IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 25-CV-2720-RMR

NESTOR ESAI MENDOZA GUTIERREZ, on behalf of himself and others similarly situated,

Plaintiff-Petitioner,

v.

JUAN BALTASAR, Warden, Aurora ICE Processing Center, in his official capacity,

ROBERT GUADIAN, Director of the Denver Field Office for U.S. Immigration and Customs Enforcement, in his official capacity;

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity;

TODD LYONS, Acting Director of U.S. Immigration and Customs Enforcement, in his official capacity;

PAMELA BONDI, Attorney General of the United States, in her official capacity;

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW;

SIRCE OWEN, Acting Director for Executive Office of Immigration Review, in her official capacity;

U.S. DEPARTMENT OF HOMELAND SECURITY;

AURORA IMMIGRATION COURT; and,

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT,

Defendants-Respondents.

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

The Immigration and Nationality Act (INA) by default entitles noncitizens in detention to a bond hearing to challenge their custody during the pendency of removal proceedings. 8 U.S.C. § 1226(a); 8 C.F.R. §§ 1003.19(a), 1236.1(d). In only limited circumstances enumerated in the statute, the INA departs from that default rule and makes the noncitizen's detention mandatory. *See, e.g.*, 8 U.S.C. §§ 1226(c); 1225(b)(1), (2); 1231(a)-(b). Under the plain text of the INA, its implementing regulations, and decades of precedent, noncitizens who are charged with having entered the United States without inspection under 8 U.S.C. § 1182(a)(6)(A)(i), are apprehended inside the country, and are in ongoing removal proceedings, have been treated under the default rule, § 1226(a), and thus are entitled to bond hearings.

Following an official change in Department of Homeland Security (DHS) policy adopted in coordination with the Department of Justice (DOJ), and an unpublished decision of the Board of Immigration Appeals (BIA), Immigration Judges ("IJs") hearing cases in Colorado are now flouting this long-settled authority and unlawfully denying bond hearings to noncitizens whose only basis for detention is alleged entry without inspection. Wholly discarding the long-accepted understanding of the statutory scheme, the IJs have adopted DHS, DOJ, and EOIR's draconian new position that such noncitizens are subject to mandatory detention under § 1225(b)(2)(A), and they thus have no jurisdiction to consider or set bond. But it is well settled that that § 1225 applies only to individuals who are apprehended when "arriving" in the United States. It states that an "applicant for admission" who is "seeking admission" to the country shall be detained for a removal proceeding. § 1225(b)(2)(A). As the Supreme Court has explained, § 1225 applies "primarily [to

individuals] seeking entry to the United States," *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018), i.e., "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible, *id.* at 287. It does *not* apply to individuals who are arrested and detained by Immigration and Customs Enforcement (ICE) after having entered and begun residing in the United States. Nevertheless, Defendant-Respondents ("Defendants") are relying on that provision to deny bond hearings even to people who have resided in the United States for decades.[1] Defendants' about-face on the scope of § 1225(b)(2)(A) is not only contrary to law, but arbitrary and capricious in violation of the Administrative Procedure Act.

Plaintiff-Petitioner Nestor Esai Mendoza Gutierrez ("Mr. Mendoza Gutierrez" or "Plaintiff") is one of at least hundreds of people who have been or will be wrongfully subjected to mandatory detention under Defendants' new, unfounded, and unprecedented reinterpretation of the INA. He is one of many who, as a result, are or will be detained by ICE at the Denver Contract Detention Facility in Aurora ("Aurora Facility") without a bond hearing. Mr. Mendoza Gutierrez seeks declaratory relief on behalf of the class of all those so harmed by Defendants' distortion of the immigration detention statutory scheme, and vacatur of Defendants' new policy under the APA.

Mr. Mendoza Gutierrez requests certification of the following class under Federal Rules of Civil Procedure 23(a) and 23(b)(2):

[1] Ex. 1, ICE Memo: Interim Guidance Regarding Detention Authority for Applicants for Admission; *see also, e.g.*, Ex. 2, Decl. of N. Mendoza Gutierrez; Ex. 3, Decl. of Prof. Hausman; Ex. 4, Decl. of A. Reed; Ex. 5, Decl. of A. Vazquez; Ex. 6, Decl. of D. Herrera; Ex. 7, Decl. of S. Faville; Ex. 8, Decl. of S. Meade; Ex. 9, Decl. of T. Guevara.

> All noncitizens in the U.S. without lawful status who are (1) detained by ICE; (2) have or will have proceedings before any immigration court hearing cases within the District of Colorado; (3) whom DHS alleges or will allege have entered the U.S. without inspection; (4) who were not or will not be apprehended upon arrival; and (5) who are not or will not be subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231 at the time they are scheduled for or request a bond hearing.

Certification is appropriate under Rule 23(a). First, the class is sufficiently numerous. Plaintiff is not aware of the exact number of putative members, as Defendants are uniquely positioned to identify them. But there are likely hundreds of people detained at the Aurora Facility who belong to the putative class.[2] Given the rapidly increasing immigration arrest rate and ICE's frequent practice of transferring detainees among jurisdictions, the class also includes many future potential members. Second, all class members suffer a common injury: wrongful denial of a bond determination by the Immigration Court in Colorado. In addition, all class members present at least one core common question of whether § 1225(b)(2)'s mandatory detention provisions apply to them and prevent them from eligibility for release on bond under § 1226(a) and its implementing regulations. Third, Plaintiff's claim is typical of those whom he seeks to represent. Like the other class members, under the prior interpretations of §§ 1225 and 1226, he would have been eligible for a bond hearing, and likely an excellent candidate for release on bond. Finally, Plaintiff is represented by qualified counsel with experience litigating class actions and cases involving the rights of noncitizens.

[2] *See* Ex. 10, Decl. of M. Sherman.

The proposed class also satisfies Rule 23(b)(2) because Defendants have acted or refused to act on grounds that apply generally to the class by treating them as subject to mandatory detention under § 1225(b)(2)(A) and denying them bond determinations on that basis. The class is also amenable to a uniform group remedy: declaring that class members are subject to detention under § 1226(a) and thus entitled to bond hearings.

Class-wide relief is appropriate to correct Defendants' misconstruction of the INA, provide those wrongfully subjected to mandatory detention the bond hearing they are due, and prevent Defendants from subjecting future noncitizens to the same cruel and draconian treatment. Mr. Mendoza Gutierrez respectfully requests that the Court grant class certification under Rule 23(b)(2), appoint him as Class Representative, and appoint the undersigned as Class Counsel.

ARGUMENT

A plaintiff whose suit satisfies the requirements of Federal Rule of Civil Procedure 23 has a "categorical" right "to pursue his claim as a class action." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). The "suit must satisfy the criteria set forth in [Rule 23(a)] (*i.e.*, numerosity, commonality, typicality, and adequacy of representation), and it also must fit into one of the three categories described in subdivision (b)." *Id*. As outlined below, the proposed class satisfies all four of the Rule 23(a) requirements.

Plaintiff also demonstrates that certification is appropriate under Rule 23(b)(2). Defendants "ha[ve] acted or refused to act on grounds that apply generally to the class, so that final . . . declaratory relief is appropriate respecting the class as a whole," and "a

single . . . declaratory judgment would provide relief to each member of the class." *See Wal-Mart Stores Inc. v. Dukes*, 564 U.S. 338, 360 (2011); *Menocal v. GEO Group, Inc.*, 882 F.3d 905, 913-14 (10th Cir. 2018).

I. THE PROPOSED CLASS SATISFIES THE REQUIREMENTS OF RULE 23(a).

A. The Proposed Class Is So Numerous That Joinder Is Impracticable.

The proposed class is sufficiently numerous to make joinder impracticable. FED. R. CIV. P. 23(a)(1). "There is no set formula to determine if the class is so numerous that it should be so certified." *Colo. Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1215 (10th Cir. 2014). Because the numerosity requirement is a "fact-specific inquiry," this Court has "wide latitude" to determine if it is satisfied. *Id*. In determining whether a proposed Class meets the numerosity requirement, therefore, "the exact number of potential members need not be shown," and a court "may make 'common sense assumptions' to support a finding that joinder would be impracticable." *Neiberger v. Hawkins*, 208 F.R.D. 301, 313 (D. Colo. 2002). Moreover, the determination turns not solely on the size of the proposed class, but on the facts of each case. *Colo. Cross-Disability Coal. v. Taco Bell Corp.*, 184 F.R.D. 354, 357-58 (D. Colo. 1999). Factors that inform whether joinder would be impracticable include "the nature of the action, the size of the individual claims, and the location of the members of the class." *Abercrombie & Fitch Co.*, 765 F.3d at 1215 (citing 7A C. Wright, A. Miller & M. Kane, FED. PRAC. & PROC. § 1762, at 206-07 (3d ed. 2005)).

In particular, the Tenth Circuit has acknowledged that because "[j]oinder of unknown individuals is certainly impracticable, . . . the fact that the class includes

unknown, unnamed future members also weighs in favor of certification." *Id.* (quoting *Pederson v. La. State Univ.,* 213 F.3d 858, 868 n.11 (5th Cir. 2000)); *see also* 32B Am. Jur. 2d Fed. Courts § 1507 (The "fluid or fluctuating nature of a pool of prospective plaintiffs is a factor demonstrating the impracticability of joinder.").

The proposed class easily meets the numerosity requirement. Prof. David Hausman of the UC Berkeley School of Law analyzed various datasets of information regarding the immigration courts in Colorado, and found that between 2021 and 2025 there were 4,419 cases where an immigration judge reached a decision on bond on the merits at the Aurora Facility.[3] Attorneys and a non-profit organization routinely practicing in the Aurora Immigration Court confirm that there are likely hundreds of people detained in the Aurora Detention Facility today who DHS alleges entered without inspection, were not detained upon arrival, and were denied bond under the Defendants' new policy.[4] These attorneys report representing at least ten individuals in cases where an IJ denied a bond, citing § 1225(b)(2)'s mandatory detention provision.[5] Likewise, they are often present in Aurora Immigration Court, where they report witnessing an increase in bond

[3] Ex. 3, Decl. of Prof. Hausman, ¶ 8.

[4] Ex. 3, Decl. of Prof. Hausman; Ex. 4, Decl. of A. Reed; Ex. 5, Decl. of A. Vazquez; Ex. 6, Decl. of D. Herrera; Ex. 7, Decl. of S. Faville; Ex. 8, Decl. of S. Meade; Ex. 9, Decl. of T. Guevara; Ex. 10, Decl. of M. Sherman.

[5] *See* Ex. 2, Decl. of N. Mendoza Gutierrez; Ex. 4, Decl. of A. Reed (case of E.R.); Ex. 5, Decl. of A. Vazquez (case of M.T.R.A.); Ex. 6, Decl. of D. Herrera (cases of C.N. & E.M.); Ex. 7, Decl. of S. Faville (case of J.M.C.); Ex. 8, Decl. of S. Meade (cases of S.V.E. & B.R.G.); Ex. 9, Decl. of T. Guevara (cases of K.O.A. & J.S.A.).

denials citing § 1225(b)(2)'s mandatory detention provision.[6] Indeed, the average daily population of the Aurora Facility is 1,173 people, and the facility has a capacity of over 1,500 people.[7] Colorado has the third-lowest number of represented immigration litigants in the country: only 22% of people in immigration proceedings here have counsel.[8] For these reasons, identification and joinder of just those who have already been unlawfully denied bond hearings would be impracticable on its own.

But the class also includes a vast number of "unknown, unnamed future members," weighing heavily in favor of certification. *Abercrombie & Fitch Co.*, 765 F.3d at 1215. The Immigration Court's interpretation of the mandatory detention provision applies to millions of people present in the United States.[9] Immigration arrests are increasing rapidly; in June of 2025, average daily arrests were 268% higher than in June of the previous year.[10] Average daily arrests in Colorado in June 2025 were triple those

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[6] Ex. 4, Decl. of A. Reed; Ex. 5, Decl. of A. Vazquez; Ex. 6, Decl. of D. Herrera; Ex. 7, Decl. of S. Faville; Ex. 8, Decl. of S. Meade; Ex. 9, Decl. of T. Guevara.

[7] *Detention Facilities Average Daily Population,* Transactional Recs. Access Clearinghouse (Aug. 4, 2025), https://perma.cc/XHB6-52LG; Geo Group, *Aurora ICE Processing Center*, https://perma.cc/W2UD-ZHN3.

[8] *Pending Court Cases by Immigrants' Address: Pending Cases With and Without Attorneys*, Transactional Recs. Access Clearinghouse (July 2025) https://perma.cc/B8VA-VEAJ.

[9] Maria Sacchetti & Carol D. Leonnig, *ICE Declares Millions of Undocumented Immigrants Ineligible for Bond Hearings*, Wash. Post (July 14, 2025), https://perma.cc/5ZTR-EN4B.

[10] Maanvi Singh et al., *How Trump Has Supercharged the Immigration Crackdown – In Data*, Guardian (July 23, 2025), https://perma.cc/T2VU-5ZZH.

of in June 2024, one of the highest increases in the country.[11] Indeed, arrests of the very sort of person likely to be held in detention solely because they cannot get a bond hearing under the Aurora Immigration Court's erroneous interpretation of § 1225(b)(2)—people with no criminal record and significant ties to the community—have drastically increased.[12] The increase in arrests is compounded by ICE's practice of frequently transferring detainees between facilities across the country—making joinder impracticable.[13] While transfer data is difficult to obtain and often incomplete, ICE transfers most detainees at least once during their incarceration.[14] Nearly 30% of detainees who are transferred are transferred into the jurisdiction of a different federal circuit court.[15] Not only are new class members being created through arrest, but new class members are likely being transferred into Colorado from other jurisdictions on a regular basis. As a result, the pool of unknown potential class members is vast and joinder is impracticable (to say the least).

For all these reasons, joinder of all those who have been or will be wrongly subjected to mandatory detention by IJs in Colorado would be impracticable, and this

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[11] *Id.*

[12] *Id.*

[13] *See Medina-Rosales v. Holder*, 778 F.3d. 1140, 1143 (10th Cir. 2015) (holding that the law of the circuit where the hearing is held is the applicable law); Adrienne Pon, *Identifying Limits on Immigration Detention Transfers and Venue*, 71 Stan. L. Rev. 747, 753 (2019) ("The choice of detention location typically determines venue for immigration courts.").

[14] Emily Ryo & Ian Peacock, *A National Study of Immigration Detention in the United States*, 92 S. Cal. L. Rev. 1, 39 (2018).

[15] *Id.*

Court should permit the case to proceed as a class action.

B. Members of the Class Have Common Questions of Law and Fact.

The claims asserted by the proposed class include common questions of law and fact that satisfy Rule 23(a)(2). At its core, "[c]ommonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Dukes*, 564 U.S. at 349–50 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). The class claims must "depend upon a common contention . . . 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." *Braver v. Northstar Alarm Servs., LLC*, 329 F.R.D. 320, 328 (W.D. Okla. 2018). "Not every issue must be common to the class so long as the claims of the plaintiffs and other class members are based on the same legal or remedial theory." *Taco Bell Corp.*, 184 F.R.D. at 359 (citing *Joseph v. Gen. Motors Corp.*, 109 F.R.D. 635, 640 (D. Colo. 1986). And factual differences between class members' claims do not defeat certification where common questions of law exist. *Milonas v. Williams*, 691 F.2d 931, 938 (10th Cir. 1982). "Whether a case should be allowed to proceed as a class action involves intensely practical considerations . . . Each case must be decided on its own facts, on the basis of 'practicalities and prudential considerations.'" *Tech Instrumentation Inc. v. Eurton Electric Co. Inc.*, No. 16-CV-2981-MSK, 2018 WL 3382914, *1 (D. Colo. May 29, 2018) (quoting *Monreal v. Potter,* 367 F.3d 1224, 1238 (10th Cir. 2004)).

Plaintiff in this case has identified a "single policy, custom, procedure or alleged administrative deficiency" that "unites the claims of the plaintiffs or the putative class

members," and provides the basis for every class member's injury: Defendants' unlawful practice of denying them bond hearings and subjecting them to mandatory detention. *Shook v. Bd. of Cnty. Comm'rs of Cnty. of El Paso*, 2006 WL 1801379, at *9 (D. Colo. June 28, 2006), *aff'd*, 543 F.3d 597 (10th Cir. 2008). In addition, all class members present at least one core common question: whether § 1225(b)(2)'s mandatory detention provisions apply to them and prevent them from being considered for release on bond under § 1226(a) and its implementing regulations.

In addition to this common injury, the class raises additional common questions, including (1) whether the Immigration Court has a policy of denying bond hearings to class members; (2) whether the policy is arbitrary and capricious; (3) whether class members are subject to detention under § 1225(b)(2) or § 1226(a) and its implementing regulations; and (4) whether class members are entitled to a bond determination by the Immigration Court. Any one of these common issues, standing alone, is enough to satisfy Rule 23(a)(2)'s standard as "there is at least one common question of law" for the entire class. *Miles v. BKP Inc.*, No. 18-cv-01212, 2022 WL 4280547, *5 (D. Colo. Sept. 15, 2022) (Brimmer, J.) (certifying class). While circumstances of the individual class members will differ in ways that could affect individualized bond determinations, such potential variations pose no bar to certification under Rule 23(a). *DG*, 594 F.3d at 1195.

Answering any one of these common legal questions will "drive the resolution of the litigation." *Dukes*, 564 U.S. at 350. Should the Court agree that class members are *not* subject to § 1225(b)(2)(A), and are thus entitled to receive a bond hearing under § 1226(a), all class members will benefit from a declaration to that effect. A class action

is the appropriate means of addressing these common issues.

C. Plaintiff's Claims Are Typical of Class Members' Claims.

Plaintiff here brings claims typical of the proposed class. *See* Fed. R. Civ. P. 23(a)(3). The typicality requirement ensures that absent class members are adequately represented by the lead plaintiff such that the interests of the class will be fairly and adequately protected in their absence. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982). Typicality "is satisfied," therefore, "when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *In re HomeAdvisor, Inc. Litig.*, 345 F.R.D. 208, 223 (D. Colo. 2024). The interests and claims of the lead plaintiff and the class members need not be identical to satisfy typicality, provided the claims of the lead plaintiff and class members are based on the same legal or remedial theory. *DG*, 594 F.3d at 1198-99.

Typicality is satisfied here for largely the same reasons that commonality is satisfied. *See Gen. Tel. Co. of Sw.*, 457 U.S. at 157 n.13 ("The commonality and typicality requirements of Rule 23(a) tend to merge"). Mr. Mendoza Gutierrez arrived in the United States without inspection. He was later arrested and detained at the Aurora Facility. An IJ refused him bond on the basis that the Immigration Court lacked jurisdiction under Defendants' new policy. And Mr. Mendoza Gutierrez remains in custody.[16] Each proposed class member faces the same principal injury as Mr. Mendoza Gutierrez (denial of a bond hearing), based on the same government policy (denying class members

[16] Ex. 2, Decl. N. Mendoza Gutierrez, ¶ 13.

consideration for bond on the basis of § 1225(b)(2)), which is unlawful as to the entire class because it is contrary to law and arbitrary and capricious under the APA. Plaintiff thus shares an identical interest with the class members in invalidating Defendants' practice. Moreover, as with commonality, any factual differences that might exist here between Plaintiff and proposed class members are not enough to defeat typicality. *DG*, 594 F.3d at 1195.

D. Plaintiff and Plaintiff's Counsel Will Adequately Protect the Interests of the Proposed Class.

Plaintiff and undersigned counsel also fulfill the final requirement that "[t]he representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The Tenth Circuit has identified two questions relevant to the adequacy of representation inquiry, whether: (i) the named plaintiff and their counsel have any conflicts with other proposed class members; and (ii) the named plaintiff and their counsel will vigorously prosecute the action on behalf of the class. *See Rutter & Wilbanks Corp. v. Shell Oil Co.,* 314 F.3d 1180, 1187–88 (10th Cir. 2002).

Here, no differences create conflicts between Mr. Mendoza Gutierrez's interests and the class members' interests. Plaintiff will fairly and adequately protect the interests of the proposed class. While Plaintiff seeks personal relief in the form of a writ of *habeas corpus*, that additional remedy does not render his interests different from or adverse to those of absent class members. Instead, Plaintiff aims to secure relief that will protect the entire class from Defendants' challenged policy. Plaintiff has no incentive to deviate from this class relief. Nor does Plaintiff seek financial gain at the cost of absent class members' rights. Plaintiff shares a common interest in ensuring the protection of their rights and will

vigorously prosecute this action on behalf of all class members.[17]

In addition, proposed class counsel includes experienced attorneys with extensive experience in both complex immigration cases and civil rights class actions.[18] As the declarations make clear, they have been appointed class counsel in successful class action litigation concerning the rights of noncitizens and others imprisoned by the government. Indeed, this Court has recently appointed undersigned attorneys from the ACLU of Colorado class counsel in other litigation challenging Defendants' immigration practices. *D.B.U. v. Trump*, 349 F.R.D. 228, 239-40 (D. Colo. 2025).

II. THE PROPOSED CLASS SATISFIES RULE 23(b)'S REQUIREMENTS

Rule 23 requires that, in addition to satisfying the requirements of Rule 23(a), a putative class must also fall within one of the parts of subsection (b). Plaintiff here seeks class certification under Rule 23(b)(2), which provides that a class action is appropriate when "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).

As courts in the Tenth Circuit have recognized, "the (b)(2) class action was invented for the purpose of facilitating civil rights suits, and much of its use is in that field today." *Anderson Living Tr. v. ConocoPhillips Co., LLC*, CIV 12-0039 JB/SCY, 2025 WL 950473, at *29 (D.N.M. Mar. 28, 2025) (citing William B. Rubenstein, *Newberg on Class*

[17] *See* Ex. 2, Decl. of N. Mendoza Gutierrez, ¶¶ 19–26.

[18] *See* Ex. 11, Decl. of T. Macdonald; Ex. 12, Decl. of H. Meyer.

Actions § 4:26 (5th ed.)); *see also Newberg on Class Actions*, *supra*, § 1:3 (Rule 23(b)(2) "is typically employed in civil rights and other cases where monetary relief is not the primary remedy. The (b)(2) class action is often referred to as a 'civil rights' or 'injunctive' class suit"). "The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the 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 (citation omitted).

This case presents the quintessential class Rule 23(b)(2) is meant to embrace. Defendants have acted on grounds that apply generally to the class by subjecting them all to the same unlawful practice: denying consideration for bond on the basis of § 1225(b)(2) to those who are eligible for a bond hearing under § 1226(a). That wrongful interpretation of the INA can be remedied in a single declaration without differentiating between class members: an order that class members are eligible for bond hearings under § 1226(a). Indeed, courts have previously certified near-identical classes under Rule 23(b)(2). *See, e.g.*, *Rodriguez Vasquez v. Bostock*, 779 F. Supp. 3d 1239 (W.D. Wash. May 2, 2025) (certifying class of "all noncitizens without lawful status detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, (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 noncitizen is scheduled for or requests a bond hearing).

Aggregate litigation is especially warranted here because a class-wide declaration will answer a recurring legal question and thus reduce the number of future habeas

petitions filed in the District. It is far more efficient for this Court to grant declaratory relief protecting all the class members than to force individuals to pursue piecemeal litigation. Indeed, failing to certify a class would likely lead to serial litigation where multiple judges are required to consider the same issue.[19]

Because Plaintiff seeks declaratory relief that would benefit him and members of the proposed class in the same fashion, certification is appropriate under Rule 23(b)(2).

CONCLUSION

Plaintiff respectfully requests that the Court grant class certification under Rule 23(b)(2), appoint the Plaintiff as Class Representative, and appoint the undersigned as Class Counsel.

[19] That is currently the case in the District of Massachusetts. *See*, *e.g.*, *Gomes v. Hyde*, No. 1:25-CV-11571-JEK, 2025 WL 1869299, *8 (D. Mass. July 7, 2025) (Kobick, J.) (granting individual *habeas* relief on § 1225 vs. § 1226 issue); *Diaz Martinez v. Hyde*, No. CV 25-11613-BEM, --- F. Supp.3d ---, 2025 WL 2084238, *9 (D. Mass. July 24, 2025) (Murphy, J.) (denying reconsideration of individual *habeas* relief on same issue); *Dos Santos v. Noem*, No. 1:25-cv-12052-JEK, 2025 WL 2370988 (D. Mass. Aug. 14, 2025) (Kobick, J.) (granting *habeas* relief on same issue); *Romero v. Hyde*, --- F.Supp.3d ----, 2025 WL 2403827 (D. Mass. Aug. 19, 2025) (Murphy, J.) (same).

Dated: September 3, 2025

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF-PETITIONER AND THE PUTATIVE CLASS

CERTIFICATE OF CONFERRAL

I hereby certify that consistent with D. Colo. Local Rule 7.1, before filing this motion, on September 3, 2025, I conferred with counsel for Defendants-Respondents, Kevin Traskos, Chief, Civil Division, US Attorney's Office for the District of Colorado, regarding the relief requested herein. Defendants-Respondents are still formulating their position on this motion.

s/ Timothy R. Macdonald

Attorney for Plaintiff-Petitioner and the Putative Class

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2025, I electronically filed the foregoing **PLAINTIFF'S MOTION FOR CLASS CERTIFICATION** with the Clerk of the Court using the CM/ECF system, and that in accordance with Fed. R. Civ. P. 5, all counsel of record shall be served electronically through such filing.

s/ Anna I. Kurtz

Attorney for Plaintiff-Petitioner and the Putative Class