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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 Victor Kalid JACOBO RAMIREZ,
 16 Petitioners,
 17 v.
 18 Kristi NOEM et al.,
 19 Respondents.

Case No. 2:25-cv-02136-RFB-MDC

**Federal Respondents' Opposition to
 Motion for Class Certification and
 Appointment of Class Counsel, ECF
 No. 15**

20
21 The Federal Respondents hereby submit this Opposition to Petitioners' Motion for
 22 Class Certification and Appointment of Class Counsel (ECF No. 15).

23 **I. Introduction**

24 The Court should deny Petitioners' Motion for Class Certification and Appointment
 25 of Class Counsel (ECF No. 15) ("Motion") for three reasons. First, 8 U.S.C. §
 26 1252(e)(1)(B) bars this Court from certifying either of Petitioners' proposed classes. Second,
 27 Petitioners cannot meet the commonality and typicality requirements of Fed. R. Civ. P.
 28 23(a). Third, Petitioners fail to establish injunctive or corresponding declaratory relief is

1 appropriate for the putative class they propose to represent because 8 U.S.C. § 1252(f)(1)
2 bars classwide relief that would enjoin the United States' operation of 8 U.S.C. § 1225(b)(2)
3 and because any other relief they seek requires individualized determinations not
4 appropriate on a classwide basis.

5 **II. Background**

6 **A. Statutory and Regulatory Background**

7 **1. Applicants for Admission**

8 “The phrase ‘applicant for admission’ is a term of art denoting a particular legal
9 status.” *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Section 1225(a)(1) states:

10 (1) Aliens treated as applicants for admission.— An alien present in the
11 United States who has not been admitted or who arrives in the United States
12 (whether or not at a designated port of arrival ...) shall be deemed for the
13 purposes of this Act an applicant for admission.

14 8 U.S.C. § 1225(a)(1).¹ Section 1225(a)(1) was added to the INA as part of the Illegal
15 Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”). Pub. L. No.
16 104-208, § 302, 110 Stat. 3009-546. “The distinction between an alien who has effected an
17 entry into the United States and one who has never entered runs throughout immigration
18 law.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

19 Before IIRIRA, “immigration law provided for two types of removal proceedings:
20 deportation hearings and exclusion hearings.” *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir.
21 1999) (en banc). A deportation hearing was a proceeding against an alien already physically
22 present in the United States, whereas an exclusion hearing was against an alien outside of
23 the United States seeking admission. *Id.* (quoting *Landon v. Plasencia*, 459 U.S. 21, 25
24 (1982)). Whether an applicant was eligible for “admission” was determined only in
25 exclusion proceedings, and exclusion proceedings were limited to “entering” aliens—those
26 aliens “coming ... into the United States, from a foreign port or place or from an outlying
27 possession.” *Plasencia*, 459 U.S. at 24 n.3 (quoting 8 U.S.C. § 1101(a)(13) (1982)). “[N]on-

28 ¹ Admission is the “lawful entry of an alien into the United States after inspection and
authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13).

1 citizens who had entered without inspection could take advantage of greater procedural and
2 substantive rights afforded in deportation proceedings, while non-citizens who presented
3 themselves at a port of entry for inspection were subjected to more summary exclusion
4 proceedings.” *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010); *see also Plasencia*, 459
5 U.S. at 25-26. Prior to IIRIRA, aliens who attempted to lawfully enter the United States
6 were in a worse position than aliens who crossed the border unlawfully. *See Hing Sum*, 602
7 F.3d at 1100; *see also* H.R. Rep. No. 104-469, pt. 1, at 225-229 (1996). IIRIRA “replaced
8 deportation and exclusion proceedings with a general removal proceeding.” *Hing Sum*, 602
9 F.3d at 1100.

10 IIRIRA added Section 1225(a)(1) to “ensure[] that all immigrants who have not been
11 lawfully admitted, regardless of their physical presence in the country, are placed on equal
12 footing in removal proceedings under the INA.” *Torres*, 976 F.3d at 928; *see also* H.R. Rep.
13 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced “certain aspects of the current
14 ‘entry doctrine,’” under which illegal aliens who entered the United States without
15 inspection gained equities and privileges in immigration proceedings unavailable to aliens
16 who presented themselves for inspection at a port of entry). The provision “places some
17 physically-but not-lawfully present noncitizens into a fictive legal status for purposes of
18 removal proceedings.” *Torres*, 976 F.3d at 928.

19 **2. Detention under the INA**

20 **i. Detention under 8 U.S.C. § 1225**

21 Section 1225 applies to “applicants for admission,” who are defined as “alien[s]
22 present in the United States who [have] not been admitted” or “who arrive[] in the United
23 States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories,
24 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583
25 U.S. 281, 287 (2018); *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 218 (BIA 2025).

26 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially
27 determined to be inadmissible due to fraud, misrepresentation, or lack of valid
28 documentation.” *Jennings*, 583 U.S. at 287; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens

1 are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But
2 if the alien “indicates an intention to apply for asylum . . . or a fear of persecution,”
3 immigration officers will refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii).
4 An alien “with a credible fear of persecution” is “detained for further consideration of the
5 application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not indicate an intent to
6 apply for asylum, express a fear of persecution, or is “found not to have such a fear,” they
7 are detained until removed from the United States. *Id.* §§ 1225(b)(1)(A)(i), (B)(iii)(IV).

8 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583
9 U.S. at 287. It “applies to all applicants for admission not covered by § 1225(b)(1).” *Id.*
10 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a
11 removal proceeding “if the examining immigration officer determines that [the] alien
12 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §
13 1225(b)(2)(A); *see Hurtado*, 29 I. & N. Dec. at 220 (“[A]liens who are present in the United
14 States without admission are applicants for admission as defined under section 235(b)(2)(A)
15 of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their
16 removal proceedings.”); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) (“for aliens
17 arriving in and seeking admission into the United States who are placed directly in full
18 removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates
19 detention ‘until removal proceedings have concluded.’”) (citing *Jennings*, 583 U.S. at 299).
20 However, the DHS has the sole discretionary authority to temporarily release on parole
21 “any alien applying for admission to the United States” on a “case-by-case basis for urgent
22 humanitarian reasons or significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*,
23 597 U.S. 785, 806 (2022).

24 **ii. Detention under 8 U.S.C. § 1226(a)**

25 Section 1226 provides the general detention authority for aliens in removal
26 proceedings. An alien “may be arrested and detained pending a decision on whether the
27 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the
28 United States may detain an alien during his removal proceedings, release him on bond, or

1 release him on conditional parole. By regulation, immigration officers can release aliens if
2 the alien demonstrates that he “would not pose a danger to property or persons” and “is
3 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also request
4 a custody redetermination (often called a bond hearing) by an IJ at any time before a final
5 order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1),
6 1003.19.

7 At a custody redetermination, the IJ may continue detention or release the alien on
8 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration judges
9 have broad discretion in deciding whether to release an alien on bond. *In re Guerra*, 24 I. &
10 N. Dec. 37, 39–40 (BIA 2006). The IJ should consider the following factors during a
11 custody redetermination: (1) whether the alien has a fixed address in the United States; (2)
12 the alien’s length of residence in the United States; (3) the alien’s family ties in the United
13 States; (4) the alien’s employment history; (5) the alien’s record of appearance in court; (6)
14 the alien’s criminal record, including the extensiveness of criminal activity, time since such
15 activity, and the seriousness of the offense; (7) the alien’s history of immigration violations;
16 (8) any attempts by the alien to flee prosecution or otherwise escape authorities; and (9) the
17 alien’s manner of entry to the United States. *Id.* at 40. But regardless of these factors, an
18 alien “who presents a danger to persons or property should not be released during the
19 pendency of removal proceedings.” *Id.* at 38.

20 **iii. Review Before the Board of Immigration Appeals**

21 The Board of Immigration Appeals (BIA) is an appellate body within the Executive
22 Office for Immigration Review (EOIR) “charged with the review of those administrative
23 adjudications under the [INA] that the Attorney General may by regulation assign to it.” 8
24 C.F.R. § 1003.1(d)(1). By regulation, it has authority to review IJ custody determinations. 8
25 C.F.R. §§ 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also
26 “through precedent decisions, shall provide clear and uniform guidance to DHS, the
27 immigration judges, and the general public on the proper interpretation and administration
28 of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1). Decisions rendered by

1 the BIA are final, except for those reviewed by the Attorney General. 8 C.F.R. §
2 1003.1(d)(7).

3 **B. Factual and Procedural History**

4 The basic facts in this case are undisputed. Petitioners are aliens that entered the
5 United States without being inspected or admitted. *See* ECF No. 1, ¶¶ 18–19, 46–65; ECF
6 No. 15, at 9. DHS initiated removal proceedings charging them with being present in the
7 United States without admission. *Id.*

8 DHS detained each alien for removal proceedings under 8 U.S.C. § 1229a and
9 determined they were subject to mandatory detention. ECF No. 1, ¶¶ 52, 55–56, 64–65.

10 While Jacobo Ramirez was initially released on bond because of an error from the IJ, the IJ
11 subsequently revoked Jacobo Ramirez’s bond after the BIA issued its precedential decision
12 in *Hurtado*, which provided guidance to the Immigration Courts and allowed the IJ to
13 correct its error. ECF No. 15, at 9. Guevara Alcantar, on the other hand, has not had a
14 custody redetermination hearing because the Immigration Courts do not have jurisdiction
15 to do so. *Id.* at 9–10.

16 Petitioners filed a habeas petition and class action complaint challenging the United
17 States’ interpretation of the detention provisions at § 1225(b)(2). ECF No. 1. Petitioners
18 brought their claim on their behalf and on behalf of a putative class. *See e.g.*, ECF No. 1, ¶
19 73–74, 82–85. Petitioners seek a preliminary injunction as to themselves, requesting that
20 Jacobo Ramirez be released unless his previously granted bond is reinstated and Guevara
21 Alcantar be released unless he is provided with a bond hearing. ECF No. 18, at 23.
22 Petitioners also moved for class certification of their putative class. ECF No. 15.

23 **III. Standard of Review**

24 The class action “is an exception to the usual rule that litigation is conducted by and
25 on behalf of the individual named parties only.” *Wal-Mart Stores*, 564 U.S. at 348 (quoting
26 *Califano*, 442 U.S. at 700–01). To fall within this narrow exception, Petitioners must
27 “affirmatively demonstrate” their compliance with each element of Rule 23—“that is,
28 [they] must be prepared to prove that there are in fact sufficiently numerous parties,

1 common questions of law or fact, etc.” *Wal-Mart Stores*, 564 U.S. at 350; *see also McCarthy v.*
2 *Kleindienst*, 741 F.2d 1406, 1414 n.9 (D.C. Cir. 1984) (“It is the party seeking class
3 certification that bears the burden of establishing the class action requirements.”). This is
4 not just a “mere pleading standard.” *Id.* “[Petitioners] must actually *prove*—not simply
5 plead—that their proposed class satisfies each requirement of Rule 23 . . . ‘ and must carry
6 their burden of proof ‘before class certification.’” *Olean Wholesale Grocery Coop., Inc. v.*
7 *Bumble Bee Foods LLC*, 31 F.4th 651, 664 (9th Cir. 2022) (en banc) (emphasis and alteration
8 in original) (quoting *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258, 275 (2014)).
9 “[A]ctual, not presumed, conformance” with Rule 23 is “indispensable,” *Gen. Tel. Co. of*
10 *Southwest v. Falcon*, 457 U.S. 147, 161 (1982), and certification is proper only if the Court is
11 satisfied “after a rigorous analysis” that Petitioners have shown that each requirement of
12 the Rules has been met. *Wal-Mart Stores*, 564 U.S. at 350–51.

13 To satisfy Rule 23(a), Petitioners must demonstrate that: (1) the class is so
14 numerous that joinder is unrealistic (“numerosity”); (2) the claims raise common questions
15 of law and fact (“commonality”); (3) the class representatives’ claims must be typical of
16 claims of other class members (“typicality”); and (4) the named representatives and counsel
17 will fairly and adequately protect the interests of the class (“adequacy of representation”).
18 *See* Fed. R. Civ. P. 23(a)(1)-(4). In addition to meeting Rule 23(a)’s requirements, the
19 proposed class must also qualify under a Rule 23(b) subset. *AmChem Prods. v. Windsor*, 521
20 U.S. 591, 614 (1997). Relevant here, Rule 23(b)(2) permits certification where “the party
21 opposing the class has acted or refused to act on grounds that apply generally to the class,
22 so that final injunctive relief or corresponding declaratory relief is appropriate respecting
23 the class as a whole.” Fed. R. Civ. P. 23(b)(2).

24 IV. Argument

25 A. 8 U.S.C. § 1252(e)(1)(B) Bars Class Certification in Cases Challenging the 26 Implementation of § 1225(b)

27 As a threshold matter, Congress has prohibited this Court from certifying
28 Petitioners’ proposed class. Section 1252(e)(1)(B)’s plain text prohibits courts from

1 certifying a class under Rule 23 when the proposed class challenges the implementation of
2 § 1225(b). Section 1252(e)(1)(B) provides that “no court may . . . certify a class under Rule
3 23 of the Federal Rules of Civil Procedure in any action for which judicial review is
4 authorized under a subsequent paragraph of this subsection.” 8 U.S.C. § 1252(e)(1)(B). The
5 subsequent paragraph in (e)(3) permits judicial review of “determinations under section
6 1225(b) of this title and its *implementation*”—*i.e.* review on challenges to the system—but
7 only in the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3) (emphasis
8 added); *see also Mendoza-Linares v. Garland*, 51 F.4th 1146, 1157 (9th Cir. 2022) (noting
9 challenges to the validity of the system “must be brought exclusively as ‘an action instituted
10 in the United States District Court for the District of Columbia.’”) (quoting 8 U.S.C. §
11 1252(e)(3)(A)). Paragraph (e)(3) confines this limited review further; any challenge to the
12 system is limited to (1) whether the section or implementing regulation is constitutional or
13 (2) whether a regulation or other written policy directive, guideline, or procedure
14 implementing the section violates the law. *See* 8 U.S.C. § 1252(e)(3)(A)(i)-(ii); *see also*
15 *M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021) (noting that jurisdiction to
16 challenge the implementation of § 1225(b) is conditioned on meeting these requirements).

17 Petitioners seek certification of a class allegedly harmed by Respondents’
18 policies and practices implementing § 1225(b)(2)(A). *See, e.g.* ECF No. 1, ¶¶ 42–45, 70.
19 Petitioners’ Complaint is clearly challenging § 1225(b). ECF No. 1, at 21, Prayer for Relief
20 (“Declare that Defendants’ policy and practice of denying consideration for bond on the
21 basis of § 1225(b)(2) . . . violates the INA, its implementing regulations, the APA and the
22 Due Process Clause”). They challenge an alleged new policy that all aliens who entered the
23 United States without inspection are subject to mandatory detention under § 1225(b)(2)(A).
24 *See, e.g., id.* ¶¶ 61, 73–74. This is exactly the type of judicial review to a written policy or
25 guideline covered by § 1252(e)(3)(A)(ii). Section (e)(3)(A) authorizes such review
26 exclusively in the District of Columbia. *See* 8 U.S.C. § 1252(e)(3); *see also Mendoza-Linares*,
27 51 F.4th at 1157. The DC Circuit has held that challenges to implementation and policies
28 related to § 1225(b) must be brought in the D.D.C. *See Make The Rd. New York v. Wolf*, 962

1 F.3d 612, 625 (D.C. Cir. 2020). The Ninth Circuit recognized that the limitation of
2 challenges to policies under 1225(b) must be filed in the D.D.C. *See Singh v. Barr*, 982
3 F.3d 778, 783 (9th Cir. 2020).

4 Because Congress provided only circumscribed judicial review of the United States'
5 new policy implementing § 1225(b) under paragraph (e)(3), §1252(e)(1)(B) bars this Court
6 from certifying either of Petitioners' proposed classes challenging this policy. The
7 controlling statute indicates that only the D.D.C. can hear challenges to "a regulation, or
8 written policy directive, written policy guideline, or written procedure" to § 1225(b). 8
9 U.S.C. § 1252(e)(3). Any potential argument that § 1252(e)(3)'s restriction on review is
10 limited to policies relating to expedited removal orders under 1225(b)(1) and not to policies
11 relating to detention under 1225(b)(2) is meritless. Section 1252(e) has five paragraphs
12 numbered 1 through 5. 8 U.S.C. § 1252(e). Paragraphs (1), (2), (4), and (5) specifically
13 reference § 1225(b)(1), while paragraph (3) references all of § 1225(b). *Id.* The inclusion of
14 "(b)(1)" in some paragraphs, but using just "(b)" in paragraph (3) shows that Congress
15 wanted review of the three subsections of § 1225(b) to be limited to the D.D.C.

16 Thus, Petitioners' Motion fails at the outset; the Court simply lacks subject matter
17 jurisdiction. *See Billingsley*, 868 F.2d 1081, 1085 (9th Cir. 1989).

18 **B. Petitioners' Proposed Class Fails to Satisfy Rule 23(a)'s Requirements.**

19 **1. The Proposed Class Lacks Commonality As Factual Distinctions Between**
20 **Putative Class Members Do Not Generate Common Answers**

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

1 of common answers and explain why these dissimilarities do not defeat class certification.

2 *See id.*

3 A class definition may be fatally overbroad if it “sweeps within it persons who could
4 not have been injured by the defendant’s conduct.” *Ross v. Lockheed Martin Corp.*, 267 F.
5 Supp. 3d 174, 191 (D.D.C. 2017) (quoting *Kohen v. Pac. Inv. Mgmt. Co. LLC*, 571 F.3d 672,
6 677 (7th Cir. 2009)). An inadequately defined or overbroad class often implicates multiple
7 Rule 23 requirements beyond commonality, including typicality and the standards for
8 certifying an injunctive-relief class under Rule 23(b)(2).

9 Petitioners seek certification of the following class of aliens:

10 All noncitizens in the U.S. without lawful status (1) who are or will be arrested or
11 detained by ICE; (2) who are or will be in removal proceedings before an
12 Immigration Court within the District of Nevada; (3) whom DHS alleges or will
13 allege to have entered the United States without inspection or parole; (4) who are not
14 or will not be subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231 at
the time they are scheduled for or request a bond hearing; and (5) whose most recent
arrest by ICE occurred inside the United States and not while arriving in the United
States.

15 ECF No. 15, at 5.

16 Petitioners assert their proposed class satisfies the commonality requirement because
17 it challenges “one common, core legal question: whether Defendants’ policy and practice of
18 applying the mandatory detention statute to the class to deny consideration for bond
19 violates the INA, its implementing regulations, the APA, and the Due Process Clause.”

20 ECF No. 15, at 15. But whether a putative class member is in fact properly subject to
21 mandatory detention overlooks obvious differences between purported class members, and
22 provides different answers depending on individualized circumstances.

23 Petitioners have failed to prove that all putative class members suffer the same injury
24 per their own interpretation of the INA. Petitioners’ proposed classes includes all aliens
25 present in the United States without lawful status who DHS alleges or will allege have
26 entered the United States without inspection and whose most recent arrest occurred inside
27 the United States and not while arriving in the United States. ECF No. 15, at 5. According
28 to Petitioners, such persons should be detained under 8 U.S.C. § 1226(a) because § 1226(a)

1 applies to people already within the United States regardless of admission status or whether
2 they initially entered the country with permission. *See e.g.*, ECF No. 1, ¶¶ 40, 73, 77. In
3 contrast, Petitioners argue, § 1225(b)(2) applies to “recent arrivals ‘seeking admission.’” *Id.* ¶
4 37. Not only is this interpretation unsupported by the plain text of § 1225(b)(2)(A)—*see e.g.*,
5 ECF Nos. 22-1, at 13–17; 22-2, at 15–18; 22-3, at 8–13—but this interpretation blurs the line
6 between who is and is not a class member. An alien could be encountered somewhere in the
7 interior but whether the alien effected an entry would still depend on the particular facts of
8 the case. *See, e.g., Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 139–140 (2020)
9 (noting that alien detained 25 yards from the boarder after an attempted unlawful entry
10 “cannot be said to have effected an entry,” and similarly an alien who is detained shortly
11 *after* unlawful entry cannot be said to have “effected an entry”). Per Petitioners’ reading of
12 §§ 1225(b)(2) and 1226(a), there is no clear line demarcating when and where a class
13 member in fact becomes a class member. Thus, Petitioners proposed classes include
14 individuals properly detained under § 1225(b)(2)(A) and thus not all class members suffer
15 the same injury arising from being detained under § 1225(b)(2) rather than § 1226(a).

16 To highlight Petitioners’ ill-conceived reading of the statute, 8 U.S.C. § 1225(b)(2)(A)
17 states: “in the case of an alien who is an *applicant for admission*, if the examining immigration
18 officer determines that an alien seeking admission is not clearly and beyond a doubt entitled
19 to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.”

20 8 U.S.C. § 1225(b)(2)(A) (emphasis added). And 8 U.S.C. § 1225(a)(1) states:

21 “An alien *present in the United States who has not been admitted* or who arrives in the United
22 States (whether or not at a designated port of arrival and including an alien who is brought
23 to the United States after having been interdicted in international or United States waters)
24 shall be deemed for purposes of this chapter an applicant for admission.” Nowhere do either
25 §§ 1225(b)(2)(A) or 1225(a)(1) limit the applicability of § 1225(b)(2)(A) to only those aliens
26 who are “recent arrivals ‘seeking admission’” as Petitioners would have the Court believe.
27 ECF No. 1, ¶ 37. Petitioners have simply invented this limitation by ignoring the plain
28 language of the statute, which expressly says that “An alien *present in the United States who has*

1 *not been admitted . . . shall be deemed . . . an applicant for admission.*” But Petitioners gloss
2 over the plain language of the statute to frustrate Congress’s intent as well as the Federal
3 Respondents’ efforts to comply with the corresponding Congressional mandate.

4 Further, Petitioners’ argument that the phrase “seeking admission” limits the scope
5 of § 1225(b)(2)(A) cuts against finding commonality. ECF No. 1, ¶ 37. It appears Petitioners
6 argue that § 1225(b)(2)(A) should be interpreted as applying to those aliens who take action
7 to obtain admission—*i.e.*, aliens “seeking admission.” *See id.* Under this construction, §
8 1225(b)(2)(A) covers any unadmitted alien present in the United States who applies for
9 certain immigration benefits. Petitioners’ class, as defined, would embrace this category of
10 people who would be properly subject to mandatory detention under § 1225(b)(2).

11 The named Petitioners’ experiences as well as the facts underlying other habeas cases
12 recently filed in this District prove this point. Petitioner Guevara Alcantar claims that he
13 qualifies for a U-Visa because he was a victim of battery with a deadly weapon. ECF No. 1,
14 ¶ 59. Per Petitioners’ interpretation, when Guevara Alcantar applied for a U-visa, he took
15 an affirmative action to obtain admission and thus be subject to mandatory detention under
16 § 1225(b)(2)(A) as an alien seeking admission. *See* 8 U.S.C. § 1184(p) (establishing U-visa
17 petitioning and admission requirements).

18 Similarly, Sanchez Roman, the petitioner in *Sanchez Roman v. Noem*, Case No. 2:25-
19 cv-01684-RFB-EJY (D. Nev. Sept. 8, 2025), would have qualified as a member of the
20 putative class when he was detained pursuant to 8 U.S.C. § 1225(b)(2)(A), despite him
21 meeting all the other elements of the putative class. *See e.g.*, Exhibit B, ¶¶ 4–5, 45–59, 61–62.
22 However, Sanchez Roman was, when the law is properly interpreted and applied,
23 unequivocally an “applicant for admission” because he had been seeking admission to the
24 United States by virtue of an I-130 petition that his wife filed on his behalf and which was
25 pending as of the time of his arrest and throughout his detention. Exhibit B, ¶ 52, 54–55. An
26 I-130 petition is a form called “Petition for Alien Relative,” which, if approved, would allow
27 Sanchez Roman to apply for lawful permanent resident status.² Thus, under a proper

28 ² *See e.g.*, <https://www.uscis.gov/i-130> (last visited November 20, 2025)

1 interpretation of the statutory framework, Sanchez Roman was rightfully the subject of
2 mandatory detention under § 1225(b)(2)(A).” Additionally, Sanchez Roman argued he was
3 eligible to apply for Cancellation of Removal under 8 U.S.C. § 1229b. *Id.* ¶ 57. Thus, if and
4 when he applies for this benefit, he would be subject to mandatory detention under §
5 1225(b)(2)(A) because he would be seeking admission.

6 As these examples demonstrate, a large portion of the putative class members, and
7 half of the named Petitioners’ experiences demonstrate that not all potential class members
8 suffer the same injury of detention under the wrong authority. These examples demonstrate
9 that, when the law is properly interpreted and applied, the Court cannot resolve the central
10 issue in this case on a classwide basis because the Court must make individualized
11 determinations regarding whether an alien has crossed the threshold from entering the
12 United States to present in the United States and whether the alien has sought admission by
13 applying for immigration benefits. Because the Court cannot generate common answers in
14 “one stroke,” unless the Court is amenable to glossing over important, outcome-
15 determinative factual details, Petitioners proposed classes lack commonality.

16 Finally, the Court previously expressed that the putative class in the case at bar
17 subsumes the classes that the petitioners proposed in *Dominguez-Lara v. Noem*, Case No.
18 2:25-cv-01553-RFB-BNW (D. Nev. Aug. 20, 2025). In *Dominguez-Lara*, the Federal
19 Respondents filed their opposition to a motion for class certification—filed as ECF No. 12
20 therein and attached herein as Exhibit A (hereafter “the *Dominguez-Lara* Opposition”)—
21 which explained why the *Dominguez-Lara* putative classes are overbroad and lack both
22 typicality and commonality. Because the Court has expressed that the putative classes in the
23 case at bar subsume the putative classes in *Dominguez-Lara*, the Federal Respondents hereby
24 incorporate by reference the arguments set forth in the *Dominguez-Lara* Opposition (Exhibit
25 A) as though fully set forth herein.³ Specifically, Sections IV.A. through IV.B. of the

26
27 ³ The Court has endorsed the incorporation by reference of prior government filings in
28 related or substantively identical immigration habeas petitions, recognizing the efficiency of
unified briefing given the number of overlapping cases presenting identical questions under
8 U.S.C. § 1225(b)(2)(A) and § 1226(a).

1 *Dominguez-Lara* Opposition demonstrate that the putative classes at issue there fail to meet
2 the requirements of Rule 23, including its commonality and typicality requirements.

3 The very fact that the Court believes the putative classes in *Dominguez-Lara* subsume
4 the putative class in the case at bar is telling. The putative classes in *Dominguez-Lara* would
5 cover (1) individuals who have been granted a bond hearing by an immigration judge that
6 has been *statutorily stayed* and (2) aliens that have a pending appeal, will file an appeal of, or
7 will respond to an appeal filed by ICE of an immigration judge’s bond hearing ruling.
8 Exhibit A, at 2. In essence, the petitioners in *Dominguez-Lara* seek to challenge the automatic
9 stay provisions of 8 C.F.R. § 1003.6 and the associated appeals to the BIA. Yet, the Petition
10 in the case at bar does not allege that the Petitioners have been detained by virtue of the
11 automatic-stay regulation in 8 C.F.R. § 1003.6. The automatic stay provision simply is of no
12 consequence to the Petitioners, yet it is a central pillar of the case set forth by the petitioners
13 in *Dominguez-Lara*. Thus, the only way to lump together the various petitioners and putative
14 class members is by glossing over important, outcome-determinative factual details, which
15 would be an error under Rule 23.

16 For the foregoing reasons, and because the Court cannot generate common answers
17 in “one stroke,” Petitioners’ proposed class lacks commonality.

18 **2. Named Petitioners’ Injuries are Not Typical of the Claims of the Proposed**
19 **Class Members**

20 Beyond commonality, Rule 23 requires that “the claims or defenses of the
21 representative parties are typical of the claims or defenses of the class.” Fed. R. Civ. P.
22 23(a)(3). Typicality focuses on whether the class representatives’ claims and interests are
23 sufficiently aligned with the class’s interest. *See Small v. Allianz Life Ins. Co. of N. Am.*, 122
24 F.4th 1182, 1201-02 (9th Cir. 2024). “Measures of typicality include whether other
25 members have the *same or similar injury*, whether the action is based on conduct which is
26 not unique to the named plaintiffs, and whether other class members have been injured by
27 the same course of conduct.” *Id.* 1202 (emphasis added) (quoting *Torres v. Mercer Canyons,*
28 *Inc.*, 835 F.3d 1125, 1141 (9th Cir. 2016)). Several courts have held that a putative class

1 representative's claims are atypical of the class where the putative representative is subject
2 to a unique defense "which threatens to become the focus of the litigation." *Hanon v.*
3 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal quotations omitted)
4 (collecting cases).

5 The named Petitioners fail to demonstrate typicality because even under Petitioners'
6 reading of §§ 1225(b)(2) and 1226(a), half of them will be subject to mandatory detention if
7 and when they apply for immigration benefits. As explained *supra* Part B.1., Petitioner
8 Guevara Alcantar, by virtue of his pending U-visa application, is seeking admission and is
9 thus subject to mandatory detention under § 1225(b)(2). If certain putative class members
10 are properly detained under § 1225(b)(2), then they do not share the same injury as other
11 putative class members and the Federal Respondents have a defense against their claims
12 unique to them arising from their lack of a common injury.

13 Finally, the Court previously expressed that the putative class in the case at bar
14 subsumes the classes that the petitioners proposed in *Dominguez-Lara*. Accordingly, the
15 Federal Respondents hereby incorporate by reference the arguments set forth in the
16 *Dominguez-Lara* Opposition (Exhibit A) as though fully set forth herein.⁴ Specifically,
17 Sections IV.A. through IV.B. of the *Dominguez-Lara* Opposition demonstrate that the
18 putative classes at issue there fail to meet the requirements of Rule 23, including its
19 commonality and typicality requirements.

20 And as explained *supra* Part B.1., the petitioners in *Dominguez-Lara* seek to challenge
21 the automatic stay provisions of 8 C.F.R. § 1003.6 and the associated appeals to the BIA. If
22 certain putative class members have been injured by virtue of the automatic stay provision
23 and the subsequent appeal period to the BIA, then they do not share the same injury as
24 other putative class members that were not affected by an automatic stay, and the Federal
25 Respondents have a defense against their claims unique to them arising from their lack of a

26
27 ⁴ The Court has endorsed the incorporation by reference of prior government filings in
28 related or substantively identical immigration habeas petitions, recognizing the efficiency of
unified briefing given the number of overlapping cases presenting identical questions under
8 U.S.C. § 1225(b)(2)(A) and § 1226(a).

1 common injury. The only way to lump together the various petitioners and putative class
2 members is by glossing over important, outcome-determinative factual details, which would
3 be an error.

4 For the foregoing reasons, and because the Court would need to engage in an
5 individualized inquiry to determine if a member of the class actually suffered the same
6 injury that Petitioners have pleaded, the class lacks typicality and thus fails to satisfy Rule
7 23.

8 **C. The Proposed Class Fails to Satisfy Rule 23(b)(2)**

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

19 **1. Section 1252(f)(1) Prohibits Classwide Relief Restraining the United**
20 **States' Operation of § 1225(b)(2)'s Detention Authority**

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

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

28 8 U.S.C. § 1252(f)(1) (emphasis added). As the Supreme Court explained, § 1252(f)(1)'s

1 reference to “the ‘operation of’ the relevant statutes is best understood to refer to the United
2 States’ efforts to enforce or implement them.” *Garland v. Aleman Gonzalez*,
3 596 U.S. 543, 550 (2022). Section 1252(f)(1) “generally prohibits lower courts from
4 entering injunctions that order federal officials to take or refrain from taking actions to
5 enforce, implement, or otherwise carry out” the covered statutory provisions of the INA.
6 *Id.* By its terms, § 1252(f)(1) is applicable here because the statutory authority for the
7 detention of aliens, like Petitioners, who are present in the United States without being
8 admitted, is one of the covered provisions. *Id.*

9 The Supreme Court has weighed in on the issue of classwide relief in the
10 immigration context; there can be no doubt that § 1252(f)(1)’s remedial bar applies here.
11 In *Aleman Gonzalez*, the Supreme Court overturned injunctions entered by two district
12 courts that had, as a matter of statutory interpretation, required the United States to
13 provide bond hearings for noncitizens detained under 8 U.S.C. § 1231(a)(6). 596 U.S. at
14 550. The Court held that “[t]hose orders ‘enjoin or restrain the operation’ of § 1231(a)(6)
15 because they require officials to take actions that (in the Government’s view) are not
16 required by § 1231(a)(6) and to refrain from actions that (again in the Government’s view)
17 are allowed by § 1231(a)(6).” *Id.* at 551. Because “[t]hose injunctions thus interfere with the
18 Government’s efforts to operate §1231(a)(6)” in its chosen manner, they were barred by §
19 1252(f)(1). *Id.*

20 *Aleman Gonzalez* proscribes the same result here—the Court lacks authority under
21 § 1252(f)(1) to restrain the Federal Respondents from detaining Petitioners and putative
22 class members under § 1225(b)(2). As the Supreme Court affirmed, § 1252(f)’s remedial bar
23 is not limited to the enumerated provisions “as *properly* interpreted.” *Id.* at 552-54. Put
24 another way, even if this Court ultimately finds that Defendants’ invocation of § 1225(b)(2)
25 to detain Petitioners and the potential class members is erroneous, § 1252(f)(1) bars the
26 Court from enjoining the Federal Respondents’ operation of § 1225 on a classwide basis.
27 *See Al Otro Lado v. Exec. Off. for Immigr. Review*, 120 F.4th 606, 627 (9th Cir. 2024) (noting
28 that “an injunction is barred even if a court determines that the Government’s ‘operation’

1 of a covered provision is unlawful or incorrect”) (citing *Aleman Gonzalez*, 596 U.S. at 552-
2 54).

3 Petitioners may argue that they meet the requirements of Rule 23(b)(2) because they
4 seek declaratory relief and not injunctive relief. *See* ECF No. 1, at 21, Prayer for Relief,
5 (requesting relief declaring Respondents’ new policy of detaining individuals under §
6 1225(b)(2) unlawful and setting aside the policy). But Petitioners will still run afoul of §
7 1252(f)(1) because § 1252(f)(1) is not limited to injunctions. Instead, it prohibits lower-court
8 orders that “enjoin or *restrain*” the United States’ operation of the covered provisions. 8
9 U.S.C. § 1252(f)(1) (emphasis added). The common denominator of those terms is that
10 they involve coercion. *See* Black’s Law Dictionary 529 (6th ed. 1990) (“Enjoin” means to
11 “require,” “command,” or “positively direct” (emphasis omitted)); *id.* at 1314 (“Restrain”
12 means to “limit” or “put compulsion upon” (emphasis omitted)). Together, they indicate
13 that a court may not impose coercive relief that “interfere[s] with the government’s efforts
14 to operate” the covered provisions in a particular way. *Aleman Gonzalez*, 596 U.S. at 551.

15 Though the Supreme Court did not indicate § 1252(f)(1) specifically prohibited other
16 forms of relief that are practically similar to an injunction, including classwide declaratory
17 relief, the Court specified that lower courts cannot impose coercive relief that “interfere[s]
18 with the United States’ efforts to operate” the covered provisions.⁵ *Id.* at 551 n.2.
19 Therefore, if the relief sought requires the United States to take steps to implement (or
20 refuse to implement) a declaratory judgment regarding § 1225(b) that relief is barred by §
21 1252(f)(1). *See Hamama v. Adducci*, 912 F.3d 869, 880 n.8 (6th Cir. 2018) (holding that while
22 “declaratory relief will not always be the functional equivalent of injunctive relief . . . in
23 this case it is the functional equivalent”).

24 Here, the requested declaratory relief is impermissibly coercive and violates §
25 1252(f)(1). Petitioners ask this Court “[d]eclare that Defendants’ policy and practice of
26 denying consideration for bond on the basis of § 1225(b)(2) to Named Plaintiffs and the
27 class, violates the INA, its implementing regulations, the APA, and the Due Process
28 Clause[.]” ECF No. 1, at 21, Prayer for Relief. Indeed, Petitioners and the putative class

1 “seek declaratory relief that establishes that class members are subject to detention under §
2 1226(a) and are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)” and are
3 therefore entitled to an individualized custody redetermination following apprehension by
4 DHS and, if not released, a bond determination by the Immigration Court. *Id.* Via this
5 request, Petitioners challenge the United States’ policy of detaining persons present in the
6 United States without being admitted or paroled under § 1225(b)(2) rather than § 1226(a),
7 and for the Court to find it unlawful. But in setting aside this policy as unlawful, and
8 “declaring” all putative class members are subject to detention under § 1226(a), the Court
9 would effectively compel Respondents to detain putative class members under § 1226(a)
10 and provide them bond hearings. And this necessarily restrains the United States’ operation
11 of § 1225(b)(2) because it stymies the United States’ implementation of § 1225(b)(2) to
12 detain putative class members.

13 **2. The Relief Petitioners Seek Will Not Appropriately Address the Alleged**
14 **Injuries of the Classes as a Whole**

15 Given § 1252(f)(1)’s limitations on classwide injunctive relief, any relief the Court
16 might order would fall far short of being appropriate relief to the proposed classes as a
17 whole. The relief sought would not be uniform and applicable to all class members for two
18 reasons. First, as explained *supra* Part B.1., the class definitions draw no clear distinctions
19 between aliens entering without inspection and aliens present without inspection such that
20 no single declaratory judgment would cover all putative class members. Under Petitioners’
21 interpretation of the INA, courts would need to make individualized determinations of
22 whether an alien crossed the threshold from an entering alien to an alien present in the
23 United States and whether the alien has sought specific types of immigration benefits such
24 that they could be deemed “seeking admission” before it could issue declaratory judgment
25 regarding appropriate detention authority.

26 Second, because Petitioners allege the Federal Respondents’ policy violates their
27 rights under the Due Process Clause of the Fifth Amendment, ECF No. 1 ¶¶ 86–90, the
28 Court should hesitate to resolve such claims via a Rule 23(b)(2) class action. As the

1 Supreme Court has cautioned, courts should consider “whether a Rule 23(b)(2) class action
2 litigated on common facts is an appropriate way to resolve [Petitioners’] Due Process
3 Clause claims. [D]ue process is flexible, we have stressed repeatedly, and it calls for such
4 procedural protections as the particular situation demands.” *Jennings v. Rodriguez*, 583 U.S.
5 281, 314 (2018) (internal quotation marks omitted) (second alteration in original); *see also*
6 *Diaz v. Garland*, 53 F.4th 1189, 1213 (9th Cir. 2022) (noting that “the Due Process Clause
7 does not mandate procedures that reduce the risk of erroneous deprivation to zero” and that
8 “[d]ue process is a flexible concept that varies with the particular situation”). Because
9 Petitioners’ putative classes, as defined, include dissimilarly situated individuals—some who
10 might properly be subject to mandatory detention even under Petitioners’ interpretation of
11 the INA—the Court could not enter a single declaratory judgment to resolve classwide Due
12 Process claims.

13 In addition to the shortcoming of a single declaratory judgment not covering all class
14 members, the classwide relief Petitioners seek blurs the line between injunctive and
15 declaratory relief. Petitioners’ description of the relief sought highlights this point: the
16 declaratory relief for their class would “establish[] that their detention is governed by §
17 1226(a)” and a “‘single injunctive or declaratory judgment’—a declaratory judgment
18 establishing that their detention is governed by § 1226(a) and vacatur of Defendants’
19 policy—‘would provide relief to each member of the class.’” ECF No. 15, at 21. In essence,
20 what Petitioners seek is an order from the Court declaring that if the United States detains
21 them, it must detain them and all putative class members under § 1226(a). But this order
22 would run afoul of § 1252(f)(1)’s classwide bar on restraining the operation of § 1225(b)(2) if
23 the order requires the United States detain putative class members under § 1226(a) rather
24 than § 1225(b)(2). Because the Court cannot grant such relief, Petitioners fail to meet the
25 requirements of Rule 23(b)(2) for this reason as well.

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1 **D. Individual Habeas Actions, Not a Class Action, are the Correct Vehicles to**
2 **Resolve Petitioners' Claims**

3 While Petitioners bring APA and Due Process Claims, Petitioners' claims are
4 within the heartland of habeas corpus. The Court should be especially hesitant to grant
5 class certification here because habeas petitions are generally unfit for class actions.⁵ The
6 purpose of class actions is to "create an efficient mechanism for trying claims that share
7 common questions of law or fact when other methods of consolidation are impracticable."
8 *Dellums v. Powell*, 566 F.2d 216, 230 (D.C. Cir. 1977). Habeas, however, has been an
9 individualized writ from its inception. The federal habeas statute is designed for individual
10 petitioners; it requires that an "[a]pplication for a writ of habeas corpus [] be in writing
11 signed and verified *by the person for whose relief it is intended or by someone acting in*
12 *his behalf*" and "shall allege the facts concerning the *applicant's commitment or detention,*
13 *the name of the person who has custody over him and by virtue of what claim or authority,*
14 *if known.*" 28 U.S.C. § 2242 (emphasis added). The issuance of the writ is then "directed
15 *to the person having custody of the person detained*" and may require the custodian to
16 "produce at the hearing *the body of the person detained.*" *Id.* § 2243 (emphasis added).
17 That is an individualized process and inquiry, not one amenable to classwide resolution.

18 Putative class members' recent actions demonstrate this point. Since this case was
19 filed, and as the Court is well aware given the immigration litigation filings in this District,
20 several putative class members have brought separate habeas suits seeking *individualized*
21 injunctive relief in this Court on the same issue in this case: a bond hearing pursuant to §
22 1226(a). These cases speak volumes. Even if the Court were to certify the classes and
23 provide declaratory relief, declaratory relief would not fully resolve the class members'

24 ⁵ Defendants acknowledge binding Ninth Circuit precedent holding class actions may be
25 brought pursuant to habeas corpus. *See Rodriguez v. Hayes*, 591 F.3d 1105, 1117 (9th Cir.
26 2010). However, the Supreme Court "has never held that class relief may be sought in a
27 habeas proceeding." *A.A.R.P. v. Trump*, 145 S. Ct. 1034, 1036 (2025) (Alito, J.,
28 dissenting). Given the individual inquiries necessary to address the alleged injuries of each
putative class member, and putative class members' continued resort to individual habeas
proceedings, this case is an example of why habeas corpus is an inappropriate vehicle for
class actions.

1 alleged injury, and each class member would still need to seek individual habeas relief
2 beyond classwide relief.⁶

3 **V. Conclusion**

4 For the foregoing reasons, the Court should deny Petitioners' Motion for Class
5 Certification and decline to certify Petitioners' proposed class.

6 Respectfully submitted this 21st day of November 2025.

7 SIGAL CHATTAH
8 Acting United States Attorney

9 /s/ Christian R. Ruiz
10 CHRISTIAN R. RUIZ
11 Assistant United States Attorney

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26 _____
27 ⁶ This also highlights why Petitioners fail to meet Rule 23(b)(2)'s requirement that either
28 injunctive or corresponding declaratory relief be appropriate to the putative classes as a
whole, because even with declaratory relief, individual class members would need to bring
separate habeas claims challenging the application of § 1225(b)(2) to their individual
detentions.