

**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

Leave to File Granted on
October 14, 2025

REPLY MEMORANDUM IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

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INTRODUCTION

This case is ideal for class treatment. Numerous people are being impacted by a uniform government policy, memorialized in a single BIA decision, that impacts all of them in an identical way—the denial of consideration for bond. And all putative class members would benefit from identical relief: a ruling that they are entitled to a bond hearing. In the absence of class treatment, the private bar, the government, and the courts will continue to contend with an unrelenting flood of individual habeas claims raising this exact question time and time again. A collective resolution is not merely appropriate—it is badly needed to preserve scarce legal and judicial resources and to ensure uniform access to justice for all detainees.

The Federal Rules specifically authorize this Court to address this question on a collective basis. The legality of the government’s policy plainly presents a “question” that is “common” to all putative class members. *See* Fed. R. Civ. P. 23(a)(2). The government’s policy is being “appl[ied] generally” to them. *See id.* 23(b)(2). The other Rule 23(a) factors are satisfied, including by the presence of a class representative who the Court has already ruled is being subjected to this exact policy. *See id.* 23(a)(1), (3), (4); Oct. 3, 2025 Order (D.E. 54). And because Petitioner proposes a class under Rule 23(b)(2), nothing further is required—the more stringent requirements of predominance and superiority in Rule 23(b)(3) simply do not apply. *Compare* Fed. R. Civ. P. 23(b)(2), *with id.* 23(b)(3).

The government’s brief attempts to elide this simple inquiry in essentially two ways. First, the government studiously ignores the strict limitations *already included* in the proposed class definition. *See* Am. Pet. (D.E. 10) ¶ 45; Cert. Mot. (D.E. 31) at 1. These restrictions will ensure that the class members truly present a common question by excluding from the class people being targeted for no-bond detention for other reasons besides the government’s policy of misclassifying

§ 1226(a) detainees under § 1225(b)(2) (*i.e.*, expedited removal; humanitarian parole revocation; § 1226(c) mandatory detention; and post-final order detention). Second, the government opposes the class by claiming there will be variations in the *answer* to the common question. But the dozens of favorable decisions recently issued in this District strongly suggest that any individual variations among class members are unlikely to be material, and they all should be eligible for bond hearings under § 1226(a). And more fundamentally, the government is putting the cart before the horse: Rule 23 requires the Court to find at least one “common *contention* [] of such a nature that it is capable of classwide resolution—which means that the 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.” *See Brito v. Barr*, 395 F. Supp. 3d 135, 147 (D. Mass. 2019) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349–50 (2011)) (emphasis added). Such a contention is surely present here. The reasoning of the Court’s Preliminary Injunction Order (D.E. 54) suggests that the *answer* to the common contention likely will be that all class members are entitled to consideration for bond, but ultimately the merits are reserved for the Court’s consideration at summary judgment.

The recurring question presented in this case can be lawfully and efficiently addressed through the class process, ultimately including declaratory relief if the Court deems it warranted after briefing on summary judgment. *See, e.g., Vazquez v. Bostock*, 349 F.R.D. 333, 365 (W.D. Wash. 2025) (certifying class on this issue), *class-wide partial summary judgment granted and declaration entered* 2025 LX 456399, at *86–87 (W.D. Wash. Sept. 30, 2025). Petitioner respectfully requests that the Court certify the proposed class.

ARGUMENT

I. 8 U.S.C. § 1252(e)(1)(B) DOES NOT PREVENT CLASS CERTIFICATION.

Respondents first argue that 8 U.S.C. § 1252(e)(1)(B), in combination with § 1252(e)(3), prevents class certification. That assertion is based on a misreading of the statute. This case is about § 1226 detainees being misclassified as § 1225(b)(2) detainees. People being detained under § 1225(b)(1) (*i.e.*, people in Expedited Removal) are excluded from the proposed class. *See* Am. Pet. (D.E. 10) ¶ 45; Cert. Mot. (D.E. 31) at 1. In contrast, § 1252(e) is specifically entitled “Judicial Review of Orders *Under Section 1225(b)(1)*.” 8 U.S.C. § 1252(e) (emphasis added). In other words, § 1252(e) is about claims by a category of people already excluded from the class. It is therefore irrelevant. *See, e.g., United States v. De La Cruz*, 998 F.3d 508, 517 (1st Cir. 2021) (holding “title of the operative section” is evidence of statute’s meaning); *Blum v. Holder*, 744 F.3d 790, 803 (1st Cir. 2014) (rejecting proposed statutory interpretation that was “inconsistent with [the statute’s] title as codified”).

The specific text of § 1252(e)(1)(B) and of the surrounding statutory scheme confirm it is referring to challenges to Expedited Removal not presented in this case. Section 1252(e)(1)(B) states that “no court may . . . certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection.” The subsequent paragraphs of the subsection never refer to § 1225(b)(2) at all. To the contrary, read as a whole, the entire subsection is concerned with challenges to the Expedited Removal system set forth in § 1225(b)(1). For example, subsections (e)(1)(A), (e)(2), (e)(4)(A), and (e)(5) all refer directly to § 1225(b)(1), and they only make sense in the context of judicial review of Expedited Removal determinations. The government relies on subsection (e)(3), but there is no reason to conclude that—without comment or reason, without specifically mentioning

§ 1225(b)(2), and contrary to the title and surrounding text of the subsection—subsection (e)(3) was intended to sweep so broadly as to bar collective challenges against anything other than the Expedited Removal process. *See City of Providence v. Barr*, 954 F.3d 23, 31 (1st Cir. 2020) (“The context surrounding a statutory provision and the structure of the statutory scheme as a whole often provide useful indicators of congressional intent.”). It is much more logical to conclude—as at least one other court has done—that subsection (e)(3) essentially uses the term “section 1225(b)” as a shorthand for what the entire subsection is actually about: Expedited Removal under § 1225(b)(1). *See Innovation Law Lab v. Nielsen*, 366 F. Supp. 3d 1110, 1120 (N.D. Cal. 2019) (holding § 1252(e)(1)(B) & (3) did not bar challenge to class action against actions taken under authority of § 1225(b)(2)), *vacated as moot sub nom. Innovation Law Lab v. Mayorkas*, 5 F.4th 1099 (9th Cir. 2021). Any remaining doubt should be dispelled by the legislative history, which confirms that § 1252(e)(3) “is limited to whether section 235(b)(1) [codified as § 1225(b)(1)], or any regulations issued pursuant to that section, is constitutional,” or whether written policy directive, guidance or procedures related to § 1252(b)(1) are lawful. H.R. Conf. Rep. No. 104-828 at 220–21, 104th Cong., 2d Sess. 1996.¹

II. THE PROPOSED CLASS MEETS THE REQUIREMENTS OF RULE 23(a).

As to the Rule 23 factors, the government does not contest numerosity or the adequacy of class counsel. *See* Fed. R. Civ. P. 23(a)(1), (g). The government also does not appear to contest that it is acting or refusing to act on grounds that apply generally to the class. *See id.* 23(b)(2).

¹ Additionally, at least one court has held that, whatever claims § 1252(e)(3) might apply to, it does not encompass claims limited to detention practices. *See Padilla v. ICE*, 704 F. Supp. 3d 1163, 1170 (W.D. Wash. 2023).

These facts can therefore be taken as given and, as explained below, the government’s challenges to the remaining Rule 23 factors should be rejected.

A. The Proposed Class Satisfies the Commonality Requirement.

It is well-settled that factual differences among class members do not defeat commonality. Rather, class members need only share “a single question of law or fact.” *Wal-Mart*, 564 U.S. at 369. The proposed class satisfies this requirement because its members—individuals whose most recent immigration arrest occurred inside the United States, who the government contends were not admitted or paroled, and who are not subject to expedited removal, humanitarian parole revocation, § 1226(c) mandatory detention, or a final order of removal—all share at least one common question: the legality of the government’s policy of subjecting all such individuals to mandatory detention pursuant to § 1225(b)(2). “That question is one purely of law, resolvable irrespective of the distinctions identified by Defendants.” *Reid v. Donelan*, 297 F.R.D. 185, 190 (D. Mass. 2014).

Respondents appear to argue that, to decide the commonality question, the Court must first decide the merits of the parties’ statutory arguments. *See* Opp. (D.E. 64) at 26. Here, the Court has already “probe[d] behind the pleadings” and conducted a statutory analysis that aligns with the claims. *See Wal-Mart*, 564 U.S. at 350–51; Oct. 3, 2025 Order (D.E. 54). In any event, the question for the Court is whether the proposed class members share “a common *contention*”—i.e., that none of the proposed class members can be subject to mandatory detention pursuant to § 1225(b)(2)—the ultimate resolution of which will be “central to the validity of each one of the claims in one stroke.” *Wal-Mart*, 564 U.S. at 350 (emphasis added). Because each of the proposed class members is or will be unlawfully subject to mandatory detention pursuant to Defendants’

new policies, Cert. Memo (D.E. 32) at 11–12, the resolution of this common legal question is central to each of their claims.

Contrary to Respondents’ assertion, Petitioner does not contend that whether a proposed class member is properly subject to mandatory detention turns on factual questions regarding the nature of their encounter with immigration officers at the time of arrest or whether they have or will apply for certain immigration benefits. Opp. (D.E. 64) at 26–29. The Court has preliminarily rejected that assertion that such facts have a material impact on detention statutory authority. *See* Oct. 3, 2025 Order (D.E. 54) at 16, 18. That also appears to be the overwhelming conclusion of the courts in this District, which are frequently ordering bond hearings in reliance on the pronounced *lack* of material factual variations among the claims and claimants—often with the government’s agreement. *See* Notices of Suppl. Authority (D.E. 53 & 69). Even if this Court did have to reach the merits at the class certification stage (which it does not), as Petitioner and multiple courts have explained, § 1225(b)(2) cannot lawfully be applied to any of the proposed class members because that provision is all about border processing, and a person arrested inside the United States after entry—whether lawful or unlawful—is neither undergoing an “examination” nor “seeking admission” at the border. P.I. Mot. (D.E. 14) at 9–10; Notices of Suppl. Authority (D.E. 45 & 53); D.E. 54 at 16–26; *see Romero v. Hyde*, No. 25-11631, 2025 U.S. Dist. LEXIS 160622, at *19–20 (D. Mass. Aug. 19, 2025).

For similar reasons, Respondents’ argument that the class members lack commonality as to their due process rights fails because the due process analysis for purposes of Petitioner’s claim—that persons arrested in the United States cannot be deprived of their liberty without a bond hearing—does not vary based on the factual questions raised by Respondents. The First Circuit specifically held in *Hernandez-Lara v. Lyons* that due process claims relating to bond hearing

procedures should be addressed on a categorical basis, *see* 10 F.4th 19, 44–46 (1st Cir. 2021), and affirmed a categorical class-wide declaration of bond hearing due process rights in *Brito v. Garland*. *See* 22 F.4th 240, 256–57 (1st Cir. 2021); *see also A.A.R.P. v. Trump*, 605 U.S. 91, 95 (2025) (per curiam) (addressing due process challenge for a class); *Wilkinson v. Austin*, 545 U.S. 209, 228–30 (2005) (same); *Wolff v. McDonnell*, 418 U.S. 539, 563–72 (1974) (same). And, of course, this Court also ordered categorical class-based APA relief in *Brito v. Barr*, 415 F. Supp. 3d 258, 268 (D. Mass. 2019), and the First Circuit did not reach any contrary conclusion on appeal, *see Brito*, 22 F.4th at 245 n.1 (declining to reach APA ruling where due process ruling controlled outcome).

Also contrary to Respondents’ assertion, the class definition clearly demarcates when an individual falls within the class. The answers to a few questions determine class membership:

- Were they arrested or detained in Massachusetts, or detained in a geographical area over which, as of September 22, 2025, an Immigration Court located in Massachusetts is the administrative control court, or otherwise subject to the jurisdiction of an Immigration Court located in Massachusetts?
- Are they in Expedited Removal proceedings or proceedings before an Immigration Judge after demonstrating a credible fear of persecution under 8 U.S.C. § 1225(b)(1)(B)(ii)?
- Does the government allege that they were admitted or paroled for their most recent entry into the United States?
- And are they subject to mandatory detention pursuant to 8 U.S.C. § 1226(c) or post-final order detention under 8 U.S.C. § 1231?

See Cert. Memo. (D.E. 32) at 8–9.²

² To the extent any factual differences were relevant, the appropriate means to address them would be to modify the class or create subclasses, not deny class certification to a large number of noncitizens facing the same unlawful government policy. For example, in *Brito*, a subset of the class members had already had deficient bond hearings, and the Court initially certified a sub-class of such persons, *see* 395 F. Supp. 3d 135, 149 (D. Mass. 2019), and at summary judgment developed a slightly different remedial scheme for them, *see* 415 F. Supp. 3d at 270–71. Counsel would be happy to discuss any concerns relating to class membership or relief at the hearing.

Further, the fact that the class will continue to grow as more individuals are improperly subjected to no-bond detention does not mean that the class as defined encompasses uninjured members. A noncitizen will not become part of the class until they are arrested. Courts regularly certify classes that contain future class members who are at some point subjected to the same challenged policy. *See, e.g., Brito*, 415 F. Supp. 3d at 263 (granting relief for class of all individuals who “are or will be detained pursuant to 8 U.S.C. § 1226(a)”), *aff’d in relevant part sub nom. Brito v. Garland*, 22 F.4th 240 (1st Cir. 2021). Respondents’ arguments to the contrary fail. *See* Opp. (D.E. 64) at 30–31.

B. The Proposed Class Satisfies the Typicality and Adequacy Requirements.

Petitioner’s injuries are also typical of those of the class, and he is an adequate representative. The injury that all class members face is the unlawful denial of consideration for release on bond. And this Court has already held that Petitioner is likely properly subject to § 1226(a), not § 1225(b). *See* Oct. 3, 2025 Order (D.E. 54) at 26. That remains true regardless of the nature of his encounter with immigration officers at the time of arrest or the status of any application for immigration benefits because, like all other members of the class, he was detained inside the United States after allegedly entering without admission or parole. *See* Oct. 3, 2025 Order (D.E. 54) at 16, 18. His injuries thus “arise from the same events or course of conduct as do the injuries of the class” and they implicate “common legal questions that apply to the claims of all [misclassified] detainees,” thereby satisfying the typicality and adequacy requirements. *See Brito*, 395 F. Supp. 3d at 147–48. And his present relief is only preliminary. If the Court ended this case without entering final relief in Petitioner’s favor, the government would no doubt resume treating him as a no-bond detainee under § 1225(b)(2)—his interest in securing a final judgment to the contrary remains aligned perfectly with the interest of the absent class members.

III. THE PROPOSED CLASS SHOULD BE CERTIFIED UNDER RULE 23(b).

Because Respondents’ uniform policy affects all proposed class members alike such that “a single . . . declaratory judgment would provide relief to each member of the class,” *Wal-Mart*, 564 U.S. at 360, class certification under Rule 23(b)(2) is proper. *See Reid*, 297 F.R.D. at 193; *Vazquez*, 349 F.R.D. at 354–55.

Respondents contend that (1) 8 U.S.C. § 1252(f)(1) bars certain types of class-wide relief, and (2) the requested declaratory relief cannot uniformly address the alleged injuries of the class. Both arguments fail, as the First Circuit has already made clear.

A. 8 U.S.C. § 1252(f)(1) Does Not Bar the Class-wide Relief Petitioner Seeks.

Section 1252(f)(1) only strips courts of jurisdiction to “enjoin or restrain” the operation of certain provisions of the INA. *Brito*, 22 F.4th at 251. As made apparent from the subsection’s title— “[l]imit on injunctive relief”—§ 1252(f)(1) neither mentions nor prohibits other forms of class-wide relief. *See id.*; *see also Biden v. Texas*, 597 U.S. 785, 798 (2022) (noting “narrowness” of § 1252(f)(1)’s scope). For instance, the First Circuit has already squarely held that “[n]othing about [§ 1252(f)(1)’s] text suggests that it bars declaratory relief.” *Brito*, 22 F.4th at 251. This is consistent with the Supreme Court’s pronouncements on § 1252(f)(1). *See Aleman Gonzalez v. Garland*, 596 U.S. 543 (2022) (holding that § 1252(f)(1) barred class-wide injunctive relief); *Biden*, 597 U.S. at 801 (“By its plain terms, and even by its title, [section 1252(f)(1)] is nothing more or less than a limit on injunctive relief.” (quoting *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999))); *Nielsen v. Preap*, 586 U.S. 392, 402 (2019) (plurality opinion of Alito, J., joined by Roberts, C.J., and Kavanaugh, J.) (§ 1252(f)(1) did not strip “jurisdiction to entertain the plaintiffs’ request for declaratory relief”). Thus, because Petitioner seeks class-wide declaratory relief that class members are subject to § 1226(a) and not § 1225(b)(2), § 1252(f)(1)’s

limitation on injunctive relief plainly does not apply. *See Brito*, 22 F.4th at 251; *see also D.V.D v. U.S. DHS*, 778 F. Supp. 3d 355, 378–79 (D. Mass. 2025) (collecting cases).

Respondents attempt to distinguish *Brito* by arguing that it does not apply where the class-wide declaration serves to “coerce any party or enjoin any future action,” Opp. (D.E. 64) at 12, but they plainly misread *Brito*. The First Circuit explained: “while declaratory relief can sometimes have much the same practical effect as injunctive relief, it differs legally and materially. ‘[A] declaratory judgment is a milder remedy’ than an injunction; it ‘*does not*, in itself, coerce any party or enjoin any future action.’” *Brito*, 22 F.4th at 251 (emphasis added). The First Circuit then affirmed a declaratory judgment regarding the burden of proof that the government bears in § 1226(a) bond hearings—i.e., a declaration defining the rights of the detained noncitizens in the class to certain bond procedures, just as Petitioner seeks here on behalf of the putative class. As the First Circuit already recognized, the fact that the government will presumably conform its future conduct to be consistent with the Court’s declaration of the proper application of § 1226 does not transform this requested remedy into injunctive relief. *See Brito*, 22 F.4th at 251.

Respondents also fail to explain how Petitioner’s request for vacatur and habeas relief runs afoul of *Aleman Gonzalez*’s holding regarding class-wide *injunctive* relief. Given the plain text of § 1252(f)(1), it is unsurprising that “all courts that have addressed the issue”—including after *Aleman Gonzalez*—“have rejected the government’s construction” and agreed that § 1252(f)(1) does not bar the normal remedy of vacatur under 5 U.S.C. § 706(2). *See Nat’l TPS Alliance v. Noem*, 773 F. Supp. 3d 807, 826 (N.D. Cal. 2025); *see, also Texas v. United States*, 40 F.4th 205, 220 (5th Cir. 2022) (per curiam); *Las Americas Immigrant Advoc. Ctr. v. U.S. Dep’t of Homeland Sec.*, 783 F. Supp. 3d 200, 232–33 (D.D.C. 2025); *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, No. 25-306 (RDM), 2025 U.S. Dist. LEXIS 126272, at *64-65 (D.D.C. July 2,

2025); *Florida v. United States*, 660 F. Supp. 3d 1239, 1284–85 (N.D. Fla. 2023); *Al Otro Lado, Inc. v. Mayorkas*, 619 F. Supp. 3d 1029, 1045 (S.D. Cal. 2022). Lastly, at least one circuit has recognized the availability of class-wide habeas relief. *See Hamama v. Homan*, 912 F.3d 869, 879 (6th Cir. 2018) (“[T]here is nothing barring a class from seeking a traditional writ of habeas corpus (which is distinct from injunctive relief”). Thus, the Court can also grant class-wide relief by vacating Defendants’ actions or granting a class-wide conditional writ. The Court need not reach these issues to certify the class, however, given the First Circuit’s recognition of the availability of class-wide declaratory relief notwithstanding § 1252(f)(1).

B. Class-wide Declaratory Relief Will Resolve Class Claims in a Single Stroke.

Respondents further argue that declaratory relief would not resolve class injuries and would leave class members without recourse, but their arguments are inapposite. First, Respondents suggest that because this case challenges the legality of Petitioner’s and the class’s detention, declaratory relief is not appropriate. Opp. (D.E. 64) at 13. But as already discussed above, the First Circuit has already affirmed class-wide declaratory relief in an essentially indistinguishable case involving immigration detention procedures. *See Brito*, 22 F.4th at 256–57.³

Second, the government wrongly asserts that the doctrine of *res judicata* would preclude class members from seeking individualized habeas or injunctive relief. Opp. (D.E. 64) at 14. None

³ Neither of Respondents’ cited cases claim that declaratory relief is categorically unavailable in immigration habeas cases. *See Calderon v. Ashmus*, 523 U.S. 740, 747 (1998) (declaratory judgment not available where respondent did not seek a final or conclusive determination that would “resolve the entire case or controversy” of the habeas proceeding); *Fusco v. Grondolsky*, No. 17-1062, 2019 U.S. App. LEXIS 40318, at *1 (1st Cir. June 18, 2019) (affirming dismissal of habeas petition under 28 U.S.C. § 2241 because jurisdiction only available under 28 U.S.C. § 2255). In contrast, detainees were able to file individual actions to enforce the *Brito* class declaration. *See, e.g., Massingue v. Streeter*, No. 19-30159, 2020 U.S. Dist. LEXIS 64600, at *4 (D. Mass. Apr. 14, 2020) (collecting cases and concluding “[t]he weight of authority, including authority in this district, does not support the government’s contention that this court lacks jurisdiction to consider Petitioner’s claim that the February 24, 2020 bond hearing was not in compliance with the constitutionally mandated *Brito* standards”).

of the cases cited by Respondents are relevant.⁴ *Id.* at 14–15. The declaratory judgment exception provides that further necessary or proper relief based on a declaratory judgment or decree may be granted, without running afoul of *res judicata*. *See* 28 U.S.C. § 2202 (“Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.”); Restatement (Second) of Judgments § 33 (1982) (noting that parties “may pursue . . . coercive relief in a subsequent action”). Class members would not be barred by a declaratory judgment from filing individual habeas petitions.

Respondents unsuccessfully attempt to dismiss the applicability of the declaratory judgment exception by claiming that individual injunctive or habeas actions “must follow this Court’s classwide resolution” and that the requested habeas and class-wide vacatur “would permit an end-run around § 1252(f)(1)’s bar to class-wide injunctive relief.” *Opp.* (D.E. 64) at 15–16. But again, this ignores the First Circuit’s prior holding that a class of detained immigrants may seek declaratory relief on its own. *See Brito*, 22 F.4th at 256. This is consistent with Rule 23(b)(2), where the language is in the disjunctive, requiring either “final injunctive relief *or* corresponding declaratory relief.” Fed. R. Civ. P. Rule 23(b)(2) (emphasis added). Moreover, there should be no need for subsequent individual injunction actions, because the federal government is expected to respect a declaratory judgment and faithfully execute the law as the court’s declaration determines it. *See, e.g., Union de Empleados De Muelles De P.R., Inc. v. Int’l Longshoremen’s Ass’n, AFL-*

⁴ In particular, Respondents cite to a few cases in which litigants sought to pursue individualized claims seeking injunctive relief materially identical to the injunctive relief sought in a pending class action where a preliminary injunction order had been stayed by the Supreme Court. That is plainly not at issue in the present litigation.

CIO, 884 F.3d 48, 58 (1st Cir. 2018) (declaratory judgments “determine the rights and obligations of the parties so that they can act in accordance with the law”).

Lastly, Respondents are wrong that the class relief sought would not be uniform and applicable to the class as a whole. As discussed above and in the motion for class certification, all class members are subject to the same unlawful policy and practice of subjecting them to mandatory detention under § 1225(b)(2) rather than considering them for release for bond under § 1226(a). An order from this Court, such a declaration of the proper legal authority for the class’s detention, would apply uniformly to all class members and give them the opportunity to seek release on bond before DHS and the immigration court.

Because class-wide relief will resolve class claims in one single stroke, class certification is appropriate under Rule 23(b)(2).

IV. IDENTIFICATION OF CLASS MEMBERS IS WARRANTED

Pursuant to Rule 23(b)(2), upon certification of the class, “the court may direct appropriate notice to the class.” Fed. R. Civ. P. Rule 23(c)(2)(A). The Court has discretion and flexibility in not only directing notice but also the methods of giving such notice. *See* Fed. R. Civ. P. 23 Advisory Committee Notes (2003). Here, all information regarding the putative class members’ identity, location, and circumstances of arrest are in the Respondents’ possession. Without the Respondents’ identification of class members to class counsel and facilitation of notice to class members, Petitioner cannot ensure that individual class members are each informed of the class action and obtain relief. *See Benavides v. Serenity Spa NY Inc.*, 166 F. Supp. 3d 474, 493 (S.D.N.Y. 2016) (directing defendants to disclose identity of all potential plaintiffs within conditionally certified collective action during pre-Rule 23 certification stage, where putative class comprised of defendants’ employees). Many class members are not represented by counsel, and others will

have been arrested in Massachusetts and transported to a distant state before a bond hearing can occur. Without an identification and notice procedure, many class members will likely be uninformed of their rights and will be left unable to recognize or act on any violations, and class counsel will be unable to ensure that the class members' rights are preserved. Therefore, Petitioner requests this Court to direct Respondents to identify class members to class counsel, and to give or facilitate notice to all class members in a form to be approved by the Court.⁵

CONCLUSION

For the foregoing reasons and those set forth in Petitioner's Memorandum in support of his Motion to Certify Class, Petitioner respectfully asks the Court to certify this action as a class action pursuant to Rule 23, appointing Petitioner as class representative and undersigned counsel as class counsel, and to order Respondents to identify and give notice to all class members and maintain records sufficient to allow for adequate and effective notice to all class members.

Respectfully submitted,

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⁵ Petitioner is amenable to, and would invite, cooperation with the government to draft and propose a form of notice to the Court, or possibly competing proposals if a form of notice cannot be agreed.

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Dated: October 13, 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: October 14, 2025

/s/ Gilleun Kang
Gilleun Kang