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Counsel for Petitioners

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF CALIFORNIA

MIGUEL GUZMAN [REDACTED] and
ANTONIO RODRIGUEZ OROZCO [REDACTED]
[REDACTED]

Case No. '25CV3809 CAB MMP

Petitioners
vs.

Kristi NOEM, Secretary, Department of
Homeland Security; Todd LYONS, in his official
capacity as Acting Director of U.S. Immigration
and Customs Enforcement; Pam BONDI,
Attorney General of the United States; J.
ARCHAMBEAULT,
Director, San Diego Field Office,
Immigration and Customs Enforcement,
Enforcement and Removal Operations;
Jeremy CASEY, Warden, Imperial
Regional Detention Facility; Christopher J.
LAROSE, Warden, Otay Mesa
Detention Center; & EXECUTIVE
OFFICE FOR IMMIGRATION
REVIEW

*PETITIONERS' EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO
SHOW CAUSE*

Respondents

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For the reasons explained in the accompanying Memorandum of Points and Authorities, Petitioners hereby make this *Ex Parte* Application for a Temporary Restraining Order and Order to Show Cause Re: Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65 and 5 U.S.C. § 705. Petitioners are in pending removal proceedings and charged with having entered the United States without authorization. Despite this Court’s orders of partial summary judgment and class certification in *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), and orders on December 18, 2025 the immigrations courts continue to refuse to find jurisdiction to hold bond redetermination hearings, and instead are applying the Board of Immigration Appeals’ decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), to find that individuals who entered the United States without inspection or subject to mandatory detention under 8 U.S.C. § 1225(b). This violates the Immigration and Nationality Act and due process. Petitioners now seek a temporary restraining order requiring that the immigration judge hold a bond hearing and not deny bond due to lack of jurisdiction under 8 U.S.C. § 1225(b)(2)(A). Expedited relief is necessary to prevent irreparable injury before a hearing on a preliminary injunction may be held.

Pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure and CivLR 83.3(g)(2), Petitioners, as members of the Maldonado Bautista Bond Eligible Class (*Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025)), hereby move the Court for emergency relief in the form of:

- 1 1. A temporary restraining order directing Respondents to release
2 Petitioner from their custody within one day of issuance of an Order or
3 to provide Petitioners with individualized bond hearings before an
4 immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of
5 issuance of an Order; and
- 6 2. Issuance of an order to show cause as to why a preliminary injunction
7 should not issue.

8 Petitioners seek this emergency relief because their continued detention
9 without a bond hearing is depriving Petitioners of statutory and constitutional
10 rights and is causing immediate and irreparable injury in the form of the
11 unlawful deprivation of their liberty. See, e.g., *Melendres v. Arpaio*, 695
12 F.3d 990, 1002 (9th Cir. 2012) (citation modified) (It “is well established that
13 the deprivation of constitutional rights unquestionably constitutes irreparable
14 injury.”). This application is supported by the Memorandum of Points and
15 Authorities, accompanying exhibits, as well as any additional submissions
16 that may be considered by the Court.

17 Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure and
18 CivLR 83.3(g)(2), Respondents have been provided with advance notice of
19 this filing. Counsel warrants she will send a copy of this filing to all listed
20 parties via electronic mail.

21 This application is supported by the Memorandum of Points and
22 Authorities, accompanying exhibits, as well as any additional submissions
23 that may be considered by the Court.

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RESPECTFULLY SUBMITTED this 23rd day of December, 2025

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CivLR 83.3(g)(2) DECLARATION OF COUNSEL

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure and CivLR 83.3(g)(2), I hereby certify that on December 23, 2025, I emailed Ms. Janet Cabral, Chief, Civil Division, U.S. Attorney’s Office, Southern District of California and informed her that my office was preparing to file this ex parte application for TRO. Ms. Cabral responded to me on December 23, 2025 and acknowledged my email and awaits the submission. I will provide a copy of the Application for a Temporary Restraining Order, Memorandum of Points and Authorities, Supporting Exhibits, and Petition for Writ of Habeas Corpus to Ms. Cabral immediately after the pleadings are filed via ECF.

RESPECTFULLY SUBMITTED this 23rd day of December, 2025

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

MIGUEL GUZMAN [REDACTED] and
ANTONIO RODRIGUEZ OROZCO [REDACTED]
[REDACTED]

Petitioners,

v.

Kristi NOEM, Secretary, Department of
Homeland Security; Todd LYONS, in his
official capacity as Acting Director of U.S.
Immigration and Customs Enforcement; Pam
BONDI, Attorney General of the United
States; J. ARCHAMBEAULT,
Director, San Diego Field Office,
Immigration and Customs Enforcement,
Enforcement and Removal Operations;
Jeremy CASEY, Warden, Imperial
Regional Detention Facility; Christopher J.
LAROSE, Warden, Otay Mesa
Detention Center; & EXECUTIVE
OFFICE FOR IMMIGRATION
REVIEW

Respondents.

Case No. '25CV3809 CAB MMP

MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
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28	<i>Matter of Yajure Hurtado</i> , 29 I&N Dec. 216 (BIA 2025)	passim

1 **I. INTRODUCTION**

2 Petitioners, Miguel Guzman and Antonio Rodriguez, are presently detained
3 at the Imperial Detention Center and Otay Mesa Detention Center respectively.
4 They seek a Temporary Restraining Order that requires Respondents to provide
5 them with individualized bond hearings before an immigration judge pursuant to 8
6 U.S.C. § 1226(a) within seven days of the issuance of a TRO.

7 Petitioners are members of the Bond Eligible Class in *Maldonado Bautista*
8 *v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F.R.D. ----, 2025 WL 3288403
9 (C.D. Cal. Nov. 25, 2025), which consists of: All noncitizens in the United States
10 without lawful status who (1) have entered or will enter the United States without
11 inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or
12 will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231
13 at the time the Department of Homeland Security makes an initial custody
14 determination. *Id.* at *9.

15 Although Petitioners have been present and residing in the United States for
16 decades. They are detained by immigration authorities and subject to a pending
17 removal hearing, and (per the claims of Respondents) are ineligible for a bond
18 hearing based on the Board of Immigration Appeals precedent decision in *Matter*
19 *of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). **Robinson Dec. at 8.** That
20 precedent decision holds that noncitizens who entered the United States without
21 inspection are ineligible for bond redetermination hearings because they are
22 seeking admission and fall within 8 U.S.C. § 1225(b)(2)(A). Without this Court's
23 intervention, they will be subject to mandatory detention during the duration of
24 their removal case based on *Matter of Yajure Hurtado*.

25 Courts both throughout California and nationally have rejected the reasoning
26 of *Matter of Yajure Hurtado* in a ruling granting partial summary judgment.
27 *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.), Dkt #
28

1 81. The Court then granted nationwide class certification on November 25, 2025,
2 and explicitly stated that its ruling on partial summary judgment applied to the
3 certified class. *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D.
4 Cal.), Dkt # 82 at 14. Despite this, the Imperial immigration court is refusing to
5 apply *Maldonado Bautista* because it is not a final judgment. **Robinson Dec.** The
6 refusal to provide a bond hearing under 8 U.S.C. § 1226(a) is a violation of
7 *Maldonado Bautista*.

8 This violation of longstanding law unfortunately persists even following a
9 December 18, 2025, when the Hon. Judge Sykes sitting in the District Court for the
10 Central District of California granted partial summary judgement in *Maldonado*
11 *Bautista*. Specifically, she found that “In determining that only Petitioners’
12 interpretation can be correct, the Court declares Respondents’ interpretation
13 contrary to law. As such, the interpretation in *Yajure-Hurtado*, 29 I. & N. Dec.
14 216, which contradicts the Court’s reasoning is no longer controlling. See *Loper*
15 *Bright*, 603 U.S. at 398–99 (requiring courts “to ignore, not follow, ‘the reading
16 the court would have reached’ had it exercised its independent judgment).” *Id.*

17 Almost every court to address this legal issue has held that the denial of bond
18 hearings to Petitioners who are charged with having entered the United States
19 without inspection violates the plain language of the Immigration and Nationality
20 Act (INA), 8 U.S.C. § 1101 *et seq.* *Rodriguez v. Bostock*, No. 3:25-CV-05240-TMC,
21 2025 WL 2782499, at *9 (W.D. Wash. Sept. 30, 2025); *Mosqueda v. Noem*, No.
22 5:25-CV-02304 CAS (BFM), 2025 WL 2591530, at *3 (C.D. Cal. Sept. 8,
23 2025); *Vasquez Garcia v. Noem*, 3:25-cv-02180-DMS-MMP (SD. Cal. Sept. 3,
24 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS) C.D. Cal. Aug. 26, 2025);
25 *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-ODW-DFM (C.D. Cal. Aug. 15, 2025);
26 *Maldonado Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28,
27 2025); *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *2 (D.
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1 Neb. Sept. 3, 2025); *Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D.
2 Neb. Sept. 3, 2025); *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL
3 2496379, at *8 (E.D. Mich. Aug. 29, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051
4 (ECT/DJF), 2025 WL 2466670, at *6 (D. Minn. Aug. 27, 2025); *Kostak v. Trump*,
5 No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Rodriguez*
6 *v. Bostock*, 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025).

7 In this District, Counsel for Respondents has issued supplemental briefing that
8 has found individuals like Petitioners appear to be members of certified class and
9 stating “Petitioners appear to be members of the Bond Eligible Class certified in
10 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d -
11 --, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). On December 18, 2025, the
12 *Bautista* court entered final judgment as to the Bond Eligible Class. *Bautista*, ECF
13 No. 94. Accordingly, Respondents acknowledge that Petitioners are detained under
14 8 U.S.C. § 1226(a) and are entitled to an order from this Court directing a bond
15 hearing be held pursuant to 8 U.S.C. § 1226(a).” **Exh. 5.**

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

22 The ongoing detention of Petitioners without a full and fair bond hearing
23 compliant with the law is depriving Petitioners of statutory and constitutional
24 rights and unquestionably constitutes irreparable injury.

25 Petitioners therefore seeks a Temporary Restraining Order for immediate
26 release or, in the alternative, order Petitioners be given individualized bond hearing
27 before an immigration judge pursuant to 8 U.S.C. § 1226(a) within a maximum of
28

1 seven days of the TRO, with instructions that the immigration judge has
2 jurisdiction under 8 U.S.C. § 1226(a) to consider bond as has been granted in other
3 similar cases.
4

5 **II. STATEMENT OF FACTS**

6 Petitioners Miguel Guzman and Antonio Rodriguez are detained at the
7 Imperial Regional Detention Facility and Otay Mesa Detention Facility
8 respectively.

9 Petitioner Miguel Guzman is presently 31 years old. He first entered the
10 United States on or around December of 2011 at the age of 17. He was
11 apprehended by immigration authorities on or around November 8, 2025, around
12 his home in Maryland. He had never previously interacted with immigration
13 authorities. He has been detained since that date. ICE placed Petitioner in removal
14 proceedings and charged him with entry without inspection or admission pursuant
15 to 8 U.S.C. § 1182(a)(6)(A)(i). Petitioner is not subject to detention under 8 U.S.C.
16 § 1226(c), § 1225(b)(1), or § 1231.

17 Petitioner Antonio Rodriguez has resided in the United States since 1992.
18 He has four siblings in the United States, all of whom have lawful status in this
19 country. He has spent around 20 years with this partner (who he considers his
20 spouse). Together they have raised two U.S. Citizen children – Julian Rodriguez
21 (age 20) and Diana Rodriguez (age 13). On April 2, 2001, Petitioner’s U.S. Citizen
22 brother, Ricardo Rodriguez Orozco, petitioned him for an immigrant visa. This
23 “priority date” of filing gives Petitioner the ability to obtain his green card in the
24 United States. After waiting decades, Petitioner was finally able to apply to adjust
25 his status to that of a Lawful Permanent Resident (“green card”). He filed this
26 application on April 1, 2024. On December 3, 2025, after having done everything
27 correctly, Petitioner appeared with his attorney at his green card interview. Despite
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1 clear adjustment eligibility, ICE authorities then entered the room and detained
2 Petitioner. ICE placed Petitioner in removal proceedings and charged him with
3 entry without inspection or admission pursuant to 8 U.S.C. § 1182(a)(6)(A)(i).
4 Petitioner is not subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or §
5 1231.

7 **III. ARGUMENT**

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

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

23 A. PETITIONERS ARE LIKELY TO SUCCEED ON THE MERITS OF 24 THEIR CLAIMS.

25 Petitioners, as members of the Maldonado Bautista Bond Eligible Class, are
26 likely to succeed on their claim that their ongoing detention by Respondents under
27 8 U.S.C. § 1225(b)(2) and the corresponding denial of a bond hearing before an
28 immigration judge is unlawful.

1 Petitioners are members of *Maldonado Bautista* Bond Eligible Class
2 consisting of:

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

9 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F.R.D. ----,
10 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

11 On November 20, 2025, the district court granted partial summary judgment
12 on behalf of individual plaintiffs and, on November 25, 2025, certified a
13 nationwide class and extended declaratory judgment to the certified class. See
14 *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d -
15 ---, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial
16 summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v.*
17 *Santacruz*, No. 5:25-CV-01873-SSS-BFM, ---F.R.D. ----, 2025 WL 3288403, at *9
18 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners’ proposed
19 nationwide Bond Eligible Class, incorporating and extending declaratory judgment
20 from Order Granting Petitioners’ Motion for Partial Summary Judgment).

21 The declaratory judgment held that the Bond Eligible Class members are
22 detained under 8 U.S.C. § 1226(a) and thus may not be denied consideration for
23 release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861,
24 at *11. Respondents are bound by the judgment in *Maldonado Bautista*, as it has
25 the full “force and effect of a final judgment.” 28 U.S.C. § 2201(a).

26 On December 18, 2025, that Court granting in part and denying in part
27 Petitioners’ Ex Parte Application for Reconsideration or Classification. Dkt. No.
28

1 92, Dec. 18, 2025. This clarified that Respondents' position that those who fall into
2 the defined class, like Petitioners herein, are not to be denied bond and are eligible
3 for custody redetermination pursuant to U.S.C. § 1226. Courts have therefore
4 repeatedly sided with Petitioners' arguments herein. Counsel for Respondents has
5 also acknowledged the December 18, 2025, decision as one entitling those like
6 Petitioners to bond hearings. Nonetheless, this issue remains urgent and necessary
7 as immigration authorities continue to maintain they have no jurisdiction to hold
8 bond hearings and that even the final judgement issued in *Maldonado Bautista* and
9 cannot be resolved without an express order from this Court naming Petitioners at
10 this time.

11 1. Petitioners' Detention Without the Right to a Full and Fair
12 Bond Hearing Before an Immigration Judge Violates
13 *Maldonado Bautista*

14 The Court's November 20 and November 25, 2025 orders in *Maldonado*
15 *Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal.). (**Robinson Dec,**
16 **Exh. 5-6**) expressly apply the order on Partial Summary Judgment on a class wide
17 basis and invalidate the argument that § 1225(b)(2) applies to those who entered
18 without inspection.

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

28 In response, Respondents argue Petitioners are "applicants for admission"

1 because § 1225(b)(2) is a “catchall provision” that applies to all applicants
2 for admission not covered by § 1225(b)(1). [Opp. at 21, (citing *Jennings*,
3 583 U.S. at 287)]. According to Respondents, “applicants for admission”
4 “fall into one of two categories, those covered by § 1225(b)(1) and those
5 covered by § 1225(b)(2).” [Opp. at 21 (citing *Jennings*, 583 U.S. at 297)].
6 Such an argument relies on the assumption that “applicants for admission”
7 encompasses *all* noncitizens coming into and already in the United States. If
8 this assumption is true, then Respondents are correct. But this cannot be
9 correct.

10 Respondents’ argument is at odds with the plain language of the INA.
11 Neither party contends with the definition section of the INA, which readily
12 resolves this dispute over statutory interpretation.

13 Dkt # 81 at 12. This is a rejection of the Board’s decision in *Matter of Yajure*
14 *Hurtado*, 29 I&N Dec. 216, 229 (BIA 2025) (“The Immigration Judge properly
15 held that he lacked authority to hear the respondent’s request for a bond as the
16 respondent is an applicant for admission and is subject to mandatory detention
17 under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A)...”). As such, the
18 legal ruling that a noncitizen who entered without inspection is subject to §
19 1225(b)(2) was rejected in *Lazaro Maldonado Bautista*.

20 That legal ruling now applies nationwide to all noncitizens who entered
21 without inspection and meet the class definition, which was certified on November
22 25, 2025, in *Maldonado Bautista*. **Robinson Dec.** Petitioners are members of this
23 class, as they are alleged to have entered the United States without inspection in
24 the Notice to Appear and is not otherwise precluded from bond.

25 The November 25, 2025, class certification Court order confirms that the
26 court’s prior November 20, 2025, order on partial summary judgment applies to
27 the nationwide class. The court stated explicitly “[w]hen considering this
28 determination with the MSJ Order, the Court extends the same declaratory relief
granted to Petitioners to the Bond Eligible Class as a whole.” Dkt # 82 at 14. As
such, the court’s November 20, 2025, ruling on partial summary judgment that

1 noncitizens who entered without inspection are eligible for bond hearings before
2 the immigration judge under § 1226(a) applies nationwide. Dkt # 81.

3
4 Based on a failure to follow Court orders, on December 18, 2025, when the
5 Hon. Judge Sykes sitting in the District Court for the Central District of California
6 granted partial summary judgement in *Maldonado Bautista*. Specifically, she
7 found that “In determining that only Petitioners’ interpretation can be correct, the
8 Court declares Respondents’ interpretation contrary to law. As such, the
9 interpretation in *Yajure-Hurtado*, 29 I. & N. Dec. 216, which contradicts the
10 Court’s reasoning is no longer controlling. See *Loper Bright*, 603 U.S. at 398–99
11 (requiring courts “to ignore, not follow, ‘the reading the court would have reached’
12 had it exercised its independent judgment).” *Id.*

13 Counsel for Respondents before this Court have issued statements that
14 individuals like Petitioners appear to be class members and should be ordered a
15 bond hearing. Regardless, these violations of longstanding and well-established
16 law persist, and the Executive Office for Immigration Review and Office of the
17 Principal Legal Advisor continue to obstruct class members’ ability to access the
18 bond hearings to which they are entitled.

19 B. PETITIONERS WILL SUFFER IRREPARABLE HARM IN THE
20 ABSENCE OF A TRO.

21 In the absence of a TRO, Petitioners will continue to be unlawfully detained
22 by Respondents pursuant to § 1225(b)(2) and denied a bond hearing before an IJ.
23 The majority of Immigration Judges continue to find that Petitioners are subject to
24 mandatory detention and *Yajure Hurtado* is good law.

25 “Freedom from imprisonment—from government custody, detention, or
26 other forms of physical restraint—lies at the heart of the liberty” that the Due
27 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention
28 constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*,

1 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff'd in part, vacated*
2 *in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th
3 821 (9th Cir. 2022). It “is well established that the deprivation of constitutional
4 rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695
5 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418
6 F.3d 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976,
7 994–95 (9th Cir. 2017) (“Thus, it follows inexorably from our conclusion that the
8 government’s current policies [which fail to consider financial ability to pay
9 immigration bonds] are likely unconstitutional—and thus that members of the
10 plaintiff class will likely be deprived of their physical liberty unconstitutionally in
11 the absence of the injunction—that Plaintiffs have also carried their burden as to
12 irreparable harm.”); *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-
13 01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting Temporary
14 Restraining Order, Dkt. 14 at 9 (“[T]he Court finds that the potential for
15 Petitioners’ continued detention without an initial bond hearing would cause
16 immediate and irreparable injury, as this violates statutory rights afforded under §
17 1226(a).”)
18

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

21 Because the government is a party, these two factors are considered
22 together. *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioners have established
23 that the public interest factor weighs in their favor because their claims assert that
24 the Board’s decision has violated federal laws. *See Valle del Sol Inc. v. Whiting*,
25 732 F.3d 1006, 1029 (9th Cir. 2013). Because the decision that prevents Petitioners
26 from obtaining bond “is inconsistent with federal law, . . . the balance of hardships
27 and public interest factors weigh in favor of a preliminary injunction.” *Moreno*
28 *Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*);

1 *see also Moreno Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part
2 permanent injunction issued in *Moreno II* and quoting approvingly district judge’s
3 declaration that “it is clear that neither equity nor the public’s interest are furthered
4 by allowing violations of federal law to continue”). This is because “it would not
5 be equitable or in the public’s interest to allow the [government] . . . to violate the
6 requirements of federal law, especially when there are no adequate remedies
7 available.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013)
8 (second alteration in original) (citation omitted). Indeed, Respondents “cannot
9 suffer harm from an injunction that merely ends an unlawful practice.” *Rodriguez*
10 *v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

11
12 D. PRUDENTIAL EXHAUSTION IS NOT REQUIRED.

13 Prudential exhaustion does not require Petitioners to be forced to endure the
14 very harm they are seeking to avoid by seeking a bond hearing before the
15 immigration judge, when Board precedent requires that the immigration judge
16 deny for lack of jurisdiction. Further, appealing the IJ bond orders to the Board of
17 Immigration Appeals and waiting many months for a decision from the BIA is
18 entirely futile. *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). *See*
19 *Vasquez-Rodriguez v. Garland*, 7 F.4th 888, 896 (9th Cir. 2021) (“[W]here the
20 agency’s position on the question at issue appears already set, and it is very likely
21 what the result of recourse to administrative remedies would be, such recourse
22 would be futile and is not required.”)

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

27 Each day that Petitioners remain in detention is one in which their statutory
28

1 and constitutional rights have been violated. Similarly situated district courts have
2 repeatedly recognized this fact. *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237
3 (W.D.N.Y. 2019); *Villalta v. Sessions*, No. 17-CV-05390-LHK, 2017 WL
4 4355182, at *3 (N.D. Cal. Oct. 2, 2017); *Cortez v. Sessions*, 318 F. Supp. 3d 1134,
5 1139 (N.D. Cal. 2018) (similar).

6 Petitioners assert both statutory and constitutional claims and has a
7 “fundamental” interest in a bond hearing, as “freedom from imprisonment is at the
8 ‘core of the liberty protected by the Due Process Clause.’” *Hernandez*, 872 F.3d at
9 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

10
11 E. THERE IS NO JURISDICTIONAL HURDLE BARRING RELIEF

12 Nothing in the Immigration and Nationality Act precludes this Court from
13 granting the TRO.

14 The “zipper clause” at 8 U.S.C. § 1252(b)(9), which channels “[j]udicial
15 review of all questions of law . . . including interpretation and application of
16 constitutional and statutory provisions, arising from any action taken . . . to remove
17 an alien from the United States” to the appropriate federal court of appeals, does
18 not apply because that section applies only to review of removal orders, and
19 Petitioners do not seek review of orders of removal but of custody. *Maldonado*
20 *Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D. Calif. July
21 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 4-5.

22 The bar to review at 8 U.S.C. § 1252(g) strips all courts of jurisdiction to
23 hear “any cause or claim by or on behalf of any alien arising from the decision or
24 action by the Attorney General to commence proceedings, adjudicate cases, or
25 execute removal orders against any alien under this chapter.” The Supreme Court
26 previously characterized § 1252(g) as a narrow provision, applying “only to three
27 discrete actions that the Attorney General may take: her ‘decision or action’ to
28

1 ‘commence proceedings, adjudicate cases, or execute removal orders.’” *Reno v.*
2 *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in
3 original). In doing so, the Supreme Court found it “implausible that the mention of
4 *three discrete events* along the road to deportation was a shorthand way to
5 referring to *all claims arising from* deportation proceedings.” *Id.* (emphasis added).
6 Petitioners’ challenge to their detention does not fall within these discrete actions.
7 *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D.
8 Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 5.

9 8 U.S.C. § 1252(a), titled “Judicial Review of Orders of Removal,” Section
10 1252(a)(2) contains four subsections, which outlines categories of claims that are
11 not subject to judicial review. § 1252(a)(2)(A)–(D). None of these subsections
12 precluding judicial review apply to this matter, as the specified statutory provisions
13 do not cite to § 1225(b)(2)(A) or § 1226(a), which are the two provisions
14 Petitioners challenge. Thus, no part of § 1252 deprives this Court of jurisdiction.
15 *Maldonado Bautista et al. v. Santacruz, et al.*, No. 5:25-cv-01873-SSS-BFM (C.D.
16 Calif. July 28, 2025), Order Granting Temporary Restraining Order, Dkt. 14 at 6.

17 As such, the Court has jurisdiction over Petitioners’ challenge to their
18 detention.

19
20 **IV. CONCLUSION**

21 For the foregoing reasons, the Court should grant Petitioners’ Application
22 for a Temporary Restraining Order and Order to Show Cause.

23
24 Dated: December 29, 2025

Respectfully Submitted,

S/ Emily L. Robinson

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 29, 2025, I served a copy of PETITIONERS' *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; DECLARATION OF EMILY L. ROBINSON; AND [PROPOSED] ORDER by email to the following individual:

Janet Cabral | Assistant United States Attorney
Chief, Civil Division
United States Attorney's Office | Southern District of California
At: Janet.Cabral@usdoj.gov
CC: Alyssa Sanderson alyssa.sanderson@usdoj.gov;
and Erin Dimpleby, erin.dimpleby@usdoj.gov

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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Plaintiff certifies that this Memo contains 3941 words, which complies with the word limit of L.R. 11-6.1.

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