IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DOMINGO ARREGUIN GOMEZ et al., 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

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PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND SUPPORTING MEMORANDUM

Plaintiffs respectfully move this Court, pursuant to Federal Rule of Civil Procedure (Rule) 23, to certify this matter as a class action, including the following subclasses:[1]

(a) **Immediate Relative Parent Subclass—**Individual U.S. citizens with an approved immigrant visa petition for an immediate relative parent and whose sponsored relative is subject to Presidential Proclamation 10052.

(b) **Preference Relative Subclass—**Individual U.S. citizens and lawful permanent residents with an approved immigrant visa petition for a relative in a preference immigrant category, including a spouse, parent, child, or sibling, and any qualifying derivative relatives, where the immigrant visa is "current" or will become "current," meaning visas are authorized for issuance abroad, while Presidential Proclamation 10052 is in effect, and whose sponsored preference relative is subject to Proclamation 10052.

(c) **Diversity Visa Subclass—**Individuals who have been selected to receive an immigrant visa through the U.S. Department of State's FY2020 Diversity Visa Lottery and who had not received their immigrant visa on or before April 23, 2020, when the Presidential Proclamation 10014, later extended by Presidential Proclamation 10052, took effect.

(d) **Temporary Worker Subclass—**United States employers who have an approved nonimmigrant visa petition for an employee or potential employee in the H-1B, H-2B, or L-1 nonimmigrant visa categories; where the employee or potential employee's petition for nonimmigrant status has been approved for temporary employment in the United States, and where the employee or potential employee is subject to Proclamation 10052.

(e) **Exchange Visitor Program Subclass—**Entities designated by the U.S. Department of State as an Exchange Visitor Program sponsor for any category of J-1 exchange visitors included in Proclamation 10052.

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[1] Plaintiffs' proposed subclasses vary slightly from the subclasses pleaded in the First Amended Complaint ("FAC"), ECF 46. Plaintiffs understand that, for the purposes of class certification under Rule 23, the Court is not bound by the class definitions alleged in the complaint. *See, e.g.*, *Chapman v. First Index, Inc.*, 796 F.3d 783, 785 (7th Cir. 2015) (Rule 23 class certification with modified class definition does not require an amendment to the operative complaint); *Abraham v. WPX Energy Prod., LLC*, 322 F.R.D. 592, 610 (D. N.M. 2017) (same). Should the Court require the pleadings to conform with the class definition, however, Plaintiffs would be pleased to move for leave to amend the class allegations currently set forth in the First Amended Complaint.

Plaintiffs further request that the Court appoint all named Plaintiffs as class representatives for their respective subclass, as set forth below:

> **Immediate Relative Parent Subclass:** Daniel Chibundu Nwankwo
>
> **Preference Relative Subclass:** Nazif Alam, Carmen Ligia Pimentel, Juan Carlos Rosario Lebron, Claudio Alejandro Sarniguet Jiménez, Angela Sinon, Mohamed Saleh, Loida Phelps, and Nancy Abarca
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> **Diversity Visa Subclass:** Fatma Bushati, Jodi Lynn Karpes, Shyam Sundar Koirala, Aja Tamamu Mariama Kinteh, Iwundu épouse Kouadio Ijeoma Golden, and Aya Nakamura
>
> **Temporary Worker Subclass:** 3Q Digital, PowerTrunk Inc., Shipco Transport Inc., and Superior Scape Inc.
>
> **Exchange Visitor Program Subclass:** ASSE International, Inc. and EurAuPair International

Finally, Plaintiffs request that the Court appoint the undersigned counsel as class counsel. In accordance with Local Rule 7(m), the parties discussed this motion with opposing counsel and made a good-faith effort to narrow the issues in dispute. Notwithstanding those discussions, Defendants oppose the motion.

I. INTRODUCTION

President Trump announced and executed Presidential Proclamation 10014, 85 Fed. Reg. 23,441 (Apr. 22, 2020) (Ex. A to First Amended Complaint, ECF 46) ("the April Proclamation"), on April 22, 2020. The April Proclamation was later extended and expanded by Presidential Proclamation No. 10052, 85 Fed. Reg. 38,263 (June 22, 2020) (as amended) (Ex. B. to ECF 46) ("the June Proclamation," and together with the April Proclamation, "the Proclamations"). The Proclamations suspend entry into the United States of virtually all immigrants seeking to become permanent residents and many foreign nationals seeking entry on temporary nonimmigrant visas. Defendant U.S. Department of State ("the State Department") has implemented the June Proclamation by refusing to issue visas. The June Proclamation's entry and visa suspensions are

set to expire on December 31, 2020, but they may be continued "as necessary," if the President so determines.

The Proclamations are unlawful and have been issued, enforced, and implemented in a manner contrary to statutory and constitutional command. On their face, the Proclamations themselves do not comply with the statute on which the President purports to repy, *see* 8 U.S.C. § 1182(f) (requiring that the President make a finding that the entry of certain foreign nationals would be detrimental to the national interest), and their impact contravenes other, related provisions of the Immigration & Nationality Act (INA), *see* 8 U.S.C. § 1154(a). Permitting the President to issue the Proclamations violates bedrock separation-of-powers principles enshrined in the U.S. Constitution. The defendant agencies' implementation of the Proclamations is likewise unlawful under several provisions of the INA, the Administrative Procedure Act (APA), and the Fifth Amendment to the U.S. Constitution.

Plaintiffs include winners of the FY 2020 Diversity Visa Lottery; U.S. citizen and lawful permanent resident petitioners of family-based immigrant visa petitions; and employers and program sponsors who have petitioned for or otherwise support individuals who seek to enter the United States on a temporary nonimmigrant visa and will suffer harm so long as the June Proclamation remains in effect. Because the June Proclamation exceeds the scope of Defendants' authority under the U.S. Constitution, the INA, and the APA, Plaintiffs request that this Court issue a classwide preliminary injunction preventing Defendants from enforcing the June Proclamation against Plaintiffs and members of the proposed class, including similarly situated individuals, employers, and program sponsors. *See* Plaintiffs' Motion for Preliminary Injunction (filed concurrently herewith).

Together with their request for preliminary injunctive relief, Plaintiffs seek to certify five subclasses under Rules 23(a), 23(b)(2), and 23(b)(1)(A). Plaintiffs' proposed subclasses are defined as follows:

(a) **Immediate Relative Parent Subclass—**Individual U.S. citizens with an approved immigrant visa petition for an immediate relative parent and whose sponsored relative is subject to Presidential Proclamation 10052.

(b) **Preference Relative Subclass—**Individual U.S. citizens and lawful permanent residents with an approved immigrant visa petition for a relative in a preference immigrant category, including a spouse, parent, child, or sibling, and any qualifying derivative relatives, where the immigrant visa is "current" or will become "current," meaning visas are authorized for issuance abroad, while Presidential Proclamation 10052 is in effect, and whose sponsored preference relative is subject to Proclamation 10052.

(c) **Diversity Visa Subclass—**Individuals who have been selected to receive an immigrant visa through the U.S. Department of State's FY2020 Diversity Visa Lottery and who had not received their immigrant visa on or before April 23, 2020, when the Presidential Proclamation 10014, later extended by Presidential Proclamation 10052, took effect.

(d) **Temporary Worker Subclass—**United States employers who have an approved nonimmigrant visa petition for an employee or potential employee in the H-1B, H-2B, or L-1 nonimmigrant visa categories; where the employee or potential employee's petition for nonimmigrant status has been approved for temporary employment in the United States, and where the employee or potential employee is subject to Proclamation 10052.

(e) **Exchange Visitor Program Subclass—**Entities designated by the U.S. Department of State as an Exchange Visitor Program sponsor for any category of J-1 exchange visitors included in Proclamation 10052.

Each proposed subclass 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. In addition, each proposed subclass meets the requirements of both Rules 23(b)(2) and 23(b)(1)(A). Each of Plaintiffs' proposed subclasses 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). Each of the proposed subclasses also satisfies Rule 23(b)(1)(A) because Defendants' unlawful ban on entry and issuance of visas to otherwise qualified visa applicants is applicable to the respective class through which they seek to represent.

Accordingly, this Court should grant class certification under Rules 23(b)(2) and 23(b)(1)(A) for purposes of entering Plaintiffs' requested classwide preliminary injunction. *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))).

II. BACKGROUND

On April 22, 2020, President Trump announced and executed Presidential 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 "April Proclamation"). The April Proclamation took effect at 11:59 p.m. EDT the very next day. Apart from limited enumerated exceptions, the April Proclamation suspended the entry of all foreign nationals as immigrants to the United States for 60 days.

On June 22, 2020, President Trump announced and executed Presidential Proclamation 10052 ("the June Proclamation"), which extended the April Proclamation's entry suspension on immigrant visas until December 31, 2020, *see* June Proclamation § 1(a), and allows the entry suspension to "be continued as necessary" if Defendants so determine. The June Proclamation also expanded the April Proclamation's entry suspension to H-1B, H-2B, J, and L nonimmigrant

visa categories. The June Proclamation's expansion to nonimmigrant visas took effect on June 24, 2020, extends through December 31, 2020, and also may be continued as "necessary." Both Proclamations include several enumerated exceptions, including an exception for individuals whose entry is determined to be in the "national interest," a category of foreign nationals that remains undefined.[2] As Plaintiffs describe in their Motion for Preliminary Injunction, the defendant agencies have implemented the June Proclamation not only by suspending entry, but also by declining to issue visas in the first instance.

A. The Proclamation's Impact on Plaintiffs

Plaintiffs are U.S. citizens and lawful permanent residents with approved immigrant visa petitions for an immediate or preference relative to immigrate to the United States; foreign nationals who are FY2020 Diversity Visa Lottery winners; and employers and program sponsors for various categories of temporary nonimmigrant visas. Each Plaintiff with an approved family-based immigrant visa petition has a "current" priority date, meaning that immigrant visas are immediately available, and their sponsored family member need only complete certain remaining steps, including appear for a consular interview, to receive the visa. Plaintiffs who are FY 2020 Diversity Visa Lottery winners either had a consular interview scheduled or were notified that their application was "ready for scheduling," before the Proclamations took effect. The employer plaintiffs seek to sponsor foreign-national workers for certain temporary nonimmigrant visas so that these individuals may enter the United States and work for the employer plaintiffs. Plaintiffs

[2] Both Proclamations also direct the Secretary of State to "implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security, may establish in the Secretary of State's discretion," and conversely directs the Secretary of Homeland Security to "implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion."

ASSE and EAP are designated J-1 program sponsors who work with the State Department to facilitate cultural exchange programs for interns, trainees, summer work/travel program participants, and au pairs. Apart from the June Proclamation, none of the Plaintiffs, including employer and program sponsor Plaintiffs who seek to enjoin the Proclamation to the extent that it suspends the entry of individuals in nonimmigrant visa categories, is aware of any ground that the individuals they seek to employ or sponsor would otherwise be deemed inadmissible and unable to enter the United States once a visa is issued. And as Plaintiffs explain in their Motion for Preliminary Injunction, all of the Plaintiffs will suffer significant—and in some cases devastating—harm if the Proclamations are not enjoined.

1. Proposed Immediate Relative Parent Subclass Representative

Plaintiff **Daniel Chibundu Nwankwo**, a U.S. citizen, has an approved immigrant visa petition for his father to immigrate to the United States from Nigeria. The June Proclamation harms Mr. Nwankwo by depriving him of his father's companionship, care, and guidance during his formative years.[3] Plaintiff Nwankwo seeks to represent a class of similarly situated U.S. citizens with an approved immigrant visa petition for an immediate relative parent to immigrate to the United States.[4]

2. Proposed Preference Relative Subclass Representative

Plaintiffs' proposed class representatives of the Preference Relative Subclass include both U.S. citizens and lawful permanent residents with approved immigrant visa petitions for a preference relative and/or qualifying derivative relative that either are current, or will become current, while the June Proclamation is in effect. All of the proposed class representatives of the

[3] *See* Declaration of Danial Chibundu Nwankwo in Support of Plaintiffs' Motion for Preliminary Injunction ¶¶ 5–11.

[4] Nwankwo Decl. ¶¶ 12–13.

Preference Relative Subclass will suffer extended, and potentially indefinite, family separation as a result of the June Proclamation. The proposed class representatives of the Preference Relative Subclass seek to represent a class of similarly situated U.S. citizens and lawful permanent residents.

Plaintiffs **Nazif Alam** and **Carmen Ligia Pimentel** are lawful permanent residents with approved immigrant visa petitions for their spouses to immigrate to the United States from Bangladesh and the Dominican Republic, respectively.[5]

Plaintiffs **Juan Carlos Rosario Lebron** and **Claudio Alejandro Sarniguet Jiménez** are lawful permanent residents with approved immigrant visa petitions for their minor children to immigrate to the United States from the Dominican Republic and Chile, respectively.[6]

Plaintiff **Angela Sinon** is a U.S. citizen with an approved immigrant visa petition for her unmarried adult son to immigrate to the United States from the Philippines. Plaintiff **Mohamed Saleh** is a U.S. citizen with an approved immigrant visa petition for his granddaughter, as a derivative beneficiary of his married adult son, to immigrate to the United States from Yemen.[7]

Plaintiff **Loida Phelps** is a U.S. citizen with an approved immigrant visa petition for her daughter and three granddaughters to immigrate to the United States from the Philippines.[8]

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[5] Declaration of Nazif Alam in Support of Plaintiffs' Motion for Preliminary Injunction ¶¶ 1, 3; Declaration of Carmen Ligia Pimentel in Support of Plaintiffs' Motion for Preliminary Injunction ¶¶ 1, 5.

[6] Declaration of Juan Carlos Rosario Lebron in Support of Plaintiffs' Motion for Preliminary Injunction ¶¶ 1, 3–4; Declaration of Claudio Alejandro Sarniguet Jiménez in Support of Plaintiffs' Motion for Preliminary Injunction ¶ 1, 2.

[7] Declaration of Angela Sinon in Support of Plaintiffs' Motion for Preliminary Injunction ¶¶ 1, 7; Declaration of Mohamed Saleh in Support of Plaintiffs' Motion for Preliminary Injunction ¶¶, 3–4.

[8] Declaration of Loida Phelps in Support of Plaintiffs' Motion for Preliminary Injunction ¶¶ 1, 7–8.

Plaintiff **Nancy Abarca** is a U.S. citizen with an approved immigrant visa petition for her brother, his wife, and their minor daughter, Maria Andrea, to immigrate to the United States from the Philippines. Maria Andrea will turn 21 years old, and therefore age out of her current visa eligibility, while the June Proclamation is in effect. Maria Andrea does not benefit from the Proclamation's "national interest" exception for children who will age out of visa eligibility, *see* June Proclamation § 4(a)(i), because she is a derivative beneficiary who cannot obtain her visa until a visa is issued to her father.[9]

3. Proposed Diversity Visa Subclass Representatives

Plaintiffs and proposed class representatives **Fatma Bushati** (Albania), **Jodi Lynn Karpes** (South Africa), **Shyam Sundar Koirala** (Nepal), **Aja Tamamu Mariama Kinteh** (The Gambia), **Iwundu épouse Kouadio Ijeoma Golden** (Cote D'Ivoire), and **Aya Nakamura** (Japan) all were selected for diversity visas in the FY 2020 Diversity Visa Lottery. They are all immediately eligible for visas prior to the September 30, 2020 deadline for such visas, and before the Proclamations took effect, each either had a consular interview scheduled or had been told that their interview was "ready for scheduling." None is aware of any ground of inadmissibility or other ground on which their visa would be denied, other than the June Proclamation. Plaintiffs Bushati, Karpes, Koirala, Kinteh, Golden, and Nakamura seek to represent a class of similarly situated FY 2020 Diversity Visa Lottery winners.[10]

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[9] Declaration of Nancy Abarca in Support of Plaintiffs' Motion for Preliminary Injunction ¶¶ 1, 2, 6.

[10] *See generally* Declarations of Fatma Bushati, Jodi Lynn Karpes, Shyam Sundar Koirala, Aja Tamamu Mariama Kinteh, Iwundu épouse Kouadio Ijeoma Golden, and Aya Nakamua in Support of Plaintiffs' Motion for Preliminary Injunction.

4. Proposed Temporary Worker Subclass Representatives

Plaintiffs **3Q Digital**, **PowerTrunk**, **Shipco Transport**, and **Superior Scape** are U.S. employers that sponsor employees and potential employees on temporary nonimmigrant visas in the H-1B, H-2B, and L-1 categories. Each has been and will continue to be harmed by the June Proclamation's entry suspension because without such workers each company will suffer a multitude of reputational and operational harm, including the prospect of shuttering operational altogether without the entry of foreign workers on an approved, valid nonimmigrant visas.[11]

The proposed class representatives of the Temporary Worker Subclass seek to represent a class of similarly situated employers and labor organizations that petition for individuals to come to the United States on H-1B, H-2B, and J-1 nonimmigrant visas.

5. Proposed Exchange Visitor Program Subclass Representatives

Plaintiffs **ASSE International, Inc.** and **EurAuPair International** are organizations that have been designated by the State Department as sponsors of J-1 exchange visitor programs for interns, trainees, and au pairs. Both organizations partner with the State Department to administer exchange visitor programs for individuals on J-1 nonimmigrant visas, the entry of whom has been suspended by the June Proclamation. As a result of the June Proclamation, both organizations have been forced to cancel programs that are central to their missions, terminate employees, and will continue to suffer material economic loss that jeopardizes the viability of it operations and ha

[11] Declaration of Laura Rodnitzky in Support of Plaintiffs' Motion for Preliminary Injunction ¶¶ 20–26; Declaration of Jose Martin in Support of Plaintiffs' Motion for Preliminary Injunction ¶ ¶ 17–22; Declaration of Klaus Jepsen in Support of Plaintiffs' Motion for Preliminary Injunction ¶ ¶ 12–13; Declaration of Terry Newman in Support of Plaintiffs' Motion for Preliminary Injunction ¶ ¶ 10–21.

foreclosed its ability to fulfill its basis for existence. By early 2021, both organizations may be forced to close entirely if the June Proclamation is not enjoined.[12]

B. The Proposed Class

Plaintiffs' stories and circumstances make manifest the fundamental injustice of denying immigrant and nonimmigrant visas to individuals arbitrarily and without notice. Their experiences exemplify the devastating, lifelong impact that the June Proclamation will have on families seeking to reunite with their children or grandchildren, individuals seeking to realize their dream of coming to the United States on a diversity-based immigrant visa, or employers who depend on the skills and talents of foreign nationals to operate their business and enrich the American economy. Class members are people and organizations just like Plaintiffs: individuals, employers, and sponsors who, as a direct result of the June Proclamation, will suffer harm to their families, their livelihoods, their reputations, or the abilities of their programs to continue to operate:

(a) **Immediate Relative Parent Subclass—**Individual U.S. citizens with an approved immigrant visa petition for an immediate relative parent and whose sponsored relative is subject to Presidential Proclamation 10052.

(b) **Preference Relative Subclass—**Individual U.S. citizens and lawful permanent residents with an approved immigrant visa petition for a relative in a preference immigrant category, including a spouse, parent, child, or sibling, and any qualifying derivative relatives, where the immigrant visa is "current" or will become "current," meaning visas are authorized for issuance abroad, while Presidential Proclamation 10052 is in effect, and whose sponsored preference relative is subject to Proclamation 10052.

(c) **Diversity Visa Subclass—**Individuals who have been selected to receive an immigrant visa through the U.S. Department of State's FY2020 Diversity Visa Lottery and who had not received their immigrant visa on or before April 23, 2020, when the Presidential Proclamation 10014, later extended by Presidential Proclamation 10052, took effect.

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[12] *See generally* Declaration of William J. Gustafson in Support of Plaintiffs' Motion for Preliminary Injunction.

(d) **Temporary Worker Subclass—**United States employers who have an approved nonimmigrant visa petition for an employee or potential employee in the H-1B, H-2B, or L-1 nonimmigrant visa categories; where the employee or potential employee's petition for nonimmigrant status has been approved for temporary employment in the United States, and where the employee or potential employee is subject to Proclamation 10052.

(e) **Exchange Visitor Program Subclass—**Entities designated by the U.S. Department of State as an Exchange Visitor Program sponsor for any category of J-1 exchange visitors included in Proclamation 10052.

C. Procedural History

On July 17, 2020, Plaintiffs filed a First Amended Complaint in this Court. ECF 46. The First Amended Complaint asserts claims based on the Defendants' violations of the APA, the INA, separation-of-powers principles of the U.S. Constitution, and the Due Process Clause of the Fifth Amendment. FAC ¶¶ 310–52. In a separate filing made the same day as this Motion for Class Certification, Plaintiffs filed a Motion for a Preliminary Injunction. As explained in Plaintiffs' Motion for Preliminary Injunction, 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.

III. 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 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*, 334 F.R.D. 449 (D.D.C. 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"; instead, "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)). That said, many appellate courts, and several courts in this district, have held that "numerosity is presumed at 40 members." *Hoyte*, 325 F.R.D. at 490 (citing *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 595 (3d Cir. 2012); *Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993); *Hardy v. District of Columbia*, 283 F.R.D. 20, 24 (D.D.C. 2012)).

"[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 readily satisfied here. The Proclamation that Plaintiffs challenge applies to every FY 2020 Diversity Visa Lottery selectee who had not received their visa at the time the April Proclamation took effect on April 23, 2020; every U.S. citizen sponsoring an immediate relative parent for an immigrant visa; every lawful permanent resident sponsoring a relative for an immigrant visa; every U.S. employer that files a visa petition for a nonimmigrant worker in the H-1B, H-2B, or L-1 categories; and every State Department-designated sponsor of any J-1 exchange visitor program for interns, trainees, teachers, camp counselors, au pairs, or summer work/travel participants. With respect to each of those categories—and therefore with respect to each of Plaintiffs' proposed subclasses—numerosity is satisfied:

Immediate Relative Parent Subclass—The Immediate Relative Parent Subclass includes every U.S. Citizen who has an approved petition for an immigrant visa for an immediate relative parent, and whose immediate relative seeks to enter the United States between June 23, 2020, and December 31, 2020. Between 2015 and 2019, the average annual number of visa petitions issued to immediate relative parents of U.S. citizens was 83,759. In 2019, the number of immigrant visas

issued to parents of U.S. citizens was 63,442.[13] Because the initial Proclamation was issued in April, the number of members of the proposed Immediate Relative Parent Subclass—likely includes more than half of the number immigrant visas issued to immediate relative parents this year—easily satisfies Rule 23's numerosity requirement.[14]

Preference Relative Subclass—The Preference Relative Subclass includes every U.S. citizen and lawful permanent resident with an approved immigrant visa petition for a preference relative that is current, or that will become current, between April 23, 2020, and December 31, 2020, and that does not fall within an exception to the April or June Proclamations. The subclass thus includes first-preference-category unmarried adult children of U.S. citizens; second-preference-category spouses, children, and unmarried sons or daughters of lawful permanent residents; third-preference-category married sons and daughters of U.S. citizens; and fourth-preference-category brothers and sisters of U.S. citizens. Like the Immediate Relative Parent Subclass, State Department statistics demonstrate that the number of members in the Preference Relative Subclass easily satisfies any Rule 23 numerosity threshold.

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[13] During each of the four years leading up to 2019, the number of immigrant visas issued to parents of U.S. citizens ranged from 78,362 (in 2018) to 108,788 (in 2016). *See* Annual Report of the Visa Office, *supra* n.7, at 2; *see also id.*, tbl. VIII ("Immediate Relative Visas Issued") (summarizing immediate relative visas issued in 2019 by category and country), *available at* https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2019AnnualReport/FY19AnnualReport-TableVIII.pdf. The State Department statistics reflect the number of beneficiary parents, and not the number of U.S. citizen petitioners, of an approved immigrant visa.

[14] To be sure, the State Department report shows that the number of immigrant visas issued to immediate relative parents of U.S. citizens has decreased by an annual average of 16.5% from 2016 to 2019. Even if Plaintiffs were to assume the same decrease from 2019 to 2020, the predicted number of immigrant visas issued in 2020 would be approximately 52,974. The number of immigrant visas issued between June 23, 2020, and December 31, 2020, would therefore well exceed any Rule 23 threshold for numerosity.

According to the State Department's 2019 Annual Report, between 2015 and 2019, the average annual number of immigrant visas issued to individuals in the above-described family-sponsored preference categories was 163,362.[15] In 2019, the number of immigrant visas issued to individuals in the above-described family-sponsored preference categories was 190,938. And again, the number of members of the proposed Preference Relative Subclass likely includes at least half of that number for the time period between April 23 and December 31, 2020—well above any Rule 23 numerosity threshold.

Diversity Visa Lottery Subclass—Under the INA, the State Department is authorized to issue up to 55,000 diversity visas through the annual diversity visa lottery. 8 U.S.C. § 1151(e). In 2019, it issued 44,882 diversity visas at foreign service posts worldwide, and in the four years before that the number of diversity visas ranged from 45,664 to 49,067.[16] State Department monthly reports show that fewer than 3,000 diversity visas were issued to lottery selectees between January and March 2020, suggesting that a significant number of the diversity immigrant visa lottery selectees—indeed, tens of thousands—remain to receive their visa before the September 30, 2020, deadline. The Diversity Visa Subclass therefore easily satisfies numerosity.

Temporary Worker Subclass—The Temporary Worker Subclass includes every U.S. employer that files a petition for a nonimmigrant worker visa in the H-1B, H-2B, or L-1 category to which the June Proclamation applies. In 2019, the State Department issued 8,742,068

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15 *See* Annual Report of the Visa Office, tbl. II ("Classes of Immigrants Issued Visas at Foreign Service Posts – Fiscal Years 2015–2019"), *available at* https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2019AnnualReport/FY19AnnualReport-%20TableII.pdf..

16 Annual Report of the Visa Office, tbl. II, at 2 ("Classes of Immigrants Issued Visas at Foreign Service Posts – Fiscal Years 2015–2019"), *available at* https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2019AnnualReport/FY19AnnualReport-%20TableII.pdf.

nonimmigrant visas.[17] It issued 188,123 nonimmigrant visas in the H-1B category; 97,623 nonimmigrant visas in the H-2B category; and 76,988 nonimmigrant visas in the L-1 category.[18] From those statistics, this Court may reasonable infer that the number of employers of those 362,734 employees or potential employees (or, for the time period between June 23, 2020, and December 31, 2020, those 150,000+ employees and potential employees) far exceeds 40. *See Coleman*, 306 F.R.D. at 76.

Exchange Visitor Program Subclass—Finally, the Exchange Visitor Program Subclass includes all State-Department-designated sponsors of J-1 Exchange Visitor Programs for interns, trainees, au pairs, camp counselors, and summer work travel participants. The State Department's Exchange Visitor Program website, https://j1visa.state.gov/sponsors/, shows that the following numbers of designated sponsors in each category:[19]

Intern:	271 designated sponsors
Trainee:	86 designated sponsors
Au Pair:	15 designated sponsors
Camp Counselor:	23 designated sponsors
Summer Work Travel:	44 designated sponsors

Thus, according to State Department records, the Exchange Visitor Program Subclass has 439 members—and again, independently satisfies Rule 23's numerosity requirement.

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[17] *See* Annual Report of the Visa Office, tbl. I ("Immigrant and Nonimmigrant Visas Issued at Foreign Service Posts – Fiscal Years 2015–2019"), *available at* https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2019AnnualReport/FY19AnnualReport-%20TableI.pdf.

[18] Those statistics are consistent with, and in some cases higher than, statistics from the four years prior to 2019. *See id.*

[19] U.S. Dep't of State, Exchange Visitor Program, https://j1visa.state.gov/sponsors/sponsor-by-country/?program=all (last visited July 31, 2020).

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 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, including each of their proposed subclasses, 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 was issued in a manner that violates separation-of-powers principles of the U.S. Constitution;

(2) whether the Proclamation and Defendants' actions taken to enforce and implement the Proclamation violate the APA;

(3) whether the Proclamation and Defendants' actions taken to enforce and implement the Proclamation violate or otherwise exceed Defendants' authority under the INA; and

(4) whether the Proclamation and Defendants' actions taken to enforce and implement the Proclamation violate the Fifth Amendment.

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; lawful permanent residents; diversity lottery winners; or employers or program sponsors who sponsor or have petitioned for the issuance of an immigrant or nonimmigrant visa for a foreign national. All of the visa applicants that class members sponsor or have petitioned for are otherwise eligible for an immigrant or nonimmigrant visa, are subject to the June Proclamation, and will neither be provided an interview, nor be issued a visa unless they 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. In other words, the Proclamation supersedes the immigration laws for those with approved visa petitions for a relative or worker who cannot receive a visa abroad and therefore enter into the United States. Accordingly, Plaintiffs and proposed class members all "'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 contravention of separation-of-powers principles of the U.S Constitution, exceeded their authority under the INA or any other law, violated the APA, 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 whether they seek an immigrant or nonimmigrant visa, whether they are an individual or an organization, or whether they are the petitioner, sponsor, or employer of the individual visa applicant who may be denied a visa—that does not defeat the fact that all class members have been subjected to an unlawful government policy or practice that affects their current status with respect to 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.").[20]

3. Plaintiffs' claims are typical of the claims of class and subclass 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

[20] Although there may be factual variations between Plaintiffs' proposed subclasses, each subclass independently presents common issues of fact. *See Pigford v. Glickman*, 182 F.R.D. 341, 349 (D.D.C. 1998). Rule 23's commonality requirement is therefore satisfied. *See id.*

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*, 334 F.R.D. at 461 (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).

Plaintiffs' claims are typical of the claims of every member of the class they seek to represent. By its terms, the June Proclamation will continue to be imposed equally and with respect to every member of the proposed class. Plaintiffs all claim that the President's issuance of the June Proclamation violates constitutional separation-of-powers principles; that the June Proclamation and its implementation violate several provisions of the INA, and that the Defendant agencies' implementation of the Proclamation violate the APA and the Fifth Amendment. None of those claims turns on any factual circumstance specific to any individual Plaintiff; rather, they

are typical of the claims of every proposed class member, and every proposed subclass member, as a whole.

Plaintiffs' individual underlying circumstances may differ in terms of the type of visa they seek, whether they are an individual or an organization, and their status with respect to the individual visa applicant. But their claims remain typical to those of the proposed class members. "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").

The factual variations which resulted in Plaintiffs' five proposed subclasses independently satisfy Rule 23's typicality requirement. The proposed representatives of Plaintiffs' Diversity Visa Subclass, and every subclass member, have the same claim arising out of their selection for the FY 2020 Diversity Visa Lottery and against the operation of the Proclamations to prevent them from receiving their immigrant visa. The proposed representatives of the Immediate Relative Parent and Preference Relative Subclasses, and every subclass member, have the same claim arising out of their approved petition for an immigrant visa that, because it is now "current" or will become "current" while the Proclamation is in effect, would allow them immediately to reunify with family. The proposed representatives of the Temporary Worker Subclass, and every subclass member, employ the beneficiary of an approved petition for a temporary nonimmigrant visa and have the same claim against the operation of the Proclamation to prevent the beneficiary from

entering the United States as a temporary worker. And every member of the Exchange Visitor Program Subclass sponsors a J-1 exchange visitor to whom the Proclamation applies and has the same claim against the operation of the Proclamation to preclude that visitor from participating in the sponsored program. Plaintiffs' claims with respect to each proposed subclass therefore are typical of the claims of the subclass members.

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 themselves, their families, their family members, or their organizations. 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. All of the subclass definitions that Plaintiffs propose are 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.[21] 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 June Proclamation, Defendants have acted, have threatened to act, and will act on grounds that apply to the class as a whole. A single injunction prohibiting the application and implementation of the Proclamation to the class members or their sponsored beneficiaries protect both Plaintiffs and absent class members

[21] 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).

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)).

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 June Proclamation with respect to all members of the proposed class, including each of the five subclasses. Such an injunction would protect all class members from the harms the Proclamation and its implementation inflict on them. The proposed class therefore satisfies the requirements of Rule 23(b)(1)(A).

IV. 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 31st day of July, 2020.

INNOVATION LAW LAB

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DOMINGO ARREGUIN GOMEZ, et al., 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 subclasses under Federal Rules of Civil Procedure 23(b)(2) and 23(b)(1)(A):

(a) **Immediate Relative Parent Subclass—**Individual U.S. citizens with an approved immigrant visa petition for an immediate relative parent and whose sponsored relative is subject to Presidential Proclamation 10052.

(b) **Preference Relative Subclass—**Individual U.S. citizens and lawful permanent residents with an approved immigrant visa petition for a relative in a preference immigrant category, including a spouse, parent, child, or sibling, and any qualifying derivative relatives, where the immigrant visa is "current" or will become "current," meaning visas are authorized for issuance abroad, while Presidential Proclamation 10052 is in effect, and whose sponsored preference relative is subject to Proclamation 10052.

(c) **Diversity Visa Subclass—**Individuals who have been selected to receive an immigrant visa through the U.S. Department of State's FY2020 Diversity Visa Lottery and who had not received their immigrant visa on or before April 23, 2020, when the Presidential Proclamation 10014, later extended by Presidential Proclamation 10052, took effect.

(d) **Temporary Worker Subclass—**United States employers who have an approved nonimmigrant visa petition for an employee or potential employee in the H-1B, H-2B, or L-1 nonimmigrant visa categories; where the employee or potential employee's petition for nonimmigrant status has been approved for temporary employment in the United States, and where the employee or potential employee is subject to Proclamation 10052.

(e) **Exchange Visitor Program Subclass—**Entities designated by the U.S. Department of State as an Exchange Visitor Program sponsor for any category of J-1 exchange visitors included in Proclamation 10052.

The Court appoints the following Plaintiffs as class representatives for their respective subclass, as set forth below:

Immediate Relative Parent Subclass: Daniel Chibundu Nwankwo

Preference Relative Subclass: Nazif Alam, Carmen Ligia Pimentel, Juan Carlos Rosario Lebron, Claudio Alejandro Sarniguet Jiménez, Angela Sinon, Mohamed Saleh, Loida Phelps, and Nancy Abarca

Diversity Visa Subclass: Fatma Bushati, Jodi Lynn Karpes, Shyam Sundar Koirala, Aja Tamamu Mariama Kinteh, Iwundu épouse Kouadio Ijeoma Golden, and Aya Nakamura

Temporary Worker Subclass: 3Q Digital, PowerTrunk Inc., Shipco Transport Inc., and Superior Scape Inc.

Exchange Visitor Program Subclass: ASSE International, Inc. and EurAuPair International

Under Rule 23(g), the Court appoints Karen C. Tumlin and Esther H. Sung of Justice Action Center; Stephen Manning, Nadia Dahab, Tess Hellgren, and Jordan Cunnings 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.

Dated:_____

_____
HON. AMIT P. MEHTA
UNITED STATES DISTRICT JUDGE