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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA

7 DOROTEO-CHAVEZ, ALEJANDRO

8 Petitioner,

9 V.

10 KRISTI NOEM, Secretary of  
11 the United States Department of Homeland  
Security; PAM BONDI,  
12 United States Attorney General;  
TODD LYONS, Director of  
13 United States Immigration and Customs  
Enforcement; BRYAN WILCOX,  
14 Field Office Director for Detention and  
Removal, U.S. Immigration and Customs  
15 Enforcement, Department of Homeland  
Security; Warden,  
16 Henderson Detention Center;  
17 UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY; UNITED  
18 STATES IMMIGRATION AND  
CUSTOMS ENFORCEMENT;

19 Respondents



Detained

Case File No.: 2:26-cv-00049-RFB-DJA

Immigration file No.:  
221-461-832

**PETITIONER'S SECOND  
MOTION FOR  
PRELIMINARY  
INJUNCTION**

**EMERGENCY MOTION**

20  
21 Petitioner seeks a preliminary injunction that requires Respondents to release  
22 Petitioner on parole under 8 USC §1226 (a)(2)(B) or, in the alternative, to provide  
23 him a bond hearing under 8 USC §1226 (a)(2)(A), enjoining Respondents from  
24 applying *Matter of Hurtado*, 29 I&N Dec. 216 (BIA 2025) to his bond  
25 proceedings, requiring a new presiding Immigration Judge, and placing the burden  
26 on the government to prove that Petitioner is a flight risk or a danger to the  
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1 community.

2 Although Petitioner has lived in the United States for over 16 years,  
3 Respondents are attempting to have Petitioner treated as an applicant for admission  
4 to the U.S., requiring mandatory detention under 8 U.S.C. § 1225(b)(2). But §  
5 1226(a)'s discretionary detention scheme—and not § 1225(b)(2)'s detention  
6 authority—governs Petitioner's detention.  
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9 Section 1226's plain language makes this clear. Under that statute, the  
10 Department of Homeland Security (DHS) may detain a noncitizen pending a  
11 hearing on that person's admissibility. In fact, the statute explicitly extends to  
12 people who are inadmissible because they entered unlawfully.  
13

14 The statutory language is unambiguous; § 1225(b)(2)'s mandatory detention  
15 scheme applies “at the Nation’s borders and ports of entry, where the Government  
16 must determine whether a[] [noncitizen] seeking to enter the country is  
17 admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Indeed, in contrast  
18 to § 1226(a), the whole purpose of § 1225 is to define how DHS should inspect,  
19 process, and detain various classes of people arriving at the border or who have  
20 just entered the country. Section 1225(b)(2) thus does not apply to people like  
21 Petitioner, who are “already in the country” and are detained “pending  
22 the outcome of removal proceedings.” *Id.* at 289.  
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26 The Court should not require administrative exhaustion.

27 Appeals to the Board of Immigration Appeals (BIA or the Board) inflict the very  
28

1 harm Petitioner seeks to avoid, where appeals take six months or more to resolve.

2 **STATEMENT OF FACTS**

3  
4 This case concerns the detention authority for people who entered the United  
5 States without inspection, are not apprehended upon arrival, and are not subject to  
6 some other detention authority, like the detention authority for people in expedited  
7 removal, 8 U.S.C. § 1225(b)(1), or withholding-only proceedings, see *id.* §  
8 1231(a)(6). For decades, people who have been residing in the United States, often  
9 for years had bond determinations based on the merits of their cases

10  
11  
12 Prior to passage of the Illegal Immigration Reform and Immigrant  
13 Responsibility Act of 1996 (IIRIRA), the statutory authority for such hearings was  
14 found at 8 U.S.C. § 1252(a). That statute provided for a noncitizen’s detention  
15 during deportation proceedings, as well as authority to release the noncitizen on  
16 bond. Such proceedings governed the detention of anyone in the United States,  
17 regardless of manner of entry. IIRIRA maintained the same basic detention  
18 authority in the new § 1226(a). Indeed, when passing IIRIRA, Congress explained  
19 that the new § 1226(a) merely “restates the current provisions in [8 U.S.C. §  
20 1252(a)] regarding the authority of the Attorney General to arrest, detain, and  
21 release on bond a[] [noncitizen] who is not lawfully in the United States.” H.R.  
22 Rep. No. 104-469, pt. 1, at 229 (1996); see also H.R. Rep. No. 104-828, at 210  
23 (1996) (Conf. Rep.) (same). Separately, Congress enacted new detention  
24 authorities for people arriving in or who recently entered the United States,  
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1 including a new expedited removal scheme for those arriving or who recently  
2 entered. *See* 8 U.S.C. § 1225(b)(1)–(2). In implementing this new detention  
3 authority, the former Immigration and Naturalization Service clarified that people  
4 who entered the United States without inspection and who were not in expedited  
5 removal would continue to be detained. Separately, “exclusion” proceedings  
6 covered those who arrived at U.S. ports of entries and had never entered the United  
7 States. *See* 8 U.S.C. § 1225 (1994) (providing for inspection and detention of  
8 noncitizens “arriving at ports of the United States”); *id.* § 1226 (1994) (providing  
9 for exclusion proceedings of “arriving” noncitizens detained for further inquiry).

13 The distinction between § 1226(a) detention and § 1225(b) detention is  
14 important.

16 Detention under § 1226(a) includes the right to a bond hearing before a  
17 neutral decisionmaker— specifically, an IJ. *See* 8 C.F.R. § 1236.1(d). At that  
18 hearing, the noncitizen may present evidence of their ties to the United States, lack  
19 of criminal history, and other factors that show they are not a flight risk or danger  
20 to the community. *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). By  
21 contrast, people determined to be detained under § 1225(b) are  
22 subject to mandatory detention and receive no bond hearing. 8 U.S.C. §  
23 1225(b)(1)(B)(ii), (iii)(IV), (b)(2). They may only be released at the discretion of  
24 the arresting agency via humanitarian parole. *Jennings*, 583 U.S. at 288; *see also* 8  
25 U.S.C. § 1182(d)(5)(A).

1 For the first 25 years after IIRIRA was enacted, immigration courts across  
2 the country, applied § 1226(a) to the detention of people who were apprehended  
3 within the United States after having entered without inspection.  
4

5 ICE has made a drastic policy shift that contradicts the plain language of the law,  
6 affecting those detained at NSDC.  
7

8 Hundreds of people have been denied the opportunity to post their bond,  
9 forcing them to litigate their cases from detention or to give up altogether. Many, if  
10 not most, of these individuals have resided in the United States for years, or even  
11 decades.  
12

13 Meanwhile, BIA appeals do not provide any meaningful relief where nearly  
14 all cases are mooted out.  
15

16 In September of 2025, the BIA issued a decision finding that anyone who  
17 entered the U.S. without inspection is subject to mandatory detention under Section  
18 235 of the INA, regardless of how long ago or where encountered. Matter of  
19 YAJURE HURTADO, 29 I&N Dec. 216 (BIA 2025).  
20

## 21 **ARGUMENT**

22 To obtain a preliminary injunction, Petitioner must demonstrate that (1) they  
23 are likely to succeed on the merits, (2) are likely to suffer irreparable harm in the  
24 absence of preliminary relief, (3) the balance of equities tips in their favor, and (4)  
25 an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555  
26 U.S. 7, 20 (2008). Even if Petitioner raises only “serious questions going to the  
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1 merits,” the Court can nevertheless grant relief if the balance of hardships tips  
2 “sharply” in his favor, and the remaining equitable factors are satisfied.

3  
4 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

5 **I. Petitioner satisfies all the factors required for a preliminary injunction.**

6 **A. Petitioner is likely to succeed on the merits of their argument that**  
7 **ICE and EOIR are violating his Due Process.**

8  
9 *Matter of Hurtado* is a poorly reasoned decision that ignores the applicable  
10 law and is not binding on this Court.

11  
12 First, the plain text of § 1226 demonstrates that its subsection (a) applies to  
13 Petitioner. By its own terms, § 1226(a) applies to anyone who is detained “pending  
14 a decision on whether the [noncitizen] is to be removed from the United States.” 8  
15 U.S.C. § 1226(a).

16  
17 Section 1226 goes on to explicitly confirm that this authority includes not  
18 just persons who are deportable, but also noncitizens who are inadmissible. While  
19 § 1226(a) provides the right to seek release, § 1226(c) carves out specific  
20 categories of noncitizens from being released— including certain categories of  
21 inadmissible noncitizens—and subjects them instead to mandatory detention. See,  
22 e.g., *id.* § 1226(c)(1)(A), (C). Clearly, if § 1226(a) did not cover inadmissible  
23 noncitizens there would be no reason to specify that § 1226(c) governs certain  
24 persons who are inadmissible; instead, it would have only needed to address people  
25 who are deportable for certain offenses.  
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1 Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227)  
2 apply to people who have previously been admitted, such as lawful permanent  
3 residents and certain visa holders, while grounds of inadmissibility (found in §  
4 1182) apply to those who have not been admitted to the United States. See, e.g.,  
5 *Barton v. Barr*, 590 U.S. 222, 234 (2020).  
6

7  
8 Notably, recent amendments to § 1226 dramatically reinforce that this  
9 section covers people such as Petitioner, whom DHS alleges to have entered  
10 without inspection. The Laken Riley Act added language to § 1226 that directly  
11 references people who have entered without inspection or who are present without  
12 authorization. See Laken Riley Act (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025).  
13 Specifically, pursuant to the LRA amendments, people charged as  
14 inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for entry without  
15 inspection) or (a)(7) (the inadmissibility ground for lacking valid documentation to  
16 enter the United States) and who have been arrested, charged with, or convicted of  
17 certain crimes are subject to § 1226(c)'s mandatory detention provisions. See 8  
18 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress  
19 further clarified that, by default, § 1226(a) covers persons charged  
20 under § 1182(a)(6) or (a)(7). In other words, if someone is only charged as  
21 inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-related  
22 provisions of § 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's  
23 detention. *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393,  
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1 400 (2010) (observing that a statutory exception would be  
2 unnecessary if the statute at issue did not otherwise cover the excepted conduct).

3  
4 In sum § 1226’s plain text demonstrates that § 1225(b)(2) should not be read to  
5 apply to everyone who is in the United States “who has not been admitted,” 8  
6 U.S.C. § 1225(a)(1).

7  
8 Section 1226(a) covers those who are not now seeking admission but instead  
9 are already residing in the United States—including those who are charged with  
10 inadmissibility—while § 1225(b)(2) covers only those “seeking admission,” i.e.,  
11 those who are apprehended upon arrival in the United States (and who are not  
12 subject to the procedures of § 1225(b)(1)). A contrary interpretation would ignore  
13 § 1226(a)’s plain text and structure and render meaningless § 1226’s  
14 language that specifically addresses individuals who have entered without  
15 inspection.  
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17

18 The text of § 1225 reinforces this interpretation. As the Supreme Court has  
19 recognized, § 1225 is concerned “primarily [with those] seeking entry,” Jennings,  
20 583 U.S. at 297, i.e., cases “at the Nation’s borders and ports of entry, where the  
21 Government must determine whether a[] [noncitizen] seeking to enter the country  
22 is admissible,” *id.* at 287. Paragraphs (b)(1) and (b)(2) in § 1225 reflect this  
23 understanding. To begin, paragraph (b)(1)—which concerns “expedited removal of  
24 inadmissible arriving [noncitizens]”—encompasses only the “inspection” of certain  
25 “arriving” noncitizens and other recent entrants the Attorney General designates,  
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1 and only those who are “inadmissible under section 1182(a)(6)(C) or §  
2 1182(a)(7).” 8 U.S.C. § 1225(b)(1), (A)(i). These grounds of inadmissibility are for  
3 those who misrepresent information to an examining immigration officer or do not  
4 have adequate documents to enter the United States.  
5

6 Thus, subsection (b)(1)’s text demonstrates that it is focused only on people  
7 arriving at a port of entry or who have recently entered the United States and not  
8 those already residing here.  
9

10 Paragraph (b)(2) is similarly limited to people applying for admission when  
11 they arrive in the United States. The title explains that this paragraph addresses the  
12 “[i]nspection of other [noncitizens],” i.e., those noncitizens who are “seeking  
13 admission,” but who (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A). By  
14 limiting (b)(2) to those “seeking admission,” Congress confirmed that it did not  
15 intend to sweep into this section individuals such as Petitioner, who has already  
16 entered and are now residing in the United States. An individual submits an  
17 “application for admission” only at “the moment in time when the immigrant  
18 actually applies for admission into the United States.” *Torres v. Barr*, 976 F.3d  
19 918, 927 (9th Cir. 2020) (en banc).  
20  
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23 Indeed, in *Torres*, the en banc Court of Appeals rejected the idea that §  
24 1225(a)(1) means that anyone who is presently in the United States without  
25 admission or parole is someone “deemed to have made an actual application for  
26 admission.” *Id.* (emphasis omitted). That holding is instructive here too, as only  
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1 those who take affirmative acts, like submitting an “application for admission,” are  
2 those that can be said to be “seeking admission” within § 1225(b)(2)(A).

3  
4 Otherwise, that language would serve no purpose, violating a key rule of statutory  
5 construction. *Shulman*, 58 F.4th at 410–11.

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

14  
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17 Finally, the entire statute is premised on the idea that an inspection occurs  
18 near the border and shortly after arrival, as the statute repeatedly refers to  
19 “examining immigration officer[s],” 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers  
20 conducting “inspection[s]” of people “arriving in the United States,” *id.* §  
21 1225(a)(3), (b)(1), (b)(2), (d); see also *King v. Burwell*, 576 U.S. 473, 492 (2015)  
22 (looking to an Act’s “broader structure . . . to determine [the statute’s] meaning”).  
23  
24

25 **1. The legislative history further supports the application of § 1226(a) to**  
26 **Petitioner.**

27  
28 The legislative history of IIRIRA also supports a limited construction of §

1 1225 and instead concluding that § 1226(a) applies to Petitioner. In passing the  
2 Act, Congress was focused on the perceived problem of recent arrivals to the  
3 United States who do not have documents to remain. See H.R. Rep. No. 104-469,  
4 pt. 1, at 157–58, 228–29; H.R. Rep. No. 104- 828, at 209. Notably, Congress did  
5 not say anything about subjecting all people present in the United States after an  
6 unlawful entry to mandatory detention if arrested. This is important, as  
7  
8 prior to IIRIRA, people like Petitioner was not subject to mandatory detention. See  
9 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens  
10 for deportability proceedings, which applied to all persons within the United  
11 States). Had Congress intended to make such a monumental shift in immigration  
12 law (potentially subjecting millions of people to mandatory detention), it would  
13 have explained so or spoken more clearly. See *Whitman v. Am. Trucking Ass'ns*,  
14 531 U.S. 457, 468–69 (2001). But to the extent it addressed the matter, Congress  
15 explained precisely the opposite, noting that the new § 1226(a) merely “restates the  
16 current provisions in section 242(a)(1) regarding the authority of the Attorney  
17 General to arrest, detain, and release on bond a[] [noncitizen] who is not lawfully  
18 in the United States.” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis added); see  
19 also H.R. Rep. No. 104-828, at 210 (same).

25 **2. The record and longstanding practice reflect that § 1226 governs**  
26 **Petitioner’s detention.**  
27

28 DHS’s long practice of considering people like Petitioner as detained under

1 § 1226(a) prior to July of 2025 further supports this reading of the statute.  
2 Typically, in cases like that of Petitioner, DHS issues a Form I-286, Notice of  
3 Custody Determination or Form I-200 stating that the person is detained under §  
4 1226(a) or has been arrested under that statute. This decision to invoke § 1226(a) is  
5 consistent with longstanding practice. For decades, and across administrations,  
6 DHS has acknowledged that § 1226(a) applies to individuals who entered the  
7 United States unlawfully, but who were later apprehended within the borders of the  
8 United States long after their entry. Such a longstanding and consistent  
9 interpretation “is powerful evidence that interpreting the Act in [this] way is  
10 natural and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203 (2014)  
11 (Scalia, J., dissenting); see also *Bankamerica Corp. v. United States*, 462 U.S. 122,  
12 130 (1983) (relying in part on “over 60 years” of government interpretation and  
13 practice to reject government’s new proposed interpretation of the law at issue).  
14 Indeed, agency regulations have long recognized that people like Petitioner are  
15 subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the  
16 regulatory basis for the immigration court’s jurisdiction—provides otherwise. In  
17 fact, the Executive Office for Immigration Review (EOIR) confirmed that §  
18 1226(a) applies to Petitioner and proposed class members’ cases when it  
19 promulgated the regulations governing immigration courts and  
20 implementing § 1226 decades ago. Specifically, EOIR explained that “[d]espite  
21 being applicants for admission, [noncitizens] who are present without having been  
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1 admitted or paroled (formerly referred to as [noncitizens] who entered without  
2 inspection) will be eligible for bond and bond redetermination.” 62 Fed. Reg. at  
3 10323.3  
4

5 In sum, § 1226 governs this case. Section 1225 applies only to individuals  
6 arriving in the United States as specified in the statute, while § 1226 applies to  
7 those who have previously entered without admission and are now residing in the  
8 United States. The BIA’s attempt to bootstrap individuals who have resided in the  
9 U.S. for years into expedited removal runs afoul of the law.  
10

11 In addition, although this Court order that Petitioner be provided a bond  
12 hearing under section 236 of the INA, the IJ failed to provide a constitutionally  
13 adequate bond hearing, finding that Petitioner is a flight risk without any factual or  
14 legal basis.  
15

16  
17 **B. Petitioner will suffer irreparable harm absent an injunction.**

18 Parties seeking preliminary injunctive relief must also show they are “likely  
19 to suffer irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at  
20 20. Irreparable harm is the type of harm for which there is “no adequate legal  
21 remedy, such as an award of damages.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d  
22 1053, 1068 (9th Cir. 2014).  
23

24 Detention constitutes “a loss of liberty that is . . . irreparable.” *Moreno*  
25 *Galvez v. Cuccinelli*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (Moreno II),  
26  
27 aff’d in part, vacated in part on other grounds, remanded sub nom. *Moreno Galvez*  
28

1 v. *Jaddou*, 52 F.4th 821 (9th Cir. 2022); see also *Rodriguez v. Robbins*, 715 F.3d  
2 1127, 1145 (9th Cir. 2013).

3  
4 Petitioner’s detention constitutes such a harm, as “civil commitment for any  
5 purpose constitutes a significant deprivation of liberty that requires due process  
6 protection.” *Addington v. Texas*, 441 U.S. 418, 425 (1979). Indeed, “[f]reedom  
7 from imprisonment—from government custody, detention, or other forms of  
8 physical restraint—lies at the heart of the liberty” that the Due Process Clause  
9 protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For this reason, the  
10 Supreme Court has repeatedly made clear that prolonged deprivations of liberty—  
11 like those that noncitizens regularly experience—require a timely hearing to test  
12 the legality of detention before a “neutral and detached magistrate.” *Gerstein v.*  
13 *Pugh*, 420 U.S. 103, 112 (1975); see also *Cnty. of Riverside v. McLaughlin*, 500  
14 U.S. 44, 55–56 (1991) (similar); *Gonzalez v. United States Immigr. & Customs*  
15 *Enft*, 975 F.3d 788, 823–26 (9<sup>th</sup> Cir. 2020) (holding that *Gerstein* applies to the  
16 detention of noncitizens on a detainer); *Zadvydas*, 533 U.S. at 690 (detention  
17 requires a hearing before an independent decisionmaker to assess whether the  
18 detention “bear[s] [a] reasonable relation” to a valid government purpose, such as  
19 preventing flight or protecting the community against dangerous individuals  
20 (alterations in original) (quoting *Jackson v. Indiana*, 406 U.S. 715, 738 (1972));  
21 *United States v. Salerno*, 481 U.S. 739, 750 (1987) (upholding Bail Reform Act’s  
22 pre-trial civil detention scheme precisely because it required the government to  
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1 justify detention in a “full-blown adversary hearing” before a “neutral  
2 decisionmaker”—a federal judge).

3  
4 Petitioner’s claims raise constitutional concerns, for civil detention “violates  
5 due process outside of ‘certain special and narrow nonpunitive circumstances.’”  
6 *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation omitted). These  
7 constitutional concerns reflect irreparable harm, with strong likelihood of success  
8 on his claim that he is being held under § 1226(a) and not § 1225(b)(2). *See Baird*  
9 *v. Bonta*, 81 F.4th 1036, 1048 (9th Cir. 2023) (declaring that “in cases involving a  
10 constitutional claim, a likelihood of success on the merits usually establishes  
11 irreparable harm”).  
12  
13

14 Detention has also taken an emotional and mental toll on Petitioner, who  
15 reports significant emotional trauma and physical struggles. Such “emotional  
16 stress, depression and reduced sense of well-being” further support a finding of  
17 irreparable harm. *Chalk v. U.S. Dist. Ct.*, 840 F.2d 701, 709 (9th Cir. 1988); see  
18 also *Moreno II*, 492 F. Supp. 3d at 1181–82 (“[S]tress, devastation, fear, and  
19 depression” arising from unlawful immigration policy are the type of “harms [that]  
20 will not be remedied by an award of damages.”).

21  
22  
23  
24 **C. The balance of hardships and public interest weigh heavily in Petitioner’s**  
25 **favor.**

26  
27 The final two factors for a preliminary injunction—the balance of hardships  
28 and public interest—“merge when the Government is the opposing party.” *Nken v.*

1 *Holder*, 556 U.S. 418, 435 (2009). Here, Petitioner faces weighty hardships: loss of  
2 liberty, separation from family, significant stress and anxiety, and difficulty in  
3 obtaining an attorney.  
4

5 The government, by contrast, faces minimal hardship: the administrative  
6 costs associated with bond hearings. “[T]he balance of hardships tips decidedly in  
7 Petitioner’s favor” when “[f]aced with such a conflict between financial concerns  
8 and preventable human suffering.” *Hernandez*, 872 F.3d at 996 (quoting *Lopez v.*  
9 *Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)).  
10

11 What is more, because the policy preventing Petitioner from posting their bond “is  
12 inconsistent with federal law, . . . the balance of hardships and public interest  
13 factors weigh in favor of a preliminary injunction.” *Moreno Galvez v. Cuccinelli*,  
14 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); see also *Moreno*  
15 *Galvez*, 52 F.4th at 832 (affirming in part permanent injunction issued in *Moreno II*  
16 and quoting approvingly district judge’s declaration that “it is clear that neither  
17 equity nor the public’s interest are furthered by allowing violations of  
18 federal law to continue”). This is because “it would not be equitable or in the  
19 public’s interest to allow the [government] . . . to violate the requirements of  
20 federal law, especially when there are no adequate remedies available.” *Valle del*  
21 *Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in  
22 original) (citation omitted). Indeed, Respondents “cannot suffer harm  
23 from an injunction that merely ends an unlawful practice.” *Rodriguez*, 715 F.3d at  
24  
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1 1145. “The public interest benefits from an injunction that ensures that individuals  
2 are not deprived of their liberty and held in immigration detention because of . . . a  
3 likely [illegal bond] process.” *Hernandez*, 872 F.3d at 996.

4  
5 Accordingly, the balance of hardships and the public interest  
6 overwhelmingly favor injunctive relief to ensure that Respondents comply with  
7 federal law and afford Petitioner release on bond.

## 9 **II. Prudential exhaustion is not required.**

10 “[T]here are a number of exceptions to the general rule requiring exhaustion,  
11 covering situations such as where administrative remedies are inadequate or not  
12 efficacious, . . . [or] irreparable injury will result . . . .” *Laing v. Ashcroft*, 370 F.3d  
13 994, 1000 (9th Cir. 2004) (citation omitted). In addition, a court  
14 may waive an exhaustion requirement when “requiring resort to the administrative  
15 remedy may occasion undue prejudice to subsequent assertion of a court action.”  
16 *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992), superseded by statute on  
17 other grounds as stated in *Booth v. Churner*, 532 U.S. 731, 739–41 (2001). “Such  
18 prejudice may result . . . from an unreasonable or indefinite  
19 timeframe for administrative action.” *Id.* at 147 (citing cases). Here, the exceptions  
20 regarding irreparable injury and agency delay apply and warrant waiving any  
21 prudential exhaustion requirement.

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27 As with the irreparable harm analysis, “in cases involving a constitutional  
28 claim, a likelihood of success on the merits . . . strongly tips the balance of equities

1 and public interest in favor of granting a preliminary injunction.” *Baird*, 81 F.4th at  
2 1048.

### 3 4 **A. Irreparable Injury**

5 The first exception to any prudential exhaustion requirement that applies  
6 here is that of irreparable injury. Each day Petitioner remains in detention is one in  
7 which his statutory rights have been violated and he could be free. Similarly  
8 situated district courts have repeatedly recognized this fact. As one court has  
9 explained, “because of delays inherent in the administrative process, BIA review  
10 would result in the very harm that the bond hearing was designed to prevent:  
11 prolonged detention without due process.” *Hechavarria v. Whitaker*, 358 F. Supp.  
12 3d 227, 237 (W.D.N.Y. 2019) (internal quotation marks omitted). Indeed, “if  
13 Petitioner is correct on the merits of his habeas petition, then Petitioner has already  
14 been unlawfully deprived of a [lawful] bond hearing[,] [and] . . . each additional  
15 day that Petitioner is detained without a [lawful] bond hearing would cause  
16 him harm that cannot be repaired.” *Villalta v. Sessions*, No. 17-CV-05390-LHK,  
17 2017 WL 4355182, at \*3 (N.D. Cal. Oct. 2, 2017) (internal quotation marks and  
18 brackets omitted); see also *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1139 (N.D.  
19 Cal. 2018) (similar). Other district courts have echoed these points.  
20 The district courts that have recognized that irreparable harm exists here are well-  
21 supported by Ninth Circuit case law. At issue in this case is civil detention, which  
22 “violates due process outside of ‘certain special and narrow nonpunitive  
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1 circumstances.” *Rodriguez*, 909 F.3d 5 See, e.g., *Perez v. Wolf*, 445 F. Supp. 3d  
2 275, 286 (N.D. Cal. 2020); *Blandon v. Barr*, 434 F. Supp. 3d 30, 37 (W.D.N.Y.  
3 2020); *Marroquin Ambriz v. Barr*, 420 F. Supp. 3d 953, 961 (N.D.  
4 Cal. 2019); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d 993, 1003–04 (N.D. Cal.  
5 2018); *Montoya Echeverria v. Barr*, No. 20-CV-02917-JSC, 2020 WL 2759731, at  
6 \*6 (N.D. Cal. May 27, 2020); *Rodriguez Diaz v. Barr*, No. 4:20-CV-01806-YGR,  
7 2020 WL 1984301, at \*5 (N.D. Cal. Apr. 27, 2020); *Birru v. Barr*, No. 20-CV-  
8 01285-LHK, 2020 WL 1905581, at \*4 (N.D. Cal. Apr. 17, 2020); *Lopez Reyes v.*  
9 *Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861, at \*7 (N.D.  
10 Cal. Dec. 24, 2018). at 257 (quoting *Zadvydas*, 533 U.S. at 690). Petitioner has a  
11 “fundamental” interest in such a hearing, as “as “freedom from imprisonment is at  
12 the ‘core of the liberty protected by the Due Process Clause.’”  
13 *Hernandez*, 872 F.3d at 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80  
14 (1992)). This point is “beyond dispute.” *Id.*; see also *Marin*, 909 F.3d at 256–57.  
15 Moreover, the irreparable injury Petitioner faces extends beyond a chance at  
16 physical liberty. There are several “irreparable harms imposed on anyone subject  
17 to immigration detention[.]” *Hernandez*, 872 F.3d at 995. These include “subpar  
18 medical and psychiatric care in ICE detention facilities,” as well as the “collateral  
19 harms to children of detainees whose parents are detained.” *Id.*

## 26 **B. Agency Delay**

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28 Second, the BIA’s delays in adjudicating bond appeals warrant excusing any

1 exhaustion requirement. The court’s ability to waive exhaustion based on delay is  
2 especially broad here given the interests at stake. As the Ninth Circuit has  
3 explained, Supreme Court precedent “permits a court under certain prescribed  
4 circumstances to excuse exhaustion where ‘a claimant’s interest in having a  
5 particular issue resolved promptly is so great that deference to the agency’s  
6 judgment [of a lack of finality] is inappropriate.’ ” *Klein v. Sullivan*, 978 F.2d 520,  
7 523 (9th Cir. 2002).

10 Moreover, the Supreme Court has explained that “[r]elief [when seeking  
11 review of detention] must be speedy if it is to be effective.” *Stack v. Boyle*, 342  
12 U.S. 1, 4 (1951).

14 Despite this fundamental interest and the Supreme Court’s admonition that  
15 only speedy relief is meaningful, the BIA takes over half a year in most cases to  
16 adjudicate an appeal of a decision denying bond. Its own data demonstrates this  
17 fact.  
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19  
20 Waiting several months, half a year, or even a year to review a custody  
21 determination is not reasonable; to the contrary, it exhibits significant disregard for  
22 the “fundamental” interests at stake. The Ninth Circuit has signaled that the  
23 protections afforded to criminal Respondents in pre-trial civil detention should  
24 apply in the civil immigration context. In *Gonzales v. U.S. Immigration & Customs*  
25 *Enforcement*, the Court of Appeals held that the Fourth Amendment “requires a  
26 prompt probable cause determination by a neutral and detached magistrate to  
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1 justify continued detention” of a noncitizen facing removal. 975 F.3d at 798; see  
2 also *id.* at 823–26. Similar principles demonstrate why the BIA’s review here is so  
3 patently unreasonable. The protections and quick review of detention orders  
4 afforded criminal Respondents are rooted in the Fifth Amendment’s  
5 Due Process Clause, see *Salerno*, 481 U.S. at 746–47, and many of those principles  
6 unquestionably apply to noncitizens, see, e.g., *Zadvydas*, 533 U.S. at 690–91  
7 (repeatedly citing *Salerno* and other Fifth Amendment civil detention caselaw).  
8 Thus, as with the rights at issue in *Gonzalez*, the rights of federal criminal  
9 Respondents facing pretrial civil detention demonstrate that the BIA’s months- or  
10 even years-long review of a noncitizen’s civil detention is an  
11 “unreasonable . . . timeframe for administrative action.” *McCarthy*, 503 U.S. at  
12 147.

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17 Finally, Petitioner notes that under either basis for waiving exhaustion, the  
18 history of appeals related to this issue supports him. Respondents have unclean  
19 hands and should not benefit from their failure to abide by appellate authority. This  
20 reality only further underscores the need for immediate relief and the propriety of  
21 waving any exhaustion requirement.  
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## 23 CONCLUSION

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25 For the foregoing reasons, Petitioner respectfully requests the Court grant his  
26 motion for a preliminary injunction and:  
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28 1. Issue an order as to Petitioner requiring that Respondents release Petitioner on



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CERTIFICATION FOR EMERGENCY MOTION

(1) Petitioner is unlawfully detained, and every day his irreparable harm is compounded, where no remedy of law can make him whole;

(2) Jeremy Mondejar, ESQ.  
2885 E Charleston BLVD, Suite 103  
Las Vegas, NV 89104  
(702) 816-6611  
Attorney for Petitioner

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PAM BONDI, US Department of Justice  
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Todd Lyons  
ICE Director  
500 12th St., SW, Washington, D.C., 20536

Warden  
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18 E Basic RD, Henderson, NV 89101

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(3) and Petitioner, through counsel, met and conferred with the U.S. attorney representing with Respondents, who made it abundantly clear that they will not consider voluntarily releasing Petitioner and oppose this motion. Petitioner has been unable to resolve the matter without court action A copy of this motion was sent to the U.S. Attorney who represents the Respondents in matters pending before this Court related to similarly situated immigrants on February 20, 2026.

/s/ Jeremy Mondejar

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Certification of Service

I hereby certify that the above Second Motion for Preliminary Injunction was filed with the Clerk of Court via the CMF/EC portal.

/s/ Jeremy Mondejar

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