Immigration — Remedies — Garland v. Aleman Gonzalez

"[T]he court seems to churn along as usual, and I see my friends' rights trampled in the process," observed an immigrant detained at the Hudson County Correctional Facility.[1] Without lawyers,[2] those friends belonged to the more than eighty percent of detained immigrants who lack legal representation in deportation proceedings.[3] Immigrants and their advocates have long relied on class actions to win systemic reforms of mass detention, on behalf of similarly situated immigrants with and without counsel.[4] Last Term, in *Garland v. Aleman Gonzalez*,[5] the Supreme Court held that a provision of the Immigration and Nationality Act[6] (INA), 8 U.S.C. § 1252(f)(1), forbids lower federal courts from granting classwide injunctive relief.[7] The Court's jurisdictional ruling leaves the rights of detained immigrants hanging in the balance.

Esteban Aleman Gonzalez entered the United States and was removed to Mexico on the same day in the year 2000.[8] Shortly afterwards, he reentered the United States, where he has since resided and started a family, including two daughters who are U.S. citizens.[9] In 2017, immigration officers arrested Aleman Gonzalez at his home in California, reinstated his prior order of removal, and placed him in detention,[10] under 8 U.S.C. § 1231(a)(6).[11] Two weeks later, an asylum officer found that Aleman Gonzalez had "a reasonable fear of persecution or torture in Mexico" by drug cartel members.[12] After six months in detention,

---

[1] MIZUE AIZEKI, GHITA SCHWARZ, JANE SHIM & SAMAH SISAY, IMMIGRANT DEF. PROJECT & CTR. FOR CONST. RTS., CRUEL BY DESIGN: VOICES OF RESISTANCE FROM IMMIGRATION DETENTION 28 (2022).

[2] *See id.*

[3] *See State and County Details on Deportation Proceedings in Immigration Court*, TRAC IMMIGR. (Feb. 2022), https://trac.syr.edu/phptools/immigration/nta [https://perma.cc/BT2Z-8WUE] (select "All" under "Immigration Court State" and "Detained" under "Custody").

[4] *See, e.g.*, *Class-Action Suit Strengthens Protections for Immigrant Children*, NAT'L CTR. FOR YOUTH L. (Mar. 31, 2022), https://youthlaw.org/news/class-action-suit-strengthens-protections-immigrant-children [https://perma.cc/PE5X-CCVS]; Martin Kaste, *Detainees Who Earned Just $1 a Day Are Owed $17 Million in Back Pay, A Jury Says*, NPR (Oct. 29, 2021, 11:28 PM), https://www.npr.org/2021/10/29/1050520220/detainees-who-earned-just-1-a-day-are-owed-17-million-in-back-pay-a-jury-orders [https://perma.cc/E4BW-Y2MJ].

[5] 142 S. Ct. 2057 (2022).

[6] Pub. L. No. 82-414, 66 Stat. 163 (1952) (codified as amended in scattered sections of 8 U.S.C.).

[7] *Aleman Gonzalez*, 142 S. Ct. at 2062–63.

[8] Class Action Complaint for Declaratory and Injunctive Relief and Petition for Writ of Habeas Corpus ¶¶ 11, 35, Gonzalez v. Sessions, 325 F.R.D. 616 (N.D. Cal. 2018) [hereinafter Aleman Gonzalez Complaint].

[9] *Id.* ¶¶ 35–36.

[10] *Id.* ¶¶ 36–37.

[11] *Gonzalez*, 325 F.R.D. at 624.

[12] Aleman Gonzalez Complaint, *supra* note 8, ¶ 38. Aleman Gonzalez later applied for withholding of removal and relief under the Convention Against Torture. *Id.* ¶ 39.

Aleman Gonzalez requested and was denied a bond hearing before an immigration judge.[13]

On March 27, 2018,[14] his 221st day in detention, Aleman Gonzalez[15] — along with Jose Eduardo Gutierrez Sanchez, who was marking his 183rd day in detention[16] — filed a class action in the U.S. District Court for the Northern District of California.[17] A year prior, on January 31, 2017, Edwin Flores Tejada,[18] then marking his 407th day in detention, had joined a similar class action in the U.S. District Court for the Western District of Washington.[19] Both suits alleged that immigrants detained under § 1231(a)(6) are entitled to bond hearings after six months of detention.[20] Both district courts concluded that the Ninth Circuit's interpretation of § 1231(a)(6) in *Diouf v. Napolitano*[21] (*Diouf II*) as requiring bond hearings after six months[22] remained good law, despite

---

[13] *Id.* ¶ 40. Because immigration law is technically civil, not criminal, in nature, constitutional due process protections — such as bond hearings — that apply to criminal detention do not necessarily apply to immigration detention. *See* Philip L. Torrey, *Rethinking Immigration's Mandatory Detention Regime: Politics, Profit, and the Meaning of "Custody*," 48 U. MICH. J.L. REFORM 879, 880–81 (2015). Four provisions of the INA primarily govern immigration detention, each authorizing discretionary or mandatory detention under particular circumstances. HILLEL R. SMITH, CONG. RSCH. SERV., IF11343, THE LAW OF IMMIGRATION DETENTION: A BRIEF INTRODUCTION 1 (2022) (explaining how 8 U.S.C. §§ 1225(b), 1226(a), 1226(c), and 1231(a) contribute to the statutory framework of detention). The "inability of many non-citizens to obtain release from detention has resulted in a particularly concerning phenomenon: prolonged detention, which refers to confinement for six months or longer." Grace Benton, Current Development, *Making Sense of Prolonged Immigration Detention in a Post-*Jennings *World*, 34 GEO. IMMIGR. L.J. 809, 813 (2020). Reasons for prolonged detention include ineligibility for release under mandatory detention, *id.* at 812, inability to pay bonds set by immigration judges, *id.*, or impossibility of deportation (given certain nations' refusal to receive deportees), *id.* at 813 & n.39. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the Supreme Court read "an implicit, temporal limitation of six months" for post–removal order detention under § 1231(a), SMITH, *supra*, at 2, where "there is no significant likelihood of removal in the reasonably foreseeable future," *id.* (quoting *Zadvydas*, 533 U.S. at 701). Though the *Zadvydas* Court noted that "[a] statute permitting indefinite detention . . . would raise a serious constitutional problem," 533 U.S. at 690, the Court in *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018), held that § 1225(b) authorized detention longer than six months without bond hearings, without reaching the question of whether such detention is unconstitutional, *see id.* at 844, 851.

[14] Aleman Gonzalez Complaint, *supra* note 8, at 14.

[15] *See id.* ¶ 36.

[16] *Id.* ¶ 50. Like Aleman Gonzalez, Gutierrez Sanchez immigrated from Mexico, reentered the United States after being removed, and resided in California with two U.S. citizen children prior to his detention at Contra Costa West County Detention Facility. *Id.* ¶ 12. An asylum officer also found that Gutierrez Sanchez had "a reasonable fear of persecution or torture in Mexico." *Id.* ¶ 46.

[17] *Id.* at 1.

[18] Like the named plaintiffs in the other case, Flores Tejada was a father to two U.S. citizen children and demonstrated "a reasonable fear of torture" in his native country, El Salvador. Amended Petition for Writ of Habeas Corpus and Class Action Complaint ¶¶ 76–77, Baños v. Asher, No. 16-cv-01454 (W.D. Wash. Apr. 4, 2018) [hereinafter Flores Tejada Complaint].

[19] *Id.* ¶¶ 12, 14.

[20] Aleman Gonzalez Complaint, *supra* note 8, ¶¶ 4–5; Flores Tejada Complaint, *supra* note 8, ¶ 12.

[21] 634 F.3d 1081 (9th Cir. 2011).

[22] *Id.* at 1092. In addition, the detained immigrant's release or removal must not be "imminent," as "detention is prolonged when it has lasted six months and is expected to continue more than minimally beyond six months." *Id.* at 1092 n.13.

the Supreme Court's decision in *Jennings v. Rodriguez*[23] earlier that year.[24] *Jennings* held that the Ninth Circuit had been wrong to find that three other provisions of the INA[25] entitled detained immigrants to bond hearings after six months by resorting to the canon of constitutional avoidance.[26] The district courts determined that *Diouf II* was not "clearly irreconcilable"[27] with *Jennings* and still governed.[28] Each district court certified a class of similarly situated plaintiffs and granted classwide injunctive relief,[29] enjoining the government from detaining class members under § 1231(a)(6) for more than 180 days without a bond hearing.[30]

The Ninth Circuit affirmed in relevant part.[31] Writing for both panels, Judge Milan Smith[32] agreed that the Ninth Circuit's reading of § 1231(a)(6) in *Diouf II* survived *Jennings*.[33] Thus, the Ninth Circuit upheld the injunctive relief in each case, to the extent that it compelled the government to provide bond hearings to class members after six months of detention.[34]

The Supreme Court reversed.[35] Writing for the Court, Justice Alito[36] held that another provision of the INA, § 1252(f)(1), stripped district courts of jurisdiction to hear and grant requests for classwide injunctive relief.[37] He started with the text of the statute, which provides:

---

[23] 138 S. Ct. 830 (2018).

[24] Gonzalez v. Sessions, 325 F.R.D. 616, 629 (N.D. Cal. 2018); Baños v. Asher, No. 16-cv-01454, 2018 WL 1617706, at *1 (W.D. Wash. Apr. 4, 2018).

[25] 8 U.S.C. §§ 1225(b), 1226(a), 1226(c).

[26] *Jennings*, 138 S. Ct. at 842–47.

[27] United States v. Robertson, 875 F.3d 1281, 1291 (9th Cir. 2017) (requiring courts to apply prior circuit precedent in the face of intervening higher authority unless they are "clearly irreconcilable," "a high standard" exceeding "some tension"), *vacated on other grounds*, 139 S. Ct. 1543 (2018) (mem.).

[28] *Gonzalez*, 325 F.R.D. at 629; *Baños*, 2018 WL 1617706, at *1.

[29] The California district court granted a preliminary injunction, *Gonzalez*, 325 F.R.D. at 629, while the Washington district court granted a permanent injunction in awarding partial summary judgment to the plaintiffs on their statutory claim (and partial summary judgment to the government on the due process claim, per the canon of constitutional avoidance), *see* Baños v. Asher, No. 16-cv-01454, 2018 WL 3244988, at *5 (W.D. Wash. Jan. 23, 2018).

[30] *Gonzalez*, 325 F.R.D. at 629; *Baños*, 2018 WL 3244988, at *5. The Washington district court ordered bond hearings not only after an immigrant's first 180 days in detention but also "every 180 days thereafter." *Id.*

[31] In *Aleman Gonzalez v. Barr*, 955 F.3d 762 (9th Cir. 2020), the Ninth Circuit affirmed. *Id.* at 790. In *Flores Tejada v. Godfrey*, 954 F.3d 1245 (9th Cir. 2020), the Ninth Circuit affirmed in part and reversed and vacated in part. *Id.* at 1251. The Ninth Circuit reversed and vacated the part of the judgment and injunction that required "*additional* bond hearings every six months," finding no support for such an obligation in the statute or precedent. *Id.* at 1247.

[32] Judge Smith was joined by Judge Miller in both cases. Judge Fernandez dissented in *Aleman Gonzalez* and concurred in part and dissented in part in *Flores Tejada*.

[33] *Aleman Gonzalez*, 955 F.3d at 766; *Flores Tejada*, 954 F.3d at 1247.

[34] *Aleman Gonzalez*, 955 F.3d at 790; *Flores Tejada*, 954 F.3d at 1251.

[35] *Aleman Gonzalez*, 142 S. Ct. at 2063.

[36] Justice Alito was joined by Chief Justice Roberts and Justices Thomas, Gorsuch, Kavanaugh, and Barrett.

[37] *Aleman Gonzalez*, 142 S. Ct. at 2062–63. Upon granting the government's petition for certiorari, the Court "instructed the parties to address the threshold question whether the District Courts had jurisdiction to entertain respondents' requests for class-wide injunctive relief." *Id.* at 2063.

> Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of [§§ 1221–1232] . . . , other than with respect to the application of such provisions to an individual alien against whom proceedings under such [provisions] have been initiated.[38]

Justice Alito concluded that the ordinary meaning of "to enjoin or restrain the operation of" bars lower courts from issuing injunctions "that order federal officials to take or to refrain from taking actions to enforce, implement, or otherwise carry out [those statutes]."[39] He then turned to the exception that § 1252(f)(1) carves out from its "general prohibition."[40] According to Justice Alito, on prior occasions, the Court had interpreted this exception to bar "federal courts from granting classwide injunctive relief," without "extend[ing] to individual cases."[41]

Next, Justice Alito addressed the detained immigrants' arguments.[42] First, he dismissed their contention that "the operation"[43] of immigration law means its operation "as *properly* interpreted."[44] In his view, such a definition would lead to procedural oddities that Congress would not have intended.[45] If courts have referenced the "unlawful" or "improper" operation of "cars, trucks, railroads, water utilities, drainage ditches, auto dealerships, planes, radios, video poker machines, [and] cable TV systems," then, he reasoned, "it is not apparent why the same cannot be said of a statute."[46] Second, Justice Alito returned to the statutory text and the Court's prior interpretations of § 1252(f)(1) to reject the possibility that a class member could be "an individual" within the meaning of the provision, which uses the singular instead of the plural.[47]

Justice Sotomayor[48] concurred in the judgment in part and dissented in part.[49] In her view, the majority "elevate[d] piecemeal dictionary definitions and policy concerns over plain meaning and context."[50] She

---

[38] 8 U.S.C. § 1252(f)(1).

[39] *Aleman Gonzalez*, 142 S. Ct. at 2065; *see also id.* at 2064.

[40] *Id.* at 2065.

[41] *Id.* (quoting Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 481–82 (1999)) (citing Jennings v. Rodriguez, 138 S. Ct. 830, 851 (2018); Nken v. Holder, 556 U.S. 418, 431 (2009)).

[42] *See id.* at 2066–68.

[43] 8 U.S.C. § 1252(f)(1).

[44] *Aleman Gonzalez*, 142 S. Ct. at 2066 (quoting Brief for Respondents at 49, *Aleman Gonzalez* (No. 20-322)).

[45] *See id.* at 2067 (noting that limiting "the operation" of immigration law to the lawful or proper operation of the law would largely limit § 1252(f)(1)'s prohibition to constitutional claims and would tie a court's jurisdiction to issue a classwide injunction to the merits of the claim).

[46] *Id.* at 2066 (collecting cases).

[47] *Id.* at 2067 (citing Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 481 (1999); Jennings v. Rodriguez, 138 S. Ct. 830, 851 (2018); Nken v. Holder, 556 U.S. 418, 431 (2009)).

[48] Justice Sotomayor was joined by Justice Kagan and joined in part by Justice Breyer.

[49] *Aleman Gonzalez*, 142 S. Ct. at 2068 (Sotomayor, J., concurring in the judgment in part and dissenting in part). Justice Sotomayor concurred in the judgment because she understood the government to prevail on the merits. *Id.* at 2068 n.1.

[50] *Id.* at 2068.

read § 1252(f)(1) as barring lower courts from using classwide injunctions to prevent the "operation" of the specified statutes — but not "from commanding compliance with the statutes or enjoining unauthorized agency action."[51] Based on plain meaning and uses of "implementation" elsewhere in § 1252, she determined that a statute's unlawful implementation cannot constitute its "operation."[52] She found unhelpful Justice Alito's "string cite . . . of 'things [that] can be unlawfully or improperly operated'": "Unlike all of those examples, a statute is the law."[53] Separately, Justice Sotomayor interpreted the carve-out for individual noncitizens as covering class actions, or "collection[s] of individual claims."[54] Given statutory context[55] and historical precedent,[56] she explained that Congress would not have intended "individual" in § 1252(f)(1) to preclude classwide relief.[57] And her narrower interpretation would not result in the procedural difficulties that Justice Alito identified, which she deemed "a problem of the Court's own making."[58]

Justice Sotomayor concluded with a warning. She cautioned that "the Court's blinkered analysis . . . will leave many vulnerable noncitizens unable to protect their rights" from the executive branch.[59] Immigrants in detention face many barriers to justice: little familiarity with the U.S. legal system, limited English proficiency, no right to counsel, significant distances from community members and lawyers, and regular transfers between facilities.[60] To Justice Sotomayor, the majority's holding "place[s] upon each of them the added burden of contesting systemic violations of their rights through discrete, collateral, federal-court proceedings."[61] She noted that the holding did not touch courts' authority to issue classwide declaratory relief and to "hold unlawful and set aside

---

[51] *Id.* at 2071. Justice Sotomayor also noted that a clear statement rule favors her reading of § 1252(f)(1): "This Court 'will not construe a statute to displace courts' traditional equitable authority absent the clearest command.'" *Id.* (quoting McQuiggin v. Perkins, 569 U.S. 383, 397 (2013)).

[52] *Id.* at 2070–71.

[53] *Id.* at 2074.

[54] *Id.* at 2072 (citing Califano v. Yamasaki, 442 U.S. 682, 701 (1979)).

[55] *See id.* (noting § 1252 precludes classwide relief elsewhere with explicit references to class certification and Rule 23 of the Federal Rules of Civil Procedure).

[56] *See id.* (citing *Califano*, 442 U.S. at 698–701 (holding that a judicial review provision of the Social Security Act that permits "[a]ny individual" to file suit did not preclude classwide relief (quoting 42 U.S.C. § 405 (g)))). In a footnote, Justice Alito distinguished the Social Security Act's provision, which provides for judicial review, from § 1252(f)(1), which limits judicial review. *Id.* at 2068 n.6 (majority opinion). Justice Sotomayor countered that her point was not that they were the same, but that "a statute's mere use of the word 'individual' does not suffice to preclude classwide relief." *Id.* at 2075 (Sotomayor, J., concurring in the judgment in part and dissenting in part).

[57] *Id.* at 2072.

[58] *Id.* at 2074. Though the availability of injunctive relief could still depend on the merits of the claim, Justice Sotomayor contended that such overlap is a common feature of litigation. *Id.* at 2075 (citing Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 351–52 (2011); Perry v. Merit Sys. Prot. Bd., 137 S. Ct. 1975, 1986 (2017); Brownback v. King, 141 S. Ct. 740, 749 (2021)).

[59] *Id.* at 2068.

[60] *Id.* at 2076.

[61] *Id.* at 2077.

agency action, findings, and conclusions" under the Administrative Procedure Act[62] (APA).[63] But even with these limits, she warned, the majority's decision would have "grave" consequences,[64] especially for "those least able to vindicate their rights."[65]

Aleman Gonzalez left more questions than answers in its wake. In her opinion, Justice Sotomayor attempted to define the boundaries of the ruling, and a few weeks later, the majority and dissenters in *Biden v. Texas*[66] gave it their own go, with little success.[67] What is clear is that *Aleman Gonzalez*'s reading of § 1252(f)(1) as barring classwide injunctions by lower federal courts eliminated a major remedy for immigrants challenging mass detention. Alternative paths to large-scale relief may still exist — including injunctions issued by the Court itself, classwide declaratory relief, APA vacatur, and mass actions. But none appear as effective at vindicating rights as classwide injunctive relief at the district court level, illustrating how jurisdictional rulings can undermine substantive rights.

By forbidding lower courts from granting injunctive relief, *Aleman Gonzalez* undermined the potential of the class action as a rights-enforcing mechanism for immigrants. As a form of collective litigation, class actions allow plaintiffs to challenge government misconduct on a systemic level, which is particularly crucial in the realm of immigration enforcement. The barriers to justice identified by Justice Sotomayor mean that many immigrants may not know their rights and, of those that do, many lack the resources to assert them.[68] In addition, as the Supreme Court has acknowledged, an individual hearing does not provide a viable setting for challenging an immigration pattern or practice by the government.[69] Thus, impact litigation on behalf of immigrants often takes the form of class actions seeking equitable relief.[70] However, throughout the last decade, the judiciary has curtailed the ability of plaintiffs to proceed, let alone to prevail, as a class.[71] The plenary power of Congress over immigration[72] gives the legislature a greater role on the "immigration front in

---

[62] 5 U.S.C. §§ 551, 553–559, 701–706.

[63] *Aleman Gonzalez*, 142 S. Ct. at 2077 (Sotomayor, J., concurring in the judgment in part and dissenting in part) (quoting 5 U.S.C. § 706(2)).

[64] *Id.* at 2078.

[65] *Id.* at 2077.

[66] 142 S. Ct. 2528 (2022).

[67] *See id.* at 2538–40; *id.* at 2552–53 (Alito, J., dissenting); *id.* at 2560–63 (Barrett, J., dissenting).

[68] *See* Gerald L. Neuman, *Federal Courts Issues in Immigration Law*, 78 TEX. L. REV. 1661, 1680–81 (2000).

[69] Jill E. Family, *Threats to the Future of the Immigration Class Action*, 27 WASH. U. J.L. & POL'Y 71, 75 (2008) (citing McNary v. Haitian Refugee Ctr., Inc., 498 U.S. 479, 496–97 (1991)).

[70] *See id.* at 74.

[71] *See* Robert H. Klonoff, *The Decline of Class Actions*, 90 WASH. U. L. REV. 729, 731 (2013); David Marcus, *The Public Interest Class Action*, 104 GEO. L.J. 777, 781 (2016).

[72] *See* Stephen H. Legomsky, *Immigration Law and the Principle of Plenary Congressional Power*, 1984 SUP. CT. REV. 255, 255 (1985) (defining the plenary power doctrine as the "special deference [the Supreme Court] has accorded Congress in the field of immigration," including a reluctance "to review federal immigration statutes for compliance with substantive constitutional restraints").

the broad war against the class action."[73] Congress has taken up this role with enthusiasm by conditioning immigration benefits on waivers of rights to judicial review and enacting jurisdiction-stripping statutes like § 1252(f)(1).[74] *Aleman Gonzalez*'s broad interpretation of § 1252(f)(1)'s restrictions removes a powerful remedy for rights violations — and the fact that it does so through a jurisdictional ruling is nothing new. Because "[i]t is much more difficult to interest the public, and therefore Congress, in laws about aspects of jurisdiction and court procedure," undermining rights through these channels has proven effective throughout history.[75]

Though § 1252(f)(1) exempts the Supreme Court from its bar on injunctive relief, it is not apparent how the Court could exercise this power. The provision carves out an exception for "the Supreme Court" in a parenthetical,[76] which "does not appear to have an analogue elsewhere in the United States Code."[77] Well before *Aleman Gonzalez*, Professor Gerald Neuman questioned "whether the Supreme Court action that [§ 1252(f)(1)] contemplates could be viewed as a legitimate exercise of appellate jurisdiction, or would instead amount to an improper exercise of original jurisdiction."[78] If, for instance, § 1252(f)(1) does not bar lower courts from issuing classwide declaratory relief, a declaratory judgment in favor of a class of detained immigrants could reach the Supreme Court[79] — as Justice Sotomayor contended in *Aleman Gonzalez*[80] and Justice Barrett contemplated in *Biden v. Texas*.[81] However, any grant of additional injunctive relief by the Court in that case would not appear to be an exercise of its appellate jurisdiction, especially when the Court "[i]n other contexts . . . has regarded Article III jurisdiction over a case as a matter to be decided separately with regard to each requested remedy."[82]

The fate of classwide declaratory relief also remains unclear after *Aleman Gonzalez*, but even if such relief is available, it offers a weaker

---

[73] Family, *supra* note 69, at 75.

[74] *See id.* at 74; *see also* Stephen Manning & Juliet Stumpf, *Big Immigration Law*, 52 U.C. DAVIS L. REV. 407, 423 (2018) ("The immigration class action addressed the asymmetrical nature of governmental power in immigration regulation as applied to noncitizens. The ability to create this type of challenge to the detention and deportation system, however, was significantly constrained by statute in 1996." (footnote omitted)).

[75] Erwin Chemerinsky, *Closing the Courthouse Doors to Civil Rights Litigants*, 5 U. PA. J. CONST. L. 537, 539, 556 (2003).

[76] 8 U.S.C. § 1252(f)(1) ("[N]o court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of [§§ 1221–1232] . . . .").

[77] Biden v. Texas, 142 S. Ct. 2528, 2561 (2022) (Barrett, J., dissenting).

[78] Neuman, *supra* note 68, at 1686.

[79] *See id.*

[80] *See Aleman Gonzalez*, 142 S. Ct. at 2077 n.9 (Sotomayor, J., concurring in the judgment in part and dissenting in part).

[81] *See Biden v. Texas*, 142 S. Ct. at 2562 (Barrett, J., dissenting). Justice Barrett also wondered whether "th[e] Court c[ould] enter an injunction on appeal if the district court *could* have entered at least one form of relief, even if it actually entered only relief that exceeded its authority" (that is, classwide injunctive relief) — or whether the parenthetical simply reaffirms the Court's existing authority "under the All Writs Act or other sources." *Id.*

[82] Neuman, *supra* note 68, at 1686.

remedy for rights violations compared to an injunction. At oral argument, the government contended that § 1252(f)(1) bars not only classwide injunctive relief but also other remedies "practically similar to an injunction," including classwide declaratory relief.[83] The majority noted the government's position but acknowledged that *Aleman Gonzalez*, which involved only an injunction, did not present the issue.[84] Justice Sotomayor concluded the same[85] but pointed out § 1252(f)(1)'s narrow title, "[l]imit on injunctive relief," and silence on declaratory relief.[86] She added that the government's position would make class actions futile to bring, thereby reducing to a "nullity" § 1252(f)(1)'s reservation of the Court's jurisdiction.[87] Writing for the majority in *Biden v. Texas*, Chief Justice Roberts noted that the Court had asked the parties to brief — but ultimately did not rule on — additional § 1252(f)(1) questions, including its effect on declaratory relief.[88] Still, two points in his analysis of subject matter jurisdiction under § 1252(f)(1) seem to bear on the availability of classwide declaratory relief: (1) Congress's intentionally narrow title,[89] and (2) the Court's conclusion in a recent immigration class action that the district court had jurisdiction over declaratory relief.[90] However, the Court has characterized declaratory judgments as "a much milder form of relief than an injunction" — one that "may be persuasive, [but] is not ultimately coercive" and "noncompliance with [which] may be inappropriate, but is not contempt."[91] Less than a month after *Aleman Gonzalez*, a district court finding in favor of a class of asylum seekers lamented that declaratory relief was "no substitute for a permanent injunction," characterizing the Court's ruling as allowing the government to "immunize itself from the federal judiciary's oversight" and "render[ing] uneconomical vindication of [the] Plaintiff class members' statutorily- and constitutionally-protected right[s]."[92]

---

[83] Transcript of Oral Argument at 16, *Aleman Gonzalez* (No. 20-322), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2021/20-322_f2ag.pdf [https://perma.cc/GY6Q-C489]. For support, the government cited the Tax Injunction Act, which the Court previously had interpreted as extending to declaratory relief. *Id.* (citing California v. Grace Brethren Church, 457 U.S. 393 (1982)).

[84] *Aleman Gonzalez*, 142 S. Ct. at 2065 n.2 (citing *Grace Brethren Church*, 457 U.S. at 408–09).

[85] *Id.* at 2077 n.9 (Sotomayor, J., concurring in the judgment in part and dissenting in part).

[86] *Id.* (alteration in original). By contrast, § 1252(e)(1) bears the broader title "[l]imitations on relief" and references declaratory relief. *Id.* (alteration in original).

[87] *Id.*

[88] Biden v. Texas, 142 S. Ct. 2528, 2540 n.4 (2022).

[89] *Id.* at 2539.

[90] *Id.* at 2540 (citing Nielsen v. Preap, 139 S. Ct. 954, 962 (2019) (opinion of Alito, J.)). Both dissenting opinions criticized this analysis as premature and unnecessary. *See id.* at 2550 (Alito, J., dissenting); *id.* at 2560 (Barrett, J., dissenting).

[91] Steffel v. Thompson, 415 U.S. 452, 471 (1974) (quoting Perez v. Ledesma, 401 U.S. 82, 125–26 (1971) (Brennan, J., concurring in part and dissenting in part)); *see also Aleman Gonzalez*, 142 S. Ct. at 2077 n.9 (Sotomayor, J., concurring in the judgment in part and dissenting in part) (citing *Steffel*, 415 U.S. at 471).

[92] Al Otro Lado, Inc. v. Mayorkas, No. 17-cv-2366, 2022 WL 3135914, at *2 (S.D. Cal. Aug. 5, 2022).

Aleman Gonzalez likewise did not consider whether § 1252(f)(1) forbids lower courts from vacating agency action under the APA, though even if this remedy remains available, its robustness can vary depending on the basis of vacatur. The majority made no mention of vacatur under § 706 of the APA, and Justice Sotomayor emphasized the Court's silence on the matter.[93] The preservation of APA claims would protect an avenue to widespread relief if the agency action at issue were a rule or policy decision. Vacatur of an action as unconstitutional[94] would be the most enduring form of relief. Vacatur of an action "in excess of statutory jurisdiction"[95] must be cured by Congress. But vacatur of an action as arbitrary and capricious[96] or as procedurally defective[97] could be overcome by a determined agency, as long as it better adhered to the procedural requirements of the APA the second time around.[98] Moreover, even in the already deferential arena of judicial review of agency action, immigration law has long proven immune to "fundamental norms of . . . administrative procedure."[99]

Finally, the majority questioned the viability of injunctive relief in suits involving more than one named plaintiff, casting doubt on the possibility of "mass actions" as an alternative form of collective litigation to class actions. Most familiar in the tort context, mass actions can involve hundreds of named plaintiffs who have been harmed in a similar way.[100] Given § 1252(f)(1)'s use of "individual,"[101] Justice Alito observed that "[a] literal reading" could preclude any attempt to secure injunctive relief for multiple

---

93 *Aleman Gonzalez*, 142 S. Ct. at 2077 (Sotomayor, J., concurring in the judgment in part and dissenting in part). This was another issue the *Biden v. Texas* Court asked the parties to brief but did not reach in the end. Biden v. Texas, 142 S. Ct. at 2540 n.4; *see also id.* at 2552–53 (Alito, J., dissenting).

94 5 U.S.C. § 706(2)(B).

95 *Id.* § 706(2)(C).

96 *Id.* § 706(2)(A).

97 *Id.* § 706(2)(D).

98 *See, e.g.*, Cristina M. Rodríguez, *Reading* Regents *and the Political Significance of Law*, 2020 SUP. CT. REV. 1, 2–3 (2019) (arguing that Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891 (2020), which held that the Trump Administration's recission of the Deferred Action for Childhood Arrivals (DACA) program was arbitrary and capricious, was "not a triumph" because it "contain[ed] a roadmap to DACA's demise," *id.* at 3). *But see, e.g.*, Lisa Heinzerling, *The Rule of Five Guys*, 119 MICH. L. REV. 1137, 1151 (2021) (book review) (arguing that the Trump Administration's failure to rescind DACA after *Regents* shows that "the basic administrative-law requirement . . . of reason giving is . . . not an empty formality but a powerful lever").

99 Peter H. Schuck, *The Transformation of Immigration Law*, 84 COLUM. L. REV. 1, 1 (1984); *see, e.g.*, *id.* at 16 ("[T]he Supreme Court reflexively confirmed the deference principle with a decision on the merits in favor of the government rather than using that principle, as it did in many other administrative law contexts, merely as a disarming prelude to judicial self-assertion." (footnotes omitted)); Rodríguez, *supra* note 98, at 22 ("[T]he [Roberts] Court [is] in a tightening embrace of a regulatory scheme created by Congress that dramatically empowers the Executive to enforce the immigration laws without meaningful judicial scrutiny.").

100 *See, e.g.*, Carrie F. Cordero, Heidi Li Feldman & Chimène I. Keitner, *The Law Against Family Separation*, 51 COLUM. HUM. RTS. L. REV. 430, 505 (2019) (proposing redress of the Trump Administration's family separation policy as a mass tort).

101 8 U.S.C. § 1252(f)(1).

named plaintiffs.[102] However, because the government did not endorse this interpretation and the case did not present the issue, the majority refrained from ruling on it.[103] Still, the Court's musing in dicta may signal a future willingness to go so far as to interpret § 1252(f)(1) as barring injunctive relief in any case brought by more than one plaintiff, let alone by many in the form of mass actions. Such a restrictive reading would place all forms of collective litigation out of the reach of detained immigrants.

Based on what the Court left unsaid, however, other paths to relief for detained immigrants may well remain after *Aleman Gonzalez*. But even in a Term marked by the rollback of substantive rights and their enforcement,[104] there is something perverse about the Court's interpretation of a jurisdiction-stripping statute as sanctioning the law's continued unlawful operation in *Aleman Gonzalez*. Since immigration law falls exclusively within federal jurisdiction, statutes limiting federal courts' jurisdiction over remedies can "ha[ve] the effect of extinguishing the underlying right altogether" and "mak[ing] the government immune from the constraints of the Constitution."[105] To immigrants in indefinite detention, who feel the fullest weight of U.S. immigration law, the words inscribed above the Court's entrance — "Equal Justice Under Law" — may ring hollow. Perhaps more compelling would be those carved by an immigrant into the walls of the Angel Island detention center a century ago: "America has power, but not justice."[106]

---

[102] *Aleman Gonzalez*, 142 S. Ct. at 2068.

[103] *Id.*

[104] *See, e.g.*, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2242 (2022) (holding that there is no federal constitutional right to abortion); Vega v. Tekoh, 142 S. Ct. 2095, 2099 (2022) (holding that a *Miranda* violation does not constitute a violation of the Fifth Amendment right against self-incrimination); Egbert v. Boule, 142 S. Ct. 1793, 1804 (2022) (holding that there is no *Bivens* remedy for Fourth Amendment excessive force claims against border agents).

[105] Mitria Wilson, Note, *Rights Without Remedies and Judgments Without Effect: The Relationship Between § 1252(f)(1) of the Immigration and Nationality Act, Class Actions, and Standing Under Article III of the Constitution*, 18 GEO. IMMIGR. L.J. 745, 746–47 (2004).

[106] ISLAND: POETRY AND HISTORY OF CHINESE IMMIGRANTS ON ANGEL ISLAND, 1910–1940, at 72 (Him Mark Lai ed. & trans., Genny Lim & Judy Yung eds., Univ. of Wash. 2d ed. 2014) (1980).