

SIGAL CHATTAH  
Acting United States Attorney  
District of Nevada  
Nevada Bar No. 8264  
CHRISTIAN R. RUIZ  
Assistant United States Attorney  
501 Las Vegas Blvd. So., Suite 1100  
Las Vegas, Nevada 89101  
Phone: (702) 388-6336  
Fax: (702) 388-6787  
Christian.Ruiz@usdoj.gov

*Attorneys for the Federal Respondents*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

Jefferson Dominguez-Lara, et al.,  
Petitioners,  
v.  
Kristi Noem, et al.,  
Federal Respondents.

Case No. 2:25-cv-01553-JAD-BNW

**Federal Respondents' Opposition to  
Petitioners' Motion for Class  
Certification**

The Federal Respondents hereby submit this opposition to Petitioners' Motion for Class Certification (ECF No. 4).

**I. Introduction**

The class action "is an 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)). To successfully certify a class, or here, classes, Petitioners Jefferson Dominguez-Lara and Jose Ramirez ("Petitioners") must meet the requirements of Federal Rule of Civil Procedure 23—specifically, Rule 23(a) and Rule 23(b)(2). Petitioners are unable to clear either of these hurdles and their Motion for Class Certification necessarily fails. As such, the Court should decline to certify Petitioners' two proposed classes.

Petitioners seek to certify two impermissibly broad classes: (A) a proposed Bond Stay Class, which is comprised of "[a]ll noncitizens detained at Northwest ICE Processing

Center” who (1) have or will enter the United States without inspection, (2) are not apprehended upon arrival into the United States, and (3) are not or will not be subject to detention under 8 U.S.C. §1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing and has been or will be granted a bond by an immigration judge in the Las Vegas Immigration Court that has been statutorily stayed, and (B) a proposed Bond Appeal Class of detained noncitizens that have a pending appeal, will file an appeal of, or will respond to an appeal filed by ICE of an immigration judge’s bond hearing ruling before the Board of Immigration Appeals (“BIA”). *See* Mot. for Class Certification at 3, ECF No. 4 (Mot.). Both these class definitions are fatally overbroad because they include individuals who have not, or will not, be injured by Federal Respondents’ allegedly unlawful actions. For the reasons discussed below, numerous requirements set forth in Rule 23(a) cannot be met under Petitioners’ definitions of the proposed Bond Stay and Bond Appeal classes.

And even if the proposed classes somehow survive under Rule 23(a), they fail to meet the requirements of Rule 23(b)(2) because any declaratory relief granted here would not constitute “corresponding declaratory relief” as required by Rule 23(b)(2). *See* Fed. R. Civ. P. 23(b)(2).

For the reasons outlined above and set forth below, Petitioners’ Motion for Class Certification should be denied in its entirety.

## II. Background

### A. Statutory and Regulatory Background

Congress has created a multi-layered statutory scheme for the civil detention of aliens pending removal proceedings and removal. *See, e.g.*, 8 U.S.C. §§ 1225, 1226, 1231. Whether 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. Detention under 8 U.S.C. § 1225

Section 1225 applies to “applicants for admission,” who are defined as “alien[s] present in the United States who [have] not been admitted” or “who arrive[] in the United

1 States.” 8 U.S.C. § 1225(a)(1). Applicants for admission “fall into one of two categories,  
2 those covered by § 1225(b)(1) and those covered by § 1225(b)(2).” *Jennings v. Rodriguez*, 583  
3 U.S. 281, 287 (2018).

4 Section 1225(b)(1) applies to arriving aliens and “certain other” aliens “initially  
5 determined to be inadmissible due to fraud, misrepresentation, or lack of valid  
6 documentation.” *Id.*; 8 U.S.C. § 1225(b)(1)(A)(i), (iii). These aliens are generally subject to  
7 expedited removal proceedings. *See* 8 U.S.C. § 1225(b)(1)(A)(i). But if the alien “indicates  
8 an intention to apply for asylum . . . or a fear of persecution,” immigration officers will  
9 refer the alien for a credible fear interview. *Id.* § 1225(b)(1)(A)(ii). After that interview, an  
10 alien “with a credible fear of persecution” is “detained for further consideration of the  
11 application for asylum.” *Id.* § 1225(b)(1)(B)(ii). If the alien does not express a fear, or is  
12 “found not to have such a fear,” he is detained until removed. *Id.* § 1225(b)(1)(A)(i),  
13 (B)(iii).

14 Section 1225(b)(2) is “broader” and “serves as a catchall provision.” *Jennings*, 583  
15 U.S. at 287. It “applies to all applicants for admission not covered by §1225(b)(1).” *Id.*  
16 Under § 1225(b)(2), an alien “who is an applicant for admission” shall be detained for a  
17 removal proceeding “if the examining immigration officer determines that [the] alien  
18 seeking admission is not clearly and beyond a doubt entitled to be admitted.” 8 U.S.C. §  
19 1225(b)(2)(A). Still, the Department of Homeland Security (DHS) has the sole  
20 discretionary authority to temporarily release on parole “any alien applying for admission  
21 to the United States” on a “case-by-case basis for urgent humanitarian reasons or  
22 significant public benefit.” *Id.* § 1182(d)(5)(A); *see Biden v. Texas*, 597 U.S. 785, 806 (2022).

## 23 2. Detention under 8 U.S.C. § 1226(a)

24 Section 1226 provides the general detention authority for aliens in removal  
25 proceedings. An alien “may be arrested and detained pending a decision on whether the  
26 alien is to be removed from the United States.” 8 U.S.C. § 1226(a). Under § 1226(a), the  
27 government may detain an alien during his removal proceedings, release him on bond, or  
28

1 release him on conditional parole.<sup>1</sup> By regulation, immigration officers can release aliens if  
 2 the alien demonstrates that he “would not pose a danger to property or persons” and “is  
 3 likely to appear for any future proceeding.” 8 C.F.R. § 236.1(c)(8). An alien can also  
 4 request a custody redetermination (often called a bond hearing) by an IJ at any time before  
 5 a final order of removal is issued. See 8 U.S.C. § 1226(a); 8 C.F.R. §§ 236.1(d)(1),  
 6 1236.1(d)(1), 1003.19.

7 At a custody redetermination, the IJ may continue detention or release the alien on  
 8 bond or conditional parole. 8 U.S.C. § 1226(a); 8 C.F.R. § 1236.1(d)(1). Immigration  
 9 judges have broad discretion in deciding whether to release an alien on bond. *In re Guerra*,  
 10 24 I. & N. Dec. 37, 39–40 (BIA 2006). The IJ should consider the following factors during  
 11 a custody redetermination: (1) whether the alien has a fixed address in the United States;  
 12 (2) the alien’s length of residence in the United States; (3) the alien’s family ties in the  
 13 United States; (4) the alien’s employment history; (5) the alien’s record of appearance in  
 14 court; (6) the alien’s criminal record, including the extensiveness of criminal activity, time  
 15 since such activity, and the seriousness of the offense; (7) the alien’s history of immigration  
 16 violations; (8) any attempts by the alien to flee prosecution or otherwise escape authorities;  
 17 and (9) the alien’s manner of entry to the United States. *Id.* at 40. But regardless of these  
 18 factors, an alien “who presents a danger to persons or property should not be released  
 19 during the pendency of removal proceedings.” *Id.* at 38.

### 20 **3. Detention under 8 U.S.C. § 1226(c)**

21 Under 8 U.S.C. § 1226(c), immigration officers “must detain certain criminal aliens  
 22 pending their removal proceedings.” *German Santos v. Warden Pike Cty. Corr. Facility*, 965  
 23 F.3d 203, 206 (3d Cir. 2020). Aliens are “not statutorily entitled to a bond hearing” under §  
 24 1226(c). *Avilez v. Garland*, 69 F.4th 525, 527 (9th Cir. 2023) (en banc). Congress enacted this

---

25 <sup>1</sup> Being “conditionally paroled under the authority of § 1226(a)” is distinct from being  
 26 “paroled into the United States under the authority of § 1182(d)(5)(A).” *Ortega-Cervantes v.*  
 27 *Gonzales*, 501 F.3d 1111, 1116 (9th Cir. 2007) (holding that because release on “conditional  
 28 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), *aff’d*,  
 417 F. App’x 888 (11th Cir. 2011).

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). Immigration judges do not have authority to release aliens detained under § 1226(c). *See* 8 C.F.R. § 1003.19(h)(2)(i)(D) (“[A]n immigration judge may not redetermine conditions of custody imposed by [DHS] with respect to . . . [a]liens in removal proceedings subject to section 236(c)(1) of the Act....”).

#### 4. Review at the Board of Immigration Appeals (BIA)

The BIA is an appellate body within the Executive Office for Immigration Review (EOIR) “charged with the review of those administrative adjudications under the [INA] that the Attorney General may by regulation assign to it.” 8 C.F.R. § 1003.1(d)(1). By regulation, it has authority to review IJ custody determinations. 8 C.F.R. §§ 236.1; 1236.1. The BIA not only resolves particular disputes before it, but also “through precedent decisions, shall provide clear and uniform guidance to DHS, the immigration judges, and the general public on the proper interpretation and administration of the [INA] and its implementing regulations.” *Id.* § 1003.1(d)(1).

#### B. Factual and Procedural History

Petitioner Jefferson Dominguez-Lara is currently detained at the Nevada Southern Detention Center (NSDC). *See* ECF No. 1, Class Action Complaint and Petition for Writ of Habeas Corpus (Pet.), ¶ 17. On July 21, 2025, an immigration judge granted him a \$5,000 bond on July 21, 2025, which the Department of Homeland Security stayed when it filed a Notice of Intent to Appeal. *Id.*

Petitioner Jose Ramirez is also currently detained at the Nevada Southern Detention Center (NSDC). *Id.* ¶ 18. On July 16, 2025, an immigration judge granted him a \$3,000 bond, which the Department of Homeland Security immediately stayed when it filed a Notice of Intent to Appeal. *Id.*

Petitioners filed this lawsuit. ECF No. 1. The Petition alleges violation of due process clause of the Fifth Amendment for delayed positing of bonds (Count One),

1 violation of the Administrative Procedure Act for unlawful stay of bond grants (Count  
2 Two), violation of the due process clause of the Fifth Amendment for delayed adjudication  
3 of bond appeals (Count Three), and violation of the Administrative Procedure Act for  
4 delayed adjudication of bond appeals (Count Four). *Id.* at ¶¶ 72–85. Petitioners seek relief  
5 for himself and on behalf of a putative class. *see e.g., Id.* at 10, 41, 64. Concurrent with filing  
6 the complaint, Petitioners also moved for a preliminary injunction and class certification.  
7 *See* ECF Nos. 3 (Preliminary Injunction) and 4 (Class Certification); *see also Garland v.*  
8 *Aleman Gonzalez*, 596 U.S. 543, 546 (2022) (holding 8 U.S.C. § 1252(f) deprived district  
9 courts of jurisdiction to entertain class-wide injunctive relief to immigration detainees  
10 seeking bond hearings under § 1231(a)(6)).

### 11 **III. Standard of Review**

12 The class action “is an exception to the usual rule that litigation is conducted by and  
13 on behalf of the individual named parties only.” *Wal-Mart Stores*, 564 U.S. at 348 (quoting  
14 *Califano*, 442 U.S. at 700–01). To fall within this narrow exception, Petitioners must  
15 “affirmatively demonstrate” their compliance with each element of Rule 23—“that is,  
16 [they] must be prepared to prove that there are in fact sufficiently numerous parties,  
17 common questions of law or fact, etc.” *Wal-Mart Stores*, 564 U.S. at 350; *see also McCarthy v.*  
18 *Kleindienst*, 741 F.2d 1406, 1414 n.9 (D.C. Cir. 1984) (“It is the party seeking class  
19 certification that bears the burden of establishing the class action requirements.”). This is  
20 not just a “mere pleading standard.” *Id.* “[A]ctual, not presumed, conformance” with Rule  
21 23 is “indispensable,” *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 161 (1982), and  
22 certification is proper only if the Court is satisfied “after a rigorous analysis” that  
23 Petitioners have shown that each requirement of the Rules has been met. *Wal-Mart Stores*,  
24 564 U.S. at 350–51.

25 Petitioners must demonstrate each element of Rule 23(a) is met: (1) the class is so  
26 numerous that joinder is impractical (“numerosity”); (2) there are questions of law or fact  
27 common to the class (“commonality”); (3) the claims or defenses of the Named Petitioners  
28 is typical of claims or defenses of the class (“typicality”); and (4) the Named Petitioners and

counsel will fairly and adequately protect the interests of the class (“adequacy of representation”). Fed. R. Civ. P. 23(a).

To satisfy the commonality element, identifying one or more common questions is not enough. “It is not the raising of common ‘questions’—even in droves—but, rather the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation” that makes a case appropriate for class treatment. *Wal-Mart Stores*, 564 U.S. at 350 (emphasis in original).

In addition to meeting the requirements set forth in Rule 23(a), the proposed class must also qualify under Rule 23(b)(1), (2), or (3). *AmChem Prods. v. Windsor*, 521 U.S. 591, 614 (1997). Petitioners seek certification under Federal Rule of Civil Procedure 23(b)(2), which 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). “The key to the (b)(2) class is the individual 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 Stores*, 564 U.S. at 360.

#### IV. Argument

##### A. The Bond Stay Class is Impermissible Because it Includes, or Potentially Includes, Individuals Who Have Not Suffered, or Will Not Suffer, the Same Injury.

Petitioners’ proposed Bond Stay Class lacks typicality and commonality because it is overbroad. 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)). Having an inadequately defined or overbroad class often implicates multiple Rule 23 requirements, including typicality, commonality, and the standards for certifying an injunctive-relief class under Rule 23(b)(2).

Accordingly, [Petitioners] seek to represent the following two classes of aliens: Bond Stay Class: All [aliens] detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are

not apprehended upon arrival, and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the [alien] is scheduled for or requests a bond hearing and has been or will be granted a bond by an immigration judge in the Las Vegas Immigration Court that has been statutorily stayed.

ECF No. 4, Class Certification Motion (Mot.) at 3. The proposed “Bond Stay Class” would include individuals who have not been subjected to the so-called “bond denial policy,” who have already been afforded § 1226(a) custody redetermination in the alternative, and who are detained under § 1225(b)(2).

First, the Bond Stay Class is overbroad because it sweeps in individuals who have not suffered the same injury that Petitioners have pleaded, i.e., an allegation of being detained by ICE under § 1226(a), but determined by an IJ to be ineligible for a custody redetermination hearing as an applicant for admission, citing § 1225(b)(2). Petitioners’ proposed class is defined by carving out those detained under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231. Mot. at 3. The proposed class, however, includes aliens who are *not* applicants for admission, and therefore will not experience the same injury that Petitioners allege. For example, an alien may enter without inspection, not be apprehended at the time and later adjust his status to that of a lawful permanent resident (LPR). *See* 8 U.S.C. §§ 1159(b) (adjustment of status of an alien granted asylum to that of an LPR)<sup>2</sup>; 1255(i) (adjustment of status of certain aliens who entered without inspection to that of an LPR). When such an alien is placed into removal proceedings, e.g., because he has been convicted of a crime of domestic violence, *see* 8 U.S.C. § 1227(a)(2)(E)(i), and ICE detains him at the Northwest ICE Processing Center, he will be a member of the “Bond Stay Class,” even though he is an applicant for admission and there is no reason to think the IJ would not conduct a custody redetermination hearing.

Second, the Bond Stay Class lacks commonality because it includes individuals who have received bond decisions that already include alternative findings under § 1226.

---

<sup>2</sup> Aliens who have entered the United States without inspection or apprehension may later seek asylum. *See, e.g., Singh v. Garland*, 46 F.4th 1117, 1120 (9th Cir. 2022). While the grant of asylum is not an admission, the later adjustment of status qualifies as an admission. *Matter of V-X-*, 26 I&N Dec. 147, 151-52 (BIA 2013).

1 Commonality requires not only common questions, but the ability of the class proceeding  
2 to “generate common answers apt to drive the resolution of the litigation.” *Wal-Mart Stores*,  
3 564 U.S. at 350. It is common practice for an immigration judge to provide more than one  
4 basis to support their decisions. *See, e.g., Martinez v. Clark*, 124 F.4th 775, 781 (9th Cir.  
5 2024) (upholding the denial of habeas relief where the BIA properly determined that  
6 Martinez was a danger to the community who should be held without bond and observing  
7 that “[t]he BIA did not reach the immigration judge’s alternative conclusion that Martinez  
8 posed a flight risk”); *Singh v. Ashcroft*, 112 F. App’x 570, 572 (9th Cir. 2004) (noting the IJ’s  
9 alternative finding regarding safe relocation was supported by evidence). Petitioners’  
10 proposed class would include individuals who have received bond decisions that provide  
11 findings under § 1226(a). These proposed class members are subject to *both* an § 1225(b)(2)  
12 holding and an alternative § 1226(a) review, and therefore a judgment affirming their right  
13 to a bond hearing under § 1226(a) would afford them no further answers or measurable  
14 relief from detention. Indeed, by receiving an alternative finding related to the § 1226(a)  
15 factors, these putative class members would have received the decision that the rest of the  
16 class claims it did not receive.

17 Third, the Bond Stay Class lacks commonality because the Petitioners are currently  
18 detained at the Nevada Southern Detention Center whereas the proposed Bond Stay Class  
19 would apply to aliens detained at the Northwest ICE Processing Center, which is located in  
20 the State of Washington. Petitioners and the proposed class definition fall under the  
21 jurisdiction of distinct immigration courts and different ICE field offices. These are distinct  
22 facilities, administered by different field offices, and overseen by different immigration  
23 judges. The instant litigation would devolve into individualized inquiries into the distinct  
24 aspects of each facility, court, and field offices. That is the very antithesis of commonality  
25 under Rule 23(a)(2).

26 Because Petitioners are not detained at the Northwest ICE Processing Center, they  
27 cannot adequately represent the interests of detainees in Washington who face potentially  
28

1 different conditions. This lack of alignment between the representatives and the proposed  
2 class members underscores the absence of a unifying, classwide question.

3 For these reasons, the Court would need to engage in an individualized inquiry to  
4 determine if a member of the class actually suffered the same injury that Petitioners have  
5 pleaded and whether they have already received § 1226(a) review in their original bond  
6 decision. This individualized review destroys the “common answers” required to certify a  
7 class. *Wal-Mart Stores*, 564 U.S. at 350. Therefore, the Court should deny the motion to  
8 certify the Bond Stay Class.

9 **B. The Bond Appeal Class Cannot be Certified Because it Fails to Meet the**  
10 **Requirements of Rule 23(a)(2), (3), and (4).**

11 Petitioners’ Bond Appeal Class is breathtakingly broad, and just as with the Bond  
12 Stay Class, lacks commonality and typicality required for class certification, as well as an  
13 adequate class representative. Petitioners seek to certify a “Bond Appeal Class: All  
14 detained noncitizens who have a pending appeal, or will file an appeal, of an immigration  
15 judge’s bond hearing ruling to the Board of Immigration Appeals.” Mot. at 3. This  
16 proposed class includes all *possible* appeals of a bond decision, without regard to the basis  
17 for the decision, or time which the appeal has been pending. Certification of this panoply of  
18 differing appeal postures, adjudicatory timelines, and discrete circumstances should not be  
19 permitted considering the spirit and letter of Rule 23(a).

20 To satisfy commonality under Rule 23(a), the class must “generate common  
21 answers apt to drive the resolution of the litigation” that makes a case appropriate for class  
22 treatment. *Wal-Mart Stores*, 564 U.S. at 350. Commonality also “requires the plaintiff to  
23 demonstrate that the class members have suffered the same injury. *Id.* at 349–50  
24 (quotations omitted).

25 The problem here is that Petitioners’ Bond Appeal Class is far too vast to “generate  
26 common answers apt to” resolve their allegations of the BIA’s alleged “systematic failure to  
27 issue timely decisions.” *See id.*; Mot. at 16. Put differently, the “question” here is whether  
28 the BIA systematically fails to timely adjudicate bond appeals. The class would seek to

1 generate a common “answer” ringing in the affirmative. *See, e.g.*, Mot. at 16. But no such  
 2 “common answer” can be distilled from Petitioners’ immense class of individuals whose  
 3 circumstances and procedural statuses wildly differ, and where determination of whether a  
 4 bond appeal is timely adjudicated is best analyzed on a case-by-case basis.

5 To the extent Petitioners argue the Bond Appeal class “presents the same question  
 6 of whether . . . the APA entitles them to timely adjudication of their bond hearing  
 7 appeals,” such inquiry is properly analyzed on a case-by-case basis under the six-factor test  
 8 set forth in *Telecomm. Research & Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984)  
 9 (*TRAC*).<sup>3</sup> The Ninth Circuit has adopted the *TRAC* Factor test to determine whether  
 10 agency action has been unreasonably delayed. *See, e.g., Brower v. Evans*, 257 F.3d 1058,  
 11 1068 (9th Cir. 2001). Since the proposed class sweeps the waterfront of all individuals who  
 12 have or may file an appeal, along with their individual, unique circumstances, the *TRAC*  
 13 analysis cannot be employed on a classwide basis because “(1) several of the individual  
 14 *TRAC* factors require individualized inquiries, and (2) the task of balancing the *TRAC*  
 15 factors requires an individualized inquiry for each class member.” *See Casa Libre/Freedom*  
 16 *House v. Mayorkas*, No. 2:22-cv-01510-ODW (JPRx), 2023 WL 3649589, at \*13 (C.D. Cal.  
 17 May 25, 2023).

18 Indeed, the length of alleged delay that any individual class member may experience  
 19 varies across the board—the only thing that the proposed class members have in common  
 20 is that their appeals are not adjudicated immediately; Petitioners certainly do not, and  
 21 cannot, seek immediate adjudication of an appeal. *See* ECF No. 1, Class Action Complaint

---

22  
 23 <sup>3</sup> These factors are: (1) the time agencies take to make decisions must be governed by a rule  
 24 of reason[;] (2) where Congress has provided a timetable or other indication of the speed  
 25 with which it expects the agency to proceed in the enabling statute, that statutory scheme  
 26 may supply content for this rule of reason [;] (3) delays that might be reasonable in the  
 27 sphere of economic regulation are less tolerable when human health and welfare are at stake  
 28 [;] (4) the court should consider the effect of expediting delayed action on agency activities  
 of a higher or competing priority[;] (5) the court should also take into account the nature  
 and extent of the interests prejudiced by the delay[;] and (6) the court need not find any  
 impropriety lurking behind agency lassitude in order to hold that agency action is  
 unreasonably delayed. *Brower v. Evans*, 257 F.3d 1058, 1068-69 (9th Cir. 2001) (quoting  
*TRAC*, 750 F.2d at 80).

1 and Petition for Writ of Habeas Corpus (Pet.) at ¶ 83, Count IV. For example, some  
 2 potential class members' appeals will be adjudicated or rendered moot before any  
 3 meaningful amount of time has elapsed after the filing of their appeal. The record in  
 4 *Rodriguez Vazquez v. Bostock*, et al., Case No. 3:25-cv-05240 (E.D. Wash.), is instructive.  
 5 The plaintiffs in *Rodriguez Vazquez* requested class certification for two classes that are  
 6 substantially similar to the Bond Appeal Class and Bond Stay Class that are the subject of  
 7 the case at bar. *Id.*, ECF No. 2, at 2. The plaintiffs there identified several individuals who  
 8 filed appeals with the BIA but, shortly thereafter, withdrew their appeals because they were  
 9 ordered removed or released from custody. These individuals included:

- 10 • J.J.C.M., who filed an appeal on August 29, 2023, and withdrew it on or  
 11 around October 4, 2023. Time elapsed: 36 days.
- 12 • J.C.S., who filed an appeal sometime after bond was denied on January 24,  
 13 2023, and withdrew it sometime around February 22, 2024, when he was  
 14 ordered removed. Time elapsed: at most, 29 days.
- 15 • L.I.R., who filed an appeal sometime after bond was denied on October 5,  
 16 2023, and withdrew it on November 8, 2023, after he was ordered removed  
 17 on October 19, 2023. Time elapsed: at most, 34 days (but his appeal was  
 18 moot two weeks after the IJ denied bond).
- 19 • S.A.L., who filed an appeal on April 12, 2023, and withdrew it on May 15,  
 20 2023, after release from custody. Time elapsed: at most, 33 days.

21 Exhibit A, Declaration of Christopher Stanislawski ("Stanislawski Decl.") ¶ 5, ECF No. 5  
 22 in Case No. 3:25-cv-05240, Eastern District Court of Washington (March 20, 2025). Here,  
 23 as in there, many of the individuals that Petitioners would rely upon to identify a failure to  
 24 timely adjudicate a bond appeal would only have appeals pending for around one month  
 25 before their cases mooted out. At the same time, Petitioners would also rely upon  
 26 individuals who, though released from detention, would have an appeal pending for over a  
 27 year and a half. And given the BIA's directive to prioritize appeals involving detained  
 28 individuals, it makes sense that these non-detained individuals' appeals took longer to

1 adjudicate than others who remained in immigration detention while the BIA adjudicated  
 2 their appeal. *See* 8 C.F.R. § 1003.1(e)(8) (“ . . . the Board member or panel to which the case  
 3 is assigned shall issue a decision on the merits as soon as practicable, *with a priority for cases*  
 4 *or custody appeals involving detained [aliens]s.*” (emphasis added)). Petitioners further allege  
 5 that the “average processing time for a bond appeal was 204 days.” Pet. ¶ 46. But  
 6 Petitioners failed to plead that this alleged 204-day average processing time is based solely  
 7 on appeals brought by detained aliens (rather than a mix of appeals brought by detained  
 8 and non-detained individuals) *See id.*; *Pisciotta v. Ashcroft*, 311 F. Supp. 2d 445, 455 (D.N.J.  
 9 2004) (finding that the “regulations governing the timeliness of BIA decision-making  
 10 provide for the speedier resolution of custody rulings”). Moreover, BIA regulations  
 11 pertaining to the timeliness of adjudications distinguish between the simpler cases assigned  
 12 to a single Board member and the more complex cases assigned to a three-member panel.  
 13 *See* 8 C.F.R. § 1003.1(e)(8)(i); *compare* 8 C.F.R. § 1003.1(e)(5) (assigning certain appeals to  
 14 a single Board member)<sup>4</sup> *with* § 1003.1(e)(6) (assigning other appeals to a three-member  
 15 panel).<sup>5</sup> There simply cannot be a common question related to appeal adjudication time

---

17 <sup>4</sup> When an appeal is assigned to a single Board member, he or she “shall issue a brief order  
 18 affirming, modifying, or remanding the decision under review . . . A single Board member  
 19 may reverse the decision under review if such reversal is plainly consistent with and  
 required by intervening Board or judicial precedent, by an intervening Act of Congress, or  
 by an intervening final regulation.” 8 C.F.R. § 1003.1(e)(5).

20 <sup>5</sup> “Cases may only be assigned for review by a three-member panel if the case presents one  
 21 of these circumstances:

22 (i) The need to settle inconsistencies among the rulings of different immigration  
 judges;

23 (ii) The need to establish a precedent construing the meaning of laws, regulations, or  
 procedures;

24 (iii) The need to review a decision by an immigration judge or DHS that is not in  
 conformity with the law or with applicable precedents;

25 (iv) The need to resolve a case or controversy of major national import;

26 (v) The need to review a clearly erroneous factual determination by an immigration  
 judge;

27 (vi) The need to reverse the decision of an immigration judge or DHS, other than a  
 reversal under § 1003.1(e)(5); or

28 (vii) The need to resolve a complex, novel, unusual, or recurring issue of law or  
 fact.”

1 between individuals who filed and withdrew an appeal within the span of a month,  
2 detained individuals with appeals pending for several months or more, and even still,  
3 between individuals who are detained or not detained (but may have filed an appeal while  
4 detained)—all without any consideration of the complexity or novelty of the underlying  
5 question(s) being appealed. Put differently, there can be no common answers as to an  
6 appropriate adjudication timeline generated by (1) proposed class members that have  
7 appeals pending for a short amount of time and (2) proposed class members with appeals  
8 pending for longer.

9 Commonality also cannot be met because the proposed class members do not suffer  
10 from the same injury. *See Wal-Mart Stores*, 564 U.S. at 349–50. Petitioners assert that the  
11 injury arising from alleged adjudication delay comes in the form of “potentially erroneous  
12 detention due to the BIA’s systematic “failure to issue timely decisions.” *See* Mot. at 16.  
13 But the time elapsed following the filing of an appeal differs substantially from individual  
14 to individual. This means that the “injury” arising from detention will change from person  
15 to person. An individual who is detained for 29 days cannot be said to suffer the same  
16 injury as an individual detained for seven months. Similarly, an individual who is released  
17 from detention while DHS appeals an IJ’s order to grant bond cannot be said to suffer the  
18 same injury as an individual who remains in custody while appealing an IJ’s order to deny  
19 bond. Therefore, the Bond Appeal class is fatally overbroad because it “sweeps within it  
20 persons who could not have been injured by the defendant’s conduct.” *See Ross*, 267 F.  
21 Supp. 3d at 191. The Court should deny class certification.

22 Typicality cannot be met as to the Bond Appeal class because Petitioners’ claims are  
23 not typical of those of his proposed class. “The test of typicality is whether other members  
24 have the same or similar injury” as the class representative. *See C. P. by & through Pritchard*  
25 *v. Blue Cross Blue Shield of Illinois*, 705 F. Supp. 3d 1273, 1280 (W.D. Wash. 2023) (quoting  
26 *A.B. v. Hawaii State Dep’t of Educ.*, 30 F.4th 828, 839 (9th Cir. 2022)). Petitioners allege that  
27

---

28 8 C.F.R. § 1003.1(e)(6).

1 the Bond Appeal class is subject to prolonged delays in adjudication of their appeals. Mot.  
2 at 16.

3 Critically, however, Petitioners do not share the same or similar injury as several  
4 individuals that would fall under the proposed class they seek to represent. Indeed, as of the  
5 time of this filing, Petitioners' bond denial appeals will have been pending for about two  
6 months or less. Petitioners have not been injured by a prolonged delay in the adjudication  
7 of his appeal. As such, Petitioners' claims are not typical of the claims of the proposed  
8 Bond Appeal class. Petitioners have also failed to show that they would "fairly and  
9 adequately protect the interests of the class." *Kim v. Allison*, 87 F.4th 994, 1000 (9th Cir.  
10 2023) (quoting Fed. R. Civ. P. 23(a)(4)). The nature of class certification under Fed. R. Civ.  
11 P. 23(b)(2) amplifies the need to confirm the commitment of the class representatives,  
12 because members of a Rule 23(b)(2) class are not afforded the right to opt out of the class  
13 and are bound by any judgment. *See Crawford v. Honig*, 37 F.3d 485, 487 n.2 (9th Cir. 1994),  
14 *as amended on denial of reh'g* (Jan. 6, 1995) ("In a Rule 23(b)(2) class action for equitable  
15 relief, the due process rights of absent class members generally are satisfied by adequate  
16 representation alone.").

17 Petitioners are unable to fairly and adequately protect the proposed class's interests  
18 because, like the discussion in the commonality and typicality requirements, the proposed  
19 Bond Appeal class encompasses a broad range of individuals who have differing reasons  
20 for detention, and most importantly, whose appeals have been pending with the BIA for  
21 different lengths of time. For example, Petitioners cannot fairly and adequately protect the  
22 interests of those individuals whose BIA appeals have been pending for longer than 90 days  
23 because his own appeal has been pending for less than that. *See Grandalski v. Quest*  
24 *Diagnostics Inc.*, 767 F.3d 175, 185-86 (9th Cir. 2014) (affirming denial of class certification  
25 where class member did not fall within the class definition); *Hayes v. Wal-Mart Stores, Inc.*,  
26 725 F.3d 349, 360 (3d Cir. 2013) ("[W]here the lead plaintiff does not fit the class  
27 definition, the class may not be certified."). For that same reason, Petitioners do not share  
28 the same injury as the proposed Bond Appeal class, and thus, cannot fairly and adequately

1 protect the interests of those with appeals pending for longer than 90 days. *See Navarro v.*  
 2 *Exxon Mobil Corp.*, No. CV 17-2477 SF (SKx) 2022 WL 22248790, at \*20-21 (C.D. Cal.  
 3 July 5, 2022) (finding lead plaintiff could not represent class when he did not suffer  
 4 actionable harm).

5 Petitioners are unable to meet the commonality, typicality, and adequacy  
 6 requirements necessary for class certification under Rule 23(a). The Court should,  
 7 therefore, decline to certify the proposed Bond Appeal class.

8 **C. Petitioners' Proposed Classes Do Not Satisfy Rule 23(b)(2)'s Requirements.**

9 Petitioners' request for declaratory relief cannot satisfy Rule 23(b)(2) because the  
 10 Court does not have the authority to award classwide coercive relief due to the limitations  
 11 in 8 U.S.C. § 1252(f)(1).

12 The text of Rule 23 allows class certification only where a court can grant  
 13 “corresponding declaratory relief.” *See* Fed. R. Civ. P. 23(b)(2) (emphasis added). The  
 14 Advisory Committee defines “corresponding declaratory relief” as any remedy that “as a  
 15 practical matter . . . affords injunctive relief or serves as a basis for later injunctive relief.”  
 16 Fed. R. Civ. P. 23(b)(2) Advisory Committee Note to 1996 Amendment; *see also* 7AA Fed.  
 17 Prac. & Proc. Civ. § 1775 (3d ed.). This definition makes clear that the purpose of the Rule  
 18 23(b)(2) class was to enjoin certain action or inaction on a classwide basis and that any  
 19 anticipated declaratory relief issued under this provision should be equivalent to an  
 20 injunction to satisfy the requirements of class certification. *See id.*; *see also Coca-Cola Bottling*  
 21 *Co. of Elizabethtown, Inc. v. Coca-Cola Co.*, 98 F.R.D. 254, 271 (D. Del. 1983) (refusing to  
 22 certify a Rule 23(b)(2) class where “[d]etermination of the [] issues would not result in  
 23 corresponding declaratory relief that would have the effect of enjoining the defendant from  
 24 acting in the future”); *Sibley v. Diversified Collection Servs., Inc.*, No. 396-cv-0816, 1998 WL  
 25 355492, \*4 (N.D. Tex. June 30, 1998) (under Rule 23(b)(2), “the declaratory judgment  
 26 should be the equivalent of an injunction” (internal citations omitted)). So under Rule  
 27 23(b)(2), Petitioners' request for declaratory relief is really a request for relief that would  
 28 have the effect of enjoining Federal Respondents; it would operate as an injunction. *See id.*

1 But Congress in 8 U.S.C. § 1252(f)(1) expressly deprived district courts of  
2 jurisdiction to enter classwide injunctions in the immigration context. As the Supreme  
3 Court held in *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022), Section 1252(f)(1)  
4 “prohibits lower courts from entering injunctions that order federal officials to take or to  
5 refrain from taking actions to enforce, implement, or otherwise carry out” the relevant  
6 provisions of the Immigration and Naturalization Act. The Court specifically rejected  
7 attempts by detained aliens to obtain systemic relief requiring bond hearings on a classwide  
8 basis, concluding that Section 1252(f)(1) “deprived the District Courts of jurisdiction to  
9 entertain respondents’ requests for classwide injunctive relief.” *Id.* at 546.

10 Petitioners’ proposed classwide relief—an order requiring the BIA to adjudicate  
11 bond appeals for all class members within 30 days and enjoining application of the  
12 automatic-stay regulation in 8 C.F.R. § 1003.6 on a classwide basis (*see* ECF No. 3, Motion  
13 for Preliminary Injunction, at 23—falls squarely within *Aleman Gonzalez*. Both forms of  
14 relief would restructure how the INA’s detention and bond provisions are enforced,  
15 implemented, or otherwise carried out on a classwide basis. That is what Section 1252(f)(1)  
16 forbids. Because such relief is jurisdictionally barred, certification under Rule 23(b)(2) is  
17 unavailable.

18 Moreover, a court cannot grant relief that was not specifically requested if doing so  
19 will prejudice the opposing party. *See Rental Dev. Corp. of Am. v. Lavery*, 304 F.2d 839, 842  
20 (9th Cir. 1962) (“If, however, it is made to appear that the failure to ask for particular relief  
21 substantially prejudiced the opposing party, Rule 54(c) does not sanction the granting of  
22 relief not prayed for in the pleadings.”). Granting the equivalent of an unrequested  
23 injunction against Federal Respondents would certainly prejudice them.

24 Accordingly, Petitioners cannot meet the requirements for certification under Rule  
25 23(b)(2), and the Court should decline to certify Petitioners’ proposed classes.

26 / /

27 / /

28 / /

**V. Conclusion**

For the foregoing reasons, the Court should deny Petitioners' Motion for Class Certification.

Respectfully submitted this 25th day of September 2025.

SIGAL CHATTAH  
Acting United States Attorney

/s/ Christian R. Ruiz  
CHRISTIAN R. RUIZ  
Assistant United States Attorney