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6 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

7
8 **GALO VINICIO SEGURA-TUQUINGA,**

9 Petitioner,

10 v.

11 **THOMAS HOGAN**, Field Office Director of
Enforcement and Removal Operations, Las
12 Vegas Field Office, Immigration and Customs
Enforcement; **Kristi NOEM**, Secretary, U.S.
13 Department of Homeland Security; **Pamela**
BONDI, U.S. Attorney General; **John**
14 **MATTOS**, Warden of Nevada Southern
Detention Center, **Todd Lyons**, Acting Director
of U.S. Immigration and Customs Enforcement;
15 **DEPARTMENT OF JUSTICE**; and
16 **EXECUTIVE OFFICE FOR**
IMMIGRATION REVIEW,

17 Respondents.

Case No. **2:26-cv-283**

**MOTION FOR PRELIMINARY
INJUNCTION**

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION¹**

3 Petitioner Galo Vinicio Segura-Tuquinga respectfully moves this Court for a preliminary
4 injunction ordering Respondents to immediately release Petitioner, or, alternatively, schedule a
5 bond hearing within seven days before an Immigration Judge (IJ) pursuant to 8 U.S.C. § 1226(a).
6 Petitioner is being detained under an unlawful application of 8 U.S.C. § 1225(b)(2)(A), in
7 violation of the Immigration and Nationality Act (INA) and the Due Process Clause of the Fifth
8 Amendment.

9 Sometime around mid-2025 the Department of Homeland Security (DHS) began to
10 systemically misclassify immigration detainees in order to deny them bond hearings. This
11 practice is contrary to decades of settled law and policy. On September 5, the government
12 cemented the practice through the Board of Immigration Appeals' (BIA) precedential decision in
13 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) (hereinafter *Matter of Hurtado*). That
14 decision unlawfully compels all IJs to uniformly refuse to provide bond hearings to anyone who
15 originally entered the country without inspection. The overwhelming majority of federal courts
16 to consider this issue have rejected the government's position, including this Court.

17 The impact on the immigrant community from DHS's policy and *Matter of Hurtado* can
18 hardly be overstated. In Nevada alone, hundreds of people are suddenly facing the prospect of
19 being illegally detained for months or years with no bond hearing at all. In the months that the
20 policies have been implemented, dozens of people seeking help have filed habeas petitions in
21 this District. These numbers will only continue to grow as U.S. Immigration and Customs
22 Enforcement (ICE) surges its enforcement activities in Nevada and neighboring states.

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24 ¹ Petitioner incorporates by reference all exhibits attached to the concurrently filed Petition for Writ of Habeas
Corpus.

1 This motion is based on the points and authorities below, the habeas petition filed
2 concurrently, the evidentiary record already established in this and parallel proceedings in this
3 District, and all matters properly before the Court.

4 **II. JURISDICTION**

5 Petitioner is in the physical custody of Respondents and detained at the NSDC in
6 Pahrump, Nevada. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28
7 U.S.C. § 1331 (federal question), and Article I, Section 9, Clause 2 of the U.S. Constitution
8 (Suspension Clause). This Court may grant relief under 28 U.S.C. § 2241, the Declaratory
9 Judgment Act (28 U.S.C. § 2201 et seq.), and the All Writs Act, 28 U.S.C. § 1651. The
10 jurisdiction-stripping provisions of 8 U.S.C. § 1252 do not bar review of Petitioner's challenge to
11 the legality of his detention.

12 **III. VENUE**

13 Venue is proper in this District under 28 U.S.C. § 2241, 28 U.S.C. § 1391(b), and 28
14 U.S.C. § 1391(e)(1) because at the time this Petition was filed, Petitioner was detained within the
15 geographic jurisdiction of the District of Nevada (Las Vegas). Venue is also proper under 28
16 U.S.C. § 1391(e) because Respondents are officers, employees, and agencies of the United
17 States, and a substantial part of the events or omissions giving rise to the claims occurred in this
18 District. *See* 28 U.S.C. § 1391(e).

19 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

20 Petitioner is not required to exhaust administrative remedies prior to seeking relief under
21 28 U.S.C. § 2241 where exhaustion would be futile. Exhaustion in immigration habeas cases is a
22 prudential doctrine, not a jurisdictional requirement.

1 Any attempt by Petitioner to exhaust administrative remedies before the Board of
2 Immigration Appeals (BIA) would be futile because both IJs and the BIA are bound by the
3 BIA's precedential decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which
4 categorically precludes bond jurisdiction for individuals alleged to have entered without
5 inspection.

6 District courts in this District have expressly held that administrative exhaustion is
7 excused as futile under these circumstances. See *Jacobo Ramirez v. Noem*, No. 2:25-cv-02136-
8 RFB-MDC, 2025 WL 3270137, at *5–6 (D. Nev. Nov. 24, 2025).

9 Accordingly, because Petitioner's detention is compelled by binding agency precedent
10 and no administrative tribunal has authority to grant the relief requested, exhaustion is excused.

11 **V. URGENCY AND IMMEDIATE RELIEF WARRANTED**

12 The relief requested here implicates the same fundamental interests underlying habeas
13 corpus: the urgent protection of physical liberty. Federal courts have recognized that where
14 detention is allegedly unlawful and ongoing, immediate intervention is not only appropriate, but
15 imperative.


16 As the Supreme Court has emphasized, "Habeas corpus is perhaps the most important
17 writ known to the constitutional law... affording as it does a swift and imperative remedy in all
18 cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). The Ninth
19 Circuit has likewise recognized that applications for release from unlawful custody "usurp the
20 attention and displace the calendar of the judge" who entertains them. *Yong v. I.N.S.*, 208 F.3d
21 1116, 1120 (9th Cir. 2000).

22 These principles apply equally here. Petitioner seeks immediate relief from unlawful
23 detention under an interpretation of 8 U.S.C. § 1225(b)(2)(A) that has been rejected by this Court
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1 and others. Without preliminary intervention, Petitioner will continue to suffer irreparable harm
2 through ongoing loss of liberty, separation from family, and inability to pursue lawful
3 immigration relief.

4 The Court's equitable authority under Rule 65, combined with its jurisdiction under 28
5 U.S.C. §§ 1331 and 2241, provides ample grounds to act swiftly.

6 **VI. STATEMENT OF FACTS**

7 Petitioner entered the United States without inspection in July 2022 and has since resided
8 continuously in Las Vegas, Nevada, where he has established substantial family and community
9 ties. See Attorney Flores Declaration (Ex. F). Petitioner is married to United States citizen
10 (USC) Heather Christine Segura born on  See I-130 Application (Ex. C). His USC
11 spouse has filed a Form I-130, Petition for Alien Relative, on his behalf, which has been
12 accepted and is currently pending adjudication with U.S. Citizenship and Immigration Services
13 (USCIS). See I-130 Receipt Notice (Ex. B) and I-130 Application (Ex. C).

14 Petitioner is the biological father of a USC child and is also the stepfather to additional
15 United States citizen children through his marriage. *Id.* Petitioner resides with and supports his
16 spouse and children, who depend on him emotionally and financially. (Ex. F).

17 In December 2025, ICE arrested Petitioner in the interior of the United States in Las
18 Vegas, Nevada—far from any border or port of entry. Following his arrest, the DHS placed
19 Petitioner into removal proceedings under 8 U.S.C. § 1229a and charged him as inadmissible
20 under 8 U.S.C. § 1182(a)(6)(A)(i). See Notice to Appear (Ex. D).

21 Petitioner requested a custody redetermination hearing before the Las Vegas Immigration
22 Court and submitted a motion for bond supported by evidence of his family ties, pending I-130
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1 petition, no criminal convictions, and absence of any danger to the community or flight risk. See
2 Motion for Bond Redetermination (Ex. E).

3 On January 15, 2026, an IJ denied bond for lack of jurisdiction, citing *Matter of*
4 *Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), and concluding that Petitioner was subject to
5 mandatory detention under 8 U.S.C. § 1225(b)(2)(A). See IJ Order Denying Bond (Ex. A).

6 The IJs denial was compelled solely by binding agency precedent and not by any
7 individualized finding that Petitioner is dangerous, poses a risk to national security, or presents a
8 risk of flight. *Id.* To the contrary, Petitioner’s family ties, pending immigration petition, no
9 criminal convictions, and stable residence all weigh strongly in favor of release.

10 **VII. LEGAL STANDARD**

11 Pursuant to Federal Rule of Civil Procedure 65, a court may grant preliminary injunctive
12 relief to prevent “immediate and irreparable injury.” *Maldonado Vazquez*, 2025 WL 2676082, at
13 *6 (citing Fed R. Civ. P. 65(b)). A preliminary injunction is “an extraordinary remedy that may
14 only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v.*
15 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, a
16 plaintiff must establish four elements: “(1) a likelihood of success on the merits, (2) that the
17 plaintiff will likely suffer irreparable harm in the absence of preliminary relief, (3) that the
18 balance of equities tips in its favor, and (4) that the public interest favors an injunction.” *Wells*
19 *Fargo & Co. v. ABD Ins. & Fin. Servs., Inc.*, 758 F.3d 1069, 1071 (9th Cir. 2014), as amended
20 (Mar. 11, 2014) (citing *Winter*, 555 U.S. at 20).

21 In the Ninth Circuit, a preliminary injunction may also issue under the “serious
22 questions” test. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011)
23 (affirming the continued viability of this doctrine post-*Winter*). According to this test, “serious
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1 questions going to the merits and a balance of hardships that tips sharply towards the plaintiff
2 can support issuance of a preliminary injunction, so long as the plaintiff also shows that there is a
3 likelihood of irreparable injury, and that the injunction is in the public interest.” *Id.* at 1135.
4 Courts in the Ninth Circuit evaluate “these factors on a sliding scale, such that a stronger
5 showing of one element may offset a weaker showing of another.” *Recycle for Change v. City of*
6 *Oakland*, 856 F.3d 666, 669 (9th Cir. 2017).

7 **VIII. ARGUMENT**

8 Petitioner satisfies all four factors for preliminary injunctive relief. Courts in this District
9 have repeatedly granted preliminary injunctions in materially identical circumstances, including
10 cases where petitioners —like Mr. Galo-Segura—sought custody redetermination (i.e. bond
11 hearing) after the BIA adopted DHS’s reading of the INA and held IJs have no jurisdiction to
12 hold a bond hearing for detained noncitizens. *See, e.g., Maldonado Vazquez*, 2025 WL 2676082,
13 at *11, 22-23; *Maldonado Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082
14 (D. Nev. Sept. 17, 2025); *Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211, at
15 *1, 6-7 (D. Nev. Sept. 23, 2025); *Sanchez Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY (D.
16 Nev. Sept. ___, 2025); *Aparicio v. Noem*, No. 2:25-CV-01919-RFB-DJA, 2025 WL 2998098, at
17 *1, 6 (D. Nev. Oct. 23, 2025); *Dominguez-Lara v. Noem*, No. 2:25-CV-01553-RFB-EJY, 2025
18 WL 2998094, at *1, 5-6 (D. Nev. Oct. 24, 2025); *Bautista-Avalos v. Bernacke*, No. 2:25-CV-
19 01987-RFB-BNW, 2025 WL 3014023, at *1, 7 (D. Nev. Oct. 27, 2025) *Arce-Cervera v. Noem*,
20 No. 2:25-cv-01895-RFB-NJK, 2025 WL 3017866, at *2, 8 (D. Nev. Oct. 28, 2025); *see also*
21 *E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264, at *2, 13 (D. Nev. Aug. 14,
22 2025); *Nolasco-Gomez v. Noem*, No. 2:25-CV-02217-RFB-DJA (D. Nev. Dec. 8, 2025); *Rodas*
23 *v. Noem*, No. 2:25-CV-02216-RFB-BNW (D. Nev. Dec. 8, 2025); *Ramirez-Contreras v. Noem*,

1 No. 2:25-CV-02218-RFB-MDC (D. Nev. Dec. ____, 2025); *Perdomo-Gonzalez v. Noem*, No.
2 2:25-CV-02121-RFB-EJY (D. Nev. Dec. 8, 2025); *Garcia-Arauz v. Noem*, No. 2:25-CV-02117-
3 RFB-EJY (D. Nev. Dec. ____, 2025); *Gonzalez Hernandez*, 2:25-cv-02486-RFB-NJK (D. Nev.
4 Dec. 30, 2025); *Juarez Salvador v. Noem*, 2:26-cv-00043-RFB-BNW (D. Nev. Jan. 25, 2026);
5 *Molina Posado v. Noem*, 2:26-cv-00050-RFB-BNW (D. Nev. Jan. 26, 2026) The same analysis
6 and ruling should apply to this case.

7 **A. APPLICATION OF THE *WINTER* FACTORS**

8 **a. Likelihood of Success on the Merits**

9 Petitioner argues that he (i) is being misclassified in the statutory/regulatory scheme as
10 no-bond detainees, when he is actually bond eligible; (ii) that his detention without a bond
11 hearing violates constitutional due process protections; and (iii) that his detention pursuant to
12 *Matter of Hurtado* is unlawful and therefore also violates the Administrative Procedure Act
13 (APA). The government’s recent reinterpretation of § 1225(b)(2)(A) was adopted in *Matter of*
14 *Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), but federal courts—including this District—have
15 uniformly rejected it, “[t]hese individuals... were apprehended far from the border. They are not
16 ‘arriving aliens’ and are properly subject to custody under § 1226(a).” *Escobar Salgado v.*
17 *Mattos*, No. 2:25-cv-01872-RFB-EJY, at 5–6 (D. Nev. Nov. 17, 2025). *See infra* Part IX

18 ARGUMENT.

19 For clarity, Petitioner’s bond was denied solely because the IJ ruled no jurisdiction to
20 hold a bond hearing for a detained noncitizen who entered without inspection. See IJ Order
21 Denying Bond (Ex. A). This detention is unlawful because Petitioner was arrested in the
22 interior of the United States and placed into removal proceedings under 8 U.S.C. § 1229a,
23 making § 1226(a)—not § 1225—the governing detention statute. Petitioner does not fall within
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1 any category requiring mandatory detention under 8 U.S.C. § 1226(c), is not subject to expedited
2 removal under § 1225(b)(1), and does not have a final order of removal triggering § 1231.

3 Hence, there is every reason to believe that he will prevail on each of these claims, and
4 therefore a preliminary injunction should enter. *See Matsumoto v. Labrador*, 122 F.4th 787, 804
5 (9th Cir. 2024) (Likelihood of success on the merits is the most important factor in a preliminary
6 injunction analysis); *see also Baird v. Bonta*, 81 F.4th 1036, 1042 (9th Cir. 2023) (likelihood of
7 success is especially important where a plaintiff seeks a preliminary injunction because of an
8 alleged constitutional violation).

9 By denying Petitioner any opportunity for individualized consideration for release on
10 bond, Respondents have violated the Immigration and Nationality Act, including 8 U.S.C. §
11 1226(a). Thus, Petitioner is detained under the wrong statutory authority, denied a bond hearing,
12 and has a strong likelihood of success on his habeas claim.

13 i. **Petitioner is likely to show that he is being misclassified in the**
14 **statutory/regulatory scheme as no-bond detainees, when he is**
15 **actually bond eligible.**

16 As this Court has recognized, nearly every court to have examined the issue has rejected
17 the government’s recent attempts to misclassify people arrested inside the United States—people
18 exactly like Petitioner—as § 1225(b)(2) no-bond detainees. *See, e.g., Maldonado Vazquez*, 2025
19 WL 2676082, at *11 (“the Court holds, consistent with the overwhelming majority of district
20 courts in the Ninth Circuit and across the country that have thus far considered the issue, that §
21 1226, not § 1225, applies to Petitioner and others similarly situated.”); *Arce-Cervera*, 2025 WL
22 3017866, at *2 (“This Court is not alone in its finding, as the overwhelming majority of district
23 courts across the country that have considered DHS and the BIA’s new statutory interpretation
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1 have found it unlawful”); *Rodriguez Vasquez*, 2025 WL 2782499, at *27 (holding that the class
2 members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under
3 8 U.S.C. § 1225(b)(2)); *Guerrero Orellana*, 2025 WL 2809996, at *4-9 (holding that § 1226(a)
4 applied based on the statute’s plain language, Congress’s recent amendment to § 1226(c), the
5 Supreme Court’s decision in *Jennings*, and established agency practice); *Pizarro Reyes v.*
6 *Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *7 (E.D. Mich. Sept. 9, 2025) (“[T]he BIA’s
7 decision to pivot from three decades of consistent statutory interpretation and call for
8 [petitioner’s] detention under § 1225(b)(2)(A) is at odds with every District Court that has been
9 confronted with the same question of statutory interpretation.”); *Mendoza Gutierrez v. Baltasar*,
10 No. 25-CV-2720-RMR, 2025 WL 2962908, at *4 (D. Colo. Oct. 17, 2025) (noting the
11 government “readily admit[s] that other district courts that have considered this same or similar
12 issue ‘have concluded that aliens who enter without inspection and then reside in the United
13 States fall within the scope of Section 1226(a) rather than Section 1225(b)(2)(A)’” (citation
14 omitted)); *Pablo Sequen v. Albarran*, No. 25-CV-06487-PCP, F. Supp. 3d , 2025 WL 2935630,
15 at *8 (N.D. Cal. Oct. 15, 2025) (“District courts throughout this district and across the country
16 have rejected that argument” that § 1225(b)(2) covers petitioners); *Hernandez Lopez v. Hardin*,
17 No. 2:25-CV-830-KCD-NPM, 2025 WL 3022245, at *4 (M.D. Fla. Oct. 29, 2025) (“Courts
18 around the country have since rejected the government’s new interpretation. This Court now
19 joins the consensus.” (citation omitted)).²

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23 *See also Guerrero Orellana*, 2025 WL 2809996, at *5 (collecting cases); *Rodriguez Vasquez*, 2025 WL 2782499, at
24 *1 n.3 (same); *Pizarro Reyes*, 2025 WL 2609425, at *7 (same); *Ventura Martinez v. Trump*, No. 25-1445 (W.D. La.
Oct. 22, 2025), ECF No. 17 at 5 n.1 (same); Kyle Cheney et al., *Judges Really Don’t Like This Policy*, Politico (Oct.
31, 2025), <https://www.politico.com/newsletters/west-wing-playbook-remaking-government/2025/10/31/judges-really-dont-like-this-detention-policy-00631871> (describing how over 100 judges have ruled at least 200 times
against the government’s new mandatory detention policy).

1 There is therefore a strong likelihood that Petitioner will show that he, too, has been
2 misclassified, and is in fact a § 1226(a) detainee who is entitled to a bond hearing before an IJ.
3 *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d), 1236.1, 1003.19(a)-(f).

4 Petitioner’s statutory and regulatory arguments arise from the intersection of the three
5 mutually exclusive statutes that create the legal landscape for civil immigration detention.

6 First, at the border, individuals “seeking admission” who are placed into removal
7 proceedings are subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(2).³ *See*
8 *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to “borders and
9 ports of entry”); *see also* *Maldonado Vazquez*, 2025 WL 2676082, at *13 (describing § 1225’s
10 limited temporal focus to “ports of entry” and “recent arrivals.”).

11 Second, when a person is arrested inside the United States on civil immigration charges,
12 they are generally subject to the detention authority of 8 U.S.C. § 1226 during the pendency of
13 their removal proceedings. *See Jennings*, 583 U.S. at 288-89 (describing § 1226 detention as
14 relating to people “inside the United States” and “present in the country”); *see also Maldonado*
15 *Vazquez*, 2025 WL 2676082, at *14, (citing *Jennings*, 583 U.S. at 303) (describing § 1226 as
16 applying to “aliens already present in the United States”). Those who do not have disqualifying
17 criminal history are entitled to a bond hearing before an IJ to decide whether they should be
18 detained or released. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d); 1003.19(a), 1236.1(d). This
19 statute has long been interpreted to apply to people arrested inside the United States, even if they
20 initially entered the country without being admitted. *See, e.g.*, 62 Fed. Reg. 10312, 10323 (Mar.

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23 ³ These individuals may request release through humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). Separately,
24 there is also a limited subset of individuals in and around the border who may be placed into the Expedited Removal
process and are subject to mandatory detention under 8 U.S.C. § 1225(b)(1). *See Make the Road N.Y. v. Noem*, No.
25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025). This subset is not pertinent to Petitioner as he has
resided in the United States for several years and the government has not attempted to place him in Expedited
Removal.

1 6, 1997) (“Despite being applicants for admission, aliens who are present without having been
2 admitted or paroled (formerly referred to as aliens who entered without inspection) will be
3 eligible for bond and bond redetermination.”).

4 Third, if a person completes their removal proceedings and all appeals, and is ordered
5 removed, the person is subject to detention under 8 U.S.C. § 1231 while the government attempts
6 to remove them. *See generally Zadvydas v. Davis*, 533 U.S. 678, 688-89 (2001) (discussing
7 limitations on post-final order detention).

8 The present crisis has arisen because the government is now attempting to unlawfully
9 move thousands of people from one of these categories to the other. Specifically, the government
10 is attempting to misclassify bond-eligible § 1226 detainees arrested inside the United States as
11 no-bond border detainees under § 1225(b)(2). This unlawful practice apparently began in a single
12 Immigration Court in Washington. *See Rodriguez Vasquez*, 779 F. Supp. 3d at 1244. Last
13 summer, DHS, “in coordination” with DOJ, began making this argument to Immigration Courts
14 nationwide.⁴ And finally, on September 5, 2025, the Board of Immigration Appeals adopted it as
15 a uniform policy for all Immigration Courts in the *Matter of Hurtado* decision. *See* 29 I. & N.
16 Dec. 216 (B.I.A. 2025). Under DHS’s policy and *Matter of Hurtado*, Petitioner has been
17 misclassified as a § 1225(b)(2) no-bond detainee and had his bond revoked, solely because the
18 government alleges he entered the United States without being admitted. Petitioner is
19 misclassified in the same way and does not have access to any consideration for bond.

20 This Court, and many throughout the country, have rejected the government’s unlawful
21 reversal of nearly three decades of settled immigration practice. As this Court has explained, the
22 government’s interpretation 1) is “inconsistent with the plain, ordinary meaning of the phrase

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24 ⁴ See Interim Guidance Regarding Detention Authority for Applicants for Admission,
<https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applicationsfor-admission>.

1 ‘seeking admission’ to apply [§ 1225(b)(2)] to all noncitizens already present and residing in the
2 U.S.”; 2) goes against legislative history that “supports interpreting the INA as subjecting
3 noncitizens like Petitioner[s] to discretionary detention with the associated procedural
4 protections”; 3) is inconsistent with “Supreme Court precedent interpreting § 1225(b) and
5 finding it ‘applies primarily to aliens seeking entry into the United States (‘applicants for
6 admission’ in the language of the statute)”; and 4) is inconsistent with existing regulations
7 governing IJs’ bond jurisdiction, as well as decades of agency practice. *Maldonado Vazquez*,
8 2025 WL 2676082, at *12-15. The new interpretation also contradicts Congress’s clear
9 understanding of the statutory framework as expressed this year with the passage of the Laken
10 Riley Act—a new statute that expressly contemplates the inclusion of people who entered
11 without inspection within the scope of § 1226. *See id* at *14 (citing *Diaz Martinez v. Hyde*, No.
12 25-11613, 2025 WL 2084238, at *7 (D. Mass. July 24, 2025) (“if, as the Government
13 argue[s], . . . a noncitizen’s inadmissibility were alone already sufficient to mandate detention
14 under section 1225(b)(2)(A), then the 2025 amendment would have no effect”).

15 “By its plain text, § 1225(b)(2) applies where several conditions are met: (1) an
16 ‘examining immigration officer’ in the context of ‘inspection’ (2) determines that an individual
17 is an ‘applicant for admission’ who is (3) ‘seeking admission.’” *See Maldonado Vazquez*, 2025
18 WL 2676082, at *12. A person apprehended inside the United States is not undergoing an
19 “examination,” which “is a specific legal process one undergoes while trying to enter the
20 country.” *Romero*, 2025 WL 2403827, at *9 (citing 8 C.F.R. § 235.1). And a person “seeking
21 admission” is necessarily taking a “present-tense action” to attempt to enter the country, not
22 somebody already inside. *See id.* at *9-10; *see also Maldonado Vasquez*, 2025 WL 2676082, at
23 *13 (“It is inconsistent with the plain, ordinary meaning of the phrase ‘seeking admission’ to
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1 apply this section to all noncitizens already present and residing in the U.S., regardless of
2 whether they are taking any affirmative acts that constitute ‘seeking admission.’”); *Lopez Benitez*
3 *v. Francis*, No. 25 CIV. 5937 (DEH), F. Supp. 3d, 2025 WL 2371588, at *7 (S.D.N.Y. Aug. 13,
4 2025) (“As § 1225(b)(2)(A) applies only to those noncitizens who are actively ‘seeking
5 admission’ to the United States, it cannot, according to its ordinary meaning, apply to
6 [petitioner], because he has already been residing in the United States for several years.”).

7 Lastly, to the extent the government might propose deference to *Matter of Hurtado*, there
8 is no longer any requirement to defer to the administrative agency’s interpretation, even if the
9 statute were ambiguous. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412-13 (2024);
10 *Pablo Sequen*, 2025 WL 2935630, at *9 (“Because ‘agencies have no special competence in
11 resolving statutory ambiguities,’ ‘the BIA decision is entitled to little deference.’ (citation
12 omitted)). It appears that nearly every court that has examined this issue since the BIA’s decision
13 on September 5 has rejected *Matter of Hurtado* as unavailing in light of the contrary conclusion
14 compelled by tools of statutory interpretation. *See, e.g., Rodriguez Vazquez*, 2025 WL 2782499,
15 at *26 (“In *Matter of Hurtado*, the BIA adopts many of Defendants’ arguments on the text of
16 section 1225, canons of interpretation, legislative history, and prior agency practice. For the
17 reasons already explained in this Order, the Court is not persuaded by the Board’s analysis.”);
18 *Pizarro Reyes*, 2025 WL 2609425, at *7 (“[T]he BIA’s decision to pivot from three decades of
19 consistent statutory interpretation and call for [petitioner’s] detention under § 1225(b)(2)(A) is at
20 odds with every District Court that has been confronted with the same question of statutory
21 interpretation.”); *Pablo Sequen*, 2025 WL 2935630, at *9 (“The BIA’s reasoning fails to
22 persuade because, as explained above, its interpretation of § 1225(b)(2) needlessly renders the
23 phrase ‘seeking admission’ superfluous, vitiates the discretionary-detention regime created by §
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1 1226(a), and nullifies much of § 1226(c). Any persuasive power the BIA’s decision might have
2 is further undercut by its inconsistency with the BIA’s earlier pronouncements.”).

3 ii. **Petitioner is likely to show that his detention without**
4 **consideration of bond violates constitutional due process**
5 **protections.**

6 Even if the government could permissibly interpret 8 U.S.C. §§ 1225 and 1226 to deny
7 Petitioner a bond hearing—though it cannot—holding him in custody without providing him any
8 individualized opportunity to seek release on bond still violates due process requirements.

9 “In our society liberty is the norm, and detention prior to trial or without trial is the
10 carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). The Fifth
11 Amendment’s Due Process Clause specifically forbids the Government from “depriv[ing]” any
12 “person . . . of . . . liberty . . . without due process of law.” U.S. Const. amend. V. There is no
13 question that these protections extend to noncitizens present in the United States. *See e.g., Trump*
14 *v. J.G.G.*, 604 U.S. 670, 673 145 S. Ct. 1003, 1006 (2025) (*per curiam*) (“It is well established
15 that the Fifth Amendment entitles aliens to due process of law’ in the context of removal
16 proceedings . . .”) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)); *Zadvydas v. Davis*, 533
17 U.S. 678, 693, (2001) (“[T]he Due Process Clause applies to all ‘persons’ within the United
18 States, including aliens, whether their presence here is lawful, unlawful, temporary, or
19 permanent.”); *Hussain v. Rosen*, 985 F.3d 634, 642 (9th Cir. 2021) (holding the “Fifth
20 Amendment entitles aliens to due process of law in deportation proceedings.”). Consequently,
21 the Supreme Court has “repeatedly . . . recognized that civil commitment for any purpose
22 constitutes a significant deprivation of liberty that requires due process protection,” including an
23 individualized detention hearing. *Addington v. Texas*, 441 U.S. 418, 425 (1979) (collecting
24

1 cases); *see also Salerno*, 481 U.S. at 755 (requiring individualized hearing and strong procedural
2 protections for detention of people charged with federal crimes); *Foucha v. Louisiana*, 504 U.S.
3 71, 81-83 (1992) (same for civil commitment for mental illness); *Kansas v. Hendricks*, 521 U.S.
4 346, 357 (1997) (same for commitment of sex offenders).

5 To determine whether detention violates procedural due process, courts apply the three-
6 part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976). *See Rodriguez Diaz v. Garland*,
7 53 F.4th 1189, 1206 (9th Cir. 2022) (collecting cases and applying the *Mathews* test to a
8 constitutional challenge to detention pursuant to 8 U.S.C. § 1226(a)). Under *Mathews*, courts
9 weigh the following three factors: (1) “the private interest that will be affected by the official
10 action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used,
11 and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the
12 Government’s interest, including the function involved and the fiscal and administrative burdens
13 that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335.
14 All three factors weigh in favor of Petitioner.

15 The first *Mathews* factor considers the private interest affected by DHS and DOJ
16 misclassifying people as being subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *See*
17 *Mathews*, 424 U.S. at 335. Here, Petitioner’s interest in being free from imprisonment is “the
18 most elemental of liberty interests.” *Maldonado Vazquez*, 2025 WL 2676082, at *18 (citing
19 *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004)). “[T]his factor weighs heavily against the
20 government whenever it is invoked.” *Id.* The mandatory detention imposed on Petitioner
21 infringes on his fundamental right to freedom from executive detention, especially because his is
22 bond-eligible pursuant to § 1226, but also due to “the harms attendant to [their] incarceration,
23 including being separated from [their] famil[ies] and young children, losing the ability to
24

1 [work] . . . and earn an income which [their] famil[ies] depend[] on, mental and emotional
2 distress, and difficulty communicating with [their] counsel and gathering evidence in preparation
3 for [their] removal proceedings.” *See id.* Thus, this factor weighs in their favor.

4 The second *Mathews* factor is “the risk of an erroneous deprivation of [Petitioner’s]
5 interest through the procedures used, and the probable value, if any, of additional or substitute
6 procedural safeguards.” *Mathews*, 424 U.S. at 335. A blanket application of mandatory detention
7 to all people that enter without inspection creates an extreme risk of erroneous and arbitrary
8 confinement. This is clearly demonstrated by the circumstances of Petitioner where an IJ refused
9 to look beyond DHS’ and DOJ’s policies and denied bond solely based on lack of jurisdiction.

10 The third and final *Mathews* factor considers the “Government’s interest, including the
11 function involved and the fiscal and administrative burdens that the additional or substitute
12 procedural requirement would entail.” *Mathews*, 424 U.S. at 335. Put simply, “the government
13 has no legitimate interest in detaining individuals who have been determined not to be a danger
14 to the community and whose appearance at future immigration proceedings can be reasonably
15 ensured by a lesser bond or alternative conditions.” *Maldonado Vazquez*, 2025 WL 2676082, at
16 *20 (citing *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th Cir. 2017)). There is no government
17 interest in continued detention under these circumstances, especially without the minimal
18 procedure of a bond hearing where the government is free to raise any arguments it believes to
19 justify continued detention. The government function and fiscal and administrative burden will
20 be no different than what existed before mid-2025 when this sudden shift in application and
21 interpretation of the current law by DHS and later adopted by *Matter of Hurtado*.

1 iii. **Petitioner is likely to show that his detention pursuant to**
2 ***Matter of Hurtado* is unlawful under the Administrative**
3 **Procedure Act.**

4 Petitioner may not be detained without a bond hearing with strong procedural protections
5 for the additional reason that such detention violates the APA. Agency action found to be
6 arbitrary, capricious, or otherwise not in accordance with law “shall” be held unlawful and set
7 aside. 5 U.S.C. § 706(2). The government is currently holding Petitioner in detention without the
8 possibility of bond pursuant to the BIA’s decision in *Matter of Hurtado*, which instructs all IJs to
9 unlawfully misclassify noncitizens like Petitioner who have allegedly entered without inspection
10 as mandatory § 1225(b)(2) detainees. An IJ refused to even consider if Petitioner was a flight
11 risk or danger to the community citing *Matter of Hurtado*.

12 As explained above, Petitioner’s misclassification as required by *Matter of Hurtado*
13 violates his statutory right to a bond hearing and offends due process. *See, e.g., Maldonado*
14 *Vazquez*, 2025 WL 2676082 at *23 (granting preliminary injunction to putative class
15 representative and rejecting *Matter of Hurtado*); *cf. Brito v. Barr*, 415 F. Supp. 3d 258, 268 (D.
16 Mass. 2019) (“Because the Court has already concluded that the BIA’s policy of placing the
17 burden of proof on the alien in § 1226(a) bond hearings is unconstitutional, the Court also holds
18 that the BIA policy is a violation of the APA.”), vacated in part on other grounds by *Brito v.*
19 *Garland*, 22 F.4th 240 (1st Cir. 2021).

20 Similarly, Petitioner’s detention pursuant to *Matter of Hurtado* is arbitrary and
21 capricious. *See Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463
22 U.S. 29, 43 (1983) (agency action is arbitrary and capricious if the agency fails to “articulate a
23 satisfactory explanation for its action” or “entirely fail[s] to consider an important aspect of the
24

1 problem”); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (agencies may not
2 depart from prior policies without displaying awareness of the change and providing good
3 reasons for it). Petitioner’s detention pursuant to *Matter of Hurtado* therefore violates the APA.

4 **b. IRREPARABLE HARM**

5 To make a showing of irreparable harm, a petitioner must demonstrate likely irreparable
6 injury in the absence of an injunction. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22
7 (2008). “It is well established that the deprivation of constitutional rights ‘unquestionably
8 constitutes irreparable injury.’” *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)
9 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Unlawful detention inflicts irreparable harm.
10 The loss of liberty—even temporarily—is not compensable by monetary damages. See:
11 *Rodriguez v. Robbins*, 715 F.3d 1127, 1144 (9th Cir. 2013) ([P]hysical confinement carries harm
12 that cannot be remedied after the fact.) see also *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70
13 (9th Cir. 2011) ([P]rolonged detention, especially where unauthorized, constitutes irreparable
14 harm.)

15 Petitioner’s continued incarceration separates him from his U.S. citizen family, interrupts
16 his pending I-130 petition, and exposes him to further psychological and financial injury every
17 day. Accordingly, Petitioner faces irreparable harm absent preliminary relief.

18 **c. BALANCE OF EQUITIES TIPS SHARPLY IN PETITIONER’S**
19 **FAVOR**

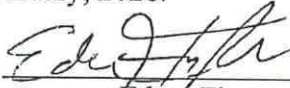
20 The Ninth Circuit has recognized that “neither equity nor the public’s interest are
21 furthered by allowing violations of federal law to continue.” *Galvez v. Jaddou*, 52 F.4th 821, 832
22 (9th Cir. 2022) (holding that the district court did not abuse its discretion in finding the balance
23 of hardships weighed in favor of petitioners who credibly alleged that the government was
24

1 violating the INA). Indeed, the Supreme Court has confirmed that “our system does not permit
2 agencies to act unlawfully even in pursuit of desirable ends.” *Ala. Ass’n of Realtors v. HHS*, 594
3 U.S. 758, 766 (2021); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582 (1952)
4 (affirming district court’s preliminary injunction of an illegal executive order even though a
5 wartime president said his order was “necessary to avert a national catastrophe”). Here, there is a
6 significant public interest in ensuring the government obeys the law and provides bond hearings
7 to Petitioner and other noncitizens detained under 8 U.S.C. § 1226(a), as the government has for
8 decades. See *Maldonado Vazquez*, 2025 WL 2676082, at *23 (“And because the Court has found
9 it is likely that Respondents are unlawfully detaining Petitioner under § 1225(b)(2), ‘neither
10 equity or the public interest are furthered’ by allowing Respondents’ violation of the INA to
11 continue—quite the opposite.”); *id.* (“The public interest benefits from an injunction that ensures
12 that individuals are not deprived of their liberty and held in immigration detention because of . . .
13 a likely unconstitutional process.” (citing *Hernandez*, 872 F.3d at 996)); *Rodriguez Vasquez*, 779
14 F. Supp. 3d at 1263 (holding that “the balance of equities tips sharply towards [petitioner]”
15 because “neither equity nor the public’s interest are furthered by detaining [petitioner] without
16 the opportunity for release on bond” as he had been unlawfully detained under § 1225(b)(2)).

17 The government has no legitimate interest in detaining an individual under the wrong
18 statute, without any individualized finding of flight risk or danger. Petitioner, by contrast,
19 suffers the most severe deprivation—a loss of liberty—based on a legal error. Numerous courts
20 have held that the balance of harms in unlawful immigration detention heavily favors release or
21 bond process. See *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

22 Any hardship to the government is minimal. For decades, the government has provided
23 bond hearings to individuals in the Petitioner’s exact same circumstances, and the government
24

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