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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Juan Daniel Luna-Gonzalez, **Petitioner,** **v.** **Kristi Noem**, Secretary of the United States Department of Homeland Security, in her official capacity; **Todd Lyons**, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity; **John Cantu**, Field Office Director for ICE's Enforcement and Removal Operation's ("ERO") Phoenix, Arizona, in his official capacity; **Sirce Owen**, Acting Director of EOIR, in her official capacity; **Respondents.**	**Case No.** **Agency No.** **PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION** **POINTS AND AUTHORITIES IN SUPPORT THEREOF**

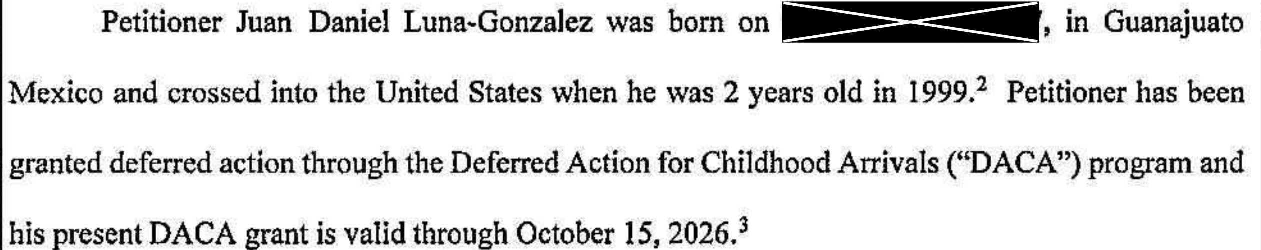
INTRODUCTION

Petitioner Juan Daniel Luna-Gonzalez is being unlawfully detained by Respondents at the Eloy Federal Detention Center in Arizona. As more fully set forth below, Petitioner is a 27-year-old man who was brough to the United States from Mexico in 1999 as an infant. He has been granted deferred action through the Deferred Action for Childhood Arrivals ("DACA") program and his present DACA permit is valid through October 15, 2026.[1] As a DACA recipient, Petitioner is considered "lawfully present" in the United States under 8 C.F.R. § 236.21(c)(3) and is entitled to "temporary forbearance from removal" under 8 C.F.R. § 236.21(c)(1).

[1] *See,* Exhibit 1, USCIS Form I-797C, DACA Approval Notice.

Filed herewith as Exhibits "A" and "B" are the declarations of Petitioner and his counsel as required by Fed.R.Civ.Pro. 65(b)(1)(A) and (B), to establish specific facts necessary to permit entry of the Temporary Restraining Order on an *ex parte* basis.

STATEMENT OF FACTS



Petitioner Juan Daniel Luna-Gonzalez was born on [redacted], in Guanajuato Mexico and crossed into the United States when he was 2 years old in 1999.[2] Petitioner has been granted deferred action through the Deferred Action for Childhood Arrivals ("DACA") program and his present DACA grant is valid through October 15, 2026.[3]

Even though DACA recipients are protected from removal for the duration of their DACA approval period, Mr. Luna-Gonzalez was arrested on June 20, 2025, after a routine traffic stop where he was determined to be "an alien present in the United States having been admitted, but without the proper documents to allow him to be in or remain in the United States legally." *See,* DHS Record of Deportable/Inadmissible Alien, page 6 of DHS Bond Hearing Exhibits.[4] On July 2, 2025, the DHS issued a Notice to Appear charging Mr. Luna-Gonzalez with inadmissibility pursuant to INA § 212(a)(6)(A)(1) [8 U.S.C. § 1182(a)(6)(A)(i)].[5]

Petitioner has been continuously detained since June 20, 2025 at the Eloy Federal Detention Center,[6] where overcrowding, safety and medical care are major concerns.[7] One prisoner recently

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[2] *See,* DHS Bond Hearing Exhibits, filed herewith as Exhibit 2.

[3] *See,* Exhibit 1, USCIS Form I-797C, DACA Approval Notice.

[4] *See,* DHS Bond Hearing Exhibits, filed herewith as Exhibit 2.

[5] *See,* Notice to Appear, filed herewith as Exhibit 7.

[6] *See,* 10/6/2025 ICE Online Detainee Locator System report for Petitioner, available at https://locator.ice.gov/odls/#/search, filed herewith as Exhibit 3.

[7] *See, Safety, medical care, overcrowding top worries at Eloy Detention Center*, by Raphael Romero Ruiz, Arizona Republic 7/28/2025 last visited 10/7/2025

died there of tuberculosis.[8] A September 2025 report from the DHS Office of Inspector General, following an unannounced inspection, found that Eloy did not adequately maintain bathing facilities and failed to provide detainees with adequate access to legal materials.[9]

An October 2024 Report co-authored by the Florence Immigrant & Refugee Rights Project states that Eloy Detention Center has "gained notoriety as the "'deadliest immigration detention center in the U.S.,' with at least 16 reported deaths, including five suicides",[10] citing to Monsy Alvarado, Ashley Balcerzak. "*Deaths in custody. Sexual violence. Hunger strikes. What we uncovered inside ICE facilities across the US.*" USA Today. December 19, 2020.[11]

Mr. Luna-Gonzalez was denied release after a bond hearing held on July 22, 2025, [12] because the Immigration Judge (IJ) agreed with DHS's 7/8/2025 policy changes,[13] which now define all noncitizens present in the United States without admission or parole as "arriving aliens" under 8 U.S.C. § 1225(a), subject to mandatory detention under § 1225(b).

On August 28, 2025, the IJ entered a written memorandum decision, which stated that:

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https://www.azcentral.com/story/news/politics/immigration/2025/07/28/migrants-at-eloy-center-worry-over-safety-medical-care-overcrowding/85252920007/?gnt-cfr=1&gca-cat=p&gca-uir=true&gca-epti=z114841p000150c000150e000300v114841b0053xxd005365&gca-ft=123&gca-ds=sophi

[8] *See,* ICE Detainee Death Report 1/29/2025, filed herewith as Exhibit 4.

[9] *See,* 9/25/2025 OIG-25-47 FINAL REPORT Results of an Unannounced Inspection of ICE's Eloy Federal Contract Facility in Eloy, Arizona, filed herewith as Exhibit 5.

[10] *See, Anthology of Abuse – A Legacy of Failed Oversight and Death at the Eloy Detention Center*, by Florence Immigrant & Refugee Rights Project, *et al.*, published 10/2024, filed herewith as Exhibit 6.

[11] *See,* Monsy Alvarado, Ashley Balcerzak. "*Deaths in custody. Sexual violence. Hunger strikes. What we uncovered inside ICE facilities across the US.*" USA Today. December 19, 2020. Available at:https://www.usatoday.com/in-depth/news/nation/2019/12/19/ice-asylum-under-trump-exclusive-look-us-immigration-detention/4381404002/ Last accessed: 10/7/2025

[12] *See,* 8/28/2025 Immigration Judge Order Denying Bond, filed herewith as Exhibit 8.

[13] *See,* ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission (last visited September 8, 2025), filed herewith as Exhibit 9.

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> In the instant case, the Department argued that the Court lacks jurisdiction to review Respondent's bond redetermination request because Respondent is an "applicant for admission" under INA §235(a)(1) despite having been in the United States for more than ten years since he allegedly entered without inspection. To that end, the Court notes that the INA describes an "applicant for admission" as "an alien present in the United States who has not been admitted" or an alien "who arrives in the United States," whether at or outside a port of entry. INA § 235(a)(1); see also *Matter of Lemus*, 25I&N Dec. 734, 743 (BIA 2012). Aliens, like Respondent, arriving in and seeking admission to the United States are subject to detention until removal proceedings have concluded. INA § 235(b)(2)(A); *Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018). For these reasons, the Court finds that it lacks jurisdiction to review Respondent's request for bond redetermination under this legal theory.

Exhibit 1, Order Denying Bond.[14]

An appeal to BIA would be futile in light of its recent holding in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).[15] *Hurtado* held any noncitizen who is present in the United States without having been inspected and admitted is considered an "applicant for admission" under §1225(a) and is therefore subject to mandatory detention under § 1225(b)(2) for the duration of their removal proceedings.

Petitioner's detention runs afoul of the government's own regulations governing DACA and therefore violate the *Accardi* Doctrine. It also violates his procedural and substantive due process rights. As such, Petitioner respectfully requests his immediate release pursuant to an *ex parte* temporary restraining order.

ARGUMENT

II. LEGAL STANDARD

The same legal standards govern requests for a preliminary injunction and a temporary restraining order. *Washington v. Trump*, 847 F.3d 1151, 1159 n.3 (9th Cir. 2017), citing to *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). The movant must establish:

1. A likelihood of success on the merits;
2. A likelihood of irreparable harm absent the injunction;

[14] *See*, 8/28/2025 Immigration Judge Order Denying Bond, filed herewith as Exhibit 8.
[15] *See*, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed herewith as Exhibit 21.

3. That the balance of equities favors the plaintiff; and
4. That the injunction is in the public interest.

Babaria v. Blinken, 87 F. 4th 963, 976 (9th Cir. 2023).

The Court considers the elements on a "sliding scale" pursuant to the Ninth Circuit's "serious question" test: "[a] preliminary injunction is appropriate when a plaintiff demonstrates that serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Wild Rockies v. Cottrell*, 632 F. 3d 1127, 1134-35 (9th Cir. 2011) (*citing Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008) (*en banc*)) (internal quotations omitted). Likelihood of success on the merits is the most important factor. Where a movant fails to meet this requirement, the "court need not consider the other factors in the absence of serious questions going to the merits." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (internal citations and quotations omitted).

A. Petitioner Is Likely To Succeed On The Merits Of His Argument That He Is Wrongfully Detained Because He Is A Current DACA Recipient.

The U.S. Department of Homeland Security ("DHS") created DACA in 2012 to protect young people brought to the United States as children who passed rigorous background checks and who were deemed to pose no threat to public safety. DHS has repeatedly confirmed that recipients are "considered lawfully present during the period deferred action is in effect." *Texas v. United States*, 809 F.3d 134, 166 (5th Cir. 2015), aff'd by an equally divided court, 136 S. Ct. 2271 (2016). The program has since been codified in regulation. 8 C.F.R. § 236.21 *et seq*.

Under DACA, "'to prevent [these] low priority individuals from being removed from the United States,' ICE 'exercise[s] prosecutorial discretion[ ] on an individual basis ... by deferring action for a period of two years, subject to renewal.'" *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1, 10 (2020). DACA has been recognized as both a "benefits rule" and a "forbearance policy." *Texas v. United States*, 126 F.4th 392, 419–20 (5th Cir. 2025).

In 2022, DHS promulgated a final rule codifying DACA's structure, adjudicative standards, and termination procedure. Deferred Action for Childhood Arrivals, 87 Fed. Reg. 53,152 (Aug. 30, 2022) (codified at 8 C.F.R. § 236.21 et seq.). The rule defines deferred action as "a form of enforcement discretion not to pursue the removal of certain aliens," or a "temporary forbearance from removal." 8 C.F.R. § 236.21(c)(1).

Per DHS's regulations, DACA recipients are also treated by DHS as "lawfully present" for the period deferred action is in effect, and are thereby entitled to certain associated benefits, such as a work authorization if they demonstrate economic need. 8 C.F.R. § 236.21(c); 87 Fed. Reg. at 53,177–80; see also Texas v. United States, 809 F.3d 134, 166 (5th Cir. 2015), aff'd by an equally divided Court, 579 U.S. 547 (2016) ("Deferred action ... is much more than nonenforcement: It ... affirmatively confer[s] 'lawful presence' and associated benefits ....").

A grant of DACA is valid for two years and is then indefinitely renewable. 8 C.F.R. § 236.23(a)(4). Consequently, DACA recipients must regularly apply to renew their DACA grant, going through the same rigorous application process and security and background checks each time. Notably, however, U.S. Citizenship and Immigration Services ("USCIS") cannot approve these applications if a person is in federal immigration detention. 8 C.F.R. § 236.23(a)(2).

The regulations also lay out specific procedures by which a grant of DACA may be terminated. 8 C.F.R. § 236.23(d). First, DHS sub-agency USCIS has exclusive jurisdiction to consider applications for DACA, and USCIS alone may terminate a grant of DACA. 8 C.F.R. § 236.23(a)(2), (d). With very few exceptions, none of which apply here, USCIS may only terminate an individual's grant of DACA *after* providing them with a Notice of Intent to Terminate and an opportunity to respond prior to termination. 8 C.F.R. § 236.23(d)(1). No such Notice of Intent to Terminate was sent to Petitioner.

Several Federal Courts have held that current DACA recipients cannot be summarily arrested and detained. *See, Enriquez-Perdomo v. Newman*, 54 F. 4th 855, 864 (6th Cir. 2022) ("When she

became a DACA recipient, she was granted 'affirmative ... relief' from removal. Although the government was free to terminate that relief, it did not, and Enriquez-Perdomo's arrest and detention were unauthorized."); October 1, 2025 Order granting Petitioner's habeas petition, in part, and ordered the release of Petitioner, "Because she is protected by DACA, Santiago is considered "lawfully present" and cannot be removed from the United States." *See,* Order entered 10/1/2025 in *Catalina Santiago Santiago v. Noem, et al.,* Case No. 25-cv-00361-KC [docket no. 25] (W.D. Texas);[16] September 5, 2025 Order granting a temporary restraining order requiring the immediate release of Petitioner – a DACA recipient – without bond, saying "[t]he Petition shows that Respondents did not observe the procedures for termination of DACA set forth in § 236.21(d). . . in violation of the *Accardi* doctrine." *Gamez Lira v. Noem,* No. 25-cv-00855-WJ-KK, 2025 WL 2581710 (D.N.M. Sept. 5, 2025).[17] *See also, Diaz. See, Dep't of Homeland Sec. v. Regents of Univ. of Cal.,* 591 U.S. 1, 9 (2020) (DACA allows certain unauthorized aliens who entered the United States as children to "apply for a two-year forbearance of removal.");

Despite being protected from removal, Mr. Luna-Gonzalez was arrested and is currently being detained at the Eloy Federal Detention Center. The United States has violated its own DACA-specific processes in this case as to Mr. Luna-Gonzalez. Under the *Accardi* doctrine, the government and its agencies are required to follow their own binding rules. *United States ex rel. Accardi v. Shaughnessy,* 347 U.S. 260 (1954). Where a regulation governing agency behavior has been promulgated, citizens and noncitizens alike are entitled to "that due process required by the regulations." *Id.* at 268.

For this reason alone, Petitioner is likely to succeed on the merits.

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[16] *See,* 10/01/25 Order granting in part petition for writ of habeas corpus in *Catalina Santiago Santiago v. Noem, et al.,* Case No. 25-cv-00361-KC [docket no. 25] (W.D. Texas), filed herewith as Exhibit 12.

[17] *See,* Order granting TRO, *Gamez Lira v. Noem,* No. 25-cv-00855-WJ-KK, 2025 WL 2581710, at *2-3 (D.N.M. Sept. 5, 2025) filed herewith as Exhibit 13.

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B. Petitioner Is Likely To Succeed On The Merits Of His Argument That He Is Wrongfully Detained Because He Is Not Subject To Mandatory Detention Under § 1225(B)(2).

DHS also argued before the Immigration Court that Petitioner was not eligible to be released on bond because he is subject to "mandatory detention" under 8 U.S.C. § 1225 (b)(2)(A) by virtue of being an "applicant for admission" under § 1225 (a)(1), pursuant to a July 8, 2025 change in DHS policy.[18] In essence, Respondents now argue that *any* noncitizen present in the United States without admission or parole is subject to mandatory detention, without the possibility of a bond hearing. However, Petitioner is likely to succeed on his claims that he is detained under 8 U.S.C. § 1226(a). He has been residing in the United States for 23 years and has never sought admission.

The plain text of § 1226 demonstrates that its subsection (a) applies to Petitioner. By its own terms, § 1226(a) applies to anyone who is detained "pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a). Section 1226 goes on to explicitly confirm that this authority includes not just persons who are deportable, but also noncitizens who are inadmissible.[19] While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories of noncitizens who may not be released— including certain categories of inadmissible noncitizens—and subjects them instead to mandatory detention. *See, e.g., id.* § 1226(c)(1)(A), (C). Even if § 1226(a) did not cover inadmissible noncitizens—there would be no reason to specify that § 1226(c) governs certain persons who are inadmissible; instead, it would have only needed to address people who are deportable for certain offenses.

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[18] *See,* Exhibit 9, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission (last visited September 8, 2025).

[19] Generally speaking, grounds of deportability (found in 8 U.S.C. § 1227) apply to people who have previously been admitted, such as lawful permanent residents and certain visa holders, while grounds of inadmissibility (found in § 1182) apply to those who have not been admitted to the United States. *See, e.g., Barton v. Barr*, 590 U.S. 222, 234 (2020).

Notably, recent amendments to § 1226 dramatically reinforce this argument. The Laken Riley Act added language to § 1226 that directly references people who have entered without inspection or who are present without authorization. *See Laken Riley Act* (LRA), Pub. L. No. 119-1, 139 Stat. 3 (2025). Specifically, pursuant to the LRA amendments, people charged as inadmissible pursuant to § 1182(a)(6) (the inadmissibility ground for entry without inspection) or (a)(7) (the inadmissibility ground for lacking valid documentation to enter the United States) and who have been arrested, charged with, or convicted of certain crimes are subject to § 1226(c)'s mandatory detention provisions. See 8 U.S.C. § 1226(c)(1)(E). By including such individuals under § 1226(c), Congress further clarified that, by default, § 1226(a) covers persons charged under § 1182(a)(6) or (a)(7). In other words, if someone is only charged as inadmissible under § 1182(a)(6) or (a)(7) and the additional crime-related provisions of § 1226(c)(1)(E) do not apply, then § 1226(a) governs that person's detention. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct).

In sum § 1226's plain text demonstrates that § 1225(b)(2) should not be read to apply to everyone who is in the United States "who has not been admitted," 8 U.S.C. § 1225(a)(1). Section 1226(a) covers those who are not now seeking admission but instead are already residing in the United States—including those who are charged with inadmissibility—while § 1225(b)(2) covers only those "seeking admission," i.e., those who are apprehended upon arrival in the United States (and who are not subject to the procedures of § 1225(b)(1)). A contrary interpretation would ignore § 1226(a)'s plain text and structure and render meaningless § 1226's language that specifically addresses individuals who have entered without inspection. The text of § 1225 reinforces this interpretation. As the Supreme Court has recognized, § 1225 is concerned "primarily [with those] seeking entry," *Jennings*, 583 U.S. at 297, i.e., cases "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is

admissible," id. at 287. Paragraphs (b)(1) and (b)(2) in § 1225 reflect this understanding. To begin, paragraph (b)(1)—which concerns "expedited removal of inadmissible arriving [noncitizens]"—encompasses only the "inspection" of certain "arriving" noncitizens and other recent entrants the Attorney General designates, and only those who are "inadmissible under section 1182(a)(6)(C) or § 1182(a)(7)." 8 U.S.C. § 1225(b)(1), (A)(i). These grounds of inadmissibility are for those who misrepresent information to an examining immigration officer or do not have adequate documents to enter the United States. Thus, subsection (b)(1)'s text demonstrates that it is focused only on people arriving at a port of entry or who have recently entered the United States and not those already residing here.

Paragraph (b)(2) is similarly limited to people applying for admission when they arrive in the United States. The title explains that this paragraph addresses the "[i]nspection of other [noncitizens]," i.e., those noncitizens who are "seeking admission," but who (b)(1) does not address. Id. § 1225(b)(2), (b)(2)(A). By limiting (b)(2) to those "seeking admission," Congress confirmed that it did not intend to sweep into this section individuals like Petitioner, who have already entered and are now residing in the United States. An individual submits an "application for admission" only at "the moment in time when the immigrant actually applies for admission into the United States." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (*en banc*). Indeed, in *Torres*, the *en banc* Court of Appeals rejected the idea that § 1225(a)(1) means that anyone who is presently in the United States without admission or parole is someone "deemed to have made an actual application for admission." *Id.* (emphasis omitted). That holding is instructive here too, as only those who take affirmative acts, like submitting an "application for admission," are those that can be said to be "seeking admission" within § 1225(b)(2)(A).

Otherwise, that language would serve no purpose, violating a key rule of statutory construction. See Shulman, 58 F.4th at 410–11. Furthermore, subparagraph (b)(2)(C) addresses the "[t]reatment of [noncitizens] arriving from contiguous territory," *i.e.* those who are "arriving on

land." 8 U.S.C. § 1225(b)(2)(C) (emphasis added). This language further underscores Congress's focus in § 1225 on those who are arriving ***into*** the United States—not those already residing here. Similarly, the title of § 1225 refers to the "inspection" of "inadmissible arriving" noncitizens. *See Dubin v. United States*, 599 U.S. 110, 120–21 (2023) (emphasis added) (relying on section title to help construe statute). Finally, the entire statute is premised on the idea that an inspection occurs near the border and shortly after arrival, as the statute repeatedly refers to "examining immigration officer[s]," 8 U.S.C. § 1225(b)(2)(A), (b)(4), or officers conducting "inspection[s]" of people "arriving in the United States," *id.* § 1225(a)(3), (b)(1), (b)(2), (d); **The Record And Longstanding Practice Reflect That § 1226 Governs Petitioner's Detention.**

Here, DHS's long practice of considering people living in the United States for more than two years as detained under § 1226(a) further supports this reading of the statute. For decades, and across administrations, DHS has acknowledged that § 1226(a) applies to individuals who entered the United States unlawfully, but who were later apprehended within the borders of the United States long after their entry. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue).

Indeed, in 1997, after Congress amended the INA through the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and the then-Immigration and Naturalization Service issued an interim rule to interpret and apply IIRIRA. Specifically, under the heading of "Apprehension, Custody, and Detention of [Noncitizens]," the agencies 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." 62 Fed. Reg. at 10323 (emphasis added). The agencies

thus made clear that individuals who had entered without inspection were eligible for consideration for bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing regulations.

In sum, § 1226 governs this case. § 1225 applies only to individuals arriving in the United States as specified in the statute, while § 1226 applies to those who have previously entered without admission and have been residing in the United States for more than 2 years. Petitioner has been living in the United States since 1999, more than 23 years.

C. Many Federal Courts Have Recently Granted Injunctive Relief Rejecting Respondent's Argument Regarding Mandatory Detention Under § 1225.

Respondents file herewith evidence showing that several Federal Courts around the country – including this one - have recently entered injunctive relief specifically rejecting DHS's argument that every noncitizen in the United States is an "applicant for admission" under § 1225 (a)(1) and therefore subject to mandatory detention under § 1225 (b)(2)(A), even if they have lived in the United States for longer than two years, effectively ignoring § 1225(b)(1)(A)(iii)(II).[20]

The following Federal Courts have issued orders preventing DHS from taking this position:

1) *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1261 (W.D. Wash. 2025) ("Rodriguez has shown that the text of Section 1226, canons of interpretation, legislative history, and longstanding agency practice indicate that he is governed under Section 1226(a)'s 'default' rule for discretionary detention. The Court is persuaded that Rodriguez is likely to succeed on the merits that he is unlawfully detained under Section 1225(b)(2)'s mandatory detention provision.");

2) On October 10, 2025, the U.S. District Court for the District of Southern Florida entered an Order granting a TRO requiring the release of Petitioner within 48 hours, stating that "the Court concludes that § 1226 governs Petitioner's detention. Because the BIA's decision to apply § 1225 and revoke bond rested on an incorrect statutory interpretation, Petitioner is likely to succeed on his claim that his detention is unlawful."[21]

[20] § 1225 (b)(1)(A)(iii)(II) states that: "An alien described in this clause is an alien . . .who has not been admitted or paroled into the United States, and who has not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph."

[21] *See*, Order entered 10/10/2025 granting TRO in *Gil-Paulino v. Noem, et al.*, Case 1:25-cv-24292-KMW [docket no. 41] (S.D.Fla.), filed herewith as Exhibit 24.

3) On October 9, 2025, the U.S. District Court for the District of Arizona issued an Order consolidating Petitioner's request for preliminary injunction with the decision on the merits in this action and ordered the release of Petitioner, stating that "Respondents themselves establish Petitioner was placed in removal proceedings under 8 U.S.C. § 1182(a)(6)(A)(i) as "[a]n alien present in the United States without being admitted or paroled," and not as "an arriving alien" and applicant for admission under 8 U.S.C. § 1225(b)." *See,* Order entered 10/9/2025 in *Hector Lopez-Melo v. Bondi, et. al.*, Case No. Case 2:25-cv-03394-DJH--JZB [docket no. 11] (D.C. Ariz.). [22]

4) On October 3, 2025, the U.S. District Court for the District of Arizona issued an Order directing Respondents to grant Petitioner, who had been present in the United States for 24 years, a "prompt bond hearing", saying that it " agrees with the majority of courts that have concluded that § 1226(a), rather than § 1225(b)(2)(A), applies in this circumstance.") *See, Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025). [23]

5) On August 4, 2025, the U.S. District Court for the District of Arizona entered an Order granting a temporary restraining order, *ex parte*, in the United States District Court for the District of Arizona in *Mirta Amarilis Co Tupul v. Noem, et al., Case No.* 25-AT-99908 (D. Ariz. August 4, 2025), noting that "the Court finds a temporary restraining order appropriate as the evidence creates a serious question whether Petitioner is eligible for expedited removal proceedings given her decades long presence in the United States. Because removal would deprive Petitioner of her rights to judicial review of her removal, she has alleged that it is probable that she would suffer irreparable harm absent a stay." [24]

6) On September 22, 2025 the American Civil Liberties Union of Massachusetts filed a class-action lawsuit in federal court to challenge the widespread denial of bond hearings to persons recently detained by U.S. Immigration and Customs Enforcement (ICE). That complaint[25] argues that DHS is now systematically reclassifying noncitizens from the statutory authority of § 1226, which usually allows for the opportunity to request bond during removal proceedings, to the no-bond detention provisions of § 1225, which doesn't apply to people already present in the interior of the United States.

[22] *See,* Order entered 10/9/2025 in *Hector Lopez-Melo v. Bondi, et. al.*, Case No. Case 2:25-cv-03394-DJH--JZB [docket no. 11] (D.C. Ariz.), filed herewith as Exhibit 22.

[23] *See,* 10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025), filed herewith as Exhibit 23.

[24] *See,* 08/04/25 Order Granting *Ex Parte* Motion for Temporary Restraining Order, *Mirta Amarilis Co Tupul v. Noem, et al.*, (D. Az. Case 2:25-cv-02748-DJH) filed herewith as Exhibit 14.

[25] *See,* First Amended Petition For Writ Of Habeas Corpus And Class Action Complaint, *Jose Arnulfo Guerrero Orellana, on behalf of himself and others similarly situated*, v. *Antone Moniz, Superintendent, Plymouth County Correctional Facility; et. al.*, United States District Court for the District of Massachusetts Case No. 25-12664-PBS [Document 10 Filed 09/22/25], filed herewith as Exhibit 19.

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7) On August 29, 2025, the U.S. District Court for the District of Minnesota, issued an Order for Injunctive Relief against four of the same Respondents named in this case, enjoining them from denying that petitioner – who had been present in the U.S. for ten years - a bond hearing. That Court found that he "more clearly falls under a plain text reading of section 1226(a). As other courts have observed, "[t]aken together these two statutes principally govern the detention of non-citizens pending removal proceedings—section 1225 governs detention of noncitizens 'seeking admission into the country,' whereas section 1226 governs detention of non-citizens 'already in the country.'" *Francisco T. v. Bondi, et al.*, Case No. 0:25-cv-03219-JMB-DTS, [CM/ECF Doc. 17] Filed 08/29/25, Page 7-8.[26]

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8) On August 14, 2025, the U.S. District Court for the District of Nebraska issued a Memorandum and Order granting the Petitioner's immediate release and her writ of habeas corpus on the ground "the government is unlawfully detaining Petitioner in violation of her Due Process rights by invoking a unliteral automatic stay of the bond a duly appointed Immigration Judge determined was appropriate." See, Floribertha Mayo Anicasio, Petitioner v. Jerome Kramer, Lincoln County Sheriff, in his official capacity, et al., Case No. 4:-cv-031580JFB-RCC [CM/ECF Doc. 34 at 1, 3].[27]

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9) August 19, 2025, the U.S. District Court for the District of Massachusetts entered a 26-page memoranda Order exhaustively discussing the DHS position and noted that:

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> This case is the latest in a growing number of challenges in this District, and across the country, to non-citizen detention arising out a decision by the Department of Homeland Security to radically alter its interpretation of the immigration statutes. Previously, in a similar instance, this Court concluded that the interpretation being advanced by the Government, which would require the mandatory detention of hundreds of thousands, if not millions, of individuals currently residing within the United States, is contrary to the plain text of the statute and the overall statutory scheme.

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Romero v. Hyde, (D. Mass. Aug. 19, 2025) (*see also* numerous cases cited therein).[28]

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10) On September 9, 2025, the Eastern District of Michigan entered an Order Granting Petition for Writ of Habeas Corpus, saying that "After reviewing the statutory text, the statute's history, Congressional intent, and § 1226(a)'s application for the past three decades, the Court finds that Pizarro Reyes falls within the confines of §

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[26] *See* Restraining Order entered 8/29/2025 in *Francisco T. v. Bondi, et al.*, Case No. 0:25-cv-03219-JMB-DTS, [CM/ECF Doc. 17], U.S. District Court for the District of Minnesota,], filed herewith as Exhibit 18.

[28] *See* Order entered 8/19/2025 in *Romero v. Hyde, et al.*, Case No. 1:25-cv-11631-BEM [CM/ECF Doc. 32], U.S. District Court for the District of Massachusetts], filed herewith as Exhibit 20.

1226(a), and not § 1225(b)(2)(A)." *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425, at *18-19 (E.D. Mich. Sept. 9, 2025));[29]

11) On July 24, 2025, the U.S. District Court for the District of Massachusetts issued a published decision which states that DHS's position ignores the plain statutory language of both § 1225 and § 1226. *See, Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025).[30]

12) On July 28, 2025, the U.S. District Court for the Central District of California, Eastern Division, issued a Temporary Restraining Order (TRO) enjoining DHS from categorically denying initial § 236(a) bond hearings to respondents in § 240 proceedings under DHS's July 8, 2025 7/8/25 DHS Guidance Notice. *See, Lazaro Maldonado Bautista et al. v. Santacruz, Jr., et al.*[31]

As shown by these various orders, TROs, and injunctions, Petitioner has an excellent chance of winning on the merits of his argument that Respondents are mislabeling him as an "applicant for admission" under § 1225 (a)(1) solely for the purpose of imposing mandatory detention under § 1225 (b)(2)(A). Rather, because he has lived in the U.S. for 23 years, he is more appropriately treated under § 1226 and subject to release on bond.

D. BIA's Determinations Are Not Entitled To Deference.

Obviously, decisions by IJs and the BIA are not binding on the Federal Judiciary, and vice-versa. *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The legal relationship between federal courts and the BIA was fundamentally restructured on June 28, 2024, when the Supreme Court issued its decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which expressly overruled

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[29] *See*, Order Granting Petition for Writ of Habeas Corpus, *Pizarro Reyes v. Raycraft*, No. 25-12546, (E.D. Mich. Sept. 9, 2025) filed herewith as Exhibit 15.

[30] *See, Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025), filed herewith as Exhibit 16.

[31] *See* Temporary Restraining Order entered 7/28/2025 in *Lazaro Maldonado Bautista et al. v. Santacruz, Jr., on behalf of themselves and others similarly situated, et al.*, Plaintiffs-Petitioners, v. *Kristi Noem, Secretary, Department of Homeland Security, et al.*, Defendants-Respondents, U.S. District Court for the Central District of California, Eastern Division, Case No. 5:25-cv-01873-SSS-BFM, filed herewith as Exhibit 17.

1 *Chevron*[32] deference to agency interpretations of statutes. The majority opinion, authored by Chief
2 Justice John Roberts, held that Federal Courts must "exercise their independent judgment in
3 deciding whether an agency has acted within its statutory authority". *Loper Bright,* 603 U.S. at 207.
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5 Thus, determining whether or not DHS's new internal policy of treating all noncitizens as
6 "applicants for admission" under § 1225 (a)(1) and thereby subject to "mandatory detention" under
7 8 U.S.C. § 1225 (b)(2)(A) is properly decided by the Federal Courts. The recent decision of *Matter*
8 *of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) is not binding on this Court.[33]
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E. Petitioner Will Suffer Irreparable Harm Absent An Injunction.

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11 Parties seeking preliminary injunctive relief must also show they are "likely to suffer
12 irreparable harm in the absence of preliminary relief." . *Winter*, 555 U.S. at 20. Irreparable harm
13 is the type of harm for which there is "no adequate legal remedy, such as an award of damages."
14 *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).
15 Loss of liberty—even for minimal periods—constitutes irreparable injury. *Elrod v. Burns,*
16 427 U.S. 347 (1976). Since Petitioner's detention he has been detained at the Eloy Detention Center,
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18 similar to a criminal detention, under the pretense that his detention is mandatory. As shown by the
19 attached reports and articles, Eloy Federal Detention Center is an unsafe, unsanitary and unhealthy
20 facility. Merely being detained there is an irreparable injury.
21 In his Declaration filed herewith, Juan Daniel also details his worsening medical condition
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23 resulting from a broken knee just before he was detained, which required surgery. He has been
24 unable to access medical care necessary to continue his recovery, including physical therapy, while
25 detained. In addition, Petitioner has not had access to evidence essential to defend his removal case.
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[32] *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984).

[33] *See,* Exhibit 10, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

Thus, by virtue of Petitioner's ongoing loss of liberty, he has demonstrated significant irreparable harm. This factor weighs in his favor.

F. The balance of hardships and public interest weigh heavily in Petitioner's favor.

The final two factors for a preliminary injunction—the balance of hardships and public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, Petitioner faces weighty hardships: loss of liberty, separation from family, significant stress and anxiety, and difficulty in communicating with his attorney.

"It is always in the public interest to prevent the violation of a party's constitutional rights." *Simms v. Dist. of Columbia*, 872 F. Supp. 2d 90, 105 (D.D.C. July 6, 2012). Similarly, "[t]here is generally no public interest in the perpetuation of unlawful agency action." *League of Women Voters of United States v. Newby,* 838 F.3d 1, 12 (D.C. Cir. 2016); *see also Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019) ("And the public interest is served when constitutional rights are protected.").

The government, by contrast, faces minimal hardship: the administrative costs associated with three bond hearings. "[T]he balance of hardships tips decidedly in plaintiffs' favor" when "[f]aced with such a conflict between financial concerns and preventable human suffering." What is more, because the policy preventing Petitioner from obtaining bond "is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction." *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (Moreno I); *see also Moreno Galvez*, 52 F.4th at 832 (affirming in part permanent injunction issued in Moreno II and quoting approvingly district judge's declaration that "it is clear that neither equity nor the public's interest are furthered by allowing violations of federal law to continue"). This is because "it would not be equitable or in the public's interest to allow the [government] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del*

1 *Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Indeed, Defendants "cannot suffer harm
2 from an injunction that merely ends an unlawful practice." *Rodriguez*, 715 F.3d at 1145."

3 **CONCLUSION**

4 For the foregoing reasons, Petitioner respectfully requests that this Court:
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6 (1) Issue an *ex parte*, Temporary Restraining Order forthwith, requiring
7 Respondents to immediately release Petitioner from his detention at the Eloy Federal
8 Detention Center in Eloy,
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10 (2) Arizona; Schedule a hearing for a Preliminary Injunction within fourteen (14)
11 days from the entry of that Temporary Restraining Order; and
12 (3) Grant any further relief the Court deems just and proper.
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14 DATED this 14th day of October, 2025.
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16 By: */s/ Nera Shefer*
Nera Shefer, Esq.
17 Shefer Law Firm, P.A.
800 SE 4th. Ave #803
18 Hallandale Beach, Florida 33009
Florida Bar# 0814121
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LIST OF DECLARATIONS	
A	**Rule 65(b) Declaration of Nera Shefer, Esq.**
B	**10/12/2025 Affidavit of Juan Daniel Luna-Gonzalez**

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LIST OF EXHIBITS	
Exhibit 1	**DACA Approval Notice dated 10/16/2024, USCIS Form I-797C**
Exhibit 2	**DHS Bond Hearing Exhibits**
Exhibit 3	**10/6/2025 ICE Online Detainee Locator System report for Petitioner, available at https://locator.ice.gov/odls/#/search**
Exhibit 4	**ICE Detainee Death Report 1/29/2025**
Exhibit 5	**9/25/2025 OIG-25-47 FINAL REPORT Results of an Unannounced Inspection of ICE's Eloy Federal Contract Facility in Eloy, Arizona**
Exhibit 6	***Anthology of Abuse: A Legacy of Failed Oversight*, Florence Immigrant & Refugee Rights Project, *et al.*, published 10/2024**
Exhibit 7	**Notice to Appear**
Exhibit 8	**8/28/2025 Immigration Judge Order Denying Bond**
Exhibit 9	**ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission (last visited September 8, 2025)**
Exhibit 10	**Petitioner's Bond Hearing Exhibits**
Exhibit 11	**8/21/2025 Notice of Appeal from a Decision of an Immigration Judge**
Exhibit 12	**10/01/25 Order granting in part petition for writ of habeas corpus in *Catalina Santiago Santiago v. Noem, et al.,* Case No. 25-cv-00361-KC (W.D. Texas)**
Exhibit 13	**9/24/25 Order granting TRO, *Gamez Lira v. Noem*, No. 25-cv-00855 (D.N.M.)**
Exhibit 14	**08/04/25 Order Granting Mot. for Temporary Restraining Order, *Co Tupul v. Noem*, No. 25-AT-99908 (D. Ariz. August 4, 2025)**
Exhibit 15	**9/9/2025 Order Granting Petition for Writ of Habeas Corpus, *Pizarro Reyes v. Raycraft*, No. 25-12546, (E.D. Mich.)**
Exhibit 16	***Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass.7/24/2025)**
Exhibit 17	**Temporary Restraining Order entered 7/28/2025 in *Lazaro Maldonado Bautista et al. v Kristi Noem, Secretary, Department of Homeland Security, et al.*, U.S. District Court for the Central District of California, Eastern Division, Case No. 5:25-cv-01873-SSS-BFM.**
Exhibit 18	**Restraining Order entered 8/29/2025 in *Francisco T. v. Bondi, et al.*, Case No. 0:25-cv-03219-JMB-DTS, [CM/ECF Doc. 17], U.S. District Court for the District of Minnesota.**
Exhibit 19	**First Amended Petition For Writ Of Habeas Corpus And Class Action Complaint, *Jose Arnulfo Guerrero Orellana, on behalf of himself and others similarly situated*, v. *Antone Moniz, Superintendent, Plymouth County Correctional Facility; et. al.*, (D.Mass. Case No. 25-12664-PBS)**
Exhibit 20	**Order entered 8/19/2025 in *Romero v. Hyde, et al.*, Case No. 1:25-cv-11631-BEM [CM/ECF Doc. 32], U.S. District Court for the District of Massachusetts.**
Exhibit 21	***Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025)**
Exhibit 22	**10/9/2025 Order entered in *Hector Lopez-Melo v. Bondi, et. al.*, Case No. Case 2:25-cv-03394-DJH--JZB [docket no. 11] (D.C. Ariz.)**
Exhibit 23	**10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025)**
Exhibit 24	**10/10/2025 Order Granting TRO in *Gil-Paulino v. Noem, et al.*, Case 1:25-cv-24292-KMW [docket no. 41] (S.D.Fla.)**

Tab A

Rule 65(b) Declaration of Attorney Nera Shefer

I, Nera Shefer, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge, information, and belief:

1. I am counsel for Petitioner, Juan Daniel Luna-Gonzalez.
2. I file this Declaration in Support of Petitioner's *Ex Parte* Application for Temporary Restraining Order or Preliminary Injunction.
3. I have met extensively with Petitioner, Juan Daniel Luna-Gonzalez, who has verified to me the facts set forth in the Petition for Habeas Corpus filed simultaneously herewith.
4. A Declaration of Petitioner, Juan Daniel Luna-Gonzalez, in compliance with Fed.R.Civ.Pro. 65(b)(1)(A) is filed herewith which supplements the allegations in the Petition for Habeas Corpus regarding the immediate and irreparable injury, loss and damage he will suffer absent immediate release from his detainment.
5. For example, Juan Daneil told me that while detained at Eloy Federal Detention Center he was denied potable water, exposed to overcrowding and environmental hazards, and endured shackling and isolation.
6. Juan Daniel told me about his serious knee condition, and that it has worsened because of the lack of treatment and medication while detained.
7. I have practiced immigration law for 21 years. In my professional experience, cases for detained immigrants are far more difficult than those for non-detained individuals.
8. Detained cases are almost always charged at significantly higher legal fees, often nearly double, because the work is twice as hard: access to the client is restricted, travel is required, and evidence gathering is severely limited.
9. From my experience, the likelihood of winning an immigration case is substantially lower when the person is detained. The inability to prepare the case with the main witness, to gather evidence, and to coordinate with family members, expert witnesses and community supporters makes a successful outcome far less likely.
10. The costs of representation in Juan Daniel's case are substantially higher because he is detained, and the chances of success are substantially lower for the same reason. Including now that he is not eligible for bond due to the new DHS policy, he had to pay more legal fees to request his release from detention through a TRO and Habeas petition.
11. His detention is causing immediate and irreparable harm to him, and his ability to defend himself from the removal he is now facing, despite having an active DACA with an employment authorization and ID.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of October, 2025, at Phoenix, County of Maricopa, State of Arizona.

By: */s/ Nera Shefer*
Nera Shefer, Esq.

Tab B

Affidavit

I, Juan Danuel Luna-González, I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge:

1. My name is Juan Danuel Luna-González. On June 19, 2025, I was traveling from San Diego, California to Mesa, Arizona.

2. While passing Yuma, Arizona, near Dome and within approximately five miles of the area, we were stopped by Border Patrol officers. There was one officer per vehicle and there were 3 vehicles that stopped us. I was a passenger, and the agents did not tell was why they had stopped us. There was not an apparent or factual reason for the stop. The driver was not charged with an infraction; he is a US citizen, so he was let go.

3. The agent asked if I had legal documents; I produced my identification and valid work authorization, documents that I had obtained through my approved DACA and are still valid until 2026.

4. The sergeant stated that the documents I presented were not legal status in the United States, even though I told him I had them because I had an active DACA.

5. He proceeded to arrest me and instructed the driver to go on.

6. Before getting arrested by ICE, I worked for First Impression Iron Workers as an installer, earning $27 per hour. I subsequently lost that job.

7. A few months ago, at my job, I broke my knee, which required surgery. After surgery, my recovery period was supposed to be approximately six weeks if I were able to attend physical therapy twice a week. I did attend accordingly for a few weeks before getting arrested by ICE and I obtained progress in my recovery during this time.

8. My physical therapy treatment was interrupted since I have been detained because ICE has not arranged for it and my recovery has retrogressed due to the delayed and prolonged treatment. For 12 weeks I was not treated.

9. I am still wearing a knee brace and walk with crutches. Even though I put in my request to see an orthopedic since the first week when I got to the detention center, only the first week of October after 90 days of being detained, I was finally referred by the detention center doctor to an orthopedic specialist. The orthopedic confirmed the initial medical treatment done by my private doctor before I was arrested and ordered physical therapy twice a week.

9. The orthopedic told me that due to my delay in getting treatment, I will very likely face decreased range of motion, muscle atrophy, increased pain, and a slower, more difficult recovery. I am very sad about because I already feel the consequences of the delayed treatment, including pain, which has increased severely in the last few weeks.