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UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

Federico Reyes Vasquez,

Petitioner

v.

KRISTI NOEM, in her official capacity as  
Secretary of the Department of Homeland  
Security,

TODD LYONS, in his official capacity as  
Acting Director of Immigration and Customs  
Enforcement,

Michael Bernacke, in his official capacity as  
ICE Field Officer Director and Warden in  
current custody of Petitioner,

PAMELA BONDI, in her official capacity as  
the United States Attorney General,

The Executive Office for Immigration Review

United States Immigration and Customs  
Enforcement.

Respondents

Civil No.: **2:25-cv-01146-JNP**

REPLY TO RESPONDENTS' RESPONSE  
TO THE AMENDED PETITION AND TRO

IMMIGRATION HABEAS CASE

1 **REPLY TO RESPONDENTS' RESPONSE TO THE AMENDED PETITION AND TRO**

2 **I. PETITIONER'S SECOND AMENDED PETITION IS FACTUALLY RELATED TO**  
3 **THE ORIGINAL AMENDED PETITION AND TO THE FIRST AMENDED**  
4 **PETITION.**

5 Petitioner's Second Amended Petition is not a departure from the prior pleadings, but a  
6 continuation of the same factual and legal nucleus that has defined this case from its inception. The  
7 government's suggestion that the U-visa allegations are newly introduced or procedurally improper is  
8 incorrect. Those allegations were expressly included in the prior Amended Petition (Doc. 11), and  
9 Respondents addressed them on the merits in their earlier response, arguing lack of habeas jurisdiction,  
10 mootness, and non-cognizability, without raising any Rule 15 objection based on improper amendment,  
11 undue delay, bad faith, prejudice, or futility (Doc. 21). Having litigated the U-visa theory substantively,  
12 Respondents cannot now recast it as newly added or procedurally barred. *See Ahmad v. Furlong*, 435  
13 F.3d 1196, 1201 (10th Cir. 2006). The U-visa theory has been part of this case and fully briefed.

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15 The additional allegations in the First Amended Petition likewise arise directly from events  
16 occurring during the pendency of this litigation: this Court's issuance of a non-removal order,  
17 Respondents' removal of Petitioner, the Court's order requiring facilitation of his return, his  
18 government-controlled return pursuant to that order, and Respondents' continued assertion of detention  
19 authority thereafter. These developments did not predate the case; they occurred because of it. They  
20 therefore arise from the same operative factual nucleus, Respondents' asserted detention and removal  
21 authority and the legal consequences of their enforcement actions.  
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24 Rule 15(a)(2) embodies a liberal amendment standard, favoring resolution of related claims in  
25 a single proceeding rather than through fragmented litigation. As the Tenth Circuit has explained, the  
26 purpose of Rule 15 is to ensure claims are decided on their merits rather than on procedural  
27 technicalities. *Hardin v. Manitowoc-Forsythe Corp.*, 691 F.2d 449, 456 (10th Cir. 1982). The proposed  
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1 amendment introduces no new parties, unrelated transactions, or novel legal frameworks; it clarifies  
2 the statutory and constitutional implications of Respondents' own conduct during this case.  
3 Respondents have been on continuous notice of the U-visa theory, the reinstatement theory, and the  
4 detention-authority dispute. There is no undue prejudice, surprise, or bad faith. Most importantly, the  
5 amendment does not alter the core question before the Court, whether, under the present procedural  
6 and factual posture, Respondents possess lawful authority to detain and remove Petitioner.  
7

## 8 **II. RESPONDENTS REINSTATED AND EXECUTED A PRIOR REMOVAL ORDER**

9 Respondents proceed as though the prior removal order remains perpetually operative and  
10 automatically available for renewed enforcement. They do not meaningfully address a critical fact: in  
11 December 2025, Respondents reinstated and executed that order. Petitioner was removed pursuant to  
12 it. The removal was completed.  
13

14 A removal order is not a self-executing instrument that remains indefinitely available for reuse.  
15 The existence of 8 U.S.C. § 1231(a)(5) confirms that once a removal order has been executed, further  
16 enforcement depends on satisfaction of specific statutory predicates. Reinstatement is conditional, not  
17 automatic.  
18

19 Execution occurs when the noncitizen is removed pursuant to the order. 8 U.S.C. § 1231;  
20 *Andrade v. Gonzales*, 459 F.3d 538, 543 (5th Cir. 2006). Here, Respondents physically removed  
21 Petitioner in December 2025 under the reinstated order. That reinstatement was therefore executed,  
22 and its enforcement authority exhausted.  
23

24 If Respondents now seek to invoke § 1231(a)(5) again, they must satisfy its requirements anew.  
25 The statute applies only where “the Attorney General finds that an alien has reentered the United States  
26 illegally after having been removed.” 8 U.S.C. § 1231(a)(5) (emphasis added). The trigger is a new  
27 illegal reentry after removal. The government may not recycle pre-removal facts or treat a previously  
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1 executed reinstatement as a standing basis for detention. Having completed the December 2025  
2 removal, Respondents must establish a subsequent unlawful reentry. They cannot rely on the same  
3 conduct that already supported the prior reinstatement and deportation.

4 Section 1231(a)(5) does not create a “forever order.” It provides a mechanism for reinstatement  
5 upon proof of a new illegal reentry. Because the prior reinstatement was executed and the removal  
6 completed, Respondents cannot bypass the statute’s predicates or treat the executed order as endlessly  
7 renewable detention authority.  
8

9 Respondents also contend that this Court lacks jurisdiction to review the reinstatement. That  
10 argument fails. Congress may channel statutory review, but it must speak clearly to preclude review of  
11 constitutional claims. *Webster v. Doe*, 486 U.S. 592, 603 (1988); *INS v. St. Cyr*, 533 U.S. 289, 300  
12 (2001). Petitioner does not merely dispute discretionary enforcement; he challenges Respondents’  
13 authority to detain him based on an already executed reinstatement. Accepting the government’s  
14 position would permit execution of a removal order, disregard of § 1231(a)(5)’s predicates, and  
15 insulation from judicial scrutiny through jurisdictional bars. The Constitution does not permit that  
16 result. This Court retains jurisdiction to determine whether Respondents are acting within statutory and  
17 constitutional limits.  
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20 **III. PETITIONER IS NOT AN ARRIVING ALIEN**

21 Respondents repeatedly characterize Petitioner as an “arriving alien” subject to mandatory  
22 detention under 8 U.S.C. § 1225. That characterization is legally incorrect. An “arriving alien” is a  
23 noncitizen who presents at a port of entry seeking admission. 8 C.F.R. § 1001.1(q). The concept is  
24 rooted in the border inspection framework and the entry fiction doctrine, which applies to individuals  
25 attempting to enter the United States whose admissibility has yet to be determined.  
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1 Petitioner does not fit that category. He did not present himself at a port of entry seeking  
2 admission. He appeared at a time and place designated by the government pursuant to this Court's  
3 order requiring facilitation of his return. His presence at the port of entry was not an attempt to gain  
4 admission; it was compliance with judicially mandated restoration of the status quo after an unlawful  
5 removal. He was permitted to enter under government control for that limited purpose.  
6

7 The cases on which Respondents rely, such as *Mezei*, *Leng May Ma*, and *Thuraissigiam*, involve  
8 individuals seeking entry at the threshold of the country. Those decisions concern border applicants  
9 invoking the entry fiction doctrine. Petitioner, by contrast, was returned by government action after an  
10 executed removal that this Court found unlawful. There is a fundamental difference between a person  
11 seeking entry and a person whose prior physical presence is being restored through judicial relief. Lack  
12 of formal admission does not transform the latter into an "arriving alien"; the regulatory definition turns  
13 on seeking admission, not merely appearing at a port of entry.  
14

15 Respondents' position would allow the government to convert any unlawful deportation into a  
16 reset of legal posture, stripping an individual of interior protections by transporting him across the  
17 border and relabeling him "arriving." Nothing in the statute authorizes such bootstrapping. The arrival  
18 doctrine applies to those seeking entry, not to individuals returned under court supervision following  
19 wrongful removal.  
20

21 Respondents further suggest that any noncitizen present without formal admission is  
22 categorically subject to § 1225 as an "arriving" applicant for admission. That sweeping interpretation  
23 collapses the distinction Congress drew between border inspection detention and interior detention  
24 authority. As Judge Campbell recently explained in *Aguilar Sanchez v. Noem*, No. 2:25-cv-01150-TC  
25 (D. Utah Jan. 16, 2026), although § 1225(a)(1) defines "applicant for admission" broadly, § 1225(b)  
26 remains tethered to the inspection framework, while § 1226 governs noncitizens already present in the  
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1 interior. Treating every non-admitted person as perpetually “arriving” would render § 1226 largely  
2 superfluous and erase Congress’s deliberate structural distinction. Courts addressing DHS’s revised  
3 theory have rejected that result.

4       Petitioner therefore is not an “arriving alien” within the meaning of the statute or regulations,  
5 and the mandatory detention framework of § 1225 does not apply.

7       **IV. HABEAS RELIEF DOES NOT DEPEND ON THE FILING OF A U-VISA**  
8       **APPLICATION**

9       Respondents contend that habeas relief is unavailable because Petitioner has not filed a U-Visa  
10 application. That argument mischaracterizes both this proceeding and habeas jurisdiction. Petitioner  
11 does not seek adjudication or approval of a U-Visa; he challenges the legality of his detention and  
12 Respondents’ reliance on a previously executed reinstatement order. Habeas under 28 U.S.C. § 2241  
13 turns on unlawful custody, not on whether a collateral immigration application has been filed.

14       The Supreme Court has repeatedly confirmed that habeas is available to test the legality of  
15 immigration detention irrespective of discretionary relief applications. *See Jennings v. Rodriguez*, 583  
16 U.S. 281, 292–93 (2018); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). The question here is whether  
17 Respondents possess statutory authority to detain Petitioner under the present posture. The filing status  
18 of a U-Visa petition neither expands nor limits this Court’s jurisdiction to answer that question.

19       Respondents also suggest the Court cannot compel USCIS to adjudicate a U-Visa application.  
20 Petitioner does not seek an order granting immigration benefits. He seeks relief from unlawful  
21 detention in light of Congress’s framework protecting qualifying crime victims. In any event, while  
22 approval of a U-Visa is discretionary, the duty to adjudicate a properly filed petition is not. Courts may  
23 compel agency action that is legally required but unlawfully withheld or unreasonably delayed. 5  
24 U.S.C. § 706(1); *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004); *Heckler v. Ringer*,  
25 466 U.S. 602, 616 (1984). Numerous courts recognize that although the outcome is discretionary, the  
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1 obligation to process and adjudicate is not. *See Kim v. Ashcroft*, 340 F. Supp. 2d 384, 389 (S.D.N.Y.  
2 2004); *Singh v. Still*, 470 F. Supp. 2d 1064, 1068 (N.D. Cal. 2007).

3 Thus, even if adjudication were at issue, it is not, this Court would retain authority to ensure  
4 compliance with legally mandated duties. Discretion to grant a benefit does not include discretion to  
5 disregard statutory protections or to detain an individual while ignoring the framework Congress  
6 enacted.

7  
8 **V. PETITIONER WAS PAROLED, OR, AT THE VERY LEAST, DID NOT**  
9 **UNLAWFULLY ENTER**

10 Respondents contend that Petitioner was not paroled because no formal parole document was  
11 issued. That argument elevates paperwork over statutory authority. Parole under 8 U.S.C. §  
12 1182(d)(5)(A) is an exercise of executive discretion permitting a noncitizen to physically enter and  
13 remain in the United States temporarily. The statute does not require issuance of a particular form as a  
14 condition precedent to the legal effect of parole. What matters is the government's decision to permit  
15 physical entry without formal admission. Here, Petitioner presented himself at a time and place  
16 designated by the government pursuant to this Court's order. He did not cross clandestinely. He did not  
17 evade inspection. He did not seek to enter unlawfully. He appeared under government instruction and  
18 was permitted to enter the United States. That is the functional definition of parole.

19  
20  
21 Petitioner did not arrive at the border requesting entry. He was returned pursuant to judicial  
22 directive after over two decades of physical presence in the United States. His entry was not an attempt  
23 to gain admission; it was restoration of the status quo following an unlawful deportation. The only  
24 lawful mechanism available to DHS to allow his physical entry without formal admission was parole.  
25 DHS exercised its discretion to allow him in; it cannot now deny the legal consequence of that act.

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27 But even if the Court were to conclude that Petitioner was not formally paroled, Respondents  
28 face a separate and dispositive problem: his entry was not unlawful. Reinstatement under 8 U.S.C. §

1 1231(a)(5) requires proof that the individual “reentered the United States illegally after having been  
2 removed.” Petitioner did not reenter illegally. He entered at a port of entry at a time and place  
3 designated by the government and was affirmatively permitted to enter. If DHS believes some  
4 mechanism other than parole authorized that entry, then by definition the entry was government-  
5 authorized and therefore not illegal. Respondents cannot simultaneously argue that they lawfully  
6 allowed him into the country and that his entry was unlawful for purposes of reinstatement.  
7

8 In short, either Petitioner was paroled, because DHS exercised its discretionary authority to  
9 permit his entry without admission, or he entered under some other lawful government authorization.  
10 Under neither scenario can his return be characterized as an illegal reentry within the meaning of §  
11 1231(a)(5). The statutory predicate for reinstatement therefore cannot be satisfied.  
12

13 **VI. THE TRO AND IMMEDIATE RELEASE IS NECESSARY AND PROPER TO**  
14 **ENSURE FUTURE COMPLIANCE WITH COURT ORDERS**

15 The need for injunctive relief in this case is not speculative. It is grounded in Respondents’ own  
16 admissions across multiple filings and sworn declarations.

17 In this matter, Respondents assert that ICE removed Petitioner in violation of this Court’s non-  
18 removal order because “ICE ERO personnel responsible for Petitioner’s physical removal were  
19 unaware of the OSC prohibiting his removal at the time he was removed.” Doc 27. In *Aguilar Sanchez*,  
20 Respondents again attribute violations of court directives to internal communication failures and  
21 logistical gaps, asserting that operational personnel “were not aware” of changes to hearing dates or  
22 court orders. Ex. 1. .

24 At the same time, Respondents acknowledge that court orders were, in fact, transmitted through  
25 agency channels. For example, in the Amended Response to Motion for Sanctions, the government  
26 states that the U.S. Attorney’s Office forwarded the OSC internally on December 22. Doc. 27. Yet ICE  
27 personnel nonetheless proceeded with removal the following morning. In other words, the government  
28

1 simultaneously maintains that the order was sent and that those executing removal never received it in  
2 time.

3 That internal disconnect is not a mere clerical error. It resulted in the removal of a habeas  
4 petitioner after a federal court explicitly prohibited removal. The government's declarations further  
5 admit structural deficiencies in ICE's compliance mechanisms. ICE has conceded that it does not  
6 employ "an automated system of book-in and book-out times" and that record updates depend on "the  
7 individual officer involved." Ex. 1 at 24. It also acknowledges that detention and transfer decisions  
8 depend on transportation schedules and logistical constraints that operate independently of court-  
9 ordered timelines. *Id.* Most critically, Respondents expressly attribute noncompliance to breakdowns  
10 in communication between the U.S. Attorney's Office, ICE counsel, and ICE ERO personnel. Doc 27.

11 These admissions demonstrate that ICE does not have a reliable, real-time mechanism to ensure  
12 that court orders prohibiting removal or mandating release are effectively implemented before  
13 enforcement action occurs. This Court need not speculate about future harm; it has already occurred.  
14 Petitioner was removed after the issuance of a non-removal order because, by Respondents' own  
15 account, the order did not reach operational personnel in time. *Id.*

16 In response to these documented failures, the government attempts to divert attention by  
17 emphasizing Petitioner's prior immigration history. But prior removals do not excuse present  
18 noncompliance with federal court orders. The issue before this Court is not Petitioner's past, it is the  
19 government's present ability to ensure adherence to judicial directives during the pendency of ongoing  
20 proceedings. The record now reflects repeated explanations grounded in internal miscommunication,  
21 transportation logistics, and operational timing constraints.

22 Those explanations, taken at face value, establish that absent judicial safeguards, ICE cannot  
23 guarantee that removal will not again occur before court orders are fully implemented through the  
24

1 agency chain of command. That is not an accusation of bad faith; it is the logical consequence of  
2 Respondents' own representations.

3 Temporary injunctive relief and immediate release are therefore necessary to preserve this  
4 Court's jurisdiction and to prevent irreparable harm. The Supreme Court has long recognized that  
5 removal during pending judicial review risks mootng the case and frustrating judicial authority. Once  
6 a petitioner is removed, restoration of the status quo becomes substantially more difficult and the  
7 Court's ability to enforce its orders is materially impaired.

9 Here, the government has already removed Petitioner once during the pendency of court  
10 proceedings after the issuance of a non-removal order. Respondents' own filings concede systemic  
11 communication gaps and operational delays that prevent real-time compliance. Under these  
12 circumstances, continued detention, coupled with ICE's admitted inability to guarantee immediate  
13 implementation of judicial directives, poses an unacceptable risk to the integrity of these proceedings.

15 A temporary restraining order and immediate release are therefore not punitive measures. They  
16 are protective measures designed to ensure that this Court's orders are meaningful, enforceable, and  
17 not subject to inadvertent circumvention through bureaucratic delay. Absent such relief, the Court must  
18 rely on the same internal communication chain that previously failed. Equity does not require the Court  
19 to take that risk a second time.

## 21 VII. CONCLUSION

22 For the foregoing reasons, Respondents' opposition should be rejected. The proposed  
23 amendment arises from the same operative facts already before this Court, presents live and justiciable  
24 habeas claims concerning Respondents' statutory authority to detain and remove Petitioner, and causes  
25 no prejudice to the Government. Moreover, Respondents' continued reliance on a previously executed  
26 reinstatement order, and their attempt to characterize Petitioner's court-directed return as a new  
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1 unlawful entry, lack statutory support and raise serious constitutional concerns. Because Petitioner  
2 remains in custody and faces ongoing enforcement action that threatens to frustrate meaningful judicial  
3 review, this Court retains jurisdiction and equitable authority to preserve the status quo. Petitioner  
4 respectfully requests that the Court grant leave to amend, deny Respondents' request to deny or limit  
5 relief, and grant the requested temporary restraining order or other appropriate relief necessary to  
6 ensure that Respondents act within the bounds of federal law and the Constitution while this habeas  
7 proceeding is adjudicated on the merits.  
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9  
10 Respectfully submitted,

11 Dated February 19, 2026  
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