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11  
12 **UNITED STATES DISTRICT COURT FOR THE**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15 Julian SANCHEZ MORA, Siobhan  
16 WALDRON, Carlos Moctezuma GARCIA,  
Brenda CANUDAS TIRADO, and Ali AINAB,

17 Plaintiffs,

18 v.

19 U.S. CUSTOMS AND BORDER PROTECTION; and  
20 U.S. DEPARTMENT OF HOMELAND SECURITY,

21 Defendants.

Case No. 3:24-cv-02430

**PLAINTIFFS' NOTICE OF  
MOTION AND MOTION  
FOR CLASS  
CERTIFICATION**

**Date:** TBD

**Time:** TBD

**Judge:** TBD

1 PLEASE TAKE NOTICE that, on a date and in a courtroom to be determined, at  
2 the San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102,  
3 before an Honorable District Judge of this Court, Plaintiffs Julian SANCHEZ MORA,  
4 Siobhan WALDRON, Carlos Moctezuma GARCIA, Brenda CANUDAS TIRADO, and  
5 Ali AINAB will, and hereby do, move this Court for class certification pursuant to  
6 Federal Rule of Civil Procedure 23.

7 Plaintiffs seek an order from this Court certifying the proposed class, appointing the  
8 named Plaintiffs as class representatives, and appointing the undersigned attorneys as class  
9 counsel.

10 This motion is based on the attached Memorandum of Points and Authorities, the  
11 pleadings, records and files in this action, and such other evidence and argument as may  
12 be presented at the time of hearing. A proposed order accompanies these filings.

13 Respectfully submitted,

14 *s/Trina Realmuto*

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## I. MOTION AND PROPOSED CLASS DEFINITION

1  
2 Plaintiffs challenge Defendant U.S. Customs and Border Protection's (CBP) nationwide  
3 pattern and practice of failing to respond to requests for records under the Freedom of  
4 Information Act (FOIA) within the timeframe mandated by the statute. Plaintiffs are attorneys  
5 and individuals who seek records that pertain to their clients and themselves, respectively,  
6 including records related to an individual's entry into and/or exit from the United States,  
7 admission, criminal history, and records of inspection, apprehensions, or interactions with CBP  
8 employees. These records are critical to determining eligibility for immigration benefits,  
9 including lawful permanent residence, naturalization, and acquisition of citizenship; defending  
10 against deportation; responding to automobile seizures; and/or investigating damages claims  
11 based on tortious or unconstitutional conduct by CBP employees.

12 The FOIA requires Defendants to respond to FOIA requests within 20, or at most, 30  
13 business days. *See* 5 U.S.C. § 552(a)(6)(A), (B). Defendant CBP has a pattern or practice of  
14 failing to make determinations on FOIA requests within the statutory time period; indeed,  
15 Defendant CBP generally takes over six months, and sometimes longer than one year, to  
16 respond. CBP is a component agency of Defendant U.S. Department of Homeland Security  
17 (DHS), which is ultimately responsible for CBP's compliance with the law. Because Defendants'  
18 failure to comply with the FOIA statute adversely impacts thousands of FOIA requesters who,  
19 like Plaintiffs, seek individual records related to their clients or themselves, Plaintiffs ask this  
20 Court to grant class certification and order declaratory and injunctive relief.

21 Whether Defendants' failure to adjudicate FOIA requests within 30 business days  
22 violates the FOIA is a legal question that can and should be resolved on a class-wide basis.  
23 Pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, Plaintiffs

1 respectfully move this Court to certify the following class:

2 All persons who filed, or will file, FOIA requests with CBP for an individual's  
3 records which have been pending, or will be pending, with CBP for more than  
30 business days without a determination.

4 For purposes of the class definition, and notwithstanding whether CBP  
5 internally classifies a request as simple or complex, a FOIA request for  
6 individual records means a request for records related to an individual, including  
7 the individual's entry into and/or exit from the United States; admission,  
8 withdrawal of admission, or denial of admission to the United States; criminal  
9 history; apprehension, inspection by, or interactions with, CBP employees; and  
10 removal, deportation, exclusion, voluntary return, and/or expulsion under any  
11 provision of the Immigration and Nationality Act or 42 U.S.C. § 265.

12 Plaintiffs further request that the Court: designate Plaintiffs Julian Sanchez Mora, Siobhan  
13 Waldron, Carlos Moctezuma García, Brenda Canudas Tirado, and Ali Ainab to represent the  
14 Class and appoint the undersigned as class counsel.

## 15 **II. BACKGROUND**

16 The FOIA requires that an agency make a determination on a FOIA request within 20  
17 business days. 5 U.S.C. § 552(a)(6)(A)(i). In the case of "unusual circumstances," with a limited  
18 exception not relevant here, an agency may extend its response time by no more than 10 working  
19 days provided it sends the requestor "written notice." 5 U.S.C. § 552(a)(6)(B)(i). CBP has a  
20 pattern or practice of failing to make a determination within this statutory timeframe, even when  
21 acting on straightforward FOIA requests for an individual's immigration or travel records.

### 22 **A. Importance of CBP Records**

23 DHS and its component agency CBP maintain records of, *inter alia*, individuals' history  
of international travel to and from the United States. *See* U.S. Customs & Border Prot., *Request  
Records Through the Freedom of Information Act*, [https://www.cbp.gov/site-policy-  
notices/foia/records](https://www.cbp.gov/site-policy-<br/>notices/foia/records) (last updated Dec. 20, 2023). These records also include information relating  
to apprehensions, detentions, or inspections of an individual by CBP agents, as well as expedited

1 removal orders, voluntary returns, withdrawn applications for admission, and expulsions. *Id.*

2 This information is often vital, for instance, to understand the precise nature of an individual's  
3 status in the United States and their immigration and/or criminal background.

4 Indeed, attorneys file CBP FOIA requests to obtain records necessary to understand and  
5 advise their clients about their eligibility for immigration benefits, to defend against removal,  
6 and to assess the availability of post-conviction relief. *See, e.g.*, Exhibit (Ex.) A1, Julian Sanchez  
7 Mora Declaration (Dec.) ¶¶ 4–5; Ex. A2, Siobhan Waldron Dec. ¶ 7; Ex. A3, Carlos Moctezuma  
8 García Dec. ¶¶ 8-9; Ex. B1, Stacy Tolchin Dec. ¶ 5; Ex. B2, Monica Kane Dec. ¶¶ 4–5; Ex. B3,  
9 Annelise Araujo Dec. ¶ 6; Ex. B4, Bardis Vakili Dec. ¶ 4; Ex. B5, Samantha Sitterley Dec. ¶ 5;  
10 Ex. B6, Lizz Cannon Dec. ¶ 3; Ex. B7, Rocío Castañeda Acosta Dec. ¶ 5; Ex. B8, Elizabeth  
11 Wood Dec. ¶ 3; Ex. B9, Rekha Nair Dec. ¶¶ 3, 6; Ex. B10, Austin Nielsen-Reagan Dec. ¶¶ 3, 8;  
12 Ex. B11, Whitney Amann Dec. ¶ 3; Ex. B12, Meredith Brown Dec. ¶¶ 8, 9; Ex. B13, Kathleen  
13 Kersh Dec. ¶ 3; Ex. B14, Mahsa Khanbabai Dec. ¶ 4; Ex. B15, Jennifer Mashek Dec., ¶ 3; Ex.  
14 B16, Kelly Ryan Dec. ¶ 3;<sup>1</sup> *see also Brown v. CBP*, 132 F. Supp. 3d 1170, 1174 (N.D. Cal.  
15 2015) (“It is more than plausible to infer that [Plaintiff immigration attorneys] will continue to  
16 make regular FOIA requests for the CBP documents that are critical for their work, and continue  
17 to experience improper delays.”). Individuals also need to obtain and review CBP records of  
18 their own travel history and/or any apprehensions, detentions, or inspections to pursue  
19 immigration benefits or relief, to defend against removal, or to demonstrate residence in the  
20 United States. *See, e.g.*, Ex. A4, Brenda Canudas Tirado Dec. ¶¶ 4, 6; Ex. A5, Ali Ainab Dec. ¶¶  
21 4, 6.

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<sup>1</sup> All referenced exhibits are attached to the accompanying Authenticating Declaration of Trina Realmuto in support of Plaintiffs’ motion for class certification.



1 The only way to obtain a copy of a noncitizen’s CBP records is for the individual or their  
2 attorney to submit a FOIA request. This is true even for noncitizens in removal proceedings, as  
3 discovery is not available. *See Sanchez v. Barr*, 919 F.3d 1193, 1196 (9th Cir. 2019) (en banc)  
4 (Paez, J., concurring) (noting that discovery is not available in removal proceedings);  
5 *Nightingale v. USCIS*, 507 F. Supp. 3d 1193, 1199 (N.D. Cal. 2019) (finding that “[a]dherence to  
6 FOIA's timeframes is critical because there is no adequate substitute for the information  
7 contained in an [immigration case file] and FOIA is the primary, if not the only, mechanism for  
8 accessing A-Files”); *see also, e.g., Ex. B7, Castañeda Acosta Dec.* ¶ 5 (stating that CBP records  
9 may be necessary for noncitizens in removal proceedings in order to meet their burden of proof  
10 to establish eligibility for relief); *Ex. B11, Amann Dec.* ¶ 5 (indicating that clients in removal  
11 proceedings often need CBP records to establish eligibility for relief from removal and to testify  
12 credibly); *Ex. B12, Brown Dec.* ¶ 7 (noting that the government has full access to CBP records  
13 and may use it to deny applications or contest relief from removal). Immigration attorneys  
14 regularly file FOIA requests with CBP to obtain the history of a client’s travel to and from the  
15 United States, as well as to determine whether a given client has ever been apprehended,  
16 detained, or inspected by CBP, or otherwise interacted with CBP agents. CBP’s website  
17 specifically encourages that such requests be made through the FOIA SecureRelease Portal. *See*  
18 *U.S. Customs & Border Prot., Request Records Through the Freedom of Information Act*,  
19 <https://www.cbp.gov/site-policy-notices/foia/records> (last updated Dec. 20, 2023).

20 Defendants’ delays in responding to FOIA requests for individual records severely  
21 disadvantage attorneys, their clients, and those who seek their own records without the assistance  
22 of counsel. Without CBP records, attorneys often cannot fully assess what forms of immigration  
23 relief are available to their client, including whether the client is eligible to naturalize or acquire

1 citizenship. For example, generally, only noncitizens who were “inspected and admitted or  
2 paroled into the United States” are eligible for adjustment of status to lawful permanent resident  
3 status under 8 U.S.C. § 1255(a). Noncitizens without legal training may not ever have known  
4 whether they were “inspected,” “admitted,” or “paroled” into the country, but CBP records  
5 would demonstrate the outcome of their entry into the United States. Furthermore, absent CBP  
6 records, attorneys and their clients may not know the one-year filing deadline for an asylum  
7 application. This is critically important because asylum applicants must apply for asylum within  
8 one year of arrival. *See* 8 U.S.C. § 1158(a)(2)(B). For those who do not recall their date of entry  
9 to the United States, CBP records would provide the answer. *See* Ex. A3, García Dec. ¶ 8 (noting  
10 need for CBP records to ascertain asylum filing deadline); Ex. B10, Nielsen-Reagan Dec. ¶ 10  
11 (same). Other forms of immigration relief are available only to noncitizens who have  
12 continuously resided in the United States for a certain length of time. *See, e.g.*, 8 U.S.C. §  
13 1229b(a)(2), (b)(1)(A) (setting residence requirements for cancellation of removal). Similarly,  
14 eligibility to naturalize or acquire U.S. citizenship through a parent requires demonstrating proof  
15 of residence and/or physical presence for certain periods of time. *See, e.g.*, 8 U.S.C. § 1427(a)-  
16 (c), 1433(a)(2); *see also* Ex. A5, Ainab Dec. ¶ 6 (describing need for CBP records to prove his  
17 U.S. residence to U.S. consular officials so that his two youngest children can acquire U.S.  
18 citizenship); Ex. B5, Sitterley Dec. ¶ 5 (attesting that travel documents are a “critical piece of  
19 evidence in representation for a stateless person” because they can be an indication of citizenship  
20 or lack thereof.”); In these scenarios, the importance of the information contained within CBP  
21 records cannot be overstated.

22           Given that years may have passed between an individual’s entry to the United States and  
23 when their need for CBP records arises, the individual may have lost the relevant paperwork

1 (assuming they were given any paperwork at all) or simply forgotten the precise details of their  
2 travel history. In such cases, filing a FOIA request with CBP is the only mechanism for an  
3 individual to obtain this crucial information. *See, e.g.*, Ex. A2, Waldron Dec. ¶ 6 (describing  
4 need for CBP records for detained clients receiving legal representation through the National  
5 Qualified Representative Program on account of their mental incompetency); Ex. B7, Castañeda  
6 Acosta Dec. ¶ 5 (explaining importance of CBP records for clients whose memories are impacted  
7 by past trauma or mental health conditions); Ex. B11, Amann Dec. ¶ 6a (describing CBP FOIA  
8 request filed on behalf of client who “recalls being fingerprinted . . . when he was a minor  
9 child”); Ex. B4, Vakili Dec. ¶ 6 (describing detained client with significant mental illness who  
10 required CBP FOIA requests to establish he entered the country as an infant); Ex. B12, Brown  
11 Dec. ¶ 7 (explaining that noncitizens often do not receive documentation of interactions with  
12 CBP); Ex. B5, Sitterley Dec. ¶ 6 (explaining that many clients do not understand or remember  
13 details regarding past interactions with CBP).

14           Moreover, the information contained in an individual’s CBP records is critical to  
15 developing a strategy for defending against deportation in removal proceedings. *See, e.g.*, Ex.  
16 A1, Sanchez Mora Dec. ¶ 9 (explaining that delays in CBP FOIA responses prevent him and his  
17 law partner from providing comprehensive advice regarding potential immigration benefits,  
18 relief from removal, and assessing the viability of post-conviction relief); Ex. B1, Tolchin Dec. ¶  
19 8 (attesting to the need for CBP records to determine whether clients are eligible for adjustment  
20 of status); Ex. B4, Khanbabai Dec. ¶ 11 (addressing need for CBP FOIA responses in order to  
21 “present exculpatory information in subsequent visa applications or in an application for relief”);  
22 *see also* Ex. B12, Brown Dec. ¶ 9; Ex. B13, Kersh Dec. ¶¶ 3, 7; Ex. B51, Mashek Dec. ¶¶ 3,4;  
23 Ex. B16, Ryan Dec. ¶ 6 .

1 Delays in CBP’s processing of FOIA requests may require attorneys to postpone filing  
2 for immigration benefits, delay challenging expedited removal orders, or force them to seek to  
3 continue immigration hearings, which may prolong their clients’ immigration cases or delay their  
4 receipt of lawful status. *See, e.g.*, Ex. A2, Waldron Dec. ¶ 8 (explaining that delays in CBP FOIA  
5 responses may prevent clients from applying for adjustment status or an immigrant visa); Ex. A4,  
6 Canudas Tirado Dec. ¶¶ 4, 6 (noting that her immigration status is uncertain while awaiting CBP  
7 FOIA response to determine whether she can proceed further with her applications); Ex. B13,  
8 Kersh Dec. ¶ 7 (explaining how CBP FOIA delays can delay affirmative benefit applications  
9 which, in turn, delays clients’ ability to obtain work authorization and prevents them from  
10 “stabilizing their immigration status, which is a barrier to their recovering from [] domestic  
11 violence victimization”); Ex. B5, Sitterley Dec. ¶¶ 8–9 (explaining that certain clients may lose  
12 legal status while waiting for CBP FOIA responses and that CBP FOIA processing delays may  
13 prevent an applicant from submitting timely responses to requests for evidence to U.S.  
14 Citizenship and Immigration Services (USCIS)); Ex. B8, Wood Dec. ¶ 7 (stating that delay in  
15 CBP FOIA response has prevented one client from applying for adjustment of status).

16 Likewise, noncitizens are seriously disadvantaged if their attorneys cannot access the  
17 paperwork from their previous encounters with CBP officers—information that may be  
18 necessary to, *inter alia*, challenge the validity of a prior CBP-issued removal order, or file a claim  
19 for damages under the Federal Tort Claims Act (FTCA) based on tortious conduct by CBP  
20 officers. *See, e.g.*, Ex. A3, García Dec. ¶ 7 (explaining need for CBP records to determine  
21 whether client has a basis to file a damages claim under the FTCA); Ex. B1, Tolchin Dec. ¶ 9  
22 (explaining that CBP records may be critical to determine whether there is a basis to move to  
23 reopen a prior expedited order); Ex B3, Araujo Dec. ¶ 7 (same); Ex. B14, Khanbabai Dec. ¶ 8

1 (same); Ex. B10, Nielsen-Reagan Dec. ¶ 11 (describing necessity of CBP records for a client  
2 seeking to rescind a prior expedited removal order and apply for asylum); Ex. B7, Casteñeda  
3 Acosta Dec. ¶ 6 (describing necessity of CBP records for a minor client seeking to file an FTCA  
4 claim based on severe abuse by border patrol agent).

#### 5 **B. CBP Processing Times and Backlog**

6 CBP has a FOIA backlog which contributes to its failure to comply with the statutory  
7 time period for processing FOIA requests. DHS defines a backlog in the FOIA context as “[t]he  
8 number of requests or administrative appeals that are pending at an agency at the end of the  
9 fiscal year that are beyond the statutory time period for a response.” Fiscal Year (FY) 2023 DHS  
10 FOIA Report.<sup>2</sup> Notably, CBP’s FOIA backlog has increased over twenty-fold in the past six  
11 years. The backlog significantly decreased to 1,172 in FY 2016 and 1,008 in FY 2017, following  
12 settlement of an earlier class action challenge to CBP’s delays in FOIA processing. FY 2016  
13 DHS Report at 17, 19; FY 2017 DHS Report at 16, 19; *see also Brown v. CBP*, 132 F. Supp. 3d  
14 1170, 1171 (N.D. Cal. 2015). At the end of FY 2023, however, CBP’s backlog consisted of  
15 21,444 requests, the second highest of all DHS component agencies. FY 2023 DHS FOIA Report  
16 at 28.

17 CBP has failed to allocate sufficient financial or staffing resources to its FOIA operations  
18 despite the significant growth in the number of FOIA requests and persistent backlogs. For  
19

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20 <sup>2</sup> DHS, *Fiscal Year 2023 Freedom of Information Report to the Attorney General of the*  
21 *United States and the Director of the Office of Government Information Services* 6 (Mar.  
22 2024), [https://www.dhs.gov/sites/default/files/2024-03/23\\_0325\\_fy23-FOIA\\_Annual\\_Report.pdf](https://www.dhs.gov/sites/default/files/2024-03/23_0325_fy23-FOIA_Annual_Report.pdf).

23 References to the “DHS FOIA Report” are to the Freedom of Information Report to the  
Attorney General of the United States and the Director of the Office of Government  
Information Services, which are available by fiscal year at <https://www.dhs.gov/foia-annual-reports>.

1 example, in FY2021, CBP received 108,177 FOIA requests and had 71 full-time FOIA  
2 personnel. FY 2021 DHS FOIA Report at 15, 27. By FY 2023, the number of FOIA requests  
3 increased by 33.55% (144,474), but the number of full-time personnel only increased by 5.63%  
4 (75). *See* FY 2023 DHS FOIA Report at 25, 13; *see also, e.g.*, DHS, *2023 Chief FOIA Officer*  
5 *Report Submitted to the Attorney General of the United States* 35 (June 8, 2023),  
6 [https://www.dhs.gov/sites/default/files/2023-06/Chief%20FOIA%20Officer%20Report](https://www.dhs.gov/sites/default/files/2023-06/Chief%20FOIA%20Officer%20Report%20for%202023.pdf)  
7 [%20for%202023.pdf](https://www.dhs.gov/sites/default/files/2023-06/Chief%20FOIA%20Officer%20Report%20for%202023.pdf) (attributing CBP FOIA backlog to, inter alia, “understaff[ing]” and  
8 “increase in the complexity and volume of requests”).

### 9 **C. Named Plaintiffs Factual Backgrounds**

10 Plaintiffs Julian Sanchez Mora, Siobhan Waldron, and Carlos Moctezuma García are  
11 immigration attorneys (Attorney Plaintiffs) who regularly file FOIA requests with CBP on behalf  
12 of their clients. They file these requests to assess their clients’ eligibility for immigration  
13 benefits, defend against deportation, and assess the availability of post-conviction relief, and they  
14 will continue to file such requests in the future. *See* Ex. A1, Sanchez Mora Dec.; Ex. A2,  
15 Waldron Dec.; Ex. A3, García Dec. Plaintiffs Brenda Canudas Tirado and Ali Ainab (Individual  
16 Plaintiffs) are individuals who filed FOIA requests with CBP for copies of their own  
17 immigration records. Ex. A4, Canudas Tirado Dec.; Ex. A5, Ainab Dec.; *see also* Cmplt. ¶¶ 16-  
18 20, 45-57.

19 All Plaintiffs have requests that were pending with CBP without a determination for more  
20 than 30 business days at the time the instant Complaint was filed. Plaintiffs Sanchez Mora and  
21 García each have had a FOIA request pending for nearly a year and a half, since October and  
22 December 2022, respectively. Cmplt. ¶¶ 47, 53; *see also* Ex. A1, Sanchez Mora Dec. ¶ 6; Ex.  
23

1 A3, García Dec. ¶ 4. Plaintiff Waldron has a CBP FOIA request that has been pending for over  
2 10 months. Cmplt. ¶ 50; *see also* Ex. A2, Waldron Dec. ¶ 4.

3 Plaintiff Brenda Canudas Tirado filed a FOIA request with CBP on July 6, 2023, to  
4 obtain information about her immigration history, including information that may be relevant to  
5 her admissibility. Cmplt. ¶¶ 19, 54-55; *see also* Ex. A4, Canudas Tirado Dec. ¶¶ 4, 6. Ms.  
6 Canudas Tirado’s FOIA request was pending with CBP for more than nine months at the time  
7 the Complaint was filed, and she still has not received a determination from CBP. *Id.*; *see also*  
8 Ex. D, Secure Release Portal Screenshot (Request No. CBP-FO-2023-105542) (retrieved April  
9 22, 2024).

10 Plaintiff Ali Ainab is a U.S. citizen who filed a FOIA request with CBP on December 22,  
11 2023, to obtain records related to his entries and exits from the United States, which he needs in  
12 order to demonstrate his two youngest children, who are abroad, have acquired U.S. citizenship.  
13 Cmplt. ¶¶ 20, 56-57; *see also* Ex. A5, Ainab Dec. ¶¶ 4, 6. Mr. Ainab’s FOIA request has been  
14 pending with CBP for more than four months at the time the Complaint was filed, and he still has  
15 not received a determination. Ex. E, Secure Release Portal Screenshot (Request No. CBP-FO-  
16 036130) (retrieved April 24, 2024).

### 17 III. THE COURT SHOULD CERTIFY THE PROPOSED CLASS.

18 Under Federal Rule of Civil Procedure 23, Plaintiffs are entitled to class certification  
19 where two conditions are met: “The suit must satisfy the criteria set forth in subdivision (a) (*i.e.*,  
20 numerosity, commonality, typicality, and adequacy of representation), and it also must fit into  
21 one of the three categories described in subdivision (b).” *Shady Grove Orthopedic Assocs., P.A.*  
22 *v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). Plaintiffs’ proposed class satisfies Rule 23(a) and  
23 (b)(2).

1 Notably, this Court already has certified a nationwide class action challenging the failure  
2 by USCIS, another DHS component agency, to produce individuals' Alien Registration Files (A-  
3 Files) under FOIA within the same statutory time period. *Nightingale v. U.S. Citizenship &*  
4 *Immigr. Servs.*, 333 F.R.D. 449, 457–63 (N.D. Cal. 2019). Additionally, courts in the Ninth  
5 Circuit, including this Court, have routinely certified class actions challenging immigration  
6 policies and practices that have broad, categorical effect. *See, e.g., Mansor v. U.S. Citizenship &*  
7 *Immigr. Servs.*, 345 F.R.D. 193, 208 (W.D. Wash. 2023) (certifying nationwide class of  
8 Temporary Protected Status applicants challenging the government's denial of interim  
9 employment authorization); *MadKudu Inc. v. U.S. Citizenship & Immigr. Servs.*, No. 20-cv-  
10 02653-SVK, 2020 WL 7389419, at \*9 (N.D. Cal. Nov. 17, 2020) (certifying nationwide class of  
11 U.S. employers whose petitions for foreign workers were denied pursuant to agency policy);  
12 *Moreno Galvez v. Cuccinelli*, No. C19-0321RSL, 2019 WL 3219418, at \*2 (W.D. Wash. July  
13 17, 2019) (certifying class in action challenging USCIS policy of denying Special Immigrant  
14 Juvenile Status (SIJS) petitions filed by immigrant youth with guardianship orders from  
15 Washington state and delaying adjudications beyond 180-day statutory deadline); *J.L. v. Cissna*,  
16 No.18-cv-04914-NC, 2019 WL 415579, at \*4–12 (N.D. Cal. Feb. 1, 2019) (certifying class of  
17 SIJS petitioners challenging USCIS's policy with respect to California state guardianship  
18 orders); *Rosario v. U.S. Citizenship & Immigr. Servs.*, No. C15-0813JLR, 2017 WL 3034447, at  
19 \*12 (W.D. Wash. July 18, 2017) (granting nationwide certification to class of initial asylum  
20 applicants challenging the government's adjudication of employment authorization applications);  
21 *Wagafe v. Trump*, No. C17-0094-RAJ, 2017 WL 2671254, at \*16 (W.D. Wash. June 21, 2017)  
22 (certifying two nationwide classes of immigrants challenging legality of a government program  
23 applied to certain immigration benefits applications); *Mendez Rojas v. Johnson*, No. C16-



1 1024RSM, 2017 WL 1397749, at \*7 (W.D. Wash. Jan. 10, 2017) (certifying two nationwide  
2 classes of asylum seekers challenging defective asylum application procedures); *Rivera v.*  
3 *Holder*, 307 F.R.D. 539, 551 (W.D. Wash. 2015) (certifying class of detained immigrants in the  
4 Western District of Washington challenging custody proceedings that categorically deny requests  
5 for conditional parole); *Santillan v. Ashcroft*, No. C04-2686 MHP, 2004 WL 2297990, at \*12  
6 (N.D. Cal. Oct. 12, 2004) (certifying nationwide class of lawful permanent residents challenging  
7 delays in receiving documentation of their status).

8         These cases demonstrate the propriety of Rule 23(b)(2) certification in actions  
9 challenging agency policies depriving noncitizens of immigration benefits, including access to  
10 immigration records that only the agency possesses. Indeed, the rule was intended to “facilitate  
11 the bringing of class actions in the civil-rights area,” particularly those seeking declaratory or  
12 injunctive relief. Charles Alan Wright & Arthur R. Miller, *7AA Federal Practice and Procedure*  
13 § 1775 (3d ed. 2023). Claims brought under Rule 23(b)(2) often involve issues affecting  
14 noncitizens who would be unable to present their claims absent class treatment. Additionally, the  
15 core issues in these types of cases generally present pure questions of law, rather than disparate  
16 questions of fact, and thus are well suited for resolution on a class-wide basis.

17 **A. The Proposed Class Meets All Requirements of Federal Rule of Civil Procedure 23(a).**

18         1. The proposed class members are so numerous that joinder is impracticable.

19         Rule 23(a)(1) requires the class be “so numerous that joinder of all members is  
20 impracticable.” Fed. R. Civ. P. 23(a)(1). “[I]mpracticability does not mean ‘impossibility,’ but  
21 only the difficulty or inconvenience of joining all members of the class.” *Harris v. Palm Springs*  
22 *Alpine Ests., Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) (citation omitted). “Numerousness—the  
23 presence of many class members—provides an obvious situation in which joinder may be

1 impracticable, but it is not the only such situation . . .” William B. Rubenstein, 1 *Newberg &*  
2 *Rubenstein on Class Actions* § 3:11 (6th ed. 2023) (footnote omitted). “Thus, Rule 23(a)(1) is an  
3 impracticability-of-joinder rule, not a strict numerosity rule. It is based on considerations of due  
4 process, judicial economy, and the ability of claimants to institute suits.” *Id.* (footnote omitted).  
5 Determining numerosity “requires examination of the specific facts of each case and imposes no  
6 absolute limitations.” *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980).

7 While “no fixed number of class members” is required, *Perez-Funez v. INS*, 611 F. Supp.  
8 990, 995 (C.D. Cal. 1984), courts have generally found “the numerosity requirement satisfied  
9 when a class includes at least 40 members.” *Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir.  
10 2010); *see also Rivera*, 307 F.R.D. at 550 (certifying class where the “the Court [found] it highly  
11 plausible that more than 40 [noncitizens] will be detained on this basis over the next year, and  
12 that more than 40 [noncitizens] are being detained on this basis currently”). Courts have also  
13 found impracticability of joinder when even fewer class members are involved. *See, e.g.,*  
14 *McCluskey v. Trustees of Red Dot Corp. Emp. Stock Ownership Plan & Trust*, 268 F.R.D. 670,  
15 673–76 (W.D. Wash. 2010) (certifying class with 27 known members); *Ark. Educ. Ass’n v. Bd.*  
16 *of Educ.*, 446 F.2d 763, 765–66 (8th Cir. 1971) (finding 17 class members sufficient);  
17 *Villalpando v. Exel Direct Inc.*, 303 F.R.D. 588, 606 (N.D. Cal. 2014) (noting that courts  
18 routinely find numerosity “when the class comprises 40 or more members”).

19 Because approximately 85% of all FOIA requests to CBP are requests for records  
20 pertaining to an individual, *see* Cmplt. ¶ 3, and CBP almost never makes determinations within  
21 30 days, requests for an individual’s records comprise a significant number of CBP’s current  
22 backlog. At the close of FY 2023, the backlog totaled 21,444. FY 2023 DHS FOIA Report at 28.  
23 Defendants know the exact number of putative class members who have not received a

1 determination on their FOIA requests. *Accord Barahona-Gomez v. Reno*, 167 F.3d 1228, 1237  
2 (9th Cir. 1999) (“[Immigration officials are] uniquely positioned to ascertain class  
3 membership.”).

4           Nevertheless, Plaintiffs reasonably estimate that there are thousands of attorneys and  
5 individual class members. The declarations of immigration attorneys substantiate, at a minimum,  
6 390 FOIA requests filed for individual records that have been pending with CBP for more than  
7 30 business days without a determination. Ex. A1, Sanchez Mora Dec. ¶ 6 (37 FOIA requests);  
8 Ex. A2, Waldron Dec. ¶ 4 (organization-wide estimate of 125 FOIA requests); Ex. A3, García  
9 Dec. ¶ 4 (29 FOIA requests); Ex. B1, Tolchin Dec. ¶ 4 (1 FOIA request); Ex. B2, Kane Dec. ¶ 8  
10 (7 FOIA requests); Ex. B3, Araujo Dec. ¶ 4 (12 FOIA requests); Ex. B4, Vakili Dec. ¶ 5 (2 FOIA  
11 requests); Ex. B6, Cannon Dec. ¶ 5 (1 FOIA request); Ex. B7, Castañeda Acosta Dec. ¶ 4  
12 (organization-wide estimate of 4 FOIA requests); Ex. B8, Wood Dec. ¶ 4 (office-wide estimate  
13 of 50 FOIA requests); Ex. B9, Nair Dec. ¶ 4 (3 FOIA requests); Ex. B10, Nielsen-Reagan Dec. ¶  
14 4 (2 FOIA requests); Ex. B11, Amann Dec. ¶ 4 (3 FOIA requests); Ex. B12, Brown Dec. ¶ 5 (10  
15 FOIA requests); Ex. B13, Kersh Dec. ¶ 4 (3 FOIA requests); Ex. B14, Khanbabai Dec. ¶ 5 (1  
16 FOIA request); Ex. B15, Mashek Dec. ¶ 6 (37 FOIA requests in VAWA unit of organization, 23  
17 in other units); Ex. B16, Ryan Dec. ¶ 5 (40 FOIA requests). Additionally, these declarants—  
18 attorneys who practice in multiple cities across the nation—describe chronic delays after  
19 submitting FOIA requests with CBP for nearly all their clients, ranging from 6 to 10 months, and  
20 in some cases, over a year. *See, e.g.*, Ex. A1, Sanchez Mora Dec. ¶ 7 (10 to 11 months); Ex. A2,  
21 Waldron Dec. ¶ 5 (6 or more months); Ex. A3, García Dec. ¶ 5 (over 12 months); Ex. B1,  
22 Tolchin Dec. ¶ 4 (about 9 to 13 months); Ex. B2, Kane Dec. ¶ 14 (over 6 months); Ex. B3,  
23 Araujo Dec. ¶¶ 4, 7 (9 to 10 months in general and sometimes close to or over 1 year); Ex. B4,

1 Vakili Dec. ¶ 5 (one pending longer than 6 months, another pending longer than 9 months); Ex.  
2 B5, Sitterley Dec. ¶ 7 (over 6 months); Ex. B6, Cannon Dec. ¶ 4 (more than 126 business days  
3 and some over one year); Ex. B7, Castañeda Acosta Dec. ¶ 4(d) (two requests pending for over 9  
4 months and two requests pending for over 7 months); Ex. B8, Wood Dec. ¶ 4 (over 6 months);  
5 Ex. B9, Nair Dec. ¶ 4 (one request pending more than 8 months and two others pending for 6-7  
6 months); Ex. B10, Nielsen-Reagan Dec. ¶ 6 (at least several months); Ex. B11, Amann Dec. ¶ 4  
7 (two requests pending for 8 months and one pending for 3 months); Ex. B12, Brown Dec. ¶ 6  
8 (around 6 months and, in one case, up to 14 months); Ex. B13, Kersh Dec. ¶ 5 (6 to 15 months);  
9 Ex. B14, Khanbabai Dec. ¶ 6 (at least 6 months); Ex. B15, Mashek Dec. ¶ 6 (6 to 10 months);  
10 Ex. B16, Ryan Dec. ¶ 9 (more than one year).

11 Finally, “[b]ecause plaintiffs seek injunctive and declaratory relief, the numerosity  
12 requirement is relaxed and plaintiffs may rely on [ ] reasonable inference[s] arising from  
13 plaintiffs’ other evidence that the number of unknown and future members of [the] proposed  
14 [class] . . . is sufficient to make joinder impracticable.” *Arnott v. USCIS*, 290 F.R.D. 579, 586  
15 (C.D. Cal. 2012) (second, third, fourth, and fifth alterations in original) (quoting *Sueoka v.*  
16 *United States*, 101 F. App’x 649, 653 (9th Cir. 2004)). As a result, even if numerosity were a  
17 close question here (which it is not), class certification is warranted. *Stewart v. Assocs.*  
18 *Consumer Discount Co.*, 183 F.R.D. 189, 194 (E.D. Pa. 1998) (“[W]here the numerosity  
19 question is a close one, the trial court should find that numerosity exists, since the court has the  
20 option to decertify the class later pursuant to Rule 23(c)(1).”) (citation omitted).

21 2. The class presents common questions of law and fact.

22 Rule 23(a)(2) requires that “there [be] questions of law or fact common to the class.” Fed.  
23 R. Civ. P. 23(a)(2). “Courts have found that a single common issue of law or fact is sufficient to

1 satisfy the commonality requirement.” *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 257 (C.D. Cal.  
2 2008) (citations omitted); *see also, e.g., Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010)  
3 (“[T]he commonality requirement[] asks us to look only for some shared legal issue or a  
4 common core of facts.”). Commonality exists if class members’ claims all “depend upon a  
5 common contention . . . of such a nature that it is capable of classwide resolution—which means  
6 that determination of its truth or falsity will resolve an issue that is central to the validity of each  
7 one of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).  
8 Therefore, the critical issue for class certification “is not the raising of common ‘questions’ . . .  
9 but rather, the capacity of a class-wide proceeding to generate common *answers* apt to drive the  
10 resolution of the litigation.” *Id.* (citation omitted).

11 Plaintiffs satisfy the commonality requirement because they challenge a policy that  
12 applies equally to all class members. *See, e.g., Nightingale*, 333 F.R.D. at 459 (finding that  
13 plaintiffs and proposed class members shared the common contention that defendants engage in  
14 a “pattern and practice of failing to make determinations in . . . FOIA cases within the statutorily  
15 mandated time frame”); *Mansor*, 345 F.R.D. at 204 (finding that plaintiffs and proposed class  
16 members shared the common contention that USCIS has a practice or policy of violating the TPS  
17 statute by failing to issue interim employment authorization); *Moreno Galvez*, 2019 WL  
18 3219418, at \*2 (stating that class of immigrant youth satisfied commonality where the case  
19 presented questions of “[w]hether the [challenged] policy is in accordance with federal law” and  
20 “[w]hether the policy is arbitrary and capricious”).

21 Differences in the circumstances of each named plaintiff or class member do not  
22 undermine this commonality. *See, e.g., Nw. Immigr. Rts. Project v. U.S. Citizenship & Immigr.*  
23 *Servs.*, 325 F.R.D. 671, 693 (W.D. Wash. 2016) (“[A]ll questions of fact and law need not be

1 common to satisfy the rule.” (citation omitted)); *Evon v. Law Offs. of Sidney Mickell*, 688 F.3d  
2 1015, 1029 (9th Cir. 2012) (“Where the circumstances of each particular class member vary but  
3 retain a common core of factual or legal issues with the rest of the class, commonality exists.”  
4 (citation omitted)); *Walters v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998) (finding commonality  
5 based on plaintiffs’ common challenge to immigration procedures, and noting that “[d]ifferences  
6 among the class members with respect to the merits of their actual document fraud cases . . . are  
7 simply insufficient to defeat the propriety of class certification”); *Orantes-Hernandez v. Smith*,  
8 541 F. Supp. 351, 370 (C.D. Cal. 1982) (granting certification in challenge to common  
9 government practices in asylum cases, even though the outcome of individual asylum cases  
10 would depend on individual class members’ varying entitlement to relief).

11 Plaintiffs and proposed class members also share a common injury: the delayed receipt of  
12 determinations on their FOIA requests filed with CBP. *See, e.g., Nightingale*, 333 F.R.D. at 459  
13 (“[T]he shared injury between plaintiffs and proposed class members is the delayed receipt of  
14 determinations on their A-File FOIA requests . . . .”); *see also, e.g., Pub. Citizen v. U.S. Dep’t of*  
15 *Just.*, 491 U.S. 440, 449 (1989) (explaining that the Supreme Court has held that a FOIA  
16 requester who sought records and did not receive them has been injured) (citations omitted);  
17 *Wilderness Soc’y, Inc. v. Rey*, 622 F.3d 1251, 1258 (9th Cir. 2010) (“Courts have found similar  
18 statutory rights to information—the deprivation of which can give rise to concrete injury  
19 sufficient for the purposes of Article III standing—under the Freedom of Information Act . . . .”).  
20 Accordingly, their injuries are capable of class-wide resolution through declaratory relief  
21 declaring Defendants’ policy or practice unlawful under the FOIA and injunctive relief requiring  
22 the unlawful delay to cease. As the relief sought by Plaintiffs will resolve the litigation as to all  
23 class members “in one stroke,” *Wal-Mart*, 564 U.S. at 350, the commonality requirement of Rule

1 23(a)(2) is satisfied.

2 This Court has found the commonality requirement satisfied “regardless of whether a  
3 plaintiff’s specific FOIA requests have been mooted because the agency has responded to their  
4 request,” where—

5 Plaintiffs have shown, through multiple declarations of immigration attorneys  
6 across the nation, that (1) defendants’ violation of FOIA is not merely an isolated  
7 incident, (2) plaintiffs and many other similarly situated people have been  
8 personally harmed by the alleged practice, and (3) proposed class members include  
9 those who will be subjected to defendants’ delays in the future when they file A-  
10 File FOIA requests.

11 *Nightingale*, 333 F.R.D at 458–59. Plaintiffs have made the same showing here. First,  
12 numerous declarations from immigration attorneys demonstrate that CBP has engaged and  
13 continues to engage in a pattern and practice of failing to make determinations on FOIA  
14 requests within the time period mandated by statute. *See generally* Exs. A1-A5 (Plaintiff  
15 declarations); Exs. B1-B16 (attorney declarations). Defendant DHS’s own statistics—  
16 documenting constant backlogs of FOIA requests in recent years—demonstrate that  
17 Defendant CBP engages in such a pattern and practice. Cmplt. ¶¶ 25-33; *see also supra*  
18 Section II.B. DHS defines FOIA backlog as “[t]he number of requests or administrative  
19 appeals that are pending at an agency at the end of the fiscal year that are beyond the  
20 statutory time for a response.” FY 2023 DHS FOIA Report at 6. Given this definition, CBP’s  
21 backlogs from the last six fiscal years demonstrate that the agency’s failure to meet the  
22 statutory time period is not an isolated incident. Second, Plaintiffs submit declarations  
23 demonstrating that they and other similarly situated individuals have been harmed by CBP’s  
practice. Cmplt. ¶¶ 35-44; *see also supra*, Section II.A. Third, the proposed class is defined  
to include those who will be subjected to delays in the future when they file FOIA requests  
for an individual’s CBP records. Cmplt. ¶ 59.

1           3. Plaintiffs' claims are typical of the claims of the members of the proposed class.

2           Rule 23(a)(3) specifies that the claims of the representatives must be “typical of the  
3 claims . . . of the class.” Meeting this requirement usually follows from the presence of common  
4 questions of law. *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982) (“The  
5 commonality and typicality requirements of Rule 23(a) tend to merge.”). To establish typicality,  
6 “a class representative must be part of the class and possess the same interest and suffer the same  
7 injury as the class members.” *Id.* at 156 (citation and internal quotation marks omitted); *see also*  
8 *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (finding typicality requirement met where  
9 class representatives “allege the same or similar injury as the rest of the putative class; they  
10 allege that this injury is a result of a course of conduct that is not unique to any of them; and they  
11 allege that the injury follows from the course of conduct at the center of the class claims”  
12 (citation, internal quotation marks, and alteration omitted)). As with commonality, factual  
13 differences among class members do not defeat typicality provided there are legal questions  
14 common to all class members. *LaDuke v. Nelson*, 762 F.2d 1318, 1332 (9th Cir. 1985) (“The  
15 minor differences in the manner in which the representative’s Fourth Amendment rights were  
16 violated does not render their claims atypical of those of the class.”) (footnote omitted).

17           In this case, the claims of the named Plaintiffs are typical of the claims of putative class  
18 members encapsulated in the proposed class definition. All Plaintiffs have filed FOIA requests  
19 with CBP which have been pending for over 30 business days, and thus fit precisely within the  
20 class definition. Specifically, Plaintiffs, like proposed class members, have not received CBP’s  
21 determination on their FOIA requests, even though the FOIA statute expressly requires a  
22 determination within no longer than 30 business days of the request being filed. In sum, the  
23 harms suffered by Plaintiffs are typical of the harms suffered by the proposed class, and



1 Plaintiffs’ injuries and the injuries of proposed class members result from the identical course of  
2 conduct by Defendants. *See, e.g., Nightingale*, 333 F.R.D. at 460 (finding typicality where  
3 “plaintiffs and proposed class members are harmed by or will be harmed by defendants’ same  
4 course of conduct, namely the lack of determination on their . . . FOIA requests within the  
5 statutory timeline”). Plaintiffs therefore satisfy the typicality requirement.

6 4. Plaintiffs will adequately protect the interests of the proposed class, and counsel are  
7 qualified to litigate this action.

8 Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect  
9 the interests of the class.” Fed. R. Civ. P. 23(a)(4). “Whether the class representatives satisfy the  
10 adequacy requirement depends on the qualifications of counsel for the representatives, an  
11 absence of antagonism, a sharing of interests between representatives and absentees, and the  
12 unlikelihood that the suit is collusive.” *Walters*, 145 F.3d at 1046 (citation and internal quotation  
13 marks omitted).

14 a. *Named Plaintiffs*

15 Plaintiffs each seek relief on behalf of the class as a whole and have no interest  
16 antagonistic to other members of the class; they will thus fairly and adequately protect the  
17 interests of the class they seek to represent. *See, e.g., Nightingale*, 333 F.R.D. at 462 (finding no  
18 conflict of interest where “[b]oth plaintiffs and proposed class members have a shared interest in  
19 ensuring that defendants make determinations in response to their . . . FOIA requests within the  
20 statutory time period”). Their mutual goal is to challenge Defendants’ unlawful practices and to  
21 obtain declaratory and injunctive relief that would not only cure this illegality but remedy the  
22 injury suffered by all current and future class members. Ex. A1, Sanchez Mora Dec. ¶ 11; Ex.  
23 A2, Waldron Dec. ¶ 11; Ex. A3, García Dec. ¶ 11; Ex. A4, Canudas Tirado Dec. ¶ 8; Ex. A5,  
Ainab Dec. ¶ 8. They thus seek a remedy for the same injuries, and all share an interest in

1 ensuring that Defendants make determinations in response to their CBP FOIA requests within  
2 the statutory time period. Because Plaintiffs do not seek monetary damages for themselves, there  
3 is no potential financial conflict of interest. Thus, the interests of the representatives and of the  
4 class members are aligned. Accordingly, Plaintiffs are adequate representatives of the proposed  
5 class.

6 *b. Counsel*

7 The adequacy of counsel is also satisfied here. Counsel are deemed qualified when they  
8 have experience in previous class actions and cases involving the same area of law. *See, e.g.,*  
9 *Jama v. State Farm Fire & Cas. Co.*, 339 F.R.D. 255, 269 (W.D. Wash. 2021); *Lynch v. Rank*,  
10 604 F. Supp. 30, 37 (N.D. Cal. 1984); *Marcus v. Heckler*, 620 F. Supp. 1218, 1223–24 (N.D. Ill.  
11 1985). Plaintiffs are represented by attorneys from the National Immigration Litigation Alliance,  
12 Northwest Immigrant Rights Project, and Van Der Hout LLP, all of whom have extensive  
13 experience in class action lawsuits and other complex federal court litigation involving  
14 immigration law. *See* Ex. C1, Realmuto Dec.; Ex. C2, Kenney Dec.; Ex. C3, Adams Dec; Ex.  
15 C4, Van Der Hout Dec. Counsel are able to demonstrate that they are counsel of record in  
16 numerous cases focusing on immigration law, in which they vigorously represented both the  
17 class representatives and absent class members in obtaining relief.

18 **B. The Proposed Class Satisfies Federal Rule of Civil Procedure 23(b)(2).**

19 In addition to satisfying the four requirements of Rule 23(a), Plaintiffs also must meet  
20 one of the requirements of Rule 23(b) for a class action to be certified. Here, Plaintiffs seek  
21 certification under Rule 23(b)(2), which requires that “the party opposing the class has acted or  
22 refused to act on grounds that apply generally to the class, so that final injunctive relief or  
23 corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P.

1 23(b)(2). Rule 23(b)(2) is “unquestionably satisfied when members of a putative class seek  
2 uniform injunctive or declaratory relief from policies or practices that are generally applicable to  
3 the class as a whole.” *Parsons*, 754 F.3d at 688 (citation omitted); *see also Zinser v. Accufix*  
4 *Rsch. Inst., Inc.*, 253 F.3d 1180, 1195 (9th Cir. 2001) (“Class certification under Rule 23(b)(2) is  
5 appropriate only where the primary relief sought is declaratory or injunctive.”). “The rule does  
6 not require [the Court] to examine the viability or bases of class members’ claims for declaratory  
7 and injunctive relief, but only to look at whether class members seek uniform relief from a  
8 practice applicable to all of them.” *Rodriguez*, 591 F.3d at 1125; *see also id.* at 1126 (certifying  
9 class of detained noncitizens under Rule 23(b)(2) because “all class members[] seek the exact  
10 same relief as a matter of statutory . . . right”).

11 This action meets the requirements of Rule 23(b)(2). CBP and DHS have subjected or  
12 will subject all class members to the same policy of failing to make timely determinations on  
13 FOIA requests for an individual’s records. Plaintiffs and proposed class members seek  
14 declaratory relief declaring Defendants’ policy unlawful and ordering Defendants to eliminate  
15 the existing backlog and process future FOIA requests for individual records filed with CBP  
16 within 30 business days. Therefore, “Plaintiffs have sufficiently satisfied the requirement for a  
17 23(b)(2) class in the FOIA context, such that ‘a single injunction for declaratory judgment would  
18 provide relief to each member of the class.’” *Nightingale*, 333 F.R.D. at 463 (quoting *Wal-Mart*,  
19 564 U.S. at 360).

#### 20 IV. CONCLUSION

21 For all the foregoing reasons, Plaintiffs respectfully request that the Court certify the  
22 proposed class, appoint Plaintiffs as class representatives, and appoint the undersigned attorneys  
23 as class counsel.

1 Respectfully submitted,

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