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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

9 **Jose Tanori Carbajal,**
10
11 **Petitioner,**
12 **v.**
13 **Kristi Noem, et al.,**
14
15 **Respondents.**

Case No. 2:25-cv-04648-DWL

A No. 

**PETITIONER'S REPLY TO
RESPONDENTS' RESPONSE
TO HABEAS PETITION**

INTRODUCTION

Petitioner Jose Tanori Carbajal files this reply to Respondents' Response to his Petition for a Writ of Habeas Corpus [doc 7]. 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. 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.

Further, no immigration judge (IJ) found Petitioner "categorically ineligible for release" as alleged in the Response at page 7, lines 18-19. Petitioner has not sought a bond hearing due to the holding of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025) filed herewith as Exhibit 2.

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 Regarding Respondents' claim that Congress intended the mandatory detention of
2 every noncitizen until the end of their removal proceedings, the statutes cannot be read in
3 isolation; they must be harmonized with § 1226's bond authority and § 1182(d)(5)'s parole
4 provisions, each of which show that Congress intended for noncitizens to be allowed
5 release in appropriate cases. And, as the Supreme Court made clear in *Zadvydas v.*
6 *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.

8
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).

17
18 Respondents are clearly promoting the Department of Homeland Security's (DHS)
19 newly adopted and erroneous position³ that all noncitizens who enter without inspection
20 are "applicants for admission" under 8 U.S.C. § 1225(a) and therefore subject to
21 mandatory detention under § 1225(b)(2), without regard for the length of time they have
22 lived in the United States.⁴ Here, Petitioner has been living in the United States for over
23 10 years and is eligible for cancelation of removal. See, Petitioner's Affidavit, filed with the
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27 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.")

28 ³ See, ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission filed with the Habeas Petition as Exhibit 1.

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**

1 Habeas Petition as Exhibit 4. He also has no criminal history. *Id.* Further, when
2 Respondents issued a Notice to Appear, it identified Petitioner as an “alien present in the
3 United States” despite “arriving alien” being an option. See, Petitioner’s Notice to Appear,
4 filed with the Habeas Petition as Exhibit 5.

5
6 The length of time that a petitioner has been living in the United States is a
7 constitutionally relevant consideration, because “once an alien enters the country, the legal
8 circumstance changes, for the Due Process Clause applies to all ‘persons’ within the
9 United States, including aliens, whether their presence here is lawful, unlawful, temporary,
10 or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). It is therefore reasonable to
11 read these statutes “against [that] backdrop.” See *Hewitt v. United States*, 605 U.S. —,
12 145 S. Ct. 2165, 2173 (2025).

13
14 **II. The Orders Entered In *Maldonado Bautista* Are Not Yet Final And Do Not Bar**
15 **Habeas Relief.**

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

22
23 As established by the Supreme Court in *Coopers & Lybrand v. Livesay*, 437 U.S.
24 463, 469 (1978), an order granting or denying class certification is interlocutory because it
25 is subject to amendment at any time prior to final judgment. See, Fed.R.Civ.Pro.
26 23(c)(1)(C)(“[a]n order that grants or denies class certification may be altered or amended
27 before final judgment.”)
28

the 2-year period immediately prior to the date of the determination of inadmissibility under
this subparagraph.” (emphasis added)

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

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12
13 Nor have Respondents moved to dismiss Petitioner's habeas petition or sought a
14 stay pending final resolution of the class certification in *Maldonado Bautista*. Neither is
15 feasible in any event, as final resolution of the issues still pending in *Maldonado Bautista*
16 could take months, if not years, to resolve, factoring in possible appeals, remands and
17 petitions for review. See, e.g. *Jennings v. Rodriguez*, 583 U.S. 281 (2018), where the U.S.
18 District Court for the Central District of California, on remand from the Ninth Circuit Court of
19 Appeals, in 2010 certified a class of all non-citizens within the Central District of California
20 who: (1) are or were detained for longer than six months pursuant to one of the general
21 immigration detention statutes pending completion of removal proceedings, including
22 judicial review, (2) are not and have not been detained pursuant to a national security
23 detention statute, and (3) have not been afforded a hearing to determine whether their
24 detention is justified. *Jennings*, 583 U.S.at 290. The Government appealed and the Ninth
25 Circuit Court of Appeals affirmed in part and reversed in part. *Rodriguez v. Robbins*, 804
26 F.3d 1060 (9th Cir. 2015), The Supreme Court granted certiorari and remanded, stating
27 that there was no "implicit 6-month time limit on the length of detention" in the statutes.
28

1 Jennings, 583 U.S. at 292. On October 19, 2021, the Ninth Circuit in a memorandum
2 decision ordered the District court to vacate the injunction, effectively decertifying the
3 class. *Rodriguez v. Marin*, 2021 WL 4871067.

4 Here, Petitioner's continued detention during the machinations of class certification
5 in *Maldonado Bautista* imposes irreparable harm. The Supreme Court has established
6 that the "loss of freedoms, for even minimal periods of time, unquestionably constitutes
7 irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 355 (1976). Thus, by virtue of
8 Petitioner's ongoing loss of liberty, he has demonstrated significant irreparable harm.
9

10 II. PETITIONER IS NOT SUBJECT TO MANDATORY DETENTION.

11 A. Caselaw Holds That An Alien Present In The U.S. For 31 Years Is Not An 12 "Arriving Alien."

13 Both Supreme Court and Ninth Circuit precedent hold that 8 U.S.C. § 1226(a) is the
14 "default" provision for aliens already present in the United States. In *Jennings v. Rodriguez*,
15 583 U.S. 281, 297 (2018), the Supreme Court reversed a Ninth Circuit holding that there
16 was a statutory right to periodic bond hearings. It held that "U. S. immigration law
17 authorizes the Government to detain certain aliens seeking admission into the country under
18 §§ 1225(b)(1) and (b)(2). It also held that "§ 1226 applies to aliens already present in the
19 United States. Section 1226(a) creates a default rule for those aliens by permitting—but not
20 requiring—the Attorney General to issue warrants for their arrest and detention pending
21 removal proceedings." *Jennings*, 583 U.S. at 303 (emphasis added). In *Zadvydas v. Davis*,
22 533 U.S. 678 (2001), the Supreme Court stated that "[w]hile removal proceedings are in
23 progress, **most aliens may be released on bond or paroled**. 8 U. S. C. §§ 1226(a) (1994
24 ed., Supp. V)." *Id.* at 683 (emphasis added).
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28 The Ninth Circuit has held that § 1226(a) is the "default" detention statute for aliens in
removal proceedings "[8 U.S.C. §1226(a) ("Subsection A")] is the default detention statute

1 for noncitizens in removal proceedings and applies to noncitizens "[e]xcept as provided in
2 [Subsection C]." 8 U.S.C. § 1226(a)." *Avilez v. Garland*, 69 F. 4th 525, 529-530 (9th Cir.
3 2022). *Accord, Rodriguez Diaz v. Garland*, 83 F. 4th 1177, 1179 (9th Cir. 2023); *Sarr v.*
4 *Scott*, 765 F. Supp. 3d 1091, 1095 (WD Wash. 2025); *Prieto-Romero v. Clark*, 534 F.3d
5 1053, 1057 (9th Cir. 2008). *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008).

7 Every case decided in the U.S. District Court for the District of Arizona over the past
8 3 months has disagreed with the government's position:

- 9
10 1) Order granting habeas in *Millan-Osuna v. Cantu, et al.*, Case No. 25-cv-04019-MTL--
11 JFM (D. Ariz. 11-26-25)("Respondents' view represents the minority position—in the
12 weeks since Judge Lanza considered the issue in *Echevarria*, dozens of other courts
13 have reached the same conclusion.... Petitioner must receive a bond hearing under
14 8 U.S.C. § 1226(a).").
- 15 2) Order granting habeas in *Luna-Gonzalez v. Noem, et al.*, Case No. 25-cv-03794-
16 MTL (D. Ariz. 11-26-25)("Having reviewed the recent decisions adopting the minority
17 view, the Court agrees with the conclusion reached by Judge Lanza in *Echevarria*.").
- 18 3) Order granting habeas in *Najarro Zuniga v. Bondi, et al.*, Case No. 25-cv-04175-
19 SHD (D. Ariz. 11-24-25)("In the OSC, the Court observed that Petitioner's case was
20 virtually indistinguishable from Francisco Echevarria... in which Judge Lanza
21 determined individuals like Petitioner are governed by § 1226 and not §
22 1225(b)(2)(A).").
- 23 4) Order granting habeas in *Padron-Carreron v. Noem, et al.*, Case No. 25-cv-04204-
24 DWL (D. Ariz. 11-24-25)("having carefully reviewed the recent decisions adopting
25 the minority view, the Court respectfully declines to revisit the conclusion it reached
26 in *Echevarria*.").
- 27 5) Order granting habeas in *Rodriguez Plascencia v. Bondi, et al.*, Case No. 25-cv-
28 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*.").
- 6) Order granting habeas in *Rodrigues da Silva v. Figueroa, et al.*, Case No. 25-cv-
04015-PHX (D. Ariz. 11-18-25)("dozens of other district courts have concluded
individuals like Petitioner are subject to § 1226 and not § 1225 and, therefore, are
not subject to mandatory detention").
- 7) Order granting habeas in *Perez Rodriguez v. Noem, et al.*, Case No. 25-cv-03921-
PHX (D. Ariz. 11/13/2025)("the vast majority of courts concluded individuals like
Petitioner are subject to § 1226 and not § 1225 and, therefore, are not subject to
mandatory detention").

- 1 8) Order granting habeas in *Gonzalez Rodriguez v. Bondi, et al.*, Case No. 25-cv-
2 03917-PHX (D. Ariz. 11-6-25)(“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 9) Order granting habeas in *Abrego-Zarate v. Noem, et al.*, Case No. 25-cv-03564-KML
6 (D. Ariz. 11-6-25)(“in accord with numerous other courts addressing the same
7 issue—'Respondents' narrow focus on the language of § 1225(a)(1) fails to take
8 account of the entirety of the statutory scheme...” *citing to Echevarria v. Bondi, et al.*,
9 CV-25-03252-PHX-DWL (ESW), 2025 WL 2821282, at *9 (D. Ariz. October 3,
10 2025)).
- 11 10) Order granting habeas in *Gonzalez Rodriguez-Zarate v. Bondi, et al.*, Case No. 2 25-
12 cv-03917-JJT (D. Ariz. 11-6-25)(“This Court agrees with the weight of authority in
13 determining Petitioner’s detention is subject to § 1226.”).
- 14 11) Order granting habeas in *Garcia-Rosales v. Noem, et al.*, No. 2:25-cv-03391-SHD-
15 DMF at page 2 (D. Ariz. Oct. 22, 2025)(“while Respondents point to two district court
16 opinions adopting their interpretation of § 1225(b)(2)(A), myriad other district courts
17 have reached the same conclusion as *Echevarria* and held individuals like Petitioner
18 are not subject to mandatory detention under 1225(b)(2)(A)”).
- 19 12) Order granting habeas corpus in *Benitez-Cornejo v. Cantu, et al.*, No. 2:25-cv-03672
20 (D. Arizona Oct. 17, 2025)(“individuals like Petitioner are not “arriving aliens” subject
21 to mandatory detention but, rather, are subject tot he general removal statute, 8
22 U.S.C. § 1226(a)”).
- 23 13) Order granting habeas entered in *Hector Lopez-Melo v. Bondi, et. al.*, Case No.
24 Case 2:25-cv-03394-DJH--JZB (D. Ariz. 10/9/2025)(“petitioner, who had been
25 present in the United States for years, was not an applicant for admission under
26 1225(b)(2)(A) or subject to mandatory detention”).
- 27 14) Order granting habeas corpus in *Bo Li v. Cantu, et al.*, No. CV-25-02989-PHX-SPL
28 (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 position on whether § 1225 applies to persons in Petitioner’s position rather than § 1226.”⁵ The Court also mentioned four more that it was aware of.⁶ However, it

⁵ Those decisions are *Mejia Olalde v. Noem*, 2025 WL 3131942 (E.D. Mo. 2025), *Vargas Lopez v. 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).

1 concluded that “it is unsurprising that judges across the country are not in full agreement
2 on how this issue should be resolved—indeed, the Court previously emphasized that “it
3 views this issue as presenting a complicated and debatable question.” *Echevarria*, 2025
4 WL 2821282 at *5.

5
6 **CONCLUSION**

7 For all the foregoing reasons, Petitioner Jose Tanori Carbajal respectfully requests
8 the Court grant his petition for writ of habeas corpus and require Respondents to
9 immediately release him from his unlawful detention at Florence Correctional Center in
10 Florence, Arizona or, in the alternative, schedule him for a bond hearing within three (3)
11 days under 8 U.S.C. § 1226, without regard to the holding of *Matter of Yajure Hurtado*, 29
12 I&N Dec. 216 (B.I.A. 2025).
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15 Dated: December 18, 2025

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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).