

1 Judah Lakin (CA #307740)
2 Lakin & Wille, LLP
3 1939 Harrison Street, Suite 420
4 Oakland, CA 94612
5 Telephone: (510) 379-9218
6 Email: judah@lakinwille.com

7 Zachary Manfredi (CA #320331)
8 Asylum Seeker Advocacy Project (ASAP)
9 228 Park Ave. S. #84810
10 New York, NY 10003-1502
11 (248) 840-0744
12 zachary.manfredi@asylumadvocacy.org

Emma Winger (MA #677608)*
Katherine Melloy Goettel (IA #23821)*
Leslie K. Dellon (DC #250316)*
American Immigration Council
1331 G Street NW, Suite 200
Washington, DC 20005
Telephone: (617) 505-5375 (Winger)
Email: ewinger@immcouncil.org
ldellon@immcouncil.org
kgoettel@immcouncil.org

13 *Counsel for Plaintiffs Tony N., et al.*
14 **Pro hac vice* motions pending

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **OAKLAND DIVISION**

18 TONY N., KAREN M., JACK S.,
19 HEGHINE MURADYAN, DAYANA
20 VERA DE APONTE,
21 Individually and on Behalf of All Others
22 Similarly Situated,

23 Plaintiffs,

24 v.

25 U.S. CITIZENSHIP & IMMIGRATION
26 SERVICES; DEPARTMENT OF
27 HOMELAND SECURITY; ALEJANDRO
MAYORKAS, Secretary of Homeland
Security; UR JADDOU, Director of USCIS

Defendants.

Case No. 4:21-cv-08742-KAW

**MOTION FOR CLASS
CERTIFICATION**

Magistrate Judge Kandis A. Westmore
Hearing: December 16, 2021, 1:30 pm

NOTICE OF MOTION FOR CLASS CERTIFICATION

PLEASE TAKE NOTICE that on December 16, 2021, 1:30 pm, or as soon thereafter as the matter may be heard at the Oakland Federal Courthouse, 1301 Clay Street, Oakland, CA 94612, with the Honorable Kandis A. Westmore, Plaintiffs move the Court for class certification pursuant to Federal Rule of Civil Procedure 23. Plaintiffs seek certification of the following class under Federal Rules of Civil Procedure 23(a) and 23(b)(2):

All individuals:

- (a) who filed applications to renew their employment authorization documents pursuant to 8 C.F.R. §§ 208.7(b); 274a.12(c)(8); and
- (b) who received a 180-day automatic extension of their employment authorization pursuant to 8 C.F.R. § 274a.13(d); and
- (c) whose applications have a processing time of at least 180 days pursuant to 8 C.F.R. § 103.2(b)(10)(i).

This motion is based on the Memorandum of Points and Authorities, *infra*, the pleadings, records and files in this action, and such other evidence and argument as may be presented at the time of hearing.

A proposed order accompanies this filing.

DATE: November 11, 2021

Respectfully submitted,

/s/ Zachary Manfredi
Zachary Manfredi (CA #320331)
Asylum Seeker Advocacy Project (ASAP)
228 Park Ave. S. #84810
New York, NY 10003-1502
Telephone: (248) 840-0744
Email: zachary.manfredi@asylumadvocacy.org

Emma Winger (MA# 677608)*
Katherine Melloy Goettel (IA #23821)*
Leslie K. Dellon (DC #250316)*
American Immigration Council
1331 G Street NW, Suite 200
Washington, DC 20005

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Telephone: (617) 505-5375 (Winger)
Email: ewinger@immcouncil.org
ldellon@immcouncil.org
kgoettel@immcouncil.org

Judah Lakin (CA #307740)
Lakin & Wille, LLP
1939 Harrison Street, Suite 420
Oakland, CA 94612
Telephone: (510) 379-9218
Email: judah@lakinwille.com

Counsel for Plaintiffs Tony N., et al.
**Pro hac vice motions pending*

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. FACTUAL BACKGROUND..... 3

III. LEGAL BACKGROUND 5

 A. Process to Apply for Work Authorization5

 B. USCIS’s 180-Day Rule of Reason.....7

IV. ARGUMENT 13

 A. Rule 23(a)(1)—Numerosity and the Impracticability of Joinder.....14

 B. Rule 23(a)(2)—Common Questions of Law and Fact.....16

 C. Rule 23(a)(3)—Typicality18

 D. Rule 23(a)(4)—Adequacy.....19

 E. Plaintiffs Satisfy the Requirements for a Rule 23(b)(2) Class.....20

V. CONCLUSION..... 21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

TABLE OF AUTHORITIES

Cases

A.B.T. v. U.S. Citizenship & Immigration Servs., No. C11–2108 RAJ, 2013 WL 5913323
 (W.D. Wash. Nov. 4, 2013)..... 14

Alfaro Garcia v. Johnson, No. 14-cv-01775- YGR, 2014 WL 6657591 (N.D. Cal. Nov. 21,
 2014)..... 14, 16

Califano v. Yamasaki, 442 U.S. 682 (1979) 14, 17

Californians for Disability Rights, Inc. v. California Dep’t of Transp., 249 F.R.D. 334 (N.D.
 Cal. 2008) 19

CASA de Maryland, Inc. v. Wolf, 486 F. Supp. 3d 928, (D. Md. 2020) 6, 7, 9

Chambers v. Whirlpool Corp., 980 F.3d 645 (9th Cir. 2020)..... 19

Doe v. Trump, 335 F.R.D. 416 (D. Or. 2020)..... 14

Ellis v. Costco Wholesale Corp., 657 F.3d 970 (9th Cir. 2011) 16, 17

Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147 (1982) 18

Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998) 16

Hanon v. Dataproducts Corp., 976 F.2d 497 (9th Cir. 1992)..... 18

In re Arris Cable Modem Consumer Litig., 327 F.R.D. 334 (N.D. Cal. 2018) 15

In re Mego Fin. Corp. Secs. Litig., 213 F.3d 454 (9th Cir. 2000) 19

Inland Empire—Immigrant Youth Collective v. Nielsen, No. EDCV 17–2048 PSG (SHKx),
 2018 WL 1061408 (C.D. Cal. Feb. 26, 2018) 14

Jordan v. Cty. of L.A., 669 F.2d 1311 (9th Cir. 1982) 15

LaDuke v. Nelson, 762 F.2d 1318 (9th Cir. 1985)..... 18

Local Joint Exec. Bd. of Culinary/Bartender Tr. Fund v. Las Vegas Sands, Inc., 244 F.3d
 1152 (9th Cir. 2001) 19

MadKudu Inc. v. U.S. Citizenship & Immigr. Servs., No. 20-CV-02653-SVK, 2020 WL
 7389419 (N.D. Cal. Nov. 17, 2020) 13, 15, 19

1 *Mazza v. Am. Honda Motor Co.*, 666 F.3d 581 (9th Cir. 2012) 13

2 *Nightingale v. U.S. Citizenship & Immigration Servs.*, 333 F.R.D. 449 (N.D. Cal. 2019) 14

3 *Rannis v. Recchia*, 380 F. App’x. 646 (9th Cir. 2010) 15

4 *Rojas v. Johnson*, No. C16-1024 RSM, 2017 WL 1397749 (W.D. Wash. Jan. 10, 2017)..... 14

5 *Roshandel v. Chertoff*, 554 F. Supp. 2d 1194 (W.D. Wash. 2008)..... 17

6 *Santillan v. Ashcroft*, No. C 04-2686 MHP, 2004 WL 2297990 (N.D. Cal. Oct. 12, 2004) .. 14

7 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010) 13

8 *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393 (2010) 13

9 *Stockwell v. City & County of San Francisco*, 749 F.3d 1107 (9th Cir. 2014)..... 17

10 *Troy v. Kehe Food Dist., Inc.*, 276 F.R.D. 642 (W.D. Wash. 2011)..... 17

11 *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) 13, 16, 18

12 *Walters v. Reno*, 145 F.3d 1032 (9th Cir. 1998)..... 13, 16, 17

13 *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180 (9th Cir. 2001) 21

14

15 **Statutes**

16 5 U.S.C. § 701..... 1

17 8 U.S.C. § 1158(d)(2) 5

18 8 U.S.C. § 1571(b) 10

19 8 U.S.C. § 208.7(d) (1997) 8

20 28 U.S.C. § 1361..... 1

21 **Other Authorities**

22 Agreed Implementation Plan, *Rosario v. USCIS*, No. C15-0813-JLR (Sept. 14, 2018),
https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/rosario_v_usics_agreed_implementation_plan.pdf..... 12

23 USCIS, Case Inquiry,
<https://egov.uscis.gov/e-request/Intro.do>..... 12

24 USCIS, *Check Case Processing Times*, (last visited Nov. 9, 2021)
<https://egov.uscis.gov/processing-times/> 11

25 USCIS, *Employment Authorization* (last updated Nov. 9, 2020),
<https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/employer-information/employment-authorization> (last updated Nov. 9, 2020) . 5

26

27

1 USCIS, *Employment Authorization Document; Renew an EAD* (last updated April 5, 2018),
 2 <https://www.uscis.gov/green-card/green-card-processes-and-procedures/employment-authorization-document> 6

3 USCIS, *Historical National Median Processing Times (in Months) for All USCIS Offices for Select Forms By Fiscal Year* (Oct. 2021),
 4 <https://egov.uscis.gov/processing-times/historic-pt>..... 10

5 USCIS, *I-765, Application for Employment Authorization* (Aug. 25, 2020)
 6 <https://www.uscis.gov/sites/default/files/document/forms/i-765.pdf>..... 6

7 USCIS, *Instructions for Application for Employment Authorization 4-5* (Aug. 25, 2020),
 8 <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf>..... 6

9 USCIS, *Outside Normal Processing Time* (last visited Nov. 9, 2021),
 10 <https://egov.uscis.gov/e-request/displayONPTForm.do;jsessionid=4D4757218B03C758E302ABF286D9581D?sroPageType=onpt&entryPoint=init>..... 12, 13

11 USCIS, *Update: Preliminary Injunction Impacting CASA and ASAP Members*
 (last reviewed/updated Nov. 8, 2021), <https://www.uscis.gov/i-765> 7

Rules

12 Fed. R. Civ. P. 23(a)(1)..... 1, 14

13 Fed. R. Civ. P. 23(a)(2)..... 1, 16

14 Fed. R. Civ. P. 23(a)(3)..... 2, 18

15 Fed. R. Civ. P. 23(a)(4)..... 2, 19

16 Fed. R. Civ. P. 23(b)(2)..... 1

17 Fed. R. Civ. P. 23(c) 21

18 Fed. R. Civ. P. 23(g) 21

Regulations

19 8 C.F.R. § 103.2(b)(10)(i)..... 2, 3, 7, 17, 21

20 8 C.F.R. § 208.7 5

21 8 C.F.R. § 208.7(b) 2, 21

22 8 C.F.R. § 208.7(b)(1)..... 5

23 8 C.F.R. § 274a.12 5

24 8 C.F.R. § 274a.12(c)(8) 1, 2, 3, 5, 21

25 8 C.F.R. § 274a.13 5

26 8 C.F.R. § 274a.13(a)(1) 6

27 8 C.F.R. § 274a.13(d)..... 2, 6, 8, 17, 21

8 C.F.R. § 274a.13(d)(1)..... 10

1 Control of Employment of Aliens, 52 Fed. Reg. 16216 (May 1, 1987) 7
2 Powers and Duties of Service Officers; Availability of Service Records, Control of
3 Employment of Aliens, 56 Fed. Reg. 41767 (Aug. 23, 1991)..... 7
4 Removal of 30-Day Processing Provision for Asylum-Applicant Related Form I-765
5 Employment Authorization Applications, 85 Fed. Reg. 37502 (June 22, 2020) 9, 10
6 Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program Improvements
7 Affecting High-Skilled Nonimmigrant Workers, 81 Fed. Reg. 82398 (Nov. 18, 2016)... 8, 9
8 Rules and Procedures for Adjudication of Applications for Asylum or Withholding of
9 Deportation and for Employment Authorization, 59 Fed. Reg. 14779 (Mar. 30, 1994)..... 8
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 **MOTION FOR CLASS CERTIFICATION AND**
2 **MEMORANDUM OF POINTS OF LAW AND AUTHORITY**

3 Plaintiffs move this Court to certify an injunctive class pursuant to Federal Rule of
4 Civil Procedure 23(b)(2). In support of this motion, Plaintiffs rely on the following facts and
5 points of law and authority.

6 **I. INTRODUCTION**

7 Plaintiffs seek to represent a class of asylum seekers who have lost or will lose their
8 work authorization due to Defendants' unreasonable delay in renewing their employment
9 authorization documents. Plaintiffs and class members challenge Defendant U.S. Citizenship
10 and Immigration Services' (USCIS) unlawful delay in adjudicating applications to renew
11 employment authorization documents (EADs) for asylum seekers under the Mandamus Act
12 or, in the alternative, the Administrative Procedure Act. 28 U.S.C. § 1361; 5 U.S.C. § 701, *et*
13 *seq.*

14
15 Defendant USCIS has already determined that each of these asylum seekers are
16 authorized to work pursuant to 8 C.F.R. § 274a.12(c)(8). Plaintiffs and class members seek to
17 renew their EADs so they may maintain or resume their employment and support themselves
18 and their families while awaiting adjudication of their asylum claims. Work authorization
19 provides support and stability that is key for asylum seekers who frequently suffer from
20 trauma and are less likely to have access to other means of financial support.

21
22 Plaintiffs seek class certification because joinder would be impracticable in this case;
23 Plaintiffs estimate that hundreds, if not more than 1,000, asylum seekers are affected by
24 Defendant USCIS' delays. Fed. R. Civ. P. 23(a)(1). Further, common questions of law and
25 fact predominate any questions affecting the individually named Plaintiffs. *See* Fed. R. Civ.
26 P. 23(a)(2); 23(b)(2). The common legal questions include whether there is a duty to
27

1 adjudicate the EAD renewal applications of asylum applicants within the 180-day automatic
2 extension at 8 C.F.R. § 274a.13(d), and whether it is unreasonable for applications to renew
3 the EADs of asylum applicants to be pending for more than 180 days pursuant to 8 C.F.R.
4 § 103.2(b)(10)(i). A common question of fact unifies the class as well—whether Defendant
5 USCIS is routinely exceeding that deadline. Resolution of these common questions will
6 resolve the entire case.
7

8 Plaintiffs also satisfy Rule 23’s typicality requirements. Plaintiffs’ claims are typical
9 of the claims of the entire class as they are all asylum applicants whose applications to renew
10 their EADs have been pending with Defendant USCIS for at least 180 days pursuant to 8
11 C.F.R. § 103.2(b)(10)(i) and they received the 180-day automatic extension. Fed. R. Civ. P.
12 23(a)(3). Plaintiffs will fairly and adequately represent the interests of the proposed class as
13 they seek relief on behalf of the class as a whole and they have no interest antagonistic to the
14 class members. Fed. R. Civ. P. 23(a)(4). Plaintiffs are represented by competent counsel with
15 extensive experience in both complex class actions and immigration law and can fairly,
16 competently, and ethically represent the interests of the class. *See* Fed. R. Civ. P. 23(a)(4).
17

18 Finally, class-wide relief under Rule 23(b)(2) is appropriate. Plaintiffs challenge
19 systemic practices that consistently prevent the timely adjudication of EAD renewal
20 applications for asylum seekers, for which injunctive relief is the necessary remedy.
21

22 Accordingly, Plaintiffs ask the Court to certify the following class:

23 All individuals:

24 (a) who filed applications to renew their employment authorization
25 documents pursuant to 8 C.F.R. §§ 208.7(b); 274a.12(c)(8); and

26 (b) who received a 180-day automatic extension of their employment
27 authorization pursuant to 8 C.F.R. § 274a.13(d); and

1 (c) whose applications have a processing time of at least 180 days pursuant
2 to 8 C.F.R. § 103.2(b)(10)(i).

3 II. FACTUAL BACKGROUND

4 Plaintiffs and class members are asylum seekers who have lost or will lose their
5 authorization to work due to Defendants' unreasonable delay in renewing their employment
6 authorization document. For each Plaintiff and class member, USCIS has previously
7 determined that they are each authorized to work pursuant to 8 C.F.R. § 274a.12(c)(8), the
8 regulation granting work authorization to asylum seekers. Plaintiffs seek to renew their
9 EADs so they may maintain or resume their employment and support themselves and their
10 families while awaiting adjudication of their asylum claims.

11
12 Plaintiff Tony N. is an asylum seeker from East Africa and a truck driver who lost his
13 job and his driver's license due to Defendants' delay in processing his work authorization
14 application. Ex. A, Decl. of Tony N., ¶ 6. Tony N.'s EAD renewal application has been
15 pending for 323 days, and the 180-day auto extension expired on October 11, 2021. *See id.*
16 ¶¶ 4, 6. Living without any support network in the U.S., Tony N. has been forced to deplete
17 his savings because he cannot work and he struggles with paying for necessities such as rent,
18 health insurance, and food. *Id.* ¶¶ 13-14.

19
20 Plaintiff Dr. Muradyan is an asylum seeker from Armenia and a medical doctor. Ex.
21 B, Decl. of Dr. Muradyan, ¶¶ 1, 7. Dr. Muradyan has now lost her residency positions at two
22 hospitals, as well as her health insurance, due to the delay in processing her work permit
23 renewal, and, as a result, she can no longer provide care to her patients or support herself and
24 her young son. *Id.* ¶¶ 7-10; 13. If Dr. Muradyan is unable to work for over three months, she
25 will lose her physicians' license and will need to redo an entire year of residency beginning
26

1 in July 2022. *Id.* ¶ 11. Dr. Muradyan’s renewal application has been pending for 219 days. *Id.*
2 ¶ 4. The 180-day auto extension expired on October 13, 2021. *Id.* ¶ 5.

3 Plaintiff Karen M. is a pregnant asylum seeker from El Salvador with two other
4 young children she supports. Ex. C, Decl. of Karen M., ¶ 1. Karen M. works as a manager at
5 McDonald’s and has been informed by her employer that if her work permit is not renewed
6 by November 15, 2021, she will be terminated from her position. *Id.* ¶ 5. Karen M. has
7 already been unable to renew her driver’s license because of the delay in processing her work
8 permit application, and now, a month before she is scheduled to give birth, she fears that she
9 will also lose her primary means to support herself and her family. *Id.* ¶ 8. Karen M. faces
10 significant economic hardship without her employment authorization, and will struggle to
11 cover necessities such as rent, food, and clothing for herself and her young children. *Id.* ¶ 6-
12 7. Plaintiff Karen M.’s EAD renewal application has been pending for 221 days. *Id.* ¶ 4.

13
14
15 Plaintiff Jack S. is an asylum seeker and was an Apple, Inc. employee. Ex. D, Decl.
16 of Jack S., ¶ 7. Jack S. recently lost his position because of the delay in renewing his work
17 permit and will soon lose his employer-based health insurance coverage. *Id.* ¶¶ 12, 17. In
18 addition, Jack S. has lost his driver’s license as a result of Defendants’ delay and can no
19 longer drive to important medical appointments or easily acquire necessities such as
20 groceries. *Id.* ¶ 15-16. Jack S. is suffering significant economic hardship without
21 employment authorization and anticipates having to drain what little savings he has to
22 support himself and his partner, who is disabled. *Id.* ¶ 14. Jack S.’s EAD renewal application
23 has been pending for 244 days. *Id.* ¶ 6.

24
25 Plaintiff Vera de Aponte is an asylum seeker from Venezuela and a registered
26 Behavior Health Technician for special needs children. Ex. E, Decl. of Vera de Aponte ¶¶ 1,

1 7. Ms. Vera de Aponte is the primary source of income for her family. *Id.* ¶ 9. Ms. Vera de
2 Aponte recently lost her job because her work permit renewal application was not approved
3 within her automatic extension period. *Id.* ¶ 6. Without work authorization, she risks losing
4 her Medicaid provider number due to inactivity, which could have serious long-term
5 implications for her career. *Id.* ¶¶ 11-13. Ms. Vera de Aponte’s EAD renewal application has
6 been pending for 259 days. *Id.* ¶ 5.

8 III. LEGAL BACKGROUND

9 1. Process to Apply for Work Authorization

10 A person with an asylum application pending before DHS or the Executive Office for
11 Immigration Review (EOIR) may obtain employment authorization, the proof of which is a
12 valid EAD. 8 C.F.R. §§ 208.7, 274a.12(c)(8); *see* 8 U.S.C. § 1158(d)(2). Defendant USCIS is
13 required by regulation to accept, process, and adjudicate all properly filed EAD applications,
14 including EAD applications by asylum applicants. *See* 8 C.F.R. §§ 208.7, 274a.12, 274a.13.

15 An EAD does not grant temporary or permanent immigration status. *See* USCIS,
16 *Employment Authorization*, [https://www.uscis.gov/working-in-the-united-states/information-](https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/employer-information/employment-authorization)
17 *for-employers-and-employees/employer-information/employment-authorization* (last updated
18 Nov. 9, 2020). Instead, an EAD is proof of authorization to work for the validity period of
19 the EAD. *Id.* An EAD for an asylum applicant is typically valid for two years. An asylum
20 applicant may apply to renew their EAD if their asylum application remains pending. 8
21 C.F.R. § 208.7(b)(1).

22 Defendant USCIS instructs people not to file for a renewal EAD more than 180 days
23 before the original EAD expires. USCIS, *Employment Authorization Document; Renew an*
24 *EAD* (last updated April 5, 2018), <https://www.uscis.gov/green-card/green-card-processes->
25
26
27

1 and-procedures/employment-authorization-document. If USCIS grants an application to
2 renew an EAD before the original EAD expires, the validity period of the renewed EAD will
3 begin to run from the date the application is approved and will overlap with the validity
4 period of the initial EAD. Compl. ¶ 31. In other words, the asylum seeker will be required to
5 seek any subsequent renewal earlier than they would have had they filed their renewal
6 application on or immediately before their original EAD expired. *Id.*

8 A person seeking to renew an EAD will receive an automatic 180-day extension of
9 their current employment authorization if they file that application before their EAD expires.
10 8 C.F.R. § 274a.13(d). The process for applying to renew an EAD requires applicants to fill
11 out a standard form. Defendant USCIS created Form I-765, Application for Employment
12 Authorization, a seven-page form that all EAD applicants must use, regardless of the basis of
13 their eligibility. USCIS, *I-765, Application for Employment Authorization* (Aug. 25, 2020)
14 <https://www.uscis.gov/sites/default/files/document/forms/i-765.pdf>. The form collects basic
15 biographic, immigration, contact, interpreter, and preparer information. *Id.* Form I-765
16 includes eight questions for determining EAD eligibility for an asylum applicant. *Id.*
17 Defendant USCIS may deny an EAD to an asylum applicant in the exercise of discretion,
18 8 C.F.R. § 274a.13(a)(1), unless the applicant is an ASAP or CASA member, *CASA de*
19 *Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928, 973-74 (D. Md. 2020).

22 Defendant USCIS requires two types of additional evidence for EAD applications by
23 asylum applicants. USCIS, *Instructions for Application for Employment Authorization 4-5*
24 (Aug. 25, 2020), <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf>.
25 First, the Form I-765 instructions require evidence that the person filed an asylum application
26 and that it remains pending before DHS or EOIR. Second, the instructions require people to
27

1 submit any criminal records. In addition, ASAP and CASA members who seek to benefit
2 from the injunction in *CASA de Maryland* must submit a copy of their membership card or a
3 letter from either organization certifying membership. USCIS, *Update: Preliminary*
4 *Injunction Impacting CASA and ASAP Members* (last reviewed/updated Nov. 8, 2021),
5 <https://www.uscis.gov/i-765>.

6
7 If the adjudicator at the assigned Service Center requires additional evidence,
8 Defendant USCIS will issue a Request for Evidence (RFE). Issuing an RFE impacts how
9 USCIS calculates how long an application has been pending. 8 C.F.R. § 103.2(b)(10)(i). If
10 USCIS sends an RFE for required initial evidence, the processing time restarts when USCIS
11 receives the required initial evidence. *Id.* If USCIS sends an RFE for supplemental evidence,
12 the processing time is paused as of the date of the request and does not resume accruing until
13 USCIS receives the requested evidence or a request for a decision based on the initial
14 evidence. *Id.* In other words, in complicated cases where additional evidence is needed, the
15 processing time either restarts or pauses, depending on whether USCIS asks for initial or
16 supplemental evidence. None of the Individual Plaintiffs have received an RFE.

18 **2. USCIS's 180-Day Rule of Reason**

19 For almost three decades, legacy Immigration and Naturalization Service (INS) and
20 subsequently Defendant USCIS were required by regulation to adjudicate most EAD
21 applications, including EAD renewal applications by asylum applicants, within a set
22 timeline—initially 60 days and later 90 days. *See Control of Employment of Aliens*, 52 Fed.
23 Reg. 16216, 16228 (May 1, 1987) (to be codified at 8 C.F.R. pts. 109, 274a); Powers and
24 Duties of Service Officers; Availability of Service Records, Control of Employment of
25 Aliens, 56 Fed. Reg. 41767, 41782 (Aug. 23, 1991) (to be codified at 8 C.F.R. pts. 103,
26
27

1 274a). These regulations required initial EADs by asylum applicants to be adjudicated in just
2 30 days, because asylum applicants were required by regulation (and later by statute) to wait
3 150 days from the filing of their asylum applications to file for an EAD. *See* Rules and
4 Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and
5 for Employment Authorization, 59 Fed. Reg. 14779, 14780 (Mar. 30, 1994) (stating that 150
6 days was the period “beyond which it would not be appropriate to deny work authorization to
7 a person whose claim has not been adjudicated”); *see* 8 U.S.C. § 1158(d)(2) (providing that
8 an asylum applicant may not receive employment authorization until 180 days after the
9 asylum application is filed).

10
11 In addition, Defendants told asylum applicants that “[i]n order for employment
12 authorization to be renewed before its expiration, the application for renewal must be
13 received by the [INS, subsequently USCIS] 90 days prior to expiration of the employment
14 authorization.” 8 U.S.C. § 208.7(d) (1997). But on November 18, 2016, Defendant DHS,
15 through its component Defendant USCIS, issued a final rule that eliminated the requirement
16 that USCIS either adjudicate applications by asylum applicants to renew their EADs and
17 other applications for employment authorization included in 8 C.F.R. § 274a.13(d) within 90
18 days of filing or issue interim work authorization. *See* Retention of EB-1, EB-2, and EB-3
19 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant
20 Workers, 81 Fed. Reg. 82398, 82455 (Nov. 18, 2016). In eliminating 90 days as a processing
21 requirement, the agency professed its commitment to a 90-day adjudication timeframe as a
22 “processing goal.” *See* 81 Fed. Reg. at 82456. This final rule took effect on January 17, 2017.
23 *Id.* at 82398.
24
25
26
27

1 At the same time that DHS eliminated the 90-day processing requirement, DHS also
2 established a benchmark by when adjudications delayed beyond 90 days should be
3 completed. “[T]o help prevent gaps in employment authorization,” the agency provided for
4 “the automatic extension of expiring EADs . . . for up to 180 days” for noncitizens who
5 timely apply to renew their EADs in the same employment authorization category as
6 previously granted. 81 Fed. Reg. at 82455. The agency identified specific renewal categories,
7 including EAD renewals by asylum applicants, that would receive the 180-day automatic
8 extension. 81 Fed. Reg. at 82455 & n.98. The automatic extension provides an additional 180
9 days of work authorization unless USCIS adjudicates the renewal application before then.
10

11 The agency envisioned the 180-day automatic extension as sufficient to protect
12 against employment interruptions and job loss: “DHS anticipates that the automatic EAD
13 extension will ensure continued employment authorization for many renewal applicants and
14 prevent any work disruptions for both the applicants and their employers.” 81 Fed. Reg. at
15 82456.
16

17 In June 2020, Defendant DHS issued a final rule eliminating the requirement that
18 asylum applicants submit their EAD renewal applications 90 days before the EAD expires in
19 order to avoid a gap in authorization and eliminated the 30-day processing rule for initial
20 EAD applications. *See Removal of 30-Day Processing Provision for Asylum-Applicant*
21 *Related Form I-765 Employment Authorization Applications*, 85 Fed. Reg. 37502, 37510
22 (June 22, 2020). (The portion of the final rule eliminating the 30-day processing requirement,
23 which took effect on August 21, has been enjoined as to ASAP and CASA members. *CASA*
24 *de Maryland*, 486 F. Supp. 3d at 973-74.) Defendant DHS justified eliminating the 90-day
25
26
27

1 advance filing rule for renewals because it was unnecessary in light of the 180-day automatic
2 extension at 8 C.F.R. § 274a.13(d)(1):

3 Because [8 C.F.R. § 274a.13(d)(1)] effectively prevents gaps in work
4 authorization for asylum applicants with expiring employment authorization
5 and EADs, DHS finds it unnecessary to continue to require that pending asylum
6 applicants file for renewal of their employment authorization 90 days before the
7 EAD's scheduled expiration in order to prevent gaps in employment
8 authorization.

9 85 Fed. Reg. at 37509.

10 The 180-day benchmark for agency adjudication of applications to renew EADs is
11 consistent with “the sense of Congress that the processing of an immigration benefit
12 application should be completed not later than 180 days after the initial filing of the
13 application” 8 U.S.C. § 1571(b). Asylum seekers, their attorneys, and advocates relied
14 on Defendants’ representations in their rulemaking that Defendant USCIS would continue to
15 adjudicate EAD renewal applications for asylum seekers within the 180-day automatic
16 extension period. Ex. F, Decl. of Rachel Kafele, ¶ 23; Ex. G, Decl. of Swapna Reddy, ¶ 27.

17 Until recently, Defendant USCIS consistently adjudicated EAD renewal applications
18 by asylum applicants in less than 180 days. Kafele Decl. ¶¶ 16, 20. According to USCIS’
19 publicly available data, the median processing time for all Form I-765 applications from
20 Fiscal Year (FY) 2017 through September of FY 2021 ranged between 2.6 and 3.9 months.
21 USCIS, *Historical National Median Processing Times (in Months) for All USCIS Offices for*
22 *Select Forms By Fiscal Year (Oct. 2021)*, <https://egov.uscis.gov/processing-times/historic-pt>.

23 However, upon information and belief, beginning with applications filed in December
24 or January 2020, Defendant USCIS began to take more than 180 days to adjudicate EAD
25 renewals for many asylum applicants. Kafele Decl. ¶ 21. Processing times have continued to
26 increase. According to Defendant USCIS, the estimated time range for adjudicating EAD
27

1 renewals for asylum applicants at the Potomac Service Center is 9.5 to 10 months.
2 USCIS, *Check Case Processing Times*, <https://egov.uscis.gov/processing-times/> (selecting
3 “Form: I-765 Application for Employment Authorization” and “Field Office or Service
4 Center: Potomac Service Center” and scrolling down to “Form type: Based on a pending
5 asylum application [(c)(8)]”) (last visited Nov. 9, 2021). According to Defendant USCIS, the
6 estimated time range for adjudicating EAD renewals for asylum applicants at the Nebraska
7 Service Center is 5.5 to 7.5 months. USCIS, *Check Case Processing*
8 *Times*, <https://egov.uscis.gov/processing-times/> (selecting “Form: I-765 Application for
9 Employment Authorization” and “Field Office or Service Center: Nebraska Service
10 Center” and scrolling down to “Form type: Based on a pending asylum application [(c)(8)]”)
11 (last visited Nov. 9, 2021). According to Defendant USCIS, the estimated time range for
12 adjudicating both initial and renewal EAD applications for asylum applicants at the Texas
13 Service Center is 3 weeks to 8 months. USCIS, *Check Case Processing*
14 *Times*, <https://egov.uscis.gov/processing-times/> (selecting “Form: I-765 Application for
15 Employment Authorization” and “Field Office or Service Center: Texas Service Center” and
16 scrolling down to “Form type: Based on a pending asylum application [(c)(8)]”) (last visited
17 Nov. 9, 2021). Because many initial EAD applications for asylum applicants must be
18 adjudicated within 30 days, the estimated time range for adjudication at the Texas Service
19 Center does not accurately reflect the actual, longer time range for renewal EAD
20 applications. *See* Agreed Implementation Plan, *Rosario v. USCIS*, No. C15-0813-JLR (Sept.
21 14, 2018),

22 https://www.americanimmigrationcouncil.org/sites/default/files/litigation_documents/rosario
23
24
25
26
27

1 _v_usics_agreed_implementation_plan.pdf (indicating that all initial EAD applications for
2 asylum applicants will be adjudicated at the Texas Service Center).

3 If an application is delayed “outside normal processing times” an applicant may ask
4 USCIS to investigate through a case inquiry. USCIS, Case Inquiry, [https://egov.uscis.gov/e-](https://egov.uscis.gov/e-request/Intro.do)
5 [request/Intro.do](https://egov.uscis.gov/e-request/Intro.do). Defendant USCIS will not accept an “outside normal processing times” case
6 inquiry for an EAD renewal application by an asylum applicant currently pending at the
7 Potomac Service Center that was filed after January 10, 2021. *See* USCIS, *Outside Normal*
8 *Processing Time*, [https://egov.uscis.gov/e-](https://egov.uscis.gov/e-request/displayONPTForm.do;jsessionid=4D4757218B03C758E302ABF286D9581D?sroPageType=onpt&entryPoint=init)
9 [request/displayONPTForm.do;jsessionid=4D4757218B03C758E302ABF286D9581D?sroPa](https://egov.uscis.gov/e-request/displayONPTForm.do;jsessionid=4D4757218B03C758E302ABF286D9581D?sroPageType=onpt&entryPoint=init)
10 [geType=onpt&entryPoint=init](https://egov.uscis.gov/e-request/displayONPTForm.do;jsessionid=4D4757218B03C758E302ABF286D9581D?sroPageType=onpt&entryPoint=init) (permitting a case inquiry “if your case has been pending
11 longer than the processing time posted (emphasis added)) (last visited Nov. 9, 2021). In other
12 words, according to Defendant USCIS, an application that has been pending at the Potomac
13 Service Center for ten months – or 306 days – is within “normal processing times.”
14

15
16 Defendant USCIS will not accept an “outside normal processing times” case inquiry
17 for an EAD renewal application by an asylum applicant currently pending at the Nebraska
18 Service Center that was filed after March 27, 2021. *See id.* In other words, according to
19 Defendant USCIS, an application that has been pending at the Nebraska Service Center for
20 over seven months – or 230 days – is within “normal processing times.”
21

22 Defendant USCIS will not accept an “outside normal processing times” case inquiry
23 for an EAD renewal application by an asylum applicant currently pending at the Texas
24 Service Center that was filed after March 22, 2021. *See id.* In other words, according to
25 Defendant USCIS, an application that has been pending at the Nebraska Service Center for
26 over seven months – or 235 days – is within “normal processing times.”
27

1 Upon information and belief, Defendant USCIS is not adjudicating EAD renewal
2 applications by asylum applicants based on first in-first out processing. Applications sent to
3 the Nebraska Service Center are adjudicated, on average, more quickly than earlier-filed
4 applications sent to the Potomac Service Center. *See id.* Applications sent to the Potomac
5 Service Center are sometimes adjudicated faster than earlier-filed applications at the same
6 service center. Ex. H, Decl. of Aidan Castillo, ¶ 8; Reddy Decl. ¶ 22.

8 IV. ARGUMENT

9 A plaintiff whose suit meets the requirements of Federal Rule of Civil Procedure 23
10 has a “categorical” right “to pursue his claim as a class action.” *Shady Grove Orthopedic*
11 *Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). The plaintiff must satisfy Rule
12 23(a) criteria—numerosity, commonality, typicality, and adequacy of representation—and
13 fall within one of the three categories found in Rule 23(b). *Id.*; *see also Mazza v. Am. Honda*
14 *Motor Co.*, 666 F.3d 581, 588 (9th Cir. 2012) (discussing criteria under Rule 23(a)). The
15 plaintiffs generally carry the burden of persuasion to show that they have met the Rule 23
16 requirements by a preponderance of the evidence. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S.
17 338, 350 (2011).

19 Courts within the Ninth Circuit, including this Court, have granted nationwide class
20 certification to plaintiffs seeking declaratory or injunctive relief in challenges to immigration
21 policies and practices. *See, e.g., Walters v. Reno*, 145 F.3d 1032, 1045-47 (9th Cir. 1998)
22 (affirming certification of nationwide class of individuals challenging adequacy of notice in
23 document fraud cases).¹ Here, as in the cases cited, a nationwide class is “[]consistent with
24

25
26 ¹ *See also MadKudu Inc. v. U.S. Citizenship & Immigr. Servs.*, No. 20-CV-02653-SVK, 2020
27 WL 7389419, at *5-6 (N.D. Cal. Nov. 17, 2020) (certifying a nationwide class of U.S.
employers whose H-1B petitions for market research analysts were denied); *Doe v. Trump*,

1 principles of equity jurisprudence” since the challenged adjudicatory policy and practice is
 2 national and “the scope of injunctive relief is dictated by the extent of the violation
 3 established, not by the geographical extent of the plaintiff class.” *Califano v. Yamasaki*, 442
 4 U.S. 682, 702 (1979). Moreover, this issue can be fully resolved only on a nationwide level.
 5 USCIS delays affect asylum seekers renewing their employment authorization across the
 6 United States, each on the same grounds and in the same unlawful manner. Importantly,
 7 individual lawsuits will not change USCIS policy. For that reason, this issue is particularly
 8 amenable to class-wide treatment. *See id.*

10 Plaintiffs meet the Rule 23 standards for class certification.

11 **A. Rule 23(a)(1)—Numerosity and the Impracticability of Joinder**

12 The proposed class is so numerous that joinder of all class members is
 13 impracticable. Fed. R. Civ. P. 23(a)(1). Based on two organizations alone, Plaintiffs have
 14 identified approximately 470 affected class members. Reddy Decl. ¶ 18 (detailing the
 15

17 335 F.R.D. 416, 437 (D. Or. 2020) (certifying class of individuals with approved or pending
 18 immigration petitions and a subclass of visa applicants challenging the President’s
 19 Proclamation on healthcare insurance); *Nightingale v. U.S. Citizenship & Immigration Servs.*,
 20 333 F.R.D. 449, 463 (N.D. Cal. 2019) (certifying two nationwide classes in case challenging
 21 immigration agencies’ failure to timely process FOIA requests); *Alfaro Garcia v. Johnson*,
 22 No. 14-cv-01775- YGR, 2014 WL 6657591, at *16 (N.D. Cal. Nov. 21, 2014) (certifying
 23 nationwide class in case challenging government’s failure to provide timely reasonable fear
 24 interviews); *Santillan v. Ashcroft*, No. C 04-2686 MHP, 2004 WL 2297990, at *12 (N.D.
 25 Cal. Oct. 12, 2004) (certifying nationwide class of lawful permanent residents challenging
 26 USCIS’ delays in issuing documentation of their status); *Inland Empire—Immigrant Youth
 27 Collective v. Nielsen*, No. EDCV 17–2048 PSG (SHKx), 2018 WL 1061408, at *4, 14 (C.D.
 Cal. Feb. 26, 2018) (certifying nationwide class of Deferred Action for Childhood Arrivals
 recipients whose benefits were terminated without notice or cause); *Rojas v. Johnson*, No.
 C16-1024 RSM, 2017 WL 1397749, at *7 (W.D. Wash. Jan. 10, 2017) (certifying two
 nationwide classes with two subclasses each of asylum seekers challenging defective asylum
 application procedures); *A.B.T. v. U.S. Citizenship & Immigration Servs.*, No. C11–2108
 RAJ, 2013 WL 5913323, at *1-2 (W.D. Wash. Nov. 4, 2013) (certifying nationwide class
 and approving a settlement amending practices by EOIR and USCIS that precluded asylum
 applicants from receiving employment authorization).

1 Asylum Seeker Advocacy Project’s 454 asylum-seeking members waiting 180 days or more
2 for EAD renewal); Castillo Decl. ¶ 6 (16 of Centro Legal de Raza’s clients have asylum
3 renewal applications pending 180 days or longer). This is nearly 12 times the 40-person
4 threshold that courts often use to establish numerosity. *See Rannis v. Recchia*, 380 F. App’x.
5 646, 651 (9th Cir. 2010) (“In general, courts find the numerosity requirement satisfied when
6 a class includes at least 40 members.”); *see also In re Arris Cable Modem Consumer Litig.*,
7 327 F.R.D. 334, 354 (N.D. Cal. 2018). Further, the class is expected to grow. As additional
8 asylum applicants file to renew their EADs, an unknown number of future class members
9 makes joinder impracticable. *See Reddy Decl.* ¶ 23 (“In November 2021, ASAP has
10 continued to receive daily inquiries from additional members concerned about wait times for
11 work permit renewal applications in excess of six months.”).

12
13
14 While a court may find numerosity based solely on the number of potential class
15 members, other factors make joinder impracticable. *See Jordan v. Cty. of L.A.*, 669 F.2d
16 1311, 1319 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982) (“Although the
17 absolute number of class members is not the sole determining factor, where a class is large in
18 numbers, joinder will usually be impracticable.”). Potential class members lack geographic
19 proximity and are spread across the country. *Reddy Decl.* ¶ 24 (noting that ASAP members
20 reporting delays living in twenty-four states). If a class were not certified, this geographic
21 dispersion of potential plaintiffs could result in lawsuits in multiple courts in various circuits,
22 resulting in the possibility of inconsistent results and a lack of judicial economy. *See*
23 *MadKudu*, 2020 WL 7389419, at *6 (“[T]he practical consequences of not certifying a
24 geographically limited class weigh in favor of nationwide certification.”) (internal citations
25 omitted). Indeed, “courts have certified nationwide classes that challenge the government’s
26
27

1 actions in enforcing the country’s immigration laws.” *Garcia*, 2014 WL 6657591, at *16
2 (citing cases where courts have certified nationwide classes challenging the government's
3 actions in enforcing immigration laws). Accordingly, a certified nationwide class preserves
4 judicial resources and prevents disparate results.

5
6 **B. Rule 23(a)(2)—Common Questions of Law and Fact**

7 The proposed class shares common questions of law and fact, in accordance with Fed.
8 R. Civ. P.23(a)(2). In determining that a common question of law exists, the putative class
9 members’ claims “must depend upon a common contention” that is “of such a nature that it is
10 capable of class-wide resolution—which means that determination of its truth or falsity will
11 resolve an issue that is central to the validity of each one of the claims in one stroke.” *Wal-*
12 *Mart Stores*, 564 U.S. at 350. To satisfy the commonality requirement, “[a]ll questions of
13 fact and law need not be common.” *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 981 (9th
14 Cir. 2011) (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998)). To the
15 contrary, one shared legal issue can be sufficient. *See, e.g., Walters*, 145 F.3d at 1046 (“What
16 makes the plaintiffs’ claims suitable for a class action is the common allegation that the
17 INS’s procedures provide insufficient notice.”).

18
19 Here, questions of law and fact predominate over any questions affecting the
20 individually named plaintiffs. All the Individual Plaintiffs and proposed class members have
21 been or will be forced to suffer the consequences of USCIS’ failure to timely adjudicate their
22 EAD renewal applications. The common questions of law include whether USCIS has a duty
23 to adjudicate the applications to renew the EADs of asylum applicants within the 180-day
24 automatic extension at 8 C.F.R. § 274a.13(d), and whether it is unreasonable for these
25 applications to be pending for more than 180 days pursuant to 8 C.F.R. § 103.2(b)(10)(i).
26
27

1 Common questions of fact include whether USCIS has delayed the adjudication of asylum
2 EAD renewals, and whether USCIS has a policy and practice of failing to adjudicate asylum
3 EAD renewals within the automatic 180-days renewal period set forth in the regulations.

4
5 Thus, a common answer regarding the existence and legality of each challenged
6 policy and practice will “drive the resolution of the litigation.” *Ellis*, 657 F.3d at 981
7 (quoting *Wal-Mart*, 131 S. Ct. at 2551). Although factual variations in individual cases may
8 exist, these are insufficient to defeat commonality. *See Califano*, 442 U.S. at 701 (“It is
9 unlikely that differences in the factual background of each claim will affect the outcome of
10 the legal issue.”); *Walters*, 145 F.3d at 1046 (“Differences among the class members with
11 respect to the merits of their actual document fraud cases, however, are simply insufficient to
12 defeat the propriety of class certification”). This case turns on the existence of unlawful
13 delays in adjudicating EAD renewal applications, which applies equally to all class members
14 regardless of any factual differences. Courts have affirmed that such factual questions are
15 well-suited to resolution on a class-wide basis. *See, e.g., Stockwell v. City & County of San*
16 *Francisco*, 749 F.3d 1107, 1114 (9th Cir. 2014) (reversing denial of class certification
17 motion because movants had “identified a single, well-enunciated, uniform policy” that was
18 allegedly responsible for the harms suffered by the class); *Roshandel v. Chertoff*, 554 F.
19 Supp. 2d 1194, 1203–04 (W.D. Wash. 2008), *amended in part*, No. C07-1739MJP, 2008 WL
20 2275558 (W.D. Wash. June 3, 2008) (finding commonality where plaintiffs challenged
21 delays in naturalization adjudications due to Federal Bureau of Investigations “name
22 checks”). Moreover, “the court must decide only once whether the application” of
23 Defendants’ policies and practices “does or does not violate” the law. *Troy v. Kehe Food*
24 *Dist., Inc.*, 276 F.R.D. 642, 654 (W.D. Wash. 2011); *see also LaDuke v. Nelson*, 762 F.2d
25
26
27

1 1318, 1332 (9th Cir. 1985) (holding that the constitutionality of an INS procedure “[p]lainly”
2 created common questions of law and fact). As such, resolution of these common issues will
3 resolve class members’ claims “in one stroke.” *Wal-Mart*, 564 U.S. at 350.

4 **C. Rule 23(a)(3)—Typicality**

5 Plaintiffs’ claims are typical of the claims of all members of the proposed class. Fed.
6 R. Civ. P. 23(a)(3). “Typicality refers to the nature of the claim or defense of the class
7 representative, and not to the specific facts from which it arose or the relief sought.” *Hanon*
8 *v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (quotation omitted). Nonetheless,
9 the “commonality and typicality requirements of Rule 23(a) tend to merge.” *Gen. Tel. Co. of*
10 *Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982). “Both serve as guideposts for determining
11 whether under the particular circumstances maintenance of a class action is economical and
12 whether the named plaintiff’s claim and the class claims are so interrelated that the interests
13 of the class members will be fairly and adequately protected in their absence.” *Id.* In
14 determining typicality, courts consider “whether other members have the same or similar
15 injury, whether the action is based on conduct which is not unique to the named plaintiffs,
16 and whether other class members have been injured by the same course of conduct.” *Hanon*,
17 976 F.2d at 508 (quotation omitted).
18
19
20

21 The claims of the Individual Plaintiffs, all of whom filed EAD renewal applications
22 that have been pending for more than 180 days, are typical of the claims of the proposed
23 class. *See* Tony N. Decl. ¶ 4; Dr. Muradyan Decl. ¶ 4; Karen M. Decl. ¶ 4; Jack S. Decl. ¶ 6;
24 Vera de Aponte Decl. ¶ 5. Each Plaintiff has suffered concrete harms, including loss or the
25 imminent loss of lawful employment opportunities and the inability to obtain or renew
26 identity documents, as a result of the Defendants’ actions. Tony N. Decl. ¶¶ 6, 12; Dr.
27

1 Muradyan Decl. ¶¶ 7, 12-14; Karen M. Decl. ¶¶ 5, 8; Jack S. Decl. ¶¶ 12, 15-17; Vera de
2 Aponte Decl. ¶¶ 7, 11-15. Thus, Individual Plaintiffs, like all members of the proposed class,
3 seek declaratory and injunctive relief from this Court directing the Defendants to adjudicate
4 EAD applications in a timely manner. Because the Individual Plaintiffs and proposed class
5 members are united in their interests and injury and their cases raise common factual and
6 legal claims, the element of typicality is met.

8 **D. Rule 23(a)(4)—Adequacy**

9 Plaintiffs are adequate representatives of the class. Fed. R. Civ. P. 23(a)(4). To
10 determine whether named Individual Plaintiffs will adequately represent the interests of the
11 class, the Court must consider two questions: “(a) do the named plaintiffs and their counsel
12 have any conflicts of interest with other class members and (b) will the named plaintiffs and
13 their counsel prosecute the action vigorously on behalf of the class?” *In re Mego Fin. Corp.*
14 *Secs. Litig.*, 213 F.3d 454, 462 (9th Cir. 2000). The Court only needs to find one plaintiff to
15 be adequate in order to satisfy Rule 23(b)(4). *See Chambers v. Whirlpool Corp.*, 980 F.3d
16 645, 670 (9th Cir. 2020) (“[T]he adequacy-of-representation requirement is satisfied as long
17 as one of the class representatives is an adequate class representative.”) (quotation omitted).
18 Plaintiffs’ counsel are deemed qualified when they possess experience in previous class
19 actions and cases involving the same area of law, and “[a]dequate representation is usually
20 presumed in the absence of contrary evidence.” *Californians for Disability Rights, Inc. v.*
21 *California Dep’t of Transp.*, 249 F.R.D. 334, 349 (N.D. Cal. 2008); *see also Local Joint*
22 *Exec. Bd. of Culinary/Bartender Tr. Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162 (9th
23 Cir. 2001); *MadKudu*, 2020 WL 7389419, at *8 (finding Plaintiffs’ counsel adequate where
24 “Plaintiffs’ attorneys are experienced class action attorneys”).
25
26
27

1 Individual Plaintiffs have no interests separate from those of the class and seek no
2 relief other than the relief sought on behalf of the class. Plaintiffs will fairly and adequately
3 represent the interests of the class because (a) they are willing and able to represent the
4 proposed class and have every incentive to pursue this action to a successful conclusion; (b)
5 their interests do not in any way conflict with those of absent members of the class; and (c)
6 they have retained counsel who are competent and experienced in litigating class actions,
7 civil rights, and immigrants' rights. Further, Plaintiffs seek the exact same relief for
8 themselves and for members of the class: declaratory and injunctive relief.
9

10 In addition, the Individual Plaintiffs possess the ability to vigorously prosecute the
11 interests of the classes through qualified counsel. Plaintiffs' counsel have extensive class
12 action experience. *See* Ex. I, Decl. of Katherine Melloy Goettel; Ex. J, Decl. of Zachary
13 Manfredi. Proposed class counsel have a robust knowledge of the legal issues and have
14 federal court immigration litigation experience related to employment authorization, asylum
15 law, and unreasonable delay actions under the Mandamus Act and Administrative Procedure
16 Act. Accordingly, counsel will be able to vigorously and ethically protect the interests of the
17 class based on their collective experience and will therefore adequately represent the interests
18 of the class.
19

20 **E. Plaintiffs Satisfy the Requirements for a Rule 23(b)(2) Class**

21 In addition to satisfying the four requirements of Rule 23(a), Plaintiffs also must meet
22 at least one of the requirements of Rule 23(b) for a class action to be certified. This action
23 meets the requirements of Rule 23(b)(2), namely "the party opposing the class has acted or
24 refused to act on grounds generally applicable to the class, thereby making appropriate final
25 injunctive relief or corresponding declaratory relief with respect to the class as a whole."
26
27

1 Individual Plaintiffs challenge—and seek declaratory and injunctive relief from—systemic
2 failure to timely adjudicate EAD renewal applications for asylum seekers. Accordingly,
3 class-wide relief is appropriate under Rule 23(b)(2). *See Zinser v. Accufix Research Inst.,*
4 *Inc.*, 253 F.3d 1180, 1195 (9th Cir. 2001) (finding certification under Rule 23(b)(2)
5 appropriate “only where the primary relief sought is declaratory or injunctive”), *amended by*
6 *273 F.3d 1180* (9th Cir. 2001).

8 **V. CONCLUSION**

9 For all of the foregoing reasons, Plaintiffs ask the Court to certify a class as follows:

10 All individuals:

- 11 (a) who filed applications to renew their employment authorization documents
12 pursuant to 8 C.F.R. §§ 208.7(b); 274a.12(c)(8); and
13 (b) who received a 180-day automatic extension of their employment
14 authorization pursuant to 8 C.F.R. § 274a.13(d); and
15 (c) whose applications have a processing time of at least 180 days pursuant to 8
16 C.F.R. § 103.2(b)(10)(i).

17 Plaintiffs further ask the Court to appoint the Individual Plaintiffs as class
18 representatives and appoint Plaintiffs’ counsel as class counsel. *See Fed. R. Civ. P. 23(c);*
19 *23(g).*

20
21 DATE: November 11, 2021

Respectfully submitted,

22 */s/ Zachary Manfredi*
23 Zachary Manfredi (CA #320331)
24 Asylum Seeker Advocacy Project (ASAP)
25 228 Park Ave. S. #84810
New York, NY 10003-1502
Telephone: (248) 840-0744
Email: zachary.manfredi@asylumadvocacy.org

26 Emma Winger (MA #677608)*
27 Katherine Melloy Goettel (IA #23821)*
Leslie K. Dellon (DC #250316)*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

American Immigration Council
1331 G Street NW, Suite 200
Washington, DC 20005
Telephone: (617) 505-5375 (Winger)
Email: ewinger@immcouncil.org
ldellon@immcouncil.org
kgoettel@immcouncil.org

Judah Lakin (CA #307740)
Lakin & Wille, LLP
1939 Harrison Street, Suite 420
Oakland, CA 94612
Telephone: (510) 379-9218
Email: judah@lakinwille.com

Counsel for Plaintiffs Tony N., et al.
**Pro Hac Vice motions pending*