

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

N-N, O-D-B, G-V-R, I-M-R, M-B, N-P-G, E-L-C, Y-L-P, Z-M-A, O-T, M-D-M, E-S-R, M-J-L, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

KEVIN K. McALEENAN, ACTING SECRETARY OF HOMELAND SECURITY; KENNETH CUCCINELLI, ACTING DIRECTOR, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; DONALD NEUFELD, ASSOCIATE DIRECTOR, SERVICE CENTER OPERATIONS DIRECTORATE,

Defendants.

Case No.

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs, by and through their attorneys, on behalf of themselves and all others similarly situated, and for their Complaint, state as follows:

NATURE OF ACTION

1. Plaintiffs, individually and on behalf of all others similarly situated, bring this action to enforce their rights as petitioners for U nonimmigrant status (commonly known as the “U visa”), a status available to certain crime victims who assist law enforcement authorities. *See* 8 U.S.C. § 1101(a)(15)(U).¹

2. Defendants have systematically and arbitrarily declined to fulfill statutory and regulatory requirements governing the timely adjudication of petitions for U status and related applications for Employment Authorization Documents (“EADs”).

¹ “U” status takes its name from this subsection.

3. Congress created U status to protect nonimmigrant victims of serious crimes and to increase public safety by encouraging those nonimmigrants to report, and assist in the investigation and prosecution of, those crimes.

4. U status, once granted, comes with a work authorization (8 U.S.C. § 1184(p)(3)(B)) and generally extends for four years (*id.* § 1184(p)(6)). At the close of that period, many U-status holders are eligible to adjust their status to lawful permanent residence. *Id.* § 1255(m).

5. Only 10,000 individuals may receive U status in any given fiscal year. 8 U.S.C. § 1184(p)(2)(A). There are currently well over 140,000 pending petitions for U status.

6. Individuals who would receive U status but for the statutory cap “must be placed on a waiting list” pending a final grant or denial of their petition. 8 C.F.R. § 214.14(d)(2). Petitioners on the waiting list, and the family members of those petitioners, are eligible for an EAD and are not subject to removal from the United States. *Id.*

7. Recognizing the importance of providing U-status petitioners with an opportunity to work even before their petitions are adjudicated, Congress authorized EADs based solely on a petitioner having submitted a bona fide U-status petition. 8 U.S.C. § 1184(p)(6).

8. Further, with respect to EAD requests submitted by U-status petitioners before January 17, 2017, Defendants had a regulatory obligation to adjudicate those EAD applications within 90 days of submission. 8 C.F.R. § 274.13a(d) (2010). If Defendants failed to meet this deadline, then they were required to issue the applicant an interim EAD. *Id.*

9. Plaintiffs and all Class members submitted U-status petitions to United States Citizenship and Immigration Services (“USCIS”), which administers the U-status program. Defendants have failed to adjudicate those petitions for placement on the waiting list.

10. Plaintiffs and all Class members also applied to USCIS for an EAD. Defendants have failed to adjudicate those EAD applications. Further, Defendants have not issued to those Plaintiffs and Class members who applied for EADs before January 17, 2017, the required interim EADs.

11. Defendants' failures have deprived Plaintiffs and the other Class members of their ability to lawfully support themselves and their families. Defendants' failures also leave Plaintiffs and Class members vulnerable to the threat of deportation and separation from family members. Deprivation of these rights has caused severe and irreparable harm to Plaintiffs and Class members and undermines the law enforcement objectives that Congress intended the U-status program to promote.

12. Defendants' failures to place Plaintiffs and Class members on the waiting list, to do so timely, to adjudicate the EAD applications of Plaintiffs and Class members, or to grant any interim EADs violate the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1184(p)(6); the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 555 & 701; the regulations governing the waiting list, 8 C.F.R. § 214.14(d)(2); and former 8 C.F.R. § 274.13a(d). Plaintiffs and Class members are entitled to relief under the APA, 5 U.S.C. §§ 555, 701–702, and 706; the Mandamus Act, 28 U.S.C. § 1361; and the Declaratory Judgment Act, 28 U.S.C. § 2201.

JURISDICTION AND VENUE

13. This action arises under § 214(p)(6) of the INA, 8 U.S.C. § 1184(p)(6); and §§ 6, 10(a) and 10(e) of the APA, 5 U.S.C. §§ 555, 702, and 706(1)–(2)(A).

14. This Court has subject matter jurisdiction under 28 U.S.C. § 1331.

15. This Court also has subject matter jurisdiction under 28 U.S.C. § 1361, which provides that the "district courts shall have original jurisdiction of any action in the nature of mandamus."

16. Venue is proper in this Court under 28 U.S.C. § 1391(e)(1), which provides that a suit against federal officials acting in their official capacities may be brought in any judicial district where a plaintiff in the action resides if no real property is involved in the action. Plaintiff N-N and other Class members reside within the Eastern District of New York.

PARTIES

17. Plaintiffs are individuals who are eligible for U nonimmigrant status

18. Plaintiffs N-N, O-D-B, G-V-R, I-M-R, Y-L-P, Z-M-A, M-D-M, and E-S-R filed complete, bona fide petitions for U nonimmigrant status, and applications for EADs, with USCIS before January 17, 2017.

19. Plaintiffs M-B, O-T, and M-J-L filed complete, bona fide petitions for U nonimmigrant status, and applications for EADs, with USCIS after January 17, 2017, but before September 17, 2017.

20. Plaintiffs N-P-G and E-L-C filed complete, bona fide petitions for U nonimmigrant status, and applications for EADs, with USCIS after September 17, 2017, but before March 17, 2019.

21. Defendant Kevin K. McAleenan is the Acting Secretary of Homeland Security and is charged with implementing the immigration laws of the United States. Plaintiffs sue Defendant McAleenan in his official capacity.

22. Defendant Kenneth Cuccinelli is the Acting Director of USCIS, a component agency of the Department of Homeland Security, and is charged with administering the services and benefits functions of the immigration laws of the United States. Plaintiffs sue Defendant Cuccinelli in his official capacity.

23. Defendant Donald Neufeld is the Associate Director of the Service Center Operations Directorate for USCIS, in which capacity he oversees activities at the USCIS

Vermont Service Center and the Nebraska Service Center. Plaintiffs sue Defendant Neufeld in his official capacity.

U NONIMMIGRANT STATUS

U Status and Form I-918

24. U status is available to any non-U.S. citizen or national who is the victim of qualifying criminal activity; suffered substantial mental and emotional abuse as a result of that criminal activity; possesses credible and reliable information concerning the criminal activity; and receives a signed, third-party certification from a law enforcement official, prosecutor, judge, or other, similar official (“law enforcement certification”) attesting to her helpfulness in the investigation or prosecution of the criminal activity. 8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.14(b).

25. Congress created U nonimmigrant status to protect survivors of violence and to “strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases” by encouraging immigrant victims of crime to report those crimes and cooperate with law enforcement. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 1513(a)(2), 114 Stat. 1466, 1533 (2000).

26. An individual seeking U nonimmigrant status must complete a Form I-918 Petition for U Nonimmigrant Status and submit that form to USCIS’s Vermont Service Center. The Vermont Service Center and USCIS’s Nebraska Service Center have exclusive jurisdiction over, and jointly process, petitions for U nonimmigrant status.

27. U-status petitioners must also submit two certifications. One certification, signed by the petitioner, must describe the facts of the victimization. 8 C.F.R. § 214.14(c)(2)(iii). The petitioner must also submit the law enforcement certification, which must be signed under

penalty of perjury by a law enforcement officer, prosecutor, judge, or similar official. *Id.*

§ 214.14(c)(2)(i); Form I-918, Supplement B, at 3, *available at* <https://www.uscis.gov/i-918>.

The Regulatory Waiting List for U Status

28. Congress has capped the number of primary U nonimmigrant status petitions that may be granted at ten thousand (10,000) per fiscal year.² 8 U.S.C. § 1184(p)(2)(A).

29. The number of petitioners who are eligible for U nonimmigrant status routinely exceeds that cap. During the five-year period from fiscal years 2014 through fiscal year 2018, for example, Defendants received more than 163,000 petitions for U nonimmigrant status. U.S. Citizenship and Immigration Services, *Number of Form I-918, Petition for U Nonimmigrant Status, by Fiscal Year, Quarter, and Case Status 2009–2019*, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Victims/I918u_visastatistics_fy2019_qtr2.pdf (“Case Status”) (last accessed August 26, 2019).³ Because Defendants granted more than 80% of the petitions they adjudicated over the same time period (*id.*), it is likely that more than 130,000 petitioners who submitted petitions during that 5-year period are eligible for U status. But the statutory cap means that only 50,000 petitioners could receive U status during that time.

30. Notwithstanding the statutory cap, Defendants are required to process and review all petitions for U nonimmigrant status. Defendants’ own regulations require them to place on a waiting list “[a]ll eligible petitioners who, due solely to the cap, are not granted U-1 nonimmigrant status.” 8 C.F.R. § 214.14(d)(2).

² Individuals who qualify for U status are “primary” (or “U-1”) petitioners. Their spouses, children, and—in the case of minors—parents are entitled to derivative U status. 8 U.S.C. § 1184(p)(2)(B). The statutory cap applies only to primary petitioners. *Id.*

³ A copy of the USCIS *Case Status* chart is annexed hereto as Exhibit A.

31. Defendants undertake a full adjudication of U-status petitions before placing petitioners on the waiting list.

32. USCIS created the waiting list for the purposes of “assisting law enforcement,” “improving customer service by allowing victims to remain in the United States,” giving petitioners “an opportunity to access victims services,” and “providing employment authorization to alien victims so they will have a lawful means through which to support themselves and their families.” DHS, *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 179, 53033 (Sept. 17, 2007) (codified at 8 C.F.R. §§ 103, 212, 214, 248, and 274).

33. Petitioners placed on the waiting list for U nonimmigrant status receive deferred action or parole. 8 C.F.R. § 214.14(d)(2). As a result, they are eligible for work authorization. *Id.* § 274a.12(c)(14).

Employment Authorization

34. Prior to February 7, 2017, Form I-918 included a question stating: “I want an Employment Authorization Document.” Petitioners for U status applied for EADs by checking the “yes” box in answer to this question. *See* Bureau of Citizenship and Immigration Services, *New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53,014, 53,029 (Sept. 17, 2007).

35. Since February 7, 2017, the only manner available to U-status petitioners to apply for an EAD while a bona fide petition is pending has been for U-status petitioners to submit Form I-765 Applications for Employment Authorization.

36. Defendants automatically grant employment authorization to petitioners who receive U nonimmigrant status. 8 U.S.C. § 1184(p)(3)(B); 8 C.F.R. § 214.14(c)(7).

Employment Authorization while U-status Petitions are Pending

37. Recognizing the importance of the ability to work, Congress has made eligible for employment authorization any individual “who has a pending, bona fide application for nonimmigrant status under section 1101(a)(15)(U).” 8 U.S.C. § 1184(p)(6).

38. U-status petitioners whose petitions are bona fide, but who have not yet been placed on the regulatory waiting list, are eligible for work authorization under § 1184(p)(6).

39. In addition, until January 17, 2017, USCIS regulations required Defendants to adjudicate EAD applications within 90 days of receipt, and to issue an interim EAD upon failure to do so. 8 C.F.R. § 274a.13(d) (2016).⁴

DEFENDANTS’ FAILURES TO ACT AND UNREASONABLE DELAYS

Failure to Comply with Regulatory Waiting-List Requirements

40. Under 8 C.F.R. § 214.14(d)(2), Defendants are required to place on the waiting list *all* petitioners who would be granted U status but for the statutory cap.

41. Defendants have failed to timely adjudicate U-status petitions for placement on the waiting list.

42. USCIS publishes a “priority date” that reflects the submission date of petitions that Defendants are currently processing for the waiting list. That date is sometimes unchanged for long periods of time. For example, from April 2015 until August 2016, the priority date remained May 7, 2014.

43. In more than three years since August 2016, the priority date has advanced barely a year, to May 6, 2015. USCIS, *Processing Times*, <https://egov.uscis.gov/cris/>

⁴ On November 18, 2016, the Department of Homeland Security issued final rules eliminating this requirement. 81 Fed. Reg. 82,398, 82,491 (Nov. 18, 2016). Those rules became effective January 17, 2017, and so apply only to EAD applications filed on or after that date. *See id.* at 82398.

processTimesDisplayInit.do (date displays after choosing Form I-918 and either the Nebraska Service Center or the Vermont Service Center) (last visited September 6, 2019) (“Processing Times”).

44. The current processing time for U-status petitions exceeds four years. USCIS, *Processing Times*.

45. In fiscal year 2014, the processing time was 5 months. The processing time has accordingly increased by more than 900% in five years. In contrast, the annual number of petitions received by USCIS has increased by only 34% over the same five-year period. *See* USCIS, *Case Status*.

46. Between fiscal year 2016 and fiscal year 2018, the processing time for U-status petitions nearly doubled, despite a decrease in the number of new petitions filed. *See* USCIS, *National Historical Average Processing Time for All USCIS Offices*, <https://egov.uscis.gov/processing-times/historic-pt>; USCIS, *Case Status*.

47. USCIS does not place all petitioners who would receive U status but for the statutory cap on the waiting list.

48. In fiscal year 2014, more than 20,000 U-status petitioners (U-1) were on the waiting list. By fiscal year 2018, that number had declined to just 9,535. *See* USCIS, *Case Status*.

49. Thus, over the same five-year period in which the number of U-status petitions filed annually increased by one-third, USCIS cut its annual number of waiting list adjudications by more than half. The number of pending U-status petitions consequently ballooned from just over 25,000 in fiscal year 2014 to over 125,000 in fiscal year 2018. *See id.*

50. USCIS now places on the waiting list only those petitioners who will receive an ultimate grant of U status within 12 months. *See id.*

51. USCIS fails to timely place petitioners on the waiting list despite Defendant Neufeld's admission that USCIS has essentially completed the administrative process for determining waitlist eligibility within months after a petition is filed. *See Solis v. Cissna*, D.S.C. No. 9:18-83, Dkt. 84, at 31 (quoting declaration of Donald Neufeld).

52. This failure to timely process U-status petitions is contrary to 8 C.F.R. § 214.14(d)(2).

Failure to Implement 8 U.S.C. § 1184(p)(6)

53. Under 8 U.S.C. § 1184(p)(6), Defendants are required to adjudicate EAD applications submitted by U-status petitioners whose petitions are bona fide.

54. Defendants have failed to implement 8 U.S.C. § 1184(p)(6).

55. Defendants do not grant EADs to U-status petitioners who submitted pending, bona fide petitions. Instead, by Defendant Neufeld's own admission, Defendants grant EADs solely to individuals who receive U status or who have been placed on the waiting list. *See Solis*, Dkt. 84, at 20-21 (quoting declaration of Donald Neufeld).

56. As Defendant Neufeld has admitted, Defendants never make a threshold determination whether a U-status petition is "bona fide," and they lack any formal process for identifying "bona fide" petitions. *See Solis*, Dkt. 84, at 21 (quoting Neufeld declaration); *see also* USCIS, *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions; Revision to Adjudicator's Field Manual (AFM) Chapters 23.5 and 39 (AFM Update AD10-38)* 4.

57. Defendants do, however, review all petitions as they come in. Indeed, they immediately run background checks on all U-status petitioners within 15 to 30 days of receiving a petition. *Solis*, Dkt. 84, at 27 (quoting Neufeld declaration).

58. Defendants have conceded that USCIS has not articulated a special definition for the term bona fide and that the “generic definition” applies. *Solis*, Dkt. 84, at 20.

59. The law enforcement certification required under 8 C.F.R. § 214.14(c)(2)(i), “acts as a check against fraud and abuse.” Department of Homeland Security, U and T Visa Law Enforcement Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and Other Government Agencies, available at https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-LawEnforcementResource%20Guide_1.4.16.pdf.

60. Defendants’ failure to adjudicate EAD applications filed by those who have submitted bona fide U-visa petitions violates 8 U.S.C. § 1184(p)(6).

Failure to Provide EAD Determinations or Interim EADs under Former 8 C.F.R. § 274a.13(d)

61. Under former 8 C.F.R. § 247a.13(d), Defendants were required, within 90 days of receiving an EAD application, to either adjudicate EAD applications of, or provide interim EADs to, all U-status petitioners who applied for EADs prior to January 17, 2017.

62. At all times before January 17, 2017, a U-status petitioner could apply for an EAD by checking “yes” to the relevant question on Form I-918, by submitting Form I-765, or by taking both actions.

63. Prior to January 17, 2017, Defendants neither adjudicated EADs for U-status petitioners within 90 days nor issued those petitioners interim EADs.

64. These failures violated former 8 C.F.R. § 274a.13(d).

PLAINTIFFS' U-STATUS PETITIONS AND EAD APPLICATIONS

65. Plaintiff N-N petitioned for U nonimmigrant status on August 18, 2015 by submitting Form I-918 and all required supporting documentation, including the law enforcement certification. Her petition was received by the Vermont Service Center on August 21, 2015.

66. Plaintiff N-N's U-visa petition was based on repeated acts of violence and abuse by her husband against her and her children. Law enforcement authorities have certified under penalty of perjury that Plaintiff N-N assisted with the investigation of this criminal conduct.

67. Plaintiff N-N checked the "yes" box for Part 2, Question 7 of Form I-918, which states "I want an Employment Authorization Document." This constituted an application for an EAD.

68. Plaintiff N-N resides in Brooklyn, New York.

69. Because she lacks a valid EAD, Plaintiff N-N is unable to earn a living and provide for herself and her children. She is unable to open a bank account and has no access to credit. This lack of financial independence has left her financially dependent on her abusive husband. She and her children have at times been forced to live in domestic violence shelters and family shelters to avoid her abusive husband. The lack of a valid EAD and resulting lack of financial means and independence has caused Plaintiff N-N and her children to suffer financial, physical, emotional, and psychological hardship.

70. Plaintiff O-D-B petitioned for U nonimmigrant status on December 2, 2016 by submitting Form I-918 and all required supporting documentation, including the law enforcement certification. Her petition was received by the Vermont Service Center on December 7, 2016.

71. Plaintiff O-D-B was the victim of years of physical and emotional abuse by her husband, culminating in a violent attack on July 22, 2015. Local law enforcement authorities have certified under penalty of perjury that she was helpful in the investigation and prosecution of this criminal activity.

72. Plaintiff O-D-B checked the “yes” box for Part 2, Question 7 of Form I-918, which states “I want an Employment Authorization Document.” This constituted an application for an EAD.

73. Plaintiff O-D-B resides in New York.

74. Plaintiff O-D-B has struggled to support herself and her family because she cannot find work without an EAD. She is aware of job opportunities that she has not been able to pursue because she does not have an EAD. She was offered a position with a cleaning service that she had to turn down because she could not present an EAD. She was also recently offered a position in a factory that offered minimum wage plus benefits such as health insurance, vacation time, and overtime pay for work on weekends or holidays, but she had to turn down that position as well because she could not present an EAD.

75. Plaintiff G-V-R petitioned for U nonimmigrant status on August 10, 2015, by submitting Form I-918 and all required supporting documentation, including the law enforcement certification. Her petition was received by the Vermont Service Center on August 17, 2015.

76. Plaintiff G-V-R was a victim of domestic violence inflicted by her ex-husband. She reported this conduct to the police, and then assisted with the investigation and prosecution of this crime. Based on her support, the perpetrator was convicted and deported.

77. Plaintiff G-V-R checked the “yes” box for Part 2, Question 7 of Form I-918, which states “I want an Employment Authorization Document.” This constituted an application for an EAD.

78. Plaintiff G-V-R resides in California.

79. Plaintiff G-V-R has struggled to support herself and her daughter because she cannot find work without an EAD. She could pursue available jobs in manufacturing, tailoring, and other industries, but every opportunity requires her to present an EAD. She has problems paying her rent, gas bill, electric bill, and phone bill almost every month.

80. Plaintiff I-M-R petitioned for U nonimmigrant status on September 16, 2016, by submitting Form I-918 and all required supporting documentation, including the law enforcement certification. Her petition was received by the Vermont Service Center on September 22, 2016.

81. Plaintiff I-M-R endured longstanding physical and sexual abuse inflicted by her father. She eventually reported this activity to her mother, who in turn reported this activity to the police. Local law enforcement officials have certified under penalty of perjury that Plaintiff I-M-R has cooperated in the investigation of this matter and there is an active, open warrant for the perpetrator’s arrest.

82. Plaintiff I-M-R checked the “yes” box for Part 2, Question 7 of Form I-918, which states “I want an Employment Authorization Document.” This constituted an application for an EAD. She also on September 16, 2016 submitted a Form I-765, Application for Employment Authorization.

83. Plaintiff I-M-R resides in Texas.

84. Plaintiff I-M-R has been offered internships and educational opportunities that she has had to turn down because she does not have an EAD. She is an excellent student and has been offered semester-long internships at law firms and other legal organizations, but has had to turn down these opportunities because she is unable to work legally in the United States. Even getting into community college was difficult despite her successful academic record, because the application itself required a Social Security number. Plaintiff I-M-R enlisted the help of a caseworker at an immigrants' rights organization to assist her in gaining admission, and started attending school later than planned because of the administrative delays caused by her lack of an EAD. She has also had to turn down a scholarship offered to her to reward her excellent grades, because the school requires scholarship recipients to have a Social Security number. She is unable to pursue scholarships that many universities offer to transferring community college students because they all require Social Security numbers.

85. Plaintiff I-M-R and her husband (a derivative U-visa applicant) have also been discriminated against while looking for housing because they do not have EADs. They have had trouble finding an apartment in a safe neighborhood because landlords require a Social Security number or EAD. They are unable to purchase a home because no bank will lend to them without an EAD. Plaintiff I-M-R and her family are also struggling to pay off medical bills accumulated in 2018 when she came down with a sudden kidney infection and had to be hospitalized.

86. Plaintiff M-B petitioned for U nonimmigrant status on April 14, 2017, by submitting Form I-918 and all required supporting documentation, including the law enforcement certification. Plaintiff M-B checked the "yes" box for Part 2, Question 7 of Form I-918, which states "I want an Employment Authorization Document." She also submitted a Form I-765, Application for Employment Authorization on April 14, 2017.

87. Her petition and application were received by the Vermont Service Center on May 22, 2017.

88. Plaintiff M-B resides in Texas.

89. Plaintiff M-B was the victim of domestic violence assaults that involved serious physical harm. Local law enforcement authorities have certified under penalty of perjury that Plaintiff M-B provided eyewitness testimony regarding the criminal acts and has assisted with prosecution efforts.

90. Plaintiff M-B has struggled to support herself and her family because she cannot find work without an EAD. With an EAD, M-B could apply, and be eligible for, jobs in house cleaning and hotel service, but every opportunity requires her to present an EAD. These positions would offer her a decent wage and benefits, such as health insurance and paid time off. Plaintiff M-B has also struggled to find a safe, comfortable apartment for her family without an EAD. Further, her son -- a derivative U-visa applicant -- has likewise been unable to find work and faces challenges in applying for college without an EAD.

91. Plaintiff N-P-G petitioned for U nonimmigrant status on January 22, 2018, by submitting Form I-918 and all required supporting documentation, including the law enforcement certification under penalty of perjury. His petition was received by the Vermont Service Center on February 7, 2018.

92. Plaintiff N-P-G was the victim of a felonious assault in which his neck was cut by a razor. He assisted local law enforcement authorities in the investigation and prosecution of this crime, including support for the Assistant District Attorney and testimony both before the grand jury and at trial. The perpetrator was indicted for attempted murder and assault, and eventually convicted and incarcerated.

93. Plaintiff N-P-G applied for an EAD by submitting Form I-765 on January 22, 2018, along with the Form I-918. This application was received by the Vermont Service Center on February 7, 2018.

94. Plaintiff N-P-G resides in New York.

95. Plaintiff N-P-G struggles to find employment because he does not have an EAD. He has been offered construction jobs paying close to twenty dollars an hour, plus benefits, but has had to turn them down because he does not have an EAD.

96. Plaintiff E-L-C petitioned for U nonimmigrant status on September 14, 2017, by submitting Form I-918 and all required supporting documentation, including the law enforcement certification. Her petition was received by the Vermont Service Center on September 19, 2017.

97. Plaintiff E-L-C submitted her U-visa petition after having endured years of physical and emotional abuse by her former partner, which culminated in a violent attack on June 12, 2017. She assisted with the police investigation of these criminal actions.

98. Plaintiff E-L-C applied for an EAD by submitting Form I-765 on September 14, 2017, which was received by the USCIS Vermont Service Center on September 19, 2017.

99. Plaintiff E-L-C resides in California.

100. In addition to difficulty finding work to support her four U.S. citizen children, Plaintiff E-L-C has had a hard time finding a safe place to live without an EAD. Since separating from her abusive partner, she has been repeatedly turned away when submitting applications for housing because she does not have a Social Security number. Her older children have held up to two jobs each in addition to going to school to help pay for household bills. E-L-C has had an

especially difficult time supporting her family because one of her sons was diagnosed with autism and schizophrenia.

101. Plaintiff Y-L-P petitioned for U nonimmigrant status on December 7, 2015, by submitting Form I-918 and all required supporting documentation, including the law enforcement certification under penalty of perjury. Her petition was received by the Vermont Service Center on December 8, 2015

102. Y-L-P was the victim of a felonious aggravated assault in June 2012 when she was present during the armed burglary of a store. Y-L-P provided crucial information leading to the apprehension of the suspects and for use in prosecuting the crime.

103. Plaintiff Y-L-P checked the “yes” box for Part 2, Question 7 of Form I-918, which states “I want an Employment Authorization Document.” This constituted an application for an EAD.

104. Plaintiff Y-L-P resides in Tennessee.

105. Plaintiff Y-L-P and her husband, who is a derivative on her petition for U status, struggle to provide for their family while they are unable to get an EAD Y-L-P’s husband is well-qualified for many jobs in the restaurant trade, but his ability to secure positions is stymied by his lack of an EAD.

106. Plaintiff Z-M-A petitioned for U nonimmigrant status on February 16, 2016 by submitting Form I-918 and all required supporting documentation, including the law enforcement certification under penalty of perjury. Her petition was received by the Vermont Service Center on March 1, 2016.

107. Plaintiff Z-M-A was the victim of assault perpetrated against her and her family by a former partner. She provided information to law enforcement authorities to assist with their

investigation and prosecution of this criminal activity, and has been asked to provide further assistance.

108. Plaintiff Z-M-A checked the “yes” box for Part 2, Question 7 of Form I-918, which states “I want an Employment Authorization Document.” This constituted an application for an EAD.

109. Plaintiff Z-M-A resides in Virginia.

110. Plaintiff Z-M-A struggles to support her family without an EAD and is unable to pay for school events for her children, since many events that are otherwise free of charge include transportation costs that she is unable to cover. She frequently feels ashamed and upset that her children have to miss school events because of her inability to cover the costs.

111. Plaintiff O-T petitioned for U nonimmigrant status on August 1, 2017, by submitting Form I-918 and all required supporting documentation, including the law enforcement certification under penalty of perjury, to the USCIS Vermont Service Center, which received and accepted her petition on August 9, 2017.

112. Plaintiff O-T submitted her U-visa petition based on multiple violent attacks by her ex-boyfriend in 2016 and 2017, which formed the basis for two separate criminal cases against the ex-boyfriend. Plaintiff O-T aided the investigation and prosecution of those cases by, among other things, repeatedly appearing in court to testify.

113. Plaintiff O-T applied for an EAD by submitting Form I-765 Application For Employment Authorization on August 1, 2017. That application was received by the Vermont Service Center on August 9, 2017.

114. Plaintiff O-T resides in Illinois.

115. Plaintiff O-T obtained a Doctor of Pharmacy degree in August 2018, completed clinical rotations in pharmacy, and has passed the Pharmacist Licensure Examination (NAPLEX/MPJE), holding licensure as a Registered Pharmacist in the State of Illinois. Notwithstanding her advanced degree, training, and licensure, she cannot even apply for employment as a pharmacist because she does not have a valid EAD. Unable to work, Plaintiff O-T has had no choice but to depend on her parents and other family members for housing and financial assistance. She has significant student loan and medical expenses and feels mental and emotional anguish as a result of the financial burden she is putting on her parents.

116. Plaintiff M-D-M petitioned for U nonimmigrant status by submitting Form I-918 and all required supporting documentation. Her petition was received by the Vermont Service Center on January 20, 2016.

117. Plaintiff M-D-M was the victim of violent assault perpetrated against her by her ex-boyfriend in 2015. She reported this assault to police the day after the assault. She subsequently testified multiple times regarding the criminal acts and has assisted with prosecution efforts.

118. Plaintiff M-D-M checked the “yes” box for Part 2, Question 7 of Form I-918, which states “I want an Employment Authorization Document.” This constituted an application for an EAD.

119. Plaintiff M-D-M resides in California.

120. Without an EAD, Plaintiff M-D-M was unable to earn enough money to pay for medication for her father, who passed away. Plaintiff M-D-M struggles to support her mother, her daughter, and her three grandchildren. Because she does not have an EAD, Plaintiff M-D-M has been unable to pursue job opportunities. For example, Plaintiff M-D-M has learned of

opportunities at the United States Postal Service, nursing facilities, construction companies, and other cleaning services. However, these job opportunities all require Plaintiff M-D-M to present a valid EAD.

121. Plaintiff M-J-L petitioned for U nonimmigrant status on June 27, 2017 by submitting Form I-918 and all required supporting documentation, including the law enforcement certification. Her petition was received by the Vermont Service Center on July 18, 2017.

122. Plaintiff M-J-L was the indirect victim of multiple sexual assaults perpetrated against her daughter. She contacted law enforcement and assisted in the investigation and prosecution of these crimes, testifying multiple times. As a result of her assistance, the perpetrator was sentenced to 25 years in prison.

123. Plaintiff M-J-L checked the “yes” box for Part 2, Question 7 of Form I-918, which states “I want an Employment Authorization Document.” At the same time she submitted Form I-918, she also submitted a Form I-765, Application for Employment Authorization.

124. Plaintiff M-J-L resides in Alaska.

125. Without an EAD, Plaintiff M-J-L struggles to support her mother, her daughter, and her son. For example, she has sometimes been unable to pay her rent. Because she does not have an EAD, Plaintiff M-J-L has been unable to pursue job opportunities. For example, Plaintiff M-J-L has learned of opportunities as cleaner at a hotel. However, these job opportunities require Plaintiff M-J-L to present a valid EAD.

126. Plaintiff E-S-R petitioned for U nonimmigrant status on January 11, 2016 by submitting Form I-918 and all required supporting documentation, including the law

enforcement certification. Her petition was received by the Vermont Service Center on January 15, 2016.

127. Plaintiff E-S-R was the victim of domestic violence, rape, and sexual assault perpetrated against her by her ex-partner. She reported these crimes to the police and assisted in the investigation of these crimes, including at one point wearing a wire as a part of the investigation.

128. Plaintiff E-S-R checked the “yes” box for Part 2, Question 7 of Form I-918, which states “I want an Employment Authorization Document.”

129. Plaintiff E-S-R resides in Alaska.

130. Without an EAD, Plaintiff E-S-R struggles to support her diabetic mother, her ill father, her daughter, and her son. For example, she has also had trouble paying her rent and has had to rely on the help of others to make rent. Because she does not have an EAD, Plaintiff E-S-R has been unable to pursue job opportunities. For example, Plaintiff E-S-R has learned of opportunities cleaning at large hotel chains. However, these job opportunities require Plaintiff E-S-R to present a valid EAD.

131. Defendants have not adjudicated Plaintiffs’ U-status petitions for placement on the regulatory waiting list.

132. Defendants have not adjudicated Plaintiffs’ applications for EADs.

133. Defendants have not made any determination that Plaintiffs’ U-status petitions are anything other than bona fide applications.

134. Defendants have not provided Plaintiff N-N, Plaintiff O-D-B, Plaintiff G-V-R, Plaintiff I-M-R, Plaintiff Y-L-P, Plaintiff Z-M-A, Plaintiff M-D-M, or Plaintiff E-S-R with an interim EAD.

135. Defendants' inaction has harmed Plaintiffs. Without employment authorization, Plaintiffs are restricted in their ability to secure lawful employment and to gain the financial means necessary to support themselves and their families. Further, because of Defendants' failure to determine whether they are eligible for U status, which would entitle Plaintiffs to deferred action or parole, they live under the unjustified threat of removal from the country and separation from their families and loved ones.

136. In addition to the direct hardships inflicted on Plaintiffs by the Defendants' conduct, the failure to execute the U nonimmigrant status program in a timely and proper fashion undermines the law enforcement objectives that the statutes and regulations were intended to achieve. Nonimmigrant crime victims are not motivated to come forward and assist law enforcement authorities when the very government they are called upon to assist fails to follow through on its promised protections and benefits of U nonimmigrant status.

137. There are no administrative remedies available for Plaintiffs to exhaust while their U-status petitions remain pending before USCIS.

CLASS ACTION ALLEGATIONS

138. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23 in their representative capacity on behalf of themselves and all others similarly situated. In particular, Plaintiffs seek to represent the following defined classes under Fed. R. Civ. P. 23(b)(2):

a. Pending U-Status Petition Class ("Class"): All individuals who filed a U-status petition and related application for employment authorization (via either the "yes" box in Part 2, Question 7 of the Form I-918 U-status petition or a Form I-765 Application for Employment Authorization) at least six months before the date this complaint is filed and (i), who have not received U status and whose petitions have not been denied; (ii) whose petitions Defendants have not adjudicated for placement on the 8 C.F.R. § 214.14(d)(2)

waiting list; and (iii) whose applications for employment authorization Defendants have not adjudicated.⁵

b. Pre-January 17, 2017 EAD Application Subclass: All individuals who have filed a U-status petition and related application for employment authorization (via either the “yes” box in Part 2, Question 7 of the Form I-918 U-status petition or a Form I-765 Application for Employment Authorization) before January 17, 2017, and (i) who have not received U status and whose petitions have not been denied; (ii) whose petitions Defendants have not adjudicated for placement on the 8 C.F.R. § 214.14(d)(2) waiting list; (iii) whose applications for employment authorization Defendants did not adjudicate within 90 days; and (iv) to whom Defendants did not grant an interim employment authorization document pursuant to former 8 C.F.R. § 274a.13(d).⁶

c. Multi-Year U-Status Petition Subclass: All individuals who filed a U-status petition at least two years before the date this complaint was filed, and (i) who have not received U status and whose petitions have not been denied; and (ii) whose petitions Defendants have not adjudicated for placement on the 8 C.F.R. § 214.14(d)(2) waiting list.⁷

139. Plaintiffs reserve the right to amend the above class definitions, and to define additional subclasses, at any time based upon further investigation and discovery.

140. **Numerosity:** The Class (and each subclass) is so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, it may be ascertained through Defendants’ records. Based on the number of pending primary U-status petitions and the percentage of such petitions that USCIS has historically

⁵ Each of the named Plaintiffs are proposed members of this class and seek to be representatives of it.

⁶ Plaintiffs N-N, O-D-B, G-V-R, I-M-R, Y-L-P, Z-M-A, M-D-M and E-S-R are proposed members of this sub-class and seek to be representatives of it.

⁷ Plaintiffs M-B, O-T, and M-J-L are proposed members of this sub-class and seek to be representatives of it.

granted (*see* USCIS, *Case Status*), Plaintiffs estimate that the Class exceeds 100,000 individuals and that both subclasses exceed 10,000 individuals.

141. **Commonality:** Common questions of law or fact exist as to all members of the Class (and subclasses). These questions include, but are not limited to, the following:

- a. Whether Defendants have a nondiscretionary obligation to adjudicate U-status petitions for placement on the 8 C.F.R. § 214.14(d)(2) waiting list.
- b. Whether Defendants have a nondiscretionary obligation to adjudicate U-status petitions for placement on the 8 C.F.R. § 214.14(d)(2) waiting list within a reasonable time.
- c. Whether Defendants' failure to adjudicate a U-status petition that has been pending for more than two years for placement on the 8 C.F.R. § 214.14(d)(2) waiting list constitutes "agency action unlawfully withheld or unreasonably delayed" under 5 U.S.C. § 706(1) or otherwise constitutes an unlawful or unreasonable delay under any other applicable law.
- d. Whether Defendants' failure to adjudicate a U-status petition that has been pending for more than two years for placement on the 8 C.F.R. § 214.14(d)(2) waiting list is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under 5 U.S.C. § 706(2)(A) or otherwise constitutes an arbitrary, capricious, or unlawful act or an abuse of discretion under any other applicable law.
- e. Whether Defendants have a nondiscretionary obligation to adjudicate applications for employment authorization under 8 U.S.C. § 1184(p)(6).
- f. Whether Defendants' failure to adjudicate an application for employment authorization filed by an individual with a pending, bona fide U-status petition constitutes

“agency action unlawfully withheld or unreasonably delayed” under 5 U.S.C. § 706(1).

g. Whether Defendants’ failure to adjudicate an application for employment authorization filed by an individual with a pending, bona fide U-status petition is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” under 5 U.S.C. § 706(2)(A).

h. Whether, for U-status petitioners who applied for EADs before January 17, 2017, Defendants had a nondiscretionary obligation under former 8 C.F.R. § 274a.13(d) to adjudicate the EAD application, or provide an interim EAD, within 90 days.

i. Whether, for U-status petitioners who applied for EADs before January 17, 2017, Defendants’ failure to adjudicate the EAD application, or provide an interim EAD, within 90 days constitutes “agency action unlawfully withheld or unreasonably delayed” under 5 U.S.C. § 706(1).

h. Whether, for U-status petitioners who applied for EADs before January 17, 2017, Defendants’ failure to adjudicate the EAD application, or provide an interim EAD, within 90 days is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” under 5 U.S.C. § 706(2)(A).

142. **Typicality:** Plaintiffs’ claims are typical of the claims of other Class (and subclass) members because Plaintiffs and each Class (and subclass) member were comparably impacted through Defendants’ failure to adjudicate an application for employment authorization (and, for the Multi-Year U-Status Petition Subclass, a U-status petition for placement on the 8 C.F.R. § 214.14(d)(2) waiting list).

143. **Adequacy:** Plaintiffs will fairly and adequately represent, and protect the interests of, the Class (and subclasses) because they are similarly situated to all such members, lack any

conflicts of interest with other Class (and subclass) members, and are not subject to any unique defenses that are not applicable to other Class (and subclass) members. Plaintiffs are committed to prosecuting this action vigorously and have retained counsel experienced in handling complex class action litigation to do so.

144. Defendants have acted or refused to act on grounds that apply generally to the Class (and subclasses), so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class (and subclasses) as a whole. Specifically, Defendants have failed to discharge, and have unreasonably delayed, their nondiscretionary obligation to adjudicate Class members' applications for employment authorization. Moreover, with respect to the Pre-January 17, 2017, EAD Application Subclass, Defendants have refused to comply with their nondiscretionary obligation under former 8 C.F.R. § 274.13(d) to either adjudicate members' EAD applications within 90 days from the date of receipt of the application or grant interim EADs. And with respect to the Multi-Year U-Status Petition Subclass, Defendants have unreasonably delayed their nondiscretionary obligation to adjudicate members' U-status petitions for placement on the 8 C.F.R. § 214.14(d)(2) waiting list.

COUNT 1—ADMINISTRATIVE PROCEDURE ACT
[FAILURE TO TIMELY DETERMINE PLAINTIFFS' ELIGIBILITY FOR U-STATUS
WAITING LIST]
(Asserted on Behalf of Plaintiffs and the Multi-Year U-Status Petition Subclass)

145. Plaintiffs incorporate each of the preceding paragraphs as if fully set forth herein.

146. Defendants have a nondiscretionary obligation to determine the eligibility of Plaintiffs and members of the Multi-Year U-Status Petition Subclass for placement on the U-status waiting list. 5 U.S.C. § 706(1); 8 C.F.R. § 214.14(d)(2).

147. Defendants have a nondiscretionary obligation to make these eligibility determinations within a reasonable time. 5 U.S.C. §§ 555(b) & 706(1).

148. Once Defendants determine that Plaintiffs and members of the Multi-Year U-Status Petition Subclass are eligible for the waiting list, Defendants have a nondiscretionary duty to place them on the waiting list and grant them deferred action or parole. 8 C.F.R. § 214.14(d)(2).

149. USCIS has not determined whether Plaintiffs N-N, O-D-B, G-V-R, I-M-R, M-B, Y-L-P, Z-M-A, O-T, M-D-M, E-S-R, and M-J-L and members of the Multi-Year U-Status Petition Subclass are eligible for the U-status waiting list.

150. Defendants' failure to make waiting-list eligibility determinations for all individuals who would receive U nonimmigrant status but for the statutory cap violates 8 C.F.R. § 214.14(d)(2) and, as to Plaintiffs and the Multi-Year U-Status Petition Subclass, constitutes agency action unlawfully withheld in violation of the APA, 5 U.S.C. § 706(1).

151. Defendants' practice of placing individuals on the waiting list only once it is clear that they will soon receive U status violates 8 C.F.R. § 214.14(d)(2) and, as to Plaintiffs and the Multi-Year U-Status Petition Subclass, constitutes agency action unlawfully withheld in violation of the APA, 5 U.S.C. § 706(1).

152. Defendants' failure to make waiting-list eligibility determinations within a reasonable time constitutes agency action unreasonably delayed in violation of the APA, 5 U.S.C. §§ 555(b) & 706(1).

153. Because of USCIS's inaction and unreasonable delay, Plaintiffs and members of the Multi-Year U-Status Petition Subclass have suffered, and will continue to suffer, substantial and irreparable harm to their welfare and that of their families for which there is no adequate remedy at law.

154. No other remedy exists for Plaintiffs to compel Defendants to comply with 8 C.F.R. § 214.14(d)(2).

COUNT II—ADMINISTRATIVE PROCEDURE ACT
[FAILURE TO COMPLY WITH STATUTE MANDATING EAD
ADJUDICATION]
(Asserted on Behalf of Plaintiffs and the Class)

155. Plaintiffs incorporate each of the preceding paragraphs as if fully set forth herein.

156. By enacting 8 U.S.C. § 1184(p)(6), Congress imposed a nondiscretionary duty on USCIS to adjudicate applications for EADs from all petitioners with pending, bona fide U-status petitions.

157. Section 1184(p)(6) imposes on USCIS an obligation to adjudicate applications for EADs before the agency makes waiting-list eligibility determinations.

158. Defendants do not adjudicate, and never have adjudicated, EAD applications under 8 U.S.C. § 1184(p)(6).

159. Defendants have withheld adjudication of EAD applications for pending, bona fide petitioners for U status who are not on the waiting list.

160. Defendants' failure to adjudicate Plaintiffs' and Class members' applications for employment authorization while their bona fide petitions for U status remain pending constitutes "agency action unlawfully withheld or unreasonably delayed" under 5 U.S.C. § 706(1), and is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under 5 U.S.C. § 706(2)(A).

161. Because of Defendants' unlawful withholding of adjudication of Plaintiffs' and Class members' EAD applications, and its failure to adjudicate the EAD applications within a reasonable period of time, Plaintiffs and Class members have suffered, and will continue to

suffer, substantial and irreparable harm to their welfare and that of their families for which there is no adequate remedy at law.

162. No other remedy exists for Plaintiffs to compel Defendants to comply with 8 U.S.C. § 1184(p)(6).

COUNT III—ADMINISTRATIVE PROCEDURE ACT
[FAILURE TO COMPLY WITH REGULATORY TIMELINE MANDATING EAD
ADJUDICATION OR ISSUANCE OF INTERIM EAD]
(Asserted on Behalf of Plaintiffs and the Pre-January 17, 2017 EAD Application Subclass)

163. Plaintiffs incorporate each of the preceding paragraphs as if fully set forth herein.

164. The EAD applications submitted by Plaintiffs N-N, O-D-B, G-V-R, I-M-R, Y-L-P, Z-M-A, M-D-M, and E-S-R, and members of the Pre-January 17, 2017 EAD Application Subclass, were received by USCIS prior to January 17, 2017.

165. These applications for an EAD have been pending for longer than 90 days and have not been adjudicated.

166. Defendants have failed to issue an interim EAD to Plaintiffs N-N, O-D-B, G-V-R, I-M-R, Y-L-P, Z-M-A, M-D-M, and E-S-R or to members of the Pre-January 17, 2017 EAD Application Subclass.

167. Defendants' inaction violates former 8 C.F.R. § 274a.13(d).

168. Defendants' failure to comply with their own regulation is "agency action unlawfully withheld or unreasonably delayed" under 5 U.S.C. § 706(1) and constitutes agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under 5 U.S.C. § 706(2)(A).

169. Because of Defendants' failure to comply with its own regulatory requirements, Plaintiffs N-N, O-D-B, G-V-R, I-M-R, Y-L-P, Z-M-A, M-D-M, and E-S-R, and members of the

Pre-January 17, 2017, EAD Application Subclass, have suffered, and will continue to suffer, substantial and irreparable harm to their welfare for which there is no adequate remedy at law.

170. No other remedy exists for Plaintiffs to compel Defendants to comply with former 8 C.F.R. § 214a.13(d).

COUNT IV—MANDAMUS ACT
[FAILURE TO PERFORM STATUTORY AND REGULATORY DUTIES TO
DETERMINE ELIGIBILITY FOR U-STATUS WAITING LIST]
(Asserted on Behalf of Plaintiffs and the Multi-Year U-Status Petition Subclass)

171. Plaintiffs incorporate each of the preceding paragraphs as if fully set forth herein.

172. The Mandamus Act authorizes federal district courts to compel an officer or employee of a United States agency to perform a duty owed to a plaintiff. 28 U.S.C. § 1361. Issuance of a writ of mandamus is appropriate where the following requirements are satisfied: (1) the plaintiff has a right to have the act performed; (2) the defendant is under a clear nondiscretionary duty to perform the act requested; and (3) no other adequate remedy is available.

173. Plaintiffs and members of the Multi-Year U-Status Petition Subclass satisfy all of the requirements for a writ of mandamus compelling Defendants to determine their eligibility for the waiting list.

174. Once Plaintiffs and members of the Multi-Year U-Status Petition Subclass properly filed their complete and bona fide U-Status petitions, they had a clear right to a determination of eligibility for the waiting list, 8 C.F.R. § 214.14(d)(2), and a clear right to that determination within a reasonable period of time. 5 U.S.C. §§ 555(b).

175. In contravention of their own regulation, Defendants make no attempt to place all petitioners who would receive U status but for the statutory cap on the waiting list.

176. Despite the lapse of more than two years, Defendants have not adjudicated the petitions filed by Plaintiffs N-N, O-D-B, G-V-R, I-M-R, M-B, Y-L-P, Z-M-A, M-D-M, E-S-R, and M-J-L, and the Multi-Year U-Status Petition Subclass for placement on the waiting list.

177. No other adequate remedy is available to Plaintiffs and members of the Multi-Year U-Status Petition Subclass. Because of Defendants' unreasonable delay, Plaintiffs and members of the Multi-Year U-Status Petition Subclass are living under the threat of removal, and in many cases, separation from their families and have been denied the opportunity to seek lawful employment to support themselves and their families, and will continue to suffer substantial and irreparable harm to their welfare and that of their families for which there is no adequate remedy at law.

COUNT V—MANDAMUS ACT
[FAILURE TO PERFORM STATUTORY AND REGULATORY DUTIES TO
ADJUDICATE EAD APPLICATION]
(Asserted on Behalf of Plaintiffs and the Class)

178. Plaintiffs incorporate each of the preceding paragraphs as if fully set forth herein.

179. Plaintiffs and members of the Class also satisfy all of the requirements for a writ of mandamus compelling Defendants to adjudicate their EAD applications under 8 U.S.C. § 1184(p)(6).

180. Plaintiffs and members of the Class have a right to adjudication of their EAD applications while their bona fide petitions for U status are pending under 8 U.S.C. § 1184(p)(6).

181. When Plaintiffs and members of the Class filed their Form I-918 petitions, they applied for an EAD by checking "yes" in response to part 2, question 7, which states "I want an employment authorization document," by properly filing a Form I-765 Application for Employment Authorization, or by taking both actions.

182. In enacting 8 U.S.C. § 1184(p)(6), Congress imposed a nondiscretionary duty on USCIS to adjudicate applications for EADs from petitioners with pending, bona fide U-status petitions.

183. Defendants have violated their obligation under 8 U.S.C. § 1184(p)(6) by failing to adjudicate employment authorization applications that were submitted by individuals with pending, bona fide petitions for U nonimmigrant status, but who have not yet been placed on the waiting list.

184. No other adequate remedy is available to Plaintiffs and members of the Class. Without the adjudication of their applications for an EAD, Plaintiffs and members of the Class have been and continue to be unable to obtain lawful employment in the United States. As a result, Plaintiffs and members of the Class have been and continue to be unable to lawfully support themselves and their families. An order from this Court is the only avenue of relief for Plaintiffs and members of the Class with respect to their right to a timely adjudication of their EAD applications.

COUNT VI—MANDAMUS ACT
[FAILURE TO PERFORM STATUTORY AND REGULATORY DUTIES TO ISSUE
INTERIM EADs]
(Asserted on Behalf of Plaintiffs and the Pre-January 17, 2017 EAD Application Subclass)

185. Plaintiffs incorporate each of the preceding paragraphs as if fully set forth herein.

186. Plaintiffs N-N, O-D-B, G-V-R, I-M-R, Y-L-P, Z-M-A, M-D-M, and E-S-R, and members of the Pre-January 17, 2017 EAD Application Subclass, who filed their EAD applications before January 17, 2017, satisfy all of the requirements for a writ of mandamus compelling Defendants to adjudicate their EAD applications and grant them an interim EAD pursuant to former 8 C.F.R. § 274a.13(d).

187. Former 8 C.F.R. § 274a.13(d) imposes a nondiscretionary duty on USCIS to either adjudicate EAD applications or issue interim EADs within 90 days of receiving an application.

188. This nondiscretionary duty applies to EAD applications submitted by U-status petitioners.

189. Defendants have violated their obligation to adjudicate the EAD applications of Plaintiffs and members of the Pre-January 17, 2017 EAD Application Subclass within 90 days or to issue them an interim EAD. Although these EAD applications have been pending for more than 90 days, Defendants have neither adjudicated the applications nor granted the applicants an interim EAD.

190. No other adequate remedy is available to Plaintiffs and members of the Pre-January 17, 2017 EAD Application Subclass. Without the adjudication of their application for an EAD or interim authorization, Plaintiffs and members of the Pre-January 17, 2017 EAD Application Subclass have been, and continue to be, unable to obtain lawful employment in the United States. As a result, Plaintiffs and members of the Pre-January 17, 2017 EAD Application Subclass have been, and continue to be unable to lawfully support themselves and their families. An order from this Court is the only avenue of relief for Plaintiffs and members of the Pre-January 17, 2017 EAD Application Subclass with respect to their right to the timely adjudication of their EAD application.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request that this Court grant the following relief:

1. Certify this action as a class action on behalf of the proposed Class (and subclasses) under Fed. R. Civ. P. 23(b)(2), and appoint Plaintiffs (as identified above) as representatives of the Class (and subclasses) and their counsel as Class counsel.

2. Declare that Defendants' acts and omissions complained of herein violate 5 U.S.C. §§ 555(b), 706(1), and 706(2)(A); 8 U.S.C. § 1184(p)(6); former 8 C.F.R. § 274a.13(d); and 8 C.F.R. § 214.14(d)(2).

3. Enjoin Defendants—and each of their officers, agents, servants, employees, successors in office, and those acting in privity or concert with them—and enter an order:

- a. compelling Defendants to timely determine Plaintiffs' and Class members' eligibility for placement on the U-status waiting list pursuant to 5 U.S.C. §§ 555(b) & 706(1) and 8 C.F.R. § 214.14(d)(2);
- b. compelling Defendants to timely adjudicate Plaintiffs' and subclass members' employment applications while their U-status petitions remain pending, pursuant to 5 U.S.C. §§ 555(b) & 706(1) and 8 U.S.C. § 1184(p)(6); and
- c. compelling Defendants to grant certain Plaintiffs and subclass members an interim EAD pursuant to former 8 C.F.R. § 274a.13(d).

4. Award attorneys' fees and costs of this litigation to Plaintiffs.

5. Grant any and all further relief that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs, and all others similarly situated, hereby demand a trial by jury herein.

Dated: September 17, 2019

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