IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DOMINGO ARREGUIN GOMEZ, a Lawful Permanent Resident of the U.S.; MIRNA S., a Lawful Permanent Resident of the U.S.; and VICENTA S., a U.S. Citizen, Plaintiffs, v. DONALD J. TRUMP, President of the United States of America, et al., Defendants.	Civil Action No. 1:20-cv-01419-APM

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
AND SUPPORTING MEMORANDUM

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

RULES

TREATISES

REGULATIONS

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND SUPPORTING MEMORANDUM

Plaintiffs respectfully move this Court, pursuant to Federal Rule of Civil Procedure (Rule) 23, to certify the following class:

> All individual immigrant sponsors with approved immigrant visa petitions for a child, including for derivative child relatives in applicable preference categories, with a "current" priority date while Presidential Proclamation 10014 is in effect; and whose sponsored child or sponsored derivative child relative is subject to the Proclamation and will, as a result of the Proclamation, age out of his or her current visa preference category by turning 21 years old while the Proclamation remains in effect.

Plaintiffs further request that the Court appoint all named Plaintiffs as class representatives and appoint the undersigned counsel as class counsel. In accordance with Local Rule 7(m), the parties made a good-faith effort to resolve the issues raised in this motion but have been unable to do so. Defendants oppose the motion.

INTRODUCTION

On April 23, 2020, the Defendants, in their official capacities, temporarily suspended immigration into the United States for the ostensible purpose of addressing "the impact of foreign workers on the United States labor market" in light of the toll that the COVID-19 pandemic has taken on the U.S. economy. Defendants did so through the issuance and implementation of a new Proclamation, titled the "Proclamation Suspending Entry of Immigrants Who Represent Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak,"[1] which took effect approximately 30 hours after it was issued and signed. Apart from limited

[1] *See* Presidential Proclamation 10014, Proclamation Suspending Entry of Immigrants Who Represent Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak, 85 Fed. Reg. 23,441 (Apr. 22, 2020). A copy of the Proclamation is also attached as Exhibit A to the Declaration of Stephen Manning ISO Plaintiffs' Motion for Temporary Restraining Order.

enumerated exceptions, the Proclamation bars the lawful issuance of immigrant visas and entry for permanent residence by the sponsored children of United States citizens; all individuals with employment- and family-based visas; all individuals selected for diversity visas; and all individuals seeking visas under the Violence Against Women Act or visas reserved for victims and witnesses to crimes in the United States.

Although the Proclamation will sunset unless renewed on or before June 22, 2020, its sweeping scope and lack of notice have resulted in, and will continue to result in, devastating and irreversible injury to many United States and lawful permanent resident parents whose minor children will turn 21 while the Proclamation is effective and will thereby "age out" of their current visa preference categories. Children who are not able to establish eligibility for one of the Proclamation's narrow exceptions will immediately lose their eligibility for their current "family preference" category and the opportunity to receive a visa and enter the United States before turning 21—an opportunity they will almost certainly not have again for years, or even decades. For petitioning family members in the United States, such as Plaintiffs, these extended delays may mean that they will be unable to reunify with their children or child relatives in the United States within their lifetimes.

The Proclamation violates the statutory and constitutional rights of U.S. visa petitioners and exceeds the scope of Defendants' authority under the U.S. Constitution and the Immigration and Nationality Act (INA). Accordingly, Plaintiffs seek a temporary restraining order preventing Defendants from enforcing and implementing the Proclamation against Plaintiffs and similarly situated U.S. citizens and lawful permanent residents who have sponsored children or derivative child relatives who will turn 21 while the Proclamation is in effect.

Together with this injunctive relief, Plaintiffs seek to certify a class under Rules 23(a), 23(b)(2), and 23(b)(1)(A). The proposed class is defined as follows:

> All individual immigrant sponsors with approved immigrant visa petitions for a child, including for derivative child relatives in applicable preference categories, with a "current" priority date while Presidential Proclamation 10014 is in effect; and whose sponsored child or sponsored derivative child relative is subject to the Proclamation and will, as a result of the Proclamation, age out of his or her current visa preference category by turning 21 years old while the Proclamation remains in effect.

The proposed class satisfies the requirements of numerosity, commonality, typicality, and adequacy under Rule 23, as well as any judicially implied requirement that the class definition be ascertainable.

Numerosity. The proposed class is so numerous that joinder is impracticable, satisfying Rule 23(a)(1). According to the Department of State's Annual Report of Immigrant Visa Applicants in the Family- and Employment-Based Preference Categories as of November 1, 2019, the number of individuals who are waiting in line to receive a visa in the F2A preference category alone was 182,156. More than 40 of those individuals are children at imminent risk of aging out. The proposed class consists of all individuals who currently have an approved or pending petition to the U.S. government to sponsor an immigrant visa for either: (1) a minor child or (2) family member with a minor child; and whose sponsored child or derivative child relative is subject to the Proclamation and, as a result, will age out of their visa eligibility category during the effective period of the Proclamation. A class action is the only appropriate and practical procedural avenue for the protections of the class members' rights.

Commonality. The class claims raise numerous common questions of fact and law, satisfying Rule 23(a)(2). Each member of the proposed class will suffer the same harm as a result of Defendants' adoption and implementation of the Proclamation. Common questions of law include whether the Proclamation and its implementation violate Plaintiffs' and the class members'

rights under the Administrative Procedure Act (APA), the INA, or the Fifth Amendment to the U.S. Constitution, and whether the Proclamation and its implementation exceed the statutory authority provided to Defendants through the INA. Common answers as to the legality of the Proclamation and its implementation will drive the resolution of the litigation.

Common questions of fact pertaining to the Proclamation include whether Defendants relied on factors Congress did not intend for them to consider; failed to consider important aspects of the problem they are purporting to address; quantified or considered harms that would result from the Proclamation and its implementation; implemented and enforced the Proclamation in an arbitrary and irrational manner not in accordance with law; or explained their decision in a manner contrary to the evidence before them when issuing and implementing the Proclamation.

Typicality. Consistent with Rule 23(a)(3), the named Plaintiffs' claims are also typical of the class of individuals whom they seek to represent—that is, other U.S. citizens and lawful permanent resident parents who have sponsored their minor child or derivative child relative (*e.g.*, a grandchild) for an immigrant visa, and whose minor child relative will age out of his or her current visa preference category during the effective period of the Proclamation. Plaintiffs assert the same APA, Fifth Amendment, and ultra vires claims as the members of the proposed class.

Adequacy. The proposed class representatives satisfy the adequacy requirement of Rule 23(a)(4), as all Plaintiffs assert the same claims and seek the same relief: an injunction that will protect themselves and all absent class members from Defendants' actions under the Proclamation. Additionally, proposed class counsel includes a team of attorneys from the American Immigration Lawyers Association, Innovation Law Lab, Justice Action Center, and the Law Office of Laboni A. Hoq, all of whom have significant experience litigating class actions and other complex cases in federal court, including cases involving federal statutory and constitutional rights of noncitizens.

Ascertainability. The proposed class is defined by clear and objective criteria and therefore satisfies any judicially implied requirement that the class be ascertainable.

In addition, the proposed class meets the requirements of both Rules 23(b)(2) and 23(b)(1)(A). Plaintiffs' proposed class satisfies Rule 23(b)(2) because Defendants have "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). The Proclamation effectively deprives the soon-to-be adult sons and daughters of United States citizens and lawful permanent residents of the opportunity to enter the United States as permanent residents after their families have taken every measure to comply with the filing requirements, paid the necessary fees, and waited in line for such opportunity. As a result, the declaratory and injunctive relief that Plaintiffs seek will be appropriate with respect to the class as a whole. The proposed class also satisfies Rule 23(b)(1)(A) because Defendants have adopted a single policy—the Proclamation—through which they seek to improperly bar otherwise qualified visa applicants from receiving visas.

Accordingly, this Court should grant class certification under Rules 23(b)(2) and 23(b)(1)(A) for purposes of entering Plaintiffs' requested classwide temporary restraining order and preliminary and permanent injunctions. *N.S. v. Hughes*, 2020 WL 2219441, at *14 (D.D.C. May 7, 2020) (certification under 23(b)(2) appropriate "[w]hen a single injunction or declaratory judgment would provide relief to each member of the class" (internal quotation marks omitted)); *Nio v. U.S. Dep't of Homeland Sec.*, 323 F.R.D. 28, 34 (D.D.C. 2017) (certification under 23(b)(1)(A) "'appropriate when the class seeks injunctive or declaratory relief to change an alleged

ongoing course of conduct that is either legal or illegal as to all members of the class'" (quoting *Adair v. England*, 209 F.R.D. 5, 12 (D.D.C. 2002))).[2]

BACKGROUND

On April 22, 2020, President Trump signed Proclamation No. 10014, titled the "Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak" (the "Proclamation"). The Proclamation took effect at 11:59 p.m. Eastern Daylight Time on April 23, 2020, approximately 30 hours after it was signed. Apart from limited enumerated exceptions, the Proclamation suspends the entry of all foreign nationals as immigrants to the United States for 60 days. Defendants have begun informing visa applicants seeking visas during the Proclamation's effective period, who do not qualify for another enumerated exception, that visa approval "will require a national interest exception." However, Defendants have provided no public guidance as to how consular officers will consider visa applicants for this exception, or how an applicant may show that he or she qualifies for that exception. Due to that lack of guidance, as well as the lack of notice before the Proclamation was issued and almost immediately took effect, the Proclamation's temporary suspension of the U.S. immigration system has the potential to inflict devastating, permanent injury on Plaintiffs, their children and grandchildren, and the members of

[2] In the alternative, the Court should provisionally certify the class pursuant to Rule 23(c)(1) for the purpose of entering Plaintiffs' requested temporary restraining order. In granting provisional class certification, the Court still must apply Rule 23, but "[i]ts analysis is tempered . . . by the understanding that such certifications may be altered or amended before the decision on the merits." *R.I.L.-R. v. Johnson*, 80 F. Supp. 3d 164, 179–80 (D.D.C. 2015) (internal quotation marks omitted); *see also Barne v. Dillard*, 2008 WL 2168393, at *4–5 (D.D.C. May 22, 2008) (provisionally certifying class where "the Court has concern that numerosity has not been achieved" but facts pertaining to numerosity "are within [Defendant's] control" and therefore the plaintiffs "inability to be more specific in their allegations should be excused at this pre-discovery stage of the litigation" (internal quotation marks omitted; alteration in original)).

the class that Plaintiffs seek to represent. Although the Proclamation sunsets on June 22, 2020, it "may be continued as necessary"; any extension of the Proclamation will only expand the number of proposed class members who are harmed.[3]

A. The Proclamation's Exacerbation of the Harms of Aging Out

By effectively freezing the issuance of immigrant visas and denying the entry of eligible foreign nationals for permanent residence for 60 days, the Proclamation has placed a significant number of minor children at imminent risk of aging out of their current visa preference categories and thus losing the opportunity to reunite with their families in the United States.

The INA contains several significant structural features that prioritize the family unity of parents and minor children, including provisions that allocate significantly more visas to visa preference categories for children under 21, provisions that except those categories from the per-country caps that apply to other visa preference categories for adults, and provisions that allow principal adults to immigrate together with their derivative minor children. Children who turn 21 before receiving their visa, however, will lose the benefits that those provisions afford, and as a result will be forced to seek immigrant visas in preference categories with substantial backlogs and waiting lines that can take decades to pass through.

If a child about to turn 21 has an approved visa petition with a "current" priority date—*i.e.*, where the consulate could immediately issue a visa to the child once the child submits the necessary paperwork—that child ordinarily could seek emergency consular processing and visa adjudication to ensure that she receives a visa before turning 21, and thereby avoids the harms of

[3] The Proclamation commands the Secretary of Homeland Security, "in consultation with the Secretary of State and the Secretary of Labor," to "recommend" whether the President "should continue or modify this Proclamation." The Proclamation provides no guidance for determining under what circumstances it would no longer be "necessary."

aging out. The Proclamation, however, has imposed a new, vague admissibility requirement on those children—under the Proclamation, a child who is about to age out must first qualify for one of the Proclamation's narrow exceptions.[4] As the U.S. Consulate in Ciudad Juarez already has applied to the daughter of Plaintiff Mirna S., the only likely exception available to minor, soon-to-age-out children under the Proclamation is the "national interest" exception. Declaration of Michael J. Eatroff ISO Plaintiffs' Motion for Temporary Restraining Order ("Eatroff Decl.") ¶ 13. But, as discussed, Defendants have provided no public guidance on how a visa applicant might apply or qualify for such an exception and consular officers, at least with respect to Plaintiff Mirna S., do not appear to be considering it in any event. The Proclamation, moreover, was announced, issued, and implemented with so little notice that children at risk of aging out—and thus at risk of losing their opportunity to reunite with their families, in some instances for the rest of their lives—must appear for their emergency interviews and establish their eligibility for a "national interest" exception without knowing how to do so or whether it is even possible, and without having any meaningful opportunity to develop or document the traits, skills, experience, references, job offers, or other qualifications that may enable them to establish that eligibility.

[4] Excepted from the Proclamation's entry suspension are healthcare professionals and researchers pursuing COVID-19-related research, along with their spouses and children under 21; immigrants arriving on EB-5 investor visas; the spouses of U.S. citizens; children of U.S. citizens, defined as an unmarried son or daughter under the age of 21; foreign nationals whose entry would further important U.S. law enforcement objectives as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees and based on a recommendation of the Attorney General or his designee; members of the United States Armed Forces and their spouses and children under 21; individuals arriving on Special Immigrant Visas designated for certain Iraqi and Afghani workers, as well as their spouses and children; and any noncitizen whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

B. The Proclamation's Impact on Plaintiffs

Plaintiffs are U.S. citizens and lawful permanent residents sponsoring their minor children or derivative child grandchildren for immigrant visas. Their visa petitions are approved and have a "current" priority date, which means that immigrant visas are immediately available to them and they need only to complete the required steps to apply for a visa, including appear for a consular interview, to receive the visa.[5] Apart from the Proclamation, Plaintiffs and their immigration attorneys are not aware of any other ground of inadmissibility or any other basis on which their sponsored minor children or derivative minor child relatives would be denied a visa.

If Plaintiffs' children or derivative child relatives are denied a visa under the Proclamation, they will age out of their current visa preference categories and, for some, will lose their "current" priority date and the opportunity to apply for and receive a visa for years, if not decades. As a result, Plaintiffs will face extended separation from their children—and may be unable entirely to reunite in the United States with those children during their lifetimes.

1. Plaintiff Mirna S.

Mirna S. is a U.S. lawful permanent resident of Mexican origin who resides in Bronx, New York. Declaration of Mirna S. ISO Plaintiffs' Motion for Temporary Restraining Order ("Mirna S. Decl.") ¶ 1. She was the victim of severe domestic violence and obtained a U nonimmigrant visa when she assisted law enforcement with investigating and pursuing the prosecution of her abuser. *Id.* ¶¶ 1, 5. After she satisfied the necessary requirements to become a lawful permanent resident, Mirna S sponsored her younger daughter, M.T.S., who resides in Mexico, for an SU-3 immigrant visa petition so she can follow-to-join her mother as a lawful permanent resident of the

[5] United States Citizen and Immigration Services (USCIS) approval of an immigrant visa petition is a determination that the sponsored minor child prima facie qualifies for an immigrant visa. 9 FAM 504.2-2(B).

United States. *Id.* ¶¶ 8, 10–11. Mirna S. is desperate to bring M.T.S. to safety and reunited with her in the United States because, among other things, M.T.S. has suffered years of physical and verbal abuse from her father in Mexico. *Id.* ¶ 9; Declaration of M.T.S. ISO Plaintiffs' Motion for Temporary Restraining Order ("M.T.S. Decl.") ¶¶ 2–12.

Mirna S.'s visa petition for M.T.S. has a "current" priority date, but she faces the prospect of aging out if she does not have a visa by the time she turns 21 years old on June 23, 2020. Mirna S. Decl. ¶¶ 10–11; Declaration of Charles Wheeler ISO Plaintiffs' Motion for Temporary Restraining Order ("Wheeler Decl.") ¶ 19. Although Mirna S. and her immigration attorney notified the National Visa Center (NVC) last November that M.T.S. would age out in June of this year, Mirna S. Decl. ¶ 11, and although Mirna S. went to extraordinary lengths to secure an emergency consular interview for M.T.S., including having U.S. Senator Kirsten Gillibrand contact the NVC *five times* in less than 3 months, Eatroff Decl. ¶¶ 4, 5, 8, 11, the U.S. Consulate in Ciudad Juarez did not contact Mirna S. and M.T.S. until May to arrange an emergency interview, which was eventually scheduled for May 29, *id.* ¶¶ 12–14.

In scheduling the interview, the U.S. Consulate told M.T.S. that she would "require a national interest exception" for her visa to be approved. *Id.* ¶ 13; Mirna S. Decl. ¶ 13. Accordingly, before M.T.S. appeared for her interview last Friday, May 29, Mirna S.'s immigration attorney submitted a three-page argument explaining why M.T.S. should qualify for the national interest exception. M.T.S. Decl. ¶ 20, Ex. A. The substantive portion of the interview lasted only eight minutes. *Id.* ¶ 21. The consular officer did not discuss or ask any questions about M.T.S.'s ability to satisfy the Proclamation's national interest exception, despite knowing she needed an exception for issuance of the visa. *Id.* ¶ 20. The consular officer told M.T.S. that she had satisfied all the requirements for a visa but was being denied a visa due to the Proclamation. *Id.* ¶ 21.

If M.T.S. does not receive her visa and enter the United States before she turns 21, she will age out of eligibility for the SU-3 visa and Mirna S.'s sponsorship for M.T.S. as a U-visa derivative will permanently expire. Wheeler Decl. ¶ 19. Mirna S. will have to sponsor M.T.S. for a family-based visa in the F-2B family preference category, for adult children of U.S. lawful permanent residents. The F2B category has a backlog of 67 years for sponsors who file a visa petition for an adult child from Mexico today. *Id.* ¶ 9.

2. Plaintiff Domingo Arreguin Gomez

Domingo Arreguin Gomez is a U.S. lawful permanent resident of Mexican origin who resides in Romeo, Michigan. Declaration of Domingo Arreguin Gomez ISO Plaintiffs' Motion for Temporary Restraining Order ("Gomez Decl.") ¶ 1. He sponsored his wife for an immigrant visa, and his wife's daughter Alondra—Plaintiff Gomez's stepdaughter—is a "follow-to-join" beneficiary of his wife's visa application. *Id.* ¶¶ 4–7. She currently lives in Mexico, where she works and attends school while caring for her four-year-old son as a single mother. *Id.* ¶ 7. Plaintiff Gomez and his family are anxious that Alondra be able to apply for and receive a visa soon, so that they can reunite with, and provide support for, Alondra and their grandson. *Id.* ¶¶ 14–15.

Plaintiff Gomez's visa petition for Alondra is currently pending in the F-2A family visa preference category, for the spouses and minor children of U.S. lawful permanent residents, and it has a "current" priority date. *Id.* ¶ 5; Wheeler Decl. ¶ 15. Apart from the Proclamation, Plaintiff Gomez and his immigration attorney are unaware of any reason why Alondra would be refused a visa. Declaration of Monica Tay Belej ISO Plaintiffs' Motion for Temporary Restraining Order ("Belej Decl.") ¶ 7. Because of the Proclamation, however, Alondra will age out of the F-2A visa preference category when she turns 21 on June 15, 2020, unless she can demonstrate to a consular officer that she meets one of the Proclamation's exceptions. *Id.* ¶ 3. If she ages out, Plaintiff

Gomez's visa petition for Alondra will automatically "convert" to the F-2B category, for the adult sons and daughters of United States lawful permanent residents, *id.*, which is currently subject to a near-70-year backlog for Mexican nationals, Wheeler Decl. ¶ 9. This backlog will effectively prevent Plaintiff Gomez and his wife from reuniting with Alondra in the United States during their lifetimes.

3. Plaintiff Vicenta S.

Vicenta S. is a U.S. citizen of Salvadoran origin who resides in Council Bluffs, Iowa. Declaration of Vicenta S. ISO Plaintiffs' Motion for Temporary Restraining Order ("Vicenta S. Decl.") ¶ 1. Almost sixteen years ago, she filed an immigrant visa petition for her son and his family in the F3 family visa preference category, for the married, adult sons and daughters of U.S. citizens. *Id.* ¶ 7; Declaration of Brian J. Blackford ISO Plaintiffs' Motion for Temporary Restraining Order ("Blackford Decl.") ¶ 1–2. Although her son and his wife are in the United States and have approved I-601A provisional waivers of unlawful presence that will required them to return to El Salvador for their immigrant interview, her grandson, W.Z.A., has remained in El Salvador. Vicenta S. Decl. ¶¶ 7, 14. Vicenta S. and her son have been separated from W.Z.A. for his entire life, and, given her age and health, she fears the time she has left to be reunited with her grandson is running out. *Id.* ¶ 21.

Vicenta S.'s petition for her son and his family was approved in 2006 and now has a "current" priority date. *Id.* ¶ 7, 17; Blackford Decl. ¶¶ 2–3; Wheeler Decl. ¶ 18. Neither Vicenta S. nor her immigration attorney are aware of any reason, apart from the Proclamation, why W.Z.A. would be refused a visa. Vicenta S. Decl. ¶¶ 17, 19; Blackford Decl. ¶ 10. But if W.Z.A. is unable to demonstrate to a consular officer that he meets one of the Proclamation's exceptions, W.Z.A. will age out and no longer be eligible for an F3 derivative immigrant visa when he turns 21 on June 30, 2020. Blackford Decl. ¶ 4. If that happens, the visa process for W.Z.A. will terminate.

Wheeler Decl. ¶ 17. He will have no way to seek a visa and reunite with Plaintiff Vicenta S. in the United States unless he begins the visa process anew and is sponsored by an employer for an employment-based visa, or by his parents, once they become lawful permanent residents, for a visa in the F-2B family visa preference category, for the adult sons and daughters of United States lawful permanent residents. If Vicenta S.'s son were able to file an F-2B petition for W.Z.A. today, they would have to wait at least five more years for the application to become "current"—on top of the nearly 16 years they have already been waiting. *Id.*

C. The Proposed Class

Plaintiffs' stories and experiences make manifest the fundamental injustice of denying immigrant visas to individuals or their families arbitrarily and without notice. Their experiences exemplify the lifelong impact that the Proclamation will have on families seeking to reunite with their children or grandchildren. Class members are people just like them: individual immigrant visa sponsors with approved immigrant visa petitions for a child, including for a derivative child relative, with a "current" priority date and who is at imminent risk of aging out of their current visa preference category:

> All individual immigrant sponsors with approved immigrant visa petitions for a child, including for derivative child relatives in applicable preference categories, with a "current" priority date while Presidential Proclamation 10014 is in effect; and whose sponsored child or sponsored derivative child relative is subject to the Proclamation and will, as a result of the Proclamation, age out of his or her current visa preference category by turning 21 years old while the Proclamation remains in effect.

The children or derivative child relatives of members of the proposed class are otherwise eligible for an immigrant visa but, because of the Proclamation, may be separated from their families indefinitely.

D. Procedural History

On May 29, 2020, Plaintiffs filed a class action complaint in this Court.[6] The complaint asserts claims based on the Defendants' violations of the APA and the INA, Defendants' ultra vires actions, and Defendants' violations of the Due Process Clause of the Fifth Amendment. In a separate filing made the same day as this Motion for Class Certification, Plaintiffs seek an Emergency Motion for Temporary Restraining Order. As explained in Plaintiffs' Emergency Motion for a Temporary Restraining Order, Plaintiffs request, for themselves and members of the proposed class, immediate injunctive relief to set aside the implementation and enforcement of the Proclamation. For the reasons set forth below, the Court should issue an order certifying the proposed class under Federal Rule of Civil Procedure 23.

ARGUMENT

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

Plaintiffs' proposed class satisfies all four Rule 23(a) prerequisites, as well as any judicially implied requirement that the proposed class be ascertainable. The proposed class likewise meets the requirements for certification under two subsections of Rule 23(b). The Court should therefore grant Plaintiffs' Motion for Class Certification. Certification would be consistent with the numerous decisions from this Court certifying classes in similar actions

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6 Complaint, ECF 1.

challenging the Government's administration of immigration programs. *See, e.g.*, *N.S. v. Hughes*, 2020 WL 2219441 (D.D.C. May 7, 2020) (certifying class of indigent criminal defendants challenging unlawful seizures for suspected civil immigration violations); *Afghan & Iraqi Allies Under Serious Threat Because of Their Faithful Service to United States v. Pompeo*, -- F.R.D. -- , 2020 WL 590121 (D.D.C. Feb. 5, 2020) (certifying class of individuals challenging unreasonable delays in visa adjudications); *Ramirez v. U.S. Immigration & Customs Enforcement*, 338 F. Supp. 3d 1 (D.D.C. 2018) (certifying class of 18-year-olds challenging transfers to adult detention facilities without considering less restrictive placements); *Damus v. Nielsen*, 313 F. Supp. 3d 317 (D.D.C. 2018) (certifying class of individuals challenging denials of parole after initial credible fear interview); *R.I.L.-R. v. Johnson*, 80 F. Supp. 3d 164 (D.D.C. 2015) (certifying class of individuals challenging placement in interim detention after initial credible fear interview).

A. The proposed class satisfies Rule 23(a)'s requirements.

A party seeking certification of a proposed class must first demonstrate that the class they seek to certify satisfies the four requirements of Rule 23(a):

(1) The class is so numerous that joinder of all members is impracticable,

(2) There are questions of law or fact common to the class,

(3) The claims or defenses of the representative parties are typical of the claims or defenses of the class, and

(4) The representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a). Those four requirements are referred to colloquially as "numerosity," "commonality," "typicality," and "adequacy." *See generally Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011). Some courts have imposed an "implied" fifth requirement that the class be adequately defined and clearly ascertainable—"the purpose of which is to 'requir[e] plaintiffs to be able to establish that the general outlines of the membership of the class are determinable at the outset of the litigation.'" *Hoyte v. District of Columbia*, 325 F.R.D. 485, 489 (D.D.C. 2017) (quoting *Thorpe v. District of Columbia*, 303 F.R.D. 120, 139 (D.D.C. 2014)).

1. The proposed class is so numerous that joinder is impracticable.

A class action is appropriate only when "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Although colloquially known as the "numerosity" requirement, "'the Rule's core requirement is that joinder be impracticable' and numerosity merely 'provides an obvious situation in which joinder may be impracticable.'" *Coleman through Bunn v. District of Columbia*, 306 F.R.D. 68, 76 (D.D.C. 2015) (quoting Newberg on Class Actions § 3:11 (5th ed. 2014)). "Impracticality" of joinder "means only that it is difficult or inconvenient to join all class members, not that it is impossible to do so." *Id.* (internal quotation marks omitted). Thus, to meet the requirement, there is no "specific threshold that must be surpassed"; "rather, the determination 'requires an examination of the specific facts of each case and imposes no absolute limitations.'" *Taylor v. D.C. Water & Sewer Auth.*, 241 F.R.D. 33, 37 (D.D.C. 2007) (quoting *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980)). As this Court recently explained, "[N]umerosity is about much more than just the total number of class members. In many cases, it is difficult to ascertain how many class members there will be, and the question simply becomes whether the existence of unknown or unnamed

future class members would make joinder difficult."[7] *N.S.*, 2020 WL 2219441, at *11 (citing *J.D. v. Azar*, 925 F.3d 1291, 1322 (D.C. Cir. 2019)).[8]

In all events, "the Court need only find an approximation of the size of the class, not an 'exact number of putative class members.'" *Coleman*, 306 F.R.D. at 76 (quoting *Pigford v. Glickman*, 182 F.R.D. 341, 347 (D.D.C. 1998)). "[A] plaintiff may satisfy the requirement by supplying estimates, rather than a precise number, of putative class members." *Ramirez*, 338 F. Supp. 3d at 44. As long as there is a "reasonable basis for the estimate provided," numerosity may be satisfied. *Kifafi v. Hilton Hotels Ret. Plan*, 189 F.R.D. 174, 176 (D.D.C. 1999). The Court may also "'draw reasonable inferences from the facts presented to find the requisite numerosity.'" *Coleman*, 306 F.R.D. at 76 (quoting *McCuin v. Sec'y of Health & Hum. Servs.*, 817 F.2d 161, 167 (1st Cir. 1987)); *see also Damus*, 313 F. Supp. 3d at 330 ("Plaintiffs need not prove exactly how many people fall within the class to merit certification.").

Rule 23(a)(2)'s numerosity requirement is satisfied here. The Proclamation that Plaintiffs challenge applies to virtually every U.S. citizen and lawful permanent resident sponsoring a relative for an immigrant visa. Of those to whom the Proclamation applies, the proposed class

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[7] Courts have also held that "[w]here a plaintiff seeks 'only injunctive and declaratory relief, the numerosity requirement is relaxed and plaintiffs may rely on reasonable inferences arising from plaintiffs' other evidence that the number of unknown and future members is sufficient to make joinder impracticable.'" *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1203 (N.D. Cal. 2017) (quoting *Civil Rights Educ. & Enf't Ctr. v. Hosp. Props. Tr.*, 317 F.R.D. 91, 100 (N.D. Cal. 2016)), *aff'd*, 867 F.3d 1093 (9th Cir. 2017); *see also Sueoka v. United States*, 101 F. App'x 649, 653 (9th Cir. 2004) (same); *Weiss v. York Hosp.*, 745 F.2d 786, 808 (3d Cir. 1984) (same).

[8] That said, most courts, including courts in this jurisdiction, "have observed that a class of at least forty members is sufficiently large'" to meet the numerosity requirement. *Ramirez*, 338 F. Supp. 3d at 44 (quoting *Taylor*, 241 F.R.D. at 37); *see also, e.g.*, *Ark. Educ. Ass'n v. Bd. of Educ. of Portland, Ark. Sch. Dist.*, 446 F.2d 763, 765–66 (8th Cir. 1971) (class of 20 sufficient); *Hum v. Dericks*, 162 F.R.D. 628, 634 (D. Haw. 1995) ("Courts have certified classes with as few as thirteen members . . . .").

includes those U.S. citizens and lawful permanent resident parents who are sponsoring their children, whose priority dates are "current," and who will turn 21 while the Proclamation is in effect. That includes, for instance, all soon-to-be-21 sponsored minor children who currently fall within the F-2A visa preference category, as well as all other soon-to-be-21 sponsored minor children currently eligible for an immigrant visa, such as those within the F-3 preference category, following-to-join lawful permanent resident parents who adjusted on the basis of a U-visa, or other family-based or humanitarian visa preference categories who would qualify for entry to the United States for permanent residence following issuance of an immigrant visa abroad.

The State Department does not publish statistics on the number of individuals who "age out" of any particular visa preference category; nor does it publish statistics on the number of individuals who request emergency or expedited consular processing services to prevent themselves from aging out.[9] But according to its Annual Report of Immigrant Visa Applicants in the Family- and Employment-Based Preference Categories as of November 1, 2019, the number of sponsored individuals waiting in line to receive a visa in the F-2A preference category *alone* was 182,156.[10] One can reasonably infer from that statistic that there are at least 40, and likely more, U.S. citizens and lawful permanent residents who are sponsoring 20-year-old children with "current" priority dates whose birthdays fall within the 60-day period during which the

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[9] The State Department certainly has that information, however. To obtain a more precise estimate of the number of members of the proposed class, Plaintiffs may seek discovery from Defendants, who are in the best position to provide the Court and the parties with that information.

[10] U.S. Dep't of State, *Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center* (Nov. 1, 2019), *available at* https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2019.pdf

Proclamation applies.[11] These U.S. citizen and lawful permanent resident parents likely reside in cities and towns all over the United States. The Court can therefore reasonably conclude that the proposed class is sufficiently numerous, and that joinder is impracticable, under Rule 23(a)(2). *See Ramirez*, 338 F. Supp. 3d at 44; *Coleman*, 306 F.R.D. at 76.

2. Plaintiffs' claims present questions of law or fact common to the class.

Rule 23(a)(2) requires a showing that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Commonality is satisfied when class members' claims "depend on 'a common contention [that] is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.'" *Damus*, 313 F. Supp. 3d at 331 (quoting *Wal-Mart Stores, Inc.*, 564 U.S. at 349) (alteration in original). Rule 23(a)(2) "does not require that *all* questions be common to the class"—"'even a single common question will do.'" *D.L. v. District of Columbia*, 713 F.3d 120, 128 (D.C. Cir. 2013) (quoting *Wal-Mart Stores, Inc.*, 564 U.S. at 359)) (emphasis added). Commonality is thus also satisfied "where there is a 'uniform policy or practice that affects all class members.'" *Damus*, 313 F. Supp. 3d at 331 (quoting *D.L.*, 713 F.3d at 128); *see also N.S.*, 2020 WL 2219441, at *13 (same); *Hoyte*, 325 F.R.D. at 490 ("[The commonality] requirement is usually met when the class members 'challenge polices or practices

[11] Forty individuals at risk of aging out in the Proclamation's 60-day period would amount to approximately 240 individuals at risk annually. That is likely a very low estimate. At that time that Congress enacted the Child Status Protection Act in 2002, Congress estimated that approximately 1000 visa applications processed in any given year for immediate relatives were for individuals who had aged out of their applicable visa preference category. *See* H.R. Rep. 107-45, at 4 (Apr. 20, 2001). There is no reason to believe that this number is significantly different for children or derivative child relatives of lawful permanent residents. The CSPA solved the age-out problem entirely for those immediate relatives but leaves children of lawful permanent residents and other derivative child relatives at risk.

that apply to all members of the class.' " (quoting 5–23 Moore's Federal Practice—Civil § 23.23 n.7.5.1)). That is because "[w]hat matters to class certification . . . [is] the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc.*, 564 U.S. at 350.

Plaintiffs' proposed class, and the claims they assert on behalf of the class, readily satisfy Rule 23(a)(2)'s commonality requirement. The common questions of law that Plaintiffs' claims present include, among others,

(1) whether the Proclamation and Defendants' enforcement and implementation of the Proclamation violate the Administrative Procedures Act (APA) and/or the Fifth Amendment, and

(2) whether the Proclamation and Defendants' actions taken to enforce and implement the Proclamation exceed the statutory authority provided to Defendants under the INA.

The common questions of fact that Plaintiffs' claims present include, among others,

(1) whether, in issuing and implementing the Proclamation, Defendants relied on factors that Congress did not intend for them to consider;

(2) whether, in issuing and implementing the Proclamation, Defendants failed to consider important aspects of the problem they sought to address;

(3) whether, in issuing and implementing the Proclamation, Defendants explained their decision in a manner contrary to the evidence before them;

(4) whether Defendants quantified or considered the harm that would result from the Proclamation and its implementation;

(5) whether Defendants provided adequate and rational notice of the requirements or criteria used to determine whether an applicant has met an exception to the Proclamation;

(6) whether the Proclamation's exceptions are, in practice, vague and unworkable, rendering impossible the uniform application of the laws or review of decisions for consistency with the facts and evidence; and

(7) whether class members have suffered harm as a result of the Proclamation and Defendants' actions taken to implement it.

Any one of those common legal or factual issues, standing alone, is enough to satisfy Rule 23(a)(2)'s standard. *D.L.*, 713 F.3d at 128 (a "single common question" is sufficient to satisfy the commonality requirement).

Plaintiffs and members of the proposed class, and the claims that Plaintiffs assert on behalf of the proposed class, also share a common core of facts and address a common injury. Class members are all U.S. citizens or lawful permanent residents in the United States with an approved immigrant visa petition for a child or a derivative child relative with a priority date that is "current" in their applicable visa preference category. All of the class members' sponsored children or derivative child relatives will turn 21 years old during the time while the Proclamation remains effective. All of the class members' sponsored children or derivative child relatives are otherwise eligible for an immigrant visa, are subject to the Proclamation, and will be denied a visa unless they can meet a new admissibility requirement and demonstrate to a consular officer that they fall within one of the Proclamation's narrow exceptions despite the lack of guidance on how to establish qualification for an exception. Thus, as a result of the Proclamation, all of the class members' sponsored children or derivative child relatives are subject to a new, possibly insurmountable admissibility requirement and, if they cannot meet this requirement, will "age out" of their current visa preference category, causing substantial delays in their visa adjudication and resulting in prolonged—and in some cases, indefinite—family

separation. Because the Proclamation is the primary barrier to entry for all class members' sponsored children or derivative child relatives, Plaintiffs and proposed class members "'have suffered the same injury.'" *Wal-Mart Stores, Inc.*, 564 U.S. at 350 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)).

That common injury is clearly "capable of classwide resolution." *Id.* Should this Court agree that Defendants acted in violation of the APA, exceeded their authority under the INA or any other law, or acted in violation of the Fifth Amendment, all members of the proposed class would benefit from the relief that Plaintiffs seek: a declaration that the Proclamation is unlawful and invalid with respect to the members of the proposed class, and an order enjoining the application of the Proclamation to Plaintiffs and their sponsored minor children or derivative minor child relatives. A common answer as to the legality of the Proclamation and its implementation will thus "drive the resolution of the litigation." *Ramirez*, 338 F. Supp. 3d at 45 (quoting *Wal-Mart Stores, Inc.*, 564 U.S. at 350).

Significantly, this Court has made clear that "'factual variations among class members' do not trump 'the overarching questions common to the class' addressing the 'legal authority to implement [the challenged] policies and practices.'" *Damus*, 313 F. Supp. 3d at 333 (quoting *Nio*, 323 F.R.D. at 32 (alteration in original)); *see also Hardy v. District of Columbia*, 283 F.R.D. 20, 24 (D.D.C. 2012) ("[F]actual variations among the class members will not defeat the commonality requirement, so long as a single aspect or feature of the claim is common to all proposed class members." (internal quotation marks omitted)). Thus, to the extent that the factual circumstances of the class members in this case differ—*e.g.*, with respect to the type of visa they seek, their nationality, or whether or not they automatically convert to a different visa preference category—this variation does not defeat the fact that all class members have been

subjected to an unlawful government policy or practice that affects their current status as a beneficiary or derivative beneficiary of an approved visa petition. *See Damus*, 313 F. Supp. 3d at 332–33; *see also Borum v. Brentwood Village, LLC*, 324 F.R.D. 1, 16 (D.D.C. 2018) ("Class members need not be identically situated.").

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

Plaintiffs' claims must also be typical of the claims of members of the proposed class. Fed. R. Civ. P. 23(a)(3). "Typicality means that the representative plaintiffs must 'possess the same interest and suffer the same injury' as the other class members." *Damus*, 313 F. Supp. 3d at 331 (quoting *Falcon*, 457 U.S. at 156). As this Court has explained, the commonality and typicality requirements "tend to merge," and "'[b]oth serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.'" *Ramirez*, 338 F. Supp. 3d at 46 (quoting *Falcon*, 457 U.S. at 157). Unlike commonality, however, "which is concerned with the similarity of class members' injuries, the typicality requirement 'focuses on whether the representatives of the class suffered a similar injury from the same course of conduct.'" *Afghan & Iraqi Allies*, 2020 WL 590121, at *10 (quoting *Bynum v. District of Columbia*, 214 F.R.D. 27, 34 (D.D.C. 2003)). The typicality requirement "'ensures that the claims of the representative and absent class members are sufficiently similar so that the representatives' acts are also acts on behalf of, and safeguard the interests of, the class.'" *Id.* (quoting *Littlewolf v. Hodel*, 681 F. Supp. 929, 935 (D.D.C. 1988), *aff'd sub nom.*, *Littlewolf v. Lujan*, 877 F.2d 1058 (D.C. Cir. 1989)). "'Generally speaking, typicality is . . . satisfied when the plaintiffs' claims arise from the same course of conduct, series of events, or legal theories of

other class members.'" *Ramirez*, 338 F. Supp. 3d at 46 (quoting *Daskalea v. Wash. Humane Soc'y*, 275 F.R.D. 346, 358 (D.D.C. 2011)) (second internal quotation marks omitted).

Here, Plaintiffs are U.S. citizens and lawful permanent residents with approved immigrant visa petitions for their minor child or derivative child relative. Plaintiffs' claims arise out of the fact that the Proclamation, which applies to their children or derivative child relatives, will operate to prevent those children from receiving an immigrant visa before they turn 21 years old if they cannot show that they meet one of the Proclamation's narrow exceptions. When that occurs, as a result of the Proclamation, Plaintiffs' minor children and derivative child relatives will "age out" of their current preference category, causing substantial delays in their visa adjudication and resulting in prolonged, if not indefinite, family separation.

Plaintiffs' claims are typical of the claims of every member of the class they seek to represent. By its terms, the Proclamation will be imposed equally on every minor child and derivative child relative of every member of the proposed class. As a result of the Proclamation, then, every member of the proposed class will have a sponsored child or derivative child relative "age out" of their current visa preference category and face the same barriers to family reunification. Plaintiffs' claims thus are substantially identical to the claims of the members of the proposed class.

Plaintiffs' individual underlying circumstances may differ in terms of the type of visa they seek, their nationality, or whether or not they "automatically convert" into a new visa preference category, but their claims remain typical to those of the members of the proposed class. "Factual variations between the claims of class representatives and the claims of other class members . . . do not negate typicality." *Bynum*, 214 F.R.D. at 34; *see also Wagner v. Taylor*, 836 F.2d 578, 591 (D.C. Cir. 1987) ("Courts have held that typicality is not destroyed

merely by factual variations." (internal quotation marks omitted)); *United States v. Trucking Emp'rs Inc.*, 75 F.R.D. 682, 688 (D.D.C. 1977) (noting that "where the claims or defenses raised by the named parties are typical of those of the class, differences in the factual patterns underlying the claims or defenses of individual class members will not defeat the action").

4. Plaintiffs will fairly and adequately protect the interests of the class.

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Rule 23's adequacy requirement imposes two criteria on plaintiffs seeking to represent a class: "(1) the named representative must not have antagonistic or conflicting interests with the unnamed members of the class, and (2) the representative must appear able to vigorously prosecute the interests of the class through qualified counsel." *Twelve John Does v. District of Columbia*, 117 F.3d 571, 575 (D.C. Cir. 1997). The purpose of the adequacy requirement is "to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625 (1997). Plaintiffs and their counsel satisfy these requirements.

Plaintiffs will fairly and adequately protect the interests of the proposed class. Plaintiffs seek no unique or additional benefit from this litigation that may make their interests different from or adverse to the claims of absent class members. Rather, Plaintiffs' objective is to secure injunctive relief that will protect themselves and others similarly situated from the harm that the Proclamation will cause to their family members and their families. Plaintiffs are not antagonistic to the class in any way, and their interests align squarely with the other absent class members.

Proposed class counsel will also be able to prosecute this matter vigorously and adequately protect the interests of the absent class members. Plaintiffs are represented by

attorneys from the American Immigration Lawyers Association (AILA), Innovation Law Lab, Justice Action Center, and the Law Office of Laboni A. Hoq, all of whom have significant experience in immigrants' rights and civil rights litigation. Class counsel are also experienced in class actions, and each has successfully sought and obtained class certification in prior cases. *See*, *e.g.*, *Doe #1 v. Trump*, No. 3:19-cv-01043 (D. Or.) (Innovation Law Lab, Justice Action Center, AILA); *Valle del Sol v. Whiting*, No. CV 10-1061-PHX-SRB (D. Ariz.) (Justice Action Center); *Unknown Parties v. Johnson*, 163 F. Supp. 3d 630 (D. Ariz. 2016) (Justice Action Center); *Trinh v. Homan*, No. 8:18-cv-00316-CJC-GJS (C.D. Cal.) (Law Office of Laboni A. Hoq). They also have more than enough resources to litigate this matter vigorously. Indeed, within a matter of weeks since the Proclamation was issued and took effect, counsel have filed a complaint, an emergency motion for a temporary restraining order, and this motion for class certification. Class counsel will continue to vigorously represent both the named Plaintiffs and absent class members.

5. The proposed class satisfies any "ascertainability" requirement.

It is "far from clear that there exists in this district a requirement that a class certified under Rule 23(b)(2) must demonstrate ascertainability to merit certification." *Ramirez*, 338 F. Supp. 3d at 48; *see also Hoyte*, 325 F.R.D. at 489 n.3 (noting that "[t]he ascertainability requirement, while adopted by some courts in this district, has been recently disavowed by four federal appellate courts," and that "the D.C. Circuit has not opined on the requirement," and citing cases). To the extent that it does exist, however, the proposed class easily satisfies it.

The judicially implied requirement that a class be "ascertainable" "ensures that any class is 'clearly defined [and] is designed primarily to help the trial court manage the class.'" *Huashan Zhang v. U.S. Citizenship & Immigration Servs.*, 344 F. Supp. 3d 32, 61 (D.D.C. 2018)

(quoting *Pigford*, 182 F.R.D. at 346). Ascertainability "is not designed to be a 'particularly stringent test,' but 'plaintiffs must at least be able to establish that the general outlines of the membership of the class are determinable at the outset of the litigation' such that 'it is administratively feasible for the court to determine whether a particular individual is a member.' " *Id.* (quoting *Pigford*, 182 F.R.D. at 346). In other words, "by looking at the class definition, counsel and putative class members [must be able to] easily ascertain whether they are members of the class." *Pigford*, 182 F.R.D. at 346.

Plaintiffs' proposed class is defined by clear and objective criteria, *see Ramirez*, 338 F. Supp. 3d at 49 (stating that standard), and class members, counsel, and the Court can easily ascertain whether particular individuals are members of the class. Class members are individual immigrant sponsors with approved visa petitions that include a minor child or derivative minor child relative as a beneficiary. That beneficiary minor child must have a petition with a "current" priority date, must be subject to the Proclamation, must turn 21 years old while the Proclamation remains in effect, and must therefore be about to "age out" of his or her current visa preference category if he or she does not receive a visa before turning 21. That definition is such that "an individual would be able to determine, simply by reading the definition, whether he or she was a member of the proposed class." *Bynum*, 214 F.R.D. at 32. The proposed class therefore easily satisfies any ascertainability requirement that might apply in these circumstances.

B. The proposed class satisfies the requirements of Rule 23(b).

In addition to meeting the requirements of Rule 23(a), a proposed class must fall within at least one of the three subsections of Rule 23(b). Plaintiffs here seek certification under Rule 23(b)(2) and Rule 23(b)(1)(A). Rule 23(b)(2) applies to cases where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Rule 23(b)(1)(A) applies where "prosecuting separate actions by or against individual class members would create a risk of . . . inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class."

1. The proposed class may be certified under Rule 23(b)(2).

A class action may be maintained under Rule 23(b)(2) when "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Under Rule 23(b)(2), "two elements must exist: (1) the defendant's action or refusal to act must be generally applicable to the class; and (2) plaintiff must seek final injunctive relief or corresponding declaratory relief on behalf of the class." *Lightfoot v. District of Columbia*, 246 F.R.D. 326, 341 (2007) (internal quotation marks omitted). "'The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.'" *Ramirez*, 338 F. Supp. 3d at 47 (quoting *Wal-Mart Stores, Inc.*, 564 U.S. at 360). In other words, Rule 23(b)(2) is satisfied "when a single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart*

Stores, Inc., 564 U.S. at 360.[12] In this district, Rule 23(b)(2) is satisfied where the claims seek to address an "alleged systemic harm" resulting from agency action that applies generally to all class members, when "a determination of whether that [action] is unlawful would . . . resolve all members' claims in one stroke." *Damus*, 313 F. Supp. 3d at 334–35 (internal quotation marks omitted).

Rule 23(b)(2) is satisfied here. In implementing and enforcing the Proclamation, Defendants have acted, have threatened to act, and will act on grounds that apply to the class as a whole. Specifically, Defendants seek to deny immigrant visas to class members' minor children or derivative child relatives notwithstanding the fact that those minor children, if they turn 21 during the period in which the Proclamation remains effective, will "age out" of their current visa preference category and face prolonged or indefinite family separation. A single injunction prohibiting the application and implementation of the Proclamation to the beneficiaries of class members' approved visa petitions would protect both Plaintiffs and absent class members from injury resulting from the unlawful government action. The proposed class therefore satisfies the requirements of Rule 23(b)(2). *See, e.g.*, *Lightfoot*, 246 F.R.D. at 337–38 (policy-and-practice challenge regarding government-imposed disability compensation benefits satisfies Rule 23(b)(2)); *cf. Bynum*, 214 F.R.D. at 37 (formal policy unnecessary; "it is enough to show that a defendant has acted in a consistent manner toward members of the class so that his actions may be viewed as part of a pattern of activity" (internal quotation marks omitted)).

[12] Rule 23(b)(2) effectively "codifies the presumption that the interests of the class members are cohesive." *Damus*, 313 F. Supp. 3d at 334 (internal quotation marks omitted).

2. The proposed class may be certified under Rule 23(b)(1)(A).

A class action may be maintained under Rule 23(b)(1)(A) when "prosecuting separate actions by or against individual class members would create a risk of . . . inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class." Fed. R. Civ. P. 23(b)(1)(A). "Rule 23(b)(1)(A) certification is appropriate when the class seeks injunctive or declaratory relief to change an alleged ongoing course of conduct that is either legal or illegal as to all members of the class." *Adair*, 209 F.R.D. at 12. Certification under Rule 23(b)(1)(A) "'is most common' in cases in which the class seeks declaratory or injunctive relief against the government 'to provide unitary treatment to all members of a defined group.'" *Id.* (quoting 5 Moore's Federal Practice, § 23.41[4] (3d ed. 2000)); *see also Amchem*, 521 U.S. at 614 (Rule 23(b)(1)(A) "takes in cases where the party is obliged by law to treat the members of the class alike[, such as] a government imposing a tax . . . ." (internal quotation marks omitted)).

Rule 23(b)(1)(A) is satisfied here. Plaintiffs in this case seek a single injunction against the government's implementation and enforcement of the Proclamation with respect to all members of the proposed class. Such an injunction would protect all class members from the harms resulting from implementing the alleged unlawful Proclamation against them. The proposed class therefore satisfies the requirements of Rule 23(b)(1)(A).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an order certifying the proposed class under Rule 23(b)(2) or Rule 23(b)(1)(A); appoint Plaintiffs as class representatives; and appoint as class counsel the below-listed attorneys from AILA, Innovation Law Lab, Justice Action Center, and the Law Office of Laboni A. Hoq.

DATED this 2nd day of June, 2020.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DOMINGO ARREGUIN GOMEZ, a Lawful Permanent Resident of the U.S.; MIRNA S., a Lawful Permanent Resident of the U.S.; and VICENTA S., a U.S. Citizen, Plaintiffs, v. DONALD J. TRUMP, President of the United States of America, et al., Defendants.	Civil Action No. 1:20-cv-01419-APM

[PROPOSED] ORDER GRANTING MOTION FOR CLASS CERTIFICATION

IT IS ORDERED that Plaintiffs' motion for class certification is **GRANTED**. The Court certifies the following class under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(1)(A):

> All individual immigrant sponsors with approved immigrant visa petitions for a child, including for derivative child relatives in applicable preference categories, with a "current" priority date while Presidential Proclamation 10014 is in effect; and whose sponsored child or sponsored derivative child relative is subject to the Proclamation and will, as a result of the Proclamation, age out of his or her current visa preference category by turning 21 years old while the Proclamation remains in effect.

Under Rule 23(g), the Court appoints Karen C. Tumlin and Esther H. Sung of Justice Action Center; Stephen Manning, Nadia Dahab, and Tess Hellgren of Innovation Law Lab; Jesse Bless of American Immigration Lawyers Association; and Laboni Hoq of the Law Office of Laboni A. Hoq as class counsel. The Court also appoints Plaintiffs Domingo Arreguin Gomez, Mirna S., and Vicenta S. as class representatives.

Dated:_____

_____
HON. AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE