SADMIRA RAMIC, ESQ. (15984)
CHRISTOPHER M. PETERSON, ESQ. (13932)
AMERICAN CIVIL LIBERTIES UNION OF NEVADA
4362 W. Cheyenne Ave.
North Las Vegas, NV 89032
Telephone: (702) 366-1226
Facsimile: (702) 718-3213
Emails: ramic@aclunv.org
peterson@aclunv.org

Listing of counsel continued on the next page

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

VICTOR KALID JACOBO RAMIREZ; EDGAR MICHEL GUEVARA ALCANTAR; on behalf of themselves and others similarly situated, et al.,

Plaintiffs-Petitioners,

vs.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity; U.S. DEPARTMENT OF HOMELAND SECURITY; PAMELA J BONDI, Attorney General of the United States, in her official capacity; TODD LYONS, Acting Director for U.S. Immigration and Customs Enforcement, in his official capacity; U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; JASON KNIGHT, Acting Field Office Director, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; SIRCE OWEN, Acting Director for Executive Office of Immigration Review, in her official capacity; LAS VEGAS IMMIGRATION COURT; JOHN MATTOS, Warden, Nevada Southern Detention Facility, in his official capacity,

Defendants-Respondents.

Case No.: 2:25-cv-02136

MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

MICHAEL KAGAN (12318C)
ANDREW ELKINS
GABRIELA RIVERA DORADO
Student Attorneys Practicing
Under Nevada Supreme Court Rule 49.3
UNLV IMMIGRATION CLINIC
Thomas & Mack Legal Clinic
William. S. Boyd School of Law
University of Nevada, Las Vegas
P.O. Box 71075
Las Vegas Nevada
Telephone: (702) 895-3000
Facsimile: (702) 895-2081
Email: Michael.Kagan@unlv.edu
Email: elkina1@unlv.nevada.edu
Email: doradoma@unlv.nevada.edu

Michael K.T. Tan (CA SBN# 284869)*
My Khanh Ngo (CA SBN# 317817)*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104
(415) 343-0770
m.tan@aclu.org
mngo@aclu.org

Counsel for Plaintiffs-Petitioners

*Applications for admission pro hac vice pending

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs-Petitioners (Plaintiffs), on behalf of themselves and the class they seek to represent, challenge new policies subjecting them to mandatory immigration detention and depriving them of the opportunity to be released on bond. These policies of Defendants-Respondents (Defendants) violate the Immigration and Nationality Act (INA), its regulations, the Administrative Procedure Act (APA), and the Due Process Clause of the Fifth Amendment. Named Plaintiffs are immigrants who were living in the United States before being "arrested and detained pending a decision on whether [they are] to be removed from the United States," 8 U.S.C. § 1226(a), and are thus entitled to an individualized custody determination by the Department of Homeland Security (DHS), and, if not released, by an Immigration Judge (IJ) under that discretionary detention provision.

A separate mandatory detention provision, 8 U.S.C. § 1225(b)(2), applies only "at the Nation's borders and ports of entry, where the Government must determine whether a[] [noncitizen] seeking to enter the country is admissible." *Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018). However, in July 2025, U.S. Immigration and Customs Enforcement (ICE) announced how DHS, in coordination with the Department of Justice (DOJ), adopted a nationwide policy of applying § 1225(b)(2) to all individuals who have not been admitted into the United States, including Plaintiffs, thus rendering them ineligible for bond. On September 5, 2025, in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 225 (B.I.A. 2025), the BIA issued a precedential decision that purports to require all IJs and DHS officers to misclassify people in this manner. As a result, IJs at the Las Vegas Immigration Court have implemented this policy and are either refusing to conduct bond hearings or are categorically denying bond—even where they find an individual not

to be a flight risk or danger—because they believe they lack jurisdiction to conduct bond hearings under § 1226(a). Notably, both DHS and the Las Vegas Immigration Court have departed from their own prior, decades-long interpretation of the law. As a result, Plaintiffs and similarly situated detained noncitizens were stripped overnight of their ability to seek release on bond and are instead now subject to mandatory detention. These new policies deprive Plaintiffs and similarly situated detained noncitizens of their statutory and constitutional rights, and violate the APA.

Plaintiffs bring this action to challenge the Las Vegas Immigration Court's and DHS's policy of applying 8 U.S.C. § 1225(b)(2) to all persons deemed inadmissible because they are present without admission, i.e., they originally entered the country without inspection. The legality of these policies can and should be resolved on a classwide basis to ensure a uniform resolution. Classwide treatment is especially appropriate here where potentially hundreds, if not thousands, of people may be subject to mandatory detention throughout their removal proceedings. Most of these individuals are unrepresented and face enormous challenges litigating pro se in immigration and federal courts. Indeed, two district courts, including one in the Ninth Circuit, have already certified comparable regional classes challenging similar policies of immigration courts located in their districts. *See Rodriguez Vazquez v. Bostock*, 349 F.R.D. 333, 364–65 (W.D. Wash. 2025); *Guerrero Orellana v. Moniz*, No. 25-cv-12664-PBS, __ F. Supp. 3d __, 2025 WL 3033769, at *14 (D. Mass. Oct. 30, 2025).[1]

/

/

[1] Two other district courts will soon be holding hearings on whether to certify similarly defined classes challenging the same unlawful detention policy. *See Maldonado Bautista v. Noem*, No. 5:25-cv-1873-SSS-BFM (C.D. Cal.) (motions for nationwide class certification and partial summary judgment pending, with hearing scheduled Nov. 14, 2025); *Mendoza Gutierrez v. Baltasar*, No. 1:25-cv-2720-RMR (D. Colo.) (motion for state-wide class certification pending, with hearing scheduled Nov. 21, 2025).

Accordingly, Plaintiffs seek to represent the following class of noncitizens:

> All noncitizens in the U.S. without lawful status (1) who are or will be arrested or detained by ICE; (2) who are or will be in removal proceedings before an Immigration Court within the District of Nevada; (3) whom DHS alleges or will allege to have entered the United States without inspection or parole; (4) who are not or will not be subject to detention under 8 U.S.C. §§ 1226(c), 1225(b)(1), or 1231 at the time they are scheduled for or request a bond hearing; and (5) whose most recent arrest by ICE occurred inside the United States and not while arriving in the United States.

The class satisfies the requirements set forth in Federal Rules of Civil Procedure 23(a) and 23(b)(2). Plaintiffs accordingly request that the Court certify the above class, appoint them as the representatives, and appoint the undersigned counsel as class counsel.

II. BACKGROUND

A. Plaintiffs' Legal Claims

Adjudicating a motion for class certification does not call for "an in-depth examination of the underlying merits," but a court may nevertheless analyze the merits to the extent necessary to determine the propriety of class certification. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 983 n.8 (9th Cir. 2011); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–52 (2011). Plaintiffs and proposed class members present legal challenges to two uniform agency policies.

The classwide policies presented in this case concern the government's new interpretation of its detention authority, which violates the INA's detention scheme, the APA, and due process. There are two statutory detention provisions at issue. First, 8 U.S.C. § 1225(b) governs inspection "at the Nation's borders and ports of entry." *Jennings*, 583 U.S. at 287; *Maldonado Vazquez v. Feeley*, No. 2:25-CV-01542-RFB-EJY, 2025 WL 2676082, at *13 (D. Nev. Sept. 17, 2025). Second, § 1226(a) applies to those who are "present in the country" but subject to removal proceedings, "includ[ing] [noncitizens] who were inadmissible at the time of entry." *See Jennings*,

583 U.S. at 288; *Maldonado Vazquez*, 2025 WL 2676082, at *14 (citing *Jennings*, 583 U.S. at 303). Noncitizens determined to be detained under § 1225(b) are subject to mandatory detention. *See* 8 U.S.C. §§ 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV), (b)(2)(A). As a result, DHS does not consider such people for release on bond, and they are not entitled to a bond hearing before an IJ. By contrast, individuals who are detained under § 1226(a) are entitled to individual custody determinations by DHS, and if not released, are entitled to a bond hearing before an IJ. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). At that bond hearing, they may present evidence of their ties to the United States, lack of criminal history, and other factors that show they pose neither a flight risk nor a danger to the community. *See generally Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006).

Consistent with the statutory framework, noncitizens who entered the United States without inspection, were not immediately apprehended pursuant to § 1225(b) (or subjected to expedited removal under § 1225(b)(1)), and are not subject to a final order of removal, are generally detained under § 1226. As a result, unless they have an enumerated criminal offense subjecting them to § 1226(c), they are entitled to bond hearings under § 1226(a) before an IJ to determine whether their detention is justified by danger or flight risk. DOJ and DHS have acted in accordance with these principles since the relevant sections of the INA were enacted. *See* Inspection and Expedited Removal of Aliens, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997); 8 C.F.R. § 1003.19(h)(2); *Matter of R-A-V-P-*, 27 I. & N. Dec. 803-04 (BIA 2020).

However, on July 8, 2025, ICE, "in coordination with" the DOJ, announced DHS's policy that rejected this well-established understanding of the statutory and regulatory framework and reversed decades of practice. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission," claims that all persons who entered the United States

without inspection shall now be deemed subject to mandatory detention under § 1225(b)(2)(A).[2] The policy applies regardless of when a person is apprehended, and affects those who have resided in the United States for months, years, and even decades.

Nationwide, DHS now insists that its July 8 policy renders all persons who entered without inspection subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and thus ineligible for bond. Overnight, thousands of individuals lost the ability to seek release on bond. The implications of this shift are grave: any time one of the thousands of persons present in the United States without admission is apprehended, that person would never be considered for release on bond by ICE and ICE maintains that the individual is not eligible for bond before an IJ.

This case additionally challenges a second classwide policy that was adopted by the Las Vegas Immigration Court after the Board of Immigration Appeals ("BIA" or "Board") in *Matter of Hurtado* formally affirmed DHS's policy in a precedential decision. On September 5, 2025, the BIA published a new decision holding that IJs lack jurisdiction to grant bond to individuals present in the U.S. without admission. *Matter of Jonathan Javier Yajure Hurtado*, 29 I. & N. Dec. 216, 229 (BIA 2025). Consistent with DHS's policy, the BIA held that all persons who entered the U.S. without inspection, by reason of being "applicants for admission" under 8 U.S.C. § 1225(a)(1), are therefore subject to mandatory detention under § 1225(b)(2)(A), rendering them ineligible for bond hearings before an IJ. *Id.* While some IJs at the Las Vegas Immigration Court initially held bond hearings, and in some instances granted bond to people before the decision in *Matter of Hurtado*, IJs at the Las Vegas Immigration Court now withhold bond hearings for people in Plaintiffs' shoes. *See* Exhibit 2 (Decl. of Michael Kagan) ("Kagan Decl.") at ¶¶ 32-33. These IJs now hold that they

[2] U.S. Immigr. & Customs Enf't, Interim Guidance Regarding Detention Authority for Applicants for Admission (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission

lack jurisdiction to determine bond for any person who has entered the United States without inspection, even if that person has resided here for months, years, or even decades. *See id* at ¶ 33.

Plaintiffs' experiences reflect DHS's and the Las Vegas Immigration Court's unlawful practice. *Id* at ¶¶ 18, 19, 20. In a few isolated instances, individuals fortunate enough to have counsel willing to pursue federal litigation have obtained bond hearings through individual habeas petitions. *See, e.g.*, *Maldonado Vazquez*, 2025 WL 2676082, at *11-16; *Sanchez Roman v. Noem*, No. 2:25-CV-01684-RFB-EJY, 2025 WL 2710211, at *6 (D. Nev. Sept. 23, 2025); *Carlos v. Noem*, No. 2:25-CV-01900-RFB-EJY, 2025 WL 2896156, at *5 (D. Nev. Oct. 10, 2025); *E.C. v. Noem*, No. 2:25-CV-01789-RFB-BNW, 2025 WL 2916264, at *8 (D. Nev. Oct. 14, 2025); *Arce-Cervera v. Noem*, No. 2:25-cv-01895-RFB-NJK, 2025 WL 3017866, at *6 (D. Nev. Oct. 28, 2025). But the majority of detained noncitizens lack immigration counsel, let alone access to counsel willing and able to file a federal habeas petition.

As a result of these IJs' erroneous interpretation, scores of individuals and likely hundreds, if not thousands more in the future, will be denied any opportunity for release under bond. *Id.* The harms impacting Plaintiffs and those similarly situated is not hypothetical. At least 22 individual habeas petitions have been filed in the District of Nevada challenging aspects of the government's mandatory detention policy. *See generally* Docket, *Maldonado Vazquez,* No. 2:25-CV-01542-RFB-EJY (D. Nev.); Docket, *Dominguez-Lara v. Noem,* No. 2:25-CV-01542-RFB-BNW (D. Nev.). In two of those cases, the court ordered limited discovery to determine the number of people detained in ICE custody in the District of Nevada. *See Maldonado Vazquez,* No. 2:25-CV-01542-RFB-EJY (D. Nev. Oct. 20, 2025), ECF No. 35; *Dominguez-Lara v. Noem,* No. 2:25-CV-01542-RFB-BNW (D. Nev. Oct. 17, 2025), ECF No. 27.[3] In response to the order, Defendants filed a Status Report which depicts that there are 595 people detained by ICE throughout facilities in

[3] The Court has since appointed listed counsel in this case as interim co-counsel for the purposes of limited discovery. *See* ECF No. 4.

Nevada, approximately 185 of which are deemed by the government to be subject to § 1225(b)(2). *Maldonado Vazquez,* No. 2:25-CV-01542-RFB-EJY(D. Nev. Oct. 24, 2025), ECF No. 39; *Dominguez-Lara,* No. 2:25-CV-01542-RFB-BNW (D. Nev. Oct. 24, 2025), ECF No. 31. The number of people impacted is likely to continue to grow as more arrests are conducted by ICE throughout Nevada and other neighboring states. Kagan Decl. ¶ 36. The denial of consideration of bond forces them to defend against their removal while detained for many months or even years under punitive conditions and separated from their families and communities. Kagan Decl. ¶ 34. Or worse, many have already felt coerced into giving up their claims against removals because of the government's mandatory detention policy, depriving people of any means of demonstrating their lack of flight risk or danger through a bond hearing in immigration court. *Id*.

B. Plaintiffs' Factual Background

Plaintiffs Victor Kalid Jacobo-Ramirez and Edgar Michel Guevara-Alcantar (Named Plaintiffs) are noncitizens and longtime residents of the United States who are harmed by Defendants' new policies. Kagan Decl. ¶¶ 8, 20. Both are detained at the Nevada Southern Detention Center in Pahrump, Nevada. *Id*. at ¶¶ 12, 24. They were detained by immigration officials while they were living in the United States, *Id* at ¶¶ 8, 19, 20, 24, and upon information and belief are charged with, *inter alia*, being present without admission, having entered the United States without inspection. *Id*. at ¶¶ 13, 25, 28. They were both denied consideration for release on bond under ICE's new policy. *Id*. at ¶¶ 18, 19, 28. Mr. Jacobo-Ramirez was initially released on bond after an IJ determined that he posed no flight risk or danger. *Id*. at ¶ 16. However, after the BIA decided in *Matter of Hurtado*, the IJ granted DHS's motion to revoke Mr. Jacobo-Ramirez's bond based on Defendants' policy of considering him subject to detention under 8 U.S.C. § 1225(b)(2). *Id*. at ¶ 18. He has been in immigration custody since October 7, 2025, despite already demonstrating to an IJ that he should not be detained. *Id*. at ¶¶ 16, 19. Mr. Guevara-Alcantar has

been in ICE custody since August 26, 2025, and he has not had a custody redetermination hearing because of DHS's policy; he remains detained without access to a bond hearing despite his lack of criminal history, length of residence in the United States, and close ties to the community in Nevada. *Id*. at ¶¶ 20, 24, 26. As a result, Plaintiffs face the prospect of months, or even years, in immigration custody, separated from their families and community. *Id*. at ¶ 34.

To seek recourse for these irreparable and ongoing harms, Plaintiffs filed a habeas petition challenging their unlawful detention and a class complaint for others similarly situated on October 30, 2025. ECF No. 1. Plaintiffs now concurrently seek a preliminary injunction and class certification.

III. ARGUMENT

A plaintiff whose suit satisfies the requirements of Federal Rule of Civil Procedure 23 has a "categorical" right "to pursue his claim as a class action." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.,* 559 U.S. 393, 398 (2010). The "suit must satisfy the criteria set forth in [Rule 23(a)] (i.e., numerosity, commonality, typicality, and adequacy of representation), and it also must fit into one of the three categories described in subdivision (b)." *Id*. As shown below, Plaintiffs' proposed class satisfies all four of Rule 23(a)'s requirements. Plaintiffs further demonstrate that Defendants "ha[ve] 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," as required under Rule 23(b)(2). *See Wal-Mart Stores*, 564 U.S.at 360. "[A] single injunction or declaratory judgment would provide relief to each member of the class," and therefore certification is appropriate under Rule 23(b)(2). *See Id*.

Courts in the Ninth Circuit have routinely certified class actions challenging immigration policies and practices, including those that impact detained noncitizens. *See, e.g.*, *Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 812 (9th Cir. 2020) (affirming certification of class

challenging the legality of ICE's practice of relying solely on electronic database checks to determine probable cause for detainment); *Hernandez Roman v. Wolf*, 829 F. App'x 165, 173 (9th Cir. 2020) (affirming provisional certification of a class of all individuals at the Adelanto detention facility based on risk from COVID-19); *Kidd v. Mayorkas*, 343 F.R.D. 428, 443 (C.D. Cal. 2023) (certifying two classes of individuals subject to ICE's enforcement policies that result in unreasonable searches and seizures in arresting and detaining immigrants in and near their own homes in the Los Angeles region); *Franco-Gonzales v. Napolitano*, No. CV 10-02211 DMG (DTBX), 2011 WL 11705815, at *16 (C.D. Cal. Nov. 21, 2011) (certifying class and subclasses of detained individuals in removal proceedings with serious mental disorder or defect rendering them incompetent to represent themselves); *Rodriguez Vazquez*, 349 F.R.D. at 364–65 (certifying classes of noncitizens detained at the Northwest ICE Processing Center subject to Tacoma Immigration Court's no-bond policy and who have pending appeal over bond denial before the BIA).

These cases demonstrate the propriety of Rule 23(b)(2) certification in actions challenging immigration policies that deprive individuals of the benefits or rights to which they are entitled. Indeed, the rule was intended to "facilitate the bringing of class actions in the civil-rights area," particularly those seeking declaratory or injunctive relief. Charles Alan Wright & Arthur R. Miller, 7AA *Federal Practice and Procedure* § 1775 (3d ed. 2022). Claims brought under Rule 23(b)(2) often involve issues affecting vulnerable individuals, like those similarly situated to Plaintiffs, who would be unable to present their claims absent class treatment. Additionally, the core issues in these types of cases generally present pure questions of law, rather than disparate questions of fact, and thus are well suited for resolution on a classwide basis. *See Rodriguez Vazquez*, 349 F.R.D. at 354; *Guerrero Orellana*, 2025 WL 3033769, at *9.

/

A. The Proposed Class Meets the Requirements of Rule 23(a).

i. The Class is Numerous and Joinder Would Be Impracticable.

The proposed class easily meets Rule 23(a)(1)'s requirement that a class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "'[I]mpracticability' does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Ests., Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) (citation omitted). "Numerousness—the presence of many class members—provides an obvious situation in which joinder may be impracticable, but it is not the only such situation." William B. Rubenstein, 1 *Newberg & Rubenstein on Class Actions* § 3:11 (6th ed. 2022) (footnote omitted). "Thus, Rule 23(a)(1) is an impracticability-of-joinder rule, not a strict numerosity rule. It is based on considerations of due process, judicial economy, and the ability of claimants to institute suits." *Id.* (footnote omitted). Determining numerosity "requires examination of the specific facts of each case and imposes no absolute limitations." *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980).

While "no fixed number of class members" is required, *Perez-Funez v. Dist. Dir., I.N.S.*, 611 F. Supp. 990, 995 (C.D. Cal. 1984), courts have generally found "the numerosity requirement satisfied when a class includes at least 40 members." *Rannis v. Recchia*, 380 F. App'x 646, 651 (9th Cir. 2010); *see also Ambrosia v. Cogent Commc'ns, Inc.*, 312 F.R.D. 544, 552 (N.D. Cal. 2016) ("[A]s a general matter, a class greater than forty often satisfies the requirement"). "'[W]here the exact size of the class is unknown but general knowledge and common sense indicate that it is large, the numerosity requirement is satisfied.'" *Kidd*, 343 F.R.D. at 437 (quoting *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 370 (C.D. Cal. 1982)).

The proposed class easily meets the numerosity requirement. EOIR's own data from January 2025 to August 2025 shows the Las Vegas Immigration Court docketed more than 500

cases where DHS detained people charged with entering without inspection.[4] Data submitted by Defendants in another similar matter before this Court shows that the government has identified approximately 585 people detained in ICE custody at facilities located within the District of Nevada, of whom 185 were identified to be detained under § 1225(b)(2). *Maldonado Vazquez,* No. 2:25-CV-01542-RFB-EJY (D. Nev. Oct. 24, 2025), ECF No. 39. While these are only preliminary and have not been probed, these figures place the proposed class far above the threshold of forty members, and the class will likely grow considering the recent increase in immigration enforcement both nationally and regionally, *See, e.g.*, *Vasquez Perdomo v. Noem*, No. 25-4312, 148 F.4th 656, 665 n.2, 666 n.3 (9th Cir. 2025) (describing statements of administration officials regarding a 3,000 daily arrest quota), and new class members likely being transferred into Nevada from other jurisdictions on a regular basis. Kagan Decl. ¶ 36.

Notably, Defendants are aware of the exact numbers for the proposed class at any given time, as they are "uniquely positioned to ascertain class membership," *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237 (9th Cir. 1999), *supplemented*, 236 F.3d 1115 (9th Cir. 2001), but the public data and anecdotal evidence alone are sufficient to show numerosity.

The proposed class is also comprised of many unknown, unnamed future members who will be subjected to Defendants' unlawful no-bond policies, making joinder even more impracticable. *See Doe v. Wolf*, 424 F. Supp. 3d 1028, 1040 (S.D. Cal. 2020) ("[W]here the class includes unnamed, unknown future members, joinder of such unknown individuals is impracticable and the numerosity requirement is therefore met, regardless of class size." (citation

[4] *New Proceedings Filed in Immigration Court: Fiscal Year NTA Dated*, Transactional Recs. Access Clearinghouse (August 2025), https://tracreports.org/phptools/immigration/ntanew/ (select "Immigration Court State" in lefthand column and select "Nevada" underneath; select "Charge on NTA" in middle column and then select "Entry Without Inspection" underneath; select "Custody" in the righthand column and then select "Detained" underneath; select "by fiscal year" on the graph; select "25" on the x-axis on the graph.

omitted)); *Ali v. Ashcroft*, 213 F.R.D. 390, 408–09 (W.D. Wash. 2003) (same). When a "class's membership changes continually over time, that factor weighs in favor of concluding that joinder of all members is impracticable." *A.B. v. Haw. St. Dep't of Educ.*, 30 F.4th 828, 838 (9th Cir. 2022).

In addition to class size and future class members, there are several other factors that make joinder impracticable in the present case, such as judicial economy, geographic dispersion of class members if transferred, limited financial resources of class members, and the inability of class members to bring individual suits. *See* Rubenstein, *supra*, § 3:12. The proposed class members are, by definition, detained, and not currently able to work to hire legal representation in their cases. Furthermore, detention poses numerous barriers to accessing counsel, imposing a significant impediment for any individual seeking to challenge Defendants' policies through individual suits. *See Rodriguez Vazquez*, 349 F.R.D. at 352 ("[G]iven that many of the putative plaintiffs have limited resources, they often decline counsel 'because they know there is no hope to obtain release'" (citations omitted)).

Accordingly, though the total number of putative class members is not known with precision, at a minimum there are currently 185 if not hundreds in the future. The proposed class thus well exceeds the sizes that courts have found sufficient for purposes of Rule 23(a)(1). *See, e.g.*, *Jordan v. Los Angeles Cnty.*, 669 F.2d 1311, 1319 (9th Cir. 1982) (class of thirty-nine), *vacated on other grounds*, 459 U.S. 810 (1982); *Franco-Gonzalez*, 2011 WL 11705815, at *9 (class of fifty-five).

ii. The Class Shares Common Questions of Law and Fact.

The proposed class satisfies commonality because it presents "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "The commonality requirement is 'construed permissively.'" *Rodriguez Vazquez*, 349 F.R.D. at 353 (quoting *Hanlon v. Chrysler Corp.*, 150

F.3d 1011, 1019 (9th Cir. 1998), *overruled on other grounds*); *see also Wal-Mart Stores*, 564 U.S. at 338. "Courts have found that a single common issue of law or fact is sufficient to satisfy the commonality requirement." *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 257 (C.D. Cal. 2008); *see also, e.g.*, *Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010) ("[T]he commonality requirements asks [sic] us to look only for some shared legal issue or a common core of facts."). Commonality exists if class members' claims all "depend upon a common contention . . . of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart*, 564 U.S. at 350. Therefore, the critical issue for class certification "is not the raising of common 'questions' . . . but rather, the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* (citation omitted).

Here, the proposed class satisfies the commonality requirement. The proposed class members share a single injury caused by Defendants' new policy: all persons who entered the United States without inspection and who are not apprehended upon arrival are now deemed subject to the mandatory provision under § 1225(b)(2)(A) and not considered for release on bond. Plaintiffs are asking the Court to consider at least one common, core legal question: whether Defendants' policy and practice of applying the mandatory detention statute to the class to deny consideration for bond violates the INA, its implementing regulations, the APA, and the Due Process Clause. *See Rodriguez Vazquez*, 349 F.R.D. at 353; *Guerrero Orellana*, 2025 WL 3033769, at *9. Those common questions are capable of classwide resolution through, at a minimum, vacatur of DHS's and the Las Vegas Immigration Court's policies and through declaratory judgments making clear that (1) the class members are not subject to mandatory detention under § 1225(b)(2)(A) but rather discretionary detention under § 1226(a); and (2) the class members are entitled to a bond hearing before the IJ. The fact that putative class members

may have varying circumstances does not defeat commonality among them. Notably, Plaintiffs are not asking this Court to determine the merits of their or any putative class member's request for release on bond. Therefore, the core common questions presented do not necessitate a substantial individual inquiry that would prevent a "classwide resolution." *Wal-Mart*, 564 U.S. at 350; *see also, e.g.*, *Evon v. L. Offs. of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012) ("Where the circumstances of each particular class member vary but retain a common core of factual or legal issues with the rest of the class, commonality exists." (citation omitted)); *Walters v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998) (finding commonality based on plaintiffs' common challenge to INS procedures, and noting that "[d]ifferences among the class members with respect to the merits of their actual document fraud cases . . . are simply insufficient to defeat the propriety of class certification"); *Orantes-Hernandez*, 541 F. Supp. at 370 (granting certification in challenge to common government practices in asylum cases, even though the outcome of individual asylum cases would depend on individual class members' varying entitlement to relief); *Rodriguez Vazquez*, 349 F.R.D. at 354 (rejecting the government's arguments that the impact of individual class members' circumstances on bond determinations could defeat commonality where there was a common legal question driving the litigation about whether class members were properly subject to mandatory detention under § 1225(b)(2)); *Guerrero Orellana*, 2025 WL 3033769, at *9 (same, noting that existence of a warrant or its language "does not govern the analysis of whether a noncitizen is detained under § 1225(b)(2)(A) or § 1226(a)" and that other "factual differences identified by the government have no bearing on whether § 1225(b)(2(A) authorizes detention without a bond hearing for the class members").

Moreover, the commonality standard is even more liberal in a civil rights suit such as this one, which "challenges a system-wide practice or policy that affects all of the putative class members." *Gonzalez*, 975 F.3d at 808 (citation omitted); *see also Armstrong v. Davis*, 275 F.3d

849, 868 (9th Cir. 2001) ("[I]n a civil-rights suit, that commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members"), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499, 504–05 (2005). Indeed, "class suits for injunctive or declaratory relief" like this case, "by their very nature often present common questions satisfying Rule 23(a)(2)." Wright & Miller, *supra*, § 1763.

In sum, the relief Plaintiffs seek will resolve the litigation as to all class members "in one stroke," *Wal-Mart*, 564 U.S. at 350, and Plaintiffs thus satisfy the commonality requirement of Rule 23(a)(2).

iii. Named Plaintiffs' Claims are Typical of the Claims of the Proposed Class Members.

The named Plaintiffs meet Rule 23(a)(3)'s requirement that their claims are "typical of the claims . . . of the class" as a whole. Fed. R. Civ. P. 23(a)(3). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (citation omitted).

Meeting this requirement usually follows from the presence of common questions of law. *See Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982) ("The commonality and typicality requirements of Rule 23(a) tend to merge."). To establish typicality, "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 156 (citation and internal quotation marks omitted); *see also Parsons*, 754 F.3d at 685 (finding typicality requirement met where class representatives "allege the same or similar injury as the rest of the putative class; and they allege that this injury is a result of a course of conduct that is not unique to any of them; and they allege that the injury follows from the course of conduct at the center of the class claims" (citation, internal quotation marks, and

alteration omitted)). As with commonality, factual differences among class members do not defeat typicality provided there are legal questions common to all class members. *See LaDuke v. Nelson*, 762 F.2d 1318, 1332 (9th Cir. 1985) ("The minor differences in the manner in which the representative's Fourth Amendment rights were violated does not render their claims atypical of those of the class." (footnote omitted)).

Typicality is satisfied for the class. Plaintiffs and all class members suffer from the same injury of detention without any opportunity to seek release on bond from either DHS or the Immigration Court. *See* Kagan Decl. ¶¶ 35, 37, 38. Plaintiffs seek declaratory relief from this Court establishing that their detention, as well as that of proposed class members, is governed by § 1226(a), which authorizes ICE to consider release on conditional parole or bond, and IJs in the Las Vegas Immigration Court to provide bond hearings. *See* ECF 1 at 21. Plaintiffs also seek vacatur of Defendants' new policy subjecting the class to mandatory detention. *See id.*

Accordingly, Plaintiffs have demonstrated that they are suffering from the same legal injury as the members of the class, caused by the same policies and practices by Defendants. *See Parsons*, 754 F.3d at 678; *Rodriguez Vazquez*, 349 F.R.D. at 357; *Guerrero Orellana*, 2025 WL 3033769, at *10. The harms suffered by Plaintiffs are thus typical of the class, and Plaintiffs satisfy the typicality requirement.

iv. Named Plaintiffs Will Adequately Protect the Interests of the Proposed Class, and Counsel Are Qualified to Litigate This Action.

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Whether the class representatives satisfy the adequacy requirement depends on 'the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive.'" *Walters*, 145 F.3d at 1046 (citation omitted).

1. Named Plaintiffs

The named Plaintiffs will fairly and adequately represent the class because their interests are consistent with, and not adverse to, the interests of the class. The named Plaintiffs are motivated to pursue this action on behalf of others like themselves who, based on ICE's new policy, are or will be subject to detention without any opportunity to seek bond. *See* Kagan Decl. ¶¶ 39, 40. They are also equally motivated to represent themselves and all other individuals who have been denied a bond hearing in the Las Vegas Immigration Court. *Id.*

The named Plaintiffs bring claims only for declaratory relief and vacatur against the government's policies, and do not seek money damages. As a result, there is no potential conflict between the interests of Plaintiffs and members of the proposed class. *See Rodriguez Vazquez*, 349 F.R.D. at 362 (finding no conflict of interest where class representative "has a 'mutual goal' with the other class members to challenge the allegedly unlawful practices and to 'obtain declaratory . . . relief that would not only cure this illegality but remedy the injury suffered by all current and future class member [sic].'" (quoting *Nightingale v. U.S. Citizenship & Immigr. Servs.*, 333 F.R.D. 449, 462 (N.D. Cal. 2019))); *Guerrero Orellana*, 2025 WL 3033769, at *10-11 (finding a common interest among the entire class and class representative in challenging the government's uniform policy imposing mandatory detention without a bond hearing on them during their removal proceedings). Accordingly, Plaintiffs are adequate representatives of the proposed class.

2. Counsel

Plaintiffs' counsel are also adequate. Counsel are qualified when they can establish experience in previous class actions and cases involving the same area of law. *See Lynch v. Rank*, 604 F. Supp. 30, 37 (N.D. Cal. 1984), *aff'd*, 747 F.2d 528 (9th Cir. 1984), *amended on reh'g*, 763 F.2d 1098 (9th Cir. 1985); *Jama v. State Farm Fire & Cas. Co.*, 339 F.R.D. 255, 269 (W.D. Wash. 2021). Plaintiffs are represented by experienced counsel from the American Civil Liberties Union

Foundation Immigrants' Rights Project, American Civil Liberties Union Foundation of Nevada, and University of Nevada, Las Vegas, Boyd School of Law Immigration Clinic. *See generally* Exhibit 1 Ramic Decl. ¶¶ 2-19; Kagan Decl. ¶¶ 2-6. Counsel have deep knowledge of immigration law and extensive experience litigating class actions and complex federal cases, including nationwide class actions and cases involving the rights of detained noncitizens. Ramic Decl. ¶¶ 2-19; Kagan Decl. ¶¶ 2-6. Counsel also have the necessary resources, expertise, and commitment to adequately prosecute this case on behalf of Plaintiffs and the proposed class. Ramic Decl. ¶¶ 2-19; Kagan Decl. ¶¶ 2-6.

For these reasons, counsel meet the requirements of Fed. R. Civ. P. 23(g).

B. The Proposed Class Satisfies Federal Rule of Civil Procedure 23(b)(2).

In addition to satisfying the four requirements of Rule 23(a), Plaintiffs also must meet one of the requirements of Rule 23(b) for a class action to be certified. Here, Plaintiffs seek certification under Rule 23(b)(2), which requires that "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." Rule 23(b)(2) is "unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole." *Parsons*, 754 F.3d at 688; *see also Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1195 (9th Cir. 2001) ("Class certification under Rule 23(b)(2) is appropriate only where the primary relief sought is declaratory or injunctive.").

The proposed class seeks such uniform relief, applicable to all class members. First, DHS's no-bond policy renders all members of the class subject to mandatory detention under § 1225(b)(2), thus depriving them of consideration for release on bond by ICE, to which they are entitled under § 1226(a). That same policy was affirmed by the BIA in the *Matter of Hurtado*.

Accordingly, a "single injunctive or declaratory judgment"—a declaratory judgement establishing that their detention is governed by § 1226(a) and vacatur of Defendants' policy—"would provide relief to each member of the class." *Wal-Mart*, 564 U.S. at 360; *see also Amchem Prods. v. Windsor*, 521 U.S. 591, 614 (1997) (explaining that "[c]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of 23(b)(2) class actions).

This is a quintessential case for Rule 23(b)(2) treatment. Plaintiffs challenge the federal government's policies and practices of violating putative class members' statutory and constitutional rights. The challenged policies and practices apply to the class as a whole, and Plaintiffs seek declaratory relief and vacatur for the class as a whole. Federal courts have routinely certified classes in similar cases. *See, e.g.*, *Walters*, 145 F.3d at 1047 (upholding certification under Rule 23(b)(2) where plaintiffs sought injunctive relief against immigration agency's practices in document fraud proceedings); *Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959, 990–91 (D. Ariz. 2011) (finding certification under Rule 23(b)(2) proper where plaintiffs sought injunctive and declaratory relief against sheriff's vehicle stop practices, including on Fourth Amendment grounds); *Rodriguez Vazquez*, 349 F.R.D. at 362-65; *Guerrero Orellana*, 2025 WL 3033769, at *13; *see also supra* at 11.

Again, that individual class members may be affected by Defendants' practices in different ways does not undermine the case for class treatment. *See Gibson v. Local 40, Supercargoes and Checkers,* 543 F.2d 1259, 1264 (9th Cir. 1976) ("A class action may be maintained under [Rule] 23(b)(2), alleging a general course of racial discrimination by an employer or union, though the discrimination may have been manifested in a variety of practices affecting different members of the class indifferent ways."); *Parsons*, 754 F.3d at 687–89. Unlike other categories of class actions, there is no requirement that common issues "predominate" for a Rule (b)(2) class and questions of manageability and judicial economy are not the touchstone. *Walters*, 145 F.3d at 1047. Class

members here seek classwide relief from a single set of policies and practices. That is sufficient for this civil rights action. *Parsons*, 754 F.3d at 686; Advisory Committee Note to Subdivision (b)(2), 39 F.R.D. 102 (1996) ("Illustrative [of the purpose of Rule 23(b)(2)] are" civil rights actions, usually those "whose members are incapable of specific enumeration.").

Therefore, this action meets the requirements of Rule 23(b)(2).

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court certify the proposed class, appoint Named Plaintiffs as the class representatives for the class, and appoint the undersigned attorneys as class counsel.

[Remainder of page left intentionally blank.]

Dated: November 6, 2025.

AMERICAN CIVIL LIBERTIES UNION OF NEVADA

/s/ Sadmira Ramic
SADMIRA RAMIC (15984)
CHRISTOPHER M. PETERSON (13932)
4362 W. Cheyenne Ave.
North Las Vegas, NV 89032
Telephone: (702) 366-1226
Facsimile: (702) 718-3213
Emails: ramic@aclunv.org
peterson@aclunv.org

Michael K.T. Tan (CA SBN# 284869)*
My Khanh Ngo (CA SBN# 317817)*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104
(415) 343-0770
m.tan@aclu.org
mngo@aclu.org

MICHAEL KAGAN (12318C)
ANDREW ELKINS
GABRIELA RIVERA DORADO
Student Attorneys Practicing
Under Nevada Supreme Court Rule 49.3
UNLV IMMIGRATION CLINIC
Thomas & Mack Legal Clinic
William. S. Boyd School of Law
University of Nevada, Las Vegas
P.O. Box 71075
Las Vegas Nevada
Telephone: (702) 895-3000
Facsimile: (702) 895-2081
Email: Michael.Kagan@unlv.edu
Email: elkina1@unlv.nevada.edu
Email: doradoma@unlv.nevada.edu

Counsel for Plaintiffs-Petitioners
*Applications for admission pro hac vice pending

INDEX

EXHIBIT	DESCRIPTION
1	Declaration of ACLU and ACLU of Nevada in Support of Plaintiff-Petitioners' Motion for Class Certification and Appointment of Class Counsel
2	Declaration of Michael Kagan, Esq. in Support of Named Plaintiffs' Motion for a Preliminary Injunction and Motion for Class Certification and Appointment of Class Counsel
2A	Las Vegas Municipal Court Case Docket for Victor Kalid Jacobo-Ramirez, Case Number 25-051521
2B	Order of Immigration Judge Granting Bond for Victor Kalid Jacobo Ramirez
2C	Order of Immigration Judge Revoking Bond from Victor Kalid Jacobo Ramirez
2D	Las Vegas Municipal Court Case Docket for Edgar Michel Guevara Alcantar, Case Number 25-053721

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL** with the Clerk of the Court for the United States District Court of Nevada by using the court's CM/ECF system on November 6, 2025. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished on all participants by:

☒ CM/ECF
☐ Electronic mail; or
☐ US Mail or Carrier Service

/s/ Suzanne Lara

An employee of ACLU of Nevada