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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Kelvin Douglas Godinez-Juarez, **Petitioner,** **v.** **Kristi Noem, *et al.*,** **Respondents.**	**Case No. 2:25-cv-04409-KML--DMF** **A No.** [redacted] **PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO HABEAS PETITION**

INTRODUCTION

Petitioner **Kelvin Douglas Godinez-Juarez** respectfully files this Reply to Respondents' Response to his Habeas Petition [Doc. 8] ("Response"). Respondents are clearly promoting the Department of Homeland Security's (DHS) newly adopted and erroneous position1[1] that all noncitizens who enter without inspection are "applicants for admission" under 8 U.S.C. § 1225(a) and therefore subject to mandatory detention under § 1225(b)(2), without regard for how long they have lived in the United States.

The length of time that a petitioner has been living in the United States is a constitutionally relevant consideration, because "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the

[1] ***See,*** ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission filed with the Habeas Petition.

United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It is therefore reasonable to read these statutes "against [that] backdrop." *See Hewitt v. United States*, 605 U.S. —, 145 S. Ct. 2165, 2173 (2025).

I. Petitioner Is Not An Arriving Alien.

A. Statutory Interpretation Supports Petitioner's Interpretation.

The Response now delves deeper into the historical statutory framework behind the Immigration and Nationality Act to conclude that the "pre-IIRIRA framework gave preferential treatment to aliens unlawfully present in the United States." Response at 2-3. Post-IIRIRA, they argue, the analysis embodied in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA 2025) should govern. Response at 3-4.

However, despite discussing § 1226 and § 1225(b), Respondents completely ignore § 1225(b)(1)(A)(iii)(II), which limits inspection of applicants for admission to those who have "not affirmatively shown, to the satisfaction of an immigration officer, that the alien has been *physically present in the United States continuously for the 2-year period immediately prior* to the date of the determination of inadmissibility under this subparagraph." (emphasis added).

As the Honorable Brian E. Murphy stated in *Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025 WL 2084238 (D. Mass. July 24, 2025), "for section 1225(b)(2)(A) to apply, several conditions must be met—in particular, an "examining immigration officer" must determine that the individual is: (1) an "applicant for admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted."

Here, there is no evidence that these three elements were met. As shown on the Petitioner's Notice to Appear, DHS itself identified Petitioner as an "alien ***present in the United States*** who has not been admitted or paroled" – despite "arriving alien" being an option. *See,* Notice to Appear filed with Habeas Petition. Thus, DHS itself determined that the Petitioner was not detained under § 1225.

B. Caselaw Holds that an Alien Present in the U.S. for More than 2 Years is not an "Arriving Alien."

Both Supreme Court and Ninth Circuit precedent hold that 8 U.S.C.§ 1226(a) is the "default" provision for aliens already present in the United States. In *Jennings v. Rodriguez,* 583 U.S. 281, 297 (2018), the Supreme Court reversed a Ninth Circuit holding that there was a statutory right to periodic bond hearings. It held that "U. S. immigration law authorizes the Government to detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also held that "§ 1226 applies to aliens already present in the United States. Section 1226(a) creates a default rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for their arrest and detention pending removal proceedings." *Jennings,* 583 U.S. at 303 (emphasis added). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court stated that "[w]hile removal proceedings are in progress, ***most aliens may be released on bond or paroled***. 8 U. S. C. §§ 1226(a) (1994 ed., Supp. V)." *Id.* at 683 (emphasis added).

The Ninth Circuit has held that § 1226(a) is the "default" detention statute for aliens in removal proceedings "[8 U.S.C. §1226(a) ("Subsection A")] is the default detention statute for noncitizens in removal proceedings and applies to noncitizens "[e]xcept as provided in [Subsection C]." 8 U.S.C. § 1226(a)." *Avilez v. Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023);

Sarr v. Scott, 765 F. Supp. 3d 1091, 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

Respondents argue that this Court should not follow the decision in *Echevarria v. Bondi, et al.*, No. 2:25-cv-03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025). However, every decision on this issue over the last six months entered in the U.S. District Court for the District of Arizona has followed *Echevarria*:

1) Order granting habeas in *Millan-Osuna v. Cantu, et al.*, Case No. 25-cv-04019-MTL--JFM (D. Ariz. 11-26-25)("Respondents' view represents the minority position—in the weeks since Judge Lanza considered the issue in *Echevarria*, dozens of other courts have reached the same conclusion.... Petitioner must receive a bond hearing under 8 U.S.C. § 1226(a).").

2) Order granting habeas in *Luna-Gonzalez v. Noem, et al.*, Case No. 25-cv-03794-MTL (D. Ariz. 11-26-25)("Having reviewed the recent decisions adopting the minority view, the Court agrees with the conclusion reached by Judge Lanza in *Echevarria*.").

3) Order granting habeas in *Najarro Zuniga v. Bondi, et al.*, Case No. 25-cv-04175-SHD (D. Ariz. 11-24-25)("In the OSC, the Court observed that Petitioner's case was virtually indistinguishable from Francisco Echevarria... in which Judge Lanza determined individuals like Petitioner are governed by § 1226 and not § 1225(b)(2)(A).").

4) Order granting habeas in *Padron-Carreron v. Noem, et al.*, Case No. 25-cv-04204-DWL (D. Ariz. 11-24-25)("having carefully reviewed the recent decisions adopting the minority view, the Court respectfully declines to revisit the conclusion it reached in *Echevarria*.").

5) Order granting habeas in *Rodriguez Plascencia v. Bondi, et al.*, Case No. 25-cv-03794-MTL (D. Ariz. 11-21-25)("having carefully reviewed the recent decisions adopting the minority view, the Court respectfully declines to revisit the conclusion it reached in Echevarria.").

6) Order granting habeas in *Rodrigues da Silva v. Figueroa, et al.*, Case No. 25-cv-04015-PHX (D. Ariz. 11-18-25)("dozens of other district courts have concluded individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to mandatory detention").

7) 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").

8) Order granting habeas in *Gonzalez Rodriguez v. Bondi, et al.,* Case No. 25-cv-03917-PHX (D. Ariz. 11-6-25)("dozens of other district courts have concluded individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to mandatory detention").

9) Order granting habeas in *Abrego-Zarate v. Noem, et al.*, Case No. 25-cv-03564-KML (D. Ariz. 11-6-25)("in accord with numerous other courts addressing the same issue—'Respondents' narrow focus on the language of § 1225(a)(1) fails to take account of the entirety of the statutory scheme..." *citing to Echevarria v. Bondi, et al.,* CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282, at *9 (D. Ariz. October 3, 2025)).

10) Order granting habeas in *Gonzalez Rodriguez-Zarate v. Bondi, et al.*, Case No. 2 25-cv-03917-JJT (D. Ariz. 11-6-25)("This Court agrees with the weight of authority in determining Petitioner's detention is subject to § 1226.").

11) Order granting habeas in *Garcia-Rosales v. Noem, et al.,* No. 2:25-cv-03391-SHD-DMF at page 2 (D. Ariz. Oct. 22, 2025)("while Respondents point to two district court opinions adopting their interpretation of § 1225(b)(2)(A), myriad other district courts have reached the same conclusion as *Echevarria* and held individuals like Petitioner are not subject to mandatory detention under 1225(b)(2)(A)").

12) Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.,* No. 2:25-cv-03672 (D. Arizona Oct. 17, 2025)("individuals like Petitioner are not "arriving aliens" subject to mandatory detention but, rather, are subject tot he general removal statute, 8 U.S.C. § 1226(a)").

13) Order granting habeas entered in *Hector Lopez-Melo v. Bondi, et. al.,* Case No. Case 2:25-cv-03394-DJH--JZB (D. Ariz. 10/9/2025)("petitioner, who had been present in the United States for years, was not an applicant for admission under 1225(b)(2)(A) or subject to mandatory detention").

14) Order granting habeas corpus in *Bo Li v. Cantu, et al.,* No. CV-25-02989-PHX-SPL (D Arizona 10/07/2025)("Respondents maintain he is subject to mandatory detention under 1225(b)(2). Again, Respondents are mistaken.").

Respondents cite to a number of cases from other states which they argue support their position. *See,* Response at 12-14. Of course, cases from other states are not binding on this Court. Further, as the Court commented in *Padron-Carreron*: "Respondents point to "at least five federal courts that have joined what the government acknowledges is a minority position on whether § 1225 applies to persons in Petitioner's

position rather than § 1226."[2] The Court also mentioned four more that it had discovered.[3] However, it concluded that "it is unsurprising that judges across the country are not in full agreement on how this issue should be resolved—indeed, the Court previously emphasized that "it views this issue as presenting a complicated and debatable question." *Echevarria*, 2025 WL 2821282 at *5.

II. The Orders Entered In *Maldonado Bautista* Are Not Yet Final And Do Not Bar Relief.

As the Response notes, a partial ruling on plaintiff's motion for summary judgment and a class certification ruling were entered on November 25, 2025, in *Maldonado Bautista v. Santacruz*, Case No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), doc. numbers 81 and 82. No final judgment has been entered in that case and the court has scheduled a January 16, 2026 status conference in the case.

As established by the Supreme Court in *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 (1978), an order granting or denying class certification is interlocutory because it is subject to amendment at any time prior to final judgment. *See,* Fed.R.Civ.Pro. 23(c)(1)(C)("[a]n order that grants or denies class certification may be altered or amended before final judgment.")

Thus, Petitioner may or may not be a member of the class ultimately certified in *Maldonado Bautista*, depending upon the exact terms of the class eventually certified.

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[2] Those decisions were *Mejia Olalde v. Noem*, 2025 WL 3131942 (E.D. Mo. 2025), *Vargas Lopez v. Trump*, 2025 WL 2780351 (D. Neb. 2025), *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. 2025), *Pipa-Aquise v. Bondi*, 2025 WL 2490657 (E.D. Va. 2025), and *Pena v. Hyde*, 2025 WL 2108913 (D. Mass. 2025).

[3] Those decisions were *Valencia v. Chestnut*, 2025 WL 3205133 (E.D. Cal. 2025); *Alonzo v. Noem*, 2025 WL 3208284 (E.D. Cal. 2025); *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. 2025); *Rojas v. Olson*, 2025 WL 3033967 (E.D. Wisc. 2025); *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, Doc. 9 (N.D. Tex. Oct. 24, 2025).

Until such time as that class certification is finalized, it will be impossible to determine whether grounds exist upon which Respondents can move to dismiss Petitioner's Habeas Petition. *See, Pride v. Correa,* 719 F.3d 1130, 1333 (9th Cir. 2013)(individuals may litigate "independent constitutional action" not "encompassed by a pending class action" of which individual is a member), citing to *Crawford v. Bell*, 599 F.2d 890 (9th Cir.1979) and *Krug v. Lutz*, 329 F.3d 692 (9th Cir.2003).

In the meantime, Petitioner's continued detention imposes irreparable harm, under the pretense that his detention is mandatory. The Supreme Court has established that the "loss of freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 355 (1976). Thus, by virtue of Petitioner's ongoing loss of liberty, she has demonstrated significant irreparable harm.

CONCLUSION

For all the foregoing reasons, Petitioner Anibal Gonzalez-Gonzalez respectfully requests the Court grant her petition for writ of habeas corpus and require Respondents to immediately release her from his unlawful detention or, in the alternative, schedule her for a bond hearing within three (3) days under 8 U.S.C. § 1226, without regard to the holding of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

Dated: December 11, 2025

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 11, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing which will serve it upon the Respondents in this case who are represented by the following attorneys, who are registered to received notice via the CM/ECF System:

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