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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

PEDRO VASQUEZ PERDOMO, *et al.*,

Plaintiffs,

v.

MARKWAYNE MULLIN, in his official capacity as Secretary of Homeland Security, *et al.*,

Defendants.

No. 2:25-cv-05605-MEMF-SP

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION [ECF 531]

Hearing Date: August 13, 2026
Hearing Time: 10:00 a.m.
Location: First Street Courthouse
350 West First Street
Los Angeles, CA 90012
Courtroom 8B
8th Floor

Hon. Maame Ewusi-Mensah Frimpong
United States District Judge

Referred to Hon. Sheri Pym
United States Magistrate Judge

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INTRODUCTION

The Court should deny Plaintiffs' motion for class certification because they lack standing, the Immigration and Nationality Act ("INA") prohibits class-wide injunctive relief here, and Plaintiffs fail to satisfy Federal Rule of Civil Procedure ("Rule") 23's requirements.

First, Plaintiffs' motion includes no individual class representative—a fatal element of their class. The only proposed representatives are organizational Plaintiffs, but they are not "members" of the class they seek to represent. Fed. R. Civ. P. 23(a). Certifying such a class does not comport with the most fundamental requirement of Rule 23(a) that "one or more *members of a class* may sue . . . as representative parties on behalf of all members" of the class. *Id.* Nor are their claims "typical" of the class. *Id.* 23(a)(3). They also do not share the same interests and cannot suffer the alleged injury as class members for the simple reason that they are organizations, not class members who have suffered the alleged injury caused by Defendants' challenged conduct.

Second, the proposed class indiscriminately sweeps in individuals—who the Court would need to identify by entertaining fact-finding hearings for every single proposed class member, a process that is not conducive to any class action—who lack Article III standing, as many putative members face no actual or imminent injury traceable to Defendants and redressable by judicial relief. *See O'Shea v. Littleton*, 414 U.S. 488, 494 (1974); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). "Every class member must have Article III standing," because "Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021). Yet the class members' isolated anecdotes and speculative fears do not suffice. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983); *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013). And absent proof of a concrete, ongoing policy of "warrantless arrests" that violate the Constitution—which the Court acknowledged it has never found, ECF 87 at 30 n.21, and Defendants' evidence refutes—organizational Plaintiffs cannot establish standing for themselves, let alone for an undefined population.

Third, 8 U.S.C. § 1252(f)(1) bars Plaintiffs' requested relief which would enjoin or restrain "the 'operation of'" detention and initiation-of-removal provisions covered by the bar. *See Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022).

Finally, setting aside these jurisdictional defects, Plaintiffs' proposed class fails to satisfy any of the requirements under Rule 23(a). Besides organizational Plaintiffs who would not suffer the alleged injury, Plaintiffs' claims are not common because they turn on highly individualized, fact-specific circumstances attendant to individual arrests. Their claims similarly fail to demonstrate typicality because members, whether they have allegedly been injured or speculate some future injury, have varying immigration status, unique factors in support of an individual arrest (e.g., whether they are a public safety and/or flight risk), or are subject to different detention statutes (mandatory versus discretionary detention). The individually named Plaintiffs do not seek to represent this class, but their circumstances show there is no commonality or typicality: two named Plaintiffs were arrested after they fled from officers, which provides important context for and can form the basis for an officer's "likelihood of escape" determination under 8 U.S.C. § 1357(a)(2). *See, e.g.*, ECF 128-7 ¶ 7 (Plaintiff Perdomo fleeing), 45-2 ¶ 6 (Plaintiff Osorto indicating he "tried to run" from agents). Plaintiffs offer mere speculation and conjecture, as opposed to concrete evidence, and thus fail to substantiate their claim of numerosity.

Finally, Plaintiffs fail to meet their burden under Rule 23(b)(2), which permits certification only where a single, indivisible injunction would provide relief to each class member. *Wal-Mart*, 564 U.S. at 360. Rule 23(b)(2) cannot be satisfied as Plaintiffs' overbroad definition sweeps in uninjured individuals of varying immigration status (or lack thereof), who are subject to different detention standards and present different factual scenarios, defeating cohesiveness and the possibility of uniform relief.

For these reasons, the Court should deny Plaintiffs' motion for class certification.

BACKGROUND

On June 20, 2025, three aliens arrested in the Los Angeles area filed a habeas petition seeking release from immigration detention. Plaintiffs, all day laborers, were arrested during a "targeted enforcement action at a doughnut shop" where surveillance and intelligence indicated the target and associates were recruiting unauthorized workers for landscaping jobs. At least two Plaintiffs had attempted to escape arrest by running from officers. ECF 128-7 ¶ 7, 45-2 ¶ 6. All three were later released and are no longer in government custody. ECF 146 at 1.

On July 2, Plaintiffs filed an amended class-action complaint adding two U.S. citizens, four organizational plaintiffs, and several federal officials as defendants. ECF 16. Following initial temporary restraining order ("TRO") briefing, an issued TRO, appeal and stay of the TRO, the Court dissolved its TRO and ordered limited, expedited discovery in anticipation of a motion for preliminary injunction, which is currently being briefed, ECF 529. On April 7, the Court granted Plaintiffs' motion to amend their complaint, ECF 484.

On June 8, Plaintiffs filed their renewed motion for preliminary injunction, and on June 9, Plaintiffs filed their Motion for Class Certification, seeking a proposed warrantless arrest class consisting of "[a]ll persons, since June 6, 2025, who have been arrested or will be arrested in this District for alleged immigration violations without a warrant and without a pre-arrest, individualized assessment of probable cause that the person poses a likelihood of escape." ECF 531 ("Mot.") at 1. Under Plaintiffs' proposal, no individual Plaintiff would serve as class representative; instead, they propose that organizational Plaintiffs serve as the class representatives.

STANDARD

A class action "is an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011). To fall within this narrow exception, Plaintiffs must "affirmatively demonstrate" their compliance with each element of Rule 23. *Id.* at 350. "[A]ctual, not presumed, conformance" with Rule 23 is "indispensable," *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 160 (1982), and certification is proper only if the Court is satisfied "after a rigorous analysis" that Plaintiffs have shown each requirement has been met. *Wal-Mart Stores, Inc.*, 564 U.S. at 350-51. Courts may consider evidence outside of the pleadings to determine whether claims or defenses are prone to resolution on a class-wide basis. *See Jones v. Rossides*, 256 F.R.D. 274, 276 (D.D.C. 2009).

To merit class certification, Plaintiffs must demonstrate: (1) the class is so numerous that joinder is impracticable; (2) there are questions of law or fact common to the class; (3) named Plaintiffs' claims or defenses are typical of the class's claims or defenses; and (4) named Plaintiffs and counsel will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a).

In addition to these requirements, the proposed class must also qualify under a subsection of Rule 23(b). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Plaintiffs claim they satisfy Rule 23(b)(2) which permits certification where Defendants "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole."

ARGUMENT

I. The Organizational Plaintiffs Cannot Serve as Class Representatives under Rule 23.

At the outset, Plaintiffs' motion fails as organizational Plaintiffs do not themselves possess the individualized interests, circumstances, and claims of the aliens they intend to represent. Even as a representative, Rule 23 requires that the named Plaintiffs be a member of the class, possess the same interest, and suffer the same injury as fellow class members. E*ast Tex. Motor Freight System, Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977). Rule 23(a) requires that "one or more *members* of a class may sue" as representatives "on behalf of all [class] members[.]" Plaintiffs fail to name individual Plaintiffs as class representatives, which is telling of the defects associated with Plaintiffs' class certification motion. The Organizational Plaintiffs are not "members of [the] class," thus they cannot represent that class. Fed. R. Civ. P. 23(a); *see Wal-Mart*, 564 U.S. at 348-49 ("The class action is 'an exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only'" and "[i]n order to justify a departure from that rule, 'a class representative must be part of the class and possess the same interest and suffer the same injury as the class members.'"). Nor are their claims "typical" of the class, as their standing and interests as an association are inherently different from each class members. Fed. R. Civ. P. 23(a)(3). Tellingly, Plaintiffs' cited warrantless cases (Mot. at 16) had individuals representing the class.

Indeed, Rule 23 has "special safeguards to ensure that the diverse interests of class members are properly represented by the named plaintiff seeking to" represent said class, expressly distinguishing such action from cases brought under an associational standing theory. *See Int'l Union v. Brock*, 477 U.S. 274,

288-89 (1986); *see, e.g.*, Fed. R. Civ. P. 23(a)(4) (requiring "representative parties" to "fairly and adequately protect the interests of the class."). As the Supreme Court rightfully cautions:

> [A]n association might prove an inadequate representative of its members' legal interests for a number of reasons. It may lack resources or experience or may bring lawsuits without authorization from its membership. In addition, the litigation strategy selected by the association may reflect the views of only a bare majority—or even an influential minority—of the full membership.

Id. at 289.

Certifying organizational Plaintiffs as class representatives could also harm putative class members through claim preclusion, especially where organizational Plaintiffs intend to represent a class beyond their own membership and with interests that may not align with individual class members who lie outside of the organization's membership. If improperly certified, a broad class judgment could bar individuals from raising additional challenges to their arrest or ultimate removal under principles of res judicata and collateral estoppel, even though their claims may rest on distinct facts and legal theories. *See Cooper v. Fed. Rsrv. Bank of Richmond*, 467 U.S. 867, 874 (1984); *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008). This would be especially troubling given that organizational Plaintiffs may ultimately bind the prospective class in a case where the Supreme Court has already once rejected the viability of their claim. Plaintiffs offer no reason why class treatment is necessary, particularly given that any individual relief could be provided through party-specific injunctions or habeas remedies.

II. The Proposed Class is Overbroad, Amorphous, and Not Ascertainable, Which Defeats Plaintiffs' Claim of Standing.

Plaintiffs' proposed class is neither definite nor ascertainable but rather encompasses individuals with no cognizable injury or realistic prospect of standing. Rule 23 requires that a class be "definite" or "ascertainable[,]" *J.D. v. Azar*, 925 F.3d 1291, 1319-20 (D.C. Cir. 2019); *Ballas v. Anthem Blue Cross Life & Health Ins. Co.*, 2013 WL 12119569, at *4 (C.D. Cal. Apr. 29, 2013). This requirement ensures that the class is "neither amorphous, nor imprecise." *Lewis v. Nat'l Football League*, 146 F.R.D. 5, 8

(D.D.C. 1992) (internal quotation and citation omitted). For example, class certification sought under Rule 23(b)(2) must "accurately articulate[] the general demarcations of the class of individuals who are being harmed." *Thorpe v. District of Columbia*, 303 F.R.D. 120, 139 (D.D.C. 2014) (cleaned up). A class definition may be fatally overbroad if it "sweeps within it persons who could not have been injured by the defendant's conduct." *Ross v. Lockheed Martin Corp.*, 267 F. Supp. 3d 174, 191 (D.D.C. 2017) (quoting *Kohen v. Pac. Inv. Mgmt. Co. LLC*, 571 F.3d 672, 677 (7th Cir. 2009)). Having an inadequately defined or overbroad class also implicates other Rule 23 requirements, including as relevant here, typicality, commonality, and compliance with Rule 23(b)(2). Although absolute precision is not necessary before certifying a (b)(2) class, class membership must still be determinable "with reference to 'objective criteria.'" *See Thorpe*, 303 F.R.D. at 139 (quoting 1 Rubenstein § 3:3); Manual for Complex Litigation § 21.222 (4th ed.) (noting that although a court need not "identify every individual member at the time of certification of a Rule 23(b)(2) class action for injunctive relief," it must be able to "determine at any given time whether a particular individual is a member of the class").

Courts in this District and Circuit evaluate ascertainability—either as an independent consideration or as part of Article III, Rule 23(a) and (b)(2)—even though the Ninth Circuit does not treat it as a separate threshold requirement. Courts look to whether class membership can be determined by objective, administratively feasible criteria. *See True Health Chiropractic, Inc. v. McKesson Corp*., 896 F.3d 923, 929 (9th Cir. 2018); *In re Honda Idle Stop Litig*., 347 F.R.D. 528, 539 (C.D. Cal. 2024).

First, whether treated independently or folded into standing and Rule 23, Plaintiffs' class is not ascertainable because class membership would turn on subjective, merits-laden "probable cause" judgements rather than objective records, making identification practically burdensome and only inviting mini-trials as to the basis for each putative member's individual arrest.[1] Such individualized fact-finding

[1] It would be highly burdensome to determine which aliens meet Plaintiffs' subjective class definition as it would require closely examining the individual circumstances of each arrest and the officer's analysis, beyond simply what is documented in an arrest narrative. Setting aside that burden, however, this individualized assessment would be antithetical to Rule 23(b)(2)'s requirement that Plaintiffs show Defendants have "acted or refused to act on grounds generally applicable to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

analysis is inappropriate in the class context, especially in the case of a Rule 23(b) class, which requires common answers that can apply to the class as a whole.

Second, Plaintiffs' class fails because it does not use objective criteria to establish membership with definite boundaries that comport with the strictures of Rule 23. *See In re Petrobras Sec.*, 862 F.3d 250, 269 (2d Cir. 2017). Indeed, warrantless immigration arrests are not inherently unlawful, nor uncommon in this District. While Plaintiffs indicate that many arrests either lack an analysis of likelihood of escape or, when documented, contain "boilerplate" analysis, as being deficient to justify a warrantless immigration arrest, Mot. at 3, that does not mean the officer did not perform the proper likelihood-of-escape analysis prior to engaging in a § 1357(a)(2) warrantless arrest. Alleged deficiencies in a narrative do not necessarily equate to an unlawful warrantless arrest, nor do they indicate that such analysis was not undertaken prior to initiating an arrest.

Even more concerning, the proposed class would necessarily encompass individuals who are not yet (and may never be) arrested within this District, which would make the claims of the proposed class too disparate to be ascertained, and thus precludes a finding of commonality and typicality among the asserted class claims. *Cf. Amchem Prods., Inc.*, 521 U.S. at 626 (finding named parties with diverse medical conditions were not adequate representatives of a single class because the interests of those within the single class were not aligned). This same defect in Plaintiffs' proposed class would also preclude the Court from ascertaining the members of the class early in the litigation, as required by Rule 23. *In re White*, 64 F.4th 302, 313 (D.C. Cir. 2023).

Third, because organizational Plaintiffs lack cognizable injuries, they (and the putative class they seek to represent) would lack standing to challenge the speculative chance that they are not only arrested but also without probable cause—which Plaintiffs have yet to demonstrate has occurred either by policy or practice—sometime in the future. For example, Plaintiff Gavidia—a U.S. citizen stopped during a routine lawful immigration enforcement stop but never arrested—cannot contest the fact that not all Plaintiffs were arrested, let alone unlawfully, and Plaintiffs cannot demonstrate with sufficient certainty that they or others will be stopped again (or in the first instance). Thus, any relief this Court could grant would not redress an alleged injury to them or otherwise benefit them or individuals similarly situated to

them who may be lawfully arrested by Immigration and Customs Enforcement ("ICE") and Customs and Border Protection ("CBP") in the future. There is no actual or imminent injury to redress, as required by *Lyons*, 461 U.S. at 101-03, and mere speculation of a possible future injury is insufficient to support standing, *Clapper*, 568 U.S. at 409. Moreover, because Plaintiffs lack standing, they cannot represent a class of similarly situated individuals (who likewise lack standing). *See Littleton*, 414 U.S. at 494; *Warth v. Seldin*, 422 U.S. 490, 502 (1975) ("Petitioners must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong and which they purport to represent.").

These defects in class definition prevent this Court from granting such far-reaching, and jurisdictionally deficient, relief. Plaintiffs' class is neither definite nor ascertainable but instead covers individuals with no cognizable injury or realistic prospect of standing. Rule 23 does not allow certification of an amorphous group defined only by Plaintiffs' speculation about who may someday be arrested, and any attempt to proceed on that basis would collapse under the very defects—lack of standing and jurisdiction, commonality, and typicality—that Rule 23 was designed to prevent.

III. Congress Has Barred Plaintiffs' Proposed Classwide Relief.

Plaintiffs' proposed relief is also barred under the INA. 8 U.S.C. § 1252(f)(1) provides that "no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of [§§ 1221-1231] other than with respect to the application of such provisions to an individual alien[.]" Congress's explicit bar on class-wide relief applies not just to enumerated statutory provisions but also "the 'operation of' the relevant statutes [which] is best understood to refer to the Government's efforts to enforce or implement [said statutes]." *Aleman Gonzalez*, 596 U.S. at 550 ("[T]he operation of the provisions is a reference not just to the statute itself but to the way that it is being carried out."). Applied here, Section 1252(f)(1) covers the government's authority to detain (§§ 1225(b)(2), 1226, 1231) and to initiate removal proceedings (§ 1229). Warrantless arrests under Section 1357(a)(2) are a paradigmatic means of enforcing or implementing the government's authority to detain and initiate removal proceedings under those covered provisions—permitting officers to arrest an alien without a warrant if they "ha[ve] reason to believe that the alien so arrested is in the United States in violation of any such

law or regulation and is likely to escape before a warrant can be obtained for his arrest." *See* 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(i). Thus, a class-wide injunction on warrantless arrests would "enjoin or restrain the operation of" enumerated provisions in contradiction of § 1252(f)(1). *Aleman Gonzalez*, 596 U.S. at 550.

Having had the chance to opine on the government's arrest authority, the D.C. Circuit concluded in *N.S. v. Dixon*, 141 F.4th 279 (D.C. Cir. 2025) that § 1252's bar required vacating a district court's injunction. *Id.* at 284 (citation omitted). Specifically, the injunction was improper because it "enjoined the Marshalls from arresting and detaining" suspected civil immigration offenders, which includes "arrests made with a warrant issued pursuant to § 1226(a) and the detention of any alien charged" under § 1226(c). The D.C. Circuit rejected Plaintiffs claim that § 1252(f)(1) "did not prevent the district court from entering the injunction because the enjoined actions are governed by § 1357," which was not explicitly enumerated under the bar. *Id.* at 288. The court reasoned that an injunction restraining the government from carrying out an arrest necessarily implicates and would restrict authority derived at least in part from §§ 1226 and 1231, both of which are covered by the jurisdictional bar. *Id.* at 289. The D.C. Circuit reached that conclusion even though it found that Marshals had no authority to engage in immigration arrests and even though Plaintiffs argued that they engaged in warrantless arrests which should not be covered. The D.C. Circuit's reasoning is even stronger here, where Plaintiffs attempt to enjoin or restrict the government arrest authority under § 1357, which "clearly affects provisions to which § 1252(f)(1) applies." *Id.* at 284. Plaintiffs' proposed class-wide relief would necessarily restrict "the way that" the government is effectuating its §§ 1226 and 1229 authority, in direct contradiction to the restrictions Congress enumerated. *Aleman Gonzalez*, 596 U.S. at 550.

Because relief is statutorily barred, even if Plaintiffs raised a cognizable injury, their relief would not be redressable, and thus the Court lacks jurisdiction and must deny Plaintiffs' motion.

IV. Plaintiffs Fail to Satisfy Any of Rule 23(a)'s Requirements.

None of Rule 23(a)'s requirements can be met because Plaintiffs moved for organizational Plaintiffs to represent a class of individuals who possess Fourth Amendment rights (which cannot be vicariously asserted). There is: no commonality as the legal questions presented by an organization differ from those of individuals who possess Fourth Amendment rights; no typicality as an organization has different claims and defenses than an individual; and no adequate representation as an organization is not subject to the policies it seeks to litigate as a class representative. Even if Plaintiffs had proposed individual representatives for their proposed class, the Rule 23(a) requirements would not be met.

A. Commonality

Plaintiffs do not satisfy the commonality requirement because each class member's claim—which are particularly distinct from Organizational Plaintiffs seeking to represent them but cannot themselves suffer the injury they challenge on behalf of the class—would require an individualized Fourth Amendment assessment based on circumstances unique to them.

1. Organizational Plaintiffs

At the onset, it is evident that organizational Plaintiffs' claims are not common of the class they seek to represent, as an entity (unlike an individual) does not possess Fourth Amendment rights that can be violated, protected, or remedied. Plaintiffs implicitly acknowledge this as they claim "all class members are subject to the same challenged practice" even though the organizations cannot be subject to such practice, Mot. at 10. And for associational standing, Plaintiff Organizations must satisfy additional legal hurdles that are not relevant to the class members' standing, such as germaneness. *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441 (1977). Organizational Plaintiffs constantly elide the distinction between their chosen organizational class representations and their members, which must share common questions across them. But even assuming the organizations had associational standing, which they do not, they may not vicariously assert other persons' Fourth Amendment rights, *Alderman v. United States*, 394 U.S. 165, 174 (1969). It thus defies logic for Plaintiffs to contend that the organizations' claims are common of the putative class.

2. Individual Plaintiffs

Nor could individual Plaintiffs rescue this broadly drawn proposed class because, following Plaintiffs' logic (having asked the Court to infer that all collateral arrestees would be members of a warrantless-arrest class), the class would include individuals who, as Defendants maintain, were subject to lawful warrantless arrests or are subject to mandatory detention where a warrant is not required. However, to establish commonality, Plaintiffs must demonstrate that "the class members 'have suffered the same injury.'" *Wal-Mart*, 564 U.S. at 349-350. This does not mean that class members merely "suffered a violation of the same provision of law" or raise some common questions. *Id.* Class members suffer the same injury only if their claims turn on a common contention "of such a nature that it is capable of class-wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*. at 350. Thus, "[w]hat matters to class certification [is] the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation." *Id*. "Dissimilarities within the proposed class are what have the potential to impede the generation of common answers." *Id*.

Indeed, the requisite fact-intensive Fourth Amendment analysis to identify potential class members defeats commonality. For example, the Ninth Circuit vacated a district court's class certification order for failing to adhere to Rule 23's "rigorous" commonality analysis, emphasizing the plaintiffs' "fact-specific constitutional claims[.]" *Black Lives Matter L.A. v. City of L.A.*, 113 F.4th 1249, 1254 (9th Cir. 2024). There, plaintiffs alleged local law enforcement used excessive force against protestors and restricted their First Amendment rights during demonstrations. *Id.* at 1259-61, 1265. In vacating the district court's order, the Ninth Circuit emphasized that the merits of the plaintiffs' claims depended on various, individualized factors, including "what force was used, what a particular class member was doing, what other protestors may have been doing, what the officers objectively observed, and a host of other factors." *Id.* at 1260. The Ninth Circuit found the plaintiffs had not "shown the existence of common

evidence that can resolve in 'one stroke' the class members' claims that hinge on a wide array of facts and circumstances." *Id*. (quoting *Wal-Mart*, 564 U.S. at 350).

The same reasoning applies here; even if (organizational or individual) Plaintiffs had a qualifying injury, which they do not, Plaintiffs cannot demonstrate the existence of "common evidence" or overcome the diverging individual circumstances to demonstrate commonality. Absent such evidence, to identify individuals that arguably satisfy Plaintiffs' warrantless-class definition, each putative class member would essentially undergo a mini-trial and review of their record to assess the veracity of the officer's objective determination that probable cause existed to effectuate the individual's warrantless arrest. Contrary to the Ninth Circuit's requirement of "common evidence" that may resolve "the class members' claims" in "one stroke[,]" *Black Lives Matter L.A.*, 113 F.4th at 1254 (quoting *Wal-Mart*, 564 U.S. at 350), the Court would have to weigh the subjective facts of each alleged warrantless arrest to determine whether it agreed with the officer that the individual presented a likelihood of escape prior to arrest. This is precisely what the Federal Rules, the Supreme Court and Ninth Circuit do not allow.

Where as here, Plaintiffs allege Defendants have engaged in a policy or practice that has "consistently and uniformly injured the putative class members, the plaintiff must provide 'significant proof' that such a policy or practice exists." *Parker v. Bank of Am*., N.A., 99 F. Supp. 3d 69, 81 (D.D.C. 2015) (citing *Wal-Mart*, 564 U.S. at 354*).* "Allegations of individual instances of mistreatment, without sufficient evidence, do not constitute a systemic deficiency or overarching policy of wrongdoing." *Willis v. City of Seattle*, 943 F.3d 882, 885 (9th Cir. 2019). Even assuming there were specific individual, fact-specific violations of law, which Plaintiffs have not demonstrated, single instances alone cannot establish a policy sufficient to create a common legal question amenable to classwide resolution. *See Falcon*, 457 U.S. at 157 (recognizing the "wide gap" between (1) an individual claim of discrimination and "(2) the existence of a class of persons who have suffered the same injury as that individual"). And the fact that a

written policy requires a finding of probable cause, i.e., prohibiting the alleged violations at issue, undercuts commonality for a class challenging conduct that contravenes those written policies. *See Wal-Mart*, 564 U.S. at 354-56.

Here, despite having litigated and sought discovery as to an alleged unlawful-warrantless-arrest policy for nearly a year, Plaintiffs have not once been able to meet their burden in establishing a policy or practice of warrantless immigration arrests that exclude a likelihood-of-escape analysis. Instead, Plaintiffs make bold, categorical accusations that Defendants fail to conduct such analysis using cherry picked statements and narratives to fit their allegations against Defendants. *See, e.g.*, Mot. at 3 (quoting ECF 529 at 5: "The Acting Associate Director of ICE told field offices that '[a]nyone who is found amenable to removal needs to be arrested.' Ex. 4, [e-mail chain] at GOV-24101.").[2] While Plaintiffs would like the Court to see these context-deprived statements as proof of a policy or practice, this is not the smoking gun they purport to have: arresting "anyone who is found amenable to removal" after being interviewed does not equate to a mandate for officers to ignore 8 U.S.C. § 1357(a)(2) or 8 C.F.R. § 287.8(c)(2)(ii). The presumption of regularity would indicate that ICE's statement presumes in making the determination to initiate an arrest, the officer is adhering to all applicable laws and regulations which inform his determination that an individual is "amenable to removal." *See Kohli v. Gonzales*, 473 F.3d 1061, 1068 (9th Cir. 2007) (recognizing that "agencies are entitled to a presumption that they "act properly and according to law." (quoting *Federal Communications Commission v. Schreiber*, 381 U.S. 279, 296 (1965)); *see also* 32 C.F.R. § 724.211. Even when arrest narratives document an officer's likelihood-of-escape analysis, Plaintiffs disregard such analysis en masse as "boilerplate" language that cannot be trusted. Mot. at 3. However, their presupposed conclusion improperly undermines the presumption of regularity and documented nature of these arrests.

[2] Plaintiffs misleadingly leave out the first portion of the quoted statement, that "All collaterals encounters need to be interviewed" and only then, if "found to be amenable to removal needs to be arrested." *See* ECF 529-10.

While Plaintiffs would have the Court infer alleged harm based on plain, non-egregious facts, class litigation is not designed such that a Court may certify a class and then have Plaintiffs go search for a common injury or unlawful policy—which even this Court acknowledges there is no evidence establishing its existence, ECF 87 at 30 n.21—to justify the class after the fact. *See Wal-Mart*, 564 U.S. at 358 ("[T]o certify a companywide class," plaintiffs must "demonstrate that the entire company 'operate[s] under a general policy of discrimination.'") (citing *Falcon*, 457 U.S. at 159, n.15). Plaintiffs possess the burden of demonstrating their class's qualification, *Parker*, 99 F. Supp. 3d at 81, which cannot be supported by isolated incidents with no sign of reoccurrence, *Willis*, 943 F.3d at 885. And the Court should not infer from Plaintiffs' insufficient evidence a basis to indulge their larger fishing expedition for (unfounded) government misconduct.

B. Typicality

Plaintiffs cannot satisfy the typicality requirement as neither organizational nor named Plaintiffs' claims are typical of the class they seek to represent.

1. Organizational Plaintiffs

Organizational Plaintiffs' "injury" would not be typical of the class they seek to represent because, similar to the flaw in their commonality analysis, entities themselves cannot be arrested. Typicality requires named Plaintiffs' claims to be "reasonably coextensive with those of absent class members." *Just Film, Inc. v. Buono,* 847 F.3d 1108, 1116 (9th Cir. 2017). To establish typicality, Plaintiffs must show that "other members have the same or similar injury," "the action is based on conduct which is not unique to the named plaintiffs," and "other class members have been injured by the same course of conduct." *Hanon v. Dataproducts Corp.,* 976 F.2d 497, 508 (9th Cir. 1992) (quoting *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985)). However, here, organizational Plaintiffs clearly fail this test, as they have different alleged injuries and interests because they represent their members and thus possess atypical interests beyond any individual member.

Additionally, organizational Plaintiffs are entities also comprised of individuals who are U.S. citizens or have some sort of lawful immigration status in this country, *see, e.g.*, ECF 529-73 ¶ 4 (CHIRLA's "membership is diverse and includes U.S. citizens, non-U.S. citizens with lawful status, and non-U.S. citizens without lawful status."), which is atypical of the category of individuals subject to § 1357(a)—presumably those that would comprise Plaintiffs' warrantless-arrest class. Mot. at 3-5. Because officers have a limited mandate to stop and arrest aliens known or suspected to be subject to removal under 8 U.S.C. § 1357, the Court cannot simply assume individuals with lawful status or U.S. citizens are being arrested in the same numbers or manner, or under the same legal framework, as aliens. Absent such showing, Plaintiffs fail to meet the typicality requirement.

2. Individual Plaintiffs

Similarly, individual Plaintiffs differ significantly in immigration status, circumstances underlying arrest, and alleged injuries, and the organizational Plaintiffs also purport to represent very broad categories of individuals, beyond their own members to include non-members and relatives.

For the same reason Plaintiffs lack commonality, typicality cannot be met—because the proffered class definition fails to address the many factors involved in assessing whether an individual is likely to escape arrest. And this lack of alignment underscores the Supreme Court's warning in *Falcon*: "there is a wide gap between" an individual's claim and "the existence of a class of persons who have suffered the same injury." 457 U.S. at 157. Plaintiffs cannot bridge that gap with inference or isolated anecdotes and thus fail to demonstrate named Plaintiffs' claims are typical of this amorphous, undefined class.

Nor is the typicality requirement met if the proposed class representatives—who represent members who allegedly would be subject to the challenged harm but are not themselves subject to any remediable harm—are subject to unique defenses or, for the officers, unique considerations, including whether they would be subject to mandatory detention. *See Hannon*, 976 F.3d at 1116. For instance, even

individual Plaintiffs' claims—two of whom tried to flee arrest which supports the fact they were likely to be a flight risk—are not typical of the class they intend to represent. Accordingly, typicality is not met.

C. Adequacy

Just as fatal to their Motion is the fact neither organizational nor individual Plaintiffs would be adequate representatives because of their diverging interests, injuries, and fact-specific circumstances.

1. Organizational Plaintiffs

Again, organizational Plaintiffs are not adequate representatives, as they themselves cannot be subjected to the challenged conduct. Plaintiffs attempt to hide behind a previous finding of associational standing—which Defendants dispute above as part of the Court's ongoing obligation to ensure it has jurisdiction at every stage of litigation, *Ctr. for Biological Diversity v. Exp.-Import Bank of the United States*, 894 F.3d 1005, 1011 (9th Cir. 2018)—but associational standing alone does not demonstrate that organizational Plaintiffs' representation of the class, which would likely extend beyond their own membership and exclude other parts of their membership, would be adequate.

Rule 23(a)(4) requires the named parties "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "Adequacy is particularly important for a Rule 23(b)(2) class because members of such a class have 'no opportunity . . . to opt out' and no entitlement to 'notice of the action.'" *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 207 (D.D.C. 2020) (quoting *Wal-Mart*, 564 U.S. at 362). Generally, to satisfy adequacy: (1) "the named representative must not have antagonistic or conflicting interests with the unnamed members of the class," and (2) "must appear to vigorously prosecute the interests of the class through qualified counsel.'" *Twelve John Does v. District of Columbia,* 117 F.3d 571, 575 (D.C. Cir. 1997). Here, Plaintiffs cannot satisfy the first element.

Class representatives must "possess the same interest and suffer the same injury" as the class members, otherwise, they are "simply not eligible to represent a class of persons who did allegedly suffer injury." *E. Tex. Motor Freight System, Inc. V. Rodriguez,* 431 U.S. 395, 403-04 (1977) (internal quotation

marks and citation omitted). The three named organizational Plaintiffs cannot fairly and adequately protect class interests for the same reasons their claims are not common or typical of the proposed class: they themselves cannot suffer the same alleged injury. Just as dispositive is the fact that their members may never even be subjected to the challenged conduct, or organizational members may wish to pursue other priorities. And as discussed *infra* § I, inadequate representatives may ultimately bind the prospective class in a case where the Supreme Court has already once rejected the viability of their claim. Thus, adequacy is not met either.

2. Individual Plaintiffs

Nor would individual Plaintiffs, at least some of whom have lawful immigration status or unique circumstances (i.e., fleeing arrest), be adequate representatives as many of them stand apart from the warrantless-arrest class they seek to represent—which can only comprise of individuals without lawful status under § 1357(a)(2). Plaintiff Gavidia, a U.S. citizen, for example, would not even qualify as a member. Nor would Plaintiffs Perdomo or Osorto qualify as they fled arrest, which are unique circumstances from other alleged members that contribute to an officer's determination that the individual is a flight risk such that a warrantless arrest is appropriate. Having failed to suffer the same injury or possess the same interests necessarily defeats adequacy or even membership in the proposed class. Tellingly, none of these Plaintiffs (some of whom were previously proposed class representatives) are proposed in their instant motion. *Compare* ECF 140 at 4 *with* Mot. at 3-5.

Therefore, having failed to propose adequate representation for their class, the Court should deny their Motion for Class Certification.

D. Numerosity

Finally, Plaintiffs' attempts to establish numerosity through mere conjecture and speculation should be rejected. First, Plaintiffs assert that numerosity is established by virtue of the sheer size of organizational Plaintiffs' membership. Mot. at 6. Yet, they do not try to show that the number of

organizations satisfies numerosity, further underscoring the improper nature of this class motion. Beyond lacking a common, typical injury, organizational Plaintiffs have not provided evidence corroborating the number of their members that would be subject to the class, who nevertheless are incredibly diverse to include individuals both with and without lawful status. Mot. at 3-5. While Plaintiffs alternatively ask the Court to infer that the increasing volume of collateral arrests amounts to many warrantless arrests that violate § 1357(a)(2), Mot. at 7, such inference is "[m]ere speculation" that cannot satisfy Rule 23(a)(1). *See Nguyen Da Yen v. Kissinger*, 70 F.R.D. 656, 661 (N.D. Cal. 1976).

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

Rule 23(b)(2) certification is improper and an independent basis to deny class certification. Specifically, Plaintiffs fail to show Defendants have improperly acted on "grounds that apply generally to the class" and that relief is "appropriate respecting the class as a whole." As discussed above, Plaintiffs neither demonstrate that "relief is available to the class as a whole" nor that the challenged conduct, which Plaintiffs fail to tether to official policy or practice, "can be enjoined or declared unlawful" as to all class members. *See Wal-Mart*, 564 U.S. at 360; *Parsons v. Ryan*, 754 F.3d 657, 687 (9th Cir. 2014).

1. Organizational Plaintiffs

Where, as here, the proposed class includes individuals who were not subjected to the challenged conduct and face no imminent risk of it—which is especially evident of the organizational Plaintiffs who propose representing this class—the structural requirement of indivisible relief is not met. *See Berni v. Barilla S.p.A.*, 964 F.3d 141, 146 (2d Cir. 2020); *Greater Chautauqua Fed. Credit Union v. Quattrone*, No. 22-cv-2753, 2025 WL 869729, at *12 (S.D.N.Y. Mar. 20, 2025); *Brown v. Kelly*, 609 F.3d 467, 482 (2d Cir. 2010). Rule 23(b)(2) presumes a cohesion of interests among class members, but Plaintiffs' proposed class sweeps in individuals across various counties and with vastly different immigration statuses—from undocumented aliens, to lawful permanent residents, to U.S. citizens—whose factual and legal circumstances are not remotely uniform. *See Lemon v. Int'l Union of Operating Eng'rs*, 216 F.3d

577, 580 (7th Cir. 2000). This lack of cohesion is fatal, especially where the representatives' own interests and alleged injury diverge from their proposed class members. Even if entitled to relief, which Defendants maintain they do not, organizational Plaintiffs' own relief could not mirror their member's individual relief because entities have no Fourth Amendment rights to assert or to be remedied, *Alderman*, 394 U.S. at 174, demonstrably defeating any Rule 23(b)(2) certification claim. *Wal-Mart*, 564 U.S. at 360.

2. Individual Plaintiffs

Plaintiffs' proposed class sweeps in every warrantless arrest conducted in this District since June 2025, with no sensible narrowing criteria, demonstrating Plaintiffs' failure to define a class with a common injury subject to a single remedy. Because warrantless arrests are not inherently unlawful, the class could include (based on Plaintiffs' uncorroborated figures) hundreds or even thousands subject to lawful arrests for whom, at least some, this Court can grant no relief. Putative class members would have disparate fact patterns regarding circumstances of their arrests. Some individuals—e.g., Plaintiffs Perdomo and Osorto—may have been stopped as they attempted to flee officers. *See, e.g.*, ECF 128-7 ¶ 7, 45-2 ¶ 6. Some may have been targets or collateral arrests during targeted operations, Mot. at 4, including operations targeting gang members, related human smuggling rings, or worksite enforcement. Some may not even be subject to Defendants' challenged warrantless-arrest authority, such as U.S. citizens like Plaintiff Gavidia. All these factors are important to evaluate individually when assessing the lawfulness of each member's arrest, and before determining whether there even is a qualifying injury and what relief, if any, would be appropriate.

As emphasized above, *supra* § I, certification also risks harming putative class members through claim preclusion. If improperly certified, a broad class judgment could bar individuals from raising additional challenges to their arrest or ultimate removal under principles of res judicata and collateral estoppel, even though their claims may rest on distinct facts and legal theories. *See Cooper*, 467 U.S. at 874; *Taylor*, 553 U.S. at 892. It is irrefutable that "the key to the (b)(2) class is 'the indivisible nature of

the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.'" *Wal-Mart*, 564 U.S. at 360 (citation omitted). Because they fail to establish a common violation subject to a common remedy applicable to an entire class, Plaintiffs have not satisfied Rule 23(b)(2).

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' Motion for Class Certification.

Dated: June 30, 2026

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L.R. 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned counsel of record certifies that this filing is 6,968 words, which complies with L.R. 11-6.1 and this Court's Standing Order, Part VIII.C.

Dated: June 30, 2026

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