

1 ADAM GORDON  
United States Attorney  
2 TOM MERRITT  
Assistant U.S. Attorney  
3 Washington State Bar No. 27723  
Office of the U.S. Attorney  
4 880 Front Street, Room 6293  
San Diego, CA 92101-8893  
5 Telephone: (619) 546-7632  
Facsimile: (619) 546-7751  
6 Email: thomas.merritt@usdoj.gov

7 Attorneys for Respondents

8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

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HAMLET KHEVOYAN,  
  
Petitioner,  
  
v.  
PATRICK DIVVER, *et al.*,  
  
Respondents.

Case No.: 26-cv-00151-BAS-SBC

**RETURN TO PETITION FOR WRIT  
OF HABEAS CORPUS**

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

27 In *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp.  
28 3d ---, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025), the district court declared the

1 Notice unlawful under the Administrative Procedures Act but did not issue a final  
2 judgment. On December 18, 2025, however, the *Bautista* court entered final judgement.  
3 *Bautista*, ECF No. 94. Accordingly, Respondents acknowledge that Petitioner is  
4 detained under 8 U.S.C. § 1226(a) and is entitled to an order from this Court directing  
5 a bond hearing be held pursuant to 8 U.S.C. § 1226(a).<sup>1</sup>

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

9 To the extent Petitioner asserts a claim under the Fourth Amendment, he fails to  
10 explain why release is the remedy for such alleged violations. *United States v. Crews*,  
11 445 U.S. 463, 474 (1980) (noting, in the criminal context, that Fourth Amendment’s  
12 “exclusionary principle” “delimits what proof the Government may offer against the  
13 accused at trial, closing the courtroom door to evidence secured by official  
14 lawlessness,” but an individual “is not himself a suppressible ‘fruit’”); *Cruz v. Barr*,  
15 926 F.3d 1128, 1146 (9th Cir. 2019) (releasing petitioner on Fourth Amendment  
16 grounds because fruits of the regulatory violation were the only evidence of petitioner’s  
17 alienage).

18 Moreover, Fourth Amendment claims related to alienage “belong in front of an  
19 Immigration Judge, not a federal district court.” *See Marvan v. Slaughter*, No. CV 25-  
20 49-H-DLC, 2025 WL 1940043, at \*3 (D. Mont. July 15, 2025) (denying habeas petition  
21 challenging detention based on Fourth Amendment violations for lack of subject matter  
22 jurisdiction). Petitioner cannot simply “bypass the immigration courts and proceed  
23 directly to district court. Instead, [he] must exhaust the administrative process before  
24 [he] can access the federal courts.” *Id.* at \*4 (quoting *J.E.F.M.*, 837 F.3d at 1029). To  
25 the extent Petitioner desires to bring such claims, this district court does not have  
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27 <sup>1</sup> To the extent the Court issues an order directing a bond hearing under 1226(a),  
28 considering heavy caseloads and staffing levels, Respondents respectfully request that  
such order provide the government 14 days from issuance to hold such bond hearing.

1 jurisdiction. Under 8 U.S.C. § 1252(b)(9), “[j]udicial review of all questions of law and  
2 fact . . . arising from any action taken or proceeding brought to remove an alien from  
3 the United States under this subchapter shall be available only in judicial review of a  
4 final order under this section.” Further, judicial review of a final order is available only  
5 through “a petition for review filed with an appropriate court of appeals.” 8 U.S.C.  
6 § 1252(a)(5).

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8 Dated: January 20, 2026

Respectfully submitted,

9 ADAM GORDON  
10 United States Attorney

11 s/ Tom Merritt  
12 TOM MERRITT  
13 Assistant United States Attorney  
14 Attorney for Respondents  
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