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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Leobardo MORENO GALVEZ, et al.

Plaintiffs,

v.

Lee Francis CISSNA, Director, U.S. Citizenship
and Immigration Services, et al.

Defendants.

Case No. 2:19-cv-321

**PLAINTIFFS' MOTION FOR
CLASS CERTIFICATION**

Noted on Motion Calendar:
March 29, 2019

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

1
2 Plaintiffs Leobardo Moreno Galvez, Jose Luis Vicente Ramos, and Angel de Jesus
3 Muñoz Olivera and the class they seek to represent are all eligible for Special Immigrant
4 Juvenile Status (SIJS), a form of humanitarian relief that provides vulnerable youth with a path
5 to long-term immigration status. SIJS is available to any “child” as defined by the INA—“an
6 unmarried person under twenty-one years of age.” 8 U.S.C. § 1101(b)(1). In each Plaintiff and
7 proposed class member’s case, a Washington state court has exercised jurisdiction to determine
8 their custody while they were under 21, and specifically entered an order finding that (1)
9 reunification with one or both of their parents is not viable due to abuse, neglect, abandonment or
10 similar basis under state law, and (2) it is not in the youth's best interest to be returned to their
11 country of origin (SIJS findings). *See* 8 U.S.C. § 1101(a)(27)(J)(i)-(ii). Accordingly, Plaintiffs
12 have submitted SIJS petitions that include the predicate SIJS order. However, Defendants have
13 unlawfully denied, or will deny, Plaintiffs’ SIJS petitions on the basis of an ultra vires policy that
14 rejects the Washington state court findings and categorically denies SIJS to 18- to 20-year-old
15 youth, in violation of the Immigration and Nationality Act (INA) and Administrative Procedure
16 Act (APA). Scores of youth in Washington State are subject to the same unlawful policy,
17 notwithstanding that a state court exercising jurisdiction over their custody has found they have
18 been abused, neglected, or abandoned, and that it is not in their best interest to be removed to
19 their country of birth.

20 Around 2017, Defendant United States Citizenship and Immigration Services (USCIS)
21 began to delay the adjudication of SIJS petitions filed by Plaintiffs and proposed class members,
22 violating a clear statutory requirement that all SIJS petitions be adjudicated within 180 days after
23 the date the petition is filed. Then in February 2018, USCIS began imposing a requirement that

1 predicate SIJS orders must be issued by a state court that had the legal authority to return them to
2 a parent. This novel justification finds no support in the SIJS statute and unlawfully targets all
3 youth who have received a SIJS order from a Washington state court after turning eighteen but
4 before reaching of twenty-one. Relying on its recent policy, and after a lengthy and unreasonable
5 delay, USCIS has denied or will deny all SIJS petitions filed by Plaintiffs and proposed class
6 members.

7 The questions presented in this case—whether USCIS’s untimely adjudication and
8 categorical denial of SIJS petitions filed by Plaintiffs and proposed class members violate the
9 INA and APA—can and should be resolved on a class-wide basis. The proposed class satisfies
10 the requirements under Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.
11 Plaintiffs thus request that the Court certify the following class and appoint them as class
12 representatives:

13 All individuals who have been issued predicate SIJS orders by Washington
14 state courts after turning eighteen years old but prior to turning twenty-one
15 years old, and have submitted or will submit SIJS petitions to USCIS prior
to turning twenty-one years old.

16 On behalf of themselves and all proposed class members, Plaintiffs seek an order from
17 this Court which (1) declares Defendants’ ultra vires policy of rejecting SIJS findings issued by
18 Washington state courts for youth ages 18 to 20 to be in violation of the INA and APA, (2)
19 compels the government to rescind the improper SIJS denials already issued and reopen those
20 SIJS petitions, (3) enjoins any future denials of SIJS petitions on the basis that Washington state
21 courts lacked the authority to reunify children with their parents, and (4) requires USCIS to
22 adjudicate Plaintiffs’ and proposed class members’ SIJS petitions within 180 days after the date
23 of filing, as required by statute.

II. BACKGROUND

A. Plaintiff's 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).

Plaintiffs thus provide a brief summary of their claims.

1. Special Immigrant Juvenile Status

SIJS is a form of humanitarian relief created by Congress to allow abused, abandoned, and neglected children to lawfully remain in the United States. SIJS provides vulnerable children and youth with protection from deportation and provides them a pathway to become lawful permanent residents (LPRs) and subsequently, United States citizenship. *See* 8 U.S.C. §§ 1255(h), 1153(b)(4), 1427. LPRs are entitled to “resid[e] permanently in the United States . . . in accordance with the immigration laws.” 8 U.S.C. § 1101(a)(20). A grant of SIJS also confers a path to obtaining work authorization when applying for lawful permanent residence, 8 C.F.R. § 274a.12(c)(9), as well as eligibility for other benefits, including access to state and federally funded benefits. *See, e.g.*, 8 U.S.C. § 1232(d)(4). USCIS is required to adjudicate all SIJS petitions “not later than 180 days after the date on which the application is filed.” 8 U.S.C. § 1232(d)(2).

The INA defines a child for purposes of SIJS to be “an unmarried person under twenty-one years of age.” 8 U.S.C. § 1101(b)(1). Accordingly, the Immigration and Naturalization Service (the predecessor agency to USCIS) recognized that all unmarried children and youth who are under age 21 meet the age requirement for SIJS. 8 C.F.R. § 204.11(c)(1); *see also*

1 USCIS Policy Manual, vol. 6, part J, ch. 2(C) (last updated Feb. 12, 2019),
2 <https://bit.ly/2NAGVCT> (“[A] ‘child’ is an unmarried person under 21 years of age for purposes
3 of SIJ classification.”). Moreover, to ensure that USCIS’s delays in adjudicating SIJS petitions
4 would not deprive petitioners of the opportunity to obtain this critical relief, Congress enacted an
5 age-out protection to ensure that no SIJS petition would be denied on the basis of age so long as
6 the petitioner was under 21 on the date the petition was filed, even if the petitioner turns 21 prior
7 to the adjudication of their petition. Trafficking Victims Protections Reauthorization Act of 2008
8 (TVPRA), Pub. L. 110-457 § 235(d)(6), 122 Stat. 5044, 5080 (2008).

9 To obtain SIJS, a petitioner must be (1) under 21 years of age at the time the petition is
10 filed; (2) unmarried; (3) declared dependent on a state or juvenile court, or placed in the custody
11 of a state agency or individual appointed by such a court (such as having their custodial
12 placement approved by a juvenile probation department or being appointed a guardian); and (4)
13 the subject of specific findings (a) that reunification with one or more parents is not viable due to
14 abuse, abandonment, or neglect (or a similar basis under state law), and (b) that it is not in the
15 child’s best interest to return to his or her home country (SIJS findings). *See* 8 U.S.C. §§
16 1101(b)(1), 1101(a)(27)(J), 1232(d)(6). Every SIJS petition to USCIS must include the predicate
17 state court order containing these findings (SIJS order). Once USCIS approves a SIJS petition,
18 the child then becomes eligible to apply to adjust their status to that of an LPR without being
19 subject to many of the grounds of inadmissibility that may apply to other noncitizens. *See* 8
20 U.S.C. § 1255(h).

21 In enacting the SIJS statute, Congress exclusively reserved the role of making SIJS
22 findings to state courts. *See* 8 U.S.C. § 1101(a)(27)(J) (requiring that state juvenile courts make
23 certain child welfare determinations); *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 265 (C.D. Cal.

1 2008) (“The SIJ statute affirms the institutional competence of state courts as the appropriate
2 forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child’s
3 best interests.”). The SIJS statute provides no authority for USCIS to second-guess the state
4 court’s determinations. Accordingly, the USCIS Policy Manual affirms “[t]here is nothing in
5 USCIS guidance that should be construed as instructing juvenile courts on *how to apply their*
6 *own state law*,” USCIS Policy Manual, vol. 6, part J, ch. 2(D)(4), and instructs adjudicating
7 officers to “rel[y] on the expertise of the juvenile courts in making child welfare decisions
8 and . . . not reweigh the evidence to determine if the child was subjected to abuse, neglect,
9 abandonment, or a similar basis under state law,” *id.* Ch. 2(D)(5); *see also id.* (“USCIS generally
10 consents to the grant of [SIJS] when the order includes or is supplemented by a reasonable
11 factual basis for all of the required findings.”).

12 2. Washington State Law Framework

13 Washington state law explicitly authorizes state courts to make determinations about
14 the care and custody of children under age 21, including youth who are 18 years or older. SIJS
15 orders are generally issued in a variety of Washington state court proceedings, including
16 juvenile offender proceedings, dependency and extended foster care proceedings, non-parental
17 custody proceedings, divorce and other family law proceedings, and Child in Need of
18 Services/At-Risk Youth proceedings. Wash. Leadership Inst., Washington State Court Special
19 Immigrant Juvenile Status (SIJS) Bench Book and Resource Guide 15-16 (Oct. 2016),
20 <https://bit.ly/2T5sUDh>.

21 State laws expressly authorize Washington courts to make custody determinations and
22 SIJS findings for youth ages 18 to 20 in three different types of proceedings. First, in juvenile
23 offender proceedings, a state court may extend its jurisdiction over the adjudication of a

1 juvenile offense and thus determine the custody of a juvenile past their eighteenth birthday.
2 RCW § 13.40.300(3); *see also* Dkt. 1 ¶¶ 33-35. Second, the Vulnerable Youth Guardianship
3 (VYG) statute, enacted by the state legislature in 2017, “grants the superior courts jurisdiction
4 to make judicial determinations regarding the custody and care of . . . an unmarried person
5 under twenty-one years of age.” RCW § 13.90.901(1)(a) (citing 8 U.S.C. § 1101(b) for
6 definition of “child”); *see also id.* § 13.90.010(6) (defining “[v]ulnerable youth” as “an
7 individual who has turned eighteen years old, but who is not yet twenty-one years old”); Dkt.1
8 ¶¶ 36-39. Third, under the Extended Foster Care (EFC) program, state courts maintain
9 jurisdiction over continued dependency proceedings for youth who were declared legally
10 dependent on the state before turning 18. RCW § 13.34.267(1); Dkt. 1 ¶¶ 40-44.

11 3. USCIS Policy Challenged by Plaintiffs

12 In 2018, Defendants began imposing a new, ultra vires requirement for SIJS petitions
13 filed by individuals who, like Plaintiffs, obtained SIJS findings after turning 18 but before
14 turning 21. In February 2018, the Office of the Chief Counsel for USCIS issued new guidance
15 stating that “in order for a court order to be valid for the purpose of establishing SIJ eligibility,
16 the court must have competent jurisdiction to determine both whether a parent could regain
17 custody and to order reunification, if warranted.” *See* Maltese Decl. Ex. B at 1. This position
18 was publicly confirmed in April 2018 by USCIS spokesperson Jonathan Withington, who
19 confirmed the agency’s position that most state courts do not have power to enter SIJS findings
20 for youth age 18 and older:

21 For purposes of establishing eligibility for SIJ, the statute requires that a
22 state court have the authority to return a child to the custody of their parent
23 in order for that court to find that reunification is not viable. Since most
courts cannot place a child back in the custody of their parent once the child
reaches the age of majority (as determined by state and in most instances

1 that is age 18), those state courts do not have power and authority to make
2 the reunification finding for purposes of SIJ eligibility.

3 *See Id.* Ex. A at 9. USICS has since incorporated the policy into its Consolidated Handbook of
4 Adjudications Procedures (CHAP), which is distributed to USCIS employees. *Id.* Ex. C at 2-3.
5 However, the agency has not altered the publicly available USCIS Policy Manual. *See* USCIS
6 Policy Manual, vol. 6, pt. J, ch. 2.

7 As demonstrated below, USCIS applies its novel policy to Plaintiffs and proposed class
8 members—youth who obtained SIJS findings in Washington State after turning 18. Pursuant to
9 its new policy, USCIS denied, or threatened to deny, Plaintiffs' and proposed class members'
10 SIJS petitions on the basis that the predicate SIJS orders are invalid because the state courts did
11 not have authority to return the youth to a parent. *See, e.g.*, Maltese Decl. Exs. E-G, I-J; Stone
12 Decl. Ex. A. USCIS has also unlawfully delayed the adjudication of all SIJS petitions filed by
13 class members. *See, e.g.*, Casey Decl. ¶ 11; Wennerstrom Decl. ¶ 11; Stone Decl. ¶ 10. This
14 case is ideally suited for class certification as it challenges the government's uniform policy
15 and practice of categorically denying SIJS petitions filed by all class members on the basis of
16 its ultra vires policy, as well as the government's routine failure to timely adjudicate SIJS
17 petitions as required by the INA.

18 **B. Named Plaintiffs' Factual Backgrounds**

19 1. Plaintiff Moreno Galvez

20 Plaintiff Leobardo Moreno Galvez is a 20-year-old citizen of Mexico. Moreno Galvez
21 Decl. ¶ 1. Growing up, Leobardo suffered severe physical abuse by his father. *Id.* ¶ 5. His parents
22 could not provide for his basic needs, such as food and adequate shelter. He was forced to drop
23 out of school when he was 8 years old and began working on his own as a 12-year-old. *Id.* ¶¶ 4,
6-9. When he turned 14, he came to the United States on his own and has since lived with

1 relatives and friends. *Id.* ¶¶ 10-11.

2 In 2016, Leobardo was placed in juvenile offender proceedings after being arrested for
3 Minor in Possession as a 17-year-old. *Id.* ¶ 12. The Skagit County Juvenile Court, which was
4 adjudicating the offense, extended its jurisdiction past Leobardo's eighteenth birthday. *Id.* On
5 October 20, 2016, when Leobardo was 18 years old, the Skagit County Juvenile Court placed
6 him in the custody of a state facility and entered SIJS findings. *Id.*; Maltese Decl. Ex. D at 1-2.

7 On December 2, 2016, Leobardo submitted his Form I-360, Petition for Special
8 Immigrant Juvenile Status to USCIS. Maltese Decl. Ex. G at 2. On August 23, 2018, USCIS
9 issued a Notice of Intent to Deny (NOID) Leobardo's SIJS petition, noting that "the evidence
10 you submitted does not establish that the state court had jurisdiction under state law to make a
11 legal conclusion about returning you to your parent(s)' custody." *Id.* Ex. E at 1-2. On October
12 31, 2018, USCIS issued a second NOID on the same basis. *Id.* Ex. F at 1-2. Leobardo submitted
13 timely responses to these notices. Moreno Galvez Decl. ¶ 13. On December 20, 2018, USCIS
14 denied his I-360 petition, again stating that "the evidence you submitted does not establish that
15 the state court had jurisdiction under state law to make a legal conclusion about returning you to
16 your parent(s)' custody." Maltese Decl. Ex. G at 2. This denial notice erroneously stated that "a
17 court has placed you in a guardianship." *Id.* Additionally, the denial notice stated that Leobardo
18 "[is] not lawfully present in the United States" and that if he "do[es] not depart within 33 days of
19 this letter, USCIS may issue [him] a Notice to Appear and commence removal proceedings
20 against [him]." *Id.* at 3.

21 2. Plaintiff Vicente Ramos

22 Plaintiff Jose Luis Vicente Ramos is a 20-year-old citizen of Guatemala. Vicente Ramos
23 Decl. ¶ 1. While growing up in Guatemala, Jose suffered severe parental abuse. His mother

1 threw rocks at him, punched him in the head with closed fists, and beat him with sticks and the
2 television antennae. *Id.* ¶ 2. His father was an abusive alcoholic who punched, slapped, and beat
3 him using belts and cords from electric appliances. *Id.* ¶ 3. On one occasion, his father kicked
4 him to the ground and began beating him with the butt of a rifle. *Id.* Jose fled from his home
5 when he was 17 years old and entered the United States as an unaccompanied child on July 3,
6 2016. *Id.* ¶¶ 6, 8.

7 Jose was initially placed in a shelter for unaccompanied minors but later released to live
8 with his cousin in Vancouver, Washington. *Id.* ¶ 9. In February 2018, U.S. Immigration and
9 Customs Enforcement (ICE) detained Jose at the Northwest Detention Center in Tacoma,
10 Washington. *Id.* ¶ 11. On June 1, 2018, the Pierce County Superior Court appointed his cousin as
11 his guardian in VYG proceedings and entered SIJS findings. Maltese Decl. Ex. H at 1-2.

12 On June 11, 2018, Jose submitted his Form I-360, Petition for Special Immigrant Juvenile
13 Status to USCIS. Vicente Ramos Decl. ¶ 10. On November 2, 2018, USCIS issued a NOID on
14 the basis that “the evidence you submitted does not establish that the state court had jurisdiction
15 under state law to make a legal conclusion about returning you to your parent(s)’ custody.”
16 Maltese Decl. Ex. I at 2. On February 5, 2019, USCIS denied Jose’s SIJS petition on the same
17 basis. *Id.* Ex. J at 1-2. As noted by the denial notice, Jose is “currently in removal proceedings
18 with the Immigration Court.” *Id.* at 3. He remains detained at the Northwest Detention Center in
19 Tacoma, Washington. Vicente Ramos Decl. ¶ 11.

20 3. Plaintiff Muñoz Olivera

21 Plaintiff Angel de Jesus Muñoz Olivera is a 19-year-old citizen of Mexico. Muñoz
22 Olivera Decl. ¶¶ 1-2. When Angel was around 10 years old, his father abandoned him. Before
23 Angel’s father left the home, he used drugs and violently abused Angel’s mother, often in front

1 of Angel. *Id.* ¶ 2. Angel’s mother, in turn, would hit Angel with a belt, clothes hangers, and her
2 cell phone. *Id.* ¶ 3. In August 2017, Angel’s mother disappeared and was later discovered dead.
3 *Id.* ¶ 4. Shortly after their mother’s death, Angel and his younger brother fled to the United
4 States, fearing for their lives. They intended to seek help from a relative living in Kennewick,
5 Washington. *Id.* ¶ 5.

6 Upon entering the United States on August 30, 2017, Angel was separated from his
7 brother at the border and detained for over three months. *Id.* ¶ 6. On November 3, 2017, the
8 Pierce County Juvenile Court appointed Angel’s relative as his guardian in VYG proceedings
9 and made SIJS findings. Maltese Decl. Ex. K at 1-2. Angel then submitted his Form I-360,
10 Petition for Special Immigrant Juvenile Status to USCIS on November 15, 2017. Muñoz Olivera
11 Decl. ¶ 10. To date, USCIS has not adjudicated his application.

12 III. ARGUMENT

13 Plaintiffs seek certification of the following class:

14 All individuals who have been issued predicate SIJS orders by Washington
15 state courts after turning eighteen years old but prior to turning twenty-one
16 years old, and have submitted or will submit SIJS petitions to USCIS prior
to turning twenty-one years old.

17 Under Federal Rule of Civil Procedure 23, Plaintiffs are entitled to class certification where two
18 conditions are met: “The suit must satisfy the criteria set forth in subdivision (a) (*i.e.*,
19 numerosity, commonality, typicality, and adequacy of representation), and it also must fit into
20 one of the three categories described in subdivision (b).” *Shady Grove Orthopedic Assocs., P.A.*
21 *v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010) (internal citation omitted). Plaintiffs’ proposed
22 class satisfies Rule 23(a) and (b)(2).
23

1 Courts in the Ninth Circuit, including this Court, have routinely certified class actions
2 challenging immigration policies and practices that have broad, categorical effect. *See, e.g., J.L.*
3 *v. Cissna*, No. 18-cv-04914-NC, 2019 WL 415579, at *12 (N.D. Cal. Feb. 1, 2019) (certifying
4 class of “[c]hildren who have received or will receive guardianship orders pursuant to California
5 Probate Code § 1510.1(a) and who have received or will receive denials of their SIJ status
6 petitions on the grounds that the state court that issued the SIJ Findings lacked jurisdiction
7 because the court did not have the authority to reunify the children with their parents”); *Rosario*
8 *v. U.S. Citizenship and Immigration Servs.*, No. C15-0813JLR, 2017 WL 3034447, at *12 (W.D.
9 Wash. July 18, 2017) (granting nationwide certification to class of initial asylum applicants
10 challenging the government’s adjudication of employment authorization applications); *Wagafe v.*
11 *Trump*, No. C17-0094-RAJ, 2017 WL 2671254, at *16 (W.D. Wash. June 21, 2017) (certifying
12 two nationwide classes of immigrants challenging legality of a government program applied to
13 certain immigration benefits applications); *Mendez Rojas v. Johnson*, No. C16-1024RSM, 2017
14 WL 1397749, at *7 (W.D. Wash. Jan. 10, 2017) (certifying two nationwide classes of asylum
15 seekers challenging defective asylum application procedures); *Rivera v. Holder*, 307 F.R.D. 539,
16 551 (W.D. Wash. 2015) (certifying class of detained immigrants in the Western District of
17 Washington challenging custody proceedings that categorically deny requests for conditional
18 parole); *Khoury v. Asher*, 3 F. Supp. 3d 877, 890 (W.D. Wash. 2014) (certifying class of detained
19 immigrants in the Western District of Washington challenging failure to provide custody
20 hearings); *A.B.T. v. U.S. Citizenship and Immigration Services*, No. C11-2108 RAJ, 2013 WL
21 5913323, at *2 (W.D. Wash. Nov. 4, 2013) (certifying nationwide class and approving a
22 settlement amending government practices that precluded asylum applicants from receiving
23 employment authorization); *Santillan v. Ashcroft*, No. C04–2686, 2004 WL 2297990, at *12

1 (N.D. Cal. Oct. 12, 2004) (certifying nationwide class of LPRs challenging delays in receiving
2 documentation of their status); *Ali v. Ashcroft*, 213 F.R.D. 390, 410-11 (W.D. Wash. 2003)
3 (certifying nationwide class of Somalis challenging legality of removal to Somalia in the absence
4 of a functioning government), *aff'd*, 346 F.3d 873, 886 (9th Cir. 2003), *vacated on other grounds*
5 *sub nom. Ali v. Gonzales*, 421 F.3d 795 (9th Cir. 2005); *Walters v. Reno*, No. C94-1204C, 1996
6 WL 897662, at *8 (W.D. Wash. 1996), *aff'd*, 145 F.3d 1032, 1045-47 (9th Cir. 1998) (certifying
7 nationwide class of individuals challenging adequacy of notice in document fraud cases).

8 These cases demonstrate the propriety of Rule 23(b)(2) certification in actions
9 challenging immigration policies. Indeed, the rule was intended to “facilitate the bringing of
10 class actions in the civil-rights area,” particularly those seeking declaratory or injunctive relief.
11 Charles Alan Wright & Arthur R. Miller, *7AA Federal Practice and Procedure* § 1775 (3d ed.
12 2008). Claims brought under Rule 23(b)(2) often involve issues affecting noncitizens who would
13 not have the ability to present their claims absent class treatment. Additionally, the core issues in
14 these type of cases generally present pure questions of law, rather than disparate questions of
15 fact, and thus are well suited for resolution on a class wide basis.

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

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

18 Rule 23(a)(1) requires the class be “so numerous that joinder of all members is
19 impracticable.” “[I]mpracticability does not mean ‘impossibility,’ but only the difficulty or
20 inconvenience of joining all members of the class.” *Harris v. Palm Springs Alpine Estates, Inc.*,
21 329 F.2d 909, 913-14 (9th Cir. 1964) (internal citation omitted). Determining numerosity
22 “requires examination of the specific facts of each case and imposes no absolute limitations.”
23 *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980). No fixed number of class

1 members is required. *Perez-Funez v. INS*, 611 F. Supp. 990, 995 (C.D. Cal. 1984); *Hum v.*
2 *Dericks*, 162 F.R.D. 628, 634 (D. Haw. 1995) (“There is no magic number for determining when
3 too many parties make joinder impracticable. Courts have certified classes with as few as
4 thirteen members, and have denied certification of classes with over three hundred members.”).
5 “Numerousness—the presence of many class members—provides an obvious situation in which
6 joinder may be impracticable, but it is not the only such situation . . .” William B. Rubenstein, 1
7 *Newberg on Class Actions* § 3:11 (5th ed. 2018) (internal footnote omitted). “Thus, Rule 23(a)(1)
8 is an impracticability of joinder rule, not a strict numerosity rule. It is based on considerations of
9 due process, judicial economy, and the ability of claimants to institute suits.” *Id.* (internal
10 footnotes omitted). Courts have found impracticability of joinder when relatively few class
11 members are involved. *See, e.g., McCluskey v. Trustees of Red Dot Corp. Emp. Stock Ownership*
12 *Plan and Trust*, 268 F.R.D. 670, 674-76 (W.D. Wash. 2010) (certifying class with 27 known
13 members); *Rivera*, 307 F.R.D. at 550 (certifying class consisting of 40 known class members and
14 unknown future members); *Arkansas Educ. Ass’n v. Bd. of Educ.*, 446 F.2d 763, 765-66 (8th Cir.
15 1971) (finding 17 class members sufficient); *Villalpando v. Exel Direct Inc.*, 303 F.R.D. 588,
16 605-06 (N.D. Cal. 2014) (noting that courts routinely find numerosity “when the class comprises
17 40 or more members”).

18 Plaintiffs estimate there are nearly 100, if not more, class members. Indeed, counsel for
19 Plaintiffs currently represent 36 such clients. Casey Decl. ¶ 7. In addition, declarations from two
20 private practitioners and one other nonprofit organization identify at least 17 other proposed
21 class members. Stone Decl. ¶ 7 (identifying 8 potential class members); Wennerstrom Decl. ¶ 7
22 (identifying 9 potential class members). Thus, Plaintiffs have identified sufficient number of
23

1 proposed class members to demonstrate the class is so numerous joinder is impracticable. Fed. R.
2 Civ. P. 23(a)(1).

3 Joinder is also inherently impracticable because of the existence of unnamed, unknown
4 future class members who will be subjected to Defendants' unlawful and ultra vires requirement
5 for SIJS eligibility. *See Ali*, 213 F.R.D. at 408-09 (“[W]here the class includes unnamed,
6 unknown future members, joinder of such unknown individuals is impracticable and the
7 numerosity requirement is therefore met, regardless of class size.”) (citations and internal
8 quotation marks omitted); *Rivera*, 307 F.R.D. at 550 (finding joinder impractical due, in part, to
9 “the inclusion of future class members”); *Smith v. Heckler*, 595 F. Supp. 1173, 1186 (E.D. Cal.
10 1984) (“Joinder in the class of persons who may be injured in the future has been held
11 impracticable, without regard to the number of persons already injured.”); *Hawker v. Consovoy*,
12 198 F.R.D. 619, 625 (D.N.J. 2001) (“The joinder of potential future class members who share a
13 common characteristic, but whose identity cannot be determined yet is considered
14 impracticable.”). Joinder is impracticable for the proposed class, which includes youth who
15 “have submitted *or will submit* SIJS petitions to USCIS prior to turning twenty-one years old.”
16 *Supra* p. 10.

17 In addition to class size and future class members, there are several other factors that
18 demonstrate impracticability of joinder in the present case, such as judicial economy, geographic
19 dispersion of class members, financial resources of class members, and the ability of class
20 members to bring individual suits. *See Rubenstein, supra*, § 3:12; *see also, e.g., Dunakin v.*
21 *Quigley*, 99 F. Supp. 3d 1297, 1327 (W.D. Wash. 2015) (finding joinder impracticable where
22 proposed class members were, inter alia, “spread across the state” and “low-income Medicaid
23 recipients”); *Lynch v. Rank*, 604 F. Supp. 30, 38 (N.D. Cal. 1984) (certifying class of poor and

1 disabled plaintiffs represented by public interest law groups), *aff'd*, 747 F.2d 528 (9th Cir. 1984),
2 *amended on reh'g on other grounds*, 763 F.2d 1098 (9th Cir. 1985); *Sherman v. Griepentrog*,
3 775 F. Supp. 1383, 1389 (D. Nev. 1991) (holding that poor and elderly or disabled plaintiffs
4 dispersed over a wide geographic area could not bring multiple lawsuits without great hardship);
5 *United States ex rel. Morgan v. Sielaff*, 546 F.2d 218, 222 (7th Cir. 1976) (“Only a representative
6 proceeding avoids a multiplicity of lawsuits and guarantees a hearing for individuals . . . who by
7 reason of ignorance, poverty, illness or lack of counsel may not have been in a position to seek
8 one on their own behalf.”) (internal citation omitted). The proposed class members are, by
9 definition, abandoned, abused, or neglected children whom state courts have committed to a state
10 agency, appointed a guardian, or found dependent on the state. As undocumented immigrants,
11 many lack work authorization and thus, a stable source of income. *See, e.g.*, Casey Decl. ¶ 15;
12 Lovell Decl. ¶ 9. Class members are also dispersed throughout Washington State and include
13 homeless youth. *See, e.g.*, Casey Decl. ¶ 7; Wennerstrom Decl. ¶ 8; Lovell Decl. ¶ 4.

14 “Because Plaintiffs seek injunctive and declaratory relief, the numerosity requirement is
15 relaxed and plaintiffs may rely on . . . reasonable inference[s] arising from plaintiffs’ other
16 evidence that the number of unknown and future members of [the] proposed subclass . . . is
17 sufficient to make joinder impracticable.” *Arnott v. U.S. Citizenship and Immigration Servs.*, 290
18 F.R.D. 579, 586 (C.D. Cal. 2012) (quoting *Sueoka v. United States*, 101 Fed. App’x 649, 653
19 (9th Cir. 2004)). Even if numerosity were a close question here, the court should certify the class.
20 *Stewart v. Assocs. Consumer Discount Co.*, 183 F.R.D. 189, 194 (E.D. Pa. 1998) (“[W]here the
21 numerosity question is a close one, the trial court should find that numerosity exists, since the
22 court has the option to decertify the class later pursuant to Rule 23(c)(1).”).

1 2. The class presents common questions of law and fact.

2 Rule 23(a)(2) requires that “there [be] questions of law or fact common to the class.” One
3 issue of law or fact common among class members, standing alone, is enough to satisfy this
4 criterion. *See, e.g., Perez-Olano*, 248 F.R.D. at 257 (“Courts have found that a single common
5 issue of law or fact is sufficient to satisfy the commonality requirement.”); *Rodriguez v. Hayes*,
6 591 F.3d 1105, 1122 (9th Cir. 2010) (“[T]he commonality requirement asks us to look only for
7 some shared legal issue or a common core of facts.”). Commonality exists if class members’
8 claims all “depend upon a common contention . . . of such a nature that it is capable of class-
9 wide resolution—which means that determination of its truth or falsity will resolve an issue that
10 is central to the validity of each one of the claims in one stroke.” *Wal-Mart*, 564 U.S. at 350.
11 Therefore, the critical issue for class certification “is not the raising of common ‘questions’ . . .
12 but, rather the capacity of a class wide proceeding to generate common *answers* apt to drive the
13 resolution of the litigation.” *Id.* (internal citation and quotation marks omitted).

14 That different class members may have different circumstances or other individual issues
15 does not defeat the commonality among them. *See, e.g., J.L.*, 2019 WL 415579, at *9 (finding
16 commonality where a “single common question—whether Defendants’ new [SIJS] requirement
17 is lawful—is ‘central to the validity’” of class members’ claims (citation omitted)); *Nw.*
18 *Immigrant Rights Project v. U.S. Citizenship and Immigration Servs.*, 325 F.R.D. 671, 693 (W.D.
19 Wash. 2016) (“[A]ll questions of fact and law need not be common to satisfy the rule.” (citation
20 and internal quotation marks omitted)); *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015,
21 1029 (9th Cir. 2012) (“Where the circumstances of each particular class member vary but retain
22 a common core of factual or legal issues with the rest of the class, commonality exists.”)
23 (internal quotation marks omitted)); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 370 (C.D.

1 Cal. 1982) (granting certification in challenge to common government practices in asylum cases,
2 even though the outcome of individual asylum cases would depend on individual class members'
3 varying entitlement to relief); *Walters*, 145 F.3d at 1046 (finding commonality based on
4 plaintiffs' common challenge to INS procedures, and noting that "[d]ifferences among the class
5 members with respect to the merits of their actual document fraud cases . . . are simply
6 insufficient to defeat the propriety of class certification."). Because Plaintiffs and proposed class
7 members challenge USCIS's policy and practice, "[t]he fact that the adjudication of each
8 individual SIJ petition may require individualized factual and legal inquiries is simply irrelevant"
9 to the issue of commonality. *J.L.*, 2019 WL 415579, at *9.

10 The commonality standard is even more liberal in a civil rights suit such as this one,
11 which "challenges a system-wide practice or policy that affects all of the putative class
12 members." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *abrogated on other grounds*
13 *by Johnson v. California*, 543 U.S. 499 (2005). "[C]lass suits for injunctive or declaratory relief"
14 like this case, "by their very nature often present common questions satisfying Rule 23(a)(2)."
15 *Wright & Miller, supra*, § 1763.

16 Here, Plaintiffs and proposed class members challenge a system-wide policy and
17 practice. By definition, they have all obtained a SIJS order from a Washington state court after
18 turning 18 but before turning 21. They have all submitted or will submit a SIJS petition to
19 USCIS on the basis of the predicate SIJS order they obtained from a Washington state court.
20 USCIS has denied, or will deny, all class members' SIJS petitions based on its ultra vires
21 requirement that state courts must have the authority to return the youth to the custody of their
22 parent. Thus Plaintiffs and proposed class members all share the legal claim that this new USCIS
23 policy violates the INA and APA. Furthermore, Plaintiffs and proposed class members all

1 suffered or continue to suffer from USCIS’s delay in adjudicating their SIJS petitions beyond the
2 180-day statutory deadline. The commonality requirement of Rule 23(a)(2) is therefore satisfied.
3 All class members’ injuries are capable of class-wide resolution through declaratory relief
4 declaring Defendants’ policy unlawful under the INA and APA, and injunctive relief enjoining
5 Defendants from applying the policy in adjudicating SIJS petitions and from delaying the
6 adjudication of their SIJS petitions past the 180-day statutory deadline. Accordingly, the relief
7 sought by Plaintiffs will resolve the litigation as to all class members in “one stroke.” *Wal-Mart*,
8 564 U.S. at 350.

9 3. Plaintiffs’ claims are typical of the claims of the members of the proposed class.

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

1 render their claims atypical of those of the class.” (internal footnote omitted)); *Smith v. Univ. of*
2 *Wash. Law Sch.*, 2 F. Supp. 2d 1324, 1342 (W.D. Wash. 1998) (“When it is alleged that the same
3 unlawful conduct was directed at or affected both the named plaintiff and the class sought to be
4 represented, the typicality requirement is usually satisfied, irrespective of varying fact patterns
5 which underlie individual claims.”).

6 In this case, the claims of the named Plaintiffs are typical of the claims of the proposed
7 class. Plaintiffs suffer from the same injury in fact as proposed class members: the delays and
8 denial of their SIJS petitions despite having received the requisite SIJS findings in a Washington
9 state court properly exercising jurisdiction under state law. Plaintiffs, like proposed class
10 members, will be denied SIJS on the basis of the same unlawful USCIS policy requiring
11 Washington state courts to have the authority to force reunification of children over 18 with a
12 parent. In sum, the harms suffered by Plaintiffs are typical of the harms suffered by the proposed
13 class, and Plaintiffs’ injuries and the injuries of proposed class members result from the identical
14 course of conduct by Defendants. Plaintiffs therefore satisfy the typicality requirement.

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

17 Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect
18 the interests of the class.” “Whether the class representatives satisfy the adequacy requirement
19 depends on ‘the qualifications of counsel for the representatives, an absence of antagonism, a
20 sharing of interests between representatives and absentees, and the unlikelihood that the suit is
21 collusive.’” *Walters*, 145 F.3d at 1046 (citations omitted).

22 *a. Named Plaintiffs*

23 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 SIJS and the many

1 benefits which flow from SIJS, and who face substantial, potentially life-threatening risks as a
2 result of the government's conduct. *See* Moreno Galvez Decl. ¶¶ 16-23; Vicente Ramos Decl. ¶¶
3 17-23; Muñoz Olivera Decl. ¶¶ 16-23. Plaintiffs will fairly and adequately protect the interests of
4 the proposed class because they share the same interests and seek the same justice for all putative
5 class members: declaratory and injunctive relief that stop Defendants from unlawfully delaying
6 the adjudication of SIJS petitions for over 180 days, and from denying SIJS petitions on the basis
7 that Washington state courts do not have the authority to return a youth over age 18 to the
8 custody of a parent. Plaintiffs do not seek money damages for themselves. In other words, there
9 is no potential conflict between the interests of any of the Plaintiffs and members of the proposed
10 class. Accordingly, Plaintiffs are adequate representatives of the proposed class.

11 *b. Counsel*

12 The adequacy of Plaintiffs' counsel is also satisfied here. Counsel are deemed qualified
13 when they have experience in previous class actions and cases involving the same area of law.
14 *See, e.g., Lynch*, 604 F. Supp. at 37; *Marcus v. Heckler*, 620 F. Supp. 1218, 1223-24 (N.D. Ill.
15 1985); Rubenstein, *supra*, § 3:72 ("The fact that proposed counsel has been found adequate in
16 other class actions is persuasive evidence that the attorney will be adequate in the present
17 action."). Plaintiffs are represented by attorneys from the Northwest Immigrant Rights Project,
18 who have extensive experience in class action lawsuits and other complex cases in federal court
19 involving immigration law, including challenges to USCIS policies in adjudicating immigration
20 benefits. *See* Adams Decl. ¶¶ 3-4, 7. Counsel is able to demonstrate that they are counsel of
21 record in numerous cases focusing on immigration law, in which they vigorously represented
22 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. Rule 23(b)(2) 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.” Thus 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 Research 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 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 all class members to unlawful denials and delays with respect to their SIJS petitions. Plaintiffs and proposed class members seek declaratory and injunctive relief enjoining USCIS from applying its unlawful policy that requires Washington state courts to have the authority to return a youth age 18 or older to their parent. Additionally, Plaintiffs and proposed class members seek relief from Defendants’ practice of delaying the adjudication of SIJS petitions beyond 180 days, in violation of the statutory deadline imposed by INA. Therefore, the declaratory and injunctive 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 Northwest Immigrant Rights as class counsel.

DATED this 5th day of March, 2019.

s/ Matt Adams

Matt Adams, WSBA No. 28287

s/ Leila Kang

Leila Kang, WSBA No. 48048

s/ Aaron Korthuis

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s/ Tim Warden-Hertz

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s/ Meghan Casey

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