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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA

11 Carlos Johany Gomez-Molina,
12 Petitioner,
13 v.
14 Kristi Noem, *et al.*,
15 Respondents.

16 Case No. 2:25-cv-04582-KML

17 A No. 

18 PETITIONER'S REPLY TO
19 RESPONDENTS' RESPONSE
20 TO HABEAS PETITION

21 INTRODUCTION

22 Petitioner files this reply to Respondents' Response to his Petition for a Writ of
23 Habeas Corpus [doc 10]. Contrary to Respondents' assertions, the class certification
24 entered 11/25/2025 in *Maldonado Bautista v. Santacruz*¹ is not final and therefore has no
25 binding effect at this time. An order granting or denying class certification is interlocutory
26 because it is subject to amendment at any time prior to final judgment.² Until such time as
27 class certification is finalized, it is impossible to determine whether Petitioner is or is not a
28 member of the class in that case.

Further, no immigration judge (IJ) found Petitioner "categorically ineligible for
release" as alleged in the Response at page 7, lines 18-19. Rather, Petitioner was **granted**
release upon the posting of a \$10,000 bond following his August 11, 2025 hearing.³

¹ *Maldonado Bautista v. Santacruz*¹, Case No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025), doc. No. 81.

² See, *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 469 (1978); 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.").

³ See, 8/27/2025 IJ Decision and Order filed with the Habeas Petition as Exhibit 10.

1 Respondents appealed that Order and the Bureau of Immigration Appeals (BIA) reversed.⁴
2 Thus, the IJ made specific findings that Petitioner was not a danger to the community and
3 that any flight risk could be mitigated by the posting of a bond. *Id.*

4 Regarding Respondents' claim that Congress intended the mandatory detention of
5 every noncitizen until the end of their removal proceedings, the statutes cannot be read in
6 isolation; they must be harmonized with § 1226's bond authority and § 1182(d)(5)'s parole
7 provisions, each of which show that Congress intended for noncitizens to be allowed
8 release in appropriate cases. And, as the Supreme Court made clear in *Zadvydas v.*
9 *Davis*, 533 U.S. 678, 693 (2001), and in *Demore v. Kim*, 538 U.S. 510, 517 (2003), civil
10 immigration detention is constitutionally limited in scope and purpose.

11 The government's reading would convert a targeted detention scheme into blanket,
12 indefinite incarceration—something Congress never enacted, and the Constitution does
13 not permit. Moreover, the Ninth Circuit has clearly and consistently held that 8 U.S.C. §
14 1226(a) is the "default" detention statute for aliens in removal proceedings. *Avilez v.*
15 *Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*, 83 F.
16 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD Wash.
17 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v.*
18 *DHS*, 535 F.3d 942 (9th Cir. 2008).

19 Respondents are clearly promoting the Department of Homeland Security's (DHS)
20 newly adopted and erroneous position⁵ that all noncitizens who enter without inspection
21 are "applicants for admission" under 8 U.S.C. § 1225(a) and therefore subject to
22 mandatory detention under § 1225(b)(2), without regard for the length of time they have
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⁴ See, 10/24/2025 BIA decision Reversing IJ Orders, filed with the Habeas Petition as Exhibit 11.

⁵ See, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission filed with the Habeas Petition as Exhibit 1.

1 lived in the United States.⁶ Here, Petitioner has been living in the United States for over
2 10 years and is eligible for cancelation of removal. See, Petitioner's Affidavit, filed with the
3 Habeas Petition as Exhibit 4. He also has no criminal history. *Id.* Further, when
4 Respondents issued a Notice to Appear, it identified Petitioner as an "alien present in the
5 United States" despite "arriving alien" being an option. See, Petitioner's Notice to Appear,
6 filed with the Habeas Petition as Exhibit 5.
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8 The length of time that a petitioner has been living in the United States is a
9 constitutionally relevant consideration, because "once an alien enters the country, the legal
10 circumstance changes, for the Due Process Clause applies to all 'persons' within the
11 United States, including aliens, whether their presence here is lawful, unlawful, temporary,
12 or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It is therefore reasonable to
13 read these statutes "against [that] backdrop." See *Hewitt v. United States*, 605 U.S. —,
14 145 S. Ct. 2165, 2173 (2025).
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17 **II. The Orders Entered In *Maldonado Bautista* Are Not Yet Final And Do Not Bar
18 Habeas Relief.**

19 As the Response notes, a partial ruling on plaintiff's motion for summary judgment
20 and a class certification ruling were entered on November 25, 2025, in *Maldonado Bautista*
21 *v. Santacruz*, Case No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25,
22 2025), doc. numbers 81 and 82. No final judgment has been entered in that case and the
23 court has scheduled a January 16, 2026 status conference in the case.
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25 As established by the Supreme Court in *Coopers & Lybrand v. Livesay*, 437 U.S.
26 463, 469 (1978), an order granting or denying class certification is interlocutory because it
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⁶ Respondents also ignore 8 U.S.C. § 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*

1 is subject to amendment at any time prior to final judgment. See, Fed.R.Civ.Pro.
2 23(c)(1)(C)("[a]n order that grants or denies class certification may be altered or amended
3 before final judgment.")

4 Thus, Petitioner may or may not be a member of the class ultimately certified in
5 *Maldonado Bautista*, depending upon the exact terms of the class eventually certified.
6 Until such time as that class certification is finalized, it will be impossible to determine
7 whether grounds exist upon which Respondents can move to dismiss Petitioner's Habeas
8 Petition. See, *Pride v. Correa*, 719 F.3d 1130, 1333 (9th Cir. 2013)(individuals may litigate
9 "independent constitutional action" not "encompassed by a pending class action" of which
10 individual is a member), citing to *Crawford v. Bell*, 599 F.2d 890 (9th Cir.1979) and *Krug v.*
11 *Lutz*, 329 F.3d 692 (9th Cir.2003). See also, Kate Weaver, *Enjoined from Enjoining: The*
12 *State of Remedies and Relief for Immigrants After Garland v.Aleman Gonzalez*, 85 La. L.
13 Rev. (2025).

14 Nor have Respondents moved to dismiss Petitioner's habeas petition or sought a
15 stay pending final resolution of the class certification in *Maldonado Bautista*. Neither is
16 feasible in any event, as final resolution of the issues still pending in *Maldonado Bautista*
17 could take months, if not years, to resolve, factoring in possible appeals, remands and
18 petitions for review. See, e.g. *Jennings v. Rodriguez*, 583 U.S. 281 (2018), where the U.S.
19 District Court for the Central District of California, on remand from the Ninth Circuit Court of
20 Appeals, in 2010 certified a class of all non-citizens within the Central District of California
21 who: (1) are or were detained for longer than six months pursuant to one of the general
22 immigration detention statutes pending completion of removal proceedings, including
23 judicial review, (2) are not and have not been detained pursuant to a national security
24 detention statute, and (3) have not been afforded a hearing to determine whether their
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the 2-year period immediately prior to the date of the determination of inadmissibility under

1 detention is justified. *Jennings*, 583 U.S. at 290. The Government appealed and the Ninth
2 Circuit Court of Appeals affirmed in part and reversed in part. *Rodriguez v. Robbins*, 804
3 F.3d 1060 (9th Cir. 2015), The Supreme Court granted certiorari and remanded, stating
4 that there was no “implicit 6-month time limit on the length of detention” in the statutes.
5 *Jennings*, 583 U.S. at 292. On October 19, 2021, the Ninth Circuit in a memorandum
6 decision ordered the District court to vacate the injunction, effectively decertifying the
7 class. *Rodriguez v. Marin*, 2021 WL 4871067.

9 Here, Petitioner’s continued detention during the machinations of class certification
10 in *Maldonado Bautista* imposes irreparable harm. The Supreme Court has established
11 that the “loss of freedoms, for even minimal periods of time, unquestionably constitutes
12 irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 355 (1976). Thus, by virtue of
13 Petitioner’s ongoing loss of liberty, he has demonstrated significant irreparable harm.
14

15 **II. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION.**

16 **A. Caselaw Holds That An Alien Present In The U.S. For 18 Years Is Not An** 17 **“Arriving Alien.”**

18 Both Supreme Court and Ninth Circuit precedent hold that 8 U.S.C. § 1226(a) is the
19 “default” provision for aliens already present in the United States. In *Jennings v. Rodriguez*,
20 583 U.S. 281, 297 (2018), the Supreme Court reversed a Ninth Circuit holding that there
21 was a statutory right to periodic bond hearings. It held that “U. S. immigration law
22 authorizes the Government to detain certain aliens seeking admission into the country under
23 §§ 1225(b)(1) and (b)(2). It also held that “§ 1226 applies to aliens already present in the
24 United States. Section 1226(a) creates a default rule for those aliens by permitting—but not
25 requiring—the Attorney General to issue warrants for their arrest and detention pending
26 removal proceedings.” *Jennings*, 583 U.S. at 303 (emphasis added). In *Zadvydas v. Davis*,
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this subparagraph.” (emphasis added)

1 533 U.S. 678 (2001), the Supreme Court stated that “[w]hile removal proceedings are in
2 progress, **most aliens may be released on bond or paroled**. 8 U. S. C. §§ 1226(a) (1994
3 ed., Supp. V).” *Id.* at 683 (emphasis added).

4 The Ninth Circuit has held that § 1226(a) is the “default” detention statute for aliens in
5 removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the default detention statute
6 for noncitizens in removal proceedings and applies to noncitizens “[e]xcept as provided in
7 [Subsection C].” 8 U.S.C. § 1226(a).” *Avilez v. Garland*, 69 F. 4th 525, 529-530 (9th Cir.
8 2022). *Accord, Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v.*
9 *Scott*, 765 F. Supp. 3d 1091, 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d
10 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

11 Every case decided in the U.S. District Court for the District of Arizona over the past
12 3 months has disagreed with the government’s position:
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- 14 1) Order granting habeas in *Millan-Osuna v. Cantu, et al.*, Case No. 25-cv-04019-MTL--
15 JFM (D. Ariz. 11-26-25)(“Respondents’ view represents the minority position—in the
16 weeks since Judge Lanza considered the issue in *Echevarria*, dozens of other courts
17 have reached the same conclusion.... Petitioner must receive a bond hearing under
18 8 U.S.C. § 1226(a).”).
- 19 2) Order granting habeas in *Luna-Gonzalez v. Noem, et al.*, Case No. 25-cv-03794-
20 MTL (D. Ariz. 11-26-25)(“Having reviewed the recent decisions adopting the minority
21 view, the Court agrees with the conclusion reached by Judge Lanza in *Echevarria*.”).
- 22 3) Order granting habeas in *Najarro Zuniga v. Bondi, et al.*, Case No. 25-cv-04175-
23 SHD (D. Ariz. 11-24-25)(“In the OSC, the Court observed that Petitioner’s case was
24 virtually indistinguishable from Francisco Echevarria... in which Judge Lanza
25 determined individuals like Petitioner are governed by § 1226 and not §
26 1225(b)(2)(A).”).
- 27 4) Order granting habeas in *Padron-Carreron v. Noem, et al.*, Case No. 25-cv-04204-
28 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*.”).

- 1 6) Order granting habeas in *Rodrigues da Silva v. Figueroa, et al.*, Case No. 25-cv-
2 04015-PHX (D. Ariz. 11-18-25)(“dozens of other district courts have concluded
3 individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are
4 not subject to mandatory detention”).
- 5 7) Order granting habeas in *Perez Rodriguez v. Noem, et al.*, Case No. 25-cv-03921-
6 PHX (D. Ariz. 11/13/2025)(“the vast majority of courts concluded individuals like
7 Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to
8 mandatory detention”).
- 9 8) Order granting habeas in *Gonzalez Rodriguez v. Bondi, et al.*, Case No. 25-cv-
10 03917-PHX (D. Ariz. 11-6-25)(“dozens of other district courts have concluded
11 individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are
12 not subject to mandatory detention”).
- 13 9) Order granting habeas in *Abrego-Zarate v. Noem, et al.*, Case No. 25-cv-03564-KML
14 (D. Ariz. 11-6-25)(“in accord with numerous other courts addressing the same
15 issue—'Respondents' narrow focus on the language of § 1225(a)(1) fails to take
16 account of the entirety of the statutory scheme...” *citing to Echevarria v. Bondi, et al.*,
17 CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282, at *9 (D. Ariz. October 3,
18 2025)).
- 19 10) Order granting habeas in *Gonzalez Rodriguez-Zarate v. Bondi, et al.*, Case No. 2 25-
20 cv-03917-JJT (D. Ariz. 11-6-25)(“This Court agrees with the weight of authority in
21 determining Petitioner’s detention is subject to § 1226.”).
- 22 11) Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No. 2:25-cv-03391-SHD-
23 DMF at page 2 (D. Ariz. Oct. 22, 2025)(“while Respondents point to two district court
24 opinions adopting their interpretation of § 1225(b)(2)(A), myriad other district courts
25 have reached the same conclusion as *Echevarria* and held individuals like Petitioner
26 are not subject to mandatory detention under 1225(b)(2)(A)”).
- 27 12) Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.*, No. 2:25-cv-03672
28 (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.”).
- 15) Order granting habeas corpus in *Echevarria v. Bondi, et al.*, No. 2:25-cv-03252-
PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025).

In *Padron-Carreron*, the Court commented that “Respondents point to “at least
five federal courts that have joined what the government acknowledges is a minority

1 position on whether § 1225 applies to persons in Petitioner's position rather than §
2 1226.⁷ The Court also mentioned four more that it was aware of.⁸ However, it
3 concluded that "it is unsurprising that judges across the country are not in full agreement
4 on how this issue should be resolved—indeed, the Court previously emphasized that "it
5 views this issue as presenting a complicated and debatable question." *Echevarria*, 2025
6 WL 2821282 at *5.
7

8 CONCLUSION

9 For all the foregoing reasons, Petitioner Carlos Johany Gomez-Molina respectfully
10 requests the Court grant his petition for writ of habeas corpus and require Respondents to
11 immediately release him from his unlawful detention at Florence Correctional Center in
12 Florence, Arizona or, in the alternative, schedule him for a bond hearing within three (3)
13 days under 8 U.S.C. § 1226, without regard to the holding of *Matter of Yajure Hurtado*, 29
14 I&N Dec. 216 (B.I.A. 2025).
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17 Dated: December 17, 2025

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27 ⁷ Those decisions are *Mejia Olalde v. Noem*, 2025 WL 3131942 (E.D. Mo. 2025), *Vargas Lopez v.*
28 *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).

⁸ Those decisions are *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).