SADMIRA RAMIC, ESQ. (15984)
CHRISTOPHER M. PETERSON, ESQ. (13932)
AMERICAN CIVIL LIBERTIES UNION OF NEVADA
4362 W. Cheyenne Ave.
North Las Vegas, NV 89032
Telephone: (702) 366-1226
Facsimile: (702) 718-3213
Emails: ramic@aclunv.org
peterson@aclunv.org

Listing of counsel continued on the next page

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

VICTOR KALID JACOBO RAMIREZ; EDGAR MICHEL GUEVARA ALCANTAR; on behalf of themselves and others similarly situated, et al.,

Plaintiffs-Petitioners,

vs.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA J BONDI, Attorney General of the United States, in her official capacity; TODD LYONS, Acting Director for U.S. Immigration and Customs Enforcement, in his official capacity; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; JASON KNIGHT, Acting Field Office Director, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; SIRCE OWEN, Acting Director for Executive Office of Immigration Review, in her official capacity; LAS VEGAS IMMIGRATION COURT; JOHN MATTOS, Warden, Nevada Southern Detention Facility, in his official capacity,

Defendants-Respondents.

Case No.: 2:25-cv-02136

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

MICHAEL KAGAN (12318C)
ANDREW ELKINS
GABRIELA RIVERA DORADO
Student Attorneys Practicing
Under Nevada Supreme Court Rule 49.3
UNLV IMMIGRATION CLINIC
Thomas & Mack Legal Clinic
William. S. Boyd School of Law
University of Nevada, Las Vegas
P.O. Box 71075
Las Vegas Nevada
Telephone: (702) 895-3000
Facsimile: (702) 895-2081
Email: Michael.Kagan@unlv.edu
Email: elkina1@unlv.nevada.edu
Email: doradoma@unlv.nevada.edu

Michael K.T. Tan (CA SBN# 284869)*
My Khanh Ngo (CA SBN# 317817)*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104
(415) 343-0770
m.tan@aclu.org
mngo@aclu.org

**Admitted pro hac vice*

Plaintiffs-Petitioners ("Plaintiffs") submit this reply in support of their Motion for Class Certification and Appointment of Class Counsel (ECF No. 15).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs seek to certify a class challenging Defendants' new policies and practices of unlawfully subjecting them to mandatory immigration detention under 8 U.S.C. § 1225(b)(2)(A), even though they are eligible for bond under 8 U.S.C. § 1226(a). On Defendants' view, every detained immigrant—the large majority of whom lack immigration counsel, let alone access to a federal court litigator—must file their own individual habeas petition. This would unnecessarily flood the courts—as reflected in this Court's experience, *see* ECF No. 15 at 6 (collecting cases)—while still excluding hundreds of more people from relief. Similar classes have been certified across the country. *See, e.g.*, *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (nationwide class)[1]; *Mendoza Gutierrez v. Baltasar*, No. 1:25-cv-2720-RMR, 2025 WL 3251143, at *7 (D. Colo. Nov. 21, 2025) (regional class). And since Plaintiffs filed their class complaint in October 2025, this Court has relied on the same reasoning to continue to grant relief to similarly situated individuals challenging the same unlawful governmental policy. *See, e.g.*, *Escobar Salgado v. Mattos*, No. 2:25-CV-01872-RFB-EJY, 2025 WL 3205356, at *1, *26 (D. Nev. Nov. 17, 2025) (granting habeas to three petitioners). This situation underscores how, contrary to Defendants' claims, Plaintiffs present a classic case for Rule 23(b)(2) class treatment because Defendants have acted on grounds that apply generally to the class. As a result, a declaration that class members are subject to § 1226(a) and vacatur of Defendants' actions would provide relief to the class as a whole.

Defendants' remaining arguments don't pass muster. Defendants do not contest numerosity or adequacy. And Plaintiffs do not challenge any aspect of expedited removal, so § 1252(e) does

[1] Although the Court in *Madonado Bautista* certified a nationwide class and granted declaratory relief, that case is still pending and the certification does not preclude this Court from moving forward with the regional class certification.

not apply. While the applicability of § 1225(b)(2) for recent entrants encountered close to the border may require individualized analysis, the proposed class definition does not include those cases. Rather, the proposed class focuses on easily identifiable traits, sets strict limitations on who is included in the class, and raises the core common question of what detention statute applies to noncitizens who entered without inspection, whose most recent arrest did not occur upon arriving in the United States, and were detained while living in the interior of the United States. The answer does not vary, including for those applying for certain immigration benefits, as reflected in the favorable decisions issued by this Court. Lastly, the Ninth Circuit has rejected Defendants' view that § 1252(f)(1) forecloses classwide declaratory relief, and courts have held the same for Administrative Procedure Act ("APA") vacatur. The Court should certify the proposed Class.

II. ARGUMENT

A. 8 U.S.C. § 1252(e)(1)(B) Does Not Prevent Class Certification

Respondents first argue that 8 U.S.C. § 1252(e)(1)(B), in combination with § 1252(e)(3), prevents class certification. That assertion is based on a misreading of the statute and fails for at least two reasons. First, Defendants invoke § 1252(e)(3)(A) to argue that this case can only be reviewed by the District of Columbia, but that statute only addresses "determinations under section 1225(b) of this title and its implementation." 8 U.S.C. § 1252(e)(3)(A). However, the entire premise of this case is that Defendants cannot invoke § 1225(b)(2) and that § 1226(a) governs class members' detention. It is well established that courts retain jurisdiction to determine their own jurisdiction. *See, e.g.*, *Ye v. INS*, 214 F.3d 1128, 1131 (9th Cir. 2000). In this case, determining whether the jurisdiction-limiting provision at § 1252(e)(3)(A) applies first requires the Court to resolve whether Plaintiffs are detained pursuant to § 1225 or § 1226. Thus, "the jurisdictional question and the merits collapse into one," *Ye*, 214 F.3d at 1131, and this Court should decide the legal issue before it. Several courts have already rejected Defendants' invocation of § 1252(e)(3) on this basis alone. *See, e.g.*, *Maldonado Bautista*, 2025 WL 3288403, at *3; *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, --- F. Supp. 3d ----, 2025 WL 3033769, at *6 (D. Mass. Oct. 30, 2025).

Second, Defendants completely misconstrue § 1252(e). By its plain terms, § 1252(e) is a *grant* of jurisdiction to certain challenges involving § 1225(b)(1) in the District of Columbia. *See* 8 U.S.C. § 1252(e) (entitled "Judicial Review of Orders Under Section 1225(b)(1)"). However, § 1252(e) does not require that challenges involving *§ 1225(b)(2)*—the detention statute at issue in this case—be brought exclusively in the District of Columbia or be barred from class certification. It is true that a different provision of § 1252—§ 1252(a)(2)(A)—bars challenges to the expedited removal process at *§ 1225(b)(1)*, "except as provided in subsection (e)"—making § 1252(e) the exclusive avenue for *those* challenges. *See Make The Rd. New York v. Wolf*, 962 F.3d 612, 620–21, 626–28 (D.C. Cir. 2020); *Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422, 426–27 (3d Cir. 2016) ("the statute makes abundantly clear that whatever jurisdiction courts have to review issues relating to *expedited removal orders* arises under § 1252(e)." (emphasis added)). But that channeling requirement for expedited removal challenges does not apply to challenges involving the detention statute at issue here. *See* ECF No. 15 at 3 (limiting the class definition to those "who are not or will not be subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231 . . . .").[2] Any remaining doubt should be dispelled by the legislative history, which confirms that § 1252(e)(3) "is limited to whether section 235(b)(1) [codified as § 1225(b)(1)], or any regulations issued pursuant to that section, is constitutional," or whether written policy directive, guidance or procedures related to § 1252(b)(1) are lawful. H.R. Rep. No. 104-828, at 220–21 (1996) (Conf. Rep.).

[2] Defendants assert that § 1252(e)(3)'s reference to § 1225(b), instead of § 1225(b)(1), is meant to sweep in § 1225(b)(2) but the entire subsection only makes sense in the context of judicial review of expedited removal determinations. Section 1252(e) makes no reference to § 1225(b)(2) while subsections (e)(1)(A), (e)(2), (e)(4)(A), and (e)(5) all refer directly to § 1225(b)(1). It is much more logical to conclude—as at least one other court has done—that subsection (e)(3) essentially uses the term "section 1225(b)" as a shorthand for what the entire subsection is actually about: Expedited Removal under § 1225(b)(1). *See Innovation Law Lab v. Nielsen*, 366 F. Supp. 3d 1110, 1120 (N.D. Cal. 2019) (holding § 1252(e)(1)(B) & (3) did not bar challenge to class action against actions taken under authority of § 1225(b)(2)), *vacated as moot sub nom. Innovation Law Lab v. Mayorkas*, 5 F.4th 1099 (9th Cir. 2021).

Defendants' own cited cases confirm that § 1252(e) covers only challenges to determinations made in the expedited removal process (such as a negative credible fear determination), *see Mendoza-Linares v. Garland*, 51 F.4th 1146, 1152, 1156–57 (9th Cir. 2022), and challenges to policies "to implement expedited-removal proceedings under section 1225(b)," *M.M.V. v. Garland*, 1 F.4th 1100, 1108 (D.C. Cir. 2021); *Singh v. Barr*, 982 F.3d 778, 784 (9th Cir. 2020) (concluding that § 1252 "deprive[d] circuit courts of appeals of jurisdiction to review expedited removal orders and related matters affecting those orders"); *see also E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 666 (9th Cir. 2021) ("Section 1252(e)(3), in short, limits jurisdiction over challenges to regulations implementing expedited-removal orders."). Because this case does not address expedited removal, § 1252(e) plainly does not apply.[3]

B. The Proposed Class Meets the Requirements of Rule 23(a).

i. The Proposed Class Satisfies Commonality.

Defendants argue against commonality by asserting that there are factual distinctions dividing the class because some class members would be properly subject to mandatory detention depending on the facts of their case, like whether they are applying for immigration benefits. ECF No. 32 ("Opp.") at 10–13. But the class is appropriately limited and, just as other courts recognized in certifying similarly defined regional classes, the common legal question presented here—whether mandatory detention applies to those who entered without inspection and whose most recent arrest did not occur upon arriving in the United States—satisfies both commonality and typicality. *See Rodriguez Vasquez v. Bostock*, 349 F.R.D. 333, 354 (W.D. Wash. 2025) (finding that commonality was satisfied when the common legal question was "whether Defendants' 'policy and practice denying bonds for lack of jurisdiction' violates the INA and APA"); *Guerrero*

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

Orellana, 2025 WL 3033769, at *9 (holding that commonality was met when the question of law was "does § 1225(b)(2)(A) authorize mandatory detention without a bond hearing during removal proceedings for noncitizens who entered the United States without inspection, were arrested while residing inside the country, and who are not subject to the expedited removal process under § 1225(b)(1), parole revocation under § 1182(d)(5)(A), or mandatory detention under § 1226(c)"); *Mendoza Gutierrez*, 2025 WL 3251143, at *3 (finding that commonality was satisfied when the common legal question was "whether § 1225(b)(2)'s mandatory detention provisions apply to the class and prevents them from being considered for release on bond under § 1226(a) and its implementing regulations."); *Maldonado Bautista*, 2025 WL 3288403, at *4 ("the deprivation of [class members'] right to a bond hearing is a common injury").

Contrary to Defendants' assertion, the class definition clearly demarcates when an individual falls within the class. *See* ECF 15 at 3. The Court would only need to answer a few questions to determine class membership: Did they enter without inspection? Did their most recent arrest occur upon arrival in the United States? And are they subject to any other detention statute because they were subject to expedited removal (§ 1225(b)(1)), are subject to mandatory detention based on certain criminal history (§ 1226(c)), or have a final order of removal (§ 1231)? For instance, the individual described in *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) (cited at Opp. 11), was detained a short distance from the border and processed through expedited removal, *id.* at 114, and thus was subject to detention under § 1225(b)(1)—and would not be part of the class. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (iii) (describing who may be subject to expedited removal). The class also omits individuals who were similarly apprehended shortly after crossing the border and released on humanitarian parole, even if they were not subject to expedited removal, like the person in *Matter of Q. Li*, 29 I. & N. Dec. 66, 67 (BIA 2025).

Defendants also suggest that a noncitizen who is residing in the country and applies for immigration relief may be deemed as "seeking admission" for purposes of the detention statute that Defendants claim applies to class members, 8 U.S.C. § 1225(b)(2)(A). Opp. at 12-13. Defendants highlight two examples to support this proposition: Plaintiff Guevara-Alcantar's U

visa application and an I-130 Visa Petition filed by Mr. Sanchez Roman whose habeas petition challenging the same unlawful actions of Defendants was granted by this Court. *Id.* However, this argument is contradicted both by the Supreme Court's decision in *Sanchez v. Mayorkas*, 593 U.S. 409 (2021), and Defendants' own policy guidance.

In *Sanchez*, the Supreme Court considered whether a grant of Temporary Protected Status ("TPS")—a form of temporary relief from deportation, *see* 8 U.S.C. § 1254a—constitutes an "admission" that renders noncitizens eligible for adjustment of status to lawful permanent residence under 8 U.S.C. § 1255. 593 U.S. at 414. The Court held that the petitioner, who had originally entered the country unlawfully, but was subsequently granted TPS, had not been "admitted" and was therefore ineligible to adjust under the relevant provisions. *Id.* at 419. As the Court explained, an "admission" is defined as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Id.* at 411 (quoting 8 U.S.C. § 1101(a)(13)(A)). TPS, however, provided the petitioner only a grant of "lawful status" in the country—and *not* an "admission." *Id.* at 415–16.

The reasoning of *Sanchez* makes clear that, contrary to Defendants' suggestion, a noncitizen inside the country applying for a U visa, or other forms of immigration relief like cancellation of removal and TPS, is "seeking lawful status"—and not "seeking admission"—because those forms of relief confer only "lawful status" in the United States. *See, e.g.*, *id.*; *Guerrero Orellana v. Moniz*, No. 25-CV-12664-PBS, --- F. Supp. 3d ----, 2025 WL 2809996, at *7 (D. Mass. Oct. 3, 2025) ("A grant of cancellation of removal would result in his adjustment of status to permanent residence while he remains within the United States, not his lawful entry into the country." (citation omitted)). And recently Defendants issued new policy guidance clarifying that, like TPS, a grant of U nonimmigrant status is not an "admission" that renders the noncitizen eligible for adjustment under 8 U.S.C. § 1255(a). *See* U.S. Citizenship & Immigr. Servs., Policy Alert: Admission for Adjustment of Status under INA 245(a), PA-2025-25 (Nov. 3, 2025), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20251103-AOSAdmission.pdf. Similarly, an I-130 petition simply establishes a "qualifying relationship with

an eligible alien relative," and as reflected on the USCIS website cited by Defendants, "the filing or approval of this petition does not give [the] relative any immigration status or benefit." U.S. Citizenship and Immigration Services, *I-130, Petition for Alien Relative*, USCIS.GOV (last updated Nov. 12, 2025), https://www.uscis.gov/i-130.

In short, Defendants are simply wrong that the Court will need to delve into factual inquiries about the nature of class members' encounter with immigration officers at the time of arrest or whether they have or will apply for certain immigration benefits. This is confirmed by the Court's treatment of habeas petitions brought by individuals challenging the same government policies. *See, e.g.*, *Escobar Salgado*, 2025 WL 3205356, at *22; ECF No. 35 at 12 ("As it did in *Escobar-Salgado*, the Court rejects Respondents' statutory interpretation here and finds Plaintiffs in this case are detained under § 1226(a) and its implementing regulations, because they are 'longtime U.S. residents, who were arrested and detained by ICE far from any port of entry.'").

ii. The Proposed Class Satisfies Typicality.

Plaintiffs' injuries are also typical of those of the class. The injury that all class members face is the unlawful denial of consideration for release on bond. And this Court has already agreed that both Plaintiffs are properly subject to § 1226(a), not § 1225(b). *See* ECF No. 35 at 11. That remains true regardless of whether they apply for certain benefits because they were detained while living in the United States after many years, not while seeking admission at the border. *See Rodriguez Vazquez*, 349 F.R.D. at 359-61 (typicality satisfied for class representative who entered without inspection); *Guerrero Orellana*, 2025 WL 3033769, at *10 (same); *Maldonado Bautista*, 2025 WL 3288403, at *5 (same); *Mendoza Gutierrez*, 2025 WL 3251143, at *4 (same, noting government's concession that class representative's application for U visa did not impact typicality). Defendants' arguments against typicality are thus unavailing.[4]

[4] Defendants' assertion that this "Court believes the putative classes in *Dominguez-Lara* subsume the putative class in this case" is not supported by the record. Opp. at 14. To the extent the Defendants are referring to the Court's statement during the November 13, 2025, hearing that the class definition in this case is broader than *Dominiguez-Lara*, such a possibility does not defeat

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

Because the Plaintiffs and proposed class members are similarly situated and improperly subject to Defendants' mandatory detention policy despite being eligible for bond under § 1226(a), the Court can easily certify a class under Rule 23(b)(2) for declaratory relief. *See Parsons v. Ryan*, 754 F.3d 657, 688 (9th Cir. 2014) (Rule 23(b)(2) is "unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole."). Defendants' assertion that no single declaratory judgment would cover the class is premised on the same misunderstanding of the proposed class definition that fails above.[5]

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

"Section 1252(f)(1) is straightforward," and it limits only the lower courts' "'jurisdiction or authority to enjoin or restrain the operation of'" specific statutory provisions of the INA. *Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 812 (9th Cir. 2020) (citing 8 U.S.C.

---

commonality or typicality as 1) the automatic stay issue still requires a determination of whether mandatory detention applies to those who entered without inspection and whose most recent arrest did not occur upon arriving in the United States and 2) the second proposed class titled "Bond Appeal Class" in *Dominguez-Lara* involves a distinct issue related to delays in review of bond appeals by the BIA that is not being challenged in this case. Thus, Defendants' arguments, incorporated by reference from *Dominguez-Lara*, as to the Bond Appeal Class are not relevant to this case, and their arguments as to the automatic stay class fail for the reasons they do for the class here.

[5] Defendants also claim that courts cannot issue classwide declaratory judgments on a due process claim. Opp. at 19-20. That is wrong as courts, including the Supreme Court and the Ninth Circuit, regularly consider due process challenges and announces rules for the generality of cases, including in class actions. *See, e.g.*, *A.A.R.P. v. Trump*, 605 U.S. 91, 94–96, 145 S. Ct. 1364, 1368 (2025) (per curiam); *Wilkinson v. Austin*, 545 U.S. 209, 228–30 (2005); *Wolff v. McDonnell*, 418 U.S. 539, 563–72 (1974); *Saravia v. Sessions*, 905 F.3d 1137, 1144–45 (9th Cir. 2018); *Barnes v. Healy*, 980 F.2d 572, 575 (9th Cir. 1992). But the Court need not address whether class certification is appropriate for Plaintiffs' due process claim at this juncture because Plaintiffs intend to move for partial summary judgment on their statutory and regulatory claims under Counts I, II and III (insofar as Defendants' policies are contrary to law under the APA).

§ 1252(f)(1)). As Defendants appear to concede, while the Supreme Court has interpreted § 1252(f)(1) to prohibit classwide injunctive relief regarding certain INA detention statutes like the ones at issue here, *see Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), it has not extended § 1252(f)(1) to other forms of relief. *See* Opp. at 17. Specifically, "§ 1252(f)(1) does not 'bar classwide declaratory relief.'" *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 138 F.4th 1102, 1123–24 (9th Cir. 2025) (quoting *Rodriguez v. Hayes*, 591 F.3d 1105, 1119 (9th Cir. 2010)); *id.* (noting "the Government concedes . . . that [its] argument is foreclosed by circuit precedent"). "By its plain terms," Section 1252(f)(1) "is nothing more or less than a limit on injunctive relief." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999). Its text nowhere mentions declaratory relief. It is titled "Limit on injunctive relief," without reference to declaratory relief. *See Biden v. Texas*, 597 U.S. 785, 798 (2022) (Section 1252(f)'s "title … makes clear the narrowness of its scope"). The legislative history likewise refers only to "injunctive relief." H.R. Rep. No. 104-469, pt. 1, at 161 (1996).

The Supreme Court has repeatedly recognized the limits of that provision. *See Biden*, 597 U.S. at 798–99; *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (opinion of Alito, J., joined by Roberts, C.J., and Kavanaugh, J.) (explaining that § 1252(f)(1) did not eliminate "jurisdiction to entertain the plaintiffs' request for declaratory relief"). Relying on cases like *Al Otro Lado*, the court in the Central District of California rejected the government's assertion that § 1252(f)(1) barred classwide declaratory relief in certifying a nationwide class action involving the same issues. *Maldonado Bautista*, 2025 WL 3288403, at *7-8.[6] Similarly, this Court should find, based on controlling Ninth Circuit precedent, that declaratory relief is not barred because it is simply not an injunction—even where it may have practically similar results. *Id.*, at *7 ("the Supreme Court has

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

acknowledged that a declaratory judgment, '[t]hough it may be persuasive, . . . is not ultimately coercive.'" (quoting *Steffel v. Thompson*, 415 U.S. 452, 471 (1974))).

Meanwhile, the term "restrain" in § 1252(f)(1) does not do the work Defendants claim. *See* Opp. at 18. Rather, "restrain and enjoin" is a "common doublet" referring to the most common forms of injunctive relief: injunctions and restraining orders. Bryan A. Garner, *Garner's Dictionary of Legal Usage* 295–96 (3d ed. 2011); *see also* Fed. R. Civ. P. 65 (providing for "injunctions and restraining orders"); *California v. Arizona*, 452 U.S. 431, 432 (1981) (using "enjoined and restrained" to describe an injunction). Notably, in that same section, § 1252, Congress made clear when it sought to preclude declaratory as well as injunctive relief. *See* 1252(e)(1)(A). Congress did not do so in § 1252(f)(1).

Defendants suggest in a footnote that Plaintiffs cannot meet Rule 23(b)(2)'s requirement for either injunctive or corresponding declaratory relief because individual class members would need to bring separate habeas claims even after prevailing on declaratory relief. Opp. at 22 n.6. This is wrong on several fronts. First, the rule is written in the disjunctive, requiring either "final injunctive relief *or* corresponding declaratory relief." *See* Fed. R. Civ. P. 23(b)(2) (emphasis added). Thus, "the rule does not require that both forms of relief be sought and a class action seeking solely declaratory relief may be certified under subdivision (b)(2)." 7AA Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1775 (3d ed.); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011). Second, while declaratory relief is "a much milder form of relief than an injunction," that does not suggest it lacks legal effect. *Steffel*, 415 U.S. at 471; *see also* 28 U.S.C. § 2201(a) ("[a]ny such declaration shall have the force and effect of a final judgment or decree"). Lastly, it is widely recognized that the federal government complies with declaratory judgments, even without an injunction. *See Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 208 n.8 (D.C. Cir. 1985) (Scalia, J.) ("it must be presumed that federal officers will adhere to the law as declared by the court."); *Smith v. Reagan*, 844 F.2d 195, 200 (4th Cir. 1988) (describing declaratory relief as "the functional equivalent of a writ of mandamus"). Unless Defendants

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

Defendants briefly acknowledge that Plaintiffs seek vacatur as well, Opp. at 16 (arguing that "setting aside [Defendants'] policy as unlawful . . . would effectively compel Defendants"), but do not explain how it runs afoul of *Aleman Gonzalez*. Nor could they. Given the plain text of § 1252(f)(1), it is unsurprising that "all courts that have addressed the issue"—including after *Aleman Gonzalez*—"have rejected the government's construction." *Nat'l TPS Alliance v. Noem*, 773 F. Supp. 3d 807, 826 (N.D. Cal. 2025); *see, e.g.*, *Texas v. United States*, 40 F.4th 205, 220 (5th Cir. 2022) (per curiam); *Las Americas Immigrant Advoc. Ctr. v. U.S. Dep't of Homeland Sec.*, 783 F. Supp. 3d 200, 232–33 (D.D.C. 2025); *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, 793 F. Supp. 3d 19, 65 (D.D.C. 2025); *Florida v. United States*, 660 F. Supp. 3d 1239, 1284–85 (N.D. Fla. 2023); *Al Otro Lado, Inc. v. Mayorkas*, 619 F. Supp. 3d 1029, 1045 (S.D. Cal. 2022). The discussion in *Nat'l TPS Alliance* is particularly instructive as to the differences between an injunction and vacatur. 773 F. Supp. 3d at 826–29; *id.* at 827 ("it is clear that there are material differences between a vacatur and an injunction"). Thus, "[n]o court has adopted the construction of § 1252(f)(1) advanced by the government," *id.* at 826, and the Court can also vacate Defendants' actions, *see Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 987 (C.D. Cal. 2024). Considering Defendants' suggestion that the government may not comply with a declaratory judgment, there is even more reason for the Court to grant vacatur as part of classwide relief.

D. This Case Calls for Classwide Resolution.

Lastly, Defendants confusingly assert that class certification is inappropriate in habeas. But Plaintiffs have not requested classwide habeas relief. *See* ECF No. 21 (Prayer for Relief in Complaint requesting this Court to issue a writ of habeas corpus requiring the Defendants to release *Named Plaintiffs* immediately, or grant them a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days) (emphasis added).

In any case, as Defendants acknowledge, there is binding Ninth Circuit precedent holding class actions may be brought pursuant to habeas. Opp. at 21 n.5 (citing *Rodriguez v. Hayes*, 591

F.3d 1105 (9th Cir. 2010)); *see also Mead v. Parker*, 464 F.2d 1108, 1112 (9th Cir. 1972). All other circuit courts to address the issue agree that habeas petitioners can litigate common claims through a class action or similar procedure available at equity. *See, e.g.*, *U.S. ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125–27 (2d Cir. 1974); *Bijeol v. Benson*, 513 F.2d 965, 968 (7th Cir. 1975); *Williams v. Richardson*, 481 F.2d 358, 361 (8th Cir. 1973); *Napier v. Gertrude*, 542 F.2d 825, 827 & n.2 (10th Cir. 1976); *LoBue v. Christopher*, 82 F.3d 1081, 1085 (D.C. Cir. 1996).[7]

Defendants point to other putative class members in this district who have brought separate habeas suits since this action was filed. Opp. at 21. That only underscores the need for classwide resolution as that is but a sliver of the total number of putative class members in this district—let alone across the country. Defendants' own reports depict that there are at least 595 people detained by ICE throughout facilities in Nevada, approximately 185 of which are deemed by the government to be subject to § 1225(b)(2). Respondents' Second Status Report at 2, *Maldonado Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY (D. Nev. Oct. 24, 2025), ECF No. 39.[8] Yet Defendants suggest that every individual must file their own habeas petition—simultaneously flooding the courts while ultimately leaving the majority without recourse—rather than resolving the pure legal issues on a classwide basis. Because Plaintiffs satisfy Rules 23(a) and 23(b)(2), and thus have a "categorical" right to pursue their claims as a class action, *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010), the Court should reject Defendants' invitation to create such a chaotic and unfair system.

III. CONCLUSION

The Court should certify the proposed class.

---

[7] The government's citation to the dissent in *A.A.R.P. v. Trump*, 145 S. Ct. 1034 (2025), Opp. at 21 n.5, ignores the Supreme Court's ultimate decision to stay removals on behalf of a putative habeas class, *see A.A.R.P.*, 145 S. Ct. at 1034.

[8] This number has likely grown since the report was submitted by Defendants on October 24, 2025, and testimony from the government in a related case confirms that the number only reflects people who have been placed in removal proceedings, and thus exclude people not yet formally in proceedings, despite being detained, as well as those with pending administrative appeals. Adams Decl. at 2, *Maldonado Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY (D. Nev. Nov. 12, 2025), ECF No. 48-1.

Dated: December 2, 2025.

AMERICAN CIVIL LIBERTIES UNION OF NEVADA

SADMIRA RAMIC (15984)
CHRISTOPHER M. PETERSON (13932)
4362 W. Cheyenne Ave.
North Las Vegas, NV 89032
Telephone: (702) 366-1226
Facsimile: (702) 718-3213
Emails: ramic@aclunv.org
peterson@aclunv.org

Michael K.T. Tan (CA SBN# 284869)*
My Khanh Ngo (CA SBN# 317817)*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104
(415) 343-0770
m.tan@aclu.org
mngo@aclu.org

MICHAEL KAGAN (12318C)
ANDREW ELKINS
GABRIELA RIVERA DORADO
Student Attorneys Practicing
Under Nevada Supreme Court Rule 49.3
UNLV IMMIGRATION CLINIC
Thomas & Mack Legal Clinic
William. S. Boyd School of Law
University of Nevada, Las Vegas
P.O. Box 71075
Las Vegas Nevada
Telephone: (702) 895-3000
Facsimile: (702) 895-2081
Email: Michael.Kagan@unlv.edu
Email: elkina1@unlv.nevada.edu
Email: doradoma@unlv.nevada.edu

Counsel for Plaintiffs-Petitioners
*Admitted pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL** with the Clerk of the Court for the United States District Court of Nevada by using the court's CM/ECF system on December 2, 2025. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished on all participants by:

☒ CM/ECF
☐ Electronic mail; or
☐ US Mail or Carrier Service

Suzanne Lara
ACLU of Nevada Employee