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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Ana Maria Camacho Rodriguez,

13 Petitioner

14 v.

15 Kristi Noem, *et al.*,

16 Respondents

)
)
) No. CV-25-04492-DJH (ASB)

)
) PETITIONER'S REPLY TO
) RESPONDENTS' RESPONSE
) TO ORDER TO SHOW CAUSE

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18 **I. INTRODUCTION**

19 1. Petitioner, by and through undersigned counsel, hereby replies to
20 Respondents' Response to the Court's Order to Show Cause, and hence to the Petition
21 for Writ of Habeas Corpus.

22 2. Petitioner is a member of the "Bond Eligible Class" in *Bautista v.*
23 *Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 ,at *1 (C.D. Cal. Nov.
24 25, 2025). However, in this Petition for Writ of Habeas Corpus, she is not seeking to
25 have this court enforce her rights as a *Bautista* class member (although the same
26 reasoning applies, which Petitioner respectfully submits should persuade this Court to
27 find that the Government is holding Petitioner in custody of violation of the law).
28 Petitioner is asking this court to grant habeas relief for her specifically for the reason

1 that the Government is holding her in custody contrary to the Fifth Amendment and
2 contrary to 8 U.S.C. 1226(a) and the bond regulations at 8 C.F.R. 236.1, 1236.1, and
3 1003.19. Even if the Government is correct that class-wide relief is not yet operative
4 or not yet reduced to an enforceable class-wide judgment, then Petitioner is still
5 detained without the hearing she seeks and, therefore, habeas is the correct remedy in
6 this case.

7 3. For decades, Respondents have applied 8 U.S.C. § 1226(a), and not
8 8 U.S.C. § 1225, to people like Petitioner who are present in the United States without
9 inspection, who were not apprehended upon arrival, and have lived in the United States
10 for many years. In this case, the most natural reading of the statute is reflected in the
11 consensus interpretation of it for nearly 30 years by the former INS, then DHS, EOIR,
12 and DOJ.

13 I. ARGUMENT

14 4. *Bautista* is instructive for its analysis of 8 U.S.C. § 1226(a) and
15 1225(b)(2), but this Petitioner's instant petition for habeas corpus is seeking relief as a
16 direct result of the Government's violation of the law (§ 1226(a) and the Fifth
17 Amendment). Class certification in *Bautista* does not deprive the court of its power or
18 duty to remedy an ongoing unlawful detention. Also, if there is no final, binding relief
19 in *Bautista*, then there's also no adequate substitute for habeas relief that this moment.
20 Although Petitioner falls within the certified *Bautista* class, Respondents' requested
21 dismissal/stay would leave Petitioner in the very custody this Petition challenges
22 without any presently enforceable classwide order providing the bond process the
23 government denies. Rule 23 does not divest this Court of habeas jurisdiction; at most it
24 informs discretionary docket management. A discretionary stay is inappropriate where
25 it would prolong an alleged unlawful deprivation of liberty in the absence of operative
26 classwide relief.

27 5. Multiple district courts have refused to dismiss or stay individual
28 habeas petitions on the ground that *Bautista* is pending, because "no final judgment

1 has been issued” to bind parties elsewhere and there was no prudential reason to delay
2 habeas relief. Courts confronting the same argument have declined to dismiss or stay
3 and have granted individualized habeas relief ordering the statutory process required
4 by § 1226(a). See, e.g., *Ochoa Armijo v. Director, Miami Field Office, ICE*, No. 2:25-
5 cv-1049-KCD-DNF, at 3–4 n.2 (M.D. Fla. Dec. 15, 2025) (aware of *Bautista* class
6 certification but finding “no prudential reason to dismiss or stay” where “no final
7 judgment” binds the parties); *Hernandez Perez v. Secretary, DHS*, No. 2:25-cv-1052-
8 KCD-NPM, at 3 n.2 (M.D. Fla. Dec. 11, 2025) (same); *Velasco-Sanchez v. Raycraft*,
9 No. 2:25-cv-13730, at 6 (E.D. Mich. Dec. 11, 2025) (rejecting the Government’s
10 attempt to “have it both ways” and holding that “in either instance, a grant of habeas
11 relief is appropriate).

12 6. Turning to the merits of Respondents’ position that Petitioner is
13 subject to mandatory detention under 8 U.S.C. § 1225(b)(2), Petitioner submits that §
14 1226(a) is the INA’s default detention authority for noncitizens “already present in the
15 United States” while DHS decides whether they are to be removed in § 1229a
16 proceedings. By contrast, § 1225(b) governs inspections “at the Nation’s borders and
17 ports of entry” for noncitizens “seeking admission” to the United States. *Jennings v.*
18 *Rodriguez*, 583 U.S. 281, 287 (2018) (emphasis added). The government’s new
19 theory—that anyone who entered without inspection and is later arrested in the interior
20 is forever an “applicant for admission” “seeking admission” under § 1225(b)(2)(A)—
21 would eliminate this basic structural distinction and would render superfluous both the
22 “seeking admission” language in § 1225(b)(2)(A) and Congress’s explicit choice in §
23 1226(c)(1)(E) to place certain people who are present in the U.S. without being
24 inspected or paroled and have certain criminal histories in § 1226(c)(1)(E)’s
25 mandatory-detention. Put another way, if individuals who are present in the U.S.
26 without being inspected and admitted are always subject to mandatory detention under
27 § 1225(b)(2), then there would be no need for Congress to have added some of them to
28 § 1226(c)(1)(E) if they have certain criminal histories.

1 7. *Bautista* confirms that Respondents’ new interpretation is unlawful.
2 In *Bautista*, the Central District of California granted partial summary judgment and
3 later certified a nationwide “Bond Eligible Class” of noncitizens who entered without
4 inspection, were not apprehended upon arrival, and are not subject to §§ 1226(c),
5 1225(b)(1), or 1231. The court held that the government’s 2025 no-bond policy is
6 “inconsistent with the plain language of the INA” and that such individuals are
7 detained under § 1226(a), not § 1225(b)(2)(A), and are therefore eligible for bond
8 hearings before immigration judges. *Maldonado Bautista v. Santacruz*, No. 5:25-cv-
9 01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20,
10 2025) (granting partial summary judgment and holding the 2025 no-bond policy
11 “inconsistent with the plain language of the INA” and confirming that class members
12 are detained under § 1226(a), not § 1225(b)(2)(A)); *Maldonado Bautista v. Santacruz*,
13 --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (certifying
14 nationwide “Bond Eligible Class”).

15 8. Likewise, in *Cerritos Echevarria v. Bondi*, the District of Arizona
16 rejected the same argument advanced in Petitioner’s case, concluding that §
17 1225(b)(2)(A)’s mandatory detention provision applies only to “applicants for
18 admission” who are, in fact, seeking admission at the border, and that long-resident
19 noncitizens arrested in the interior—like Petitioner—fall instead under § 1226(a)’s
20 default detention framework and are entitled to bond hearings. *Cerritos Echevarria v.*
21 *Bondi*, No. CV-25-03252-PHX-DWL, 2025 WL 2821282, at *4-5 (D. Ariz. Oct. 3,
22 2025). In *Echeverria*, Judge Lanza noted that “[g]iven that an immigrant submits an
23 ‘application for admission’ at a distinct point in time, stretching the phrase ‘at the time
24 of application for admission’ to refer to a period of years would push the statutory text
25 beyond its breaking point.” *Id.* At *6. For these reasons, in the case at bar, it cannot
26 reasonably be said that Petitioner was “seeking admission” when she was a passenger
27 in a vehicle pulled over by Border Patrol for a traffic stop near Blythe, California,
28 twenty years after she had entered the United States.

1 9. After *Echeverria*, many other courts have reached the same
2 conclusion. See, e.g., *Quinapanta v. Bondi*, 2025 WL 3157867, *6 (W.D. Wisc. Nov.
3 12, 2025) (“[M]ore than 45 district courts have now rejected similar arguments made
4 by respondents here and ordered bond hearings for noncitizens who, like petitioner,
5 were apprehended within the United States years after entering without admission or
6 inspection unless implicated by any criminal activity covered by § 1226(c). These
7 decisions, along with a growing number of others now including this court have
8 concluded that the statutory text, the statute’s history, Congressional intent, and §
9 1226(a)’s application for the past three decades support its application to noncitizens in
10 petitioner’s position.”)

11 10. Another district court explained that if § 235 “rather than section
12 236, is the applicable immigration detention authority for all applicants for admission,”
13 then applying § 1225’s mandatory detention provisions to “all noncitizens who have
14 not been admitted” “would render superfluous provisions of Section 1226 that apply to
15 certain categories of inadmissible noncitizens.” *Rodriguez Vazquez v. Bostock*, No.
16 3:25-cv-05240-TMC, --- F. Supp. 3d ----, 2025 WL 1193850, at *11 (W.D. Wash. Apr.
17 24, 2025) (quoting Lyons memo). “Put another way, Section 1226(c)(1)(E)’s mandated
18 detention for inadmissible noncitizens who are implicated in an enumerated crime,
19 including those ‘present in the United States without being admitted or paroled,’ would
20 be meaningless since ‘all noncitizens who have not been admitted’ would already be
21 governed by Section 1225’s mandatory detention authority.” *Id.* at 11–12.

22 11. It is also helpful to look at the history of the law and practice.
23 Following the passage of IRRIRA in 1996, the Immigration and Naturalization Service
24 (“INS”) and Executive Office for Immigration Review (“EOIR”) published the
25 regulations for 8 U.S.C. § 1225 and 1226 on March 6, 1997. See “Inspection and
26 Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal
27 Proceedings; Asylum Procedures,” 62 Fed. Reg. 10312, 10323 (March 6, 1997).

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1 12. In its preamble to the regulations in 1997, INS addressed the issue
2 of the characterization of aliens who are present in the United States without having
3 been admitted or paroled as “applicants for admission.” There, INS stated “[d]espite
4 being applicants for admission, aliens who are present without having been admitted or
5 paroled (formerly referred to aliens who entered without inspection) will be eligible for
6 bond and bond redetermination.” Later on the same page, INS and EOIR stated
7 “inadmissible aliens, except for arriving aliens, have available to them bond
8 redetermination hearings before an immigration judge, while arriving aliens do not.”

9 13. In addition, the regulation at 8 CFR 236.1(c)(2) expressly
10 authorizes that “Any officer authorized to issue a warrant of arrest may, in the officer’s
11 discretion, release an alien not described in section 236(c)(1) of the Act, under the
12 conditions at section 236(a)(2) and (3) of the Act; provided that the alien must
13 demonstrate to the satisfaction of the officer that such release would not pose a danger
14 to property or persons, and that the alien is likely to appear for any future proceeding.”

15 14. These regulations are part of the original authority for the decades-
16 long practice of INS and then ICE officers to set a bond and release aliens who were
17 present in the United States without admission or parole (or even release them upon
18 their own recognizance) and also the authority of immigration judges to redetermine
19 their custody status by conducting bond hearings and ordering their release upon the
20 payment of a bond (subject to the limits of INA Section 236(c)).

21 15. Therefore, the 1997 regulations at 8 CFR 236.1 that INS and EOIR
22 promulgated following the enactment of Sections 1225 and 1226 are clear evidence of
23 INS’s and EOIR’s own contemporaneous understanding that the intent of Congress
24 was that a person who was apprehended inside the United States who had not been
25 admitted or paroled *is* eligible under Section 1226 for release on bond by either an
26 immigration officer or an immigration judge.

27 16. Thus, in the decades that followed the passage of IRRIRA in 1996,
28 people who had entered the U.S. without inspection, were present in the United States

1 without being admitted or paroled, who had not been arrested at the time of arrival, and
2 were thereafter arrested within the United States and placed in removal proceedings
3 *were* considered for release on bond by DHS and also received bond hearings before
4 an IJ under Section 1226, unless their criminal history rendered them ineligible. This
5 practice by EOIR, INS, and then DHS, was a reflection of and implementation of the
6 law as it is written.

7 17. This long-standing, contemporaneous construction by the very
8 officials charged with implementing the statute is entitled to “great weight” and should
9 not be discarded absent “cogent reasons” and a clear showing that it is erroneous. See
10 *Nat’l Lead Co. v. United States*, 252 U.S. 140, 145–46 (1920) (“great weight” to long-
11 continued contemporaneous construction); *Houghton v. Payne*, 194 U.S. 88, 239–42
12 (1904) (quoting *United States v. Finnell*, 185 U.S. 236, 244 (1902) (“not overruled
13 except for cogent reasons”)); see also *Loper Bright Enters. v. Raimondo*, 603 U.S. ___,
14 slip op. at 16–19 (2024) (reaffirming that courts may accord weight to long-settled
15 executive interpretations under Skidmore-type principles). The Lyons Memo and
16 *Matter of Yajure Hurtado* abruptly abandon that settled construction, retroactively re-
17 branding all persons who entered the United States without inspection (regardless of
18 how long they have lived here) as applicants “seeking admission” subject to mandatory
19 detention under § 1225(b)(2)(A). The government’s about-face reinterpretation of §
20 1225(b)(2)(A) conflicts with the statutory text and *Jennings*’s explanation of the
21 relationship between § 1225 and 1226.

22 18. The statutory text, structure, contemporaneous regulations, decades
23 of uniform practice, and the growing body of federal case law—including *Bautista* and
24 *Echevarria*—all point in one direction: individuals like Petitioner, who are present in
25 the U.S. without inspection but were later arrested after years of residence in the
26 United States and are in § 1229a proceedings without a final removal order, are
27 detained under § 1226(a), not § 1225(b)(2)(A), and are therefore entitled to an
28 individualized bond hearing.

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I. CONCLUSION

19. For the reasons set forth above, Petitioner's detention is not authorized by 8 U.S.C. § 1225(b)(2)(A) and instead is governed by § 1226(a). Respondents have detained Petitioner under an unlawful mandatory-detention theory that disregards the statutory text, Congress's recent amendment of § 1226, longstanding regulations, and decades of consistent agency practice.

20. Petitioner therefore respectfully requests that this Court grant the Petition, declare that § 1225(b)(2)(A) does not authorize Petitioner's detention, hold that she is detained under § 1226(a), and order Respondents to conduct an individualized bond hearing pursuant to § 1226(a) within 7 days.

DATED this 16th day of December, 2025.

Respectfully submitted,

/s/ Robert E. Coughlon, Jr.

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