GREGORY P. FAY
AZ Bar: 035534
Green Evans-Schroeder, PLLC
130 W. Cushing Street
Tucson, Arizona 85701
Tel: (480) 588-3430
Email: greg@arizonaimmigration.net

Attorney for Petitioner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Rosario Tapia Miranda,

Petitioner,

v.

John E. 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, Eloy Detention Center

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

Respondents.

Case No.

EMERGENCY MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER (TRO)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

Challenge to Unlawful Incarceration; Request for Declaratory and Injunctive Relief

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 enjoining Respondents John E. Cantú, in his official capacity as Field Office Director of Enforcement and Removal Operations, Phoenix Field Office, Immigration and Customs Enforcement (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 M. Lyons, in his official capacity as the Acting Director of ICE, and Christopher Howard, Warden, Eloy Detention Centerm where Petitioner is detained, from continuing to detain Petitioner, or ordering a bond hearing before an immigration judge. Respondents should also not transfer the Petitioner outside the District of Arizona, where he is presently located. Such an order would maintain the status quo while habeas jurisdiction is litigated, and would also ensure that Petitioner remains close to legal counsel.

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

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

WHEREFORE, Petitioner prays that this Court grant his request for a

preliminary injunction enjoining Respondents from continuing to detain him, and order a bond hearing before an immigration judge in fifteen days.

Dated: December 30, 2025

Respectfully Submitted

s/Gregory P. Fay
Attorney for Petitioner

TABLE OF CONTENTS

I. INTRODUCTION

Petitioner Rosario Tapia Miranda seeks a Preliminary Injunction (PI) that requires Respondents to either release him from custody within seven days of the issuance of a PI, or order a bond hearing before an immigration judge within fifteen days where the Department of Homeland Security (DHS) bears the burden of demonstrating that his removal is reasonably foreseeable and whether his detention is justified (i.e. whether he poses a danger or a flight risk). Finally, Petitioner seeks a PI enjoining Respondents from transferring Petitioner outside the District of Arizona, where he is presently located.

Petitioner should prevail on this motion because he is likely to succeed on the merits of his claims. The text of 8 U.S.C. § 1226(a) and § 1225(b)(2) demonstrates that he is not subject to mandatory detention. Further, other federal courts have rejected the respondents' novel argument that 8 U.S.C. § 1225(b) governs the detention of every noncitizen without lawful immigration status. Petitioner will also suffer irreparable harm in the absence of a PI. The balance of equities tips in his favor, and a PI is 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 38-year-old resident of Phoenix, Arizona. Exhibit A. To wit, he arrived in 2009 and has remained in the United States since that time. Petitioner has a US citizen fiancee who is his sponsor for his bond. Exhibit E. He is the father of two US citizen children who rely on him for financial support. Exhibit F. He will apply for cancellation of removal and is prima facie eligible for relief. His case remains pending. Exhibit D.

Petitioner was detained during a traffic stop on November 19, 2025. Exhibit A. He was served a Notice to Appear that day on the detained docket in Florence, Arizona. Exhibit B. Petitioner sought a custody redetermination under 8 C.F.R. § 1236. Exhibit C. On December 18, 2025, the immigration judge denied that bond request, citing *Matter of Yajure Hurtado* and failed to give effect to the class-wide declaratory judgment in *Maldonado Bautista* or recognize Petitioner's membership in the certified class. *Id.*

Petitioner is still detained at a federal detention center in Arizona. Absent this Court's intervention, he will remain detained for the duration of his removal proceedings.

III. LEGAL STANDARD

Petitioner is entitled to 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 his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.,* 555 U.S. 7, 20 (2008). 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). As shown below, Petitioner overwhelmingly satisfies both standards.

IV. ARGUMENT

Petitioner should prevail on this motion because he is likely to succeed on the merits of his claims, 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. Respondents

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

Petitioner will also suffer irreparable harm in the absence of a PI. The balance of equities tips in his favor, and a PI is 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 by Respondents under 8 U.S.C. § 1225(b)(2), and the denial of access to bond, is unlawful.

1. Discretionary Versus Mandatory Detention in Removal Proceedings

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

Certain categories of noncitizens are subject to mandatory detention while in removal proceedings. Under a provision in Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), if "an alien seeking admission is not clearly and

beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under [8 U.S.C. 1229a]." 8 U.S.C. 1225(b)(2)(A). In the same bill, Congress defined "admission" and "admitted" as the "lawful entry of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. 1101(a)(13)(A). In other words, the terms "admission" and "admitted" "refer to inspection and authorization by an immigration officer at the port of entry." *Hing Sum v. Holder*, 602 F.3d 1092, 1101 (9th Cir. 2010). Thus, as the Supreme Court has explained, 8 U.S.C. 1225(b)(2)(A) only applies to noncitizens who are "seeking admission into the country," *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018), i.e., those who are "arriving in the United States." *Clark v. Martinez*, 543 U.S. 371, 373 (2005).

Consistent with the text of 8 U.S.C. § 1225(b)(2)(A), federal regulations preclude immigration judges from granting bond to "arriving aliens," 8 C.F.R. 1003.19(h)(1)(B)(ii), a phrase defined in relevant part as "an applicant for admission coming or attempting to come into the United States at a port-of-entry." 8 C.F.R. 1001.1(q). The decision to preclude immigration judges from granting bond to arriving aliens—as distinct from all noncitizens who entered without admission—was the product of notice and comment rulemaking in early 1997 following the enactment of the IIRIRA. As the regulations were initially proposed, all "[i]nadmissible aliens in removal proceedings" would have been ineligible for bond. Inspection and Expedited Removal of *Aliens; Detention and Removal of Aliens; Conduct of Removal*, 62 Fed. Reg. 444, 483 (Jan. 3, 1997). After receiving comments, however, the Attorney General deleted the proposed provision and replaced it with one that would apply only to "[a]rriving aliens." *Inspection and Expedited Removal*

of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10361 (March 6, 1997).

As the Attorney General explained, "[t]he effect of this change [was] that inadmissible aliens, except for arriving aliens, have available to them bond redetermination hearings before an immigration judge, while arriving aliens do not." *Id.* at 10323. "[A]liens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." *Id.*

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

2. <u>The Government's Novel and Widely Rejected Theory That All Noncitizens Who Entered Without Admission Are Subject to Mandatory Detention</u>

On Friday, July 4, 2025, President Trump signed the One Big Beautiful Bill Act, Pub. L. No. 119-21, 139 Stat. 72. Among other things, the bill appropriated $45 billion to

ICE to detain noncitizens through fiscal year 2029. § 90003, 139 Stat. 358.

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

On September 5, 2025, the Board of Immigration Appeals (BIA) issued a precedential decision adopting ICE's 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, like ICE, 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). *Id.* at 218. 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, but it stated that "redundancies are common in statutory drafting." *Id.* at 221-22 (quoting *Barton v. Barr*, 590 U.S. 222 (2020)).

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 regulations issued by the Attorney General.[1]

To date, federal district judges have issued over 280 decisions either outright rejecting the government's novel interpretation,[i] or finding that noncitizens challenging the government's interpretation were substantially likely to prevail on the merits.[ii] These judges have not been unsparing in their criticism of the government's newfound position. One called it "willfully blind." *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 at *25 (D. Md. Aug. 24, 2025). Another called it "a policy argument, projected onto Congress." *Romero v. Hyde*, No. 25-11631, __ F. Supp. 3d __, 2025 WL 2403827 at *28 (D. Mass. Aug. 19, 2025).

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

[1] 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.

1225(b)(2)(A), and are entitled to consideration for release on bond. *Maldonado Bautista*, No. 5:25-cv-01873-SSS-BFM, at *26 (C.D. Cal. Nov. 25, 2025) (extending the same declaratory relief granted to individual petitioners to the class as a whole).

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

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

Id. at *4, 26.

Petitioner in this case is thus a class member and covered by the declaratory relief granted in *Maldonado Bautista.* Still, Petitioner's habeas action and motion for PI are necessary because the class-wide declaratory judgment in *Maldonado Bautista* does not provide coercive remedies like a writ of habeas corpus ordering release or a bond hearing. 28 U.S.C. § 2201(a); *Steffel v. Thompson*, 415 U.S. 452, 471 (1974) (explaining that declaratory judgment "is not ultimately coercive; noncompliance with it may be inappropriate, but is not contempt.")

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. 1101(a)(13)(A). Accordingly, "[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the country would read the word

'entry' out of the definitions of 'admitted' and 'admission.'" *Chafla v. Scott*, No. 2:25-cv-00437-SDN, at *19 (D. Me. Sep. 21, 2025) (citing 8 U.S.C. 1101(a)(13)(A)). 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.).

Indeed, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioner. 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 § 1226(a) provides the right to seek release, § 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 § 1226(c) governs certain persons who are inadmissible; instead, § 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 like Petitioner, whom DHS alleges to be present without admission. Specifically, the Laken Riley Act added language to § 1226 that directly references those who are inadmissible under § 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-

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 Rodriguez Vazquez v. Bostock,* No. 3:25-CV-05240-TMC, 2025 WL 1193850, at *14 (W.D. Wash. June 6, 2025) (explaining these amendments explicitly provide that § 1226(a) covers people like Petitioner because the "'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." 2025 WL 2084238, at *7; *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025) (similar).

Unlike 8 U.S.C. § 1226, 8 U.S.C. § 1225(b) requires the detention of certain individuals who are arriving at U.S. ports of entry or who recently entered the United States. As relevant here, 8 U.S.C. § 1225(b)(2)(A) applies only to individuals who are "seeking admission" to the United States.[2] *See Vasquez-Garcia v. Noem*, No. 25-cv-02180-

[2] 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.

DMS-MMP, at *18 (S.D. Cal. Sep. 3, 2025) (rejecting DHS' contention that an individual who entered the United States without inspection "is automatically understood to be 'seeking admission' within the meaning of § 1225(b)(2)(A), without need[ing] to affirmatively apply for admission or parole"); *Arrazola Gonzalez v. Noem*, No. 5:25-cv-01789, at *6-7 (C.D. Cal. Aug. 15, 2025) (concluding that habeas petitioner showed likelihood of success on the merits of argument that "[t]o ignore the 'seeking admission' language [in 8 U.S.C. § 1225(b)(2)(A) . . . would render the language purposeless and violate a key rule of statutory construction"); *see also* 8 C.F.R. § 1.2 (addressing noncitizens who are presently "coming or attempting to come into the United States").

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

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*, 583 U.S. at 287, 297; *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 Webster's Dictionary (2025) (defining "seek" as, inter alia, "to go in search of" or "to try to acquire or gain").

Thus, Petitioner prevails regardless of the scope of § 1225(a)(1)'s definition of "applicant for admission." This is because classification as an "applicant for admission" is not sufficient to render someone 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, § 1226 governs this case. The mandatory detention provision of § 1225 applies only to individuals arriving in the United States as specified in the statute, while § 1226 applies to those who previously entered without admission.

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

In the absence of a PI, Petitioner will continue to be unlawfully detained by Respondents under § 1225(b)(2) and denied his freedom based on an erroneous interpretation of the law. "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 established unconstitutional deprivation of physical liberty "also carried their burden as to irreparable harm."); *Maldonado Bautista v. Santacruz*, No. 5:25-cv-01873-SSS-BFM, at *16 (C.D. Cal. July 28, 2025) ("[T]he Court finds that the potential for Petitioners' continued detention without an initial bond hearing would cause immediate and irreparable injury, as this violates statutory rights afforded under § 1226(a).").

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). During his more than two decades in the U.S., Petitioner has been gainfully employed, married and had two U.S. citizen children. Further, Petitioner has extensive community ties here, and has good moral character. Continued detention in such "prison-like" conditions which separate Petitioner from his wife, teenage children, and community constitute an irreparable harm.

C. THE BALANCE OF EQUITIES TIPS IN PETITIONER'S FAVOR AND A PI IS 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 claim asserts that the new policy violates federal laws. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Because the policy preventing Petitioner from realizing any bond an immigration judge may grant "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh

in favor of a preliminary injunction." *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019).

Finally, any burden imposed by requiring the Respondents to release Petitioner from custody or providing a hearing before an immigration judge is both *de minimis* and clearly outweighed by the substantial harm he will suffer as 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.").

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 awaiting an immigration judge or BIA decision, where the BIA'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, 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 a bond, each day he remains in detention is one in which his statutory and constitutional rights have been violated. 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 v. Wolf*, 445 F. Supp. 3d 275, 286 (N. D. Cal. April 14, 2020)

D. 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 actions specified in the bar to review at 8 U.S.C. § 1252(g). *Maldonado Bautista,* at *9-10 (C.D. Cal. July 28, 2025) (addressing "zipper clause" at 8 U.S.C. § 1252(b)(9)).

V. CONCLUSION

For these reasons, the Court should grant Petitioner's Motion for a Preliminary Injunction.

Dated: December 30, 2025

Respectfully Submitted,

s/Gregory P. Fay
Gregory P. Fay
Attorney for Petitioner

MOTION LENGTH CERTIFICATION

The undersigned counsel of record for Petitioner certifies that this Motion and accompanying Memorandum does not exceed seventeen (17) pages, exclusive of attachments and any required statement of facts, which complies with LR Civ. 7.2.

s/Gregory P. Fay
Gregory P. Fay

Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Gregory P. Fay hereby certify that on Tuesday, December 30, 2025, I served a copy of PETITIONER'S MOTION FOR A PRELIMINARY INJUNCTION by mail to the following individual(s):

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

s/Gregory P. Fay
Gregory P. Fay

Attorney for Petitioner

[i] *Castellanos Lopez v. Warden*, No. 25-2527 (S.D. Cal. Oct. 27, 2025) (Huie, J.); *Esquivel-Ipina v. Larose*, No. 25-2672 (S.D. Cal. Oct. 24, 2025) (Sammartino, 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. Ind. 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. Tex. 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. Minn. Oct. 1, 2025) (Menendez, J.); *Santiago Santiago v. Noem*, No. 25-361 (W.D. Tex. 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. Tex. 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.); *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.).

[ii] *Arce-Cervera v. Noem*, 25-1895 (D. Nev. Oct. 28, 2025); *Martinez Lopez v. Noem*, No. 3:25-2734 (S.D. Cal. Oct. 23, 2025) (Park, J.); *Sabi Polo v. Chestnut,* No. 25-1342 (E.D. Cal. Oct. 17, 2025) (Thurston, J.); *Menjivar Sanchez v. Wofford*, No. 25-1187 (E.D. Cal. Oct. 17, 2025) (Oberto, J.); *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. Cal. Sept. 23, 2025) (Sherriff, J.); *Aceros v. Kaiser*, No. 25-06924, 2025 LX 330524 (N.D. Cal. Sept. 12, 2025) (Chen, J.); *Guzman v. Andrews*, No. 25-01015, 2025 LX 354551 (E.D. Cal. Sept. 9, 2025) (Sherriff, 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. 25-2325 (S.D. Cal. Sep. 24, 2025) (Bencivengo, J.) (denying temporary restraining order); *Villanueva v. Chestnut*, No. 25-2 (E.D. Cal. Oct. 24, 2025) (Sheriff, J.) (same).