

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

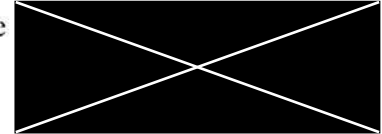
RIGO HERRERA-ESCOBAR

Petitioner

V.

Case No. 0:25-cv-62212-RS

Agency File



PAMELA BONDI, Et. Al.

Defendants-Respondents

PETITIONER'S RESPONSE TO THIS COURT'S ORDER TO SHOW CAUSE

As several Judges in this District have already held, the petitioner and persons like him are not subject to mandatory detention under 8 U. S. C. § 1225(b)(2) and thus have a right to pursue the custody review processes afforded by § 1226 and its implementing regulations and case law. E. g., Order (D.E. 6) at *7, *Franco v. Att'y Gen.*, No. 25-25466-CV-WILLIAMS (S.D. Fla. Dec. 1, 2025) (“The IJ and Respondents’ interpretation of the INA ‘directly contravenes the statute, disregards decades of settled precedent,’ and is erroneous.”) (citations omitted); *id.*, at *11 n. 4 (noting “the continued onslaught of litigation being generated by Respondents’ widespread illegal detention practices”); *id.*, at *7–*12 (D.E. 6), *Franco v. Att'y Gen.*, No. 25-25466-CV-WILLIAMS (S.D. Fla. Dec. 1, 2025) (collecting cases across the country); *Fernandez v. Ripa*, Order (D.E. 17) at *10–*16, 1:25-cv-24981-LEIBOWITZ (S.D. Fla. Nov. 25, 2025); *Ardon-Quiroz v. Assistant*

Field Off. Dir., No. 25-CV-25290-BECERRA, 2025 WL 3451645, at *5–*7 (S.D. Fla. Dec. 1, 2025); *Boffill v. Field Off. Dir.*, No. 25-CV-25179-BECERRA, 2025 WL 3246868, at *5–*7 (S.D. Fla. Nov. 20, 2025); *Puga v. Assistant Field Off. Dir., Krome N. Serv. Processing Ctr.*, No. 25-24535-CIV-ALTONAGA, 2025 WL 2938369, at *3–*5 (S.D. Fla. Oct. 15, 2025); *Merino v. Ripa*, No. 25-23845-CIV-MARTINEZ, 2025 WL 2941609, at *3 (S.D. Fla. Oct. 15, 2025); see also *id.*, at *4 (ruling that automatic stay regulations violate procedural due process).

The fact that the petitioner is a class member in the *Maldonado-Bautista* matter does not preclude him from seeking individualized injunctive relief via the APA or habeas.

First, class wide injunctive relief was prohibited by 8 U. S. C. § 1252(f) in the *Maldonado-Bautista* case, which is why the Court’s order there was declaratory in nature. *Maldonado-Bautista v. Santacruz, et.al.*, 2025 WL 3288403, at *7–*8 (CDCAL 2025). Thus, individualized injunctive relief (via the APA or habeas) by class members is not barred by claim preclusion because such relief was not and is not being sought by the class representatives in the *Maldonado-Bautista* case. *Hiser v. Franklin*, 94 F. 3d 1287, 1291 (CA9 1996) (“Hiser’s claims for damages and individual injunctive relief are clearly not barred by res judicata because they could not have been brought in the Cleary litigation.”); see also *Fortner v. Thomas*, 983 F. 2d 1024, 1031 (CA11 1993) (“It is clear that a prisoner’s claim for monetary damages or other particularized relief is not barred if the class representative sought only declaratory and injunctive relief, even if the prisoner is a member of a pending class action.”) (citations and footnote omitted); *Spears v. Johnson*, 859 F. 2d 853, 855 (CA11 1988), opinion vacated in part on reconsideration, 876 F.2d 1485 (CA11 1989) (“Because Spears seeks relief different from that requested by the class representatives in Newman, we may conclude from our decisions in *Herron*, *Jordan* and *Bogard* that Spears’ petition should not have been dismissed.”) (emphasis added); *Herron v. Beck*, 693 F. 2d 125, 127 (CA11

1982) (“First, although the class action in *Brown v. Beck v. Evans*, supra, did involve various conditions in the same jail, the class representatives sought only declaratory and injunctive relief, not damages. Thus, the appellant’s claim for damages would not be barred by the class action.”) (citations omitted). Since the *Maldonado-Bautista* decision was a declaratory judgment that extended to the class, and the petitioner’s APA claim and Habeas Petitioner requests injunctive relief, the petitioner’s case should not be stayed for further findings in *Maldonado-Bautista*, dismissed or transferred.

Second, the Department of Justice and the immigration judge corps are uniformly taking the position, across the country, that *Maldonado-Bautista* class members are not entitled to bond hearings notwithstanding the District Court’s orders in that case, hence the need for this Court’s intervention. Exhibit 1. These judges are claiming that the decision fails because it was not certified under rule 54(b). Rule 54(b) would not apply here. *Liberty Mutual v. Wetzel*, 424 U.S. 737, 743 (1976)(“Rule 54(b) does not apply to a single claim action. They prayed for several different types of relief but their complaint advanced a single legal theory”). Here the single legal theory is that aliens already inside the United States at the time of their arrest fall under §1226 and not §1225. See Order Granting Partial Summary Judgment, at 14. The only reason given that the Court denied the entire final judgment was because there was “a pending motion for class certification”. *Id.*, at 17.

Third, the party who would be precluded by the *Maldonado-Bautista* Court’s order would be the government under the doctrine of issue preclusion, specifically, with regard to the statutory issue of whether 8 U. S. C § 1225(b)(2)(A) or § 1226 applies to a person like the petitioner here.

See Parklane Hosiery Co. v. Shore, 439 U. S. 322, 331–33 (1979) (allowing use of non-mutual offensive collateral estoppel by plaintiffs in subsequent litigation).¹

Fourth, in this Circuit, non-final orders in a case, such as partial summary judgment orders, that were fully and fairly litigated, as occurred in the *Maldonado-Bautista* case, are entitled to issue preclusion. *Christo v. Padgett*, 223 F. 3d 1324, 1339 (CA11 2000) (“It is widely recognized that the finality requirement is less stringent for issue preclusion than for claim preclusion.”); *Id.*, at 1338–40 (applying issue preclusion to findings in an order on a motion to dismiss that was not a final judgment); *Dana v. E.S. Originals, Inc.*, 342 F. 3d 1320, 1325 (Fed. Cir. 2003) (“The *Christo* case makes clear (as does our decision in *RF Delaware*) that the Eleventh Circuit follows the more flexible approach employed by the Restatement of Judgments, which gives collateral estoppel effect to orders that do not constitute final, appealable judgments if they are ‘sufficiently firm to be accorded conclusive effect.’”) (quoting *Christo*, 223 F. 3d, at 1339 n. 47); *Id.*, at 1324 (“With regard to whether the party to be estopped had a full and fair opportunity to litigate and whether the partial summary judgment orders were sufficiently final to be accorded preclusive effect, this case is closer to *Christo* than to *RF Delaware*.”); See also *RF Delaware, Inc. v. Pacific Keystone Technologies, Inc.*, 326 F.3d 1255 (Fed.Cir.2003).

Last, individualized lawsuits can be brought by members of a class to obtain relief on claims which are based on issues that were previously decided in class litigation. *E. g.*, *Brown v. R.J. Reynolds Tobacco Co.*, 611 F. 3d 1324, 1326–29 (11th Cir. 2010) (describing *Engle* litigation—see *Engle v. Liggett Grp. Inc.*, 945 So.2d 1246, 1256 (Fla.2006) (*Engle III*)).

A. Why This Court Must Deny Any Stay and Order Immediate Bond Relief

¹ But seeing that the petitioner is a *Bautista* class member, his argument for offensive collateral estoppel would be a mutual one, not non-mutual.

Every additional day of detention without an individualized hearing on danger or flight risk is a separate, ongoing due-process violation. The Supreme Court has never permitted the government to hold someone in mandatory detention while it appeals a declaratory judgment that already declared that the petitioner's detention unlawful and to do so would be a fifth amendment liberty interest violation. U.S. Const. Amend. V; *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 531 (2003).

A federal judge, after full litigation, has already declared that Petitioner is statutorily entitled to a bond hearing and may not be subjected to § 1225(b) mandatory detention. That right vested the moment the partial summary judgment was entered, the class certified and the extension of the judgment to the class. Staying enforcement would nullify a congressionally conferred liberty interest for months or years. 8 U.S.C. § 1226(a); *Maldonado Bautista v. Santacruz*, Doc. 82 (C.D. Cal. Nov. 13, 2025). Crucially, a class-wide order declaring the respondents' policy in violation of the class members' rights would not ensure their release on bond; it merely secures a right to an individualized hearing. Any differences that may exist in class members' entitlement to be released is a different matter than their entitlement to a hearing. *Id.* at 13-14.

Prolonged detention without prompt judicial review of the grounds for confinement violates the Fourth Amendment. Petitioner has now been detained for over two months without any neutral magistrate ever finding probable cause to believe he is a danger or flight risk. *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975) ("When the stakes are this high, the detached judgment of a neutral magistrate is essential if the Fourth Amendment is to furnish meaningful protection from unfounded interference with liberty.") *County of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991) ("... prolonged detention based on incorrect or unfounded suspicion may unjustly "imperil [a] suspect's job, interrupt his source of income, and impair his family relationships.").

The Great Writ exists for swift relief from unlawful executive detention. Even arguendo, staying habeas relief if the government has appealed an injunction that already found the detention unlawful would defeat the very purpose of 28 U.S.C. § 2241. U.S. Const. Art. I, § 9, cl. 2; *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)(“ At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest”); *Boumediene v. Bush*, 553 U.S. 723, 771 (2008)(“ This Court may not impose a de facto suspension [of the right to writ of habeas] by abstaining from these controversies”).

The *Nken* factors, when viewed through the lens of these rights, forbid a stay. *Nken v. Holder*, 556 U.S. 418, 129 S. Ct. 1749, 1752, 173 L. Ed. 2d 550 (2009). As to the likelihood of success on the merits – The district court’s plain-text reading of §§ 1225(b) and 1226(a) is compelling and consistent with pre-*Matter of M-S-* authority and *Jennings*. Second, as to the irreparable injury to the government – there is none because a bond hearing is a routine, congressionally mandated procedure. Third, as to the irreparable injury to the petitioner, the loss of liberty is profound and causes daily loss. “Liberty is the norm; detention ... the carefully limited exception” (*Jennings v. Rodriguez*, 583 U.S. 281, 303 (2108) (Breyer, J., dissenting) (“ § 1226 applies to aliens already present in the United States”)) Finally it is in the public interest that a uniform, nationwide application of the INA is conducted. Selective non-enforcement breeds chaos and unequal treatment.

Liberty is not held in abeyance while the government litigates because the petitioner is not asking for a new right. He is asking only for rights that: 1) a United States District Judge has already declared he possesses, 2) the Constitution has protected for over 230 years, and 3) Congress expressly granted in 8 U.S.C. § 1226(a).

B. Petitioner's Petition should not be dismissed

Dismissal of the petitioner's case is improper because *Maldonado-Bautista* is a binding, permanent declaratory judgment currently in full force whereas the petitioner requires enforcement in this District. The Central District's November 25, 2025, order (Doc. 82) certifies a nationwide class, declares that persons in the petitioner's position are entitled to bond under 8 U.S.C. § 1226(a), and permanently enjoins the respondents from subjecting them to mandatory detention under § 1225(b). The petitioner not only has filed a full claim for the writ of habeas corpus but has presented a claim under the Administrative Procedures Act, both claims should withstand dismissal.

No stay has been entered by Judge Sykes or the Ninth Circuit as of this date. A declaratory judgment extended to a class is immediately operative and enforceable nationwide against the named federal officers in their official capacities unless and until stayed. 28 U.S.C. § 1292(a)(1); Fed. R. Civ. P. 62(c); If this Court were not to enforce the *Maldonado-Bautista* declaratory judgment and decline to enter an order granting a bond motion, "fragmented immigration policy would run afoul of the constitutional and statutory requirement for uniform immigration law and policy."). *Hawaii v. Trump*, 859 F.3d 741, 785–88 (9th Cir. 2017) (per curiam); *Howat v. Kansas*, 258 U.S. 181, 189–90 (1922).

Dismissal would sanction an ongoing constitutional violation. Prolonged mandatory detention without an individualized bond hearing violates the Fifth Amendment's Due Process Clause (*Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Demore v. Kim*, 538 U.S. 510, 531 (2003)) and the Fourth Amendment's requirement of prompt judicial review of the basis for detention (*Gerstein v. Pugh*, 420 U.S. 103 (1975); *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) (Each day that the petitioner remains detained without a hearing constitutes fresh, irreparable injury.)).

Collateral estoppel bars re-litigation of the core issue. The government fully litigated—and lost—the question whether noncitizens who entered without inspection but were not apprehended at the time of entry are applicants for admission under § 1225(b). That determination is conclusive against respondents in every federal court. *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008); *Montana v. United States*, 440 U.S. 147, 153–54 (1979).

Dismissal would reward the government’s refusal to comply with a binding declaratory judgment. The class judgment precludes individual relitigation of the same equitable claim (*Cooper v. Federal Reserve Bank*, 467 U.S. 867, 874 (1984); *McNeil v. Guthrie*, 945 F.2d 1163, 1166–67 (10th Cir. 1991)), but that judgment cuts in favor of enforcement, not dismissal. Dismissing this petition and others would continue to force thousands of duplicative filings, defeating the very purpose of the certified class action.

The public interest and judicial economy demand immediate enforcement. The petitioner falls squarely within the certified class. Rather than dismiss, the proper course is to recognize the binding effect of *Maldonado-Bautista* and order Respondents to provide an individualized bond hearing before an immigration judge within fourteen days, consistent with the declaratory judgment.

Dismissal is neither required nor appropriate, in fact, enforcement is what is required. This new decision out of the Central District of California does not eliminate the claim but actually enhances it because the partial summary judgment in *Maldonado Bautista v. Santacruz* (No. 5:25-cv-01873, C.D. Cal.)—issued on November 20, 2025, and extended to the certified class on November 25, 2025—declares that class members are detained under 8 U.S.C. § 1226(a) (entitling them to bond hearings) rather than under mandatory no-bond detention per § 1225(b)(2).

C. Petitioner's Petitioner should not be transferred

First, venue is proper in this District for the petitioner's habeas relief. Pursuant to 2241, "Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge *within their respective jurisdictions.*" 28 U.S.C. § 2241(a)(emphasis added). "The order of a circuit judge shall be entered in the records of the district court of the district *wherein the restraint complained of is had*". *Id.* (emphasis added).

Transferring this § 2241 habeas to the Central District would serve no purpose except to drag out the petitioner's unlawful detention. The petitioner's habeas can only be heard in this district because this is the district in which he is being held. *Khalil v. Joyce*, 771 F. Supp. 3d 268, 288 (S.D.N.Y. 2025)("the only district in which — due to the immediate-custodian and district-of-confinement rules — his 'core' claims 'could have been brought'")(internal quotations omitted); *See, e.g., Alvarado v. Gillis*, No. 22-CV-10082 (JLR) (KHP), 2023 WL 5417157 (S.D.N.Y. Aug. 3, 2023), report and recommendation adopted, 2023 WL 5396499 (S.D.N.Y. Aug. 22, 2023) *Rasco v. Superintendent of Metro. Corr. Ctr., Miami, Fla.*, 551 F. Supp. 783, 785 (S.D. Fla. 1982) (ordering transfer of an immigration habeas petition to the district where the petitioner was detained at the time of filing); District courts are limited to granting habeas relief "within their respective jurisdictions." 28 U.S.C. § 2241(a). *Rumsfeld v. Padilla*, 542 U.S. 426, 442, 124 S. Ct. 2711, 2722, 159 L. Ed. 2d 513 (2004)

Indeed, the Court cannot do otherwise because where, as here, "a federal statute covers the point in dispute," "that is the end of the matter; federal courts are bound to apply rules enacted by Congress with respect to matters over which it has legislative power." *Stewart Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 27, 108 S.Ct. 2239, 101 L.Ed.2d 22 (1988) (cleaned up).

WHEREFORE, the petitioner respectfully requests that this Honorable Court by the extension of declaratory judgment that the petitioner and others like him are subject to § 1226 and order a bond proceeding immediately, or other relief as so this Court deems proper.

Respectfully submitted,

Dated this December 16, 2025

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CERTIFICATE OF SERVICE

I, Bonnie Smerdon, certify that on December 16, 2025, I electronically filed the above PETITIONER'S RESPONSE TO THIS COURT'S ORDER TO SHOW CAUSE with the Clerk of the Court of the Southern District of Florida using the CM-ECF system and copies of the foregoing document will be served on all counsel of record via transmission of a Notice of Filing generated by the CM/ECF system.

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