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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

9 **Adonis Carretero-Cenovio,**  
10  
11 **Petitioner,**  
12 **v.**  
13 **Kristi Noem, et al.,**  
14  
15 **Respondents.**

Case No. 2:25-cv-04631-DJH

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 10]. Contrary to Respondents' assertions, the class certification entered 11/25/2025 in *Maldonado Bautista v. Santacruz*<sup>1</sup> 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.<sup>2</sup> 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.

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

1 Respondents also aver that “Petitioner argues that his detention is unlawful  
2 because *Respondents denied him a bond hearing, which Respondents did because of an*  
3 *immigration judge’s finding that Respondent was categorically ineligible for release.*”  
4 Response at page 7, lines 18-20 (emphasis added). However, Petitioner made no such  
5 argument. In fact, Petitioner has never moved for a bond hearing and his merits hearing is  
6 still undecided, with an upcoming hearing scheduled for January 14, 2026 at 2:30 p.m. in  
7 Eloy Arizona.  
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9 Regarding Respondents’ claim that Congress intended the mandatory detention of  
10 every noncitizen until the end of their removal proceedings, the statutes cannot be read in  
11 isolation; they must be harmonized with § 1226’s bond authority and § 1182(d)(5)’s parole  
12 provisions, each of which show that Congress intended for noncitizens to be allowed  
13 release in appropriate cases. And, as the Supreme Court made clear in *Zadvydas v.*  
14 *Davis*, 533 U.S. 678, 693 (2001), and in *Demore v. Kim*, 538 U.S. 510, 517 (2003), civil  
15 immigration detention is constitutionally limited in scope and purpose.  
16

17 The government’s reading would convert a targeted detention scheme into blanket,  
18 indefinite incarceration—something Congress never enacted, and the Constitution does  
19 not permit. Moreover, the Ninth Circuit has clearly and consistently held that 8 U.S.C. §  
20 1226(a) is the “default” detention statute for aliens in removal proceedings. *Avilez v.*  
21 *Garland*, 69 F. 4th 525, 529-530 (9th Cir. 2022). *Accord, Rodriguez Diaz v. Garland*, 83 F.  
22 4th 1177, 1179 (9th Cir. 2023); *Sarr v. Scott*, 765 F. Supp. 3d 1091, 1095 (WD Wash.  
23 2025); *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v.*  
24 *DHS*, 535 F.3d 942 (9th Cir. 2008).  
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26 Respondents are clearly promoting the Department of Homeland Security’s (DHS)  
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<sup>2</sup> 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.”)

1 newly adopted and erroneous position<sup>3</sup> that all noncitizens who enter without inspection  
2 are "applicants for admission" under 8 U.S.C. § 1225(a) and therefore subject to  
3 mandatory detention under § 1225(b)(2), without regard for the length of time they have  
4 lived in the United States.<sup>4</sup> Here, Petitioner has been living in the United States for over  
5 10 years and is eligible for cancelation of removal. See, Petitioner's Affidavit, filed with the  
6 Habeas Petition as Exhibit 4. He also has no criminal history. *Id.* Further, when  
7 Respondents issued a Notice to Appear, it identified Petitioner as an "alien present in the  
8 United States" despite "arriving alien" being an option. See, Petitioner's Notice to Appear,  
9 filed with the Habeas Petition as Exhibit 5.  
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11 The length of time that a petitioner has been living in the United States is a  
12 constitutionally relevant consideration, because "once an alien enters the country, the legal  
13 circumstance changes, for the Due Process Clause applies to all 'persons' within the  
14 United States, including aliens, whether their presence here is lawful, unlawful, temporary,  
15 or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It is therefore reasonable to  
16 read these statutes "against [that] backdrop." See *Hewitt v. United States*, 605 U.S. —,  
17 145 S. Ct. 2165, 2173 (2025).  
18  
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20 **II. The Orders Entered In *Maldonado Bautista* Are Not Yet Final And Do Not Bar**  
21 **Habeas Relief.**

22 As the Response notes, a partial ruling on plaintiff's motion for summary judgment  
23 and a class certification ruling were entered on November 25, 2025, in *Maldonado Bautista*  
24 *v. Santacruz*, Case No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25,  
25  
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27  
28 <sup>3</sup> See, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission  
filed with the Habeas Petition.

<sup>4</sup> 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 2025), doc. numbers 81 and 82. No final judgment has been entered in that case and the  
2 court has scheduled a January 16, 2026 status conference in the case.

3 As established by the Supreme Court in *Coopers & Lybrand v. Livesay*, 437 U.S.  
4 463, 469 (1978), an order granting or denying class certification is interlocutory because it  
5 is subject to amendment at any time prior to final judgment. See, Fed.R.Civ.Pro.  
6 23(c)(1)(C)("[a]n order that grants or denies class certification may be altered or amended  
7 before final judgment.")  
8

9 Thus, Petitioner may or may not be a member of the class ultimately certified in  
10 *Maldonado Bautista*, depending upon the exact terms of the class eventually certified.  
11 Until such time as that class certification is finalized, it will be impossible to determine  
12 whether grounds exist upon which Respondents can move to dismiss Petitioner's Habeas  
13 Petition. See, *Pride v. Correa*, 719 F.3d 1130, 1333 (9th Cir. 2013)(individuals may litigate  
14 "independent constitutional action" not "encompassed by a pending class action" of which  
15 individual is a member), citing to *Crawford v. Bell*, 599 F.2d 890 (9th Cir.1979) and *Krug v.*  
16 *Lutz*, 329 F.3d 692 (9th Cir.2003). See also, *Kate Weaver, Enjoined from Enjoining: The*  
17 *State of Remedies and Relief for Immigrants After Garland v. Aleman Gonzalez*, 85 La. L.  
18 *Rev.* (2025).  
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21 Nor have Respondents moved to dismiss Petitioner's habeas petition or sought a  
22 stay pending final resolution of the class certification in *Maldonado Bautista*. Neither is  
23 feasible in any event, as final resolution of the issues still pending in *Maldonado Bautista*  
24 could take months, if not years, to resolve, factoring in possible appeals, remands and  
25 petitions for review. See, e.g. *Jennings v. Rodriguez*, 583 U.S. 281 (2018), where the U.S.  
26 District Court for the Central District of California, on remand from the Ninth Circuit Court of  
27 Appeals, in 2010 certified a class of all non-citizens within the Central District of California  
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**period immediately prior** to the date of the determination of inadmissibility under this

1 who: (1) are or were detained for longer than six months pursuant to one of the general  
2 immigration detention statutes pending completion of removal proceedings, including  
3 judicial review, (2) are not and have not been detained pursuant to a national security  
4 detention statute, and (3) have not been afforded a hearing to determine whether their  
5 detention is justified. *Jennings*, 583 U.S. at 290. The Government appealed and the Ninth  
6 Circuit Court of Appeals affirmed in part and reversed in part. *Rodriguez v. Robbins*, 804  
7 F.3d 1060 (9th Cir. 2015), The Supreme Court granted certiorari and remanded, stating  
8 that there was no “implicit 6-month time limit on the length of detention” in the statutes.  
9 *Jennings*, 583 U.S. at 292. On October 19, 2021, the Ninth Circuit in a memorandum  
10 decision ordered the District court to vacate the injunction, effectively decertifying the  
11 class. *Rodriguez v. Marin*, 2021 WL 4871067.

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

## 20 **II. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION.**

### 21 **A. Caselaw Holds That An Alien Present In The U.S. For 18 Years Is Not An** 22 **“Arriving Alien.”**

23 Both Supreme Court and Ninth Circuit precedent hold that 8 U.S.C. § 1226(a) is the  
24 “default” provision for aliens already present in the United States. In *Jennings v. Rodriguez*,  
25 583 U.S. 281, 297 (2018), the Supreme Court reversed a Ninth Circuit holding that there  
26 was a statutory right to periodic bond hearings. It held that “U. S. immigration law  
27 authorizes the Government to detain certain aliens seeking admission into the country under  
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subparagraph.” (emphasis added)

1 §§ 1225(b)(1) and (b)(2). It also held that “§ 1226 applies to aliens already present in the  
2 United States. Section 1226(a) creates a default rule for those aliens by permitting—but not  
3 requiring—the Attorney General to issue warrants for their arrest and detention pending  
4 removal proceedings.” Jennings, 583 U.S. at 303 (emphasis added). In *Zadvydas v. Davis*,  
5 533 U.S. 678 (2001), the Supreme Court stated that “[w]hile removal proceedings are in  
6 progress, **most aliens may be released on bond or paroled.** 8 U. S. C. §§ 1226(a) (1994  
7 ed., Supp. V).” *Id.* at 683 (emphasis added).

9 The Ninth Circuit has held that § 1226(a) is the “default” detention statute for aliens in  
10 removal proceedings “[8 U.S.C. §1226(a) (“Subsection A”)] is the default detention statute  
11 for noncitizens in removal proceedings and applies to noncitizens “[e]xcept as provided in  
12 [Subsection C].” 8 U.S.C. § 1226(a).” *Avilez v. Garland*, 69 F. 4th 525, 529-530 (9th Cir.  
13 2022). *Accord, Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v.*  
14 *Scott*, 765 F. Supp. 3d 1091, 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d  
15 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

17 Every case decided in the U.S. District Court for the District of Arizona over the past  
18 3 months has disagreed with the government’s position:

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

- 1
- 2 4) Order granting habeas in *Padron-Carreron v. Noem, et al.*, Case No. 25-cv-04204-  
3 DWL (D. Ariz. 11-24-25)("having carefully reviewed the recent decisions adopting  
4 the minority view, the Court respectfully declines to revisit the conclusion it reached  
5 in *Echevarria*.").
- 6 5) Order granting habeas in *Rodriguez Plascencia v. Bondi, et al.*, Case No. 25-cv-  
7 03794-MTL (D. Ariz. 11-21-25)("having carefully reviewed the recent decisions  
8 adopting the minority view, the Court respectfully declines to revisit the conclusion it  
9 reached in *Echevarria*.").
- 10 6) Order granting habeas in *Rodrigues da Silva v. Figueroa, et al.*, Case No. 25-cv-  
11 04015-PHX (D. Ariz. 11-18-25)("dozens of other district courts have concluded  
12 individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are  
13 not subject to mandatory detention").
- 14 7) Order granting habeas in *Perez Rodriguez v. Noem, et al.*, Case No. 25-cv-03921-  
15 PHX (D. Ariz. 11/13/2025)("the vast majority of courts concluded individuals like  
16 Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to  
17 mandatory detention").
- 18 8) Order granting habeas in *Gonzalez Rodriguez v. Bondi, et al.*, Case No. 25-cv-  
19 03917-PHX (D. Ariz. 11-6-25)("dozens of other district courts have concluded  
20 individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are  
21 not subject to mandatory detention").
- 22 9) Order granting habeas in *Abrego-Zarate v. Noem, et al.*, Case No. 25-cv-03564-KML  
23 (D. Ariz. 11-6-25)("in accord with numerous other courts addressing the same  
24 issue—'Respondents' narrow focus on the language of § 1225(a)(1) fails to take  
25 account of the entirety of the statutory scheme..." *citing to Echevarria v. Bondi, et al.*,  
26 CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282, at \*9 (D. Ariz. October 3,  
27 2025)).
- 28 10) Order granting habeas in *Gonzalez Rodriguez-Zarate v. Bondi, et al.*, Case No. 25-  
cv-03917-JJT (D. Ariz. 11-6-25)("This Court agrees with the weight of authority in  
determining Petitioner's detention is subject to § 1226.").
- 11) Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No. 2:25-cv-03391-SHD-  
DMF at page 2 (D. Ariz. Oct. 22, 2025)("while Respondents point to two district court  
opinions adopting their interpretation of § 1225(b)(2)(A), myriad other district courts  
have reached the same conclusion as *Echevarria* and held individuals like Petitioner  
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 to the general removal statute, 8  
U.S.C. § 1226(a)").

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3 13) Order granting habeas entered in *Hector Lopez-Melo v. Bondi, et al.*, Case No.  
4 Case 2:25-cv-03394-DJH--JZB (D. Ariz. 10/9/2025) (“petitioner, who had been  
5 present in the United States for years, was not an applicant for admission under  
6 1225(b)(2)(A) or subject to mandatory detention”).

7  
8 14) Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No. CV-25-02989-PHX-SPL  
9 (D Arizona 10/07/2025) (“Respondents maintain he is subject to mandatory detention  
10 under 1225(b)(2). Again, Respondents are mistaken.”).

11  
12 15) Order granting habeas corpus in *Echevarria v. Bondi, et al.*, No. 2:25-cv-03252-  
13 PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025).

14  
15 In *Padron-Carreron*, the Court commented that “Respondents point to “at least  
16 five federal courts that have joined what the government acknowledges is a minority  
17 position on whether § 1225 applies to persons in Petitioner’s position rather than §  
18 1226.”<sup>5</sup> The Court also mentioned four more that it was aware of.<sup>6</sup> However, it  
19 concluded that “it is unsurprising that judges across the country are not in full agreement  
20 on how this issue should be resolved—indeed, the Court previously emphasized that “it  
21 views this issue as presenting a complicated and debatable question.” *Echevarria*, 2025  
22 WL 2821282 at \*5.

### 23 CONCLUSION

24 For all the foregoing reasons, Petitioner Adonis Carretero-Cenovio respectfully  
25 requests the Court grant his petition for writ of habeas corpus and require Respondents to  
26 immediately release him from his unlawful detention at Florence Correctional Center in  
27 Florence, Arizona or, in the alternative, schedule him for a bond hearing within three (3)  
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29 <sup>5</sup> Those decisions are *Mejia Olalde v. Noem*, 2025 WL 3131942 (E.D. Mo. 2025), *Vargas Lopez v.*  
30 *Trump*, 2025 WL 2780351 (D. Neb. 2025), *Chavez v. Noem*, 2025 WL 2730228 (S.D. Cal. 2025),  
31 *Pipa-Aquise v. Bondi*, 2025 WL 2490657 (E.D. Va. 2025), and *Pena v. Hyde*, 2025 WL 2108913 (D.  
32 Mass. 2025).

33 <sup>6</sup> Those decisions are *Valencia v. Chestnut*, 2025 WL 3205133 (E.D. Cal. 2025); *Alonzo v. Noem*,  
34 2025 WL 3208284 (E.D. Cal. 2025); *Sandoval v. Acuna*, 2025 WL 3048926 (W.D. La. 2025); *Rojas*  
35 *v. Olson*, 2025 WL 3033967 (E.D. Wisc. 2025); *Garibay-Robledo v. Noem*, No. 1:25-CV-177-H, Doc.  
36 9 (N.D. Tex. Oct. 24, 2025).

1 days under 8 U.S.C. § 1226, without regard to the holding of *Matter of Yajure Hurtado*, 29  
2 I&N Dec. 216 (B.I.A. 2025).

3 Dated: December 17, 2025

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