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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;
Siree Owen, Acting Director of EOIR, in her official
capacity; Fred Figueroa, Warden, Eloy Detention
Center,**

Respondents.

Case No. CV-25-03794-PHX-MTL

Agency No. 

**PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE
TO MOTION FOR
PRELIMINARY INJUNCTION**

INTRODUCTION

In the Response, Respondents conflate the government's authority to *remove* Petitioner from the county with its power to *detain* him during that process. As the Supreme Court has explained, "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects in immigration cases. *Zadvydas*, 533 U.S. at 690.

1 Respondents raise three primary arguments in the Response: (1) lack of jurisdiction; (2)
2 DACA's irrelevance to Petitioner's arrest and detention; and (3) Petitioner is subject to mandatory
3 detention under 8 U.S.C. § 1225(b) because he is an "arriving alien" as defined by 8 U.S.C. § 1225(a).

4 This reply will address each assertion in turn.

5
6 **I. NEITHER 8 U.S.C. § 1252(g) NOR § 1252(b)(9) PRECLUDES THIS COURT
7 FROM EXERCISING JURISDICTION.**

8 Respondents argue that 8 U.S.C. § 1252(g) means that district "[c]ourts lack jurisdiction over
9 any claim or cause of action arising from *any* decision to commence or adjudicate removal
10 proceedings or execute removal orders." *See*, Response at page 11, lines 8-10 (emphasis added).
11 However, the Supreme Court has made clear that § 1252(g) is limited to only "three discrete actions":
12 the "decision or action" to '*commence* proceedings, *adjudicate* cases, or *execute* removal
13 orders.'" *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482, (1999) (*AADC*)
14 (emphasis in original).

15
16 The Court rejected any reading of the statute that would cover "the universe of deportation
17 claims." *Id.* Ten years later, the Supreme Court again cautioned against interpreting § 1252(g) to
18 "sweep in any claim that can technically be said to 'arise from'" these three actions. *Jennings v.*
19 *Rodriguez*, 583 U.S. 281, 294 (2018). *See also Catholic Soc. Servs. v. Immigration & Naturalization*
20 *Serv.*, 232 F.3d 1139, 1150 (9th Cir. 2000) ("[Section 1252(g)] applies only to the three specific
21 discretionary actions mentioned in its text, not to all claims relating in any way to deportation
22 proceedings.").

23
24 As the Ninth Circuit has explained regarding § 1252(g), "[w]e have jurisdiction to decide a
25 'purely legal question' that 'does not challenge the Attorney General's discretionary authority.'"
26 *United States v. Hovsepian*, 359 F.3d 1144, 1155 (9th Cir. 2004) (citing *Ali v. Ashcroft*, 346 F.3d 873,
27 878-79 (9th Cir. 2003), *vacated on other grounds sub nom.*, *Ali v. Gonzales*, 421 F.3d 795 (9th Cir.
28

1 2005). *See also, Ibarra-Perez v. United States*, ___ F.4th ___, 2025 WL 2461663, at *6 (9th Cir. Aug.
2 27, 2025).

3 Here, just as in *Hovsepian* and *Ibarra-Perez*, Petitioner raises purely legal arguments in
4 challenging his detention. He does not contend that the government is categorically forbidden to ever
5 remove him. Rather, he contends that he had a right to meaningful notice and an opportunity to
6 present a defense before his DACA deferred status was ignored and he was detained.

7
8 There is no question that DACA dsequentlyeferred status is validity in place for Petitioner and
9 the government admits it has not yet decided whether to initiate termination proceedings. *See*,
10 Response at page 5, lines 18-19 (“Respondents are in the process of reviewing whether DACA status
11 should be terminated.”) Indeed, Respondents admit that “[i]f the issue before the Court was whether
12 respondents can remove petitioner, the parties might agree that, because of DACA, ICE cannot
13 remove him from the United States.” *See*, Response at page 5, lines 20-21.

14
15 The Ninth Circuit has specifically held that “[w]here the Attorney General totally lacks the
16 discretion to effectuate a removal order, § 1252(g) is simply not implicated.” *Arce v. United States*,
17 899 F.3d 796, 801 (9th Cir. 2018). *Accord, Kong v. United States*, 62 F.4th 608, 618 (1st Cir. 2023)
18 (§1252(g) inapplicable where claim did not arise from “discretionary decision to execute removal”);
19 *Enriquez Perdomo v. Newman*, 54 F.4th 855, 865 (6th Cir. 2022) (holding §1252(g) inapplicable
20 “when a removal order is not subject to execution”); *Madu v. Att’y Gen.*, 470 F.3d 1362, 1368 (11th
21 Cir. 2006) (“section 1252(g) does not apply” to a challenge raising a non-discretionary bar to
22 removal).

23
24 Thus, because Petition is a current DACA recipient and cannot be removed, “the Attorney
25 General totally lacks the discretion to effectuate a removal order [and] § 1252(g) is simply not
26 implicated.” *Arce v. United States*, 899 F.3d at 801.

27
28 As to 8 U.S.C. § 1252(b)(9), the so-called “zipper” clause”, the Supreme Court held in *Nielsen*
v. Preap, 586 U.S. 392 (2019) that bond hearings and mandatory detention claims are not barred by

1 § 1252(b)(9). *Id.* at 399. Here, Luna-Gonzalez is challenging his detention and violation of his due
2 process right – not asking for review of an order of removal or any part of the process by which his
3 removability will be determined. In *Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 810
4 (9th Cir. 2020), the Ninth Circuit agreed, holding that “challenging the legality of detention pursuant
5 to an immigration detainer are independent of the removal process.”
6

7 Many other courts have specifically found that neither § 1252(g) and (b)(9) present a
8 jurisdictional bar to habeas challenges to immigration detention. *See, e.g. Inland Empire-Immigrant*
9 *Youth Collective v. Nielsen*, No. EDCV172048PSGSHKX, 2018 WL 1061408, at *24-25 (C.D. Cal.
10 Feb. 26, 2018)(“legal challenges under the APA and the due process clause [are] the sorts of purely
11 legal questions that, although related to a discretionary decision, are nevertheless permitted by the
12 Ninth Circuit. . . the Court concludes that § 1252(g) does not deprive it of jurisdiction over their
13 claims [and] § 1252(b)(9) . . . applies only ‘[w]ith respect to review of an order of removal under
14 subsection (a)(1).’”);¹ *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-PHX-DWL (D.
15 Ariz. 10/3/2025)(Because “the phrase ‘arising from’ is not ‘infinitely elastic,’” it “does not reach
16 ‘claims that are independent of, or wholly collateral to, the removal process. Among such ‘collateral’
17 claims’ not subject to the § 1252(g) bar on judicial review are ‘claims seeking review of the legality
18 of a petitioner’s detention. [citing to *Kong v. United States*, 62 F.4th 608, 614 (1st Cir. 2023)]”;²
19 *Lazaro Maldonado Bautista et al. v. Noem, et al.*, Case No. 5:25-cv-01873-SSS-BFM (D.C.C.D. Cal.
20 2025)(“§ 1252(b)(9) channels review of ‘final orders of removal’ to federal courts of appeals”);³
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26 ¹ *See, Inland Empire-Immigrant Youth Collective v. Nielsen*, No. EDCV172048PSGSHKX, 2018 WL 1061408, at
*24-25 (C.D. Cal. Feb. 26, 2018), filed by Respondents as docket no. 11-1 at pages 28-29.

27 ² *See*, 10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-PHX-DWL
28 (ESW), (D. Ariz. 10/3/2025), filed with the writ of Habeas Corpus as Exhibit 23.

³ *See* Temporary Restraining Order entered 7/28/2025 in *Maldonado Bautista et al. v. Noem, et al.*, Case No.
5:25-cv-01873-SSS-BFM (D.C.C.D. Cal. 2025) filed with the Petition for Habeas Corpus as Exhibit
17.

1 *Romero v. Hyde, et al.*, Case No. 1:25-cv-11631-BEM (D. Mass. Aug. 19, 2025)(“ this Court has
2 jurisdiction to determine what legal authority governed Petitioner’s detention and whether, as a result,
3 Petitioner was entitled to a bond hearing”).⁴

4 **II. DACA IS PIVOTAL TO PETITIONER’S REMOVAL PROCEEDINGS.**

5
6 As a general statement, Petitioner does not disagree that DACA Status alone will not prevent
7 removal proceedings when they are appropriate. However, Respondents appear to have
8 misapprehended the meaning and intent of the preliminary injunction entered in *Inland Empire-*
9 *Immigrant Youth Collective v. Nielsen*, No. EDCV172048PSGSHKX, 2018 WL 1061408 (C.D. Cal.
10 Feb. 26, 2018).

11
12 As set forth in the body of that preliminary injunction, filed as Exhibit 2 to the Response
13 [docket no. 11-1, page 5-41], Inland Empire-Immigrant Youth Collective was challenging the
14 government’s decision to unilaterally revoke DACA status – without notice or an opportunity to be
15 heard – as soon as a notice to appear was issued. After holding that neither §1252(g) or § 1252(b)(9)
16 barred the case, the Court certified a nationwide class and issued a preliminary injunction:

- 17
18 (1) enjoining the government from terminating grants of DACA and related
19 employment authorization documents (EADs) of class members absent a fair
20 procedure;
21 (2) enjoining the government terminating grants of DACA and related EADs based
22 solely on the issuance of a Notice to Appear (“NTA”) that charges the DACA
23 recipient as removable due to his or her presence in the United States without
24 admission or having overstayed a visa;
25 (3) Defendants’ decisions after January 19, 2017 to terminate the DACA grants and
26 EADs of class members, without notice, a reasoned explanation, or an
27 opportunity to respond prior to termination, are preliminarily enjoined.
28 Defendants immediately will restore those individuals’ DACA and EADs,
subject to their original date of expiration; and
(4) Defendants accept and adjudicate any applications to renew DACA by individuals
whose DACA grant and EAD would have expired on or before March 5, 2018,
but were unable to apply for or obtain a renewal as a result of Defendants’
unlawful revocation decision, consistent with the terms of this Order.

⁴ 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 as Exhibit 20 to the Habeas Petition.

1 See, Order Granting Plaintiffs' motion for class certification and Granting Plaintiffs' motion for a
2 classwide preliminary injunction, filed as Exhibit 11-1, page 37.

3 It is unclear where in this document Respondents derive the conclusion that "[t]he decision in
4 *Inland Empire* contemplates and allows respondents to prosecute removal proceedings against DACA
5 recipients without termination of their DACA grants." See, Response at page 5, lines 11-13. Nowhere
6 is such a statement present in the order or elsewhere in the court's subsequent orders.⁵

7
8 Rather, as clearly set forth in the cases which Petitioner cited in his Motion for a Preliminary
9 Injunction, in order to comply with relevant statutory and constitutional law, DHS must properly
10 terminate a noncitizen's DACA status before commencing removal proceedings.

11
12 For similar reasons, the Petition supports that Gamez Lira is also likely
13 to succeed on his assertion that Respondents have violated the *Accardi*
14 doctrine with respect to 8 C.F.R. § 236.23(d). Under the *Accardi*
15 doctrine, the government and its agencies are required to follow their
16 own rules and regulations. See *Jagers v. Fed. Crop Ins. Corp.*, 758 F.3d
17 1179, 1186-87 (10th Cir. 2014). The Petition shows that Respondents
18 did not observe the procedures for termination of DACA set forth in §
19 236.23(d). Therefore, Gamez Lira has shown a likelihood for success
20 on his claim that his DACA status was effectively terminated in
21 violation of the *Accardi* doctrine.

22
23 *Gamez Lira v. Noem*, No. 25-cv-00855-WJ-KK, 2025 WL 2581710 *7 (D.N.M. Sept. 5, 2025):⁶

24
25 Similarly, in *Catalina Santiago Santiago v. Noem, et al.*, Case No. 25-cv-00361-KC [docket
26 no. 25] (W.D. Texas), the Court stated "[b]ecause she spent roughly twenty years at liberty in the
27 United States—and thirteen of those years with the Government's permission under DACA—
28 Santiago possesses a cognizable interest in her continued freedom from detention.∴ [the government

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⁵ The proceedings in the case were stayed for several years, pending the Supreme Court's decision in *Department of Homeland Security v. Regents of Univ. of California*, 591 U.S. 1, 27 (2020), which held that the government's attempt to rescind DACA were invalid under the Administrative Procedures Act as "arbitrary and capricious". *Inland Empire-Immigrant Youth Collective* is currently stayed, for a second time, pending resolution of *Texas v. United States*, (5th Cir. Jan. 17, 2025).

⁶ 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 as Exhibit 13 to the Petition for Habeas Corpus.

1 can] follow the procedures already available to Respondents as set out in 8 C.F.R. § 236.23(d) to
2 terminate Santiago’s DACA grant and *subsequently* seek her removal.”(emphasis added)⁷

3 Respondents admit that they failed to terminate Petitioner’s deferred status under DACA
4 before his arrest and detention. It is also worth noting that Respondents failed to respond to the
5 allegations that they violated the *Accardi* doctrine, which requires the government and its agencies to
6 follow their own binding rules. *See, United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260
7 (1954). Where a regulation governing agency behavior has been promulgated, citizens and
8 noncitizens alike are entitled to “that due process required by the regulations.” *Id.* at 268. *See also,*
9 *Jagers v. Fed. Crop Ins. Corp.*, 758 F.3d 1179, 1186-87 (10th Cir. 2014); *Gamez Lira v. Noem*, 2025
10 WL 2581710 at *6 (D.N.M. Sept. 5, 2025).⁸

13 III. PETITIONER IS NOT AN ARRIVING ALIEN.

14 A. Caselaw Holds That An Alien Present In The U.S. For 30 Years Is Not An 15 “Arriving Alien”.

16 Both Supreme Court and Ninth Circuit precedent hold that 8 U.S.C. § 1226(a) is the “default”
17 provision for aliens already present in the United States. In *Jennings v. Rodriguez*, 583 U.S. 281,
18 297 (2018), the Supreme Court reversed a Ninth Circuit holding that there was a statutory right to
19 periodic bond hearings. It held that “U. S. immigration law authorizes the Government to detain
20 certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also held that
21 “§ 1226 applies to aliens *already present* in the United States. Section 1226(a) creates a *default rule*
22 for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their
23 arrest and detention pending removal proceedings.” *Jennings*, 583 U.S. at 303 (emphasis added).
24 In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court stated that “[w]hile removal
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28 ⁷ *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 (W.D. Texas) filed with the Habeas Petition as Exhibit 12.

⁸ *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 with the Petition for Writ of Habeas Corpus as Exhibit 13.

1 proceedings are in progress, *most aliens may be released on bond or paroled*. 8 U. S. C. §§ 1226(a)
2 (1994 ed., Supp. V).” *Id.* at 683 (emphasis added).

3 The Ninth Circuit has held that § 1226(a) is the “default” detention statute for aliens in
4 removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the default detention statute for
5 noncitizens in removal proceedings and applies to noncitizens “[e]xcept as provided in [Subsection
6 C].” 8 U.S.C. § 1226(a).” *Avilez v. Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord*,
7 *Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091,
8 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-*
9 *Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

10
11 Respondents acknowledge the existence of *Echevarria v. Bondi, et al.*, No. 2:25-cv-03252-
12 PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025).⁹ However at least six additional cases in
13 the Arizona District Court have recently found against the government’s position:
14

- 15 (1) Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No. 2:25-cv-03391-SHD-
16 DMF at page 2 (D. Ariz. Oct. 22, 2025)(“while Respondents point to two district
17 court opinions adopting their interpretation of § 1225(b)(2)(A), myriad other
18 district courts have reached the same conclusion as *Echevarria* and held
19 individuals like Petitioner are not subject to mandatory detention under
20 1225(b)(2)(A)”);¹⁰
21 (2) Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.*, No. 2:25-cv-
22 03672 (D. Arizona Oct. 17, 2025)(“individuals like Petitioner are not “arriving
23 aliens” subject to mandatory detention but, rather, are subject to the general
24 removal statute, 8 U.S.C. § 1226(a)”);¹¹
25 (3) Order granting habeas entered in *Hector Lopez-Melo v. Bondi, et al.*, Case No.
26 Case 2:25-cv-03394-DJH--JZB (D. Ariz. 10/9/2025)(“petitioner, who had been

26 ⁹ *See*, 10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-PHX-DWL
27 (ESW), (D. Ariz. 10/3/2025), filed with the Habeas Petition as Exhibit 23.

28 ¹⁰ *See*, 10/22/2025 Order entered in *Garcia-Rosales v. Noem, et al.*, No. 2:25-cv-03391-SHD—DMF (D. Ariz.
Oct. 22, 2025), filed herewith as Exhibit 24.

¹¹ *See*, 10/17/2025 Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.*, No. 2:25-cv-03672 (D.
Arizona Oct. 17, 2025); filed herewith as Exhibit 25.

1 present in the United States for years, was not an applicant for admission under
2 1225(b)(2)(A) or subject to mandatory detention”);¹²

3 (4) 10/07/2025 Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No. CV-25-
4 02989-PHX-SPL (D Arizona 10/07/2025)(“Respondents maintain he is subject to
5 mandatory detention under 1225(b)(2). Again, Respondents are mistaken.”);¹³

6 (5) August 11, 2025 Magistrate’s Report and Recommendation in *Rocha Rosado v.*
7 *Figueroa*, No. CV-25-02157-PHX-DLR 2025 WL 2349133 at *10 (D. Ariz. Aug.
8 13, 2025)(Magistrate’s Report and Recommendation Adopted at 2025 WL
9 2349133)([t]he text of § 1226, the canons of statutory interpretation, this section’s
10 legislative history, and longstanding agency practice indicate that Rosado is
11 subject to § 1226(a)’s ‘default’ rule for discretionary detention rather than § 1225’s
12 mandatory detention requirement, and that the IJ erred by finding they did not have
13 jurisdiction to consider Rosado’s detention.”) *report and recommendation adopted*
14 *sub nom.* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025);¹⁴

15 (6) 08/04/25 Order Granting Mot. for Temporary Restraining Order, *Co Tupul v. Noem*, No.
16 25-AT-99908 (D. Ariz. August 4, 2025)(“Petitioner alleges she has been present in the
17 United States for 30 years and, as a result, is statutorily ineligible for expedited removal
18 proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(iii)(II) (conditioning the Attorney General’s
19 ability to apply expedited removal procedures to non-arriving noncitizens on those
20 noncitizens ‘having been present in the United States for under two years’”).¹⁵

21 Respondents also cite to two cases from other states, *Chavez v. Noem*, -- F. Supp. 3d --, 2025
22 WL 2730228 (S.D. Cal. Sept. 24, 2025) and *Vargas Lopez v. Trump*, -- F. Supp. 3d --, 2025 WL
23 2780351 (D. Neb. Sept. 30, 2025), which they believe support their arguments. However, in *Vargas*
24 *Lopez*, the court held that Vargas Lopez failed to meet his burden to show that he falls under §
25 1226(a), so “his Petition fails *regardless of the parties’ arguments about the scope of § 1225(b)*
26 *and § 1226(a).*” *Vargas Lopez v. Trump*, 2025 WL 2780351 at *7 (emphasis added).

27
28
¹² *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 with the Habeas Petition as Exhibit 26.

¹³ *See*, 10/07/2025 Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No. CV-25-02989-PHX-SPL (D
Arizona 0/07/2025), filed herewith as Exhibit 20.

¹⁴ *See*, 8/13/2025 Magistrate’s Report and Recommendation in *Rocha Rosado v. Figueroa*, No. CV-25-02157-
PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025), filed herewith as Exhibit 19.

¹⁵ *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 with the Habeas Petitoin as Exhibit 14.

1 In *Chavez v. Noem*, the court denied a temporary restraining order on the grounds that the
2 petitioners had “not demonstrated serious questions about the application of Section 1225 to aliens
3 present in the United States.” *Chavez v. Noem*, 2025 WL 2730228 at *4. However, the court spent
4 less than 2 pages analyzing the statutory language and caselaw before concluding that “Petitioners
5 have not shown either a likelihood of success or serious questions going to the merits [therefore] we
6 do not address the remaining *Winter* factors.” *Chavez v. Noem*, 2025 WL 2730228 at *5.

8 Thus, neither *Vargas Lopez* nor *Chavez v. Noem* is particularly instructive. Of course,
9 neither case is binding precedent on this Court.

10 **B. Statutory Interpretation Supports Petitioner’s Interpretation.**

11 As the Honorable Brian E. Murphy stated in *Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025
12 WL 2084238 (D. Mass. July 24, 2025)¹⁶ “for section 1225(b)(2)(A) to apply, several conditions must
13 be met—in particular, an “examining immigration officer” must determine that the individual is: (1)
14 an “applicant for admission”; (2) “seeking admission”; and (3) “not clearly and beyond a doubt
15 entitled to be admitted.” Here, there is no evidence that these three elements were met.

17 As shown on the Petitioner’s Notice to Appear, DHS itself identified him as an “alien *present*
18 *in the United States* who has not been admitted or paroled” – despite “arriving alien being an option.”¹⁷
19 Thus, DHS itself determined he was not detained under the “default” provision of § 1226.

21 Respondents are clearly promoting the Department of Homeland Security’s (DHS) newly
22 adopted and erroneous position¹⁸ that all noncitizens who enter without inspection are “applicants
23 for admission” under § 1225(a) and therefore subject to mandatory detention under § 1225(b)(2),
24

25
26 ¹⁶ *Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025) was filed as
Exhibit 16 with the Petition for Habeas Corpus.

27 ¹⁷ Petitioner’s Notice to Appear was filed as Exhibit 7 with the Petition for Habeas Corpus.

28 ¹⁸ *See*, [ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission](#) (last
visited September 8, 2025), filed with the Petition for Writ of Habeas Corpus as Exhibit 4.

1 without regard for the length of time they have lived in the United States. Respondents also ignore
2 8 U.S.C. § 1225(b)(1)(A)(iii)(II), which limits inspection of applicants for admission to those who
3 have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been
4 *physically present in the United States continuously for the 2-year period immediately prior to the*
5 *date of the determination of inadmissibility under this subparagraph.*" (emphasis added)
6

7 Here, Mr. Lopez-Cruz has been living in the United States for 12 years, is married and has
8 a son who was born in Tucson, Arizona. He is not an "applicant for admission" just arriving at
9 the border.

10 **IV. Petitioner Has Met His Burden To Obtain A Preliminary Injunction.**

11 Petitioner is likely to succeed on his claims that he is wrongfully detained. He has been
12 residing in the United States for 30 years, has active deferred status through DACA and has never
13 sought admission. Petitioner is also suffering irreparable harm the longer he is detained. The
14 Supreme Court has established that the "loss of freedoms, for even minimal periods of time,
15 unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 355 (1976). Thus, by
16 virtue of Petitioner's ongoing loss of liberty, he has demonstrated significant irreparable harm. This
17 factor weighs in his favor. The government, by contrast, faces minimal hardship: the administrative
18 costs associated with three bond hearings. Indeed, Respondents "cannot suffer harm from an
19 injunction that merely ends an unlawful practice." *Rodriguez*, 715 F.3d at 1145."
20
21

22 **CONCLUSION**

23 For all the foregoing reasons, Petitioner Juan Daniel Luna-Gonzalez respectfully requests
24 the Court grant this motion for a Temporary Restraining Order and order him released immediately.
25

26 DATED this 31st day of October, 2025.
27 By: /s/ Nera Shefer
28 Nera Shefer, Esq.
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LIST OF NEW EXHIBITS	
Exhibit 24	10/22/2025 Order entered in <i>Garcia-Rosales v. Noem, et al.</i> , No. 2:25-cv-03391-SHD—DMF (D. Ariz. Oct. 22, 2025)
Exhibit 25	10-17-25 Order granting habeas corpus in <i>Benitez-Cornejo v. Cantu, et al.</i> , No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)
Exhibit 26	10/07/2025 Order granting habeas corpus in <i>Bo Li v Cantu, et al.</i> , No. CV-25-02989-PHX-SPL (D Arizona 0/07/2025)
Exhibit 27	8/13/2025 Magistrate’s Report and Recommendation in <i>Rocha Rosado v. Figueroa</i> , No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025)(Magistrate’s Report and Recommendation Adopted at 2025 WL 2349133)