District Judge Tiffany M. Cartwright

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Ramon RODRIGUEZ VAZQUEZ, et al., Plaintiffs, v. Drew BOSTOCK, et al., Defendants.	Case No. 3:25-cv-05240-TMC **REPLY IN SUPPORT OF NAMED PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** Noting Date: April 21, 2025

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INTRODUCTION

Remarkably, Defendants do not contest that the Tacoma Immigration Court has adopted an unlawful and draconian bond policy that resulted in the immigration judge (IJ) denying Mr. Rodriguez's release on bond. Instead, Defendants seek to sidestep their illegal action by arguing that Mr. Rodriguez should be forced to endure several more months of unlawful detention in the hope that the Board of Immigration Appeals (BIA or Board) may eventually remand his case back to the Tacoma Immigration Court—all while he is separated from his wife, four children, and ten grandchildren. But well-established exceptions support waiving any prudential exhaustion requirement here, including the ongoing irreparable harm Mr. Rodriguez faces and the agency's delay in issuing bond appeal decisions. Moreover, this case presents a pure question of law—and that is where the federal judiciary's own expertise, as well as its constitutional prerogative, is at its zenith. Defendants thus cannot plausibly claim agency expertise is needed here. Similarly, waiving exhaustion will not encourage bypass of the appellate system, as persons similarly situated to Mr. Rodriguez have asked the Board for years to fix this problem.

Notably, in their response, Defendants do not contest that Mr. Rodriguez has lived here for over fifteen years, surrounded by his children and grandchildren, in his own home, and with no criminal history. As a matter of law, he is neither a flight risk nor a danger to the community. Given that Defendants have already denied him release at the prior bond hearing based solely on their unlawful policy (which they do not even attempt to defend), and given the unlawful denial of his release has significantly prolonged his detention, this Court should grant the preliminary injunction and order his immediate release.

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ARGUMENT

I. Defendants Do Not Contest the Merits.

Defendants fail to offer *any* argument in response to Mr. Rodriguez's assertion that he is detained under 8 U.S.C. § 1226(a) rather than § 1225(b)(2). *See generally* Dkt. 21. That reflects the statute's clear text. As Mr. Rodriguez detailed in his motion, § 1226(a) applies to anyone arrested and detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). Subsection (a) provides the default detention authority and authorizes a person to be released on bond or conditional parole. *Id.* Subsection (c) authorizes mandatory detention for certain persons, including inadmissible people. *Id.* § 1226(c)(1)(A), (D), (E). Most notably, subparagraph (E) subjects people who are inadmissible for entering without inspection and have otherwise been charged with, arrested for, or convicted of certain crimes to mandatory detention. *Id.* § 1226(c)(1)(E). By specifying that only *that* subset of persons who are inadmissible for entering without inspection are subject to mandatory detention, Congress made clear that § 1226(a) applies to the rest of that group: people (like Mr. Rodriguez) who the Department of Homeland Security (DHS) asserts are inadmissible for having entered without inspection. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that an exception would be unnecessary if the rule at issue did not otherwise cover the excepted conduct). Concluding, as the IJ did here, that § 1226(a) can never apply to any person who has entered without inspection, Lino Decl. Ex. A at 5–6—or indeed, any inadmissible person, *see, e.g.*, Dkt. 5-2 at 2—defies this text and renders much of § 1226 meaningless.

Despite this plain text, the IJ concluded that § 1225(b)(2)'s mandatory detention provision applies here. *See* Lino Decl. Ex. A. But § 1225 is an inspection, processing, and

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detention scheme "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Accordingly, the section's detention provisions for "applicants for admission," 8 U.S.C. § 1225(b), must be read "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) (citation omitted); *see also King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an act's "broader structure . . . to determine [the statute's] meaning"). This is particularly apt given that the detention provision the IJ cites requires a person to be "seeking admission"—something that a person like Mr. Rodriguez, who has lived here for years, cannot be said to be doing. 8 U.S.C. § 1225(b)(2)(A).

The IJ's conclusion also ignores that Congress and Defendants themselves have made clear that § 1226(a) applies in this case. When Congress passed the law enacting § 1226 and § 1225, it explained that the new § 1226(a) merely "restates the current provisions in [the prior] section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a[] [noncitizen] *who is not lawfully in the United States*." H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same). And in implementing regulations that have governed since that time, the Executive Office for Immigration Review (EOIR) similarly explained that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination." Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

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In short, as Defendants themselves appear to recognize, the law here is clear and Mr. Rodriguez is likely to succeed on the merits of his claim.

II. The Court Should Waive Any Prudential Exhaustion Requirement.

Defendants' primary assertion is that the Court should abstain from resolving the matter because Mr. Rodriguez should instead be forced to exhaust administrative remedies. But Defendants do not meaningfully contest Mr. Rodriguez's asserted bases for waiving any prudential exhaustion requirement. Accordingly, as in similar cases, this Court should waive exhaustion. *See, e.g.*, *Rivera v. Holder*, 307 F.R.D. 539, 543, 551–52, 553–54 (W.D. Wash. 2015) (excusing exhaustion and granting motions for class certification and summary judgment in class action involving single named plaintiff challenging a clear policy and practice: the failure of IJs to consider people for release under the conditional parole authority of 8 U.S.C. § 1226(a)).

A. Irreparable harm and agency delay warrant waiver of exhaustion.

In his motion, Mr. Rodriguez explained that two well-established bases apply to his request to waive any exhaustion requirement: irreparable harm and agency delay. *See, e.g.*, *McCarthy v. Madigan*, 503 U.S. 140, 146–47 (1992), *superseded by statute on other grounds as stated in Booth v. Churner*, 532 U.S. 731, 739–41 (2001); *Laing v. Ashcroft*, 370 F.3d 994, 1000 (9th Cir. 2004). Courts have often recognized these bases for waiving the exhaustion requirement in this context, as a person otherwise continues in unlawful detention. *See* Dkt. 3 at 21–25. Defendants do not respond to this long line of cases. Instead, they urge this Court to reject any suggestion that "detention alone creates irreparable harm." Dkt. 21 at 9. According to them, Plaintiff's argument "would essentially mandate the release of all detainees while their appeals were pending, and thereby stand the exhaustion requirement on its head." *Id.* (citation omitted).

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Defendants' argument misconstrues what is at stake in this case and the cases Mr. Rodriguez cites. First, while Mr. Rodriguez does request his own release, *see infra* Sec. V, he challenges a clear legal policy misinterpreting the statute. In doing so, he is not requesting release for all similarly-situated persons. Rather, he requests that this Court clarify the law so that all similarly-situated persons receive the opportunity to be considered for release as provided for by § 1226(a). Second, Defendants do not contest the evidence cited in Mr. Rodriguez's motion, which shows that on average Defendants take over six months to issue decisions in the custody appeals of detained persons. *See* Dkt. 3 at 23. Nor have Defendants challenged that the BIA has failed to issue any precedential guidance to correct this ongoing travesty of justice. Instead, the vast majority of bond appeals on this issue are mooted out and the affected noncitizens are permanently deprived of their statutory right to be considered for release during the removal proceedings. This combination—the Tacoma Immigration Court's unique, unlawful, statutory (mis)interpretation that deprives hundreds of individuals of any opportunity for release, the Board's failure to provide a precedential response, and the continued months-long detention in a carceral setting without any meaningful opportunity to be heard—constitutes irreparable harm. *See e.g.*, *Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 237 (W.D.N.Y. 2019) ("[B]ecause 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 . . . ." (internal quotation marks omitted)); *Cortez v. Sessions*, 318 F. Supp. 3d 1134, 1138–39 (N.D. Cal. 2018) (similar).

Finally, Defendants claim that Mr. Rodriguez's irreparable harm is based on "detention alone" also misses the many other harms that the record establishes. Mr. Rodriguez's declaration details that he has been married for nearly 40 years, his children live minutes from him, and his

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many U.S. citizen grandchildren also live nearby. Dkt. 9 ¶¶ 4, 9. It also explains that he plays an important role in ensuring that one of his grandchildren receives the special medical care she requires, a fact that the bond record corroborates. *Id.* ¶ 9; *see also* Lino Decl. Ex. C at 37–38.[1] In addition, Mr. Rodriguez's declaration speaks of the deficient medical care he has received, his inability to help his family, and the emotional anguish he is facing. Dkt. 9 ¶¶ 9–10, 13–14. Defendants' response is to claim that these are "generalized complaints of separation from children and 'subpar medical and psychiatric care,'" justifying this argument in part because his children are adults. Dkt. 21 at 10 (citation omitted). This argument callously disregards Mr. Rodriguez's separation from his children and grandchildren, and altogether ignores the fact that he is separated from his wife and cannot support her. Moreover, a "generalized" claim is one that lacks specific evidence, whereas Mr. Rodriguez has provided ample supporting evidence (which the bond record, which is now available, further corroborates). Defendants do not contest any of the facts, including the subpar medical care. Nor do they contest the legal principles recognizing that irreparable harm can stem from "separation from family members," *Leiva-Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir. 2011) (per curiam) (citation omitted), "potential economic hardship," *id.* (citation omitted). or "evidence of subpar medical . . . care in [an] ICE detention facilit[y]," *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).

In sum, the record establishes that Mr. Rodriguez has experienced well-recognized harms, and Defendants do not contest that EOIR data demonstrates any BIA appeal decision is

[1] This exhibit is Mr. Rodriguez's evidence that was submitted the day before his hearing by the law firm that represented him. Lino Decl. Ex. C at 2, 8. The Tacoma Immigration Court rejected the filing for lack of pagination thirteen minutes before the close of business that same day. *See id*. at 1. However, the IJ considered this filing as part of the record, citing to Mr. Rodriguez's submission in his decision. *Id.* Ex. A at 4.

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likely to take months. Courts have repeatedly recognized these as a basis to excuse exhaustion, and this Court should do the same.

B. Agency expertise is not a reason to continue unlawfully detaining Mr. Rodriguez.

Defendants also err in asserting that this Court "would likely benefit from the BIA's expertise" in answering the pure question of law Mr. Rodriguez's merits question presents. Dkt. 21 at 8. That argument discounts the plain statutory text, this Court's authority, and recent binding caselaw that makes clear it is Article III courts, not administrative agencies, that are the primary interpreters of the law.

The central question presented in this preliminary injunction motion—whether § 1226(a) or § 1225(b)(2) governs Mr. Rodriguez's detention—is a question of statutory interpretation that calls on this Court to perform the quintessential function of the federal judiciary. The Supreme Court recently reminded executive agencies like the BIA of precisely that, reaffirming that "that "[t]he Framers . . . envisioned that the final 'interpretation of the laws' would be 'the proper and peculiar province of the courts.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (citation omitted). Thus, "[w]hen the meaning of a statute [is] at issue, the judicial role [is] to 'interpret the act of Congress, in order to ascertain the rights of the parties.'" *Id.* (citation omitted). And while administrative agency interpretations may demand "respect," *id.* at 403, it is ultimately and "emphatically the province and duty of the judicial department to say what the law is," *id.* at 385 (quoting *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)).

This Court has recognized this before. In a similar case involving class action claims that the Tacoma Immigration Court failed to properly apply § 1226(a), Judge Lasnik held that the "record of administrative appeal is not necessary to resolve the purely legal question presented."

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Rivera, 307 F.R.D. at 551. The parallels between that case and this one—both of which involved noncitizens seeking to assert their rights under § 1226(a)—make it especially informative here.

Notably, as Mr. Rodriguez has explained, the BIA's caselaw and agency regulations have long provided for bond hearings for people like him. Defendants rely on this history to suggest the Board has special expertise and should be permitted to weigh in on Mr. Rodriguez's case. But as detailed below, the BIA has had years to fix this issue and has refused to do so—depriving hundreds of people, if not more, of lawful bond hearings. *See, e.g.*, Dkt. 5 ¶¶ 4–6; Dkt. 6 ¶ 3. That uncontested history only further underscores that waiting for agency "expertise" here is unwarranted.[2]

C. Waiving any exhaustion requirement will not encourage bypass of the administrative appeal scheme.

Both the record and caselaw refute Defendants' assertion that waiving exhaustion will encourage bypass of the administrative appeal regime.

First, Defendants' claim that "[w]aiving exhaustion would also 'encourage other detainees to bypass the BIA'" ignores the uncontested record here. Dkt. 21 at 8 (citation omitted). As Mr. Rodriguez detailed, for the past few years, advocates have repeatedly done exactly what Defendants suggest: appealing to the BIA to correct the Tacoma Immigration Court's unlawful statutory interpretation. *See generally* Dkt. 3 at 5–7. But most cases become moot because individuals win their case, are otherwise released, or are removed (many of whom give up when faced with the prospect of continued prolonged detention). *See, e.g.*, Dkt 5 ¶¶ 5, 9–

[2] Defendants' citation to *Maldonado v. Bostock*, No. 2:23-cv-00760-LK-BAT, 2023 WL 5804021 (W.D. Wash. Aug. 8, 2023), Dkt. 21 at 13, is unavailing. There, the parties agreed to a stipulated order clarifying the petitioner was entitled to a hearing, and Judge King first asked the parties to address the effect of § 1225(b)(2). 2023 WL 5804021 at *2. But Judge King's willingness to address that issue *without* an appeal to the BIA merely undercuts Defendants' claim that this Court should wait for the Board to rule.

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10; Dkt. 6 ¶ 5; Dkt. 10 ¶¶ 7, 9–11. In the *two* cases that have reached adjudication at the BIA, the Board has reversed the Tacoma Immigration Court, but it has declined to issue a precedential decision. *See* Dkts. 4-1, 4-2, 4-3, 4-4. The Tacoma IJs have relied on the Board's refusal to issue a precedent ruling as an excuse to continue denying people bond hearings, as the IJ did in Mr. Rodriguez's own case, *see* Lino Decl. Ex A at 6 n.4; *see also* Dkt. 5 ¶ 11, contributing to that court's shockingly low rate of granting bond. *See* Transactional Records Access Clearinghouse, Detained Immigrants Seeking Release on Bond Have Widely Different Outcomes, https://tracreports.org/reports/722/ (July 19, 2023). Defendants do not contest these facts, which Mr. Rodriguez presented in his motion. *See* Dkt. 3 at 5. And they make clear that, contrary to Defendants' claims, litigants are not attempting to bypass the administrative scheme.

Second, *Rivera* is again instructive. There, Judge Lasnik confronted a similar argument and rejected the government's request for requiring exhaustion. In doing so, he reasoned that "the discreteness of the legal question presented and plaintiff's request for classwide relief suggest that relaxing the exhaustion requirement in this case will not encourage future habeas petitioners to bypass the administrative scheme, as the issue here will not arise again (at least in this District) once the Court rules on it." 307 F.R.D. at 551. Here, while Mr. Rodriguez requests individual injunctive relief at this time (because of the bar on classwide injunctive relief at 8 U.S.C. § 1252(f)(1)), like in *Rivera*, he ultimately seeks classwide relief to ensure that all similarly-situated detained persons in this district are afforded the opportunity to have their claim to release considered. Because this case will resolve the discrete legal issue on a classwide basis, waiving exhaustion here is appropriate.

D. Futility or inadequacy are not required here to waive exhaustion.

Finally, Defendants assert that Mr. Rodriguez must establish that BIA review is "futile," "inadequate or not efficacious." Dkt. 21 at 11 (citation omitted). As an initial matter, Mr.

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Rodriguez has demonstrated he qualifies for a separate exception to judicial exhaustion. But even if he were required to establish inadequacy in addition to irreparable harm and unreasonable agency delay, he has done so, for by the time the BIA issues any decision, he will have been unlawfully detained for months.[3] In any event, unreasonable agency delay is a separate and recognized basis for waiving the exhaustion requirement, and the record supports waiving exhaustion on that ground here (in addition to irreparable harm). Defendants respond to this delay by noting that Mr. Rodriguez's appeal has been pending for over a month and the BIA has issued a briefing schedule (as it does in every case), so the Court need not act. *Id*. But they do not contest the EOIR data that Mr. Rodriguez has submitted, which shows that BIA custody appeals take many months to resolve. *See* Dkt. 7 ¶¶ 5–6. Mr. Rodriguez does not need to wait for such harm to occur to challenge it or to say that it provides a basis to excuse exhaustion. *Cf. Gonzalez v. U.S. ICE*, 975 F.3d 788, 805 (9th Cir. 2020) (a plaintiff "did not need to wait for [allegedly unlawful] detention to challenge its legality" where he alleged a policy existed showing that such unlawful detention would occur); *Mendia v. Garcia*, 768 F.3d 1009, 1012 (9th Cir. 2014) ("Remaining confined in jail when one should otherwise be free is an Article III injury, plain and simple[.]").

Forcing someone to wait many months to simply have a *chance* to demonstrate they are not a flight risk or danger is remarkable and violates due process. After all, "[r]elief [when seeking review of detention] must be speedy if it is to be effective." *Stack v. Boyle*, 342 U.S. 1, 4 (1951). Mr. Rodriguez has explained that in the analogous pre-trial criminal context, review of detention decisions is much quicker. *See* Dkt. 3 at 23–24. That speedy review is rooted in the

[3] The record also reflects that, as mechanism for classwide relief, appeal to the BIA is plainly futile and will result in hundreds of people continuing to be denied their statutory right to be considered for bond.

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Fifth Amendment's Due Process Clause, *see United States v. Salerno*, 481 U.S. 739, 746–47 (1987), and such principles apply equally in the immigration detention context, *see Zadvydas v. Davis*, 533 U.S. 678, 690–91 (2001) (applying civil detention case law to immigration detention).

Defendants do not respond to these arguments or authorities, and instead cite unpublished decisions from this district where other judges have declined to waive exhaustion requirements in individual habeas petitions.[4] These cases, however, were not class actions challenging an agency policy and did not grapple with the authorities cited above regarding irreparable harm or agency delay. The Court should therefore decline to adopt their reasoning here.

III. Mr. Rodriguez Has Demonstrated Irreparable Harm.

Defendants suggest there is no irreparable harm because Plaintiff's claim is statutory as opposed to constitutional. Dkt. 21 at 14. But constitutional concerns underlie his statutory claim because civil detention "violates due process outside of 'certain special and narrow nonpunitive circumstances.'" *Rodriguez v. Marin*, 909 F.3d 252, 257 (9th Cir. 2018) (citation omitted); *see also generally* Dkt. 3 at 16–17 (citing cases). Moreover, detention itself constitutes irreparable harm for purposes of an injunction, a point to which Defendants never respond. *See id.* at 15–16. Defendants do fleetingly claim that Mr. Rodriguez has an "adequate remedy" because he "can obtain relief at the BIA." Dkt. 21 at 14. But Plaintiff has already demonstrated that argument is meritless. *See supra* Sec. II. Finally, Defendants repeat their non-responsive arguments that Mr.

[4] One of the two cases Defendants cite to is *Chavez v. ICE*, where the *pro se* petitioner withdrew his request for a bond hearing and never requested another bond hearing. No. C23-1631-JNW-SKV, 2024 WL 1661159, at *1 (W.D. Wash. Jan. 25, 2024). Notably, that case dealt with a person who, like Mr. Rodriguez, was inadmissible with no legal status, and yet "[t]he parties . . . agree[d] that this case is governed by 8 U.S.C. § 1226(a)." *Id.* at *2. This contradicts the Tacoma Immigration Court's policy of applying § 1225(b)(2) to deny any opportunity for release on bond.

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Rodriguez has just made "generalized" claims about certain other irreparable harms. Dkt. 21 at 14. As described above, the record plainly demonstrates these harms are not generalized and caselaw recognizes these harms.

IV. The Public Interest and Balance of Equities Favor Mr. Rodriguez.

Finally, Defendants' claimed need for the "steady enforcement of its immigration laws" and BIA review do not provide a "compelling interest" that forecloses a preliminary injunction. *Id.* at 15. Indeed, Defendants do not even dispute that the Tacoma Immigration Court is violating the Immigration and Nationality Act. Mr. Rodriguez is simply trying to ensure he is afforded his statutory rights, and "the balance of hardships and public interest factors weigh in favor of a preliminary injunction" where a plaintiff like Mr. Rodriguez challenges a policy that "is inconsistent with federal law." *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019); *see also Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (similar). Defendants never address this caselaw.

V. The Court Should Order Mr. Rodriguez's Release.

Mr. Rodriguez has been detained since February 5, 2025. Lino Decl. Ex. B at 4–5. As he detailed in his testimony and motion, he has lived in the United States over fifteen years, owns a home here, has no criminal history, and has his wife, children, and grandchildren here. *See* Dkt. 9 ¶¶ 3–4, 8–9. Respondents did not contest these facts here or in his bond proceedings, including as to Mr. Rodriguez's lack of criminal history. Indeed, all ICE submitted in Mr. Rodriguez's bond case was its own record of arrest noting he has no criminal history. Lino Decl. Ex. B at 4 The bond record in Mr. Rodriguez's custody case confirms his connections to this country. It includes evidence of his long physical presence in the United States, *id.* Ex. C at 12–26, 41–56, his history of employment at the same place for a decade, *id.* at 45, evidence of his care for the

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(206) 957-8611

acute health needs of his granddaughter, *id.* at 37–38, and many letters from family and friends attesting to his character, work ethic, and connection to his family, *id.* at 47–56.

These facts present a unique situation that warrant release, because they amply demonstrate that Mr. Rodriguez does not pose a flight risk or danger to the community as matter of law. Despite that, the IJ held a hearing in Mr. Rodriguez's case denying bond altogether. *Id.* Ex. A. As a result of that erroneous ruling, Mr. Rodriguez has continued to suffer in detention when he plainly should be free, reunited with his family and community. "[L]aw and justice require" expeditious release here to remedy this ongoing harm. 28 U.S.C. § 2243. And nothing in § 1226 prevents the Court from reaching this conclusion, as § 1226(e) does not bar this Court's review of whether Mr. Rodriguez constitutes a flight risk or danger based on the bond record submitted to the agency. *See Martinez v. Clark*, 124 F.4th 775, 782–84 (9th Cir. 2024) (holding that the question of whether undisputed facts make a person a danger is a question of law reviewable in a petition for writ of habeas corpus, notwithstanding § 1226(e)).

CONCLUSION

For the foregoing reasons, Mr. Rodriguez respectfully requests the Court grant his motion for a preliminary injunction and order his release, or, in the alternative, a new hearing.

Respectfully submitted this 17th of April, 2025.

s/ Matt Adams
Matt Adams, WSBA No. 28287
matt@nwirp.org

s/ Leila Kang
Leila Kang, WSBA No. 48048
leila@nwirp.org

s/ Glenda M. Aldana Madrid
Glenda M. Aldana Madrid, WSBA No. 46987
glenda@nwirp.org

s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974
aaron@nwirp.org

NORTHWEST IMMIGRANT
RIGHTS PROJECT
615 Second Ave., Suite 400
Seattle, WA 98104

(206) 957-8611

Counsel for Plaintiff and the Proposed Class

WORD COUNT CERTIFICATION

I certify that this memorandum contains 4,174 words, in compliance with the Local Civil Rules.

s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974
NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Ave., Suite 400
Seattle, WA 98104
(206) 816-3872
aaron@nwirp.org