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15 UNITED STATES DISTRICT COURT  
16 EASTERN DISTRICT OF CALIFORNIA  
17 FRESNO DIVISION

18 UNITED FARM WORKERS, et al.,  
19 Plaintiffs,  
20 v.  
21 KRISTI NOEM, SECRETARY OF  
22 HOMELAND SECURITY, et al.,  
23 Defendants.

No. 1:25-cv-00246-JLT-CDB

**DEFENDANTS' OPPOSITION TO  
PLAINTIFFS' MOTION FOR  
PROVISIONAL CLASS CERTIFICATION**

Scheduled Hearing: April 28, 2025, at 1:30 p.m.,  
Courtroom 4, before Hon. Jennifer L. Thurston

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**INTRODUCTION**

1  
2 Plaintiffs move to certify two broad and distinct putative classes: the “Suspicionless Stop Class”  
3 and the “Warrantless Arrest Class” (collectively “the Proposed Classes”).<sup>1</sup> The fundamental flaw in  
4 Plaintiffs’ Proposed Classes is that they do not account for the many factors that are involved in assessing  
5 probable cause and flight risk where there exists no pattern, practice, or policy of U.S. Border Patrol  
6 (“USBP”) conducting unlawful stops and arrests in the Eastern District of California. This is because  
7 assessing “reasonable suspicion”—a *sine quo non* for both determinations—is a singularly discretionary  
8 determination based on the unique circumstances of each stop and arrest. *U.S. v. Rodriguez*, 976 F.2d  
9 592, 595 (9th Cir. 1992). This flaw renders the Proposed Classes defective, and Plaintiffs cannot meet  
10 their burden to satisfy the requirements of Fed. R. Civ. P. 23.

11 The Court should deny Plaintiffs’ motion for provisional class certification for three specific  
12 reasons. *First*, the Proposed Classes are what is known as “fail-safe” classes, because they are  
13 impermissibly circular in nature and defined in a way that precludes membership unless liability of the  
14 defendant is established. *Second*, the Proposed Classes are not sufficiently numerous, encompass  
15 dissimilarly situated individuals whose claims are not common, whose injuries are not typical, and who  
16 differ in their ability to challenge their claims through the administrative process. Crafting an injunction  
17 on the basis of the Proposed Classes to provide classwide relief would be impossible because to determine  
18 whether the alien is a member of the proposed class would require an individualized assessment of  
19 whether the alien was illegally stopped and arrested by Border Patrol. Plaintiffs therefore have not met  
20 their burden to show the numerosity, commonality, typicality, or adequacy requirements under Fed. R.  
21 Civ. P. 23(a). *Third*, Plaintiffs have not made the required showing that Defendants acted or refused to  
22 act on grounds generally applicable to the Proposed Classes, so that final injunctive relief or  
23 corresponding declaratory relief could be appropriate for the Proposed Classes as a whole, as required  
24 under Fed. R. Civ. P. 23(b)(2). For these reasons, Plaintiffs’ motion for provisional class certification  
25 should be denied.

26  
27  
28 <sup>1</sup> Defendants use terminology consistent with the terminology used in Plaintiffs’ motion. *See*  
ECF No. 14-1 at 2.

1 **STATEMENT OF THE FACTS**

2 Plaintiffs seek provisional certification of two proposed classes. The first proposed class, which  
3 Plaintiffs name the “Suspicionless Stop Class,” comprises:

4 All persons who, since January 6, 2025, have been or will be subjected to a detentive stop  
5 by Border Patrol in this district pursuant to a practice of conducting stops without warrants  
6 and without an individualized assessment of reasonable suspicion whether the person (1)  
7 is engaged in an offense against the United States or (2) is a noncitizen unlawfully in the  
8 United States.

9 ECF No. 14-1 at 2. The second proposed class, which Plaintiffs name the “Warrantless Arrest Class,”  
10 comprises: “All persons whom Border Patrol, since January 6, 2025, has arrested or will arrest without a  
11 warrant in this district.” *Id.*

12 **1. Proposed Three Class Representatives.**

13 Plaintiffs propose three class representatives—Oscar Morales Cisneros, Wilder Munguia  
14 Esquivel, and Yolanda Aguilera Martinez—to represent both the Suspicionless Stop Class and the  
15 Warrantless Arrest Class. *Id.* These three proposed class members have attached declarations to  
16 Plaintiffs’ related motion for a preliminary injunction. *See* ECF Nos. 15-9, 15-10, 15-11. Below are  
17 summaries relating to these three representatives of the Proposed Classes, as alleged in Plaintiffs’  
18 Complaint. *See generally* ECF No. 1, Compl.

19 **A. Proposed Representative Oscar Morales Cisneros**

20 On January 7, 2025, Border Patrol stopped and detained Oscar Morales Cisneros (“Cisneros”)  
21 during a vehicle stop. *See* ECF No. 15-9 (“Cisneros Decl.”) ¶ 4. Cisneros alleges he was about to reverse  
22 out of his parking spot when an unmarked Chevrolet Tahoe pulled up behind his truck and blocked him  
23 in. *Id.* Cisneros put his truck back in park and lowered his driver’s side window. *Id.* Two men in Border  
24 Patrol uniforms approached his window, and one of the men asked Cisneros if he had papers and was  
25 here legally. *Id.* at ¶¶ 4-5. Cisneros did not answer. *Id.* at ¶ 5. After Cisneros exercised his right to  
26 remain silent, Cisneros voluntarily gave one of the agents his driver’s license, and one of the agents  
27 walked back to the Tahoe with his license. *Id.* When the agent returned, he told Cisneros he was in the  
28 United States illegally and arrested him. *Id.* at ¶¶ 5-6. Cisneros was transported to a detention facility in  
El Centro and, on January 10, 2025, provided with a monitoring device and released. *Id.* at ¶¶ 9, 18-19.

**B. Proposed Representative Wilder Munguia Esquivel**

1           **B. Proposed Representative Wilder Munguia Esquivel**  
2           On January 7, 2025, Border Patrol stopped and detained Wilder Munguia Esquivel (“Esquivel”)  
3 around 12:00 p.m., while he was outside of a Home Depot in Bakersfield, CA, standing with a group of  
4 other day laborers, when several unmarked vehicles pulled up and at least ten plain-clothed men, most  
5 wearing masks covering all but their eyes, exited the vehicles and aggressively “swarmed around us.”  
6 *See* ECF No. 15-10 (“Esquivel Decl.”) ¶¶ 4-5. One of the men asked Esquivel about his status—“Do you  
7 have papers? Do you have identification? Where are you from?” *Id.* at ¶ 5. When Esquivel did not  
8 answer, the man asked again, but louder, and then asked again, louder still. *Id.* Esquivel turned away  
9 from the man and walked away. *Id.* The man followed Esquivel, continuing to ask Esquivel questions.  
10 *Id.* Esquivel did not respond, and the man ordered Esquivel to stop. *Id.* Esquivel realized the man was  
11 a federal immigration agent and stopped, telling the agent “I have the right to remain silent.” *Id.* at ¶¶ 5-  
12 6. The agent asked Esquivel for identification and ordered him to take out his wallet. *Id.* at ¶ 6. Before  
13 Esquivel could comply, the agent removed the wallet from Esquivel’s back pocket, looked through it,  
14 and arrested him. *Id.* at ¶¶ 7-9.

**C. Proposed Representative Yolanda Aguilera Martinez**

15           **C. Proposed Representative Yolanda Aguilera Martinez**  
16           On January 8, 2025, Border Patrol stopped and detained Yolanda Aguilera Martinez (“Martinez”)  
17 during a vehicle stop in Bakersfield, CA around 4:30 pm. *See* ECF No. 15-11 (“Martinez Decl.”) ¶ 4.  
18 Martinez was driving to a doctor’s appointment when she saw two vehicles, one with flashing police  
19 lights, pulled over to the right side of the road with three men standing near the vehicles. *Id.* ¶¶ 4-5. The  
20 men were in plain-clothes, but with holstered firearms, and one of the men raised his hand and flagged  
21 Martinez to pull over her vehicle. *Id.* Martinez pulled over, and the man who flagged Martinez down  
22 approached her window and asked about her immigration status. *Id.* at ¶ 6. Martinez produced a driver’s  
23 license, but the man questioned its authenticity. *Id.* at ¶ 6. The man placed handcuffs on Martinez and  
24 took her to his vehicle. *Id.* at ¶ 7. After Martinez produced an image on her phone of her green card and  
25 showed it to the agents, the agents released her. *Id.* at ¶ 10. Martinez alleges to be a Lawful Permanent  
26 Resident (“LPR”). *Id.* at ¶ 2.

1           **2.       *Additionally Named and Unnamed Plaintiffs.***

2           Plaintiffs additionally identify other Plaintiffs in their Complaint. Specifically, Plaintiffs’  
3 Complaint identifies Juan Vargas Mendez and Maria Guadalupe Hernandez Espinoza, who are named  
4 Plaintiffs, in the caption of the Complaint. *See generally* ECF No. 1. The Complaint also references  
5 other unnamed Plaintiffs such as Jesus Ramirez, Ernesto Campos Gutierrez, and Luis Perez Cruz. *See,*  
6 *e.g.*, ECF No. 1, Compl., at 37-42. These additional named and unnamed Plaintiffs have attached  
7 declarations relating to the allegations raised in Plaintiffs’ Complaint. ECF Nos. 15-4 through 15-8. It  
8 is important for the Court to consider the declarations of these Plaintiffs to verify whether the proposed  
9 class representatives adequately represent the class as a whole. *Melendres v. Arpaio*, 784 F.3d 1254, 1261  
10 (9th Cir. 2015) (“Class certification . . . is meant to ensure that named plaintiffs are adequate  
11 representatives of the unnamed class.”). Below are summaries of the allegations of these additional  
12 Plaintiffs.<sup>2</sup>

13           **A.       Named Plaintiff Juan Vargas Mendez**

14           On January 8, 2025, at approximately 5:00 p.m., Juan Vargas Mendez (“Mendez”) was driving  
15 with five of his coworkers in a van when an SUV with flashing lights pulled the van over. *See* ECF No.  
16 15-6 (“Mendez Decl.”) ¶¶ 4-5. Mendez described the people who pulled the van over as four people  
17 wearing regular clothing. *Id.* at ¶ 6. Mendez stated one of the men approached the van and demanded  
18 that the driver and front passenger show their license and proof of residency. *Id.* at ¶ 7. He further states  
19 that as the agent was reviewing the identifications, two other agents opened the van door without consent  
20 from any of the passengers and shouted for identification. *Id.* at ¶ 8. Mendez alleges he did not show his  
21 identification to the agent because he was not carrying it with him. *Id.* at ¶ 9. Mendez alleges the agents  
22 arrested him without telling him the reason for his arrest and without a warrant. *Id.* at ¶10. Eventually,  
23 one of the agents told Mendez that he was arrested because he was in the United States illegally and that  
24 he would be deported. *Id.* ¶15. Mendez claims he signed his name on a pad provided to him by Border  
25 Patrol agents, but he did not understand what he was signing. *Id.* at ¶ 19. On January 9, 2025, Mendez

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27           <sup>2</sup> The United Farm Worker Plaintiffs are “Alicia,” “Benjamin,” “Carlos,” and “Fernando” who  
28 are using pseudonyms. *See e.g.*, ECF No. 1 at ¶ 327. These Plaintiffs have not provided their  
declarations. Thus, Defendants do not provide summaries for them here.

1 departed the U.S. to Mexico under an order of Voluntary Departure pursuant to the form he signed. *Id.*  
2 ¶¶ 19-20.

3 **B. Named Plaintiff Maria Guadalupe Hernandez Espinoza**

4 On January 7, 2025, Maria Guadalupe Hernandez Espinoza (“Espinoza”), her coworker, and her  
5 partner were driving together on CA-58. *See* ECF No. 15-8 (“Espinoza Decl.”) ¶ 4. Espinoza’s partner  
6 was driving a vehicle registered in his name, and without any “stickers or decals.” *Id.* She alleges her  
7 partner was getting ready to exit when the car was approached from behind by an unmarked white Ford  
8 pickup truck, and the truck flashed its lights and turned on its siren. *Id.* She alleges a man ordered her  
9 partner to exit the vehicle without the man identifying himself, presenting a warrant, or asking any  
10 questions. *Id.* at ¶ 5. The agents also searched the car without consent. *Id.* at ¶ 8. She alleges one of the  
11 agents asked her for identification, which she did not show because she was not carrying it. *Id.* at ¶ 7.  
12 The agents did not arrest Espinoza but put her into the back seat of the white Ford truck. *Id.* at ¶ 9.  
13 Espinoza alleges she “impulsively” agreed to voluntary departure. *Id.* at ¶ 14. She signed her name on  
14 a small digital device without seeing the documents she was signing. *Id.* at ¶ 18. On January 9, 2025,  
15 Espinoza departed the U.S. to Mexico under an order of Voluntary Departure. *Id.* ¶¶ 14, 20.

16 **C. Plaintiff Jesus Ramirez**

17 On January 7, 2025, Border Patrol stopped and detained Jesus Ramirez (“Ramirez”) at a Home  
18 Depot in Bakersfield, CA around 11:00 am. *See* ECF No. 15-5 (“Ramirez Decl.”) ¶ 4. Ramirez stated  
19 he knew he was stopped by Border Patrol agents because they had badges on their vest. *Id.* He alleges  
20 the agents arrived in multiple vehicles and some of them had sirens.” *Id.* Ramirez alleges the Border  
21 Patrol agents demanded that “we”<sup>3</sup> show “our” papers. *Id.* at ¶ 5. He asserts one of the agents snatched  
22 his wallet, took and retained his identification from the wallet, and returned the wallet to him. *Id.* He  
23 states the agent did not have a warrant. *Id.* at ¶ 7. He states that he was loaded into a vehicle with several  
24 other people. *Id.* at ¶ 8. He states that he was detained for 7 or 8 hours at a makeshift processing station.  
25 *Id.* at ¶ 10. He states a Border Patrol agent at El Centro ordered him to sign a document, which was in  
26 English—a language that he does not understand. *Id.* at ¶ 12. On January 9, 2025, Ramirez was moved  
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28 <sup>3</sup> Ramirez did not specifically state who was with him when he was stopped by Border Patrol.

1 from El Centro into an ICE Detention center where he asserts he remains as of the time of his February  
2 13, 2025, declaration. *Id.* at ¶¶ 13, 14.

3 **D. Plaintiff Ernesto Campos Gutierrez**

4 Ernesto Campos Gutierrez (“Gutierrez”), a United States citizen, and his passenger, were stopped  
5 by Border Patrol on January 8, 2025, during a vehicle stop. *See* ECF No. 15-4 (“Gutierrez Decl.”) ¶¶ 2,  
6 3. He states he was driving in Bakersfield, CA around 9:40 a.m. on his way to a gardening job. *Id.* at ¶  
7 3. He asserts the vehicle he was driving is registered in his name and has no “stickers or decal.” *Id.* at ¶  
8 3. He also asserts he was driving within the speed limit. *Id.* Gutierrez states that an unmarked, white  
9 Chevrolet Tahoe followed him when the Tahoe turned on flashing lights and signaled for him to pull  
10 over. *Id.* at ¶ 4. He stated that an agent wearing a vest with the word “POLICE” approached his driver’s  
11 side door and asked for his identification and his keys. *Id.* at ¶¶ 4-5. Gutierrez asserts that he provided  
12 the agent with his identification, but he did not give the agent his keys. *Id.* at ¶ 5. He asserts the agent  
13 then slashed his tires with a knife, and another agent blocked his truck by parking in front of his vehicle.  
14 *Id.* at ¶¶ 6-7. Gutierrez alleges another agent arrived and stated he was under arrest for “alien smuggling”  
15 *Id.* at ¶ 9. Gutierrez alleges the agent did not have a warrant or explain why he stopped him. *Id.* at ¶ 4.  
16 He alleges the agents detained him for four hours and then drove him to his home and dropped him off.  
17 *Id.* at ¶ 13.

18 **E. Plaintiff Luis Perez Cruz**

19 On January 7, 2025, Border Patrol stopped and detained Luis Perez Cruz (“Cruz”) at a Home  
20 Depot. ECF No. 15-7 (“Cruz Decl.”) ¶ 3. He stated that he ran into two of his cousins, and he began  
21 chatting with them when two men wearing civilian clothing approached them. *Id.* Cruz asserts that the  
22 two men identified themselves as Border Patrol agents and demanded his identification showing that he  
23 had legal status in the United States. *Id.* Cruz asserts that he remained silent, and one of the agents then  
24 grabbed him by the hand and arrested him. *Id.* He states that the agents put him in a truck and transported  
25 him in a van along with other people. *Id.* at ¶ 5. He states that they took him to a holding center in El  
26 Centro, CA. *Id.* Cruz asserts the agents tried to make him sign documents without showing him what he  
27 was signing, but Cruz refused to sign them. *Id.* at ¶ 6. He asserts the agents eventually gave him a wrist  
28 monitor and documents pertaining to immigration court, and released him into a shelter in Calexico. *Id.*

**ARGUMENT**

1  
2 As an initial matter, a motion to certify a class should be denied when Plaintiffs do not have  
3 standing to seek injunctive relief. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 978-79 (9th Cir. 2011).  
4 “[S]tanding requires that (1) the plaintiff suffered an injury in fact, i.e., one that is sufficiently concrete  
5 and particularized and actual or imminent, not conjectural or hypothetical, (2) the injury is fairly traceable  
6 to the challenged conduct, and (3) the injury is likely to be redressed by a favorable decision.” *Id.* at 978  
7 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)). To meet these requirements,  
8 “[t]he plaintiff must demonstrate that he has suffered or is threatened with a concrete and particularized  
9 legal harm, coupled with a sufficient likelihood that he will again be wronged in a similar way.” *Id.* at  
10 979. If Plaintiffs cannot demonstrate standing to seek injunctive relief, then the motion to certify the  
11 class should be denied. *Id.* at 978 (explaining that in a class action, Plaintiffs have the burden to prove  
12 standing exists).

13 A motion to certify a class should also be denied when the proposed class is a fail-safe class. That  
14 is, a class that is defined in a way that precludes membership unless liability of the defendant is  
15 established. *Kamar v. RadioShack Corp.*, 375 F. App’x 734, 736 (9th Cir. 2010). “[O]nce it is determined  
16 that a person, who is a possible class member, cannot prevail against the defendant, that member drops  
17 out of the class.” *Id.* Such classes are impermissible and would make it impossible for the defendants to  
18 comply with the notice requirements set forth in Fed. R. Civ. P. 23(c)(2). *Id.*; see also *Genenbacher v.*  
19 *CenturyTel Fiber Co. II*, 244 F.R.D. 485, 488 (C.D. Ill. 2007) (where the court held fail-safe classes are  
20 impermissible because they define a class in such a way that “the class members either win or are not in  
21 the class” thus “the Court cannot enter an adverse judgment against the class.”). Furthermore, the  
22 proposed class cannot be impermissibly overbroad. *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125,  
23 1138 (9th Cir. 2016).

24 Assuming Plaintiffs have standing, the proposed classes are not fail-safe, and the proposed classes  
25 are not impermissibly overbroad, a party seeking class certification must also satisfy the four elements of  
26 Fed. R. Civ. P. 23(a), which provides that:

27 (1) the class is so numerous that joinder of all members is impracticable, (2) there are common  
28 questions of law and fact, (3) the representative party’s claims or defenses are typical of the class  
claims or defenses, and (4) the representative party will fairly and adequately protect the class

1 interests.

2 *Justus v. Doerer*, No. 1:25-CV-00138-JLT-SAB (PC), 2025 WL 811145, at \*1 (E.D. Cal. Mar. 13, 2025)  
3 (citing Fed. R. Civ. P. 23(a)). “The court must verify the putative class’s ‘actual, not presumed,  
4 conformance with Rule 23(a) . . . .” *Gutierrez v. Webcollex, LLC*, No. 2:23-CV-00988 AC, 2024 WL  
5 4527329, at \*2 (E.D. Cal. Oct. 18, 2024) (quoting *Gen. Telephone Co. of the Southwest v. Falcon*, 457  
6 U.S. 147, 160 (1982)). These class certification requirements are generally “intimately involved with the  
7 merits of the claims,” and “a district court *must* consider the merits if they overlap with the Rule 23(a)  
8 requirements.” *Ellis*, 657 F.3d at 980-81 (emphasis in original). “What matters to class certification . . .  
9 is not the raising of common ‘questions’—even in droves—but, rather the capacity of a classwide  
10 proceeding to generate common answers apt to drive the resolution of the litigation.” *Jones v. Tirehub*  
11 *LLC*, No. 2:21-CV-0564 DB, 2024 WL 2132611, at \*4 (E.D. Cal. May 13, 2024) (quoting *Wal-Mart*  
12 *Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)).

13 In addition to satisfying the requirements set forth under Fed. R. Civ. P. 23(a), the party seeking  
14 certification must also satisfy one of the elements of Fed. R. Civ. P. 23(b). *See United Steel, Paper &*  
15 *Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int’l Union, AFL-CIO, CLC v.*  
16 *ConocoPhillips Co.*, 593 F.3d 802, 806 (9th Cir. 2010). “Rule 23(b) provides that

17 [a] class action may be maintained if Rule 23(a) is satisfied and if:

18 (1) prosecuting separate actions by or against individual class members would create a risk of:

19 (A) inconsistent or varying adjudications with respect to individual class members that would  
20 establish incompatible standards of conduct for the party opposing the class; or

21 (B) adjudications with respect to individual class members that, as a practical matter, would be  
22 dispositive of the interests of the other members not parties to the individual adjudications or  
23 would substantially impair or impede their ability to protect their interests;

24 (2) the party opposing the class has acted or refused to act on grounds that apply generally to the  
25 class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting  
26 the class as a whole . . . [.]

27 *ConocoPhillips Co.*, 593 F.3d at 806. Here, Plaintiffs seek class certification under Fed. R. Civ. P.  
28 23(b)(2) because they seek a single preliminary injunction for the Proposed Classes. *See* ECF No. 14-1

1 at 2; *Gonzalez v. United States Immigr. & Customs Enf't*, 975 F.3d 788, 812 (9th Cir. 2020) (“Rule  
2 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each  
3 member of the class.”). Thus, Plaintiffs must prove that “the party opposing the class has acted or refused  
4 to act on grounds that apply generally to the class, so that final injunctive relief or corresponding  
5 declaratory relief is appropriate respecting the class as a whole.” *B.K. by next friend Tinsley v. Snyder*,  
6 922 F.3d 957, 966 (9th Cir. 2019) (quoting Fed. R. Civ. P. 23(b)(2)); *United Steel Workers v.*  
7 *ConocoPhillips Co.*, 593 F.3d 802, 807 (9th Cir. 2010) (“The party seeking class certification bears the  
8 burden of demonstrating that the requirements of Rules 23(a) and (b) are met.”).

9 Failure to meet “any one of Rule 23’s requirements destroys the alleged class action.” *Rutledge*  
10 *v. Elec. Hose & Rubber Co.*, 511 F.2d 668, 673 (9th Cir. 1975). “It is sufficient if class members complain  
11 of a pattern or practice that is generally applicable to the class as a whole.” *Walters v. Reno*, 145 F.3d  
12 1032, 1047 (9th Cir. 1998). Here, the Proposed Classes do not satisfy any of the requirements of Fed. R.  
13 Civ. P. 23(a) nor do they satisfy the requirements of Fed. R. Civ. P. 23 (b)(2).

14 **I. Plaintiffs’ Motion to Certify their Proposed Classes Should be Denied Because They**  
15 **Lack Standing to Seek Injunctive Relief.**

16 As stated above, in order to have standing to certify a class, a plaintiff must demonstrate that “he  
17 has suffered or is threatened with a concrete and particularized legal harm, coupled with a sufficient  
18 likelihood that he will again be wronged in a similar way.” *Ellis*, 657 F.3d at 979. Here, even assuming  
19 the allegations raised in Plaintiffs’ complaint are true—which Defendants do not concede—Plaintiffs lack  
20 standing because they cannot demonstrate any sufficient likelihood that they will be wronged again in a  
21 similar way because the issues raised in their Complaint have been resolved. On April 4, 2025, USBP’s  
22 El Centro Sector issued policy and guidance and committed to providing training thereon. *See* Ex. A  
23 (“Muster”); *see also* Ex. B (Declaration of Sergio Guzman). This Muster is in all material respects  
24 identical to the Broadcast issued in *Castanon Nava*. *Compare* El Centro Muster, Exhibit (“Ex.”) A, *with*  
25 Complaint Appendix A. The Muster contains guidance on the requirement for reasonable suspicion for  
26 traffic stops conducted throughout the Eastern District of California, guidance on assessing flight risk  
27 using factors such as “family, home, or employment” (that is, community ties), and guidance on  
28 documenting the facts and circumstances surrounding a warrantless arrest in an alien’s Form I-213 as

1 soon as practicable. *See* Ex. A; ECF No. 1, Compl. at ¶ 278 (stating USBP should provide its officers  
2 guidance on the requirement for reasonable suspicion for traffic stops in the interior, away from the  
3 border, and guidance on assessing flight risk using factors such as “family, home, or employment,” that  
4 is, community ties). El Centro USBP is moreover taking steps to implement training on the Muster. *See*  
5 Ex. B. USBP will endeavor to conduct training sessions to ensure compliance with the Muster within 60  
6 days for the more than 900 El Centro Border Patrol Agents, supervisors, and command staff on report  
7 writing, compliance with the Fourth Amendment and 8 U.S.C. § 1357, and compliance with Supreme  
8 Court and Ninth Circuit law on conducting vehicle stops, consensual encounters, and warrantless arrests.  
9 *See* Ex. B. at ¶¶ 13-19. Accordingly, in light of these actions and commitments, Plaintiffs cannot  
10 demonstrate any sufficient likelihood that they will be wronged again in a similar way. *Ellis*, 657 F.3d  
11 at 979. Thus, this Court should deny Plaintiffs’ motion to certify the Proposed Classes because they lack  
12 standing to seek injunctive relief.<sup>4</sup>

13 **II. Plaintiffs’ Proposed Classes Cannot be Certified Because They are Impermissibly**  
14 **Defined as “Fail-Safe” Classes, and the “Warrantless Arrest Class” is Impermissibly**  
15 **Overbroad.**

16 As referenced above, the Proposed Classes are called the “Suspicionless Stop Class” and the  
17 “Warrantless Arrest Class.” ECF No. 14-1 at 2. Membership in the “Suspicionless Stop Class” depends  
18 on whether Plaintiffs can prove the Defendants had a practice of conducting stops without warrants and  
19 without an individualized assessment of reasonable suspicion for an individual. Membership in the  
20 “Warrantless Arrest Class,” on the other hand, broadly depends on whether Plaintiffs can prove that  
21 Defendants has arrested or will arrest an individual without a warrant in this district. *Id.*

22 The Proposed Classes are prime examples of impermissible “fail-safe” classes because they can  
23 only be certified upon a determination of the merits. Because proving that Defendants are liable is  
24 necessary in order to have membership in either the “Suspicionless Stop Class” or the “Warrantless Arrest  
25 Class,” this Court must deny Plaintiffs’ motion for provisional class certification because the Proposed  
26 Classes are “fail-safe” classes. *Ruiz Torres v. Mercer Canyons Inc.*, 835 F.3d 1125, 1138 n. 7 (9th Cir.

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27 <sup>4</sup> To the extent that the Court believes that unresolved issues remain, Defendants are amenable  
28 to a stay of the litigation to explore resolution of the remaining issues without further litigation or  
intervention of the court.

1 2016) (explaining that a “fail-safe” class is defined so narrowly that it “precludes membership unless the  
2 liability of the defendant is established.”) (quoting *Kamar*, 375 Fed. Appx. at 736); *Tinnin v. Sutter Valley*  
3 *Med. Found.*, 647 F. Supp. 3d 864, 874 (E.D. Cal. Dec. 27, 2022) (same).

4 The “Warrantless Arrest Class” should also not be certified because it is impermissibly overly  
5 broad. “[P]ursuant to Rule 23, the court’s task at certification is to ensure that the class is not defined so  
6 broadly as to include a great number of members who for some reason could not have been harmed by  
7 the defendant’s allegedly unlawful conduct.” *Ruiz*, 835 F.3d at 1138. Arresting someone without a  
8 warrant is not necessarily unlawful conduct. *United States v. Shepherd*, No. 2:24-CR-00083-DJC-1, 2024  
9 WL 4931677, at \*5 (E.D. Cal. Dec. 2, 2024) (“To justify an arrest [without a warrant], officers must have  
10 probable cause based on the facts available to them at that time for the arrest.”). Because the “Warrantless  
11 Arrest Class” may include some lawful arrests and may thus include a great number of members who  
12 could not have been harmed, this class is impermissibly overbroad. *See Gonzales v. Comcast Corp.*, No.  
13 10-CV-01010-LJO-BAM, 2012 WL 10621, at \*20 (E.D. Cal. Jan. 3, 2012), *report and recommendation*  
14 *adopted*, No. 1:10-CV-01010-LJO, 2012 WL 217708 (E.D. Cal. Jan. 23, 2012) (finding plaintiffs’ class  
15 definitions are overbroad, as it included class members who were never injured by defendants’ conduct).

### 16 **III. Plaintiffs Have Not Satisfied Their Burden to Demonstrate Numerosity.**

17 Numerosity requires the Court to determine whether the class is so numerous that it would make  
18 joinder impracticable, Fed. R. Civ. P. 23(a)(1), which “depends on the facts and circumstances of each  
19 case.” *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 448 (N.D. Cal. 1994). “Generally,  
20 the numerosity factor is satisfied if the class comprises 40 or more members and courts will find that it  
21 has not been satisfied when the class comprises 21 or fewer.” *McCurley v. Royal Seas Cruise, Inc.*, 331  
22 F.R.D. 142, 167 (S.D. Cal. 2019) (cleaned up).

23 Here, the Proposed Classes, as defined by Plaintiffs, are not so numerous that they render “joinder  
24 of all members [] impracticable.” Fed. R. Civ. P. 23(a)(1). Plaintiffs aver that each class is currently  
25 comprised of “at least dozens of people”; that Border Patrol arrested 78 people in Kern or Tulare counties  
26 between January 7 and January 10, 2025; and that the classes “consist of *numerous future* class members  
27 who will be subjected to the challenged practices or patterns.” ECF No. 14-1 at 10 (original and added  
28 emphasis). However, Plaintiffs do not attempt to even estimate the number of aliens who will

1 prospectively be “subjected to [BP’s] challenged practices or patterns.” *Id.* Plaintiffs point to only a  
2 dozen<sup>5</sup> examples in which the proposed class representatives claim justify certification of a class. *See*  
3 ECF Nos. 1; 14-1. Furthermore, Plaintiffs’ motion for provisional class certification does not clearly  
4 specify which Plaintiffs—among the 12 in which they have provided examples—would represent each  
5 proposed class. Plaintiffs here have failed to show that 12 investigative stops and arrests are indicative  
6 of a “systemic” problem justifying a class, or why joinder of all known members of the class is  
7 impracticable. ECF No. 15-1 at 21; *see* Fed. R. Civ. P. 23(a)(1). Plaintiffs have thus failed to meet the  
8 numerosity requirement.

9 **IV. Plaintiffs Cannot Identify a Common Question That Would Drive Resolution of**  
10 **This Litigation.**

11 Even if the proposed putative classes satisfied the numerosity requirement, Plaintiffs have not  
12 established that there is a common question capable of providing common answers across the Proposed  
13 Classes. To satisfy Fed. R. Civ. P. 23(a)(2)’s commonality requirement, the proposed class members  
14 must “have suffered the same injury.” *Wal-Mart Stores, Inc.*, 564 U.S. at 350. This does not mean that  
15 class members merely “suffered a violation of the same provision of law” or raise some common  
16 questions. *Id.*; *Ellis*, 657 F.3d at 981 (“[I]t is insufficient to merely allege any common question . . .”).  
17 Rather, class members’ claims must depend upon a common contention, the determination of which “will  
18 resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-Mart Stores,*  
19 *Inc.*, 564 U.S. at 350. Thus, “[w]hat matters to class certification . . . is not the raising of common  
20 ‘questions’—even in droves—but, rather the capacity of a classwide proceeding to generate common  
21 answers apt to drive the resolution of the litigation.” *Id.* (quotation omitted). “Dissimilarities within the  
22 proposed class are what have the potential to impede the generation of common answers.” *Id.*

23 Although “[t]he existence of shared legal issues with divergent factual predicates” can establish  
24 commonality, *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998), where a plaintiff alleges  
25 that there is a “common pattern and practice that could affect the class *as a whole*,” plaintiffs must provide  
26 evidence that the common policy or practice actually exists; otherwise, there is “no question common to

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27  
28 <sup>5</sup> The dozen of Plaintiffs are the three proposed class representatives, the two named Plaintiffs,  
the three unnamed Plaintiffs, and the four representatives of the United Farm Workers. *See supra* at 6.

1 the class.” *Ellis*, 657 F.3d at 983 & n.7 (citing *Wal-Mart Stores, Inc.*, 564 U.S. at 355-56)); *see also*  
2 *Lightfoot v. D.C.*, 273 F.R.D. 314, 326 (D.D.C. 2011) (commonality cannot be established by identifying  
3 “a constellation of disparate but equally suspect [alleged] practices . . . distilled from the varying  
4 experiences of the class” and then asking the court to enjoin them all as a “policy or custom[.]”).

5 The Proposed Classes lack commonality for three reasons. *First*, the evidence belies Plaintiffs’  
6 argument that a systemic policy, pattern, or practice in violation of the Fourth Amendment and 8 U.S.C.  
7 § 1357 exists, or that such pattern or practice occurred during “Operation Return to Sender.” *See, e.g.*,  
8 ECF Nos. 1 at 62-63; 15-1 at 21. Plaintiffs aver that “all class members in each Proposed Class are bound  
9 together by common questions of fact and law focused on the nature of Border Patrol’s policies or  
10 practices and whether those policies or practices are unlawful.” ECF No. 14-1 at 8. However, this  
11 justification is an insufficient basis for establishing commonality under Fed. R. Civ. P. 23(a)(2). The  
12 Supreme Court has held that a class action “may only be certified if the trial court is satisfied, after  
13 *rigorous analysis*, that the prerequisites of Rule 23(a) have been satisfied.” *Falcon*, 457 U.S. at 161  
14 (emphasis added). In *Falcon*, a district court certified a class in a plaintiff-employee’s Title VII action  
15 against his employer where the plaintiff claimed, without offering any evidence, that the company had a  
16 policy of racial discrimination. *Id.* at 149-52. The Court of Appeals for the Fifth Circuit affirmed the  
17 class certification. *Id.* at 147. The Supreme Court, however, reversed the Court of Appeals order  
18 affirming the class certification and held that there was “a wide gap” between (1) an individual claim of  
19 discrimination and an unsupported allegation that a company had a policy of discrimination, and “(2) the  
20 existence of a class of persons who have suffered the same injury as that individual, such that the  
21 individual’s claim and the class claims will share common questions of law or fact.” *Id.* at 157. Same  
22 here. As in *Falcon*, Plaintiffs’ unsupported allegations of Border Patrol’s unlawful policies or practices  
23 are insufficient absent a rigorous analysis of those claims, particularly because, as described below,  
24 whether Border Patrol agents have reasonable suspicion to effectuate investigative stops and probable  
25 cause to effectuate arrests is an inherently fact-specific and individualized inquiry. *See Rodriguez*, 976  
26 F.2d at 595; *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1008 (N.D. Ill. 2016).

27 In fact, the differences surrounding each alien’s stop and arrest go to the heart of whether USBP  
28 actually has a common practice or policy to begin with. And the evidence of differing individual

1 circumstances negate a finding of a systemic practice or policy. Also, the factual differences surrounding  
2 each encounter would be material to the resolution of the claim because they affect the inquiry into  
3 whether USBP has failed to comply with the Constitution and pertinent statutes and regulations. *See B.K.*  
4 *v. Snyder*, 922 F.3d 957, 976-78 (9th Cir. 2019) (finding district court abused discretion in certifying  
5 subclass on theory of failure to comply with the Medicaid statute where it was not clear that the elements  
6 of the claim could be evaluated on a classwide basis).

7 *Second*, the Proposed Classes definitions simply cannot address the many factors that are involved  
8 in making an assessment of probable cause and flight risk. This is because, as noted above, assessing  
9 “reasonable suspicion” is a singularly discretionary determination based on the unique circumstances of  
10 each stop. *Rodriguez*, 976 F.2d at 595 (“Reasonable suspicion is an individualized inquiry that must be  
11 founded upon a particularized and objective basis for suspecting the particular person stopped.”).

12 In the cases of the proposed class representatives and the other named Plaintiffs, there are various  
13 facts and circumstances concerning each alleged detention. For instance, some Border Patrol agents were  
14 wearing plain clothes and some were wearing uniform. *E.g., compare* Mendez Decl. ¶ 6 stating that the  
15 Border Patrol agents were wearing plain clothing *with* Gutierrez Decl., ¶ 4, which states the Border patrol  
16 agent was wearing a vest that said “POLICE.” Another example is that some of the individuals who were  
17 detained presented the Border Patrol agents with identification whereas some individuals did not. *E.g.,*  
18 *compare* Mendez Decl. ¶ 9 (where Mendez states he did not present his identification) *with* Ramirez Decl.  
19 ¶ 7 (where Ramirez asserts the Border Patrol agent took his identification). Furthermore, some of the  
20 individuals were detained for several hours or days whereas other individuals were released at the site of  
21 the alleged detention. *E.g., compare* Ramirez Decl. ¶ 10 (where he asserts he was detained for seven or  
22 eight hours) *with* Martinez Decl. ¶ 10 (where Martinez states she was released after she presented her  
23 green card to the agents). *Fourth*, some of the individuals who were detained allege that they were being  
24 detained for being in the United States without any legal status where at least one individual was told he  
25 was being detained because of a crime. *Compare* Cisneros Decl. ¶¶ 5-6 (where Cisneros asserts the agent  
26 stated the agent arrested him after telling him that he was in the United States illegally) *with* Gutierrez  
27 Decl., ¶ 9 (where Gutierrez states the agent detained him for “alien smuggling”). Similarly, some of the  
28 individuals were stopped while driving in a vehicle while other individuals were stopped while at a Home

1 Depot. *Compare* Cisneros Decl., ¶ 5-6 (where he states he was stopped while in a vehicle) *with* Esquivel  
2 Decl., ¶¶ 4-5 (where he states he was stopped at a Home Depot).

3 Assessing the reasonableness of each of these separate stops and encounters is an individualized  
4 determination, and class actions are antithetical to individualized determinations. *See, e.g., James v. Uber*  
5 *Techs. Inc.*, 338 F.R.D. 123, 142 (N.D. Cal. 2021) (“Determining Uber’s liability for wages cannot be  
6 determined on a class-wide basis and individualized determinations would be complex and manifold.”).  
7 Class actions are instead for common questions of fact and injury, *see* Rule 23(a)(2)-(3), and the different  
8 fact patterns for each of the proposed class representatives and named Plaintiffs that may or may not show  
9 injury, underscores the unsuitability of challenging USBP’s operation between January 7, 2025, and  
10 January 9, 2025, in a class action and, conversely, why Congress channeled these types of claims into  
11 separate petitions for review. *See Olean Wholesale Grocery Coop., Inc., v. Bumble Bee Foods LLC*, 31  
12 F.4th 651, 669 n.15 (9th Cir. 2022) (cautioning against certifying a class which circularly depends upon,  
13 or does not exist without, proving the injury). Indeed, the lack of commonality between the investigative  
14 stops in this case overlaps with the merits of Plaintiffs’ claim and undermine Plaintiffs’ claim that USBP  
15 engaged in a pattern or practice of unlawful stops. *See Wal-Mart Stores, Inc.*, 564 U.S. at 348.

16 The Proposed Classes also lack commonality because members will have widely varying fact  
17 patterns regarding the circumstances of their investigative stops and warrantless arrests. Some will  
18 undoubtedly be detained following traffic stops/tactical checkpoints or consensual stops, like Martinez  
19 and Cisneros, respectively. *See* ECF Nos. 15-11 (Martinez Decl.); 15-9 (Cisneros Decl.). Others, like  
20 Gutierrez, may have been detained following collateral arrests during operations related alien smuggling  
21 (Gutierrez Decl. ¶ 9). This is because the determination of whether an alien is a flight risk and whether  
22 there is probable cause are inherently individualized determinations. *See Moreno*, 213 F. Supp. 3d at  
23 1008 (describing the necessity of individualized determinations of flight risk); *see also Gonzalez v. United*  
24 *States Immigr. & Customs Enf’t*, 975 F.3d 788, 809 (9th Cir. 2020) (noting that “we have no doubt that  
25 ‘[t]he constitutional validity of a warrantless search is pre-eminently the sort of question which can only  
26 be decided in the concrete factual context of [an] individual case[.]’”) (quoting *Sibron v. New York*, 392  
27 U.S. 40, 58 (1968)). The Proposed Classes also fail because class members will have widely varying fact  
28 patterns regarding familial ties, employment status, and other community connections. All of these

1 factors are important to the flight risk determination. Thus, the lack of commonality of the Proposed  
2 Classes defeats class certification.

3 Plaintiffs argue that “[t]he existence of shared legal issues with divergent factual predicates is  
4 sufficient,” *Gonzalez*, 975 F.3d at 807 (quotation marks and citation omitted), and that “where the  
5 circumstances of each particular class member vary but retain a common core of factual or legal issues  
6 with the rest of the class, commonality exists[.]” *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014).  
7 ECF No. 14-1 at 17. However, as discussed above, Plaintiffs have not shown that there exists a common  
8 core of factual or legal issues here because of the inherently subjective nature of the assessment of  
9 probable cause and flight risk. *Gonzales* is distinguishable because the district court found, and the Ninth  
10 Circuit affirmed, that the Probable Cause subclass plaintiffs sought to certify was based on the core issue  
11 of whether ICE “has an ‘unlawful policy to base probable cause determinations on only a check of an  
12 online database.’” *Id.* at 808. Thus, in *Gonzales*, the class was sufficiently common because the probable  
13 cause determination was pegged solely to the checks of online database. 975 F.3d at 808 (“Because the  
14 class is defined as those individuals against whom ICE issued a detainer based solely on searches of  
15 electronic databases, ICE’s policy of making probable cause determinations based solely on such searches  
16 is the ‘glue’ that holds the class together.”); *Parsons v. Ryan*, 754 F.3d at 678 (explaining that the “policy  
17 and practices . . . to which all members of the class are subjected . . . are the ‘glue’ that holds together the  
18 putative class and the putative subclass; either each of the policies and practices is unlawful as to every  
19 inmate or it is not.”). Not so here. As explained, the determination of probable cause relevant to both  
20 the stop and arrest proposed putative classes, is a fact-specific, individualized inquiry which negates  
21 commonality.

22 In sum, the Proposed Classes encompass a broad range of individuals with differing unique set of  
23 circumstances as bases for their claims. Plaintiffs have thus not met their burden to show that common  
24 questions predominate to provide common answers.

#### 25 **V. The Named Plaintiffs’ Claims or Defenses Are Not Typical of the Putative Class.**

26 Typicality requires a party to show that “the claims or defenses of the representative parties are  
27 typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). This requirement “assure[s] that  
28 the interest of the named representative aligns with the interests of the class.” *Wolin v. Jaguar Land*

1 *Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (quotation omitted). “The test of typicality is  
2 whether other members have the same or similar injury, whether the action is based on conduct which is  
3 not unique to the named plaintiffs, and whether other class members have been injured by the same course  
4 of conduct.” *Id.* (quotation omitted). Thus, “a class representative must be part of the class and possess  
5 the same interest and suffer the same injury as the class member.” *Falcon*, 457 U.S. at 156. A named  
6 plaintiff does not satisfy the typicality requirement when his “unique background and factual situation  
7 require him to prepare to meet defenses that are not typical of the defenses which may be raised against  
8 other members of the proposed class.” *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

9 Here, Plaintiffs have not shown that the claims of the proposed class representatives or other  
10 named Plaintiffs are typical of the members of the Proposed Classes. Plaintiffs assert that “the claims of  
11 Individual Plaintiffs are typical of those of the members of the Proposed Classes, because they all arise  
12 from Border Patrol’s illegal immigration policies, practices, or patterns pertaining to suspiciousness stops  
13 and warrantless arrests in this District.” ECF No. 14-1 at 13. They argue that “[t]he fact that some  
14 putative class members experienced different *outcomes* flowing from Border Patrol’s unlawful actions  
15 because of their differing immigration status does not defeat typicality because *all* class members have  
16 suffered, or will suffer, the same harms,”—namely, unlawful stop or arrest. *Id.* (original emphasis). This  
17 argument does not withstand scrutiny. As discussed above, the asserted harms here are inexplicably  
18 intertwined with wildly differing underlying factual circumstances necessary to the determination of  
19 probable cause and flight risk. For instance, all three proposed class representatives provided the agents  
20 with their identification. *See* Cisneros Decl. at ¶ 5, Esquivel Decl. at ¶¶ 7-9, Martinez Decl. at ¶¶ 6,12.  
21 In contrast, the other Plaintiffs did not provide their identification to the agents. Mendez Decl. at ¶ 9,  
22 Espinoza Decl. at ¶ 7. This alone shows that the proposed putative classes representatives’ claims or  
23 defenses cannot be typical of the members of the Proposed Classes.

24 Indeed, the Proposed Classes lack typicality for the same reasons they lack commonality: The  
25 proffered classes definitions cannot address the many factors that are involved in making an  
26 individualized assessment of probable cause and flight risk. This is because an individualized assessment  
27 is a necessary component for determining whether class members have the same or similar injury:  
28 *unlawful* stop and arrest. For example, a flight risk determination may include factors such as whether

1 individuals are eligible for relief from removal, have criminal convictions which bar them from relief, or  
2 have final removal orders or have been previously removed, in addition to the circumstances of their  
3 warrantless arrests. Because these individualized circumstances are relevant to a court’s consideration  
4 of whether class members share similar injury—because they are necessary to the probable cause and  
5 flight risk analysis—Plaintiffs proposed putative classes fail to meet the typicality requirement.

6 **VI. The Named Plaintiffs are Not Shown to Be Adequate Representatives.**

7 Plaintiffs have also not presented evidence that the three proposed class representatives would  
8 “fairly and adequately protect the interests of the class.” *Kim v. Allison*, 87 F.4th 994, 1000 (9th Cir.  
9 2023) (quoting Fed. R. Civ. P. 23(a)(4)). The nature of class certification under Fed. R. Civ. P. 23(b)(2)  
10 amplifies the need to confirm the commitment of the class representatives, because members of a Rule  
11 23(b)(2) class are not afforded the right to opt out of the class and are bound by any judgment. *See*  
12 *Crawford v. Honig*, 37 F.3d 485, 487 n.2 (9th Cir. 1994), *as amended on denial of reh’g* (Jan. 6, 1995)  
13 (“In a Rule 23(b)(2) class action for equitable relief, the due process rights of absent class members  
14 generally are satisfied by adequate representation alone.”).

15 The three proposed class representatives and other named Plaintiffs here will fail to fairly and  
16 adequately protect the class interests because, like the discussion in the commonality and typicality  
17 requirements, the Proposed Classes encompass a broad range of individuals with different factual bases  
18 for their claims, different avenues of possible relief, etc. As an example, Plaintiffs cannot fairly and  
19 adequately protect the interests of those arrested in different circumstances from their own, such as those  
20 arrested as a result of anti-human trafficking or alien smuggling operations, worksite enforcement, those  
21 arrested at a border or airport attempting to unlawfully enter the United States, or those aliens who entered  
22 the United States lawfully but illegally overstayed a visa. Put simply, claiming a few examples of  
23 allegedly unlawful stops and arrests is insufficient to justify a case proceeding as a class action.

24 **VII. Plaintiffs Cannot Satisfy the Requirements for an Injunctive-Relief Class Under**  
25 **Rule 23(b)(2).**

26 Under Fed. R. Civ. P. 23(b)(2), Plaintiffs must demonstrate that Defendants have “acted or refused  
27 to act on grounds that apply generally to the class, so that final injunctive relief or corresponding  
28 declaratory relief is appropriate respecting the class as a whole.” These requirements cannot be met.

1 First, because there is no pattern and practice of failure to comply with the Fourth Amendment’s probable  
2 cause requirements and 8 U.S.C. § 1357 flight risk assessment, Plaintiffs cannot show that the government  
3 has “acted or refused to act on grounds that apply generally to the class.” *Id.*

4 Classwide relief would not be appropriate. This is because, again, each alien presents a unique  
5 set of circumstances. As demonstrated by the declarations Plaintiffs submitted with their Complaint, the  
6 type of alleged harm resulting from the warrantless detention differs from person to person on the basis  
7 of each person’s individual circumstances. Thus, each alien detained by USBP has a unique set of  
8 circumstances and unique avenues for seeking relief. Some will undoubtedly apply for immigration relief  
9 including asylum and cancellation of removal. *See, e.g., Morales v. Bondi*, No. 23-274, 2025 WL 763479,  
10 at \*2 (9th Cir. Mar. 11, 2025) (citing *Jara-Navarrete v. I.N.S.*, 813 F.2d 1340, 1342 (9th Cir. 1986)  
11 showing that an individual may seek cancellation of removal if the alien can show eligibility including  
12 but not limited to extremely and unusual hardship)). Of those, some may have plausible claims that may  
13 lead to relief in the near future. Others may have criminal convictions that may bar them from relief and  
14 require their detention without bond under 8 U.S.C. § 1226(c). *Rodriguez v. Robbins*, 715 F.3d 1127,  
15 1131 (9th Cir. 2013) (stating that 8 U.S.C. § 1226 “subjects certain aliens who are deportable or  
16 inadmissible on account of their criminal history to mandatory detention pending proceedings to remove  
17 them from the United States.”).

18 For all these reasons, classwide relief is not suitable for making Plaintiffs whole, and Plaintiffs  
19 therefore have not satisfied Rule 23(b)(2). For certification under Rule 23(b)(2), Plaintiffs must show  
20 that “relief is available to the class as a whole” and that the challenged conduct “can be enjoined or  
21 declared unlawful only as to all of the class members or as to none of them.” *Wal-Mart*, 564 U.S. at 360.

22 These widely differing circumstances belie Plaintiffs’ argument that highly individualized  
23 questions regarding the encounters can be characterized as actions or a refusal to act generally applicable  
24 to the class as a whole. Because Plaintiffs fail to allege a specific act or refusal to act applicable to the  
25 class as a whole, injunctive relief on a classwide basis is inappropriate.

## 26 CONCLUSION

27 For the foregoing reasons, the Court should deny Plaintiffs’ motion for provisional class  
28 certification.

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DATED: April 7, 2025

Respectfully Submitted,

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*Counsel for Defendants*

**CERTIFICATE OF SERVICE**

On April 7, 2025, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Eastern District of California, using the electronic case filing system of the Court.

I hereby certify that I have served counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

*/s/ Carolyn D. Dillard*  
CAROLYN D. DILLARD  
Trial Attorney

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# **Exhibit A**

## El Centro Sector Muster

**This Muster states the underlying laws and policies applicable to all arrests effected by El Centro Sector Border Patrol Agents under 8 U.S.C. § 1357(a)(2) / INA § 287(a)(2) in the Eastern District of California and is to be interpreted consistent with all implementing regulations and controlling Supreme Court and Ninth Circuit case law.**

### A. Warrantless Arrests

Under 8 U.S.C. § 1357(a)(2) / INA § 287(a)(2), U.S. Border Patrol (USBP) Agents may conduct warrantless arrests if there is “reason to believe that the alien [] [to be] arrested is [present] in the United States in violation of any [U.S. immigration] law and is likely to escape before a warrant can be obtained for [the] arrest.” The “reason to believe” standard requires USBP Agents to have probable cause that an individual is in the United States in violation of U.S. immigration laws and probable cause that the individual is likely to escape before a warrant can be obtained for the arrest.

In considering “likelihood of escape,” a USBP Agent must consider the totality of circumstances known to the agent before making the arrest. While there is no exhaustive list of factors that should be considered in determining whether an individual is “likely to escape before a warrant can be obtained” under 8 U.S.C. § 1357(a) / INA § 287(a), factors relevant to the determination may include the USBP Agent’s ability to determine the individual’s identity, knowledge of that individual’s prior escapes or evasions of immigration authorities, attempted flight from a USBP Agent, ties to the community (such as a family, home, or employment) or lack thereof, or other specific circumstances that weigh in favor or

against a reasonable belief that the subject is likely to abscond. The particular circumstances before the USBP Agent are not to be viewed singly; rather, they must be considered as a whole. However, mere presence within the United States in violation of U.S. immigration law is not, by itself, sufficient to conclude that an alien is likely to escape before a warrant for arrest can be *obtained*.

When conducting enforcement actions, USBP Agents shall, at the time of arrest or as soon as it is practical and safe to do so, identify themselves as immigration officers in accordance with 8 C.F.R. § 287.8(c)(2)(iii).

After having made an arrest under 8 U.S.C. § 1357(a)(2) / INA § 287(a)(2), a USBP Agent should document the facts and circumstances surrounding that warrantless arrest in the narrative section of the alien's I-213 as soon as practicable. This documentation should include: (1) that the alien was arrested without a warrant; (2) the location of the arrest and whether this location was a place of business, residence, vehicle, or a public area; (3) whether the alien is an employee of the business, if arrested at a place of business, or whether the alien is a resident of the residence, if arrested at a residential location; (4) the alien's ties to the community, if known at the time of arrest, including family, home, or employment (**Note:** Information learned post-arrest relevant to custody determination should be documented separately from the information relevant to likelihood of escape known at the time of the warrantless arrest.); (5) the specific, particularized facts supporting the conclusion that the alien was likely to escape before a warrant could be obtained; and (6) a statement of how "at the time of arrest, the designated immigration officer [did], as soon as it [wa]s practical and safe to do so, identify himself or herself as an immigration officer who is authorized to execute an arrest; and state[d] that the person is under arrest and the reason for the arrest."

## B. Vehicle Stops

The policy above applies to all warrantless arrests under 8 U.S.C. § 1357(a)(2) / INA § 287(a)(2), including warrantless arrests resulting from vehicle stops.

USBP agents may stop a vehicle to enforce civil immigration laws only if they are aware of specific, articulable facts that reasonably warrant suspicion that the vehicle contains an alien(s) who may be illegally in the country.

As soon as practicable after making an arrest under 8 U.S.C. § 1357(a)(2) / INA § 287(a)(2) pursuant to a vehicle stop, in addition to the documentation requirements for warrantless arrests described above, the USBP agent also must document the facts and circumstances surrounding the vehicle stop that resulted in a warrantless arrest in the narrative section of the alien's I-213. This documentation should include the specific, articulable facts that formed the basis for the USBP Agent's reasonable suspicion that an alien in the vehicle stopped was present within the United States in violation of U.S. immigration law.

# **Exhibit B**

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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

United Farm Workers, *et al.*,

Plaintiffs,

vs.

KRISTI NOEM, Secretary of the United States  
Department of Homeland Security, *et al.*,

Defendants.

Case No. 25-cv-00246-JLT-BAM

**DECLARATION OF  
SERGIO GUZMAN**

I, Sergio Guzman, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Acting Executive Officer (XO), El Centro Sector (ELC), U.S. Border Patrol (USBP), U.S. Customs and Border Protection (CBP), U.S. Department of Homeland Security (DHS). I have held this position since November 18, 2024.

2. In my position as the XO, I serve directly under the Division Chief of Operations (DCO). The DCO has direct oversight of El Centro, Calexico, and Indio stations, Sector Intelligence Unit, Special Operations Detachment, and Foreign Operations Branch. I assist the DCO with both administrative and operational functions that have direct impact with the stations and other departments. I remain up to date with any critical incidents or operations occurring within the sector. I brief the Chief Patrol Agent and Deputy Chief Patrol Agent on significant matters related to the Operations Division. I also serve as a primary point of contact between USBP Headquarters (HQ) and ELC.

3. As the XO, I was involved with the various phases (planning, execution, and after action) of Operation Return to Sender.

4. When not serving as the XO, I am a permanent Deputy Patrol Agent in Charge at the Calexico Station (CAX). I have held that position since March 2022. I oversee and run the operational component of the station. I make all station-wide decisions in the absence of the Patrol Agent in Charge. I have three GS-14 Watch Commanders and one Special Operations Supervisor under my direct supervision. I provide guidance and mentorship to them along with

1 the 46 first-line supervisors assigned to CAX. I have briefed congressional visitors and  
2 uniformed/non-uniformed personnel from USBP HQ on the operational challenges at CAX. I  
3 support CAX agents with the resources, infrastructure, technology, and knowledge that could  
4 assist them to perform their job at a higher level and in a safe manner.

5 5. I am submitting this declaration in support of Defendants' Opposition to Plaintiffs'  
6 Motion for Preliminary Injunction (PI). This declaration is based on my personal knowledge,  
7 information made known to me from official records reasonably relied upon, and information  
8 conveyed to me by my staff and other knowledgeable CBP personnel in the course of my official  
9 duties.

10 6. ELC is situated within the Imperial Valley of Southern California. The ELC area  
11 of responsibility (AOR) spans 70 linear miles along the U.S. and Mexico border from the Jacumba  
12 Mountains in the west to the Imperial Sand Dunes in the east. ELC's AOR also includes inland  
13 areas of California extending all the way to the Oregon State Line, including Bakersfield,  
14 California.

15 7. ELC is staffed by 975 Border Patrol Agents and 149 support personnel. Staffing is  
16 assigned to ELC HQ and the three patrol stations: El Centro, Calexico, and Indio.

17 8. ELC is committed to conducting enforcement operations within the Eastern District  
18 of California in compliance with the Fourth Amendment, 8 U.S.C. § 1357, and Supreme Court and  
19 Ninth Circuit case law.

20 9. In furtherance of this commitment, ELC issued a muster to all ELC employees on  
21 Friday, April 4, 2025, attached at Exhibit A. The muster includes the underlying laws and policies  
22 applicable to all warrantless arrests effected by El Centro Sector Border Patrol under 8 U.S.C. §  
23 1357(a)(2) in the Eastern District of California.

24 10. ELC will endeavor to conduct refresher training sessions to ensure compliance with  
25 the muster within 60 Days for all ELC Border Patrol Agents (BPAs), supervisors, and Command  
26 Staff.<sup>1</sup> The trainings will include instruction on report writing and compliance with the Fourth  
27 Amendment, 8 U.S.C. § 1357, and Supreme Court and Ninth Circuit case law pertaining to vehicle  
28 stops, consensual encounters, and warrantless arrests.

11. The training sessions will cover topics such as:

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<sup>1</sup> It may not be practicable to train all such ELC employees within 60 days due to, for example, employees being on detail or extended leave.

- a. ELC BPAs’ authority to effect warrantless arrests within the Eastern District of California pursuant to 8 U.S.C. § 1357 including factors relevant to determining “reason to believe” an alien is in the United States in violation of law or regulation and the alien’s likelihood of escape before a warrant can be obtained;
- b. ELC BPAs’ authority to effect vehicle stops within the Eastern District of California upon establishment of reasonable suspicion of a violation of law or regulation in compliance with the Fourth Amendment, Supreme Court, and Ninth Circuit case law.
- c. ELC BPAs’ authority to effect consensual encounters within the Eastern District of California in compliance with the Fourth Amendment, Supreme Court, and Ninth Circuit case law;
- d. Report writing requirements including documentation of the facts and circumstances pertaining to warrantless arrests in the narrative section of an alien arrestee’s Record of Deportable/Inadmissible Alien (“Form I-213”)<sup>2</sup>; and
- e. Report writing requirements including documentation of the facts and circumstances pertaining to vehicle stops resulting in warrantless arrests in the narrative section of the alien arrestee’s Form I-213.

12. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 7, 2025, at El Centro, California.

**SERGIO  
GUZMAN**

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Sergio Guzman  
Acting Executive Officer  
El Centro Sector  
U.S. Border Patrol

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<sup>2</sup> A Form I-213 or DHS “Record of Deportable/Inadmissible Alien,” is an official record which includes information about an alien’s immigration status and the basis and key facts to support the alien’s removal from the United States.