UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

William Rodrigo Tenesaca-Yanchatuna, Petitioner, v. Kristi Noem, et al. Respondents.	No. CV-25-04615-PHX-KML (ASB) PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO ORDER TO SHOW CAUSE

REPLY TO GOVERNMENT'S RESPONSE TO ORDER TO SHOW CAUSE

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PRELIMINARY STATEMENT

Petitioner, William Rodrigo Tenesaca-Yanchatuna, respectfully submits the instant Reply to Respondent's Response to this Court's Order to Show Cause. Petitioner submits this Reply pursuant to Rule 5(e) of the Federal Rules Governing §2254 cases.

The Petitioner has resided in the United States twenty years before the Department of Homeland Security ("DHS") placed Petitioner in full removal proceedings before an Immigration Judge under 8 U.S.C. § 1229a, which is mutually exclusive with expedited removal proceedings under 8 U.S.C. § 1225. Petitioner's detention violates both the Immigration Nationality Act ("INA") and Petitioner's Fifth Amendment rights and due process of law as he was not subject to 8 U.S.C. § 1225(b)(2)(a) when detained in the interior of the United States after twenty years of residing in the country.

PROCEDURAL HISTORY

Petitioner entered the United States on or about June 17, 2005, when he was twenty-four years old. He fled his native country of Ecuador to escape threats and forced [redacted] He was subjected to human trafficking and forced labor on his journey to the United States. He was arrested on October 19, 2025, and transferred to Eloy Detention Center. DHS issued a Notice to Appear on or about October 19, 2025, pursuant to 8 U.S.C. § 1229a . The NTA alleges that Petitioner is "a [noncitizen] present in the United States who has not been admitted or paroled" pursuant to §§212(a)(6)(A)(i). *See* ECF 1-1, Notice to Appear.

DHS's filing of the NTA against Petitioner in this case initiated "full" removal proceedings in Immigration Court pursuant to 8 U.S.C. § 1229a-which vested jurisdiction with the Immigration Judge-and constituted "the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted,

removed from the United States." 8 U.S.C. § 1229a(a)(3) (emphasis added). As the Board of Immigration Appeals ("BIA") recently stated, "DHS may place aliens arriving in the United States in either expedited removal proceedings under section 235(b)(1) of the INA, 8 U.S.C. § 1225(b)(1), or full removal proceedings under section 240 of the INA, 8 U.S.C. § 1229a." *Matter of Q. Li*, 29 I&N Dec 66, 68 (BIA 2025) (emphasis added).

Full removal proceedings and expedited removal proceedings are mutually exclusive. Moreover, the Government must concede that Petitioner is not in expedited removal proceedings, or ever was. While the Government submitted evidence, they failed to provide the warrant of arrest by which they detained Petitioner.

Nonetheless, Petitioner has proceeded with full removal proceedings, appeared at hearings with the Eloy Immigration Court before an Immigration Judge. Petitioner subsequently filed with the Eloy Immigration Court a request for custody redetermination, also known as a "bond request", pursuant to 8 C.F.R. § 1003.19(a) (2025) ("Custody and bond determinations made by [DHS]. .. may be reviewed by an Immigration Judge."). The Immigration Court summarily denied the Petitioner's request citing the recent holding in *Matter of Yajure Hurtado,* 29 I&N 216 (BIA 2025). Relying on that decision, the Court determined that Petitioner was subject to mandatory detention under section 235(b)(2)(A) of the Immigration Nationality Act ("INA"), 8 U.S.C. § 1226.

This determination represents a significant departure from the long-standing interpretation recognized for more than two decades, that individuals charged under § 212(a)(6)(A)(i) are not subject to mandatory detention, but rather fall within the discretionary custody provisions of INA § 236(a). By adopting the reasoning in *Yajure Hurtado*, the Immigration Court effectively eliminated access to custody redetermination hearings for a broad

category of noncitizens who have never been deemed subject to mandatory detention under any prior authority. The Immigration Court further improperly conflated the detention framework applicable to "arriving aliens" seeking admission under INA § 235(b)(2)(A), 8 U.S.C. § 1225(b)(2)(A), with the post-entry custody provisions of INA § 236, 8 U.S.C. § 1226, thereby erroneously treating Mr. Pineda Lopez, who was apprehended well inside the United States, as if he were an arriving alien subject to mandatory detention rather than discretionary release under § 236(a).

Courts in this Circuit have made clear that when DHS files a Notice to Appear and places a noncitizen into full § 240 removal proceedings, custody is governed by § 1226(a), and DHS may not later invoke § 1225(b)(2) to impose mandatory detention. *Casas-Castrillon v. DHS*, 535 F.3d 942, 947–49 (9th Cir. 2008). The Ninth Circuit further held that for noncitizens apprehended inside the United States and placed into § 240 proceedings, the Government must provide individualized custody determinations under § 1226(a). *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

ARGUMENT

I. THE GOVERNMENT'S RELIANCE ON BAUTISTA IS NOW MERITLESS: A FINAL JUDGMENT HAS BEEN ISSUED, CLASSWIDE RELIEF HAS BEEN DECLARED, AND THE POLICY THEY INVOKE HAS BEEN VACATED

On December 18, 2025, the District Court of California issued a clarifying Order in *Maldonado Bautista*, 5:25-cv-01873-SSS-BFM, declaring that DHS's mandatory-detention policy was unlawful and granted vacatur under the APA for the nationwide class. Given the recent Order and Judgment, the Government's core procedural objection is now moot. *Bautista* is no longer "pending relief someday in the future." It is final, class wide, nationwide declaratory relief and vacatur of the DHS policy the Government invokes here.

The Government represented to this Court that *Bautista* lacked preclusive force and was "not yet binding." That representation is now contradicted by the record. Judge Sykes acknowledged that "without preclusive effect, a declaratory judgment is little more than an advisory opinion," *Id.* and resolved that concern by issuing final judgment on Counts I–III. Respondents can no longer rely on the fiction that *Bautista* is too premature to matter.

The circumstances prompting entry of final judgment should alarm any Article III court. Judge Sykes noted new evidence that immigration judges in at least ten states were denying bond hearings to class members despite the declaratory ruling, often citing confusion created by Respondents. More troubling still, the Office of Immigration Litigation issued internal guidance instructing IJs to "hold the position that *Yajure Hurtado* remains good law," in direct defiance of the federal ruling. Those findings eliminate any basis for a stay. They confirm the urgency of judicial intervention. (*Bautista,* slip. Op. at 8).

Most importantly, none of this class litigation strips this Court of habeas jurisdiction. The Supreme Court has long held that habeas exists to remedy unlawful executive detention, even in the presence of overlapping structural litigation. See *Harris v. Nelson*, 394 U.S. 286, 292 (1969). Rule 23 is not a suspension clause. Congress, not DOJ strategy, determines when § 2241 review is unavailable, and nothing in the INA withdraws jurisdiction for a noncitizen challenging the statutory basis of confinement.

Thus, Respondents now stand in an untenable posture. They ask this Court to delay review because Bautista supposedly controls, while simultaneously instructing adjudicators to ignore the controlling final judgment in *Bautista.* What *Bautista* confirms is that the policy the Government relies on is unlawful, and that individuals detained under § 1225(b)(2) despite placement into full § 240 proceedings are entitled to custody determinations under § 1226(a).

Accordingly, Bautista does not supply a reason to stay or dismiss this petition. It supplies a reason to grant it.

II. RULE 23 LITIGATION CANNOT DISPLACE § 2241 REVIEW

In their response, the Government asserts that this Court should decline jurisdiction simply because a Rule 23(b)(2) class action is pending in another district. In substance, the Government is asking this Court to suspend the Great Writ—preventing an individualized review of unlawful detention—based not on any statute, not on any final judgment, and not on any binding injunction, but merely on the existence of parallel litigation elsewhere. That position is illogical and legally unsustainable.

Nothing in the December 18, 2025 Order purports to displace habeas review under § 2241. The Supreme Court has repeatedly held that habeas remains an independent check on unlawful executive confinement. *Harris v. Nelson*, 394 U.S. 286, 292 (1969). Rule 23 is not a suspension clause. Congress, not parallel civil litigation, determines when habeas is unavailable, and nothing in the INA withdraws this Court's authority to review the statutory basis for detention.

Separately, Judge Sykes has now entered Rule 54(b) final judgment on Counts I–III in *Maldonado Bautista*, expressly declaring DHS's mandatory-detention policy unlawful and granting class wide vacatur under the APA. The court found "no just reason for delay" given the nationwide denial of bond hearings and ongoing constitutional harm. The Government's assertion that *Bautista* is "not binding" is therefore factually incorrect.

The Government's reliance on *Crawford, McNeil, Gillespie*, and similar class-action decisions is misplaced. None of those cases involved a petitioner in immigration detention invoking the Court's habeas jurisdiction under 28 U.S.C. § 2241 to challenge an ongoing

deprivation of liberty. Rather, those decisions addressed prisoners seeking equitable or injunctive relief where a certified class had already obtained, or was on the brink of obtaining, class-wide injunctive remedies. Habeas is different.

In *Harris v. Nelson*, 394 U.S. 286, 292 (1969), the Supreme Court held that habeas corpus remains an independent mechanism for judicial inquiry into unlawful custody, separate from ordinary equitable relief. Likewise, in *Singleton v. Wulff*, 428 U.S. 106, 113–14 (1976), the Court reaffirmed that individuals retain the right to assert personal constitutional claims even when broader structural litigation exists.

Moreover, *Crawford v. Bell*, 599 F.2d 890 (9th Cir. 1979) permits dismissal of duplicative suits seeking identical equitable class relief, but it does not authorize federal courts to decline jurisdiction over individual habeas petitions involving confinement. Nothing in *Crawford* suggests that Rule 23 can suspend habeas review for a detainee challenging the statutory basis of his custody. The suspension of habeas requires Congress, not a litigant's reliance on a parallel civil suit.

Nor does *McNeil v. Guthrie*, 945 F.2d 1163 (10th Cir. 1991) assist the Government. That case simply held that prisoners could not pursue separate institutional injunctive relief when a class injunction was already in place. It expressly preserved individual claims where liberty is at stake.

Finally, *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) bars only separate suits for equitable reform in the presence of a class injunction. It does not bar personal habeas petitions, and it does not involve detention authority under § 1225 or § 1226.

III. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION UNDER THE EXPEDITED REMOVAL STATUTE, 8 U.S.C. § 1225(b)(2)(A)

The Government argues that Petitioner is subject to mandatory detention under the expedited removal statute, 8 U.S.C. § 1225(b)(2)(A). That argument has no application here. 8 U.S.C. § 1225(b)(2)(A) governs noncitizens who are "applicants for admission, if the examining officer determines" the noncitizen seeking admission "is not clearly and beyond a doubt entitled to be admitted." Petitioner entered the United States in 2005, at the age of 24. Now, in 2025 after Respondent's policy change rendering significant portions of 8 U.S.C. 1226 meaningless, the Government wants to argue that Petitioner is now, twenty years later, seeking admission. When DHS encountered him, he had already lived in the United States for over twenty years. DHS chose to initiate full removal proceedings by issuing a Notice to Appear under 8 U.S.C. § 1229a, because they could not impose an expedited process. The checkbox on the NTA confirming that an asylum officer found credible fear is blank. This confirms that DHS did not initiate the statutory process that triggers § 1225(b)(1)'s mandatory-detention clause. *See* ECF 1-1.

Full removal proceedings under § 1229a are mutually exclusive from expedited removal under § 1225. Congress expressly provided that proceedings under § 1229a "shall be the sole and exclusive procedure" for determining removability once DHS elects that pathway. 8 U.S.C. § 1229a(a)(3). Once DHS elected that statutory framework, § 236(a) governed custody.

Administrative guidance confirms this reading. In *Matter of M-S-*, the Attorney General explained that 8 U.S.C. § 1225 requires detention only for individuals originally placed in expedited removal and undergoing Credible Fear Interviews. 27 I&N Dec. 509, 512 (A.G. 2019). Individuals apprehended in the interior and issued NTAs are governed instead by §1226(a), under which DHS may detain or release the person on bond or parole. This distinction is reflected in DHS's own arrest practices. The record here shows that DHS processed Petitioner

under § 1226(a) and recognized Immigration Judge custody jurisdiction, before reversing course based on subsequent BIA decisions.

The Government also argues that § 1225(b)(2)(A) applies because Petitioner is an "applicant for admission." § 1225(b)(2)(A) applies to individuals who are seeking admission at the time they encounter immigration officers, before DHS files an NTA. The statute itself makes this clear: it applies where an officer determines that "an alien seeking admission is not clearly and beyond a doubt entitled to be admitted." *Matter* of *M-S-*, 27 I. & N. Dec. 509 (emphasis added). That statutory language does not describe Petitioner. He was not seeking admission; he was living in the United States and was apprehended years after entry.

The Ninth Circuit has already rejected DHS's attempt to reclassify noncitizens as "arriving" after the agency elects to initiate full removal proceedings. Once DHS files a Notice to Appear and invokes the § 240 process, custody is governed by § 1226(a), and DHS may not later rely on § 1225(b)(2) to impose mandatory detention. *Casas-Castrillon v. DHS*, 535 F.3d 942, 947–49 (9th Cir. 2008). The court explained that DHS's statutory election carries legal consequences and forecloses subsequent reliance on the expedited-removal detention framework. Likewise, the Ninth Circuit has held that noncitizens apprehended inside the United States and placed into § 240 proceedings are entitled to individualized custody determinations under § 1226(a) and cannot be treated as mandatory detainees based on § 1225. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

Nothing about Petitioner's posture aligns with the statutory scheme of § 1225(b). He was not seeking admission at the port of entry. He was not placed in expedited removal. He was not referred for a Credible Fear Interview. He was arrested while he was already present in the United States, with the knowledge of DHS, for more than twenty years. *See* **Exhibit "A".** He

was placed directly into § 240 proceedings, and DHS's own actions reflect an initial determination that § 1226(a), not § 1225(b), governed custody.

To the extent the Government relies on *Matter of Q. Li*, this Court should decline to follow it. After *Loper Bright*, no deference is owed to an agency interpretation that rewrites the statute. The Ninth Circuit has already made clear that § 1225(b)(2) applies to individuals at the threshold of entry—not long-term interior arrests placed into § 240 proceedings—and that custody in that posture is governed by § 1226(a). *Campos v. INS*, 62 F.3d 311, 314 (9th Cir. 1995); *Casas-Castrillon v. DHS*, 535 F.3d 942, 947–49 (9th Cir. 2008). This Court should follow controlling circuit law, not *Q. Li's* expansion of "applicant for admission." Accordingly, the mandatory-detention provision in § 1225(b) does not apply to Petitioner, and DHS's reliance on that statute provides no lawful authority for his continued detention.

IV. PETITIONER HAS THE RIGHT TO DUE PROCESS IN THE IMMIGRATION PROCEEDINGS

Noncitizens who have entered the United States are entitled to basic procedural protections, including notice and an opportunity to be heard. The Supreme Court has long held that noncitizens within the United States are entitled to procedural due process. *Yamataya v. Fisher*, 189 U.S. 86, 23 S. Ct. 611, 47 L. Ed. 721 (1903); *Bridges v. Wixon*, 326 U.S. 135, 65 S. Ct. 1443, 89 L. Ed. 2103 (1945). Our immigration laws distinguish between individuals seeking initial admission and those who have already entered the country. *Leng May Ma v. Barber*, 357 U.S. 185, 187, 78 S. Ct. 1072, 2 L. Ed. 2d 1246 (1958). Noncitizens who are physically present in the United States "undeniably have due process rights." *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 191, 140 S. Ct. 1959, 207 L. Ed. 2d 427 (2020).

Here, the Government attempts to categorize Petitioner as an "applicant for admission" by relying on *Matter of Q Li* and *Matter of Yajure Hurtado*. Those cases involved individuals

processed as arriving aliens who had been conditionally paroled at or near the border. They do not apply to a person whom DHS arrested inside the United States and placed directly into § 240 proceedings long after entry. DHS cannot rewrite the factual posture of this case to retroactively impose the expedited-removal framework.

Petitioner is not in expedited removal, has never undergone a Credible Fear Interview, and is not subject to § 235(b). He is a long-term resident placed squarely in the statutory framework of § 236(a) and § 240. Thus, he is entitled to the due-process protections available in those proceedings, including meaningful consideration of release under § 236(a).

Accordingly, Petitioner, who remains in full § 240 removal proceedings, is entitled to the due-process protections afforded to individuals in those proceedings. DHS's effort to deny him those protections by mischaracterizing his statutory posture has no basis in fact or law.

To the extent the Government suggests that recent district Court decision yield to the BIA's recent precedential decisions in *Matter of Q-Li* and *Matter of Yajure Hurtado*, that argument misstates both the law and the current judicial landscape. After *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024), courts - not agencies - exercise independent judgment in interpreting statutory meaning. Chevron deference no longer applies, and agencies are owed no special weight on pure questions of statutory construction.

Consistent with this framework, federal courts evaluating the same issue have declined to follow *Q-Li* and *Yajure Hurtado* and have held that § 1225(b)(2) does not govern the detention of noncitizens arrested in the interior. See *Hyppolite v. Noem*, Slip Op. (E.D.N.Y. 2025); *Placido Romero Perez v. Francis*, Slip Op. (S.D.N.Y. 2025); *Rueda Torres v. Francis*, Slip Op. (S.D.N.Y. 2025); *J.U. v. Maldonado*, Slip Op. (E.D.N.Y. 2025); *Artiga v. Genalo*, Slip Op. (E.D.N.Y. 2025). Although these decisions arise outside the Eleventh Circuit, they apply the

same statutory text and post-*Loper Bright* interpretive principles and reinforce the growing national consensus that *Q-Li* and *Yajure Hurtado* cannot be read to impose mandatory detention on long-term residents who were never processed as applicants for admission. Courts across jurisdictions have recognized that DHS's treatment of an individual under § 236(a) and § 240 forecloses later reliance on § 235(b)(2).

V. DHS WAIVED THE ABILITY TO DETAIN UNDER § 1225(B)(2) AND DETENTION IS ULTRA VIRES

The Government's position that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) fails for an additional, independent reason: DHS waived any ability to rely on § 1225(b)(2) when it chose to process Petitioner under § 1226(a) and place him in full removal proceedings pursuant to 8 U.S.C. § 1229a. The record demonstrates that DHS (1) issued and filed a Notice to Appear initiating § 240 removal proceedings, and (2) processed him through the custody framework of § 1226(a) by acknowledging Immigration Judge jurisdiction over custody. *See* Notice to Appear. Notably, DHS did not issue the required record of arrest identifying § 1225(b)(2) as the authority for detention, further undermining its belated reliance on that provision.

A. DHS's invocation of § 1226(a) forecloses reliance on § 1225(b)(2)

The Ninth Circuit has already rejected DHS's recent attempt to retroactively transform § 1226(a) custody cases into § 1225(b)(2) "applicant-for-admission" cases. Once DHS files a Notice to Appear and initiates § 240 removal proceedings, custody is governed by § 1226(a), and DHS may not later rely on § 1225(b)(2) to impose mandatory detention. *Casas-Castrillon v. DHS*, 535 F.3d 942, 947–49 (9th Cir. 2008). That statutory election has legal consequences and forecloses later reliance on the expedited-removal detention framework. Likewise, the Ninth

Circuit has confirmed that noncitizens arrested in the interior and placed in § 240 proceedings are entitled to individualized custody determinations under § 1226(a) and cannot be recast as mandatory detainees based on § 1225. *Hernandez v. Sessions*, 872 F.3d 976, 988 (9th Cir. 2017).

B. The 1997 regulation confirms that DHS waived § 1225(b)(2) for interior arrests

The regulations held in the Detention and Removal of Aliens explicitly provide that individuals who entered without inspection are eligible for bond and IJ redetermination. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 FR 10312, 10323, 62 FR 10312-01, 10323. DHS cannot ignore this regulation. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 74 S. Ct. 499, 98 L. Ed. 681 (1954). Because Petitioner is an interior EWI arrest, DHS is legally required to treat him under § 236(a).

C. DHS's failure to issue a Form I-220A or I-286 further proves that § 1225(b)(2) never applied

DHS has not produced a Form I-220A Record of Custody or any contemporaneous custody advisal identifying § 1225(b)(2) as the statutory basis for detention. The regulations mandate issuance of such documentation. 8 C.F.R. § 236.1(b), 287.3(a). Failure to comply with these mandatory procedural requirements renders custody unlawful and ultra vires. See *Matter of Garcia*, 17 I. & N. Dec. 319 (BIA 1980). This omission is consistent with what the Ninth Circuit has identified as impermissible retroactive reliance on § 1225(b)(2) after DHS has already processed a noncitizen under § 1226(a). *Casas-Castrillon v. DHS*, 535 F.3d 942, 947–49 (9th Cir. 2008).

VI. THE APPROPRIATE REMEDY IS RELEASE, NOT A BOND HEARING

The Government argues that even if Petitioner prevails, the only remedy would be a bond hearing. Yet, Ninth Circuit precedent distinguishes between prolonged-detention claims and challenges to the statutory basis for custody. Where DHS relies on the wrong statute, the proper remedy is immediate release, not a bond hearing. See *Rodriguez v. Robbins*, 715 F.3d 1127, 1139–40 (9th Cir. 2013); *Casas-Castrillon v. DHS*, 535 F.3d 942, 949–50 (9th Cir. 2008). A bond hearing presupposes lawful detention authority. Because DHS initiated § 240 proceedings, processed Petitioner under § 236(a), waived reliance on § 1225(b)(2), and violated mandatory regulatory procedures, Petitioner's continued detention is statutorily unauthorized and must end.

CONCLUSION

For the reasons described above, Petitioner's Petition should be granted, and Respondents should be ordered to release Petitioner immediately pursuant to his statutory eligibility for release.

Dated: White Plains, New York
December 19, 2025

Respectfully Submitted,

By: /s/ Andrea C. Soto

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