UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

EZEQUIEL GONZALEZ, *et al.*, *on behalf of themselves and all others similarly situated*, *Plaintiffs*, v. U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*, *Defendants*.	Case No. 1:26-CV-03564 Judge Carl J. Nichols

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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INTRODUCTION

Plaintiffs Ezequiel Gonzalez, Joel Vigil Rodriguez, Rolando Ramirez Fuentes, Enis Suleima Luna Ardila, Alex Estuardo Hernandez Perez, Vladimir Izmailov, and Domingo Tot Quip (hereinafter "Plaintiffs") bring this Motion for Class Certification on behalf of themselves and all others similarly situated. Plaintiffs seek class certification to challenge Defendants' de facto policy of withholding property seized from people detained for civil immigration purposes for far longer than needed for any legitimate governmental purpose (the "De Facto Policy").

This action is brought under the Administrative Procedure Act ("APA") and the Court's inherent equitable power to enjoin unconstitutional conduct by the Executive Branch. It seeks vacatur of the De Facto Policy and declaratory and injunctive relief prohibiting Defendants from enforcing their unlawful policy and violating Plaintiffs' rights under the Fourth Amendment.

Plaintiffs move for an order certifying the following class and two nationwide subclasses pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). The class is defined as follows:

> All persons who have been or will be detained for civil immigration purposes on or after January 20, 2025, whose property ICE obtains in connection with that detention and whose property ICE does not return following the person's release from detention (including through removal from the United States), except where the property is contraband or reasonably necessary to prove a crime or identity.
>
> This class has two subclasses:
>
> ***Subclass 1***: All persons who have been or will be detained for civil immigration purposes on or after January 20, 2025, whose document or documents ICE obtains in connection with that detention and whose document or documents ICE does not return following the person's release from detention (including through removal from the United States), except where the property is contraband or reasonably necessary to prove a crime or identity.
>
> ***Subclass 2***: All persons who have been or will be detained for civil immigration purposes on or after January 20, 2025, whose non-document property ICE obtains in connection with that detention and whose non-document property ICE does not return following the person's release from detention (including through removal

from the United States), except where the property is contraband or reasonably necessary to prove a crime or identity.

Plaintiffs Gonzalez, Vigil, Ramirez, Luna Ardila, Hernandez, and Izmailov seek to represent Subclass 1. Plaintiffs Vigil, Izmailov, and Tot Quip seek to represent Subclass 2.

The proposed class and subclasses readily satisfy the requirements of Rule 23 of numerosity, commonality, typicality, and adequacy for maintaining a class action, as well as the requirements under Rule 23(b)(2).

First, the proposed class and subclasses satisfy the numerosity requirement of Rule 23(a) because they are sufficiently numerous to make joinder impractical. The proposed class has many thousands of members. Further, there are significantly more than 40 instances of ICE retaining identity documents without justification and 40 instances of ICE retaining other property without justification, with numbers growing each day. This volume surpasses the number courts typically treat as sufficient to make joinder impractical and satisfy the requirements of Rule 23(a)(1). Joinder is also impracticable because the class and both subclasses include future members, as well as individuals who will be difficult to locate and join.

Second, members of the proposed class and subclasses share common issues of law and fact, as required by Rule 23(a)(2), including whether ICE's De Facto Policy violated their rights under the Fourth Amendment and whether the policy is arbitrary and capricious because it allowed ICE to withhold their documents and other property without any legitimate governmental need. These common issues of law and fact can be resolved as to the class as a whole and each subclass and will not require individualized determinations or evaluation of the individual circumstances of any Plaintiff.

Third, as to Rule 23(a)(3) and (4), the claims of the putative class representatives are typical of the claims of the class and subclass members they seek to represent, and they will fairly and adequately protect their interests—as will their experienced counsel.

Fourth, the named Plaintiffs and proposed class counsel will fairly and adequately represent the class. Named Plaintiffs seek relief that will benefit all members of the class, and they do not have any conflicting interests with the rest of the proposed class. Further, Plaintiffs' counsel are highly experienced litigators with expertise in federal litigation, including class actions, and experience in the relevant bodies of law, including immigration law, civil rights, and constitutional and administrative law.

The proposed class and subclasses also satisfy Rule 23(b)(2) because Defendants have acted, or will act, in ways that apply generally to the putative class and subclasses, making final equitable and declaratory relief appropriate for each subclass and the class as a whole. Specifically, all members of the proposed class and subclasses have been or will be harmed by Defendants' De Facto Policy of withholding documents and property seized during civil-immigration detention after there is no longer any legitimate governmental purpose to withhold the documents or property.

Accordingly, the Court should certify the proposed subclasses, with Plaintiffs as class representatives, and appoint the undersigned as class counsel.

STATEMENT OF FACTS

I. ICE's De Facto Policy

When ICE detains a person for civil immigration purposes, it generally confiscates the person's property for the duration of the detention. When ICE releases someone from detention, it has a legal duty to return the property it seized unless there is a new legal justification for retaining

it. Despite that legal duty, ICE has adopted a De Facto Policy of withholding property for longer than necessary for any legitimate government purpose. As a result of this policy, ICE routinely fails to return important items seized from people detained for civil immigration purposes following release. This property includes government-issued documents, such as passports, Employment Authorization Documents ("EAD" or "EADs"), and driver's licenses, as well as other personal items, including money, jewelry, cell phones, car keys, and clothing. ICE has deprived people of their important property for far longer than any governmental interest would require, often months after the individuals were released from ICE custody.

Federal judges around the country have repeatedly held that ICE unlawfully retained property from people it released. ICE has, on many occasions, continued to withhold property even after courts have ordered ICE to return it. For example, in Minnesota, a federal judge found that government officials had, in multiple cases, "violate[d] the terms of" court orders "because they retained possession of the Petitioners' personal property collected during their arrest and detention without any lawful basis to do so." *J.B.C.O. v. Bondi*, No. 26-cv-00424, ECF No. 32 at 5 (D. Minn. Mar. 6, 2026) (addressing failure to return wallets, work permits, drivers' licenses, passports, consular identification cards, other immigration documents, social security cards, debit and credit cards, cellphones, clothing and shoes, jewelry and watches, and other personal property); *see also Narvaez Alvarez v. Easterwood*, No. 26-cv-00832, 2026 WL 327903, at *2 (D. Minn. Feb. 5, 2026); *Rigoberto S. J. v. Bondi*, No. 26-cv-00957, 830 F. Supp. 3d 882, 887 (D. Minn. 2026).

In West Virginia, a district court issued multiple orders for ICE to return personal property—including telephones, wallets, identification and immigration-paperwork, and bank cards—to a group of individuals who had been ordered released and eventually issued a show-cause order demanding the government explain why it should not be held in contempt. *See Serna*

Zarate et al., v. Mason, et al., Case No. 26-cv-00069, ECF No. 46 at 2–3 (S.D. W.Va. Feb. 18, 2026). Federal courts in New York, Texas, and Colorado have similarly held that ICE wrongfully withheld identification documents and personal property from noncitizens after releasing them from detention for civil immigration purposes. *See Cadena-Gallegos v. Bondi*, No. 26-cv-00844, ECF Nos. 9-12 (E.D.N.Y. Feb. 14, 2026) (addressing identification cards, clothing, and money); *Arnao Linares v. Warden*, No. 26-cv-00340, ECF Nos. 5, 9, 16 (W.D. Tex. Feb. 18, 2026) (discussing ICE's retention of identification documents even after court issued a show cause order); *Cortes v. Guadian*, No. 26-cv-00294, ECF No. 18 at 1–2 (D. Colo. Feb. 6, 2026) (similar).

Journalists and immigration attorneys have also documented ICE's De Facto Policy. *Mother Jones* documented a pattern of ICE retaining property following release from custody, observing the practice extends even to "refugees[] who enter the country legally after thorough vetting from abroad[.]" Julia Lurie, *ICE Took Their Papers—and Won't Give Them Back*, Mother Jones (Feb. 24, 2026), https://www.motherjones.com/politics/2026/02/ice-detention-keeping-not-returning-immigration-documents-work-permits. The *New York Times* has documented ICE routinely removing noncitizens from the United States without returning their identification, documents, money, phones, clothing, jewelry, and other valuables. Frances Robles, *Deported From the U.S., Some Haitians Are Left Broke and Stranded*, N.Y. Times (Sept. 6, 2026), https://www.nytimes.com/2026/09/06/world/americas/haiti-deportees.html.

Immigration attorneys and organizations that assist noncitizens have provided evidence that ICE retains a range of documents, including work authorization documents, drivers' licenses, birth certificates, and passports, when it releases noncitizens from civil immigration detention. *See* Declaration of Branden Ladebush ¶¶ 7, 9-12, Ex. 1; Declaration of Immigrant Legal Advocacy Project ¶¶ 5-11, Ex. 2; Declaration of Sarah Houston ¶¶ 4-9, Ex. 3; Declaration of Claudia Lainez

¶¶ 15-18, Ex. 4; Declaration of Daniel Chin ¶¶ 9, 19-21, Ex. 5; Declaration of KaYing Yang ¶¶ 5-8, Ex. 6; Declaration of Juan Cuéllar Torres ¶ 9, Ex. 7; Declaration of Susanna Booth ¶¶ 4, 8, 12, 17, Ex. 8; Declaration of Remi Gavlick ¶¶ 4-5, Ex. 9; Declaration of Hayley Upshaw ¶¶ 4-5, 8, Ex. 10; Declaration of Andres Diaz Jr. ¶¶ 10, 13-15, Ex. 11; Declaration of Daniella Ponet ¶¶ 6-11, Ex. 12. ICE also withholds other property following release, including wallets, cash, cell phones, car keys, medicine, clothing, and jewelry. *See* Ex. 1 ¶¶ 7, 10-12; Ex. 2 ¶ 5; Ex. 3 ¶ 6; Ex. 5 ¶ 9; Ex. 7 ¶ 9; Ex. 8 ¶¶ 4, 8, 12; Ex. 9 ¶ 4; Ex. 10 ¶ 4; Ex. 11 ¶¶ 10, 13-15; Ex. 12 ¶¶ 6-8. *See also* Bennett Haeberle et al., *Attorneys raise concerns over ICE confiscating detainees' IDs, personal documents*, NBC Chicago (Feb. 17, 2026), https://www.nbcchicago.com/news/local/attorneys-raise-concerns-over-ice-confiscating-detainees-ids-personal-documents/3895558/ (noting immigration attorneys from multiple states have reported that ICE consistently fails to return property to individuals released from ICE custody, including EADs, foreign passports, driver's licenses, birth certificates, cellphones, wallets, and cash).

II. Plaintiffs

Plaintiffs are seven people who fell victim to ICE's De Facto Policy in different parts of the country. Each of the named Plaintiffs was detained by ICE. In each case, ICE either effectuated the arrest and confiscated the property itself or obtained custody of the Plaintiffs after an arrest by another entity and obtained Plaintiffs' property when they were transferred to ICE custody. More than four months have elapsed since each Plaintiff was released and all are still without items seized at the time of their detention.

Specifically,

- Plaintiff Ezequiel Gonzalez was detained in September 2025 in Indianapolis, released on March 3, 2026, and still has not received his passport, social security card, or EAD that ICE obtained when it took custody of him.[1]
- Plaintiff Joel Vigil Rodriguez was detained on January 20, 2026, in Windham, Massachusetts, ordered released on February 10, 2026, and still has not received his wallet, which contained two El Salvador driver's licenses (one for driving motorcycles, and one for trailers), car keys, his phone, AirPods, or his coat.[2]
- Plaintiff Rolando Ramirez Fuentes was detained on July 3, 2025, in Tampa, Florida, ordered released on April 28, 2026, and still has not received his Social Security Card, EAD, Cuban birth certificate, or Florida's driver's license.[3]
- Plaintiff Enis Suleima Luna Ardila was detained in Indianapolis, Indiana on December 18, 2025, released on February 23, 2026, and still has not received her belongings, including personal documents, a state-issued ID, her EAD, her Colombian passport, her social security card, and her learner's permit.[4]
- Plaintiff Alex Estuardo Hernandez Perez was detained by ICE in February 2026 in Indianapolis, Indiana, released at the end of February 2026, and still has not received his ID or EAD.[5]

[1] Declaration of Ezequiel Gonzalez ¶¶ 4, 6, Exhibit 13.
[2] Declaration of Joel Vigil Rodriguez ¶¶ 4-6, 8, Exhibit 14.
[3] Declaration of Rolando Ramirez Fuentes ¶¶ 4-7, Exhibit 15.
[4] Declaration of Enis Suleima Luna Ardila ¶¶ 4-9, Exhibit 16.
[5] Declaration of Alex Estuardo Hernandez Perez ¶¶ 4, 9-11, Exhibit 17.

- Plaintiff Vladimir Izmailov was detained on November 1, 2025, in Laredo Texas, released April 18, 2026, and has not received his driver's license, EAD, wallet, belt, or wedding band.[6]
- Plaintiff Domingo Tot Quip was detained in Portland, Maine in January 2026, and, after being wrongfully removed to Guatemala and then returned, released in Burlington, Maine on August 13, 2026.[7] He has not received some of his cash, or his phone charger, headphones, clothes, or backpack.[8]

ICE has no legitimate interest in retaining the items it has failed to return. None is contraband; nor did the appearance of any item (or the circumstances of its acquisition) provide any basis to conclude that it could be contraband or needed as evidence in a civil or criminal proceeding. Similarly, none of the documents were (or could be reasonably mistaken to be) fraudulent or obtained via fraudulent means. ICE also does not need all the documents it failed to return to facilitate removals. At minimum, it could have accomplished any interest it had in this objective by providing Plaintiffs a copy of their documents; however, ICE provided none.

LEGAL STANDARD

Class certification is appropriate where plaintiffs satisfy all the requirements of Fed. R. Civ. P. 23(a) and at least one of the requirements of Rule 23(b). *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011). First, Rule 23(a) requires plaintiffs to demonstrate that: "(1) the class is so numerous that joinder is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the

[6] Declaration of Vladimir Izmailov ¶¶ 5-6, 10-15, Exhibit 18.
[7] Declaration of Domingo Tot Quip ¶¶ 4-9, Exhibit 19.
[8] *Id.* at ¶¶ 9-11.

class." Second, Plaintiffs must demonstrate that they meet one of the three requirements of Rule 23(b). *See Ross v. Lockheed Martin Corp.*, 267 F. Supp. 3d 174, 190–91 (D.D.C. 2017). Here, class certification is appropriate under Rule 23(b)(2) because "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." *Id.* at 345–46.

Rule 23(a) and (b) analyses are distinct from the merits of the case. "Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Ramirez v. U.S. Immigration & Customs Enf't*, 338 F. Supp. 3d 1, 44 (D.D.C. 2018) (emphasis added) (quoting *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013)). In determining whether class certification is proper, trial courts routinely consider material beyond the pleadings and rely on supplemental evidentiary submissions by the parties, including declarations and other evidence that would be inadmissible at trial. *See, e.g., N.S. v. Hughes*, 335 F.R.D. 337, 353 & n.14 (D.D.C. 2020), *clarified sub nom. N.S. v. Dixon*, No. 1:20-cv-101 (RCL), 2020 WL 6701076 (D.D.C. Nov. 13, 2020) (rejecting argument that plaintiffs' declarations constituted hearsay because this evidence is "routinely accept[ed] . . . at the class certification stage").

ARGUMENT

This case is appropriate for class certification under Fed. R. Civ. P.23(a) and 23(b)(2). The De Facto Policy adversely affects noncitizens across the country and will continue to do so absent relief from this Court. Plaintiffs have submitted declarations and other evidence that demonstrates that the proposed class meets all requirements for class certification. Proposed subclass 1, which includes all members of the class whose documents ICE has not returned, and proposed subclass

2, which includes all members of the class whose non-document property ICE has not returned, also each independently satisfy all requirements for certification.

I. The Proposed Subclasses Satisfy the Requirements of Rule 23(a).

Plaintiffs can demonstrate that the proposed class and subclasses satisfy the requirements of Fed. R. Civ. P. 23(a).

A. Joinder of all class members is impractical.

The numerosity requirement of Rule 23(a) is satisfied where the number of potential plaintiffs is "so numerous that joinder of all members" of the class would be "impracticable." Fed. R. Civ. P. 23(a)(1); *see also D.L. v. District of Columbia*, 302 F.R.D. 1, 11 (D.D.C. 2013), *aff'd*, 860 F.3d 713 (D.C. Cir. 2017) (noting that plaintiffs must show "only that the difficulty or inconvenience of joining all members of the class [to] make use of the class action appropriate" (quoting *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 244–45 (2d Cir. 2007))). While there is no fixed number required to meet the standard of numerosity, a class of 40 is generally sufficient. *N.S.,* 335 F.R.D. at 352 (numerosity is "presumptively" satisfied where class is 40 or more); *see also Garnett v. Zeilinger*, 301 F. Supp. 3d 199, 206 (D.D.C. 2018) (same). Plaintiffs easily satisfy this standard.

First, the proposed class is made up of hundreds, if not thousands, of people. The facts of the named Plaintiffs' cases demonstrate that ICE has implemented the De Facto Policy across the country at a time when ICE detention has soared to unprecedented levels, including over 50,000 arrests in August—setting a record for the third month in a row.[9] Beyond the named Plaintiffs,

[9] Kristina Cooke & Ben Kellerman, *ICE arrests keep soaring. Here's why they are not leading to more deportations*, Reuters (Sept. 14, 2026), https://www.reuters.com/legal/government/ice-arrests-keep-soaring-heres-why-they-are-not-leading-more-deportations-2026-09-14/ (noting immigration arrests have continued to soar in recent months, approaching "51,000 in August, setting a record for a third straight month").

multiple other individuals who have been subject to these unlawful polices,[10] and various attorneys and organizations that assist these individuals, have submitted declarations in support of this motion that show the broad impact of ICE's unlawful policy.[11] These declarations identify well over 40 cases of individuals who have had documents or other property seized and not returned, not including the named Plaintiffs. This alone is enough to satisfy the numerosity requirement. *See N.S.,* 335 F.R.D. at 352. And these declarations show a widespread policy and practice that provides a valid basis to conclude that both subclasses are also sufficiently numerous. *Adair v.*

[10] *See* Declaration of Juan Soto Medina, Ex. 20; Declaration of Yuleida Dunya Rondon Malpica, Ex. 21; Declaration of Ferniyer Fajardo Medina, Ex. 22; Declaration of Cu Va Nguyen, Ex. 23; Declaration of Kenis Adalberto Lopez Gonzalez, Ex. 24; Declaration of Andrey Hursevich, Ex. 25.

[11] *See* Ex. 1 (discussing cases of approximately 40 clients who were released from ICE custody and noting that ICE did not return all property to approximately half of the noncitizens released in New England and that ICE retains property from an even higher percentage of clients who are transferred out of the region); Ex. 2 (discussing clients of Immigrant Legal Advocacy Project, a non-profit legal services organization in Maine, and identifying at least 12 individuals they have encountered in the last year who were released but did not have their property returned); Ex. 3 (identifying at least 15 clients of the Immigrant Defenders Law Center ("ImmDef") whose property was not returned by ICE officers when they were released from detention); Ex. 7 (discussing 15 cases Kino Border Initiative is tracking involving ICE's failure to return documents and other items to noncitizens); Ex. 9 (discussing clients of the Migrant & Immigrant Community Action (MICA) Project who did not receive their property back when released from ICE custody); Ex. 10 (discussing at least 12 clients of the San Francisco Public Defender's Office Immigration Unit who did not get their property back when released by ICE); Ex. 5 (discussing 3 clients represented by the Flora Legal Group, an immigration law firm based in Indianapolis, Indiana, who were released from ICE custody without personal property that was seized when they were detained); Ex. 11 (discussing several individuals assisted by the Resurrection Project, a Chicago organization that provides no-cost immigration-related legal services to Illinois community members, who spent months without receiving their personal belongings after being released from ICE detention); Ex. 6 (discussing a refugee who was released from ICE custody without ICE returning her, her husband's, or her son's I-94, UNHCR card, work authorizations, I-797 document, social security card and IRIS documents); Ex. 8 (discussing several individuals represented by Amica Center for Immigrant Rights who were released from ICE detention without their property); Ex. 12 (discussing the fact that Ms. Ponet, who is a Regional Immigration Bond Associate at Community Justice Exchange, has encountered at least 30 people released from immigration detention via bond payment this year whose personal effects were not returned to them after they were released from detention).

England, 209 F.R.D. 5, 8 (D.D.C. 2002) ("[P]laintiffs need not provide a specific number as long as they give a reasonable basis for their estimate.").

Second, because the proposed class seeks prospective injunctive relief for future class members (as opposed to seeking relief exclusively for an existing set of individuals), joinder is "inherently impracticable." *D.L. v. Dist. Of Columbia.* ("*D.L. I*"), 302 F.R.D. 1, 11 (D.D.C. 2013), *aff'd, D.L. v. Dist. Of Columbia* ("*D.L. II*"), 860 F.3d 713 (D.C. Cir. 2017) (quoting *Olson v. Brown*, 284 F.R.D. 398, 408 (N.D. Ind. 2012)). "[C]lasses including future claimants generally meet the numerosity requirement due to the impracticality of counting such class members, much less joining them." *J.D. v. Azar*, 925 F.3d 1291, 1322 (D.C. Cir. 2019) (internal quotation marks omitted). Here, Plaintiffs cannot identify, let alone join, all the noncitizens who in the future will be subject to ICE's policy and practice of retaining documents and other property without legal justification following release from ICE custody. Joinder of these future class members is impracticable.

Third, the geographic dispersal of the class members also makes joinder unworkable. The declarations evidence the fact that the De Facto Policy has been applied across the country and is not limited to any particular city, state or region. ICE applies its policy nationwide, and class members are spread across the country as a result. It is impracticable to identify, meet with, and join all current and future members of the proposed class and subclasses given this geographic diffusion. *See Azar*, 925 F.3d at 1323 (discussing the relevance of "non-numerical considerations" to Rule 23(a)(1)); *Kifafi v. Hilton Hotels Ret. Plan*, 189 F.R.D. 174, 176 (D.D.C. 1999) (referencing that geographical dispersion relevant to impracticability of joinder); *Afghan & Iraqi Allies v. Pompeo*, 334 F.R.D. 449, 459 (D.D.C. 2020) (same).

For these reasons, joinder of all members of the class and each subclass is impractical and each satisfies the numerosity requirement of Rule 23(a)(1).

B. The class and subclasses present common questions of law and fact.

The commonality requirement of Rule 23(a)(2) requires plaintiffs seeking class certification to show that their claims "depend upon a common contention" that "is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart*, 564 U.S. at 350. "[C]ommonality requires a showing that the members of the class suffered an injury resulting from the defendant's conduct." *Bynum v. Dist. of Columbia*, 214 F.R.D. 27, 34 (D.D.C. 2003).

The named Plaintiffs' claims are based on common questions of law and fact that are also common to the class. These factual questions include whether ICE retains property after release from civil immigration detention pursuant to a policy or practice rather than based on individualized determinations regarding whether continued retention is justified; whether ICE documents the basis for continued retention of property after a person's release from detention; whether ICE's actual practices regarding the retention and return of property are consistent with its written policies, detention standards, and directives; and, whether ICE maintains adequate systems for tracking, reviewing, and returning property after a person's release from detention. Common legal questions include whether ICE's policy and practice violates the Fourth Amendment; whether ICE's policy is arbitrary and capricious or otherwise unlawful under the APA because it allows ICE to withhold documents and other property without any legitimate governmental need; and, whether the Fourth Amendment requires ICE to provide a meaningful mechanism through which released individuals can recover property that remains in ICE custody.

Plaintiffs have identified a De Facto Policy that applies to all members of the class—ICE's policy of withholding identity documents and other property following release from civil

immigration detention even where ICE has no operational need or legal justification for continuing to withhold the property. Plaintiffs and all class members have common claims against this De Facto Policy, including that it violates the APA's prohibition on arbitrary or capricious agency action and the Fourth Amendment's reasonableness requirement for "seizure of effects," which applies "not only at the moment of arrest, but also for the seizure's duration." *Asinor v. District of Columbia*, 111 F.4th 1249, 1256 (D.C. Cir. 2024).

Courts in this District have uniformly certified classes where, as here, "plaintiffs allege widespread wrongdoing by a defendant" in the form of "a uniform policy or practice that affects all class members." *Thorpe v. Dist. of Columbia*, 303 F.R.D. 120, 145 (D.D.C. 2014) (internal quotation marks omitted); *see also D.L. II*, 860 F.3d at 723–26 (affirming district court's certification of "three subclasses … each defined by reference to a 'uniform policy or practice' governing a specific stage of the special education process"); *R.I.L-R. v. Johnson*, 80 F. Supp. 3d 164, 181 (D.D.C. 2015) ("commonality is satisfied where there is 'a uniform policy or practice that affects all class members'" (quoting *DL v. Dist. of Columbia*, 713 F.3d 120, 128 (D.C. Cir. 2013))); *Ramirez*, 338 F. Supp. 3d at 46–47 (rejecting argument that circumstances of detention or differing procedural posture of immigration proceedings defeated commonality and typicality because the plaintiffs "identified a single alleged practice ... that provide[d] the basis for every class member's injury").

Determining the legality of ICE's De Facto Policy will resolve questions that are common to the proposed class and subclasses, as each member of the proposed class has suffered harm that is traceable to that policy. *See Thorpe*, 303 F.R.D. at 145-46 (explaining that a policy or practice that affects all class members bridges the gap between individual allegations of harm and the existence of a class that has suffered the same injury). Members of subclass 1 have all suffered

that harm with respect to documents ICE has withheld and members of subclass 2 have suffered that harm based on ICE retaining non-document property. The class and subclasses thus share common questions related to ICE's De Facto Policy, and answering these questions will "drive the resolution of the litigation," *Dukes*, 564 U.S. at 350, resulting in injunctive or declaratory relief that benefits all members of the class and each subclass if the Court rules in their favor.

C. Plaintiffs' claims are typical of those of members of the class and the subclasses.

The typicality requirement of Rule 23(a)(3) requires that the claims of the representative parties be typical of those of the class as a whole. *Dukes*, 564 U.S. at 349. This requirement is "not demanding," *L.G.M.L. v. Noem*, 800 F. Supp. 3d 100, 119 (D.D.C. 2025), and "focuses on whether the *representatives* of the class suffered a similar injury from the same course of conduct," *Bynum*, 214 F.R.D. at 34 (emphasis in original). Satisfying this standard does not require an absence of "factual variations between the claims of the plaintiffs." *Id*. at 34–35. "Rather, if the named plaintiffs' claims are based on the same legal theory as the claims of the other class members, it will suffice to show that the named plaintiffs' injuries arise from the same course of conduct that gives rise to the other class members' claims." *Id*. at 35. Typicality and commonality are thus closely related inquiries that tend to merge. *Ramirez*, 338 F. Supp. 3d at 46. Where commonality is satisfied, typicality usually is as well. *See id.*; *R.I.L-R.*, 80 F. Supp. 3d at 181–82; *O.A. v. Trump*, 404 F. Supp. 3d 109, 155–56 (D.D.C. 2019).

Here, the named Plaintiffs have the same injury as unnamed class members—deprivation of documents or other property without legal justification following release from ICE custody. Plaintiffs Vigil, Ramirez, Gonzalez, Luna Ardila, Hernandez, and Izmailov all had government-issued documents confiscated and not returned after release or removal. Their injuries and claims are typical of the unnamed members of subclass 1. Plaintiffs Vigil, Izmailov, and Tot Quip all had

other property confiscated and not returned after release or removal, and their injuries and claims are typical of the unnamed members of subclass 2. Each named Plaintiff suffered these injuries for the same reason as the unnamed class members—ICE's De Facto Policy. Plaintiffs and the putative class thus "share an identical interest in invalidation of" the policy and challenge it on the same basis. *O.A.*, 404 F. Supp. 3d at 156; *see also Afghan & Iraqi Allies*, 334 F.R.D. at 461 (holding typicality satisfied where "[a]ll class members' claims arise from the same event or practice or course of conduct and ... are based on the same legal theory." (internal quotation marks omitted)).

D. The proposed class representatives will fairly and adequately protect the interests of the class and subclasses.

Rule 23(a)(4) requires that the class representatives "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To satisfy the adequacy requirement, the class representatives "(i) must not have antagonistic or conflicting interests with the unnamed members of the class and (ii) must appear able to vigorously prosecute the interests of the class through qualified counsel." *Azar*, 925 F.3d at 1312 (internal quotation marks omitted) (quoting *Twelve John Does v. Dist. of Columbia*, 117 F.3d 571, 575 (D.C. Cir. 1997)). Proposed Class Representatives here meet this two-part inquiry.

First, proposed class representatives do not have antagonistic or competing interests with the unnamed members of the class. Proposed class representatives and putative class members are all subject to Defendants' unlawful policy of withholding documents or property without a legal basis to do so following release from immigration detention. Proposed class representatives and putative class members therefore share a common interest in ending the policy, ensuring the protection of their rights, and seeking the return of their belongings. Proposed class representatives seek declaratory and injunctive relief which would benefit all class and subclass members. *See Charles H. v. District of Columbia*, No. 21-cv-00997, 2021 WL 2946127, at *14 (D.D.C. June 16,

2021) (finding the named plaintiffs adequate where they sought "only forms of relief that [would] benefit the entire class"). Given the proposed class representatives do not seek monetary damages, there is no potential for financial conflict.

Second, the proposed class representatives are competent to represent the class and subclasses. Adequacy "does not require either that the proposed class representatives have legal knowledge or a complete understanding of the representative's role in class litigation." *Thorpe v. District of Columbia*, 303 F.R.D. 120, 151 (D.D.C. 2014). The class representative need only have "some rudimentary knowledge of [their] role as a class representative and [be] committed to serving in that role in litigation" and "courts typically decline certification only in 'flagrant cases, where the putative class representatives display an alarming unfamiliarity with the suit, display an unwillingness to learn about the facts underlying their claims, or are so lacking in credibility that they are likely to harm their case.'" *Garnett*, 301 F. Supp. 3d at 210–11 (quoting *Howard v. Liquidity Services Inc.* 322 F.R.D. 103, 135 (D.D.C. 2017)).

Here, the proposed class representatives' declarations demonstrate "an awareness of the facts of this case." *Garnett*, 301 F. Supp. at 211. This is "sufficient to make them adequate representatives." *Id.* Moreover, the proposed class representatives' counsel has extensive experience in federal litigation, including in class actions, and in the relevant subject areas, including immigration law, civil rights, and constitutional and administrative law, and they will vigorously defend the interests of the class and each subclass in this case. *See* Declaration of Kevin Fee ¶¶ 5-7, Ex. 26; Declaration of Scott Michelman ¶¶ 5-16, Ex. 27; Declaration of Craig Becker ¶¶ 6-7, 10-12, Ex. 28; Declaration of Ravi Ramanathan ¶¶ 5-11, Ex. 29; Declaration of Craig Martin ¶¶ 5-8, 14-19, Ex. 30; *see also Howard*, 322 F.R.D. at 135 ("Particularly in complex cases, 'the qualifications of class counsel are generally more important in determining adequacy than

those of the class representatives.'" (quoting *Harris v. Koenig*, 271 F.R.D. 383, 392 (D.D.C. 2010)).

Accordingly, the proposed class representatives satisfy the adequacy requirement of Rule 23(a)(4).

II. The Proposed Class and Subclasses Satisfy the Requirements of Rule 23(b)(2).

Certification of Plaintiffs' proposed class and subclasses is appropriate under Rule 23(b)(2). Through their De Facto Policy, Defendants have "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 key to this requirement is "the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them." *Wal-Mart*, 564 U.S. at 360 (citation omitted). Courts in this District have interpreted Rule 23(b)(2) to impose two requirements: "(1) the defendant's action or refusal to act must be generally applicable to the class, and (2) plaintiff must seek final injunctive relief or corresponding declaratory relief on behalf of the class." *Steele v. United States*, 159 F. Supp. 3d 73, 81 (D.D.C. 2016) (citation omitted); *Bynum*, 214 F.R.D. at 37–38; *R.I.L-R* 80 F. Supp. 3d at 182.

Both requirements are readily satisfied here. First, ICE's De Facto Policy of retaining identification documents and other personal property confiscated pursuant to immigration detention following release without justification—which Plaintiffs challenge on behalf of all putative class members—impacts all members of the proposed class and subclasses. The class is thus defined based on an action by Defendants that is "generally applicable to the class." *Steele*, 159 F. Supp. 3d at 81 (internal quotations and citations omitted).

Second, Plaintiffs, on behalf of all putative class members, seek declaratory and injunctive relief that would benefit the whole class and each subclass, including holding unlawful, enjoining, vacating, staying or setting aside the De Facto Policy, and ending ICE's unlawful retention of noncitizens' identity documents and other property. Plaintiffs also seek an injunction requiring ICE to return all documents and other property it has failed to return to members of the class and each subclass. *See* Compl., ECF No. 1, Prayer for Relief. This is precisely the type of case for which Rule 23(b)(2) is designed, as "Rule 23(b)(2) exists so that parties and courts can avoid piecemeal litigation when common claims arise from systemic harms that demand injunctive relief." *D.L. v. Dist. of Columbia,* 860 F.3d 713, 726 (D.C. Cir. 2017).

This Court and courts across the country have regularly certified (b)(2) classes challenging widespread practices affecting noncitizens, such as the one at issue here. *See, e.g.*, *Azar*, 925 F.3d at 1312 (upholding certification of a class of pregnant noncitizen unaccompanied children in Office of Refugee Resettlement custody); *R.I.L-R*, 80 F. Supp. 3d at 182, 184 (certifying class of noncitizen plaintiffs subject to ICE practice of considering certain factors in custody determinations and seeking to enjoin ICE from applying that unwritten policy to deny release); *United Farm Workers v. Noem*, 785 F. Supp. 3d 672, 719, 723, 731 (E.D. Cal. 2025) (certifying provisional classes challenging ICE's policy, pattern, or practice of making unlawful stops without reasonable suspicion and warrantless arrests without a flight risk assessment), *appeal docketed*, No. 25-4047 (9th Cir.); *Ortega-Melendres v. Arpaio*, 836 F. Supp. 2d 959, 989, 992–93 (D. Ariz. 2011) (certifying class of all Latino individuals "stopped, detained, questioned or searched" by sheriff's office "while driving or sitting in a vehicle on a public roadway or parking area," where plaintiffs brought Fourth Amendment and equal protection claims challenging policy or practice of racial profiling); *Ramirez*, 338 F. Supp. 3d at 46, 50 (certifying class of noncitizen plaintiffs,

previously deemed unaccompanied children, in challenge to agency practice of violating statutory right to the least restrictive detention setting); *Afghan & Iraqi*, 334 F.R.D. at 459, 464-65 (certifying class of noncitizen plaintiffs seeking injunctive relief related to agency practice of failing to promptly adjudicate their visas); *Gonzalez v. U. S. Immigration and Customs Enf't*, 975 F.3d 788, 808, 812 (9th Cir. 2020) (upholding certification of class of noncitizens subject to immigration detainers based on ICE's unlawful practice of making probable cause determinations based on "only a check of an online database").

Accordingly, the proposed class and subclasses satisfy the requirements of Rule 23(b)(2).

III. The Court Should Appoint Plaintiffs' Attorneys as Class Counsel

Upon certifying a class, the Court must also appoint class counsel. Fed. R. Civ. P. 23(g)(1). To do so, the Court must consider: "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). The court "may [also] consider any other matter pertinent to counsel's ability to fairly and adequately represent the interest of the class." Fed. R. Civ. P. 23(g)(1)(B).

Plaintiffs' counsel satisfy all four criteria. Plaintiffs are jointly represented by attorneys from several experienced organizations: the American Civil Liberties Union Foundation of DC, the Roger Baldwin Foundation of ACLU Inc., Democracy Defenders Fund, Platkin LLP, and Willkie Farr & Gallagher LLP. As the Complaint demonstrates, counsel have already devoted "substantial time and resources to identifying and investigating potential claims in the action," and will continue to do so. *Encinas v. J.J. Drywall Corp*., 265 F.R.D. 3, 9 (D.D.C. 2010) (conditionally certifying a class where "[c]ounsel have already committed substantial time and resources to

identifying and investigating potential claims in the action"). Counsel at each organization has significant experience handling class actions, litigating immigration and APA matters and other complex federal court cases, and representing noncitizens. *See* Ex. 26 ¶ 7; Ex. 27 ¶¶ 5-16; Ex. 28 ¶¶ 6-7, 10-12; Ex. 29 ¶¶ 5-6, 9-11; Ex. 30 ¶¶ 5-8, 14. Counsel are well-versed in the intricacies of immigration law, the APA, civil rights law, and law governing class proceedings generally. *See* Ex. 26 ¶ 7; Ex. 27 ¶¶ 5-16; Ex. 28 ¶¶ 5-8, 10-12; Ex. 29 ¶¶ 5-6; Ex. 30 ¶¶ 5-8, 14. And, together, these five organizations have ample resources that they are prepared to commit to representing the class. Accordingly, the Court should appoint Plaintiffs' counsel as class counsel in this case.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion for Class Certification and enter an order:

1. Certifying this action as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2);
2. Certifying the proposed class and subclasses;
3. Appointing Plaintiffs Gonzalez, Vigil, Ramirez, Luna Ardila, Hernandez, Izmailov, and Tot Quip as representatives of the class;
4. Appointing Plaintiffs Gonzalez, Vigil, Ramirez, Luna Ardila, Hernandez, and Izmailov as representatives of subclass 1;
5. Appointing Plaintiffs Vigil, Izmailov, and Tot Quip as representatives of subclass 2;
6. Appointing Plaintiffs' counsel as class counsel for the class pursuant to Fed. R. Civ. P. 23(g).

Dated: October 23, 2026

Respectfully submitted,

(signature page to follow)

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