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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

Lazaro MALDONADO BAUTISTA, *et al.*, on behalf of themselves and others similarly situated,

Plaintiffs-Petitioners,

v.

Kristi NOEM, Secretary, Department of Homeland Security, *et al.*,

Defendants-Respondents.

Case No. 5:25-cv-01873-SSS-BFM

NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES

Hearing
Date: October 17, 2025
Time: 2:00pm
Courtroom: 2
Judge: Sunshine S. Sykes

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NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION:

To all Parties and their attorneys of record: Please take notice that at 2:00pm October 17, 2025, over a Zoom conference, Plaintiffs-Petitioners Lazaro Maldonado Bautista, Ana Franco Galdamez, Ananias Pascual, and Luiz Alberto De Aquino De Aquino (Plaintiffs) will, and hereby do, move this Court for an order certifying two classes of plaintiffs as defined herein, appointing named Plaintiffs as class representatives, and appointing Plaintiffs' counsel as class counsel. The proposed classes are 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.

- **Adelanto Class**: All noncitizens in the United States without lawful status who (1) have or will have proceedings before the Adelanto Immigration Court; (2) have entered or will enter the United States without inspection; (3) were not or will not be apprehended upon arrival; and (4) 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 noncitizen is scheduled for or requests a bond hearing.

This motion is made pursuant to Rule 23 of the Federal Rules of Civil Procedure on the grounds that Plaintiffs meet the requirements for class certification under Rule 23(a) and Rule 23(b)(2).

The motion is based on this Notice of Motion; the supporting Memorandum of Points and Authorities; the supporting declarations; all documents and pleadings

on file in this action, including the Amended Complaint for Declaratory and Injunctive Relief; and any additional papers, evidence, and argument that Plaintiffs may file or submit in support.

This motion is made following the conference of counsel pursuant to L.R. 7-3. The conference took place on August 4, 2025 by video conference. Present at the conference were Plaintiffs' attorneys Matt Adams, Leila Kang, Aaron Korthuis, My Khanh Ngo, and Niels Frenzen and Defendants' attorneys Marie Feyche and Michael Stone. The conference lasted approximately ten minutes. The parties discussed Plaintiffs' motions for class certification and motion for summary judgment and were unable to reach a resolution to eliminate the necessity of a hearing on this motion. See Decl. of Matt Adams ¶¶ 12-15.

DATED: August 11, 2025

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/s/ Aaron Korthuis
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INTRODUCTION

Plaintiffs-Petitioners (Plaintiffs), on behalf of themselves and the classes they seek to represent, challenge new policies subjecting them to mandatory immigration detention and depriving them of the opportunity to be released on bond. These policies of Defendants-Respondents (Defendants) violate the Immigration and Nationality Act (INA), its regulations, the Administrative Procedure Act (APA), and the Due Process Clause of the Fifth Amendment. Named Plaintiffs are four immigrants who were living in the United States before being "arrested and detained pending a decision on whether [they are] to be removed from the United States," 8 U.S.C. § 1226(a), and are thus entitled to an individualized custody determination by the Department of Homeland Security (DHS), and, if not released, by an immigration judge under that discretionary detention provision.

A separate mandatory detention provision, 8 U.S.C. § 1225(b)(2), applies only "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). However, since June 2025, immigration judges (IJs) at the Adelanto Immigration Court have implemented a policy of categorically denying bond for Plaintiffs and others similarly situated—even where they find an individual not to be a flight risk or danger—because they believe they lack jurisdiction to conduct bond hearings under § 1226(a).

Similarly, since July 2025, U.S. Immigration and Customs Enforcement (ICE) described how DHS has adopted a nationwide policy of applying § 1225(b)(2) to all individuals who have not been admitted into the United States, including Plaintiffs, thus rendering them ineligible for bond. As a result, across the country, thousands of individuals apprehended and detained by ICE inside the United States were stripped overnight of their ability to seek release on bond and are instead now subject to mandatory detention. Notably, both DHS and the Adelanto Immigration Court have departed from their own prior, decades-long interpretation of the law. These new policies deprive Plaintiffs and similarly situated detained noncitizens of their statutory and constitutional rights, and violate the APA.

Plaintiffs bring this action to challenge both DHS's nationwide policy and the Adelanto Immigration Court's local policy of applying 8 U.S.C. § 1225(b)(2) to all persons deemed inadmissible because they are present without admission, i.e., they originally entered the country without inspection. The legality of these policies can and should be resolved on a classwide basis—nationwide as to DHS's policy and regionally for those subject to the Adelanto Immigration Court's policy—to ensure a uniform resolution. Classwide treatment is especially appropriate here where thousands and potentially tens of thousands of people may be subject to mandatory detention throughout their removal proceedings. Most of these individuals are unrepresented and face enormous challenges litigating pro se in immigration and

federal courts. Indeed, one district court in the Ninth Circuit has already certified a comparable regional class challenging another immigration court's policy of denying bond hearings. *See Rodriguez Vazquez v. Bostock*, 349 F.R.D. 333, 364–65 (W.D. Wash. 2025).

Accordingly, Plaintiffs seek to represent the following two classes of noncitizens:

> 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.
>
> Adelanto Class: All noncitizens in the United States without lawful status who (1) have or will have proceedings before the Adelanto Immigration Court; (2) have entered or will enter the United States without inspection; (3) were not or will not be apprehended upon arrival; and (4) 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 noncitizen is scheduled for or requests a bond hearing.

Each proposed class satisfies the requirements set forth in Federal Rules of Civil Procedure 23(a) and 23(b)(2). Plaintiffs accordingly request that the Court certify the above classes, appoint them as the representatives for both classes, and appoint the undersigned counsel as class counsel.

BACKGROUND

I. Plaintiffs' Legal Claims

Adjudicating a motion for class certification does not call for "an in-depth examination of the underlying merits," but a court may nevertheless analyze the merits to the extent necessary to determine the propriety of class certification. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 983 n.8 (9th Cir. 2011); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–52 (2011). Plaintiffs and proposed class members present legal challenges to two uniform agency policies.

A. DHS's No-Bond Policy

The first classwide policy presented in this case concerns DHS's new interpretation of its detention authority, which violates the INA's detention scheme, the APA, and due process.

The policy concerns two statutory detention provisions. First, 8 U.S.C. § 1225(b) governs inspection "at the Nation's borders and ports of entry." *Jennings*, 583 U.S. at 287. Second, § 1226(a) applies to those who are "present in the country" but subject to removal proceedings, "includ[ing] [noncitizens] who were inadmissible at the time of entry." *Id.* at 288. Noncitizens determined to be detained under § 1225(b) are subject to mandatory detention. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV), (b)(2)(A). As a result, DHS does not consider such people for release on bond, and they are not entitled to a bond hearing before an IJ. By contrast,

individuals who are detained under § 1226(a) are entitled to individual custody determinations by DHS, and if not released, are entitled to a bond hearing before an IJ. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). At that bond hearing, they may present evidence of their ties to the United States, lack of criminal history, and other factors that show they pose neither a flight risk nor a danger to the community. *See generally Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).

Consistent with the statutory framework, noncitizens who entered the United States without inspection, were not immediately apprehended pursuant to § 1225(b) (or subjected to expedited removal under § 1225(b)(1)), and are not subject to a final order of removal, are generally detained under § 1226. As a result, unless they have an enumerated criminal offense subjecting them to § 1226(c), they are entitled to bond hearings under § 1226(a) before an IJ to determine whether their detention is justified by danger or flight risk. DOJ and DHS have acted in accordance with these principles since the relevant sections of the INA were enacted. *See* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997); 8 C.F.R. § 1003.19(h)(2); *Matter of R-A-V-P-*, 27 I. & N. Dec. 803–04 (BIA 2020); Decl. of Sydney Maltese Ex. A (unpublished BIA decisions applying § 1226(a) to persons who entered without inspection); Decl. of Lisa Knox ¶¶ 6–7; Decl. of Karla Navarette ¶ 5; Decl. of Guadalupe Garcia ¶ 5; Decl. of Keli Reynolds ¶ 7; Decl. of Veronica Barba ¶ 6; Decl. of Emily Robinson ¶ 10; Decl. of Doug Jalaie ¶ 8.

However, on July 8, 2025, ICE, "in coordination with" the Department of Justice, announced DHS's policy that rejected this well-established understanding of the statutory and regulatory framework and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States without inspection shall now be deemed subject to mandatory detention under § 1225(b)(2)(A). *See* Dkt. 5-2 at Ex. I. The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

Nationwide, DHS now insists that its July 8 policy renders all persons who entered without inspection subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and thus ineligible for bond. Overnight, thousands of individuals lost the ability to seek release on bond by ICE. The implications of this shift are grave: any time one of the thousands of persons present in the United States without admission is apprehended, that person would never be considered for release on bond.

While some IJs in other immigration courts have continued to grant bond to people in Plaintiffs' shoes, DHS now implements its new policy by filing Form EOIR-43, Notice of Service Intent to Appeal Custody Redetermination. The notice not only appeals any IJ decision granting bond but also asserts the right to an

automatic stay of the bond decision during the appeal pursuant to 8 C.F.R. § 1003.19(i)(2). That "auto-stay" provision of 8 C.F.R. § 1003.19(i)(2) bars noncitizens from posting bond and being released even in jurisdictions where IJs have rejected DHS's unlawful reinterpretation of § 1225(b)(2) and granted bond. *See* Decl. of Juan Gonzalez Martinez ¶¶ 9, 11–12; Decl. of Roxana Cortes-Mills ¶¶ 5–7; Pet. for Writ of Habeas Corpus, *Herrera Torralba v. Knight*, No. 2:25-cv-01366 (D. Nev. July 28, 2025), Dkt. 5 ¶¶ 57, 64, 65; Resp. to Pet. for Writ of Habeas Corpus, *Mayo Anicasio v. Kramer*, No. 4:25-cv-03158-JFB-RCC (D. Neb. Aug. 7, 2025), Dkt. 19 at 2–4.

The legality of DHS's no-bond policy is a question that should be resolved on a classwide basis. Class certification is particularly warranted in this case because the policy's consequences are sweeping. DHS now refuses to consider bond for noncitizens and, in bond hearings, argues to IJs that putative class members may not be considered for release on bond; further, when IJs disagree with the new policy and order release on bond, DHS invokes the automatic stay provision, thus overriding the IJ's bond decision to keep the putative class member detained.

In a few isolated instances, individuals fortunate enough to have counsel have obtained bond hearings through individual habeas petitions. *See, e.g.*, *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp. 3d ----, 2025 WL 2084238, at *8 (D. Mass. July 24, 2025); *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299,

at *8–9 (D. Mass. July 7, 2025); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2267803 (S.D.N.Y. Aug. 8, 2025). But the majority of detained noncitizens lack immigration counsel,[1] let alone access to counsel willing and able to file a federal habeas petition. Class treatment is therefore necessary to address the legality of a nationwide policy that impacts so many immigrants in the same manner: depriving them of consideration for release on bond. It would also conserve judicial resources by avoiding piecemeal habeas litigation throughout the country in a manner that excludes those who lack representation.

B. The Adelanto Immigration Court's Bond Denial Policy

This case additionally challenges a second classwide policy impacting individuals with removal proceedings before the Adelanto Immigration Court. Before ICE announced its nationwide policy, on May 22, 2025, the Board of Immigration Appeals (BIA) issued an unpublished decision holding that all noncitizens who entered the United States without admission or parole are ineligible for IJ bond hearings under 8 U.S.C. § 1225(b)(2)(A). Dkt. 5-2 at Exh. J. The IJs in the Adelanto Immigration Court adopted that position soon thereafter.

[1] Among all immigration court cases completed in 2024 of those who remained in custody, over 76 percent—69,022 out of 90,296 cases—were unrepresented. *See Outcomes of Immigration Court Proceedings*, TRAC Immigration (data through June 2025), https://tracreports.org/phptools/immigration/closure/ (mark "All Cases" and "All Outcomes," select "2024" under "Fiscal Year Completed," select "Detained" under "Custody," and select "Not Represented" under "Represented").

These IJs now hold that they lack jurisdiction to determine bond for any person who has entered the United States without inspection, even if that person has resided here for months, years, or even decades. *See* Maltese Decl. Exs. D–G (Named Plaintiffs' IJ bond decisions); Barba Decl. ¶ 6; Garcia Decl. ¶¶ 3–4; Knox Decl. ¶¶ 3–5, 7; Navarette Decl. ¶¶ 3–4; Garcia Decl. ¶¶ 3–4; Reynolds Decl. ¶¶ 3–6; Barba Decl. ¶¶ 3–5; Robinson Decl. ¶¶ 6–9; Jalaie Decl. ¶¶ 3–6. Instead, consistent with the unpublished BIA decision and DHS's new policy, the IJs deem such people subject to mandatory detention under § 1225(b)(2)(A). *See* Barba Decl. ¶ 6; Garcia Decl. ¶¶ 3–4; Knox Decl. ¶¶ 3–5, 7; Navarette Decl. ¶¶ 3–4; Garcia Decl. ¶¶ 3–4; Reynolds Decl. ¶¶ 3–6; Barba Decl. ¶¶ 3–5; Robinson Decl. ¶¶ 6–9; Jalaie Decl. ¶¶ 3–6. Plaintiffs' experiences reflect the Adelanto Immigration Court's unlawful practice. *See* Maltese Decl. Exs. D–G (Named Plaintiffs' IJ bond decisions); Decl. of Lazaro Maldonado Bautista ¶ 9; Decl. of Ana Franco Galdamez ¶ 9; Decl. of Ananias Pascual ¶ 9; Decl. of Luiz Alberto De Aquino De Aquino ¶ 7.[2]

As a result of these IJs' erroneous interpretation, scores of individuals and likely hundreds, if not thousands more in the future, will be denied any opportunity for release under bond. *See* Knox Decl. ¶¶ 8–10; Garcia Decl. ¶¶ 6–7; Reynolds Decl.

[2] A visiting IJ who is not a member of the Adelanto Immigration Court, but who hears some cases there through video conference, has not adopted DHS's interpretation and has continued to provide bonds for detained noncitizens who entered without inspection. Jalaie Decl. ¶ 7. However, ICE has refused to release persons who are granted and post such bonds. *Id.*

¶¶ 8–9; Barba Decl. ¶¶ 7–8; Robinson Decl. ¶¶ 12–14. That denial forces them to defend against their removal while detained under punitive conditions and separated from their families and communities. Indeed, since the filing of this class complaint, at least one other group of petitioners has already challenged the denial of bond consideration by Adelanto IJs. *See Ceja Gonzalez v. Noem*, No. 5:25-cv-02054 (C.D. Cal. filed Aug. 7, 2025). This policy, too, should be resolved on a classwide basis to avoid piecemeal litigation and conserve judicial resources.

II. Plaintiffs' Factual Background

Plaintiffs Lazaro Maldonado Bautista, Ana Franco Galdamez, Ananias Pascual, and Luiz Alberto De Aquino De Aquino (named Plaintiffs) are noncitizens and longtime residents of the United States who are harmed by Defendants' new policies. Maldonado Decl. ¶¶ 3, 7–11; Franco Decl. ¶¶ 3, 9, 11–15; Pascual Decl. ¶¶ 3, 9, 11–13; De Aquino Decl. ¶¶ 3, 9.

All four Plaintiffs were detained during ICE raids and enforcement actions in the Los Angeles area, and were detained at the Adelanto ICE Processing Center in Adelanto, California. *See* Maldonado Decl. ¶¶ 2, 5, 7; Franco Decl. ¶¶ 2, 7; Pascual Decl. ¶¶ 2, 7; De Aquino Decl. ¶¶ 2, 3, 5–6. They are charged with, *inter alia*, being present without admission (having entered the United States without inspection). *See* Maldonado Decl. ¶ 8; Franco Decl. ¶ 8; Pascual Decl. ¶ 8; De Aquino Decl. ¶ 6. They were all denied consideration for release on bond under ICE's new policy, and,

when they requested a custody redetermination before the Adelanto Immigration Court, in each case an IJ found them ineligible for release on bond. *See* Maldonado Decl. ¶¶ 9–10; Franco Decl. ¶¶ 9–10; Pascual Decl. ¶¶ 9–10; De Aquino Decl. ¶¶ 7–8. The IJs reasoned that, notwithstanding the years or even decades Plaintiffs have lived in the United States, each Plaintiff is nevertheless an "applicant for admission" who is "seeking admission" and subject to mandatory detention under § 1225(b)(2)(A). *See* Maldonado Decl. ¶ 9; Franco Decl. ¶ 9; Pascual Decl. ¶ 9; De Aquino Decl. ¶ 7. As a result, Plaintiffs faced the prospect of months, or even years, in immigration custody, separated from their families and community. *See* Maldonado Decl. ¶¶ 10–12; Franco Decl. ¶¶ 11–12; Pascual Decl. ¶¶ 10–13; De Aquino Decl. ¶ 9.

To seek recourse for these irreparable and ongoing harms, Plaintiffs filed a habeas petition challenging their unlawful detention and sought a temporary restraining order, which this Court granted on July 28, 2025. *See* Dkt. 14. The Court ordered a hearing for August 22, to determine whether to provide preliminary injunctive relief for Plaintiffs. *Id.* at 13. Plaintiffs promptly filed an amended class complaint and now seek class certification. *See* Dkt. 15.

ARGUMENT

A plaintiff whose suit satisfies the requirements of Federal Rule of Civil Procedure 23 has a "categorical" right "to pursue his claim as a class action." *Shady*

Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 398 (2010). The "suit must satisfy the criteria set forth in [Rule 23(a)] (*i.e.*, numerosity, commonality, typicality, and adequacy of representation), and it also must fit into one of the three categories described in subdivision (b)." *Id.* As shown below, Plaintiffs' proposed classes satisfy all four of Rule 23(a)'s requirements. Plaintiffs further demonstrate that Defendants "ha[ve] acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole," as required under Rule 23(b)(2). "[A] single injunction or declaratory judgment would provide relief to each member of the class," and therefore certification is appropriate under Rule 23(b)(2). *See Wal-Mart Stores*, 564 U.S.at 360.

Courts in the Ninth Circuit, including this Court, have routinely certified class actions challenging immigration policies and practices, including those that impact detained noncitizens. *See, e.g.*, *Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 812 (9th Cir. 2020) (affirming certification of class challenging the legality of ICE's practice of relying solely on electronic database checks to determine probable cause for detainment); *Hernandez Roman v. Wolf*, 829 F. App'x 165, 173 (9th Cir. 2020) (affirming provisional certification of a class of all individuals at the Adelanto detention facility based on risk from COVID-19); *Kidd v. Mayorkas*, 343 F.R.D. 428, 443 (C.D. Cal. 2023) (certifying two classes of individuals subject to ICE's

enforcement policies that result in unreasonable searches and seizures in arresting and detaining immigrants in and near their own homes in the Los Angeles region); *Franco-Gonzales v. Napolitano*, No. CV 10-02211 DMG (DTBX), 2011 WL 11705815, at *16 (C.D. Cal. Nov. 21, 2011) (certifying class and subclasses of detained individuals in removal proceedings with serious mental disorder or defect rendering them incompetent to represent themselves); *Rodriguez Vazquez*, 349 F.R.D. at 364–65 (certifying classes of noncitizens detained at the Northwest ICE Processing Center subject to Tacoma Immigration Court's no-bond policy and who have pending appeal over bond denial before the BIA).

These cases demonstrate the propriety of Rule 23(b)(2) certification in actions challenging immigration policies that deprive individuals of the benefits or rights to which they are entitled. Indeed, the rule was intended to "facilitate the bringing of class actions in the civil-rights area," particularly those seeking declaratory or injunctive relief. Charles Alan Wright & Arthur R. Miller, 7AA *Federal Practice and Procedure* § 1775 (3d ed. 2022). Claims brought under Rule 23(b)(2) often involve issues affecting vulnerable individuals, like Plaintiffs, who would be unable to present their claims absent class treatment. Additionally, the core issues in these types of cases generally present pure questions of law, rather than disparate questions of fact, and thus are well suited for resolution on a classwide basis.

I. The Proposed Classes Meet the Requirements of Rule 23(a).

A. The Classes Are Numerous and Joinder Would Be Impracticable.

The proposed classes easily meet Rule 23(a)(1)'s requirement that a class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "'[I]mpracticability' does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Ests., Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) (citation omitted). "Numerousness—the presence of many class members—provides an obvious situation in which joinder may be impracticable, but it is not the only such situation . . . ." William B. Rubenstein, 1 *Newberg & Rubenstein on Class Actions* § 3:11 (6th ed. 2022) (footnote omitted). "Thus, Rule 23(a)(1) is an impracticability-of-joinder rule, not a strict numerosity rule. It is based on considerations of due process, judicial economy, and the ability of claimants to institute suits." *Id.* (footnote omitted). Determining numerosity "requires examination of the specific facts of each case and imposes no absolute limitations." *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980).

While "no fixed number of class members" is required, *Perez-Funez v. INS*, 611 F. Supp. 990, 995 (C.D. Cal. 1984), courts have generally found "the numerosity requirement satisfied when a class includes at least 40 members," *Rannis v. Recchia*, 380 F. App'x 646, 651 (9th Cir. 2010); *see also Ambrosia v. Cogent Commc'ns, Inc.*,

312 F.R.D. 544, 552 (N.D. Cal. 2016) ("[A]s a general matter, a class greater than forty often satisfies the requirement"). "'[W]here the exact size of the class is unknown but general knowledge and common sense indicate that it is large, the numerosity requirement is satisfied.'" *Kidd*, 343 F.R.D. at 437 (quoting *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 370 (C.D. Cal. 1982)).

Each proposed class meets the numerosity requirement. EOIR's own data show that between July 2021 and June 2025, DHS charged more than 87,000 noncitizens as being removable for being present without admission (having entered without inspection). Decl. of David Hausman ¶ 7. In more than 36,400 of those cases, IJs held bond hearings and granted release on bond. *Id*. ¶ 8. This means that over the previous four-year period, tens of thousands of individuals were charged with entry without inspection and not only were eligible for bond hearings, but also were granted release on bond. EOIR data also show that over the same period, the Adelanto Immigration Court docketed more than 1,200 cases where DHS charged the noncitizen for entering without inspection, and IJs granted release on bond in over 300 of those cases. *Id*. ¶ 9. These figures place each class far above the threshold of forty members, and the classes will likely grow considering the recent increase in immigration enforcement both nationally and regionally. *See, e.g.*, *Vasquez Perdomo v. Noem*, No. 25-4312, --- F.4th ----, 2025 WL 2181709, at *2 n.2, 3 & n.3

(9th Cir. Aug. 1, 2025) (describing "Operation At Large" in Los Angeles and statements of administration officials regarding a 3,000 daily arrest quota).

Notably, Defendants are aware of the exact numbers for both proposed classes at any given time, as they are "uniquely positioned to ascertain class membership," *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999), but the public data and anecdotal evidence alone are sufficient to show numerosity.

Both proposed classes are also comprised of many unknown, unnamed future members who will be subjected to Defendants' unlawful no-bond policies, making joinder even more impracticable. *See Doe v. Wolf*, 424 F. Supp. 3d 1028, 1040 (S.D. Cal. 2020) ("[W]here the class includes unnamed, unknown future members, joinder of such unknown individuals is impracticable and the numerosity requirement is therefore met, regardless of class size." (citation omitted)); *Ali v. Ashcroft*, 213 F.R.D. 390, 408–09 (W.D. Wash. 2003) (same). When a "class's membership changes continually over time, that factor weighs in favor of concluding that joinder of all members is impracticable." *A.B. v. Haw. St. Dep't of Educ.*, 30 F.4th 828, 838 (9th Cir. 2022).

In addition to class size and future class members, there are several other factors that make joinder impracticable in the present case, such as judicial economy, geographic dispersion of class members, financial resources of class members, and the ability of class members to bring individual suits. *See* Rubenstein, *supra*, § 3:12.

The proposed class members are detained by definition, and not currently able to work to support themselves or their family. Furthermore, detention poses numerous barriers to accessing counsel, imposing a significant barrier for any individual seeking to challenge Defendants' policies through individual suits. *See Rodriguez Vazquez*, 349 F.R.D. at 352 ("[G]iven that many of the putative plaintiffs have limited resources, they often decline counsel 'because they know there is no hope to obtain release'" (citation modified)).

Accordingly, though the total number of putative class members is not known with precision, at a minimum there are thousands of Bond Eligible Class members and hundreds of Adelanto Class members. The proposed classes thus well exceed the sizes that courts have found sufficient for purposes of Rule 23(a)(1). *See, e.g.*, *Jordan v. Los Angeles Cnty.*, 669 F.2d 1311, 1319 (9th Cir. 1982) (class of thirty-nine), *vacated on other grounds*, 459 U.S. 810 (1982); *Franco-Gonzalez*, 2011 WL 11705815, at *9 (class of fifty-five).

B. Each of the Classes Shares Common Questions of Law and Fact.

The proposed classes satisfy commonality because each presents "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "The commonality requirement is 'construed permissively.'" *Rodriguez Vazquez*, 349 F.R.D. at 353 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998), *overruled on other grounds*, *Wal-Mart Stores*, 564 U.S. at 338). "Courts have found that a

single common issue of law or fact is sufficient to satisfy the commonality requirement." *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 257 (C.D. Cal. 2008)); *see also, e.g.*, *Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010) ("[T]he commonality requirements asks [sic] us to look only for some shared legal issue or a common core of facts."). Commonality exists if class members' claims all "depend upon a common contention . . . of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart*, 564 U.S. at 350. Therefore, the critical issue for class certification "is not the raising of common 'questions' . . . but rather, the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* (citation omitted).

Here, both proposed classes satisfy the commonality requirement. The proposed Bond Eligible Class members share a single injury caused by DHS's new policy: all persons who entered the United States without inspection and who are not apprehended upon arrival are now deemed subject to the mandatory provision under § 1225(b)(2)(A) and not considered for release on bond. Similarly, the Adelanto Class members all suffer the same injury caused by the Adelanto Immigration Court's policy of categorically denying release on bond. For both classes, Plaintiffs are asking the Court to consider at least one common, core legal question: whether

Defendants' policy and practice of applying the mandatory detention statute to the classes to deny consideration for bond violates the INA, its implementing regulations, the APA, and the Due Process Clause. *See Rodriguez Vazquez*, 349 F.R.D. at 353. Those common questions are capable of classwide resolution through, at a minimum, vacatur of DHS's and the Adelanto Immigration Court's policies and through declaratory judgments making clear that (1) the Bond Eligible Class members are not subject to mandatory detention under § 1225(b)(2)(A) but rather discretionary detention under § 1226(a); and (2) the Adelanto Class members are entitled to a bond hearing before the IJ, as demonstrated in the concurrently filed motion for partial summary judgment.

The fact that putative class members may have varying circumstances does not defeat commonality among them. Notably, Plaintiffs are not asking this Court to determine the merits of their or any putative class member's request for release on bond. Therefore, the core common questions presented do not necessitate a substantial individual inquiry that would prevent a "classwide resolution." *Wal-Mart*, 564 U.S. at 350; *see also, e.g.*, *Evon v. L. Offs. of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012) ("Where the circumstances of each particular class member vary but retain a common core of factual or legal issues with the rest of the class, commonality exists." (citation omitted)); *Walters v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998) (finding commonality based on plaintiffs' common challenge to INS

procedures, and noting that "[d]ifferences among the class members with respect to the merits of their actual document fraud cases . . . are simply insufficient to defeat the propriety of class certification"); *Orantes-Hernandez*, 541 F. Supp. at 370 (granting certification in challenge to common government practices in asylum cases, even though the outcome of individual asylum cases would depend on individual class members' varying entitlement to relief); *Rodriguez Vazquez*, 349 F.R.D. at 354 (rejecting the government's arguments that the impact of individual class members' circumstances on bond determinations could defeat commonality where there was a common legal question driving the litigation about whether class members were properly subject to mandatory detention under § 1225(b)(2)).

Moreover, the commonality standard is even more liberal in a civil rights suit such as this one, which "challenges a system-wide practice or policy that affects all of the putative class members." *Gonzalez*, 975 F.3d at 808 (citation omitted); *see also Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) ("[I]n a civil-rights suit, that commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members"), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499, 504–05 (2005). Indeed, "class suits for injunctive or declaratory relief" like this case, "by their very nature often present common questions satisfying Rule 23(a)(2)." Wright & Miller, *supra*, § 1763.

In sum, the relief Plaintiffs seek will resolve the litigation as to all class members "in one stroke," *Wal-Mart*, 564 U.S. at 350, and Plaintiffs thus satisfy the commonality requirement of Rule 23(a)(2).

C. Named Plaintiffs' Claims Are Typical of the Claims of the Proposed Class Members.

The named Plaintiffs meet Rule 23(a)(3)'s requirement that their claims are "typical of the claims . . . of the class" as a whole. Fed. R. Civ. P. 23(a)(3). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (citation omitted).

Meeting this requirement usually follows from the presence of common questions of law. *See Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982) ("The commonality and typicality requirements of Rule 23(a) tend to merge."). To establish typicality, "a class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Id.* at 156 (citation and internal quotation marks omitted); *see also Parsons*, 754 F.3d at 685 (finding typicality requirement met where class representatives "allege the same or similar injury as the rest of the putative class; and they allege that this injury is a result of a course of conduct that is not unique to any of them; and they allege that the injury follows from the course of conduct at the center of the class claims"

(citation, internal quotation marks, and alteration omitted)). As with commonality, factual differences among class members do not defeat typicality provided there are legal questions common to all class members. *See LaDuke v. Nelson*, 762 F.2d 1318, 1332 (9th Cir. 1985) ("The minor differences in the manner in which the representative's Fourth Amendment rights were violated does not render their claims atypical of those of the class." (footnote omitted)).

Typicality is satisfied for both proposed classes. For the Bond Eligible Class, Plaintiffs and all class members all suffer from the same injury of detention without any opportunity to seek release on bond. *See* Maldonado Decl. ¶ 9; Franco Decl. ¶ 9; Pascual Decl. ¶ 9; De Aquino Decl. ¶ 7. Plaintiffs seek declaratory relief from this Court establishing that their detention, as well as that of proposed Bond Eligible Class members, is governed by § 1226(a), which authorizes ICE to consider release on conditional parole or bond. *See* Am. Compl., Dkt. 15 at 31. Plaintiffs also seek vacatur of DHS's new nationwide policy subjecting the Bond Eligible Class to mandatory detention. *See id.* at 32. Similarly, for the Adelanto Class, Plaintiffs and all class members all suffer from the same injury of detention without any opportunity to seek an individual custody determination from the IJ. *See* Maldonado Decl. ¶ 9; Franco Decl. ¶ 9; Pascual Decl. ¶ 9; De Aquino Decl. ¶ 7. Plaintiffs seek declaratory relief and vacatur regarding the Adelanto Immigration Court's bond denial policy. *See* Am. Compl., Dkt. 15 at 31–32. And both proposed classes seek

declaratory relief and vacatur of Defendants' policies as violative of due process. *See id.*

Accordingly, Plaintiffs have demonstrated that they are suffering from the same legal injury as the members of the two classes, caused by the same policies and practices by Defendants. *See Parsons*, 754 F.3d at 678; *Rodriguez Vazquez*, 349 F.R.D. at 357. The harms suffered by Plaintiffs are thus typical of the classes, and Plaintiffs satisfy the typicality requirement.

D. Named Plaintiffs Will Adequately Protect the Interests of the Proposed Classes, and Counsel Are Qualified to Litigate This Action.

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Whether the class representatives satisfy the adequacy requirement depends on 'the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive.'" *Walters*, 145 F.3d at 1046 (citation omitted).

i. Named Plaintiffs

The four named Plaintiffs will fairly and adequately represent the classes because their interests are consistent with, and not adverse to, the interests of the classes. The named Plaintiffs are motivated to pursue this action on behalf of others like themselves who, based on ICE's new policy, are or will be subject to detention

without any opportunity to seek bond. *See* Maldonado Decl. ¶¶ 9, 13–14; Franco Decl. ¶¶ 9, 18–19; Pascual Decl. ¶¶ 9, 15–16; De Aquino Decl. ¶¶ 7, 11–12. They are also equally motivated to represent themselves and all other individuals who have been denied a bond hearing in the Adelanto Immigration Court. *See* Maldonado Decl. ¶¶ 13–14; Franco Decl. ¶¶ 18–19; Pascual Decl. ¶¶ 15–16; De Aquino Decl. ¶¶ 11–12.

The named Plaintiffs bring claims only for declaratory relief and vacatur against the government's policies, and do not seek money damages. As a result, there is no potential conflict between the interests of Plaintiffs and members of the proposed class. *See Rodriguez Vazquez*, 349 F.R.D. at 3 (finding no conflict of interest where class representative "has a 'mutual goal' with the other class members to challenge the allegedly unlawful practices and to 'obtain declaratory . . . relief that would not only cure this illegality but remedy the injury suffered by all current and future class members'" (quoting *Nightingale v. U.S. Citizenship & Immigr. Servs.*, 333 F.R.D. 449, 462 (N.D. Cal. 2019))). Accordingly, Plaintiffs are adequate representatives of the proposed classes.

ii. Counsel

Plaintiffs' counsel are also adequate. Counsel are qualified when they can establish experience in previous class actions and cases involving the same area of law. *See Lynch v. Rank*, 604 F. Supp. 30, 37 (N.D. Cal. 1984), *aff'd*, 747 F.2d 528

(9th Cir. 1984), *amended on reh'g*, 763 F.2d 1098 (9th Cir. 1985); *Jama v. State Farm Fire & Cas. Co.*, 339 F.R.D. 255, 269 (W.D. Wash. 2021). Plaintiffs are represented by experienced counsel from the Northwest Immigrant Rights Project, American Civil Liberties Union Foundation Immigrants' Rights Project, American Civil Liberties Union Foundation of Southern California, and USC Gould School of Law Immigration Clinic. *See* Decl. of Matt Adams ¶ 1; Decl. of My Khanh Ngo ¶ 1 Decl. of Niels W. Frenzen ¶ 1. Counsel have deep knowledge of immigration law and extensive experience litigating class actions and complex federal cases, including nationwide class actions and cases involving the rights of detained noncitizens. Adams Decl. ¶¶ 2–8; Ngo Decl. ¶¶ 2–14; Frenzen Decl. ¶¶ 2–10. Counsel also have the necessary resources, expertise, and commitment to adequately prosecute this case on behalf of Plaintiffs and the proposed classes. Adams Decl. ¶¶ 8–9; Ngo Decl. ¶¶ 14–15; Frenzen Decl. ¶¶ 10–11.

For these reasons, counsel meet the requirements of Fed. R. Civ. P. 23(g).

II. The Proposed Classes Satisfy Federal Rule of Civil Procedure 23(b)(2).

In addition to satisfying the four requirements of Rule 23(a), Plaintiffs also must meet one of the requirements of Rule 23(b) for a class action to be certified. Here, Plaintiffs seek certification under Rule 23(b)(2), which requires that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate

respecting the class as a whole." Rule 23(b)(2) is "unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole." *Parsons*, 754 F.3d at 688; *see also Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1195 (9th Cir. 2001) ("Class certification under Rule 23(b)(2) is appropriate only where the primary relief sought is declaratory or injunctive.").

Each proposed class seeks such uniform relief, applicable to all class members. First, DHS's no-bond policy renders all members of the Bond Eligible Class subject to mandatory detention under § 1225(b)(2), thus depriving them of consideration for release on bond by ICE, to which they are entitled under § 1226(a). That same policy directly results in DHS filing automatic stays of bond orders issued by IJs to proposed class members. Accordingly, a "single injunctive or declaratory judgment"—a declaratory judgement establishing that their detention is governed by § 1226(a) and vacatur of the government's policy—"would provide relief to each member of the class." *Wal-Mart*, 564 U.S. at 360; *see also Amchem Prods. v. Windsor*, 521 U.S. 591, 614 (1997) (explaining that "[c]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of 23(b)(2) class actions). Similarly, the Adelanto Immigration Court's policy of subjecting all members of the Adelanto Class to mandatory detention under § 1225(b)(2) denies them all to an individualized custody determination by an IJ at

a bond hearing, to which they are entitled under § 1226(a). A single declaratory judgment requiring Adelanto IJs to provide individualized custody determinations at bond hearings and vacatur of the Adelanto Immigration Court's policy would apply to the class as a whole.

This is a quintessential case for Rule 23(b)(2) treatment. Plaintiffs challenge the federal government's policies and practices of violating putative class members' statutory and constitutional rights. The challenged policies and practices apply to the classes as a whole, and Plaintiffs seek declaratory relief and vacatur for each class as a whole. Federal courts have routinely certified classes in similar cases. *See, e.g.*, *Walters*, 145 F.3d at 1047 (upholding certification under Rule 23(b)(2) where plaintiffs sought injunctive relief against immigration agency's practices in document fraud proceedings); *Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959, 990–91 (D. Ariz. 2011) (finding certification under Rule 23(b)(2) proper where plaintiffs sought injunctive and declaratory relief against sheriff's vehicle stop practices, including on Fourth Amendment grounds); *see also supra* at 12–13.

Again, that individual class members may be affected by Defendants' practices in different ways does not undermine the case for class treatment. *See Gibson v. Local 40, Supercargoes and Checkers*, 543 F.2d 1259, 1264 (9th Cir. 1976) ("A class action may be maintained under [Rule] 23(b)(2), alleging a general course of racial discrimination by an employer or union, though the discrimination may

have been manifested in a variety of practices affecting different members of the class indifferent ways . . . ."); *Parsons*, 754 F.3d at 687–89. Unlike other categories of class actions, there is no requirement that common issues "predominate" for a Rule (b)(2) class and questions of manageability and judicial economy are not the touchstone. *Walters*, 145 F.3d at 1047. Class members here seek classwide relief from a single set of policies and practices. That is sufficient for this civil rights action. *Parsons*, 754 F.3d at 686; Advisory Committee Note to Subdivision (b)(2), 39 F.R.D. 102 (1996) ("Illustrative [of the purpose of Rule 23(b)(2)] are" civil rights actions, usually those "whose members are incapable of specific enumeration.").

Therefore, this action meets the requirements of Rule 23(b)(2).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court certify the proposed classes, appoint named Plaintiffs as the class representatives for both classes, and appoint the undersigned attorneys as class counsel.

DATED: August 11, 2025

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CERTIFICATE OF COMPLIANCE

I, Aaron Korthuis, certify that this brief contains 6,750 words and complies with the word limit of L.R. 11-6.1.

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