

The Honorable James L. Robart  
United States District Judge

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS  
PROJECT, *et al.*,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND  
IMMIGRATION SERVICES, *et al.*,

Defendants.

Case No. 2:15-cv-00813-JLR

**DECLARATION OF CONNIE NOLAN**

I, Connie Nolan, declare and say:

1) I am the Deputy Associate Director of Service Center Operations (SCOPS) for U. S. Citizenship and Immigration Services (USCIS), which is within the Department of Homeland Security (DHS). I have held this position since June 2019. I began my federal career in 1992 with the former Immigration and Naturalization Service (INS) and have served in numerous capacities with INS and now USCIS at the Vermont Service Center, Potomac Service Center, and SCOPS headquarters.

1 2) In my current position, I oversee all planning, management, and operational functions of  
2 Service Center Operations, which includes overseeing all activities at the five service centers  
3 located in California, Texas, Nebraska, Vermont, and Virginia, respectively. SCOPS employs  
4 approximately 6,500 federal and contract staff and is authorized to employ up to 7,600 federal  
5 and contract staff. Hiring and onboarding of new employees is ongoing. SCOPS adjudicated  
6 nearly 4.6 million requests for immigration benefits in fiscal year 2022 to date.

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8 3) An asylum applicant's eligibility for employment authorization is governed by 8 C.F.R.  
9 § 274a.12(c)(8) (hereinafter also, "C8 EAD applicants"). Asylum applicants must apply for  
10 employment authorization and be issued an employment authorization document (EAD) to be  
11 authorized to work in the United States (hereinafter also, "C8 EAD applications").

12 4) On July 26, 2018, in *Rosario, et al., v. USCIS, et. al.*, 15-813 (W.D.Wash.), the court  
13 granted summary judgment against the government, finding that the government had violated 8  
14 C.F.R. § 208.7(a)(1) by failing to comply with the regulation's 30-day processing timeline  
15 requirement for adjudicating initial C8 EAD applications.

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17 5) On June 22, 2020, the Department of Homeland Security (DHS) amended 8 C.F.R.  
18 § 208.7(a)(1), to eliminate the 30-day processing timeline requirement. *See* Removal of 30-Day  
19 Processing Provision for Asylum Applicant- Related Form I-765 Employment Authorization  
20 Applications, 85 Fed. Reg. 37,502 (June 22, 2020) ("Timeline Repeal Rule"). The change to 8  
21 C.F.R. § 208.7(a)(1) became effective on August 21, 2020.

22  
23 6) On June 26, 2020, DHS promulgated a broader rule related to initial and renewal  
24 employment authorization for asylum seekers, which implemented a multitude of changes  
25 affecting various aspects of the employment authorization process, including when a C8 EAD

1 application could be filed, new biometrics requirements, and numerous new eligibility criteria,  
2 among other changes. *See* Asylum Application, Interview, and Employment Authorization for  
3 Applicants 85 Fed. Reg. 38532 (June 26, 2020) (“Broader Asylum EAD Rule”). The Broader  
4 Asylum EAD rule became effective on August 25, 2020.

5 7) On September 11, 2020, the U.S. District Court for the District of Maryland in *Casa De*  
6 *Maryland, Inc., v. Mayorkas*, 20-cv-2118, imposed a preliminary injunction (the “CASA PI”)  
7 requiring that USCIS not apply the Timeline Repeal Rule and certain aspects of the Broader  
8 Asylum EAD Rule (collectively, “2020 rules”) to members of the Casa De Maryland, Inc.  
9 (“CASA”), and Asylum Seeker Advocacy Project (“ASAP”) organizations.

10 8) Because the changes to 8 C.F.R. § 208.7(a)(1) were enjoined as to CASA and ASAP  
11 members, USCIS considered individual CASA and ASAP members who filed an initial asylum-  
12 based Form I-765 Application for Employment Authorization (applicants seeking initial  
13 employment authorization based on a pending asylum application, hereinafter also, “CASA and  
14 ASAP initial C8 EAD applicants”) on or after August 21, 2020, the effective date of the  
15 Timeline Repeal Rule, to be potential class members in the *Rosario* litigation.

16 9) Any individual who filed an initial C8 EAD application prior to August 21, 2020, and  
17 whose application had not yet been adjudicated on that date, is also a potential *Rosario* class  
18 member if their C8 EAD application was not processed within the 30-day processing timeframe.  
19 All other initial C8 EAD applicants were processed under the Timeline Repeal Rule as well as  
20 the Broader Asylum EAD rule and were not considered potential *Rosario* class members until  
21 the 2020 rules were vacated by the decision in *Asylumworks v. Mayorkas*, 20-cv-2815 on  
22 February 7, 2022 by the U.S. District Court for the District of Columbia.  
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1 10) I am submitting this declaration to provide additional information regarding the impact of  
2 the *Asylumworks* decision and describe the steps USCIS has taken and continues to take to  
3 address the resulting backlog and to comply with this court's order.

4 11) After the vacatur of the Timeline Repeal Rule and Broader Asylum EAD Rule, USCIS  
5 returned to processing C8 EAD applications under the rules that were in place prior to the  
6 effective dates of those rules, August 21, 2020 and August 25, 2020, respectively. This  
7 application of the regulatory scheme in place prior to the effective dates of those rules applies to  
8 all C8 EAD applicants, including but not limited to all CASA and ASAP initial C8 EAD  
9 applicants.  
10

11 12) Responding to the vacatur has been a complicated process for USCIS in light of the  
12 CASA PI. The CASA PI, which enjoined USCIS from administering the Timeline Repeal Rule  
13 and certain aspects of the Broader Asylum EAD Rule with regard to CASA and ASAP members,  
14 caused CASA and ASAP applicants to be treated differently than other initial C8 EAD applicants  
15 and caused them to become potential *Rosario* class members, while the Timeline Repeal Rule  
16 and relevant aspects of the Broader Asylum EAD Rule continued to apply to applicants who  
17 were not members of CASA or ASAP.  
18

19 13) Compliance with these competing regulatory schemes in the context of the controlling  
20 court orders required USCIS to establish separate distinct work streams, processes, and  
21 procedures for the adjudication of CASA and ASAP member initial C8 EAD applications, and  
22 the adjudication of all other C8 EAD applications not submitted by CASA and ASAP members.  
23

24 14) At the time the CASA PI issued, it was not possible to accurately identify CASA and ASAP  
25 member initial C8 EAD applications in USCIS systems, which could only identify them by inference  
based on whether or not the biometrics fee was paid (for non-CASA/ASAP members) or the

1 application was submitted without a fee (for CASA/ASAP members because the fee was enjoined  
2 under the CASA PI, and as provided by instructions on the USCIS website for CASA/ASAP member  
3 filings under the CASA PI).

4 15) The USCIS Office of Intake and Document Production (OIDP) and its contractors at the  
5 Dallas Lockbox facility initially were required to manually review and track each filing by CASA  
6 and ASAP members. In turn, these filings had to be manually tracked by SCOPS for case assignment  
7 and expedited processing, because existing systems were not built to electronically track cases based  
8 on criteria such as membership in a particular organization, as required by the CASA PI. These  
9 processes were subsequently introduced and incorporated into USCIS intake and case  
10 management systems, which increased efficiency and reduced overall processing time, but which  
11 first required testing, refinement, and the development of other C8-specific workarounds related  
12 to the CASA PI.

14 16) Establishing separate and distinct work streams, processes, and procedures, including  
15 developing new system capabilities that enabled USCIS to accurately and efficiently identify  
16 CASA and ASAP member applications, was a complicated process that required time. USCIS  
17 was not able to resume consistent 30-day processing for 90% or more CASA and ASAP  
18 applicants subject to the CASA PI and the *Rosario* order until June of 2021.

20 17) USCIS currently reports C8 EAD processing information regarding cases subject to the  
21 30-day processing timeline to plaintiffs in the case *Rosario v. USCIS*, 15-cv-813 (W.D. Wa.),  
22 pursuant to an agreement (henceforth the “Rosario report.”). Attached to this declaration are  
23 Rosario reports for January – August of 2022.

24 18) Referencing the data in Table 1 of each *Rosario* report, these data reflect historical  
25 monthly completions of initial C8 EAD application adjudications subject to the 30-day

1 regulatory requirement dating back to August of 2020 and continuing through the month of the  
2 report. As previously noted, the 30-day processing requirement was eliminated by the now-  
3 vacated Timeline Repeal Rule in July of 2020, effective August 21, 2020. However, on  
4 September 11, 2020, as a result of the CASA PI, 30-day processing was reinstated for a subset  
5 of initial C8 EAD applicants, consisting of CASA and ASAP members.

6 19) The Compliance Percentages column in Table 1 of the Rosario report reflects the data in  
7 Processing Time (in Days) columns. By way of example, and referencing the August 2022  
8 Rosario report, for August of 2020, Table 1 reflects, regarding processing time, that USCIS  
9 completed 21,187 adjudications, of which 20,457 were complete in 0-30 days. In the Compliance  
10 Percentage columns, in the % Completed within 30 days column, those figures are converted to a  
11 percentage. It reports that USCIS completed 96.6% of cases in August of 2020 within 0-30 days  
12 ( $20457/21187 = 0.9655$  which is rounded to 96.6%).  
13

14 20) The data in Table 2 of the August 2022 *Rosario* report reflects the number of initial C8  
15 EAD applications pending for adjudication as of August 31, 2022, organized by time buckets: 0-  
16 30 days, 31-60 days, 61-90 days, 91-120 days, and 121+ days. The compliance percentage data  
17 in Table 2 reflects the percentages of currently pending applications that have been pending  
18 under 30 days and under 60 days.  
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20 21) As reflected in Table 1 of the August 2022 Rosario report, following issuance of the  
21 CASA PI on September 11, 2020, USCIS was not able to resume completing at least 90% of  
22 initial C8 EAD Applications subject to the 30-day processing requirement until June of 2021, a  
23 period of 10 months.  
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1 22) Immediately following the February 7, 2022 *Asylumworks* vacatur decision, USCIS  
2 understood all pending initial C8 EAD applications, as well as all initial C8 EAD applications  
3 filed on or after February 8, 2022 (including CASA and ASAP initial C8 EAD applications), to  
4 be subject to the vacatur order. As a consequence, all applicants would also be potential *Rosario*  
5 class members.

6 23) After the *Asylumworks* vacatur on February 7, 2022, USCIS immediately took steps to  
7 cease application of the vacated rules, including notifying affected operations, assessing the  
8 impacts of the decision, providing preliminary guidance, and identifying necessary system and  
9 form updates. Actions that could be implemented immediately included:  
10

- 11 a) Ceasing application of the vacated biometrics requirement by ceasing  
12 scheduling biometrics appointments for affected C8 EAD applicants  
13 and/or resubmitting previously collected fingerprints;
- 14 b) Ceasing rejection of C8 EAD applications filed without a biometric  
15 services fee, without regard to CASA or ASAP membership;
- 16 c) Ceasing application of the requirement that asylum applicants must wait  
17 365 days from the time of filing Form I-589, Application for Asylum,  
18 before they could file their initial C8 EAD application;
- 19 d) Ceasing denial of C8 EAD applications based on treatment of unresolved  
20 amendments or supplements to the underlying asylum application as  
21 unresolved applicant-caused delays;
- 22 e) Adjudicators would not consider criminal convictions, or issue denials  
23 based on criminal conduct other than aggravated felonies;  
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- f) Adjudicators would not consider entry without inspection as a basis for ineligibility;
- g) Adjudicators would not consider whether the applicant applied for asylum within one year of their previous entry;
- h) Ceasing application of the prohibition on employment authorization during federal court appeals in the adjudication of renewal applications;
- i) Applying the 180-day EAD Asylum Clock and 150-day waiting period to file initial C8 EAD applications;
- j) Reusing or scanning photos for card production, regardless of CASA or ASAP membership.

24) The period to appeal the *Asylumworks* decision lapsed at the end of April 7, 2022.

25) USCIS continued to collect information from CASA and ASAP members. In addition, while USCIS applied the vacatur to all pending C8 EAD applications, USCIS did not begin to dismantle the bifurcated processes and procedures applicable to CASA and ASAP initial C8 EAD applications—processes and procedures that took a substantial amount of time and technological infrastructure to create—until after April 7, 2022

26) Ultimately, the government did not appeal the *Asylumworks* decision.

27) USCIS subsequently took steps to reincorporate CASA and ASAP initial C8 EAD applications into a common adjudication queue with all other initial C8 EAD applicants.

28) One consequence of the *Asylumworks* vacatur was the immediate creation of a significant backlog of cases to which the re-established 30-day processing timeline applied. Between September 11, 2020 when the CASA PI was issued and February 7, 2022, when the



1 *Asylumworks* vacatur was issued, 30-day processing was only provided to CASA and ASAP  
2 initial C8 EAD applicants, pursuant to the terms of the CASA PI and the *Rosario* order. The  
3 adjudication of initial C8 EAD applications filed by people who were not members of CASA or  
4 ASAP was not subject to any adjudicatory timeline prior to February 7, 2022. On the morning of  
5 February 8, 2022, all of those non-CASA/ASAP member applications that were still pending,  
6 became subject to a 30-day adjudication timeline. They also became potential *Rosario* class  
7 members.  
8

9 29) In January 2022, USCIS completed the adjudication of 12,457 CASA/ASAP member  
10 applications to which the 30-day processing requirement applied. Of those cases, USCIS  
11 adjudicated 11,476 within 30 days (a 92.1% 30-day completion rate). (See August 2022 Rosario  
12 Report).

13 30) At the end of January 2022, there were 8,138 CASA/ASAP member applications pending  
14 for adjudication, of which 7,960 had been pending for 30 days or fewer. (See January 2022  
15 Rosario Report).

16 31) Following the *Asylumworks* vacatur, at the end of February 2022, there were 93,639  
17 pending cases to which the 30-day processing requirement applied, and of which 66,935 were  
18 now credited as having been pending for 121 or more days. These numbers reflect the  
19 reincorporation of pending non-CASA and ASAP initial C8 EAD applications into the 30-day  
20 processing framework required post-vacatur.  
21

22 32) Following the vacatur, USCIS began to make plans to address the backlog of pending  
23 initial C8 EAD applications, consisting largely of “non-CASA and ASAP” cases. USCIS did  
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1 not begin taking steps to reincorporate all pending and newly filed initial C8 EAD applications  
2 into a single workstream until on or about April 19, 2022.

3 33) SCOPS's efforts have resulted in USCIS substantially increasing the number of monthly  
4 initial C8 EAD adjudications subject to the 30-day processing timeframe that USCIS is able to  
5 complete. For example, in December 2021 and January 2022 USCIS processed 10,534 and  
6 12,457 total CASA/ASAP applications, respectively, subject to the 30-day requirement. In May,  
7 June, July, and August of 2022, USCIS processed 31,474, 29,014, 25,694, and 34,889 total 30-  
8 day timeline cases respectively.  
9

10 34) USCIS has focused its efforts largely on reducing the backlog of cases, working the  
11 oldest cases first. The need to address the backlog has impacted USCIS's processing times for  
12 all initial C8 EAD applications. In particular, it has resulted in recent initial C8 EAD applicants  
13 having longer than expected processing times.

14 35) Focusing on completing the oldest cases first negatively impacts processing times for  
15 EAD applications within the 30-day processing requirement, but it is necessary to achieve  
16 consistent processing timeframes across the entire initial C8 EAD adjudication line of cases.  
17 Longer average processing times do not indicate that USCIS is processing fewer initial C8 EAD  
18 applications. On the contrary, regarding applications subject to the *Rosario* decision, between  
19 March and July 2022, USCIS completed more than two-and-a-half times as many initial C8 EAD  
20 applications (135K) than between October 2021 and February 2022 (50K).  
21

22 36) USCIS cannot make precise predictions of future completions due to a number of factors,  
23 most significant of which the unpredictability of incoming filing volumes, but may also include  
24 localized processing disruptions such as those due to weather, COVID-19, or other outside  
25

1 factors. Over the past several months, USCIS has experienced an increase in the volume of  
2 incoming receipts.

3 37) Since the *Asylumworks* vacatur, to address the backlog of cases and resume compliance  
4 with this Court's order, SCOPS has worked to increase resources for the entire initial C8 EAD  
5 application workload, including adding staff (pulling from other workloads as well as new hires)  
6 and offering overtime.

7 38) In particular, USCIS has added staff dedicated to the adjudication of C8 EAD initial  
8 applications by reassigning experienced officers from other lines of work and assigning new  
9 hires to this portfolio. In addition, USCIS is offering overtime to all officers working C8 EAD  
10 initial applications. As a result of these efforts, USCIS has maintained higher levels of  
11 completions than have occurred since 2017, resulting in significant reduction in total cases  
12 pending over 30 days. Further, in order to offset the unexpectedly high volume of incoming  
13 receipts and meet previously expected goals, USCIS is also moving a portion of the backlog of  
14 C8 EAD initial applications to an additional service center to increase overall production  
15 capacity.  
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18 39) USCIS has substantially reduced the backlog of cases pending more than 90 days. Table  
19 2 of the February 2022 Rosario report shows the number of cases pending for 91 or more days  
20 was 72,412 (5,477 cases pending for 91-120 days, and 66,935 cases pending for 121+ days).  
21 Table 2 of the of August 2022 Rosario report shows that the number of cases pending for 91 or  
22 more days has been reduced to 687 (444 cases pending for 91-120 days, and 243 cases pending  
23 for 121+ days).  
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1 40) USCIS is continuing its efforts to further reduce the backlog of cases, now focusing on  
2 cases pending for 31 or more days, i.e., applications received since May and that are reflected in  
3 Table 2 of the August 2022 Rosario report in the 31-60 and 61-90 day columns. That figure was  
4 39,846 (26,602 cases pending for 31-60 days, and 13,244 cases pending for 61-90 days) at the  
5 end of August 2022.

6 41) By the end of September, USCIS anticipates making additional substantial progress  
7 reducing the backlog of cases pending over 30 and 60 days. USCIS anticipates resolving the  
8 backlog in the near future, and resuming focus on working incoming monthly receipts, *with a*  
9 *goal of processing up to 90% of applications within 30 days of filing* in October or soon  
10 thereafter. A continuing upward trend in incoming receipts, however, could delay achieving this  
11 goal.  
12

13 42) USCIS is working toward achieving 30-day processing, as required by the *Rosario*  
14 decision, for all initial C8 EAD applications. USCIS has ceased applying the vacated rules to all  
15 pending and newly filed initial C8 EAD applications and has resumed applying the rules in place  
16 immediately prior to the effective date of the vacated rules.  
17

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

19 Executed this 12th day of September 2022, at St. Albans, Vermont.  
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21  
22 \_\_\_\_\_  
23 Connie Nolan  
24 Deputy Associate Director, SCOPS  
25 U.S. Citizenship and Immigration Services  
Camp Springs, MD