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12 **IN THE UNITED STATES DISTRICT COURT**  
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14 **FOR THE DISTRICT OF ARIZONA**

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**Ulises Poxtan Avendano,** )  
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Petitioner, )  
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v. )  
)  
**Luis Rosa Jr.,** Warden, Florence Correctional )  
Center; **Chris McGregor,** Acting Director of )  
Phoenix Field Office, U.S. Immigration and )  
Customs Enforcement; **Todd Lyons,** Director, )  
U.S. Immigration and Customs Enforcement; )  
**Kristi Noem,** Secretary of the U.S. Department )  
of Homeland Security; and **Pamela Bondi,** )  
Attorney General of the United States, in their )  
official capacities. )  
)  
Respondents. )

No. CV-25-04742-PHX-SHD (JZB)

**REPLY TO RESPONSE TO  
PETITION FOR WRIT OF  
HABEAS CORPUS AND  
RESPONSE TO ORDER TO  
SHOW CAUSE**

**INTRODUCTION**

Petitioner Ulises Poxtan Avendano respectfully submits this reply in support of his motion for injunctive relief. 8 U.S.C. § 1226(a) governs Petitioner’s custody and he should be released or granted a bond hearing before an immigration judge. The government’s response fails to show that § 1225(b)(2)(A) applies here. Petitioner, therefore, remains

1 unlawfully detained and asks the Court to grant this Petition for Writ of Habeas Corpus  
2 and order the Respondent's to provide Petitioner with a bond hearing by the immigration  
3 judge, or in the alternative direct Petitioner's immediate release from immigration  
4 detention.  
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### 6 ARGUMENT

7 The government contends that this Court should ignore the voluminous number of  
8 decisions finding that Section 1226(a), not Section 1225(b)(2)(A), detention applies here.  
9 *Government Response at 1.* To date, hundreds of federal district judges have either outright  
10 rejected the government's novel interpretation,<sup>i</sup> or found that noncitizens challenging the  
11 government's interpretation were substantially likely to prevail on the merits.<sup>ii</sup> In fact, the  
12 government acknowledges that its legal position was "squarely rejected" in *Echevarria v.*  
13 *Bondi*, 2025 WL 2821282 (D. Ariz. 2025). They also concede that the District Court in  
14 *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov.  
15 25, 2025), found the Petitioner to be covered by this class of detained individuals. In the  
16 *Bautista* ruling the court found that 8 U.S.C. §1226(a) governs the detention of class  
17 members.  
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20 Instead of relying on these numerous decisions, the government cites to two district  
21 court case in support of their claim, *Sixtos Chavez v. Noem*, No. 3:25-cv-02325-CAB-SBC  
22 (S.D. Cal. Sep. 24, 2025) and *Vargas Lopez v. Trump*, No. 8:25CV526, 2025 WL 2780351  
23 (D. Neb. Sep. 30, 2025). In *Sixtos Chavez*, the district court denied a temporary restraining  
24 order on the grounds that the petitioners had not demonstrated "serious questions about the  
25 application of Section 1225 to aliens present in the United States." *Id.* at p.8. The court's  
26 analysis of Section 1225, however, was limited to determining whether the petitioners, as

1 non-citizens present in the United States but not admitted, were “applicants for admission”  
2 under Section 1225. *Id.* But that is not the statutory construction issue before this Court.  
3  
4 Petitioner here agrees that he is an “applicant for admission.” He contests whether he is an  
5 “applicant for admission . . . *seeking admission*” within the scope of 1225(b)(2), an issue  
6 the district court *Sixtos Chavez* did not address at all.

7 In the case of *Vargas Lopez*, the court found that the Petitioner failed to meet his  
8 burden of proof to show that he falls under section 1226(a) and that the denial fell squarely  
9 on errors in his petition. The facts in *Vargas Lopez* were not on point and should not  
10 persuade this court into a denial of Petitioner’s habeas petition.  
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12 It is not difficult to understand why the overwhelming majority of federal district  
13 courts have rejected the government’s novel interpretation. By its terms, 8 U.S.C. §  
14 1225(b)(2)(A) only applies to noncitizens who are “seeking admission,” and Congress  
15 defined “admission” as the “lawful entry of the alien into the United States after inspection  
16 and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). Accordingly,  
17 “[c]onstruing section 1225(b)(2) to apply to noncitizens already residing in the country  
18 would read the word ‘entry’ out of the definitions of ‘admitted’ and ‘admission.’” *Chafila*  
19 *v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (citing 8 U.S.C.  
20 1101(a)(13)(A)).  
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22 Thus, Petitioner prevails regardless of the scope of § 1225(a)(1)’s definition of  
23 “applicant for admission.” This is because classification as an “applicant for admission”  
24 is not sufficient to render someone subject to mandatory detention under § 1225(b)(2). The  
25 “applicant for admission” must *also* be “seeking admission,” and that is clearly not the case  
26 for Petitioner.

1 Again, the plain text of § 1226 demonstrates that subsection (a) applies to Petitioner.  
2 Section 1226(a) permits the release of noncitizens who are detained “pending a decision  
3 on whether the [noncitizen] is to be removed from the United States.” 8 U.S.C. § 1226(a).  
4 While § 1226(a) provides the right to seek release, § 1226(c) carves out specific categories  
5 of noncitizens—including certain categories of noncitizens who are inadmissible under 8  
6 U.S.C. § 1182(a)—and subjects them instead to mandatory detention. *See, e.g.*, §  
7 1226(c)(1)(A), (C). If § 1226(a) could never apply to inadmissible noncitizens, there would  
8 be no reason to specify that § 1226(c) governs certain persons who are inadmissible;  
9 instead, § 1226(c) would only have needed to address people who are deportable for certain  
10 offenses under 8 U.S.C. § 1227(a).  
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13 8 U.S.C. § 1225 further defines its scope by reference to “inspections”—a term not  
14 defined in the INA, but which typically connotes an examination on or soon after physical  
15 entry. *See* 8 U.S.C. § 1225 (titled “Inspection by immigration officers; expedited removal  
16 of inadmissible arriving [noncitizens]; referral for hearing”); §§ 1225(b)(1)–(2) (referring  
17 to “inspections” in their titles); § 1225(b)(2)(A), (b)(4) (referring to “examining  
18 immigration officers”); § 1225(d)(1) (authorizing immigration officials to search certain  
19 conveyances in order to conduct “inspections” where noncitizens “are being brought into  
20 the United States”); *see also* *Dubin v. United States*, 599 U.S. 110, 120–21 (2023)  
21 (emphasis added) (relying on section title to help construe statute). Many statutory  
22 provisions, various regulations, and agency precedent also discuss “inspection” in the  
23 context of admission processes at ports of entry, further supporting the conclusion that §  
24 1225 has a limited temporal and geographic scope. *See, e.g.*, 8 U.S.C. §§ 1187(h)(2)(B)(i),  
25 1225A; 8 U.S.C. § 1752a; 8 C.F.R. § 235.1; *Matter of Quilantan*, 25 I&N Dec. 285 (BIA  
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1 2010)); *King v. Burwell*, 576 U.S. 473, 492 (2015) (looking to an Act’s “broader structure  
2 . . . to determine [the statute’s] meaning”).

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4 The statutory and regulatory text’s use of the present and present progressive tenses  
5 further excludes noncitizens apprehended in the interior, because they are no longer in the  
6 process of arriving in or seeking admission to the United States. *See* 8 U.S.C. §  
7 1225(b)(2)(C) (addressing the “[t]reatment of [noncitizens] *arriving* from contiguous  
8 territory,” i.e. those who are “*arriving* on land”) (emphasis added). As the Supreme Court  
9 recognized, this mandatory detention scheme applies “at the Nation’s borders and ports of  
10 entry, where the Government must determine whether a [] [noncitizen] seeking to enter the  
11 country is admissible,” and § 1225 is concerned “primarily [with those] seeking entry.”  
12 *Jennings v. Rodriguez*, 583 U.S. 281, 287, 297 (2018).

14 In addition, the Justice Department’s own regulations only preclude immigration  
15 judges from granting bond to “[a]rriving aliens,” 8 C.F.R. 1003.19(h)(1)(B)(ii), as distinct  
16 from noncitizens who previously entered the country and are merely present without  
17 admission. When the Justice Department created these regulations following notice and  
18 comment, it specifically stated that ““aliens who are present without having been admitted  
19 or paroled (formerly referred to as aliens who entered without inspection) will be eligible  
20 for bond and bond redetermination.”” *Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1261  
21 (W.D. Wash. April 24, 2025) (quoting 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)). And,  
22 “an administrative agency may not slip by the notice and comment rule-making  
23 requirements needed to amend a rule by merely adopting a de facto amendment to its  
24 regulation through adjudication.” *Marseilles Land & Water Co. v. FERC*, 345 F.3d 916,  
25 920 (D.C. Cir. 2003) (Silberman, J.) (citing cases). *See also Patel v. INS*, 638 F.2d 1199,  
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1 1202 (9th Cir. 1980) (rejecting BIA decision that imposed additional requirement that the  
2 INS declined to impose during notice and comment rulemaking).

3 The legislative history of the Illegal Immigration Reform and Immigrant  
4 Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104--208, Div. C, §§ 302-03, 110 Stat.  
5 3009-546, 3009-582 to 3009-583, 3009-585, also supports the conclusion that § 1226(a)  
6 applies to Petitioner. In passing IIRIRA, Congress was focused on the perceived problem  
7 of recent arrivals to the United States who did not have documents to remain. *See* H.R.  
8 Rep. No. 104-469, pt. 1, at 157-58, 228-29; H.R. Rep. No. 104-828, at 209. Notably,  
9 Congress did not say anything about subjecting all people present in the United States after  
10 an unlawful entry to mandatory detention if arrested. This is important because prior to  
11 IIRIRA, people like Petitioner were not subject to mandatory detention. *See* 8 U.S.C. §  
12 1252(a)(1) (1994) (authorizing Attorney General to arrest and release noncitizens  
13 physically present in the United States pending a determination of deportability). Had  
14 Congress intended to make such a monumental shift in immigration law (potentially  
15 subjecting millions of people to mandatory detention), it would have explained so or spoken  
16 more clearly. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468-69 (2001). But to  
17 the extent it addressed the matter, Congress explained precisely the opposite, noting that  
18 the new § 1226(a) merely “restates the current provisions in [INA] section 242(a)(1)  
19 regarding the authority of the Attorney General to arrest, detain, and release on bond a []  
20 [noncitizen] *who is not lawfully in the United States.*” H.R. Rep. No. 104- 469, pt. 1, at 229  
21 (emphasis added); *see also* H.R. Rep. No. 104-828, at 210 (same).  
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The agency’s interpretation of IIRIRA soon after its enactment is consistent with  
this history. As noted in a recent decision from this judicial district, “a 1997 interim rule

1 issued ‘to implement the provisions of [IIRIRA],’ which had passed six months earlier . . .  
2 explained that ‘[d]espite being applicants for admission, aliens who are present without  
3 having been admitted or paroled (formerly referred to as aliens who entered without  
4 inspection) will be eligible for bond and bond redetermination.’” *Rosado v. Figueroa*, 2025  
5 WL 2337099 (D. Ariz. Aug. 11, 2025) (quoting 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)).

7 The Board of Immigration Appeals (BIA) acknowledged that reading 8 U.S.C. §  
8 1225(b)(2)(A) to apply to individuals who entered without inspection would create a  
9 redundancy in the statute by subjecting such individuals to mandatory detention under two  
10 separate provisions. *Matter of Yajure Hurtado*, 29 I. & N. Dec. at 222. The BIA dismissed  
11 such redundancy as permissible and posited that the Laken Riley Act did not purport to  
12 “overrule” 8 U.S.C. § 1225(b)(2)(A). *Id.* at 219, 222. But once again, in reaching this  
13 conclusion, the BIA did not address the requirement of 8 U.S.C. § 1225(b)(2)(A) that an  
14 individual must be “seeking admission” to be subject to § 1225(b)(2)(A). To give substance  
15 to the phrase “seeking admission” would both ensure fidelity to the plain language of the  
16 statute and eliminate concerns about redundancies between § 1226(c) and § 1225(b)(2)(A):  
17 individuals who entered without inspection and have been present in the United States for  
18 more than two years would not be subject to detention, *unless* they were subject to one of  
19 the mandatory detention provisions of the Laken Riley Act.

22 The government also claims that an applicant for admission inherently  
23 encompasses those seeking admission. *Government Response at 3*. However, that  
24 interpretation would render those persons, such as Petitioner, in the country in a perpetual  
25 state of seeking admission, even if they resided here for 10, 20, 50, or 100 years, and would  
26 thus defy logic. *See Echevarria v. Bondi*, 2:25-cv-03252-DWL-ESW (D. Ariz. Oct. 3,

1 2025) (rejecting the concept that the petitioner there was perpetually seeking admission  
2 during the 24 years he had been in the country). This Court should thus similarly adopt the  
3 analysis applied by the courts in *Echevarria*, *Benitez-Cornejo*, and the numerous other  
4 similar rulings across the country.  
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6 Based on the aforementioned legal arguments, this Court should issue a Writ of  
7 Habeas Corpus that either instructs the government to immediately release the Petitioner  
8 or provide Petitioner with a bond redetermination hearing within seven days and afford  
9 Petitioner the opportunity to present evidence that he is not a flight risk nor a danger to the  
10 community.  
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12 Respectfully submitted,

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21 Dated: December 31, 2025

22 <sup>1</sup> See, e.g., *Castellanos Lopez v. Warden*, No. 25-2527 (S.D. Cal. Oct. 27, 2025) (Huie, J.);  
23 *Esquivel-Ipina v. Larose*, No. 25-2672 (S.D. Cal. Oct. 24, 2025) (Sammartino, J.); *Benitez-*  
24 *Cornejo v. Cantu*, No. 25-3672 (D. Ariz. Oct. 17, 2025) (Tuchi, J.); *Torres v. Wamsley*, 2025  
25 WL 2855379 (W.D. Wash. Oct. 8, 2025) (Menendez, J.); *BDVS v. Forestal*, No. 25-1968  
26 (S.D. Ind. Oct. 8, 2025) (Evans Barker, J.); *Eliseo v. Olson*, No. 25-3381 (Oct. 8, 2025)  
(Blackwell, J.); *Buenrostro-Mendez v. Bondi*, No. 25-3726, (S.D. Tex. Oct. 7, 2025)  
(Rosenthal, J.); *Echevarria v. Bondi*, No. 25-3252, 2025 LX 492534 (D. Ariz. Oct. 3, 2025)  
(Joun, J.); *Belsai D.S. v. Bondi*, No. 25-3682 (D. Minn. Oct. 1, 2025) (Menendez, J.);  
*Santiago Santiago v. Noem*, No. 25-361 (W.D. Tex. Oct. 1, 2025) (Cardone, J.); *Quispe-*  
*Ardiles v. Noem*, No. 25-1382, 2025 WL 2783799 (E.D. Va. Sept. 30, 2025) (Nachmanoff,  
J.); *Rodriguez Vazquez v. Bostock*, No. 25-5240, 2025 WL 2782499 (W.D. Wash. Sept. 30,

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2025) (Cartwright, J.); *Da Silva v. ICE*, No. 25-284, 2025 WL 2778083 (D.N.H. Sept. 29, 2025) (McCafferty, J.); *Quispe v. Crawford*, No. 25-1471, 2025 WL 2783799 (E.D. Va. Sept. 29, 2025) (Trenga, J.); *Inlago Tocagon v. Moniz*, No. 25-12453, 2025 WL 2778023 (D. Mass. Sept. 29, 2025) (Joun, J.); *Barrios v. Shepley*, No. 25-406, 2025 WL 2772579 (D. Maine Sept. 29, 2025) (Woodcock, Jr.); *J.U. v. Maldonado*, No. 25-4836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *Savane v. Francis*, No. 25-6666, 2025 WL 2774452 (S.D.N.Y. Sept. 28, 2025) (Woods, J.); *Zumba v. Bondi*, No. 25-14626, 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (Hayden, J.); *Villanueva Herrera v. Tate*, No. 25-3364 (S.D. Tex. Sept. 26, 2025) (Hittner, J.); *Gamez Lira v. Noem*, No. 25-855 (D.N.M. 25-855) (Johnson, J.); *Singh v. Lewis*, No. 25-96, 2025 LX 400065 (W.D. Ky. Sept. 22, 2025) (Jennings, J.); *Chafra v. Scott*, No. 25-437, 2025 LX 422663 (D. Maine Sept. 21, 2025) (Neumann, J.); *Hasan v. Crawford*, No. 25-1408, 2025 LX 499354 (E.D. Va. Sept. 19, 2025) (Brinkema, J.); *Barrera v. Tindall*, No. 25-451, 2025 LX 435572 (W.D. Ky. Sept. 19, 2025) (Jenning, J.); *Salazar v. Dedos*, No. 25-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025) (Urias, J.); *Garcia Cortes v. Noem*, No. 25-2677, 2025 WL 2652880 (D. Colo. Sept. 16, 2025) (Sweeney, J.); *Pizarro Reyes v. Raycraft*, No. 25-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025) (White, J.); *Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924 (D. Mass. Sept. 9, 2025) (Kobick, J.); *Jimenez v. FCI Berlin*, No. 25-326, 2025 LX 360066 (D.N.H. Sept. 8, 2025) (McCafferty, J.); *Doe v. Moniz*, No. 25-12094, 2025 WL 2576819 (D. Mass. Sept. 5, 2025) (Talwani, J.); *Lopez Benitez v. Francis*, No. 25-5937, 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025) (Ho, J.); *Lopez-Campos v. Raycraft*, No. 25-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025) (McMillion, J.); *Diaz v. Mattivelo*, No. 25-12226, 2025 WL 2457610 (D. Mass. Aug. 27, 2025) (Kobick, J.); *Jose J.O.E. v. Bondi*, No. 25-3051, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) (Tostrud, J.); *Leal-Hernandez v. Noem*, No. 25-2428, 2025 WL 2430025 (D. Md. Aug. 24, 2025) (Rubin, J.); *Romero v. Hyde*, No. 25-11631, \_\_\_ F.Supp.3d \_\_\_, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Murphy, J.); *Samb v. Joyce*, No. 25-6373, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025) (Ho, J.); *dos Santos v. Noem*, No. 25-12052, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Kobick, J.); *Diaz Martinez v. Hyde*, No. 25-11613, \_\_\_ F.Supp.3d \_\_\_, 2025 WL 2084238 (D. Mass. July 24, 2025) (Murphy, J.); *Gomes v. Hyde*, No. 25-11571, 2025 WL 1869299 (D. Mass. July 7, 2025) (Kobick, J.).

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<sup>11</sup> See, e.g., *Arce-Cervera v. Noem*, 25-1895 (D. Nev. Oct. 28, 2025); *Martinez Lopez v. Noem*, No. 3:25-2734 (S.D. Cal. Oct. 23, 2025) (Park, J.); *Sabi Polo v. Chestnut*, No. 25-1342 (E.D. Cal. Oct. 17, 2025) (Thurston, J.); *Menjivar Sanchez v. Wofford*, No. 25-1187 (E.D. Cal. Oct. 17, 2025) (Oberto, J.); *E.C. v. Noem*, 2025 WL 2916264 (D. Nev. Oct. 14, 2025) (Boulware, J.); *Rico-Tapia v. Smith* No. 25-379 (D. Haw. Oct. 10, 2025) (Park, J.); *Alvarez Chavez v. Kaiser*, 2025 WL 2909526 (N.D. Cal. Oct. 9, 2025) (Beeler, J.); *Flores v. Noem*, No. 25-2490, 2025 LX 444718 (C.D. Cal. Sept. 29, 2025) (Birotte, J.); *Roa v. Albarran*, No. 25-7802, 2025 WL 2732923 (N.D. Cal. Sept. 25, 2025) (Seeborg, J.); *Lopez v. Hardin*, No. 25-830, 2025 WL 2732717 (M.D. Fla. Sept. 25, 2025) (Dudek, J.); *Guerrero Lepe v. Andrews*, No. 1:25-cv-01163 (E.D. Cal. Sept. 23, 2025) (Sherriff, J.); *Aceros v. Kaiser*, No. 25-06924, 2025 LX 330524 (N.D. Cal. Sept. 12, 2025) (Chen, J.); *Guzman v. Andrews*, No. 25-01015, 2025 LX 354551 (E.D. Cal. Sept. 9, 2025) (Sherriff, J.); *Mosqueda v. Noem*, No. 25-2304, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (Snyder, J.);

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*Nieves v. Kaiser*, No. 25-6921, 2025 LX 320701 (N.D. Cal. Sept. 3, 2025) (Beeler, J.);  
*Garcia v. Noem*, No. 25-2180, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025) (Sabraw, J.);  
*Garcia v. Kaiser*, No. 25-06916, 2025 LX 322337 (N.D. Cal. Aug. 29, 2025) (Gonzalez  
Rogers, J.); *Kostak v. Trump*, No. 25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025)  
(Edwards, J.); *Benitez v. Noem*, No. 25-02190, 2025 LX 322897 (C.D. Cal. Aug. 26, 2025)  
(Klausner, J.); *Ramirez Clavijo v. Kaiser*, No. 25-06248, 2025 WL 2419263 (N.D. Cal.  
Aug. 21, 2025) (Freeman, J.); *Arrazola-Gonzalez v. Noem*, No. 25-01789, 2025 WL  
2379285 (C.D. Cal. Aug. 15, 2025) (Wright, J.); *Maldonado v. Olson*, No. 25-3142, 2025  
WL 2374411 (D. Minn. Aug. 15, 2025) (Nelson, J.); *Maldonado Bautista v. Santacruz*, No.  
25-01873, 2025 LX 341363 (C.D. Cal. July 28, 2025); *Vazquez v. Bostock*, No. 25-05240,  
779 F. Supp. 3d 1239 (W.D. Wash. April 24, 2025) (Cartwright, J.). *But see Sixtos Chavez*  
*v. Noem*, No. 25-2325 (S.D. Cal. Sep. 24, 2025) (Bencivengo, J.) (denying temporary  
restraining order); *Villanueva v. Chestnut*, No. 25-2 (E.D. Cal. Oct. 24, 2025) (Sheriff, J.)  
(same).