

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.

3. Petitioner is a member of the *Maldonado* 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.

4. Because Petitioner is a member of the *Maldonado* 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); *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.”). In *Gillespie*, the Fifth Circuit held that an individual class member is barred from pursuing his own individual lawsuit that seeks equitable relief within the subject matter of the class action. *Gillespie*, 858 F.2d at 1103. In so holding, the Fifth Circuit explained that “[i]ndividual members of the class . . . may assert any equitable or declaratory claims they have, but they must do so by urging further action through the class representative and attorney, including contempt proceedings, or by intervention in the class action.” *Id.* Thus, Petitioner, who is an individual class member cannot bring claims seeking equitable relief in this action and the habeas petition should be dismissed. *See, e.g., Oliver*

v. Scott, No. CIV. 3:98-CV-2246-H, 2000 WL 140745, at *3 (N.D. Tex. Feb. 4, 2000)(dismissing claims based on *Gillespie*).

5. Assuming for the sake of argument that the Court finds that Petitioner is a member of the *Maldonado* class, but that dismissal is not warranted, the *Maldonado* court’s decision does not have preclusive effect in this matter. As noted above, the *Maldonado* 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).

6. 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*. 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.

7. In short, the *Maldonado* court did not enter a class-wide judgment. As such, there is currently no declaratory relief, let alone relief with preclusive effect on *Maldonado* class

members' claims concerning the proper interpretation of 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention provision.

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Respectfully submitted,

NICHOLAS J. GANJEI
United States Attorney
Southern District of Texas

By: *s/ Ancy Thomas*
ANCY THOMAS
Assistant United States Attorney
S.D. Tex. ID. No. 3869396
New York Bar No. 5449871
United States Attorney's Office
Southern District of Texas
1701 W. Bus. Highway 83, Suite 600
McAllen, Texas 78501
Telephone: (956) 992-9380
Facsimile: (956) 618-8016
Email: Ancy.Thomas@usdoj.gov
Attorney for Respondents

CERTIFICATE OF SERVICE

I, Ancy Thomas, Assistant United States Attorney for the Southern District of Texas, do hereby certify that on this 5th day of December 2025, a copy of the foregoing was served on counsel for Petitioner via CM/ECF email notification.

By: *s/ Ancy Thomas*
ANCY THOMAS
Assistant United States Attorney