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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF ARIZONA**

12 **Octavio Garcia Ornelas,**
13 **Petitioner,**

14 v.

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

Case No.

Agency No. 

**PETITION FOR WRIT
OF HABEAS CORPUS
PURSUANT TO 28 U.S.C.
§2241**

26 **INTRODUCTION**

27 The Respondents are unlawfully detaining Petitioner Octavio Garcia Ornelas, at
28 the Florence Correctional Center, due to the Department of Homeland Security (DHS)
recently changed its long-standing position with regard to the status of mandatory
detention. *See*, ICE Memo: Interim Guidance Regarding Detention Authority for
Applications for Admission filed herewith as Exhibit 1. The Bureau of Immigration

1 Appeals (BIA) issued a precedential decision on September 5, 2025, holding that all
2 noncitizens present in the United States without admission – no matter how long they
3 have resided here – are still “applicants for admission” under 8 U.S.C. § 1225(a) and
4 not entitled to bond hearings because they are subject to mandatory detention under §
5 1225(b)(2)(A). *See, Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) filed
6 herewith as Exhibit 2.
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8
9 But this interpretation of the Immigration and Naturalization Act (INA) violates
10 both procedural and substantive Fifth Amendment protections, ignores the plain
11 statutory language of both § 1225 and § 1226, and is contrary to numerous recent Federal
12 Court decisions in this District that have rejected these exact arguments. *See e.g.*
13 10/3/2025 Order entered in *Francisco Echevarria v. Pam Bondi, et al.*, CV-25-03252-
14 PHX-DWL (ESW), (D. Ariz. 10/3/2025), filed herewith as Exhibit 16.
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16 Respondent has resided in the United States continuously since 2001 and is the
17 father of four United States citizen children. He has submitted an application for
18 cancellation of removal under INA § 240A(b) (42B), for which he is statutorily eligible,
19 and he has no criminal history. *See, Petitioner’s Application for Cancellation of*
20 *Removal for Certain Nonpermanent Residents*, filed herewith as Exhibit 6. Despite these
21 substantial equities, Respondent remains detained without the opportunity to present
22 evidence relevant to bond eligibility. Further, when Respondents issued a Notice to
23 Appear, it identified Petitioner as an “alien present in the United States” despite
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1 “arriving alien” being an option. *See*, Petitioner’s Notice to Appear, filed herewith as
2 Exhibit 5.

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4 In addition to BIA decisions not being binding precedent upon this Court, the
5 Supreme Court decision last year in *Loper Bright Enterprises v. Raimondo*, 603 U.S.
6 369, 400 (2024), made clear that federal courts must independently interpret statutes and
7 no longer defer under so-called “Chevron deference.” This Court is therefore in the best
8 position to determine whether the Respondents are misinterpreting the relevant federal
9 statutes and improperly denying alien detainees bond hearings on the grounds that they
10 are all subject to mandatory detention under § 1225(b)(2)(A). The petition for writ of
11 habeas corpus should be granted.
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14 **JURISDICTION & CUSTODY**

15 1. Petitioner Octavio Garcia Ornelas, is in the physical custody of
16 Respondents and Immigration and Customs Enforcement (ICE), an agency within the
17 Department of Homeland Security.
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19 2. Petitioner is currently detained at Florence Correctional Center and is
20 under the direct control of Respondents and their agents.
21

22 3. This action arises under the Constitution of the United States and 8
23 U.S.C. § 1101 et seq.

24 4. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of
25 the United States Constitution, 28 U.S.C. § 1331, and the common law. This Court may
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1 grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. §
2 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

3
4 5. Congress has preserved judicial review of challenges to immigration
5 detention. *See Jennings v. Rodriguez*, 583 U.S. 122, 130-131 (2018) (holding that 8
6 U.S.C. §§ 1226(e) and 1252(b)(9) do not bar review of challenges to prolonged
7 immigration detention).

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9 6. The Court must grant the petition for writ of habeas corpus or order
10 Respondents to show cause “forthwith,” unless the petitioner is not entitled to relief. 28
11 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return
12 “within three days unless for good cause additional time, not exceeding twenty days, is
13 allowed.” *Id.*


14
15 7. The Court has inherent power to release the petitioner pending review
16 of his petition. *See Martin v. Solem*, 801 F.2d 324, 329 (8th Cir. 1986).

18 VENUE

19 8. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410
20 U.S. 484, 493- 500 (1973), venue lies in this Court, the federal judicial district in which
21 Petitioner is currently is in custody.

22
23 9. Venue is also properly in this Court pursuant to 18 U.S.C. § 1391(e)
24 because Respondents are employees, officers, and agencies of the United States.

26 PARTIES

1 10. Petitioner Octavio Garcia Ornelas was born on  in
2 Guanajuato, Mexico. Petitioner is currently detained by ICE at Florence Correctional
3 Center. *See*, ICE Online Detainee Locator, filed herewith as Exhibit 3.
4

5 11. Respondent Kristi Noem is the Secretary of the U.S. Department of
6 Homeland Security (“DHS”). In this capacity, Respondent Noem is a legal custodian of
7 Petitioner. Respondent Noem is sued in her official capacity.
8

9 12. Respondent DHS is a federal executive agency responsible for, among
10 other things, enforcing federal immigration laws and overseeing lawful immigration to
11 the United States. Respondent DHS is a legal custodian of Petitioner.
12

13 13. Respondent Todd M. Lyons is Acting Director and Senior Official
14 Performing the Duties of the Director of U.S. Immigration and Customs Enforcement
15 (“ICE”). Respondent Lyons is responsible for ICE’s policies, practices, and procedures,
16 including those relating to the detention of immigrants during their removal procedures.
17 Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in his
18 official capacity.
19

20 14. Respondent ICE is a federal law enforcement agency within DHS.
21 Respondent ICE is responsible for the enforcement of immigration laws, including the
22 detention and removal of immigrants. Respondent ICE is a legal custodian of Petitioner.
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24 15. Respondent John Cantu is Field Office Director for ICE’s Enforcement
25 and Removal Operation’s (“ERO”) Field Office. Respondent Cantu is a legal custodian
26 of Petitioner and is sued in his official capacity.
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1 28. Congress has granted the Attorney General discretion to decide
2 whether to detain or release certain noncitizens pending a removal decision. *See* 8 U.S.C.
3 § 1226(a). The Attorney General has delegated that authority to IJs. 8 C.F.R. §§ 1003.19,
4 1236.1.
5

6 29. On July 8, 2025, DHS adopted a new policy on mandatory detention
7 for noncitizens who have been residing in the United States. *See*, ICE Memo: Interim
8 Guidance Regarding Detention Authority for Applications for Admission filed herewith
9 as Exhibit 1.
10

11 30. On September 5, 2025, the BIA entered the precedential decision
12 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025), filed herewith as Exhibit 2,
13 which holds that all noncitizens who enter without inspection are “applicants for
14 admission” under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under
15 § 1225(b)(2), without regard for the length of time they have lived in the United States.
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18 31. The Ninth Circuit has held that § 1226(a) is the “default” detention
19 statute for aliens in removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the
20 default detention statute for noncitizens in removal proceedings and applies to
21 noncitizens “[e]xcept as provided in [Subsection C].” 8 U.S.C. § 1226(a).” *Avilez v.*
22 *Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*,
23 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD
24 Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-*
25 *Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).
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1 32. Almost every Federal District Court that has considered the issue has
2 found that DHS's interpretation defies the INA. In Arizona, the following decisions so
3 find and collect the cases from other district courts around the country:
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- 5 a. 12/12/2025 Order granting habeas in *Gonzalez-Gonzalez v. Noem*, et al.,
6 Case No. 25-cv-04478-DWL (D. Ariz. 12-12-25)(The court declined to
7 revisit the conclusion it reached in *Echevarria*).
- 8 b. 11/26/2025 Order granting habeas in *Luna-Gonzalez v. Noem*, et al., Case
9 No. 25-cv-03794-PHX (D. Ariz. 11-26-25)(The court rejected the
10 government's argument that the petitioner is an "arriving alien" subject to
11 mandatory detention under § 1225 and agrees instead with the growing
12 majority of courts that people like the petitioner—who were arrested
13 inside the United States long after entering—are detained under § 1226(a),
14 not § 1225.), gathering cases, filed with the Habeas Petition as Exhibit 7;
- 15 c. 11/24/25 Order granting habeas in *Padron-Carreron v. Noem*, et al., Case
16 No. 25-cv-04204-PHX (D. Ariz. 11-25-25)("Respondents correctly
17 acknowledge that their view still represents the minority position—in the
18 weeks since the Court considered the issue in *Echevarria*, dozens of other
19 courts have reached the same conclusion... [that] § 1226(a)'s application
20 for the past three decades supports its application to noncitizens in
21 petitioner's position"), gathering cases, filed with the Habeas Petition as
22 Exhibit 8;
- 23 d. 11/18/2025 Order granting habeas in *Rodrigues da Silva v. Figueroa*, et
24 al., Case No. 25-cv-04015-PHX (D. Ariz. 11-18-25)("dozens of other
25 district courts have concluded individuals like Petitioner are subject to §
26 1226 and not § 1225 and, therefore, are not subject to mandatory
27 detention"), gathering cases, filed with the Habeas Petition as Exhibit 9;
- 28 e. 11/13/2025 Order granting habeas in *Perez Rodriguez v. Noem*, et al., Case
No. 25-cv-03921-PHX (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 detention"), gathering cases,
filed with the Habeas Petition as Exhibit 10

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- 2 f. 11/6/25 Order granting habeas in *Gonzalez Rodriguez v. Bondi, et al.*, Case
- 3 No. 25-cv-03917-PHX (D. Ariz. 11-6-25)(“dozens of other district courts
- 4 have concluded individuals like Petitioner are subject to § 1226 and not §
- 5 1225 and, therefore, are not subject to mandatory detention”), gathering
- 6 cases, filed with the Habeas Petition as Exhibit 11
- 7
- 8 g. 11/6/2025 Order Granting Habeas in *Abrego-Zarate v. Noem, et al.*, Case
- 9 No. 25-cv-03564-KML (D. Ariz. 11-6-25)(“the great weigh of authority
- 10 is that individuals like petitioner are not subject to mandatory detention.
- 11 This court agrees with the majority view. For these reasons, the petition is
- 12 granted, and petitioner must receive a bond hearing without application of
- 13 *Matter of Yajure Hurtado*, 29 I&N 216 (B.I.A. 2025.”), filed herewith as
- 14 Exhibit 12.
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- 16 h. 11/03/25 Order granting habeas petition in *Lopez-Cruz v. Noem, et al*, No.
- 17 2:25-cv-03566-DJH--ASB (D. Ariz. 11/3/2025)(“dozens of other district
- 18 courts have concluded individuals like Petitioner are subject to § 1226 and
- 19 not § 1225 and, therefore, are not subject to mandatory detention. This
- 20 Court agrees with this conclusion.”), filed herewith as Exhibit 13.
- 21
- 22 i. 10/22/2025 Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No.
- 23 2:25-cv-03391-SHD-DMF at page 2 (D. Ariz. Oct. 22, 2025)(“while
- 24 Respondents point to two district court opinions adopting their
- 25 interpretation of § 1225(b)(2)(A), myriad other district courts have
- 26 reached the same conclusion as *Echevarria* and held individuals like
- 27 Petitioner are not subject to mandatory detention under 1225(b)(2)(A)”),
- 28 filed herewith as Exhibit 14.
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- 30 j. 10/17/2025 Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et*
- 31 *al.*, No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)(“individuals like
- 32 Petitioner are not “arriving aliens” subject to mandatory detention but,
- 33 rather, are subject to the general removal statute, 8 U.S.C. § 1226(a)”),
- 34 filed herewith as Exhibit 15.
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- 36 k. 10/09/2025 Order granting habeas entered in *Hector Lopez-Melo v. Bondi,*
- 37 *et. al.*, Case No. Case 2:25-cv-03394-DJH--JZB (D. Ariz.
- 38

1 10/9/2025)(“petitioner, who had been present in the United States for
2 years, was not an applicant for admission under 1225(b)(2)(A) or subject
3 to mandatory detention”), filed herewith as Exhibit 16.

4 1. 10/07/2025 Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No.
5 CV-25-02989-PHX-SPL (D Arizona 10/07/2025)(“Respondents maintain
6 he is subject to mandatory detention under 1225(b)(2). Again,
7 Respondents are mistaken.”), filed herewith as Exhibit 17.

8 m. 10/3/2025 Order granting habeas corpus in *Echevarria v. Bondi, et al.*, No.
9 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3,
10 2025)(“Court agrees with the majority of courts that have concluded that
11 § 1226(a), rather than § 1225(b)(2)(A), applies in this circumstance.”),
12 filed herewith as Exhibit 18.

13 n. 08/11/2025 Magistrate’s Report and Recommendation in *Rocha Rosado*
14 *v. Figueroa*, No. CV-25-02157-PHX-DLR 2025 WL 2349133 at *10 (D.
15 Ariz. Aug. 13, 2025)(Magistrate’s Report and Recommendation Adopted
16 at 2025 WL 2349133)([t]he text of § 1226, the canons of statutory
17 interpretation, this section’s legislative history, and longstanding agency
18 practice indicate that Rosado is subject to § 1226(a)’s ‘default’ rule for
19 discretionary detention rather than § 1225’s mandatory detention
20 requirement, and that the IJ erred by finding they did not have jurisdiction
21 to consider Rosado’s detention.”) *report and recommendation adopted sub*
22 *nom.* 2025 WL 2349133 (D. Ariz. Aug. 13, 2025), filed herewith as
23 Exhibit 19.

24 33. Petitioner has located only 6 cases holding to the contrary. In *Vargas*
25 *Lopez v. Trump*, --F. Supp. 3d--, 2025 WL 2780351 (D. Neb. Sept. 30, 2025), the court
26 held that Vargas Lopez failed to meet his burden to show that he falls under § 1226(a),
27 so “his Petition fails regardless of the parties’ arguments about the scope of § 1225(b)
28 and § 1226(a).” *Vargas Lopez v. Trump*, 2025 WL 2780351 at *7 (emphasis added). In
Chavez v. Noem, -- F. Supp. 3d --, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), the

1 court denied a temporary restraining order on the grounds that the petitioners had “not
2 demonstrated serious questions about the application of Section 1225 to aliens present
3 in the United States.” *Chavez v. Noem*, 2025 WL 2730228 at *4. However, the court
4 spent less than 2 pages analyzing the statutory language and caselaw before concluding
5 that “Petitioners have not shown either a likelihood of success or serious questions going
6 to the merits [therefore] we do not address the remaining Winter factors.” *Chavez v.*
7 *Noem*, 2025 WL 2730228 at *5. *Mejia Olalde v. Noem*, 2025 U.S. Dist. LEXIS 221830
8 (E.D. Mo. Nov. 10, 2025) was concerned with whether the habeas petition had been
9 properly filed in that court’s jurisdiction and never reached the application of § 1225(b)
10 to the petitioner. *Pipa-Aquise v. Bondi*, No. 25-1094, 2025 WL 2490657 (E.D. Va. Aug.
11 5, 2025) and *Pena v. Hyde*, No. 25-11983, 2025 WL 2108913 (D. Mass. July 28, 2025)
12 were each shorter than two pages long and neither contained any significant analysis.
13 Lastly, in *Lauren-Ayala v. Noem*, No. 25-cv- 04425-KML--JFM (D. Ariz. 12/12/2025).
14 the court did not reach the merits of the habeas claim or analyze the governing statute;
15 instead, it dismissed the petition for lack of jurisdiction, concluding that, because
16 petitioner failed to address the immigration court’s alternative dangerousness finding, it
17 could not order any effective relief. Thus, none of these cases are particularly instructive.

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23 34. In 1997, after Congress amended the INA through the Illegal
24 Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), EOIR and
25 the then-Immigration and Naturalization Service issued an interim rule to interpret and
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28

1 apply IIRIRA. Specifically, under the heading of “Apprehension, Custody, and
2 Detention of Aliens,” the agencies explained that:

3
4 Despite being applicants for admission, aliens who are
5 present without having been admitted or paroled (formerly
6 referred to as aliens who entered without inspection) *will be*
eligible for bond and bond redetermination.

7 62 Fed. Reg. at 10323 (emphasis added). The agencies thus made clear that
8 individuals who had entered without inspection *were* eligible for consideration for
9 bond and bond hearings before IJs under 8 U.S.C. § 1226 and its implementing
10 regulations.
11

12 35. Thus, for almost 30 years, all participants in the immigration system
13 have understood that people arrested inside the United States generally fall within §
14 1226 for detention purposes and are therefore required to receive a bond hearing upon
15 request—even if they initially entered the country without permission. *See Martinez v.*
16 *Hyde*, No. 25-11613, 2025 WL 2084238, at *4 n.9 (D. Mass. July 24, 2025) (citing the
17 United States Solicitor General’s representation to the Supreme Court at oral argument
18 that “DHS’s long-standing interpretation has been that 1226(a) applies to those who
19 have crossed the border between ports of entry and are shortly thereafter apprehended”).
20
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22 36. Despite the overwhelming number of federal cases that have ruled
23 against the government’s position, DHS and DOJ are continuing to systemically
24 misclassify people and unlawfully deny them access to bond hearings and release on
25 bond during the pendency of their immigration proceedings.
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28 **CLAIMS FOR RELIEF**

FIRST CLAIM FOR RELIEF
Violation of Fifth Amendment – Substantive Due Process

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3 37. Petitioner realleges and incorporates herein the allegations contained
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5 in the preceding paragraphs of the petition as if fully set forth herein.

6 38. The Due Process Clause of the Fifth Amendment forbids the
7
8 government from depriving any “person” of liberty “without due process of law,”
9 including noncitizens. U.S. Const. amend. V.

10 39. Substantive due process asks whether a person’s life, liberty, or
11
12 property is deprived without sufficient purpose. There is no question that Petitioner has
13 been deprived of his liberty in this case.

14 40. The government’s continued detention of Petitioner is not supported
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16 by any special interest or compelling justification that outweighs his liberty interest.

17 41. Petitioner’s ongoing detention when so many federal courts have held
18
19 that he is entitled to be considered for release upon posting an appropriate bond under §
20 1226 constitutes prolonged detention and violates his substantive due process rights.

SECOND CLAIM FOR RELIEF
Violation of Fifth Amendment Right - Procedural Due Process

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23 42. Petitioner realleges and incorporates herein the allegations contained
24
25 in the preceding paragraphs of the petition as if fully set forth herein.

26 43. The Due Process Clause of the Fifth Amendment guarantees Petitioner
27
28 the right to procedural due process in seeking a bond redetermination and the
government may not unreasonably restrict this right.

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VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner Octavio Garcia Ornelas and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 18th day of December, 2025.

By: /s/ *Erica Sanchez*
Erica Sanchez, Esq.

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LIST OF EXHIBITS

1	LIST OF EXHIBITS	
2	Exhibit 1	<u>ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission</u> (last visited September 8, 2025).
3		
4	Exhibit 2	<i>Matter of Yajure Hurtado</i> , 29 I&N Dec. 216 (B.I.A. 2025).
5	Exhibit 3	ICE Online Detainee Locator Printout
6	Exhibit 4	Declaration of Counsel in Support of Petition for Writ of Habeas Corpus
7	Exhibit 5	Notice to Appear
8	Exhibit 6	Cover: Application for Cancellation of Removal for Certain Nonpermanent Residents
9		
10	Exhibit 7	Order granting habeas in <i>Gonzalez-Gonzalez v. Noem</i> , et al., Case No. 25-cv-04478-DWL (D. Ariz. 12-12-25)
11	Exhibit 8	Order granting habeas in <i>Luna-Gonzalez v. Noem</i> , et al., Case No. 25-cv-03794-PHX (D. Ariz. 11-26-25)
12		
13	Exhibit 9	Order granting habeas in <i>Padron-Carreron v. Noem</i> , et al., Case No. 25-cv-04204-PHX (D. Ariz. 11-24-25)
14	Exhibit 10	Order granting habeas in <i>Rodrigues da Silva v. Figueroa</i> , et al., Case No. 25-cv-04015-PHX (D. Ariz. 11-18-25)
15		
16	Exhibit 11	Order entered <i>Perez Rodriguez v. Noem</i> , et al., Case No. 25-cv-03921-PHX (D. Ariz. 11/13/2025)
17	Exhibit 12	Order entered <i>Gonzalez Rodriguez v. Bondi</i> , et al., Case No. 25-cv-03917-PHX (D. Ariz. 11-6-25)
18		
19	Exhibit 13	Order entered in <i>Abrego-Zarate v. Noem</i> , et al., Case No. 25-cv-03564-KML (D. Ariz. 11-6-25)
20	Exhibit 14	Order entered in <i>Lopez-Cruz v. Noem</i> , et al, No. 2:25-cv-03566-DJH--ASB (D. Ariz. 11/3/2025)
21		
22	Exhibit 15	Order entered in <i>Garcia-Rosales v. Noem</i> , et al., No. 2:25-cv-03391-SHD—DMF (D. Ariz. Oct. 22, 2025)
23	Exhibit 16	Order granting habeas corpus in <i>Benitez-Cornejo v. Cantu</i> , et al., No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)
24		
25	Exhibit 17	Order entered in <i>Hector Lopez-Melo v. Bondi</i> , et. al., Case No. Case 2:25-cv-03394-DJH--JZB [docket no. 11] (D.C. Ariz. 10/9/2025)
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27	Exhibit 18	Order granting habeas corpus in <i>Bo Li v. Cantu</i> , et al., No. CV-25-02989-PHX-SPL (D Arizona 10/07/2025)
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Exhibit 19	Order entered in <i>Francisco Echevarria v. Pam Bondi, et al.</i> , CV-25-03252-PHX-DWL (ESW), (D. Ariz. 10/3/2025)
Exhibit 20	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)