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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

CARMEN ARACELY PABLO SEQUEN, YULISA ALVARADO AMBROCIO, MARTIN HERNANDEZ TORRES, and LIGIA GARCIA, Plaintiffs-Petitioners, v. SERGIO ALBARRAN, MARCOS CHARLES, THOMAS GILES, MONICA BURKE, KRISTI NOEM, U.S. DEPARTMENT OF HOMELAND SECURITY, TODD M. LYONS, SIRCE E. OWEN, PAMELA BONDI, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, UNITED STATES DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION AND REVIEW, UNITED STATES OF AMERICA, Defendants-Respondents.	CASE NO. 25-cv-06487-PCP **RESPONDENTS' OPPOSITION TO PETITIONERS' MOTION FOR PROVISIONAL CLASS CERTIFICATION** Date: November 10, 2025 Time: 10:00 a.m. Courtroom: Courtroom 8 – 4th Floor Honorable P. Casey Pitts United States District Judge

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I. INTRODUCTION

This case is an action originally brought as a habeas petition by a single petitioner on the single issue of the Government's authority to detain her as an "applicant for admission" under 8 U.S.C. § 1225 of the Immigration and Nationality Act ("INA"). But having procured a favorable preliminary injunction in this forum rejecting the Government's interpretation of that statute as applied to that single petitioner, Petitioners have attempted to transform this routine habeas case into class action on local and national immigration policies. While this case should be dismissed, class certification also is improper.[1]

First, 8 U.S.C. § 1252(e)(1)(B) bars this Court from certifying either of Petitioners' proposed classes. Second, there is no "live" case in light of the Court's previous preliminary injunction rulings on Petitioners' habeas claims. Petitioners lack standing, their claims are not ripe for adjudication, and their claims are moot. Third, this case does not qualify for the "exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)). Fourth, Petitioners fail to establish that injunctive or corresponding declaratory relief is appropriate for both of the proposed classes because 8 U.S.C. § 1252(f)(1) bars classwide relief that would enjoin the Federal Government's operation of 8 U.S.C. § 1225(b)(2) and because any other relief they seek requires individualized determinations not appropriate on a classwide basis. Finally, Ninth Circuit precedent precludes Petitioners' class arising out of claims challenging the conditions of their confinement. Accordingly, the Court should deny Petitioners' motion for class certification. Petitioners have failed to *prove* that they meet the foundational requirements of Rule 23 of the Federal Rules of Civil Procedure to certify a class.

II. LEGAL BACKGROUND

Congress created a multi-layered statutory scheme for the civil detention of aliens during an initial inspection, pending removal proceedings, and post removal proceedings. *See, e.g.*, 8 U.S.C. §§ 1225, 1226, 1231. Where an alien falls within this statutory scheme is determined by the time and circumstances of entry, as well as the stage of the removal process.

[1] The Government has filed a motion to dismiss the amended complaint. ECF No. 106. The Court should defer ruling on Petitioners' motion for class certification until after it rules on the pending motion to dismiss. *See Wright v. Shock*, 742 F.2d 541, 545-46 (9th Cir. 1984).

A. Applicants for Admission.

"The phrase 'applicant for admission' is a term of art denoting a particular legal status." *Torres v. Barr*, 976 F.3d 918, 927 (9th Cir. 2020) (en banc). Section 1225(a)(1) deems "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States" even if not at a designated port of arrival as "applicants for admission." 8 U.S.C. § 1225(a)(1). Admission is the "lawful entry of an alien into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13).

Section 1225(a)(1) was added to the INA as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"). Pub. L. No. 104-208, § 302, 110 Stat. 3009-546. Before the IIRIRA, "immigration law 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 deportation hearing was a proceeding against an alien physically present in the United States, whereas an exclusion hearing was against an alien outside of the United States seeking admission. *Id.* (citing *Landon v. Plasencia*, 459 U.S. 21, 25 (1982)). Aliens who entered without inspection had greater rights in deportation proceedings, while aliens who presented themselves at ports of entry for inspection were subjected to summary exclusion proceedings. *Hing Sum v. Holder*, 602 F.3d 1092, 1100 (9th Cir. 2010); *see also Plasencia*, 459 U.S. at 25-26. Pre-IIRIRA, aliens who attempted to lawfully enter the United States were in a worse position than aliens who crossed the border unlawfully. *See Hing Sum*, 602 F.3d at 1100; *see also* H.R. Rep. No. 104-469, pt. 1, at 225-229. The IIRIRA addressed this inequity by replacing deportation and exclusion proceedings with general removal proceedings. *Hing Sum*, 602 F.3d at 1100.

The IIRIRA also added § 1225(a)(1) to "ensure[] that all immigrants who have not been lawfully admitted, regardless of their physical presence in the country, are placed on equal footing in removal proceedings under the INA." *Torres*, 976 F.3d at 928; *see also* H.R. Rep. 104-469, pt. 1, at 225 (explaining that § 1225(a)(1) replaced "certain aspects of the current 'entry doctrine,'" under which aliens who entered the United States without inspection gained equities and privileges in immigration proceedings that were unavailable to aliens who present themselves for inspection at ports of entry). The provision "places some physically-but not-lawfully present noncitizens into a fictive legal status for

purposes of removal proceedings." *Torres*, 976 F.3d at 928.

B. IIRIRA's Removal Proceedings.

The IIRIRA established two distinct types of removal proceedings: "expedited removal" and "full removal". Pub. L. No. 104-208, 110 Stat. 3009, 3009-546. Removal proceedings under § 1225(b)(1) are known as "expedited removal proceedings." *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 109-113 (2020). Two groups of aliens are subject to expedited removal, (1) "arriving aliens" and (2) aliens who "ha[ve] not been admitted or paroled into the United States" and have not been "physically present in the United States" for two years immediately prior to the date of the determination of inadmissibility. 8 U.S.C. § 1225(b)(1)(A)(i)-(iii). "Arriving aliens" are defined by regulation as "an applicant for admission coming or attempting to come into the United States at a port-of-entry …" 8 C.F.R. § 1.2.

Expedited removal proceedings are conducted by an immigration officer, not an Immigration Judge ("IJ"). If the alien is inadmissible and does not indicate intent to apply for asylum, the officer, after supervisory review, issues a Notice and Order of Expedited Removal. *Id.* § 235.3(b)(2)(i). The alien has no right to appeal to an IJ, the Board of Immigration Appeals ("BIA") or any other court. *Id.* § 235.3(b)(2)(ii); 8 U.S.C. § 1252(a)(2)(A)(i). Unlike full proceedings, which often take place over several months, the expedited removal process can take place in hours or days. *Coal. for Humane Immigrant Rts. v. Noem*, No. 25-CV-872 (JMC), 2025 WL 2192986, at *4 (D.D.C. Aug. 1, 2025).

Removal proceedings under § 1229a are commonly referred to as "full removal proceedings" or "240 removal proceedings" due to the section of the INA they appear in. 8 U.S.C. § 1229a; INA § 240. The proceedings take place before an IJ, a Department of Justice ("DOJ") employee. 8 U.S.C. § 1229a(a)(1), (b)(1). Aliens in 1229a proceedings have an opportunity to apply for relief from removal. *See, e.g.*, 8 U.S.C. § 1158 (asylum); 8 U.S.C. § 1229b(b) (cancellation of removal for nonpermanent residents); 8 U.S.C. § 1255 (adjustment of status). These are adversarial proceedings in which the alien has the right to hire counsel at no expense to the Government, examine and present evidence, and cross-examine witnesses. 8 U.S.C. § 1229a(b)(4). Either party may appeal the IJ decision to the BIA. *Id.* § 1229a(b)(4)(C); *see also* 8 C.F.R. § 1240.15. If the BIA issues a final order of removal, the alien may also appeal the decision to a U.S. court of appeals. 8 U.S.C. § 1252.

C. Detention Under the INA.

The INA authorizes civil detention of aliens during removal proceedings and "[d]etention is necessarily part of this deportation procedure." *Carlson v. Landon*, 342 U.S. 524, 538 (1952); *see also* 8 U.S.C. §§ 1225(b), 1226(a), and 1231(a). Each of "these statutes apply at different stages of an alien's detention." *Diouf v. Mukasey*, 542 F.3d 1222, 1228 (9th Cir. 2008). "Where an alien falls within this statutory scheme can affect whether his detention is mandatory or discretionary, as well as the kind of review process available to him if he wishes to contest the necessity of his detention." *Prieto-Romero v. Clark*, 534 F.3d 1053, 1057 (9th Cir. 2008).

Section 1225 governs detention of "applicants for admission." 8 U.S.C. § 1225(a)(1). Applicants for admission "fall into one of two categories, those covered by § 1225(b)(1) and those covered by § 1225(b)(2)." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). Section 1225(b)(1) applies to aliens arriving in the United States and "certain other" aliens "initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation." *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). Section 1225(b)(2) is "broader" and "a catchall provision." *Jennings*, 583 U.S. at 287. It "applies to all applicants for admission not covered by §1225(b)(1)." *Id.* Under § 1225(b)(2), an alien "who is an applicant for admission" shall be detained for a removal proceeding "if the examining immigration officer determines that [the] alien seeking admission is not clearly and beyond a doubt entitled to be admitted." 8 U.S.C. § 1225(b)(2)(A).

Section 1226 provides for detention of aliens "on a warrant" pending a decision on whether to remove the alien. An alien "may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). Under § 1226(a), the Government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole.[2] An alien can also request a custody redetermination (often called a bond hearing) by an IJ at any time before a final

[2] Being "conditionally paroled under the authority of § 1226(a)" is distinct from being "paroled into the United States under the authority of § 1182(d)(5)(A)."*Ortega-Cervantes v. Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on "conditional parole" under § 1226(a) is not a parole, the alien was not eligible for adjustment of status under § 1255(a)); *Matter of Castillo-Padilla*, 25 I&N Dec. 257, 259-63 (BIA 2010) (same).

order of removal is issued. *See* 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1), 1003.19.

While § 1226(a)'s detention authority is discretionary, § 1226(c) mandates detention of "certain criminal aliens pending their removal proceedings." *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 206 (3d Cir. 2020). Aliens are "not statutorily entitled to a bond hearing" under § 1226(c). *Avilez v. Garland*, 69 F.4th 525, 527 (9th Cir. 2023) (en banc). Congress enacted this mandate because it was "justifiably concerned that deportable criminal aliens who are not detained continue to engage in crime and fail to appear for their removal hearings in large numbers." *Demore v. Kim*, 538 U.S. 510, 513 (2003). IJs lack authority to release aliens detained under § 1226(c). *See* 8 C.F.R. § 1003.19(h)(2)(i)(D).

III. FACTUAL AND PROCEDURAL BACKGROUND

A. History of Courthouse Arrests Through Multiple Presidential Administrations.

1. Policies During Barack Obama's Presidency.

Since at least 2014, U.S. Immigration and Customs Enforcement ("ICE") policy has engaged in civil immigration enforcement actions in or near courthouses. *See* Declaration of Douglas Johns ("Johns Decl.") ¶ 2, Ex. A, ECF No. 107. In a March 19, 2014 Memorandum entitled "Enforcement Actions at or Near Courthouses" (the "March 2014 Guidance"), ICE stated that "[e]nforcement actions at or near courthouses will only be undertaken against Priority 1 aliens," including aliens engaged in or suspected of terrorism or espionage or who otherwise pose a danger to national security, and those aliens who pose a serious risk to public safety as shown by certain criminal activity. *See id.* After March 2014, ICE's guidance with respect to courthouse arrests has been amended several times to reflect changes in U.S. Department of Homeland Security ("DHS") enforcement priorities. In guidance dated January 26, 2015, ICE revised the March 2014 Guidance to reflect enforcement priorities set forth in then-DHS Secretary Jeh Johnson's November 20, 2014, Memorandum, entitled "Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants." *See id.* ¶ 3, Ex. B. The guidance dated January 26, 2015, still permitted enforcement actions at or near courthouses under certain circumstances. *See id.*

2. Policies During President Donald Trump's First Presidency.

On January 25, 2017, President Trump issued Executive Order 13,768, which expanded the categories of aliens to be prioritized for removal. 82 Fed. Reg. 8799 (Jan. 25, 2017). To implement the

Executive Order, on January 10, 2018, ICE issued the Memorandum entitled "Directive 11072.1: Civil Immigration Enforcement Actions Inside Courthouses" (the "2018 Directive"), which revised ICE's policy "regarding civil immigration enforcement actions inside federal, state, and local courthouses." *See* Johns Decl. ¶ 3, Ex. C at 1. The 2018 Directive explained that "civil immigration enforcement actions taken inside courthouses can reduce safety risks to the public, targeted alien(s) and ICE officers and agents," because "[i]ndividuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband." *Id.*

3. Policies During Joseph Biden's Presidency.

On January 20, 2021, President Biden issued Executive Order 13,993, "Revision of Civil Immigration Enforcement Policies and Priorities," 86 Fed. Reg. 7051 (Jan. 20, 2021), which revoked Executive Order 13,768. On the same day, Acting DHS Secretary David Pekoske issued the Memorandum which amended the agency's immigration enforcement priorities. *See* Johns Decl. ¶ 5, Ex. D. DHS revoked the 2018 Directive and issued interim guidance "governing [ICE] civil immigration enforcement actions in or near courthouses" ("2021 Guidance"). *See id.* The 2021 Guidance provided that a civil immigration enforcement action may be taken in or near a courthouse under certain conditions. *See id.* ¶ 5, Ex. D at 2. In the absence of hot pursuit and subject to advance supervisory approval, ICE officers were permitted to undertake a civil immigration enforcement action in or near a courthouse against an individual posing a threat to public safety if there was no other safe alternative location or it would be too difficult to undertake the action elsewhere. *Id.*

B. Current Courthouse Arrest Guidance.

On January 20, 2025, President Trump issued Executive Order 14,159, which, among other things, revoked the prior administration's civil immigration enforcement policies and priorities and stated that it "is the policy of the United States to faithfully execute the immigration laws against all inadmissible and removable aliens, particularly those aliens who threaten the safety or security of the American people." 90 Fed. Reg. 8443, 8443 (Jan. 20, 2025). The next day, Acting ICE Director, Caleb Vitello, issued "Policy Number 11072.3" in a Memorandum entitled "Interim Guidance: Civil Immigration Enforcement Actions in or near Courthouses" ("Interim Guidance"). *See* Johns Decl. ¶ 6, Ex. E. Shortly thereafter, on May 27,

2025, Todd M. Lyons, Acting ICE Director, issued the revised Memorandum entitled, "Civil Immigration Enforcement Actions In or Near Courthouses" (the "2025 Courthouse Arrest Guidance") which superseded the Interim Guidance. *See* Johns Decl. ¶ 7, Ex. F at 1.

The 2025 Courthouse Arrest Guidance explains that civil immigration enforcement actions taken inside courthouses "can reduce safety risks to the public, targeted alien(s) and ICE officers and agents," because "[i]ndividuals entering courthouses are typically screened by law enforcement personnel to search for weapons and other contraband." *See id.* And civil immigration enforcement actions in or near courthouses are consistent with the actions of "[f]ederal, state and local law enforcement officials" who "routinely engage in enforcement activities in or near courthouses because many individuals appear in courthouses for unrelated criminal or civil violations." *Id.* The 2025 Courthouse Arrest Guidance further explains that courthouse arrests "are often required when jurisdictions refuse to cooperate with ICE," such as refusing "to honor immigration detainers and transfer aliens directly to ICE custody." *Id.*

C. Respondents' Detention Policy.

1. Declaration of National Emergency and Detention Policy.

On January 20, 2025, President Trump issued Executive Orders including "Protecting the American People Against Invasion" and "Securing Our Borders." *See* Declaration of Andrew Kaskanlian ("Kaskanlian Decl.") ¶ 5, Ex. O; *see also* Johns Decl. ¶ 9, Ex. H. These Executive Orders declared a national emergency and ordered "the detaining, to the maximum extent authorized by law, aliens apprehended on suspicion of violating Federal or State law, until such time as they are removed from the United States." *See id.* at 1. ICE issued the Nationwide Hold Room Waiver ("Detention Policy") in response to President Trump's Executive Orders declaring a national emergency and because the daily population of detained aliens had increased due to President Trump's commitment to enforcing the immigration laws of the United States. *See id.* The Detention Policy "allows for aliens who are recently detained, or are being transferred to or from a court, detention facility, or holding facility, or other agency to be housed in a holding facility, for up to, but not exceeding 72 hours, absent exceptional circumstances." *See id.*

Under the Detention Policy, ICE and DHS remain committed to ensuring the safety of detainees. *See id.* at 2. Respondents must follow the existing and extensive policies, procedures, and guidance governing holding facilities. *See id.* at 2; Kaskanlian Decl. ¶ 5, Exs. R-S. ICE will only hold detainees "for the least amount of time required for their processing, transfer, release, or repatriation." *See id.* at 2; *see also* Kaskanlian Decl. ¶ 16. The amount of time a particular detainee is detained varies based on different circumstances and factors. *See* Kaskanlian Decl. ¶¶ 16-17. While some detainees may be held longer than 12 hours based on the availability of detention centers, arrest numbers, and transportation schedules, many detainees are released or transferred under twelve hours. *See* Kaskanlian Decl. ¶¶ 12, 15; *see also* Declaration of David Solano at 2, ECF No. 71 (transferred within six hours); Declaration of Jacqueline Nunez at 2, ECF No. 72 (transferred within 5.5 hours); Declaration of Kaymaris Miranda at 2, ECF No. 76 (transferred within 4.5 hours); Declaration of Yessica Torres at 2, ECF No. 82 (transferred within 6.5 hours). The Detention Policy will remain in effect for "one calendar year," when Respondents will review it and determine if it needs to be extended. *See* Kaskanlian Decl. ¶ 5, Ex. O.

2. Respondents' Policies, Procedures, and Standards.

DHS and ICE have holding facilities around the United States to process aliens who have been arrested for immigration violations including, but not limited to, arrests pursuant to final removal orders. *See* Kaskanlian Decl. ¶ 7. Aliens are processed at holding facilities until they are transferred to an ICE detention facility. *See id.*

The ICE Holding Facility at 630 Sansome Street in San Francisco, California ("630 Sansome") is one of these holding facilities. *See id.* at ¶ 6. 630 Sansome is critical to the mission of Enforcement and Removal Operations ("ERO") San Francisco's mission. *See id.* at ¶ 13. ERO San Francisco could not execute its arrest and detention authority and comply with existing policies and procedures to enforce the laws of the United States under the INA without the operation of 630 Sansome. *See id.*

630 Sansome is governed by ERO Directive 11087.2, "Operations of ERO Holding Facilities," and ICE Detention Standards in addition to Executive Orders based on national emergencies. *See id.* at ¶ 5, Exs. N-O. Under ERO Directive 11087.2, Respondents are required to annually assess holding facilities including 630 Sansome to validate compliance with national policies and procedures. *See id.* at ¶ 7. On

March 31, 3025, Respondents completed that assessment. *See id.* 630 Sansome had no deficiencies. *See id.* at ¶ 5, Ex. P. 630 Sansome was compliant with every inspection standard including, but not limited to: "Holding Facility Supervision and Monitoring; Upgrades to Facilities and Technologies; Placement of Detainees with Specialized Needs; Property and Written/Electronic Logs; and Evacuation Plan, Medical Emergencies, and Sexual Abuse and Prevention." *See id.* at ¶ 8.

The facilities at 630 Sansome consist of, among other things, six large cells and three small cells. *See id.* at ¶ 9. The sitting capacity of the large cells is 30 people, but the sleeping capacity is ten. *See id.* The sitting capacity of the small cells is three people, but the sleeping capacity is one person. *See id.* ERO rarely uses the small cells. *See id.* If ERO must use the small cells, it does so to segregate people who are a safety risk. *See id.* In addition to a window and metal bench, each cell has a toilet and a sink that is separated from the rest of the cell by a privacy wall. *See id.* at ¶ 14. The lights are kept on continuously for the safety of the detainees as required by the ICE National Detention Standards. *See id.* The continuous lighting supports continuous observation by staff, rapid response in case of emergencies, and incident prevention and reduces opportunities for self-harm, assault, harassment, or intimidation. *See id.* Officers frequently monitor the cells by reviewing video camera footage, and officers cannot adequately review video camera footage if the lights are dimmed. *See id.* at ¶ 17.

ERO conducts a risk assessment of each person when he or she is detained based on, among other factors, age, sex, criminal history, and gang affiliation. *See id.* at ¶ 10. ERO conducts that assessment to ensure the safety of all detainees. *See id.* ERO decides where to detain a person based on their sex, and the results of the risk assessment. *See id.* at ¶¶ 10-11.

At 630 Sansome, and consistent with decades of prior practices, ERO provides mattress pads and blankets to detainees who happen to be held overnight. *See id.* at ¶ 18. In addition to bedding, ERO provides detainees with a sweatsuit, sanitary products, undergarments, water, a set of toiletries, and three daily meals that consider a detainee's dietary restrictions. *See id.* at ¶¶ 19-23. If requested, ERO offers detainees a private bathroom with a shower every morning. *See id.* at ¶ 22.

Contract detention officers clean the cells each day while detainees are present. *See id.* at ¶ 32. If detainees are kept in cells for more than one day, contract detention officers temporarily move detainees out of the cells to clean them. *See id.* When the cells are vacant, janitorial services clean the cells. *See id.*

When detainees are arrested, ERO asks if they have any medical conditions, require ongoing medical treatment, or will need any medication. *See id.* at ¶ 24. ERO allows a detainee's family to bring medication to people who need it including both prescription and over-the-counter medication *See id.* And when detainees arrive at the holding facility, ERO asks them again about their medical conditions and history. *See id.* at ¶ 25. ERO provides detainees with questionnaires about medication, drugs, and alcohol and asks them to complete the questionnaires. *See id.* at ¶¶ 5, Ex. T, 25. In addition to the questionnaires, ERO asks detainees if they have drug or alcohol issues or if they require ongoing medical treatment. *See id.* at ¶ 25. ERO offer interpreter services through the ERO language line when needed. *See id.*

ERO keeps medication available and distributes it based on the needs of a detainee. *See id.* at ¶ 26. If a detainee has a serious medical issue, that detainee is permitted to place unlimited phone calls about the medication and medical issue. *See id.* If a detainee has a serious medical issue, ERO will prioritize his or her transfer to a detention facility to meet his or her medical needs. *See id.* at ¶¶ 26, 27. ERO transfers detainees with medical emergencies to San Francisco General Hospital. *See id.* at ¶ 27. 630 Sansome has an assigned Field Medical Coordinator who is available 24 hours a day. *See id.*

From June to September 2025, during the time when Petitioners were detained, the average detainee population at 630 Sansome was between 10 and 11 people. *See id.* at ¶ 12. However, the detainee population may change based several factors including the availability at detention facilities and flight schedules. *See id.* However, the population has not exceeded the capacity of the cells. *See id.* As of October 7, 2025, 630 Sansome had only 7 detainees. *See id.*

630 Sansome prioritizes detainees accessing their attorneys. *See id.* at ¶ 30. All detainees can make a free phone call when they arrive at 630 Sansome as well as place collect calls at any time. *See id.* at ¶¶ 28-30. ERO provides detainees with a free phone call if the detainee cannot reach an attorney. *See id.* at ¶ 30. And attorneys are provided access to their clients when they arrive at 630 Sansome. *See id.* Attorneys

can meet with their clients in the visitation room or a private room if requested. *See id.* ERO assists detainees and attorneys with any paperwork that needs to be executed. *See id.*

Around the holding facility, ERO displays photographs of its operation requirements as well as posters relating to the rights of detainees inside 630 Sansome. *See id.* at ¶ 8. Each detainee is also provided with the ICE National Detainee Handbook which includes, among other things, information related to contacting consulate offices, inspectors general, pro bono attorneys, free legal aid groups, and the ICE Detention Removals and Information Line. *See id.* at ¶ 31.

D. Factual Background.

Petitioners are aliens who entered the United States without being inspected or admitted. *See* Pls.' Am. Compl. ("FAC") at 34-40, ECF No. 32. DHS initiated removal proceedings against Petitioners charging them with being present in the United States without admission. Petitioners' individual circumstances are different. *See id.* at 34-40. To illustrate, Petitioner, Martin Hernandez Torres ("Torres"), is a convicted felon with an extensive criminal history who has a removal order. *See* Declaration of Sellenia Olson ("Olson Decl.") ¶¶ 15-26, Ex. L-M, ECF No. 108. Torres is detained during the 90-day removal period required by statute in California City, California, which is in the Eastern District of California. *See id.* at ¶¶ 12-15.

Petitioner, Yulisa Alvarado Ambrocio ("Ambrocio"), has never been arrested by ICE or detained at 630 Sansome. *See* FAC at ¶¶ 204-205. There is no evidence that Ambrocio will be arrested or detained at 630 Sansome and especially given the Court's order granting a preliminary injunction. *See* Order Granting Prelim. Inj. at 24, ECF No. 90. Neither of the remaining two Petitioners—Carmen Aracely Pablo Sequen ("Sequen") and Ligia Garcia ("Garcia")—is being detained at 630 Sansome. At the time Petitioners filed their motion for class certification, no Petitioner was being detained at 630 Sansome.

E. Relevant Procedural Background.

This case presents a rich, yet convoluted, background. The Court has entered two preliminary injunctions (on an original habeas petition for one Petitioner and on habeas claims for two other Petitioners in an amended complaint). And pending before the Court are a motion to dismiss, a motion for class certification, a third preliminary injunction motion, and two motions to stay. But Respondents only

include the relevant procedural background for this motion.

On September 16, 2025, the Court issued an order granting a preliminary injunction as to Sequen. *See* Order Granting Prelim. Inj., ECF No. 27. On September 18, 2025, and less than 48 hours after the Court issued a preliminary injunction exclusively as to Sequen, the new Petitioners filed their 54-page FAC adding three new Petitioners (Garcia, Ambrocio and Torres) and nine new Respondents, and asserting seven new claims. During the late evening on the same day they filed their FAC, Petitioners filed a motion for class certification. Pls.' Mot. for Provisional Class Certification, ECF No. 33.[3] The same night, Garcia and Ambrocio filed their motion for a temporary restraining order. *See* ECF Nos. 34, 35.

On October 10, 2025, Petitioners filed another motion for a preliminary injunction, which also sought a stay of Respondents' Detention Policy and conditions at 630 Sansome. *See* Pls.' Mot. for Prelim. Inj. and Stay of Agency Action, ECF No. 64. Petitioners moved for an order shortening Respondents' time to respond to it, which Respondents opposed, and the Court denied. *See* ECF Nos. 84, 87, 89.

On October 15, 2025, the Court granted Ambrocio and Garcia's motion for a preliminary injunction. *See* Order Granting Prelim. Inj. at 24, ECF No. 90. On October 24, 2025, Respondents filed their motion to dismiss and motion to sever. *See* Resp'ts' Mot. to Dismiss and Mot. to Sever, ECF No. 106. The Court has not made any factual findings as to the alleged conditions at 630 Sansome. The parties have not engaged in any discovery.

IV. LEGAL STANDARD

The class action is an exception to the usual rule that only individual named parties may litigate a dispute. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011). To fall within this narrow exception, proposed class representatives must "affirmatively demonstrate" their compliance with Rule 23. *Id.* at 350. This is not just a "mere pleading standard." *Id.* "'[P]laintiffs must actually *prove*—not simply plead—that their proposed class satisfies each requirement of Rule 23 . . .' and must carry their burden of proof 'before class certification.'" *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 664 (9th Cir. 2022) (en banc) (emphasis and alteration in original) (quoting *Halliburton Co. v. Erica*

[3] Although there were significant service issues, the Court extended Respondents' time to respond to the motion for class certification. *See* Order, ECF No. 102.

P. John Fund, Inc., 573 U.S. 258, 275 (2014)). In assessing such proof, courts must rigorously analyze each of Rule 23's requirements. *See Wal-Mart*, 564 U.S. at 351-52.

To satisfy Rule 23(a), Petitioners must demonstrate that: (1) the class is so numerous that joinder is unrealistic ("numerosity"); (2) the claims raise common questions of law and fact ("commonality"); (3) the class representatives' claims must be typical of claims of other class members ("typicality"); and (4) the named representatives and counsel will fairly and adequately protect the interests of the class ("adequacy of representation"). *See* Fed. R. Civ. P. 23(a)(1)-(4). The proposed class must also qualify under a Rule 23(b) subset. *AmChem Prods. v. Windsor*, 521 U.S. 591, 614 (1997). Relevant here, Rule 23(b)(2) permits certification where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

V. ARGUMENT

A. 8 U.S.C. § 1252(e)(1)(B) Bars Class Certification.

Petitioners challenge Respondents' courthouse arrest policies including the 2025 Courthouse Arrest Guidance (Mot. at 4-6), the Detention Policy (Mot. at 6), and the conditions at 630 Sansome (Mot. at 7-10). However, all of these policies are part of Respondents' attempt and mission to apply, enforce, and implement the INA including, but not limited to, 8 U.S.C. § 1225. As President Trump ordered in Executive Order 14159, "Protecting the American People Against Invasion," the "Secretary of Homeland Security shall take all appropriate action, pursuant to section 235(b)(1)(A)(iii)(I) of the INA (8 U.S.C. 1225(b)(1)(A)(iii)(I)), to apply, in her sole and unreviewable discretion, the provisions of section 235(b)(1)(A)(i) and (ii) of the INA to the aliens designated under section 235(b)(1)(A)(iii)(II)." Exec. Order No. 14159, 90 Fed. Reg. 8443, 8445 (Jan. 20, 2025). And Petitioners' Courthouse Arrest Class directly conflicts with 8 U.S.C. § 1226(c), which mandates detention, and does not limit the apprehension of aliens to a specific location, even a courthouse. *See* 8 U.S.C. § 1226(c). Petitioners' Courthouse Arrest Class seeks to limit the application of § 1226(c) by geography or location, which is not permitted.

Thus, and as a threshold matter, Congress has prohibited this Court from certifying Petitioners' proposed classes seeking to limit Respondents' application of 8 U.S.C. § 1225(b). Section 1252(e)(1)(B)'s

plain text prohibits courts from certifying a class under Rule 23 when the proposed class challenges the implementation of § 1225(b). Section 1252(e)(1)(B) provides that "no court may . . . certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection." 8 U.S.C. § 1252(e)(1)(B). The subsequent paragraph in (e)(3) permits judicial review of "determinations under section 1225(b) of this title and its *implementation*"—i.e. review on challenges to the system—but only in the District Court for the District of Columbia. 8 U.S.C. § 1252(e)(3) (emphasis added); *see also Mendoza-Linares v. Garland*, 51 F.4th 1146, 1157 (9th Cir. 2022) (noting challenges to the validity of the system "must be brought exclusively as 'an action instituted in the United States District Court for the District of Columbia.'") (quoting 8 U.S.C. § 1252(e)(3)(A)). Paragraph (e)(3) confines this limited review further; any challenge to the system is limited to (1) whether the section or implementing regulation is constitutional; or (2) whether a regulation or other written policy directive, guideline, or procedure implementing the section violates the law. *See* 8 U.S.C. § 1252(e)(3)(A)(i)-(ii); *see also M.M.V. v. Garland*, 1 F.4th 1100, 1109 (D.C. Cir. 2021) (jurisdiction to challenge the implementation of § 1225(b) is conditioned on meeting these requirements).

To apply, enforce, and implement § 1225(b), Respondents must, among many things, arrest and detain aliens subject to detention and removal. However, Petitioners challenge these policies by seeking to certify two classes to enjoin or stay Respondents' courthouse arrest policies and Detention Policy. In other words, Petitioners seek certification of two classes that directly infringe on Respondents' application, enforcement, and implementation of § 1225(b). *See* Mot. at 3. To the extent Petitioners' challenges arise out of Respondents' implementation of § 1225(b), they are barred. Because Congress provided only circumscribed judicial review of the Government's policy implementing § 1225(b) under paragraph (e)(3), § 1252(e)(1)(B) bars this Court from certifying either of Petitioners' proposed classes challenging the implementation of this policy.

B. The Named Petitioners Lack Standing, Their Claims Are Moot, and Their Claims Are Not Ripe Because They Are No Longer Detained and Cannot Be Detained.

As an additional threshold matter, and before considering whether Petitioners have proven that they meet the requirements of Rule 23, this Court must be satisfied that Petitioners have standing, that their claims are ripe, and that their claims are not moot. Standing is the threshold issue in any suit. *See*

Lierboe v. State Farm Mut. Auto. Ins. Co., 350 F.3d 1018, 1022 (9th Cir. 2003). "A class of plaintiffs does not have standing to sue if the named plaintiff does not have standing." *B.C. v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1264 (9th Cir. 1999). A class representative "must be part of the class and possess the same interest and suffer the same injury as the class members." *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 156 (1982) (quoting *E. Texas Motor Freight Sys. v. Rodriguez*, 431 U.S. 395, 403 (1977) (internal quotation marks omitted)). "[A] plaintiff must demonstrate standing separately for each form of relief sought." *See Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC)*, 528 U.S. 167, 185 (2000). Standing exists only where the plaintiff demonstrates that (1) he has suffered an "injury in fact" that is concrete, particularized, and actual or imminent, (2) the injury is "fairly traceable" to the defendant's conduct, and (3) the injury can be "redressed by a favorable decision." *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

The doctrine of ripeness "is a means by which federal courts may dispose of matters that are premature for review because the plaintiff's purported injury is too speculative and may never occur." *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). For a claim to be ripe, the plaintiff must be subject to a "genuine threat of imminent prosecution." *See Clark v. City of Seattle*, 899 F.3d 802, 813 (9th Cir. 2018). The central concern of the ripeness inquiry is "whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *Richardson v. City and County of Honolulu*, 124 F.3d 1150, 1160 (9th Cir. 1997). "A case becomes moot-and therefore no longer a 'Case' or 'Controversy' for purposes of Article III-'when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.' *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982)).

The named Petitioners lack standing and a legally cognizable interest in the outcome of this case because (1) they are no longer detained at 630 Sansome (*See* FAC); (2) they have received relief from the Court prohibiting their future detention (*See* ECF Nos. 7, 27, 36, 90); and (3) in the case of Torres, he is being detained at a different facility in the Eastern District of California for the 90-day required removal period. *See* Olson Decl. ¶¶ 12-15. Petitioners could not represent the proposed class of people subject to

courthouse arrests or detention at 630 Sansome when they are not subject to being arrested or detained based on orders that they received from the Court. *See* Orders, ECF Nos. 7, 27, 36, 90.

The putative classes satisfy neither the "capable of repetition, yet evading review" nor the "inherently transitory" exceptions to mootness that would allow for "relation back" to the Petitioners' FAC based on relief that they expressly sought. *See Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 45, 52 (1991); *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 398-99 (1980). The Ninth Circuit has explained that exception to the mootness doctrine should "be used sparingly, only in 'exceptional situations,' 'and generally only where the named plaintiff can make a reasonable showing that he will again be subjected to the alleged illegality.'" *See Wallingford v. Bonta*, 82 F.4th 797, 801 (9th Cir. 2023) (quoting *Los Angeles v. Lyons*, 461 U.S. 95, 109 (1983)). Given the orders that Petitioners sought and received from the Court, Petitioners have not, and cannot, demonstrate that they "face[] some likelihood of becoming involved in the same controversy in the future[.]" *Geraghty*, 445 U.S. at 398; *see also Weinstein v. Bradford*, 423 U.S. 147, 149 (1975) (concluding there was no "reasonable expectation that the same complaining party would be subjected to the same action again . . . [when] there is no demonstrated probability that respondent will again be among that number"). Indeed, the Court has expressly prohibited it. *See* Orders, ECF Nos. 7, 27, 36, 90. Petitioners made the strategic litigation decision to seek emergency relief before seeking to certify their proposed classes. After the Court granted that emergency relief, there is no longer a "live" dispute. Petitioners' claims became moot, and they are no longer ripe for adjudication. Because Petitioners no longer have a live claim for either of their proposed classes, their certification request should be denied.

C. Petitioners' Proposed Classes Fail to Satisfy Rule 23(a)'s Requirements.

Alternatively, the Court should deny Petitioners' motion for class certification because they have failed to *prove* that their proposed classes meet Rule 23(a)'s requirements to certify a class.

1. The Proposed Classes Lack Commonality Because Factual Distinctions Between Putative Class Members Do Not Generate Common Answers.

Petitioners' proposed classes lack commonality because they are overbroad. Rule 23(a)(2) requires Petitioners to identify questions of law and fact common to the class. *See Wal-Mart*, 564 U.S. at 351. Class claims must depend on a common contention that allows a court to resolve the central issue of each claim "in one stroke." *Id.* at 350. "What matters to class certification is not the raising of common

questions—even in droves—but rather, the capacity of a class-wide proceeding to generate common *answers* apt to drive resolution of the litigation." *Id.* (cleaned up) (citations omitted) (emphasis in original). Courts must assess the dissimilarities within a proposed class that have the potential to impede the generation of common answers and explain why these dissimilarities do not defeat class certification. *See id.* Petitioners must "affirmatively demonstrate" their compliance with the commonality requirement, which demands not only "common questions . . . but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* at 350 (emphasis in original).

A class definition may be fatally overbroad if it "sweeps within it persons who could not have been injured by the defendant's conduct." *Ross v. Lockheed Martin Corp.*, 267 F. Supp. 3d 174, 191 (D.D.C. 2017) (quoting *Kohen v. Pac. Inv. Mgmt. Co. LLC*, 571 F.3d 672, 677 (7th Cir. 2009)). An inadequately defined or overbroad class often implicates multiple Rule 23 requirements beyond commonality, including typicality and the standards for certifying an injunctive-relief class under Rule 23(b)(2).

Petitioners seek certification of two classes:

> Courthouse Arrest Class: All persons who have an immigration court hearing in a proceeding on the Executive Office for Immigration Review's ("EOIR") non-detained docket in an immigration courthouse in ICE's San Francisco Field Office Area of Responsibility.
>
> Detention Class: All persons who are now or will be detained in a holding cell in ICE's San Francisco Field Office.

Mot. at 3. Petitioners only offer conclusory reasons for why they satisfy the commonality requirement. *See generally* Mot. at 14-17. To illustrate, Petitioners assert their proposed classes satisfy the commonality requirement because they will be subjected to Respondents' policies and practices. *See* Mot. at 16. Petitioners further allege that they satisfy the commonality requirement because of their challenges to Respondents' policies. *See id.* But Petitioners' individual circumstances tell a different story.

To start with the named Petitioners, Ambrocio seeks to represent the Courthouse Arrest Class, but she has *never* been subject to a courthouse arrest. *See* FAC ¶¶ 201-206. Petitioners concede that ICE exercised its discretion and did not arrest Ambrocio. *See id.* Torres received a medical intake and extensive medical care while he was detained. *See* Olson Decl. ¶ 12; *see also* Declaration of Martin Hernandez Torres ("Torres Decl.") ¶ 4, ECF No. 78.

Moreover, Petitioners' other submissions confirm that experiences at 630 Sansome vary based on individual circumstances. Based on Petitioners' supporting declarations, several detainees were detained at 630 Sansome far less than 12 hours. *See* Declaration of David Solano at 2, ECF No. 71 (transferred within six hours); Declaration of Jacqueline Nunez at 2, ECF No. 72 (transferred within 5.5 hours); Declaration of Kaymaris Miranda at 2, ECF No. 76 (transferred within 4.5 hours); Declaration of Yessica Torres at 2, ECF No. 82 (transferred within 6.5 hours). Petitioners' own submissions support Respondents' position that they strive to hold detainees less than 12 hours. *See* Kaskanlian Decl. ¶ 15.

To the extent Petitioners are challenging Respondents' policy and practice of applying immigration statutes, they ignore that application is based on individualized circumstances. Indeed, whether a putative class member is in fact properly subject to mandatory detention overlooks obvious differences between purported class members, and provides different answers depending on individualized circumstances. Regarding both proposed classes, Petitioners have failed to prove that all putative class members suffer the same injury and that the basis for that injury is the same for each person. To the contrary, and based on the record that Petitioners have developed, detention, the basis of detention, the length of detention, and the circumstances of detention vary based on individual circumstances.

In addition, to prevail on a challenge to conditions of confinement, Petitioners must prove both that ICE's operations at 630 Sansome "pose an unreasonable risk of serious damage to [the detainees'] future health," *Helling v. McKinney*, 509 U.S. 25, 35 (1993), and that ICE was deliberately indifferent to Petitioners' wellbeing, *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). The Ninth Circuit has applied an objective standard to some claims challenging conditions of confinement and requires a showing that an "intentional decision" was made to the conditions at issue. *See Roman v. Wolf*, 977 F.3d 935, 943 (9th Cir. 2020); *see also Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1124-25 (9th Cir. 2018) (holding that claims challenging adequate medical care must be brought "under an objective deliberate indifference standard").

These legal inquiries are fact-driven, implicating a cumulative and individualized analysis. *See Bell v. Wolfish*, 441 U.S. 520, 542 (1979) (analyzing affidavits and conducting an in person visit to the facility). And Petitioners' submissions about 630 Sansome confirm that. Even based on Petitioners' submissions, which they prepared, the conditions at 630 Sansome are fact-specific and individualized.

Because 630 Sansome processes detainees before further action is taken, it is not uncommon for detainees to only be at 630 Sansome for hours at a time. *See* Declaration of David Solano at 2, ECF No. 71 (transferred within six hours); Declaration of Jacqueline Nunez at 2, ECF No. 72 (transferred within 5.5 hours); Declaration of Kaymaris Miranda at 2, ECF No. 76 (transferred within 4.5 hours); Declaration of Yessica Torres at 2, ECF No. 82 (transferred within 6.5 hours). Thus, a cumulative-effect driven inquiry is even more strained and militates against a class with common questions and answers.

The record before the Court demonstrates that certification of Petitioners' proposed classes is improper because each alien's circumstances pertaining to courthouse arrests and detention at 630 Sansome are individualized. The named Petitioners did not even experience most of the conditions for which they are trying to represent the alleged classes. Because the Court cannot generate common answers in "one stroke," Petitioners' proposed classes lack commonality.

2. The Named Petitioners' Injuries Are Not Typical of the Claims of the Proposed Class Members.

Beyond commonality, Rule 23 requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Typicality focuses on whether the class representatives' claims and interests are sufficiently aligned with the class's interest. *See Small v. Allianz Life Ins. Co. of N. Am.*, 122 F.4th 1182, 1201-02 (9th Cir. 2024). "Measures of typicality include whether other members have the *same or similar injury*, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *Id.* 1202 (emphasis added) (quoting *Torres v. Mercer Canyons, Inc.*, 835 F.3d 1125, 1141 (9th Cir. 2016)).

The named Petitioners fail to demonstrate typicality and especially in light of the Court's orders prohibiting their further detention. *See* Orders, ECF Nos. 7, 27, 36, 90. Ambrocio has never been arrested, but she one of the named Petitioners for the Courthouse Arrest Class. *See* Mot. at 3. Torres received a medical intake and extensive medical treatment during his detention at 630 Sansome but he is challenging Respondents medical policies as one of the two named Petitioners for the Detention Class. *See* Torres Decl. ¶ 4. Petitioners' other submissions confirm that the detainees at 630 Sansome experience different circumstances, which supports that the named Petitioners lack typicality.

3. The Named Petitioners' Are Not Adequate Class Representatives.

Petitioners also fail to demonstrate they are adequate class representatives. Rule 23(a)(4) requires that the named parties be able to "fairly and adequately protect the interests of the class." *Anchem Prods. v. Windsor*, 521 U.S. 591, 625 (1997). "[A] class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Id.* at 625-26 (cleaned up).

No named Petitioner is currently detained at 630 Sansome, and there is no evidence that they will be for the foreseeable and especially given the Court's orders. *See* Orders, ECF Nos. 7, 27, 36, 90. Ambrocio has never been subject to a courthouse arrest or detention at 630 Sansome. Torres has a removal order, and he is currently detained in the Eastern District of California. *See generally* Olson Decl. He is not an adequate class representative for that independent reason. Most significantly, by seeking relief on their habeas claims, Sequen, Ambrocio, and Garcia have ensured that they will not suffer the same injury as the class members. *See* Orders, ECF Nos. 7, 27, 36, 90. They have already received relief. Thus, the named Petitioners' interests diverge from the class, and they are not adequate class representatives.

D. Petitioners' Proposed Classes Fail to Satisfy Rule 23(b)(2).

Petitioners also fail to satisfy Rule 23(b)(2)'s requirements. Under Rule 23(b)(2), final injunctive or declaratory relief must be appropriate respecting the class as a whole. Fed. R. Civ. P. 23(b)(2). The "key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them." *Wal-Mart*, 564 U.S. at 360 (citation omitted). But Petitioners fail to meet Rule 23(b)(2)'s requirements because 8 U.S.C. § 1252(f)(1) prohibits the Court from granting Petitioners the relief they seek, and any version of the relief sought that would not run afoul of § 1252(f)(1) would not address the alleged injuries of the proposed classes.

1. Section 1252(f)(1) Prohibits Classwide Relief Restraining the Government's Operations of Section 1225(b)'s Detention Authority.

The Court lacks jurisdiction to enjoin or restrain the Government from detaining individuals under 8 U.S.C. § 1225(b). Section 1252(f)(1) states that:

> Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, *no court (other than the Supreme Court)* shall have jurisdiction or authority to enjoin or restrain the

> operation of the provisions of Part IV [of subchapter II of the INA], other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

8 U.S.C. § 1252(f)(1) (emphasis added). As the Supreme Court explained, § 1252(f)(1)'s reference to "the 'operation of' the relevant statutes is best understood to refer to the Government's efforts to enforce or implement them." *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022). Section 1252(f)(1) "generally prohibits lower courts from entering injunctions that order federal officials to take or refrain from taking actions to enforce, implement, or otherwise carry out" the covered statutory provisions of the INA. *Id.* To the extent Petitioners' proposed classes seek to restrain the Government from detaining aliens, § 1252(f)(1) applies because the statutory authority for the detention of aliens, like Petitioners, who are present in the United States without being admitted, is one of the covered provisions. *Id.*

The Supreme Court has weighed in on the issue of classwide relief in the immigration context; there can be no doubt that § 1252(f)(1)'s remedial bar applies here. In *Aleman Gonzalez*, the Supreme Court overturned injunctions entered by two district courts that had, as a matter of statutory interpretation, required the Government to provide bond hearings for noncitizens detained under 8 U.S.C. § 1231(a)(6). 596 U.S. at 550. The Court held that "[t]hose orders 'enjoin or restrain the operation' of § 1231(a)(6) because they require officials to take actions that (in the Government's view) are not required by § 1231(a)(6) and to refrain from actions that (again in the Government's view) are allowed by § 1231(a)(6)." *Id.* at 551. Because "[t]hose injunctions thus interfere with the Government's efforts to operate §1231(a)(6)" in its chosen manner, they were barred by § 1252(f)(1). *Id.*

Aleman Gonzalez proscribes the same result here—the Court lacks authority under § 1252(f)(1) to restrain Respondents from enforcing and implementing the INA as to Petitioners and other proposed class members including § 1225(b). As the Supreme Court affirmed, § 1252(f)'s remedial bar is not limited to the enumerated provisions "as *properly* interpreted." *Id.* at 552-54. Even if this Court ultimately finds that Respondents' invocation of § 1225(b) to arrest and detain Petitioners and the potential class members under it is erroneous, § 1252(f)(1) bars the Court from enjoining Defendants' operation of § 1225 on a classwide basis. *See Al Otro Lado v. Exec. Off. for Immigr. Review*, 120 F.4th 606, 627 (9th Cir. 2024) (noting that "an injunction is barred even if a court determines that the Government's 'operation' of a

covered provision is unlawful or incorrect") (citing *Aleman Gonzalez*, 596 U.S. at 552-54).

Petitioners may argue that they meet the requirements of Rule 23(b)(2) because they seek declaratory relief in addition to injunctive relief. *See* Am. Compl., Prayer for Relief, at 51-52. But Petitioners will still run afoul of § 1252(f)(1) because § 1252(f)(1) is not limited to injunctions. Instead, it prohibits lower-court orders that "enjoin or *restrain*" the Government's operation of the covered provisions. 8 U.S.C. § 1252(f)(1) (emphasis added). The common denominator of those terms is that they involve coercion. *See* Black's Law Dictionary 529 (6th ed. 1990) ("Enjoin" means to "require," "command," or "positively direct" (emphasis omitted)); *id.* at 1314 ("Restrain" means to "limit" or "put compulsion upon" (emphasis omitted)). Together, they indicate that a court may not impose coercive relief that "interfere[s] with the government's efforts to operate" the covered provisions in a particular way. *Aleman Gonzalez*, 596 U.S. at 551. Though the Supreme Court did not indicate § 1252(f)(1) specifically prohibited other forms of relief that are similar to an injunction, including classwide declaratory relief, the Court specified that lower courts cannot impose coercive relief that "interfere[s] with the government's efforts to operate" the covered provisions.[4] *Id.* at 551 n.2. Therefore, if the relief sought requires the Government to take steps to implement (or refuse to implement) a declaratory judgment regarding § 1225(b) that relief is barred by § 1252(f)(1). *See Hamama v. Adducci*, 912 F.3d 869, 880 n.8 (6th Cir. 2018) (holding that while "declaratory relief will not always be the functional equivalent of injunctive relief . . . in this case it is the functional equivalent").

Here, the requested declaratory relief is impermissibly coercive and violates § 1252(f)(1). Petitioners ask this Court to, among other things, "[d]eclare that Defendants' policies and practices violate" their "Fifth Amendment due process rights," and First Amendment rights. *See* Am. Compl., Prayer for Relief, at 51. Indeed, Petitioners and the putative classes "seek declaratory relief" challenging the Federal Government's application and implementation of the INA including its application of § 1225(b), and for the Court to find it unlawful. This necessarily restrains the Governments' operation of § 1225(b) because it stymies the Government's implementation of § 1225(b)(2) to detain and arrest

[4] The Supreme Court, in *Biden v. Texas*, left open the question of whether § 1252(f)(1) bars declaratory relief that is in effect coercive. 797 U.S. 785, 839 (2022) (Barrett, J., dissenting).

putative class members including at courthouses.

2. The Relief Petitioners Seek Will Not Appropriately Address the Alleged Injuries of the Classes as a Whole.

Given § 1252(f)(1)'s limitations on classwide injunctive relief, any relief the Court might order would fall far short of being appropriate relief to the proposed classes as a whole. Petitioners contend that their proposed classes seek "uniform relief from policies and practices that apply to the class as a whole." *See* Mot. at 20. But the relief sought would not be uniform and applicable to all class members. First, as explained above, the class definitions do not make any individualized distinctions for aliens such that a single judgment would cover all putative class members. Respondents' application and implementation of the INA requires individualized determinations. Based on Petitioners' own submissions, a detainee's circumstances at 630 Sansome also vary significantly based on experience and the time spent in detention.

Second, because Petitioners allege Respondents' policies violate their rights under the Due Process Clause of the Fifth Amendment, the Court should hesitate to resolve such claims via a Rule 23(b)(2) class action. *See generally* FAC. As the Supreme Court has cautioned, courts should consider "whether a Rule 23(b)(2) class action litigated on common facts is an appropriate way to resolve [Petitioners'] Due Process Clause claims. [D]ue process is flexible, we have stressed repeatedly, and it calls for such procedural protections as the particular situation demands." *Jennings v. Rodriguez*, 583 U.S. 281, 314 (2018) (internal quotation makes omitted) (second alteration in original); *see also Diaz v. Garland*, 53 F.4th 1189, 1213 (9th Cir. 2022) (noting that "the Due Process Clause does not mandate procedures that reduce the risk of erroneous deprivation to zero" and that "[d]ue process is a flexible concept that varies with the particular situation"). Because Petitioners' putative classes, as defined, include dissimilarly situated individuals, the Court could not enter a single declaratory judgment to resolve classwide Due Process claims.

Third, not all putative class members are entitled to the same due process protections, as Petitioners' proposed classes includes aliens with: (1) final orders of removal having gone through removal proceedings before an immigration judge; (2) expedited removal orders having gone through expedited removal proceedings under 8 U.S.C. § 1225 and who can be ordered removed by an immigration officer without a hearing before an immigration judge; (3) reinstated removal orders; and (4) final administrative orders. *See* 8 U.S.C. §§ 1225(b)(1)(B)(iii)(IV), 1231(a)(2), (6) (authorizing detention

pending removal on removal orders entered following "full" removal proceedings). Because commonality "requires the plaintiff to demonstrate that the class members 'have suffered the same injury,'" that the members of the putative class possess differing levels of due process protections is necessarily fatal to their ability to demonstrate the requisite commonality for class certification. *Wal-Mart*, 564 U.S. at 349-50.

E. Individual Habeas Actions Are the Correct Vehicles to Resolve Petitioners' Claims Based on Ninth Circuit Precedent, Not a Class Action.

In their amended complaint, Petitioners allege claims under the Administrative Procedure Act ("APA") challenging the Detention Policy and policies pertaining to courthouse arrests. *See* FAC at 40-51. Petitioners also allege claims challenging the conditions at 630 Sansome. *See id.* at 42-47, 48-49. And Petitioners allege habeas claims on behalf of Sequen, Ambrocio, and Garcia. *See* FAC at 49-51.

The purpose of class actions is to "create an efficient mechanism for trying claims that share common questions of law or fact when other methods of consolidation are impracticable." *Dellums v. Powell*, 566 F.2d 216, 230 (D.C. Cir. 1977). Habeas, however, has been an individualized writ from its inception. *See Pinson v. Carvajal*, 69 F.4th 1059, 1069 (9th Cir. 2023). The Supreme Court "has never held that class relief may be sought in a habeas proceeding." *A.A.R.P. v. Trump*, 145 S. Ct. 1034, 1036 (2025) (Alito, J., dissenting). The federal habeas statute is designed for individual petitioners; it requires that an "[a]pplication for a writ of habeas corpus [] be in writing signed and verified *by the person for whose relief it is intended or by someone acting in his behalf*" and "shall allege the facts concerning the *applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or authority*, if known." 28 U.S.C. § 2242 (emphasis added). The issuance of the writ is then "directed *to the person having custody of the person detained*" and may require the custodian to "produce at the hearing *the body of the person detained*." *Id.* § 2243 (emphasis added). That is an individualized inquiry, not one amenable to classwide resolution, and it is consistent with Ninth Circuit precedent.

Under Ninth Circuit precedent, there are differences between core habeas claims and claims challenging conditions of confinement. *See Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir. 2016). Core habeas claims (1) go directly to the constitutionality of the physical confinement itself; and (2) seek either immediate release from that confinement or the shortening of its duration. *See Pinson v. Carvajal*, 69

F.4th 1059, 1069 (9th Cir. 2023). A habeas claim is one challenging the fact of confinement rather than the conditions of confinement. *See Doe v. Garland*, 109 F.4th 1188, 1194 (9th Cir. 2024). "The Ninth Circuit has long held that the "the writ of habeas corpus is limited to attacks upon the legality or duration of confinement" and "does not cover claims based on allegations 'that the terms and conditions of ... incarceration constitute cruel and unusual punishment.'" *See Pinson*, 69 F.4th at 1065 (quoting *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979)). As even this Court has ruled, claims regarding conditions of confinement cannot proceed in a habeas action. *See Allen v. S.V,S.P. – P.I.P.*, No. 24-cv-03197-PCP, 2025 WL 1101519, at *1 (N.D. Mar. 31, 2025).

The Court should not certify the Detention Class based on Ninth Circuit precedent. Garcia and Torres are the named Petitioners for the Detention Class. Under Ninth Circuit precedent, Garcia cannot allege conditions of confinement claims in her habeas action. *See Allen*, 2025 WL 1101519, at *1 ("Claims regarding conditions of confinement cannot proceed in a habeas action"). Garcia already sought relief on her habeas claims, and the Court granted her the relief that she sought. *See* Order Granting prelim. Inj. at 24, ECF No. 90. Torres is only other alleged named Petitioner for the Detention Class, and he is currently being detained in the Eastern District of California for the required 90-day removal period based on his prior felonies and removal order. *See generally* Olson Decl.

Moreover, Petitioners' conduct demonstrates why class relief is inappropriate in this habeas case. Petitioners brought habeas claims and received relief that eliminates the need for the Court to rule on their claims arising under the APA. To illustrate, and as to the Courthouse Arrest Class, based on the Court's order and the relief provided by it, Ambrocio, Sequen, and Garcia cannot be arrested at a courthouse unless Respondents make the required showing under the Court's orders. *See* Orders, ECF Nos. 7, 27, 36, 90. Ambrocio has never been arrested at a courthouse, and pursuant to the Court's order, it is unclear whether she ever will be based on the relief the Court granted. *See id.* Petitioners continue to ignore that their awarded relief prohibits any further disputes between the parties.

VI. CONCLUSION

The Court should deny Petitioners' motion for class certification.

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Respectfully submitted,

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