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**UNITED STATES DISTRICT COURT**
**FOR THE CENTRAL DISTRICT OF CALIFORNIA**
**EASTERN DIVISION**

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

**REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL**

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

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## I. INTRODUCTION

Plaintiffs seek to certify a nationwide class challenging Defendants' new policies and practices of unlawfully subjecting them to mandatory immigration detention under 8 U.S.C. § 1225(b)(2)(A), even though they are eligible for bond under 8 U.S.C. § 1226(a).[1] On Defendants' view, every detained immigrant—the large majority of whom lack immigration counsel, let alone access to a federal court litigator—must file their own individual habeas petition. This would unnecessarily flood the courts, while still excluding thousands of more people from relief. Since Plaintiffs filed their class complaint in July 2025, similarly situated individuals already have filed dozens of cases throughout the country to challenge the same unlawful governmental policy. This situation underscores how, contrary to Defendants' claims, Plaintiffs present a classic case for Rule 23(b)(2) class treatment because Defendants have acted on grounds that apply generally to the class. As a result, a declaration that class members are subject to § 1226(a) and vacatur of Defendants' actions would provide relief to the class as a whole.

None of Defendants' remaining arguments pass muster. Defendants do not contest numerosity or adequacy. And Plaintiffs do not challenge any aspect of expedited removal, so § 1252(e) does not apply. While the applicability of § 1225(b)(2) for recent entrants encountered close to the border may require individualized analysis, the proposed class definition does not include those cases. Rather, the proposed class focuses on easily identifiable traits and raises the core common question of what detention statute applies to noncitizens who entered

[1] Plaintiffs agree with Defendants that the Adelanto Class is redundant now that the Board of Immigration Appeals has issued a published decision confirming the agency's position that anyone who entered without inspection is subject to § 1225(b). *See* Dkt. 59 (Opp.) at 18 (citing *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025); Dkt. 56 at 3 (same). The nationwide Bond Eligible Class challenges the erroneous deprivation of bond by DHS and EOIR.

without inspection, were not apprehended upon arrival, and were detained while living in the interior of the United States. The answer does not vary, including for those applying for certain immigration benefits. Lastly, the Ninth Circuit has rejected Defendants' view that § 1252(f)(1) forecloses classwide declaratory relief, and courts have held the same for APA vacatur, which Defendants hardly address. The Court should certify the proposed Class.

## II. ARGUMENT

### A. 8 U.S.C. § 1252(e) Does Not Apply to this Challenge

Defendants' threshold argument—which speaks to jurisdiction rather than class certification—fails for at least two reasons. First, Defendants invoke § 1252(e)(3)(A), but that statute only addresses "determinations under section 1225(b) of this title and its implementation." 8 U.S.C. § 1252(e)(3)(A). However, the entire premise of this case is that Defendants cannot invoke § 1225(b)(2) and that § 1226(a) governs class members' detention. It is well established that courts retain jurisdiction to determine their own jurisdiction. *See, e.g.*, *Ye v. INS*, 214 F.3d 1128, 1131 (9th Cir. 2000). In this case, determining whether the jurisdiction-limiting provision at § 1252(e)(3)(A) applies first requires the Court to resolve whether Plaintiffs are detained pursuant to § 1225 or § 1226. Thus, "the jurisdictional question and the merits collapse into one," *Ye*, 214 F.3d at 1131, and this Court should decide the legal issue before it.

Second, Defendants completely misconstrue § 1252(e). By its plain terms, § 1252(e) is a *grant* of jurisdiction to certain challenges involving § 1225(b) in the District of Columbia. However, § 1252(e) does not require that challenge involving *§ 1225(b)(2)*—the detention statute at issue in this case—be brought exclusively in D.C. It is true that a different provision of § 1252—§ 1252(a)(2)(A)—bars challenges to the expedited removal process at *§ 1225(b)(1)*, "except as provided in subsection (e)"—making § 1252(e) the exclusive avenue for *those* challenges. *See*

*Make The Rd. New York v. Wolf*, 962 F.3d 612, 620–21, 626–27 (D.C. Cir. 2020). But that channeling requirement for expedited removal challenges does not apply to challenges involving the detention statute at issue here. As confirmed by Defendants' cited cases, § 1252(e) covers only challenges to determinations made in the expedited removal process (such as a negative credible fear determination), *see Mendoza-Linares v. Garland*, 51 F.4th 1146, 1152, 1156–57 (9th Cir. 2022), and challenges to policies "to implement expedited-removal proceedings under section 1225(b)," *M.M.V. v. Garland*, 1 F.4th 1100, 1108 (D.C. Cir. 2021); *see also E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 666 (9th Cir. 2021) ("Section 1252(e)(3), in short, limits jurisdiction over challenges to regulations implementing expedited-removal orders."). Because this case does not address expedited removal, § 1252(e) plainly does not apply.[2]

**B. The Proposed Class Satisfies Commonality and Typicality**

Despite taking the position that anyone who entered without inspection is subject to mandatory detention, Dkt. 60 at 11, Defendants now argue that there are factual distinctions dividing the class because some class members will be properly subject to mandatory detention depending on the facts of their case and some may be applying for certain immigration benefits. Opp. 10–13. But the class is appropriately limited and, as another court recognized in certifying a similarly defined regional class, "Rule 23(a)(1) does not demand uniformity." *Rodriguez Vasquez v. Bostock*, 349 F.R.D. 333, 354, 356 (W.D. Wash. 2025). Commonality

[2] Another court has also concluded that § 1252(e) does not limit judicial review over immigration *detention* decisions. *See Padilla v. U.S. Immigr. & Customs Enf't*, 704 F. Supp. 3d 1163, 1170 (W.D. Wash. 2023) ("§ 1252(e)(3) addresses 'challenges to the removal process itself, not to detentions attendant upon that process'" (citation omitted)). *Padilla* involved detention of individuals who were subject to expedited removal, and thus § 1225(b)(1), but § 1252(e)(3) is even less relevant here as the parties agree no class member is subject to expedited removal.

and typicality are both satisfied here because class members share at least one common question: whether mandatory detention applies to those who entered without inspection and were not apprehended upon arrival. *Id*. at 348, 356, 361.

Contrary to Defendants' assertion, the class definition clearly demarcates when an individual falls within the class. *See* Dkt. 41 at 3. The Court would only need to answer a few questions to determine class membership: Did they enter without inspection? Were they apprehended upon arrival in the United States? And are they subject to any other detention statute because they were subject to expedited removal (§ 1225(b)(1)), are subject to mandatory detention based on certain criminal history (§ 1226(c)), or have a final order of removal (§ 1231)? For instance, the individual described in *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) (cited at Opp. 11), was detained a short distance from the border and processed through expedited removal, *id*. at 114, and thus was subject to detention under § 1225(b)(1)—and would not be part of the class. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (iii) (describing who may be subject to expedited removal). The class also omits individuals who were similarly apprehended within a few miles of the border shortly after crossing, even if they were not subject to expedited removal, like the person in *Matter of Q. Li*, 29 I. & N. Dec. 66, 67 (BIA 2025).

Defendants also claim that individuals who have not been admitted and who apply for certain immigration benefits would qualify as "seeking admission" and thus be subject to § 1225(b)(2). Opp. 11. But that is a red herring that misunderstands the meaning of "seeking admission" within § 1225(b)(2) and ignores its context. As Plaintiffs and multiple courts have explained, § 1225(b)(2) requires mandatory detention of "applicants for admission" who an inspecting officer determines to be "seeking admission"—thus limiting the temporal scope of the statute to the time of inspection at the border. *See, e.g.*, Dkt. 42 at 17–18 (describing legislative history); *Arrazola-Gonzalez v. Noem*, No. 5:25-CV-01789-ODW (DFMX), 2025 WL

2379285, at *2 (C.D. Cal. Aug. 15, 2025) (agreeing that those "seeking admission" means "those who take 'affirmative acts, like submitting an "application for admission"' or subject to inspection at a border or upon arrival before an immigration officer"); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1258 (W.D. Wash. 2025) (describing § 1225 "as part of a process that 'generally begins at the Nation's borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible'" (quoting *Jennings*, 583 U.S. at 287)). But individuals like Plaintiffs Franco and Pascual, who entered without inspection and resided in the country for over 20 years, and were never stopped or inspected at the border, cannot be said to be "seeking admission" within the meaning of § 1225(b)(2).

Named Plaintiffs' injuries are thus also typical of those of the class. The injury here that all class members face is the unlawful denial of consideration for release on bond. And this Court has already agreed that all four Named Plaintiffs are properly subject to § 1226(a), not § 1225(b). *See* Dkt. 14 at 8. That remains true regardless of whether they apply for certain benefits because they were detained while living in the United States after many years, not while seeking admission at the border. *See Rodriguez Vazquez*, 349 F.R.D. at 359 (typicality satisfied for class representative who entered without inspection). Defendants' arguments against commonality and typicality are thus unavailing.

### C. The Proposed Class Satisfies Rule 23(b)(2) Because the Court Can Grant Classwide Declaratory Relief and Vacatur

Because the Plaintiffs and proposed class members are thus similarly situated and improperly subject to Defendants' mandatory detention policy despite being eligible for bond under § 1226(a), the Court can easily certify a class under Rule 23(b)(2) for declaratory relief. *See Parsons v. Ryan*, 754 F.3d 657, 688 (9th Cir. 2014) (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."). Defendants' assertion that no single declaratory judgment would cover the class is premised on the same misunderstanding of the proposed class definition that fails above.[3]

Defendants' main dispute against Rule 23(b)(2) certification, however, is based on 8 U.S.C. § 1252(f)(1)'s prohibition against certain types of classwide relief. But the plain text of § 1252(f)(1) and Rule 23(b)(2) refute this argument.

"Section 1252(f)(1) is straightforward," and it limits only the lower courts' "'jurisdiction or authority to enjoin or restrain the operation of'" specific statutory provisions of the INA. *Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 812 (9th Cir. 2020) (citing 8 U.S.C. § 1252(f)(1)). As Defendants appear to concede, while the Supreme Court has interpreted § 1252(f)(1) to prohibit classwide injunctive relief regarding certain INA detention statutes like the ones at issue here, *see Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), it has not extended § 1252(f)(1) to other forms of relief. *See* Opp. 15.

Specifically, "§ 1252(f)(1) does not 'bar classwide declaratory relief.'" *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 138 F.4th 1102, 1123–24 (9th Cir. 2025) (quoting *Rodriguez v. Hayes*, 591 F.3d 1111, 1119 (9th Cir. 2010)); *id*. (noting "the Government concedes . . . that [its] argument is foreclosed by circuit precedent").

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[3] Defendants also claim that courts cannot issue classwide declaratory judgments on a due process claim. Opp. 17. That is wrong as courts, including the Supreme Court and the Ninth Circuit, regularly consider due process challenges and announces rules for the generality of cases, including in class actions. *See, e.g.*, *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) (per curiam); *Wilkinson v. Austin*, 545 U.S. 209, 228–30 (2005); *Wolff v. McDonnell*, 418 U.S. 539, 563–72 (1974); *Saravia v. Sessions*, 905 F.3d 1137, 1144 (9th Cir. 2018); *Barnes v. Healy*, 980 F.2d 572, 575 (9th Cir. 1992). But the Court need not address whether class certification is appropriate for Plaintiffs' due process claim at this juncture because Plaintiffs have only moved for partial summary judgment on their statutory and regulatory claims. *See* Dkt. 42 at 3.

"By its plain terms," Section 1252(f)(1) "is nothing more or less than a limit on injunctive relief." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999). Its text nowhere mentions declaratory relief. It is titled "Limit on injunctive relief," without reference to declaratory relief. *See Biden v. Texas*, 597 U.S. 785, 798 (2022) (Section 1252(f)'s "title … makes clear the narrowness of its scope"). The legislative history likewise refers only to "injunctive relief." H.R. Rep. No. 104-469, pt. 1, at 161 (1996).

The Supreme Court has repeatedly recognized the limits of that provision. *See Biden*, 597 U.S. at 798–99; *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (opinion of Alito, J., joined by Roberts, C.J., and Kavanaugh, J.) (explaining that § 1252(f)(1) did not eliminate "jurisdiction to entertain the plaintiffs' request for declaratory relief").[4] Contrary to Defendants' assertions, declaratory relief is not an injunction—even where it may have practically similar results. "The express purpose of the Federal Declaratory Judgment Act was to provide a milder alternative to the injunction remedy." *Steffel v. Thompson*, 415 U.S. 452, 467 (1974).

Meanwhile, the term "restrain" in § 1252(f)(1) does not do the work Defendants claim. *See* Opp. 15. Rather, "restrain and enjoin" is a "common doublet" referring to the most common forms of injunctive relief: injunctions and restraining orders. BRYAN A. GARNER, GARNER'S DICTIONARY OF LEGAL USAGE 295–96 (3d ed. 2011); *see also* Fed. R. Civ. P. 65 (providing for "injunctions and restraining orders"); *California v. Arizona*, 452 U.S. 431, 432 (1981) (using "enjoined and

[4] Other lower courts agree that classwide declaratory relief is available notwithstanding § 1252(f)(1). *See, e.g.*, *Brito v. Garland*, 22 F.4th 240, 252 (1st Cir. 2021); *Make The Rd.*, 962 F.3d at 635; *Alli v. Decker*, 650 F.3d 1007, 1013 (3d Cir. 2011). The only outlier case Defendants can identify is *Hamama v. Adducci*, 912 F.3d 869 (6th Cir. 2018), which only mentioned § 1252(f)(1) and declaratory relief in passing, and stated that "the issue of declaratory relief [was] not before [the court]." *Id*. at 880 n.8.

restrained" to describe an injunction). Notably, in that same section, § 1252, Congress made clear when it sought to preclude declaratory as well as injunctive relief. *See* 1252(e)(1)(A). Congress did not do so in § 1252(f)(1).

Defendants suggest in a footnote that Plaintiffs cannot meet Rule 23(b)(2)'s requirement for either injunctive or corresponding declaratory relief because individual class members would need to bring separate habeas claims even after prevailing on declaratory relief. Opp. 20 n.7. This is wrong on several fronts. First, the rule is written in the disjunctive, requiring either "final injunctive relief *or* corresponding declaratory relief." *See* Fed. R. Civ. P. 23(b)(2) (emphasis added). Thus, "the rule does not require that both forms of relief be sought and a class action seeking solely declaratory relief may be certified under subdivision (b)(2)." Wright & Miller, 7AA Fed. Prac. & Proc. Civ. § 1775 (3d ed.); *see also Wal-Mart Stores*, 564 U.S. at 360. In other words, Rule 23(b)(2) specifically contemplates that a class could seek declaratory judgment with individual suits to follow.

Second, while declaratory relief is "a much milder form of relief than an injunction," that does not suggest it lacks legal effect. *Steffel*, 415 U.S. at 471; *see also* 28 U.S.C. § 2201(a) ("[a]ny such declaration shall have the force and effect of a final judgment or decree"). "[A]fter a declaratory judgment is issued the district court may enforce it by granting further necessary or proper relief[.]" *Samuels v. Mackell*, 401 U.S. 66, 72 (1971).

Lastly, it is widely recognized that the federal government complies with declaratory judgments, even without an injunction. *See Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 208 n.8 (D.C. Cir. 1985) (Scalia, J.) ("it must be presumed that federal officers will adhere to the law as declared by the court."); *Smith v. Reagan*, 844 F.2d 195, 200 (4th Cir. 1988) (describing declaratory relief as "the functional equivalent of a writ of mandamus"). Unless Defendants suggest that the

government will not comply with a declaratory judgment, there should be no need for follow-on habeas petitions from class members.

Defendants briefly acknowledge that Plaintiffs seek vacatur as well, Opp. 16 (arguing that "setting aside [Defendants'] policy as unlawful . . . would effectively compel Defendants"), but do not explain how it runs afoul of *Aleman Gonzalez*. Nor could they. Given the plain text of § 1252(f)(1), it is unsurprising that "all courts that have addressed the issue"—including after *Aleman Gonzalez*—"have rejected the government's construction." *Nat'l TPS Alliance v. Noem*, 773 F. Supp. 3d 807, 826 (N.D. Cal. 2025); *see, e.g.*, *Texas v. United States*, 40 F.4th 205, 220 (5th Cir. 2022) (per curiam); *Las Americas Immigrant Advoc. Ctr. v. U.S. Dep't of Homeland Sec'y*, 783 F. Supp. 3d 200, 232–33 (D.D.C. 2025); *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, No. CV 25-306 (RDM), --- F. Supp. 3d ----, 2025 WL 1825431, at *21 (D.D.C. July 2, 2025); *Florida v. United States*, 660 F. Supp. 3d 1239, 1284–85 (N.D. Fla. 2023); *Al Otro Lado, Inc. v. Mayorkas*, 619 F. Supp. 3d 1029, 1045 (S.D. Cal. 2022). The discussion in *Nat'l TPS Alliance* is particularly instructive as to the differences between an injunction and vacatur. 773 F. Supp. 3d at 826–29; *id*. at 827 ("it is clear that there are material differences between a vacatur and an injunction"). Thus, "[n]o court has adopted the construction of § 1252(f)(1) advanced by the government," *id*. at 826, and the Court can also vacate Defendants' actions, *see Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 987 (C.D. Cal. 2024).

**D. This Case Calls for Classwide Resolution**

Lastly, Defendants confusingly assert that class certification is inappropriate in habeas. But Plaintiffs have not requested classwide habeas relief. *See* Dkt. 15 at 30–32 (Prayer for Relief in Amended Complaint); Dkt. 42-1 at 1–2 (Proposed Order, seeking only individual writs of habeas corpus for Named Plaintiffs).

In any case, as Defendants acknowledge, there is binding Ninth Circuit precedent holding class actions may be brought pursuant to habeas. Opp. 19 (citing

*Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010)); *see also Mead v. Parker*, 464 F.2d 1108, 1112 (9th Cir. 1972). All other circuit courts to address the issue agree that habeas petitioners can litigate common claims through a class action or similar procedure available at equity. *See, e.g.*, *U.S. ex rel. Sero v. Preiser*, 506 F.2d 1115 (2d Cir. 1974); *Bijeol v. Benson*, 513 F.2d 965, 968 (7th Cir. 1975); *Williams v. Richardson*, 481 F.2d 358 (8th Cir. 1973); *Napier v. Gertrude*, 542 F.2d 825, 827 & n.2 (10th Cir. 1976); *LoBue v. Christopher*, 82 F.3d 1081, 1085 (D.C. Cir. 1996).[5]

Defendants point to 17 putative class members in this district who have brought separate habeas suits since this action was filed. Opp. 19. That only underscores the need for classwide resolution as that is but a sliver of the total number of putative class members in this district—let alone across the country—and Defendants agree if class certification is granted, there should be one nationwide class. *See* Opp. 18. Plaintiffs' (uncontested) expert estimated, conservatively, over 1,200 individuals venued in this District who are impacted by Defendants' no-bond policy; that number grows to over 36,400 when expanded to the nationwide class. Dkt. 52-2 ¶¶ 8–9. Yet Defendants suggest that every individual must file their own habeas petition—simultaneously flooding the courts while ultimately leaving the majority without recourse—rather than resolving the pure legal issues on a classwide basis. Because Plaintiffs satisfy Rules 23(a) and 23(b)(2), and thus have a "categorical" right to pursue their claims as a class action, *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010), the Court should reject Defendants' invitation to create such a chaotic and unfair system.

## III. CONCLUSION

The Court should certify the proposed class.

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[5] The government's citation to the dissent in *A.A.R.P. v. Trump*, 145 S. Ct. 1034 (2025), Opp. 19 n.6, ignores the Supreme Court's ultimate decision to stay removals on behalf of a putative habeas class, *see A.A.R.P.*, 145 S. Ct. at 1034.

Respectfully submitted this 19th day of September, 2025.

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**CERTIFICATE OF COMPLIANCE**

I, Aaron Korthuis certify that this brief does not exceed 10 pages and complies with the page limit of Civil Standing Order, VII.D.

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