

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....3
PRELIMINARY STATEMENT.....6
CUSTODY.....7
JURISDICTION.....8
VENUE.....8
REQUIREMENTS OF 28 U.S.C. § 2243.....8
PARTIES.....9
EXHAUSTION OF ADMINISTRATIVE REMEDIES.....9
LEGAL FRAMEWORK.....10
RELEVANT FACTS.....22
CLAIMS FOR RELIEF.....22
 COUNT I: VIOLATIONS OF THE INA.....22
 COUNT II: VIOLATION OF DUE PROCESS.....23
 COUNT III: VIOLATION OF APA.....24
PRAYER FOR RELIEF.....24
VERIFICATION PURSUANT TO 28 U.S.C. § 2242.....25
EXHIBITS
 A. DHS Notice to Appear
 B. Naturalization Certificate for Petitioner’s Spouse/Marriage Certificate
 C. DHS Warrant for Petitioner’s Arrest
 D. Motion for Bond
 E. Immigration Judge’s Order Denying Bond Hearing
 F. *Maldonado Baustista* Nationwide Class Action Order

TABLE OF AUTHORITIES

CASES

A.A.R.P. v. Trump,
605 U.S. 91, 94 (2025).....21

Almendarez-Torres v. United States,
523 U.S. 224 (1998).....13

Becerra Vargas v. Bondi,
No. SA-25-CV-1023-FB, 2025 WL 3300446 (W.D. Tex. Nov. 12, 2025).....20

Braden v. 30th Judicial Circuit Court of Kentucky,
410 U.S. 484 (1973).....8

Chogllo Chafra v. Scott,
Nos. 25-CV-437, 2025 U.S. Dist. LEXIS 184909
(D. Me. Sept. 22, 2025).....20

Davis v. Michigan Dep’t of Treasury,
489 U.S. 803 (1989).....14

Faye v. Novia,
372 U.S. 391 (1963).....9

Fuller v. Rich,
11 F.3d. 61 (5th Cir. 1994) (per curiam).....10

Gunaydin v. Trump,
784 F. Supp. 3d 1175(D. Minn. May 21, 2025).....20

Jennings v. Rodriguez,
583 U.S. 281 (2018).....18

Hamdi v. Rumsfeld,
542 U.S. 507 (2004).....19

Hing Sum v. Holder,
602 F.3d 1092 (9th Cir. 2010).....15

Leng May Ma v. Barber,
357 U.S. 185 (1958).....19

Lopez Benitez v. Francis,
No. 25-Civ-5937, 2025 U.S. Dist. LEXIS 153952(S.D.N.Y. Aug. 8, 2025).....16

Lopez-Campos v. Raycraft,
No. 2:25-CV-12486, 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379,
(E.D. Mich. Aug. 29, 2025).....16

Maldonado Bautista v. Santaacruz,
No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403
(C.D. Cal. Nov. 25,2025).....12, 13

Martinez v. Hyde,
--- F. Supp. 3d ---, 2025 U.S. Dist. LEXIS 141724 (D. Mass. July 24, 2025).....15, 19

Martinez v. Noem,
No. 5:25-cv-1007-JKP, 2025 U.S Dist. LEXIS 174415,
(W.D. Tex. Sept. 8, 2025).....18

Martinez v. Noem,
No. EP:25-CV-430-KC, U.S. Dist. LEXIS 403462 (W.D. Tex. Oct. 21, 2025).....20, 21

Mathews v. Eldridge,
424 U.S. 319 (1976).....18, 19, 20

Matter of Yajure Hurtado,
29 I&N Dec. 216, 220 (BIA 2025).....passim

Matter of Pierre,
14 I & N Dec. 467 (1973).....15-16

Posos-Sanchez v. Garland,
3 F.4th 1176 (9th Cir. 2021).....16

Sanchez Alvarez v. Noem,
No. 25-CV-1090, 2025 U.S. Dist. LEXIS 2048996 (W.D. Mich. Oct. 17, 2025).....20

Velesaca v. Decker,
458 F. Supp. 3d 224 (S.D.N.Y. 2020).....20

Von Hoffburg v. Alexander,
615 F.2d 633 (5th Cir. 1980).....9

Yong v. I.N.S.,
208 F.3d 1116 (9th Cir. 2000).....9

Zadvydas v. Davis,
533 U.S. 678, 690 (2001).....23

U.S. CONSTITUTION

Art. I, § 9.....7

Amend. 5.....passim

STATUTES

5 U.S.C. § 706(2)(A)-(C).....21, 22, 23-24

8 U.S.C. § 1101(a)(13).....16

8 U.S.C. § 1182(a)(6)(A)(i).....passim

8 U.S.C. § 1225.....passim

8 U.S.C. § 1226.....passim

8 U.S.C. § 1229a.....10

8 U.S.C. § 1229b(b).....22

8 U.S.C. § 1231.....11

28 U.S.C. § 1391(e).....8

28 U.S.C. § 1331.....8

28 U.S.C. § 1651.....8

28 U.S.C. § 2201.....8

28 U.S.C. § 2241.....6, 8,

28 U.S.C. § 2242.....25

28 U.S.C. § 2243.....8

REGULATIONS

62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).....11

8 C.F.R. § 235.1(a).....16

8 C.F.R. § 236.1(c)(8).....11

8 C.F.R. § 1003.19(a).....11

8 C.F.R. § 1003.1(g)(2).....10
8 C.F.R. § 1236.1(d).....10

TREATISES

Antonin Scalia and Bryan A. Garner,
Reading Law: The Interpretation of Legal Texts (2012).....14-15

MISCELLANEOUS

Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/seeking>15

PRELIMINARY STATEMENT

1. Petitioner WILBERT RUDOLF WIEBE THIESSEN, a dual citizen of Canada and Mexico, is detained by Respondents at the Bluebonnet Detention Facility in Anson, Texas because the Department of Homeland Security (DHS) and the Executive Office of Immigration Review (EOIR) illegally concluded that he is subject to mandatory detention under 8 U.S.C. § 1225(b). Petitioner seeks relief under 28 U.S.C. § 2241.

2. Petitioner entered the United States without inspection on or about December 24, 2007. Exhibit A (Form I-862, DHS Notice to Appear).

3. Thereafter, Mr. Wiebe met and married his wife, Olga Consuelo Rodriguez-Peregrino, a United States citizen. Exhibit B (Naturalization Certificate/Marriage Certificate).

4. On October 24, 2025, immigration officials arrested Petitioner in Seminole, Texas and transported him to the Bluebonnet Detention Facility in Anson, Texas. Exhibit C. (Form I-200, Warrant for Arrest). Petitioner has no criminal convictions.

5. Petitioner filed a motion for bond hearing with the Immigration Judge who denied a hearing for lack of jurisdiction pursuant to *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). Exhibits D-E.

6. The Department of Homeland Security's election to detain Petitioner is based solely upon a single ground of inadmissibility identified in the Notice to Appear:

You are an alien present in the United States who has not been admitted or parole ... [and] subject to removal ... pursuant to the following provisions of law, 212(a)(6)(A)(i) of the Immigration and Nationality Act.

Exhibit A, p 4.

7. Prior to August 24, 2025, the government had not elected to detain Petitioner.

8. On July 8, 2025, DHS introduced a "new policy" instructing all ICE employees to treat

anyone alleged to be inadmissible under Section 1182(a)(6)(A)(i) as an “applicant for admission” subject to the mandatory detention under 8 U.S.C. § 1225(b)(2)(A). This announcement of the policy conceded that it was created “in coordination with the Department of Justice (DOJ).”¹ This incorrect and indefensible interpretation of the Immigration and Nationality Act (“INA”) was endorsed by the Board of Immigration Appeals, an arm of the Department of Justice, on September 5, 2025, *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). The IJ cited *Matter of Yajure Hurtado* to deny a bond hearing to Petitioner. Exhibit E.

9. Petitioner’s detention under 8 U.S.C. § 1225(b)(2)(A) violates the plain language of the Immigration and Nationality Act and contradicts basic precepts of statutory construction and legal analysis.

10. A correct reading of the INA would conclude that Section 1225(b)(2)(A) applies to recent arrivals who are apprehended near the border. It does not apply to individuals, like Petitioner, who are accused of entering the country years ago and are arrested more than 100 miles north of the U.S.-Mexico border.

11. The correct reading of the statute is discerned from text, case law, and decades of agency practice. Petitioner should not be deemed detained under Section 1225(b)(2) but under Section 1226(a) and, thus, eligible for bond. Respondents’ interpretation to the contrary is a dangerous transgression of the INA, the Administrative Procedure Act, and Due Process.

12. Petitioner seeks a writ of habeas corpus requiring the Respondents to release him or provide an individualized bond hearing within 10 days before an immigration judge.

CUSTODY

13. Petitioner is in the physical custody of Respondent Joshua Johnson, Acting Field

¹ Available at <https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission>.

Operations Director of Dallas Immigration and Customs Enforcement Office, U.S. Dept. of Homeland Security. Petitioner is detained at the Bluebonnet Detention Center, Anson, Texas, owned by Management and Training Corporation. Respondent Marcello Villegas is the Warden.

JURISDICTION

14. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article 1, section 9, clause 2 of the United States Constitution (the Suspension Clause).

15. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

VENUE

16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493- 500 (1973), venue lies in the United States District Court for the Northern District of Texas, Abilene Division because Petitioner is detained in Jones County, Texas, within the environs of the Abilene Division.

17. Venue is also proper pursuant to 28 U.S.C. § 1391(e) because (a) Respondents are employees, officers, and agencies of the United States, and (b) a substantial part of the events or omissions giving rise to the claims occurred in the Northern District of Texas.

REQUIREMENTS OF 28 U.S.C. § 2243

18. The Court must grant a petition for writ of habeas corpus or order a respondent to show cause forthwith, unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, a respondent must file a return “within three days unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.*

19. Habeas corpus is “perhaps the most important writ known to the constitutional law...”

affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added). “The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application.” *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

PARTIES

20. Petitioner is a dual citizen of Mexico and Canada. Exhibit A.
21. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees ICE, which is responsible for Petitioner’s detention. Secretary Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.
22. Respondent Joshua Johnson is the Acting Field Operations Director of Dallas Immigration and Customs Enforcement Office, U.S. Dept. of Homeland Security. As such, Respondent is Petitioner’s immediate federal custodian and is responsible for Petitioner’s detention and removal. He is named in his official capacity.
24. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system is a component agency. She is sued in her official capacity.
25. Respondent Marcello Villegas is the Warden of the Bluebonnet Detention Facility. He is Petitioner’s immediate custodian, works within the Northern District of Texas and is sued in his official capacity.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

26. “The major purpose of the exhaustion doctrine is to prevent the courts from interfering

with the administrative process until it has reached a conclusion.” *Von Hoffburg v. Alexander*, 615 F.2d 633, 637 (5th Cir. 1980). Under *Matter of Yajure Hurtado*, an immigration judge has no jurisdiction to entertain a bond hearing for people such as Petitioner. Because *Yajure Hurtado* was issued as a precedential decision, it serves as “precedent[] in all proceedings involving the same issue or issues” upon BIA review. 8 C.F.R. § 1003.1(g)(2). Any appeal of the denial of the bond hearing to the BIA “would be a patently futile course of action.” *Fuller v. Rich*, 11 F.3d. 61, 62 (5th Cir. 1994 (per curiam)). Therefore, an exception to exhaustion exists and Petitioner’s only remedy is by way of a writ.

LEGAL FRAMEWORK

8 USC §§ 1225, 1226 and *Matter of Yajure Hurtado*

27. The Immigration and Nationality Act (“INA”) prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

28. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. *See* 8 U.S.C. § 1229a. Individuals detained under Section 1226(a) are generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). However, noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention under Section 1226(c). *See* 8 U.S.C. § 1226(c).

29. Second, the INA provides for mandatory detention of two groups of noncitizens: The first group consists of those who are subject to expedited removal for being apprehended upon arrival near the border or for being unable to show that they have been physically present in the United States for more than two years until a determination has been made as to whether they have a credible fear of persecution. 8 U.S.C. § 1225(b)(1). The second group subject to mandatory detention consists of anyone alleged to be an “applicant for admission” who is “seeking admission” and whom an

“examining immigration officer determines . . . is not clearly and beyond a doubt entitled to be admitted.” *See* 8 U.S.C. § 1225(b)(2)(A).

30. Last, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings. *See* 8 U.S.C. § 1231(a)–(b).

31. Petitioner’s case concerns the detention provisions described in Section 1226(a) and Section 1225(b)(2).

32. The detention provisions in Section 1226(a) and Section 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104–208, Div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended earlier this year by the Laken Riley Act, Pub.L. No. 119-1, 139 Stat. 3 (2025).

33. Following the enactment of the IIRIRA, EOIR drafted regulations explaining that, in general, people who entered the country without inspection were considered detained under Section 1226(a), not under Section 1225. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

34. In the decades that followed the creation of this statutory and regulatory language, people who entered without inspection were placed in standard removal proceedings and received bond hearings, unless their criminal histories triggered the requirements for mandatory detention outlined in 8 U.S.C. § 1226(c) (concerning mandatory detention of “criminal aliens”). *See also* 8 C.F.R. 236.1(c)(8) (describing criteria for release). That practice was consistent with many decades of prior practice, in which noncitizens who were not deemed “arriving” were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8 U.S.C. § 1252(a) (1994); *see also*

H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply “restates” the detention authority previously found at § 1252(a).

35. On July 8, 2025, ICE announced a new policy “in coordination with” the Department of Justice that rejected the well-established understanding of the statutory framework and reversed decades of practice.

36. The new policy, entitled “Interim Guidance Regarding Detention Authority for Applicants for Admission,” asserts that all persons who entered the United States without inspection shall now be deemed “applicants for admission” under 8 U.S.C. § 1225(a)(1), and therefore subject to mandatory detention provision under Section 1225(b)(2)(A). The policy applies regardless of when or where a person was apprehended, and it affects those who have resided in the United States for months, years, and even decades.

37. On September 5, 2025, the Board of Immigration Appeals (BIA) issued an opinion adopting this interpretation of the detention statutes. *Matter of Yajure Hurtado*, 29 I&N Dec. 216, 220 (BIA 2025). The decision holds that “aliens who are present in the United States without admission are applicants for admission as defined under section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), and must be detained for the duration of their removal proceedings.” *Id.*

38. In the United States District Court for the Central District of California, detainees sought a nationwide class action challenging this policy. On November 20, 2025, the district court granted partial summary judgment on behalf of the individualized petitioners and on November 25, 2025, certified a nationwide class and extended the declaratory judgment to the certified class. *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ---, 2025 WL 3289861, at *11 (C.D. Cal. Nov. 20, 2025) (order granting partial summary judgment to named Plaintiffs-Petitioners); *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, --- F. Supp.

3d ----, 2025 WL 3288403, at *9 (C.D. Cal. Nov. 25, 2025) (order certifying Plaintiffs-Petitioners' proposed nationwide Bond Eligible Class, incorporating and extending declaratory judgment from Order Granting Petitioners' Motion for Partial Summary Judgment). The Nationwide Class includes:

All noncitizens in the United States without lawful status who (1) entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to mandatory detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Exhibit F, p 15.

39. Petitioner falls squarely within the Nationwide Class.

40. The joint DHS-DOJ interpretation of Section 1225(b)(2) defies the INA's text, the INA's logic, and the well-established case law and practice interpreting this provision. There are five separate grounds on which the DHS-DOJ interpretation of law fails basic methods of statutory construction.

41. First, the DHS-DOJ reading of the statute is wrong because it is incompatible with the title of Section 1225, "Inspection by Immigration Officers; *Expedited Removal of Inadmissible Arriving Aliens*; Referral for Hearing." 8 U.S.C. § 1225 (emphasis added). As the Supreme Court has explained, "the title of a statute and the heading of a section are tools available for the resolution of a doubt" about the meaning of a statute. *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998). Section 1225's title refers to "arriving" noncitizens who are put in "expedited removal proceedings." *Id.* These are the people to whom Section 1225(a)(1)'s definition of "applicant for admission" and Section 1225(b)(2)(A)'s mandatory detention provisions apply. The government gravely errs by applying the definition of "applicant for admission" to people who are not "arriving" and not in "expedited removal proceedings." In this case, Petitioner was not "arriving" or "seeking admission" when he was detained **years after entry hundreds of miles north of the U.S. – Mexico border**. Nor

was he put in expedited removal proceedings. Exhibit A. Section 1225(b)(2)(A) cannot apply to him.

42. Second, the DHS-DOJ reading violates the INA because it ignores the subject-matter of Section 1225. Section 1225 describes the procedures for the inspection and expedited removal of people detained at the border who are “seeking admission” to the United States. 8 U.S.C. § 1225(b)(2)(A). The Supreme Court itself noted that the mandatory detention scheme in Section 1225(b)(2)(A) applies “at the Nation’s borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible.” *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Throughout, Section 1225’s text makes clear that it concerns apprehensions and “expedited” procedures conducted at the border—not actions taken far from the border like Chicago. That the DHS-DOJ reading of the statute ignores this context. “It is a fundamental canon of statutory construction,” the Supreme Court explained, “that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *Davis v. Michigan Dep’t of Treasury*, 489 U.S. 803, 809 (1989). The context of Section 1225 demonstrates that subsections 1225(a)(1) and 1225(b)(2)(A) apply to those apprehended at or near the border upon arrival or shortly thereafter. They do not apply to those who are arrested in the interior of the United States months, years or a decade or more later. The DHS-DOJ reading of the statute is an act of cherry-picking a definitional phrase from one context and applying it to another context where it does not belong.

43. Third, the DHS-DOJ reading of Section 1225(b)(2)(A) is wrong because it requires courts to ignore numerous words in the text of that very subsection. As Justice Antonin Scalia and his co-author, Bryan A. Garner, explain: “If possible, every word and every provision is to be given effect.” SCALIA AND GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* AT 174 (2012). A good interpretation of a statute will not result in “extra” words. Yet that is exactly what occurs if one tries to apply Section 1225(b)(2)(A) to Petitioner’s case. Here is the full text of Section 1225(b)(2)(A), the mandatory-detention provision:

[I]n the case of an alien who is an applicant for admission, if the *examining immigration officer* determines that an alien [2] *seeking* admission is [3] *not clearly and beyond a doubt entitled to be admitted*, the alien shall be detained for a proceeding under section 240.

8 U.S.C. § 1225(b)(2)(A) (emphasis and bracketed numbers added). Petitioner was never seen by an “examining immigration officer.” There was never a “determin[ation] that . . .” he was “not clearly and beyond a doubt entitled to be admitted.” Nor was Petitioner “seeking” when immigration officials arrested him. The reason the DHS-DOJ application of the statute has all of these “extra” words is that the statute applies only to those who are “arriving” at the border and are candidates for “expedited removal.” In *that* context, those “extra” words make sense, as there will be an “examining immigration officer” and there will be a determination of potential eligibility for immigration relief. These procedures are uniquely tethered to the border and they are described in exquisite detail in the subsections of Section 1225. But Section 1225’s procedures have no place in the entirely different context of someone who is detained far from the border and decades after he has allegedly entered. Only by ignoring the “extra” words can DHS-DOJ claim to make its reading of the statute fit Petitioner.

44. Further, Respondents’ proposed interpretation of the statute ignores the plain meaning of the phrase “seeking admission.” See *Martinez v. Hyde*, No. CV 25-11613-BEM, 2025 Dist. LEXIS 141724, at *6-11 (D. Mass July 24, 2025). “Seeking” means “asking for” or “trying to acquire or gain.” Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/seeking>. And the use of a present participle, “seeking,” “necessarily implies some sort of present-tense action.” *Martinez*, 2025 Dist. LEXIS 2084238, at *7. The term “admission” is defined as “the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.” 8 U.S.C. § 1101(a)(13)(A). And “entry” has long been understood to mean “a crossing into the territorial limits of the United States.” *Hing Sum v. Holder*, 602 F.3d 1092, 1100-01 (9th Cir. 2010) (quoting *Matter*

of *Pierre*, 14 I & N Dec. 467, 468 (1973)). To piece this together, the phrase “seeking admission” means that one must be actively “seeking” “lawful entry.” See *Lopez Benitez v. Francis*, No. 25-Civ-5937, 2025 U.S. Dist. LEXIS 153952 at *7 (S.D.N.Y. Aug. 8, 2025).²

45. However, Petitioner was not seeking admission when he was arrested on July 29, 2025. He was already in the United States, having entered without inspection on December 24, 2007. If anything, Petitioner was seeking to *remain* in the United States. As *Lopez-Benitez* noted:

[S]omeone who enters a movie theater without purchasing a ticket and then proceeds to sit through the first few minutes of a film would not ordinarily then be described as “seeking admission” to the theater. Rather, that person would be described as already present there. Even if that person, after being detected, offered to pay for a ticket, one would not ordinarily describe them as “seeking admission” (or “seeking” “lawful entry”) at that point—one would say that they had entered unlawfully but now seek a lawful [*12] means of remaining there. As § 1225(b)(2)(A) applies only to those noncitizens who are actively “seeking admission” to the United States, it cannot, according to its ordinary meaning, apply to [petitioner], because he has already been residing in the United States for more than two years.

Lopez Benitez, 2025 WL 2371588, at *7; see also *Lopez-Campos v. Raycraft*, No. 2:25-CV-12486, 2025 U.S. Dist. LEXIS 169423, 2025 WL 2496379, at *6 (E.D. Mich. Aug. 29, 2025) (“[S]eeking ‘admission’ implies action — something that is currently occurring, and in this instance, would most

² This understanding is further buttressed by the fact that “lawful entry” may occur only after “inspection and authorization by an immigration officer,” see 8 U.S.C. § 1101(a)(13), a process that typically must occur at the border or other port of entry. See *Posos-Sanchez v. Garland*, 3 F.4th 1176, 1183 (9th Cir. 2021) (explaining that “inspection and authorization” must “take place at a ‘port of entry’” for one to be considered to have “lawfully entered”). The regulations that set out “inspection procedures” make clear that inspection is a procedure that occurs at ports of entry. See 8 C.F.R. § 235.1(a) (“Application to lawfully enter the United States shall be made in person to an immigration officer at a U.S. port-of-entry when the port is open for inspection.”).

logically occur at the border upon inspection.”).

46. Fourth, the DHS-DOJ reading of Section 1225(b)(2)(A) violates the INA because it renders a neighboring subsection superfluous. In Section 1226(c), the INA describes people who would otherwise be eligible for bond under Section 1226(a), but are rendered ineligible for bond because of their criminal histories. *See* 8 U.S.C. § 1226(c). Of particular interest, subsections 1226(c)(1)(E)(i)-(ii) address people who are alleged to be inadmissible under 8 § U.S.C. 1182(a)(6)(A) as aliens present without inspection. According to these subsections, such people are ineligible for bond *only* if they are also “charged with, . . . arrested for, . . . convicted of . . .” certain crimes. *See* 8 U.S.C. § 1226(c)(1)(E)(i)-(ii). In short, Section 1226(c) requires mandatory detention for people who have entered without inspection *and* have criminal histories. But if the DHS-DOJ reading were correct, then all people who entered without inspection would be mandatorily detained, regardless of whether they had criminal histories or not. Subsections 1226(c)(1)(E)(i) and (ii) would be superfluous, if the DHS-DOJ position were correct, because Section 1225(b)(2)(A) would govern all cases where someone was alleged to have entered without inspection. But we know that cannot be right, as these subsections of 1226(c)(1) were the most recent subsections added by Congress to the INA just this year in the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. ____ (2025) (adding (E)(i) and (E)(ii) to Section 1226(c)(1)). Congress would not have added the subsections only to see these additions rendered completely superfluous. That is another sign that the government’s reading of Section 1225(b)(2)(A) is wrong.

47. Fifth, the DHS-DOJ reading violates the INA because it ignores the textual references to “warrant” in Section 1226(a). DHS issued a “warrant” for the arrest of Petitioner, Form I-200, dated July 29, 2025, is signed by the “W. 3553 Payte, SDDO.” Exhibit C. It is clearly labeled: “Warrant for Arrest of Alien.” Its heading specifically identifies “Section[] 236 of the Immigration and Nationality Act.” Exhibit C. The text of the INA makes clear that a person arrested by warrant

is detained under 1226(a), not 1225(b)(2)(A). For example, the opening sentence of 1226(a) states:

Arrest, detention, and release.—On a *warrant* issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.

8 U.S.C. § 1226(a) (emphasis). By contrast, the word “warrant” does not appear anywhere in Section 1225, a sure sign that Congress intended those arrested by warrant to be evaluated under Section 1226(a) and, thus, eligible for bond. Likewise, the Supreme Court noted that Section 1226(a) — INA 236(a) — “authorizes detention only ‘[o]n a warrant issued’ by the Attorney General leading to the alien’s arrest.” *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018). Other federal courts to consider this issue have agreed that an immigration arrest by warrant subjects a person to detention under 1226(a), thus making them bond eligible. *See, e.g., Lopez Benitez v. Francis*, 2025 WL 2371588, at *4 (S.D.N.Y. Aug. 13, 2025) (pointing to warrant of arrest for noncitizen as evidence that “unequivocally establish[es]” he is “detained pursuant to . . . § 1226(a) [236(a)]”). But the DHS-DOJ reading of the statute ignores the warrant altogether, choosing to apply Section 1225(b)(2)(A) even though Section 1225 never mentions arrests by warrant and, frankly, contemplates only border arrests, where no warrant would be required.

48. For the five distinct reasons outlined above, the mandatory detention provision of Section 1225(b)(2)(A) does not apply to people like Petitioner.

Due Process Violation

49. Respondents’ detention of Petitioner without a bond hearing denies due process under the Fifth Amendment.

50. “To determine whether a civil detention violates a detainee’s due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976).” *Martinez v. Noem*, No. 5:25-cv-1007-JKP, 2025 U.S. Dist. LEXIS 174415, at *3 (W.D. Tex. Sept. 8, 2025). Those factors

are: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335. “The essence of procedural due process is that a person risking a serious loss be given notice and an opportunity to be heard in a meaningful manner and at a meaningful time.” *Id.* at 348.

a. Private Interest

51. As to the first element, “[t]he interest in being free from physical detention’ is ‘the most elemental of liberty interests.’” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Respondents have detained Petitioner since September 25, 2025. A person’s physical freedom is a paramount liberty interest, secured not just by statute but by the Constitution. *Id.* This liberty interest applies to noncitizens, although to varying degrees *Martinez v. Hyde*, --- F. Supp. 3d ---, 2025 U.S. Dist. LEXIS 141724 at *8 (D. Mass. July 24, 2025) (citation omitted). “[O]ur immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality.” *Id.* (quoting *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958)). “In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely “on the threshold of initial entry.”” *Id.* (quoting *Leng May Ma*, 357 U.S. at 187).

52. Petitioner has lived in the United States since December 24, 2007, so “it cannot be denied that [he] was ‘already in the country.’” *See id.* (quotations omitted). He has no criminal history, and he has established a family and a community here. In custody, he is suffering all the deprivations of incarceration, including loss of contact with friends and family and, most fundamentally, the lack of freedom of movement.

53. Recently, district courts throughout the United States have considered due process claims in habeas petitions by noncitizens without lawful immigration status who entered the United States surreptitiously, like Petitioner. Those courts have found that because the petitioners established a life here—albeit without authorization—they possessed a strong liberty interest in their freedom from detention. *See, e.g., Sanchez Alvarez v. Noem*, No. 25-CV-1090, 2025 U.S. Dist. LEXIS 2048996 at *1 (W.D. Mich. Oct. 17, 2025); *Chogllo Chafila v. Scott*, Nos. 25-CV-437, 438, 439, 2025 U.S. Dist. LEXIS 184909 at *1, 10 (D. Me. Sept. 22, 2025); *Martinez v. Noem*, No. EP:25-CV-430-KC, U.S. Dist. LEXIS 403462 (W.D. Tex. Oct. 21, 2025); *Becerra Vargas v. Bondi*, No. SA-25-CV-1023-FB, 2025 WL 3300446 (W.D. Tex. Nov. 12, 2025). These decisions are persuasive and consistent with the longstanding principle that due process applies to those who are present in the interior of the United States, regardless of their citizenship status. *See Leng May Ma*, 357 U.S. at 187.

b. Risk of Erroneous Deprivation

54. Under the second *Mathews* factor, the Court must consider “whether the challenged procedure creates a risk of erroneous deprivation of individuals’ private rights and the degree to which alternative procedures could ameliorate these risks.” *Martinez v. Noem*, 2025 U.S. Dist. LEXIS 403462 at *8 (quoting *Gunaydin v. Trump*, 784 F. Supp. 3d 1175, 1187 (D. Minn. May 21, 2025)).

55. Detaining Petitioner without holding a bond hearing creates a substantial risk that he may be erroneously deprived of his liberty. Without an individualized determination, it cannot be said that detention is warranted in his case. This risk is easily ameliorated through a bond hearing. Indeed, agency decisionmakers regularly “conduct[] individualized custody determinations . . . consider[ing] flight risk and dangerousness.” *Velesaca v. Decker*, 458 F. Supp. 3d 224, 242 (S.D.N.Y. 2020) (citation omitted); see also 8 C.F.R. §§ 236.1(c)(8), 1003.19(h)(3). Under “decades of DHS’s own practices” prior to 2025, noncitizens “who entered without inspection” and were later arrested, just like Petitioner, received bond hearings. *Chogllo Chafila*, 2025 U.S. Dist. LEXIS 184909, at *8

(citations omitted). This is precisely the type of proceeding that would give Petitioner an opportunity to be heard and to receive a meaningful assessment of whether he is dangerous or likely to abscond, and it would greatly reduce the risk of an erroneous deprivation of his liberty. Therefore, the second *Mathews* factor weighs in favor of Petitioner.

c. Government's Interest

56. Respondents' only possible interest to detain Petitioner without a bond hearing serves the misguided policy to detain every non-citizen who entered the United States without inspection pursuant to *Matter of Yajure Hurtado*. Petitioner's constitutional interest in his liberty exists above and apart from the INA. See *A.A.R.P. v. Trump*, 605 U.S. 91, 94 (2025) ("[T]he Fifth Amendment entitles aliens to due process of law in the context of removal proceedings.") (citation omitted). Certainly, the Government has an interest in ensuring that noncitizens appear for their removal hearings and do not pose a danger to the community. But these concerns would be squarely addressed through a bond hearing. Thus, the third *Mathews* factor also weighs in favor of Petitioner.

57. Since all *Mathews* factors support Petitioner's position, the denial of an individualized bond hearing to assess flight risk and dangerousness deprives him of his constitutional right to procedural due process under the Fifth Amendment of the United States Constitution. Petitioner is entitled to a bond hearing. See *Martinez v. Noem*, 2025 U.S. Dist. LEXIS 403462 at *9.

Administrative Procedure Act

58. Under the Administrative Procedure Act, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," that is "contrary to constitutional right [or] power," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

59. Respondents' detention of Petitioner pursuant to Section 1225(b)(2) is arbitrary and capricious. Respondents' detention of Petitioner violates the INA and the Fifth Amendment. Respondents do not have statutory authority under Section 1225(b)(2) to detain Petitioner.

RELEVANT FACTS

60. Petitioner has dual citizenship in Canada and Mexico and entered the United States without inspection on December 24, 2007. Exhibit A.

61. Petitioner is married to Olga Consuelo Rodriguez-Peregrino, a United States citizen. Exhibit B.

62. Immigration officials arrested Petitioner on July 29, 2025 and transferred him to the Bluebonnet Detention Center in Anson, Texas. Exhibit C.

63. Petitioner requested a bond hearing from the Immigration Judge. Exhibit D.

64. The Immigration Judge denied the bond hearing, citing *Matter of Yajure Hurtado*. Exhibit E.

65. Petitioner has relief from deportation under Section 1229b(b) of Title 8. Under Section 1229b(b), the non-citizen may obtain lawful permanent residence from an immigration judge if he can prove, among other factors, that a qualifying relative (spouse, minor child or parent who is a U.S. citizen or permanent resident) will suffer "exceptional, extreme unusual hardship" if the non-citizen is deported. Petitioner's wife is suffering from leukemia.

CLAIMS FOR RELIEF

COUNT I: VIOLATIONS OF THE INA

66. Petitioner incorporates by reference the factual allegations and legal arguments set forth in the preceding paragraphs.

67. For the reasons described above, the mandatory detention provision of 8 U.S.C. § 1225(b)(2) cannot not apply to all noncitizens in the United States who are subject to the specified

grounds of inadmissibility, entry without inspection. As relevant here, this mandatory detention statute cannot be read to apply to those who are accused of residing in the United States for decades prior to apprehension and removal proceedings. A person with long-term residence in the United States who is alleged to be removable should be deemed detained under Section 1226(a), unless they are subject to Section 1226(c) or Section 1231. Indeed, for the reasons described in all the paragraphs above, the mandatory detention statute cannot be read to apply to someone in Petitioner's circumstances.

68. The application of § 1225(b)(2)(A) to Petitioner unlawfully mandates his continued detention and violates the INA.

COUNT II: VIOLATION OF DUE PROCESS

69. Petitioner incorporates by reference the factual allegations and legal arguments set forth in the preceding paragraphs.

70. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

71. Petitioner has a fundamental interest in liberty and being free from official restraint.

72. Petitioner's due process rights are violated by the denial of a bond hearing by Respondents.

COUNT III: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

73. Petitioner incorporates by reference the factual allegations and legal arguments set forth in the preceding paragraphs.

74. Under the Administrative Procedure Act, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance

with the law,” that is “contrary to constitutional right [or] power,” or that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C. § 706(2)(A)-(C).

75. Respondents’ detention of Petitioner pursuant to Section 1225(b)(2) is arbitrary and capricious. Respondents’ detention of Petitioner violates the INA and the Fifth Amendment. Respondents do not have statutory authority under Section 1225(b)(2) to detain Petitioner.

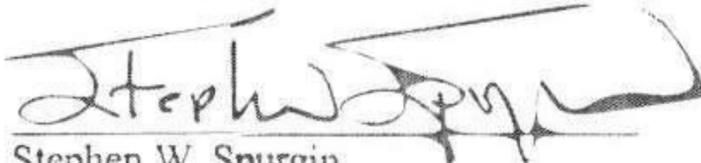
PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue a writ of habeas corpus requiring Respondents to release Petitioner immediately or provide an individualized bond hearing within 10 days
- c. Grant such other relief that the Court deems proper.

Date: December 9, 2025

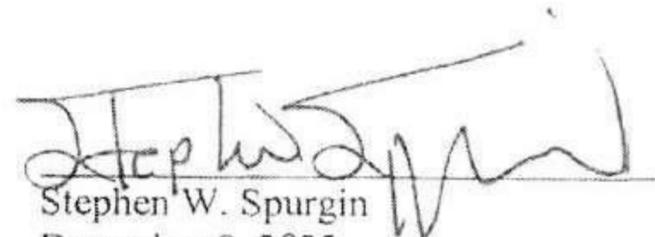
Respectfully submitted,



Stephen W. Spurgin
Texas Bar No. 189743250
310 North Mesa, Suite 300
Cortez on the Plaza
El Paso, Texas 79901
Tel: 915.779.2800
Fax: 915.779.2801
Email: stephen@spurginlaw.com
For Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I, Stephen W. Spurgin, am the attorney for Petitioner Wilbert Rudolf Wiebe Thiessen. I have read the foregoing Petition and have gone over the facts in this Petition with Petitioner. I have reviewed each Exhibit. I am also Petitioner's attorney in the underlying immigration case. I verify under penalty of perjury of the laws of the United States of America that the statements in this Writ of Habeas Corpus are true and correct.


Stephen W. Spurgin
December 9, 2025

7. The respondent has relief from removal under INA §240A (b) and is also eligible for consular processing with pending I-130 petition.

8. The respondent has a well-qualified sponsor who possesses the financial ability to post a bond. *See Matter of Patel*, 15 I&N Dec. 666 (BIA 1976); *see also* 8 C.F.R. §§ 236(c), 1236.1 (c)(8).

II.

CONCLUSION

The respondent is not ineligible for bond under INA § 236(c). He has a fixed address, operates his own business, Wilbert's Construction LLC, and has relief from removal available under INA § 240A(b) as well as consular processing with a pending I-130 petition. The respondent is neither a flight risk nor a danger to the community. The respondent requests a bond in the amount to be determined by the Court.

Signed this 18th day of November 2025.

Respectfully submitted,


STEPHEN W. SPURGIN
Attorney for Respondent

WIEBE THIESSEN, WILBERT RUDOLF

A 

PROOF OF SERVICE

I, Stephen W. Spurgin, served a copy of this Respondent's Motion for Bond/ Custody Redetermination Hearing and any attached pages to the El Paso Immigration Court and OPLA via the ECAS Portal on this 18th day of November 2025.

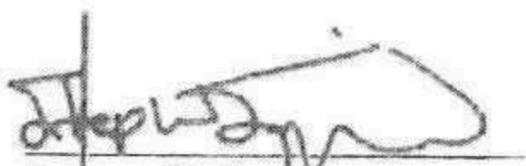

Stephen W. Spurgin

EXHIBIT A

DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

DOB: [REDACTED]
Even: [REDACTED]

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED]

FINS: [REDACTED]

File No: [REDACTED]

In the Matter of:

Respondent: WILBERT RUDOLF WIEBE THIESSEN

currently residing at:

See Continuation Page Made a Part Hereof

(325) 823-8031

(Number, street, city, state and ZIP code)

(Area code and phone number)

- You are an arriving alien.
- You are an alien present in the United States who has not been admitted or paroled.
- You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of MEXICO and a citizen of MEXICO;
3. You entered the United States at or near EL PASO, TEXAS, on or about December 24, 2007;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.

Section 235(b)(1) order was vacated pursuant to: 8CFR 208.30 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

8915 MONTANA AVE, STE C EL PASO, TEXAS 79925, BLUEBONNET DETENTION CENTER

(Complete Address of Immigration Court, including Room Number, if any)

on August 28, 2025 at 8:30 am to show why you should not be removed from the United States based on the

(Date)

(Time)

charge(s) set forth above.

W. 3558 PAYTE - SDDO

(Signature and Title of Issuing Officer)

Date: July 29, 2025

LUBBOCK, TEXAS

(City and State)

EOIR - 1 of 4

Privacy Act Statement

Authority:

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CAIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorn>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/oepl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

U.S. Department of Homeland Security

Continuation Page for Form I-862

Alien's Name WIEBE THIESSEN, WILBERT RUDOLF	File Number  Event No: 	Date 07/28/2025
CURRENTLY RESIDING AT: ----- BLUEBONNET DETENTION CENTER 400 2ND ST ANSON, TEXAS 79501		
Signature  W. 3558 PAVTE	Title SDDO	

EOIR - 4 of 4

EXHIBIT C

EXHIBIT D

DETAINED

Stephen W. Spurgin
Immigration Spurgin PLLC
EOIR ID: UR455824
Post Office Box 1676
El Paso, Texas 79949

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
EL PASO, TEXAS

In the Matter of:

WIEBE THIESSEN, WILBERT
RUDOLF

Respondent,

In Bond Proceedings

10/25/2025 10:00 AM

FILE NO. [REDACTED]

Immigration Judge: TBD

Next Hearing: TBD

RESPONDENT'S MOTION FOR BOND/CUSTODY
REDETERMINATION HEARING

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
EL PASO, TEXAS

In the Matter of:

WIEBE THIESSEN, WILBERT
RUDOLF

Respondent,

In Bond Proceedings

10-30-2025 10:00 AM

FILE NO. [REDACTED]

**RESPONDENT'S MOTION FOR BOND/CUSTODY
REDETERMINATION HEARING**

WILBERT RUDOLF WIEBE THIESSEN, the respondent, through undersigned counsel, and pursuant to 8 C.F.R. § 1003.19, requests that a bond/custody redetermination hearing be scheduled, and in support would show:

I.

RELEVANT FACTS

1. The respondent is detained at the Bluebonnet Detention Facility in Anson, Texas and is not ineligible for bond under INA § 236(c).
2. The respondent is a citizen of Mexico and Canada who last entered the United States on December 24, 2007. *See* NTA.
3. The respondent has a fixed U.S. address.
4. The respondent is gainfully employed in his own business, Wilbert's Construction LLC, and has ties to the United States. Tab C, Page 82.
5. The respondent has one United States citizen child. Tab D, Page 126.
6. The respondent has committed no immoral acts, nor has he been convicted of any dangerous or violent offenses.

EOIR 2 of 5

7. The respondent has relief from removal under INA §240A (b) and is also eligible for consular processing with pending I-130 petition.

8. The respondent has a well-qualified sponsor who possesses the financial ability to post a bond. *See Matter of Patel*, 15 I&N Dec. 666 (BIA 1976); *see also* 8 C.F.R. §§ 236(c), 1236.1 (c)(8).

II.

CONCLUSION

The respondent is not ineligible for bond under INA § 236(c). He has a fixed address, operates his own business, Wilbert's Construction LLC, and has relief from removal available under INA § 240A(b) as well as consular processing with a pending I-130 petition. The respondent is neither a flight risk nor a danger to the community. The respondent requests a bond in the amount to be determined by the Court.

Signed this 18th day of November 2025.

Respectfully submitted,


STEPHEN W. SPURGIN
Attorney for Respondent

WIEBE THIESSEN, WILBERT RUDOLF



PROOF OF SERVICE

I, Stephen W. Spurgin, served a copy of this Respondent's Motion for Bond/ Custody Redetermination Hearing and any attached pages to the El Paso Immigration Court and OPLA via the ECAS Portal on this 18th day of November 2025.

A handwritten signature in black ink, appearing to read "Stephen W. Spurgin", is written over a horizontal line.

Stephen W. Spurgin

EXHIBIT E



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
EL PASO SPC IMMIGRATION COURT

Respondent Name:

WIEBE THIESSEN, WILBERT RUDOLF

To:

Stephen W. Spurgin, Esq.
PO Box 1676
El Paso, TX 79949

A-Number:

~~XXXXXXXXXX~~

Riders:

In Custody Redetermination Proceedings

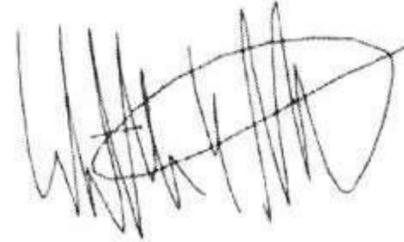
Date:

11/20/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

- Denied, because
The Court lacks jurisdiction to set a bond in the respondent's case. See Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025).
- Granted. It is ordered that Respondent be:
- released from custody on his own recognizance.
 - released from custody under bond of \$
 - other:
- Other:



Immigration Judge: Herbert, Nathan 11/20/2025

Appeal: Department of Homeland Security: waived reserved
Respondent: waived reserved

Appeal Due: 12/22/2025

Certificate of Service

This document was served:

Via: M Mail | P Personal Service | E Electronic Service | U Address Unavailable

To: Alien | Alien c/o custodial officer | E Alien atty/rep. | E DHS

Respondent Name : WIEBE THIESSEN, WILBERT RUDOLF | A-Number 

Riders:

Date: 11/20/2025 By: Sandoval, Blanca, Court Staff

EXHIBIT F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—
GENERAL

Case No. 5:25-cv-01873-SSS-BFM Date November 25, 2025
Title Lazaro Maldonado Bautista et al v. Ernesto Santacruz Jr et al

Present: The Honorable SUNSHINE S. SYKES, UNITED STATES DISTRICT JUDGE

Irene Vazquez
Deputy Clerk

Not Reported
Court Reporter

Attorney(s) Present for Plaintiff(s):
None Present

Attorney(s) Present for Defendant(s):
None Present

**Proceedings: (IN CHAMBERS) ORDER GRANTING PLAINTIFF
PETITIONERS' MOTION FOR CLASS CERTIFICATION
[DKT. NO. 41]**

Before the Court is Plaintiff Petitioners Lazaro Maldonado Bautista, Ananias Pasqual, Ana Franco Galdamez, and Luiz Alberto de Aquino de Aquino's (collectively, "Petitioners") Motion for Class Certification. [Dkt. No. 41, "Motion"; Dkt. No. 15]. Defendant Respondents Ernesto Santacruz Jr., Todd Lyons, Krista Noem, Pamela Bondi, and Feriti Semaia ("Respondents") have filed their Opposition to this Motion. [Dkt. No. 59, Opposition or "Opp."]. Petitioners filed their Reply on September 19, 2025. [Dkt. No. 61, "Reply"]. For the following reasons, Petitioners' Motion is **GRANTED**.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Court will not repeat the facts of this case for the sake of brevity. For reference to the factual background, please refer to the Prior Order on the Motion for Partial Summary Judgment, the First Amended Complaint ("FAC"), and the pleadings papers related to this motion. [See Dkt. No. 15, "First Amended Complaint" or "FAC"; Dkt. No. 81, "MSJ Order". See generally Dkt. Nos. 41, 59, 61].

On August 11, 2025, Petitioners filed this Motion, seeking declaratory relief and vacatur against Respondents' policies for two proposed classes:

- **Bond Eligible Class:** All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.
- **Adelanto Class:** All noncitizens in the United States without lawful status who (1) have or will have proceedings before the Adelanto Immigration Court; (2) have entered or will enter the United States without inspection; (3) were not or will not be apprehended upon arrival; and (4) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing.

[See Motion at 14].

On November 14, 2025, the Court heard argument from the parties on the Motion. At the hearing, the parties agreed to proceed with the Bond Eligible Class only consistent with their briefing on the redundancy of the Adelanto Class. [See also Opp. at 24; Reply at 4 n.1]. With the scope of the Motion limited to the Bond Eligible Class only, the Court now considers whether class certification is proper.

II. LEGAL STANDARD

“A party seeking class certification must satisfy the requirements of Federal Rule of Civil Procedure 23(a) and the requirements of at least one of the categories under Rule 23(b).” *Wang v. Chinese Daily News*, 737 F.3d 538, 542 (9th Cir. 2013).

In determining whether to certify a class, a district court “take[s] the substantive allegations of the complaint as true,” however, “the court also is required to consider the nature and range of proof necessary to establish those allegations.” *In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust Litig.*, 691 F.2d 1335, 1342 (9th Cir. 1982).

Petitioners cannot demonstrate commonality and typicality, and that the proposed classes do not qualify for Rule 23(b)(2) relief. [Opp. at 15–24].¹

A. 8 U.S.C. § 1252

Respondents suggest 8 U.S.C. § 1252(e)(1)(B) precludes class certification in this action. [Opp. at 14]. Section 1252(e)(1)(B) limits judicial review by preventing courts from “certify[ing] a class under Rule 23 . . . in any action for which judicial review is authorized under a subsequent paragraph of this subsection.” § 1252(e)(1)(B). Respondents are correct that § 1252(e)(3)(A) limits “[j]udicial review of determinations under section 1225(b) of this title and its implementation is available in an action instituted in the United States District Court for the District of Columbia,” and limits challenges to the constitutionality of a section or regulation, or whether certain regulations, policies, or procedures are inconsistent with the INA or violates other laws. [Opp. at 14–15]. See § 1252(e)(3)(A). However, invoking § 1252(e)(1)(B) as a bar to relief is illusory.

Respondents’ argument assumes that Petitioners “challenge an alleged new policy that all [noncitizens]² who entered the United States without inspection are

¹ The Opposition further contends that the Adelanto Class is redundant and should not be certified. [Opp. at 24]. Petitioners concede this argument, and maintain that a nationwide Bond Eligible Class suffices. [Reply at 4 n.1].

² This Order uses the term “noncitizen” in place of “alien.” The Court follows the U.S. Supreme Court and Ninth Circuit, where the use of the term “noncitizen” has become a common practice. See *Patel v. Garland*, 596 U.S. 328 (2022) (Barrett, J.); *United States v. Palomar-Santiago*, 593 U.S. 321 (2021) (Sotomayor, J.); *Barton v. Barr*, 590 U.S. 222, 226 n.2, (2020) (Kavanaugh, J.) (“This opinion uses the term ‘noncitizen’ as equivalent to the statutory term ‘alien.’” (citing 8 U.S.C. § 1101(a)(3))); *Avilez v. Garland*, 69 F.4th 525 (9th Cir. 2023); *Arce v. United States*, 899 F.3d 796 (9th Cir. 2018). Additionally, this Court thinks it is prudent to “avoid language that reasonable readers might find offensive or distracting—unless the biased language is central to the meaning of the writing.” *Chicago Manual of Style Online* 5.253, <https://www.chicagomanualofstyle.org/book/ed17/part2/ch05/psec253.html>. As noted by the Ninth Circuit, “[t]he word alien can suggest ‘strange,’ ‘different,’ ‘repugnant,’ ‘hostile,’ and ‘opposed[.]’” *Avilez*, 69 F.4th at 527 n.1 (citing *Alien*, *Webster’s Third New International Dictionary* 53 (2002)). Accordingly, because the word “noncitizen” is synonymous and does not encompass such negative connotations, the Court finds “noncitizen” is a better word choice. See *Alien* and

subject to mandatory detention under § 1225(b)(2)(A).” [Opp. at 14]. However, as discussed in the Order on the Motion for Partial Summary Judgment, Petitioners have maintained their position that they are detained under § 1226 and are therefore entitled to receive bond hearings rather than remain in mandatory detention. [Reply at 6].

Because the premise of Petitioners’ claim is that the proper governing authority over their detention is § 1226 rather than § 1225, the Court does not find § 1252(e)(3)(A) prohibits this Court from ruling on this Motion.

B. Rule 23(a)

The Court now considers whether the proposed class meets the requirements of Rule 23(a).

1. Numerosity

Numerosity is satisfied if “the class is so large that joinder of all members is impracticable.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)). Generally, courts find the numerosity requirement satisfied “when a class includes at least 40 members.” *Rannis v. Recchia*, 380 Fed. Appx. 646, 651 (9th Cir. 2010)).

Respondents do not dispute that Petitioners have satisfied numerosity. [See generally Opp.]. The Court finds numerosity is satisfied given the factual circumstances surrounding the putative class members and geographic scope of the proposed class. [Motion at 28 (suggesting that “at a minimum there are thousands of Bond Eligible Class members”)].

The Bond Eligible Class includes individuals that were detained following “Operation At Large,” which entailed a 3,000 daily arrest quota of putative class members in Los Angeles, California. [Motion at 27]. Where the Department of Homeland Security (“DHS”) and Immigration and Customs Enforcement (“ICE”) continue to increase immigration-related arrests in cities across the country, the Court finds that Petitioners have demonstrated by a preponderance of evidence that numerosity is satisfied. [See Department of Homeland Security, *ICE Launches Operation Midway Blitz in Honor of Katie Abraham to Target Criminal Illegal [Noncitizens] Terrorizing Americans in Sanctuary Illinois* (Sept. 8, 2025)

Noncitizen, *American Heritage Dictionary of English Language* 44, 1198 (5th ed. 2011).

(documenting “Operation Midway Blitz” in Chicago, Illinois); Department of Homeland Security, *DHS Launches Operation Charlotte’s Web to Target Criminal Illegal [Noncitizens] Terrorizing Americans in Charlotte, North Carolina* (Nov. 15, 2025) (indicating “surging resources for Operation Charlotte’s Web in North Carolina”).

Based on data from the Executive Office of Immigration Review (“EOIR”) and DHS’s reports of its operations, the Court finds the Bond Eligible class satisfies the numerosity requirement. [See Motion at 2628].

2. Commonality

The second Rule 23(a) requirement is commonality. This prong requires “a plaintiff . . . show that ‘there are questions of law or fact common to the class.’” *Dukes*, 564 U.S. at 349 (quoting Fed. R. Civ. Proc. 23(a)(2)). The proposed class’s claims must “depend upon a common contention.” *Id.* And the common contention “must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.” *Id.* Accordingly, “what matters to class certification . . . is not the raising of common questions—even in droves—but rather, the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation.” *Id.* at 350.

Commonality is “construed permissively.” *Hanlon*, 150 F.3d at 1019. Thus, “[a]ll questions of fact and law need not be common to satisfy the rule.” *Id.*; see also *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012) (“Where the circumstances of each particular class member vary but retain a common core of factual or legal issues with the rest of the class, commonality exists”).

Rather, the “standard is ‘readily met’ when plaintiffs seek prospective relief ‘challeng[ing] a system-wide practice or policy that affects all of the putative class members.’” *Mansor*, 345 F.R.D. at 204. Indeed, the Ninth Circuit has held that “in a civil-rights suit . . . commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members.” *Gonzalez*, 975 F.3d at 808 (citations omitted).

There is little question here that Petitioners seek declaratory relief to challenge a newly adopted DHS policy that affects all putative class members. [Motion at 28–32]. Nevertheless, Respondents argue the proposed class lacks

commonality because there are “obvious differences between purported class members,” which would require “different answers depending on individualized circumstances.” [Opp. at 16].

However, the Court does not find the difference among putative class members so obvious. Although it is possible that individuals may have differing charges of inadmissibility when they are arrested, the deprivation of their right to a bond hearing is a common injury. Such common injury can be resolved in a single stroke upon the determination that the new DHS policy is in violation of their due process rights. *See Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010) (describing commonality as “look[ing] only for some shared legal issue or a common core of facts”).

The Court’s MSJ Order rejected Respondents’ proposed interpretation of the INA, which subjected Petitioners and those similarly situated to mandatory detention. [MSJ Order at 1017]. As a matter of law, Respondents’ interpretation runs counter to the plain language of the INA, foundational principles of statutory interpretation, and the INA’s statutory scheme. [*Id.*]. In other words, the interpretive consequences of Respondents’ interpretation and corresponding agency practices stemming from that interpretation injure Petitioners and putative class members in a common manner.

Where the class definition outlines an adequate basis to define this kind of injury, the Court finds commonality has been satisfied.

3. Typicality

The third requirement of Rule 23(a) is typicality. “The claims of the representative party must be typical of the class claims.” *Gonzalez*, 975 F.3d at 809 (citing Fed. R. Civ. P. 23(a)(3)). “[R]epresentative claims are ‘typical’ if they are reasonably co-extensive with those of absent class members; they need not be substantially identical.” *Hanlon*, 150 F.3d at 1020; *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D.Cal.1985). Typicality looks to “whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

“Typicality refers to the nature of the claim or defense of the class representative, and not to the specific facts from which it arose or the relief

sought.” *Hanon*, 976 F.2d at 508. Typicality is a “permissive standard,” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003), but class certification is inappropriate “if there is a danger that absent class members will suffer if their representative is preoccupied with defenses unique to it.” *Hanon*, 976 F.2d at 508.

Together, commonality and typicality “serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical” and whether the class representative’s and class claims are “so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982)

Respondents contest typicality by suggesting that “half of [the named Petitioners] will be subject to mandatory detention if and when they apply for immigration benefits.” [Opp. at 18]. But Petitioners and the putative class members face essentially identical factual circumstances that satisfy typicality.

Petitioners arrived in the United States without inspection. [Dkt. No. 1 at 6–7]. They were later arrested and detained at an ICE Processing Center and were denied bond hearings by an IJ, who claimed a lack of jurisdiction. [See *id.*; Dkt. No. 5]. At the time of their arrest, Petitioners were charged inadmissible under grounds that did not place them under mandatory detention as required by § 1225(b)(1), § 1226(c), or § 1231. [Dkt. No. 1 ¶¶ 43, 48, 53, 58]. Despite this, Petitioners remained in detention until the Court granted their TRO. [See Dkt. No. 5; Dkt. No. 14, “Prior Order”]. After the TRO, Petitioners were granted individualized bond hearings.

A named plaintiff is not typical if “there is a danger that absent class members will suffer if their representative is preoccupied with defenses unique to it.” *DZ Rsrv. v. Meta Platforms, Inc.*, 96 F.4th 1223, 1238 (9th Cir. 2024). Respondents posit that Petitioners cannot show typicality because “if and when [named Petitioners] apply for a U-visa and cancellation of removal, respectively, they will . . . be subject to mandatory detention under § 1225(b)(2).” [Opp. at 18]. Not only does the record fail to support the premise that Petitioners will take such a course of action, but the Court also has doubts as to whether such action would necessitate mandatory detention. [See Reply at 7].

Much like the Petitioners, putative class members are noncitizens who already arrived in the United States without inspection, or will enter the United States and not face inspection. [Motion at 14]. In other words, putative class

members are inadmissible, but not subject to mandatory detention under § 1225(b)(1), § 1226(c), or § 1231. Where those individuals are subject to mandatory detention due to Respondents' improper interpretation of the INA, Petitioners' claims present the same circumstances as those of the Bond Eligible Class. Therefore, Petitioners' claims can be considered typical of Bond Eligible Class's.

The Court thus finds that Petitioners have satisfied the typicality requirement for the Bond Eligible Class.

4. Adequacy

The final requirement of Rule 23(a) is adequacy. Adequacy looks at whether "the representative parties will fairly and adequately protect the interests of the class." *See Hanlon*, 150 F.3d at 1020 (quoting Fed. R. Civ. P. 23(a)(4)). To evaluate adequacy, the Court looks to whether (1) the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) whether named plaintiffs and their counsel prosecute the action vigorously on behalf of the class" *See Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978)). The named plaintiffs and their counsel must have "sufficient 'zeal and competence' to protect the interests of the rest of the class." *Doe v. Wolf*, 424 F. Supp. 3d 1028, 1043 (S.D. Cal. 2020) (quoting *Fendler v. Westgate-Cal. Corp.*, 527 F.2d 1168, 1170 (9th Cir. 1975)).

Respondents do not appear to contest adequacy. Nevertheless, the Court evaluates whether there are any conflicts of interest or concerns associated with named Petitioners and their counsel.

i. Named Petitioner's Adequacy

The Court turns first to the adequacy of the named Plaintiff Petitioner: Lazaro Maldonado Bautista.

Bautista has lived in Los Angeles, California since 2021 and has no criminal history. [Dkt. No. 41-14 ¶¶ 3, 6, "Declaration of Lazaro Maldonado Bautista"]. He was arrested on June 6, 2025 during an ICE operation in Los Angeles, California. [Dkt. No. 1 at 5-6]. Following his arrest, ICE detained Bautista at Adelanto ICE Processing Facility. [Declaration of Lazaro Maldonado Bautista ¶ 7]. Upon requesting a bond hearing before an immigration court, Bautista attended a hearing at which an IJ concluded that he was subject to mandatory detention and that the IJ lacked jurisdiction to consider his request for release on bond. [*Id.* ¶ 9].

Bautista, along with the other named Petitioners, received a bond hearing only after this Court granted their Application for a TRO. [*Id.* ¶ 12; *see also* Dkt. No. 5].

Having now been released on bond, Bautista expresses his interest in representing the class and his understanding of the responsibilities of doing so. In a declaration submitted to the Court, Bautista explains he “want[s] to be a named plaintiff in this case.” [Declaration of Lazaro Maldonado Bautista at ¶ 13]. Furthermore, Bautista indicates his understanding that he “would represent a large number of people who have entered the United States without inspection” and “ICE is not considering [those people] for bond.” [*Id.*]. The declaration further states he understands he “would represent people who are currently in detention and who have been denied consideration for bond for the same reason as [himself].” [*Id.* ¶ 14]. As part of his role as class representative, Bautista declares that his role would require representing “the interests of all class members in this lawsuit and that it is [his] responsibility to represent the interests of each class as a whole and not just [his] own personal interests.” [*Id.* ¶ 15].

Based on his declaration, Bautista asserts that he is an adequate representative of the class; he seeks for the putative class members the same relief he received, and, as of the filing of the complaint, shares the same interests as absent class members. *See Doe v. Wolf*, 424 F. Supp. 3d 1028, 1043-44 (S.D. Cal. 2020). Nothing in the record suggests that Bautista has any conflicts of interest. Bautista has a “mutual goal” with the other class members to challenge the allegedly unlawful practices and to “obtain declaratory . . . relief that would not only cure this illegality but remedy the injury suffered by all current and future class members.” [Motion at 35 (quoting *Nightingale v. U.S. Citizenship & Immigr. Servs.*, 333 F.R.D. 449, 462 (N.D. Cal. 2019))].

The Court finds he is an adequate representative of the Bond Eligible Class.

ii. Class Counsel’s Adequacy

Counsel for the proposed class have shown that they have experience litigating class actions on immigration matters. The two attorneys from the USC Gould School of Law Immigration Clinic—Mr. Niels W. Frenzen and Ms. Jean E. Reisz—have litigated and presented arguments in immigration cases in numerous federal district courts and represented clients in approximately fifty petitions before two Circuit Courts of Appeals. [Dkt. 41-21 ¶¶ 2-4]. Moreover, the attorneys from the Northwest Immigrant Rights Project (NWIRP) have a decade or

more of experience working in immigration law. [See Dkt. No. 44-19 (explaining that Adams has many years of experience); *id.* ¶ 5 (explaining that Madrid has worked for NWIRP since 2013); *id.* ¶ 6 (explaining that Kang has worked for NWIRP since 2014); *id.* ¶ 7 (explaining that Korthius has worked for NWIRP since 2018). Notably, Mr. Matt Adams has litigated “hundreds of cases and personally argued on behalf of immigrants before immigration judges, the Board of Immigration Appeals, federal district courts, the Ninth Circuit Court of Appeals, and the United States Supreme Court.” [Dkt. No. 41-19 ¶ 3]. He has “successfully moved for class certification and been approved by federal courts as class counsel in sixteen different class actions on behalf of immigrants.” [*Id.*].

The Motion further mentions the qualification of counsel from the American Civil Liberties Union, given their deep knowledge of immigration law and experience litigating class actions and complex federal cases. [Motion at 35–36]. The combined experience of class counsel is more than adequate.

Finally, the Court finds nothing in the record to suggest that the attorneys have any conflicts of interest with other class members. Accordingly, the Court concludes that counsel meet Rule 23(a)(4)’s adequacy requirement.

C. Rule 23(b)(2)

Because the proposed class has met the requirements of Rule 23(a), the Court now turns to Rule 23(b). Petitioners seek class certification under Rule 23(b)(2), “which permits the Court to certify a class if ‘the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.’” *Jane Doe I v. Nielsen*, 357 F. Supp. 3d 972, 991 (N.D. Cal. 2018).

The Ninth Circuit has previously concluded that “[n]either [Rule 23] nor due process necessarily requires that the district court rule on class certification before granting or denying a motion for summary judgment.” *Wright v. Schock*, 742 F.2d 541, 545 (9th Cir. 1984). See also *Estakhrian v. Obenstine*, 859 F. App’x 121, 122 (9th Cir. 2021). As a preliminary matter, the Court’s MSJ Order already determined that Respondents’ interpretation of the INA cannot be squared with the statutory text and statutory scheme, and articulated the proper interpretation of the INA that applies to Petitioners. [See MSJ Order]. The MSJ Order, therefore, makes clear that this proposed class is appropriate for certification under Rule 23(b)(2). However, because the MSJ Order precedes this ruling on the class

certification motion, the Court addresses Respondents' concerns regarding certification and further articulates why Rule 23(b)(2)'s standards are met.

"Class certification under Rule 23(b)(2)" requires that "the primary relief sought is declaratory or injunctive." *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010). Petitioners "seek declaratory relief and vacatur for [the Bond Eligible Class]." [Motion at 38]. Respondents raise two arguments to oppose class certification: (1) that § 1252(f)(1) prohibits the requested classwide relief, and (2) that the requested relief will not address the Bond Eligible Class's injuries as a whole. [Opp. at 19–23].

1. Section 1252(f)'s Prohibition of Class Actions

The Ninth Circuit's recent decision in *Al Otro Lado v. Executive Office for Immigration Review* addresses Respondents' first argument. *See Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 120 F.4th 606, 625–26 (9th Cir. 2024). In this case, the Ninth Circuit rejected the Government's argument that classwide declaratory relief was prohibited by § 1252(f). 120 F.4th at 1123–24. Nevertheless, Respondents insist that the requested declaratory relief would interfere with the Government's efforts to detain noncitizens under § 1225(b)(2), and that is "impermissibly coercive." [Opp. at 20–21]. However, the Supreme Court has acknowledged that a declaratory judgment, "[t]hough it may be persuasive, . . . is not ultimately coercive." *Steffel v. Thompson*, 415 U.S. 452, 471 (1974).

The Court further notes that the statutory text further supports the availability of classwide declaratory relief. *Compare* § 1252(e)(1)(A) (prohibiting courts from entering "declaratory, injunctive, or other equitable relief" in any action to exclude under § 1225(b)(1) *with* § 1252(f)(1) (specifically noting that this subsection is a "[l]imit on injunctive relief"). Therefore, the requested relief for the Bond Eligible Class authorized by Rule 23(b)(2) is not incompatible with § 1252(f).

2. Whether Classwide Relief is Appropriate

Respondents next argue that classwide declaratory relief is not appropriate, as "the relief sought would not be uniform and applicable to all class members." [Opp. at 22]. Respondents suggest the class definition "draw[s] no clear distinctions between [noncitizens] entering without inspection and [noncitizens] present without inspection such that no single declaratory judgment would cover all putative class members." [*Id.* at 22–23]. In other words, Respondents take

issue with an overbroad class definition, and further argue that due process may call for dissimilar procedural protections. [*Id.*].

The Court recognizes that Respondents could not benefit from the Court's reasoning in the MSJ Order at the time of submitting their Opposition. However, the MSJ Order has now clarified two important concerns in this matter: (1) that Respondents' interpretation of the INA is incorrect; and (2) the relief requested by Petitioners would merely make available to Petitioners and putative class members the statutory protections imbued by the INA. [MSJ Order at 11, 16]. The accessibility of the INA's statutory protections to noncitizens is therefore uniform.

Rule 23(b)(2) "does not require [courts] to examine the viability or bases of class members' claims for declaratory and injunctive relief, but only to look at whether class members seek uniform relief from a practice applicable to all of them." *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010); *see also Parsons v. Ryan*, 754 F.3d 657, 688 (9th Cir. 2014). This inquiry "does not require an examination of the viability or bases of the class members' claims for relief, does not require that the issues common to the class satisfy a Rule 23(b)(3)-like predominance test, and does not require a finding that all members of the class have suffered identical injuries." *Parsons*, 754 F.3d at 688. Thus, "it is sufficient" to meet the requirements of Rule 23(b)(2) that "class members complain of a pattern or practice that is generally applicable to the class as a whole." *Rodriguez*, 591 at 1125 (citations omitted).

Consistent with the MSJ Order, Petitioners indeed clarify that the requested declaratory relief is generally applicable to all members of the Bond Eligible Class. According to Petitioners, the new DHS policy applies to the members of the proposed Bond Eligible Class. Where the DHS policy renders all of the Bond Eligible Class subject to mandatory detention under § 1225(b)(2), the putative class members have been deprived of their right to a bond hearing under § 1226(a). [Motion at 37–38]. The declaratory relief requested—a ruling that the policy violates Petitioners' and putative class members' statutory and constitutional rights—would provide the entire class with relief from continued deprivation of their rights. [*Id.* at 13, 38]. Petitioners explain that "[a] single declaratory judgment requiring [IJs] to provide individualized custody determinations at bond hearings" would apply to the class as a whole." [*Id.* at 38].

Crucially, a classwide order declaring the DHS policy in violation of the class members' rights would not ensure their release on bond; it merely secures a

right to an individualized hearing. Any differences that may exist in class members' entitlement to be released is a different matter than their entitlement to a hearing. Respondents' concerns regarding uniform relief does not speak to the latter.

"The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the [defendant's] 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." *Dukes*, 564 U.S. at 360. The MSJ Order has already found Respondents' interpretation of the INA to be contrary to the statutory text and statutory scheme, and mutually exclusive of Petitioners' interpretation. Because the proper interpretation of the INA preserves a noncitizen's right to an individualized bond hearing after arrest, the MSJ Order illustrates the indivisible nature of the relief. The Court finds similar cases from this judicial district instructive.

In *Franco-Gonzales v. Napolitano*, the Court found a class action under Rule 23(b)(2) was maintainable where the plaintiffs claimed that the defendants "[had] failed, on a systemic basis, to have adequate procedures in place to both identify mentally incompetent [noncitizens] and provide them with necessary safeguards." *Franco-Gonzales*, No. CV 10-02211 DMG DTBX, 2011 WL 11705815 (C.D. Cal. Nov. 21, 2011). Petitioners present very similar circumstances here. Respondents have failed, on a systemic basis, to provide Petitioners and putative class members with the necessary safeguards imbued by the INA in violation of their rights.

Moreover, in *Inland Empire-Immigrant Youth Collective v. Nielsen*, the Court found class certification under Rule 23(b)(2) was appropriate because "to certify a class that is *not* nationwide in scope might result in the application of unlawful practices based solely on geographic location, a piecemeal situation that would lead to arbitrary results." *Inland Empire-Immigrant Youth Collective v. Nielsen*, No. EDCV172048PSGSHKX, 2018 WL 1061408 at *12 (C.D. Cal. Feb. 26, 2018). With this in mind, the Court finds a nationwide Bond Eligible Class is appropriate.

Accordingly, Petitioners satisfy Rule 23(b)(2). When considering this determination with the MSJ Order, the Court extends the same declaratory relief granted to Petitioners to the Bond Eligible Class as a whole.

IV. CONCLUSION

For these reasons, Petitioners' Motion for Class Certification is **GRANTED** as to the Bond Eligible Class and **DENIED** as to the Adelanto Class. [Dkt. No. 41]. The Court **ORDERS** that the following class be certified:

The Bond Eligible Class is **CERTIFIED** as to Petitioners' claims that the DHS Policy violates the INA and Due Process. The class certified is defined as follows:

- **Bond Eligible Class:** All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

The Court appoints Lazaro Maldonado Bautista as the representative for the Bond Eligible Class. The Court appoints attorneys Niels W. Frenzen and Jean E. Reisz of the USC Gould School of Law Immigration Clinic and Matt Adams, Glenda M. Aldana Madrid, Leila Kang, and Aaron Korthuis of the Northwest Immigrant Rights Project as class counsel.

The Court **SETS** a status conference for **January 16, 2026**, and **ORDERS** parties to submit a Joint Status Report on **January 9, 2026**, which shall include how the parties will proceed with this matter.

IT IS SO ORDERED.