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12
13 **UNITED STATES DISTRICT COURT**
14 **SOUTHERN DISTRICT OF CALIFORNIA**

15 Chancely FANFAN, María
16 MALDONADO CRUZ, and Elesban
ANGEL MENDEZ,

17 *Plaintiff-Petitioners,*

18 v.

19 Kristi NOEM, Secretary of Homeland
20 Security; Christopher J. LAROSE,
21 Warden, Otay Mesa Detention Center;
Daniel A BRIGHTMAN, Field Office
22 Director, San Diego Field Office, United
States Immigration and Customs
23 Enforcement; Todd M. LYONS, Acting
24 Director, United States Immigration and
25 Customs Enforcement; Pamela Jo BONDI,
26 Attorney General *in their official*
capacities,

27 *Defendant-Respondents.*
28

Case No.: 25-cv-3291-DMS-BJW

**PLAINTIFF-PETITIONERS’
NOTICE OF MOTION AND
MOTION FOR PROVISIONAL
CLASS CERTIFICATION**

Date and Time: April 17, 2026,
1:30pm
Before: Honorable Dana M. Sabraw

NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION

To all Parties and their counsel of record:

PLEASE TAKE NOTICE that on April 17, 2026, Plaintiff-Petitioners 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 class:

Noncitizens with pending 8 U.S.C. 1229a removal proceedings who have been or will be re-detained in the Southern District of California while appearing at an ICE “check-in” or appointment; who DHS previously released from custody; and for whom ICE has not conducted a pre-deprivation hearing to determine whether material changes in circumstances justify re-detention.

The proposed class representatives are Plaintiff-Petitioners Chancely Fanfan, María Maldonado Cruz, and Elesban Angel Mendez. Plaintiff-Petitioners additionally seek to have the Center for Immigration Law and Policy at UCLA School of Law and the Center for Human Rights and Constitutional Law provisionally appointed as class counsel.

This Motion is based on the accompanying Memorandum of Points and Authorities and exhibits, and upon all other matters of record herein.

Dated: February 25, 2025

Respectfully submitted,

/s/ Monika Y. Langarica

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MEMORANDUM OF POINTS AND AUTHORITIES

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INTRODUCTION

This case arises from Defendant-Respondents (Defendants)’ practice and policy of luring individuals who the Department of Homeland Security (DHS) previously released from custody to Immigration and Customs Enforcement (ICE) appointments and re-detaining them without providing pre-deprivation hearings or otherwise determining on an individualized basis whether material changes in circumstances justify their re-detention. The experiences of Plaintiff-Petitioners (Plaintiffs) Chancelly Fanfan, María Maldonado Cruz, and Elesban Angel Mendez illustrate the devastating effects of Defendants’ challenged conduct: unlawful detention, agonizing family separation, housing and financial instability for families—including U.S. citizen children—on the outside, and other acute harms, including untreated medical needs for those left to languish for months in Defendants’ custody.

This Court previously granted Plaintiffs’ Motion for Temporary Restraining Order (TRO Motion), ECF 3, ordering their immediate release based on a finding that their re-detention likely violates Procedural Due Process, ECF 13. Because the practice and policy that Plaintiffs challenge in this case affects numerous similarly situated individuals in the Southern District of California, Plaintiffs now move for Provisional Class Certification.¹

The class Plaintiffs seek to certify and represent is defined as follows:

Noncitizens with pending 8 U.S.C. 1229a removal proceedings who have been or will be re-detained in the Southern District of California while appearing at an ICE “check-in” or appointment; who DHS previously released from custody; and for whom ICE has not conducted a pre-deprivation hearing to determine whether material changes in circumstances justify re-detention.

Plaintiffs readily meet the requirements for class certification. Plaintiffs satisfy Federal Rule of Civil Procedure 23(a) where the number of people subjected

¹ Plaintiffs have concurrently filed a Class-Wide Motion for Order Postponing Effective Date of Agency Action under 5 U.S.C 705.

1 to Defendants’ unlawful conduct is so high that joinder of their claims is
2 impracticable. This is especially true in light of reasonable inferences this Court is
3 permitted to draw based on the escalation of immigration enforcement in the region.
4 Indeed, without the benefit of discovery, Plaintiffs have already submitted evidence
5 of at least twenty-four putative class members, which is almost certainly an
6 undercount. Plaintiffs’ additional evidence indicates volunteers have documented at
7 least 212 instances of individuals being detained at ICE check-ins or appointments
8 in San Diego, and the class necessarily includes unknown future class members
9 because Defendants’ practice is ongoing. Additionally, there are common questions
10 of law and fact that will decide the claims of all class members—including whether
11 Defendants offered a sufficiently reasoned explanation for the new re-detention
12 policy and whether it comports with Procedural Due Process; Plaintiffs’ claims are
13 typical of those of the class; and Plaintiffs and Plaintiffs’ counsel have no conflicts
14 with the class and will otherwise adequately represent it. Moreover, this case meets
15 the requirements of Rule 23(b)(2) because Defendants have “acted or refused to act
16 on grounds that apply generally to the class,” such that interim and final relief under
17 the Administrative Procedure Act (APA) as well as declaratory relief will remedy
18 the violations for the entire class. Fed. R. Civ. P. 23(b)(2).

19 Accordingly, this Court should certify the class, as courts have routinely done
20 in cases involving challenges to immigration policies by noncitizens facing detention
21 or deportation, including in cases materially indistinguishable from this one. *See*
22 *Garro Pinchi v. Noem*, No. 25-CV-05632-PCP, 2025 WL 3691938 (N.D. Cal. Dec.
23 19, 2025) (certifying class of noncitizens challenging ICE re-detention policy within
24 the San Francisco Area of Responsibility); *see also, e.g., Saravia v. Sessions*, 280 F.
25 Supp. 3d 1168 (N.D. Cal. 2017), *aff’d sub nom. Saravia for A.H. v. Sessions*, 905
26 F.3d 1137 (9th Cir. 2018) (certifying class of noncitizen children who were re-
27 detained by DHS after being previously released).

STATEMENT OF FACTS

I. Procedural History

On November 25, 2025, Plaintiffs filed a Petition for Writ of Habeas Corpus and Class Complaint (Petition/Complaint). ECF 1. On November 26, Plaintiffs filed a TRO Motion, seeking their immediate release from Defendants' custody. ECF 3. Plaintiffs argued their unlawful re-detention violated the Due Process Clause of the Fifth Amendment, the Immigration and Nationality Act, and the APA, where they had each been previously released from DHS custody and where Defendants did not provide pre-deprivation hearings to assess whether material changes in circumstances justify their re-detention. *Id.* Each Plaintiff was in ongoing 8 U.S.C. 1229a removal proceedings at the time of their re-detention. On December 12, this Court granted the TRO Motion, finding Plaintiffs' re-detentions likely violated Procedural Due Process, and ordered their immediate release. ECF 13.

II. Class Treatment is Warranted Where Defendants Continue to Unlawfully Re-Detain Individuals Situated Similarly to Plaintiffs

As Plaintiffs explained in the TRO Motion, their experiences exemplify ICE's recent enforcement tactics in San Diego that target people doing exactly what the government has asked of them: appear for immigration court hearings and ICE appointments. Specifically, in the late spring and summer of last year, ICE began arresting people who showed up for their immigration court hearings in downtown San Diego.² After significant public outcry and court orders limiting this practice,³ ICE's San Diego Field Office developed a work-around. The agency continued to prey on people who were doing as they were told, but shifted towards targeting those

² Sofia Mejias-Pascoe, *Ice takes people into custody outside court in San Diego*, INews Source (May 22, 2025), <https://inewssource.org/2025/05/22/ice-san-diego-immigration-court/>

³ See, e.g., *Make the Rd. New York v. Noem*, No. 25-CV-190 (JMC), 2025 WL 2494908 (D.D.C. Aug. 29, 2025).

1 appearing for appointments to which ICE summoned them. *See, e.g.*, Declaration of
2 Luis Gonzalez (Gonzalez Decl.) ¶ 6; Declaration of Jessica Ziling Ho (Ho Decl.) ¶
3 7.⁴ Since about October 2025, ICE began issuing letters instructing individuals,
4 including those with ongoing removal proceedings, to appear for “check-ins” or
5 “interviews” at ICE offices on the second floor of the same federal building where
6 individuals appear for immigration court.⁵ ICE hands some individuals these letters
7 at their immigration court hearings, instructing them to appear for a check-in on the
8 second floor immediately after their hearing, and it sends others the letters by mail.⁶
9 At the check-ins, ICE often arrests and detains them pursuant to a policy of re-
10 detaining individuals it previously released, without conducting an individualized
11 assessment to determine whether material changes in circumstances related to flight
12 risk or danger justify re-detention.⁷ The New York Times reported that in one two-
13 week period in October 2025, “more than 120 people were seen being detained after
14 attending check-ins with immigration officials” on the second floor of 880 Front
15 Street.⁸

16 In December 2025, weeks after Plaintiffs initiated this case, ICE expanded its

17 ⁴ Kate Morrissey, *ICE in San Diego has a new policy- detain everyone*, Daylight San
18 Diego (Oct. 10, 2025), [https://www.daylightsandiego.org/ice-in-san-diego-has-a-](https://www.daylightsandiego.org/ice-in-san-diego-has-a-new-policy-detain-everyone/)
19 [new-policy-detain-everyone/](https://www.daylightsandiego.org/ice-in-san-diego-has-a-new-policy-detain-everyone/); Lillian Perlmutter, *Asylum-seekers now held for days-*
20 *in a downtown San Diego basement*, Times of San Diego (Oct. 20, 2025),
21 [https://timesofsandiego.com/politics/2025/10/20/asylum-seekers-held-basement-](https://timesofsandiego.com/politics/2025/10/20/asylum-seekers-held-basement-san-diego-ice/)
[san-diego-ice/](https://timesofsandiego.com/politics/2025/10/20/asylum-seekers-held-basement-san-diego-ice/)

22 ⁵ *See Id.*

23 ⁶ *Id.*

24 ⁷ *See id.*

25 ⁸ Jesus Jimenez, *Emotional Glimpses of an Immigration Crackdown in a San Diego*
26 *Courthouse*, New York Times (Nov. 8, 2025),
27 [https://www.nytimes.com/card/2025/11/08/us/immigration-ice-san-diego-](https://www.nytimes.com/card/2025/11/08/us/immigration-ice-san-diego-courthouse)
28 [courthouse](https://www.nytimes.com/card/2025/11/08/us/immigration-ice-san-diego-courthouse)

1 tactics yet again by targeting even more people in San Diego who are actively
2 complying with the conditions of their previous releases: those showing up to ICE
3 appointments with the agency's Intensive Supervision Appearance Program (ISAP),
4 a supervised release program under which ICE often requires participants to wear
5 ankle monitors or other tracking devices, but who are not in violation of the
6 program's requirements.⁹ Attorneys and volunteers documented more than 15 arrests
7 at ISAP appointments over a span of two days in December.¹⁰

8 Plaintiffs have submitted evidence indicating that at least 212 individuals have
9 been subject to detention at ICE check-ins and appointments within the Southern
10 District of California, of which at least twenty-four are likely putative class
11 members. *See* Argument Section I(A), *infra*.

12 Once in ICE detention, most of these individuals have no administrative
13 recourse to seek release due to recent changes to longstanding law and policy that
14 misclassifies them as ineligible for bond hearings before an immigration judge. *See*
15 *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (B.I.A. 2025).¹¹ In addition to being

16 ⁹ Kate Morrissey, *ICE in San Diego is arresting everyone who shows up for*
17 *contractor check-in, attorneys say*, Daylight San Diego (Dec. 18, 2025),
18 [https://www.daylightsandiego.org/ice-in-san-diego-is-arresting-everyone-who-](https://www.daylightsandiego.org/ice-in-san-diego-is-arresting-everyone-who-shows-up-for-contractor-check-in-attorneys-say/)
19 [shows-up-for-contractor-check-in-attorneys-say/](https://www.daylightsandiego.org/ice-in-san-diego-is-arresting-everyone-who-shows-up-for-contractor-check-in-attorneys-say/)

20 ¹⁰ *Id.*

21 ¹¹ On November 25, 2025, the U.S. District Court for the Central District of
22 California issued an order in *Maldonado Bautista v. Santacruz*, certifying a
23 nationwide class of noncitizens who are in immigration detention and being denied
24 access to a bond hearing based on the government's allegation that they entered the
25 United States without admission or inspection, and the Court granted declaratory
26 relief to the entire class, holding that the government is unlawfully subjecting them
27 to mandatory detention and that class members are eligible for release on bond under
28 the immigration laws. 5:25-cv-01873-SSS-BFM, 2025 WL 3288403 (C.D. Cal. Nov.
25, 2025). However, the Executive Office for Immigration Review, which houses
immigration courts, issued nationwide guidance instructing immigration judges to
continue following *Matter of Yajure Hurtado* and stating that the declaratory relief

(Footnote continues on next page.)

1 separated from their families and communities, individuals are also subjected to
2 deplorable conditions of detention—first in basement rooms of the federal building
3 at 880 Front Street unsuited for overnight detention, and later at immigration jails
4 like the Otay Mesa Detention Center.¹² The families of detained individuals agonize
5 on the outside not knowing when or if they will see their loved ones again or how
6 they will provide for their families.¹³ Taken together, these policies and practices
7 amount to a trap that punishes people for complying with the requirements of their
8 immigration cases. ICE lures them to unassuming offices where agents seek to detain
9 them quietly and outside of the public eye, without individualized assessment of
10 whether they are a danger to the community or a flight risk, before subjecting them
11 to indefinite detention under harsh, prison-like conditions.

12 Plaintiffs now move to represent a class of similarly situated individuals to
13 challenge on a class-wide basis Defendants’ practice of unlawfully re-detaining
14 individuals in ongoing removal proceedings, who DHS previously released from
15 custody, without conducting the proper pre-deprivation procedures to ensure their
16 re-detention is justified.

17 **STANDARD OF REVIEW**

18 Courts may certify classes pursuant to Rule 23(a) where plaintiffs establish
19

20
21 order is not binding, so the *Maldonado Bautista* order has not had a consistent
22 practical effect on the ability of detained individuals to seek release. *See Practice*
23 *Alert: EOIR Issues Nationwide Guidance on Maldonado Bautista*, American
24 Immigration Lawyers’ Association (Jan. 16, 2026),
25 [https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-](https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista)
26 [maldonado-bautista](https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista). The government has additionally filed a notice of appeal in
27 *Maldonado Bautista* and maintains the position that class members are not entitled
28 to bond hearings. *Maldonado Bautista v. DHS*, No. 25-7958 (9th Cir. 2026).

27 ¹²*See, e.g.,* Perlmutter, *supra* note 4.

28 ¹³*See, e.g.,* Morrissey, *supra* note 4.

that (1) the class is so numerous that joinder of all members is impracticable; (2) the class presents common questions of law or fact; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a); *Officers for Just. v. Civ. Serv. Comm’n of City and Cnty. of San Francisco*, 688 F.2d 615, 630 (9th Cir. 1982). The Ninth Circuit “ha[s] approved provisional class certification for purposes of preliminary [relief] proceedings.” *Al Otro Lado v. Wolf*, 952 F.3d 999, 1005 n.4 (9th Cir. 2020).

ARGUMENT

I. Plaintiffs Satisfy Rule 23(a)

Plaintiffs readily satisfy the requirements of Rule 23. Thus, this Court should certify the class they seek to represent, as courts have done in similar cases involving challenges to immigration policies by noncitizens facing detention or deportation. *See, e.g., Garro Pinchi*, 2025 WL 3691938 (certifying class of noncitizens challenging ICE re-detention policy within the ICE San Francisco Area of Responsibility); *see also, e.g., Saravia*, 280 F. Supp. 3d 1168 (certifying class of noncitizen children who were re-detained by DHS after being previously released); *Rodriguez v. Hayes*, 591 F.3d 1105, 1126 (9th Cir. 2010) (reversing denial of class certification, remanding for further proceedings, and finding class of noncitizens challenging prolonged ICE detention without a bond hearing satisfied Rule 23);¹⁴ *Doe v. Wolf*, 424 F. Supp. 3d 1028 (S.D. Cal. 2020) (certifying class of individuals in short term Customs and Border Protection custody challenging access to counsel); *Al Otro Lado v. Wolf*, 336 F.R.D. 494 (S.D. Cal. 2020) (certifying class of noncitizens who sought asylum at ports of entry and were denied access to the asylum system); *Rodriguez Alcantara v. Archambeault*, 613 F. Supp. 3d 1337 (S.D.

¹⁴ The Ninth Circuit Court of Appeals recently reaffirmed the controlling nature of *Rodriguez v. Hayes*. *Nat’l TPS All. v. Noem*, No. 25-5724, 2026 WL 226573, at *9 (9th Cir. Jan. 28, 2026).

1 Cal. 2020) (certifying class of detained noncitizens challenging detention at outset
2 of the COVID-19 pandemic); *Franco-Gonzales v. Napolitano*, No. CV 10-02211
3 DMG (DTB), 2011 WL 11705815 (C.D. Cal. Nov. 21, 2011) (certifying class of
4 detained noncitizens found incompetent to represent themselves).

5 **A. Numerosity**

6 Plaintiffs satisfy numerosity because the class is “so numerous that joinder of
7 all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The standard is not “whether
8 joinder is a literal impossibility. Rather, the question is whether joinder of all class
9 members is *practicable*—i.e., *reasonably* capable of being accomplished.” *A.B. v.*
10 *Haw. State Dep’t of Educ.*, 30 F.4th 828, 837 (9th Cir. 2022) (internal quotations
11 and citations omitted); *see also Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d
12 909, 913–14 (9th Cir. 1964) (impracticability is “only the difficulty or inconvenience
13 of joining all members of the class”). Determining whether joinder is impracticable
14 “requires examination of the specific facts of each case and imposes no absolute
15 limitations.” *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980). A
16 proposed class satisfies numerosity where joinder of all class members “would
17 impose very substantial logistical burdens.” *Garro Pinchi*, 2025 WL 3691938 at *14
18 (citing *A. B. v. Haw. State Dep’t of Educ.*, 30 F.4th 828, 837 (9th Cir. 2022)).

19 Plaintiffs “need not state the exact number of potential class members; nor is
20 a specific minimum number required.” *Doe*, 424 F. Supp. 3d at 1040. Plaintiffs need
21 only “show some evidence of or reasonably estimate the number of class members.”
22 *Schwartz v. Upper Deck Co.*, 183 F.R.D. 672, 681 (S.D. Cal. 1999). However, the
23 numerosity requirement is generally satisfied when the class contains 40 or more
24 members, *Al Otro Lado*, 336 F.R.D. at 501, although courts have also found
25 numerosity satisfied in cases involving 25 members, *Gilbert v. MoneyMutual, LLC*,
26 318 F.R.D. 614, 621 (N.D. Cal. 2016), and as few as 19 members, *Pole v. Estenson*
27 *Logistics, LLC*, No. CV 15-07196 DDP (Ex), 2016 WL 4238635, at *5 (C.D. Cal.
28 Aug. 10, 2016).

1 In cases where plaintiffs seek “only equitable relief,” the numerosity
2 requirement is “relaxed and plaintiffs may rely on “reasonable inference[s]” arising
3 from the evidence. *Al Otro Lado*, 336 F.R.D. at 501 (citing *Sueoka v. United States*,
4 101 F. App’x 649, 653 (9th Cir. 2004)). This includes postponement and set-aside
5 relief under the APA. *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 995 (9th Cir.
6 2025) (referring to a stay under APA 705 as “interim equitable relief”); *see also*
7 *Garro Pinchi*, 2025 WL 3691938 at *15. Indeed, in *Garro Pinchi*, a challenge to
8 unjustified re-detentions of a similarly defined class, a district court in this circuit
9 found it “reasonable to infer” that “at least a small fraction” of the “hundreds or
10 thousands of noncitizens” that ICE had arrested fell within the defined class and
11 subclass in that case. *Id.* at *14.

12 Moreover, “[w]here the class includes unnamed, unknown future members,
13 joinder of such unknown individuals is impracticable and the numerosity
14 requirement is therefore met, regardless of class size.” *Nat’l Ass’n of Radiation*
15 *Survivors v. Walters*, 111 F.R.D. 595, 599 (N.D. Cal. 1986) (internal quotations
16 omitted); *see also J.D. v. Azar*, 925 F.3d 1291, 1322 (D.C. Cir. 2019) (“classes
17 including future claimants generally meet the numerosity requirement due to the
18 impracticality of counting such class members, much less joining them” (internal
19 quotation marks omitted)); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 370
20 (C.D. Cal. 1982) (finding joinder impractical where “[t]he parameters of the class
21 change on a daily basis as Salvadorans are apprehended and removed from the
22 United States”). Indeed, such an approach promotes judicial economy and avoids
23 “duplicative suits brought by other class members.” *Pole*, 2016 WL 4238635 at *5.

24 Here, Plaintiffs readily satisfy the numerosity requirement of Rule 23. *First*,
25 there are *at least* twenty-four individuals whose fact patterns fit the class definition
26 in this case. In addition to their own, Plaintiffs have identified seventeen unique writ
27 of habeas corpus cases filed in the Southern District of California involving
28 individuals whose facts meet the class criteria in this case and in which district courts

1 have issued decisions between November 2025 and February 2026.¹⁵ Plaintiffs have
2 additionally filed declarations from San Diego-based immigration attorneys who

3
4 ¹⁵ *Zamora Ramales v. LaRose*, No. 26-cv-501-JES-DEB, 2026 WL 280216 (S.D.
5 Cal. Feb. 3, 2026) (ordering release of petitioner in removal proceedings who was
6 re-detained at ICE check-in); *Singh v. Noem*, No. 3:26-cv-00261-RBM-MSB, 2026
7 WL 296656 (S.D. Cal. Feb. 4, 2026) (ordering release of petitioner in removal
8 proceedings who was re-detained at ICE check in Santa Ana and detained at Imperial
9 Regional Detention Facility); *Ba v. Lyons*, No. 3:25-cv-2871-CAB-BJW, 2026 WL
10 218936 (S.D. Cal. Jan. 27, 2026) (denying TRO as moot because petitioner whose
11 immigration appeal was pending at the BIA was released on bond after being re-
12 detained at an ICE-check in); *Lozada v. LaRose*, No. 25-cv-3614-LL-KSC, 2026
13 WL 184205 (S.D. Cal. Jan. 23, 2026) (ordering release of petitioner in removal
14 proceedings who was re-arrested at ICE check-in in Texas and detained at Otay Mesa
15 Detention Center); *Machado v. Director of Otay Mesa Detention Center*, No. 25-
16 CV-3277-JES-JLB, 2026 WL 125618 (S.D. Cal. Jan. 16, 2026) (ordering release of
17 petitioner with pending BIA appeal of removal order who was re-detained at ICE
18 check-in); *Aguilar-Perez v. LaRose*, No. 25-cv-3409-LL-DDL, 2026 WL 92045
19 (S.D. Cal. Jan. 13, 2026) (ordering release of petitioner in removal proceedings who
20 was re-detained at ICE check-in); *Naveen v. Archambeault*, No. 25-cv-3728-AGS-
21 AHG, 2025 WL 3724912 (S.D. Cal. Dec. 24, 2025) (ordering government to respond
22 to petition filed by noncitizen in removal proceedings who was re-detained “at his
23 pre-scheduled ICE check-in”); *Lucas v. LaRose*, No. 3:25-cv-02973-GPC-JLB,
24 2025 WL 3485163 (S.D. Cal. Dec. 4, 2025) (granting petition for noncitizen who
25 was re-detained at check-in after his removal case was re-calendared and nearly
26 seven years after prior release); *Sanchez v. LaRose*, 25-cv-3136-JLS-JLB, 2025 WL
27 3470432 (S.D. Cal. Dec. 3, 2025) (ordering release for petitioner in removal
28 proceedings who was re-detained at yearly check-in); *Velasquez v. LaRose*, No. 25-
cv-3137-JLS-MSB, 2025 WL 3251373 (S.D. Cal. Nov. 21, 2025) (granting
petitions, including for one noncitizen in removal proceedings who was re-detained
at a regularly scheduled ICE check-in); *Bolanos-Suarez v. LaRose*, No. 3:25-cv-
03075-DMS-KSC, Dkt. 7 (S.D. Cal. Nov. 21, 2025) (granting petition in part for
noncitizen with recently re-calendared proceedings who was re-detained at ICE
check-in and subjected to mandatory detention); *Solis-Becerril v. Noem*, No. 3:25-
cv-3002-JES-JLB, 2025 WL 3228312 (S.D. Cal, Nov. 19, 2025) (granting petition
for noncitizen who was re-detained at check-in he attended following his
immigration court hearing “in compliance with a ‘call-in’ letter he had received in
the mail”); *Prieto-Cordova v. LaRose*, No. 3:25-cv-2824-CAB-DDL, 2025 WL
3228953 (S.D. Cal. Nov. 19, 2025) (ordering release of petitioner who was re-
detained when attending ICE check-in); *Faizyan v. Casey*, No. 3:25-cv-02884-

(Footnote continues on next page.)

1 represent eight individuals who fit the class criteria in this case, of which at least
 2 four are not already accounted for in the seventeen habeas petitions. Declaration of
 3 Suzan Worm ¶ 5; Declaration of Linette Tobin ¶ 3; Declaration of Caroline Mathews
 4 ¶ 3. Plaintiffs additionally submitted a declaration from the Executive Director of
 5 Immigration Services for Jewish Family Service of San Diego (JFS), an organization
 6 that documented at least two calls from individuals seeking services who squarely
 7 meet the class criteria in this case. Gonzalez Decl. ¶ 4. These counts almost certainly
 8 underestimate the total number of putative class members, because they primarily
 9 reflect those who have been represented by lawyers or have otherwise had access to
 10 the federal legal system, which is uncommon among detained noncitizens.¹⁶ Thus,
 11 in light of the sheer volume of likely putative class members—at least twenty-four
 12 in total including Plaintiffs—joinder would unquestionably be impracticable.

13 *Second*, Plaintiffs have submitted a sworn declaration from a volunteer-run
 14 organization that supports migrants and refugees in San Diego County indicating

15 RBM-JLB, 2025 WL 3208844 (S.D. Cal. Nov. 17, 2025) (ordering release of
 16 petitioner who was re-detained at ICE check-in while appeal of removal order
 17 remained pending at the BIA); *Ortiz Reyes v. LaRose*, No. 25-cv-2938-JLS-VET,
 18 2025 WL 3171743 (S.D. Cal. Nov. 13, 2025) (ordering release of petitioner who was
 19 re-detained at ICE check-in after his removal proceedings had been re-calendared);
 20 *Lesic v. LaRose*, 25-cv-2746-LL-BJW, 2025 WL 3158675 (S.D. Cal. Nov. 12, 2025)
 21 (ordering release of two petitioners who were re-detained at ICE check-ins after prior
 22 releases on bond and while BIA appeals of removal and voluntary departure orders
 23 remained pending); *Salazar v. Casey*, No. 25-cv-2784-JLS-VET, 2025 WL 3063629
 24 (S.D. Cal. Nov. 3, 2025) (ordering release of petitioner in removal proceedings who
 was re-detained at ICE check-in). This string cite likely reflects a significant
 undercount, as it is limited to decisions that appear on Westlaw where the discussion
 of the facts makes clear that the petitioner is a putative class member.

25 ¹⁶ American Immigration Council, *Where Can You Win in Immigration Court?* (Nov.
 26 20, 2025), [https://www.americanimmigrationcouncil.org/report/immigration-](https://www.americanimmigrationcouncil.org/report/immigration-court/#legal-representation-rates-vary-widely-across-the-country-especially-in-detention)
 27 [court/#legal-representation-rates-vary-widely-across-the-country-especially-in-](https://www.americanimmigrationcouncil.org/report/immigration-court/#legal-representation-rates-vary-widely-across-the-country-especially-in-detention)
 28 [detention](https://www.americanimmigrationcouncil.org/report/immigration-court/#legal-representation-rates-vary-widely-across-the-country-especially-in-detention)(finding only 6.7% of detained noncitizens with removal cases before the
 San Diego Immigration Court were represented by lawyers between fiscal years
 2019 and 2024).

1 that its volunteers have documented at least 212 arrests at ICE check-ins at 880 Front
2 Street and at ISAP appointments between October 2025 and January 2026. Ho Decl.
3 ¶ 7. Of those, at least twenty-one arrests were of individuals attending check-ins
4 directly after immigration court hearings, indicating that they were in active removal
5 proceedings at the time of their arrests. *See id.* Plaintiffs have additionally submitted
6 a declaration from the Director of the San Diego County Immigrant Legal Defense
7 Program indicating that between August 2025 and January 2026, the program’s
8 intake hotline received calls from—and assigned attorneys to—twenty-seven
9 individuals who were detained at ICE check-ins or appointments. Declaration of F.
10 Michael Garcia ¶ 6. And a declaration from the Executive Director of Immigration
11 Services for JFS that notes eight additional individuals who have called the hotline
12 after being detained at ICE check-ins or appointments. Gonzalez Decl. ¶ 4. The New
13 York Times additionally reported that in one two-week period in October 2025,
14 “more than 120 people were seen being detained after attending check-ins with
15 immigration officials” on the second floor of 880 Front Street, and Daylight San
16 Diego reported that over the course of just two days in December, fifteen individuals
17 were detained after attending ISAP appointments.¹⁷ Based on the at least hundreds
18 of arrests at 880 Front Street and at ISAP appointments, including of individuals
19 arrested shortly after attending immigration court hearings, and because Plaintiffs
20 here seek equitable relief to remedy rights violations, it is “reasonable [for this
21 Court] to infer” that “at least a small fraction” of those arrests involve individuals
22 who had been previously released from immigration custody and who had ongoing
23 removal proceedings at the time of their re-detentions. *Garro Pinchi*, 2025 WL
24 3691938, at *14.

25 *Third*, the class definition here includes unknown and future members who
26 may be subject to unlawful re-detention in the future, thus “[t]he parameters of the
27

28 ¹⁷ Jimenez, *supra* note 8; Morrissey, *supra* note 9.

1 class change on a daily basis,” making joinder an impossibility and independently
2 satisfying Rule 23(a)(1). *Orantes-Hernandez*, 541 F. Supp. at 370.

3 Thus, Plaintiffs satisfy numerosity.

4 **B. Commonality**

5 Class certification under Rule 23(a)(2) requires the existence of “questions of
6 law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). Plaintiffs’ claims “must
7 depend upon a common contention.” *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir.
8 2014) (cleaned up). A contention is common where “determination of its truth or
9 falsity will resolve an issue that is central to the validity of each one of the claims in
10 one stroke.” *Id.*; see also *Garro Pinchi*, 2025 WL 3691938 at *15 (noting
11 commonality is satisfied “where the same evidence will suffice for each member to
12 make a prima facie showing or the issue is susceptible to generalized, class-wide
13 proof.”).

14 “Even a single common question” will satisfy Rule 23(a)(2). *Wal-Mart Stores,*
15 *Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (cleaned up). Indeed, “[a]ll questions of fact
16 and law need not be common to satisfy the commonality requirement. The existence
17 of shared legal issues with divergent factual predicates is sufficient.” *Gonzalez v.*
18 *ICE*, 975 F.3d 788, 807 (9th Cir. 2020) (cleaned up). Thus, commonality exists even
19 where class members’ circumstances vary but “retain a common core of factual or
20 legal issues with the rest of the class[.]” *Parsons*, 754 F.3d at 675 (cleaned up).
21 Indeed, in *Garro Pinchi*, the court found that where class members had claims that
22 could be resolved with common answers, the fact that “the individual circumstances
23 surrounding class members’ release, arrest, and detention may differ does not
24 destroy [the] common question.” 2025 WL 3691938 at *15.

25 The commonality requirement “has been construed permissively,” *Preap v.*
26 *Johnson*, 303 F.R.D. 566, 585 (N.D. Cal. 2014), particularly in a civil rights suit like
27 this one, in which “the lawsuit challenges a system-wide practice or policy that
28

1 affects all of the putative class members.” *Armstrong v. Davis*, 275 F.3d 849, 868
2 (9th Cir. 2001). This case meets that liberal standard.

3 Here, putative class members present a “common core” of facts and legal
4 issues, even if their individual circumstances may vary. For example, all putative
5 class members share the common fact that they have been or will be re-detained at
6 ICE check-ins or appointments in San Diego, after having been previously deemed
7 fit for release from DHS custody, and all putative class members had ongoing 8
8 U.S.C. 1229a removal proceedings at the time of their re-detentions. Additionally,
9 all class members present at least the following common questions of law:

- 10 • Whether Defendants provided a sufficiently reasoned explanation for
11 their new policy of re-detaining previously-released individuals
12 without conducting an individualized assessment to determine whether
13 material changes in circumstances related to flight risk or danger justify
14 re-detention;
- 15 • Whether Defendants considered reliance interests engendered by the
16 prior policy of not re-detaining previously-released individuals; and
- 17 • Whether Defendants’ practice of re-detaining previously-released
18 individuals without providing a pre-deprivation hearing to determine
19 whether the re-detention is warranted satisfies Procedural Due Process.

20 Because resolution of these common questions will resolve claims for the entire
21 class in “one stroke,” *Parsons*, 754 F.3d at 675, Plaintiffs satisfy commonality
22 regardless of any factual differences among Plaintiffs or class members, *Garro*
23 *Pinchi*, 2025 WL 3691938, at *15.

24 **C. Typicality**

25 Rule 23(a)(3) requires that the claims “of the representative parties [be]
26 typical of the claims . . . of the class.” Fed. R. Civ. P. 23(a)(3). “[R]epresentative
27 claims are ‘typical’ if they are reasonably coextensive with those of the absent class
28

1 members.” *Parsons*, 754 F.3d at 685. “The test of typicality is ‘whether other
2 members have the same or similar injury, whether the action is based on conduct
3 which is not unique to the named plaintiffs, and whether other class members have
4 been injured by the same course of conduct.’” *Id.*

5 The inquiry “focuses on the nature of the claim” the proposed class
6 representative brings, and not “the specific facts from which it arose.” *Gonzalez*, 975
7 F.3d at 809 (internal quotation marks omitted); *see also, e.g., Armstrong*, 275 F.3d
8 at 868 (Typicality is “satisfied when each class member’s claim arises from the same
9 course of events, and each class member makes similar legal arguments to prove the
10 defendant’s liability.” (internal quotation marks omitted)); *Garro Pinchi*, 2025 WL
11 3691938, at *16 (“Typicality focuses on the class representative’s claim—but not the
12 specific facts from which the claim arose—and ensures that the interest of the class
13 representative aligns with the interests of the class.” (quoting *Small v. Allianz Life*
14 *Ins. Co. of N. Am.*, 122 F.4th 1182, 1201–02 (9th Cir. 2024))). In Rule 23(b)(2) cases
15 such as this one, *see* Section II *infra*, “commonality and typicality [] tend to merge.”
16 *Wal-Mart Stores*, 564 U.S. at 349 n.5.

17 Here, Plaintiffs can establish typicality because they were subjected to the
18 same arbitrary re-detention policy after having been previously deemed fit for
19 release, without first having a pre-deprivation hearing to determine whether material
20 changes in circumstances justify their re-detention. This is the same practice at the
21 heart of other class members’ claims, thus they “allege ‘the same or [a] similar
22 injury’ as the rest of the putative class; they allege that this injury is a result of a
23 course of conduct that is not unique to any of them; and they allege that the injury
24 follows from the course of conduct at the center of the class claims.” *Parsons*, 754
25 F.3d at 685. The fact that some Plaintiffs and class members may have been
26 originally released from DHS custody pursuant to different authorities (release on
27 recognizance, parole, or bond) does not defeat typicality because the prior release
28 authority is immaterial to their claim that their *re-detention* is unlawful and

1 unconstitutional, and “[d]iffering factual scenarios resulting in a claim of the same
 2 nature as other class members does not defeat typicality.” *Garro Pinchi*, 2025 WL
 3 3691938, at *17 (citing *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 n. 9 (9th
 4 Cir. 2011)).¹⁸

5 **D. Adequate Representation**

6 Plaintiffs must also satisfy adequate representation. Fed. R. Civ. P. 23(a)(4).
 7 “The adequacy inquiry is addressed by answering two questions: (1) do the named
 8 plaintiffs and their counsel have any conflicts of interest with other class members
 9 and (2) will the named plaintiffs and their counsel prosecute the action vigorously
 10 on behalf of the class? If either answer is no, the representative is inadequate.” *Garro*
 11 *Pinchi*, 2025 WL 3691938, at *17. “[A] class representative must be part of the class
 12 and possess the same interest and suffer the same injury as the class members.” *Id.*
 13 (citing *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 625 (1997)).

14 Here, Plaintiffs have no conflict of interest with the class; all have suffered or
 15 will suffer the same injury at the hands of Defendants’ unlawful practice and policy,
 16 and all seek relief that will set it aside and declare it unlawful. Plaintiffs, whom
 17 Defendants released pursuant to this Court’s December 12 order, ECF 13, have an
 18 ongoing interest in preserving their rights and protections against arbitrary re-
 19 detentions at future government appointments. Moreover, Plaintiffs have
 20 “indicate[d] clearly that [they] understand[] [their] duties and [are] currently willing
 21 and able to perform them,” which is all Rule 23 requires. *Loc. Joint Exec. Bd. of*
 22 *Culinary/Bartender Tr. Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th
 23 Cir. 2001). *See* Supplemental Declaration of Chancelly Fanfan ¶ 10; Supplemental

24 ¹⁸ Regardless of the authority underlying the prior releases of class members, any re-
 25 detentions of individuals with ongoing 8 U.S.C. 1229a removal proceedings that
 26 occur at ICE check-ins or appointments—which are at issue in this case—occur in
 27 the interior of the country, far from any port of entry and long after any border
 28 encounter, and thus are governed by 8 U.S.C. 1226(a). Thus, any factual differences
 concerning the nature of the prior releases not at issue in this case are immaterial to
 typicality.

1 Declaration of María Maldonado Cruz ¶ 11; Supplemental Declaration of Elesban
2 Angel Mendez ¶ 13.

3 Nor do Plaintiffs’ counsel have conflicts of interest with the class. Counsel
4 are experienced civil rights litigators with substantial experience representing
5 plaintiffs in complex class action lawsuits that have sought equitable and declaratory
6 relief to preserve noncitizens’ civil and constitutional rights. Supplemental
7 Declaration of Monika Y. Langarica ¶¶ 7, 9, 10; Declaration of Bardis Vakili ¶ 5, 9.
8 They diligently investigated the claims and facts—including any potential for
9 conflicts—prior to bringing this case. For the same reasons, Plaintiffs’ counsel is
10 competent to vigorously prosecute this case, as evidenced by their combined decades
11 of experience serving as class counsel in cases involving detained noncitizens. *Id.*

12 *****

13 For the foregoing reasons, Plaintiffs satisfy the requirements of Rule 23(a).

14 **II. This Case Meets the Requirements of Rule 23(b)**

15 Plaintiffs additionally satisfy Rule 23(b) because Defendants
16 have “acted or refused to act on grounds that apply generally to the class, so that
17 final injunctive relief or corresponding declaratory relief is appropriate respecting
18 the class as a whole.” Fed. R. Civ. P. 23(b)(2). “[T]he primary role of [Rule 23(b)(2)]
19 has always been the certification of civil rights actions.” *Parsons*, 754 F.3d at 686
20 (citing *Amchem Prods. Inc.*, 521 U.S. at 614). “The key to [a] (b)(2) class is ‘the
21 indivisible nature of the . . . remedy warranted—the notion that the conduct is such
22 that it can be enjoined or declared unlawful only as to all of the class members or as
23 to none of them.’” *Wal-Mart Stores*, 564 U.S. at 360; *Rodriguez*, 591 F.3d at 1126
24 (finding that class of non-citizens detained during immigration proceedings met Rule
25 23(b)(2) because “all class members[] [sought] the exact same relief as a matter of
26 statutory or, in the alternative, constitutional right”). This standard is
27 “unquestionably satisfied when members of a putative class seek uniform ...
28 declaratory relief from policies or practices that are generally applicable to the class

1 as a whole.” *Parsons*, 754 F.3d at 688. In *Garro Pinchi*, the court found the
2 plaintiffs’ motion under the APA “to vacate DHS’s re-detention policy as to every
3 member of the putative class” satisfied Rule 23(b)(2). *Garro Pinchi*, 2025 WL
4 3691938, at *18.

5 Here, Plaintiffs seek relief that would apply to the entire class through the
6 Administrative Procedure Act or the Declaratory Judgment Act. An order
7 postponing, setting aside, and/or declaring unlawful Defendants’ re-detention
8 practice would apply to all current and future class members “while leaving DHS
9 free to promulgate new policies providing for re-detention so long as any new policy
10 is sufficiently reasoned and comports with applicable law” and Due Process. *See id.*

11 Accordingly, Plaintiffs satisfy Rule 23(b)(2).

12 **CONCLUSION**

13 For the foregoing reasons, the Court should grant Plaintiff-Petitioners’
14 Motion for Provisional Class Certification.

15
16 Dated: February 25, 2025

17 Respectfully submitted,

18 /s/ Monika Y. Langarica

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