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9
10 **UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

11 MOISES RODAS,
12 Petitioner,
13 v.

Case No. 2:25-cv-02216-RFB-BNW
**Federal Respondents' Response to
Court's Order to Show Cause, ECF
No. 10**

14 KRISTI NOEM, Secretary of the United
States Department of Homeland Security;
15 PAM BONDI, United States Attorney
General; TODD LYONS, Director of
United States Immigration and Customs
16 Enforcement; BRYAN WILCOX, Field
Office Director for Detention and Removal,
17 U.S. Immigration and Customs
Enforcement, Department of Homeland
18 Security; WARDEN, Henderson Detention
Center; UNITED STATES
19 DEPARTMENT OF HOMELAND
SECURITY; UNITED STATES
20 IMMIGRATION AND CUSTOMS
ENFORCEMENT,

21 Respondents.
22

23 The Federal Respondents hereby submit this Response to the Court's Order to
24 Show Cause why Petitioner's Amended Motion for Preliminary Injunction (ECF No. 9)
25 should not be granted. ECF No. 10.

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1 **I. Introduction**

2 Petitioner seeks immediate relief challenging the Department of Homeland
3 Security’s (“DHS”) detention authority, contending that his custody is governed by
4 8 U.S.C. § 1226(a) rather than § 1225(b)(2)(A). This is not a novel question; identical
5 arguments have recently been litigated in parallel proceedings before this Court and other
6 district courts.

7 For the reasons stated below—and as set forth more fully in the government’s prior
8 filing in *Jefferson Dominguez-Lara, et al. v. Noem, et al.*, No. 2:25-cv-01553-RFB-BNW (D.
9 Nev. Sept. 27, 2025) as incorporated herein—Petitioner fails to demonstrate any
10 likelihood of success on the merits, irreparable harm, or a basis for extraordinary
11 injunctive relief.

12 **II. Factual and Procedural Background**

13 Petitioner is a native and citizen of El Salvador. ECF No. 8 at ¶13. He is currently
14 detained at the Henderson Detention Center. *Id.* at ¶1. On an unknown date and
15 unknown place, Petitioner entered the United States without admission, inspection or
16 parole in or around 2001. *See* Exhibit A. Petitioner was taken into custody by DHS on or
17 about October 20, 2025, following his arrest for domestic violence. ECF No. 8 at ¶14.

18 Petitioner sought a bond redetermination, which was heard on November 3, 2025.
19 *See* Exhibit A. Petitioner’s bond redetermination was denied because the IJ found that
20 Petitioner was present in the United States without being admitted after inspection. The IJ
21 found that it lacked jurisdiction to order bond citing *Matter of Yasjure Hurtado*, 29 I&N Dec.
22 216 (BIA 2025) because Petitioner was present in the United States without admission. *Id.*
23 Petitioner filed an appeal of the IJ’s decision to the BIA on November 5, 2025. ECF No. 8
24 at ¶17.

25 On November 19, 2025, Petitioner filed an Amended Petition for Writ of Habeas
26 Corpus. ECF No. 8. The same day, he filed an Amended Motion for Preliminary
27 Injunction seeking parole under 8 USC §1226(a)(2)(B) or, in the alternative, to provide
28 him with a bond hearing under 8 USC §1226. ECF No. 9. On November 20, 2025, the

1 Court ordered Respondents to show cause why the Motion for Preliminary Injunction
2 should not be granted. ECF No. 10. This response follows.

3 **III. Argument**

4 ***A. Incorporation By Reference of Government's Prior Response***

5 Federal Respondents hereby incorporate by reference Federal Respondents'
6 Opposition to Petitioners' Motion for Preliminary Injunction in *Jefferson Dominguez-Lara, et*
7 *al. v. Noem, et al.*, No. 2:25-cv-01553-RFB-BNW (D. Nev. Sept. 27, 2025) ("Dominguez-
8 Lara Opposition"), as though fully set forth herein.¹ The Dominguez-Lara Opposition
9 addresses identical statutory and constitutional questions regarding DHS's authority to
10 detain individuals under § 1225(b)(2)(A) who are not yet admitted and whose cases remain
11 in pending removal proceedings.

12 For efficiency and consistency, Respondents adopt the Dominguez-Lara Opposition
13 in full, except for Sections IV.C ("No Class Certification") and IV.D ("Classwide Relief
14 Runs Afoul of § 1252(f)(1)"), which do not apply here as Petitioner has not sought class
15 certification in this matter.

16 The arguments in Sections I, II.A, III.C, and IV.A–B of the Dominguez-Lara
17 Opposition are equally applicable and incorporated by reference. Those sections
18 demonstrate that detention under § 1225(b)(2)(A) is mandatory by statute, not § 1226(a),
19 and that DHS's custody determination therefore complies with both statutory and
20 constitutional requirements.

21 (*See* Dominguez-Lara Opposition, ECF No. 17, at 1-23, attached hereto as Exhibit
22 "B" and incorporated herein by reference, except Sections IV.C and IV.D.)

23 ***B. Petitioner's Request for EAJA Fees Should be Denied***

24 Petitioner seeks attorney's fees and costs pursuant to § 2412 of the Equal Access for
25 Justice Act ("EAJA"), which allows fee-shifting in civil actions by or against the United
26 States. EAJA has two parts, agency adversarial adjudication fee-shifting, 5 U.S.C. § 504,

27 _____
28 ¹ The Court has endorsed the incorporation by reference of prior government filings in related or substantively
identical immigration habeas petitions, recognizing the efficiency of unified briefing given the number of
overlapping cases presenting identical questions under 8 U.S.C. § 1225(b)(2)(A) and § 1226(a).

1 and fee-shifting in civil actions in federal court, 28 U.S.C. § 2412. Petitioner cannot obtain
2 fees in this case under 5 U.S.C. § 504 since that provision excludes administrative
3 immigration proceedings. *Ardestani v. Immigration and Naturalization Service*, 502 U.S. 129
4 (1991). His only recourse for fees is pursuant to § 2412(d)(1)(A), which provides, subject to
5 exceptions not relevant here, that in an action brought by or against the United States, a
6 court must award fees and expenses to a prevailing non-government party “unless the court
7 finds that the position of the United States was substantially justified or that special
8 circumstances make an award unjust.” 28 U.S.C. § 2412(d)(1)(A).

9 Here, Petitioner’s request is premature because he is not a prevailing party. Second,
10 even if Petitioner were to prevail in this case, the Federal Respondents’ position asserted in
11 this Response is substantially justified because other courts have found the arguments
12 presented herein to be persuasive and that DHS can lawfully detain, under the mandatory
13 detention provisions of 8 U.S.C. § 1225, other petitioners who are similarly situated as
14 Petitioner.

15 As described above, the United States District Court for the District of Nebraska
16 and the United States District Court for the Southern District of California have both
17 issued decisions holding that, under the plain language of § 1225(a)(1), aliens present in the
18 United States who have not been admitted are “applicants for admission” and are thus
19 subject to the mandatory detention provisions of “applicants for admission” under §
20 1225(b)(2). *See Vargas Lopez*, 2025 WL 2780351; *Chavez*, 2025 WL 2730228. Because other
21 federal judges have found persuasive the positions advanced by the Federal Respondents in
22 this case, the Federal Respondents’ position is substantially justified. *See Medina Tovar v.*
23 *Zuchowski*, 41 F.4th 1085, 1091 (9th Cir. 2022) (finding that the district court did not abuse
24 its discretion, in finding that the United States’ position was substantially justified for
25 purposes of EAJA, where different judges disagreed about the proper reading of the statute
26 and the case involved an issue of first impression).

27 Because the United States’ position in this case is substantially justified, Petitioner’s
28 request for attorney’s fees under EAJA cannot prevail.

1 **IV. Conclusion**

2 For the reasons stated herein and, in the Dominguez-Lara Opposition, Petitioner
3 cannot satisfy the standards for such injunctive relief. The Order to Show Cause should be
4 discharged, and the Motion for Preliminary Injunction be denied in full.

5 Respectfully submitted this 26th day of November 2025.

6
7 SIGAL CHATTAH
First Assistant United States Attorney

8 /s/ Summer A. Johnson
9 SUMMER A. JOHNSON
Assistant United States Attorney