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9
10 **UNITED STATES DISTRICT COURT**

11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 HATIM ABDEL MONGY ABDALA
13 BAKER,

14 Petitioner,

15 v.

16 ADAM GORDON, et al.,

17 Respondents.
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Case No.: 25-cv-3539-CAB-SBC

RESPONSE TO PETITION

1 On July 8, 2025, the Department of Homeland Security (“DHS”) instituted a
2 notice titled “Interim Guidance Regarding Detention Authority for Applicants for
3 Admission” (the “Notice”) requiring, in general, that anyone arrested in the United
4 States and charged with being inadmissible to be considered an “applicant for
5 admission” under 8 U.S.C. § 1225(b)(2)(A), subject to mandatory detention under
6 8 U.S.C. § 1225(b)(2)(A) and not subject to detention under 8 U.S.C. § 1226(a).

7 In *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp.
8 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the district court declared the
9 Notice unlawful under the Administrative Procedures Act but did not issue a final
10 judgment. On December 18, 2025, however, the *Bautista* court entered final judgement.
11 *Bautista*, No. 5:25-CV-01873-SSS-BFM, ECF No. 94 (filed concurrently herewith as
12 Exhibit 1). Accordingly, Respondents acknowledge that Petitioner is detained under
13 8 U.S.C. § 1226(a) and is entitled to an order from this Court directing a bond hearing
14 be held pursuant to 8 U.S.C. § 1226(a).¹

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16 ¹ To the extent Petitioner asserts claims regarding conditions of his confinement, ECF
17 No. 1 at ¶¶ 2–3, 21–23, 29–30, 35–36, the Court lacks jurisdiction over such claims
18 because they do not challenge the lawfulness of his custody. Habeas relief under
19 28 U.S.C. § 2241 is available to challenge only the legality or duration of confinement.
20 *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023); *Crawford v. Bell*, 599 F.2d
21 890, 891 (9th Cir. 1979); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117
22 (2020) (stating the writ of habeas corpus historically “provide[s] a means of contesting
23 the lawfulness of restraint and securing release”). Here, Petitioner’s claims regarding
24 the conditions of his confinement do not arise under § 2241. *See Nettles v. Grounds*,
25 830 F.3d 922, 933 (9th Cir. 2016) (“We have long held that prisoners may not challenge
26 mere conditions of confinement in habeas corpus.”); *Giron Rodas v. Lyons*, No.
27 25cv1912-LL-AHG, 2025 WL 2300781, at *3 (S.D. Cal. Aug. 1, 2025) (“Like in
28 *Pinson*, the Court lacks jurisdiction over Petitioner’s § 2241 habeas petition since it
cannot be fairly read as attacking ‘the legality or duration of confinement.’”) (quoting
Pinson, 69 F.4th at 1065); *Guselnikov v. Noem*, No. 25-cv-1971-BTM-KSC, 2025 WL
2300873, at *1 (S.D. Cal. Aug. 8, 2025) (finding petitioners’ claims did not arise under
§ 2241 because they were not arguing they were unlawfully in custody and receiving
the requested relief would not entitle them to release). Petitioner’s claim under *Fraihat*
likewise does not sound in habeas corpus. *See Fraihat v. U.S. Immigration & Customs*
Enf’t, 445 F. Supp. 3d 709 (C.D. Cal. 2020), *order clarified*, 2020 WL 6541994 (C.D.

1 Respondents reserve the right to supplement this response in the event of a stay
2 of enforcement of the *Bautista* final judgment, appellate relief, or a change in DHS
3 policy.

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5 DATED: December 19, 2025

Respectfully submitted,

6 ADAM GORDON
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7 s/ Kelly A. Reis
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Assistant United States Attorney
9 Attorneys for Respondents

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25 Cal. Oct. 7, 2020) and *rev'd and remanded*, 16 F.4th 613 (9th Cir. 2021). The issue
26 presented in *Frailhat* was whether the conditions in which ICE detainees were held
27 during the pandemic violated the Constitution. *Frailhat*, 445 F. Supp. 3d at 737. The
28 *Frailhat* court specifically noted that “[t]he class’s interest is not in release, but in not
being subject to unlawful conditions of confinement.” *Frailhat*, 445 F. Supp. 3d at 740
n.22. Thus, Petitioner’s conditions of confinement claims do not arise under § 2241 and
should be dismissed.