UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Fayez MANSOR, et al.

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, et al.

Defendants.

Case No. 2:23-cv-347

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Noting Date: March 31, 2023

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

Plaintiffs Fayez Mansor, Eclesiaste Coissy, Cabdi Ibrahim Xareed, and Shukria Zafari and the class they seek to represent are all initial applicants for Temporary Protected Status (TPS). TPS is a form of lawful status that Congress made available to individuals from countries designated by the Secretary of the Department of Homeland Security (DHS) to protect them from removal to the dangerous and often life-threatening conditions in their country of origin. Among other benefits, Congress required DHS to provide TPS-eligible applicants with evidence of employment authorization.

In creating TPS, Congress recognized the importance of providing employment authorization and protection from removal to TPS applicants. Absent those benefits, applicants could face removal, or be forced to voluntarily leave due to an inability to support themselves in this country. Accordingly, the Immigration and Nationality Act (INA) directs that any noncitizen "who establishes a prima facie case of eligibility for [TPS] benefits . . . shall be provided" protection against removal and employment authorization "until a final determination with respect to [noncitizen's] eligibility . . . has been made." 8 U.S.C. § 1254a(a)(1), (4).

Notwithstanding the statute's explicit language, Defendant U.S. Citizenship and Immigration Services (USCIS)—the DHS agency charged with adjudicating TPS applications and providing employment authorization documents—does not provide work permits or documentation of employment authorization to TPS applicants. To the contrary, USCIS simply ignores the statutory mandate, leaving Plaintiffs and proposed class members without the ability to work lawfully. This, in turn, causes Plaintiffs and proposed class members significant harm, depriving them of the ability to provide for themselves and their families while they wait the many months—or even years—it takes USCIS to process their TPS applications.

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The question presented in this case—whether USCIS's policy violates the INA and the Administrative Procedure Act (APA)—can and should be resolved on a class-wide basis. The proposed class satisfies the requirements under Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. Plaintiffs thus request that the Court certify the following class and appoint them as class representatives:

> All individuals who have submitted or will submit an initial application for Temporary Protected Status (TPS), who have received or will receive a notice of receipt for such an application, who have not received a final decision on the TPS application, and who have not been issued employment authorization documentation incident to their pending TPS application.

On behalf of themselves and all proposed class members, Plaintiffs seek an order from this Court that (1) declares Defendants' current policy and practice unlawful, (2) sets aside Defendants' current policy and practice under the APA, and (3) declares that the INA requires Defendants to provide initial TPS applicants with employment authorization documentation.

II. BACKGROUND

A. Plaintiffs' Legal Claims

Adjudicating a motion for class certification does not call for "an in-depth examination of the underlying merits," but a court may nevertheless analyze the merits to the extent necessary to determine the propriety of class certification. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 983 n.8 (9th Cir. 2011); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351–52 (2011). Here, Plaintiffs' and the proposed class members' legal claims make clear that the class challenges a uniform agency policy.

Congress established the TPS program as part of the Immigration Act of 1990, Pub L. No. 101-649, § 302, 104 Stat. 4978, 5030–36, to provide temporary relief to noncitizens from countries facing wars, disasters, or emergencies that make safe return to their countries of origin

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impossible. Under the INA, the DHS Secretary must designate a country for TPS to make noncitizens of that country in the United States eligible for that relief. *See* 8 U.S.C. § 1254a(b)(1). Once designated, the status typically lasts from six to eighteen months. *Id.* § 1254a(b)(2). Even after that period expires, the Secretary may extend the initial designation, provided that the Secretary concludes conditions in the designated country warrant continued designation. *Id.* § 1254a(b)(3). Individuals with TPS must re-register their status each time the DHS Secretary extends a country's initial designation. 8 C.F.R. § 244.17.

This case centers on TPS applicants who apply for TPS following a country's designation. To qualify for TPS, a national of a TPS-designated country must show that the applicant (1) was "continuously physically present in the United States since the effective date of the [country's] most recent designation"; (2) "continuously resided in the United States" since a date designated by the Secretary; and (3) "is admissible as an immigrant," with certain exceptions and opportunities for waivers. 8 U.S.C. § 1254a(c)(1)(A)(i)–(iii). Among other benefits, the statute provides that DHS "shall not remove [TPS beneficiaries] during the period in which [TPS] status is in effect" and that DHS "shall authorize the [noncitizen] to engage in employment in the United States and provide the [noncitizen] with an 'employment authorized' endorsement or other appropriate work permit." *Id.* § 1254a(a)(1)(A)–(B).

Congress extended these same benefits to all TPS-eligible applicants. Pursuant to § 1254a(a)(4)(B), DHS "shall . . . provide[] [the] benefits" described above "[i]n the case of a[] [noncitizen] who establishes a prima facie case of eligibility . . . until a final determination with respect to the [noncitizen's] eligibility for such benefits . . . has been made."[1] Notably, DHS's

[1] Prima facie eligibility is "established with the filing of a completed application for Temporary Protected Status containing factual information that if unrebutted will establish a claim of eligibility." 8 C.F.R. § 244.1.

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own regulations recognize this requirement. Those regulations state that "[d]uring the registration period," an applicant "shall be afforded temporary treatment benefits." 8 C.F.R. § 244.5(b). Such benefits include work authorization, as the INA directs. *Id.* § 244.10(e)(1)(ii). Notwithstanding this directive in both the INA and its own regulations, USCIS does not regularly provide documentation of employment authorization to noncitizens with pending TPS applications. Corral Decl. ¶ 6; Cova Decl. ¶¶ 7-8; Falgout Decl. ¶¶ 6, 8–9; Liberles Decl. ¶¶ 7-8; Marzouk ¶¶ 6-7; McGrorty Decl. ¶ 7; Prokosch Decl. ¶¶ 7-8; Sharma-Crawford Decl. ¶¶ 6–7. To the contrary, it instructs applicants to apply for work permits under a category for work authorization that provides a work permit only upon final approval of the TPS application. Maltese Decl. Ex. E, TPS- Questions and Answers, at Q.15; *see also*, *e.g.*, McGrorty Decl. ¶¶ 5, 8. And for online applicants, the agency does not even permit initial applicants to submit an application for work authorization that indicates they want work authorization while the TPS application is pending. *Id.* Ex. F, Mansor Online Filing Screenshot; Corral Decl. ¶ 5; Cova Decl. ¶ 6; Falgout Decl. ¶ 5; Liberles Decl. ¶ 6; Marzouk ¶ 5; McGrorty Decl. ¶ 6; Prokosch Decl. ¶ 6; Sharma-Crawford Decl. ¶ 5.

B. Named Plaintiffs' Factual Backgrounds

1. Fayez Mansor

Plaintiff Fayez Mansor is a noncitizen from Afghanistan. Mansor Decl. ¶ 2. He entered the United States with parole on September 9, 2021, after being evacuated from Afghanistan. *Id.* ¶ 3. Mr. Mansor applied for TPS and work authorization on February 21, 2023. *Id.* Mr. Mansor satisfies all of the eligibility requirements for TPS for Afghan nationals. He has resided in the United States since his entry, and therefore satisfies the continuous presence requirement. He

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included proof of his Afghan nationality and his continuous presence in the United States with his application for TPS. USCIS issued a receipt notice for Mr. Mansor's TPS application the same day that he applied for TPS. Maltese Decl. Ex. A, Mansor Receipt Notice. USCIS also indicated it would be issuing a receipt notice for Mr. Mansor's employment authorization application on or before the week of March 13th. His applications remain pending before the agency.

While Mr. Mansor currently has a work permit, that authorization is scheduled to expire on October 3, 2023. Mansor Decl. ¶ 3. Like many Afghans, Mr. Mansor's employment authorization is tied to his parole status, which expires two years after his entry. Yet because USCIS takes many months and often a year to adjudicate TPS applications, he will lose his authorization in October. The lack of work authorization will cause Mr. Mansor significant harm. Without work authorization, he will lose his job and be unable to pay for basic expenses, like housing, gas, car insurance, groceries, and clothes. *Id.* ¶ 4. The prospect of losing his employment authorization causes him significant stress, and he worries about how he will continue to live in the United States without such authorization. *Id.* ¶ 5.

2. Eclesiaste Coissy

Plaintiff Eclisiaste Coissy is a noncitizen from Haiti. Coissy Decl. ¶ 2. He entered the United States in July 2021. *Id.* ¶ 3. He applied for TPS and employment authorization on September 28, 2021. *Id.* ¶ 4. He is prima facie eligible for TPS for Haitian nationals. *Id*. USCIS issued receipt notices for Mr. Coissy's TPS and employment authorization applications on October 1, 2021. Maltese Decl. Ex. G, Coissy Receipt Notices. His applications remain pending before the agency.

Mr. Coissy's wife resides with him; they are expecting a child in July 2023. Coissy Decl.

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¶ 2. He also has a 14-year-old daughter from a previous relationship who resides with his mother in Haiti. *Id.* He needs to work to be able to support himself, his wife, and their baby when the child is born; he also needs to send to his family in Haiti to help support his teenage daughter and other family members. *Id.* ¶ 5. He is depressed and stressed over his financial situation and very worried about how he will support his baby. *Id.* ¶ 6. The lack of a work authorization since his TPS application was filed in September 2021 is causing Mr. Coissy great harm.

3. Cabdi Ibrahim Xareed

Plaintiff Cabdi Ibrahim Xareed is a noncitizen from Somalia. Xareed Decl. ¶ 2. He entered the United States without authorization around September 23, 2022, to seek asylum. *Id.* ¶ 4. He was apprehended by immigration authorities shortly after his arrival and has been in immigration detention since then. *Id.* ¶ 2. He is in removal proceedings. *Id.* ¶ 3. Mr. Xareed applied for TPS and employment authorization on February 23, 2023. *Id.* ¶ 5. He is prima facie eligible for TPS for Somali nationals. *Id*. He has resided in the United States since his entry, and therefore satisfies the continuous presence requirement. He included proof of his Somali identity and his continuous presence in the United States with his application for TPS. *Id.* USCIS has not yet issued receipt notices for Mr. Xareed's TPS and employment authorization applications.

While Mr. Xareed is currently in immigration detention, he expects to be released soon to a sponsor. *Id.* ¶ 6. He has been approved for release upon posting a bond and has found a sponsor who is willing to post the bond. Employment authorization will be critical for him once he is released, as he does not have family or financial resources here in the United States. *Id.* ¶ 8. He plans to live with a sponsor but will need to provide financially for himself to cover his expenses. *Id.* Additionally, in fleeing Somalia, Mr. Xareed lost contact with his wife and two-year-old

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daughter, whom he believes are still in hiding in the country. *Id.* ¶ 4. He needs financial resources to locate them and to provide for them until he is able to bring them here lawfully. *Id.* ¶ 7. The lack of employment authorization while his TPS application is pending will thus cause Mr. Xareed significant harm.

4. Shukria Zafari

Plaintiff Shukria Zafari is a noncitizen from Afghanistan. Zafari Decl. ¶ 2. She entered the United States with parole on September 8, 2021, after being evacuated from Afghanistan. ¶ 3. Ms. Zafari applied for TPS and employment authorization incident to TPS status on January 3, 2023. *Id.* ¶ 4. Ms. Zafari is prima facie eligible for TPS for Afghan nationals. She has resided in the United States since her entry, and therefore satisfies the continuous presence requirement. She included proof of her Afghan nationality and her continuous presence in the United States with her application for TPS. USCIS issued receipt notices for Ms. Zafari's TPS and employment authorization applications on January 5, 2023. Maltese Decl. Ex. B, Zafari Receipt Notices. Her applications remain pending before the agency.

While Ms. Zafari currently has employment authorization, that authorization is scheduled to expire in September 2023. Zafari Decl. ¶ 3. Like many Afghans, Ms. Zafari's employment authorization is tied to her parole status, which expires two years after her entry. Yet because USCIS takes many months and often a year to adjudicate TPS applications, she will lose her authorization in September. The lack of work authorization will cause Ms. Zafari significant harm. Ms Zafari is a single mother. *Id.* ¶ 2. Two of her children, who are ten and twelve years old, live with her here in the United States. *Id.* A third child lives in Afghanistan. *Id.* Without work authorization, Ms. Zafari will be unable to care for herself and her children. *Id.* ¶ 5. She

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will also be unable to afford the expenses necessary to bring her child in Afghanistan to the United States, which she hopes to do as soon as possible. *Id.*

III. ARGUMENT

Plaintiffs seek certification of the following class:

> All individuals who have submitted or will submit an initial application for Temporary Protected Status (TPS), who have received or will receive a notice of receipt for such an application, who have not received a final decision on the TPS application, and who have not been issued employment authorization documentation incident to their pending TPS application.

Under Federal Rule of Civil Procedure 23, Plaintiffs are entitled to class certification where two conditions are met: "The suit must satisfy the criteria set forth in subdivision (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)." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). Plaintiffs' proposed class satisfies Rule 23(a) and (b)(2).

Courts in the Ninth Circuit, including this Court, have routinely certified class actions challenging immigration policies and practices that have broad, categorical effect. *See, e.g.*, *Moreno Galvez v. Cuccinelli*, No. C19-0321RSL, 2019 WL 3219418, at *2 (W.D. Wash. Jul. 17, 2019) (certifying class of "[a]ll individuals who have been issued predicate Special Immigrant Juvenile Status ('SIJS') orders by Washington state courts after turning eighteen years old but prior to turning twenty-one years old and have submitted or will submit SIJS petitions to [USCIS] prior to turning twenty-one years old"); *Nightingale v. USCIS*, 333 F.R.D. 449, at *457–63 (N.D. Cal. 2019) (certifying nationwide classes challenging agency's failure to produce immigration files); *Rosario v. USCIS*, No. C15-0813JLR, 2017 WL 3034447, at *12 (W.D. Wash. July 18, 2017) (granting nationwide certification to class of initial asylum applicants

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challenging the government's adjudication of employment authorization applications); *Wagafe v. Trump*, No. C17-0094-RAJ, 2017 WL 2671254, at *16 (W.D. Wash. June 21, 2017) (certifying two nationwide classes of immigrants challenging legality of a government program applied to certain immigration benefits applications); *Mendez Rojas v. Johnson*, No. C16-1024RSM, 2017 WL 1397749, at *7 (W.D. Wash. Jan. 10, 2017) (certifying two nationwide classes of asylum seekers challenging defective asylum application procedures); *Rivera v. Holder*, 307 F.R.D. 539, 551 (W.D. Wash. 2015) (certifying class of detained immigrants in the Western District of Washington challenging custody proceedings that categorically deny requests for conditional parole); *A.B.T. v. USCIS*, No. C11-2108 RAJ, 2013 WL 5913323, at *2 (W.D. Wash. Nov. 4, 2013) (certifying nationwide class and approving a settlement amending government practices that precluded asylum applicants from receiving employment authorization); *Santillan v. Ashcroft*, No. C04-2686, 2004 WL 2297990, at *12 (N.D. Cal. Oct. 12, 2004) (certifying nationwide class of LPRs challenging delays in receiving documentation of their status).

These cases demonstrate the propriety of Rule 23(b)(2) certification in actions challenging immigration policies depriving noncitizens of immigration benefits, including employment authorization. Indeed, the rule was intended to "facilitate the bringing of class actions in the civil-rights area," particularly those seeking declaratory or injunctive relief. Charles Alan Wright & Arthur R. Miller, 7AA *Federal Practice and Procedure* § 1775 (3d ed. 2022). Claims brought under Rule 23(b)(2) often involve issues affecting noncitizens who would be unable to present their claims absent class treatment. Additionally, the core issues in these types of cases generally present pure questions of law, rather than disparate questions of fact, and thus are well suited for resolution on a class-wide basis.

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A. The Proposed Class Meets All Requirements of Federal Rule of Civil Procedure 23(a).

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

Rule 23(a)(1) requires the class be "so numerous that joinder of all members is impracticable." "[I]mpracticability does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964) (citation omitted). "Numerousness—the presence of many class members—provides an obvious situation in which joinder may be impracticable, but it is not the only such situation . . . ." William B. Rubenstein, 1 *Newberg & Rubenstein on Class Actions* § 3:11 (6th ed. 2022) (footnote omitted). "Thus, Rule 23(a)(1) is an impracticability of joinder rule, not a strict numerosity rule. It is based on considerations of due process, judicial economy, and the ability of claimants to institute suits." *Id.* (footnote omitted). Determining numerosity "requires examination of the specific facts of each case and imposes no absolute limitations." *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980).

While "no fixed number of class members" is required, *Perez-Funez v. INS*, 611 F. Supp. 990, 995 (C.D. Cal. 1984), courts have generally found "the numerosity requirement satisfied when a class includes at least 40 members." *Rannis v. Recchia*, 380 F. App'x 646, 651 (9th Cir. 2010); *see also Rivera*, 307 F.R.D. at 550 (certifying class where the "the Court [found] it highly plausible that more than 40 [noncitizens] will be detained on this basis over the next year, and that more than 40 [noncitizens] are being detained on this basis currently"); *Hum v. Dericks*, 162 F.R.D. 628, 634 (D. Haw. 1995) ("There is no magic number for determining when too many parties make joinder impracticable. Courts have certified classes with as few as thirteen members, and have denied certification of classes with over three hundred members."). Courts have also found impracticability of joinder when even fewer class members are involved. *See,*

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e.g., *McCluskey v. Trustees of Red Dot Corp. Emp. Stock Ownership Plan and Trust*, 268 F.R.D. 670, 674–76 (W.D. Wash. 2010) (certifying class with 27 known members); *Arkansas Educ. Ass'n v. Bd. of Educ.*, 446 F.2d 763, 765–66 (8th Cir. 1971) (finding 17 class members sufficient); *Villalpando v. Exel Direct Inc.*, 303 F.R.D. 588, 606 (N.D. Cal. 2014) (noting that courts routinely find numerosity "when the class comprises 40 or more members").

Here, Plaintiffs estimate that there are over one hundred thousand putative class members nationwide. Over the last year alone, DHS has designated or re-designated several countries for TPS, including Afghanistan, Cameroon, Ethiopia, Haiti, Myanmar, Somalia, South Sudan, Sudan, Syria, Ukraine, and Yemen. *See* Maltese Decl. Ex. C, USCIS, TPS Designated Country Pages. TPS is currently in an initial registration period for these countries, meaning USCIS is accepting first-time TPS applicants. Many, if not most, of these individuals lack work authorization, as USCIS has provided them no interim work authorization based on their timely filed TPS applications.[2] Other countries, like Venezuela, recently closed their initial registration period. *See* Designation of Venezuela for Temporary Protected Status, 86 Fed. Reg. 13574 (Mar. 19, 2021) (stating that Venezuela's initial registration period remained open through September 9, 2022). Between the countries listed above, USCIS has well over 200,000 pending TPS applications. *See* Maltese Decl. Ex. D, USCIS I-821 Data. While some of these applications may be to re-register TPS status, most are initial applications. *See id.* (listing over 148,000 pending TPS applications for Venezuela, which was never previously designated for TPS).[3]

[2] When the DHS Secretary extends a prior designation, only the individuals who received TPS during the initial designation can re-register for TPS. In the case of a re-designation, people who entered since the initial designation (or did not register then) become eligible to receive TPS for the first time, thus allowing many additional people to obtain the status.

[3] Some applicants from these countries may have been granted temporary employment authorization through other means, such as parole, but most will not.

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Consequently, Plaintiffs have identified a sufficient number of proposed class members to demonstrate the class is so numerous joinder is impracticable. Fed. R. Civ. P. 23(a)(1).

Joinder is also impracticable because of the existence of unnamed, unknown future class members who will be subjected to Defendants' policy and practice of refusing to grant work authorization. *See Ali v. Ashcroft*, 213 F.R.D. 390, 408–09 (W.D. Wash. 2003) ("[W]here the class includes unnamed, unknown future members, joinder of such unknown individuals is impracticable and the numerosity requirement is therefore met, regardless of class size." (citation and internal quotation marks omitted)); *Rivera*, 307 F.R.D. at 550 (finding joinder impractical due, in part, to "the inclusion of future class members"); *Hawker v. Consovoy*, 198 F.R.D. 619, 625 (D.N.J. 2001) ("The joinder of potential future class members who share a common characteristic, but whose identity cannot be determined yet is considered impracticable."). Here, joinder is impracticable for the same reason, as the proposed class includes applicants who "who have submitted or will submit an initial application for Temporary Protected Status." *Supra* p. 8.

In addition to class size and future class members, there are several other factors that make joinder impracticable in the present case, such as judicial economy, geographic dispersion of class members, financial resources of class members, and the ability of class members to bring individual suits. *See* Rubenstein, *supra*, § 3:12; *see also, e.g.*, *Dunakin v. Quigley*, 99 F. Supp. 3d 1297, 1327 (W.D. Wash. 2015) (finding joinder impracticable where proposed class members were, inter alia, "spread across the state" and "low-income Medicaid recipients"). Here, the proposed class members are dispersed nationwide. And by definition, they lack work authorization and thus, a stable source of income, rendering it difficult for them to afford the significant costs associated with litigation.

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Finally, "[b]ecause plaintiffs seek injunctive and declaratory relief, the numerosity requirement is relaxed and plaintiffs may rely on [ ] reasonable inference[s] arising from plaintiffs' other evidence that the number of unknown and future members of [the] proposed subclass . . . is sufficient to make joinder impracticable." *Arnott v. USCIS*, 290 F.R.D. 579, 586 (C.D. Cal. 2012) (second, third, fourth, and fifth alterations in original) (quoting *Sueoka v. United States*, 101 F. App'x 649, 653 (9th Cir. 2004)). As a result, even if numerosity were a close question here (which it is not), class certification is warranted. *Stewart v. Assocs. Consumer Discount Co.*, 183 F.R.D. 189, 194 (E.D. Pa. 1998) ("[W]here the numerosity question is a close one, the trial court should find that numerosity exists, since the court has the option to decertify the class later pursuant to Rule 23(c)(1).").

5. The class presents common questions of law and fact.

Rule 23(a)(2) requires that "there [be] questions of law or fact common to the class." "Courts have found that a single common issue of law or fact is sufficient to satisfy the commonality requirement." *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 257 (C.D. Cal. 2008)); *see also, e.g.*, *Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010) ("[T]he commonality requirement asks us to look only for some shared legal issue or a common core of facts."). Commonality exists if class members' claims all "depend upon a common contention . . . of such a nature that it is capable of class-wide 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." *Wal-Mart*, 564 U.S. at 350. Therefore, the critical issue for class certification "is not the raising of common 'questions' . . . but, rather the capacity of a class-wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* (citation omitted).

That putative class members may have different circumstances or other issues related to

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their individual TPS applications does not defeat the commonality among them. Instead, Plaintiffs challenge a policy that applies equally to all class members, thus satisfying the commonality requirement, notwithstanding those differences. *See, e.g.*, *Moreno Galvez*, 2019 WL 3219418, at *2 (stating that class of immigrant youth satisfied commonality where the case presented questions of "[w]hether the [challenged] policy is in accordance with federal law" and "[w]hether the policy is arbitrary and capricious"); *Nw. Immigrant Rights Project v. USCIS*, 325 F.R.D. 671, 693 (W.D. Wash. 2016) ("[A]ll questions of fact and law need not be common to satisfy the rule." (citation omitted)); *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012) ("Where the circumstances of each particular class member vary but retain a common core of factual or legal issues with the rest of the class, commonality exists." (citation omitted)); *Walters v. Reno*, 145 F.3d 1032, 1046 (9th Cir. 1998) (finding commonality based on plaintiffs' common challenge to INS procedures, and noting that "[d]ifferences among the class members with respect to the merits of their actual document fraud cases . . . are simply insufficient to defeat the propriety of class certification"); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 370 (C.D. Cal. 1982) (granting certification in challenge to common government practices in asylum cases, even though the outcome of individual asylum cases would depend on individual class members' varying entitlement to relief). In sum, because Plaintiffs and proposed class members challenge USCIS's policy and practice, "[t]he fact that the adjudication of each individual [TPS application] may require individualized factual and legal inquiries is simply irrelevant" to the issue of commonality. *J.L. v. Cissna*, No.18-cv-04914-NC, 2019 WL 415579, at *9 (N.D. Cal. Feb. 1, 2019).

The commonality standard is even more liberal in a civil rights suit such as this one, which "challenges a system-wide practice or policy that affects all of the putative class

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members." *Gonzalez v. U.S. Immigr. & Customs Enf't*, 975 F.3d 788, 808 (9th Cir. 2020) (citation omitted). Moreover, "class suits for injunctive or declaratory relief" like this case, "by their very nature often present common questions satisfying Rule 23(a)(2)." Wright & Miller, *supra*, § 1763.

Here, Plaintiffs and proposed class members challenge a system-wide policy and practice. Specifically, notwithstanding the INA's express language, USCIS has a policy and practice of failing to grant interim work authorization to TPS-eligible applicants during the many months—or longer—their applications remain pending with USCIS. By definition, all proposed class members have applied or will apply for TPS, are prima facie eligible to receive that status, and have not been provided employment authorization documentation pursuant to their pending TPS application. Consequently, Plaintiffs and proposed class members all share the legal claim that USCIS has unlawfully deprived them of employment authorization documentation, violating the INA and APA.

Furthermore, Plaintiffs and proposed class members suffer the same injury. All have suffered or will continue to suffer from USCIS's refusal to provide evidence of employment authorization while their applications are pending. Such injuries are capable of class-wide resolution through declaratory relief declaring Defendants' policy unlawful under the INA and by setting aside Defendants' policy under the APA. As the relief sought by Plaintiffs will resolve the litigation as to all class members "in one stroke," *Wal-Mart*, 564 U.S. at 350, the commonality requirement of Rule 23(a)(2) is satisfied.

6. Plaintiffs' claims are typical of the claims of the members of the proposed class.

Rule 23(a)(3) specifies that the claims of the representatives must be "typical of the claims . . . of the class." Meeting this requirement usually follows from the presence of common

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questions of law. *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982) ("The commonality and typicality requirements of Rule 23(a) tend to merge."). To establish typicality, "a class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Id.* at 156 (citation and internal quotation marks omitted); *see also Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (finding typicality requirement met where class representatives "allege the same or similar injury as the rest of the putative class; they allege that this injury is a result of a course of conduct that is not unique to any of them; and they allege that the injury follows from the course of conduct at the center of the class claims" (citation, internal quotation marks, and alteration omitted)). As with commonality, factual differences among class members do not defeat typicality provided there are legal questions common to all class members. *LaDuke v. Nelson*, 762 F.2d 1318, 1332 (9th Cir. 1985) ("The minor differences in the manner in which the representative's Fourth Amendment rights were violated does not render their claims atypical of those of the class." (footnote omitted)).

In this case, the claims of the named Plaintiffs are typical of the claims of the proposed class. Plaintiffs suffer from the same injury as proposed class members: the lack of employment authorization documentation. Specifically, Plaintiffs, like proposed class members, have not received documentation evidencing their employment authorization as TPS applicants, even though the INA and its implementing regulations expressly require USCIS to provide such documentation. In sum, the harms suffered by Plaintiffs are typical of the harms suffered by the proposed class, and Plaintiffs' injuries and the injuries of proposed class members result from the identical course of conduct by Defendants. Plaintiffs therefore satisfy the typicality requirement.

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7. Plaintiffs will adequately protect the interests of the proposed class, and counsel are qualified to litigate this action.

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." "Whether the class representatives satisfy the adequacy requirement depends on 'the qualifications of counsel for the representatives, an absence of antagonism, a sharing of interests between representatives and absentees, and the unlikelihood that the suit is collusive.'" *Walters*, 145 F.3d at 1046 (citation omitted).

a. Named Plaintiffs

Plaintiffs are motivated to pursue this action on behalf of others like them who, based on the government's unlawful policy, have been or will be wrongfully denied employment authorization documentation. This deprives Plaintiffs of the ability to care for themselves and their families and maintain a stable life. *See* Mansor Decl. ¶¶ 4-5; Coissy Decl. ¶¶ 5-6; Xareed Decl. ¶¶ 7-8; Zafari Decl. ¶¶ 5-6. Other class members face the same potential harms. Plaintiffs will also fairly and adequately protect the interests of the proposed class because they share the same interests and seek the same relief for all putative class members: a declaratory order and vacatur under the APA that stops Defendants from unlawfully refusing to provide them with work permits. Finally, Plaintiffs do not seek money damages for themselves. As a result, there is no potential conflict between the interests of any of the Plaintiffs and members of the proposed class. Accordingly, Plaintiffs are adequate representatives of the proposed class.

b. Counsel

The adequacy of counsel is also satisfied here. Counsel are deemed qualified when they have experience in previous class actions and cases involving the same area of law. *See, e.g.*, *Jama v. State Farm Fire & Cas. Co.*, 339 F.R.D. 255, 269 (W.D. Wash. 2021); *Lynch v. Rank*, 604 F. Supp. 30, 37 (N.D. Cal. 1984); *Marcus v. Heckler*, 620 F. Supp. 1218, 1223–24 (N.D. Ill.

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1985). Plaintiffs are represented by attorneys from the Northwest Immigrant Rights Project, the National Immigration Litigation Alliance, and the law firm of Kurzban Kurzban Tetzeli & Pratt, all of whom who have extensive experience in class action lawsuits and other complex federal court litigation involving immigration law, including challenges to USCIS policies in adjudicating immigration benefits. *See* Adams Decl. ¶¶ 3–4, 6–7; Kenney Decl. ¶¶ 4-6; Realmuto Decl. ¶¶ 3–5. Counsel is able to demonstrate that they are counsel of record in numerous cases focusing on immigration law, in which they vigorously represented both the class representatives and absent class members in obtaining relief.

B. The Proposed Class Satisfies Federal Rule of Civil Procedure 23(b)(2).

In addition to satisfying the four requirements of Rule 23(a), Plaintiffs also must meet one of the requirements of Rule 23(b) for a class action to be certified. Here, Plaintiffs seek certification under Rule 23(b)(2), which requires that "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." Rule 23(b)(2) is "unquestionably satisfied when members of a putative class seek uniform injunctive or declaratory relief from policies or practices that are generally applicable to the class as a whole." *Parsons*, 754 F.3d at 688; *see also Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1195 (9th Cir. 2001) ("Class certification under Rule 23(b)(2) is appropriate only where the primary relief sought is declaratory or injunctive."). "The rule does not require [the court] to examine the viability or bases of class members' claims for declaratory and injunctive relief, but only to look at whether class members seek uniform relief from a practice applicable to all of them." *Rodriguez,* 591 F.3d at 1125; *see also id.* at 1126 (certifying class of detained noncitizens under

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Rule 23(b)(2) because "all class members[] seek the exact same relief as a matter of statutory . . . right").

This action meets the requirements of Rule 23(b)(2). USCIS has subjected or will subject all class members to the same policy of refusing to provide employment authorization documentation. Plaintiffs and proposed class members seek declaratory relief declaring Defendants' policy unlawful and clarifying Plaintiffs' rights under the INA. They also seek vacatur of Defendants' current policy of refusing to provide employment authorization documentation to TPS eligible applicants. Therefore, the relief sought by Plaintiffs will apply to the proposed class as a whole.

IV. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court certify the proposed class, appoint Plaintiffs as class representatives, and appoint the undersigned attorneys as class counsel.

DATED this 9th day of March, 2023.

Respectfully submitted,

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* *Pro hac vice applications forthcoming*

WORD COUNT CERTIFICATION

I certify that this memorandum contains 5748 words, in compliance with the Local Civil Rules.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Fayez MANSOR, et al.

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, et al.

Defendants.

Case No. 2:23-cv-347

[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Upon consideration of Plaintiffs' Motion for Class Certification, this Court finds that Plaintiffs have satisfied the requirements for class certification under Federal Rules of Civil Procedure 23(a) and 23(b)(2). Specifically, Plaintiffs have demonstrated that (1) members of the proposed class are so numerous that joinder is impracticable; (2) there are questions of law and fact common to the proposed class; (3) the claims of the Plaintiffs are typical of the claims of the class members; and (4) Plaintiffs and their counsel, as representatives of the class, will fairly and adequately protect all class members' interests. Additionally, this Court finds that Defendants have acted on grounds generally applicable to class members, thereby making appropriate final declaratory relief and vacatur as to the class as a whole.

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Considering the above, this Court orders that Plaintiffs' motion for class certification be granted and that the following class be certified:

> All individuals who have submitted or will submit an initial application for Temporary Protected Status (TPS), who have received or will receive a notice of receipt for such an application, who have not received a final decision on the TPS application, and who have not been issued employment authorization documentation incident to their pending TPS application.

The Court appoints Plaintiffs Fayez Mansor, Eclesiaste Coissy, Cabdi Ibrahim Xareed, and Shukria Zafari as class representatives, and attorneys Matt Adams, Aaron Korthuis, and Glenda M. Aldana Madrid of the Northwest Immigrant Rights Project, Mary Kenney, Trina Realmuto, and Kristin Macleod-Ball of the National Immigration Litigation Alliance, and Ira J. Kurzban and Edward F. Ramos of Kurzban Kurzban Tetzeli & Pratt, P.A., as class counsel.

It is so ORDERED.

DATED this _____ day of _____, 2023.

_____
UNITED STATES DISTRICT JUDGE

Presented this 9th day of March, 2023, by:

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