

ADAM GORDON
United States Attorney
ALLIE E. MALONE
Assistant U.S. Attorney
California State Bar No. 317588
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 674-9225
Facsimile: (619) 546-7751
Email: allie.malone.subke@usdoj.gov

Attorneys for Respondents

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

SANTOS HERRERA LANZA,

Petitioner,

v.

PATRICK DIVVER, et al.,

Respondents.

Case No.: 26-cv-3215-JAO-JLB

RESPONSE TO PETITION

Petitioner seeks habeas relief based solely on his assertion that he is a member of the class certified in *Maldonado Bautista v. Santacruz*, which in turn rests on his allegation that he was not apprehended upon his arrival to the United States on or about December 23, 2018. Petition (ECF No. 1), ¶¶ 1, 6. But the record establishes that Petitioner *was* apprehended upon his arrival, which means he is not a *Bautista* class member, and his Petition should be denied accordingly.

On November 25, 2025, the *Baustista* court certified a nationwide class of detained noncitizens, which the court described as the “Bond Eligible Class.” *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.).” To be a member of the Bond Eligible Class, a person must (1) have entered the United States without inspection, (2) not have been apprehended upon arrival, and (3) not be detained under 8 U.S.C. § 1126(c), 8 U.S.C. § 1125(b)(1) or 8 U.S.C. § 1231 at the time the Department of Homeland Security made its initial custody determination. *Id.* at *9.

1 Here, Petitioner was apprehended by a United States Border Patrol Agent almost
2 immediately after he entered the United States without inspection near El Paso, Texas
3 on December 23, 2018. Encounter Summary, attached as *Exhibit 1*, pg. 3. Indeed, he
4 was arrested within approximately five minutes of his entry. *Id.* Given these facts,
5 Petitioner is *not* a member of the Bond Eligible Class. He identifies no other basis for
6 habeas relief apart from his contention that he is a *Bautista* class member. As that
7 premise is incorrect, there is no basis for the Court to grant the requested relief and the
8 Petition should be denied accordingly.

9 DATED: May 29, 2026

Respectfully submitted,

10 ADAM GORDON
11 United States Attorney

12 s/ Allie E. Malone
13 ALLIE E. MALONE
14 Assistant United States Attorney
15 Attorneys for Respondents
16
17
18
19
20
21
22
23
24
25
26
27
28