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14 **IN THE UNITED STATES DISTRICT COURT**  
15 **FOR THE DISTRICT OF ARIZONA**

16 Jose Garcia Romero,  
17 Petitioner,  
18 v.  
19 David Rivas, *et al.*,  
20 Respondents.

No. 2:25-cv-04475-PHX-SMB (DMF)

**RESPONSE TO PETITION FOR  
WRIT OF HABEAS CORPUS  
AND  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

21 **I. INTRODUCTION AND FACTUAL BACKGROUND.**

22 Respondents, by and through counsel, hereby respond to the Petition for a Writ of Habeas  
23 Corpus (Doc. 1) and Motion for Temporary Restraining Order (“TRO”) (Doc. 2). Petitioner  
24 is a citizen of Mexico who entered the United States in 2002 and has resided in the United  
25 States since that time. Doc. 5. On or about July 11, 2025, Petitioner was taken into ICE  
26 custody and classified by ICE as an “applicant for admission” subject to mandatory detention  
27 pursuant to 8 U.S.C. § 1225(b)(2). *Id.* Petitioner asserts that he is not an “applicant for  
28 admission,” and that his detention is instead governed by 8 U.S.C. § 1226(a), which  
authorizes release on bond or conditional parole. *Id.* Petitioner further asserts that he is a  
class member in *Maldonado Bautista v. Santacruz*, 5:25-CV-01873-SSS-BFM (C.D. Cal).  
*Id.*

1 The Court should dismiss the Petition because Petitioner is a member of a certified non-  
2 opt-out class in *Bautista* pursuing the same relief he requests here. Respondents also preserve  
3 and maintain their legal position that Petitioner is subject to mandatory detention under  
4 8 U.S.C. § 1225(b)(2).

5 **II. STATUTORY FRAMEWORK.**

6 **A. Petitioner's claim is already being litigated in the *Bautista* class action.**

7 Petitioner is currently held in immigration custody without bond pursuant to  
8 8 U.S.C. § 1225(b)(2). In this action, Petitioner asks this court to declare that Section  
9 1225(b)(2) does not apply to him and to grant him either release from custody or a bond  
10 hearing. *See* Petition at 36. However, because that claim is already being adjudicated in the  
11 nationwide *Bautista* class action, this Court should decline to consider it. *See Bautista v.*  
12 *Santacruz*, 5:25-cv-1873-SSS-BFM (C.D. Cal.); *see also Clinton v. Jones*, 520 U.S. 681,  
13 706 (1997) (noting that a district court “has broad discretion to stay proceedings as an  
14 incident to its power to control its own docket). As part of district courts’ discretion to  
15 administer their dockets, courts have dismissed, without prejudice, suits brought by  
16 individuals whose claims are duplicative of class claims in other litigation. *See, e.g., Griffin*  
17 *v. Gomez*, 139 F.3d 905 (9th Cir. 1998) (in habeas case, discussing prior stay of Fifth  
18 Amendment challenge pending completion of pending class action); *Herrera v. Birkholz*,  
19 No. 22-cv-07784-RSWL-JDE, 2022 WL 18396018, at \*4-6 (C.D. Cal. Dec. 1, 2022),  
20 *report and recommendation adopted*, 2023 WL 319917 (C.D. Cal. Jan. 18, 2023)  
21 (dismissing habeas case brought by federal prisoner related to COVID-19 measures  
22 reasoning that petitioner’s claims were based, in part, on a duplicative class action and were  
23 “not properly before the court.”).

24 Multiple courts of appeals have upheld dismissals of cases where parallel class  
25 actions raise the same or substantially similar issues. *See, e.g., Crawford v. Bell*, 599 F.2d  
26 890, 892-93 (9th Cir. 1979) (holding that a district court may dismiss “those portions of  
27 [the] complaint which duplicate the [class action’s] allegations and prayer for relief”);  
28 *McNeil v. Guthrie*, 945 F.2d 1163, 1165-66 (10th Cir. 1991) (finding that individual suits

1 for injunctive and declaratory relief cannot be brought where a class action with the same  
2 claims exists); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (once a class  
3 action has been certified, “[s]eparate individual suits may not be maintained for equitable  
4 relief”); *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982) (“If a class member cannot  
5 relitigate issues raised in a class action after it has been resolved, a class member should  
6 not be able to prosecute a separate equitable action once his or her class has been  
7 certified”).

8 Petitioner’s claim seeking to invalidate the Board of Immigration Appeals’  
9 interpretation of Section 1225(b)(2) substantially overlaps with the *Bautista* nationwide  
10 class action. Indeed, on November 25, 2025, the court in *Bautista* certified, pursuant to  
11 Fed. R. Civ. P. 23(b)(2), a class of individuals defined as follows:

12  
13 All noncitizens in the United States without lawful status who (1) have  
14 entered or will enter the United States without inspection; (2) were not or  
15 will not be apprehended upon arrival; and (3) are not or will not be subject  
16 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.

17 *Bautista v. Santacruz*, 5:25-cv-1873-SSS-BFM (Doc. 82) (C.D. Cal. Nov. 25, 2025)  
18 (“Class Certification Ruling”). Petitioner acknowledges his class membership in his  
19 Petition. Petition at ¶ 66.

20 Because the *Bautista* class was certified pursuant to FRCP 23(b)(2), *see Bautista*,  
21 5:25-cv-1873-SSS-BFM (Doc. 82), at 14, membership in the class is mandatory with no  
22 opportunity to opt out. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011)  
23 (stating that Rule 23 “provides no opportunity for (b)(1) or (b)(2) class members to opt out,  
24 and does not even oblige the [d]istrict [c]ourt to afford them notice of the action”);  
25 *Sanderson v. Whoop, Inc.*, No. 3:23-CV-05477-CRB, 2025 WL 744036, at \*15 (N.D. Cal.  
26 Mar. 7, 2025) (noting that “23(b)(2) class members have no opportunity to opt out”).  
27 Members of FRCP 23(b)(2) classes may not bring individual suits over the same issues  
28 covered by the class action. *See Crawford v. Bell*, 599 F.3d 890 (9th Cir. 1979); *see also*

1 *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988); *McNeil v. Guthrie*, 945 F.2d  
2 1163, 1165 (10th Cir. 1991); *Stewart v. Asuncion*, 2016 U.S. Dist. LEXIS 162036 at \*5–6  
3 (C.D. Cal. Oct. 26, 2016) (collecting cases). “Individual members of the class . . . may  
4 assert any equitable or declaratory claims they have, but they must do so by urging further  
5 action through the class representative and attorney, including contempt proceedings, or  
6 by intervention in the class action.” *Gillespie*, 858 F.2d at 1165.

7 The *Bautista* court granted partial summary judgment to the named plaintiffs,  
8 *Bautista*, 5:25-cv-1873-SSS-BFM (Doc. 81) (“Partial MSJ Ruling”), but the court did not  
9 order any relief at that time. On December 18, 2025, the *Bautista* court granted a Motion  
10 to Clarify, and in doing so, it amended its previous order to clarify that the Partial MSJ  
11 Ruling applies to the class as well. *See Bautista*, 5:25-cv-1873-SSS-BFM (Doc. 92). The  
12 case is on appeal. As a member of the certified class, Petitioner is entitled to and bound by  
13 any relief that the *Bautista* court ultimately grants, including any applicable injunctive  
14 relief. Accordingly, this Court should dismiss his claims seeking release or a bond hearing  
15 because they are subsumed within the issues being litigated in *Bautista*. To do otherwise  
16 would undermine what Rule 23 was intended to ensure: consistency of treatment for  
17 similarly situated individuals. *See Howard v. Aetna Life Ins. Co.*, No.  
18 CV2201505CJCMRWX, 2024 WL 1098789, at \*11 (C.D. Cal. Feb. 27, 2024). It would  
19 also open the floodgates of parallel litigation in district courts all over the country, which  
20 could ultimately threaten the certification of the underlying class by creating differences  
21 among the class members. The proper way for Petitioner to request relief for his claim is  
22 “by urging further action through the class representative and attorney, including contempt  
23 proceedings, or by intervention in the class action,” which he is perfectly free to do.  
24 *Gillespie*, 858 F.2d at 1165.

25 However, the *Bautista* court has not yet ordered Respondents to conduct any bond  
26 hearings for the certified class members. It has only extended its previous finding that  
27 section 1226(a) rather than section 1225(b)(2) governs the named Plaintiff’s claims to the  
28 entire class, entering a final judgment from which the Government has appealed. Therefore,

1 if the Court declines to dismiss the petition so that Petitioner can pursue his rights as a  
2 *Bautista* class member, and it determines that a bond hearing is warranted under section  
3 1226(a) consistent with the holding in *Bautista*, it will still need to order that a bond hearing  
4 be provided.

5 **B. Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).**

6 Petitioner argues that his detention is unlawful because Respondents denied him a  
7 bond hearing, which Respondents did because of an immigration judge's finding that  
8 Respondent was categorically ineligible for release. Petitioner argues that denying him a  
9 bond hearing constitutes a violation of his due process rights. Respondents maintain that  
10 Petitioner is an "applicant for admission" who is "seeking admission" to the United States.  
11 Respondents argue that all such people must be detained for removal proceedings under 8  
12 U.S.C. 1225(b)(2)(A) in most circumstances. *See* 8 U.S.C. § 1225(a)(3) ("All aliens . . .  
13 who are applicants for admission or otherwise seeking admission or readmission to or  
14 transit through the United States *shall be inspected* by immigration officers.") (emphasis  
15 added); 8 U.S.C. § 1225(a)(1) ("An alien present in the United States who has not been  
16 admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter  
17 an applicant for admission."); 8 U.S.C. § 1225(b)(2)(A) ("[I]n the case of an alien who is  
18 an applicant for admission, if the examining immigration officer determines that an alien  
19 seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall  
20 be detained").

21 For the foregoing reasons, Respondents respectfully request that this Court deny the  
22 Petition for a Writ of Habeas Corpus (Doc. 1) and Motion for a TRO (Doc. 2).

23 Respectfully submitted on December 19, 2025.

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