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7
8 IN THE UNITED STATES DISTRICT COURT
9
10 EASTERN DISTRICT OF CALIFORNIA

11 VIVEK BAINS,

12 Petitioner,

13 v.

14 KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
15 Security, et al.,

16 Respondents.¹

CASE NO. 1:25-CV-01998-DAD-EFB

OPPOSITION TO MOTION FOR A TEMPORARY
RESTRAINING ORDER

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27 ¹ This Court should dismiss all respondents other than the Warden of the California City Correctional
Facility because the only proper respondent to a habeas petition is the custodian having immediate
28 custody of the petitioner. *See* 28 U.S.C. § 2242; *Rumsfeld v. Padilla*, 542 U.S. 426, 430 (2004); *Doe v.*
GarlanId, 109 F.4th 1188, 1197 (9th Cir. 2024).

I. PRELIMINARY MATTERS

On the face of the habeas petition, the petitioner does not appear to be a member of the class certified in *Maldonado Bautista v. Santacruz*, 5:25-cv-01873-SSS-BFM (C.D. Cal), because (1) he entered the United States without inspection; (2) he was apprehended upon arrival at Lukeville, Arizona; and (3) he was not detained under 8 U.S.C. § 1226(c), section 1225(b)(1), or section 1231 at the time that DHS made its initial custody determination. Habeas Petition at Exhibit A.²

In *Maldonado-Bautista*, the Central District of California: (1) declared that the class members are detained under section 1226(a) and are not subject to mandatory detention under section 1225(b)(2); (2) declared that pursuant to the government’s regulations (8 C.F.R. 236.1, 1236.1, and 1003.19) the class members are detained under section 1226(a), are not subject to mandatory detention under section 1225(b)(2), and are entitled to consideration for release on bond by immigration officers and, if not released, a custody redetermination hearing before an immigration judge; and (3) vacated the Department of Homeland Security’s July 8, 2025 “Interim Guidance Regarding Detention Authority for Applicants for Admission” -- which takes the position that all applicants for admission within the meaning of 8 U.S.C. 1225(a) are subject to mandatory detention under 8 U.S.C. 1225(b) -- as contrary to law under the Administrative Procedures Act. *See Maldonado Bautista v. Noem*, No. 5:25-cv-01873, 2025 WL 3713987 (C.D. Cal. Dec. 18, 2025).

In its order, the *Maldonado Bautista* court recognized that it could not extend the portions of its order declaring that the class members are detained under section 1226(a), not section 1225(b)(2), and that pursuant to the government’s regulations the class members are detained under section 1226(a) and are eligible for release on bond, to class members beyond the Central District of California. *See Maldonado Bautista*, 2025 WL 37113987, at *29-30 (acknowledging that the court’s jurisdiction to grant habeas relief is limited to those within the district and stating that its order does not require the government to provide habeas relief to all members across the nation). However, the court stated that it did have jurisdiction to extend its declaratory judgment regarding the illegality of DHS’s July 8, 2025

² Although there are references in the habeas petition to the petitioner raising a credible fear of persecution and an expedited removal order, those references are not supported by any of the attachments to the habeas petition and appear to be incorrect. Habeas Petition ¶¶ 8-9.

1 guidance under the APA beyond the borders of the Central District of California. *See id.* The
 2 government has appealed the *Maldonado Bautista* judgment to the Ninth Circuit, *see Maldonado*
 3 *Bautista v. DHS*, 9th Cir. No. 25-7958, but neither the district court nor the Ninth Circuit has issued a
 4 stay of the district court's order.

5 II. DISCUSSION

6 A Petitioner is a citizen and national of India who entered the United States without inspection.
 7 He is an "applicant for admission" within the meaning of 8 U.S.C. § 1225(a) and subject to mandatory
 8 detention by Immigration and Customs Enforcement under 8 U.S.C. § 1225(b) during the pendency of
 9 his removal proceedings. *See, e.g., Cortes Alonzo v. Noem et al.*, 1:25-cv-01519-WBS-SCR (E.D. Cal.
 10 Nov. 17, 2025) (Docket No. 14).

11 Several district courts within the Ninth Circuit have recently denied motions for temporary
 12 restraining orders and preliminary injunctions for individuals, like the petitioner, who have been
 13 detained under section 1225(b)(2) following release on conditional parole. *See Altamirano Ramos v.*
 14 *Lyons*, No. 25-cv-09785, 2025 WL 3199872, at *4 (C.D. Cal. Nov. 12, 2025) (acknowledging that the
 15 court had previously rejected the government's interpretation of § 1225(b)(2), but "after additional
 16 research and analysis, the court has concluded that Petitioner is subject to mandatory detention under §
 17 1225(b)(2)(a), and that Petitioner is not eligible for a bond hearing under 8 U.S.C. § 1226(a)"); *Sixtos*
 18 *Chavez v. Noem*, No. 25-cv-02325, 2025 WL 2730228 (S.D. Cal. Sept. 24, 2025), *appeal docketed*, No.
 19 25-7077 (9th Cir. Nov. 7, 2025); *Valencia v. Chestnut*, No. 25-cv-01550, 2025 WL 3205133 (E.D. Cal.
 20 Nov. 17, 2025); *Alonzo v. Noem*, No. 25-cv-01519, 2025 WL 3208284 (E.D. Cal. Nov. 17, 2025).

21 Respondents further rely upon *In re Matter of Yajure Hurtado*, 29 I & N Dec. 216 (BIA 2025).
 22 There, the BIA examined the plain language of § 1225, the INA's statutory scheme, Supreme Court and
 23 BIA precedent, the legislative history of the INA and the Illegal Immigration Reform and Immigrant
 24 Responsibility Act of 1996 ("IIRIRA"), Pub L. No. 104-208, and DHS's prior practices. After doing so,
 25 the BIA held that "under a plain language reading of section 235(b)(2)(A) of the INA, 8 U.S.C. §
 26 1225(b)(2)(A), Immigration Judges lack authority to hear bond requests or to grant bond to aliens, like
 27 the respondent, who are present in the United States without admission." 29 I & N Dec. at 225. This
 28 Court should rule the same. Petitioner's prior release in the discretion of DHS, even if the release

1 document cited 8 U.S.C. § 1226, does not have the effect of having converted petitioner's presence in
2 the United States into an "admission." "[A]n alien who 'arrives in the United States,' or 'is present' in
3 this country but 'has not been admitted,' is treated as 'an applicant for admission.'" *Jennings v.*
4 *Rodriguez*, 583 U.S. 281 (2018). As an applicant for admission, petitioner is subject to mandatory
5 detention and thus ineligible for a bond hearing. Therefore, the Court should decline to enter a
6 preliminary injunction.

7 Nevertheless, counsel for the government has reviewed the cases cited in the Court's minute
8 order (Docket No. 6) and there are no factual or legal issues in this case that render it distinct from the
9 court's prior orders, and others such as *Valencia Zapata v. Kaiser*, No. 25-cv-07492, 2025 WL 2741654
10 (N.D. Cal. Sept. 26, 2025). Moreover, the government alerts the Court to the fact that two district
11 courts within the Ninth Circuit have recently vacated or stayed the Department of Homeland Security's
12 July 8, 2025 "Interim Guidance Regarding Detention Authority for Applicants for Admission" –
13 guidance that takes the position that all applicants for admission within the meaning of 8 U.S.C. 1225(a)
14 are subject to mandatory detention under 8 U.S.C. 1225(b) -- as contrary to law under the
15 Administrative Procedure Act. *See Maldonado Bautista v. Noem*, No. 5:25-cv-01873, 2025 WL
16 3713987 (C.D. Cal. Dec. 18, 2025) (vacating the guidance); *Garro Pinchi v. Noem*, No. 25-cv-05632,
17 2025 WL 3691938 (N.D. Cal. Dec. 19, 2025) (staying the guidance within ICE's San Francisco area of
18 responsibility, an area that includes the Eastern District of California, pending final resolution of the
19 APA claim). Although the government has appealed the *Bautista Maldonado* judgment to the Ninth
20 Circuit, *see Bautista-Maldonado v. DHS*, 9th Cir. No. 25-7958, there is currently no stay in place of the
21 district court's order from either the district court or the Ninth Circuit.

22 The government also wishes to bring to the Court's attention the fact that the Ninth Circuit will
23 likely address the application of section 1225(b)(2) in *Rodriguez v. Bostock*, 9th Cir. No. 25-6842, an
24 appeal that is being considered for the oral argument calendar in March 2026.

25 The government does not oppose treating the motion for a temporary restraining order as a
26 motion for preliminary injunction. The government also does not request a hearing.

Dated: December 29, 2025

ERIC GRANT
United States Attorney

By: /s/ Edward A. Olsen
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