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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' MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF THEIR
MOTION FOR CLASS
CERTIFICATION**

Hon. Ruth Bermudez Montenegro
Hearing Date: July 28, 2025
Courtroom: 5B

**NO ORAL ARGUMENT UNLESS
ORDERED BY THE COURT**

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I. INTRODUCTION

On January 20, 2025, Defendants unlawfully blocked access to the U.S. asylum process at Class A ports of entry on the U.S.-Mexico border (“POEs”) and canceled all pending CBP One appointments. Defendants’ actions are preventing Individual Plaintiffs and all similarly situated individuals from exercising their shared statutory right to seek asylum in the United States and leaving them stranded permanently in Mexico, where they face an ongoing risk of kidnapping, murder, torture, rape, and other targeted violence.

Individual Plaintiffs Maria Doe, Jessica Doe, Fernando Doe, Ali Doe, Eduardo Doe, Jean Doe, Rous Doe, Diana Doe, Nikolai Zolotov, Anahi Doe, and Dragon Doe (collectively, “Individual Plaintiffs”), alongside Organizational Plaintiffs Al Otro Lado, Inc. (“AOL”) and Haitian Bridge Alliance (“HBA”),¹ seek certification of a class consisting of:

All noncitizens who, on or after January 20, 2025, have sought or will seek to present themselves at a Class A POE on the U.S.-Mexico border to seek asylum; who were or will be prevented from accessing the U.S. asylum process by or at the direction of Defendants based on the Proclamation² or the Asylum Shutdown Policy³; who continue to seek access to the U.S. asylum process; and who are not physically present in the United States.

(“Asylum Class”).

Further, Individual Plaintiffs Maria Doe, Jessica Doe, Fernando Doe, Ali Doe, Eduardo Doe, Jean Doe, and Rous Doe (collectively, “CBP One Individual Plaintiffs”) seek certification of a subclass consisting of:

All noncitizens who received appointments through the CBP One app to present themselves at a Class A POE on the U.S.-Mexico border; whose appointments were canceled by Defendants on January 20, 2025; who continue to seek access to the U.S. asylum process; and who are

¹ Individual Plaintiffs and Organizational Plaintiffs are collectively referred to herein as “Plaintiffs.”

² “Proclamation” refers to Proclamation No. 10888, 90 Fed. Reg. 8333 (Jan. 20, 2025).

³ “Asylum Shutdown Policy” refers to Defendants’ decisions to effectively close southern border POEs to people seeking asylum, as defined by ECF No. 1 at ¶ 13.

1 not physically present in the United States.
2 (“CBP One Subclass”). Plaintiffs easily meet the requirements of Rules 23(a)
3 and 23(b)(2) as to the putative class and subclass.

4 **First**, the proposed class and subclass exceed the numerosity requirement. The
5 CBP One Subclass alone includes at least 30,000 people who are geographically
6 dispersed along the U.S.-Mexico border, and the Asylum Class is even larger, making
7 joinder in a single proceeding impractical.

8 **Second**, all putative class and subclass members assert a common set of legal
9 claims based on a common nucleus of operative facts. Questions capable of common
10 proof for both the class and subclass include whether Defendants unlawfully
11 prevented the class members from presenting themselves at a POE to seek asylum
12 and whether Defendants’ actions violate the Immigration and Nationality Act
13 (“INA”), the Administrative Procedures Act (“APA”), and/or are ultra vires. For the
14 CBP One Subclass, questions capable of common proof include whether Defendants’
15 decision to cancel CBP One appointments (“CBP One Cancellation”) was arbitrary
16 and capricious or otherwise violated the APA.

17 **Third**, all Individual Plaintiffs assert claims that are typical of the proposed
18 class and, where relevant, the proposed subclass, including violations of the INA and
19 the APA, and the ultra vires nature of Defendants’ actions.

20 **Fourth**, the Individual Plaintiffs will fairly and adequately protect the interests
21 of both the proposed class and subclass. They are represented by qualified counsel
22 with extensive experience in class actions and complex litigation, including
23 challenges to Defendants’ immigration policies, who have dedicated significant
24 resources to litigating this matter. Moreover, none of the Individual Plaintiffs have
25 antagonistic or conflicting interests.

26 **Finally**, Plaintiffs seek relief that will provide a complete remedy for all
27 proposed class and subclass members: restoration of access to the U.S. asylum
28 process as guaranteed by law.

II. FACTS COMMON TO THE PUTATIVE CLASS AND SUBCLASS

Individual Plaintiffs and proposed class members’ claims are premised on a simple, cohesive set of facts that are subject to common proof. Following Defendant Trump’s inauguration, Defendants illegally shut down the asylum process at POEs on the U.S.-Mexico border. Defendants also canceled all pending CBP One appointments and CBP One’s scheduling functionality. As a result of Defendants’ unlawful actions, Individual Plaintiffs and proposed class members have experienced and continue to experience irreparable harm.

A. On Inauguration Day, Defendants Canceled All Pending CBP One Appointments and Shut Down Access to Asylum at Ports of Entry Along the Southern Border.

At noon on January 20, 2025, Defendants abruptly canceled some 30,000 pending CBP One appointments that individuals waiting in Mexico had secured to present themselves at POEs to access the U.S. asylum process. *E.g.*, Ex. A, Maria Doe Decl. ¶ 11; Ex. B, Rous Doe Decl. ¶ 16; Ex. C, Fernando Doe Decl. ¶¶ 14–15.⁴ At the same time, Defendants began turning away asylum seekers with CBP One appointments who presented themselves at POEs on their designated appointment date and time. *E.g.*, Ex. D, Jean Doe Decl. ¶¶ 13–14; Ex. E, Eduardo Doe Decl. ¶¶ 9–11. Shortly thereafter, CBP posted an announcement on its website indicating that, as of January 20, 2025, all pending CBP One appointments had been canceled and the CBP One scheduling functionality was no longer available.⁵

Later that evening, Defendant Trump issued the “Securing Our Borders” executive order (the “Executive Order”) directing the Secretary of Homeland Security to stop using CBP One “as a method of paroling or facilitating the entry of

⁴ Exhibits citations refer to the contemporaneously-filed Declaration of Eric M. Acker in Support of Plaintiffs’ Motion for Class Certification and Motion to Proceed Pseudonymously.

⁵ *CBP One™ Mobile Application*, U.S. Customs & Border Protection, <https://web.archive.org/web/20250120180218/https://www.cbp.gov/about/mobile-apps-directory/cbpone> (archived Jan. 20, 2025).

1 otherwise inadmissible [noncitizens] into the United States.” 90 Fed. Reg. 8467, 8468
2 (Jan. 20, 2025). Defendants’ decision to cancel scheduled CBP One appointments
3 and remove the app’s scheduling functionality effectively eliminated the only method
4 that had been available to noncitizens to seek asylum at the U.S.-Mexico border since
5 May 2023. *See* Ex. L, Laura St. John Decl. (“FIRRP Decl.”) ¶ 8; Ex. M, Jennifer
6 Babaie Decl. (“Las Americas Decl.”) ¶ 12; Ex. V, Tracey Horan Decl. (“KBI Decl.”)
7 ¶¶ 14, 21–23.

8 The same evening, Defendant Trump issued the Proclamation. The
9 Proclamation vaguely asserts that there is an “invasion” at the Southern border, with
10 no definition of what that means. Invoking INA §§ 212(f) and 215(a)(1), 8 U.S.C.
11 §§ 1182(f), 1185(a)(1), the Proclamation indefinitely “suspend[s] the physical entry”
12 of noncitizens “engaged in the invasion” or who “fail[,] before entering the United
13 States, to provide Federal officials with sufficient medical information and reliable
14 criminal history and background information as to enable fulfillment of the
15 requirements of” 8 U.S.C. § 1182(a)(1)–(3) on or after January 20, 2025. 90 Fed.
16 Reg. 8335 (Jan. 20, 2025). Relying on the same statutory provisions, the
17 Proclamation also indefinitely “restrict[s noncitizens’] access to provisions of the
18 INA that would permit their continued presence in the United States, including, but
19 not limited to,” 8 U.S.C. § 1158, the right to apply for asylum. *Id.*

20 Subsequently, CBP issued written guidance applicable to the CBP Office of
21 Field Operations, which operates POEs. The guidance implements the documentation
22 requirements under Section 3 of the Proclamation that purport to fulfill the
23 requirements of 8 U.S.C. § 1182(a)(1)–(3) and memorializes the Asylum Shutdown
24 Policy. *See* ECF No. 1 at Ex. A, USA00022-33. The guidance states that noncitizens
25 subject to the Proclamation “shall not be permitted to cross the international
26 boundary” for inspection at POEs, even if they “claim or manifest a fear at the
27 international boundary line.” *Id.* at USA00024.

B. Defendants' Conduct Has Irreparably Harmed and Continues to Irreparably Harm Individual Plaintiffs, the Asylum Class, and the CBP One Subclass.

1. Asylum Class Members Have Been Unlawfully Denied Access to the Asylum Process.

On January 20, Individual Plaintiffs and thousands of members of the proposed Asylum Class had been waiting in Mexico for an opportunity to present themselves at a POE to seek asylum.⁶ The Proclamation, Asylum Shutdown Policy, and CBP One Cancellation deprived Individual Plaintiffs and those similarly situated of their statutory right to seek asylum and left them stranded in Mexico under precarious conditions. Ex. A, Maria Doe Decl. ¶¶ 10–13; Ex. B, Rous Doe Decl. ¶¶ 16, 20–21; Ex. C, Fernando Doe Decl. ¶¶ 16–18; Ex. D, Jean Doe Decl. ¶¶ 13–15; Ex. E, Eduardo Doe Decl. ¶¶ 11–14; Ex. F, Dragon Doe Decl. ¶¶ 10–12; Ex. G, Anahi Doe Decl. ¶¶ 10–12; Ex. H, Ali Doe Decl. ¶¶ 10–12; Ex. I, Jessica Doe Decl. ¶¶ 15–19; Ex. J, Diana Doe Decl. ¶¶ 9–11; Ex. K, Nikolai Zolotov Decl. ¶¶ 8–13.⁷

Like the Individual Plaintiffs, members of the proposed Asylum Class had been waiting, often for months, for the opportunity to present themselves at a POE to access the U.S. asylum process. *E.g.*, Ex. K, Nikolai Zolotov Decl. ¶¶ 8–10 (waiting in Mexico since March 21, 2024); Ex. J, Diana Doe Decl. ¶¶ 8–9 (waiting in Mexico since March 2024); Ex. I, Jessica Doe Decl. ¶¶ 12–13, 15 (waiting in Mexico since June 19, 2024); Ex. F, Dragon Doe Decl. ¶ 8 (waiting in Mexico since November 20, 2024). Due to the Proclamation and the Asylum Shutdown Policy, the Individual Plaintiffs and Asylum Class members have no hope of accessing the U.S. asylum

⁶ See Camilo Montoya-Galvez, *About 270,000 migrants waiting to enter U.S. through app Trump has vowed to end, estimates show*, CBS News (Jan. 19, 2025), <https://www.cbsnews.com/news/270000-migrants-waiting-to-enter-u-s-through-cbp-one-app-trump-has-vowed-to-end/>.

⁷ See Julie Watson & Megan Janetsky, *Migrants stranded when thousands of appointments to enter the US are canceled as Trump takes office*, AP News (Jan. 20, 2025), <https://apnews.com/article/trump-immigration-cbp-one-border-app-652854b5f2a4e6ccd6ee2ccc729cbb55>.

process at a POE absent action from this Court.

2. Pursuant to Defendant’s Instructions, Members of the CBP One Subclass Obtained CBP One Appointments, Which Defendants Canceled at the Eleventh Hour.

Approximately 30,000 of those waiting in Mexico on January 20, including Individual Plaintiffs Maria Doe, Jessica Doe, Fernando Doe, Ali Doe, Eduardo Doe, Jean Doe, Rous Doe, and the rest of the CBP One Subclass, had obtained CBP One appointments pursuant to Defendants’ instructions.⁸ Those appointments were scheduled to occur between January 20, 2025 and February 2025. *E.g.*, Ex. A, Maria Doe Decl. ¶ 11 (appointment scheduled for Feb. 9, 2025); Ex. B, Rous Doe Decl. ¶ 13 (Jan. 23, 2025); Ex. C, Fernando Doe Decl. ¶ 14 (Jan. 25, 2025); Ex. D, Jean Doe Decl. ¶ 13 (Jan. 20, 2025); Ex. E, Eduardo Doe Decl. ¶ 9 (Jan. 21, 2025); Ex. H, Ali Doe Decl. ¶ 10 (Jan. 23, 2025); Ex. I, Jessica Doe Decl. ¶ 15 (Feb. 9, 2025). In reliance on Defendants’ explicit representations that they could present themselves at the designated POE on the date and time of their CBP One appointments to seek asylum, CBP One Subclass members expended significant sums of money and risked increased exposure to physical harm to travel to the border as their appointments approached. *E.g.*, Ex. B, Rous Doe Decl. ¶¶ 14–17 (kidnapped on her way to CBP One appointment in Nogales); Ex. C, Fernando Doe Decl. ¶¶ 14–15 (spent all his funds paying for extortion fees, release from kidnappers, and travel to Nogales for CBP One appointment); Ex. H, Ali Decl. ¶ 10 (spent 9,000 Mexican pesos, approximately \$450, to travel to Nogales for CBP One appointment).

Despite CBP One Subclass members’ reliance on the CBP One app and Defendants’ representations related thereto, Defendants canceled their appointments—without notice or explanation—and provided no alternate method for

⁸ See Thomas Graham, *US asylum seekers in despair after Trump cancels CBP One app: ‘Start from zero again,’* The Guardian (Jan. 23, 2025), <https://www.theguardian.com/us-news/2025/jan/23/trump-cbp-one-app-canceled-mexico> (“Roughly 30,000 appointments that had already been scheduled also have been canceled.”).

1 accessing the U.S. asylum process. *E.g.*, Ex. M, Las Americas Decl. ¶ 14 (“[T]he
2 most common sentiment expressed, even beyond their widespread fear, is a profound
3 sense of betrayal: asylum seekers did everything possible to follow the
4 U.S. government’s complex and often unfair procedural hurdles to apply for asylum
5 in the way the government asked them to . . .”).

6 **3. Asylum Class Members Face a Myriad of Harms in Mexico,**
7 **Including Violence, Torture, Kidnapping, and**
8 **Discrimination.**

9 As a result of Defendants’ actions, Individual Plaintiffs and proposed class
10 members face a persistent threat of violence in Mexico. For example, Maria Doe
11 suffered brutal beatings and continues to be relentlessly pursued by a Mexican cartel
12 such that she and her husband rarely venture out of the shelter where they live, have
13 changed their phone numbers, and do not make contact with family or friends. Ex. A,
14 Maria Doe Decl. ¶¶ 9–12. Eduardo Doe, who was previously kidnapped and tortured
15 by members of a Mexican cartel, fears that the same thing could happen again. Ex. E
16 ¶¶ 8–9, 12. Other Individual Plaintiffs face similarly harrowing risks while stranded
17 in Mexico, emblematic of the experiences of other class members. *E.g.*, Ex. B, Rous
18 Doe Decl. ¶¶ 14–17 (kidnapped and held hostage for seven weeks); Ex. C, Fernando
19 Doe Decl. ¶¶ 12, 16, 19 (after advocating against the Venezuelan regime, masked
20 men in Mexico with possible links to narco-trafficking syndicates and Maduro
21 threatened him with photographs of dead bodies; he faced extortion, kidnapping,
22 severe beatings, and nearly died from internal organ damage); Ex. I, Jessica Doe
23 Decl. ¶¶ 14 (suffered beatings and extreme food deprivation after being kidnapped
24 by human traffickers); Ex. K, Nikolai Zolotov Decl. ¶ 12 (faced threats and
25 harassment, fears being in public, and witnessed cartel violence).

26 The dangers that the Individual Plaintiffs face are consistent with public reports
27 of the dangers to migrants in Mexico. Civil society organizations have documented
28 widespread risks of kidnapping, extortion, and violence against migrants in Mexico.
Ex. O, José Alberto Argüelles Aviles Decl. (“AAMX Decl.”) ¶ 14 (asylum seekers

1 in Mexico “experience extortion, kidnappings, disappearances, swindles and fraud,
2 and sexual and gender-based violence.”), ¶ 20 (“[Asylum seekers] face severe
3 deprivations of their fundamental rights and have been subject to untold violence at
4 the hands of cartels and other organized crime.”); Ex. L, FIRRP Decl. ¶ 11 (families
5 experience extortion and kidnapping); Ex. M, Las Americas Decl. ¶ 12 (migrants “are
6 routinely kidnapped, arrested or detained by Mexican police and organized criminal
7 groups”); Ex. V, KBI Decl. ¶ 13 (78% of migrants arriving at Kino Border Initiative’s
8 Migrant Outreach Center in 2024 reported that violence was their primary reason for
9 migration); Ex. P, Sophia Genovese Decl. (“NMILC Decl.”) ¶¶ 11–13, 15–16, 18
10 (migrants face violence and extortion); Ex. Q, Nicole Elizabeth Ramos Decl. (“AOL
11 Decl.”) ¶ 19 (“[C]lients in Mexico frequently report facing rape, kidnapping,
12 extortion, and other forms of violence on a regular basis.”); Ex. U, Guerline Jozef
13 Decl. (“HBA Decl.”) ¶¶ 13–14 (Community of asylum seekers HBA serves in
14 Mexico “routinely face violence and discrimination from criminal organizations and
15 local authorities and are often subject to robbery, rape, and physical assault.”).

16 Human Rights First has tracked reports of over 2,500 asylum seekers and other
17 migrants who survived kidnapping, murder, torture, rape, and other serious harms
18 while they were stranded in Mexico. *See* Ex. R, Human Rights First, at 136.
19 Moreover, the U.S. State Department has recognized that armed groups frequently
20 limit the movements of migrants within Mexico and that human smuggling
21 organizations hold significant power throughout the country. *See, e.g.,* Ex. S, U.S.
22 Department of State’s Mexico Travel Advisory at 190. People seeking asylum from
23 countries other than Mexico face threats of deportation back to their persecutors in
24 their home countries, while asylum seekers from Mexico are forced to remain in the
25 country where they face persecution. *E.g.,* Ex. K, Nikolai Zolotov Decl. ¶ 11 (fears
26 Mexican officials who could detain or deport him); Ex. U, HBA Decl. ¶ 10 (“Black
27 migrants report to HBA that they now fear approaching U.S. ports of entry without a
28 CBP One appointment because of ubiquitous stories of INM [*Instituto Nacional de*

1 *Migración*, the Mexican immigration agency] or CBP harassment, arrest, relocation,
2 deportation, or worse.”). They also face Mexican military, law enforcement, and
3 immigration officials who are hostile to their presence in the country and engage in
4 extortion, violence, and arbitrary detention. *E.g.*, Ex. E, Eduardo Doe Decl. ¶ 12
5 (fears approaching a port of entry due to Mexican border officials detaining people
6 and sending them to southern Mexico where the risk of kidnapping is high); Ex. Q,
7 AOL Decl. ¶ 25 (AOL’s clients in Mexico experience “violence at the hands of . . .
8 Mexican officials”); *see also* Ex. T, Hope Border Institute/Jesuit Refugee Service
9 Mexico, at 230 (noting Mexican authorities’ involvement in 30% of kidnapping cases
10 surveyed).

11 In addition to these dangers, Individual Plaintiffs and class members must
12 endure pervasive discrimination and dire economic straits. *E.g.*, Ex. B, Rous Doe
13 Decl. ¶ 21 (finding a job as a trans woman in Mexico is “almost impossible”); Ex. C,
14 Fernando Doe Decl. ¶ 18 (can barely afford food and pay for rent); Ex. E, Eduardo
15 Doe Decl. ¶ 13 (struggling to survive because he is paid less than half of what his
16 co-workers receive due to migrant status); Ex. G, Anahi Doe Decl. ¶ 12 (as a
17 transgender woman in Mexico, lives in constant fear and has suffered discrimination
18 in seeking employment); Ex. H, Ali Doe Decl. ¶ 12 (feels unsafe in Mexico due to
19 lack of support); Ex. I, Jessica Doe Decl. ¶ 18 (barely makes enough money to
20 survive); Ex. K, Nikolai Zolotov Decl. ¶ 13 (struggling both emotionally and
21 financially; unable to work due to lack of legal status in Mexico and lack of Spanish
22 proficiency); Ex. Q, AOL Decl. ¶ 19 (“[M]any work in jobs where they receive far
23 below the minimum wage, endure conditions that are exploitative and unsafe, and
24 face housing and food insecurity”); Ex. U, HBA Decl. ¶¶ 13–14 (detailing economic
25 harms, dire health risks, and discrimination against Black migrants).

26 The persistent, credible threats to their personal security also make it extremely
27 difficult for non-Mexican Individual Plaintiffs and members of the proposed Asylum
28 Class to access the Mexican asylum system. Ex. Q, AOL Decl. ¶¶ 17–20 (asylum

1 seekers forced to wait in Mexico “face grave dangers and live under precarious
2 conditions”); Ex. B, Rous Doe Decl. ¶ 20 (“I do not want to stay in Mexico because
3 I am afraid of being kidnapped again or suffering more violence for being a trans
4 woman.”); Ex. C, Fernando Doe Decl. ¶ 18 (“I cannot hope for security in a place
5 where I am not safe at all.”); Ex. J, Diana Doe Decl. ¶ 10 (her partner was assaulted
6 in Mexico and she is “scared to even go out in the street”).

7 Moreover, Mexico has a strict 30-day deadline to file an asylum claim;
8 securing an exception to that deadline is nearly impossible to overcome, particularly
9 without a lawyer. At the same time, most people seeking asylum in Mexico lack
10 counsel. Ex. O, AAMX Decl. ¶¶ 5–8 (noting the 30-day deadline and explaining the
11 need for representation for asylum seekers in Mexico “far outstrips capacity”). The
12 30-day deadline may be excused for “good cause,” but whether good cause exists is
13 at the discretion of COMAR, the Mexican asylum agency. *Id.* ¶ 6. COMAR has made
14 clear that missing the deadline because a person intended to apply for asylum in the
15 United States through CBP One does not amount to good cause. *Id.*

16 Most non-Mexican Individual Plaintiffs and class members already in Mexico
17 missed the 30-day deadline to apply for asylum there when they relied on the promise
18 of access to the U.S. asylum process through a CBP One appointment. *E.g.*, Ex. D,
19 Jean Doe Decl. ¶ 12 (missed the 30-day deadline because a COMAR official told him
20 he could not apply for asylum in Mexico while waiting for a CBP One appointment);
21 Ex. U, HBA Decl. ¶ 9 (“[I]ndividuals, relying on the promise of access to the U.S.
22 asylum process, have long since bypassed Mexico’s 30-day asylum application
23 deadline and are currently stuck in Mexico”). They are now likely ineligible for such
24 relief. *See* Ex. Q, AOL Decl. ¶ 18 (“If an asylum seeker applies late and their
25 justification for missing the deadline is deemed insufficient, they risk deportation.”).

26 All Individual Plaintiffs are now stranded in Mexico in legal limbo, unable to
27 return home for fear of persecution and deprived of access to asylum in both the
28 United States and Mexico.

III. LEGAL ARGUMENT

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

Rule 23 “creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). To proceed as a class, Plaintiffs must satisfy Rule 23(a)’s requirements—numerosity, commonality, typicality, and adequacy—and show that the proposed class fits into one of the three types of classes authorized by Rule 23(b). *Ms. L. v. U.S. Immigration and Customs Enforcement*, 331 F.R.D. 529, 535 (S.D. Cal. 2018).

Plaintiffs readily meet these requirements.⁹ The number of class and subclass members demonstrates that joinder is impracticable, and both the class and subclass exceed common numerosity thresholds. Both the class and subclass assert a common set of claims based on a common set of facts. The legality of the Proclamation, the Asylum Shutdown Policy, and the CBP One Cancellation are common questions that will generate common answers. Moreover, Plaintiffs seek relief that will restore access to the asylum process for all proposed class and subclass members and thereby remedy the harm they have suffered. The Individual Plaintiffs’ claims are typical of the proposed class and subclass that they seek to represent, and each Individual Plaintiff will fairly and adequately represent the interests of the class and subclass. For the reasons detailed below, and consistent with prior decisions from the Ninth Circuit and this District certifying classes challenging federal immigration policies,

⁹ When analyzing class certification, “[t]he court may consider whether the plaintiff’s proof is, or will likely lead to, admissible evidence.” *Sali v. Corona Reg’l Med. Ctr.*, 909 F.3d 996, 1006 (9th Cir. 2018). “But admissibility must not be dispositive. Instead, an inquiry into the evidence’s ultimate admissibility should go to the weight that evidence is given at the class certification stage.” *Id.* (concluding that district court abused its discretion by refusing to consider a declaration purely on admissibility grounds).

the putative class and subclass should both be certified.¹⁰

1. The Proposed Class and Subclass Are so Numerous that Joinder Is Impracticable.

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “Impracticability does not mean impossibility” but only “the difficulty or inconvenience of joining all members of [the] class.” *Astiana v. Kashi Co.*, 291 F.R.D. 493, 501 (S.D. Cal. 2013) (citation omitted).

Plaintiffs “need not state the exact number of potential class members; nor is a specific minimum number required.” *Ms. L.*, 331 F.R.D. at 536. However, “courts find numerosity when the class includes at least forty members.” *Gomez v. Rossi Concrete, Inc.*, 270 F.R.D. 579, 588 (S.D. Cal. 2010) (citations omitted); *In re Facebook, Inc., PPC Adver. Litig.*, 282 F.R.D. 446, 452 (N.D. Cal. 2012), *aff’d sub nom. Fox Test Prep v. Facebook, Inc.*, 588 F. App’x 733 (9th Cir. 2014). Because Plaintiffs seek to certify a Rule 23(b)(2) class, “the numerosity requirement is relaxed and plaintiffs may rely on the reasonable inference arising from plaintiffs’ other evidence that the number of unknown and future members of [the] proposed

¹⁰ See *Gonzalez v. U.S. Immigration & Customs Enforcement*, 975 F.3d 788, 807–08 (9th Cir. 2020) (affirming certification of class of individuals raising Fourth Amendment claims concerning detention pursuant to a detainer); *Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998) (affirming certification of nationwide class of individuals challenging adequacy of notice in document fraud cases); *Ms. L.*, 331 F.R.D. at 541 (certifying class of parents who were detained in immigration custody and separated from their children); *Al Otro Lado v. Wolf*, 336 F.R.D. 494 (S.D. Cal. 2020) (“*AOL v. Wolf*”) (certifying class of people seeking access to the asylum process at POEs); *Al Otro Lado, Inc. v. McAleenan*, 423 F. Supp. 3d 848, 878 (S.D. Cal. 2019) (“*AOL v. McAleenan*”) (provisionally certifying a subclass of people who had been metered while trying to access the asylum process at POEs); see also *Al Otro Lado v. Wolf*, 952 F.3d 999, 1002 (9th Cir. 2020) (denying the government’s motion for a stay pending appeal of the district court’s order enjoining enforcement of the challenged rule against the subclass provisionally certified in *AOL v. McAleenan*, 423 F. Supp. 3d 848).

1 subclass . . . is sufficient to make joinder impracticable.” *Sueoka v. United States*,
2 101 F. App’x 649, 653 (9th Cir. 2004).

3 Plaintiffs easily satisfy the numerosity requirement, as the number of class
4 members far exceeds the minimum requirement. Before January 20, 2025,
5 Defendants gave out 1,450 CBP One appointments per day, which were scheduled
6 roughly three weeks in advance.¹¹ Approximately 30,000 individuals had pending
7 CBP One appointments that Defendants summarily canceled on January 20.¹² The
8 proposed CBP One Subclass thus includes, at minimum, 30,000 members, and the
9 broader Asylum Class likely includes thousands more people who were or will be
10 seeking asylum at a POE.¹³

11 Here, joinder is impracticable because “general knowledge and common sense
12 indicate that [the class] is large.” *Johns v. Bayer Corp.*, 280 F.R.D. 551, 556 (S.D.
13 Cal. 2012) (citation omitted). In two motions involving classes similar to those
14 proposed here, the defendants conceded, and the Court agreed, that the classes
15 satisfied Rule 23(a)(1)’s numerosity requirement. *AOL v. Wolf*, 336 F.R.D. at 500–
16 02 (finding that a class of “all noncitizens who seek or will seek to access the U.S.

18 ¹¹ *CBP One™ Appointments Increased to 1,450 Per Day*, U.S. Customs & Border
19 Protection,
20 <https://web.archive.org/web/20250619202852/https://www.cbp.gov/newsroom/national-media-release/cbp-one-appointments-increased-1450-day> (June 30, 2023).

21 ¹² See Thomas Graham, *US asylum seekers in despair after Trump cancels CBP One*
22 *app: ‘Start from zero again’*, The Guardian (Jan. 25, 2025),
23 <https://www.theguardian.com/us-news/2025/jan/23/trump-cbp-one-app-canceled-mexico>. (“Roughly 30,000 appointments that had already been scheduled also have
24 been canceled.”).

25 ¹³ Camilo Montoya-Galvez, *About 270,000 migrants waiting to enter U.S. through*
26 *app Trump has vowed to end, estimates show*, CBS News (Jan. 19, 2025),
27 <https://www.cbsnews.com/news/270000-migrants-waiting-to-enter-u-s-through-cbp-one-app-trump-has-vowed-to-end> (“Approximately 270,000 migrants are
28 estimated to be waiting on the Mexican side of the U.S.-Mexico border, hoping to get an appointment to enter the U.S. through a system that President-elect Donald Trump has vowed to end”).

1 asylum process by presenting themselves at a Class A [POE] on the U.S.-Mexico
2 border, and were or will be denied access to the U.S. asylum process by or at the
3 instruction of [CBP] officials on or after January 1, 2016,” satisfied Rule 23(a)(1));
4 *see also AOL v. McAleenan*, 423 F. Supp. 3d at 869–70 (finding that a class of “all
5 non-Mexican noncitizens who were denied access to the United States [a]sylum
6 process before July 16, 2019 as a result of the Government’s metering policy and
7 continue to seek access to the U.S. asylum process” also satisfied Rule 23(a)(1)).

8 Here, the proposed class and subclass each contain thousands of individuals
9 who are geographically dispersed throughout Mexico, which is “large enough on its
10 face” to satisfy Rule 23(a)(1). *AOL v. McAleenan*, 423 F. Supp. 3d at 870 (finding
11 Rule(a)(1) satisfied for a class of 26,000 individuals dispersed along the U.S.-Mexico
12 border).

13 **2. Individual Plaintiffs’ Claims Present Common Questions of**
14 **Law and Fact.**

15 Rule 23(a)(2) requires that there be “questions of law or fact common to the
16 class.” Fed. R. Civ. P. 23(a)(2). “What matters to class certification . . . is not the
17 raising of common questions—even in droves—but rather, the capacity of a
18 class-wide proceeding to generate common *answers* apt to drive the resolution of the
19 litigation.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) (internal
20 quotation marks omitted). Therefore, a question is common to the class when “it is
21 capable of classwide resolution—which means that determination of its truth or
22 falsity will resolve an issue that is central to the validity of each one of the claims in
23 one stroke.” *Id.*

24 The requirements of Rule 23(a)(2) have been construed permissively, and one
25 significant common question of law or fact will satisfy the rule. *See Ms. L.*, 331
26 F.R.D. at 536, 538. Critically, commonality is satisfied where a “lawsuit challenges
27 a system-wide practice or policy that affects all of the proposed class members.”
28 *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001); *see also Ms. L.*, 331 F.R.D.

1 at 538 (holding that plaintiffs met commonality because, *inter alia*, “the focus of this
2 litigation is on the Government’s practice of separating migrant parents and
3 children”); *Chhoeun v. Marin*, No. SACV 17-01898-CJC(GJSx), 2018 WL 6265014,
4 at *5 (C.D. Cal. Aug. 14, 2018) (commonality satisfied where “[t]he central question
5 in [the] case is whether the Government’s policy of revoking proposed class
6 members’ release and re-detaining them without any procedural protections is
7 unlawful”); *Inland Empire - Immigrant Youth Collective v. Nielsen*, No. EDCV
8 17-2048 PSG (SHKx), 2018 WL 1061408, at *9 (C.D. Cal. Feb. 26, 2018)
9 (commonality satisfied where plaintiffs “challenge[d] Defendants’ common
10 termination policies and practices as categorically violating the APA and the Due
11 Process Clause—not the agency’s ultimate exercise of discretion with respect to each
12 recipient.”) (internal quotation marks omitted).

13 “[I]ndividual factual differences among class members pose no obstacle to
14 commonality.” *Rosas v. Baca*, No. CV 12-00428 DDP (SHx), 2012 WL 2061694, at
15 *3 (C.D. Cal. June 7, 2012); *see also Bloom v. City of San Diego*, No. 3:17-cv-02324-
16 AJB-MSB, 2021 WL 8053533, at *5 (S.D. Cal. June 8, 2021) (finding that plaintiffs
17 satisfied the commonality requirement, despite “some inevitable individual
18 questions,” citing *Rosas*).¹⁴

19 Plaintiffs’ suit raises numerous legal questions common to the proposed
20 Asylum Class. All class members assert four claims challenging the validity of the
21 Proclamation and/or the Asylum Shutdown Policy, all of which turn on the same
22 underlying issue, *i.e.*, whether Defendants’ actions are unlawfully preventing
23 members of the proposed Asylum Class from presenting themselves at a POE to seek
24 asylum. ECF No. 1 at ¶¶ 169–192, 208–212 (Causes of Action Nos. 1–3, 6).
25 Plaintiffs’ claims raise common legal questions regarding whether Defendants’

26 ¹⁴ Slight variations in how class members experience the government’s failure to
27 comply with the law do not defeat class certification. In fact, this Court has certified
28 similar classes despite variations in how the class members were impacted by a
government policy. *See AOL v. Wolf*, 336 F.R.D. at 502–03.

1 actions violate the INA, the APA, and/or are ultra vires. The CBP One Subclass
2 asserts two additional claims challenging the legality of the CBP One Cancellation,
3 which turn on (1) whether Defendants complied with the APA when they summarily
4 canceled some 30,000 CBP One appointments with no notice or explanation, and (2)
5 on whether Defendants' cancellation of putative CBP One Subclass members'
6 appointments despite their significant reliance interests was arbitrary and capricious.
7 *Id.* ¶¶ 193–207 (Causes of Action Nos. 4, 5). Any of these common legal issues
8 standing alone is sufficient to satisfy Rule 23(a)(2)'s commonality requirement. *See*
9 *Ms. L*, 331 F.R.D. at 536–37 (finding that plaintiffs satisfied the commonality
10 requirement because, *inter alia*, they asserted “the same legal claim, namely whether
11 Defendants' practice of separating proposed class members from their minor
12 children” violated the Due Process Clause). Plaintiffs thus satisfy Rule 23(a)(2).

13 Moreover, whether an agency is correctly interpreting and enforcing laws and
14 regulations is a common question of law and fact sufficient for class certification. In
15 *AOL v. McAleenan*, before another court in this District, plaintiffs sought provisional
16 class certification for a putative class of asylum seekers turned away before the
17 effective date of a new asylum eligibility rule and later inspected and processed while
18 that rule was still in effect. 423 F. Supp. 3d at 871. The court found that commonality
19 existed because the court could determine “in one fell swoop” whether the
20 government was “improperly construing” its own regulation to apply to those who
21 were turned back before the regulation's promulgation. *See id.*; *see also Parsons v.*
22 *Ryan*, 754 F.3d 657, 679 (9th Cir. 2014) (affirming class certification and finding
23 commonality where “all members of the class are subject identically to those same
24 policies and practices, and the constitutionality of any given policy and practice . . .
25 can be answered in a single stroke”).

26 Plaintiffs' claims also raise at least the following common questions of fact:
27 (1) whether Defendants' actions prevent Asylum Class members who have sought or
28 will seek to present themselves at a Class A POE on the U.S.-Mexico border from

1 accessing the U.S. asylum process; and (2) whether Defendants rendered the CBP
2 One Subclass unable to seek asylum when Defendants canceled putative CBP One
3 Subclass members' appointments despite their significant reliance interests. *See, e.g.,*
4 *Parsons*, 754 F.3d at 679.

5 **3. Individual Plaintiffs' Claims Are Typical of the Claims of**
6 **the Proposed Class and Subclass.**

7 Rule 23(a)(3) requires that "the claims or defenses of the representative parties
8 are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "The test
9 of typicality is whether other members have the same or similar injury, whether the
10 action is based on conduct which is not unique to the named plaintiffs, and whether
11 other class members have been injured by the same course of conduct." *Ms. L.*, 331
12 F.R.D. at 539 (citation omitted). "Under the rule's permissive standards,
13 representative claims are 'typical' if they are reasonably coextensive with those of
14 absent class members; they need not be substantially identical." *Parsons*, 754 F.3d at
15 685 (internal citation omitted).

16 Individual Plaintiffs' claims are coextensive with those of the rest of the class
17 and subclass. For the Asylum Class, the named Plaintiffs and each proposed class
18 member are suffering the same injury (they were or will be unlawfully prevented
19 from seeking asylum at a POE on the U.S.-Mexico border); and the injury arises from
20 the same conduct by Defendants (the Proclamation and Asylum Shutdown Policy and
21 Defendants' actions implementing them). Likewise, for the CBP One Subclass, the
22 CBP One Individual Plaintiffs—Maria Doe, Jessica Doe, Fernando Doe, Ali Doe,
23 Eduardo Doe, Jean Doe, and Rous Doe—and all proposed CBP One Subclass
24 members are also suffering the same injury (their CBP One appointments were
25 abruptly canceled, preventing them from seeking asylum despite their reliance on
26 Defendants' instructions, and leaving them stranded under dangerous conditions in
27 Mexico); the injury arises from the same conduct by Defendants (their categorical
28 cancellation of all scheduled CBP One appointments); and Defendants' actions

1 similarly violate their statutory right to seek asylum. *E.g.*, Ex. A, Maria Doe Decl.
2 ¶¶ 10–13; Ex. B, Rous Doe Decl. ¶¶ 16–21; Ex. C, Fernando Doe Decl. ¶¶ 15–20;
3 Ex. D, Jean Doe Decl. ¶¶ 13–15; Ex. E, Eduardo Doe Decl. ¶¶ 10–14; Ex. H, Ali Doe
4 Decl. ¶¶ 10–12; Ex. I, Jessica Doe Decl. ¶¶ 16–19.

5 Because “the claims of the named Plaintiffs and the claims of class members
6 are so interrelated that the interests of the class members will be fairly and adequately
7 protected in their absence,” Plaintiffs meet Rule 23(a)(3)’s typicality requirement.
8 *See Ms. L.*, 331 F.R.D. at 539 (finding that plaintiffs satisfied the typicality
9 requirement because, *inter alia*, “Plaintiffs’ claims are the same as those raised by
10 absent class members, namely the Government’s practice . . . violates their right to
11 due process [and] the injuries suffered by the named Plaintiffs are the same as those
12 suffered by members of the proposed class”) (internal quotation marks omitted).

13 **4. Individual Plaintiffs Will Fairly and Adequately Protect the**
14 **Interests of the Proposed Class and Subclass.**

15 Rule 23(a)(4) requires a showing that “the representative parties will fairly and
16 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). “A
17 representative is adequate where (1) there is no conflict of interest between the
18 representative and its counsel and absent class members, and (2) the representative
19 and its counsel will pursue the action vigorously on behalf of the class.” *Arnott v.*
20 *U.S. Citizenship & Immigration Servs.*, 290 F.R.D. 579, 588 (C.D. Cal. 2012)
21 (citation omitted). “[O]nly a conflict that goes to the very subject matter of the
22 litigation will defeat a party’s claim of representative status.” 7A Mary Kay Kane,
23 *Federal Practice & Procedure* § 1768 (4th ed. 2023).

24 Federal Rule of Civil Procedure 23(g) is designed to “guide the court in
25 assessing proposed class counsel as part of the certification decision.” Fed. R. Civ. P.
26 23(g) advisory committee’s note (2003). Rule 23(g)(1)(A) provides that, in
27 appointing class counsel, a court “must consider” the following: “(1) the work
28 counsel has done in identifying or investigating potential claims in the action,

1 (2) counsel’s experience in handling class actions, other complex litigation, and the
2 types of claims asserted in the action, (3) counsel’s knowledge of the applicable law,
3 and (4) the resources that counsel will commit to representing the class.”

4 Individual Plaintiffs will fairly and adequately protect the interests of the
5 proposed Asylum Class because, as discussed, Individual Plaintiffs and proposed
6 class members have identical claims that all arise from Defendants’ same unlawful
7 conduct. Ex. A, Maria Doe Decl. ¶¶ 12–13; Ex. B, Rous Doe Decl. ¶¶ 16–17, 20–21;
8 Ex. C, Fernando Doe Decl. ¶¶ 13, 16–19; Ex. D, Jean Doe Decl. ¶¶ 14–15; Ex. E,
9 Eduardo Doe Decl. ¶¶ 11–12, 14; Ex. F, Dragon Doe Decl. ¶¶ 11–12; Ex. G, Anahi
10 Doe Decl. ¶¶ 11–124; Ex. H, Ali Doe Decl. ¶¶ 10–12; Ex. I, Jessica Doe Decl. ¶¶ 17–
11 19; Ex. J, Diana Doe Decl. ¶¶ 9–11; Ex. K, Nikolai Zolotov Decl. ¶¶ 10–13. Likewise,
12 Individual Plaintiffs Maria Doe, Jessica Doe, Fernando Doe, Ali Doe, Eduardo Doe,
13 Jean Doe, and Rous Doe will fairly and adequately protect the interests of the
14 proposed CBP One Subclass because they—like all members of the Subclass—were
15 additionally harmed by the unlawful cancellation of scheduled CBP One
16 appointments. Ex. A, Maria Doe Decl. ¶¶ 11; Ex. I, Jessica Doe Decl. ¶¶ 13–16;
17 Ex. C, Fernando Doe Decl. ¶¶ 14–15; Ex. H, Ali Doe Decl. ¶¶ 10–12, 14; Ex. E,
18 Eduardo Doe Decl. ¶¶ 9–10, 16; Ex. D, Jean Doe Decl. ¶¶ 13–14, 17; Ex. B, Rous
19 Doe Decl. ¶¶ 13–16.

20 Through this action, Individual Plaintiffs seek vacatur and declaratory and
21 injunctive relief that would allow them, and proposed class members, to access the
22 U.S. asylum process. Individual Plaintiffs will pursue this action vigorously on behalf
23 of the class. Ex. A, Maria Doe Decl. ¶ 15; Ex. B, Rous Doe Decl. ¶ 23; Ex. C,
24 Fernando Doe Decl. ¶ 22; Ex. D, Jean Doe Decl. ¶ 17; Ex. E, Eduardo Doe Decl.
25 ¶ 16; Ex. F, Dragon Doe Decl. ¶ 14; Ex. G, Anahi Doe Decl. ¶ 14; Ex. H, Ali Doe
26 Decl. ¶ 14; Ex. I, Jessica Doe Decl. ¶ 21; Ex. J, Diana Doe Decl. ¶ 13; Ex. K, Nikolai
27 Zolotov Decl. ¶ 15 (each Individual Plaintiff attesting commitment to being a class
28 representative). Individual Plaintiffs do not seek any unique or additional relief that

1 would make their interests different from those of the putative Asylum Class
2 members, and the CBP One Subclass Plaintiffs do not seek any relief that is distinct
3 from that sought for the CBP One Subclass. Accordingly, there is no conflict of
4 interest between Individual Plaintiffs and the putative class or subclass members.
5 *Ms. L.*, 331 F.R.D. at 540.

6 Collectively, Plaintiffs’ counsel in this action have extensive experience in
7 complex litigation and class actions, including prior challenges to federal
8 immigration policies and Defendants’ implementation of those policies. Declaration
9 of Eric Acker in Support of Plaintiffs’ Motion for Class Certification and Motion to
10 Proceed Pseudonymously (“Acker Decl.”) ¶¶ 4–6; Declaration of Melissa Crow
11 (“Crow Decl.”) ¶¶ 3–6, 8–9, 12–13; Declaration of Brian Netter (“Netter Decl.”)
12 ¶¶ 6–7, 10–11; Declaration of Baher Azmy (“Azmy Decl.”) ¶¶ 3–8; Declaration of
13 Michelle Lapointe (“Lapointe Decl.”) ¶¶ 4, 7–8, 10, 12. Leading up to and continuing
14 into this litigation, Plaintiffs’ counsel have spent significant time and resources
15 investigating, documenting, and analyzing the current state of asylum processing at
16 POEs along the southern border in the wake of the Proclamation, the Asylum
17 Shutdown Policy, and the CBP One Cancellation. Acker Decl. ¶ 16 Crow Decl. ¶ 14;
18 Netter Decl. ¶ 15; Azmy Decl. ¶ 10; Lapointe Decl. ¶ 13.

19 Notably, courts in this District have found many of the same counsel qualified
20 to represent classes of asylum seekers in previous actions. *AOL v. McAleenan*, 423
21 F. Supp. 3d at 872; *AOL v. Wolf*, 336 F.R.D. at 505. Class counsel also have sufficient
22 resources to litigate this matter to completion. Acker Decl. ¶ 7; Crow Decl. ¶ 14;
23 Netter Decl. ¶ 15; Azmy Decl. ¶ 10; Lapointe Decl. ¶ 13. Plaintiffs are aware of no
24 conflict of interest between Plaintiffs, proposed class members, and class counsel.
25 Acker Decl. ¶ 18; Crow Decl. ¶ 15; Netter Decl. ¶ 16; Azmy Decl. ¶ 9; Lapointe Decl.
26 ¶ 14. Together, the class action and subject matter expertise of Plaintiffs’ counsel
27 qualify them to represent the proposed class and subclass. Because “[t]here is no
28 conflict between Plaintiffs’ counsel and the members of the proposed class, and

1 counsel have demonstrated they will prosecute the case vigorously on behalf of the
2 class . . . the requirement of Rule 23(a)(4) is met.” *Ms. L.*, 331 F.R.D. at 540.

3 **B. Plaintiffs Satisfy the Requirements of Rule 23(b)(2).**

4 Class certification pursuant to Rule 23(b)(2) requires that “the party opposing
5 the class has acted or refused to act on grounds that apply generally to the class, so
6 that final injunctive relief or corresponding declaratory relief is appropriate
7 respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). “The key to the
8 [Rule 23](b)(2) class is ‘the indivisible nature of the injunctive or declaratory remedy
9 warranted—the notion that the conduct is such that it can be enjoined or declared
10 unlawful only as to all of the class members or as to none of them.’” *Wal-Mart*, 564
11 U.S. at 360 (citation omitted); *see AOL v. McAleenan*, 423 F. Supp. 3d at 872
12 (Rule 23(b)(2) applies “when a single injunctive or declaratory judgment would
13 provide relief to each member of the class” (internal citation omitted).); *Ms. L.*, 331
14 F.R.D. at 540. Thus, class certification is appropriate where the party opposing the
15 class “has acted in a consistent manner towards members of the class so that [its]
16 actions may be viewed as a part of a pattern of activity, or has established or acted
17 pursuant to a regulatory scheme common to all class members.” *Westways World
18 Travel, Inc. v. AMR Corp.*, 218 F.R.D. 223, 240 (C.D. Cal. 2003) (quoting Wright,
19 Miller & Kane, *Federal Practice and Civil Procedure* § 1775.). “Even if some class
20 members have not been injured by the challenged practice, a [Rule 23(b)(2)] class
21 may nevertheless be appropriate.” *Walters*, 145 F.3d at 1047.

22 The mere existence of factual differences among some class members will not
23 defeat a motion to certify a Rule 23(b)(2) class because the focus of Rule 23(b)(2) is
24 the relief sought, not the factual circumstances of each class member. *See Unknown
25 Parties v. Johnson*, 163 F. Supp. 3d 630, 643 (D. Ariz. 2016) (rejecting argument that
26 plaintiffs were “challeng[ing] . . . various practices amongst [multiple] facilities,”
27 because plaintiffs identified the “systemic nature of the conditions” at those detention
28 facilities) (internal quotation marks omitted); *Walters*, 145 F.3d at 1047 (“[T]he

1 government’s dogged focus on the factual differences among the class members
2 appears to demonstrate a fundamental misunderstanding of the rule.”). The relevant
3 question for purposes of Rule 23(b)(2) is “the ‘indivisible’ nature of the claim alleged
4 and the relief sought.” *Ms. L.*, 331 F.R.D. at 541 (certifying Rule 23(b)(2) class);
5 *Lyon v. U.S. Immigration & Customs Enforcement*, 308 F.R.D. 203, 214 (N.D. Cal.
6 2015) (rejecting argument that ICE facilities had different attributes, because “these
7 differences do not negate the fact that Plaintiffs seek relief that is applicable to . . .
8 the entire class”). This is because Rule 23(b)(2) “focuses on the defendant and
9 questions whether the defendant has a policy that affects everyone in the proposed
10 class in a similar fashion.” 2 William B. Rubenstein, *Newberg and Rubenstein on*
11 *Class Actions* § 4:28 (6th ed. 2023).

12 For example, in *Jane Doe I v. Nielsen*, a group of eighty-seven Iranian
13 Christians sued DHS for denying them entry into the United States. 357 F. Supp. 3d
14 972, 980–81 (N.D. Cal. 2018). Those plaintiffs argued that the government’s
15 “uniform response” to their applications to enter the United States was “sufficient to
16 satisfy Rule 23(b)(2).” *Id.* at 992. The court reasoned that, in the face of the
17 government’s apparent uniform action, the “declaratory and injunctive relief sought
18 [would] appl[y] equally to all members of the proposed class and thus conform[ed]
19 to Rule 23(b)(2).” *Id.*

20 Similarly, in *AOL v. Wolf*, the Court held that Rule 23(b)(2)’s requirements
21 were “plainly met,” because, *inter alia*, “Plaintiffs allege that CBP officers refused
22 to process asylum-seekers, an act which they claim is unlawful regardless of the
23 grounds for the refusal.” 336 F.R.D. at 506. The court concluded, “[t]he officers’
24 refusal to process asylum-seekers, therefore, is the generally applicable ground for
25 class-wide relief under Rule 23(b)(2).” *Id.* The Rule 23(b)(2) basis for class
26 certification here is equally strong; all of the Asylum Class members were or will be
27 denied access to POEs to seek asylum by Defendants, and Defendants canceled all
28 the CBP One Subclass members’ scheduled CBP One appointments on January 20,

2025.¹⁵

The relief that Individual Plaintiffs seek is applicable to and indivisible from that sought by the proposed Asylum Class. Plaintiffs ask the Court to declare the Proclamation and the Asylum Shutdown Policy unlawful, vacate the Asylum Shutdown Policy, and enjoin Defendants from enforcing both. A single ruling granting this relief would necessarily provide relief to *all* Individual Plaintiffs and putative Asylum Class members, who have been and continue to be, or will be deprived of access to the U.S. asylum process as a result of Defendants' unlawful actions. Likewise, the CBP One Subclass Plaintiffs ask the Court to set aside the CBP One Cancellation and restore subclass members' access to the U.S. asylum process. A single ruling granting this relief would necessarily provide relief to *all* Individual Plaintiffs seeking to represent the CBP One Subclass and all Subclass members, who obtained CBP One appointments in reliance on Defendants' representations but were prevented from presenting themselves at POEs after Defendants canceled their appointments. Because Defendants' conduct is "applicable to [the Class and Subclass] generally, rendering injunctive and declaratory relief appropriate to the class as a whole," the requirements of Rule 23(b)(2) are satisfied. *Ms. L.*, 331 F.R.D. at 541.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court:

(i) certify the Asylum Class and CBP One Subclass, defined as follows:

Asylum Class. All noncitizens who, on or after January 20, 2025, have sought or will seek to present themselves at a Class A POE on the U.S.-Mexico border to seek asylum; who were or will be prevented from accessing the U.S. asylum process by or at the direction of Defendants based on the Proclamation or the Asylum Shutdown Policy; who continue to seek access to the U.S. asylum process; and who are not

¹⁵ As another court in this District previously found, ascertainability is not a requirement for certification of a Rule 23(b)(2) class. *See AOL v. McAleenan*, 423 F. Supp. 3d at 872–73 (collecting cases).

1 physically present in the United States.

2 **CBP Subclass.** All noncitizens who received appointments through the
3 CBP One app to present themselves at a Class A POE on the
4 U.S.-Mexico border; whose appointments were canceled by Defendants
on January 20, 2025; who continue to seek access to the U.S. asylum
process; and who are not physically present in the United States.

5 (ii) appoint all Individual Plaintiffs as representatives of the Asylum Class;

6 (iii) appoint the CBP One Individual Plaintiffs as representatives of the CBP
7 One Subclass; and

8 (iv) appoint Plaintiffs' counsel as Class Counsel.

1 Dated: June 25, 2025

Respectfully Submitted,

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3
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