UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Ramon RODRIGUEZ VAZQUEZ, on behalf of himself as an individual and on behalf of others similarly situated,

Plaintiff,

v.

Drew BOSTOCK, et al.,

Defendants.

Case No. 25-cv-5240

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

Noting Date: April 17, 2025

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

On behalf of himself and the classes he seeks to represent, Named Plaintiff Ramon Rodriguez Vazquez (hereinafter "Plaintiff" or "Mr. Rodriguez") challenges Defendants' failure to provide bond hearings before an immigration judge (IJ) as required by the Immigration and Nationality Act (INA), as well as their failure to provide a timely and thus meaningful avenue to appeal IJ bond decisions. Mr. Rodriguez lived in the United States for nearly fifteen years before being "arrested and detained pending a decision on whether [he] is to be removed from the United States," 8 U.S.C. § 1226(a), and is thus entitled to a bond hearing under that discretionary detention provision. The Tacoma Immigration Court, however, has adopted a policy subjecting individuals like Mr. Rodriguez to mandatory detention under § 1225(b)(2), thus rendering them ineligible for bond, even though that scheme only applies "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). Notably, the Tacoma IJs have departed not only from their own prior policy, but also from that of immigration courts across the country in finding that they lack jurisdiction to conduct bond hearings under § 1226(a) for Mr. Rodriguez and others similarly situated.

The only avenue for such detained individuals to challenge this unlawful denial of bond is filing an administrative appeal to the Board of Immigration Appeals (BIA). However, most cases moot out before the bond appeals are adjudicated, as they take, on average, well over six months. Moreover, even if the person's case has not mooted out, they have already been deprived of their liberty for months under punitive conditions, facing numerous barriers to defending against removal. The BIA's systematic delays in adjudicating bond appeals thus deprive all detained noncitizens of any meaningful avenue to appeal custody determinations.

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That deprivation violates their constitutional and statutory rights.

Mr. Rodriguez brings this action to challenge both the Tacoma Immigration Court's unlawful policy of applying 8 U.S.C. § 1225(b)(2) to all persons who are inadmissible because they originally entered the country without inspection, as well as the BIA's failure to timely adjudicate any bond appeals. Both of these questions can and should be resolved on a classwide basis to ensure a uniform resolution of the issues. Notably, even after the BIA has issued an unpublished decision expressly finding that § 1226(a) entitles similarly situated individuals to a bond hearing, all but one of the Tacoma IJs have continued to apply their policy refusing to provide bond to such individuals. The BIA, in turn, has refused to issue a precedential decision to correct the Tacoma Immigration Court's rulings.

Accordingly, Plaintiff seeks to represent the following two classes of noncitizens:

> Bond Denial Class: All noncitizens detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing.
>
> Bond Appeal Class: All detained noncitizens who have a pending appeal, or will file an appeal, of an immigration judge's bond hearing ruling to the Board of Immigration Appeals.

Each proposed class satisfies the requirements set forth in Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. Mr. Rodriguez accordingly requests that the Court certify the above classes and appoint him as the representative for both classes.

II. BACKROUND

A. Named Plaintiff's 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

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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). Here, Plaintiff and proposed class members present legal challenges to two uniform agency policies.

1. The Tacoma Immigration Court's Bond Denial Policy

The first question presented in this case concerns the Tacoma Immigration Court's arbitrary and unlawful interpretation of the INA's detention scheme. There are two statutory sections at issue here. The first is 8 U.S.C. § 1225(b), which applies "at the Nation's borders and ports of entry," *Jennings*, 583 U.S. at 287. The second is § 1226(a), which 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," *id.* at 288. Noncitizens determined to be detained under § 1225(b) are subject to mandatory detention without any opportunity to seek bond before an IJ. *See* 8 U.S.C. § 1225(b)(1)(B)(ii), (b)(1)(B)(iii)(IV), (b)(2)(A). By contrast, individuals who are detained under § 1226(a) are entitled to a bond hearing before an IJ. *See* 8 C.F.R. §§ 1003.19(a), 1236.1(d). At that hearing, the noncitizen may present evidence of their ties to the United States, lack of criminal history, and other factors that show they are not a flight risk or danger to the community. *See generally Matter of Guerra*, 24 I. & N. Dec. 37, 38 (BIA 2006).

Consistent with the statutory framework, noncitizens who entered the United States without inspection, were not immediately apprehended pursuant to § 1225(b), and not subject to some other detention authority are generally detained under § 1226(a). As a result, they are entitled to bond hearings before an IJ to determine whether their detention is justified by danger or flight risk. However, beginning around late 2022, the IJs at the Tacoma Immigration Court adopted a novel and draconian interpretation of the statute, and began to apply the mandatory detention provisions of 8 U.S.C. § 1225(b)(2) to all persons who entered the United States

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without inspection, including longtime residents of Washington and other states who have resided in the United States years, or even decades. *See, e.g.* Stanislowski Decl. ¶ 5 (recounting facts of individual clients); Boyd Decl. ¶ 6 (describing individual client's circumstances). These IJs have reasoned that all people who enter the United States without inspection are considered "applicants for admission" who are "seeking admission" to the United States, and are therefore subject to § 1225(b)(2). *See, e.g.*, Stanislowski Decl. Exs. A–L (IJ orders concluding no jurisdiction for a bond hearing and applying the mandatory detention provisions of § 1225(b)(2)); Boyd Decl. Ex. A (same). As a result of this erroneous interpretation, scores of individuals—and probably hundreds of individuals—have been denied any opportunity for release under bond. That denial forces them to defend against their removal while detained under punitive conditions and while separated from their families and communities.

The legality of the Tacoma Immigration Court's bond denial policy is a question that must be resolved on a classwide basis. The necessity of a class action is particularly pronounced in this case where, as here, advocates have already attempted to change this practice in individual bond cases before IJs and BIA. Even though the BIA has issued two unpublished decisions reversing the application of § 1225(b)(2) to individuals like Mr. Rodriguez, *see* Maltese Decl. Exs. A–B, all but one of the IJs at the Tacoma Immigration Court have disregarded this authority and continued to apply their unlawful policy, *see, e.g.*, Stanislowski Decl. ¶ 11; Braker Decl. ¶¶ 4–5.[1]

[1] One IJ has since shifted to allow for bond once more in such cases. Stanislowski Decl. ¶ 8. But even when presented with a BIA unpublished decision on this precise issue, the other IJs have not.

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2. The Board of Immigration Appeals' Delayed Adjudication of Bond Appeals

Another barrier for noncitizens seeking to challenge to the Tacoma Immigration Court's unlawful policy is the BIA's delayed adjudication of bond appeals. Under the regulations implementing § 1226(a), noncitizens have the right to challenge bond determinations by the IJ by filing an administrative appeal with the BIA. 8 C.F.R. §§ 1003.1(b)(7), 1003.19(f), 1003.38(a). Even though the regulations require the BIA to "issue a decision on the merits as soon as practicable, *with a priority for cases or custody appeals involving detained noncitizens*," *id.* § 1003.1(e)(8) (emphasis added), the BIA's processing time for bond appeals averages well over six months. Korthuis Decl. ¶ 5. This systematic delay impacts not only those who are subject to the unlawful bond policy described above, but also all detained noncitizens who have a right to a bond and seek to challenge an IJ's custody denial or bond amount.

The BIA's failure to timely adjudicate bond appeals defies the agency's own regulations, as well as the Due Process Clause, which "requires adequate procedural protections to ensure that the government's asserted justification for physical confinement outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Hernandez v. Sessions*, 872 F.3d 976, 990 (9th Cir. 2017) (quoting *Singh v. Holder*, 638 F.3d 1196, 1203 (9th Cir. 2011)). As the Supreme Court and the Ninth Circuit have explained, appellate review is a critical component of a constitutional civil detention scheme, including in immigration cases. *See, e.g.*, *Schall v. Martin*, 467 U.S. 253, 280 (1984); *Singh*, 638 F.3d at 1209; *Prieto-Romero v. Clark*, 534 F.3d 1053, 1065–66 (9th Cir. 2008). Critically, the Supreme Court has also made clear that *timely* appellate review is a key feature of any detention scheme, explaining that "[r]elief [when seeking review of detention] must be speedy if it is to be effective." *Stack v. Boyle*, 342 U.S. 1, 4 (1951); *see also United States v. Salerno*, 481 U.S. 739, 752 (1987) (upholding the Bail Reform Act's

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federal pretrial detention provision in part because it "provide[s] for immediate appellate review of the detention decision"). These principles derive from the federal pretrial context, where the opportunity to obtain "freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction." *Stack*, 342 U.S. at 4.

The same principles apply equally, if not with greater force, to noncitizens detained pending civil, non-criminal proceedings. During the many months the BIA takes to review a bond appeal, the damage that such review should be designed to prevent already occurs: a detained noncitizen is forced to defend against their removal while facing significant barriers to prepare their case, often deprived of access to their family members as well as the opportunity to provide for them. *See, e.g.*, ACLU, *No Fighting Chance: ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers* 6 (June 9, 2022), https://www.aclu.org/publications/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-centers (summarizing significant challenges faced by detained noncitizens in accessing and communicating with counsel); *see also, e.g.*, Rodriguez Decl. ¶ 9 (describing difficulty of separation from family). Many ultimately give up on fighting their cases, accepting removal to avoid further detention. *See e.g.*, Stanislowski Decl. ¶ 10; Boyd Decl. ¶ 6; Torres Medina Decl. ¶¶ 9–11. Even where a noncitizen prevails in their bond appeal, they have already spent months of unnecessary time in detention. The BIA's systematic delays of bond appeals thus violates the Due Process Clause and constitutes an "agency action . . . unreasonably delayed," 5 U.S.C. § 706(1), in violation of the Administrative Procedure Act.

B. Named Plaintiff's Factual Background

Ramon Rodriguez Vazquez is currently detained at NWIPC. Rodriguez Decl. ¶ 2. Mr.

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Rodriguez has been a resident of Grandview, Washington for over 15 years, working in agriculture. *Id.* ¶¶ 3, 7. Before being detained, he was living with his wife, to whom he has been married for almost 40 years. *Id.* ¶ 4. He has four adult children and ten grandchildren, all of whom live near his home in Grandview. *Id.*; *see also id.* ¶ 9.

The only time Mr. Rodriguez has been apprehended by an immigration officer was on February 5, 2025. *Id.* ¶¶ 5, 8. Early in the morning that day, he was making lunch at home before leaving for work when he heard knocking and yelling at the door. *Id.* ¶ 5. A group of law enforcement officers threw down the door and came into his home, and immigration officers interrogated him regarding his status. *Id.* Mr. Rodriguez was apprehended at his home and subsequently transferred to NWIPC. ICE placed him in removal proceedings under 8 U.S.C. § 1229a, charging him as having entered the United States without inspection. *Id.* ¶ 7; *see also* 8 U.S.C. § 1182(a)(6)(A)(i).

On March 12, 2025, Mr. Rodriguez appeared for a scheduled bond hearing before the Tacoma Immigration Court. *Id.* ¶ 11. At that hearing, the IJ stated that he could not consider any bond request because Mr. Rodriguez was subject to mandatory detention under § 1225(b)(2). *Id.* Mr. Rodriguez appealed the bond denial on March 13, 2025, and it is pending before the BIA. *Id.* ¶ 12.

ARGUMENT

Plaintiff seeks certification of the following classes:

> Bond Denial Class: All noncitizens detained at the Northwest ICE Processing Center who (1) have entered or will enter the United States without inspection, (2) are not apprehended upon arrival, and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the noncitizen is scheduled for or requests a bond hearing.
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> Bond Appeal Class: All detained noncitizens who have a pending appeal, or will file an appeal, of an immigration judge's bond hearing ruling to the Board of

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Immigration Appeals.

Under Federal Rule of Civil Procedure 23, class certification is warranted where two conditions are met: "The suit must satisfy the criteria set forth in subdivision (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)." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). Plaintiff's proposed classes satisfy Rule 23(a) and (b)(2).

Courts in the Ninth Circuit, including this Court, have routinely certified class actions challenging immigration policies and practices, including those that impact detained noncitizens. *See, e.g.*, *Mansor v. USCIS*, 345 F.R.D. 193, 199 (W.D. Wash. 2023) (certifying nationwide class of applicants for Temporary Protected Status challenging a policy that failed to provide them with interim benefits guaranteed by statute); *Moreno Galvez v. Cuccinelli*, No. C19-0321RSL, 2019 WL 3219418, at *2 (W.D. Wash. Jul. 17, 2019) (certifying class of children and youth challenging policies impeding access to Special Immigrant Juvenile visas); *Nightingale v. USCIS*, 333 F.R.D. 449, at *457–63 (N.D. Cal. 2019) (certifying nationwide classes challenging agency's failure to produce immigration files); *Rosario v. USCIS*, No. C15-0813JLR, 2017 WL 3034447, at *12 (W.D. Wash. July 18, 2017) (granting nationwide certification to class of initial asylum applicants challenging the government's adjudication of employment authorization applications); *Wagafe v. Trump*, No. C17-0094-RAJ, 2017 WL 2671254, at *16 (W.D. Wash. June 21, 2017) (certifying nationwide class of immigrants challenging legality of a vetting program impeding naturalization applicants from obtaining citizenship); *Mendez Rojas v. Johnson*, No. C16-1024RSM, 2017 WL 1397749, at *7 (W.D. Wash. Jan. 10, 2017) (certifying two nationwide classes of asylum seekers challenging defective asylum application procedures);

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Rivera v. Holder, 307 F.R.D. 539, 551 (W.D. Wash. 2015) (certifying class of detained immigrants in the Western District of Washington challenging custody proceedings that categorically deny requests for conditional parole); *A.B.T. v. USCIS*, No. C11-2108 RAJ, 2013 WL 5913323, at *2 (W.D. Wash. Nov. 4, 2013) (certifying nationwide class and approving a settlement amending government practices that precluded asylum applicants from receiving employment authorization); *Roshandel v. Chertoff*, 554 F. Supp. 2d 1194 (W.D. Wash. 2008) (certifying class of naturalization applicants living in Western District of Washington challenging policy delaying access to citizenship).

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 Mr. Rodriguez, 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.

A. The Proposed Classes Meet All Requirements of Federal Rule of Civil Procedure 23(a).

1. <u>The proposed class members are so numerous that joinder is impracticable.</u>

Rule 23(a)(1) requires the class be "so numerous that joinder of all members is impracticable." "[I]mpracticability does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) (citation omitted). "Numerousness—the presence of many

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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. INS*, 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 Rivera*, 307 F.R.D. at 550 (certifying class where “the Court [found] it highly plausible that more than 40 [noncitizens] will be detained on this basis over the next year, and that more than 40 [noncitizens] are being detained on this basis currently”); *Hum v. Dericks*, 162 F.R.D. 628, 634 (D. Haw. 1995) (“There is no magic number for determining when too many parties make joinder impracticable. Courts have certified classes with as few as thirteen members, and have denied certification of classes with over three hundred members.”). Courts have also found impracticability of joinder when even fewer class members are involved. *See, e.g.*, *McCluskey v. Trustees of Red Dot Corp. Emp. Stock Ownership Plan and Trust*, 268 F.R.D. 670, 674–76 (W.D. Wash. 2010) (certifying class with 27 known members); *Arkansas Educ. Ass’n v. Bd. of Educ.*, 446 F.2d 763, 765–66 (8th Cir. 1971) (finding 17 class members sufficient); *Villalpando v. Exel Direct Inc.*, 303 F.R.D. 588, 606 (N.D. Cal. 2014) (noting that courts routinely find numerosity “when the class comprises 40 or more members”).

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Each proposed class meets the numerosity requirement. First, it is estimated that the proposed Bond Denial Class is currently comprised of at least dozens of individuals currently detained at NWIPC. Stanislowski Decl. ¶¶ 4–6 (noting that the Northwest Immigrant Rights Project has represented at least 12 individuals and reviewed the cases of at least 80 additional individuals over the past two years); *see also id.* ¶ 8 (noting dramatic increase in number of individuals detained at NWIPC, including due to increased interior enforcement, and likelihood of corresponding increase in individuals subject to bond denial policy); *see also, e.g.*, Boyd Decl. ¶ 3 (estimating around 25 past clients over the past few years who were subject to bond denial policy by Tacoma Immigration Court). Second, the Bond Appeal Class is likely comprised of hundreds or thousands of individuals who appeal the outcome of their bond hearings to the BIA each year. *See* Korthuis Decl. ¶ 8 (listing number of bond appeal decisions issued by BIA between FY 2020 and FY 2023). Notably, Defendants are aware of the exact numbers for both proposed classes at any given time, as they are "uniquely positioned to ascertain class membership." *Barahona-Gomez v. Reno*, 167 F.3d 1229, 1237 (9th Cir. 1999). Both proposed classes are also comprised of many future members. Plaintiff has thus identified a sufficient number of proposed class members to demonstrate the class is so numerous that joinder is impracticable. Fed. R. Civ. P. 23(a)(1).

Joinder is also impracticable because of the existence of unnamed, unknown future class members who will be subjected to Defendants' unlawful bond denial policy and BIA's unreasonably delayed adjudications of bond appeals. *See Ali v. Ashcroft*, 213 F.R.D. 390, 408–09 (W.D. Wash. 2003) ("[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 and internal quotation marks omitted)); *Rivera*, 307 F.R.D. at

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550 (finding joinder impractical due, in part, to "the inclusion of future class members"); *Hawker v. Consovoy*, 198 F.R.D. 619, 625 (D.N.J. 2001) ("The joinder of potential future class members who share a common characteristic, but whose identity cannot be determined yet is considered impracticable."). The impracticability of joining future class members is pronounced in cases that involve inherently revolving populations, such as groups of individuals detained at NWIPC or other detention centers throughout the United States. *See J.D. v. Nagin*, 255 F.R.D. 406, 414 (E.D. La. 2009) ("The mere fact that the population of the [Youth Study Center] is constantly revolving during the pendency of litigation renders any joinder impractical."); *Clarkson v. Coughlin*, 145 F.R.D. 339 (S.D.N.Y. 1993) (certifying classes of male and female deaf and hearing-impaired inmates even though only seven deaf or hearing impaired female inmates were identified, in part because the composition of the prison population is inherently fluid).

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, financial resources of class members, and the ability of class members to bring individual suits. *See* Rubenstein, *supra*, § 3:12; *see also, e.g.*, *Dunakin v. Quigley*, 99 F. Supp. 3d 1297, 1327 (W.D. Wash. 2015) (finding joinder impracticable where proposed class members were, inter alia, "spread across the state" and "low-income Medicaid recipients"). The proposed class members are detained by definition, and not currently able to work to support themselves or their family. Furthermore, detention poses numerous barriers to accessing counsel, imposing a significant barrier for any individual seeking to challenge Defendants' policies through individual suits. *See* ACLU, *supra* at 6 (documenting challenges faced by detained immigrants in working with counsel, including barriers to telephone access, legal mail, and attorney visits).

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Finally, "[b]ecause plaintiffs seek injunctive and declaratory relief, the numerosity requirement is relaxed and plaintiffs may rely on [ ] reasonable inference[s] arising from plaintiffs' other evidence that the number of unknown and future members of [the] proposed subclass . . . is sufficient to make joinder impracticable." *Arnott v. USCIS*, 290 F.R.D. 579, 586 (C.D. Cal. 2012) (second, third, fourth, and fifth alterations in original) (quoting *Sueoka v. United States*, 101 F. App'x 649, 653 (9th Cir. 2004)). As a result, even if numerosity were a close question here (which it is not), class certification is warranted. *Stewart v. Assocs. Consumer Discount Co.*, 183 F.R.D. 189, 194 (E.D. Pa. 1998) ("[W]here the numerosity question is a close one, the trial court should find that numerosity exists, since the court has the option to decertify the class later pursuant to Rule 23(c)(1).").

2. The class presents common questions of law and fact.

Rule 23(a)(2) requires that "there [be] questions of law or fact common to the class." "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 requirement asks 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 classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* (citation omitted).

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Here, both proposed classes satisfy the commonality requirement. The proposed Bond Denial Class members all suffer from the same injury caused by the Tacoma Immigration Court's policy: the denial of an individualized custody determination by the IJ. Similarly, the proposed Bond Appeal Class is comprised of noncitizens who have a pending or future bond appeal, all of whom are subject to prolonged, potentially erroneous detention due to the BIA's systematic failure to issue timely decisions. Accordingly, both of these issues are capable of classwide resolution through declaratory judgments making clear that (1) Bond Denial Class members are entitled to a bond hearing before the IJ, and (2) Bond Appeal Class members are entitled to a timely review of their bond appeals.

The fact that putative class members may have varying circumstances does not defeat the commonality among them. Notably, Plaintiff is not asking this Court to determine the merits of his or any putative class member's bond decision or appeal. Therefore, the core common questions presented do not necessitate a substantial individual inquiry that would prevent a "classwide resolution." *Wal-Mart*, 131 S. Ct. at 2551; *see also, e.g.*, *Moreno Galvez*, 2019 WL 3219418, at *2 (stating that class of immigrant youth satisfied commonality where the case presented questions of "[w]hether the [challenged] policy is in accordance with federal law" and "[w]hether the policy is arbitrary and capricious"); *Nw. Immigr. Rts. Project v. USCIS*, 325 F.R.D. 671, 693 (W.D. Wash. 2016) ("[A]ll questions of fact and law need not be common to satisfy the rule." (citation omitted)); *Evon v. Law Offices 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

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members with respect to the merits of their actual document fraud cases . . . are simply insufficient to defeat the propriety of class certification"); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 370 (C.D. Cal. 1982) (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).

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 v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 808 (9th Cir. 2020) (citation omitted). 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 sought by Plaintiff will resolve the litigation as to all class members "in one stroke," *Wal-Mart*, 564 U.S. at 350, and Plaintiff thus satisfies the commonality requirement of Rule 23(a)(2).

3. Named Plaintiff's claims are typical of the claims of the proposed class members.

Rule 23(a)(3) specifies that the claims of the representatives must be "typical of the claims . . . of the class." Meeting this requirement usually follows from the presence of common questions of law. *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 v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (finding typicality requirement met where class representatives "allege the same or similar injury as the rest of the putative class; they

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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 both proposed classes. First, Plaintiff and proposed Bond Denial Class members all suffer from the same injury of detention without any opportunity to seek release. Rodriguez Decl. ¶¶ 11, 13. Plaintiff seeks declaratory relief from this Court establishing that his detention, as well as that of proposed Bond Denial Class members, is authorized by § 1226(a), which provides an opportunity for a bond hearing before an IJ. Dkt. 1, Prayer for Relief ¶ B.1. Similarly, the deprivation of a timely bond appeal adjudication inflicts the same injury on Plaintiff and proposed Bond Appeal Class members, as they are all subject to continued detention without a timely, meaningful opportunity to seek review of their custody determination. Rodriguez Decl. ¶¶ 12–13. Plaintiff thus seeks declaratory relief establishing the right to timely bond appeals for himself and all proposed class members. Dkt. 1, Prayer for Relief ¶ B.3.

In sum, the harms suffered by Plaintiff are typical of the harms suffered by the proposed classes, and Plaintiff's injuries and the injuries of all proposed class members result from the identical courses of conduct by Defendants. Plaintiff therefore satisfies the typicality requirement.

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4. Named Plaintiff will adequately protect the interests of the proposed classes, 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." "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).

(a) Named Plaintiff

Plaintiff is motivated to pursue this action on behalf of others like him, who based on Defendants' bond denial policy, are or will be subject to detention without any opportunity to seek bond. Rodriguez Decl. ¶¶ 16–17. He is also motivated to represent himself and all other individuals who challenge an IJ's custody determination and are deprived of a timely, and thus meaningful, right to appeal. *Id.*

Plaintiff will thus fairly and adequately protect the interests of the proposed classes, as he shares the same interests and seek the same relief for all putative class members. Finally, Plaintiff does not seek money damages for himself. As a result, there is no potential conflict between the interests of Plaintiff and members of the proposed classes. Accordingly, Plaintiff is an adequate representative of the proposed classes.

(b) Counsel

The adequacy of counsel is also satisfied here. Counsel are deemed qualified when they have experience in previous class actions and cases involving the same area of law. *See, e.g.*, *Jama v. State Farm Fire & Cas. Co.*, 339 F.R.D. 255, 269 (W.D. Wash. 2021); *Lynch v. Rank*, 604 F. Supp. 30, 37 (N.D. Cal. 1984); *Marcus v. Heckler*, 620 F. Supp. 1218, 1223–24 (N.D. Ill. 1985). Plaintiff is represented by attorneys from the Northwest Immigrant Rights Project, all of

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whom who have extensive experience in class action lawsuits and other complex federal court litigation involving immigration law, including challenges to detention policies. *See* Adams Decl. ¶¶ 3–4, 6–8. Counsel have litigated numerous cases focusing on immigration law, including those involving the rights of detained noncitizens, in which they vigorously represented both the class representatives and absent class members in obtaining relief.

B. The Proposed Classes Satisfy Federal Rule of Civil Procedure 23(b)(2).

In addition to satisfying the four requirements of Rule 23(a), Plaintiff also must meet one of the requirements of Rule 23(b) for a class action to be certified. Here, Plaintiff seeks 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.").

Each proposed class seeks such uniform relief, applicable to all class members. First, Defendants' bond denial policy applies to the members of the proposed Bond Denial class, rendering them all subject to mandatory detention under § 1225(b)(2) and thus depriving of the bond hearing that they are entitled under § 1226(a). Accordingly, a "single injunctive or declaratory judgment"—a declaratory judgement establishing that their detention is governed by § 1226(a)— "would provide relief to each member of the class." *Wal-Mart*, 564 U.S. at 360; *see also Amchem Products v. Windsor*, 521 U.S. 591, 614 (1997) (explaining that "[c]ivil rights

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cases against parties charged with unlawful, class-based discrimination are prime examples" of 23(b)(2) class actions). Similarly, the BIA's systematic failure to timely adjudicate bond appeals impacts all members of the proposed Bond Appeal class, and a single declaratory judgment requiring the BIA to issue timely bond appeal decisions would apply to the class as a whole. Therefore, this action unquestionably meets the requirements of Rule 23(b)(2).

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court certify the proposed classes, appoint Mr. Rodriguez as the class representative for both classes, and appoint the undersigned attorneys as class counsel.

Respectfully submitted this 20th of March, 2025.

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WORD COUNT CERTIFICATION

I certify that this memorandum contains 5,909 words, in compliance with the Local Civil Rules.

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