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**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

**MOTION FOR PARTIAL  
SUMMARY JUDGEMENT**

Noting Date: June 30, 2025

**ORAL ARGUMENT REQUESTED**

1 **INTRODUCTION**

2 The Bond Denial Class (Plaintiffs) challenges a policy of the Tacoma Immigration Court  
3 that denies them bond solely because the Department of Homeland Security (DHS) alleges they  
4 entered the United States without inspection. As the Court recognized in its preliminary  
5 injunction for the named plaintiff, this policy is illegal, because it defies the plain text of 8  
6 U.S.C. § 1226, applicable canons of statutory construction, the legislative history, and the  
7 Executive Office for Immigration Review’s (EOIR) long history of providing individuals in this  
8 situation with bond hearings. *See* Dkt. 29.

9 Plaintiffs now move for partial summary judgment to ensure that Defendants do not  
10 unlawfully continue to deny bond to class members. Defendants continue to subject class  
11 members to mandatory detention under 8 U.S.C. § 1225(b)(2), despite the fact that many have  
12 lived here for years and even decades. In light of this ongoing, unlawful detention, Plaintiffs  
13 respectfully request that the Court act expeditiously to resolve this matter and confirm that  
14 § 1226(a), not § 1225(b), applies to them, and to clarify that any bond orders holding otherwise  
15 are invalid insofar as they deny bond based on § 1225(b).

16 Along with this motion, Plaintiffs present individual claims for four class members who,  
17 despite having lived here for much of their lives, have been found to be subject to § 1225(b)(2)  
18 as recent arrivals. But for the Tacoma Immigration Court’s policy, these class members would  
19 qualify for release under bond, as evidenced by the alternative bond finding in their cases. Each  
20 day that individuals like these class members remain detained is one that constitutes unlawful  
21 detention, and one that separates them from their communities and loved ones. Accordingly,  
22 Plaintiffs also request that the Court grant individual injunctions for each of the identified class  
23 members and require that DHS honor the alternative bond finding in their cases.

## STATEMENT OF FACTS

### I. The Tacoma Immigration Court’s Practice of Denying Bond Hearings

This case concerns the detention authority for people who entered the United States without inspection, were not apprehended upon arrival, and are not subject to some other detention authority, like the detention authority for people in expedited removal, *see* 8 U.S.C. § 1225(b)(1), or withholding-only proceedings, *see id.* § 1231(a)(6). For decades, people in this situation—people who have been residing in the United States, often for years—received bond hearings before an Immigration Judge (IJ). Indeed, similarly situated people continue to be released on bond by IJs in other immigration courts around the country.

Prior to passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the statutory authority for such hearings was found at 8 U.S.C. § 1252(a). That statute provided for a noncitizen’s detention during deportation proceedings, as well as authority to release them on bond. *See* 8 U.S.C. § 1252(a) (1994). Such proceedings governed the detention of anyone in the United States, regardless of manner of entry. *Id.*<sup>1</sup> IIRIRA maintained the same basic detention authority in the provision codified at 8 U.S.C. § 1226(a). Indeed, when passing IIRIRA, Congress explained that the new § 1226(a) merely “restates the current provisions in [8 U.S.C. § 1252(a)] 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); *see also* H.R. Rep. No. 104-828, at 210 (1996) (Conf. Rep.) (same). Separately, Congress enacted new detention authorities for people arriving in or who recently entered the United States, including a new expedited removal scheme for those arriving

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<sup>1</sup> Separately, “exclusion” proceedings covered those who arrived at U.S. ports of entry and had never entered the United States. *See* 8 U.S.C. § 1225 (1994); *id.* § 1226 (1994).

1 or who recently entered. *See* 8 U.S.C. § 1225(b)(1)–(2). In implementing this new detention  
2 authority, the former Immigration and Naturalization Service clarified that people who entered  
3 the United States without inspection and who were not in expedited removal would continue to  
4 be detained under the same detention they always had been: § 1226(a) (previously § 1252(a)).  
5 *See* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

6 The distinction between § 1226(a) and § 1225(b) detention is important. Detention under  
7 § 1226(a) includes the right to a bond hearing before an IJ. *See* 8 C.F.R. § 1236.1(d). At that  
8 hearing, the noncitizen may present evidence of their ties to the United States, lack of criminal  
9 history, and other factors showing they are not a flight risk or danger to the community. *See*  
10 *generally Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006). By contrast, people detained  
11 under § 1225(b) are subject to mandatory detention and receive no bond hearing. *See* 8 U.S.C.  
12 § 1225(b)(1)(B)(ii), (iii)(IV), (b)(2)(A). They may only be released under parole at the discretion  
13 of the arresting agency. *See Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018); *see also* 8 U.S.C.  
14 § 1182(d)(5)(A).

15 For the first 25 years after IIRIRA was enacted, local immigration courts, like  
16 immigration courts across the country, applied § 1226(a) to the detention of people who were  
17 apprehended within the United States after having entered without inspection. But in the past few  
18 years, the Tacoma Immigration Court began to apply the mandatory detention provisions of 8  
19 U.S.C. § 1225(b)(2) to all persons who entered the United States without inspection, regardless  
20 of how long those persons have resided here. *See* Dkt. 5 ¶ 3; Dkt. 6 ¶ 3; *see also* Maltese Decl.  
21 Ex. B at 4. According to the immigration court, all people who enter the United States without  
22 inspection are deemed “applicants for admission” and are therefore subject to § 1225(b)(2). *See*,  
23 *e.g.*, Dkt. 4-5 (custody order of named plaintiff concluding no jurisdiction to issue a bond and  
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1 applying § 1225(b)(2)); Dkts. 5-1-5-11 (custody orders of similarly situated individuals); Dkt. 6-  
2 1 (same); Dkt. 34-6 (same for current class member); Maltese Decl. Exs. E, I, K (same for  
3 additional class members). Defendants have not disputed that the Tacoma Immigration Court's  
4 bond denial policy exists. Dkt. 29 at 7–8, 16.

5 The results of this policy shift have been catastrophic for noncitizens detained at the  
6 Northwest ICE Processing Center (NWIPC), many of whom are longtime residents of  
7 Washington and neighboring states. Hundreds have been denied bond as a result, forcing them to  
8 defend their removal cases while detained or to give up altogether. Dkt. 5 ¶¶ 4–6; Dkt. 6 ¶ 3; *see*  
9 *also supra* pp. 3–4 (citing orders denying bond). Many, if not most, of these individuals have  
10 resided in the country for years, or even decades. *See, e.g.*, Dkt. 5 ¶ 4 (summarizing stories of  
11 individual clients); Dkt. 6 ¶ 6 (same); Dkt. 35 ¶ 3; Nunez Decl. ¶¶ 3, 5; Contreras-Baca Decl. ¶ 3;  
12 Mateo Decl. ¶ 3. These individuals have families, jobs, and communities here in the United  
13 States. The harm inflicted is thus not only to them, but also to their family members, employers,  
14 colleagues, and friends. *See, e.g.*, Dkt. 9 ¶¶ 4, 9–10, 14 (named plaintiff testifying to U.S.  
15 connections and harm of detention on himself and family); Dkt. 35 ¶¶ 3–5, 15 (similar); Nunez  
16 Decl. ¶¶ 3–5, 14 (similar); Contreras-Baca Decl. ¶ 4–5, 17 (similar, including testimony as to  
17 separation from seven-year-old child with cancer); Mateo Decl. ¶¶ 4–5, 14 (similar); *see also,*  
18 *e.g.*, Dkt. 34-1 (numerous community members attesting to contributions made by class  
19 member); Maltese Decl. Ex. J at 41–61 (similar).

20 Notably, national statistics reflect that Tacoma IJs are denying bond hearings at  
21 extraordinary rates—a fact that appeals have done nothing to fix. For example, in FY2023,  
22 Tacoma IJs granted bond in a mere 3% of the cases where bonds were requested, far less than  
23 most courts, and by far the lowest grant rate in the entire country. *See* Transactional Records  
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1 Access Clearinghouse (TRAC), Detained Immigrants Seeking Release on Bond Have Widely  
2 Different Outcomes, <https://tracreports.org/reports/722/> (July 19, 2023). Recent statistics reflect  
3 similarly low rates, with bond continuing to be denied in around 90% of cases. *See* TRAC,  
4 Immigration Court Bond Hearings and Related Case Decisions, [https://tracreports.org/phptools/  
5 immigration/bond/](https://tracreports.org/phptools/immigration/bond/) (last accessed May 31, 2025) (fields selected: Bond Hearing Fiscal Year – FY  
6 2025, Bond Hearing Immigration Court State – Washington, and Bond Hearing Outcome)  
7 (showing that out of 288 bond hearings in FY 2025, bond was granted in only 29 cases—just  
8 over 10%); *see also* Maltese Decl. Ex. A (PDF of same TRAC website data).

9 Critically, advocates have tried—and failed—to change this practice through individual  
10 administrative appeals. Appeals take several months, and sometimes even a year or more, to  
11 complete. *See* Dkt. 7 ¶¶ 5–6 (reporting that the average case processing time for BIA appeals  
12 was 204 days in FY 2024); *see also* Dkt. 5 ¶ 5(d) (noting that an appeal has been pending for  
13 over a year and a half in one case). Such delays in civil detention cases do not provide an  
14 individual with a meaningful chance to seek their release. As advocates recount, nearly all cases  
15 become moot by this point. Many noncitizens cannot afford an appeal, and some may lose their  
16 case in the meantime and face removal. *See* Dkt. 5 ¶ 10 (recounting reasons why appeals never  
17 reached a decision); Dkt. 6 ¶ 5. Others give up their case because of prolonged detention. Dkt. 5  
18 ¶ 10; Dkt. 6 ¶ 5. Still others receive a discretionary release from ICE or win their case before any  
19 decision on appeal is issued. *See* Dkt. 5 ¶ 10; Dkt. 6 ¶ 5. In short, BIA appeals do not provide  
20 any meaningful relief for the vast majority of class members.

21 Even after two rare cases where the BIA did issue decisions granting relief for the  
22 detained individuals, Tacoma IJs have subsequently disregarded such appellate authority. In  
23 these two unpublished BIA cases, the Board has reversed the Tacoma IJs’ refusal to grant bond  
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1 in cases like those of Bond Denial Class members. *See* Dkts. 4-1, 4-2. In one instance, advocates  
2 requested that the Board publish the decision, but the agency refused. Dkt. 4-3, 4-4. In requests  
3 for bond hearings since these unpublished decisions, advocates have submitted one or both  
4 decisions to support the request. *See, e.g.*, Dkt. 5 ¶ 11; Dkt. 8 ¶ 4. Yet with the exception of one  
5 IJ, the Tacoma Immigration Court—including the Assistant Chief Immigration Judge—has  
6 ignored this appellate authority and continued to deny bond hearings for people like Plaintiffs,  
7 *see* Dkt. 5 ¶ 11; Dkt. 8 ¶ 5, depriving them of any opportunity to reunite with loved ones and  
8 return to their communities.

9 **II. The Tacoma Immigration Court Has Continued to Deny Bond to Class Members**  
10 **Since This Court Issued a Preliminary Injunction on Behalf of the Named Plaintiff.**

11 Even after this Court issued its preliminary injunction order, Tacoma IJs have denied  
12 bond to class members based on the IJs' interpretation of § 1225(b)(2) in at least four instances.  
13 In those cases, the IJ issued an order denying bond under § 1225(b)(2) and ordering that in the  
14 alternative, and but for the immigration court's mandatory detention finding, the individual be  
15 released on bond. These individuals are currently suffering unlawful detention and have no  
16 means of release in the near future except through the Court's resolution of this motion. *See infra*  
17 Argument Sec. II; *see also* Dkt. 38 (denying motion for a temporary restraining order (TRO)).

18 First, as class counsel previously detailed, *see* Dkt. 38, class member Alfredo Juarez  
19 Zeferino is a twenty-five-year-old longtime Washington State resident and civic leader. *See*  
20 *generally* Dkt. 34-1; Dkt. 35 ¶¶ 3, 5, 12. He has lived around the Skagit Valley and Whatcom  
21 County area since 2012. Dkt. 35 ¶ 3. He grew up in a farmworker family and attended Burlington  
22 High School. *Id.* He has seven siblings and is an important source of support to his five youngest  
23 siblings, all of whom are U.S. citizens. *Id.* ¶¶ 4–5; Dkt. 34-1 at 4–10, 20, 31, 36, 42. Mr. Juarez  
24 is a valued member of his community. He is a well-known farmworkers' rights activist, *see, e.g.*,

1 Dkt. 34-1 at 19, 24, 27, having founded an independent farmworker union called Familias  
2 Unidas por la Justicia (Families United For Justice) when he was a teenager, Dkt. 34-1 at 11, 14;  
3 Dkt. 35 ¶ 12. He is also an indigenous leader, acting as a voice for the Mixteco and Triqui  
4 communities of the Skagit Valley and Whatcom County areas, both as an interpreter and in  
5 political advocacy and outreach at the local and state levels. *See, e.g.*, Dkt. 34-1 at 11–43.

6 Mr. Juarez was arrested by immigration officers on March 25, 2025, and sent to the  
7 NWIPC, where he is currently detained. Dkt. 34-5 at DHS-2, 4. On May 6, Mr. Juarez requested  
8 a bond hearing. *See* Dkt. 34-1. In support of his request, he presented Assistant Chief  
9 Immigration Judge (ACIJ) Scala with a copy of this Court’s preliminary injunction, Dkt. 34-2,  
10 which found that the bond denial policy is likely illegal, *see* Dkt. 29 at 22–32. He also presented  
11 letters of support from more than 20 friends, family, and community leaders, including various  
12 elected officials, attesting to his moral character and invaluable community contributions. *See,*  
13 *e.g.*, Dkt. 34-1 at 11–43 (letters from, inter alia, U.S. Senator Maria Cantwell, U.S.  
14 representatives Rick Larsen, Pramila Jayapal, and Emily Randall, and other state and local  
15 leaders).

16 On May 8, after receiving and considering this Court’s decision, *see* Dkt. 34-2, ACIJ  
17 Scala denied Mr. Juarez release on bond pursuant to the Tacoma Immigration Court’s bond  
18 denial policy. *See* Dkt. 34-6; Dkt. 35 ¶¶ 10–11. She alternatively found that if he was not subject  
19 to mandatory detention, he could be released on a \$5,000 bond. Dkt. 34-6. Mr. Juarez filed a  
20 notice of appeal challenging the ACIJ’s jurisdictional finding. Dkt. 35 ¶ 13. Subsequently, on  
21 May 30, 2025, the ACIJ provided a written decision describing her reasoning. Maltese Decl. Ex.  
22 B.

1 Another class member—Bellingham, WA resident David Nunez Hernandez—was  
2 similarly denied bond. Mr. Nunez has lived in the United States since 1996, and in Washington  
3 since 2000. Nunez Decl. ¶ 3; Maltese Decl. Ex. C at 100, 106, 108 (letters testifying to knowing  
4 Mr. Nunez for 15 and 20 years). He has five U.S. citizen children, Nunez Decl. ¶ 4, Maltese  
5 Decl. Ex. C at 14–18, one of whom suffers from significant mental health issues, Nunez Decl.  
6 ¶ 4; Maltese Decl. Ex. C at 84–98. Members of his extended family also live in the United  
7 States. Nunez Decl. ¶ 4; Maltese Decl. Ex. C at 103–05.

8 Mr. Nunez was arrested at a worksite raid in Whatcom County on April 2, 2025. Maltese  
9 Decl. Ex. D at 4. He was subsequently transported to the NWIPC, where he has since remained  
10 detained. *Id.* at 6; *see also* Nunez Decl. ¶ 7. On May 14, he requested a bond hearing, which was  
11 held on May 19. Nunez Decl. ¶ 9. In support of his request, Mr. Nunez provided evidence of his  
12 children’s citizenship, Maltese Decl. Ex. C at 14–18, over a decade’s worth of tax returns, *id.* at  
13 22–83, proof of the mental health challenges one of his daughters is experiencing, *id.* at 84–100,  
14 and support letters from family and friends, *id.* at 11–13, 100–111. Mr. Nunez has no criminal  
15 history. *Id.* Ex. D at 5.

16 At the bond hearing, the ACIJ denied Mr. Nunez bond, ruling that he is detained under  
17 § 1225(b)(2). *Id.* Ex. E. In addition, she ruled that but for her mandatory detention finding, Mr.  
18 Nunez could be released on a \$10,000 bond. *Id.* Mr. Nunez filed a notice of appeal of the IJ’s  
19 decision on May 19. Nunez Decl. ¶ 12; *see also* Maltese Decl. Ex. F.

20 A third class member would also be free on bond but for the Tacoma Immigration  
21 Court’s challenged policy. Class member Yesica Contreras-Baca is a noncitizen who has lived in  
22 the United States since 2008—over seventeen years. Contreras-Baca Decl. ¶ 3. She has six U.S.  
23 citizen children, the oldest of whom was born in 2009. *See id.* ¶ 4; Maltese Decl. Ex. G at 16–20.

1 One of Ms. Contreras-Baca’s children was previously diagnosed with terminal cancer.  
2 Contreras-Baca Decl. ¶ 5; *see also* Maltese Decl. Ex. G at 29–48. As she explains in her  
3 declaration, she wants to “spend as much time with [her] child as [she] can, because it is  
4 unknown when his condition will worsen and when he will no longer be in this world.”  
5 Contreras-Baca Decl. ¶ 5.

6 On May 8, 2025, Ms. Contreras-Baca requested a bond hearing before the Tacoma  
7 Immigration Court. Maltese Decl. Ex. G at 2–4. In support of her request, she submitted a  
8 sponsor letter from a U.S.-citizen family member, *id.* at 8–10, proof of her children’s U.S.  
9 citizenship, *id.* at 16–20, tax returns, *id.* at 11–12, 49–109, proof of residence, *id.* at 21–22,  
10 letters from family and friends attesting to her character, *id.* at 23–28, and documents showing  
11 that the one criminal charge she was faced with was dismissed, *id.* at 110. Nevertheless, the IJ  
12 denied Ms. Contreras-Baca bond under § 1225(b)(2), but provided a \$3,000 bond in the  
13 alternative. *Id.* Ex. I. Following the hearing, she reserved appeal. Contreras-Baca Decl. ¶ 15.

14 Finally, Mr. Jose Mateo—a resident of Lynden, WA—is similarly unlawfully detained  
15 because of the Tacoma Immigration Court’s bond denial policy. Mr. Mateo first entered the  
16 United States around 2010, and has lived here for the past fifteen years. Mateo Decl. ¶ 3. He was  
17 detained at the same worksite raid as Mr. Nunez on April 2, 2025. *Id.* ¶¶ 5, 7. Mr. Mateo has  
18 three U.S. citizen children who are five years old, three years old, and eight months old. *Id.* ¶ 4;  
19 Maltese Ex. J at 17–19. He is an active and loved member of his church and community, and  
20 works hard to provide for his family. *See id.* at 20–61.

21 On May 13, 2025, Mr. Mateo requested a bond hearing before the immigration judge. *See*  
22 Maltese Decl. Ex. J at 2–5. In support of his request for bond, he included proof of his children’s  
23 citizenship, *id.* at 17–19, employment and tax records, *id.* at 26–27, 31–39, support letters from  
24

1 church members and other community members, *id.* at 42–61, proof of his filings of application  
2 for relief from removal, *id.* at 71–101, and lack of criminal history, *id.* at 103.

3 On May 14, 2025, the ACIJ denied him bond under § 1225(b)(2), but provided a \$7,500  
4 bond in the alternative. *Id.* Ex. K. Mr. Mateo intends to appeal the bond denial. Mateo Decl. ¶ 13.

### 5 **III. Procedural History.**

6 Plaintiffs filed this lawsuit on March 20, 2025. Dkt. 1. That same day, they filed a motion  
7 for class certification, Dkt. 2, and a motion for a preliminary injunction of behalf of Named  
8 Plaintiff Ramon Rodriguez Vazquez, Dkt. 3, along with extensive supporting evidence detailing  
9 Defendants’ policy and its effects, *see* Dkts. 4–10. On April 24, 2025, this Court granted Mr.  
10 Rodriguez’s motion for a preliminary injunction, ordering that he receive a bond hearing. Dkt.  
11 29. A week later, on May 2, the Court granted class certification as to the Bond Denial Class and  
12 a separate Bond Appeal Class. Dkt. 32.<sup>2</sup> Specifically, the Court certified the following class:

13 All noncitizens without lawful status detained at the Northwest ICE Processing  
14 Center who (1) have entered or will enter the United States without inspection, (2)  
15 are not apprehended upon arrival, (3) are not or will not be subject to detention  
under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is  
scheduled for or requests a bond hearing.

16 *Id.* at 43.

17 Following class certification, class counsel filed a motion for a TRO on behalf of Mr.  
18 Juarez, seeking an order that required Defendants to honor the alternative bond amount set at the  
19 bond hearing. Dkt. 33. This Court denied the TRO motion, reasoning that it was unclear it had  
20 the authority to issue injunctive relief for an unnamed class member and concluding that granting  
21 the motion would change the status quo. Dkt. 38 at 6–9.

22  
23  
24 <sup>2</sup> The Bond Appeal Class does not seek summary judgment at this time.

**ARGUMENT**

Summary judgment must be granted where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Range Rd. Music, Inc. v. E. Coast Foods, Inc.*, 668 F.3d 1148, 1152 (9th Cir. 2012). Here, the materials facts are not in dispute: the Tacoma Immigration Court IJs are denying bond by applying § 1225(b)(2) to Bond Denial Class members. Whether class members are detained under § 1225(b)(2) or whether they are instead detained under § 1226(a) presents a “pure question of law” that can be resolved on summary judgment. *Swoger v. Rare Coin Wholesalers*, 803 F.3d 1045, 1048 (9th Cir. 2015).

As detailed below, Plaintiffs are entitled to classwide declaratory relief on this issue. The plain text of the Immigration and Nationality Act (INA), canons of statutory construction, legislative history, and decades of practice all support this conclusion. In addition, this Court has the power to award individual injunctive relief to individual class members. To receive permanent injunctive relief, “the party seeking [such] relief [must] demonstrate[] that: (1) it is likely to suffer irreparable injury that cannot be redressed by an award of damages; (2) that considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (3) that the public interest would not be disserved by a permanent injunction.” *City & Cty. of San Francisco v. Trump*, 897 F.3d 1225, 1243 (9th Cir. 2018) (internal quotation marks omitted). Notably, absent individual injunctive relief, Defendants may continue to unlawfully detain these individual class members pending any appeal of an order granting declaratory relief to the class.

1 **I. Defendants’ Bond Denial Policy Is Unlawful.**

2 **A. The text of § 1226(a) and applicable canons of statutory construction**  
 3 **demonstrate Plaintiffs are entitled to bond hearings under this section.**

4 The plain text of § 1226 demonstrates that its subsection (a) applies to class members.  
 5 Subsection 1226(a) is the INA’s default detention authority, and it applies to anyone who is  
 6 detained “pending a decision on whether the [noncitizen] is to be removed from the United  
 7 States.” 8 U.S.C. § 1226(a). It applies not just to persons who are deportable, but also to  
 8 noncitizens who are inadmissible.<sup>3</sup> Specifically, while § 1226(a) provides the general right to  
 9 seek release, § 1226(c) carves out discrete categories of noncitizens from being released—  
 10 including certain categories of inadmissible noncitizens—and subjects them instead to  
 11 mandatory detention. *See, e.g., id.* § 1226(c)(1)(A), (C).

12 Recent amendments to § 1226 reinforce that it covers class members. The Laken Riley  
 13 Act (LRA) added language to § 1226 that directly references people who have entered without  
 14 inspection or who are present without authorization. *See* Laken Riley Act, Pub. L. No. 119-1,  
 15 139 Stat. 3 (2025). Pursuant to these amendments, people charged as inadmissible under  
 16 § 1182(a)(6)(A) (the inadmissibility ground for entry without inspection) or (a)(7)(A) (the  
 17 inadmissibility ground for lacking valid documentation to enter the United States) *and* who have  
 18 been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)’s mandatory  
 19 detention provisions. *See* 8 U.S.C. § 1226(c)(1)(E). By including such individuals under  
 20 § 1226(c), Congress reaffirmed that § 1226 covers persons charged under § 1182(a)(6)(A) or  
 21 (a)(7). As this Court observed in its preliminary injunction decision, “when Congress creates

22 <sup>3</sup> Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people like  
 23 lawful permanent residents, who have been lawfully admitted and continue to have lawful  
 24 status, while grounds of inadmissibility (found in § 1182) apply to those who have not yet been  
 admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020).

1 ‘specific exceptions’ to a statute’s applicability, it ‘proves’ that absent those exceptions, the  
2 statute generally applies.” Dkt. 29 at 24 (quoting *Shady Grove Orthopedic Assocs., P.A. v.*  
3 *Allstate Ins. Co.*, 559 U.S. 393, 400 (2010)).<sup>4</sup>

4 Several canons of interpretation support this understanding. First, the canon against  
5 rendering text superfluous or meaningless applies with significant force here. *See, e.g., Shulman*  
6 *v. Kaplan*, 58 F.4th 404, 410–11 (9th Cir. 2023) (declaring that courts “must interpret the statute  
7 as a whole, giving effect to each word and making every effort not to interpret a provision in a  
8 manner that renders other provisions of the same statute inconsistent, meaningless or  
9 superfluous” (citation omitted)). Notwithstanding the plain text noted above, the Tacoma  
10 Immigration Court has repeatedly held that § 1225(b)(2)(A) “mandates the detention of all  
11 inadmissible noncitizens.” Dkt. 5-2 at 2; *see also* Dkt. 5-4 at 2 (holding that § 1225 “include[s]  
12 all noncitizens who have not been admitted regardless of where they are encountered or how  
13 long they have been in the United States”). This interpretation “would render significant portions  
14 of Section 1226(c) meaningless.” Dkt. 29 at 26. As the Court explained before, this is so because  
15 if “Section 1225 . . . and its mandatory detention provisions apply to all noncitizens who have  
16 not been admitted, then it would render superfluous provisions of Section 1226 that apply to  
17 certain categories of inadmissible noncitizens.” *Id.* (internal citation and quotation marks  
18 omitted).

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20  
21 <sup>4</sup> In her written decision regarding class member Alfredo Juarez Zeferino, the ACIJ dismisses the  
22 LRA with a policy argument, reasoning that the LRA reiterates the importance of subjecting  
23 people like “Laken Riley’s killer” to mandatory detention and that the Act does not say anything  
24 about detention under § 1226(a). Maltese Decl. Ex. B at 7–8. For the same reasons articulated  
here and below, this argument defies the statute’s text, its history of implementation, and canons  
of statutory construction. Such “naked policy appeals” reveal that the Tacoma IJs’ interpretation  
has abandoned “any pretense of statutory interpretation.” *Bostock v. Clayton Cnty., Georgia*, 590  
U.S. 644, 680 (2020).

1 Second, “[w]hen Congress acts to amend a statute, [courts] presume it intends its  
2 amendment to have real and substantial effect.” *Gieg v. Howarth*, 244 F.3d 775, 776 (9th Cir.  
3 2001) (citation omitted). That presumption applies here, given the LRA’s recent amendments to  
4 § 1226. *See* Dkt. 29 at 28 (quoting *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995)). Indeed, as noted  
5 above, and as the Court explained before, these amendments explicitly provide that § 1226(a)  
6 covers class members. This is because the “‘specific exceptions’ [in the LRA] for inadmissible  
7 noncitizens who are arrested, charged with, or convicted of the enumerated crimes logically  
8 leaves those inadmissible noncitizens not criminally implicated under Section 1226(a)’s default  
9 rule for discretionary detention.” *Id.*

10 Finally, “[w]hen Congress adopts a new law against the backdrop of a longstanding  
11 administrative construction,” courts “generally presume[] the new provision should be  
12 understood to work in harmony with what has come before.” *Monsalvo Velazquez v. Bondi*, 145  
13 S. Ct. 1232, 1242 (2025) (internal quotation marks omitted). As the Court has observed, this  
14 canon also supports the class’s understanding of the statute, because “Congress adopted the new  
15 amendments to Section 1226(c) against the backdrop of decades of post-IIRIRA agency practice  
16 applying discretionary detention under Section 1226(a) to inadmissible noncitizens such as [the  
17 Named Plaintiff].” Dkt. 29 at 29; *see also infra* pp. 18–19.

18 **B. The statutory structure further demonstrates that § 1226(a), not § 1225,**  
19 **applies to Bond Denial Class members.**

20 The statutory structure also supports understanding § 1226(a) to apply to class members.  
21 As the Supreme Court has explained, an act’s “broader structure” can be a useful tool “to  
22 determine [a statute’s] meaning.” *King v. Burwell*, 576 U.S. 473, 492 (2015); *see also Biden v.*  
23 *Texas*, 597 U.S. 785, 799–800 (2022) (looking to statutory structure to inform interpretation of  
24 INA provision). This is particularly true where “a provision . . . may seem ambiguous in

1 isolation.” *United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365,  
2 371 (1988). In such situations, the statute’s meaning “is often clarified by the remainder of the  
3 statutory scheme . . . because only one of the permissible meanings produces a substantive effect  
4 that is compatible with the rest of the law.” *Id.* To the extent there is ambiguity here, these  
5 principles apply with particular force.

6 The Supreme Court has previously discussed the structure of § 1226 and § 1225 in a way  
7 that supports Plaintiffs’ reading. As the Court explained, § 1226(a) applies to those who are  
8 “already in the country” and are detained “pending the outcome of removal proceedings.”  
9 *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). By contrast, § 1225(b)(2)’s mandatory  
10 detention scheme applies “at the Nation’s borders and ports of entry, where the Government  
11 must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Id.* at 287.  
12 Indeed, in contrast to § 1226(a), the whole purpose of § 1225 is to define how DHS should  
13 inspect, process, and detain various classes of people arriving at the border or who have just  
14 entered the country. *See id.* at 297 (“§ 1225(b) applies primarily to [noncitizens] seeking entry  
15 into the United States.”).

16 The text of § 1225 reinforces this understanding of the two sections’ structure and  
17 application. To begin, § 1225 concerns “expedited removal of inadmissible arriving  
18 [noncitizens].” 8 U.S.C. § 1225. Its paragraph (b)(1) encompasses only the “inspection” of  
19 certain “arriving” noncitizens and other recent entrants the Attorney General designates, and  
20 only those who are “inadmissible” for having misrepresented information to an inspecting officer  
21 or for lacking documents to enter the United States. Paragraph (b)(2) is similarly limited to  
22 people applying for admission when they arrive in the United States. The title explains that this  
23 paragraph addresses the “[i]nspection of other [noncitizens],” i.e., those noncitizens who are  
24

1 “seeking admission,” but whom (b)(1) does not address. *Id.* § 1225(b)(2), (b)(2)(A). By limiting  
2 (b)(2) to those “seeking admission,” Congress confirmed that it did not intend to sweep into this  
3 section individuals like class members, who have already entered and are now residing in the  
4 United States. An individual submits an “application for admission” only at “the moment in time  
5 when the immigrant actually applies for admission into the United States.” *Torres v. Barr*, 976  
6 F.3d 918, 927 (9th Cir. 2020) (en banc). Indeed, in *Torres*, the en banc Court of Appeals rejected  
7 the idea that § 1225(a)(1) means that anyone who is presently in the United States without  
8 admission or parole is someone “deemed to have made an actual application for admission.” *Id.*  
9 (emphasis omitted). That holding is instructive here too, as only those who take affirmative acts,  
10 like submitting an “application for admission,” are those that can be said to be “seeking  
11 admission” within § 1225(b)(2)(A). Otherwise, that language would serve no purpose, as the  
12 statute specifies that it is addressing a person who is both an “applicant for admission” and who  
13 is determined to be “seeking admission.” *Id.*

14 Furthermore, subparagraph (b)(2)(C) addresses the “[t]reatment of [noncitizens] *arriving*  
15 from contiguous territory,” i.e., “the case of [a noncitizen] . . . who *is arriving* on land.” 8 U.S.C.  
16 § 1225(b)(2)(C) (emphasis added). This language further underscores Congress’s temporal  
17 requirements in § 1225 and focus on those who are arriving into the United States. Similarly, the  
18 title of § 1225 refers to the “inspection” of “inadmissible *arriving*” noncitizens. *See, e.g., Dubin*  
19 *v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help  
20 construe statute). Finally, the entire statute is premised on the idea that an inspection occurs near  
21 the border and shortly after arrival, as the statute repeatedly refers to “examining immigration  
22 officer[s],” 8 U.S.C. § 1225(b)(2)(A), (b)(4), and sets out procedures for “inspection[s]” of  
23 people “arriving in the United States,” *id.* § 1225(a)(3), (b)(1), (b)(2), (d).

1 A recent BIA decision, published in May 2025, further supports reading § 1225(b) as  
2 applying only to arriving individuals and recent entrants. In *Matter of Q. Li*, the BIA held that a  
3 noncitizen who was apprehended “approximately 5.4 miles away from a designated port of entry  
4 and 100 yards north of the border” was detained under § 1225(b) and not § 1226(a). 29 I. & N.  
5 Dec. 66, 67 (BIA 2025). In other words, they were someone “apprehended upon arrival.” Dkt. 32  
6 at 43. The Board then explained that such persons are properly treated as “arriv[ing] in the  
7 United States,” given that they are “detained shortly after unlawful entry,” and “[are]  
8 apprehended’ just inside ‘the southern border, and not at a point of entry, on the same day [they]  
9 crossed into the United States.’” *Matter of Q. Li*, 29 I. & N. Dec. at 68 (alternations in original)  
10 (quoting *Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020)). Notably, in so holding, the  
11 BIA’s analysis closely tracked the arguments Plaintiffs have made here: that § 1226(a) “applies  
12 to [noncitizens] already present in the United States,” while § 1225(b) “applies primarily to  
13 [noncitizens] seeking entry into the United States and authorizes DHS to detain a[] [noncitizen]  
14 without a warrant at the border.” *Id.* at 70 (internal quotation marks omitted).

15 **C. The legislative history further supports Plaintiffs’ argument.**

16 IIRIRA’s legislative history also supports concluding that § 1226(a) applies to class  
17 members. In passing the Act, Congress was focused on the perceived problem of recent arrivals  
18 to the United States who do not have documents to remain. *See* H.R. Rep. No. 104-469, pt. 1, at  
19 157–58, 228–29; H.R. Rep. No. 104-828, at 209. Notably, Congress did not say anything about  
20 subjecting all people present in the United States after an unlawful entry to mandatory detention  
21 if arrested. This is important, as prior to IIRIRA, class members were not subject to mandatory  
22 detention. *See* 8 U.S.C. § 1252(a)(1) (1994) (authorizing Attorney General to arrest noncitizens  
23 for deportability proceedings, which applied to all persons within the United States). Had  
24 Congress intended to make such a monumental shift in immigration law (potentially subjecting

1 millions of people to mandatory detention), it would have explained so or spoken more clearly.  
2 *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468–69 (2001). But in fact, Congress  
3 explained precisely the opposite, noting that the new § 1226(a) merely “restates the current  
4 provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain,  
5 and release on bond a[] [noncitizen] *who is not lawfully in the United States*.” H.R. Rep. No.  
6 104-469, pt. 1, at 229 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).  
7 “Because noncitizens like [Plaintiffs] were entitled to discretionary detention under Section  
8 1226(a)’s predecessor statute and Congress declared its scope unchanged by IIRIRA, this  
9 background supports [the class]’s position that [they too are] subject to discretionary detention.”  
10 Dkt. 29 at 30.

11 **D. The record and longstanding practice reflect that § 1226 governs Plaintiffs’  
12 detention.**

13 Finally, DHS’s longstanding practice of considering people like Plaintiffs as detained  
14 under § 1226(a) further supports reading the statute to apply to them. Typically, DHS issues  
15 class members a Form I-286, Notice of Custody Determination, or Form I-200, Warrant for  
16 Arrest of Alien, stating that the person is detained under § 1226(a) (§ 236 of the INA). *See, e.g.*,  
17 Dkt. 5-3 at 5–6; Dkt. 5-4 at 2–3; Dkt. 34-5 at DHS-2 (stating Mr. Juarez was arrested pursuant to  
18 an I-200); Maltese Decl. Ex. D at 4 (same, regarding Mr. Nunez); *id.* Ex. G at 5 (similar, for Ms.  
19 Contreras-Baca); *id.* Ex. L at 1 (sample I-200). As these arrest documents demonstrate, DHS has  
20 long acknowledged that § 1226(a) applies to individuals who entered the United States  
21 unlawfully, but who were later apprehended within the country’s borders long after their entry.  
22 Such a longstanding and consistent interpretation “is powerful evidence that interpreting the Act  
23 in [this] way is natural and reasonable.” *Abramski v. United States*, 573 U.S. 169, 203 (2014)  
24 (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983)

1 (relying in part on “over 60 years” of government’s interpretation and practice to reject its new  
2 proposed interpretation of the law at issue).

3 Similarly, EOIR regulations have long recognized that class members are subject to  
4 detention under § 1226(a). Nothing in 8 C.F.R. § 1003.19—the regulatory basis for the  
5 immigration court’s jurisdiction—provides otherwise. In fact, EOIR confirmed that § 1226(a)  
6 applies to class members when it promulgated the regulations governing immigration courts and  
7 implementing § 1226 decades ago. At that time, EOIR explained that “[d]espite being applicants  
8 for admission, [noncitizens] who are present without having been admitted or paroled (formerly  
9 referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond  
10 redetermination.” 62 Fed. Reg. at 10323; *see also Matter of R-A-V-P-*, 27 I. & N. Dec. 803–04  
11 (BIA 2020) (referencing § 1226(a) as detention authority for a noncitizen who unlawfully  
12 entered the United States the prior year and was detained soon thereafter); *Maltese Decl. Ex. M*  
13 *at 8, 9* (unpublished BIA decisions explaining the same). The Court previously reasoned that  
14 “this guidance and the agency’s subsequent years of unchanged practice is persuasive” in further  
15 understanding § 1226(a) to apply to class members. Dkt. 29 at 31.

16 In sum, § 1226 governs class members’ detention, and the Court should issue  
17 corresponding declaratory relief clarifying their rights.

## 18 **II. Individual Class Members Juarez, Nunez, Baca-Contreras, and Mateo warrant** 19 **injunctive relief.**

### 20 **A. The Court has authority to issue an injunction.**

21 Apart from classwide declaratory relief, the Court has authority to issue an injunction on  
22 behalf of individual class members. This is true for several reasons.

23 First, in its order denying a TRO for Mr. Juarez, the Court expressed concern about  
24 whether an individual class member seeking injunctive relief conflicts with Rule 23(b)(2)’s

1 requirements. The Court explained that such an injunction might be a “different injunction or  
2 declaratory judgment” than what the rest of the class seeks. Dkt. 38 at 8 (emphasis and citation  
3 omitted). This is not the case. The individual class members seek the same relief as the class—  
4 the declaratory relief—and also simply ask for an additional remedy to ensure they do not  
5 needlessly suffer additional unlawful detention. The individual injunctions sought are a means of  
6 ensuring prompt relief, consistent with the classwide declaratory relief sought for all class  
7 members. The Supreme Court’s concern about different injunctions or declaratory relief in  
8 *Dukes* concerns relief that differs *in substance*. The Court so explained when it noted that Rule  
9 23(b)(2) is not satisfied where the “claims [are ones] for *individualized* relief (like the backpay at  
10 issue here).” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011). Such backpay claims  
11 require “additional proceedings . . . to determine the scope of individual relief.” *Id.* at 366  
12 (alteration in original). Here, however, the individual injunctions sought simply require  
13 compliance with the same classwide declaratory judgment.

14       Second, a Rule 23(b)(2) class is a “mandatory, non-opt-out class[.]” *McCluskey v. Trs. of*  
15 *Red Dot Corp. Emp. Stock Ownership Plan & Tr.*, 268 F.R.D. 670, 677 (W.D. Wash. 2010); *see*  
16 *also Dukes*, 564 U.S. at 362 (describing (b)(2) classes as “mandatory”); 2 Newberg and  
17 Rubenstein on Class Actions § 4:36 (6th ed. 2024) (explaining that “[t]here is no realistic sense  
18 of ‘opting out’ of such a [civil rights] class” like this one). Once certified, class members are  
19 parties to this case. Accordingly, intervention or a separate habeas typically does not make sense,  
20 as those individuals are already a party to the case that is determining their legal rights—indeed,  
21 federal courts are empowered to deny such requests or dismiss such cases. *See, e.g., Crawford v.*  
22 *Bell*, 599 F.2d 890, 892–93 (9th Cir. 1979) (affirming district court’s dismissal of individual’s  
23 allegations which were duplicative of those being litigated by certified (b)(2) class action). Thus,  
24

1 by seeking relief on behalf of individual class members, class counsel seeks merely to advocate  
2 zealously on behalf of their clients, as they will be bound by any judgment in this matter. *See*  
3 *Devlin v. Scardelletti*, 536 U.S. 1, 10 (2002) (“[N]onnamed class members are parties in the  
4 sense of being bound by [a] settlement.”).

5 Notably, 8 U.S.C. § 1252(f)(1) further supports this approach. Section 1252(f)(1) bars  
6 federal courts from providing injunctive relief with respect to specified statutory provisions  
7 (including §§ 1225 and 1226) “other than with respect to the application of such provisions to an  
8 individual [noncitizen] against whom proceedings under such part have been initiated.” *See also*  
9 *Garland v. Aleman Gonzalez*, 596 U.S. 543, 551 (2022) (explaining classwide injunctions  
10 violated § 1252(f)(1) but acknowledging that § 1252(f)(1) contains an “exception for  
11 individualized relief”). While § 1252(f)(1) is directed at classwide injunctive relief, it does not  
12 stand in the way of classwide declaratory relief. *See Nielsen v. Preap*, 586 U.S. 392, 402–03  
13 (2019). And, because 28 U.S.C. § 2202 permits “a declaratory judgment [to] serve as the basis  
14 for issuance of a later injunction,” *Alli v. Decker*, 650 F.3d 1007, 1015 (3d Cir. 2011) (quoting  
15 *Steffel v. Thompson*, 415 U.S. 452, 461 n.11 (1974)), courts have understood the interaction  
16 between § 1252(f)(1) and Rule 23(b)(2) as permitting “class members [to] pursue individual  
17 injunctions after issuance of a classwide declaration,” *id.*; *see also id.* at 1020 n.2 (Fuentes, J.,  
18 dissenting) (“[E]very single member of the class can, and will, immediately seek an injunction  
19 grounded on the authority of the declaratory judgment.”); *J.E.F.M. v. Holder*, 107 F. Supp. 3d  
20 1119, 1143–44 (W.D. Wash. 2015), *aff’d in part, rev’d in part on other grounds sub nom.*  
21 *J.E.F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016) (“[A]fter securing a declaratory judgment, each  
22 individual class member would have to separately invoke it as a ground for individual injunctive  
23 relief, which ‘is expressly permitted under § 1252(f)(1).’” (quoting *Alli*, 650 F.3d at 1015));

1 *Immigrant Defs. L. Ctr. v. Mayorkas*, No. CV 20-9893 JGB (SHKx), 2023 WL 3149243, at \*14  
2 (C.D. Cal. Mar. 15, 2023) (“While it is absurd to imagine that, in lieu of *Brown v. Board of*  
3 *Education*, 349 U.S. 294 (1955) and its progeny, lower courts might have been ‘restrained to  
4 issue injunctive relief, schoolchild-by-schoolchild,’ that may be the practical effect of . . .  
5 *Aleman Gonzalez* . . . .” (citation omitted)); *Reid v. Donelan*, No. CV 13-30125-PBS, 2018 WL  
6 5269992, at \*8 (D. Mass. Oct. 23, 2018) (“[E]ach class member could use a declaratory  
7 judgment announcing a right to an individualized hearing after prolonged detention to secure an  
8 individual injunction requiring one.”).

9 **B. Mr. Juarez, Mr. Nunez, Ms. Contreras-Baca, and Mr. Mateo will suffer**  
10 **irreparable harm absent an injunction.**

11 Irreparable harm is plainly established here. The alternative bond findings in their cases  
12 demonstrate that but for the Tacoma Immigration Court’s policy, Mr. Juarez, Mr. Nunez, Ms.  
13 Contreras-Baca, and Mr. Mateo would be free, living again with their loved ones and  
14 communities. Dkt. 35 ¶ 14; Nunez Decl. ¶ 9; Contreras-Baca Decl. ¶ 16; Mateo Decl. ¶ 12. For  
15 them, the harm is not merely the *potential* to be released following a custody hearing; rather,  
16 they are now “needlessly detained,” *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013),  
17 and they “suffer[] . . . irreparable harm every day that [they] remain[] in custody” due to the  
18 Tacoma Immigration Court’s unlawful policy, Dkt. 29 at 33 (quoting *Cortez v. Sessions*, 318 F.  
19 Supp. 3d 1134, 1139 (N.D. Cal. 2018)).

20 They are also unable to be with or support their families. Dkt. 35 ¶¶ 4–5, 20; Nunez Decl.  
21 ¶¶ 4–5, 14; Contreras-Baca Decl. ¶¶ 4–5, 16–17; Mateo Decl. ¶¶ 4, 14. Such “separation from  
22 family members” is an important irreparable harm factor. *Leiva-Perez v. Holder*, 640 F.3d 962,  
23 969–70 (9th Cir. 2011) (per curiam) (citation omitted); *see also, e.g., Washington v. Trump*, 847  
24 F.3d 1151, 1169 (9th Cir. 2017) (per curiam) (listing “separated families” as a “substantial

1 injur[y] and even irreparable harm[ ]”); Dkt. 29 at 18–19 (recognizing similar forms of harm are  
2 irreparable in context of exhaustion analysis).

3         Additionally, NWIPC’s appalling conditions have placed a great emotional and mental  
4 toll on class members, who attest to undercooked meals or other dietary issues, overcrowding,  
5 understaffing, lack of medical care, and extreme limitations on their ability to be outside. Dkt. 35  
6 ¶¶ 15–19; Nunez Decl. ¶ 14; *see also* Dkt. 9 ¶¶ 10, 13. Such “emotional stress, depression and  
7 reduced sense of well-being” further support a finding of irreparable harm. *Chalk v. U.S. Dist.*  
8 *Ct. Cent. Dist. of Cal.*, 840 F.2d 701, 709 (9th Cir. 1988); *see also Moreno Galvez v. Cuccinelli*,  
9 492 F. Supp. 3d 1169, 1181–82 (W.D. Wash. 2020) (explaining that “stress, devastation, fear,  
10 and depression” arising from unlawful immigration policy are the type of “harms [that] will not  
11 be remedied by an award of damages”), *aff’d in part, vacated in part on other grounds*,  
12 *remanded sub nom. Moreno Galvez v. Jaddou*, 52 F.4th 821 (9th Cir. 2022)

### 13           **C. The balance of hardships and public interest favor an injunction.**

14         Finally, as this Court previously recognized, the last two injunction factors favor the class  
15 members. On the one hand, “[t]he harm to the government here is minimal.” Dkt. 29 at 34. After  
16 all, “the undisputed record [shows] that the practice [class members] seek[] to enjoin is an outlier  
17 to the government’s longstanding interpretation and enforcement of its immigration laws.” *Id.*  
18 Defendants, moreover, “cannot suffer harm from an injunction that merely ends an unlawful  
19 practice.” *Rodriguez*, 715 F.3d at 1145. Similarly, “it would not be equitable or in the public’s  
20 interest to allow the [government] . . . to violate the requirements of federal law, especially when  
21 there are no adequate remedies available.” *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029  
22 (9th Cir. 2013) (omission in original) (citation omitted). Of course, by contrast, the harms that  
23 the class members face are far more significant, and include separation from family, community,  
24 employment, and much more. Dkt. 35 ¶¶ 4–5, 15–20; Nunez Decl. ¶¶ 4, 14; Contreras-Baca

1 Decl. ¶¶ 4–5, 17; Mateo Decl. ¶¶ 14–17. These facts tilt these final two factors strongly in their  
2 favor. Dkt. 29 at 34–35; *see also Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017)  
3 (finding “the balance of hardships tips decidedly in plaintiffs’ favor” when “[f]aced with such a  
4 conflict between financial concerns and preventable human suffering” (citation omitted)).

### 5 **III. Prudential Exhaustion Is Not Required.**

6 Prudential exhaustion is not required here. The Court has already found it is not required  
7 in the context of the preliminary injunction decision, *see* Dkt. 29 at 13–21, and has since certified  
8 a class action challenge to the bond denial policy, *see* Dkt. 30. As the Court previously noted,  
9 requiring exhaustion may be appropriate where agency expertise is required, relaxation of the  
10 exhaustion requirement might encourage others to also bypass that scheme, or where  
11 administrative review might resolve the issue. Dkt. 29 at 13. Even then, factors such as  
12 irreparable harm and agency delay can excuse exhaustion. *Id.* These considerations warrant  
13 excusing exhaustion here.

14 First, there is no need for agency expertise. “The Framers . . . envisioned that the final  
15 ‘interpretation of the laws’ would be ‘the proper and peculiar province of the courts.’” *Loper*  
16 *Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (citation omitted). Thus, “[w]hen the  
17 meaning of a statute [is] at issue, the judicial role [is] to ‘interpret the act of Congress, in order to  
18 ascertain the rights of the parties.’” *Id.* (citation omitted); *see also* Dkt. 29 at 14 (similar).

19 Second, addressing this motion on the merits will not encourage other persons to bypass  
20 the administrative appeal scheme in making other claims. This is because, once this Court  
21 decides the question on summary judgment, “the issue here will not arise again (at least in this  
22 District).” *Rivera v. Holder*, 307 F.R.D. 539, 551 (W.D. Wash. 2015); *see also* Dkt. 29 at 15  
23 (“[R]esolution of [the] legal question . . . will provide concrete guidance for future administrative  
24

1 proceedings.”).

2 Finally, while the BIA might eventually overturn the Tacoma Immigration Court’s bond  
3 denial policy, to date, it has refused to issue a published decision clarifying the law and  
4 eliminating the ongoing, unlawful denial of bond. Dkt. 29 at 16; *see also* Dkt 4-4. In this  
5 context—where the BIA has failed to correct the harm that class members suffer—this factor  
6 does not support requiring exhaustion. *See* Dkt. 29 at 16.

7 Even if prudential exhaustion were warranted, exceptions regarding irreparable injury  
8 and agency delay apply and merit its waiver. First, in prior briefing, Defendants did not “dispute  
9 [the class’s] evidence of the protracted nature of BIA appeals.” Dkt. 29 at 17. Indeed, “EOIR  
10 data show[s] an average processing time of 204 days for bond appeals in 2024.” *Id.*; *see also*  
11 Dkt. 7 ¶ 5 (EOIR data showing average appeal times). Such times are inconsistent with the  
12 requirements of due process, as Plaintiffs previously explained. *See* Dkt. 3 at 23–25.

13 This lengthy process, and detention itself, inflicts irreparable harm on class members.  
14 Class members are either denied the opportunity to seek bond, or in some cases—like those of  
15 the class members seeking injunctive relief—are being detained based solely on Defendants’  
16 bond denial policy. Such ongoing, unlawful detention constitutes irreparable harm. Dkt. 29 at  
17 17–18 (rejecting Defendants’ argument that “detention alone” cannot result in irreparable harm);  
18 *see also id.* at 18–19 (citing cases recognizing irreparable harm in situations akin to this one).

19 Moreover, class members also face other harms, including separation from their families,  
20 and the indignities and prison-like conditions of NWIPC. Dkt. 35 ¶¶ 4–5, 20; Nunez Decl. ¶¶ 4,  
21 14; Contreras-Baca Decl. ¶¶ 4–5, 17; Mateo Decl. ¶¶ 4, 14–17. This separation can be extremely  
22 traumatic for both those detained and for their U.S. citizen family members, like in the case of  
23 Ms. Contreras-Baca, who is separated from her three-year-old and her seven-year-old with  
24

1 cancer. Contreras-Baca Decl. ¶¶ 17. Such harms plainly support a finding of irreparable harm  
2 and waiving the exhaustion requirement. *See, e.g.*, Dkt 29 at 18–19; Dkt. 3 at 15–17, 21–22.

3 **CONCLUSION**

4 Plaintiffs accordingly and respectfully request that the Court declare Defendants’ bond  
5 denial policy unlawful and issue individual injunctions on behalf of the identified class members  
6 who are currently detained solely based on that unlawful policy.

7 Respectfully submitted this 2nd day of June, 2025.

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16 **WORD COUNT CERTIFICATION**

17 I certify that this memorandum contains 8,399 words, in compliance with the Local Civil  
18 Rules.

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