CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Bardis Vakili (Cal. Bar No. 247783)
bardis@centerforhumanrights.org
Sarah E. Kahn (Cal. Bar No. 341901)
sarah@centerforhumanrights.org
Erika Cervantes (Cal. Bar No. 344432)
erika@centerforhumanrights.org
1505 E 17th St. Ste. 117
Santa Ana, CA 92705
Tel: (909) 274-9057

Attorneys for Plaintiffs

Additional counsel listed on following page

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Immigration Center for Women and Children, et. al.,

Plaintiffs,

v.

Kristi Noem, et. al,

Defendants.

Case No.: 2:25-cv-09848-AB-AS

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

Hon. Andre Birotte Jr.
Hearing Date: February 10, 2026
Hearing Time: 10:00 AM

Additional Counsel for Plaintiffs:
LA RAZA CENTRO LEGAL
Stephen A. Rosenbaum (Cal. Bar No. 98634)
srosenbaum@law.berkeley.edu
Jordan Weiner (Cal. Bar No. 356297)
jordan@lrcl.org
474 Valencia Street, Suite 295
San Francisco, CA 94103
Tel: (415) 575-3500

PUBLIC COUNSEL
Rebecca Brown (Cal. Bar No. 345805)
rbrown@publiccounsel.org
Kathleen Rivas (Cal. Bar No. 333600)
krivas@publiccounsel.org
610 South Ardmore Ave.
Los Angeles, CA 90005
Tel: (213) 385-2977

COALITION FOR HUMANE IMMIGRANT RIGHTS
Carl Bergquist (DC Bar 1720816)*
cbergquist@chirla.org
2351 Hempstead Road
Ottawa Hills, OH 43606
Tel: (310) 279-6025

Adam Reese (Cal. Bar No. 362898)
areese@chirla.org
2533 W 3rd Street, #101
Los Angeles, CA 90057
Tel: (213) 353-1333

Admitted pro hac vice

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INTRODUCTION

Defendants present a tangled web of circular arguments challenging class certification. None hold up.

First, their arguments that Plaintiffs' claims are not justiciable, rendering class certification improper, lack merit. Each Plaintiff has standing, which Defendants fail to realize is based on facts at the time the Complaint was filed. Plaintiffs' claims are also not moot, and Defendants fail to explain why the inherently transitory exception to mootness does not apply. They also conflate mootness with ripeness, dooming their ripeness arguments. Each Plaintiff was subjected to the challenged policies when the case was filed, rendering their injuries ripe. Finally, 8 U.S.C. § 1252(f)(1) cannot bear the weight Defendants place upon it, as they ignore precedent holding that provision does not forbid classwide APA or declaratory relief, and the classwide injunctive relief Plaintiffs seek does not implicate the provisions of the INA covered by § 1252(f)(1). Thus, Plaintiffs' harms are redressable, and there is no justiciability obstacle to certification.

Second, Defendants' arguments that Rule 23(a) and Rule 23(b)(2) are not satisfied fail, because they misunderstand the proposed class definitions and Rule 23's requirements. Further, *Trump v. CASA* does not remotely bar the Court from granting classwide relief under Rule 23(b), as it explicitly preserves class actions as a vehicle for nationwide relief and does not address APA or declaratory relief at all.

ARGUMENT

I. The Individual Plaintiffs' Class Claims are Justiciable

A. The Individual Plaintiffs have standing.

Defendants' standing arguments fail because they ignore the fact that "standing in a Rule 23(b)(2) class is assessed at the time the complaint was filed." *Thakur v. Trump*, 148 F.4th 1096, 1105 (9th Cir. 2025). To establish standing for prospective relief, "a plaintiff must show that he is under threat of suffering 'injury in fact' that is concrete and particularized; the threat must be actual and imminent,

not conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury." *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009).

1. Injury in Fact: Defendants do not dispute that, at the time the complaint was filed, Paulo C., Ms. Merlos, Luna E., and Daniel H. were in ICE detention. "[O]ngoing" or "prospective detention" qualifies as "an Article III injury plain and simple." *Gonzalez v. ICE*, 975 F.3d 788, 804 (9th Cir. 2020) (citations omitted). It is also undisputed that, when the Complaint was filed, Lupe A., Carmen F., and Ms. Ruano had been deported away from their longtime homes. "[T]he case or controversy requirement is satisfied where the petitioner is deported." *Zegarra-Gomez v. INS*, 314 F.3d 1124, 1127 (9th Cir. 2003); *Chadha v. INS*, 634 F.2d 408, 418 (9th Cir. 1980) ("deportation" is "a concrete injury"). Finally, Camila B. was – and is – subject to onerous reporting requirements, including answering ICE's calls "right away" on pain of re-detention. Camila Decl. ¶¶ 29-31, Dkt. No. 23-4. This also constitutes sufficient injury for standing purposes. *See, e.g., Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (finding released immigrant had standing to seek "a pre-deprivation hearing… prior to being re-arrested").

2. Traceability: Plaintiffs' harm need only be "fairly" traceable to the challenged policies. *Summers,* 555 U.S. at 493. Defendants ignore evidence that, prior to the 2025 Guidance, it was rare for Defendants to detain and remove people with pending petitions for Survivor-based Benefits. *See* Pltfs' Class Cert. Mtn ("Mtn.") at 11-12, Dkt. 23. Prior to 2025, "ICE religiously honored deferred action status," Logan Decl. ¶ 12, Dkt 31-6, detention and removal of survivors with deferred action was nearly unheard of, and ICE routinely granted stays of removal to survivors with pending petitions, but now survivors are routinely detained and deported. Decl. of Deborah Mas Cabrera ¶ 16 ("Before 2025, none of ProBAR's clients with pending U, T, or VAWA petitions were deported without any review of their petition," and "ProBAR had never had a client deported who was in valid

deferred action status."); Decl. of Marguerite Marty ¶ 12 ("[B]efore February 2025, ICE routinely granted stays of removal for clients with pending U visa applications"); Velez Decl. ¶ 29, Dkt. 23-24.

It is irrelevant whether the 2025 Guidance "advises federal officials on how to exercise their discretion." Defs' Opp. to Class Cert. ("Opp.") at 9, Dkt. 39. The point is, this "advice" instructs officials to exercise this discretion in a more heavy-handed way than prior directives required. *See Damus v. Nielsen*, 313 F. Supp. 3d 317, 330 (D.D.C. 2018) (holding plaintiffs had standing because they "suffered a concrete injury—detention imposed without the protections of the Parole Directive"). Indeed, the Individual Plaintiffs had long been present in the United States without being detained prior to the 2025 Guidance. Thus, their injuries are not traceable to Defendants' general enforcement authority. It is also immaterial that Executive Order 14159 encourages sweeping immigration enforcement, because the Order does not even *mention* U, T, or VAWA protections. Thus, Plaintiffs' detention and removal do not "flow from [] Executive Order 14159," Opp. at 10, but instead from the challenged policies.

3. Redressability: Defendants' redressability arguments fail because they rely on invented relief that Plaintiffs do not seek and ignore binding precedent. "For an injury to be redressable, it must be 'likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.'" *Seattle Pac. Univ. v. Ferguson*, 104 F.4th 50, 61 (9th Cir. 2024) (citation omitted). "[A] 'guarantee' that their injuries will be redressed by a favorable decision" is not required. *Renee v. Duncan*, 686 F.3d 1002, 1013 (9th Cir. 2012) (citation omitted).

Plaintiffs seek APA, declaratory, and injunctive relief regarding the three policies they challenge – the 2025 Guidance, the De Factor Revocation Policy, and the Blind Removal Policy. Cmplt., Req. for Relief, Dkt. 1 at 73-75. Setting aside the 2025 Guidance would likely redress Plaintiffs' harms because each would have a realistic opportunity to receive a favorable exercise of prosecutorial discretion to

prevent their continued or future detention or removal. *Renee*, 686 F.3d at 1013. And obviously, the relief sought against the De Facto Revocation and Blind Removal Policies that caused their injuries would redress those injuries. "If an agency has misinterpreted the law, there is Article III standing 'even though the agency ... might later, in the exercise of its lawful discretion, reach the same result for a different reason.'" *Id.* (citation omitted).

Hodgers-Durgin v. de la Vina, 199 F.3d 1037, 1040 (9th Cir. 1999), does not require otherwise. As the Ninth Circuit recently noted, the *Hodgers-Durgin* court did not hold the plaintiffs lacked standing, but rather that they did not establish a "sufficiently immediate" threat of injury to warrant declaratory relief or "an injunction as a matter of the law of equitable remedies." *Vasquez Perdomo v. Noem*, 148 F.4th 656, 678 (9th Cir. 2025). The plaintiffs there had endured the harm they were challenging – racially motivated vehicle stops – *before* the complaint was filed, *Hodgers-Durgin*, 199 F.3d at 1039-40, while Plaintiffs here were all suffering ongoing harm at the time the complaint was filed, easily satisfying the immediate threat requirement.

B. Because the relation-back doctrine applies to Individual Plaintiffs' inherently transitory claims, their class claims are not moot.

Although they appear not to realize it, Defendants' standing arguments based on events subsequent to the filing of the Complaint are actually mootness arguments. Regardless, Plaintiffs' class claims are not moot because the relation-back doctrine applies to this inherently transitory class action.

Unlike standing, mootness involves "subsequent events" and is based on "[w]hether standing and the other requirements for a live case or controversy exist [] throughout the entirety of a case." *Wolfe v. City of Portland*, 566 F. Supp. 3d 1069, 1081 (D. Or. 2021). Although Paulo C., Ms. Merlos, and Daniel H. are no longer in ICE custody and Luna E.'s T visa petition was denied, their class claims

are not moot.[1] Because Plaintiffs made "a timely motion for class certification" involving "inherently transitory" claims such that the Court did not have "enough time to rule on a motion for class certification before the proposed representative's individual interest expires," they "may continue to represent the class until the district court decides the class certification issue." *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1090-92 (9th Cir. 2011). Certification thus "relates back to the filing of the complaint." *Id.* at 1092. Therefore, "the termination of a class representative's claim does not moot the claims of the unnamed members of the class," and "the 'relation back' doctrine is properly invoked to preserve the merits of the case for judicial resolution." *County of Riverside v. McLaughlin*, 500 U.S. 44, 51–52 (1991); *Haro v. Sebelius*, 747 F.3d 1099, 1110 (9th Cir. 2014).

Defendants' wishful argument, without evidentiary support, that "[c]laims of this type are not inherently transitory given the protracted timeline of immigration litigation," Opp. at 19-20, is belied by the evidence. Defendants routinely rush individuals they target through the detention and removal process, as the experiences of Lupe A. and Carmen F. illustrate. Lupe Decl. ¶¶ 20-29, Dkt. 23-3 (removed in less than two days); Carmen Decl. ¶¶ 29-30, 42, Dkt. 23-8 (removed in less than two months). And although it took Paulo C. and Ms. Merlos several months to secure their release, this obviously occurred before the Court could rule on class certification. Thus, the evidence demonstrates Plaintiffs' "claims are so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires." *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 399 (1980).

Indeed, permitting Defendants to defeat class certification under such

[1] Defendants provide no evidentiary support for their allegations of post-Complaint events. Opp. at 2, 10. Plaintiffs acknowledge that, subsequent to the filing of their Complaint and Motion for Preliminary Injunction, Defendants deported Daniel H., denied Luna E.'s T-visa petition, and released Paulo C. from custody. Plaintiffs do not concede any other unsupported allegations proffered by Defendants.

circumstances would unjustly reward them for their delay in assigning counsel to this case. When Plaintiffs' motion for class certification was filed on October 30, 2025, both Paulo C. and Daniel H. were still detained, and Luna E.'s T visa petition was still pending. Paulo Decl. ¶ 33, Dkt. 23-5, Daniel Decl. ¶ 1, Dkt. 23-10, Luna Decl. ¶¶ 35-36, Dkt. 23-7. On November 28, Plaintiffs agreed to stipulate to continue the hearing because Defendants still needed "more time to obtain and assign counsel to appear in this action" after the government shutdown, and they agreed to a second extension on December 8, 2025 because counsel needed "additional time." Stipulation ¶ 6, Dkt. 34; Stipulation ¶ 9, Dkt. 37. Now Defendants argue the class should not be certified because, in the intervening period, Defendants released Paulo on November 25, 2025, deported Daniel on December 7, 2025, and denied Luna's visa petition on November 20, 2025. Crawford Decl. ¶ 6-7, 9, Hoffman Decl. ¶ 5, Davis Decl. ¶ 4. The Court should not reward Defendants' torpor. *Cf. Pitts*, 653 F.3d at 1091 (applying relation-back doctrine where defendant sought to "buy off" named plaintiff because it rendered class claims transitory, even if not "inherently" so).

Finally, regardless of the applicability of the relation-back doctrine, there are still are at least two Individual Plaintiffs for each proposed class experiencing the same ongoing harm as they were experiencing at the outset of the case: Lupe A. and Camila B. for the Pending Petition and Deferred Action classes, and Carmen F. and Ms. Ruano for the Stay of Removal Class. *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (en banc) (only one named plaintiff with standing is required to pursue injunctive relief).

C. The ripeness doctrine does not bar Plaintiffs' class claims.

The relation-back doctrine also forecloses Defendants' ripeness claims, which are merely improperly repackaged mootness claims. Opp. at 10-12.

"The central concern of the ripeness inquiry is whether the case involves uncertain or contingent future events that may not occur as anticipated, or indeed

may not occur at all," while "[t]he central question for mootness is whether changes in the circumstances that prevailed at the beginning of litigation have forestalled any occasion for meaningful relief." *Meland v. Weber*, 2 F.4th 838, 848–49 (9th Cir. 2021) (citation omitted). Defendants assert that "[n]one of the named plaintiffs show any concrete, imminent plan by the government to unlawfully re-detain anyone..." Opp. at 12. However, because Plaintiffs are "presenting a classic example of a transitory claim," there is a case and controversy "*even if* there is no indication that [Plaintiffs] or other current class members may again be subject to the acts that gave rise to the claims … because there is a constantly changing putative class that will become subject to these allegedly unconstitutional conditions." *Wade v. Kirkland*, 118 F.3d 667, 670 (9th Cir. 1997). Thus, in such cases, ripeness, like standing, is determined at the time of the filing of the complaint. *Cf. Planned Parenthood Great Nw., Hawaii, Alaska, Indiana, Kentucky v. Labrador*, 122 F.4th 825, 839 (9th Cir. 2024) ("In many cases, the constitutional component of ripeness is synonymous with the injury-in-fact prong of the standing inquiry.") (cleaned up).

Cases cited by Defendants in support of their ripeness argument all involve plaintiffs who were not suffering harm at the time the complaint was filed, Opp. at 12, and are therefore inapposite. For instance, in *Lyons*, the plaintiff's injury occurred "five months before" the filing of a complaint challenging a police department's choke-hold policies. *City of Los Angeles v. Lyons*, 461 U.S. 95, 105, (1983). By contrast, the Individual Plaintiffs were suffering ongoing injury when the Complaint was filed. Thus, they "present concrete legal issues" and "not abstractions," rendering them "ripe within the meaning of Article III." *Planned Parenthood*, 122 F.4th at 839.

D. § 1252(f) does not bar certification or classwide relief.

Defendants argue that 8 U.S.C. § 1252(f)(1) bars the relief Plaintiffs seek and

renders their claims non-redressable. Binding precedent forecloses their arguments.[2]

§ 1252(f)(1) provides:

> Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions of part IV of this subchapter, as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, other than with respect to the application of such provisions to an individual alien against whom proceedings under such part have been initiated.

As the Supreme Court and the Ninth Circuit have explained, § 1252(f)(1) applies narrowly only to "injunctive relief."[3] *See Biden v. Texas*, 597 U.S. 785, 798-99 (2022); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999); *Immigr. Defs. L. Ctr. v. Noem*, 145 F.4th 972, 989-90 (9th Cir. 2025).

Thus, the Ninth Circuit has squarely held that "1252(f)(1) does not prohibit relief in the form of a stay or postponement of agency action under the APA." *Nat'l TPS All. v. Noem*, 150 F.4th 1000, 1018 (9th Cir. 2025); *Immigr. Defs. L. Ctr.*, 145 F.4th at 990. This is because injunctive and APA relief are distinct.[4] Defendants' failure to identify this binding caselaw dooms their specious argument that APA relief under "5 U.S.C. § 705" is "prohibited by Section 1252(f)(1)." Opp. at 8.

Defendants ignore additional precedent in attempting to persuade this Court that §1252(f)(1) also bars declaratory relief. Opp. at 8 n.3. "[T]hat argument is

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[2] As explained in Plaintiffs' concurrently filed Reply in support of their motion for preliminary relief, 8 U.S.C. §§ 1252(a)(5)(b)(9), and (g) also do not bar relief, as Defendants suggest. Opp. at 11 n.4.

[3] Given the Supreme Court's unequivocal statement nearly three decades ago that "[b]y its plain terms, and even by its title, [§ 1252(f)(1)] is nothing more or less than a limit on injunctive relief," *Am.-Arab Anti-Discrimination Comm.*, 525 U.S. at 481, Defendants bald assertion that "Section 1252(f)(1) is not limited to injunctions" is perplexing. Opp. at 8 n.3.

[4] "[A]n injunction is a judicial process or mandate operating *in personam*," meaning it "is directed at someone, and governs that party's conduct." *Immigr. Defs. L. Ctr.*, 145 F.4th at 990 (quoting *Nken v. Holder*, 556 U.S. 418, 428 (2009)). By contrast, APA relief prevents agency action by "suspending the source of authority to act,… not by directing an actor's conduct." *Nken*, 556 U.S. at 428-29. Thus, APA relief is "a less drastic remedy" than an injunction, as it merely "re-establish[es] the status quo absent the ... agency action" challenged. *Immigr. Defs. L. Ctr.*, 145 F.4th at 990 (citing *Texas v. United States*, 40 F.4th 205, 219-20 (5th Cir. 2022)).

foreclosed by circuit precedent holding that § 1252(f)(1) does not 'bar classwide declaratory relief.'" *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 138 F.4th 1102, 1123-24 (9th Cir. 2025) (quoting *Rodriguez v. Hayes*, 591 F.3d 1105, 1119 (9th Cir. 2010)); *see also Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018).

Furthermore, a classwide injunction prohibiting Defendants from deciding stay requests without first determining prima facie eligibility for U or T visa relief, as required by 8 U.S.C. § 1227(d), does not run afoul of § 1252(f)(1) because § 1227(d) is not among the provisions covered by 1252(f)(1). By its terms, § 1252(f)(1) applies only to Part IV of the INA "*as amended by [IIRIRA]*" (emphasis added). The Ninth Circuit recently examined the reach of § 1252(f)(1) in the context of a statute that appeared to be located within "Part IV of the INA" but was not part of the INA "as amended by" IIRIRA in 1996. *Galvez v. Jaddou*, 52 F.4th 821, 829-31 (9th Cir. 2022). Because the statute in question was "enacted in 2008 by… William Wilberforce Trafficking Victims Protection Reauthorization Act" ("TVPRA"), the court held it "is certainly not a provision of the INA "*as amended by* the [IIRIRA] of 1996" because "the TVPRA was enacted in 2008," rendering § 1252(f)(1) inapplicable. *Galvez*, 52 F.4th at 830-31. That holding controls here, because § 1227(d) was also enacted by the TVPRA, § 204. Pub. L. No.110-457, 122 Stat. 5044. Thus, *Galvez* forecloses any argument that this Court cannot issue a classwide injunction requiring Defendants to comply with 8 U.S.C. § 1227(d).

Finally, Plaintiffs' request for a classwide injunction requiring Defendants to comply with their own policies and provide notice and an opportunity to be heard before revoking deferred action is not barred by § 1252(f), because such an injunction does nor "enjoin or restrain the operation of" a covered provision. The reference in § 1252(f)(1) to "Part IV" refers generally to "sections 1221 through 1232 of the INA," as amended by IIRIRA, which generally authorize immigration detention and removal processes. *Biden*, 597 U.S. at 798. However, deferred action is not referenced at all in the covered provisions. Thus, requiring Defendants to

follow a specific process before revoking deferred action does not enjoin the operation of the detention and removal statutes, even if it may have some collateral effect on them. The Ninth Circuit "has repeatedly held that § 1252(f)(1) does not prohibit an injunction simply because of collateral effects on a covered provision." *Al Otro Lado*, 138 F.4th at 1125. And even if it limits this one form of relief, it does not bar certification because many other forms of relief remain available.

II. Individual Plaintiffs Meet the Requirements of Rule 23(a).

A. There is no ascertainability requirement in Rule 23(b)(2) class actions, and the proposed classes are well defined.

Defendants assert that "ascertainability" is an "independent" requirement for certification or an element of Rule 23(a). Opp. at 12-13, fn. 5. The Ninth Circuit disagrees, stating "we have not… adopted an 'ascertainability' requirement."[5] *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1125 n.4 (9th Cir. 2017). Instead, the appropriate "question is not whether the identity of class members can be ascertained with perfect accuracy at the certification stage but whether the defendant will receive a fair opportunity to present its defenses when putative class members actually come forward." *Id.* at 1132. That is the case here. For the Pending Petition Class, Defendants can easily determine whether a person has applied for a Survivor-based Benefit and whether ICE has "detained or seeks to detain" them. Mtn at 1. For the Deferred Action Class, whether Defendants have granted deferred action and either "detains, seeks to detain, or removed" the person is also readily identifiable. *Id.* And for the Stay of Removal Class, ICE can easily determine whether someone with a pending U or T visa petition they have detained or seek to detain after January 30, 2025 has "requested a stay" of removal. *Id.*

Whether any of the challenged policies "violate [class members'] rights," Opp. at 14, is a legal question for the Court to decide for the class, not a question that determines class membership, because the class definitions do not include

[5] Thus, the out-of-circuit cases cited by Defendants are inapplicable. Opp. at 13 n.5.

whether a violation occurred. Mtn at 1. Further, Defendants are plainly wrong that the classes "encompass individuals who are not yet (and may never be) detained." Opp. at 14. As defined, the classes only include people who ICE "detains," "seeks to detain," "have been, are, or will be detained," or "removed." Mtn at 1.

Rule 23(b)(3) damages classes cited by Defendants are inapposite, Opp. at 13, because defining a damages class "to include members without individualized injuries runs the risk of compensating individuals who suffered no harm. Where plaintiffs seek purely prospective relief, however, there is no similar risk of granting redress without an attendant injury." *Garro Pinchi v. Noemi*, --F.Supp.3d--, 2025 WL 3691938, at *14 (N.D. Cal. 2025)

B. Numerosity

Defendants' primary error in arguing against numerosity is insisting that Plaintiffs must identify a precise number of class members. Opp. at 17. In support of this, Defendants quote a purported line from *Schwartz v. Upper Deck Co.*, 183 F.R.D. 672, 681 (S.D. Cal. 1999), that plaintiffs must provide "some evidence of or reasonably estimate the number of class members *with specificity*.'" Opp. at 17 (emphasis added). The "with specificity" language is found nowhere in *Schwartz*. In fact, the court explicitly states that the "Court *does not require Plaintiffs to fix a precise number*," contradicting Defendants' point. *Schwartz*, 183 F.R.D. at 680-81 (emphasis added). Where plaintiffs seek "injunctive and declaratory relief, the numerosity requirement is relaxed and plaintiffs may rely on reasonable inferences arising from plaintiffs' other evidence." *C.R. Educ. & Enf't Ctr. v. Hosp. Props. Tr.*, 317 F.R.D. 91, 100 (N.D. Cal. 2016) (cleaned up).

Further, the difficulty of identifying a precise number *supports* numerosity rather than undermines it, because where "a class's membership changes continually over time, that factor weighs in favor of concluding that joinder of all members is impracticable . . . even if current class members are relatively fewer in number." *A. B. v. Hawaii State Dep't of Educ.*, 30 F.4th 828, 838 (9th Cir. 2022)

(internal citation omitted). Defendants notably do not address the numerous cases Plaintiffs cited on this point. Mtn at 10-11.

Defendants' assertion that Plaintiffs are "without evidence" of numerosity is similarly puzzling. Opp. at 17-18. As Defendants acknowledge, Plaintiffs "cit[e] to data," "news articles," declarations, and court filings to support an inference that there are sufficiently numerous individuals in each class. *Id.* at 17. To the extent Defendants complain that the evidence is inadmissible or the declarations are "improper" under "Rule 602," Opp. at 16, they ignore that proof "in support of class certification… need not be admissible evidence," and the Court "need only consider 'material sufficient to form a reasonable judgment on each [Rule 23(a)] requirement.'" *Sali v. Corona Reg'l Med. Ctr.*, 909 F.3d 996, 1004-05 (9th Cir. 2018). Nevertheless, Plaintiffs submit renewed declarations to assuage any authentication concerns. Additionally, Plaintiffs also submit an additional eighteen declarations identifying additional class members.[6] Based on undersigned counsel's estimate, the declarations submitted thus far identify more than 200 Pending Petition Class members, approximately 65 Deferred Action Class members, and approximately 32 Stay of Removal Class members already.

C. Commonality

Defendants' cursory assertions that alleged "factual differences among putative class members" defeat commonality fail. Opp. at 18. As to Plaintiffs' claim that the 2025 Guidance is arbitrary and capricious and contrary to law, there is a "common issue, with a common answer, as to whether a sufficiently reasoned explanation was provided" for the policy. *Thakur v. Trump*, 787 F. Supp. 3d 955, 1003 (N.D. Cal. 2025). The facts of individual plaintiffs' cases do not change this

[6] *See* Decl. of Christine Meneses; Decl. of Auguy G. Mangone; Decl. of Denisse V. Miller; Decl. of Rachel Parris; Decl. of Joseph Dorsey; Decl. of Angelyne E. Lisinski; Decl. of Suzette Colon Cales; Decl. of Stephen Roiger; Decl. of Marguerite Evelyne Marty; Decl. of Kevin Alejandro Sarabia; Decl. of Kathrine Elizabeth Reynolds; Decl. of Deborah Mas Cabrera; Decl. of Angelique Montano; Decl. of Scott E. Bellgrau; Decl. of Alizabeth Newman; Decl. of Alyssa Reed; Decl. of Giulia Fantacci; and Decl. of Jesus E. Saucedo.

common question: either the Guidance "is unlawful as to every [class member] or it is not. That inquiry does not require [the Court] to determine the effect of those policies ... upon any individual class member (or class members) or to undertake any other kind of individualized determination." *Parsons v. Ryan*, 754 F.3d 657, 678 (9th Cir. 2014). The same is true for Plaintiffs' challenges to the De Facto Revocation Policy and Blind Removal Policy: either those policies violate the law as to all class members or they do not. Defendants do not address *Parsons*.

Certifying the Deferred Action Class – the only class raising due process claims – would not require "fact finding hearings" for each class member simply because "due process is a flexible concept." Opp. at 14 (citing two cases that do not involve class certification). A broad cliché does not distinguish the binding cases Plaintiffs cite holding otherwise, which Defendants do not address. Mtn. at 16-17. No individualized determinations are required to determine whether Defendants' lack of procedures for revoking deferred action violate due process.

D. Typicality

Defendants claim the Deferred Action Class definition requires members "to have no notice and opportunity to be heard," but because some class representatives have "had their day in court in their immigration proceedings," typicality is defeated. Opp. at 19. This is wrong on several fronts. First, the class definition requires a lack of "notice and an opportunity to be heard *regarding potential revocation of their deferred action status*." Mtn. at 1 (emphasis added). As the Ninth Circuit has held, only "USCIS, and not the [immigration judge], had jurisdiction" over "deferred action" issued by USCIS. *Lee v. Holder*, 599 F.3d 973, 975-76 (9th Cir. 2010). Defendants do not dispute this. Second, as the class is defined, class members will already be in detention, an injury that their deferred action status – and their due process claim for a *pre-deprivation* process for its revocation – is meant to protect against. By definition, no class member is provided such a process before detention. Indeed, Ms. Merlos was only released by an

immigration judge after enduring months of detention. "It does not matter that the named plaintiffs may have in the past suffered varying injuries . . . Rule 23(a)(3) requires only that their claims be 'typical' of the class, not that they be identically positioned to each other or to every class member." *Parsons*, 754 F.3d at 686.

E. Adequacy

Defendants inexplicably assert that Plaintiffs are inadequate because they have not demonstrated they have "reviewed the complaint, understood the legal theories asserted, or exercised any independent judgment over the litigation strategy." Opp. at 20. Adequacy obviously does not require that the named representatives be lawyers. "The adequacy inquiry is addressed by answering" only "two questions: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Small v. Allianz Life Ins. Co. of N. Am.,* 122 F.4th 1182, 1202 (9th Cir. 2024). Defendants cite *Amchem Prods., Inc. v. Windsor,* 521 U.S. 591, 626-27 (1997) to support their preposterous standard, but *Amchem* applied the proper adequacy standard, declining to certify a class because the interests of class members "tugs against the interest" of some of the Plaintiffs. *Id.* Defendants do not, and cannot, allege that Individual Plaintiffs have any conflict of interest with the class, and each Plaintiff has declared they will vigorously represent the class. Pltfs' Mtn. at 20 (citing declarations).

III. Rule 23(b)(2) is satisfied.

Defendants do not dispute that the Pending Petition Class or the Stay of Removal Class satisfy Rule 23(b)(2), and they address only two of the Deferred Action Class's claims (ignoring their *Accardi* claim, their Fourth Amendment claim, and their APA challenge to the De Facto Revocation Policy). Opp. at 20. As to the due process claims they do challenge, Defendants largely parrot their earlier arguments, which apply with no greater force in the context of Rule 23(b)(2).

The Supreme Court's decision in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025)

does not remotely "preclude[] class certification." Opp at 22-25. *CASA* addresses the issue of so-called universal injunctions *outside* the context of class actions. Indeed, much of the Court's analysis focuses on its concern that "universal injunctions are a class-action workaround." *CASA*, 606 U.S. at 850. The Court specifically noted that common law remedies to benefit large groups properly "evolved into the modern class action," and "not as the universal injunction," underscoring why the latter is an impermissible assertion of judicial authority that "circumvent[s] Rule 23's procedural protections and allow courts to create *de facto* class actions at will." *Id.* at 849 (cleaned up). Thus, *CASA* explicitly contemplates that class actions are an appropriate method for pursuing nationwide relief.

Furthermore, *CASA* did not hold that such injunctions were not authorized by the APA, and it did not address declaratory judgments. Indeed, "[t]he Supreme Court regularly, repeatedly, and recently has applied Section 705's statutory neighbor, Section 706, to provide universal relief under the APA." *Make the Rd. New York v. Noem*, No. 25-5320, 2025 WL 3563313, at *36 (D.C. Cir. Nov. 22, 2025) ("[T]he Department's procrustean effort to stretch *CASA's* plaintiff-specific remedial framework onto the APA defies countless precedents to the contrary.") (citing cases, internal citation omitted). Thus, "When a reviewing court determines that agency regulations are unlawful," under the APA, "the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed." *Harmon v. Thornburgh*, 878 F.2d 484, 495 n.21 (D.C. Cir. 1989).

Even applying the "complete-relief principal," which the APA does not require, it is proper to grant a stay of agency action under the APA where such stay, "effective nationwide, is the only remedy that provides complete relief to the parties." *Nat'l TPS All.* 150 F.4th at 1028 (9th Cir. 2025).

CONCLUSION

Accordingly, Plaintiffs respectfully request that the Court grant this motion.

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Respectfully submitted,

/s/ Bardis Vakili
Bardis Vakili

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Bardis Vakili
Sarah E. Kahn
Erika Cervantes

LA RAZA CENTRO LEGAL
Stephen A. Rosenbaum
Jordan Weiner

PUBLIC COUNSEL
Rebecca Brown
Kathleen Rivas

COALITION FOR HUMANE IMMIGRANT RIGHTS
Carl Bergquist
Adam Reese