
No. 26-4343

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CRUZ GAMEZ, et al.,

Plaintiffs-Appellees,

v.

TODD M. LYONS, et al.,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Oregon
No. 6:25-cv-02011 • Hon. Mustafa T. Kasubhai

OPPOSITION TO MOTION TO CONSOLIDATE APPEALS

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August 17, 2026

INTRODUCTION

Defendants-Appellants seek to consolidate the appeal of the district court's order preliminarily enjoining Defendants from conducting unlawful warrantless civil immigration arrests with their appeal of the district court's later decision granting class certification. But consolidation is not appropriate here because this Court lacks jurisdiction over the class certification appeal, as Plaintiffs-Appellees have explained in their concurrently filed and pending motion to dismiss that appeal. Moreover, consolidation would not promote judicial economy and instead would inject more complexity into these appeals, because briefing is already ongoing in the appeal of the preliminary injunction. Accordingly, the Court should deny consolidation of the appeals.

BACKGROUND

In October 2025, officers of Defendants U.S. Immigration and Customs Enforcement and U.S. Department of Homeland Security “reported to Oregon to execute what President Trump describes as ‘the single largest Mass Deportation Program in History.’” Op. & Order 1,

ECF 88.¹ Plaintiffs M-J-M-A- and Victor C.G. challenge Defendants’ policy and practice of making warrantless immigration arrests without finding probable cause that the arrestee was in the United States unlawfully and posed a flight risk, as required by the Immigration and Nationality Act (INA), 8 U.S.C. § 1357(a)(2), and its implementing regulations, 8 C.F.R. § 287.85(c)(2)(ii). On behalf of themselves and others similarly situated, Plaintiffs allege, among other things, Administrative Procedure Act claims that Defendants’ policy and practice are arbitrary, capricious, contrary to federal immigration law, and in excess of statutory authority. *See* Supp. Pleading 19–21, ECF 68.

The preliminary injunction order and appeal

On January 9, 2026, Plaintiffs moved to preliminarily enjoin Defendants from conducting warrantless civil immigration arrests without first making an individualized probable cause determination of the person’s risk of escape. The motion also sought provisional certification of the “‘Unassessed Escape Risk Subclass,’ consisting of ‘[a]ll person[s] since September 28, 2025, who have been arrested or will be

¹ ECF citations refer to the ECF entries in the underlying district court docket, No. 6:25-cv-02011.

arrested in the District of Oregon for alleged immigration violations without a warrant and without a pre-arrest, individualized assessment of probable cause that the person poses a flight risk.” ECF 88 at 4.

Based on an extensive factual record, including three days of evidentiary hearings with testimony from eleven witnesses, the district court granted the Plaintiffs’ preliminary injunction motion. The court’s order preliminarily enjoined Defendants “from enforcing their policy or practice of making warrantless civil immigration arrests in the District of Oregon without a pre-arrest individualized determination by the arresting agent of probable cause that the person being arrested is likely to escape before a warrant can be obtained, as required by 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2)(ii).” Order ¶ 3, ECF 82. The court also provisionally certified the Unassessed Escape Risk Subclass. *Id.* ¶ 1.

Defendants appealed the February 4 order granting a preliminary injunction, which the Court docketed at No. 26-2090. Defendants filed their opening brief in the appeal on July 6, 2026. Plaintiffs’ answering brief is due on September 2, 2026.

The class certification decision and appeal

On January 9, 2026, Plaintiffs moved for class certification of the following class and subclass under Federal Rule of Civil Procedure 23(b)(1), or in the alternative, under Rule 23(b)(2):

WARRANTLESS ARREST CLASS: All person[s] since September 28, 2025, who have been arrested or will be arrested in the District of Oregon for alleged immigration violations without a warrant and without a pre-arrest, individualized assessment of probable cause that the person is in the United States unlawfully and that the person poses a flight risk.

UNASSESSED ESCAPE RISK SUBCLASS: All person[s] since September 28, 2025, who have been arrested or will be arrested in the District of Oregon for alleged immigration violations without a warrant and without a pre-arrest, individualized assessment of probable cause that the person poses a flight risk.

Class Cert. Mot. 1, ECF 60.

On June 24, 2026, the district court issued an order granting Plaintiffs' motion for class certification. ECF 103. To begin, the court rejected the Defendants' arguments that the Plaintiffs lacked standing and that the INA barred the injunctive relief sought by Plaintiffs. Then, it held that the Warrantless Arrest Class and Unassessed Escape Risk Subclass for which Plaintiffs sought certification "are not impermissibly fail-safe because the proposed classes can be determined through

objective criteria.” *Id.* at 6. Further, it concluded that the class and subclass satisfied the requirements of Rule 23(a) and Rules 23(b)(1)(A) and 23(b)(2). Accordingly, it certified the Warrantless Arrest Class and Unassessed Escape Risk Subclass, as defined in Plaintiffs’ class certification motion, and appointed Plaintiffs’ counsel, Innovation Law Lab, as Class Counsel. *Id.* at 12.

Without seeking or receiving permission from this Court to appeal the class certification order, as required by Federal Rule of Civil Procedure 23(f), Defendants filed a notice of appeal for the June 24 class certification order. *See* Notice of Appeal, ECF 107. The Court docketed the appeal at No. 26-4343.

Plaintiffs have moved to dismiss the class certification appeal, No. 26-4343, for lack of jurisdiction. That motion is filed concurrently with this opposition and is pending.

ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 3(b)(2), the Court has discretion to consolidate appeals “[w]hen the parties have filed separate timely notices of appeal.” Here, Defendants’ motion to

consolidate the preliminary injunction appeal, No. 26-2090, with the class certification appeal, No. 26-4343, should be denied for two reasons.

First, as explained in Plaintiffs’ pending motion to dismiss the class certification appeal, No. 26-4343, the Court lacks jurisdiction over the class certification decision. That decision is an interlocutory order, and Defendants failed to seek and receive permission from this Court to appeal that decision, as required by Federal Rule of Civil Procedure 23(f) and the Supreme Court’s decisions explaining the requirements of that rule. *See Nutraceutical Corp. v. Lambert*, 586 U.S. 188 (2019); *Microsoft v. Baker*, 582 U.S. 23 (2017).

As Plaintiffs explain in their motion to dismiss, Defendants’ assertion that the class-certification decision is “inextricably intertwined” with the preliminary injunction order does not provide this Court with jurisdiction over the class certification decision here. Unlike the class certification orders at issue in the cases cited by Defendants—*Fraihat v. ICE*, 16 F.4th 613 (9th Cir. 2021), and *Paige v. California*, 102 F.3d 1035 (9th Cir. 1996)—the class certification order here was issued months *after* the court entered the preliminary injunction, and the preliminary injunctive relief granted here does not depend on that later

certification order. Defendants also cite *Arc of California v. Douglas*, 757 F.3d 975 (9th Cir. 2014), but that case had nothing to do with a class-certification order; rather, it concerned the exercise of pendent appellate jurisdiction over an interlocutory order dismissing claims pursuant to Rule 12(b)(6). *See* 757 F.3d at 992–93.

Because this Court lacks jurisdiction over the class-certification appeal, it should deny Defendants’ motion to consolidate that appeal with another. *See United States v. State of Wash.*, 573 F.2d 1121, 1123 (9th Cir. 1978) (stating that “each of the matters to be consolidated must be within the jurisdiction of the court” and rejecting “consolidation when the appeal in question contains a fatal jurisdictional defect”).

Second, consolidation of the appeals would not promote judicial economy, contrary to Defendants’ assertion. Instead, it would introduce complexity because briefing is already underway in the preliminary injunction appeal, No. 26-2090, whereas it has not yet begun in the class-certification appeal, No. 26-4343. Defendants suggest that the Court could later order supplemental briefing to “aid resolution of the consolidated appeals,” Consol. Mot. 3, but supplemental briefing clearly would not promote efficiency or conserve judicial resources.

Therefore, the Court should deny Defendants' motion to consolidate the appeals. However, if the Court denies Plaintiffs' motion to dismiss the class-certification appeal, Plaintiffs do not oppose consolidating the two appeals for purposes of oral argument only, so that both could be argued before the same panel on the same day.

CONCLUSION

Defendants' motion to consolidate should be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The foregoing has 1,318 words, including 0 words manually counted in any visual images, and is less than 20 pages, excluding the items exempted by Federal Rule of Appellate Procedure 32(f) and the rules of this Court. The foregoing's type style and typeface comply with Federal Rules of Appellate Procedure 27, 32(a)(5) and (6) because it has been prepared using 14-point Century Schoolbook type, which is serif and proportionally spaced.

I certify that the foregoing complies with the word limits of Federal Rule of Appellate Procedure 27 and Ninth Circuit Rule 27-1(1)(d).

August 17, 2026

/s/ Wendy Liu

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