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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Edgar Rodriguez-Garcia,

Petitioner,

v.

John Cantu, Field Office Director of  
Enforcement and Removal Operations,  
Phoenix Field Office, Immigration and  
Customs Enforcement;

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

Pamela Bondi, U.S. Attorney General;

Christopher Howard, Warden of Eloy  
Detention Center;

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

Respondents.

Case No. TBD

**EX PARTE  
MOTION FOR  
TEMPORARY  
RESTRAINING  
ORDER AND  
PRELIMINARY  
INJUNCTION**

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

**Challenge to Unlawful  
Incarceration; Request for  
Declaratory and Injunctive  
Relief**

Ex Parte Motion for TRO/PI; Points and Authorities in Support of  
Petitioner's Ex Parte Motion for TRO/PI

## NOTICE OF MOTION

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 that Respondents – Christopher D. McGregor in his official capacity as Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement (“ICE”), 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, Todd Lyons, in his official capacity as Acting Director of ICE Enforcement and Removal Operations, and Christopher Howard, in his official capacity as Warden of the Eloy Detention Center, where Petitioner is detained – be enjoined from continuing to detain Petitioner without an individualized bond hearing at which the government bears the burden to prove by clear and convincing evidence that Petitioner is a danger to the community or a flight risk, or in the alternative release him on appropriate conditions of supervision. Petitioner additionally seeks to enjoin Respondents from transferring the Petitioner outside the District of Arizona, where he is presently located, while this petition is pending, or from hindering his travel, if he is released, to California, where he can obtain the medical and psychiatric treatment necessary to become competent to participate meaningfully in his removal proceedings. Such an order would maintain the status quo while habeas jurisdiction is litigated, ensure that Petitioner remains close to legal counsel during the pendency of his petition, and provide a path to resolution of his removal proceedings.

The reasons for this Motion are in the accompanying Memorandum of Points and Ex Parte Motion for TRO/PI; Points and Authorities in Support of Petitioner’s Ex Parte Motion for TRO/PI

Authorities. As this Motion shows, Petitioner warrants a temporary restraining order and a preliminary injunction due to his weighty liberty interest under the Due Process Clause of the Fifth Amendment in remedying his unlawful detention.

Petitioner is submitting a habeas petition for same, on the same grounds, and is also filing this motion for a temporary restraining order and preliminary injunction to prevent irreparable injury before a hearing on his Habeas may be held. Petitioner has provided a copy of his Petition for Writ of Habeas Corpus and Motions for Temporary Restraining Order and Motion for Preliminary Injunction to Katherine Branch, Civil Chief for the U.S. Attorney's Office, via email.

WHEREFORE, Petitioner prays that this Court grant his request for a temporary restraining order and preliminary injunction enjoining Respondents from continuing to detain him without an individualized bond hearing, and enjoining Respondents from transferring him outside this judicial district while his habeas corpus petition is pending, and enjoin ICE from preventing his relocation to California following his release from custody.

Dated: December 10, 2025

Respectfully Submitted

/s/ Gregory P. Fay  
Attorney for Petitioner

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## I. INTRODUCTION

Petitioner Edgar Rodriguez Garcia seeks a Temporary Restraining Order (TRO) and Preliminary Injunction (PI) that requires Respondents to provide him with an individualized bond hearing at which the government bears the burden to prove that he is a danger to the community or a flight risk, and where the immigration judge must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that Respondents may establish. Petitioner also seeks a TRO and PI enjoining Respondents from transferring Petitioner outside the District of Arizona, where he is presently located, while this petition is pending, and enjoining Respondents from hindering Petitioner's travel following his release to California, where he can obtain the medical and psychiatric treatment necessary to restore his competency and enable him to participate meaningfully in his removal proceedings.

Petitioner should prevail on this motion because he is likely to succeed on the merits of his claims. Petitioner's detention without an individualized bond determination is unreasonably prolonged and potentially permanent, in violation of his due process rights, under the unique circumstances of his case. Specifically, an immigration judge has determined that Petitioner is not competent to understand the criminal and administrative removal proceedings that were pending against him, and a federal judge recently dismissed a criminal case that was pending against Petitioner following a competency motion. Because Petitioner cannot become competent to understand the proceedings against him given the lack of treatment he has received in detention, and proceedings cannot be resolved until he has become competent, his detention has no end in sight. Furthermore, to

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the extent the immigration judge's denial of Petitioner's request for bond due to lack of jurisdiction was based on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), that decision is contrary to the text of 8 U.S.C. § 1226(a) and § 1225(b)(2).

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

## **II. STATEMENT OF THE FACTS**

Petitioner is a native and citizen of Colombia who entered the United States most recently on June 29, 2025. *See* Exhibit A (Notice to Appear). Petitioner is 37 years old, and his mother, sister, and stepfather live in California. *See* Exhibit A; Exhibit B (Declaration of Raul Ernesto Quijada Gomez). Petitioner has suffered from significant developmental delays since infancy, and as an adult he was diagnosed with schizophrenia and depression. *See* Exhibit B. He requires an extensive medication regimen to treat his mental health conditions, and if he is released, his mother and stepfather are prepared to ensure that he receives the medical care, psychiatric supervision, and family support that he needs. *See* Exhibit B, Exhibit C (medical records from Colombia, with translation).

Petitioner was detained by Customs and Border Protection near Douglas, Arizona, on June 29, 2025, and DHS initially determined that it would process him for reinstatement of a prior removal order under 8 U.S.C. § 1241(a)(5). Exhibit D (Form I-213). However, DHS did not initiate reinstatement proceedings. Instead, Petitioner was referred to the custody of the U.S. Marshals and charged in the United States District Court for the District

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of Arizona with illegal re-entry into the United States in violation of 8 U.S.C. § 1326. Exhibit D, Exhibit E (Copy of Criminal Complaint). He had previously been removed from the United States on December 19, 2011. *See id.* Petitioner was transferred to the Eloy Detention Center in Eloy, Arizona, after his criminal complaint was dismissed on July 17, 2025, following a motion to determine competency. *See* Exhibit F (Copy of Motion to Determine Competency); Exhibit G (Copy of Order of Dismissal).

After the conclusion of his criminal case, Petitioner was placed into removal proceedings under 8 U.S.C. § 1229a upon filing of a Notice to Appear (NTA), which alleges that he entered the United States without inspection as recounted above. Exhibit A. The NTA does not allege that Petitioner is an arriving alien, and the box for such designation on that form remains unchecked. *See id.* However, the immigration judge administratively closed Petitioner's removal proceedings on October 8, 2025, after finding that Petitioner is "incompetent" and that legal counsel alone is not a sufficient safeguard to allow proceedings to continue. *See* Exhibit H (October 8, 2025 Order of the Immigration Judge). The Department of Homeland Security (DHS) filed an interlocutory appeal of the Immigration Judge's order granting administrative closure on October 8, 2025, which remains pending with no briefing deadline. *See* Exhibit I (Printout of Executive Office for Immigration Review, Automated Case Information System screen).

On September 3, 2025, Petitioner sought parole from the DHS pursuant to 8 C.F.R. § 212.5(b), in light of his significant mental health issues and needs, but DHS denied his request on September 6, 2025. *See* Exhibit J (Copy of email exchange between Petitioner's counsel in removal proceedings and DHS staff); Exhibit K (Copy of letter submitted to Ex Parte Motion for TRO/PI; Points and Authorities in Support of Petitioner's Ex Parte Motion for TRO/PI

DHS in support of parole request). Petitioner renewed his parole request on October 9, 2025, but DHS again denied the request on the same day. *See* Exhibit J. Petitioner's efforts to obtain release from the Immigration Court were equally unavailing. On December 8, 2025, an immigration judge denied Petitioner's request for bond with no finding about whether he presented a flight risk or a danger to the community, in a three-word order stating "Court lacks jurisdiction." *See* Exhibit L (Immigration Judge Bond Order).

Thus, Petitioner has been detained for nearly six months, even though a federal judge in this district has dismissed the criminal charges that were pending against him after his defense counsel provided evidence that he was incompetent. Exhibits F, G. Petitioner's period of detention includes two months after an immigration judge determined he was not competent to participate in his removal proceedings, and ordered those proceedings be administratively closed. Exhibit H; *Matter of M-A-M*, 25 I. & N. Dec. 474 (BIA 2011).

Petitioner cannot become competent to participate meaningfully in his removal proceedings while he is detained. Indeed, he has not received adequate treatment in immigration detention during the five months since his criminal proceedings were dismissed following a competency motion, and he has not received adequate treatment during the two months since the immigration judge deemed him incompetent. Therefore, Petitioner's detention has no likely termination point, and instead, there is no end in sight.

### **III. LEGAL STANDARD**

Petitioner is entitled to a temporary restraining order and preliminary injunctive relief if he establishes that he is "likely to succeed on the merits, . . . likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in

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[his] favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are “substantially identical”). Even if Petitioner does not show a likelihood of success on the merits, the Court may still grant relief if he raises “serious questions” as to the merits of his claims, the balance of hardships tips “sharply” in his favor, and the remaining equitable factors are satisfied. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127 (9th Cir. 2011).

A temporary restraining order should be issued if “immediate and irreparable injury, loss, or irreversible damage will result” to the applicant in the absence of an order. Fed. R. Civ. P. 65(b). The purpose of a temporary restraining order is to prevent irreparable harm before a preliminary injunction hearing is held. *See Granny Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda City*, 415 U.S. 423, 439 (1974). As shown below, Petitioner overwhelmingly satisfies the standards for both a temporary restraining order and a preliminary injunction.

#### IV. ARGUMENT

**PETITIONER WARRANTS A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION BECAUSE HE IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIMS, AND HE SUFFERS IRREPARABLE INJURY EACH DAY HE REMAINS DETAINED WITHOUT AN INDIVIDUALIZED BOND HEARING.**

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

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Petitioner is likely to succeed on his claim for because in his particular circumstances, the Due Process Clause of the Constitution prevents Respondents from keeping him in custody indefinitely without an individualized bond hearing in which the government bears the burden to show he is a danger to the community or a flight risk. Petitioner's removal proceedings cannot proceed while he is incompetent to participate meaningfully, and he cannot be made competent while in detention, because ICE has not provided adequate medical or psychiatric treatment. Petitioner's detention is unreasonably prolonged and indefinite, and it is unconstitutional because there is no end in sight.

The immigration judge's denial of bond was based on an unexplained finding that he lacked jurisdiction. Exhibit L. To the extent this determination was based on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, Respondents have violated the Immigration and Nationality Act and applicable regulations.

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

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

Petitioner is likely to succeed on his claim that his ongoing detention is unlawful without an individualized bond hearing concerning danger and flight risk.

**1. Petitioner Is Likely to Succeed on the Merits of His Claim That His Continued Detention Is Unconstitutional Because It Is Indefinite.**

Petitioner was physically present in the United States for less than two years when

he was apprehended in June 2025. However, he was not processed for expedited removal under section 1225(b), nor for reinstatement of removal pursuant to section 1231(a)(5). Instead, he was served with a Notice to Appear and placed into proceedings under section 1229a, in which he was not charged as an arriving alien. Exhibit A. Even assuming, *arguendo*, that Petitioner is subject to the mandatory detention provisions of 8 U.S.C. § 1225(b)(1)(A)(i), (iii)(I)-(II), his detention without an individualized bond hearing is nonetheless unconstitutional in his particular circumstances because it is potentially indefinite, with no end in sight.

*a. Unreasonably Prolonged or Indefinite Detention May Violate Due Process Even Where a Mandatory Detention Statute Applies.*

While detention of a noncitizen “during” removal proceedings is permissible, DHS may not hold individuals in immigration custody indefinitely, without any chance of release. *Jennings v. Rodriguez*, 583 U.S. 281, 301-02 (2018); *see also Zadvydas v. Davis*, 533 U.S. 678, 699-700 (2001) (holding that immigration detention violates the Due Process Clause unless it is “reasonably related” to the government’s purpose, which is to effectuate removal or to prevent danger or flight risk).

Even where a statute renders detention mandatory during removal proceedings, unreasonably prolonged detention under such a statute may impermissibly violate an individual’s due process rights on an as-applied basis. *See Black v. Dir. Thomas Decker*, 103 F.4th 133, 138 (2d Cir. 2024); *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018) (expressing “grave doubts that any statute that allows for arbitrary prolonged detention without any process is constitutional”); *Doe v. Chestnut*, No. 24-0943, 2025 U.S. Dist.

LEXIS 228839, \*10-\*11 (E.D. Cal. Nov. 20, 2025) (distinguishing *Jennings*, 583 U.S. at 312, because claim of unreasonably prolonged detention during pending removal proceedings in *Doe* was constitutional, not statutory as in *Jennings*); *Diaz v. Genalo*, No. 22-3063, 2024 WL 4124756 \*13-\*14 (S.D.N.Y. Sep. 9, 2024) (ordering bond hearing with burden on government as to danger and flight risk, for noncitizen subject to mandatory detention under 1226(c), but detained for three years while suffering from severe mental illness); see also *Abdulraimov v. Andrews*, No. 25-0843, 2025 WL 2912307, \*12-\*13 (E.D. Cal. Oct. 14, 2025) (rejecting argument “that ‘noncitizens subject to mandatory detention like Petitioner, who were not admitted or paroled into the country, nor physically present for at least two years on the date of inspection — as a class — lack any liberty interest in avoiding removal or to certain additional procedures’”).

*b. Petitioner’s Detention Would Be Unreasonably Prolonged Under the Six-Factor Test Articulated in Banda v. McAleenan.*

Under Petitioner’s particular circumstances, his detention is unreasonably prolonged and therefore violates due process. Courts addressing as-applied constitutional challenges to prolonged pre-order detention have frequently applied a six-factor, “case-specific” test “to determine whether Petitioner’s detention violates due process.” *Banda v. McAleenan*, 385 F. Supp. 3d 1099, 1106 (W.D. WA 2019).<sup>1</sup> The six *Banda* factors are:

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<sup>1</sup> See, e.g., *Hamideh Sadeqi v. Larose*, No. 25-2587, 2025 WL 3154520 (S.D. Cal. Nov. 25, 2025) (applying *Banda* factors and granting habeas petition of arriving alien detained during credible fear proceedings); *Amado v. DOJ*, No. 25-2687, 2025 WL 3079052 (S.D. Cal. Nov. 4, 2025) (applying *Banda* factors and granting habeas petition of arriving alien placed in removal proceedings under section 1229a); *Kadir v. Larose*, No. 25-1045, 2025 Ex Parte Motion for TRO/PI; Points and Authorities in Support of Petitioner’s Ex Parte Motion for TRO/PI

“(1) the total length of detention to date; (2) the likely duration of future detention; (3) the conditions of detention; (4) delays in the removal proceedings caused by the detainee; (5) delays in the removal proceedings caused by the government; and (6) the likelihood that the removal proceedings will result in a final order of removal.” *Id.* (quoting *Jamal A. v. Whitaker*, 385 F. Supp. 3d 853, 858-59 (D. Minn. 2019)). Petitioner is likely to succeed on the merits upon application of the *Banda* factors to his case.

As to the first factor, Petitioner was apprehended by Customs and Border Protection on June 29, 2025, and he has been detained ever since, his criminal proceedings having lasted less than one month. Exhibits E, F, G. As to the second factor, the likely duration of his future detention is indefinite and potentially permanent, because he cannot meaningfully participate in his removal proceedings while he is incompetent, and he cannot be rendered competent while he is detained. *See* Exhibits B, F, G, H. Thus, as long as Petitioner is detained, his removal proceedings have no likely termination point, but will remain in limbo indefinitely. Accordingly, while the first *Banda* factor does not render Petitioner’s detention presumptively unreasonable, the second factor weighs heavily in his favor.

As to the third factor, conditions for Petitioner in detention are severely detrimental to his health and do not permit him to obtain adequate treatment for his serious psychiatric and developmental ailments. While in immigration detention,

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U.S. Dist. LEXIS 203614 (S.D. Cal. Oct. 15, 2025) (same); *Cardozo v. Bostock*, 25-0871, 2025 WL 2592275 (W.D. WA Sep. 8, 2025) (same); *Arechiga v. Archambeault*, No. 23-0600, 2023 WL 5207589 (D. Nev. Aug. 11, 2023) (same).  
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Petitioner “has gone days without sleeping. His behavior has become increasingly unstable, and other detainees have expressed concern because he appears distressed at night.” Exhibit B. “These are clear signs that he urgently needs specialized psychiatric intervention,” but in detention, Petitioner “lacks the proper professional support that his condition requires.” *Id.* ICE has failed to provide adequate treatment even though Petitioner, through counsel, proffered extensive documentation of his medical and psychiatric conditions and treatment needs, dating back many years, including information about an incident in Colombia where he disappeared for one week and was with “no clothing and no shoes,” experiencing symptoms of schizophrenia. Exhibits C, K.

As to the fourth and fifth factors, Petitioner has not caused the delays in his removal proceedings, which are instead attributable to ICE or to circumstances beyond his control. Petitioner’s incompetence is no fault of his own, but is instead attributable to conditions from which he has suffered since infancy. Exhibits B, C. ICE has long been aware of Petitioner’s incompetency and has had ample time to provide adequate treatment for Petitioner’s conditions. Petitioner’s criminal case was dismissed five months ago following a competency motion, and it has been two months since an immigration judge found that Petitioner is not competent to participate in his removal proceedings. Exhibits F, G, H. Petitioner has provided DHS with detailed documentation of his psychiatric and developmental challenges, and of his family’s willingness and ability to ensure his treatment, over the course of two requests for parole. Exhibits J, K. Despite having all the necessary information presented to it cogently and promptly, DHS has delayed Petitioner’s proceedings by failing to provide proper treatment or release

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Petitioner to the family members who have promised to do so. *See id.*; *see also* Exhibit B. Thus, the fourth and fifth factors weigh heavily in Petitioner's favor.

Finally, as to the sixth factor, it is unlikely that the proceedings will result in a final order of removal. The immigration judge administratively closed the proceedings because Petitioner is not competent to participate meaningfully, and adequate safeguards could not be provided. Exhibit H. While DHS has filed an interlocutory appeal of this order, adjudication of that appeal promises to be protracted, because the Board of Immigration Appeals has not set a briefing deadline despite Petitioner's continued detention. *See* Exhibit I. Furthermore, given the criminal court's dismissal of Petitioner's case following the competency motion, DHS's interlocutory appeal is unlikely to succeed. *See* Exhibit H. Petitioner further intends to seek relief from removal, *see* Exhibit J, but he would need to be restored to competency or provided with adequate safeguards in order to do so in a manner consistent with BIA precedent – which is not possible in ICE custody. *See Campos Mejia v. Sessions*, 868 F.3d 1118, 1121 (9th Cir. 2018). Thus, the sixth and final factor favors Petitioner.

On balance, the six *Banda* factors favor a grant of this petition, with an order that Petitioner should receive a hearing at which the government bears the burden to prove that he poses a danger to the community or a risk of flight. *See Hamideh Sadeqi*, 2025 WL 3154520 (ordering bond hearing with burden allocated to the government); *Amado*, 2025 WL 3079052 (same); *Kadir*, 2025 U.S. Dist. LEXIS 203614 (same); *Cardozo*, 2025

WL 2592275 (same); *Arechiga*, 2023 WL 5207589 (same).<sup>2</sup>

*c. Petitioner's Detention Is Unreasonably Prolonged Under the Mathews v. Eldridge Test.*

The six-factor *Banda* test is most appropriate for consideration of this petition, because “a balancing test focusing on ‘*additional or substitute* procedural safeguards . . . does not resolve the more fundamental issue of whether *any* procedure—such as a bond hearing—must be provided.” *Hong v. Mayorkas*, No. 20-1784, 2022 WL 1078627, \*10 (W.D. WA Apr. 11, 2022) (quoting *Djelassi v. ICE Field Office Dir.*, 434 F. Supp. 3d 917, 920 (W.D. WA 2020)). However, Petitioner’s circumstances also satisfy the requirements of the balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), which some courts have applied.<sup>3</sup>

The *Mathews v. Eldridge* test involves balancing of three factors: “[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the

<sup>2</sup> Petitioner has not yet received an individualized bond hearing at which his risk of flight or danger to the community were considered. Instead, the immigration judge denied his request for bond with a three-word conclusion: “Court lacks jurisdiction.” Exhibit L.

<sup>3</sup> *See, e.g., Idiev v. Warden, Golden State Annex Detention Facility*, No. 25-1030, 2025 U.S. Dist. LEXIS 218271 (S.D. Cal. Nov. 5, 2025) (collecting cases; applying balancing test under *Mathews v. Eldridge*, 424 U.S. 319, to claim of unreasonably prolonged pre-order mandatory detention under § 1225(b)(1); and concluding that bond hearing was required with burden of proof on the government as to danger and flight risk); *Tonoyan v. Andrews*, No. 25-0815, 2025 WL 3013684 (E.D. Cal. Oct. 27, 2025) (same); *Maksim v. Warden, Golden State Annex Detention Facility*, No. 25-00955, 2025 WL 2879328 (E.D. Cal. Oct. 9, 2025) (same).

additional or substitute procedural requirement would entail.” 424 U.S. at 335.

As to the first factor, in *Tonoyan*, the petitioner was detained for nearly 11 months, but approximately five months of this detention period was attributable to his own request for continuances of his removal proceedings to prepare applications for relief and switch attorneys. 2025 WL 3013684 at \*4, \*11. The Court in *Tonoyan* found that under these circumstances, Petitioner’s “private interest in being free from prolonged detention” was a factor that weighed in his favor. *Id.* at \*11. Just as the petitioner in *Tonoyan* was detained for approximately six months that were not attributable to his own actions, Petitioner has been detained for nearly six months due to factors outside his control, as described above. While a detention period of six months is “presumptively” reasonable, there is no “categorical prohibition on claims challenging detention less than six months.” *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020); *see also Uzzhina v. Chestnut*, No. 25-1594, 2025 WL 3458787, \*6, n.3 (E.D. Cal. Dec. 2, 2025) (“[t]he fact that a noncitizen has been held in-custody less than six months does not foreclose a claim that his or her detention is unlawful”). As explained above, DHS has twice denied Petitioner’s parole requests and has filed an interlocutory appeal of the immigration judge’s order finding him incompetent, despite the order of a federal district judge dismissing his criminal proceedings following a competency motion. Under these unique circumstances, there is no indication that Petitioner’s detention has any foreseeable end point. Thus, the first factor under *Mathews v. Eldridge* favors Petitioner.

As to the second factor, “the probable value of additional procedural safeguards” in the form of a bond hearing “is high” when a petitioner has not received an

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individualized bond hearing and “it is not clear when detention will end.” *Idiev*, 2025 U.S. Dist. LEXIS 218271, \*15. Petitioner has not received a bond hearing that provided any meaningful procedural safeguards, because the immigration judge made no findings about danger or flight risk. Exhibit L. DHS did not address the competency issues raised by Petitioner in either of its conclusory statements denying his amply documented requests for parole, and it has not provided adequate treatment for his psychiatric conditions in detention. Exhibits B, J, K. Ultimately, it is not clear when (or if) Petitioner’s detention will end, and he has received no meaningful procedural safeguards. Thus, the risk of erroneous deprivation weighs in favor of granting a bond hearing.

Finally, as to the third factor, the government has an interest in “effecting removal” and “in protecting the public from danger,” but not in continued detention of a petitioner without a bond hearing. *Idiev*, 2025 U.S. Dist. LEXIS 218271, \*15. A petitioner’s degree of dangerousness or flight risk is neither presumed nor established by speculation; instead, the purpose of a bond hearing is “to inquire whether the alien represents a flight risk or danger to the community.” *Id.* (citing *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006)). Additionally, in Petitioner’s circumstances, any interest the government ultimately acquires in effecting removal would be facilitated, not hindered, by his release, because his mother and stepfather are able to ensure that he receives the treatment he needs to permit removal proceedings to continue. Exhibit B. Under these circumstances, the *Mathews v. Eldridge* factors, on balance, favor a grant of this petition.

*d. Petitioner's Detention Would Violate Due Process Even Under the Standard Applied by Courts That Have Declined to Impose a Balancing Test.*

Finally, even following the approach of courts that have declined to apply any type of multi-factor balancing test, Petitioner's detention is unconstitutional because it is potentially permanent and has no "definite termination point." *Gevorg v. Warden, Golden State Annex Detention Facility*, No. 25-0992, 2025 U.S. Dist. LEXIS 251666, \*20 (E.D. Cal. Dec. 5, 2025) (concluding that in "the absence of binding authority on the issue" in the Ninth Circuit, "the threshold question in considering Petitioner's claims of unreasonably prolonged detention under § 1225(b) without a bond hearing is whether Petitioner's continued detention serves the purported immigration purpose and has a definite termination point"); *see also Doe v. Andrews*, No. 25-0333, 2025 WL 3280777, \*35-\*36 (E.D. Cal. Nov. 25, 2025) (same, recommending dismissal of petition because petitioner presented "no evidence that his detention is indefinite or potentially permanent," and concluding that the dismissal in these circumstances "does not foreclose the possibility of a due process violation and bond hearing for a § 1225(b)(1) detainee where circumstances evince that detention is indefinite or for some other non-immigration purpose") (emphasis in original).

In *Gevorg*, the petitioner's proceedings were "still actively 'pending a final determination of credible fear of persecution,'" and a final hearing before an immigration judge was scheduled within weeks of the habeas filing. *Id.* at 20. By contrast, an immigration judge has administratively closed Petitioner's removal proceedings upon a conclusion that they cannot proceed while he is incompetent to participate meaningfully

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in them. *See Matter of M-A-M-*, 25 I. & N. Dec. 474. And as previously explained, Petitioner cannot be rendered competent while in detention. The circumstances of this case therefore evince that Petitioner's detention is indefinite and potentially permanent, and as such, his continued detention without an individualized bond hearing violates due process. Petitioner is likely to succeed on the merits of his claim.

2. Petitioner Is Likely to Succeed on the Merits of His Claim That He Is Not Subject to Mandatory Detention as an "Arriving Alien" Who Is "Seeking Admission."

The immigration judge denied Petitioner's request for bond upon a finding of no jurisdiction, without citing any case or statute. Exhibit L. To the extent that finding was based on *Matter of Yajure-Hurtado*, 29 I. & N. 216, Petitioner is likely to succeed on the merits of his claim that *Matter of Yajure-Hurtado* is an impermissible interpretation of the INA.

On September 5, 2025, the BIA issued a precedential decision adopting a novel argument that all noncitizens who are present without admission are subject to mandatory detention under 8 U.S.C. 1225(b)(2)(A). *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA acknowledged that 8 U.S.C. 1225(b)(2)(A) only applies to noncitizens who are "seeking admission," but concluded that the provision applied to all noncitizens who are present without admission as they are also "applicant[s] for admission" under 8 U.S.C. 1225(a)(1). 29 I&N Dec. at 218.<sup>4</sup>

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<sup>4</sup> A motion to reconsider had been filed in *Matter of Yajure Hurtado*. The motion challenges the Board's statutory analysis, and asks it to withdraw its decision because (a) the underlying removal proceedings had concluded by the time the Board issued its decision, making the case moot, and (b) the decision conflicts with longstanding Ex Parte Motion for TRO/PI; Points and Authorities in Support of Petitioner's Ex Parte Motion for TRO/PI

To date, over 100 federal district judges have either outright rejected the government's novel interpretation,<sup>5</sup> or found that noncitizens challenging the government's

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regulations issued by the Attorney General. The Board's Decision in *Matter of Yajure Hurtado* is also not entitled to deference because it contravenes the statutory language and legislative history, and it deviates from longstanding agency practice and regulations. *Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025).

<sup>5</sup> *Martinez v. Raycraft*, No. 25-1504, 2025 U.S. Dist. LEXIS 253165 (W.D. MI Dec. 8, 2025) (Jonker, J.); *Patel v. O'Neil*, No. 25-2185, 2025 U.S. Dist. LEXIS 252347 (W.D. Pa. Dec. 8, 2025) (Mariani, J.); *Silvestre Mendoza v. Noem*, No. 25-3206, 2025 U.S. Dist. LEXIS 253317 (S.D. Cal. Dec. 8, 2025) (Bermudez Montenegro, J.); *Esperanza v. Francis*, No. 25-8727, 2025 U.S. Dist. LEXIS 253384 (S.D.N.Y. Dec. 8, 2025) (Abrams, J.); *Pereira v. O'Neill*, No. 25-6543, 2025 U.S. Dist. LEXIS 252833 (E.D. Pa. Dec. 8, 2025) (Spencer Marston, J.); *Ramirez v. Larose*, No. 25-3253, 2025 U.S. Dist. LEXIS 251625 (S.D. Cal. Dec. 5, 2025) (Simmons, J.); *Sislema v. Soto*, No. 25-17204, 2025 U.S. Dist. LEXIS 251281 (D. N.J. Dec. 5, 2025) (Martinotti, J.); *Conde v. Jamison*, No. 25-6551, 2025 U.S. Dist. LEXIS 251052 (E.D. Pa. Dec. 5, 2025) (Brody, J.); *Ramirez-Ramirez v. Beuter*, 25-185, 2025 U.S. Dist. LEXIS 251111 (D. Iowa Dec. 5, 2025) (Williams, C.J.); *Patel v. Warden, Folkston ICE Processing Facility*, No. 25-146, 2025 U.S. Dist. LEXIS 168696 (S.D. Ga. Dec. 3, 2025) (Godbey Wood, J.); *Gonzalez v. Olson*, No. 25-13439, 2025 U.S. Dist. LEXIS 227990 (N.D. Ill. Nov. 19, 2025) (Harjani, J.); *Pastor v. Raycraft*, No. 25-1301, 2025 U.S. Dist. LEXIS 227892 (W.D. Mich. Nov. 19, 2025) (Jarbou, J.); *Martinez v. Lynch*, No. 25-1353, 2025 U.S. Dist. LEXIS 227890 (W.D. MI Nov. 19, 2025) (Beckerling, J.); *Lobera v. Noem*, No. 25-13593, 2025 U.S. Dist. LEXIS 227578 (N.D. Ill. Nov. 19, 2025) (Tharp, J.); *Ndiaye v. Jamison*, No. 25-6007, 2025 U.S. Dist. LEXIS 227253 (E.D. Pa. Nov. 19, 2025) (Sanchez, J.); *Torres v. Bondi*, No. 25-2457, 2025 U.S. Dist. LEXIS 226975 (S.D. Cal. Nov. 18, 2025) (Bashant, J.); *Aparicio Sanchez v. Noem*, No. 25-3068, 2025 U.S. Dist. LEXIS 226977 (S.D. Cal. Nov. 18, 2025) (Sammartino, J.); *Demirel v. Fed. Det. Ctr. Phila.*, No. 25-5488, 2025 U.S. Dist. LEXIS 226877 (E.D. Pa. Nov. 18, 2025) (Diamond, J.); *Lopez v. Olson*, No. 25-654, 2025 U.S. Dist. LEXIS 226574 (W.D. Ky. Nov. 18, 2025) (Hale, C.J.); *Guerrero v. Noem*, No. 25-5881, 2025 U.S. Dist. LEXIS 226952 (E.D.N.Y. Nov. 18, 2025) (Komitee, J.); *Villegas ex rel. Andujar v. Francis*, 25-9199, 2025 U.S. Dist. LEXIS 228053 (S.D.N.Y. Nov. 18, 2025) (Rochon, J.); *Garcia v. Sam Olson Field Off. Dir. Of Enf.*, No. 25-13621, 2025 U.S. Dist. LEXIS 225438 (N.D. Ill. Nov. 17, 2025) (Kendall, J.); *Guaita-Quinapanta v. Bondi*, No. 25-795, 2025 U.S. Dist. LEXIS 233351 (W.D. WI Nov. 12, 2025) (Conley, J.); *Guartazaca Sumba v. Crowley*, No. 25-13034, 2025 U.S. Dist. LEXIS 220641 (N.D. Ill. Nov. 9, 2025) (Chang, J.); *Morales-Martinez v. Raycraft*, No. 25-13303, 2025 U.S. Dist. LEXIS 220596 (E.D. Mich. Nov. 7, 2025) (Behm, J.); *Diaz Garcia v. Noem*, No. 25-1712, 2025 U.S. Dist. LEXIS 219436 (E.D. Va. Nov. 6, 2025) (Giles, J.); *Arizmendi v. Noem*, No. 25-13041, 2025 U.S. Dist. LEXIS 218000 (N.D. Ill. Nov. 5, 2025) (Pallmyer, J.); *Elias v. Hyde*, No. Ex Parte Motion for TRO/PI; Points and Authorities in Support of Petitioner's Ex Parte Motion for TRO/PI

25-540, 2025 LX 210971 (D. R.I. Oct. 27, 2025); *Carmona v. Noem*, No. 25-1131, 2025 LX 209629 (W.D. Mich. Oct. 23, 2025) (Maloney, J.); *Del Cid v. Bondi*, No. 25-0304, 2025 LX 209136 (W.D. Pa. Oct. 23, 2025) (Haines, J.); *Avila v. Bondi*, No. 25-3741, 2025 LX 206789 (D. Minn. Oct. 21, 2025) (Tunheim, J.); *Miguel v. Noem*, No. 25-C-11137, 2025 LX 206990 (N.D. Ill. Oct. 21, 2025) (Alonso, J.); *Maldonado de Leon v. Baker*, No. 25-3084, 2025 LX 207581 (D. Md. Oct. 21, 2025) (Chuang, J.); *Buestan v. Cory Chu*, No. 225-16034, 2025 LX 211879 (D. N.J. Oct. 21, 2025) (Fabiarz, J.); *Benitez-Cornejo v. Cantu*, No. 25-3672 (D. Ariz. Oct. 17, 2025) (Tuchi, J.); *Torres v. Wamsley*, 2025 WL 2855379 (W.D. Wash. Oct. 8, 2025) (Menendez, J.); *BDVS v. Forestal*, No. 25-1968 (S.D. In. Oct. 8, 2025) (Evans Barker, J.); *Eliseo v. Olson*, No. 25-3381, Oct. 8, 2025) (Blackwell, J.); *Buenrostro-Mendez v. Bondi*, No. 25-3726, (S.D. Tx. Oct. 7, 2025) (Rosenthal, J.); *Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025) (Joun, J.); *Belsai D.S. v. Bondi*, No. 25-3682 (D. Mn. Oct. 1, 2025) (Menendez, J.); *Santiago Santiago v. Noem*, No. 25-361 (W.D. Tx. Oct. 1, 2025) (Cardone, J.); *Quispe-Ardiles v. Noem*, No. 25-1382, 2025 WL 2783799 (E.D. Va. Sept. 30, 2025) (Nachmanoff, J.); *Rodriguez Vazquez v. Bostock*, No. 25-5240, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025) (Cartwright, J.); *Da Silva v. ICE*, No. 25-284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025) (McCafferty, J.); *Quispe v. Crawford*, No. 25-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025) (Trenga, J.); *Inlago Tocagon v. Moniz*, No. 25-12453, 2025 WL 2778023 (D. Mass. Sept. 29, 2025) (Joun, J.); *Barrios v. Shepley*, No. 25-406, 2025 WL 2772579 (D. Maine Sept. 29, 2025) (Woodcock, Jr.); *J.U. v. Maldonado*, No. 25-4836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Savane v. Francis*, No. 25-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.); *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (Hayden, J.); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tx. Sept. 26, 2025) (Hittner, J.); *Gamez Lira v. Noem*, No. 25-855 (D.N.M. 25-855) (Johnson, J.); *Singh v. Lewis*, No. 25-96, 2025 LX 400065 (W.D. Ky. Sept. 22, 2025) (Jennings, J.); *Chafla v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (Neumann, J.); *Hasan v. Crawford*, No. 25-1408, 2025 LX 499354 (E.D. Va. Sept. 19, 2025) (Brinkema, J.); *Barrera v. Tindall*, No. 25-451, 2025 LX 435572 (W.D. Ky. Sept. 19, 2025) (Jenning, J.); *Salazar v. Dedos*, No. 25-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (Urias, J.); *Garcia Cortes v. Noem*, No. 25-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (Sweeney, J.); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (White, J.); *Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX 360066 (D.N.H. Sept. 8, 2025) (McCafferty, J.); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (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. 19, 2025) (Murphy, J.); Ex Parte Motion for TRO/PI; Points and Authorities in Support of Petitioner's Ex Parte Motion for TRO/PI

interpretation were substantially likely to prevail on the merits.<sup>6</sup> It is not difficult to understand why federal district courts have rejected the government’s novel interpretation. By its terms, 8 U.S.C. 1225(b)(2)(A) only applies to noncitizens who are “seeking admission,” and Congress defined “admission” as the “lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C.

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*Samb v. Joyce*, No. 25-6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (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.); *see also Mairena-Munguia v. Arnott*, No. 25-3318, 2025 U.S. Dist. LEXIS 227477 (Nov. 19, 2025) (Harpool, J.) (further concluding that contrary position advanced by Respondents was not substantially justified, for purposes of awarding fees under Equal Access to Justice Act).

<sup>6</sup> *Vasquez v. Noem*, No. 25-3087, 2025 U.S. Dist. LEXIS 228034 (C.D. Cal. Nov. 19, 2025) (Slaughter, J.); *Mendoza Gutierrez v. Baltasar*, No. 25-CV-02720, 2025 LX 208448 (D. Colo. Oct. 17, 2025); *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025) (Boulware, J.); *Rico-Tapia v. Smith* No. 25-379 (D. Haw. Oct. 10, 2025) (Park, J.); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025) (Beeler, J.); *Flores v. Noem*, No. 25-2490, 2025 LX 444718 (C.D. Cal. Sept. 29, 2025) (Birotte, J.); *Roa v. Albarran*, No. 25-7802, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025) (Seeborg, J.); *Lopez v. Hardin*, No. 25-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025) (Dudek, J.); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163 (E.D. Ca Sept. 23, 2025) (Sherriff, J.); *Aceros v. Kaiser*, No. 25-06924, 2025 LX 330524 (N.D. Cal. Sept. 12, 2025) (Chen, J.); *Mosqueda v. Noem*, No. 25-2304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (Snyder, J.); *Nieves v. Kaiser*, No. 25-6921, 2025 LX 320701 (N.D. Cal. Sept. 3, 2025) (Beeler, J.); *Garcia v. Noem*, No. 25-2180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.); *Garcia v. Kaiser*, No. 25-06916, 2025 LX 322337 (N.D. Cal. Aug. 29, 2025) (Gonzalez Rogers, J.); *Kostak v. Trump*, No. 25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (Edwards, J.); *Benitez v. Noem*, No. 25-02190, 2025 LX 322897 (C.D. Cal. Aug. 26, 2025) (Klausner, J.); *Ramirez Clavijo v. Kaiser*, No. 25-06248, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025) (Freeman, J.); *Arrazola-Gonzalez v. Noem*, No. 25-01789, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (Wright, J.); *Maldonado v. Olson*, No. 25-3142, 2025 WL 2374411 (D. Minn. Aug. 15, 2025) (Nelson, J.); *Maldonado Bautista v. Santacruz*, No. 25-01873, 2025 LX 341363 (C.D. Cal. July 28, 2025); *Vazquez v. Bostock*, No. 25-05240, 779 F. Supp. 3d 1239 (W.D. Wash. April 24, 2025) (Cartwright, J.). *But see Sixtos Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC (S.D. Cal. Sep. 24, 2025) (denying temporary restraining order).

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1101(a)(13)(A). The plain text of the statutory provisions demonstrates that § 1226(a), not § 1225(b), applies to people who enter the United States without inspection but are not seeking admission. As importantly, if “the [BIA was] correct that § 1225(b)’s mandatory detention provisions apply to all persons who have not been admitted into the United States, that would render superfluous those provisions of § 1226 that apply to certain categories of inadmissible aliens, such as § 1226(c)(1)(A), (D), and (E).” *Hasan v. Crawford*, \_\_\_ F. Supp. 3d \_\_\_, 2025 WL 268225 at \*22 (E.D. Va. Sept. 19, 2025) (Brinkema, J.).

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

Recent amendments to § 1226 dramatically reinforce that this section covers people whom DHS alleges to be present without admission. Specifically, the Laken Riley Act added language to section 1226 that directly references those who are inadmissible under section 1182(a)(6) because they are present without admission or under § 1182(a)(7) because of the lack of valid documentation. *See* Laken Riley Act (LRA), Pub. L. No. 119-  
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1, 139 Stat. 3 (2025); 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c) and carving them out of § 1226(a) if they have been arrested, charged with, or convicted of certain crimes, Congress reaffirmed that § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). *See Aceros v. Kaiser*, 2025 WL 2637503 at \*28 (N.D. Cal. Sept. 12, 2025) (concluding that the BIA’s interpretation would also “render the Laken Riley Act a meaningless amendment, since it would have prescribed mandatory detention for noncitizens already subject to it”); *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at \*14 (W.D. Wash. June 6, 2025) (explaining that “‘specific exceptions’ [in the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)’s default rule for discretionary detention.”); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at \*7 (D. Mass. July 24, 2025) (“if, as the Government argue[s], . . . a non-citizen’s inadmissibility were alone already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025 amendment would have no effect”); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at \*7 (D. Mass. July 7, 2025) (similar). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).<sup>7</sup>

Unlike 8 U.S.C. § 1226, 8 U.S.C. § 1225(b)(2)(A) applies only to individuals who

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<sup>7</sup> The BIA acknowledged that its interpretation rendered superfluous multiple provisions of 8 U.S.C. 1226(c), including one recently enacted in the Laken Riley Act, Pub. L. No. 119-1, but it stated that “redundancies are common in statutory drafting.” 29 I&N Dec. at 221-22 (quoting *Barton v. Barr*, 590 U.S. 222 (2020)).  
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are “seeking admission” to the United States.<sup>8</sup> *See Benitez-Cornejo v. Cantu, et al.*, 2:25-CV-03672-JJT-ESW, 2025 LX (D. Ariz. Oct. 17, 2025) (rejecting argument that all “individuals who have never been admitted are ‘seeking admission’”); *Echevarria v. Bondi, et al.*, 2:25-CV-03252-DWL-ESW, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025) (reasoning that to argue all applicants for admission “are necessarily (and continuously) ‘seeking admission,’ so long as they continue to exist in the United States” is “an obvious violation of the rule against surplusage” and “goes against the plain, ordinary meaning of the words ‘seeking’ and ‘admission’”); *Arrazola Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (similar).

8 U.S.C. § 1225 further defines its scope by reference to “inspections”—a term not defined in the INA, but which typically connotes an examination upon or soon after physical entry. *See* 8 U.S.C. § 1225 (titled “Inspection by immigration officers; expedited removal of inadmissible arriving [noncitizens]; referral for hearing”); §§ 1225(b)(1)–(2) (referring to “inspections” in their titles); § 1225(b)(2)(A), (b)(4) (referring to “examining immigration officers”); § 1225(d)(1) (authorizing immigration officials to search certain conveyances in order to conduct “inspections” where noncitizens “are being brought into the United States”); *see also Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe statute). Many statutory

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<sup>8</sup> 8 U.S.C. § 1225(b)(1) concerns “expedited removal of inadmissible arriving [noncitizens],” including those who present themselves for inspection upon “arriving” and other individuals designated by the Attorney General who have been present in the United States for less than two years, and who are “inadmissible under section 1182(a)(6)(C) or § 1182(a)(7).” 8 U.S.C. § 1225(b)(1)(A)(i). Subsection (b)(1) does not require Petitioner’s detention because he did not present himself for inspection.  
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provisions, various regulations, and agency precedent also discuss “inspection” in the context of admission processes at ports of entry, further supporting the conclusion that § 1225 has a limited temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§ 1187(h)(2)(B)(i), 1225A; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010)); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act’s “broader structure . . . to determine [the statute’s] meaning”).

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

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Webster's Dictionary (2025) (defining "seek" as, inter alia, "to go in search of" or "to try to acquire or gain"). Thus, regardless of the scope of § 1225(a)(1)'s definition of "applicant for admission," a noncitizen's status as an "applicant for admission" is not sufficient to render him or her subject to mandatory detention under § 1225(b)(2). The "applicant for admission" must *also* be "seeking admission," and that is clearly not the case for Petitioner.

In sum, the mandatory detention provision of section 1225 addressed in *Matter of Yajure-Hurtado* applies only to individuals arriving in the United States and seeking admission as specified in the statute. To the extent the immigration judge based his jurisdictional determination on *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, Petitioner is likely to prevail on any challenge to that determination. *See* Exhibit L.

**B. PETITIONER WILL SUFFER IRREPARABLE HARM IN THE ABSENCE OF A TEMPORARY RESTRAINING ORDER AND A PRELIMINARY INJUNCTION.**

In the absence of a TRO and PI, Petitioner will continue to be unlawfully detained on a potentially indefinite basis without an individualized bond hearing. "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). Further, 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) (concluding that Plaintiffs who showed unconstitutional deprivation of physical liberty "also carried their burden as to irreparable harm.").

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Detainees in civil ICE custody are held in “prison-like conditions” which have real consequences for their lives. *Preap v. Johnson*, 831 F.3d 1193, 1195 (9th Cir. 2016). Petitioner suffers from serious psychiatric conditions and developmental delays, for which he is not receiving adequate treatment while in detention. Exhibits B, K. He cannot meaningfully participate in his removal proceedings under these circumstances, *see* Exhibits F, G, H, and his mother and stepfather stand ready to ensure that he receives treatment if he is released, *see* Exhibit B. Petitioner’s ongoing deprivation of adequate psychiatric treatment, and his separation from family members who are willing and able to ensure that he receives such treatment, constitutes irreparable harm.

Petitioner will also suffer irreparable harm if he is transferred outside this judicial district while his petition is pending. Because habeas review is governed by the district-of-confinement/immediate-custodian rule, transfer of a detainee to another judicial district can frustrate effective review. *See Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025); *Rumsfeld v. Padilla*, 542 U.S. 426, 441–42 (2004); *FTC v. Dean Foods Co.*, 384 U.S. 597, 603–05 (1966). Furthermore, in a habeas action, the physical presence of a petitioner in the judicial district where the action is pending “facilitate[s]” the petitioner’s “ability to work with [his or] her attorneys, coordinate the appearance of witnesses, and generally present [his or her] habeas claims.” *Ozturk v. Trump*, 779 F. Supp. 3d 462, 497 (D. Vt. 2025). These interests are particularly acute where, as in Mr. Rodriguez Garcia’s case, the habeas claim is “based on events that occurred in” the same geographic region as the judicial district of detention. *Id.*; *see also* Standing Order 2025-01, Misc. No. 00-308 (D. Md., May 21, 2025) (prohibiting, for at least two business days after the filing of Ex Parte Motion for TRO/PI; Points and Authorities in Support of Petitioner’s Ex Parte Motion for TRO/PI

all habeas petitions, removal of petitioners from the continental United States to preserve their ability to participate in court proceedings and access legal counsel); *Velasquez-Salazar v. Dedos*, 1:25-CV-00835-DHU-JMR, 2025 WL 2676729 (D.N.M. Sep. 17, 2025) (enjoining Respondents from transferring petitioner outside judicial district during pendency of habeas action upon a finding that petitioner showed a likelihood of irreparable harm absent injunction). Finally, if Petitioner is released, but prevented from traveling to and from California, where his family members are able to ensure that he receives adequate treatment, he will suffer irreparable harm in the form of continued incompetence and inability to participate meaningfully in his removal proceedings. Thus, a temporary restraining order and preliminary injunctive relief are necessary to prevent Petitioner from suffering irreparable harm by remaining in indefinite detention without an individualized bond hearing, by being moved outside this judicial district while the petition is pending, or by being prevented from traveling within the United States following his release.

**C. THE BALANCE OF EQUITIES TIPS IN PETITIONER'S FAVOR AND A TRO AND PI ARE 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 factor weighs in his favor because his detention is potentially indefinite and therefore violates his due process rights. Additionally, the new policy articulated in *Matter of Yajure-Hurtado*, 29 I. & N. Dec. 216, violates federal laws. The government cannot suffer harm from an injunction that prevents it from engaging in an unlawful practice. *See*

*Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983) Further, any burden imposed by requiring the Respondents to provide Petitioner with an individualized bond hearing, rather than continuing to subject an incompetent noncitizen to indefinite detention, is both *de minimis* and clearly outweighed by the substantial harm he will suffer if he continues to be detained. *See Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983) (“Society’s interest lies on the side of affording fair procedures to all persons, even though the expenditure of governmental funds is required.”).

Just as the government cannot be burdened by releasing Petitioner from custody, any burden imposed by requiring them to *maintain* custody in the District of Arizona for the duration of this case is clearly outweighed by the substantial harm Petitioner will face if his case cannot be heard at all because he is moved to a different jurisdiction. *See Ozturk v. Hyde*, 136 F.4th 382 (“[f]aced with such a conflict between the government’s unspecific financial and administrative concerns on the one hand, and the risk of substantial constitutional harm to [petitioner] on the other, we have little difficulty concluding ‘that the balance of hardships tips decidedly’ in [the petitioner’s] favor”) (quoting *Mitchell v. Cuomo*, 748 F.2d 804, 808 (2d Cir. 1984)). Similarly, any burden imposed on the government by requiring it to permit Petitioner’s travel to and from California if he is released is outweighed by the substantial harm Petitioner will face if he continues to be separated from his family treatment resources.

Finally, if preliminary relief is not entered, the government would effectively be granted permission to detain Petitioner indefinitely without an individualized hearing, in violation of the requirements of Due Process.

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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 immigration judge's denial of bond and awaiting a BIA decision, where the Board's recent precedential decision makes the outcome of that appeal a foregone conclusion. "[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). Administrative exhaustion is not required where a request for relief before the agency would be futile because the agency has "predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). Here, the exceptions regarding futility, irreparable injury, and agency delay warrant waiving any prudential exhaustion requirement.

1. Futility

The BIA's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, renders prudential exhaustion futile in bond cases involving individuals who entered the United States without inspection. *Zaragoza Mosqueda, et al. v. Noem*, 2025 WL 2591530, at \*7 (C.D. Cal. Sept. 8, 2025). The BIA's decision in *Matter of Yajure Hurtado* "predetermine[s]" the outcome of DHS's administrative appeal. *McCarthy*, 503 U.S. at 148. Prudential exhaustion is therefore unnecessary, and the Court should take jurisdiction over Petitioner's case.

2. Irreparable injury

Because Petitioner was denied access to an individualized bond determination as to flight risk and danger to the community, his detention is potentially indefinite, in violation of his constitutional rights. 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).

### 3. Agency delay

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

### E. THERE IS NO JURISDICTIONAL HURDLE BARRING RELIEF

Finally, there is no jurisdictional bar under the INA because Petitioner does not seek review of a removal order, but of custody, and his challenge does not fall within the discrete Ex Parte Motion for TRO/PI; Points and Authorities in Support of Petitioner’s Ex Parte Motion for TRO/PI

actions specified in the bar to review at 8 U.S.C. § 1252(g). *Maldonado Bautista et al.*, No. 5:25-cv-01873-SSS-BFM, Order Granting TRO (addressing “zipper clause” at 8 U.S.C. § 1252(b)(9)).

**V. REQUIREMENTS OF FRCP 65(b)**

In compliance with Fed. R. Civ. P. 65(b)(1), Petitioner certifies that prior notice of this motion to counsel for Respondents should not be required because, as the associated habeas petition was only recently filed, no attorney has entered a notice of appearance for Respondents as of the time of this filing, and Petitioner has shown that immediate and irreparable injury, loss, or damage in the form of continued, unlawful detention will result to him before Respondents can be heard in opposition.

**VI. CONCLUSION**

For these reasons, the Court should grant Petitioner’s Motion for a Temporary Restraining Order and Preliminary Injunction.

Dated: December 15, 2025

Respectfully Submitted,

*/s/ Gregory P. Fay*

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Attorney for Petitioner

**MOTION LENGTH CERTIFICATION**

The undersigned counsel of record for Petitioner certifies that this Memo exceeds seventeen pages, as allowed per LR Civ. 7.2, therefore an accompanying motion to extend page limit is simultaneously filed.

*/s/ Gregory P. Fay*

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Attorney for Petitioner

**CERTIFICATE OF SERVICE**

I CERTIFY THAT I SEVED A COPY OF PETITIONER'S *EX PARTE MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION* by mail to the following individual:

Chief, Civil Division, U.S. Attorney's Office  
District of Arizona  
40 N. Central Ave., Ste. 1200  
Phoenix, AZ 85004

*/s/ Gregory P. Fay*

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Attorney for Petitioner