TIMOTHY COURCHAINE
United States Attorney
District of Arizona
BROCK HEATHCOTTE
Assistant U.S. Attorney
Arizona State Bar No.014466
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
Facsimile: (602) 514-7760
Email: Brock.Heathcotte@usdoj.gov
Attorneys for the United States

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Juan Daniel Luna-Gonzalez, Petitioner, v. Kristi Noem, *et al.*, Respondent	No. CV-25-03794-PHX-MTL-DMF **RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION**

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; and Sirce Owen, Acting Director of EOIR, in her official capacity ("Respondents"), by and through undersigned counsel, respond in opposition to Petitioner's Motion for Temporary Restraining Order ("TRO") and Preliminary Injunction ("PI") (Doc. 2).

I. INTRODUCTION

Petitioner Juan Daniel Luna-Gonzalez's motion for TRO and PI seeks an order to release him from detention alleging that he is wrongfully detained because he is a current

DACA recipient and that he is wrongfully detained because he is not subject to mandatory detention under § 1225(B)(2).

These allegations are incorrect because the agency can detain Petitioner and prosecute removal proceedings despite his DACA status; Petitioner is an arriving alien subject to mandatory detention which comports with his due process rights; and this Court lacks subject matter jurisdiction to review a decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g).

II. BACKGROUND

Declarant, Jayson McElhaney, makes the following statements under oath and subject to the penalty of perjury pursuant to the provision of 28 U.S.C. § 1746. See Exhibit A, Declaration of Jayson McElhaney.

1. I am currently employed as a Deportation Officer with U.S. Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO). I have been employed by DHS since February 22, 2022, serving at Eloy, Arizona beginning in July 2025.

2. I am assigned to the Eloy Detention Center (EDC) in Eloy, AZ. As the DO at EDC, I am responsible for the management of cases on the Detained Docket Unit (as of October 6, 2025), including detention and removal of noncitizens housed there. At the EDC, I manage cases of detainees housed in the Eloy facilities. I make this declaration based on my role and knowledge as the DO for EDC and based on my review of Mr. Luna Gonzalez's file maintained by DHS.

3. Juan Daniel Luna Gonzalez is a native and citizen of Mexico, born on [redacted] in Mexico.

4. Luna Gonzalez entered the United States on an unknown date and an unknown time from Mexico at a time and place other than designated by the Secretary of Homeland Security. USBP took Luna Gonzalez into custody June 20, 2025, and served him with a Notice to Appear charging inadmissibility under section 212a07(A)(i) and 237a01(C)(i) of the Immigration and Nationality Act.

5. Luna Gonzalez applied for Deferred Action for Childhood Arrivals (DACA) and Employment Authorization and was approved for the following dates:

December 12, 2012, expiring December 9, 2014

November 13, 2014, expiring October 30, 2016

October 27, 2016, expiring October 13, 2018

August 6, 2018, expiring August 1, 2020

April 28, 2020, expiring April 22, 2022

December 29, 2021, expiring December 22, 2023

October 18, 2024, expires October 15, 2026

6. On May 19, 2022, Luna Gonzalez was charged with Driving Under the Influence by the Mesa Police Department.

7. On October 4, 2023, he was convicted with a sentence of one day in jail and 60 months of probation.

III. LEGAL FRAMEWORK FOR TRO AND PI

The substantive standard for issuing a temporary restraining order is identical to the standard for issuing a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). An injunction is a matter of equitable discretion and is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Preliminary injunctions are "never awarded as of right." *Id.* at 24.

Preliminary injunctions are intended to preserve the relative positions of the parties until a trial on the merits can be held, "preventing the irreparable loss of a right or judgment." *Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984). Preliminary injunctions are "not a preliminary adjudication on the merits." *Id.* A court should not grant a preliminary injunction unless the applicant shows: (1) a strong likelihood of his success on the merits; (2) that the applicant is likely to suffer an irreparable injury absent preliminary relief; (3) the balance of hardships favors the applicant; and (4) the public interest favors a preliminary injunction. *Winter*, 555 U.S. at 20. To show harm,

a movant must allege that concrete, imminent harm is likely with particularized facts. *Id.* at 22. Where the government is a party, courts merge the analysis of the final two *Winter* factors, the balance of equities and the public interest. *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Alternatively, a plaintiff can show that there are "'serious questions going to the merits' and the 'balance of hardships tips sharply towards' [plaintiff], as long as the second and third *Winter* factors are [also] satisfied." *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (citing *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir. 2011)). "[P]laintiffs seeking a preliminary injunction face a difficult task in proving that they are entitled to this 'extraordinary remedy." *Earth Island Inst. v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010). Petitioner's burden is aptly described as a "heavy" one. *Id.*

A preliminary injunction can take two forms. A "prohibitory injunction prohibits a party from taking action and preserves the status quo pending a determination of the action on the merits." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 878-79 (9th Cir. 2009) (cleaned up). A "mandatory injunction orders a responsible party to take action. . . . A mandatory injunction goes well beyond simply maintaining the status quo pendente lite and is particularly disfavored." *Id.* at 879 (cleaned up). A mandatory injunction is "subject to a higher degree of scrutiny because such relief is particularly disfavored under the law of this circuit." *Stanley v. Univ. of S. California*, 13 F.3d 1313, 1320 (9th Cir. 1994) (citation omitted). The Ninth Circuit has warned courts to be "extremely cautious" when issuing this type of relief, *Martin v. Int'l Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984), and requests for such relief are generally denied "unless extreme or very serious damage will result," and even then, not in "doubtful cases." *Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879; *accord LGS Architects, Inc. v. Concordia Homes of Nevada*, 434 F.3d 1150, 1158 (9th Cir. 2006); *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). In such cases, district courts should deny preliminary relief unless the facts and law *clearly* favor the moving party. *Garcia*, 786 F.3d at 740 (emphasis in original).

IV. DACA STATUS DOES NOT PREVENT DETENTION AND REMOVAL PROCEEDINGS

Petitioner is a member of the class certified in *Inland Empire-Immigrant Youth Collective v. Nielsen*, No. EDCV172048PSGSHKX, 2018 WL 1061408, at *22 (C.D. Cal. Feb. 26, 2018)(" All recipients of Deferred Action for Childhood Arrivals ("DACA") who, after January 19, 2017, have had or will have their DACA grant and employment authorization revoked without notice or an opportunity to respond, even though they have not been convicted of a disqualifying criminal offense.") See Exhibit B, Order Granting Plaintiffs' motion for class certification and Granting Plaintiffs' motion for a class-wide preliminary injunction.

The decision in *Inland Empire* contemplates and allows respondents to prosecute removal proceedings against DACA recipients without termination of their DACA grants. *Id.*, at 2018 WL 1061408, at *22 ("It is hereby ORDERED that Defendants are preliminarily enjoined from terminating grants of DACA and related EADs based solely on the issuance of a Notice to Appear ("NTA") that charges the DACA recipient as removable due to his or her presence in the United States without admission or having overstayed a visa.") Respondents have not terminated petitioner's DACA status through the issuance of a NTA. Respondents are in the process of reviewing whether DACA status should be terminated.

If the issue before the Court was whether respondents can remove petitioner, the parties might agree that, because of DACA, ICE cannot remove him from the United States. But that is not at issue. Nothing prevents respondents from commencing removal proceedings against him. *See* 8 C.F.R. § 236.21(c)(2). Indeed, the immigration judge has the discretion to terminate removal proceedings where the alien has deferred action but may decide to allow them to continue. 8 C.F.R. § 1003.18(d)(1)(ii)(C).

Petitioner's DACA status is simply not relevant to the question of whether respondents may detain him and prosecute removal proceedings. And this Court lacks subject matter jurisdiction under 8 U.S.C. § 1252(g) to decide whether detention and

prosecution of removal proceedings against DACA recipients may proceed prior to termination of DACA status. See Sec. V. below.

V. PETITIONER'S CLAIMS BARRED BY 8 U.S.C. § 1252(g) AND (b)(9).

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a threshold matter, Petitioner's claims are jurisdictionally barred under 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9). Courts lack jurisdiction over any claim or cause of action arising from any decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to *commence proceedings, adjudicate cases*, or execute removal orders.") (emphasis added); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."). In other words, § 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney may take: [his] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Petitioners' claims necessarily arise "from the decision or action by the Attorney General to commence proceedings [and] adjudicate cases," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

Section 1252(g) also bars district courts from hearing challenges to the method by which the government chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and bars review of "ICE's decision to take [plaintiff] into

custody and to detain him during his removal proceedings"). Petitioner's claims stem from ICE's decision to commence removal proceedings and therefore detain him. His detention arises from the decision to commence proceedings against him. *See, e.g.*, *Valecia-Meja v. United States*, No. 08-2943 CAS (PJWz), 2008 WL 4286979, at *4 (C.D. Cal. Sept. 15, 2008) ("The decision to detain plaintiff until his hearing before the Immigration Judge arose from this decision to commence proceedings."); *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D. Cal. Aug. 18, 2010); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 298–99 (3d Cir. 2020) (holding that 8 U.S.C. § 1252(g) and (b)(9) deprive district court of jurisdiction to review action to execute removal order).

Other courts have held, "[f]or the purposes of § 1252, the Attorney General commences proceedings against an alien when the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. 08-2941 DSF (JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* at *3. "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). *But see Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025).

Moreover, under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law and fact . . . *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." Further, judicial review of a final order is available only through "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review of all" "decisions and actions leading up to or consequent upon final orders of deportation," including "non-final order[s]," into proceedings before a court

of appeals. *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is "breathtaking in scope and vise-like in grip and therefore swallows up virtually all claims that are tied to removal proceedings"). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition for review] PFR process." *J.E.F.M.*, 837 F.3d at 1031 ("[W]hile these sections limit *how* immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeal.") (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings").

Critically, "1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that noncitizens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law."). These provisions divest district courts of jurisdiction to review, both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the

first place or to seek removal").

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit has explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal[.]"). Here, Petitioner challenges the government's decision and action to detain him, which arises from DHS's decision to commence removal proceedings, and is thus an "action taken . . . to remove [him] from the United States." *See* 8 U.S.C. § 1252(b)(9); *see also, e.g.*, *Jennings*, 583 U.S. at 294–95; *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020) (finding that 8 U.S.C. § 1226(e) did not bar review in that case because the petitioner did not challenge "his initial detention"); *Saadulloev v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision, which flows from the government's decision to "commence proceedings"). *But see Vasquez Garcia*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *3-4. As such, the Court lacks jurisdiction over this action. The reasoning in *Jennings* outlines why Petitioners' claims are unreviewable here.

While holding that it was unnecessary to comprehensively address the scope of § 1252(b)(9), the Supreme Court in *Jennings* provided guidance on the types of challenges that may fall within the scope of § 1252(b)(9). *See Jennings*, 583 U.S. at 293–94. The Court found that "§ 1252(b)(9) [did] not present a jurisdictional bar" in situations where "respondents . . . [were] not challenging the decision to detain them in the first place." *Id.* at 294–95. In this case, Petitioners do challenge the government's decision to detain them in the first place. Though Petitioner attempts to frame his challenge as one relating to detention authority, rather than a challenge to DHS's decision to detain him in the first instance, such creative framing does not evade the preclusive effect of § 1252(b)(9).

Indeed, that Petitioner is challenging the basis upon which he is detained is enough to trigger § 1252(b)(9) because "detention *is* an 'action taken . . . to remove' an alien." *See Jennings*, 583 U.S. 318, 319 (Thomas, J., concurring); 8 U.S.C. § 1252(b)(9). As such, Petitioner's claims would be more appropriately presented before the appropriate federal court of appeals because they challenge the government's decision or action to detain him, which must be raised before a court of appeals, not this Court. *See* 8 U.S.C. § 1252(b)(9). In light of the above, the Court should deny the Petition and dismiss this matter for lack of jurisdiction under 8 U.S.C. § 1252.

VI. PETITIONER IS AN ARRIVING ALIEN SUBJECT TO MANDATORY DETENTION WHICH COMPORTS WITH HIS DUE PROCESS RIGHTS.

An arriving alien is "an applicant for admission coming or attempting to come into the United States at a port-of-entry, or an alien seeking transit through the United States at a port-of-entry, or an alien interdicted in international or United States waters and brought into the United States by any means, whether or not to a designated port-of-entry, and regardless of the means of transport. *See* 8 C.F.R. § 1.2. Section 1225 applies to "applicants for admission," who are defined as "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018); *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA 2025).

Section 1225(b)(1) applies to arriving aliens and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). An alien "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to apply for asylum, express a fear of persecution, or is "found not to

have such a fear," he is detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

Section 1225(b)(2) is "broader" and "serves as a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by § 1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025) ("[A]liens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings."); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("for aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). However, DHS has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

A. Petitioner Qualifies as an "Applicant for Admission."

Here, Petitioner falls within the ambit of Section 1225(b)(2)(A)'s mandatory detention as Petitioner is an "applicant for admission" to the United States, which includes undocumented aliens present in the United States. Petitioner is an arriving alien seeking admission into the United States subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and detention throughout the remainder of those proceedings are lawful. Noncitizens in pre-final-removal-order civil immigration detention generally fall within two categories: 8 U.S.C. § 1225, which consists of noncitizens seeking an initial entry, and 8 U.S.C. § 1226, which consists of noncitizens who entered the United States. Petitioner falls under 8 U.S.C. § 1225 because he was found to be an inadmissible arriving alien. The

difference between the noncitizens in these two categories is significant for due process purposes. *See Thuraissigiam*, 591 U.S. 103, 117 106–07, 138–40 (2020); *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1148 (9th Cir. 2022) (noting the "unique constitutional status of arriving aliens with no ties to the United States").

B. *Francisco Cerritos Echevarria v. Pam Bondi* (D. Ariz.).

Respondents are aware of a prior ruling in this District rejecting these arguments, *see e.g., Francisco Cerritos Echevarria v. Pam Bondi, et al.*, 2:25-cv-03252-DWL-ESW, (D. Ariz. Oct. 3, 2025), but Respondents respectfully maintain that Petitioner has not been deprived of due process, and falls within the definition of an "arriving alien" warranting mandatory detention as the removal process unfolds. Respondents also respectfully maintain that a person is an "applicant for admission" until an immigration official has inspected that person and determined that they are admissible into the United States.

In *Echevarria*, the Court determined that the phrase "alien seeking admission" in 8 U.S.C. § 1225(b)(2)(A) implies a present-tense nature to the desire for admission, such that an alien who is already present in the United States cannot be "seeking admission":

> The word "seeking" is the present participle of the verb "seek." It thus has a temporal element—Petitioner must have been in the process of seeking admission at the time of the inspection.
>
> It is hard to see how Petitioner could be deemed to have been "seeking" admission at the time of the encounter on July 2, 2025. By that point, Petitioner had already been present in the United States for 24 years, having arrived and entered in 2001. Moreover, under Respondents' interpretation of § 1225(a)(1), Petitioner became an "applicant for admission" in 2001, upon his arrival and entry. Implicit in Respondents' position, then, is that Petitioner somehow existed in a perpetual state of "seeking" admission during the 24-year period between when he first became an "applicant for admission" in 2001, by virtue of his entry into the country, and when he was encountered and inspected by an immigration officer in 2025.

Echevarria, 2025 U.S. Dist. LEXIS 196174, at *16–17 (internal citations omitted).

However, this analysis fails to consider other pieces of statutory context. Respondents respectfully argue that the phrase "applicants for admission" carves out a subset of those who are "seeking admission." For example, elsewhere in section 1225, the

statute says that "[a]ll aliens who are applicants for admission *or otherwise seeking admission* or readmission to or transit through the United States shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3) (emphasis added). In other words, 8 U.S.C. § 1225(a)(3) shows that an alien may be "seeking admission" either by being an "applicant for admission," or in some different way. As discussed earlier, the phrase "applicant for admission" unambiguously includes aliens who have already entered the United States. "In all but the most unusual situations, a single use of a statutory phrase must have a fixed meaning." *See Cochise Consultancy, Inc. v. United States ex rel. Hunt*, 587 U.S. 262, 268 (2019) (referring to *Ratzlaf* v. *United States*, 510 U. S. 135, 143 (1994)). "We therefore avoid interpretations that would "attribute different meanings to the same phrase." (quoting *Reno* v. *Bossier Parish School Bd.*, 528 U. S. 320, 329 (2000)). Thus, the *Echevarria* court's holding is not supported by the text of the statute, and Respondents respectfully request this Court reach a different result.

Furthermore, Respondents direct this Court's attention to a decision issued on September 30, 2025, in the United States District Court for the District of Nebraska. *See Luciano Vargas Lopez v. Trump, et al.*, 2025 WL 2780351 (D. Neb. Sept. 30, 2025). The court in *Luciano Vargas Lopez* denied a similar Petition for Writ of Habeas Corpus filed by a Petitioner, who entered the United States in 2013, and was detained under § 1225(b)(2) without bond, holding that Petitioner was properly detained under § 1225(b)(2) as an alien within the "catchall" scope of § 1225(b)(2) subject to detention without possibility of release on bond through § 1229a removal proceedings. *Id.* at *6-9. The court noted that illegally remaining in the country for years did not mean the Petitioner, who "wish[ed] to stay in this country," was suddenly not an "applicant for admission." *Id.* at *9. Additionally, "even if [Petitioner] might fall within the scope of § 1226(a), he "certainly" fts within the language of § 1225(b)(2) as well. *Id.*

The court also noted the "overlapping relationship between § 1225(b) and § 1226(a) is not only consistent with the plain language of the two provisions but consistent with the interpretation of the two provisions under *Jennings*." *Id.* The court determined

that § 1226 does not contain language limiting its application "to aliens already present in the United States." *Id.* (referring *to Jennings*, 583 U.S. at 289) (stating that United States immigration law "authorizes the Government to detain certain aliens already in the country pending the outcome of removal proceedings under §§ 1226(a) and (c).") ("As noted, § 1226 applies to aliens already present in the United States."), *with* 8 U.S.C. § 1226(a) (containing no reference to aliens "present" or "already present" in the United States); 8 U.S.C. § 1226(c) (containing no reference to "criminal aliens" "present" or "already present" in the United States). The court determined that "references to 'aliens' in § 1226 must be read to mean 'alien[s] present in the United States who ha[ve] not been admitted' within the meaning of § 1225(a)(1) and within at least the 'catchall provision that applies to all applicants for admission not covered by § 1225(b)(1) in § 1225(b)(2)." (citing *Jennings*, 583 U.S. at 287).

The Southern District of California also issued a favorable ruling denying a request for a TRO by an alien who was similarly detained under § 1225(b)(2) despite already being in the United States. *See Jose Guadalupe Sixtos Chavez, et al. v. Noem, et al.*, --F.Supp.3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025). The court noted, among other arguments, that "Section 1225(a)(1) expressly defines that '[a]n alien present in the United States who has not been admitted ... shall be deemed for purposes of this Act *an applicant for admission.*' *Id.* § 1225(a)(1). (emphasis added)." *Id.* at *4. The court reasoned that, "Petitioners do not contest that they are "alien[s] present in the United States who ha[ve]not been admitted. By the plain language of § 1225(a)(1), then, Petitioners are 'applicants for admission' and thus subject to the mandatory detention provisions of 'applicants for admission' under § 1225(b)(2)." *Id.* Respondents respectfully request this Court consider *Luciano Vargas Lopez v. Trump, et al.* and *Jose Guadalupe Sixtos Chavez, et al. v. Noem, et al.* persuasive for the reasons mentioned above.

C. Due Process Protections to Arriving Aliens are Limited.

The Supreme Court considered whether 8 U.S.C. § 1225(b) imposes a time-limit on the length of detention and whether such noncitizens detained under this statutory authority

have a statutory right to a bond hearing. *See Jennings*, 583 U.S. at 296-303. The Supreme Court held that "nothing in the statutory text [of 8 U.S.C. § 1225(b)] imposes any limit on the length of detention" nor "says anything whatsoever about bond hearings." *Id.* at 842. The sole means of release for noncitizens detained pursuant to 8 U.S.C. § 1225(b) is temporary parole at the discretion of DHS under 8 U.S.C. § 1182(d)(5). *Id.* at 844.

Understanding the statutory interpretation of 8 U.S.C. § 1225(b) and the rights it affords to "arriving aliens" like Petitioner, is critical because, for "more than a century" now, the Supreme Court has held that the rights of such noncitizens are confined exclusively to those granted by Congress. *See Thuraissigiam*, 591 U.S. at 131; *see also Nishimura Ekiu*, 142 U.S. at 660 (holding that with regard to "foreigners who have never been naturalized, nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law," "the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law."); *Landon*, 459 U.S. at 32 ("This Court has long held that an alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application, for the power to admit or exclude aliens is a sovereign prerogative"); *Shaugnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (rejecting noncitizens' habeas petitions premised on their claim that their detention without a bond hearing violated their Fifth Amendment Due Process rights because "an alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'").

The Supreme Court's holding on this topic was reinforced most recently in *Thuraissigiam*, a habeas action involving a noncitizen, like Petitioner, seeking initial entry to the United States and detained under 8 U.S.C. § 1225(b) who raised a Fifth Amendment Due Process Clause challenge. 591 U.S. 106–07. Therein, the Supreme Court "reiterated th[e] important rule," *id.* at 138, that a noncitizen seeking initial entry to the United States "has no entitlement" to any legal rights, constitutional or otherwise, other than those expressly provided by statue. *Id.* at 107 ("Congress is entitled to set the conditions for an

alien's lawful entry into this country and [] as a result [] an alien at the threshold of initial entry cannot claim any greater rights under the Due Process Clause."); *id.* (holding that a noncitizen seeking initial entry "has no entitlement to procedural rights other than those afforded by statute"); *id.* at 140 (A noncitizen seeking initial entry to the United States "has only those rights regarding admission that Congress has provided by statute" and "the Due Process Clause provides nothing more[.]").

More broadly, the Supreme Court has long recognized that the political branches' broad power over immigration is "at its zenith at the international border." *United States v. Flores-Montano*, 541 U.S. 149, 152–53 (2004). The power to admit or exclude aliens is a sovereign prerogative vested in the political branches, and "it is not within the province of any court, unless expressly authorized by law, to review [that] determination." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950); *see also Kleindienst v. Mandel*, 408 U.S. 753, 765–66 n.6 (1972) (noting that the Supreme Court's "general reaffirmations" of the political branches' exclusive authority to admit or exclude aliens "have been legion"). Control of the Nation's borders is vested in the political branches because that authority is "vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations," matters "exclusively entrusted to the political branches of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952). Preserving the political branches' authority to control the border serves "the obvious necessity that the Nation speak with one voice" on such matters. *Zadvydas v. Davis*, 533 U.S. 678, 711 (2001).

In addition to the sovereign, largely unreviewable prerogative of Congress and the Executive to admit or exclude aliens, *see Knauff*, 338 U.S. at 543 (1950), the Supreme Court also has recognized that aliens seeking admission to the United States do not have the same constitutional protections as individuals who have entered the United States. "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality. In the latter instance, the Court has recognized additional

rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) (quoting *Mezei*, 345 U.S. at 212). Accordingly, Congress may authorize the detention of aliens at the border, even for prolonged periods of time, and such detention does not deprive aliens "of any statutory or constitutional right." *See Mezei*, 345 U.S. at 212 (upholding detention of lawful permanent resident returning from trip abroad detained for over a year and a half).

Here, as an arriving alien, Petitioner has no due process protections beyond those afforded by statute. *See United States v. Verdugo-Urquidez*, 494 U.S. 259, 270-71 (1990) (Aliens "receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country."); *Landon*, 459 U.S. at 32 ("[A]n alien seeking initial admission to the United States requests a privilege and has no constitutional rights regarding his application."); *Mezei*, 345 U.S. at 212 ("[A]n alien on the threshold of initial entry stands on a different footing: 'Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.'"); *Thuraissigiam*, 591 U.S. at 131. Petitioner has and continues to receive all the protections allowed by the relevant statutes. Since Petitioner was mandatorily detained under 8 U.S.C. § 1225(b), the IJ properly found that he lacked jurisdiction to issue bond. Because Petitioner is subject to mandatory detention without bond under the statute, and because the Supreme Court has held that such detention comports with due process for those subject to 8 U.S.C. § 1225(b), the Court should deny the habeas petition. *Thuraissigiam*, 591 U.S. at 131.

VII. CONCLUSION

Every habeas corpus petition necessarily alleges the same basic ground for relief, *i.e.*, that the petitioner is detained in violation of the Constitution, laws or treaties of the United States. *See* 28 U.S.C. § 2241. Only when it is clear on the face of a petition that exceptional circumstances require immediate review of a petitioner's claims will consideration of his petition be advanced at the expense of prior, pending petitions. Upon the current record, it is not plain that the merits of Petitioner's claims are so strong as to

warrant expedited adjudication and Petitioner is not likely to succeed on the merits of his claim. *See In re Roe,* 257 F.3d 1077, 1081 (9th Cir. 2001) (declining to resolve issue of whether a district court has the authority to release a prisoner pending resolution of a habeas case, but holding that if such authority does exist, it can only be exercised in an "extraordinary case involving special circumstances"). Accordingly, Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction should be denied.

RESPECTFULLY SUBMITTED October 24, 2025.

TIMOTHY COURCHAINE
United States Attorney
District of Arizona

s/ Brock Heathcotte
BROCK HEATHCOTTE
Assistant United States Attorney
Attorneys for the United States