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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CARMEN 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

CLASS ACTION

PLAINTIFFS' SUPPLEMENTAL REPLY IN SUPPORT OF MOTION FOR PROVISIONAL CLASS CERTIFICATION

Date: November 10, 2025
Time: 10:00 a.m.
Ctrm: 8

Trial Date: None Set

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INTRODUCTION

Plaintiffs Carmen Aracely Pablo Sequen, Yulisa Alvarado Ambrocio, Martin Hernandez Torres, and Ligia Garcia (collectively, “Plaintiffs”) seek to provisionally certify two classes—a Courthouse Arrest Class and a Detained Class—that each readily meet the requirements of Federal Rules of Civil Procedure 23 (“Rule 23”). Each putative class challenges systemic policies or practices and shares at least one common question of law or fact. Each putative class has one or more class representatives whose claims are typical of the class claims and who will fairly and adequately protect the interest of the class. Indeed, courts routinely certify classes challenging policies as arbitrary and capricious under the Administrative Procedure Act (“APA”) and classes challenging system-wide policies or practices affecting conditions of confinement. None of Defendant’s objections to class certification undermine the putative classes’ clear qualifications under Rule 23.

Further, Plaintiffs had standing when the Amended Complaint (ECF No. 32) was filed; both proposed representatives of the Detained Class were detained at ICE’s San Francisco Field Office located at 630 Sansome Street (“630 Sansome”), and the proposed representatives of the Courthouse Arrest Class either had been recently arrested or faced the imminent risk of arrest at an upcoming immigration hearing. Moreover, because Plaintiffs’ class claims are transitory, class certification relates back to the facts that existed at the time of filing; therefore, neither Plaintiffs’ subsequent release from 630 Sansome, nor the Court’s preliminary injunction orders, moot the class claims.

Defendants’ remaining rejoinders to class certification are predicated on mischaracterizations of Plaintiffs’ class claims as challenging unrelated aspects of the immigration system or on conflations between substantive due process (which governs the constitutional adequacy of civil detention) and procedural due process.

I. RELEVANT FACTUAL AND LEGAL BACKGROUND¹

Plaintiffs filed the Amended Complaint and Motion for Provisional Class Certification on

¹ Defendants’ Opposition includes a background section spanning issues well beyond the scope of class certification. In the interest of brevity, Plaintiffs include only the relevant background here and will respond to Defendants’ remaining assertions in the corresponding briefing.

1 September 18, 2025. ECF Nos. 32, 33. Earlier that day, ICE had arrested Plaintiff Ligia Garcia at
 2 immigration court after she attended a mandatory hearing. ECF No. 77 ¶¶ 5, 7. Plaintiff Carmen
 3 Aracely Pablo Sequen previously had been arrested at her immigration court hearing on July 31,
 4 2025, and Plaintiff Yulisa Alvarado Ambrocio feared being arrested at her upcoming immigration
 5 hearing on October 16, 2025, after narrowly avoiding arrest at her last hearing because her
 6 breastfeeding infant was with her. ECF No. 33-11 ¶¶ 6-8; ECF No. 70 ¶ 3.

7 On the day the Amended Complaint and Motion for Provisional Class Certification were
 8 filed, Plaintiffs Martin Hernandez Torres and Ligia Garcia were both detained at 630 Sansome. ECF
 9 No. 33-5 ¶ 3; ECF No. 33-7 ¶ 3. Ms. Garcia was released the following day after the Court granted
 10 a Temporary Restraining Order. ECF No. 77 ¶ 12. Mr. Hernandez Torres was subsequently
 11 hospitalized for over a week before ICE brought him back to 630 Sansome for approximately 24
 12 hours and then transferred him to a long-term detention facility. ECF No. 78 ¶¶ 22, 25-28.²

13 Ms. Pablo Sequen, Ms. Garcia, and Ms. Alvarado Ambrocio seek to represent a putative
 14 Courthouse Arrest Class of non-detained noncitizens with immigration court hearings in the ICE
 15 San Francisco Area of Responsibility (“SF AOR”) to challenge Defendants’ courthouse arrest
 16 policies as arbitrary and capricious under the APA. Mr. Hernandez Torres and Ms. Garcia seek to
 17 represent a putative Detention Class of individuals who are or will be detained in a holding cell at
 18 630 Sansome to challenge ICE’s 12-Hour Waiver Memo under the APA and the conditions of
 19 confinement at 630 Sansome as unconstitutional under the Fifth Amendment.

20 **II. ARGUMENT**

21 At the time of the class complaint in this case, at least one proposed class representative had
 22 standing to challenge each of the policies and practices at issue here. And because their claims are
 23 transitory and thus capable of repetition, yet evading review, well-established precedent holds that
 24 there remains a live controversy irrespective of whether the proposed class representatives’ claims
 25 become moot prior to class certification. Both the putative Courthouse Arrest and Detention Class
 26 readily satisfy Rule 23’s requirements; courts routinely certify classes challenging policies as

27
 28 ² ICE has since removed Mr. Hernandez Torres to Mexico.

1 arbitrary and capricious and classes challenging systemic detention condition policies or practices.
2 And the INA does not preclude certification of the putative classes or classwide relief on Plaintiffs’
3 class claims.³

4 **A. 8 U.S.C. Section 1252(e)(1)(B) Has No Bearing On Class Certification**

5 Defendants’ reliance on Section 1252(e)(1)(B) is entirely misplaced. ECF No. 109 (“Opp.”)
6 at 13-14. Section 1252(e), entitled “Judicial Review Of Orders Under Section 1225(b)(1)[,]”
7 channels review of challenges to *the expedited removal system*—and only those challenges—to the
8 District Court for the District of Columbia. *See* 8 U.S.C. § 1252(e)(3)(A); *see also E. Bay Sanctuary*
9 *Covenant v. Biden*, 993 F.3d 640, 667 (9th Cir. 2021) (“§ 1252(e)(3) is about challenges to expedited
10 removal orders and the implementation of the expedited removal provisions”) (citation
11 omitted).⁴ Section 1252(e)(1)(B)’s bar on class actions is therefore irrelevant here, because none of
12 the class claims challenge the expedited removal system.

13 Defendants vaguely state that the challenged policies are “part of [Defendants’] attempt and
14 mission to apply, enforce, and implement the INA including, but not limited to, 8 U.S.C. § 1225.”
15 Opp. at 13. That is far too attenuated. The relevant standard, as the *Mendoza-Linares v. Garland*
16 decision cited by Defendants explains, is whether a challenged policy “is ‘entirely linked’ to the
17 expedited removal process[.]” 51 F.4th 1146, 1157 (9th Cir. 2022) (quoting *E. Bay Sanctuary*
18 *Covenant*, 993 F.3d at 666–67). The claims presented here do not even come close to being “entirely
19 linked” to the expedited removal process. None of the challenged policies so much as mentions
20 Section 1225(b)(1) or expedited removal, and the policies have applicability to immigrants in
21

22
23 ³ The Court should reject Defendants’ suggestion—made only in a footnote—that it defer ruling on
24 class certification until after it rules on Defendants’ recently-filed motion to dismiss. Plaintiffs’ class
25 certification motion has been pending for over a month and concerns time-sensitive requests for
26 preliminary relief that are scheduled to be heard in the coming weeks. Deferring ruling on class
certification would harm putative class members at risk of arrest at immigration court or detained
in inhumane conditions at 630 Sansome.

27 ⁴ Section 1252(e) operates as a jurisdiction-saving provision, in that, except as it provides, another
28 subsection of 1252 precludes claims challenging “procedures and policies adopted by the Attorney
General to implement [expedited removal].” 8 U.S.C. § 1252(a)(2)(A)(iv).

1 various procedural postures. *See e.g.*, ECF No. 98 ¶ 29.⁵ Defendants’ bare citation to Executive
 2 Order 14159, Opp. at 13, which announced a range of immigration measures, does nothing to
 3 explain how the policies at issue here implement expedited removal. At bottom, Defendants’
 4 position would restrict jurisdiction over any generally applicable arrest or detention policy based
 5 merely on whether some applications of the policy occur in the context of expedited removal. This
 6 Court should reject that overbroad position.

7 **B. Defendants’ Standing, Ripeness, and Mootness Objections Lack Merit**

8 Defendants’ standing objections are predicated on factual misstatement. Contrary to
 9 Defendants’ assertion, Opp. at 11, on the day the Amended Complaint and the Motion for Class
 10 Certification were filed, Mr. Hernandez Torres and Ms. Garcia were *both* detained at 630 Sansome.
 11 ECF No. 33-5 ¶ 3; ECF No. 33-7 ¶ 3. They thus had standing to challenge the conditions of
 12 confinement at 630 Sansome and the 12-Hour Waiver Memo. *See Lujan v. Defs. of Wildlife*, 504
 13 U.S. 555, 569 n.4 (1992) (standing turns on facts as they exist when the complaint is filed). Both
 14 Mr. Hernandez Torres and Ms. Garcia were suffering “concrete” and “actual” injury from the
 15 unconstitutional conditions: Mr. Hernandez Torres already had been detained for over 12 hours, and
 16 Ms. Garcia was at “imminent” risk of being detained for more than 12 hours pursuant to the 12-
 17 Hour Waiver Memo. *See Lujan*, 504 U.S. at 560; ECF No. 77 ¶¶ 10, 13-17 (describing conditions
 18 of confinement); ECF No. 78 ¶¶ 4-18 (describing conditions of confinement). Indeed, Ms. Garcia
 19 would go on to be detained overnight and well into the next day before she was released pursuant
 20 to the Court’s temporary restraining order (ECF No. 77 ¶ 12), and Mr. Hernandez Torres would be
 21 hospitalized for eight days and then *returned* to a holding cell at 630 Sansome for another
 22 approximately 24 hours. ECF No. 78 ¶¶ 22, 25-28.⁶

23
 24 ⁵ Defendants state that the “Courthouse Arrest Class directly conflicts with 8 U.S.C. § 1226(c)[.]”
 25 Opp. at 13. Whatever is meant by this, it illustrates that Plaintiffs challenge agency policies that
 have general applicability, not policies that uniquely relate to implementing expedited removal.

26 ⁶ Defendants contend that Plaintiffs “made the strategic litigation decision to seek emergency relief
 27 before seeking to certify their proposed classes.” Opp. at 16. This is untrue (and irrelevant). Plaintiffs
 28 filed the motion seeking Ms. Garcia’s release from 630 Sansome after filing the motion for
 provisional class certification.

Defendants’ assertion that Plaintiffs’ claims are not ripe, or their injury is too speculative, is also baseless. “For a suit to be ripe within the meaning of Article III, it must present ‘concrete legal issues, presented in actual cases, not abstractions.’” *Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky. v. Labrador*, 122 F.4th 825, 839 (9th Cir. 2024) (citations omitted); *see also Thomas v. Anchorage Equal Rts. Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (“And, in ‘measuring whether the litigant has asserted an injury that is real and concrete rather than speculative and hypothetical, the ripeness inquiry merges almost completely with standing.’”) (citation omitted).

It is evident that this case presents an actual controversy, not an abstract disagreement. Plaintiffs challenge policies and practices that they were actively or imminently subject to and harmed by at the time of filing. Thus, they met the injury-in-fact prong of the standing inquiry. The challenged policies and practices have tangible real-world impact, as evidenced by both Plaintiffs’ own experiences and the volume of evidence submitted with Plaintiffs’ pending motions for preliminary relief. There is no risk that this case presents “hypothetical or speculative disputes” or “abstract disagreements.” *Flaxman v. Ferguson*, 151 F.4th 1178, 1184 (9th Cir. 2025).

Moreover, the class claims are not moot simply because Plaintiffs are no longer detained at 630 Sansome or because the Court has preliminarily enjoined their future arrests. “Some claims are so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative’s individual interest expires.” *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 399 (1980). As the Ninth Circuit has explained, an inherently transitory claim is one that “will certainly repeat as to the class either because the individual could nonetheless suffer repeated harm *or because it is certain that other persons similarly situated will have the same complaint.*” *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1090 (9th Cir. 2011) (cleaned up) (emphasis added); *see also Doe v. Wolf*, 424 F. Supp. 3d 1028, 1039 (S.D. Cal. 2020) (“In cases concerning class actions, the named plaintiff need not be subjected to the same action again for the claim to be inherently transitory.”). “In such cases, the named plaintiff’s claim is ‘capable of repetition, yet evading review,’ and ‘the “relation back” doctrine is properly invoked to preserve the merits of the case for judicial resolution.’” *Pitts*, 653 F.3d at 1090 (citing *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975), and *Cnty. of Riverside v. McLaughlin*, 500

1 U.S. 44, 52 (1991)). Pursuant to that doctrine, the Court should evaluate this case as of the time the
2 amended class complaint was filed. *See, e.g., Pitts*, 653 F.3d at 1091.

3 “The inherently transitory rationale was developed to address circumstances in which the
4 challenged conduct was effectively unreviewable, because no plaintiff possessed a personal stake in
5 the suit long enough for litigation to run its course.” *Wolf*, 424 F. Supp. 3d at 1039 (citing *Genesis*
6 *Healthcare Corp. v. Symczyk*, 569 U.S. 66, 76 (2013) (internal quotation marks omitted)). “[T]he
7 fact that a class ‘was not certified until after the named plaintiffs’ claims had become moot does not
8 deprive [a court] of jurisdiction’ when . . . the harms alleged are transitory enough to elude review.”
9 *Nielsen v. Preap*, 586 U.S. 392, 403 (2019) (plurality opinion) (citing *Cnty. of Riverside*, 500 U.S.
10 at 52). Notably, in *Preap*, like in this case, the proposed class representatives had been released from
11 custody, or obtained analogous relief, prior to class certification. *Id.* at 404 (“[T]he fact that the
12 named plaintiffs obtained some relief before class certification does not moot their claims.”).

13 Class claims arising out of conditions at a short-term detention facility are quintessentially
14 claims that meet a mootness exception. *See Torres v. U.S. Dep’t of Homeland Sec.*, 411 F. Supp. 3d
15 1036, 1056 (C.D. Cal. 2019) (“The Court concludes that Plaintiffs resemble those plaintiffs before
16 them held in jail and so present a ‘classic example of a transitory claim.’”) (citing *Wade v. Kirkland*,
17 118 F.3d 667, 670 (9th Cir. 1997)); *see also Lyon v. U.S. Immigr. & Customs Enf’t*, 300 F.R.D. 628,
18 639 (N.D. Cal. 2014). Class claims challenging courthouse arrest policies are similarly transitory
19 and therefore capable of repetition, yet evading review; for example, when the Amended Complaint
20 was filed, Ms. Alvarado Ambrocio’s upcoming immigration hearing was under a month away and
21 thus would have occurred before the class certification motion could be ruled upon. *Cf. Hernandez*
22 *v. Cnty. of Monterey*, 70 F. Supp. 3d 963, 975 (N.D. Cal. 2014) (concluding that class claims were
23 not moot because 34-day period to raise claims was too short for court to resolve motion for class
24 certification). *Wallingford v. Bonta* and *Weinstein v. Bradford*, Opp. at 16, are readily
25 distinguishable because each involved an individual challenge, not a class. 82 F.4th 797, 801 (9th
26 Cir. 2023); 423 U.S. 147, 149 (1975).

27 It is immaterial that Mr. Hernandez Torres and Ms. Garcia may not again be detained at 630
28 Sansome because other members of the putative Detention Class will be. Similarly, the Court’s

preliminary injunction orders on Ms. Sequen, Ms. Garcia, and Ms. Alvarado Ambrocio’s habeas claims do not moot their class claims challenging Defendants’ courthouse arrest policies, because those policies indisputably remain in effect and harm class members. Thus, the class claims are capable of repetition, yet evading review, permitting relation back to the filing of the amended class complaint, when Plaintiffs had standing. Defendants ignore the clear application of *Pitts*, and the Supreme Court precedent upon which it is based, to the class claims.

C. Both Proposed Classes Satisfy Rule 23(a)⁷

1. There Are Questions of Law and Fact Common to the Proposed Classes

Defendants’ arguments against commonality fail to address binding precedent or distinguish the putative classes in this case from the many examples of certified classes in APA challenges to agency action or constitutional challenges to detention conditions. *See, e.g.*, ECF No. 33 (“Mot.”) at 15 (collecting examples of certified classes in APA and detention conditions cases).

First, Defendants’ cursory characterization of the putative classes as overbroad is unavailing. Defendants fail to explain how or why either class is overbroad. Plaintiffs’ proposed Courthouse Arrest Class comprises nondetained persons with immigration hearings, the very individuals who face the impossible choice between risking their freedom or foregoing immigration relief and receiving an *in absentia* removal order because of the challenged courthouse arrest policies. Plaintiffs’ proposed Detention Class comprises individuals detained in the holding cells at 630 Sansome, i.e., those subjected to the challenged policies and practices. Neither class sweeps in “persons who *could not have been* injured by [D]efendants’ conduct.” Opp. at 17 (citation omitted) (emphasis added).

Second, the fact that Ms. Alvarado Ambrocio had not (yet) been arrested at immigration court at the time of filing the Amended Complaint does not defeat commonality; she shares a “common issue[], with a common answer,” with the rest of the putative Courthouse Arrest Class, i.e., whether the courthouse arrest policies are arbitrary and capricious. *See Thakur v. Trump*, 787

⁷ Defendants do not contest that the numerosity requirement is met or that proposed class counsel will fairly and adequately protect the interests of the class. *See* Opp. at 16-20.

1 F. Supp. 3d 955, 1005 (N.D. Cal. 2025) (certifying class challenging agency action under the APA
2 because there is a common issue as to whether a sufficiently reasoned explanation was provided).

3 Third, the minor factual variations Defendants identify also do not preclude a finding of
4 commonality. “The existence of shared legal issues with divergent factual predicates is sufficient.”
5 *Gonzalez v. U.S. Immigr. & Customs Enf’t*, 975 F.3d 788, 807 (9th Cir. 2020) (cleaned up); *see also*
6 *Walters v. Reno*, 145 F.3d 1032, 1047 (citing *Adamson v. Bowen*, 855 F.2d 668, 676 (10th Cir. 1988)
7 (“[A]lthough the claims of individual class members may differ factually, certification under Rule
8 23(b)(2) is a proper vehicle for challenging a common policy.”)) (cleaned up). Even “a single
9 common question” satisfies commonality. *Parsons v. Ryan*, 754 F.3d 657, 675 (9th Cir. 2014)
10 (citation omitted). The proposed classes easily meet this standard.

11 As the Ninth Circuit noted in affirming class certification in *Parsons*, a challenge to
12 detention conditions, claims challenging policies and practices satisfy commonality. “[E]ither each
13 of the policies and practices is unlawful as to every inmate or it is not. That inquiry does not require
14 us to determine the effect of those policies and practices upon any individual class member . . . or
15 to undertake any other kind of individualized determination.” *Id.* at 678. While Mr. Hernandez
16 Torres’s subsequent medical emergency⁸ was likely the “effect” of Defendants’ challenged policies
17 and practices, this Court need not determine that during its inquiry into whether policies and
18 practices at 630 Sansome, like the lack of medical screening, are unconstitutional; Defendants’
19 practice of not screening detained individuals for urgent medical issues or continuity of care needs
20 like prescription medications “is unlawful as to every [class member] or it is not.” *Parsons*, 754
21 F.3d at 678; *see also Castillo v. Barr*, 449 F. Supp. 3d 915, 920 (C.D. Cal. 2020) (“Inadequate health
22 and safety measures at a detention center cause cognizable harm to every detainee at that center.”).

23 Defendants do not mention—let alone distinguish—*Parsons*, which binds this Court and
24 squarely supports a finding of commonality in a challenge to systemic detention policies and
25

26 ⁸ Defendants disingenuously describe the fact that Mr. Hernandez Torres had to be taken to the
27 emergency room after spending a night in a holding cell because an attorney alerted ICE officers to
28 his deteriorating health (ECF No. 78 ¶¶ 15-19) as “a medical intake and extensive medical care[.]”
Opp. at 17.

1 practices. As the Ninth Circuit explained, courts repeatedly have recognized that “many inmates can
2 simultaneously be endangered by a single policy.” *Parsons*, 754 F.3d at 678 (collecting cases). Here,
3 like in *Parsons* and the numerous cases it cites, the putative Detained Class members share common
4 contentions “whose truth or falsity can be determined in one stroke:” whether the challenged ICE
5 policies and practices at 630 Sansome violate the Fifth Amendment. *See id.*

6 Relatedly, the possibility that some individuals may be transferred out of 630 Sansome
7 before they are detained for 12 hours or overnight does not undermine commonality or class
8 certification. When they are detained at 630 Sansome, all putative Detention Class members are
9 subjected to the same systemic policies and practices, including the lack of adequate medical
10 screening and the challenged 12-Hour Waiver Memo which permits Defendants to detain any of
11 them for more than 12 hours. Class members have no way to know, let alone control, how long they
12 will be subjected to these policies and practices, and even Defendants acknowledge that the amount
13 of time a detainee spends at 630 Sansome varies based on external factors. *Opp.* at 8; *see also* ECF
14 No. 69 ¶¶ 5-6 (attorney describing how ICE told her that detainee who had been detained overnight
15 was “on his way” to long-term detention facility only to find out he was not transferred until
16 following day). Further, it is well-established that “[e]ven if some class members have not been
17 injured by the challenged practice, a class may nevertheless be appropriate.” *Walters*, 145 F.3d at
18 1047 (citation omitted).

19 Finally, Defendants’ attempt to recast Plaintiffs’ claims as a challenge to Defendants’
20 “policy and practice of applying immigration statutes,” *Opp.* at 18, is a strawman. None of Plaintiffs’
21 class claims involve determining whether putative class members are properly subject to mandatory
22 detention. For example, even if members of the Detention Class were subject to mandatory
23 detention, the alleged deficiencies in the holding cells at 630 Sansome still would violate their
24 constitutional rights. This Court need not delve into any facts related to the basis or circumstances
25 of an individual class member’s detention to provide a common answer to the common legal or
26 factual questions at issue.

27 2. The Class Representatives’ Claims are Typical of the Classes’ Claims

28 Defendants’ perfunctory challenge to typicality is similarly unpersuasive. “The test of

1 typicality is ‘whether other members have the same or similar injury, whether the action is based on
 2 conduct which is not unique to the named plaintiffs, and whether other class members have been
 3 injured by the same course of conduct.’” *Parsons*, 754 F.3d at 685 (citation omitted). Ms. Alvarado
 4 Ambrocio’s injury at the time of filing was precisely the injury that the putative Courthouse Arrest
 5 Class faces, i.e., the chilling effect and impossibly unjust choice created by facing the risk of arrest
 6 simply for attending a mandatory court hearing. ECF No. 33-11 ¶ 8 (“I am extremely afraid because
 7 I do not have any choice but to attend my hearing.”). The Court’s subsequent preliminary injunction
 8 orders have no bearing on the typicality of Plaintiffs’ class claims because Plaintiffs had already
 9 experienced the “same or similar injury” as class members by the time the Court entered those
 10 orders.

11 Further, Mr. Hernandez Torres’s emergency room visit and subsequent hospitalization does
 12 not change “the nature of [his] claim,” which is about systemic policies and practice, “conduct which
 13 is not unique to the named plaintiffs.” *Parsons*, 754 F.3d at 685 (citation omitted). With respect to
 14 the class claims—which seek only injunctive relief and vacatur—Mr. Hernandez Torres has the
 15 same or similar injury as members of the putative Detained Class. Defendants also do not challenge
 16 the typicality of Ms. Garcia, another representative of the Detained Class. Thus, irrespective of Mr.
 17 Hernandez Torres, the Detained Class has a representative with typical claims.

18 Finally, the unsubstantiated assertion that Plaintiffs’ “other submissions” undercut
 19 typicality, Opp. at 19—which lacks any citation—appears to simply restate Defendants’
 20 commonality arguments and should be rejected for the reasons above.

21 In short, Plaintiffs’ claims easily surpass the “permissive standard[]” for typicality because
 22 they are “reasonably coextensive with those of absent class members.” *Parsons*, 754 F.3d at 685
 23 (citation omitted).

24 3. The Class Representatives Are Adequate

25 Each of the class representatives have declared their intention to represent the interests of
 26 the classes. ECF No. 33-1 ¶ 8; ECF No. 33-5 ¶ 8; ECF No. 33-7 ¶ 8; ECF No. 33-11 ¶ 12. Defendants
 27 neither undermine these assertions nor identify any conflict of interest between Plaintiffs and the
 28 classes. Accordingly, Plaintiffs are adequate class representatives.

1 Rather than engage with the legal standard for adequacy, Defendants recycle their
2 commonality arguments to no avail. On the day the Amended Complaint and Plaintiffs' Motion for
3 Class Certification were filed, Mr. Hernandez Torres and Ms. Garcia were both in ICE detention at
4 630 Sansome Street. As a result, they were a part of the class they seek to represent. So too for Ms.
5 Alvarado Ambrocio, who stood precisely in the shoes of the class she seeks to represent, as she
6 faced an upcoming immigration court date where she risked arrest at the hands of Defendants. *See*
7 ECF No. 45 at 24.

8 This Court's subsequent individual preliminary injunction orders do not affect adequacy.
9 There is no order for Mr. Hernandez Torres. Further, as the Court itself has noted, the orders are
10 preliminary and do not offer all the relief requested, even on Plaintiffs' individual habeas claims.
11 *See* ECF No. 90 at 7 (citing *Lackey v. Stinnie*, 604 U.S. 192, 200 (2025)). And, it is immaterial to
12 adequacy whether Plaintiffs will suffer the same injury as the class members *in the future*; they
13 already have suffered the relevant injuries and, given their experiences, they seek to prevent similar
14 harm to the class. *See Pitts*, 653 F.3d at 1090 (“[T]he relation back doctrine is properly invoked to
15 preserve the merits of the case for judicial resolution.”) (citation omitted).

16 **D. Both Proposed Classes Satisfy Rule 23(b)(2)**

17 **1. Section 1252(f)(1) does not bar the relief that the putative class seeks**

18 Section 1252(f)(1) has no bearing on preliminary class certification. It prohibits lower courts
19 from “enjoin[ing] or restrain[ing] the operation” of certain covered provisions. 8 U.S.C. §
20 1252(f)(1). “By its plain terms,” it “is nothing more or less than a limit on injunctive relief.” *Reno*
21 *v. Am.-Arab Anti-Discrimination Comm.* (“AADC”), 525 U.S. 471, 481 (1999); *accord Biden v.*
22 *Texas*, 597 U.S. 785, 798 (2022) (observing “the narrowness of [1252(f)(1)’s] scope”). Thus, where
23 it applies, Section 1252(f)(1) “prohibits lower courts from entering *injunctions*.” *Garland v. Aleman*
24 *Gonzalez*, 596 U.S. 543, 550 (2022) (emphasis added). But the Ninth Circuit has squarely held that
25 Section 1252(f)(1) does not bar issuance of a stay pursuant to Section 705 of the APA. *See*
26 *Immigrant Defs. L. Ctr. v. Noem*, 145 F.4th 972, 990 (9th Cir. 2025) (explaining that a stay
27 “temporarily suspend[s] the source of authority to act[,]” in contrast to injunctive relief, which
28 “directs an actor’s conduct.”) (quoting *Nken v. Holder*, 556 U.S. 418, 428–29 (2009)); *id.*

1 (“Congress made no mention of limiting APA claims in § 1252(f)(1) and instead only explicitly
2 limits injunctive relief.”); *accord Texas v. U.S.*, 40 F.4th 205, 219–20 (5th Cir. 2022). Thus, the
3 stays the putative classes seek as preliminary relief are not injunctions and are not barred by Section
4 1252(f)(1).

5 In attempting to analogize this case to *Aleman-Gonzalez*, which involved an affirmative
6 injunction interpreting a detention statute to require the government to provide bond hearings, 596
7 U.S. at 551, Defendants claim that the putative classes challenge the implementation of Section
8 1225(b). Opp. at 22. That is simply wrong. The putative classes are not seeking any relief (injunctive
9 or otherwise) having to do with the implementation of Section 1225(b). To the extent Defendants
10 argue that an injunction remedying unconstitutional conditions of confinement at 630 Sansome may,
11 in some indirect way, affect their implementation of Section 1225(b), that argument fails. The Ninth
12 Circuit “has repeatedly held that § 1252(f)(1) does not prohibit an injunction simply because of
13 collateral effects on a covered provision.” *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 138 F.4th
14 1102, 1125–26 (9th Cir. 2025) (discussing *Gonzales v. DHS*, 508 F.3d 1227, 1233 (9th Cir. 2007)
15 and *Gonzalez v. ICE*, 975 F.3d 788 (9th Cir. 2020)); *see also id.* at 1126 (“The Supreme Court
16 acknowledged our collateral-effect rule in *Aleman Gonzalez* and left it undisturbed.”); *accord*
17 *Aleman-Gonzales*, 596 U.S. at 553 n.4 (explaining that Section 1252(f)(1) does not bar injunctive
18 relief that “has some collateral effect on the operation of a covered provision.”). The Ninth Circuit’s
19 binding interpretation of Section 1252(f)(1) is the only tenable one, as virtually any challenge to an
20 agency policy could be characterized as having the indirect effect of restraining officials’
21 implementation of the immigration statutes. Moreover, this narrow interpretation comports with the
22 Supreme Court’s approach to reading Section 1252’s jurisdictional limitations. *See Jennings v.*
23 *Rodriguez*, 583 U.S. 281, 292–95 (2018) (rejecting expansive interpretation of comparable
24 jurisdiction-stripping provision from reaching collateral matters); *AADC*, 525 U.S. at 482 (same).

25 2. Plaintiffs seek relief from policies and practices that are generally 26 applicable to the classes as a whole

27 Defendants offer three reasons why the relief Plaintiffs seek purportedly is not applicable to
28 the putative classes as whole. Each is based on erroneously conflating Plaintiffs’ class claims, which

1 are APA and *substantive* due process claims, with *procedural* due process claims.

2 First, the class definitions need not distinguish between categories of noncitizens. The
3 challenged policies and practices apply generally to each respective putative class; the 12-Hour
4 Waiver Memo does not apply to only certain noncitizens detained in holding cells, and the
5 Courthouse Arrest policies are not limited to noncitizens in any particular posture. And for the
6 reasons set forth above, minor variations in the circumstances of class members' detention at 630
7 Sansome do not defeat certification. *Walters*, 145 F.3d at 1047 (noting that even the fact that some
8 class members may have suffered different injuries, or even no injuries, does not prevent Rule
9 23(b)(2) certification). Thus, the requirements of Rule 23(b)(2) are "unquestionably satisfied[.]"
10 *Parsons*, 754 F.3d at 688.

11 Second, Defendants' argument that not all members of the putative Detention Class are
12 entitled to the same due process protections based on differences in the posture of their immigration
13 case, Opp. at 23, is premised on confusion between procedural and substantive due process. While
14 it may be true that noncitizens are entitled to different *procedural* due process protections based on
15 differences in their immigration cases, Defendants offer no support for the extraordinary proposition
16 that the procedural posture of a noncitizen's immigration case dictates the constitutional adequacy
17 of the *conditions* in which they are detained. Dicta from *procedural* due process cases have no
18 bearing on whether a putative class bringing *substantive* due process challenges to conditions of
19 confinement may be certified. Opp. at 23 (citing *Jennings*, 583 U.S. at 314, and *Diaz v. Garland*, 53
20 F.4th 1189, 1213 (9th Cir. 2022)). Defendants' assertion that members of the putative Detention
21 Class are entitled to different detention conditions based on the procedural posture of their
22 immigration cases is wholly unsupported and readily can be rejected.

23 **E. The Inclusion of Individual Habeas Claims in this Action Does Not Preclude**
24 **Class Certification**

25 Defendants' final argument misapplies the case law. As this Court has already recognized,
26 "the government has not argued or cited any authority holding that petitioners may not assert habeas
27 and non-habeas claims together in a single complaint." ECF No. 90 at 8 (citing *Zepeda Rivas v.*
28 *Jennings*, 465 F. Supp. 3d 1028, 1036 (N.D. Cal. 2020) and Fed. R. Civ. P. 18(a) ("A party asserting

1 a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative
 2 claims, as many claims as it has against an opposing party.”)). Instead, Defendants rely on cases
 3 where habeas petitioners have purported to rely *exclusively* on habeas jurisdiction to bring claims
 4 outside the core of habeas related to conditions of confinement. *See, e.g., Pinson v. Carvajal*, 69
 5 F.4th 1059, 1075 (9th Cir. 2023) (concluding that court does not have jurisdiction under federal
 6 habeas corpus statute to hear conditions claims outside historic core of habeas); *Nettles v. Grounds*,
 7 830 F.3d 922, 927 (9th Cir. 2016) (concluding that court does not have habeas jurisdiction to hear
 8 challenge to disciplinary proceeding which is outside historic core of habeas); *Allen v. S.V.S.P. -*
 9 *P.I.P.*, No. 24-CV-03197-PCP, 2025 WL 1101519, at *1 (N.D. Cal. Mar. 31, 2025) (concluding that
 10 court does not have habeas jurisdiction over challenge to prison transfer); *see also Doe v. Garland*,
 11 109 F.4th 1188, 1194 (9th Cir. 2024) (“*Nettles* and *Pinson* addressed the different question of
 12 whether claims were cognizable in habeas at all.”).

13 Unlike in the cases Defendants cite, this Court already has recognized that Plaintiffs’
 14 “conditions-of-confinement claims do not invoke this Court’s habeas jurisdiction. Instead, they
 15 invoke the Court’s jurisdiction to adjudicate claims arising under the U.S. Constitution and the
 16 [APA] . . . and the Court’s equitable authority to restrain unlawful executive action.” ECF No. 90
 17 at 8 (citations omitted). Contrary to Defendants’ assertion, there is no Ninth Circuit precedent—or
 18 any case law at all—that precludes certification of a class challenging conditions of confinement in
 19 a lawsuit that also has individual habeas claims.⁹

20 Finally, neither Mr. Hernandez Torres’s detention and removal order nor the Court’s
 21 preliminary injunction orders on Ms. Pablo Sequen, Ms. Garcia, and Ms. Alvarado Ambrocio’s
 22 individual habeas claims have any bearing on the propriety of class certification. Defendants’
 23 arguments are yet another rehash of their mootness objections, and should be rejected for the reasons
 24 set forth above. None of the Plaintiffs have been awarded relief that moots the class claims
 25

26 ⁹ Defendants also appear to conflate the class claims and the habeas claims when they state that
 27 habeas is an “individualized inquiry, not one amenable to classwide resolution[.]” Opp. at 24. For
 28 avoidance of any doubt, as the Amended Complaint explicitly states, the habeas claims are presented
 on behalf of the named plaintiffs; they are *not* class claims. *See* ECF No. 32 at 50-52.

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challenging Defendants’ courthouse arrest policies, the 12-Hour Waiver Memo, or the inhumane conditions of confinement at 630 Sansome. *See Nielsen*, 586 U.S. at 404.

III. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court provisionally certify the two proposed classes and provisionally appoint Plaintiffs’ counsel as class counsel.

DATED: October 30, 2025

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