UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

Veronica ARREOLA CHAVEZ, *Petitioner-Plaintiff*, v. PAMELA JO BONDI, Attorney General of the United States, et al., *Respondents-Defendants*.	)	Civil Action 5:25-CV-00227

RESPONSE OF PETITIONER TO THE RESPONDENTS' ANSWER

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PETITIONER'S RESPONSE

The Petitioner, Ms. Arreola, timely submits her traverse to the Respondents' return to her habeas petition. This Court has ordered the parties also to submit additional briefing to address: (1) whether Petitioner is a member of the nationally certified Bond Eligible Class; and (2) what affect if any the declaratory relief granted in *Maldonado Bautista v. Santacruz*, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025) has on Petitioner's claims.

The Petitioner filed her habeas petition on November 21, 2025. Dkt. 1. The Respondents filed their return opposing the grant of the petition on December 1, 2025. Dkt.12. In their return, they argue for dismissal of the petition on exhaustion grounds. Dkt. 12 at 3-4. They argue that the plain language of the statutes supports their reading requiring mandatory detention of Petitioner, and that persuasive decisions of the Board of Immigration Appeals and of a district judge within this district support their reading. *Id*. at 5-10.

The government argues also that the *Bautista* court granted class certification and partial summary judgment for the plaintiffs in that case, but did not issue a class-wide declaratory judgment, and because the court also did not issue a class-wide injunction, the *Bautista* court's decision does not have preclusive effect with respect to this case.

The Respondents ignore this Court's recent decision declining to require exhaustion in similar circumstances in *Fuentes v. Lyons,* 5:25-CV-00153 (S. D. Tex. Oct. 16, 2025) ("[R]equiring Petitioner to request a bond hearing from an IJ prior to review of his Petition for Habeas Corpus would be an exercise in futility, therefore exhaustion does not bar the Courts review.") The Respondents in their Answer notably ignore the weight of Article III authority, much of it recent and directly on point, that shows prudential exhaustion is not necessary where "waiver is appropriate when the interests of the individual weigh heavily against requiring

administrative exhaustion, or exhaustion would be futile and unable to afford the petitioner the relief he seeks. *See McCarthy*, 503 U.S. at 145, 112 S.Ct. 1081; *see also Fazzani v. NE Ohio Corr. Ctr.*, 473 F.3d 229 (6th Cir. 2006) (citing *Aron v. LaManna*, 4 F. App'x 232, 233 (6th Cir. 2001). Exhaustion is also excused when delay means hardship. *See Shalala v. Illinois Council*, 529 U.S. 1, 13, 120 S.Ct. 1084, 146 L.Ed.2d 1 (2000).

Moving beyond the exhaustion issue, Respondents also argue that *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025) which the BIA published on September 5, 2025, should be followed. Dkt. 12 at 7-8. But Respondents ignore that this Court has rejected *Yajure-Hurtado's* reading, see *Fuentes v. Lyons,* 5:25-CV-00153 *10 (S.D.Tex., 2025) ("Nearly every district court to address the statutory question "has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice." *Rodriguez*, 2025 WL 2782499, at *1 n.3. Having read the sound analysis of this issue by many other districts, the Court adopts the position of the majority of courts . . ."); *see also Buenrostro-Mendez v. Bondi*, 2025 WL 2886346, at *3 (S.D. Tex. Oct. 7, 2025); *Gutierrez v. Thompson,* 2025 WL 3187521, at *8 (S.D.Tex., 2025); *Espinoza Andres v Noem*, et al., H-25-5128, 2025 WL 3458893, at *1 (S.D.Tex., 2025); *Padron Covarrubias v. Vergara*, No. 5:25-CV-112, 2025 WL 2950097, at *4 (S.D. Tex. Oct. 8, 2025). *See also Chogllo Chafla v. Scott*, 2025 WL 2688541, at *8 (D.Me., 2025) ("The BIA's decision in *Yajure Hurtado* also is at odds with decades of DHS's own practices, which the opinion acknowledges.); *J.U. v. Maldonado*, 2025 WL 2772765, at *7 (E.D.N.Y., 2025) ("[T]his Court finds that the historical practice – under which § 1225(b)(2)(A) would not have applied to Petitioner – is consistent with the text, structure, and statutory scheme. As noted above, § 1225(a) defines an applicant for admission as "[a]n alien present in the United States who has not been admitted or who arrives in the United States" and

in turn, § 1225(b)(2)(A) states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.").

Respondents point to two recent case from the same judge within this district that are in their favor, namely, *Cabanas v. Bondi*, No. 4:25-CV-04830, 2025 WL 3171331 (S.D. Tex. Nov. 13, 2025), and *Arquimedes Maceda Jiminez v. Raymond Thompson, et al.* No. 4:25-cv-05026, (S.D. Tex. Nov. 24, 2025). Dkt. 12 at 9-10. However, Petitioner argues that her reading is compelled by the text of Section 1225 itself, *see, e.g.*, *Tumba Huamani*, 2025 WL 3079014, at *7; *J.G.O. v Francis*, 25-CV-7233, 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025); by the context and "overall statutory scheme," *e.g.*, *J.G.O. v Francis*, 2025 WL 3040142, at *4 (internal quotation marks omitted); by the amendment history of Section 1226, including an amendment enacted just months ago, *see, e.g.*, *id.* (citing the Laken Riley Act, Pub. L. No. 119-1); and (until this year) the Executive Branch's own longtime understanding of the statutory scheme, *see, e.g.*, *id.* at *4-5; *Rodriguez Vasquez*, 2025 WL 2782499, at *24-26.

Lastly, Respondents argue that Petitioner's Administrative Procedure Act claims fail, as do her Constitutional claims. Dkt. 12 at 10-11. They assert that she is mere "merely recharacterizing his (sic) §§ 1225/1226 statutory argument." They assert that "[B]ecause Petitioner can assert her statutory arguments via habeas, the APA does not provide a separate remedy. *See Martinez v. Unknown Party*, No. 1:25-CV-1298, 2025 WL 3223774, at *7 (W.D. Mich. Nov. 19, 2025) (in case involving similar claims, holding that, because habeas provides an adequate remedy, habeas corpus, not the APA, is the proper vehicle to assert a challenge) (citing *Trump v. J. G. G.*, 604 U.S. 670, 674 (2025)). Yet she asserts here that she is confined in violation of the

Administrative Procedure Act because she has resided in the U.S. since January 2000, and DHS arrested her summarily in 2025 after she dropped her daughter off at Texas Tech University. Dkt. 1 at 7, and Respondents have continued to deny her bond, because they promulgated a Notice ("Lyons Memorandum" binding all their employees without using notice-and-comment procedures. Dkt. 1 at 16. See 5 U.S.C. § 553. *See* 5 U.S.C. § 553(b). Their novel reading of the bond statutes would improperly alter the substantive rules concerning mandatory custody status without the required notice-and-comment period, Dkt. 1 at 16, 26.

As to her Constitutional claims, the Respondents assert in their answer that she has made a "conclusory" statement that her detention without bond violates her due process. Dkt. 12 at 11. But they ignore the record, which shows that Petitioner has shown she has a vested liberty interest in liberty because she is eligible for Cancellation of Removal relief, and is entitled to pursue that relief outside of detention by showing she is neither a danger to the community nor a flight risk. Dkt. 1 at 25.

Indeed, the Respondents do not address the weight of case law, much of it recent, on this very issue, finding that noncitizens like Petitioner here who have lived many years in the United States, and are apprehended within the interior, are entitled to due process under the Fifth Amendment of the Constitution. See, e.g., *Martinez v. Hyde*, --- F. Supp. 3d ----, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025) (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)) (the distinction is one of place—not status: "[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission ... and those who are within the United States after an entry, irrespective of its legality.") Respondents believe this Court should defer to *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), Dkt. 12 at 7-9, yet they have not addressed Petitioner's arguments that this Court owes no deference, in light of the

Supreme Court's ruling in *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024), to Respondents' interpretation of the INA and regulations. Dkt 1 at 20.

The continued detention of Petitioner separates her from her family, prohibits her removal defense in many ways, including by inhibiting her access to computers, to any counsel's office to prepare evidence, to communicate with witnesses, gather evidence, and afford legal representation, among other related harms. Her detention makes it difficult for them to access counsel and prepare for the ongoing removal proceedings. In the immigration context, the Supreme Court only recognizes two purposes for civil detention: preventing flight and mitigating the risks of danger to the community. *Zadvydas*, 533 U.S. at 690; *Demore v. Kim*, 538 U.S. 510, 528 (U.S., 2003). A noncitizen may only be detained based on these two justifications if they are otherwise statutorily eligible for bond. *Zadvydas*, 533 U.S. at 690. Petitioner's detention is improper because she has been deprived of her substantive Due Process rights. The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. U.S. Const. Amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). "Government detention violates the Due Process Clause unless it is ordered in a criminal proceeding with adequate procedural safeguards, or in certain special and non-punitive circumstances 'where a special justification ... outweighs the individual's constitutionally protected interest in avoiding physical restraint.'" *Zavala v. Ridge*, 310 F. Supp. 2d 1071, 1076 (N.D. Cal. 2004) (quoting *Kansas v. Hendricks*, 521 U.S. 346, 356 (1997)). The discretionary bond framework under Section 1226(a) requires a bond hearing to make an individualized custody determination – a hearing that here the IJ did not conduct. Therefore, without first evaluating Petitioner's risk of flight or dangerousness, her detention is a violation of her due process rights.

The procedural protections required in a given situation are evaluated using the *Mathews v. Eldridge* factors:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976)); *see Arreola*, 872 F.3d 976, 993 (9th Cir. 2017) (applying *Mathews* factors in immigration detention context).

Turning to the first *Mathews* factor, petitioner has a substantial private interest in remaining free from detention. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Petitioner resided at liberty within the U.S. for over twenty five years, and during that time, she established extensive ties and life in the community. Her detention denies her that freedom.

Second, "the risk of an erroneous deprivation [of liberty] is high" where, as here, "[the petitioner] has not received any bond or custody redetermination hearing." *A.E. v. Andrews*, 2025 WL 1424382, at *5 (E.D. Cal. May 16, 2025). Civil immigration detention, which is "nonpunitive in purpose and effect[,]" is justified when a noncitizen presents a risk of flight or danger to the community. *See Zadvydas*, 533 U.S. at 690; *Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023). Petitioner has no criminal record. The government does not dispute this and did not present evidence that petitioner was a flight risk or danger to community. Nonetheless, ICE detained her, and the government has not given any reason why it did so, other than arguing that she is subject to mandatory detention based on the government's decision pursuant to a nation-wide policy involving a novel interpretation of the INA. Petitioner has not

been provided any procedural safeguards to determine whether her detention is justified, and her request for a custody redetermination was denied because the immigration judge found that he lacked jurisdiction. Given the absence of any procedural safeguards, "the probable value of additional procedural safeguards, i.e., a bond hearing, is high." *A.E.*, 2025 WL 1424382, at *5.

Third, the government's interest in detaining petitioner without a hearing is "low." *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. 2019); *Doe*, 2025 WL 691664, at *6. In immigration court, custody hearings are routine and impose a "minimal" cost. *Doe*, 2025 WL 691664, at *6. The government's interest is further diminished where a person "has consistently appeared for [his] immigration hearings ... and [ ] does not have a criminal record," *Pinchi v. Noem*, No. 25-CV-05632-RMI (RFL), 2025 WL 1853763 at *2 (N.D. Cal. July 4, 2025), as is the case here.

On balance, the *Mathews* factors show that Petitioner is entitled to a bond hearing, which should have been provided before petitioner was detained. "'[T]he root requirement' of the Due Process Clause" is "'that an individual be given an opportunity for a hearing *before* he is deprived of any significant protected interest.'" *Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532, 542 (1985) (quoting *Boddie v. Connecticut,* 401 U.S. 371, 379 (1971)); *see Zinermon*, 494 U.S. at 127 ("Applying [the *Mathews*] test, the Court usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty ...."). The Supreme Court has held that Due Process requires a pre-deprivation hearing before those released on parole from a criminal conviction can have their bond finally revoked. *See Morrissey v. Brewer*, 408 U.S. 471, 480–86 (1972). The same is true for those subject to revocation of probation. *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973).

Given the absence of "evidence of urgent concerns," this Court should conclude that "a *pre*-deprivation hearing [was] required to satisfy due process." *Guillermo M. R. v. Kaiser*, No. 25-CV-05436-RFL, 2025 WL 1983677 at *9 (N.D. Cal. July 17, 2025). Numerous district courts have reached a similar conclusion. *See, e.g.*, *id.*; *Garcia v. Andrews*, No. 2:25-CV-01884-TLN-SCR, 2025 WL 1927596 at *5 (E.D. Cal. July 14, 2025); *Pinchi*, 2025 WL 1853763, at *3–4; *Ortega*, 415 F. Supp. 3d at 970; *Singh v. Andrews*, No. 1:25-CV-00801-KES-SKO (HC), 2025 WL 1918679 at *6 (E.D. Cal. July 11, 2025); *Valencia Zapata v. Kaiser*, No. 25-CV-07492-RFL, 2025 WL 2578207 at *1 (N.D. Cal. Sept. 5, 2025).

PETITIONER'S POSITION ON MALDONADO-BAUTISTA CLASS ACTION

Introduction

The Court has ordered additional briefing on the impact of *Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr*, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025) on Petitioner's case. By means of this supplemental brief, Petitioner urges this Court to find that she is a class member and to defer to the district court's statutory analysis in that case—but further submits that the declaratory judgement there does not moot her claims nor necessitate that he administratively exhaust her remedies before the immigration court. Despite the *Maldonado Bautista* decision, exhaustion remains futile. Since the decision there was issued, Respondents have instructed immigration judges not to apply the decision to class members, since the nationwide relief was only declaratory. As a result, immigration judges are continuing to deny bond to individuals like Petitioner around the country and in the San Antonio and Laredo area. Their filing in this case confirms that stance. Dkt. 14 at 3.

Moreover, even were the *Maldonado Bautista* being implemented in practice, which it is not, *Maldonado Bautista* does not dispose of Petitioner's due-process claims nor settle the

question of appropriate remedy.

For those reasons, Petitioner urges the Court to order her immediate release.

Maldonado Bautista

Maldonado Bautista v. Santacruz is a class-action case brought pursuant to the bond statute and regulations and the Administrative Procedure Act, not the federal habeas statute.[1] On November 20, 2025, the district court granted partial summary judgment on behalf of individualplaintiffs in the case and, on November 25, 2025, certified a nationwide class and extended declaratory relief to the certified class. *See 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*, 2025 WL 3288403, at *9 (order certifying Plaintiffs-Petitioners' proposed nationwide BondEligible Class, and adding "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole"). The bond class certified is defined as: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination. *Maldonado Bautista*, 2025 WL 3288403, at *1. The second prong of this definition is subject to some dispute: class counsel believes that the relevant apprehension is the most *recent* apprehension (which for Petitioner Ms. Arreola would

[1] The case originally had individual petitioners who brought habeas claims in their own right—but the class allegations in the case were not pled under the habeas statute. *See* Amended Petition, *Maldonado Bautista v. Noem*, 5:25-cv-01873-SSS-BFM (C.D. Cal. July 28, 2025) (ECF No. 15).

mean her apprehension in August 2025), but Respondents have argued that the definition excludes entrants without inspection *initially* apprehended shortly after crossing the border. 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. Respondents are bound by the judgment in *Maldonado Bautista* as to class members nationwide, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).[2]

But since that declaratory judgment, Respondents have instructed Immigration Judges *not* to comply with the ruling and not to find entrants without inspection are eligible for bond. *See* Exh. 1, IJ Jesus Ybarra's Order denying bond specifically noting Maldonado Bautista class certification does not apply as it is not an injunction or declaratory relief. Respondents' submission in this case, *see* Dkt. 14, suggests that this stems from an interpretation of the decision as non-final and improper.

ARGUMENT

Petitioner submits that she is a member of the *Maldonado Bautista* bond class. But she also does not think the questions of her class membership nor even the binding nature of *Maldonado Bautista* is necessary to the resolution of this case. To the extent the Court disagrees that she is a class member, or concurs with Respondents' erroneous contention that the *Maldonado Bautista* decision does not in fact order nationwide declaratory relief, she nonetheless urges the Court to follow the reasoning in *Maldonado Bautista*—and hundreds of other courts nationwide—as to the authority for her detention. She further notes that the decision

[2] While she does not think it is necessary to resolve the issue in this case, Petitioner believes that the *Maldonado Bautista* decision is final as to both its certification of a nationwide class and issuance of a declaratory judgement. *See Ramos v. Town of Vernon*, 208 F.3d 203 (2d Cir. 2000).

in *Maldonado Bautista* does not render the instant petition moot, nor does it determine the question of what the appropriate remedy is. Ms. Arreola seeks immediate release because of the statutory and due-process violations she has alleged and which Respondents have not meaningfully disputed.

A. Petitioner Is a *Maldonado Bautista* Class Member.

Petitioner submits that she is a class member because she does not have lawful status in the United States and is currently detained; she was apprehended most recently in Abilene, Texas, after living here for over two decades and not upon arrival; and she is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.4. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole." *Maldonado Bautista*, 2025 WL 3288403, at *9. That is, as a member of the Bond Eligible Class, Petitioner is necessarily detained under 8 U.S.C. § 1226(a). As noted above, the class definition requires that members "were not or will not be apprehended upon arrival" but is not clear as to which apprehension is at issue for detained noncitizens who have been apprehended more than once. Although none of the petitioners in *Maldonado Bautista* were initially apprehended at or near the border, Petitioner believes the most natural reading to be the one she proposes: because the class-action concerns the statutory authority for an individual's *current* detention, the relevant apprehension is the one that precipitated the current detention. For Ms. Arreola, that apprehension took place on August 22, 2025 in Abilene, Texas, see Dkt. 1 at 7, and not upon her arrival.

Assuming that the Court agrees she is a class member, Ms. Arreola is now entitled to the benefit of the district court's conclusion in *Maldonado Bautista* that her custody is governed by §

1226(a), not 1225(b)(2). But even should the Court conclude she is not a class member, the same conclusion is dictated by the reasoning in the case as well as in countless others including from this Court. Under that reasoning, Ms. Arreola's detention is governed by § 1226(a).

B. *Maldonado Bautista* Does Not Moot the Instant Petition.

Even should the Court agree that Petitioner is a class member of *Maldonado Bautista*, the class-wide declaratory judgement in that case does not moot her claims. She remains detained, which is indisputedly an injury sufficient to create a case or controversy. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998). Even with *Maldonado Bautista* in place, Ms. Arreola cannot actually obtain a bond hearing absent an order from this court because Respondents have not interpreted the case to bind immigration judges and instead have expressly directed those judges *not* to hold administrative bond hearings. See Exh. 1.

C. The Court Should Order Petitioner's Immediate Release Without First Requiring a Bond Hearing.

Because Ms. Arreola's detention was unlawful ab initio, a bond hearing pursuant to 8 U.S.C. § 1226(a) is also not the appropriate or just remedy and no prudential exhaustion requirement should be imposed, irrespective of the remedy ordered in *Maldonado Bautista*. As a district judge explained last week, "a bond determination by a DHS officer or an immigration judge would not remedy the core constitutional violation at issue here. [Petitioner's] detention was unlawful from its inception because ICE detained her under the wrong statute and without any notice or opportunity to be heard, much less the procedures required under Section 1226(a)." *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025). Where "ICE's detention of Petitioner did not comport with the implementing regulations and § 1226(a) [] a bond hearing for a post-deprivation review is wholly inadequate to

remedy that unlawful detention." *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765, at *3 (E.D.N.Y. Sept. 29, 2025). "Such a hearing is no substitute for the requirement that ICE engage in a 'deliberative process prior to, or contemporaneous with,' the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause." *Gonzalez v. Joyce*, No. 25 CIV. 8250 (AT), 2025 WL 2961626, at *7 (S.D.N.Y. Oct. 19, 2025) (citing *Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *15 (S.D.N.Y. June 12, 2018); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001)). "The suggestion that government agents may sweep up any person they wish without consideration of dangerousness or flight risk, so long as the person will, at some unknown future date, be allowed to ask some other official for his or her release, offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Id.* As Petitioner noted in her petition, many courts have ultimately decided that when Section 1225(b)(2) is applied unlawfully, as it indisputedly was here, release is the most appropriate remedy—without first ordering a bond hearing. *See Montoya v. Bondi, et al.,* No. 25-CV-06363 (JMA), 2025 WL 3280762, at *1 (E.D.N.Y. Nov. 25, 2025); *Montoya, et al.,* 2025 WL 3280762, at *1; *Hyppolite v. Noem*, No. 25-cv-4304, 2025 WL 2829511 at *16 (E.D.N.Y. Oct. 6, 2025); *J.U.*, 2025 WL 2772765, at *10; *Artiga v.Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *9 (E.D.N.Y. Oct. 5, 2025) ("Petitioner's allegations of his detention by ICE raise a substantial constitutional question that cannot be properly adjudicated administratively"). This was true even prior to Respondents' volte-face from 30 years of precedent and sudden invocation of Section 1225(b)(2) detention to justify the detention of individuals who entered the U.S. without inspection, as courts had already ordered numerous petitioners released following unlawful re-detention—even though Respondents' agreed in those cases that petitioners' detention was under § 1226(a). *See Valdez v. Joyce*, No. 25 Civ. 4627, 2025 WL 1707737, at *3

(S.D.N.Y. June 18, 2025); *Chipantiza-Sisalema v.Francis*, No. 25-CV-5528, 2025WL 1927931, at *4 (S.D.N.Y. July 13, 2025). The Court should do the same here and not require administrative exhaustion or a bond hearing.

D. Administrative Exhaustion Is Not Required.

Exhaustion is not required and, as a prudential matter, it is not appropriate, even after *Maldonado Bautista*. "Exhaustion of administrative remedies may not be required when: (1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Howell v. I.N.S.*, 72 F.3d 288, 291 (2d Cir. 1995) (citations omitted). Here, all four of these exceptions continue to apply.

First, despite *Maldonado Bautista*, exhaustion is futile. *See Howell*, 72 F.3d at 291. The *Maldonado Bautista* decision does not enjoin Respondents to provide bond hearings and judges have been instructed not to hold bond hearings pursuant to that decision, since its relief is only declaratory. This includes Petitioner's assigned IJ, namely, Jesus Ybarra at the Laredo Immigration Court. See Exh. 1.

Next, as many courts have concluded, detention in violation of the right to due process raises a substantial constitutional question and inflicts irreparable harm, two exceptions to the exhaustion requirement. *See*, *e.g.*, *J.U.*, 2025 WL 2772765, at *4 ("waiver of the exhaustion requirement is warranted because Petitioner is likely to experience irreparable harm if he is unable to seek habeas relief in this Court"); *Artiga*, 2025 WL 2829434, at *4. Should the Court impose an administrative exhaustion requirement, Respondents would prevail in claiming "that § 1226(a) grants practically limitless, unreviewable power to detain individuals for weeks or

months, even if the detention is patently unconstitutional." *Ozturk v. Trump*, No. 2:25-CV-374, 2025 WL 1145250, at *14–15 (D. Vt. Apr. 18, 2025), *amended on other grounds sub nom. Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025). Finally, a bond hearing would not remedy the violations Petitioner challenges. "In this situation a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out." *Rodriguez-Acurio*, 2025 WL 3314420, at *31.

CONCLUSION

For the foregoing reasons, the Court should grant Ms. Arreola's petition and order her immediate release.

Respectfully submitted on this eighth day of December, 2025.

/s/ Stephen O'Connor

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing RESPONSE OF PETITIONER TO THE RESPONDENTS' ANSWERAND ADDITIONAL BRIEFING in the case of *Veronica Arreola-Chavez v. Pamela Bondi, et al*., Civil Action 25-00227, was sent to Hilda Concepcion, Assistant United States Attorney, via email to Hilda.garcia.concepcion@usdoj.gov and through the District Clerk's electronic case filing system on this day the 8th of December, 2025.

Dated this eighth day of December, 2025

s/ Stephen O'Connor
Stephen O'Connor