

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 25-cv-02720-RMR

NESTOR ESAI MENDOZA GUTIERREZ, for himself and on behalf of themselves and others similarly situated,

Petitioner-Plaintiff,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity;
ROBERT HAGAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity;
KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity;
TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;
PAMELA BONDI, Attorney General of the United States, in her official capacity;
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;
SIRCE OWEN, Acting Director for Executive Office of Immigration Review, in her official capacity;
U.S. DEPARTMENT OF HOMELAND SECURITY;
AURORA IMMIGRATION COURT; and,
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Respondents-Defendants.

**RESPONSE TO PETITIONER'S MOTION FOR LEAVE TO FILE EARLY
MOTION FOR PARTIAL SUMMARY JUDGMENT, ECF No. 37**

Respondents respond to Petitioner's Motion for Leave to File Early Motion for Partial Summary Judgment, ECF No. 37 (the "Motion for Leave").

The Court should deny the Motion for Leave. While Respondents are amenable to a schedule tailored to the particular issues this case raises, for the reasons discussed

below, an early summary judgment motion is neither a viable nor an effective way to proceed.

First, the Court must determine what kind of case Petitioner actually is bringing here. Petitioner apparently wants to seek various types of final remedies in his early motion for summary judgment: release under the habeas statute, 28 U.S.C. § 2241; vacatur under the Administrative Procedure Act (“APA”), 5 U.S.C. § 706; and a declaration of rights under the Declaratory Judgment Act, 28 U.S.C. § 2201. ECF No. 6 ¶ 16. But the procedure for how to resolve a case depends on the basis for the suit.

Here, Petitioner has challenged the legality of his detention (and the detention of others) under 8 U.S.C. § 1225(b)(2)(A). Based on the Motion for Leave, it appears that Petitioner’s end goal is to obtain an order requiring bond hearings for the potential class members. ECF No. 37 at 3 (“[S]peedy resolution of this issue will provide vacatur and declaratory relief to class members, *who would otherwise continue to be illegally detained . . .*” (emphasis added)).

Such a challenge to the legality of detention has long been understood to be the province of habeas relief. *See Rasul v. Bush*, 542 U.S. 466, 474 (2004) (“At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention.” (citation omitted)). Indeed, the specific legal challenge Petitioner presents here—that he was entitled to a bond hearing under § 1226(a)—is the type of challenge to detention that has routinely been pursued through habeas. *See, e.g., Johnson v. Guzman Chavez*, 594 U.S. 523, 532-33 (2021) (addressing habeas petitions by noncitizens arguing that, because they sought withholding, they

were not subject to detention under § 1231 and thus were entitled to bond hearings under § 1226(a)); *Nielsen v. Preap*, 586 U.S. 392, 400 (2019) (addressing habeas petitions by noncitizens arguing that, based on when they were detained, they were not subject to mandatory detention under § 1226(c) and thus were entitled to bond hearings under § 1226(a)).

This type of challenge must be pursued through a habeas proceeding. Challenges to the legality of detention “fall within the ‘core’ of the writ of habeas corpus and thus must be brought in habeas,” regardless of whether the plaintiff is expressly seeking—or has disavowed seeking—relief in habeas. *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (holding that a legal challenge by detainees to removal that, if successful, would also imply the invalidity of the legal basis for their detention had to be pursued through habeas, despite the fact that the detainees had “dismissed their habeas claims” and “[r]egardless of whether the detainees formally request release from confinement”).

Where a habeas remedy may be sought to obtain the requested relief, a party cannot assert a stand-alone claim under the APA. See 5 U.S.C. § 704 (permitting APA claims only where “there is no other adequate remedy in a court”)’ *O’Banion v. Matevousian*, 835 F. App’x 347, 350 (10th Cir. 2020) (unpublished) (affirming the dismissal of an APA claim where a habeas action under 28 U.S.C. § 2241 was available). In short, Petitioner’s legal challenge here must be brought in habeas.¹

¹ Petitioner can, of course, raise legal challenges in the context of a habeas proceeding. “The text of the APA allows challenges to agency action to be brought in habeas petitions,” so long as the APA claim has “some relationship to the prisoner’s release.”

The habeas statute does not provide for summary judgment. Instead, the statute provides that “[t]he court shall summarily hear and determine the facts, and dispose of the matter as law and justice require[s].” 28 U.S.C. § 2243; see *Levack v. Burton*, 16-cv-125, 2018 WL 11548114, at *2–4 (W.D. Mich. Feb. 2, 2018) (collecting cases holding that summary judgment is not available in habeas cases). Accordingly, the proper procedure to resolve the legal issues in this case would not be a motion for summary judgment, but briefing on the habeas petition as brought by Petitioner on behalf of himself and the putative class.

But even if Court were to permit Petitioner to proceed solely under the APA and not in a habeas proceeding, summary judgment still would not be appropriate here. This district’s procedures for APA cases expressly disallow motions for summary judgment. D.C.COLO.LAPR 16.1(d) (in APA cases, “[m]otions for summary judgment shall not be filed”); see also *Olenhouse v. Commodity Credit Corp.*, 42 F.3d 1560, 1580 (10th Cir. 1994) (characterizing motions for summary judgment as “conceptually incompatible” with the review process required under the APA).

If the Court were to permit Petitioner to proceed under the APA and not via habeas, Petitioner should comply with this Court’s Local Rules for APA cases. Those rules contemplate the development of a joint case management plan, under which the parties determine how to best tee up the issues raised in a particular APA case. Here, such an approach would be needed to frame the issues. For example, the APA sets

See *Thieme v. Warden Fort Nix FCI*, 154 F.4th 115, 123 (3d Cir. 2025) (citing 5 U.S.C. § 703).

preconditions for review: the challenge must target “final agency action for which there is no other adequate remedy in a court,” 5 U.S.C. § 704, but neither Petitioner’s amended complaint nor the Motion for Leave specifically identify the final agency action Petitioner seeks to challenge. Accordingly, if the Court permits this case to proceed as an APA claim and not in habeas, Respondents suggest proceeding under those rules and establishing a schedule that includes briefing on the threshold 5 U.S.C. § 704 issues.

In short, under either the habeas statute or the APA, summary judgment is not how this case should be resolved.

Further, the Court should not consider allowing Petitioner to seek early, “partial” summary judgment in the form of an early declaration of rights while he continues to litigate other aspects of a substantive APA claim.

Second, even if summary judgment could be a proper vehicle here, the Court must resolve Petitioner’s motion for class certification before Petitioner seeks summary judgment (or other final relief) on behalf of a class. At this point, Petitioner remains the only party to this case. Thus, the putative class would not be able to seek or gain any relief from an order of this Court until the Court has certified a class. *See Frank v. Crawley Petroleum Corp.*, 992 F.3d 987, 999 (10th Cir. 2021) (“[U]nnamed putative class members are certainly not parties before the class is certified.”). Any briefing, be it on a motion for summary judgment or otherwise, should not proceed until the Court has determined whether it will certify the proposed class.

Petitioner relies on a case from the Western District of Washington, *Rodriguez v. Bostock*, 25-cv-05240-TMC, 2025 WL 2782499 (W.D. Wash. Sept. 30, 2025), as support for seeking to file a motion for summary judgment at this stage. ECF No. 37 at 2. But in that matter, the Court certified a class *before* the plaintiffs sought summary judgment. See *Rodriguez Vasquez*, ECF No. 32 (May 2, 2025) (order granting in part and denying in part Motion to Certify Class); *id.*, ECF No. 41 (June 2, 2025) (motion for partial summary judgment as to certified class). *Rodriguez Vasquez* thus does not support allowing Petitioner to seek class-wide relief via an early summary judgment motion filed before a class has been certified.² Accordingly, the Court should deny the Motion for Leave; or, if Court allows Petitioner to file an early summary judgment motion on his own behalf, it should deny the Motion for Leave as to his request to seek relief for the putative, uncertified class.

* * * * *

Respondents do not seek to delay briefing on the merits of Petitioner and the putative class's case. They want to ensure, though, that any such briefing is done in accordance with the applicable rules for the proceeding and provides Respondents the opportunity to present arguments regarding why Petitioner has not brought an adequate claim, be it under the habeas statute or the APA. Accordingly, if the Court regards the case as proceeding under the habeas statute, Respondents propose that the Court

² The government has appealed the grant of summary judgment in *Rodriguez Vasquez*. Notice of Appeal, *Rodriguez Vazquez*, No. 25-cv-05240, ECF No. 71 (W.D. Wash. Oct. 28, 2025).

issue an order, under 28 U.S.C. § 2243, directing the parties to file simultaneous briefs 21 days after the Court has made a determination on class certification and then simultaneous response briefs 14 days after that. If the Court regards the case as presenting an APA claim, Respondents propose that the Court order the parties, in accordance with the Court's Local AP Rules, to confer about and develop a joint case management plan that would provide for the development of an administrative record and subsequent briefing.

For the reasons discussed above, the Court should deny Petitioner's Motion for Leave.

Dated: November 18, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Benjamin Gibson
Benjamin Gibson
U.S. Attorney's Office