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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

Eugene Division

M-J-M-A- and VICTOR CRUZ GAMEZ, individually and on behalf of all similarly situated individuals,

Petitioner and Plaintiffs,

v.

LAURA HERMOSILLO, Seattle Field Office Director, Immigration and Customs Enforcement and Removal Operations ("ICE/ERO"); TODD LYONS, Acting Director of Immigration Customs Enforcement ("ICE"); U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; KRISTI NOEM, Secretary of the Department of Homeland Security ("DHS"); U.S. DEPARTMENT OF HOMELAND SECURITY; and PAMELA BONDI, Attorney General of the United States,

Respondents-Defendants.

Case No. 25-cv-02011-MTK

PETITIONER & PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

ORAL ARGUMENT REQUESTED

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs respectfully move this Court, pursuant to Federal Rule of Civil Procedure 23, to certify the following class and subclass and appoint the undersigned counsel as class counsel:

> WARRANTLESS ARREST CLASS: All person since September 28, 2025, who have been arrested or will be arrested in the District of Oregon for alleged immigration violations without a warrant and without a pre-arrest, individualized assessment of probable cause that the person is in the United States unlawfully and that the person poses a flight risk.
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> UNASSESSED ESCAPE RISK SUBCLASS: All person since September 28, 2025, who have been arrested or will be arrested in the District of Oregon for alleged immigration violations without a warrant and without a pre-arrest, individualized assessment of probable cause that the person poses a flight risk.

Petitioner-Plaintiff M-J-M-A- and Plaintiff Victor Manuel Cruz Gamez should be designated as class representatives.

In accordance with Local Rule 7-1, Plaintiffs' counsel conferred with Defendants' counsel on January 9, 2026. Defendants' counsel represented that Defendants oppose this motion.

MEMORANDUM OF LAW

I. INTRODUCTION

In the District of Oregon, Defendants are rounding up community members across the region without warrants, detaining them and then moving them swiftly out of district. Defendants take these actions in order "to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History."[1] Petitioner-Plaintiff M-J-M-A- and

[1] See Declaration of Jordan E. Cunnings (Cunnings Decl.), Ex. 1 (Pres. Donald Trump, @realDonaldTrump, Truth Social (June 15, 2025, 5:43pm) ("ICE Officers are herewith ordered, by notice of this TRUTH, to do all in their power to achieve the very important goal of delivering the single largest Mass Deportation Program in History.")).

Plaintiff Victor Cruz Gamez bring this challenge on behalf of themselves and similarly situated individuals. They seek to represent a class of individuals in Oregon who have been arrested or will be arrested for alleged immigration violations without a warrant and without a pre-arrest, individualized assessment of probable cause that the person is in the United States in violation of civil immigration laws and that the person poses a flight risk. Through this case, Plaintiffs seek protection of their rights and liberty in accordance with U.S. law.

Defendants' policy and practice for making warrantless arrests without probable cause—what Plaintiffs refer to as the "Arrest First, Justify Later" policy— in Oregon is unlawful. Similar Department of Homeland Security ("DHS") policies and practices have been enjoined in the District of Colombia and the District of Colorado. *See Escobar Molina v. U.S. Dep't Homeland Security*, -- F. Supp. 3d --, 2025 WL 3465518, *2 (D.D.C. Dec. 2, 2025) (granting injunction against DHS policy of warrantless arrests in District of Colombia); *Ramirez Ovando v. Noem*, -- F.Supp. 3d --, 2025 WL 3293467, *22-23 (D. Colo. Nov. 25, 2025) (same for the District of Colorado). In these cases, similar classes have been certified provisionally. *Escobar Molina*, 2025 WL 3465518, *36; *Ramirez Ovando*, 2025 WL 3293467, *14.

The proposed class – and, for the same reasons, the proposed subclass – readily meets the threshold requirements of Rule 23(a).

Numerosity. The proposed class and subclass are so numerous that joinder of all members is impracticable under Rule 23(a)(1). Oregon has a large immigrant population; according to data from the American Immigration Council, around 404,200 people in the state are foreign-born residents, which is nearly 10% of the state's total population. *See* Cunnings Decl. Ex. 34 (American Immigration Council ("AIC"), *Immigrants in Oregon* (2023)).[2] Approximately one quarter of

[2] *Available at* https://map.americanimmigrationcouncil.org/locations/oregon/.

Oregon's immigrant population is estimated to be undocumented, and it is estimated that 89,000 U.S.-citizen Oregonians live in mixed-status households. *Id.* Almost 600,000 Oregonians are Latino, making up 14% of the state's total population. Cunnings Decl. Ex. 35 (Oregon Commission on Hispanic Affairs, *Biennium Report* (2023)).[3] Thousands of Oregonians are thus vulnerable to being targeted and caught in Defendants' immigration enforcement dragnet, regardless of their current immigration status. Cunnings Decl. Ex. 36.[4]

Commonality. The class claims raise numerous common questions of law and fact under Rule 23(a)(2). Each member of the proposed class and subclass will be harmed because of Defendants' arrest first, justify later policy. At its core, this case seeks to enforce the common-sense—and textually clear—statutory protections when warrantless arrests are made by Defendants. Common questions of law and fact include whether DHS has a policy, pattern, or practice of conducting warrantless arrests without proper probable cause that an individual is in violation of civil immigration laws; whether DHS has a policy, pattern, or practice of conducting warrantless arrests without proper probable cause that an individual is likely to escape before a warrant can be obtained for the arrest; whether DHS is in compliance with the legal requirements of the Broadcast Statement Policy ("Broadcast Policy") required by the *Castanon Nava v. DHS* settlement agreement; and, whether DHS's policy, pattern, or practice of conducting warrantless arrests without proper probable cause violates 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(i)-(ii).

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[3] *Available at* https://www.oregon.gov/oac/ocha/Documents/OCHA%202023%20Biennium%20Report%20%282%29.pdf.

[4] *See* Nicole Foy, *We Found That More Than 170 U.S. Citizens Have Been Held by Immigration Agents. They've Been Kicked, Dragged and Detained for Days*, ProPublica (Oct. 16, 2025), https://www.propublica.org/article/immigration-dhs-american-citizens-arrested-detained-against-will.

Typicality. Plaintiffs' claims are typical of the claims of the proposed class and subclass under Rule 23(a)(3). Since September 2025, Defendants have engaged in widespread and indiscriminate efforts to detain non-citizens in Oregon using unlawful warrantless arrests. Named Plaintiffs assert the same claims under the INA and APA as the members of the proposed class and subclass. These claims arise from the same course of Defendants' conduct, and named Plaintiffs are united with putative class and subclass members in their interest in ensuring the protections provided by the statute are adhered to by Defendants.

Adequacy. Named Plaintiffs will fairly and adequately protect the class and subclass under Rule 23(a)(4), as they seek relief on behalf of the class and subclass as a whole and have no interests antagonistic to other putative class or subclass members. Petitioner-Plaintiff M-J-M-A- and Plaintiff Cruz Gamez seek declaratory and injunctive relief that would benefit the class and subclass as a whole. Petitioner-Plaintiff M-J-M-A's habeas claims are complimentary and inclusive of the class claims. Plaintiffs' attorneys, proposed class counsel, have extensive experience in immigration law, civil rights litigation, and class action representation, including in other cases before this Court.

Ascertainability. Though not required in the Ninth Circuit, *see Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1124-25 (9th Cir. 2017), the proposed class and subclass are ascertainable as they are defined by clear and objective criteria.

In addition, the proposed class and subclass meet the requirements of both Federal Rules of Civil Procedure 23(b)(1)(A) and 23(b)(2). Plaintiffs' proposed class and subclass satisfy Rule 23(b)(2) because 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). This case also qualifies for certification under Rule

23(b)(1)(A) because Defendants have adopted a consistent Arrest First, Justify Later policy and accompanying practices through which they arrest class members without a warrant and thus bringing separate action risks "inconsistent or varying adjudications . . . that would establish incompatible standards of conduct" for Defendants. F.R.C.P. 23(b)(1)(A). Putative class members seek identical declaratory and injunctive relief that would remedy their harms in a single stroke.

Accordingly, this Court should grant class certification under Rules 23(b)(1)(A) and 23(b)(2) for purposes of entering Plaintiffs' requested class-wide preliminary and permanent injunctions. *See Gray v. County of Riverside*, 2014 WL 5304915, at *37 (C.D. Cal. Sept. 2, 2014) (certification under 23(b)(1)(A) appropriate where "many individuals, all challenging a single government policy, bring separate suits for injunctive relief"); *Wit v. United Behavioral Health*, 317 F.R.D. 106 (N.D. Cal. 2016) (certification under Rule 23(b)(2) appropriate for purpose of entering injunctive relief where the plaintiff established that prerequisites in Rule 23(a) were also met). Numerous courts have granted classwide relief in similar actions brought by noncitizens challenging the government's policy and practice of widespread warrantless arrests. *Escobar Molina*, 2025 WL 3465518, *36 (granting provisional certification); *Ramirez Ovando*, 2025 WL 3293467, *14 (granting provisional certification); *United Farm Workers v. Noem*, 785 F.Supp.3d 672, 729-731 (E.D. Cal. 2025) (certifying similar warrantless arrest class). Plaintiffs respectfully request that this Court similarly certify the class and subclass proposed here.[5]

[5] The Court should provisionally certify the class for the purpose of entering a preliminary injunction. *Carrillo v. Schneider Logistics, Inc.*, 2012 WL 556309, at *9 (C.D. Cal. Jan. 31, 2012) ("courts routinely grant provisional class certification for purposes of entering injunctive relief"), *aff'd*, 501 F. App'x 713 (9th Cir. 2012).

II. ARGUMENT

A plaintiff whose lawsuit meets the requirements of Rule 23 has a "categorical" right "to pursue his claim as a class action." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). To meet these requirements, the "suit must satisfy the criteria set forth in [Rule 23(a)] (i.e., numerosity, commonality, typicality, and adequacy of representation), and it also must fit into one of the three categories described in subdivision (b)." *Id*.

A. Plaintiffs' Proposed Class Satisfies the Requirements of Rule 23(a).

Plaintiffs' proposed class and subclass satisfy all four Rule 23(a) prerequisites. The proposed class likewise meets the requirements for certification under Rule 23(b)(2). The Court should therefore certify the proposed Warrantless Arrest Class and Unassessed Escape Risk Subclass, in line with numerous court decisions certifying or granting relief to similar classes in similar actions challenging the federal government's implementation of immigration enforcement actions. *See, e.g.*, *Escobar Molina*, 2025 WL 3465518, *36 (provisional certification); *Ramirez Ovando*, 2025 WL 3293467, *14 (provisional certification); *Ms. L. v. U.S Immigration & Customs Enf't*, 330 F.R.D. 284, 292-93 (S.D. Cal. 2019); *United Farm Workers v. Noem*, 785 F. Supp. 3d 672, 731 (E.D. Cal. 2025) (provisional certification of similar warrantless arrest class); *Gonzalez v. Noem*, 2025 WL 3204602, at *5 (N.D. Ill. Nov. 17, 2025) (certification of similar class of "immigration detainees who are detained and those who will be detained in the future" at particular ICE facility).

1. The Proposed Class Satisfies the Numerosity Requirement.

The proposed class and subclass are sufficiently numerous to make joinder impracticable. Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "Impracticability does not mean impossibility," only the "difficulty or

inconvenience in joining all members of the class." *In re ConAgra Foods, Inc*., 302 F.R.D. 537, 568 (C.D. Cal. 2014) (quoting *Harris v. Palm Springs Alpine Ests., Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964)). "Plaintiffs need not be able to identify all Class Members, so long as there are enough to make joinder impracticable." *Freedman v. Louisiana-Pacific Corp*., 922 F. Supp. 377, 398 (D. Or. 1996). Although there is no numerical cutoff to determine whether a class is sufficiently numerous, courts in the Ninth Circuit and in this district generally presume sufficient numerosity when the plaintiff class contains forty or more members. *See, e.g.*, *Oregon Laborers-Employers Health & Welfare Trust Fund v. Philip Morris, Inc.*, 188 F.R.D. 365, 372 (D. Or. 1998); *In re Cooper Co. Inc. Sec. Litig.*, 254 F.R.D. 628, 634 (C.D. Cal. 2009); *see also Jordan v. Cty. of Los Angeles*, 669 F.2d 1311, 1319-20 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982).

Plaintiffs here do not need to identify a precise number of class or subclass members in order to be granted class certification. "Where a plaintiff seeks 'only injunctive and declaratory relief, the numerosity requirement is relaxed and plaintiffs may rely on reasonable inferences arising from plaintiffs' other evidence that the number of unknown and future members is sufficient to make joinder impracticable.'" *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1203 (N.D. Cal. 2017) (quoting *Civil Rights Educ. & Enf't Ctr. v. Hosp. Props. Tr.*, 317 F.R.D. 91, 100 (N.D. Cal. 2016)), *aff'd*, 867 F.3d 1093 (9th Cir. 2017). Similarly, "a court may draw a reasonable inference of class size from the facts before it." *Lynch v. Rank*, 604 F. Supp. 30, 36 (N.D. Cal. 1984), *aff'd*, 747 F.2d 528 (9th Cir. 1984), *opinion amended on reh'g*, 763 F.2d 1098 (9th Cir. 1985).

The proposed class and subclass in this case easily meet the requirements of Rule 23(a)(1). Approximately 10% of the population in Oregon is foreign-born, and thus susceptible to immigration enforcement based on their "immigration nexus." *See* Cunnings Decl. Ex. 34 (AIC,

Immigrants in Oregon). Of these individuals, one-quarter (approximately 100,000) are estimated to be undocumented. *See Id.* Nor is the class or subclass limited to these individuals; individuals in a range of immigration status may be and indeed have been swept up in Defendants' immigration enforcement sweeps.[6]

Joinder of similarly situated individuals is further impeded by the circumstances of this case. In addition to the sheer number of similarly situated individuals, courts may consider putative class members' geographic dispersion, financial resources, and ability to file individual lawsuits in determining the impracticability of joinder. *See McCluskey v. Trs. of Red Dot Corp. Emp. Stock Ownership Plan & Tr.*, 268 F.R.D. 670, 674 (W.D. Wash. 2010); *see also Fraihat v. U.S. Immigr. & Customs Enf't*, 445 F. Supp. 3d 709, 737 (C.D. Cal. 2020) (holding that "obstacles to accessing counsel" impeding individual class members from proceeding on their own weighed in favor of finding joinder impracticable), *rev'd on other grounds*, 16 F.4th 613, 635 (9th Cir. 2021); *Rodriguez v. Hayes*, 591 F.3d 1105, 1123 (9th Cir. 2010) (finding numerosity satisfied, in part, because of "the severe practical concerns that would likely attend [prospective immigrant class members] were they forced to proceed alone."). Putative class and subclass members here are located across the state of Oregon; a vast number of these individuals meet the income threshold to be eligible for free legal services through Equity Corps of Oregon, meaning their financial resources to independently pursue district court litigation are necessarily limited.

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[6] *See, e.g.,* Cunnings Decl. Ex. 36 (Nicole Foy, *We Found That More Than 170 U.S. Citizens Have Been Held by Immigration Agents. They've Been Kicked, Dragged and Detained for Days*, ProPublica (Oct. 16, 2025), https://www.propublica.org/article/immigration-dhs-american-citizens-arrested-detained-against-will); Ex. 37 (Ryan J. Foley, *After rescinding protections, ICE is moving to deport more immigrants who were victims of crime*, The Associated Press (Sept. 16, 2025), https://www.ap.org/news-highlights/spotlights/2025/after-rescinding-protections-ice-is-moving-to-deport-more-immigrants-who-were-victims-of-crime/ (ICE may now detain U and T visa holders, under new policy)).

In light of the significant number of individuals likely to be subjected to Defendants' widespread arrests and the additional circumstances that impede joinder, the proposed Warrantless Arrest Class meets the numerosity requirement.

2. Proposed Class Members' Claims Raise Questions of Law or Fact Common to the Class

The proposed Warrantless Arrest Class and Unassessed Escape Risk Subclass meet the requirement of Rule 23(a) because proposed class and subclass members' claims pose "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This requirement "has been construed permissively." *Giles v. St. Charles Health Sys., Inc.*, 294 F.R.D. 585, 590 (D.Or. 2013) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998), *overruled on other grounds by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011)). "What matters to class certification . . . is not the raising of common questions—even in droves—but rather, the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Wal-Mart*, 564 U.S. at 350 (internal quotation marks omitted). A plaintiff "need not show . . . that every question in the case, or even a preponderance of questions, is capable of class wide resolution." *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014) (quotation marks omitted). Rather, even one shared legal issue can be sufficient. *See, e.g.*, *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir. 2012) (noting that "commonality only requires a single significant question of law or fact"); *Walters*, 145 F.3d at 1046 ("What makes the plaintiffs' claims suitable for a class action is the common allegation that the INS's procedures provide insufficient notice.").

Class members need not be identical in all respects, and commonality may be satisfied, notwithstanding some variation among putative class members' questions of law and fact, where the harm alleged is common to all class members. *Murphy v. Precision Castparts Corp.*, 2018 WL 3151426, at *2 (D. Or. June 6, 2018) (Beckerman, J.), *report and recommendation adopted*, 2018

WL 3150675 (D. Or. June 27, 2018); *Wit*, 317 F.R.D at 127. Accordingly, the existence of "shared legal issues with divergent factual predicates" is sufficient to satisfy Rule 23. *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014) (quoting *Hanlon*, 150 F.3d at 1019). In civil rights suits such as this one, commonality is satisfied where "the lawsuit challenges a system-wide practice or policy that affects all of the putative class members. Under such circumstances, individual factual differences among class members pose no obstacle to commonality." *Parsons*, 754 F.3d at 682 (quoting *Rosas v. Baca*, 2012 WL 2061694, at *3 (C.D. Cal. June 7, 2012)).

The proposed Warrantless Arrest Class and the Unassessed Escape Risk Subclass readily satisfy Rule 23(a)(2)'s commonality requirement. All members of the proposed class and subclass have been arrested or will be arrested for alleged civil immigration violations without a warrant in this District. They will all be subjected to the same policies or practices that violate the INA. There are thus numerous questions of law and fact common to the proposed class and subclass which predominate over any individual questions, including but not limited to:

- Whether Defendants' widespread immigration arrests since October 2025 are in accordance with law, including Defendants' statutory authority for warrantless arrest pursuant to 8 U.S.C. § 1357;
- Whether there is a policy/practice of making warrantless arrests in Oregon without probable cause of an immigration violation;
- Whether DHS is in compliance with the legal requirements of the Broadcast Policy in considering and documenting specific individualized factors in flight risk assessments; and
- Where there is a policy/practice of making warrantless arrests in Oregon without probable cause of flight risk.

Any one of these common legal or factual issues, standing alone, is enough to satisfy Rule 23(a)(2)'s permissive standard. *See Inland Empire—Immigrant Youth Collective v. Nielsen*, 2018 WL 1061408, at *8 (C.D. Cal. Feb. 26, 2018) (quoting *Perez-Olano v. Gonzalez*, 248 F.R.D.2 48, 257 (C.D. Cal. 2008)); *Caput v. NTT Security US Inc.*, 2019 WL 3308771, at *2 (C.D. Cal. Apr. 19, 2019) ("For the commonality requirement to be met, there must only be one single issue common to the proposed class." (quoting *Haley v. Medtronic*, 169 F.R.D. 643, 648 (C.D. Cal. 1996) (quotation marks and alterations omitted)).

The claims of Plaintiffs and the putative class members share a common core of facts and address a common injury of unlawful deprivation of liberty. Because the Plaintiffs, like putative class members, have been arrested without a warrant or will be arrested for an alleged civil immigration violation, the Plaintiffs and the proposed class members "have suffered the same injury." *Wal-Mart Stores,* 564 U.S. at 350 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). And that common injury is clearly "capable of class wide resolution." *Id.*

Should the Court agree that Defendants violated the INA and related policies and exceeded their authority under the INA, the APA, or any other law, all individuals who fall within the proposed class and subclass will benefit from the requested relief, which includes declaratory and injunctive relief preventing Defendants from effecting such warrantless arrests without the requisite probable cause. A common answer as to the legality of the Defendants' policies and practices will thus "drive the resolution of the litigation." *Ellis v. Costco Wholesale Corp*., 657 F.3d 970, 981 (9th Cir. 2011) (quoting *Wal-Mart*, 564 U.S. at 350).

3. Individual Plaintiff's Claims Are Typical of Class Members' Claims

Plaintiffs have claims typical of the proposed class and subclass. Rule 23(a)(3) requires that "the claims . . . of the representative parties [be] typical of the claims . . . of the class." Fed.

R. Civ. P. 23(a)(3). The purpose of this requirement is to "assure[] that the interests of the named representatives align with those of the class" as a whole. *Weinberger v. Thornton*, 114 F.R.D. 599, 603 (S.D. Cal. 1986). The typicality standard is also "permissive" in that the claims of the individual plaintiffs are "typical" if "they are reasonably co-extensive with those of absent class members; [the claims] need not be substantially identical." *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1020 (9th Cir. 1998). "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 individual plaintiffs, and whether other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp*., 976 F.2d 497, 508 (9th Cir. 1992) (quotation marks omitted); *see also Rodriguez v. Hayes*, 591 F.3d 1105, 1124 (9th Cir. 2010) (typicality satisfied because "though Petitioner and some of the other members of the proposed class are detained under different statutes and are at different points in the remand process . . . they . . . raise similar constitutionally-based arguments and are alleged victims of the same practice of prolonged detention while in immigration proceedings"); *Staley v. Kulongoski*, No. 3:00-cv-00078-ST, Dkt. No. 31, Order at 7 (D. Or. 2000) (plaintiffs alleging systemic violations of the Social Security Act, ADA, Rehabilitation Act, and Due Process Clause "easily" met the typicality requirement by showing that they had all been denied needed Medicaid services).

Plaintiffs satisfy Rule 23(a)(3)'s typicality requirement. Plaintiffs, like all putative class and subclass members, are individuals who have been or will be arrested in Oregon without a warrant for alleged civil immigration violations. The Defendants' policy and practice of arresting individuals without a warrant and without having probable cause will be imposed equally on every class and subclass member detained through Defendants' Arrest First, Justify Later policy and their warrantless arrests practice. Therefore, the claims of Plaintiffs are substantially identical to those

of the proposed class and subclass members. Although putative class members' underlying circumstances may differ in terms of the details of their arrest and in terms of their immigration status and available options, Plaintiffs are nevertheless typical of class members because they will suffer the same substantial, irreparable harm: deprivation of liberty through an unlawful arrest and subsequent detention, potentially leading to prolonged unlawful custody and deportation without due process of law. Because these common harms arise from the same course of conduct by Defendants, in violation of the same statutory and regulatory protections, Plaintiffs' claims typify the claims of the putative class and subclass members.

Moreover, as with commonality, any factual differences between the harms suffered by Plaintiffs and the putative class members are not sufficiently material to defeat typicality. *See Hanlon*, 150 F.3d at 1020 (under "permissive" typicality standard, representative claims need only be "reasonably co-extensive with those of absent class members; they need not be substantially identical."); *Fraihat*, 445 F. Supp. 3d at 739 (holding that the availability of individualized habeas relief to class members did not bar a finding of typicality).

4. Plaintiffs Will Fairly and Adequately Protect the Interests of the Proposed Class

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Adequacy 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 (quotation marks omitted); *see also Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996, 1007 (9th Cir. 2018) ("Determining whether representation is adequate requires the court to consider two questions: (a) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (b) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the

class?" (quotation marks omitted)). Plaintiffs' counsel are deemed qualified when they possess experience in previous class actions and cases involving the same area of law. *See Local Joint Exec. Bd. of Culinary/Bartender Tr. Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th Cir. 2001); *Lynch*, 604 F. Supp. at 37 (N.D. Cal. 1984). Both Plaintiffs and their counsel satisfy these requirements.

First, named Plaintiffs will fairly and adequately protect the interests of the proposed class. The named Plaintiffs do not seek any unique or additional benefit from this litigation that may make their interests different from or adverse to those of absent class or subclass members. Instead, their aim is to secure injunctive relief that will protect themselves and the entire class from Defendants' challenged policies and practices. Accordingly, the proposed class representatives lack any antagonism with the class, and their interests align squarely with the other proposed class and subclass members. Petitioner-Plaintiff M-J-M-A's individual claims arising in habeas related to release from detention are complimentary to the declaratory and injunctive relief sought for the class and do not in any way contradict or undermine relief for the class.

Second, if appointed as class counsel, the undersigned will be able to prosecute this matter vigorously and adequately protect the interests of absent class members. Plaintiffs are represented by counsel from Innovation Law Lab, an organization with a demonstrated commitment to protecting the rights and interests of noncitizens. *See* Declaration of Stephen W. Manning at ¶¶ 2-5. Proposed class counsel have substantial experience handling complex litigation pertaining to immigrants' rights, including a number of class action lawsuits. *Id* ¶¶ 7-12. Class counsel will continue to vigorously represent both the named and absent class members.

5. The Proposed Class is Sufficiently Ascertainable.

Although ascertainability is not required for class certification in the Ninth Circuit, *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1133 (9th Cir. 2017), the proposed class and subclass are, nevertheless, sufficiently ascertainable because it is "administratively feasible" to ascertain whether an individual is a member. *Greater Los Angeles Agency on Deafness, Inc. v. Reel Servs. Mgmt. LLC*, 2014 WL 12561074, at *5 (C.D. Cal. May 6, 2014) (quotation marks omitted) (finding ascertainable proposed class of individuals who are deaf or hard of hearing and require closed captioning).

Here, membership in the class is defined by clear and objective criteria—class members are individuals: (a) who have been arrested or will be arrested (b) in the District of Oregon (c) by DHS (d) without a warrant and without a pre-arrest, individualized assessment of probable cause (for subclass members, of risk of flight) (e) since September 28, 2025. These parameters are "precise, objective, and presently ascertainable." *O'Connor v. Boeing N. Am., Inc.*, 184 F.R.D. 311, 319 (C.D. Cal. 1998) (quotations omitted) (observing that class definitions for actions maintained under Rule 23(b)(2) involve less precision than actions for damages requiring notice to the class); *see also, e.g.*, *Lamumba Corp. v. City of Oakland*, 2007 WL 3245282, at *4 (N.D. Cal. Nov. 2, 2007) ("Plaintiffs putative class is based on the objective factors of business ownership, race, and indebtedness to the City, and therefore is sufficiently defined."). The fact that some administrative process may be required to identify class members does not undermine ascertainability. *See, e.g.*, *Moreno v. Napolitano*, 2014 WL4911938, at *6-7 (N.D. Ill. Sept. 30, 2014) (finding that the necessity of manually reviewing tens of thousands of detainer forms to identify class members did not undermine ascertainability) (citing *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 539 (6th Cir. 2012)).

B. Plaintiffs' Proposed Class Satisfies the Requirements of Rule 23(b)(2).

In addition to satisfying the four requirements of Rule 23(a), the proposed class also satisfies Rule 23(b). While certification is appropriate where the class fits into only one Rule 23(b) category, the class and subclass here meet the requirements of both Rules 23(b)(2) and 23(b)(1)(A).

1. Certification is Proper Under Rule 23(b)(2).

Certification of a class under Rule 23(b)(2) requires that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). In the Ninth Circuit, "[i]t is sufficient" that "class members complain of a pattern or practice that is generally applicable to the class as a whole." *Walters*, 145 F.3d at 1032, 1047. "'The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.'" *Lyon v. ICE*, 308 F.R.D. 203, 213 (N.D. Cal. 2015) (quoting *Wal-Mart*, 564 U.S. at 360).

Here, named Plaintiffs allege that Defendants are acting on grounds that "apply generally to the class" because they are broadly applying policies and practices of making warrantless arrests without individualized assessments of probable cause. Although there may be factual differences between the resulting circumstances of each putative class member, Rule 23(b)(2) asks "only . . . whether class members seek uniform relief from a practice applicable to all of them." *Rodriguez*, 591 F.3d at 1125. That is the case here: Plaintiffs seek only injunctive and declaratory relief to remedy systemic violations of putative class members' statutory rights. These remedies do not require individualized determinations of eligibility for relief and would "provide relief to all class members, or to none of them." *Fraihat*, 445 F. Supp. 3d at 741.

Nor do factual differences among putative class members preclude certification. In contrast to Rule 23(b)(3) classes, "the focus [in a Rule 23(b)(2) class] is not the claims of the individual class members, but rather whether [the Defendants] ha[ve] engaged in a 'common policy.'" *In re Yahoo Mail Lit.*, 308 F.R.D. 577, 599 (N.D. Cal. 2015) (quotation marks omitted). Thus, "[t]he fact that some class members may have suffered no injury or different injuries from the challenged practice does not prevent the class from meeting the requirements of Rule 23(b)(2)." *Rodriguez,* 591 F.3d, at 1123. In any case, any material factual differences among the experiences of individual putative class members are minor. And since named Plaintiffs seek uniform relief from a uniformly applicable practice, certification is warranted even where some class members "have suffered . . . different injuries from the challenged practice." *Rodriguez*, 591 F.3d at 1125. Indeed, even if such claims "may involve some individualized inquiries," the relevant question for purposes of Rule 23(b)(2) is "the 'indivisible' nature of the claim alleged and the relief sought." *Ms. L. v. U.S. Immigr. & Customs Enf't*,, 331 F.R.D. 529, 541 (S.D. Cal. 2018) (certifying Rule 23(b)(2) class); *Lyon v. U.S. Immigr. & Customs Enf't*, 308 F.R.D. 203, 214 (N.D. Cal. 2015) (rejecting the argument that ICE facilities had different attributes, because "these differences do not negate the fact that Plaintiffs seek relief that is applicable to . . . the entire class."); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1205 (N.D. Cal. 2017) (Rule 23(b)(2) satisfied "[b]ecause a single injunction can protect all class members' procedural due process rights.").

Therefore, the proposed class and subclass should be certified under Rule 23(b)(2).

2. Certification is Proper Under Rule 23(b)(1)(A).

The proposed class and subclass may also be properly certified under Rule 23(b)(1)(A). Under that provision, class certification is appropriate if the prosecution of separate actions by individual members of the class would create the risk of "inconsistent or varying adjudications …

that would establish incompatible standards of conduct for the party opposing the class." Fed. R. Civ. P. 23(b)(1)(A).

The instant case presents "[a] 'core example' of an action under 23(b)(1)(A)": where "many individuals, all challenging a single government policy, bring separate suits for injunctive relief." *Gray*, 2014 WL 5304915, at *37 (quoting Newberg on Class Actions § 4:11 (5th ed.)). Specifically, the Defendants here have adopted consistent policies and practices through which they seek to make warrantless arrests in Oregon without the required probable cause determinations. Individual actions challenging and seeking to define the Defendants' authority to do so present a significant risk of varying adjudications defining obligations and requirements in a manner that is confused and inconsistent, resulting in some individuals being afforded their counsel rights while others are impeded or obstructed from accessing counsel altogether. Accordingly, certification under 23(b)(1)(A) is appropriate. *Gray*, 2014 WL 5304915, at *37 (Rule 23(b)(1)(A) certification is appropriate where "if each member of the proposed class litigated their claims individually there would be a risk that each individual case would impose a different standard" on the defendants).

Because named Plaintiffs and proposed class members seek injunctive relief against a single government policy and separate adjudications regarding the policy present the risk of "inconsistent or varying adjudications and would establish incompatible standards for the party opposing the class," certification under Rule 23(b)(1)(A) is proper.

III. CONCLUSION

For the foregoing reasons, named Plaintiffs respectfully request that the Court grant this Motion and enter an order certifying the proposed class under Rule 23(b)(2) and/or Rule 23(b)(1)(A); appoint M-J-M-A, and Victor Manuel Cruz Gamez as class representatives; and appoint Plaintiffs' undersigned counsel from Innovation Law Lab as class counsel.

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Respectfully submitted,

/s/ Stephen W Manning

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