IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

BRAYAN JOSUE LOPEZ SARMIENTO, *et al.*, *Petitioners*, v. KRISTI NOEM, *et al.*, *Respondents*.	Case No. 1:25-cv-1644 (AJT/WBP)

OPPOSITION TO PETITIONERS' MOTION FOR CLASS CERTIFICATION

TODD W. BLANCHE
DEPUTY ATTORNEY GENERAL

By: /s/
CHRISTIAN J. COOPER
Special Assistant United States Attorney
ELIZABETH A. SPAVINS
Assistant United States Attorney
Office of the United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Tel: (703) 299-3831/3785
Fax: (703) 299-3983
Email: christian.cooper@usdoj.gov
lizzie.spavins@usdoj.gov
Counsel for Federal Respondents

INTRODUCTION

On behalf of two putative classes, Petitioners bring a host of challenges to their detention in immigration custody without bond, their detention without a pre-detention hearing, and/or the rescission of their deferred action. For the reasons set forth below, certification of either class is not appropriate here.

As an initial matter, 8 U.S.C. § 1252(e)(1)(B) bars this Court from certifying either of Petitioners' proposed classes.

Moreover, Petitioners cannot meet the requirements for class certification under Federal Rule of Civil Procedure 23. First, the proposed class lacks commonality. Second, the Petitioners fail to meet the typicality requirements of Rule 23(a). Even if Petitioners could overcome these obstacles to class certification under Rule 23(a), Petitioners cannot meet their burden under Rule 23(b). Plaintiffs seek to certify this action as a Rule 23(b)(2) action—"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." But Petitioners fail to establish injunctive or corresponding declaratory relief is appropriate for both of the putative classes they propose to represent because 8 U.S.C. § 1252(f)(1) bars class-wide relief that would enjoin the 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 class-wide basis. Petitioners' alternative argument, that certification is proper under Rule 23(b)(1), which permits class certification where "prosecuting separate actions by or against individual class members would create a risk of . . . inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class," fares no better.

Finally, individual habeas actions are the correct vehicle to resolve Petitioners' claims.

Accordingly, Federal Respondents respectfully request that this Court deny Petitioners' motion to certify two classes.

BACKGROUND

I. Statutory and Regulatory Background

The INA provides that all "alien[s] present in the United States who [have] not been admitted" or "who arrive[] in the United States" are "applicants for admission." 8 U.S.C. § 1225(a)(1). Applicants for admission must be inspected by immigration officers, 8 U.S.C. § 1225(a)(3), and "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)'s detention and removal provisions apply to aliens who arrive 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). This includes aliens, as designated by the Secretary, who have been continuously physically present in the United States for up to two years before the date of their inadmissibility determination. *See* 8 U.S.C. § 1225(b)(1)(A)(iii). These aliens are generally subject to expedited removal proceedings, including, if applicable, referral for a credible fear interview. *See* 8 U.S.C. § 1225(b)(1)(A)(i). If the alien does not indicate an intent to apply for asylum, express a fear of prosecution, or is "found not to have such a fear," he is detained until removed. *Id.* § 1225(b)(1)(A)(i), (B)(iii)(IV). If the alien does demonstrate a credible fear, the alien "shall be detained" for further consideration of an asylum application. 8 U.S.C. § 1225(b)(1)(B)(ii).

Section 1225(b)(2) is "broader" and "serves as 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 under 8 U.S.C. § 1229a "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); *Matter of Q. Li*, 29 I. & N. Dec. 66, 68 (BIA 2025) ("[F]or aliens arriving in and seeking admission into the United States who are placed directly in full removal proceedings, section 235(b)(2)(A) of the INA, 8 U.S.C. § 1225(b)(2)(A), mandates detention 'until removal proceedings have concluded.'") (citing *Jennings*, 583 U.S. at 299). Still, the Department of Homeland Security (DHS) has the sole discretionary authority to temporarily release on parole "any alien applying for admission to the United States" on a "case-by-case basis for urgent humanitarian reasons or significant public benefit." 8 U.S.C. § 1182(d)(5)(A).

Section 1226 provides for arrest and detention "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). This section thus provides authority to detain aliens who do not fall under § 1225(b)(2) because they were previously admitted, but who are placed in removal proceedings under § 1229a for various reasons, including by violating their status, overstaying their visas, or being convicted of certain crimes. *See* 8 U.S.C. § 1237(a). Under § 1226(a), the government may detain an alien during his removal proceedings, release him on bond, or release him on conditional parole. By regulation, immigration officers can release an alien detained under §1226(a) if the alien demonstrates that he "would not pose a danger to property or persons" and "is likely to appear for any future proceeding." 8 C.F.R. § 236.1(c)(8).

II. Procedural History

Petitioner Brayan Josue Lopez Sarmiento, Jhonatan Alex Rodriguez Argueta, and Josue Antonio Rodriguez Argueta filed this putative class action on behalf of themselves and other similarly situated individuals, arguing that their ongoing detention violates the Immigration and Nationality Act (Count I); the bond regulations (Count II), the Administrative Procedures Act (Count III), and the Fifth Amendment of the Constitution (Count IV). (Dkt. 4). After the Court

ordered Federal Respondents to provide Petitioners with individualized bond hearings pursuant to 8 U.S.C. § 1226(a), Petitioners filed a Second Amended Complaint, in which they added Ucles as a named petitioner-plaintiff, added additional claims,[1] and redefined the proposed class as two separate proposed classes. (Dkt. 18-1). After multiple subsequent rounds of briefing and two hearings, the Court ordered that Petitioner Ucles be released immediately from custody and further enjoined his re-detention absent a pre-deprivation hearing in which Respondents carry the burden of establishing changed circumstances justifying Ucles' re-detention based on his flight risk or danger to the community. (Doc. 49; *see also* Doc. 54 (Memorandum Opinion)).

On January 6, 2025, Petitioners moved to certify the following classes:

> **Unaccompanied Minors Class**: All noncitizens who are or will be held in civil immigration detention within the area of responsibility of WAS ICE who have entered or will enter the United States, are or were designated as unaccompanied minors, and are or will be denied consideration for release under 8 U.S.C. § 1226(a) based on Respondents' mandatory detention policy.
>
> **SIJS Class**: All noncitizens who are or will be held in civil immigration detention within the area of responsibility of WAS ICE who have entered or will enter the United States, have or will have obtained SIJS status at the time of detention, and are or will be denied consideration for release under 8 U.S.C. § 1226(a) based on Respondents' mandatory detention policy.

Mot. to Certify Class at 1-2 (Dkt. 45).

On January 23, 2026, Federal Respondents moved to dismiss Petitioners' Second Amended Complaint for lack of subject matter jurisdiction and asked the Court to deny Petitioners' motion for a preliminary injunction, which *inter alia*, asked this Court to provisionally certify the same two classes identified above. *See* Dkt. 56.

ARGUMENT

This Court should not certify Plaintiffs' proposed class.

[1] *See* Dkt. 56 at 2-3 (identifying claims listed in the Second Amended Complaint).

First, as a threshold matter, 8 U.S.C. § 1252(e)(1)(B) bars this Court from certifying either of Petitioners' proposed classes.

Second, even beyond this threshold failure, a class action is "an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Califano v. Yamasaki*, 442 U.S. 682, 700-01 (1979); *see also Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013) (same). To fall within this exception, a plaintiff "must affirmatively demonstrate his compliance" with Rule 23. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). As the Supreme Court has explained, "Rule 23 does not set forth a mere pleading standard." *Id.*; *see also Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 321 (4th Cir. 2006) (explaining that the defendant does not bear the burden of showing that the proposed class does not comply with Rule 23). Indeed, "certification is proper only if 'the trial court is satisfied, after a rigorous analysis, that the prerequisites of Rule 23(a) have been satisfied[.]'" *Wal-Mart*, 564 U.S. at 350-51 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982)). "Frequently that 'rigorous analysis' will entail some overlap with the merits of the plaintiff's underlying claim." *Id.* at 351.

To meet this "affirmative" burden of compliance with Rule 23, Petitioners must demonstrate the existence of each and every element required by Rule 23(a) that: (1) there are sufficiently numerous parties ("numerosity"); (2) there are questions of law or fact common to the class ("commonality"); (3) the claims of the named plaintiff are typical of those of the class ("typicality"); and (4) the named plaintiff will fairly and adequately protect the interests of the class ("adequacy of representation"). Fed. R. Civ. P. 23(a); *see also Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 613 (1997). Rule 23 also "contains an implicit threshold requirement that the members of a proposed class be "readily identifiable," often referred to as "ascertainability." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014). "If class members are impossible to

identify without extensive and individualized fact-finding or mini-trials, then a class action is inappropriate." *Id.* "[A]ctual, not presumed, conformance with Rule 23(a) [is] indispensable." *Falcon*, 457 U.S. at 160.

In addition to the requirements of Rule 23(a), the proposed class must qualify under Rule 23(b)(1), (2), or (3). *See Brown v. Nucor Corp.*, 785 F.3d 895, 931 (4th Cir. 2015). Petitioners move to certify the class here as a Rule 23(b)(2) or (b)(1) class. Pls.' Br. (Dkt. 46) at 18-22. 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). Rule 23(b)(1) permits certification where "prosecuting separate actions by or against individual class members would create a risk of . . . inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class." Fed. R. Civ. P. 23(b)(1)(A).

As detailed below, Petitioners fail to meet their burden to certify a class under Rule 23(a) or 23(b)(2) or (b)(1).

I. 8 U.S.C. § 1252(e)(1)(B) Bars Class Certification in Cases Challenging the Implementation of § 1225(b)

As a threshold matter, Congress has prohibited this Court from certifying the proposed classes under Fed. R. Civ. P. 23, because the class claims challenge the implementation of § 1225(b). Specifically, 8 U.S.C. § 1252(e)(1)(B) provides: "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 limited judicial review only in the District Court for the District of Columbia of "determinations under section 1225(b) of this title and its

implementation." 8 U.S.C. § 1252(e)(3) (emphasis added). Paragraph (e)(3) further confines this limited review to (1) whether § 1225(b) or an 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). Here, Petitioner challenges the Federal Respondents' "mandatory detention policy," under which Federal Respondents determined that Petitioners are detained pursuant to § 1252(b), rather than § 1226(a). *See, e.g.*, Sec. Am. Comp. ¶ 94. Petitioners thus seek judicial review of a written policy or guideline implementing § 1225(b), which is thus covered by § 1252(e)(3)(A)(ii) and subject to § 1252(e)(1)(B)'s class-certification bar.

II. Petitioners fail to meet all of Rule 23(a)'s requirements.

The Court should deny Petitioners' Motion on the alternative ground that they have failed to prove their proposed classes meet Rule 23(a)'s requirements of commonality and typicality.

A. Petitioners fail to demonstrate commonality.

Commonality requires the plaintiff to show that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). But as courts have cautioned, "any competently crafted class complaint literally raises common questions," *Wal-Mart*, 564 U.S. at 349, and "at a sufficiently abstract level of generalization, almost any set of claims can be said to display commonality," *Love v. Johanns*, 439 F.3d 723, 729 (D.C. Cir. 2006). "Commonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Wal-Mart*, 564 U.S. at 349 (citing *Falcon*, 457 U.S. at 157). "This does *not* mean merely that they have all suffered a violation of the same provision of law." *Id.* (emphasis added). And despite Rule 23(a)(2)'s use of the phrase "common questions," the Supreme Court has clarified that "what matters" in analyzing

commonality is not "common questions," but rather "the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation. Dissimilarities within the proposed class are what have the potential to impede the generation of common answers." *Id.* at 350 (emphasis in original) (citation and internal quotation marks omitted). In other words, "a question is not common, by contrast, if its resolution turns on a consideration of the individual circumstances of each class member." *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 319 (4th Cir. 2006).

Applying that logic here, there is insufficient commonality among proposed class members. Although Petitioners frame the proposed class definitions as hinging on the Federal Respondents' application of a mandatory detention policy, *see* Sec. Am. Compl. ¶ 94, what Petitioners are actually seeking as relief is inherently fact-specific in terms of the legal analysis, and varies depending on the individual's circumstances. For example, Petitioners argue that the Federal Respondents have "arbitrarily and capriciously sought to terminate Petitioners' period of deferred action without providing any rationale for doing so whatsoever, and strip Petitioners of the deferred-action-based employment authorization that they had previously been entitled to." Sec. Am. Compl. ¶ 116. Petitioners argue that this claim generates "questions of law and fact common to the SIJS Class," including "[w]hether DHS and EOIR have a policy or practice of immediately detaining Special Immigrant Juveniles with valid Deferred Action and stripping them of their deferred action and employment authorization without legal basis." *See* Dkt. 46 at 12. But this question does not rest on a "common *answer*" that would resolve this litigation. *Wal-Mart*, 564 U.S. at 350. To the contrary, the answer to this question is inherently fact-specific, as it relies on the basis for the rescission of an individual's deferred action, and whether that basis withstands APA review and procedural due process requirements. *See* Dkt. 54 at 13-16.

Even leaving aside these commonality defects that prevent classwide resolution of each of Petitioners' legal claims, Petitioners' proposed classes are overbroad and lack commonality for the additional reason that they are prospective and indeterminate. The proposed classes include individuals who may be encountered and arrested by ICE or others in the future but who cannot show any imminent injury from immigration detention. *See* Sec. Am. Compl. ¶ 94. A person may sue in federal court—whether as an individual or a class member—only if he has standing, which requires an "injury in fact that is concrete, particularized, and actual or imminent." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021); *cf. Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025) (requiring that injunctions be no "broader than necessary to provide complete relief to each plaintiff *with standing to sue*" (emphasis added)). The proposed class includes not only those who have already entered the United States and will later be arrested and detained, but also anyone who later enters and is arrested and detained who is designated as an unaccompanied minor or who in the future obtains SIJ status. *See* Sec. Am. Compl. ¶ 94. By definition, aliens who are not currently or imminently subject to immigration detention have suffered no actual or imminent injury. *See United States v. SCRAP*, 412 U.S. 669, 688-89 (1973) (plaintiff must allege "that he has been or will in fact be perceptibly harmed by the challenged agency action," "not that he can imagine circumstances in which he could be affected by agency action"). Therefore, a court may not certify a class that would sweep in such uninjured absent class members. "Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not." *TransUnion*, 594 U.S. at 431 (internal quotation marks omitted).

Accordingly, Plaintiffs have failed to meet their burden on commonality.

B. Petitioners fail to demonstrate typicality.

Rule 23 also 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). The commonality prong tends to

merge with the requirement of typicality under Rule 23(a)(3), *see Wal-Mart*, 564 U.S. at 349 n.5, because the central inquiry in assessing whether a proposed class has "typicality" is "whether the class representatives' claims have the same essential characteristics as the claims of the other members of the class." *Garcia v. E.J. Amusements of New Hampshire, Inc.*, 98 F. Supp. 3d 277, 288 (D. Mass. 2015). Here, under Petitioners' legal theories, Petitioners' claims that their detention should be governed by § 1226(a) is not typical of members of the class who are arguing that *any* detention is impermissible without a pre-detention hearing at which the government bears the burden of showing changed circumstances, and in turn is not typical of those members arguing that their detention while they retain deferred action is improper *at all*. *See* Dkt. 46 at 11-12. Accordingly, Petitioners fail to demonstrate typicality under Rule 23(a).

III. Plaintiffs fail to meet their burden to certify a class pursuant to Rule 23(b)(2) or (b)(1).

Plaintiffs also cannot meet their burden to certify a class pursuant to Federal Rule of Civil Procedure 23(b)(2) or (b)(1).

A. Section 1252(f)(1) Prohibits Class-wide Relief Restraining the Government's Operation of § 1225(b)(2)'s Detention Authority

As the Federal Respondents also set forth in their Motion to Dismiss and Opposition to Petitioner's Motion for a Preliminary Injunction (Dkt. 56), the Court lacks jurisdiction to enjoin or restrain the government's detention under § 1225(b)(2) on a classwide basis. *See* Dkt. 56 at 7-10. For purposes of judicial economy, the Federal Respondents respectfully refer to their arguments in that submission and incorporate them here.

In brief, § 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) (emphases 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." *Aleman Gonzalez*, 596 U.S. at 550. 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. *Id.* The statutes governing pre-removal-order detention of aliens—including both § 1225(b)(2) and § 1226(a)—are covered statutory provisions. Section 1252(f)(1) thus precludes lower courts from issuing an order telling the government how to carry out these detention provisions on a class-wide basis.

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

As to Rule 23(b)(2), that rule 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). "[B]ecause of the group nature of the harm alleged and the broad character of the relief sought, the (b)(2) class is, by its very nature, assumed to be a homogenous and cohesive group with few conflicting interests among its members." *Berry v. Schulman*, 807 F.3d 600, 608-09 (4th Cir. 2015) (citation and internal quotation marks omitted). The injunctive or declaratory relief must be "indivisible, meaning 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 and internal quotation marks omitted). Rule 23(b)(2) classes are "mandatory," in that "opt-out rights for class members are deemed unnecessary and are not provided under the rule." *Berry*, 807 F.3d at 609 (citation and internal quotation marks omitted). "Cohesiveness" is therefore "even more

important for a Rule 23(b)(2) class because, unlike Rule 23(b)(3), there is no provision for unnamed class members to opt out of the litigation." *Avritt v. Reliastar Life Ins. Co.*, 615 F.3d 1023, 1035 (8th Cir. 2010). "Individuals comprising a Rule 23(b)(2) class are therefore generally bound together through preexisting or continuing legal relationships or by some significant common trait such as race or gender." *Id.* (citation and internal quotation marks omitted).

As described earlier, the putative class members are not a cohesive group. Given § 1252(f)(1)'s limitations on class-wide relief, any relief the Court might properly order would fall far short of being appropriate relief to the proposed class as a whole. But challenge to the legality of detention is a core habeas claim, and declaratory relief is not appropriate in such habeas cases. *Calderon v. Ashmus*, 523 U.S. 740, 747 (1998) (declaratory judgment action not appropriate to address "validity of a defense the State may, or may not, raise in a habeas proceeding" in part because "the underlying claim must be adjudicated in a federal habeas proceeding"). Petitioner's description of the relief sought highlights this point: the declaratory relief for the class would establish that the Federal Respondents "immediate mandatory detention policy . . . on the basis of § 1225(b)(2) . . . violates the INA, its implementing regulations, and the Due Process Clause." Sec. Am. Compl., Prayer for Relief ¶ h. In essence, what Petitioner seeks is an order from the Court declaring that the Government's detention of class members under § 1225(b)(2) is unlawful, which is at the core of habeas. And, such an order, if coercive, would run afoul of § 1252(f)(1)'s bar on classwide restraints on the operation of § 1225(b)(2). Because the Court cannot grant such relief to the class as a whole, Petitioners cannot meet the requirements of Rule 23(b)(2).

The class relief sought would also not be uniform and applicable to all class members as required by Rule 23(b)(2), for two reasons. First, as detailed above, there are material differences among class members such that no single declaratory judgment would cover all putative class

members. Under Petitioners' arguments, the Court would need to make individualized determinations of whether an alien's deferred action was properly rescinded, for example, before it could declare that those class members are not subject to § 1225(b)(2)(A)'s mandatory detention authority or set aside the application of *Matter of Hurtado* as to them.

Second, the Court should decline to resolve Petitioners' claims that the Federal Respondents' policy violates their rights under the Due Process Clause via a Rule 23(b)(2) class action. *See* Sec. Am. Pet. at 31-34. 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. Due process is flexible, we have stressed repeatedly, and it calls for such procedural protections as the particular situation demands." *Jennings*, 583 U.S. at 314 (cleaned up); *see also Clukey v. Town of Camden*, 717 F.3d 52, 59 (1st Cir. 2013). Because Petitioners' proposed class includes dissimilarly situated individuals, a single declaratory judgment is not appropriate to resolve every class member's due process claims.

C. Petitioners Also Cannot Show Certification is Proper under Rule 23(b)(1)

As to Rule 23(b)(1), the Court may certify a class where "prosecuting separate actions by or against individual class members would create a risk of . . . inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class." Fed. R. Civ. P. 23(b)(1)(A). According to Petitioners, they have satisfied this standard because "[i]f members of either proposed class were required to initiate separate actions . . . such adjudication may result in inconsistent standards concerning the same immediate mandatory detention policy." Dkt. 46 at 22. Specifically, Petitioners point to the other individual habeas petitions currently challenging the application of mandatory detention. *Id.* But what Petitioners describe is merely the individualized nature of a habeas proceeding, which of

course is what the INA specifically provides for. *See* 8 U.S.C. § 1252(f)(1), § 1252(e)(1)(B). Thus, Petitioners' argument is unpersuasive, as it runs headlong into the statutory scheme governing immigration detention.

IV. Individual Habeas Actions, Not a Class Action, are the Correct Vehicles to Resolve Petitioners' Claims.

While Petitioners bring APA and Due Process Claims, Petitioners' claims are within the heartland of habeas corpus. The Court should be especially hesitant to grant class certification here because habeas petitions are generally unfit for class actions.[2] 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. 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 process and inquiry, not one amenable to class-wide resolution.

Putative class members' recent actions demonstrate this point. Since this case was filed, the four named Petitioners and putative class members sought *individualized* injunctive relief in

[2] 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). Given the individual inquiries necessary to address the alleged injuries of each putative class member, and putative class members' continued resort to individual habeas proceedings, this case is an example of why habeas corpus is an inappropriate vehicle for class actions.

this Court on one of the same issue in this case: a bond hearing pursuant to § 1226(a). *See Sarmiento v. Perry*, 2025 WL 3091140 (E.D. Va. Nov. 5, 2025) (Trenga, J.) ("*Sarmiento I*"); *Sarmiento v. Perry*, 2026 WL 131917 (E.D. Va. Jan. 19, 2026) (Trenga, J.) ("*Sarmiento II*"). These cases speak volumes. Even if the Court were to certify the classes and provide declaratory relief, declaratory relief would not fully resolve the class members' alleged injury, and each class member would still need to seek individual habeas relief beyond class-wide relief.[3]

//

[3] This also highlights why Petitioners fail to meet Rule 23(b)(2)'s requirement that either injunctive or corresponding declaratory relief be appropriate to the putative classes as a whole, because even with declaratory relief, individual class members would need to bring separate habeas claims challenging the application of § 1225(b)(2) to their individual detentions.

CONCLUSION

For the foregoing reasons, Federal Respondents respectfully request that this Court deny Petitioners' motion.

February 2, 2026

Respectfully Submitted,

TODD W. BLANCHE
DEPUTY ATTORNEY GENERAL

By: /s/
CHRISTIAN J. COOPER
Special Assistant United States Attorney
ELIZABETH A. SPAVINS
Assistant United States Attorney
Office of the United States Attorney
2100 Jamieson Ave.
Alexandria, VA 22314
Tels: (703) 299-3785
Fax: (703) 299-3983
Emails: christian.cooper@usdoj.gov
lizzie.spavins@usdoj.gov

Counsel for Federal Respondents