United States Court of Federal Claims

Esther Jenke, et al.

No. 24-2005-SSS

v.

United States of America

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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INTRODUCTION

Plaintiffs respectfully submit this Memorandum of Law in support of Plaintiffs' Motion to Certify a Class Action pursuant to Rule 23 of the Rules of the United States Court of Federal Claims ("RCFC"). Plaintiffs challenge the legality of the $2,350 fee imposed by the U.S. Department of State for processing voluntary renunciations of U.S. citizenship under 8 U.S.C. § 1481(a)(5), alleging, *inter alia*, that it violates the Independent Offices Appropriation Act ("IOAA"), 31 U.S.C. § 9701 in that the fee constitutes an illegal exaction. Plaintiffs seek certification of a class defined as all individuals who paid this fee since October 4, 2017,[1] seeking a refund of that part of the fee deemed excessive under the IOAA. *See* Amended Complaint, ECF 35 ("ECF 35"), ¶42. As detailed below, the proposed class satisfies all requirements of RCFC 23(a) and both RCFC 23(b)(2) and (b)(3).

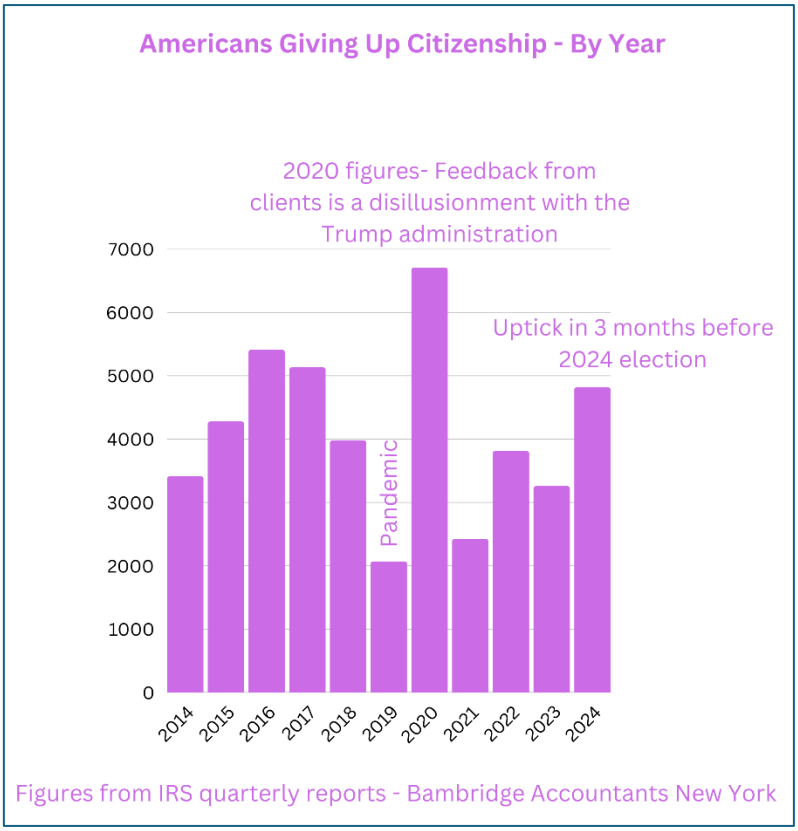
[1] The filing of the original complaint in the United States District Court for the District of Columbia, which included class action allegations and a request to certify the action as a class action [*see* ECF 35, ¶¶41-45, Prayer for Relief, ¶¶(a)-(b)] tolled the statute of limitations for the potential class members' claims under 28 U.S.C. § 2501. *See Geneva Rock Products, Inc. v. United States*, 100 Fed. Cl. 778, 783-787 (2011) (holding that the statute of limitations is tolled for the duration of the opt-in period when a complaint containing class action allegations is filed before the expiration of the limitations period, even if the motion for class certification is filed later); *Toscano v. United States*, 98 Fed. Cl. 152, 155 (2011) (same). Pursuant to 28 U.S.C. § 1631, the transfer of this case to the Court of Federal Claims on November 26, 2024, preserves the original filing date in the district court for statute of limitations purposes. Thus, the claims of potential class members who paid the fee on or after October 4, 2017, remain timely as of the original filing date, and the tolling will continue during the opt-in period established by this Court.

BACKGROUND

A. Factual background

Since 2014, the U.S. Department of State has charged a fee of $2,350 for individuals seeking to voluntarily renounce their U.S. citizenship under 8 U.S.C. § 1481(a)(5), a process formalized by taking an oath before a consular official. This fee, referred to as the Renunciation Fee, marks a dramatic increase from the $450 fee introduced in 2010, which itself was the first time a charge was imposed for this service in U.S. history. For the 230 years prior to 2010 and for 55 years since the enaction of the IOAA, renunciation was free.

The number of Americans renouncing their citizenship has surged since at least 2013. *See* Jacob Gershman, Americans Renouncing Citizenship at Record Pace, THE WALL STREET JOURNAL (May 1, 2014) [available here]; Alaa Elassar, *A record number of people are giving up their US citizenship, according to new research. Here's why*, CNN (August 10, 2020) [available here] ("More than 5,800 Americans gave up their citizenship in the first six months of 2020 compared to the 2,072 Americans who renounced their citizenship in all of 2019"); Robert W. Wood, *Renouncing American Citizenship Hits All-Time Record*, FORBES (February 7, 2021, updated April 14, 2022) [available here] ("[...] the names for the fourth quarter 2020 made the annual total 6,707, a 237% increase from 2019."); Marcy Nicholson, *Trump bump: U.S. citizenship renunciation inquiries surge in Canada, lawyers say*, CBC NEWS (Jan 28, 2025) [available here]; Alistair Bambridge, *Surge in Americans Giving Up Citizenship, Reports Bambridge Accountants New York*, ACCESS NEWSWIRE (March 7, 2025) [available here]. The following chart visualizes this undisputed trend:



The right to renounce U.S. citizenship is a cornerstone of American legal tradition, affirmed by statutes like the Expatriation Act of 1868, which declared expatriation a "natural and inherent right of all people."[2] Historically, this right was exercised without cost, reflecting its status as an essential liberty tied to the pursuit of happiness and personal autonomy. As discussed below, in 2010, the Department of State, invoking the IOAA, introduced a $450 fee, citing the administrative burden of services provided under 8 U.S.C. § 1481(a)(5). This fee

[2] Act Concerning the Rights of American Citizens in Foreign States, ch. 249, 15 Stat. 223 (1868), codified as a Note to 8 U.S.C. § 1481 (the "Expatriation Act").For an in-depth discussion regarding the fundamental nature of the right to expatriate and supporting cases and authorities, we respectfully refer the Court to the *Memorandum of Points and Authorities in Opposition to Defendants' Motion for Partial Dismissal and Summary Judgment and in Support of Plaintiffs' Cross-Motion for Partial Summary Judgment,* Case 1:20-cv-03573-TSC (D.D.C.), filed on June 17, 2021 [available here].

was raised to $2,350 in 2014. Plaintiffs contend that this increase—over 500%—is disproportionate to the actual cost of the service, rendering it inconsistent with the IOAA's requirement that fees be fair and cost-based.

Named Plaintiffs—Esther Jenke, Nina Nelson, and Arianna Poli—are former U.S. citizens who paid the $2,350 Renunciation Fee. Each Plaintiff renounced their citizenship at a U.S. mission abroad after paying the fee and completing the required oath. Esther Jenke, a German citizen, renounced in 2018; Nina Nelson, a French citizen, in 2022; and Arianna Poli, a French citizen residing in Singapore, also renounced in 2022. *See* ECF 35, ¶¶13-15; see also the Declarations of Esther Jenke ("Jenke Decl."), Nina Nelson ("Nelson Decl.") and Arianna Poli ("Poli Decl."), attached as Exhibits to this Memorandum.

The proposed class encompasses all individuals who paid the $2,350 fee on or after October 4, 2017, a group estimated to number in the tens of thousands.

B. Statutory background

Under 8 U.S.C. § 1481(a)(5), U.S. citizens have the right to renounce their citizenship by making a formal renunciation before a U.S. diplomatic or consular officer abroad,[3] a right historically exercised free of charge for most of American

[3] 8 U.S.C. § 1481(a)(5) provides as follows:

> A person who is a national of the United States whether by birth or naturalization, shall lose his nationality by voluntarily performing any of the following acts with the intention of relinquishing United States nationality […] making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State.

history. As mentioned, in 2010, the Department of State, invoking the Independent Offices Appropriations Act—which authorizes agencies to charge fees for services or things of value—introduced a fee of $450 for renunciation services, following a Notice of Proposed Rulemaking. 75 FED. REG. 6321 (Feb. 9, 2010) [available here]. This rule, finalized in 2012, marked the first time such a fee was imposed. On August 28, 2014, the government issued an interim final rule increasing the fee to $2,350, effective September 6, 2014, and finalized on August 25, 2015, 79 FED. REG. 51247, 80 FED. REG. 51464 (respectively) [available here and here, respectively].

C. AAA v. DOS

This $2,350 Renunciation Fee faced legal scrutiny in 2020 when *L'Association des Américains Accidentels et al. v. United States Department of State et al.* ("*AAA v. DOS*"), Case No. 1:20-cv-03573 (D.D.C.), was filed, challenging its constitutionality and legality under the Fifth Amendment, the IOAA, and other grounds. On January 6, 2023, just before oral argument which was scheduled for January 9, 2023, the government filed a notice, announcing its intent to reduce the fee back to $450. On October 2, 2023, the government published a proposed

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See also 22 CFR § 50.50 [available here]. The detailed procedures for renunciation are set for in the DOS Foreign Affairs Manual ("FAM"), the "comprehensive, and authoritative source for the Department's organization structures, policies, and procedures that govern the operations of the State Department, the Foreign Service and, when applicable, other federal agencies." https://fam.state.gov/. *See* 7 FAM 1260- Renunciation of U.S. Citizenship Abroad [available here]. Plaintiffs complied with the relevant statute and regulations, paid the Renunciation Fee and received a certificate of loss of nationality ("CLN").

rule to effect this reduction, 88 FED. REG. 67687 [available here], but as of the filing date of this motion—no final rule has been issued, and the fee remains $2,350.

In *AAA v. DOS*, the district court granted summary judgment to the government on February 10, 2023. *L'Association des Americains Accidentels v. United States Dep't of State*, 656 F. Supp. 3d 165 (D.D.C. 2023). Plaintiffs' in *AAA v. DOS* filed an appeal on February 13, 2023 which was subsequently held in abeyance by the D.C. Circuit on May 9, 2023, pending the rulemaking process, with the government providing periodic status updates.

In *AAA v. DOS*, the government produced the *Cost of Service Model - 2012 Annual Update Report* and the *Consular Cost of Service Model Data Set: Other Citizens' Services (2010-FY2014)* ("CoS Model") to try to defend the $2,350 Renunciation Fee. The CoS Model broke down "costs" for renunciation services totaling $3,999,668 for a projected volume of 1,703 applications per year.[4] The relevant part of the CoS Model appears below for reference:

[4] The government determined the average volume of 1,703 renunciation applications per year by calculating the mean of the actual volumes from fiscal years 2010 to 2012 and the projected volumes for fiscal years 2013 and 2014. Specifically, the volumes were 956 (FY 2010), 1,314 (FY 2011), 1,798 (FY 2012), 2,068 (FY 2013 projected), and 2,378 (FY 2014 projected). The sum of these five yearly volumes is 8,514, and dividing by five yields an average of approximately 1,702.8, which was rounded to 1,703. *See* Declaration of Stacy L. Pickard, *L'Association des Américains Accidentals, et al. v. United States Department of State, et al.*, Case No. 1:20-cv-03573-TSC, ECF 11-2, ¶18, filed on April 23, 2021. As we discuss below, the average volume of renunciations from 2013 to the present were, in fact, significantly higher. For the complete CoS Model, see *L'Association des Américains Accidentals, et al. v. United States Department of State, et al.*, Case No. 1:20-cv-03573-TSC, ECF 14-4, filed on June 17, 2021.

Consular Cost of Service Model Data Set: Other Citizens' Services
(2010-FY2014 Figures Weighted by Volumes)

	Renunciation of U.S. Citizenship (Item No. 8)			
	Direct Trace	Assigned	Allocated	Total
Perform Activities Associated with Loss and Renunciation of U.S. Citizenship and Nationality	$0	$1,375,231	$0	$1,375,231
Overseas Management	$0	$3,465	$0	$3,465
Overseas Cashiering/Internal Controls	$0	$97	$0	$97
Fraud Prevention and Detection	$0	$1,035	$0	$1,035
Public Affairs	$0	$266	$0	$266
Consular Affairs Management	$0	$4,797	$0	$4,797
IT/Systems Support	$0	$7,260	$0	$7,260
Other Bureau Support				
Functional Bureaus	$19,591	$161,789	$854,190	$1,035,571
Regional Bureaus	$0	$0	$52,899	$52,899
Support Bureaus	$0	$280,398	$197,917	$478,315
ICASS	$0	$1,040,730	$0	$1,040,730
Total Costs	$19,591	$2,875,068	$1,105,007	$3,999,666
Volume				1,703
Unit Cost				$2,349
Fee				$2,350

ARGUMENT

I. This Court has jurisdiction over the claims of all class members

This Court has jurisdiction under the Little Tucker Act, 28 U.S.C. § 1346(a)(2), which provides for claims against the United States not exceeding $10,000. Each class member's claim for restitution of the $2,350 fee is a discrete amount well below this threshold. *United States v. Bormes*, 568 U.S. 6, 10 n. 1 (2012), *citing United States v. Will*, 449 U.S. 200, 211 fn. 10 (1980) ("It is undisputed that this class action satisfied the Little Tucker Act's amount-in-controversy limitation. We have held that to require only that the 'claims of individual members of the clas[s] do not exceed $10,000.' "); *Mar. v. United States*, 506 F.2d 1306, 1309 (D.C. Cir. 1974); *Briggs v. United States*, 2009 WL 113387, at *5 (N.D. Cal. Jan. 16, 2009) ("In class actions under the Little Tucker Act, this

monetary limitation is satisfied if the *individual* claims of each of the class members are below $10,000, even if a greater aggregate amount is claimed.").

II. This Court should certify the class under Rule 23

RCFC 23 governs class actions at the U.S. Court of Federal Claims, permitting one or more members of a class to sue as representative parties on behalf of all members, provided specific prerequisites are met. These prerequisites ensure that a class action is an appropriate and efficient mechanism for resolving the dispute. The test for class certification under RCFC 23 comprises seven elements, all of which must be satisfied: **(1)** numerosity; **(2)** commonality; **(3)** typicality; **(4)** adequacy; **(5)** general applicability; **(6)** predominance; and **(7)** superiority. Plaintiffs bear the burden of proving each element by a preponderance of the evidence. *Bauer v. United States*, 176 Fed. Cl. 240, 246-247 (2025), *per* S. Schwartz, J.

The Court is required to conduct a "rigorous analysis," which may involve probing beyond the pleadings to evaluate the claims, defenses, facts, and applicable law. *Jones v. United States*, 118 Fed. Cl. 728, 733 (2014). Failure to prove any single element precludes certification. *Brown v. United States*, 126 Fed. Cl. 571, 577 (2016).

A. This case meets Rule 23(a)'s requirements

1. The class is sufficiently numerous and joinder is impracticable

The numerosity prong of RCFC 23(a)(1) requires a showing that the proposed class is sufficiently large and that joining all members individually

would be impractical. Courts have emphasized that this determination hinges on evidence, not mere speculation. *See Gross v. United States*, 106 Fed. Cl. 369, 377 (2012); *Fisher v. United States*, 69 Fed. Cl. 193, 198 (2006).

(a) **The class is sufficiently numerous**

Even taking into account this Court's occasionally inconsistent application of the numerosity requirement in opt-class actions, here, the proposed class clearly satisfies numerosity for purposes of Rule 23(a)(1). A potential class numbering in the tens of thousands leaves no room for doubt as to its sufficiency. As noted in *Arnhold v. United States*, 166 Fed. Cl. 499, 506 (2023), "for an opt-in class action, each participating member of the class must act affirmatively to participate, which amounts to joinder in pragmatic terms" [*quoting Haggart v. United States*, 89 Fed. Cl. 523, 530 (2009)]. This similarity to joinder has complicated the analysis and led to contradictory rulings on the number of plaintiffs required to satisfy numerosity under RCFC 23(a)(1). *See Toscano v. United States*, 98 Fed. Cl. 152, 155 (2011) (proposed class of 800 plaintiffs satisfies the numerosity requirement); *Abel v. United States*, 18 Cl. Ct. 477, 478 (1989) (class of 1,218 does not satisfy numerosity requirement); *King v. United States*, 84 Fed. Cl. 120, 124 (2008) (class of 152 does satisfy); *Jaynes v. United States*, 69 Fed. Cl. 450, 454 (2006) (class of 258 does not); *Rasmuson v. United States*, 91 Fed. Cl. 204, 211 (2010) (class of 50 does not). Here, however, the sheer size of the proposed class decisively meets the numerosity bar.

IRS data from quarterly lists of expatriates, published in the Federal Register pursuant to 26 U.S.C. § 6039G, provides a concrete foundation for

estimating class size. Between the fourth quarter (Q4) of 2017 and Q1 2025, approximately 29,042 individuals expatriated:

Expatriates in 2017-Q4

Quarter	Number of Expatriates	Source
2017-Q4	685	83 Fed. Reg 5830, 2018 WL 777094 (February 9, 2018)

Expatriates in 2018

Quarter	Number of Expatriates	Source
2018-Q1	1099	83 Fed. Reg. 20914-03, 2018 WL 2099976 (May 8, 2018)
2018-Q2	1086	83 Fed. Reg. 37616-01, 2018 WL 3631676 (Aug. 1, 2018)
2018-Q3	1104	83 Fed. Reg. 58321-01, 2018 WL 6019008 (Nov. 19, 2018)
2018-Q4	685	84 Fed. Reg. 9204-01, 2019 WL 1126271 (March 13, 2019)
Total 2018	**3974**	

Expatriates in 2019

Quarter	Number of Expatriates	Source
2019-Q1	1018	84 Fed. Reg. 20954-01, 2019 WL 2074877 (May 13, 2019)
2019-Q2	609	84 Fed. Reg. 41807-01, 2019 WL 3814903 (August 15, 2019)
2019-Q3	183	84 Fed. Reg. 61137-02, 2019 WL 5870470 (November 12, 2019)
2019-Q4	261	85 Fed. Reg. 7847-02, 2020 WL 616559 (February 11, 2020)
Total 2019	**2071**	

Expatriates in 2020

Quarter	Number of Expatriates	Source
2020-Q1	2907	85 Fed. Reg. 27507-01, 2020 WL 2217383 (May 8, 2020)
2020-Q2	2406	85 Fed. Reg. 47843-01, 2020 WL 4501702 (August 6, 2020)
2020-Q3	732	85 Fed. Reg. 68625-01, 2020 WL 6318801 (October 29, 2020)
2020-Q4	660	86 Fed. Reg. 8251-01, 2021 WL 372706 (February 4, 2021)
Total 2020	**6705**	

Expatriates in 2021

Quarter	Number of Expatriates	Source
2021-Q1	228	86 Fed. Reg. 22781-01, 2021 WL 1664272 (April 29, 2021)
2021-Q2	733	86 Fed. Reg. 40899-01, 2021 WL 3188160 (July 29, 2021)
2021-Q3	977	86 Fed. Reg. 63091-02, 2021 WL 5280792 (November 15, 2021)
2021-Q4	488	87 Fed. Reg. 4106-01, 2022 WL 215487 (January 26, 2022)
Total 2021	**2426**	

Expatriates in 2022

Quarter	Number of Expatriates	Source
2022-Q1	568	87 Fed. Reg. 24639-01, 2022 WL 1212107 (April 26, 2022)
2022-Q2	1474	87 Fed. Reg. 45403-01, 2022 WL 2967191 (July 28, 2022)
2022-Q3	750	87 Fed. Reg. 64842-01, 2022 WL 14554623 (October 26, 2022)
2022-Q4	1024	88 Fed. Reg. 5418-01, 2023 WL 419167 (January 27, 2023)
Total 2022	**3816**	

Expatriates in 2023

Quarter	Number of Expatriates	Source
2023-Q1	536	88 Fed. Reg. 24270-01, 2023 WL 2988609 (April 19, 2023)
2023-Q2	830	88 Fed. Reg. 47238-01, 2023 WL 4641452 (July 21, 2023)
2023-Q3	749	88 Fed. Reg. 74232-02, 2023 WL 7110157 (October 30, 2023)
2023-Q4	1145	89 Fed. Reg. 5606-01, 2024 WL 307948 (January 29, 2024)
Total 2023	**3260**	

Expatriates in 2024

Quarter	Number of Expatriates	Source
2024-Q1	345	89 Fed. Reg. 34331-02, 2024 WL 1857341 (April 30, 2024)
2024-Q2	1717	89 Fed. Reg. 62843-01, 2024 WL 3595864 (August 1, 2024)
2024-Q3	2123	89 Fed. Reg. 86083-02, 2024 WL 4591161 (October 29, 2024)
2024-Q4	635	90 Fed. Reg. 8830-01, 2025 WL 358703 (February 3, 2025)
Total 2024	**4820**	

Expatriates in 2025-Q1

Quarter	Number of Expatriates	Source
2025-Q1	1285	90 Fed. Reg. 17279-01, 2025 WL 1179541 (April 24, 2025)

This figure—29,042—far exceeds thresholds courts have found sufficient for numerosity. *See Toscano*, 98 Fed. Cl. at 155 (800); *King*, 84 Fed. Cl. at 124 (152); *Elec. Welfare Tr. Fund v. United States*, 160 Fed. Cl. 462, 467 (2022) (class of 652 sufficient for illegal exaction claim).

Moreover, the quarterly lists used to arrive at 29,042 likely underrepresent the true number of renunciants, as named plaintiffs Esther Jenke, Nina Nelson, and Arianna Poli—each of whom renounced and paid the fee—do not appear on them, suggesting a larger actual class size.[5]

(b) **Joinder is impracticable**

With an estimated class size of at least ~30,000 (and probably much higher) joinder is clearly impracticable. *Bauer*, 176 Fed. Cl. at 250 (only numerosity is relevant in determining impartibility of joinder); *Arnhold*, 166 Fed. Cl. at 507 (2,600 potential class members satisfies numerosity requirement); *Silver Buckle Mines, Inc. v. United States*, 132 Fed. Cl. 77, 98 (2017) ("The sheer volume of

[5] The IRS quarterly lists appear to record only "covered expatriates," defined under 26 U.S.C. § 877(a)(2) as individuals meeting specific income or asset thresholds subject to special tax rules upon expatriation. Under the "income test," an individual is a "covered expatriate" if the average annual net income tax liability for the five tax years preceding the year of expatriation exceeds $190,000. Under the "asset test" an individual is a "covered expatriate" if his/her net worth is $2 million or more on the date of expatriation. Renunciants who do not meet these criteria, such as the named plaintiffs, are likely excluded from these lists, significantly underrepresenting the total number of potential class members.

potential class members [69,000] in this case is sufficient to satisfy the court that, as the parties indicate, the proposed class easily satisfies the numerosity requirement.).

In addition, the following factors also support that joinder is not practicable:

(i) **Centralized efforts by class counsel-** Unlike joinder, where each individual must independently join the case (and may engage independent counsel), a class action benefits from the appointment of class counsel. Under court supervision, class counsel takes on the responsibility of locating and notifying class members, centralizing the effort. This coordinated approach is far more efficient than the fragmented, individual actions required for joinder, especially for an estimated potential class of tens of thousands.

(ii) **Court-approved notice plans-** In a class action, the court can approve a comprehensive notice plan tailored to reach class members effectively. This may include methods such as mail, email, or even publication in widely circulated media. These options contrast sharply with joinder, a far more burdensome requirement given a potential class of this magnitude.

(iii) **Streamlined opt-in procedures-** The opt-in process in a class action can be designed for simplicity and accessibility. Class members might join by signing a form, clicking a link, or submitting a brief online confirmation—steps that are significantly less demanding than the formal legal filings often required to join a case as a plaintiff. This streamlined approach reduces barriers to participation.

(iv) **Economies of scale-** With a potential class exceeding 30,000 members, the class action leverages economies of scale. The per capita cost of notification and administration decreases as the class size grows, making it more cost-effective and manageable than coordinating thousands of individual joinders. This scalability is a key practical advantage.

(v) **Judicial efficiency-** A class action allows common issues to be adjudicated in a single proceeding, conserving judicial resources and ensuring consistent rulings. Joinder, by contrast, could result in numerous separate cases, each requiring individual attention from the court—an inefficient and unwieldy alternative.

In summary, while joinder and an opt-in class action both involve individual participation, the class action's centralized management, flexible notification

methods, streamlined procedures, and inherent efficiencies make it a far more practicable solution to this case.[6]

2. The legal and factual issues are common to the class

The commonality requirement, as set forth in RCFC 23(a)(2), mandates that there be "questions of law or fact common to the class." This prerequisite ensures that the claims of the proposed class members share a unifying legal or factual basis, allowing the litigation to proceed efficiently and cohesively. As the Supreme Court emphasized in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), it is not sufficient for class members merely to raise similar questions; rather, these questions must be "capable of generating common answers" that resolve a central issue for the entire class "in one stroke." *Id.* at 350. In essence, the common questions must "drive the resolution of the litigation," such that their determination advances the claims of all class members simultaneously. *Id., quoting* Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. REV. 97, 132 (2009). Thus, the commonality inquiry focuses on whether the class's claims hinge on a shared contention whose resolution will significantly impact the outcome for the entire group. *See also Bauer*, 176 Fed. Cl. at 252.

Here, the class presents a compelling common question of law and fact under RCFC 23(a)(2): whether the government is required to refund that portion of the Renunciation Fee deemed excessive or unfair. *See Elec. Welfare Tr. Fund*, 160 Fed. Cl. at 468 (whether government is required to refund a fee satisfies the

[6] *See* also below in the section of the Brief addressing superiority under RCFC 23(b)(3).

commonality prong); *Silver Buckle Mines, Inc.,* 132 Fed. Cl. at 99 ("Here, the common-issue requirement is easily satisfied. An identical legal question is present for each potential class member—i.e., whether the government is required to refund paid 2013 maintenance fees."). *See also* ECF 35, ¶43. This question is universal across the entire class because it hinges solely on the government's conduct in calculating and imposing the fee, requiring no inquiry into the individual circumstances of any Plaintiff or class member. The answer depends entirely on an objective assessment of whether the fee's cost structure, as derived from the government's CoS Model, complies with the IOAA's mandate that fees correspond to the actual costs of the service provided—a legal and factual determination focused exclusively on the government's actions.

For example, a critical sub-issue is whether the inclusion of indirect costs like "Other Bureau Services" and "ICASS,"[7] which constitute the bulk of the fee's purported justification yet appear disconnected from renunciation services, is permissible under the IOAA. Resolving this question will determine the fee's legality for all class members in one stroke, as the fee structure is uniformly applied to every renunciant. If the fee is deemed unlawful, it establishes liability for the entire class simultaneously, satisfying the commonality standard

[7] "Other Bureau Services" refer to indirect costs within the Department of State, such as administrative support and management, not directly linked to consular services like renunciation but allocated across various fees, including the Renunciation Fee. "ICASS" (International Cooperative Administrative Support Services) is a U.S. government system for sharing costs of common administrative services at overseas posts, funded through interagency contributions. Its inclusion in the Renunciation Fee highlights indirect costs potentially unrelated to the renunciation process.

articulated in *Wal-Mart v. Dukes*, where a single resolution drives the litigation forward for all.

A further common question in this case is whether the methodology used by the government to calculate the Renunciation Fee is accurate and reliable, a determination that hinges on an objective evaluation of the government's actions rather than individual plaintiffs' circumstances. This issue unites the class because it challenges the uniform process applied to all renunciants, questioning its compliance with the IOAA's cost-based standards. Plaintiffs intend to introduce expert testimony to demonstrate that the government's analysis is flawed, relying on estimates and assumptions that are not only inadequately explained or supported but also reflect significantly changing assumptions over time without justification. For instance, the testimony will scrutinize whether shifts in the government's cost inputs—such as labor, overhead, or processing expenses—are arbitrary or grounded in verifiable data. Since this evaluation focuses solely on the government's methodology and its consistent application across the class, resolving this question will uniformly affect all members: a finding that the methodology lacks reliability would invalidate the fee for everyone in a single stroke. This satisfies the commonality requirement, as it presents a shared issue driving the litigation's outcome for the entire class.

One last example to demonstrate commonality:[8] The class also intends to argue that the government used most of the revenue generated from the

[8] The arguments presented here are meant merely to demonstrate the common nature of the legal and factual claims and by no means exhaustive. Plaintiffs intend to raise additional challenges to the fee and represent to the Court that

Renunciation Fee for matters completely unrelated to services rendered under 8 U.S.C. § 1481(a)(5). Recall that government's CoS Model assumed 1,703 annual renunciations, yet IRS public data shows an average closer to 4,000—likely higher, as discussed above. This discrepancy inflated the fee, generating a significant revenue surplus beyond the actual cost of providing renunciation services.[9] That surplus, in turn, funded unrelated government functions, not renunciations.[10] These issues—whether the fee's basis violates the IOAA and whether surplus revenue was misallocated in violation of the IOAA—are common to all class members, focusing solely on the government's uniform actions, not individual circumstances. This commonality drives the litigation and underscores the need for an accurate record, potentially through discovery.[11]

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these challenges, without exception, focus solely on the government and are not tailored specifically to any individual Plaintiff or potential class member.

[9] The exact surplus can only be determined after analyzing the costs and determining which are fixed and which are variable. Preliminary analysis suggests the majority of costs are fixed (e.g., management, IT support), which do not scale with volume. An expert report will be provided to address this issue in detail.

[10] In *AAA v. DOS* and the Administrative Record produced in that case, the government detailed renunciation service costs but remained silent on surplus use. Claiming now that it reinvested the surplus into renunciations would lack prior support—indeed, the record suggests otherwise. In the government's October 2, 2023 proposed rule to effect the current reduction – 88 FED. REG. 67687 [available here] – it continues to state that the "[...] fee of $450 represents a fraction of the cost of providing CLN services." That is simply not the case based on the government's own published amount of renunciants. Moreover, given the government's representations that it "reviews its Cost of Service Model annually, to calculate the cost of providing all services, including CLN services" (*id.*), it is hard to understand how the government has kept the current $2,350 fee in effect for so long. This is all the more troublesome considering the time it is taking the government to issue a final rule, effectuating the new, reduced fee. *See* ECF 35, ¶4, fn. 1.

[11] The average number of renunciants between 2013-2017 was well over 4,000 and from 2013 to 2015 was 3,564, indicating that even during the rulemaking to

The court's analysis in *Steele v. United States* 159 F. Supp. 3d 73, 80-82 (D.D.C. 2016) further reinforces the commonality of the class's claims. In *Steele*, the court certified a class challenging the IRS's PTIN fee under 31 U.S.C. § 9701, holding that the questions of whether the agency had authority to impose the fee and whether the fee was excessive were common to all class members. The court reasoned that because the fee was uniformly applied and the government's cost of providing the service was consistent across all applicants, resolving these questions would uniformly affect the entire class. *Id.* Similarly, here, the Renunciation Fee is uniformly imposed on all class members seeking to renounce citizenship, and the central question—whether the fee violates § 9701 by, *inter alia*, including unrelated costs, funding unrelated agency programs or unfair/unconstitutional – turns solely on the government's conduct and cost calculations. As in *Steele*, this question requires no individualized inquiry and its resolution will determine the fee's legality for all class members in one stroke, fully satisfying RCFC 23(a)(2).

In sum, the class's shared legal and factual questions—focused squarely on the government's uniform fee calculation and its compliance with the IOAA—will allow the court to resolve the litigation for the entire class by deciding these common questions once, fully satisfying the commonality requirement under RCFC 23(a)(2).

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increase the fee to $2,350, the government knew its volume projections were completely off the chart.

3. The named plaintiffs' claims are typical of the class

Typicality requires that plaintiffs demonstrate that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." RCFC 23(a)(3). The typicality requirement is satisfied where the "claims [...] of the representatives and the members of the class stem from a single event or unitary course of conduct, or if they are based on the same legal or remedial theory." *King*, 84 Fed. Cl. at 126. Factual differences between named and absent class members do not defeat typicality "provided that the named representatives' claims share the same essential characteristics as the claims of the class at large." *Fisher*, 69 Fed. Cl. at 200. The threshold for typicality is "not high," but it requires evidentiary proof. *Brown*, 126 Fed. Cl. at 585 (citing *Fisher*, 69 Fed. Cl. at 200).

Here, the named plaintiffs—Esther Jenke, Nina Nelson, and Arianna Poli—satisfy the typicality requirement because their claims are typical of the class. Like every class member, the named plaintiffs were required to pay the $2,350 Renunciation Fee to renounce their U.S. citizenship under 8 U.S.C. § 1481(a)(5). Their claims arise from the same government action: the Department of State's uniform imposition of the fee since September 2014. *See* Jenke Decl., ¶¶1-3; Nelson Decl., ¶¶1-3; Poli Decl., ¶¶1-3. The legal theories underlying their claims—as previously discussed—are identical to those of the class. The named plaintiffs' claims stem from the same "unitary course of conduct"—the government's consistent application of the $2,350 fee to all renunciants during the class period (since October 4, 2017). The fee is applied uniformly, without variation based on

individual circumstances, meaning that every class member's claim involves the same legal questions: whether the fee violates the IOAA by exceeding the costs of service or including unrelated expenses, whether the government's fee calculation methodology is lawful, and whether the fee infringes on the constitutional right to expatriate. These shared legal theories ensure that the named Plaintiffs' claims "share the same essential characteristics" as those of the class. *Fisher*, 69 Fed. Cl. at 200.

Factual differences among class members—such as the date, location, or personal motivations for renouncing citizenship—are entirely irrelevant to the core legal issue. These variations have no bearing whatsoever on the legality of the fee, which hinges solely on the government's consistent policy and calculation methods, not individual circumstances. Since the fee was applied identically to all renunciants, the named plaintiffs' claims remain typical of the class under RCFC 23(a)(3).

In sum, because the named Plaintiffs' claims arise from the same government conduct and are based on the same legal theories as those of the class, the typicality requirement under RCFC 23(a)(3) is satisfied.

4. The named plaintiffs are adequate representatives

The adequacy requirement under RCFC 23(a)(4) mandates that "the representative parties will fairly and adequately protect the interests of the class." This involves two inquiries: **(1)** whether conflicts of interest exist between the named plaintiffs and other class members, and **(2)** whether proposed class counsel is competent to represent the class. *Common Ground Healthcare Coop. v. United*

States, 137 Fed. Cl. 630, 641 (2018), *citing Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625–626 & n. 20 (1997).

(a) The named Plaintiffs have no conflicts of interest and are committed to protecting the class's interests

The named plaintiffs—Esther Jenke, Nina Nelson, and Arianna Poli—meet the first prong of adequacy. Their interests align seamlessly with those of the class: each paid the $2,350 renunciation fee and seeks restitution through identical legal challenges to its validity. No conflicts arise, as their objective—refunding the fee for all class members—mirrors the class's goals. *See Geneva Rock Prods., Inc. v. United States*, 100 Fed. Cl. 778, 790 (2011) (adequacy satisfied where representatives share the same claims as the class).

Their commitment is equally clear. By initiating this lawsuit, actively engaging in its progression, and volunteering as class representatives, they have shown a steadfast dedication to advancing the class's interests. *See* also Jenke Decl., ¶¶3-4; Nelson Decl., ¶¶3-4; Poli Decl., ¶¶3-4.

(b) Proposed class counsel is competent to represent the class

Proposed class counsel—Marc Zell and Noam Schreiber of Zell & Associates International Advocates, LLC ("Zell & Associates")—satisfy the requirements of RCFC 23(g)(1)(C) through their litigation expertise, case-specific achievements, and relevant experience.

Proposed class counsel have direct experience with renunciation and expatriation issues, demonstrating their practical knowledge of the legal and procedural details involved:

- In *AAA v. DOS* (Case 1:20-cv-03573, D.D.C.), proposed counsel challenged the U.S. Department of State's increase of the Renunciation Fee from $450 to $2,350. Their efforts prompted the government to plan a reduction back to $450 and initiate the current rulemaking process.
- Proposed class counsel also addressed delays in renunciation services during the COVID-19 pandemic in *L'Association des Américains Accidentels, et al. v. The U.S. Dep't of State* (Case 1:21-cv-2933, D.D.C.), challenging the suspension of voluntary expatriation services under the Fifth Amendment and the Administrative Procedure Act.

This experience provides them with a deep understanding of the administrative rules and constitutional questions at play in the present case. *See* also Jenke Decl., ¶4; Nelson Decl., ¶4; Poli Decl., ¶4.

In addition to their direct experience with renunciation cases, proposed class counsel have litigated numerous other cases against the U.S. federal government and its agencies, as well as complex international litigation, further demonstrating their capability to handle constitutional and administrative law issues. To name several:

- *United States of America et al. v. LABQ Clinical Diagnostics, LLC et al.*, 1:2022-cv-00751 (S.D.N.Y.)- represent defendants in a complex False Claims Act, 31 U.S.C. § 3729 *et seq.*, lawsuit concerning alleged billing practices in connection with COVID-19 tests to the Health Resources and Services Administration's so-called Uninsured Program.
- *Silver, et al. v. IRS, et al.*, 1:20-cv-1544 (D.D.C.) - an administrative law case against the U.S. Internal Revenue Service and the U.S. Department of Treasury, challenging the legality of regulations issued under the 2017 Tax Cut and Jobs Act concerning the GILTI tax.
- *United States of America v. Leeds*, 1-22-cv-379 (D. Idaho)- proposed class counsel represent the defendant in a lawsuit commenced by the U.S. government to recover penalties and interest exceeding $3

million for the alleged failure to file FBAR disclosures under the Bank Secrecy Act, 31 U.S.C. § 5314, and FinCEN Form 114.

- In *Jenny Schieber v. U.S.A.*, 22-5068 (D.C. Cir.)- handled a consolidated appeal challenging the dismissal of five lawsuits by Holocaust survivors seeking compensation under the U.S.-France Agreement on Compensation for Certain Victims of Holocaust-Related Deportation.
- In *Ambar, et al. v. The Federal Republic of Germany*, 1:20-cv-3587 (D.D.C.)- represent plaintiffs in a lawsuit under the Foreign Sovereign Immunities Act against Germany for the theft of Jewish property during the Holocaust.
- In *Harrow, et al. v. Airbnb, Inc.*, 3:19-cv-0395 (N.D. Cal. 2019)- served as co-counsel representing plaintiffs challenging Airbnb's decision to remove listings of accommodations owned by Jews in Judea and Samaria (West Bank) as an "anti-Jewish Discriminatory Policy" violating the federal Fair Housing Act and California law. Their efforts resulted in a settlement where Airbnb reversed its de-listing policy, highlighting their negotiation skills and commitment to civil rights.

In addition, proposed class counsel's involvement in *Simon v. Republic of Hungary*, a class action with international scope, further demonstrates their capability to handle complex, multi-jurisdictional litigation. The *Simon v. Republic of Hungary* case involved Holocaust survivors and their heirs suing Hungary for property seized during World War II under the Foreign Sovereign Immunities Act. The case reached the U.S. Supreme Court twice: first in 2021, resulting in a remand for further review (*Republic of Hungary v. Simon*, 592 U.S. 207 (2021), and again in 2025, when the Court unanimously ruled on February 21, 2025, that plaintiffs must directly trace specific expropriated property or its proceeds to the U.S. *Republic of Hungary v. Simon*, 145 S. Ct. 480 (2025).

Mr. Zell, principal and founder of Zell & Associates, has been a practicing litigation attorney since 1977 and a copy of his curriculum vitae is attached to this Memorandum as an exhibit.

Zell & Associates is well-equipped to handle this litigation, with the resources necessary to represent the class effectively. Their commitment to the case is evident from their prior and ongoing efforts in related litigation and they have already expended significant time and resources in challenging the government's renunciation procedures.

B. This case meets Rule 23(b)'s requirements

RCFC 23(b) provides that a class action may be maintained if the prerequisites of RCFC 23(a) are satisfied and:

1. the United States has acted or refused to act on grounds generally applicable to the class; RCFC(b)(2), and
2. the court finds that the questions of law or fact common to the class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. RCFC 23(b)(3).

1. The imposition of the Renunciation Fee uniformly applies to the entire class

RCFC 23(b)(2) is satisfied when the government's action applies uniformly to the entire class. *Geneva Rock Prods., Inc.,* 100 Fed. Cl. at 788–789. Here, the government imposed a uniform Renunciation Fee of $2,350 on all individuals who voluntarily renounced their U.S. citizenship under 8 U.S.C. § 1481(a)(5) since September 2014. This fee applies consistently to every class member, irrespective of individual circumstances such as the date or location of renunciation. The government's uniform policy of charging the same fee to all renunciants meets the requirement that it "has acted [...] on grounds generally applicable to the class." RCFC 23(b)(2). Similar to the issuance of a single Notice of Interim Trail Use in

Geneva Rock, which applied uniformly to all affected property owners, the Renunciation Fee is a singular government action that impacts every class member identically. *See* 100 Fed. Cl. at 788–789; *Bauer*, 176 Fed. Cl. at 255.

This uniform application of the $2,350 Renunciation Fee across all class members again mirrors the scenario in *Steele*, 159 F. Supp. 3d at 84 ("it is difficult to imagine a scenario where certification is more appropriate"), making class certification here not only suitable but compelling.

2. Common questions predominate and a class action is superior

RCFC 23(b)(3) requires that **(1)** common questions of law or fact predominate over individual issues and **(2)** that a class action be superior to other adjudication methods. Predominance is a stringent standard, more demanding than RCFC 23(a)(2)'s commonality requirement, focusing on whether common issues drive the litigation. *Oztimurlenk v. United States*, 162 Fed. Cl. 680, 692 (2022), *quoting Webb v. Exxon Mobil Corp.*, 856 F.3d 1150, 1156–1157 (8th Cir. 2017). The superiority prong evaluates whether a class action is the most efficient and fair approach to resolve the dispute. *See Jaynes*, 69 Fed. Cl. at 459.

(a) Common questions predominate

The predominance requirement of RCFC 23(b)(3) is met here because common questions of law and fact regarding the legality of the $2,350 Renunciation Fee overwhelmingly predominate over any individual issues. Plaintiffs challenge the fee as excessive under the Independent Offices Appropriations Act— a question that hinges on the government's uniform fee policy, not individual circumstances. This case aligns closely with *National*

Veterans Legal Services Program v. United States, where the court certified a class challenging the PACER fee schedule, finding that the common question of whether the fee violated the E-Government Act predominated. *National Veterans Legal Services Program v. United States*, 235 F. Supp. 3d 32, 44 (D.D.C. 2017). There, the court emphasized that liability turned on the legality of the uniform fee schedule itself, not individual users' experiences. *Id.* Similarly, here, if the Renunciation Fee is deemed unlawful, liability extends uniformly to all class members who paid it, and damages would be a straightforward refund of the excessive amount, requiring no individualized inquiry.

Indeed, it is difficult to conceive of any individual issue that could overshadow the central, class-wide questions regarding the fee's legality. Unlike cases where individual property rights or personal experiences might vary, here, the fee is uniformly applied to all renunciants, and the legal challenges target the government's policy itself, not the specifics of each renunciation.

(b) A class action is superior in this case

A class action is the superior method for adjudicating the legality of the $2,350 Renunciation Fee, as it achieves "economies of time, effort, and expense" and ensures "uniformity of decision" for similarly situated renunciants, without compromising fairness. RCFC 23(b)(3); *Amchem Prods., Inc.*, 521 U.S. at 615. In *Carson v. United States*, the Court of Federal Claims certified a class where liability was established, highlighting that a class action avoided "potentially thousands of individual suits presenting the same question of law and similar questions of fact," thus serving judicial economy. *Carson v. United States*, 2023

WL 8812926, at *5 (Fed. Cl. Dec. 20, 2023). Here, although liability remains contested, the central issue—whether the fee violates the Independent Offices Appropriation Act—is identical across all class members. A single proceeding resolves this uniform question efficiently, preventing a flood of duplicative litigation that could clog the court and yield inconsistent outcomes. *Elec. Welfare Tr. Fund,* 160 Fed. Cl. at 469.

The superiority of a class action shines brighter when weighing the factors under RCFC 23(b)(3). First, class members lack a strong interest in controlling separate actions. With claims averaging $2,350, the cost of individual litigation far outweighs potential recovery, rendering solo suits economically irrational (especially when considering the fact that the class members are no longer U.S. citizens and reside abroad). This echoes *Carson*, where claims averaged just $100, yet the court found a class action superior due to the impracticality of individual suits. *Carson*, 2023 WL 8812926, at *5. Second, no evidence suggests other litigation by class members has begun, reinforcing that a class action is the primary vehicle for redress. Third, manageability poses no difficulty: the government records will identify all renunciants who paid the fee, mirroring *Carson*'s reliance on a government-provided list of class members. *Id.* This ready identification streamlines notice and administration, slashing logistical costs and bolstering superiority.

Moreover, a class action serves a vital purpose that individual or joinder-based litigation cannot: it ensures government accountability on a meaningful scale. If the Renunciation Fee violates the IOAA, the government's policy failure demands a comprehensive reckoning, not a fragmented patchwork of individual

rulings. A class-wide resolution compels the government to address the full extent of its alleged misconduct, delivering systemic relief and deterring future overreach. By aggregating the claims of tens of thousands of renunciants, this approach reflects the true magnitude of the harm and aligns with the Court of Federal Claims' role in holding the government to account. In contrast, individual suits or joinder would dilute this impact, risking inconsistent outcomes and leaving the underlying policy unchallenged.

Last, the superiority of a class action is also evident when considering the remedial framework courts may apply in IOAA fee challenges, as illustrated in *Steele v. United States*, 657 F. Supp. 3d 23 (D.D.C. 2023). In this decision, the *Steele* court held that when it is determined IOAA fee is excessive because it charges for unallowable activities, the proper remedy is to remand to the agency to show its work and set a new fee and determine a refund (*id.* at 49-50). This process, while under appeal[12], highlights the potential for agency-driven remedies in this IOAA class action as well. A class action here would ensure that any calculation of the refund applies uniformly to all renunciants who paid it since October 4, 2017. Moreover, without class certification, any potential remand to the agency to determine the refund would arguable not obligate it to reassess the fee or issue refunds to non-plaintiffs, potentially leaving thousands of affected

[12] The *Steele* decision has been appealed, with one issue being whether the agency can effectively determine its own liability by estimating costs for activities not chargeable under the IOAA. *See Montrois v. United States*, No. 25-5090, Document #2113348 (D.C. Cir., filed Apr. 28, 2025). For purposes of the present motion, the Court does not need to determine the proper remedial framework. This issue will rise if and when the class is certified and the Court finds that the government violated the IOAA.

individuals without remedy. A class action, however, compels comprehensive accountability, ensuring the government addresses the full scope of its alleged overcharging in a single proceeding.

In conclusion, certifying this class comports with RCFC 23(b)(3)'s core logic: judicial economy, manageability, and uniformity compel a class action where individual adjudication fails. The DOS's records, the opt-in structure, and the sheer scale of the class obliterate any counterargument. This court should certify the class to deliver fair, efficient justice to all affected renunciants.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court grant their Motion to Certify the Class as defined herein, appoint the named plaintiffs as class representatives, and approve class counsel. The proposed class meets all prerequisites of RCFC 23, warranting certification to efficiently resolve this significant challenge to an allegedly unlawful government policy.

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Respectfully submitted,

/s/ L. Marc Zell

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