

1 James D. Jenkins
2 P.O. Box 6373
3 Richmond, VA 23230
4 (804) 873-8528
5 jjenkins@valancourtbooks.com
6 *Attorney for Petitioner*

7 UNITED STATES DISTRICT COURT
8 FOR THE DISTRICT OF ARIZONA

9 Blanca Nubia Higueta Florez,

10 Petitioner

11 v.

12 Fred Figueroa, *et al.*

13 Respondents.
14
15

Case No. 2:25-cv-4415-MTL

**PETITIONER'S REPLY IN
SUPPORT OF PETITION
FOR WRIT OF HABEAS
CORPUS**

16 **INTRODUCTION**

17 In their Response (Dkt. 12), Respondents "seek[] to have it both ways": on the one
18 hand, they argue that the *Bautista* class action provides no relief for Ms. Higueta, but on
19 the other hand, they claim that it requires dismissal of her habeas petition, thus leaving her
20 with no effective way of seeking relief from her unconstitutional confinement. *See*
21 *Velasco-Sanchez v. Raycraft*, 2025 WL 3553672, at *3 (E.D. Mich. Dec. 11, 2025).
22

23 However, this Court should reject Respondents' arguments for several reasons.
24 First, it is not even clear that Ms. Higueta is part of the *Bautista* class. Second, her claims
25 for habeas relief and immediate release or a bond hearing are distinct from the relief sought
26
27
28

1 in *Bautista*. And third, as a matter of law, she could not seek either habeas or injunctive
2 relief through the *Bautista* class action.

3 Finally, without citing any case law or acknowledging the decisions of this Court,
4 other courts in this district, or more than 350 other cases around the country that reject
5 their arguments, Respondents claim that Ms. Higuita is subject to mandatory detention
6 under 8 U.S.C. § 1225(b)(2). Their argument is so underdeveloped that the Court should
7 consider it waived, or, if the Court considers it on the merits, it should find it foreclosed
8 by earlier precedents from this Court and courts in this district.
9
10

11 ARGUMENT

12 **I. The existence of the *Bautista* class action does not preclude relief here or**
13 **require dismissal of Ms. Higuita’s habeas petition.**

14 **A. Ms. Higuita does not appear to be a member of the *Bautista* class.**

15
16 Ms. Higuita filed her Petition on November 26, less than twenty-four hours after
17 the court’s order certifying the class in *Bautista v. Santacruz*, -- F.R.D. --, 2025 WL
18 3288403 (C.D. Cal. Nov. 25, 2025). At the time she filed her Petition, she believed that
19 she was part of the class. However, upon closer examination, Petitioner submits that it is
20 unclear whether she in fact forms part of the class. The “Bond Eligible Class” is defined
21 in relevant part as “All noncitizens in the United States without lawful status who (1) have
22 entered or will enter the United States without inspection; (2) were not or will not be
23 apprehended upon arrival.” *Bautista*, 2025 WL 3288403, at *1. While there is no question
24 that Ms. Higuita satisfies the first element – entry without inspection (*See* ECF No. 1-1 at
25 7) – it is unclear whether she meets the second element. The Form I-213 “Report of
26
27
28

1 Deportable/Inadmissible Alien” recites that “The subject entered the U.S. without
2 inspection ... on or about 2/27/2023. The subject was apprehended and released by United
3 States Border Patrol via prosecutorial discretion on the same day.” *Id.* Although there is a
4 question of whether being “apprehended ... on the same day” as her arrival is the same as
5 “apprehended upon arrival,” the Court could reasonably find that the most plausible
6 reading is that she does not fall within the class definition. In that case, the remainder of
7 Respondents’ arguments about *Bautista* are irrelevant; but, as discussed below, even if the
8 Court assumes that she may be part of the class, the Court should still grant her habeas
9 relief.
10
11

12 **B. Even if Ms. Higuita is part of the *Bautista* class, her petition should not be**
13 **dismissed, since it seeks relief not available to her in the class action.**

14 Respondents argue that “Petitioner asks this court to ... grant her either release from
15 custody or a bond hearing ... However, because that claim is already being adjudicated in
16 the nationwide *Bautista* class action, this Court should decline to consider it.” Dkt. 12 at
17 2. However, those claims are *not* being litigated in *Bautista*. The complaint in *Bautista*
18 seeks release or a bond hearing only for the four named plaintiffs, not the class as a whole.
19 *Bautista v. Santacruz*, 5:25-cv-1873-SSS-BFM, Dkt. 15 at 34. For other class members –
20 including Ms. Higuita, assuming she is part of the class – the complaint seeks only a
21 declaratory judgment that the class is not subject to mandatory detention under
22 § 1225(b)(2) and expressly does not seek habeas or injunctive relief. *Id.*
23
24
25

26 In the Ninth Circuit, the question of whether an individual suit should be dismissed
27 because it is duplicative of a class action is governed by *Pride v. Correa*, 719 F.3d 1130
28

1 (9th Cir. 2013). In *Pride*, a prisoner filed suit under 42 U.S.C. § 1983, seeking damages
2 and injunctive relief concerning his own individual medical treatment. *Id.* at 1131. The
3 district court dismissed his claim for injunctive relief, finding it duplicative of a pending
4 class action, but the Ninth Circuit reversed, noting that the class action did not deal with
5 the individual plaintiff’s medical care, but instead “systemic reform of medical care in
6 California prisons.” *Id.* The court held that “a district court *may not* ‘dismiss[] those
7 allegations of [the] complaint which go beyond the allegations and relief prayed for in [the
8 class action].” *Pride*, 719 F.3d at 1133 (citing *Crawford v. Bell*, 599 F.2d 890, 893 (9th Cir.
9 1979)) (emphasis added). Accordingly, any part of Ms. Higuita’s petition that goes beyond
10 the relief sought in *Bautista* “may not” be dismissed. *Id.*

11
12
13
14 The court in *Nguyen v. Scott*, 796 F. Supp. 3d 703 (W.D. Wash. 2025) relied on
15 *Pride* to reject an argument similar to the one Respondents make here. In *Nguyen*, the
16 court noted that the petitioner’s “due process claim is not identical to the claims at issue
17 in the *D.V.D.* class action – Petitioner argues that due process requires he have a
18 meaningful opportunity to seek withholding of removal, a claim not at issue in *D.V.D.*
19 (which concerns claims under the Convention Against Torture).” *Id.* at 730. Similarly, Ms.
20 Higuita’s claims here are “not identical to the claims at issue” in *Bautista*.
21
22

23 Thus, contrary to Respondents’ suggestions that “this Court should decline to
24 consider” Ms. Higuita’s habeas petition, under Ninth Circuit precedent, this court “*may*
25 *not* dismiss” the petition to the extent it seeks relief beyond what is available in *Bautista*.
26 *Pride*, 719 F.3d at 1133 (emphasis added). Comparing the prayers for relief in *Bautista*
27 and this case, it is apparent that they are substantially different: Ms. Higuita’s petition
28

1 prays for “a writ of habeas corpus requiring that Respondents immediately release
2 Petitioner subject to the same terms as her original Order of Release on Recognizance,”
3 or “[i]n the alternative ... a writ of habeas corpus requiring Petitioner’s immediate release
4 unless Respondents provide Petitioner with a bond hearing ... within 7 days,” as well as
5 injunctive relief. Dkt. 1 at 36. By contrast, *Bautista* seeks only a declaratory judgment, not
6 release, a bond hearing, or an injunction. *Bautista v. Santacruz*, 5:25-cv-1873-SSS-BFM,
7 Dkt. 15 at 34. Under controlling Ninth Circuit precedent as set out in *Pride*, this Court
8 may not dismiss Ms. Higuita’s petition, which is not duplicative of *Bautista*.
9

11 Respondents further argue that “Petitioner cannot identify any legal bar, or even a
12 practical impediment, to her ability to receive full and fair relief from the *Bautista* suit.”
13 Dkt. 12 at 5 (internal quote marks omitted). But this is simply untrue. There are at least
14 two significant legal bars to her obtaining relief in that case. First of all, classwide
15 injunctive relief is not available in *Bautista*. See *Garland v. Aleman Gonzalez*, 596 U.S.
16 543 (2022) (interpreting 8 U.S.C. § 1252(f)(1) to prohibit classwide injunctive relief
17 regarding immigration detention statutes). Second, habeas relief is not available to Ms.
18 Higuita in *Bautista*; that case is in the Central District of California, and the Supreme Court
19 has made clear that habeas petitions must be filed against “the warden of the facility where
20 the prisoner is being held,” *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004), which means
21 her habeas petition must be filed in Arizona. Since injunctive relief is not available to the
22 class, and she cannot bring her habeas claim in California, there are certainly “legal bar[s]”
23 and “practical impediment[s]” to her receiving any relief from *Bautista*.
24
25
26
27

28 Respondents wrongly claim that “*Bautista* has ordered no relief ... Neither the

1 Partial MSJ Ruling nor the Class Certification Ruling entered declaratory judgment as to
2 the nationwide class.” Dkt. 12 at 5. In fact, the *Bautista* court stated that “the Court extends
3 the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.”
4 *Bautista*, 2025 WL 3288403, at *9. Nonetheless, this declaratory relief has not proven to
5 be worth much. So far, immigration judges have ignored *Bautista* and similar declaratory
6 orders. *See* Dkt. 13-1 (Dec. 11, 2025 order from an IJ in Texas in one of counsel’s other
7 habeas cases); *see also Corrales Castillo v. Wamsley*, 2025 WL 3204370, at *2 (W.D.
8 Wash. Nov. 17, 2025) (noting immigration court’s failure to comply with the declaratory
9 judgment in a similar case, *Rodriguez Vasquez v. Bostock*, 2025 WL 2782499 (W.D. Wash.
10 Sept. 30, 2025)). Thus, if the Court dismisses Ms. Higuita’s petition, she is left in a no-
11 man’s-land, where she has no means of seeking habeas or injunctive relief and has – at
12 best – a declaratory judgment that the immigration court will simply ignore. *See, e.g.*,
13 *Hernandez Perez v. Sec’y, Dep’t of Homeland Sec.*, 2025 WL 3551383, at *2, n.2 (M.D.
14 Fla. Dec. 11, 2025) (“the Court finds no prudential reason to dismiss or stay this case ...
15 because Perez will seemingly need to return to this jurisdiction to obtain the habeas relief
16 sought.”).

21 **C. District courts have cited *Bautista* in granting habeas relief.**

22 While Respondents appear to be correct that a final judgment has not yet been
23 entered in *Bautista* pursuant to Fed. R. Civ. P. 54, courts have nonetheless cited it as
24 additional grounds for granting habeas petitions in cases like this one. *See, e.g., Velasco-*
25 *Sanchez v. Raycraft*, 2025 WL 3553672, at *3 (E.D. Mich. Dec. 11, 2025) (citing *Bautista*
26 in granting habeas relief); *Morales-Flores v. Lyons*, 2025 WL 3552841, at *3 (E.D. Cal.
27
28

1 Dec. 11, 2025) (citing *Bautista* as additional reason for granting habeas relief); *Rodriguez*
2 *v. Larose*, 2025 WL 3456475 (S.D. Cal. Dec. 2, 2025), at *5, n.4 (“Petitioner is a member
3 of this class and entitled to the same relief”); *Santuario v. Bondi*, 2025 WL 3469577 (D.
4 Minn. Dec. 2, 2025), at *2, n.4 (“the Court also concludes that Petitioner qualifies as a
5 class member pursuant to the order in *Bautista*, and is entitled to his habeas petition being
6 granted on those alternative grounds”).
7

8 Thus, far from requiring this case’s dismissal, courts have found that *Bautista*
9 weighs in favor of granting habeas relief.
10

11 **II. Respondents’ arguments about § 1225(b)(2) are so cursory as to be waived,**
12 **and in any event are foreclosed by this Court’s prior rulings.**

13 Respondents spend about half a page arguing that Ms. Higueta is subject to
14 mandatory detention under 8 U.S.C. § 1225(b)(2). Dkt. 12 at 7-8. They cite to no authority
15 to support their argument, nor do they acknowledge this district’s rulings in cases like
16 *Luna-Gonzalez v. Noem*, CV-25-3794, Dkt. 22 (D. Ariz. Nov. 26, 2025) (Liburdi, J.);
17 *Vargas-Murillo v. Bondi*, CV-25-3396 (D. Ariz. Nov. 25, 2025) (Liburdi, J.); *Rodriguez*
18 *Plascencia v. Bondi*, CV-25-4140 (D. Ariz. Nov. 21, 2025) (Lanza, J.); *Perez Rodriguez*
19 *v. Noem*, CV-25-3921 (D. Ariz. Nov. 13, 2025) (Tuchi, J.); *Gonzalez Rodriguez v. Bondi*,
20 CV-25-3917 (Tuchi, J.); *Benitez-Cornejo v. Cantu*, CV-25-3672, 2025 WL 2992211 (D.
21 Ariz. Oct. 17, 2025) (Tuchi, J.); *Echevarria v. Bondi*, CV-25-3252, 2025 WL 2821282 (D.
22 Ariz. Oct. 3, 2025) (Lanza, J.); or *Rosado v. Figueroa*, CV-25-02157-DLR, 2025 WL
23 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha*
24 *Rosado v. Figueroa*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (Rayes, J.).
25
26
27
28

1 This district's case law does not represent an outlier approach. In fact, one district
2 judge recently cited "350 cases decided by over 160 different judges sitting in about fifty
3 different courts spread across the United States" who have rejected Respondents' position.
4 *Barco Mercado v. Francis*, 25-cv-6582, 2025 WL 3295903 (S.D.N.Y. Nov. 26, 2025), at
5 *4. Moreover, yesterday the Seventh Circuit became the first appellate court to weigh in
6 on this topic, finding that the Government was "not likely to succeed on the merits of their
7 argument that those individuals, whom ICE arrested without a warrant, are subject to
8 mandatory detention under § 1225(b)(2)(A)." *Castanon-Nava v. U.S. Dep't of Homeland*
9 *Sec.*, -- F. 4th --, 2025 WL 3552514, at *10 (7th Cir. Dec. 11, 2025). In short, Respondents'
10 argument has been rejected by nearly every court to consider it, including this Court, and
11 it should be rejected again here.
12
13
14

15 Respondents make no response whatsoever to Ms. Higuita's claim that she was
16 denied due process by her re-detention without a predeprivation hearing. *See* Dkt. 1 at 30-
17 35. In a recent similar case, Judge Tuchi found that Respondents' failure to address this
18 argument meant that "Respondents have waived any challenge." *F.B. v. Noem*, 25-cv-
19 4271-JJT-JZB, Dkt. 9 (D. Ariz. Dec. 4, 2025), slip op., at 2. Furthermore, reaching the
20 merits, the *F.B.* court found that the petitioner "had a protected liberty interest in her
21 release from immigration detention and was entitled to a pre-deprivation hearing before
22 rearrest and detention." *Id.* at 2-3 (collecting cases). Since Respondents have not addressed
23 this claim, the Court should grant relief on this count and order Ms. Higuita released
24 subject to her preexisting order of release on recognizance. *Id.* Indeed, "Respondents'
25 response to the OSC is a boilerplate response reiterating their argument that all individuals
26
27
28

1 who have not been admitted to the United States are ‘applicants for admission’ under 8
2 U.S.C. § 1225(b)(2)(A) and are therefore subject to mandatory detention. Because the
3 Court has addressed numerous challenges addressing this issue and has made its position
4 clear, the Court need not spend additional time rejecting that contention.” *J.A.A.M. v.*
5
6 *Cantu*, 2:25-cv-4278-JJT-CDB, Dkt 12 (D. Ariz. Dec. 4, 2025), slip op. at 2.

7
8 **CONCLUSION**

9 The Court should grant the petition for writ of habeas corpus and order Ms.
10 Higuita’s immediate release subject to her preexisting order of release on recognizance,
11 or order a bond hearing at which the Government bears the burden of justifying her
12 detention by clear and convincing evidence.
13

14
15 Dated: December 12, 2025

Respectfully submitted,

16
17 /s/ James D. Jenkins
18 James D. Jenkins* (WA #63234)
19 P.O. Box 6373
20 Richmond, VA 23230
21 Tel.: (804) 873-8528
22 jjenkins@valancourtbooks.com
23 *Admitted pro hac vice
24 *Counsel for Petitioner*

25
26 **Certificate of Service**

27 The undersigned certifies that the foregoing was filed with the Court’s CM/ECF
28 system this 12th day of December, 2025.

/s/ James D. Jenkins
Counsel for Petitioner