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10 **UNITED STATES DISTRICT COURT FOR THE
11 CENTRAL DISTRICT OF CALIFORNIA**

12 Mauricio LEON,
13 Plaintiff,
14 v.
15 Kristi NOEM, Secretary, Department of
16 Homeland Security; Todd LYONS, in his
17 official capacity as Acting Director of U.S.
18 Immigration and Customs Enforcement; Pam
19 BONDI, Attorney General of the United
20 States; Ernesto SANTACRUZ Jr., Acting
21 Director, Los Angeles ICE Field Office; and
22 Fereti SEMAIA, Warden, Adelanto ICE
23 Processing Center.
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No. 5:25-cv-02582

PETITIONER'S REPLY TO *EX PARTE* APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND ORDER TO SHOW
CAUSE RE: PRELIMINARY
INJUNCTION

Immigration Case

22 Respondents.
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2 I. INTRODUCTION

3 Petitioner replies to Respondents' October 1, 2025 Opposition to his
4 Application for Temporary Restraining Order. Dkt # 5.

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6 II. ARGUMENT

7 A. THIS COURT SHOULD ORDER PETITIONER'S RELEASE

8 First, Respondents do not dispute that this Court has the independent
9 authority to order Petitioner's release, independent of the provisions of 8 U.S.C. §
10 1226, which govern the Attorney General's ability to release noncitizens from
11 custody. Respondents argue that Petitioner is being lawfully held in immigration
12 custody based on a pending removal proceeding. Dkt # 5 at 4. Apparently
13 Petitioner's removal case was originally instituted on October 19, 2017, when he
14 was issued a Notice to Appear based on having entered without inspection. Tolchin
15 Supp. Dec. Exh. E. It was then administratively closed on September 2, 2021 at the
16 joint request of the parties. Tolchin Supp Dec. Exh. F. The U Visa was filed on
17 April 22, 2020 and the Bonafide determination was issued on March 1, 2024.
18 Tolchin Supp. Dec. Exh. G.

19 As Respondents acknowledge, Petitioner is charged with having entered
20 without inspection. Under a recent Board of Immigration Appeals decision, he is no
21 longer eligible for a bond redetermination hearing, as the Board now takes the
22 position that noncitizens who entered without inspection are "seeking admission"
23 and subject to mandatory detention under 8 U.S.C. § 1225(b)(2). *Matter of YAJURE*
24 *HURTADO*, 29 I&N Dec. 216 (BIA 2025). This issue has been the subject of ongoing
25 litigation. *See Vasquez Garcia v. Noem*, 3:25-cv-02180-DMS-MMP (SD. Cal. Sept.
26 3, 2025); *Benitez v. Noem*, No. 5:25-cv-02190-RGK-AS) C.D. Cal. Aug. 26, 2025);
27 *Arrazola Gonzalez v. Noem*, 5:25-cv-01789-ODW-DFM (C.D. Cal. Aug. 15, 2025);
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1 *Maldonado Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28,
2 *Carmona-Lorenzo v. Trump*, No. 4:25CV3172, 2025 WL 2531521, at *2 (D.
3 *Neb. Sept. 3, 2025); Perez v. Berg*, No. 8:25CV494, 2025 WL 2531566, at *2 (D.
4 *Neb. Sept. 3, 2025); Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 WL
5 2496379, at *8 (E.D. Mich. Aug. 29, 2025); *Jose J.O.E. v. Bondi*, No. 25-CV-3051
6 (ECT/DJF), 2025 WL 2466670, at *6 (D. Minn. Aug. 27, 2025); *Kostak v. Trump*,
7 No. CV 3:25-1093, 2025 WL 2472136, at *3 (W.D. La. Aug. 27, 2025); *Rodriguez*
8 *v. Bostock*, 2025 WL 1193850 (W.D. Wa. Apr. 24, 2025). This is even more the
9 reason to order Petitioner's release from custody, just as Judge Pym did in *Vasquez*
10 *Perdomo v. Noem*, 2:25-cv-05605-MEMF-SP (CD. Cal. Jul. 30, 2025) when the
11 same issue of mandatory custody under § 1225(b)(2) arose. Tolchin Dec. Exh. D.

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13 B. PETITIONER IS LIKELY TO PREVAIL IN HIS CLAIMS

14 1. Petitioner is Likely to Prevail in His Fourth Amendment Claim

15 Next, Respondents argue that there is no merit to Petitioner's claim that he
16 was unlawfully detained, in light of the Supreme Court's stay of the Temporary
17 Restraining Order in *Noem v. Vasquez Perdomo*, 606 U.S. (2025). Dkt # 5 at 6.
18 However, as Petitioner explained, that stay does not affect the Fourth Amendment
19 arguments because 1) the majority decision issued a stay of the order without any
20 reasoning; 2) the dissent and concurrence identify multiple reasons that could have
21 been the basis for the emergency stay; and 3) the Temporary Restraining Order
22 applied only to *Terry* stops and not to arrests, which require probable cause as
23 opposed to reasonable suspicion. The recent September 23, 2025 decision from
24 Judge Fitzgerald in *Cruz Uitz. v. Noem*, No. 25-06420-MWF (AJRx) (C.D. Cal.
25 2025) (Tolchin Supp. Exh. I), makes just that finding, concluding that the Supreme
26 Court's stay did not affect the Fourth Amendment claims in a similar case.

27 There, the Court held:

28 Of course, this Court is aware that the Supreme Court has since stayed the

1 temporary restraining order granted in *Vasquez Perdomo* pending appeal. *See*
2 *Vasquez Perdomo*, 2025 WL 2585637, at *1. But here, Defendants **have not**
3 **even attempted to justify the detention**, other than the meaningless legal
4 conclusion offered by their declarant of some mythical “consensual
5 encounter” without a scintilla of admissible evidence in support. Defendants
6 instead relied on their mistaken argument that this Court lacks jurisdiction.
7 Nothing by implication in the Supreme Court’s ruling or stated in Justice
8 Kavanaugh’s concurrence can therefore justify the apparently nonconsensual
9 and unjustified stop here.

10 Tolchin Supp. Exh. I at 14. Further, the Court noted that in that case, which raises
11 the same Fourth Amendment claims, the petitioner was likely to prevail in his
12 claims before the Court. *Id.*

13 **C. PETITIONER HAS BEEN GRANTED DEFERRED ACTION**

14 Next, Respondents argue that there is not evidence that Petitioner was
15 granted deferred action. Dkt # 5 at 7. The work permit that Petitioner submitted
16 contains the code for deferred action, which should be evidence enough. 8 C.F.R. §
17 274a.12(c)(14); Tolchin Dec. Exh. A. That is the code for “deferred action.”¹
18 Petitioner now also includes the U Visa bona fide determination, dated March 1,
19 2024. Tolchin Supp Dec. Exh. G. It is clear that he has deferred action based on the
20 U visa bona fide determination.

21 **D. THE REHABILITATION ACT IS A BASIS FOR HABEAS
22 RELIEF**

23 Last, Respondents argue that the Rehabilitation Act is not a basis for habeas
24 relief. Dkt # 5 at 8. Respondents cite no authority for this assertion. In fact, in
25 *Franco-Gonzales v. Holder*, 767 F. Supp. 2d 1034, 1037 (C.D. Cal. 2010), a case
26 issuing a nationwide injunction for individuals lacking mental competency, the
27 court noted that the initial habeas petition alleged this same Rehabilitation Act
28 claim, and as the result of the filing, the petitioner was released from immigration

¹ Petitioner’s initial application contained the incorrect citation of 8 C.F.R. § 2741.12(c)(14). The correct citation is 8 C.F.R. § 274a.12(c)(14).

1 custody. *See also Jimenez v. Wolf*, No. 19-CV-07996-NC, 2020 WL 510347, at *1
2 (N.D. Cal. Jan. 30, 2020).

3

4 **II. CONCLUSION**

5 Petitioner respectfully requests that this Court grant his request for a
6 temporary restraining order and order that he be immediately released from ICE
7 custody.

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9 Dated: October 2, 2025

Respectfully Submitted,

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3 **WORD COUNT CERTIFICATION**
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6 The undersigned, counsel of record for Plaintiff certifies that this Memo contains
7 968 words, which complies with the word limit of L.R. 11-6.1.
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9 s/ Stacy Tolchin
10 Stacy Tolchin
11 Counsel for Petitioner
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