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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Miguel Eliseo Bernal Ramirez,

Petitioner,

v.

Kristi Noem, et al.,

Respondents.

Case No. 2:25-cv-04590-MTL

A No 

PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE
TO HABEAS PETITION

INTRODUCTION

Petitioner Miguel Eliseo Bernal Ramirez respectfully files this reply to Respondents' Response to his Petition for a Writ of Habeas Corpus [doc 6]. Contrary to Respondents' assertions, the class certification entered 11/25/2025 in *Maldonado Bautista v. Santacruz*¹ is not final and therefore has no binding effect at this time. As the Supreme Court held 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.² Until such time as class certification is finalized, it is impossible to determine whether Petitioner is or is not a member of the class in that case. Therefore, at this time, that ruling has no bearing on the relief requested in this habeas case.

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.

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

9 The government's reading would convert a targeted detention scheme into blanket,
10 indefinite incarceration—something Congress never enacted, and the Constitution does
11 not permit. Moreover, the Ninth Circuit has clearly and consistently held that 8 U.S.C. §
12 1226(a) is the "default" detention statute for aliens in removal proceedings. *Avilez v.*
13 *Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*, 83 F.
14 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD Wash.
15 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v.*
16 *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 position³ 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
23 lived in the United States.⁴ Here, Petitioner has been living in the United States for over
24

26 ² 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.")

28 ³ See, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission
filed with the Habeas Petition.

⁴ 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 the 2-year**

1 10 years and is eligible for cancelation of removal. See, Petitioner's Affidavit, filed with the
2 Habeas Petition as Exhibit 4. He also has no criminal history. *Id.* Further, when
3 Respondents issued a Notice to Appear, it identified Petitioner as an "alien present in the
4 United States" despite "arriving alien" being an option. See, Petitioner's Notice to Appear,
5 filed with the Habeas Petition as Exhibit 5.
6

7 The length of time that a petitioner has been living in the United States is a
8 constitutionally relevant consideration, because "once an alien enters the country, the legal
9 circumstance changes, for the Due Process Clause applies to all 'persons' within the
10 United States, including aliens, whether their presence here is lawful, unlawful, temporary,
11 or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It is therefore reasonable to
12 read these statutes "against [that] backdrop." See *Hewitt v. United States*, 605 U.S. —,
13 145 S. Ct. 2165, 2173 (2025).
14

15
16 **II. The Orders Entered In *Maldonado Bautista* Are Not Yet Final And Do Not Bar
Habeas Relief.**
17

18 As the Response notes, a partial ruling on plaintiff's motion for summary judgment
19 and a class certification ruling were entered on November 25, 2025, in *Maldonado Bautista*
20 *v. Santacruz*, Case No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25,
21 2025), doc. numbers 81 and 82. No final judgment has been entered in that case and the
22 court has scheduled a January 16, 2026 status conference in the case.
23

24 As established by the Supreme Court in *Coopers & Lybrand v. Livesay*, 437 U.S.
25 463, 469 (1978), an order granting or denying class certification is interlocutory because it
26 is subject to amendment at any time prior to final judgment. See, Fed.R.Civ.Pro.
27 23(c)(1)(C)("[a]n order that grants or denies class certification may be altered or amended
28

period immediately prior to the date of the determination of inadmissibility under this
subparagraph." (emphasis added)

1 before final judgment.”)

2 Thus, Petitioner may or may not be a member of the class ultimately certified in
3 *Maldonado Bautista*, depending upon the exact terms of the class eventually certified.
4 Until such time as that class certification is finalized, it will be impossible to determine
5 whether grounds exist upon which Respondents can move to dismiss Petitioner’s Habeas
6 Petition. See, *Pride v. Correa*, 719 F.3d 1130, 1333 (9th Cir. 2013)(individuals may litigate
7 “independent constitutional action” not “encompassed by a pending class action” of which
8 individual is a member), citing to *Crawford v. Bell*, 599 F.2d 890 (9th Cir.1979) and *Krug v.*
9 *Lutz*, 329 F.3d 692 (9th Cir.2003).
10

11 In the meantime, Petitioner’s continued detention imposes irreparable harm, under
12 the pretense that his detention is mandatory. The Supreme Court has established that the
13 “loss of freedoms, for even minimal periods of time, unquestionably constitutes irreparable
14 injury.” *Elrod v. Burns*, 427 U.S. 347, 355 (1976). Thus, by virtue of Petitioner’s ongoing
15 loss of liberty, he has demonstrated significant irreparable harm.
16

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

18 **A. Caselaw Holds That An Alien Present In The U.S. For 10 Years Is Not An**
19 **“Arriving Alien.”**
20

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

1 removal proceedings.” Jennings, 583 U.S. at 303 (emphasis added). In *Zadvydas v. Davis*,
2 533 U.S. 678 (2001), the Supreme Court stated that “[w]hile removal proceedings are in
3 progress, **most aliens may be released on bond or paroled.** 8 U. S. C. §§ 1226(a) (1994
4 ed., Supp. V).” *Id.* at 683 (emphasis added).

5
6 The Ninth Circuit has held that § 1226(a) is the “default” detention statute for aliens in
7 removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the default detention statute
8 for noncitizens in removal proceedings and applies to noncitizens “[e]xcept as provided in
9 [Subsection C].” 8 U.S.C. § 1226(a).” *Avilez v. Garland*, 69 F. 4th 525, 529-530 (9th Cir.
10 2022). *Accord, Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v.*
11 *Scott*, 765 F. Supp. 3d 1091, 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d
12 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

13
14 Every case decided in the U.S. District Court for the District of Arizona over the past
15 3 months has disagreed with the government’s position:

- 16
17 1) Order granting habeas in *Millan-Osuna v. Cantu, et al.*, Case No. 25-cv-04019-MTL--
18 JFM (D. Ariz. 11-26-25)(“Respondents’ view represents the minority position—in the
19 weeks since Judge Lanza considered the issue in *Echevarria*, dozens of other courts
20 have reached the same conclusion.... Petitioner must receive a bond hearing under
21 8 U.S.C. § 1226(a).”).
- 22 2) Order granting habeas in *Luna-Gonzalez v. Noem, et al.*, Case No. 25-cv-03794-
23 MTL (D. Ariz. 11-26-25)(“Having reviewed the recent decisions adopting the minority
24 view, the Court agrees with the conclusion reached by Judge Lanza in *Echevarria*.”).
- 25 3) Order granting habeas in *Najarro Zuniga v. Bondi, et al.*, Case No. 25-cv-04175-
26 SHD (D. Ariz. 11-24-25)(“In the OSC, the Court observed that Petitioner’s case was
27 virtually indistinguishable from Francisco Echevarria... in which Judge Lanza
28 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

1 adopting the minority view, the Court respectfully declines to revisit the conclusion it
2 reached in *Echevarria*.”).

3 6) Order granting habeas in *Rodrigues da Silva v. Figueroa, et al.*, Case No. 25-cv-
4 04015-PHX (D. Ariz. 11-18-25)(“dozens of other district courts have concluded
5 individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are
6 not subject to mandatory detention”).

7 7) Order granting habeas in *Perez Rodriguez v. Noem, et al.*, Case No. 25-cv-03921-
8 PHX (D. Ariz. 11/13/2025)(“the vast majority of courts concluded individuals like
9 Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to
10 mandatory detention”).

11 8) Order granting habeas in *Gonzalez Rodriguez v. Bondi, et al.*, Case No. 25-cv-
12 03917-PHX (D. Ariz. 11-6-25)(“dozens of other district courts have concluded
13 individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are
14 not subject to mandatory detention”).

15 9) Order granting habeas in *Abrego-Zarate v. Noem, et al.*, Case No. 25-cv-03564-KML
16 (D. Ariz. 11-6-25)(“in accord with numerous other courts addressing the same
17 issue—‘Respondents’ narrow focus on the language of § 1225(a)(1) fails to take
18 account of the entirety of the statutory scheme...” *citing to Echevarria v. Bondi, et al.*,
19 CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282, at *9 (D. Ariz. October 3,
20 2025)).

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

24 11) Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No. 2:25-cv-03391-SHD-
25 DMF at page 2 (D. Ariz. Oct. 22, 2025)(“while Respondents point to two district court
26 opinions adopting their interpretation of § 1225(b)(2)(A), myriad other district courts
27 have reached the same conclusion as *Echevarria* and held individuals like Petitioner
28 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.”).

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).

1
2 In *Padron-Carreron*, the Court commented that “Respondents point to “at least
3 five federal courts that have joined what the government acknowledges is a minority
4 position on whether § 1225 applies to persons in Petitioner’s position rather than §
5 1226.”⁵ The Court also mentioned four more that it was aware of.⁶ However, it
6 concluded that “it is unsurprising that judges across the country are not in full agreement
7 on how this issue should be resolved—indeed, the Court previously emphasized that “it
8 views this issue as presenting a complicated and debatable question.” *Echevarria*, 2025
9 WL 2821282 at *5.

10
11 **CONCLUSION**

12 For all the foregoing reasons, Petitioner Victor Hugo Padron-Carreron respectfully
13 requests the Court grant his petition for writ of habeas corpus and require Respondents to
14 immediately release him from his unlawful detention at Florence Correctional Center in
15 Florence, Arizona or, in the alternative, schedule him for a bond hearing within seven (7)
16 days under 8 U.S.C. § 1226, without regard to the holding of *Matter of Yajure Hurtado*, 29
17 I&N Dec. 216 (B.I.A. 2025).

18
19 Dated: December 16, 2025

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26 ⁵ Those decisions are *Mejia Olalde v. Noem*, 2025 WL 3131942 (E.D. Mo. 2025), *Vargas Lopez v.*
27 *Trump*, 2025 WL 2780351 (D. Neb. 2025), *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. 2025),
28 *Pipa-Aquise v. Bondi*, 2025 WL 2490657 (E.D. Va. 2025), and *Pena v. Hyde*, 2025 WL 2108913 (D.
Mass. 2025).

⁶ 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).