

The Honorable John C. Coughenour

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

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

Donald TRUMP, et al.,

Defendants.

Case No. 2:25-cv-00127-JCC

**INDIVIDUAL PLAINTIFFS’
MOTION FOR CLASS
CERTIFICATION**

Noting Date: February 24, 2025

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

Individual Plaintiffs Delmy Franco, Cherly Norales, Alicia Chavarria, their future children, and the class they seek to represent all face the specter of themselves or their children being stripped of their U.S. citizenship, despite being born in the United States and being subject to the country’s jurisdiction. They and putative class members are directly impacted by an Executive Order (EO) signed by President Trump on January 20, 2025, that purports to strip them or their children of their right to U.S. citizenship. But that EO violates the express language of the Fourteenth Amendment of the U.S. Constitution, Supreme Court precedent squarely addressing the question presented, and a federal statute codifying this constitutional right.¹

The first clause of the Fourteenth Amendment to the U.S. Constitution (the Citizenship Clause) states that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.” U.S. Const. amend. XIV § 1. The express language and history of the Citizenship Clause establish that the Constitution bestows citizenship upon all persons born in the United States—with only rare exceptions involving persons who are not subject to the laws of this country, such as the children of foreign diplomats. In *United States v. Wong Kim Ark*, the Supreme Court confirmed that children born in the United States to noncitizen parents are citizens under the Fourteenth Amendment’s Citizenship Clause. 169 U.S. 649 (1898). Congress has since codified birthright citizenship in a statute whose language mirrors the Fourteenth Amendment. *See* 8 U.S.C. § 1401(a).

¹ On January 27, 2025, this Court consolidated this matter (formerly Case No. 2:25-cv-00163) with Case No. 2:25-00127-JCC. As ordered by the Court, the Individual Plaintiffs will file a supplemental motion for a preliminary injunction by January 29, 2025. *See* Dkt. 56. As detailed below, they also seek provisional class certification to provide class-wide injunctive relief if the Court does not otherwise certify the class prior to entering any injunctive order.

1 The EO, entitled “Protecting the Meaning and Value of American Citizenship,”
2 contradicts its stated purpose: it blatantly seeks to eviscerate the fundamental principle of
3 birthright citizenship in the United States, notwithstanding the Citizenship Clause’s explicit
4 language, history, controlling caselaw, and the parallel federal statute. If left unchecked, the EO
5 would cause catastrophic harm to Individual Plaintiffs and proposed class members.

6 The question presented in this case—whether the EO violates the Citizenship Clause—
7 can and should be resolved on a class-wide basis, as there will be hundreds and soon thousands
8 of persons in Washington State facing the exact same fundamental question. The proposed class
9 satisfies the requirements under Rules 23(a) and 23(b)(2) of the Federal Rules of Civil
10 Procedure. The Individual Plaintiffs thus request that the Court certify the following class and
11 appoint them as class representatives:

12 All pregnant persons residing in Washington State who will give birth in the United
13 States on or after February 19, 2025, where neither parent of the expected child is
a U.S. citizen or lawful permanent resident at the time of the child’s birth; and,

14 all children residing in Washington State who are born in the United States on or
15 after February 19, 2025, where neither of their parents is a U.S. citizen or lawful
permanent resident at the time of the child’s birth.

16 The Individual Plaintiffs also request that, in the event that the Court issues a preliminary
17 injunctive order prior to certifying the class, that the Court issue a provisional certification order
18 to ensure class-wide relief. *See infra* p. 19.

19 Class certification is appropriate because the class is sufficiently numerous and the
20 Individual Plaintiffs seek relief common to the class, have claims typical of the class, and are
21 adequate representatives. On behalf of themselves and all proposed class members, Individual
22 Plaintiffs seek an order from this Court that (1) permanently enjoins implementation of the EO,
23 (2) declares that the EO violates the Citizenship Clause, 8 U.S.C. § 1401(a), and controlling

1 Supreme Court precedent, (3) declares that children covered by the order are U.S. citizens, and
2 (4) sets aside agency action implementing the EO under the Administrative Procedure Act
3 (APA).

4 II. BACKGROUND

5 A. The Executive Order

6 On January 20, 2025, President Trump issued an Executive Order that purports to
7 eliminate birthright citizenship for certain children of noncitizens in the United States. *See* The
8 White House, Executive Order, Protecting the Meaning and Value of American Citizenship,
9 [https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-meaning-and-value-of-](https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-meaning-and-value-of-american-citizenship/)
10 [american-citizenship/](https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-meaning-and-value-of-american-citizenship/) (Jan. 20, 2025). The EO states that, beginning thirty days after its signing,
11 “no department or agency of the United States government shall issue documents recognizing
12 United States citizenship” to newborn children where (1) “that person’s mother was unlawfully
13 present in the United States and the person’s father was not a United States citizen or lawful
14 permanent resident [LPR] at the time of said person’s birth” or where (2) “that person’s mother’s
15 presence in the United States was lawful but temporary, and the person’s father was not a United
16 States citizen or [LPR] at the time of said person’s birth.” EO § 2. In short, the order claims to
17 redefine the Citizenship Clause of the Fourteenth Amendment and drastically undercuts *jus*
18 *solis*—that is, birthright citizenship—in the United States. The order only applies prospectively.

19 Notably, the order’s language underscores its breathtaking scope, particularly by failing
20 to define who is “unlawfully present” or who has “temporary” status. To the Individual
21 Plaintiffs’ knowledge, Defendants have not provided any clarifying guidance. As written,
22 however, the order appears to sweep in any child born to parents who are neither LPRs nor U.S.
23 citizens. This covers a wide range of immigration statuses, many of which allow noncitizens to

1 reside in this country for years and even decades, such as asylum, withholding of removal,
2 temporary protected status, U status, and H-1B status. While ultimately a person’s immigration
3 status does not matter to Plaintiffs’ legal claims, the order’s scope reflects the widespread and
4 devastating impact it will have on immigrant families in this state.

5 **B. Individual Plaintiffs’ Legal Claims**

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

12 This case centers on the Citizenship Clause of the Fourteenth Amendment, guaranteeing
13 that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof,
14 are citizens of the United States and of the State wherein they reside.” U.S. Const. amend. XIV
15 § 1. The Citizenship Clause repudiated the Supreme Court’s shameful decision in *Dred Scott v.*
16 *Sanford*, 60 U.S. 393 (1857), and ensured that *jus soli*—birthright citizenship—applies to *all*
17 people born in the United States.

18 The EO at issue in this case purports to unilaterally reinterpret the Citizenship Clause to
19 strip the children of people who are not U.S. citizens or LPRs of the “priceless treasure” that is
20 U.S. citizenship. *Fedorenko v. United States*, 449 U.S. 490, 507 (1981) (citation omitted). While
21 the EO claims that noncitizens are not “subject to the jurisdiction” of the United States, that
22 interpretation is baseless. Instead, that phrase refers only to limited, well-known exceptions,
23 including diplomats or the children of hostile foreign armies on U.S. soil. The Clause’s plain

1 text, history prior to Reconstruction, legislative debates surrounding its passage, and caselaw
2 have all made clear that the phrase regarding jurisdiction exempts only these narrow classes of
3 individuals. Indeed, the Supreme Court explicitly rejected the EO's legal basis long ago in
4 *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), and has since repeatedly reaffirmed this
5 interpretation of the Fourteenth Amendment. In short, President Trump's EO is nothing short of
6 a flagrantly unconstitutional attempt to rewrite a foundational aspect of the U.S. Constitution.

7 **C. Individual Named Plaintiffs' Factual Backgrounds**

8 1. Delmy Franco

9 Plaintiff Delmy Franco is a noncitizen from El Salvador who currently resides in
10 Lynnwood, Washington. Franco Decl. ¶ 2. She is around seven months pregnant, and her due
11 date is March 26, 2025. *Id.* ¶ 9. Ms. Franco fled El Salvador in 2015 with her oldest daughter,
12 who was six years old at the time, to escape violence and threats. Her partner had already fled El
13 Salvador the year prior. *Id.* ¶¶ 6–7. An immigration judge granted her daughter asylum and Ms.
14 Franco withholding of removal. *Id.* ¶ 7. She has lived in the state of Washington for almost ten
15 years. *Id.* ¶ 3. Her brother and sister live in Washington, as does her immediate family, including
16 a U.S. citizen son born in 2018. *Id.* ¶ 8. She considers Washington her home and her family's
17 home. *Id.*

18 Ms. Franco fears that under the EO her expected child will be deemed undocumented as
19 neither she nor the father are U.S. citizens or LPRs. *Id.* ¶ 11. She fears that her child will be
20 targeted by immigration enforcement, and that immigration agents may separate her and her
21 family from her child. *Id.* ¶ 13. Even if not subject to immigration enforcement actions, she fears
22 that her child will lack educational opportunities and authorization to work legally in the United
23 States. *Id.* Without the assurance of citizenship, Ms. Franco is concerned her child will feel

1 unsafe and that she will have to live in hiding to protect the child and her family. *Id.*

2 2. Cherly Norales

3 Plaintiff Cherly Norales is a noncitizen from Honduras who currently resides in Seattle,
4 Washington. Norales Decl. ¶ 2. She is around seven months pregnant, and her due date is March
5 19, 2025. *Id.* ¶ 9. Ms. Norales fled Honduras in 2023 with her son, who was two years old at the
6 time, to escape severe violence, abuse, and threats. *Id.* ¶¶ 3, 6. Ms. Norales and her child have
7 applied for asylum before an immigration judge. *Id.* ¶ 8.

8 Ms. Norales fears that under the EO her expected child will be deemed undocumented as
9 neither she nor the father are U.S. citizens or LPRs. *Id.* ¶ 11. She is worried that her child may be
10 targeted by immigration enforcement. *Id.* ¶ 13. She worries that her child will not have access to
11 public benefits available only to U.S. citizens, and that this lack of access may impact the child's
12 well-being. *Id.* In addition, she fears that the child will eventually be unable to access to higher
13 education or work lawfully. *Id.* She also does not want her unborn child to ever risk removal to a
14 country the child has never known—a country where she has faced so much fear and abuse. *Id.*

15 3. Alicia Chavarria

16 Plaintiff Alicia Chavarria is a noncitizen from El Salvador who currently resides in
17 Bothell, Washington. Chavarria Decl. ¶ 2. She is around three months pregnant, and her due date
18 is July 21, 2025. *Id.* ¶ 8. Ms. Chavarria fled El Salvador in 2016 to escape violence and abuse,
19 believing the Salvadoran police could not help her or protect her. *Id.* ¶¶ 5–6. She came to the
20 state of Washington, where her brother lived, and met her current partner in Washington in 2018
21 or 2019. *Id.* ¶ 7. Their first child was born in 2019. *Id.* Ms. Chavarria has now lived in
22 Washington about eight years and considers this state her and her family's home. *Id.* Ms.
23 Chavarria applied for asylum with United State Citizenship and Immigration Services (USCIS).

1 *Id.* ¶ 6.

2 Ms. Chavarria fears that under the EO her expected child will be deemed undocumented
3 as neither she nor the father are U.S. citizens or LPRs. *Id.* ¶ 10. She fears her child could be
4 targeted for immigration enforcement, and that immigration agents may separate her family. *Id.*
5 ¶ 12. She fears that her child may be removed to a country from which she was forced to flee.
6 *Id.* It is imperative to Ms. Chavarria that her family remain united and safe in the United States.
7 *Id.* She is also concerned for how difficult her child’s life will be without proof of U.S.
8 citizenship and the benefits it includes, like unrestricted social security number. *Id.* Ms.
9 Chavarria fears that without citizenship, it will be difficult for her child to obtain a specialized
10 education or work, and she does not want this for her child. *Id.*

11 **III. ARGUMENT**

12 Individual Plaintiffs (hereinafter, “Plaintiffs”) seek certification of the following class:

13 All pregnant persons residing in Washington State who will give birth in the United
14 States on or after February 19, 2025, where neither parent of the expected child is
a U.S. citizen or lawful permanent resident at the time of the child’s birth; and,

15 all children residing in Washington State who are born in the United States on or
16 after February 19, 2025, where neither of their parents is a U.S. citizen or lawful
permanent resident at the time of the child's birth.

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). Plaintiffs’ proposed class satisfies Rule 23(a) and
22 (b)(2).
23

1 Courts in the Ninth Circuit, including this Court, have routinely certified class actions
2 challenging immigration and citizenship policies and practices that have broad, categorical
3 effect. *See, e.g., Mansor v. USCIS*, 345 F.R.D. 193, 199 (W.D. Wash. 2023) (certifying
4 nationwide class of applicants for Temporary Protected Status challenging a policy that failed to
5 provide them with interim benefits guaranteed by statute); *Moreno Galvez v. Cuccinelli*, No.
6 C19-0321RSL, 2019 WL 3219418, at *2 (W.D. Wash. Jul. 17, 2019) (certifying class of children
7 and youth challenging policies impeding access to Special Immigrant Juvenile visas);
8 *Nightingale v. USCIS*, 333 F.R.D. 449, at *457–63 (N.D. Cal. 2019) (certifying nationwide
9 classes challenging agency’s failure to produce immigration files); *Rosario v. USCIS*, No. C15-
10 0813JLR, 2017 WL 3034447, at *12 (W.D. Wash. July 18, 2017) (granting nationwide
11 certification to class of initial asylum applicants challenging the government’s adjudication of
12 employment authorization applications); *Wagafe v. Trump*, No. C17-0094-RAJ, 2017 WL
13 2671254, at *16 (W.D. Wash. June 21, 2017) (certifying nationwide class of immigrants
14 challenging legality of a vetting program impeding naturalization applicants from obtaining
15 citizenship); *Mendez Rojas v. Johnson*, No. C16-1024RSM, 2017 WL 1397749, at *7 (W.D.
16 Wash. Jan. 10, 2017) (certifying two nationwide classes of asylum seekers challenging defective
17 asylum application procedures); *Rivera v. Holder*, 307 F.R.D. 539, 551 (W.D. Wash. 2015)
18 (certifying class of detained immigrants in the Western District of Washington challenging
19 custody proceedings that categorically deny requests for conditional parole); *A.B.T. v. USCIS*,
20 No. C11-2108 RAJ, 2013 WL 5913323, at *2 (W.D. Wash. Nov. 4, 2013) (certifying nationwide
21 class and approving a settlement amending government practices that precluded asylum
22 applicants from receiving employment authorization); *Roshandel v. Chertoff*, 554 F. Supp. 2d
23

1 1194 (W.D. Wash. 2008) (certifying class of naturalization applicants living in Western District
2 of Washington challenging policy delaying access to citizenship).

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

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

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

14 Rule 23(a)(1) requires the class be “so numerous that joinder of all members is
15 impracticable.” “[I]mpracticability does not mean ‘impossibility,’ but only the difficulty or
16 inconvenience of joining all members of the class.” *Harris v. Palm Springs Alpine Estates, Inc.*,
17 329 F.2d 909, 913–14 (9th Cir. 1964) (citation omitted). “Numerousness—the presence of many
18 class members—provides an obvious situation in which joinder may be impracticable, but it is
19 not the only such situation” William B. Rubenstein, 1 *Newberg & Rubenstein on Class*
20 *Actions* § 3:11 (6th ed. 2022) (footnote omitted). “Thus, Rule 23(a)(1) is an impracticability of
21 joinder rule, not a strict numerosity rule. It is based on considerations of due process, judicial
22 economy, and the ability of claimants to institute suits.” *Id.* (footnote omitted). Determining
23

1 numerosity “requires examination of the specific facts of each case and imposes no absolute
2 limitations.” *Gen. Tel. Co. of the Nw., Inc. v. EEOC*, 446 U.S. 318, 330 (1980).

3 While “no fixed number of class members” is required, *Perez-Funez v. INS*, 611 F. Supp.
4 990, 995 (C.D. Cal. 1984), courts have generally found “the numerosity requirement satisfied
5 when a class includes at least 40 members,” *Rannis v. Recchia*, 380 F. App’x 646, 651 (9th Cir.
6 2010); *see also Rivera*, 307 F.R.D. at 550 (certifying class where “the Court [found] it highly
7 plausible that more than 40 [noncitizens] will be detained on this basis over the next year, and
8 that more than 40 [noncitizens] are being detained on this basis currently”); *Hum v. Dericks*, 162
9 F.R.D. 628, 634 (D. Haw. 1995) (“There is no magic number for determining when too many
10 parties make joinder impracticable. Courts have certified classes with as few as thirteen
11 members, and have denied certification of classes with over three hundred members.”). Courts
12 have also found impracticability of joinder when even fewer class members are involved. *See*,
13 *e.g., McCluskey v. Trustees of Red Dot Corp. Emp. Stock Ownership Plan and Trust*, 268 F.R.D.
14 670, 674–76 (W.D. Wash. 2010) (certifying class with 27 known members); *Arkansas Educ.*
15 *Ass’n v. Bd. of Educ.*, 446 F.2d 763, 765–66 (8th Cir. 1971) (finding 17 class members
16 sufficient); *Villalpando v. Exel Direct Inc.*, 303 F.R.D. 588, 606 (N.D. Cal. 2014) (noting that
17 courts routinely find numerosity “when the class comprises 40 or more members”).

18 Here, Plaintiffs estimate that the class is currently comprised of hundreds, and will
19 quickly comprise thousands, of members. Data from Washington State and the expert testimony
20 submitted in this case support this number. In 2021, Washington State estimated that there were
21 over 300,000 undocumented noncitizens in the state. *See Wei Yen*, Washington state’s
22 immigrant population: 2010-21, Office of Financial Management (May 2023),
23 <https://ofm.wa.gov/sites/default/files/public/dataresearch/researchbriefs/brief110.pdf>. As a result,

1 even a conservative estimate suggests that thousands of people will be born this year alone in
2 Washington that will now be considered noncitizens. *See* All Births Dashboard, Washington
3 State Department of Health (last accessed Jan. 23, 2025), [https://doh.wa.gov/data-and-statistical-](https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/county-all-births-dashboard)
4 [reports/washington-tracking-network-wtn/county-all-births-dashboard](https://doh.wa.gov/data-and-statistical-reports/washington-tracking-network-wtn/county-all-births-dashboard) (reflecting a fertility rate
5 of 51.9 births per 1,000 women aged 15–44 in 2022 in Washington). Additionally, the states’
6 expert estimates that in 2022 there were about 4,000 births in the state to parents who were
7 undocumented. *See* Lapkoff Decl., Dkt. 13 ¶ 11. Consequently, Plaintiffs have identified a
8 sufficient number of proposed class members to demonstrate the class is so numerous that
9 joinder is impracticable. Fed. R. Civ. P. 23(a)(1).

10 Joinder is also impracticable because of the existence of unnamed, unknown future class
11 members who will be subjected to Defendants’ policy of refusing to recognize U.S. citizenship.
12 *See Ali v. Ashcroft*, 213 F.R.D. 390, 408–09 (W.D. Wash. 2003) (“[W]here the class includes
13 unnamed, unknown future members, joinder of such unknown individuals is impracticable and
14 the numerosity requirement is therefore met, regardless of class size.” (citation and internal
15 quotation marks omitted)); *Rivera*, 307 F.R.D. at 550 (finding joinder impractical due, in part, to
16 “the inclusion of future class members”); *Hawker v. Consovoy*, 198 F.R.D. 619, 625 (D.N.J.
17 2001) (“The joinder of potential future class members who share a common characteristic, but
18 whose identity cannot be determined yet is considered impracticable.”). Here, joinder is
19 impracticable for the same reason, as the proposed class includes families who are not yet
20 pregnant and children who are not yet born. *Supra* p. 7.

21 In addition to class size and future class members, there are several other factors that
22 make joinder impracticable in the present case, such as judicial economy, geographic dispersion
23 of class members, financial resources of class members, and the ability of class members to bring

1 individual suits. *See* Rubenstein, *supra*, § 3:12; *see also, e.g., Dunakin v. Quigley*, 99 F. Supp. 3d
2 1297, 1327 (W.D. Wash. 2015) (finding joinder impracticable where proposed class members
3 were, inter alia, “spread across the state” and “low-income Medicaid recipients”). Here, the
4 proposed class members are dispersed statewide. Many are also low-income noncitizens and thus
5 do not have the means to bring the complex litigation that this case requires. *See, e.g., Franco*
6 Decl. ¶ 13; Chavarria Decl. ¶ 12.

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

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

18 Rule 23(a)(2) requires that “there [be] questions of law or fact common to the class.”
19 “Courts have found that a single common issue of law or fact is sufficient to satisfy the
20 commonality requirement.” *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 257 (C.D. Cal. 2008));
21 *see also, e.g., Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir. 2010) (“[T]he commonality
22 requirement asks us to look only for some shared legal issue or a common core of facts.”).
23 Commonality exists if class members’ claims all “depend upon a common contention . . . of such

1 a nature that it is capable of class-wide resolution—which means that determination of its truth
2 or falsity will resolve an issue that is central to the validity of each one of the claims in one
3 stroke.” *Wal-Mart*, 564 U.S. at 350. Therefore, the critical issue for class certification “is not the
4 raising of common ‘questions’ . . . but, rather the capacity of a class-wide proceeding to generate
5 common *answers* apt to drive the resolution of the litigation.” *Id.* (citation omitted).

6 Here, Plaintiffs and proposed class members raise a common legal issue. Specifically,
7 they allege that the EO defies the express language of the Fourteenth Amendment and 8 U.S.C.
8 § 1401, and purports to strip people of their citizenship. By definition, all class members are
9 subject to that policy, either because they themselves are stripped of U.S. citizenship or their
10 children are stripped of citizenship. Consequently, Plaintiffs and proposed class members all
11 share the legal claim that the EO and any action implementing the EO violates the U.S.
12 Constitution, 8 U.S.C. § 1401(a), and the APA.

13 The fact that putative class members may have varying immigration statuses does not
14 defeat the commonality among them. Together, Plaintiffs challenge an executive order and the
15 policies implementing that order that apply equally to all class members. They therefore satisfy
16 the commonality requirement, as they present the “common legal question” of “whether
17 Defendants’ [policy] violates the [Fourteenth Amendment and 8 U.S.C. § 1401(a)].” *Mansor*,
18 345 F.R.D. at 205; *see also Moreno Galvez*, 2019 WL 3219418, at *2 (stating that class of
19 immigrant youth satisfied commonality where the case presented questions of “[w]hether the
20 [challenged] policy is in accordance with federal law” and “[w]hether the policy is arbitrary and
21 capricious”); *Nw. Immigrant Rights Project v. USCIS*, 325 F.R.D. 671, 693 (W.D. Wash. 2016)
22 (“[A]ll questions of fact and law need not be common to satisfy the rule.” (citation omitted));
23 *Evon v. Law Offices of Sidney Mickell*, 688 F.3d 1015, 1029 (9th Cir. 2012) (“Where the

1 circumstances of each particular class member vary but retain a common core of factual or legal
2 issues with the rest of the class, commonality exists.” (citation omitted); *Walters v. Reno*, 145
3 F.3d 1032, 1046 (9th Cir. 1998) (finding commonality based on plaintiffs’ common challenge to
4 INS procedures, and noting that “[d]ifferences among the class members with respect to the
5 merits of their actual document fraud cases . . . are simply insufficient to defeat the propriety of
6 class certification”); *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 370 (C.D. Cal. 1982)
7 (granting certification in challenge to common government practices in asylum cases, even
8 though the outcome of individual asylum cases would depend on individual class members’
9 varying entitlement to relief).

10 Moreover, the commonality standard is even more liberal in a civil rights suit such as this
11 one, which “challenges a system-wide practice or policy that affects all of the putative class
12 members.” *Gonzalez v. U.S. Immigr. & Customs Enf’t*, 975 F.3d 788, 808 (9th Cir. 2020)
13 (citation omitted). Indeed, “class suits for injunctive or declaratory relief” like this case, “by their
14 very nature often present common questions satisfying Rule 23(a)(2).” Wright & Miller, *supra*,
15 § 1763.

16 Finally, Plaintiffs and proposed class members suffer the same injury. All will face the
17 fear and uncertainty that the EO presents for their future, including the very real threat of
18 immigration enforcement, forcing them and their families to live in the shadows. And even if
19 those born after February 19, 2025, are not immediately targeted for removal, the EO will have
20 an impact on the benefits and rights that they enjoy. This includes potentially preventing the
21 class member children from obtaining public benefits limited to U.S. citizens. Further, as they
22 grow older, they will experience more closed doors: they will be cut off from employment
23 (because they lack work authorization) and they will have limited access to higher education

1 (because they will be ineligible for federal student financial aid). In addition, they will further be
2 denied all the core rights afforded to U.S. citizens, including the right to travel and vote.

3 The class member parents will also suffer from this lack of rights. DHS may target their
4 homes for immigration enforcement actions, resulting in family separations. Parents will be
5 forced to make difficult, sometimes harrowing choices to avoid risking exposing their families to
6 immigration officials. Finally, as their children grow older, the EO will greatly impair the
7 children's ability to provide for their class member parents later in life, undermining any dreams
8 of stability and security for their families.

9 In sum the relief sought by Plaintiffs will resolve the litigation as to all class members "in
10 one stroke," *Wal-Mart*, 564 U.S. at 350, and they thus satisfy the commonality requirement of
11 Rule 23(a)(2).

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

13 Rule 23(a)(3) specifies that the claims of the representatives must be "typical of the
14 claims . . . of the class." Meeting this requirement usually follows from the presence of common
15 questions of law. *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982) ("The
16 commonality and typicality requirements of Rule 23(a) tend to merge."). To establish typicality,
17 "a class representative must be part of the class and possess the same interest and suffer the same
18 injury as the class members." *Id.* at 156 (citation and internal quotation marks omitted); *see also*
19 *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (finding typicality requirement met where
20 class representatives "allege the same or similar injury as the rest of the putative class; they
21 allege that this injury is a result of a course of conduct that is not unique to any of them; and they
22 allege that the injury follows from the course of conduct at the center of the class claims"
23 (citation, internal quotation marks, and alteration omitted)). As with commonality, factual

1 differences among class members do not defeat typicality provided there are legal questions
2 common to all class members. *See LaDuke v. Nelson*, 762 F.2d 1318, 1332 (9th Cir. 1985) (“The
3 minor differences in the manner in which the representative’s Fourth Amendment rights were
4 violated does not render their claims atypical of those of the class.” (footnote omitted)).

5 In this case, the claims of the named Plaintiffs are typical of the claims of the proposed
6 class. Specifically, Plaintiffs and proposed class members all suffer from the same injury: the
7 purported elimination of their citizenship (in the case of the children) or of their children’s
8 citizenship (in the case of the parents). Moreover, as detailed above, Plaintiffs will suffer the
9 same or similar harms that flow from this elimination of citizenship, such as family separation
10 and the loss of benefits. The child class members will also face the threat of removal and lose
11 access to work authorization, educational opportunities, and other key rights as citizens. These
12 harms in turn affect the parent plaintiffs, whose children will be unable to work or may not be
13 able to access higher education. The children’s vulnerability to removal also puts the entire
14 family’s stability at risk, threatening separation or departure of the entire family unit. In sum, the
15 harms suffered by Plaintiffs are typical of the harms suffered by the proposed class, and
16 Plaintiffs’ injuries and the injuries of proposed class members result from the identical course of
17 conduct by Defendants. Plaintiffs therefore satisfy the typicality requirement.

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

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

1 *a. Named Plaintiffs*

2 Plaintiffs are motivated to pursue this action on behalf of others like them who, based on
3 the EO, will have their children stripped of citizenship. This threatens Plaintiffs' families with
4 separation and the loss of benefits, among other harms. *See* Franco Decl. ¶ 13; Norales Decl. ¶
5 13; Chavarria Decl. ¶ 12. The Plaintiffs also all face immense emotional distress and fear due to
6 the threatened loss of their child's citizenship and its attendant rights—especially the possibility
7 of their child's removal. Franco Decl. ¶ 13; Norales Decl. ¶ 13; Chavarria Decl. ¶ 12. Other class
8 members face the same potential harms.

9 Plaintiffs will thus fairly and adequately protect the interests of the proposed class, as
10 they share the same interests and seek the same relief for all putative class members: an
11 injunction, a declaratory order, and vacatur under the APA that stops Defendants from
12 implementing the unlawful EO. Finally, Plaintiffs do not seek money damages for themselves.
13 As a result, there is no potential conflict between the interests of any of the Plaintiffs and
14 members of the proposed class. Accordingly, Plaintiffs are adequate representatives of the
15 proposed class.

16 *b. Counsel*

17 The adequacy of counsel is also satisfied here. Counsel are deemed qualified when they
18 have experience in previous class actions and cases involving the same area of law. *See, e.g.,*
19 *Jama v. State Farm Fire & Cas. Co.*, 339 F.R.D. 255, 269 (W.D. Wash. 2021); *Lynch v. Rank*,
20 604 F. Supp. 30, 37 (N.D. Cal. 1984); *Marcus v. Heckler*, 620 F. Supp. 1218, 1223–24 (N.D. Ill.
21 1985). Plaintiffs are represented by attorneys from the Northwest Immigrant Rights Project, all
22 of whom who have extensive experience in class action lawsuits and other complex federal court
23 litigation involving immigration law, including challenges to government policies in adjudicating

1 immigration benefits. *See* Adams Decl. ¶¶ 3–4, 6–8. Counsel are able to demonstrate that they
2 are counsel of record in numerous cases focusing on immigration law, in which they vigorously
3 represented both the class representatives and absent class members in obtaining relief.

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

5 In addition to satisfying the four requirements of Rule 23(a), Plaintiffs also must meet
6 one of the requirements of Rule 23(b) for a class action to be certified. Here, Plaintiffs seek
7 certification under Rule 23(b)(2), which requires that “the party opposing the class has acted or
8 refused to act on grounds that apply generally to the class, so that final injunctive relief or
9 corresponding declaratory relief is appropriate respecting the class as a whole.” Rule 23(b)(2) is
10 “unquestionably satisfied when members of a putative class seek uniform injunctive or
11 declaratory relief from policies or practices that are generally applicable to the class as a whole.”
12 *Parsons*, 754 F.3d at 688; *see also Zinser v. Accufix Rsch. Inst., Inc.*, 253 F.3d 1180, 1195 (9th
13 Cir. 2001) (“Class certification under Rule 23(b)(2) is appropriate only where the primary relief
14 sought is declaratory or injunctive.”).

15 By its very language, the Executive Order announces and directs the implementation of a
16 uniform “policy of the United States” that strips birthright citizenship from all children born on
17 or after February 19, 2025, where neither parent is an LPR or U.S. citizen. EO § 2. The
18 challenged policy thus applies across the board to all Plaintiffs, eliminating birthright citizenship
19 of either themselves (in the case of the children) or their children (in the case of the parents).
20 Accordingly, a “single injunctive or declaratory judgment”—one enjoining the Executive Order
21 in its entirety and declaring it unconstitutional under the Fourteenth Amendment—“would
22 provide relief to each member of the class.” *Dukes*, 564 U.S. at 360; *see also Amchem Products*
23 *v. Windsor*, 521 U.S. 591, 614 (1997) (explaining that “[c]ivil rights cases against parties

1 charged with unlawful, class-based discrimination are prime examples” of 23(b)(2) class
2 actions). Therefore, this action unquestionably meets the requirements of Rule 23(b)(2).

3 **C. Plaintiffs Also Request Provisional Certification if the Court Does Not Grant Class
4 Certification Prior to Any Injunctive Order.**

5 As noted above, Plaintiffs seek preliminary injunctive relief for themselves and for
6 putative class members. However, since temporary injunctive relief cannot be granted to a class
7 before an order has been entered determining that class treatment is proper, *see Nat’l Ctr. for*
8 *Immigrants Rights, Inc. v. INS*, 743 F.2d 1365, 1371 (9th Cir. 1984); *Davis v. Romney*, 490 F.2d
9 1360, 1366 (3d Cir. 1974), “[c]ourts in the Ninth Circuit routinely grant provisional class
10 certification for purposes of entering injunctive relief,” *Maney v. Brown*, 516 F. Supp. 3d 1161,
11 1171 (D. Or. 2021) (citation omitted). Thus, Plaintiffs also request provisional class certification
12 to allow the Court to provide the preliminary injunctive relief required to protect the status quo
13 and to prevent irreparable harm to themselves and to the putative class members. In entering
14 such a provisional order, the Court’s “analysis [regarding satisfaction of the requirements for
15 provisional class certification] is tempered . . . by the understanding that such certifications ‘may
16 be altered or amended before the decision on the merits.’” *Damus v. Nielsen*, 313 F. Supp. 3d
17 317, 329 (D.D.C. 2018) (quoting *Bame v. Dillard*, No. 05-1833, 2008 WL 2168393, at *5
18 (D.D.C. May 22, 2008)).

19 **IV. CONCLUSION**

20 For all the foregoing reasons, Plaintiffs respectfully request that the Court certify (and
21 provisionally certify, as necessary) the proposed class, appoint Plaintiffs as class representatives,
22 and appoint the undersigned attorneys as class counsel.
23

1 DATED this 27th day of January 2025.

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WORD COUNT CERTIFICATION

I certify that this memorandum contains 5,983 words, in compliance with the Local Civil Rules.

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