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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 FRESCIA GARRO PINCHI, JUANY GALO
18 SANTOS, and JOSE TELETOR SENTE, on
behalf of themselves and others similarly
19 situated,

20 Plaintiffs-Petitioners,

21 v.

22 SERGIO ALBARRAN, Field Office Director
of the San Francisco Immigration and
Customs Enforcement Office; KRISTI
23 NOEM, Secretary of the United States
Department of Homeland Security; TODD
24 LYONS, Acting Director of United States
Immigration and Customs Enforcement,
25 acting in their official capacities; U.S.
DEPARTMENT OF HOMELAND
26 SECURITY; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT,

27 Defendants-Respondents.
28

Case No. 5:25-cv-5632-PCP

**REPLY IN SUPPORT OF MOTION FOR
PROVISIONAL CLASS
CERTIFICATION**

Date: December 9, 2025
Time: 10:00 a.m.
Dept: Courtroom 8 - 4th Floor
Judge: Hon. P. Casey Pitts

Date Filed: July 3, 2025

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1 **I. INTRODUCTION**

2 Defendants argue that purported “individual differences” among the proposed class
3 members defeat class certification—but ironically fail to acknowledge that Plaintiffs challenge
4 Defendants’ sweeping new policy (the “Re-Detention Policy”) precisely because it authorizes the
5 re-arrest and re-detention of noncitizens *without any individualized assessment* of their flight risk
6 or danger to the community, in violation of the APA and INA. When such violations are
7 systemic, as here, courts routinely grant class certification. Defendants’ Opposition to Plaintiffs’
8 Motion for Provisional Class Certification fails to meaningfully address Plaintiffs’ arguments.

9 Defendants advance a host of other arguments, many of which are based on
10 mischaracterizations of the law and none of which defeat provisional class certification. *First*,
11 contrary to Defendants’ contention, Plaintiffs have standing because they all face the imminent
12 risk of being re-detained under Defendants’ Policy. Notably, Defendants never state that they
13 will not re-detain Plaintiffs absent a material change in circumstances. *Second*, 8 U.S.C.
14 § 1252(e), which applies to expedited removal, has no bearing on Plaintiffs’ request to certify a
15 class of noncitizens properly subject to § 1226(a). *Third*, Defendants’ attempt to cast Plaintiffs’
16 proposed class definitions as overbroad fails because there is no administrative feasibility
17 requirement in the Ninth Circuit and, in any case, some overbreadth is permissible in a (b)(2)
18 class. *Finally*, neither § 1252(f)(1) nor the Supreme Court’s decision in *Trump v. CASA, Inc.* bar
19 the relief Plaintiffs seek here.

20 Plaintiffs have shown that the proposed Class and Subclass satisfy Rule 23. Accordingly,
21 Plaintiffs respectfully request that the Court provisionally certify the proposed Class and Subclass
22 and appoint Frescia Garro Pinchi, Juany Galo Santos, and Jose Waldemar Teletor Sente
23 (“Plaintiffs”) as class representatives.

24 **II. ARGUMENT**

25 **A. The Proposed Class and Subclass Meet the Requirements of Rule 23(a).**

26 Defendants fail to overcome Plaintiffs’ evidence establishing that the Proposed Class and
27 Subclass meet all of the requirements under Rule 23(a).
28

1 **1. Numerosity**

2 Defendants do not dispute Plaintiffs’ evidence that at least 40 noncitizens within the
3 jurisdiction of the San Francisco ICE Field Office have been re-detained without any
4 individualized assessment of dangerousness or flight risk. *See* Mot. at 10 n.3. Plaintiffs have
5 submitted numerous sworn declarations from noncitizens and practitioners affected by
6 Defendants’ Re-Detention Policy. The declarations establish that there are at least 40 confirmed
7 class members, including the 33 habeas clients represented by Jordan Weiner, Plaintiff Garro
8 Pinchi, and the six other impacted individuals who submitted declarations in support of Plaintiffs’
9 Motion to Stay describing their arrests without changed circumstances. *See* Dkt. Nos. 48-2, 48-5,
10 48-12-18. That alone satisfies the numerosity requirement. *Villalpando v. Exel Direct Inc.*, 303
11 F.R.D. 588, 605–06 (N.D. Cal. 2014) (courts “routinely” find numerosity where class comprises
12 40 or more members.). In addition to confirming the existence of at least 40 class members,
13 Plaintiffs have provided evidence, including news reports, showing that Defendants are
14 systematically re-detaining and re-arresting noncitizens within the jurisdiction of the San
15 Francisco ICE office, suggesting that number is likely much higher. *See* Mot. 10-11.

16 Defendants’ efforts to attack Plaintiffs’ clear showing of numerosity are unavailing. First,
17 Defendants incorrectly suggest that Plaintiffs are required to show the “precise class size” to
18 establish numerosity. Opp. 7. Plaintiffs need only “show some evidence of or reasonably
19 estimate the number of class members.” *Kincaid v. City of Fresno*, 244 F.R.D. 597, 601 (E.D.
20 Cal. 2007). Similarly, Plaintiffs are not required to predict the number of unknown future class
21 members, which is likely significant given that Defendants’ unlawful and arbitrary re-detentions
22 are ongoing. *See Sueoka v. United States*, 101 F. App’x 649, 653 (9th Cir. 2004) (class
23 certification appropriate without estimated number of future class members); *Kingdom v. Trump*,
24 No. 1:25-cv-691-RCL, 2025 WL 1568238, at *13 (D.D.C. June 3, 2025) (“[C]lasses including
25 future claimants generally meet the numerosity requirement due to the ‘impracticality’ of
26 counting such members...” (citation omitted).

27 Defendants next claim that Plaintiffs cannot establish numerosity absent individuals “with
28 the same factual pattern,” *i.e.*, the same “status, location, arrest, and alleged re-detention.” Opp.

1 8. That is not what the law requires. Numerosity is focused on the question of whether “joinder
 2 of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). As discussed above, Plaintiffs have
 3 made that showing given the number of impacted noncitizens. Defendants’ objections about
 4 perceived factual differences among the putative class members have no bearing on numerosity—
 5 they are arguments against commonality and typicality, which, for the reasons discussed below,
 6 also fail.

7 2. Commonality

8 Defendants’ commonality arguments are premised on a basic mistake: that Plaintiffs
 9 challenge the individual “application” of ICE’s authority to re-arrest and re-detain class members.
 10 Opp. 9. But Plaintiffs’ class claims challenge Defendants’ *systemic policy* of re-arresting and re-
 11 detaining noncitizens without any analysis of individual flight risk or danger to the community;
 12 Plaintiffs do not challenge *any individual* re-arrests and re-detentions on behalf of the class. This
 13 Court can therefore answer the overarching common question—whether this Re-Detention Policy
 14 is lawful under the APA—“in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350
 15 (2011) (when claims “depend upon a common contention” or the assertion of a single unlawful
 16 practice applied to all class members, commonality is satisfied); *see also Thakur v. Trump*, 787 F.
 17 Supp. 3d 955, 1005 (N.D. Cal. 2025) (commonality satisfied in APA challenge because a
 18 common issue existed as to whether the agency provided a sufficiently reasonable explanation for
 19 its decision to terminate multi-year federal grants previously awarded to fund research projects in
 20 several government agencies).

21 That the named Plaintiffs have different “individual circumstances” is entirely beside the
 22 point. Opp. 9. As the Ninth Circuit has made clear, determining whether systemic policies and
 23 practices are unlawful does not require a court “to determine the effect of those policies and
 24 practices upon any individual class member...or to undertake any other kind of” fact-intensive
 25 inquiry as to those individuals. *Parsons v. Ryan*, 754 F.3d 657, 678 (9th Cir. 2014). In *Parsons*,
 26 the plaintiffs sought certification of a class and subclass of inmates who alleged that various
 27 policies and practices governing their detention conditions exposed them to a serious risk of harm
 28 in violation of the Eighth Amendment. *Id.* at 663. In rejecting the Government’s challenge to

1 commonality, the court explained that dissimilarities among class members did not defeat
2 commonality because the plaintiffs were not challenging individual deficiencies in care on any
3 one occasion; rather, the members of the class were united by a shared exposure to government
4 policies and practices that put them at a substantial risk of future harm. *Id.* at 678. Here, as in
5 *Parsons*, the challenged policy “is unlawful as to every [class member] or it is not,” regardless of
6 whether a particular individual is re-arrested or re-detained. *See id.* Accordingly, Plaintiffs easily
7 satisfy Rule 23’s “permissive[.]” commonality requirement, because they challenge a systemic
8 policy and present common questions of law and fact. *See* Mot. 13-14 (identifying questions
9 common to the proposed Class and subclass); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
10 1019 (9th Cir. 1998).

11 3. Typicality

12 Defendants’ arguments against typicality are rooted in the same erroneous assumption that
13 typicality requires an assessment of the individualized circumstances of each putative class
14 member. Opp. 10-11. As with commonality, Defendants are wrong. *See, e.g., Armstrong v.*
15 *Davis*, 275 F.3d 849, 869 (9th Cir. 2001) (finding differences “in the nature of the specific
16 injuries suffered by the various class members” challenging systemwide prison policies and
17 practices were “insufficient to defeat typicality”); *Kidd v. Mayorkas*, 343 F.R.D. 428, 439 (C.D.
18 Cal. 2023) (holding that factual differences across various ICE encounters were insufficient to
19 defeat typicality where the plaintiffs “challenge[d] ICE’s policies or practices on a systemwide
20 basis.”) Indeed, if the Court were to accept Defendants’ argument that all proposed class
21 members must be injured by the policy in the exact same manner, typicality could rarely, if ever,
22 be satisfied. *See Brown v. Kelly*, 244 F.R.D. 222, 230 (S.D.N.Y. 2007) (“[I]f such factual
23 distinctions could preclude findings of commonality and typicality under Rule 23(a), they would
24 be the death knell for class actions challenging the systemic enforcement of an unconstitutional
25 statute.”).

26 Properly understood, Plaintiffs’ claims are typical because they arise from the same
27 unlawful and arbitrary Re-Detention Policy as other putative class members: under this Policy,
28 they have been re-arrested and re-detained, or are subject to being re-arrested and re-detained,

1 without any consideration of their individual flight risk or danger to the community. *See* Mot. 14-
2 15; *see also Parsons*, 754 F.3d at 685 (the test for typicality is “whether other members have the
3 same or similar injury, whether the action is based on conduct which is not unique to the named
4 plaintiffs, and whether other class members have been injured by the same course of conduct.”).
5 Thus, the specific factual details of each putative class member’s individual case are irrelevant to
6 typicality because all putative class members have been, or may be, “injured by the same course
7 of conduct” that is not unique to any of them and that forms the basis of their legal claims.
8 *Parsons*, 754 F.3d at 685. In short, typicality is a “permissive standard[]” that is satisfied “when
9 each class member’s claim arises from the same course of events, and each class member makes
10 similar legal arguments to prove the defendant’s liability.” *See Armstrong*, 275 F.3d at 868; *see*
11 *also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). Plaintiffs easily meet that
12 standard here.

13 4. Adequacy

14 Defendants offer no serious challenge to Plaintiffs’ adequacy as class representatives.
15 Adequacy is assessed by determining (1) if the named plaintiffs have any conflicts of interest with
16 other class members, and (2) if the named plaintiffs will prosecute the action vigorously on behalf
17 of the class. *See Evon v. Law Offs. of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012). The
18 individual Plaintiffs unquestionably meet that standard.¹ *See* Mot. 15-17.

19 Rather than address the legal standard for the adequacy requirement, Defendants first
20 attempt to challenge Plaintiffs’ adequacy by recycling the same failed arguments they advance
21 against other Rule 23 criteria, addressed above and below. *See* Opp. 12 (arguing that Plaintiffs
22 are inadequate class representatives because they lack injury-in-fact, have already received
23 preliminary relief on a habeas petition, or will receive relief at a different time and place than
24 other putative class members, causing their interests to diverge). But courts regularly deny
25 challenges to adequacy that are repetitive of arguments made in opposition to other class

26
27 ¹ Defendants do not contest, and therefore concede, the adequacy of proposed class counsel.
28 *Deus ex Machina Motorcycles Pty. Ltd. v. Metro-Goldwyn-Mayer Inc.*, No. CV20-4822-PLA,
2020 WL 6875178, at n.3 (C.D. Cal. Oct. 23, 2020) (finding plaintiff conceded argument that he
failed to contest in opposition and citing cases).

1 certification requirements. *See, e.g., Gonzalez v. ICE*, 975 F.3d 788, n.13 (9th Cir. 2020)
2 (declining to separately address the government’s adequacy challenge because it was
3 “coextensive” with its typicality challenge); *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir.
4 2010) (rejecting the government’s adequacy challenge because it only “re-assert[ed] their
5 commonality and typicality arguments”). Regardless, for the same reasons discussed above,
6 individual differences between the named Plaintiffs and the other class members would not defeat
7 adequacy because Plaintiffs’ class claims challenge the application of a uniform policy, not
8 individual re-arrests or re-detentions. *Gonzalez*, 975 F.3d at 809–12 (finding U.S. citizen could
9 adequately represent class members with diverse immigration statuses and differing facts
10 informing probable cause determinations for immigration arrests).

11 Defendants also assert, without a shred of evidence, that Plaintiffs are inadequate class
12 representatives because they “lack any understanding of their responsibilities as class
13 representatives.” Opp. 12. This is belied by the declarations submitted by Plaintiffs, which
14 confirm their commitment to representing the proposed Class and Subclass in this case. *See, e.g.*,
15 Dkt. No. 48-2, Garro Pinchi Decl. ¶ 24 (attesting that she “represent[s] the interests of everyone
16 in the class,” is “prepared to stay informed,” and is “committed to being a class representative
17 because [she] do[es] not want other people to be unlawfully detained.”). This evidence is more
18 than sufficient to establish Plaintiffs’ adequacy as class representatives for purposes of class
19 certification. *See In re Accellion, Inc. Data Breach Litig.*, No. 5:21-CV-01155-EJD, 2025 WL
20 2799102, at *9 (N.D. Cal. Sept. 30, 2025) (finding that “there is no expectation that [p]laintiffs be
21 required to know the legal matters at issue” to be adequate class representatives and explaining
22 that “[s]o long as a class representative has a basic awareness that she is representing others and
23 does not expressly disclaim any intent to represent the class or portions of the class, there is no
24 adequacy problem.”). Nor is it a requirement of Rule 23 that each proposed class representative
25 express their willingness to represent the class with sufficiently varied language. In fact, courts
26 regularly find adequacy satisfied even when proposed class representatives declare their
27 willingness to serve using identical language. *See, e.g., United Farm Workers v. Noem*, 785 F.
28 Supp. 3d 672, 727–28 (E.D. Cal. 2025) (finding adequacy requirement satisfied for three class

1 representatives where declaration for each proposed representative contained the same language).
2 Plaintiffs have satisfied all of the requirements under Rule 23(a).

3 **B. The Proposed Class and Subclass Meet the Requirements of Rule 23(b)(2).**

4 Defendants' response on Rule 23(b)(2) fares no better. Rule 23(b)(2)'s "requirements are
5 unquestionably satisfied when members of the putative class seek uniform...declaratory relief
6 from policies or practices that are generally applicable to the class as a whole." *Parsons*, 754
7 F.3d at 688. Defendants barely contest that Plaintiffs meet this standard. Instead, they raise
8 scattershot arguments about the unavailability of classwide relief, none of which are persuasive.

9 **1. Section 1252(f)(1) does not prohibit the Court from granting relief**
10 **here.**

11 8 U.S.C. § 1252(f)(1), which bars lower courts from issuing certain classwide relief, is
12 "nothing more or less than a limit on injunctive relief." *Biden v. Texas*, 597 U.S. 785, 801 (2022).
13 It does not apply here, where Plaintiffs do not seek a classwide injunction at all. For the class,
14 Plaintiffs seek only APA relief and a declaratory judgment. The Ninth Circuit has squarely held
15 that § 1252(f)(1) does not apply to either.

16 First, § 1252(f)(1) does not disturb district court jurisdiction to fashion classwide APA
17 remedies, including a temporary stay of agency action. *Immigrant Defs. L. Ctr. v. Noem*, 145
18 F.4th 972, 989–90 (9th Cir. 2025) ("*ImmDef*") (holding that § 1252(f)(1) does not bar classwide
19 relief under Section 705). Defendants rely exclusively on *Garland v. Aleman Gonzalez*, 596 U.S.
20 543 (2022), *Opp.* 14-15, but plaintiffs there argued that the government had violated § 1231 of the
21 INA and sought an injunction. There, plaintiffs did not assert claims under the APA or seek a
22 stay under the APA, which the Supreme Court has repeatedly held is distinct from and "less
23 drastic" than injunctive relief. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010); *see*
24 *also Nken v. Holder*, 556 U.S. 418, 428–29 (2009) (explaining the difference between a stay and
25 an injunction).

26 Second, § 1252(f)(1) similarly preserves district court jurisdiction over classwide
27 declaratory relief. *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 138 F.4th 1102, 1123–24 (9th Cir.
28 2025), *cert. granted on other grounds sub nom. Noem v. Al Otro Lado*, No. 25-5, 2025 WL

1 3198572 (U.S. Nov. 17, 2025); *see also Biden*, 597 U.S. at 800 (citing with approval opinions
2 holding that § 1252(f)(1) does not apply to declaratory relief).

3 Defendants do not mention *ImmDef* or *Al Otro Lado*, even though those cases control
4 here. Instead, Defendants assert without explanation that the classwide declaratory relief that
5 Plaintiffs seek in their complaint is “impermissibly coercive” and thus barred by § 1252(f)(1).
6 *Opp.* 15.² Nothing in the text of § 1252(f)(1) supports this theory, and *Al Otro Lado* forecloses
7 the argument. The classwide declaratory relief Plaintiffs seek in this case is indistinguishable
8 from the classwide declaratory relief the Ninth Circuit upheld there. In both cases, Plaintiffs
9 sought a classwide declaratory judgment that an immigration agency policy violated the law.
10 *Compare* Am. Compl. at 35 (seeking a declaration that Defendants’ Re-Detention Policy violates
11 federal law and the Constitution), *with* 138 F.4th 1102 at 1176 (upholding declaratory judgment
12 that DHS Metering Policy violated two federal statutes).

13 Unable to identify any coercive element of the relief Plaintiffs seek, Defendants resort to
14 conjecture, arguing that “if” Plaintiffs seek relief “to implement” a declaratory judgment, such
15 relief would be barred by § 1252(f)(1). *Opp.* 15. But Plaintiffs seek no such relief, *see*
16 Am. Compl. at 35, and the Ninth Circuit has expressly held that § 1252(f)(1) allows the relief
17 Plaintiffs do seek. This Court should disregard Defendants’ straw man arguments and grant
18 provisional class certification. *See McCabe v. Arave*, 827 F.2d 634, 639 (9th Cir. 1987) (“Federal
19 courts should not decide hypothetical questions.”).

20 **2. The inclusion of individual habeas claims does not preclude class**
21 **certification.**

22 Defendants argue that class treatment of Plaintiffs’ APA claims is inappropriate because
23 Plaintiffs are *also* pursuing individual habeas claims, but this argument is grounded in neither law
24 nor reason. *Opp.* 16-17. Defendants cite no authority suggesting that a plaintiff may not assert
25 individual habeas claims and non-habeas class claims together in one complaint. No such bar
26 exists. *See* Fed. R. Civ. P. 18(a) (“A party asserting a claim, counterclaim, crossclaim, or third

27 ² Contrary to Defendants’ citation, the Supreme Court in *Biden v. Texas* did not discuss
28 “coercive” declaratory judgments at all. *Contrast* Dkt. No. 68, *Opp.* to Mot. to Stay 15, *with* 597
U.S. 785 (2022).

1 party claim may join, as independent or alternative claims, as many claims as it has against an
2 opposing party.”). Defendants’ reliance on *Pinson v. Carvajal*, 69 F.4th 1059 (9th Cir. 2023), for
3 this proposition is misplaced: In that case, the habeas petitioner relied *exclusively* on habeas
4 jurisdiction to append claims that were outside the “core” of habeas. *Id.* at 1075. That is not the
5 case here. *See* Am. Compl. ¶ 12.

6 Defendants also claim that because Ms. Garro Pinchi pursued and obtained individualized
7 habeas relief, there is no live controversy. That is wrong. The Court’s Order granting a
8 preliminary injunction on Ms. Garro Pinchi’s individual habeas claim has no bearing on the
9 propriety of provisional class certification; Plaintiffs have not yet been awarded *any* relief as to
10 their class claims challenging the Re-Detention Policy. Moreover, even this Court’s preliminary
11 injunction regarding Ms. Garro Pinchi’s individual claims is based on her *likelihood* of success on
12 the merits; she has not been awarded any final relief. *See Nielson v. Preap*, 586 U.S. 392, 404
13 (2019) (“[T]he fact that the named plaintiffs obtained some relief before class certification does
14 not moot their claims.”). Accordingly, Defendants’ arguments fail.

15 3. **CASA does not preclude class certification.**

16 In the final pages of their opposition brief, Defendants argue that *Trump v. CASA, Inc.*,
17 606 U.S. 831 (2025), precludes Plaintiffs’ request for provisional class certification. Opp. 17-19.
18 Defendants’ argument badly misconstrues the Supreme Court’s holding in *CASA* and must be
19 rejected.

20 Defendants argue that “*CASA* makes clear that courts may not award classwide relief” to
21 restrain the Government; this is simply wrong. Opp. 18. *CASA* did not concern class certification
22 at all. In *CASA*, the Supreme Court addressed the propriety of injunctions obtained on behalf of
23 *individual* plaintiffs that applied to nonparties nationwide. *CASA*, 606 U.S. at 838–40. The
24 Supreme Court found that a court’s equitable authority extends only so far as to provide
25 “complete relief” to the parties. *Id.* at 851. Based on that conclusion, the Supreme Court held
26 that the nationwide injunctions issued in cases brought by individual plaintiffs—without a
27 certified class—exceeded that equitable authority. *Id.* at 856.

28 Far from prohibiting classwide relief, *CASA* reaffirmed the importance of Rule 23 and

1 class actions in obtaining relief on behalf of absent parties. The *CASA* majority expressed its
 2 concern that universal injunctions operate as a “shortcut to relief” that “*circumvent[s]* Rule 23’s
 3 procedural protections and allow[s] courts to create de facto class actions at will.” *Id.* at 849
 4 (emphasis added); *id.* (“Why bother with a Rule 23 class action when the quick fix of a universal
 5 injunction is on the table?”). That is, *CASA* embraced Rule 23 as the solution to the perceived
 6 problems with universal injunctions. *Id.* at 850 (explaining that universal injunctions are an
 7 impermissible class action workaround).

8 *CASA*’s holding thus has no bearing here. Plaintiffs are not seeking a “universal”
 9 injunction on behalf of nonparties. Instead, Plaintiffs seek to certify a class of noncitizens within
 10 the jurisdiction of the San Francisco ICE Field Office and obtain relief on their behalf, and
 11 Plaintiffs have shown that they satisfy the requirements of Rule 23 to obtain this relief—precisely
 12 the procedural approach that the Supreme Court endorsed in *CASA*.

13 **C. Defendants’ Remaining Arguments Do Not Defeat Provisional Class**
 14 **Certification.**

15 **1. Section 1252(e)(1)(B) does not bar class certification.**

16 Defendants argue that 8 U.S.C. § 1252(e)(1)(B), in connection with § 1252(e)(3), bar
 17 Plaintiffs’ request for provisional class certification. But Defendants’ argument is based on a
 18 misunderstanding of the statute and Plaintiffs’ claims.

19 Defendants’ opposition rewrites Plaintiffs’ claims as seeking to “restrict the government’s
 20 application of § 1225(b).” Opp. 4. But this case does *not* challenge the implementation of
 21 § 1225(b); instead, Plaintiffs challenge Defendants’ policy of re-detaining noncitizens who were
 22 released under § 1226(a). Indeed, according to Defendants’ own exhibits, *see* Dkt. No. 68-1 at
 23 ¶¶ 8, 18; Dkt. No. 68-2 at ¶ 9, they initially released all three of the individual Plaintiffs under
 24 § 1226(a), including Plaintiff Garro Pinchi, whom Defendants have conceded was subject to
 25 § 1226(a) at the time of her re-detention. *See* Dkt. No. 20. This summer, for the first time,
 26 Defendants began to assert the novel argument that § 1225(b)(2) applies to noncitizens like
 27 Plaintiffs, who were initially released from detention under § 1226(a). But, as explained in
 28 Plaintiffs’ Motion to Stay Agency Action and as demonstrated by Ms. Garro Pinchi’s re-arrest,
 Defendants had already implemented their Re-Detention Policy prior to inventing this post-hoc

1 rationale. Dkt. No. 48, Mot. to Stay 12. Accordingly, Plaintiffs’ challenge to the Re-Detention
2 Policy cannot be explained or justified by Defendants’ post-hoc re-interpretation of § 1225(b)(2).
3 *Id.* at 12-14; *see also Cordero Pelico v. Kaiser*, No. 25-cv-07286-EMC, 2025 WL 2822876 (N.D.
4 Cal. Oct. 3, 2025) (rejecting the government’s post-hoc re-interpretation of § 1225(b)(2)); *Pablo*
5 *Sequen v. Kaiser*, No. 25-cv-06487-PCP, 2025 WL 2650637 at *1, *6-7 (N.D. Cal. Sept. 16,
6 2025) (same); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *5
7 (S.D.N.Y. Aug. 13, 2025) (same).

8 In fact, courts have repeatedly rejected the precise argument Defendants attempt to
9 advance here, holding that § 1252(e)(3) does not bar claims that deal with the question of whether
10 § 1225(b)(2) applies to noncitizens. *See, e.g., Guerrero Orellana v. Moniz*, No. 25-CV-12664-
11 PBS, 2025 WL 3033769, at *6 (D. Mass. Oct. 30, 2025) (“Because § 1225(b)(2)(A) does not
12 govern the detention of individuals in Guerrero Orellana’s position in the first place, he is not
13 seeking judicial review of the “implementation” of § 1225(b).”); *Guerra v. Noem*, No. 1:25-CV-
14 1341, 2025 WL 3204289, at *3 (W.D. Mich. Nov. 17, 2025) (rejecting the government’s claim
15 that § 1252(e)(3) deprived the court of jurisdiction where the petitioner was detained under
16 § 1226(a), not § 1225(b)(2)); *J.A.M. v. Streeval*, No. 4:25-CV-342 (CDL), 2025 WL 3050094, at
17 *1 (M.D. Ga. Nov. 1, 2025) (same).

18 Moreover, even if the Court were to construe this case as a challenge to the
19 implementation of § 1225(b)(2)—which it is not—§ 1252(e) still would not apply to bar
20 Plaintiffs’ request for provisional class certification. As the Ninth Circuit has held, the provisions
21 of § 1252(e) apply only to § 1225(b)(1), which governs expedited removal orders. *E. Bay*
22 *Sanctuary Covenant v. Biden*, 993 F.3d 640, 666 (9th Cir. 2021) (“Section 1252(e)(3) authorizes a
23 limited court review of *expedited-removal proceedings*.”) (emphasis added); *see also O.A. v.*
24 *Trump*, 404 F. Supp. 3d 109, 141 (D.D.C. 2019) (“§ 1252(e)(3) is about challenges to expedited
25 removal orders and the implementation of the expedited removal provisions that Congress
26 enacted in IIRIRA.”). In contrast, noncitizens subject to § 1225(b)(2) are *not* in expedited
27 removal, but full removal proceedings under § 1229a. *See* 8 U.S.C. § 1225(b)(2).

28 The Ninth Circuit’s holding in *East Bay Sanctuary Covenant* is consistent with the

1 statute’s title, plain language and legislative history. For example, § 1252(e) is expressly titled
 2 “Judicial Review of Orders *Under Section 1225(b)(1)*.” 8 U.S.C. § 1252(e) (emphasis added);
 3 *see also Gonzalez v. Herrera*, 151 F.4th 1076, 1082 (9th Cir. 2025) (quoting *Dubin v. United*
 4 *States*, 599 U.S. 110, 120–121 (2023) (“[T]he title of a statute...[is a] tool[] available for the
 5 resolution...about the meaning of statute.”). Thus, as one court in this district has already found,
 6 subsection (e)(3) should be understood as a reference only to § 1225(b)(1)’s expedited removal
 7 process. *Innovation L. Lab v. Nielsen*, 366 F. Supp. 3d 1110, 1120 (N.D. Cal. 2019) (“In context,
 8 however, ‘the system’ should be understood as a reference to the expedited removal procedure
 9 authorized under section 1225(b)(1).”), *vacated as moot sub nom. Innovation L. Lab v. Mayorkas*,
 10 5 F.4th 1099 (9th Cir. 2021).³

11 Accordingly, the Court should reject Defendants’ argument that § 1252(e) bars Plaintiffs’
 12 request for provisional class certification.

13 2. Plaintiffs present a live Article III controversy.

14 Defendants claim that Plaintiffs lack standing because: (1) none of them are currently
 15 detained; (2) Ms. Garro Pinchi has already been released from custody; and (3) Mr. Teletor Sente
 16 and Ms. Galo Santos have not yet been re-detained and identify no evidence suggesting imminent
 17 re-detention. Defendants’ arguments fail.

18 In a class action, standing is satisfied if at least one named plaintiff meets the
 19 requirements. *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007). Here that
 20 standard is easily met. There can be no dispute that Ms. Garro Pinchi had Article III standing
 21 when she filed this action—she had just been re-arrested and re-detained pursuant to Defendants’
 22 Re-Detention Policy. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 569 n.4 (1992) (standing is
 23 assessed at the time the complaint is filed); *Gonzalez*, 975 F.3d at 803 (assessing “standing for
 24 prospective injunctive relief as of the time when [plaintiff] commenced suit, relying on the
 25 allegations in the operative amended complaint”). Additionally, although this Court need not

26 ³ The legislative history confirms that § 1252(e)(3) “is limited to whether section 235(b)(1)
 27 [codified as § 1225(b)(1)], or any regulations issued *pursuant to that section*, is constitutional, or
 28 whether the regulations, or a written policy directive, written policy guidance, or written
 procedures issued by the Attorney General are consistent with the INA or other law.” H.R. Conf.
 Rep. No. 104-828 at 220–21, 104th Cong., 2d Sess. 1996 (emphasis added).

1 reach it, the other named plaintiffs also have demonstrated Article III injury because the Re-
2 Detention Policy remains in effect, and thus they remain subject to the imminent risk of re-arrest
3 and re-detention at their next ICE check-in or immigration hearing. Defendants’ argument that
4 Plaintiffs’ fears of future re-detention are “speculative” is particularly specious, Opp. 6, given that
5 the government has not chosen to make any commitments that they will not detain Ms. Galo
6 Santos or Mr. Teletor Sente (or any other proposed class members) in the future absent a material
7 change in circumstances. Indeed, the government’s position in this action that § 1225(b)(2)
8 requires mandatory detention of Plaintiffs suggests a firm intent to detain them in the near term.

9 Nor does this Court’s preliminary-injunction order requiring Ms. Garro Pinchi’s release
10 from detention rob her of standing. The preliminary injunction order is only temporary; it does
11 not fully resolve her claims. *See Pablo Sequen v. Albarran*, 2025 WL 2935630, at *4 (N.D. Cal.
12 Oct. 15, 2025) (rejecting similar mootness argument because the preliminary injunction neither
13 “provide[d] all the relief requested by [the plaintiff]”, nor “fully adjudicate[d] [her] claims”).

14 Regardless, the inherently transitory nature of the claims at issue here favor finding that
15 standing exists and granting provisional certification. The Ninth Circuit has explained that an
16 inherently transitory claim is one that “will certainly repeat as to the class either because the
17 individual could nonetheless suffer repeated harm or because it is certain that other persons
18 similarly situated will have the same complaint.” *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081,
19 1090 (9th Cir. 2011). “In such cases, the named plaintiff’s claim is ‘capable of repetition, yet
20 evading review,’ and the ‘relation back’ doctrine is properly invoked to preserve the merits of the
21 case for judicial resolution,” requiring that the Court evaluate the case as of the time the amended
22 complaint was filed. *Id.* at 1090–91. Here, the class claims arising out of Defendants’ Re-
23 Detention Policy are exactly this type of transitory claim. For example, when the Amended
24 Complaint was filed on October 10, 2025, Mr. Teletor Sente’s upcoming immigration hearing
25 was scheduled for November 18, 2025, which would have occurred before the class certification
26 motion was ruled upon. Am. Compl. ¶ 81; *cf. Gomez v. Campbell-Ewald Co.*, 805 F. Supp. 2d
27 923, 927–28 (C.D. Cal. 2011) (inherently transitory exception for class claims include instances
28 where “the trial court will not have enough time to rule on a motion for class certification before

1 the proposed named plaintiff’s individual interest expires.”).

2 Defendants try to dodge this fact, asserting that the doctrine does not apply because
3 Plaintiffs have not established that they will be re-detained. As an initial matter, as to Ms. Galo
4 Santos and Mr. Teletor Sente, Defendants’ argument ignores that both have demonstrated that
5 they face the imminent risk of re-arrest and re-detention, as discussed above. And as to
6 Ms. Garro Pinchi, the only individual Plaintiff who has already been subject to re-detention under
7 Defendants’ Re-Detention Policy, this assertion cannot be reconciled with controlling precedent.
8 In *Nielsen v. Preap*, the Supreme Court squarely held that “the fact that the named plaintiffs
9 obtained some relief before class certification”—there, as here, release from detention—“does not
10 moot their claims.” *See* 586 U.S. at 404. It is immaterial that Ms. Garro Pinchi may not be re-
11 detained yet again pursuant to the government’s Re-Detention Policy—because other proposed
12 class members will be. *See Doe v. Wolf*, 424 F. Supp. 3d 1028, 1039 (S.D. Cal. 2020) (“In cases
13 concerning class actions, the named plaintiff need not be subjected to the same action again for
14 the claim to be inherently transitory.”). That defeats mootness in the class-action context.

15 3. The proposed Class and Subclass are clearly defined.

16 Defendants claim that the proposed Class and Subclass cannot be provisionally certified
17 because they (1) cannot be defined using “objective, administratively feasible criteria” and (2) are
18 overbroad. Neither argument holds water.

19 Rule 23 does not require that the identification of class members be “administratively
20 feasible.” In fact, in *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121 (9th Cir. 2017), the Ninth
21 Circuit expressly disclaimed such a requirement for (b)(3) classes, which must satisfy more
22 stringent requirements than (b)(2) classes. *Id.* at 1126. Even Defendants’ cited cases
23 acknowledge this point. *See True Health Chiropractic Inc. v. McKesson Corp.*, 896 F.3d 923,
24 929 (9th Cir. 2018) (explaining that under *Briseno* there is “no free-standing requirement” that the
25 identification of class members must be “administratively feasible”). Accordingly, numerous
26 district courts in this circuit have applied *Briseno* in cases seeking certification of (b)(2) classes
27 finding the administrative feasibility requirement “serves little purpose” in (b)(2) classes given
28 the “indivisible nature” of the remedy sought. *In re Yahoo Mail Litig.*, 308 F.R.D. 577, 597 (N.D.

1 Cal. 2015); *Mirabelli v. Olson*, No. 3:23-cv-768-BEN-WVG, 2025 WL 2939531, at *5 (S.D. Cal.
2 Oct. 15, 2025) (quoting *Briseno* and concluding in a Rule 23(b)(2) case that “the Ninth Circuit
3 does not impose an ‘ascertainability’ requirement or an ‘administrative feasibility’ requirement
4 for class certification”). Defendants’ attempt to impose this additional requirement on Plaintiffs’
5 request for provisional class certification is without basis in law.

6 Defendants’ argument that the proposed Class and Subclass are overbroad and circular
7 because they encompass “all” noncitizens overlooks a critical limitation—both the proposed
8 Class and Subclass are confined to noncitizens *in the jurisdiction of the San Francisco ICE Field*
9 *Office* who are subject to the same, uniform Re-Detention Policy. Neither group is overbroad or
10 circular; the proposed Class and Subclass are defined by objective factual criteria. Moreover,
11 even if the proposed class definitions were overbroad, some overbreadth is permissible in a (b)(2)
12 class seeking equitable relief because uninjured class members will receive no windfall. *See*
13 *Rodriguez*, 591 F.3d at 1125 (“[T]he fact that some class members have suffered no injury or
14 different injuries” does not prevent certification under Rule 23(b)(2) because only equitable relief
15 is sought).

16 **III. CONCLUSION**

17 As long as Defendants’ Re-Detention Policy remains in place, noncitizens who are
18 members of the Proposed Class and Subclass are at risk of arbitrary re-arrest and re-detention
19 without any individualized determination of a material change in circumstances. For the
20 foregoing reasons, this Court should grant Plaintiffs’ motion for provisional class certification.

21
22 Dated: November 24, 2025

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