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25 **UNITED STATES DISTRICT COURT**
26 **CENTRAL DISTRICT OF CALIFORNIA**

27 Manuel SOTO MUNOZ,

28 Petitioner,

v.

Fereti SEMAIA, et al.

Respondents.

No. 5:25-cv-02898-MRA-BFM

PETITIONER'S REPLY TO
FEDERAL RESPONDENTS'
ANSWER TO HABEAS
PETITION

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I. INTRODUCTION

Petitioner hereby replies to Respondents' December 31, 2025 Answer to Petitioner's habeas petition. Dkt # 17. In their Answer, Respondents argue that Petitioner's habeas petition is moot due to the fact that, pursuant to this Court's order, Petitioner was provided with an 8 U.S.C. § 1226(a) bond hearing and released. *Id.* While Respondents did indeed comply with this Court's order and provide Petitioner with a bond hearing, Respondents have not changed their legal position with regards to Petitioner: in other words, absent a permanent injunction from this Court, Respondents could simply re-arrest Petitioner and subject them to the same illegal detention scheme that was the impetus for the lawsuit. Nothing in their Answer suggests otherwise and they maintain the view that Mr. Soto should be subject to mandatory detention pursuant to both *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025) and their policy memorandum issued on July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission," *see* Dkt. # 3-1, Exh. Q. As such, this case is not moot and the Court should issue a permanent injunction that enjoins Respondents from detaining Petitioner pursuant to *Yajure Hurtado* and their policy memorandum without a bond hearing before a neutral adjudicator pursuant to 8 U.S.C. 1226(a) within seven days at which the government bears the burden by clear and convincing evidence that he is either a danger or such a flight risk that no bond conditions could mitigate. *See* Dkt #1.¹

¹ For purposes of Habeas Corpus, Petitioner remains "in custody." Though Petitioner is no longer detained by Respondent DHS, his release is with "conditions," namely the Alternatives to Detention ("ATD") program. *See* Dkt. #11, Exhibit A; *See* attached Third Declaration of Vivek Mittal ("Third Mittal Decl."), Exhs. A-C. As part of the ATD program, Immigration and Customs Enforcement ("ICE") Officers, through the Intensive Supervision Appearance Program ("ISAP"), put a GPS monitor on Petitioner's ankle that constantly monitors Mr. Soto Munoz's location and require that he attend twice-monthly check-ins with ISAP, both at his home and at the ISAP office in San Bernardino

II. Respondents' Compliance With the District Court's Temporary Restraining Order Does Not Render this Case Moot Since Respondent DHS has Not Changed Their Legal Position and Therefore Petitioner Remains at Risk of Re-Detention.

That Respondents complied with this Court's Temporary Restraining Order ("TRO") does not render this habeas case moot as he is at constant risk of re-detention by Respondent Department of Homeland Security ("DHS"). "A case becomes moot 'when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome' of the litigation." *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1086 (9th Cir. 2011). "In other words, if events subsequent to the filing of the case resolve the parties' dispute, [the court] must dismiss the case as moot." *Id.* at 1087. "The party asserting mootness bears the burden of establishing that there is no effective relief that the court can provide." *Forest Guardians v. Johanns*, 450 F.3d 455, 461 (9th Cir. 2006). "The burden to establish mootness is 'heavy;' a case is not moot where *any* effective relief may be granted." *Id.* (emphasis in the original).

Here, Mr. Soto Munoz needs *permanent* relief from this Court to protect his liberty interest. *See Zadvydas v. Davis*, 533 U.S. 678, 690, 121 S. Ct. 2491, 2498,

(often within days of each other), and failure to comply with the program could result in re-detention, indicating that Respondents continue to have custodial authority over him. *See Third Mittal Decl., Exh. A.* Therefore, Mr. Soto Munoz, although released from immigrant detention, is still considered "in custody" for purposes of Habeas. *See Ortega v. Bonnar*, 415 F. Supp.3d 963, 967–68 (N.D. Cal. 2019)("[H]abeas relief is available where the individual is subject to restraints not shared by the public generally."). However, even absent Habeas jurisdiction, this Court could still grant injunctive relief to ensure that Mr. Soto Munoz's liberty interests are protected. *See Dkt. # 1; Roman v. Wolf*, 977 F.3d 935, 942 (9th Cir. 2020) (holding that district court did not abuse discretion by issuing injunctive relief in response to Plaintiff's due process claims, where habeas relief was also requested).

1 150 L. Ed. 2d 653 (2001) (“Freedom from imprisonment—from government
2 custody, detention, or other forms of physical restraint—lies at the heart of the
3 liberty that [The Fifth Amendment of the Constitution] protects.”); *Terrible Herbst*,
4 653 F.3d at 1086; *Hogarth v. Santacruz*, No. 5:25-CV-09472-SPG-MAR, 2025 WL
5 3211461, at *10 (C.D. Cal. Oct. 23, 2025) (Petitioner has “developed an intense
6 reliance on his freedom from imprisonment—from government custody, detention,
7 or other forms of physical restraint.”); *Perera v. Jennings*, 598 F. Supp. 3d 736, 744
8 (N.D. Cal. 2022) (quoting *Zadvydas*, 553 U.S. at 690); *Pham v. Becerra*, 717 F.
9 Supp. 3d 877, 886 (N.D. Cal. 2024) (quoting *Perera*); *Sun v. Santacruz*, No. 5:25-
10 CV-02198-JLS-JC, 2025 WL 2730235, at *6-7 (C.D. Cal. Aug. 26, 2025).

11 Indeed, by its nature, this Court’s order provided temporary relief but has not
12 conclusively resolved the legal issues at the heart of his petition – only a ruling on
13 the merits can do so. *See, e.g., Lackey v. Stinnie*, 145 S. Ct. 659, 667 (2025)
14 (Preliminary injunctions. . . do not conclusively resolve legal disputes. In awarding
15 preliminary injunctions, courts determine if a plaintiff is likely to succeed on the
16 merits—along with the risk of irreparable harm, the balance of equities, and the
17 public interest.”); *cf.* at 669 (“A plaintiff who wins a transient victory on a
18 preliminary injunction does not become a ‘prevailing party’. . . Rather, a plaintiff
19 ‘prevails’. . . when a court conclusively resolves a claim by granting *enduring*
20 *judicial relief* on the merits that materially alters the legal relationship between the
21 parties.”) (emphasis added).

22 Mr. Soto Munoz’s removal proceedings — to which the statutory detention is
23 tied – are still very much alive. He is currently pursuing relief in the form of
24 cancellation of removal before Respondent EOIR, and has instant *pro bono* counsel
25 but does not have an order preventing re-detention in place. Should he be re-
26 detained, Mr. Soto Munoz would need to either petition this Court for relief or be
27 forced to request a bond hearing before EOIR yet again – even though Respondent
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1 EOIR only recently determined that Mr. Soto Munoz is neither a flight risk nor a
2 danger to the community, and granted bond on that basis. *See* [Dkt. #11](#), Exh. A.

3 As a result, permanent relief is paramount in ensuring enduring protection of
4 Mr. Soto Munoz's liberty interest in being free from arbitrary imprisonment. Even
5 though this Court's TRO led to a bond hearing which then resulted in Mr. Soto
6 Munoz's conditional release from custody, if this Court were to dismiss his case as
7 moot, there would be nothing stopping Respondents from re-arresting Mr. Soto
8 Munoz and subjecting him to the same illegal policy they subjected him to months
9 ago. Respondents have not disavowed their memo nor *Yajure Hurtado*, nor have
10 they provided any indication to this Court that they would *not* re-detain him, and in
11 fact, Respondents take the position that they have the legal authority to do so in
12 similar litigation. *See e.g. Perera v. Jennings*, [598 F. Supp. 3d 736, 744](#) (N.D. Cal.
13 2022) (describing the government's argument that it could re-detain a petitioner at
14 any time after being released on bond with conditions); *Pham v. Becerra*, [717 F.](#)
15 [Supp. 3d 877, 879–80](#) (N.D. Cal. 2024) (granting the habeas petition on the merits
16 and issued a permanent injunction barring the government from detaining the
17 petitioner without providing further process).

18 The court in *Perera v. Jennings* considered the government's argument that
19 the petitioner "is not being deprived of any liberty interest now because he 'is not in
20 ICE custody' and has already received a bond hearing pursuant to the Court's
21 temporary restraining order, after which he was released on bond with conditions."
22 [598 F. Supp. 3d at 744](#). The court, however, noted that the government's argument
23 was that it "could re-detain [the petitioner] at any time." *Id.* at 745. The court
24 explained, "If [petitioner] had no liberty interest in freedom from possible re-
25 detention by ICE such that his existing Petition would need to be denied,
26 [petitioner] would be forced to file a successive petition (or petitions) should ICE
27 re-detain him. That illogical result cannot be[.]" The court went on to grant the
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1 petition for writ of habeas corpus and “permanently ENJOINED [the government]
2 from detaining Petitioner–Plaintiff, pursuant to 8 U.S.C. § 1226(c) based on
3 criminal convictions that pre-date this Order, for more than seven days without a
4 bond hearing at which the Government bears the burden of justifying Petitioner–
5 Plaintiff’s detention by clear and convincing evidence.” *Id.* at 748.

6 Similarly, in *Pham v. Becerra*, the habeas court “granted a temporary
7 restraining order (TRO) enjoining the Department of Homeland Security and
8 Respondents from continuing to detain [petitioner] without a bond hearing.” 717 F.
9 Supp. 3d 877, 879–80 (N.D. Cal. 2024). Subsequently, “[f]ollowing [petitioner’s]
10 posting of bond and release from custody,” the court granted the habeas petition on
11 the merits and issued a permanent injunction barring the government from
12 detaining the petitioner without providing further process. *Id.* (“The Court
13 GRANTS Pham’s petition for habeas corpus and permanently enjoins Defendants
14 from detaining Pham pursuant to 8 U.S.C. § 1226(c) based on criminal convictions
15 that pre-date the Court’s order, for more than five days without a bond hearing, at
16 which the Government bears the burden of justifying Pham’s detention by clear and
17 convincing evidence.”).

18 Here, although the government’s claim of statutory authority for detention is
19 different, § 1226(c) in *Pham* and *Perera* vs § 1225(b)(2) here, the same principle
20 applies. See 598 F. Supp. 3d at 744; 717 F. Supp. 3d 877, 879–80. Absent a
21 permanent injunction Respondents would be free to arrest Mr. Soto Munoz
22 pursuant to their belief that he is subject to 8 USC § 1225. For their part,
23 Respondents simply reference their legal positions in their brief in opposition to
24 Mr. Soto Munoz’s *ex parte* application for a TRO, rather than offer any meaningful
25 argument, or reason, as to why Habeas, or permanent, relief should *not* be granted.
26 Just as in *Perera* and *Pham*, despite this Court’s TRO, Mr. Soto Munoz’s liberty
27 remains at risk and seeks, and needs, an enduring order which permanently enjoins
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1 Respondents from detaining him again absent some guarantee of process should he
2 be detained again.

3 Mr. Soto Munoz was released from imprisonment only because this Court
4 issued a TRO and Respondents complied with the terms of the Court's order by
5 providing Mr. Soto Munoz a bond hearing. *See* Dkt. Nos. 10, 11. However, mere
6 compliance with the Court's order does not by itself render this case moot,
7 particularly here where Respondents continue to retain custodial authority through
8 the Court's requirement that Mr. Soto Munoz be enrolled in the "Alternatives to
9 Detention" program, and future possible deprivation of liberty through confinement
10 in an immigration detention facility – which could happen at any time, for any
11 reason, especially considering that Respondents hold the position that 8 U.S.C. §
12 1225(b)(2) still applies to Mr. Soto Munoz. In addition, Respondents have not
13 disavowed their policy, let alone made it "absolutely clear," that the mandatory
14 detention provision of 8 U.S.C. § 1225(b)(2) does not apply to Mr. Soto Munoz.
15 *See Friends of the Earth, Inc. v. Laidlaw Env'tl Serv's (TOC), Inc.*, 528 U.S. 167,
16 189 (2000) (quoting *United States v. Concentrated Phosphate Export Ass'n*, 393
17 U.S. 199, 203 (1968)).

18 Indeed, Respondents squarely maintain that § 1225(b)(2), not § 1226(a), is
19 the applicable detention statute for Mr. Soto Munoz, and others who are similarly
20 situated. Dkt. # 8, 11. Respondents' policy and practice after a recent decision in
21 this District in *Bautista v. Santacruz*, which granted classwide declaratory relief in
22 the form of requiring individualized bond hearings to members of the class and to
23 not relocate those class members outside of the Central District, makes it clear that
24 they are intentionally running afoul of *Bautista*. *Bautista v. Santacruz*, No. 5:25-
25 CV-01873-SSS-BFM, 2025 WL 3713987, at *32 (C.D. Cal. Dec. 18, 2025),
26 judgment entered sub nom. *Maldonado Bautista v. Noem*, No. 5:25-CV-01873-
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1 SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). The *Bautista* class is
2 defined as follows (of which Petitioner is a member):
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4 All noncitizens in the United States without lawful status who (1) have
5 entered or will enter the United States without inspection; (2) were not or
6 will not be apprehended upon arrival; and (3) are not or will not be subject to
7 detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the
8 Department of Homeland Security makes an initial custody determination.

9 *Id.* However, Respondent DHS and EOIR believe that the classwide
10 declaratory relief does not apply to them. *See* Third Mittal Decl., ¶¶ 16-18, Exhs.
11 D, E. In addition to learning about IJs not following the holding of *Bautista*, *see id.*
12 at ¶ 16, it is official EOIR policy to not follow the *Bautista* case and continue to
13 proceed with its position in *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA
14 2025) and Respondent DHS' policy made in coordination with Respondent DOJ,
15 Dkt. # 3-1, Exh. Q. *See* Third Mittal Decl., ¶ 17, Exh. D. The Chief Immigration
16 Judge of Respondent EOIR states in an email that the *Bautista* decision is “not a
17 nationwide injunction, and does not purport to vacate, stay, or enjoin *Yajure*
18 *Hurtado*...[and therefore *Yajure Hurtado*] remains binding precedent on agency
19 adjudicators.” *Id.*; *See also* Exh. E. Therefore, it is clear that even in the face of a
20 classwide declaration, Respondents are committed to this unlawful interpretation of
21 law, and are adamant that only an injunction will protect individuals.²

22 As a result, Respondents have not shown “the formidable burden of showing
23 that it is absolutely clear the allegedly wrongful behavior could not reasonably be
24 expected to recur.” *Friends of the Earth, Inc. v. Laidlaw Envtl Serv's (TOC), Inc.*,

25 ² The Petitioners in *Bautista v. Santacruz* are unable to obtain injunctive relief due
26 to the limitation placed by Congress in 8 U.S.C. § 1252(f)(1) as it pertains to the
27 *Bautista* class. However, this Court is permitted to grant injunctive relief as to
28 “individual alien[s] against whom [removal] proceedings...have been initiated.” 8
U.S.C. 1252(f)(1).

1 528 U.S. 167, 190 (2000); *id.* at 189 (“such a defendant bears a ‘heavy burden of
2 persua[ding]’ the court that the challenged conduct cannot reasonably be expected
3 to start up again.”); *Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234, 241 (2024)
4 (“To show that a case is truly moot, a defendant must prove ‘no reasonable
5 expectation’ remains that it will ‘return to [its] old ways.’ (citation omitted).”).
6 And, in fact, statements from Respondents make it clear, that absent a permanent
7 injunction, Mr. Soto Munoz will be illegally detained again. And, nothing in
8 Respondents’ filing with this Court suggests that they will not violate the law again.
9 For Respondents part, their sole argument as to mootness is that they complied with
10 this Court’s order granting Petitioner injunctive relief, and say nothing about *not* re-
11 detaining Petitioner. Dkt. # 17 at 1.

12 Finally, it is well-established that detention challenges are “inherently
13 transitory” and “distinctly ‘capable of repetition yet evading review.’” *Gerstein v.*
14 *Pugh*, 420 U.S. 103, 110 n.11 (1975) (“Moreover, in this case, the constant
15 existence of a class of persons suffering the deprivation is certain.”). Courts have
16 routinely found that challenges to immigration detention remain live
17 notwithstanding changes in the custody of the named plaintiffs. *See, e.g.,*
18 *Hernandez v. Lynch*, No. EDCV 16-00620-JGB-KKx, 2016 WL 7116611, at *12
19 (C.D. Cal. Nov. 10, 2016) (finding that named plaintiffs’ release from custody “has
20 no impact on...standing to seek injunctive relief.”)

21 Furthermore, that the District Court denied the preliminary injunction, Dkt. #
22 15, is of no import here because Mr. Soto Munoz is seeking enduring and
23 permanent relief from being re-detained. Indeed, in their Answer, Respondents
24 offer not a single citation where a Court actually determined that a habeas petition
25 was moot because an individual was conditionally released pursuant to compliance
26 with a district court order of preliminary relief. In its Answer, Respondents cite
27 three Central District cases in support of their argument that other Central District
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Judges have found mootness of the habeas petition: *Javier Gonzales et al. v. Kristi Noem et al.*, 5:25-cv-02054-ODW-BFM; *Moises Salomon Zaragoza Mosqueda v. Kristi Noem et al.*, 5:25-cv-002304-CAS-BFM; *Coc Tut v. Kristi Noem*, 5:25-cv-02701-DOC. However, none of these cases actually hold that the habeas petition is rendered moot; only that the preliminary injunction is moot because the emergency relief needed – a bond hearing or release – was provided, as in the instant case. And afterwards – in all three matters cited by Respondents - the case was dismissed voluntarily by Petitioners, and therefore those Courts never rendered a decision on mootness of their habeas petitions.

In *Gonzales* and *Mosqueda*, just like the instant case, the Court denied the preliminary injunction as moot, but did not deny the petition for habeas corpus. See *Gonzales et al. v. Kristi Noem et al.*, 5:25-cv-02054-ODW-BFM, at Dkt. # 16; *Mosqueda v. Noem*, 5:25-cv-002304, at Dkt. # 15. The *Mosqueda* Court held that in their preliminary injunction, “petitioners requested bond hearings or to be released from custody....Given that the relief sought by petitioners has been provided....the Court finds the preliminary injunction moot.” *Mosqueda v. Noem*, 5:25-cv-002304, at Dkt. # 15. However, the Court never denied the petition for habeas corpus, but rather the petition was voluntarily dismissed pursuant to Fed. R. Civ. P. 41(a)(1). *Gonzales et al. v. Noem*, at Dkt. # 17; *Mosqueda v. Noem*, 5:25-cv-002304, Dkt. # 16. In both *Gonzales* and *Mosqueda*, there was no opportunity for the Court to review the mootness of the underlying habeas petition as petitioners voluntarily dismissed the action.

Furthermore, in *Coc Tut*, the Court adds that “[p]etitioners may seek relief from the Court should they be re-detained by immigration officials and held without bond pursuant to [ICE’s policy memorandum entitled “Interim Guidance Regarding Detention Authority for Applications for Admission”]. See *Coc Tut v. Kristi Noem*, 5:25-cv-02701-DOC, at Dkt. #13; see also *Gonzales et al. v. Kristi*

1 *Noem et al.*, 5:25-cv-02054-ODW-BFM, at Dkt. #16. This holding came *after* the
2 Court denied the preliminary injunction as moot due to Respondents having
3 provided a bond hearing to the Petitioner, and had no bearing on the mootness of
4 the Habeas petition itself. Furthermore, the Court in both of those cases could have
5 instead granted the permanent injunction – as could this Court – so that
6 Respondents cannot re-detain those petitioners absent a bond hearing. Yet, just as
7 in *Gonzales* and *Mosqueda*, the *Coc Tut* Court also did not have the opportunity to
8 consider mootness as to the habeas petition due to the case’s voluntary dismissal by
9 Petitioner shortly after this order. *Coc Tut*, Dkt. No. 16.

10 **III. CONCLUSION**

11 For the foregoing reasons, Mr. Soto Munoz submits that his Petition for Writ
12 of Habeas Corpus is not moot as Petitioner is in need of enduring relief in the form
13 of a permanent injunction, as Respondents have not changed their legal position
14 and absent permanent relief from this Court, would be re-detained again and
15 subjected to the same illegal policy that led to his initial detention.

16
17 Dated: January 30, 2026

Respectfully Submitted,

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19 /s/Vivek Mittal

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WORD COUNT CERTIFICATION

The undersigned, counsel of record for Petitioner, certifies that this Memo contains
2,904 words, which complies with the Word Limit of L.R. 11-6.1.

/s/Vivek Mittal

Vivek Mittal
Pro Bono Counsel for Petitioner