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9  
10 **UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 Felipe Diaz Quiroz,

13 Petitioner

14 v.

15 Kristi Noem, *et al.*,

16 Respondents

)  
)  
) No. CV-25-04533-DJH (CDB)

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

17  
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. It is undisputed by Respondents that Petitioner is a member of the  
23 “Bond Eligible Class” in *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025  
24 WL 3288403 ,at \*1 (C.D. Cal. Nov. 25, 2025). However, in this Petition for Writ of  
25 Habeas Corpus, he is not seeking to have this court enforce his rights as a *Bautista*  
26 class member (although the same reasoning applies, which Petitioner respectfully  
27 submits should persuade this Court to find that the Government is holding Petitioner in  
28 custody of violation of the law). Petitioner is asking this court grant habeas relief for

1 him specifically for the reason that the Government is holding him in custody contrary  
2 to the Fifth Amendment and contrary to 8 U.S.C. 1226(a) and the bond regulations at 8  
3 C.F.R. 236.1, 1236.1, and 1003.19. Even if the Government is correct that class-wide  
4 relief is not yet operative or not yet reduced to an enforceable class-wide judgment,  
5 then Petitioner is still detained without the hearing he seeks and, therefore, habeas is  
6 the correct remedy in 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) in § 1226(c)(1)(E)’s mandatory-detention. If individuals who are  
25 present in the U.S. without being inspected and admitted are always subject to  
26 mandatory detention under § 1225(b)(2), then there would no need for Congress to  
27 have added them to § 1226(c)(1)(E).

28

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

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

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 as 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 the original authority for the decades-long  
16 practice of INS and then ICE officers to set a bond and release aliens who were present  
17 in the United States without admission or parole (or even release them upon their own  
18 recognizance) and also the authority of immigration judges to redetermine their  
19 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 without inspection, were present in the United States without

1 being admitted or paroled, who had not been arrested at the time of arrival, and were  
2 thereafter arrested within the United States and placed in removal proceedings *were*  
3 considered for release on bond by DHS and also received bond hearings before an IJ  
4 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.

**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 he is detained under § 1226(a), and order Respondents to conduct an individualized bond hearing pursuant to § 1226(a) within 7 days.

DATED this 16<sup>th</sup> day of December, 2025.

Respectfully submitted,

/s/ Robert E. Coughlon, Jr.

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