

1 Erica Sanchez, Of Counsel  
2 Shefer Law Firm, P.A.  
3 800 SE 4th. Ave #803  
4 Hallandale Beach, Florida 33009  
5 Telephone: (480) 866-1111  
6 erica@shefer.legal  
7 Arizona Bar #027107  
8 Attorney for Respondent

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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

**Anibal Gonzalez-Gonzalez,**  
  
**Petitioner,**  
  
**v.**  
**Kristi Noem, et al.,**  
  
**Respondents.**

Case No. 2:25-cv-04478-DWL--DMF

A No. 

**PETITIONER'S REPLY TO  
RESPONDENTS' RESPONSE TO  
HABEAS PETITION**

**INTRODUCTION**

Petitioner Anibal Gonzalez-Gonzalez respectfully files this Reply to Respondents' Response to her Habeas Petition [Doc. 7] ("Response"). Respondents are clearly promoting the Department of Homeland Security's (DHS) newly adopted and erroneous position<sup>1</sup> 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 the length of time 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 United States, including aliens,

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<sup>1</sup> *See*, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission filed with the Habeas Petition.

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

4 **I. Petitioner Is Not An Arriving Alien.**

5 **A. Statutory Interpretation Supports Petitioner’s Interpretation.**

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7 The Response now delves deeper into the historical statutory framework behind the  
8 Immigration and Nationality Act to conclude that the “pre-IIRIRA framework gave preferential  
9 treatment to aliens unlawfully present in the United States.” Response at 2-3. Post-IIRIRA, they  
10 argue, the analysis embodied in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 222-223 (BIA  
11 2025) should govern. Response at 3-4.

12  
13 However, despite discussing § 1226 and § 1225(b), Respondents completely ignore §  
14 1225(b)(1)(A)(iii)(II), which limits inspection of applicants for admission to those who have “not  
15 affirmatively shown, to the satisfaction of an immigration officer, that the alien has been *physically*  
16 *present in the United States continuously for the 2-year period immediately prior* to the date of the  
17 determination of inadmissibility under this subparagraph.” (emphasis added).

18  
19 As the Honorable Brian E. Murphy stated in *Diaz Martinez v. Hyde*, — F. Supp. 3d —, 2025  
20 WL 2084238 (D. Mass. July 24, 2025), “for section 1225(b)(2)(A) to apply, several conditions must  
21 be met—in particular, an “examining immigration officer” must determine that the individual is: (1)  
22 an “applicant for admission”; (2) “seeking admission”; and (3) “not clearly and beyond a doubt  
23 entitled to be admitted.”

24  
25 Here, there is no evidence that these three elements were met. As shown on the Petitioner’s  
26 Notice to Appear, DHS itself identified Petitioner as an “alien *present in the United States* who has  
27 not been admitted or paroled” – despite “arriving alien being an option. *See*, Notice to Appear filed  
28

1 with Habeas Petition. Thus, DHS itself determined that the Petitioner was not detained under §  
2 1225.

3 **B. Caselaw Holds that an Alien Present in the U.S. for More than 2 Years is not an**  
4 **“Arriving Alien.”**

5 Both Supreme Court and Ninth Circuit precedent hold that 8 U.S.C. § 1226(a) is the  
6 “default” provision for aliens already present in the United States. In *Jennings v. Rodriguez*, 583  
7 U.S. 281, 297 (2018), the Supreme Court reversed a Ninth Circuit holding that there was a statutory  
8 right to periodic bond hearings. It held that “U. S. immigration law authorizes the Government to  
9 detain certain aliens seeking admission into the country under §§ 1225(b)(1) and (b)(2). It also held  
10 that “§ 1226 applies to aliens already present in the United States. Section 1226(a) creates a default  
11 rule for those aliens by permitting—but not requiring—the Attorney General to issue warrants for  
12 their arrest and detention pending removal proceedings.” *Jennings*, 583 U.S. at 303 (emphasis  
13 added). In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court stated that “[w]hile removal  
14 proceedings are in progress, *most aliens may be released on bond or paroled*. 8 U. S. C. §§ 1226(a)  
15 (1994 ed., Supp. V).” *Id.* at 683 (emphasis added).

16 The Ninth Circuit has held that § 1226(a) is the “default” detention statute for aliens in  
17 removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the default detention statute for  
18 noncitizens in removal proceedings and applies to noncitizens “[e]xcept as provided in [Subsection  
19 C].” 8 U.S.C. § 1226(a).” *Avilez v. Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord*,  
20 *Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d  
21 1091, 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).  
22 *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

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

- 3
- 4 1) Order granting habeas in *Millan-Osuna v. Cantu, et al.*, Case No. 25-cv-04019-MTL--JFM (D.  
5 Ariz. 11-26-25)(“Respondents’ view represents the minority position—in the weeks since Judge  
6 Lanza considered the issue in *Echevarria*, dozens of other courts have reached the same  
7 conclusion.... Petitioner must receive a bond hearing under 8 U.S.C. § 1226(a).”).
- 8 2) Order granting habeas in *Luna-Gonzalez v. Noem, et al.*, Case No. 25-cv-03794-MTL (D. Ariz.  
9 11-26-25)(“Having reviewed the recent decisions adopting the minority view, the Court agrees  
10 with the conclusion reached by Judge Lanza in *Echevarria*.”).
- 11 3) Order granting habeas in *Najarro Zuniga v. Bondi, et al.*, Case No. 25-cv-04175-SHD (D. Ariz.  
12 11-24-25)(“In the OSC, the Court observed that Petitioner’s case was virtually indistinguishable  
13 from Francisco Echevarria... in which Judge Lanza determined individuals like Petitioner are  
14 governed by § 1226 and not § 1225(b)(2)(A).”).
- 15 4) Order granting habeas in *Padron-Carreron v. Noem, et al.*, Case No. 25-cv-04204-DWL (D.  
16 Ariz. 11-24-25)(“having carefully reviewed the recent decisions adopting the minority view, the  
17 Court respectfully declines to revisit the conclusion it reached in *Echevarria*.”).
- 18 5) Order granting habeas in *Rodriguez Plascencia v. Bondi, et al.*, Case No. 25-cv-03794-MTL (D.  
19 Ariz. 11-21-25)(“having carefully reviewed the recent decisions adopting the minority view, the  
20 Court respectfully declines to revisit the conclusion it reached in *Echevarria*.”).
- 21 6) Order granting habeas in *Rodrigues da Silva v. Figueroa, et al.*, Case No. 25-cv-04015-PHX (D.  
22 Ariz. 11-18-25)(“dozens of other district courts have concluded individuals like Petitioner are  
23 subject to § 1226 and not § 1225 and, therefore, are not subject to mandatory detention”).
- 24 7) Order granting habeas in *Perez Rodriguez v. Noem, et al.*, Case No. 25-cv-03921-PHX (D. Ariz.  
25 11/13/2025)(“the vast majority of courts concluded individuals like Petitioner are subject to §  
26 1226 and not § 1225 and, therefore, are not subject to mandatory detention”).
- 27 8) Order granting habeas in *Gonzalez Rodriguez v. Bondi, et al.*, Case No. 25-cv-03917-PHX (D.  
28 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.”).

- 1 11) Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No. 2:25-cv-03391-SHD-DMF at page  
2 2 (D. Ariz. Oct. 22, 2025)(“while Respondents point to two district court opinions adopting their  
3 interpretation of § 1225(b)(2)(A), myriad other district courts have reached the same conclusion  
4 as *Echevarria* and held individuals like Petitioner are not subject to mandatory detention under  
5 1225(b)(2)(A)”).
- 6 12) Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.*, No. 2:25-cv-03672 (D. Arizona  
7 Oct. 17, 2025)(“individuals like Petitioner are not “arriving aliens” subject to mandatory  
8 detention but, rather, are subject to the general removal statute, 8 U.S.C. § 1226(a)”).
- 9 13) Order granting habeas entered in *Hector Lopez-Melo v. Bondi, et. al.*, Case No. Case 2:25-cv-  
10 03394-DJH--JZB (D. Ariz. 10/9/2025)(“petitioner, who had been present in the United States for  
11 years, was not an applicant for admission under 1225(b)(2)(A) or subject to mandatory  
12 detention”).
- 13 14) Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No. CV-25-02989-PHX-SPL (D Arizona  
14 10/07/2025)(“Respondents maintain he is subject to mandatory detention under 1225(b)(2).  
15 Again, Respondents are mistaken.”).

16 Respondents cite to a number of cases from other states which they argue support their position.  
17  
18 *See*, Response at 12-14. Caselaw from other states is not binding on this Court. Further, as the  
19 Court commented in *Padron-Carreron*: “Respondents point to “at least five federal courts that have  
20 joined what the government acknowledges is a minority position on whether § 1225 applies to  
21 persons in Petitioner’s position rather than § 1226.”<sup>2</sup> The Court also mentioned four more that it  
22 had discovered.<sup>3</sup> However, it concluded that “it is unsurprising that judges across the country are  
23 not in full agreement on how this issue should be resolved—indeed, the Court previously  
24 emphasized that “it views this issue as presenting a complicated and debatable question.”  
25  
26 *Echevarria*, 2025 WL 2821282 at \*5.

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<sup>2</sup> 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).

<sup>3</sup> 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).

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

3 As the Response notes, a partial ruling on plaintiff's motion for summary judgment and a  
4 class certification ruling were entered on November 25, 2025, in *Maldonado Bautista v. Santacruz*,  
5 Case No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), doc. numbers  
6 81 and 82. No final judgment has been entered in that case and the court has scheduled a January  
7 16, 2026 status conference in the case.  
8

9 As established by the Supreme Court in *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469  
10 (1978), an order granting or denying class certification is interlocutory because it is subject to  
11 amendment at any time prior to final judgment. See, Fed.R.Civ.Pro. 23(c)(1)(C)("[a]n order that  
12 grants or denies class certification may be altered or amended before final judgment.")  
13

14 Thus, Petitioner may or may not be a member of the class ultimately certified in *Maldonado*  
15 *Bautista*, depending upon the exact terms of the class eventually certified. Until such time as that  
16 class certification is finalized, it will be impossible to determine whether grounds exist upon which  
17 Respondents can move to dismiss Petitioner's Habeas Petition. See, *Pride v. Correa*, 719 F.3d  
18 1130, 1333 (9th Cir. 2013)(individuals may litigate "independent constitutional action" not  
19 "encompassed by a pending class action" of which individual is a member), citing to *Crawford v.*  
20 *Bell*, 599 F.2d 890 (9th Cir.1979) and *Krug v. Lutz*, 329 F.3d 692 (9th Cir.2003).  
21

22 In the meantime, Petitioner's continued detention imposes irreparable harm, under the  
23 pretense that his detention is mandatory. The Supreme Court has established that the "loss of  
24 freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v.*  
25 *Burns*, 427 U.S. 347, 355 (1976). Thus, by virtue of Petitioner's ongoing loss of liberty, she has  
26 demonstrated significant irreparable harm.  
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3 **CONCLUSION**  
4

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

10 Dated: December 10, 2025

Attorney for Respondent

11 By: /s/ Erica Sanchez  
12 Erica Sanchez, Of Counsel  
13 Shefer Law Firm, P.A.  
14 800 SE 4th. Ave #803  
15 Hallandale Beach, Florida 33009  
16 Telephone: (480) 866-1111  
17 erica@shefer.legal  
18 Arizona Bar #027107  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on December 10, 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:

BROOKS CHUPP  
Assistant United States Attorney  
Two Renaissance Square  
40 North Central Avenue, Suite 1800  
Phoenix, Arizona 85004-4449  
Email: brooks.chupp@usdoj.gov

By: /s/ Sheryl Serreze Mayer  
Sheryl Serreze Mayer  
Shefer Law Firm, P.A.