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21 **UNITED STATES DISTRICT COURT**
22 **CENTRAL DISTRICT OF CALIFORNIA**

23 Ms. J.P., Ms. J.O., Ms. R.M., on behalf of
24 themselves and all other similarly situated,

25 Plaintiffs,

26 v.

27 JEFFERSON B. SESSIONS III,
28 ATTORNEY GENERAL OF THE

Case No. 2:18-cv-06081

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR CLASS
CERTIFICATION; MEMORANDUM
OF POINTS & AUTHORITIES IN
SUPPORT THEREOF**

1 UNITED STATES; KIRSTJEN
2 NIELSEN, SECRETARY OF
3 HOMELAND SECURITY; U.S.
4 DEPARTMENT OF HOMELAND
5 SECURITY, AND ITS SUBORDINATE
6 ENTITIES; U.S. IMMIGRATION AND
7 CUSTOMS ENFORCEMENT; U.S.
8 CUSTOMS AND BORDER
9 PROTECTION; ALEX M. AZAR II,
10 SECRETARY OF HEALTH AND
11 HUMAN SERVICES; U.S.
12 DEPARTMENT OF HEALTH AND
13 HUMAN SERVICES; SCOTT LLOYD,
14 DIRECTOR OF THE OFFICE OF
15 REFUGEE RESETTLEMENT; OFFICE
16 OF REFUGEE RESETTLEMENT;
17 DAVID MARIN, LOS ANGELES FIELD
18 OFFICE DIRECTOR, U.S.
19 IMMIGRATION AND CUSTOMS
20 ENFORCEMENT; LISA VON
21 NORDHEIM, WARDEN, JAMES A.
22 MUSICK FACILITY; MARC J. MOORE,
23 SEATTLE FIELD OFFICE DIRECTOR,
24 U.S. IMMIGRATION AND CUSTOMS
25 ENFORCEMENT; LOWELL CLARK,
26 WARDEN, TACOMA NORTHWEST
27 DETENTION CENTER

Defendants.

Date: October 29, 2018
Time: 8:30 a.m.
Judge: Hon. John A. Kronstadt
Courtroom: 10B

[Filed concurrently with Supporting
Declarations of Ms. J.P., Ms. J.O., Ms.
R.M., Lucero Chavez, Alejandra Acuña,
Dylan Gee, Alfonso Mercado, and
Bridget S. Johnsen]

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**Admitted pro hac vice*

*** Institution listed for identification purposes only*

1 **NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION**

2 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE THAT, on October 29, 2018 at 8:30 a.m., or as soon
4 thereafter this matter may be heard, before the Honorable John A. Kronstadt, in
5 Courtroom 10B, of the United States District Court for the Central District of
6 California, located at 350 W. First Street, Los Angeles, CA 90012, Plaintiffs Ms. J.P.,
7 Ms. J.O., and Ms. R.M. (“Plaintiffs”) will and hereby move, pursuant to Federal Rule
8 of Civil Procedure 23, for an order certifying the following proposed Class,
9 appointing each of them as class representatives, and appointing their undersigned
10 counsel as class counsel:

11 All adult parents nationwide who (1) were, are, or will be
12 detained in immigration custody by the Department of
13 Homeland Security (“DHS”), and (2) have a minor child who
14 has been, is, or will be separated from them by DHS and
15 detained in DHS or Office of Refugee Resettlement (“ORR”)
16 custody or foster care, absent a demonstration in a hearing
17 that the parent is unfit or presents a danger to the child.

18 This Motion is based upon this Notice of Motion and Motion, the following
19 Memorandum of Points and Authorities; the supporting Declarations of Ms. J.P., Ms.
20 J.O., Ms. R.M., Lucero Chavez, Alejandra Acuña, Dylan Gee, Alfonso Mercado, and
21 Bridget S. Johnsen; the pleadings, declarations, and filings in this action; any
22 additional matter of which the Court may take judicial notice; and such further
23 evidence or argument as may be presented before or at the hearing on this Motion.

24 This motion is made following the conference with counsel for the defendants
25 pursuant to L.R. 7-3, which took place on July 25, 2018. Plaintiffs first requested a
26 conference in a letter dated July 18, 2018, which was served on July 18 and 20, 2018,
27 each time by personal delivery and mail on the United States Government defendants
28 -- Jeffrey B. Sessions, III, Attorney General of the United States; Kirstjen Nielsen,
Secretary of Homeland Security, and its subordinate entities; U.S. Immigration and
Customs Enforcement; U.S. Customs and Border Protection; Alex M. Azar, II,

1 Secretary of Health and Human Services; Scott Lloyd, Director of the Office of
2 Refugee Resettlement; Office of Refugee Resettlement; David Marin, Los Angeles
3 Field Office Director, U.S. Immigration and Customs Enforcement; Marc J. Moore,
4 Seattle Field Office Director, U.S. Immigration and Customs Enforcement
5 (collectively, the “US Defendants”), and was served by personal delivery and mail by
6 July 20 on Defendants Lisa Von Nordheim, Warden at the James A. Musick Facility
7 in Irvine, California, and Lowell Clark, Warden at the Tacoma Northwest Detention
8 Center (collectively, the “Wardens”). Plaintiffs additionally met and conferred
9 telephonically with counsel for the Tacoma Northwest Detention Center on July 27,
10 2018. Despite Plaintiffs’ numerous attempts to contact defendant Lisa Von
11 Nordheim, Warden at the James A. Musick Facility in Irvine, California,
12 representatives of defendant Lisa Von Nordheim have not contacted Plaintiffs. The
13 concurrently filed Declaration of Bridget S. Johnsen details Plaintiffs’ efforts to meet
14 and confer with defendants regarding this Motion pursuant to L.R. 7-3.

15
16 Date: July 27, 2018

Respectfully submitted,

17
18 /s/ Amy P. Lally
19 Amy P. Lally
20 Attorneys for Plaintiffs
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1 **I. INTRODUCTION**

2 In the last several months, the government, and Defendants working on its
3 behalf, deliberately, needlessly, and unconstitutionally separated thousands of children
4 from their parents, refused to allow parents and children to communicate, failed to
5 provide information about the well-being of the separated family members, and kept
6 separated family members in intolerable suspense by refusing to explain when or even
7 if family would ever be reunified.

8 The government’s misconduct inflicted devastating psychological trauma on
9 both parents and children, which trauma is multiplied the longer the families remain
10 separated and/or untreated. Its effects do not evaporate once families are united;
11 instead, there is a risk of long-lasting damage to the physical and mental health of
12 parents and children alike, including anxiety, depression, and post-traumatic stress
13 disorder (“PTSD”). Plaintiffs and the group of parents whom they seek to represent in
14 this action need immediate mental health screenings, and if appropriate, family-
15 centered mental health treatment designed to alleviate such trauma and to reduce the
16 risk of long-term consequences to both parent and child. In their Motion for
17 Preliminary Injunction, filed July 18, 2018 (Dkt. No. 45) (“PI Motion”), Plaintiffs
18 seek an order requiring the government to live up to its constitutional obligations by
19 screening Plaintiffs and the proposed class members to identify those who require
20 treatment and providing effective treatment in an appropriate setting to address the
21 harm inflicted by the unconstitutional separation of families.

22 Together with this injunctive relief, Plaintiffs seek to certify the following
23 nationwide class under Federal Rules of Civil Procedure 23(a) and 23(b)(2):

24 All adult parents nationwide who (1) were, are, or will be
25 detained in immigration custody by the Department of
26 Homeland Security (“DHS”), and (2) have a minor child
27 who has been, is, or will be separated from them by DHS
28 and detained in DHS or Office of Refugee Resettlement
29 (“ORR”) custody or foster care, absent a demonstration in a

1 hearing that the parent is unfit or presents a danger to the
2 child.

3 The proposed class satisfies the requirements of numerosity, commonality,
4 typicality, and adequacy in Rule 23(a) and is ascertainable:

5 **Numerosity**. The proposed class includes over one thousand individuals whose
6 minor children were separated from them, and many members of the proposed class
7 have not been reunited with their minor children.

8 **Commonality**. The class raises numerous common questions of fact and law.
9 Each of the class members has been subject to the government’s family separation
10 policy, and had their minor children forcibly taken from their care, triggering the
11 trauma and other harms alleged in the Complaint and described in the PI Motion. In
12 addition, the question of whether and to what extent the government has developed an
13 appropriate policy for mitigating the harms inflicted by the family separation policy is
14 common to all proposed class members. Multiple questions of law also are common
15 to the proposed class, namely whether Defendants’ family separation practice violates
16 the substantive due process and equal protection rights of the proposed class members
17 and the appropriate relief to address the harm.

18 **Typicality**. Plaintiffs’ due process and equal protection claims are typical of
19 the class of individuals whom they seek to represent—that is, other parents who were
20 forcibly separated from their children without a finding of unfitness or that they
21 present a danger to their children, and who have not been provided with appropriate
22 mental-health screening or offered appropriate trauma-informed intervention.
23 Plaintiffs assert the same rights under the Fifth Amendment as the members of the
24 proposed class.

25 **Adequacy**. The proposed class representatives satisfy the adequacy
26 requirement as the Plaintiffs assert the same claims and seek the same relief—
27 appropriate mental-health screen and any appropriate trauma-informed intervention
28 under appropriate conditions—and will defend the rights of all the proposed class

1 members fairly and adequately. Additionally, the proposed class counsel is a team of
2 attorneys from Public Counsel and Sidley Austin LLP with significant experience
3 litigating class actions and other complex cases in federal court, including civil rights
4 cases on behalf of noncitizens.

5 **Ascertainable**. The proposed class is ascertainable using Defendants’ records.
6 Plaintiffs’ proposed class likewise satisfies Rule 23(b)(2) because Defendants have
7 “acted or refused to act on grounds that apply generally to the class, so that final
8 injunctive relief or corresponding declaratory relief is appropriate respecting the class
9 as a whole.” Fed. R. Civ. P. 23(b)(2). Defendants have forcibly separated migrant
10 parents from their children under a common policy and have failed to provide
11 adequate mental health evaluation and care to the families to remedy the harm
12 inflicted on the proposed class members and their minor children. As a result, the
13 declaratory and injunctive relief sought by the plaintiffs will be appropriate with
14 respect to the class as a whole.

15 Accordingly, this Court should grant class certification under Rule 23(b)(2) for
16 purposes of entering Plaintiffs’ requested classwide preliminary and permanent
17 injunctions.¹ See *Carrillo v. Schneider Logistics, Inc.*, No. 11-cv-8557, 2012 WL
18 556309, at *9 (C.D. Cal. Jan. 31, 2012) (“courts routinely grant provisional class
19 certification for purposes of entering [preliminary] injunctive relief” under Rule
20 23(b)(2) where the plaintiff establishes that the four prerequisites in Rule 23(a) are
21 also met) (citing *Baharona-Gomez v. Reno*, 167 F.3d 1228, 1233 (9th Cir. 1999)).

22 **II. BACKGROUND**

23 **A. The Government’s Implementation of its Unconstitutional Family** 24 **Separation Policy**

25 On May 7, 2018, Defendant Attorney General Jeff Sessions announced a “zero-
26 tolerance” policy of forced family separation to deter migrants from crossing the

27 ¹ Plaintiffs also request that they be appointed Class Representatives, and that
28 undersigned counsel be appointed Class Counsel.

1 southern border, announcing “If you cross this border unlawfully, then we will
2 prosecute you. It’s that simple. . . . If you are smuggling a child, then we will
3 prosecute you and that child will be separated from you. . . .”² But the policy was not
4 limited to “smugglers.” Rather, ordinary immigrant families—many of whom are
5 seeking asylum—bore its brunt. In the first month of the policy, nearly 3,000 children
6 were separated from their parents while crossing the border.³ Some children were as
7 young as 18 months old, and more than 100 were younger than four years old.⁴

8 The government mischaracterized family separation as necessary to enforce the
9 law. But DHS expressly contemplated using family separation to deter migration
10 from Central America into the United States at least a year before the “zero tolerance”
11 policy was adopted,⁵ and administration officials have confirmed the goal of deterring
12 Central American immigrants.⁶

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18 ² *Attorney General Sessions Delivers Remarks Discussing the Immigration*
19 *Enforcement Actions of the Trump Administration*, DOJ Justice News (May 7, 2018),
20 [https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-](https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions)
21 [discussing-immigration-enforcement-actions.](https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions)

22 ³ Caitlin Dickerson, *Trump Administration in Chaotic Scramble to Reunify Migrant*
23 *Families*, N.Y. TIMES (July 5, 2018),
24 [https://www.nytimes.com/2018/07/05/us/migrant-children-chaos-family-](https://www.nytimes.com/2018/07/05/us/migrant-children-chaos-family-separation.html)
25 [separation.html.](https://www.nytimes.com/2018/07/05/us/migrant-children-chaos-family-separation.html)

26 ⁴ Caitlin Dickerson, *Hundreds of Immigrant Children Have Been Taken From Parents*
27 *at U.S. Border*, N.Y. TIMES (Apr. 20, 2018),
28 [https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html.](https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html)

⁵ Daniella Diaz, *Kelly: DHS is considering separating undocumented children from*
their parents at the border, CNN (March 6, 2017),
[https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-](https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html)
[parents-immigration-border/index.html.](https://www.cnn.com/2017/03/06/politics/john-kelly-separating-children-from-parents-immigration-border/index.html)

⁶ Transcript: White House Chief of Staff John Kelly’s Interview with NPR, NPR (May
11, 2018), [https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-](https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr)
[of-staff-john-kellys-interview-with-npr](https://www.npr.org/2018/05/11/610116389/transcript-white-house-chief-of-staff-john-kellys-interview-with-npr) (last visited July 12, 2018).

1 **B. The Plaintiffs and the Government’s Separation of Plaintiffs and**
 2 **their Minor Children**

3 **1. Plaintiff Ms. J.P. (“Ms. P”)**

4 After Ms. P fled Guatemala with her 16-year-old daughter, both crossed the
 5 border and were detained by Customs and Border Patrol (“CBP”).⁷ Ms. P fled
 6 Guatemala to escape death threats from a former partner who sexually abused and
 7 beat her.⁸ Because Ms. P spoke a Mayan dialect rarely spoken in the United States,
 8 Ms. P could not communicate with detention officers.⁹

9 When they arrived in the United States, Ms. P and her daughter, L.P. initially
 10 were detained by the government in a windowless room without beds or showers and
 11 fed nothing but lukewarm soup.¹⁰ Guards at the facility taunted mothers, saying: “If
 12 you’re such a good mother, why would you bring your child here?”¹¹ Three days after
 13 entering the United States, with no explanation, the government removed L.P. from
 14 the detention center where the government was holding Ms. P.¹² When she realized
 15 what was happening, L.P. fainted in terror, which injured her mouth and left her face
 16 swollen for several days.¹³ The government did not permit Ms. P to speak to her
 17 daughter until June 22, 2018, when, after 30 hours of advocacy by her attorney, she
 18 was allowed to speak with L.P. by phone.¹⁴

19 Ms. P “is displaying symptoms of [PTSD] . . . as a result of her separation from
 20 her daughter” and is also “displaying symptoms of both depression and anxiety.”¹⁵ If
 21 left untreated, these symptoms “could escalate into a diagnosis of PTSD, Dissociative
 22 Disorder, and Major Depressive Disorder.”¹⁶ “Ms. P speaks a Mayan dialect and

23 ⁷ Declaration of Ms. J.P. (“J.P. Decl.”) ¶¶ 2, 5-6.

24 ⁸ *Id.* ¶ 4.

25 ⁹ *Id.* ¶¶ 6, 16, 18.

26 ¹⁰ *Id.* ¶¶ 7, 10.

27 ¹¹ Declaration of Lucero Chavez (“Chavez Decl.”) ¶ 11.

28 ¹² J.P. Decl. ¶ 15.

¹³ Chavez Decl. ¶ 14.

¹⁴ J.P. Decl. ¶ 21; Complaint, Dkt. 1, (“Compl.”) ¶ 20.

¹⁵ Declaration of Alejandra Acuña (“Acuña Decl.”) ¶¶ 7-8.

¹⁶ *Id.* ¶ 11.

1 understands very little Spanish and no English,” which likely exacerbated her trauma
 2 when guards “did not communicate supportively when she did not understand.”¹⁷ L.P.
 3 has reported feeling depressed, hopeless, and confused by her detention and
 4 separation.¹⁸

5 2. **Named Plaintiff: Ms. J.O. (“Ms. O”)**

6 Ms. O and her daughter, T.B., fled their native Honduras in fear for their lives
 7 after gangs directly threatened their family.¹⁹ Ms. O and T.B. entered the United
 8 States on or around May 18, 2018, where they encountered a CBP officer.²⁰ Ms. O
 9 claimed fear of returning to Honduras, but was told that she was to be charged with
 10 illegal entry.²¹ Ms. O and T.B. were processed separately and kept apart at the
 11 detention center.²² In her time at the detention center, Ms. O was kept in a cell
 12 resembling a dog kennel with 50 other women without beds or pillows, and where the
 13 lights were kept on 24 hours per day.²³ While there, Ms. O heard guards tell parents
 14 that a new law permitted them to take away their children permanently, which terrified
 15 Ms. O, who feared she would be separated from T.B. forever.²⁴

16 On or about May 21, 2018, after criminal proceedings in which Ms. O pleaded
 17 guilty for illegal entry into the United States, the government transferred Ms. O to the
 18 SeaTac Federal Prison in SeaTac, Washington, and then to the Northwest Detention
 19 Center in Tacoma, Washington.²⁵ Ms. O’s daughter was detained in Southwest Key
 20 Programs, Inc.—Casa Antigua in San Benito, Texas.²⁶ Following the separation, T.B.

23 ¹⁷ Declaration of Dylan Gee (“Gee Decl.”) ¶ 15.

24 ¹⁸ Chavez Decl. ¶ 15.

25 ¹⁹ Declaration of Ms. J.O. (“J.O. Decl.”) ¶¶ 3, 5.

26 ²⁰ *Id.* ¶ 6.

27 ²¹ Compl. ¶ 24, 29.

28 ²² J.O. Decl ¶ 7-8.

²³ *Id.* ¶¶ 15-16.

²⁴ *Id.* ¶¶ 10-11.

²⁵ Compl. ¶ 30.

²⁶ *Id.*

1 has “reported symptoms including excessive worry, dysphoric mood, crying spells,
2 sleep and appetite disturbances, and fear of the unknown.”²⁷

3 **3. Named Plaintiff: Ms. R.M. (“Ms. M”)**

4 Ms. M and her 15-year-old daughter, S.Q., fled El Salvador in fear of Ms. M’s
5 husband, a former military officer, who severely beat them both and threatened their
6 lives.²⁸ On or around May 18, 2018, Ms. M and her daughter entered the United States
7 near Hidalgo, Texas, where they encountered a CBP officer and claimed fear of
8 returning to their country of origin.²⁹

9 CBP immediately detained and separated Ms. M and her daughter.³⁰ Officers
10 told Ms. M that she was to be deported without her daughter, and that she would be
11 punished for exposing her daughter to such a harsh journey.³¹ Upon hearing this, Ms.
12 M began to cry, and one officer said, “You can thank Trump.”³²

13 Ms. M was kept in a holding cell that resembled a dog kennel tightly packed
14 with at least 40 – 50 other women.³³ The guards fed them with pieces of soggy bread
15 and a frozen piece of what looked like ham.³⁴ The guards would humiliate the women
16 by opening the cage door and throwing crackers at them.³⁵

17 Within several days of her detention, Ms. M was prosecuted on federal criminal
18 charges and transferred to the SeaTac Federal Prison in SeaTac, Washington.³⁶ She
19 was subsequently transferred to the Northwest Detention Center in Tacoma,
20 Washington.³⁷ Ms. M’s daughter was detained in Southwest Key Programs, Inc.—

21
22 ²⁷ Declaration of Alfonso Mercado (“Mercado Decl.”) ¶ 7.

23 ²⁸ Declaration of Ms. R.M. (“R.M. Decl.”) ¶ 2-4.

24 ²⁹ *Id.* ¶ 5.

25 ³⁰ *Id.* ¶ 6.

26 ³¹ *Id.* ¶ 7.

27 ³² *Id.*

28 ³³ *Id.* ¶ 9.

³⁴ *Id.* ¶ 11.

³⁵ *Id.*

³⁶ Compl. ¶ 39, 41.

³⁷ *Id.* ¶ 41.

1 Casa Antigua in San Benito, Texas.³⁸ Following the separation, S.Q. has “reported
2 symptoms including excessive worry, dysphoric mood, crying spells, sleep and
3 appetite disturbances, and fear of the unknown.”³⁹

4 * * *

5 The government has never alleged that Ms. P, Ms. O, or Ms. M are unfit parents
6 or that their children are unsafe with them and has not provided Plaintiffs or their
7 children with mental health services.

8 **C. The Proposed Class**

9 Plaintiffs’ experiences are representative of Defendants’ practice of forcibly
10 separating parents from their children without a hearing and without any
11 demonstration that the parent is endangering the child. Their experiences exemplify
12 the severity of the harm inflicted by the government’s family separation policy and the
13 government’s failure to provide adequate mental health care. Media reports and
14 personal accounts of the separations are replete with vivid descriptions of terrified
15 children and desperate parents. Garance Burke and Martha Mendoza, *Toddlers*
16 *Separated from Parents at the Border Are Being Detained in ‘Tender Age’ Shelters*,
17 TIME (June 20, 2018), [http://time.com/5316764/toddler-immigrants-tender-age-](http://time.com/5316764/toddler-immigrants-tender-age-shelters/)
18 [shelters/](http://time.com/5316764/toddler-immigrants-tender-age-shelters/); Caitlin Dickerson and Manny Fernandez, *What’s Behind the ‘Tender Age’*
19 *Shelters Opening for Young Migrants*, N.Y. TIMES (June 20, 2018),
20 [https://www.nytimes.com/2018/06/20/us/tender-age-shelters-family-separation-](https://www.nytimes.com/2018/06/20/us/tender-age-shelters-family-separation-immigration.html)
21 [immigration.html](https://www.nytimes.com/2018/06/20/us/tender-age-shelters-family-separation-immigration.html).; Nick Miroff, *A Family Was Separated At the Border, and This*
22 *Distraught Father Took His Own Life*, WASH. POST (June 9, 2018),
23 [https://www.washingtonpost.com/world/national-security/a-family-was-separated-at-](https://www.washingtonpost.com/world/national-security/a-family-was-separated-at-the-border-and-this-distraught-father-took-his-own-life/2018/06/08/24e40b70-6b5d-11e8-9e38-24e693b38637_story.html?utm_term=.f3c12fb7157d)
24 [the-border-and-this-distraught-father-took-his-own-life/2018/06/08/24e40b70-6b5d-](https://www.washingtonpost.com/world/national-security/a-family-was-separated-at-the-border-and-this-distraught-father-took-his-own-life/2018/06/08/24e40b70-6b5d-11e8-9e38-24e693b38637_story.html?utm_term=.f3c12fb7157d)
25 [11e8-9e38-24e693b38637_story.html?utm_term=.f3c12fb7157d](https://www.washingtonpost.com/world/national-security/a-family-was-separated-at-the-border-and-this-distraught-father-took-his-own-life/2018/06/08/24e40b70-6b5d-11e8-9e38-24e693b38637_story.html?utm_term=.f3c12fb7157d). Such reports reveal
26 that, by the government’s own estimation, on July 5, 2018, the government held

27 _____
³⁸ Compl. ¶ 40.

28 ³⁹ Mercado Decl. ¶ 7.

1 nearly 3,000 children after forcibly separating them from their parents. Caitlin
 2 Dickerson, *Trump Administration in Chaotic Scramble to Reunify Migrant Families*,
 3 NY. TIMES (July 5, 2018), [https://www.nytimes.com/2018/07/05/us/migrant-children-
 4 chaos-family-separation.html](https://www.nytimes.com/2018/07/05/us/migrant-children-chaos-family-separation.html).

5 **D. The Government’s Family Separation Policy is Found Likely**
 6 **Unconstitutional and Enjoined in *Ms. L. v. U.S. Immigration &***
 7 ***Customs Enforcement***

8 The government’s policy of separating families was met with widespread
 9 condemnation and, unsurprisingly, litigation. One of the cases challenging the policy
 10 was filed by a refugee known as “Ms. L.” in the Southern District of California, and is
 11 pending before Judge Dana Sabraw. *Ms. L. v. U.S. Immigration & Customs Enf’t*,
 12 Case No. 3:18-cv-00428-DMS-MDD, 2018 WL 3129486 (S.D. Cal. June 26, 2018)
 13 (“Ms. L. Case”). On June 26, 2018, Judge Sabraw preliminarily certified a class of
 14 parents who enter the United States who were, are or will be detained in immigration
 15 custody, and who have a minor child who is or will be separated from them absent a
 16 determination that the parent is unfit or endangers the child. *Ms. L. Case*, Dkt. No. 82
 17 at 17.

18 That same day, Judge Sabraw also concluded that the Ms. L Case plaintiffs had
 19 submitted evidence demonstrating they were likely to succeed in showing that the
 20 government’s family separation practice violates due process and “shocks the
 21 conscience” and “interferes with rights implicit in the concept of ordered liberty,
 22 ... and is so brutal and offensive that it [does] not comport with traditional ideas of
 23 fair play and decency,” *Ms. L. Case*, Dkt. No. 83 at 12, 17, and entered a preliminary
 24 injunction that required the following:

- 25 • Defendants . . . are preliminarily enjoined from detaining Class Members in
 26 DHS custody without and apart from their minor children, absent a
 27 determination that the parent is unfit or presents a danger to the child
- 28 • Defendants must reunify all Class Members with their minor children who are
 under the age of five (5) within fourteen (14) days of the entry of this Order;

1 and . . . Defendants must reunify all Class Members with their minor children
2 age five (5) and over within thirty (30) days of the entry of this Order.

- 3 • Defendants . . . are preliminarily enjoined from removing any Class Members
4 without their child

5 *Id.* at 22-24. The government has struggled to comply with the injunction ordered in
6 the Ms. L Case and has not fully complied with that order as of the filing of this
7 Motion. *Ms. L. Case*, Dkt. No. 152 at 4; Tal Kopan, *Hundreds of separated children*
8 *not reunited by court-ordered deadline*, CNN (Jul. 26, 2018),
9 <https://www.cnn.com/2018/07/26/politics/family-separations-deadline/index.html>;
10 Tom Hals, *Immigrants lost in ‘black hole’ of U.S. family reunification: advocates*,
11 REUTERS (Jul. 26, 2018), [https://www.reuters.com/article/us-usa-](https://www.reuters.com/article/us-usa-immigration/immigrants-lost-in-black-hole-of-u-s-family-reunification-advocates-idUSKBN1KG19B)
12 [immigration/immigrants-lost-in-black-hole-of-u-s-family-reunification-advocates-](https://www.reuters.com/article/us-usa-immigration/immigrants-lost-in-black-hole-of-u-s-family-reunification-advocates-idUSKBN1KG19B)
13 [idUSKBN1KG19B](https://www.reuters.com/article/us-usa-immigration/immigrants-lost-in-black-hole-of-u-s-family-reunification-advocates-idUSKBN1KG19B); Paloma Esquivel and Esmeralda Bermudez, *Hundreds of children*
14 *remain separated from migrant parents as deadline looms*, L.A. TIMES (Jul. 26, 2018),
15 [http://www.latimes.com/local/lanow/la-me-family-reunification-numbers-20180726-](http://www.latimes.com/local/lanow/la-me-family-reunification-numbers-20180726-story.html)
16 [story.html](http://www.latimes.com/local/lanow/la-me-family-reunification-numbers-20180726-story.html).

17 **E. The Plaintiffs’ PI Motion Seeks Relief for the Trauma the**
18 **Government’s Separation Policy Inflicted on Plaintiffs and the**
19 **Proposed Class Members**

20 As detailed in the PI Motion, the consensus among trauma experts is that
21 tearing children from their parents inflicts severe complex trauma on parents and
22 children alike. This trauma increases the longer the separation continues and/or goes
23 untreated. Accordingly, in the PI Motion, Plaintiffs seek for themselves and the
24 proposed class members mental health screening and appropriate and sufficient mental
25 health services to alleviate the psychological and neurobiological consequences of the
26 government’s forcible separation of migrant parents and their children. *See* Dkt. No.
27 45. As set forth below, certification of the proposed class in this action is appropriate
28 under Rule 23.

1 **III. ARGUMENT**

2 A plaintiff whose suit meets the requirements of Federal Rule of Civil
3 Procedure 23 has a “categorical” right “to pursue his claim as a class action.” *Shady*
4 *Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). To
5 meet these requirements, the “suit must satisfy the criteria set forth in [Rule 23(a)]
6 (i.e., numerosity, commonality, typicality, and adequacy of representation), and it also
7 must fit into one of the three categories described in subdivision (b).” *Id.*

8 Plaintiffs’ proposed class satisfies all four of the Rule 23(a) prerequisites, as
9 well as the judicially implied requirement of ascertainability. The proposed class
10 likewise meets the requirements for certification under Rule 23(b)(2). This Court
11 should certify the proposed class in keeping with the numerous court decisions
12 certifying classes in similar actions challenging the federal government’s
13 administration of immigration programs. *See, e.g., Walters v. Reno*, 145 F.3d 1032
14 (9th Cir. 1998) (affirming certification of nationwide class of individuals challenging
15 adequacy of notice in document fraud cases); *Arnott v. U.S. Citizenship &*
16 *Immigration Servs.*, 290 F.R.D. 579 (C.D. Cal. 2012) (certifying nationwide class of
17 immigrant investors challenging USCIS’ retroactive application of new rules
18 governing approval petitions to remove permanent residency conditions); *Santillan v.*
19 *Ashcroft*, No. 04-cv-2686, 2004 WL 2297990 (N.D. Cal. Oct. 12, 2004) (certifying
20 nationwide class of lawful permanent residents challenging delays in receiving
21 documentation of their status); *Wagafe v. Trump*, No. 17-cv-0094, 2017 WL 2671254,
22 at *1 (W.D. Wash. June 21, 2017) (certifying nationwide class of naturalization
23 applicants challenging national security screening procedures); *Mendez Rojas, et al. v.*
24 *Johnson*, No. 16-cv-1024, 2017 WL 1397749 (W.D. Wash. Jan. 10, 2017) (certifying
25 two nationwide classes of asylum seekers challenging defective asylum application
26 procedures); *see also Ms. L. Case*, 2018 WL 3129486, at *3, 11-12 (certifying a class
27 of parents who enter the United States at or between designated ports of entry who (1)
28 have been, are, or will be detained in immigration custody by the DHS, and (2) have a

1 minor child who is or will be separated from them absent a determination that the
2 parent is unfit or presents a danger to the child).

3 **A. The Proposed Class Satisfies Rule 23(a)’s Requirements**

4 **1. The Proposed Class Satisfies the Numerosity Requirement**

5 Rule 23(a)(1) requires that a class be “so numerous that joinder of all members
6 is impracticable.” Fed. R. Civ. P. 23(a)(1). “[I]mpracticability’ does not mean
7 ‘impossibility,’ but only the difficulty or inconvenience of joining all members of the
8 class.” *Franco-Gonzales v. Napolitano*, No. 10-cv-02211, 2011 WL 11705815, at *6
9 (C.D. Cal. Nov. 21, 2011) (quoting *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.
10 2d 909, 913-14 (9th Cir. 1964)). No fixed number of class members is required.
11 *Perez-Funez v. Dist. Dir., I.N.S.*, 611 F. Supp. 990, 995 (C.D. Cal. 1984). Moreover,
12 where a plaintiff seeks injunctive and declaratory relief, the “requirement is relaxed
13 and plaintiffs may rely on [] reasonable inference[s] arising from plaintiffs’ other
14 evidence that the number of unknown and future members of [the] proposed subclass
15 ... is sufficient to make joinder impracticable.” *Arnott v. U.S. Citizenship &*
16 *Immigration Servs.*, 290 F.R.D. 579, 586 (C.D. Cal. 2012) (quoting *Sueoka v. United*
17 *States*, 101 Fed. App’x 649, 653 (9th Cir. 2004)).

18 Here, the number of class members far exceeds the requirement for numerosity.
19 The government admitted that as recently as July 5, 2018, 3,000 minor children were
20 held in detention after being forcibly separated from their parents. Caitlin Dickerson,
21 *Trump Administration in Chaotic Scramble to Reunify Migrant Families*, NY. TIMES
22 (July 5, 2018), [https://www.nytimes.com/2018/07/05/us/migrant-children-chaos-](https://www.nytimes.com/2018/07/05/us/migrant-children-chaos-family-separation.html)
23 [family-separation.html](https://www.nytimes.com/2018/07/05/us/migrant-children-chaos-family-separation.html); *Separating families at the border: How we got here*, CBS
24 NEWS (June 18, 2018), <https://cbsn.ws/2MAkOvq>. The Court can thus reasonably
25 conclude that the proposed class is sufficiently numerous. *See Cervantez v. Celestica*
26 *Corp.*, 253 F.R.D. 562, 569 (C.D. Cal. 2008) (noting that “where the exact size of the
27 class is unknown but general knowledge and common sense indicate that it is large,
28 the numerosity requirement is satisfied”) (quotation marks omitted); *see also, e.g.*,

1 *Hum v. Dericks*, 162 F.R.D. 628, 634 (D. Haw. 1995) (“Courts have certified classes
2 with as few as thirteen members.”); *Ark. Educ. Ass’n v. Bd. of Ed. of Portland, Ark.*
3 *Sch. Dist.*, 446 F.2d 763, 765-66 (8th Cir. 1971) (class of 20 sufficient).

4 Second, in addition to the number of individuals who have already been
5 separated from their children, the proposed class also includes individuals who *will*
6 *have* a child taken from them. The presence of such future class members renders
7 joinder inherently impractical, thereby satisfying the purpose behind the numerosity
8 requirement. *See, e.g., Ali v. Ashcroft*, 213 F.R.D. 390, 408 (W.D. Wash. 2003), *aff’d*,
9 346 F.3d 873 (9th Cir. 2003), *vacated on other grounds*, 421 F.3d 795 (9th Cir. 2005)
10 (quotation marks omitted) (“[W]here the class includes unnamed, unknown future
11 members, joinder of such unknown individuals is impracticable and the numerosity
12 requirement is therefore met, regardless of class size.”) (quoting *Nat’l Ass’n of*
13 *Radiation Survivors v. Walters*, 111 F.R.D. 595, 599 (N.D. Cal. 1986)); *Smith v.*
14 *Heckler*, 595 F. Supp. 1173, 1186 (E.D. Cal. 1984) (in injunctive relief cases,
15 “[j]oinder in the class of persons who may be injured in the future has been held
16 impracticable without regard to the number of persons already injured”); *Hawker v.*
17 *Consovoy*, 198 F.R.D. 619, 625 (D.N.J. 2001) (“The joinder of potential future class
18 members who share a common characteristic, but whose identity cannot be
19 determined yet is considered impracticable.”).

20 **2. The Class Presents Common Questions of Law and Fact**

21 To satisfy commonality, Plaintiffs must show that “there are questions of law or
22 fact common to the class.” Fed. R. Civ. P. 23(a)(2). Rule 23(a)(2)’s commonality
23 requirement “has been construed permissively.” *Preap v. Johnson*, 303 F.R.D. 566,
24 585 (N.D. Cal. 2014), *aff’d*, 831 F.3d 1193 (9th Cir. 2016) (quoting *Hanlon v.*
25 *Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)) (quotation marks omitted). A
26 plaintiff “need not show . . . that every question in the case, or even a preponderance
27 of questions, is capable of class wide resolution.” *Parsons v. Ryan*, 754 F.3d 657, 675
28 (9th Cir. 2014) (quotation marks omitted). Rather, even one shared legal issue can be

1 sufficient. *See, e.g., Mazza v. Am. Honda Motor Co.*, 666 F.3d 581, 589 (9th Cir.
2 2012) (noting that “commonality only requires a single significant question of law or
3 fact”); *Walters*, 145 F.3d at 1046 (“What makes the plaintiffs’ claims suitable for a
4 class action is the common allegation that the INS’s procedures provide insufficient
5 notice.”).

6 Moreover, “[i]ndividual variation among plaintiffs’ questions of law and fact
7 does not defeat underlying legal commonality, because ‘the existence of shared legal
8 issues with divergent factual predicates is sufficient’ to satisfy Rule 23.” *Santillan v.*
9 *Ashcroft*, 2004 WL 2297990, at *10 (N.D. Cal. Oct. 12, 2004) (quoting *Hanlon*, 150
10 F.3d at 1019). The commonality standard is even more liberal in a civil rights suit like
11 this one, in which “the lawsuit challenges a system-wide practice or policy that affects
12 all of the putative class members.” *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir.
13 2001), *abrogated on other grounds, Johnson v. California*, 543 U.S. 499 (2005).

14 Plaintiffs’ lawsuit raises numerous legal and factual questions common to the
15 proposed class. First, whether and to what extent the government has an obligation to
16 develop an appropriate policy for mitigating the harms inflicted by the family
17 separation policy. Second, and relatedly, whether Defendants’ policies and practices
18 actions have violated the substantive due process rights of proposed class members
19 and their rights to equal protection of the law. Each of these raises multiple common
20 questions of law and fact. And any one of these common issues, standing alone, is
21 enough to satisfy Rule 23(a)(2)’s permissive standard. *See Perez-Olano v. Gonzalez*,
22 248 F.R.D. 248, 257 (C.D. Cal. 2008) (“Courts have found that a single common issue
23 of law or fact is sufficient.”) (citation omitted); *Sweet v. Pfizer*, 232 F.R.D. 360, 367
24 (C.D. Cal. 2005) (observing that “there must only be one single issue common to the
25 proposed class”) (quotation and citation omitted).

26 Plaintiffs and proposed class members also share a common core of facts: all
27 came to the United States with their children and were subsequently detained; all were
28 separated from their children without any allegation or showing that they present a

1 danger to their child; the scientific consensus is that child—parent separation is a
2 traumatic event; there is no existing policy to provide class members appropriate
3 mental-health screening or appropriate trauma-informed intervention. Plaintiffs and
4 proposed class members, thus, “have suffered the same injury.” *Wal-Mart Stores, Inc.*
5 *v. Dukes*, 564 U.S. 338, 350 (2011) (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S.
6 147, 157 (1982)). And that common injury is clearly “capable of class wide
7 resolution.” *Id.* Should the Court agree that Defendants’ policies or practices violate
8 the Due Process Clause, all who fall within the class will benefit from the requested
9 relief: mental-health screenings for Plaintiffs and their children to assess their need for
10 subsequent trauma-informed remedial medical and appropriate mental-health services
11 to address the trauma of separation and child detention. A common answer as to the
12 legality of the challenged policies and practices will “drive the resolution of the
13 litigation.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th Cir. 2011)
14 (quoting *Wal-Mart*, 564 U.S. at 350).

15 Significantly, courts have made clear that even “[w]here the circumstances of
16 each particular class member vary but retain a common core of factual or legal issues
17 with the rest of the class, commonality exists.” *Evon v. Law Offices of Sidney Mickell*,
18 688 F.3d 1015, 1029 (9th Cir. 2012) (quotation marks omitted); *see also Walters*, 145
19 F.3d at 1046 (“Differences among the class members with respect to the merits of
20 their actual document fraud cases, however, are simply insufficient to defeat the
21 propriety of class certification. What makes the plaintiffs’ claims suitable for a class
22 action is the common allegation that the INS’s procedures provide insufficient
23 notice.”); *Arnott*, 290 F.R.D. at 586-87 (factual variations did not defeat certification
24 where core legal issues were similar). Moreover, any factual differences that may exist
25 among Plaintiffs and individual proposed class members are immaterial to their core
26 claim that they are entitled to mental health care screenings and effective family
27 treatment to address and remediate the effects of the trauma that the government
28 wantonly and knowingly inflicted on them under the unconstitutional policy of

1 separating parents from their children. *See, e.g., Orantes-Hernandez v. Smith*, 541 F.
2 Supp. 351, 370 (C.D. Cal. 1982) (granting certification in challenge to common
3 agency practices in asylum cases, even though the outcome of individual asylum cases
4 would depend on individual class members' varying entitlement to asylum).

5 **3. Typicality: Plaintiffs' Claims Are Typical of Class Members'** 6 **Claims**

7 Rule 23(a)(3) requires that "the claims or defenses of the representative parties
8 [be] typical of the claims or defenses of the class." The purpose of this requirement is
9 to "assure[] that the interests of the named representatives align with those of the
10 class" as a whole. *Weinberger v. Thornton*, 114 F.R.D. 599, 603 (S.D. Cal. 1986).
11 "Under the rule's permissive standards, representative claims are 'typical' if they are
12 reasonably coextensive with those of the absent class members." *Parsons*, 754 F.3d at
13 685 (quoting *Hanlon*, 150 F.3d at 1020). "The test of typicality is 'whether other
14 members have the same or similar injury, whether the action is based on conduct
15 which is not unique to the named plaintiffs, and whether other class members have
16 been injured by the same course of conduct.'" *Id.* (citation omitted).

17 Plaintiffs' claims are typical of the claims of the proposed class, for largely the
18 same reasons that the class presents common questions of law and fact. Each proposed
19 class member—like each proposed class representative, Ms. P, Ms. O, and Ms. M—
20 was forcibly separated from her child without a finding of unfitness or that she
21 presented a danger to her child, and she has not been provided with appropriate
22 mental-health screenings or offered appropriate trauma-informed intervention.
23 Additionally, Plaintiffs assert the same rights under the Fifth Amendment. Plaintiffs'
24 claims are not only typical of proposed class members, they are nearly identical.

25 Moreover, as with commonality, any factual differences between Plaintiffs and
26 proposed class members are not material enough to defeat typicality. *See, e.g.,*
27 *Hanlon*, 150 F.3d at 1020 (under "permissive" typicality standard, representative
28 claims need only be "reasonably co-extensive with those of absent class members;

1 they need not be substantially identical”); *LaDuke v. Nelson*, 762 F.2d 1318, 1332 (9th
2 Cir. 1985) (“The minor differences in the manner in which the representative’s Fourth
3 Amendment rights were violated does not render their claims atypical of those of the
4 class.”); *cf. Marisol A. v. Giuliani*, 126 F.3d 372, 378 (2d Cir. 1997) (certifying Rule
5 23(b)(2) class despite differences in the exact nature of the harm suffered by class
6 members).

7 **4. Adequacy: Plaintiffs Will Adequately Protect the Interests of**
8 **the Proposed Class, and Plaintiffs’ Counsel Are More Than**
9 **Qualified to Litigate this Action**

10 Rule 23(a)(4) requires that “[t]he representative parties will fairly and
11 adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Adequacy
12 depends on “the qualifications of counsel for the representatives, an absence of
13 antagonism, a sharing of interests between representatives and absentees, and the
14 unlikelihood that the suit is collusive.” *Walters*, 145 F.3d at 1046 (quotation marks
15 omitted). Plaintiffs’ counsel are deemed qualified when they possess experience in
16 previous class actions and cases involving the same area of law. *Lynch v. Rank*, 604
17 F. Supp. 30, 37 (N.D. Cal. 1984), *aff’d* 747 F.2d 528 (9th Cir. 1984), *amended on*
18 *reh’g*, 763 F.2d 1098 (9th Cir. 1985). Here, putative Class Counsel are attorneys from
19 Public Counsel and Sidley Austin LLP with significant experience in immigrants’
20 rights issues and hundreds of class action cases. Class Counsel have more than
21 sufficient resources to litigate this matter vigorously.

22 Plaintiffs will fairly and adequately protect the interests of the proposed class,
23 and therefore, are adequate class representatives. Plaintiffs do not seek any unique or
24 additional benefit from this litigation that may make their interests different from or
25 adverse to those of absent class members. Instead, Plaintiffs’ aim is to secure
26 injunctive relief that will protect themselves and the entire class from Defendants’
27 challenged practices and enjoin Defendants from further violations. Nor do Plaintiffs
28 or Class Counsel seek financial gain at the cost of absent class members’ rights.

1 Accordingly, Plaintiffs lack any antagonism with the class, and their interests align
2 squarely with the other proposed class members.

3 **5. The Class Is Sufficiently Ascertainable**

4 Although ascertainability is not required for class certification in the Ninth
5 Circuit, *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1133 (9th Cir. 2017), the
6 proposed class is, nevertheless, sufficiently ascertainable because it is
7 “administratively feasible” to ascertain whether an individual is a member. *Greater*
8 *Los Angeles Agency on Deafness, Inc. v. Reel Servs. Mgmt. LLC*, No. 13-cv-7172,
9 2014 WL 12561074, at *5 (C.D. Cal. May 6, 2014) (quotation marks omitted)
10 (finding ascertainable proposed class of individuals who are deaf or hard of hearing
11 and require closed captioning). Here, membership in the class is defined by clear and
12 objective criteria: class members were, are, or will be in immigration detention, their
13 children were taken from them without a hearing and showing of unfitness, and their
14 children were or are held elsewhere by ORR or DHS. *See supra* at 3. These
15 parameters are “precise, objective, and presently ascertainable.” *O’Connor v. Boeing*
16 *N. Am., Inc.*, 184 F.R.D. 311, 319 (C.D. Cal. 1998) (quotations omitted) (observing
17 that class definitions for actions maintained under Rule 23(b)(2) involve less precision
18 than actions for damages requiring notice to the class); *see also, e.g., Lamumba Corp.*
19 *v. City of Oakland*, No. 05-cv-2712, 2007 WL 3245282, at *4 (N.D. Cal. Nov. 2,
20 2007) (“Plaintiffs putative class is based on the objective factors of business
21 ownership, race, and indebtedness to the City, and therefore is sufficiently defined.”).
22 The fact that some administrative process may be required to identify class members
23 does not undermine ascertainability. *See, e.g., Moreno v. Napolitano*, No. 11-cv-
24 5452, 2014 WL 4911938, at *6-7 (N.D. Ill. Sept. 30, 2014) (finding that the necessity
25 of manually reviewing tens of thousands of detainer forms to identify class members
26 did not undermine ascertainability) (citing *Young v. Nationwide Mut. Ins. Co.*, 693
27 F.3d 532, 539 (6th Cir. 2012)).
28

1 **B. This Action Satisfies the Requirements of Rule 23(b)(2)**

2 In addition to satisfying the four requirements of Rule 23(a), a class must also
3 come within one of the subsections of Rule 23(b). Certification of a class under Rule
4 23(b)(2) requires that “the party opposing the class has acted or refused to act on
5 grounds that apply generally to the class, so that final injunctive relief or
6 corresponding declaratory relief is appropriate respecting the class as a whole.” Fed.
7 R. Civ. P. 23(b)(2). In the Ninth Circuit, “[i]t is sufficient” to meet Rule 23(b)(2)’s
8 requirements that “class members complain of a pattern or practice that is generally
9 applicable to the class as a whole.” *Walters*, 145 F.3d at 1047. Indeed, Rule “23(b)(2)
10 was adopted in order to permit the prosecution of civil rights actions” like this one. *Id.*
11 ““The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory
12 remedy warranted—the notion that the conduct is such that it can be enjoined or
13 declared unlawful only as to all of the class members or as to none of them.”” *Lyon v.*
14 *ICE*, 308 F.R.D. 203, 213 (N.D. Cal. 2015) (quoting *Wal-Mart*, 131 S. Ct. at 2557).

15 Rule 23(b)(2)’s requirements are met here. Plaintiffs ask the Court for
16 declaratory and injunctive relief to remedy the harm inflicted on the proposed class
17 members and their minor children by Defendants’ practice—common to all class
18 members—of forcibly separating them from their children without a hearing and
19 showing that they are unfit or present a danger to their children and failing to provide
20 adequate family based mental health evaluations and care for this traumatic event. If
21 Defendants’ failure to provide adequate mental health services to parents and children
22 traumatized by Defendants’ unconstitutional family separation practice violates
23 substantive due process or the equal protection guarantee of the Fifth Amendment, it
24 does so as to all proposed class members. A single injunction would protect both
25 Plaintiffs and the other class members from this same practice and would provide
26 relief to Plaintiffs and the other class members through mental-health screenings and
27 appropriate trauma-informed remedial medical and mental-health services. *See, e.g.,*
28 *Walters*, 145 F.3d at 1047 (certifying Rule 23(b)(2) class based on Defendants’

1 practice of providing deficient notice of deportation procedures).

2 This relief would benefit Plaintiffs as well as all members of the proposed class
3 in the same fashion. No individual class member would be entitled to a different
4 injunction or declaratory judgment. The requested relief would address these policies
5 or practices in a single stroke, and, therefore, the proposed class warrants certification
6 under Rule 23(b)(2). *See Parsons*, 754 F.3d at 689 (finding declaratory and injunctive
7 relief proper as to the whole class where “every [member] in the proposed class is
8 allegedly suffering the same (or at least a similar) injury and that injury can be
9 alleviated for every class member by uniform changes in . . . policy and practice”).

10 Because Plaintiffs and proposed class members all have suffered or will suffer
11 the same constitutional violations as a result of the government’s challenged practice,
12 and because they seek singular injunctive and corresponding declaratory relief that
13 remedy those injuries, certification under Rule 23(b)(2) is proper.

14 **IV. CONCLUSION**

15 Plaintiffs respectfully request that the Court grant this Motion and enter an
16 order certifying the proposed class under Rule 23(b)(2); appoint Plaintiffs as Class
17 Representatives; and appoint the Plaintiffs’ counsel from Public Counsel and Sidley
18 Austin LLP as Class Counsel.

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