UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

RENE ANTONIO BENITEZ *et al.*,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY *et al.*,

Defendants.

Case No. 2:26-cv-2082

ORAL ARGUMENT REQUESTED

MEMORANDUM OF LAW IN SUPPORT OF INDIVIDUAL PLAINTIFFS' MOTION FOR PROVISIONAL CLASS CERTIFICATION

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INTRODUCTION

Across New York, federal immigration agents have been conducting mass warrantless arrests of individuals without probable cause and in clear violation of federal law. To make a warrantless arrest, an immigration agent must have probable cause to believe that the person they are arresting "is likely to escape before a warrant can be obtained." 8 U.S.C. § 1357(a)(2). Yet, in conjunction with the Trump Administration's implementation of immigration arrest quotas, Defendants have adopted a policy and practice of arresting first and assessing probable cause later (if ever). As a result, Defendants' agents have stopped and arrested hundreds—and likely thousands—of people without probable cause to believe that they are likely to escape before a warrant could be obtained.

Plaintiffs Rene Antonio Benitez, Darwin Garcia Medrano, Hesler Asaf Garcia Lanza, A.M.C., F.R.P., H.L.A.O., J.R.H.L., R.C.R., and Workers' Center of Central New York bring this lawsuit as a putative class action to challenge this policy and practice. Concurrently with this motion, Plaintiffs move the Court to enjoin Defendants' policy and practice. Plaintiffs further request that the Court certify the following class under Federal Rule of Civil Procedure 23(b)(2) in connection with Plaintiffs' preliminary injunction motion: "All persons who, since January 20, 2025, have been or will be arrested in New York for alleged immigration violations without a warrant and without a pre-arrest, individualized assessment of probable cause that the person is likely to escape." Compl. ¶ 485. Plaintiffs request that the individual Plaintiffs be designated as class representatives.[1]

[1] Workers' Center of Central New York does not seek to serve as a representative for the proposed class defined above.

Plaintiffs' proposed class satisfies the requirements of Federal Rule of Civil Procedure 23(a). First, the class is numerous, consisting of at least hundreds of individuals, making joinder impracticable. Second, the putative class members' claims share common questions of law and fact that are capable of class-wide resolution. Third, Plaintiffs' claims are typical of the class's because they are based on Defendants' policy and practice of conducting warrantless arrests without the required probable cause determination, and all their claims arise from Defendants' implementation of that practice. Fourth, Plaintiffs are adequate class representatives who meet all of the requirements of Rule 23(a)(4).

Plaintiffs' proposed class also is appropriate under Rule 23(b)(2) because, by implementing their warrantless arrest 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). Certification under Rule 23(b)(2) is particularly appropriate in class actions like this one challenging the government's violation of individuals' civil rights, including in cases challenging immigration policies as unlawful. Further, undersigned counsel satisfy the requirements of Rule 23(g) and should be appointed as class counsel because they will vigorously advance the interests of the class and include attorneys with extensive relevant experience in class actions and civil rights litigation.

BACKGROUND

I. Trying to Meet President Trump's Mass Deportation Goals, Defendants Have Substantially Increased Warrantless Arrests Across New York.

During his 2024 election campaign, President Trump declared that he would "begin the largest deportation operation in the history of our country" on day one. Scarcella Decl., Ex. 23 (White House Press Release). In January 2025, the Trump Administration set a goal for each U.S. Immigration and Customs Enforcement ("ICE") field office to fulfill a quota of 75 arrests per day.

Id., Ex. 1 (Miroff & Sachetti). In May 2025, White House Deputy Chief of Staff Stephen Miller increased this number to 3,000 arrests per day nationally, adding that the "number is going to keep getting bumped higher over time." *Id.*, Ex. 24 (Arcand). To fulfill these arrest quotas, Miller instructed ICE agents to "just go out there and arrest," directing them to targets like Home Depot and 7-Eleven convenience stores. *Id.*, Ex. 4 (Findell). Senior government officials also encouraged immigration agents to "turn the creative knob up to 11" and said that,"[i]f it involves handcuffs on wrists, it's probably worth pursuing." *Id.*, Ex. 8 (Olivares).

Defendants have specifically targeted New York for increased immigration enforcement as a so-called sanctuary jurisdiction. *Id.*, Ex. 11 (DOJ Sanctuary Jurisdiction List). As the Trump administration's "Border Czar" Tom Homan put it: "I've said this a thousand times—sanctuary cities are going to get exactly what they don't want: more agents in the community and more collateral arrests." *Id.*, Ex. 12 (Dwyer). He has further stated that "we're going to flood the zone in sanctuary cities. You're going to see a record number of agents in the neighborhoods." *Id.*, Ex. 25 (Texas Border Business). The numbers bear this out. In the first six months of the second Trump Administration, immigration officials arrested 2,888 noncitizens in the greater New York City area, more than triple the number of arrests in the last six months of the Biden Administration. *Id.*, Ex. 16 (Grench & Vo). This heightened level of arrests has continued across the state of New York and through the present, with ICE alone having arrested more than 15,000 New Yorkers since the start of the second Trump Administration. *Id.*, Ex. 26 (Sun), Ex. 27 (Chu).

II. Defendants Carry Out a Policy of Conducting Warrantless Arrests Without First Assessing Probable Cause of a Person's Likelihood of Escape.

Defendants have driven the sharp increase in arrests in New York by directing their agents to systematically make immigration arrests without a warrant and without an assessment of a person's likelihood of escape. ICE and other federal agents have stopped and arrested people while

walking,[2] standing,[3] driving,[4] walking to or sitting in a parked car,[5] delivering food,[6] pumping gas,[7] and coming home from work.[8] In their pursuit of meeting the Administration's arrest quotas, Defendants have resorted to an "arrest first and ask questions later" approach, regularly failing to ask the questions needed to assess a person's likelihood of escape until *after* arresting them—if ever.

For example, Plaintiff Benitez was stopped by ICE agents while driving his 17-year-old daughter to school in his brother's car despite not having violated any traffic laws. Benitez Decl. ¶ 6. During this encounter, an ICE agent asked Mr. Benitez for identification, and Mr. Benitez gave the agent his current New York state license but otherwise remained silent. *Id.* ¶ 7. The officer failed to identify himself or show Mr. Benitez a warrant. *Id.* Rather, he only asked Mr. Benitez whether he had papers, to which Mr. Benitez replied no. *Id.* The agent then told Mr. Benitez that "they were taking everyone who was here illegally" and subsequently instructed Mr. Benitez to exit the vehicle. *Id.* After one agent threatened to take Mr. Benitez out of the car if he failed to comply with the directive, Mr. Benitez complied and exited the vehicle. *Id.* ¶ 8. He was then patted down and escorted into one of the ICE officers' vehicles. *Id.* ¶ 9. Only *after* he was arrested and placed in the ICE vehicle did the officers ask him any questions bearing on whether he was likely to escape if not apprehended. *Id.* ¶ 10.

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[2] J.R.H.L. Decl. ¶¶ 7-13; Garcia Lanza Decl. ¶¶ 2-5.

[3] A.J.M.C. Decl. ¶¶ 5-8.

[4] Benitez Decl. ¶¶ 6-9.

[5] H.L.A.O. Decl. ¶¶ 7-8; R.C.R. Decl. ¶¶ 9-10.

[6] O.T.M.-M. Decl. ¶¶ 6-7.

[7] Garcia Medrano Decl. ¶¶ 4-7.

[8] A.M.C. Decl. ¶ 8.

Plaintiff J.R.H.L had a similar encounter. A man in a bulletproof vest approached J.R.H.L while he walked through a public parking lot and, in Spanish, purported to ask for assistance in identifying a man in a photo. J.R.H.L. Decl. ¶¶ 7-10. J.R.H.L responded in Spanish and indicated that he thought he had seen the man in the photo around the area but could not offer much information about him. *Id.* ¶ 11. Afterwards, the officer asked J.R.H.L if he had legal status and identification. *Id.* ¶ 12. J.R.H.L. handed over his identification, which the officer went to his car to check and to talk to his boss. *Id.* Shortly thereafter, additional ICE agents encircled J.R.H.L. and he was arrested. *Id.* ¶¶ 12-13. None of the agents at any point in the parking lot ever questioned J.R.H.L. about his connections to the community or posed other questions related to assessing the risk of escape. *Id.* ¶ 15.

Plaintiffs Garcia Medrano, Garcia Lanza, F.R.P., R.C.R., A.M.C., and H.L.A.O. likewise were approached and then arrested without any meaningful assessment of whether they were an escape risk. Mr. Garcia Medrano was arrested with three people while pumping gas and was not asked anything other than to provide identification, which he did. Garcia Medrano Decl. ¶¶ 4–8. Mr. Garcia Lanza was stopped while crossing the street and was arrested immediately by immigration agents after providing his work permit to them. Garcia Lanza Decl. ¶¶ 2–4. F.R.P. and R.C.R. were both arrested while walking to their car in a Walmart parking lot and after providing agents their work permit, Social Security card, and REAL ID. F.R.P. Decl. ¶¶ 7-10, 12; R.C.R. Decl. ¶¶ 7–11. A.M.C. was arrested outside his apartment building after ICE officers showed him a photograph of a Latino man he did not know and then told him that meant he would be taken into custody. A.M.C. Decl. ¶¶ 8–14. And H.L.A.O. was arrested while sitting in a parked car waiting to board the Shelter Island ferry when an ICE officer approached him. H.L.A.O. Decl.

¶¶ 7–8. After H.L.A.O. gave the officer his New York driver's license, the officer responded that he was being placed under arrest. *Id.*

Plaintiffs' and Declarants' experiences are neither isolated incidents nor anomalies. Time and time again, rather than assess an individual's escape risk as required by law, Defendants' agents arrest people first and ask questions later.[9] This results from Defendants' policy that their agents need not make probable cause assessments of a person's likelihood of escape to make a warrantless arrest. Defendants routinely admit this policy exists. Since September 25, 2025, the Department of Homeland Security ("DHS") has repeatedly taken the position that "DHS law enforcement uses 'reasonable suspicion' to make arrests," Scarcella Decl., Ex. 28 (DHS X Post)—a lower standard than probable cause. *Escobar Molina v. U.S. Dep't of Homeland Sec.*, 811 F.Supp.3d 1, 16 (D.D.C. 2025). In a public statement, then-Chief Border Patrol Agent Gregory Bovino confirmed Defendants' position that "[w]e need reasonable suspicion to make an immigration arrest" and disavowed any probable cause assessment: "You notice I did not say probable cause, nor did I say I need a warrant." *Id.*

Moreover, on January 28, 2026, Defendant Lyons issued a memorandum (the "Lyons Memo") that pays lip service to the governing statute and regulations but flouts their commands. The Lyons Memo interprets "likely to escape" under 8 U.S.C. § 1357(a)(2) to mean that a person is "unlikely to be located at the scene of the encounter or another clearly identifiable location once an administrative warrant is obtained." Scarcella Decl., Ex. 10 (Lyons Memo). This interpretation vitiates the statute: because Defendants' practice is to stop pedestrians and vehicles in public areas,

[9] *See* G.E.V.S. Decl. ¶ 8 (stopped and arrested by ICE agents while sitting in a car); A.J.M.C. Decl. ¶ 25 (stopped and arrested by ICE agents and U.S. Marshals while standing in the parking lot of a commercial center); J.G.G. Decl. ¶ 15 (arrested while standing in a Home Depot parking lot); N.D.L.A. Decl. ¶ 11 (arrested while driving to work); L.R.C. Decl. ¶ 15 (similar; stopped and arrested by ICE and FBI agents while standing at a parking lot).

and to make arrests without asking about community ties, every person an ICE agent encounters can be deemed "likely to escape" under the expansive guidance supplied in the Lyons Memorandum since it is unlikely they will remain in the exact same place until a warrant is obtained. By reducing 8 U.S.C. § 1357(a)(2) to a nullity as applied in practice, the Lyons Memo further confirms Defendants' policy and practice of not making an individualized probable-cause determination that a person is likely to escape before arresting them.

III. Courts Around the Country Have Consistently Enjoined Defendants' Policy in Other Jurisdictions and Certified a Similar Class as Plaintiffs Seek to Certify Here.

New York is not the only jurisdiction in which Defendants have been flouting the requirements of 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2) by conducting unlawful warrantless arrests. Individuals across the country have brought numerous class action lawsuits challenging the same policy and practice that Plaintiffs challenge here, and numerous courts have enjoined the government from making warrantless immigration arrests without the individualized probable cause assessment that the Immigration and Nationality Act requires and simultaneously certified an injunctive class under Rule 23(b)(2) on a statewide or districtwide basis. *See Ramirez Ovando v. Noem*, 810 F.Supp.3d 1209, 1228 (D. Colo. 2025) (provisionally certifying a class of individuals arrested without a warrant and without a pre-arrest, individualized assessment of probable cause that the individual poses a flight risk); *Escobar Molina*, 811 F.Supp.3d at 55 (similar for unassessed escape risk class); *M-J-M-A- v. Hermosillo*, 2026 WL 562063, at *17–18 (D. Or. Feb. 27, 2026) (similar for unassessed escape risk class).

LEGAL STANDARD

The party seeking class certification must demonstrate "numerosity, commonality, typicality, and adequate representation" and establish "that one of the three conditions of Rule 23(b) is met." *Elisa W. v. City of New York*, 82 F.4th 115, 122 (2d Cir. 2023). A class for

"injunctive relief or corresponding declaratory relief" may be certified if "the party opposing the class has acted or refused to act on grounds that apply generally to the class." Fed. R. Civ. P. 23(b)(2).

As to motions seeking provisional class certification for purposes of entering injunctive relief, courts conduct a full Rule 23(a) analysis, but only "in connection with the preliminary injunction motion." *Mercado v. Noem*, 800 F.Supp.3d 526, 559 (S.D.N.Y. 2025). The party seeking class certification need only establish each requirement of Rule 23 "by a preponderance of the evidence." *Id.* (quoting *Johnson v. Nextel Commc'ns Inc.*, 780 F.3d 128, 137 (2d Cir. 2015)).

ARGUMENT

I. Plaintiffs Satisfy the Requirements of Rule 23(a).

A. Plaintiffs Have Established Numerosity.

A class satisfies Rule 23(a)(1) if it is "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Joinder is impracticable if "the number of potential plaintiffs with analogous claims is sufficiently large that it would be unduly burdensome to make each individually join the lawsuit." *Guadagna v. Zucker*, 332 F.R.D. 86, 93 (E.D.N.Y. 2019). "Numerosity is 'presumed'" when a proposed class has 40 or more members. *Cox v. Spirit Airlines, Inc.*, 341 F.R.D. 349, 367 (E.D.N.Y. 2022) (citation omitted), *amended on reconsideration in part on other grounds*, 2023 WL 1994201 (E.D.N.Y. Feb. 14, 2023). And the "Second Circuit has relaxed the numerosity requirement where," as here, "the putative class seeks injunctive and declaratory relief" under Rule 23(b)(2). *Nicholson v. Williams*, 205 F.R.D. 92, 98 (E.D.N.Y. 2001). Plaintiffs need not show "the precise number of potential class members," and "courts are empowered to 'make common sense assumptions'" about potential class membership. *Id.* (citation modified).

Plaintiffs here easily meet the numerosity requirement. The class likely includes hundreds, if not thousands, of members. Since January 20, 2025, ICE alone has arrested over 15,000 individuals across the state of New York, Scarcella Decl., Ex. 26 (Sun), many of whom were arrested under Defendants' warrantless arrest policy described above. Plaintiffs have supplied declarations from twenty additional individuals who were personally subjected to Defendants' policy, and they are only the tip of the iceberg. *See, e.g.*, A.J.M.C. Decl. ¶¶ 6-19; G.E.V.S. Decl. ¶¶ 6–8; Pacheco Vasquez Decl. ¶¶ 3–10; Hassan Jeylani Decl. ¶¶ 4–9; *see also* Lampert Decl. ¶¶ 4–5, 14–24 (identifying eighteen other individuals that the Brooklyn Defenders Service has represented that were subject to Defendants' policy and practice).

The number of class members who "have been" arrested meet Rule 23(a)(1), and numerosity is further satisfied because the proposed class also includes class members who "will be" arrested. Threats from White House "Border Czar" Tom Homan that the government planned to "flood the zone in sanctuary cities," Scarcella Decl., Ex. 25 (Tex. Border Business), and from an anonymous White House official that New York was "next" following Minnesota have become reality, *id.*, Ex. 29 (Kelly & Feiger). Organizations across New York have reported an increase in warrantless arrests conducted without any assessment of a person's likelihood of escape, with one pastor indicating that congregants have been arrested on their way to church following a surge in Brooklyn's Sunset Park and Bay Ridge neighborhoods. Ruiz Decl. ¶¶ 6–8. The total number of individuals subjected to this practice is likely to increase going forward. This is more than enough to establish numerosity. *See Nicholson*, 205 F.R.D. at 98 (collecting cases finding numerosity satisfied where class seeks injunctive and declaratory relief and contains unknown future class members).

B. Plaintiffs Satisfy the Commonality Requirement.

Plaintiffs satisfy Rule 23(a)(2) by showing "that there are questions of law or fact common to the class." *Elisa W.*, 82 F.4th at 122–23. "[C]ommonality turns on the ability of the action to 'generate common *answers* apt to drive the resolution of the litigation.'" *Id.* (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). "[E]ven a single common question will do," *id.* at 127, for example; "[w]here the same conduct or practice by the same defendant gives rise to the same kind of claims from all class members, there is a common question." *C.K. ex rel. P.K. v. McDonald*, 2024 WL 730494, at *4 (E.D.N.Y. Feb. 22, 2024). This principle holds even where implementation of a specific challenged practice creates "differing 'individual circumstances of class members.'" *Kurtz v. Kimberly-Clark Corp.*, 321 F.R.D. 482, 530 (E.D.N.Y. 2017). As a result, when a movant "seeks to enjoin a practice or policy, rather than individualized relief, commonality is assumed." *Batalla Vidal v. Wolf*, 501 F.Supp.3d 117, 135 (E.D.N.Y. 2020).

Commonality is readily satisfied here because this lawsuit challenges a "unitary" policy of warrantless arrests, and determination of this policy's unlawfulness "is central to the validity of" all class members' claims. *Elisa W.*, 82 F.4th at 123-24 (quoting *Dukes*, 564 U.S. at 350); *see also Ramirez Ovando*, 810 F.Supp. at 1229 (finding commonality because "[a]ll class members … are subject to ICE's continued illegal practices"). As explained in detail in Plaintiffs' accompanying motion for a preliminary injunction, Plaintiffs contend (and have shown) that Defendants maintain a uniform policy and practice of conducting warrantless arrests without making an individualized, pre-arrest assessment of probable cause that the person is likely to escape—despite the statute and Defendants' own regulation requiring this assessment. *See* 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2). Because Plaintiffs challenge here the existence of a policy and practice encouraging warrantless arrests that are illegal under the governing statutes and regulations—and not "a breakdown of an established procedure in a particular case"—the question of whether the policy

violates the law alone satisfies the commonality requirement. *Elisa W.*, 82 F.4th at 125 (vacating denial of class certification); *see also Escobar Molina*, 811 F.Supp. 3d at 58 (finding commonality where plaintiffs challenged "defendants' alleged policy and practice of conducting warrantless civil immigration arrests without the required finding of escape risk").

This case also presents many other common questions of law and fact that will "drive the resolution of this litigation" and are each independently sufficient to satisfy commonality. *Kurtz*, 321 F.R.D. at 530. These include, but are not limited to:

- Whether Defendants' policy and practice of conducting warrantless arrests in New York without making an individualized determination of probable cause that an individual is in the United States unlawfully violates 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(i)-(ii);
- Whether Defendants have implemented a policy of requiring only reasonable suspicion in assessing escape risk prior to effecting a warrantless arrest, in violation of 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(i)-(ii); and
- Whether the Lyons Memo's interpretation that a person is considered likely to escape within the meaning of 8 U.S.C. § 1357 and 8 C.F.R. § 287.8(c)(2)(i)-(ii) where a person is unlikely to be in the same physical place by the time an ICE agent can secure an arrest warrant is legally erroneous.[10]

Class members' experiences evince the uniformity of this policy. Without warning, and in neighborhoods across New York, federal agents descend suddenly on those they perceive to be Latino. *E.g.*, A.M.C. Decl. ¶¶ 8–9; H.L.A.O. Decl. ¶¶ 7–8; J.R.H.L. Decl. ¶¶ 7–8; *see also* Preliminary Injunction Motion at 5. Often, agents ask no questions. *See, e.g.*, J.R.H.L. Decl. ¶ 15. And they frequently ignore evidence demonstrating individuals' strong community ties that negate any risk of escape. *See* H.L.A.O. Decl. ¶ 8 (explaining wife and son were hospitalized); A.M.C. Decl. ¶ 10 (confirming family ties before being arrested). Class members are then nevertheless

[10] Notably, Defendants are not even following this policy and regularly ignore evidence that a person is likely to remain in the same physical space, such as where they are near home or work. *See* Preliminary Injunction Motion at 22 n.2.

arrested, despite the lack of a warrant or any attempt to assess whether they presented an escape risk and regardless of evidence confirming their strong community ties. A determination of the policy's lawfulness is "central to the validity" of the putative class's claims. *Elisa W.*, 82 F.4th at 123–24 (citation modified).

Any minor factual variations in class members' experiences pose no barrier to commonality. Whether agents approached class members while they were walking, driving, or otherwise going about daily life does not change the heart of this case: Defendants implemented a policy that fails to comport with 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2). *See* Preliminary Injunction Motion at 17–20. And any differences in how class members were or will be treated *after* their arrests are similarly immaterial: Plaintiffs' claims focus on the illegality of the fact of arrest and Defendants' failure to comply with the statute and regulations at the time of that arrest. Because "Plaintiffs' claims turn on the impact of Defendants' alleged policies, practices, and procedures" and those policies all give "rise to the same kind of claims from all class members, commonality is satisfied." *C.K.*, 2024 WL 730494, at *4 (internal quotation marks omitted).

C. Plaintiffs' Claims Are Typical of the Class.

Rule 23(a)(3) is satisfied if the claims of the named representatives are "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical if "each member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Barrows v. Becerra*, 24 F.4th 116, 131 (2d Cir. 2022). This inquiry "is not highly demanding" and does not require "complete symmetry between the class representative's claims and those of the absent class members." *Kurtz*, 321 F.R.D. at 532–33. Rather, "the named plaintiff's claims" need only "share the same essential characteristics as that of the proposed class." *Id.* "[W]here the claims of a class stem from a single course of conduct, 'the commonality and typicality requirements … tend to merge,'" *Elisa W.*, 82 F.4th at 128, and

typicality is satisfied when the "same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented," regardless of whether there are "minor variations in the fact patterns underlying individual claims," *Robidoux v. Celani*, 987 F.2d 931, 937 (2d Cir. 1993).

Here, the claims of the individual Plaintiffs are typical of those of the proposed class. Defendants subjected each individual Plaintiff to a warrantless arrest without the required individualized probable-cause determinations. *See* J.R.H.L. Decl. ¶ 15 (describing arrest without a warrant and without arresting agents asking any questions about his ties to the community); H.L.A.O. Decl. ¶ 8 (describing arrest without a warrant where agents asked no pre-arrest questions about community ties and Plaintiff had told agents about hospitalization of wife and son); A.M.C. Decl. ¶ 10 (describing family ties prior to arrest); Benitez Decl. ¶¶ 7–9 (describing arrest without a warrant and without being asked anything other than to provide identification); Garcia Medrano Decl. ¶¶ 6–8 (same); F.R.P. Decl. ¶¶ 7–10 (same); R.C.R. Decl. ¶¶ 7–10 (same); Garcia Lanza Decl. ¶¶ 2–5.

Each Plaintiff's claims arise from the same policy and practice—Defendants' uniform execution of warrantless arrests without individualized determinations as to likelihood of escape—and thus from "the same course of events." *Barrows*, 24 F.4th at 131. These claims all rest on Defendants' failure to comply with 8 U.S.C. § 1357(a) and 8 C.F.R. § 287.8(c)(2), and thus "make[] similar legal arguments to prove the defendant's liability." *Id*. And the essential characteristic of their claims is identical to that of the class as a whole: each challenges the "same overarching pattern" of unlawful conduct. *Hill v. City of New York*, 2019 WL 1900503 at *7 (E.D.N.Y. Apr. 29, 2019). Accordingly, Plaintiffs have established typicality. *See Escobar Molina*, 811 F.Supp.3d at 59 (finding typicality satisfied despite the presence of "individual factual

circumstances" because plaintiffs "suffered a similar injury from the same course of conduct" (citations omitted)); *M-J-M-A-*, 2026 WL 562063, at *17 (finding typicality in challenge to ICE's policy and practice of conducting warrantless arrests despite differences in "individual facts surrounding each case" because plaintiffs and the proposed subclass "assert[ed] the same claims and [sought] the same relief").

D. Plaintiffs Will Fairly and Adequately Represent the Interests of the Class.

The proposed class should be certified because Plaintiffs will fairly and adequately represent the interests of the class. Fed. R. Civ. P. 23(a)(4). This requires showing (1) "that there is an absence of conflict and antagonistic interests between [the plaintiffs] and the class members," and (2) "that plaintiff's counsel is qualified, experienced, and capable." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 293 F.R.D. 287, 302 (E.D.N.Y. 2013). Moreover, "[i]n order to defeat a motion for certification," any purported "conflict 'must be fundamental.'" *In re Flag Telecom Holdings, Ltd.*, 574 F.3d 29, 35 (2d Cir. 2009). Plaintiffs make both showings.

First, the class representatives in this case will fairly and adequately represent the class. Plaintiffs share with other putative class members the overriding common interest in ending Defendants' unlawful policy and practice of conducting warrantless arrests without the requisite probable cause assessments, and there are no conflicts of interest between Plaintiffs and other putative class members—let alone "fundamental" ones. Plaintiffs further are willing and able to take an active role in the litigation and protect the interests of absentees. Benitez Decl. ¶ 16; Garcia Lanza Decl. ¶ 23; Garcia Medrano Decl. ¶¶ 25–27; A.M.C. Decl. ¶ 21; F.R.P. Decl. ¶ 26; H.L.A.O. Decl. ¶ 19; J.R.H.L. Decl. ¶ 23; R.C.R. Decl. ¶ 22. Plaintiffs have all been "subject to defendants' policy and practice" of making warrantless arrests without a flight risk analysis and "share a common interest in ensuring the protection of [class members'] rights." *Escobar Molina*, 811 F.Supp.3d at 60.

Second, Plaintiffs are represented by highly experienced counsel who will represent both Plaintiffs and the class with zeal and competence. Belsher Decl. ¶¶ 5–13; Gimbel Decl. ¶¶ 5–19; Philip Decl. ¶¶ 3, 5–10; Solis Decl. ¶¶ 4–10. The adequacy requirement thus is satisfied. *See C.K.*, 2024 WL 730494, at *5 (finding adequacy met where plaintiffs' counsel "collectively have resources and experience in complex class action litigation, including class action litigation" similar in subject matter to claims being pursued).

E. The Proposed Class Is Ascertainable.

The proposed class also meets the implicit "ascertainability" requirement in Rule 23(a). *M.G. v. New York City Dep't of Educ.*, 162 F.Supp.3d 216, 233 (S.D.N.Y. 2016). "At the certification stage, movants need not 'show[] administrative feasibility,' and instead need only show that the class is 'sufficiently definite so that it is administratively feasible for the court to determine whether a particular individual is a member.'" *Hobbs v. Knight-Swift Transp. Holdings, Inc.*, 2025 WL 1577271, at *12 (S.D.N.Y. June 4, 2025). This "modest threshold requirement" "will only preclude certification if a proposed class definition is indeterminate in some fundamental way." *In re Petrobras Sec.*, 862 F.3d 250, 269 (2d Cir. 2017).

Ascertainability is satisfied because membership in the class is based on criteria that are "clearly objective." *Id.* Members of the class include any person who, since January 20, 2025, has been or will be arrested in New York for alleged immigration violations without a warrant and without a pre-arrest, individualized assessment of probable cause that the person is likely to escape. Compl. ¶ 485. Membership in the class is based on "subject matter, timing, and location," all of which are "clearly objective" metrics for determining whether a person is in the proposed class. *Hunter v. Blue Ridge Bankshares, Inc.*, 2025 WL 1649323, at *22 (E.D.N.Y. June 11, 2025). Because determining a person's membership in the proposed class is "objectively *possible*," the

class is ascertainable and should be provisionally certified. *Petrobras*, 862 F.3d at 270 (emphasis in original).

II. The Requirements of Rule 23(b)(2) Are Satisfied Because Defendants' Unlawful Policies Apply Generally to the Class.

In addition to satisfying Rule 23(a), a class must meet one of the requirements of Rule 23(b). This case fits squarely within Rule 23(b)(2), which authorizes class certification where "the party opposing the class has acted or refused to act on grounds that apply generally to the class." Fed. R. Civ. P. 23(b)(2). Certification of a class for Rule 23(b)(2) injunctive relief is appropriate "where a single injunction would provide relief to each member of the class," and relief to each member need not "be identical," only "beneficial." *Sykes v. Mel S. Harris & Assocs. LLC*, 780 F.3d 70, 97 (2d Cir. 2015) (citation modified). Rule 23(b)(2) class certification "is particularly appropriate in civil rights litigation." *Plaintiffs #1-21 v. County of Suffolk*, 2021 WL 1255011, at *17 (E.D.N.Y. Mar. 12, 2021), *report and recommendation adopted*, 2021 WL 1254408 (E.D.N.Y. Apr. 5, 2021).

Defendants' policy and practice of arresting individuals without conducting an individualized, pre-arrest assessment of likelihood of escape impacts all members of the Proposed Class. Furthermore, each class member will "benefit from the injunction" Plaintiffs seek. *Barrows*, 24 F.4th at 132. Plaintiffs seek declaratory and injunctive relief that would benefit the whole class, including a single injunction prohibiting Defendants from conducting warrantless arrests without individualized determinations of probable cause that the person is in the United States unlawfully and is an escape risk. Plaintiffs were arrested near their homes, in neighborhoods they visit regularly, and on routes to school or to work that they traverse in their daily lives. Defendants' agents continue to target people who look like Plaintiffs in Plaintiffs' neighborhoods under their unlawful policy, and arrests continue to grow. *See* N.D.L.A. Decl. ¶ 20 (describing ICE returning to his home looking for other people about a week after his release from detention); Gomez Decl.

¶ 5 ("That is the situation now in the Hempstead area: people are stopped all the time just for being Hispanic."). This is precisely the type of case for which Rule 23(b)(2) is designed, as it "is most commonly relied upon by litigants seeking institutional reform in the form of injunctive relief." *Stinson v. City of New York*, 282 F.R.D. 360, 379 (S.D.N.Y. 2012) (citation omitted). Absent the requested injunction, Plaintiffs face the imminent risk that Defendants' agents will deprive them of their physical liberty—a risk shared by all class members. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) ("Freedom from imprisonment … lies at the heart of the liberty.").

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

Rule 23(g) requires that the district court appoint class counsel for any class that is certified under Rule 23. The lawyers appointed to serve as class counsel must "fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). Courts consider four factors in appointing class counsel: (1) "the work counsel has done in identifying [and] investigating potential claims in the action;" (2) "counsel's experience[ing] in handling class actions, other complex litigation, and the types of claims asserted in the action;" (3) counsel's knowledge of the applicable law; and (4) "the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A).

Plaintiffs' lawyers more than satisfy these criteria and should be appointed as class counsel. As noted above, Plaintiffs' counsel collectively has extensive experience in immigration litigation and class actions. Belsher Decl. ¶¶ 5–10; Gimbel Decl. ¶¶ 5–16; Philip Decl. ¶¶ 3, 5–7; Solis Decl. ¶¶ 4-7. Counsel has spent a significant amount of time identifying and investigating Plaintiffs' claims, is familiar with the applicable substantive law, and has the resources needed to fully and adequately represent the class. Belsher Decl. ¶¶ 11–13; Gimbel Decl. ¶¶ 17–19; Philip Decl. ¶¶ 8–10; Solis Decl. ¶¶ 8–10. Plaintiffs accordingly request that the Court appoint their attorneys as class counsel.

CONCLUSION

For the above reasons, Plaintiffs request that the Court find that Plaintiffs' proposed class meets the requirements of Fed. R. Civ. P. 23(a) and 23(b)(2); certify the designated class; and, pursuant to Fed. R. Civ. P. 23(g), appoint current counsel for Plaintiffs as counsel for the class.

Dated: April 13, 2026
New York, NY

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CERTIFICATE OF COMPLIANCE

I hereby certify that this Memorandum of Law complies with the length restrictions in Local Civil Rule 7.1(c) because it contains 5,552 words, as counted by the Microsoft Word-processing program used to prepare this document. This word count excludes the caption, table of contents, table of authorities, signature blocks, and this certificate as provided for by Local Civil Rule 7.1(c).

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