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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

DARWIN ANTONIO AREVALO MILLAN, on his own and on behalf of others similarly situated,

Petitioner-Plaintiff,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Respondents-Defendants.

No. 2:25-cv-02994-CV-SK

RESPONDENTS-DEFENDANTS' OPPOSITION TO MOTION FOR CLASS CERTIFICATION

Honorable John W. Holcomb
United States District Judge

I. INTRODUCTION

The Court should deny the Motion for Class Certification. Unlike the situation in *A.A.R.P. v. Trump*, S,Ct. No. 24A1007, slip op. at 3–4, 7 (2025) (per curiam), Petitioner has offered no evidence that removal under the Alien Enemies Act (AEA) is "likely imminent" for either himself or a putative class member. He has not been served with a notice of removal under the AEA. Nor has he alleged that immigration officers have told him that he will be removed imminently. To the contrary, Petitioner has a traditional removal hearing under the Immigration and Nationality Act (INA) scheduled for June 9, 2025.

But to the extent the Court believes the facts here are analogous to *A.A.R.P.*, its ruling should be just as limited as that case. In *A.A.R.P.*, the Supreme Court granted temporary emergency classwide relief "only to vindicate notice rights" under the AEA. Federal courts lack jurisdiction to review the President's assessment that an invasion or predatory incursion has occurred. And habeas relief will ultimately depend on each class member's individual circumstances, which is ill-suited for a class action. Not only that, Petitioner has not established the necessary requirements to certify a class under Rule 23 of the Federal Rules of Civil Procedure. The Government respectfully asks that the Motion for Class Certification be denied.

II. BACKGROUND

A. The Petitioner.

Darwin Antonio Arevalo Millan (Petitioner) is a twenty-seven year old citizen of Venezuela. Lara Decl. at ¶ 7. On May 4, 2024, he applied for admission at the Laredo, Texas Port of Entry. *Id.* Because he lacked entry documents, U.S. Customs and Border Protection (CBP) issued a Notice to Appear for removal proceedings as being inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* at ¶¶ 7–8. As an alternative to detention, Petitioner was released on parole and placed in an intensive supervision program. *Id.* at ¶¶ 8–9. He broke the terms of supervision by failing to appear a biometric check-in appointment on December 3, 2024. *Id.* at ¶ 10. Although Petitioner was given a second

chance, he missed the biometric appointment again on January 3, 2025. *Id.* at ¶ 11.

On March 20, 2025, Immigration and Customs Enforcement (ICE) terminated Petitioner's supervision and placed him into custody. *Id.* at ¶¶ 13–14. He has since been transferred to the Adelanto ICE Processing Center. *Id.* at ¶ 16. And on April 3, 2025, an attorney entered an appearance on Petitioner's behalf in the Adelanto Immigration Court. *Id.* at ¶¶ 15, 17. Petitioner has a merits hearing to determine whether he is to be removed under the INA on June 9, 2025. *Id.* at ¶ 17.

B. This lawsuit.

On May 17, 2025, Petitioner filed this habeas and class action complaint for declaratory and injunctive relief. ECF 1 (Complaint). It raises twenty causes of action under: the AEA, the INA, the Administrative Procedure Act (APA), the U.S. Constitution, the California Constitution, the U.S.-Venezuela Treaty of 1836, and the Geneva Conventions. *Id.* at ¶¶ 263–368. Concurrent with the Complaint, Petitioner sought a Temporary Restraining Order (TRO) and moved for class certification. ECF 2 (TRO), ECF 3 (Mot. Class Cert.). The Court granted the TRO *ex parte* and certified the putative class under *A.A.R.P.* "for the limited purpose of adjudicating the amount of notice due prior to removal under AEA or Proclamation No. 10903." ECF 6 at 13. The Court directed the Government to file oppositions to the Petitioner's applications by noon on Tuesday May 27, 2025. *Id.* at 13.

III. STANDARD OF REVIEW

The class action "is an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)). To fall within this narrow exception, Petitioner must "affirmatively demonstrate" compliance with each element of Rule 23—"that is, he must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc." *Wal-Mart Stores*, 564 U.S. at 350; *see also McCarthy v. Kleindienst*, 741 F.2d 1406, 1414 n.9 (D.C. Cir. 1984) ("It is the party seeking class certification that bears the burden of establishing the class action

requirements."). This is not just a "mere pleading standard." *Id.* "[A]ctual, not presumed, conformance" with Rule 23 is "indispensable." *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 161 (1982). Class certification is proper only if the Court is satisfied "after a rigorous analysis" that Plaintiffs have shown that each requirement of the Rules has been met. *Wal-Mart Stores*, 564 U.S. at 350–51.

Petitioner must demonstrate each element of Rule 23(a) is met: (1) the class is so numerous that joinder is impractical ("numerosity"); (2) there are questions of law or fact common to the class ("commonality"); (3) the claims or defenses of the Named Plaintiff is typical of claims or defenses of the class ("typicality"); and (4) the Named Plaintiffs and counsel will fairly and adequately protect the interests of the class ("adequacy of representation"). Fed. R. Civ. P. 23(a).

To satisfy the commonality element, identifying one or more common questions is not enough. "It is not the raising of common 'questions'—even in droves—but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation" that makes a case appropriate for class treatment. *Wal-Mart Stores*, 564 U.S. at 350 (emphasis in original).

In addition to meeting the requirements set forth in Rule 23(a), the proposed class must also qualify under Rule 23(b)(1), (2), or (3). *AmChem Prods. v. Windsor*, 521 U.S. 591, 614 (1997). Petitioner seeks certification under Federal Rule of Civil Procedure 23(b)(2), which 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). "The key to the (b)(2) class is the individual 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 Stores*, 564 U.S. at 360.

IV. ARGUMENT

A. The Court should not certify a class of aliens raising claims over which it lacks jurisdiction.

This Court lacks jurisdiction to review the Proclamation or enjoin the President's exercise of authority under Article II and the AEA. The Supreme Court has long recognized that courts cannot issue an injunction purporting to supervise the President's performance of his "official duties"—including "the execution of an act of Congress." *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475, 501 (1867); *See also The Prize Cases*, 67 U.S. (2 Black) 635, 670 (1862) ("The proclamation of blockade is itself official and conclusive evidence to the Court that a state of war existed which demanded and authorized a recourse to such a measure"); *Trump v. United States*, 603 U.S. 593, 607 (2024) (recounting that the President "has important foreign relations responsibilities: [including] . . . recognizing foreign governments, . . . overseeing international diplomacy and intelligence gathering, and managing matters related to terrorism, . . . and immigration").

Consistent with that general rule, courts have held that the President's authority and discretion under the AEA is not a proper subject for judicial scrutiny: "The authority of the President to promulgate by proclamation or public act 'the manner and degree of the restraint to which they (alien enemies) shall be subject, and in what cases,' is, of course, *plenary and not reviewable*." *Ex parte Gilroy*, 257 F. 110, 112 (S.D.N.Y. Feb. 28, 1919) (emphasis added); *see also id.* ("Once the person is an alien enemy, obviously the course to be pursued is essentially an executive function, to be exercised in the discretion of the President.").

Indeed, the Supreme Court recently held that "[c]hallenges to removal under the AEA, a statute which largely 'preclude[s] judicial review,' must be brought in habeas." *Trump, et al. v. J.G.G., et al.*, 604 U.S. ----, 2025 WL 1024097, at *1 (U.S. Apr. 7, 2025) (quoting *Ludecke v. Watkins*, 335 U. S. 160, 163–164 (1948)). The Supreme Court further

held that an individual subject to detention and removal under the AEA is entitled to "'judicial review'" as to "questions of 'interpretation and constitutionality' of the Act as well as whether he or she 'is in fact an alien enemy fourteen years of age or older.'" *Id.* at *2 (quoting *Ludecke*, 335 U. S., at 163–164, 172, n. 17). "So, the detainees are entitled to notice and opportunity to be heard 'appropriate to the nature of the case.'" *Id.* (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 313 (1950)). More specifically, the Court held that "AEA detainees must receive notice . . . that they are subject to removal under the [AEA]. The notice must be afforded within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs." *Id.*

Because jurisdiction in this context is limited to individual habeas claims challenging whether an alien has been properly included in the category of alien enemies – necessarily an individual determination – there is no basis to certify a class to resolve those claims. *See Harris v. Med. Transp. Mgmt., Inc.*, 77 F.4th 746, 753 (D.C. Cir. 2023) (class certification not appropriate where "questions of law or fact . . . affecting only individual members" predominate); ECF No. 1 ¶¶ 11, 22 (setting out Petitioner's specific factual circumstances); *see also Trump, et al. v. J.G.G., et al.*, 2025 WL 1024097, at *8 (Sotomayor, J., dissenting) (noting that the issue before the Court was "'which procedural vehicle is best situated for the Plaintiffs' injunctive and declaratory claims': *individual habeas petitions filed in district courts across the country* or a class action filed in the District of Columbia").

B. Class actions are not appropriate in the habeas context.

Habeas proceedings are "unique." *Harris v. Nelson*, 394 U.S. 286, 294 (1969). Although "civil" in nature, the Rules of Civil Procedure apply only to the extent that a given practice "previously conformed to the practice in civil actions." Fed. R. Civ. P. 81(a)(4)(B). That means a practice contained in a rule must have existed in habeas proceedings when the Rules of Civil Procedure were codified in 1938. *See Harris*, 394 U.S. at 294. Class actions, however, are "a form of relief traditionally confined to equity

practice." *United States ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125 (2d Cir. 1974). In the Ninth Circuit, they are "ordinarily disfavored" in the habeas context. *Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir. 2010) *abrogation recognized by Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1199–1201 (9th Cir. 2022) (quoting *Cox v. McCarthy*, 829 F.2d 800, 804 (9th Cir. 1987)). And even the limited practice recognized in this circuit likely does not survive "more recent changes in the legal landscape." *Betschart v. Oregon*, 103 F.4th 607, 636 (9th Cir. 2024) (Bumatay, J., dissenting). The Court should not certify a class at this stage because "it is doubtful that class relief may be obtained a habeas proceeding." *A.A.R.P.*, 605 U.S. ---, 2025 WL 1417281, at *9 (Alito, J., dissenting).

Although the Supreme Court granted temporary classwide relief "to vindicate notice rights" in *A.A.R.P.*, it declined to address whether the class should be certified under Rule 23. *See A.A.R.P. v. Trump*, 605 U.S.---, 2025 WL 1417281, at *3 n.1 (May 16, 2025). The Court based its ruling on evidence indicating "that removals of putative class members were likely imminent." *Id.* at *3. Immigration officers had informed some class members "that they will be deported either today or tomorrow." *Id.* Other class members had received written notices of removal. *Id.* But Petitioner has presented no such evidence here. *See id.* He has not alleged that immigration officers have informed him of imminent removal under the AEA. *See* ECF 2-2 (Schroeder Decl.). Nor has he received written notice of removal under the AEA. Lara Decl. at ¶ 13. To the contrary, he has a traditional removal hearing under the INA on June 9, 2023. *Id.* at ¶ 17. Because Petitioner has not presented evidence indicating imminent removal under the AEA, there is no need to "vindicate notice rights on a classwide basis." *A.A.R.P.*, 2025 WL 1417281, at *3 n.1

C. To the extent Rule 23 applies, the putative class fails to meet its requirements for certification.

"The class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.'" *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013) (quoting *Califano v. Yamanski*, 442 U.S. 682, 700-01 (1979)). Federal Rule of Civil Procedure 23 governs class certification. A putative class must first satisfy each

of Rule 23(a)'s four requirements: (1) numerosity; (2) typicality; (3) commonality; and (4) adequacy. *See* Fed. R. Civ. P. 23(a). If the putative class satisfies Rule 23(a)'s requirements, it then "must satisfy at least one of the three requirements listed in Rule 23(b)." *Wal-Mart Stores*, 564 U.S. at 345. Here, Petitioner relies on Rule 23(b)(2), *see* ECF No. 3 at 2, which provides 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." Fed. R. Civ. P. 23(b)(2). The Court should not certify a class action unless the moving party establishes each of the requirements of Rule 23. *See e.g., Edwards v. First Am. Corp.*, 798 F.3d 1172, 1177–78 (9th Cir. 2015).

1. Petitioners cannot establish commonality.

The "commonality" requirement mandates that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The "claims must depend upon a common contention." *Wal-Mart*, 564 U.S. at 350. And "[t]hat common contention . . . must be of such a nature that it is capable of class-wide 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." *Id.* Although even a single common question will do, "[w]hat 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 the resolution of the litigation. Dissimilarities within the class are what have the potential to impede the generation of common answers." *Id.* (citation omitted).

The Court should not certify the class because a common answer will not resolve this litigation. *See id.* The Supreme Court has made clear that challenging "removal under the AEA . . . must be brought in habeas." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2025). And entitlement to habeas relief is highly individualized. *See e.g., Boumediene v. Bush*, 553 U.S. 723, 779 (2008). Petitioners seek to certify a class of "[a]ll noncitizens" in this district "who were, are, or will be subject to" the Proclamation 10903. ECF 3 at 1. That is simply "too broad to certify because individualized questions . . . exist to defeat

commonality." *Wooley v. Ygrene Energy Fund*, No. 20-16608, 2021 WL 4690971, at *1 (9th Cir. Oct. 7, 2021); *see also Stafford v. Bojangles' Rests.*, 123 F.4th 671, 681 (4th Cir. 2024) (holding class was "too broad and ill-defined to reach the threshholds of class certification") (quoting *Braidwood Mgmt., Inc. v. EEOC*, 70 F.4th 914, 933 (5th Cir. 2023)). The putative class includes individuals at various stages of removal proceedings—or not in proceedings at all. It includes individuals with Temporary Protected Status, or without. It includes individuals fear-based applications, or without. And it includes individuals with varying risk of designation under the AEA based on their own individual circumstances. The Court should allow each member of the putative class to raise individualized claims for habeas relief. *See W.M.M. v. Trump*, ---F. Supp. 3d ---, 2025 WL 1358476, at *11–12 (N.D. Tex. May, 9, 2025) *vacated by A.A.R.P.*, 605 U.S. ---, 2025 WL 1417281, at *3 n.1.

To the extent the common allegation is that class members have all suffered a violation of the Due Process Clause—that is insufficient to satisfy commonality. *Wal-Mart Stores*, 564 U.S. at 350. The allegation is particularly deficient because "due process is flexible and calls for such procedural protections as the particular situation demands." *Matthews v. Eldridge*, 424 U.S. 319, 321 (1976); *Jennings v. Rodriguez*, 583 U.S. 281, 314 (2018) (a class action may not be the proper vehicle to resolve Due Process claims because of the flexibility inherent in a Due Process analysis). Because due process is a flexible concept, the dissimilarities inherent to each individual case would require a court to delve into the specific facts of each alien's case, thereby rendering it impossible to dispose of the class-wide claims in an efficient manner. It would be more efficient to address these issues in the context of individual habeas cases where the court may elect to stay individual removals for longer or shorter periods based on the allegations and strength of the Government's showing in individual cases. Moreover, determinations of whether an alien is subject to removal under the AEA, are inherently fact-specific questions that cannot be resolved on a class-wide basis. Accordingly, the certified class does not meet the commonality requirement under Rule 23(a)(2).

2. Petitioners cannot show typicality.

Petitioner also fails to satisfy the requirement 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). "A finding of typicality may be 'inappropriate where a putative class representative is subject to unique defenses which threaten to become the focus of the litigation.'" *Torres v. Air to Ground Servs., Inc.*, 300 F.R.D. 386, 400 (C.D. Cal. 2014) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). The class representative must "possess the same interest and suffer the same injury as the class members." *Gen. Tel. Co. of the Sw.*, 457 U.S. at 156 (quotations omitted).

Petitioner has not sustained any injury, much less the same one as the putative class members. *See id.* He was served with a Notice to Appear in May 2024—before President Trump took office and subsequently issued Proclamation 13033. Lara Decl. at ¶¶ 7–8. The government's basis for removal is inadmissibility under the INA, not designation under the AEA. *Id.* at ¶ 8. And Petitioner has a hearing on the merits in less than two weeks. *Id.* at ¶ 17. Not only that, Petitioner has offered no evidence that he will be imminently removed under the AEA. *See e.g.*, *A.A.R.P.*, 2025 WL 1417281, at *3 (noting some class members were told "that they will be deported either today or tomorrow" and others had notices of removal). He stands in stark contrast with a putative class member detained under the AEA. *See id.* Whatever legal challenges may exist to the AEA, Petitioner is not the proper class representative to make them.

3. Petitioners cannot establish adequacy.

A named Plaintiff "must fairly and adequately protect the interests of the class." *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011). That means the named Plaintiff and his counsel: (1) have no conflicts of interest with other class members and (2) will vigorously prosecute the case on behalf of the class. *Kim v. Allison*, 87 F.4th 994, 1000 (9th Cir. 2023). To adequately represent a class, the named Plaintiff's "interests must align with all putative class members' interests." *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1065 (C.D. Cal. 2010) (quotations omitted).

Petitioner has not established that his interests align with the putative class members. *See id.* As noted, he has a traditional removal hearing on the merits scheduled for June 9, 2025. Lara Decl. at ¶ 17. That alone "'implicate[s] a significantly different set of concerns' than the unnamed plaintiffs." *Melendres v. Arpaio*, 784 F.3d 1254, 1263 (9th Cir. 2015) (quoting *Gratz v. Bollinger*, 539 U.S. 244, 265 (2003)). Depending upon those proceedings, the Petitioner may have no incentive to "prosecute the action vigorously on behalf of the class." *Kim*, 87 F.4th at 1002 (*quoting In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 943 (9th Cir. 2015) (cleaned up))

4. Petitioners do nothing to establish numerosity.

Petitioners simply assert that because over 200 people have been removed under the Alien Enemies Act, numerosity must exist. ECF 3 at 6-7. But the putative class is just "noncitizens in custody in the Central District of California" who may be subject to the Proclamation. *Id.* at 2. There is no basis for assuming, without evidence, that number of putative class members in custody in a single district could reach sufficient levels for numerosity. Courts in this district have held that 7 to 38 members are insufficient for a class. *See Astorga v. Cnty. of Los Angeles*, 2021 WL 5986912, at *3 (C.D. Cal. Oct. 21, 2021) (38 insufficient); *Gallardo v. AIG Domestic Claims, Inc.*, 2012 WL 12860705, at *2 (C.D. Cal. Oct. 17, 2012) (7 to 15 people are insufficient). Absent clear evidence, it is unlikely that the number of non-citizens in custody within the district that are subject to the Proclamation even come close to 38.

At most, Petitioners could rely on future potential class members. But speculation that some unknown number of people may be subject to the proclamation in the future does cure Petitioners' defect. *See Astorga*, 2021 WL 5986912, at *3 (speculation on future members does not count). And habeas jurisdiction requires that class members currently be in custody. *See I.M. v. United States Customs & Border Prot.*, 67 F.4th 436, 439 (D.C. Cir. 2023) ("Custody Is an Essential Jurisdictional Requirement"). Since this Court would not have jurisdiction over future class members not yet in custody, those individuals cannot be part of the class here. *See Monteferrante v. Williams-Sonoma, Inc.*, 241 F. Supp.

3d 264, 269 (D. Mass. 2017); *Pagan v. Dubois*, 884 F. Supp. 25, 28 (D. Mass. 1995) (holding plaintiffs' class definition as overbroad because it included those who did not have an injury). So Petitioners fail to establish numerosity.

5. Petitioners cannot satisfy the requirements of Rule 23(b)(2).

The Court should reject the claim that Rule 23(b)(2) has been satisfied. *See* ECF 3 at 1. Rule 23(b)(2) provides that a class action can be maintained if "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). "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 (internal quotations and citation omitted). "It does not authorize class certification when each individual class member would be entitled to a different injunction or declaratory judgment against the defendant." *Id.*

Rule 23(b)(2) does not authorize class certification here because each individual class member would be entitled to a different injunction or declaratory judgment against the Government. Whether an alien is a member of Tren de Aragua; whether he has been given sufficient process; whether he is removable under a different provision of law; and other such questions necessarily are individualized determinations unsuitable for class treatment. *See W.M.M.*, 2025 WL 1358476, at *16 ("the fact that the petitioners are seeking individualized habeas relief . . . makes certification under Rule 23(b)(2) inappropriate") *vacated by A.A.R.P.*, 605 U.S. ---, 2025 WL 1417281, at *3 n.1.

To the extent Petitioner and the proposed class are entitled to some additional procedures under the Due Process Clause, those procedures would be different for each alien depending on the underlying facts and circumstances of their case because—as the Supreme Court has "stressed repeatedly"—"due process is flexible," and it "calls for such procedural protections as the particular situation demands." *Jennings*, 583 U.S. at 314 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972) and citing *Landon v. Plasencia*,

459 U.S. 21, 34 (1982)); *see also Vallario v. Vandehey*, 554 F.3d 129, 1268 (10th Cir. 2009) ("Under Rule 23(b)(2), the injuries sustained by the class must be sufficiently similar that they can be addressed in a single injunction that need not differentiate between class members." (emphasis added) (citation omitted)). "A class consisting of some members who might be entitled to [relief] and others who are not lacks sufficient cohesiveness to obtain relief . . . under Rule 23(b)(2)." *Reid*, 17 F.4th at 11 (holding that a class of aliens seeking relief from mandatory detention in § 1226(c) could not be sustained under Rule 23(b)(2) because they were not all entitled to the same procedures). Although "having clear standards" with regard to AEA removals may "make life simpler for all involved," a Rule 23(b)(2) class action seeking additional procedures under the Due Process Clause "does not provide a vehicle for preemptively announcing such rules." *Id.* at 12. Instead, standards should arise in the form of agency guidance or regulations or through "common law rules of precedential force, through case-by-case adjudication." *Id.* Under these circumstances, Petitioners cannot demonstrate that certification under Rule 23(b)(2) is proper.

D. The All Writs Act does not permit class actions outside of Rule 23.

There is no alternative means to certify a habeas class. Petitioners must satisfy Rule 23. Petitioners argue, however, that a habeas class can be maintained under "equity principles," including the All Writs Act. ECF 3 at 12–13 (citing *U. S. ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125 (2d Cir. 1974) (relying on All Writs Act)). They claim this permits a habeas class even if nothing else does, free of the Rule 23 requirements. *Id.* This is wrong. First, general equitable principles and the All Writs Act cannot be used "to circumvent statutory requirements or otherwise binding procedural rules." *Shoop v. Twyford*, 596 U.S. 811, 820–21 (2022). So to the extent a habeas class can be maintained (it cannot), the All Writs Act cannot replace the existing procedural requirements of Rule 23 for class actions. *See Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32–33 (2002) (All Writs Act cannot replace removal requirements). Inventing a new habeas class action mechanism through the All Writs Act circumvents these procedural rules and undermines

their purpose in regulating class actions. If courts could freely do this, there would be no reason to ever follow Rule 23 or other procedural restrictions.

In addition, this innovation would circumvent the individual application and "next friend" procedures of federal habeas. *See* 28 U.S.C. § 2242 ("Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf"). Here, a class representative can simply sign on behalf of a class of people they know nothing about (including, apparently, future class members yet to exist). That is not how equity or the All Writs Act work. *See Shoop*, 596 U.S. at 820–21 (All Writs Act cannot supplement habeas procedures).

Even if there were no existing procedural rules for class actions, there is no basis in equity or the All Writs Act to create a habeas class action. Indeed, the All Writs Act is limited to "all writs necessary or appropriate in aid of their respective jurisdictions." 28 U.S.C. § 1651(a). It cannot create jurisdiction in the first place nor grant a court the power to extend its jurisdiction to putative class members. *See Syngenta Crop Prot., Inc.*, 537 U.S. at 33 (All Writs Act aids jurisdiction, it does not grant it). In any event, equity and the All Writs Act are limited to the relief that was "traditionally accorded by courts of equity" at "the time of the adoption of the Constitution and the enactment of the original Judiciary Act, 1789." *Grupo Mexicano de Desarrollo S.A. v. All. Bond Fund, Inc.*, 527 U.S. 308, 318-19, 326 n.8 (1999). There is no evidence that habeas class actions existed at the Founding. So it is unsurprising that Petitioners do not cite (and the government could not locate) any class habeas cases prior to Rule 23 enacted in 1938. Mot.12–13. Given the lack of historical support, if a habeas class can exist at all (it cannot) it must be maintained under Rule 23. Neither equity nor the All Writs Act vest courts with the discretion to invent a new form of class action or ignore Rule 23's strictures.

V. CONCLUSION

For all the above reasons, Defendant requests that the Motion for Class Certification be denied.

DATED this 27th day of May, 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel of record for the Federal Defendant certifies that this brief contains 4852 words which complies with the word limit of Local Rule 11-6.1.

/s/ Michael D. Ross
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