UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Maria CAMPBELL DAVIS and Abdel Wahab ALAUSSOS, on behalf of themselves and all others similarly situated, Plaintiffs, v. U.S. CITIZENSHIP AND IMMIGRATION SERVICES; Kenneth T. CUCCINELLI, Senior Official Performing Duties of the Director, U.S. Citizenship and Immigration Services, in his official capacity; Chad WOLF, Secretary of the Department of Homeland Security, in his official capacity; Kathleen BAUSMAN, Field Office Director, U.S. Citizenship and Immigration Services, Philadelphia Field Office, in her official capacity; and William P. BARR, Attorney General, in his official capacity. Defendants.	Case No. 2:20-cv-02770

Plaintiffs' Memorandum of Law in Support of Their Motion for Class Certification

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I. INTRODUCTION

Plaintiffs and proposed class members are lawful permanent residents whose applications for naturalization have been approved by Defendant U.S. Citizenship and Naturalization Services (USCIS) but have been unable to complete the last step of the naturalization process for months due to the COVID-19 pandemic. While the initial delay was both understandable and necessary, it has now left hundreds of individuals under the jurisdiction of USCIS's Philadelphia Field Office without the benefits and privileges of U.S. citizenship. Moreover, further delay is unnecessary; Congress has provided tools to address this precise situation, empowering both this Court and USCIS to provide for expedited naturalization. Through this motion Plaintiffs seek to certify a class of individuals eligible for immediate naturalization. As Plaintiffs explain below, expediting naturalization in these unprecedented circumstances will carry out the intent of Congress, will ensure that Plaintiffs and putative class members are naturalized in a timely manner, and will afford them the full panoply of benefits and privileges that accompanies U.S. citizenship.

Plaintiffs have demonstrated that they are entitled to become U.S. citizens, as they meet the statutory requirements and have successfully completed the naturalization interview process with USCIS. Following those interviews, USCIS issued notices to Plaintiffs advising that the next step for them was to be sworn in as U.S. citizens. However, their appointments to take the public oath ceremony—the last step needed to confer U.S. citizenship—were cancelled or not scheduled due the outbreak of COVID-19, the infectious disease caused by the novel coronavirus. COVID-19 has resulted in a global pandemic on a scale not seen for over a century. Recognizing that physical separation is the only way to prevent the spread of this deadly virus, in mid-March the federal government, including this Court and USCIS, took necessary measures to

restrict public interactions and cancelled public events. Soon thereafter, on April 1, 2020, the Commonwealth of Pennsylvania issued a stay at home order.

On June 4, 2020, USCIS began to hold public oath ceremonies. However, these ceremonies are significantly more limited than those that occurred prior to the COVID-19 pandemic. As a result, Plaintiffs and proposed class members inevitably will have to wait for months to take the oath, even while more individuals become eligible to naturalize. As a result, Plaintiffs and proposed class members are being denied, and will continue to be denied, the fundamental rights and benefits that citizenship affords. Indeed, the pandemic and slow pace of naturalization threatens to deprive many class members of the right to vote in the 2020 election in November.

Statutory tools exist to resolve this crisis. Specifically, Congress provided a mechanism to permit individuals who are on the brink of obtaining U.S. citizenship but face special circumstances to obtain an expedited administration of the oath of allegiance to complete the naturalization process. Under 8 U.S.C. § 1448(c), upon request, this Court is authorized to conduct an expedited oath ceremony or to order USCIS to conduct immediate administrative naturalizations. Plaintiffs' complaint constitutes such a request on behalf of Plaintiffs and proposed class members within the jurisdiction of the USCIS Philadelphia Field Office; specifically, Plaintiffs seek an order providing expedited oath ceremonies or compelling USCIS to "provide for immediate administrative naturalization." 8 U.S.C. § 1448(c).

As detailed below, Plaintiffs and proposed class members satisfy the requirements of Federal Rule of Civil Procedure 23. The class Plaintiffs seek to represent is comprised of at least hundreds of individuals. This case also presents core common facts and common questions of law, as each class member is similarly situated and awaiting a naturalization ceremony. As a

result, "final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

II. BACKGROUND

a. The COVID-19 Pandemic and USCIS's Response

COVID-19 is a disease caused by the novel coronavirus that has swept across the world in recent months. Since the outbreak of COVID-19 in the United States, nearly 2 million people have been infected, and over 100,000 people have died. *See* Korthuis Decl. Ex. A, World Health Organization, Coronavirus Disease (COVID-19) Situation Report 140 (June 8, 2020). Currently, there is no cure for the disease. *See, e.g.*, *id.* Ex. B, In the News: Coronavirus and "Alternative Treatments," Nat'l Ctr. for Complementary and Integrative Health, Nat'l Insts. of Health (last visited June 8, 2020).[1] As a result, public health authorities have recommended that individuals practice "social distancing" and good hygiene—the only known tools to stop the lethal virus's spread. *See, e.g.*, *id.* Ex. C, Coronavirus Disease 2019 (COVID-19) Public Health Guidance for Community Related Exposure, Centers for Disease Control and Prevention (last updated June 5, 2020). These recommendations have resulted in unprecedented orders requiring individuals to stay at home across the nation, including in Pennsylvania and the City of Philadelphia. *See id.* Ex. D, Order of the Governor of the Commonwealth of Pennsylvania for Individuals to Stay at Home (Apr. 1, 2020); *id.* Ex. E, Order No. 2, Office of the Mayor of the City of Philadelphia, Dep't of Public Health (Mar. 22, 2020).

Recognizing the gravity of this situation, on March 18, 2020, the Philadelphia Field Office of USCIS shut down its in-person operations. *See id.* Ex. F, USCIS Temporarily Closing Offices to the Public March 18 - April 1, USCIS (Mar. 17, 2020); *see also* Declaration of

[1] The web addresses for internet sources can be found in Plaintiffs' declaration authenticating the exhibits included in support of this motion.

Camille Van Kote (Van Kote Decl.) ¶ 3; Declaration of Lori Alexander (Alexander Decl.) ¶ 3; Declaration of Rebeca Huftstader (Huftstader Decl.) ¶ 3. Prior to the shutdown, the Philadelphia Field Office typically conducted around four naturalization ceremonies every week. Van Kote Decl. ¶ 5; Alexander Decl. ¶ 6; Hufstader Decl. ¶ 5. Approximately 420 individuals became U.S. citizens every week. Van Kote Decl. ¶ 5; Alexander Decl. ¶ 6; Hufstader Decl. ¶ 5.

However, following USCIS's shutdown, hundreds of individuals with approved naturalization applications were unable to naturalize. In some cases, the Philadelphia Field Office sent notices to individuals who had been interviewed and approved for naturalization cancelling their oath ceremonies—the final required step to become a citizen. Van Kote Decl. ¶ 7; Alexander Decl. ¶ 7; Hufstader Decl. ¶ 6; Korthuis Decl. Ex. G, Notice of Cancelled Oath Ceremony for Plaintiff Maria Campbell Davis. In other cases, the Field Office simply did not schedule those individuals for an oath ceremony. *See* Korthuis Decl. Ex. H, Online Case Status Update for Plaintiff Abdel Wahab Alaussos. Thus, between March 18, 2020, and June 4, 2020, with only one known exception for six people, no naturalization ceremonies took place. *See* Korthuis Decl. Decl. Ex. I, Liz Evans Scolforo, *Six York County Residents Become U.S. Citizens After Swearing Oath of Allegiance*, York Dispatch, May 12, 2020. Moreover, in early June, the USCIS Philadelphia Field Office announced that it will begin to hold a limited number of naturalization interviews in late June. Van Kote Decl. ¶ 6; Alexander Decl. ¶ 9. As a result, hundreds of individuals within the jurisdiction of USCIS' Philadelphia Field Office now form part of a backlog of individuals requiring only a naturalization ceremony to become a U.S. citizen.

On June 4, 2020, following weeks of shutdown, USCIS partially reopened its offices, including in Philadelphia. Under its reopening plan, the Philadelphia Field Office plans to

provide small naturalization ceremonies for approximately five people at a time to those on the long list of individuals whose ceremonies were cancelled. Van Kote Decl. ¶ 6; Alexander Decl. ¶ 9. Larger naturalization ceremonies will not take place for the foreseeable future. For example, the naturalization ceremony scheduled for June 19, 2020, in Lancaster, Pennsylvania, where many people would have been in attendance, already has been cancelled. *See* Korthuis Decl. Ex. J, Notice: June 19, 2029 Naturalization Ceremony is Cancelled, Lancaster Cty. (last accessed June 8, 2020). And notably, the Commonwealth of Pennsylvania's safety protocols prohibit gatherings of more than 25 individuals and encourage individuals to maintain six feet of distance from one another as well as avoid non-essential travel. *See id.* Ex. K, Process to Reopen Pennsylvania, Governor Tom Wolf (last updated June 9, 2020). The Philadelphia Field Office has not yet informed the public how many ceremonies will take place each week. Alexander Dec. ¶ 9; Van Kote Decl. ¶ 6. However, the limitations on groups sizes and the large backlog of people demonstrate that it may take many months to naturalize those whose ceremonies were cancelled. *See, e.g.*, Alexander Decl. ¶ 9.

b. This Court and USCIS Have the Authority to Provide for Expedited Naturalization Ceremonies.

To naturalize as a U.S. citizen, an applicant must satisfy certain eligibility criteria under the INA and its implementing regulations. *See generally* 8 U.S.C. §§ 1421-1458; 8 C.F.R. §§ 316.1-316.14. Specifically, applicants must prove that they are "at least 18 years of age," 8 C.F.R. § 316.2(a)(1); have "resided continuously, after being lawfully admitted for permanent residence" in the United States "for at least five years"; and have been "physically present" in the United States for "at least half of that time." 8 U.S.C. § 1427(a)(1). Those statutory requirements are modified for certain persons who married U.S. citizens, employees of certain nonprofit

organizations, and veterans. *See generally id.* §§ 1430, 1439-40; 8 C.F.R. §§ 319.1, 319.4, 328.2, 329.2.

Once an individual submits an application, USCIS must conduct a background investigation, *see* 8 U.S.C. § 1446(a); 8 C.F.R. § 335.1, which includes a full criminal background check by the Federal Bureau of Investigation, *see* 8 C.F.R. § 335.2(b). After completing the background investigation, USCIS must schedule a naturalization examination at which the applicant meets with a USCIS examiner for an interview. 8 U.S.C. § 1446(b); 8 C.F.R. §§ 316.14, 335.2. The applicant is tested with respect to English language proficiency and knowledge of U.S. history and government. 8 U.S.C. § 1423(a); 8 C.F.R. §§ 312.1-312.2. At this examination, the applicant signs the oath of allegiance before a USCIS officer. If the applicant has complied with all requirements for naturalization, USCIS "shall grant the application." 8 C.F.R. § 335.3(a).

The final step is generally an oath of allegiance to the United States that the applicant must make in a "public ceremony"—the only requirement that prospective class members in this case have not satisfied. 8 U.S.C. § 1448(a); 8 C.F.R. §§ 310.3(a), 337.1(a). USCIS may waive this requirement for children and individuals with a "physical or developmental disability or mental impairment." 8 U.S.C. § 1448(a). Similarly, pursuant to 8 U.S.C. § 1448(c), USCIS may provide for immediate administrative naturalization where an "expedited judicial oath administration ceremony is impracticable."[2]

[2] Although 8 U.S.C. § 1421(a) provides that "[t]he sole authority to naturalize persons as citizens of the United States is conferred upon the [Secretary of Homeland Security]," the Department of Homeland Security (DHS) Secretary may delegate the authority to administer the oath to certain DHS officials (including USCIS officials) and immigration judges "as may be necessary for the efficient administration of the naturalization program." 8 C.F.R. § 337.2(b). Congress also authorized the U.S district courts and certain state courts to administer the oath of allegiance. 8 U.S.C. § 1421(b).

In this District, applicants may choose to take the oath of allegiance in an administrative ceremony before USCIS or, if available, in a judicial ceremony before this Court. 8 U.S.C. § 1421(b)(1)(A). An applicant for naturalization is deemed a U.S. citizen as of the date of the oath of allegiance. 8 C.F.R. § 337.9(a). Significantly, Congress has mandated that DHS "shall prescribe rules and procedures to ensure that the ceremonies conducted by [USCIS]. . . are public, conducted frequently and at regular intervals, and are in keeping with the dignity of the occasion." 8 U.S.C. § 1448(d). To implement this mandate, DHS regulations provide that "[n]aturalization ceremonies will be conducted at regular intervals as frequently as necessary to ensure timely naturalization, but in all events at least once monthly where it is required to minimize unreasonable delays." 8 C.F.R. § 337.2(a)

After USCIS approves a naturalization application, an individual can take the oath of allegiance at any time. Some individuals take the oath at the interview or on the same day. Alexander Decl. ¶ 5. USCIS provides others either a scheduling notice informing them of the date of their naturalization ceremony or a notification that they are in the queue and will be scheduled for a naturalization ceremony. *Id*.; Van Kote Decl. ¶ 4; Huftstader Dec. ¶ 4. If "derogatory information" arises subsequent to the interview—including disqualifying conduct that occurs after the interview but before the oath is taken—the applicant may be excluded from the public ceremony and thus be prevented from naturalizing until the matter is resolved. 8 C.F.R. §§ 335.5, 337.2(c).

In crafting the naturalization statutory scheme, Congress recognized that certain, unique circumstances may require expedited naturalization ceremonies. As a result, under 8 U.S.C. § 1448(c), USCIS or a district court may grant an individual an "expedited judicial oath administration ceremony or administrative naturalization . . . upon demonstrating sufficient

cause." *See also* 8 C.F.R. § 337.3(a). In making this determination, USCIS or a district court "shall consider special circumstances." 8 U.S.C. § 1448(c). Congress defined special circumstances as including, but not limited to, "serious illness of the applicant or a member of the applicant's immediate family," "advanced age," or "exigent circumstances relating to travel or employment." *Id.* § 1448(c); *see also* 8 C.F.R. § 337.3(a). Where a district court is unable to conduct such an expedited ceremony, Congress provided the court with the power to order DHS to "provide for immediate administrative naturalization." 8 U.S.C. § 1448(c); *see also* 8 C.F.R. § 337.3(b).

To request an expedited administration of the oath of allegiance, individuals must submit a written request to either the court or USCIS with "sufficient information to substantiate the claim of special circumstances to permit either the court or USCIS to properly exercise the discretionary authority to grant the relief sought." 8 C.F.R. § 337.3(c). An expedited administrative naturalization could entail conducting virtual oath ceremonies remotely, administering the oath telephonically, providing final approval based on the oath of allegiance taken at the naturalization interview, or scheduling individual oath ceremonies in accordance with state safety measures. The grave public health threat posed by COVID-19 constitutes special circumstances warranting use of this unique procedure.

c. Plaintiffs' Cases.

Plaintiff Maria Campbell Davis (Ms. Campbell Davis) is a lawful permanent resident of the United States and a citizen of Jamaica. Ms. Campbell Davis submitted her application to naturalize in July 2019. Dkt. 1 ¶ 39. USCIS interviewed Ms. Campbell Davis regarding the application on January 14, 2020. Following the interview, she received a notice to appear for an oath ceremony on March 19, 2020. However, prior to the ceremony, on March 13, 2020, USCIS

issued a notice cancelling the interview and informing Ms. Campbell Davis that her ceremony would be rescheduled. *See* Korthuis Decl. Ex. G. To date, she has not received a notice providing a new date for the interview. Dkt. 1 ¶ 39.

Plaintiff Abdel Wahab Alaussos (Mr. Alaussos) is a lawful permanent resident of the United States and citizen of Syria who has been waiting for an oath ceremony since mid-March, 2020. Dkt. 1 ¶ 40. Mr. Alaussos interviewed to become a U.S. citizen in July 2019. *Id*. USCIS delayed adjudication of his application, approving the application in March 2020 only after Mr. Alaussos filed suit under 8 U.S.C. § 1447(b). *See Alaussos v. Chau*, No. 2:20-cv-00143 (E.D. Pa. filed Jan. 8, 2020). However, because USCIS cancelled all oath ceremonies beginning in mid-March, he has been unable to naturalize. Indeed, since mid-March, USCIS's online case status portal for Mr. Alaussos has stated that he will be mailed a notice regarding the scheduling of his oath ceremony. *See* Korthuis Decl. Ex. H; *see also* Dkt. 1 ¶ 40. To date, he has not received any such notice. *Id*. As a result, he continues to wait to become a U.S. citizen.

III. ARGUMENT

In light of the continuing limitation on group events and the Philadelphia Field Office's naturalization ceremony backlog, Plaintiffs seek classwide relief requesting an expedited judicial oath ceremony or immediate administrative naturalization, as Congress provided. Specifically, Plaintiffs seek to represent the following class:

> All individuals within the jurisdiction of the USCIS Philadelphia Field Office whose scheduled oath ceremony was cancelled or whose oath ceremony was not scheduled due to outbreak of the COVID-19 pandemic and have not been rescheduled for an oath ceremony to take place on or before September 28, 2020.

As Plaintiffs explain below, the proposed class satisfies the requirements of Federal Rule of Civil Procedure 23(a) and (b)(2).

a. The Standard for Class Certification

To obtain class certification, Plaintiffs must establish by a preponderance of the evidence all four elements of Rule 23(a) and at least one provision of Rule 23(b). *Shelton v. Bledsoe*, 775 F.3d 554, 559 (3d Cir. 2015); *In re Hydrogen Peroxide Antitrust Litig.*, 552 F.3d 305, 306 (3d Cir. 2008); *Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 55 (3d Cir. 1994); *see also Wal-Mart Stores Inc. v. Dukes*, 664 U.S. 338, 348 (2011). Specifically, Plaintiffs must demonstrate that:

(1) the class is so numerous that joinder of all members is impracticable;

(2) there are questions of law or fact common to the class;

(3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(4) the representative parties will fairly and adequately protect the interests of the class.

Fed R. Civ. P. 23(a). Under Rule 23(b)(2), Plaintiffs must further show 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." Fed. R. Civ. P. 23(b)(2). To make this showing, the class must demonstrate that "a single injunction or declaratory judgment would provide relief to each member of the class." *Gates v. Rohm and Haas Co.*, 655 F.3d 255, 262 (3d Cir. 2011) (quoting *Wal-Mart Stores,* 564 U.S. at 360); *see also Shelton*, 775 F.3d at 561.

b. The Class Meets All of the Requirements of 23(a)

i. The Class is so Numerous that Joinder is Impracticable.

The proposed class meets the numerosity requirement of Rule 23(a)(1), which requires that the class be "so numerous that joinder of all class members would be impracticable." Impracticability of joinder does not mean impossibility, only that joinder would be difficult. *Ardrey v. Fed. Kemper Ins. Co*., 142 F.R.D. 105, 111 (E.D. Pa. 1992); *see also Cannon v. Cherry Hill Toyota, Inc.*, 184 F.R.D. 540, 543 (D.N.J. 1999) ("[Under Rule 23(a)(1)], [t]he plaintiff need not precisely enumerate the potential size of the proposed class, nor is the plaintiff required to demonstrate that joinder would be impossible."); *see also* 7A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1762 (3d ed. 2020) ("'[I]mpracticable' does not mean 'impossible.' The representatives only need to show that it is extremely difficult or inconvenient to join all the members of a class."). "No minimum number of plaintiffs is required to maintain a suit as a class action, but generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met." *Stewart v. Abraham,* 275 F.3d 220, 226-27 (3d Cir. 2001); *accord Williams v. City of Philadelphia*, 270 F.R.D. 208, 214-15 (E.D. Pa. 2010) ("[C]ourts in this circuit have generally found that a class of 40 or more plaintiffs satisfies the numerosity requirement."); *Dittimus-Bey v. Taylor*, 244 F.R.D. 284, 290 (D.N.J. 2007) (same). Indeed, courts in this circuit have recognized that they "may certify a class even if it is composed of as few as 14 members." *Grant v. Sullivan*, 131 F.R.D. 436, 446 (M.D. Pa. 1990). To establish numerosity, Plaintiffs are entitled to use circumstantial evidence to provide a good-faith estimate, and the Court may rely on common sense. *See Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 596 (3d Cir. 2012).

The numerosity prerequisite is easily satisfied here. Prior to the March 18, 2020, shutdown of the Philadelphia Field Office, according to data provided at a recent stakeholder meeting, USCIS provided oath ceremonies for approximately 420 people per week. Alexander Decl. ¶ 9; Van Kote Decl. ¶ 5; Hufstader Decl. ¶ 5; *see also* Korthuis Decl. Ex. K, USCIS, Number of Form N-400, Application for Naturalization, By Category of Naturalization, Case Status, and USCIS Field Office Location, October 1-December 31, 2019 (indicating that, during the first quarter of Fiscal Year 2020, the Philadelphia USCIS Field Office approved 4,801 naturalization applications). Some individuals who were approved at the naturalization interview were able to attend an oath ceremony that same day or week. Alexander Decl. ¶ 5. For many others, however, USCIS would send the individual a notice scheduling them for an oath ceremony for a later date, sometimes as far as two months out. *Id.*; *see also* Van Kote Decl. ¶ 4; Hufstader Decl. ¶ 4.

Given the volume of cases being approved in the weeks prior to the COVID-19 shutdown and the fact that ceremonies often were scheduled weeks or longer in advance, it is reasonable to estimate that a backlog of hundreds of individuals has developed.[3] *See Marcus*, 687 F.3d at 596 ("Rule 23(a)(1) does not require a plaintiff to offer direct evidence of the exact number and identities of the class members. But in the absence of direct evidence, a plaintiff must show sufficient circumstantial evidence . . . ."). As a result, at a minimum, the proposed class consists of hundreds of lawful permanent residents awaiting to become U.S. citizens.

Accordingly, the numerosity requirement of Rule 23(a)(1) is satisfied.

[3] Moreover, agency data indicates that USCIS already had a backlog of over 14,000 naturalization applications as of the end of 2019. *See* Korthuis Decl. Ex. K. This number indicates that the Philadelphia Field Office already faced a large backlog of naturalization application prior to the outbreak of COVID-19. This backlog would only have grown during the shutdown, and underscores the need for expedited ceremony procedures to ensure that other USCIS resources may be dedicated to resolving the large number of pending applications.

ii. Members of the Class Have Questions of Law and Fact in Common

The proposed class meets the commonality requirement of Rule 23(a)(2), which "does not require that the representative plaintiff ha[s] endured precisely the same injuries that have been sustained by the class members, only that the harm complained of be *common* to the class." *Hassine v. Jeffes*, 846 F.2d 169, 177 (3d Cir. 1988); *see also Logory v. Cty. of Susquehanna*, 277 F.R.D. 135, 141 (M.D. Pa. 2011). This means that whether class members' claims are common depends on whether there is a "common contention . . . of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores*, 564 U.S. at 350; *Logory*, 277 F.R.D. at 141 (noting commonality is not determined by the existence of classwide questions, "but instead the potential for a classwide resolution." (internal quotation marks omitted)).

It is well established that even one common issue will satisfy Rule 23(a)(2). *Baby Neal*, 43 F.3d at 56; *see also Wal-Mart Stores*, 564 U.S. at 359 (noting a "single common question will do" (brackets and internal quotation marks omitted)). Indeed, "[b]ecause the requirement may be satisfied by a single common issue, it is easily met." *Baby Neal*, 43 F.3d at 56; *see also Brooks Educators Mut. Life Ins. Co.*, 206 F.R.D. 96, 101 (E.D. Pa. 2002) ("The Third Circuit has held that the commonality requirement is not stringent, and that a *single* common issue of law or fact suffices.").

Cases seeking injunctive relief, by their very nature, often present common questions satisfying Rule 23(a)(2) "because they do not also involve an individualized inquiry for the determination of damage awards." *Dittimus-Bey*, 244 F.R.D. at 290 (quoting *Baby Neal*, 43 F.3d at 57); *see also P.V. ex. Rel Valentin v. Sch. Dist. of Philadelphia*, 289 F.R.D. 227, 234-35 (E.D.

Pa. 2013) (commonality satisfied where plaintiffs filed "systemic challenge" against Defendants' policy). This principle "is especially true where plaintiffs request declaratory and injunctive relief against a defendant engaging in a common course of conduct toward them," because under such circumstances, "there is therefore no need for *individualized* determinations of the propriety of injunctive relief." *Baby Neal*, 43 F.3d at 57.

Like numerosity, Plaintiffs also easily establish commonality. Proposed class members are all subject to the same delays as they all continue to wait for their oath ceremonies to be scheduled due to the COVID-19 pandemic. They also face the similar injuries as one another: the possibility of not being eligible to vote in the 2020 national election, losing the right to petition for family members, or being barred from applying for critical public benefits during the pandemic. And critically, each class member's situation can be resolved through the same remedy: expedited judicial oath ceremonies or immediate administrative naturalizations that will ensure they become U.S. citizens in the near future. Finally, this case presents common legal questions regarding the applicability of the expedited naturalization scheme at 8 U.S.C. § 1448(c) to the "special circumstances" that COVID-19 presents. Thus, Plaintiffs satisfy the Rule 23(a)(2) commonality requirement.

iii. The Claims of the Named Plaintiffs are Typical of Those of the Class

Additionally, Plaintiffs' claims are typical of the class they seek to represent. Typicality asks "whether the named plaintiffs' claims are typical, in common-sense terms, of the class, thus suggesting that the incentives of the plaintiff are aligned with those of the class." *Beck v. Maximus, Inc.*, 457 F.3d 291, 295-96 (3d Cir. 2006) (citation omitted). "This element appraises the alignment between the named plaintiff's particular case and the claims of the other potential class members." *Logory*, 277 F.R.D. at 144. For class representatives' claims to be typical, they

do not need to be identical to the claims of the class members. *Johnston v. HBO Film Mgmt., Inc.*, 265 F.3d 178, 184 (3d Cir. 2001). Factual differences will not render a claim atypical, so long as the claims of the named plaintiffs and proposed class members arise from the same practice or course of conduct by the defendants and the class members' claims are based on the same legal theory. *Clarke v. Lane*, 267 F.R.D. 180, 197 (3d Cir. 2010) (citing *Beck*, 457 F.3d at 295-96). As the Third Circuit has noted, "even relatively pronounced factual differences will generally not preclude a finding of typicality where there is a strong similarity of legal theories." *Baby Neal*, 43 F.3d at 58; *see also Clarke*, 267 F.R.D. at 197 (finding typicality met when all putative class members suffered "constitutional violations under a uniform system").

For reasons similar to those in the prior section, Plaintiffs satisfy the typicality requirement. Indeed, the Supreme Court has noted that the "commonality and typicality requirements of Rule 23(a) tend to merge." *Wal-Mart Stores*, 564 U.S. at 349 n.5. Here, Plaintiffs' claims are typical of that of the class, as like proposed class members, they face the "same exact course of conduct" as the rest of the class. *Logory*, 277 F.R.D. at 144. As noted above, all class members have had their naturalization ceremonies cancelled or not scheduled due to COVID-19. In each case, USCIS cancelled or did not schedule the oath ceremony for precisely the same reasons: the special circumstances that COVID-19 presents. And in each case, the expedited naturalization process can ensure that class members' statutory right to a timely oath ceremony is protected. Thus, this class meets the 23(a)(3) typicality requirement.

iv. The Named Plaintiffs Will Fairly and Adequately Protect the Interests of the Class.

This class meets also the final requirement of Rule 23(a), which is that the named plaintiffs must fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(4). The adequacy inquiry has two components: (1) whether the attorneys retained by the named

plaintiffs are qualified, experienced, and generally able to conduct the litigation; and (2) whether the named plaintiffs have interests that are antagonistic or in conflict with those they seek to represent. *Baby Neal*, 43 F.3d at 55.

Plaintiffs' attorneys are "experienced and qualified to prosecute the claims on behalf of the entire class." *Id.* Plaintiffs' legal team includes two immigrants' rights organizations, the National Immigration Litigation Alliance and the Northwest Immigrant Rights Project, and the law office of Stacy Tolchin, whose attorneys have extensive experience litigating complex class actions involving the legality of government actions under the Immigration and Nationality Act. Plaintiffs are also locally represented by Jonathan Feinberg, of Kairys, Rudovsky, Messing, Feinberg & Lin LLP, a law firm which regularly represents individuals in civil rights cases and whose attorneys have experience in federal court class action litigation. Together, counsel will "vigorously pursu[e] the interests of the class," as demanded by Rule 23. *Dittimus-Bey*, 244 F.R.D. at 292.

Second, as explained in the typicality section, Plaintiffs' interests align with the interests of the proposed class as a whole. Plaintiffs do not have any interests antagonistic to those of any other member of the proposed class. Antagonism may exist between the named plaintiff and other class members when a unique defense could be asserted against a plaintiff that would distract from the class claims or defenses. *See Williams*, 270 F.R.D. at 216, 222 (finding that the named plaintiffs would "fairly and adequately protect the interests of the class" because, in part, there were no "unique defenses that would consume a disproportionate amount of time and attention"). No such circumstances are present here. On the contrary, the Plaintiffs' interests coincide with those of the proposed class, as they all seek a remedy that guarantees their timely ability to become U.S. citizens. Such relief would benefit the class members and would not

impair any future class member's claims; rather, it would ensure the protection of those rights. Accordingly, this class meets the 23(a)(4) adequacy requirement.

c. Plaintiffs Meet the Requirement of Rule 23(b)(2)

Finally, certification of a Rule 23(b)(2) class is appropriate for Plaintiffs' claims for declaratory and injunctive relief. *See* Fed. R. Civ. P. 23(b)(2). Certification under Rule 23(b)(2) is appropriate where "the party opposing the class has acted or refused to act on grounds generally applicable to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *Id.* The Third Circuit has interpreted the requirement to mean that "the interests of class members are so like those of the individual representatives that injustice will not result from their being bound by such judgment in the subsequent application of principles of res judicata." *Hassine*, 846 F.2d at 179. Moreover, this subsection was crafted largely to permit cases pursuing injunctive relief on behalf of a group of individuals against a general course of conduct. *See Shelton*, 775 F.3d at 561; *Stewart*, 275 F.3d at 228; *Baby Neal*, 43 F.3d at 64. As a result, Rule 23(b)(2) classes are "especially appropriate vehicle[s] for civil right actions" given their potential for common resolution. *See Coley v. Clinton*, 635 F.2d 1364, 1378 (8th Cir. 1980). Indeed, as the Supreme Court has explained, the key to the (b)(2) class is "the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them." *Wal-Mart Stores, Inc.*, 564 U.S. at 360 (citation omitted).

Here, Plaintiffs' claims again easily satisfy this requirement. This Court can address the class members' claims through a single order that provides for expedited naturalization ceremonies for all class members. As a result, "final injunctive relief or corresponding

declaratory relief is appropriate respecting the class as a whole" in this case, and Plaintiffs meet the requirements of Rule 23(b)(2).

IV. CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' Motion and certify the proposed class.

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