Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Linda CABELLO GARCIA, on behalf of herself and others similarly situated,

Plaintiff,

v.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES; Alejandro MAYORKAS, Secretary of Homeland Security; Ur M. JADDOU, Director, U.S. Citizenship and Immigration Services,

Defendants.

Case No. 3:22-cv-5984

PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

Plaintiff Linda Cabello Garcia (Ms. Cabello) and the class she seeks to represent are all noncitizens who were granted U nonimmigrant status and then applied, or will apply, to adjust their status to lawful permanent residence. However, Defendants have unlawfully imposed, or will impose, a requirement that they submit a completed Form I-693, Report of Medical Examination and Vaccination Record, with their adjustment application. Defendant U.S. Citizenship and Immigration Services (USCIS) requires the submission of Form I-693 to assess whether an adjustment applicant is inadmissible to the United States on public health grounds. The Immigration and Nationality Act (INA), however, *exempts* U-based adjustment applicants from those public-health inadmissibility grounds. The medical examination to obtain a completed Form I-693 is costly, burdensome and, in the case of some individuals like Ms. Cabello, prohibitive to obtain. Ms. Cabello and the putative class members challenge Defendants' imposition of this requirement as arbitrary, capricious, contrary to the law, and in excess of statutory authority.

The question presented in this case—whether USCIS's policy or practice of requiring a completed Form I-693 of U-based adjustment-of-status applicants violates the INA and the APA—can and should be resolved on a class-wide basis. Ms. Cabello thus requests that the Court certify the following class and appoint her as class representative:

> All individuals with approved U status under 8 U.S.C. § 1101(a)(15)(U) who have submitted an application for adjustment of status that has not yet been approved or who will submit an application for adjustment of status, and whom USCIS has required, or will require, to submit a Form I-693, Report of Medical Examination and Vaccine Record.

As detailed below, the proposed class satisfies the requirements of Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, and for that reason, the Court should grant Plaintiffs' motion.

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II. BACKGROUND

A. Defendants' Policy and 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). Ms. Cabello thus briefly summarizes her claim below.

U nonimmigrant status is available to certain noncitizens who are victims of qualifying crimes and are helpful to a public official in investigating or prosecuting that crime. *See* 8 U.S.C. §§ 1101(a)(15)(u), 1184(p). The INA provides that noncitizens granted U nonimmigrant status may apply to adjust their immigration status to that of lawful permanent residents (LPRs) after being continuously present in the United States for three years in U status, if their continued presence in the country "is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest," among other requirements. *Id.* § 1255(m); *see also* 8 C.F.R. § 245.24(b). U-status holders have a one-year window in which to apply to adjust status, as their status expires after four years. 8 C.F.R. § 214.14(g)(1). U status is automatically extended while an application for adjustment of status under § 1255(m) is pending. 8 U.S.C. § 1184(p)(6).

Generally, an applicant seeking to adjust status to become an LPR must be "admissible to the United States." *Id.* § 1255(a). The inadmissibility grounds are enumerated in 8 U.S.C. § 1182, including the public-health inadmissibility grounds at issue here, which are specified under § 1182(a)(1). The INA, however, exempts U-based adjustment of status applicants from all but *one* of the inadmissibility grounds—the one found at 8 U.S.C. § 1182(a)(3)(E) for

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"[p]articipants in Nazi persecution, genocide, or the commission of any act or torture or extrajudicial killing." *Id.* § 1255(m)(1); *see also* 8 C.F.R. § 245.24(b)(4).

Notwithstanding this clear statutory language, USCIS requires proposed class members to submit a qualifying Form I-693 in order to adjust their status. *See, e.g.*, Maltese Decl., Ex. A, Form I-485 Instructions, at 14; *id.* Ex. B, Cabello Request for Evidence, at 2–3; Gutierrez Acuña Decl. ¶¶ 7–9; Vazquez Arena Decl. ¶ 5–6; Trujillo Estrada Decl. ¶¶ 7–10; Zamacona Tellez Decl. ¶¶ 6–7. In fact, Ms. Cabello was denied adjustment of status for failing to submit the form. Cabello Decl. ¶ 13. But the only purpose of Form I-693 is "to establish that applicants … are not inadmissible to the United States on public health grounds." Maltese Decl. Ex C, Form I-693 Instructions at 1.

Defendants' policy contravenes the plain language of § 1255(m)(1). Unlike subsection (a) of § 1255, which explicitly incorporates all admissibility grounds, subsection(m) references *only* the human rights ground of inadmissibility at § 1182(a)(3)(E). That difference demonstrates that Congress did *not* impose a general admissibility requirement for U-based adjustment of status. *See, e.g., Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 452 (2002) ("[W]hen Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (internal quotation marks omitted)); *United States v. Kakatin*, 214 F.3d 1049, 1051 (9th Cir. 2000) ("[T]he inclusion of certain provisions in a statute implies the exclusion of others . . . ."). Indeed, if all inadmissibility grounds applied, Congress's inclusion of § 1182(a)(3)(E) when discussing U-based adjustment would be superfluous. *See Ysleta Del Sur Pueblo v. Texas*, 142 S. Ct. 1929, 1939 (2022).

The relevant regulations, which state that U-based adjustment applicants "are not

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required to establish that they are admissible," support Ms. Cabello's position. 8 C.F.R. § 245.24(d)(11). Indeed, the Federal Register notice implementing those regulations explains that the "[U-based] adjustment provisions contained in [8 U.S.C. § 1255(m)] are stand-alone provisions and not simply a variation of the general adjustment rules contained in [8 U.S.C. § 1255(a)]." Adjustment of Status to Lawful Permanent Residents for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75540, 75548 (Dec. 12, 2008).

In short, Section 1255 does not empower Defendants to impose additional categorical requirements to establish eligibility for U-based adjustment of status because Congress already explicitly *excluded* the very requirement Defendants impose. Yet USCIS uniformly applies its extra-statutory policy or practice to *all* U-based adjustment applicants, denying their applications (as they did in Ms. Cabello's case) when they fail to abide by that policy or practice. Defendants' actions are therefore "arbitrary, capricious, an abuse of discretion, … not in accordance with law" and "in excess of statutory … authority." 5 U.S.C. § 706(2)(A), (C); *see also* Pl.'s Mot. For Prelim. Inj. at 7–10.

B. Named Plaintiff's Factual Background

Plaintiff Linda Cabello Garcia is a noncitizen from Mexico. Cabello Decl. ¶ 2. She came to the United States when she was just six years old in 1999 and has lived here ever since. *Id.* ¶ 3. She is married to a U.S. citizen and has a U.S. citizen sister and both her parents are lawful permanent residents. *Id.* ¶¶ 7, 14.

Ms. Cabello applied for a U visa on October 22, 2013, after being the victim of stalking and cooperating with the Juneau Police Department in the investigation of the crime. *Id.* ¶¶ 4–5. As part of her application, Ms. Cabello Garcia also requested a waiver of any applicable grounds of inadmissibility. Maltese Decl. Ex. D, I-192 Approval Notice. USCIS granted the waiver of

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inadmissibility and approved her U visa application on October 28, 2016, thus finding her admission "to be in the public or national interest." 8 U.S.C. § 1182(d)(14). Her U status was valid for four years, until October 26, 2020. Cabello Decl. ¶ 6.

After being continuously present in the United States for three years, Ms. Cabello submitted her application for U-based adjustment of status on August 10, 2020. *Id.* ¶ 7. She provided voluminous evidence demonstrating her physical presence in the country, as well as documents to support a favorable exercise of discretion. *Id.* After USCIS requested that she submit Form I-693, she explained that the form was unnecessary, as she was not subject to the public-health related grounds of inadmissibility. *Id.* ¶¶ 8, 10; Maltese Decl. Ex. E, Cabello Request for Evidence Response. She further noted that she could not complete the exam because of her ICD-10 Generalized Anxiety Disorder and Panic Disorder. Cabello Decl. ¶ 12; Maltese Decl. Ex. F, Cabello Notice of Intent to Deny Response, at 1–5, 8. Nevertheless, USCIS denied her application on August 1, 2022, solely because she failed to submit a completed Form I-693. Cabello Decl. ¶ 13; *see also* Maltese Decl. Ex. G, Cabello Denial Decision.

Ms. Cabello has been harmed because of USCIS's unlawful requirement. The agency's policy and practice barred her from adjusting status, depriving her of the benefits that accompany LPR status, including stability and employment authorization. Cabello Decl. ¶¶ 14–15. In addition, Ms. Cabello has now lost her U status. She is no longer authorized to work and is now at risk of removal and separation from her family and the only country she has ever called home.

III. ARGUMENT

Ms. Cabello seeks certification of the following class:

> All individuals with approved U status under 8 U.S.C. § 1101(a)(15)(U) who have submitted an application for adjustment of status that has not yet been approved or who will submit an application for adjustment of status, and whom USCIS has

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> required, or will require, to submit a Form I-693, Report of Medical Examination and Vaccine Record.

The proposed class satisfies Federal Rule of Civil Procedure 23(a) and (b)(2). *See, e.g.*, *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010) (declaring that to bring a class action, "[t]he 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)").

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"); *J.L. v. Cissna*, No. 18-cv-04914-NC, 2019 WL 415579, at *12 (N.D. Cal. Feb. 1, 2019) (certifying class of "[c]hildren who have received or will receive guardianship orders pursuant to California Probate Code § 1510.1(a) and who have received or will receive denials of their SIJ status petitions on the grounds that the state court that issued the SIJ Findings lacked jurisdiction because the court did not have the authority to reunify the children with their parents"); *Rosario v. U.S. Citizenship and Immigr. Servs.*, No. C15-0813JLR, 2017 WL 3034447, at *12 (W.D. Wash. July 18, 2017) (certifying nationwide class of initial asylum applicants 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.*

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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 denied requests for conditional parole); *A.B.T. v. U.S. Citizenship and Immigr. Servs.*, 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).

These cases demonstrate the propriety of Rule 23(b)(2) certification in actions challenging immigration policies. 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 not have the ability 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.

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

1. <u>The proposed class members are so numerous that joinder is impracticable.</u>

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). Rule 23(a)(1) "is based on considerations of due process, judicial economy, and the ability of claimants to institute suits." 1

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William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 3:11 (6th ed. 2022). Determining numerosity therefore "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).

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"). Here, there are likely tens of thousands of class members nationwide. From 2010 to 2020, USCIS approved between 17,225 and 19,330 petitions for U nonimmigrant principal and derivative status per year—and there are nearly 270,000 petitions pending. *See* Maltese Decl. Ex. H, USCIS Form I-918 Case Data (showing received, approved, denied, and pending petitions by both principal U nonimmigrant status applicants and their derivatives for Fiscal Years 2009-2021); 8 U.S.C. § 1184(p)(2) (establishing annual numerical maximum of 10,000 for principal U nonimmigrant grants, but exempting their derivatives from cap). Because their U status expires after four years, the vast majority of those individuals will apply to adjust their status in their final year with U status.

Joinder is also impracticable because of the existence of unnamed, unknown future class members who will be subjected to Defendants' extra-statutory eligibility requirement. *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." (internal quotation marks

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omitted)); *Rivera*, 307 F.R.D. at 550 (finding joinder impractical due, in part, to "the inclusion of future class members"); *supra* pp. 5–6 (defining class to include future members).

Several other factors demonstrate the impracticability of joinder in the present case, including 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 depending on their immigration status, may lack a stable source of income, rendering it difficult for them to afford the costs associated with litigation.

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. U.S. Citizenship and Immigr. Servs.*, 290 F.R.D. 579, 586 (C.D. Cal. 2012) (alterations in original) (quoting *Sueoka v. United States*, 101 F. App'x 649, 653 (9th Cir. 2004)). The Court should thus find that the class is sufficiently numerous that joinder is impracticable. Fed. R. Civ. P. 23(a)(1).

2. 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.").

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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).

Here, proceeding on a class-wide basis will generate a common answer that will resolve the claim Ms. Cabello and the proposed class members bring, for they challenge a system-wide policy and practice that applies to all of them. By definition, they have all applied or will apply for adjustment of status and will all be subject to and harmed by Defendants' policy or practice. They will all be required to pay hundreds of dollars for a burdensome and intrusive medical examination that Congress did not require of them *or* face certain loss of their lawful immigration status with all its attendant benefits and privileges. USCIS has already denied Ms. Cabello's adjustment application for failing to abide by the challenged policy or practice, and has or will deny any putative class members' adjustment application if they also fail to comply with the requirement. Consequently, Ms. Cabello and proposed class members all share the legal claim that this USCIS policy or practice violates the INA and APA and harms them in the process. Their injuries are capable of class-wide resolution through declaratory relief declaring Defendants' policy unlawful, vacatur of the policy, and injunctive relief enjoining Defendants from enforcing it. This relief will resolve the litigation as to all class members "in one stroke," *Wal-Mart*, 564 U.S. at 350, and thus Plaintiffs satisfy Rule 23(a)(2)'s commonality requirement.

That Ms. Cabello and the other putative class members may have different circumstances or other issues related to their individual adjustment applications does not defeat the

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commonality among them, for they are challenging a policy and practice that applies equally to all of them, 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. U.S. Citizenship and Immigr. Servs.*, 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 immigration agency 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"). Because Ms. Cabello and proposed class members challenge USCIS's policy or practice concerning Form I-693 for U-based adjustment applications, "[t]he fact that the adjudication of each individual [adjustment of status application] may require individualized factual and legal inquiries is simply irrelevant" to the issue of commonality. *J.L.*, 2019 WL 415579, at *9.

Additional factors confirm the class satisfies the commonality requirement of Rule 23(a)(2). "[C]lass 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. And 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 members."

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Gonzalez v. U.S. Immigr. & Customs Enf't, 975 F.3d 788, 808 (9th Cir. 2020) (citation omitted).

3. Ms. Cabello's 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 questions of law, *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982), especially "[w]here the challenged conduct is a policy or practice that affects all class members," *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (quoting *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001)). To assess typicality, courts generally ask whether the named plaintiffs' injuries are "similar" and "result from the same, injurious course of conduct." *Id.* (quoting *Armstrong*, 275 F.3d at 869); *see also Gonzalez*, 975 F.3d at 809 (typicality inquiry is informed by whether the class members and named plaintiff "have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct" and clarifying a named plaintiff's claims need only "be reasonably coextensive with those of absent class members" for typicality to exist) (citation and internal quotation marks 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)); *see also, e.g.*, *Gonzalez*, 975 F.3d at 809–12 (finding typicality satisfied despite Named Plaintiff's unique background where he was injured by the same policy affecting all class members); *Ellis*, 657 F.3d at 985 n.9 ("Differing factual scenarios resulting in a claim of the same nature as other class members does not defeat typicality.").

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In this case, the claims of the Named Plaintiff are typical of the claims of the proposed class. Defendants subjected Ms. Cabello to the same policy and course of conduct as all class members. In addition, Ms. Cabello suffers from the same injury as proposed class members: the imposition of Defendants' costly and burdensome extra-statutory requirement. Of course, some class members suffer more than others because are some are less burdened by the unlawful imposition of this requirement, but that does not render their claims atypical, as they are injured by Defendants' identical course of conduct. *See, e.g.*, *In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 227 F.R.D. 553, 561 (W.D. Wash. 2004) (certifying class in drug lawsuit where class representatives were stroke victims, even though not all class members suffered this same injury from the drug); *Siqueiros v. Gen. Motors LLC*, No. 16-CV-07244-EMC, 2022 WL 3717269, at *5 (N.D. Cal. Aug. 29, 2022) (certifying class even though some class members suffered "more serious injuries" than others, because all injuries resulted from the same vehicle problem). Ms. Cabello therefore satisfies the typicality requirement.

4. Ms. Cabello 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 Plaintiff

Ms. Cabello is motivated to pursue this action on behalf of others like her who have been or will be subjected to Defendants' unlawful I-693 policy or practice. Ms. Cabello is potentially subject to forcible separation from her family and home. As this litigation is the only avenue

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through which Ms. Cabello can obtain U-based adjustment of status, she is especially motivated to demonstrate the policy is unlawful. She will thus fairly and adequately protect the interests of the proposed class, for they share the same interests and seek the same justice: declaratory and injunctive relief that stops Defendants from unlawfully requiring a qualifying Form I-693 in order to grant U-based adjustment applications. Finally, Ms. Cabello does not seek money damages for herself. As a result, there is no potential conflict between her interests and those of the proposed class. She is thus an adequate representative of the putative 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. 1985). Ms. Cabello and the proposed class members are represented by counsel from the Alaska Institute for Justice, who has extensive expertise in immigration law, and the Northwest Immigrant Rights Project (NWIRP), who have broad 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, 6–8. NWIRP counsel are representatives of record in numerous cases focusing on immigration law, in which they vigorously represented both the class representatives and absent class members.

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

Ms. Cabello also satisfies the requirement of 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

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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 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 erroneous, unlawful policy. Ms. Cabello and proposed class members seek to vacate Defendant's policy, as well as declaratory and injunctive relief enjoining USCIS from applying its unlawful policy and practice obligating proposed class members to pay for and subject themselves to an expensive and burdensome medical examination to satisfy a requirement from which Congress *exempted* them. Therefore, the relief sought by Ms. Cabello will apply to the proposed class as a whole.

IV. CONCLUSION

For all these reasons, Ms. Cabello respectfully requests that the Court certify the proposed class, appoint her as class representative, and appoint the undersigned attorneys as class counsel.[1]

[1] Counsel for Plaintiffs certify that on January 20, 2023, counsel informed Nickolas Bohl, Assistant U.S. Attorney for the Western District of Washington, that Plaintiffs intended to file motions for class certification and a preliminary injunction in this matter. Defendants have not yet filed a notice of appearance in this matter.

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615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

DATED this 9th day of February, 2023.

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