IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-02720-RMR

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

Petitioner-Plaintiff,

v.

JUAN BALTAZAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, 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,

Respondents-Defendants.

CONSOLIDATED RESPONSE TO PETITIONER'S FIRST APPLICATION FOR WRIT OF HABEAS CORPUS (ECF No. 1), MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION (ECF No. 14), AND MOTION TO CERTIFY CLASS (ECF No. 15)

Respondents-Defendants ("Respondents") respond to Petitioner-Plaintiff's ("Petitioner's") First Application for Writ of Habeas Corpus (ECF No. 1, "Petition"), Motion for Temporary Restraining Order and/or Preliminary Injunction (ECF No. 14, "PI Motion"), and Motion to Certify Class (ECF No. 15, "Motion to Certify"). As explained below, the Court should deny the Petition and the PI Motion. It should defer decision on the Motion to Certify or deny it.

INTRODUCTION

This case involves a question of statutory interpretation. The Department of Homeland Security ("DHS") is detaining Petitioner under 8 U.S.C. § 1225(b)(2)(A). Petitioner claims he should instead be detained under 8 U.S.C. § 1226(a). The practical difference between the two sections is that aliens detained under Section 1225(b)(2)(A) are not eligible for bond hearings while those detained under Section 1226(a) are. Because Petitioner believes his detention should be governed by Section 1226(a), he requests immediate release or a bond hearing in seven days.

The Court should deny these requests. Under the Immigration and Nationality Act ("INA") this Court lacks jurisdiction to review DHS's decision to detain Petitioner under Section 1225 rather than Section 1226. Even if the Court were to determine it has jurisdiction, it should deny Petitioner's requests for relief. Section 1225(b)(2)(A) requires detention of an alien who is an "applicant for admission" if an "examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." An applicant for admission includes any "alien present in the United States who has not been admitted." 8 U.S.C. § 1225(a)(1).

Petitioner's detention is governed by Section 1225(b)(2)(A) because he is an alien present in the United States who has not been admitted.

Petitioner also seeks to certify a class composed of other aliens through the Motion to Certify. The Court should defer deciding whether to grant Petitioner's request to certify a class because it is unclear whether Petitioner is seeking to certify a class for habeas relief, relief under the Administrative Procedure Act ("APA"), or both. Even if the Court were to take up the Motion to Certify, it should not certify Petitioner's proposed class. The relief that Petitioner seeks for the class is barred under 8 U.S.C. § 1252(f)(1) of the INA. In addition, the proposed class does not meet the certification requirements in Federal Rule of Civil Procedure 23.

BACKGROUND

I. Legal background.

In the INA, Congress established rules governing when certain aliens may be detained or removed. As relevant here, 8 U.S.C. § 1225 governs the processes for the detention and removal of "applicants for admission." Section 1225 defines an "applicant for admission" as any "alien present in the United States who has not been admitted *or* who arrives in the United States." 8 U.S.C. § 1225(a)(1) (emphasis added). The INA defines "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13)(A). In other words, an applicant for admission is an alien who is (1) present in the United States who has not lawfully entered the country or (2) who is arriving in the United States. Per 8 U.S.C. § 1225(a)(3), all applicants for admission

are subject to inspection by immigration officers to determine if they are admissible.

Section 1225(b)(1) describes two categories of applicants for admission, which together describe many—but not all—of those applicants. The first category includes those aliens who are arriving and inadmissible under 8 U.S.C. § 1182(a)(6)(c) or (a)(7).[1] *Id.* § 1225(b)(1)(A)(i). The second category includes those aliens who have "not been admitted or paroled into the United States," who have not "affirmatively shown, to the satisfaction of an immigration officer, that [they] have been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility," and who also are inadmissible under Section 1182(a)(6)(c) or (a)(7). *Id.* § 1225(b)(1)(A)(i), (iii)(II). Aliens within the two categories described in Section 1225(b)(1) are subject to expedited removal, *see* 8 C.F.R. § 235.3(b), and "shall be detained" until removed (or until the end of asylum or credible fear proceedings). 8 U.S.C. §§ 1225(b)(1)(B)(ii), (iii)(IV).[2]

But those two categories do not encompass all applicants for admission. Section 1225(b)(2) serves as a catchall for all remaining applicants for admission. Under 8 U.S.C. § 1225(b)(2)(A), all other applicants for admission who an immigration officer determines are "not clearly and beyond a doubt entitled to be admitted" shall be detained for removal proceedings under 8 U.S.C. § 1229a. Section 1225(b)(2)(A) thus

[1] Section 1182(a)(6)(c) and (a)(7) address inadmissibility based on misrepresentation or the lack of valid entry documents.

[2] Depending on the circumstances, an alien who is ordered removed under Section 1125(b)(1)(A)(i) but who is not removed within 90 days of the removal order may be released under an order of supervision. 8 U.S.C. § 1231(a)(3).

generally provides for detention, during removal proceedings, for aliens who are applicants for admission but who do not fall within one of the two categories described in Section 1225(b)(1) (*i.e.*, arriving aliens, or other aliens subject to expedited removal). Section 1225 does not provide a bond hearing for aliens detained under that provision.

The two categories of aliens described in Sections 1225(b)(1), and the additional catchall category of aliens described in 1225(b)(2) who also meet the definition of "applicants for admission," do not encompass all aliens who may be subject to removal. For aliens who fall outside those categories, another provision—Section 1226—provides procedures for detention and removal. Unlike Section 1225, Section 1226 is not limited to applicants for admission, but broadly applies to aliens facing removal.

Section 1226 provides procedures for detention and removal of aliens that are different from those provided for aliens subject to detention under Section 1225. Section 1226(a) provides that if the Attorney General issues a warrant, an alien may be arrested and detained "pending a decision on whether the alien is to be removed from the United States." Following arrest, and subject to certain restrictions, the alien may remain detained or may be released on bond or conditional parole. *Id.* By regulation, immigration officers can release such an alien if he demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8). If not released by an immigration officer, the alien can request a custody redetermination by an immigration judge ("IJ") at any time before a final order of removal is issued. *See id.* §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

Section 1226(c) also requires the Attorney General to take into custody certain

defined categories of "criminal aliens" when they are released from other forms of custody (or upon DHS's own initiative), and to detain them during their removal proceedings—i.e., they are not able to receive bond hearings.[3] 8 U.S.C. § 1226(c).

II. Factual background.

As explained below, Petitioner has not been inspected to be admitted to the United States, but he is seeking a visa.

Petitioner is a citizen of El Salvador. Respondents' App'x, p. 3, ¶ 4 – Declaration of M. Ketels. He crossed the border into the United States without inspection sometime before 2003. *Id.* ¶¶ 4-5. Petitioner alleges that he has resided in the Denver area since 1999. ECF No. 1 ¶ 34. He does not allege that he has ever been inspected.

Petitioner also asserts that, at some point after 2017, he submitted a U-Visa application related to his role serving as a witness in a criminal case against a family friend who sexually assaulted Petitioner's son, which he claims remains pending. ECF No. 1 ¶¶ 36-37. Under 8 U.S.C. § 1101(a)(15)(U), upon petition, an alien may obtain nonimmigrant status if they are the victim of certain crimes or if they may assist law enforcement in investigating or prosecuting those crimes.[4]

In May 2025, Petitioner was arrested and taken into custody at the county jail in Broomfield, Colorado for a charge that was later dismissed. Respondents' App'x, p. 3,

[3] There is one narrow exception for criminal aliens who are assisting with or essential to investigations into major criminal activity. 8 U.S.C. § 1226(c)(4).

[4] Respondents do not provide further information here because, by statute, absent a waiver by the alien, DHS employees and Department of Justice employees are greatly restricted from releasing information about aliens who are the beneficiaries of an application for U nonimmigrant status. *See* 8 U.S.C. § 1367(a)(2), (b).

¶ 6, n.1; ECF No. 14-7 at 3. On May 25, 2025, upon his release from jail, Immigration and Customs Enforcement ("ICE") took Petitioner into custody. Respondents' App'x, pp. 3-4, ¶ 7. Petitioner was initially detained pursuant to 8 U.S.C. § 1226(a), but DHS later reexamined its detention authority and determined that 8 U.S.C. § 1225 is the proper detention authority for him. *Id.* at 3-4, ¶¶ 7-8. On June 13, 2025, Petitioner's counsel requested a custody redetermination (*i.e.*, a bond hearing) before an IJ. *Id.* at 3, ¶ 12. On June 23, 2025, Petitioner appeared before an IJ for a bond hearing. *Id.* at 4, ¶ 13. After the hearing, the IJ denied bond, explaining that it lacked jurisdiction to grant him bond because Petitioner was detained under 8 U.S.C. § 1225. *Id.*; *see also* ECF No. 14-6. He is currently detained at the Denver Contract Detention Facility in Aurora, Colorado for removal proceedings. Respondent's App'x, pp. 3-6, ¶¶ 3, 11-25.

III. Procedural Background

On August 29, 2025, Petitioner filed the Petition. ECF No. 1. In it, he challenges his detention as violating (1) the provisions regarding detention in 8 U.S.C. § 1226(a); (2) the regulations implementing Section 1226; (3) the APA insofar as he is detained under 8 U.S.C. § 1225; and (4) due process. ECF No. 1 ¶¶ 47-62. In brief, he argues that his detention under Section 1225 (which provides for mandatory detention) is improper and that he should instead be detained under Section 1226 (which provides for the possibility of release on bond). *See generally id.* He seeks immediate release or a bond hearing within seven days. *Id.* at 15 (prayer for relief).

On September 2, 2025, Petitioner filed the "First Amended Class Action Complaint for Vacatur and Declaratory and *Habeas Corpus* Relief." ECF No. 6 (the

"Amended Complaint"). The Amended Complaint seeks new forms of relief, which are described below in the response to the Motion to Certify. *Infra* at pp. 23-30. Petitioner has not paid the filing fee required for filing civil complaints or served the Defendants named in the Amended Complaint under Federal Rule of Civil Procedure 4(i).

On September 3, 2025, Petitioner filed the PI Motion and the Motion to Certify. ECF Nos. 14 & 15. In the PI Motion, he requests release or a bond hearing within seven days. ECF No. 14 at 2, 16. He also asks for an order enjoining Respondents from transferring him outside of the District of Colorado. *Id.* In the Motion to Certify, Petitioner requests certification of a class under Federal Rule of Civil Procedure 23(b)(2). ECF No. 15. The definition of the proposed class is set forth below in Section IV.C, *infra* at p. 26. The Court ordered Respondents to file a consolidated response to the PI Motion, the Motion to Certify, and the Petition. ECF No. 22.

On September 5, 2025, the Board of Immigration Appeals ("BIA") issued a precedential decision addressing whether an IJ can hold a bond hearing for an alien present in the United States who has not been admitted after inspection. *See* Respondents' App'x, pp. 7-21 – *Matter of Jonathan Javier Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The BIA concluded that an alien who entered the United States without inspection and then resided in the country for years without lawful status falls under 8 U.S.C. § 1225(b)(2)(A) for purposes of detention authority. *See generally id.*

ARGUMENT

I. This Court lacks jurisdiction over Petitioner's requests for relief.

This Court cannot consider Petitioner's challenge to his detention insofar as he is challenging the fact that is being detained under 8 U.S.C. § 1225(b)(2)(A) rather than 8 U.S.C. § 1226(a). As explained below, the INA channels challenges arising from actions taken to remove an alien to the appropriate court of appeals.

Congress has provided aliens with a vehicle to challenge the statutory provision that ICE relies on to detain and remove aliens. Specifically, Congress provided, in the INA, that claims related to removal orders are to be presented to the appropriate court of appeals through a petition for review. 8 U.S.C. § 1252(a)(5). Review of a final order includes review of "all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States." *Id.* § 1252(b)(9). The decision to detain Petitioner under Section 1225(b)(2)(A) is a question of law arising from his removal proceedings. This issue could be reviewed by the appropriate court of appeals as part of an appeal of a final order of removal.

In the INA, Congress otherwise limited what types of claims district courts can review. Specifically, 8 U.S.C. § 1252(g) states that, except as otherwise provided in Section 1252, courts lack jurisdiction to consider "any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings . . . against any alien under this chapter." This bar on considering the commencement of cases includes a bar on considering challenges to the *basis on*

which ICE chooses to commence removal proceedings. *See Alvarez v. U.S. Immigr. & Customs Enf't*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars [courts] from questioning ICE's discretionary decisions to commence removal—and thus necessarily prevents [courts] from considering whether the agency should have used a different statutory procedure to initiate the removal process.").

Accordingly, Congress—in Section 1252(a)(5) and (b)(9)—provided aliens (like Petitioner) with a vehicle to challenge the basis on which ICE seeks to detain and remove them, in the court of appeals; but Congress also—in sections 1252(b)(9) and (g)—deprived district courts (like this Court) of jurisdiction to review an alien's challenge to DHS's decision about the basis his removal proceedings.

II. Petitioner is not entitled to a bond hearing.

Even if the Court were to determine that it has jurisdiction to consider Petitioner's challenge to DHS's decision to detain him under Section 1225(b)(2)(A) rather than Section 1226(a), that challenge fails because the plain text of Section 1225(b)(2)(A) makes clear that Petitioner falls within its scope.

Section 1225(b)(2)(A) mandates detention for an alien "who is an applicant for admission" if an immigration officer determines that the alien "seeking admission is not clearly and beyond a doubt entitled to be admitted." The statute defines "[a]pplicant for admission" to include aliens who (1) are "present in the United States who ha[ve] not been admitted" or (2) "who arrive[ ] in the United States." *Id.* § 1225(a)(1). In other words, an alien who is present in the United States but has not been inspected or admitted is treated, as a matter of law, as an applicant for admission.

That definition of "applicant for admission" describes Petitioner. When ICE took him into custody, he was present in the United States. And he has not been "admitted" (*i.e.*, made a "lawful entry")." 8 U.S.C. § 1101(a)(13)(A). Thus, Petitioner is an applicant for admission. And he does not argue that he is clearly and beyond a doubt entitled to be admitted. In short, he falls within the scope of Section 1225(b)(2)(A).

Petitioner resists this plain reading of Section 1225(b)(2)(A). He makes three arguments about why this section should not apply to him: arguments from the text of the INA, the INA's legislative history, and the Government's past practice.[5] But, as described below, none of these arguments overcome the plain reading of the text.

Textual arguments. First, Petitioner makes textual arguments about why Section 1225 does not apply to him and why Section 1226 does.

Petitioner argues that the text of Section 1225 is limited to those just arriving in the United States. Specifically, he argues that Section 1225(b)(2)(A) should be read in a limited way to apply *only* to aliens who are "apprehended at the border or port of entry." ECF No. 1 ¶ 16; ECF No. 14 at 11 ("Section 1225(b)(2) is similarly limited to people applying for admission on arrival, but whom (b)(1) does not cover.").

But that reading of Section 1225(b)(2)(A) does not comport with its text or make sense in the context of the whole section. Rather, Section 1225 makes clear that "applicants for admission" includes both those just arriving in the United States *and*

[5] Petitioner also cites other district courts that have concluded that aliens who enter without inspection and then reside in the United States fall within the scope of Section 1226(a) rather than Section 1225(b)(2)(A). ECF No. 1 ¶ 27 (collecting cases). Those district courts relied on the same types of arguments Petitioner makes here.

those who entered without inspection and have been residing here. For example, Section 1225(b)(1)(A)(i) is not limited to aliens "arriving in the United States" who are rendered inadmissible for the specified reasons (*i.e.*, misrepresentation or lack of a valid entry document). Section 1225(b)(1)(A)(i) also applies, through its reference to Section 1225(b)(1)(A)(iii), to some aliens who have *already* been residing in the United States and are inadmissible for the same reasons—that is, applicants for admission who have "not been admitted or paroled" and have not "affirmatively shown, to the satisfaction of an immigration officer, that [they] ha[ve] been physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility under this subparagraph." 8 U.S.C. § 1225(b)(1)(A)(iii)(II).

Petitioner's argument also disregards that Section 1225(b)(2) is broader than Section 1225(b)(1). Section 1225(b)(2) is titled "Inspection of other aliens." The "other aliens" in the title refers to the fact that it covers a category of aliens that is not covered by Section 1225(b)(1). Indeed, the Supreme Court has recognized that Section 1225(b)(2) refers to a "broader" category of aliens than those described in 1225(b)(1). In *Jennings v. Rodriguez*, the Court referred to Section 1225(b)(2) as a "catchall provision that applies to *all applicants for admission* not covered by § 1225(b)(1)." 583 U.S. 281, 287 (2020) (emphasis added). Accordingly, Section 1225(b)(2) applies *both* to applicants for admission just arriving at the border who do not fall within Section 1225(b)(1)(A)(i) *and* to applicants for admission who have been physically present in the United States but are not covered by Section 1225(b)(1)(A)(iii)(II).

Petitioner also points to the phrase "seeking admission" in Section 1225(b)(2)(A)

as evidence that this section is limited to those aliens who are actively taking some step to gain admission to the United States. ECF No. 14 at 12. But that reading ignores the parts of Section 1225 indicating that anyone falling within the category of applicants for admission is to deemed, as a matter of law, to be seeking admission. *See* 8 U.S.C. § 1225(a)(3) ("All aliens . . . who are applicants for admission or *otherwise seeking admission* . . . shall be inspected by immigration officers." (emphasis added)). Indeed, the Supreme Court has treated Section 1225(b)(2)(A) as applying to "*all applicants for admission* not covered by § 1225(b)(1)." *Jennings*, 583 U.S. at 287 (emphasis added).

Even if "seeking admission" did require that an applicant for admission be "'doing something' following arrival to obtain authorized entry", ECF No. 14 at 12, Petitioner falls within that definition. He alleges that he has applied for a U-Visa. ECF No. 1 ¶ 37. If granted, that U-Visa would provide him lawful status in the United States for the visa's duration. *See* 8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.14(g).

Petitioner also argues that Section 1225(b)(2)(A) does not apply to him because Section 1226(a) should. First, he argues that Section 1226(a) is the "default rule" that should apply to all aliens "pending a decision on whether the [noncitizen] is to be removed." ECF No. 1 ¶ 29 (citations omitted). As support, he argues that "[o]ther portions of the text of § 1226 . . . explicitly apply to people charged as being inadmissible, including those who entered without inspection." *Id.* ¶ 30. As an example, he identifies Section 1226(c), which expressly requires mandatory detention for certain categories of aliens, including at least one group of aliens who entered without inspection. *See id.* (citing 8 U.S.C. § 1226(c)(1)(E)). Petitioner argues that the specific

requirement of mandatory detention for a category of aliens who entered without inspection means that Section 1226(a) must then apply to all other aliens who entered without inspection. *Id.*; *see also* ECF No. 14 at 8. According to Petitioner, deeming him and other aliens who entered illegally as falling under Section 1225(b)(2)(A) would "render[ ] significant portions of Section 1226(c) meaningless." ECF No. 14 at 9.

Petitioner is wrong. Section 1226(a)'s general detention authority, which permits the issuance of warrants to detain aliens for their removal proceedings, must be read alongside Section 1225, which specifically addresses the detention of applicants for admission. And Section 1226 does not displace the more specific provisions in Section 1225 governing the detention of applicants for admission. It is well established that where "there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one." *Guidry v. Sheet Metal Workers Nat. Pension Fund*, 493 U.S. 365, 375 (1990) (citation omitted). Here, Section 1225 is narrower in scope than Section 1226. It applies only to "applicants for admission," which includes aliens present in the United States who have not been admitted. *See* 8 U.S.C. § 1225(a)(1).

To be sure, 8 U.S.C. § 1226(c)(1)(E) mandates detention for a narrow category of aliens who entered the country without inspection: those who both entered without inspection and were later arrested for, committed, or have admitted to committing one of a list of enumerated crimes. It requires DHS to take such aliens into custody after their release from criminal custody and detain them. *See Nielsen v. Preap*, 586 U.S. 392, 414-15 (2019) (explaining that Section 1226(c)(1)'s "when released" clause clarifies that DHS custody begins "upon release from criminal custody," not before, and that it

"exhort[s] [DHS] to act quickly"). The fact that Section 1226(c)(1)(E) provides further rules for detention of one category of aliens who entered without inspection does not mean that Section 1225(b)(2)(A) no longer applies to all other such aliens.

Put differently, it is true that for a certain subset of aliens—those who entered without inspection, and then committed (or may have committed) certain crimes—Congress has now mandated their detention in two separate provisions, both Section 1225(b)(2)(A) and Section 1226(c)(1)(E). But any potential redundancy in requiring mandatory detention for that subset of aliens does not mean that Section 1225(b)(2)(A) does not still govern the detention of other aliens who entered without inspection. As the Supreme Court has acknowledged, redundancies "are common in statutory drafting—sometimes in a congressional effort to be doubly sure, sometimes because of congressional inadvertence or lack of foresight, or sometimes simply because of the shortcomings of human communication." *Barton v. Barr*, 590 U.S. 222, 239 (2020). "Redundancy in one portion of a statute is not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Id.* The Court should not read Section 1226 to require courts to ignore the express detention and removal provisions in Section 1225.

Nor is there any indication that Congress intended courts to ignore the detention provisions in Section 1225. In enacting the Laken Riley Act (which added Section 1226(c)(1)(E)), Congress did not alter Section 1225(b)(2)(A). *See* PL No. 119-1, 139 Stat. 3 (2025). It is implausible that in the Laken Riley Act, Congress intended—without ever saying so—to displace the authority in Section 1225(b)(2)(A) to detain applicants for admission who are present in the United States and have not been admitted.

Finally, Petitioner points to stray language from *Jennings* to bolster his reading of Sections 1225 and 1226. ECF No. 1 ¶¶ 19, 32. In *Jennings*, the Supreme Court addressed whether aliens were entitled to periodic bond hearings during detentions under Sections 1225 and 1226 that became prolonged. 583 U.S. at 291-92. In doing so, the Court suggested that Section "1225(b) applies primarily to aliens seeking entry into the United States," *id.* at 297, and that Section 1226(a) is the "default rule" for aliens "inside the United States," *id.* at 288. But *Jennings* actually confirms that Section 1225(b)(2) should apply to aliens who entered without inspection. Specifically, the *Jennings* Court described Section 1225(b)(2) as a "catchall provision that applies to *all applicants for admission* not covered by § 1225(b)(1)." *Id.* at 287 (emphasis added). And the Court did not limit Section 1225(b) to those just arriving in the United States.

Legislative history. Petitioner also argues that the legislative history behind Sections 1225 and 1226 supports his position. ECF No. 14 at 4, 13. He argues that before Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA") in 1996, 8 U.S.C. § 1252(a) (1994) authorized release on bond for all aliens who were present in the United States when they were detained for deportation proceedings. *Id.* at 13. According to Petitioner, the IIRIRA re-codified the availability of bond hearings for most aliens, including those who had entered without inspection. *Id.* He points to language in the House Report stating that Section 1226(a) "restates the current provisions . . . regarding the authority . . . to arrest, detain, and release on bond a[] [noncitizen]." *Id.* (citing H.R. Rep. No. 104-469, pt. 1, at 229).

But the legislative history weighs in favor of Respondents' interpretation of

Sections 1225 and 1226. Before the IIRIRA, Section 1225 provided for the inspection of aliens only when they were arriving at a port of entry. *See* 8 U.S.C. § 1225(a) (1990) (discussing inspection of all aliens "arriving at ports of the United States"). It required that aliens arriving at a port of entry be placed in exclusion proceedings. *Id.* § 1225(c). By contrast, aliens "in the United States" who "entered without inspection" were deemed deportable under 8 U.S.C. § 1251(a)(1)(B) (1994), and placed in deportation proceedings, where they could request release on bond, *id.* § 1252(a)(1) (1994).

In short, under the pre-IIRIRA regime, whether an alien was placed in exclusion proceedings or deportation proceedings depended on whether they had "entered" the United States. But this focus on "entry" "resulted in an anomaly"—"non-citizens who had entered without inspection could take advantage of the greater procedural and substantive rights afforded in deportation proceedings, while non-citizens who presented themselves at a port of entry for inspection were subjected to more summary exclusion proceedings." *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010).

The IIRIRA sought to address this anomaly "by substituting 'admission' for 'entry' and by replacing deportation and exclusion proceedings with a general 'removal' proceeding." *Id.* Congress expanded Section 1225 to address not only those who presented themselves at a port of entry. As re-codified, it includes *all* applicants for admission—*i.e.*, aliens present in the United States who have not been admitted, as well as those just arriving. The House Judiciary Committee Report confirms Congress intended such a fix when enacting the IIRIRA. The Report states that the IIRIRA was

> intended to replace certain aspects of the current "entry doctrine," under which illegal aliens who have entered the United States without inspection

> gain equities and privileges in immigration proceedings that are not available to aliens who present themselves for inspection at a port of entry. Hence, the pivotal factor in determining an alien's status will be whether or not the alien has been lawfully admitted.

H.R. Rep. No. 104-469, pt. 1, at 225 (1996). The Report also explains that before the IIRIRA "aliens who ha[d] entered without inspection [were] deportable under section [1251(a)(1)(B)]" but that after the IIRIRA "such aliens will not be considered to have been admitted." *Id.* at 226. The revisions to Section 1225 "ensure[d] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country," would be on "equal footing in removal proceedings" as applicants for admission. *Torres v. Barr*, 976 F.3d 918, 928 (9th Cir. 2020) (en banc) (citing 8 U.S.C. § 1225(a)(1)).

If the Court interprets Section 1225 in the manner advocated by Petitioner, it would undo the fix that Congress enacted through the IIRIRA. On Petitioner's reading, an alien who enters without inspection would often be entitled to a bond hearing while an alien who presents themselves to immigration officers at a port of entry would not. Such a reading would re-create the anomalous pre-IIRIRA incentives for those entering the country without inspection, an outcome that the Supreme Court has cautioned against. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020) ("The rule advocated by respondent . . . would . . . create a perverse incentive to enter at an unlawful rather than a lawful location.").

Past practice. Finally, Petitioner argues that detaining aliens like him under Section 1225(b)(2)(A) would conflict with past practice. Specifically, he points to an entry in the Federal Register from 1997 which states that "[d]espite being applicants for

admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." ECF No. 1 ¶ 21 (citing Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997)); *see also* ECF No. 14 at 14.

This citation from the Federal Register does not support Petitioner's argument for several reasons. First, the entry appears to acknowledge that aliens who are present without having been admitted are "applicants for admission." Thus, the cited language implicitly acknowledges that applicants for admission are not eligible for bond hearings under the statute. Instead, it apparently regarded them as eligible for bond hearings as a matter of administrative discretion, not of statutory interpretation.

Second, the Federal Register does not change the plain language of the statute. The weight given to agency interpretations must "depend upon their thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 388 (2024) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)). Here, the agency provided little analysis to support the reasoning for its statement about granting bond hearings to applicants for admission. *See* 62 Fed. Reg. at 10323. A prior practice by the agency of making such individuals eligible for bond hearings therefore carries little weight.

In sum, Petitioner's arguments all fail to persuade.

III. Petitioner is not entitled to a preliminary injunction.

In his PI Motion, Petitioner seeks emergency injunctive relief for himself pursuant to Federal Rule of Civil Procedure 65. A court may enter such emergency injunctive relief only after the moving party proves "(1) that she's substantially likely to succeed on the merits, (2) that she'll suffer irreparable injury if the court denies the injunction, (3) that her threatened injury (without the injunction) outweighs the opposing party's under the injunction, and (4) that the injunction isn't adverse to the public interest." *Free the Nipple-Fort Collins v. City of Fort Collins*, 916 F.3d 792, 797 (10th Cir. 2019) (internal quotation marks omitted).

When a movant seeks a "disfavored injunction," he must meet a heightened standard. *Id.* at 797. An injunction is disfavored when "(1) it mandates action (rather than prohibiting it), (2) it changes the status quo, or (3) it grants all the relief that the moving party could expect from a trial win." *Id.* When seeking a disfavored preliminary injunction, the moving party must make a "strong showing" as to the likelihood-of-success-on-the-merits and the balance-of-harms factors. *Id.*

The PI Motion seeks a disfavored injunction. Petitioner requests that the Court order Respondents to immediately release him from detention—a request to change the status quo. In the alternative, Petitioner requests that Respondents provide him with a bond hearing within seven days—a request that mandates action. Thus, Petitioner must make a strong showing on both the likelihood-of-success and balance-of-harms factors. Petitioner also requests that he not be transferred from the District of Colorado during this proceeding. That request is not subject to the heightened standard.

A. Petitioner has not established a likelihood of success on the merits.

Request for bond hearing. Petitioner requests either immediate release or, in the alternative, a bond hearing. ECF No. 14 at 2. His sole basis for these requests appears to be that his detention should be governed by Section 1226(a) rather than Section 1225(b)(2). *Id.* at 7-14. For the reasons described above, Petitioner's detention is governed by Section 1225(b)(2), not Section 1226(a). Thus, he has not established a strong likelihood of succeeding on the merits on his request for a bond hearing.

Request for immediate release. Even if the Court were to determine that Petitioner is likely to succeed on his challenge to his detention under Section 1225(b)(2) rather than Section 1226(a), the appropriate relief would be to order that Petitioner receive a bond hearing. Section 1226(a) does not require release—it provides DHS the discretion to grant an alien release on bond. It requires nothing more.

Indeed, Petitioner has not provided any argument in the PI Motion about why release rather than a bond hearing would be appropriate relief here. Arguments that are "inadequately developed to be meaningfully addressed" are "deemed waived." *Thompson R2-J Sch. Dist. v. Luke P., ex rel. Jeff P.*, 540 F.3d 1143, 1148 n.3 (10th Cir. 2008). Petitioner has not explained why immediate release, rather than a bond hearing, would be the appropriate relief here. He has forfeited any arguments on this point and has not made a strong showing of likelihood of success on the merits as to this request.

Request for injunction on transfer. Petitioner also requests that the Court enjoin Respondents from "transferring [him] outside the District of Colorado." ECF No. 14 at 16. Although he makes a passing reference to requesting this relief under Rule 65

and the All Writs Act, 28 U.S.C. § 1651(a), he does not explain why he is entitled to such relief. *Id.* at 2. The Court should not consider this undeveloped argument.

Even if he had developed this argument, Petitioner is not entitled to this relief under the All Writs Act. The All Writs Act provides that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). The Supreme Court has made clear that "the express terms" of the All Writs Act "confine" courts "to issuing process 'in aid of' its existing statutory jurisdiction; the Act does not enlarge that jurisdiction." *Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999). Here, Petitioner filed the Petition in the District of Colorado. This Court would retain jurisdiction even if he was transferred out of this district to another facility in the United States. *See Serna v. Commandant, USDB-Leavenworth,* 608 F. App'x 713, 714 (10th Cir. 2015). And because Petitioner is not yet subject to a final removal order, he cannot be removed from the United States at this time. There is no need for the Court to enjoin Respondents for it to retain jurisdiction.

B. Petitioner has not established irreparable harm.

Petitioner has not established that he faces irreparable harm absent a preliminary injunction. "To constitute irreparable harm, an injury must be certain, great, actual, and not theoretical." *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003) (internal quotation marks omitted).

Petitioner argues that his current detention constitutes irreparable harm. ECF No. 14 at 14-15. But the rule that Petitioner advocates for—that detention during the

pendency of habeas proceedings constitutes irreparable harm—cannot be correct. If "detention in and of itself constitutes irreparable harm . . . then many if not most habeas petitioners would be entitled to such relief." *Abshir H.A. v. Barr*, 19-cv-1033 (PAM/TNL), 2019 WL 3292058, at *4 (D. Minn. May 6, 2019), *report and recommendation adopted by Abi v. Barr*, 2019 WL 2463036 (D. Minn. June 13, 2019). Petitioner has not established what is unique to his circumstances that constitutes irreparable harm.

C. Petitioner has not established that the public interest and balance of equities weigh strongly in his favor.

The third and fourth factors—regarding the balance of the equities and whether a preliminary injunction would be in the public interest—"merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Supreme Court has recognized that the public interest in the enforcement of the United States' immigration laws is significant. *See, e.g., id.* at 436. Here, Respondents have a valid statutory basis for detention, *see* 8 U.S.C. § 1225(b)(2)(A), and "detention during [removal] proceedings [is] a constitutionally valid aspect of the deportation process," *Demore v. Kim*, 538 U.S. 510, 523 (2003).

Petitioner argues that granting an injunction would not harm Respondents because it would simply require them to return to a past practice. ECF No. 14 at 15. But if that past practice was contrary to statute, it should not be followed. As the Supreme Court recently indicated, any time that the Government is "enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (quoting *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). Enjoining Respondents

from carrying out their statutory obligations would harm the Government and, thus, these factors weigh against the Court granting an injunction.[6]

IV. The Court should not grant the Motion to Certify.

A. The Court should defer ruling on the Motion to Certify at this time.

The Court should decline to rule on the Motion to Certify at this point. The Court should defer ruling on the Motion to Certify because the nature of the proposed class action is uncertain at this stage. In his original Petition, Petitioner sought only habeas relief (and did not seek class-wide relief). ECF No. 1. By contrast, in the Amended Complaint (which, as noted, has not yet been properly served), he asserts claims both in habeas and under the APA. *See* ECF No. 6 at 22–25. Despite this, he asks the Court to simply "[c]ertify this case as a class action." ECF No. 6 at 25. But different procedural rules govern habeas cases and civil actions. Rule 23 does not directly apply in habeas cases, and courts should proceed with caution before employing analogous, unwritten class procedures in habeas matters. *See Bijeol v. Banson*, 513 F.2d 965, 969 (7th Cir. 1975) (observing that "the category of habeas corpus cases suitable for representative treatment" is "narrow[]"); *United States ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125 (2nd Cir. 1974) (allowing "multi-party proceeding" of individuals "held in custody" only upon finding "compelling justification"); *see also Napier v. Gertrude*, 542 F.2d 825, 827 n.2 (10th Cir. 1976) (citing *Bijeol* and *Sero*).

[6] Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction . . . only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained." If the Court grants Petitioner's request for a preliminary injunction, Respondents request that the Court require appropriate security.

Petitioner's request for class certification does not address these distinctions and does not specify whether he wants to certify an APA class under Rule 23, a class in habeas under an analogous procedure, or both. The Court should therefore decline to act on the Motion to Certify until the nature and scope of this proceeding is clarified.

In addition, it appears that similarly situated petitioners/plaintiffs may be seeking to certify a class regarding the same legal issues in an action pending in the Central District of California. *See* Order, *Maldonado Bautista v. Noem*, No. 5:25-cv-01873-SSS-BFM, ECF No. 14 (C.D. Cal. July 28, 2025) (describing habeas petition challenging detention under 8 U.S.C. § 1225(b)(2) rather than 8 U.S.C. § 1226(a)); Mot. for Class Cert., *Maldonado Bautista*, ECF No. 41 (August 11, 2025).[7] It may be the case that the proposed class in the motion for class certification in *Maldonado Bautista* (which does not appear to have been ruled on yet) overlaps with the proposed class here. As a matter of comity and to avoid potentially inconsistent rulings as to class members, it would make sense for the Court to defer ruling on the Motion to Certify until after the *Maldonado Bautista* court rules on the class certification motion there.

B. If the Court takes up the Motion to Certify, it should deny it based on 8 U.S.C. § 1252(f)(1).

8 U.S.C. § 1252(f)(1) prohibits district courts from "enjoin[ing] or restrain[ing] the operation of [certain] provisions" of the INA, including Sections 1225 and 1226, "other than with respect to the application of such provisions to an individual alien against

[7] Filings other than orders in *Maldonado Bautista* appear to be subject to the limitation on remote access described in Fed. R. Civ. P. 5.2(c). Thus, the motion for class certification describing the proposed class in that matter is not publicly available via remote access.

whom proceedings under such part have been initiated." By its plain terms, the statute "deprives courts of the power to issue a specific category of remedies": class-wide relief that enjoins or restrains DHS as to the relevant provisions. *Biden v. Texas*, 597 U.S. 785, 798 (2022); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 551 (2022).

The Supreme Court's analysis in *Aleman Gonzalez* illustrates why, if this Court were to certify a class here, Section 1252(f)(1) would bar relief for the class. There, habeas petitioners detained under 8 U.S.C. § 1231(a)(6), one of the provisions covered by Section 1252(f)(1), attempted to obtain a class-wide injunction requiring bond hearings after 180 days of detention. 596 U.S. at 546–47. The Supreme Court held that Section 1252(f)(1) made this relief unavailable on a class-wide basis because it would "require officials to take actions that (in the Government's view) [we]re not required by § 1231(a)(6)." *Id.* at 551.

Here, Petitioner seeks class-wide relief by compelling Respondents to detain class members under Section 1226(a) and not Section 1225(b)(2)(A). But it would be pointless to certify a class where Congress has provided that class-wide relief is not available. *See Jennings*, 583 U.S. at 312–14 (questioning viability of continuing class proceedings in a habeas action about bond hearings under Sections 1225 and 1226).

Although Petitioner never mentions Section 1252(f)(1), his request for relief in the Amended Complaint appears structured to attempt to avoid its reach. He may argue that Section 1252(f)(1) does not bar class-wide efforts to obtain *declaratory* relief as to Sections 1225 and 1226—in other words, a statement by a court about what the law is, unaccompanied by any injunction. In *Biden v. Texas*, the Supreme Court declined to

take up that issue. 597 U.S. at 801 n.4. But such relief would be an impermissible advisory opinion, as "what makes a declaratory judgment action a proper judicial resolution of a case or controversy rather than an advisory opinion is the settling of some dispute *which affects the behavior of the defendant toward the plaintiff*." *Jordan v. Sosa*, 654 F.3d 1012, 1025 (10th Cir. 2011) (emphasis added) (quotation omitted).

In any case, Petitioner is not *just* asking for declaratory relief. He pairs his request for declaratory relief with a request for "individual *injunctions* when requested as necessary to secure the rights of Class members." ECF No. 6 at 26 (emphasis added). Further, his request that the Court "[s]et aside application of Defendant's unlawful policy as to the class members" under the APA, *id.*, cannot be seen as anything but an attempt to "restrain[]" DHS as to the whole class, which 8 U.S.C. § 1252(f)(1) does not permit. Thus, Petitioner requests the kind of class-wide relief prohibited by Section 1252(f)(1). The Court should therefore deny the Motion to Certify.

C. Petitioner has not demonstrated that the proposed class satisfies Fed. R. Civ. P. 23 (or an analogous procedure in habeas).

Petitioner asks the Court to certify the following class under Rule 23(b)(2):

> 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.

ECF No. 15 at 3-4. To certify a class under Rule 23(b)(2), the party seeking certification must (1) establish that all the Rule 23(a) prerequisites for class treatment are met, and

(2) show that proceeding under Rule 23(b)(2) is appropriate. *Shook v. El Paso Cnty.* (*Shook 1*), 386 F.3d 963, 968 (10th Cir. 2004) ("[T]he party seeking to certify a class bears the burden of proving that all the requirements of Rule 23 are met"). Petitioner has not met this standard as to either Rule 23(a) or Rule 23(b).

Rule 23(a). The four prerequisites under Rule 23(a) are numerosity, commonality, typicality, and adequacy of representation. *See* Fed. R. Civ. P. 23(a). The commonality and typicality prerequisites "tend to merge." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982). Here, commonality and typicality are not met, and Petitioner has not shown that numerosity is met, either.

As to commonality and typicality, the proposed class appears to sweep in class members who have no claim at all—for example, aliens who have been in DHS detention for some time, have requested and *received* a bond hearing, but otherwise fit the class definition. Because such class members do not have a claim at all, there is no common question of law or fact between them and Petitioner. *See Ross v. Lockheed Martin Corp.*, 267 F.Supp.3d 174, 191 (D.D.C. 2017) (class should not include "persons who could not have been injured by the defendant's conduct" (quotation omitted)).

Further, the class includes several attributes not shared by Petitioner. For instance, Petitioner is in DHS custody in Colorado, which is why he can seek habeas relief in this district. 28 U.S.C. § 2241(a) (authorizing the district courts to issue writs of habeas corpus "within their respective jurisdictions"). But the proposed class includes "all noncitizens in the U[nited] S[tates]" who are detained by DHS *anywhere* and "have or will have proceedings before any immigration court hearing cases within the District

of Colorado." ECF No. 15 at 3. Because an immigration judge may conduct a hearing by video conference, 8 C.F.R. § 1003.25(c), the proposed class could include aliens who are not in detention in Colorado, over which this Court would lack jurisdiction.

Also, the proposed class includes those who DHS "alleges" entered without inspection. ECF No. 15 at 3. But an alien who has been admitted but is "alleged" to have entered without inspection may seek relief on different grounds than Petitioner (who in fact entered the United States without inspection). Such an alien may seek to factually challenge the basis for any detention, rather than challenging which statute governs his detention. Notably, the "near-identical" class Petitioner cites in the Motion to Certify, *id.* at 15, is framed more narrowly along these dimensions—it includes aliens detained at a particular facility who did, in fact, enter without inspection. *See Rodriguez Vasquez v. Bostock* (*Rodriguez Vasquez 2*), 349 F.R.D. 333, 348 (W.D. Wash. 2025).

Finally, Petitioner's claim is not typical because he appears to be pursuing lawful status in the United States. He asserts that he "submitted [a] U-Visa application before his detention" began. ECF No. 1 ¶ 37. Moreover, if that application is granted, Petitioner would have lawful status in the United States for the visa's duration. *See* 8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.14(g). He thus has taken "affirmative actions to gain authorized entry," *see* ECF No. 14 at 12 (quotation omitted), differentiating himself from class members who have not attempted to obtain lawful status. Accordingly, Rule 23(a)'s commonality and typicality requirements are not met.

In terms of numerosity: Petitioner has not shown that this requirement would be met if the proposed class definition were changed to address the commonality and

typicality problems identified above. Accordingly, the proposed class does not meet the prerequisites of Rule 23(a).

Rule 23(b)(2). Federal Rule of Civil Procedure 23(b)(2) allows for a class action if Rule 23(a) is met and **"**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." (Emphasis added.) The Advisory Committee defines "corresponding declaratory relief" as any remedy that "as a practical matter . . . affords injunctive relief or serves as a basis for later injunctive relief." Fed. R. Civ. P. 23(b)(2) advisory committee's note to 1966 amendment. Thus, a Rule 23(b)(2) class contemplates that "a single injunction or declaratory judgment w[ill] provide relief to each member of the class." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011). This means that a class action cannot proceed under Rule 23(b)(2) "when each individual class member would be entitled to a *different* injunction or declaratory judgment against the defendant." *Id.* (emphasis in original).

For this reason, "Rule 23(b)(2) demands a certain cohesiveness among class members with respect to their injuries, the absence of which can preclude certification." *Shook v. Bd. of Cnty. Comm'rs of Cnty. of El Paso* (*Shook 2*), 543 F.3d 597, 604 (10th Cir. 2008) (Gorsuch, J.). Absent sufficient cohesion, the class member's injuries cannot all be redressed at once. *See id.* (Rule 23(b)(2) class cannot be certified if "relief specifically tailored to each class member would be necessary to correct the allegedly wrongful conduct of the defendant" (quotation omitted)).

Here, Petitioner's request for relief shows that class treatment under Rule 23(b)(2) is not appropriate. He pairs his request for class-wide declaratory relief with a request for "individual injunctions when requested as necessary to secure the rights of Class members." ECF No. 6 at 25–26. So, it cannot be said that "a single . . . declaratory judgment w[ill] provide relief to each member of the class." *Dukes*, 564 U.S. at 360; *see also Jennings*, 583 U.S. at 313 (highlighting that Rule 23(b)(2) "requir[es] that final injunctive relief or *corresponding* declaratory relief be appropriate respecting the class as a whole" (emphasis in original; citation modified)).

Indeed, the "near-identical" class action in the Western District of Washington that Petitioner points to shows that declaratory relief alone would not provide redress to all class members. *See* ECF No. 15 at 14 (citing *Rodriguez Vasquez v. Bostock* (*Rodriguez Vasquez 1*), 779 F. Supp. 3d 1239 (W.D. Wash. 2025)). In that litigation, after the Court certified a declaratory relief class, a class member filed a motion requesting his own injunction for immediate release on bond. *Rodrigez Vasquez v. Bostock* (*Rodriguez Vasquez 3*), No. 25-cv-5240, 2025 WL 1655483, at *3 (W.D. Wash. May 19, 2025). Citing *Dukes*, the court observed that "seek[ing] a remedy for a single unnamed class member . . . appears to exceed the scope of Rule 23(b)(2)." *Id.* at *4. *Rodriguez Vasquez 3* confirms that Petitioner's request for class certification (for declaratory relief *and* individual injunctions as needed) does not comply with Rule 23(b).

CONCLUSION

For the reasons discussed above, the Court should deny the Petition and the PI Motion, and should defer ruling on or deny the Motion to Certify.

Dated: September 16, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Benjamin Gibson
U.S. Attorney's Office