UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Julio RODRIGUEZ TALLEDOS,

Petitioner,

v.

Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Juan BALTASAR, Warden of Denver Contract Detention Facility; Todd LYONS, Acting Director, Immigration and Customs Enforcement and Removal Operations; Robert GUADIAN, Field Office Director of Enforcement and Removal Operations, Immigration and Customs Enforcement;

Respondents.

Case No.

EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

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, Petitioner moves this Court for an order enjoining Respondents from continuing to detain Petitioner, or ordering a bond hearing before an immigration judge. Petitioner additionally seeks to enjoin Respondents from removing him from the U.S. to any third country to which he does not have a removal order without first providing him with constitutionally-compliant procedures. Respondents should also not transfer the Petitioner outside the District of Colorado, 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 may be held.

WHEREFORE, Petitioner prays that this Court grant his request for a preliminary injunction enjoining Respondents from continuing to detain him, order a bond hearing before an immigration judge in fifteen days, and enjoining Respondents from removing him to any third country without first providing her with constitutionally-compliant procedures.

Dated:

Respectfully Submitted

/s/ Jason Wisecup

Attorney for Petitioner

I. INTRODUCTION

Petitioner Julio Rodriguez Talledos 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). At that hearing, the immigration judge must further consider whether, in lieu of detention, alternatives to detention exist to mitigate any risk that Respondents may establish. Petitioner also seeks a PI enjoining Respondents from removing Petitioner to any third country to which he does not have a removal order without first providing him with constitutionally-compliant procedures. Finally, Petitioner seeks a PI enjoining Respondents from transferring Petitioner outside the District of Colorado, 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 first entered the United States in 1995, at age six. He has remained here in the country since that time. During his 30 years in the United States, Petitioner has married a USC, and fathered eight USC children, one of which has passed away. His children are currently aged 4, 5, 6, 8, 10, 11, and 14.

Petitioner works in construction and drywall, and is the sole financial supporter of his family. He has a minimal criminal history, including a conviction for driving under the influence, for which he was given classes and community service.

Petitioner's eleven-year-old son has a lung disease, which requires that he wear oxygen at night and periodically during the day. In addition, his ten-year-old son has scoliosis. His spouse has been diagnosed with severe depression, stress, and bipolar disorder. She has panic attacks and has had to move her and her children in with her parents. Petitioner's detention has greatly exacerbated these problems.

Petitioner was arrested on May 28, 2025, and transferred to ICE custody on May 29, 2025. Petitioner has been detained since that time, and is presently detained at the Denver Contract Detention Facility in Aurora, Colorado. ICE has charged Petitioner with removability under 8 U.S.C. § 1182(a)(6)(A)(i) as an alien in the United States without being admitted or paroled.

Absent this Court's intervention, he will remain detained for the duration of his removal proceedings, away from his family and community.

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); *Att'y Gen. of Okla. v. Tyson Foods,*

Inc., 565 F.3d 769, 776 (10th Cir. 2009).

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 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 (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. In other words, "aliens 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. The Government's Novel and Widely Rejected Theory That All Noncitizens Who Entered Without Admission Are Subject to Mandatory Detention

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 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 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 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). 29 I&N Dec. 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." 29 I&N Dec. 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 350 decisions either outright rejecting the

[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.

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 a "nonstarter." *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 at *10 (D. Mass. Sept. 5, 2025). Another 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). Indeed, in the District of Colorado alone, various judges, in at least seven separate decisions, have unanimously rejected the government's interpretation. *See, e.g., Florez Marin v. Baltazar*, 2025 WL 3677019 (D.Colo. Dec. 18, 2025) (Brimmer, J.); *Jiminez Faccio v. Baltazar*, 2025 WL 3559128 (D.Colo. Dec. 12, 2025) (Chung, J.). In fact, undersigned counsel has not identified a single decision from any court in the Tenth Circuit denying similar habeas corpus relief.

The district court in *Maldonado Bautista v. Santacruz*, et al, 5:25-cv-01873 (C.D. Cal. Nov. 20, 2025) (Sykes, J.), has granted nationwide class certification and summary judgment on this issue.[2] 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. Other courts have followed suit. *See Guerrero Orellano v. Moniz, et al.*, 1:25-cv-12664 (D. Mass. Dec. 19, 2025) (Saris, J.); *Ramirez Ovando, et al., v. Noem, et al.*, 1:25-cv-03183 (D. Colo. Nov. 25, 2025) (Jackson, J.). Thus, class members nationwide now have a

[2] Petitioner notes that on Dec. 18, 2025, the Court subsequently ordered final judgment in favor of petitioners and the Bond Eligible Class. *Maldonado Bautista v. Santacruz*, et al, 5:25-cv-01873 (C.D. Cal. Dec. 18, 2025) (Sykes, J.).

binding judgment declaring they are detained under 8 U.S.C. § 1226(a), not § 1225(b)(2)(A), and are entitled to consideration for release on bond.

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.

Petitioner in this case is thus a class member and covered by the declaratory relief granted in *Maldonado Bautista.*

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. 25-437, 2025 LX 422663 (D. Maine Sept. 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.). The BIA's interpretation would also "render the Laken Riley Act a meaningless amendment, since it would have prescribed mandatory detention for noncitizens already subject to it." *Aceros v. Kaiser*, 2025 WL 2637503 at

*28 (N.D. Cal. Sept. 12, 2025).

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). *See also Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

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.[3] *See Vasquez-Garcia et al. v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 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*, 2025 WL 2379285 (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

[3] 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.

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 v. Rodriguez*, 583 U.S. 281, 287, 297 (2018).

The Board in *Matter of Yajure Hurtado* ignored the "seeking admission" requirement and instead focused solely on whether an individual who enters the United States without inspection

is "applicant for admission," as § 1225(b)(2)(A) also requires. But as the Ninth Circuit has explained, "when deciding whether language is plain, [courts] must read the words in their context and with a view to their place in the overall statutory scheme." *San Carlos Apache Tribe v. Becerra*, 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation marks omitted). In context, the differential phrasing of "applicant for admission" and "seeking admission" in the same statutory subsection is significant, because "applicant for admission" is a term of art that has been analyzed as such by both the Supreme Court and the Ninth Circuit Court of Appeals. *See DHS v. Thuraissigiam*, 591 U.S. 103, 109 (2020); *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018); *see also Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc) (an individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States."). By contrast, an individual who has not presented at a port of entry and has not filed any affirmative application for immigration benefits is not "seeking" anything under the plain meaning of the word. *See* Merriam 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 the freedom the IJ has already established is appropriate. Petitioner has now been in custody following his detention for over 250 days. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Further, it "is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury." *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d 989, 1001-02 (9th Cir. 2005); *see also Hernandez v. Sessions*, 872 F.3d 976, 994–95 (9th Cir. 2017) (concluding that Plaintiffs who showed unconstitutional deprivation of physical liberty "also carried their burden as to irreparable harm."); *Maldonado Bautista et al. v. Santacruz, et al.,* No. 5:25-cv- 01873-SSS-BFM (C.D. Calif. July 28, 2025), Order Granting TRO, Dkt. 14 at 9 ("[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)."). This detention also causes irreparable harm because Petitioner is the sole bread winner for his family, which again contains seven USC children and a USC wife with mental and health issues.

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). Continued detention in such "prison-like" conditions which separate Petitioner from his family, job, and community, constitute an irreparable harm

Petitioner will also suffer irreparable harm were he removed to a third country without first being provided with constitutionally-compliant procedures to ensure that his right to apply for fear-based relief is protected. Individuals removed to third countries under DHS's policy have reported

that they are now stuck in countries where they do not have government support, do not speak the language, and have no network.[4] Thus, preliminary injunctive relief is necessary to prevent Petitioner from suffering irreparable harm by remaining in unlawful and unjust detention, and by being summarily removed to any third country where he may face persecution or torture.

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).

Further, 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.").

Finally, if preliminary relief is not entered, the government would effectively be granted permission to detain Petitioner or to summarily remove him to any third country, in violation of the requirements of Due Process.

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[4] NPR, "Asylum seekers deported by the U.S. are stuck in Panama unable to return home (May 5, 2025), available at: https://www.npr.org/2025/05/05/nx-s1-5369572/asylum-seekers-deported-by-the-u-s-are-stuck-in-panama-unable-to-return-home.

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 Board decision, where the Board's recent precedential decision makes the outcome of that appeal a foregone conclusion. "[T]here are a number of exceptions to the general rule requiring exhaustion, covering situations such as where administrative remedies are inadequate or not efficacious, . . . [or] irreparable injury will result." *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004) (citation omitted). Administrative exhaustion is not required where a request for relief before the agency would be futile because the agency has "predetermined the issue before it." *McCarthy v. Madigan*, 503 U.S. 140, 148 (1992). Here, the exceptions regarding futility, irreparable injury, and agency delay warrant waiving any prudential exhaustion requirement.

1. Futility

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

2. Irreparable injury

Because Petitioner was denied access to 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*, 445 F. Supp. 3d at 286.

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 et al.,* No. 5:25-cv-01873-SSS-BFM, Order Granting TRO (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.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

This certifies that I filed this document electronically, which will send a notice to all counsel of record. I also emailed a copy of this document to counsel for the respondents, Civil Chief, Kevin Traskos, for the U.S. Attorney's Office, District of Colorado, at kevin.traskos@usdoj.gov.

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[i] *See, e.g., Moreno Madrid v. Acuna,* 3:25-CV-01572 (W.D. La. Dec. 12, 2025); *Sanabria v. Rosa,* 25-4429 (D. Ariz. Dec. 11, 2025) (Tuchi, J.); *H.L.P.F. V. Wamsley,* 25-1899 (D. Or. Dec. 10, 2025) (Aiken, J.); *Millan-Osuna v. Cantu*, 25-4019 (D. Ariz. Nov. 26, 2025); (Liburdi, J.); *Soto v. Noem*, 25-4178 (D. Ariz. Nov. 26, 2025) (Liburdi, J.); *Vargas-Murillo v. Bondi,* 25-03396 (D. Ariz. Nov. 25, 2025) (Liburdi, J.); *Perez Camacho v. Holinshead,* 25-593 (D. Id. Nov. 19, 2025) (Winmill, J.); *Macilla Ruiz v. Larose,* No. 25-379 (S.D. Cal. Nov. 18, 2025) (Bashant, J.); *Maravilla Amaya v. Noem*, 25-2892 (S.D. Cal. Nov. 13, 2025) (Moskowitz, J.); *Hernandez-Luna v. Noem*, 25-1818 (D. Nev. Nov. 6, 2025) (Navarro, J.); *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.); *Lopez Santos v. Noem,* 2025 WL 2642278 (W.D. La. Sept. 11, 2025) (Doughty, 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.). *But see Barrios Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. Oct. 31, 2025) (Joseph, J.) (denying habeas petition); *Silva Olveira v. Patterson,* 2025 WL 3095972 (W.D. La. Nov. 4, 2025) (Joseph, J.) (same).

[ii] *See, e.g., Dolmo Martinez v. Rice,* 2025 WL 3554620 (W.D. La. Dec. 11, 2025) (Edwards, J.); *Rueda Padilla v. Bowen*, 25-cv-10780 (C.D. Cal. Nov. 21, 2025) (Snyder, J.); *Sandigo Manzanarez v. Bondi*, 25-1536 (E.D. Cal. Nov. 20, 2025) (Coggins, J.); *Orozco Acosta v. Bondi,* 25-9601 (N.D. Cal. Nov. 19, 2025) (Gillam, J.); *Diaz v. Albarran*, 25-cv-9601 (N.D. Cal. Nov. 18, 2025) (Corley, J.); *Estuardo Marin v. Andrews,* 25-cv-1422 (E.D. Cal. Nov. 13, 2025) (Boone, J.); *Lopez v. Lyons*, 25-3174 (E.D. Cal. Nov 7, 2025) (Calabretta J.) *Castillo v. Wamsley,* 25-2054 (W.D. Wash. Nov 5, 2025) (Cartwright, J.); *Pineda Parada v. Rice*, 2025 WL 3146250 (W.D. La. Nov. 4, 2025) (Drell, J.); *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.); *Ventura Martinez v. Trump* (W.D. La. Oct. 22, 2025) (Edwards, 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).