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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Immigration Center for Women and Children, et. al., Plaintiffs, v. Kristi Noem, et. al, Defendants.	Case No.: 2:25-cv-09848-AB-AS **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION** Hearing Date: December 12, 2025 Hearing Time: 10 a.m. Ctrm: 7B Hon. André Birotte Jr.

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* Pro Hac Vice Application Pending

NOTICE OF MOTION FOR CLASS CERTIFICATION

To Defendants and their attorneys of record:

PLEASE TAKE NOTICE that on December 12, 2025, or as soon thereafter as counsel may be heard, Plaintiffs will and do hereby move the Court for an order certifying this case as a class action pursuant to Fed. R. Civ. P. 23(b (2) on behalf of the following classes of similarly situated persons:

- **Pending Petition Class**: All individuals with pending principal or derivative U visa petitions, T visa petitions, or VAWA self-petitions who ICE detains or seeks to detain for civil immigration enforcement;
- **Deferred Action Class**: All individuals to whom USCIS has granted deferred action based on a pending U or T visa petition and who, during the authorized period of deferred action, ICE detains, seeks to detain, or removed without providing notice and an opportunity to be heard regarding potential revocation of their deferred action status; and
- **Stay of Removal Class**: All individuals with a pending U or T visa petition who, since January 30, 2025, have been, are, or will be detained by ICE and who request or requested a stay of a final removal order prior to enforcement of that removal order.

The proposed Pending Petition Class representatives are Lupe A., Camila B., Paulo C., Kenia Jackeline Merlos, Luna E., Carmen F., Yessenia Ruano, and Daniel H. (collectively "Individual Plaintiffs").

The proposed Deferred Action Class representatives are Lupe A., Camila B., Paulo C., and Ms. Merlos (collectively "Deferred Action Plaintiffs").

The proposed Stay of Removal Class representatives are Carmen F. and Ms. Ruano (collectively "Stay of Removal Plaintiffs").

This motion is based upon the accompanying memorandum of law and exhibits, and upon all other matters of record herein. A proposed order is lodged

concurrently herewith.

STATEMENT OF COMPLIANCE WITH L.R. 7-3

Pursuant to L.R. 23-3, Plaintiffs file this Motion "[a]t the earliest possible time after service of a pleading purporting to commence a class action." On October 21, 2025, Plaintiffs' counsel met and conferred with Assistant U.S. Attorney Daniel Beck regarding several matters, including this Motion, which Plaintiffs' counsel identified in an email dated October 20, 2025. Declaration of Bardis Vakili, October 29, 2025 ("Vakili Decl."). However, Plaintiffs understand that Mr. Beck is only temporarily handling the case until counsel from the United States Department of Justice in Washington D.C. can be assigned, and he was therefore unable to represent a position on this matter. *Id.* ¶ 10. Because assignment may be slowed by the current lapse in federal funding, Plaintiffs submit this motion now, consistent with the requirement of L.R. 23-3, as well as undersigned counsel's obligations to the putative classes of individuals in or facing immigration detention, to seek certification promptly. *See, e.g.*, *Wade v. Kirkland*, 118 F.3d 667, 670 (9th Cir. 1997) (Where a plaintiff "purported to represent short-term inmates in a county jail," it "present[s] a classic example of a transitory claim that cries out for a ruling on certification as rapidly as possible."). Once appropriate counsel for Defendants is assigned, Plaintiffs will promptly request a conference with such counsel to discuss this and any other pending matters. Vakili Decl. ¶ 10.

Dated: October 29, 2025

Respectfully submitted,

/s/ Bardis Vakili__
Bardis Vakili

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** Pro Hac Vice Application Pending*

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I. INTRODUCTION

Plaintiffs are survivors of crime, trafficking, and domestic abuse, who have pending petitions for U visa or T visas, and who were or likely will be detained or deported without consideration of their status as survivors or their pending petitions. They challenge the rescission by Defendant U.S. Immigration and Customs Enforcement ("ICE") of longstanding policies protecting immigrant survivors, as well as policies and practices by ICE and Defendant United States Citizenship and Immigration Services ("USCIS") stemming from such rescission. Plaintiffs now move this Court to certify the following classes:

- **Pending Petition Class**: All individuals with pending principal or derivative U visa petitions, T visa petitions, or VAWA self-petitions who ICE detains or seeks to detain for civil immigration enforcement;
- **Deferred Action Class**: All individuals to whom USCIS has granted deferred action based on a pending U or T visa petition and who, during the authorized period of deferred action, ICE detains, seeks to detain, or removed without providing notice and an opportunity to be heard regarding potential revocation of their deferred action status; and
- **Stay of Removal Class**: All individuals with a pending U or T visa petition who, since January 30, 2025, have been, are, or will be detained by ICE and who request or requested a stay of a final removal order prior to enforcement of that removal order.

All Individual Plaintiffs were detained or removed by ICE despite their pending U or T visa petitions. *See* Ex. 11, Declaration of Sarah Kahn, October 27, 2025 ("Oct. 27 Kahn Decl."), Ex. (A)-(T). They seek to represent the Pending Petition Class and challenge ICE Policy Number 11005.4 under the Administrative Procedures Act ("APA") (Claims 1 – 2). *See* ECF No. 1-1 (ICE Policy Number 11005.4, *Interim Guidance on Civil Immigration Enforcement Actions Involving*

Current or Potential Beneficiaries of Victim-Based Immigration Benefits (Jan. 30, 2025)) (hereinafter "2025 Guidance").

Plaintiffs Lupe A. ("Lupe"), Camila B. ("Camila"), Paulo C. ("Paulo"), and Kenia Jackeline Merlos ("Ms. Merlos") had deferred action status pursuant to bona fide determinations in their U visa cases, but ICE arrested and detained them without a pre-deprivation hearing to determine whether changed circumstances warranted revocation of their deferred action and whether they were sufficiently dangerous or flight risks that their incarceration was necessary during any removal proceedings. *See* Oct. 27 Kahn Decl. Ex. (A)-(D), (K), (T). They seek to represent the Deferred Action Class and challenge Defendants' policy and practice of unilaterally revoking deferred action conferred by USCIS based on a pending U or T visa petition, by arresting, detaining, and/or deporting noncitizens in an authorized period of such deferred action status without providing notice and an opportunity to be heard, bringing claims under the APA, the *Accardi* Doctrine, the Due Process Clause, and the Fourth Amendment (Claims 3-7).

Plaintiffs Carmen F. ("Carmen") and Yessenia Ruano ("Ms. Ruano") had pending U and T visa petitions, respectively, and requested stays of their removals. ICE denied their requests without a determination of their prima facie eligibility, and each was denied. *See* Oct. 27 Kahn Decl., Ex. (E)-(J), (O)-(Q). They seek to represent the Stay of Removal Class and challenge Defendants' policy and practice permitting denial of stays of removal from U and T visa petitioners without first determining the requestor's prima facie eligibility for relief, bringing claims under the Immigration and Nationality Act ("INA") and APA (Claim 8-9).

Each proposed class readily meets Rule 23(a)'s four requirements for certification. First, each proposed class is sufficiently numerous that joinder is impracticable. The Pending Petition Class includes hundreds of thousands of individuals awaiting review of their T, U, or VAWA petitions who are subject to the 2025 Guidance. The Deferred Action Class includes an unknown number of U

and T visa petitioners who have been granted deferred action based on those pending petitions and who are or will be arrested, detained, or deported. News media and immigration attorneys report a growing trend of these deferred-action detentions and deportations, which often occur swiftly because Defendants provide little to no process. These rushed detentions and deportations create an inherently transitory class of often-unrepresented people who are torn from their lives and detained or expelled before they can challenge their treatment in court. The Stay of Removal Class is numerous and transitory for similar reasons: Defendants rush their deportations based on the asserted authority to deny their stay requests without being required to determine their prima facie eligibility first, as part of a strategy of mass deportation that weaponizes speed and curtails protections.

Second, each proposed class presents common questions. The Pending Petition Class raises common questions, including whether the 2025 Guidance, which rescinded a set of policies that would have protected all class members, is arbitrary, capricious, and contrary to law. The Deferred Action Class raises common questions, including whether ICE's policy of revoking deferred action unilaterally, by detaining and deporting class members in deferred action status without notice or an opportunity to be heard on the revocation of deferred action or the necessity of their detention, violates due process, the APA, or the Accardi doctrine. The Stay of Removal Class raises common questions, including whether deporting class members without first determining their prima facie eligibility for U or T visas review violates 8 U.S.C. § 1227(d).

Third, the proposed representatives of each class present claims that are typical of the class they seek to represent. All Pending Petition Class representative were arrested, detained, and placed into removal proceedings without consideration of their pending U or T visa petitions and without any of the victim-centered protections they would have received under the longstanding policies the 2025 Guidance rescinded. Each seeks for themselves what they seek for the Class: to

have those protections reinstated. Each Deferred Action Class representative was in authorized deferred action status pursuant to a pending T or U visa and was then arrested, detained, or deported without any notice or hearing on whether changed circumstances justified revoking their deferred action or detaining them. Each Stay of Removal class representative had a pending U or T visa petition, had a final removal order, and requested a stay of removal, but ICE removed them without requesting prima facie review of their petitions from USCIS.

Fourth, the class representatives will adequately and fairly protect the classes they seek to represent. Class counsel are experienced in civil rights, immigration, and class action cases, and the proposed plaintiff representatives have no interests separate from the classes they seek to represent with respect to the claims in this case.

This case also qualifies for certification under Rule 23(b)(2). Defendants apply the challenged policies against all class members, "so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

For the Pending Petition Class, the 2025 Guidance applies equally to all members, who by definition ICE seeks to detain or remove. For the Deferred Action Class, Defendants deny a pre-deprivation process for revoking deferred action and for justifying detention to all class members equally. Requiring such a process for all class members would not require this Court to decide the propriety of detention or recission of deferred action, or direct Defendants to reach any particular result, in any individual case. Similarly, for the Stay of Removal Class, Defendants' policy that they need not determine prima facie eligibility in *every* case prior to deciding on a request for a stay of removal applies to the class as a whole, regardless of the outcome of any such prima facie determination or whether ICE sometimes seeks such determinations when it is in ICE's best interests.

Although this case has just been filed, the rapid nature of detention and removal warrants early certification. *See Wade v. Kirkland*, 118 F.3d 667, 670 (9th Cir. 1997) (where plaintiff "purported to represent short-term inmates in a county jail," it presented "a classic example of a transitory claim that cries out for a ruling on certification as rapidly as possible.") (citing Gerstein v. Pugh, 420 U.S. 103, 110 n. 11 (1975)).

This Court should therefore certify the classes, as numerous courts have done in similar actions brought by noncitizens challenging immigration policies and practices. *See, e.g., Doe v. Wolf*, 424 F. Supp. 3d 1028, 1040 (S.D. Cal. 2020) (certifying transitory class of individuals in Customs and Border Protection custody, despite the precise number being unknown, because "where the class includes unnamed, unknown future members, joinder of such unknown individuals is impracticable and the numerosity requirement is therefore met, regardless of class size").

II. LEGAL AND FACTUAL BACKGROUND

Since 1994, Congress has created a scheme of protections for immigrant survivors of domestic violence, crime, and trafficking.[1] Before Congress legislated these protections, noncitizen victims of these crimes faced an impossible choice: if they did not report the crime they experienced, they and others would remain vulnerable to harm by the perpetrator, but if they did report the crime, they might be face detention and deportation because of their undocumented status. Congress saw that this choice was seriously harming law enforcement's ability to investigate and

[1] *See, e.g.*, Violence Against Women Act ("VAWA") as Section IV of the Violent Crime Control and Law Enforcement Act of 1994, Title IV of Pub. L. No. 103-322 (PDF), 108 Stat. 1796, 1902 (September 13, 1994); Victims of Trafficking and Violence Protection Act of 2000 ("TVPA"), Pub. L. No. 106-386, § 1513(a)(2)(B), 114 Stat. 1464, 1533; Title VIII of the Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109-162, 119 Stat. 2960, 3053 (January 5, 2006); The Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193; Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164; William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457.

prosecute crimes. CRS Report R47404, Immigration Relief for Noncitizen Crime Victims at 1 (Jan. 31, 2023), available at https://www.congress.gov/crs-product/R47404. Congress also saw that this choice was creating a humanitarian crisis, resulting in a growing group of noncitizens who were already suffering exploitation and abuse, and whose abusers could harm them without fear of police intervention because the victims were too afraid to come forward. *Id.* at 2. Congress's explicit purpose in creating the VAWA self-petition, U visa, and T visa processes for obtaining permanent immigration status was to address these harms by encouraging noncitizen victims to come forward, free themselves from their abusers, and cooperate with law enforcement in investigating or prosecuting the crimes. *Id.* Plaintiffs refer to lawful immigration status obtained through the VAWA, U visa, and T visa processes as "Survivor-based Benefits."

Because of caps on the numbers of U and T visas and certain VAWA-eligible family-based visas that USCIS can grant annually, as well as the lengthy adjudication processes for such petitions, Congress created several protections for petitioners while they waited for adjudication. *See, e.g.*, 8 U.S.C. § 1154(a)(1)(K) (approved VAWA self-petitioners waiting for their priority date are "eligible for work authorization"); 8 U.S.C. § 1184(p)(6) ("The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 1101(a)(15)(U) of this title."); 8 U.S.C. § 1227(d) an administrative stay" for T or U visa petitioner with "a prima facie case for approval" until "the application for nonimmigrant status" is approved or denied").

As noted by the cosponsors of the bills that created them, these protections clearly envision that noncitizens with pending VAWA, U visa, or T visa petitions would be permitted to remain in the United States while they await adjudication, stating explicitly that survivors "with deferred action status should not be removed or deported. Prima facie determinations and deferred action grants should not be

revoked by immigration enforcement agents. The specially trained Citizenship and Immigration Services (CIS) unit should review such cases to determine whether or not to revoke a deferred action grant." 151 Cong. Rec. E2605, 2607 (Dec. 17, 2005) (Statement of Rep. Conyers) available at https://www.congress.gov/congressional-record/volume-151/issue-164/extensions-of-remarks-section/article/E2605-4.

In keeping with Congress's authorization of benefits for waiting petitioners, DHS promulgated regulations implementing processes for obtaining deferred action status protection for petitioners with pending survivor-based benefit applications. *See, e.g.*, 8 C.F.R. § 214.205(e)(1)-(2) ("Once USCIS deems an Application for T Nonimmigrant Status or Application for Derivative T Nonimmigrant Status bona fide, USCIS may consider the applicant for deferred action" and employment authorization); 8 C.F.R. § 214.14(d)(2) (for "[a]ll eligible petitioners who, due solely to the cap, are not granted U-1 nonimmigrant status . . . USCIS will grant deferred action [protection from removal] or parole [permission to enter the United States from abroad] . . . [and] may authorize employment for such petitioners and qualifying family members.").

In addition to regulations, DHS has also implemented formal policies protecting immigrant survivors by providing the opportunity for deferred action status, including more prompt protection for U and T visa petitioners based on a streamlined initial review of their petitions to determine if they are bona fide. *See, e.g.*, USCIS Policy Manual ("PM") vol. 3, pt. D, chap. 5.C.2 ("[a]pproved [VAWA] self-petitioners and their derivative beneficiaries may be considered for deferred action"); PM, vol. 3, pt. C, chap. 5 (describing the streamlined bona fide determination process for granting interim benefits to U visa petitioners); PM, vol. 3, pt. B, chap. 6 (describing the bona fide determination process for granting interim benefits to T visa petitioners).[2] ICE, in particular, has long maintained policies to generally refrain from pursuing civil immigration enforcement against

[2] The USCIS Policy Manual is available at https://www.uscis.gov/policy-manual.

noncitizens with pending VAWA, U visa, or T visa petitions absent a public safety threat. *See, e.g.* ICE Directive 11005.3: *Using a Victim-Centered Approach with Noncitizen Crime Victims* (Dec. 2, 2021) ("2021 Policy") (recognizing ICE's "duty to protect and assist noncitizen crime victims" as "enshrined in" VAWA and the TVPA.); *see also* Complaint ¶¶ 70-81, ECF No. 1 (detailing history of policies).

On January 30, 2025, ICE reversed course on decades of victim-centered protections, issuing the 2025 Guidance. Among other things, this policy rescinds long-standing requirements that ICE officers consider a pending petition for Survivor-based Benefits favorably and generally to refrain from civil enforcement against such petitioners – including arrest, detention, and removal – absent public safety concerns.

Instead, by encouraging "total" enforcement against "all" nominally removable noncitizens, the 2025 Guidance greenlit such enforcement as a routine matter and has led to ICE engaging in a policy and practice permitting arrest, detention, and removal of U and T visa petitioners in valid deferred action status ("De Facto Revocation Policy"). Furthermore, by directing ICE to "no longer routinely request expedited adjudications from USCIS," the 2025 Guidance led to a policy and practice of ICE denying stays of removal for U and T visa petitioners who request them, without first determining their prima facie eligibility as required by 8 U.S.C. § 1227(d) ("Blind Removal Policy").

III. LEGAL STANDARD FOR CLASS CERTIFICATION

Plaintiffs have a "categorical right" to certification if they demonstrate each of the four requirements of Rule 23(a) – commonly referred to as numerosity, commonality, typicality, and adequacy – and at least one of the requirements of Rule 23(b). *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010) A party seeking class certification must demonstrate compliance with Rule 23 by a preponderance of the evidence. *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LL*C, 31 F.4th 651, 664 (9th Cir. Apr. 8, 2022).

The focus of the Court's inquiry is not whether the Plaintiffs' claims have merit, but rather whether there is a sufficient basis to support a "reasonable judgment" that the requirements of Rule 23 have been met. *Blackie v. Barrack*, 524 F.2d 891, 900-01 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976).

IV. ARGUMENT

Each of the proposed classes meets all four requirements of Rule 23(a), and this case fits squarely within Rule 23(b)(2). Therefore, Plaintiffs respectfully request the Court certify the classes, as court have routinely done in cases involving challenges to immigration policies by noncitizens facing detention or deportation. *See, e.g.*, *Rodriguez v. Hayes*, 591 F.3d 1105, 1126 (9th Cir. 2010); *Doe,* 424 F. Supp. 3d at 1040 (certifying class of individuals in short term Customs and Border Protection custody challenging access to counsel); *L.G.M.L. v. Noem*, No. CV 25-2942 (TJK), 2025 WL 2671690, at *7 (D.D.C. Sept. 18, 2025) (certifying a class of Guatemalan children "in (and who will be in) ORR custody"); *Franco-Gonzales v. Napolitano*, No. CV 10-02211 DMG (DTB), 2011 WL 11705815, at *16 (C.D. Cal. Nov. 21, 2011) (certifying class of detained noncitizens found incompetent to represent themselves); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 366, 370 (C.D. Cal. 1982) (certifying a class of "all citizens and nationals of El Salvador eligible to apply for political asylum" who "have been or will be taken into custody by immigration officials" or who "will in the future" request asylum).

A. *The proposed classes satisfy the requirements of Rule 23(a).*

1. Numerosity: The classes are numerous that joinder is impractical.

Rule 23(a)(1) requires that the class be "so numerous that joinder is impractical." "'[I]mpracticability' does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Franco-Gonzales v. Napolitano*, WL 11705815, at *6. Thus, "although referred to as a numerosity requirement, the real inquiry under Rule 23(a)(1) . . . is whether joinder would be

impractical. A relatively small class may be certified if joinder is impractical." *Daigle v. Shell Oil Co*., 133 F.R.D. 600, 603 (D. Colo. 1990); *see also Hum v. Dericks*, 162 F.R.D. 628, 634 (D. Haw. 1995). No fixed number is required to meet the Rule 23(a)(1) requirement. *Perez-Funez v. District Director, I.N.S.,* 611 F. Supp. 990, 995 (C.D. Cal. 1984). Indeed, "[c]lasses with under twenty people have been certified." *Daigle*, 133 F.R.D. at 603; *see also Ark. Educ. Ass'n v. Bd. of Educ.*, 446 F.2d 763, 765–66 (8th Cir. 1971) (class of 20 sufficient). Accordingly, the so-called numerosity requirement is actually "based on considerations of due process, judicial economy, and the ability of claimants to institute suits." William B. Rubenstein, Newberg on Class Actions, § 3:11 (5th ed. 2014); *see also Moreno v. DFG Foods, LLC*, No. 02 C 4019, 2003 WL 21183903, at *6 (N.D. Ill. May 21, 2003).

Because the proposed classes are inherently transitory, they meet Rule 23(a)'s requirements regardless of their size at any given moment, due to the impracticability of identifying and joining future members. *See, e.g., L.G.M.L.*, 2025 WL 2671690, at *7 (certifying a class of Guatemalan children "in (and who will be in) ORR custody" at risk of unlawful summary deportation: "the class contains 'future claimants'—those who will be in ORR custody—and such classes 'generally meet the numerosity requirement' because 'counting' and 'joining' those class members is 'impractical[ ].'") (quoting *J.D. v. Azar*, 925 F.3d 1291, 1322 (D.C. Cir. 2019) (citation omitted)).

As numerous courts have held, "[w]here the class includes unnamed, unknown future members, joinder of such unknown individuals is impracticable and the numerosity requirement is therefore met, regardless of class size." *Nat'l Ass'n of Radiation Survivors v. Walters*, 111 F.R.D. 595, 599 (N.D. Cal. 1986) (internal quotations omitted); *see also Orantes-Hernandez*, 541 F. Supp. at 370 (finding joinder impractical where "[t]he parameters of the class change on a daily basis as Salvadorans are apprehended and removed from the United States"); *Ellis*

v. Naval Air Rework Facility, 404 F. Supp. 391, 396 (N.D. Cal. 1975) ("Since there is no way now of determining how many of these future plaintiffs there may be, their joinder is impracticable."). Thus, because "the proposed class includes unknown and unnamed future members," the record amply supports the Court "making a conclusion that joinder is impracticable. . . ." *Int'l Molders' & Allied Workers' Loc. Union No. 164 v. Nelson*, 102 F.R.D. 457, 461 (N.D. Cal. 1983).

Further, "non-numerical considerations like the fluidity of [ICE] custody, the dispersion of class members across the country, and [plaintiffs'] limited resources suggest that joinder is impracticable." *L.G.M.L.*, 2025 WL 2671690, at *7.

Here, the proposed classes readily meet these standards, as they are all inherently transitory, which is exacerbated by the fact that Defendants often rush individuals they target through the deportation process, as the experiences of Lupe A. and Carmen F. illustrate. *See* Declaration of Lupe A. ("Lupe Decl.") ¶¶ 28-29 (stating ICE removed her in less than two days); Declaration of Carmen F. ("Carmen Decl.") ¶¶ 29, 42 (same, in less than two months).

Regarding the Pending Petition Class, USCIS data indicates that there were over 160,000 VAWA self-petitions pending in 2024,[3] over 395,000 U visa principal and derivative petitions pending in 2024,[4] and over 23,000 principal and derivative T visa petitions received in 2024.[5] An unknown but certainly large number of these petitioners will be arrested, detained, and deported under the 2025 Guidance. Indeed, the number of putative class members who have already been detained or

[3] USCIS, *Number of Form I-360 Petition for Amerasian, Widow(er), or Special Immigrant, With a Classification of VAWA Self-Petitioner* (Fiscal Year 2010-2025), available at https://www.uscis.gov/sites/default/files/document/data/i360_vawa_performancedata_fy2025_q1.xlsx.

[4] USCIS, *Number of Form I-918 Petitions for U Nonimmigrant Status* (Fiscal Years 2010-2025), available at https://www.uscis.gov/sites/default/files/document/data/quarterly_all_forms_fy2024_q4.xlsx.

[5] USCIS Annual Report to Congress, *Fiscal Year 2024: Immigration Applications and Petitions Made by Victims of Abuse*, (July 1, 2025) available at https://www.uscis.gov/sites/default/files/document/data/fy24_immigration_applications_made_by_victims_of_abuse.pdf.

deported is rapidly growing. National reporting has identified a trend of increased targeting of U, T, and VAWA petitioners, which was once extremely uncommon.[6] National Public Radio reported that it "spoke with immigration attorneys in Missouri, Florida and Pennsylvania who are already seeing the impact this policy has on clients . . . Everybody's rightfully concerned."[7] NBC News reported that "other administrations didn't take coercive measures against victims applying for U visas, but that has changed with the second Trump administration. Now, if someone has a visa pending and even been given a work permit notification, like Mendoza Méndez, [his attorney told NBC that] 'it doesn't really matter because these people are also being arrested and detained.'"[8] Thus, based on the 2025 Guidance's policy of "total" enforcement against "all" allegedly removable noncitizens, there will certainly be sufficiently numerous petitioners for VAWA, U visa, and T visa relief who ICE seeks to apprehend to satisfy the numerosity requirement of the proposed Pending Petition Class.

Regarding the Deferred Action Class, without the benefit of discovery, Plaintiffs can already provide evidence of approximately 25 individuals who ICE has detained or deported while in authorized deferred action status, just in the first

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[6] Zane Irwin, *Authorities detain migrants protected by program that offers help to victims of crime*, NPR (June 9, 2025), available at https://www.npr.org/2025/06/09/nx-s1-5409081/authorities-detain-migrants-protected-by-program-that-offers-help-to-victims-of-crime;

[7] *Id*.

[8] Albinson Linares, *Immigrants who are crime victims and waiting for visas now face deportation*, NBC NEWS (Aug. 7, 2025), https://www.nbcnews.com/news/latino/immigrants-u-visas-deportation-new-trump-rules-ice-rcna223480; *see also* Patrick Lohmann, *NM immigrant lawyer says deportation fear widespread among NM kids, parents, crime victims*, SOURCENM (October 14, 2025); Keyris Manzanares, *ICE detains lawfully present [based on pending U visa] Richmond father as son waits for school bus*, VPM NEWS (October 2, 2025), https://www.vpm.org/news/2025-10-02/silviano-mora-vera-ice-u-nonimmigrant-visa-farmville-riverside; Travis Gettys, *ICE threatens to reunite woman with abusive ex she helped cops arrest*, RAW STORY (October 13, 2025), https://www.rawstory.com/ice-2674179271/; Victoria Elena Valenzuela, *'Will I be detained?' Immigrants fear ICE arrest if they report domestic violence*, USA TODAY (June 22, 2025), https://www.usatoday.com/story/news/nation/2025/06/22/immigrant-domestic-violence-survivors-ice-deportation/84246931007/.

few months since the 2025 Guidance unleashed the De Facto Revocation Policy. *See* Ex. 15, Declaration of Christine Hoffman, October 8, 2025 ¶ 17g-h ("Hoffman Decl.") (OPLA filed motions to recalendar administratively closed removal proceedings of three U visa clients with deferred action based on a bona fide determination ("BFD")); Ex. 16, Declaration of Lucy Egberg, October 9, 2025 ¶ 8 (office has conferred with multiple individuals deported with U visa BFD deferred action); Ex. 17, Declaration of Emma Dempster-Greenbaum, October 21, 2025 ¶ 8 (U visa BFD client with deferred action detained); Ex. 18, Declaration of Claire Fawcett, October 22, 2025 ¶¶ 17-18 ("Fawcett Decl.") (client with T visa BFD in proceedings; two clients with U visa BFD deferred action detained); Ex. 19, Declaration of Jasmine McGee, October 23, 2025 ¶ 14 ("McGee Decl.") (client with deferred action detained); Ex. 20, Declaration of Nerea Woods, October 24, 2025 ¶¶ 7-8 (client with U visa BFD deferred action detained); Ex. 21, Declaration of Magdalena Metelska, October 24, 2025 ¶¶ 13-14 ("Metelska Decl.") (same); Ex. 22, Declaration of Christina Corbaci, October 24, 2025 ¶¶ 5-7 ("Corbaci Decl.") (same); Ex. 23, Declaration of Cristina Velez, October 17, 2025 ¶ 29 (noting increase in petitioners filing habeas petitions for detained U, T, and VAWA petitioners). This includes a growing number of habeas petitions involving the detention of putative class members. *See, e.g., Ramirez Lopez v. Trump*, Case No. 1:25-cv-4826 (S.D.N.Y. 2025); *Ramos Paz v. Moniz,* Case No. 25-12715 (D. Mass. 2025); *Tran v. LaRose*, Case No. 3:25-cv-02366 (S.D. Cal. 2025); *Hernandez Hernandez v. U.S.B.P.*, Case No. 3:25-cv-05842 (W.D. Wash. 2025); *Aguilar Gama v. Bondi*, No. 2:25-CV-01925-TL, 2025 WL 2822264 (W.D. Wash. Oct. 4, 2025); *Sepulveda Ayala v. Bondi*, No. 2:25-CV-01063-JNW-TLF, 2025 WL 2084400 (W.D. Wash. July 24, 2025); *Velasco Gomez v. Scott*, No. 2:25-CV-00522-JLR-BAT, 2025 WL 1382855 (W.D. Wash. Apr. 29, 2025); *Maldonado v. Noem*, 2025 WL 1593133 (S.D. Tex. June 5, 2025). The declarations and cases cited herein were largely identified through a sampling of immigration attorneys,

suggesting there are likely many more unidentified class members. Given the focus of the 2025 Guidance on "total" enforcement, there will certainly be more to come.

Regarding the Stay of Removal Class, ICE states explicitly in the 2025 Guidance that it will no longer "no longer routinely request expedited adjudications from USCIS" when it engages in immigration enforcement, except when "it is in ICE's best interests." 2025 Guidance at 2. Attorneys report increasing numbers of U and T visa petitioners detained or deported while their petitions remain pending. Hoffman Decl. ¶ 17f (client deported with pending U visa petition); Fawcett Decl. ¶ 18 (ongoing removal proceedings for petitioners with pending T petitions); Corbaci Decl. ¶ 9 (ICE denied a stay of removal for a T visa petitioner); Metelska Decl. ¶ 15 (ICE denied stay of removal and expedited USCIS review for a VAWA petitioner; ICE refused to permit time for USCIS to conduct prima facie review of a client's U visa petition). For the same reasons identified above, that number will certainly grow: as Defendants continue to target individuals with orders of removal, petitioners for Survivor-based Benefits will of course be among them and will request stays of those removal orders because Congress has explicitly authorized them to do so. *See* 8 U.S.C. § 1227(d)(1).

Accordingly, the proposed classes satisfy the requirements of Rule 23(a)(1).

2. Commonality: There are questions of law and fact common to each class.

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." The proposed classes present classic cases of commonality, because each challenges a single set of policies applied equally to all class members. Fed. R. Civ. P. 23(a)(2). "[P]laintiffs' claims must depend upon a common contention, such that determination of [their] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014) (internal citations omitted) (cleaned up). Plaintiffs "need not show, however, that every question in the case, or even a preponderance of questions, is capable of class wide resolution. So long as there is even a single

common question, a would-be class can satisfy the commonality requirement." *Id.* The commonality requirement "has been construed permissively," *Preap v. Johnson*, 303 F.R.D. 566, 585 (N.D. Cal. 2014), particularly in a civil rights suit like this one, in which "the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001). This case meets that liberal standard; there are questions of law *and* fact common to the class.

The Pending Petition Class challenges the legality of the 2025 Guidance. All members of the Petition Pending Class are equally subject to the 2025 Guidance. Common question of law or fact exist as to all class members, including but not limited to the following: whether ICE considered the unique vulnerabilities of class members prior to issuing the 2025 Guidance; whether ICE decision makers considered prior findings made by their predecessors in ICE, colleagues in USCIS, and Congress prior to issuing the 2025 Guidance; whether ICE considered class members' reliance interests prior to issuing the 2025 Guidance; whether ICE engaged in reasoned decision-making or adequately justified its reversal of decades of consistent practice when issuing the 2025 Guidance; and whether the 2025 Guidance is arbitrary, capricious, or contrary to law under the APA.

The Deferred Action Class challenges Defendants' De Facto Revocation policy. Common question of law or fact exist as to all Class members, including but not limited to the following: whether Defendants have a policy and practice of unilaterally revoking deferred action granted by USCIS in connection with a U or T visa petition without providing notice and an opportunity to be heard; whether the De Facto Revocation Policy is arbitrary, capricious, or contrary to law under the APA; whether the De Facto Revocation Policy violates Defendants' own existing policies in violation of the *Accardi* doctrine; and whether the De Facto Revocation Policy violates Subclass members' Fifth Amendment rights to a

process before revocation of deferred action and to be free from detention until a constitutionally adequate revocation process is complete.

The Stay of Removal Class challenges Defendants' Blind Removal Policy. Common question of law or fact exist as to all Class members, including but not limited to the following: whether Defendants have a policy and practice of removing people with pending U or T visa petitions who have requested a stay of removal without first obtaining a prima facie determination regarding their pending petitions; and whether the Blind Removal Policy violates 8 U.S.C. § 1227(d)(1) and the APA.

The possibility that some Deferred Action Class members might obtain release in a pre-deprivation hearing while others do not, or that some Stay of Removal Class members may secure a stay while others do not, is irrelevant. The question at class certification is not whether there are no facts unique to each Plaintiff, but rather whether one answer would satisfy the class wide claims. *Wal-Mart Stores, Inc. v Dukes*, 564 U.S. 338, 350 (2011) (the critical issue for class certification "is not the raising of common 'questions' . . . but, rather the capacity of a class wide proceeding to generate common answers apt to drive the resolution of the litigation."). Individual differences in Plaintiffs' do not defeat commonality because their injuries would be redressed by a single set of orders from the Court: that the 2025 Guidance's rescission of protections was arbitrary and capricious and contrary to law; that due process, the APA, and agency policy require a pre-deprivation hearing before individuals with deferred action status may have that status revoked or be detained; that prima facie review and consideration for a stay is mandatory. *See e.g.*, *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012) ("Where the circumstances of each particular class member vary but retain a common core of factual or legal issues with the rest of the class, commonality exists.") (internal quotation marks omitted); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 370 (C.D. Cal. 1982) (granting certification in challenge

to common government practices in asylum cases, even though the outcome of individual asylum cases would depend on individual class members' varying entitlement to relief); *Walters v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998) ("Differences among the class members with respect to the merits of their actual document fraud cases, however, are simply insufficient to defeat the propriety of class certification. What makes the plaintiffs' claims suitable for a class action is the common allegation that the INS's procedures [are] insufficient.").

Thus, no facts unique to individual Plaintiffs impact the common questions of law and fact raised by the challenged policies and practices. Nor do Plaintiffs ask the Court to direct a particular outcome in their cases in its final judgment. They simply seek classwide resolution of the common questions of law and fact. This action therefore satisfies the commonality requirement of Rule 23(a)(2).

3. Typicality: The class representatives' claims are typical of the class.

Rule 23(a)(3) requires that the claims of the named plaintiffs be "typical of the claims . . . of the class." Under this permissive standard, "representative claims are 'typical' if they are reasonably coextensive with those of the absent class members." *Parsons*, 754 F.3d at 685. "The test of typicality is 'whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Id.* Here, the putative class's claims are "fairly encompassed by the named plaintiff's claims." *General Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982).

All Plaintiffs seeking to represent the Pending Petition Class have been impacted by the 2025 Guidance in ways that are typical of other class members, as they have been subject to immigration enforcement without regard for their pending petitions, when prior policy would consider their pending petitions as a positive factor. *See* Oct. 27 Kahn Decl. Ex. (A)-(T). This meets the standard for typicality. Their claims are typical of Pending Petition Class because they challenge the 2025

Guidance, which Defendants apply equally to all class members, without regard for the individual facts of their cases. Where class members "declare[] that [they are] being exposed, like all other members of the putative class, to a substantial risk of serious harm by the challenged [] policies and practices," they allege "the same or a similar injury" (risk of serious harm); "that this injury is a result of a course of conduct that is not unique to any of them;" and "that the injury follows from the course of conduct at the center of the class claims." *Parsons*, 754 F.3d at 685. Setting aside the 2025 Guidance, which permits and condones the course of conduct from which class members' injury flows, would protect all class members from injury.

In a similar case, when a putative class representative challenged the Executive Order on which the 2025 Guidance relies, the court certified the class, finding that "members of [the] class, including the proposed class representatives, face the same threat of injury: (1) loss of the protections afforded to [noncitizens] under" previous policies providing an opportunity for class members to apply for asylum and CAT protections. *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Noem*, No. CV 25-306 (RDM), 2025 WL 1825431, at *46 (D.D.C. July 2, 2025). Here, too, plaintiffs challenge the "loss of the protections afforded" to immigrant-survivors under the policies rescinded by the 2025 Guidance. *Id*.

Next, the claims of Plaintiffs Lupe, Camila, Paulo, and Ms. Merlos are typical of the Deferred Action Class, which challenges the 2025 Guidance and the De Facto Revocation Policy. Each had deferred action in their U visa cases, but ICE arrested and detained them without a pre-deprivation hearing to determine whether changed circumstances warranted revocation of their deferred action or whether their detention was necessary or justified. *See* Oct. 27 Kahn Decl. Ex. (A)-(D), (K), (T). All members of the Deferred Action Class have the same or similar injury. Regardless of whether such deferred action was conferred pursuant to a U or T visa, each class member's grant of deferred action followed an application process by

USCIS under which USCIS determined they satisfied the standards for deferred action, including passing a background check and being deemed not a public safety risk. *See* Oct. 27 Kahn Decl. Ex. (V)-(W) (PM vol. 3, pt. B, chap. 6; PM vol 3, pt. C, chap 5). Thus, their claims apply equally to all class members, without regard for the individual facts of their cases. The Court need not "focus on outcomes" of the De Facto Revocation Policy's implementation against individual plaintiffs, because they "are irrelevant to the common questions that Plaintiffs raise about the processes that they say the [INA] and the Constitution require." *L.G.M.L,.* 2025 WL 2671690 at *8.

Finally, the claims of Plaintiffs Carmen and Ms. Ruano are typical of the Stay of Removal Class because they challenge the Blind Removal Policy, which Defendants apply equally to all class members, without regard for the individual facts of their cases. Both Carmen and Ms. Ruano requested a stay so that their petition could receive prima facie review, and ICE denied each request based on its policy that 8 U.S.C. § 1227(d)(1) does not mandate such a determination. *See* Oct. 27 Kahn Decl. Ex. (E)-(J), (O)-(Q). That policy and practice is universally applied to all class members, even if ICE may occasionally request prima facie determinations in some cases when it is "in ICE's interest." 2025 Guidance at 3.

Thus, the individual Plaintiffs' claims are typical of putative class members' claims. Therefore, Rule 23(a)'s typicality requirement is met.

4. Plaintiffs will fairly and adequately represent the class.

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." The "class representatives satisfy the adequacy requirement depends on 'the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive.'" *Walters*, 145 F.3d at 1046 (citations omitted).

Plaintiffs' interests are not antagonistic to one another's, and class counsel has extensive experience litigating class actions on behalf of immigrants, including APA claims. *Lynch v. Rank*, 604 F. Supp. 30, 37 (N.D. Cal.), *aff'd*, 747 F.2d 528 (9th Cir. 1984), *opinion amended on reh'g*, 763 F.2d 1098 (9th Cir. 1985) (finding Rule 23(a)(4) satisfied where "No class member's position is antagonistic to another's. Plaintiffs' counsel, moreover, are experienced in class action litigation and in [relevant] law.").

Plaintiffs join this action and seek to represent their respective classes because they seek the same remedy for themselves that they seek for those classes: for the Pending Petition Class, reinstatement of policies consistent with Congress' intent to protect immigrant survivors; for the Deferred Action Class, due process and adherence to agency policy before revocation of deferred action and detention of individuals with deferred action; and, for the Stay of Removal Class, the opportunity to have their petitions reviewed and considered before being removed. Each named plaintiff has specifically stated they wish to help other VAWA, U, and T visa petitioners similarly suffering. *See, e.g.*, Ex. 2, Declaration of Lupe A., October 10, 2025 ("Lupe Decl.") ¶ 31; Ex. 3, Declaration of Camila B., October 13, 2025 ("Camila Decl.") ¶ 36; Ex. 4, Declaration of Paulo C., October 13, 2025 ("Paulo Decl.") ¶ 44; Ex. 5, Declaration of Kenia J. Merlos ("Merlos Decl.") ¶ 54; Ex. 6, Declaration of Luna E., October 9, 2025 ("Luna Decl.") ¶ 45; Ex. 7, Declaration of Carmen F., October 15, 2025 ("Carmen Decl.") ¶ 52; Ex. 8, Declaration of Yessenia Ruano, October 3, 2025 ("Ruano Decl.") ¶¶ 14, 53; Ex. 9, Declaration of Daniel H., October, 2025 ("Daniel Decl.") ¶ 26. Plaintiffs seek no money damages and there is no adverse interest or conflict with putative class members related to the claims in this case.

Plaintiffs' counsel also satisfy the Rule 23(a)(4) adequacy requirement. Class counsel are attorneys from the Center for Human Rights and Constitutional Law, Public Counsel, La Raza Centro Legal, and the Coalition for Humane Immigrant

Rights ("CHIRLA"). All are non-profit organizations that regularly engage in class action litigation on immigrants' rights issues, and several of the specific counsel engaged in this matter have been appointed a number of times to represent large classes of noncitizens. *See* Ex. 1, Declaration of Bardis Vakili ¶ 4 (October 20, 2025) ("Vakili Dec."); Ex. 12, Declaration of Rebecca Brown ¶P 5, 10 (October 16, 2025); Ex. 13 Declaration of Jordan Weiner ¶¶ 3-4 (October 16, 2025); Ex. 14 Declaration of Carl Bergquist ¶¶ 3-4. Class counsel has successfully litigated claims challenging DHS policies under the APA and Constitution. Vakili Dec. ¶¶ 5-6. Further, class counsel collectively have extensive experience representing immigrants and survivors and have deep knowledge of survivor-based benefits and the impacted community. Vakili Dec. ¶¶ 4-5; Brown Dec. ¶¶ 7-9, 12-16. For these reasons, class counsel are more than qualified to represent the class under Rule 23(a)(4).

B. *The proposed class satisfies Rule 23(b)(2).*

Rule 23(b)(2) applies "when a single injunction or declaratory judgment would provide relief to each member of the class." *Parsons*, 754 F.3d at 687–88. The requirements of 23(b)(2) are "unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole." *Id*. This "does not require a finding that all members of the class have suffered identical injuries." *Id*.

This action warrants certification because, as to each class, Defendants have "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). "[I]t is sufficient to meet the requirements of Rule 23(b)(2) that class members complain of a pattern or practice that is generally applicable to the class as a whole." *Rodriguez*, 591 F.3d at 1125 (citation and quotation marks omitted). Indeed, Rule 23(b)(2) "was adopted in order to permit the prosecution of civil rights actions." *Walters,* 145 F.3d at 1047; *see*

also Parsons, 754 F.3d at 686 (noting "the primary role of this provision has always been the certification of civil rights class actions."). It applies specifically to class actions involving immigration detention. *Rodriguez*, 591 F.3d at1126 (finding that class of non-citizens detained during immigration proceedings met Rule 23(b)(2) because "all class members[] [sought] the exact same relief as a matter of statutory or, in the alternative, constitutional right").

Here, Plaintiffs have "establish[ed] systemic policies and practices that place every" one of them in harm's way. *Parsons*, 754 F.3d at 689. They seek "uniform injunctive [and] declaratory relief from policies or practices" of denying adjudication for the waiting list "that are generally applicable to the class as a whole."

C. *Notice to the Proposed Class.*

Because this is a proposed Rule 23(b)(2) class action, should the Court certify the classes, it "may direct appropriate notice to the class[es]." Fed. R. Civ. P. 23(c)(2). Plaintiffs' counsel is part of a network of immigration attorneys and advocates who represent the interests of immigrant survivors. Vakili Decl. ¶ 9. Plaintiffs contemplate providing notice to the classes by distributing such notice to relevant listservs of attorneys and advocates across the United States and posting on the Public Counsel, La Raza Centro Legal, and Center for Human Rights & Constitutional Law websites. *Carlin v. DairyAmerica, Inc*., 328 F.R.D. 393, 406 (E.D. Cal. 2018) (mailing notice and publishing "notice on a dedicated website" sufficient). Plaintiffs' counsel also contemplate written notice in multiple languages may be posted in ICE detention centers and will meet and confer with Defendants on the subject at the appropriate time.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court certify the proposed classes and appoint (1) Plaintiffs Lupe, Camila, Paulo, Ms. Merlos, Carmen, Ms. Ruano, Daniel, and Luna as Class Representatives for the

Pending Petition Class, (2) Plaintiffs Lupe, Camila, Paulo, and Ms. Merlos as Class Representatives for the Deferred Action Class; (3) Plaintiffs Carmen and Ms. Ruano as Class Representatives for the Stay of Removal Class; and (4) appoint the Center for Human Rights and Constitutional Law, Public Counsel, La Raza Centro Legal, and Coalition for Humane Immigrant Rights as Class Counsel.

Dated: October 29, 2025

Respectfully submitted,

/s/ Bardis Vakili
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