

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

SANTOS CANO LOZADO,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 5:25-cv-00162
	)	
WARDEN, FOLKSTON ICE	)	
PROCESSING CENTER, ET AL.,	)	
	)	
Respondents.	)	

MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO STAY

Respondent moves to dismiss the Petition in this case without prejudice or, in the alternative, to stay this action because the Petitioner is a member of the class certified in *Maldonado Bautista v. Santacruz*, ___ F.R.D. ___, No. 5:25-CV-01873, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025). In support of the motion, the Government states as follows:

1. The *Maldonado* 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, at *10.

2. The *Maldonado* 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.

3. Petitioner asserts he is a member of the *Maldonado* class. See Doc. 6 at 1-2. Based on the information available to Respondent, it appears Petitioner is correct. 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 *United States 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) (en banc) (“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.* The other Courts of Appeal that have confronted this question have reached the same conclusion. *McNeil v. Guthrie*, 945 F.2d 1163, 1165–66 (10th Cir. 1991) (finding that individual suits for equitable relief cannot be brought where a class action with the same claims exists); *Horns v. Whalen*, 922 F.2d 835, 835 & n.2 (4th Cir. 1991); *Bennett v. Blanchard*, 802 F.2d 456, 456 (6th Cir. 1986) (holding that the lower court was correct in dismissing a case when the plaintiff was also a member in a parallel class action); *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982) (since class members generally “cannot relitigate issues raised in a class action after it has been resolved, a class member should not be able to prosecute a separate equitable action once his or her class has been certified.”). 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., I.V.I. v. Baker*, No. 25-CV-1572, 2025 WL 1519449, at *2-3 (D. Md. May 27, 2025) (dismissing claims by asserted class member as it would be “contrary to those same principles [of comity and judicial economy] to assert jurisdiction over virtually identical claims between essentially the same parties” in suit challenging Department of Homeland Services policy regarding removals to countries not previously designated as the country or alternative country of removal); *Wynn v. Vilsack*, No. 3:21-cv-514, 2021 WL 7501821, at *3 (M.D. Fla. Dec. 7, 2021) (“Multiple courts of appeal have approved the practice of staying a case, or dismissing it without prejudice, on the ground that the plaintiff is a member of a parallel class action.” (cleaned up)).

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, 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.

Respondent therefore requests that the Court dismiss this action without prejudice or, in the alternative, stay this matter pending resolution of the *Maldonado* litigation.

Dated: December 4, 2025

Respectfully submitted,

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