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 BALTASAR, Warden, Denver Contract Detention Facility, Aurora, Colorado, in his official capacity,
ROBERT HAGAN, 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.

RESPONSE TO PETITIONER AND THE CONDITIONALLY CERTIFIED CLASS'S PARTIAL MOTION FOR SUMMARY JUDGMENT, ECF No. 49

The Court should deny Petitioner and the Conditionally Certified Class's Partial Motion for Summary Judgment, ECF No. 49 (the "Motion"). Petitioner seeks relief for the class that he could not (and does not) seek for himself—a stand-alone declaratory judgment in a habeas matter without any corresponding habeas relief. He does so because habeas relief is unavailable on a class-wide basis under 8 U.S.C. § 1252(f)(1). But that does not mean that class-wide declaratory relief (and nothing more) *is* available for the class members here, who—in substance—seek habeas relief. In addition, neither Petitioner nor the class are entitled to habeas relief under a plain reading of 8 U.S.C. § 1225(b)(2). Rather, consistent with the Supreme Court's decision in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), it is lawful to detain Petitioner and the class under that provision of the Immigration and Nationality Act ("INA"). Finally, the Court should not grant Petitioner the other relief he seeks through the Motion regarding notice and transfer, especially in light of a recent decision in the Central District of California that certified a nationwide class that includes this case's class members.

BACKGROUND[1]

The Court is familiar with the background of this matter. This case began as an individual habeas petition. ECF No. 1. Petitioner, a noncitizen who entered the country without inspection and is now seeking a U-visa, challenged his detention on the ground that he was improperly being detained under a provision of the INA that does not

[1] Although styled as a motion for partial summary judgment, the Motion does not include a statement of undisputed facts as required by D.C.COLO.LCivR 56.1(a). The Court should ignore statements in Petitioner's "Background" section, ECF No. 49 at 3–9, that are argumentative in nature.

provide for release on bond (8 U.S.C. § 1225(b)(2)) and should, instead, have been detained under a different provision that does (8 U.S.C. § 1226(a)). *See generally id.*; *see also* ECF No. 26-1 at 3 ¶ 4 (Ketels Decl.); ECF No. 14-7 at 2 ¶ 10 (Mendoza Gutierrez Decl.). He sought immediate release from Immigration and Customs Enforcement ("ICE") custody or, in the alternative, a bond hearing. ECF No. 1 at 15.

Petitioner then filed an amended class complaint, seeking the same habeas relief for himself and additional, non-habeas relief for himself and a class. ECF No. 6. In particular, on behalf of the class, he seeks relief under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701-06, and the Declaratory Judgment Act, 28 U.S.C. § 2201. *Id.* ¶¶ 15-16. Petitioner also moved for a temporary restraining order and preliminary injunction, ECF No. 14, and for class certification for other noncitizens who also are, or will be (in the government's view) ineligible for bond because they are detained under 8 U.S.C. § 1225(b)(2) rather than 8 U.S.C. § 1226(a), ECF No. 15.

The Court subsequently granted preliminary injunctive relief, ordering Petitioner's immediate release without bond and enjoining the transfer or removal of members of the proposed class. ECF No. 33 at 35–36.[2] On November 21, 2025, the Court conditionally certified a class of individuals detained under 8 U.S.C. § 1225(b)(2) "for purposes of Petitioner's declaratory judgment claim for relief" and appointed Petitioner to represent the class. ECF No. 47 at 14–15. On November 24, 2025, Petitioner then

[2] Petitioner has been released from ICE detention. Because bond is available only to those in detention and Petitioner has already been released, Respondents have not provided Petitioner a bond hearing.

filed the Motion, seeking declaratory relief on behalf of both himself and the class and a final ruling on his own individual habeas claim. ECF No. 49.

On November 25, 2025, a court in the Central District of California certified a nationwide class of noncitizens who entered the country without inspection, were not apprehended upon arrival, and are detained under 8 U.S.C. § 1225(b)(2). *See Maldonado Bautista v. Ernesto Santacruz Jr.*, 5:25-cv-01873-SSS-BFM, ECF No. 82 (C.D. Cal. Nov. 25, 2025). That district court indicated its intent to extend to the class declaratory relief that it had previously granted to the named petitioners in that matter. *Id.* at 14. A status conference has been set in that case for January 16, 2026, to discuss "how the parties will proceed with th[e] matter." *Id.* at 15.

ARGUMENT

I. Petitioner and the class are bringing a claim for habeas relief.

Through the Motion, Petitioner seeks declaratory relief—and nothing else—on behalf of the class. ECF No. 49 at 20. But because this case must be pursued in habeas, Petitioner cannot seek a declaratory judgment *alone* for class members.

A. Petitioner and the class seek relief that must be pursued in habeas.

In this case, Petitioner challenges the legality of his detention and the detention of the class. *See, e.g.*, ECF No. 49 at 8 ("Defendants Unlawfully Detained Mr. Mendoza Gutierrez and the Class Without Bond Hearings"). Many class members currently are detained by ICE in Colorado. See ECF No. 40-1 at 2 ¶ 6 (Hall Decl.). Petitioner seeks to establish their eligibility for release on bond. *See* ECF No. 6 ¶ 12 ("The class seeks declaratory relief that establishes that class members . . . are . . . entitled to an

individualized custody determination regarding bond following apprehension by DHS and, if not released, a bond determination by the Aurora Court.").

A challenge to the legality of detention falls within the core of habeas. *See Rasul v. Bush*, 542 U.S. 466, 474 (2004) ("At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention." (citation omitted)). Similar requests for bond determinations based on challenges to the government's implementation of the INA have routinely been pursued through habeas. *See, e.g.*, *Johnson v. Guzman Chavez*, 594 U.S. 523, 532-33 (2021) (addressing habeas petitions by noncitizens arguing that, because they sought withholding, they were not subject to detention under § 1231 and thus were entitled to bond hearings under § 1226(a)); *Nielsen v. Preap*, 586 U.S. 392, 400 (2019) (addressing habeas petitions by noncitizens arguing that, based on when they were detained, they were not subject to mandatory detention under § 1226(c) and thus were entitled to bond hearings under § 1226(a)).

Indeed, in his Amended Complaint, Petitioner appears to recognize that, in substance, he seeks habeas relief for himself *and* the class: "This case arises under 28 U.S.C. § 2241 (the federal habeas statute) as it challenges Defendants' unlawful detention of Mr. Mendoza Gutierrez (and others similarly situated) . . . ." ECF No. 6 ¶ 15. In the Motion, he expressly seeks habeas relief for himself. ECF No. 49 at 21 (asking the Court to "grant [his] individual petition for a writ of habeas corpus").

Because Petitioner seeks to challenge the legality of detention for the class, Petitioner can pursue such relief for the class only through habeas, and not through another avenue. "[A] party who can petition for a writ of habeas corpus may not instead

seek a declaratory judgment." *Rooney v. Secretary of Army*, 405 F.3d 1029, 1031 (D.C. Cir. 2005) (concluding that it did not matter that the plaintiff did not ask for release if habeas relief is what would naturally flow from a declaratory judgment). Indeed, where a challenge to the legality of detention "fall[s] within the 'core' of the writ of habeas corpus," it "must be brought in habeas," even if the plaintiff has *disavowed* relief in habeas. *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025). In *J.G.G.*, the Supreme Court considered a legal challenge by detainees to removal, brought under the APA. The Court ruled that because this APA challenge, if successful, would imply the invalidity of the legal basis for the detention, it had to be pursued through habeas (not the APA), despite the fact that the detainees had "dismissed their habeas claims" and "[r]egardless of whether the detainees formally request[ed] release from confinement." *Id.* at 671-72. Here, too, Petitioner is requesting a form of relief for himself and the class that would imply the invalidity of the legal basis for their detention—specifically, that they are not lawfully detained under 8 U.S.C. § 1225(b)(2). As in *J.G.G.*, accordingly, this relief must be pursued in habeas—and habeas alone.

B. Because Petitioner and the class must proceed in habeas, they cannot obtain a declaratory judgment without injunctive relief.

Because Petitioner and the class seek relief that must be pursued through habeas, that limits the relief they can seek.

First, any declaratory judgment that would require the government to take action to remedy the (allegedly) wrongful detention would be a grant of the writ of habeas corpus as to the class. But the Court cannot grant declaratory relief that amounts to a class-wide grant of writ of habeas corpus because the INA bars such class-wide relief.

A grant of the writ of habeas corpus would necessarily amount to a class-wide injunction. 8 U.S.C. § 1252(f)(1), though, deprives district courts of "jurisdiction or authority to enjoin or restrain the operation of the provisions of [as relevant here, § 1225] . . . other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated." Class-wide habeas relief that requires the provision of bond determinations or bond hearings for class members would violate § 1252(f)(1). Specifically, § 1252(f)(1) forbids courts from issuing class-wide orders that "require officials to take actions that (*in the Government's view*) are not required" or "to refrain from actions that (*again in the Government's view*) are allowed by" certain provisions of the INA, including both § 1225 and § 1226. *Garland v. Aleman Gonzalez*, 596 U.S. 543, 551 (2022) (emphasis added).

Second, even if the relief Petitioner seeks would not amount to injunctive relief—*i.e.*, it would not require any class-wide action, but would merely be a prelude to later requests for individual habeas relief—such relief is unavailable. Well-settled habeas law prevents this Court from first granting a request for class-wide declaratory relief in a habeas case, and then considering and granting individual habeas petitions. As the Supreme Court has explained, class members in a habeas case cannot obtain declaratory relief that "would not resolve the entire case or controversy as to any one of [the class members' claims], but would merely determine a collateral legal issue governing certain aspects of their pending or future suits." *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998) (explaining that such preliminary relief would not resolve any case or controversy). *Calderon* bars courts from granting class members in a habeas case a

preliminary declaration of their legal rights that can later be enforced as binding in individual habeas cases. *Id.* at 748 (explaining the "need . . . to prevent federal-court litigants from seeking by declaratory judgment to litigate a single issue in a dispute that must await another lawsuit for complete resolution").

Such prohibited class-wide declaratory relief—the type that would not resolve the entire case as to any of the class members—is what Petitioner is asking the Court to grant here. In the Amended Complaint, he acknowledges that declaratory relief he seeks for the class would simply be the precursor to later individual requests for "individual injunctions when requested as necessary to secure the rights of Class members," ECF No. 6 at 26—in other words, individual petitions for writs of habeas corpus. But *Calderon* forecloses such an approach.

In short, the Court should deny the Motion because Petitioner and the class must proceed through habeas, and the declaratory relief they seek cannot be obtained through a habeas class action proceeding.

II. Detention of class members under 8 U.S.C. § 1225(b)(2) is lawful.

Petitioner argues why the detention of the class under 8 U.S.C. § 1225(b)(2) is unlawful and why their detention should, instead, be governed by 8 U.S.C. § 1226(a). ECF No. 49 at 11-20. Respondents have previously explained why the detention of Petitioner and others like him is proper under 8 U.S.C. § 1225(b)(2)(A). ECF No. 26 at 10-18. Below, Respondents highlight several reasons why such detention is proper.

***Maldonado Bautista* does not have preclusive effect.** Before addressing why 8 U.S.C. § 1225(b)(2)(A) is the provision that governs detention of class members,

Respondents first address why the November 25, 2025, decision in *Maldonado Bautista* does not have preclusive effect on the declaratory relief Petitioner seeks here. Under the doctrine of res judicata, "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Pelt v. Utah*, 539 F.3d 1271, 1281 (10th Cir. 2008) (citation omitted). "Under Tenth Circuit law, claim preclusion applies when three elements exist: (1) a final judgment on the merits in an earlier action; (2) identity of parties or privies in the two suits; and (3) identity of the cause of action in both suits." *Id.* (citation omitted).

The court's order in *Maldonado Bautista* does not, at this point, have a preclusive effect on the declaratory judgment claims in this case because the *Maldonado Bautista* court has not issued a final judgment on the merits. That court expressly refused to certify a final judgment under Federal Rule of Civil Procedure 54(b) in its order granting declaratory judgment for the named petitioners. *See Maldonado Bautista*, ECF No. 81 at 17 (Nov. 20, 2025). And in its order on class certification, the court set a status conference for January 16, 2025, regarding "how the parties will proceed with th[e] matter." ECF No. 82 at 15. Because that court has not yet issued a final judgment on the merits, there is no preclusive effect in this matter under Tenth Circuit law.

The dispute is whether 8 U.S.C. § 1225(b) covers the class members.

Petitioner agrees that "people detained under § 1225(b) are subject to mandatory detention on initiation of removal proceedings." ECF No. 49 at 5. The issue, therefore, is whether Petitioner and class members are covered by § 1225(b).

The plain meaning of 8 U.S.C. § 1225(b) covers the class members. In § 1225, Congress provided that certain individuals are "deemed"—*i.e.*, treated as a matter of law—to be "applicants for admission." Specifically, "[a]n alien *present in the United States who has not been admitted* or who arrives in the United States (whether or not at a designated port of arrival . . .) *shall be deemed* for purposes of this chapter an applicant for admission." 8 U.S.C. § 1225(a)(1) (emphasis added). The Supreme Court has recognized this term as a term of art. *See Jennings*, 583 U.S. at 287 ("Under . . . 8 U.S.C. § 1225, an alien who 'arrives in the United States,' or 'is present' in this country but 'has not been admitted,' is *treated as* 'an applicant for admission.'" (emphasis added)). And the INA defines "admission" not as physical entry, but as lawful entry after inspection by immigration authorities. *Id.* § 1101(a)(13)(A); *Mejia Olalde v. Noem*, 25-cv-00168-JMD, 2025 WL 3131942, at *3 (E.D. Mo. Nov. 10, 2025). Thus, under the statute, a noncitizen who enters the country without permission is deemed an "applicant for admission," regardless of the duration of their presence in the United States, their distance from the border, or if they have applied for admission.

In turn, § 1225(b)(2) provides that "an alien who is an applicant for admission" "shall be detained" pending removal proceedings if the "alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1125(b)(2)(A). Petitioner and the class members have not shown they meet this standard, so they are subject to detention under § 1225(b)(2).

All "applicants for admission" are deemed to be "seeking admission." Petitioner argues that this plain reading of the text does not justify his or the class's

detention under § 1225(b)(2)(A) because he believes that the provision applies to a narrower category of applicants for admission that he and the class members allegedly do not belong to—those "seeking admission." ECF No. 49 at 14-15. But the statutory text of § 1225(a)(1), quoted above, shows that being an "applicant for admission" is *deemed as a matter of law* to be "seeking admission"—no additional step is necessary.

Moreover, § 1225(a) later states that "[a]ll aliens . . . who are applicants for admission *or otherwise seeking admission* . . . shall be inspected by immigration officers." 8 U.S.C. § 1225(a)(3). Section 1225(a)(3) confirms that a noncitizen seeks admission simply by meeting the definition of being deemed an applicant for admission, *or* can "otherwise" seek admission by directly applying for admission. In other words, every "applicant for admission" is inherently and necessarily "seeking admission."

Even when a noncitizen has been physically present in the country for many years, they can "still be an applicant for *lawful* entry, seeking legal 'admission.'" *Mejia Olalde*, 2025 WL 3131942, at *3 (emphasis in original). Congress knows how to limit the scope of the text geographically and temporally when it wants to. For example, § 1225(b)(1)(A)(i) is limited to noncitizens "who [are] arriving in the United States." Section 1225(b)(2) has no similar language limiting applicability only to noncitizens who are in the process of "arriving." And § 1225(b)(1)(A)(iii) is limited to noncitizens who cannot show they have been physically in the United States "continuously for the 2-year period immediately prior." But § 1225(b)(2) contains no time limit. As the geographic and temporal limits in the neighboring provision demonstrate, "[i]f Congress meant to

say that an alien no longer is 'seeking admission' after some amount of time in the United States, Congress knew how to do so." *Mejia Olalde*, 2025 WL 3131942, at *4.

8 U.S.C. § 1226 does not change the scope of § 1225. Petitioner argues that noncitizens who enter without inspection and are not apprehended at the border are not covered by § 1225(b)(2)(A), but by § 1226. ECF No. 49 at 13. But Petitioner's arguments about § 1226 do not change § 1225's clear meaning.

Petitioner points out that § 1226(c), which requires mandatory detention in certain circumstances, addresses certain noncitizens who are inadmissible for entering without inspection. As support for this reading, he points to the Laken Riley Act, which amended § 1226(c) to impose mandatory detention on noncitizens who are present in the country without having been admitted *and* have been charged with certain crimes. *Id.* at 15-16 (citing 8 U.S.C. § 1226(c)(1)(E)(ii)). He argues that "[i]f noncitizens like class members are already ineligible for bond under § 1226(a) because they are detained under § 1225, there simply would have been no need for Congress to exclude them from bond" through the Laken Riley Act. *Id.* at 16.

But the Laken Riley Act did not make § 1225(b)(2)(A) superfluous. That Act requires mandatory detention of *criminal* noncitizens who are "inadmissible" under 8 U.S.C. § 1182(a)(6)(A), (a)(6)(C), or (a)(7). *See* 8 U.S.C. § 1226(c)(E)(i)-(ii). Both (a)(6)(C) and (a)(7) apply to inadmissible noncitizens who were admitted in error, as well as those never admitted. That means there is no surplusage, as § 1225(b)(2) does not apply to noncitizens who were admitted *in error*; it applies to noncitizens who were never admitted *at all*.

To be sure, the Laken Riley Act's application to noncitizens who are inadmissible under § 1182(a)(6)(A)—for being "present . . . without being admitted or paroled"—overlaps with § 1225(b)(2)(A) for some aliens. But "[r]edundancies are common in statutory drafting," and are "not a license to rewrite or eviscerate another portion of the statute contrary to its text." *Barton v. Barr,* 590 U.S. 222, 239 (2020); *see Mejia Olalde*, 2025 WL 3131942, at *4 ("[E]ven assuming there were surplusage, that cannot trump the plain meaning of § 1225(b)(2)"). That is especially true where, as here, there is overlap under *any* possible reading of the statute. *See Microsoft Corp. v. I4I Ltd. P'ship*, 564 U.S. 91, 106 (2011) ("[T]he canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute." (internal quotation omitted)). After all, this portion of the Laken Riley Act also requires detention of arriving aliens if they meet the offense criteria, *see* 8 U.S.C. § 1226(c)(1)(E)(i)—but those noncitizens are subject to § 1225(b)(2)(A), too. Some redundancy is unavoidable.

Besides, § 1225(b)(2) and § 1226(c) use different language that reflects the distinct obligations each section imposes. Section 1226(c), which applies "when [a criminal] alien is released" from another entity's custody, specifies that the "Attorney General shall take into custody" the noncitizen. That provision directs the Executive to take affirmative steps to apprehend covered noncitizens when they are released from state or federal custody. *See Nielson*, 586 U.S. at 414 (explaining that "the duty to arrest is triggered[] upon release from criminal custody"). Section 1225(b)(2), by contrast, applies "if [an] examining officer determines" that the noncitizen "is not clearly and beyond a doubt entitled to be admitted," and directs that they "shall be detained."

Put simply, § 1225(b)(2) does not itself impose an obligation on the Executive to apprehend such a noncitizen; it applies once an examining officer has encountered the applicant for admission. *Id.* Because § 1226(c) "regulates not only what the Attorney General must do (take aliens into custody), but also when the Attorney General must do so," while § 1225 "does not specify a timeline," Respondents' reading of § 1225 "does not render the Laken Riley Act superfluous." *Mejia Olalde*, 2025 WL 3131942, at *4.

***Jennings* supports Respondents' interpretation**. In *Jennings*, the Supreme Court reversed a decision that had "impos[ed] an implicit 6-month time limit on an alien's detention" under §§ 1225(b) and 1226. 583 U.S. at 292. In reaching that holding, the Court discussed the scope of § 1225. It explained that an alien who "'is present' in this country but 'has not been admitted,' is treated as 'an applicant for admission.'" *See Jennings*, 583 U.S. at 287 (quoting § 1225(a)(1)). And, consistent with Respondents' reading, the Court described § 1225(b)(2)(A)—the mandatory detention provision—as a "catchall provision that applies to *all applicants for admission* not covered by §1225(b)(1)." *Id.* (emphasis added). The Court did not suggest that the scope of § 1225(b)(2) is limited to a purported subset of those applicants for admission—*i.e.*, those who are also doing something else to "seek[] admission."

Later in the opinion, the Supreme Court referred to § 1226, stating that the INA "authorizes the Government to detain certain aliens already *in the country* pending the outcome of removal proceedings under §§ 1226(a) and (c)." *Id.* at 289 (emphasis added). But that language is not inconsistent with Respondents' interpretation: it allows that § 1226 is the exclusive source of detention authority for the substantial category of

noncitizens who were admitted into the United States (and so are "in the country") but are now removable. Indeed, in context, that language in *Jennings* appears to refer to noncitizens who are "in and admitted to the United States." 8 U.S.C. § 1227(a). The reference to noncitizens "present in the country" specifically cites § 1227(a), which covers only admitted noncitizens. *See Jennings*, 583 U.S. at 288. And this language does not suggest that § 1226 is the sole detention authority for "aliens already in the country"; after all, the Court had already recognized the separate mandatory detention authority in § 1225(b)(2)(A).

Petitioner's interpretation would subvert Congress's intent. Petitioner's reading would require detention for those who present themselves for inspection at the border in compliance with law, but would grant bond hearings to noncitizens who enter the United States unlawfully, evade immigration authorities, and remain unlawfully for years until an encounter with immigration authorities.

This result—rewarding those who enter unlawfully and evade authorities—would undermine one of the express objectives of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 ("IIRIRA"). Before the passage of IIRIRA, the INA "provided for two types of removal proceedings: deportation hearings and exclusion hearings." *Hose v. I.N.S.*, 180 F.3d 992, 994 (9th Cir. 1999) (en banc). A noncitizen who arrived at a port of entry would be placed in "exclusion proceedings and subject to mandatory detention, with potential release solely by means of a grant of parole." *Matter of Yajure Hurtado*, 29 I & N Dec. 216, 223 (BIA 2015); *see* 8 U.S.C. § 1225(a)-(b) (1995); *id.* § 1226(a) (1995). In contrast, a noncitizen who physically entered the

United States unlawfully would be placed in deportation proceedings. *Hing Sum v. Holder,* 602 F.3d 1092, 1099-1100 (9th Cir. 2010). Those in deportation proceedings, unlike those in exclusion proceedings, "were entitled to request release on bond." *Hurtado*, 29 I. & N. Dec. at 223 (citing 8 U.S.C. § 1252(a)(1) (1994)). This meant that noncitizens who entered the United States unlawfully were given "equities and privileges in immigration proceedings that [were] not available to aliens who present[ed] themselves for inspection" at the border, including the right to secure release on bond. H.R. Rep. No. 104-469, pt. 1, at 225 (1996).

Through IIRIRA, Congress meant to dispense with this regime. *See id.*; *see also Hing Sum*, 602 F.3d at 1100 (explaining that "IIRIRA addressed th[e] anomaly" of noncitizens who had entered without inspection being able to "take advantage of the greater procedural and substantive rights afforded in deportation proceedings"). But Petitioner's interpretation of § 1225(b)(2) and § 1226(a) would bring it back, undoing Congress's express objective.

III. Judgment under Rule 54(b) is not appropriate.

Petitioner requests that the Court enter final judgment as to Counts I and II of the Amended Complaint pursuant to Rule 54(b). ECF No. 49 at 21. The Court should not.

Rule 54(b) provides, in pertinent part, that "[w]hen an action presents more than one claim for relief . . . the court may direct entry of a final judgment as to one or more, but fewer than all, claims . . . only if the court expressly determines that there is no just reason for delay." "The purpose of Rule 54(b) is to avoid the possible injustice of a delay in entering judgment on a distinctly separate claim or as to fewer than all of the

parties until the final adjudication of the entire case by making an immediate appeal available." *Okla. Tpk. Auth. v. Bruner*, 259 F.3d 1236, 1241 (10th Cir. 2001) (internal quotation marks omitted). "Rule 54(b) entries are not to be made routinely . . . [and] trial courts should be reluctant to enter Rule 54(b) orders since the purpose of this rule is a limited one: to provide a recourse for litigants when dismissal of less than all their claims will create undue hardships." *Id.* at 1242 (internal quotations omitted).

To determine whether an order is "final," "a district court must first consider the separability of the adjudicated and unadjudicated claims." *Inola Drug, Inc. v. Express Scripts, Inc.*, 390 F. App'x. 774, 775 (10th Cir. 2010) (unpublished) (citing *Jordan v. Pugh*, 425 F.3d 820, 826 (10th Cir. 2005)). The controlling question is whether the adjudicated claim is "distinct and separable from the claims left unresolved." *Jordan*, 425 F.3d at 826 (citation omitted). "[C]ourts consider whether the allegedly separate claims turn on the same factual questions, whether they involve common legal issues, and whether separate recovery is possible." *Id.* at 827.

Here, Petitioner asks the Court to certify any declaratory relief granted regarding Claims I and II as final judgments. Claims I and II are that detention of the class violates the INA and its implementing regulations. ECF No. 6 ¶¶ 73-80. Claims III and IV are that detention of the class violates the APA and the Due Process Clause. *Id.* ¶¶ 81-89. Claims III and IV concern the same factual and legal issues as Claims I and II—namely, whether individuals that entered the country without inspection and have been residing in the United States are properly detained under 8 U.S.C. § 1225(b)(2) and thus not entitled to a bond hearing, or under 8 U.S.C. § 1226(a) and thus entitled to

a bond hearing. When there is such an overlap between the issues in the decided and undecided claims, certifying final judgment is not permissible. *Cf. Great Lakes Ins., S.E. v. Highland W. LLLP*, 19-cv-00508-LTB, 2020 WL 14009922, at *3 (D. Colo. Dec. 30, 2020) (concluding that where the adjudicated claim was not distinct and separable from the remaining claims, there was not a final decision for purposes of Rule 54(b)). The Court should not certify Claims I and II under Rule 54(b).

IV. The Court should not grant Petitioner any of the further relief he seeks.

In the Motion, Petitioner now requests more than just declaratory relief.

Notice to class members. Petitioner asks the Court to "order the Parties to confer within ten days of the Court's order regarding the content of a notice to be provided to the Class explaining their rights." ECF No. 49 at 21. The Court should not grant Petitioner's request. The *Maldonado Bautista* court has certified a nationwide class that would include the class members here. The Court should wait to see what notice, if any, is provided to nationwide class members related to the order in *Maldonado Bautista*. Requiring notice to class members based on this case could result in duplicative notices and potential confusion for individuals trying to determine what class they might be a member of. At a minimum, the Court should wait until after the January 16, 2026, status conference in *Maldonado Bautista* to determine whether notice should be provided in this case.

Notice five days before transfers. At present, the Court has entered an injunction barring the transfer of class members from the District of Colorado. *See* ECF No. 47 at 15. Petitioner now appears to indicate that such relief is not needed, stating

that he "does not ask the court to enjoin further transfers of class members." ECF No. 49 at 21. Instead, he requests that the Court "should order Defendants to provide Class Counsel with notice any time a class member is to be transferred out of the District of Colorado, so that Class Counsel can monitor compliance with the declaratory judgment." *Id.* Specifically, a "notice should be provided each Monday by 5:00 pm MT and should include the names and alien file numbers of all class members with the status of any bond proceedings for each person." *Id.* n.19. And he requests that Respondents should be required to "provide the class member, the class member's immigration counsel (if applicable), and class counsel notice of the intent to transfer them five days before effectuating the transfer." *Id.*

The Court should not grant any such relief for multiple reasons.

Now that the *Maldonado Bautista* court has certified a nationwide class and ordered declaratory relief for that class, it is not clear that the injunction barring transfer of class members to other districts or the proposed notice requirement serves any purpose. All individual class members in this matter are members of the nationwide class certified in *Maldonado Bautista*. Thus, all the class members will be covered by any declaratory judgment issued in that case regardless of whether they are being detained by Respondents in the District of Colorado or at any other facility in the United States. The Court should not impose any requirements on the transfer of class members when any such requirement would serve no practical purpose.

In addition, the Court should not grant Petitioner's proposed order requiring notice five days before transfer of class members because that relief would (like the

Court's current bar on transfer of class members) violate the INA. Congress has provided that "[t]he Attorney General shall arrange for appropriate places of detention for aliens detained pending removal or a decision on removal." 8 U.S.C. § 1231(g)(1). And in the INA, Congress limited review of that placement decision in multiple ways.

First, the INA bars class-wide relief enjoining the government's placement decisions under § 1231. Section 1252(f)(1) deprives district courts of "jurisdiction or authority to enjoin or restrain the operation of the provisions of [as relevant here, § 1231] . . . other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated." The Tenth Circuit, in *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999), concluded that "§ 1252(f) forecloses jurisdiction to grant class-wide injunctive relief to restrain operation of §§ 1221–31 by any court other than the Supreme Court." The Tenth Circuit went on to explain that "[i]t is therefore apparent that a district court has no jurisdiction to restrain the Attorney General's power to transfer aliens to appropriate facilities by granting injunctive relief in a *Bivens* class action suit." *Id.* There is no reason why the Tenth Circuit's reasoning in *Van Dinh* would lead to a different conclusion in a non-*Bivens* class action. Here, the Court's current order prevents transfer of class members.

Second, the INA deprives courts of the authority to review discretionary decisions, such as those regarding where to detain noncitizens. 8 U.S.C. § 1252(a)(2)(B)(ii) provides that "no court shall have jurisdiction to review . . . any . . . decision or action of the Attorney General . . . the authority for which is specified under this subchapter to be in the discretion of the Attorney General." In *Van Dinh*, the Tenth

Circuit explained that 8 U.S.C. § 1231(g)(1) provided "[t]he Attorney General[ ] discretionary power to transfer aliens from one locale to another, *as she deems appropriate*." 197 F.3d at 433 (emphasis added). The court concluded that "[b]ecause the discretionary decision to transfer aliens from one facility to another and the correlative discretionary decision to grant or deny relief from such a transfer is a 'decision . . . under this subchapter,' judicial review of that decision is expressly barred by § 1252(a)(2)(B)(ii)." *Id.* at 434 (citations omitted).

Under the Tenth Circuit's decision in *Van Dinh*, Petitioner's proposed order would violate both of these provisions. The proposed order would effectively enjoin Respondents from any transfer for a minimum of five days after they exercise the § 1231(g) discretion to transfer a class member. That relief—like the Court's current limit on transfer—would be barred by §§ 1252(f)(1) and 1252(a)(2)(B)(ii).

CONCLUSION

For the foregoing reasons, the Court should deny the Motion. The declaratory judgment that Petitioner and the class ostensibly seek would imply the invalidity of their detention and thus must be pursued via habeas. But Petitioner and the class cannot obtain that declaratory relief in a habeas case—either by seeking a class-wide habeas writ, *or* by not seeking one and leaving such relief for later individual proceedings where such writs would be granted. And 8 U.S.C. § 1225(b)(2) authorizes the detention of the class here. Also, the Court should not grant any of the additional requested relief given the nationwide class certified in *Maldonado Bautista* and the INA provisions barring such relief.

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PETER MCNEILLY
United States Attorney

s/ Benjamin Gibson
Benjamin Gibson
Brad Leneis
Assistant United States Attorneys
1801 California Street, Suite 1600
Denver, Colorado 80202
Telephone: (303) 454-0100
benjamin.gibson@usdoj.gov
brad.leneis2@usdoj.gov

Attorneys for Respondents-Defendants Executive Office of Immigration Review, U.S Department of Homeland Security, Aurora Immigration Court, and U.S. Immigration and Customs Enforcement, and Juan Baltasar, Robert Hagan, Kristi Noem, Todd Lyons, Pamela Bondi, and Sirce Owen in their official capacities

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 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
Benjamin Gibson
U.S. Attorney's Office