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8 Attorneys for Respondents

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 NEIKER YOUSEE MENDOZA
12 BUSTAMONTE,

13 Petitioner,

14 v.

15 PATRICK DIVVER, Field Office Director
of Enforcement and Removal Operations,
San Diego Field Office, Immigration and
16 Customs Enforcement; *et al.*,

17 Respondents.
18
19

Case No.: 26-cv-2294-LEK-BLM

RETURN TO PETITION

20 Petitioner has filed a habeas petition solely to “to seek enforcement of [his] rights
21 as [a] member[] of the Bond [Eligible] Class certified in *Maldonado Bautista v.*
22 *Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.)” ECF No. 1 at ¶ 1. Specifically,
23 the petition contains a single cause of action alleging Petitioner is entitled to an
24 individualized bond hearing because he is a member of the “Bond Eligible Class”
25 defined in *Bautista. Id.* at ¶ 6. However, Petitioner is not a member of the Bond Eligible
26 Class, rendering his habeas petition legally infirm.

27 On November 25, 2025, the *Baustista* court certified a nationwide class of
28 detained noncitizens, which the *Baustista* court described as the “Bond Eligible Class.”

1 *Bautista*, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). To be a member of the Bond
2 Eligible Class, a person must (1) have entered the United States without inspection, (2)
3 not have been apprehended upon arrival, and (3) not be detained under 8 U.S.C. §
4 1126(c), 8 U.S.C. § 1125(b)(1) or 8 U.S.C. § 1231 at the time the Department of
5 Homeland Security made its initial custody determination. *Id.* at *9.

6 Here, Petitioner entered the United States at or near El Paso, Texas, on or about
7 October 8, 2023. *See* Exhibit 1 (Form I-213). He was apprehended almost immediately,
8 issued a Notice to Appear (NTA), and released pending § 1229a removal proceedings.
9 *See id.* Petitioner was re-detained on January 28, 2026. *See* ECF No. 1-5 at 2. At the
10 time of re-detention, Petitioner admitted he was issued an NTA after his prior unlawful
11 entry in October 2023. *See id.* at 5. Currently, Petitioner is mandatorily detained under
12 8 U.S.C. § 1225(b)(2).

13 Given these facts, Petitioner is not a member of the Bond Eligible Class because
14 he was apprehended upon arrival. Accordingly, Petitioner's habeas petition is legally
15 infirm and should be denied. *See Rodriguez v. Jeffreys, et al.*, No. 8:25CV714, 2025
16 WL 3754411, *16 (D. Neb. Dec. 29, 2025) (rejecting *Bautista* as basis for relief and
17 denying habeas petition because, among other things, "there is 'a bright-line rule'
18 applicable in [these] circumstances") (citations omitted).

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20 DATED: May 4, 2026

Respectfully submitted,

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