IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

JEFFSON ST-HILAIRE, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 1:23-cv-01505-TWP-TAB
	)	
COMMISSIONER OF THE INDIANA BUREAU OF MOTOR VEHICLES, in his official capacity,	)	
	)	
Defendant.	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

INTRODUCTION

At issue in this case is the legality and constitutionality of Indiana House Enrolled Act 1050 ("H.E.A. 1050"), which was passed by the Indiana General Assembly during the 2023 legislative session and signed by the Governor on May 4th. As detailed at great length in the plaintiffs' memorandum in support of their preliminary-injunction request (Dkt. 25), this statute allows noncitizens who have been admitted to the United States on humanitarian parole and who reside in Indiana to obtain driver's licenses, learner's permits, identification cards, vehicle registrations, and certificates of title—but only if they are Ukrainian. The plaintiffs in this case are all Haitian nationals with the exact same federal status as the Ukrainians who may benefit from H.E.A. 1050, but they are

statutorily prohibited from obtaining Indiana licenses, identification cards, or similar benefits. They allege that the discrimination mandated by the statute violates Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, *et seq.*, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, and that it is preempted by federal law.

The plaintiffs are obviously not the only humanitarian parolees affected by H.E.A. 1050. To the contrary, at least hundreds of persons—from Cuba, Haiti, Nicaragua, Venezuela, and other countries other than Ukraine—have been admitted to the United States on humanitarian parole and currently live in Indiana, and would greatly benefit from the ability to drive or to present state-issued identification. The plaintiffs therefore seek certification of the following class pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure:

> All current and future Indiana residents admitted to the United States on humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5)(A) who are not citizens or nationals of Ukraine and who did not last habitually reside in Ukraine, and who are not eligible for a driver's license or identification card under section 202 of the REAL ID Act of 2005.

It is hornbook law that "civil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of cases where certification under Rule 23(b)(2) is appropriate. *Chicago Teachers Union, Local No. 1 v. Bd. of Educ. of City of Chicago*, 797 F.3d 426, 441 (7th Cir. 2015) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997)). All requirements of Rule 23 are met, and the proposed class should be certified.

STANDARD FOR CLASS CERTIFICATION

The requirements for certification of a class under the Federal Rules of Civil Procedure are clear. In order for an individual or individuals to sue on behalf of a class, four requirements must be met:

(1) The class must be so numerous that joinder of the members is impracticable;

(2) There must be questions of law or fact common to the class;

(3) The claims or defenses of the representative parties must be typical of the claims or defenses of the class; and

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

Fed. R. Civ. P. 23(a). In addition, a class must meet the requirements of Federal Rule 23(b)(1), (2), or (3). In this case, the plaintiffs seek certification pursuant to Rule 23(b)(2). This portion of the Rule is met if the defendant has acted or refused to act on grounds generally applicable to the class. Fed. R. Civ. P. 23(b)(2).

ARGUMENT

I. The class is so numerous that joinder of all members is impracticable

The first requirement for certification of a class action is that the class must be so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1). "Impracticable does not mean impossible." *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993). Thus, while Rule 23(a)(1) does not impose an absolute numerical requirement for class certification, courts must consider each case on its facts to determine the

practicability of joining all class members. *Gen. Tel. Co. of the Nw. v. EEOC*, 446 U.S. 318, 330 (1980). However, it has been held that "generally if the named plaintiff demonstrates that the potential number of plaintiffs exceeds 40, the first prong of Rule 23(a) has been met." *Hayes v. Wal-Mart Stores, Inc.*, 725 F.3d 349, 356 n.5 (3d Cir. 2013) (quoting *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir.2001)); *see also Flood v. Dominguez*, 270 F.R.D. 413, 417 (N.D. Ind. 2010) ("Generally speaking, when the putative class consists of more than 40 members, numerosity is met, but there is nothing magical about that number."). And courts may "rely on common sense assumptions or reasonable inferences in determining numerosity." *Jenkins v. Mercantile Mortg. Co.*, 231 F. Supp. 2d 737, 744 (N.D. Ill. 2002) (citation omitted).

This case is not a close call. The federal government has reported that through the end of June 2023, it approved for admission into the United States nearly 160,000 Cubans, Haitians, Nicaraguans, and Venezuelans through the special program of humanitarian parole that the plaintiffs have referenced as the "CHNV Parole Program." (Dkt. 24-6 at 1). More recent reporting indicates that upwards of 200,000 parolees had been approved for admission through August 22nd. *See* Camilo Montoya-Galvez, *U.S. has welcomed more than 500,000 migrants as part of historic expansion of legal immigration under Biden*, CBS News, July 18, 2023, *at* https://www.cbsnews.com/news/immigration-parole-migrants-us-expansion-biden (last visited Aug. 28, 2023). And this does not include class members admitted through a special program other than the CHNV Parole Program or admitted

on humanitarian parole but not through a special program.

Of course, these are nationwide figures and there may be no basis for concluding that parolees are evenly dispersed throughout the United States (although, in order for at least forty class members to exist, only 0.02% of these parolees would need to live in Indiana). But the facts demonstrate also that numerous humanitarian parolees from countries other than Ukraine reside in Indiana. The plaintiffs have submitted the affidavit of Cole Varga, the Chief Executive Officer of Exodus Refugee Immigration, Inc. ("Exodus"), a nonprofit corporation that provides various forms of assistance to noncitizens, including persons on humanitarian parole, who have relocated to Indiana in order to flee persecution, war, and other humanitarian crises. (Dkt. 24-8 at 1 [¶¶ 2-4]). Mr. Varga indicates that, as of August 23, 2023, Exodus was serving 178 clients on humanitarian parole from countries other than Ukraine, nearly 60% of whom had been paroled into the United States for a period of one year or longer. (*Id.* at 4-5 [¶¶ 13-14]). And this represents a significant undercount: not only does Exodus only serve persons in the Indianapolis and Bloomington areas, but it only offers its services to persons on humanitarian parole who actually learn of the organization, generally through a referral from a partner agency or by word of mouth. (*Id.* at 1-2 [¶¶ 3, 5-6]). None of the five named plaintiffs in this case, for instance, are included in these numbers. (*Id.* at 6 [¶ 17]). Clearly the class is sufficiently large to render the joinder of all members impracticable.

On top of this, "[t]he general rule encouraging liberal construction of civil rights

class actions applies with equal force to the numerosity requirement of Rule 23(a)(1)," *Jones v. Diamond*, 519 F.2d 1090, 1100 (5th Cir. 1975), and "the court may look to other factors [beside the sheer number of class members] when determining whether joinder is impracticable," *Gentry v. Floyd Cnty.*, 313 F.R.D. 72, 77 (S.D. Ind. 2016) (citation omitted). Here, there are three additional factors that counsel in favor of a finding of numerosity.

First, the members of the class have, by definition, left their countries of origin to avoid humanitarian crises—whether those crises are global, national, or personal—and are new to the United States. Many likely do not speak English or have significant familiarity with the American legal system. More than a few hail from countries governed by dictatorships where the judicial system cannot necessarily be relied on to dispense justice. Every single class member is doubtless expending significant energy simply acclimating themselves to their new communities, and given the political climate some likely fear reprisal should they initiate separate suits. Given all this, joinder is particularly impracticable. *See, e.g.*, *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1203 (N.D. Cal. 2017 (certifying class of at least sixteen persons in part because "[t]he class consists of a changing population of noncitizen minors in government custody"), *aff'd*, 905 F.3d 1137 (9th Cir. 2018); *Gortat v. Capala Bros.*, 949 F. Supp. 2d 374, 383-84 (E.D.N.Y. 2013) (certifying class of twenty-four persons where the class members were "immigrant laborers who speak little English"); *Morris v. Alle Processing Corp.*, 2013 WL 1880919, at *8 (E.D.N.Y. May 6, 2013) (holding class sufficiently numerous in part because it was

"largely comprised of foreign-born, non-English-speaking employees, who are unfamiliar with the American legal system and fear losing their employment"); *Ansoumana v. Gristede's Operating Corp.*, 201 F.R.D. 81, 85-86 (S.D.N.Y. 2001) (holding class sufficiently numerous insofar as class members were unlikely to initiate individual suits insofar as they feared reprisal, "especially in relation to the immigrant status of many"); *Haitian Refugee Ctr., Inc. v. Nelson*, 694 F. Supp. 864, 877 & n.25 (S.D. Fla. 1988) (finding class sufficiently numerous in part because "the putative class members are migrant workers whose economic means militate against individual suits"), *aff'd*, 872 F.2d 1555 (11th Cir. 1989), *aff'd sub nom. McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479 (1991).

Second, as this Court has observed, "the joinder of [future class members], regardless of the number, is inherently impracticable." *Lindh v. Warden*, 2014 WL 7334745, at *3 (S.D. Ind. Dec. 19, 2014) (citing *Rosario v. Cook Cnty.*, 101 F.R.D. 659, 661 (N.D. Ill. 1983)), *class decertified on other grounds*, 2015 WL 5009244 (S.D. Ind. Aug. 20, 2015). When a class contains unknown future members, "some courts have bypassed the numerical analysis altogether," *Kidd v. Mayorkas*, 343 F.R.D. 428, 437 (C.D. Cal. 2023) (citing cases), while others have held simply that the impracticability (indeed, impossibility) of joining future members is one factor to consider in the numerosity calculus, *see, e.g.*, *Pederson v. Louisiana State Univ.*, 213 F.3d 858, 868 n.11 (5th Cir. 2000). Regardless of the precise test employed, the inclusion of future members underscores that numerosity is met here.

And third, members of the class are spread throughout Indiana. The "geographic dispersion" of class members dictates in favor of certification. *See, e.g.*, *Gomez v. Ill. State Bd. of Educ.*, 117 F.R.D. 394, 399 (N.D. Ill. 1987) (citation omitted). Although this factor is most often employed when certification of a nationwide class is sought, on multiple occasions this Court has concluded that the statewide nature of a proposed class weighed in favor of certification. *See Ind. Civil Liberties Union Found., Inc. v. Superintendent*, 336 F.R.D. 165, 173 (S.D. Ind. 2020) (class of persons engaged in panhandling that "span[ned] the entire state"); *Hubler Chevrolet, Inc. v. Gen. Motors Corp.*, 193 F.R.D. 574, 577 (S.D. Ind. 2000) (class of automobile dealers located throughout Indiana). So too here.

For all of these reasons, the numerosity requirement of Federal Rule 23(a)(1) is met in this case.

II. The remaining requirements of Rule 23(a) are met here

The remaining requirements of Rule 23(a)—commonality, typicality, and adequacy—frequently overlap and are similarly met here.

A. There are questions of law or fact common to the class

In this case the named plaintiffs and the members of the putative class are all subject to the same challenged provisions of H.E.A. 1050: they are categorically ineligible to receive Indiana identification cards, learner's permits, driver's licenses, vehicle registrations, and certificates of title. The class is united by the common questions of whether this statute runs afoul of Title VI or the Fourteenth Amendment, or whether it is

preempted by federal law. Commonality is met where class members' claims "depend upon a common contention . . . of such a nature that it is capable of classwide resolution." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011); *see also, e.g.*, *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) ("Commonality is satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the putative class members."); *Hernandez v. Cnty. of Monterey*, 305 F.R.D. 132, 154 (N.D. Cal. 2015) ("Because of the nature of the plaintiffs' system-wide challenge, either each of the policies and practices is unlawful as to every [plaintiff] or it is not.") (internal quotation omitted); *cf. Orr v. Shicker*, 953 F.3d 490, 497-99 (7th Cir. 2020) (concluding that commonality was met in class action challenging prison system's failure to treat inmates' Hepatitis C).

This requirement is met here. Either Indiana is legally justified (whether through the lens of Title VI, equal protection, or preemption) in treating the members of the class differently than it treats Ukrainians also on humanitarian parole, or it is not. This action will "generate common answers" for the plaintiffs and the members of the putative class. *Wal-Mart*, 564 U.S. at 350 (emphasis omitted). That is all that commonality requires.

B. The claims of the named plaintiffs are typical of those of the class

Rule 23(a)(3) of the Federal Rules of Civil Procedure requires that the claims of the representative parties be typical of those of the class. As the Supreme Court has noted, this requirement is often intertwined with the commonality requirement:

> The commonality and typicality requirements of Rule 23(a) tend to merge. Both serve as guideposts for determining whether under the particular

> circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so inter-related that the interests of the class-members will be fairly and adequately protected in their absence.

Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 157 n.13 (1982). In order for this requirement to be met, there need not be identity of interest between the named plaintiffs and the class that they seek to represent; rather, there need only be "sufficient homogeneity of interests." *Sosna v. Iowa*, 419 U.S. 393, 403 n.13 (1975). Another view is that typicality requires that the claims of the plaintiffs "not be significantly antagonistic to the claims of the proposed class." *Eatinger v. BP Am. Prod. Co.*, 271 F.R.D. 253, 260 (D. Kan. 2010) (internal quotation omitted). The fundamental inquiry is whether all members of the class would benefit in some way from a judgment favorable to the plaintiffs. *See Meisberger v. Donahue*, 245 F.R.D. 627, 631 (S.D. Ind. 2007).

Again, the putative class meets these standards. There is a uniform statute affecting all class members: none of them are eligible to receive the same benefits that they would be if they were Ukrainian. Thus, all members of the class would benefit in some way from a judgment favorable to the plaintiffs in that all class members would be protected from this discrimination. The named plaintiffs are, therefore, typical of the class they seek to represent. *See, e.g.*, *Shepherd v. ASI, Ltd.*, 295 F.R.D. 289, 298 (S.D. Ind. 2013) (typicality met where a finding that the defendants violated the statute in question "would redound to the benefit of all class members").

C. The requirement of adequacy of representation is satisfied here

Rule 23(a)(4) of the Federal Rules of Civil Procedure requires that the class representatives' interests be such that they can and will vigorously pursue the class's interests as well as their own. *See, e.g.*, *Hohman v. Packard Instrument Co.*, 399 F.2d 711 (7th Cir. 1968). The relief that the plaintiffs seek "is not inconsistent in any way with the interests of the members of the class." *Jones v. Blinziner*, 536 F. Supp. 1181, 1190 (N.D. Ind. 1982). Much to the contrary, they seek an injunction that will inure to the benefit of all class members. Likewise, they clearly have a substantial stake in these proceedings that will "insure diligent and thorough prosecution of the litigation." *Rodriguez v. Swank*, 318 F. Supp. 289, 294 (N.D. Ill. 1970), *aff'd*, 496 F.2d 1110 (7th Cir. 1974).

The named plaintiffs are adequate class representatives, and their counsel are adequate class counsel.[1]

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[1] Undersigned counsel should therefore be appointed class counsel pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

This Court is, of course, familiar with counsel employed by the ACLU of Indiana. A brief review of Westlaw reveals numerous similar cases in which these attorneys have been appointed to represent a class pursuant to Rule 23(g). *See Copeland v. Wabash Cnty.*, 338 F.R.D. 595, 605 (N.D. Ind. 2021); *Hines v. Sheriff of White Cnty.*, 2021 WL 651351, at *3 (N.D. Ind. Feb. 19, 2021); *Indiana Civil Liberties Union Found. v. Superintendent*, 336 F.R.D. 165, 177 (S.D. Ind. 2020); *Gutierrez v. City of East Chicago*, 2016 WL 5816804, at *1 (N.D. Ind. Oct. 5, 2016); *Olson v. Brown*, 284 F.R.D. 398, 413 (N.D. Ind. 2012); *A.M.T. v. Gargano*, 2010 WL 4860119, at *7 (S.D. Ind. Nov. 22, 2010); *Indiana Protection & Advocacy Servs. Comm'n v. Commissioner*, 2010 WL 1737821, at *2 (S.D. Ind. Apr. 27, 2010); *Schepers v. Commissioner*, 2010 WL 761225, at *3 (S.D. Ind. Mar. 3, 2010); *Meisberger v. Donahue*, 245 F.R.D. 627, 632 (S.D. Ind. 2007). And counsel can certainly represent that the cases available on Westlaw represent only a small sampling of the cases in which he has served as class counsel.

The attorneys employed by the National Immigration Law Center, who have been admitted *pro hac vice*, likewise possess substantial experience litigating immigration-related matters,

III. The further requirements of Rule 23(b)(2) are also met in this case

The final requirement for certification of the class is stated in Rule 23(b)(2) of the Federal Rules of Civil Procedure. In order to meet the requirement of Rule 23(b)(2), the party who opposes the class must have "acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the class as a whole."

This is not a difficult standard to meet in a case such as this one, where the plaintiffs challenge the legality and constitutionality of a duly enacted statute of general applicability. After all, "Rule 23(b)(2) was drafted specifically to facilitate relief in civil rights suits. Most class actions in the constitutional and civil rights areas seek primarily declaratory and injunctive relief on behalf of the class and therefore readily satisfy Rule 23(b)(2) class action criteria." *Tyson v. Grant Cnty. Sheriff*, No. 1:07-cv-0010, 2007 WL 1395563, *5 (N.D. Ind. May 9, 2007) (quoting A. Conte & H. Newberg, 8 Newberg on Class Actions, § 25.20 (4th ed. 2002)). Consequently, "[t]he requirements of the rule are . . . given a liberal construction in civil rights suits." *John Does 1-100 v. Boyd*, 613 F. Supp. 1514, 1528 (D. Minn. 1985) (citing *Coley v. Clinton*, 635 F.2d 1364, 1379 (8th Cir. 1980)).

In this case, the discrimination mandated by H.E.A. 1050 has detrimentally

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frequently in actions brought pursuant to 42 U.S.C. § 1983 or other civil rights statutes. *See, e.g.*, *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571 (2017); *Arizona Dream Act Coalition v. Brewer*, 855 F.3d 957 (9th Cir. 2017); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006 (9th Cir. 2013); *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, 691 F.3d 1250 (11th Cir. 2012); *Hispanic Interest Coalition of Alabama v. Governor of Alabama*, 691 F.3d 1236 (11th Cir. 2012).

affected and will continue to detrimentally affect the named plaintiffs as well as the members of the putative class. Indiana's refusal to provide a driver's license, identification card, or related benefits to the plaintiffs has absolutely nothing to do with their individual factual circumstances; it has everything to do with their membership in the class they seek to represent. Indiana has therefore acted or refused to act on grounds generally applicable to the class and the requirements of Rule 23(b)(2) are met.

CONCLUSION

This case is quintessentially appropriate for class-action treatment. The plaintiffs' request for class certification should be granted and the class should be certified pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, with the named plaintiffs to serve as class representatives and undersigned counsel to be appointed as class counsel.

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