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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HERIBERTO LEON MARTINEZ, Petitioner, v. MARKWAYNE MULLIN, et al., Respondents.	Case No.: 3:26-cv-03987-JLS-GC **RESPONSE TO PETITION**

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

It is the government's position that Petitioner is subject to mandatory detention under § 1225(b)(2). However, the government acknowledges that based upon the allegations in the petition (ECF No. 1, ¶ 2) Petitioner appears to be a member of the Bond Eligible Class

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

However, Respondents acknowledge the prior orders from this District directing bond hearings pursuant to 8 U.S.C. § 1226(a) in similar cases. *See, e.g., Juan v. LaRose*, No. 26-cv-2099-JES-BJW. 2026 WL 1018635, *2 (S.D. Cal. April 15, 2026) (noting stay outside of Central District of California but finding *Maldonado Bautista* to be compelling persuasive authority). Respondents therefore do not oppose an order from this Court directing a bond hearing be held pursuant to 8 U.S.C. § 1226(a).[1]

DATED: July 20, 2026

Respectfully submitted,

ADAM GORDON
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s/ Roger G. Wright
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[1] To the extent the Court issues an order directing a bond hearing under 1226(a), considering heavy caseloads and staffing levels, Respondents respectfully request that such order provide the government 14 days from issuance to hold such bond hearing. The Ninth Circuit has confirmed that at a bond hearing under 8 U.S.C. § 1226(a), the burden is on the detainee to demonstrate by a preponderance of the evidence that he is not a flight risk or 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).