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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

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

INTRODUCTION

Defendants' opposition to class certification is without merit. Defendants attack class certification in three primary ways. First, they broadly assert a set of facts that they say show undermine the Plaintiffs' standing because (Defendants say) the Plaintiffs were arrested lawfully, that any relief they wanted was provided via a memorandum issued by the Defendants' themselves "reminding" agents to follow the law, and that there is no such policy or practice of arrest first, justify later. Second, they claim that the Immigration and Nationality Act precludes class relief here, citing to 8 U.S.C. § 1252(f). Finally, they argue the class fails to meet Rule 23's requirements.

Defendants' attack has no support in the facts of this case or the law. The Defendants have no real answer to the large body of evidence developed in this record that M-J-M-A- and Mr. Cruz Gamez were arrested without warrants and without probable cause of immigration status or flight risk pursuant to their Arrest First, Justify Later policy. All the evidence-- the testimony, the Defendants' internal documents, their public statements, the declarations and videos—plainly demonstrate that the class motion should be granted. Defendants' attack on jurisdiction misstates the law and the proposed class definition. Their remaining arguments regarding Rule 23 requirements are equally unavailing.

Accordingly, the Court should grant the class certification motion.

ARGUMENT

I. Defendants' standing arguments are meritless.

Contrary to Defendants' arguments, Defs.' Opp'n., ECF 85 at 12-17, Plaintiffs have established Article III standing based on their individual injury-in-fact. They have also submitted copious evidence to establish that Defendants have a policy and practice of conducting unlawful

warrantless arrests in Oregon. Separately, as explained *infra* at Section III, Plaintiffs also meet the Rule 23(a) requirements to be appointed as class representatives.[1]

A. Proposed class representatives have suffered injury-in-fact.

Defendants argue that M-J-M-A- and Mr. Cruz Gamez were lawfully arrested without a warrant because Defendants' agents had probable cause as to unlawful immigration status and the likelihood of escape. ECF 85 at 13-15. But the Defendants have no credible evidence to support that position. *See* Opinion and Order, ECF 88 at 12, 16 (finding that the testimony from the arresting and processing officers were not credible or raised significant doubts). The Defendants' argument is without merit.

M-J-M-A-. M-J-M-A was arrested without a warrant and without probable cause as to her immigration status or her flight risk; the Defendants' counter-theory, which relies on a series of speculative premises made by the field agents that the initial stop of the van in which M-J-M-A- was a passenger was lawful (made with reasonable suspicion) and that the stop extended and gradually transformed into a lawful warrantless arrest based on probable cause, is belied by the

[1] Defendants wrongly conflate the Article III question of Plaintiffs' standing in this matter with the question of whether Plaintiffs are appropriate class representatives. It is true that he Ninth Circuit has affirmed that "a court must first determine whether at least one named class representative has Article III standing, then question whether the named plaintiffs have representative capacity, as defined by Rule 23(a), to assert the rights of others." *Melendres v. Arpaio*, 784 F.3d 1254, 1262 (9th Cir. 2015) (internal quotation marks omitted). To be sure, "named plaintiffs who represent a class 'must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong.'" *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 n.6 (2016), *quoting Simon v. Eastern Ky. Welfare Rights Organization,* 426 U.S. 26, 40 n.20 (1976). But as the Ninth Circuit has explained, this standing inquiry is *separate and apart* from the Court's assessment of Plaintiffs' ability to serve as class representatives. *See Melendres*, 784 F.3d at 1262 ("[A]ny issues regarding the relationship between the class representative and the passive class members—such as dissimilarity in injuries suffered—are relevant only to class certification, not to standing."); *see also Gen. Tel. Co. of Sw. v. Falcon,* 457 U.S. 147, 155–61 (1982) (considering dissimilarities in injuries between named and unnamed plaintiffs as an issue of class certification, not of standing).

evidence. The Defendants' counter-theory is counter-factual, as the ample evidence before the court demonstrates, but it is also flawed because it originates and entirely rests on evidence—the so-called "target package"—created by agent J.B. After this lawsuit was filed, agent J.B. destroyed that evidence. ECF 55, Tr. 233. The Defendants recently filed with this Court a motion indicating that, even months later, they are uncertain if any such information will be produced. Defendants' Mot. for Extension of Time to Respond to Requests for Documents, ECF 86 at 2 ("Defendants require additional time to determine whether records exist that are responsive to Plaintiff's discovery requests [related to target packet materials] and how to retrieve those records if they exist.").[2] For the purposes of this motion to certify the class, the Court may draw the adverse inference that the target-package never existed and therefore the stop was unlawful. *In re Napster, Inc. Copyright Litigation*, 462 F.Supp.2d 1060, 1078 (N.D. Cal. 2006) (describing when the court may give an adverse inference instruction as a sanction for the destruction of evidence).

Even if the Court does not draw an adverse inference, the Defendants' theory fails because there is no credible evidence supporting the purported reasoning for the stop of the van. In order to establish reasonable suspicion, the Fourth Amendment requires "specific, articulable facts which, when considered with objective and reasonable inferences, form a basis for *particularized* suspicion." *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000). Here, there are no such facts because "[n]o weight [was] given to this unsupported testimony because the witness destroyed the 'rap sheet' and other documents relating to the mission that morning." ECF 88 at 8. Accordingly, there is no credible evidence in the record to support Defendants' argument that M-J-M-A- was arrested based on probable cause as to immigration status or flight risk.

[2] Plaintiffs are not seeking to resolve any discovery dispute by means of this reply; rather, Plaintiffs point out this information to show that the theory of the Defendants' case is a theory that they consistently assert but refuse to prove.

Moreover, the ample record evidence shows that the Defendants arrested M-J-M-A- without a warrant and without probable cause of immigration status or flight risk. The evidence shows that they did not have the identities of anyone in the van, nor they were pursuing any known target. ECF 55, Tr. 204. At the moment of the stop and subsequent arrest of M-J-M-A-, Defendants did not know her name nor her place of birth; she exercised her right to remain silent, invoked her right to call an attorney, did not attempt to flee, and complied with instructions; nevertheless, she was handcuffed upon exiting the van. Declaration of M-J-M-A-, ECF 31, at ¶¶ 6-10; ECF 55, Tr. 251. Defendants than transported M-J-M-A- to the Portland ICE facility where she was processed and forced to sign a document she did not understand. ECF 31 at ¶¶ 12-16. An arrest warrant was produced after she was processed, along with forms containing inaccurate information. ECF 88 at 14-19. All of this shows, as the Court found, that any probable cause for her arrest was discovered after she was already arrested. *See* ECF 88 at 38 (citing M-J-M-A-'s arrest as an example of officers improperly relying on post-arrest evidence of likelihood of escape and immigration violations).

Victor Cruz Gamez. Similarly, in the case of Plaintiff Victor Cruz Gamez, Defendants argue that their officers had probable cause to arrest him without a warrant. ECF 85 at 15-17. But their arguments are implausible, illogical, and unsupported in the law. They assert two arguments which are logically inconsistent: (1) their agents made no mistake and had probable cause that *this* Victor Cruz Gamez (the petitioner) was unlawfully present in the United States; and, contradicting that argument, or (2) their agents made a mistake and arrested the wrong Victor Cruz Gamez, and then later acquired information to support probable cause that Mr. Cruz Gamez was unlawfully present in the United States. *Id.* at 15. But the Defendants should know what their agents did; after all, it was Defendants agents who took Mr. Cruz Gamez away from his family and locked him

away for weeks. Their alternative theories of their defense—maybe their agents were looking for the right person, but maybe they weren't—shows that they have failed to meet their burden.

Defendants (wrongly) assert that "[w]hen Mr. Cruz Gamez was unable to provide the officers with any evidence that he was lawfully present in the United States, he was handcuffed and placed in the officers' vehicle[,]" *id.* at 15, and "Mr. Cruz Gamez was then unable to provide the officers with any evidence that he was in the country lawfully", *id.* at 16. But Mr. Cruz Gamez showed the agents his work permit, which plainly demonstrated his lawful presence in the United States. ECF 88 at 38 (noting that Mr. Cruz Gamez "showed officers his lawful work permit" but was arrested anyway). So, if the agents were looking for *this* Victor Cruz Gamez (the Plaintiff), then they cannot assert a lawful basis for the stop because it was the Defendants themselves who provided him with his lawful presence. If, though, they were looking for some *other* person, then the stop and the arrest were unlawful.

Second, the Defendants' mistake-of-fact argument fails because they waived it, having never argued or asserted it before, *see* Defs.' Opp. to PI, ECF 70[3], and they have presented no evidence to support it. A mistake of fact theory means that the agents' "correct understanding of the law, together with a good-faith error regarding the facts" made the stop reasonable and then later allowed them to form probable cause for a warrantless arrest, *see United States v. King*, 244 F.3d 736, 739 (9th Cir. 2001). It Defendants' burden to demonstrate the mistake-of-fact defense, yet they have put forth *no* facts to support it. They have failed to produce any evidence regarding the agents' purported "good faith regarding the facts." They have proffered no testimony or declaration from the agents who they assert allegedly made a mistake of fact; they offered no

[3] Defendants "reserve[d] the right to present evidence at the February 4, 2026, preliminary injunction hearing on the circumstances of Mr. Cruz Gamez's arrest," ECF 70 at 4 n.1, but did not do so.

evidence to assert what information about Mr. Cruz Gamez led the agents (mistakenly) to think that the actual person they were seeking was unlawfully present in the United States. Thus, their mistake-of-fact defense is procedurally barred and invalid for lack of evidence.

But Defendants' mistake-of-fact defense has a much more fundamental problem, too, because it is really a mistake-of-law that the agents made. Defendants assert in their opposition that an "[a]rrest is a necessary function of placing an individual in removal proceedings[.]" ECF 85 at 17. This is entirely incorrect as a statement of law. *Detention* requires an arrest; but removal proceedings require no arrest and are commenced routinely without any arrest (or detention) at all. *Cf.* 8 U.S.C. § 1226(a) (detention) *with* 8 U.S.C. § 1229 (initiation of removal proceedings). Removal proceedings do not require an arrest or detention; they are initiated with service of the "notice to appear" which can be accomplished in person or by mail to the noncitizen or to the noncitizen's lawyer. 8 U.S.C. § 1229(a)(1). "At the time of issuance of the notice to appear…the respondent *may* be arrested" but also may remain at liberty. *See* 8 C.F.R. § 1236.1(b). "It is tempting, if the only tool you have is a hammer, to treat everything as if it were a nail." *United States v. Johnson*, No. 20-cr-214-JPS, 2022 WL 102277, at *10 (E.D. Wisc. Jan. 11, 2022) (referencing Maslow's Hammer). Here, Defendants mistakenly believe their only tool to achieve Operational Black Rose's mass deportation scheme, regardless of the law, is indiscriminate detention, leading them to treat human beings, such as the Plaintiffs here, as mere numbers to fulfill a quota. Accordingly, if the agents who arrested Mr. Cruz Gamez were operating under a mistake of law that required they stop and arrest him in order to commence removal proceedings, that is a legal error which renders the stop and arrest unlawful. *See U.S. v. Twilley*, 222 F.3d 1092, 1096 (9th Cir. 2000) (a mistake of law cannot be the basis for reasonable suspicion).

B. Plaintiffs have established, as a factual matter, Defendants' policy and practice of conducting unlawful warrantless arrests in Oregon.

Defendants' arguments that they do not have a policy or practice of unlawful warrantless arrests in Oregon is similarly meritless. As Defendants concede, ECF 85 at 18 n.2, the Court has already found that Plaintiffs have established Defendants' pattern or practice of conducting warrantless arrests without individualized determinations of flight risk. *See* ECF 88 at 48 ("The Court finds that ample evidence in this case demonstrates a high likelihood—if not a certainty—that Defendants are engaging in a pattern and practice of unlawful conduct in Oregon"). This finding was soundly based on significant evidence, including copious news articles, declarations from numerous cases in this District, and in-court testimony. *See id.* at 37 ("The record is replete with examples demonstrating Defendants' pattern and practice of conducting warrantless arrests without first making the required individualized probable cause determinations."), 36-43 (describing evidence).

Similarly, Plaintiffs have also met their burden of showing a policy and practice of warrantless arrests without the required finding of probable cause of immigration status. As this Court has already found, "ICE fails to meaningfully question individuals or document facts known to the officers at the time of arrest," instead "copy[ing] and past[ing] language and broadly cit[ing] general immigration violations or information obtained *after* the time of arrest" to try to justify probable cause. *Id.* at 38. Though this discussion relates specifically to probable cause for flight risk, it is clear from the facts relied upon that the same deficiencies widely exist as to probable cause for immigration status as well. *See id.* (referencing the arrest of a lawful permanent resident; noting that an "officer who drafted the encounter narrative was not present at time of stop, relied on inaccurate information," and used an identical narrative for seven arrestees; and a "substantively inaccurate" encounter narrative written by a processing officer); *accord id.* at 40-

41 (describing the arrests of people with lawful status, including U.S. citizens "held for hours or longer before being allowed to prove their citizenship"). The Court correctly opined that "[t]hese determinations need to occur *before* a warrantless arrest is made for that arrest to be lawful." *Id.* This is just as true in the context of the probable cause finding for immigration status as it is for flight risk.

Finally, Defendants rely on a new memorandum ("Lyons Memo") to argue that Plaintiffs have no imminent injury. Opp. at 13. But actually, the Lyons Memo is just a doubling-down of DHS's illegal behaviors. The Lyons Memo directs ICE agents to pursue warrantless arrests under a flawed interpretation of what constitutes probable cause sufficient to deprive an individual of their liberty. *See* Todd M. Lyons, *Civil Immigration Arrest Authority: Administrative Arrest Warrants and Warrantless Arrests*, January 28, 2026, *available at* https://static01.nyt.com/newsgraphics/documenttools/e3524bab7246ffa8/0e6654f6-full.pdf (citing factors like age and health, driving a vehicle, possession of "*suspect[ed]* fraudulent documents", and probable cause of immigration status to constitute probable cause for escape risk-functionally allowing a flight risk finding for *anyone* anyone arrested in the community). If the Lyons Memo is merely a "reminder" (as it purports to be) for agents to follow the law, the Defendants' voluntary cessation of challenged conduct does not have an impact on this case. ECF 88 at 43-44. This is "especially true here, where Defendants have a longstanding history of noncompliance with these same laws." *Id.* at 44; Nava Broadcast Policy, Settlement Agreement, *Castañon Nava et al. v. Dep't of Homeland Sec.*, No. 18-cv-3757 (N.D. Ill.) (which remains in force, *see id.* at ECF 214 (finding that the Agreement remains enforceable while any motion to enforce its terms remains pending) *and* ECF 82 (motion to enforce, filed March 6, 2026)).

II. Defendants' jurisdictional argument under 8 U.S.C. § 1252(f) is meritless.

Defendants argue that the INA precludes the Court from issuing class-wide relief. ECF 85 at 19-21. But Plaintiffs do not seek to enjoin Defendants from any operation of the provisions of the INA covered by § 1252(f), which govern, in part, procedures for the apprehension and removal of noncitizens. Instead, Plaintiffs seek an order enforcing the legal standards that apply to warrantless arrests under 8 U.S.C. § 1357(a)(2) and protecting class members' constitutional rights under the Fourth and Fifth Amendments. *See* Supplemental Complaint, ECF 68 at 23.

Section 1252(f)(1), by its plain text, applies only to challenges to the government's statutory authority under 8 U.S.C. §§ 1221-1332. Defendants concede that Plaintiffs allege violations of 8 U.S.C. § 1357(a)(2), "which is not a provision specifically referenced in § 1252(f)(1)." ECF 85 at 20. Defendants nevertheless argue that section 1252(f)(1) "still applies because enjoining Defendants' warrantless arrest authority under 8 U.S.C. § 1357 necessarily interferes with the operation of [covered provisions]." *Id.* This interpretation of the statute is incorrect.

If an "injunction would have at most a 'collateral' effect on [the] operation of proceedings under covered provisions, it does not fall "within the scope of § 1252(f)(1)." *Al Otro Lado v. Exec. Office for Immigr. Review*, 138 F.4th 1102, 1125 (9th Cir. 2025) (citing *Gonzales v. Dep't of Homeland Sec.*, 508 F.3d 1227, 1233 (9th Cir. 2007)); *Garland v. Aleman Gonzalez*, 596 U.S. 543, 553 n.4 (2022) (acknowledging the "proposition that a court may enjoin the unlawful operation of a provision *that is not specified in § 1252(f)(1)* even if that injunction has some collateral effect on the operation of a covered provision") (emphasis in original). The Ninth Circuit has repeatedly refused to apply section 1252(f)(1) to claims that do not directly challenge provisions within 8 U.S.C. §§ 1221-1332, even if the result of the requested injunctive relief may have some impact

on a covered provision. *See, e.g.*, *Gonzales*, 508 F.3d at 1233; *Catholic Social Services, Inc. v. INS*, 232 F.3d 1139, 1150 (9th Cir. 2000) (en banc).

The Defendants' reliance on *N.S. v. Dixon*, 141 F.4th 279 (D.C. Cir. 2025) is unavailing. In *N.S.*, the D.C. Circuit overturned an overbroad injunction that prohibited the U.S. Marshals from making any immigration arrests—whether with an administrative warrant (governed by § 1226) or without (governed by § 1357). 141 F.4th 279, 289 (D.C. Cir. 2025). Here, Plaintiffs seek a remedy relating only warrantless civil immigration arrests governed by § 1357(a)(2), which, as discussed, does not fall within § 1252(f)(1)'s purview.

The decision in *Escobar Molina* further demonstrates why 8 U.S.C. § 1252(f)(1) does not bar class-wide relief. In *Escobar Molina*, as here, the government argued that "because the government must first arrest someone in order to detain them, any injunction affecting the way arrests are made will necessarily affect the 'operation of' provisions governing detention", such as sections 1225, 1226, and 1231, that are within the scope of section 1252(f)(1). *Escobar Molina*, 2025 WL 3465518, at *31. The court squarely rejected this argument, applying *Aleman Gonzalez* and concluding that "[j]ust because a warrantless civil immigration arrest, governed by § 1357(a), may lead to detention or other consequences governed by §§ 1221-31 does not mean that an injunction implicating § 1357(a)(2) is effectively an injunction impairing the operation of the covered sections." *Id.* at *32. So too here. As Defendants themselves point out, "arrest and continued detention are two distinct actions under the INA." ECF 85 at 17 (distinguishing arrests from detention under 8 U.S.C. § 1226(a)).[4]

[4] To the extent that halting unlawful warrantless arrests has impacts on Defendants' ability to subsequently continue to detain those individuals, such "downstream effects" do not strip this Court of jurisdiction over claims that pertain to Defendants' warrantless arrest authority and class members' constitutional rights. *Escobar Molina*, 2025 WL 3465518, at *31.

Section 1252(f)(1) does not limit this Court's jurisdiction to grant class wide relief.

III. Defendants' Rule 23 arguments are meritless.

Defendants' Rule 23 litany is unpersuasive. Plaintiffs can show that the class meets the Rule's requirements for numerosity, commonality, typicality, and adequacy; alternatively, a class is appropriate under Rule 23(b)(1) or (b)(2).

A. The proposed class and subclass satisfy the numerosity requirement.

Defendants argue that Plaintiffs fail to meet their burden of showing numerosity because of supposed reliance on newspaper articles that detail arrest in states other than Oregon. ECF 85 at 21-22. But, as Defendants well know, immigration law and policy are national in scope, making statements of agency leaders and actions in other states highly relevant as to the existence of the same policy in Oregon. *See Arizona v. United States*, 567 U.S. 387, 395–97 (2012) (describing the "extensive and complex" federal governance of immigration law).

Defendants also argue that Plaintiffs have not presented evidence specific to how many warrantless arrests have been conducted in the state. ECF 85 at 22. But this Court has already found, in its preliminary injunction decision, that Defendants have a policy of engaging in warrantless arrests in Oregon. ECF 88 at 37 (finding that "Plaintiffs proffer significant evidence to demonstrate that Defendants are executing [a policy of warrantless arrests without probable cause] in Oregon. . . . Defendants' officers have already executed this practice in Oregon communities and continue to do so."). Though the preliminary injunction holding was limited to the escape risk class, the Court also credited evidence of Defendants arresting multiple people in Oregon who have lawful immigration status or who are U.S. citizens. *Id.* at 40 (referencing the arrests of several U.S. citizens and a lawful permanent resident in Oregon); *see also infra* Section I.B. (Plaintiffs have met their burden of showing a policy and practice of warrantless arrests without probable cause of immigration status). And agency leadership continues to make

statements disavowing the probable cause standard. *See Nothing But Green Lights': ICE Memo Expands Agents' Warrantless Arrest Powers,* The Daily Caller (Jan. 31, 2026), https://dailycaller.com/2026/01/31/immigration-customs-enforcement-memo-expandsagents-warrantless-arrest-powers/ (last accessed Mar. 5, 2026) (quoting DHS Assistant Secretary for Public Affairs Tricia McLaughlin calling the Lyons memo "nothing new" and asserting that "[l]aw enforcement uses 'reasonable suspicion' to make arrests, as allowed under the Fourth Amendment"); *see also* ECF 88 at 42 (crediting Plaintiffs' evidence of prior statements by agency leadership stating the same). Having loudly trumpeted a policy of mass deportations without the constraints of the Constitution, Defendants are disingenuous to now pretend that potential class members are scarce. Plaintiffs have met their burden of showing the class is sufficiently numerous. *See Mercado v. Noem*, No. 25-cv- 6568 (LAK), 2025 WL 2658779, at *19 (S.D.N.Y. Sept. 17, 2025) ("Classes including future [members] generally meet the numerosity requirement due to the impracticality of counting such class members, much less joining them.") (cleaned up).

B. The proposed class and subclass satisfy the commonality requirement.

Plaintiffs amply meet Rule 23's requirement of commonality. "What matters to class certification . . .[is] the capacity of a class wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014). Whether or not the individual circumstances of each class member vary, where, as here, all individuals "retain a common core of factual or legal issues with the rest of the class, commonality exists." *Evon v. Law Offices of Sidney Mickell,* 688 F.3d 1015, 1029 (9th Cir.2012) (quotation marks and citation omitted).

1. The Arrest First, Justify Later policy applies to all class members.

Defendants cite *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) to argue that, while Plaintiffs may raise questions common to the class, commonality fails because there is no

common "answer" applicable to all class members because the agency purportedly makes individualized determinations regarding probable cause. ECF 85 at 22-24. But Plaintiffs claim fits squarely within *Wal-Mart*'s framework because they allege – and this Court has found, *see* ECF 88 at 37 – a policy of unlawful warrantless arrests; this is both a factual and legal question that can be answered *without* engaging in "individualized inquiries" about each class member. *See Wal-Mart*, 564 at 353 (holding that "significant proof" of a "general policy of discrimination" would be sufficient to show commonality in an employment discrimination class action). Plaintiffs' claims are based on an overarching policy and practice – unlawful warrantless arrests – that applies to *all* putative class members, irrespective of individual factors. *See Parsons*, 754 F.3d at 676 (finding commonality where "[t]he Complaint does not allege that the care provided on any particular occasion to any particular inmate (or group of inmates) was insufficient . . . but rather that [Defendant] policies and practices of statewide and systemic application expose all inmates in [Defendant] custody to a substantial risk of serious harm"). Plaintiffs' putative class is thus similar to other recently provisionally certified classes in which questions regarding the existence of an alleged overarching policy were determinative of commonality, irrespective of any differences in individuals' particular experiences. *See, e.g.*, *United Farm Workers*, 785 F. Supp. 3d 672, 725 (E.D. Cal. 2025) (finding arguments against commonality "unavailing" where Plaintiffs' claims were based on an overarching practice and policy, not the result of any individualized assessment); *Escobar Molina*, 2025 WL 3465518, at *33 (granting provisional certification where "the legality of the challenged policy and practice is not a question that requires wading into 'fact-specific and individualized' determinations about each class member's arrest"); *Moreno*, 2014 WL 4911938, at *8 (finding commonality met where "Plaintiffs are challenging the general policies and procedures used by Defendants" rather than "the reasonableness or constitutional of each

individual decision"); *Ramirez Ovando v. Noem*, No. 1:25-cv-03183-RBJ, 2025 WL 3293467, at *13 (D. Co. Nov. 25, 2025) (finding a similar provisional class to meet the commonality requirement).

All individuals in Plaintiffs' proposed class have been or are at risk of being arrested without a warrant for alleged civil immigration violations in Oregon irrespective of actual probable cause, meaning that they are subject – now or in the future – to Defendants' continued unlawful practices of warrantless arrest. In this way, the proposed class is like the class provisionally certified in *Ramirez Ovando*, in which the district court concluded that "[a]ll class members, by virtue of being in Colorado without lawful status, are subject to ICE's continued illegal practices." 2025 WL 3293467, at *13. The relief that Plaintiffs seek – the injunction against warrantless arrests – would equally guarantee all class members the protection from unlawful deprivations of liberty. In other words, "the potential factual differences that Defendants identify . . . do not affect Plaintiffs' 'entitlement to relief' on their claims about statutorily and constitutionally required *process* . . . So they are not the kind that destroy commonality." *L.G.M.L. v. Noem*, 800 F.Supp.3d 100, 119 (D.D.C. 2025).

C. Plaintiffs' claims satisfy the typicality requirement.

The test of typicality serves to ensure that "the interest of the named representative aligns with the interests of the class." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Under the "permissive standards" of Rule 23, "representative claims are 'typical' if they are reasonably coextensive with those of absent class members; they need not be substantially identical." *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1141 (9th Cir. 2016). The typicality analysis considers factors including "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.* Typicality inquiries

"tend to merge" with the issues considered for commonality. *General Tel. Co. v. Falcon,* 457 U.S. 147, 157 n. 13 (1982).

Both M-J-M-A- and Mr. Cruz Gamez are squarely representative of other proposed class members because they allege their fear of being injured by the same course of unlawful conduct: being deprived of their liberty through an unlawful warrantless civil immigration arrest. Because Plaintiffs fear being subject to the same practices as other class members, their claims are typical of the putative class members. *See United Farm Workers*, 785 F. Supp. 3d at 726–27 (finding typicality met where proposed class representatives were subjected to the same Border Patrol practices as the putative class members and suffered the same injuries).

D. Plaintiffs would adequately represent the interests of the class.

"Whether 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 v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998) (*quoting Crawford v. Honig*, 37 F.3d 485, 487 (9th Cir.1994)). Defendants identify no conflict of interest between Plaintiffs and the class, nor do they raise any concerns as to class counsel's ability to vigorously "to prosecute the action vigorously on behalf of the class." *See* ECF 85 at 27-28; *Kim v. Allison*, 87 F.4th 994, 1000 (9th Cir. 2023). Instead, Defendants' sole objection to Plaintiffs' adequacy as class representatives is based on their arguments regarding commonality and typicality. *See* ECF 85 at 27-28. As described *supra,* Plaintiffs meet both requirements.

For the reasons explained *supra*, Plaintiffs' interests are closely aligned with the interests of putative class members. *See* ECF 88 at 35 ("The named Plaintiffs do not request any relief particular to themselves; they assert only interests that are consistent with those of the subclass."). Plaintiffs, having suffered the same harm of warrantless arrest without probable cause as to flight

risk or immigration status, are not only willing but also able to vigorously represent the interests of the class. *See Mercado*, 2025 WL 2658779 at *21 (finding class representative adequate given possibility of future harm and absent "evidence undermining the sincerity of plaintiff's eagerness to pursue the interests of the class"); *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010), *abrogated on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2025) (finding class representative adequate where Respondents "challenge Petitioner's adequacy only by re-asserting their commonality and typicality arguments" and finding those elements met). Rule 23's adequacy requirement is therefore satisfied.

IV. Plaintiffs Do Not Propose an "Impermissible Fail-Safe Class"

Defendants' fail-safe argument fails. They categorize the proposed classes as "fail safe" and assert that "fail safe" classes are impermissible. ECF 85 at 28. Both contentions are incorrect.

The proposed class definitions are not so-called "fail safe" classes. A "fail-safe" class definition is one that references the merits of the case to determine class membership. *See* William B. Rubenstein, *Newberg on Class Action* § 3:6 (5th ed. 2016). "A simple example is: 'all employees unlawfully denied promotion.'" *Id.* But that is not the case here. The Warrantless Arrest Class and the Unassessed Escape Risk subclass do not contain any definitional elements that presuppose success on the merits. Rather, they are defined by whether the individuals were subjected to a warrantless arrest in a particular jurisdiction during a particular time. Pls.' Mot. Class Cert., ECF 60 at 2 (defining the class and subclass). As explained in their Motion, Plaintiffs proposed classes are properly defined to comply with the requirement of Rule 23 (a) of addressing common questions of fact that must be determined to establish liability. ECF 60 at 10-12.

Importantly, even if the proposed class definitions were found to be "fail safe" classes, this is not sufficient reason to deny class certification; instead, this problem "can, and often should, be resolved by refining the class definition rather than by flatly denying class certification." *Olean*

Wholesale Grocery Coop., Inc., F.4th 651, 669 n.14 (9th Cir. 2022) (quoting *Messner v. Northshore Univ. HealthSystem*, 669 F.3d 802, 825 (7th Cir. 2012)); *see also In re White*, 64 F.4th 302, 313 (D.C. Cir. 2023) (characterizing the fail-safe doctrine as "extra textual" and reversing the lower court's denial of class certification on that basis alone).

V. Plaintiffs Satisfy the Requirements of Rule 23(b)(2).

Defendants are incorrect that Plaintiffs fail to meet the requirements of Rule 23(b)(2). Rule 23(b)(2) is "unquestionably satisfied," as here, 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." *B.K. ex rel. Tinsley v. Snyder*, 922 F.3d 957, 971 (9th Cir. 2019). As explained *supra* section III.B.1., Plaintiffs challenge Defendants' policy and practice of unlawful warrantless civil immigration arrests in Oregon. Similar to the class challenge in *United Farm Workers*, Plaintiffs' "evidence contradicts Defendants' assertions, because it shows agents engaged in a "pattern and practice" of violating [constitutional] rights" that properly supports certification under Rule 23(b)(2). *See United Farm Workers*, 785 F. Supp. 3d at 729; *see also Ramirez Ovando*, 2025 WL 3293467, at *14 (finding "sufficient cohesiveness among class members under Rule 23(b)(2)" where ICE continues to engage in unlawful practices "[d]espite its own proclaimed policies").

Nor does the varying nature of class members' individual legal needs defeat the uniformity of the remedy sought. *Contra* ECF 85 at 30; *see Rodriguez*, 591 F.3d at 1126 (certifying class under Rule 23(b)(2) and explaining that despite variations in individual class members' process, "all class members' seek the exact same relief as a matter of statutory or, in the alternative, constitutional right"); *see also Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994) ("Indeed, (b)(2) classes have been certified in a legion of civil rights cases where commonality findings were based primarily on the fact that defendant's conduct is central to the claims of all class members irrespective of their individual circumstances and the disparate effects of the

conduct."). The appropriate remedy sought here is sufficiently uniform as to satisfy the requirements of Rule 23(b)(2).

VI. Plaintiffs Satisfy the Requirements of Rule 23(b)(1)(A).

Defendants mischaracterize Plaintiffs' claim and the relief Plaintiffs seek, thus Defendants' Rule 23(b)(1)(A) arguments necessarily fail. Defendants fail to grapple with Plaintiffs' core challenge in this case, which is whether Defendants are following the law in conducting warrantless arrests in Oregon. Defendants improperly characterize Plaintiffs' challenge as limited to *only* whether probable cause determinations are made, and not what probable cause determinations consist of. *See* ECF 85 at 31 (emphasis added). But this is not Plaintiffs' challenge. Plaintiffs challenge Defendants' policy and practice of failing to make *lawful* probable cause determinations in conducting wide sweeping warrantless arrests in Oregon and the relief Plaintiffs seek necessarily encompasses whether Defendants' probable cause determinations comply with the law. Thus, Plaintiffs are clearly seeking relief to challenge ICE's ongoing course of conduct that "is either legal or illegal as to all members of the class." *Adair v. England*, 209 F.R.D. 5, 12 (D.D.C. 2002).

Defendants are also wrong that the Lyons Memo provides Plaintiffs with the relief they seek. *See* ECF 85 at 32. While the Lyons Memo purports to "remind" ICE agents of the law, it simultaneously directs ICE agents to pursue warrantless arrests under a flawed interpretation of what constitutes probable cause sufficient to deprive an individual of their liberty. This Court has already found that Lyons Memo does not "demonstrate either a lack of past policy, pattern, or practice, or evidence of a new policy that effectively moots Plaintiffs' claims." ECF 88 at 43.

Finally, Defendants argue that, to the extent Plaintiffs challenge probable cause determinations made in accordance with the Lyons Memo, a Rule 23(b)(1)(A) class is inappropriate because it would require an individualized assessment of each arrest. ECF 85 at 32.

Again, Defendants either mischaracterize or misunderstand Plaintiffs' challenge and the relief Plaintiffs seek. Plaintiffs challenge Defendants' widespread policy and practice of making warrantless arrests in Oregon in violation of the law and seek relief that would require Defendants to comply with the law; this fits squarely within a Rule 23(b)(1)(A) action.

CONCLUSION

For the foregoing reasons, named Plaintiffs respectfully request that the Court grant their Motion for Class Certification, ECF 60, and enter an order certifying the proposed class and subclass 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.

Dated: March 6, 2026.

Respectfully submitted,

/s/ Stephen W Manning

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