IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

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INTRODUCTION

Class certification is necessary and appropriate for this Court to issue the immediate, temporary injunctive relief that Plaintiffs request. Although Defendants have strategically "picked off" the claims of two of the three named Plaintiffs, at least two exceptions to mootness apply in this instance and allow those Plaintiffs' class claims to relate back to a date on which they were "live" and permit the Plaintiffs to proceed as class representatives. The third named Plaintiff, Vicenta S., has a currently "live" claim, and therefore also has standing to represent the class. Plaintiffs' proposed class satisfies all four Rule 23(a) prerequisites and meets the requirements for certification under two subsections of Rule 23(b). As explained below, the grant of Plaintiffs' Motion for Class Certification ("Motion") would be consistent with the numerous decisions of this Court certifying cases in similar actions challenging the Government's unlawful, arbitrary, and capricious administration and implementation of immigration programs. *See, e.g.*, *Afghan & Iraqi Allies Under Serious Threat Because of Their Faithful Service to United States v. Pompeo*, -- F.R.D. -- , 2020 WL 590121 (D.D.C. Feb. 5, 2020) (certifying class of individuals challenging unreasonable delays in visa adjudications).

In the alternative, Plaintiffs request that the Court provisionally certify the class for the purpose of entering Plaintiffs' requested temporary restraining order. In granting provisional class certification, the Court still must apply Rule 23, but "[i]ts analysis is tempered . . . by the understanding that such certifications may be altered or amended before the decision on the merits." *R.I.L.-R. v. Johnson*, 80 F. Supp. 3d 164, 179–80 (D.D.C. 2015) (internal quotation marks omitted); *see also Barne v. Dillard*, 2008 WL 2168393, at *4–5 (D.D.C. May 22, 2008). Provisional certification should be granted in the circumstances presented here.

ARGUMENT

This Court should certify, even if provisionally, Plaintiffs' proposed class for the purpose of issuing the immediate, temporary injunctive relief that Plaintiffs request. Although the child or derivative child relatives of Plaintiffs Gomez and Mirna S. each has been issued a visa since Plaintiffs' class action complaint was filed, the inherently transitory nature of their claims and the process through which they received their visas allows them to retain their status as class representatives. Plaintiff Vicenta S. has a live claim that she has standing to pursue on behalf of the class. Plaintiffs proposed class also readily satisfies the requirements of Rule 23.

A. Plaintiffs have standing to proceed as class representatives.

Each of the named Plaintiffs in this action has standing to bring the claims they assert and may proceed as a representative of the proposed class. For the purposes of this reply, Plaintiffs incorporate herein by reference the arguments they assert in their concurrently filed Reply in Support of Plaintiffs' Motion for Temporary Restraining Order ("TRO Reply"). For the reasons explained below and in the TRO Reply, *see* TRO Reply at 2–5, all of the named Plaintiffs, including Plaintiff Vicenta S., have standing to pursue the claims they allege as representatives of the proposed class.

1. Plaintiff Vicenta S. will suffer imminent injury as a result of Defendants' implementation and enforcement of the Proclamation.

As Plaintiffs demonstrate in their TRO Reply,[1] the agencies' enforcement of the Proclamation is the barrier to W.Z.A.'s receiving a visa, such that Vicenta S.'s imminent injuries are directly attributable to the Proclamation and its implementation and enforcement in El

[1] To avoid repeating the arguments that Plaintiffs make in their TRO Reply, Plaintiffs do not repeat herein all of the reasons that Vicenta S. has standing to pursue her claims on behalf of the proposed class. Plaintiffs incorporate in full the arguments on that point set forth in the TRO Reply.

Salvador. TRO Reply at 4. W.Z.A. and W.Z. have been scheduled for emergency immigrant visa interviews and plan to attend them next week. TRO Reply at 3. W.Z. will travel to San Salvador by way of Tegucigalpa, Honduras, and the two will be able to freely attend their appointments because El Salvador's quarantine has now been lifted. TRO Reply at 3–4. Neither W.Z.A. or W.Z. are aware of any ground, other than the Proclamation, that they may be deemed inadmissible and that W.Z.A. may otherwise age out of his current preference category. TRO Reply at 4. For the further reasons that Plaintiffs explain in their TRO Reply, Plaintiff Vicenta S. will face immediate irreparable harm unless the Proclamation is immediately and temporarily enjoined. *See* TRO Reply at 2–5; *see also* TRO Reply at 20 (citing *Hawai'i v. Trump*, 859 F.3d 741, 782–83 (9th Cir. 2017) ("prolonged separation from family members" constitutes irreparable harm)).

2. All of the named Plaintiffs may proceed as class representatives.

Even if the Court deemed one or two of the named Plaintiffs' claims moot, they still may proceed as class representatives for at least two independent reasons. First, Plaintiffs' claims are "inherently transitory" and therefore properly relate back to the date the complaint was filed, at which point their claims were live. Second, Defendants' painfully obvious litigation strategy of "picking off" the named Plaintiffs' claims to avoid judicial review likewise preserves the class members' live interests in the claims at issue.

The "inherently transitory" exception to mootness in the class context was most recently addressed by the Supreme Court in *Nielsen v. Preap*, 139 S. Ct. 954 (2019), where two classes of noncitizens brought habeas petitions and class action claims challenging mandatory detention without bond. *Id.* at 960–61. In *Preap*, the Government argued that, because the putative class representatives had "obtained either cancellation of removal or bond hearings" by the time the court had ruled on class certification, the class action was moot. *Id.* at 963. The Court held

otherwise, noting that "the fact that a class 'was not certified until after the named plaintiffs' claims had become moot does not deprive [the Court] of jurisdiction' when . . . the harms alleged are transitory enough to elude review." *Id.* (quoting *County of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991)). The Supreme Court explained, "Because this type of injury ends as soon as the decision on removal is made, it is transitory. So the fact that the named Plaintiffs obtained some relief before class certification does not moot their claims." *Id.*

Following the Supreme Court's decision in *Preap*, and guided further by its earlier decisions in *U.S. Parole Commission v. Geraghty*, 445 U.S. 388 (1980), and *Sosna v. Iowa*, 419 U.S. 393 (1975), the D.C. Circuit recently held that, in the class action context, the "inherently transitory" exception to mootness serves to "salvage claims that will, or at least might, not survive until certification." *J.D. v. Azar*, 925 F.3d 1291, 1310 (D.C. Cir. 2019). Claims involving visa applications, like the class claims at issue here, are "inherently transitory" and thus may benefit from the exception. *Afghan & Iraqi Allies*, 2020 WL 590121, at *12 ("Because this case involves visa applications, the class is inherently transitory, and its membership is not fixed."). To apply the "inherently transitory" exception, a court must "determine (i) whether the individual claim might end before the district court has a reasonable amount of time to decide class certification, and (ii) whether some class members will retain a live claim at every stage of the litigation." *J.D.*, 925 F.3d at 1311. An affirmative answer to both questions ordinarily will suffice to permit relation back, allowing the court to relate the class certification motion back to a date to which the individual plaintiffs' claims were live. *Id.* at 1308–11.

Here, Plaintiffs' APA claims, which arose because of the Proclamation and terminate as soon as the soon-to-be-21-year-old visa applicant either turns 21 or is issued a visa, remain "fleeting" and thus fall within this exception. *See Afghan & Iraqi Allies*, 2020 WL 590121, at

*12 (so stating). Some of the class members, including the named Plaintiffs, will have received decisions on their applications between the filing of the class action complaint and the Court's decision on class certification.[2] Other class members may have not, and instead remain at risk of suffering the same imminent injury, including class members scattered across the globe who may not receive a visa because they either cannot qualify for one of the Proclamation's exceptions or cannot secure an emergency interview in the first place. Particularly in light of Defendants' litigation strategy of deliberately processing and granting the named Plaintiffs' visa applications, but ignoring the remaining class members who are at imminent risk of age out, Plaintiffs have virtually no way of ensuring that any particular proposed class representative's claim will remain live at the time of a decision on certification. *See id.* (noting that inherently transitory claims make it impossible to predict whose claims will remain live at the class certification stage); *see also Thorpe v. District of Columbia*, 916 F. Supp. 2d 65, 67 (D.D.C. 2013) (same). The "inherently transitory" exception therefore applies, and this Court should find that all of the named Plaintiffs may proceed as representatives of the proposed class.

The "picking off" exception is distinct but commands the same result. That exception applies where, as here, the defendant "picks off" the named plaintiff by mooting out his or her claim before the class is certified. *Wilson v. Gordon*, 822 F.3d 934, 947 (6th Cir. 2016). The exception originated with the Supreme Court's decision in *Deposit Guaranty National Bank v. Roper*, 445 U.S. 326, 339 (1980), in which the Court held that a defendant could not strip a court of jurisdiction simply by "buying off" the individual claims of the named class representatives. It exists to protect against strategic litigation conduct of the very sort that Defendants are

[2] Plaintiffs' Motion was filed on June 2, 2020, only two business days after they filed their class action complaint.

engaging in here—conduct designed to avoid judicial review of otherwise meritorious class action claims. *See Wilson*, 822 F.3d at 947 ("picking off" exception addresses "concern of defendants strategically mooting named plaintiffs' claims in an attempt to avoid a class action"). Several sister circuit courts of appeal have recognized the exception and have applied it in cases where the defendants' actions demonstrated an intent to strategically avoid class action claims by "picking off" the claims of the proposed class representatives. *See, e.g.*, *Lucero v. Bureau of Collection Recovery, Inc.*, 639 F.3d 1239, 1250 (10th Cir. 2011); *Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1091 (9th Cir. 2011); *Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030, 1050 (5th Cir. Unit A 1981); *Stein v. Buccaneers Ltd. P'ship*, 772 F.3d 698, 704–05 (11th Cir. 2014) (affirming *Zeidman* as binding precedent in the Eleventh Circuit). Courts generally do not require an evidentiary showing of a defendant's intent to avoid the class action claims—at most, they have inferred from a defendant's creation of a "new, ad hoc process" to address the plaintiffs' claims as sufficient evidence of such intent. *See Wilson*, 822 F.3d at 950–51 (evidence of intent not required, but if it were, evidence that the defendants failed to follow their standard procedure for claims processing is sufficient).

For the reasons that Plaintiffs explain in their TRO Reply, Defendants' conduct plainly demonstrates an intent to strategically "pick off" the named Plaintiffs' claims as a means to avoid judicial review of the claims of the class. *See* TRO Reply at 7. With respect to the claims of Mirna S., Defendants reversed their prior denial of M.T.S.'s visa application and determined, without providing any basis for their determination, that M.T.S. had satisfied the "national interest" exception to the Proclamation. TRO Reply at 7. Likewise, with respect to Plaintiff Gomez, Defendants made extraordinary efforts to schedule his daughter, Alondra, for an

emergency visa interview on just four days' notice,[3] waiving otherwise applicable rules that require original signatures and police certificates, all to avoid this Court's ruling on Plaintiffs' request for a temporary restraining order. TRO Reply at 7; Declaration of Alondra Ramos Flores in Support of Plaintiffs' Motion for Temporary Restraining Order ("Flores Decl.") ¶¶ 2–3. They also granted Alondra's application without so much as assessing the materials she was prepared to present on the merits of her request for a national interest exception to the Proclamation. TRO Reply at 7–8; Flores Decl. ¶¶ 8–10. Defendants' conduct demonstrates clearly that they created a highly irregular "new, ad hoc process," *see Wilson*, 822 F.3d at 950–51, designed strategically to avoid judicial review of Plaintiffs' class action claims.

Both the "inherently transitory" and "picking off" exceptions to mootness apply in this case to preserve the named Plaintiffs' class claims and allow them to proceed as class representatives. Defendants' arguments to the contrary, if any, should be rejected.

[3] The U.S. consulate in Ciudad Juarez currently reports that it has no availability for emergency visa interviews until at least July 7. *See* Declaration of Brian Blackford in Support of Plaintiffs' Motion for Temporary Restraining Order ¶ 20. That consulate is also conducting only five interviews per day, rather than its usual 400. Nonetheless, Alondra was granted an emergency immigrant visa interview.

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

Defendants contend that Plaintiffs' proposed class fails under all four Rule 23(a) prerequisites. They are wrong. As explained below and in their initial Motion, Plaintiffs have satisfied their burden to establish that joinder of all members would be "impracticable," and thereby satisfy Rule 23(a)(1)'s "numerosity" requirement, particularly for a grant of provisional certification. Plaintiffs also readily satisfy Rule 23(a)(2)'s "commonality" requirement, which "tends to merge" with Rule 23(a)(3)'s "typicality" requirement. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 n.5 (2011). And with respect to "adequacy," Defendants' litigation strategy of mooting the claims of the named Plaintiffs and proposed class representatives does not undermine their ability to adequately represent the class. *See J.D.*, 925 F.3d at 1313 ("Our decisions thus find it 'clear that mootness and adequacy are separate issues and that plaintiffs with moot claims may adequately represent a class.'" (quoting *D.L. v. District of Columbia*, 860 F.3d 713, 726 (D.C. Cir. 2017))); *see also Afghan & Iraqi Allies*, 2020 WL 590121, at *12 (holding that the existence of the "inherently transitory" exception to mootness itself means that a named Plaintiff with an inherently transitory claim is not an inadequate class representative). Plaintiffs' proposed class therefore satisfies Rule 23(a)'s requirements.

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

Rule 23(a)(1) requires that a putative class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "[T]he Rule's core requirement is that joinder be impracticable," *Coleman v. District of Columbia*, 306 F.R.D. 68, 76 (D.D.C. 2015); thus, although numerosity alone often "provides an obvious situation in which joinder may be impracticable," *id.*, courts may also consider "(1) 'judicial economy arising from avoidance of a multiplicity of actions'; (2) 'geographic dispersion of class members'; (3) 'size of individual claims'; (4) 'financial resources of class members'; and (5) 'the ability of claimants to institute

individual suits,'" *id.* at 80 (quoting Newberg on Class Actions § 3:12 (5th ed. 2014)); *see also Paxton v. Union Nat'l Bank*, 688 F.2d 552, 559–60 (8th Cir. 1982) (same). In circumstances "[w]here the balance of these factors 'is a close call, some courts err in favor of certification because a court always has the option to decertify the class if it is later found that the class does not in fact meet the numerosity requirement.'" *Coleman*, 306 F.R.D. at 80 (citing *J.D. v. Nagin*, 255 F.R.D. 406, 414 (E.D. La. 2009) ("Rule 23 must be read liberally in the context of civil rights suits.")). And, where the relief sought is declaratory or injunctive, even speculative or conclusory representations about the size of the class are sufficient. *See Horn v. Associated Wholesale Grocers, Inc.*, 555 F.2d 270, 275–76 (10th Cir. 1977) (citing cases).[4] In all events, the determination of impracticability is "'best left to the sound discretion of the district court'" and requires "'an examination by the district court of the facts of each case.'" *Coleman*, 306 F.R.D. at 80 (quoting *Frazier v. Consol. Rail Corp.*, 851 F.2d 1447, 1456 & n.10 (D.C. Cir. 1988)).

Here, joinder is sufficiently impracticable such that Rule 23(a)(1)'s "numerosity" requirement is satisfied. As Plaintiffs explained in their initial motion, Defendants do not publish statistics on the number of people who "age out" of any particular visa preference category or the number of people who request emergency or expedited consular processing services to prevent themselves from aging out; thus, it is impossible for Plaintiffs to know the exact number of individuals in the class. But according to Defendants' published statistics on the number of people who are waiting in line for immigrant visas, combined with historical data that prompted Congress to enact CSPA protections for immediate relatives, Plaintiffs and the Court

[4] *See also Sueoka v. United States*, 101 F. App'x 649, 653 (9th Cir. 2004); *Weiss v. York Hosp.*, 745 F.2d 786, 808 (3d Cir. 1984); *Jones v. Diamond*, 519 F.2d 1090, 1100 (5th Cir. 1975); *Doe v. Charleston Area Med. Ctr.*, 529 F.2d 638, 645 (4th Cir. 1975); *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1203 (N.D. Cal. 2017) (quoting *Civil Rights Educ. & Enf't Ctr. v. Hosp. Props. Tr.*, 317 F.R.D. 91, 100 (N.D. Cal. 2016)), *aff'd*, 867 F.3d 1093 (9th Cir. 2017).

may reasonable infer that the putative class is indeed so numerous that joinder would be impracticable. At minimum, Plaintiffs' motion should not be denied until they are able to seek discovery from Defendants, who are in the best position to provide the Court and the parties with an estimate of the size of the class.

Joinder is made even more impracticable by the fact that the Proclamation will impact U.S. citizen and lawful permanent resident sponsors across the country and their child and derivative child relative beneficiaries worldwide; thus, members of the class are geographically dispersed. *See Coleman*, 306 F.RD. at 80 (geographic dispersion a factor in impracticability determination). Each class member's claim is also fleeting, *see supra* Part A.2, and as the named Plaintiffs' own claims demonstrate, individual class members may lack important information (*e.g.*, whether they are in fact CSPA protected, or how to establish eligibility for the national interest exception) necessary to mount an individual challenge to its terms. *See Coleman*, F.R.D. at 80 (ability to pursue individual claims a factor in impracticability determination). In this context, where individual immigrant visa sponsors face irreparable harm as a result of a vague and unlawful Presidential Proclamation and seek limited injunctive relief to prevent such harm, a class action both preserves judicial resources and provides perhaps the only realistic mechanism for seeking and obtaining relief. *Id.* (judicial economy a factor in impracticability determination). Rule 23(a)(1)'s requirement is therefore satisfied.

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

Defendants' cursory challenge to Plaintiffs' proposed class on commonality grounds lacks merit. Defendants argue only that Plaintiffs "fai[l] to demonstrate that their class satisfies commonality because it is significantly overinclusive." Defendants' Opposition to Plaintiffs' Motion for Class Certification ("Opposition") at 28. In Defendants' view, Plaintiffs' class

definition is "overinclusive" because it "would sweep up a wide number of individuals who may turn 21 years-old while the Proclamation remains in effect, but who have locked in their CSPA age . . . or who would be otherwise ineligible for an immigrant visa for any number of independent reasons." *Id.*

But Defendants are simply wrong. Plaintiffs' proposed class is defined as follows:

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

An individual who has locked in his or her CSPA age will not "age out of his or her current visa preference category by turning 21," and therefore is not within the scope of Plaintiffs' proposed class. And an individual who may be independently ineligible for an immigrant visa will not age out "as a result of the Proclamation," and therefore likewise is not within the scope of Plaintiffs' proposed class. Defendants' "overbreadth" argument therefore fails.

Importantly, Defendants do not take issue with any of the common questions of law and fact that Plaintiffs' claims present, which Plaintiffs clearly set forth in their complaint and Motion. *See, e.g.*, Motion at 20–21. Each of those common questions "depend[s] 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 v. Nielsen*, 313 F. Supp. 3d 317, 331 (D.D.C. 2018) (quoting *Wal-Mart Stores, Inc.*, 564 U.S. at 349) (second alteration in original). Moreover, Plaintiffs challenge the lawfulness of a single, uniform policy that affects all class members." *Id.*; *see also N.S. v. Hughes*, -- F.R.D. --, 2020 WL 2219441, at *13 (D.D.C. May 7, 2020) (same); *Hoyte v. District*

of Columbia, 325 F.R.D. 485, 490 (D.D.C. 2017) ("[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)). Plaintiffs' claims present questions of law or fact that are common to the class, and thus satisfy Rule 23(a)(2)'s "commonality" requirement.

Again, class members are all U.S. citizens or lawful permanent residents in the United States with an approved immigrant visa petition for a child or a derivative child relative with a priority date that is "current" in their applicable visa preference category. All of the class members' sponsored children or derivative child relatives will turn 21 years old during or shortly after the time the Proclamation remains in effect, including during its all-but-certain extension after June 22, 2020. All of the class members' sponsored children or derivative child relatives are otherwise eligible for an immigrant visa, are subject to the Proclamation, and will be denied a visa unless they can meet a new admissibility requirement and demonstrate to a consular officer that they fall within one of the Proclamation's narrow exceptions despite the lack of guidance on how to establish qualification for those exceptions. The class members' claims thus share a common core set of facts and arise from a common injury that clearly is "capable of classwide resolution." *Wal-Mart Stores, Inc.*, 564 U.S. at 350. A common answer with respect to the legality of the Proclamation and its implementation will "drive the resolution of the litigation." *Ramirez v. U.S. Immigration & Customs Enforcement*, 338 F. Supp. 3d 1, 45 (D.D.C. 2018) (quoting *Wal-Mart Stores, Inc.*, 564 U.S. at 350).

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

Nor are Defendants' typicality arguments persuasive. "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 *Gen. Tel. Co. of Sw. v. Falcon*, 457

U.S. 147, 156 (1982)). The commonality and typicality requirements "tend to merge"; "'[b]oth serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.'" *Ramirez*, 338 F. Supp. 3d at 46 (quoting *Falcon*, 457 U.S. at 157).

Courts have made clear that "[f]actual variations between the claims of class representatives and the claims of other class members . . . do not negate typicality." *Bynum v. District of Columbia*, 214 F.R.D. 27, 34 (D.D.C. 2003); *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)). Thus, the so-called "unique defenses" that Defendants identify—*e.g.*, predicate visa holders' statuses, country conditions, or an applicant's failure to avail him or herself of the protections of the CSPA—are simply irrelevant. To be sure, Plaintiffs seek to enjoin the Proclamation to the extent that it imposes an unlawful and arbitrary admissibility requirement on every member of the proposed class, not to direct individual visa determinations for individuals who may not otherwise be eligible. None of Defendants' so-called "defenses" changes the fact that every member of the proposed class has a child or derivative child relative who is subject to the Proclamation and will, as a result of the Proclamation, age out of his or her visa preference category by turning 21 while it is in effect. Plaintiffs, who will suffer or have suffered the same consequences, allege that the Proclamation is unlawful with respect to the entire putative class. Plaintiffs' claims are therefore typical of the claims of the other putative class members.

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

With respect to adequacy, Defendants essentially contend that neither Plaintiff Gomez nor Plaintiff Mirna S. is an adequate class representative because Defendants mooted their claims before the class could be certified. *See* Opp. at 31. As explained above, however, Plaintiffs' claims in this case are "inherently transitory" in nature, and thus remain viable for class certifications purposes. "[T]he very existence of the inherently-transitory exception disproves any suggestion that the mootness of a plaintiff's claims necessarily demonstrates her inadequacy as a representative." *J.D.*, 925 F.3d at 1313. Indeed, "[t]he entire object of that exception is to allow a class action to proceed even though the inherently fleeting nature of the class's claims will predictably render a given class member's claims moot before the class is certified." *Id.* Thus, the Supreme Court has specifically recognized that a plaintiff with a moot claim may serve as a class representative. *Geraghty*, 445 U.S. at 404. Plaintiffs Gomez and Mirna S. will adequately represent the class, notwithstanding the fact that their claims are now moot. Certainly, Defendants have submitted no evidence to the contrary.

And none of the proposed class representatives—Plaintiffs Gomez, Mirna S., or Vicenta S.—has antagonistic or conflicting interests with the unnamed members of the class, and all will vigorously prosecute the interests of the class through qualified counsel. *See Twelve John Does v. District of Columbia*, 117 F.3d 571, 575 (D.C. Cir. 1997) (stating that standard). Proposed class counsel will likewise be able to prosecute the matter vigorously and adequately protect the interests of absent class members. Defendants do not contend otherwise. Plaintiffs' proposed class thus satisfies Rule 23(a)(4)'s "adequacy" requirement.

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

Finally, Defendants make cursory arguments generally asserting that Plaintiffs' proposed class does not fall within any subsection of Rule 23(b). But Defendants arguments on this point turn on the same erroneous assumptions as its standing and Rule 23(a) arguments, ignoring the fact that Plaintiffs Gomez and Mirna S. may still proceed as class representatives even if their claims have become moot, and asserting, incorrectly, that the factual circumstances underlying Plaintiff Vicenta S.'s claim somehow undermine her status as a class member or her ability to represent the class. For the reasons explained above, neither is correct.

Under Rule 23(b)(2), a single order enjoining Defendants' implementation and enforcement of the Proclamation would provide relief to every member of Plaintiffs' proposed class, because the Proclamation applies evenly across the class and imposes on each class member a new, potentially insurmountable admissibility requirement without notice of or explanation for how to satisfy it. For the same reasons, certification under Rule 23(b)(1)(A) is also appropriate. *See Adair v. England*, 209 F.R.D. 5, 12 (D.D.C. 2002) (certification under Rule 23(b)(1)(A) particularly appropriate when a single injunction against government action is necessary to afford unitary treatment to all class members).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an order certifying or provisionally certifying the proposed class under Rule 23(b)(2) or Rule 23(b)(1)(A); appointing Domingo Arreguin Gomez, Mirna S., and Vicenta S. as class representatives; and appointing 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 16th day of June, 2020.

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