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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10
11 Meilan Guzman-Jarquin,

Case No.: 26-cv-0514-BJC-JLB

12 Petitioner,

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

13
14 v.

15 Patrick Divver, Field Office Director of
16 Enforcement and Removal Operations,
et. al.,

17 Respondents.
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22 **I. INTRODUCTION**

23 Petitioner asserts that she is a member of the bond eligible class set forth in
24 *Maldonado Bautista v. Santacruz*, No 5:25-cv-01873-SSS-BFM, 2025 WL 3713987
25 (C.D. Cal. Dec. 18, 2025). She therefore requests that the Court order her release from
26 Immigration and Customs Enforcement (ICE) custody or, alternatively, that she be
27 provided a bond hearing. Her petition should be denied for these reasons.
28

1 *First*, this Court lacks jurisdiction because Petitioner’s claims are barred by 8
2 U.S.C. § 1252(g). *Second*, contrary to her assertion, Petitioner is *not* a class member of
3 *Maldonado Bautista* because, among other reasons, she departed the United States for
4 Mexico in November 25, 2025, remained there for almost 10 days, and was
5 immediately apprehended after unlawfully entering the United States on December 4,
6 2025. In any event, although represented by counsel, she failed to cite any other
7 caselaw or authorities or otherwise raise any other arguments in her Petition, besides
8 claiming to be a *Bautista* member. This amounts to waiver.

9 **II. FACTUAL AND PROCEDURAL BACKGROUND**

10 Petitioner is a native and citizen of Mexico, who entered the United States
11 without inspection near San Ysidro, California, on August 9, 2023. *See* ECF No. 1-4 at
12 1. At the time, she did not have any valid entry documents to enter the United States.
13 *Id.* On August 10, 2023, Petitioner was issued a Notice to Appear and was released on
14 an order of her own recognizance. Exhibit 1 (2023 I-213), at 3.

15 She concedes that she lacks any legal status in the United States. *See* ECF No. 1
16 at 3 ¶ 5.a (Petition stating she “does not have lawful status in the United States”).¹ On
17 November 25, 2025, she left the United States and went back to Mexico, where she
18 remained for 10 days. *See* Exhibit 2 (I-213), at 5. On December 5, 2025, she hired a
19 guide and attempted to enter the United States without inspection or valid entry
20 documents. She was immediately detained by U.S. Border Patrol, and she has retained
21 detained since at Otay Mesa Detention Center.

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24 ¹ In Exhibit 2, the U.S. Border Patrol officer wrote that “[Petitioner] had been previously
25 granted asylum and possessed lawful status in the United States.” *Id.* at 5. That is
26 incorrect. Respondent’s counsel has check with ICE counsel, and the agency has
27 confirmed that is inaccurate. As Petitioner concedes, she lacks any legal status in the
28 United States. Respondents’ counsel believes that likely is a reference to a I-130
(Petition for Alien Relative) her husband filed on her behalf.

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2 **III. ARGUMENT**

3 **A. Petitioner's Claim is Barred Under 8 U.S.C. § 1252(g).**

4 Respondents contend that judicial review over Petitioner's claim is barred by 28
5 U.S.C. § 1252(g), which states that "[n]o court shall have jurisdiction to hear any cause
6 or claim by or on behalf of any alien arising from the decision or action by the Attorney
7 General to commence proceedings, adjudicate cases, or execute removal orders."

8 Here, Petitioner's claims of unlawful detention necessarily arise from the
9 Department of Homeland Security's² decision to commence removal proceedings
10 against him because that decision unavoidably triggers mandatory detention under 8
11 U.S.C. § 1225(b)(1)(B)(ii) until the conclusion of his removal proceedings. *See, e.g.,*
12 *Wang v. United States*, No. CV 10-0389 SVW (RCx), 2010 WL 11463156, at *6 (C.D.
13 Cal. Aug. 18, 2010) (finding section 1252(g) bars judicial review of false imprisonment
14 claim because the plaintiff's detention arose from the decision to commence removal
15 proceedings, and in turn, the "statute mandating detention during removal proceedings
16 of a person charged as an 'arriving alien.'").

17 As explained by another district court, removal proceedings are commenced
18 when, as occurred here, "the alien is issued a Notice to Appear before an immigration
19 court." *Herrera-Correra v. United States*, No. CV 08-2941 DSF (JCx), 2008 WL
20 11336833, at *3 (C.D. Cal. Sept. 11, 2008). The government "may arrest the alien
21 against whom proceedings are commenced and detain that individual until the
22 conclusion of those proceedings." *Herrera-Correra*, 2008 WL 11336833, at *3. "Thus,
23 an alien's detention throughout this process arises from the [government's] decision to
24 commence proceedings" and review of claims arising from such detention is barred
25 under section 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007));
26 *see also Wang*, 2010 WL 11463156, at *6.

27 ² "In 2002, Congress transferred the Attorney General's immigration enforcement
28 responsibilities to the Secretary of Homeland Security." *Ibarra-Perez v. United States*,
154 F.4th 989, 995 n.2 (9th Cir. 2025).

1 Because this habeas petition brings a claim “arising from the decision or action
2 by the [government] to commence proceedings,” review of Petitioner’s claim is barred
3 under 8 U.S.C § 1252(g). Thus, the Court must dismiss the petition.

4 **B. Petitioner is Not a *Maldonado Bautista* Class Member**

5 Even if the Court assumed jurisdiction to review Petitioner’s claim, her petition
6 fails on the merits. Her sole claim of relief is under *Bautista*. See ECF No. 1 at 6-7, ¶¶
7 26-31. Namely, Petitioner claims that she is a member of the *Bautista* Bond Eligible
8 Class. See ECF No. 1 at 3, ¶ 5.

9 She is not. The *Bautista* court defined the eligible class as: “All noncitizens in
10 the United States without lawful status who (1) have entered or will enter the United
11 States without inspection; (2) *were not or will not be apprehended upon arrival*; and
12 (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1),
13 or § 1231 at the time the Department of Homeland Security makes an initial custody
14 determination.” (emphasis added). 2025 WL 3713987, at *2.

15 Here, the Petitioner *was* apprehended upon arrival in both 2023 and 2025 (after
16 she voluntarily departed the United States, remained in Mexico for 10 days, and
17 attempted to enter without inspection a second time). Her I-213 from her first entry into
18 the United States in 2023 states that she was apprehended by U.S. Border Patrol within
19 a group of eight individuals immediately after illegally entering the United States. See
20 Exhibit 1, at 3. After she was detained, she was interviewed and admitted to crossing
21 into the United States on August 9, 2023, around noon. *Id.* She was detained at
22 approximately 12:14 PM. She was served with a Notice of Appear and released on her
23 own recognizance. *Id.* On these facts alone, it is plain that she does not fall into the
24 *Bautista* class because she *was* apprehended upon arrival.

25 In any event, Petitioner is not a *Bautista* class member. Her current detention
26 arising from her December 5, 2025 attempt to enter the United States is a result of her
27 leaving the United States on November 25, 2025, remaining in Mexico for around 10
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1 days, and being detained after trying to unlawfully enter the United States on her return
2 without inspection or valid documents. *See* Exhibit 2, at 3-4.

3 **C. Waiver**

4 Based on the above, the Petition should be denied. Even though the Petitioner is
5 represented by legal counsel, she fails to cite any other authorities or advance any other
6 arguments that support alternative grounds for relief. That is, she does not advance any
7 other argument—besides claiming to be a member of the *Bautista* Bond Eligible
8 Class—that entitles her to bond hearing on a statutory or constitutional basis or even
9 claim that her detention has been prolonged.

10 This amounts to waiver. *See Brown v. Rawson-Neal Psychiatric Hospital*, 840
11 F.3d 1146, 1149 (9th Cir. 2016) (finding waiver because party failed to provide
12 arguments about an issue in its opening brief); *see also United States v. Dunkel*, 927
13 F.2d 955, 956 (7th Cir. 1991) (“Judges are not like pigs, hunting for truffles buried in
14 briefs.”). The petition should not be liberally construed; she is represented by legal
15 counsel.

16 **D. Petitioner is Lawfully Detained**

17 In the event the Court liberally construes the Petition as raising a prolonged
18 detention argument, *see* ECF No. 1, at 7 ¶ 31, this argument fails.

19 As an initial matter, Petitioner is an individual at the threshold of initial entry.
20 The Supreme Court’s ruling in *Shaughnessy v. United States ex rel. Mezei*, 345 U.S.
21 206, 207–09 (1953) “is directly on point and controls this case.” *See Poonjani v.*
22 *Shanahan*, 319 F. Supp. 3d 644 (S.D.N.Y. 2018). In *Poonjani*, the petitioner attempted
23 to enter the United State with a fake passport. *Id.* at 645. He was immediately detained
24 by immigration officials but was later released on parole. After pleading guilty to a
25 crime, he was arrested and detained by immigration authorities. *Id.* After more than a
26 year in immigration detention under § 1225(b), he filed a habeas petition. In denying
27 the petition, the court reasoned that petitioner, like Mezei, remained “at the threshold
28 of initial entry,” by which “aliens who have been denied admission to the United States

1 yet are present within its borders are ‘treated, for constitutional purposes, as if stopped
2 at the border.’” *Id.* at 648 (citations omitted). And because *Mezei* core’s holding—that
3 for aliens on the “threshold of initial entry”—due process is “whatever procedures has
4 been authorized by Congress,” the court denied the request for bond because Section
5 1225(b)(1) does not include “any avenue for release other than parole at the discretion
6 of the Attorney General.”

7 For similar reasons, some courts in the Southern District of New York have held
8 that under *Mezei*’s entry fiction doctrine, individuals detained at the threshold of initial
9 entry, like the Petitioner, do not have a due process right against prolonged detention or
10 right to a bond hearing. *See Acousta v. Arteta*, 25-cv-9916, 2026 WL 263470, at *6
11 (S.D.N.Y. Feb. 2, 2026) (citing *Poonjani* and *Mezei*); *Arana v. Arteta*, 26-cv-240-GHW,
12 2026 WL 279786, at *5 (S.D.N.Y. Feb. 3, 2026) (citing *Poonjani* and *Mezei*); *Weng v.*
13 *Genalo*, 25-cv-09595 (JHR), 2026 WL 194248, at *7 (S.D.N.Y. Jan. 25, 2026) (citing
14 *Mezei*).

15 Other courts are in accord. *Gevorg v. Warden of Golden State Annex Detention*
16 *Facility*, 1:25-cv-00992-HBK (HC), 2025 WL 3496436, at *8 (E.D. Cal. Dec. 5, 2025)
17 (“To find Petitioner—an arriving asylum seeker who had not yet been admitted to the
18 United States and has an asylum application pending—is entitled to a bond hearing
19 solely based on the length of his detention would render § 1225(b)(1) meaningless and
20 disregard statutorily and constitutionally significant differences among the categories
21 of aliens seeking habeas relief.”); *Doe v. Bondi*, 1:25-cv-02712, 2025 WL 3516292, at
22 *5 (D. Colo. Nov. 4, 2025) (“[P]rocedural due process does not afford inadmissible
23 arriving aliens subject to prolonged detention a right to release or bond hearing prior to
24 the conclusion of removal proceedings.”); *Romero v. Bondi*, 1:25-cv-993, 2025 WL
25 2490659, at *3 (E.D. Va. July 2, 2025); *Mendoza-Linares v. Garland*, No. 21-cv-1169-
26 BEN (AHG), 2024 WL 3316306, *2 (S.D. Cal. June 10, 2024) (“[T]he Court finds that
27 Petitioner has no Fifth Amendment right to a bond hearing pending his removal
28 proceedings.”); *Zelaya-Gonzalez*, 2023 WL 3103811, at *3 (S.D. Cal. Apr. 25, 2023)

1 (same); *Rodriguez Figueroa v. Garland*, 535 F. Supp. 3d 122, 126–27 (W.D.N.Y.
2 2021); *Gonzales Garcia v. Rosen*, 513 F. Supp. 3d 329, 336 (W.D.N.Y. 2021); *St.*
3 *Charles v. Barr*, 514 F. Supp. 3d 570, 579 (W.D.N.Y. 2021); *Petgrave v. Aleman*, 529
4 F. Supp. 3d 665, 667 (S.D. Tex. 2021); *Mendez Ramirez v. Decker*, 612 F. Supp. 3d
5 200, 221 (S.D.N.Y. 2020); *Gonzalez Aguilar v. Wolf*, 448 F. Supp. 3d 1202, 1212
6 (D.N.M. 2020); *de la Rosa Espinoza v. Guadian*, Case No. 20-3126-JWL, 2020 WL
7 3452967, at *6-8 (D. Kansas June 24, 2020).

8 Even if the court were to infer a constitutional due process right against prolonged
9 detention, this claim should still fail. Critically, the Petitioner has been detained for a
10 little over two months. Courts in this district have denied due process challenges even
11 from petitioners detained far longer. A recent case within this district, *Markov v. Larose*,
12 is instructive. 25-CV-3811 JLS (SBC), 2026 WL 92069 (S.D. Cal. January 13, 2026).
13 There, the petitioner had been detained under 8 U.S.C. § 1225 for “almost exactly one-
14 year” without a bond hearing. *Id.* at *2. The court nonetheless denied the petition,
15 reasoning that the mere “length of detention, *without more*, does not render his detention
16 unreasonable.” *Id.* (emphasis added). Similarly, in *Miagkikh v. Larose*, 3:25-cv-3755-
17 CAB-BJW, 2026 WL 237742, at *2-3 (S.D. Cal. Jan. 29, 2026), the court held that nine
18 months of mandatory detention under § 1225(b) did not rise to the level of a due process
19 violation.

20 Petitioner was detained as an alien present in the United States who has not been
21 admitted or paroled. Thus, Petitioner is rightly considered an applicant for admission,
22 and her mandatory detention does not violate due process. *See Shapan v. Warden, Otay*
23 *Mesa Detention Center*, 3:25-cv-03817-AGS-VET, ECF No. 12 (S.D. Cal. February 5,
24 2026); *Duran Romero v. LaRose*, No. 25-cv-3567-AGS-VET, ECF No. 7 (S.D. Cal.
25 Jan. 14, 2026); *Shahin v. Noem*, No. 25-cv-2496-AGS-KSC, ECF No. 12 (S.D. Cal.
26 Dec. 23, 2025); *Cordova Cordova*, No. 25-cv-2426-BAS-DDL, ECF No. 9 (S.D. Cal.
27 Nov. 14, 2025).

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1 **IV. CONCLUSION**

2 For the reasons stated herein, Respondents respectfully request that the Court
3 dismiss this petition for lack of jurisdiction or deny it on the merits.

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5 Dated: February 9, 2026

Respectfully submitted,

6 ADAM GORDON
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7 *s/ Robbin O. Lee*
8 _____
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9 Attorneys for Respondents

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