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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOSE ORLANDO CANCINO  
CASTELLAR, ANA MARIA  
HERNANDEZ AGUAS, MICHAEL  
GONZALEZ,

Plaintiff-Petitioners,

v.

KEVIN MCALEENAN, Secretary of  
Homeland Security; et al.,

Defendant-Respondents.

Case No. 3:17-cv-0491-BAS-AHG

**MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
OF PLAINTIFF-PETITIONERS'  
RENEWED MOTION FOR CLASS  
CERTIFICATION**

**Date:** Dec. 7, 2020  
**Time:** 1:00 P.M.  
**Courtroom:** 4B  
**Judge:** Cynthia A. Bashant

**REDACTED VERSION**

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## 1 I. INTRODUCTION

2 Plaintiff-Petitioners (“Plaintiffs”) brought this action to prevent Defendant-  
 3 Respondents (“Defendants”) from continuing to imprison thousands of persons for  
 4 weeks or months without presenting them to a neutral adjudicator for a first  
 5 appearance. As the Court has held, Plaintiffs state a claim Defendants are systemically  
 6 violating due process by holding persons in immigration detention without promptly  
 7 presenting them to a judge for a first appearance, regardless of whether they just arrived  
 8 in the United States or have lived here for years. ECF No. 63. To address that systemic  
 9 claim, Plaintiffs moved to certify a class, which the Court deferred for development of  
 10 the record. *Id.* at 45. As developed in discovery, the record confirms that Defendants  
 11 continue to engage in system wide policies and practices that cause systemic delays in  
 12 presenting detained persons to a judge, and this Court could remedy those systemic  
 13 delays with a single order. Accordingly, Plaintiffs renew their motion for class  
 14 certification.

15 This case meets the four threshold requirements of Rule 23(a). *First*, the class is  
 16 numerous under Rule 23(a)(1) because it is a transitory class including thousands of  
 17 individuals detained by Defendants now or in the future without prompt presentment.  
 18 *Second*, the case presents common questions under Rule 23(a)(2), because all class  
 19 members are complaining of similar treatment and making claims under the same laws  
 20 and theories—that extended detention without presentment to an immigration judge  
 21 (“IJ”) is unlawful—and a ruling in Plaintiffs’ favor would cure the harms inflicted on all  
 22 class members. Whatever slightly differing procedural rights class members may have  
 23 in their individual cases, all class members have the same constitutional due process  
 24 right to a prompt first appearance where an IJ informs them of those rights. Even if  
 25 some class members face more egregious delays than others, the same constitutional  
 26 questions, and the same constitutional floor applies to all class members, and all class  
 27 members’ delays are well below that floor. *Third*, for essentially the same reasons, the  
 28

1 named Plaintiffs present claims typical of the class under Rule 23(a)(3). Each endured  
 2 detention of several weeks or more without a judicial hearing, consistent with the  
 3 experience of class members and far longer than due process permits. *Fourth*, the class  
 4 representatives will fairly and adequately protect the class under Rule 23(a)(4). Class  
 5 counsel are experienced in civil rights, immigration, and class action cases, and the  
 6 named Plaintiffs have no conflict with the class because they sought the same relief for  
 7 themselves as they do for the rest of the class.

8 This case also qualifies for certification under Rule 23(b). The due process claim  
 9 stated by Plaintiffs applies generally to the class, “so that final injunctive relief or  
 10 corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R.  
 11 Civ. P. 23(b)(2). If Plaintiffs prevail, the Court could enter a single injunction that simply  
 12 requires a prompt first appearance before an immigration judge for all class members,  
 13 as well as corresponding declaratory relief. Such a ruling would ensure that detained  
 14 persons may avail themselves of whatever rights and remedies are available to them in  
 15 immigration proceedings, but it would not dictate the result of any individual removal  
 16 or custody proceedings.

17 Like other civil rights cases, including those on behalf of people detained in  
 18 immigration custody, this case presents at least one common issue that can be resolved  
 19 for many plaintiffs in one proceeding. To fight this issue one case at a time makes no  
 20 sense. As a result, this is a classic case for class certification.

## 21 **II. LEGAL AND FACTUAL BACKGROUND**

### 22 **A. Legal Framework for Determinations Regarding Custody and** 23 **Initiation of Removal Proceedings for Putative Class Members**

24 The Court has previously addressed, and Plaintiffs will not repeat at length, the  
 25 relevant legal framework governing the apprehension, continued detention, and  
 26 initiation of removal proceedings for individuals encountered by Defendants and  
 27  
 28

1 alleged to be removable other than through expedited removal. ECF No. 63 at 3:15-  
 2 4:21. Briefly, with exceptions not relevant here, applicable regulations require  
 3 Defendants to decide within 48 hours of arresting an alleged non-citizen whether they  
 4 will (1) issue a Notice to Appear (“NTA”) that commences “regular” removal  
 5 proceedings under section 240 of the Immigration and Nationality Act (“INA”), 8  
 6 U.S.C. § 1229a, and (2) subject the individual to continued custody for those  
 7 proceedings. 8 C.F.R. § 287.3(d). Significantly, if Defendants choose to initiate  
 8 removal proceedings, they retain discretion to release nearly all such persons from  
 9 detention during those proceedings. ECF No. 28-1 at 5:7, n.5 (citing 8 U.S.C. §§  
 10 1182(b)(5), 1226(a)).

11 People seeking asylum after being placed in expedited removal proceedings  
 12 have a slightly different path before seeing an immigration judge, but all have a right  
 13 to do so. Specifically, Defendants have the discretion to place people who presents at  
 14 a port of entry or who Defendants encounter within 100 miles of a land border and  
 15 had been in the U.S. for less than 14 days into “expedited” removal proceedings  
 16 under section 235(b) of the INA rather than issue an NTA, if an immigration official  
 17 determines they are inadmissible based on fraud or lack of valid entry documents.<sup>1</sup> 8  
 18 U.S.C. § 1225(b)(1)(a)(i); Declaration of Bardis Vakili in support of Renewed Motion  
 19 for Class Certification (“Vakili Decl.”), Ex. 9 (DHS Responses to First Set of  
 20 Requests for Admission, Resp. to RFA No. 3). This can result in a final “expedited”  
 21 removal order “*unless* [they] indicate[] either an intention to apply for asylum... or a  
 22

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23 <sup>1</sup> The 14-day, 100-mile limitation on expedited removal has been in existence since  
 24 2004. *Designating Aliens for Expedited Removal*, [69 FR 48877](#) (Aug. 11, 2004). On July 23,  
 25 2019, the government published notice of its intent to expand its expedited removal  
 26 authority to include individuals encountered anywhere in the United States who have  
 27 been present less than two years. *Designating Aliens for Expedited Removal*, 84 FR 35409  
 (July 23, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-07-23/pdf/2019-15710.pdf>. Defendants may implement this expansion at any time.



1 fear of persecution.” *Id.* (emphasis added). If they so indicate, they remain in  
 2 Defendants’ custody for a “credible fear” interview – a threshold screening to  
 3 determine whether they have a “significant possibility” of “establish[ing] eligibility for  
 4 asylum.” 8 U.S.C. § 1225(b)(1)(A)(ii), (B)(v). Those who pass the screening, whether  
 5 immediately or after an IJ overrules a negative screening determination, will be placed  
 6 in regular removal proceedings before an IJ. 8 U.S.C. § 1225(b)(1)(B)(ii), (iii)(III); 8  
 7 C.F.R. § 235.6(a)(1)(ii), (iii). Those who waive their right to IJ review, or for whom a  
 8 reviewing IJ upholds the negative determination, receive final expedited removal  
 9 orders. 8 U.S.C. § 1225(b)(1)(B)(iii)(I).

10 Again, Defendants retain discretion to release people from detention pending  
 11 credible fear interviews or removal proceedings. 8 U.S.C. § 1182(b)(5); Vakili Decl.,  
 12 Ex. 4 (██████████, Rule 30(b)(6) Witness for ICE, Dep. Tr. [“ICE Dep.”] at  
 13 170:4-22), Ex. 5 (██████████, Rule 30(b)(6) Witness for CBP OFO, Dep. Tr.  
 14 [“OFO Dep.”] at 96:20-98:1, 111:10-112:9), Ex. 6 (██████████, Rule 30(b)(6)  
 15 Witness for CBP Border Patrol, Dep. Tr. [“Border Patrol Dep.”] at 127:5-12,<sup>2</sup> 129:10-  
 16 16), Ex. 9 (DHS Resp. to RFA Nos. 3-4).<sup>3</sup>

## 17 **B. Defendants’ Policies and Practices Causing and Exacerbating the** 18 **Harms of Lengthy Detention without Presentment**

### 19 **1. Booking Process**

20 In this case, putative class members are detained by the San Diego Field Office  
 21 of Immigration and Customs Enforcement (“ICE”), the San Diego Field Office of  
 22

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23 <sup>2</sup> References to “ICRO” in this passage of the transcript are mis-transcribed  
 24 references to “ICE-ERO.”

25 <sup>3</sup> Unless otherwise noted, Exhibits cited herein are Exhibits to the Declaration of  
 26 Bardis Vakili, filed concurrently herewith. Plaintiffs will make explicit when cited  
 27 exhibits reference exhibits to another document. For ease of reference, all Exhibits  
 28 referenced herein are also listed in the Index of Exhibits submitted with this brief.

1 Customs and Border Protection (“CBP”) Office of Field Operations (“OFO”), and/or  
 2 the San Diego or El Centro Sectors of U.S. Border Patrol (“BP”) (collectively, the  
 3 “Immigration Agencies”).

4 When the Immigration Agencies decide to detain people for removal  
 5 proceedings, such individuals will ordinarily spend most of their confinement in ICE  
 6 custody. Ex. 4 (ICE Dep. at 120:3-11, 130:9-135:18), Ex. 5 (OFO Dep. at 124:17-125:4,  
 7 166:14-167:2; 2020-09-23), Ex. 6 (Border Patrol Dep. at 177:21-178:4, 183:12-22). The  
 8 ICE San Diego Field Office typically conducts booking of people they arrest at one of  
 9 its two staging facilities in San Diego and Imperial Counties. Ex. 4 (ICE Dep. at 31:6-  
 10 33:13, 34:2-15, 116:1-117:9). Barring extraordinary circumstances, ICE usually finishes  
 11 booking the same day, and then transfers them to one of three locations—the Otay  
 12 Detention Center (“OMDC”), Imperial Regional Detention Facility (“IRDF”), or when  
 13 bed space is limited, the San Luis Regional Detention Center (“SLRDC”). *Id.* at 30:8-  
 14 31:2, 33:6–34:1, 117:22-120:11; *see also* Declaration of Dr. Tom Wong (“Wong Decl.”)  
 15 ¶ 17 ( [REDACTED] ).

16 In addition to those who ICE itself apprehends, others who end up in ICE  
 17 custody may have been initially arrested by a CBP component agency. Ex. 4 (ICE Dep.  
 18 at 131:8-147:22-149:6); Ex. 5 (OFO Dep. at 124:17-125:4, 166:14-167:2); Ex. 6 (Border  
 19 Patrol Dep. at 177:21-178:4, 183:12-22). One CBP component agency, the San Diego  
 20 Field Office for OFO, processes people at the several ports of entry along the  
 21 California-Mexico border. Ex. 5 (OFO Dep. at 25:8-26:9, 39:9-16). If primary and  
 22 secondary inspection reveal that a person’s admissibility is in question, OFO sends the  
 23 case to the Admissibility Enforcement Unit, where the most frequent processing  
 24 dispositions are NTAs, expedited removals with credible fear, and withdrawals of  
 25 applications for admission. *Id.* at 44:8-45:21, 47:13-48:1, 111:1-9. During booking and  
 26 while awaiting transfer to ICE, OFO often confines people for days in holding cells at  
 27  
 28

1 the San Ysidro and Calexico ports of entry or sometimes in Border Patrol's Barracks 5  
2 facility. *Id.* at 25:8-26:9, 39:9-41:1, 51:17-52:4, 78:5-9, 81:7-21.

3 The San Diego and El Centro Sectors of U.S. Border Patrol, another component  
4 of CBP, operate between ports of entry along the border. Ex. 6 (Border Patrol Dep. at  
5 33:12-19). When they arrest and process people for civil immigration enforcement, they  
6 confine those people in Border Patrol facilities until they can be transferred to ICE. *Id.*  
7 at 49:10-14; Vakili Decl., Ex. 8 (Defendant DHS's Responses to Plaintiffs' Second Set  
8 of Interrogatories (Aug. 14, 2020), Resp. to Interrog. No. 13).

9 Although the Immigration Agencies may transfer people in their collective  
10 custody among their different detention facilities, they are all DHS component agencies,  
11 and the INA does not distinguish among them. *See* 8 C.F.R. § 100.1. Whichever agency  
12 makes the initial arrest and whatever the reason for it, the initial booking procedures do  
13 not vary in terms of timing or general process: Defendants process people they arrest  
14 by running background checks, completing various forms, and conducting an interview  
15 of the arrested person. Ex. 4 (ICE Dep. at 36:13-39:14, 48:13-50:21, 85:8-11, 133:5-  
16 136:2); Ex. 5 (OFO Dep. at 79:19-83:17, 85:9-86:1); Ex. 6 (Border Patrol Dep. at 51:9-  
17 53:6). The specific forms may vary depending on the whether the case involves an NTA  
18 for regular removal proceedings or a credible fear claim, but in practice the different  
19 forms do not impact the timing for completion of booking. Ex. 4 (ICE Dep. at 133:5-  
20 136:2); Ex. 5 (OFO Dep. at 64:8-12, 98:2-14, 99:7-100:2, 105:20-108:2, 121:12-122:1);  
21 Ex. 5.1 (exhibit 99 to OFO Dep., CBP OFO Trainee Guide); Ex. 6 (Border Patrol Dep.  
22 at 57:18-58:9); Ex. 8 (DHS Resp. to Interrog. No. 16). Regardless of which agency made  
23 the initial arrest, the Immigration Agencies usually complete the booking process  
24 "within hours," but no later than 48 hours in the absence of exceptional circumstances.  
25 Ex. 4 (ICE Dep. at 46:1-9, 76:13-22, 77:15-78:11, 108:4-8, 138:8-14) (noting "the  
26 majority of these custody determinations are made within hours."); Ex. 5 (OFO Dep.  
27 at 79:19-80:13, 81:13-88:21, 98:2-100:2 (explaining that people in OFO custody typically  
28

1 wait 1-2 days in custody before being processed through a sworn interview, which  
 2 usually takes an hour); Ex. 6 (Border Patrol Dep. at 52:5-55:10, 59:8-62:4, 120:20-  
 3 121:21) ( [REDACTED]  
 4 [REDACTED]).

## 5 **2. Presentment Delays and Policies that Contribute to Them**

6 Despite completing the initial booking process well within 48 hours, the  
 7 Immigration Agencies' regular practice is to keep people they allege to be removable  
 8 imprisoned for weeks or months before presenting them to an IJ for their first hearing  
 9 in removal proceedings, known as an initial Master Calendar Hearing ("MCH"). Wong  
 10 Decl. ¶¶ 22–23; Answer, ECF No. 66 ¶ 33. As Plaintiffs have explained, in practice the  
 11 initial MCH resembles the arraignment—not a first appearance—in a criminal case,  
 12 with the IJ taking the equivalent of a plea to the charges, among other procedural  
 13 matters, but the first judicial appearance required by due process need not be as  
 14 comprehensive in either criminal or immigration detention. ECF No. 50-1 at 12:12-20  
 15 (citing *United States v. Gaines*, 555 F.2d 618, 625 n.8 (7th Cir. 1977) (distinguishing  
 16 between first appearance and arraignment); Cal. Penal Code §§ 825(a), 849(a) (first  
 17 appearance), 988 (arraignment)). For convenience, Plaintiffs will refer to the initial  
 18 hearing in the removal process as an initial MCH, but the Court need not decide now  
 19 whether due process requires the full scope of an initial MCH at a first appearance for  
 20 people detained by the Immigration Agencies.

21 In fiscal year 2019, the most recent full year for which Defendants produced  
 22 data,<sup>4</sup> putative class members, whether originally apprehended by ICE or CBP, spent  
 23

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24 <sup>4</sup> As noted in Dr. Wong's Declaration, data referenced in his declaration and this  
 25 motion was provided in discovery by Defendants and included spreadsheets listing  
 26 uniquely identified people in ICE custody who had an initial MCH in Imperial or  
 27 Otay Mesa immigration courts between October 1, 2016 (when the government's  
 28 2017 fiscal year began) and November 22, 2019, when Defendant EOIR ran their  
 data, as well as certain information about their cases. Wong Decl. ¶ 9.

1 mean of about [REDACTED] with a median of about [REDACTED] in ICE custody before their  
 2 initial MCH. Wong Decl. ¶ 22(c). When CBP is the arresting agency, [REDACTED]  
 3 [REDACTED], to this detention time prior to transfer to ICE,  
 4 despite CBP policy that people should not remain in its custody longer than 72 hours.  
 5 Ex. 5 (OFO Dep. at 147:19-151:9); Ex. 6 (Border Patrol Dep. at 154:4-12, 158:12-  
 6 162:22); Ex. 6.1 ([REDACTED]  
 7 [REDACTED]); Wong Decl. ¶ 33 ([REDACTED]  
 8 [REDACTED]  
 9 [REDACTED]).

10 Several system-wide policies contribute to these delays. For instance, ICE does  
 11 not consider the immigration court's capacity to process cases promptly when choosing  
 12 to detain people. Answer, ECF No. 66 ¶¶ 6, 62. Instead, ICE packs its detention centers  
 13 in the San Diego Field Office. From FY 17 to FY 19, [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]  
 16 [REDACTED]. Wong Decl. ¶ 37; Vakili Decl. Ex. 7 ([REDACTED]  
 17 [REDACTED], Rule 30(b)(6) Witness for Executive Office for  
 18 Immigration Review, Dep. Tr. ["EOIR Dep."] at 148:2-8). In addition, whereas ICE  
 19 used to release, pursuant to its parole authority,<sup>5</sup> a significant number of people seeking  
 20 asylum who passed their credible fear interviews, the San Diego Field Office of ICE  
 21 denied parole to [REDACTED] of such individuals between FY 17 and FY 19. Wong Decl.  
 22 ¶ 35; *cf. Damus v. Nielsen*, 313 F. Supp. 3d 317, 339 (D.D.C. 2018) (noting in five ICE  
 23 field offices a shift from roughly 90% parole grant rates before 2017 to nearly 100%  
 24

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25 <sup>5</sup> ICE Parole Directive, ICE Directive 11002.1, Parole of Arriving Aliens Found to  
 26 Have a Credible Fear of Persecution or Torture (Dec. 2009), *available at*  
 27 [https://www.ice.gov/doclib/dro/pdf/11002.1-hd-](https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf)  
 28 [parole\\_of\\_arriving\\_alien\\_found\\_credible\\_fear.pdf](https://www.ice.gov/doclib/dro/pdf/11002.1-hd-parole_of_arriving_alien_found_credible_fear.pdf).

1 parole denial rates after 2017). For asylum seekers in IRDF, ICE granted parole in a  
2 [REDACTED] credible fear cases during this period. Wong Decl. ¶ 35.

3 Uniform CBP detention policy in this district also contributes to delays. Other  
4 than rare circumstances such as medical emergencies, OFO and San Diego and El  
5 Centro Border Patrol Sectors have blanket policies refusing to release people from their  
6 custody before ICE takes custody, despite their clear legal authority to do so, and  
7 Border Patrol does not process cases any differently or more expeditiously when class  
8 members request IJ review of Border Patrol's blanket custody determinations. Ex. 5  
9 (OFO Dep. at 94:18–96:3, 97:16–98:1, 111:21–112:9, 130:22–131:5); Ex. 6 (Border Patrol  
10 Dep. at 121:9–13, 122:10–123:15, 132:8–133:11). CBP in this district does not file  
11 requests for IJ bond hearings with the immigration court. Ex. 9 (DHS Resp. to RFA  
12 No. 2).

13 Apart from their choices to detain far more people than legally required or  
14 justified, the Immigration Agencies have processing policies that contribute to delays  
15 as well. For example, when ICE issues an NTA, it does not have the issuing agent in  
16 the staging facility immediately file the NTA with immigration court, instead instituting  
17 a policy that permits additional 48-hour delay to actually file the NTA after issuing it.  
18 Ex. 4 (ICE Dep. at 213:12–216:18, 219:22–220:7). Despite having the technological  
19 ability to do so, ICE's only explanation for this delay was that “[i]t just comes down to  
20 the way things are divided in the structure of the Field Office” and that Defendant  
21 Department of Justice had not provided sufficient access to EOIR's online portal. *Id.*  
22 at 220:14–223:12. Even worse, for cases in which people in CBP custody will be  
23 transferred to ICE, CBP in this district simply does not file NTAs with immigration  
24 court as a matter of policy and practice, abdicating its admitted legal authority and  
25 technological ability to do so, and despite the fact that they do so in other kinds of  
26 removal cases. Ex. 5 (OFO Dep. at 141:10–144:21); Ex. 5.2 (exhibit 103 to OFO Dep.,  
27 Instructions for OFO to file NTAs in cases involving the so-called Migrant  
28



1 “Protection” Protocols or “MPP”); Ex. 6 (Border Patrol Dep. at 78:4-80:16); Ex. 9  
 2 (DHS Resp. to RFA No. 1). CBP is aware that if bed space in the San Diego Field  
 3 Office of ICE is unavailable and ICE cannot find alternative placement, these policies  
 4 will result in longer time spent in CBP custody, yet the agency does it anyway. Ex. 5  
 5 (OFO Dep. at 95:6-95:15, 97:14-98:1, 154:3-154:12); Ex. 6 (Border Patrol Dep. at 138:4-  
 6 140:15, 155:1-7, 156:4-8, 157:21-158:11, 170:5-21).

7 Defendant EOIR also employs common policies that contribute to the violations  
 8 of class members’ rights. The immigration courts’ regular practice in this district is not  
 9 to hold individuals’ initial MCH for weeks after receiving the NTA from ICE. In FY  
 10 19, the most recent year for which data was provided, the delay between the  
 11 immigration court receiving the NTA – sometimes long after the person entered  
 12 custody – and holding the initial MCH was on [REDACTED]

13 [REDACTED]  
 14 [REDACTED]  
 15 [REDACTED]. Wong  
 16 Decl. ¶ 30.

17 Like all Defendants, EOIR’s interpretation of 8 U.S.C. § 1229(b)(1) as a law  
 18 forbidding prompt presentment also contributes to delays. Ex. 7 (EOIR Dep. at 74:5-  
 19 75:21, 77:5-21, 179:20-180:3) (indicating an initial MCH could be scheduled sooner than  
 20 48 hours after receiving the NTA if not for section 1229(b)(1)’s requirements). Section  
 21 1229(b)(1) provides a safeguard to prevent railroading alleged non-citizens (whether  
 22 detained or not) into removal by permitting an optional 10-day grace period after  
 23 “service of the notice to appear,” to find counsel before substantive aspects of the  
 24 removal case can begin. 8 U.S.C. § 1229(b)(1). It is not relevant to custody issues, which  
 25 are “separate and apart” from removal hearings, 8 C.F.R. § 1003.19(d), and is consistent  
 26 with the constitutional safeguard against unlawful detention provided by a prompt  
 27 presentment hearing, which need not involve issues on the merits of a removal case and  
 28

1 which furthers the right to obtain counsel. The Court need not resolve this question of  
 2 statutory interpretation to certify the class. For present purposes, it suffices to note that  
 3 Defendants' policy interpreting the statute is common across the class and contributes  
 4 to presentment delays.

### 5 **3. Policies Exacerbating the Harms Caused by Delays**

6 Common factual issues also exacerbate the harm caused by the delays. For  
 7 instance, despite its nominal classification as "civil detention," ICE detention is  
 8 criminal-like: ICE forces its prisoners to wear color-coded uniforms, confines them to  
 9 a housing unit, gives them limited time outdoors, permits only limited visitation from  
 10 family and requires prisoners to endure a strip search if they want to have actual physical  
 11 contact with their loved ones, records their personal telephone calls, denies them access  
 12 to the internet, pays them no more than [REDACTED] for a full shift of work in custodial,  
 13 janitorial, or landscaping jobs. Answer, ECF No. 66 ¶¶ 50-57.

14 Yet unlike criminal custody, the INA does not permit the appointment of free  
 15 counsel, 8 U.S.C. § 1362, meaning significant numbers of class members go  
 16 unrepresented. Ex. 7 (EOIR Dep. at 91:22-93:4, 192:15-193:4). Lack of counsel  
 17 intensifies the need for prompt presentment to a neutral adjudicator for, among other  
 18 things, rights advisals. *See, e.g.,* Vakili Decl., Ex. 12 (Declaration of Muhammad Tayyab  
 19 ¶¶ 10-12).

20 The prevalence of language barriers also exacerbates the harms of delay. From  
 21 FY 17 to FY 19, there have been [REDACTED]  
 22 [REDACTED]) whose primary language was not English, Wong Decl. ¶ 21, yet the  
 23 vast majority of forms provided to class members to purportedly explain their rights  
 24 are in English. Ex. 4 (ICE Dep. at 97:22-98:4); Ex. 5 (OFO Dep. at 117:20-121:11); Ex.  
 25 6 (Border Patrol Dep. at 73:5-19, 165:15-166:16). Even for those who understand  
 26 English, the Immigration Agencies dump piles of these forms on class members after  
 27 processing, all written in lengthy, technical legalese. *See* Vakili Decl., Ex. 1 (Cancino  
 28



Decl. ¶ 7); Ex. 10 (██████████, Dep. Tr. [“██████████ Dep.”] at 256:3-17, 263:10-22).

For those in CBP custody, the conditions in hold rooms exacerbate the harms of detention beyond even imposed by ICE detention, as Defendants themselves acknowledge these spaces are not suitable for extended detention. Ex. 5 (OFO Dep. at 148:20-150:7). Lights remain on 24 hours a day, there is no outdoor time or even windows to the outside, there are no beds, bathrooms are exposed other than a low partition, family visits and confidential legal visits are not permitted, only collect or non-private phone calls may be made, and people locked inside have no access to forms in their immigration cases. *Id.* at 188:7-191:2; Ex. 6 (Border Patrol Dep. at 204:2-206:19). For many in CBP custody, the vast majority of whom are asylum seekers, contact with the outside world is essentially cut off for days.

Collectively, these uniform policies work tremendous hardship on all class members, who languish in DHS custody for weeks or longer without a hearing at which a neutral adjudicator informs them of the charges against them, the reasons for their custody, or their rights and any applicable procedures for regaining their freedom. Regardless of which DHS component’s custody they are in, how many times they have been passed off to a different detention center, what language they speak, whether they have children at home or are alone and new in this country, what type of relief they are seeking, or the reason for their detention, all class members are left in the same predicament, navigating a Byzantine maze of detention and immigration laws for agonizingly long periods without seeing a judge.

### **C. Plaintiffs’ Experiences with Defendants’ Policies**

Plaintiffs’ experiences, described in detail in prior briefing, *see, e.g.*, ECF No 35 at 6-8, are typical of the experiences and harms suffered by the class and demonstrate why immaterial procedural differences do not exempt class members from the harms of Defendants’ policies and practices. Each Plaintiff was originally apprehended by a

1 different component of DHS—Jose Cancino Castellar by ICE, Ana Maria Hernandez  
2 Aguas by CBP Border Patrol, and Michael Gonzalez by CBP OFO—and each  
3 ultimately applied for and obtained different relief against removal. *Id.* But these  
4 distinctions made no difference in their delayed presentment. Each was detained longer  
5 than a month before their initial appearance before an IJ. *Id.*

6 ICE arrested Plaintiff Cancino Castellar on February 17, 2017 while he was still  
7 in the 12<sup>th</sup> grade. Ex. 1 (Cancino Decl. ¶¶ 2, 5). Despite noting on his I-213 that Mr.  
8 Cancino Castellar was a student with no criminal history, had lived in the U.S. since age  
9 5, and had younger U.S. citizen siblings at home, an ICE Officer recommended he be  
10 incarcerated for removal proceedings. Ex. 10 (██████ Dep. at 150:14-152:17, 156:10-19,  
11 161:4-7, 221:19–227:12); Ex. 10.1 (Cancino Castellar I-213). The Officer testified that  
12 her practice was to never recommend release and that her supervisor’s regular practice  
13 was to concur. Ex. 10 (██████ Dep. at 196:8-14, 204:9-205:14, 225:12–227:12). The  
14 Officer issued his NTA four days after he was taken into custody, serving it to him with  
15 a stack of “complicated” documents that he did not understand. Ex. 1 (Cancino Decl.  
16 ¶ 7); Ex. 10 (██████ Dep. 205:7-206:1, 251:17-252:7, 256:9-16, 263:18-22). ICE did not  
17 file the NTA with the immigration court until February 24, 2017, three days later. ECF  
18 No. 60-1 at 8:17-18. It took another two weeks before EOIR, on March 8, 2017,  
19 scheduled his initial MCH for March 23, 2017. *Id.* at 8:19-20.

20 Border Patrol arrested Plaintiff Hernandez Aguas on February 7, 2017, near her  
21 home in Escondido where she lived with her two U.S. citizen children, then ages eight  
22 and two. Vakili Decl., Ex. 2.1-2.2 (Hernandez Aguas Decl. ¶¶ 3-4). She was taken first  
23 to a Border Patrol station in San Clemente for processing, and then to the Border Patrol  
24 Station in Chula Vista, where she remained until February 12, 2017. *Id.* ¶¶ 5-6; ECF No.  
25 60-1 at 9:14. Border Patrol issued her NTA on February 7, but consistent with Border  
26 Patrol policy not to give people in its custody copies of the NTA or any other  
27 paperwork, they did not allow her to retain a copy of the NTA or any other documents  
28

1 created during her processing. Ex. 2 (Hernandez Aguas Decl. ¶¶ 9, 11); Ex. 6 (Border  
2 Patrol Dep. at 70:11–73:8). On February 12, 2017, Ms. Hernandez Aguas was  
3 transferred to SLRDC for two days, and then to OMDC. ECF No. 60-1 at 9:14-16. On  
4 February 21, two weeks after she was arrested, ICE filed her NTA with the immigration  
5 court. Ex. 6.2 (exhibit 2 in Border Patrol Dep., Hernandez Aguas NTA). She saw an IJ  
6 for the first time at a bond hearing on March 13, 2017.<sup>6</sup> ECF No. 60-1 at 9:21-25. In  
7 theory, a bond hearing must be scheduled “as soon as possible,” Ex. 7 (EOIR Dep. at  
8 140:12–19), but her bond hearing did not take place for over a month after she entered  
9 custody.

10 CBO OFO arrested Plaintiff Michael Gonzalez at the San Ysidro Port of Entry  
11 on November 17, 2016. Vakili Decl., Ex. 3 (Gonzalez Decl. ¶¶ 4, 5). He asserted a fear  
12 of persecution if returned to Mexico and made a claim to U.S. citizenship. *Id.* CBP  
13 detained him for 6 days at San Ysidro and the Border Patrol transit station Barracks 5,  
14 before transferring him to OMDC on November 23, 2016. ECF No. 60-1 at 10:8-9;  
15 Vakili Decl., Ex. 11 (██████████ Dep. Tr. at 226:4–227:13). Mr. Gonzalez was  
16 provided a credible fear interview on December 16, 2016 and found to have a credible  
17 fear the same day. ECF No. 60-1 at 10:10-11. On January 9, 2017, ICE served him with  
18 an NTA, but they did not file it with the immigration court until 10 days later on January  
19 19, 2017. *Id.* at 10:11-14. His initial MCH was not held until March 14, 2017.<sup>7</sup> *Id.* at  
20 10:15-17.

21  
22  
23  
24 <sup>6</sup> Ms. Hernandez Aguas’s removal proceedings were subsequently administratively  
25 closed. ECF No. 60-1 at 10:1-2.

26 <sup>7</sup> Mr. Gonzalez was subsequently found to qualify for appointed counsel under the  
27 settlement in *Franco-Gonzalez v. Holder*, CV 10-02211 DMG (DTBx), 2013 WL 3674492,  
28 at \*8 (C.D. Cal. Apr. 23, 2013). Vakili Decl. ¶ 9. In July 2019, he was granted  
withholding of removal and released from custody. *Id.*

**D. Plaintiffs Seek to Represent a Class Based on the Record as Developed**

Plaintiffs seek to vindicate the prompt presentment rights of all class members, to protect them from suffering similar harms as Plaintiffs. Accordingly, based on the record developed in discovery, Plaintiffs seek to represent a class defined as:

All individuals, other than unaccompanied minors or individuals with administratively final removal orders, who (1) are or will have been in the civil custody of the San Diego Field Office of ICE, the San Diego Field Office of CBP Office of Field Operations, the San Diego Sector of U.S. Border Patrol, and/or the El Centro Sector of U.S. Border Patrol, collectively, for longer than 48 hours and (2) have not had a hearing before an immigration judge.

As this Court has noted, although a court is ordinarily “bound to class definitions provided in the complaint . . . [t]he primary exception to this principle is when a plaintiff proposes a new class definition that is *narrower* than the class definition originally proposed, and does not involve a new claim for relief.” *Bee, Denning, Inc. v. Capital All. Grp.*, 310 F.R.D. 614, 621 (S.D. Cal. 2015) (emphasis in original)

Here, the proposed class definition is far narrower than that proposed in the Complaint, because it excludes a number of categories of individuals who fell within the original definition. Specifically, in opposing Plaintiffs’ original motion for class certification, Defendants noted that the class definition had included unaccompanied minors, “criminal aliens,” and people in “withholding-only” proceedings after reinstatement of a removal order. ECF No. 30 at 15 n.17, 20-22. This narrower class definition excludes each of those categories of individuals. Unaccompanied minors are explicitly excluded, “criminal aliens” are excluded by the limitation to people in “civil custody,” and people in “withholding-only” proceedings fall into the exclusion of people with “administratively final removal orders,” *see Padilla-Ramirez v. Bible*, 882 F.3d 826, 836 (9th Cir. 2017) (finding that people in withholding-only proceedings have

administrative final removal orders). Although the class continues to include people in the expedited removal process awaiting a credible fear interview – as their expedited removal orders are not enforceable and therefore not final – it is far narrower than before.

The class definition has been otherwise refined in one small way that does not “involve a new claim for relief.” *Bee, Denning, Inc.*, 310 F.R.D. at 621. Although the Complaint defined the class to include persons detained in this district, ECF No. 1 ¶ 68, Plaintiffs recently learned in discovery that the San Diego Field Office of ICE detains people in SLRDC and San Diego Sector of Border Patrol detains people in the Newton and Azrak Border Patrol Station in Murrieta, each just outside this district. Ex. 4 (ICE Dep. 33:6-34:1), Ex. 8 (DHS Resp. to Interrog. 13). Accordingly, the class definition was adjusted to include people detained by the Immigration Agencies operating in this district, not only people physically detained in this district. This minor refinement is necessary to correspond to Defendants’ operational reality that their Areas of Responsibility include two facilities that lie just outside this district and does not reflect any new legal theory or claim.

Despite the slight tweak, the class definition is still far narrower than that originally proposed and presents no new legal claim. It should provide no obstacle to certification.

### III. ARGUMENT

The class meets all the requirements of Rule 23(a), and this case squarely fits within Rule 23(b)(2). Accordingly, Plaintiffs have a “categorical” right “to pursue [their] claim as a class action.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). Courts routinely certify classes in cases involving claims arising from immigration detention. *Doe v. Wolf*, 424 F. Supp. 3d 1028 (S.D. Cal. 2020); *Rodriguez v. Hayes*, 591 F.3d 1105, 1126 (9th Cir. 2010); *Padilla v. US Immigration & Customs Enf’t*, No. C18-928 MJP, 2019 WL 1056466, at \*1 (W.D. Wash. Mar. 6, 2019); *Aleman-*

*Gonzalez v. Sessions*, 325 F.R.D. 616, 629 (N.D. Cal. 2018); *Rivera v. Holder*, 307 F.R.D. 539, 551 (W.D. Wash. 2015); *Garcia v. Johnson*, No. 14-cv-01775-YGR, 2014 WL 6657591, at \*1 (N.D. Cal. Nov. 21, 2014); *Franco-Gonzalez v. Napolitano*, CV 10-02211 DMG (DTBx), 2011 WL 11705815, at \*16 (C.D. Cal. Nov. 21, 2011); *Alcantara v. Archambeault*, No. 20CV0756 DMS (AHG), 2020 WL 2315777, at \*7 (S.D. Cal. May 1, 2020). This Court should do the same.

### A. The Proposed Class Satisfies Rule 23(a)'s Requirements

#### 1. **Numerosity:** The proposed class consists of thousands of immigration detainees.

To qualify for certification, a class must be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The proposed class, which includes thousands of people, plainly meets that requirement.

Defendants identified [REDACTED] people who, from FY 2017 until November 22, 2019, while detained by the San Diego Field Office of ICE longer than 48 hours and had initial MCHs in the San Diego, Otay Mesa, or Imperial immigration courts. Wong Decl. ¶ 11. The “exact size of the class need not be known so long as general knowledge and common sense indicate that it is large,” which is the case here. *Perez-Funez*, 611 F. Supp. at 995; *cf. Rivera*, 307 F.R.D. at 550 (class of more than forty current immigrant detainees sufficient); *Franco-Gonzalez*, 2011 WL 11705815, at \*9 (class of fifty-five immigrant detainees sufficient). In addition, the class is transitory and includes individuals who will be detained in the future, making joinder of those individuals impracticable. *Doe*, 424 F. Supp. 3d at 1040; *Lyon v. U.S. Immigration & Customs Enforcement*, 300 F.R.D. 628, 635-36 (N.D. Cal. 2014); *J.D. v. Nagin*, 255 F.R.D. 406, 414 (E.D. La. 2009); *Hawker v. Consovoy*, 198 F.R.D. 619, 625 (D.N.J. 2001); *Clarkson v. Coughlin*, 145 F.R.D. 339, 348 (S.D.N.Y. 1993). The proposed class thus satisfies the numerosity requirement of Rule 23(a)(1).



1                   **2.     Commonality: Several common questions of law and fact**  
 2                   **exist among the class members.**

3             Commonality exists when “there are questions of law or fact common to the  
 4     class.” Fed. R. Civ. P. 23(a)(2). Plaintiffs need not show “that every question of law or  
 5     fact must be common to the class; all that Rule 23(a)(2) requires is ‘a single significant  
 6     question of law or fact.’” *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir.  
 7     2013) (citing *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011)).

8             This case presents ample factual and legal questions common to the entire class,  
 9     including but not limited to:

- 10             • Whether Defendants have a policy and practice of denying prompt judicial  
 11             presentment to class members;
- 12             • Whether Defendants’ other policies and practices contribute to delays in  
 13             presentment;
- 14             • Whether the delays in judicial presentment faced by all class members  
 15             violate their rights under the substantive component of the Due Process  
 16             Clause of the Fifth Amendment, ECF No. 63 at 27;
- 17             • Whether Defendant’s policies and practices of delaying judicial  
 18             presentment violate the Administrative Procedure Act, *id.* at 44-45.

19             Each of those questions is “capable of classwide resolution” with “common  
 20     answers apt to drive the resolution of the litigation,” because they seek the enforcement  
 21     of “a constitutional floor equally applicable” to everyone in the class. *Lyon v. U.S.*  
 22     *Immigration & Customs Enf’t*, 308 F.R.D. 203, 211-12 (N.D. Cal. 2015) (emphasis in  
 23     original); *Doe*, 424 F. Supp. 3d at 1040–1041. Indeed, a class action may be the only way  
 24     to provide relief, as individual suits could all become moot if the Court is unable to act  
 25     before detained persons receive a first hearing. *Doe*, 424 F. Supp. 3d at 1038-39–1041;  
 26     *Walters v. Reno*, 145 F.3d 1032, 1045 (9th Cir. 1998); *Rodriguez I*, 591 F.3d at 1123.



1 In fact, *Rodriguez I* is directly on point. There, a class of immigration detainees  
2 challenged their prolonged detention for “more than six months without a bond hearing  
3 while engaged in immigration proceedings.” *Rodriguez I*, 591 F.3d at 1111. The  
4 government opposed certification because, *inter alia*, detainees were held under different  
5 provisions of the INA, which conferred upon them different rights to a bond hearing.  
6 *Id.* at 1122. In holding the class satisfied Rule 23(a)(2), the Court concluded that the  
7 various statutes authorizing detention of different class members did not materially  
8 impact whether there was “some shared legal issue or a common core of facts”  
9 regarding class members’ right to a bond hearing, which “the proposed members of the  
10 class certainly have.” *Id.* at 1122-23. Thus, it is irrelevant that, as Defendants previously  
11 argued, members of the class may be detained pursuant to different statutes. ECF 30 at  
12 14. All that is needed is a single “shared legal issue or a common core of facts” regarding  
13 the due process claim for prompt judicial presentment, which “the proposed members  
14 of the class certainly have.” *Rodriguez I*, 591 F.3d at 1122–23. As this Court has  
15 recognized, “[t]he existence of shared legal issues,” even “with divergent factual  
16 predicates is sufficient.” *Al Otro Lado, Inc. v. Wolf*, No. 17-CV-02366-BAS-KSC, 2020  
17 WL 4530755, at \*6-7 (S.D. Cal. Aug. 6, 2020).

18 Nor does it matter whether some class members are “arriving” asylum seekers  
19 detained at the border when attempting to enter the United States, such as Mr.  
20 Gonzalez, while others were apprehended inside the United States, such as Mr. Cancino  
21 Castellar and Ms. Hernandez Aguas. Regardless of how and where class members were  
22 arrested, this Court has already held they share the same substantive due process right  
23 to prompt judicial presentment. ECF No. 63 at 27. Likewise, it is irrelevant whether  
24 some class members were detained longer than others, because all class members  
25 experience lengthy delays that fall below the permissible constitutional floor, regardless  
26 of their procedural history. *See Wong Decl.* ¶¶ 24-25 ( [REDACTED]  
27 [REDACTED]  
28

1 [REDACTED]; ECF No. 63 at 16:7-16 (citing  
 2 *Coleman v. Frantz*, 754 F.2d 719 (7th Cir. 1985) (finding 18-day detention without  
 3 presentment unlawful). The “fact that ‘precise practices’ among” the Immigration  
 4 Agencies may “differ does not mean that a constitutional or statutory floor does not  
 5 apply equally to all...” *Al Otro Lado, Inc.* 2020 WL 4530755, at \*6-7. This action  
 6 therefore satisfies the commonality requirement of Rule 23(a)(2).

7 **3. Typicality: Plaintiffs’ claims are typical of, if not identical to,**  
 8 **those of other class members.**

9 Typicality exists if “the claims or defenses of the representative parties are typical  
 10 of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). Under this permissive  
 11 standard, “representative claims are ‘typical’ if they are reasonably coextensive with  
 12 those of the absent class members; they need not be substantially identical.” *Parsons v.*  
 13 *Ryan*, 754 F.3d 657, 685 (9th Cir. 2014). “The test of typicality is ‘whether other  
 14 members have the same or similar injury, whether the action is based on conduct which  
 15 is not unique to the named plaintiffs, and whether other class members have been  
 16 injured by the same course of conduct.’” *Id.*

17 The representative Plaintiffs meet that standard, as they suffered violations and  
 18 harms similar to and typical of those suffered by the class. Mr. Cancino Castellar and  
 19 Ms. Hernandez Aguas each spent 34 days in ICE custody without seeing an IJ. ECF  
 20 No. 28-2, Ex. C, L. This is typical of the rest of the class, which in FY 2017, spent on  
 21 average [REDACTED] in ICE custody before their initial MCH. Wong Decl. ¶ 22(a).

22 Similarly, Mr. Gonzalez was detained for 117 days before judicial presentment.  
 23 ECF No. 28-2, Ex. U. When Mr. Gonzalez presented himself at the San Ysidro Port of  
 24 Entry on or about November 17, 2016, CBP processed him for an asylum claim after  
 25 he expressed a fear of removal, as it has done for scores of other class members. Ex. 3  
 26 (Gonzalez Decl. ¶ 7); Wong Decl., Ex. C-7 (ICE Spreadsheet “Details#3\_5” tab, listing  
 27 all credible fear cases, *see* column V). Mr. Gonzalez waited approximately four weeks  
 28

1 for a credible fear interview from an asylum officer, after which he was referred to  
 2 immigration court, but he did not appear before a judge until March 14, 2017. Ex. 3  
 3 (Gonzalez Dec. ¶¶ 7-10.); ECF 28-2, Ex. U. The time he waited for a credible fear  
 4 interview was typical of the class, who waited on average [REDACTED] for credible fear  
 5 interviews during FY 2017. Wong Decl. ¶¶ 24(a), 26 ([REDACTED]  
 6 [REDACTED]); *see also* Ex. 12 (Tayyab Decl.) (33 days to  
 7 credible fear interview).

8 Because Plaintiffs have “raise[d] similar constitutionally-based arguments and are  
 9 alleged victims of the same practice of prolonged detention while in immigration  
 10 proceedings,” their claims are typical of those of other class members. *Rodriguez*, I, 591  
 11 F.3d at 1124. This case therefore satisfies the typicality requirement of Rule 23(a)(3).

12 **4. Adequacy: Plaintiffs will adequately protect the interests of**  
 13 **the proposed class, and their counsel are more than qualified**  
 14 **to litigate this action.**

15 Adequacy exists if “the representative parties will fairly and adequately protect  
 16 the interests of the class.” Fed. R. Civ. P. 23(a)(4). “Whether the class representatives  
 17 satisfy the adequacy requirement depends on the qualifications of counsel for the  
 18 representatives, an absence of antagonism, a sharing of interests between  
 19 representatives and absentees, and the unlikelihood that the suit is collusive.” *Rodriguez*  
 20 I, 591 F.3d at 1125. Those standards are all met here.

21 Class counsel are attorneys from the ACLU Foundation of San Diego and  
 22 Imperial Counties (“ACLUF-SDIC”), Fish & Richardson P.C., and the Law Office of  
 23 Leonard B. Simon. Vakili Decl. ¶ 4. ACLUF-SDIC attorneys have participated as class  
 24 counsel in many immigration detention cases before this Court and others. *Id.* ¶ 5. Fish  
 25 & Richardson P.C. has served as *pro bono* counsel in a class action case involving indigent  
 26 plaintiffs and obtained significant relief. *Alford v. County of San Diego*, 151 Cal. App. 4th  
 27 16 (2007). Mr. Simon has litigated hundreds of class actions during a forty-year career  
 28

1 and taught law school courses on class actions and on complex civil litigation. *See, e.g.*,  
 2 <https://www.rgrdlaw.com/attorneys-Leonard-B-Simon.html> (last visited Oct. 15,  
 3 2020). Class counsel are abundantly qualified. *Lynch v. Rank*, 604 F. Supp. 30, 37 (N.D.  
 4 Cal. 1984), *aff'd*, 747 F.2d 528 (9th Cir. 1984).

5 Plaintiffs are adequate class representatives. They seek no relief for themselves  
 6 through this case beyond the relief sought for the entire class and have no interests  
 7 adverse to the class. ECF No. 1, Complaint ¶¶ 75-90, Prayer for Relief. This is a  
 8 genuinely adverse case involving no collusion with Defendant-Respondents.  
 9 Accordingly, this case satisfies the adequacy requirement of Rule 23(a)(4).

10 **B. This Case Satisfies Rule 23(b)(2) Because it Seeks to Declare**  
 11 **Illegal and Enjoin a Practice that Applies to the Class as a Whole.**

12 This action warrants certification because “the party opposing the class has acted  
 13 or refused to act on grounds that apply generally to the class, so that final injunctive  
 14 relief or corresponding declaratory relief is appropriate respecting the class as a whole.”  
 15 Fed. R. Civ. P. 23(b)(2). Plaintiffs satisfy Rule 23(b)(2) because they “complain of a  
 16 pattern or practice that is generally applicable to the class as a whole.” *Rodriguez I*, 591  
 17 F.3d at 1125 (quotation marks omitted). Indeed, Rule 23(b)(2) “was adopted in order  
 18 to permit the prosecution of civil rights actions” like this one. *Walters*, 145 F.3d at 1047;  
 19 *see also Parsons*, 754 F.3d at 686. The Ninth Circuit does not require “ascertainability”  
 20 under Rule 23(b)(2), and even if it did, the class can be objectively ascertained. *Briseno*  
 21 *v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1125 n.4 (9th Cir. 2017); *Hernandez v. County of*  
 22 *Monterey*, 305 F.R.D. 132, 152 (N.D. Cal. 2015).

23 Defendants are acting on grounds that are generally applicable to the class  
 24 because they subject all class members to the same policies or practices by detaining  
 25 them without a prompt hearing before a judge. As a matter of policy or practice, the  
 26 government does not require any class members to be presented to a judge within any  
 27 set amount of time. Accordingly, the claim for prompt presentment can be resolved as  
 28

1 a unitary issue of law, because this “action concerns,” at minimum, “a single policy  
2 applicable to the entire class that (if unlawful) subjects class members to unnecessary  
3 detention.” *Rivera*, 307 F.R.D. at 551.

4 Furthermore, each of the policies described above that contribute to and  
5 exacerbate the presentment delays are applicable to all class members as a whole.  
6 Therefore, this case satisfies Rule 23(b)(2) because “members of a putative class seek  
7 uniform injunctive or declaratory relief from policies or practices that are generally  
8 applicable to the class as a whole,” and “a single injunction or declaratory judgment  
9 would provide relief to each member of the class.” *Parsons*, 754 F.3d at 688; *Doe*, 424 F.  
10 Supp. 3d at 1044 (Rule 23(b)(2) met where “putative class members seek the same  
11 injunctive and declaratory relief, and [CBP] policy of prohibiting access to retained  
12 counsel... is generally applicable to the entire class”).

#### 13 **IV. CONCLUSION**

14 For the reasons above, Plaintiffs respectfully request that the Court grant their  
15 motion for class certification.  
16

17  
18 Dated: October 16, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on October 16, 2020 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Civ LR 5.4(d). Any other counsel of record will be served by U.S. mail or hand delivery.

/s/ Bardis Vakili

Bardis Vakili