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UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Martin Raul DIAZ APARICIO [redacted] Petitioner,	Case No. 3:25-cv-2413 (Judge Saporito)
v.	
Craig LOWE, *et al.*, Respondents.	

PETITIONER'S REPLY TO RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

I. INTRODUCTION

Respondents' opposition (Dkt. 4) relies entirely on a premise that has been decisively rejected by a nationwide class certification order binding on them: that they may detain Petitioner Martin Raul Diaz Aparicio without a bond hearing under 8 U.S.C. § 1225(b)(2). Mr. Diaz Aparicio (erroneously called "Dashan" by Respondents) is a member of the certified Bond Eligible Class in *Maldonado Bautista v. Santacruz*, Case No. 5:25-cv-01873 (C.D. Cal.), a decision that vacated the very policy Respondents now cite to justify his detention. Respondents attempt

to evade this binding judgment and this Court's jurisdiction by recycling jurisdictional arguments that have been conclusively rejected by courts, including in this District. They incorrectly argue that 8 U.S.C. § 1252 strips this Court of jurisdiction, that Petitioner must exhaust futile administrative remedies, and that a pending appeal allows them to ignore a valid declaratory judgment.

Petitioner is currently detained in violation of the Immigration and Nationality Act (INA) and the Due Process Clause. Because he is detained under § 1226(a), not § 1225(b)(2), he is entitled to a bond hearing. However, because the government is demonstrably incapable of providing such hearings in a timely manner due to systemic backlogs, immediate release is the only effective remedy.

II. ARGUMENT

A. This Court Has Subject Matter Jurisdiction Over Petitioner's Claims

Respondents contend that 8 U.S.C. §§ 1252(g), 1252(b)(9), and 1252(a) deprive this Court of jurisdiction. These arguments fail because Petitioner challenges the *legality of his detention*, not the Government's decision to commence proceedings or execute a removal order.

1. Section 1252(g) Does Not Bar Habeas Jurisdiction.

Section 1252(g) is narrow. It applies only to three specific actions: the decision "to commence proceedings, adjudicate cases, or execute removal orders." It does not cover all claims arising from deportation proceedings. And, as the Third

Circuit has held, this provision does not bar challenges to detention itself. *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 296 (3d Cir. 2020). Petitioner here is explicitly not challenging the Government's commencement of his removal proceedings, but rather the legality of his detention. Courts in this Circuit, and this District, have recently and repeatedly held that § 1252(g) does not bar claims identical to Petitioner's. *See, e.g., Patel v. O'Neil*, 2025 U.S. Dist. LEXIS 252347 (M.D. Pa. Dec. 8, 2025); *Ndiaye v. Jamison*, 2025 LX 503509 (E.D. Pa. Nov. 19, 2025).

2. **Section 1252(b)(9) Does Not Bar Jurisdiction Where 'Later' is Not an Option.**

Respondents argue that § 1252(b)(9) channels all claims to the Court of Appeals via a petition for review of a final order. This "zipper clause" does not apply when a noncitizen seeks relief that a court cannot meaningfully provide alongside review of a final order of removal. If Petitioner were forced to wait for a final order of removal to challenge his current detention, the relief sought – release from custody – would be moot. As the Third Circuit has stated, "If 'later' is not an option, review is available now." *E.O.H.C. v. Sec'y United States Dep't of Homeland Sec.*, 950 F.3d 177, 186 (3d Cir. 2020). The Court of Appeals could not meaningfully redress an unlawful denial of bond after a final removal order is issued. *See Patel*, LEXIS 252347 at *7.

3. **Section 1252(a)(2)(B)(ii) Does Not Apply to Statutory Construction.**

Respondents claim that detention is a "discretionary" decision immune from review. However, statutory interpretation – determining which statute governs detention – is a question of law. *See Patel*, LEXIS 252347 at *7 (holding that statutory detention power is "not a matter of discretion" to which § 1252(a)(2)(B)(ii) would apply).

B. Exhaustion of Administrative Remedies is Futile and Not Required

Respondents argue the Petition should be dismissed for failure to exhaust administrative remedies. This ignores the binding BIA precedent that makes such exhaustion futile.

There is no statutory exhaustion requirement for habeas petitions challenging detention; it is a prudential requirement that courts may waive. An exception exists where "the decisionmakers in the administrative process will almost certainly reject petitioner's requested relief." *Ndiaye*, 2025 LX 503509. Respondents concede that the BIA's decision in *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), is binding on Immigration Judges and forecloses bond at the administrative level. Because the BIA has "predetermined the statutory issue," Petitioner has "no reasonable prospect of obtaining relief through administrative remedies." *Patel*, LEXIS 252347 at *7. To require Petitioner to request a bond hearing from an IJ who is legally barred from granting it would be an exercise in futility.

C. Petitioner is Detained Under 8 U.S.C. § 1226(a), Not § 1225(b)(2)

1. Respondents Are Bound by the *Maldonado Bautista* Class Judgment.

Respondents' argument that *Maldonado Bautista* has no binding effect is incorrect. Petitioner is a member of the certified "Bond Eligible Class" defined in that case: he entered without inspection, was not apprehended upon arrival (encountered months later), and is not subject to § 1226(c) or § 1231. The *Maldonado Bautista* court issued a declaratory judgment vacating the policy relying on *Matter of Yajure Hurtado* and declaring that class members are detained under § 1226(a). Respondents are parties to that litigation. A certified class action judgment binds the defendant agencies nationwide. Respondents argue that because the case is on appeal, they need not follow it. This is legally baseless. Unless a stay is issued, and no stay has been granted by the Ninth Circuit or Supreme Court, the judgment remains in full force and effect. Respondents cannot simply ignore this class-wide declaration because they disagree with it.

2. Statutory Text and Context Support Application of § 1226(a).

Even evaluating the claim *de novo*, Respondents' interpretation of § 1225(b)(2) is incorrect. Respondents argue that every noncitizen not admitted is an "applicant for admission" subject to mandatory detention. This interpretation would render § 1226(a), the general detention statute for those arrested in the interior of the country, superfluous. Courts have historically drawn a clear line: §

1225 governs detention for those seeking admission at the border, while § 1226 governs detention for those already in the country. *Zumba v. Bondi*, 2025 U.S. Dist. LEXIS 190052 at *19.

Here, Petitioner entered the United States in December 2023. At the time at issue here, he was encountered by ICE in November 2025 in Pennsylvania. He was, therefore, already in the country and not "seeking admission" at a port of entry. Respondents' reliance on *Matter of Yajure Hurtado* contradicts decades of statutory application where individuals in Petitioner's position were treated as detained under § 1226(a). As noted by the *Patel* court, "Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A) is unlawful... [it] applies only to noncitizens who are affirmatively seeking admission... not noncitizens like Petitioner who have resided in the United States for years." *Patel*, LEXIS 252347 at *7.

D. Petitioner's Continued Detention Violates Due Process

Respondents argue that mandatory detention during removal proceedings is constitutionally permissible. However, because Petitioner is actually detained under § 1226(a), he has a statutory and due process right to a bond hearing to determine if he is a flight risk or danger to the community. Even if § 1225 applied, indefinite detention without review violates the Fifth Amendment. *Zadvydas v. Davis*, 533 U.S. 678 (2001). Petitioner faces immediate, irreparable harm from unconstitutional, indefinite detention. The Government's inability to provide

hearings due to the insurmountable backlog created by its policy shift means that detention has become punitive rather than regulatory.[1]

III. CONCLUSION AND RELIEF SOUGHT

Following the Government's position would require this Court to turn a blind eye to a binding nationwide class judgment, ignore the futility of administrative exhaustion, and overturn decades of statutory interpretation regarding § 1226(a). Petitioner is a member of the *Maldonado Bautista* class. His detention under § 1225(b)(2) is unlawful. Because the administrative system cannot provide a timely remedy, this Court should grant the writ and order Petitioner's immediate release.

DATED: December 30, 2025

Respectfully submitted,

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[1] While the class relief makes Petitioner eligible for a bond hearing, ordering such a hearing provides no effective remedy because the administrative system cannot handle the volume. The sudden reclassification of thousands of mandatory detainees to bond-eligible detainees has created an insurmountable backlog for the Executive Office for Immigration Review. *See, e.g.,* Geoff Bennett and Ali Schmitz, "Ousted immigration judge describes deepening court backlog" (PBS News Hour, Nov. 12, 2025), available at https://www.pbs.org/newshour/show/ousted-immigration-judge-describes-deepening-court-backlog; Camilo Montoya-Galvez and Julia Ingram, "The number of non-criminal detainees arrested by ICE has surged by 2,000% under Trump" (CBS News, Nov. 26, 2025), available at https://www.cbsnews.com/news/ice-detainee-data-fastest-growing-without-criminal-records-trump/ ("On Nov. 16, the government figures show, ICE was holding 65,135 people in detention facilities throughout the U.S., the highest level ever publicly reported by the agency … The official figures indicate that 30,986 – or 48% — of the ICE detainees in custody as of Nov. 16 lacked any criminal charges or convictions in the U.S. and were being held solely because of civil violations of U.S. immigration law.").

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