

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 1:25-cv-25805 WILLIAMS

MARTIN VELISARIO  
VAZQUEZ PAXTOR

Petitioner,

vs.

GARRETT RIPA, ICE ERO Miami  
Field Office Director, KRISTI NOEM,  
Secretary, U.S. Dept. of Homeland Security,  
U.S. DEPT. OF HOMELAND SECURITY,  
PAMELA BONDI, U.S. Attorney General,  
EXECUTIVE OFFICE FOR IMMIGRATION  
REVIEW, E.K. CARLTON, Warden of  
Miami Federal Detention Center

Respondents.

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**RESPONDENTS RETURN IN OPPOSITION  
TO THE AMENDED PETITION FOR WRIT OF HABEAS CORPUS**

Respondents, by and through the undersigned Assistant United States Attorney, submit the following return in opposition to the Amended Petition for Writ of Habeas Corpus [ECF No. 6] (Petition). Therein, Petitioner complains that Immigration and Customs Enforcement continues to detain him without providing a meaningful opportunity for custody review the absence of any evidence that he is a flight risk or a danger.” *Id.*, ¶ 11. He demands that the Court “direct Respondents to provide him with a prompt, meaningful, and individualized custody hearing before a neutral adjudicator with authority to grant release.” *Id.*, ¶ 77. However, Petitioner has yet to request a custody redetermination hearing. At his both of his initial master

calendar hearings, Petitioner has appeared pro se and requested additional time to seek representation. Therefore, he has failed to exhaust his administrative remedies.

Respondents further provide the Court with briefing of the effect of the class action certification in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025). Because Petitioner is a putative member of the *Maldonado Bautista* class, the Court should dismiss or, in the alternative, stay this action.

### BACKGROUND

The petitioner, Martin V. Vasquez Paxtor (“Petitioner”), is a native and citizen of Guatemala. *See Exhibit 1*, I-213. Petitioner illegally entered the United States without being admitted or paroled on June 8, 2001. *See id.*

On October 22, 2025, Florida Highway Patrol encountered Petitioner during a traffic stop and transferred him into Immigration and Customs Enforcement (“ICE”) custody. On October 22, 2025, ICE filed a Notice to Appear with the Executive Office for Immigration Review (“EOIR”) alleging that Petitioner was removable based on his illegal entry into the United States without having been admitted or paroled, in violation of INA § 212(a)(6)(A)(i), and that he was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document, in violation of INA § 212(a)(7)(A)(i). *See Exhibit 2*, Notice to Appear.

On November 14, 2025, Petitioner attended his initial master calendar, pro se and requested more time to seek representation. *See Exhibit 3*, Declaration of Deportation Officer Erasmo Suarez. The immigration court scheduled Petitioner’s

next hearing for December 12, 2025. *Id.*; see also Exhibit 4, 11/14/2025 Notice of Hearing. On December 12, 2025, Petitioner attended the second hearing, pro se, and again requested more time to seek representation. See Exhibit 3, Suarez Declaration. The next hearing is scheduled for January 30, 2026. See Exhibit 5, 12/12/2025 Notice of Hearing. Petitioner has not requested a custody redetermination hearing before EOIR. See Exhibit 3, Suarez Declaration. Petitioner remains detained at the Federal Detention Center in Miami, Florida. *Id.*

## ARGUMENT

### I. Petitioner Failed to Exhaust His Administrative Remedies

1. The Court should dismiss the petition for writ of habeas corpus for lack of jurisdiction as Petitioner has failed to exhaust administrative remedies. A habeas petitioner must normally exhaust administrative remedies before seeking federal court intervention. The exhaustion requirement “aims to provide the agency with a chance to correct its own errors, ‘protect[] the authority of administrative agencies,’ and otherwise conserve judicial resources by ‘limiting interference in agency affairs, developing the factual record to make judicial review more efficient, and resolving issues to render judicial review unnecessary.” *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (*Sotomayor, J.*).

2. Here, Petitioner has not availed himself of the administrative remedies available to him, as he has not requested a custody redetermination hearing. Instead, at each appearance before the immigration court, Petitioner has sought additional time in order to obtain representation. The next hearing is scheduled for January 30,

2026. *See Exhibit 5*, 12/12/2025 Notice of Hearing. Petitioner has not requested a custody redetermination hearing before EOIR. *See Exhibit 3*, Suarez Declaration.

3. Indeed, Petitioner only theorizes that he is

*unlikely* to receive a bond hearing that complies with the requirements of the Fifth Amendment. Petitioner is *unlikely* to be afforded an individualized determination regarding danger or flight risk. In addition, it is highly *unlikely* that a neutral adjudicator evaluates whether continued detention is necessary or reasonable, or whether the Petitioner's confinement is not tied to any criminal proceedings, and he has no disqualifying criminal history.

Petition, ¶ 29 (emphasis added).

4. According to Article III, Section 2, of the United States Constitution, federal courts can only consider ongoing cases or controversies. *Lewis v. Continental Bank, Corp.*, 494 U.S. 472, 477-78 (1990). The “case-or-controversy requirement subsists through all stages of federal judicial proceedings.” *Id.* at 477-78. Because Petitioner does not actually challenge a final bond order, and because Petitioner has taken no steps to exhaust his administrative remedies, the Court should deny the instant petition.

## II. Petitioner's APA Claim (Count III) is not Properly Before the Court

5. The APA authorizes a reviewing court to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). “Agency action” includes, in relevant part, “an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act.” 5 U.S.C. § 551(13) (emphasis added). The APA addresses concerns about bureaucratic limbo by mandating that “[w]ith due regard for the convenience and necessity of the parties or their representatives and

within a reasonable time, each agency shall proceed to conclude a matter presented to it.” 5 U.S.C. § 555(b). However, the court’s power to compel agency action under the APA is limited: the APA “empowers a court only to compel an agency ‘to perform a ministerial or non-discretionary act,’ or ‘to take action upon a matter, without directing how it shall act.’” *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (emphasis in original) (quoting Attorney General’s Manual on the Administrative Procedure Act 108 (1947)).

6. Because habeas corpus actions and non-habeas corpus actions have different filing fee requirements, different pleading standards, and different substantive standards, it is generally inappropriate to bring a hybrid action asserting both habeas and non-habeas claims in one case. *King v. Carlton*, No. 21-cv-21634, 2021 U.S. Dist. LEXIS 83778, at \*4 (S.D. Fla. Apr. 30, 2021) (*Bloom, J.*) (finding that petitioner could not circumvent filing fee requirements by filing a “joint or hybrid” habeas action); accord *Burnam v. Marberry*, 313 F. App’x 455, 456 n.2 (3d Cir. 2009) (noting that the district court should not have considered habeas claims and claims under the Privacy Act and Administrative Procedures Act in a single case); *Malcom v. Starr*, No. 20-cv-2503, 2021 U.S. Dist. LEXIS 45387, 2021 WL 931213, at \*2 (D. Minn. Mar. 11, 2021) (“As many other cases from this District have noted, habeas petitions and civil complaints have different and incompatible rules regarding service of process, discovery, and even filing fees.”).

7. For example, Petitioner did not pay the required filing fee for any non-habeas claims. See ECF 1, \$5.00 filing fee receipt no. AFLSDC-1903230. The statute

governing filing fees in district court clearly states: “The clerk of each district court shall require the parties instituting any civil action, suit or proceeding in such court, whether by original process, removal or otherwise, to pay a filing fee of \$350, except that on application for a writ of habeas corpus the filing fee shall be \$5.” 28 U.S.C. § 1914(a). “The payment of the \$5 habeas filing fee relegates this action to habeas relief only. One cannot pay the minimal habeas fee and pursue non-habeas relief.” *Ndudzi v. Castro*, No. 20-CV-0492, 2020 WL 3317107, at \*2 (W.D. Tex. June 18, 2020).

### III. Petitioner Does Not Have Standing to Bring His APA Claim

8. Petitioner also does not have standing to bring his APA claim. By the APA’s terms, it is available only for final agency action “for which there is no other adequate remedy in court.” 5 U.S.C. § 704. Thus, Petitioner’s APA claim is independently barred by this limitation in 5 U.S.C. § 704.

9. In *Trump v. J.G.G.*, the Supreme Court held that where the claims for relief, as here, “necessarily imply the invalidity of their confinement” those claims “must be brought in habeas.” 145 S. Ct. 1003, 1005 (2025) (cleaned up) (internal quotation marks and citation omitted). As noted by Justice Kavanaugh in his concurrence in *J.G.G.*, “given 5 U.S.C. § 704, which states that claims under the APA are not available when there is another adequate remedy in court, I agree with the Court that habeas corpus, not the APA, is the proper vehicle here.” *Id.* at 1007 (Kavanaugh, J. concurring). Here, as in *J.G.G.*, habeas is an “adequate remedy” through which Petitioner can challenge his detention. Even if Petitioner’s APA claim had merit, which it does not, the result would be the same as that in habeas – release

from detention. The Supreme Court's holding is consistent with well-established law that habeas is generally the only possible district court vehicle for challenges brought pursuant to the immigration statutes. *Id.* (citing *Heikkila v. Barber*, 345 U.S. 229, 234-35 (1953)).

**IV. Because Petitioner is a Member of the *Maldonado Bautista* Class, the Court Should Dismiss or, in the Alternative, Stay This Action**

10. The *Maldonado Bautista* court granted class certification under Rule 23(b)(2). *Id.* Prior to class certification, the court entered partial summary judgment for the petitioners in that case but denied the request to enter final judgment because there was a pending motion for class certification. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3289861 (C.D. Cal. Nov. 20, 2025). Accordingly, the court has not issued final class-wide relief. Rather, the court set a January 9, 2026 joint status report deadline and January 16, 2026 status conference. 2025 WL 3288403, at \*10.

11. The *Maldonado Bautista* 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 Bautista*, 2025 WL 3288403, at \*9.

12. Petitioner concedes that he is a member of the *Maldonado Bautista* class. *See* Petition, ¶¶ 4, 5, 7, 8, 27, and 28. Petitioner entered the United States without inspection; he was not apprehended upon arrival; and 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.

13. Because Petitioner is a member of the *Maldonado Bautista* 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); *Horns v. Whalen*, 922 F.2d 835 (4th Cir. 1991) (affirming district court’s decision to decline jurisdiction in a habeas mandamus action where the issue at bar was pending in a class action); *McNeil v. Guthrie*, 945 F.2d 1163, 1165-66 (10th Cir. 1991) (finding that “[i]ndividual suits for injunctive and declaratory relief from alleged unconstitutional prison conditions cannot be brought where there is an existing class action. To permit them would allow interference with the ongoing class action”); *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”); *Rahman v. Blinker*, 2024 WL 4332603, at \*8 (D.D.C. Sept. 27, 2024) (dismissing mandamus and APA claims where the same claims were being litigated in a class action of which the plaintiff was a member).

14. Should the Court find that Petitioner is a member of the *Maldonado Bautista* class, but that dismissal is not warranted, the *Maldonado Bautista* court’s

decision does not have preclusive effect in this matter. As noted above, the *Maldonado Bautista* 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).

15. 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 Bautista*. 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.

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

preclusive effect on *Maldonado Bautista* class members' claims concerning the proper interpretation of 8 U.S.C. § 1225(b)(2)(A)'s mandatory detention provision.

### CONCLUSION

Because Petitioner has failed to request a custody redetermination hearing, he has failed to exhaust his administrative remedies, and this petition should be dismissed. Alternatively, because Petitioner is a putative member of the *Maldonado Bautista* class, the Court should dismiss or, in the alternative, stay this action.

Respectfully submitted,

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**UNITED STATES ATTORNEY**

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