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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, JANE DOE, on behalf of herself and others similarly situated,

Plaintiffs,

v.

DON WRIGHT, Acting Secretary of Health and Human Services, *et al.*,

Defendants,

v.

U.S. CONFERENCE OF CATHOLIC BISHOPS,

Case No. 3:16-cv-03539-LB

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

Date: October 5, 2017
Location: Courtroom C

Honorable Judge Laurel Beeler

Defendant-Intervenors.

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NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on October 5, 2017, or as soon thereafter as the matter can be heard, before the Honorable Laurel Beeler at the San Francisco Courthouse, Courtroom C, 450 Golden Gate Avenue, 17th Floor, San Francisco, California, 94102, Plaintiffs American Civil Liberties Union of Northern California and Jane Doe, on behalf of herself and others similarly situated (collectively, "Plaintiffs"), will and hereby do move for an order certifying the following proposed class or, in the alternative, provisionally certifying the class for purposes of the preliminary injunction sought by Plaintiffs: All pregnant unaccompanied immigrant minors who are or will be in the legal custody of the federal government. Plaintiff Jane Doe further moves that she should be appointed named plaintiff of the class and undersigned counsel be appointed class counsel.

These motions are based on this Notice of Motion; the accompanying Memorandum of Points and Authorities and materials cited therein; the Declarations of Jane Doe and Brigitte Amiri; the pleadings and evidence on file in this matter; oral argument of counsel; and such other materials and argument as may be presented in connection with the hearing on the motions.

Respectfully submitted,

Dated: October 5, 2017

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

s/Brigitte Amiri

Attorneys for Plaintiffs

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STATEMENT OF ISSUES TO BE DECIDED – LOCAL RULE 7-4(a)(3)

1. Whether the proposed class should be certified or provisionally certified, the Plaintiff appointed as class representative, and the Plaintiffs' counsel appointed as class counsel;

2. Whether the proposed class is so numerous that joinder of all members is impracticable;

3. Whether there are questions of law and fact common to the class;

4. Whether the claims and defenses of the Plaintiff are typical of the claims of the class;

5. Whether the Plaintiff will fairly and adequately protect the interests of the class;

6. Whether certification of the proposed class under Fed. R. Civ. P. 23(b)(2) is appropriate in that Defendants have acted or refused to act on grounds that apply generally to the class, so that the final injunctive relief or corresponding declaratory relief is appropriate to the class as a whole;

7. Whether proposed class counsel should be appointed; and

8. Whether proposed class counsel will fairly and adequately represent the interests of the class, based on consideration of the work performed to date by counsel, counsel's experience in handling class actions and other complex litigation, counsel's knowledge of the applicable law, and the resources counsel will commit to representing the class.

MEMORANDUM OF POINTS AND AUTHORITIES

SUMMARY OF ARGUMENT AND CLASS DEFINITION

Plaintiff Jane Doe brings this action on behalf of herself and others similarly situated to compel Defendants – the Office of Refugee Resettlement (ORR) and the Department of Health and Human Services, by and through their employees ("Defendants") to prevent Defendants for obstructing, hindering, blocking or otherwise interfering with unaccompanied minors' access to abortion. Plaintiffs respectfully move this Court to certify a class[1] so that Plaintiff Jane Doe and others similarly situated may be allowed to exercise their constitutional rights and receive the pregnancy-related care they need without unconstitutional obstructions, interference or barriers. Specifically, Plaintiffs seek to certify a class of all pregnant UCs who are or will be in the legal custody of the federal government ("Proposed Class").

The Proposed Class satisfies the requirements of Fed. R. Civ. P. 23(a) because a class of all pregnant unaccompanied minors who are or will be in the legal custody of the federal government is a class that is so numerous that joinder is impracticable. The actions of Defendants have led to the denial of pregnancy related care to UCs thus raising common questions of fact and law. Jane Doe's constitutional claims are typical of those claims held by members of the proposed class and Ms. Doe, as well as her attorneys in this case, will adequately and fairly represent the interests of the class. Finally, the proposed class satisfies the requirements of Rule 23(b)(2) because the Defendants are acting in a manner generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

[1] All references to Plaintiffs' "motion to certify a class" throughout this brief and in any accompanying materials filed in connection with this brief include Plaintiffs' request, in the alternative, that the Court provisionally certify the Proposed Class for purposes of preliminary injunctive relief should the Court believe that provisional class certification is more appropriate at this stage. Ninth Circuit "courts routinely grant provisional class certification for purposes of entering [preliminary] injunctive relief" where the plaintiff establishes that the four prerequisites in Rule 23(a) are also met. *Carrillo v. Schneider Logistics, Inc.*, No. 11-8557, 2012 WL 556309, at *9 (C.D. Cal. Jan. 31, 2012) (citing *Barahona-Gomez v. Reno*, 167 F.3d 1228, 1233 (9th Cir. 1999)); *see also Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036 (9th Cir. 2012) (finding district court did not abuse its discretion by provisionally certifying class for purpose of entering preliminary injunction).

BACKGROUND

Plaintiffs incorporate by reference the facts submitted in support of their simultaneously filed Motion for a TRO/Preliminary Injunction.

ARGUMENT

I. THE COURT SHOULD CERTIFY THE PROPOSED CLASS AND ENJOIN DEFENDANTS' UNLAWFUL POLICIES AND PRACTICES AS TO ALL CLASS MEMBERS.

Federal Rule of Civil Procedure 23 governs class actions in federal court, and a plaintiff whose suit meets that Rule's requirements has a "categorical" right "to pursue his claim as a class action." *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). The "suit must satisfy the criteria set forth in subdivision (a) (*i.e.*, numerosity, commonality, typicality, and adequacy of representation), and it also must fit into one of the three categories described in subdivision (b)." *Id.* (citing Fed. R. Civ. P. 23(b)). As set forth below, all four of the Rule 23(a) requirements are satisfied here, and the action also satisfies Rule 23(b) because "final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

II. THIS ACTION SATISIFES THE CLASS CERTIFICATION REQUIREMENTS OF FED. R. CIV. P. 23(a).

A. The Proposed Class Members Are So Numerous That Joinder Is Impracticable.

Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "[I]mpracticability does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class." *Harris v. Palm Springs Alpine Est., Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964) (citation omitted). "There is no magic number" for determining when the numerosity requirement has been satisfied, and "[c]ourts have certified classes with as few as thirteen members." *Hum v. Dericks*, 162 F.R.D. 628, 634 (D. Haw. 1995). Where, as here, a plaintiff "seek[s] only injunctive and declaratory relief, the numerosity requirement is relaxed

and [the] plaintiff[] may rely on [] reasonable inference[s] . . . that the number of unknown and future members . . . is sufficient to make joinder impracticable." *Civ. Rights Educ. & Enf't Ctr. v. Hosp. Properties. Tr.*, 317 F.R.D. 91, 100 (N.D. Cal. 2016) (internal quotation marks omitted) (citing *Sueoka v. United States*, 101 Fed. Appx. 649, 653 (9th Cir. 2004)).

The Proposed Class is sufficiently numerous. Plaintiffs seek relief on behalf of all pregnant UCs who are or will be in the legal custody of the federal government. All pregnant UCs are affected by Defendants' revised policy that grants ORR a veto power over a minor's abortion decision, erects numerous hurdles to a minor's ability to obtain unbiased counseling about pregnancy options and prompt pregnancy dating, regardless of whether they will ultimately decide to terminate or carry to term their pregnancy, and imposes significant hurdles for minors who decide to have an abortion. Government documents suggest there are many hundreds of pregnant UCs in federal government custody each year. According to documents received through discovery, between August 2015 and March 2017, there were over a thousand UCs in ORR custody who were pregnant. Ex. 1, Decl. of Brigitte Amiri in Supp. of Pls.' Mot. for Class Certification ("Amiri Dec.") ¶ 5, Ex. C. On March 6, 2017 alone, there were 38 pregnant young people in 18 programs across ORR's national network of shelter facilities. *Id.* ¶ 6, Ex. D.

Joinder is also inherently impractical because of the unnamed, unknown future class members who will be pregnant while in the legal custody and care of ORR. *Ali v. Ashcroft*, 213 F.R.D. 390, 408-09 (W.D. Wash. 2003), *aff'd,* 346 F.3d 873, 886 (9th Cir. 2003), *vacated on other grounds*, 421 F.3d 795 (9th Cir. 2005) ("where the class includes unnamed, unknown future members, joinder of such unknown individuals is impracticable and the numerosity requirement is therefore met, regardless of class size"). While this precise number is unknowable, "general knowledge and common sense indicate that it is large." *Von Colln v. Cnty. of Ventura*, 189 F.R.D. 583, 590 (C.D. Cal. 1999). In 2014, there were approximately 726 pregnant UCs in ORR custody; in

2015, there were 450; and in 2016, 682. Amiri Dec. ¶ 4, Ex. B; ¶ 5, Ex. C. The Court can reasonably assume that this number will continue to be substantial. Moreover, both the inherently temporal nature of pregnancy and transitory nature of the UC population adds to the impracticability of joining future class members. *See J.D. v. Nagin*, 255 F.R.D. 406, 414 (E.D. La. 2009) ("The mere fact that the population of the [juvenile detention facility] is constantly revolving during the pendency of litigation renders any joinder impractical.").

Additional factors commonly considered by courts when evaluating numerosity compel the conclusion that class treatment is appropriate. These factors include: "(1) the judicial economy that will arise from avoiding multiple actions; (2) the geographic dispersion of members of the proposed class; (3) the financial resources of those members; (4) the ability of the members to file individual suits; and (5) requests for prospective relief that may have an effect on future class members." *McCluskey v. Trustees of Red Dot Corp. Emp. Stock Ownership Plan & Tr.*, 268 F.R.D. 670, 674 (W.D. Wash. 2010) (citation omitted). While each of these factors weighs sharply in favor of class certification, factors (2), (3), and (4) are particularly pertinent here. Proposed Class members are scattered across the entire nation. Plaintiffs seek relief on behalf of a Proposed Class of pregnant young people who, being completely new to this country and entirely dependent upon the federal government and its network of grantees, largely lack the knowledge, skills and resources needed to understand—let alone assert—their statutory and constitutional rights on their own. *Leyva v. Buley*, 125 F.R.D. 512, 515 (E.D. Wash. 1989) (certifying class of migrant workers and citing class members' lack of sophistication, limited knowledge of the legal system, limited or non-existent English skills, and fear of retaliation). Moreover, ORR's willingness to transfer UCs to different sites complicates Proposed Class members' ability to identify and secure legal representation and obstructs their ability to understand their legal rights and proceed individually. As a result, any doubt as to whether Rule 23(a)(1) is met should be resolved in favor of class treatment. *See Rodriguez v.*

Hayes, 591 F.3d 1105, 1123 (9th Cir. 2010) (finding numerosity satisfied, in part, because of "the severe practical concerns that would likely attend [prospective immigrant class members] were they forced to proceed alone").

B. The Class Presents Common Questions of Law and Fact.

Rule 23(a)(2) requires the existence of "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "[N]ot every question of law or fact must be common to the class; 'all that Rule 23(a)(2) requires is a single *significant* question of law or fact.'" *Rodriguez v. Nike Retail Servs., Inc.*, No. 14-1508, 2016 WL 8729923, at *8-9 (N.D. Cal. Aug. 19, 2016) (quoting *Abdullah v. U.S. Sec. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013)); *see also Hayes*, 591 F.3d at 1122 ("[T]he commonality requirements asks [sic] us to look only for some shared legal issue or a common core of facts."). At bottom, "[c]ommonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011). "What matters . . . [is] . . . the capacity of a class wide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Id.* (internal citation and quotation marks omitted).

The standard is even more liberal in a civil rights suit seeking injunctive and declaratory relief, like this one, which "challenges a system-wide practice or policy that affects all of the putative class members." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *overruled on other grounds by Johnson v. Cal.*, 543 U.S. 499, 504-05 (2005). Such suits "by their very nature often present common questions satisfying Rule 23(a)(2)." 7A Wright, Miller & Kane, Federal Practice & Procedure § 1763 (3d ed. 2005).

Class members here suffer the same injury as a result of Defendants' new policies – the deprivation of their legally protected right to aspects of pregnancy-related care, including abortion, without interference by Defendants. The claims brought by Plaintiff Jane Doe on behalf of the Proposed Class raise a common questions of both law and fact, including:

- Whether ORR has recently adopted revised policies and practices blatantly designed to interfere, obstruct or prevent pregnant UCs from accessing certain pregnancy-related care, including preventing access to the abortion itself, preventing access to unbiased counseling, preventing access to certain medical examinations, forcing minors to obtain "counseling from anti-abortion crisis pregnancy centers, and which forces them to discuss their most intimate decisions.
- Whether ORR can constitutionally force UCs to tell their parents or sponsors, or tell parents and sponsors themselves, about the minors' pregnancy and/or abortion decision, against the minors' express wishes—even where they have sought and/or obtained a judicial bypass to ensure that their parents and/or sponsors do not learn of their decision.

Any one of these common issues, standing alone, is enough to satisfy Rule 23(a)(2)'s permissive standard. *Abdullah*, 731 F.3d at 957; *Perez-Olano v. Gonzalez*, 248 F.R.D. 248, 257 (C.D. Cal. 2008) ("Courts have found that a single common issue of law or fact is sufficient.") (citation omitted); *see also Sweet v. Pfizer*, 232 F.R.D. 360, 367 (C.D. Cal. 2005) ("there must only be one single issue common to the proposed class") (quotation and citation omitted).

C. The Claims of the Named Plaintiff Are Typical of the Claims of the Members of the Proposed Class.

Rule 23(a)(3) requires that the claims or defenses of the class representatives be typical of the claims or defenses of the class members. "The test of typicality is 'whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.'" *Parsons v. Ryan*, 754 F.3d 657, 685 (9th Cir. 2014) (citation omitted). Typicality is satisfied "when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability." *Rodriguez*, 591 F.3d at 1124 (quoting *Armstrong*, 275 F.3d at 868). "Under the rule's permissive standards, representative claims are

'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1020 (9th Cir. 1998).

Here, Plaintiff Jane Doe's legal claims are typical of the Proposed Class. Like other members of the Proposed Class, Ms. Doe's right to access comprehensive and unbiased pregnancy care in a timely fashion is at stake. She, like other members of the Proposed Class, is pregnant and needs prompt medical care that includes full, prompt, and unbiased options counseling. Ms. Doe, like other proposed class members who have decided to have an abortion or are considering abortion, or want to learn about the option of abortion from a neutral health care provider, suffer the same injury of constitutional deprivation of rights and harmful delay in accessing medical care as a result of the government's revised policy. Additionally, Ms. Doe, like other proposed class members, have privacy concerns that are at stake. For example, the Defendants informed Ms. Doe's mother of her pregnancy despite Ms. Doe's express decision to not inform her mother and despite a court order granting Ms. Doe a judicial bypass. She, like other Proposed Class members, is subject to an unconstitutional veto power over her decision, was denied prompt unbiased options counseling, has been forced to divulge extremely intimate personal information against her will to her to anti-abortion crisis pregnancy center staff, is subject to enormous practical barriers to accessing the care she needs, and she may even be forced to carry her pregnancy to term against her will. Ms. Doe, like the members of the proposed class, has suffered violations of her rights to privacy and free speech as a result of Defendants' policies, and the relief Ms. Doe seeks is relief that could remedy each class members' injury. Ms. Doe and the proposed class are united in their interest and injury, and raise common legal claims. Thus, the typicality requirement is easily met.

D. The Named Plaintiff Will Adequately Protect the Interests of the Proposed Class and Counsel are Qualified to Litigate this Action.

1. Named Plaintiff

The named Plaintiff will fairly and adequately protect the interests of the Proposed Class

because she seeks relief on behalf of the class as a whole and has no interest antagonistic to other members of the class. Their mutual goal is to seek a declaration that Defendants' challenged policies and practices of denying unaccompanied minors access to pregnancy-related care (including full options counseling and termination) and erecting substantial, common barriers to abortion access are unconstitutional, and to enjoin further constitutional violations. The interest of the class representative is not antagonistic to those of the Proposed Class members, but in fact coincides perfectly with them. *See* Declaration of Jane Doe (attached).

2. Counsel

Plaintiff's counsel is also adequate for the purposes of Rule 23. Rule 23(a)(4) requires that the "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy inquiry asks: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020. Both requirements are plainly satisfied here. There are no conflicts of interest between Proposed Class members or counsel. Moreover, the interests of the Proposed Class have been vigorously represented throughout this litigation and, in fact, in bringing this motion for class certification and the accompanying Second Amended Complaint and motion for temporary restraining order/preliminary injunction, counsel has again proved the sincerity of both counsel and the Proposed Class members in prosecuting this action to protect the constitutional rights of unaccompanied minors. Plaintiffs are represented by counsel from the American Civil Liberties Union ("ACLU") Foundation, the ACLU Foundation of Northern California, and the ACLU Foundation of Southern California. These organizations and the individual attorneys on this case have expertise in class actions and constitutional impact litigation. They have participated in numerous cases in federal court defending reproductive freedom and challenging policies and practices within the federal immigration system. There can be no doubt that Plaintiffs' counsel are competent and will adequately represent the class with zeal.

III. THIS ACTION SATISFIES THE REQUIREMENT OF RULE 23(b)(2) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

In addition to satisfying the four requirements of Rule 23(a), Plaintiffs also must meet one of the requirements of Rule 23(b) for a class action to be certified. This action plainly meets the Rule 23(b)(2) requirement that "the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1195 (9th Cir. 2001) (finding certification under Rule 23(b)(2) appropriate "where the primary relief sought is declaratory or injunctive."). "Rule [23](b)(2) was adopted in order to permit the prosecution of civil rights actions." *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998).

Certification of a class under Rule 23(b)(2) does not require every single class member to have been injured or aggrieved in the same way by a defendant's conduct. Rather, a class may properly be certified under Rule 23(b)(2) if the opposing party's "[a]ction or inaction is directed to a class … even if it has taken effect or is threatened only as to one or a few members of the class, provided it is based on grounds which have general application to the class." Fed. R. Civ. P. 23(b)(2) Advisory Committee's Note (1966). Thus, it is sufficient if the defendant has adopted or engaged in a pattern of activity that is central to the claims of all class members irrespective of their individual circumstances and the disparate effects of the conduct. *Baby Neal for & by Kanter v. Casey*, 43 F.3d 48, 57 (3d Cir. 1994).

Civil rights class actions such as this one are the paradigmatic Rule 23(b)(2) suits, "for they seek classwide structural relief that would clearly redound equally to the benefit of each class member." *Marcera v. Chinlund*, 595 F.2d 1231, 1240 (2d Cir. 1979), *vacated on other grounds sub nom., Lombard v. Marcera*, 442 U.S. 915 (1979); *see also Johnson v. Gen. Motors Corp.*, 598 F.2d 432, 435 (5th Cir. 1979); *Elliot v. Weinberger*, 564 F.2d 1219, 1229 (9th Cir. 1977) (action to enjoin allegedly unconstitutional government conduct is "the classic type of action envisioned by the drafters of Rule 23 to be brought under subdivision (b)(2)"), *aff'd in pertinent part sub nom. Califano v. Yamasaki*, 442 U.S. 682, 701 (1979).

A. Defendants Have Acted or Refused to Act on Grounds That Apply Generally to the Class.

Certification of the proposed class under Rule 23(b)(2) is appropriate in this case because the Defendants' policy and practices impact all pregnant proposed class members. Discovery has shown that Defendants have adopted a policy that restricts or delays pregnant immigrant minor's access to fully informed and unbiased options counseling, grants Defendants a veto power over the minors' decisions about abortion, and erects substantial barrier to access to abortion. *See* Pls.' Mot. for TRO/Preliminary Injunction (filed Oct. 5, 2017).

Injunctive relief is precisely what is necessary to remedy Defendants' unlawful practices. The class requests uniform relief in the form of an injunction prohibiting Defendants from denying unaccompanied minors access to constitutionally protected reproductive health care services. Because a single injunction would afford this relief to all members of the Proposed Class, certification under Rule 23(b)(2) is appropriate. *See Parsons*, 754 F.3d at 689 (finding declaratory and injunctive relief proper as to class where "every [member] … is allegedly suffering the same (or at least a similar) injury and that injury can be alleviated for every class member by uniform changes in … policy and practice"). The fact that Defendants' unlawful practices rest "on grounds generally applicable to the class" renders injunctive relief "appropriate … with respect to the class as a whole." *Zinser*, 253 F.3d at 1195.

B. Judicial Economy and the Transitory Nature of the Class Support Class Certification.

Further, certification of a class is appropriate because the injunctive and declaratory relief it seeks is necessary to avoid mootness and facilitate enforcement of judgments. *See* WILLIAM B. RUBENSTEIN, 1 NEWBERG ON CLASS ACTIONS § 2:13 (5th Ed. 2013); *see also Wade v. Kirkland*, 118 F.3d 667, 670 (9th Cir. 1997) (if a claim is "inherently transitory," the action qualifies for an exception to any mootness arguments because "there is a constantly changing putative class that will become subject to these allegedly unconstitutional conditions"). Absent certification of the proposed class, there would be no named Plaintiff remaining throughout the course of the litigation with standing to enforce any judgment entered by the Court. Moreover, other unaccompanied minors who meet the class definition or who may do so in the future are certainly entitled to the same rights under federal law. Class-wide final injunctive and declaratory relief is therefore appropriate to avoid

mootness and to facilitate enforcement of any judgment this Court may enter. *See Lynch v. Rank*, 604 F.Supp. 30, 38-39 (N.D. Cal. 1984) (certifying a nationwide class so that other public interest groups will not "be forced to throw their efforts and resources into relitigating the issue"); *see also Roe v. Wade*, 410 U.S. 113, 125 (1973) (recognizing the short temporal nature of pregnancy naturally causes mootness problems and is a quintessential situation capable of repetition but evading review).

Judicial economy also favors certification. Indeed, even assuming *arguendo* that all of the putative class members could either be joined to this action or litigate each of their cases as individuals, doing so would constitute a tremendous waste of judicial resources. *Matyasovszky v. Hous. Auth. of the City of Bridgeport*, 226 F.R.D. 35, 40 (D. Conn. 2005) ("when making a determination of joinder impracticability, relevant considerations include judicial economy arising from the avoidance of a multiplicity of actions, geographic dispersions of class members, financial resources of class members, the ability of claimants to institute individual suits, and requests for prospective injunctive relief which would involve future class members") (citing *Robidoux v. Celani*, 987 F.2d 931 (2d Cir. 1993)); *see also McCluskey v. Trs. of Red Dot Corp. Employee Stock Ownership Plan & Trust*, 268 F.R.D. 670, 674-76 (W.D Wash. 2010) (considering judicial economy; the class members' geographic dispersion; their financial resources; the ability of the members to file individual suits; and requests for prospective relief that may have an effect on future class members).

Accordingly, all the requirements of Rule 23 are met, and the Court should therefore certify the Proposed Class so that all similarly situated unaccompanied minors may benefit from the injunctive relief sought.

CONCLUSION

Plaintiffs respectfully request that the Court grant this motion and enter the attached order defining the class as set forth above so that Plaintiff Jane Doe and others similarly situated may receive constitutionally protected access to pregnancy care services.

Respectfully submitted.

Dated: October 5, 2017

AMERICAN CIVIL LIBERTIES UNION FOUNDATION

*s/*Brigitte Amiri

Attorneys for Plaintiffs