UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOSE ARNULFO GUERRERO ORELLANA, on behalf of himself and others similarly situated, Petitioner-Plaintiff, v. ANTONE MONIZ, Superintendent, Plymouth County Correctional Facility, et al., Respondents-Defendants.	Case No. 25-12664-PBS

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND MEMORANDUM IN OPPOSITION TO RESPONDENTS' CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT

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INTRODUCTION

Defendants' opposition confirms that this dispute presents a straightforward question of statutory interpretation that this Court has already answered: noncitizens arrested inside the United States are subject to detention under 8 U.S.C. § 1226(a), not § 1225(b)(2), and thus eligible for release on bond. *See generally* Mem. and Order (D.E. 54) ("PI Order"). And the Court can and should grant relief to the certified class. *See generally* Mem. and Order (D.E. 81) ("Class Cert. Order"). Defendants' largely recycled arguments have no merit.

First, as the Court has repeatedly ruled, there is jurisdiction to decide these claims. *See* PI Order at 8-11 (rejecting applicability of §§ 1252(b)(9), 1252(g) and 1252(a)(2)(B)(ii)); Class Cert. Order at 11-15 (rejecting applicability of § 1252(e)(1)(B)). Sections 1252(a)(5), 1252(b)(9) and 1252(g) do not bar review because the class challenges the legality of their detention—not removal orders or discretionary choices to commence, adjudicate, or execute removal. Section 1252(e) is likewise inapposite: it concerns people in expedited removal under § 1225(b)(1) (who are expressly excluded from this class definition), and in any case says nothing to limit the claims of people subject to detention under § 1226. *See* Class Cert. Order at 13-15. And § 1252(f)(1) imposes only a limit on class-wide injunctive relief; it does not bar the requested class-wide declaratory relief. *Id*. at 30-31.

Second, on the merits, the Court has already held that Defendants' theory that every "applicant for admission" is necessarily "seeking admission" cannot be squared with the statutory text, structure, or history. Section 1225(b)(2) only applies to "applicants for admission" who are also "seeking admission," i.e., lawful entry, from immigration officers at the border. But class members, who entered without inspection and are now present inside the United States, are by definition not "seeking admission" within the meaning of § 1225(b)(2) and thus fall within the

detention framework of § 1226—which explicitly covers "inadmissible" noncitizens like the class and would be rendered largely meaningless under Defendants' theory. Congress confirmed as much when it recently amended § 1226(c) to transfer certain noncitizens present without admission or parole from detention under § 1226(a) to subsection (c). Congress's recent action would make no sense if, as Defendants contend, Congress never included such noncitizens in § 1226 to begin with. And, of course, if the statutory scheme allowed for the lengthy no-bond detention of millions of people inside the United States without any process, such a massive mandatory detention scheme would plainly violate the Constitution—an outcome which Congress is presumed not to intend, and which the class's proposed interpretation appropriately avoids.

Finally, to ensure that relief reaches the people it is intended to protect—particularly given frequent inter-facility transfers—the Court should direct reasonable notice to the class and identification of class members to class counsel. Monitoring compliance with any declaration that the Court enters is a predicate to successful enforcement, and it would be appropriately facilitated by the proposed notice and identification procedures.

For these reasons, and those explained in Petitioner-Plaintiff's ("Plaintiff") opening brief ("Br."), the Court should grant Plaintiff's motion for partial summary judgment and deny Defendants' cross-motion. Count I is segregable from the remaining claims such that entry of partial final judgment under Rule 54(b) is warranted—a position with which the Defendants agree. *See* Opposition/Cross-Mot. (D.E. 95) ("Opp.") at 38 ("Respondents agree that the judgment should be entered as a partial final judgment under Rule 54(b).").

ARGUMENT

I. THIS COURT HAS JURISDICTION.

Defendants reiterate three jurisdictional challenges that this Court already rejected. They should not be reconsidered. First, Defendants once again claim there is no jurisdiction because 8 U.S.C. §§ 1252(b)(9) and 1252(g), in conjunction with § 1252(a)(5), bar review of any claim "arising from" removal proceedings. Opp. at 22. But "district courts retain jurisdiction over challenges to the legality of detention in the immigration context." *Aguilar v. U.S. Immigr. & Customs Enf't*, 510 F.3d 1, 11 (1st Cir. 2007) (holding that § 1252(b)(9) does not preclude review of challenges to detention independent of removal orders); *see also Kong v. United States*, 62 F.4th 608, 617-18 (1st Cir. 2023) (holding that § 1252(g) does not strip a district court of jurisdiction to consider challenges to detention). As this Court has already noted, the class in this case is challenging the legality of "ongoing immigration detention without a bond hearing," not any element of the removal proceedings themselves. *See* PI Order at 9. Nor is the class challenging decisions to arrest each member in the first instance. *See id.* (quoting *Jennings*, 583 U.S. 281, 294 (2018)). The jurisdictional bars of §§ 1252(a)(5), 1252(b)(9), and 1252(g) do not apply here, and this Court retains jurisdiction to decide Count I.

Second, Defendants reassert their objection based on 8 U.S.C. § 1252(e), which they allege bars certification of a class challenging a determination under section 1225(b). Opp. at 23. This argument is premised on a misinterpretation of the statute, which applies only to "Judicial Review of Orders Under Section 1225(b)(1)." *See* Class Cert. Reply (D.E. 72) at 9. Section 1252(e) does not apply because that provision *grants* review over certain challenges involving the expedited provisions of § 1225(b)(1) that is otherwise stripped by § 1252(a)(2)(A). Because this class challenges § 1226 detainees being misclassified as § 1225(b)(2) detainees, the expedited removal

provisions of § 1225(b)(1)—and hence § 1252(e)—do not enter into the analysis. *See, e.g.*, *Innovation Law Lab v. Nielsen*, 366 F. Supp. 3d 1110, 1120 (N.D. Cal. 2019), *vacated as moot sub nom, Innovation Law Lab v. Mayorkas*, 5 F.4th 1099 (9th Cir. 2021).[1] In any event, § 1252(e)'s jurisdictional bar does not apply because the class is not seeking review of any order pursuant to § 1225(b). As this Court has repeatedly held, § 1225(b) does not govern detention of class members in the first place, and so the class cannot be (and is not) seeking review of its implementation. *See* Class Cert. Order at 13-14; PI Order at 15.

Third, Defendants repeat their objection that the declaratory relief sought here runs afoul of § 1252(f)'s jurisdictional bar on an order or injunctive relief. Opp. at 35-38. But again, as further discussed below, this argument is foreclosed by binding precedent. As this Court has recognized, the First Circuit has held that "§ 1252(f)(1) does not prohibit such class-wide declaratory relief." Class Cert. Order at 31 (citing *Brito v. Garland*, 22 F.4th 240, 252 (1st Cir. 2021)). Defendants' argument here continues to fail.

[1] Several district courts have similarly ruled that a challenge to the misclassification of a § 1226 detainee did not implicate § 1252(e). *See, e.g.*, Nov. 25, 2025 Order (D.E. 17), *Ocampo Fernandez v. Ripa*, No 25-24981 (S.D. Fla.) at 6-7 (citing *Castro v. U.S. Dep't of Homeland Sec.*, 835 F.3d 422, 427 (3d Cir. 2016)); *Cardona-Lozano v. Noem*, No. 1:25-CV-1784-RP, 2025 U.S. Dist. LEXIS 226361, at *7 (W.D. Tex. Nov. 14, 2025) (noting "multiple courts have described 1252(e)(3) as applying only to 'the expedited removal process'"); *see also Sequen v. Albarran*, No. 25-CV-06487-PCP, 2025 U.S. Dist. LEXIS 232133, at *31 (N.D. Cal. Nov. 25, 2025) ("§ 1252(e)(3) provides only a 'limited grant of jurisdiction to the D.C. district court' to decide challenges to 'regulation[s] that [are] entirely linked to the expedited removal process.'" (citation and quotation marks omitted)).

II. DEFENDANTS' POLICY OF SUBJECTING THE CLASS TO MANDATORY DETENTION UNDER 8 U.S.C. § 1225(B)(2) VIOLATES THE INA.

A. "Applicants for Admission" Are Not Necessarily "Seeking Admission."

Defendants contend that every "applicant for admission" is inherently and necessarily "seeking admission" within the meaning of § 1225(b)(2)(A), such that every person who entered without inspection would have to be classified as a § 1225(b)(2) no-bond detainee essentially forever. Opp. at 25-26. As noted in the class's opening brief, this assertion reflects a drastic and unjustified reversal of decades of well-settled law and practice, with catastrophic results for the class members. This Court and many others have expressly rejected Defendants' attempt to systematically misclassify these detainees and deny them access to bond, and Defendants essentially repeat the exact arguments those courts have already ruled are incorrect.[2] *See, e.g.*, PI Order at 19-20; *Romero v. Hyde*, No. 25-11631-BEM, 2025 U.S. Dist. LEXIS 160622, at *20-24 (D. Mass. Aug. 19, 2025); *J.G.O. v. Francis*, No. 25-CV-7233 (AS), 2025 U.S. Dist. LEXIS 212816, at *9-10 (S.D.N.Y. Oct. 28, 2025). Their arguments should be rejected for the same reasons.

In making this argument, Defendants assert that the terms "or otherwise" in Section 1225(a)(3)—which provides that "[a]ll aliens . . . who are applicants for admission *or otherwise*

[2] An overwhelming number of decisions have rejected the government's new misclassification policy. *See* Nov. 26, 2025 Mem. Opinion (D.E. 28), *Barco Mercado v. Noem*, No. 25-06582 (S.D.N.Y.) at 9-10 & App. A (finding that out of at least 362 challenges to this policy, at least 350 decisions by over 160 different judges have rejected the government's new position); *see also* Kyle Cheney, *More than 220 Judges Have Now Rejected the Trump Admin's Mass Detention Policy*, Politico (Nov. 28, 2025), https://www.politico.com/news/2025/11/28/trump-detention-deportation-policy-00669861. Defendants rely on a tiny minority of cases to the contrary, *see* Opp. at 24, but those cases adopted the government's flawed arguments that this Court has already rejected—i.e., that all "applicants for admission" are always "seeking admission." *See, e.g.*, *Chavez v. Noem*, No. 25-02325, 2025 U.S. Dist. LEXIS 192940, at *11-12 (S.D. Cal. Sept. 24, 2025).

seeking admission . . . shall be inspected," 8 U.S.C. § 1225(a)(3) (emphasis added)—establish that being an "applicant for admission" is merely one particular "way or manner" of "seeking admission" such that all "applicants for admission" are "seeking admission" for purposes of §1225(b)(2)(A). Opp. at 25-26. This is not correct. The ordinary use of the term "or" is "almost always disjunctive, that is, the words it connects are to be given separate meanings," and "otherwise" means "something or anything else." *See J.G.O.*, 2025 U.S. Dist. LEXIS 212816, at *9 (internal quotations omitted). "Taken together, 'or otherwise' is used to refer to something that is different from something already mentioned." *Id.* (internal quotations omitted) (quoting Merriam Webster's Collegiate Dictionary (10th ed. 2001)). Contrary to Defendants' reading, "seeking admission" in § 1225(b)(2)(A) refers to "something that is different from" the previously mentioned term "applicant for admission." *See id.*; *see also Fischer v. United States*, 603 U.S. 480, 490-91 (2024) (rejecting sweeping interpretation of "otherwise" connecting two different actions because such reading would render the first, narrower provision superfluous). As this Court explained in its PI Order, Defendants' interpretation impermissibly expands the scope of the statute beyond the ordinary meaning of its text and violates multiple canons of statutory construction. *See* PI Order at 17-20.

Moreover, Defendants essentially lop off the rest of the provision, which states that noncitizens "who are applicants for admission or otherwise seeking admission *or readmission to or transit through the United States* shall be inspected by immigration officers." 8 U.S.C. § 1252(a)(3). Defendants offer no explanation for why "applicants for admission" fall exclusively as a subset of only those "seeking admission" to the exclusion of those seeking readmission or transit; a more natural reading of the statute confirms that "applicants for admission" are a distinct concept from those "seeking admission or readmission to or transit through the United States."

Defendants also repeat various arguments that this Court and the decisions it relied on have already thoroughly considered and resolved. For example, Defendants argue that the class provides no "viable theory as to what 'seeking admission' means," Opp. at 28, but this is not true: "seeking admission" is the "present-tense action" of seeking "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer." *See Romero*, 2025 U.S. Dist. LEXIS 160622, at *20; 8 U.S.C. § 1101(a)(13)(A) (defining admission). Thus, there are many other types of individuals beyond applicants for admission who may be considered "seeking admission," including returning lawful permanent residents who potentially abandoned their status. *See Zumba v. Bondi*, No. 25-CV-14626 (KSH), 2025 U.S. Dist. LEXIS 190052, at *22-23 (D.N.J. Sept. 26, 2025) (listing examples). But clearly the phrase "seeking admission" has no application to people who *already entered* the United States *without* seeking lawful entry and are later apprehended within its borders. And the mere fact that such people may later request some type of immigration status *from inside the country* cannot implicate this language either. *See* PI Order at 18; *see also Sanchez v. Mayorkas*, 593 U.S. 409, 414-18 (2021) (differentiating between a lawful admission into the country and a grant of lawful status once inside the country).

B. The Recent Amendments to Section 1226(c) Confirm that People Who Entered Without Admission or Parole Are Within Section 1226.

This Court already found that adopting Defendants' interpretation of § 1225(b)(2) would render meaningless the recent Laken Riley Act amendment to § 1226(c) that subjects only certain noncitizens "present in the United States without being admitted or paroled" to mandatory detention. PI Order at 20–21. Defendants' new argument to the contrary—that their interpretation does not render the relevant provision of § 1226(c) superfluous because it narrows the

circumstances under which noncitizens subject to § 1225(b)(2) can be released from mandatory detention, Opp. at 33—misunderstands the law.

By its plain terms, § 1226(c) only limits the detention authority of § 1226(a); it does not have any effect on the scope of § 1225(b)(2). *Nielsen v. Preap*, 586 U.S. 392, 409 (2019) ("[Section 1226(c)] is simply a limit on the authority conferred by subsection (a)."); *Jennings v. Rodriguez*, 583 U.S. 281, 288 (2018) (explaining that § 1226(a) "sets out the default rule," and § 1226(c) "carves out a category of aliens who may *not* be released under § 1226(a)"); *see also* PI Order at 24 (Sections 1226 and 1225(b)(2) "apply in different circumstances") (quoting *Sampiao v. Hyde*, No. 1:25-cv-11981-JEK, 2025 U.S. Dist. LEXIS 175513, at *23 (D. Mass. Sept. 9, 2025)). By carving out a subclass of noncitizens present without being admitted or paroled from the authority of § 1226(a), the recent amendment to § 1226(c) demonstrates that § 1226(a) applies to all other such noncitizens. *See* PI Order at 16 ("The 'express exception' to § 1226(a)'s discretionary detention authority in § 1226(c) 'implies that there are no other circumstances under which' a noncitizen detained under § 1226 is subject to mandatory detention.") (quoting *Jennings*, 583 U.S. at 300). This amendment—which can only operate to limit the scope of § 1226(a)—would have no effect if such noncitizens were already excluded from § 1226(a). *Id.* at 20 ("When Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect.") (quoting *United States v. Quality Stores, Inc.*, 572 U.S. 141, 148 (2014)). In other words, Defendants are simply wrong that the Laken Riley Act applies to individuals who would otherwise be properly subject to § 1225(b)(2), and their position still renders those recent amendments superfluous. *Id.*

C. Plaintiff's Reading of Statute Comports with Congressional Intent.

This Court also rejected Defendants' contention that its interpretation of § 1225(b)(2) comports with congressional intent in enacting IIRIRA. The Court explained that "resort to IIRIRA's '[p]urpose cannot override [the] text' of the statute," PI Order at 25 (quoting *Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 25 (1st Cir. 2020)), and, "[i]n any event, the legislative history suggests that Congress did ***not*** intend to alter the detention authority for noncitizens who entered the country unlawfully," *id.* (emphasis added) (citing H.R. Rep. No. 104-828, at 210 (1996); H.R. Rep. No. 104-469, pt. I, at 229 (1996)). Congress had good reason to maintain the pre-IIRIRA detention scheme for noncitizens who entered without inspection: detention implicates high-order liberty interests, and "once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001); *Romero v. Hyde*, No. 25-11631-BEM, 2025 U.S. Dist. LEXIS 160622, at *29-30 (D. Mass. Aug. 19, 2025). Congress is presumed not to intend legislative interpretations that would violate the Constitution, as a statute mandating civil confinement of people arrested within the United States without any due process most surely would. *See Zadvydas*, 533 U.S. at 689; *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997); *Foucha v. Louisiana*, 504 U.S. 71, 81-83 (1992); *United States v. Salerno*, 481 U.S. 739, 755 (1987); *Addington v. Texas*, 441 U.S. 418, 425 (1979); *cf. Jennings*, 583 U.S. at 296; *Demore v. Kim*, 538 U.S. 510, 527 (2003).

Moreover, while Congress explicitly amended § 1226(a) to omit any reference to deportability—thus ensuring that those who are inadmissible because they entered without inspection would be eligible for bond, H.R. Rep. No. 104-469, pt. I, at 229—Congress also expressly expanded crime-based mandatory detention grounds in IIRIRA *and* gave the then-

Immigration and Naturalization Service (INS) two years to expand its detention capacity modestly so it could expand up to 9,000 beds. *See id.* at 123-24; Margaret H. Taylor, *The 1996 Immigration Act: Detention and Related Issues*, 74 Interpreter Releases 209, 216-17 (1997). Defendants' suggestion that Congress simultaneously and quietly mandated the detention of many times more people—estimated over two million noncitizens who were present without inspection or parole at the time—is not only absurd but inconsistent with the changes to IIRIRA and the congressional record.

Defendants suggest that an agency regulation governing expedited removal contemplates the application of § 1225(b)(2) to all applicants for admission who are not amenable to expedited removal. Opp. at 29. But Defendants fail to explain why, from promulgation of that regulation in 1997 until just a few months ago, "the relevant agencies consistently applied § 1226, not § 1225(b)(2)(A), to noncitizens who entered without inspection and were later apprehended within the country." PI Order at 23-24. Perhaps because the issuing agency clarified that, "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). This clarification is consistent with the longstanding practice of applying § 1226 to such individuals, and both that clarification and nearly thirty years of consistent practice demonstrate that § 1225(b)(2) only applies to noncitizens apprehended while "seeking admission" from an "examining immigration officer" at the border. *See* PI Order at 22-24.

Defendants' argument based on the expedited removal statute is similarly unavailing. *See* Opp. at 29. It hardly helps Defendants' argument that Congress *did* specifically describe the circumstances for § 1225's applicability for people who were not admitted or paroled, but it is in (b)(1) and *not* in (b)(2). *See* 8 U.S.C. § 1225(b)(1)(A)(i) & (iii)(II), (B)(iii)(IV); *RadLAX Gateway*

Hotel v. Amalgamated Bank, 566 U.S. 639, 645 (2012) ("It is a commonplace of statutory construction that the specific governs the general."). And, of course, anyone detained under (b)(1) is excluded from this class. *See* Class Cert. Order at 37.

D. Plaintiff's Reading of Statute Comports with *Jennings*.

This Court also rejected Defendants' attempt to mischaracterize *Jennings* as supportive of its arguments, finding *Jennings* "largely consistent with Guerrero Oreallana's argument" because it explains that § 1225 applies to noncitizens "seeking admission into the country" and that § 1226 applies to "certain aliens already in the country." *See* PI Order at 22 (quoting *Jennings*, 583 U.S. at 287-89). Defendants now argue that *Jennings*'s description of § 1226 as applying to "***certain*** aliens already in the country" suggests that it only applies to noncitizens who have been admitted. *See* Opp. at 35 (emphasis added). Not so. The Court in *Jennings* was clearly referring to its statements in the preceding paragraphs that some noncitizens "inside the United States" are subject to removal, and "Section 1226 generally governs the process of arresting and detaining *that group* of aliens pending their removal." *See Jennings*, 538 U.S. at 288 (emphasis added). The Court then stated that Section 1226 "authorizes the Government to detain certain aliens already in the country." *See id.* at 289. In context, the word "certain" in that statement merely conveys the unremarkable proposition that Section 1226 does not apply to every noncitizen in the country—only those who are allegedly removable, such as the class members in this case.[3]

[3] Defendants refer to noncitizens who were encountered upon arrival and later released on humanitarian parole, Opp. at 30 n.2, but those individuals are excluded from the class. Class Cert. Order at 37. Thus, contrary to Defendants' assertion, this Court need not address what statute applies to such individuals.

III. DECLARATORY RELIEF REMAINS APPROPRIATE AND EFFECTIVE.

As discussed above, Defendants oppose class-wide declaratory relief based on § 1252(f)(1). The Court has already rejected these arguments, *see* Class Cert. Order at 30-35, and should reject them again for the same reasons. Among other reasons, the First Circuit has specifically held that nothing in § 1252(f)(1) bars class-based declaratory relief in the context of challenges to immigration detention, *see Brito v. Garland*, 22 F.4th at 252, a fact Defendants acknowledge, *see* Opp. at 35 (noting in § 1252(f)(1) argument that "the First Circuit has held otherwise"). Defendants imply that *Aleman Gonzalez* might have changed the law in this regard, *see id.*, but in reality the Supreme Court expressly declined to reach the question, *see* 596 U.S. 543, 551 n.2 (2022) ("[W]e have no occasion to address this argument."), and courts since then have agreed that § 1252(f)(1) does not foreclose class-wide declaratory relief, *see, e.g.*, *Vazquez v. Bostock*, No. 3:25-CV-05240-TMC, 2025 U.S. Dist. LEXIS 193611, at *33-36 (W.D. Wash. Sept. 30, 2025).

Defendants do attempt to smuggle in one new argument via footnote, albeit a flawed one. *See* Opp. at 37 n.3. Defendants seem to imply that any declaratory judgment issued by this Court should not be given preclusive effect so long as it is subject to a potential or actual appeal. This assertion is wrong. Unless stayed, vacated, or reversed by an appellate court, a judgment is final for purposes of res judicata even if it is subject to, or could be subject to, an appeal. *See* 18 Moore's Federal Practice – Civil § 131.30[2][c][ii] (2025). The same principle applies to a district court's declaratory judgment, which is final and binding. *See Henglein v. Colt Inds.*, 260 F.3d 201, 210-11 (3d Cir. 2001). It is binding on the parties before the court and is res judicata in subsequent proceedings as to matters declared. *See Union de Empleados de Muelles de P.R., Inc. v. Int'l Longshoreman's Ass'n*, 884 F.3d 48, 58-59 (1st Cir. 2018).

IV. NOTICE AND IDENTIFICATION PROCEDURES ARE NECESSARY TO ENSURE CLASS MEMBERS OBTAIN RELIEF.

Should the Court grant class-wide partial summary judgment, the Court should also provide notice to, and identification of, the class members. The Court has "broad discretion to order an 'appropriate' level of notice" for class members pursuant to Fed. R. Civ. P. 23(c)(2)(A). *Fraihat v. U.S. Immigr. & Customs Enf't*, No. EDC 19-1546 JGB, 2020 U.S. Dist. LEXIS 94952, at *13 (C.D. Cal. May 15, 2020). Here, the requested declaratory judgment would enable class members to seek release on bond. To be able to do so, however, they must know their rights. While Defendants contend that the posting of a notice in a place visited by many class members is sufficient, Opp. at 38, reality demonstrates this is not the case. Given DHS's well-documented practice of transferring detainees out of New England to other parts of the country in violation of their own policy[4]—sometimes within a matter of hours[5]—it is clear that without appropriate notice, class members may never become aware of their rights.

Because Defendants are "uniquely positioned to ascertain class membership," the Court should require Defendants to inform class members that declaratory relief is available. *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1236-37 (9th Cir. 1999) (holding that the district court did not err

[4] ICE Policy 11022.1 prohibits ICE from transferring detainees outside the Area of Responsibility ("AOR") (which includes Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont) for detainees with documentation showing that they have immediate family, an attorney of record, or notice of pending or on-going removal proceedings within the AOR, or that their bond has been granted or their bond hearing has been scheduled, unless the AOR's Field Office Director deems a transfer necessary. The policy also requires ICE to provide notice of transfers to detainees and their attorneys. *See* ICE Policy 11022.1: Detainee Transfers, https://www.ice.gov/doclib/detention-reform/pdf/hd-detainee-transfers.pdf.

[5] Marcela Rodrigues and Scooty Nickerson, *'Treated like an animal': ICE is Moving Detained Immigrants Quickly to Conservative States, Raising Due Process Concerns, Boston Globe* (Nov. 25, 2025), https://www.bostonglobe.com/2025/11/25/metro/ice-deportation-transfers-due-process/.

in ordering defendant INS to provide notice). Further, there is "no real burden to the government in providing notice because it can be easily attached" to other distributions to detainees. *See id.* The Court ordered such notice in *Brito*, and it was provided without apparent difficulty. *Brito v. Barr*, 415 F. Supp. 3d 258, 271 (D. Mass. 2019), *aff'd in part and vacated in part, Brito v. Garland*, 22 F.4th 240 (1st Cir. 2021).

Identification of class members is also warranted for similar reasons. Particularly where class members are frequently transferred out of New England, class counsel cannot contact class members, monitor their treatment, or enforce their rights without identifying information uniquely and exclusively in Defendants' possession. Br. at 20-21. Defendants contend that ongoing identification of class members and class transfers to class counsel runs afoul of § 1252(f)(1)'s jurisdictional bar on class-wide injunctive relief. Opp. at 39. To be clear, the remedy sought is a declaratory one, and an order to provide ongoing identification of class members and transfers in no way "enjoin[s] or restrain[s]" the operation of the INA. *See Al Otro Lado v. Exec. Off. for Immigr. Review*, 120 F.4th 606, 628 (9th Cir. 2024) (referring to collateral-effect rule). A directive to provide identification imposes no more additional burden than to track those class members to which the correct INA provision will be applied. There will be no effect on Defendants' operation of the covered provisions. *See id.* (citing *Aleman Gonzalez v. Garland*, 596 U.S. 543, 553 n.4 (2022)) ("The Supreme Court acknowledged our collateral-effect rule in *Aleman Gonzalez* and left it undisturbed.").

Class members are among the most vulnerable populations: they are in large part unrepresented by counsel, may not speak English, lack access to information and resources, and are transferred away to detention centers far away from their families and communities. Without notice to class members and identification to class counsel, class members may be unable to assert

their rights, and the Court's declaratory relief may cease to reach the very people it seeks to protect. This Court should therefore grant notice to, and identification of, class members.

CONCLUSION

For the foregoing reasons and those described in the Memorandum in Support of Motion for Partial Summary Judgment, the Class respectfully requests that the Court (a) grant class-wide partial summary judgment on Count I in favor of the class and deny Defendants' cross-motion; (b) enter declaratory relief that class members are entitled to bond hearings upon request; (c) enter its ruling as a partial judgment under Rule 54(b); and (d) order notice to the class members and identification of the class members to class counsel.

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Dated: December 5, 2025

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document will be served on counsel for all parties through the Court's CM/ECF system.

Date: December 5, 2025

/s/ Gilleun Kang
Gilleun Kang