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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

Lazaro MALDONADO BAUTISTA, *et al.*,

Plaintiffs-Petitioners,

v.

Krist NOEM, Secretary, Dept. of Homeland Security, *et al.*,[1]

Defendants-Respondents.

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

DEFENDANTS' OPPOSITION TO PETITIONERS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES

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

[1] The undersigned does not represent Fereti Semaia, Warden, Adelanto ICE Processing Center, as Adelanto is a private facility and Warden Semaia is not a federal employee. However, all arguments made on behalf of the remaining Respondents apply with equal force to Warden Semaia, who was detaining the Petitioners at the request of the United States.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Regulations

Other Authorities

INTRODUCTION

The Court should deny Petitioners' Motion for Class Certification and Appointment of Class Counsel, Dkt 41, (Mot.) for three reasons. First, 8 U.S.C. § 1252(e)(1)(B) bars this Court from certifying either of Petitioners' proposed classes. Second, Petitioners have failed to demonstrate they meet the commonality and typicality requirements of Fed. Rule Civ. Pro. 23(a). Third, Petitioners fail to establish injunctive or corresponding declaratory relief is appropriate for both of the putative classes they propose to represent because 8 U.S.C. § 1252(f)(1) bars classwide relief that would enjoin the government's operation of 8 U.S.C. § 1225(b)(2) and because any other relief they seek requires individualized determinations not appropriate on a classwide basis.

BACKGROUND

I. Legal Background

Congress created a multi-layered statutory scheme for the civil detention of aliens during an initial inspection, pending removal proceedings, and post removal proceedings. *See*, *e.g.*, 8 U.S.C. §§ 1225, 1226, 1231. Where an alien falls within this statutory scheme is determined by the time and circumstances of entry, as well as the stage of the removal process. Relevant to this litigation are the detention authorities of 8 U.S.C. §§ 1225 and 1226.

A. Applicants for Admission

"The phrase 'applicant for admission' is a term of art denoting a particular legal status." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Section 1225(a)(1) deems "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States" even if not at a designated port of arrival as "applicants for admission." 8 U.S.C. § 1225(a)(1). Admission is the "lawful entry of an alien into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13).

Section 1225(a)(1) was added to the Immigration and Nationality Act ("INA") as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996

("IIRIRA"). Pub. L. No. 104-208, § 302, 110 Stat. 3009-546. Before IIRIRA, "immigration law provided for two types of removal proceedings: deportation hearings and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). A deportation hearing was a proceeding against an alien physically present in the United States, whereas an exclusion hearing was against an alien outside of the United States seeking admission. *Id.* (citing *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). Aliens who entered without inspection had greater procedural and substantive rights in deportation proceedings, while aliens who presented themselves at ports of entry for inspection were subjected to summary exclusion proceedings. *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010); *see also Plasencia*, 459 U.S. at 25-26. Pre-IIRIRA, aliens who attempted to lawfully enter the United States were in a worse position than aliens who crossed the border unlawfully. *See Hing Sum*, 602 F.3d at 1100; *see also* H.R. Rep. No. 104-469, pt. 1, at 225-229. Due to this, IIRIRA replaced deportation and exclusion proceedings with general removal proceedings. *Hing Sum*, 602 F.3d at 1100.

IIRIRA also added § 1225(a)(1) to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres*, 976 F.3d at 928; *see also* H.R. Rep. 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced "certain aspects of the current 'entry doctrine,'" under which aliens who entered the United States without inspection gained equities and privileges in immigration proceedings that were unavailable to aliens who present themselves for inspection at ports of entry). The provision "places some physically-but not-lawfully present noncitizens into a fictive legal status for purposes of removal proceedings." *Torres*, 976 F.3d at 928.

B. IIRIRA's Removal Proceedings

IIRIRA established two distinct types of removal proceedings: "expedited removal" and "full removal". Pub. L. No. 104-208, 110 Stat. 3009, 3009-546. Removal proceedings under § 1225 are known as "expedited removal proceedings." *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109–113 (2020) (citing provisions). Two groups of aliens

are subject to expedited removal, (1) "arriving aliens" and (2) aliens who "ha[ve] not been admitted or paroled into the United States" and have not been "physically present in the United States" for two years. 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). "Arriving aliens" are defined by regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry …" 8 C.F.R. § 1.2.

Expedited removal proceedings are conducted by an immigration officer, not an Immigration Judge ("IJ"). The officer asks the applicant for admission questions to determine (a) "identity, alienage, and inadmissibility," and (b) whether the alien intends to apply for asylum. 8 C.F.R. § 235.3(b)(2)(i), (b)(4). If the alien is inadmissible and does not indicate intent to apply for asylum, the officer, after supervisory review, issues a Notice and Order of Expedited Removal. *Id.* § 235.3(b)(2)(i). The alien has no right to appeal to an IJ, the Board of Immigration Appeals ("BIA") or any other court. *Id.* § 235.3(b)(2)(ii); 8 U.S.C. § 1252(a)(2)(A)(i). Unlike full proceedings, which often take place over several months, the expedited removal process can take place in hours or days. *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at *4 (D.D.C. Aug. 1, 2025).

Removal proceedings under § 1229a are commonly referred to as "full removal proceedings" or "240 removal proceedings" due to the section of the INA they appear in. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before an IJ, a Department of Justice ("DOJ") employee. 8 U.S.C. § 1229a(a)(1), (b)(1). Aliens in 1229a proceedings have an opportunity to apply for relief from removal. *See, e.g.,* 8 U.S.C. § 1158 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent residents); 8 U.S.C. § 1255 (adjustment of status). These are adversarial proceedings in which the alien has the right to hire counsel at no expense to the government, examine and present evidence, and cross-examine witnesses. 8 U.S.C. § 1229a(b)(4). Either party may appeal the IJ decision to the BIA. *Id.* § 1229a(b)(4)(C); *see also* 8 C.F.R. § 1240.15. If the BIA issues a final order of removal, the alien may also appeal the decision to a U.S. court of appeals. 8 U.S.C. § 1252.

C. Detention Under the INA

The INA authorizes civil detention of aliens during removal proceedings and "[d]etention is necessarily part of this deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see also* 8 U.S.C. §§ 1225(b), 1226(a), and 1231(a). Each of "these statutes apply at different stages of an alien's detention." *Diouf v. Mukasey*, 542 F.3d 1222, 1228 (9th Cir. 2008). "Where an alien falls within this statutory scheme can affect whether his detention is mandatory or discretionary, as well as the kind of review process available to him if he wishes to contest the necessity of his detention." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

Section 1225 governs detention of "applicants for admission." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018).[2]

Section 1225(b)(1) applies to aliens arriving in the United States and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien "indicates an intention to apply for asylum . . . or a fear of persecution," immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). After that interview, an alien "with a credible fear of persecution" is "detained for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii). If the alien does not

[2] Petitioners cite *Jennings* for the proposition that "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.'" Mot. at 1. This is a misreading of *Jennings*. The full text is:

> To implement its immigration policy, the Government must be able to decide (1) who may enter the country and (2) who may stay here after entering.
>
> That process of decision generally begins at the Nation's borders and ports of entry, where the Government must determine whether an alien seeking to enter the country is admissible.

Jennings, 583 U.S. at 286-87.

express a fear, or is "found not to have such a fear," he is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii).

Section 1225(b)(2) is "broader" and "a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by §1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A). The Department of Homeland Security (DHS) has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on an individualized "case-by-case basis for urgent humanitarian reasons or significant public benefit." *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

Section 1226 provides for detention of aliens "on a warrant" pending a decision on whether to remove the alien. An alien "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the Government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.[3] An alien can also request a custody redetermination (often called a bond hearing) by an immigration judge (IJ) at any time before a final order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

While section 1226(a)'s detention authority is discretionary, section 1226(c) mandates detention of "certain criminal aliens pending their removal proceedings." *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 206 (3d Cir. 2020). Aliens are "not statutorily entitled to a bond hearing" under § 1226(c). *Avilez v. Garland*,

[3] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)." *Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)); *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 259-63 (BIA 2010) (same).

69 F.4th 525, 527 (9th Cir. 2023) (en banc). Congress enacted this mandate because it was "justifiably concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers." *Demore v. Kim*, 538 U.S. 510, 513 (2003). IJs lack authority to release aliens detained under § 1226(c). *See* 8 C.F.R. § 1003.19(h)(2)(i)(D).

II. Procedural and Factual History

The basic facts in this case are undisputed. Petitioners are aliens that entered the United States without being inspected or admitted. *See* Class Action Compl. and Am. Pet. for Writ of Habeas Corpus ("Compl."), ¶¶ 56, 64, 72, 80. DHS initiated removal proceedings charging them with being present in the United States without admission. *Id.*, ¶¶ 3, 59, 67, 75, 83.

DHS detained each alien for removal proceedings under 8 U.S.C. § 1229a. Compl. ¶¶ 58-60, 66-68, 74-76, 82-84. DHS determined Petitioners were subject to mandatory detention and denied them release. *Id.* ¶ 4. Each requested a bond redetermination before an IJ. *Id.* ¶¶ 60, 68, 76, 84. In each case, the IJ concluded that they were ineligible for release on bond and were subject to mandatory detention under 1225(b)(2)(A). *Id.* ¶¶ 61, 69, 77, 85.

Petitioners filed a habeas petition and class action complaint challenging the government's interpretation of the detention provisions at § 1255(b)(2). Compl. Petitioners brought their claims on their behalf and on behalf of two putative classes: a Nationwide class[4] and an Adelanto class. Compl. ¶¶ 89, 94. Petitioners sought a temporary restraining order as to themselves requesting bond hearings. Dkt 5. This Court granted Petitioners' motion and ordered Defendants to provide them with bond hearings. Dkt 14. At these bond hearings, IJs granted Petitioners release on bond. Pls.' Statement of Uncontroverted Facts, Dkt 42-3, ¶ 49. Petitioners have posted their immigration bonds

[4] In their Complaint, Petitioners name this class the "Bond Eligible Class." Compl. ¶ 89. Defendants object to Petitioners' naming of the class as it frames the legal issue in dispute as a legal conclusion. Defendants propose this class be referred to as the Nationwide class instead.

and have been released from immigration detention. McDermond Decl. ¶ 8, Dkt 50.

On August 11, 2025, Petitioners moved for class certification of their two putative classes. Pls' Mot. for Class Cert. ("Mot."), Dkt 41. That same day, before Defendants responded to the Complaint, Petitioners moved for partial summary judgment on Counts I, II, and III of their Complaint. Pls' Partial Mot. Summ. J., Dkt 42.

STANDARD

The class action is an exception to the usual rule that only individual named parties may litigate a dispute. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011). To fall within this narrow exception, proposed class representatives must "affirmatively demonstrate" their compliance with Rule 23. *Id.* at 350. This is not just a "mere pleading standard." *Id.* "'[P]laintiffs must actually *prove*—not simply plead—that their proposed class satisfies each requirement of Rule 23 . . .' and must carry their burden of proof 'before class certification.'" *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 664 (9th Cir. 2022) (en banc) (emphasis and alteration in original) (quoting *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275 (2014)). In assessing such proof, courts must rigorously analyze each of Rule 23's requirements. *See Wal-Mart*, 564 U.S. at 351-52.

To satisfy Rule 23(a), Petitioners must demonstrate that: (1) the class is so numerous that joinder is unrealistic ("numerosity"); (2) the claims raise common questions of law and fact ("commonality"); (3) the class representatives' claims must be typical of claims of other class members ("typicality"); and (4) the named representatives and counsel will fairly and adequately protect the interests of the class ("adequacy of representation"). *See* Fed. R. Civ. P. 23(a)(1)-(4). In addition to meeting Rule 23(a)'s requirements, the proposed class must also qualify under a Rule 23(b) subset. *AmChem Prods. v. Windsor*, 521 U.S. 591, 614 (1997). Relevant here, Rule 23(b)(2) permits certification where "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." Fed. R. Civ. P. 23(b)(2).

ARGUMENT

I. 8 U.S.C. § 1252(e)(1)(B) Bars Class Certification in Cases Challenging the Implementation of § 1225(b)

As a threshold matter, Congress has prohibited this Court from certifying Petitioners' proposed classes. Section 1252(e)(1)(B)'s plain text prohibits courts from certifying a class under Rule 23 when the proposed class challenges the implementation of § 1225(b). Section 1252(e)(1)(B) provides that "no court may . . . certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection." 8 U.S.C. § 1252(e)(1)(B). The subsequent paragraph in (e)(3) permits judicial review of "determinations under section 1225(b) of this title and its *implementation*"—i.e. review on challenges to the system—but only in the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3) (emphasis added); *see also Mendoza-Linares v. Garland*, 51 F.4th 1146, 1157 (9th Cir. 2022) (noting challenges to the validity of the system "must be brought exclusively as 'an action instituted in the United States District Court for the District of Columbia.'") (quoting 8 U.S.C. § 1252(e)(3)(A)). Paragraph (e)(3) confines this limited review further; any challenge to the system is limited to (1) whether the section or implementing regulation is constitutional or (2) whether a regulation or other written policy directive, guideline, or procedure implementing the section violates the law. *See* 8 U.S.C. § 1252(e)(3)(A)(i)-(ii); *see also M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021) (noting that jurisdiction to challenge the implementation of § 1225(b) is conditioned on meeting these requirements).

Petitioners seek certification of two classes allegedly harmed by Defendants' policies and practices implementing § 1225(b)(2)(A). *See*, *e.g.* Compl. ¶¶ 1 (alleging named Petitioners are harmed by Defendants' "new, draconian *policy* reinterpreting the immigration detention statutes") (emphasis added), 9 ("Plaintiffs seek to represent two classes of noncitizens harmed by these agency *policies* and practices denying them bond.") (emphasis added). Petitioners challenge an alleged new policy that all aliens who entered

the United States without inspection are subject to mandatory detention under § 1225(b)(2)(A). *See*, *e.g.*, *id.* ¶ 41 (alleging the BIA, adopted this policy via an unpublished opinion), ¶ 42-43 (alleging that on July 8, 2025, ICE issued new guidance). This is exactly the type of judicial review to a written policy or guideline covered by § 1252(e)(3)(A)(ii). *See* Defs' Oppo. Summ. J., pp. 9-10. Section (e)(3)(A) authorizes such review exclusively in the District of Columbia. *See* 8 U.S.C. § 1252(e)(3); *see also Mendoza-Linares*, 51 F.4th at 1157. Thus, because Congress provided only circumscribed judicial review of the government's new policy implementing § 1225(b) under paragraph (e)(3), §1252(e)(1)(B) bars this Court from certifying either of Petitioners' proposed classes challenging this policy.

II. Petitioners' Proposed Classes Fail to Satisfy Rule 23(a)'s Requirements

The Court should deny Petitioners' Motion on the alternative ground that they have failed to prove their proposed classes meet Rule 23(a)'s requirements of commonality and typicality.

A. The Proposed Classes Lack Commonality As Factual Distinctions Between Putative Class Members Do Not Generate Common Answers

Petitioners' proposed classes lack commonality because they are overbroad. Rule 23(a)(2) requires Petitioners to identify questions of law and fact common to the class. *See Wal-Mart*, 564 U.S. at 351. Class claims must depend on a common contention that allows a court to resolve the central issue of each claim "in one stroke." *Id.* at 350. "What matters to class certification is not the raising of common questions—even in droves—but rather, the capacity of a class-wide proceeding to generate common *answers* apt to drive resolution of the litigation." *Id.* (cleaned up) (citations omitted) (emphasis in original). Courts must assess the dissimilarities within a proposed class that have the potential to impede the generation of common answers and explain why these dissimilarities do not defeat class certification. *See id.*

A class definition may be fatally overbroad if it "sweeps within it persons who could not have been injured by the defendant's conduct." *Ross v. Lockheed Martin Corp.*,

267 F. Supp. 3d 174, 191 (D.D.C. 2017) (quoting *Kohen v. Pac. Inv. Mgmt. Co. LLC*, 571 F.3d 672, 677 (7th Cir. 2009)). An inadequately defined or overbroad class often implicates multiple Rule 23 requirements beyond commonality, including typicality and the standards for certifying an injunctive-relief class under Rule 23(b)(2).

Petitioners seek certification of two classes:

> [Nationwide] 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 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.

Mot. at 3. Petitioners assert their proposed classes satisfy the commonality requirement because they both challenge "Defendants' policy and practice of applying the mandatory detention statute to the classes[.]" Mot. at 19. But whether a putative class member is in fact properly subject to mandatory detention overlooks obvious differences between purported class members, and provides different answers depending on individualized circumstances.

Regarding both proposed classes, Petitioners have failed to prove that all putative class members suffer the same injury, per their own interpretation of the INA. Petitioners' proposed classes includes all aliens present in the United States without lawful status who have entered or will enter the United States without inspection and are not apprehended upon arrival. Mot. at 3. According to Petitioners, such persons should be detained under 8 U.S.C. § 1226(a) because § 1226(a) applies to people already within the United States regardless of admission status. *See* Compl. ¶ 53; Summ. J. Mot. at 10-11. In contrast,

Petitioners argue, § 1225(b)(2)(A) applies as part of "a processing scheme" for aliens entering the country. Summ. J. Mot. at 17. Not only is this interpretation unsupported by the text of § 1225(b)(2)(A), *see* Defs' Oppo Summ. J. pp 11-16, but this interpretation blurs the line between who is and is not a class member. An alien could be encountered somewhere in the interior but whether the alien effected an entry would still depend on the particular facts of the case. *See*, *e.g.*, *Thurassigiam*, 591 U.S. at 140 (noting that alien detained 25 yards from the boarder after an attempted unlawful entry "cannot be said to have effected an entry"). Per Petitioners reading of §§ 1225(b)(2) and 1226(a), there is no clear line demarcating when a class member in fact becomes a class member. Thus, Petitioners proposed classes include individuals properly detained under § 1225(b)(2)(A) and thus not all class members suffer the same injury arising from being detained under § 1225(b)(2) rather than § 1226(a).

Similarly, Petitioners' argument that the phrase "seeking admission" limits the scope of § 1225(b)(2)(A) cuts against finding commonality. Summ. J. Mot. at 17-19. Petitioners argue that "seeking admission" should be interpreted as requiring taking action to obtain admission. *See id.* Under this construction, § 1225(b)(2) covers any unadmitted alien present in the United States who applies for certain immigration benefits. Petitioners' classes, as defined, would embrace this category of people who would be properly subject to mandatory detention under § 1225(b)(2).

Two named Petitioners' experiences prove this point. In her declaration, Petitioner Ana Franco Galdamez claims she is eligible for a U-visa. *See* Summ. J. Mot, Ana Franco Galdamez Decl. ¶ 17, Dkt. 41-15. Per Petitioners' interpretation, when Petitioner Galdamez applies for a U-visa, she will take action to obtain admission and thus be subject to mandatory detention under § 1225(b)(2)(A) as an arriving alien seeking admission. *See* 8 U.S.C. § 1184(p) (establishing U-visa petitioning and admission requirements). Similarly, Petitioner Ananias Pascual intends to apply for cancellation of removal under 8 U.S.C. § 1229b(b), adjusting her status to that of a lawful permanent resident. *See* Mot. Summ. J., Pascual Decl. ¶ 13, Dkt. 41-16. If and when she applies for this benefit, she too

will be subject to mandatory detention under § 1225(b)(2)(A) because she is seeking admission. Thus, half of the named Petitioners' experiences demonstrate that not all potential class members suffer the same injury of detention under the wrong authority.

These examples demonstrates that the Court cannot resolve the central issue in this case on a classwide basis because the Court must make individualized determinations regarding whether an alien has crossed the threshold from entering the United States to present in the United States and whether the alien has sought admission by applying for immigration benefits. Because the Court cannot generate common answers in "one stroke," Petitioners proposed classes lack commonality.

B. Named Petitioners' Injuries are Not Typical of the Claims of the Proposed Class Members

Beyond commonality, Rule 23 requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Typicality focuses on whether the class representatives' claims and interests are sufficiently aligned with the class's interest. *See Small v. Allianz Life Ins. Co. of N. Am.*, 122 F.4th 1182, 1201-02 (9th Cir. 2024). "Measures of typicality include whether other members have the *same or similar injury*, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Id.* 1202 (emphasis added) (quoting *Torres v. Mercer Canyons, Inc.*, 835 F.3d 1125, 1141 (9th Cir. 2016)). Several courts have held that a putative class representative's claims are atypical of the class where the putative representative is subject to a unique defense "which threatens to become the focus of the litigation." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal quotations omitted) (collecting cases).

The named Petitioners fail to demonstrate typicality because even under Petitioners' reading of §§ 1225(b)(2) and 1226(a), half of them will be subject to mandatory detention if and when they apply for immigration benefits. As explained *supra* Part II.A., if and when Petitioners Galdamez and Pascual apply for a U-visa and cancellation of removal,

respectively, they will be seeking admission and will thus be subject to mandatory detention under § 1225(b)(2). If they are properly detained under § 1225(b)(2), per Petitioners' interpretation of the statute, then they do not share the same injury as other putative class members and Defendants have a defense against their claims unique to them arising from their lack of a common injury.

III. Both Proposed Classes Fail to Satisfy Rule 23(b)(2)

In addition to failing to meet Rule 23(a)'s requirements, Petitioners also fail to satisfy Rule 23(b)(2)'s requirements. Under Rule 23(b)(2), final injunctive or declaratory relief must be appropriate respecting the class as a whole. Fed. R. Civ. P. 23(b)(2). The "key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them." *Wal-Mart*, 564 U.S. at 360 (citation omitted). But Petitioners fail to meet Rule 23(b)(2)'s requirements because 8 U.S.C. § 1252(f)(1) prohibits the Court from granting Petitioners the relief they seek, and any version of the relief sought that would not run afoul of § 1252(f)(1) would not address the alleged injuries of the classes as a whole.

A. Section 1252(f)(1) Prohibits Classwide Relief Restraining the Government's Operation of § 1225(b)(2)'s Detention Authority

The Court lacks jurisdiction to enjoin or restrain the government from detaining individuals under 8 U.S.C. § 1225(b)(2) on a classwide basis. Section 1252(f)(1) states that:

> Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, *no court (other than the Supreme Court)* shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of Part IV [of subchapter II of the INA], other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

8 U.S.C. § 1252(f)(1) (emphasis added). As the Supreme Court explained, § 1252(f)(1)'s reference to "the 'operation of' the relevant statutes is best understood to refer to the

Government's efforts to enforce or implement them." *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022). Section 1252(f)(1) "generally prohibits lower courts from entering injunctions that order federal officials to take or refrain from taking actions to enforce, implement, or otherwise carry out" the covered statutory provisions of the INA. *Id.* By its terms, § 1252(f)(1) is applicable here because the statutory authority for the detention of aliens, like Petitioners, who are present in the United States without being admitted, is one of the covered provisions. *Id.*

The Supreme Court has weighed in on the issue of classwide relief in the immigration context; there can be no doubt that § 1252(f)(1)'s remedial bar applies here. In *Aleman Gonzalez*, the Supreme Court overturned injunctions entered by two district courts that had, as a matter of statutory interpretation, required the government to provide bond hearings for noncitizens detained under 8 U.S.C. § 1231(a)(6). 596 U.S. at 550. The Court held that "[t]hose orders 'enjoin or restrain the operation' of § 1231(a)(6) because they require officials to take actions that (in the Government's view) are not required by § 1231(a)(6) and to refrain from actions that (again in the Government's view) are allowed by § 1231(a)(6)." *Id.* at 551. Because "[t]hose injunctions thus interfere with the Government's efforts to operate §1231(a)(6)" in its chosen manner, they were barred by § 1252(f)(1). *Id.*

Aleman Gonzalez proscribes the same result here—the Court lacks authority under § 1252(f)(1) to restrain Defendants from detaining Petitioners and putative class members under § 1225(b)(2). As the Supreme Court affirmed, § 1252(f)'s remedial bar is not limited to the enumerated provisions "as *properly* interpreted." *Id.* at 552-54. Put another way, even if this Court ultimately finds that Defendants' invocation of § 1225(b)(2) to detain Petitioners and the potential class members is erroneous, § 1252(f)(1) bars the Court from enjoining Defendants' operation of § 1225 on a classwide basis. *See Al Otro Lado v. Exec. Off. for Immigr. Review*, 120 F.4th 606, 627 (9th Cir. 2024) (noting that "an injunction is barred even if a court determines that the Government's 'operation' of a covered provision is unlawful or incorrect") (citing *Aleman Gonzalez*, 596 U.S. at 552-54).

Petitioners may argue that they meet the requirements of Rule 23(b)(2) because they seek declaratory relief and not injunctive relief. *See* Am. Compl., Prayer for Relief, B. ¶¶ 1-2, 5 (requesting relief declaring Defendants' new policy of detaining individuals under § 1225(b)(2) unlawful and setting aside the policy). But Petitioners will still run afoul of § 1252(f)(1) because § 1252(f)(1) is not limited to injunctions. Instead, it prohibits lower-court orders that "enjoin or *restrain*" the government's operation of the covered provisions. 8 U.S.C. § 1252(f)(1) (emphasis added). The common denominator of those terms is that they involve coercion. *See* Black's Law Dictionary 529 (6th ed. 1990) ("Enjoin" means to "require," "command," or "positively direct" (emphasis omitted)); *id.* at 1314 ("Restrain" means to "limit" or "put compulsion upon" (emphasis omitted)). Together, they indicate that a court may not impose coercive relief that "interfere[s] with the government's efforts to operate" the covered provisions in a particular way. *Aleman Gonzalez*, 596 U.S. at 551.

Though the Supreme Court did not indicate § 1252(f)(1) specifically prohibited other forms of relief that are practically similar to an injunction, including classwide declaratory relief, the Court specified that lower courts cannot impose coercive relief that "interfere[s] with the government's efforts to operate" the covered provisions.[5] *Id.* at 551 n.2. Therefore, if the relief sought requires the government to take steps to implement (or refuse to implement) a declaratory judgment regarding § 1225(b) that relief is barred by § 1252(f)(1). *See Hamama v. Adducci*, 912 F.3d 869, 880 n.8 (6th Cir. 2018) (holding that while "declaratory relief will not always be the functional equivalent of injunctive relief . . . in this case it is the functional equivalent").

Here, the requested declaratory relief is impermissibly coercive and violates § 1252(f)(1). Petitioners ask this Court "[d]eclare that Defendants' policy and practice of denying consideration for bond on the basis of § 1225(b)(2) to Plaintiffs . . . [and putative

[5] The Supreme Court, in *Biden v. Texas*, left open the question of whether § 1252(f)(1) bars declaratory relief that is in effect coercive. 797 U.S. 785, 839 (2022) (Barrett, J., dissenting).

class members], violates the INA, its implementing regulations, the APA, and the Due Process Clause[].]" Compl., Prayer for Relief, B. ¶ 1; *see also id.* ¶¶ 2 (requesting the Court declare DHS's practice of relying on the new policy to appeal IJ bond determinations violates the INA, regulations, and the APA), 5 (requesting the Court "[s]et aside Defendants' unlawful detention policy under the APA"). Indeed, Petitioners and the putative classes "seek declaratory relief that establishes that class members are subject to detention under § 1226(a) . . . and are therefore entitled to an individualized custody redetermination following apprehension by DHS and, if not released, a bond determination by the Immigration Court." *Id.* ¶ 12. Via this request, Petitioners challenge the government's policy of detaining persons present in the United States without being admitted or paroled under § 1225(b)(2) rather than § 1226(a), and for the Court to find it unlawful. But in setting aside this policy as unlawful, and "declaring" all putative class members are subject to detention under § 1226(a), the Court would effectively compel Defendants to detain putative class members under § 1226(a) and provide them bond hearings. And this necessarily restrains the Governments' operation of § 1225(b)(2) because it stymies the Government's implementation of § 1225(b)(2) to detain putative class members.

B. The Relief Petitioners Seek Will Not Appropriately Address the Alleged Injuries of the Classes as a Whole

Given § 1252(f)(1)'s limitations on classwide injunctive relief, any relief the Court might order would fall far short of being appropriate relief to the proposed classes as a whole. Petitioners contend that their proposed classes seek "uniform relief, applicable to all class members." Mot. at 26. But the relief sought would not be uniform and applicable to all class members for two reasons. First, as explained *supra* Part II.A., the class definitions draw no clear distinctions between aliens entering without inspection and aliens present without inspection such that no single declaratory judgment would cover all putative class members. Under Petitioners' interpretation of the INA, courts would need to make individualized determinations of whether an alien crossed the threshold from an

entering alien to an alien present in the United States and whether the alien has sought specific types of immigration benefits such that they could be deemed "seeking admission" before it could issue declaratory judgment regarding appropriate detention authority.

Second, because Petitioners allege Defendants' policy violates their rights under the Due Process Clause of the Fifth Amendment, Compl. ¶¶ 119-23, the Court should hesitate to resolve such claims via a Rule 23(b)(2) class action. As the Supreme Court has cautioned, courts should consider "whether a Rule 23(b)(2) class action litigated on common facts is an appropriate way to resolve [Petitioners'] Due Process Clause claims. [D]ue process is flexible, we have stressed repeatedly, and it calls for such procedural protections as the particular situation demands." *Jennings v. Rodriguez*, 583 U.S. 281, 314 (2018) (internal quotation makes omitted) (second alteration in original); *see also Diaz v. Garland*, 53 F.4th 1189, 1213 (9th Cir. 2022) (noting that "the Due Process Clause does not mandate procedures that reduce the risk of erroneous deprivation to zero" and that "[d]ue process is a flexible concept that varies with the particular situation"). Because Petitioners' putative classes, as defined, include dissimilarly situated individuals—some who might properly be subject to mandatory detention even under Petitioners interpretation of the INA—the Court could not enter a single declaratory judgment to resolve classwide Due Process claims.

In addition to the shortcoming of a single declaratory judgment not covering all class members, the classwide relief Petitioners seek blurs the line between injunctive and declaratory relief. Petitioners' description of the relief sought highlights this point: the declaratory relief for their Nationwide class would "establish[] that their detention is governed by § 1226(a)" and a "single declaratory judgment *requiring* Adelanto IJs to provide individualized custody determinations at bond hearings" would apply to the Adelanto Class. Mot. at 26-27 (emphasis added). In essence, what Petitioners seek is an order from the Court declaring that if the Government detains them, it must detain them and all putative class members under § 1226(a). But this order would run afoul of § 1252(f)(1)'s classwide bar on restraining the operation of § 1225(b)(2) if the order

requires the government detain putative class members under § 1226(a) rather than § 1225(b)(2). Because the Court cannot grant such relief, Petitioners fail to meet the requirements of Rule 23(b)(2) for this reason as well.

IV. Petitioners' Adelanto Class is a Redundant Class, And Should Not be Certified

Courts should not certify redundant classes. *See*, *e.g.*, *Galvan v. Mnuchin*, 2020 WL 8259110 at *3 (N.D. Il. Oct. 15, 2020) (collecting authorities establishing "[c]onsiderable authority counsels against certifying a redundant class"). Petitioners' Adelanto Class is now redundant of the Nationwide class since the BIA's issuance of *Matter of Yajure Hurtado*. In *Yajure Hurtado* the BIA held that Section 1225(b)(2)(A) mandates detention of aliens who are present in the United States without admission. *See generally* 29 I&N Dec. 216 (BIA 2025). The BIA's holding is now controlling on DHS. *See* 8 U.S.C. § 1103(a)(1) (vesting the Attorney General with authority to determine all questions of law regarding the INA and mandating such determinations are controlling on DHS); *see also INS v. Aguirre-Aguirre*, 526 U.S. 415, 424-25 (1999) (noting Attorney General delegated this authority to the BIA). Since the issuance of *Yajure Hurtado*, DHS and EOIR's policy is now uniform and all putative class members of the Nationwide class and Adelanto class will be subject to the same application of § 1225(b)(2). The putative Adelanto class has effectively been encompassed by any potential nationwide class challenging the government's policy of applying § 1225(b)(2) to aliens who are present in the United States without admission. The Court should not certify the Adelanto class for this additional reason.

V. Individual Habeas Actions, Not a Class Action, are the Correct Vehicles to Resolve Petitioners' Claims

While Petitioners bring APA and Due Process Claims, Petitioners' claims are within the heartland of habeas corpus. The Court should be especially hesitant to grant class

certification here because habeas petitions are generally unfit for class actions.[6] The purpose of class actions is to "create an efficient mechanism for trying claims that share common questions of law or fact when other methods of consolidation are impracticable." *Dellums v. Powell*, 566 F.2d 216, 230 (D.C. Cir. 1977). Habeas, however, has been an individualized writ from its inception. The federal habeas statute is designed for individual petitioners; it requires that an "[a]pplication for a writ of habeas corpus [] be in writing signed and verified *by the person for whose relief it is intended or by someone acting in his behalf*" and "shall allege the facts concerning the *applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority*, if known." 28 U.S.C. § 2242 (emphasis added). The issuance of the writ is then "directed *to the person having custody of the person detained*" and may require the custodian to "produce at the hearing *the body of the person detained*." *Id.* § 2243 (emphasis added). That is an individualized process and inquiry, not one amenable to classwide resolution.

Putative class members' recent actions demonstrate this point. Since this case was filed, 17 putative class members have brought separate habeas suits seeking *individualized* injunctive relief in this Court on the same issue in this case: a bond hearing pursuant to § 1226(a). *See Ruben Benitez, et al. v. Kristi Noem, et al.*, 5:25-cv-02190 RGK-AS, ECF No. 11 (granting petitioners' request for a TRO requiring the Government provide them with individualized bond hearings); *Javier Ceja Gonzalez, et al. v. Kristi Noem, et al.,* 5:25-cv-02054-ODW-ADS, ECF No. 12 (same); *Jorge Arrazola-Gonzalez, et al. v. Kristi Noem, et al.,* 5:25-cv-01789-ODW-DFM, ECF No. 10 (same). These cases speak volumes. Even if the Court were to certify the classes and provide declaratory relief, declaratory

[6] Defendants acknowledge binding Ninth Circuit precedent holding class actions may be brought pursuant to habeas corpus. *See Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010). However, the Supreme Court "has never held that class relief may be sought in a habeas proceeding." *A.A.R.P. v. Trump*, 145 S. Ct. 1034, 1036 (2025) (Alito, J., dissenting). Given the individual inquiries necessary to address the alleged injuries of each putative class member, and putative class members' continued resort to individual habeas proceedings, this case is an example of why habeas corpus is an inappropriate vehicle for class actions.

relief would not fully resolve the class members' alleged injury, and each class member would still need to seek individual habeas relief beyond classwide relief.[7]

CONCLUSION

The Court should decline to certify either of Petitioners' proposed classes because § 1252 strips the Court of jurisdiction to entertain this putative class action; Petitioners' proposed classes lack Rule 23(a)'s commonality and typicality requirements; Petitioners have failed to demonstrate a single injunctive or corresponding declaratory relief would be appropriate to the classes as a whole under Rule 23(b)(2); and the putative class claims are more appropriately brought as individual habeas actions.

Dated: September 12, 2025

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[7] This also highlights why Petitioners fail to meet Rule 23(b)(2)'s requirement that either injunctive or corresponding declaratory relief be appropriate to the putative classes as a whole, because even with declaratory relief, individual class members would need to bring separate habeas claims challenging the application of § 1225(b)(2) to their individual detentions.

LOCAL RULE 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendants certifies that this brief contains 6879 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 12, 2025

/s/ Malcolm McDermond
MALCOLM MCDERMOND

CERTIFICATE OF SERVICE

I certify that on September 12, 2025, I electronically filed the foregoing Defendants' Opposition to Petitioners' Motion to for Class Certification and Appointment of Class Counsel with the Clerk of Court by using the CM/ECF system, which will provide electronic notice pursuant to L.R. 5-3.2.1 to the following attorneys of record:

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