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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX, ARIZONA**

Emily Leyva Mora


Petitioner,

v.

Kristi Noem, Secretary, U.S. Department
of Homeland Security; Pamela Bondi,
Attorney General of the United States,
Executive Office for Immigration Review
(EOIR); Corina Almeida, Chief Counsel,
Immigration and Customs Enforcement
(ICE), Office of Principal Legal Advisor,
Florence; John Cantu, Field Office
Director, ICE Enforcement and Removal
Operations, Phoenix; Fred Figueroa,
Warden, Eloy Detention Center,

Respondents.

Case No. 2:25-cv-04488-KML (CDB)

Immigration Number: 

**PETITIONER'S REPLY IN
SUPPORT FOR PETITION FOR
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

I. INTRODUCTION

Respondents' opposition rests on an untenable premise: that a procedural rule (Rule 23) can act as a unilateral "off-switch" for a constitutional right (Habeas Corpus). Respondents admit that the *Maldonado Bautista* class action has produced no injunction, no bond hearings, and no final judgment. Yet, they argue that its mere existence creates a

1 jurisdictional "no-man's-land" where individual detainees are barred from seeking the Great
2 Writ.

3
4 Accepting this position would create a constructive suspension of the writ. The
5 Constitution does not permit the government to insulate detention decisions from judicial
6 review by trapping individuals in a mandatory class action that offers no present relief. This
7 Court should exercise its core habeas jurisdiction and adjudicate Petitioner's challenge to
8 his ongoing detention.
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10 **II. A PENDING RULE 23(b)(2) CLASS ACTION DOES NOT STRIP THIS**
11 **COURT OF HABEAS JURISDICTION.**

12 A. Habeas Corpus is a Personal Constitutional Right That Cannot be Suspended
13 by Rule 23.

14 Habeas corpus is the "instrument by which due process could be
15 implemented." *Hamdi v. Rumsfeld*, 542 U.S. 507, 525 (2004). Because the writ is protected
16 by the Suspension Clause (U.S. Const. art. I, § 9, cl. 2), it cannot be displaced by the Federal
17 Rules of Civil Procedure.
18

19 Respondents' argument that Rule 23(b)(2) "subsumes" this petition ignores the
20 hierarchy of laws. A procedural vehicle designed for "judicial efficiency" cannot override a
21 non-waivable constitutional mandate. If Rule 23 certification alone could bar habeas
22 petitions, the government could effectively suspend the writ for thousands of people simply
23 by litigating a single, slow-moving nationwide case. Courts have consistently rejected this;
24 habeas relief is inherently personal and cannot be displaced by aggregate litigation. *See*
25 *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).
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1 B. Respondents' Authorities Concern "Conditions of Confinement," Not
2 Physical Liberty.

3 Respondents rely on *Crawford, Gillespie, and McNeil*—cases involving prison-
4 conditions or programmatic equitable challenges¹. These cases are categorically different
5 from the present Petition. In conditions-of-confinement cases, a plaintiff seeks to change a
6 policy (e.g., COVID protocols or library access); in such instances, a class action may be a
7 sufficient substitute.
8

9 However, where a Petitioner challenges the fact or duration of confinement—the
10 "heart of habeas corpus"—individualized review is mandatory. *Preiser*, 411 U.S. at 484.
11 While a prisoner might be stayed from suing over "COVID measures" pending a class action
12 (see *Herrera*), the Supreme Court has never held that a person's right to challenge their
13 physical detention can be stayed indefinitely behind a programmatic class action.
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16 **III. MALDONADO BAUTISTA PROVIDES NO PRESENT RELIEF AND IS**
17 **AN INADEQUATE SUBSTITUTE.**

18 A. Respondents Admit that Bautista Offers No Enforceable Remedy while
19 Simultaneously Disregarding the Declaratory Relief Already Granted.

20 Respondents' brief is internally incoherent. In Section A, they argue Petitioner is
21 "bound" by *Bautista*; yet in Section C, they admit that *Bautista* currently lacks any
22 "preclusive effect" and that they do not intend to provide relief based on its orders. (Govt.
23 Br. at 5-6).
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27 ¹ In *Herrera* and *Griffin*, the government was at least *attempting* to comply with the class-
28 wide orders. Here, Respondents explicitly argue that they **are not obligated to do anything** based on the *Bautista* orders. (Govt. Br. at 5).

1 Respondents are attempting to "pocket-veto" a federal court order. While it is true
2 that a Rule 54(b) final judgment has not yet been entered, the *Bautista* court was
3 unequivocal in its November 25, 2025 Order: "[T]he Court extends the same declaratory
4 relief granted to Petitioners to the Bond Eligible Class as a whole." *Bautista*, Doc. 82 at
5 14. Under 28 U.S.C. § 2201(a), such a declaration has the "force and effect of a final
6 judgment." (emphasis added).
7

8 Despite this, Respondents admit they are refusing to provide bond hearings to class
9 members, claiming the order is not yet "preclusive." (Govt. Br. at 6). This admission is fatal
10 to their argument. If the government is currently refusing to honor the declaratory relief
11 in *Bautista*, then *Bautista* is not an "adequate and effective" substitute for habeas. Petitioner
12 cannot be forced to wait in a cell until January 16, 2026—and likely months beyond—for a
13 "final" order that Respondents have already signaled they will continue to contest. *See*
14 *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).
15
16

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18 B. Judicial Efficiency Cannot Justify Unreasonable Delay of Liberty.

19 Respondents urge this Court to prioritize "consistency of treatment" and "judicial
20 administration" over Petitioner's liberty. (Govt. Br. at 4). But the "first-to-file" doctrine is a
21 rule of discretion, not a jurisdictional bar. Its application here would be "unjust" because it
22 would prioritize docket management over the physical liberty of a human being. *See*
23 *Pacesetter Sys. v. Medtronic*, 678 F.2d 93, 95 (9th Cir. 1982).
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26 **IV. RESPONDENTS' THEORY CREATES A "CATCH-22" DUE PROCESS VIOLATION**

27 Respondents' position creates a procedural trap:
28

- 1 1. They argue Petitioner is a mandatory member of the *Bautista* class with no right to
2 opt-out.
- 3 2. They argued that because he is a class member, he is barred from filing an individual
4 habeas petition;
- 5 3. They admit the class action provides no current mechanism for his release.
6

7 Respondents essentially argue that Petitioner is 'bound' for the purposes of losing his right
8 to sue, but they are 'not bound' for the purposes of providing him relief. This 'one-way'
9 application of Rule 23 is a textbook violation of the Fifth Amendment. This result would
10 leave Petitioner in a "legal vacuum," held without a bond hearing and stripped of any forum
11 to challenge that detention. Such "procedural limbo" is a direct violation of the Fifth
12 Amendment's Due Process Clause. *Boumediene*, 553 U.S. at 779. The government's desire
13 to avoid "parallel litigation" does not give it the power to sacrifice an individual's right to a
14 bond hearing on the altar of administrative convenience.
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18 **V. PETITIONER'S DETENTION IS UNLAWFUL AND VIOLATES DUE**
19 **PROCESS AND THE APA**

20 Because Petitioner is detained under the wrong statutory provision, his ongoing custody
21 is "not in accordance with law" and must be set aside under the APA, 5 U.S.C. § 706(2)(A).
22 Under the correct provision—§ 1226(a)—he is statutorily eligible for bond. The IJ has
23 already made the factual findings necessary to effectuate release: Petitioner is not a danger,
24 and a minimal bond suffices to mitigate any flight risk.
25

26 Prolonged civil detention without a lawful statutory basis also raises grave Due Process
27 concerns. "Freedom from imprisonment—from government custody, detention, or other
28

1 forms of physical restraint—lies at the heart of the liberty” protected by the Fifth
2 Amendment. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Due Process Clause applies
3 to all “persons” in the United States, regardless of status. *Id.* at 693. It cannot be squared
4 with permanently mandatory detention of long-term residents who have never had their
5 custody reviewed under the proper statute.
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8 **VI. SECTION 2243 REQUIRES THE COURT TO GRANT THE WRIT
9 FORTHWITH**

10 Under 28 U.S.C. § 2243, once the return is filed, the Court must “summarily hear and determine
11 the facts, and dispose of the matter as law and justice require.” There is no material factual dispute
12 here:

- 13
- 14 • Petitioner entered without inspection more than 13 years ago and has lived in Arizona ever
15 since;
 - 16 • He was arrested in the interior on September 30, 2025, and placed into § 1229a
17 proceedings;
 - 18 • He has never been processed under expedited removal or inspected at a port of entry;
 - 19 • The IJ denied bond solely based on *Hurtado*’s jurisdictional holding.
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21 Because the legality of Petitioner’s detention turns purely on the correct interpretation of the INA,
22 and because § 1226(a) plainly governs, the Court should grant the writ “forthwith” and declare
23 that Petitioner is detained under § 1226(a), invalidate Respondents’ reliance on § 1225(b)(2), and
24 order that he be provided an individualized bond hearing before an IJ under § 1226(a) and 8
25 C.F.R. §§ 1003.19, 1236.1 within 48 hours.
26

27 **VII. CONCLUSION**

1 The government seeks to transform a class-action lawsuit into a shield against Constitutional
2 accountability. Because *Maldonado Bautista* provides no present relief and cannot
3 extinguish the right to individualized habeas review, this Court should deny the request to
4 dismiss or stay. For the foregoing reasons, and those stated in Petitioner's opening petition,
5 Petition respectfully requests that this Court:
6

- 7 1) Assume jurisdiction over this cause pursuant to 28 U.S.C. § 2241;
- 8 2) Declare that Petitioner is detained under 8 U.S.C. § 1226(a), not § 1225(b)(2);
- 9 3) Order Respondents to provide Petitioner an individualized bond hearing under §
10 1226(a) before an IJ within 48 hours;
- 11 4) Enjoin Respondents from transferring Petitioner outside this District pending
12 compliance;
- 13 5) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act, and
14 on any other basis justified under law; and
- 15 6) Grant such other and further relief as this Court deems just and proper under the
16 circumstances.
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21 RESPECTFULLY SUBMITTED this 17TH day of December 2025.

22 By: s/ Jessica Anleu, Esq.

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