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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CARMENT ARACELY PABLO SEQUEN,
YULISA ALVARADO AMBROCIO,
MARTIN HERNANDEZ TORRES, and
LIGIA GARCIA,

Plaintiffs-Petitioners,

v.

SERGIO ALBARRAN, MARCOS
CHARLES, THOMAS GILES, MONICA
BURKE, KRISTI NOEM, U.S.
DEPARTMENT OF HOMELAND
SECURITY, TODD M. LYONS, SIRCE E.
OWEN, PAMELA BONDI, U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT, UNITED STATES
DEPARTMENT OF JUSTICE, EXECUTIVE
OFFICE FOR IMMIGRATION AND
REVIEW, UNITED STATES OF AMERICA,

Defendants-Respondents.

Case No. 5:25-cv-06487-PCP

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PROVISIONAL
CLASS CERTIFICATION;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: October 30, 2025
Time: 10:00 a.m.
Dept.: Courtroom 8

Trial Date: None Set

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NOTICE OF MOTION AND MOTION FOR PROVISIONAL CLASS CERTIFICATION**TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on October 30, 2025, at 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 8 of the United States District Court, Northern District of California, San Jose Division, located at 280 South 1st Street, San Jose, California 95113, Plaintiffs Carmen Aracely Pablo Sequen, Yulisa Alvarado Ambrocio, Martin Hernandez Torres, and Ligia Garia, on behalf of themselves and those similarly situated (the Plaintiffs”) respectfully request that the Court provisionally certify the proposed classes by entering an order in the proposed form lodged herewith.

First, Plaintiffs seek to provisionally certify a class to challenge Defendants’ ongoing arrests of immigrants leaving their hearings at immigration courts: All persons who have an immigration court hearing in a proceeding on EOIR’s non-detained docket in an immigration courthouse in ICE’s San Francisco Field Office Area of Responsibility.

Second, Plaintiffs seek to provisionally certify a class to challenge the inhumane conditions found at the holding cells in ICE’s San Francisco Field Office: All persons who are now or will be detained in a holding cell in ICE’s San Francisco Field Office.

The two proposed classes meet the requirements of Federal Rule of Civil Procedure 23(a) and 23(b)(2). First, each class is sufficiently numerous. Each class contains at least 40 known, unknown, and future members, which renders joinder impracticable. Second, all class members in each Proposed Class share common questions of fact or law focused on the legality of Defendants’ policies and uniform practices. Third and fourth, the proposed class representatives for each class are proper because their claims are typical of unnamed class members and because the proposed class representatives and class counsel will adequately represent the class. Finally, Defendants have acted and, absent preliminary relief, will continue to act on grounds that are generally applicable to each Proposed Class as a whole.

This motion is based on the Notice of Motion and Motion, the Memorandum of Points and Authorities, the Declarations filed herewith, all pleadings and papers on file in this action, any matters of which the Court may take judicial notice, any evidence or argument presented at the

1 hearing on the motion, and any other matters the Court deems proper.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 In recent months, ICE has launched a sweeping campaign of arresting immigrants at
 5 immigration courts in Northern California. Immigrants arrested in San Francisco are then held at a
 6 makeshift jail at ICE's San Francisco Field Office—often for days—in small, dirty, freezing,
 7 brightly lit cells with no place to sleep and no access to medical care. This regime of seizing
 8 immigrants when they dutifully appear for court and detaining them in terrible conditions is all in
 9 service of the Trump administration's mass deportation agenda.

10 Abandoning years of well-reasoned policy and practice, Immigration and Customs
 11 Enforcement (ICE) and the Executive Office of Immigration Review (EOIR) have transformed
 12 immigration courts into hunting grounds. For decades, the government had a longstanding practice
 13 and policy to refrain from conducting immigration arrests at immigration court in recognition of the
 14 obvious paradox that such arrests create for litigants pursuing their immigration cases. In a series of
 15 well-reasoned policies, the government outlined the harms—including the chilling effect, safety
 16 risks, and impact on the fair administration of justice—of arresting immigrants when they appear
 17 for required immigration hearings.

18 Immediately after President Trump's inauguration, however, the current administration
 19 replaced those established policies with a flurry of policies that permit arrests at immigration court
 20 under any circumstances. The new policies evince no consideration of the numerous reasons why
 21 such arrests were previously prohibited, let alone an explanation for the radical change. Notably, it
 22 is not just ICE that changed its policy to permit courthouse arrests. EOIR, which administers the
 23 immigration courts, also executed an about-face, inexplicably permitting arrests in its courthouses.

24 As a result of these policy changes, immigration court is now a trap. Masked ICE agents lurk
 25 in the halls, forcibly arresting immigrants when they step out of their hearings. Arrests appear
 26 unrelated to the circumstances, procedural posture, or merits of an individual's immigration
 27 proceedings—ICE has arrested immigrants with pending asylum cases, immigrants without criminal
 28 histories, immigrants with work authorizations, and even immigrants who already have agreed to

1 leave the country voluntarily. In Northern California alone, ICE has arrested almost 100 people at
 2 immigration court, just in the past few months. Immigrants with upcoming court dates are forced to
 3 decide whether to attend their mandatory hearings and risk arrest, or miss court and receive an *in*
 4 *absentia* removal order.

5 Individuals arrested at San Francisco immigration court—one of the busiest in the country—
 6 are detained in small, cold holding cells in ICE’s San Francisco Field Office. These holding cells
 7 are designed to detain people for a matter of hours and lack basic amenities, like beds or basic
 8 hygiene supplies. However, faced with a dearth of long-term detention space resulting from its ill-
 9 conceived mass arrest campaign, ICE has resorted to holding recently-arrested immigrants in these
 10 spare holding cells for days. The conditions are abhorrent: detainees are forced to sleep on metal
 11 benches or the floor, and are denied access to basic medical care or counsel. ICE waived its prior
 12 policy limiting the use of these rooms for a maximum of 12 hours; under ICE’s new policy,
 13 immigrants may be held in these barebones cells for up to three days.

14 Plaintiffs seek to provisionally certify two classes to challenge both the legality of
 15 Defendants’ hasty policy changes and the punitive conditions of detention at ICE’s San Francisco
 16 Field Office. The classes, respectively, seek to resolve common issues of fact and law, including:
 17 *First*, are Defendants’ policies authorizing courthouse arrests arbitrary and capricious; *Second*, is
 18 Defendants’ policy permitting the use of hold rooms for up to 72 hours arbitrary and capricious; and
 19 *Third*, are the enumerated conditions in the hold rooms unlawful under the Fifth Amendment?

20 Plaintiffs seek provisional certification of two classes (Proposed Classes):

21 ***Courthouse Arrest Class:*** All persons who have an immigration court hearing in a
 22 proceeding on EOIR’s non-detained docket in an immigration courthouse in ICE’s San Francisco
 23 Field Office Area of Responsibility.

24 ***Detention Class:*** All persons who are now or will be detained in a holding cell in ICE’s San
 25 Francisco Field Office.

26 Plaintiffs Carmen Aracely Pablo Sequen, Yulisa Alvarado Ambrocio, and Ligia Garcia seek
 27 to represent the putative Courthouse Arrest class, and Plaintiffs Martin Hernandez Torres and Ligia
 28 Garcia seek to represent the putative Detention class. Each proposed class representative shares the

1 same injuries, and seeks the same relief, as absent class members in the respective class.

2 The Proposed Classes meet the requirements of Federal Rule of Civil Procedure 23(a) and
 3 23(b)(2). *First*, each class is sufficiently numerous. Each class contains at least 40 known, unknown,
 4 and future members, which renders joinder impracticable. *Second*, all class members in each
 5 Proposed Class share common questions of fact or law focused on the legality of Defendants’
 6 policies and uniform practices. *Third* and *fourth*, the proposed class representatives for each class
 7 are proper because their claims are typical of unnamed class members and because the proposed
 8 class representatives and class counsel will adequately represent the class. *Finally*, Defendants have
 9 acted and, absent preliminary relief, will continue to act on grounds that are generally applicable to
 10 each Proposed Class as a whole.

11 This motion seeks to provisionally certify the Proposed Classes and a subsequently filed
 12 motion will set forth the basis for issuing the necessary preliminary relief.

13 **II. BACKGROUND**

14 **A. DHS and EOIR Reverse Their Policies on Courthouse Arrests, Resulting in** 15 **Mass Arrests at Immigration Courts**

16 As detailed in the Amended Complaint, since January, ICE and EOIR have dramatically
 17 upended their longstanding policy and practice of refraining from conducting civil immigration
 18 arrests at immigration courts. Amended Complaint (“Am. Compl.”) at ¶ 42. For decades, the
 19 government did not conduct civil immigration arrests at immigration courts, except in extreme
 20 circumstances, because such arrests would deter attendance at immigration hearings and disrupt the
 21 proper functioning of the courts. *Id.* ¶¶ 36–37. In 2021, DHS codified this well-established practice
 22 in a memorandum titled “Civil Immigration Enforcement Actions in or near Courthouses” (2021
 23 DHS Memorandum). *Id.* ¶ 37. In recognition of the principle that civil immigration enforcement at
 24 or near courthouses “may chill individuals’ access to courthouses, and as a result, impair the fair
 25 administration of justice,” the 2021 DHS Memorandum allowed ICE agents to conduct civil
 26 immigration enforcement action in or near courthouses in only “extremely limited circumstances,”
 27 such as an imminent risk of death, violence, or physical harm to a person. *Id.* ¶ 38.

28 EOIR, which conducts immigration court proceedings, issued a similar document titled

1 “Operating Policies and Procedures Memorandum (OPPM) 23-01” (2023 EOIR Memorandum). *Id.*
 2 ¶ 39. It adopts the principles and policies in the 2021 DHS Memorandum and details the “chilling
 3 effect,” safety risks, increased absenteeism, and infringement upon the separate role of immigration
 4 court that would result from courthouse arrests. *Id.*

5 For years, these two reasoned policies, which codified longstanding practices, remained in
 6 effect.

7 Then, in a flurry of documents issued between January and May 2025, DHS and EOIR
 8 upended their prior positions on courthouse arrests without explanation. On inauguration day, DHS
 9 rescinded prior guidelines that “thwart law enforcement in or near so-called ‘sensitive areas.’” *Id.*
 10 ¶ 43. The next day, ICE issued interim guidance that superseded the 2021 DHS Memorandum (ICE
 11 Interim Arrest Guidance). *Id.* ¶ 44. The ICE Interim Arrest Guidance gave ICE agents broad
 12 authority to conduct civil immigration arrests in or near immigration courts and other courthouses.
 13 *Id.* The interim guidance did not address the concerns outlined in the 2021 DHS Memorandum about
 14 the chilling effect that courthouse arrests could have on court attendance or the fair administration
 15 of justice. *Id.* ¶¶ 44–46.

16 A week later, EOIR issued OPPM 25-06 (2025 EOIR Memorandum), rescinding EOIR’s
 17 prior OPPM on courthouse arrests. *Id.* ¶ 50. OPPM 25-06 summarily dismisses the prior
 18 longstanding concern that courthouse arrests would have a chilling effect as “vague, unspecified”
 19 and “contrary to logic,” and inexplicably asserts that individuals with valid immigration claims have
 20 “no reason to fear any enforcement action by DHS.” *Id.*

21 In May 2025, ICE issued a final version of ICE’s Interim Arrest Guidance (ICE Final Arrest
 22 Memorandum), which is nearly identical to the interim guidance. *Id.* ¶ 47 Both the 2025 EOIR
 23 Memorandum and the ICE Final Arrest Memorandum remain in effect. *Id.* ¶¶ 47, 50.

24 In the aftermath of these abrupt, unexplained policy changes, ICE began a sweeping
 25 campaign of arresting immigrants attending their immigration court hearings, in service of DHS’s
 26 recently self-imposed target of 3,000 arrests per day.¹ *Id.* ¶ 52. A familiar pattern has emerged in
 27

28 ¹ *Vasquez Perdomo v. Noem*, 148 F.4th 656, 665 n.2 (9th Cir. 2025); see also Sean Hannity, *Stephen*

1 recent weeks. First, attorneys representing DHS in immigration hearings orally request that
 2 immigration judges dismiss the immigration proceeding. To the extent the government attorneys
 3 support these oral dismissal requests at all, the proffered reasons are generic and not particular to
 4 the individual immigrant. For example, the government attorney may assert—without
 5 substantiation—that it is in the best interest to dismiss the proceeding. The apparent purpose of the
 6 dismissal is simply to clear the way for the ICE agents to make an arrest.

7 Second, irrespective of whether the immigration judge grants the government’s requested
 8 dismissal, masked federal agents hovering just outside immigration courtrooms arrest immigrants
 9 when they step out of their hearings. *Id.* ¶¶ 61, 64. Those arrests are generally forceful, and often
 10 violent. *Id.* ¶ 65. Onlookers report ICE agents pushing and shoving the arrestee, their family
 11 members, and even bystanders in the process of effectuating these arrests. ICE’s courthouse arrests
 12 are not isolated incidents; since May 2025, ICE has arrested at least 35 immigrants at immigration
 13 courts in the Bay Area, and at least 39 immigrants at immigration court in Sacramento. *See*
 14 Declaration of Nikolas de Bremaeker ISO Plaintiffs’ Motion for Provisional Class Certification (“de
 15 Bremaeker Dec.”) at ¶ 13; Declaration of Nicole Zanardi ISO Plaintiffs’ Motion for Provisional
 16 Class Certification (“Zanardi Dec.”) at ¶ 14.

17 **B. ICE Hastily Waives the 12-Hour Limit on Holding Cells to Accommodate Its**
 18 **Mass Arrest Campaign**

19 Because of the overnight change in policy, ICE lacks the detention infrastructure to absorb
 20 the surge in arrestees resulting from Defendants’ mass arrest campaign; ICE’s long-term detention
 21 facilities are at or above capacity. Am. Compl. ¶ 70. Accordingly, ICE detains recently-arrested
 22 immigrants indefinitely in facilities not meant for prolonged detention, until bed space opens up in
 23 a long-term detention facility. *Id.* ¶ 71. Those waits are extensive. *Id.* ¶¶ 72–73.

24 For more than a decade, ICE had a 12-hour limit on the use of ICE “hold rooms” for
 25 detention of arrestees. *Id.* ¶¶ 76–77. However, faced with the overcrowding resulting from its mass
 26 arrest campaign, ICE abruptly waived that limit. In June 2025, ICE issued a Memorandum titled

27 _____
 28 *Miller says the admin wants to create the strongest immigration system in US History*, Fox News
 (May 28, 2025, 6:29 pm PT), available at <https://www.foxnews.com/video/6373591405112>.

1 “Nationwide Hold Room Waiver” (the 12-Hour Waiver Memo). *Id.* ¶ 84. Pursuant to that Memo,
 2 individuals who were recently detained or are being transferred may be confined in hold rooms for
 3 up to *seventy-two* hours—a sixfold increase in detention time from the previous policy. *Id.* ¶85. The
 4 12-Hour Waiver Memo applies to all hold rooms nationwide. *Id.* ¶ 84.

5 As described below, the conditions in the hold rooms are inhumane. ICE nevertheless issued
 6 the 12-Hour Waiver Memo without explaining why holding people for days in barebones cells
 7 expressly not designed for overnight detention was the only viable option for addressing its capacity
 8 issues. *Id.* ¶ 90. ICE also issued the 12-Hour Waiver Memo without making changes to the
 9 conditions of confinement in the hold rooms to account for the fact that they would now be used to
 10 hold people for up to three days. *Id.* ¶ 92.

11 C. ICE Holds Recently-Arrested Immigrants in Inhumane Conditions

12 As a direct consequence of ICE’s ill-conceived waiver of the 12-hour limit on hold rooms,
 13 recently-arrested immigrants in San Francisco are held in squalid conditions at ICE’s San Francisco
 14 Field Office at 630 Sansome Street (630 Sansome). Between January 20 and July 30, 2025, public
 15 reports indicate that ICE detained at least 433 people in the San Francisco Field Office.² These
 16 detentions regularly last overnight or even for days.

17 The detention conditions at 630 Sansome are punitive, dangerous, and inhumane. The rooms
 18 are small, maintained at an extremely cold temperature, and generally contain only an open toilet
 19 and metal benches. *Id.* ¶¶ 125–126, 134. There are no beds, and immigrants detained there overnight
 20 or for multiple days report being forced to sleep directly on the floor, with (at most) a thin sheet of
 21 plastic or aluminum and a yoga mat. *Id.* ¶ 142. ICE keeps the lights on twenty-four hours a day and
 22 the combination of constant illumination, cold temperatures, and the lack of beds make it nearly
 23 impossible to get enough sleep. *Id.* ¶ 146. It is not an exaggeration to say that these are the conditions
 24 that jailers often *design* for the purpose of torturing detainees.

25 Detainees’ medical needs are disregarded because ICE does not conduct a standardized
 26

27 ² Kelly Waldron and Frankie Solinsky Duryea, *2,123 lives: Inside the stats and stories of those*
 28 *arrested by ICE from the S.F. Area*, Mission Local (July 30, 2025), available at
<https://missionlocal.org/2025/07/ice-data-immigrants-arrested-sf/>.

1 medical assessment at 630 Sansome until after they are transferred to a long-term detention facility,
 2 and there is no medical support, supplies, or infrastructure at 630 Sansome. *Id.* ¶¶ 148, 150. Because
 3 ICE often grabs people after their immigration hearing with no warning, many detainees do not have
 4 their prescription medications with them, and ICE does not attend to those needs. *Id.* There are *no*
 5 medical services available to detainees on-site at 630 Sansome. *Id.* ICE does not provide written
 6 translated materials to detainees and has neglected to implement any system of translation to
 7 communicate with or field medical requests from detainees. *Id.* ¶¶ 154, 157. Therefore, when
 8 medical issues arise, ICE agents routinely ignore the complaint and will respond only if it is made
 9 in English, which many detainees do not speak. *Id.*

10 ICE’s policies and practices also obstruct detainees’ access to counsel. ICE’s policy is to
 11 refuse to allow attorneys into 630 Sansome to meet with their detained clients on weekends and
 12 holidays, or after 3pm on weekdays. *Id.* ¶ 162. When they are able to meet, counsel and clients are
 13 separated by Plexiglas and forced to communicate through a rudimentary landline system with such
 14 poor audio quality that it is difficult to convey even basic information. *Id.* ¶ 163. There is no
 15 confidential way for attorneys and clients to review documents together; they either must hold
 16 papers up to the glass or ask the facility staff to gopher paperwork back and forth (staff often refuse).
 17 *Id.* 164–65. The only other way for counsel and clients to communicate is through a landline in the
 18 holding cell that requires payment from either the caller or the recipient. *Id.* ¶ 161.

19 **D. Defendants’ Abrupt Policy Changes and the Ensuing Punitive Conditions of**
 20 **Confinement are Unlawful**

21 Defendants’ abrupt reversal of established policies and practices flouts even the most basic
 22 requirements for an agency’s change in position and is arbitrary and capricious under the
 23 Administrative Procedures Act. Changes in agency positions must be supported by “good reasons
 24 for the new policy” and balance those good reasons against “engendered serious reliance interests.”
 25 *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221–22 (2016) (internal quotations omitted).
 26 Neither the ICE Interim Arrest Guidance, the ICE Final Arrest Memorandum, the 2025 EOIR
 27 Memorandum (collectively, “2025 Courthouse Arrest Policies”), nor the 12-Hour Waiver Memo
 28 can meet this bar.

1 The ICE Interim Arrest Guidance and the Final ICE Arrest Memorandum offer at most three
 2 conclusory statements in purported justification for reversing the decades-long practice of refraining
 3 from courthouse arrests. None of ICE's barebones reasons mention, let alone account for, the core
 4 concerns articulated in the 2021 DHS Memorandum, including the chilling effect, the disruption of
 5 the functioning of the courts, or the impact on the fair administration of justice. The 2025 EOIR
 6 Memorandum similarly includes only cursory dismissals of the reasoning of the prior EOIR policy,
 7 which are unsubstantiated by any explanation or recognition of the longstanding reliance interests
 8 implicated by the policy change.

9 ICE's 12-Hour Waiver Memo is also arbitrary and capricious. To address a self-inflicted
 10 issue—the lack of detention space caused by its own mass arrest campaign—ICE elected to
 11 summarily waive a decade-old policy without any consideration of either the significant legal and
 12 humanitarian implications of holding human beings for days in cells meant only for short-term
 13 detention, or the viable alternatives that would alleviate overcrowding and lack of detention space.

14 Finally, the inhumane conditions of confinement at ICE's San Francisco Field Office—
 15 where individuals are now held for up to 72 hours or even longer—flout the basic constitutional
 16 requirements of civil immigration confinement. Forcing detainees to sleep on the floor and denying
 17 them access to medical care and counsel violates their due process rights.

18 **E. Defendants' Unlawful Policies and Practices Harm Plaintiffs and Putative Class**
 19 **Members**

20 Classwide relief is necessary to protect the rights of the putative class members, who are or
 21 will be subjected to Defendants' unlawful policies and the punitive conditions in the holding cells
 22 at 630 Sansome Street.

23 ICE's courthouse arrests have had a dramatic chilling effect. Before ICE initiated widespread
 24 courthouse arrests, immigrants felt comfortable attending their immigration hearings, and were
 25 eager to receive their day in court and an opportunity to pursue any avenues of immigration relief
 26 available to them. Since ICE began arresting people at immigration court, there has been a marked
 27 decline in the number of people appearing for their immigration hearings; on some dockets, not one
 28 person appears for their hearing. Putative Courthouse Arrest class members face a Catch-22: attend

1 their hearings and risk arrest, detention, and deportation, simply for dutifully appearing for court, or
 2 miss their court hearings and receive an *in absentia* removal order.

3 ICE's 12-Hour Waiver Memo and the ensuing use of short-term holding cells for long-term
 4 detention have forced immigrants arrested by ICE to withstand unsafe and appalling conditions that
 5 risk their health and wellbeing. Individuals held at 630 Sansome report being forced to sleep on
 6 metal benches or the floor due to lack of beds, harsh 24/7 lighting, extremely cold temperatures, and
 7 no systemic way to address medical ailments and pain, all while attorneys struggle to reach them to
 8 provide timely legal services. These unlawful conditions result from uniform policies and practices
 9 that apply, and risk harm to, the entire putative Detention Class.

10 As explained below, provisional certification of the proposed classes is necessary to protect
 11 all putative class members from further violations of their rights.

12 **III. LEGAL STANDARD**

13 Under Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs must satisfy four
 14 requirements to certify a class:

- 15 (1) the class is so numerous that joinder of all members is impracticable ("numerosity");
- 16 (2) there are questions of law or fact common to the class ("commonality");
- 17 (3) the claims or defenses of the representative parties are typical of the claims or defenses
- 18 of the class ("typicality");
- 19 (4) the representative parties will fairly and adequately protect the interests of the class
- 20 ("adequacy").

21 Fed. R. Civ. P. 23(a). Rule 23(b)(2) requires the court to also find that the Defendants have "acted
 22 or refused to act on grounds that apply generally to the class, so that final injunctive relief or
 23 corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P.
 24 23(b)(2). "[T]he primary role of [Rule 23(b)(2)] has always been the certification of civil rights class
 25 actions." *Parsons v. Ryan*, 754 F.3d 657, 686 (9th Cir. 2014).

26 "Courts in the Ninth Circuit routinely grant provisional class certification for purposes of
 27 entering injunctive relief." *Maney v. Brown*, 516 F. Supp. 3d 1161, 1171 (D. Or. 2021) (quotations
 28 omitted); see *Wilson v. Mercado*, No. 1:22-CV-00278-ADA-SAB (PC), 2022 WL 5235405, at *1

(E.D. Cal. Sept. 1, 2022) (collecting cases). Plaintiffs seeking provisional class certification must satisfy the requirements of Rule 23, but the “analysis is tempered, by the understanding that such certifications may be altered or amended before the decision on the merits.” *Thakur v. Trump*, No. 25-CV-04737-RFL, 2025 WL 1734471, at *25 (N.D. Cal. June 23, 2025) (cleaned up).

“Rule 23 grants courts no license to engage in free-ranging merits inquiries at the certification stage. Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied.” *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013).

IV. ARGUMENT

Both proposed classes meet the Rule 23(a) and Rule 23(b)(2) requirements for class certification.

a. Requirements of Class Certification Are Met

i. The Proposed Classes are Sufficiently Numerous

The Court should certify the proposed classes because they are each “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a). “[T]his numerosity requirement requires examination of the specific facts of each case and imposes no absolute limitations.” *A. B. v. Haw. State Dep’t of Educ.*, 30 F.4th 828, 835 (9th Cir. 2022) (citing *General Tel. Co. of the NW., Inc. v. EEOC*, 446 U.S. 318, 318 (1980)). “Impracticability does not mean impossibility, but only the difficulty or inconvenience of joining all members of the class.” *Harris v. Palm Springs Alpine Ests., Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964) (cleaned up).

“In general, courts find the numerosity requirement satisfied when a class includes at least 40 members.” *Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir. 2010). Importantly, however, “the size of the class is not the sole determining factor” in numerosity. *A.B.*, 30 F.4th at 835 (citation omitted). For smaller classes, “the number of class members does not weigh as heavily in the analysis, and other factors bearing upon the feasibility and convenience of joinder may assume more significance.” *Id.* (citation omitted). “These potentially countervailing factors include . . . the ability of individual claimants to institute separate suits, and whether injunctive or declaratory relief is sought, as well as the ability to identify and locate class members.” *Id.* (citation omitted); *see also*

1 *Rodriguez v. Bostock*, 349 F.R.D. 333, 352 (W.D. Wash. 2025) (“The Court may still certify the
 2 class even if it contains fewer than 40 members. Relatively small class sizes have been found to
 3 satisfy this requirement where joinder is still found impractical.”) (citation omitted).

4 Further, multiple district courts have concluded that “the presence of future class members
 5 renders joinder inherently impractical, thus satisfying the numerosity requirement’s fundamental
 6 purpose.” *Inland Empire-Immigrant Youth Collective v. Nielsen*, No. EDCV 17-2048 PSG (SHKx),
 7 2018 WL 1061408, at *7 (C.D. Cal. Feb. 26, 2018) (citing *Sueoka v. United States*, 101 F. App’x
 8 649, 653 (9th Cir. 2004) (“Because plaintiffs seek injunctive and declaratory relief, the numerosity
 9 requirement is relaxed and plaintiffs may rely on the reasonable inference arising from plaintiffs’
 10 other evidence that the number of unknown and future members of proposed [class] is sufficient to
 11 make joinder impracticable.”)); *see also Nat’l Ass’n of Radiation Survivors v. Walters*, 111 F.R.D.
 12 595, 599 (N.D. Cal. 1986) (“[W]here the class includes unnamed, unknown future members,
 13 joinder of such unknown individuals is impracticable and the numerosity requirement is therefore
 14 met,’ regardless of class size.”); *Smith v. Heckler*, 595 F. Supp. 1173, 1186 (E.D. Cal. 1984)
 15 (“Joinder in the class of persons who may be injured in the future has been held impracticable,
 16 without regard to the number of persons already injured.”) (citing *Newberg on Class*
 17 *Actions*, Section 1105g). Courts in the Ninth Circuit have certified classes with less than 20
 18 identified members when the class “might also include unknown present and future class members.”
 19 *Inland Empire*, 2018 WL 1061408, at *8 (collecting cases).

20 The Ninth Circuit also has “recognized that when, as here, a class’s membership changes
 21 continually over time, that factor weighs in favor of concluding that joinder of all members is
 22 impracticable.” *A.B.*, 30 F.4th at 838 (citation omitted). The Ninth Circuit favorably cited a D.C.
 23 Circuit decision that noted that “this factor weighs in favor of impracticability of joinder *even if*
 24 *current class members are relatively fewer in number.*” *Id.* (citing *J.D. v. Azar*, 925 F.3d 1291, 1322
 25 (D.C. Cir. 2019) (emphasis added)). In *J.D.*, the D.C. Circuit noted that a proposed class composed
 26 of pregnant unaccompanied minors in Office of Refugee Resettlement (ORR) custody posed non-
 27 numerical considerations that make joinder impracticable, including the fluidity of ORR custody
 28 and the class members’ limited resources. *J.D.*, 925 F.3d at 1322 (collecting cases in which classes

1 of less than 20 known members certified in similar circumstances); *see also Rodriguez*, 349 F.R.D.
 2 at 352 (“Relatively small class sizes have been found to satisfy this requirement where joinder is
 3 still found impractical.”) (citations omitted).

4 While it is impossible to identify with certainty the precise number of people in each putative
 5 class, the available evidence makes clear that both the Courthouse Arrest Class and the Detention
 6 Class meet the numerosity requirement. First, both putative classes contain unknown and future
 7 class members, rendering joinder inherently impracticable. *See Inland Empire*, at *7 (noting that
 8 presence of future class members makes joinder impracticable); *Nat’l Ass’n of Radiation Survivors*,
 9 111 F.R.D. at 599 (same); *Smith*, 595 F. Supp. at 1186 (same).

10 Further, the available evidence certainly supports the “reasonable inference” that each class
 11 contains at least 40 unknown and future class members, which is sufficient to make joinder
 12 impracticable. *See Sueoka*, 101 F. App’x at 653. In just four months’ time, ICE has arrested at least
 13 74 people at immigration courthouses in the San Francisco Field Office’s Area of Responsibility
 14 (SF AOR). *See de Bremaeker Dec.* ¶ 13; *Zanardi Dec.* ¶ 14. Immigration hearings continue to
 15 proceed at immigration courts within the SF AOR, and legal services providers who work in the
 16 immigration courts expect courthouse arrests will continue. *See de Bremaeker Dec.* ¶¶ 7, 43;
 17 Declaration of Jordan Weiner ISO Plaintiffs’ Motion for Provisional Class Certification (“Weiner
 18 Dec.”) at ¶¶ 4, 25. Given the number of recent arrests and the ongoing ICE and EOIR policies
 19 authorizing courthouse arrests, it is reasonable to infer that the number of unknown and future
 20 putative Courthouse Arrests class members will exceed 40 and render joinder impracticable. *See*
 21 *Rivera v. Holder*, 307 F.R.D. 539, 550 (W.D. Wash. 2015) (finding it “highly plausible” that future
 22 class members exceeded 40 based on plaintiffs’ evidence).

23 Similarly, in the first six months of this year, public reports indicate that ICE has detained at
 24 least 433 people in the San Francisco Field Office.³ In light of Defendants’ public statements vowing
 25
 26

27 ³ Kelly Waldron and Frankie Solinsky Duryea, *2,123 lives: Inside the stats and stories of those*
 28 *arrested by ICE from the S.F. Area*, Mission Local (July 30, 2025), available at
<https://missionlocal.org/2025/07/ice-data-immigrants-arrested-sf/>.

1 to continue their mass arrest campaign⁴—as well as ongoing constraints on longer-term bed
 2 space⁵—it is reasonable to infer that the number of unknown and future putative Detention class
 3 members will exceed 40 and render joinder impracticable.

4 Finally, joinder is also impracticable because of the composition and characteristics of the
 5 putative classes. Many putative class members are unable to bring individual litigation because they
 6 are unrepresented by counsel and lack sufficient resources to retain counsel. Members of the putative
 7 Detention Class face additional barriers to seeking counsel resulting from their detention and the
 8 limits placed by Defendants on their access to counsel. The makeup of the putative Detention class
 9 also changes continually over time, as individuals are arrested, detained, and subsequently released
 10 or transferred to long-term detention. *See Rivera*, 307 F.R.D. at 550 (finding joinder impractical
 11 based in part on “transient nature of the class”); *J.D.*, 925 F.3d at 1323 (noting non-numerical
 12 considerations that make joinder impracticable, including “fluidity of ORR custody”).

13 Because each of the putative classes contain at least 40 known, unknown, or future members
 14 and given many non-numerical considerations that render joinder impracticable, both the putative
 15 Courthouse Arrest and Detention classes surpass the “relaxed” threshold for numerosity. *See*
 16 *Sueoka*, 101 F. App’x at 653.

17 **ii. Commonality**

18 Rule 23(a)(2) requires that “there are questions of law or fact common to the class.” Fed. R.
 19 Civ. P. 23(a)(2). “Even a single common question” will satisfy the commonality requirement. *Wal-*
 20 *Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (cleaned up); *see Ellis v. Costco Wholesale*
 21 *Corp.*, 657 F.3d 970, 981 (9th Cir. 2011) (construing Rule 23(a)(2) requirements “permissively”).
 22 Indeed, “all questions of fact and law need not be common to satisfy the commonality requirement.
 23 The existence of shared legal issues with divergent factual predicates is sufficient.” *Gonzalez v.*

24
 25 ⁴ Connor Greene, *The Trump Administration Escalates Its Battles with Sanctuary Cities: What to*
 26 *Know*, Time Magazine (September 8, 2025), available at <https://time.com/7315444/trump-immigration-crackdown-ice-sanctuary-cities/> (last visited September 16, 2025).

27 ⁵ Andrea Castillo and Gabrielle LaMarr LeMee, *‘It’s happening everywhere’: 1 in 3 ICE detainees*
 28 *held in overcrowded facilities, data show*, Los Angeles Times (August 29, 2025), available at
<https://www.latimes.com/politics/story/2025-08-29/as-ice-detainees-top-60000-some-detention-centers-stack-mattresses-on-the-floor>.

1 *United States Immigration & Customs Enforcement*, 975 F.3d 788, 807 (9th Cir. 2020) (cleaned up
 2 internal quotation marks and alterations omitted). “Thus, ‘[w]here the circumstances of each
 3 particular class member vary but retain a common core of factual or legal issues with the rest of the
 4 class, commonality exists.’” *Parsons*, 754 F.3d at 675.

5 Commonality is satisfied where, as here, plaintiffs are “challeng[ing] a system-wide practice
 6 or policy that affects all of the putative class members.” *Armstrong v. Davis*, 275 F.3d 849, 868 (9th
 7 Cir. 2001), *abrogated on other grounds by Johnson v. California*, 543 U.S. 499, 504–05 (2005); *see*
 8 *also* 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure*
 9 § 1763, at 226 (3d ed. 2005) (“[C]lass suits for injunctive or declaratory relief by their very nature
 10 often present common questions satisfying Rule 23(a)(2).”). Indeed, courts in the Ninth Circuit
 11 routinely hold that commonality is satisfied in cases challenging systemic deficiencies in detention
 12 conditions. *See, e.g., Parsons*, 754 F.3d at 676 (certifying class of state prisoners challenging
 13 policies and practices that exposed all inmates to a substantial risk of serious harm); *Zepeda Rivas*
 14 *v. Jennings*, 445 F. Supp. 3d 36, 38-9 (N.D. Cal. 2020) (provisionally certifying class of ICE
 15 detainees because they have suffered the same injury from the lack of social distancing in the
 16 detention facilities and would benefit from the same remedy); *Unknown Parties v. Johnson*, 163 F.
 17 Supp. 3d 630, 637 (D. Ariz. 2016) (certifying class of detainees in Customs and Border Patrol
 18 detention because they were subject to the same set of overall conditions); *Hernandez v. Cnty. of*
 19 *Monterey*, 305 F.R.D. 132, 156-57 (N.D. Cal. 2015) (certifying class of jail inmates challenging
 20 systemwide healthcare policies and practices that exposed class members to a common “substantial
 21 risk of serious future harm”).

22 Courts also regularly certify classes challenging agency action under the APA because they
 23 “present a common issue, with a common answer, as to whether a sufficiently reasoned explanation
 24 was provided.” *Thakur*, 2025 WL 1734471, at *29; *see, e.g., Scholl v. Mnuchin*, 489 F. Supp. 3d
 25 1008, 1044 (N.D. Cal. 2020) (provisionally certifying class of incarcerated people with APA
 26 challenge); *Jane Doe I v. Nielsen*, 357 F. Supp. 3d 972, 992 (N.D. Cal. 2018) (certifying class of
 27 refugee applicants with APA challenge).

28 Here the proposed class claims satisfy the commonality requirement because they present

1 common questions of law and fact. For the putative Courthouse Arrest class, each class member has
 2 been, or will be, subjected to the same policies, which Plaintiffs allege are arbitrary and capricious.

3 Common questions of law and fact for the putative Courthouse Arrest class include:

- 4 • Whether the ICE Final Arrest Memorandum violates APA Section 706;
- 5 • Whether the 2025 EOIR Memorandum violates APA Section 706.

6 For the putative Detention class, each class member has been, or will be, subjected to the 12-Hour
 7 Waiver Memo and the same conditions and practices. Common questions of law and fact for the
 8 putative Detention class include:

- 9 • Whether the 12-Hour Waiver Memo violates APA Section 706;
- 10 • Whether the ICE Defendants’ policy and practice of forcing Plaintiffs and putative
 11 class members to sleep overnight on metal benches or on the floor, with constant
 12 illumination and in cold temperatures, violates the Fifth Amendment;
- 13 • Whether the ICE Defendants’ policy and practice not to conduct a medical intake or
 14 evaluation or give detainees access to their prescription medication violates the Fifth
 15 Amendment.

16 Plaintiffs’ arbitrary and capriciousness challenges to the 2025 Courthouse Arrest Policies
 17 and 12-Hour Waiver Memo are unquestionably common; they “present a common issue, with a
 18 common answer, as to whether a sufficiently reasoned explanation was provided,” which will apply
 19 to the entire class. *See Thakur*, 2025 WL 1734471, at *29. If Defendants failed to adequately justify
 20 their abrupt change in position, that is a “shared legal issue[]” common to the entire class. *See*
 21 *Gonzalez*, 975 F.3d at 807.

22 Further, as the Ninth Circuit recognized in *Parsons*, class treatment is appropriate for claims
 23 challenging systemic deficiencies in the conditions of confinement. *Parsons*, 754 F.3d at 678
 24 (“[P]olicies and practices are the ‘glue’ that holds together the putative class and putative subclass;
 25 either each of the policies and practices is unlawful as to every inmate or it is not.”). Like in *Parsons*,
 26 the conditions Plaintiffs challenge—such as forcible floor-sleeping in cells that do not contain
 27 beds—are systemic and readily capable of classwide resolution because they have a common
 28 answer: either floor-sleeping in hold rooms is “unlawful as to every [detainee] or it is not.” *See*

1 *Parsons*, 754 F.3d at 678. Because the legality of any given policy or practice “can be answered in
2 a single stroke,” commonality is satisfied. *Id.* at 679.

3 **iii. Typicality**

4 Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical
5 of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “Under the rule’s permissive
6 standards, representative claims are typical if they are reasonably coextensive with those of absent
7 class members; they need not be substantially identical.” *Parsons*, 754 F.3d at 685 (citation omitted).
8 “The test of typicality is whether other members have the same or similar injury, whether the action
9 is based on conduct which is not unique to the named plaintiffs, and whether other class members
10 have been injured by the same course of conduct.” *Id.* (citation omitted). “Thus, typicality refers to
11 the nature of the claim . . . and not to the specific facts from which it arose or the relief sought.” *Id.*
12 (citation omitted). “[T]he commonality and typicality requirements of Rule 23(a) tend to merge,” as
13 both consider “whether the named plaintiff’s claim and the class claims are so interrelated that the
14 interests of the class members will be fairly and adequately protected in their absence.” *Wal-Mart*
15 *Stores, Inc.*, 564 U.S. at 350 n.5.

16 Plaintiffs’ claims easily surpass the “permissive standard[]” for typicality. *See Parsons*, 754
17 F.3d at 685. The APA claims challenging Defendants’ 2025 Courthouse Arrest Policies are
18 coextensive for the putative Courthouse Arrest Class. Defendants’ conduct in issuing the challenged
19 policies is not unique to the named plaintiffs. Moreover, Plaintiffs and the putative Courthouse
20 Arrest class members have the “same or similar injury” resulting from “the same course of
21 conduct”—i.e., the chilling effect created by the risk of arrest simply for attending a mandatory
22 court hearing. As a result of Defendants’ impulsive policy change, each class member faces the
23 same impossible choice between pursuing their immigration case and risking arrest, or missing
24 court, foregoing their opportunity for immigration relief, and receiving an *in absentia* removal order.

25 Similarly, the APA claim challenging the 12-Hour Waiver Memo is coextensive for the
26 putative Detention class. As with the 2025 Courthouse Arrest Policies, Defendants’ conduct in
27 issuing the waiver is not unique to the named plaintiffs, and Plaintiffs and putative Detention class
28 members’ injury is the same—the risk of three days’ detention in a holding cell made only for a few

1 hours' use. As of September 18, 2025, Plaintiffs Martin Hernandez Torres and Ligia Garcia, who
 2 represent the putative Detention Class, were detained at ICE's San Francisco Field Office, and Mr.
 3 Hernandez Torres was detained there for over 12 hours. Declaration of Martin Hernandez Torres
 4 ISO Plaintiffs' Motion for Provisional Class Certification ("Hernandez Dec.") at ¶ 3; Declaration of
 5 Ligia Garcia ISO Plaintiffs' Motion for Provisional Class Certification ("Garcia Dec.") at ¶ 3.

6 Finally, Plaintiffs and putative Detention class members are or will be subjected to the same
 7 conditions, i.e., cold temperatures, constant illumination, a lack of beds, all of which are a result
 8 from Defendants' uniform practices in the detention rooms at 630 Sansome Street. Accordingly,
 9 typicality is met because class members have the "same or similar injury," as named plaintiffs and
 10 the claims are "based on conduct which is not unique to the named plaintiffs."

11 **iv. Adequacy**

12 Under Rule 23(a)(4), the Court must be satisfied that the named plaintiffs "will fairly and
 13 adequately protect the interests of the class" Fed. R. Civ. P. 23(a)(4). This requires considering two
 14 questions: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other
 15 class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously
 16 on behalf of the class?" *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1031 (9th Cir. 2012)
 17 (citation omitted). The adequacy of representation requirement tends to merge with the commonality
 18 and typicality requirement. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982).

19 ***Individual Plaintiffs.*** The Individual Plaintiffs seeking to represent the proposed classes
 20 meet both aspects of adequacy. Plaintiffs Carmen Aracely Pablo Sequen, Yulisa Alvarado
 21 Ambrocio, and Ligia Garcia seek to represent the putative Courthouse Arrest class, and Plaintiffs
 22 Martin Hernandez Torres and Ligia Garcia seek to represent the putative Detention class.

23 First, there is no conflict between the Individual Plaintiffs and the Proposed Class Members.
 24 The Individual Plaintiffs are part of the class or classes they seek to represent and share an interest
 25 and injury with the respective class. *Evon*, 688 F.3d at 1031. Second, the proposed class
 26 representatives will vigorously prosecute this action on behalf of all class members. The class
 27 representatives understand the claims asserted, the relief sought, and their role as class
 28 representatives, and they are prepared to fulfill their duties as class representatives. Declaration of

1 Carmen Aracely Pablo Sequen ISO Plaintiffs’ Motion for Provisional Class Certification (“Sequen
 2 Dec.”) at ¶¶ 7–9; Declaration of Yulia Alvarado Ambrocio ISO Plaintiffs’ Motion for Provisional
 3 Class Certification (“Ambrocio Dec.”) at ¶¶ 12–15; Hernandez Dec. ¶¶ 8–11; Garcia Dec. ¶¶ 8–11.

4 ***Proposed Class Counsel.*** Counsel representing the Individual Plaintiffs include experienced
 5 attorneys and practitioners in federal constitutional litigation, class actions, and complex litigation,
 6 including involving immigrants’ rights. *See* Declaration of Jordan Wells ISO Plaintiffs’ Motion for
 7 Provisional Class Certification (“Wells Dec.”) at ¶¶ 4–15; Declaration of Neil K. Sawhney ISO
 8 Plaintiffs’ Motion for Provisional Class Certification (“Sawhney Dec.”) at ¶¶ 3–7; Declaration of
 9 Mark L. Hejinian ISO Plaintiffs’ Motion for Provisional Class Certification (“Hejinian Dec.”) at ¶¶
 10 3–11; Declaration of Laura Victoria Sanchez ISO Plaintiffs’ Motion for Provisional Class
 11 Certification (“Sanchez Dec.”) at ¶ 6. Plaintiffs’ counsel have adequately and thoroughly
 12 investigated the claims prior to bringing this lawsuit, and they will vigorously prosecute this action
 13 on behalf of the proposed class. *See* Wells Dec. ¶ 18; Sawhney Dec. ¶ 8; Hejinian Dec. ¶ 14.
 14 Plaintiffs’ counsel do not have any conflicts with the class members. *See* Wells Dec. ¶ 17; Sawhney
 15 Dec. ¶ 10; Hejinian Dec. ¶ 13; Sanchez Dec. ¶ 12. For these reasons, class counsel also meet the
 16 requirements of Rules 23(a)(4) and 23(g).

17 In sum, the proposed class satisfies the requirement of Rule 23(a).

18 **v. Rule 23(b)**

19 Under Rule 23(b)(2), a class can be certified where the defendant has acted or refused to act
 20 on grounds that apply generally to the class, so that final injunctive relief or corresponding
 21 declaratory relief is appropriate respecting the class as a whole. Fed. R. Civ. P. 23(b)(2). “These
 22 requirements are unquestionably satisfied when members of a putative class seek uniform injunctive
 23 or declaratory relief from policies or practices that are generally applicable to the class as a whole.”
 24 *Parsons*, 754 F.3d at 688. Rule 23(b)(2) “does not require an examination of the viability or bases
 25 of the class members’ claims for relief, does not require that the issues common to the class satisfy
 26 a Rule 23(b)(3)-like predominance test, and does not require a finding that all members of the class
 27 have suffered identical injuries.” *Id.* The fact that some class members may have suffered different
 28 injuries—or even no injuries—from the challenged practice does not prevent Rule 23(b)(2)

1 certification. *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1988).

2 This civil rights lawsuit is a paradigmatic Rule 23(b)(2) class action. Plaintiffs and putative
3 class members seek uniform relief from policies and practices that apply to the class as a whole;
4 there is no individualized or differentiated remedy sought. Thus, under *Parsons*, the requirements
5 of Rule 23(b)(2) are “unquestionably satisfied.” *Parsons*, 754 F.3d at 688.

6 **V. CONCLUSION**

7 For the foregoing reasons, Plaintiffs respectfully request that the Court provisionally certify
8 the Proposed Classes under Federal Rules of Civil Procedure 23(a) and 23(b)(2), and provisionally
9 appoint Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, the American Civil
10 Liberties Union Foundation of Northern California, Central American Resource Center of Northern
11 California, and Coblenz Patch Duffy & Bass LLP as class counsel pursuant to Rule 23(g).

12
13 DATED: September 18, 2025

LAWYERS’ COMMITTEE FOR CIVIL RIGHTS OF THE
SAN FRANCISCO BAY AREA

14
15
16 By: /s/ Marissa Hatton

MARISSA HATTON

17 ANDREW NTIM

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18 JORDAN WELLS

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20
21 DATED: September 18, 2025

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24 By: /s/ Laura Victoria Sanchez

LAURA VICTORIA SANCHEZ

25 Attorneys for Plaintiff-Petitioners

1 DATED: September 18, 2025

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA

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