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9 UNITED STATES DISTRICT COURT FOR THE  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 Zachary NIGHTINGALE; Courtney  
13 McDERMED; Cheryl DAVID; Pao LOPA;  
14 Maribel CARANDANG,

15 Plaintiffs,

16 v.

17 U.S. CITIZENSHIP AND IMMIGRATION SERVICES;  
18 U.S. IMMIGRATION AND CUSTOMS  
19 ENFORCEMENT; U.S. DEPARTMENT OF  
20 HOMELAND SECURITY,

21 Defendants.

No. 3:19-cv-03512-WHO

**Plaintiffs' Notice of Motion  
and Motion for Class  
Certification**

**Date: October 2, 2019**

**Time: 2:00 P.M.**

**Judge William H. Orrick**

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\* *Admitted pro hac vice*

\*\**Applications for admission pro hac vice pending*

\*\*\**Application for admission pro hac vice forthcoming*

1 PLEASE TAKE NOTICE that on October 2, 2019, at 2:00 p.m., or as soon  
 2 thereafter as the matter may be heard at the above-entitled court located at the San  
 3 Francisco Courthouse, Courtroom 2 of the 17th floor, 450 Golden Gate Avenue, San  
 4 Francisco, CA 94102, with the Honorable District Judge William H. Orrick presiding,  
 5 Plaintiffs Zachary NIGHTINGALE, Courtney McDERMED, Cheryl DAVID, Pao  
 6 LOPA, and Maribel CARANDANG will, and hereby do, move this Court for class  
 7 certification pursuant to Federal Rule of Civil Procedure 23.  
 8

9 This motion is based on the attached Memorandum of Points and Authorities, the  
 10 pleadings, records and files in this action, and such other evidence and argument as may  
 11 be presented at the time of hearing. A proposed order accompanies these filings.  
 12

13 Respectfully submitted,

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 27 \* Admitted *pro hac vice*      \*\* Application for admission *pro hac vice* pending  
 \*\*\* Application for admission *pro hac vice* forthcoming

28 Dated: August 8, 2019

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 24 Reg. 1755, 1757 (Jan. 16, 2007) ..... 3

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1 **I. MOTION AND PROPOSED CLASS DEFINITIONS**

2 Plaintiffs are challenging routine and systemic violations of their right to obtain timely  
3 access to immigration case files by two component agencies of Defendant Department of  
4 Homeland Security (DHS), namely Defendant U.S. Citizenship and Immigration Services  
5 (USCIS) and Defendant U.S. Immigration and Customs Enforcement (ICE). These immigration  
6 files, commonly known as A-Files, provide information that is essential to Plaintiffs' and putative  
7 class members' immigration cases, including their eligibility to apply for immigration benefits, to  
8 change their existing immigration status, to defend against removal, to work, and to travel freely.  
9 Under the Freedom of Information Act (FOIA), Defendants are required to respond to requests  
10 for A-Files within, at most, 30 business days, including when Defendant USCIS has referred all  
11 or a portion of the request to Defendant ICE. *See* 5 U.S.C. § 552(a)(6)(A), (B); 6 C.F.R. §  
12 5.4(d)(3), (g). Instead Defendants have a pattern or practice of failing to make determinations on  
13 the FOIA requests within the statutory time period; indeed, Defendants generally take several  
14 months and up to a year to respond. Consequently, Plaintiffs ask this Court for declaratory and  
15 injunctive relief.  
16  
17

18 Whether Defendants' failure to adjudicate A-File FOIA requests within 30 business days  
19 is unlawful is a legal question that is appropriate for resolution on a class-wide basis, making  
20 certification appropriate. Pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil  
21 Procedure, Plaintiffs respectfully move this Court to certify the following classes:  
22

23 **USCIS Class:** All individuals who filed, or will file, A-File FOIA requests with  
24 USCIS which have been pending, or will be pending, with USCIS for more than  
25 30 business days without a determination.

26 **ICE Referral Class:** All individuals who filed, or will file, A-File FOIA  
27 requests with USCIS that USCIS has referred, or will refer, to ICE and which  
28 have been pending, or will be pending, for more than 30 business days from the  
date of the initial filing with USCIS without a determination.



1 Plaintiffs further request that the Court: designate Plaintiffs Zachary Nightingale, Courtney  
2 McDermed, Cheryl David, and Pao Lopa to represent the USCIS Class; designate Plaintiffs  
3 Nightingale, McDermed, David, and Maribel Carandang to represent the ICE Referral Class; and  
4 appoint undersigned counsel to represent both classes.

## 5 **II. BACKGROUND**

6  
7 The Freedom of Information Act requires that an agency make a determination on a FOIA  
8 request within 20 business days. 5 U.S.C. § 552(a)(6)(A)(i). In the case of “unusual  
9 circumstances,” with a limited exception not relevant here, an agency may extend its response  
10 time by “no more than ten working days” provided it sends the requestor “written notice.” 5  
11 U.S.C. § 552(a)(6)(B)(i).

12  
13 USCIS has a pattern or practice of failing to make a determination within this statutory  
14 timeframe, even when acting on straightforward FOIA requests for a noncitizen’s immigration  
15 file, also known as an “A-File.” ICE similarly has a pattern or practice of failing to make a  
16 determination on A-File FOIA requests referred to it from USCIS within this statutory timeframe,  
17 despite the requirement that “[a]ll . . . referrals received by DHS will be handled according to the  
18 date that the FOIA request initially was received by the first component or agency, not any later  
19 date.” 6 C.F.R. § 5.4(g).

### 20 **A. The Importance of the A-File**

21  
22 DHS and its components—USCIS, ICE, and U.S. Customs and Border Protection  
23 (CBP)—maintain comprehensive files on all noncitizens in the United States, commonly referred  
24 to as A-Files. *See* USCIS, *A-Files Numbered Below 8 Million*, [https://www.uscis.gov/history-](https://www.uscis.gov/history-and-genealogy/genealogy/files-numbered-below-8-million#WhatAreAFilesCite)  
25 [and-genealogy/genealogy/files-numbered-below-8-million#WhatAreAFilesCite](https://www.uscis.gov/history-and-genealogy/genealogy/files-numbered-below-8-million#WhatAreAFilesCite) (Feb. 9, 2016).  
26 These files contain documents relating to all interactions that a noncitizen has had with an  
27 immigration agency or officer. Consequently, an A-File is a comprehensive repository of a  
28

1 noncitizen’s immigration history, including, inter alia: verification of immigration status at  
2 various points in time; copies of applications or petitions filed by, or on behalf of, the noncitizen;  
3 details regarding an individual’s entry into the United States; and information relevant to the  
4 ability to defend against deportation should DHS initiate removal proceedings. *See* Privacy Act;  
5 Alien File (A-File) and Central Index System (CIS) Systems of Records, 72 Fed. Reg. 1755, 1757  
6 (Jan. 16, 2007) (“The hardcopy paper A-File . . . contains all the individual’s official record  
7 material such as: naturalization certificates; various forms and attachments (e.g., photographs);  
8 applications and petitions for benefits under the immigration and nationality laws; reports of  
9 investigations; statements; reports; correspondence; and memoranda on each individual for whom  
10 DHS has created a record under the Immigration and Nationality Act. Subsets of information may  
11 be used to determine eligibility for citizenship under Section 320 of the Immigration and  
12 Nationality Act.”); *see also, e.g.*, Ex. A1, Nightingale Dec. ¶5; Ex. A3, McDermed Dec. ¶¶5-6;  
13 Ex. A4, Abrutyn Dec. ¶6; Ex. A7, Asch Dec. ¶3; Ex. A9, Ellison Dec. ¶4; Ex. A11, Lee Dec. ¶6;  
14 Ex. A12, Falgout Dec. ¶5; Ex. A13, Dobrin Dec. ¶¶3-4.

17 The only way a noncitizen or his or her attorney can obtain a copy of an A-File is to  
18 submit a FOIA request.<sup>1</sup> This is true even for noncitizens in removal proceedings, as discovery is  
19 not available. *See Sanchez v. Barr*, 919 F.3d 1193, 1196 (9th Cir. 2019) (Paez, J., concurring)  
20 (noting that discovery is not available in removal proceedings); *see also, e.g.*, Ex. A3, McDermed  
21 Dec. ¶7 (obtaining A-File is particularly important in removal proceedings); Ex. A5, Cleveland  
22 Dec. ¶9 (no discovery in removal proceedings); Ex. A11, Lee Dec. ¶7 (A-File for unaccompanied  
23 minors in removal proceedings, who “have trouble recounting their own immigration history”  
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27 <sup>1</sup> *See* USCIS, *Submitting FOIA Requests*, <https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/submitting-foia-requests>  
28 (Apr. 12, 2016).

1 and often “are not the keepers of their documents”); Ex. A12, Falgout Dec. ¶7 (without A-File,  
2 unable to determine eligibility for relief for client and child in removal proceedings); Ex. A13,  
3 Dobrin Dec. ¶4 (records of prior interactions with ICE or CBP critical to assessing removal  
4 defense strategy). Immigration attorneys regularly file FOIA requests for A-Files to obtain the  
5 history of a client’s interactions with the immigration system. DHS instructs that all FOIA  
6 requests for A-Files must be sent to USCIS.<sup>2</sup> If an A-File contains information that ICE created  
7 or originally acquired, USCIS may refer responsibility for processing all, or a portion of the  
8 FOIA request, to ICE. *See* 6 C.F.R. § 5.4(d)(3).  
9

10 Defendants’ delays in responding to an A-File FOIA request place attorneys, their clients,  
11 and noncitizens seeking their records without the assistance of counsel at a distinct disadvantage.  
12 Without the A-File, attorneys cannot assess a client’s affirmative or defensive immigration  
13 options. For example, A-Files contain critical information needed to determine if an individual is  
14 a U.S. citizen or is eligible for an immigration benefit, including to adjust his or her status to that  
15 of a lawful permanent resident. *See e.g.*, Ex. A8, Taurel Dec. ¶9 (A-File needed to assess  
16 adjustment eligibility for clients who have been granted Deferred Action for Childhood Arrivals);  
17 Ex. A10, Hansen Dec. ¶¶5-6, 10 (A-File important for assessing eligibility for naturalization or  
18 derivation of citizenship). Consequently, attorneys may have to postpone filing for immigration  
19 benefits or seek to continue immigration hearings, which may prolong their immigration cases or  
20 delay their receipt of lawful status. *See, e.g.*, Ex. A4, Abrutyn Dec. ¶7 (inability to establish  
21 agency error and seek termination of removal proceedings due to FOIA delay); Ex. A10, Hansen  
22 Dec. ¶7 (delays in FOIA response times cause delays in filing naturalization applications); Ex.  
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27 <sup>2</sup> *See* USCIS, *How to File a FOIA/PA Request*, <https://www.uscis.gov/about-us/freedom-information-and-privacy-act-foia/how-file-foia-privacy-act-request/how-file-a-foiapa-request> (July 24, 2019); ICE, *FOIA Overview*, <https://www.ice.gov/foia/overview> (July 24, 2018).  
28

1 A12, Falgout Dec. ¶7 (immigration judge ordered deadline to file applications for relief, where  
2 attorney is unable to determine eligibility for relief due to delayed response to FOIA request); Ex.  
3 A14, Phelps Dec. ¶10 (delay in receiving A-File impeding asylee’s ability to seek adjustment of  
4 status). The absence of the A-File also puts noncitizens at risk of having a USCIS officer or  
5 immigration judge deny an application, such as for naturalization or cancellation of removal,  
6 based on a statement or testimony considered to be inconsistent with a previous statement in the  
7 A-File. *See, e.g.*, Ex. A2, David Dec. ¶10 (clients placed into removal proceedings after filing for  
8 citizenship); Ex. A10, Hansen Dec. ¶¶5-6 (clients risk denial of naturalization application and  
9 initiation of removal proceedings by filing applications without reviewing A-File); Ex. A14,  
10 Phelps Dec. ¶8 (attorneys unable to respond to USCIS’ notice of intent to deny client’s  
11 application without first obtaining A-File). Similarly, asylum seekers are at risk of having an  
12 immigration judge deny their applications if their attorneys cannot access the paperwork from the  
13 previous interview with an asylum officer—information that would inform and strengthen the  
14 asylum application and permit the applicant to be prepared to explain any inconsistencies or  
15 translation errors. *See, e.g.*, Ex. A1, Nightingale Dec. ¶12 (A-File delay affecting client’s ability  
16 to timely file asylum application containing sufficient details); Ex. A3, McDermed Dec. ¶7 (A-  
17 File needed to “review the [asylum] officer’s notes and conclusions” from a previous credible  
18 fear interview); Ex. A5, Cleveland Dec. ¶¶12-13 (A-File needed to review asylum officers’  
19 interview notes). Information in the A-File also is critical to developing a strategy for defending  
20 against deportation in removal proceedings. *See, e.g.*, Ex. A2, David Dec. ¶4 (A-File needed for  
21 clients to assess eligibility to adjust status or possibility to terminate removal proceedings based  
22 on citizenship claim); Ex. A6, Hall Dec. ¶10 (A-File contains evidence relevant to noncitizen’s  
23 eligibility for cancellation of removal); Ex. A8, Taurel Dec. ¶7 (A-File allows attorney to, inter  
24 alia, “minimize surprises at trial” and “prepare a client for cross-examination”); Ex. A13, Dobrin  
25  
26  
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1 Dec. ¶3 (A-File required to apply for immigration benefits before USCIS, particularly where  
2 client has submitted prior applications). For example, it may contain evidence needed to establish  
3 an individual’s place and manner of entry, length of time in the United States, criminal history,  
4 and prior immigrant visa petitions filed on his or her behalf—all of which are common elements  
5 of certain forms of relief from removal under the Immigration and Nationality Act (INA). *See,*  
6 *e.g.*, 8 U.S.C. § 1255 (adjustment of status); *id.* § 1229b (cancellation of removal); 8 U.S.C. §  
7 1182(c) (1994) (former § 212(c) relief). Furthermore, an A-File may contain information relating  
8 to an individual’s encounters with immigration or other law enforcement, which informs an  
9 attorney’s assessment of the viability of moving to suppress evidence or terminate proceedings.  
10

### 11 **B. USCIS and ICE Backlogs**

12 DHS defines a backlog in the FOIA context as “[t]he number of requests or administrative  
13 appeals that are pending [] at the end of the fiscal year that are beyond the statutory time period  
14 for a response.”<sup>3</sup> DHS’ annual reports on FOIA statistics reveal a widespread pattern or practice  
15 of USCIS and ICE failing to make determinations on FOIA requests within the statutory time  
16 periods. From 2013 to the present, USCIS’ backlog increased each year, with significant growth  
17 in the past four years.<sup>4</sup> For at least a decade, the agency has consistently failed to devote  
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19

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21 <sup>3</sup> DHS, *2018 Freedom of Information Act Report to the Attorney General of the United States and the Director of the Office of Government Information Services* (“FY 2018 DHS FOIA Report”), vii (Mar. 2019), <https://tinyurl.com/ybjwfkfn>.

22 <sup>4</sup> DHS, *2013 Freedom of Information Act Report to the Attorney General of the United States* (“FY 2013 DHS FOIA Report”), 18 (Feb. 2014), <https://tinyurl.com/y595lby5> (3,394 backlogged requests); DHS, *2014 Freedom of Information Act Report to the Attorney General of the United States* (“FY 2014 DHS FOIA Report”), 17 (Feb. 2015), <https://tinyurl.com/y3csxtrm> (5,026 backlogged requests); DHS, *2015 Freedom of Information Act Report to the Attorney General of the United States* (“FY 2015 DHS FOIA Report”), 18 (Feb. 2016), <https://tinyurl.com/y3suqjgv> (16,247 backlogged requests); DHS, *2016 Freedom of Information Act Report to the Attorney General of the United States* (“FY 2016 DHS FOIA Report”), 17 (Feb. 2017), <https://tinyurl.com/y6fvlud5> (35,763 backlogged requests); DHS, *2017 Freedom of Information Act Report to the Attorney General of the United States and the Director of the Office of Government Information Services* (“FY 2017 DHS FOIA Report”), 17 (Feb. 2018),  
28

1 sufficient resources to its FOIA operations, only occasionally increasing its personnel to attempt  
 2 to reduce, but never eliminate, the backlog.<sup>5</sup> USCIS' FOIA backlog more than doubled between  
 3 FY 2015 and FY 2017, growing from 16,247 in FY 2015<sup>6</sup> to 37,877 in FY 2017.<sup>7</sup> By the end of  
 4 FY 2018, USCIS' backlog was 41,329, the largest, by far, of any DHS agency.<sup>8</sup> Many of the total  
 5 number of FOIA requests submitted to USCIS each year are for A-Files.<sup>9</sup>

7 ICE's reported backlog more than tripled between FY 2017 and FY 2018, jumping from  
 8 391 to 1,332 at the end of FY 2018.<sup>10</sup> Moreover, in FY 2018, because ICE underreported the  
 9 USCIS FOIA referrals it received, failing to account for 17,043 referrals, its actual backlog would  
 10 have been much higher.<sup>11</sup> ICE's FY 2018 FOIA backlog likely includes hundreds if not  
 11 thousands of the unreported USCIS FOIA referrals.

### 12 C. Plaintiffs' Factual Backgrounds

13 Plaintiffs Zachary Nightingale, Courtney McDermed, and Cheryl David are immigration  
 14 attorneys ("Attorney Plaintiffs") who regularly file FOIA requests for A-Files on behalf of their  
 15 clients. They file these requests to assess their clients' eligibility for immigration benefits, and to  
 16

17  
 18 <https://tinyurl.com/y2dclogy> (37,887 backlogged requests); FY 2018 DHS FOIA Report, at 21  
 19 (41,329 backlogged requests).

20 <sup>5</sup> For example, between 2012 and 2013, USCIS increased the number of FOIA adjudicators  
 21 from 213 to 355.45 and was able to reduce the backlog to 3,394. *See* DHS, 2012 Freedom of  
 22 Information Act Report to the Attorney General of the United States ("FY 2012 DHS FOIA  
 23 Report"), 16 (Feb. 2013), <https://tinyurl.com/y66bq6cm>; FY 2013 DHS FOIA Report, at 15. The  
 24 number of employees was reduced to 221.5 in 2014 and has never again reached the 2013 staff  
 25 total. *See* FY 2014 DHS FOIA Report, at 16; 2015 (227); 2016 (246); 2017 (304); 2018 (338).

26 <sup>6</sup> DHS Privacy Office, 2015 Freedom of Information Report to the Attorney General of the  
 27 United States 18 (2016), <https://tinyurl.com/y3suqjgv>.

28 <sup>7</sup> FY 2017 DHS FOIA Report, at 17.

<sup>8</sup> FY 2018 DHS FOIA Report, at 19.

<sup>9</sup> Office of Gov't Info. Servs., *Compliance Review of Immigration and Customs  
 Enforcement and Freedom of Information Act Program* (Oct. 18, 2016),  
<https://tinyurl.com/y29swspt> ("Records referred to ICE from USCIS as part of the processing of  
 requests for Alien Files, or A-Files, are a vast majority of ICE's FOIA workload.").

<sup>10</sup> FY 2018 DHS FOIA Report, at 19.

<sup>11</sup> *Id.* at 6.

1 defend against deportation, and they will continue to file such requests in the future. Ex. A1,  
2 Nightingale Dec. ¶¶4-8; Ex. A3, McDermed Dec. ¶¶3, 5-7; Ex. A2, David Dec. ¶¶3-4, 6.  
3 Plaintiffs Pao Lopa and Maribel Carandang (“Noncitizen Plaintiffs”) are noncitizens who filed  
4 FOIA requests with USCIS for copies of their A-Files. Cmplt. ¶¶60, 61.

5 All Attorney Plaintiffs and Plaintiff Lopa had A-File FOIA requests that were pending  
6 with USCIS without a determination for more than 30 days at the time the instant Complaint was  
7 filed. *See* Cmplt. ¶¶53 (several), 56 (at least three), 59 (at least seven), 60 (one); *see also* Ex. A1,  
8 Nightingale Dec. ¶4; Ex. A3, McDermed Dec. ¶4; Ex. A2, David Dec. ¶3. All Attorney Plaintiffs  
9 and Plaintiff Carandang had A-File FOIA requests that they filed with USCIS, USCIS  
10 subsequently referred to ICE, and had been pending for more than 30 days since initial filing with  
11 USCIS, at the time this Complaint was filed. Cmplt. ¶¶53 (several), 56 (at least five), 59 (at least  
12 two), 61 (one); *see also* Ex. A1, Nightingale Dec. ¶4; Ex. A3, McDermed Dec. ¶4; Ex. A2, David  
13 Dec. ¶3.

14 Plaintiff Pao Lopa filed a FOIA request for his A-File with USCIS on November 14, 2018  
15 to obtain information about his immigration history, including a previously filed naturalization  
16 application. Cmplt. ¶60. Mr. Lopa’s A-File FOIA request was pending with USCIS for more than  
17 seven months at the time the Complaint was filed, and he still has not received the requested  
18 information. Ex. C, USCIS, *FOIA/PA Check Status* (Receipt No. NRC2018168972) (retrieved  
19 Aug. 7, 2019).

20 Plaintiff Carandang filed an A-File FOIA request with USCIS on May 14, 2018 to obtain  
21 documents related to her immigration history, including prior removal proceedings, in order to  
22 adequately prepare for a naturalization interview. Cmplt. ¶61; Ex. A1, Nightingale Dec. ¶11. On  
23 October 9, 2018, USCIS responded by releasing and withholding certain documents, and referred  
24 8 pages of potentially responsive documents that may have originated from ICE to the ICE FOIA  
25  
26  
27  
28

1 Office. Cmplt. ¶62; Ex. A1, Nightingale Dec. ¶11. At the time this Complaint was filed, Ms.  
2 Carandang’s A-File FOIA request had been pending for over a year since it was initially filed  
3 with USCIS. ICE still has not made a determination on the portion of her request referred to it.  
4 Ex. D, USCIS, *FOIA/PA Check Status* (Receipt No. NRC2018070921) (retrieved Aug. 7, 2019).

### 5 **III. THE COURT SHOULD CERTIFY THE PROPOSED CLASSES.**

#### 6 **A. Class Certification Requirements**

7  
8 To obtain class certification, the proposed class must satisfy the four prerequisites  
9 enumerated in Federal Rule of Civil Procedure 23(a), as well as at least one of the requirements  
10 of Rule 23(b). Rule 23 “creates a categorical rule entitling a plaintiff whose suit meets the  
11 specified criteria to pursue [his or her] claim as a class action.” *Shady Grove Orthopedic Assocs.,*  
12 *P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010).

13  
14 Courts in the Ninth Circuit, including this Court, routinely grant class certification to  
15 noncitizens challenging immigration policies and practices. *See, e.g., Alfaro Garcia v. Johnson*,  
16 No. 14-CV-01775-YGR, 2014 WL 6657591, at \*16 (N.D. Cal. Nov. 21, 2014) (certifying  
17 nationwide class in case challenging government’s failure to provide timely reasonable fear  
18 interviews); *Santillan v. Ashcroft*, No. C 04-2686, 2004 WL 2297990, at \*12 (N.D. Cal. Oct. 12,  
19 2004) (certifying nationwide class of lawful permanent residents challenging USCIS’ delays in  
20 issuing documentation of their status); *Chhoeun v. Marin*, No. SACV 17-01898-CJC(GJSx),  
21 2018 WL 6265014, at \*7 (C.D. Cal. Aug. 14, 2018) (certifying nationwide class of released  
22 Cambodian nationals with final orders of removal facing detention without cause); *Inland*  
23 *Empire—Immigration Youth Collective v. Nielsen*, No. EDCV 17–2048 PSG (SHKx), 2018 WL  
24 1061408, at \*14 (C.D. Cal. Feb. 26, 2018) (certifying nationwide class of Deferred Action for  
25 Childhood Arrivals recipients whose benefits were terminated without notice or cause); *Rosario*  
26 *v. U.S. Citizenship & Immigration Servs.*, No. C15-0813JLR, 2017 WL 3034447, at \*12 (W.D.  
27  
28



1 Wash. July 18, 2017) (granting nationwide certification to class of initial asylum applicants  
2 challenging USCIS' delays in adjudicating employment authorization applications); *Rojas v.*  
3 *Johnson*, No. C16-1024-RSM, 2017 WL 1397749, at \*7 (W.D. Wash. Jan. 10, 2017) (certifying a  
4 nationwide class and two subclasses of asylum seekers challenging defective asylum application  
5 procedures); *A.B.T. v. U.S. Citizenship & Immigration Servs.*, No. C11-2108 RAJ, 2013 WL  
6 5913323, at \*2 (W.D. Wash. Nov. 4, 2013) (certifying nationwide class and approving a  
7 settlement amending practices by EOIR and USCIS that precluded asylum applicants from  
8 receiving employment authorization).  
9

10 In reviewing whether to certify a nationwide class, courts also consider whether (1) there  
11 are similar cases currently pending in other jurisdictions, and (2) the plaintiffs are challenging a  
12 nationwide policy or practice. *See, e.g., Arnott v. U.S. Citizenship & Immigration Servs.*, 290  
13 F.R.D. 579, 589 (C.D. Cal. 2012); *Clark v. Astrue*, 274 F.R.D. 462, 471 (S.D.N.Y. 2011). To the  
14 best of counsel's knowledge, there are no similar cases currently pending in other jurisdictions.  
15 While there are pending actions in other jurisdictions challenging USCIS and ICE FOIA delays in  
16 individual cases, counsel is unaware of any cases challenging the systemic failure by USCIS and  
17 ICE to comply with the FOIA's statutory timeframe. Moreover, this issue can only be addressed  
18 on a nationwide level. USCIS is the primary custodian of A-Files and, as such, all FOIA requests  
19 must be initiated and filed with USCIS. *See supra* Section II.A. As such, USCIS' and ICE's  
20 statutory violations of the FOIA have *de facto* nationwide reach and are particularly amenable to  
21 class-wide treatment. *See Clark*, 274 F.R.D. 462 at 471 (finding nationwide class appropriate  
22 because the "scope of injunctive relief is dictated by the extent of the violation established"  
23 (quoting *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979)).  
24  
25  
26  
27  
28

1           **B. Both Classes Satisfy Rule 23(a) Prerequisites**

2                   **1. The Proposed Classes Are So Numerous that Joinder Is Impracticable**

3           Rule 23(a) requires, first, that the class be “so numerous that joinder of all members is  
4 impracticable.” Fed. R. Civ. P. 23(a)(1). “[I]mpracticability’ does not mean ‘impossibility,’ but  
5 only the difficulty or inconvenience of joining all members of the class.” *Harris v. Palm Springs*  
6 *Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964) (citation omitted).  
7

8           Nor does Rule 23(a)(1) require a fixed number of class members; to the contrary,  
9 relatively few class members can suffice. *See, e.g., Horn v. Associated Wholesale Grocers, Inc.*,  
10 555 F.2d 270, 275-76 (10th Cir. 1977) (41-46 class members); *Jones v. Diamond*, 519 F.2d 1090,  
11 1100 n.18 (5th Cir. 1975) (suggesting 48 class members would suffice), *abrogated on other*  
12 *grounds by Gardner v. Westinghouse Broad. Co.*, 437 U.S. 478 (1978); *Ark. Educ. Ass’n v. Bd. of*  
13 *Educ.*, 446 F.2d 763, 765-66 (8th Cir. 1971) (20 class members held sufficient); *McCluskey v.*  
14 *Trs. of Red Dot Corp. Emp. Stock Ownership Plan & Trust*, 268 F.R.D. 670, 673-76 (W.D. Wash.  
15 2010) (finding numerosity and certifying class with 27 known members); *Perez-Funez v. Dist.*  
16 *Dir., Immigration & Naturalization Serv.*, 611 F. Supp. 990, 995 (C.D. Cal. 1984) (“There is no  
17 fixed number of class members which either compels or precludes the certification of a class.”).  
18

19           Both proposed classes meet the numerosity requirement. With respect to the proposed  
20 USCIS class, Plaintiffs reasonably estimate hundreds, if not thousands, of attorneys and  
21 noncitizens constitute class members. *See infra* Section II.A. The declarations of immigration  
22 attorneys substantiate, at a minimum, at least 173 A-File FOIA requests filed on behalf of  
23 noncitizens that have been pending with USCIS for more than 30 business days without a  
24 determination, and at least 139 A-File FOIA requests that USCIS has referred to ICE and have  
25 been pending for more than 30 business days. Ex. A1, Nightingale Dec. ¶4 (16 FOIA requests  
26 pending, of which at least 4 are pending with ICE); Ex. A2, David Dec. ¶3 (5 with USCIS, 7 with  
27  
28

1 ICE); Ex. A3, McDermed Dec. ¶¶3-4 (5 with USCIS, 6 with ICE); Ex. A4, Abrutyn Dec. ¶4 (11  
2 with USCIS); Ex. A5, Cleveland Dec. ¶¶6-7 (office-wide estimate of 15 with USCIS and 15 with  
3 ICE); Ex. A6, Hall Dec. ¶¶4-5 (office-wide estimate of 45 with USCIS and 3 with ICE); Ex. A7,  
4 Asch Dec. ¶9 (2 with USCIS, 1 with ICE); Ex. A8, Taurel Dec. ¶3 (2 with USCIS); Ex. A9,  
5 Ellison Dec. ¶6 (7 with USCIS); Ex. A11, Lee Dec. ¶4 (7 with USCIS); Ex. A12, Falgout Dec.  
6 ¶¶6, 9 (office-wide estimate of 50 with USCIS and 100 with ICE); Ex. A13, Dobrin Dec. ¶¶5-6  
7 (at least 10 with USCIS and 3 with ICE); Ex. A14, Phelps Dec. ¶¶8, 10 (identifying at least 2  
8 pending with USCIS). Additionally, these declarants—immigration attorneys who practice in  
9 multiple different cities across the nation—describe chronic delays after submitting FOIA  
10 requests for A-Files for nearly all their clients, ranging from around 4 to 12 months, and in some  
11 cases, over a year. Ex. A1, Nightingale Dec. ¶4 (4 to 7 months); Ex. A2, David Dec. ¶5 (4 to 8  
12 months); Ex. A5, Cleveland Dec. ¶5 (2 to 12 months, or longer); Ex. A6, Hall Dec. ¶6 (4 to 7  
13 months for A-Files of clients in removal proceedings, and 5 to 10 months for others); Ex. A8,  
14 Taurel Dec. ¶3 (1 to 4 months for A-Files of clients in removal proceedings, 5 to 9 months for  
15 others); Ex. A9, Ellison Dec. ¶7 (4 to 6 months); Ex. A11, Lee Dec. ¶5 (3 to 7 months); Ex. A12,  
16 Falgout Dec. ¶6 (generally 6 months or longer); Ex. A13, Dobrin Dec. ¶5 (6 to 12 months).

19 Because most of the FOIA requests to USCIS are A-File requests and USCIS almost  
20 never makes these determinations within 30 days, A-File FOIA requests comprise a significant  
21 number of USCIS' current backlog. At the close of FY 2018, the backlog totaled 41,329.  
22 Defendants know the exact number of putative USCIS class members who have not received a  
23 determination on their A-File FOIA requests. *Accord Barahona-Gomez v. Reno*, 167 F.3d 1228,  
24 1237 (9th Cir. 1999) (“[Immigration officials are] uniquely positioned to ascertain class  
25  
26  
27  
28

1 membership.”).<sup>12</sup>

2 Similarly, the proposed ICE Referral Class meets the numerosity requirement. Plaintiffs  
 3 reasonably estimate that there are at least several hundred members of this class, and likely  
 4 several thousand. *See supra* Section II.A. At the end of FY 2018, ICE documented a backlog of  
 5 1,332 FOIA requests.<sup>13</sup> The attorney declarants substantiate this by evidencing at least 139 A-File  
 6 FOIA requests that USCIS referred to ICE and that have been pending for more than 30 business  
 7 days since they were initially filed. *See supra* pp. 11-12. Moreover, as with the USCIS class,  
 8 declarants describe a pattern or practice of such delays on ICE’s part, consistent with its own  
 9 backlog report. Practitioners across the United States report having numerous A-File FOIA  
 10 requests submitted to USCIS that are then referred to ICE for additional review and release but  
 11 remain pending more than 30 business days after initial filing, with delays ranging anywhere  
 12 from around 4 to 12 months, and sometimes over a year. Ex. A1, Nightingale Dec. ¶4 (6 to 12  
 13 months); Ex. A2, David Dec. ¶3 (6 months); Ex. A6, Hall Dec. ¶6 (1 to 2 months of additional  
 14 delay beyond USCIS processing time); Ex. A8, Taurel Dec. ¶3 (1 to 4 months of additional delay  
 15 beyond USCIS processing time); Ex. A12, Falgout Dec. ¶9 (generally 6 months or longer,  
 16 sometimes nonresponsive); Ex. A13, Dobrin Dec. ¶6 (4 to 12 months).

17  
 18  
 19 Three additional reasons establish that both proposed classes satisfy the numerosity  
 20 requirement. First, caselaw confirms that, since Plaintiffs seek injunctive and declaratory relief,  
 21 the “requirement is relaxed and plaintiffs may rely on . . . reasonable inference[s] arising from  
 22 plaintiffs’ other evidence that the number of unknown and future members of [the] proposed  
 23 subclass . . . is sufficient to make joinder impracticable.” *Arnott*, 290 F.R.D. at 586 (quoting  
 24  
 25

---

26  
 27 <sup>12</sup> Joinder of proposed USCIS Class members also is impracticable because Defendants do  
 not provide the number of A-File FOIA requests in any publicly available information.

28 <sup>13</sup> FY 2018 DHS FOIA Report, at 19.

1 *Sueoka v. United States*, 101 F. App'x 649, 653 (9th Cir. 2004)) (alterations in original). Second,  
2 the proposed class includes individuals who will be subjected to Defendants' delays in the future;  
3 when the class includes "unnamed, unknown future members," joinder is impracticable and thus  
4 "the numerosity requirement is . . . met, regardless of class size." *Nat'l Assoc. of Radiation*  
5 *Survivors v. Walters*, 111 F.R.D. 595, 599 (N.D. Cal. 1986) (internal quotation marks and citation  
6 omitted). And third, even if numerosity were a close question here (which it is not), this Court  
7 still should certify the class at this initial stage. *See Stewart v. Assocs. Consumer Discount Co.*,  
8 183 F.R.D. 189, 194 (E.D. Pa. 1998) ("[W]here the numerosity question is a close one, the trial  
9 court should find that numerosity exists, since the court has the option to decertify the class later  
10 pursuant to Rule 23(c)(1).").

11  
12 Thus, both proposed classes satisfy the numerosity criterion of Rule 23(a)(1).

## 13 **2. The Proposed Classes Present Common Questions of Law and Fact**

14  
15 Rule 23(a) also requires that the case involve "questions of law or fact common to the  
16 class." Fed. R. Civ. P. 23(a)(2). In *Wal-Mart Stores, Inc. v. Dukes*, the Supreme Court explained  
17 that commonality requires that the "class members 'have suffered the same injury.'" 564 U.S.  
18 338, 350 (2011) (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). Further, the  
19 plaintiffs' claims "must depend upon a common contention of such a nature that it is capable of  
20 class-wide resolution—which means that determination of its truth or falsity will resolve an issue  
21 that is central to the validity of each one of the claims in one stroke." *Wal-Mart*, 564 U.S. at 350.  
22 However, the plaintiffs need not show that all questions, "or even a preponderance of questions,"  
23 to meet this standard; instead, "[s]o long as there is 'even a single common question,' a would-be  
24 class can satisfy the commonality requirement." *Wang v. Chinese Daily News, Inc.*, 737 F.3d 538,  
25 544 (9th Cir. 2013) (quoting *Wal-Mart*, 564 U.S. at 544).

1 Here, members of both proposed classes satisfy this standard. Defendant USCIS and  
 2 Defendant ICE both have engaged—and continue to engage—in a pattern and practice of failing  
 3 to make determinations on A-File FOIA requests within the time period mandated by statute.  
 4 Cmpl. ¶¶33-37, 75, 80. Defendants’ own statistics—documenting ever-growing backlogs of  
 5 FOIA requests—demonstrate that each Defendant engages in such a pattern and practice. Cmpl.  
 6 ¶¶23, 29-30; *see also supra* Section II.B. DHS defines a FOIA backlog as “[t]he number of  
 7 requests or administrative appeals that are pending . . . at the end of the fiscal year that are  
 8 beyond the statutory time period for a response.”<sup>14</sup> Given this definition, these backlogs are  
 9 themselves proof of a pattern or practice.  
 10

11 USCIS’ backlog grew from 16,247 to 41,329 between FY 2015 and FY 2018, while ICE’s  
 12 backlog grew from 555 to 1,332 during that same period.<sup>15</sup> The existence within each agency of  
 13 thousands of FOIA requests in which determinations have not been made within the statutory  
 14 time period constitutes a pattern or practice of failure to meet the statutory time frames. *Accord*  
 15 *Allee v. Medrano*, 416 U.S. 802, 815 (1974) (finding that prospective injunctive relief may be  
 16 “appropriate” where there is a showing of a “persistent pattern of . . . misconduct.”); *see also*  
 17 *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 555-56, 558-59 (9th Cir. 1990) (noting that  
 18 injunctive relief was available to combat a persistent pattern and practice of misconduct violative  
 19 of plaintiff’s rights). Members of each class, by definition, are part of USCIS’ and ICE’s  
 20 backlogs. Cmpl. ¶ 64 (defining both USCIS and ICE classes as individuals whose A-File FOIA  
 21 requests have been, or will be pending, for more than 30 business days after filing). The  
 22 declarations submitted by immigration practitioners across the nation, *see* Exs. A1-A14, further  
 23  
 24  
 25

26 <sup>14</sup> FY 2018 DHS FOIA Report, at vii.

27 <sup>15</sup> FY 2015 DHS FOIA Report, at 20; FY 2018 DHS FOIA Report, at 21. Moreover, in FY  
 28 2018, ICE underreported the USCIS FOIA referrals it received, failing to account for 17,043  
 referrals. FY 2018 DHS FOIA Report, at 6.

1 establish Defendants USCIS' and ICE's pattern of failing to make timely determinations on A-  
2 File FOIAs.

3       Members of each proposed class all share a common injury: the delayed receipt of  
4 determinations on their A-File FOIA requests filed with USCIS, and, with respect to the ICE  
5 Referral class, subsequently referred by USCIS to ICE. *See Pub. Citizen v. U.S. Dep't of Justice*,  
6 491 U.S. 440, 449 (1989) (explaining that the Supreme Court has held that a FOIA requester who  
7 sought records and did not receive them has been injured) (citations omitted); *Wilderness Soc'y,*  
8 *Inc. v. Rey*, 622 F.3d 1251, 1258 (9th Cir. 2010) ("Courts have found similar statutory rights to  
9 information—the deprivation of which can give rise to concrete injury sufficient for the purposes  
10 of Article III standing—under the Freedom of Information Act"). Moreover, Plaintiffs' claims  
11 with respect to each class depend upon a common contention, namely that Defendant USCIS' and  
12 ICE's pattern and practice of failing to make determinations on A-File FOIA requests within 30  
13 business days from the date that a request is filed with USCIS violates 5 U.S.C. § 552(a)(3),  
14 (a)(6), and with respect to ICE, also violates 6 C.F.R. § 5.4(d)(3), (g). Resolution of this  
15 contention will fully resolve the case for all proposed class members.  
16  
17

18       Thus, the "glue," *Wal-Mart*, 564 U.S. at 352, that holds each class together is each  
19 Defendants' pattern or practice of failing to make determinations in A-File FOIA cases within the  
20 statutorily mandated time frame. All members of the two proposed classes are or will be impacted  
21 by these practices. Further, the practices are either "unlawful as to every [putative class member]  
22 or [they are] not. The inquiry does not require [the Court] to determine the effect of those policies  
23 and practices upon any individual class member . . . or to undertake any other kind of  
24 individualized determination." *Parsons v. Ryan*, 754 F.3d 657, 678 (9th Cir. 2014).  
25

26       In short, Plaintiffs' injuries and those of putative class members of both classes are  
27 capable of class-wide resolution through declaratory relief declaring Defendants' delays unlawful  
28

1 under the FOIA statute and implementing regulations, and injunctive relief requiring that these  
2 unlawful delays cease.

3 **3. Plaintiffs' Claims Are Typical of the Claims of the Members of the**  
4 **Proposed Classes**

5 The third Rule 23(a) criterion is that “the claims or defenses of the representative parties  
6 are typical of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “Typical” simply  
7 means that “a class representative must be part of the class and ‘possess the same interest and  
8 suffer the same injury’ as the class members.” *Falcon*, 457 U.S. at 156 (internal quotation marks  
9 and citation omitted).

10  
11 Factual differences among class members therefore do not defeat typicality where, as  
12 here, the named Plaintiffs challenge a uniform policy or practice and suffer injuries similar to  
13 those of the proposed class members, “result[ing] from the same, injurious course of conduct.”  
14 *Armstrong v. Davis*, 275 F.3d 849, 869 (9th Cir. 2001), *abrogated on other grounds by Johnson*  
15 *v. California*, 543 U.S. 499 (2005); *see also, e.g., Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020  
16 (9th Cir. 1998) (the typicality rule’s “permissive standards” only require the plaintiff  
17 representative’s claims to be “reasonably co-extensive with those of absent class members; they  
18 need not be substantially identical”), *overruled on other grounds by Wal-Mart; LaDuke v. Nelson*,  
19 762 F.2d 1318, 1332 (9th Cir. 1985) (“The minor differences in the manner in which the  
20 representative’s Fourth Amendment rights were violated does not render their claims atypical of  
21 those of the class.” (internal footnote omitted)).

22  
23 Here, the claims of the named Plaintiffs are typical of the claims of putative class  
24 members encapsulated in the proposed class definitions for the USCIS Class and ICE Referral  
25 Class. All Attorney Plaintiffs and Plaintiff Lopa have A-File FOIA requests filed with USCIS  
26 which have been pending for over 30 days, and thus fit precisely within the USCIS Class.  
27 Similarly, all Attorney Plaintiffs and Plaintiff Carandang fall within the ICE Referral Class: all  
28



1 have filed A-File FOIA requests with USCIS that have been referred to ICE and which remain  
2 pending without a determination from ICE more than 30 days since they were filed.

3 Given that the named Plaintiffs are members of the proposed classes, raise common legal  
4 claims and are united in their interest and injury, the element of typicality is met.

5  
6 **4. The Named Plaintiffs Will Adequately Protect the Interests of the  
Proposed Class, and Counsel Are Qualified to Litigate this Action**

7 Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect  
8 the interests of the class.” “Whether the class representatives satisfy the adequacy requirement  
9 depends on ‘the qualifications of counsel for the representatives, an absence of antagonism, a  
10 sharing of interests between representatives and absentees, and the unlikelihood that the suit is  
11 collusive.’” *Walters v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998) (citations omitted).

12  
13 The named Plaintiffs each seek relief on behalf of their respective class as a whole and  
14 have no interest antagonistic to other members of the class; they will thus fairly and adequately  
15 protect the interests of the class they seek to represent. Their mutual goal is to challenge  
16 Defendants’ unlawful practices and to obtain declaratory and injunctive relief that would not only  
17 cure this illegality but remedy the injury suffered by all current and future class members. They  
18 thus seek a remedy for the same injuries, and all share an interest in ensuring that Defendants  
19 make determinations in response to their A-File FOIAs within the statutory time periods. Thus,  
20 the interests of the representatives and of the class members are aligned.<sup>16</sup>

21  
22 Plaintiffs’ counsel are adequate. Counsel are considered qualified when they can establish  
23 their experience in previous class actions and cases involving the same field of law. *See, e.g.,*

24  
25 <sup>16</sup> Even though a defendant can “moot out” a class plaintiff’s claim after the lawsuit is filed,  
26 the Supreme Court has made clear that such a mooted-out plaintiff may still serve as class  
27 representative when the claim in the lawsuit is capable of repetition yet evading review, which is  
28 the case here. *E.g., Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975); *Cty. of Riverside v.  
McLaughlin*, 500 U.S. 44, 51-52 (1991); *see also, e.g., Pitts v. Terrible Herbst, Inc.*, 653 F.3d  
1081, 1090-91 (9th Cir. 2011).

1 *Lynch v. Rank*, 604 F. Supp. 30, 37 (N.D. Cal. 1984); *Marcus v. Heckler*, 620 F. Supp. 1218,  
2 1223-24 (N.D. Ill. 1985); *Adams v. Califano*, 474 F. Supp. 974, 979 (D. Md. 1979). Plaintiffs are  
3 represented by attorneys from the American Immigration Council, the Northwest Immigrant  
4 Rights Project, and the Law Firm of Stacy Tolchin, who all have extensive experience in  
5 handling complex and class action litigation in the immigration field. *See* Ex. B1, Realmuto Dec.;  
6 Ex. B2, Kenney Dec.; Ex. B3, Adams Dec.; Ex. B4, Tolchin Dec. Counsel have represented  
7 numerous classes of immigrants in actions that successfully obtained class relief and will  
8 zealously represent named and putative class members.

10 **C. The Action Also Satisfies the Requirements of Rule 23(b)(2)**

11 Federal Rule of Civil Procedure 23(b)(2), under which Plaintiffs seek certification,  
12 requires that “the party opposing the class has acted or refused to act on grounds that apply  
13 generally to the class.” It also “requires ‘that the primary relief sought is declaratory or  
14 injunctive.’” *Rodriguez v. Hayes*, 591 F.3d 1105, 1125 (9th Cir. 2010) (citation omitted). The rule  
15 “does not require an examination of the viability or bases of class members’ claims for  
16 declaratory and injunctive relief,” but of whether class members seek uniform relief from a  
17 practice applicable to all of them. *Parsons*, 754 F.3d at 688 (citation omitted). This suit satisfies  
18 the requirements of Rule 23(b)(2) as Defendants have a nationwide pattern or practice of inaction  
19 that is injurious to the rights and interests of the Plaintiffs and members of the putative classes.

22 Plaintiffs Nightingale, McDermed, David and Lopa, individually and on behalf of the  
23 proposed USCIS Class, challenge—and seek declaratory and injunctive relief from—Defendant  
24 USCIS’ pattern or practice of failing to make determinations on A-File FOIA requests within the  
25 statutory timeframe mandated by the FOIA statute, 5 U.S.C. § 552(a)(6)(A), (B). Cmpl. ¶74.  
26 Similarly, Plaintiffs Nightingale, McDermed, David, and Carandang, individually and on behalf  
27 of the ICE Referral Class, challenge Defendant ICE’s pattern or practice of failing to make  
28

1 determinations on A-File FOIA requests initially filed with USCIS and referred to it, within the  
2 timeframe compelled by statute and implementing regulations, 6 C.F.R. § 5.4(d)(3), (g), and seek  
3 the same relief as the USCIS Class. Cmplt. ¶¶74-77. Specifically, all Plaintiffs seek an order from  
4 this Court declaring the challenged conduct of both Defendants unlawful, ordering each  
5 Defendant to make determinations on A-File FOIA requests and referrals that have been pending  
6 for more than 30 business days within 60 business days of the Court’s order, and ordering each  
7 Defendant to make determinations on A-File FOIA requests and referrals of members of the  
8 proposed classes as mandated by 5 U.S.C. § 552(a)(6)(A)(i). Cmplt., Prayer for Relief ¶¶ 5, 6.

10 Defendants’ violations of the FOIA statute and implementing regulations demonstrate that  
11 each agency has acted “on grounds that apply generally” to the respective class, thereby making  
12 “final injunctive relief or corresponding declaratory relief . . . appropriate respecting the class as a  
13 whole.” Fed. R. Civ. P. 23(b)(2); *see also, e.g., Rodriguez*, 591 F.3d at 1126 (finding that class of  
14 noncitizens detained during immigration proceedings met Rule 23(b)(2) criteria because “all class  
15 members’ [sic] seek the exact same relief as a matter of statutory or, in the alternative,  
16 constitutional right”); *Parsons*, 754 F.3d at 688 (holding that Rule 23(b)(2) “requirements are  
17 unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory  
18 relief from policies or practices that are generally applicable to the class as a whole”).  
19

20 For the foregoing reasons, the requirements of Rule 23(b)(2) are met.  
21

#### 22 **IV. CONCLUSION**

23 For the reasons detailed in this motion, the proposed USCIS Class and ICE Referral Class  
24 are entitled to class certification under Rule 23. Plaintiffs accordingly request that the Court grant  
25 this motion and issue the accompanying proposed order.  
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Respectfully submitted,

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\* Admitted *pro hac vice*  
\*\* Application for admission *pro hac vice* pending  
\*\*\* Application for admission *pro hac vice* forthcoming

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