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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

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

Petitioner-Plaintiff,

v.

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

Respondent-Defendant.

No. 5:25-cv-01207

RESPONSE TO PETITIONER-PLAINTIFF'S EMERGENCY *EX PARTE* APPLICATION FOR WRIT OF MANDAMUS, ISSUANCE OF WRIT OF HABEAS CORPUS WITH DECLARATORY RELIEF, AND PERMANENT INJUNCTION

Honorable John W. Holcomb
United States District Judge

Petitioner Darwin Antonio Arevalo, a citizen of Venezuela, is lawfully detained as an arriving alien who is in proceedings under 8 U.S.C. § 1229a. Petitioner may be lawfully detained pursuant to 8 U.S.C. 1225(b)(2)(A) during his removal proceedings and pending any appeal. Despite the narrow legal question presented here, and the clear legal authority for Petitioner's continued detention, Petitioner seeks expansive emergency, *ex parte* relief for himself and new class of individuals granted relief or protection from removal and who are detained "pursuant to a vague and unknown reason." ECF No. 30 at 2-5, 27.

The court should deny Petitioner's request. Petitioner is detained pending appeal of the Immigration Judge's grant of asylum. As before, there currently exists no evidence that Petitioner faces any threat of detention or removal as an alien enemy. Similarly, Petitioner is not entitled to expansive relief on behalf of a new, uncertified class has he has not satisfied Federal Rule of Civil Procedure 23, and classwide relief is legally barred by 8 U.S.C. § 1252(f)(1). As most of the alleged harms raised here are associated with baseless claims that Petitioner is being detained outside of the Immigration and Nationality Act (INA)

BACKGROUND

A. Legal Background. A removable alien may be detained during their removal proceedings and after they receive an order of removal. *See* 8 U.S.C. §§ 1225, 1226, 1231. Generally, when an alien arrives at a port of entry into the United States, he is "an applicant for admission," *id.* § 1225(a)(1), who must "be inspected by immigration officers" to ensure that he may be admitted into the country, *id.* § 1225(a)(3). These noncitizens are

often referred to as "arriving aliens," 8 C.F.R. § 1001.1, and include individuals who are inadmissible due to fraud, misrepresentation, or lack of valid documentation to enter the United States. 8 U.S.C. § 1225(b)(1)(A)(i). A noncitizen who is "not clearly and beyond a doubt entitled to be admitted . . . shall be detained" pending the outcome of proceedings before an Immigration Judge. *Id.* § 1225(b)(2)(A). The noncitizen may be released on parole "for urgent humanitarian reasons or significant public benefit," but when the purpose of the parole has been served, the noncitizen is "returned to the custody from which he was paroled." *Id.* § 1182(d)(5)(A); *see Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018).

As to noncitizens who are charged as removable within the United States, 8 U.S.C. § 1226 "generally governs the process of arresting and detaining . . . aliens pending their removal." *Jennings*, 583 U.S. at 288. Under § 1226(a), "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). By contrast, § 1226(c) provides that the government "shall take into custody any alien who" has committed any one in a set of serious crimes, *id.* § 1226(c)(1), and "may release" the noncitizen "only" under narrow witness-protection circumstances, *id.* § 1226(c)(2).

If a noncitizen becomes subject to an administratively final removal order, the authority for detention shifts to § 1231(a). *See Johnson v. Guzman Chavez*, 594 U.S. 523, 528–29 (2021). Similarly, if a noncitizen illegally reenters the United States after previously having been removed, he is subject to a reinstated order of removal and may

be detained under § 1231(a). *See id.* at 533. Section 1231 establishes a 90-day "removal period" within which the government generally must secure removal. 8 U.S.C. § 1231(a)(1)(A). The government "shall" detain noncitizens during that period, and "[u]nder no circumstances during the removal period shall the [government] release" those whose removal is based on certain criminal or national-security grounds. *Id.* § 1231(a)(2). In some cases, the government is unable to secure removal within the removal period and "may" continue to detain certain noncitizens beyond the removal period. *Id.* § 1231(a)(6). Detention beyond the removal period may last only for "a period reasonably necessary to bring about" removal. *Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

B. Petitioner's Entry and Removal Proceedings. On May 4, 2024, Petitioner, a Venezuelan citizen, applied for admission to the United States at a Port of Entry. ECF 11-1, Declaration of Jackson Lara ("Lara Dec.") at ¶ 7. He was paroled into the United States, placed under the supervision of Immigration and Customs Enforcement (ICE) using the intensive supervision appearance program (ISAP), referred to removal proceedings under 8 U.S.C. § 1229a. *Id.* ¶ 8. Between May 2024 and March 2025, Petitioner violated the terms of his release on three occasions, which resulted in Petitioner being taken into custody on March 20, 2025. *Id.* at ¶¶ 10-12.

In removal proceedings, on June 9, 2025, the Immigration Judge granted Petitioner's application for asylum under 8 U.S.C. § 1158. ECF No. 30-4 at 2. DHS immediately reserved appeal. *Id.* at 5. The DHS appeal is due to the Board of Immigration Appeals on July 9, 2025. *Id.* at 5. Pending the appeal and competition of 1229a

proceedings, Petitioner remains detained under 8 U.S.C. 1225(b)(2)(A), which provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title."

B. Habeas Proceedings. Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, ECF No. 1, a TRO motion, TRO Mot., ECF No. 2, and a class-certification motion, ECF No. 3. Petitioner premised his suit on the claim that the Proclamation applies to him and that he is facing removal under the AEA. ECF No. 1 at 69-90. This Court enjoined the Government from "removing Arevalo, or any member of the putative class, under the AEA or Proclamation No. 10903." ECF No. 6.

On June 2, 2025, this Court granted, in part, Petitioner's Application for a Temporary Restraining Order and Motion for Class Certification. ECF No. 26. For the limited purpose of preliminary injunctive relief, the Court certified the following class:

> All noncitizens in custody in the Central District of California who were, are, or will be subject to the March 2025 Presidential Proclamation entitled "Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua" and/or its implementation, with the exception of any noncitizen who filed an individual habeas petition prior to the commencement of this action.

Id. at 25. This Court preliminarily enjoined the Government from removing Petitioner, or any member of the putative class, under the AEA or Proclamation No. 10903, pending further Court order. *Id.* Similarly, the Court preliminarily enjoined the Government from

transferring Petitioner, or any member, out of this judicial district "for any purpose other than executing a removal order lawfully issued under the [INA]." *Id.* The June 2, 2025, order did not prevent the Government from removing Petitioner, or any class member, pursuant to a removal order "lawfully issued under [INA]." *Id.* at 26-26.

Petitioner has now filed an "Emergency *Ex Parte* Application for Writ of Mandamus, Issuance of Writ of Habeas Corpus with Declaratory Relief, and Permanent Injunction." ECF No. 30. On his own behalf, Petitioner requests release from detention and declaratory relief. *Id.* at 3. On behalf the putative class members, his request is expansive. *See id.* at 3-4. His filing includes requests for hearings, release, and a permanent injunction granting the relief he seeks for all similarly situated persons on a "nationwide, circuit wide, district wide, and class wide basis." *Id.* at 4.

ARGUMENT

I. Petitioner is not entitled to relief.

Petitioner is lawfully detained pending DHS's appeal of the Immigration Judge's decision. Petitioner is detained pursuant to 8 U.S.C. § 1225(b)(2)(A). Specifically, Petitioner is an "an alien who is an applicant for admission," whom the "examining immigration officer determine[d] . . . is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A); *see* Lara Dec. at 2. Designated as such, Petitioner "shall be detained" for removal proceedings although he may be released on parole. 8 U.S.C. § 1225(b)(2)(A). After being initially detained, Petitioner was released on parole. Lara Dec. at 2. Petitioner was detained again after his violations of the supervisory

program. *Id.* at 2-3. At that point, he "returned to the custody from which he was paroled." 8 U.S.C. § 1182(d)(5)(A); *see Jennings*, 583 U.S. at 288; Lara Dec. at 2-3. In other words, he returned to detention under 8 U.S.C. § 1225(b)(2)(A).

Petitioner remains detained under that authority after the Immigration Judge's June 9, 2025, decision. The Immigration Judge's decision is not yet final. An Immigration Judge's grant of relief in removal proceedings is not final where the DHS has appealed the decision. *Matter of E-Y-F-G-*, 29 I&N Dec. 103, 104 (BIA 2025). A decision on removal thus remains pending where, as here, the DHS intends to file an appeal within thirty days of the decision. 8 C.F.R. § 1003.39; *see* ECF No. 30-4 at 5 (DHS reserves appeal). While Petitioner may ultimately succeed in securing relief from removal despite DHS's appeal, the grant of such relief is not final while the appeal is pending. *Matter of E-Y-F-G-*, 29 I&N Dec. at 104. Given that the Immigration Judge's decision is not yet final, Petitioner remains detained under section 1225(b)(2)(A) "for a proceeding under section [8 U.S.C. § 1229a]." 8 U.S.C. § 1225(b)(2)(A).

II. Petitioner has not presented any basis for class-wide relief

Petitioner has made no attempt to satisfy the requirements for the expansive class-wide relief he seeks. As a threshold matter, Petitioner made no claim in his original petition related to the specific question of his detention after the Immigration Judge's asylum decision. *See* ECF No. 1. Indeed, the asylum grant had not yet transpired in his case. Petitioner's detention after the grant of asylum is a posture wholly unrelated to his AEA-based claims in this case. *See* ECF Nos. 1 & 2. Accordingly, the Court has not certified a

class in this respect. *See* ECF 26 at 25-26. Petitioner cannot simply augment the class that was certified by this Court "for the limited purpose of granting preliminary injunctive relief." *Id.* at 25. Petitioner would have to satisfy Rule 23 for his particular claim at this juncture.

Petitioner has not attempted to comply with that rule. "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. To satisfy Rule 23, 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, Inc. v. Dukes* ("*Wal-Mart*"), 564 U.S. 338, 345 (2011); *see* FRCP 23 (b) ("Types of Class Actions"). Petitioner has not discussed any of Rule 23's requirements. *See* ECF No. 30-1 at 18-27.

Even if he had discussed the requirements, Petitioner's request patently fails on the question of numerosity. Analysis of numerosity "requires examination of the specific facts of each case and imposes no absolute limitations." *Gen. Tel. Co. v. EEOC*, 446 U.S. 318, 330 (1980). While a petitioner need not calculate the precise number of class members, mere speculation as to numerosity does not satisfy Rule 23(a)(1). *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 59-97 (3d Cir. 2012); *Reed v. Bowen*, 849 F.2d 1307, 1309 (10th

Cir. 1988). Furthermore, "[i]t is well-established that members of a plaintiff class must all have the legal right to bring suit against the defendant on their own; inclusion of those without such standing renders the class overbroad." *In re TJX Companies Retail Sec. Breach Litig.*, 246 F.R.D. 389, 393 (D. Mass. 2007). A court may strike class allegations that encompass individuals who cannot meet basic jurisdictional requirements. *Monteferrante v. Williams-Sonoma, Inc.*, 241 F. Supp. 3d 264, 269 (D. Mass. 2017); *see also 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). Petitioner has offered only anecdotal claims of persons who have remained detained after being granted relief. *See* ECF No. 30-2 at 2. He does not explain whether the DHS reserved appeal in those cases nor does he tie those accounts to any AEA claims. Petitioner has not demonstrated the required numerosity. *See Marcus*, 687 F.3d at 597 ("But the only fact with respect to numerosity proven by a preponderance of the evidence is that Marcus himself is a member of the proposed class.").

In any event, Petitioner cannot satisfy Rule 23(b)(2) because the Court does not have jurisdiction to grant Petitioner's requested relief on a class-wide basis. "[N]o court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of," specified statutes, including the detention statute at issue in this case, 8 U.S.C. § 1225, "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); *see Garland v. Aleman Gonzalez*, 596 U.S. 543, 548-50 (2022); *see also*

Biden v. Texas, 597 U.S. 785, 797-98 (2022). Section 1252(f)(1) "generally prohibits lower courts from entering injunctions that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out the specified statutory provisions." *Aleman Gonzalez*, 596 U.S. at 550. Therefore, this Court lacks jurisdiction to grant class-wide injunctive relief that interferes with ICE's execution of its detention responsibilities under the INA, including its ability to detain and remove noncitizens. 8 U.S.C. § 1252(f)(1); *Aleman Gonzalez*, 596 U.S. at 548.

Moreover, labeling class-wide relief as declaratory does not change the fact that the practical effect of that relief would operate as a class-wide injunction that goes directly against 8 U.S.C. § 1252(f)(1). *See Aleman Gonzalez*, 596 U.S. at 549–50 (only the Supreme Court has jurisdiction "to enjoin or restrain the operation of" certain laws governing ICE's authority to inspect, apprehend, examine or remove noncitizens). Assuming Petitioner seeks class-wide declaratory relief that would have any meaningful significance for the proposed class, that relief would undoubtably restrain ICE's authority and ability to detain and remove noncitizens with different factual backgrounds which may or may not require mandatory detention or removal. *See id.*; *see also Alli v. Decker*, 650 F.3d 1007, 1014 (3d Cir. 2011) (recognizing that "under certain circumstances, declaratory relief has been deemed functionally equivalent to injunctive relief"). Accordingly, because Plaintiff seeks class-wide relief that is either barred by statute or offends justiciability principles, the Court should deny class certification.

III. Petitioner's remaining claims are fully addressed through this Court's preliminary injunction.

The Court has already addressed the remainder of Petitioner's demands. This Court's June 2, 2025, Order provides preliminary injunctive relief for those aliens in the district who "were, are, or will be" subject to the Proclamation. ECF No. 26 at 25. The relief extends until "further Order of this Court." *Id.* Petitioner rehashes his AEA claims in his most recent request and relies upon the "papers already filed in this case" and the "original petition" and preliminary injunction. ECF Doc. 30 at 2. There is no need for the Court to enter additional relief on these claims on a regurgitated record, particularly where it is clear that Petitioner's detention is under INA authority and not based on the authorities challenged. Moreover, while Petitioner attempts to add claims that the President has violated the Posse Comitatus Act, those claims are currently being addressed in other litigation.[1] *See* ECF No. 30-1; *Newsom v. Trump*, No. 25-CV-04870-CRB, 2025 WL 1663345, at *16–17 (N.D. Cal. June 12, 2025) ("[T]he parties will be free to make whatever arguments they wish in connection with the Posse Comitatus Act.").

[1] For his allegation that the Government has violated the Posse Comitatus Act, Petitioner relies upon a transcript he refers to as "Exhibit D." ECF Doc. 30 at 2. Petitioner, however, has not attached an Exhibit D to his filing.

CONCLUSION

Petitioner's emergency applications and motion should be denied.

DATED this 18th day of June, 2025.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel of record for the Federal Defendant certifies that this brief contains 3,556 words which exceeds the word limit of Local Rule 11-6.1.

/s/ Nancy Safavi
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