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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ALEJANDRO BAUTISTA MARTINEZ,)
)
Petitioner,)
)
v.)
)
Kristi NOEM, Secretary, Department of)
Homeland Security; Pam BONDI, Attorney)
General; EXECUTIVE OFFICE FOR)
IMMIGRATION REVIEW; Todd LYONS,)
Executive Associate Director of ICE)
Enforcement and Removal)
Operations (ERO); and Christopher J.)
LAROSE, Otay Mesa Detention Center)
Director,)
)
Respondents.)
)

Civil Case No. 25CV3695 AGS B JW

**PETITIONER’S EX PARTE
APPLICATION FOR
COMPLAINT FOR
TEMPORARY
RESTRAINING
ORDER AND ORDER TO
SHOW CAUSE**

Pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure,

ALEJANDRO BAUTISTA MARTINEZ (hereinafter, “Petitioner”, through Jose R. Jordan, Esq. (hereinafter, “Present Counsel”) hereby moves the Court for

1
2 emergency relief in the form of a temporary restraining order directing
3 Respondents to release him from their custody or to provide him with an
4 individualized bond hearing before an immigration judge pursuant to 8 U.S.C. §
5 1226(a) within seven (7) days of issuance of an Order.
6

7 Petitioner also seeks a temporary restraining order enjoining Respondents
8 from relocating him outside of the Central District of California pending final
9 resolution of this case.
10

11 Petitioner further moves for the issuance of an order to show cause as to why
12 a preliminary injunction should not issue.
13

14 This application is supported by the Memorandum of Points and Authorities,
15 accompanying exhibits, as well as any additional submissions that may be
16 considered by the Court.
17

18 Respondents have indicated that they will not take a position on the TRO
19 application until after it has been filed with the Court.
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Dated: December 19, 2025

Respectfully submitted,

/s/Jose R. Jordan, Esq.
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1
2 **CERTIFICATE OF COUNSEL**

3 Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure, L.R.
4 7-19.1, and L.R. 65-1, I hereby certify that on December 19, 2025, I communicated
5 with Glen F. Dorgan, Deputy Chief, Civil Division, U.S. Attorney's Office,
6 Southern District of California to inquire into whether Respondents would oppose
7 a TRO. More specifically, I provided Mr. Dorgan with a copy of the Application
8 for a Temporary Restraining Order, Memorandum of Points and Authorities, and
9 Petition for Writ of Habeas Corpus by emailing copies thereof to
10 Glen.Dorgan@usdoj.gov shortly after filing the pleadings via CM/ECF.
11
12
13

14 Dated: December 19, 2025

15 Respectfully submitted,
16

17 /s/Jose R. Jordan, Esq.
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9 *Attorneys for Petitioner*

10 **UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA**

12 **Alejandro BAUTISTA MARTINEZ,**)

13 Petitioner,)

14 v.)

15)
16 Kristi NOEM, Secretary, Department of)
17 Homeland Security; Pam BONDI, Attorney)
18 General; EXECUTIVE OFFICE FOR)
19 IMMIGRATION REVIEW; Todd LYONS,)
20 Executive Associate Director of ICE)
21 Enforcement and Removal)
22 Operations; and Christopher J. LAROSE,)
23 Otay Mesa Detention Center Director,)

24 Respondents.)
25)
26)
27)
28)

Civil Case No. 25CV3695 AGS B JW

**MEMORANDUM OF
POINTS AND
AUTHORITIES IN
SUPPORT OF
APPLICATION FOR
TEMPORARY
RESTRAINING ORDER
AND ORDER TO SHOW
CAUSE**

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1
2 **INTRODUCTION**

3 Alejandro Bautista Martinez (hereinafter, “Petitioner”) hereby seeks a
4 temporary restraining order (hereinafter, “TRO”) that requires Respondents to
5 release him from custody or to provide him with an individualized bond hearing
6 before an immigration judge (hereinafter, “IJ”) pursuant to 8 U.S.C. § 1226(a)
7 within seven (7) days of the issuance of a TRO.
8

9
10 Although Petitioner was present and residing in the United States at the time
11 of his immigration arrest, he has been subjected to a new Department of Homeland
12 Security (hereinafter, “DHS”) policy issued on July 8, 2025, which instructs all
13 Immigration and Customs Enforcement (hereinafter, “ICE”) employees to consider
14 anyone arrested within the United States and charged with being inadmissible
15 under 8 U.S.C. § 1182(a)(6)(A)(i) to be an “applicant for admission” under 8
16 U.S.C. § 1225(b)(2)(a) and therefore subject to mandatory detention.
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19
20 The new DHS policy was issued “in coordination with the Department of
21 Justice (DOJ).” Petitioner is detained at the Otay Mesa ICE Processing Center in
22 Otay Mesa, California and was denied bond by the IJ based on this new policy.
23

24 The denial of a bond hearing to Petitioner and his ongoing detention based
25 on this new DHS policy violates the plain language of the Immigration and
26 Nationality Act (hereinafter, “INA” or “the Act”), 8 U.S.C. § 1101 *et seq.* Despite
27 the new DHS policy’s assertion to the contrary, 8 U.S.C. § 1225(b)(2)(A) does not
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1
2 apply to an individual like Petitioner who previously entered and is now residing in
3 the United States. Instead, such individuals are subject to a different statute, §
4 1226(a), that allows for release on bond or conditional parole. Section 1226(a)
5 expressly applies to a person who, like Petitioner, is charged as removable for
6 having entered the U.S. without inspection and being present without admission.
7

8
9 Respondents' new legal interpretation set forth in this policy is plainly
10 contrary to the statutory framework and contrary to decades of agency practice
11 applying § 1226(a) to a person like Petitioner who is present within the United
12 States. Respondents' new policy and the resulting ongoing detention of Petitioner
13 without a bond hearing is depriving him of statutory and constitutional rights and
14 unquestionably constitutes irreparable injury.
15
16

17 Petitioner therefore seeks a TRO enjoining Respondents from continuing to
18 detain him unless the former is provided an individualized bond hearing before an
19 immigration judge pursuant to 8 U.S.C. § 1226(a) within seven (7) days of the
20 TRO.
21

22
23 Petitioner also seeks an order prohibiting Respondents from relocating him
24 outside of the Southern District pending final resolution of this litigation.
25

26 **STATEMENT OF FACTS**

27 Petitioner resides in Maywood, California. On or about October 28th of this
28 year, he was arrested in Los Angeles County, California. He has no criminal

1
2 record and no previous contact with immigration authorities. Petitioner is now
3 detained at the Otay Mesa ICE Processing Center in Otay Mesa, California. ICE
4 placed him in removal proceedings under 8 U.S.C. § 1229a. ICE has charged
5 Petitioner with being inadmissible pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) as
6 someone who is present without admission in the United States. He then requested
7 a bond hearing before an IJ. On December 12, 2025, the IJ denied Petitioner's
8 request for release on bond and issued a decision that s/he lacks jurisdiction to
9 conduct a bond redetermination hearing because Petitioner is an applicant for
10 admission.
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14 ARGUMENT

15
16 The requirements for granting a TRO are “substantially identical” to those
17 for granting a preliminary injunction. *Stuhlbarg Int’l Sales Co. v. John D. Brush &*
18 *Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001).
19

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

9
10 **I. Petitioner is Likely to Succeed on the Merits of His Claims.**

11
12 Petitioner is likely to succeed on his claim that his ongoing detention by
13 Respondents under 8 U.S.C. § 1225(b)(2) and the denial of bond hearing before an
14 immigration judge is unlawful.

15
16 The text, context, and legislative and statutory history of the Act all
17 demonstrate that 8 U.S.C. § 1226(a) governs his detention.

18
19 **A. The text of § 1226(a) and § 1225(b)(2) demonstrate that Petitioner is**
not subject to mandatory detention.

20
21 First, the plain text of § 1226 demonstrates that subsection (a) applies to
22 Petitioner. By its own terms, § 1226(a) applies to anyone who is detained “pending
23 a decision on whether the [noncitizen] is to be removed from the United States.” 8
24 U.S.C. § 1226(a). Section 1226 explicitly confirms that this authority includes not
25 just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a), but also
26 noncitizens, such as Petitioner, who is inadmissible pursuant to 8 U.S.C. § 1182(a).
27
28

1
2 While § 1226(a) provides the right to seek release, § 1226(c) carves out specific
3 categories of noncitizens from being released— including certain categories of
4 inadmissible noncitizens—and subjects them instead to mandatory detention. *See*,
5 e.g., § 1226(c)(1)(A), (C).
6

7 If Respondents’ position that § 1226(a) did not apply to an inadmissible
8 noncitizen such as Petitioner who is present without admission in the United States
9 were correct, there would be no reason to specify that § 1226(c) governs certain
10 persons who are inadmissible; instead, the statute would only have needed to
11 address people who are deportable for certain offenses. Notably, recent
12 amendments to § 1226 reinforce that this section covers a person like Petitioner
13 who DHS alleges to be present without admission. The Laken Riley Act
14 (hereinafter, “LRA”) added language to § 1226 that directly references people who
15 have entered without inspection, those who are inadmissible because they are
16 present without admission. Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3
17 (2025). Specifically, pursuant to the LRA amendments, people charged as
18 inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for presence
19 without admission) or § 1182(a)(7) (the inadmissibility ground for lacking valid
20 documentation to enter the United States) and who have been arrested, charged
21 with, or convicted of certain crimes are subject to § 1226(c)’s mandatory detention
22 provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under §
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2 1226(c), Congress further clarified that § 1226(a) covers persons charged under §
3 1182(a)(6) or (a)(7). In other words, if someone is only charged as inadmissible
4 under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of §
5 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention. *See*
6 *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 WL 1193850, at
7 *14 (W.D. Wash. June 6, 2025), explaining these amendments explicitly provide
8 that § 1226(a) covers a person like Petitioner because the “‘specific exceptions’ [in
9 the LRA] for inadmissible noncitizens who are arrested, charged with, or convicted
10 of the enumerated crimes logically leaves those inadmissible noncitizens not
11 criminally implicated under Section 1226(a)’s default rule for discretionary
12 detention.”); *Diaz Martinez v. Hyde*, 2025 WL 2084238, at *7 (D. Mass. July 24,
13 2025) (“if, as the Government argue[s]...a non-citizen’s inadmissibility were alone
14 already sufficient to mandate detention under section 1225(b)(2)(A), then the 2025
15 amendment would have no effect.” 2025 WL 2084238, at *7; *Gomes v. Hyde*, No.
16 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (similar);
17 *Ceja Gonzalez v. Noem*, No. 5:25-cv-02054-ODW-BFM (C.D. Cal. August 13,
18 2025) Order Granting *Ex Parte* Application for TRO and OSC, Dkt. 12 at 7 (“If
19 Respondents are correct that Congress meant for § 1225 to govern all aliens
20 present in the United States who had not been admitted, it would render the
21 exception made under § 1226(c)(1)(E) unnecessary. This does not stand to reason
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2 for, as Respondents aptly note, ‘a statute should be construed so that effect is given
3 to all its provisions.’” (citations omitted.) *See also Shady Grove Orthopedic*
4 *Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a
5 statutory exception would be unnecessary if the statute at issue did not otherwise
6 cover the excepted conduct).
7

8
9 Despite the clear statutory language, DHS issued a new policy on July 8,
10 2025 instructing all ICE employees to consider anyone inadmissible under §
11 1182(a)(6)(A)(i) - i.e., those who are present without admission - to be an
12 “applicant for admission” and therefore subject to mandatory detention pursuant to
13 8 U.S.C. § 1225(b)(2)(A). The new policy was implemented “in coordination
14 with” the Department of Justice (hereinafter, “DOJ”). *Id.* In addition, on May 22,
15 2025, in an unpublished decision from the Board of Immigration Appeals
16 (hereinafter, “Board” or “BIA”), the Executive Office for Immigration Review
17 (hereinafter, “EOIR”) adopted this same position. It is virtually certain that
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2 (2004)); *see also Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023)
3 (“[C]ourt[s] ‘must interpret the statute as a whole, giving effect to each word and
4 making every effort not to interpret a provision in a manner that renders other
5 provisions of the same statute inconsistent, meaningless or superfluous.’” (citation
6 omitted)). But by concluding that the mandatory detention provision of §
7 1225(b)(2) applies to Petitioner, DHS and EOIR violate this rule.
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10 In sum § 1226’s plain text demonstrates that § 1225(b)(2) should not be read
11 to apply to everyone who is in the United States “who has not been admitted.”
12 Section 1226(a) covers those who are present within and residing within the United
13 States and who are not at the border seeking admission. The text of § 1225
14 reinforces this interpretation. As the Supreme Court recognized, § 1225 is
15 concerned “primarily [with those] seeking entry,” *Jennings v. Rodriguez*, 583 U.S.
16 281, 297 (2018), i.e., cases “at the Nation’s borders and ports of entry, where the
17 Government must determine whether a[] [noncitizen] seeking to enter the country
18 is admissible.” *Id.* at 287.
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23 Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin,
24 paragraph (b)(1)—which concerns “expedited removal of inadmissible arriving
25 [noncitizens]”—encompasses only the “inspection” of certain “arriving”
26 noncitizens and other recent entrants the Attorney General designates, and only
27 those who are “inadmissible under section 1182(a)(6)(C) or § 1182(a)(7).” 8
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2 U.S.C. § 1225(b)(1)(A)(i). These grounds of inadmissibility are for those who
3 misrepresent information to an examining immigration officer or do not have
4 adequate documents to enter the United States. Thus, subsection (b)(1)'s text
5 demonstrates that it is focused only on people arriving at a port of entry or who
6 have recently entered the United States and not those already residing here.
7 Paragraph (b)(2) is similarly limited to people applying for admission when they
8 arrive in the United States. The title explains that this paragraph addresses the
9 "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking
10 admission," but who (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A). By
11 limiting (b)(2) to those "seeking admission," Congress confirmed that it did not
12 intend to sweep into this section an individual like Petitioner, who has already
13 entered the United States and is now residing in the country. An individual submits
14 an "application for admission" only at "the moment in time when the immigrant
15 actually applies for admission into the United States." *Torres v. Barr*, 976 F.3d 918,
16 927 (9th Cir. 2020) (*en banc*). Indeed, in *Torres*, the *en banc* Court of Appeals
17 rejected the idea that § 1225(a)(1) means that anyone who is presently in the
18 United States without admission or parole is someone "deemed to have made an
19 actual application for admission." *Id.* (emphasis omitted). That holding is
20 instructive here too, as only those who take affirmative acts, like submitting an
21 "application for admission," are those who can be said to be "seeking admission"
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2 within § 1225(b)(2)(A). Otherwise, that language would serve no purpose,
3 violating a key rule of statutory construction. *See Shulman*, 58 F.4th at 410–11.

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

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16 Finally, the entire statute is premised on the idea that an inspection occurs
17 near the border and shortly after arrival, as the statute repeatedly refers to
18 “examining immigration officer[s],” 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers
19 conducting “inspection[s]” of people “arriving in the United States,” *id.* §
20 1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492 (2015)
21 (looking to an Act’s “broader structure . . . to determine [the statute’s] meaning”).
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24 The new DHS and EOIR policy and the IJ order denying bond to Petitioner
25 on this basis ignore all this and instead focus on the definition of “applicant for
26 admission” at § 1225(a)(1), which defines an “applicant for admission” as a person
27 who is “present in the United States who has not been admitted or who arrives in
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2 the United States,” 8 U.S.C. § 1225(a)(1). But, as the Ninth Circuit has explained,
3 “when deciding whether language is plain, [courts] must read the words in their
4 context and with a view to their place in the overall statutory scheme.” *San Carlos*
5 *Apache Tribe v. Becerra*, 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation
6 marks omitted). Here, that context underscores that the definition in (a)(1) is
7 limited by other aspects of the statute to those who undergo an initial inspection at
8 or near a port of entry shortly after arrival—and that it does not apply to those who
9 are arrested in the interior of the United States months or years or decades later.

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

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5 B. The legislative history further supports the application of § 1226(a) to
6 Petitioner’s detention.

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

11 DHS’s long practice of considering people like Petitioner as detained under
12 §1226(a) further supports this reading of the statute. Typically, in cases like that of
13 Petitioner, DHS issues a Form I-286, Notice of Custody Determination, or Form
14 I-200 stating that the person is detained under § 1226(a) or has been arrested under
15 that statute. This decision to invoke § 1226(a) is consistent with longstanding
16 practice. For decades, and across administrations, DHS has acknowledged that §
17 1226(a) applies to individuals who are present without admission after entering the
18 United States unlawfully, but who were later apprehended within the United States
19 long after their entry. Such a longstanding and consistent interpretation “is
20 powerful evidence that interpreting the Act in [this] way is natural and reasonable.”
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22 *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see*
23 *also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part
24 on “over 60 years” of government interpretation and practice to reject
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2 government’s new proposed interpretation of the law at issue).

3 Indeed, agency regulations have long recognized that a person like Petitioner
4 is subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the
5 regulatory basis for the immigration court’s jurisdiction—provides otherwise. In
6 fact, EOIR confirmed that § 1226(a) applies to Petitioner when it promulgated the
7 regulations governing immigration courts and implementing § 1226 decades ago.
8 Specifically, EOIR explained that “[d]espite being applicants for admission,
9 [noncitizens] who are present without having been admitted or paroled (formerly
10 referred to as [noncitizens] who entered without inspection) will be eligible for
11 bond and bond redetermination.” 62 Fed. Reg. at 10323.3.
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15 In sum, § 1226 governs this case. Section 1225 and its mandatory detention
16 provision applies only to individuals arriving in the United States as specified in
17 the statute, while § 1226 applies to those who have previously entered without
18 admission and are now present and residing in the United States.
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21 **II. Petitioner Will Suffer Irreparable Harm in the Absence of a TRO.**

22 In the absence of a TRO, Petitioner will continue to be unlawfully detained
23 by Respondents pursuant to § 1225(b)(2) and denied a bond hearing before an IJ.
24 Petitioner has now been detained without a bond hearing for almost three (3)
25 weeks. “Freedom from imprisonment—from government custody, detention, or
26 other forms of physical restraint—lies at the heart of the liberty” that the Due
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2 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention
3 constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*,
4 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (Moreno II), *aff’d in part, vacated*
5 *in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th
6 821 (9th Cir. 2022). It “is well established that the deprivation of constitutional
7 rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d
8 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d
9 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976,
10 994–95 (9th Cir. 2017) (“Thus, it follows inexorably from our conclusion that the
11 government’s current policies [which fail to consider financial ability to pay
12 immigration bonds] are likely unconstitutional—and thus that members of the
13 plaintiff class will likely be deprived of their physical liberty unconstitutionally in
14 the absence of the injunction—that Plaintiffs have also carried their burden as to
15 irreparable harm.”); *Maldonado Bautista et al. v. Santacruz et al.*, No.
16 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary
17 Restraining Order, Dkt. 14 at 9 (“[T]he Court finds that the potential for
18 Petitioners’ continued detention without an initial bond hearing would cause
19 immediate and irreparable injury, as this violates statutory rights afforded under §
20 1226(a).”)
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2 **III. The Balance of Equities Tips in Petitioner’s Favor, and a TRO is in the**
3 **Public Interest.**

4 Since the government is a party, these two (2) factors are considered
5 together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioner has established that
6 the public interest factor weighs in his favor because his claims assert that the new
7 policy has violated federal laws. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006,
8 1029 (9th Cir. 2013). Since the policy preventing Petitioner from obtaining bond
9 “is inconsistent with federal law...the balance of hardships and public interest
10 factors weigh in favor of a preliminary injunction.” *Moreno Galvez v. Cuccinelli*,
11 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (Moreno I); *see also Moreno*
12 *Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part permanent injunction
13 issued in *Moreno II* and quoting approvingly district judge’s declaration that “it is
14 clear that neither equity nor the public’s interest are furthered by allowing
15 violations of federal law to continue”). This is because “it would not be equitable
16 or in the public’s interest to allow the [government] . . . to violate the requirements
17 of federal law, especially when there are no adequate remedies available.” *Valle del*
18 *Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in
19 original) (citation omitted). Indeed, Respondents “cannot suffer harm from an
20 injunction that merely ends an unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d
21 1127, 1145 (9th Cir. 2013).
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2 **IV. Prudential Exhaustion is Not Required.**

3 Prudential exhaustion does not require Petitioner to be forced to endure the
4 very harm he is seeking to avoid by appealing the IJ bond order to the BIA and
5 waiting many months for a decision from the Board. “[T]here are a number of
6 exceptions to the general rule requiring exhaustion, covering situations such as
7 where administrative remedies are inadequate or not efficacious, . . . [or]
8 irreparable injury will result . . .” *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir.
9 2004) (citation omitted). In addition, a court may waive an exhaustion requirement
10 when “requiring resort to the administrative remedy may occasion undue prejudice
11 to subsequent assertion of a court action.” *McCarthy v. Madigan*, 503 U.S. 140,
12 146–47 (1992), *superseded by statute on other grounds as stated in Booth v.*
13 *Churner*, 532 U.S. 731, 739–41 (2001). “Such prejudice may result . . . from an
14 unreasonable or indefinite time frame for administrative action.” *Id.* at 147 (citing
15 cases). Here, the exceptions regarding irreparable injury and agency delay apply
16 and warrant waiving any prudential exhaustion requirement.

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22 **A. Futility**

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24 Futility is an exception to the prudential exhaustion requirement. Petitioner
25 has been subjected to the new DHS policy issued on July 8, 2025 instructing all
26 ICE employees to consider anyone arrested within the United States and charged
27 with being inadmissible under § 1182(a)(6)(A)(i) to be an “applicant for
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2 admission” under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory
3 detention. The DHS policy states it was issued “in coordination with the
4 Department of Justice (DOJ).” Immigration judges function within the EOIR,
5 which is a component of the Department of Justice. Petitioner has been denied a
6 bond hearing by an IJ based on this new policy.
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9 Further, the most recent unpublished BIA decision on this issue held that
10 persons like Petitioner are subject to mandatory detention as applicants for
11 admission. Finally, in the *Rodriguez Vazquez* litigation, in which EOIR and the
12 Attorney General are defendants, DOJ has affirmed its position that an individual
13 like Petitioner is an applicant for admission and subject to detention under §
14 1225(b)(2)(A). *See* Mot. to Dismiss, *Rodriguez Vazquez v. Bostock*, No.
15 3:25-CV-05240-TMC (W.D. Wash. June 6, 2025), Dkt. 49 at 27–31. *See also*
16 *Maldonado Bautista et al. v. Santacruz et al.*, No. 5:25-cv-01873-SSS-BFM (C.D.
17 Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 11
18 (in a case with identical facts and legal arguments, the Court stated it “was
19 unconvinced that the administrative process would self-correct in light of the DHS
20 Guidance Notice.” The Court also noted “DHS’s unequivocal commitment to the
21 contested legal authority in [the] matter[.]”) Under these facts, an appeal to the
22 BIA would be futile.
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2 B. Irreparable Injury

3 Irreparable injury is an exception to any prudential exhaustion requirement.
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5 Since Petitioner was denied bond and ordered mandatorily detained, each day he
6 remains in detention is one in which his statutory and constitutional rights have
7 been violated. Similarly situated district courts have repeatedly recognized this
8 fact. As one court has explained, “because of delays inherent in the administrative
9 process, BIA review would result in the very harm that the bond hearing was
10 designed to prevent: prolonged detention without due process.” *Hechavarria v.*
11 *Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (internal quotation marks
12 omitted). Indeed, “if Petitioner is correct on the merits of his habeas petition, then
13 he has already been unlawfully deprived of a [lawful] bond hearing[,] [and]...each
14 additional day that Petitioner is detained without a [lawful] bond hearing would
15 cause him harm that cannot be repaired.” *Villalta v. Sessions*, No.
16 17-CV-05390-LHK, 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2, 2017) (internal
17 quotation marks and brackets omitted); *see also Cortez v. Sessions*, 318 F. Supp. 3d
18 1134, 1139 (N.D. Cal. 2018) (similar). Other district courts have echoed these
19 points.¹

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¹ *See, e.g., Perez v. Wolf*, 445 F. Supp. 3d 275, 286 (N.D. Cal. 2020); *Blandon v. Barr*, 434 F. Supp. 3d 30, 37 (W.D.N.Y. 2020); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 961 (N.D. Cal. 2019); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003–04 (N.D. Cal. 2018); *Montoya Echeverria v. Barr*, No. 20-CV-02917-JSC, 2020 WL 2759731, at *6 (N.D. Cal. May 27, 2020); *Rodriguez Diaz v. Barr*, No. 4:20-CV-01806-YGR, 2020 WL 1984301, at *5 (N.D. Cal. Apr. 27, 2020); *Birru v. Barr*, No. 20-CV-01285-LHK, 2020 WL 1905581, at *4 (N.D. Cal. Apr. 17,

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2 Petitioner asserts both statutory and constitutional claims and has a
3 “fundamental” interest in a bond hearing, as “freedom from imprisonment is at the
4 ‘core of the liberty protected by the Due Process Clause.’” *Hernandez*, 872 F.3d at
5 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).
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7 Moreover, the irreparable injury Petitioner faces extends beyond a chance at
8 physical liberty. There are several “irreparable harms imposed on anyone subject to
9 immigration detention[.]” *Hernandez*, 872 F.3d at 995. These include “subpar
10 medical and psychiatric care in ICE detention facilities.” *Id.*
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13 C. Agency Delay

14 Third, the BIA’s delays in adjudicating bond appeals warrant excusing any
15 exhaustion requirement. A court’s ability to waive exhaustion based on delay is
16 especially broad here given the interests at stake. As the Ninth Circuit has
17 explained, Supreme Court precedent “permits a court under certain prescribed
18 circumstances to excuse exhaustion where ‘a claimant’s interest in having a
19 particular issue resolved promptly is so great that deference to the agency’s
20 judgment [of a lack of finality] is inappropriate.’” *Klein v. Sullivan*, 978 F.2d 520,
21 523 (9th Cir. 1992) (alteration in original) (quoting *Matthews v. Eldridge*, 424 U.S.
22 319, 330 (1976)). Of course, as noted above, Petitioner’s interest here in physical
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27 2020); *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at *7 (N.D. Cal. Dec.
28 24, 2018).

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2 liberty is a “fundamental” one. *Hernandez*, 872 F.3d at 993. Moreover, the
3 Supreme Court has explained that “[r]elief [when seeking review of detention]
4 must be speedy if it is to be effective.” *Stack v. Boyle*, 342 U.S. 1, 4 (1951).
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6 Despite this fundamental interest and the Supreme Court’s admonition that
7 only speedy relief is meaningful, the BIA takes over half a year in most cases to
8 adjudicate an appeal of a decision denying bond. In these cases, noncitizens in
9 removal proceedings often remain locked up in a detention facility with conditions
10 “similar . . . to those in many prisons and jails” and separated from family.
11 *Rodriguez*, 583 U.S. at 329 (Breyer, J., dissenting); *see also, e.g., Hernandez*, 872
12 F.3d at 996.
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16 District courts facing situations similar to the one at issue here
17 acknowledged that the BIA’s months-long review is unreasonable and results in
18 ongoing injury to the detained individual. *See, e.g., Perez*, 445 F. Supp. 3d at 286.
19 Indeed, as one district judge observed, “the vast majority of . . . cases...have
20 ‘waived exhaustion...where several additional months may pass before the Board
21 renders a decision on a pending appeal [of a custody order].” *Montoya Echeverria*,
22 2020 WL 2759731, at *6 (*quoting Rodriguez Diaz*, 2020 WL 1984301, at *5); *see*
23 *also Hechavarria*, 358 F. Supp. 3d at 237–38 (citing McCarthy and BIA delays as
24 reason to waive prudential exhaustion requirement).
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2 Additionally, the issues presented in this petition are questions of statutory
3 interpretation which are “unlikely to require agency consideration to generate a
4 proper record to reach a proper decision.” *Maldonado Bautista et al. v. Santacruz*
5 *et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting
6 Temporary Restraining Order, Dkt. 14 at 11.
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9 **CONCLUSION**

10 For the foregoing reasons, the Court should grant Petitioner’s Application
11 for a Temporary Restraining Order and Order to Show Cause.
12

13 Dated: December 19, 2025

14 Respectfully submitted,
15 JOSE JORDAN AND ASSOCIATES, APLC
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17 _____
18 /s/Jose R. Jordan, Esq.
19 *Attorney for Petitioner*
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2 **WORD COUNT CERTIFICATION**

3 The undersigned counsel of record for Petitioner certifies that this Memo
4 contains 6,429 words, which complies with the word limit of L.R. 11-6.1.
5

6 _____
7 /s/Jose R. Jordan, Esq.
8 *Attorney for Petitioner*
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 19, 2025, I served a copy of this Memorandum in Support of Application for TRO and OSC by email to the following individual:

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