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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AL OTRO LADO, INC., *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United States, in his official capacity, *et al.*,

Defendants.

Case No. 3:25-cv-01501-RBM-BLM

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

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I. INTRODUCTION

Defendants' Opposition confirms that the proposed Asylum Class and CBP One Subclass should be certified. They acknowledge that under Presidential Proclamation 10888 and Office of Field Operations ("OFO") guidance, CBP "suspends entry to the U.S. at all ports of entry (POEs)" for individuals who do not present specified medical and criminal history information; that "[noncitizens] subject to the Proclamation shall not be permitted to cross the international boundary"; and that the policy applies at every Class A POE on the southern border—without exception, even when a person claims or manifests fear. Defs' Opp'n ("Opp'n") 3-4. Those uniform, system-wide directives present common questions susceptible to common answers that would drive resolution of this litigation.

Defendants' threshold attack on the class and subclass definitions—"vague," "overbroad," "indefinite"—ignores precedent from this District, which has certified materially similar asylum-access classes. To the extent the Court sees any drafting issue with the definitions, the remedy is modification, not denial of certification.

Plaintiffs easily satisfy each of the Rule 23(a) requirements. Numerosity is beyond dispute, given the mass cancellation of 30,000 CBP One appointments and the border-wide application of the government's policy to countless asylum seekers. Commonality and typicality are satisfied because Plaintiffs challenge a single border-wide policy that forecloses access to the asylum process for all putative class members. And the Individual Plaintiffs are adequate class representatives; Defendants have articulated no conflict of interest between them and putative class members that would impede vigorous representation. On standing, Defendants' arguments fail as Plaintiffs need only establish a credible threat that they will be harmed by the Proclamation and Asylum Shutdown Policy, which they have.

Plaintiffs also satisfy Rule 23(b)(2) because a single ruling will remedy the uniform barrier to the asylum system for all putative class members. Defendants' Section 1252(f)(1) arguments are improper at this stage. Section 1252(f)(1) is a

remedies statute, not a certification bar. In any event, it does not preclude classwide relief. Plaintiffs' motion for class certification should be granted.

II. ARGUMENT

A. The Class and Subclass Are Appropriately Crafted to Cover All Individuals Harmed by Defendants' Unlawful Actions.

1. Precedent Supports the Proposed Definitions.

Defendants contend that terms like "seek to present themselves," "continue to seek," and "at the direction of Defendants" render the proposed class and subclass definitions "vague, overbroad, and indefinite," and doom certification. Opp'n 6-9. Not so. This District has already certified classes with substantially similar formulations in litigation over asylum access at POEs, including classes that encompassed persons denied access "*at the instruction* of [CBP] officials" and who "*continue to seek* access to the U.S. asylum process." *AOL v. Wolf*, 336 F.R.D. 494, 504 (S.D. Cal. 2020) (emphasis added); *AOL v. McAleenan*, 423 F. Supp. 3d 848, 874 (S.D. Cal. 2019) (emphasis added; quotations omitted).

Defendants' argument that the proposed class is overbroad because it includes members who "will seek" access to asylum, Opp'n 12, also contravenes established law. *See AOL v. Wolf*, 336 F.R.D. at 500-02 ("all noncitizens who seek or will seek to access the U.S. asylum process…and were or will be denied"); *Probe v. State Teachers' Ret. Sys.*, 780 F.2d 776, 780 (9th Cir. 1986) (inclusion of "future members does not render the class definition so vague as to preclude certification"); *Ms. L. v. United States Immigration & Customs Enforcement*, 331 F.R.D. 529, 541 (S.D. Cal. 2018) (certifying a class who "have been, are, or will be detained in immigration custody" and "have a minor child who is or will be separated from them").

2. The Definitions Are Keyed to Objective Criteria.

Defendants are wrong that the terms "continue to seek" and "seek to present themselves" require probing putative class members' state of mind. Opp'n 8:8-9:4. It can be confirmed by objective conduct class members undertake to access the U.S.

asylum system, such as making a CBP One Appointment, attempting to approach a POE, finding temporary shelter near a POE, or consulting a legal service provider on how to seek asylum in the U.S. Defendants' cited cases underscore the distinction: Where a definition hinges on credibility-laden subjective intent, courts hesitate; where a definition uses objective criteria, courts certify. *See Lyon v. United States Immigration & Customs Enforcement*, 300 F.R.D. 628, 635 (N.D. Cal. 2014) (class of all current and future immigration detainees at specified facilities was not overbroad because members could be ascertained by reference to objective criteria), *modified sub nom.* 308 F.R.D. 203 (N.D. Cal. 2015); *cf. Schwartz v. Upper Deck Co.*, 183 F.R.D. 672, 676-77 (S.D. Cal. 1999) (rejecting definition turning on purchasers' subjective intent to win a rare insert card within a pack of sports cards).

The phrase "at the direction of Defendants" is equally workable. It encompasses conduct by CBP and those acting at CBP's instruction in implementing the Proclamation/OFO guidance at POEs. Defendants' references to the act of state doctrine and non-justiciable political questions do not help their cause. The Court need not adjudicate the independent acts of foreign sovereigns to resolve whether U.S. officials may lawfully shut the door to asylum processing at our ports. Plaintiffs only ask this Court to adjudicate the legality of U.S. policy at U.S. ports.

The "Asylum Shutdown Policy" likewise is not amorphous; Defendants define it themselves. Defendants' own narrative identifies the policy Plaintiffs challenge: Proclamation 10888 and OFO implementation guidance that (i) suspends "entry" at all POEs for those lacking specified information, (ii) directs that such persons "shall not be permitted to cross the international boundary," and (iii) does not except people, including those who claim fear at the boundary. Opp'n 3:4-4:12. That is a uniform, border-wide regime—exactly the kind of "system wide" practice Rule 23 envisions. *Parsons v. Ryan*, 754 F.3d 657, 681-82 (9th Cir. 2014).

3. Although Rule 23 Does Not Require It, the Class and Subclass Are "Ascertainable."

To the extent Defendants argue that certification must be denied for lack of ascertainability, Opp'n 7:2-8:6, Ninth Circuit law dictates that Rule 23 does not require it. *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1125 (9th Cir. 2017). In any event, the Asylum Class and CBP One Subclass members *are* ascertainable with objective characteristics. And even if the Court finds defects in the proposed definitions, the remedy is to modify them, not deny certification. *See Ms. L. v. United States Immigration & Customs Enforcement*, 330 F.R.D. 284, 292 (S.D. Cal. 2019).[1]

B. The Proposed Class and Subclass Satisfy Rule 23(a).

***Numerosity*:** Defendants cannot credibly dispute that there are more than forty putative class members, c*f.* Opp'n 10:8-11, which this District has held to be sufficient to establish numerosity. *See Gomez v. Rossi Concrete, Inc.*, 270 F.R.D. 579, 588 (S.D. Cal. 2010). The Government simultaneously canceled all pending CBP One appointments on January 20, 2025, and implemented border-wide directives at every Class A POE. Compl. ¶¶ 6, 90-95, Dkt. No. 1; Opp'n 3:4-4:12. Defendants' "no evidence" refrain, Opp'n 11:7-15, rings hollow. *See* Compl. nn.6-8, 12-13 (all sources reporting tens of thousands of asylum seekers stranded in Mexico on January 20, 2025). CBP officials themselves are the source of Plaintiffs' assertion that 30,000 asylum seekers had their CBP One appointments canceled by Defendants on January 20, 2025.[2] Given the large number of putative class members and their

[1] Defendants' reliance on *Martino v. Ecolab, Inc.* is misplaced. *See* Opp'n 7:16-17. In *Martino*, the court *certified* a class and explained that the purpose of a clear class definition is to "assist[] class members in understanding their rights and making informed opt-out decisions." 2016 WL 614477, at *10 (N.D. Cal. Feb. 16, 2016). Here, the objective criteria in the class definition will enable individuals to determine if they fall within the class; opt-out is not at issue in this Rule 23(b)(2) class.

[2] *See, e.g.*, https://www.washingtonpost.com/immigration/2025/01/20/trump-border-cbp-one-migrants/ (reporting the "cancellations will affect about 30,000 people, according to two CBP officials"). Likewise, extrapolating based on the number of CBP One appointments available per day at the time of cancellation (1,450, according

geographic dispersion across the border, joinder would be impracticable. The Court should flatly reject Defendants' numerosity argument. *See Sueoka v. United States*, 101 F. App'x 649, 653 (9th Cir. 2004) (for (b)(2) classes, numerosity is "relaxed," and reasonable inferences suffice).

***Commonality*:** "What matters to class certification . . . is . . . the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Commonality is "satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members." *Parsons*, 754 F.3d at 681-82 (cleaned up). Here, Defendants' own statements defeat their arguments against commonality. They concede that the Asylum Shutdown Policy bars people like the Individual Plaintiffs and putative class members from accessing the U.S. asylum system. Opp'n 3:4-4:12. Commonality is easily established based on a system-wide policy that inflicts the same injury on all putative class members. *See Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001). The inclusion of class members who face future harm does not change this analysis. *See* Opp'n 12:7-20.

"Courts have frequently certified classes whose members share a common threat of future harm." *Nehmer v. United States Veterans' Admin.*, 118 F.R.D. 113, 117 (N.D. Cal. 1987) (collecting cases). All putative class members face a "credible threat" that the Asylum Shutdown Policy will preclude their access to the asylum system. *Natural Res. Def. Council v. United States Envtl. Prot. Agency*, 735 F.3d 873, 878 (9th Cir. 2013) (credible threat that a probabilistic harm will materialize establishes standing); *see also Doe #1 v. Trump*, 335 F.R.D. 416, 431 (D. Or. 2020) (rejecting that no one has standing to challenge a Proclamation until it is enforced).

Defendants' reliance on *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021), is

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to an official CBP source) produces a similar estimate; thus, the estimated number of subclass members, which is only a subset of the class, is sufficiently reliable at this stage. *See* Compl. n.11 (citing CBP press release). Indeed, cancellation of only one day's worth of CBP One appointments would establish numerosity.

misplaced. *TransUnion* in fact forecloses Defendants' standing argument; the Court explained that "a person exposed to a risk of future harm may pursue forward-looking, injunctive relief to prevent the harm from occurring." *Id*. at 435. The Supreme Court also "has long recognized that in cases seeking injunctive or declaratory relief, *only one plaintiff* need demonstrate standing to satisfy Article III." *Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 682 n.32 (9th Cir. 2022) (emphasis added).

Defendants' kitchen-sink arguments based on the Mexican government, act-of-state doctrine, and non-justiciable political questions also fail. Opp'n 13:4-18. Defendants invoke these doctrines—in a single paragraph, without elaboration—to argue that each should somehow prevent class certification. *Id.* These passing arguments are so poorly developed that the Court should find them waived. *See Maldonado v. Morales*, 556 F.3d 1037, 1048 n.4 (9th Cir. 2009). Plaintiffs do not ask the Court to adjudicate U.S.-Mexican foreign policy or "sit in judgment on the acts of the government of another done within its own territory." *Sea Breeze Salt, Inc. v. Mitsubishi Corp.*, 899 F.3d 1064, 1069 (9th Cir. 2018).[3] Plaintiffs seek to enjoin the U.S.-based Defendants' unlawful conduct in carrying out the Proclamation and Asylum Shutdown Policy. Whether Plaintiffs were separately harmed by the Mexican government is immaterial because the class and subclass are limited to those "who were or will be prevented from accessing the U.S. asylum process by or at the direction of Defendants." *See* Pls' Mot. Class Certification 1:14-17.

Finally, Defendants hypothesize that class members' individual circumstances may affect the nature of their injuries, thereby defeating commonality. *See* Opp'n 14:15-18. Not so. Individual experiences do not defeat certification when a uniform policy is the "moving force" behind the injury; the legality of that policy is the same

[3] The Government's cited cases are inapposite. *Sea Breeze Salt, Inc.*, 899 F.3d at 1069 (Mexico's salt production policy); *Dellums v. U.S. Nuclear Regul. Comm'n*, 863 F.2d 968, 970 (D.C. Cir. 1988) (Nuclear Regulatory Commission order)*; Corrie v. Caterpillar, Inc.*, 503 F.3d 974, 982-83 (9th Cir. 2007) (foreign military aid).

for all. *Parsons*, 754 F.3d at 681-82. The theoretical possibility that some individuals might be ineligible for asylum is irrelevant. The putative class members' shared injury is the denial of access to the asylum process, and the shared question is whether Defendants' actions prevent their *access* to the asylum system—not whether every class member will ultimately qualify for asylum. *See AOL v. Wolf*, 336 F.R.D. at 504 (certifying class based on common injury of loss of access to the asylum process).

***Typicality*:** Defendants claim differences in Individual Plaintiffs' experiences—such as how they learned their appointments were canceled or that POE access was shut down—defeat typicality. Opp'n 16. These variations are immaterial because they do not change that the Individual Plaintiffs and putative class members suffered the same injury (denial of access to the asylum system) by the same conduct (Defendants' implementation of the Asylum Shutdown Policy). Opp'n 16 ("Proclamation and OFO Guidance applies to all the POEs along the southern border."); *see Chhoeun v. Marin*, 2018 WL 6265014, at *6 (C.D. Cal. Aug. 14, 2018) (typicality satisfied where "injury is the result of a uniform policy that is applied to all class members, and is not unique to Petitioners").[4]

***Adequacy*:** Defendants challenge only the adequacy of the proposed class representatives, and not of class counsel. Adequacy simply requires "no conflict of interest between the representative and its counsel and absent class members" and that "the representative and its counsel will pursue the action vigorously on behalf of the class." *Arnott v. United States Citizenship & Immigration Servs.*, 290 F.R.D. 579, 588 (C.D. Cal. 2012). Defendants do not even argue that there is a conflict of interest between the Individual Plaintiffs and absent class members. Instead, Defendants argue that Individual Plaintiffs are inadequate because they have not attempted to present at a POE with documentation that would exempt them from the Proclamation, and therefore they cannot adequately represent putative class members who have and

[4] Moreover, Defendants' recitation of these alleged differences is "not supported by citations to the record" and should be deemed waived. *United States v. Graf*, 610 F.3d 1148, 1166 (9th Cir. 2010).

were rejected. Opp'n 17:5-12. Defendants further suggest that such a representative is required because Plaintiffs contest, *inter alia*, the implementation of the Proclamation § 3 documentation mandate. Opp'n 17:5-14.

Defendants' argument is nonsensical. *First*, Plaintiffs challenge the implementation of the Proclamation § 3 documentation requirement on the basis that it is impossibly prohibitive because people do not generally flee persecution with a full set of personal files. The absence of a class representative who attempted to present papers merely reflects this reality and supports Plaintiffs' arguments.

Second, nothing in the proposed class or subclass definitions requires noncitizens to present themselves at a POE in a specific way. Nor do Defendants cite to any authority requiring a separate class representative demonstrating every possible variation of how individuals might present themselves. Defendants do not explain how a class representative who did not attempt to present documents somehow has a conflict of interest with class representatives who have.

Third, Defendants' challenge to the Individual Plaintiffs' standing fails for the reasons discussed *supra*, II.B.2. Plaintiffs are not required to present themselves at a POE or show that they have been denied entry to the United States by CBP to establish standing, as Defendants suggest, when doing so would be futile. Opp'n 12:12-15. It is well established that, although a plaintiff "must demonstrate a realistic danger of sustaining a direct injury as a result of a statute's operation or enforcement," they "do[] not have to await the consummation of threatened injury to obtain preventive relief." *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979); *see also Taniguchi v. Schultz*, 303 F.3d 950, 957 (9th Cir. 2002), as amended (Sept. 25, 2002) ("[S]tanding does not require exercises in futility.").[5]

[5] Defendants' leading case does not help their cause. In *Mason v. Ashbritt, Inc.*, 2020 WL 789570 (N.D. Cal. Feb. 17, 2020), Plaintiffs claimed wildfire clean-up efforts harmed their property. The court found a lack of standing because the class representative did not allege any specific harm traceable to defendants. *Id.* at *7. By contrast, here, each plaintiff has suffered the same injury alleged for the entirety of

C. Rule 23(b)(2) Is Satisfied.

1. A Single Ruling Will Provide Relief to All Plaintiffs.

Defendants' contention that relief must be parceled out on an individual basis is meritless. The Government's "conduct is such that it can be . . . declared unlawful only as to all of the class members or as to none of them," so Rule 23(b)(2) applies. *Wal-Mart*, 564 U.S. at 360 (cleaned up). A ruling on the enforcement of laws or policies applies equally to *all* individuals affected by them, and therefore to all members of the proposed classes. *See Bautista-Perez v. Holder*, 2009 WL 2031759, at *10 (N.D. Cal. July 9, 2009).

2. Section 1252(f)(1) Does Not Bar Class Certification.

Section 1252(f)(1) is a remedies provision that has no bearing on class certification. Defendants' reliance on *AOL v. Mayorkas*[6] proves this point. In *Mayorkas*, the court analyzed the appropriate remedy and determined Section 1252(f)(1) precluded injunctive relief following the adjudication of summary judgment motions. Critically, the court did not de-certify the class once it found Section 1252(f)(1) applied. *See* Fed. R. Civ. P. 23(c)(1)(C) (allowing modification and decertification). Instead, it held that "class-wide declaratory relief is both available and warranted here." *AOL v. Mayorkas*, 619 F. Supp. 3d at 1034.

Section 1252(f)(1) may not apply to this case at all,[7] but even if it does, Defendants overread the law and seek a novel, broad application explicitly rejected

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both classes: denial of access to the asylum system, which is a "concrete" and "particularized" injury that confers standing. *AOL v. Wolf*, 336 F.R.D. at 504 (named plaintiffs' claims "reasonably co-extensive" of the broader class of asylum seekers who were or will be denied access to a POE).

[6] 619 F. Supp. 3d 1029, 1034 (S.D. Cal. 2022), *judgment entered,* No. 17-cv-02366-BAS-KSC, 2022 WL 3970755 (S.D. Cal. Aug. 23, 2022), *aff'd in part, vacated in part sub nom. AOL v. Exec. Off. for Immigr. Rev.*, 120 F.4th 606 (9th Cir. 2024), and *aff'd in part, vacated in part sub nom. AOL v. Exec. Off. for Immigr. Rev.*, 138 F.4th 1102 (9th Cir. 2025).

[7] Plaintiffs do not concede that § 1252(f)(1) precludes an injunction as a remedy here. 8 U.S.C. §§ 1158 and 1182 are not "covered" by § 1252(f)(1), and the Supreme Court and Ninth Circuit have made clear that § 1252(f)(1) does not bar collateral effects on covered provisions. *See, e.g.*, *Galvez v. Jaddou*, 52 F.4th 821, 830-31 (9th Cir. 2022).

by all other courts that have faced the same question. The Supreme Court held that Section 1252(f), "[b]y its plain terms, and even by its title, . . . is nothing more or less than a limit on injunctive relief" in certain narrow, classwide contexts. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 481 (1999). The statute does not restrict certification, especially where, as here, the class seeks declaratory relief and vacatur. *Garland v. Gonzalez*, 596 U.S. 543, 571 (2022) (Sotomayor, J., concurring in the judgment and dissenting in part) ("[T]he Court does not purport to hold that § 1252(f)(1) affects courts' ability to 'hold unlawful and set aside agency action, findings, and conclusions' under the [APA]."") (quoting 5 U.S.C. § 706(2)).

Defendants argue that if injunctive relief is unavailable, Rule 23(b)(2) does not permit class certification for declaratory relief alone. Opp'n 23. But the Ninth Circuit has held that even if Section 1252(f)(1) bars classwide injunctive relief, "it does not affect classwide declaratory relief." *Rodriguez v. Marin*, 909 F.3d 252, 256 (9th Cir. 2018). Plaintiffs also do not concede that declaratory relief is the only available remedy in this case. Following the Supreme Court's decision in *Aleman Gonzalez*, every court facing the question has held that when Section 1252(f)(1) precludes an injunction, declaratory relief and vacatur are still available on a classwide basis. *See, e.g.*, *Rodriguez v. Hayes*, 591 F.3d 1105, 1119 (9th Cir. 2010) (holding Section 1252(f) does not preclude declaratory relief on behalf of the class); *Kidd v. Mayorkas*, 734 F.Supp.3d 967, 986 (C.D. Cal. 2024) (vacatur sufficient to redress classwide injury); *Immigrant Defenders Law Ctr. v. Mayorkas*, 2023 WL 3149243, at *13 (C.D. Cal. Mar. 15, 2023) ("district courts . . . retain jurisdiction to award declaratory relief in immigration class actions"); 28 U.S.C. § 2201(a). While it is premature for the Court to decide the contours of whether and how Section 1252(f)(1) would apply in this case, it is clear that it does not bar class certification.

III. CONCLUSION

For the foregoing reasons, and those set forth in Plaintiffs' opening brief, Plaintiffs' Motion for Class Certification should be granted.

Dated: August 26, 2025

Respectfully Submitted,

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