UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

[redacted] LOPEZ SARMIENTO; [redacted] *on behalf of themselves and all others similarly situated,*

Petitioners-Plaintiffs,

v.

PAUL PERRY, *et al.*,

Respondents-Defendants.

Case No. 1:25-cv-01644-AJT-WBP

MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS' MOTION FOR CLASS CERTIFICATION

This case challenges the legality of the federal government's practice of arresting and detaining, without a pre-deprivation hearing or an opportunity for release on bond, two related classes of noncitizens: (1) noncitizens who were designated as unaccompanied minors and (2) noncitizens who have obtained Special Immigration Juvenile status ("SIJS"). The actions of Respondents have caused the arbitrary and unlawful detention of the named Petitioners-Plaintiffs ("Petitioners") and members of the proposed classes, and has resulted in additional harms to the proposed class members, such as the revocation of their deferred action and employment status, and unlawful attempts to remove them to third countries. Because Respondents' challenged conduct will continue to deprive Petitioners and proposed class members of their liberty unless this Court addresses Petitioners' claims through class-wide relief, Petitioners, on behalf of

themselves and all others similarly situated, respectfully request that this Court certify two classes to remedy the systemic violation of their rights.

Petitioners seek to represent the following classes:

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

Each proposed class satisfies the requirements of Federal Rule of Civil Procedure 23(a) and (b)(2) or (b)(1).

First, each class is so numerous that joinder of all members is impracticable. The precise size of each proposed class is unknown because that information lies uniquely within the government's possession, but publicly available information indicates that each class will number in the hundreds or thousands. That the classes are transient and difficult to quantify precisely at any given time further illustrates the impracticability of joinder.

Second, each proposed class is bound by common questions of law and fact that are appropriate for class treatment, including whether the Department of Homeland Security ("DHS") and the Executive Office for Immigration Review ("EOIR") are complying with the Immigration and Nationality Act, 8 U.S.C. §1226(a), entitling class members to bond hearing for release pending their removal proceedings, and whether this noncompliance violates the Administrative Procedure Act ("APA") and/or the Due Process Clause of the U.S. Constitution. The Unaccompanied Minors Class is further bound by the question of whether class members are entitled to pre-deprivation hearings and notice prior to re-detention, and the SIJS class is

bound by the question of whether their SIJS-based deferred action prevents the government from detaining them at all. Determining these questions class-wide will efficiently resolve in one fell stroke issues that cut to the core of each class member's claims.

Third, Petitioners are proper class representatives because they are members of the classes they seek to represent; their claims are typical of the proposed classes; and they, along with their counsel, will fairly and adequately protect the interests of the proposed classes.

Finally, the proposed classes satisfy Rule 23(b)(2) because Defendants are subjecting the proposed class members to a common practice, namely, subjecting them to mandatory detention under 8 U.S.C. §1225(b)(2)(A), despite, in the case of the Unaccompanied Minors Class, their designations as unaccompanied minors, and, in the case of the SIJS Class, their legal status through SIJS. Alternatively, the proposed classes satisfy Rule 23(b)(1) because the prosecution of separate actions by individual class members would create a risk of inconsistent adjudications and incompatible standards of conduct for Respondents.

On November 5, 2025, this Court held that Petitioners' detention is governed by 8 U.S.C. § 1226(a)'s discretionary framework, not section 1225(b)'s mandatory detention procedures, and that Petitioners' continued detention under section 1226 without a bond hearing violated their substantive and procedural due process rights. Doc. No. 16 at 6–7. The Court ordered Respondents to provide Petitioners with a standard bond hearing pursuant to section 1226(a). Doc. No. 16 at 7. Class certification will ensure that relief granted to Petitioners by this Court is afforded to unnamed individuals who are subjected to Respondents' unlawful mandatory detention policy.[1]

[1] On November 25, 2025, the United States District Court for the Central District of California certified a class challenging Respondents' mandatory detention policy, defined as: "All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be 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

PROPOSED CLASS DEFINITIONS

Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Petitioners respectfully request that the Court enter orders certifying two classes, as follows:

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

ARGUMENT

Petitioners seek certification of the proposed classes described above under Federal Rule of Civil Procedure 23. "By its terms, [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). Class certification is thus appropriate where the proposed class satisfies the four requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy of representation—and at least one of the categories of Rule 23(b). *See* Fed. R. Civ. P. 23(a)–(b).

Department of Homeland Security makes an initial custody determination." *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr.*, No. 5:25-cv-01873-SSS-BFM, Doc. No. 82 at 15, (C.D. Cal. Nov. 25, 2025). Certification is appropriate here for many of the reasons recognized by Judge Sykes in that case, as well as additional reasons set forth below. However, the class certified in *Maldonado Bautista* is not entirely co-extensive with the classes Petitioners propose here. So class certification is necessary here in order to ensure that any proposed class members who may not fall within the *Maldonado Bautista* class are afforded the relief to which they are entitled. Class certification and adjudication of Petitioners' claims here is further appropriate in light of "troubling" evidence that the government is "directi[ng]" immigration judges to "disregard th[e] Court's orders" in *Maldonado Bautista*. *See Lazaro Maldonado Bautista v. Ernesto Santacruz Jr.*, No. 5:25-cv-01873-SSS-BFM, Doc. No. 92 at 9 (C.D. Cal. Dec. 18, 2025).

As set forth below, the proposed classes meet all the requirements of Rule 23(a). In addition, the proposed classes satisfy Rule 23(b)(2)'s requirement 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." Fed. R. Civ. P. 23(b)(2). Here, Petitioners seek only declaratory and injunctive relief and, absent class certification, members of each of the proposed classes will lack adequate redress for Defendants' unlawful deprivation of their liberty. Additionally, certification is also appropriate under Rule 23(b)(1) because separate actions by class members would risk inconsistent outcomes and incompatible standards of conduct for Respondents.

Applying the factors and standards of Rule 23(a) and (b), this Court and courts across the country have repeatedly certified similar classes of detained non-citizens seeking injunctive and declaratory relief from unlawful practices that deprived them of their freedom. *See, e.g., Guerra v. Perry,* No. 1:23-CV-1151, 2024 WL 3581226 (E.D. Va. Apr. 26, 2024) (certifying a class of detained noncitizens challenging Immigration and Customs Enforcement's ("ICE") failure to comply with release policy); *Diaz v. Hott*, 297 F. Supp. 3d 618, 628 (E.D. Va. 2018), *rev'd on jurisdictional grounds sub nom Johnson v. Guzman Chavez*, 141 S. Ct. 2271 (2021) (certifying class of detained noncitizens seeking eligibility for immigration bond hearings); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 334 (D.D.C. 2018) (provisionally certifying class of detained noncitizens challenging ICE's failure to comply with parole policy); *Brito v. Barr*, 395 F. Supp. 3d 135, 149 (D. Mass. 2019), *aff'd as to class-wide declaratory relief and rev'd as to class-wide injunctive relief sub nom Brito v. Garland*, 22 F.4th 240 (1st Cir. 2021) (certifying a class of detained noncitizens challenging the allocation of the burden of proof and other procedures at immigration bond hearings). Petitioners urge this Court to do the same.

I. The Proposed Classes Meet the Requirements of Rule 23(a)

"[F]ederal courts should give Rule 23 a liberal rather than a restrictive construction, adopting a standard of flexibility in application which will in the particular case best serve the ends of justice for the affected parties and . . . promote judicial efficiency." *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 424 (4th Cir. 2003) (internal quotation marks omitted). Rule 23(a) provides that a class may be certified if it meets four requirements: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a). Petitioners' proposed classes clear the bar on each of these counts.

A. Each Class is So Numerous as to Render Joinder Impracticable

Each of the proposed classes satisfies the requirement that a class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "No specified number is needed to maintain a class action under Fed. R. Civ. P. 23; [rather,] application of the rule is to be considered in light of the particular circumstances of the case . . . ." *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n*, 375 F.2d 648, 653 (4th Cir. 1967). And the numerosity requirement is relaxed where, as here, Petitioners seek only injunctive and declaratory relief. *See Doe v. Heckler*, 576 F. Supp. 463, 467 (D. Md. 1983) ("Where the only relief sought for the class is injunctive and declaratory in nature, even speculative and conclusory representations as to the size of the class suffice . . . ." (quoting *Doe v. Charleston Area Med. Ctr., Inc.*, 529 F.2d 638, 645 (4th Cir. 1975)) (internal quotation and alteration marks omitted). The proposed classes—which Petitioners estimate, based on publicly available information, to number in the hundreds or

thousands—satisfy Rule 23(a) because each is currently large enough to render joinder impracticable. *See Lazaro Maldonado Bautista v. Ernesto Santacruz Jr.*, No. 5:25-cv-01873-SSS-BFM, Doc. No. 82 at 6, (C.D. Cal. Nov. 25, 2025) (finding the putative class satisfied the numerosity requirement based on factual circumstances surrounding the class and data from the Executive Office of Immigration Review and DHS's reports of its operations). Moreover, the future entry of additional class members makes joinder of every member virtually impossible.

1. The numerosity requirement is not a demanding one. Courts have found it satisfied even when relatively few class members are involved. *See Cypress*, 375 F.2d at 653 (affirming that class of 18 was sufficiently numerous); *Doe 1 v. Shenandoah Valley Juvenile Ctr. Comm'n*, No. 5:17-cv-97, 2018 WL 10593355, at *1 (W.D. Va. June 27, 2018) (finding numerosity satisfied based on an "assertion that there [were] approximately 30 unaccompanied immigrant minors under detention"); *Dale Elecs., Inc. v. R. C. L. Elecs., Inc.*, 53 F.R.D. 531, 534 (D.N.H. 1971) (finding that class of 13 members was numerous in part because "it is not numbers alone, but whether or not the numbers make joinder impracticable that is the test"). Furthermore, "it is not required that the exact size of a class be established" to demonstrate numerosity. *Harris v. Rainey*, 299 F.R.D. 486, 489 (W.D. Va. 2014). Rather, "[i]n making this determination, the court is entitled to make common sense assumptions" based on the evidence before it. *Hewlett v. Premier Salons Int'l Inc.*, 185 F.R.D. 211, 215 (D. Md. 1997) (internal quotation marks omitted); *see also* William B. Rubenstein, *Newberg on Class Actions* § 3:13 (6th ed. 2025) ("Generally, a plaintiff must show enough evidence of the class's size to enable the court to make commonsense assumptions regarding the number of putative class members.").

Moreover, courts have repeatedly held that the guaranteed presence of future unidentified class members renders joinder inherently impracticable. *See, e.g.*, *Pederson v. Louisiana State*

Univ., 213 F.3d 858, 868 n.11 (5th Cir. 2000) ("We have found the inclusion of future members in the class definition a factor to consider in determining if joinder is impracticable."); *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.") (internal quotations omitted); *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.").

Based on these joinder theories, courts have certified relatively small classes of detained persons where the class was likely to grow in the future with additional non-citizens entering detention. *See, e.g.*, *Gonzalez v. Sessions*, 325 F.R.D. 616, 622 (N.D. Cal. 2018) (finding sufficient numerosity where "Plaintiffs estimate this number will grow each day as the government places additional individuals in custody who will later reach six months of detention under § 1231(a)(6)"). Courts have been particularly inclined to certify classes of detained persons that are transient in nature, with additional persons not only entering the class but also leaving it soon thereafter. *See, e.g.*, *Reid*, 297 F.R.D. at 189 (finding that "the transient nature of the proposed class" favored certification); *Scott v. Clarke*, 61 F. Supp. 3d 569, 584 (W.D. Va. 2014) (citing "the fluidity of prison populations" as favoring certification) (internal quotations omitted); *Braggs v. Dunn*, 317 F.R.D. 634, 653 (M.D. Ala. 2016) (collecting cases on the connection between transiency and numerosity). The transient nature of a class is further enhanced and weighs even more strongly in favor of class certification where the exact number of detained persons in the class at any given time "is not easily identifiable" due to the nature of detention, lack of counsel, lack of English literacy, and other factors. *Reid*, 297 F.R.D. at 189 (finding numerosity where

"many [class members] do not speak English, a majority do not have counsel, and most are unlikely even to know that they are members of the proposed class"); *see also Brito*, 395 F. Supp. 3d at 144 n.3 (finding numerosity given that "the inability of many [non-citizens] to speak English and secure counsel render joinder impracticable").

2. Each of the proposed classes here meets the numerosity requirement. Petitioners estimate that the proposed Unaccompanied Minors Class is currently comprised of at least hundreds, if not thousands, of noncitizens who were designated unaccompanied minors to whom Respondents' immediate mandatory detention policy applies or will apply if they are apprehended. Second Am. Compl. [Doc. No. 18-1] ¶ 96, Doc. No. 22. This can be presumed based on government data, showing that in the 2022 fiscal year alone, ORR released 6,214 unaccompanied minors to sponsors in Virginia. Second Am. Compl., Ex. D [Doc. No. 18-5]. Petitioners estimate that the proposed SIJS Class is comprised of hundreds or thousands of individuals who have or will have obtained SIJS status at the time of detention, based on government data showing that U.S. Citizenship and Immigration Services ("USCIS") approved 34,605 SIJS applications between 2021 and 2022. Second Am. Compl. [Doc. No. 18-1] ¶ 96. These proposed classes are each large enough currently to render joinder impracticable. *See Lazaro Maldonado Bautista v. Ernesto Santacruz Jr.*, No. 5:25-cv-01873-SSS-BFM, Doc. No. 82 at 5–6, (C.D. Cal. Nov. 25, 2025). And there are likely more noncitizens currently detained in this posture who have not been identified by Petitioners' counsel because they are detained, do not speak English, or are likely unrepresented.

Additionally, both classes are likely to grow, both in the short and long term. On information and belief, ICE is continuing—and even accelerating—its practice of arbitrarily arresting and then detaining noncitizens pursuant to its new immediate mandatory detention policy. *See* Camilo

Montoya-Galvez, *ICE's detainee population reaches 66,000, a new record high, statistics show*, CBS News (November 6, 2025), https://www.cbsnews.com/news/ices-detainee-population-reaches-66000-a-new-record-high-statistics-show/ (noting that ICE recently received an "unprecedented infusion of funds" that it intends to use to dramatically "expand detention levels" of noncitizens). It is likely that a significant number of those noncitizens will belong to one or both of the proposed classes.

B. There are Questions Common to Each Class

Rule 23(a)(2) allows a class action where the claims "depend upon a common contention" that is "capable of class-wide resolution." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). "A single common question will suffice, but it must be of such a nature that its determination will resolve an issue that is central to the validity of each one of the claims in one stroke." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 360 (4th Cir. 2014) (citation modified). One way to establish commonality is to "identify a unified common policy, practice, or course of conduct that is the source of [the plaintiffs'] alleged injury." *Dockery v. Fisher*, 253 F. Supp. 3d 832, 846 (S.D. Miss. 2015); *see also In re Yahoo Mail Litig.*, 308 F.R.D. 577, 598 (N.D. Cal. 2015) ("It is sufficient if class members complain of a pattern or practice that is generally applicable to the class as a whole.") (citation omitted).

Here, both proposed classes satisfy the commonality requirement. Petitioners' proposed Unaccompanied Minors Class members have been and will continue to be subject to Respondents' immediate mandatory detention policy without regard to their unaccompanied minor designation. Similarly, Petitioners and proposed SIJS Class members have been and will continue to be subject to Respondents' immediate mandatory detention policy without regard to their approved SIJS. All members of the proposed classes "have suffered the same injury," namely, periods of arbitrary

detention, because of this practice. *Wal-Mart*, 564 U.S. at 350 (internal quotations omitted). Second Am. Compl. [Doc. No. 18-1] ¶¶ 60–91. And the issues applicable to these classes are capable of class-wide resolution. The Unaccompanied Minors Class members seek a ruling that Respondents' immediate mandatory detention policy disregarding unaccompanied minor designation violates the INA and implementing regulations and thereby violates the APA and the Due Process Clause of the Fifth Amendment, and that their re-detention without a pre-deprivation hearing or notice violates their liberty interest under the Due Process Clause, the APA, and the government's own policies in violation of *United States, ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). SIJS Class members similarly seek a ruling that Respondents' immediate mandatory detention policy disregarding approved SIJS violates the INA and implementing regulations and thereby violates the APA and the Due Process Clause of the Fifth Amendment, and that their detention despite their SIJS-based deferred action violates the APA, *Accardi*, and Due Process. With respect to each class, such a declaration and injunction will "resolve an issue that is central to the validity" of each class member's claim and provide "answers to common questions." *Wal-Mart*, 564 U.S. at 350, 356.

The questions of law and fact that are common to the Unaccompanied Minors Class include at least the following:

1. Whether DHS and EOIR have an immediate mandatory detention policy of mandatorily detaining noncitizens without regard to their designations as unaccompanied minors.

2. Whether such practice or policy violates the Immigration and Nationality Act and implementing regulation, which requires that noncitizens designated as unaccompanied minors, released to sponsors years prior, be provided a bond hearing pursuant to 8 U.S.C. § 1226(a).

3. Whether such a departure from DHS and EOIR's long standing policy and practice violates the Administrative Procedure Act, the *Accardi* doctrine, and/or the Due Process Clause.

4. Whether DHS has a policy or practice of arresting noncitizens designated as unaccompanied minors, who were released to sponsors, solely on the basis of removability.

5. Whether such practice or policy violates the APA and DHS and EOIR policy, which requires "changed circumstances" to justify the arrest of a noncitizen previously released from immigration custody.

6. Whether such practice or policy violates the Due Process Clause, which requires that the government bear the burden of demonstrating such changed circumstances prior to detention of a noncitizen previously designated as an unaccompanied minor.

7. Whether such policy and practice violates the APA and/or the Due Process Clause due to the government's failure to provide noncitizens designated as unaccompanied minors with a pre-deprivation notice or hearing prior to detention.

The questions of law and fact that are common to the SIJS Class include:

1. Whether DHS and EOIR have an immediate mandatory detention policy of mandatorily detaining noncitizens without regard to their approved SIJS and/or SIJS-based Deferred Action.

2. Whether such practice or policy violates the Immigration and Nationality Act and implementing regulation, which requires that noncitizens pursuing SIJS be provided a bond hearing pursuant to 8 U.S.C. §1226(a).

3. Whether such a departure from DHS and EOIR's long standing policy and practice violates the APA, the *Accardi* doctrine, and/or the Due Process Clause.

4. Whether DHS and EOIR have a policy or practice of immediately detaining Special Immigrant Juveniles with valid Deferred Action and stripping them of their deferred action and employment authorization without legal basis.

5. Whether such policy or practice violates the APA, the *Accardi* doctrine, and/or the Due Process Clause.

Any minor factual variations among proposed class members are secondary to the common questions detailed above and do not defeat the commonality requirement. *See DiFelice v. U.S. Airways, Inc*., 235 F.R.D. 70, 78 (E.D. Va. 2006) ("Minor differences in the underlying facts of individual class members' cases do not defeat a showing of commonality where there are common questions of law.") (citation modified); *Holsey v. Armour & Co.*, 743 F.2d 199, 217 (4th Cir. 1984); *Scott*, 61 F. Supp. 3d at 586 (W.D. Va. 2014) ("[T]he commonality requirement does not require

that all class members share identical factual histories."). Courts have certified similar classes of detained non-citizens where the precise factual scenarios varied among class members, yet a common experience united them. *See Diaz*, 297 F. Supp. 3d at 627 (finding commonality despite variations in the types of bond hearings available to the detained noncitizen class members because "the core legal question raised by the petition is the same across all class members"); *Damus*, 313 F. Supp. 3d at 333 (finding commonality despite purported differences in ICE's reasons for denying parole to class members because "the specific facts of each [parole] denial matter not if Petitioners are correct in their claim that the Directive is no longer in force overall"). In *Maldonado Bautista*, the district court explained that "individuals may have differing charges of admissibility when they are arrested, [but] the deprivation of their right to a bond hearing is a common injury […that] can be resolved in a single stroke[.]" *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr.*, No. 5:25-cv-01873-SSS-BFM, Doc. No. 82 at 7, (C.D. Cal. Nov. 25, 2025). A similar conclusion holds here.

All Unaccompanied Minors Class members were or will be designated as unaccompanied minors and released to sponsors in the United States. All SIJS Class members have or will have obtained SIJS status at the time of detention. By virtue of those designations, the members of each class are entitled to a bond hearing under the plain language of the governing statute and the government's longstanding practice—yet the government is now denying bond hearings to these individuals pursuant to its unlawful mandatory detention policy. Additionally, members of the Unaccompanied Minors Class are entitled to pre-deprivation notice or hearing, where the DHS has the burden to prove "changed circumstances" to justify a re-detention. Any factual differences between the class members' circumstances are not relevant to their legal claims that this policy is unlawful and do not inhibit resolution of the common questions. Respondents' immediate mandatory detention policy does not differentiate between individuals based on any factors unique

to individual unaccompanied minors or individual SIJS recipients; on the contrary, it applies to all proposed class members with equal force. Similarly, DHS may have different purported reasons for re-detaining class members, but whether Respondents are considering them "applicants for admission" not entitled to bond hearings under 8 U.S.C. § 1226(a), whether unaccompanied minors are being detained without pre-deprivation notice or hearing, or whether special immigrant juveniles with deferred action can be lawfully detained without prior process, are common questions unaffected by those distinctions.

C. Petitioners Assert Claims Typical of Each Class

Rule 23(a)(3) requires that "the claims or defenses of the representative parties [be] typical of the claims or defenses of the class." Typicality does not "require[] that the plaintiff's claim and the claims of class members be perfectly identical or perfectly aligned," but "plaintiff's claim cannot be so different from the claims of absent class members that their claims will not be advanced by plaintiff's proof of his own individual claim." *Deiter v. Microsoft Corp*., 436 F.3d 461, 466–67 (4th Cir. 2006). While they are two separate elements of a class, typicality and commonality "tend to merge." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982).

The claims of the Unaccompanied Minors Class arise from their designation as unaccompanied minors, and the claims of the SIJS Class arise from their approved SIJS. In both cases, that status makes Respondents' application of their immediate mandatory detention policy to these class members unlawful. Petitioners, having been designated as unaccompanied minors and having obtained SIJS, and yet having been subjected to the mandatory detention policy, nonetheless assert claims typical of both classes.

Petitioners' claims are typical of each class for many of the same reasons that the class meets the commonality requirement. Petitioners raise the same legal claims that current and future

members of each class could raise and have raised, namely that their continued detention without a bond hearing, as permitted under 8 U.S.C. § 1226(a), violates the APA and due process. *See Garcia Portillo v. Crawford,* 1:24-cv-297-AJT-LRV (E.D. Va. 2024) (dismissed as moot); *Castillo Torres v. Perry*, 1:23-cv-1469-LMB-WEF (E.D. Va. 2023) (dismissed as moot); *Rios Castro, et al. v. Crawford*, 1:23-cv-1011-AJT-WEF (E.D. Va. 2023) (dismissed as moot). Members of the Unaccompanied Minors Class assert these claims on the basis of their designations as unaccompanied minors. Members of the SIJS Class assert these claims on the basis of their approved SIJS. Furthermore, Petitioners have suffered the same injury as all proposed class members across both classes—detention without an opportunity to release on bond—and they both seek a declaration that such continued detention without a proper bond hearing is unlawful and further seek injunctive relief.

While the named Petitioners, like other proposed Unaccompanied Minors Class members, entered this country's immigration system through different routes, they all share an experience relevant to their common legal claims: they are, or were, immediately detained for some period and denied bond based on Respondents' mandatory detention policy notwithstanding their eligibility for bond under the plain language of the INA and the government's longstanding practice. *See Damus*, 313 F. Supp. 3d at 334 ("Although the specific details of each named Plaintiff's parole adjudication may vary, the crux of their allegations is typical of the claims of the putative class that the Government is no longer providing asylum-seekers with the individualized determinations and opportunities for release required under the Directive."); *see also Lazaro Maldonado Bautista v. Ernesto Santacruz Jr.*, No. 5:25-cv-01873-SSS-BFM, Doc. No. 82 at 9, (C.D. Cal. Nov. 25, 2025) ("Where those individuals are subject to mandatory detention due to Respondents' improper interpretation of the INA, Petitioners' claims present the same

circumstances as those of the Bond Eligible Class. Therefore, Petitioners' claims can be considered typical of Bond Eligible Class's."). For example, one non-Petitioner class member who entered the United States in 2019 was designated as an unaccompanied minor and released from ORR custody, obtained SIJS with deferred action in 2022, and was re-arrested without notice or pursuant to a warrant on September 7, 2025, and denied consideration for release based on Respondents' new mandatory detention policy. *See Guix-Mendez v. Crawford et. al.,* No. 1:25-cv-01798, Doc. No. 16 (E.D. Va. Oct. 29, 2025) (J., Brinkema). Likewise, in *Campos-Flores v. Bondi*, the Petitioner, who entered the United States at 15 years old, designated as an unaccompanied minor, released to a sponsor, obtained SIJS and deferred action, was nonetheless detained "while he was working as a landscaper on the National Mall" and denied bond based on Respondents' new mandatory detention policy. No. 3:25CV797, 2025 WL 3461551, at *2 (E.D. Va. Dec. 2, 2025). *See also, Pineda-Medrano v. Bondi*, No. 1:25-CV-01870, 2025 WL 3472152 (E.D. Va. Dec. 3, 2025) (J. Trenga). Petitioners' pursuit of a declaration from this Court that the Unaccompanied Minors and SIJS Class members are entitled to bond hearings under 8 U.S.C. §1226(a) will "advance the interests of the[se] absent class members." *Deiter*, 436 F.3d at 466–67.

D. Petitioners and Their Counsel are Adequate Representatives for Both Classes

The named Petitioners and their counsel will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy requirement is satisfied if: "(1) the named plaintiffs' interests are not opposed to those of other class members, and (2) the plaintiffs' attorneys are qualified, experienced and able to conduct the litigation." *Cuthie v. Fleet Reserve Ass'n*, 743 F. Supp. 2d 486, 499 (D. Md. 2010) (citation omitted). A named petitioner is an adequate representative of the class where the named petitioner "has a mutual goal with the other class members to challenge the allegedly unlawful practices and to obtain declaratory…relief that would

not only cure this illegality but remedy the injured suffered by all current and future class members." *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr.*, No. 5:25-cv-01873-SSS-BFM, Doc. No. 82 at 10, (C.D. Cal. Nov. 25, 2025) (internal citations omitted).

The interests of the named Petitioners will not conflict with the interests of any of the class members; rather, as explained above, their interests are aligned with members of both the Unaccompanied Minors Class and SIJS Class. For a conflict of interest between a named plaintiff and class members to defeat the adequacy requirement, that conflict must be "fundamental." *Ward v. Dixie Nat'l Life Ins.*, 595 F.3d 164, 180 (4th Cir. 2010) (citation omitted). "A conflict is not fundamental when . . . all class members share common objectives[,] the same factual and legal positions [and] have the same interest in establishing the liability of [defendants]." *Id.* at 180 (alterations in original) (internal quotation marks omitted). Here, there is no identified conflict of interest, much less any fundamental conflict of interest, either now or that could plausibly arise in the future. Petitioners do not seek monetary damages, but rather declaratory and injunctive relief that would benefit members of both classes. Petitioners have attested to their understanding and commitment to pursue the claims of the classes. Doc. No. 27-2 ¶ 14 ([redacted] declaration); Doc. No. 27-4 ¶ 12 ([redacted] declaration); Doc. No. 27-5 ¶ 15 ([redacted] declaration); Doc. No. 27-6 ¶ 12 ([redacted] declaration).

Petitioners' counsel will also adequately protect and advance the interests of the classes. "In assessing counsel's adequacy under Rule 23(a)(4), courts consider whether counsel are qualified, experienced and generally able to conduct the litigation and whether counsel will vigorously prosecute the interests of the class." *Newberg on Class Actions* § 3:72 (6th ed. 2025) (internal citations and quotations omitted). Counsel is considered qualified when they have experience with previous class actions or cases involving the same field of law. *See, e.g.*, *Adams*

v. Califano, 474 F. Supp. 974, 979 (D. Md. 1979). The representatives for the named Petitioners seeking to represent the class are the American Civil Liberties Union of Virginia and Sterne Kessler Goldstein & Fox PLLC. Collectively, counsel has substantial experience with, and a demonstrated commitment to, the representation of detained noncitizens, including through habeas litigation and class actions. Ex. A, Declarations in Support of Plaintiffs' Motion for Class Certification. Moreover, Class Counsel has already devoted significant resources to this matter and has sufficient resources to litigate this matter to completion.

For the same reasons, Class Counsel also satisfies the requirements of Rule 23(g).[2] *See* Fed. R. Civ. P. 23(g) (providing that, in appointing class counsel, the court must consider "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions . . . and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources counsel will commit to representing the class"); *see also Bell v. Brockett*, 922 F.3d 502, 512 (4th Cir. 2019) ("In applying Rule 23(g), courts must consider the four mandatory factors and may consider other permissive factors in assessing the adequacy of class counsel."). Thus, Petitioners satisfy the Rule 23(a) and (g) factors.

II. The Proposed Classes Meet the Requirements of Rule 23(b)(2) and/or (b)(1)

In addition to meeting the four requirements of Rule 23(a), a "class action must fall within one of the three categories enumerated in Rule 23(b)." *Adair*, 764 F.3d at 357 (quoting *Gunnells*, 348 F.3d at 423). Here, Petitioners primarily seek certification under Rule 23(b)(2), which

[2] *See* Rubenstein, *supra,* § 3:72 (noting that Congress in 2003 adopted "Rule 23(g), creating an explicit textual mooring for the class counsel analysis[,] but many courts continue to employ the substantive standards courts had generated under Rule 23(a)(4) prior to Rule 23(g)'s adoption in their analysis of counsel's adequacy"); Fed. R. Civ. P. 23(g) Comm. (explaining that Rule 23(g) was meant to "build[] on" previous judicial experience in evaluating adequacy under Rule 23(a)(4)).

"authorizes class treatment when '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.'" *Adair*, 764 F.3d at 357 (quoting Fed. R. Civ. P. 23(b)(2)).

A. Certification is Proper under Rule 23(b)(2)

Rule 23(b)(2) is met where "a single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart*, 564 U.S. at 360. The Rule was designed especially for civil rights cases seeking broad injunctive or declaratory relief from patterns of discrimination or arbitrary conduct. *See id.* at 361 (explaining that "'[c]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples' of what (b)(2) is meant to capture" (quoting *Amchem Products, Inc. v. Windsor,* 521 U.S. 591, 613 (1997)); *Thorn v. Jefferson-Pilot Life Ins. Co*., 445 F.3d 311, 330 n.24 (4th Cir. 2006) (explaining that (b)(2) "was created to facilitate civil rights class actions"); Advisory Committee's Note, 28 U.S.C. App., pp. 1260–61 (1964 ed., Supp. II) (citing foundational cases that inspired (b)(2)).

Under (b)(2), courts have repeatedly certified classes of detained noncitizens challenging systemic detention practices. *See Rodriguez v. Hayes*, 591 F.3d 1105, 1126 (9th Cir. 2010) (finding class certification proper under (b)(2) where detained noncitizens challenged "practice of prolonged detention . . . without providing a bond hearing and [sought] as relief a bond hearing with the burden placed on the government"); *Diaz*, 297 F. Supp. 3d at 627–28 (certifying class under (b)(2) where class challenged Government's interpretation of INA finding them ineligible for bond); *Damus*, 313 F. Supp. 3d at 334 (provisionally certifying class under (b)(2) where class sought to "address an alleged systematic harm—the failure of the Field Offices to comply with the [Parole] Directive"); *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr.*, No. 5:25-cv-01873-

SSS-BFM, Doc. No. 82 at 14, (C.D. Cal. Nov. 25, 2025) (certifying a class under (b)(2) and finding that the Respondents "have failed, on a systematic basis, to provide Petitioners and putative class members with the necessary safeguards imbued by the INA in violation of their rights.").

Here, each of the proposed classes challenge Respondents' immediate mandatory detention policy of detaining class members without consideration for release on bond under 8 U.S.C. §1226(a). Specifically, Petitioners allege that DHS and EOIR are systematically and unlawfully categorizing or re-categorizing unaccompanied minors who were released to sponsors in the United States, or who have pursued SIJS, as "applicants for admission" upon their re-apprehension by ICE and then detaining these individuals without bond pursuant to that categorization. Petitioners seek class-wide declarations that DHS and EOIR have a policy or practice inconsistent with the INA and its implementation of regulations, and that such noncompliance violates the APA and the Due Process Clause of the Fifth Amendment. Petitioners further seek a class-wide declaration that re-arrest or re-detention of members of the Unaccompanied Minors Class without pre-deprivation notice and hearing violates their liberty interest under the Due Process Clause. Additionally, the detention of SIJS class members with deferred action violates the Due Process Clause and the government's own policies under *Accardi*, because the government has provided the SIJS class members protection from immigration enforcement action, which, at a minimum, prohibits their deportation, eliminating any legitimate basis for their detention.

While each class member could theoretically make these claims individually, such individual litigation would not demonstrate the alleged pattern as adequately and efficiently as would class-wide litigation. *See Wal-Mart*, 564 U.S. at 361 (noting that certification under (b)(2) is proper when "the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them") (citation omitted). Furthermore, the declaration sought

by Petitioners would "benefit[] all [class] members at once." *Id.* at 362. It would clarify the scope and applicability of 8 U.S.C. §1226 and inform DHS and EOIR of their duty to comply with the INA and implementing regulations by providing Unaccompanied Minors with a pre-deprivation hearing prior to detention and by providing all class members with individualized bond hearings to assess whether their continued detention is warranted based on flight risk or dangerousness. *See Centennial Life Ins. Co. v. Poston*, 88 F.3d 255, 256 (4th Cir. 1996) (observing that declaratory relief is proper when "the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and . . . when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding") (citation omitted); *Lazaro Maldonado Bautista v. Ernesto Santacruz Jr.*, No. 5:25-cv-01873-SSS-BFM, Doc. No. 82 at 14, (C.D. Cal. Nov. 25, 2025) (finding that "[a]ny differences that may exist in class members' entitlement to be released is a different matter than their entitlement to a hearing.").

B. In the Alternative, Certification is Proper under Rule 23(b)(1)

As an alternative to Rule 23(b)(2), the Court can also properly certify the proposed classes under Rule 23(b)(1), which permits class certification where "prosecuting separate actions by or against individual class members would create a risk of . . . inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class . . . ." Fed. R. Civ. P. 23(b)(1)(A). Certification under Rule 23(b)(1)(A) "is appropriate when the class seeks injunctive or declaratory relief to change an alleged ongoing course of conduct that is either legal or illegal as to all members of the class." *Adair v. England*, 209 F.R.D. 5, 12 (D.D.C. 2002) (citing James W. Moore et al., Moore's Federal Practice § 23.41[4] (3d ed. 2000)).

Petitioners satisfy this standard. If members of either proposed class were required to initiate separate actions containing the same allegations as made here by Petitioners against Respondents, and one or more individual claims were adjudicated before the petitioner was released, such adjudication may result in inconsistent standards concerning the same immediate mandatory detention policy. This risk is not merely hypothetical, but distinctly possible given the number of individual habeas petitioners who are currently challenging their detention based on Respondents' blanket mandatory detention policy. *See, e.g.*, Second Am. Compl. [Doc. No. 18-1] ¶ 59 (collecting cases). To avoid such inconsistent outcomes, it is necessary to certify both of the proposed classes and adjudicate the members' common claims together. Petitioners seek declaratory and injunctive relief applicable to all members of each class, and certification pursuant to Rule 23(b)(1) is therefore appropriate.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant their Motion for Class Certification for the two enumerated classes, the Unaccompanied Minors Class and the SIJS Class.

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Respectfully submitted,

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