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

11 BYRON NOE HERRERA ATJUN,

12 Petitioner,

13 v.

14 CHRISTOPHER J. LAROSE, et al.,

15 Respondents.
16
17

Case No.: 3:26-cv-03820-RBM-MMP

RESPONSE TO PETITION

18 Petitioner has filed a habeas petition under 28 U.S.C. § 2241. ECF No. 1. The
19 government has carefully reviewed this petition and determined that the legal issues
20 presented concern the statutory authority for U.S. Immigration and Customs Enforcement's
21 (ICE) detention of Petitioner under 8 U.S.C. §§ 1225(b)(2)(A) or 1226(a). While reserving
22 all rights, including the right to appeal, the government respectfully submits this
23 abbreviated response to preserve the legal issues, to conserve judicial and party resources,
24 and to expedite the Court's consideration of this matter.

25 It is the government's position that Petitioner is subject to mandatory detention under
26 § 1225(b)(2). However, the government acknowledges that based upon the allegations in
27 the petition, Petitioner appears to be a member of the Bond Eligible Class certified in
28

1 *Maldonado Bautista v. Santacruz*, 813 F. Supp. 3d 1084 (C.D. Cal. 2025). *See Id.* at 1127
 2 (describing bond eligible class to include noncitizens who enter without inspection, not
 3 apprehended on arrival, and not subject to detention under 8 U.S.C. §§ 1225(b)(1),
 4 1226(C), or 1231 at the time of initial custody determination). The United States Court of
 5 Appeals for the Ninth Circuit has stayed application of the *Maldonado Bautista* class
 6 certification except in the Central District of California. *See Maldonado Bautista v. U.S.*
 7 *Department of Homeland Security*, No. 26-1044, Order, Docket Entry #17, (9th Cir. Mar.
 8 31, 2026) (granting stay pending appeal of district court's December 18, 2025, class
 9 certification order insofar as it extends beyond Central District of California).

10 However, Respondents acknowledge the prior orders from this District directing
 11 bond hearings pursuant to 8 U.S.C. § 1226(a) in similar cases.¹ Respondents therefore do
 12 not oppose an order from this Court directing a bond hearing be held pursuant to 8 U.S.C.
 13 § 1226(a).²

14 EVIDENTIARY HEARING NOT REQUESTED

15 In accordance with the directive set forth in the Court's Order entered on July 1,
 16 2026 (ECF No. 2), an evidentiary hearing is not requested.

20 ¹ The petition appears to assert a claim sounding in Due Process. ECF 1, ¶ 36. Should the
 21 Court grant the petition, it should decline to address this argument. *INS v. Bagamasbad*,
 22 429 U.S. 24, 25 (1976) (“As a general rule courts and agencies are not required to make
 findings on issues the decision of which is unnecessary to the results they reach.”).

23 ² To the extent the Court issues an order directing a bond hearing under 1226(a),
 24 considering heavy caseloads and staffing levels, Respondents respectfully request that such
 25 order provide the government 14 days from issuance to hold such bond hearing. The Ninth
 26 Circuit has confirmed that at a bond hearing under 8 U.S.C. § 1226(a), the burden is on the
 27 detainee to demonstrate by a preponderance of the evidence that he is not a flight risk or
 28 danger to the community. *See Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1197 (9th Cir.
 2022); *see also Dos Santos v. Becerra*, No. 26-cv-01423-GPC-VET, 2026 WL 800201
 (S.D. Cal. Mar. 23, 2026).

1 DATED: July 8, 2026

2 Respectfully submitted,

3 ADAM GORDON
4 United States Attorney

5 s/ Roger G. Wright
6 Roger G. Wright
7 Special Assistant U.S. Attorney
8 Attorney for Respondents
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