No. 25-20496

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Victor Buenrostro-Mendez,
Petitioner – Appellee,
v.
Pamela Bondi, U.S. Attorney General; Kristi Noem, Secretary, U.S. Department of Homeland Security; Todd M. Lyons, Acting Director, United States Immigration and Customs Enforcement; Matthew W. Baker, Acting ICE Houston Field Office Director, United States Immigration and Customs Enforcement; John Linscott, ICE Director, Houston Contract Detention Facility, United States Immigration and Customs Enforcement; Martin Frink, Warden, Houston Contract Detention Facility, CoreCivic,
Respondents-Appellants,

consolidated with

No. 25-40701

Jose Padron Covarrubias
Petitioner-Appellee,
v.
Miguel Vergara, ICE Field Office Director, San Antonio ICE Detention and Removal; Kristi Noem, Secretary, U.S. Department of Homeland Security; Orlando Perez, Warden, Laredo Processing Center, Corrections Corporation of America; Susan Aikman, In her official capacity, as Assistant Chief Counsel Office of Chief Counsel, U.S. Immigration and Customs Enforcement,
Respondents-Appellants,

OPPOSITION TO RESPONDENTS-APPELLANTS' MOTION TO RECONSIDER DENIAL OF MOTION TO EXPEDITE APPEAL

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INTRODUCTION

This is the second time that Respondents-Appellants ("Respondents") have come to this Court to request the expeditious adjudication of these appeals.[1] ECF No. 10. After full briefing, this Court denied Respondents' motion to expedite. ECF No. 30-2. The Court should again deny Respondents' second request that advances identical arguments to the first request and raises no good cause for reconsideration. *See* 5th Cir. R. 27.5 (requiring "good cause" to expedite).

First, Respondents do not offer any new arguments about the need to rush these appeals. As Petitioner explained in opposing the original motion to expedite, because the question of statutory interpretation in these cases is "exceptionally important," as Respondents agree, ECF No. 38-1 at 2, that counsels in favor of fulsome briefing and argument. Respondents continue to complain about the numbers of cases pending in this Circuit but as Petitioner also explained, Respondents cannot rely on a problem of their own making. Respondents now submit declarations from government attorneys to assert that there is a "strain" on their offices, ECF No. 38-1 at 2, but notably, most of those declarations *do not* specify the nature of those habeas petitions or whether they even involve the issue *in these* appeals. And more importantly, Respondents' core argument was already

[1] This case has been consolidated with *Covarrubias v. Vergara*, No. 25-40701. *See* ECF No. 30-2.

advanced in the motion to expedite that was denied by this Court. *Compare* ECF No. 10 at 7, *with* ECF No. 38-1 at 6.

Second, events since the Court's denial of the motion to expedite only undermine Respondents' plea of urgency. Since November 19, 2025, a district court has certified and extended declaratory relief to a nationwide class based on the same issue presented in these cases. *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). As a result, there is a binding declaratory judgment that all class members—which would include the two Petitioners here—are subject to *discretionary* detention under 8 U.S.C. § 1226(a) with access to a bond hearing, and not *mandatory* detention under 8 U.S.C. § 1225(b)(2). *Id*. Because of this holding, expediting these appeals is not necessary to resolve any pending district court cases in this Circuit. Any asserted strain on government resources is self-made as Respondents could simply resolve the pending cases by honoring the declaratory judgment in *Maldonado Bautista*, and providing bond hearings to petitioners in those cases—as was the status quo for decades before Respondents' unprecedented change in policy and interpretation of the relevant detention statutes.

Petitioner opposes the Respondents' attempt to relitigate an issue already decided by this Court and again respectfully requests that the Court enter the standard briefing schedule as provided in Fed. R. App. P. 31(a) and 5th Cir. Rule 31.

ARGUMENT

I. THERE IS NO GOOD CAUSE FOR RECONSIDERATION OF THIS COURT'S ORDER

For the second time before this Court, the government argues for a speedy resolution of this case because there has been a "tidal wave of litigation [that] has placed a severe strain on U.S. Attorney Offices resource and has required the diversion of resources committed to other important priorities[.]" ECF No. 38-1 at 3. But a version of this argument has been made before. *See* ECF No. 10 at 3 ("That same question of statutory interpretation is presented in well over a hundred cases pending or decided across the country, including dozens pending in district courts within this Circuit."). Respondents offer no new arguments or evidence to support reconsideration.

As previously explained by Petitioners, the district courts here did not *enjoin* any statutes but rather *interpreted* them. *See* ECF No. 12-1 at 5–6. And where the government's novel reading of the immigration laws has been rejected by nearly every judge to consider the issue across the country, the law is scarcely unclear. *See id.* at 6–7 (collecting cases in this Circuit and pointing to nationwide statistics). Since then, even more judges have rejected Respondents' reading of the relevant statutes. *See, e.g.*, *Barco Mercado v. Francis*, 25-CV-6582 (LAK), --- F. Supp. 3d ----, 2025 WL 3295903, at *13–14 (S.D.N.Y. Nov. 26, 2025) (listing 350 decisions granting

and only 12 decisions denying similar habeas petitions).[2] Again, while the government is free to argue on appeal that hundreds of lower court decisions are all incorrect, the fact that the government must respond to a significant number of habeas petitions is a problem entirely of its own making and does not constitute a reason for expediting the appeals. In fact, the large number of cases on the exact same legal question signals its importance, which counsels for a routine schedule that would allow for robust briefing, consultation with counsel in other appeals pending in this Court on the same issue, and involvement by interested *amici* who can provide the Court with additional perspectives.

As previously noted, Petitioners are no longer in immigration detention because, pursuant to the lower court orders, they received bond hearings where they demonstrated to an immigration judge that they were suitable candidates for release on bond. *See* ECF No. 12-1 at 7–8. Likewise, the only consequence of courts granting habeas petitions in other cases while these appeals are pending would be individuals receiving bond hearings—as they had for decades before this year—and only those who are found to pose no threat of flight risk or danger would be released. *See Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2007) ("The burden in on the

[2] *See also* Kyle Cheney, *More Than 220 Judges Have Now Rejected the Trump Admin's Mass Detention Policy*, Politico (Nov. 28, 2025), https://www.politico.com/news/2025/11/28/trump-detention-deportation-policy-00669861 (noting that over 220 judges in over 700 cases across at least 35 states have found the government's new policy to be unlawful).

[noncitizen] to show to the satisfaction of the Immigration Judge that he or she merits release on bond."). This too undermines Respondents' assertion of any harm while these appeals are pending.

Respondents now submit declarations from government-employed attorneys, *see* ECF Nos. 38-3–38-7, but they do not present any relevant new evidence to revisit this Court's decision denying the motion to expedite. These declarations all parrot the same, conclusory language that "the burden of this flood of new lawsuits" supports expedited consideration of this appeal. *See* ECF No. 38-3 ¶ 5; ECF No. 38-4 ¶ 5; ECF No. 38-5 ¶ 5; ECF No. 38-6 ¶ 5; ECF No. 38-7 ¶ 5. But only *one* of those declarations provides any specificity as to the nature of the habeas petitions. *See* ECF No. 38-6 ¶ 3. That declaration explained that while "534 habeas cases have been filed in the district courts within the Fifth Circuit since July of this year," only "48 of these petitions [out of 81 in the Northern District of Texas] relat[ed] primarily to § 1225 detention." *Id*. The other declarations notably do not provide any estimate of the number of habeas petitions in those districts dealing with the same statutory issue or any indication of the legal issues in those habeas cases. *See* ECF No. 38-3 ¶ 3; ECF No. 38-4 ¶ 3; ECF No. 38-5 ¶ 3; ECF No. 38-7 ¶ 3.

In addition, Respondents suggest that resources have been diverted from "other important priorities" but do not explain why habeas petitions filed by people challenging their confinement is civil immigration detention is not also an

"important" priority. Respondents imply that the "flood" of habeas petitions lack the same merit as other civil or criminal matters that the government attorneys are prosecuting. But as reflected in the near-unanimous rejection of Respondents' position in these cases raising this statutory issue, that is demonstrably false. *Supra*.[3]

Lastly, while Respondents highlight the number of pending habeas petitions in the Circuit, they fail to mention the intervening decision in *Maldonado Bautista*, holding that members of the nationwide class of individuals who entered without inspection are *not* subject to detention under § 1225(b)(2) and issuing declaratory relief to that effect. 2025 WL 3288403, at *9. Thus, Respondents could resolve pending district court cases raising the same issue by providing bond hearings for qualifying class members. Yet, the government has instead taken the contradictory positions that (1) it is *not* bound to follow the *Maldonado Bautista* declaratory judgment and can still detain class members without any access to bond hearings, but also (2) that pending habeas petitions involving class members should be dismissed or stayed because of *Maldonado Bautista*. *See* Exh. A (Respondents' Response to the Court's Order Requesting Supplemental Briefing on *Maldonado Bautista*). Respondents appear to be taking a "heads-I-win, tails-you-lose" position

[3] Respondents also rely on the Sixth Circuit's order in related cases but omit that the Sixth Circuit had only granted their motion to expedite in part but rejected their proposed expedited briefing schedule. *Compare* Mot. to Expedite Appeal, *Pizarro Reyes v. Raycraft*, No. 25-1982 (6th Cir. Nov. 4, 2025), ECF No. 4-1 at 1, *with* Order, *Pizarro Reyes v. Raycraft*, No. 25-1982 (6th Cir. Nov. 25, 2025), ECF No. 10.

as to *Maldonado Bautista*. In any case, it undermines Respondents' assertion that expediting is necessary to conserve government resources when they are simultaneously resisting the court's declaratory judgment and seeking to dismiss or stay cases on the basis of that court's order.

CONCLUSION

For the foregoing reasons, the Court should deny Respondents' motion to reconsider this Court's decision to deny expedition of these appeals.

Dated: December 8, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2025 I electronically filed the foregoing with the Clerk of the Court through the Court's ECF system and that it will be served electronically upon registered participants identified on the Notice of Electronic Filing.

/s/ Charles Andrew Perry

CERTIFICATE OF COMPLIANCE

1. This response complies with Fed. R. App. P. 27(d)(2)(A) because it contains 1,577 words, excluding the parts of the response exempted by Fed. R. App. P. 32(f).

2. This response complies with the typeface and typestyle requirements of Fed. R. App. P. 32(g) because the brief has been prepared in Times New Roman font using Microsoft Word.

/s/ Charles Andrew Perry

Exhibit A:

Respondents' Response to the Court's Order Requesting Supplemental Briefing on *Maldonado Bautista* (E.D. Mich. Dec. 4, 2025)

United States District Court
Eastern District of Michigan

[redacted],

Petitioner,

v.

Kevin Raycraft, in his official capacity as Field Office Director of Enforcement and Removal Operations, Detroit Field Office, Immigration and Customs Enforcement; et al.,

Respondents.

Civil No. 25-13799

Honorable Susan K. DeClercq
Mag. Judge Curtis Ivy Jr.

Response to the Court's Order Requesting Supplemental Briefing

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Pursuant to the Court's Order, (ECF No. 6), respondents submit this response to petitioner's notice regarding the class action certification and orders in *Maldonado Bautista v. Santacruz,* No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025).

The *Maldonado Bautista* court granted class certification under Rule 23(b)(2) and partial summary judgment for the petitioners in that case but did not issue a class-wide declaratory judgment. The court also did not issue a class-wide injunction, which would not be permitted by law. Rather, the court set a January 9,

2026, joint status report deadline and January 16, 2026, status conference. 2025 WL 3288403.

The *Maldonado Bautista* court defined the certified class as follows:

> Bond Eligible Class: All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Maldonado, 2025 WL 3288403 at *9.

Petitioner is a member of the *Maldonado Bautista* class. Petitioner entered the United States without inspection; he was not apprehended upon arrival; he is not subject to detention under § 1226(c) (criminal aliens), § 1225(b)(1) (arriving alien), or § 1231 (post final order of removal) at the time the Department of Homeland Security made their initial custody determination.

Because Petitioner is a member of the *Maldonado Bautista* class, the Court should dismiss or, in the alternative, stay this action. Certification of a 23(b)(2) class precludes individual suits for the same injunctive or declaratory relief. *See U.S. v. Sanchez-Gomez*, 584 U.S. 381, 387 (2018) (noting that "[t]he certification of a suit as a class action has important consequences for the unnamed members of the class, including being "bound by the judgment") (cleaned up); *Groseclose v. Dutton*, 829 F.2d 581, 584 (6th Cir. 1987) (holding that individual class member could not proceed in individual case); *see Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir.

1988) ("To allow individual suits would interfere with the orderly administration of the class action and risk inconsistent adjudications."). Thus, Petitioner, who is an individual class member cannot bring claims seeking equitable relief in this action and the habeas petition should be dismissed.

Assuming for the sake of argument that the Court finds that Petitioner is a member of the *Maldonado Bautista* class, but that dismissal is not warranted, the *Maldonado Bautista* court's decision does not have preclusive effect in this matter. As noted above, the *Maldonado Bautista* court did not enter a final judgment with respect to the class. Although the court stated it was extending "the same declaratory relief" to the class, a court cannot grant declaratory relief prior to the entry of a final judgment, *i.e.*, a declaratory judgment. *See Doran v. Salem Inn, Inc.,* 422 U.S. 922, 931 (1975) ("prior to final judgment there is no established declaratory remedy comparable to a preliminary injunction"). A pre-final judgment declaration is, by its nature, not a declaratory judgment "[b]ecause a preliminary declaration—unlike a final declaration—does not specifically bind anyone, it is more akin to an advisory opinion, which the Court is precluded from issuing by history and the implicit policies embodied in Article III." *Vazquez Perez v. Decker*, No. 18-CV-10683 (AJN), 2019 WL 4784950, at *10 (S.D.N.Y. Sept. 30, 2019).

Absent an entry of final judgment with respect to the class, or a certification of partial final judgment under Rule 54(b), there is no declaratory judgment in

Maldonado Bautista. The partial summary judgment ruling does not operate as a "judgment" because it is not an appealable order and "does not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." Fed. R. Civ. P. 54(a), (b). Thus, there is no class-wide judgment, let alone any final judgment that could have preclusive effect as to class members.

In short, the *Maldonado Bautista* court did not enter a class-wide judgment. As such, there is currently no declaratory relief, let alone relief with preclusive effect on *Maldonado Bautista* class members' claims concerning the proper interpretation of 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention provision.

Respectfully submitted,

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Dated: December 4, 2025

Certificate of Service

I hereby certify that on December 4, 2025, I electronically filed the foregoing paper with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties of record.

/s/ Zak Toomey
Zak Toomey
Assistant U.S. Attorney