BRETT A. SHUMATE
Assistant Attorney General
Civil Division
DREW C. ENSIGN
Deputy Assistant Attorney General
TIBERIUS DAVIS
SEAN SKEDZIELEWSKI
Counsel to the Assistant Attorney General
JONATHAN K. ROSS
Senior Litigation Counsel
STEPHANIE L. GROFF
JASON K. ZUBATA
ANIELLO DESIMONE
JACOB A. BASHYROV
Trial Attorneys
Office of Immigration Litigation
Civil Division, U.S. Dept. of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044
Tel: (202) 305-7662
Email: Jonathan.K.Ross@usdoj.gov
Counsel for Defendants

BILAL A. ESSAYLI
Acting United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
DANIEL A. BECK
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
ALEXANDER L. FARRELL (SBN 335008)
PAULINE H. ALARCON (SBN 345785)
Assistant United States Attorneys
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Tel: (213) 894-5557 | 3992
E-mail: Alexander.Farrell@usdoj.gov
Pauline.Alarcon@usdoj.gov

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

PEDRO VASQUEZ PERDOMO; *et al.*,

Plaintiffs,

v.

KRISTI NOEM, in her official capacity as Secretary of Homeland Security; *et al.*,

Defendants.

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

DEFENDANTS' OPPOSITION TO CLASS CERTIFICATION [ECF NO. 140]

Hearing Date: September 24, 2025
Hearing Time: 9:00 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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

Federal Rules of Civil Procedure

Plaintiffs' motion fails at the threshold. The proposed class indiscriminately sweeps in individuals who lack Article III standing. A class action cannot proceed where 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). Plaintiffs attempt to define a class encompassing millions of people across seven counties regardless of whether they have ever been subjected to a Fourth Amendment stop, much less face a real and immediate threat of recurrence. 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 "suspicionless stops"—which the Court has never found and Defendants' evidence refutes—the named Plaintiffs cannot establish standing for themselves, let alone for an undefined population.

Even setting standing aside, Plaintiffs do not satisfy Rule 23(a). They offer conjecture, not evidence, for numerosity while defining a class spanning seven counties and multiple types of immigration status. Plaintiffs fail to establish commonality because their claims turn on highly individualized, fact-specific circumstances surrounding stops, and Plaintiffs identify no uniform policy authorizing reliance solely on the four factors enjoined by this Court's TRO. *See generally* Mot. Plaintiffs cannot meet their burden to show typicality because the allegedly injured individuals have varying immigration status, are stopped at different locations, and allegedly suffer distinct injuries that diverge sharply. The named plaintiffs cannot adequately represent the proposed class for many of the same reasons that Plaintiffs cannot establish commonality and typicality but also because several named Plaintiffs are no longer detained and assert only speculative fears of future stops, while organizational declarants rely on hearsay from unidentified individuals and cannot vicariously assert personal Fourth Amendment rights. Under *Wal-Mart* and *Falcon*, Plaintiffs have not carried their burden to prove—after rigorous analysis—each prerequisite of Rule 23(a). *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350-51 (2011); *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 160-61 (1982).

Plaintiffs also fail to meet their burden under Rule 23(b)(2). That provision permits certification only where a single, indivisible injunction would provide relief to each class member. *Wal-Mart*, 564

U.S. at 360. Plaintiffs' overbroad definition sweeps in uninjured and unthreatened persons—citizens and aliens alike—defeating cohesiveness and the possibility of uniform relief. And the Supreme Court's recent decision in *Trump v. CASA* confirms courts may not use Rule 23 to obtain universal relief untethered to parties with proven or actually impending injury. 145 S. Ct. 2540, 2555, 2558 (2025).

For these reasons, the Court should deny Plaintiffs' motion in full. At a minimum, it should deny certification while the Supreme Court and Ninth Circuit resolve the government's pending appeals, which bear on several dispositive issues. In any event, Plaintiffs' class definition is untenable: it presumes the very violation at issue by sweeping in "anyone who might be stopped," on the assumption that every stop is unsupported by reasonable suspicion. That circular framing both eliminates any principled way to identify class members and guarantees that individualized inquiries into the basis for each stop would overwhelm the case. Rule 23 does not permit certification of such a boundless and assumption-driven class.

FACTUAL AND PROCEDURAL BACKGROUND

On June 20, three aliens arrested in the Los Angeles area filed a habeas petition seeking release from immigration detention. Plaintiffs, all day laborers, had been arrested in Pasadena on June 18 during a "targeted enforcement action at a doughnut shop" where surveillance and intelligence indicated that the target and his associates were recruiting unauthorized workers for landscaping jobs. All three were later released and are no longer in government custody. *See* ECF No. 146 at 1.

On July 2, Plaintiffs filed an amended class-action complaint adding two U.S.-citizen individuals, four organizational plaintiffs, and several federal officials as defendants—dramatically expanding the suit to challenge time-limited federal immigration-enforcement operations across the Los Angeles area. ECF No. 16. The next day, Plaintiffs moved ex parte for temporary restraining orders. ECF Nos. 38, 45. Relevant to the claims raised on behalf of a putative class, Plaintiffs alleged that immigration officers had adopted (without actually identifying) a policy and practice of conducting immigration operations in violation of their obligation to stop individuals in public only if there is reasonable suspicion. ECF No. 45 at 2, 6-16. Plaintiffs objected to ICE operations targeting certain types of businesses, such as

carwashes, and further alleged that agents conducted indiscriminate enforcement at "street corners, bus stops, parking lots, agricultural sites, day laborer corners, and other places." *Id.* at 6.

On July 11, the Court granted Plaintiffs' request and issued a sweeping injunction. ECF No. 87 at 50. The order barred federal officers in the Central District of California from conducting investigative stops without reasonable suspicion and prohibited reliance "solely" on four factors—apparent race or ethnicity, use of Spanish or accented English, presence at certain locations, or type of work—"alone or in combination," to establish reasonable suspicion. *Id.* The Court acknowledged the absence of any official policy authorizing reliance on those factors but inferred from anecdotal evidence that officers engaged in a practice of stops based only on those factors. *Id.* at 45 n.33.

The Court further concluded that Plaintiffs had standing, based entirely on one plaintiff's allegation that he had been stopped and questioned because of his ethnicity. *Id.* at 34-35. On the merits, it found Plaintiffs likely to succeed on their claim that the four factors cannot suffice to establish reasonable suspicion. *Id.* at 36-46. It added that even when other circumstances were present, such as a suspect's flight, the government had not shown they supported reasonable suspicion. *Id.* As to relief, the Court held that Plaintiffs faced irreparable harm, *id.* at 46, and that "to provide complete relief to the named . . . Plaintiffs," it must enjoin "all law enforcement engaged in immigration enforcement throughout" the District. *Id.* at 36.

Accordingly, the injunction prohibits immigration officers from conducting investigative stops in the District without reasonable suspicion that a person is unlawfully present in the United States and forbids reliance solely on four enumerated factors. *Id.* at 50.

On August 7, Plaintiffs moved for class certification, proposing a class of:

> All persons who, since June 6, 2025, have been or will be subjected to a detentive stop by federal agents for purposes of immigration enforcement in this District, other than at a port of entry, checkpoint, or other functional equivalent of the border, without a pre-stop, individualized assessment of reasonable suspicion that the person to be stopped (1) is engaged in an offense against the United States or (2) is a noncitizen unlawfully present in the United States.

ECF No. 140, Motion for Class Certification ("Mot.") at 3. Plaintiffs argue that certification under Rule 23(b)(2) is warranted because the injunction already issued by the Court demonstrated common questions of law and fact across the proposed class, and because district-wide injunctive relief was necessary to provide complete relief and prevent ongoing irreparable harm. *Id.* at 1. They contended that the anecdotal evidence credited by the Court in granting preliminary relief established typicality and adequacy, and that uniform injunctive relief is the only effective remedy to protect putative class members from future unconstitutional investigative stops.

LEGAL STANDARD

The 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*, 564 U.S. at 348 (quoting *Califano v. Yamasaki*, 442 U.S. 682, 700-01 (1979)). To fall within this narrow exception, Plaintiffs must "affirmatively demonstrate" their compliance with each element of Rule 23—"that is, [they] must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc." *Id.* at 350. This is not just a "mere pleading standard." *Wal-Mart*, 564 U.S. at 350. "[A]ctual, not presumed, conformance" with Rule 23 is "indispensable," *Falcon*, 457 U.S. at 161, and certification is proper only if the Court is satisfied "after a rigorous analysis" that Plaintiffs have shown that each requirement of the rules has been met. *Wal-Mart Stores, Inc.*, 564 U.S. at 350-51. In determining whether class certification is appropriate, 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 each element of Rule 23(a) is met: (1) the class is so numerous that joinder is impracticable ("numerosity"); (2) there are questions of law or fact common to the class ("commonality"); (3) the claims or defenses of the named Plaintiffs are typical of claims or defenses of the class ("typicality"); and (4) the named Plaintiffs and counsel will fairly and adequately protect the interests of the class ("adequacy of representation"). Fed. R. Civ. P. 23(a).

In addition to meeting the requirements set forth in Rule 23(a), the proposed class must also qualify under one of the subsections of Rule 23(b). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Plaintiffs' attempt to meet that standard by appealing to Rule 23(b)(2) which permits certification

where "the party opposing the class has 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." Fed. R. Civ. P. 23(b)(2).

ARGUMENT

I. The Proposed Class Definition is Overbroad, Amorphous, and Not Ascertainable

Rule 23 imposes a "requirement that a class be clearly defined." *Pigford v. Glickman*, 182 F.R.D. 341, 346 (D.D.C. 1998) (citing *Hartman v. Duffey*, 19 F.3d 1459, 1471 (D.C. Cir. 1994)); *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, a class sought to be certified 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 often implicates other Rule 23 requirements, including typicality, commonality, and the standards for certifying an injunctive-relief class under Rule 23(b)(2).

Courts in this District and Circuit still evaluate ascertainability—either as an independent consideration or as part of Article III, Rule 23(a), and Rule 23(b)(2)—even though the Ninth Circuit does not treat it as a separate threshold requirement. They 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 EthereumMax Inv. Litig.*, No. CV 22-00163-MWF (SKx), 2025 WL 2377070, at *10 (C.D. Cal. Aug. 6, 2025); *In re Honda Idle Stop Litig.*, 347 F.R.D. 528, 539 (C.D. Cal. 2024); *Keegan v. Am. Honda Motor Co.*, 284 F.R.D. 504, 521 (C.D. Cal. 2012); *O'Connor v. Boeing N. Am., Inc.*, 184 F.R.D. 311, 319 (C.D. Cal. 1998).

In short, a putative class must be "definite" or "ascertainable." *J.D. v. Azar*, 925 F.3d 1291, 1319-20 (D.C. Cir. 2019) (citing 1 William B. Rubenstein, Newberg and Rubenstein on Class Actions § 3:3

(6th ed.)). It arises from Rule 23's "express[] direct[ion] that the definition of a class be determined and that its members be identified or identifiable early in the litigation, not at its end." *In re White*, 64 F.4th 302, 313 (D.C. Cir.), *cert. denied sub nom. Hilton Hotels Ret. Plan v. White*, 144 S. Ct. 487 (2023) (citing Fed. R. Civ. P. 23(c)(1)(A)). Although absolute precision is not necessary before certifying a (b)(2) class, class membership must still be determinable "with reference to 'objective criteria.'" *Thorpe*, 303 F.R.D. at 139 (quoting 1 Rubenstein § 3:3); *see also* Manual for Complex Litigation § 21.222 (4th ed.) (defining class "is of critical importance because," among other things, "it identifies the persons [who are] entitled to relief"); *id.* (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").

Whether treated independently or folded into standing and Rule 23, Plaintiffs' class is not ascertainable because membership turns on subjective, merits-laden "reasonable suspicion" judgments rather than objective records, making identification administratively infeasible and inviting mini-trials. *First*, Plaintiffs' class definition fails because it does not use objective criteria to establish membership with definite boundaries. *See In re Petrobras Sec.*, 862 F.3d 250, 269 (2d Cir. 2017). In fact, the class definition is not a definition at all insofar as it attempts to include everyone affected by the alleged policy without defining who they are or may be. The proposed class definition is too vague and indefinite because it includes an undefined and immeasurable number of individuals whose membership status would, at a minimum, require individual inquiries under the Fourth Amendment. To determine the members of the proposed class, fact finding hearings for *every single proposed class member* would be necessary to establish whether they had been stopped "without a pre-stop, individualized assessment of reasonable suspicion." ECF No. 140 at 3. Such individualized fact-finding 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. *See infra* Argument III.

Second, Plaintiffs' proposed class conflates an unidentifiable, broad sweep of people and types of locations based entirely on Plaintiffs' unwarranted inferential leap that, because a few individuals were allegedly harmed, all of the Central District is in jeopardy of the same harm. *See* Mot. 1. Indeed, as

currently articulated, the proposed class would necessarily encompass individuals who are not yet (and may never be) stopped, detained, placed in immigration proceedings or removed 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' articulation of their 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 at 313. And as discussed at length above, *see supra* Argument I, these individuals also lack cognizable injuries such that they would not have standing to challenge the speculative possibility of being stopped in the future.

Plaintiffs cannot contest the fact that not all of them were stopped and that they cannot demonstrate when, if at all, they or anyone else will be stopped again or in the first instance. Thus, any relief this Court could grant would not benefit them or other aliens similarly situated to them who may be lawfully stopped by ICE and Customs and Border Protection (CBP). There is no actual or imminent injury to redress. Moreover, because they lack standing to obtain the relief sought, they cannot represent a class of similarly situated individuals (who likewise lack standing). *See O'Shea v. Littleton*, 414 U.S. 488, 494 (1974) ("[I]f none of the named plaintiffs purporting to represent a class establishes the requisite of a case or controversy with the defendants, none may seek relief on behalf of himself or any other member of the class."); *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."); *Johnson v. District of Columbia*, 248 F.R.D. 46, 54-56 (D.D.C. 2008) (declining to certify Rule 23(b)(2) classes where plaintiffs lack standing to seek prospective relief).

These defects in the class definition prevent this Court from granting such far-reaching relief. Plaintiffs have drawn a class that is neither definite nor ascertainable, but instead encompasses individuals with no cognizable injury and no realistic prospect of standing to sue. Rule 23 does not permit certification of an amorphous group defined only by Plaintiffs' speculation about who might someday be

stopped, and any attempt to proceed on that basis would collapse under the very defects—lack of standing, commonality, and typicality—that Rule 23 was designed to prevent.

II. Plaintiffs Fail to Satisfy Rule 23(a)'s Requirements

A. Plaintiffs Cannot Establish Numerosity

Plaintiffs concede that the precise class size is unknown, acknowledge that the putative class is dispersed over seven counties, and rely on a lay witness declaration to establish a theoretical (but imprecise) number of aliens who *could* be subject to arrests (Mot. Ex. 15) without making any distinction between lawful and allegedly unlawful arrests.[1] Mot. at 9-11. To the extent Plaintiffs contend this suffices, it does not. They provide no specific evidence of the number of putative class members. Between the named Plaintiffs' and Plaintiff Organizations' submissions, they cannot identify even five individuals with the same factual pattern—status, location, and alleged stop—who would all be entitled to the same uniform injunction. And proving that any proposed class members merit relief, beyond those who have already submitted declarations or are named plaintiffs, would require fact-intensive inquiries into whether or not every single stop that was allegedly unsupported by reasonable suspicion was in fact unsupported.

Such speculation cannot satisfy Rule 23(a)(1). *Nguyen Da Yen v. Kissinger*, 70 F.R.D. 656, 661 (N.D. Cal. 1976). Courts require "some evidence of or reasonably estimate the number of class members with specificity." *Schwartz v. Upper Deck Co.*, 183 F.R.D. 672, 680-81 (S.D. Cal. 1999). Plaintiffs' declarations (Mot. Exs. 7-15) support a class size ranging anywhere from the named representatives (and perhaps a handful of family members) to some unknown larger number. That indeterminacy underscores Plaintiffs' failure to satisfy their burden of proof.

B. Plaintiffs Cannot Establish Commonality

Neither do Plaintiffs' claims satisfy the commonality requirement. Rule 23(a)(2) requires that the putative class's claims "depend upon a common contention … of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue …

---

[1] Plaintiffs style the class as including individuals subjected to "suspicionless stops." That framing is misleading. What Plaintiffs call "suspicionless stops" are, in reality, investigative stops—temporary encounters supported by reasonable suspicion that may or may not result in arrest. By conflating investigative stops with arrests, Plaintiffs improperly expand the putative class far beyond anything administrable.

central to the validity of each one of the claims in one stroke." *Wal-Mart*, 564 U.S. at 350. Plaintiffs fall far short of meeting this standard.

First, as emphasized above and as this Court had previously recognized, ECF No. 45 at 45 n.33, Plaintiffs have not identified an official policy directing reliance solely on four enumerated factors for stops. Defendants' declarations confirm that no directive instructs officers to rely exclusively on the four factors. Rather, agents are trained to evaluate the totality of the circumstances and to articulate the specific facts supporting reasonable suspicion in each case. *E.g.*, ECF No. 94-4, Declaration of Daniel Parra 3-11; ECF No. 71-1, Declaration of Andre Quinones 3-5.

Second, Plaintiffs fail to show that factual differences among putative members are immaterial. *Compare* ECF No. 140-7 ¶¶ 4-9 (detailing an alien's stop and arrest at a bus stop) *with* ECF No. 140-9 ¶ 3 (alleging being questioned by government officers without resulting in an arrest) *and* ECF No. 140-10 (alleging being "stopped, interrogated, and mistreated" without resulting in an arrest); *compare* ECF Nos. 140-7 *and* 140-8 (detailing alien stop and arrest) *with* 140-9 and 140-10 (U.S. citizens alleging being questioned but not arrested or otherwise stopped). Stops and detentions occur across seven counties under varying circumstances, informed by "the totality of the circumstances"—including intelligence, surveillance, and interagency tips not visible to the suspect. *See, e.g.*, ECF No. 87 at 38-39 (noting stops may only occur after "identifying 'specific articulable facts'" and citing *United States v. Montero-Camargo*, 208 F.3d 1122, 1129 (9th Cir. 2000), for the proposition that a reasonable suspicion assessment must be based on "the totality of the circumstances").

Third, Plaintiffs' anecdotal declarations (Mot. Exs. 7-14) describe scattered, individualized encounters, none of which show that a stop was predicated solely on the four prohibited factors. The record instead shows diversity, not commonality: Gavidia describes a single stop allegedly based on his appearance (Mot. Ex. 10 ¶ 2); Viramontes recounts three visits with differing outcomes (Mot. Ex. 9 ¶ 3); Perdomo only speculates about future harm (Mot. Ex. 7 ¶ 14); Molina attributes a stop to his appearance without knowledge of other intelligence (Mot. Ex. 8 ¶ 13); and organizational declarations recount hearsay reports from unnamed individuals (Mot. Exs. 11-14). These varied, anecdotal accounts cannot establish a "common answer apt to drive the resolution of the litigation." *Wal-Mart*, 564 U.S. at 350.

C. Plaintiffs Cannot Establish Typicality

Typicality requires that the claims of the named plaintiffs be "reasonably coextensive with those of absent class members." *Just Film, Inc. v. Buono*, 847 F.3d 1108, 1116 (9th Cir. 2017). Plaintiffs fail this test. Even the named individual Plaintiffs differ significantly in immigration status, circumstances of arrest, and alleged injuries. *See* Mot. at 4-5 (noting some arrests were at work while others were at a bus stop and noting some Plaintiffs are U.S. citizens while others are aliens). Proposed class members' supposed injuries could be even more varied and impossible to resolve by appeal to the claims brought by Plaintiffs. Organizational Plaintiffs purport to represent even broader categories, including non-members or relatives of members. *Id.* 5-7. This lack of alignment echoes 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 anecdote and thus fail to demonstrate named Plaintiffs' claims are typical of this amorphous, undefined class. Plaintiffs have not presented any evidence that their experience is "typical" of the experience of their proposed class.

D. Plaintiffs Cannot Establish Adequacy

Finally, the record shows the declarants lack any understanding of their responsibilities as class representatives. *See* Mot. Exs. 7-10. Each declaration recites, in nearly identical language and formatting, the same boilerplate statement: that the declarant "understand[s]" he or she is a plaintiff in a class action, "understand[s]" a duty to stay informed and consider the interests of absent class members, and is "prepared to represent the class." *Id.* Yet none explain what those responsibilities actually entail. Separately, the uniformity of these submissions calls into question whether the declarants themselves comprehend their asserted obligations. In such circumstances, the reliability of the declarations cannot be adequately assessed. *Cf. Mei Chai Ye v. U.S. Dep't of Justice*, 489 F.3d 517, 524 (2d Cir. 2007) (noting that "striking similarities between affidavits are an indication that the statements are 'canned'"). Courts have rejected adequacy where representatives do not comprehend their role. *Amchem*, 521 U.S. at 626-27.

Organizational plaintiffs fare no better. Their declarations rely on pseudonymous members, raising due process concerns. *See Rapuano v. Trs. of Dartmouth Coll.*, 334 F.R.D. 637, 649 (D.N.H. 2020) (class members have a right to know who purports to represent them). Without identifiable representatives, a court cannot assess their adequacy or assure itself of the absence of conflicts of interest. *See also Doe (1) v. Univ. of Kan. Hosp. Auth.*, No. 2:25-CV-02200-HLT-TJJ, 2025 WL 1634958, at *4 (D. Kan. June 9, 2025). Several organizations also fail to show they have members in the district at all. *See* Mot. Ex. 13 ¶¶ 1-6.

In sum, because Plaintiffs cannot establish numerosity, commonality, typicality, or adequacy, they fail to carry their burden under Rule 23(a). The Court should deny certification on this basis alone.

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

Certification under Rule 23(b)(2) is improper and independent grounds for denying Plaintiffs' class certification motion. Rule 23(b)(2) permits certification only when "the party opposing the class has 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." Fed. R. Civ. P. 23(b)(2). The Supreme Court has emphasized that "Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart*, 564 U.S. at 360; *see also Parsons v. Ryan*, 754 F.3d 657, 687 (9th Cir. 2014). Where, as here, the proposed class includes individuals who have not been subjected to the challenged conduct and face no imminent risk of it, 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 at least seven counties and with vastly different immigration statuses—from illegal 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).

The record further underscores that the putative class sweeps across a wide array of circumstances, undermining any claim of commonality. For example, some declarants describe brief investigatory stops,

while others recount full custodial arrests. Still others emphasize what they characterize as "consensual encounters," and a different group describe interactions they themselves initiated—such as approaching officers to ask questions or request assistance. These divergent scenarios implicate distinct legal standards and factual predicates, making it impossible to resolve the claims "in one stroke." The variation in the alleged law enforcement encounters highlights the overbreadth of the class definition and demonstrates that individual circumstances, not classwide issues, would dominate the litigation.

This lack of cohesion is fatal, because the alleged Fourth Amendment violations necessarily require individualized determinations. The Supreme Court has repeatedly stressed that reasonableness under the Fourth Amendment turns on "the totality of the circumstances" and "demand[s] specificity in the information upon which police action is predicated." *Terry v. Ohio*, 392 U.S. 1, 21 & n.18 (1968); *Ashcroft v. al-Kidd*, 563 U.S. 731, 736 (2011). This Court has acknowledged as much. *See* ECF No. 87 at 38-39 (noting stops may only occur after "identifying 'specific articulable facts" and citing *Montero-Camargo,* 208 F.3d at 1129, for the proposition that a reasonable suspicion assessment must be based on "the totality of the circumstances"); *see Black Lives Matter L.A. v. City of Los Angeles*, 113 F.4th 1249, 1258-62 (9th Cir. 2024) (rejecting certification of a Fourth Amendment class because claims were too fact-specific and individualized); *Portis v. City of Chicago*, 613 F.3d 702, 705 (7th Cir. 2010) ("The premise of the class certification is that one rule applies to all members," but "[b]ecause [Fourth Amendment] reasonableness is a standard rather than a rule, and because one detainee's circumstances differ from another's, common questions do not predominate and class certification is inappropriate."). That defect confirms why Rule 23(b)(2) certification is improper here, where the proposed relief cannot resolve the diverse circumstances of stops, detentions, and encounters across seven counties in "one stroke." *Wal-Mart*, 564 U.S. at 350. The Court cannot enter a single injunction resolving the reasonableness of diverse and fact-specific stops involving different officers, circumstances, and locations. *See Shook v. Bd. of Cnty. Comm'rs*, 543 F.3d 597, 604 (10th Cir. 2008) (Rule 23(b)(2) class inappropriate where relief depends on "highly individualized determinations").

Certification risks harming putative class members through claim preclusion. A broad class judgment could bar individuals from raising additional challenges to their stop, detention, or 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). Plaintiffs offer no reason why class treatment is necessary—notwithstanding the fact the Court has already issued injunctive relief "District-wide[,]" ECF No. 87 at 30 n.21—particularly given that any individual relief could be provided through party-specific injunctions or habeas remedies.

In short, this case is not one where "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. Because the proposed relief would require individualized determinations and could not uniformly benefit the diverse putative class, Rule 23(b)(2) certification is improper.

IV. *CASA* Precludes Class Certification as a Vehicle for Universal Relief

Plaintiffs argue that certifying the proposed class would follow a long tradition of certifying classes in cases in the immigration context, including those raising Fourth Amendment claims. Mot. at 1 (collecting cases). They further argue that courts routinely certify classes in systemic civil rights challenges to law enforcement policies and practices, and "the primary role of [Rule 23(b)(2)] has always been the certification of civil rights class actions." Mot. at 2. Plaintiffs are mistaken and the authority they rely on predates *CASA*, 145 S. Ct. at 2540, and the specific proposed class definition in this case implicates the authority set out in *CASA*.

As currently defined, Plaintiffs' putative class casts too wide a net. While not blatantly seeking a nation-wide injunction, it is impossible to see how the proposed class would not have the same practical effect since the injunction Plaintiffs have sought restrains defendants as to everyone in the District rather than Plaintiffs themselves or even to a putative class. The equitable principles from the Supreme Court's recent decision in *CASA*, which held that district courts lack authority to issue universal injunctions, support denying class certification here, where the relief sought would cover seven distinct and vast counties and a combined population that is even larger than that of other states and even some countries. *See CASA*, 145 S. Ct. at 2540

Plaintiffs suggest (Mot. at 12-13) that certification is justified because the Court previously entered district-wide relief, or that broad injunctions may be permissible to "protect" the Court's jurisdiction over putative class claims. But *CASA* forecloses that theory. *CASA* makes clear that universal relief cannot be achieved through Rule 23 without rigorous adherence to the Rule's requirements, and provisional certification cannot fill the gap. *See Wal-Mart*, 564 U.S. at 350-51. The suggestion that district-wide relief is necessary to preserve jurisdiction over absent class members is unfounded: the Court's jurisdiction remains intact without certifying an amorphous class, and nothing in the pending appellate review of the TRO supports repackaging universal injunctions as class-wide remedies. The Supreme Court has explicitly cautioned against this: "[D]istrict courts should not view [*CASA*] as an invitation to certify nationwide classes without scrupulous adherence to the rigors of Rule 23. Otherwise, the universal injunction will return from the grave under the guise of 'nationwide class relief[.]'" *CASA*, 145 S. Ct. at 2566 (Alito, J. concurring). In *CASA*, the Supreme Court addressed universal injunctions and held that "Congress has granted federal courts no such power," *id.* at 2550, as universal injunctions have no historical analogue in equity practice, *id.* at 2551. Instead, the governing principle is that a court granting equitable relief "may administer complete relief *between the parties*." *Id.* at 2557 (quotation omitted). "Under this principle, the question is not whether an injunction offers complete relief to everyone potentially affected by an allegedly unlawful act; it is whether an injunction will offer complete relief *to the plaintiffs before the court*." *Id.* (emphasis in original). Focusing on the "plaintiffs before the court" and not "everyone" is especially important because, "[w]hen a federal court enters a universal injunction against the Government, it 'improper[ly] intru[des]' on 'a coordinate branch of the Government' and prevents the Government from enforcing its policies against nonparties." *Id.* at 2561 (quoting *Immigr. & Naturalization Serv. v. Legalization Assistance Project of L.A. Cnty. Fed'n of Lab.*, 510 U.S. 1301, 1306 (1993) (O'Connor, J., in chambers)).

Plaintiffs' declarations, at best, describe how ICE's arrests affect each Plaintiff's respective location that allegedly harmed *Plaintiffs*. But Plaintiffs have not demonstrated that they adequately represent the interests of *every other individual at every location across all seven counties totaling 20*

million people.[2] Migration Policy Inst., *Profile of the Unauthorized Population: Los Angeles County, CA*, https://www.migrationpolicy.org/data/unauthorized-immigrantpopulation/county/6037. Likewise, the lawfulness of an arrest in the immigration context cannot be resolved uniformly with respect to every class member. And Plaintiffs have failed to demonstrate that their proposed class is entitled to the sort of single, indivisible remedy that is necessary for maintaining a class under Rule 23(b)(2). Because Rule 23 "does not set forth a mere pleading standard" but instead imposes a burden on Plaintiffs to "affirmatively demonstrate[ ] compliance with the Rule," *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 180 (D.D.C. 2015) (citation modified), Plaintiffs' unsubstantiated assertions that Rule 23's requirements are satisfied here are insufficient.

Accordingly, this Court cannot properly provide preliminary relief to anyone beyond the named individuals before it.

V. Certification Should be Denied Pending Resolution of Defendants' Appeal

Even if the Court were otherwise inclined to consider class certification now, prudence counsels denial or deferral until higher courts resolve Defendants' pending appeal. The Supreme Court and the Ninth Circuit are currently considering questions that bear directly on the viability of Plaintiffs' claims and the scope of relief that may be available in this action. Their rulings will clarify whether Plaintiffs have a cognizable cause of action, whether the relief they seek is legally permissible, and whether the constitutional and statutory theories they advance are sustainable.

Proceeding with certification in the interim would risk expending significant judicial and party resources to define, notice, and manage a class that may ultimately prove improper or unnecessary once appellate guidance issues. Prudence and sound case management counsel in favor of deferring any ruling on class certification until the pending appellate proceedings conclude. *See* Fed. R. Civ. P. 1, 16. Proceeding now risks unnecessary duplication and wasted resources if those higher-court decisions ultimately narrow or eliminate key issues. Waiting until the appellate courts have spoken will ensure that

---

[2] Plaintiffs do not define the proposed class based on Spanish-speaking. *See* Mot. at 3. But the estimate of two million illegal aliens in the seven counties necessarily encompasses far more than just Spanish-speaking aliens. At a minimum, it includes other foreign-language speakers—for example, Chinese, Tagalog, or other immigrant populations—underscoring the breadth and heterogeneity of the putative class.

this Court addresses certification against a settled backdrop, consistent with the Rules' directive to secure the just, speedy, and inexpensive resolution of cases.

Deferring class certification until after resolution of the pending appeal will therefore conserve resources, avoid inconsistent rulings, and ensure that any certification decision rests on a stable and authoritative legal framework.

CONCLUSION

Because Plaintiffs' proposed class improperly seeks relief that Rule 23 does not allow, certification would effectively authorize a universal injunction untethered to any concrete injury. That approach is squarely foreclosed by Supreme Court precedent and would prejudice both the Court and absent class members. At a minimum, certification should be denied while the Supreme Court and the Ninth Circuit resolve Defendants' pending appeal, which will clarify several dispositive issues.

Dated: August 21, 2025

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

DREW C. ENSIGN
Deputy Assistant Attorney General

TIBERIUS DAVIS
SEAN SKEDZIELEWSKI
Counsel to the Assistant Attorney General

STEPHANIE L. GROFF
JASON K. ZUBATA
ANIELLO DESIMONE
JACOB A. BASHYROV
Trial Attorneys

/s/ Jonathan K. Ross
JONATHAN K. ROSS
Senior Litigation Counsel
Office of Immigration Litigation
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 305-7662
Jonathan.K.Ross@usdoj.gov

Counsel for Defendants

L.R. 11-6.2 CERTIFICATE OF COMPLIANCE

The undersigned counsel of record certifies that this filing is less than twenty-five (25) pages, which complies with L.R. 11-6.1 and this Court's Standing Order, Part VIII.C.

Dated: August 21, 2025

Respectfully submitted,

/s/ Jonathan K. Ross
JONATHAN K. ROSS
Senior Litigation Counsel
Office of Immigration Litigation
U.S. Department of Justice

Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States District Court, Central District of California, by using the CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

Respectfully submitted,

/s/ Jonathan K. Ross
JONATHAN K. ROSS
Senior Litigation Counsel
Office of Immigration Litigation
U.S. Department of Justice

Counsel for Defendants