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Elber Mateo Cortes-Beltran

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

Elber Mateo Cortes-Beltran,

Petitioner,

v.

Patrick Divver, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement; Kristi NOEM, Secretary, U.S. Department of Homeland Security; U.S. DEPARTMENT OF HOMELAND SECURITY; Pamela BONDI, U.S. Attorney General; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; Christopher J. LaRose, Warden of Otay Mesa Detention Center,

Respondents.

Case No. **'25CV3846 CAB DEB**

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Elber Mateo Cortes-Beltran ("Mr. Cortes-Beltran"), brings this petition for a writ of habeas corpus to seek enforcement of their rights as members of the Bond Denial Class certified in *Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM (C.D. Cal.) Petitioner is in the physical custody of Respondents at the Otay Mesa Detention Center. He now faces unlawful detention because the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) have refused to abide by the declaratory judgment issued on behalf of the certified class in *Maldonado Bautista v. Santacruz*.

2. On November 20, 2025, the district court granted partial summary judgment on behalf of individual plaintiffs and on November 25, 2025, certified a nationwide class and extended 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).

3. The declaratory judgment held that the Bond Denial Class members are detained under 8 U.S.C. § 1226(a), and thus may not be denied consideration for release on bond under § 1225(b)(2)(A). *Maldonado Bautista*, 2025 WL 3289861, at *11.

4. Nonetheless, the Executive Office for Immigration Review and its subagency the Immigration Court and the Department of Homeland Security (DHS) have blatantly refused to

abide by the declaratory relief and have unlawfully denied the opportunity to be released on bond.

5. Petitioner Mr. Cortes-Beltran is a member of the Bond Eligible Class, as he:

a. does not have lawful status in the United States and is currently detained at the Otay Mesa Detention Center. He was apprehended by immigration authorities on November 13, 2025.

b. entered the United States without inspection around September 20, 2023, and was not apprehended upon arrival, *cf. id.*; and

c. is not detained under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231.

6. After apprehending Petitioner on November 13, 2025, the DHS placed him in removal proceedings pursuant to 8 U.S.C. § 1229a. DHS has charged Petitioner as being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i), as someone who entered the United States without inspection.

7. The Court should expeditiously grant this petition.

8. Respondents are bound by the judgment in *Maldonado Bautista*, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Petitioner to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

9. Immigration judges have informed class members in bond hearings that they have been instructed by "leadership" that the declaratory judgment in *Maldonado Bautista* is not controlling, even with respect to class members, and that instead IJs remain bound to follow the agency's prior decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

10. Because Respondents are detaining Petitioner in violation of the declaratory judgment issued in *Maldonado Bautista,* the Court should accordingly order that within one day, Respondent DHS must release Petitioner.

11. Alternatively, the Court should order Petitioner's release unless Respondents provide a bond hearing under 8 U.S.C. § 1226(a) within seven (7) days.

JURISDICTION

12. Petitioner is in the physical custody of Respondents. Petitioner is detained at the Otay Mesa Detention Center in San Diego, California.

13. This Court has jurisdiction under 28 U.S.C. § 2241(c)(5) (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause).

14. 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

15. 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 Southern District, the judicial district in which Petitioner currently is detained.

16. Venue is also properly in this Court pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Southern District.

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REQUIREMENTS OF 28 U.S.C. § 2243

17. The Court should grant the petition for writ of habeas corpus "forthwith," as the legal issues have already been resolved for class members in *Maldonado Bautista.*

18. 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

19. Petitioner, Mr. Cortes-Beltran, is a citizen of Colombia who has been in immigration detention since November 13, 2025. On December 10, I, Jose Torres, Esq. requested two (2) bond hearings on separate matters at the Otay Mesa Immigration Court for two (2) separate individuals similarly situated, with same charges as Mr. Cortes-Beltran who were not applicants for admission. They were both denied bond by an IJ at the because they were deemed an "applicant for admission." *See* redacted orders denying bond. Requesting bond at Immigration Court is futile as the IJs are not abiding by the decision in *Maldonado Bautista.*

20. Respondent, Patrick Divver, is the Director of the San Diego Field Office of ICE's Enforcement and Removal Operations division. As such, Patrick Divver is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is named in his official capacity.

21. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is responsible for the implementation and enforcement of the Immigration and

Nationality Act (INA), and oversees ICE, which is responsible for Petitioner's detention. Ms. Noem has ultimate custodial authority over Petitioner and is sued in her official capacity.

22. Respondent Department of Homeland Security (DHS) is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

23. 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 it operates is a component agency. She is sued in her official capacity.

24. Respondent Executive Office for Immigration Review (EOIR) is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

25. Respondent Christopher J. LaRose is employed by CoreCivic as Warden of the Otay Mesa Detention Center, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

CLAIM FOR RELIEF
Violation of the INA:
Request for Relief Pursuant to *Maldonado Bautista*

26. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

27. As a member of the Bond Eligible Class, Petitioner is entitled to consideration for release on bond under 8 U.S.C. § 1226(a).

28. The order granting partial summary judgment in *Maldonado Bautista* holds that Respondents violate the INA in applying the mandatory detention statute at § 1225(b)(2) to class members.

29. The order granting class certification in *Maldonado Bautista* further orders that "[w]hen 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."

30. Respondents are parties to *Maldonado Bautista* and bound by the Court's declaratory judgment, which has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

31. By denying Petitioner a bond hearing under § 1226(a) and asserting that he is subject to mandatory detention under § 1225(b)(2), Respondents violate Petitioner's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

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 that within one day, Respondents release Petitioner;

c. Alternatively, issue a writ of habeas corpus requiring Respondents to release Petitioner unless they provide a bond hearing under 8 U.S.C. § 1226(a) within seven days;

d. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act (EAJA), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

e. Grant any other and further relief that this Court deems just and proper.

DATED this December 16, 2025.

/s/ Jose Torres
Jose Torres
Counsel for Petitioner

AO 242 (Rev. 09/17) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

for the

Southern District of California

Elber Mateo Cortes-Beltran

Petitioner

v.

Patrick Divver, Field Office Director of Enforcement and Removal Operations, San Diego Field Office, Immigration and Customs Enforcement, et al.

Respondent

(name of warden or authorized person having custody of petitioner)

Case No. '25CV3846 CAB DEB

(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Elber Mateo Cortes-Beltran

   (b) Other names you have used: N/A

2. Place of confinement:

   (a) Name of institution: Otay Mesa Detention Center

   (b) Address: 7488 Calzada De La Fuente, San Diego, California 92154

   (c) Your identification number: A [redacted]

3. Are you currently being held on orders by:

   ☑ Federal authorities ☐ State authorities ☐ Other - explain:

   ICE Detainee

4. Are you currently:

   ☐ A pretrial detainee (waiting for trial on criminal charges)

   ☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

   If you are currently serving a sentence, provide:

   (a) Name and location of court that sentenced you:

   (b) Docket number of criminal case:

   (c) Date of sentencing:

   ☑ Being held on an immigration charge

   ☐ Other *(explain)*:

Decision or Action You Are Challenging

5. What are you challenging in this petition:

   ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

☐ Pretrial detention
☑ Immigration detention
☐ Detainer
☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
☐ Disciplinary proceedings
☐ Other *(explain)*:

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: Department of Homeland Security / ICE Enforcement and Removal Operations; Executive Office for Immigration Review (Immigration Court).

(b) Docket number, case number, or opinion number: A[redacted]

(c) Decision or action you are challenging *(for disciplinary proceedings, specify the penalties imposed)*:
Continued immigration detention without a bond hearing or custody redetermination.

(d) Date of the decision or action: 11/13/2025

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☐ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not appeal: No bond hearing was requested or conducted, and no custody determination was issued that could be appealed.

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a second appeal: No custody determination was issued.

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a third appeal: No custody determination was issued.

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☑ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☐ No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☐ No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence:

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☑ Yes ☐ No

If "Yes," provide:

(a) Date you were taken into immigration custody: 11/13/2025

(b) Date of the removal or reinstatement order:

(c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes ☑ No

If "Yes," provide:

(1) Date of filing:

(2) Case number:

(3) Result:

(4) Date of result:

(5) Issues raised:

(d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes ☑ No

If "Yes," provide:

(1) Name of court:

(2) Date of filing:

(3) Case number:

(4) Result:

(5) Date of result:

(6) Issues raised:

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes ☑ No

If "Yes," provide:

(a) Kind of petition, motion, or application:

(b) Name of the authority, agency, or court:

(c) Date of filing:

(d) Docket number, case number, or opinion number:

(e) Result:

(f) Date of result:

(g) Issues raised:

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: Unlawful continued immigration detention without bond jurisdiction.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Petitioner is detained by ICE at Otay Mesa Detention Center and is in removal proceedings under INA § 240 with no final order of removal. Petitioner has not received a bond hearing and remains detained without a custody redetermination.

(b) Did you present Ground One in all appeals that were available to you?

☐ Yes ☑ No

GROUND TWO: Continued detention without any available custody redetermination mechanism.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Petitioner requested release from immigration custody but no bond hearing was conducted and no custody review has been scheduled. Petitioner remains detained without any administrative forum available to review custody.

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes ☑ No

GROUND THREE: Ongoing restraint on liberty without individualized custody review.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Petitioner remains physically confined at Otay Mesa Detention Center and has not received an individualized custody determination as of the date of filing.

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes ☑ No

GROUND FOUR: Continued detention without administrative custody review.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

Petitioner continues to be detained without a bond hearing or any available custody review process.

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes ☑ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: No bond hearing was conducted and no custody determination was issued that could be appealed.

Request for Relief

15. State exactly what you want the court to do: Petitioner requests that the Court order his immediate release from immigration detention, or in the alternative, order the Government to provide a prompt bond hearing before an Immigration Judge with authority to determine custody.

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

_____

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: 12/16/2025

Mateo Cortes
Signature of Petitioner

Jose Torres
Signature of Attorney or other authorized person, if any

DEPARTMENT OF HOMELAND SECURITY

NOTICE TO APPEAR

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

Subject ID: [redacted] File No: [redacted]

In the Matter of:

Respondent: ELBER MATEO CORTES-BELTRAN currently residing at:

[redacted] MIRAMAR, FLORIDA, 33023-3650 +1 (786)-486-1212

(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 COLOMBIA and a citizen of COLOMBIA ;
3. You arrived in the United States at or near EAGLE PASS, TX , on or about September 20, 2023 ;
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:

333 SOUTH MIAMI AVE., STE.700 MIAMI FL 331301904

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

on June 23, 2027 *(Date)* at 08:00 AM *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

KEN RUSSELL
Acting/Patrol Agent in Charge
KEN D RUSSELL Date: 2023.09.24 [illegible]35 -05:00 0687582622.CBP

(Signature and Title of Issuing Officer) (Sign in ink)

Date: September 24, 2023 Eagle Pass, Texas

(City and State)

EOIR – 1 of 3

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at **www.uscis.gov/i-589**. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at **http://www.ice.gov/contact/ero**, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before: _____

Mateo Cortes
(Signature of Respondent) (Sign in ink)

BPA
(Signature and Title of Immigration Officer) (Sign in ink)

Date: _____

Certificate of Service

This Notice To Appear was served on the respondent by me on _____, in the following manner and in compliance with section 239(a)(1) of the Act.

☒ in person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail
☐ Attached is a credible fear worksheet.
☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

Mateo Cortes
(Signature of Respondent if Personally Served) (Sign in ink)

DARIO DE-HOYOS, BPA
(Signature and Title of officer) (Sign in ink)

EOIR – 2 of 3

Exh. 1 – Adm.

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 (CARIER), 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-sorns. 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/opcl/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.

EOIR – 3 of 3

Exh. 1 - Adm.

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	Not Reported
Deputy Clerk	Court Reporter

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

A. Rule 23(a) Prerequisites

"Rule 23(a) ensures that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011). A party seeking class certification must demonstrate the following prerequisites under Rule 23(a): "(1) numerosity of plaintiffs; (2) common questions of law or fact predominate; (3) the named plaintiff's claims and defenses are typical; and (4) the named plaintiff can adequately protect the interests of the class." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir.1992) (citing Fed.R.Civ.P. 23(a)). The party may not rest on mere allegations, but must provide facts to satisfy these requirements. *Doninger v. Pac. Northwest Bell, Inc.*, 564 F.2d 1304, 1309 (9th Cir.1977).

The district court must conduct a "rigorous analysis" and conclude that all four requirements—commonly shorthanded as numerosity, commonality, typicality, and adequate representation—are satisfied. *Wang*, 737 F.3d at 542–43 (quoting *Wal-Mart*, 564 U.S. at 349).

B. Rule 23(b)(2) Requirements

"In addition to the requirements of Rule 23(a), a proposed class must also meet the requirements of one or more of the 'three different types of classes' set forth in Rule 23(b)." *Senne* v. *Kan. City Royals Baseball Corp.*, 934 F.3d 918, 927 (9th Cir. 2019). Here, Petitioners seek certification under Rule 23(b)(2). [Motion at 36–39].

Rule 23(b)(2) requires that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

III. DISCUSSION

As a threshold matter, Respondents oppose class certification, arguing that statutory limits preclude the requested method of relief. [Opp. at 14–15]. Respondents further challenge the propriety of class certification by arguing that

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

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[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 1 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.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTAY MESA IMMIGRATION COURT

Respondent Name:
[redacted]

To:

Torres, Jose
7546 Parkway Dr.
Apt. 1U
La Mesa, CA 91942

A-Number:
[redacted]-459
Riders:
In Custody Redetermination Proceedings

Date:
12/10/2025

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 finds that it continues to lack jurisdiction to redetermine Respondent's custody status. See Matter of Yajure-Hurtado, 29 I&N Dec. 216 (BIA 2025). Although the United States District Court for the Central District of California recently granted class certification in Maldonado Bautista v. Noem, No. 5:25 CV-01873-SSS-BFM (C.D. Cal. Nov. 25, 2025), Maldonado Bautista remains pending with the District Court. As such, the Court denies Respondent's request for custody redetermination.

☐ Granted. It is ordered that Respondent be:
- ☐ released from custody on his own recognizance.
- ☐ released from custody under bond of $
- ☐ other:

☐ Other:

Guy Grande

Immigration Judge: Grande, Guy 12/10/2025

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

Appeal Due: 01/12/2026

Certificate of Service

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

Respondent Name : [redacted] | A-Number : [redacted]-459

Riders:

Date: 12/10/2025 By: GONZALEZ, EMELY, Court Staff

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OTAY MESA IMMIGRATION COURT

Respondent Name:
[redacted]

To:

Torres, Jose
7546 Parkway Dr.
Apt. 1U
La Mesa, CA 91942

A-Number:
[redacted]-488
Riders:
In Custody Redetermination Proceedings

Date:
12/10/2025

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- ☐ released from custody on his own recognizance.
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Immigration Judge: Grande, Guy 12/10/2025

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

Appeal Due: 01/12/2026

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

Respondent Name : [redacted] | A-Number : [redacted]-488

Riders:

Date: 12/10/2025 By: GONZALEZ, EMELY, Court Staff