

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

J.O.P., et al.,

Plaintiffs,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY, et al.,**

Defendants.

Civil Action No. 8:19-CV-01944-GJH

**PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL**

Plaintiffs J.O.P., M.A.L.C., M.E.R.E., K.A.R.C., and E.D.G. (together, the "Plaintiffs") respectfully move this Court to certify the following class with the named Plaintiffs as class representatives:

All individuals nationwide who prior to the effective date of a lawfully promulgated policy prospectively altering the policy set forth in the 2013 Kim Memorandum (1) were determined to be an Unaccompanied Alien Child; and (2) who had filed an asylum application that was pending with United States Citizenship and Immigration Services ("USCIS"); and (3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits.

Plaintiffs also move for an order appointing Kids in Need of Defense (KIND), Catholic Legal Immigration Network (CLINIC), Public Counsel, and Goodwin Procter LLP as class counsel.

Plaintiffs bring this Motion pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(2), and 23(g). As explained in the accompanying Memorandum in Support, class certification is appropriate under Federal Rule of Civil Procedure 23(b)(2) because (1) joinder of all class

members is impracticable, (2) the class presents common questions of law and fact, (3) the claims of Plaintiffs are typical of the claims of the members of the prospective class, (4) Plaintiffs and their counsel are adequate representatives for the prospective class, and (5) Defendants have acted or refused to act on grounds that apply generally to the class.

In support of this Motion, Plaintiffs rely on their Memorandum of Law and supporting declarations and exhibits, filed contemporaneously with this Motion.

Dated: June 15, 2020

Respectfully submitted,

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**MEMORANDUM OF LAW IN SUPPORT OF
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INTRODUCTION

Plaintiffs J.O.P., M.A.L.C., M.E.R.E., K.A.R.C., and E.D.G. (“Plaintiffs”) bring this action on behalf of themselves and all others similarly situated to challenge the policies set forth in Defendants’ May 31, 2019 memorandum (the “2019 Redetermination Memo”). The 2019 Redetermination Memo enacts restrictions on the scope of Defendant USCIS’s initial jurisdiction over asylum claims, corresponding restrictions on exemption from a time bar to asylum claims, and deference to EOIR jurisdictional determinations, which deny Plaintiffs the non-adversarial forum and associated protections Congress provided to those who fled their home countries to escape violence and came to the United States as unaccompanied children. Defendants’ 2019 Redetermination Memo—entered with no public notice but for a June 14, 2019 internet posting—reverses the USCIS policy that has been in place since 2013 (the “2013 Kim Memorandum”) and applies it to all children (even those determined to be a UAC before the June 30, 2019 policy start date), retroactively stripping jurisdiction over the claims of asylum applicants.¹ In their haste to reverse the 2013 Kim Memorandum and replace it with one that is inconsistent with the governing statute, Defendants dispensed with the process required by the Administrative Procedure Act. Notwithstanding this Court’s preliminary injunction requiring Defendants to continue to adjudicate UAC asylum cases as it had under the 2013 Kim Memorandum and prohibiting them from applying the 2019 Redetermination Memo, Defendants persist in practices that advance the policy set forth in the 2019 Redetermination Memo,

¹ Although Defendants offered the Court a proposed temporary restraining order prohibiting the retroactive application of the new policy at a July 19, 2019 hearing on Plaintiffs’ Motion for a Temporary Restraining Order, Defendants in fact applied the policy retroactively both before *and after* the hearing, even after this Court entered its August 2, 2019 temporary restraining order and its October 15, 2019 preliminary injunction. *See* D.I. 76. Accordingly, Defendants’ offer appears to have represented a bargaining position and not Defendants’ position on the application of the new policy, and thus its retroactive application is still a live issue.

including withholding USCIS adjudication of asylum applications where jurisdiction is proper under the 2013 policy, and deferring to EOIR jurisdictional determinations. This advancement of the 2019 Redetermination Memo has resulted in improper denials of USCIS jurisdiction over UAC asylum applications, which previously would have been accepted by USCIS, despite this Court's order requiring Defendants to return to their previous practice.

Pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure, Plaintiffs respectfully move this Court to certify the following class with the named Plaintiffs as class representatives:

All individuals nationwide who prior to the effective date of a lawfully promulgated policy prospectively altering the policy set forth in the 2013 Kim Memorandum (1) were determined to be an Unaccompanied Alien Child; and (2) who had filed an asylum application that was pending with United States Citizenship and Immigration Services ("USCIS"); and (3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual's asylum application on the merits.²

Plaintiffs also move for an order appointing Kids in Need of Defense (KIND), Catholic Legal Immigration Network (CLINIC), Public Counsel, and Goodwin Procter LLP as class counsel pursuant to Federal Rule of Civil Procedure 23(g).

The proposed class satisfies each of the requirements set forth in Rule 23(a) and is appropriate for certification under Rule 23(b)(2), as Defendants have "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). The

² This class definition was revised in Plaintiffs' First Amended Complaint to account for individuals whose asylum applications were unlawfully denied adjudication in violation of the preliminary injunction in place in this case.

proposed class consists of individuals who, like Plaintiffs, have suffered or stand to suffer common harms from Defendants' unlawful policy.

First, each member of the proposed class has already suffered a common harm when Defendants instituted their new policy without engaging in notice-and-comment rulemaking or even considering unaccompanied children's interests; the proper remedy for this denial of procedural rights is vacating the policy. Second, until this Court enjoined Defendants from applying the policy, Defendants had begun using it to reject asylum applications for lack of jurisdiction, denying some proposed class members the rights they had had under the 2013 Kim Memorandum and punishing their reasonable reliance on that policy, and threatening to deny these rights to the rest of the proposed class. Even after the preliminary injunction was entered, Defendants have continued to implement the 2019 Redetermination Memo—for example, by deferring to EOIR jurisdictional determinations as first required under the 2019 Redetermination Memo based on a novel and unsupported interpretation of the 2013 Kim Memorandum's "affirmative act" language. Consequently, Plaintiffs and other unaccompanied children are losing valuable rights merely for following guidance that Defendants issued as recently as two weeks before the date reflected on the 2019 Redetermination Memo. This Court has already entered a temporary restraining order, later converted to a preliminary injunction, based on these harms, which affect the proposed class uniformly. *See* D.I. 55, 71. Accordingly, this Court should grant class certification.

I. BACKGROUND

The historical and factual background of Plaintiffs' claims are set forth in more detail in their First Amended Complaint and memorandum in support of their Motion to Enforce the Preliminary Injunction, D.I. 91, 76, and in extensive detail in this Court's order denying the motions to dismiss and to enforce the preliminary injunction, D.I. 115.

Plaintiff J.O.P. was born in Guatemala and is currently 18 years old. Plaintiff J.O.P. left Guatemala in 2015, when he was 14, after witnessing a murder and receiving violent threats. After Plaintiff J.O.P. reached the United States, DHS officials apprehended him, determined him to be a UAC on or about November 25, 2015, and placed him in removal proceedings. After being held in a shelter for UACs in Texas, in December 2015, Plaintiff J.O.P. was reunited with his mother in Maryland, where he enrolled in high school. On February 20, 2018, Plaintiff J.O.P. filed an asylum application with USCIS. In March 2018, Plaintiff J.O.P. complied with a USCIS notice for biometrics collection, but USCIS has not scheduled him for an interview on his asylum application. *See* D.I. 91 ¶¶ 25-30.

Plaintiff M.A.L.C. was born in Guatemala and is currently 21 years old. Plaintiff M.A.L.C.'s family received repeated death threats when he was a child; his father was murdered in 2010 and his mother was murdered in 2011. Guatemalan authorities neither investigated the murders nor arrested anyone. Afterward, Plaintiff M.A.L.C. continued to receive threats of violence and extortion. In fear for his life, Plaintiff M.A.L.C. fled to the United States at the age of 17. In August 2016, Plaintiff M.A.L.C. was apprehended by DHS officials who determined him to be a UAC and placed him in removal proceedings. After a short period in a shelter for UACs, Plaintiff M.A.L.C. was released to his older sister in California, where he lives and attends school. Plaintiff M.A.L.C. filed an application for asylum with USCIS on February 14, 2018, when he was 19 years old, and USCIS has not scheduled him for an interview on his application. *See* D.I. 91 ¶¶ 31-35.

Plaintiff M.E.R.E. was born in El Salvador and is currently 21 years old. Plaintiff M.E.R.E. fled El Salvador in October 2014 at the age of 15 because of discrimination, persecution, and abuse he experienced based on his sexual orientation. In November 2014,

Plaintiff M.E.R.E. was apprehended by DHS officials in Texas, determined to be a UAC, and placed in removal proceedings. After being transferred to a shelter for UACs in November 2014, Plaintiff M.E.R.E. was released to live with his parents in Maryland, where he attended and graduated from high school. Plaintiff M.E.R.E. filed an asylum application with USCIS on March 30, 2018, at the age of 18. In April 2018, he had his biometrics collected, but USCIS has not scheduled him for an interview on his asylum application. *See* D.I. 91 ¶¶ 36-41.

Plaintiff K.A.R.C. was born in El Salvador and is currently 21 years old. Plaintiff K.A.R.C. fled from El Salvador in May 2016 when he was 17 years old. He had experienced sustained physical abuse from his father and brother for his perceived sexual orientation, and in April 2016 Plaintiff K.A.R.C. was gang-raped by MS-13 gang members. One week later, the gang threatened him with a firearm. In May 2016, Plaintiff K.A.R.C. was arrested by DHS officials and determined to be a UAC, placed in removal proceedings, and transferred to a shelter for UACs in Texas. In October 2016, Plaintiff K.A.R.C. was released from the shelter to live with an aunt in Maryland, who did not treat him well. In 2017, shortly before turning 18, Plaintiff K.A.R.C. moved to housing run by an organization that helps homeless youth and subsequently moved into a shared apartment with friends. He graduated from high school with a 3.7 GPA. In the fall of 2017, Plaintiff K.A.R.C. filed an application for asylum with USCIS. He has not been scheduled for an interview on his asylum application. K.A.R.C. attended a biometrics appointment in October 2017 and attended an interview at the asylum office in November 2017. USCIS has yet to issue a decision on his asylum application. *See* D.I. 91 ¶¶ 42-46.

Plaintiff E.D.G. was born in Honduras and is currently 21 years old. Plaintiff E.D.G. fled Honduras in June 2016, when he was 17 years old. He had been sexually, physically, and

emotionally abused in Honduras for years, and he was targeted by a gang for recruitment and grievously harmed by that gang for refusing to join. In July 2016, after Plaintiff E.D.G. reached the United States, DHS officials determined he was a UAC and placed him in removal proceedings. He was transferred to a shelter for UACs. In May 2017, he was released from the shelter to an unrelated sponsor in Missouri. In late 2017, when Plaintiff E.D.G. was 18 years old, he filed his asylum application with USCIS. A USCIS asylum officer interviewed Plaintiff E.D.G. on his asylum application in March 2018, but never issued a decision on the merits of his application. On October 10, 2018, an immigration judge ordered Plaintiff E.D.G. removed after concluding that EOIR had jurisdiction over his asylum application and denying it on the merits. An appeal from his removal order remains pending before the Board of Immigration Appeals. On July 25, 2019, USCIS relied on the 2019 Redetermination Memo to reject jurisdiction over Plaintiff E.D.G.'s asylum application, and the agency reopened his case in compliance with this Court's temporary restraining order on August 5, 2019. On September 30, 2019, while the Court's temporary restraining order remained in effect, USCIS again rejected jurisdiction over Plaintiff E.D.G.'s asylum application based on the 2019 Redetermination Memo and its instruction to defer to EOIR jurisdictional determinations. *See* D.I. 91 ¶¶ 47-54.

II. ARGUMENT

Federal Rule of Civil Procedure 23 “creates a categorical rule entitling a plaintiff whose suit” satisfies “the criteria set forth in subdivision (a) (*i.e.*, numerosity, commonality, typicality, and adequacy of representation)” and “fit[s] into one of the three categories described in subdivision (b)” to “pursue his claim as a class action.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). As detailed further below, Plaintiffs’ proposed class satisfies each requirement in Rule 23(a) and qualifies for certification under Rule 23(b)(2).

A. The Proposed Class Meets the Requirements of Rule 23(a)

1. The Proposed Class Easily Satisfies the Numerosity Requirement

Under Rule 23(a)(1), a class must be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “The Fourth Circuit has held that ‘[n]o specified number is needed to maintain a class action.’” *Fangman v. Genuine Title, LLC*, 2016 WL 6600509, at *8 (D. Md. Nov. 8, 2016) (quoting *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984)). However, “[a] class consisting of as few as 25 to 30 members raises the presumption that joinder would be impractical.” *Id.* (citation omitted).

Here, the number of prospective class members greatly exceeds the requirement to establish numerosity. USCIS’s own published statistics show that thousands of UACs who have already filed asylum applications are likely to be affected by the policy set forth in the 2019 Redetermination Memo. At the end of March 2019, USCIS’s records reflect that there were 27,106 pending asylum cases filed under the initial jurisdiction provision of the TVPRA while applicants were in removal proceedings.³ Of these 27,106 pending cases, USCIS’s public statements suggest that a substantial proportion, if not a majority, involve UACs who have been placed with one or more parents.⁴ These statistics provided by USCIS do not specify how many of the total number turned 18 before filing their asylum applications, as they were entitled to do under the 2013 policy, nor do they include individuals who have not yet filed an asylum

³ U.S. Citizenship & Immigration Servs., *MPA and PRL Report – Fiscal Year 2019* (2019), <https://www.uscis.gov/outreach/asylum-division-quarterly-stakeholder-meeting-10> (27,106 pending “PRL” cases); U.S. Citizenship & Immigration Servs., *Asylum Statistics Key* (2019), <https://www.uscis.gov/outreach/asylum-division-quarterly-stakeholder-meeting-10> (defining “PRL” as “[a]sylum applicants of any age filing with USCIS under the initial jurisdiction provision of the [TVPRA] while in removal proceedings”).

⁴ Memorandum from John Kelly, Secretary of the U.S. Dep’t of Homeland Sec. 10 (Feb. 20, 2017), https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Implementing-the-Presidents-Border-Security-Immigration-Enforcement-Improvement-Policies.pdf (“Approximately 60% of minors initially determined to be ‘unaccompanied alien children’ are placed in the care of one or more parents[.]”).

application. The Court can reasonably conclude that the proposed class, which likely numbers in the thousands, is sufficiently numerous. *See, e.g., Cent. Wesleyan Coll. v. W.R. Grace & Co.*, 6 F.3d 177, 183 (4th Cir. 1993) (noting without dispute district court’s finding “that some 480 potential class members would easily satisfy the numerosity requirement”); *Harris v. Rainey*, 299 F.R.D. 486, 489 (W.D. Va. 2014) (“[I]t is not required that the exact size of a class be established. Indeed, where general knowledge and common sense would indicate that it is large, the numerosity requirement is satisfied.” (citation and internal quotation marks omitted)); *Newsome v. Up-To-Date Laundry, Inc.*, 219 F.R.D. 356, 360-61 (D. Md. 2004) (“Generally, fewer than 20 employees will not satisfy numerosity although more than 40 will.”). Where Rule 23(b)(2) is concerned, even “speculative and conclusory representations” regarding numerosity suffice for class certification. *Doe v. Charleston Area Med. Ctr., Inc.*, 529 F.2d 638, 645 (4th Cir. 1975) (citation omitted).

2. *The Proposed Class Presents Common Questions of Law and Fact*

To establish commonality, Plaintiffs must show that “there are questions of law or fact common to the class.” Fed. R. Civ. P. 23(a)(2). “Although the rule speaks in terms of common questions, ‘what matters to class certification . . . [is] the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation.’ *EQT Prod. Co. v. Adair*, 764 F.3d 347, 360 (4th Cir. 2014) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011)). “A single common question will suffice, but it must be of such a nature that its determination ‘will resolve an issue that is central to the validity of each one of the claims in one stroke.’” *Id.* (internal citations omitted) (quoting *Wal-mart Stores*, 564 U.S. at 350). The factual and legal claims of proposed class members need not be “identical . . . in all respects.” *Broussard v. Meineke Disc. Muffler Shops, Inc.*, 155 F.3d 331, 344 (4th Cir. 1998).

There is a single question at the core of this case: the legality, in substance and in process, of the 2019 Redetermination Memo. That question includes several facets: whether the 2019 Redetermination Memo was implemented without adequate process under the APA, whether the 2019 Redetermination Memo is fatally inconsistent with the TVPRA, whether implementation of the 2019 Redetermination Memo constitutes arbitrary and capricious agency action, whether it violates due process to apply the 2019 Redetermination Memo's policy to individuals who had been determined to be UACs while the 2013 Kim Memorandum has been in effect but did not file asylum applications until after turning 18 or before being reunited with parents or legal guardians, and whether USCIS may deny jurisdiction based on novel "affirmative acts" such as EOIR jurisdictional determinations consistent with their practice under the 2013 Kim Memorandum. Each of these subsidiary questions is common to the entire class, and each admits to a common answer. No factual distinctions between the situations of individual class members will affect the procedural legitimacy of Defendants' choice to forego notice-and-comment rulemaking, and if this Court finds that Defendants' actions violate the APA, the only appropriate remedy is to vacate the agency action entirely to the benefit of the entire class. *See, e.g., Guilford Coll. v. McAleenan*, 389 F. Supp. 3d 377, 396-97 (M.D.N.C. 2019) ("[W]hen a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed." (quoting *Nat'l Mining Ass'n v. U.S. Army Corps of Eng'rs*, 145 F.3d 1399, 1409 (D.C. Cir. 1998))). The same goes for Defendants' arbitrary and capricious failure to consider reliance interests and their decision to implement a policy upending established substantive rights. Plaintiffs all raise the same due process rights, and all of their challenges to the 2019 Redetermination Memo present the same legal questions of whether Defendants may abruptly

and unilaterally strip them of a non-adversarial forum to address their asylum claims and, as a result, impose a time bar on those claims. And the inescapable conflict between Defendants' new policy, of inventing "affirmative acts" to carry out the policy behind the 2019 Redetermination Memo, and the aims and provisions of the TVPRA is a matter of pure law distinct from any of the proposed class members' individual circumstances. Any of these common questions would suffice to satisfy the commonality requirement of Rule 23(a)(2). *Wal-mart Stores*, 564 U.S. at 350.

The answers to these common questions will unquestionably "drive the resolution" of the case. *Id.* In short, if any one of these questions is answered in Plaintiffs' favor, then Defendants will be required to withdraw their policy entirely and the proposed class members will *all* be free from Defendants' attempt to strip USCIS of jurisdiction over their asylum claims. Each of these questions of law, which do not rely on the individual facts of the proposed class members' situations, has the potential to "drive" the provision of relief to all class members, in one fell swoop, by invalidating the 2019 Redetermination Memo. The proposed class members thus have raised 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." *Id.* at 352.

Any factual distinctions between the proposed class members are immaterial in light of the common harm they have suffered and will suffer from Defendants and the nature of the common issues they seek to resolve. The relevant facts for resolving this case are all common to every class member: each was determined to be a UAC while the 2013 Kim Memorandum was in effect; each has since turned 18 or joined a parent or legal guardian such that they would not be determined to be UACs if reevaluated today; each, pursuant to USCIS's consistent practice

under the 2013 Kim Memorandum, was entitled to pursue their asylum claim at the time of their choosing; and each, with the illegitimate introduction of the 2019 Redetermination Memo, was subjected to USCIS's rejection of their asylum claims on jurisdictional grounds for filing an application after turning 18 or after joining a parent or legal guardian. Plaintiffs, through this case, do not seek any resolution of the merits of their asylum claims, which may turn on the specific facts of their history or origin. Instead, they ask this Court to deny Defendants' attempt, on a categorical and context-blind basis, to strip jurisdiction over their asylum claims from USCIS. They ask for this based on Defendants' failure to follow the rules that apply to Defendants, namely the APA, the TVPRA, and the Due Process Clause of the U.S. Constitution. Accordingly, the proposed class satisfies the commonality requirement of Rule 23(a)(2) because all class members allege the same injuries and seek the same relief, which would follow from the resolution of any of the aforementioned common questions of law.

3. *Plaintiffs' Claims Are Typical of Proposed Class Members' Claims*

Under Rule 23(a)(3), class representatives must show that their claims are "typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims "cannot be so different from the claims of absent class members that their claims will not be advanced by" proof of Plaintiffs' individual claims. *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466-67 (4th Cir. 2006). "In analyzing this question, a court compares the class representative's claims and defenses to those of the absent class members, considers the facts needed to prove the class representative's claims, and assesses the extent to which those facts would also prove the claims of the absent class members." *Amaya v. DGS Constr., LLC*, 326 F.R.D. 439, 447 (D. Md. 2018). The commonality and typicality requirements "tend to merge, with commonality and typicality serv[ing] as guideposts for determining whether . . . maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests

of the class members will be fairly and adequately protected in their absence.” *Broussard*, 155 F.3d at 337 (internal quotation marks omitted) (quoting *Gen. Tel. Co. v. Falcon*, 457 U.S. 147, 157 n.13 (1982)); *see also Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 626 n.20 (1997) (same).

Plaintiffs’ claims are typical of those of the class for the same reasons that the class claims rely on common questions of law and fact: the claims operate on the same legal theories and seek the same relief to remedy the same injury. The underlying issue here is the illegal manner in which Defendants took injurious action against the proposed class *on a categorical basis* and *as a class*. In fact, even if each proposed class member did challenge the 2019 Redetermination Memo in their own individual suit, each such case would still rely upon the same evidence (*e.g.*, the administrative record or lack thereof) to establish the same legal conclusions (*i.e.*, that Defendants violated the APA, acted arbitrarily and capriciously, and violated due process rights). There is no danger that the present case will devolve into inefficient mini-trials, but rather that unconsolidated cases would constitute a kaleidoscopic multiplication of identical lawsuits.

4. *The Named Plaintiffs Will Adequately Protect the Interests of the Proposed Class Members, and Counsel Are Qualified To Litigate this Action*

To satisfy Rule 23(a)(4), the named Plaintiffs must establish that “[t]he representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). This inquiry “serves to uncover conflicts of interest between named parties and the class they seek to represent.” *Amchem*, 521 U.S. at 625. For a conflict to preclude class certification, the conflict “must be more than merely speculative or hypothetical;” instead, it “must be fundamental” and “go to the heart of the litigation.” *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 430-31 (4th Cir. 2003) (citations omitted); *see also Ward v. Dixie Nat’l Life Ins. Co.*,

595 F.3d 164, 180 (4th Cir. 2010) (“For a conflict of interest to defeat the adequacy requirement, that conflict must be fundamental.” (citation and internal quotation marks omitted)).

The named Plaintiffs have no interests at odds with the proposed class members and do not seek any individual benefit from this litigation beyond that which would inure to the class as a whole. *See* Ex. A, J.O.P. Decl.; Ex. B., M.A.L.C. Decl.; Ex. C, M.E.R.E. Decl.; Ex. D, K.A.R.C. Decl.; Ex. E, E.D.G. Decl. Plaintiffs and the proposed class members all aim to obtain injunctive relief to protect them from the application of the 2019 Redetermination Memo and petition this Court to vacate the unlawful agency action entirely to vindicate all proposed class members’ rights. Because there is no conflict of interest between the named Plaintiffs and the proposed class members and because the named Plaintiffs’ interests are coextensive with those of the class, the named Plaintiffs are adequate representatives.

Plaintiffs’ counsel will also “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(g)(4).⁵ Rule 23(g) requires the Court to consider four non-exhaustive factors: “the work counsel has done in identifying or investigating potential claims in the action;” “counsel’s experience in handling class actions, other complex litigation, and the types of claims asserted in the action;” “counsel’s knowledge of the applicable law;” and “the resources that counsel will commit to representing the class.” Fed. R. Civ. P. 23(g)(1)(A).

Plaintiffs are represented by attorneys from Kids in Need of Defense (KIND), Catholic Legal Immigration Network (CLINIC), Public Counsel, and Goodwin Procter LLP.

Collectively, counsel have broad experience in class action litigation and complex immigration litigation, and counsel’s experience has resulted in a thorough understanding of the governing

⁵ Although adequacy of class counsel has traditionally been analyzed under Rule 23(a)(4), since 2003 it has been governed by Rule 23(g). *See Soutter v. Equifax Info. Servs., LLC*, 307 F.R.D. 183, 212 (E.D. Va. 2015). However, counsel will address it here in order to inform the Court’s complete analysis of the adequacy of the proposed class members’ representation.

law. *See* Ex. F, Burgess Decl.; Ex. G, Shuchart Decl.; Ex. H, Jackson Decl.; Ex. I, Mendez Decl. Counsel have vigorously pursued Plaintiffs' claims in this suit, especially in light of the suddenness of Defendants' implementation of the 2019 Redetermination Memo, the urgency of responding to it, and multiple lapses in Defendants' compliance with the Court's preliminary injunction. Plaintiffs seek no monetary damages, so there is no potential for a financial conflict of interest in this case. Counsel have the experience, ability, and willingness to zealously represent the proposed class members.

5. *The Proposed Class Is Ascertainable*

In addition, the Fourth Circuit has held that "Rule 23 contains an implicit threshold requirement that the members of a proposed class be readily identifiable," creating an "ascertainability requirement." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014) (citations and internal quotation marks omitted); *see also Krakauer v. Dish Network, LLC*, 925 F.3d 643, 658 (4th Cir. 2019). Under this rule, "[a] class cannot be certified unless a court can readily identify the class members in reference to objective criteria." *Id.*; *see also* 7A Charles Alan Wright et al., *Federal Practice & Procedure* § 1760 (3d ed. 2005) ("[T]he requirement that there be a class will not be deemed satisfied unless . . . it is administratively feasible for the court to determine whether a particular individual is a member."). Plaintiffs cannot "merely identify a mass of data which could aid the process of identifying class members," but must also "provide an efficient method of using this information." *Spotswood v. Hertz Corp.*, 2019 WL 498822, at *6 (D. Md. Feb. 7, 2019). "While it is not necessary to identify every class member at the time of certification . . . , a class cannot be certified if its membership must be determined through individualized fact-finding or mini-trials." *Amaya*, 326 F.R.D. at 446 (citation and internal quotation marks omitted); *see also Krakauer*, 925 F.3d at 658 ("The goal is not to identify every class member at the time of certification, but to define a class in such a way as to ensure that

there will be some administratively feasible [way] for the court to determine whether a particular individual is a member at some point.” (citation and internal quotation marks omitted)).

The proposed class here is suitably ascertainable because it will be a simple matter, based on clear and objective criteria, to identify class members. *See, e.g., Amaya*, 326 F.R.D. at 448 (finding classes ascertainable where members could be identified “without a significant administrative burden”). A threshold marker of class membership is action taken by Defendants themselves, namely, DHS’s determination that a child is a UAC. The filing of an asylum application with USCIS is also a matter established in government records, and an applicant’s age and custodial circumstances at the time of filing are also objectively verifiable. Given these unambiguous and objective considerations for identifying class members, the class meets the ascertainability requirement. *See, e.g., Krakauer*, 925 F.3d at 658 (finding class ascertainable when a series of records would allow class members to be identified “on a large-scale basis” even though it required cross-referencing different data sets). Several recent class actions against Defendant USCIS have involved certification of classes of young applicants through examination of USCIS records, consistent with this requirement. *See, e.g., R.F.M. v. Nielsen*, 365 F. Supp. 3d 350 (S.D.N.Y. 2019); *Moreno Galvez v. Cuccinelli*, 2019 WL 3219418 (W.D. Wa. July 17, 2019); *J.L. v. Cissna*, 2019 WL 415579 (N.D. Cal. Feb. 1, 2019).

B. Plaintiffs Satisfy the Requirements of Rule 23(b)

In addition to satisfying Rule 23(a)’s four requirements, a class must also fall under one of Rule 23(b)’s three subsections. A class may be certified under Rule 23(b)(2) if “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). According to the U.S. Supreme Court, “[t]he 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*, 564 U.S. at 360 (citation and internal quotation marks omitted). Thus, certification under Rule 23(b)(2) is appropriate only when “a single injunction or declaratory judgment would provide relief to each member of the class.” *Id.*

The proposed class here easily satisfies Rule 23(b)(2). The basis of Plaintiffs’ First Amended Complaint is that Defendants improperly instituted a new policy through the 2019 Redetermination Memo that would, for all members of the proposed class, result in USCIS’s rejecting jurisdiction over their asylum applications. Accordingly, Plaintiffs ask this Court to vacate Defendants’ 2019 Redetermination Memo entirely, which would have the effect of returning all class members to the status quo. Among the bases for Plaintiffs’ claims are that the new policy is arbitrary and capricious and its introduction violated the APA; these violations harm all proposed class members equally and with identical effect. If Plaintiffs succeed in these claims, a single injunction vacating the policy would protect all proposed class members from its effects equally and with identical effect.

Plaintiffs’ due process claim also warrants certification under Rule 23(b)(2). The effect of Defendants’ new policy is to retroactively “attach[] new legal consequences to events completed before its enactment,” namely proposed class members’ decision not to file their asylum applications with USCIS earlier. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 270 (1994). Each proposed class member was either over 18 or had joined a parent or legal guardian prior to filing their asylum application; each class member was determined to be a UAC and decided, for any number of reasons, not to file their asylum application before their circumstances changed such that they would not meet the definition of UAC if their status were to be redetermined. Before the implementation of the 2019 Redetermination Memo, these

decisions to postpone filing their applications had no legal consequences for their eventual asylum applications to USCIS. As a direct result of the policy, each class member stands to lose access to this forum and exemption from the time bar because of the new legal significance of actions taken, or not, in the irretrievable past. Even if this Court were to find that Defendants' new policy complied in all respects with the APA (as it should not), Defendants' implementation of that policy would still be impermissibly retroactive as to every member of the proposed class, and every member of the proposed class would receive relief if this Court enjoined Defendants from applying it retroactively.

Plaintiffs do not seek monetary damages nor any individualized relief relating to their personal asylum claims but instead only ask this Court for declaratory and injunctive relief that would protect all proposed class members. Therefore, as a result of Defendants' actions on grounds applying generally to the class, the only appropriate remedy is final injunctive relief or corresponding declaratory relief. Fed. R. Civ. P. 23(b)(2).

III. CONCLUSION

For all of the above reasons, Plaintiffs respectfully request that the Court: (i) certify the class as defined; (ii) appoint Plaintiffs to serve as representatives of the class; and (iii) appoint KIND, CLINIC, Public Counsel, and Goodwin Procter LLP as class counsel.

Dated: June 15, 2020

Respectfully submitted,

/s/ Brian T. Burgess

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

J.O.P., et al.,

Plaintiffs,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY, et al.,**

Defendants.

Civil Action No. 8:19-CV-01944-GJH

**[PROPOSED] ORDER ON MOTION FOR CLASS CERTIFICATION AND
APPOINTMENT OF CLASS COUNSEL**

Upon consideration of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel, this Court finds that Plaintiffs have satisfied the requirements for class certification under Federal Rule of Civil Procedure 23. Specifically, Plaintiffs have demonstrated that members of the proposed class are so numerous that joinder is impracticable, that there are questions of law and fact common to the class, that the claims of the Plaintiffs are typical of the claims of the class members, and that Plaintiffs and their counsel, as representatives of the class, will fairly and adequately protect its interests. Additionally, this Court finds that Defendants have acted on grounds generally applicable to the class in its entirety, thereby making appropriate final injunctive and declaratory relief for all class members.

In light of the above, it is hereby ORDERED that Plaintiffs' Motion is GRANTED. It is further ORDERED that the following class be certified, with the named Plaintiffs appointed class representatives:

All individuals nationwide who prior to the effective date of a lawfully promulgated policy prospectively altering the policy set forth in the 2013 Kim Memorandum (1) were determined to be an Unaccompanied Alien Child; and (2) who had filed an asylum application that was pending with United States Citizenship and Immigration Services (“USCIS”); and (3) on the date they filed their asylum application with USCIS, were 18 years of age or older, or had a parent or legal guardian in the United States who is available to provide care and physical custody; and (4) for whom USCIS has not adjudicated the individual’s asylum application on the merits.

It is further ORDERED that Kids in Need of Defense (KIND), Catholic Legal Immigration Network (CLINIC), Public Counsel, and Goodwin Procter LLP be appointed class counsel for the newly certified class.

Date: _____

The Honorable George J. Hazel
United States District Court Judge

Appendix of Exhibits

<i>Exhibit A</i>	March 30, 2020 Declaration of Plaintiff J.O.P.
<i>Exhibit B</i>	March 30, 2020 Declaration of Plaintiff M.A.L.C.
<i>Exhibit C</i>	March 30, 2020 Declaration of Plaintiff M.E.R.E.
<i>Exhibit D</i>	April 14, 2020 Declaration of Plaintiff K.A.R.C.
<i>Exhibit E</i>	April 24, 2020 Declaration of Plaintiff E.D.G.
<i>Exhibit F</i>	June 15, 2020 Declaration of Brian T. Burgess
<i>Exhibit 1</i>	Biography of Brian T. Burgess
<i>Exhibit 2</i>	Biography of Elaine Herrmann Blais
<i>Exhibit 3</i>	Biography of Kevin DeJong
<i>Exhibit 4</i>	Biography of Stephen Shaw
<i>Exhibit G</i>	June 15, 2020 Declaration of Scott Shuchart
<i>Exhibit H</i>	June 2, 2020 Declaration of Kristen Jackson
<i>Exhibit I</i>	June 15, 2020 Declaration of Michelle Mendez

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

J.O.P., et al.,

Plaintiffs,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY**, et al.,

Defendants.

Civil Action No. 8:19-CV-01944-GJH

**DECLARATION OF J.O.P. IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL**

**DECLARACIÓN DE J.O.P. EN APOYO DE
DEMANDANTES MOCIÓN DE CERTIFICACIÓN DE CLASE Y
NOMBRAMIENTO DE ABOGADOS DE LA CLASE**

1. Mi nombre es J.O.P. Soy un demandante en este caso y tengo permiso del Tribunal para proceder según mis iniciales. Yo presento esta declaración en apoyo de los Demandantes Moción de Certificación de Clase y Nombramiento de Abogados de la Clase.

2. Tengo conocimiento de la definición de la clase de demandantes propuestos presentados en el Primero Enmendado Demanda Colectiva para un Remedio Declaratorio y Medidas Cautelares. Yo soy un miembro del grupo propuesto: (1) A mi llegada a los Estados Unidos, me clasificaron como un niño extranjero no acompañado y me colocaron en procedimientos de remoción; (2) he presentado una solicitud de asilo con el Servicio de Ciudadanía e Inmigración de Estados Unidos (USCIS, por sus siglas en inglés); (3) cuando yo presente mi aplicación con USCIS, estaba viviendo con mi madre en los Estados Unidos; (4) y USCIS aún no ha adjudicado mi aplicación por sus méritos.

3. Yo estoy solicitando ser un representante de la clase en este caso, y yo entiendo las responsabilidades que esto implica. Yo entiendo que significa ser el demandante principal representando la clase. Yo entiendo que yo necesito saber que está sucediendo en el caso incluyendo cualquier acuerdo que los demandantes podrían llegar con el gobierno para resolver el caso.

4. Yo también entiendo que yo soy parte de un grupo realizando importantes decisiones legales y dirigiendo los abogados en este caso después de obtener su consejo. Para hacer esto, yo tendré la oportunidad de revisar los documentos legales y obtener novedades de parte de mis abogados sobre qué está sucediendo con los documentos sometidos al Tribunal. Yo compartiré lo que pienso sobre estas decisiones y participaré en cualquier

aprobación final de decisiones de importancia, incluyendo si resolveré el caso con el gobierno.

5. Yo trabajaré con los otros representantes de la clase en este caso para tomar decisiones cuando asuntos aparezcan de cómo proceder. Si nosotros no estamos de acuerdo, tomaremos un voto, y aceptaré lo que la mayoría este de acuerdo es lo mejor que hacer.

6. Yo entiendo que tengo la responsabilidad a la clase entera de personas como yo de proteger nuestros intereses. Para hacer esto correctamente, yo sé que necesito colaborar en presentar este caso a nombre de la clase entera. Haré todo lo posible para obtener los mejores resultados para la clase.

7. Yo seré un participante activo en este caso, dirigiendo a los abogados en la medida necesaria. Me comunicaré regularmente con los abogados sobre mociones importantes, conversaciones sobre resoluciones, preparación del juicio, y juicio. Yo entiendo que soy responsable de dirigir a los abogados sobre cada uno de estos temas, después de obtener su consejo. Hablaré con los abogados las veces que sea necesario.

8. Yo entiendo que de pronto necesite contestar preguntas de los abogados del gobierno por escrito o en persona.

9. Yo entiendo que si esta clase es certificada, mis abogados tienen la responsabilidad a cada persona de esta clase propuesta de ofrecer representación legal justa y adecuada.

10. Considero que Goodwin Procter LLP, Kids in Need of Defense, the Catholic Legal Immigration Network, y Public Counsel deberían ser aprobadas por el Tribunal para servir como abogados adjuntos para la clase. Considero que ellos trabajarán duro para obtener los mejores resultados para la clase.

11. Yo respetuosamente pido que el Tribunal autorice la Moción de Demandantes de Certificación de Clase y Nombramiento de Abogados de la Clase.

Declaro bajo pena de perjurio que lo anterior es verdad y correcto mi leal saber.

Ejecutado:

J.O.P.
J.O.P.

03/30/20 2020
Date

ENGLISH TRANSLATION

1. My name is J.O.P. I am a plaintiff in this case and have been allowed by the Court to proceed under my initials. I submit this declaration in support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel.

2. I am familiar with the definition of the proposed plaintiff class set forth in Plaintiffs' First Amended Class Action Complaint for Declaratory and Injunctive Relief. I am a member of the proposed class: (1) Upon my arrival in the United States, I was determined to be an unaccompanied alien child and placed in removal proceedings; (2) I have filed an asylum application with U.S. Citizenship and Immigration Services (USCIS, by its initials in English); (3) when I filed my application with USCIS, I was living with my mother in the United States; (4) and USCIS has not yet adjudicated my application on the merits.

3. I am seeking to be a class representative in this case, and I understand the responsibilities involved. I understand what it means to be a lead plaintiff representing a class. I understand that I need to know what is going on with the case including any agreements the plaintiffs might come to with the government to resolve the case.

4. I also understand that I will be part of a team making important legal decisions and directing the attorneys in this case after getting their advice. In order to do this, I will be able to look at the legal documents and get updates from my attorneys on what is going on with the documents submitted to the Court. I will share what I think about these decisions and will be involved in any final approval of major decisions, including whether to settle this case with the government.

5. I will work with the other class representatives on this case to make decisions when issues come up about how to proceed. If we disagree, we will take a vote, and I will

accept what a majority agrees is the best thing to do.

6. I understand that I have a responsibility to the whole class of people like me to protect our interests. I know that to do this properly, I must help in bringing this case forward on behalf of the whole class. I will do my best to obtain the best result for the class.

7. I will be an active participant in this case, directing the attorneys as needed. I will communicate on a regular basis with the attorneys about important motions, settlement talks, trial preparation, and trial. I understand that I am responsible to direct the attorneys on each of these things, after getting their advice. I will speak to the attorneys as often as necessary.

8. I understand I may need to answer questions from the government's attorneys in writing or in person.

9. I understand that if a class is certified, my attorneys will have a responsibility to every member of the proposed class to provide fair and adequate representation.

10. I believe that Goodwin Procter LLP, Kids in Need of Defense, the Catholic Legal Immigration Network, and Public Counsel should be approved by the Court to serve as co-counsel for the class. I believe they will work hard to obtain the best result for the class.

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

J.O.P., et al.,

Plaintiffs,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY**, et al.,

Defendants.

Civil Action No. 8:19-CV-01944-GJH

**DECLARATION OF M.A.L.C. IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL**

**DECLARACIÓN DE M.A.L.C. EN APOYO DE
DEMANDANTES MOCIÓN DE CERTIFICACIÓN DE CLASE Y
NOMBRAMIENTO DE ABOGADOS DE LA CLASE**

1. Mi nombre es M.A.L.C. Soy un demandante en este caso y tengo permiso del Tribunal para proceder según mis iniciales. Yo presento esta declaración en apoyo de los Demandantes Moción de Certificación de Clase y Nombramiento de Abogados de la Clase.

2. Tengo conocimiento de la definición de la clase de demandantes propuestos presentados en el Primero Enmendado Demanda Colectiva para un Remedio Declaratorio y Medidas Cautelares. Yo soy un miembro del grupo propuesto: (1) A mi llegada a los Estados Unidos, me clasificaron como un niño extranjero no acompañado y me colocaron en procedimientos de remoción; (2) he presentado una solicitud de asilo con el Servicio de Ciudadanía e Inmigración de Estados Unidos (USCIS, por sus siglas en inglés); (3) cuando yo presente mi aplicación con USCIS, ya había cumplido dieciocho años; (4) y USCIS aún no ha adjudicado mi aplicación por sus méritos.

3. Yo estoy solicitando ser un representante de la clase en este caso, y yo entiendo las responsabilidades que esto implica. Yo entiendo que significa ser el demandante principal representando la clase. Yo entiendo que yo necesito saber que está sucediendo en el caso incluyendo cualquier acuerdo que los demandantes podrían llegar con el gobierno para resolver el caso.

4. Yo también entiendo que yo soy parte de un grupo realizando importantes decisiones legales y dirigiendo los abogados en este caso después de obtener su consejo. Para hacer esto, yo tendré la oportunidad de revisar los documentos legales y obtener novedades de parte de mis abogados sobre qué está sucediendo con los documentos sometidos al Tribunal. Yo compartiré lo que pienso sobre estas decisiones y participaré en cualquier

aprobación final de decisiones de importancia, incluyendo si resolveré el caso con el gobierno.

5. Yo trabajaré con los otros representantes de la clase en este caso para tomar decisiones cuando asuntos aparezcan de cómo proceder. Si nosotros no estamos de acuerdo, tomaremos un voto, y aceptaré lo que la mayoría este de acuerdo es lo mejor que hacer.

6. Yo entiendo que tengo la responsabilidad a la clase entera de personas como yo de proteger nuestros intereses. Para hacer esto correctamente, yo sé que necesito colaborar en presentar este caso a nombre de la clase entera. Haré todo lo posible para obtener los mejores resultados para la clase.

7. Yo seré un participante activo en este caso, dirigiendo a los abogados en la medida necesaria. Me comunicaré regularmente con los abogados sobre mociones importantes, conversaciones sobre resoluciones, preparación del juicio, y juicio. Yo entiendo que soy responsable de dirigir a los abogados sobre cada uno de estos temas, después de obtener su consejo. Hablaré con los abogados las veces que sea necesario.

8. Yo entiendo que de pronto necesite contestar preguntas de los abogados del gobierno por escrito o en persona.

9. Yo entiendo que si esta clase es certificada, mis abogados tienen la responsabilidad a cada persona de esta clase propuesta de ofrecer representación legal justa y adecuada.

10. Considero que Goodwin Procter LLP, Kids in Need of Defense, the Catholic Legal Immigration Network, y Public Counsel deberían ser aprobadas por el Tribunal para servir como abogados adjuntos para la clase. Considero que ellos trabajarán duro para obtener los mejores resultados para la clase.

11. Yo respetuosamente pido que el Tribunal autorice la Moción de Demandantes de Certificación de Clase y Nombramiento de Abogados de la Clase.

Declaro bajo pena de perjurio que lo anterior es verdad y correcto mi leal saber.

Ejecutado:



M.A.L.C.

03/30/20 2020
Date

ENGLISH TRANSLATION

1. My name is M.A.L.C. I am a plaintiff in this case and have been allowed by the Court to proceed under my initials. I submit this declaration in support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel.

2. I am familiar with the definition of the proposed plaintiff class set forth in Plaintiffs' First Amended Class Action Complaint for Declaratory and Injunctive Relief. I am a member of the proposed class: (1) Upon my arrival in the United States, I was determined to be an unaccompanied alien child and placed in removal proceedings; (2) I have filed an asylum application with U.S. Citizenship and Immigration Services (USCIS, by its initials in English); (3) when I filed my application with USCIS, I had already turned 18 years old; (4) and USCIS has not yet adjudicated my application on the merits.

3. I am seeking to be a class representative in this case, and I understand the responsibilities involved. I understand what it means to be a lead plaintiff representing a class. I understand that I need to know what is going on with the case including any agreements the plaintiffs might come to with the government to resolve the case.

4. I also understand that I will be part of a team making important legal decisions and directing the attorneys in this case after getting their advice. In order to do this, I will be able to look at the legal documents and get updates from my attorneys on what is going on with the documents submitted to the Court. I will share what I think about these decisions and will be involved in any final approval of major decisions, including whether to settle this case with the government.

5. I will work with the other class representatives on this case to make decisions when issues come up about how to proceed. If we disagree, we will take a vote, and I will accept what a majority agrees is the best thing to do.

6. I understand that I have a responsibility to the whole class of people like me to protect our interests. I know that to do this properly, I must help in bringing this case forward on behalf of the whole class. I will do my best to obtain the best result for the class.

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8. I understand I may need to answer questions from the government's attorneys in writing or in person.

9. I understand that if a class is certified, my attorneys will have a responsibility to every member of the proposed class to provide fair and adequate representation.

10. I believe that Goodwin Procter LLP, Kids in Need of Defense, the Catholic Legal Immigration Network, and Public Counsel should be approved by the Court to serve as co-counsel for the class. I believe they will work hard to obtain the best result for the class.

11. I respectfully request that the Court grant Plaintiffs' Motion for Class Certification and Appointment of Class Counsel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed:

M.A.L.C.

3/30/2020
Date

* * *

CERTIFICATION OF TRANSLATION

I, Daniel Sanchez, declare:

I certify that I am competent to translate from English to Spanish and from Spanish to English and that the translation of the Declaration of M.A.L.C. in Support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel, attached, is complete and accurate to the best of my abilities.

I declare under penalty of perjury that the foregoing is true and correct.

Executed:



Daniel Sanchez
Public Counsel

610 S Ardmore Ave
Los Angeles, CA 90005
213-385-2977 ext. 144

April 21, 2020
Date

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

J.O.P., et al.,

Plaintiffs,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY**, et al.,

Defendants.

Civil Action No. 8:19-CV-01944-GJH

**DECLARATION OF M.E.R.E. IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL**

**DECLARACIÓN DE M.E.R.E. EN APOYO DE
DEMANDANTES MOCIÓN DE CERTIFICACIÓN DE CLASE Y
NOMBRAMIENTO DE ABOGADOS DE LA CLASE**

1. Mi nombre es M.E.R.E. Soy un demandante en este caso y tengo permiso del Tribunal para proceder según mis iniciales. Yo presento esta declaración en apoyo de los Demandantes Moción de Certificación de Clase y Nombramiento de Abogados de la Clase.

2. Tengo conocimiento de la definición de la clase de demandantes propuestos presentados en el Primero Enmendado Demanda Colectiva para un Remedio Declaratorio y Medidas Cautelares. Yo soy un miembro del grupo propuesto: (1) A mi llegada a los Estados Unidos, me clasificaron como un niño extranjero no acompañado y me colocaron en procedimientos de remoción; (2) he presentado una solicitud de asilo con el Servicio de Ciudadanía e Inmigración de Estados Unidos (USCIS, por sus siglas en inglés); (3) cuando yo presente mi aplicación con USCIS, estaba viviendo con mis padres en los Estados Unidos; (4) y USCIS aún no ha adjudicado mi aplicación por sus méritos.

3. Yo estoy solicitando ser un representante de la clase en este caso, y yo entiendo las responsabilidades que esto implica. Yo entiendo que significa ser el demandante principal representando la clase. Yo entiendo que yo necesito saber que está sucediendo en el caso incluyendo cualquier acuerdo que los demandantes podrían llegar con el gobierno para resolver el caso.

4. Yo también entiendo que yo soy parte de un grupo realizando importantes decisiones legales y dirigiendo los abogados en este caso después de obtener su consejo. Para hacer esto, yo tendré la oportunidad de revisar los documentos legales y obtener novedades de parte de mis abogados sobre qué está sucediendo con los documentos sometidos al Tribunal. Yo compartiré lo que pienso sobre estas decisiones y participaré en cualquier

aprobación final de decisiones de importancia, incluyendo si resolveré el caso con el gobierno.

5. Yo trabajaré con los otros representantes de la clase en este caso para tomar decisiones cuando asuntos aparezcan de cómo proceder. Si nosotros no estamos de acuerdo, tomaremos un voto, y aceptaré lo que la mayoría este de acuerdo es lo mejor que hacer.

6. Yo entiendo que tengo la responsabilidad a la clase entera de personas como yo de proteger nuestros intereses. Para hacer esto correctamente, yo sé que necesito colaborar en presentar este caso a nombre de la clase entera. Haré todo lo posible para obtener los mejores resultados para la clase.

7. Yo seré un participante activo en este caso, dirigiendo a los abogados en la medida necesaria. Me comunicaré regularmente con los abogados sobre mociones importantes, conversaciones sobre resoluciones, preparación del juicio, y juicio. Yo entiendo que soy responsable de dirigir a los abogados sobre cada uno de estos temas, después de obtener su consejo. Hablaré con los abogados las veces que sea necesario.

8. Yo entiendo que de pronto necesite contestar preguntas de los abogados del gobierno por escrito o en persona.

9. Yo entiendo que si esta clase es certificada, mis abogados tienen la responsabilidad a cada persona de esta clase propuesta de ofrecer representación legal justa y adecuada.

10. Considero que Goodwin Procter LLP, Kids in Need of Defense, the Catholic Legal Immigration Network, y Public Counsel deberían ser aprobadas por el Tribunal para servir como abogados adjuntos para la clase. Considero que ellos trabajarán duro para obtener los mejores resultados para la clase.

11. Yo respetuosamente pido que el Tribunal autorice la Moción de Demandantes de Certificación de Clase y Nombramiento de Abogados de la Clase.

Declaro bajo pena de perjurio que lo anterior es verdad y correcto mi leal saber.

Ejecutado:

M.E.R.E.
M.E.R.E.

3/30/ 2020
Date

ENGLISH TRANSLATION

1. My name is M.E.R.E. I am a plaintiff in this case and have been allowed by the Court to proceed under my initials. I submit this declaration in support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel.

2. I am familiar with the definition of the proposed plaintiff class set forth in Plaintiffs' First Amended Class Action Complaint for Declaratory and Injunctive Relief. I am a member of the proposed class: (1) Upon my arrival in the United States, I was determined to be an unaccompanied alien child and placed in removal proceedings; (2) I have filed an asylum application with U.S. Citizenship and Immigration Services (USCIS, by its initials in English); (3) when I filed my application with USCIS, I was living with my parents in the United States; (4) and USCIS has not yet adjudicated my application on the merits.

3. I am seeking to be a class representative in this case, and I understand the responsibilities involved. I understand what it means to be a lead plaintiff representing a class. I understand that I need to know what is going on with the case including any agreements the plaintiffs might come to with the government to resolve the case.

4. I also understand that I will be part of a team making important legal decisions and directing the attorneys in this case after getting their advice. In order to do this, I will be able to look at the legal documents and get updates from my attorneys on what is going on with the documents submitted to the Court. I will share what I think about these decisions and will be involved in any final approval of major decisions, including whether to settle this case with the government.

5. I will work with the other class representatives on this case to make decisions when issues come up about how to proceed. If we disagree, we will take a vote, and I will

accept what a majority agrees is the best thing to do.

6. I understand that I have a responsibility to the whole class of people like me to protect our interests. I know that to do this properly, I must help in bringing this case forward on behalf of the whole class. I will do my best to obtain the best result for the class.

7. I will be an active participant in this case, directing the attorneys as needed. I will communicate on a regular basis with the attorneys about important motions, settlement talks, trial preparation, and trial. I understand that I am responsible to direct the attorneys on each of these things, after getting their advice. I will speak to the attorneys as often as necessary.

8. I understand I may need to answer questions from the government's attorneys in writing or in person.

9. I understand that if a class is certified, my attorneys will have a responsibility to every member of the proposed class to provide fair and adequate representation.

10. I believe that Goodwin Procter LLP, Kids in Need of Defense, the Catholic Legal Immigration Network, and Public Counsel should be approved by the Court to serve as co-counsel for the class. I believe they will work hard to obtain the best result for the class.

11. I respectfully request that the Court grant Plaintiffs' Motion for Class Certification and Appointment of Class Counsel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed:

M.E.R.E. 3/30/2020
Date

* * *

CERTIFICATION OF TRANSLATION

I, Daniel Sanchez, declare:

I certify that I am competent to translate from English to Spanish and from Spanish to English and that the translation of the Declaration of M.E.R.E.in Support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel, attached, is complete and accurate to the best of my abilities.

I declare under penalty of perjury that the foregoing is true and correct.

Executed:



Daniel Sanchez
Public Counsel
610 S Ardmore Ave
Los Angeles, CA 90005
213-385-2977 ext. 144

April 24, 2020
Date

EXHIBIT D

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

J.O.P., et al.,

Plaintiffs,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY**, et al.,

Defendants.

Civil Action No. 8:19-CV-01944-GJH

**DECLARATION OF K.A.R.C. IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL**

**DECLARACIÓN DE K.A.R.C. EN APOYO DE
DEMANDANTES MOCIÓN DE CERTIFICACIÓN DE CLASE Y
NOMBRAMIENTO DE ABOGADOS DE LA CLASE**

1. Mi nombre es K.A.R.C. Soy un demandante en este caso y tengo permiso del Tribunal para proceder según mis iniciales. Yo presento esta declaración en apoyo de los Demandantes Moción de Certificación de Clase y Nombramiento de Abogados de la Clase.

2. Tengo conocimiento de la definición de la clase de demandantes propuestos presentados en el Primero Enmendado Demanda Colectiva para un Remedio Declaratorio y Medidas Cautelares. Yo soy un miembro del grupo propuesto: (1) A mi llegada a los Estados Unidos, me clasificaron como un niño extranjero no acompañado y me colocaron en procedimientos de remoción; (2) he presentado una solicitud de asilo con el Servicio de Ciudadanía e Inmigración de Estados Unidos (USCIS, por sus siglas en inglés); (3) cuando yo presente mi aplicación con USCIS, ya había cumplido dieciocho años; y (4) USCIS aún no ha adjudicado mi aplicación por sus méritos.

3. Yo estoy solicitando ser un representante de la clase en este caso, y yo entiendo las responsabilidades que esto implica. Yo entiendo que significa ser el demandante principal representando la clase. Yo entiendo que yo necesito saber que está sucediendo en el caso incluyendo cualquier acuerdo que los demandantes podrían llegar con el gobierno para resolver el caso.

4. Yo también entiendo que yo soy parte de un grupo realizando importantes decisiones legales y dirigiendo los abogados en este caso después de obtener su consejo. Para hacer esto, yo tendré la oportunidad de revisar los documentos legales y obtener novedades de parte de mis abogados sobre qué está sucediendo con los documentos sometidos al Tribunal. Yo compartiré lo que pienso sobre estas decisiones y participaré en cualquier

aprobación final de decisiones de importancia, incluyendo si resolveré el caso con el gobierno.

5. Yo trabajaré con los otros representantes de la clase en este caso para tomar decisiones cuando asuntos aparezcan de cómo proceder. Si nosotros no estamos de acuerdo, tomaremos un voto, y aceptaré lo que la mayoría este de acuerdo es lo mejor que hacer.

6. Yo entiendo que tengo la responsabilidad a la clase entera de personas como yo de proteger nuestros intereses. Para hacer esto correctamente, yo sé que necesito colaborar en presentar este caso a nombre de la clase entera. Haré todo lo posible para obtener los mejores resultados para la clase.

7. Yo seré un participante activo en este caso, dirigiendo a los abogados en la medida necesaria. Me comunicaré regularmente con los abogados sobre mociones importantes, conversaciones sobre resoluciones, preparación del juicio, y juicio. Yo entiendo que soy responsable de dirigir a los abogados sobre cada uno de estos temas, después de obtener su consejo. Hablaré con los abogados las veces que sea necesario.

8. Yo entiendo que de pronto necesite contestar preguntas de los abogados del gobierno por escrito o en persona.

9. Yo entiendo que si esta clase es certificada, mis abogados tienen la responsabilidad a cada persona de esta clase propuesta de ofrecer representación legal justa y adecuada.

10. Considero que Goodwin Procter LLP, Kids in Need of Defense, the Catholic Legal Immigration Network, y Public Counsel deberían ser aprobadas por el Tribunal para servir como abogados adjuntos para la clase. Considero que ellos trabajarán duro para obtener los mejores resultados para la clase.

11. Yo respetuosamente pido que el Tribunal autorice la Moción de Demandantes de Certificación de Clase y Nombramiento de Abogados de la Clase.

Declaro bajo pena de perjurio que lo anterior es verdad y correcto mi leal saber.

Ejecutado:

K.A.R.C.

14 de abril, 2020

K.A.R.C.

Dia

*Counsel hereby certifies that he or she has a signed copy of the foregoing document available for inspection at any time by the court or a party to this action.

ENGLISH TRANSLATION

1. My name is K.A.R.C. I am a plaintiff in this case and have been allowed by the Court to proceed under my initials. I submit this declaration in support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel.

2. I am familiar with the definition of the proposed plaintiff class set forth in Plaintiffs' First Amended Class Action Complaint for Declaratory and Injunctive Relief. I am a member of the proposed class: (1) Upon my arrival in the United States, I was determined to be an unaccompanied alien child and placed in removal proceedings; (2) I have filed an asylum application with U.S. Citizenship and Immigration Services (USCIS, by its initials in English); (3) when I filed my application with USCIS, I had already turned 18 years old; and (4) USCIS has not yet adjudicated my application on the merits.

3. I am seeking to be a class representative in this case, and I understand the responsibilities involved. I understand what it means to be a lead plaintiff representing a class. I understand that I need to know what is going on with the case including any agreements the plaintiffs might come to with the government to resolve the case.

4. I also understand that I will be part of a team making important legal decisions and directing the attorneys in this case after getting their advice. In order to do this, I will be able to look at the legal documents and get updates from my attorneys on what is going on with the documents submitted to the Court. I will share what I think about these decisions and will be involved in any final approval of major decisions, including whether to settle this case with the government.

5. I will work with the other class representatives on this case to make decisions when issues come up about how to proceed. If we disagree, we will take a vote, and I will accept what a majority agrees is the best thing to do.

6. I understand that I have a responsibility to the whole class of people like me to protect our interests. I know that to do this properly, I must help in bringing this case forward on behalf of the whole class. I will do my best to obtain the best result for the class.

7. I will be an active participant in this case, directing the attorneys as needed. I will communicate on a regular basis with the attorneys about important motions, settlement talks, trial preparation, and trial. I understand that I am responsible to direct the attorneys on each of these things, after getting their advice. I will speak to the attorneys as often as necessary.

8. I understand I may need to answer questions from the government's attorneys in writing or in person.

9. I understand that if a class is certified, my attorneys will have a responsibility to every member of the proposed class to provide fair and adequate representation.

10. I believe that Goodwin Procter LLP, Kids in Need of Defense, the Catholic Legal Immigration Network, and Public Counsel should be approved by the Court to serve as co-counsel for the class. I believe they will work hard to obtain the best result for the class.

11. I respectfully request that the Court grant Plaintiffs' Motion for Class Certification and Appointment of Class Counsel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed:

_____ April 14, 2020
K.A.R.C. Date

* * *

CERTIFICATION OF TRANSLATION

I, Daniel Sanchez, declare:

I certify that I am competent to translate from English to Spanish and from Spanish to English and that the translation of the Declaration of K.A.R.C. in Support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel, attached, is complete and accurate to the best of my abilities.

I declare under penalty of perjury that the foregoing is true and correct.

Executed:


_____ April 24, 2020
Daniel Sanchez Date
Public Counsel
610 S Ardmore Ave
Los Angeles, CA 90005
213-385-2977 ext. 144

EXHIBIT E

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

J.O.P., et al.,

Plaintiffs,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY**, et al.,

Defendants.

Civil Action No. 8:19-CV-01944-GJH

**DECLARATION OF E.D.G. IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL**

**DECLARACIÓN DE E.D.G. EN APOYO DE
DEMANDANTES MOCIÓN DE CERTIFICACIÓN DE CLASE Y
NOMBRAMIENTO DE ABOGADOS DE LA CLASE**

1. Mi nombre es E.D.G. Soy un demandante en este caso y tengo permiso del Tribunal para proceder según mis iniciales. Yo presento esta declaración en apoyo de los Demandantes Moción de Certificación de Clase y Nombramiento de Abogados de la Clase.

2. Tengo conocimiento de la definición de la clase de demandantes propuestos presentados en el Primero Enmendado Demanda Colectiva para un Remedio Declaratorio y Medidas Cautelares. Yo soy un miembro del grupo propuesto: (1) A mi llegada a los Estados Unidos, me clasificaron como un niño extranjero no acompañado y me colocaron en procedimientos de remoción; (2) he presentado una solicitud de asilo con el Servicio de Ciudadanía e Inmigración de Estados Unidos (USCIS, por sus siglas en inglés); (3) cuando yo presente mi aplicación con USCIS, ya había cumplido dieciocho años; (4) y USCIS aún no ha adjudicado mi aplicación por sus méritos.

3. Yo estoy solicitando ser un representante de la clase en este caso, y yo entiendo las responsabilidades que esto implica. Yo entiendo que significa ser el demandante principal representando la clase. Yo entiendo que yo necesito saber que está sucediendo en el caso incluyendo cualquier acuerdo que los demandantes podrían llegar con el gobierno para resolver el caso.

4. Yo también entiendo que yo soy parte de un grupo realizando importantes decisiones legales y dirigiendo los abogados en este caso después de obtener su consejo. Para hacer esto, yo tendré la oportunidad de revisar los documentos legales y obtener novedades de parte de mis abogados sobre qué está sucediendo con los documentos sometidos al Tribunal. Yo compartiré lo que pienso sobre estas decisiones y participaré en cualquier

aprobación final de decisiones de importancia, incluyendo si resolveré el caso con el gobierno.

5. Yo trabajaré con los otros representantes de la clase en este caso para tomar decisiones cuando asuntos aparezcan de cómo proceder. Si nosotros no estamos de acuerdo, tomaremos un voto, y aceptaré lo que la mayoría este de acuerdo es lo mejor que hacer.

6. Yo entiendo que tengo la responsabilidad a la clase entera de personas como yo de proteger nuestros intereses. Para hacer esto correctamente, yo sé que necesito colaborar en presentar este caso a nombre de la clase entera. Haré todo lo posible para obtener los mejores resultados para la clase.

7. Yo seré un participante activo en este caso, dirigiendo a los abogados en la medida necesaria. Me comunicaré regularmente con los abogados sobre mociones importantes, conversaciones sobre resoluciones, preparación del juicio, y juicio. Yo entiendo que soy responsable de dirigir a los abogados sobre cada uno de estos temas, después de obtener su consejo. Hablaré con los abogados las veces que sea necesario.

8. Yo entiendo que de pronto necesite contestar preguntas de los abogados del gobierno por escrito o en persona.

9. Yo entiendo que si esta clase es certificada, mis abogados tienen la responsabilidad a cada persona de esta clase propuesta de ofrecer representación legal justa y adecuada.

10. Considero que Goodwin Procter LLP, Kids in Need of Defense, the Catholic Legal Immigration Network, y Public Counsel deberían ser aprobadas por el Tribunal para servir como abogados adjuntos para la clase. Considero que ellos trabajarán duro para obtener los mejores resultados para la clase.

11. Yo respetuosamente pido que el Tribunal autorice la Moción de Demandantes de Certificación de Clase y Nombramiento de Abogados de la Clase.

Declaro bajo pena de perjurio que lo anterior es verdad y correcto mi leal saber.

Ejecutado:



E.D.G.

01/24/2020

Date

*Counsel hereby certifies that he or she has a signed copy of the foregoing document available for inspection at any time by the court or a party to this action.

ENGLISH TRANSLATION

1. My name is E.D.G. I am a plaintiff in this case and have been allowed by the Court to proceed under my initials. I submit this declaration in support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel.

2. I am familiar with the definition of the proposed plaintiff class set forth in Plaintiffs' First Amended Class Action Complaint for Declaratory and Injunctive Relief. I am a member of the proposed class: (1) Upon my arrival in the United States, I was determined to be an unaccompanied alien child and placed in removal proceedings; (2) I have filed an asylum application with U.S. Citizenship and Immigration Services (USCIS, by its initials in English); (3) when I filed my application with USCIS, I had already turned 18 years old; (4) and USCIS has not yet adjudicated my application on the merits.

3. I am seeking to be a class representative in this case, and I understand the responsibilities involved. I understand what it means to be a lead plaintiff representing a class. I understand that I need to know what is going on with the case including any agreements the plaintiffs might come to with the government to resolve the case.

4. I also understand that I will be part of a team making important legal decisions and directing the attorneys in this case after getting their advice. In order to do this, I will be able to look at the legal documents and get updates from my attorneys on what is going on with the documents submitted to the Court. I will share what I think about these decisions and will be involved in any final approval of major decisions, including whether to settle this case with the government.

5. I will work with the other class representatives on this case to make decisions when issues come up about how to proceed. If we disagree, we will take a vote, and I will accept what a majority agrees is the best thing to do.

6. I understand that I have a responsibility to the whole class of people like me to protect our interests. I know that to do this properly, I must help in bringing this case forward on behalf of the whole class. I will do my best to obtain the best result for the class.

7. I will be an active participant in this case, directing the attorneys as needed. I will communicate on a regular basis with the attorneys about important motions, settlement talks, trial preparation, and trial. I understand that I am responsible to direct the attorneys on each of these things, after getting their advice. I will speak to the attorneys as often as necessary.

8. I understand I may need to answer questions from the government's attorneys in writing or in person.

9. I understand that if a class is certified, my attorneys will have a responsibility to every member of the proposed class to provide fair and adequate representation.

10. I believe that Goodwin Procter LLP, Kids in Need of Defense, the Catholic Legal Immigration Network, and Public Counsel should be approved by the Court to serve as co-counsel for the class. I believe they will work hard to obtain the best result for the class.

11. I respectfully request that the Court grant Plaintiffs' Motion for Class Certification and Appointment of Class Counsel.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed:

E.D.G. 04/24/2020
Date

* * *

CERTIFICATION OF TRANSLATION

I, Daniel Sanchez, declare:

I certify that I am competent to translate from English to Spanish and from Spanish to English and that the translation of the Declaration of E.D.G. in Support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel, attached, is complete and accurate to the best of my abilities.

I declare under penalty of perjury that the foregoing is true and correct.

Executed:



Daniel Sanchez April 24, 2020
Public Counsel Date
610 S Ardmore Ave
Los Angeles, CA 90005
213-385-2977 ext. 144

EXHIBIT F

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

J.O.P., et al.,

Plaintiffs,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY, et al.,**

Defendants.

Civil Action No.
8:19-CV-01944-GJH

**DECLARATION OF BRIAN T. BURGESS
IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL**

I, Brian T. Burgess, hereby declare as follows:

1. I have personal knowledge of the matters in this Declaration and they are true and correct. I am an attorney licensed to practice law in the State of New York and the District of Columbia, and admitted to the bar of numerous federal district and circuit courts, including the District of Maryland. I am a partner at Goodwin Procter LLP, located at 1900 N Street NW, Washington, DC 20036.
2. I graduated from Dartmouth College in 2005 and from New York University Law School in 2009. Since 2013, I have been employed by Goodwin Procter, becoming a partner in 2016. Previously, I served as a law clerk for Judge Guido Calabresi of the U.S. Court of Appeals for the Second Circuit from 2009-2010, for Judge David Tatel of the U.S. Court of Appeals for the D.C. Circuit from 2010-2011, and for Associate Justice Sonia Sotomayor of the U.S. Supreme Court from 2012-2013. I also worked in the Department of Justice as a special assistant to the Solicitor General from 2011-2012.

3. My practice focuses on complex litigation and appellate matters. I have significant experience in the areas of administrative law and class-action litigation. I am an experienced advocate, and have argued cases before many federal courts, including two arguments in the U.S. Supreme Court during the 2019 Term. I have also taken a significant role in a number of complex litigation cases in federal district court, including many administrative law cases. My biography is attached as Exhibit A.
4. I have prior experience litigating administrative law and class action issues, including in the following cases:
 - a. *In re Intuniv Antitrust Litigation*, Nos. 16-cv-12396, 16-cv-12653 (D. Mass.) (helped lead briefing for defendants on class certification and summary judgment);
 - b. *Otsuka Pharm. Co. v. Price*, No. 16-5229 (D.C. Cir.) (co-authored brief on behalf of a pharmaceutical company defending approval of its new drug application against a competitor's exclusivity challenge);
 - c. *Matson Navigation Co. v. DOT*, No. 18-cv-2751 (D.D.C.) (lead counsel for intervenor-defendant in administrative law action);
 - d. *Otsuka Pharm. Co. v. Burwell*, No. 15-cv-852 (D. Md.) (co-authored briefs on behalf of a leading pharmaceutical manufacturer and several other intervenors in a suit against FDA seeking to stop the launch of generic versions of the drug Abilify, successfully opposing preliminary injunction and obtaining summary judgment);
 - e. *Rothstein v. Balboa Ins. Co.*, No. 14-2250-cv (2d Cir.) (co-authored briefs on behalf of a major banking client in a putative class-action alleging violations of

the Racketeering Influenced and Corrupt Organizations Act based on the rates charged for lender-placed insurance, successfully obtaining interlocutory review and reversal of adverse judgment resulting in an order to dismiss all claims).

5. My partner at Goodwin Procter, Elaine Herrmann Blais, also represents the Plaintiffs in this action and seeks to represent the proposed class. Ms. Blais is an attorney licensed to practice in the State of Massachusetts and is admitted to the bar of numerous federal district and circuit courts. She is located in the firm's Boston office at 100 Northern Avenue, Boston, MA 02210. Ms. Blais graduated from Allegheny College in 1991 and from the Ohio State University College of Law in 1995.
6. Ms. Blais's practice focuses on intellectual property litigation, in addition to an active pro bono practice. She currently serves on the Kids in Need of Defense (KIND) Boston Advisory Committee and is a council member for the Boston Bar Association. Ms. Blais has been recognized for her pro bono efforts, having received the Boston Bar Association's Thurgood Marshall Award in 2017, presented annually to a lawyer in Greater Boston for extraordinary efforts in enhancing the human dignity of others through improving or delivering services to Massachusetts' low income population, and the Mentor Award from the Political Asylum/Immigration Representation Project in 2009 for her work on behalf of human rights and immigrant advocacy. Ms. Blais's biography is attached as Exhibit B.
7. Ms. Blais has significant prior experience with complex litigation and asylum/immigration matters.
 - a. She has litigated patent cases for nearly 25 years, from initial counseling up through trial and appeal. She has been involved in drafting proposed legislation

and made numerous presentations before Congressional members and staff regarding patent policy.

- b. Additionally, Ms. Blais has represented unaccompanied immigrant and refugee children in their deportation proceedings through KIND since 2012.
 - c. Since 2008, she has also represented adults seeking asylum through The Political Asylum/Immigration Representation Project (PAIR) and has recently represented Ugandan lesbians through Immigration Equality, which provides legal counsel to the LGBT and HIV-positive immigrant community.
 - d. With the Lawyers' Committee for Civil Rights and Economic Justice, Ms. Blais is involved in the support of Massachusetts sanctuary cities Chelsea and Lawrence, seeking to establish that these cities are in full compliance with federal immigration law.
8. In addition to Ms. Blais, two of my colleagues at Goodwin Procter LLP are assisting me with this matter. Attached as Exhibit C is the biography of Kevin DeJong, an associate in the firm's Boston office. Attached as Exhibit D is the biography of Stephen Shaw, an associate in the firm's Washington, D.C. office. I am also receiving assistance from law clerks and support staff at Goodwin Procter LLP. The firm has agreed to represent the plaintiffs *pro bono publico*.
9. My firm and I have the legal and financial resources needed to pursue this case to the full extent necessary.
10. I have no conflicts of interest with any members of the class nor, to my knowledge, do any of the other Plaintiffs' counsel.

11. The other counsel Plaintiffs request be appointed as class counsel are Scott Shuchart and Wendy Wylegala of Kids in Need of Defense (KIND), Kristen Jackson and Mary Tanagho Ross of Public Counsel, and Michelle Mendez and Rebecca Scholtz of Catholic Legal Immigration Network, Inc. (CLINIC). It is my understanding that declarations will be provided from each set of class counsel.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of June, 2020 in Washington, D.C.



Brian T. Burgess
Goodwin Procter, LLP
1900 N Street, NW
Washington, DC 20036
(202) 346-4215
BBurgess@goodwinlaw.com

EXHIBIT 1



**BRIAN
BURGESS**

Partner
bburgess@goodwinlaw.com
Washington, DC +1 202 346 4215

Brian Burgess is a partner in the firm's Litigation Department and Appellate Litigation practice. His work focuses on appellate matters and complex civil litigation in federal courts, and he has experience in a wide range of areas including antitrust law, administrative law (with a particular focus on FDA litigation), constitutional law, intellectual property, ERISA and financial services litigation. Mr. Burgess was named to Benchmark Litigation's "Under 40 Hotlist" in 2019, 2018 and 2017. Mr. Burgess has argued appeals in numerous courts, including twice in the U.S. Supreme Court in the 2019 Term.

Prior to joining Goodwin, Mr. Burgess served as a law clerk to Associate Justice Sonia Sotomayor of the Supreme Court of the United States. He previously worked in the Department of Justice as a special assistant to the Solicitor General.

AREAS OF PRACTICE

Appellate Litigation
Litigation + Dispute Resolution
FDA Litigation

EXPERIENCE

Since joining Goodwin, Mr. Burgess has handled complex litigation matters in the Supreme Court; in the First, Second, Third, Fourth, Sixth, Ninth, D.C. and Federal Circuits; in several state appellate courts; in bankruptcy court; and in numerous federal and state trial courts.

Mr. Burgess has briefed and argued several significant recent appeals:

- Successfully defended class-action settlement in antitrust litigation in the Second Circuit on appeal raising issue of first impression concerning the authority of claims administrators to opt customers out of class actions. See *In re Aggrenox Antitrust Litig.*, 2020 WL 2146901 (2d Cir. May 5, 2020).
- Successfully represented the National Mining Association in the D.C. Circuit in defense of the decision by the Environmental Protection Agency not to finalize new “financial responsibility” requirements for the hardrock mining industry under Section 108(b) of CERCLA. Presented oral argument on behalf of coalition of industry intervenors. See *Idaho Conservation League v. Wheeler*, 930 F.3d 494 (D.C. Cir. 2019).
- Persuaded the U.S. Supreme Court to grant certiorari in two matters in the 2019 Term, led merits briefing, and presented oral argument. See *Banister v. Davis* (argued Dec. 4, 2019, decision pending); *Lomax v. Ortiz-Marquez* (argued Feb. 26, 2020, decision pending)
- Successfully defended judgment for BarBri, Inc. in affirmance of claims brought by a bar-exam competitor under the Sherman Act and RICO. Mr. Burgess co-authored motion to dismiss briefing in litigation in the Southern District of New York, and then led successful appellate effort in the Second Circuit. See *LLM Bar Exam, LLC v. BarBri, Inc.*, 922 F.3d 136 (2d Cir. 2019).
- Successfully represented client in the D.C. Circuit in a litigation that resulted in the dismissal of a challenge to a shipping client’s eligibility to participate in the “Maritime Security Program” administered by the Maritime Administration and the Department of Defense. See *Matson Navigation Co. v. U.S. Dept’ of Transp.*, 895 F.3d 799 (D.C. Cir. 2018).
- Persuaded the Washington Court of Appeals to grant interlocutory review and then reverse the denial of clients’ motion for summary judgment in product liability case involving the prescription drug metoclopramide. The decision rejected an effort by the plaintiff to expand the scope of a drug company’s duty to warn under state law to extend beyond the warnings provided with a product’s package insert. See *Sherman v. Pfizer, Inc.*, P.3d, 2019 WL 1923583 (Wash. App. 2019).

Mr. Burgess’s other significant matters include:

- Led merits briefing in several matters in the U.S. Supreme Court. Co-authored brief and served as second-chair in Supreme Court litigation concerning the test for whether an artistic design feature can qualify for a copyright. Mr. Burgess represented the copyright owner, which designed original artwork appearing on clothing. The Supreme Court held by a vote of 6-2 that the designs were copyright-eligible. *Star Athletica, LLC v. Varsity Brands, Inc.*, 137 S. Ct. 1002 (2017).
- He defended companies in several putative class actions challenging patent litigation settlements on antitrust grounds, initiated after the Supreme Court’s decision in *FTC v. Actavis*, 133 S. Ct. 2223 (2013). Led briefing efforts on motions to dismiss and oppositions to class certification, in both district and appellate courts. He also represented leading trade associate in filing numerous amicus curiae briefs on issues arising in antitrust litigation involving patent settlements.
- Co-authored brief in D.C. Circuit on behalf of a pharmaceutical company defending approval of its new drug application against a competitor’s exclusivity challenge. The D.C. Circuit upheld FDA’s approval of our client’s application in a decision that set an important precedent on the scope of 3-year exclusivities for new clinical investigations. *Otsuka Pharm. Co. v. Price*, 869 F.3d 987 (D.C. Cir. 2017).
- Co-authored briefs in the Second Circuit on behalf of a major banking client in a putative class-action

alleging violations of the Racketeering Influenced and Corrupt Organizations Act based on the rates charged for lender-placed insurance. Successfully obtained interlocutory review and reversal of adverse judgment resulting in an order to dismiss all claims. *Rothstein v. Balboa Insurance Company*, 794 F.3d 256 (2d Cir. 2015).

- Co-authored briefs on behalf of a leading pharmaceutical manufacturer and several other intervenors in a suit against FDA seeking to stop the launch of generic versions of the drug Abilify.[®] Successfully opposed a preliminary injunction and then obtained summary judgment.
- Co-authored several briefs in opposition to petition for certiorari in the Supreme Court, including a brief in a First Amendment challenge to a transit authority's advertising policy, a brief concerning the rules for claim construction in patent litigation, and a brief in opposition to the Michigan Attorney General on an issue arising under the Sixth Amendment.
- Presented oral argument and successfully persuaded the Fourth Circuit to vacate in a pro bono matter challenging a county's anti-panhandling ordinance as inconsistent with the First Amendment. *Reynolds v. Middleton*, 779 F.3d 222 (4th Cir. 2015).

AWARDS



PUBLICATIONS

Co-Author, *U.S. CARES Act Enables Long-Awaited OTC Drug Regulatory Modernization: Key Highlights*, Goodwin Alert, April 2020

Contributor, *Guide to Biosimilars Litigation and Regulation in the U.S., 2019-2020 ed.*, published by Thomson Reuters, November 2019

CREDENTIALS

EDUCATION

J.D., 2009

New York University

(summa cum laude)

A.B., 2005

Dartmouth College

(summa cum laude)

CLERKSHIPS

2012-2013 U.S. Supreme Court, Honorable Sonia M. Sotomayor

2010-2011 U.S. Court of Appeals for the District of Columbia Circuit, Honorable David S. Tatel

2009-2010 U.S. Court of Appeals for the Second Circuit, Honorable Guido Calabresi

ADMISSIONS

BAR

New York

District of Columbia

COURTS

U.S. Court of Appeals for the First Circuit

U.S. Court of Appeals for the Second Circuit

U.S. Court of Appeals for the Third Circuit

U.S. Court of Appeals for the Fourth Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. Court of Appeals for the District of Columbia Circuit

U.S. District Court for the District of Columbia

U.S. District Court of Maryland

U.S. Court of Appeals for the Federal Circuit

EXHIBIT 2



ELAINE HERRMANN BLAIS

Partner

Boston Litigation Leader

eblais@goodwinlaw.com

Boston +1 617 570 1205

Elaine Blais, head of the Litigation Department in Goodwin's Boston office, focuses her practice on intellectual property litigation, particularly with respect to patent litigation. Ms. Blais has handled numerous patent infringement lawsuits in federal courts nationwide. She serves on Goodwin's Intellectual Property Steering and Attorney Development Committees. Ms. Blais is the co-founder and editor of the firm's biosimilars blog, www.bigmoleculewatch.com, which is dedicated to providing resources and observations through Goodwin's active watch of the world of biologics, biosimilars and the Biologics Price Competition and Innovation Act (BPCIA). She is the former co-chair of the Boston Women's Initiative Council. Having served on various committees across the firm, Ms. Blais is currently Co-Chair of our Incubator Committee, which guides the growth and development of emerging and innovative practices.

AREAS OF PRACTICE

Patent Litigation

Hatch-Waxman, Biologics and Biosimilars Litigation

Fintech

Patent Trial + Appeal Board

Litigation + Dispute Resolution

Pharmaceuticals

Intellectual Property

Patent Prosecution + Counseling

Healthcare

EXPERIENCE

Ms. Blais has been litigating patent cases for nearly 25 years. She has advised clients and participated in all

phases of patent litigation, from initial counseling up through trial and appeal. Ms. Blais has worked on patent cases involving diverse areas of technology, including pharmaceutical products (Teva Pharmaceuticals, Fresenius Kabi, Hikma, Dr. Reddy's), biosimilars (Celltrion, Association for Accessible Medicines, Boehringer Ingelheim), stem cell technology (ViaCell, Inc.), secure financial transactions (Fidelity), prepaid wireless technology (Freedom Wireless), email tracking systems (Eloqua), semiconductor manufacturing tools (Applied Materials), and consumer products (P&G).

In addition to her patent litigation experience, she has represented clients in cases involving copyrights, trademarks, trade secrets, unfair competition and patent-related antitrust issues. Ms. Blais has also filed amicus briefs on behalf of firm clients in a number of significant patent cases before the U.S. Supreme Court and the Federal Circuit sitting *en banc*, including *Therasense v. Becton Dickinson*, *Microsoft v. i4i*, and *Caraco v. Novo Nordisk*.

Ms. Blais has devoted a significant amount of her practice to counseling clients and advocating to Congress on behalf of clients regarding patent policy. In this capacity, she has worked on various pieces of legislation impacting the pharmaceutical industry, including the Biologics Price Competition & Innovation Act and the America Invents Act. Ms. Blais has been involved in drafting proposed legislation and has made numerous presentations before Congressional members and staff.

Additionally, Ms. Blais has an active pro bono practice. Since 2012, she has represented unaccompanied immigrant and refugee children in their deportation proceedings through Kids in Need of Defense (KIND). Since 2008, she has also represented adults seeking asylum through The Political Asylum/Immigration Representation Project (PAIR) and has recently represented Ugandan lesbians through Immigration Equality, which provides legal counsel to the LGBT and HIV-positive immigrant community. With the Lawyers' Committee for Civil Rights and Economic Justice, Ms. Blais is involved in the support of Massachusetts sanctuary cities Chelsea and Lawrence, seeking to establish that these cities are in full compliance with federal immigration law.

PROFESSIONAL ACTIVITIES

Ms. Blais currently serves on the KIND Boston Advisory Committee and as a council member for the Boston Bar Association.

In 2013, at the selection of firm leadership, Ms. Blais participated in Harvard Business School's "Leading Professional Service Firms" executive education program. This selective program focuses on how professional service firms should approach client retention and client service, among other critical issues facing professional service firms.

In 2011, Ms. Blais was selected by the firm to participate in LEAD Boston, a year-long program focused on leadership and social justice.

Ms. Blais is a member of the American Bar Association, the Boston Bar Association, and the American

Intellectual Property Law Association.

RECOGNITION

Ms. Blais was included as an IP Star for Massachusetts in the 2020/21 by *Managing IP*.

Ms. Blais is regularly recognized by leading industry publications, including *Managing Intellectual Property's* "IP Star," *Legal 500* (Patent Litigation), and *LMG Life Sciences* "Life Sciences Stars."

In 2018 and 2019, Ms. Blais was on the shortlist for *LMG Life Sciences'* General Patent Litigator of the Year: New England.

In 2017, Ms. Blais was honored for her commitment to community and *pro bono* work with the Boston Bar Association's Thurgood Marshall Award, presented annually to a lawyer in Greater Boston for extraordinary efforts in enhancing the human dignity of others through improving or delivering services to Massachusetts' low income population.

In 2012, Ms. Blais and a client were selected as a recipient of the Project for Attorney Retention's 2012 PAR Flex Success Award. The award recognizes attorney-client relationships exemplifying how, with client and firm support, attorneys can work on flexible schedules, deliver exceptional legal services and enjoy extraordinarily successful careers.

In 2009, Ms. Blais was awarded the Mentor Award from the Political Asylum/Immigration Representation Project for her work on behalf of human rights and immigrant advocacy. Ms. Blais continues to dedicate pro bono time to the representation of immigrants seeking asylum, refugee status or special immigrant juvenile status in the United States. While attending law school, Ms. Blais was an associate editor of *The Ohio State Law Journal*.

AWARDS





PUBLICATIONS

Ms. Blais is a frequent lecturer on topics relating generally to patent litigation and more specifically to pharmaceutical and biosimilar patent litigation. Her recent presentations include:

- Contributor, *Guide to Biosimilars Litigation and Regulation in the U.S., 2019-2020 ed.*, published by Thomson Reuters, November 2019
- Speaker, "Corporate Social Responsibility, Tech and Legal: Bringing it All Together," ChIPs Global Summit (September 2019)
- Interview: The FDA and Communications About Biosimilars, *The Center for Biosimilars* (September 2019)
- Interview: The Potential for U.S. Patent Reform, *The Center for Biosimilars* (August 2019)
- Interview: Trends in Patent Settlements, *The Center for Biosimilars* (July 2019)
- Interview: *Helsinn v Teva* and Its Implications for Biosimilar Developers, *The Center for Biosimilars* (June 2019)
- Speaker, "Unlocking the Value of Data in MedTech: Protections, Pitfalls, and Strategies," *Goodwin Webinar* (March 2019)
- "Increasing Biosimilar Competition: Trends In Government Responses," *BioProcessOnline*, (March 2019) (co-authored)
- "Biosimilars Market Update," *Goodwin Webinar* (November 2018)
- "GRx+Biosims 2018," *Association for Accessible Medicines* (September 2018)
- "How to Ensure Investment is Made in Potential New Uses for Existing Medicines for the Benefit of Patients Worldwide," *Moderator, Future of Innovation in Medicine - Incentives for New Medical Treatments*

and Global Health Conference (February 2018)

- “BBA Women’s Leadership & Advancement Forum,” *Boston Bar Association* (February 2018)
- “End Of A Humira Battle: Observations From The AbbVie-Amgen Armistice,” *Biosimilar Development* (October 2017)
- “Who Will “Dance” Now? Biosimilars After Amgen v. Sandoz,” *The IPO IP Chat Webinar* (July 2017)
- “The Supreme Court’s Decision in Sandoz v. Amgen,” *Goodwin Webinar* (June 2017)
- “Dance Fever: A Recap of Recent BPCIA Litigation,” *Bloomberg Law Report* (May 2017)
- “Do The Patent Dance,” *STAT Plus Chat Webinar* (April 2017)
- “Biosimilar Investment Landscape in 2017,” *Goodwin seminar* (January 2017)
- “Biosimilars: A Guide to Regulatory and Intellectual Property Issues,” *Goodwin* (January 2016)
- “Biosimilars: Annual Market Review,” *Goodwin seminar* (January 2016)
- “Recent Supreme Court Decisions in Patent Cases – How Helpful Have They Been?” *PLI* (November 2015)
- “Analysis of Amgen v. Sandoz,” *Goodwin webinar* (August 2015)
- “Current Topics in Life Sciences Law, Regulation and Business,” *The John F. Scarpa Center for Law and Entrepreneurship at Villanova University School of Law* (June 2015)
- “Summit on U.S. Biosimilars,” *American Conference Institute* (April 2015)
- “The Impact of *Amgen v. Sandoz*,” *Goodwin webinar* (March 2015)
- “Actavis, Valuation, and Fair Market Value,” *Moderator, GPhA Annual Meeting* (February 2015)
- “Biosimilars Teleconference,” *Credit Suisse* (February 2015)
- “Understanding Biosimilars: Intellectual Property Challenges,” *Goodwin seminar* (January 2015)
- “Patent Litigation 2014: Recent Development and Changes in Patent Law and Their Effects on Patent Litigation,” *PLI* (November 2014)
- “Supreme Court’s Landmark *Limelight* and *Nautilus* Decisions and Their Impact on Patent Litigation and Prosecution Strategies,” *PLI* (June 2014)
- “*Octane Fitness* and *Highmark*: The Supreme Court Eases the Standard for Recovering Attorney Fees in Patent Cases,” *PLI* (May 2014)
- “Patent Litigation 2013: Recent Developments and Changes in Patent Law and Their Effects on Patent Litigation,” *PLI* (November 2013)

CREDENTIALS

EDUCATION

J.D., 1995

The Ohio State University, College of Law
(with honors, Order of the Coif)

B.A., 1991

Allegheny College

ADMISSIONS

BAR

Massachusetts

COURTS

U.S. Court of Appeals for the Federal Circuit

U.S. Court of Appeals for the First Circuit

U.S. District Court for the District of Massachusetts

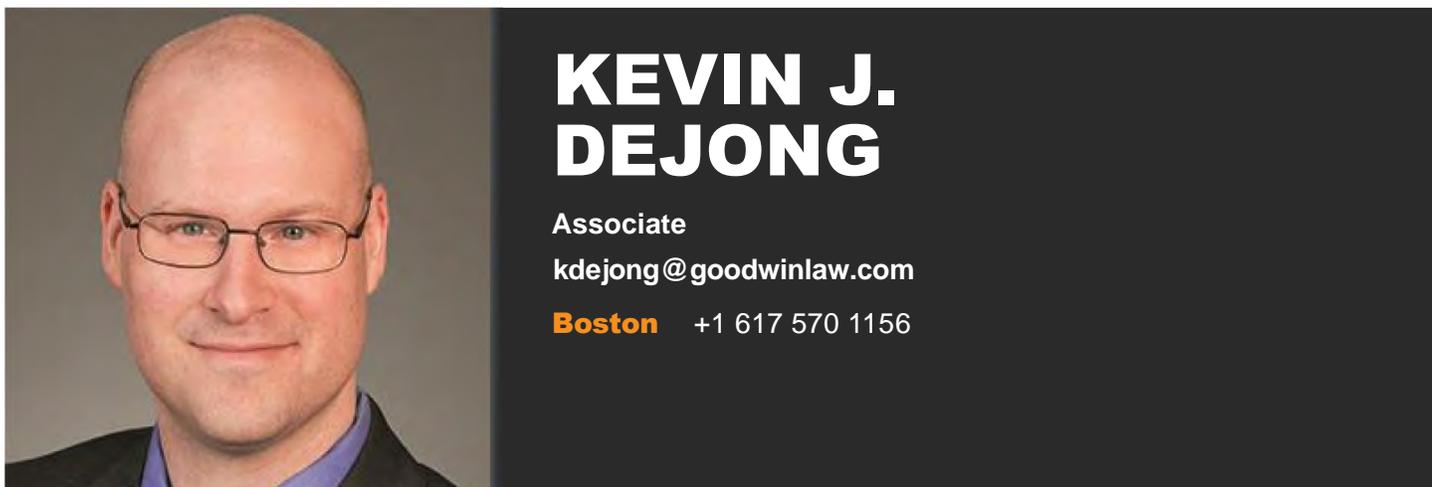
U.S. District Court for the Eastern District of Texas

U.S. District Court for the Northern District of Ohio

U.S. District Court for the Northern District of Illinois

U.S. District Court for the Eastern District of Michigan

EXHIBIT 3



Kevin DeJong, an associate in Goodwin's Litigation group, focuses his practice on intellectual property litigation. Mr. DeJong has experience in a broad range of intellectual property litigation matters, including patent, trademark and trade secret matters. He has advised clients in a variety of intellectual property-related litigations in the pharmaceutical, medical device, consumer product and software industries.

Mr. DeJong has particular expertise in ANDA cases under the Hatch-Waxman Act and cases involving biosimilars under the BPCIA. Mr. DeJong brings to his practice an exceptional combination of patent law expertise and technical proficiency in the pharmaceutical and biotechnology fields. He holds a degree in chemical engineering, and before pursuing a career in law, he worked in the biotechnology industry as a process engineer responsible for process development, scale-up, and equipment design for cell culture and protein purification processes.

Mr. DeJong also devotes a significant amount of time representing *pro bono* clients in a variety of matters. In particular, Mr. DeJong has represented many unaccompanied children seeking to obtain permanent resident status.

AREAS OF PRACTICE

Patent Litigation
Intellectual Property
Litigation + Dispute Resolution
Hatch-Waxman, Biologics and Biosimilars Litigation
Patent Prosecution + Counseling
Patent Trial + Appeal Board

EXPERIENCE

Mr. DeJong's representative matters include:

- *Genentech et al. v. Celltrion et al.* (D. Del.), representing Celltrion/Teva in suit under the BPCIA related to biosimilar of Herceptin.
* See https://www.goodwinlaw.com/news/2017/9/09_20_17-goodwin-secures-patent-win-for-celltrion
- *Genentech et al. v. Celltrion et al.* (D. N.J.), representing Celltrion/Teva in suit under the BPCIA related to biosimilar of Rituxan.
- *Gillette v. Dollar Shave Club* (D. Del.), representing Gillette in a suit involving patents on razor blade edge coatings.
- *Tris Pharma, Inc. v. Actavis Elizabeth LLC* (D. Del.), representing Actavis in ANDA case involving methylphenidate hydrochloride extended-release chewable tablets.
- *Dow Pharma. Sciences v. Teva* (D. N.J.), represented Teva in ANDA case involving clindamycin phosphate and benzoyl peroxide gel.
- *Teva Pharmaceuticals USA et al. v. Sandoz, Inc. et al. and Mylan Pharmaceuticals Inc. et al.* (S.D.N.Y.). Represented patent owner in Hatch-Waxman dispute regarding generic version of Copaxone, a complex mixture of polypeptides. Was part of trial team that obtained decision in favor of Teva finding all claims infringed, valid, and enforceable.
- *Teva Pharmaceuticals USA et al. v. Sandoz, Inc. et al. and Mylan Pharmaceuticals Inc. et al.* (S.D.N.Y.). Represented patent owner in patent litigation involving techniques to measure the molecular weight of complex mixtures of polypeptides.
- *Momenta Pharmaceuticals v. Teva Pharmaceuticals* (D. Mass). Represented Teva in patent litigation related to methods of evaluating low molecular weight heparins.
- *iHance, Inc. v. Eloqua Ltd.* (E.D. Va.). Represented Eloqua in patent litigation involving technology for monitoring email and website behavior of email recipients.
- *Abbott Point of Care, Inc. v. Epocal, Inc.* (N.D. Ala.). Represented Epocal in patent litigation dispute related to point-of-care blood testing diagnostic devices. Was part of trial team that obtained jury verdict in Epocal's favor in finding no infringement.
- *X-ray Optical Systems v. Innov-X* (N.D.N.Y.). Represented Innov-X in patent ownership dispute relating to x-ray optics technology.
- *Asentinel LLC v. The Info Group, Inc. et al.* (W.D. Tenn.). Represented Veramark in patent litigation involving technology used in analyzing telecommunications invoices.

PROFESSIONAL ACTIVITIES

Mr. DeJong is a member of the Boston Intellectual Property Inn of Court, the Boston Bar Association and the New Hampshire Bar Association. Mr. DeJong also serves as an editor of the firm's biosimilars blog, Big Molecule Watch.

PROFESSIONAL EXPERIENCE

Prior to joining Goodwin, Mr. DeJong worked as an engineer in the pharmaceutical and biotechnology industry. He has extensive experience in pharmaceutical and biotech manufacturing, process development and scale-up, and equipment design.

RECOGNITION

While attending law school, Mr. DeJong served as Editor-in-Chief of the 49th Volume of *IDEA: The Intellectual Property Law Review*.

PUBLICATIONS

Guide to Biosimilars Litigation and Regulation in the U.S., 2019-2020 ed., published by Thomson Reuters, November 2019 (contributor)

"Biosimilar V. Biosimilar' Patent Case May Be First Of Many ," *Law360*, March 2019 (co-authored)

CREDENTIALS

EDUCATION

J.D., 2009

University of New Hampshire School of Law
(*magna cum laude*)

B.S., Chemical Engineering, 1999

Northwestern University

ADMISSIONS

BAR

U.S. Patent and Trademark Office (USPTO)
Massachusetts
New Hampshire

COURTS

U.S. Court of Appeals for the Federal Circuit
U.S. District Court for the District of Massachusetts
U.S. District Court of New Hampshire

EXHIBIT 4



Stephen Shaw is an associate in the firm's Litigation Department. He joined Goodwin in 2017.

AREAS OF PRACTICE

Litigation + Dispute Resolution

EXPERIENCE

PROFESSIONAL EXPERIENCE

Prior to joining Goodwin, Mr. Shaw clerked in the U.S. District Court for the Northern District of Illinois. During law school, Mr. Shaw was the supervising chair of the *Harvard Law Review* and a senior article editor for the *Harvard Law and Policy Review*.

CREDENTIALS

EDUCATION

J.D., 2015

Harvard Law School

M.A., 2010

Fordham University

B.A., 2009

Fordham University

(in cursu honorum, summa cum laude)

CLERKSHIPS

2015 - 2017 U.S. District Court for the Northern District of Illinois, Chief Judge Ruben Castillo

ADMISSIONS

BAR

District of Columbia

New York

EXHIBIT G

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

J.O.P., et al.,

Plaintiffs,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY**, et al.,

Defendants.

Civil Action No. 8:19-CV-01944-GJH

**DECLARATION OF SCOTT SHUCHART
IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL**

I, Scott Shuchart, hereby declare as follows:

1. I have personal knowledge of the matters in this Declaration. I am an attorney licensed to practice law in the State of New York and in the District of Columbia. I work as Senior Director for Legal Strategy at Kids in Need of Defense (KIND), with my principal office as 1201 L St., NW, 2nd Floor, Washington, DC 20005.

2. I, along with my colleague Wendy Wylegala, KIND's Director for Legal Technical Assistance, are co-counsel in this case and represent Plaintiffs J.O.P., M.A.L.C., M.E.R.E., K.A.R.C., and E.D.G. and the proposed class they seek to represent. I make this declaration in support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel to set forth the relevant experience of Ms. Wylegala and myself, including our qualifications in the area of immigration law, complex litigation, and class action litigation, to demonstrate our adequacy to represent the class, and to support our proposed class's numerosity.

3. Kids in Need of Defense (KIND) is a national nonprofit organization dedicated to providing free legal representation to immigrant children who are unaccompanied by or separated from a parent or legal guardian, and face removal proceedings in immigration court. Since January 2009, KIND has received referrals for over 20,000 children from 72 countries, serving children through its 10 field offices and in partnership with over 600 law firms, corporations, law schools, and bar associations. KIND promotes protection of children in countries of origin and transit countries and works to address the root causes of child migration from Central America through a team of regional experts who regularly travel to and work in Central American countries. KIND also advocates for laws, policies, and practices to improve the protection of unaccompanied children. KIND and its pro bono partners have assisted thousands of unaccompanied children in obtaining asylum or other forms of humanitarian protection. Ms. Wylegala and I are senior staff members in a division of KIND that provides training and legal technical assistance to our nationwide network of field offices and pro bono partner attorneys, and engages in administrative advocacy and litigation on issues impacting the children we serve.

4. The Plaintiffs and other class members in this case lack sufficient resources to pursue litigation on an individual basis as they are generally from indigent backgrounds and most are just starting their lives here in the United States. Plaintiffs and other class members are unaccompanied immigrant children who fled violence and persecution in their countries of origin. Plaintiffs' counsel has no conflict of interest with the class members in this litigation. Plaintiffs' counsel routinely represent unaccompanied children like the proposed class.

5. I have been working as an attorney for more than fifteen years in private practice, clinical teaching, and public service. I received my law degree from Yale Law School in 2003

and was a law clerk to Hon. Marsha S. Berzon on the U.S. Court of Appeals for the Ninth Circuit; a fellow and an associate at two well regarded law firms (now known as Altshuler Berzon LLP and Boies Schiller Flexner LLP); a clinical teaching fellow and scholar at Yale Law School; and, for eight years, Senior Advisor to the Officer for Civil Rights and Civil Liberties in the Department of Homeland Security, a defendant agency in this matter. I have worked at KIND for approximately one year.

6. In these positions I have been co-counsel on high-stakes public law, immigration, impact, and class action litigation. My matters have included *Negusie v. Holder*, 555 U.S. 511 (2009), a case involving interpretation of the asylum statute, and *Carr v. United States*, 560 U.S. 438 (2010), a criminal case presenting a due process challenge to a federal registration regime; my clients prevailed in each. Other litigation matters have included the multi-billion-dollar ownership dispute between the AIG insurance company and its former chief executive and a decades-long challenge to the federal government's operation of dam systems in California rivers. I spent eight years as a senior official in the internal civil rights oversight office at Defendant U.S. Department of Homeland Security, where I developed policy and investigated civil rights complaints across the range of immigration agencies. I was closely involved in development of various policies affecting the treatment of unaccompanied children encountered by the immigration agencies.

7. My colleague and proposed class counsel, Wendy Wylegala, has worked at KIND since its founding in the fall of 2008, helping to launch the organization's training and mentoring model for pro bono attorneys. During seven years in two KIND field offices, including as supervisor of the New York office, she supported hundreds of pro bono lawyers, and interviewed hundreds of immigrant children to analyze their potential legal remedies, primarily forms of

humanitarian relief including asylum. In addition to trainings for KIND staff, she has conducted trainings on issues relating to child migrants for the Practising Law Institute, the American Immigration Lawyers Association, USCIS' Refugee, Asylum and International Operations Directorate, and scores of law offices.

8. Previously Ms. Wylegala was in private practice at the law firm of Cahill Gordon & Reindel LLP from 2000 to 2008, where her experience included several complex litigation matters as well as pro bono service to immigrant children. She received her law degree from New York University School of Law in 2000.

9. Together and individually, Ms. Wylegala and I have distinctive knowledge and specialized skill in the area of immigration litigation in the federal courts and in the rights of immigrant children in particular, and we and our co-counsel are adequately and fairly representing the interests of the class.

10. Neither KIND nor my co-counsel in this case will receive reimbursement from the individual Plaintiffs or class members in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of June, 2020

/s/ Scott Shuchart
Scott Shuchart

EXHIBIT H

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

J.O.P., et al.,

Plaintiffs,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY, et al.,**

Defendants.

Civil Action No.
8:19-CV-01944-GJH

**DECLARATION OF KRISTEN JACKSON
IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL**

I, Kristen Jackson, hereby declare as follows:

1. I have personal knowledge of the matters in this Declaration and they are true and correct. I am an attorney licensed to practice law in the State of California. I work as a senior staff attorney in the Immigrants' Rights Project ("IRP") at Public Counsel, located at 610 S. Ardmore Avenue, Los Angeles, CA 90005. I served as the acting supervising senior staff attorney for IRP's children's removal defense team from May through October 2019. From August through November 2018, I served as IRP's acting director.
2. I, along with my colleague Mary Tanagho Ross at Public Counsel, are co-counsel in this case and represent Plaintiffs J.O.P., M.A.L.C., M.E.R.E., K.A.R.C., and E.D.G. ("Plaintiffs") and the proposed class they seek to represent. I make this declaration in support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel to set forth the relevant experience of Ms. Tanagho Ross and myself, including our qualifications in the area of immigration law, complex litigation, and class action

litigation, to demonstrate our adequacy to represent the class, and to support our proposed class's numerosity.

3. Based in Los Angeles, Public Counsel is the nation's largest not-for-profit law firm specializing in delivering pro bono legal services to vulnerable populations. Public Counsel's IRP provides pro bono placement and direct representation to hundreds of immigrant children each year. In addition to direct representation of clients seeking affirmative immigration relief and defense of those in removal proceedings, we also engage in appellate representation before the Board of Immigration Appeals ("BIA") and the U.S. Court of Appeals for the Ninth Circuit ("Ninth Circuit"). Public Counsel regularly engages in immigration litigation in federal courts related to the Administrative Procedure Act, and constitutional law violations, and our current litigation includes *Flores v. Sessions*, CV 85-4544-DMG (challenging the federal government's family separation policy on constitutional grounds), *J.L. v. Cuccinelli*, CV 18-4914 (oversight of the Settlement Agreement in a case that challenged a policy which resulted in denials of Special Immigrant Juvenile Status ("SIJS") to petitioners in California), *Franco v. Holder*, CV 10-02211 DMG (a class action lawsuit on behalf of hundreds of immigration detainees in California, Arizona, and Washington who suffer from severe mental disabilities), and *Regents of the University of California v. DHS*, 18-15068 (challenging the Department of Homeland Security's decision to end the Deferred Action for Childhood Arrivals program). In fact, Public Counsel has been at the forefront of past and current federal immigration class action litigation.
4. In addition to our class action work, IRP has a children's removal defense team that focuses solely on the representation of unaccompanied immigrant children. The team

carries a caseload of approximately 200 children at any given time. The team has submitted asylum applications to U.S. Citizenship and Immigration Services (“USCIS”) on behalf of many children who had been determined to be “unaccompanied alien children” (“UCs”) since 2014, when this team formed. Up until July 20, 2019, USCIS never refused initial jurisdiction on one these cases because a child had turned 18 or had been reunited with a parent or legal guardian before filing their asylum application with USCIS.

5. As of June 30, 2019, our team had 44 asylum applications pending with USCIS that were filed on behalf of children who had been determined to be UCs and who had filed their asylum applications with USCIS after turning 18 or having been reunited with a parent or legal guardian. The team was also providing technical assistance on an additional 11 such cases placed with volunteer attorneys. As of May 31, 2020, USCIS has granted asylum in 27 of these cases and referred four of them to immigration court. The remaining 24 of these 55 cases are still awaiting USCIS adjudication. In addition, our team and the volunteer attorneys they support submitted six asylum applications to USCIS between July 1, 2019 and May 31, 2020 on behalf of children who had been determined to be UCs and who had already turned 18 or reunited with a parent or legal guardian. As of May 31, 2020, all six of these cases are still awaiting USCIS adjudication.
6. The Plaintiffs and class members in this case lack sufficient resources to pursue litigation on an individual basis as they are from indigent backgrounds and most are just starting their lives here in the United States. Plaintiffs and class members are unaccompanied immigrant children who fled violence and persecution in their countries of origin.

Plaintiffs' counsel has no conflict of interest with the class members in this litigation.

Plaintiffs' counsel routinely represents Plaintiffs like the ones represented in this case.

7. I have been working as an immigration attorney at Public Counsel for more than 16 years. From 2003 to 2004, I served as an Arthur L. Liman Public Interest Fellow within IRP. My fellowship focused specifically on providing representation to children eligible for SIJS. In 2004, I transitioned to a staff attorney position. My work remained focused on serving immigrant youth. In 2009, I became a senior staff attorney. In this role, I have been responsible for representing children in juvenile dependency, delinquency, and probate court and federal administrative and court proceedings to obtain SIJS. I also have trained judges and attorneys about SIJS and other immigration options for youth, including asylum, as well as the intersection of immigration and juvenile justice. I have conducted these trainings across the country.
8. I was employed as a lecturer in law for the University of California Los Angeles ("UCLA") School of Law from the spring of 2008 through the spring of 2018. During this time, I co-taught the law school's Asylum Clinic. In this capacity, each spring I ran a twice-weekly seminar focused on client interviewing, cross-cultural communication, declaration and brief writing, and trial advocacy skills. I also supervised student pairs working on asylum cases at Public Counsel.
9. During my time at Public Counsel, I have litigated cases on behalf of immigrants before immigration judges, the BIA, federal district courts, the Ninth Circuit, and the California state courts. The vast majority of my clients in these cases have been immigrant children. I represented petitioners before the Ninth Circuit in the following published cases:

C.J.L.G. v. Barr, 923 F.3d 622, 627 (9th Cir. 2019) (en banc) (pro bono counsel for

indigent child in case involving immigration judge's duty to identify the child as potentially eligible for SIJS); *J. E. F.M. v. Lynch*, 837 F.3d 1026 (9th Cir. 2016) (pro bono class counsel for indigent children in case involving federal constitutional and statutory claims to right to government-appointed counsel in removal proceedings); *Garcia v. Holder*, 659 F.3d 1261 (9th Cir. 2011) (pro bono counsel for respondent in case of first impression involving the interplay between SIJS and cancellation of removal under 8 U.S.C. § 1229b). I also represented a petitioner before the California Court of Appeals in the following published case: *Leslie H. v. Superior Court*, 224 Cal. App. 4th 340 (2014) (pro bono counsel for petitioner in case of first impression regarding SIJS via juvenile delinquency proceedings). In my role as class counsel before the federal district court in *J. E. F.M.*, I participated heavily in discovery, took and defended depositions, and drafted complex motions.

10. Through these cases, I have distinctive knowledge and specialized skill in the area of immigrants' rights litigation in federal courts, class action litigation on behalf of low income clients and complex civil rights litigation as well as the intersection between immigration, civil rights, and impact litigation.
11. My colleague and proposed class counsel, Mary Tanagho Ross, received a law degree from UCLA School of Law in 2011. Upon graduation, Ms. Tanagho Ross completed a federal clerkship in the U.S. District Court, District of Nevada where she was responsible for the civil rights litigation docket of cases brought under 42 U.S.C. § 1983. Since completing this federal clerkship, Ms. Tanagho Ross has focused entirely on representing plaintiffs in state and federal court, in the immigration context, and in civil and human rights litigation, including single, multi-plaintiff, and class action litigation. Ms. Tanagho

Ross has litigated claims challenging agency action on behalf of individual plaintiffs as well as in class action litigation.

12. Ms. Tanagho Ross currently represents unaccompanied immigrant children in their appeals before the BIA and federal district courts. She also supervises pro bono attorneys in appellate litigation on behalf of unaccompanied minors. Ms. Tanagho Ross was appointed as class counsel in *J.L. v. Cuccinelli, et al.*, CV 18-4914, a class action lawsuit which challenged a government policy which resulted in denials of SIJS to children and youth in California. In that case, a federal court granted a preliminary injunction and class certification, and recently approved a class wide settlement. The litigation resulted in a successful settlement, including a rescission of the challenged policy and an agreement with regard to the adjudication of the class members' petitions for immigration relief. Ms. Tanagho Ross also represents individuals in habeas petitions before federal courts alleging due process claims, claims under the Administrative Procedure Act, and violations of federal immigration law.
13. Ms. Tanagho Ross is a member of the Bar of the State of California, and she is admitted to practice before several federal courts, including the Northern District of California, the Central District of California, and the Ninth Circuit. In addition to her role at Public Counsel, Ms. Tanagho Ross has served as an adjunct clinical professor at the University of California Irvine School of Law where she supervised law students providing pro bono representation in civil rights appeals before the Ninth Circuit Court of Appeals.
14. Prior to joining Public Counsel, Ms. Tanagho Ross was an associate at Hadsell Stormer & Renick, a leading civil rights law firm that is regularly appointed class counsel in complex class actions. She has substantial experience litigating complex cases, including

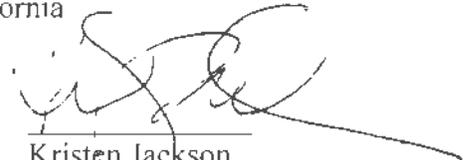
in individual actions, complex multi-plaintiff litigation and class action litigation. Ms. Tanagho Ross was counsel in *Dukes v. Walmart*, 3:01-cv-02252, a class action lawsuit alleging sexual discrimination on behalf of a proposed class of 150,000 women. In addition to the extensive written discovery in that case, Ms. Tanagho Ross defended class members in their depositions. She was also counsel in complex multi-plaintiff litigation, *Ratha et al. v. Phatthana Seafood Co., Ltd. et al.*, CV 16-42771-JFW, where plaintiffs brought claims under the Trafficking Victims Protection Act against international defendants and U.S.-based defendants for forced labor and human trafficking. This was the first case of its kind based on allegations that a defendant is liable for making a financial profit off of human trafficking, and it is currently on appeal before the Ninth Circuit. She has represented many plaintiffs in civil rights lawsuits, alleging civil rights and human rights violations in both the domestic and international context.

15. Through these cases and others, Ms. Tanagho Ross has distinctive knowledge and specialized skill in the area of immigrants' rights litigation in federal courts, class action litigation on behalf of low income clients and complex civil rights litigation as well as the intersection between immigration, civil rights, and impact litigation.
16. Together and individually, Ms. Tanagho Ross and I have distinctive knowledge and specialized skill in the area of immigration litigation in the federal courts and in the rights of immigrant children in particular, and we are adequately and fairly representing the interests of the class.

17. Neither Public Counsel nor my co-counsel in this case will receive reimbursement from the individual Plaintiffs or class members in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of June, 2020 in Joshua Tree, California

A handwritten signature in black ink, appearing to read 'K. Jackson', written over a horizontal line.

Kristen Jackson
Public Counsel
610 S. Ardmore Ave.
Los Angeles, CA 90005
kjackson@publiccounsel.org

EXHIBIT I

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND, SOUTHERN DIVISION**

J.O.P., et al.,

Plaintiffs,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY, et al.,**

Defendants.

Civil Action No.
8:19-CV-01944-GJH

**DECLARATION OF MICHELLE MENDEZ
IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS COUNSEL**

I, Michelle Mendez, hereby declare as follows:

1. I have personal knowledge of the facts in this Declaration and they are true and correct.
2. I am an attorney licensed to practice law in the State of Maryland and am admitted to practice in the District of Maryland. I am the Director of the Defending Vulnerable Populations (DVP) Program at Catholic Legal Immigration Network (CLINIC), whose main office is located at 8757 Georgia Avenue, Suite 850, Silver Spring, MD 20910. I work primarily from an office in Baltimore, Maryland, located at the University of Baltimore School of Law, 1401 N. Charles St., Baltimore, MD 21201.
3. I, along with my colleague Rebecca Scholtz at CLINIC, am co-counsel in this case and represent Plaintiffs J.O.P., M.A.L.C., M.E.R.E., K.A.R.C., and E.D.G. ("Plaintiffs") and the proposed class they seek to represent. I make this declaration in support of Plaintiffs' Motion for Class Certification and Appointment of Class Counsel to

set forth the relevant experience of Ms. Scholtz and myself, to demonstrate our adequacy to represent the class.

4. The Plaintiffs and class members in this case lack sufficient resources to pursue litigation on an individual basis as they are from indigent backgrounds and most are still seeking stability here in the United States. Plaintiffs and class members are unaccompanied immigrant children who fled violence and persecution in their countries of origin. Plaintiffs' counsel has no conflict of interest with the class members in this litigation.
5. CLINIC is the largest nationwide network of nonprofit immigration programs, with over 370 affiliates in 49 states and the District of Columbia that collectively serve hundreds of thousands of low-income immigrants each year. One of CLINIC's core activities is providing training and legal support for immigration legal services agencies. CLINIC supports practitioners, including those who represent unaccompanied child asylum seekers, through technical assistance and practice advisories, webinars, and in-person trainings. CLINIC has developed a number of resources and training materials related specifically to representation of, and litigation of cases involving, unaccompanied children.
6. CLINIC's DVP Program, which I direct, focuses on providing training, technical assistance, and support to nonprofit and pro bono practitioners representing noncitizens in immigration court, with the goal of increasing the availability of high quality, affordable representation in removal proceedings. As the DVP Program director, I work with our team to issue written resources, plan and execute in-person and web-based trainings, respond to requests for technical support on immigration issues, strategize on new projects that serve the legal needs of the immigration community, represent select cases

appearing before an immigration judge or appealing to the Board of Immigration Appeals (BIA) or the U.S. courts of appeals, and develop and present legal challenges in federal court. Through DVP's work, I have organized and led numerous court skills trainings for nonprofit and pro bono practitioners, including trainings focused specifically on representatives of unaccompanied children seeking asylum.

7. CLINIC's federal court work has historically primarily involved representation of noncitizens in petitions for review in the U.S. courts of appeals, as well as submission of briefing as amicus curiae in cases before the BIA and U.S. courts of appeals involving immigration issues of significant impact to the CLINIC network. CLINIC's BIA Pro Bono Project matches vulnerable immigrants with pro bono counsel to defend their cases before the BIA and in petitions for review in the U.S. courts of appeals. Since the project's inception in 2001, the project has found pro bono counsel for over 1,600 matters before the BIA and U.S. courts of appeals. The project's cases regularly result in significant decisions, from both the BIA and federal appellate courts. Agency precedents in which CLINIC attorneys served as counsel include *Matter of Deang*, 27 I. & N. Dec. 57 (BIA 2017), and *Matter of L-E-A-*, 27 I. & N. Dec. 581 (A.G. 2019). Federal court cases in which CLINIC attorneys mentored pro bono counsel through the BIA Pro Bono Project include *Leocal v. Ashcroft*, 543 U.S. 1 (2004); *Alphonsus v. Holder*, 705 F.3d 1031 (9th Cir. 2013); *Dutton-Myrie v. Att'y Gen. U.S.*, 855 F.3d 509 (3d Cir. 2017); *Mejia Galindo v. Sessions*, 897 F.3d 894 (7th Cir. 2018); *Keeley v. Whitaker*, 910 F.3d 878 (6th Cir. 2018); *Trujillo Diaz v. Sessions*, 880 F.3d 244 (6th Cir. 2018); *Tineo v. Att'y Gen.*, 937 F.3d 200 (3d Cir. 2019); and *Sow v. Att'y Gen.*, 949 F.3d 1312 (11th Cir. 2020).

8. In recent years, CLINIC has expanded its litigation work to include affirmative federal court litigation. Since May 2019, CLINIC has filed 18 amicus briefs, 12 cases in the federal district courts, six petitions for review in the federal appellate courts, and served as counsel of record to an asylum seeker whose case was certified directly to the Attorney General. CLINIC's recent federal court litigation has included challenges to asylum-related policies brought under the Administrative Procedure Act, mandamus actions to compel immigration agency action, judicial review of naturalization denials, and Freedom of Information Act (FOIA) litigation. CLINIC's current litigation includes the following cases: *L.M.-M. v. Cuccinelli*, Civil No. 19-2676 (RDM), 2020 WL 985376 (D.D.C. Mar. 1, 2020), appeal docketed, No. 20-5141 (D.C. Cir. May 18, 2020) (challenging policies that impinge on noncitizens' ability to seek asylum); *S.A.P. v. Barr*, Civil No. 19-3549 (RC) (D.D.C. filed Nov. 22, 2019) (challenging immigration directives significantly restricting asylum based on family membership); and *Duncan v. Kavanagh*, Civil No. CCB-19-1465, 2020 WL 619173 (D. Md. Feb. 10, 2020), appeal docketed, No. 20-6501 (4th Cir. Apr. 15, 2020) (habeas petition challenging detention on the basis of U.S. citizen claim and prolonged detention).
9. I received my law degree from University of Maryland Francis King Carey School of Law in 2008. Since graduation from law school, I have focused entirely on representation of individuals in immigration matters, including before immigration courts, the BIA, the U.S Court of Appeals for the Fourth Circuit, the U.S. District Court for District of Maryland, and the U.S. District Court for the District of Columbia.
10. Prior to joining CLINIC, I worked in the Immigration Legal Services program at Catholic Charities of Washington where I provided direct legal services and represented dozens of

children over six years. There, I managed the Legal Orientation Program for Custodians of Unaccompanied Children, a Department of Justice Executive Office for Immigration Review initiative through which I provided legal orientation presentations to the adult caregivers (custodians) of unaccompanied children in EOIR removal proceedings. I led these orientations in Washington, DC, Silver Spring, MD, and at the Baltimore Immigration Court. I also presented on issues affecting unaccompanied children to important stakeholders such as Lutheran Immigrant and Refugee Services and the Office of Refugee Resettlement personnel, at the 2015 AILA national conference, and at various conferences and trainings in the Washington, D.C. area. During the 2015 Maryland legislative session, I testified before the House Judiciary Committee and the Senate Judicial Proceedings Committee on the child immigrant experience.

11. As an adjunct professor at Catholic University Columbus School of Law teaching the Immigration Litigation Clinic from 2013 to 2016 and as a Visiting Clinical Lecturer in Law at Yale Law School teaching a seminar entitled “Asylum Advocacy in Times of Crisis” during the spring semester of 2018, I focused my lectures on the asylum process for unaccompanied children. Also, as the program director for the National Institute for Trial Advocacy (NITA) immigration programs, we have used a case file that features an unaccompanied child respondent.
12. I currently co-counsel in the following cases, noted earlier: *S.A.P. v. Barr*, No. 1:19-cv-03549 (D.D.C. filed Nov. 22, 2019) (challenging immigration directives significantly restricting asylum based on family membership); and *Duncan v. Kavanagh*, Civil No. CCB-19-1465, 2020 WL 619173 (D. Md. Feb. 10, 2020) (habeas petition challenging detention on basis of U.S. citizen claim and prolonged detention). We recently settled

CLINIC v. USCIS, No. 8:19-cv-01074 (D. Md. filed Apr. 10, 2019) (FOIA litigation on behalf of formerly separated families), a case I co-counseled.

13. My colleague and proposed class counsel, Rebecca Scholtz, is admitted to practice law in Minnesota and New York, and has been admitted *pro hac vice* in the instant matter before this Court. Ms. Scholtz is a senior attorney with CLINIC's Defending Vulnerable Populations Program.
14. Ms. Scholtz received her J.D. from Yale Law School in 2011. During law school Ms. Scholtz represented clients as a supervised student intern in federal district court litigation, including a *Bivens* and Federal Tort Claims Act action and habeas litigation. From 2011 to 2012, Ms. Scholtz completed a judicial clerkship with the Honorable Diana E. Murphy of the U.S. Court of Appeals for the Eighth Circuit.
15. Since 2012, Ms. Scholtz has focused exclusively on representation of, and building capacity among other representatives of, noncitizens in immigration matters, with a focus on children's immigration issues including those related to unaccompanied children in removal proceedings. Ms. Scholtz coordinates a working group for Minnesota practitioners who represent noncitizen children in immigration matters, including unaccompanied child asylum seekers, and has been a frequent speaker and trainer on children's immigration issues including those related to representation of unaccompanied child asylum seekers.
16. From 2012 to 2017, Ms. Scholtz worked at Mid-Minnesota Legal Aid (MMLA), first as an Arthur Liman Public Interest Fellow and then as a staff attorney. During her time at MMLA, Ms. Scholtz's direct representation cases focused on unaccompanied children in

removal proceedings, including those seeking asylum before USCIS under the Kim Memorandum.

17. From 2015 to 2017, Ms. Scholtz was an adjunct professor at the University of Minnesota Law School, with the Federal Immigration Litigation Clinic. Through that position, she supervised students on matters including representation of unaccompanied child asylum seekers before the immigration court, BIA, and U.S. Court of Appeals for the Eighth Circuit. Since 2017, Ms. Scholtz has been a Faculty Fellow at St. Thomas School of Law, where she assists the law school's immigration clinic with cases before the immigration court, BIA, and U.S. Court of Appeals for the Eighth Circuit.
18. From 2017 to the present, Ms. Scholtz has been employed at CLINIC. In her role as senior attorney, Ms. Scholtz provides training and technical assistance to immigration practitioners across the country who represent noncitizens in removal proceedings, including many who represent unaccompanied children seeking asylum and other immigration relief. In 2017, she was co-counsel in *Dilley Pro Bono Project v. ICE*, No. 1:17-cv-01055 (D.D.C. filed June 1, 2017), which brought claims under the First Amendment and the Administrative Procedure Act challenging policies for obtaining mental health evaluations at a Texas family detention center. She is also currently co-counsel in *S.A.P. v. Barr*, No. 1:19-cv-03549 (D.D.C. filed Nov. 22, 2019), noted earlier, an Administrative Procedure Act challenge to certain asylum policies.
19. Together and individually, Ms. Scholtz and I have distinctive knowledge and specialized skill in the area of immigration litigation in the federal courts and the rights of unaccompanied immigrant children in particular and will adequately and fairly represent the interests of the class.

20. CLINIC is committed to providing the resources necessary to advance the interests of Plaintiffs and members of the class, to represent them adequately, and to litigate this case to resolution.

21. Neither CLINIC nor my co-counsel in this case will receive reimbursement from the individual Plaintiffs or class members in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of June, 2020.

A handwritten signature in black ink, appearing to read "Michelle Mendez".

Michelle Mendez
CLINIC