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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN DOE #1; JUAN RAMON MORALES; JANE DOE #2; JANE DOE #3; IRIS ANGELINA CASTRO; BLAKE DOE; BRENDA VILLARRUEL; GABINO SORIANO CASTELLANOS; and LATINO NETWORK, Plaintiffs, v. DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; CHAD F. WOLF, in his official capacity as Acting Secretary of the Department of Homeland Security; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX M. AZAR II, in his official capacity as Secretary of the Department of Health and Human Services; U.S. DEPARTMENT OF STATE; MICHAEL POMPEO, in his official capacity as Secretary of State; and UNITED STATES OF AMERICA, Defendants.	CASE NO. 3:19-cv-01743-SI **DEFENDANTS' OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER**

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I. INTRODUCTION

The Court should deny Plaintiffs' motion to partially enjoin a new Presidential Proclamation that has nothing to do with this lawsuit.

Plaintiffs do not allege that the Proclamation is unlawful, let alone identify any Plaintiff in this case who allegedly has been injured by it, and they assert no meaningful connection between this new Proclamation and their lawsuit. As this Court is aware, in this case Plaintiffs challenge the enforcement and implementation of Presidential Proclamation 9945, Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System in Order to Protect the Availability of Healthcare Benefits for Americans ("Healthcare Proclamation"), 84 Fed. Reg. 53,991. But in their TRO motion, Plaintiffs ask for emergency relief based on a speculative injury that might be caused by the timing of visa adjudication due to the COVID-19 emergency and an entirely different Proclamation—Presidential Proclamation 10014, Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak ("COVID-19 Labor Proclamation"), 85 Fed. Reg. 23,441 (Ex. 1). The Court should reject Plaintiffs' extraordinary and flawed request for emergency relief for several independently sufficient reasons.

First, this Court cannot grant the relief that Plaintiffs request because that relief falls well outside the scope of this case. Injunctive relief is permissible only where there is "a relationship between the injury claimed in the motion for injunctive relief and the conduct asserted in the underlying complaint." *Pac. Radiation Oncology, LLC v. Queen's Medical Ctr.*, 810 F.3d 631, 636 (9th Cir. 2015). Plaintiffs' operative complaint challenges only the Healthcare Proclamation; this TRO motion addresses a different Proclamation that is entirely unrelated to this litigation. And Plaintiffs do not even dispute the legality of this new Proclamation, and instead assert that it may

have an unspecified impact on immigrant visa applicants retaining or "aging out" of their preference categories. The operative complaint makes no allegations related to COVID-19, delays in processing, or "aging out" of visa categories. This Court cannot grant injunctive relief based on claims that Plaintiffs did not raise in their complaint.

Second, Plaintiffs have no basis for invoking the All Writs Act, which is the only statute under which they seek relief in the present motion. Mot. 2-3. That Act allows courts to issue "all writs necessary or appropriate in aid of their respective jurisdictions," 28 U.S.C. § 1651(a), but it "does not erase *separate* legal requirements for a given type of claim," *Makekau v. Hawaii*, 943 F.3d 1200, 1204 (9th Cir. 2019). The All Writs Act does not permit this Court to halt a Proclamation that is unrelated to the Healthcare Proclamation challenged in the complaint, because unrelated Executive actions do not affect the Court's jurisdiction over the claims pleaded in the complaint. Plaintiffs therefore have failed to establish the jurisdictional prerequisites for seeking relief under the All Writs Act.

Third, even if this Court were to examine the operation of the new Proclamation in spite of it not being the subject of this lawsuit, Plaintiffs' assertion of injury is entirely speculative. Plaintiffs contend that the COVID-19 Labor Proclamation has prevented "emergency and urgent consular processing services" from going forward. Mot. 2, 13. This speculative assertion is incorrect. The COVID-19 Labor Proclamation does not alter the State Department's emergency processing policy—emergency processing continues at this time, and individuals who may age out of the F2A visa-preference category are people for whom emergency processing may be warranted. *See* Ex. 2, Brianne Marwaha Decl., ¶ 2. The new Proclamation has not changed that, and instead, the State Department website and attached State Department declaration explain that processing of potential age-out cases—and consideration of whether such a person may qualify

for an exception under the new Proclamation—can occur pursuant to the emergency processing policy. *See id*. ¶¶ 3-4; U.S. Department of State–Bureau of Consular Affairs, *Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*, https://travel.state.gov/content/travel/en/News/visas-news/Proclamation-Suspending-Entry-of-Immigrants-Who-Present-Risk-to-the-US-labor-market.html (Apr. 23, 2020).

Fourth, the COVID-19 Labor Proclamation is lawful, and Plaintiffs do not argue otherwise. The Proclamation was lawfully issued pursuant to the President's broad authority under 8 U.S.C. § 1182(f) to suspend the entry of certain aliens based on his finding that their entry would be detrimental to the interests of the United States. After the President declared on March 13, 2020, that the COVID-19 outbreak in the United States constitutes a national emergency, 85 Fed. Reg. 15,337, over the next four weeks more than 22 million Americans filed for unemployment, 85 Fed. Reg. 23,441. The President determined that, "without intervention," the United States would face "a potentially protracted economic recovery with persistently high unemployment if labor supply," including from new immigrants, "outpaces labor demand." *Id*. Particularly given that this Proclamation was issued in response to the extreme economic disruption caused by a national emergency, it is consistent with *Trump v. Hawaii*, 138 S. Ct. 2392 (2018).

Finally, Plaintiffs have not alleged—let alone demonstrated with any evidence—that a single person has been or will be harmed by the COVID-19 Labor Proclamation. On the other hand, action by this Court to enjoin the Proclamation would make irreparable the harms to the national labor market that the Proclamation is addressing in light of the ongoing COVID-19 pandemic and its dramatic and unanticipated impact on employment in the United States.

II. BACKGROUND

A. This Lawsuit.

In this lawsuit, Plaintiffs challenge only the "implementation and enforcement of the Healthcare Proclamation." Mot. 4; *see* ECF No. 100, First Am. Compl. ¶¶ 227-57. This Court then certified two subclasses. *Doe v. Trump*, 2020 WL 1689727, at *17 (D. Or. Apr. 7, 2020). Only the Visa Applicant Subclass is relevant to the TRO motion, and that subclass is defined as:

> Individuals who are foreign nationals who (i) have applied for or will soon apply to the United States government for an immigrant visa; (ii) are otherwise eligible to be granted the visa; but (iii) are subject to the Proclamation and unable to demonstrate to the satisfaction of a consular officer that they "will be covered by approved health insurance" within 30 days after entry or will be able "to pay for reasonably foreseeable medical costs."

Id. That subclass was certified not to provide roving judicial authority over any governmental policies that might apply to members of the subclass, but to address the common issue that subclass raised in the class-action complaint—whether the Healthcare Proclamation is unlawful. *Id*. at *12-13. While this Court issued a universal injunction prior to certifying the subclass, the Court has yet to address any claim by the certified subclass that it is entitled to immediate injunctive relief. Plaintiffs' assertion that this Court's injunction "applies on a classwide basis," Mot. 5, is wrong.

B. The COVID-19 Pandemic and the COVID-19 Labor Proclamation.

The COVID-19 pandemic has presented serious and unique challenges for countries around the world. The United States government has taken a range of steps to respond to the pandemic and stem the spread of the virus. For example, the State Department has taken action to protect its employees and the public while maintaining mission critical services. On March 20, 2020, the State Department announced that it would "temporarily suspend routine visa services at all U.S. Embassies and Consulates," but noted that "emergency and mission critical visa services" would continue as resources allow. U.S. Department of State–Bureau of Consular Affairs, *Suspension of*

Routine Visa Services, https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html (Mar. 20, 2020). That policy remains in effect as of the date of this filing. *Id.* (accessed Apr. 27, 2020).

About a month later, on April 22, the President signed the COVID-19 Labor Proclamation. *See* Presidential Proclamation 10014, Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak, 85 Fed. Reg. 23,441 (Apr. 27, 2020). The President issued the COVID-19 Labor Proclamation in large part to address the rising unemployment rate caused by the virus and the policies that have been necessary to mitigate the spread of COVID-19 in the United States. *Id*. Unemployment claims have reached "historic levels"—between March 13, when the President declared a national emergency, and April 11, "more than 22 million Americans have filed for unemployment." *Id*.

As the President explained, administering our immigration system during the COVID-19 pandemic requires "be[ing] mindful of the impact of foreign workers on the United States labor market, particularly in an environment of high domestic unemployment and depressed demand for labor," as well as "conserv[ing] critical State Department resources so that consular officers may continue to provide services to United States citizens abroad." 85 Fed. Reg. 23,441. "[W]ithout intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand." *Id*. An excess labor supply "is particularly harmful to workers at the margin between employment and unemployment," as they are the ones "likely to bear the burden of excess labor supply disproportionately." *Id*. Recently, "these workers have been disproportionately represented by historically disadvantaged groups,

including African Americans and other minorities, those without a college degree, and the disabled." *Id.*

Once immigrant are admitted as lawful permanent residents, they are immediately eligible "to compete for almost any job," and the "vast majority of immigrant visa categories do not require employers to account for displacement of United States workers." 85 Fed. Reg. 23,441. For example, there is typically no way to direct "new residents to particular economic sectors with a demonstrated need not met by the existing labor supply" so that "already disadvantaged and unemployed Americans" would be protected "from the threat of competition for scarce jobs from new lawful permanent residents." *Id.* Although "some employment-based visas contain a labor certification requirement," that certification, issued long before the visa is issued, would not necessarily "capture the status of the labor market today." *Id.* at 23,442. Finally, "introducing additional permanent residents when our healthcare resources are limited puts strain on the finite limits of our healthcare system at a time when we need to prioritize Americans and the existing immigrant population." *Id.*

To address these complex challenges, the President issued the COVID-19 Labor Proclamation pursuant to 8 U.S.C. § 1182(f) and § 1185(a), and suspended entry into the United States, for 60 days, of intending immigrants abroad who did not already have a valid immigrant visa or travel document as of the date the Proclamation was signed, April 23, 2020. 85 Fed. Reg. 23,442, §§ 1, 2(a). The Proclamation also exempts individuals who are already in the United States, lawful permanent residents, and several categories of intending immigrants, including individuals who intend to come to the United States on visas to work as healthcare professionals, COVID-19 researchers, or other COVID-19 essential workers, and their spouses and children; any individual seeking to enter on an EB-5 immigrant investor visa; any spouse of a U.S. citizen;

anyone under age 21 who is the child of a U.S. citizen or is coming to the United States to be adopted; members of the United States Armed Forces, and their spouses and children; and nationals of Afghanistan and Iraq who are applicants for "Special Immigrant Visas" in the SI or SQ classifications, and their spouses and children. 85 Fed. Reg. 23,442, § 2(b).

The Proclamation also exempts any intending immigrant "whose entry would further important United States law enforcement objectives, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees, based on a recommendation of the Attorney General or his designee," or "whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees." *Id*.

The Proclamation expires on June 22, 2020. 85 Fed. Reg. 23,443, §§ 4, 5. No later than June 12, 2020, the Secretary of Homeland Security, upon consultation with the Secretaries of State and Labor, will make a recommendation to the President regarding whether to continue or modify the Proclamation, and then the President will decide if such action is necessary. *Id*.

The day before Plaintiffs filed this TRO motion, the State Department already had posted guidance online on the COVID-19 Labor Proclamation. *See* U.S. Department of State–Bureau of Consular Affairs, *Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*, https://travel.state.gov/content/travel/en/News/visas-news/Proclamation-Suspending-Entry-of-Immigrants-Who-Present-Risk-to-the-US-labor-market.html (Apr. 23, 2020). This guidance explains that, as with the earlier guidance suspending routine visa services, "embassies and consulates will *continue to provide emergency and mission critical visa services* for applicants who are not subject to this presidential proclamation." *Id*. (emphasis added); *see also* Official U.S. Department of State Visa Appointment Service, Mexico,

Information for visa applicants regarding novel coronavirus, https://ais.usvisa-info.com/en-mx/niv/information/announcements#565-information_for_visa_applicants_regarding_novel_coronavirus_20200424172330 (Apr. 24, 2020) ("Routine visas services have been suspended at U.S. posts worldwide, but as resources allow, embassies and consulates will continue to provide emergency and mission critical visa services for applicants who are not subject to this presidential proclamation."). And in the attached declaration, the State Department explains that the "Department[] inclu[des] in 'mission critical or emergency services' . . . those cases involving an applicant likely to age out of their visa classification by turning 21" and this policy "has not changed." Ex. 2, Brianne Marwaha Decl., ¶ 4. A consular "[P]ost may continue to schedule interviews, as resources allow, for mission critical and emergency cases where a post determines the applicant may qualify for an exception under the Presidential Proclamation." *Id*.

C. The Family-Based Immigrant Visa Process and the Child Status Protection Act.

United States citizens and lawful permanent residents (LPRs) may petition for an immigrant visa on behalf of certain categories of relatives so that those relatives may immigrate to the United States and become permanent residents themselves. *See* 8 U.S.C. §§ 1153(a), 1154(a)(1). To do so, the petitioning U.S. citizen or LPR files a Form I-130, Petition for Alien Relative, with United States Citizenship and Immigration Services (USCIS). On this form, the petitioning relative must establish that she is a U.S. citizen or LPR and that she has a qualifying relationship with the beneficiary. 8 C.F.R. § 204.1(a). Once the agency satisfies itself that the petitioner has met her burden, USCIS approves the I-130 petition. *Scialabba v. Cuellar de Osorio*, 573 U.S. 41, 46-48 (2014) (citing 8 U.S.C. § 1154(b)).

An approved petition does not, however, necessarily mean that the beneficiary may immediately apply for an immigrant visa. Instead, the approved petition is given a priority date and classified in the appropriate category depending on the immigration status of the petitioning relative and the petitioning relative's relationship with the beneficiary. Immigrant visas are always available for "immediate relatives"—beneficiaries who are the spouses, parents, and unmarried children under the age of 21 of U.S. citizens. 8 U.S.C. § 1151(b)(2)(A)(i); *Cuellar De Osorio*, 573 U.S. at 46. All other family relationships are classified in "preference" categories as follows:

Category	**Definition**	**Citation**
F1	unmarried, adult (21 or over) sons and daughters of U.S. citizens	8 U.S.C. § 1153(a)(1)
F2A	spouses and unmarried, minor (under 21) children of LPRs	8 U.S.C. § 1153(a)(2)(A)
F2B	unmarried, adult (21 or over) sons and daughters of LPRs	8 U.S.C. § 1153(a)(2)(B)
F3	married sons and daughters of U.S. citizens	8 U.S.C. § 1153(a)(3)
F4	brothers and sisters of U.S. citizens	8 U.S.C. § 1153(a)(4)

For these preference categories, Congress imposes annual limits on the number of available visas. 8 U.S.C. §§ 1151(c)(1), 1152, 1153(a)(1)-(4). Demand for family-preference category visas frequently exceeds the congressionally established number of available visas. *Cuellar de Osorio*, 573 U.S. at 48. The system is "first-come, first-served" within each preference category, meaning that an immigrant visa number becomes available to a beneficiary based on the priority date of her approved I-130 petition. 8 U.S.C. § 1153(e)(1); *Cuellar de Osorio*, 573 U.S. at 48; 8 C.F.R. § 204.1(b); 22 C.F.R. § 42.53(a). The amount of time the beneficiary must wait depends on supply and demand within a given category, and some beneficiaries may wait years before a visa in a given preference category becomes available. *Cuellar de Osorio*, 573 U.S. at 50. The Department of State publishes a "Visa Bulletin" every month indicating the priority dates that are current within each preference category. *See* 8 C.F.R. § 245.1(g)(1); 22 C.F.R. § 42.51(b).

When the beneficiary is abroad, as members of the Visa Applicant Subclass are, USCIS sends the approved petition to the National Visa Center (NVC) of the Department of State for pre-processing. 8 U.S.C. § 1202; 8 C.F.R. §§ 204.1(a), 204.2(d)(3)(i); *see also* https://travel.state.gov/content/travel/en/us-visas/immigrate/national-visa-center.html. When the visa becomes current or is about to become current, the NVC notifies the beneficiary, who may then begin the application for an immigrant visa. The NVC then schedules the beneficiary for a visa interview at the appropriate United States Embassy or Consulate. *See* 8 U.S.C. § 1202(a), (e); 22 C.F.R. § 42.62.

Under this legal regime, a beneficiary will not necessarily remain in the same visa-preference category during the pendency of her petition. For example, while waiting for a visa to become available in a family-preference category, a beneficiary who initially qualified as a "child" may have turned 21 and "aged-out" into a different family-preference category. *See Cuellar de Osorio*, 573 U.S. at 45. In 2002, Congress passed the Child Status Protection Act (CSPA), *see* Pub. L. No. 107-208, to protect certain beneficiaries who were minors when their petitions were filed but risk "aging out" due to administrative processing delays (*i.e.*, the time it takes USCIS to adjudicate the petition).

Different provisions of the CSPA apply to different categories of intending immigrants. Here, the relevant CSPA provision is at 8 U.S.C. § 1153(h), captioned "Rules for determining whether certain aliens are children." Section 1153(h) "contains three interlinked paragraphs that mitigate the 'aging out' problem for" "the offspring of LPRs and aliens who initially qualified as either principal beneficiaries of F2A petitions or derivative beneficiaries of any kind of family preference petition." *Cuellar de Osorio*, 573 U.S. at 51. To determine whether a beneficiary is a "child" under age 21, age is calculated by reducing "the age of the alien on the date on which an

immigrant visa number becomes available for such alien" by "the number of days in the period during which the applicable [immigrant] petition was pending [adjudication with USCIS]." 8 U.S.C. § 1153(h)(1). Section 1153(h)(1) also requires that the beneficiary seek to acquire LPR status "within one year of such [visa] availability" in order to benefit from the "statutory age" calculation. *Id.* Thus, section 1153(h)(1) provides the "CSPA age" for certain purposes that may differ from an alien's actual, biological age. In short, these provisions "prevent an alien from 'aging out' because of—but only because of—bureaucratic delays: the time Government officials spend reviewing (or getting around to reviewing) paperwork at . . . the front and back ends of the immigration process." *Cuellar de Osorio*, 573 U.S. at 53. Notably, if a beneficiary's CSPA age is under 21 and she has sought to acquire an immigrant visa by submitting an online application or paying their immigrant visa applications fees—steps taken prior to appearing for an in-person interview or even completing the application—then the beneficiary will maintain her CSPA age, so long as the beneficiary does not marry and the petitioner maintains her immigration status. 9 Foreign Affairs Manual (FAM) 502.1-1(D)(6).

D. Plaintiffs' TRO Motion.

Plaintiffs filed this TRO motion on Saturday, April 25, purportedly on behalf of "certain underage members of the Visa Applicant Subclass." Mot. 2. Although Plaintiffs' TRO motion does not specify any particular group in that class, the proposed order that Defendants received today clarifies that Plaintiffs seek relief on behalf of minor children in the F2A visa-preference category. Exclusively invoking the All Writs Act, Plaintiffs insist that an immediate injunction of the COVID-19 Labor Proclamation is necessary "to the extent that the Proclamation prevents" these hypothetical and anonymous subclass members "from accessing currently available emergency and urgent consular processing services to prevent their aging out of their place in the visa queue."

Mot. 2. Plaintiffs also assert that such an injunction is "necessary to prevent the frustration of the Court's earlier orders in this case." Mot. 3. As noted above, Plaintiffs' operative complaint does not raise any claims related to COVID-19, let alone the COVID-19 Labor Proclamation, or "aging out" of a "place in the visa queue." *See generally* ECF No. 100, First Am. Compl.

III. LEGAL STANDARD

In deciding whether to grant a TRO, courts generally look to substantially the same factors that apply to a preliminary injunction. *See Stuhlbarg Int'l Sales Co. v. John Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008). A court should enter a preliminary injunction only "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims; (2) that it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that the balance of equities tips in its favor; and (4) that the proposed injunction is in the public interest. *Id.* at 20.

The All Writs Act, 28 U.S.C. § 1651(a), does not absolve a party seeking a TRO from satisfying the factors for preliminary relief. *See Wis. Right to Life, Inc. v. Fed. Election Comm'n*, 542 U.S. 1305, 1306 (2004) (Rehnquist, C.J., in chambers) (party seeking an injunction under the All Writs Act still must establish that "the legal rights at issue are indisputably clear"); *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1101 n.13 (11th Cir. 2004) (where party seeks relief not related to preserving a court's jurisdiction, a "district court may not evade the traditional requirements of an injunction by purporting to issue what is, in effect, a preliminary injunction under the All Writs Act"). And Article III demands that a remedy "be limited to the inadequacy that produced the injury in fact that the plaintiff has established," *Gill v. Whitford*, 138 S. Ct. 1916,

1931 (2018) (citation omitted); *see Log Cabin Republicans v. United States*, 658 F.3d 1162, 1168 (9th Cir. 2011) (per curiam), and principles of equity similarly require that injunctions be no broader than "necessary to provide complete relief to the plaintiffs," *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 765 (1994).

IV. ARGUMENT

A. This Court cannot grant the requested injunctive relief because it is not related to the claims raised in the complaint.

Plaintiffs' TRO request should be denied because it rests on claims that Plaintiffs never made in their operative complaint, and that accordingly fall outside the scope of this case.

For injunctive relief to be proper, "there must be a relationship between the injury claimed in the motion for injunctive relief and the *conduct asserted in the underlying complaint*." *Pac. Radiation Oncology, LLC*, 810 F.3d at 636 (emphasis added). If a court never rules that the "conduct asserted in the underlying complaint" is likely to be unlawful, then there is no basis to issue an injunction of conduct not challenged in the complaint. *See De Beers Consol. Mines v. United States*, 325 U.S. 212, 219 (1945) (the issuance of preliminary relief "presupposes or assumes . . . that a decree may be entered after a trial on the *merits* enjoining and restraining the defendants from certain future conduct") (emphasis added). Indeed, such a ruling would be an abuse of discretion. *See Pac. Radiation Oncology, LLC*, 810 F.3d at 637 (movant "could not prove the likelihood of success requirement of the preliminary injunction analysis because the [] violations alleged in the motion were not contained within the actual complaint"); *accord Colvin v. Caruso*, 605 F.3d 282, 300 (6th Cir. 2010) (plaintiff "had no grounds to seek an injunction pertaining to allegedly impermissible conduct not mentioned in his original complaint").

Plaintiffs' TRO motion flunks the requirement for "a relationship between the injury claimed in the motion for injunctive relief and the conduct asserted in the underlying complaint."

Pac. Radiation Oncology, LLC, 810 F.3d at 636. As Plaintiffs acknowledge, their complaint challenges only the "implementation and enforcement of the Healthcare Proclamation." Mot. 4; *see* ECF No. 100, First Am. Compl. ¶¶ 227-57. And this Court already has issued—on a preliminary basis—the relief ultimately sought by Plaintiffs—an injunction of all implementation and enforcement of the Healthcare Proclamation. *See* ECF No. 95, Preliminary Injunction, at 48. Fatal to its success, the TRO motion does not seek any relief with respect to the Healthcare Proclamation.

Plaintiffs purport to bring this TRO motion on behalf of some hypothetical, anonymous members of their Visa Applicant Subclass. But this Court certified that subclass based on the allegations and claims contained in the complaint, which relates solely to the Healthcare Proclamation. *See Doe*, 2020 WL 1689727, at *7-17. Plaintiffs' counsel do not represent class members on matters beyond the common challenge for which the class was certified. Plaintiffs' counsel do not, in fact, represent *anyone* with respect to a challenge to the COVID-19 Labor Proclamation—there is no plaintiff in this case raising such a claim. Among other requirements, a putative class seeking certification must establish commonality, Fed. R. Civ. P. 23(a)(2), which involves "show[ing] that the putative class members suffered the 'same injury,' *i.e.*, that their claims depend on a 'common contention.'" *Doe*, 2020 WL 1689727, at *12 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)); *see id.* at *13 (finding "many alleged common issues of law and fact" relating to Plaintiffs' challenge to the Healthcare Proclamation). Although Plaintiffs' complaint contains no allegations or requests for relief based on the COVID-19 pandemic or "aging out" of a visa queue, Plaintiffs' TRO motion asks this Court to partially enjoin the COVID-19 Labor Proclamation to prevent hypothetical "age-outs." Mot. 2-3. This requested

relief does not relate to any of the common claims pleaded in their operative complaint that gave rise to class treatment. *See* ECF No. 100, First Am. Compl. ¶¶ 227-57.

A class action does not enable Plaintiffs to complain generally about policies that might theoretically impact some subset of the class, particularly when Plaintiffs make no effort to demonstrate that class certification would be warranted as to those claims. *See Halliburton Co. v. Erica P. John Fund, Inc.*, 134 S. Ct. 2398, 2412 (2014) ("Plaintiffs wishing to proceed through a class action must actually *prove*—not simply plead—that their proposed class satisfies each requirement of Rule 23."). And the putative subclass for whom Plaintiffs now seek relief could not be certified because it would be impossible to identify the relevant common questions presented, just like this Court's certification order made no mention of issues like COVID-19, age-outs, or visa processing delays in considering "commonality." Nor would any representative be adequate to present these issues that none has alleged in the complaint. Fed. R. Civ. P. 23(a)(4). Defendants also suspect the obligations of class counsel—appointed as adequate counsel based on the claims in the complaint, *Doe*, 2020 WL 1689727, at *15—would be impossible to satisfy if they actually represented the class with respect to *all issues* that might stand in the way of their obtaining an immigrant visa, rather than just with respect to the common issue for which this Court certified the class and appointed them class counsel.

In their TRO motion, Plaintiffs attempt to present their underlying claims as broadly "seek[ing] to preserve class members' access to a fair adjudication process." Mot. 15. That abstract and generalized description of their claims just seeks to paper over the lack of any meaningful connection between the TRO request and their actual claims. The Court should reject Plaintiffs' effort. Indeed, Plaintiffs now describe this Court's injunction as "preserv[ing] class members' access to the immigrant visa system and their status in the immigrant visa queue." Mot. 17. But

the injunction does nothing of the sort. Although it applies universally, the injunction only prevents Defendants from implementing or enforcing the Healthcare Proclamation; it does not require some general "access" to a "visa system," nor does it require preserving someone's place in a "visa queue." No class was certified to address those issues, nor does the operative complaint encompass them.

Any class-based challenge to the COVID-19 Labor Proclamation would require, at a minimum, a new complaint with a plaintiff suffering a cognizable legal injury, a class-certification process based on the class allegations in that new complaint, and a request for injunctive relief based on the injury alleged in the complaint. Plaintiffs cannot bring what should be a new class action and a separate lawsuit here by seeking relief that is unrelated to the claims in this case. *See Pac. Radiation Oncology, LLC*, 810 F.3d at 636; *Las Americas Immigrant Advocacy Ctr. v. Trump*, No. 3:19-CV-02051-IM, 2020 WL 1671584, at *2 (D. Or. Apr. 2, 2020) (holding that relief plaintiffs sought in TRO motion was "too attenuated from the claims alleged in the Complaint to sustain Plaintiffs' burden under the All Writs Act"). Because Plaintiffs seek an order partially enjoining the COVID-19 Labor Proclamation, which is not addressed in their complaint, the Court should deny Plaintiffs' TRO motion on this ground alone.

B. The All Writs Act does not provide a basis for the relief Plaintiffs seek, which is unrelated to this Court's adjudication of the claims they have brought.

The All Writs Act is not a source of authority that allows courts to disregard jurisdictional limits. The Act has no relevance here.

Plaintiffs ask this Court to grant a TRO under the All Writs Act "restraining Defendants from enforcing the Presidential Proclamation against the Visa Applicant Subclass, to the extent" it would prevent members of that subclass from seeking "emergency and urgent consular processing of their immigrant visa to preserve their place in the visa processing queue and their

ability to receive visas under their current preference category." Mot. 13. But, as just discussed, the injunction that Plaintiffs seek is not related to any of the claims in their complaint, and this Court's jurisdiction is therefore not aided by enjoining an unrelated policy that might pose an independent bar to obtaining a visa. Because the relief that Plaintiffs seek is unrelated to securing this Court's jurisdiction over their complaint, the Court cannot grant them relief under the All Writs Act.

The All Writs Act allows courts to issue "all writs necessary or appropriate in aid of their respective jurisdictions." 28 U.S.C. § 1651(a). It "authorizes a federal court 'to issue'" only "'such commands . . . as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained.'" *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002) (quoting *United States v. New York Telephone Co.*, 434 U.S. 159, 172 (1977)). It "does not erase *separate* legal requirements for a given type of claim." *Makekau v. Hawaii*, 943 F.3d 1200, 1204 (9th Cir. 2019). The All Writs Act thus "is only properly exercised where . . . the legal rights at issue are indisputably clear." *Wis. Right to Life*, 542 U.S. at 1306 (Rehnquist, C.J., in chambers) (quotation omitted); *see Hobby Lobby v. Sebelius*, 568 U.S. 1401, 1403 (2012) (Sotomayor, J., in chambers) (same). The "fact that a party may be better able to effectuate its rights or duties if a writ is issued never has been, and under the language of the All Writs Act cannot be, a sufficient basis for issuance of the writ." *Williams v. McKeithen*, 939 F.2d 1100, 1105 (5th Cir. 1991) (internal punctuation and citation omitted); *see also id.* at 1105 n.13 ("[s]peculation . . . cannot form the legal basis of a remedial order"). And while the All Writs Act empowers courts "to issu[e] process 'in aid of' its existing" jurisdiction, it does not "enlarge that jurisdiction." *Clinton v. Goldsmith*, 526 U.S. 529, 534-35 (1999) (citation omitted); *see also Henson*, 537 U.S. at 33 (2002) ("[T]he All Writs Act does not confer jurisdiction on the

federal courts."). Under these well-settled principles, the All Writs Act does not provide a basis for the relief that Plaintiffs seeks.

Plaintiffs resist this conclusion by citing the Ninth Circuit's stay-stage decision in *Al Otro Lado v. Wolf*, 952 F.3d 999 (9th Cir. 2020). But the relief Plaintiffs seek here goes far beyond what the Ninth Circuit said—erroneously, Defendants believe—in *Al Otro Lado*. What Plaintiffs ask for here is boundless and untethered to the law: that this Court have free reign—without looking at the scope of the complaint and without applying any of the injunctive factors—to enjoin any policy or practice that might make it harder for any class member to obtain a visa even where those policies have no connection to the Healthcare Proclamation that is the subject of this suit and the basis of the class. Mot. 14-16. Indeed, as Plaintiffs acknowledge, the Ninth Circuit stay panel relied on an interaction between a new rule limiting asylum and an ongoing metering policy—the subject of the lawsuit there—such that plaintiffs were subject to the new rule only *because of* the challenged metering; thus, applying the new rule, the panel believed, "would interfere with the court's jurisdiction" because it would "extinguish class members' [ ] claims." *Al Otro Lado*, 952 F.3d at 1006 n.6. Here, there is no link between the COVID-19 Labor Proclamation and the Healthcare Proclamation. The Healthcare Proclamation—which never went into effect because of this Court's injunction—did not result in class members being subject to the COVID-19 Labor Proclamation. Instead, the new Proclamation is simply an additional limitation on obtaining an immigrant visa that is now in effect. Moreover, in *Al Otro Lado* it was critical that Plaintiffs had alleged "unlawful, widespread pattern and practice of denying asylum seekers access to the asylum process" which provided a sufficient "relationship between the injury claimed in the motion for injunctive relief and the conduct asserted in the underlying complaint." *Id*. (quoting *Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 636 (9th Cir. 2015)). Here, as already

explained, there is *no* relationship between the complaint and the COVID-19 Labor Proclamation. The All Writs Act is not a vehicle that can be used to restrain policies that might, entirely independent of the policy challenged in this case, prevent plaintiffs from obtaining a visa. *See id*.

Again, the dispositive problem with Plaintiff's reliance on the All Writs Act is that the relief Plaintiffs seek here has no bearing on the Court's jurisdiction over the claims in their suit. Their complaint exclusively raises challenges to the Healthcare Proclamation and seeks declaratory and injunctive relief holding that Proclamation unlawful and preventing the government from implementing it. ECF No. 100, First Am. Compl. ¶¶ 227-57, Prayer for Relief. The Parties dispute the Court's jurisdiction over those claims and the relief Plaintiffs seek. But the relief Plaintiffs seek in their TRO motion will have no impact on that dispute. The Court could grant in full or, as it should, deny in full Plaintiffs' TRO motion without affecting its jurisdiction over Plaintiffs' claims in this suit in any respect. That legal reality forecloses the Court's ability to grant Plaintiffs the relief they seek in their TRO motion under the All Writs Act. A "court may not rely on the [All Writs] Act to enjoin conduct that is 'not shown to be detrimental to the court's jurisdiction.'" *Peters v. Brants Grocery*, 990 F. Supp. 1337, 1342 (M.D. Ala. 1998) (quoting *ITT Community Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978)).

Plaintiffs do not make any meaningful argument to the contrary. They argue only that, if the COVID-19 Labor Proclamation makes them "entirely unable to access consular processing and visa adjudication services"—something they have not shown the Labor Proclamation actually does—"their current visa eligibility will be extinguished." Mot. 15. But they provide no explanation for why this is so, and even were it true it would not justify relief under the All Writs Act. They seek relief for "the children of lawful permanent residents" who they argue "can lose their preference classification through the passage of time." Mot. 10. But as Plaintiffs

acknowledge, the CSPA, 8 U.S.C. § 1153(h), provides protections against aging out of a visa category in certain circumstances, Mot. 11 n.18, and this includes protections for "children of an alien lawfully admitted for permanent residence," § 1153(a)(2)(A), (h).

Plaintiffs argue that § 1153(h) does not completely "solve" "the 'aging out' problem." Mot. 11 n.18. But this is not a case about the CSPA, and even if it were, nothing in the COVID-19 Labor Proclamation affects the operation of the CSPA. The relevant date for purposes of the age-out protections in the CSPA is "the age of the alien on the date on which an immigrant visa number becomes available for such alien." 8 U.S.C. § 1153(h)(1)(A). The date "an immigrant visa number becomes available" is not based in any way on the date the alien is interviewed by the consulate or has his visa adjudicated. *See* 8 C.F.R. § 245.1(g)(1); 22 C.F.R. § 42.51(b). Applicants eligible for the CSPA age-out protection may continue to seek to acquire an immigrant visa by paying their application fees or submitted the immigrant visa application form, *see* 9 FAM 502.1-1(D)(6), even while the COVID-19 Labor Proclamation remains in effect. Thus, even if the COVID-19 Labor Proclamation prevented an alien from "access[ing] consular processing and visa adjudication services" or "seek[ing] emergency consular interviews," Mot. 2, 11, 15—which it does not—it would have no effect on the operation of the CSPA.[1]

[1] Plaintiffs also have not shown that the COVID-19 Labor Proclamation has any effect on consular-processing or visa-adjudication services. As they acknowledge, the State Department suspended certain operations at U.S. embassies and consulates in response to the COVID-19 outbreak over a month *before* the COVID-19 Labor Proclamation was issued. The Proclamation says nothing about suspending such services. In fact, it anticipates that consular processing will continue because it sets out certain categories of visas to which "this proclamation shall not apply," 85 Fed. Reg. 23,442, § 2(b), and contemplates that "[t]he consular officer shall determine" whether a particular visa falls within one of these categories and can be processed even while the Proclamation is in effect, *id.* § 3. *See also* Ex. 2, Brianne Marwaha Decl., ¶¶ 3-4.

Plaintiffs rely heavily on *Scialabba v. Cuellar de Osorio*, 573 U.S. 41, 45 (2014), which addressed the proper treatment of beneficiaries who aged-out were no longer eligible for the visa classification for which they were applying, but nothing in that case suggests that the CSPA's age-out protection depends on the timing of the consular interview. To the extent that an alien is at risk of aging out due to a delay in consular processing, Plaintiffs have not shown that there is any overlap between those aliens and the aliens that are part of the class in this case. To the contrary, the State Department continues to provide for "mission critical or emergency services," including interviews of aliens at risk of aging out, during the pandemic and after the issuance of the COVID-19 Labor Proclamation. *See* Ex. 2, Brianne Marwaha Decl., ¶¶ 3-4. Plaintiffs thus have not shown that the COVID-19 Labor Proclamation has any effect on their visa applications, let alone on the claims in the complaint or this Court's prior orders, and an All Writs Act injunction is improper where Plaintiffs give the Court no basis to "explain how its jurisdiction was, or could be, threatened by the conduct [they ask the Court to] enjoin[ ]." *In re Bayshore Ford Trucks Sales, Inc.*, 471 F.3d 1233, 1257 (11th Cir. 2006).

Plaintiffs are also wrong that they "need not show irreparable harm" or satisfy the other factors for obtaining emergency injunctive relief. Mot. 3 n.2, 13 n.20. The All Writs Act "serves to protect courts and not parties." *In re Convertible Rowing Exerciser Patent Litig.*, 616 F. Supp. 1134, 1139 (D. Del. 1985). It is a tool for preserving jurisdiction over the claims, not to remedy wholly unrelated alleged wrongs. *See F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966); *California v. M&P Investments*, 46 F. App'x 876, 879 (9th Cir. 2002). When a party seeks relief that is not related to preserving a court's jurisdiction, as Plaintiffs do here, a "district court may not evade the traditional requirements of an injunction by purporting to issue what is, in effect, a preliminary injunction under the All Writs Act." *Klay*, 376 F.3d at 1101 n.13. And, even if there

were some relationship between the relief that Plaintiffs now seek and the claims in the complaint, they still could not evade the traditional injunction factors required by Rule 65. *See Wis. Right to Life, Inc.*, 542 U.S. at 1306 (Rehnquist, C.J., in chambers) (even under the All Writs Act party seeking an injunction must still establish that "the legal rights at issue are indisputably clear"); *Hobby Lobby*, 568 U.S. at 1403 (Sotomayor, J., in chambers) (All Writs Act "power is to be used sparingly," and party seeking such relief must "satisfy the demanding standard for the extraordinary relief they seek," including showing an "entitlement to relief" that is "indisputably clear"); *In re Jimmy John's Overtime Litig.*, 877 F.3d 756, 769-70 (7th Cir. 2017) (an All Writs Act injunction needs to comport with Rule 65 factors); *Fla. Med. Ass'n, Inc. v. U.S. Dep't of Health*, 601 F.2d 199, 202 (5th Cir. 1979); *Ben David v. Travisono*, 495 F.2d 562, 563 (1st Cir. 1974). Plaintiffs' TRO motion does not identify any harm caused to class members by the COVID-19 Labor Proclamation, let alone irreparable harm sufficient to warrant a TRO, and thus Plaintiffs have not identified an "indisputably clear" right to obtain an injunction of a Presidential Proclamation that is unrelated to this case and that is aimed at addressing a national emergency.

Adopting Plaintiffs' theory (and apparent goal) would empower a district court to enjoin any immigration policy that would either depart from Plaintiffs' policy preferences or that might independently stand in the way of a class member obtaining a visa, despite the class definition requiring that the intending immigrant be "otherwise eligible" for a visa but for the Healthcare Proclamation. There is no limit to or basis for this expansive view of the All Writs Act. The Act authorizes writs only that are "agreeable to the usages and principles of law," 28 U.S.C. § 1651(a), yet Plaintiffs' theory is unmoored by the law, *see Perez v. Barr*, No. 16-71918, slip op. 16 n.8 (9th Cir. Apr. 27, 2020) (noting that the Ninth Circuit has "cautioned against the dangers of unprincipled use of its power under the All Writs Act" (internal quotation marks omitted)).

Reading the Act to provide for injunctive relief that would permit a party to challenge a policy unrelated to the claims in the complaint and that has no bearing on the Court's jurisdiction over those claims, especially where Plaintiffs have not identified any individual who is affected by the newly challenged policy or would have standing to challenge it, is not consistent with basic "principles of law." *See Las Americas Immigrant Advocacy Ctr. v. Trump*, No. 3:19-CV-02051-IM, 2020 WL 1671584, at *1-2 (D. Or. Apr. 2, 2020) (denying request under the All Writs Act where the relief sought in the TRO had no "nexus" to "the relief sought in the Complaint," was not "necessary to preserve [the] Court's jurisdiction over the Complaint," and sought "sweeping relief" that was not "agreeable to the usages and principles of law"); *cf. Hamilton v. Nakai*, 453 F.2d 152, 158 (9th Cir. 1971) (noting the "obvious principle" that a court's power to issue writs "agreeable to the usages and principles of law" is "co-extensive with its jurisdiction over the subject matter").

The Court should deny Plaintiffs' request for a TRO under the All Writs Act.

C. If the Court were to reach the merits, Plaintiffs' request should be denied because the COVID-19 Labor Proclamation is lawful and Plaintiffs do not argue otherwise.

If this Court were to consider Plaintiffs' TRO motion on the merits, it should reject Plaintiffs' request to partially enjoin a lawful Presidential Proclamation.

To begin with, Plaintiffs do not argue that the COVID-19 Labor Proclamation is unlawful. Plaintiffs say only that this Court "need not consider the merits" of the COVID-19 Labor Proclamation "when issuing an All Writs Act injunction." Mot. at 13 n. 20. That is a breathtaking statement, especially where Plaintiffs have not shown any connection between the proposed TRO and the complaint or any threat to this Court's jurisdiction over the claims in the complaint, and where Plaintiffs, on behalf of no identified injured person, seek to enjoin a Presidential

Proclamation that was issued during a national emergency to respond to the complex challenges and economic disruption caused by a once-in-a-century global pandemic. Even if Plaintiffs had identified some threat to this Court's jurisdiction over the claims in the complaint based on the COVID-19 Labor Proclamation, the Court still would have to consider Plaintiffs' challenges—or here, lack of challenges—to the lawfulness of the Proclamation, because to obtain an injunction Plaintiffs must establish that "the legal rights at issue are indisputably clear." *Wis. Right to Life, Inc.*, 542 U.S. at 1306 (Rehnquist, C.J., in chambers). Given that Plaintiffs present no argument that the COVID-19 Labor Proclamation is unlawful as to anyone, the Court should reject outright their request to enjoin it.

In any case, the COVID-19 Labor Proclamation is a valid exercise of the broad authority Congress granted the President in 8 U.S.C. § 1182(f) to suspend entry of aliens based on his determination that their entry would be detrimental to the national interest. Section 1182(f) provides that "[w]henever the President finds that the entry of . . . any class of aliens into the United States would be detrimental to the interests of the United States, he may . . . suspend entry of . . . any class of aliens . . . or impose on the entry of aliens any restrictions he may deem to be appropriate." 8 U.S.C. § 1182(f); *see also id.* § 1185(a)(1) ("[I]t shall be unlawful . . . for any alien to . . . enter . . . the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe."). Section 1182(f) "exudes deference to the President in every clause," and in that statute Congress "entrusts to the President the decisions whether and when to suspend entry," "whose entry to suspend," "for how long," and "on what conditions." *Trump v. Hawaii*, 138 S. Ct. 2392, 2408 (2018).

Here, the President lawfully exercised this authority after "determin[ing] that the entry, during the next 60 days, of certain aliens as immigrants would be detrimental to the interests of

the United States." 85 Fed. Reg. 23,442; *see Hawaii*, 138 S. Ct. at 2408 (explaining that the "sole prerequisite" to this "comprehensive delegation" is that the President find that entry of the covered aliens would be detrimental to the interests of the United States). The Proclamation sets out the President's reasons for finding that entry of certain intending immigrants would be detrimental to the United States during the economic recovery following the COVID-19 pandemic, with the goal of increasing access to the labor market for American workers, particularly those who are "at the margin between employment and unemployment." 85 Fed. Reg. 23,441. The President also explained that immigrants, upon admission as lawful permanent residents, are immediately eligible "to compete for almost any job," and thus "already disadvantaged and unemployed Americans" are left unprotected "from the threat of competition for scare jobs from new lawful permanent residents." *Id*. And, the President added, allowing additional immigrants to enter during this time of economic recovery would further strain "the finite limits of our healthcare system at a time when we need to prioritize Americans and the existing immigrant population." *Id.* at 23,442.

Thus, although the President is not required to justify or explain his findings in detail, *see Hawaii*, 138 S. Ct. at 2400-01, the reasoning set out in the Proclamation satisfies § 1182(f). Defendants recognize that this Court previously ruled that the President's use of § 1182(f) in the Healthcare Proclamation violated the nondelegation doctrine on the ground that the Healthcare Proclamation "engage[d] in domestic policymaking, without addressing any foreign relations or national security issue or emergency." *Doe v. Trump*, 418 F. Supp. 3d 573, 592 (D. Or. 2019). While Defendants respectfully disagree with that ruling, here there is no dispute that the COVID-19 Labor Proclamation was issued expressly in response to a national emergency triggered by a worldwide crisis. 85 Fed. Reg. 23,441. This Court has recognized that a national emergency is an appropriate time for the President to exercise the power delegated to him in § 1182(f). *See Doe*,

418 F. Supp. 3d at 592 (describing *U.S. ex rel. Knauff v. Shaughnes*sy, 338 U.S. 537 (1950), as involving a delegation of authority "in time of war or national emergency"); *see id*. (describing *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155 (1993), as involving a delegation of authority during "a political and humanitarian emergency occurring beyond the borders of the United States"); *see id*. (describing *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), as involving a delegation of authority in regards to "important issues of national security and foreign affairs" that "also involved activities occurring beyond the borders of the United States").

The national emergency identified in the COVID-19 Labor Proclamation is based on the devastating effects of the global pandemic on the national labor market. There can be no serious doubt that, under Supreme Court precedent, the COVID-19 Labor Proclamation is a lawful exercise of the President's authority under § 1182(f), and that it was constitutional for Congress to grant that authority to the President in at least this circumstance. Accordingly, Plaintiffs' request to partially enjoin the Proclamation should be denied.

D. Considerations of irreparable harm and the equities strongly favor the Government.

The party seeking preliminary injunctive relief must show that the balance of equities tips in his favor, that the injunction is in the public interest, and that it would suffer irreparable harm without the injunction. *Winter*, 555 U.S. at 20. The Court "'should pay particular regard for the public consequences'" of injunctive relief. *Id.* at 24 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)). These factors strongly favor the government.

Plaintiffs have failed to show any harm, let alone irreparable harm, in the absence of injunctive relief. As noted above, Plaintiffs are wrong that they "need not show irreparable harm," Mot. 3 n.2, where the purpose of the relief they seek is to protect members of the Visa Applicant Subclass from alleged irreparable harm, Mot. 15. Plaintiffs have not identified a single person who

allegedly has been or would be harmed by the COVID-19 Labor Proclamation. Indeed, Plaintiffs did not attach a single declaration or other piece of evidence to their TRO motion. Even if Plaintiffs were correct that the Proclamation would reduce monthly immigrant visa allocation by 26,000—a number for which Plaintiffs' sole source of authority is a tweet, Mot. 9 & n.17—they say nothing of how many individuals allegedly would be in their Visa Applicant Subclass *and* be prevented from having a consular interview due to the COVID-19 Labor Proclamation such that they would "age out" of their preference category.

Instead, Plaintiffs represent that the COVID-19 Labor Proclamation "potentially" could affect members of the Visa Applicant Subclass by "potentially" preventing their access to "their current visa preference category." Mot. 15. But it also appears that this Proclamation could potentially impact no class member's visa preference category. The State Department continues to provide emergency services, including interviews of individuals who may age-out, at embassies and consulates abroad. *See* Ex. 2, Brianne Marwaha Decl., ¶¶ 3-4. In addition, an intending immigrant does not have a right to a certain visa preference category—and certainly not a right that is protected by this Court's injunction of the Healthcare Proclamation. And the COVID-19 Labor Proclamation allows any intending immigrant to seek an exception if her "entry would be in the national interest." 85 Fed. Reg. 23,442. Plaintiffs' request for emergency injunctive relief enjoining a Proclamation—particularly one that Plaintiffs do not argue is unlawful—cannot depend wholly on unsupported assertions relying on hypothetical upon hypothetical. A "preliminary injunction is an extraordinary and drastic remedy," *Munaf*, 553 U.S. at 689-90, and merely showing a "possibility" of irreparable harm is insufficient for an injunction like the one Plaintiffs seek here, *see Winter*, 555 U.S. at 22.

At the same time, if this Court were to partially enjoin a lawful Presidential Proclamation issued to address a specific threat to Americans during a time of national emergency, the repercussions would be great and irreversible. There is a significant institutional injury in preventing the President from having flexibility in addressing this global crisis. And as set out in the COVID-19 Labor Proclamation, national unemployment claims have reached "historic levels" over the last several weeks. 85 Fed. Reg. at 23,441. And American workers who are already "at the margin between employment and unemployment" are "likely to bear the burden of excess labor supply disproportionately." *Id*. Continued immigration at the normal rate during this critical time of economic recovery would threaten the ability of those American workers to secure employment. *Id*. at 23,442. The injury would be irreparable, as the Proclamation applies only to limit entry at the border. Even a partial injunction of this Proclamation would allow these identified harms, that Plaintiffs do not dispute, to endure.

V. CONCLUSION

Because the COVID-19 Labor Proclamation is both lawful and unrelated to Plaintiffs' operative complaint, the Court should deny Plaintiffs' motion for a temporary restraining order.

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