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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 Lazaro MALDONADO BAUTISTA;
11 Ananias PASQUAL;
12 Ana FRANCO GALDAMEZ;
13 Luiz Alberto DE AQUINO DE
14 AQUINO,

15 Petitioners,

16 v.

17 Ernesto SANTACRUZ JR., Acting
18 Director, Los Angeles Field Office,
19 Immigration and Customs Enforcement,
20 Enforcement and Removal Operations;
21 Todd LYONS, Acting Director, Immigration
22 and Customs Enforcement;
23 Kristi NOEM, Secretary, U.S.
24 Department of Homeland Security;
25 Pamela BONDI, U.S. Attorney General;
26 Fereti SEMAIA, Warden, Adelanto ICE
27 Processing Center,

28 Respondents.

Case No. 5:25-cv-1873

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

1 Pursuant to Rule 65(b)(1) of the Federal Rules of Civil Procedure, Petitioners
2 hereby move the Court for emergency relief in the form of a temporary restraining
3 order directing Respondents to release Petitioners from their custody or to provide
4 Petitioners with individualized bond hearings before an immigration judge pursuant
5 to 8 U.S.C. § 1226(a) within seven days of issuance of an Order.

6 Petitioners also seek a temporary restraining order enjoining the Respondents
7 from relocating Petitioners outside of the Central District of California pending
8 final resolution of this case.

9 Petitioners further move for the issuance of an order to show cause as to why
10 a preliminary injunction should not issue.

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

14
15 Dated: July 23, 2025

Respectfully submitted,

s/ Niels W. Frenzen
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CERTIFICATE OF COUNSEL

Pursuant to Rule 65(b)(1)(B) of the Federal Rules of Civil Procedure and L.R. 65-1, I hereby certify that on July 23, 2025 at approximately 11:15 AM, I emailed David M. Harris, Chief of the Civil Division, U.S. Attorney’s Office, Central District of California. I provided a copy of the Application for a Temporary Restraining Order, Memorandum of Points and Authorities, and Petition for Writ of Habeas Corpus to Mr. Harris by emailing copies to David.M.Harris@usdoj.gov.

Dated: July 23, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 23, 2025, I served a copy of this Application for TRO and OSC by email to the following individual:

David M. Harris
Chief of the Civil Division
U.S. Attorney's Office
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Email: David.M.Harris@usdoj.gov

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10 **UNITED STATES DISTRICT COURT**
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12 Lazaro MALDONADO BAUTISTA;
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26 Department of Homeland Security;
27 Pamela BONDI, U.S. Attorney General;
28 Fereti SEMAIA, Warden, Adelanto ICE
29 Processing Center,

30 Respondents.

Case No. 5:25-cv-1873

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF APPLICATION
FOR TEMPORARY
RESTRAINING ORDER AND
ORDER TO SHOW CAUSE**

1 INTRODUCTION

2 Petitioners Lazaro MALDONADO BAUTISTA, Ananias PASQUAL, Ana
3 FRANCO GALDAMEZ, and Luiz Alberto DE AQUINO DE AQUINO seek a
4 Temporary Restraining Order that requires Respondents to release them from
5 custody or to provide them with an individualized bond hearing before an
6 immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the issuance
7 of a TRO.

8 Although each Petitioner was present within and residing in the United States
9 at the time of their immigration arrests, they have been subjected to a new DHS
10 policy issued on July 8, 2025 which instructs all ICE employees to consider anyone
11 arrested within the United States and charged with being inadmissible under 8
12 U.S.C. § 1182(a)(6)(A)(i) to be an “applicant for admission” under 8 U.S.C. §
13 1225(b)(2)(A) and therefore subject to mandatory detention.

14 The new DHS policy was issued “in coordination with the Department of
15 Justice (DOJ).” *See* Ex. I, ICE Interim Guidance Regarding Detention Authority
16 for Applicants for Admission. Each Petitioner is detained at the Adelanto ICE
17 Processing Center and has been denied a bond hearing by an IJ based on this new
18 policy. *See* Exs. E, F, G, H, IJ Bond Orders.

19 The denial of bond hearings to the Petitioners and their ongoing detention on
20 the basis of the new DHS policy violates the plain language of the Immigration and
21 Nationality Act (INA), 8 U.S.C. § 1101 *et seq.* Despite the new DHS policy’s
22 assertions to the contrary, 8 U.S.C. § 1225(b)(2)(A) does not apply to individuals
23 like Petitioners who previously entered and are now residing in the United States.
24 Instead, such individuals are subject to a different statute, § 1226(a), that allows for
25 release on bond or conditional parole. Section 1226(a) expressly applies to people
26 who, like Petitioners, are charged as removable for having entered the United States
27 without inspection and being present without admission.

28 Respondents’ new legal interpretation set forth in the policy is plainly

1 contrary to the statutory framework and contrary to decades of agency practice
2 applying § 1226(a) to people like Petitioners who are present within the United
3 States. Respondents' new policy and the resulting ongoing detention of Petitioners
4 without a bond hearing is depriving Petitioners of statutory and constitutional rights
5 and unquestionably constitutes irreparable injury.

6 Petitioners therefore seek a Temporary Restraining Order enjoining
7 Respondents from continuing to detain them unless Petitioners are provided an
8 individualized bond hearing before an immigration judge pursuant to 8 U.S.C. §
9 1226(a) within seven days of the TRO.

10 Petitioners also seek an Order prohibiting Respondents from relocating
11 Petitioners outside of the Central District pending final resolution of this litigation.

12 **STATEMENT OF FACTS**

13 Petitioner Lazaro MALDONADO BAUTISTA has resided in Los Angeles
14 County for approximately four years. On June 6, 2025, MALDONADO
15 BAUTISTA was arrested at the Ambiance Apparel clothing manufacturer in the
16 Fashion District of Downtown Los Angeles. He has no criminal record and no
17 previous contact with immigration authorities. *See* Ex. C, DHS Form I-213, Record
18 of Deportable/Inadmissible Alien. He is now detained at the Adelanto ICE
19 Processing Center in Adelanto, California.

20 ICE placed MALDONADO BAUTISTA in removal proceedings before the
21 Adelanto Immigration Court pursuant to 8 U.S.C. § 1229a. ICE charged him with
22 being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is present
23 without admission in the United States. *Id.*

24 MALDONADO BAUTISTA requested a bond redetermination hearing
25 before an IJ. On July 17, 2025, an IJ denied the request and issued a decision that
26 the court lacked jurisdiction to conduct a bond redetermination hearing because
27 MALDONADO BAUTISTA was an applicant for admission. *See* Ex. G., IJ Bond
28 Order.

1 Petitioner Ananias PASQUAL has resided in the United States for over
2 twenty years. On June 6, 2025, PASQUAL was arrested at the Ambiance Apparel
3 clothing manufacturer in the Fashion District of Downtown Los Angeles. He has
4 no criminal record and no previous contact with immigration authorities. *See* Ex.
5 D, DHS Form I-213, Record of Deportable/Inadmissible Alien. PASQUAL is now
6 detained at the Adelanto ICE Processing Center in Adelanto, California.

7 ICE placed PASQUAL in removal proceedings before the Adelanto
8 Immigration Court pursuant to 8 U.S.C. § 1229a. ICE charged him with being
9 inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is present without
10 admission in the United States. *Id.*

11 PASQUAL requested a bond redetermination hearing before an IJ. On July
12 15, 2025, an IJ denied the request and issued a decision that the court lacked
13 jurisdiction to conduct a bond redetermination hearing because PASQUAL was an
14 applicant for admission. *See* Ex. H, IJ Bond Order.

15 Petitioner Ana FRANCO GALDAMEZ resides in Los Angeles County. On
16 June 19, 2025, she was arrested in Los Angeles. She has no criminal record and no
17 previous contact with immigration authorities. *See* Ex. B, DHS Form I-213, Record
18 of Deportable/Inadmissible Alien. FRANCO GALDAMEZ is now detained at the
19 Adelanto ICE Processing Center in Adelanto, California.

20 ICE placed FRANCO GALDAMEZ in removal proceedings before the
21 Adelanto Immigration Court pursuant to 8 U.S.C. § 1229a. ICE charged her with
22 being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is present
23 without admission in the United States. *Id.*

24 FRANCO GALDAMEZ requested a bond redetermination hearing before
25 an IJ. On July 22, 2025, an IJ denied the request and issued a decision that the court
26 lacked jurisdiction to conduct a bond redetermination hearing pursuant to, *inter*
27 *alia*, 8 U.S.C. § 1225(b). *See* Ex. F., IJ Bond Order.

28 Petitioner Luiz Alberto DE AQUINO DE AQUINO resides in Los Angeles

1 County. On June 6, 2025, Petitioner was arrested at the Ambiance Apparel clothing
2 manufacturer in the Fashion District of Downtown Los Angeles. He has no
3 criminal record and no previous contact with immigration authorities. *See* Ex. A,
4 DHS Form I-213, Record of Deportable/Inadmissible Alien. He is now detained at
5 the Adelanto ICE Processing Center in Adelanto, California.

6 ICE placed DE AQUINO DE AQUINO in removal proceedings before the
7 Adelanto Immigration Court pursuant to 8 U.S.C. § 1229a. ICE charged him with
8 being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who is present
9 without admission in the United States. *Id.*

10 DE AQUINO DE AQUINO requested a bond redetermination hearing before
11 an IJ. On July 21, 2025, an IJ denied the request and issued a decision that the court
12 lacked jurisdiction to conduct a bond redetermination hearing because DE
13 AQUINO DE AQUINO was an applicant for admission. *See* Ex. E., IJ Bond
14 Order.

15 ARGUMENT

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

19 Petitioners must demonstrate that (1) they are likely to succeed on the merits
20 of their claims; (2) they are likely to suffer irreparable harm in the absence of
21 preliminary relief; (3) the balance of equities tips in their favor; and (4) an
22 injunction is in the public interest. *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22
23 (2008). A sliding scale test may be applied and an injunction should be issued
24 when there is a stronger showing on the balance of hardships, even if there are
25 “serious questions on the merits ... so long as the plaintiff also shows a likelihood
26 of irreparable harm and that the injunction is in the public interest.” *All. for the*
27 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011); *see also Flathead-*
28 *Lolo-Bitterroot Citizen Task Force v. Montana*, 98 F.4th 1180, 1190 (9th Cir.

1 2024).

2 Petitioners satisfy the criteria and a TRO should be granted.

3 **I. Petitioners Are Likely to Succeed on the Merits of Their Claims.**

4 Petitioners are likely to succeed on their claims that their ongoing detention
5 by Respondents under 8 U.S.C. § 1225(b)(2) and the denial of bond hearing before
6 an immigration judge is unlawful.

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8 The text, context, and legislative and statutory history of the Immigration and
9 Nationality Act all demonstrate that 8 U.S.C. § 1226(a) governs their detention.

10 **A. The text of § 1226(a) and § 1225(b)(2) demonstrate that Petitioners are not**
11 **subject to mandatory detention.**

12 First, the plain text of § 1226 demonstrates that subsection (a) applies to
13 Petitioners. 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). Section 1226 explicitly confirms that this authority includes not
16 just noncitizens who are deportable pursuant to 8 U.S.C. § 1227(a), but also
17 noncitizens, such as Petitioners, who are inadmissible pursuant to 8 U.S.C. §
18 1182(a). While § 1226(a) provides the right to seek release, § 1226(c) carves out
19 specific categories of noncitizens from being released—including certain
20 categories of inadmissible noncitizens—and subjects them instead to
21 mandatory detention. *See, e.g.*, § 1226(c)(1)(A), (C).

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26 If Respondents’ position that § 1226(a) did not apply to inadmissible
27 noncitizens such as Petitioners who are present without admission in the United
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1 States, there would be no reason to specify that § 1226(c) governs certain persons
2 who are inadmissible; instead, the statute would have only needed to address people
3 who are deportable for certain offenses. Notably, recent amendments to § 1226
4 dramatically reinforce that this section covers people like Petitioners who DHS
5 alleges to be present without admission. The Laken Riley Act added language to §
6 1226 that directly references people who have entered without inspection and who
7 are present without admission. *See* Laken Riley Act (LRA), Pub. L. No. 119-1, 139
8 Stat. 3 (2025). Specifically, pursuant to the LRA amendments, people charged as
9 inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for presence
10 without admission) or § 1182(a)(7) (the inadmissibility ground for lacking valid
11 documentation to enter the United States) *and* who have been arrested, charged
12 with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention
13 provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals
14 under § 1226(c), Congress further clarified that, by default, § 1226(a) covers
15 persons charged under § 1182(a)(6) or (a)(7). In other words, if someone is *only*
16 charged as inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-
17 related provisions of § 1226(c)(1)(E) do not apply, then § 1226(a) governs that
18 person's detention. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*,
19 559 U.S. 393, 400 (2010) (observing that a statutory exception would be
20 unnecessary if the statute at issue did not otherwise cover the excepted conduct).
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1 Despite the clear statutory language, DHS issued a new policy on July 8,
2 2025 instructing all Immigration and Customs Enforcement (ICE) employees to
3 consider anyone inadmissible under § 1182(a)(6)(A)(i) - i.e., those who are present
4 without admission - to be an “applicant for admission” and therefore subject to
5 mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A). See Ex. I, “Interim
6 Guidance Regarding Detention Authority for Applicants for Admission”, ICE, July
7 8, 2025. The new policy was implemented “in coordination with” the Department
8 of Justice. *Id.* And on May 22, 2025, in an unpublished decision from the Board of
9 Immigration Appeals, EOIR adopted this same position. See Ex. J, BIA Decision,
10 Case No. XXX-XXX-269, May 22, 2025. Petitioners have each been denied a
11 bond hearing before an IJ pursuant to this new policy. See Exs. E, F, G, H, IJ Bond
12 Orders for Petitioners.
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17 The new policy is also inconsistent with the canon against superfluities.
18 Under this “most basic [of] interpretive canons, . . . ‘[a] statute should be construed
19 so that effect is given to all of its provisions, so that no part will be inoperative or
20 superfluous, void or insignificant.’” *Corley v. United States*, 556 U.S. 303, 314
21 (2009) (third alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101
22 (2004)); see also *Shulman v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023)
23 (“[C]ourt[s] ‘must interpret the statute as a whole, giving effect to each word and
24 making every effort not to interpret a provision in a manner that renders other
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1 provisions of the same statute inconsistent, meaningless or superfluous.” (citation
2 omitted)). But by concluding that the mandatory detention provision of §
3 1225(b)(2) applies to Petitioners, DHS and EOIR violate this rule.

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5 In sum § 1226’s plain text demonstrates that § 1225(b)(2) should not be read
6 to apply to everyone who is in the United States “who has not been admitted.”
7 Section 1226(a) covers those who are present within and residing within the United
8 States and who are not at an international border seeking admission. The text of §
9 1225 reinforces this interpretation. As the Supreme Court recognized, § 1225 is
10 concerned “primarily [with those] seeking entry,” *Jennings v. Rodriguez*, 583 U.S.
11 281, 297 (2018), i.e., cases “at the Nation’s borders and ports of entry, where the
12 Government must determine whether a[] [noncitizen] seeking to enter the country is
13 admissible,” *id.* at 287.

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17 Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin,
18 paragraph (b)(1)—which concerns “expedited
19 removal of inadmissible arriving [noncitizens]”—encompasses only the
20 “inspection” of certain “arriving” noncitizens and other recent entrants the Attorney
21 General designates, and only those who are “inadmissible under section
22 1182(a)(6)(C) or § 1182(a)(7).” 8 U.S.C. § 1225(b)(1)(A)(i). These grounds of
23 inadmissibility are for those who misrepresent information to an
24 examining immigration officer or do not have adequate documents to enter the
25 United States. Thus, subsection (b)(1)’s text demonstrates that it is focused only on
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1 people arriving at a port of entry or who have recently entered the United States and
2 not those already residing here. Paragraph (b)(2) is similarly limited to people
3 applying for admission when they arrive in the United States. The title explains that
4 this paragraph addresses the “[i]nspection of other [noncitizens],” i.e., those
5 noncitizens who are “seeking admission,” but who (b)(1) does not
6 address. *Id.* § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those “seeking
7 admission,” Congress confirmed that it did not intend to sweep into this section
8 individuals like Petitioners, who have already entered and are now residing in the
9 United States. An individual submits an “application for admission” only at “the
10 moment in time when the immigrant actually applies for admission into the United
11 States.” *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Indeed, in
12 *Torres*, the en banc Court of Appeals rejected the idea that § 1225(a)(1) means that
13 anyone who is presently in the United States without admission or parole is
14 someone “deemed to have made an actual application for admission.” *Id.* (emphasis
15 omitted). That holding is instructive here too, as only those who take affirmative
16 acts, like submitting an “application for admission,” are those who can be said to be
17 “seeking admission” within § 1225(b)(2)(A). Otherwise, that language would serve
18 no purpose, violating a key rule of statutory construction. *See Shulman*, 58 F.4th at
19 410–11.

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27 Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of
28 [noncitizens] *arriving* from contiguous territory,” i.e. those who are “*arriving* on

1 land.” 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further
2 underscores Congress’s focus in § 1225 on those who are arriving into the United
3 States—not those already residing here. Similarly, the title of § 1225 refers to the
4 “inspection” of “inadmissible *arriving*” noncitizens. *See Dubin v. United States*,
5 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help
6 construe statute).
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9 Finally, the entire statute is premised on the idea that an inspection occurs
10 near the border and shortly after arrival, as the statute repeatedly refers to
11 “examining immigration officer[s],” 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers
12 conducting “inspection[s]” of people “arriving in the United States,” *id.* §
13 1225(a)(3), (b)(1), (b)(2), (d); *see also King v. Burwell*, 576 U.S. 473, 492
14 (2015) (looking to an Act’s “broader structure . . . to determine [the statute’s]
15 meaning”).
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18 The new DHS and EOIR policy and the IJ orders denying bond to Petitioners
19 on this basis ignore all this and instead focus on the definition of “applicant for
20 admission” at § 1225(a)(1) (*see* Ex. I, “Interim Guidance Regarding Detention
21 Authority for Applicants for Admission”, ICE, July 8, 2025; Exs. E, G, H, IJ Bond
22 Orders for Petitioners) which defines an “applicant for admission” as a person who
23 is “present in the United States who has not been admitted or who arrives in the
24 United States,” 8 U.S.C. § 1225(a)(1). But as the Ninth Circuit has explained,
25 “when deciding whether language is plain, [courts] must read the words in their
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1 context and with a view to their place in the overall statutory scheme.” *San Carlos*
2 *Apache Tribe v. Becerra*, 53 F.4th 1236, 1240 (9th Cir. 2022) (internal quotation
3 marks omitted). Here, that context underscores that the definition in (a)(1) is
4 limited by other aspects of the statute to those who undergo an initial inspection at
5 or near a port of entry shortly after arrival—and that it does not apply to those who
6 are arrested in the interior of the United States months or years or decades later.
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8 Moreover, in deeming that all noncitizens who entered without inspection are
9 necessarily encompassed by the mandatory detention provision at § 1225(b)(2), the
10 DHS and EOIR policy ignores that the provision does not simply address applicants
11 for admission. Instead, the language “applicant for admission” in (b)(2)(A) is
12 further qualified by clarifying the subparagraph applies only to those “seeking
13 admission”—in other words, those who have applied to be admitted or paroled. The
14 new policy and the IJs’ implementation of the policy ignores this text, just as it
15 ignores the statutory language in § 1226 that expressly encompasses persons who
16 have entered the United States and are present without admission.
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21 B. The legislative history further supports the application of § 1226(a) to
22 Petitioners’ detention.

23 The legislative history of the Illegal Immigration Reform and Immigrant
24 Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104–208, Div. C, §§ 302–03,
25 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585, also supports a limited
26 construction of § 1225 and the conclusion that § 1226(a) applies to Petitioners. In
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1 passing the Act, Congress was focused on the perceived problem of recent arrivals
2 to the United States who did not have documents to remain. *See* H.R. Rep. No. 104-
3 469, pt. 1, at 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress
4 did not say anything about subjecting all people present in the United States after an
5 unlawful entry to mandatory detention if arrested. This is important, as prior to
6 IIRIRA, people like Petitioners were not subject to mandatory detention. *See* §
7 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens for
8 deportation proceedings, which applied to all persons physically present within the
9 United States). Had Congress intended to make such a monumental shift in
10 immigration law (potentially subjecting millions of people to mandatory detention),
11 it would have explained so or spoken more clearly. *See Whitman v. Am. Trucking*
12 *Ass'ns*, 531 U.S. 457, 468–69 (2001). But to the extent it addressed the matter,
13 Congress explained precisely the opposite, noting that the new § 1226(a) merely
14 “restates the current provisions in [INA] section 242(a)(1) regarding the authority
15 of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] *who*
16 *is not lawfully in the United States.*” H.R. Rep. No. 104-469, pt. 1, at 229 (emphasis
17 added); *see also* H.R. Rep. No. 104-828, at 210 (same).

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24 C. The record and longstanding agency practice reflect that § 1226 governs
25 Petitioners’ detention.

26 DHS’s long practice of considering people like the Petitioners as detained
27 under §1226(a) further supports this reading of the statute. Typically, in cases like
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1 that of the Petitioners, DHS issues a Form I-286, Notice of Custody Determination,
2 or Form I-200 stating that the person is detained under § 1226(a) or has been
3 arrested under that statute. This decision to invoke § 1226(a) is consistent
4 with longstanding practice. For decades, and across administrations, DHS has
5 acknowledged that § 1226(a) applies to individuals who are present without
6 admission after entering the United States unlawfully, but who were later
7 apprehended within the United States long after their entry. Such a longstanding
8 and consistent interpretation “is powerful evidence that interpreting the Act in [this]
9 way is natural and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203
10 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462
11 U.S. 122, 130 (1983) (relying in part on “over 60 years” of government
12 interpretation and practice to reject government’s new proposed interpretation of
13 the law at issue).

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Indeed, agency regulations have long recognized that people like Petitioners
are subject to detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19(h)—the
regulatory basis for the immigration court’s jurisdiction—provides otherwise. In
fact, EOIR confirmed that § 1226(a) applies to Petitioners when it promulgated the
regulations governing immigration courts and implementing § 1226 decades ago.
Specifically, EOIR explained that “[d]espite being applicants for admission,
[noncitizens] who are present without having been admitted or paroled (formerly

1 referred to as [noncitizens] who entered without inspection) will be eligible for
2 bond and bond redetermination.” 62 Fed. Reg. at 10323.3
3

4 In sum, § 1226 governs this case. Section 1225 and its mandatory detention
5 provision applies only to individuals arriving in the United States as specified in the
6 statute, while § 1226 applies to those who have previously entered without
7 admission and are now present and residing in the United States.
8

9 **II. Petitioners Will Suffer Irreparable Harm in the**
10 **Absence of a TRO.**

11 In the absence of a TRO, Petitioners will continue to be unlawfully detained
12 by Respondents pursuant to § 1225(b)(2) and denied a bond hearing before an IJ.
13 Petitioners Maldonado Bautista, Pasqual, and De Aquino De Aquino have now
14 been detained without a bond hearing for 48 days and Petitioner Franco Galdamez
15 for 35 days.

16 “Freedom from imprisonment—from government custody, detention, or
17 other forms of physical restraint—lies at the heart of the liberty” that the Due
18 Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Detention
19 constitutes “a loss of liberty that is . . . irreparable.” *Moreno Galvez v. Cuccinelli*,
20 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020) (*Moreno II*), *aff’d in part, vacated*
21 *in part on other grounds, remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th
22 821 (9th Cir. 2022). It “is well established that the deprivation of constitutional
23 rights unquestionably constitutes irreparable injury.” *Melendres v. Arpaio*, 695 F.3d
24 990, 1002 (9th Cir. 2012) (citation modified); *Warsoldier v. Woodford*, 418 F.3d
25 989, 1001-02 (9th Cir. 2005). *See also Hernandez v. Sessions*, 872 F.3d 976, 994–
26 95 (9th Cir. 2017) (“Thus, it follows inexorably from our conclusion that the
27 government’s current policies [which fail to consider financial ability to pay
28 immigration bonds] are likely unconstitutional—and thus that members of the

1 plaintiff class will likely be deprived of their physical liberty unconstitutionally in
2 the absence of the injunction—that Plaintiffs have also carried their burden as to
3 irreparable harm.”)

4
5 **III. The Balance of Equities Tips in Petitioners’ Favor and**
6 **a TRO is in the Public Interest.**

7 Because the government is a party, these two factors are considered together.
8 *Nken v. Holder*, 556 U.S. 418, 435 (2009). Petitioners have established that the
9 public interest factor weighs in their favor because their claims assert that the new
10 policy has violated federal laws. *See Valle del Sol Inc. v. Whiting*, 732 F.3d 1006,
11 1029 (9th Cir. 2013). Because the policy preventing Petitioners from obtaining
12 bond “is
13 inconsistent with federal law, . . . the balance of hardships and public interest
14 factors weigh in favor of a preliminary injunction.” *Moreno Galvez v. Cuccinelli*,
15 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (*Moreno I*); *see also Moreno*
16 *Galvez*, 52 F.4th 821, 832 (9th Cir. 2022) (affirming in part permanent injunction
17 issued in *Moreno II* and quoting approvingly district judge’s declaration that “it is
18 clear that neither equity nor the public’s interest are furthered by allowing
19 violations of federal law to continue”). This is because “it would not be equitable or
20 in the public’s interest to
21 allow the [government] . . . to violate the requirements of federal law, especially
22 when there are no adequate remedies available.” *Valle del Sol Inc. v. Whiting*, 732
23 F.3d 1006, 1029 (9th Cir. 2013) (second alteration in original) (citation omitted).
24 Indeed, Respondents “cannot suffer harm from an injunction that merely ends an
25 unlawful practice.” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013).

26 ///
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28 ///

1 **IV. Prudential Exhaustion is Not Required.**

2 Prudential exhaustion does not require Petitioners to be forced to endure the
3 very harm they are seeking to avoid by appealing the IJ bond orders to the Board of
4 Immigration Appeals and waiting many months for a decision from the BIA.
5 “[T]here are a number of exceptions to the general rule requiring exhaustion,
6 covering situations such as where administrative remedies are inadequate or not
7 efficacious, . . . [or] irreparable injury will result . . .” *Laing v. Ashcroft*, 370 F.3d
8 994, 1000 (9th Cir. 2004) (citation omitted). In addition, a court may waive an
9 exhaustion requirement when “requiring resort to the administrative remedy may
10 occasion undue prejudice to subsequent assertion of a court action.” *McCarthy v.*
11 *Madigan*, 503 U.S. 140, 146–47 (1992), *superseded by statute on other grounds as*
12 *stated in Booth v. Churner*, 532 U.S. 731, 739–41 (2001). “Such prejudice may
13 result . . . from an unreasonable or indefinite time frame for administrative action.”
14 *Id.* at 147 (citing cases). Here, the exceptions regarding irreparable injury and
15 agency delay apply and warrant waiving any prudential exhaustion requirement.

16 A. Futility

17 Futility is an exception to the prudential exhaustion requirement. Petitioners
18 have been subjected to the new DHS policy issued on July 8, 2025 instructing all
19 ICE employees to consider anyone arrested within the United States and charged
20 with being inadmissible under § 1182(a)(6)(A)(i) to be an “applicant for admission”
21 under 8 U.S.C. § 1225(b)(2)(A) and therefore subject to mandatory detention. The
22 DHS policy states it was issued “in coordination with the Department of Justice
23 (DOJ).” *See* Ex. I. IJs function within the Executive Office for Immigration
24 Review which is a component of the Department of Justice. Each Petitioner has
25 been denied a bond hearing by an IJ based on this new policy. *See* Exs. E, F, G, H.

26 Further, the most recent unpublished BIA decision on this issue held that
27 persons like Petitioners are subject to mandatory detention as applicants for
28 admission. *See* Ex. J, BIA Decision, Case No. XXX-XXX-269, May 22, 2025.

1 Finally, in the *Rodriguez Vazquez* litigation, where EOIR and the Attorney General
2 are defendants, DOJ has affirmed its position that individuals like Petitioners are
3 applicants for admission and subject to detention under § 1225(b)(2)(A). *See* Mot.
4 to Dismiss, *Rodriguez Vazquez v. Bostock*, No. 3:25-CV-05240-TMC (W.D. Wash.
5 June 6, 2025), Dkt. 49 at 27–31. Under these facts, appeals to the BIA would be
6 futile.

7 B. Irreparable Injury

8 Irreparable injury is an exception to any prudential exhaustion requirement.
9 Because Petitioners were denied bond and ordered mandatorily detained, each day
10 they remain in detention is one in which their statutory and constitutional rights
11 have been violated. Similarly situated district courts have repeatedly recognized this
12 fact. As one court has explained, “because of delays inherent in the administrative
13 process, BIA review would result in the very harm that the bond hearing was
14 designed to prevent: prolonged detention without due process.” *Hechavarria v.*
15 *Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) (internal quotation marks
16 omitted). Indeed, “if Petitioner is correct on the merits of his habeas petition, then
17 Petitioner has *already* been unlawfully deprived of a [lawful] bond hearing[,] [and]
18 . . . each additional day that Petitioner is detained without a [lawful] bond hearing
19 would cause him harm that cannot be repaired.” *Villalta v. Sessions*, No. 17-CV-
20 05390-LHK, 2017 WL 4355182, at *3 (N.D. Cal. Oct. 2, 2017) (internal quotation
21 marks and brackets omitted); *see also Cortez v. Sessions*, 318 F. Supp. 3d 1134,
22 1139 (N.D. Cal. 2018) (similar). Other district courts have echoed these points.¹

23
24 ¹ *See, e.g., Perez v. Wolf*, 445 F. Supp. 3d 275, 286 (N.D. Cal. 2020); *Blandon v.*
25 *Barr*, 434 F. Supp. 3d 30, 37 (W.D.N.Y. 2020); *Marroquin Ambriz v. Barr*, 420 F.
26 Supp. 3d 953, 961 (N.D. Cal. 2019); *Ortega-Rangel v. Sessions*, 313 F. Supp. 3d
27 993, 1003–04 (N.D. Cal. 2018); *Montoya Echeverria v. Barr*, No. 20-CV-02917-
28 JSC, 2020 WL 2759731, at *6 (N.D. Cal. May 27, 2020); *Rodriguez Diaz v. Barr*,
No. 4:20-CV-01806-YGR, 2020 WL 1984301, at *5 (N.D. Cal. Apr. 27, 2020);
Birru v. Barr, No. 20-CV-01285-LHK, 2020 WL 1905581, at *4 (N.D. Cal.

1 Petitioners assert both statutory and constitutional claims and have a
2 “fundamental” interest in a bond hearing, as “freedom from imprisonment is at the
3 ‘core of the liberty protected by the Due Process Clause.’” *Hernandez*, 872 F.3d at
4 993 (quoting *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)).

5 Moreover, the irreparable injury Petitioners face extends beyond a chance at
6 physical liberty. There are several “irreparable harms imposed on anyone subject to
7 immigration detention[.]” *Hernandez*, 872 F.3d at 995. These include “subpar
8 medical and psychiatric care in ICE detention facilities.” *Id.*

9 C. Agency Delay

10 Third, the BIA’s delays in adjudicating bond appeals warrant excusing any
11 exhaustion requirement. A court’s ability to waive exhaustion based on delay is
12 especially broad here given the interests at stake. As the Ninth Circuit has
13 explained, Supreme Court precedent “permits a court under certain prescribed
14 circumstances to excuse exhaustion where ‘a claimant’s interest in having a
15 particular issue resolved promptly is so great that deference to the agency’s
16 judgment [of a lack of finality] is inappropriate.’” *Klein v. Sullivan*, 978 F.2d 520,
17 523 (9th Cir. 1992) (alteration in original) (quoting *Mathews v. Eldridge*, 424 U.S.
18 319, 330 (1976)). Of course, as noted above, Petitioners’ interest here in physical
19 liberty is a “fundamental” one. *Hernandez*, 872 F.3d at 993. Moreover, the
20 Supreme Court has explained that “[r]elief [when seeking review of detention] must
21 be speedy if it is to be effective.” *Stack v. Boyle*, 342 U.S. 1, 4 (1951).

22 Despite this fundamental interest and the Supreme Court’s admonition that
23 only speedy relief is meaningful, the BIA takes over half a year in most cases to
24 adjudicate an appeal of a decision denying bond. In these cases, noncitizens in
25 removal proceedings often remain locked up in a detention facility with conditions

26
27 Apr. 17, 2020); *Lopez Reyes v. Bonnar*, No. 18-CV-07429-SK, 2018 WL 7474861,
28 at *7 (N.D. Cal. Dec. 24, 2018).

1 “similar . . . to those in many prisons and jails” and separated from family.
2 *Rodriguez*, 583 U.S. at 329 (Breyer, J., dissenting); *see also, e.g., Hernandez*, 872
3 F.3d at 996.

4 District courts facing situations similar to the one at issue here acknowledged
5 that the BIA’s months-long review is unreasonable and results in ongoing injury to
6 the detained individual. *See, e.g., Perez*, 445 F. Supp. 3d at 286.

7 Indeed, as one district judge observed, “the vast majority of . . . cases . . .
8 have ‘waived exhaustion . . . where several additional months may pass before the
9 BIA renders a decision on a pending appeal [of a custody order].” *Montoya*
10 *Echeverria*, 2020 WL 2759731, at *6 (quoting *Rodriguez Diaz*, 2020 WL 1984301,
11 at *5); *see also Hechavarria*, 358 F. Supp. 3d at 237–38 (citing *McCarthy* and BIA
12 delays as reason to waive prudential exhaustion requirement).

13 **CONCLUSION**

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

16
17 DATED: July 23, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 23, 2025, I served a copy of this Memorandum in Support of Application for TRO and OSC by email to the following individual:

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