UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

RIGO HERRERA-ESCOBAR

Petitioner

V.

Case No. 0:25-cv-62212-RS

Agency File 

PAMELA BONDI, Et. Al.

Defendants-Respondents

REPLY TO RESPONDENTS' RESPONSE TO PETITIONER'S EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER/PRELIMINARY INJUNCTION, MOTION FOR AN ORDER TO SHOW CAUSE AND TO CONSOLIDATE A PRELIMINARY INJUNCTION WITH THE MERITS IN THE COMPLAINT UNDER RULE 65(a)

Petitioner, by and through undersigned counsel, hereby replies to the Respondents' Response to Petitioner's Emergency Motion for Temporary Restraining Order/Preliminary Injunction, Motion for an Order to Show Cause and To Consolidate A Preliminary Injunction With The Merits In The Complaint Under Rule 65(A) ,e.g. "The Motion".

In the respondents' response, the position is that this Honorable Court should not grant The Motion because a "preliminary injunction is an extraordinary and drastic remedy". [D.E. 9] at 1.

However, as noted by a voluminous plethora of cases as cited in the petitioner's Petition for Writ of Habeas Corpus [D.E. 1] ("Pet.") at ¶ 47, it was the respondents' actions and position on this matter that has caused a Constitutional Crisis in which many district Courts have had to step in and remedy. In light of the District Court decisions across the entire United States, it would be extraordinary and drastic to not grant the petitioner's petition.

Furthermore, on November 20, 2025, the District Court in California granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025)(order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz,* No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D.Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment).

The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). Maldonado Bautista, 2025 WL 3289861, at *11. Nonetheless, in many instances across the United States, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) are still blatantly refusing to abide by the declaratory relief.

The Petitioner is a member of the Bond Eligible Class. He is being held in detention although he has resided in the United States since 2014 and is currently being held without a bond hearing available to him.

Respondents are bound by the judgment in Maldonado Bautista, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his/her/their clear entitlement to consideration for release on bond as a Bond

Eligible Class member. Additionally, immigration judges have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in Maldonado Bautista is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in Matter of *Yajure Hurtado*, 29 I. &; N. Dec. 216 (BIA 2025).

The respondents have also argued that the Court should not grant this petition because the petitioner has not exhausted available administrative remedies by requesting a bond hearing. The petitioner asks the Court to excuse administrative exhaustion because it would be futile. In *Matter of Yajure Hurtado,* the Board of Immigration Appeals ("BIA") held that immigration judges have no authority to consider bond requests from noncitizens who entered the United States without inspection "because aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings." *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (B.I.A. 2025).

The petitioner should not need to exhaust administrative remedies if "the administrative body is shown to be biased or has otherwise predetermined the issue before it." *McCarthy v. Madigan,* 503 U.S. 140, 148 (1992); see also *Shalala v. Ill. Counsel on Long Term Care,* Inc., 529 U.S. 1, 13 (2000). Requiring the petitioner to make an administrative request for a bond hearing would be futile because the result is predetermined by *Yajure Hurtado*. District courts around the country have reached the same conclusion. Under these circumstances, the Court should find good cause to excuse exhaustion.

Dated this December 1, 2025

/s/BONNIE SMERDON

Bonnie Smerdon
Florida Bar #123933
22966 Overseas Highway
Cudjoe Key, Florida 33042
(954) 624-2622 T
(954) 416-6602 F
bsmerdon@lucelawpllc.com

Attorney for the Petitioner

CERTIFICATE OF SERVICE

I, Bonnie Smerdon, certify that on December 1, 2025, I electronically filed the above REPLY TO RESPONDENTS' RETURN IN OPPOSITION TO THE VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF with the Clerk of the Court of the Southern District of Florida using the CM-ECF system and copies of the foregoing document will be served on all counsel of record via transmission of a Notice of Filing generated by the CM/ECF system. Moreover, I have sent a proposed order via email to the Judge's clerk with the Respondent Noticing Attorneys copied.

/s/ BONNIE SMERDON
Bonnie Smerdon, Esq.
954-624-2622 T
954-416-6602 F
bsmerdon@lucelawpllc.com