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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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

Petitioner-Plaintiff,

vs.

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

Respondents-Defendants.

Case No.: 5:25-cv-01207

PETITIONER-PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

PETITINERS-PLAINTIFF'S MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

TO THE COURT, ALL PARTIES AND COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Petitioner-Plaintiff ("Petitioner") hereby move the Court for an order certifying a class in this matter as follows:

> All persons 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 who has been determined admissible

> pursuant to 8 U.S.C. § 1182(a)(3) after a 8 U.S.C. § 1229a proceeding, or who are detained pursuant to 8 U.S.C. § 1225(b)(2)(A) during a 8 U.S.C. § 1229a proceeding, and who have been granted asylum, and found not found inadmissible during 8 U.S.C. § 1229a proceedings, or whose inadmissibility is inapplicable under 8 U.S.C. § 1157, or whose immigration officer has not determined they are "not clearly and beyond a doubt entitled to be admitted," or any person in the Central District of California who has not been given notice and an opportunity to be heard regarding the legal and/or constitutional justifications for Immigration & Customs Enforcement detention, excluding persons who already filed habeas corpus or who are already represented by a class.

Petitioner further moves for an order appointing him as representative of the class defined above, and appointing Petitioner's counsel as counsel for the class.

Petitioner further moves for an order requiring the government to identify members of the class and provide notice when a class member is transferred into the District.

This Motion is made pursuant to the Federal Rule of Civil Procedure 23(a) and 23(b)(2) or, in the alternative, under principles of habeas jurisdiction and equity with Federal Rule of Civil Procedure 23 as a guidepost. The Motion is based upon a supporting Memorandum of Law and accompanying declaration, which is filed concurrently with this Motion.

Respectfully Submitted on June 30, 2025

/s/ Joshua J. Schroeder
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PETITIONER-PLAINTIFF'S MEMORANDUM IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

PETITINER-PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

INTRODUCTION

A class action is appropriate for this challenge to Respondents-Defendants' ("Respondents") invocation of the Alien Enemies Act of 1798 ("AEA"). The President has invoked a war power, under the AEA, in an attempt to summarily detain, remove, disappear, and/or extraordinary rendition noncitizens from the United States and bypass the immigration laws that Congress has enacted. That invocation is patently unlawful: It violates the statutory terms of the AEA; unlawfully bypasses the INA; and infringes on noncitizens' constitutional right to Due Process under the Fifth Amendment.

Petitioners-Plaintiffs ("Petitioners") seeks to certify the following class under Federal Rules of Civil Procedure 23(a) and 23(b)(2):

> All persons 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 who has been determined admissible pursuant to 8 U.S.C. § 1182(a)(3) after a 8 U.S.C. § 1229a proceeding, or who are detained pursuant to 8 U.S.C. § 1225(b)(2)(A) during a 8 U.S.C. § 1229a proceeding, and who have been granted asylum, and found not found inadmissible during 8 U.S.C. § 1229a proceedings, or whose inadmissibility is inapplicable under 8 U.S.C. § 1157, or whose immigration officer has not determined they are "not clearly and beyond a doubt entitled to be admitted," or any person in the Central District of California who has not been given notice and an opportunity to be heard regarding the legal and/or constitutional justifications for Immigration & Customs Enforcement detention, excluding persons who already filed habeas corpus or who are already represented by a class.

The proposed class readily satisfies the requirements of Rule 23.

Numerosity is present, as demonstrated by the number of people in the United States that the government has admitted having designated as subject to the AEA Proclamation. *See* Cerna Decl. ¶ 6, J.G.G. v. Trump, No. 25-cv-766-JEB (D.D.C.

Mar. 18, 2025), ECF No. 28-1 (identifying a total of 258 people in the United States who the government believes are TdA members). Additionally, people who were, are, or will be designated as subject to the AEA Proclamation are detained and confined in the Central District of California. Upon information and belief, the government has retained Petitioner and several others in the Central District of California for the time being, and more may arrive or transit through if district-wide rulings hostile to the AEA Proclamation continue to be administered in Texas under recent rulings. A.A.R.P. v. Trump, No. 24A1007, slip op. at 3–4, 7 (2025) (per curiam).

All class members suffer the same injury: unlawful detention, removal, disappearance, and extraordinary rendition under the AEA, unlawful denial of their statutory rights to the removal and detention procedures contained in the INA, treaty stipulations and protections, and violation of their rights to equal protection, due process, free speech, and their right to immigrate traditionally thought of as a Privilege and Immunities issue. The class raises common questions that will generate common answers, including whether the Proclamation and its implementation violate the AEA, the INA, the constitution, and the statutory protections for asylum seekers. The Petitioner's legal claims are typical of those whom he seeks to represent. Petitioner is represented by experienced counsel with significant experience involving practice and research involving the rights of noncitizens. And the proposed class satisfies Rule 23(b)(2) because Respondents have acted or refused to act on grounds that apply generally to the class by summarily removing noncitizens without statutorily and constitutionally mandated safeguards. *See* Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 360 (2011). And, the class would be amenable to uniform group remedies, such as granting a writ of habeas corpus that enjoins Respondents from removing Petitioners and the class pursuant to the Proclamation, declaring the Proclamation unlawful, and enjoining the Respondents from applying the Proclamation without appropriate notice and opportunity to respond. *Id.*

The lack of notice to individuals and undersigned counsel reinforces why certification of a district-wide class is necessary in this case. While the government has identified hundreds of individuals who could be removed subject to the Proclamation, it has refused to disclose the identity and location of such individuals. Given that the government may begin transferring Venezuelan men from all over the country to this District, or move them through this District, it means more people will likely be detained and subject to summary removal pursuant to the Proclamation. Proceeding with a district-wide class would thus serve the purpose of Federal Rule of Civil Procedure 23. *See* William B. Rubenstein, Newberg and Rubenstein on Class Actions § 4:35 (6th ed.) (discussing "critical safeguards for class members that certification alone can provide").

Moreover, this class is tailored to the legal outcomes possible in the concurrent application for *ex parte* relief, which complies with the new ruling in *Trump v. CASA*, No. 24A884, slip op. (2025). As noted by the U.S. Supreme Court, "Rule 23 . . . would still be recognizable to an English Chancellor" and it is therefore a constitutional basis for granting relief beyond Petitioner. *Id.* a 13. Indeed, this suit consists of a request for relief that arises under *Ex parte Young* jurisdiction. *Id.* at 10. *Ex parte Young* was a firm expression of judicial modesty that vindicated the international railway system by denying habeas corpus to Government officials who are jailed for disobeying federal laws. Joshua J. Schroeder, *The Body Snatchers: How the Writ of Habeas Corpus Was Taken from the People of the United States*, 35 QUINNIPIAC L. REV. 1, 114 (2016) (Schroeder). As noted in Justice Sotomayor's dissent, the *Young* strategy was "'easily absorbed in suits of challenging federal official action.'" *CASA*, No. 24A884, at 30 (Sotomayor, J., dissenting) (quoting R. FALLON, D. MELTZER, & D. SHAPIRO, HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 958–959 (5th ed. 2003)).

Of course, the majority disagreed slightly, claiming that *Young* arose from earlier cases involving suits against federal officials like *Osborn v. Bank of the United*

States. *Id.* at 11 n.9. However, if one looks even deeper such suits against the federal government were sustained in *McCulloch v. Maryland* in which a private party named John James was allowed to sue on behalf of Maryland against an official employed at the federal bank. McCulloch v. Maryland, 17 U.S. 316, 317 (1819). Unfortunately, neither majority nor dissents broached the issue of *Young* correctly. *See* Schroeder, *supra*, at 113–14.

For *Young* was candidly modest, as the Court asserted jurisdiction in *Young* to *deny* the writ of habeas corpus filed by Minnesota's "wicked minister[]" Attorney General Edward T. Young. *Id.* at 115; *Ex parte* Young, 209 U.S. 123, 168 (1908) ("[T]he petition for writs of habeas corpus and certiorari is dismissed."). In so doing, the Court expanded federal powers to institute federal railways with nationalized standards across the nation. Schroeder, *supra*, at 114. In the intervening years, *Young* expanded jurisdiction to extend relief to litigants by analogy that if a government official were jailed for violating federal laws and that official filed for habeas corpus relief, as occurred in *Young*, then the federal Courts would deny him unless or until he complies with the federal laws. *Young*, 209 U.S. at 168, *extended by* Green v. Mansour, 474 U.S. 64, 68 (1985) ("*Young* gives life to the Supremacy Clause."). The Courts have allowed the rule of *Young* to expand without needing to jail every official that violates the laws, though such officials could be jailed. *CASA*, No. 24A884, at 10–11, n.9. Here, pursuant to *CASA*, this Class is tailored to a Class of which *Young*'s jurisdiction applies, such that the government officials could be jailed and not released until they complied with federal law and by not jailing them the Court modestly shows its restraint. *Id.*

The Court should grant class certification under Rule 23(b)(2), appoint the Petitioner as Class Representative, and appoint the undersigned as Class Counsel. Alternatively, the Court can use Rule 23 as a guidepost to certify a class under principles of habeas jurisdiction and equity. Every circuit that has addressed the issue has found that a class habeas action may be maintained. *See, e.g.*, U.S. ex rel. Sero v.

Preiser, 506 F.2d 1115 (2d Cir. 1974); Bijeol v. Benson, 513 F.2d 965, 967 (7th Cir. 1975), Williams v. Richardson, 481 F.2d 358 (8th Cir. 1973); Mead v. Parker, 464 F.2d 1108, 1112 (9th Cir. 1972); Napier v. Gertrude, 542 F.2d 825, 827 & n.5 (10th Cir. 1976); LoBue v. Christopher, 82 F.3d 1081, 1085 (D.C. Cir. 1996).

BACKGROUND

I. President Trump's Proclamation Invoking the AEA

Proclamation 10903 provides that "all Venezuelan citizens 14 years of age or older who are members of TdA [Tren de Aragua], are within the United States, and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies." *See* Exec. Proclamation 10903, 90 Fed. Reg. 13033. Several hundred men have been disappeared under Proclamation 10903 to CECOT in El Salvador. President Trump has indicated that he wants El Salvador to build more space, and that he wants to similarly include "home grown" U.S. citizen criminals in those included under this proclamation. Complaint at 47.

This may actually comport with President Trump's stated belief that *Wong Kim Ark* is wrong, meaning that in the near future several thousands more who were not contemplated as affected by Proclamation 10903 may become affected. *Id.* at 60. In fact, it appears that this is happening now as the President appears to have violated the War Powers Act by initiating warfare with the sovereign nation of Iran. ECF No. 43, at 14. Thus, many individuals in this District are at imminent risk of summary removal and face the same irreparable, devastating outcome as those removed on March 15, with the Court potentially permanently losing jurisdiction.

II. Respondents' Unnoticed Claim of INA Basis for Detention

Respondents claimed, without providing notice or an opportunity to be heard, that Petitioner is now detained pursuant to the Immigration and Nationality Act ("INA"). However, this basis was not noticed in Petitioner's matter and is not mutually exclusive with a Proclamation 10903 basis or other basis for detention. ECF

No. 37. Without notice, Petitioner was required to respond in 24-hours to a Response to this motion claiming an INA basis for detention. ECF No. 43, at 21.

The reality is that INA is so large that if one looks hard enough, one can see almost anything in it like a Hegelian crystal ball, including contraventions of binding U.S. Supreme Court precedent. *Compare* Karingithi v. Whitaker, 913 F.3d. 1158, 1159 (9th Cir. 2019) (appearing to strip any actual consequence from the Government's failure to comply with *Pereira v. Sessions*), *with* Rodriguez v. Garland, 15 F.4th 351, 356 (5th Cir. 2021) (appearing to require compliance with *Niz-Chavez*, which is generally a redux of *Pereira*). In weak cases as this, where the Government is likely to lose its contentions that a Petitioner is a terrorist, enemy alien, or other enemy alien class the Respondents can rely upon the INA to provide a malleable basis for detention of potentially anyone in America without notice or an opportunity to be heard. ECF No. 37. The upshot is, that the INA is and can be interpreted as a license to act first and ask questions later such that several individuals like Petitioner, including U.S. citizens, can be put in detention without notice or an opportunity to be heard potentially without legal basis. *See, e.g.*, Brown v. Ramsay, 2025 U.S. Dist. LEXIS 107437, *3–4, 10–14 (S.D. Fla. 2025) (noting several forms known as a "detainer packet," which should be served on a detained person, and that were used to detain a U.S. citizen in that case). This system can be used to merely hurt a group of people that the last President wanted America to believe he was helping, or to punish individuals who resist the President's plans, or who might upset President Trump's claim that he has released no immigrants from detention. *Id.*; Border Patrol Didn't Release a Single Illegal Into the U.S. Last Month, THE WHITE HOUSE (June 17, 2025), https://www.whitehouse.gov/articles/2025/06/border-patrol-didnt-release-a-single-illegal-into-the-u-s-last-month/.

II. Named Petitioners and the Proposed Class

The Petitioner is a non-U.S. citizen from Venezuela, accused of affiliation with Tren de Aragua, who is detained at the Adelanto ICE Processing Center and Desert

View Annex. Petitioner is representative of other noncitizens subject to the Proclamation under the Alien Enemies Act because they are in ICE detention as military prisoners, have been accused of affiliation with Tren de Aragua, and are thus at risk of designation as alien enemies and removal based on the Proclamation. The proposed class includes a narrowly tailored group of individuals who are clearly due release pending legitimate government action under the law and class certification is requested, here, solely for the purpose of obtaining this relief for similarly situation individuals in the Central District of California. The relief sought is solely limited to blocking Executive overreach, beyond the statutory authorities claimed by the Executive for general, discretionary detention pursuant to indefinite detention after § 1229a proceedings that result in refugee status that should preclude mandatory detention under the INA.

ARGUMENT

A plaintiff whose suit satisfies the requirements of Federal Rule of Civil Procedure 23 has a "categorical" right "to pursue his claim as a class action." Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 398 (2010). The "suit must satisfy the criteria set forth in [Rule 23(a)] (i.e., numerosity, commonality, typicality, and adequacy of representation), and it also must fit into one of the three categories described in subdivision (b)." *Id.*; *see also* Shelton v. Bledsoe, 775 F.3d 554, 562 (3d Cir. 2015). As set forth below, Petitioners' proposed class satisfies all four of the Rule 23(a) requirements.

Petitioners also demonstrate below that Respondents "ha[ve] acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole," as required under Rule 23(b)(2). "[A] single injunction or declaratory judgment would provide relief to each member of the class," and therefore certification is appropriate under Rule 23(b)(2). *See Wal-Mart Stores*, 564 U.S. at 360; *see also* Yates, 868 F.3d at 367.

I. THE PROPOSED CLASS SATISFIES THE REQUIREMENTS OF RULE 23(a)

A. The Proposed Class is So Numerous That Joinder is Impracticable.

The proposed class is sufficiently numerous to make joinder impracticable. Fed. R. Civ. P. 23(a)(1). There is no fixed number of class or subclass members required for a finding of numerosity. Rannis v. Recchia, 380 Fed. Appx. 646, 651 (9th Cir. 2010). The Ninth Circuit has held that "'impracticability' does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." Harris v. Palm Springs Alpine Estates, Inc., 329 F.2d 909, 913–14 (1964). This difficulty is decided by relevant factors including "(1) the judicial economy that will arise from avoiding multiple actions; (2) geographic dispersion of the members of the proposed class; (3) the financial resources of those members; (4) the ability of the members to file individual suits; and (5) requests for prospective relief that may have an effect on future class members." Lil' Man in the Boat, Inc. v. City & Cty. Of San Francisco, 2019 U.S. Dist. LEXIS 3546, *12 (N.D. Cal. 2019). Finally, "the fact that the class includes unknown, unnamed future members also weighs in favor of certification." Pederson v. La. State Univ., 213 F.3d 858, 868 n.11 (5th Cir. 2000) (citing Jack v. Am. Linen Supply Co., 498 F.2d 122, 124 (5th Cir. 1974)).

"The general rule encouraging liberal construction of civil rights class actions applies with equal force to the numerosity requirement of Rule 23(a)(1)," and "[s]maller classes are less objectionable where . . . the plaintiff is seeking injunctive relief on behalf of future class members as well as past and present members." Jones v. Diamond, 519 F.2d 1090, 1100 (5th Cir. 1975), *abrogated on other grounds*, Gardner v. Westinghouse Broad. Co., 437 U.S. 478 (1978). Joinder is routinely found impracticable when a class consists of forty members or more. Salter v. Quality Carriers, 2021 U.S. Dist. LEXIS 109280, *15–16 (C.D. Cal.).

The proposed class easily meets the numerosity requirement. Originally, at least 137 Venezuelans were disappeared to CECOT in El Salvador, which grew to at

least 278 individuals according to news reports. Complaint at 66. Based on either of these numbers alone, Petitioners clear the bar, but there are likely to be more individuals entering the class according to President Trump's recent rhetoric. Complaint at 47. Moreover, the government has been transferring Venezuelan men from detention centers all over the country, including Petitioners, in the past few days alone. Further, because ICE continues to "track[] the TdA members who are amenable to removal proceedings," *id.*, "the class includes unknown, unnamed future members." Pederson, 213 F.3d at 868 n.11; *see also Jack*, 498 F.2d at 124 (discussing impracticability of joinder of unknown persons); Phillips v. Joint Legislative Comm. on Performance & Expenditure Review, 637 F.2d 1014, 1022 (5th Cir. 1981) ("joinder of unknown individuals is 'certainly impracticable'").

And the President is starting wars, or at least engaging in war efforts, in foreign countries that will likely create more groups of enemy aliens for the President to treat the same as Petitioner. ECF No. 43, at 14. Los Angeles and the Adelanto ICE Processing Center is occupied by the U.S. military. ECF No. 30, Mem. Pts. & Auth. at 9. As demonstrated by the experience of the Court, here, in Petitioner's matter, these categories can easily shift at the sole discretion of Respondents. *See generally* ECF No. 37. Potentially all refugees can be, now, placed in detention pending appeals or removed to third party countries even when those appeals are lost pursuant to the rationale argued by Respondents in *D.V.D.* ECF No. 37; ECF No. 43, at 18. We are aware that Respondents are pressuring DHS lawyers to file similar appeals like the one at issue here to challenge all asylum grants, to flood the Board of Immigration Appeals ("BIA") and to delay the conclusions of those appeals.

Numbers of asylum grants are hard to track, but there is a mounting backlog and Los Angeles decided 14,220 asylum cases in EOIR over 2016–2021, and this does not include Los Angeles – North and it cannot include individuals detained in the Central District of California whose EOIR matter is determined by a judge not located in the Central District of California as frequently occurs in remote courts.

Asylum Success Varies Widely Among Immigration Judges, TRACImmigration (Dec. 9, 2021), https://tracreports.org/immigration/reports/670/#:~:text=Table_title:%20More%20Judge%2Dby%2DJudge%20Asylum%20Data%20Available%20Table_content:,14%2C220%20%7C%20Number%20of%20Judges**:%2042%20%7C. Across the nation, individual of Venezuelan origin in the fiscal year of 2023 were granted asylum 2,922 times. Executive Office for Immigration Review Adjudication Statistics: Asylum Decision Rates by Nationality, EOIR WEBSITE, https://www.justice.gov/eoir/page/file/1107366/dl. These numbers are well above the amount of individuals required to satisfy Rule 23, and if even a fraction of them are targeted like Petitioner for extended or indefinite detention then the class is considered not practicable for litigation through joinder. *Cf.* FY2024 EOIR Immigration Court Data: Caseloads and the Pending Cases Backlog, CRS: IN12492 (Jan. 24, 2025), file:///C:/Users/User/Downloads/IN12492.1.pdf ("At the end of FY2024, EOIR had 3,558,995 pending cases.").

Joinder is impracticable not only because of the sheer numbers, but also because class members are frequently dispersed in different detention facilities prior to rapid staging for removal. *See J.G.G.*, 2025 WL 914682, at *17; J.G.G., 2025 WL 890401, at *3; *see also* J.D. v. Azar, 925 F.3d 1291, 1323 (D.C. Cir. 2019) (stating that joinder may be impracticable in light of "fluidity" of custody, "the dispersion of class members across the country, and their limited resources"); *see also, e.g.*, Mullen v. Treasure Chest Casino, LLC, 186 F.3d 620, 624 (5th Cir. 1999) (joinder impracticable where class members were "transient" and "geographically dispersed"); Zeidman v. J. Ray McDermott & Co., Inc., 651 F.2d 1080, 1038 (5th Cir. 1981) (geographic dispersion relevant to impracticability of joinder); Steward v. Janek, 315 F.R.D. 472, 480 (W.D. Tex. 2016) (same). Joinder is further impracticable given the nature of the class. Chisholm v. Jindal, No. 97-CV-3274, 1998 WL 92272, at *3 (E.D. La. Mar. 2, 1998) (finding joinder impracticable, "especially in light of the fact that [the putative class members] are indigent").

B. Members of the Class Have Common Questions of Law and Fact.

The claims asserted by the proposed class include common questions of law and fact that satisfy Rule 23(a)(2). At bottom, "[c]ommonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Wal-Mart Stores*, 564 U.S. at 349–50 (quoting Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 157 (1982)). "To satisfy the commonality requirement under Rule 23(a)(2), class members must raise at least one contention that is central to the validity of each class member's claims." In re Deepwater Horizon, 739 F.3d 790, 810 (5th Cir. 2014). Even a single common question of law or fact is sufficient, so long as the resolution of the common question "will resolve an issue that is central to the validity of each one of the class member's claims in one stroke." Cole v. Livingston, 4:14-CV-1698, 2016 WL 3258345, at *3 (S.D. Tex. June 14, 2016), *aff'd sub nom.*, Yates v. Collier, 868 F.3d 354 (5th Cir. 2017); Hanlon v. Chrysler Corp, 150 F.3d 1011, 1022 (9th Cir. 1998) (same). A "pattern or practice that is generally applicable to the class as a whole" satisfies that requirement. M.D. v. Perry, 294 F.R.D. 7, 28 (S.D. Tex. 2013); Ellis v. Costco Wholesale Corp., 657 F.3d 970, 983 (9th Cir. 2011) (same).

Petitioner in this case have identified a "single course of conduct"—the unlawful maximization of detention, removal, disappearance, and extraordinary rendition of noncitizens under the AEA—that provides the basis for every class member's injury. M.D., 294 F.R.D. at 28-29; *see also* Valentine v. Collier, 490 F. Supp. 3d 1121, 1158 (S.D. Tex. 2020), *rev'd on other grounds*, 993 F.3d 270 (5th Cir. 2021) (commonality met where "[e]ither the answer to this question is 'yes,' in which case [defendants are] required to provide that specific accommodation for the entire subclass, or the answer is 'no,' in which case class-wide relief is not warranted. But either way, the answer to that question can be resolved with respect to every . . . class member at once.").

In addition to this common injury, numerous questions are common to the proposed class: whether the detention and removals go beyond the power granted to

the President under the AEA; whether the detention and removals violate statutory and regulatory immigration removal procedures; whether Respondents' denial of meaningful procedural protections to challenge class members' removal and detention violates the AEA and Fifth Amendment after an asylum grant; whether the treaty of peace between the United States and Venezuela is triggered in favor of the Class; and whether the Respondents' enforcement of the AEA is a prior restraint of speech. Any one of these common issues, standing alone, is enough to satisfy Rule 23(a)(2)'s permissive standard. *See Yates*, 868 F.3d at 365 n.6 ("we reaffirm that Rule 23(a)(2) requires only that a plaintiff demonstrate at least one common question of law or fact" (citing Dukes, 564 U.S. at 359)); Simms v. Jones, 296 F.R.D. 485, 497 (N.D. Tex. 2013) (same). And while class members may present individualized defenses to their designation as alien enemies and to prolonged and unlawful detention after asylum grant, "this 'obvious fact does not destroy commonality'" for purposes of addressing these common questions. Valentine, 490 F. Supp. 3d at 1159 (citing *Yates*, 868 F.3d at 363); Meek v. SkyWest, Inc., 562 F.Supp.3d 488, 494–95 (N.D. Cal. 2021) (same).

Answering any one of these common legal questions will "drive the resolution of the litigation." *Wal-Mart Stores*, 564 U.S. at 350. Should the Court agree that Respondents cannot lawfully remove noncitizens under the AEA because there has, for instance, been no "invasion or predatory incursion" by a "foreign government or nation," all class members will benefit from the requested relief, which includes a declaration to that effect and an injunction preventing Respondents from conducting the removals. But at this stage, a class action is the appropriate means of addressing the threshold systemic issues that affect all of the class members.

C. The Petitioners' Claims Are Typical of Class Members' Claims.

Petitioners here have claims typical of the proposed class. *See* Fed. R. Civ. P. 23(a)(3). The typicality requirement ensures that the absent class members are adequately represented by the lead plaintiffs such that the interests of the class will be

fairly and adequately protected in their absence. Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 157 n.13 (1982). "[T]he test for typicality is not demanding," *Mullen*, 186 F.3d at 625, and "does not require a complete identity of claims." James v. City of Dallas, Tex., 254 F.3d 551, 571 (5th Cir. 2001), *abrogated on other grounds in* In re Rodriguez, 695 F.3d 360 (5th Cir. 2012); *Hanlon*, 150 F.3d at 1020. Rather, the class representative's claim must have the same essential characteristics as that of the putative class. Morrow v. Washington, 277 F.R.D. 172, 194 (E.D. Tex. 2011). Claims arising from a similar course of conduct and sharing the same legal theories are typical claims even if there is factual difference between the representative and others in the class. *James*, 254 F.3d at 571.

Typicality is satisfied here for largely the same reasons that commonality is satisfied. *See Wal-Mart Stores*, 564 U.S. at 349 n.5 ("The commonality and typicality requirements of Rule 23(a) tend to merge" (quoting *Falcon*, 457 U.S. at 157 n. 13). Each proposed class member, including the proposed class representatives, faces the same principal injury (unlawful removal), based on the same government policy (invocation of the AEA), which is unlawful as to the entire class because it violates the AEA itself, as well as the immigration laws and the Constitution. Petitioners thus share an identical interest in invalidation of Respondents' implementation of removals pursuant to the Proclamation. Moreover, as with commonality, any factual differences that might exist here between Petitioners and proposed class members are not enough to defeat typicality.

D. Petitioners and Petitioners' Counsel Will Adequately Protect The Interests Of The Proposed Class

Petitioners and undersigned counsel also fulfill the final requirement that "[t]he representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy of representation inquiry has two components: (i) whether the attorneys retained by the named plaintiffs are qualified, experienced, and generally able to conduct the litigation; and (ii) whether the named plaintiffs have

interests that are antagonistic to or in conflict with those they seek to represent. Berger v. Compaq Computer Corp., 257 F.3d 475, 481 (5th Cir. 2001); Lynch v. Rank, 604 F.Supp. 30, 37 (N.D. Cal. 1984) (same).

Here, there are no differences that create conflicts between the named Petitioners' interests and the class members' interests. Petitioners will fairly and adequately protect the interests of the proposed class. Petitioners do not seek any unique or additional benefit from this litigation that may make their interests different from or adverse to those of absent class members. Instead, Petitioners aim to secure relief that will protect them and the entire class from Respondents' challenged policy and to enjoin Respondents from further violations. Petitioners have no incentive to deviate from this class relief. Nor do Petitioners seek financial gain at the cost of absent class members' rights. There are no differences that are "antagonistic to the interests of the class." *Lynch*, 604 F.Supp. at 37; *Mullen*, 186 F.3d at 625–26; *see also* Jenkins v. Raymark Industries, Inc., 782 F.2d 468, 472 (5th Cir. 1986).

In addition, proposed class counsel includes experienced attorneys with extensive experience in constitutional law, habeas corpus, and immigration law. *See* Schroeder Decl. ¶¶ 2–3. Moreover, it appears that the Trump administration is arguing to limit nation-wide injunctions citing class actions as the proper alternative. *Id. at* ¶ 4. If class certification is denied, the Court may lose important capabilities that would otherwise be available to it.

II. THE PROPOSED CLASS SATISFIES RULE 23(b)'S REQUIREMENTS

Rule 23 requires that, in addition to satisfying the requirements of Rule 23(a), a putative class must also fall within one of the parts of subsection (b). *Yates*, 868 F.3d at 366. Petitioners here seek class certification under Rule 23(b)(2), which provides that a class action is appropriate when "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.

Rule 23(b)(2) is satisfied here because Respondents have acted on grounds that apply generally to the class by subjecting them all to the same Proclamation and attempting to summarily remove them without complying with the AEA, INA, and due process. *See Yates*, 868 F.3d at 366 ("It is well-established that instead of requiring common issues, Rule 23(b)(2) requires common behavior by the defendant toward the class." (quoting In re Rodriguez, 695 F.3d 360, 365 (5th Cir. 2012))). Petitioners seek injunctive and declaratory relief that would benefit them as well as all members of the proposed class in the same fashion. "The relief Petitioners seek is precisely the type of remedial action for which Rule 23(b)(2) was designed." Murillo, 809 F. Supp. 487 at 503 (citing *Penson*, 634 F.2d 993); see also Newberg on Class Actions, supra, § 1:3 ("Rule 23(b)(2) is typically employed in civil rights cases and other actions not primarily seeking money damages. The (b)(2) class action is often referred to as a 'civil rights' or 'injunctive' class suit.").

The class is exactly the kind of class that Rule 23(b)(2) is meant to embrace. The class's interests are sufficiently related to warrant aggregate litigation. This is especially the case because members of the proposed class are in detention, often lack immigration counsel, and are indigent; they may also be detained in various facilities across the country and are therefore very unlikely to bring their own individual suits. It is far more efficient for this Court to grant injunctive and declaratory relief protecting all the class members than to force individuals to pursue piecemeal litigation, especially as the government has already announced its plans to swiftly deport people before they have the opportunity to seek judicial intervention.

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III. ALTERNATIVELY, A CLASS CAN ALSO BE CERTIFIED UNDER HABEAS EQUITY PRINCIPLES.

A habeas class may be maintained either under Rule 23 or in equity informed by Rule 23 principles. *See, e.g.*, *Sero*, 506 F.2d at 1125 (the Supreme Court "confirms the power of the judiciary, under the All Writs Act, . . . to fashion for habeas actions 'appropriate modes of procedure, by analogy to existing rules or otherwise in conformity with judicial usage'" (citing Harris v. Nelson, 394 U.S. 286 (1960)); *Bijeol*, 513 F.2d at 968 (agreeing with *Sero* that "a representative procedure analogous to the class action provided for in Rule 23 may be appropriate in a habeas corpus action" like the one at issue), *Williams*, 481 F.2d at 361 ("under certain circumstances a class action provides an appropriate procedure to resolve the claims of a group of petitioners and avoid unnecessary duplication of judicial efforts"); *Mead*, 464 F.2d at 1112–13 ("there can be cases, and this is one of them, where the relief sought can be of immediate benefit to a large and amorphous group. In such cases, it has been held that a class action may be appropriate"); *LoBue*, 82 F.3d at 1085 ("If . . . he meant to claim that there is no equivalent to class actions in habeas, he was wrong, for courts have in fact developed such equivalents."); Napier, 542 F.2d at 827 & n.5 (recognizing "class treatment" with "reference to Rule 23 in proper circumstances"); *see also* Hamama v. Adducci, 912 F.3d 869, 879 (6th Cir. 2018) (noting that classwide habeas still available notwithstanding INA provision barring classwide injunctive relief).

Additionally, the Supreme Court has ruled on the merits in class habeas cases. *See, e.g.*, Johnson v. Guzman Chavez, 594 U.S. 523, 532 (2021); Nielsen v. Preap, 586 U.S. 392, 400 (2019); Jennings v. Rodriguez, 583 U.S. 281, 290 (2018). The Ninth Circuit has noted: "The Supreme Court has Permitted the Use of the writ for just such a purpose." Mead v. Parker, 464 F.2d 1108, 1112 (9th Cir. 1972) (citing Johnson v. Avery, 393 U.S. 483 (1969)).

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CONCLUSION

The Court should certify the proposed Class under Rule 23(a) and 23(b)(2) or in equity, appoint the Petitioners as Class Representatives, and appoint the undersigned as Class Counsel.

Respectfully Submitted on June 30, 2025

/s/ Joshua J. Schroeder
Joshua J. Schroeder
SchroederLaw
Attorney for Darwin Antonio Arevalo Millan

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Darwin Antonio Arevalo Millan, certifies that this brief contains 5,532 words, and complies with the word limit of L.R. 11-6.1.

DATED: June 30, 2025

By: /s/ Joshua J. Schroeder
Joshua J. Schroeder
Attorney for Petitioner-Plaintiff

DECLARATION OF ATTORNEY JOSHUA J. SCHROEDER IN SUPPORT OF PETITIONER'S MOTION FOR CLASS CERTIFICATION

I, Joshua J. Schroeder, hereby declare:

1. I am an attorney at SchroederLaw, and I am counsel for Petitioner Darwin Antonio Arevalo Millan ("Darwin") in this case. I make this declaration to describe my qualifications.
2. I currently reside in Hollywood, CA where I own and operate SchroederLaw, a virtual law firm focused on immigration law, constitutional law, and intellectual property law. I hold a J.D. from Lewis & Clark Law School, and am admitted to practice in the Supreme Court of the United States, the United States Court of Appeals for the Ninth Circuit, the United States District Court for the Northern, Central, Eastern and Southern Districts of California, the United States District Court for the District of Oregon, the State Bar of California, and the Oregon State Bar. Prior to founding SchroederLaw, I spent one year training under immigration attorney Johanna Torres in humanitarian immigration work including practice in Executive Office of Immigration Review, the Board of Immigration Appeals, and United States Citizenship and Immigration Services. By and through SchroederLaw, I continued this work and also drafted habeas petitions for immigrants for use in federal court under other attorneys. Before that I spent at least five years researching and publishing in law reviews, which I have continued doing today and have several pieces accepted for publication including on immigration topics especially focused on habeas corpus for immigrants.
3. I am the author of *A Candle in the Labyrinth: A Guide for Immigration Attorney to Assert Habeas Corpus after DHS v. Thuraissigiam*, 49 HASTINGS CONST. L.Q. 237 (2022). This guide was created based on my experience

working with immigration attorneys to help immigrants in detention. Several basics of habeas review that I had studied deeply years prior do not easily translate into immigration practice. I have spent years developing ways for immigration attorneys to understand how they can enter into federal court by filing habeas corpus for immigrants like Darwin.

4. I am aware that *Trump v. CASA*, No. 24A884, slip op. at 13 (2025) precludes the use of nation-wide so called "universal injunctions" and granting this motion will allow the Court to administer wider relief that merely to Petitioner alone pursuant to *CASA*'s requirements.
5. Based on information and belief, DHS lawyers in charge of filing and defending appeals of Executive Office for Immigration Review ("EOIR") appeals were pressured into filing appeals against every asylum grant on a blanket basis when Darwin received asylum.
6. I am aware of news reports touted by the White House that the President released no illegal immigrants over the month that Darwin received asylum and should have been released.
7. I am working closely with Joshua H. Goldenstein, attorney at law, who is representing Darwin in his immigration matter and who may make declarations and offer other documents and evidence in this matter.

Executed in Hollywood, California

DATED: June 30, 2025

/s/ Joshua J. Schroeder
Joshua J. Schroeder