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9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF ARIZONA

11 **Fauser Reino Godinez-Ramirez,**  
12 **Petitioner,**

13 **v.**

14 **Kristi Noem**, Secretary of the United States  
15 Department of Homeland Security, in her  
16 official capacity; **Todd Lyons**, Acting of the  
17 Director of U.S. Immigration and Customs  
18 Enforcement, in his official capacity; **John**  
19 **Cantu**, Field Office Director for ICE's  
20 Enforcement and Removal Operation's  
21 ("ERO") Phoenix, Arizona Field Office, in his  
22 official capacity; **Sirce Owen**, Acting  
23 Director of Executive Office for Immigration  
24 Review, in her official capacity; **Luis Rosa,**  
25 **Jr.**, Warden of the Central Arizona Florence  
26 Correctional Complex, in his official capacity;

27 **Respondents.**

Case No. 2:25-cv-04406-SMB

A No. 

**PETITIONER'S REPLY TO  
RESPONSE TO PETITION FOR  
WRIT OF HABEAS CORPUS**

**AND**

**MOTION FOR TEMPORARY  
RESTRAINING ORDER OR  
PRELIMINARY INJUNCTION**

28 Petitioner Fauser Reino Godinez-Ramirez respectfully files this Reply to Respondents' Response to his Petition for Writ of Habeas Corpus Under § 2241 (Habeas Petition) [doc. 1] and his Motion for Temporary Restraining Order or, in the alternative, Preliminary Injunction (TRO) [doc. 2]. Because Respondents efficiently responded to both the TRO and the Habeas Petition in their Response [doc. 10], the deadlines set forth in this Court's Order dated 12/3/2025 at pages 2-3 [doc. 6] are satisfied by this single Reply.

## INTRODUCTION

1  
2 Respondents are clearly promoting the Department of Homeland Security's (DHS)  
3 newly adopted and erroneous position<sup>1</sup> that all noncitizens who enter without inspection  
4 are "applicants for admission" under 8 U.S.C. § 1225(a) and therefore subject to  
5 mandatory detention under § 1225(b)(2), without regard for how long they have lived in the  
6 United States.  
7

8 The length of time that a petitioner has been living in the United States is a  
9 constitutionally relevant consideration, because "once an alien enters the country, the legal  
10 circumstance changes, for the Due Process Clause applies to all 'persons' within the  
11 United States, including aliens, whether their presence here is lawful, unlawful, temporary,  
12 or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It is therefore reasonable to  
13 read these statutes "against [that] backdrop." See *Hewitt v. United States*, 605 U.S. —,  
14 145 S. Ct. 2165, 2173 (2025).  
15

16 Because a petitioner must show "that he is likely to succeed on the merits" in order  
17 to win injunctive relief, *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20  
18 (2008), Petitioner will start by responding to Respondents' § 1225 arguments.  
19

### 20 I. Petitioner Is Not An Arriving Alien.

#### 21 A. Statutory Interpretation Supports Petitioner's Interpretation.

22 The Response now delves deeper into the historical statutory framework behind the  
23 Immigration and Nationality Act to conclude that the "pre-IIRIRA framework gave  
24 preferential treatment to aliens unlawfully present in the United States." Response at 2-3.  
25 Post-IIRIRA, they argue, the analysis embodied in *Matter of Yajure Hurtado*, 29 I. & N.  
26

27  
28 <sup>1</sup> See, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission  
filed with the Habeas Petition.

1 Dec. 216, 222-223 (BIA 2025) should govern. Response at 3-4.

2           However, despite discussing § 1226 and § 1225(b), Respondents completely ignore  
3 § 1225(b)(1)(A)(iii)(II), which limits inspection of applicants for admission to those who  
4 have “not affirmatively shown, to the satisfaction of an immigration officer, that the alien  
5 has been *physically present in the United States continuously for the 2-year period*  
6 *immediately prior* to the date of the determination of inadmissibility under this  
7 subparagraph.” (emphasis added).

8  
9           As the Honorable Brian E. Murphy stated in *Diaz Martinez v. Hyde*, — F. Supp. 3d  
10 —, 2025 WL 2084238 (D. Mass. July 24, 2025), “for section 1225(b)(2)(A) to apply, several  
11 conditions must be met—in particular, an “examining immigration officer” must determine  
12 that the individual is: (1) an “applicant for admission”; (2) “seeking admission”; and (3) “not  
13 clearly and beyond a doubt entitled to be admitted.”

14  
15           Here, there is no evidence that these three elements were met. As shown on the  
16 Petitioner’s Notice to Appear, DHS itself identified Petitioner as an “alien *present in the*  
17 *United States* who has not been admitted or paroled” – despite “arriving alien” being an  
18 option. See, Notice to Appear filed with Habeas Petition. Thus, DHS itself determined that  
19 the Petitioner was not detained under § 1225.  
20

21           **B. Caselaw Holds that an Alien Present in the U.S. for More than 2 Years is not an**  
22           **“Arriving Alien.”**

23           Both Supreme Court and Ninth Circuit precedent hold that 8 U.S.C. § 1226(a) is the  
24 “default” provision for aliens already present in the United States. In *Jennings v.*  
25 *Rodriguez*, 583 U.S. 281, 297 (2018), the Supreme Court reversed a Ninth Circuit holding  
26 that there was a statutory right to periodic bond hearings. It held that “U. S. immigration  
27  
28

1 law authorizes the Government to detain certain aliens seeking admission into the country  
2 under §§ 1225(b)(1) and (b)(2). It also held that “§ 1226 applies to aliens already present  
3 in the United States. Section 1226(a) creates a default rule for those aliens by permitting—  
4 but not requiring—the Attorney General to issue warrants for their arrest and detention  
5 pending removal proceedings.” *Jennings*, 583 U.S. at 303 (emphasis added). In *Zadvydas*  
6 *v. Davis*, 533 U.S. 678 (2001), the Supreme Court stated that “[w]hile removal proceedings  
7 are in progress, **most aliens may be released on bond or paroled**. 8 U. S. C. §§ 1226(a)  
8 (1994 ed., Supp. V).” *Id.* at 683 (emphasis added).  
9

10 The Ninth Circuit has held that § 1226(a) is the “default” detention statute for aliens  
11 in removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the default detention  
12 statute for noncitizens in removal proceedings and applies to noncitizens “[e]xcept as  
13 provided in [Subsection C].” 8 U.S.C. § 1226(a).” *Avilez v. Garland*, 69 F. 4th 525, 529-530  
14 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023);  
15 *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534  
16 F.3d 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).  
17

18 Respondents argue that this Court should not follow the decision in *Echevarria v.*  
19 *Bondi, et al.*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025).  
20 However, every decision on this issue over the last six months entered in the U.S. District  
21 Court for the District of Arizona has followed *Echevarria*:  
22

23  
24 1) Order granting habeas in *Millan-Osuna v. Cantu, et al.*, Case No. 25-cv-04019-MTL--  
25 JFM (D. Ariz. 11-26-25)(“Respondents’ view represents the minority position—in the  
26 weeks since Judge Lanza considered the issue in *Echevarria*, dozens of other courts  
27 have reached the same conclusion.... Petitioner must receive a bond hearing under 8  
28 U.S.C. § 1226(a).”).

- 1 2) Order granting habeas in *Luna-Gonzalez v. Noem, et al.*, Case No. 25-cv-03794-MTL  
2 (D. Ariz. 11-26-25)(“Having reviewed the recent decisions adopting the minority view,  
the Court agrees with the conclusion reached by Judge Lanza in *Echevarria*.”).
- 3 3) Order granting habeas in *Najarro Zuniga v. Bondi, et al.*, Case No. 25-cv-04175-SHD  
4 (D. Ariz. 11-24-25)(“In the OSC, the Court observed that Petitioner’s case was virtually  
5 indistinguishable from Francisco Echevarria... in which Judge Lanza determined  
individuals like Petitioner are governed by § 1226 and not § 1225(b)(2)(A).”).
- 6 4) Order granting habeas in *Padron-Carreron v. Noem, et al.*, Case No. 25-cv-04204-DWL  
7 (D. Ariz. 11-24-25)(“having carefully reviewed the recent decisions adopting the minority  
8 view, the Court respectfully declines to revisit the conclusion it reached in *Echevarria*.”).
- 9 5) Order granting habeas in *Rodriguez Plascencia v. Bondi, et al.*, Case No. 25-cv-03794-  
10 MTL (D. Ariz. 11-21-25)(“having carefully reviewed the recent decisions adopting the  
minority view, the Court respectfully declines to revisit the conclusion it reached in  
11 *Echevarria*.”).
- 12 6) Order granting habeas in *Rodrigues da Silva v. Figueroa, et al.*, Case No. 25-cv-04015-  
13 PHX (D. Ariz. 11-18-25)(“dozens of other district courts have concluded individuals like  
Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to  
14 mandatory detention”).
- 15 7) Order granting habeas in *Perez Rodriguez v. Noem, et al.*, Case No. 25-cv-03921-PHX  
16 (D. Ariz. 11/13/2025)(“the vast majority of courts concluded individuals like Petitioner  
are subject to § 1226 and not § 1225 and, therefore, are not subject to mandatory  
17 detention”).
- 18 8) Order granting habeas in *Gonzalez Rodriguez v. Bondi, et al.*, Case No. 25-cv-03917-  
19 PHX (D. Ariz. 11-6-25)(“dozens of other district courts have concluded individuals like  
Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to  
20 mandatory detention”).
- 21 9) Order granting habeas in *Abrego-Zarate v. Noem, et al.*, Case No. 25-cv-03564-KML  
22 (D. Ariz. 11-6-25)(“in accord with numerous other courts addressing the same issue—  
‘Respondents’ narrow focus on the language of § 1225(a)(1) fails to take account of the  
23 entirety of the statutory scheme...” *citing to Echevarria v. Bondi, et al.*, CV-25-03252-  
PHX-DWL (ESW), 2025 WL 2821282, at \*9 (D. Ariz. October 3, 2025)).
- 24 10) Order granting habeas in *Gonzalez Rodriguez-Zarate v. Bondi, et al.*, Case No. 25-cv-  
25 03917-JJT (D. Ariz. 11-6-25)(“This Court agrees with the weight of authority in  
determining Petitioner’s detention is subject to § 1226.”).
- 26 11) Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No. 2:25-cv-03391-SHD-DMF  
27 at page 2 (D. Ariz. Oct. 22, 2025)(“while Respondents point to two district court opinions  
28 adopting their interpretation of § 1225(b)(2)(A), myriad other district courts have  
reached the same conclusion as *Echevarria* and held individuals like Petitioner are not  
subject to mandatory detention under 1225(b)(2)(A)”).

- 1 12) Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.*, No. 2:25-cv-03672 (D.  
2 Arizona Oct. 17, 2025) (“individuals like Petitioner are not “arriving aliens” subject to  
3 mandatory detention but, rather, are subject to the general removal statute, 8 U.S.C. §  
4 1226(a)”).
- 5 13) Order granting habeas entered in *Hector Lopez-Melo v. Bondi, et al.*, Case No. Case  
6 2:25-cv-03394-DJH--JZB (D. Ariz. 10/9/2025) (“petitioner, who had been present in the  
7 United States for years, was not an applicant for admission under 1225(b)(2)(A) or  
8 subject to mandatory detention”).
- 9 14) Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No. CV-25-02989-PHX-SPL (D  
10 Arizona 10/07/2025) (“Respondents maintain he is subject to mandatory detention under  
11 1225(b)(2). Again, Respondents are mistaken.”).

12 Respondents urge this Court to reject the holding of *Echevarria* and cite to a  
13 number of cases from other states which they argue support their position. See, Response  
14 at 13-15. Of course, cases from other states are not binding on this Court.

15 Further, as the Court commented in *Padron-Carreron*: “Respondents point to “at  
16 least five federal courts that have joined what the government acknowledges is a minority  
17 position on whether § 1225 applies to persons in Petitioner’s position rather than § 1226.”<sup>2</sup>  
18 The Court also mentioned four more that it had discovered.<sup>3</sup> However, it concluded that “it  
19 is unsurprising that judges across the country are not in full agreement on how this issue  
20 should be resolved—indeed, the Court previously emphasized that “it views this issue as  
21 presenting a complicated and debatable question.” *Echevarria*, 2025 WL 2821282 at \*5.

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23  
24  
25 <sup>2</sup> Those decisions were *Mejia Olalde v. Noem*, 2025 WL 3131942 (E.D. Mo. 2025), *Vargas Lopez v.*  
26 *Trump*, 2025 WL 2780351 (D. Neb. 2025), *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. 2025),  
27 *Pipa-Aquise v. Bondi*, 2025 WL 2490657 (E.D. Va. 2025), and *Pena v. Hyde*, 2025 WL 2108913 (D.  
28 Mass. 2025).

<sup>3</sup> Those decisions were *Valencia v. Chestnut*, 2025 WL 3205133 (E.D. Cal. 2025); *Alonzo v. Noem*,  
2025 WL 3208284 (E.D. Cal. 2025); *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. 2025); *Rojas*

1 **II. Petition Has Met His Burden For Injunctive Relief**

2 **A. Petitioner Will Suffer Irreparable Harm Absent An Injunction.**

3 Parties seeking preliminary injunctive relief must show they are “likely to suffer  
4 irreparable harm in the absence of preliminary relief.” *Winter*, 555 U.S. at 20. Irreparable  
5 harm is the type of harm for which there is “no adequate legal remedy, such as an award  
6 of damages.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

7  
8 Since Petitioner’s detention he has been detained at the Florence Correctional  
9 Center in Florence, Arizona, similar to a criminal detention, under the pretense that his  
10 detention is mandatory. The Supreme Court has established that the “loss of freedoms, for  
11 even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v.*  
12 *Burns*, 427 U.S. 347, 355 (1976). Thus, by virtue of Petitioner’s ongoing loss of liberty, he  
13 has demonstrated significant irreparable harm. This factor weighs in his favor.  
14

15 **B. The balance of hardships and public interest weigh heavily in Petitioner’s**  
16 **favor.**

17 The final two factors for a preliminary injunction—the balance of hardships and  
18 public interest—“merge when the Government is the opposing party.” *Nken v. Holder*, 556  
19 U.S. 418, 435 (2009). Here, Petitioner faces weighty hardships: loss of liberty, separation  
20 from family, significant stress and anxiety, and difficulty in communicating with his attorney.  
21

22 The government, by contrast, faces minimal hardship: the administrative costs  
23 associated with three bond hearings. “[T]he balance of hardships tips decidedly in  
24 plaintiffs’ favor” when “[f]aced with such a conflict between financial concerns and  
25 preventable human suffering.” What is more, because the policy preventing Petitioner from  
26 obtaining bond “is inconsistent with federal law, . . . the balance of hardships and public  
27

28 *v. Olson*, 2025 WL 3033967 (E.D. Wisc. 2025); *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, Doc.

1 interest factors weigh in favor of a preliminary injunction.” *Moreno Galvez v. Cuccinelli*, 387  
2 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (Moreno I); *see also Moreno Galvez*, 52 F.4th  
3 at 832 (affirming in part permanent injunction issued in Moreno II and quoting approvingly  
4 district judge’s declaration that “it is clear that neither equity nor the public’s interest are  
5 furthered by allowing violations of federal law to continue”). This is because “it would not  
6 be equitable or in the public’s interest to allow the [government] . . . to violate the  
7 requirements of federal law, especially when there are no adequate remedies available.”  
8 *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013). Indeed, Defendants  
9 “cannot suffer harm from an injunction that merely ends an unlawful practice.” *Rodriguez*,  
10 715 F.3d at 1145.”  
11

### 12 CONCLUSION

13  
14 For all the foregoing reasons, Petitioner Fauser Reino Godinez-Ramirez respectfully  
15 requests the Court either:

- 16 • Grant The Petition For Writ Of Habeas Corpus; or
  - 17 • Grant The Motion For Injunctive Relief.
- 18

19  
20 Dated: December 13, 2025

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9 (N.D. Tex. Oct. 24, 2025).

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 13, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing which will serve it upon the Respondents in this case who are represented by the following attorneys, who are registered to received notice via the CM/ECF System:

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