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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA

11 **Javier Lopez Penaloza,**
12 **Petitioner,**
13 **v**
14 **Kristi Noem, et al,**
15 **Respondents.**

16 Case No. 25-cv-04777-DWL

17 A# 

18 **PETITIONER'S REPLY TO**
19 **RESPONDENTS' RESPONSE TO**
20 **HABEAS PETITION**

21 **INTRODUCTION**

22 Petitioner Javier Lopez Penaloza files this reply to Respondents' Response to his
23 Petition for a Writ of Habeas Corpus [doc 7]. Respondents appear to concede that this
24 Court should grant Petitioner a bond hearing pursuant to the orders entered on
25 12/18/2025 in *Maldonado Bautista v. Santacruz*, Case No. 5:25-CV-01873-SSS-BFM, --
26 F.R.D. --, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). Those orders were:

- 27 (1) Order Granting In Part And Denying In Part Petitioners' Ex Parte Application For Reconsideration Or Clarification [dkt. no. 92] (Clarification Order);
- 28 (2) Amended Order Consolidating The Court's Orders On Motion For Partial Summary Judgment, Class Certification, And Application For Reconsideration Or Clarification [dkt. no. 93] (Consolidation Order); and
- (3) Final Judgment [dkt. no. 94] (Final Order).

Although Respondents filed a Notice Of Appeal to the Ninth Circuit Court of Appeals of all three orders on 12/18/2025 [dkt. no. 95], no Motion for Stay has yet been

1 requested in either the Central District of California or the 9th Circuit Court of Appeals. "A
2 party must ordinarily move first in the district court for a stay of the judgment or order of a
3 district court pending appeal." Fed.R.App.Pro. 8(a)(1).

4 Accordingly, the following holdings of the Clarification Order are currently valid:

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6 . . . Although the MSJ Order does not grant vacatur of *Yajure*
7 *Hurtado* under the APA, **Yajure Hurtado is no longer controlling;**
8 **the legal conclusion underlying the decision is no longer**
tenable.

9 Because vacatur is a necessary consequence of declaring an
10 agency action unlawful, vacatur of the DHS Policy¹ is within the
11 scope of the MSJ Order. Detailed reasoning and discussion of
12 potential jurisdictional issues are discussed in the Amended
13 Consolidated Order to be issued shortly after this Order. Accordingly,
14 the Court GRANTS Petitioners' Application to clarify that the MSJ
15 Order encompassed Count III of the Amended Class Complaint and
16 **granted classwide vacatur of the unlawful DHS policy.**

17 Clarification Order at page 6 (emphasis added).

18 Thus, although Petitioner does not concede his membership in the Bond Eligible
19 Class certified in *Maldonado Bautista* at this juncture, the holdings in the Certification
20 Order certainly support granting him habeas relief. Obviously, he filed this habeas
21 petition to pursue his individual remedies.

22 Although Respondents did not address *Echevarria v. Bondi, et al.*, No. 2:25-cv-
23 03252-PHX-DWL, 2025 WL 2821282 (D. Ariz. Oct. 3, 2025), *Maldonado Bautista* is
24 consistent with the holdings in *Echevarria*.

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27 ¹ Previously defined in the 11/20/2025 Order Granting Petitioners' Motion For Partial Summary
28 Judgment And Denying Request To Enter Final Judgment [dkt. no. 81] as "July 8,
2025...Department of Homeland Security (DHS) instituted a notice titled 'Interim Guidance
Regarding Detention Authority for Applicants for Admission' ['DHS Guidance Notice" or 'DHS
Policy']".

CONCLUSION

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Petitioner Javier Lopez Penaloza requests the Court grant his petition for habeas and require Respondents to immediately release him or, in the alternative, schedule him for a bond hearing within seven (7) days under 8 U.S.C. § 1226, without regard to the holding of *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).

Dated: December 31, 2025, 2025

Attorney for Respondent

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