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10 **IN THE UNITED STATES DISTRICT COURT**
 11 **FOR THE DISTRICT OF ARIZONA**

12 Rendy Erick Diaz Mendez,
 13 Petitioner,
 14 v.
 15 Kristi Noem, *et al.*,
 16 Respondents.

No. 2:25-cv-04717-PHX-JJT (JZB)

**RESPONSE TO ORDER TO SHOW
 CAUSE**

17
 18 **I. INTRODUCTION**

19 Respondents, by and through counsel, respond to the Court’s Order to Show Cause
 20 (Doc. 5), and hence to the Petition for a Writ of Habeas Corpus (Doc. 1). Petitioner Rendy
 21 Erick Diaz Mendez is a national of Guatemala who allegedly entered the United States
 22 without inspection. *See* Petition at ¶¶ 2–3. The Court should dismiss the Petition. Petitioner
 23 is a member of a certified non-opt-out class in *Bautista* pursuing the same relief he requests
 24 here, so his Petition should be dismissed. Finally, Respondents also preserve and maintain
 25 their legal position that Petitioner is subject to mandatory detention under 8 U.S.C. §
 26 1225(b)(2).

27 **II. STATUTORY FRAMEWORK.**

28 **A. Petitioner’s claim is already being litigated in the *Bautista* class action.**

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

18 Multiple courts of appeals have upheld dismissals of cases where parallel class
19 actions raise the same or substantially similar issues. *See, e.g., Crawford v. Bell*, 599 F.2d
20 890, 892-93 (9th Cir. 1979) (holding that a district court may dismiss “those portions of
21 [the] complaint which duplicate the [class action’s] allegations and prayer for relief”);
22 *McNeil v. Guthrie*, 945 F.2d 1163, 1165-66 (10th Cir. 1991) (finding that individual suits
23 for injunctive and declaratory relief cannot be brought where a class action with the same
24 claims exists); *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988) (once a class
25 action has been certified, “[s]eparate individual suits may not be maintained for equitable
26 relief”); *Goff v. Menke*, 672 F.2d 702, 704 (8th Cir. 1982) (“If a class member cannot
27 relitigate issues raised in a class action after it has been resolved, a class member should
28 not be able to prosecute a separate equitable action once his or her class has been

1 certified”).

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

6
7 All noncitizens in the United States without lawful status who (1) have
8 entered or will enter the United States without inspection; (2) were not or
9 will not be apprehended upon arrival; and (3) are not or will not be subject
10 to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the
11 Department of Homeland Security makes an initial custody determination.

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

15 Because the *Bautista* class was certified pursuant to FRCP 23(b)(2), *see Bautista*,
16 5:25-cv-1873-SSS-BFM (Doc. 82), at 14, membership in the class is mandatory with no
17 opportunity to opt out. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 361-62 (2011)
18 (stating that Rule 23 “provides no opportunity for (b)(1) or (b)(2) class members to opt out,
19 and does not even oblige the [d]istrict [c]ourt to afford them notice of the action”);
20 *Sanderson v. Whoop, Inc.*, No. 3:23-CV-05477-CRB, 2025 WL 744036, at *15 (N.D. Cal.
21 Mar. 7, 2025) (noting that “23(b)(2) class members have no opportunity to opt out”).
22 Members of FRCP 23(b)(2) classes may not bring individual suits over the same issues
23 covered by the class action. *See Crawford v. Bell*, 599 F.3d 890 (9th Cir. 1979); *see also*
24 *Gillespie v. Crawford*, 858 F.2d 1101, 1103 (5th Cir. 1988); *McNeil v. Guthrie*, 945 F.2d
25 1163, 1165 (10th Cir. 1991); *Stewart v. Asuncion*, 2016 U.S. Dist. LEXIS 162036 at *5–6
26 (C.D. Cal. Oct. 26, 2016) (collecting cases). “Individual members of the class . . . may
27 assert any equitable or declaratory claims they have, but they must do so by urging further
28 action through the class representative and attorney, including contempt proceedings, or
by intervention in the class action.” *Gillespie*, 858 F.2d at 1165.

1 The *Bautista* court granted partial summary judgment to the named plaintiffs,
2 *Bautista*, 5:25-cv-1873-SSS-BFM (Doc. 81) (“Partial MSJ Ruling”), but the court did not
3 order any relief at that time. On December 18, 2025, the *Bautista* court granted a Motion
4 to Clarify, and in doing so, it amended its previous order to clarify that the Partial MSJ
5 Ruling applies to the class as well. *See Bautista*, 5:25-cv-1873-SSS-BFM (Doc. 92). The
6 case is on appeal.¹ As a member of the certified class, Petitioner is entitled to and bound
7 by any relief that the *Bautista* court ultimately grants, including any applicable injunctive
8 relief. Accordingly, this Court should dismiss his claims seeking release or a bond hearing
9 because they are subsumed within the issues being litigated in *Bautista*. To do otherwise
10 would undermine what Rule 23 was intended to ensure: consistency of treatment for
11 similarly situated individuals. *See Howard v. Aetna Life Ins. Co.*, No.
12 CV2201505CJCMRWX, 2024 WL 1098789, at *11 (C.D. Cal. Feb. 27, 2024). It would
13 also open the floodgates of parallel litigation in district courts all over the country, which
14 could ultimately threaten the certification of the underlying class by creating differences
15 among the class members. The proper way for Petitioner to request relief for his claim is
16 “by urging further action through the class representative and attorney, including contempt
17 proceedings, or by intervention in the class action,” which he is perfectly free to do.
18 *Gillespie*, 858 F.2d at 1165.

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

20 Petitioner argues that his detention is unlawful because Respondents denied him a
21 bond hearing, which Respondents did because of an immigration judge’s finding that
22 Respondent was categorically ineligible for release. Petitioner argues that denying him a
23 bond hearing constitutes a violation of his due process rights. Respondents maintain that
24 Petitioner is an “applicant for admission” who is “seeking admission” to the United States.

25 ¹ In its Order to Show Cause, the Court directed Respondents to “explain whether they are
26 obligated to provide [Petitioner] a bond hearing based on the *Bautista* orders or if an
27 additional order from this Court is required to entitle Petitioner to a bond hearing.” Doc. 5
28 at 2. The *Bautista* court did not order Respondents to conduct any bond hearings, so if the
Court determines that a bond hearing is warranted, it will need to order one.

1 Respondents argue that all such people must be detained for removal proceedings under 8
2 U.S.C. 1225(b)(2)(A) in most circumstances. *See* 8 U.S.C. § 1225(a)(3) (“All aliens . . .
3 who are applicants for admission or otherwise seeking admission or readmission to or
4 transit through the United States *shall be inspected* by immigration officers.”) (emphasis
5 added); 8 U.S.C. § 1225(a)(1) (“An alien present in the United States who has not been
6 admitted or who arrives in the United States . . . shall be deemed for purposes of this chapter
7 an applicant for admission.”); 8 U.S.C. § 1225(b)(2)(A) (“[I]n the case of an alien who is
8 an applicant for admission, if the examining immigration officer determines that an alien
9 seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall
10 be detained”).²

11 For the foregoing reasons, Respondents respectfully request that this Court deny the
12 Petition for a Writ of Habeas Corpus (Doc. 1).

13 Respectfully submitted on December 19, 2025.

14
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20 Assistant United States Attorney
21 *Attorneys for Respondents*

21 ² In response to the flood of habeas petitions across the country on this issue, immigration
22 judges have started to issue alternative holdings in bond hearings, in which they determine
23 what bond order they would issue if they were found to have jurisdiction to issue a bond.
24 An immigration judge has issued such an alternative holding for Petitioner. *See* Petition,
25 Exhibit A, at 2. In similar cases where this Court has granted relief, the Court has ordered
26 Respondents to give effect to the alternative holding, ordering release “in compliance with
27 the IJ’s alternative bond determination.” *See Davalos v. Noem*, No. cv-25-04459-PHX-
28 SHD (ASB) (Doc. 14) at 4. Respondents have recently informed the undersigned that ICE’s
Enforcement and Removal Operations team (“ERO”) does not consider the immigration
judges’ alternative holdings to have any practical effect whenever the immigration judge
has checked the box labeled “denied” on the bond form, and hence that orders from this
Court telling them to give effect to the alternative holding are a nullity.

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 2025, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/M. Simeonoff
United States Attorney's Office