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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

Lazaro MALDONADO BAUTISTA, *et al.*, on behalf of themselves and others similarly situated,

Plaintiffs-Petitioners,

v.

Kristi NOEM, Secretary, Department of Homeland Security; *et al.*,

Defendants-Respondents.

Case No. 5:25-cv-01873-SSS-BFM

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

Hearing

Date: October 17, 2025

Time: 2:00pm

Courtroom: 2

Judge: Sunshine S. Sykes

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1 **I. INTRODUCTION**

2 Plaintiffs seek to certify a nationwide class challenging Defendants' new
3 policies and practices of unlawfully subjecting them to mandatory immigration
4 detention under 8 U.S.C. § 1225(b)(2)(A), even though they are eligible for bond
5 under 8 U.S.C. § 1226(a).¹ On Defendants' view, every detained immigrant—the
6 large majority of whom lack immigration counsel, let alone access to a federal court
7 litigator—must file their own individual habeas petition. This would unnecessarily
8 flood the courts, while still excluding thousands of more people from relief. Since
9 Plaintiffs filed their class complaint in July 2025, similarly situated individuals
10 already have filed dozens of cases throughout the country to challenge the same
11 unlawful governmental policy. This situation underscores how, contrary to
12 Defendants' claims, Plaintiffs present a classic case for Rule 23(b)(2) class treatment
13 because Defendants have acted on grounds that apply generally to the class. As a
14 result, a declaration that class members are subject to § 1226(a) and vacatur of
15 Defendants' actions would provide relief to the class as a whole.

16 None of Defendants' remaining arguments pass muster. Defendants do not
17 contest numerosity or adequacy. And Plaintiffs do not challenge any aspect of
18 expedited removal, so § 1252(e) does not apply. While the applicability of
19 § 1225(b)(2) for recent entrants encountered close to the border may require
20 individualized analysis, the proposed class definition does not include those cases.
21 Rather, the proposed class focuses on easily identifiable traits and raises the core
22 common question of what detention statute applies to noncitizens who entered

23 _____
24 ¹ Plaintiffs agree with Defendants that the Adelanto Class is redundant now that the
25 Board of Immigration Appeals has issued a published decision confirming the
26 agency's position that anyone who entered without inspection is subject to
27 § 1225(b). *See* Dkt. 59 (Opp.) at 18 (citing *Matter of Yajure Hurtado*, 29 I. & N.
Dec. 216 (BIA 2025); Dkt. 56 at 3 (same)). The nationwide Bond Eligible Class
challenges the erroneous deprivation of bond by DHS and EOIR.

1 without inspection, were not apprehended upon arrival, and were detained while
2 living in the interior of the United States. The answer does not vary, including for
3 those applying for certain immigration benefits. Lastly, the Ninth Circuit has
4 rejected Defendants' view that § 1252(f)(1) forecloses classwide declaratory relief,
5 and courts have held the same for APA vacatur, which Defendants hardly address.
6 The Court should certify the proposed Class.

7 **II. ARGUMENT**

8 **A. 8 U.S.C. § 1252(e) Does Not Apply to this Challenge**

9 Defendants' threshold argument—which speaks to jurisdiction rather than
10 class certification—fails for at least two reasons. First, Defendants invoke
11 § 1252(e)(3)(A), but that statute only addresses “determinations under section
12 1225(b) of this title and its implementation.” 8 U.S.C. § 1252(e)(3)(A). However,
13 the entire premise of this case is that Defendants cannot invoke § 1225(b)(2) and
14 that § 1226(a) governs class members' detention. It is well established that courts
15 retain jurisdiction to determine their own jurisdiction. *See, e.g., Ye v. INS*, 214 F.3d
16 1128, 1131 (9th Cir. 2000). In this case, determining whether the jurisdiction-
17 limiting provision at § 1252(e)(3)(A) applies first requires the Court to resolve
18 whether Plaintiffs are detained pursuant to § 1225 or § 1226. Thus, “the
19 jurisdictional question and the merits collapse into one,” *Ye*, 214 F.3d at 1131, and
20 this Court should decide the legal issue before it.

21 Second, Defendants completely misconstrue § 1252(e). By its plain terms,
22 § 1252(e) is a *grant* of jurisdiction to certain challenges involving § 1225(b) in the
23 District of Columbia. However, § 1252(e) does not require that challenge involving
24 § 1225(b)(2)—the detention statute at issue in this case—be brought exclusively in
25 D.C. It is true that a different provision of § 1252—§ 1252(a)(2)(A)—bars
26 challenges to the expedited removal process at § 1225(b)(1), “except as provided in
27 subsection (e)” —making § 1252(e) the exclusive avenue for *those* challenges. *See*

1 *Make The Rd. New York v. Wolf*, 962 F.3d 612, 620–21, 626–27 (D.C. Cir. 2020).
2 But that channeling requirement for expedited removal challenges does not apply to
3 challenges involving the detention statute at issue here. As confirmed by Defendants’
4 cited cases, § 1252(e) covers only challenges to determinations made in the
5 expedited removal process (such as a negative credible fear determination), *see*
6 *Mendoza-Linares v. Garland*, 51 F.4th 1146, 1152, 1156–57 (9th Cir. 2022), and
7 challenges to policies “to implement expedited-removal proceedings under section
8 1225(b),” *M.M.V. v. Garland*, 1 F.4th 1100, 1108 (D.C. Cir. 2021); *see also E. Bay*
9 *Sanctuary Covenant v. Biden*, 993 F.3d 640, 666 (9th Cir. 2021) (“Section
10 1252(e)(3), in short, limits jurisdiction over challenges to regulations implementing
11 expedited-removal orders.”). Because this case does not address expedited removal,
12 § 1252(e) plainly does not apply.²

13 **B. The Proposed Class Satisfies Commonality and Typicality**

14 Despite taking the position that anyone who entered without inspection is
15 subject to mandatory detention, Dkt. 60 at 11, Defendants now argue that there are
16 factual distinctions dividing the class because some class members will be properly
17 subject to mandatory detention depending on the facts of their case and some may
18 be applying for certain immigration benefits. Opp. 10–13. But the class is
19 appropriately limited and, as another court recognized in certifying a similarly
20 defined regional class, “Rule 23(a)(1) does not demand uniformity.” *Rodriguez*
21 *Vasquez v. Bostock*, 349 F.R.D. 333, 354, 356 (W.D. Wash. 2025). Commonality
22

23 ² Another court has also concluded that § 1252(e) does not limit judicial review over
24 immigration *detention* decisions. *See Padilla v. U.S. Immigr. & Customs Enf’t*, 704
25 F. Supp. 3d 1163, 1170 (W.D. Wash. 2023) (“§ 1252(e)(3) addresses ‘challenges to
26 the removal process itself, not to detentions attendant upon that process’” (citation
27 omitted)). *Padilla* involved detention of individuals who were subject to expedited
removal, and thus § 1225(b)(1), but § 1252(e)(3) is even less relevant here as the
parties agree no class member is subject to expedited removal.

1 and typicality are both satisfied here because class members share at least one
2 common question: whether mandatory detention applies to those who entered
3 without inspection and were not apprehended upon arrival. *Id.* at 348, 356, 361.

4 Contrary to Defendants’ assertion, the class definition clearly demarcates
5 when an individual falls within the class. *See* Dkt. 41 at 3. The Court would only
6 need to answer a few questions to determine class membership: Did they enter
7 without inspection? Were they apprehended upon arrival in the United States? And
8 are they subject to any other detention statute because they were subject to expedited
9 removal (§ 1225(b)(1)), are subject to mandatory detention based on certain criminal
10 history (§ 1226(c)), or have a final order of removal (§ 1231)? For instance, the
11 individual described in *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103
12 (2020) (cited at Opp. 11), was detained a short distance from the border and
13 processed through expedited removal, *id.* at 114, and thus was subject to detention
14 under § 1225(b)(1)—and would not be part of the class. *See* 8 U.S.C.
15 § 1225(b)(1)(A)(i), (iii) (describing who may be subject to expedited removal). The
16 class also omits individuals who were similarly apprehended within a few miles of
17 the border shortly after crossing, even if they were not subject to expedited removal,
18 like the person in *Matter of Q. Li*, 29 I. & N. Dec. 66, 67 (BIA 2025).

19 Defendants also claim that individuals who have not been admitted and who
20 apply for certain immigration benefits would qualify as “seeking admission” and
21 thus be subject to § 1225(b)(2). Opp. 11. But that is a red herring that misunderstands
22 the meaning of “seeking admission” within § 1225(b)(2) and ignores its context. As
23 Plaintiffs and multiple courts have explained, § 1225(b)(2) requires mandatory
24 detention of “applicants for admission” who an inspecting officer determines to be
25 “seeking admission”—thus limiting the temporal scope of the statute to the time of
26 inspection at the border. *See, e.g.*, Dkt. 42 at 17–18 (describing legislative history);
27 *Arrazola-Gonzalez v. Noem*, No. 5:25-CV-01789-ODW (DFMX), 2025 WL

2379285, at *2 (C.D. Cal. Aug. 15, 2025) (agreeing that those “seeking admission” means “those who take ‘affirmative acts, like submitting an “application for admission”” or subject to inspection at a border or upon arrival before an immigration officer”); *Rodriguez Vazquez v. Bostock*, 779 F. Supp. 3d 1239, 1258 (W.D. Wash. 2025) (describing § 1225 “as part of a process that ‘generally begins at the Nation’s borders and ports of entry, where the Government must determine whether a [noncitizen] seeking to enter the country is admissible”” (quoting *Jennings*, 583 U.S. at 287)). But individuals like Plaintiffs Franco and Pascual, who entered without inspection and resided in the country for over 20 years, and were never stopped or inspected at the border, cannot be said to be “seeking admission” within the meaning of § 1225(b)(2).

Named Plaintiffs’ injuries are thus also typical of those of the class. The injury here that all class members face is the unlawful denial of consideration for release on bond. And this Court has already agreed that all four Named Plaintiffs are properly subject to § 1226(a), not § 1225(b). *See* Dkt. 14 at 8. That remains true regardless of whether they apply for certain benefits because they were detained while living in the United States after many years, not while seeking admission at the border. *See Rodriguez Vazquez*, 349 F.R.D. at 359 (typicality satisfied for class representative who entered without inspection). Defendants’ arguments against commonality and typicality are thus unavailing.

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

Because the Plaintiffs and proposed class members are thus similarly situated and improperly subject to Defendants’ mandatory detention policy despite being eligible for bond under § 1226(a), the Court can easily certify a class under Rule 23(b)(2) for declaratory relief. *See Parsons v. Ryan*, 754 F.3d 657, 688 (9th Cir. 2014) (Rule 23(b)(2) is “unquestionably satisfied when members of a putative class

1 seek uniform injunctive or declaratory relief from policies or practices that are
2 generally applicable to the class as a whole.”). Defendants’ assertion that no single
3 declaratory judgment would cover the class is premised on the same
4 misunderstanding of the proposed class definition that fails above.³

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

8 “Section 1252(f)(1) is straightforward,” and it limits only the lower courts’
9 “jurisdiction or authority to enjoin or restrain the operation of” specific statutory
10 provisions of the INA. *Gonzalez v. U.S. Immigr. & Customs Enf’t*, 975 F.3d 788,
11 812 (9th Cir. 2020) (citing 8 U.S.C. § 1252(f)(1)). As Defendants appear to concede,
12 while the Supreme Court has interpreted § 1252(f)(1) to prohibit classwide
13 injunctive relief regarding certain INA detention statutes like the ones at issue here,
14 *see Garland v. Aleman Gonzalez*, 596 U.S. 543 (2022), it has not extended
15 § 1252(f)(1) to other forms of relief. *See* Opp. 15.

16 Specifically, “§ 1252(f)(1) does not ‘bar classwide declaratory relief.’” *Al*
17 *Otro Lado v. Exec. Off. for Immigr. Rev.*, 138 F.4th 1102, 1123–24 (9th Cir. 2025)
18 (quoting *Rodriguez v. Hayes*, 591 F.3d 1111, 1119 (9th Cir. 2010)); *id.* (noting “the
19 Government concedes . . . that [its] argument is foreclosed by circuit precedent”).
20

21 ³ Defendants also claim that courts cannot issue classwide declaratory judgments on
22 a due process claim. Opp. 17. That is wrong as courts, including the Supreme Court
23 and the Ninth Circuit, regularly consider due process challenges and announces rules
24 for the generality of cases, including in class actions. *See, e.g., A.A.R.P. v. Trump*,
25 145 S. Ct. 1364, 1368 (2025) (per curiam); *Wilkinson v. Austin*, 545 U.S. 209, 228–
26 30 (2005); *Wolff v. McDonnell*, 418 U.S. 539, 563–72 (1974); *Saravia v. Sessions*,
27 905 F.3d 1137, 1144 (9th Cir. 2018); *Barnes v. Healy*, 980 F.2d 572, 575 (9th Cir.
1992). But the Court need not address whether class certification is appropriate for
Plaintiffs’ due process claim at this juncture because Plaintiffs have only moved for
partial summary judgment on their statutory and regulatory claims. *See* Dkt. 42 at 3.

1 “By its plain terms,” Section 1252(f)(1) “is nothing more or less than a limit on
2 injunctive relief.” *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481
3 (1999). Its text nowhere mentions declaratory relief. It is titled “Limit on injunctive
4 relief,” without reference to declaratory relief. *See Biden v. Texas*, 597 U.S. 785, 798
5 (2022) (Section 1252(f)’s “title ... makes clear the narrowness of its scope”). The
6 legislative history likewise refers only to “injunctive relief.” H.R. Rep. No. 104-469,
7 pt. 1, at 161 (1996).

8 The Supreme Court has repeatedly recognized the limits of that provision. *See*
9 *Biden*, 597 U.S. at 798–99; *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (opinion of
10 Alito, J., joined by Roberts, C.J., and Kavanaugh, J.) (explaining that § 1252(f)(1)
11 did not eliminate “jurisdiction to entertain the plaintiffs’ request for declaratory
12 relief”).⁴ Contrary to Defendants’ assertions, declaratory relief is not an injunction—
13 even where it may have practically similar results. “The express purpose of the
14 Federal Declaratory Judgment Act was to provide a milder alternative to the
15 injunction remedy.” *Steffel v. Thompson*, 415 U.S. 452, 467 (1974).

16 Meanwhile, the term “restrain” in § 1252(f)(1) does not do the work
17 Defendants claim. *See* Opp. 15. Rather, “restrain and enjoin” is a “common doublet”
18 referring to the most common forms of injunctive relief: injunctions and restraining
19 orders. BRYAN A. GARNER, GARNER’S DICTIONARY OF LEGAL USAGE 295–96 (3d ed.
20 2011); *see also* Fed. R. Civ. P. 65 (providing for “injunctions and restraining
21 orders”); *California v. Arizona*, 452 U.S. 431, 432 (1981) (using “enjoined and
22

23 ⁴ Other lower courts agree that classwide declaratory relief is available
24 notwithstanding § 1252(f)(1). *See, e.g., Brito v. Garland*, 22 F.4th 240, 252 (1st Cir.
25 2021); *Make The Rd.*, 962 F.3d at 635; *Alli v. Decker*, 650 F.3d 1007, 1013 (3d Cir.
26 2011). The only outlier case Defendants can identify is *Hamama v. Adducci*, 912
27 F.3d 869 (6th Cir. 2018), which only mentioned § 1252(f)(1) and declaratory relief
in passing, and stated that “the issue of declaratory relief [was] not before [the
court].” *Id.* at 880 n.8.

1 restrained” to describe an injunction). Notably, in that same section, § 1252,
2 Congress made clear when it sought to preclude declaratory as well as injunctive
3 relief. *See* 1252(e)(1)(A). Congress did not do so in § 1252(f)(1).

4 Defendants suggest in a footnote that Plaintiffs cannot meet Rule 23(b)(2)’s
5 requirement for either injunctive or corresponding declaratory relief because
6 individual class members would need to bring separate habeas claims even after
7 prevailing on declaratory relief. *Opp.* 20 n.7. This is wrong on several fronts. First,
8 the rule is written in the disjunctive, requiring either “final injunctive relief *or*
9 corresponding declaratory relief.” *See* Fed. R. Civ. P. 23(b)(2) (emphasis added).
10 Thus, “the rule does not require that both forms of relief be sought and a class action
11 seeking solely declaratory relief may be certified under subdivision (b)(2).” *Wright*
12 *& Miller*, 7AA Fed. Prac. & Proc. Civ. § 1775 (3d ed.); *see also Wal-Mart Stores*,
13 564 U.S. at 360. In other words, Rule 23(b)(2) specifically contemplates that a class
14 could seek declaratory judgment with individual suits to follow.

15 Second, while declaratory relief is “a much milder form of relief than an
16 injunction,” that does not suggest it lacks legal effect. *Steffel*, 415 U.S. at 471; *see*
17 *also* 28 U.S.C. § 2201(a) (“[a]ny such declaration shall have the force and effect of
18 a final judgment or decree”). “[A]fter a declaratory judgment is issued the district
19 court may enforce it by granting further necessary or proper relief[.]” *Samuels v.*
20 *Mackell*, 401 U.S. 66, 72 (1971).

21 Lastly, it is widely recognized that the federal government complies with
22 declaratory judgments, even without an injunction. *See Sanchez-Espinoza v.*
23 *Reagan*, 770 F.2d 202, 208 n.8 (D.C. Cir. 1985) (Scalia, J.) (“it must be presumed
24 that federal officers will adhere to the law as declared by the court.”); *Smith v.*
25 *Reagan*, 844 F.2d 195, 200 (4th Cir. 1988) (describing declaratory relief as “the
26 functional equivalent of a writ of mandamus”). Unless Defendants suggest that the
27

1 government will not comply with a declaratory judgment, there should be no need
2 for follow-on habeas petitions from class members.

3 Defendants briefly acknowledge that Plaintiffs seek vacatur as well, Opp. 16
4 (arguing that “setting aside [Defendants’] policy as unlawful . . . would effectively
5 compel Defendants”), but do not explain how it runs afoul of *Aleman Gonzalez*. Nor
6 could they. Given the plain text of § 1252(f)(1), it is unsurprising that “all courts that
7 have addressed the issue”—including after *Aleman Gonzalez*—“have rejected the
8 government’s construction.” *Nat’l TPS Alliance v. Noem*, 773 F. Supp. 3d 807, 826
9 (N.D. Cal. 2025); *see, e.g., Texas v. United States*, 40 F.4th 205, 220 (5th Cir. 2022)
10 (per curiam); *Las Americas Immigrant Advoc. Ctr. v. U.S. Dep’t of Homeland Sec’y*,
11 783 F. Supp. 3d 200, 232–33 (D.D.C. 2025); *Refugee & Immigrant Ctr. for Educ. &*
12 *Legal Servs. v. Noem*, No. CV 25-306 (RDM), --- F. Supp. 3d ----, 2025 WL
13 1825431, at *21 (D.D.C. July 2, 2025); *Florida v. United States*, 660 F. Supp. 3d
14 1239, 1284–85 (N.D. Fla. 2023); *Al Otro Lado, Inc. v. Mayorkas*, 619 F. Supp. 3d
15 1029, 1045 (S.D. Cal. 2022). The discussion in *Nat’l TPS Alliance* is particularly
16 instructive as to the differences between an injunction and vacatur. 773 F. Supp. 3d
17 at 826–29; *id.* at 827 (“it is clear that there are material differences between a vacatur
18 and an injunction”). Thus, “[n]o court has adopted the construction of § 1252(f)(1)
19 advanced by the government,” *id.* at 826, and the Court can also vacate Defendants’
20 actions, *see Kidd v. Mayorkas*, 734 F. Supp. 3d 967, 987 (C.D. Cal. 2024).

21 **D. This Case Calls for Classwide Resolution**

22 Lastly, Defendants confusingly assert that class certification is inappropriate
23 in habeas. But Plaintiffs have not requested classwide habeas relief. *See* Dkt. 15 at
24 30–32 (Prayer for Relief in Amended Complaint); Dkt. 42-1 at 1–2 (Proposed Order,
25 seeking only individual writs of habeas corpus for Named Plaintiffs).

26 In any case, as Defendants acknowledge, there is binding Ninth Circuit
27 precedent holding class actions may be brought pursuant to habeas. Opp. 19 (citing

1 *Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010)); *see also Mead v. Parker*, 464
2 F.2d 1108, 1112 (9th Cir. 1972). All other circuit courts to address the issue agree
3 that habeas petitioners can litigate common claims through a class action or similar
4 procedure available at equity. *See, e.g., U.S. ex rel. Sero v. Preiser*, 506 F.2d 1115
5 (2d Cir. 1974); *Bijeol v. Benson*, 513 F.2d 965, 968 (7th Cir. 1975); *Williams v.*
6 *Richardson*, 481 F.2d 358 (8th Cir. 1973); *Napier v. Gertrude*, 542 F.2d 825, 827 &
7 n.2 (10th Cir. 1976); *LoBue v. Christopher*, 82 F.3d 1081, 1085 (D.C. Cir. 1996).⁵

8 Defendants point to 17 putative class members in this district who have
9 brought separate habeas suits since this action was filed. Opp. 19. That only
10 underscores the need for classwide resolution as that is but a sliver of the total
11 number of putative class members in this district—let alone across the country—and
12 Defendants agree if class certification is granted, there should be one nationwide
13 class. *See* Opp. 18. Plaintiffs’ (uncontested) expert estimated, conservatively, over
14 1,200 individuals venued in this District who are impacted by Defendants’ no-bond
15 policy; that number grows to over 36,400 when expanded to the nationwide class.
16 Dkt. 52-2 ¶¶ 8–9. Yet Defendants suggest that every individual must file their own
17 habeas petition—simultaneously flooding the courts while ultimately leaving the
18 majority without recourse—rather than resolving the pure legal issues on a classwide
19 basis. Because Plaintiffs satisfy Rules 23(a) and 23(b)(2), and thus have a
20 “categorical” right to pursue their claims as a class action, *Shady Grove Orthopedic*
21 *Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010), the Court should reject
22 Defendants’ invitation to create such a chaotic and unfair system.

23 **III. CONCLUSION**

24 The Court should certify the proposed class.

25
26 ⁵ The government’s citation to the dissent in *A.A.R.P. v. Trump*, 145 S. Ct. 1034
27 (2025), Opp. 19 n.6, ignores the Supreme Court’s ultimate decision to stay removals
on behalf of a putative habeas class, *see A.A.R.P.*, 145 S. Ct. at 1034.

Respectfully submitted this 19th day of September, 2025.

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CERTIFICATE OF COMPLIANCE

I, Aaron Korthuis certify that this brief does not exceed 10 pages and complies with the page limit of Civil Standing Order, VII.D.

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