

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NOOR DOE, *et al.*,

Plaintiffs,

v.

MARKWAYNE MULLIN, Secretary, United
States Department of Homeland Security, in his
official capacity, *et al.*,

Defendants.

Case No. 26 Civ. 2280 (DEH)

**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO CLASS
CERTIFICATION**

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Defendants (the “government”) respectfully submit this memorandum of law in opposition to the motion for class certification filed by the named plaintiffs (“Plaintiffs”). *See* Dkt. No. 27 (“Pl. Br.”).¹

PRELIMINARY STATEMENT

In this putative class action, Plaintiffs challenge the Secretary of Homeland Security’s termination of Yemen’s Temporary Protected Status (“TPS”) designation under the Administrative Procedure Act (“APA”) and the equal-protection guarantee of the Fifth Amendment’s Due Process Clause. Plaintiffs now seek to certify two nationwide classes encompassing every Yemeni national who currently holds, or has applied for, TPS. As a threshold matter, the Court should defer ruling on the motion until the Supreme Court resolves whether Plaintiffs’ claims are even viable, because a Supreme Court decision in the government’s favor may obviate the need for further litigation regarding class certification altogether.

In any event, the motion fails on the merits. To obtain class certification, Plaintiffs must satisfy all of Rule 23(a)’s requirements and at least one provision of Rule 23(b). They cannot do either here. Starting with Rule 23(b), Plaintiffs invoke both Rule 23(b)(2) and Rule 23(b)(1)(A), but neither applies. Rule 23(b)(2) certification is available only where class-wide injunctive or corresponding declaratory relief is appropriate. Here, 8 U.S.C. § 1252(f)(1) strips this Court of jurisdiction to grant such relief. Certification under Rule 23(b)(1)(A) fares no better, because there is no risk that inconsistent rulings would compel the government to take incompatible positions toward any individual class member. Plaintiffs also cannot satisfy Rule 23(a)’s requirements. The

¹ Secretary of Homeland Security Markwayne Mullin is automatically substituted for former Secretary Kristi Noem pursuant to Federal Rule of Civil Procedure 25(d).

proposed classes are overbroad, likely sweeping in many individuals who have obtained alternative immigration relief, departed the United States, or otherwise would suffer no legally cognizable injury from the TPS termination—defeating commonality under Rule 23(a)(2). And the seven named plaintiffs present highly individualized injury allegations that they have not shown are representative of the ordinary Yemeni TPS holder or applicant, which defeats typicality under Rule 23(a)(3). Finally, even if certification were otherwise appropriate, the Court should not certify a nationwide class.

BACKGROUND

Congress created TPS to provide temporary protection to noncitizens who cannot safely return to their home country because of natural disaster, armed conflict, or “extraordinary and temporary conditions.” 8 U.S.C. § 1254a(b)(1). In 2015, the Secretary of Homeland Security (the “Secretary”) designated Yemen for TPS based on a determination that there was an ongoing armed conflict in Yemen and that, due to that conflict, requiring Yemeni nationals to return would pose a serious threat to their personal safety. *See Designation of the Republic of Yemen for Temporary Protected Status*, 80 Fed. Reg. 53,319 (Sept. 3, 2015). The designation was extended multiple times on that basis and based on “extraordinary and temporary conditions.” *Termination of the Designation of Yemen for Temporary Protected Status*, 91 Fed. Reg. 10,402–03 (Mar. 3, 2026) (listing extensions). On March 3, 2026, however, the Secretary announced that Yemen’s TPS designation would be terminated effective May 4, 2026.

Plaintiffs commenced this action on March 19, 2026, challenging the termination under the APA and the equal-protection guarantee of the Fifth Amendment’s Due Process Clause. Dkt. No. 1. On March 25, Plaintiffs moved to postpone the effective date of the termination pursuant to

5 U.S.C. § 705. Dkt. No. 22. The next day, Plaintiffs moved for class certification, but the Court granted the parties’ agreement to hold the briefing on that motion in abeyance for approximately two months. Dkt. Nos. 25, 28, 29. On May 1, the Court granted Plaintiffs’ motion to postpone the effective date of the termination of Yemen’s TPS designation after finding that Plaintiffs were likely to succeed on their APA claims. Dkt. No. 54.

On May 28, 2026, this Court stayed this case pending a decision from the Supreme Court in *Noem v. Doe*, 224 L. Ed. 2d 184 (U.S. Mar. 16, 2026) (“*Noem*”) and *Trump v. Miot*, 224 L. Ed. 2d 184 (U.S. Mar. 16, 2026) (“*Miot*”)—two cases that involve similar APA and constitutional challenges to TPS terminations. Dkt. No. 67. The Court ordered, however, that briefing on Plaintiffs’ class certification motion would proceed. *Id.*

LEGAL STANDARD

“The class action is ‘an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only.’” *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700–01 (1979)). Parties seeking class certification bear the burden of demonstrating that they have satisfied all four of Rule 23(a)’s prerequisites and that their proposed class action falls within one of the three types of actions permitted under Rule 23(b). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997).

Rule 23(a) requires a party seeking to certify a class first to demonstrate that:

- (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 [(“commonality”)];
- (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class [(“typicality”)]; and
- (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). In addition, as noted above, “the proposed class must satisfy at least one of the three requirements listed in Rule 23(b).” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011). Plaintiffs here seek certification under Rule 23(b)(2) or Rule 23(b)(1)(A). Pl. Br. at 1–2. Rule 23(b)(2) permits class certification where “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). Rule 23(b)(1)(A) applies 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).

The Supreme Court has emphasized that “Rule 23 does not set forth a mere pleading standard” and, thus, a plaintiff “must affirmatively demonstrate [his] compliance with the Rule.” *Wal-Mart*, 564 U.S. at 350. Consequently, the Court must conduct a “rigorous” class certification analysis, which may “entail some overlap with the merits of the plaintiff’s underlying claim.” *Id.* at 351. While courts assume the truth of the allegations in the complaint when considering whether to certify a proposed class, “district courts are required to look past the pleadings for the limited purpose of deciding if the Rule 23 requirements have been met.” *Attenborough v. Constr. & Gen. Bldg. Laborers’ Loc. 79*, 238 F.R.D. 82, 93 (S.D.N.Y. 2006) (citing *Heerwagen v. Clear Channel Commc’ns*, 435 F.3d 219, 231 (2d Cir. 2006)). If the Court is not satisfied that all Rule 23 requirements are met after conducting a “rigorous” analysis, the Court cannot certify the class. *Wal-Mart*, 564 U.S. at 351.

ARGUMENT

I. THE COURT SHOULD DEFER RULING ON CLASS CERTIFICATION.

As the Court is aware, the Supreme Court will soon decide whether the APA and constitutional claims asserted in TPS cases like this one are viable. *See Noem*, 224 L. Ed. at 2d 184; *Miot*, 224 L. Ed. 2d at 184. To the extent the Supreme Court holds that they are not viable, the government anticipates seeking dismissal of this case, which may obviate the need for the Court to adjudicate this motion. *See Deide v. Day*, No. 23-CV-3954 (NSR), 2024 WL 3471294, at *1 (S.D.N.Y. July 19, 2024) (“the Motion to Dismiss is GRANTED and, as a result, the Motion for Class Certification is DENIED as moot”); *Petersen v. Chase Card Funding, LLC*, No. 19-CV-741-LJV-JJM, 2020 WL 613531, at *1 n.2 (W.D.N.Y. Jan. 22, 2020) (“Although [plaintiff] seeks class certification, ‘[c]ourts have made rulings on a wide variety of motions to dismiss prior to . . . class certification determinations, including motions to dismiss for failure to state a claim (Rule 12(b)(6)).’” (quoting 3 Newberg on Class Actions § 7:9 (5th ed.))), *report and recommendation adopted*, 2020 WL 5628935 (W.D.N.Y. Sept. 21, 2020); *see also* 3 Newberg and Rubenstein on Class Actions § 7:9 (6th ed.) (“Given the early nature of most motions to dismiss, courts will often handle them prior to deciding a motion for class certification.”). Class certification is especially unwarranted at this juncture because the Court’s postponement order (Dkt. No. 54) has already granted preliminary relief to the putative class members, meaning it postpones the effective date of the Secretary’s termination determination for parties and non-parties alike.

II. PLAINTIFFS HAVE NOT SATISFIED THE RIGOROUS REQUIREMENTS FOR CLASS CERTIFICATION.

A. Plaintiffs Do Not Satisfy Rule 23(b)'s Requirements.

1. Section 1252(f)(1) Prevents Plaintiffs from Certifying a Class Under Rule 23(b)(2).

Plaintiffs seek class certification under Rule 23(b)(2). Pl. Br. at 12–13. That provision permits certification if the defendant “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). Plaintiffs cannot satisfy that requirement here because 8 U.S.C. § 1252(f)(1) precludes the Court from granting the contemplated injunctive and declaratory relief. *See* Compl. ¶¶ 179–180, 183 (seeking declaratory and injunctive relief).

Rule 23(b)(2) certification requires the availability of two kinds of class-wide relief: injunctive relief or declaratory relief that “corresponds” to injunctive relief. Section 1252(f)(1) bars that relief here. Specifically, § 1252(f)(1) strips district courts of “jurisdiction” to “enjoin or restrain the operation” of certain statutory provisions that include the TPS statute.² 8 U.S.C.

² Specifically, as explained in the government’s opposition to Plaintiffs’ postponement motion (Dkt. No. 32 at 17–18), § 1252(f)(1) deprives district courts of jurisdiction to “enjoin or restrain the operation of the provisions of part IV of this subchapter.” 8 U.S.C. § 1252(f)(1). The TPS statute—8 U.S.C. § 1254a—is one of the statutory provisions that § 1252(f)(1) covers. In the U.S. Code, § 1254a appears in part V of the relevant subchapter. The public law enacted by Congress, however, strips lower courts of the authority to enjoin or restrain “the provisions of chapter 4 of title II,” which contains the TPS statute (section 244 of the INA, as amended). Illegal Immigration Reform and Immigrant Responsibility Act of 1996, div. C, Pub. L. No. 104-208, §§ 306 (enacting § 1252(f)), 308 (specifying section 244 as part of chapter 4), 110 Stat. 3009. When the enacted text and the U.S. Code conflict, the enacted text prevails. *See U.S. National Bank of Oregon v. Independent Insurance Agents of America, Inc.*, 508 U.S. 439, 448 (1993) (“United States Code is ‘prima facie’ evidence that the provision has the force of law, 1 U.S.C. § 204(a), [but] it is the Statutes at Large that provides the ‘legal evidence of laws,’ [1 U.S.C.] § 112”); *United States v. Welden*, 377 U.S. 95, 98 n.4 (1964) (“the Code cannot prevail over the Statutes at Large when

§ 1252(f)(1). As this Court recognized when granting Plaintiffs’ motion to postpone, § 1252(f)(1) “withdraws a district court’s ‘jurisdiction or authority’ to grant a particular form of relief: that which ‘enjoin[s] or restrain[s] the operation of’ the relevant sections of the statute.” Dkt. No. 54 at 22 (quoting *Biden v. Texas*, 597 U.S. 785, 798 (2022)) (some quotation marks omitted). The first form of Rule 23(b)(2) relief—class-wide injunctive relief—is therefore unavailable here, because any injunction entered in Plaintiffs’ favor would enjoin the operation of the TPS statute. *See Berni v. Barilla S.p.A.*, 964 F.3d 141, 146 (2d Cir. 2020) (“[A] class may *not* be certified under Rule 23(b)(2) if *any* class member’s injury is not remediable by the injunctive or declaratory relief sought.”). Specifically, such an injunction would enjoin the operation of 8 U.S.C. § 1254a(b)(3)(B), which permits the Secretary to terminate a country’s TPS designation after concluding that the country no longer meets the conditions for its designation.

The same jurisdictional bar reaches the “corresponding declaratory relief” that Rule 23(b)(2) contemplates. Courts have interpreted the words “corresponding declaratory relief” to mean declaratory relief that is, in practical effect, the equivalent to an injunction. *See Goldberg v. Winston & Morrone, P.C.*, No. 95-CV-9282 (LAK), 1997 WL 139526, at *3 (S.D.N.Y. Mar. 26, 1997) (certification under Rule 23(b)(2) is appropriate only where declaratory relief “‘correspond[s]’ to injunctive relief” and observing that an Advisory Committee note to Rule 23 “‘makes clear’ that “[d]eclaratory relief ‘corresponds’ to injunctive relief when as a practical matter it affords injunctive relief or serves as a basis for later injunctive relief”); 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1775 (3d ed. 2005)

the two are inconsistent” (quoting *Stephan v. United States*, 319 U.S. 423, 426 (1943))). Thus, the TPS statute is within the scope of § 1252(f)(1).

(discussing Advisory Committee note and stating that the “declaration should be equivalent to an injunction” to qualify for Rule 23(b)(2) certification). Because § 1252(f)(1) bars district courts from granting relief that enjoins the operation of the TPS statute, it equally bars “corresponding declaratory relief” that would do the same thing and thereby improperly “enjoin or restrain the operation” of the TPS statute.³ 8 U.S.C. § 1252(f)(1).

Finally, to the extent Plaintiffs contend that they are seeking relief other than injunctive relief or declaratory relief that “corresponds” to injunctive relief, certification under Rule 23(b)(2) would not be available. *See Presser v. Key Food Stores Co-op., Inc.*, 218 F.R.D. 53, 57 (E.D.N.Y. 2003) (a “Rule 23(b)(2) class action is available only when the class seeks ‘final injunctive relief or corresponding declaratory relief’” for the class).

2. There Is No Risk of Incompatible Rulings that Would Justify Certifying a Class Under Rule 23(b)(1)(A).

Plaintiffs also do not satisfy Rule 23(b)(1)(A), which allows for class certification where “inconsistent or varying adjudications with respect to individual class members . . . would establish incompatible standards of conduct for the party opposing the class.” Fed. R. Civ. P. 23(b)(1)(A). There is no risk of that here. Even if different courts were to reach different conclusions about the lawfulness of the TPS termination in individual lawsuits, no such divergence would compel the U.S. Department of Homeland Security (“DHS”) to maintain inconsistent positions toward any single class member. After all, DHS’s TPS determination as to any individual would be governed

³ This conclusion is consistent with *California v. Grace Brethren Church*, 457 U.S. 393, 408 (1982), where the Supreme Court interpreted statutory language closely analogous to § 1252(f)(1) and concluded that it precluded declaratory relief. Specifically, it held that the Tax Injunction Act, 28 U.S.C. § 1341—which divested district courts of jurisdiction to “suspend or restrain” tax collection—barred declaratory relief. *Grace Brethren Church*, 457 U.S. at 408.

by the outcome of that individual’s case, not by rulings in unrelated litigation. *Oakley v. Verizon Commc’ns Inc.*, No. 09 Civ. 9175 (CM), 2012 WL 335657, at *11 (S.D.N.Y. Feb. 1, 2012) (“Rule 23(b)(1)(A) is not meant to apply . . . where the risk of inconsistent results in individual actions is merely the possibility that the defendants will prevail in some cases and not in others” (quotation marks omitted)); *see also In re Bendectin Prods. Liab. Litig.*, 749 F.2d 300, 305 (6th Cir. 1984) (“[T]hat some plaintiffs may be successful in their suits against a defendant while others may not is clearly not a ground for invoking Rule 23(b)(1)(A).”). Though Plaintiffs suggest otherwise (Pl. Br. at 14), DHS can update databases and records to reflect whether any given putative class member is a TPS holder.

B. Plaintiffs Do Not Satisfy Rule 23(a)’s Requirements for Class Certification.

1. The Class is Overbroad and Does Not Meet Rule 23(a)(2)’s Commonality Requirement.

Plaintiffs cannot establish commonality under Rule 23(a)(2) because the class is overbroad. “A question of law or fact is common to the class . . . , if the question is ‘capable of classwide resolution—which means that its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.’” *Johnson v. Nextel Commc’ns Inc.*, 780 F.3d 128, 137 (2d Cir. 2015) (quoting *Wal-Mart*, 564 U.S. at 349–50) (alterations and citations omitted). Commonality requires the plaintiff to demonstrate that the class members “‘have suffered the same injury,’” which “does not mean merely that they have all suffered a violation of the same provision of law.” *Wal-Mart*, 564 U.S. at 350. It is not enough for a plaintiff to identify broad questions that are common to the entire class. *Id.* (“What matters to class certification . . . is not the raising of common questions—even in droves—but rather, the capacity of a class-wide proceeding to

generate common *answers* apt to drive the resolution of the litigation.” (quotations omitted) (emphasis in original)).

Plaintiffs seek to certify classes defined, in relevant part, as (1) “Yemeni nationals . . . who have TPS status”; and (2) “Yemeni nationals . . . who apply or have applied for TPS for Yemen.” Pl. Br. at 1. These class definitions are overbroad, and their application would encompass individuals who are not concretely harmed by the alleged unlawful conduct. *See Sheehan v. Purolator, Inc.*, 103 F.R.D. 641, 656 (E.D.N.Y. 1984) (an overly “broad class” presents commonality concern), *aff’d*, 839 F.2d 99 (2d Cir. 1988); *see also Ross v. Lockheed Martin Corp.*, 267 F. Supp. 3d 174, 191 (D.D.C. 2017) (a class definition may be fatally overbroad if it “sweeps within it persons who could not have been injured by the defendant’s conduct” (quoting *Kohen v. Pac. Inv. Mgmt. Co. LLC*, 571 F.3d 672, 677 (7th Cir. 2009))); *Faralli v. Hair Today, Gone Tomorrow*, No. 06-CV-504, 2007 WL 120664, at *6 (N.D. Ohio Jan. 10, 2007) (“A proposed class may be deemed overly broad if it would include members who have not suffered harm at the hands of the defendant.” (internal quotation marks omitted)).

Plaintiffs’ class definitions—which include no temporal limitations—will include individuals who have had TPS or have applied for TPS from 2015 to the present. Many of these individuals will have received alternative forms of immigration relief and, accordingly, would not be harmed by the termination of TPS. For example, some putative class members may have received asylum or U or T nonimmigrant status. *See* U.S. Dep’t of Labor, *U and T Visa Certifications*, www.dol.gov/agencies/whd/immigration/u-t-visa (last accessed June 5, 2026). Others may have utilized available pathways to adjust status through a U.S. citizen or lawful permanent resident relative, Special Immigrant Juvenile Status, or a Violence Against Women Act

of 1994 self-petition. And still others may no longer be in the United States, deciding to return to Yemen or change their residence to another country. This group of individuals would lack standing to challenge the Secretary's action because they would not suffer any legally cognizable injury. *See Ross*, 267 F. Supp. 3d at 191 (“[I]f the definition is so broad that it sweeps within it persons who could not have been injured by the defendant’s conduct, it is too broad.” (quoting *Kohen*, 571 F.3d at 677)); *see also TransUnion LLC v. Ramirez*, 594 U.S. 413, 417 (2021) (“To have Article III standing to sue in federal court, plaintiffs must demonstrate, among other things, that they suffered a concrete harm. No concrete harm, no standing.”); *Lewis v. U.S. Parole Comm’n*, 743 F. Supp. 3d 181, 204 (D.D.C. 2024) (“Plaintiffs’ overly broad class definition runs afoul of Rule 23’s commonality requirement, because the Court cannot determine by a preponderance of the evidence that [the alleged unlawful conduct] gives rise to a common injury affecting all or nearly all class members.”).

Plaintiffs’ allegations of the “imminent harms” associated with removal and loss of employment authorization do not establish commonality. Pl. Br. at 9–10. Certainly, there may be some putative class members who have final orders of removal with no forms of immigration relief available to them and DHS may seek their removal to Yemen if the country’s TPS designation is terminated. *See* 8 U.S.C. § 1254a(a)(1) (establishing that aliens with final orders of removal can be removed once TPS is no longer in effect). But many putative class members will have pathways to seek relief or protection from removal. *See, e.g.*, 8 U.S.C. §§ 1158 (asylum⁴), 1231(b)(3)(A)

⁴ USCIS’s pause on the processing of asylum applications for Yemeni nationals, referenced in the declaration of Sam Doe (Dkt. No. 26-7), applies only to affirmative asylum applications, not defensive applications submitted during removal proceedings. *See* www.uscis.gov/humanitarian/refugees-and-asylum/asylum/obtaining-asylum-in-the-united-states (describing different means of applying for asylum).

(withholding of removal); 1229b (cancellation of removal); 8 C.F.R. §§ 1208.16–1208.17 (governing relief available under Convention Against Torture). Those who apply for or who have received many forms of relief, including asylum, may be eligible for work authorization. *See, e.g.*, 8 C.F.R. §§ 208.7, 274a.12. These individuals would fall within Plaintiffs’ class definition but not be subject to the imminent harms that they claim. The class definitions are therefore simply too broad to satisfy the commonality requirement.

2. Plaintiffs Have Not Shown that Rule 23(a)’s Typicality Requirement Is Met.

Plaintiffs also have not demonstrated that their claims are typical of those of the proposed class. “Rule 23(a) ensures that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate . . . by effectively limiting the class claims to those fairly encompassed by the named plaintiff’s claims.” *Mazzei v. Money Store*, 829 F.3d 260, 271–72 (2d Cir. 2016) (alterations, citation, and internal quotation marks omitted). Typicality requires that “the disputed issues of law or fact occupy essentially the same degree of centrality to the named plaintiff’s claim as to that of other members of the proposed class.” *Id.* at 272 (internal quotation marks and alterations omitted). The typicality requirement aims “to ensure that the named plaintiff’s claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.” *Id.* (quotation marks and alterations omitted). In particular, typicality “ensures that ‘the class representatives have suffered injuries in the same general fashion as absent class members.’” *Crowe v. Fed. Bureau of Prisons*, No. 24-CV-3582 (APM), 2025 WL 1635392, at *19 (D.D.C. June 9, 2025) (quoting *In re Vitamins Antitrust Litig.*, 209 F.R.D. 251, 260 (D.D.C. 2002)).

The seven named plaintiffs each present individualized injury allegations that do not closely resemble one another, and there is no indication that they are typical of the ordinary Yemeni TPS holder or applicant. They include, among other things, assertions of alleged injury based on: individualized demographic, medical, family, and career-related ties to the United States; the absence of ties to Yemen; past experiences with or fears of harm in Yemen based on individualized characteristics; and a pending asylum application. *See* Abdo Doe Decl., Dkt. No. 26-1, ¶¶ 5, 9; Hadeel Doe Decl., Dkt. No. 26-2, ¶¶ 4–9; Faiz Doe Decl., Dkt. No. 26-3, ¶¶ 3–13; Ebe Doe Decl., Dkt. No. 26-4, ¶¶ 7–15; Ali Doe Decl., Dkt. No. 26-5, ¶¶ 2–11; Fahad Doe Decl., Dkt. No. 26-6, ¶¶ 2–6; Sam Doe Decl., Dkt. No. 26-7, ¶¶ 2–10. None of the named plaintiffs assert that they have been in removal proceedings, or claim to have been denied any of the various forms of relief available to individuals facing removal, such as asylum (8 U.S.C. § 1158), withholding of removal (8 U.S.C. § 1231(b)), or Convention Against Torture protection (8 C.F.R. §§ 1208.16–1208.17). Further, other than Abdo Doe, who makes references to applying for adjustment of status (Dkt. No. 26-1, ¶ 2), none of the named plaintiffs ever discuss applying for and being denied lawful status based, for example, on their relations to U.S. citizens or permanent residents. Plaintiffs have not shown that the named plaintiffs share the same risks and avenues for immigration relief as ordinary class members, which prevents them from satisfying the typicality requirement. *See Vasquez v. Bolla Operating L.I. Corp.*, No. 2:22-CV-7014 (NCM) (ST), 2025 WL 3755610, at *6 (E.D.N.Y. Dec. 5, 2025) (“[T]o satisfy typicality ‘a class representative must be part of the class and possess the same interest and suffer the same injury as the class members.’” (quoting *Wal-Mart*, 564 U.S. at 348–49)). This concern is heightened here because Rule 23 “provides no opportunity for (b)(1) or (b)(2) class members to opt out.” *Wal-Mart*, 564 U.S. at 362.

III. A NATIONWIDE CLASS SHOULD NOT BE CERTIFIED.

Even if the Court concludes that class certification is appropriate, it should not certify a nationwide class action. The Supreme Court has cautioned against readily certifying nationwide class actions, noting that they can have a “detrimental effect” in that they “foreclose[e] adjudication by a number of different courts and judges.” *Califano*, 442 U.S. at 702. It is a feature of our system that district judges within each circuit can reach different opinions on the same question of law before a circuit court rules. And even once a circuit court rules, the issue can continue to percolate within other circuits until the matter is taken up by the Supreme Court. Indeed, the Supreme Court recently recognized that Rule 23’s predecessor, the equitable bill of peace, “involved a ‘group [that] was small and cohesive,’ and the suit did not ‘resolve a question of legal interpretation for the entire realm.’” *Trump v. CASA, Inc.*, 606 U.S. 831, 848 (2025). Accordingly, should the Court certify a class here, it should at most be limited to this judicial district. *See, e.g., Bova v. Cox Commc’ns, Inc.*, Civ. A. No. 01-0090, 2001 WL 1654708, at *4 (W.D. Va. Dec. 12, 2001) (limiting the class action to the Western District of Virginia).

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' motion for class certification.

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Certificate of Compliance

Pursuant to Local Civil Rule 7.1(c), the above-named counsel hereby certifies that this memorandum complies with the word-count limitation of this Court's Local Civil Rules. As measured by the word processing system used to prepare it, this memorandum contains 4,312 words.