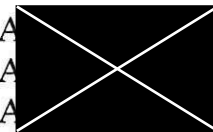


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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

11 Jesus Domingo-Ros,) CASE NO.: 25-cv-1208-DMS-DEB
12 Yoni Jacinto Garcia, and)
13 Edwin Juarez-Cobon,)
14)
15 Petitioners-Plaintiffs,)
16)
17 v.) PETITIONERS' REPLY TO
18) RESPONDENTS' OPPOSITION
19) TO HABEAS PETITION AND
20 Gregory J. Archambeault,) APPLICATION FOR TEMPORARY
21 San Diego Field Office) RESTRAINING ORDER
22 Director, Immigration and)
23 Customs Enforcement,)
24 Enforcement and Removal) Petitioners' DHS Nos. A
25 Operations, and) A
26)
27 Jeremy Casey, Warden,)
28 Imperial Regional Detention) Date: May 16, 2025
Facility, Calexico, California) Time: 1:30 PM
Judge: Hon. Dana M. Sabraw
Respondents-Defendants.)



1 Respondents' opposition to Petitioners' claims is flawed because it is based
2 on the mistaken premise that this is a border case. This is a case regarding the
3 actions of Border Patrol agents within the interior of the United States. Petitioners
4 do not question the authority of the Border Patrol to operate within the interior of
5 the United States, but constitutional protections apply within the interior of the
6 United States and the Border Patrol cannot operate within the interior of the United
7 States in the same manner as it does at the border.
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10 The expedited removal statute, 8 U.S.C. § 1225(b)(1), was added to the
11 Immigration & Nationality Act in 1996 by the Illegal Immigration Reform and
12 Immigrant Responsibility Act (IIRIRA). Over the past 28 years the expedited
13 removal process has been applied almost exclusive to noncitizens apprehended at
14 the border or to noncitizens apprehended within 100 air miles of a land border who
15 were continuously present in the United States for less than 14 days. *See* 90 FR
16 8139-01 (Jan. 24, 2025). In January 2025, the Homeland Security Secretary again
17 expanded the application of expedited removal procedures to certain noncitizens
18 arrested anywhere in the United States who have been present for less than two
19 years. *Id.* The legality of the expansion of the expedited removal process to the
20 interior of the United States is being actively litigated before the U.S. District Court
21 for the District of Columbia. *See Make the Road New York v. Noem, et al.*, No.
22 1:25-cv-190-JMC (DDC) (complaint filed Jan. 22, 2025).
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1 The authority on which Respondents rely in their opposition to Petitioners’
2 TRO Application is based *entirely* on decisions considering the rights of
3 noncitizens in the expedited removal process at or near the border. It is well
4 established that due process rights of noncitizens apprehended at or near the border
5 “are coextensive with the statutory rights Congress provides.” *Guerrier v. Garland*,
6 18 F.4th 304, 310 (9th Cir. 2021). “[A]n alien in [Thuraissigiam]’s position
7 [apprehended twenty-five yards from the border] has only those rights regarding
8 admission that Congress has provided by statute. ... Because the Due Process
9 Clause provides nothing more, it does not require review of that determination or
10 how it was made. As applied here, therefore, [the] § 1252(e)(2) [limitations on
11 judicial review of expedited removal orders] do[] not violate due process.” *DHS v.*
12 *Thuraissigiam*, 591 U.S. 103, 140 (2020).

17 However, unlike the noncitizens in *Thuraissigiam* and *Guerrier* on which
18 Respondents rely, individuals like the three Petitioners who are within the United
19 States have constitutional rights. “[T]he Due Process Clause applies to all
20 ‘persons’ within the United States, including aliens, whether their presence here is
21 lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693
22 (2001). The Border Patrol’s I-213 forms state that Petitioners were arrested in Los
23 Angeles County between 134 and 191 miles northwest of the Calexico, California
24 Port of Entry. See ECF No. 2-2 at pp. 6, 11, 17.

1 While Respondents' acknowledge that Petitioners are asserting habeas
2 jurisdiction under § 1252(e)(2), they argue no jurisdiction exists under this
3 provision and rely largely on *Mendoza-Linares v. Garland* and *Guerrier v.*
4 *Garland*. Both cases involved noncitizens arrested at the border. *Mendoza-Linares*
5 "jumped the border fence near Tecate, California and was immediately
6 apprehended by U.S. authorities. *Mendoza-Linares v. Garland*, 51 F.4th 1146,
7 1148 (9th Cir. 2022). *Guerrier* "entered the United States unlawfully ... and was
8 apprehended by immigration authorities" "shortly thereafter." *Guerrier*, 18 F.4th at
9 307, n. 1.

13 Both cases however, explicitly recognize the habeas jurisdiction under §
14 1252(e)(2) that Petitioners invoke and otherwise support Petitioners' jurisdictional
15 arguments. The Ninth Circuit rejected *Mendoza-Linares*' § 1252(e)(2) argument
16 because he conceded he was an alien and because his challenge to whether he had
17 been ordered removed under the expedited removal statute was based primarily on
18 a claim that that his credible fear of persecution was not evaluated under the correct
19 standards. *Mendoza-Linares*, 51 F.4th at 1158. The Ninth Circuit concluded that
20 the claim regarding the credible fear process was barred by § 1252(e)(5) and that
21 given the concession of alienage, there was no jurisdictional basis for habeas under
22 § 1252(e)(2). Unlike *Mendoza-Linares*, Petitioners have not conceded alienage and
23 are not challenging the denial of any relief from removability.

1 *Guerrier*, in addition to recognizing habeas jurisdiction under § 1252(e)(2),
2 but finding it inapplicable to *Guerrier*, discussed the “colorable constitutional
3 claim” exception to bars on judicial review previously considered in *Pena v. Lynch*,
4 815 F.3d 452, 456 (9th Cir. 2016). *Guerrier* decided that the “colorable
5 constitutional claim” exception has been abrogated by the Supreme Court’s 2020
6 *Thuraissigiam* decision. *Guerrier*, 18 F.4th at 311. But the “colorable
7 constitutional claim” exception considered in *Pena* and *Guerrier* arose in the
8 context of the rights of noncitizens apprehended at the international border and the
9 corresponding lack of constitutional protections.
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11 Should this Court decide that § 1252(e)(2) is not a jurisdictional basis for
12 Petitioners’ claims, the “colorable constitutional claim” exception provides an
13 independent basis for the Court’s jurisdiction since Petitioners are entitled to
14 constitutional protections, including the Fourth Amendment and the Fifth
15 Amendment’s Due Process Clause. “Both the Supreme Court and [the Ninth]
16 Circuit have suggested that a litigant may be unconstitutionally denied a forum
17 when there is absolutely no avenue for judicial review of a colorable claim of
18 constitutional deprivation. *See Webster v. Doe*, 486 U.S. 592, 603 (1988)
19 (explaining that a “serious constitutional question ... would arise if a federal statute
20 were construed to deny any judicial forum for a colorable constitutional claim.”)
21 (emphasis added) (citation and internal quotation marks omitted).” *Pena v. Lynch*,
22 815 F.3d at 456, abrogated by *Guerrier v. Garland*, 18 F.4th 304, 310 (9th Cir.
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1 2021). Such constitutional claims can properly be asserted by a habeas petition
2 filed pursuant to 28 U.S.C. § 2241.
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4 In response to Petitioners' challenge to how the alienage determination was
5 made during the expedited removal process, Respondents argue that such questions
6 lie outside of the scope of § 1252(e)(2) and § 1252(a)(2)(A). ECF No. 5 at p. 6.
7 Respondents do not however respond to Petitioners' argument it is the government
8 that bears the burden of establishing alienage when an individual is arrested within
9 the United States (*see Woodby v. INS*, 385 U.S. 276, 285-86 (1966); ECF No. 2-1 at
10 pp. 3-4) and that any admissions made by the Petitioners or other evidence seized
11 from the Petitioners must be suppressed as a result of the Border Patrol's
12 unconstitutional detentive stops and subsequent arrests of the Petitioners. *See* ECF
13 No. 2-1 at pp. 4-5. The fact that there is a statutory basis for the implementation
14 under certain circumstances of the expedited removal process within the interior of
15 the United States, does not negate clearly recognized constitutional protections
16 which apply to all persons within the United States. These constitutional
17 protections include the right to be free from unreasonable seizures and the right to
18 due process in connection with the government's efforts to remove a person from
19 the United States.
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25 For the reasons stated, pending adjudication of Petitioners' claims for relief,
26 Petitioners respectfully request that the Court issue a Temporary Restraining Order
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1 enjoining Respondents from removing Petitioners from the United States and from
2 relocating Petitioners outside of the District.

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4 A Temporary Restraining Order should be issued for these reasons, but such
5 an Order preserving the *status quo* would also enable the parties to more fully and
6 adequately brief the jurisdictional and substantive issues before the Court.
7

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9 DATED: May 15, 2025

Respectfully submitted,

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11 By: s/ Niels W. Frenzen

12 Niels W. Frenzen
13 USC Gould School of Law
14 Immigration Clinic

15 Attorney for Petitioners
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