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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARIA SILVIA GUEVARA ENRIQUEZ,
SOFIO CALLEJAS-VENEGAS,
KEVIN ALBERTO JIMENEZ RIVAS,
ISMAEL MONTES CISNEROS,
GIOVANNI ACOSTA GUERRA,
CRISTAN IVAN ACOSTA VALENZUELA,
SOONIA AHMED,
JOSE ALDANA SALGUERO,
FYAAZ ALI,
SHAMEER ALI,
DIEGO ALVAREZ,
MUHANNAD ALZURAIQAT,
IGNACIO AMANDO HERNANDEZ,
GAUDELIA ANGEL GOMEZ,
CARLOS ARANGO VELEZ,
JOSE ARGUETA,
ALEJANDRA ARIAS,
GUADALUPE CLEMENTE ARIZMENDI
MENDEZ,
DANIEL ARREDONDO ARISTA,
ABEL ARREDONDO RODRIGUEZ,
OSMAN ARRIAGA,
JAVIER ARROYO FLORES,
TAUQEER ASHRAF,
JOHNY ASTURIAS CHAVEZ,
DANIEL AVALOS HERRERA,
RAFAEL AVELAR,
ELIZABETH AVILA KIRBY,
MARIO AYALA GARNICA,
SITKI AYDOGDU,
MARCO BARRAGAN ARELLANO,

Case No.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

CLASS ACTION

1 NABOR BENITEZ OCAMPO,
REGINA BOLDRIN,
2 ELIZABETH BOYLE,
VERONICA BRATLAND,
3 JOSE E. BRAVO AVILA,
ROXANA BRINGAS LOPEZ,
4 MIGUEL ANGEL CABALLERO MAYA,
NAVI CABRERA ADAME,
5 JUAN CAMACHO,
6 ADRIANA CAMACHO TORNERO,
7 FERNANDO CAMARENA GONZALEZ,
DANIELA CAMARGO CALDERON,
8 MYRON LEONEL CANAHUI,
YANG CAO,
9 EDGAR CARDONA MORENO,
GENESIS CARMONA,
10 TONY SALOMON CASTANEDA
PALACIOS,
11 VICENTE CASTANON QUINTANILLA,
12 GABRIEL CASTILLO BONILLA,
13 ERNESTO CASTILLO PADILLA,
JUANA CASTRO,
14 JOSE A. CENTENO MERINO,
ELISA CERECEDO ARENAS,
15 PABLO CONTRERAS REYES,
16 DAVID CONTRERAS ZAMBRANO,
RICARDO CORTES GONZALEZ,
17 CLARA CRUZ MANRIQUEZ,
SILVIA CRUZ ORTIZ,
18 EDGAR CRUZ ORTIZ,
19 JOSE CUEVAS CUEVAS,
MIGUEL ANGEL CUEVAS FLORES,
20 CHRISTIAN MATHEUS DANTAS SOUTO
MAIOR DE FRANCA,
21 FELICIANO DE LEON UBALDO,
22 JOAO DE PAULA,
FREDY A. DELGADO MARMOLEJO,
23 IRVING DELGADO ZARCO,
24 GILMAR DESOUZA,
FELIPE DIAZ,
25 FERNANDO DIAZ DE LA CRUZ,
J SAMUEL DIAZ MILLA,
26 ELIAS DIAZ MORALES,
27 ARTURO DOMINGUEZ,

1 VANESSA DOMINGUEZ ZAVALA,
2 RUBICELA DORANTES PINEDA,
3 SELMA DOS SANTOS,
4 NADA ELSEWEHY,
5 FRANCISCO ENRIQUEZ GARCIA,
6 SAUL ESCOBEDO GONZALEZ,
7 CHRISTIAN ESPINOSA,
8 MARCO ANTONIO ESPINOZA
9 CASTILLO,
10 JESUS ESQUIVEL LUNA,
11 JAIME EUFRACIO CRUZ,
12 FABIOLA FARNSWORTH,
13 ISAAC FERIA RODRIGUEZ
14 AMARILY A. FERNANDEZ FERNANDEZ,
15 FRANCES FREIRE MALTA,
16 DANIEL GAMEZ AGUSTIN,
17 DIANA GARCIA,
18 NICSON GARCIA,
19 ELVIS C. GARCIA ARGUETA,
20 JESUS GARCIA DIAZ,
21 ANTONIO DE JESUS GARCIA MORENO,
22 BRUNO G. GARCIA RIBEIRO,
23 ROSENDO GARCIA SUAREZ,
24 FABIOLA GOCKA,
25 ANTONIO DE JESUS GOMEZ
26 AVENDANO,
27 MANUEL GOMEZ TORRES,
28 MOISES GONZALEZ,
LUIS GONZALEZ ALONSO,
LUIS GONZALEZ-ORTIZ,
JUAN GUARDADO,
JOSE GUARDADO ALFARO,
ALFREDO GUERRERO MORENO,
MARIO GUILLEN LOPEZ,
EDUARDO HERNANDEZ,
MIGUEL HERNANDEZ,
ABEL HERNANDEZ,
MA CRUZ HERNANDEZ BALLESTEROS,
GABRIEL HERNANDEZ RAMIREZ,
ESPERANZA HERNANDEZ VENEGAS,
EDWIN HIDALGO MEJIA,
JOSE S. HILARIO,
IRMA HOLGUIN,
JOAN IBANEZ RAMOS,

1 MICHAEL IBARRA RODRIGUEZ,
2 OKSANA IVANUSHCHAK,
3 LESTER IXMATUL,
4 JOSE PIEDAD JARAMILLO SOLORIO,
5 IRMA JIMENEZ MADRIGAL,
6 DOMINIKA KAMINSKA,
7 WAHRUDIN KARYANTO,
8 DILMA KAUFMAN,
9 IVANE KHMALADZE,
10 AMIT KUMAR,
11 JORGE LANDA,
12 MI HYE LEE,
13 ANTONIO LEITE,
14 MIREYA LIRA DURAN,
15 HELTON, LOPEZ
16 SERGIO LOPEZ BARRERA,
17 ROQUE LOPEZ CLEMENTE,
18 MELINA LOPEZ RAMIREZ,
19 KEVIN LUNA CAMPOS,
20 OSMIN LUNA MARTINEZ,
21 HUMBERTO MADERA GONZAGA,
22 MIRIAM CAROLINA MALDONADO
23 CONTRERAS,
24 ROBERTO CARLOS MANCILLA
25 CARRETO,
26 MARIA YULIANA MARTINEZ,
27 ELSA MARTINEZ,
28 ISAIAS MARTINEZ,
SILVIA MARTINEZ ALFARO,
LENI G. MARTINEZ GALVEZ,
MARCIANO MARTINEZ MARTINEZ,
ADRIAN MARTINEZ ORTIZ,
JAVIER MARTINEZ VAZQUEZ,
ANDRES MATA VERA,
ANDRIS MATEO MESA,
FABIAN MEDINA ARREGUIN,
MARIA FERNANDA MEJIA,
NERY MEJIA MORALES,
DANYA MELEK,
ARMANDO MENDEZ GUZMAN,
ERIK MENDOZA VALENCIA,
SAMELA MENEZES-FARIA,
JUAN C. MERCADO CORONA,
JOSE MOLINA,

1 JOSE JUAN MONTAS SEPULVEDA,
2 ELIAS MONTERO SANCHEZ,
3 JESUS A. MORA TORRES,
4 MARIO ANTONIO MORALES CORDERO,
5 HECTOR MORALES MORFIN,
6 ENIO MORATAYA,
7 LUIS ANDRES MOYA HERNANDEZ,
8 CARLOS EDUARDO MURILLO
9 HERNANDEZ,
10 XIOMARA NAVARRO SANKEY,
11 REGINALDO O DOS SANTOS,
12 NANCY OROZCO ABURTO,
13 JAIME A ORREGO ALVARADO,
14 YESSICA ORTIZ,
15 OSCAR OTERO HERNANDEZ,
16 LUZ PADILLA CABREJA,
17 JENNEFFER PALENCIA MAYORGA,
18 OSCAR PALMA-FLORES,
19 WENDY PALMERS,
20 LUIS PEDRO CORTEZ,
21 JUAN PEREZ,
22 JUAN PEREZ,
23 JOEL PEREZ,
24 NOELIA PEREZ NUNEZ,
25 HELEN PERPETUO,
26 MOISES PINEDA,
27 JEREMIAS PINEDA Y PINEDA,
28 JOSE ANTONIO PINTO,
DALIA PONCE PELAYO,
LENITSA POTSI,
ADRIAN PRAMANTA,
EARNAN QUIGLEY,
LUIS SANTIAGO QUINDE TAMAY,
VILMA QUINTANA,
MELITON ALFREDO QUIROZ MEJIA,
VENKATESAN RAJENDRAN,
JORGE RAMIREZ MURILLO,
CRESCENCIO RAMIREZ NAJAR,
RIGOBERTA REBOLLAR MEDEROS,
LUZ REYES,
JORGE JAVIER REYES RAMIREZ,
MARTA RINALDI,
MARINO MIGUEL RIOS LUIS,
HUGH RIVERA,

1 ERIH RIVERA,
2 VICTOR RIVERA-SILVA,
3 JOSE RODRIGUEZ,
4 MARIELA RODRIGUEZ,
5 MARIA ANGELICA RODRIGUEZ LOERA,
6 JOSE CRUZ RODRIGUEZ MENDEZ,
7 J JESUS RODRIGUEZ RUIZ,
8 MIGUEL RODRIGUEZ TORRES,
9 JOSE EDUARDO ROJAS RESENDIZ,
10 HUZIEL ROMAN SANDOVAL,
11 EDGAR ROMERO ZABALZA,
12 ARELY ROMO,
13 DAVID ROSAS ROSAS,
14 ERIKA B. ROSAS SERRANO,
15 DAVID RUBIO PEREZ,
16 JOHANN SAMPSON-CORDERO,
17 SALMA SANCHEZ,
18 VICTORIA SANCHEZ,
19 EVER NAUN SANCHEZ OVIEDO,
20 GERARDO SANCHEZ VARGAS,
21 MARVIN SANDOVAL CARDONA,
22 EDHIT SANTOS,
23 JOSE MAURICIO SANTOS GALDAMEZ,
24 RUBEN SEGURA ROSAS,
25 ANASTASIA SHCHIPAKINA,
26 TIAGO SILVA,
27 KULWINDER SINGH,
28 JASON SMALL,
BRUNO SOTELO BAUTISTA,
JENNIFER TANG,
JOSE DE JESUS TORRES MEJIA,
INOCENCIO TORRES SOLIS,
EVERADO TORRES-VEGA,
ALFONSO TRUJILLO VELASQUEZ,
JAVIER TULE,
ERASMO VACA ORTEGA,
MARIA LETICIA VALDEZ ACUNA,
ARLYN VALLADARES ACOSTA,
ANGELICA VARGAS,
ELENA VELAZQUEZ SANCHEZ,
CARLOS VERA VENTURA,
JOSE VILLAGRAN GRIJALVA,
DAMIAN VILLARREAL-BARRON,
VICTOR VITAL,

1 CARLENE WALCOTT,
2 RAFAEL ZAMUDIO ROJAS,
3 LOURDES MARLENE ZAYAS,
4 RENATA ZENEVICIUTE,
5 KARLA ZEPEDA VALDIVIA,

6 Plaintiffs,

7 v.

8 U.S. CITIZENSHIP AND IMMIGRATION
9 SERVICES; UR M. JADDOU, Director of
10 USCIS,

11 Defendants.

12 **INTRODUCTION**

13 1. Plaintiffs are the beneficiaries of approved family-based immigrant visa petitions. The
14 petitions were filed either by U.S. citizens or U.S. lawful permanent residents. While Defendant
15 U.S. Citizenship and Immigration Services (USCIS) has approved the immigrant visa petitions
16 filed on Plaintiffs’ behalf, USCIS’ unreasonable delay in deciding their applications for a
17 provisional waiver—a required step before they can be set for their consular appointment
18 abroad—has left Plaintiffs and class members stuck in a bureaucratic nightmare. They cannot
19 work and remain susceptible to removal from the United States while waiting for a decision on
20 their waiver applications. Without the timely historical processing that this step has normally
21 enjoyed (4-5 months), Plaintiffs and class members cannot finalize the process to become U.S.
22 lawful permanent residents. Plaintiffs seek a return to the historical processing times for their
23 applications.

24 2. To obtain a provisional unlawful presence waiver, Plaintiffs and class members file Form
25 I-601A, “Application for Provisional Unlawful Presence Waiver” with Defendant USCIS.
26 According to government statistics, Defendant USCIS’ median processing time for Form I-601A
27 provisional waiver applications reached 31.7 months for Fiscal Year 2022 (October 1, 2021 –

1 September 30, 2022). Those wait times have grown exponentially, from 4.5 months in Fiscal
2 Year 2018 to 17.1 months in Fiscal Year 2021 to today. The most recent processing times (for
3 eighty percent of Form I-601A applications) are 34 months and 39.5 months, respectively, at the
4 two USCIS offices that process these applications. During the fourth quarter of Fiscal Year 2022
5 (July 1, 2022 – September 30, 2022), Defendant USCIS received 9,349 Form I-601A provisional
6 unlawful presence waiver applications and completed only 1,290 applications, while 121,793
7 applications were pending.

8 3. Defendants USCIS and USCIS Director Ur M. Jaddou have not acted with due regard for
9 the convenience and necessity of Plaintiffs and class members, as the Administrative Procedure
10 Act (APA) requires. Plaintiffs and class members seek relief pursuant to the APA to end this
11 harmful and unreasonable delay.

12 **PARTIES**

13 4. Plaintiff Maria Silvia Guevara Enriquez is a citizen of [REDACTED]. She resides in [REDACTED]
14 [REDACTED]. USCIS approved an immigrant visa
15 classification for Plaintiff Guevara Enriquez in the category of a spouse of a U.S. citizen. On
16 [REDACTED], Plaintiff Guevara Enriquez filed a Form I-601A with USCIS for a provisional
17 waiver of unlawful presence in the United States. A consular officer cannot approve Plaintiff
18 Guevara Enriquez’s immigrant visa application without a waiver of unlawful presence.
19 Defendant USCIS’ failure to decide Plaintiff Guevara Enriquez’s provisional waiver application
20 denies Plaintiff Guevara Enriquez the opportunity to become a U.S. lawful permanent resident
21 because the delay prevents her from proceeding with the immigrant visa application process.

22 5. Plaintiff Sofio Callejas Venegas is a citizen of [REDACTED]. He resides in [REDACTED]
23 [REDACTED]. USCIS approved an immigrant visa classification for Plaintiff
24 Callejas Venegas in the category of a spouse of a U.S. citizen. On [REDACTED], Plaintiff
25 Callejas Venegas filed a Form I-601A with USCIS for a provisional waiver of unlawful presence
26 in the United States. A consular officer cannot approve Plaintiff Callejas Venegas’ immigrant
27

1 visa application without a waiver of unlawful presence. Defendant USCIS' failure to decide
2 Plaintiff Callejas Venegas' provisional waiver application denies Plaintiff Callejas Venegas the
3 opportunity to become a U.S. lawful permanent resident because the delay prevents him from
4 proceeding with the immigrant visa application process.

5 6. Plaintiff Kevin Alberto Jimenez Rivas is a citizen of [REDACTED]. He resides in [REDACTED]
6 [REDACTED]. USCIS approved an immigrant visa classification
7 for Plaintiff Jimenez Rivas in the category of a spouse of a U.S. citizen. On [REDACTED],
8 Plaintiff Jimenez Rivas filed a Form I-601A with USCIS for a provisional waiver of unlawful
9 presence in the United States. A consular officer cannot approve Plaintiff Jimenez Rivas'
10 immigrant visa application without a waiver of unlawful presence. Defendant USCIS' failure to
11 decide Plaintiff Jimenez Rivas' provisional waiver application denies Plaintiff Jimenez Rivas the
12 opportunity to become a U.S. lawful permanent resident because the delay prevents him from
13 proceeding with the immigrant visa application process.

14 7. Plaintiff Ismael Montes Cisneros is a citizen of [REDACTED]. He resides in [REDACTED]
15 [REDACTED]. USCIS approved an immigrant visa
16 classification for Plaintiff Montes Cisneros in the category of a spouse of a U.S. citizen. On [REDACTED]
17 [REDACTED], Plaintiff Montes Cisneros filed a Form I-601A with USCIS for a provisional waiver of
18 unlawful presence in the United States. A consular officer cannot approve Plaintiff Montes
19 Cisneros' immigrant visa application without a waiver of unlawful presence. Defendant USCIS'
20 failure to decide Plaintiff Montes Cisneros' provisional waiver application denies Plaintiff
21 Montes Cisneros the opportunity to become a U.S. lawful permanent resident because the delay
22 prevents him from proceeding with the immigrant visa application process.

23 8. While the above plaintiffs are proposed class representatives with circumstances
24 highlighted above, all 248 plaintiffs are suffering financial and emotional hardship due to
25 USCIS's unreasonable delay in processing and adjudicating their applications. Specifically, all
26 named plaintiffs remain stuck in limbo, unable to make future life decisions without the
27

1 knowledge whether their future is in the United States as lawful permanent residents with their
 2 families or whether they could be subject to future removal from the United States. All named
 3 plaintiffs suffer from lost economic opportunities due to the extended delay by the agency. All
 4 named plaintiffs filed an I-601A application for a provisional waiver of unlawful presence
 5 pursuant to regulations specifically enacted to *lessen* the hardship qualifying families would
 6 suffer in the process of applying for an unlawful presence waiver. Each of the named plaintiffs
 7 filed their I-601A waiver application prior to December 31, 2021. For each named plaintiff,
 8 USCIS accepted the I-601A waiver application along with \$715 in filing fees, including an \$85
 9 biometrics fee. For each named plaintiff, USCIS issued a notice with the receipt number but has
 10 failed to adjudicate their applications for a minimum of 12 months. Details including each named
 11 plaintiff’s place of residence, date of filing with USCIS, and receipt number are included in the
 12 table below:

PROPOSED CLASS REPRESENTATIVES				
Last Name	First name	Place of Residence	Receipt No.	I-601A Filing Date
GUEVARA ENRIQUEZ	MARIA SILVIA	[REDACTED]	[REDACTED]	[REDACTED]
CALLEJAS-VENEGAS	SOFIO	[REDACTED]	[REDACTED]	[REDACTED]
JIMENEZ RIVAS	KEVIN ALBERTO	[REDACTED]	[REDACTED]	[REDACTED]
MONTES CISNEROS	ISMAEL	[REDACTED]	[REDACTED]	[REDACTED]
ADDITIONAL NAMED PLAINTIFFS				
Last Name	First name	Place of Residence	Receipt No.	I-601A Filing Date
ACOSTA GUERRA	GIOVANNI	[REDACTED]	[REDACTED]	[REDACTED]
ACOSTA VALENZUELA	CRISTAN IVAN	[REDACTED]	[REDACTED]	[REDACTED]
AHMED	SOONIA	[REDACTED]	[REDACTED]	[REDACTED]
ALDANA SALGUERO	JOSE	[REDACTED]	[REDACTED]	[REDACTED]
ALI	FYAAZ	[REDACTED]	[REDACTED]	[REDACTED]
ALI	SHAMEER	[REDACTED]	[REDACTED]	[REDACTED]

1	ALVAREZ	DIEGO	[REDACTED]
2	ALZURAIQAT	MUHANNAD	[REDACTED]
3	AMANDO HERNANDEZ	IGNACIO	[REDACTED]
4	ANGEL GOMEZ	GAUDELIA	[REDACTED]
5	ARANGO VELEZ	CARLOS	[REDACTED]
6	ARGUETA	JOSE	[REDACTED]
7	ARIZMENDI MENDEZ	GUADALUPE CLEMENTE	[REDACTED]
8	ARREDONDO ARISTA	DANIEL	[REDACTED]
9	ARREDONDO RODRIGUEZ	ABEL	[REDACTED]
10	ARRIAGA	OSMAN	[REDACTED]
11	ARIAS	ALEJANDRA	[REDACTED]
12	ARROYO FLORES	JAVIER	[REDACTED]
13	ASHRAF	TAUQEER	[REDACTED]
14	ASTURIAS CHAVEZ	JOHNY	[REDACTED]
15	AVALOS HERRERA	DANIEL	[REDACTED]
16	AVELAR	RAFAEL	[REDACTED]
17	AVILA KIRBY	ELIZABETH	[REDACTED]
18	AYALA GARNICA	MARIO	[REDACTED]
19	AYDOGDU	SITKI	[REDACTED]
20	BARRAGAN ARELLANO	MARCO	[REDACTED]
21	BENITEZ OCAMPO	NABOR	[REDACTED]
22	BOLDRIN	REGINA	[REDACTED]
23	BOYLE	ELIZABETH	[REDACTED]
24	BRATLAND	VERONICA	[REDACTED]
25	BRAVO AVILA	JOSE E.	[REDACTED]
26	BRINGAS LOPEZ	ROXANA	[REDACTED]
27	CABALLERO MAYA	MIGUEL ANGEL	[REDACTED]
28	CABRERA ADAME	NAVI	[REDACTED]
	CAMACHO	JUAN	[REDACTED]
	CAMACHO TORNERO	ADRIANA	[REDACTED]
	CAMARENA GONZALEZ	FERNANDO	[REDACTED]
	CAMARGO CALDERON	DANIELA	[REDACTED]

1	CANAHUI	MYRON LEONEL	[REDACTED]	[REDACTED]	[REDACTED]
2	CAO	YANG	[REDACTED]	[REDACTED]	[REDACTED]
3	CARDONA MORENO	EDGAR	[REDACTED]	[REDACTED]	[REDACTED]
4	CARMONA	GENESIS	[REDACTED]	[REDACTED]	[REDACTED]
5	CASTANEDA PALACIOS	TONY SALOMON	[REDACTED]	[REDACTED]	[REDACTED]
6	CASTANON QUINTANILLA	VICENTE	[REDACTED]	[REDACTED]	[REDACTED]
7	CASTILLO BONILLA	GABRIEL	[REDACTED]	[REDACTED]	[REDACTED]
8	CASTILLO PADILLA	ERNESTO	[REDACTED]	[REDACTED]	[REDACTED]
9	CASTRO	JUANA	[REDACTED]	[REDACTED]	[REDACTED]
10	CENTENO MERINO	JOSE A	[REDACTED]	[REDACTED]	[REDACTED]
11	CERECEDO ARENAS	ELISA	[REDACTED]	[REDACTED]	[REDACTED]
12	CONTRERAS REYES	PABLO	[REDACTED]	[REDACTED]	[REDACTED]
13	CONTRERAS ZAMBRANO	DAVID	[REDACTED]	[REDACTED]	[REDACTED]
14	CORTES GONZALEZ	RICARDO	[REDACTED]	[REDACTED]	[REDACTED]
15	CRUZ MANRIQUEZ	CLARA	[REDACTED]	[REDACTED]	[REDACTED]
16	CRUZ ORTIZ	SILVIA	[REDACTED]	[REDACTED]	[REDACTED]
17	CRUZ ORTIZ	EDGAR	[REDACTED]	[REDACTED]	[REDACTED]
18	CUEVAS CUEVAS	JOSE	[REDACTED]	[REDACTED]	[REDACTED]
19	CUEVAS FLORES	MIGUEL ANGEL	[REDACTED]	[REDACTED]	[REDACTED]
20	DANTAS SOUTO MAIOR DE FRANCA	CHRISTIAN MATHEUS	[REDACTED]	[REDACTED]	[REDACTED]
21	DE LEON UBALDO	FELICIANO	[REDACTED]	[REDACTED]	[REDACTED]
22	DE PAULA	JOAO	[REDACTED]	[REDACTED]	[REDACTED]
23	DELGADO MARMOLEJO	FREDY A.	[REDACTED]	[REDACTED]	[REDACTED]
24	DELGADO ZARCO	IRVING	[REDACTED]	[REDACTED]	[REDACTED]
25	DESOUZA	GILMAR	[REDACTED]	[REDACTED]	[REDACTED]
26	DIAZ	FELIPE	[REDACTED]	[REDACTED]	[REDACTED]
27	DIAZ DE LA CRUZ	FERNANDO	[REDACTED]	[REDACTED]	[REDACTED]
28	DIAZ MILLA	J SAMUEL	[REDACTED]	[REDACTED]	[REDACTED]
	DIAZ MORALES	ELIAS	[REDACTED]	[REDACTED]	[REDACTED]
	DOMINGUEZ	ARTURO	[REDACTED]	[REDACTED]	[REDACTED]
	DOMINGUEZ ZAVALA	VANESSA	[REDACTED]	[REDACTED]	[REDACTED]
	DORANTES PINEDA	RUBICELA	[REDACTED]	[REDACTED]	[REDACTED]

1	DOS SANTOS	SELMA	[REDACTED]	[REDACTED]	[REDACTED]
	ELSEWEHY	NADA	[REDACTED]	[REDACTED]	[REDACTED]
2	ENRIQUEZ GARCIA	FRANCISCO	[REDACTED]	[REDACTED]	[REDACTED]
3	ESCOBEDO GONZALEZ	SAUL	[REDACTED]	[REDACTED]	[REDACTED]
4	ESPINOSA	CHRISTIAN	[REDACTED]	[REDACTED]	[REDACTED]
5	ESPINOZA CASTILLO	MARCO ANTONIO	[REDACTED]	[REDACTED]	[REDACTED]
6	ESQUIVEL LUNA	JESUS	[REDACTED]	[REDACTED]	[REDACTED]
7	EUFRACIO CRUZ	JAIME	[REDACTED]	[REDACTED]	[REDACTED]
8	FARNSWORTH	FABIOLA	[REDACTED]	[REDACTED]	[REDACTED]
9	FERIA RODRIGUEZ	ISAAC	[REDACTED]	[REDACTED]	[REDACTED]
	FERNANDEZ FERNANDEZ	AMARILY A	[REDACTED]	[REDACTED]	[REDACTED]
10	FREIRE MALTA	FRANCES	[REDACTED]	[REDACTED]	[REDACTED]
11	GAMEZ AGUSTIN	DANIEL	[REDACTED]	[REDACTED]	[REDACTED]
12	GARCIA	DIANA	[REDACTED]	[REDACTED]	[REDACTED]
13	GARCIA	NICSON	[REDACTED]	[REDACTED]	[REDACTED]
14	GARCIA ARGUETA	ELVIS C	[REDACTED]	[REDACTED]	[REDACTED]
15	GARCIA DIAZ	JESUS	[REDACTED]	[REDACTED]	[REDACTED]
16	GARCIA MORENO	ANTONIO DE JESUS	[REDACTED]	[REDACTED]	[REDACTED]
17	GARCIA RIBEIRO	BRUNO G.	[REDACTED]	[REDACTED]	[REDACTED]
18	GARCIA SUAREZ	ROSENDO	[REDACTED]	[REDACTED]	[REDACTED]
19	GOCKA	FABIOLA	[REDACTED]	[REDACTED]	[REDACTED]
20	GOMEZ AVENDANO	ANTONIO DE JESUS	[REDACTED]	[REDACTED]	[REDACTED]
21	GOMEZ TORRES	MANUEL	[REDACTED]	[REDACTED]	[REDACTED]
22	GONZALEZ	MOISES	[REDACTED]	[REDACTED]	[REDACTED]
23	GONZALEZ ALONSO	LUIS	[REDACTED]	[REDACTED]	[REDACTED]
24	GONZALEZ-ORTIZ	LUIS	[REDACTED]	[REDACTED]	[REDACTED]
25	GUARDADO	JUAN	[REDACTED]	[REDACTED]	[REDACTED]
26	GUARDADO ALFARO	JOSE	[REDACTED]	[REDACTED]	[REDACTED]
27	GUERRERO MORENO	ALFREDO	[REDACTED]	[REDACTED]	[REDACTED]
28	GUILLEN LOPEZ	MARIO	[REDACTED]	[REDACTED]	[REDACTED]
	HERNANDEZ	EDUARDO	[REDACTED]	[REDACTED]	[REDACTED]
	HERNANDEZ	MIGUEL	[REDACTED]	[REDACTED]	[REDACTED]
	HERNANDEZ	ABEL	[REDACTED]	[REDACTED]	[REDACTED]

1	HERNANDEZ BALLESTEROS	MA CRUZ	[REDACTED]	[REDACTED]	[REDACTED]
2	HERNANDEZ RAMIREZ	GABRIEL	[REDACTED]	[REDACTED]	[REDACTED]
3	HERNANDEZ VENEGAS	ESPERANZA	[REDACTED]	[REDACTED]	[REDACTED]
4	HIDALGO MEJIA	EDWIN	[REDACTED]	[REDACTED]	[REDACTED]
5	HILARIO	JOSE S.	[REDACTED]	[REDACTED]	[REDACTED]
6	HOLGUIN	IRMA	[REDACTED]	[REDACTED]	[REDACTED]
7	IBANEZ RAMOS	JOAN	[REDACTED]	[REDACTED]	[REDACTED]
8	IBARRA RODRIGUEZ	MICHAEL	[REDACTED]	[REDACTED]	[REDACTED]
9	IVANUSHCHAK	OKSANA	[REDACTED]	[REDACTED]	[REDACTED]
10	IXMATUL	LESTER	[REDACTED]	[REDACTED]	[REDACTED]
11	JARAMILLO SOLORIO	JOSE PIEDAD	[REDACTED]	[REDACTED]	[REDACTED]
12	JIMENEZ MADRIGAL	IRMA	[REDACTED]	[REDACTED]	[REDACTED]
13	KAMINSKA	DOMINIKA	[REDACTED]	[REDACTED]	[REDACTED]
14	KARYANTO	WAHRUDIN	[REDACTED]	[REDACTED]	[REDACTED]
15	KAUFMAN	DILMA	[REDACTED]	[REDACTED]	[REDACTED]
16	KHMALADZE	IVANE	[REDACTED]	[REDACTED]	[REDACTED]
17	KUMAR	AMIT	[REDACTED]	[REDACTED]	[REDACTED]
18	LANDA	JORGE	[REDACTED]	[REDACTED]	[REDACTED]
19	LEE	MI HYE	[REDACTED]	[REDACTED]	[REDACTED]
20	LEITE	ANTONIO	[REDACTED]	[REDACTED]	[REDACTED]
21	LIRA DURAN	MIREYA	[REDACTED]	[REDACTED]	[REDACTED]
22	LOPEZ	HELTON	[REDACTED]	[REDACTED]	[REDACTED]
23	LOPEZ BARRERA	SERGIO	[REDACTED]	[REDACTED]	[REDACTED]
24	LOPEZ CLEMENTE	ROQUE	[REDACTED]	[REDACTED]	[REDACTED]
25	LOPEZ RAMIREZ	MELINA	[REDACTED]	[REDACTED]	[REDACTED]
26	LUNA CAMPOS	KEVIN	[REDACTED]	[REDACTED]	[REDACTED]
27	LUNA MARTINEZ	OSMIN	[REDACTED]	[REDACTED]	[REDACTED]
28	MADERA GONZAGA	HUMBERTO	[REDACTED]	[REDACTED]	[REDACTED]
	MALDONADO CONTRERAS	MIRIAM CAROLINA	[REDACTED]	[REDACTED]	[REDACTED]
	MANCILLA CARRETO	ROBERTO CARLOS	[REDACTED]	[REDACTED]	[REDACTED]
	MARTINEZ	MARIA YULIANA	[REDACTED]	[REDACTED]	[REDACTED]
	MARTINEZ	ELSA	[REDACTED]	[REDACTED]	[REDACTED]
	MARTINEZ	ISAIAS	[REDACTED]	[REDACTED]	[REDACTED]

1	MARTINEZ ALFARO	SILVIA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
2	MARTINEZ GALVEZ	LENI G	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
3	MARTINEZ MARTINEZ	MARCIANO	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
4	MARTINEZ ORTIZ	ADRIAN	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
5	MARTINEZ VAZQUEZ	JAVIER	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
6	MATA VERA	ANDRES	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
7	MATEO MESA	ANDRIS	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
8	MEDINA ARREGUIN	FABIAN	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
9	MEJIA	MARIA FERNANDA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
10	MEJIA MORALES	NERY	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
11	MELEK	DANYA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
12	MENDEZ GUZMAN	ARMANDO	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
13	MENDOZA VALENCIA	ERIK	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
14	MENEZES-FARIA	SAMELA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
15	MERCADO CORONA	JUAN C	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
16	MOLINA	JOSE	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
17	MONTAS SEPULVEDA	JOSE JUAN	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
18	MONTERO SANCHEZ	ELIAS	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
19	MORA TORRES	JESUS A.	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
20	MORALES CORDERO	MARIO ANTONIO	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
21	MORALES MORFIN	HECTOR	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
22	MORATAYA	ENIO	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
23	MOYA HERNANDEZ	LUIS ANDRES	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
24	MURILLO HERNANDEZ	CARLOS EDUARDO	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
25	NAVARRO SANKEY	XIOMARA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
26	O DOS SANTOS	REGINALDO	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
27	OROZCO ABURTO	NANCY	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
28	ORREGO ALVARADO	JAIME A	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	ORTIZ	YESSICA	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	OTERO HERNANDEZ	OSCAR	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	PADILLA CABREJA	LUZ	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	PALENCIA MAYORGA	JENNEFFER	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	PALMA-FLORES	OSCAR	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	PALMERS	WENDY	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

1	PEDRO CORTEZ	LUIS	
2	PEREZ	JUAN	
3	PEREZ	JUAN	
4	PEREZ NUNEZ	NOELIA	
5	PERPETUO	HELEN	
6	PINEDA	MOISES	
7	PINEDA Y PINEDA	JEREMIAS	
8	PINTO	JOSE ANTONIO	
9	PONCE PELAYO	DALIA	
10	POTSI	LENITSA	
11	PRAMANTA	ADRIAN	
12	QUIGLEY	EARNAN	
13	QUINDE TAMAY	LUIS SANTIAGO	
14	QUINTANA	VILMA	
15	QUIROZ MEJIA	MELITON ALFREDO	
16	RAJENDRAN	VENKATESAN	
17	RAMIREZ MURILLO	JORGE	
18	RAMIREZ NAJAR	CRESCENCIO	
19	REBOLLAR MEDEROS	RIGOBERTA	
20	REYES	LUZ	
21	REYES RAMIREZ	JORGE JAVIER	
22	RINALDI	MARTA	
23	RIOS LUIS	MARINO MIGUEL	
24	RIVERA	HUGH	
25	RIVERA	ERIH	
26	RIVERA-SILVA	VICTOR	
27	RODRIGUEZ	JOSE	
28	RODRIGUEZ	MARIELA	
	RODRIGUEZ LOERA	MARIA ANGELICA	
	RODRIGUEZ MENDEZ	JOSE CRUZ	

1	RODRIGUEZ RUIZ	J JESUS	[REDACTED]
2	RODRIGUEZ TORRES	MIGUEL	[REDACTED]
3	ROJAS RESENDIZ	JOSE EDUARDO	[REDACTED]
4	ROMAN SANDOVAL	HUZIEL	[REDACTED]
5	ROMERO ZABALZA	EDGAR	[REDACTED]
6	ROMO	ARELY	[REDACTED]
7	ROSAS ROSAS	DAVID	[REDACTED]
8	ROSAS SERRANO	ERIKA B.	[REDACTED]
9	RUBIO PEREZ	DAVID	[REDACTED]
10	SAMPSON-CORDERO	JOHANN	[REDACTED]
11	SANCHEZ	SALMA	[REDACTED]
12	SANCHEZ	VICTORIA	[REDACTED]
13	SANCHEZ OVIEDO	EVER NAUN	[REDACTED]
14	SANCHEZ VARGAS	GERARDO	[REDACTED]
15	SANDOVAL CARDONA	MARVIN	[REDACTED]
16	SANTOS	EDHIT	[REDACTED]
17	SANTOS GALDAMEZ	JOSE MAURICIO	[REDACTED]
18	SEGURA ROSAS	RUBEN	[REDACTED]
19	SHCHIPAKINA	ANASTASIA	[REDACTED]
20	SILVA	TIAGO	[REDACTED]
21	SINGH	KULWINDER	[REDACTED]
22	SMALL	JASON	[REDACTED]
23	SOTELO BAUTISTA	BRUNO	[REDACTED]
24	TANG	JENNIFER	[REDACTED]
25	TORRES MEJIA	JOSE DE JESUS	[REDACTED]
26	TORRES SOLIS	INOCENCIO	[REDACTED]
27	TORRES-VEGA	EVERADO	[REDACTED]
28	TRUJILLO VELASQUEZ	ALFONSO	[REDACTED]
	TULE	JAVIER	[REDACTED]
	VACA ORTEGA	ERASMO	[REDACTED]
	VALDEZ ACUNA	MARIA LETICIA	[REDACTED]

1	VALLADARES ACOSTA	ARLYN	[REDACTED]	[REDACTED]	[REDACTED]
2	VARGAS	ANGELICA	[REDACTED]	[REDACTED]	[REDACTED]
3	VELAZQUEZ SANCHEZ	ELENA	[REDACTED]	[REDACTED]	[REDACTED]
4	VERA VENTURA	CARLOS	[REDACTED]	[REDACTED]	[REDACTED]
5	VILLAGRAN GRIJALVA	JOSE	[REDACTED]	[REDACTED]	[REDACTED]
6	VILLARREAL- BARRON	DAMIAN	[REDACTED]	[REDACTED]	[REDACTED]
7	VITAL	VICTOR	[REDACTED]	[REDACTED]	[REDACTED]
8	WALCOTT	CARLENE	[REDACTED]	[REDACTED]	[REDACTED]
9	ZAMUDIO ROJAS	RAFAEL	[REDACTED]	[REDACTED]	[REDACTED]
10	ZAYAS	LOURDES MARLENE	[REDACTED]	[REDACTED]	[REDACTED]
11	ZENEVICIUTE	RENATA	[REDACTED]	[REDACTED]	[REDACTED]
	ZEPEDA VALDIVIA	KARLA	[REDACTED]	[REDACTED]	[REDACTED]

12 9. Defendant USCIS is a component of the U.S. Department of Homeland Security (DHS),
13 6 U.S.C. § 271, and an agency within the meaning of the Administrative Procedure Act (APA),
14 5 U.S.C. § 551(1). USCIS is responsible for adjudicating all applications and petitions for
15 immigration benefits, including Form I-601A applications for provisional waivers.

16 10. Defendant Ur M. Jaddou is the Director of USCIS. In her official capacity, she oversees
17 the adjudication of all applications and petitions for immigration benefits, including Form I-
18 601A applications for provisional waivers, and the establishing and implementing of governing
19 policies. She is sued in her official capacity.

JURISDICTION AND VENUE

21 11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331
22 (federal question jurisdiction). *Califano v. Sanders*, 430 U.S. 99, 106 (1977).

23 12. This Court has the authority to grant relief pursuant to the APA, 5 U.S.C. § 701 *et seq.*, to
24 compel agency action that is unlawfully withheld or unreasonably delayed, 5 U.S.C. § 706(1),
25 and pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. The United States has waived
26 sovereign immunity pursuant to 5 U.S.C. § 702.

27

28

1 13. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(C) because Plaintiffs
2 Maria Silvia Guevara Enriquez and Ismael Montes Cisneros reside in this District and no real
3 property is involved in this action.

4 14. Venue is proper in the Seattle Division of the Western District of Washington per Local
5 Rule (3)(e)(1). Plaintiff Maria Silvia Guevara Enriquez is a resident of Kent, Washington, which
6 is within King County, and Plaintiff Ismael Montes Cisneros is a resident of Sammamish,
7 Washington, also within King County, and thus, that is where the claim arose. *Id.*

8 **EXHAUSTION**

9 15. There are no available remedies for Plaintiffs to exhaust.

10 **LEGAL BACKGROUND**

11 ***Family-Based Immigrant Visas and Provisional Unlawful Presence Waivers***

12 16. To become U.S. lawful permanent residents in a family-based category, Plaintiffs and
13 class members must complete a two-step process.

14 17. First, a U.S. citizen or U.S. lawful permanent resident must file a petition with USCIS for
15 an immigrant visa classification on behalf of their noncitizen relative using a Form I-130 Petition
16 for Alien Relative. *See* 8 U.S.C. § 1154(a)(1); 8 C.F.R. § 204.2.

17 18. Second, if Defendant USCIS approves the petition, noncitizens who will consular process
18 must apply to the State Department for an immigrant visa. *See* 8 U.S.C. §§ 1201(a), 1202(a);
19 22 C.F.R. §§ 42.61-62.

20 19. Noncitizen beneficiaries of an approved immigrant visa petition who are (a) unlawfully
21 present in the United States, and (b) not lawfully admitted or paroled into the United States, like
22 Plaintiffs and class members, must appear at a consulate abroad in order to apply for issuance of
23 an immigrant visa and then seek admission at a port of entry. *See* 8 U.S.C. § 1201(a); 22 C.F.R.
24 §§ 42.61-62

25 20. A noncitizen “unlawfully present” in the United States who has not been admitted or
26 paroled is, with limited exceptions, ineligible to adjust status in the United States on the basis of
27

1 a family-based immigrant petition. 8 U.S.C. § 1182(a)(9)(B); 8 U.S.C. § 1255(a). A noncitizen is
2 “deemed” to be unlawfully present if “present in the United States after the expiration of the
3 period of stay authorized by the [DHS Secretary]¹ or is present in the United States without
4 being admitted or paroled.” 8 U.S.C. § 1182(a)(9)(B)(ii).

5 21. If the noncitizen departs the United States after being unlawfully present for more than
6 180 days but less than one year without receiving the provisional waiver, they become
7 inadmissible to the United States and are ineligible for a visa for three years. 8 U.S.C.
8 § 1182(a)(9)(B)(i)(I).

9 22. If the noncitizen departs the United States after being unlawfully present for at least one
10 year, without receiving the provisional waiver, they become inadmissible to the United States
11 and are ineligible for a visa for ten years from their date of departure. 8 U.S.C.
12 § 1182(a)(9)(B)(i)(II).

13 23. A consular officer cannot approve an immigrant visa if the officer knows that the
14 applicant is ineligible to receive a visa. 8 U.S.C. § 1201(g).

15 24. Congress gave the DHS Secretary the exclusive authority to waive inadmissibility for
16 unlawful presence for “an immigrant who is the spouse or the son or daughter” of a U.S. citizen
17 or U.S. lawful permanent resident, if the Secretary determines that the U.S. citizen or U.S. lawful
18 permanent resident spouse or parent of the immigrant would suffer “extreme hardship” if the
19 immigrant is refused admission to the United States. *See* 8 U.S.C. § 1182(a)(9)(B)(v); 8 C.F.R.
20 § 212.7(e)(3). The Secretary exercises this authority through Defendant USCIS. *See* 8 C.F.R.
21 § 212.7(e)(3).

22 25. In 2013 and 2016, DHS, through its component Defendant USCIS, promulgated detailed
23 regulations that permit certain individuals who are present in the United States to request from
24 USCIS a provisional waiver of inadmissibility before departing the United States for consular
25

26 ¹ After Congress transferred immigration authority to DHS in 2003, a statutory reference to the
27 Attorney General is “deemed to refer to the [DHS] Secretary.” *See* 6 U.S.C. § 557.

1 processing of their immigrant visas. *See Expansion of Provisional Unlawful Presence Waivers of*
2 *Inadmissibility; Final Rule*, 81 Fed. Reg. 50244, 50245 (July 29, 2016); *Provisional Unlawful*
3 *Presence Waivers of Inadmissibility for Certain Immediate Relatives; Final Rule*, 78 Fed. Reg.
4 536(Jan. 3, 2013). “Having an approved provisional waiver helps facilitate immigrant visa
5 issuance at DOS, streamlines both the waiver and the immigrant visa processes, and reduces the
6 time that applicants are separated from their U.S. citizen or LPR family members, thus
7 promoting family unity.” 81 Fed. Reg. at 50244.²

8 26. When adjudicating provisional waiver applications, USCIS officers may issue a Request
9 for Evidence (RFE) to applicants to obtain more information as to eligibility before issuing a
10 decision, including, but not limited to, evidence of extreme hardship. For other types of filings,
11 USCIS may provide up to 87 days to submit a response to an RFE. In keeping with the agency’s
12 streamlining of the provisional waiver application process, Defendant USCIS sets a deadline of
13 30 days for responses to RFEs issued in connection with Form I-601A applications. *See* 1 USCIS
14 Policy Manual Part E, ch. 6, § F.3, chart & n.54. “USCIS will retain the 30-day RFE response
15 period, because USCIS and DOS closely coordinate immigrant visa and provisional waiver
16 application processing. The 30-day RFE response time streamlines USCIS processing, prevents
17 lengthy delays at DOS, and allows applicants to complete immigrant visa processing in a timely
18 manner.” 81 Fed. Reg. at 50258.

19 27. The noncitizen is allowed to wait in the United States while Defendant USCIS
20 adjudicates the provisional unlawful presence waiver but having a pending or approved waiver
21 application does not qualify an individual to seek work authorization or grant them any lawful
22 immigration status. 8 C.F.R. § 212.7(e)(2).

24 ² An outstanding final order of removal does not render an otherwise eligible noncitizen
25 ineligible, if “the [noncitizen] has already filed and USCIS has already granted . . . an application
26 for consent to reapply for admission under section 212(a)(9)(A)(iii) of the Act and 8 CFR
27 212.2(j).” 8 C.F.R. § 212.7(e)(4)(iv).

1 28. Without an approved Form I-601A provisional waiver, Plaintiffs and class members will
2 become subject to the unlawful presence bar when they depart the United States to complete the
3 consular processing required to become U.S. lawful permanent residents. For noncitizens who
4 have been unlawfully present for between 180 days and one year, they are barred from
5 readmission for three years, and for those unlawfully present for more than one year, they are
6 barred from readmission for ten years following their departure from the United States unless
7 Defendant USCIS approves their applications for provisional waiver before they depart the
8 United States or unless they apply for and are approved for a distinct waiver form, the Form I-
9 601, while abroad. USCIS is currently publishing a processing time for the USCIS Nebraska
10 Service Center of 27.5 months for the I-601 waiver form. Plaintiffs and class members therefore
11 must wait for USCIS to adjudicate their pending applications or leave, submit a different waiver
12 form with additional filing fees, and wait years abroad separated from their families while
13 waiting for the I-601 waiver to be processed.

14 **FACTUAL BACKGROUND**

15 29. Defendant USCIS' median processing time for a Form I-601A increased approximately
16 600% from Fiscal Years 2017 through 2022:

- 17 • FY 2017: 4.6 months
- 18 • FY 2018: 4.5 months
- 19 • FY 2019: 8.7 months
- 20 • FY 2020: 11.2 months
- FY 2021: 17.1 months
- FY 2022: 31.7 months

21 *See USCIS, Historical National Median Processing Time (in Months) for All USCIS Offices for*
22 *Select Forms by Fiscal Year, Fiscal Year 2012 to 2017* (hereafter "USCIS Median Processing
23 Time FY 2012 – 2017"), <https://egov.uscis.gov/processing-times/historic-pt-2> (last visited Jan.
24 23, 2023); USCIS, *Historical National Median Processing Time (in Months) for All USCIS*
25 *Offices for Select Forms by Fiscal Year, Fiscal Year 2018 to 2023 (up to December 31, 2022)*
26 (hereafter "USCIS Median Processing Time FY 2018 – Dec. 31, 2022"),
27

1 <https://egov.uscis.gov/processing-times/historic-pt> (last visited Jan. 23, 2023). The median is the
2 time it takes Defendant USCIS to process 50% of the pending applications in the time period
3 identified. *Id.*

4 30. During Fiscal Years 2013 through 2018, the median processing time for Form I-601A
5 was under five months.

- 6 • FY 2013: 3.5 months
- 7 • FY 2014: 4.6 months
- 8 • FY 2015: 3.0 months
- 9 • FY 2016: 4.9 months
- FY 2017: 4.6 months
- FY 2018: 4.5 months

10 USCIS Median Processing Time FY 2012 – 2017; USCIS Median Processing Time FY 2018 –
11 Dec. 31, 2022.

12 31. On [REDACTED], Plaintiff Guevara Enriquez’s U.S. citizen husband filed an immigrant
13 visa petition on her behalf. On [REDACTED], Defendant USCIS approved the immigrant visa
14 petition.

15 32. On [REDACTED], Plaintiff Guevara Enriquez filed her Form I-601A, application for
16 provisional unlawful presence waiver. Defendant USCIS issued her receipt number
17 [REDACTED], with [REDACTED] standing for the USCIS [REDACTED] Service Center and collected a
18 \$715.00 fee (for filing and biometrics) to adjudicate the waiver application.³ Plaintiff Guevara
19 Enriquez’s Form I-601A has been pending with USCIS for more than [REDACTED] months. As of the
20 date of filing the complaint, Plaintiff Guevara Enriquez has not received a Request for Evidence
21 from Defendant USCIS.

22 33. The basis for the extreme hardship to Plaintiff Guevara Enriquez’s husband is [REDACTED]
23 [REDACTED]

25 ³ Defendant USCIS issues a receipt notice when it accepts a Form I-601A for filing. The agency
26 does not accept a Form I-601A for filing from an applicant, like plaintiffs and class members,
27 who is the beneficiary of an approved family-based immigrant visa petition unless that applicant
is in the process of obtaining an immigrant visa.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]

7 34. On [REDACTED], Plaintiff Callejas Venegas's U.S. citizen wife filed an immigrant
8 visa petition on his behalf. On [REDACTED], Defendant USCIS approved the immigrant visa
9 petition.

10 35. On [REDACTED], Plaintiff Callejas Venegas filed his Form I-601A, application for
11 provisional unlawful presence waiver. Defendant USCIS issued him receipt number
12 [REDACTED] (the USCIS [REDACTED] Service Center) and collected a \$715.00 fee (filing and
13 biometrics) to adjudicate the waiver application. Plaintiff Callejas Venegas' Form I-601A has
14 been pending with USCIS for more than [REDACTED] months. As of the date of filing the complaint,
15 Plaintiff Callejas Venegas has not received a Request for Evidence from Defendant USCIS.

16 36. The basis for the extreme hardship to Plaintiff Callejas Venegas' U.S. citizen wife is [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 37. On [REDACTED], Plaintiff Jimenez Rivas's U.S. citizen wife filed an immigrant visa
23 petition on his behalf. On [REDACTED], Defendant USCIS approved the immigrant visa
24 petition.

25 38. On [REDACTED], Plaintiff Jimenez Rivas filed his Form I-601A, application for
26 provisional unlawful presence waiver. Defendant USCIS issued him receipt number

27
28

1 [REDACTED] (the USCIS [REDACTED] Service Center), and collected a \$715.00 fee (filing and
2 biometrics) to adjudicate the waiver application. Plaintiff Jimenez Rivas' Form I-601A has been
3 pending with USCIS for more than [REDACTED] months. As of the date of filing the complaint, Plaintiff
4 Jimenez Rivas has not received a Request for Evidence from Defendant USCIS.

5 39. The basis for the extreme hardship to Plaintiff Jimenez Rivas' U.S. citizen wife is [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 40. On [REDACTED], Plaintiff Montes Cisneros's U.S. citizen wife filed an immigrant
13 visa petition on his behalf. On [REDACTED], Defendant USCIS approved the immigrant
14 visa petition.

15 41. On [REDACTED], Plaintiff Montes Cisneros filed his Form I-601A, application for
16 provisional unlawful presence waiver. Defendant USCIS issued him receipt number
17 [REDACTED] (the USCIS [REDACTED] Service Center) and collected a \$715.00 fee (filing and
18 biometrics) to adjudicate the waiver application. Plaintiff Montes Cisneros' Form I-601A has
19 been pending with USCIS for more than [REDACTED] months. As of the date of filing the complaint,
20 Plaintiff Montes Cisneros has not received a Request for Evidence from Defendant USCIS.

21 42. The basis for the extreme hardship to Plaintiff Montes Cisneros' U.S. citizen wife is [REDACTED]

22 [REDACTED]
23 [REDACTED]

24 43. Defendants USCIS and Jaddou are depriving Plaintiffs and class members of their
25 opportunity to become a U.S. lawful permanent resident because they are not going to depart the
26 United States and be interviewed for an immigrant visa at a U.S. consulate unless USCIS decides

1 and approves their application for a provisional unlawful presence waiver, and if they do depart,
 2 either the three- or ten-year bar on admission will apply. A consular officer deciding the
 3 eligibility of Plaintiffs and class members for an immigrant visa will not find them inadmissible
 4 for unlawful presence if Defendant USCIS grants them a provisional waiver. With the waiver,
 5 the consular officer can issue Plaintiffs and class members an immigrant visa if the consular
 6 officer abroad determines that unlawful presence is the only applicable ground of inadmissibility.

7 44. USCIS is taking more than seven times as long to adjudicate a Form I-601A provisional
 8 waiver application than it did in FY 2018 – from 4.5 months to the Nebraska Service Center’s
 9 2.8 years and the Potomac Service Center’s nearly 3.3 years. Compare USCIS Median
 10 Processing Time FY 2018 – Dec. 31, 2022, with USCIS, *Check Case Processing Times*,
 11 <https://eogv.uscis.gov/processing-times/> (last visited Jan. 23, 2023) (selecting “Form:
 12 601A/Application for Provisional Unlawful Presence Waiver,” “Form Category: Provisional
 13 Waiver of Unlawful Presence,” and “Field Office or Service Center: Potomac Service Center” or
 14 “Field Office or Service Center: Nebraska Service Center”).

15 TRAC FACTORS AND UNREASONABLE DELAY

16 45. Courts often evaluate whether an agency’s delay is unreasonable by applying the six
 17 factors identified by the D.C. Circuit in *Telecomms. Rsch. & Action Ctr. v. FCC* (“TRAC”):

18 (1) the time agencies take to make decisions must be governed by a ‘rule of reason’;
 19 (2) where Congress has provided a timetable or other indication of the speed with
 20 which it expects the agency to proceed in the enabling statute, that statutory scheme
 21 may supply content for this rule of reason; (3) delays that might be reasonable in
 22 the sphere of economic regulation are less tolerable when human health and welfare
 23 are at stake; (4) the court should consider the effect of expediting delayed action on
 24 agency activities of a higher or competing priority; (5) the court should also take
 into account the nature and extent of the interests prejudiced by delay; and (6) the
 court need not ‘find any impropriety lurking behind agency lassitude in order to
 hold that agency action is unreasonably delayed.’

25 *Telecomms. Rsch. & Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) (citations omitted). See
 26 also *Brower v. Evans*, 257 F.3d 1058, 1068-69 (9th Cir. 2001).

1 **TRAC Factors 1 and 2: “Rule of Reason” and a Statutory Benchmark**

2 46. Defendant USCIS does not follow a rule of reason in adjudicating Form I-601A
3 provisional waiver applications. The agency’s median processing time for the Form I-601A
4 provisional waiver application has increased from under five months from Fiscal Years 2013
5 through 2018 to 31.7 months for Fiscal Year 2022. The most recently available processing times
6 show the Nebraska Service Center decides eighty percent of provisional waiver applications in
7 34 months and the Potomac Service Center decides eighty percent in 39.5 months.

8 47. Defendant Jaddou acknowledges that USCIS processing times are unreasonable. On
9 February 2, 2022 (almost a full year ago, and when processing times were shorter than they are
10 today), at a briefing for stakeholders on the one-year anniversary of the Biden administration,
11 Defendant Jaddou stated: “Let me be very clear. Our processing times are too long. There are no
12 ifs, ands or buts about it.” Suzanne Monyak, *USCIS director: Federal immigration funds*
13 *‘critical’ to agency*, Roll Call (Feb. 2, 2022, 7:17 pm), [https://rollcall.com/2022/02/02/uscis-](https://rollcall.com/2022/02/02/uscis-director-federal-immigration-funds-critical-to-agency/)
14 [director-federal-immigration-funds-critical-to-agency/](https://rollcall.com/2022/02/02/uscis-director-federal-immigration-funds-critical-to-agency/).

15 48. USCIS’ median processing time for provisional unlawful presence waiver applications
16 has jumped from under 5 months for the six years from FY 2013 through FY 2018, to 8.7 months
17 in FY 2019, 11.2 months in FY 2020, 17.1 months in FY 2021, and **31.7 months** in FY 2022.
18 These substantial increases in processing times do not equate to a reasonable time frame for
19 processing provisional waiver applications. *Barrios Garcia v. DHS*, 25 F.4th 430, 454 (6th Cir.
20 2022) (concluding in the context of agency delays that “it [is] unhelpful to fixate on the average
21 snail’s pace when comparing snails against snails in a snails’ race.”).

22 49. Congress has expressed its expectation that USCIS adjudicate an application for a
23 provisional unlawful presence waiver within 180 days. “It is the sense of Congress that the
24 processing of an immigration benefit application should be completed not later than 180 days
25 after the initial filing of the application.” 8 U.S.C. § 1571(b).

1 50. For six years, Defendant USCIS met this expectation. But by Fiscal Year 2019, the
 2 median processing time reached 8.7 months, and by Fiscal Year 2022, climbed to 31.7 months.
 3 In Fiscal Year 2021, Defendant USCIS received 45,344 provisional waiver applications, and
 4 completed 20,048, which is 44% of the number received, and ended that fiscal year with 91,796
 5 applications pending. USCIS, *Number of Service-wide Forms By Quarter, Form Status, and*
 6 *Processing Time, Fiscal Year 2021, Quarter 4, Fiscal Year – To Date,*
 7 https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2021Q4.pdf
 8 (last visited Jan. 23, 2023). In Fiscal Year 2022, Defendant USCIS received 36,309
 9 applications—20% fewer than in Fiscal Year 2021—but for the entire Fiscal Year 2022,
 10 Defendant USCIS completed only 6,064 applications—18,000 applications fewer than the year
 11 before and only 16.7% of the number received. USCIS, *Number of Service-wide Forms By*
 12 *Quarter, Form Status, and Processing Time, July 1, 2022 – September 30, 2022, Fiscal Year –*
 13 *To Date,*
 14 https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2022_Q4.pdf
 15 (last visited Jan. 23, 2023) (hereinafter “USCIS Number of Service-wide Forms, July – Sept.
 16 2022”). This meant that the total pending applications increased by 30,000 applications to
 17 121,793. *Id.*

18 **TRAC Factors 3 and 5: Prejudice and Harm to Health and Welfare Due to Delay**

19 51. For each of the Plaintiffs and class members, USCIS’s delays in processing their
 20 provisional unlawful presence waiver has resulted in them being stuck in limbo, unable to create
 21 stable plans professionally or for their families as they face an uncertain future.

22 52. Plaintiff Guevara Enriquez and her U.S. citizen husband are each suffering from the
 23 uncertainty caused by USCIS’ delay in adjudicating her I-601A provisional waiver application.
 24 Plaintiff Guevara Enriquez’s application includes documentation for the purpose of establishing
 25 extreme hardship to her husband, [REDACTED]

26 [REDACTED]

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[REDACTED]

53. Plaintiff Callejas Venegas and his U.S. citizen wife cannot move forward with plans for a life together in the United States. Plaintiff Callejas Venegas' Form I-601A provisional waiver application includes documentation for the purpose of establishing extreme hardship to his wife.

[REDACTED]

54. Plaintiff Jimenez Rivas, his U.S. citizen wife, and their U.S. citizen children face emotional and financial insecurity as their lives remain in limbo from USCIS' delay in adjudicating his Form I-601A provisional waiver application. Plaintiff Jimenez Rivas' application includes documentation for the purpose of establishing extreme hardship to his wife.

[REDACTED]

1 55. Plaintiff Montes Cisneros and his U.S. citizen wife each suffer from the emotional stress
2 of being in limbo from USCIS' delay in adjudicating his Form I-601A provisional waiver
3 application. [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 56. These representative Plaintiffs and others similarly situated have built lives spanning
13 decades in the United States, and all have been injured by Defendants' increasingly unreasonable
14 delay in adjudicating their applications, and, as a consequence, the continuing specter of
15 potentially being separated from their families, including U.S. citizen spouses and children.

16 57. Plaintiffs and class members cannot consular process and, as a result cannot obtain U.S.
17 lawful permanent residence, and the attendant benefits that status grants, including the stability
18 that permanent resident status affords. Plaintiffs are unable to work outside the United States
19 with their current lack of status because they currently have no documentation by which they
20 could be readmitted to the United States. Their pathway to U.S. citizenship is indefinitely
21 lengthened as they are not able to begin accruing the years of permanent resident status
22 necessary to be eligible for naturalization (three if based on marriage to a U.S. citizen or five
23 years generally).

24 **TRAC Factor 4: Competing Priorities**

25 58. USCIS has a history of prioritizing family unity. "Many INS programs in the 1940s and
26 1950s addressed individuals affected by conditions in postwar Europe. . . . Other post-war INS
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1 programs facilitated family reunification.” USCIS, Overview of Agency History, Postwar Years,
2 <https://www.uscis.gov/about-us/our-history/overview-of-agency-history/post-war-years> (last
3 visited Jan. 23, 2023). “Having an approved provisional waiver . . . reduces the time that
4 applicants are separated from their U.S. citizen or LPR family members, thus promoting family
5 unity.” 81 Fed. Reg. at 50250.

6 59. Defendant Jaddou has continued this tradition. “[T]he vast majority of our work is
7 serving U.S. citizens who want to be with their families, and U.S. businesses that need talented
8 employees. Again, this underscores the fact that the work that we do every day is of vital
9 importance to the wellbeing of our nation.” USCIS, Remarks Delivered by Director Ur M.
10 Jaddou at the 2021 National Immigration Integration Conference, Oct. 4, 2021
11 [https://www.uscis.gov/newsroom/speeches-statements-testimony/remarks-delivered-by-director-](https://www.uscis.gov/newsroom/speeches-statements-testimony/remarks-delivered-by-director-ur-m-jaddou-at-the-2021-national-immigrant-integration-conference)
12 [ur-m-jaddou-at-the-2021-national-immigrant-integration-conference](https://www.uscis.gov/newsroom/speeches-statements-testimony/remarks-delivered-by-director-ur-m-jaddou-at-the-2021-national-immigrant-integration-conference) (last visited Jan. 23, 2023).

13 60. When it enacted the provisional unlawful presence waiver in 2013, DHS/USCIS
14 explicitly referenced the need for efficient processing of waiver applications. *See, e.g.*, 78 Fed.
15 Reg. at 542 (“By creating these new filing procedures, DHS anticipates that the immigrant visa
16 waiver process will become more efficient for the U.S. Government and for U.S. citizens and
17 their immediate relatives.”); *id.* at 548 (rejecting proposal to concurrently adjudicate unlawful
18 presence waivers and I-212 waivers because it “would undercut the efficiencies USCIS and DOS
19 will gain through the streamlined provisional unlawful presence waiver process”); *id.* (“DHS
20 developed this provisional unlawful presence waiver process in close coordination with DOS to
21 ensure that both agencies could efficiently complete the waiver and immigrant visa process
22 concurrently within a short timeframe.”); *id.* at 565 (“[T]he changes will streamline the
23 immigrant visa waiver process, thereby increasing efficiencies for both USCIS and DOS in the
24 issuance of immediate relative immigrant visas.”); *id.* at 575 (“DHS anticipates that the new
25 process will make the immigrant visa process more efficient.”)

1 61. Indeed, DHS/USCIS rejected proposals from commenters who suggested that they
2 provide interim benefits while the Form I-601A is pending, assuring the public that “USCIS and
3 DOS have coordinated closely on this streamlined process” in order to achieve a “close
4 timeframe between processing of the Form I-601A approval and the immigrant visa application,”
5 that “will encourage individuals to speed up the consular process.” *Id.* at 555. “Any issuance of
6 interim benefits or specific authorized periods of stay will hinder this goal and the integrity of the
7 program.” *Id.*; *see also* 8 C.F.R. § 212.7(e)(2)(ii) (“A pending or an approved provisional
8 unlawful presence waiver does not support the filing of any application for interim immigration
9 benefits, such as employment authorization or an advance parole document.”).

10 62. In 2016, when DHS/USCIS expanded provisional waivers to noncitizens who could
11 demonstrate extreme hardship to a lawful permanent resident spouse or parent, the agency said:
12 “USCIS and DOS will continue to benefit from the operational efficiencies gained from the
13 provisional waiver’s role in streamlining immigrant visa application processing, but on a larger
14 scale.” 81 Fed. Reg. at 50246.

15 63. DHS/USCIS also maintained the 30-day time limit for responding to a Request for
16 Evidence in keeping with the agency’s intent that provisional waiver adjudications would
17 streamline immigrant visa processing. 81 Fed. Reg. at 50258. This 30-day response time remains
18 in effect today. 1 USCIS Policy Manual Part E, ch. 6, § F.3, chart & n.54.

19 64. DHS/USCIS also continued to maintain that the provisional waiver process would reduce
20 the time spent abroad: “Having an approved provisional waiver helps facilitate immigrant visa
21 issuance at DOS, streamlines both the waiver and the immigrant visa processes, and reduces the
22 time that applicants are separated from their U.S. citizen or LPR family members, thus
23 promoting family unity.” 81 Fed. Reg. at 50250. The agencies explained that the DHS Secretary
24 directed USCIS to expand the provisional waiver program for operational efficiencies and for
25 reducing time spent abroad: “Based on the lengthy separation periods and related financial and
26 emotional burdens to families associated with the Form I-601 [unlawful presence] waiver
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1 process [that can only be applied for when the immigrant visa applicant is abroad], and based on
2 the efficiencies realized for both USCIS and DOS through the provisional waiver process, the
3 Secretary directed USCIS to expand eligibility for the provisional waiver process . . .” *Id.* at
4 50265.

5 65. Defendant USCIS’ delay in adjudicating provisional unlawful presence waiver
6 applications harms family unity by leaving Plaintiffs and class members and their families,
7 including a U.S. citizen parent or spouse or children, in fear of being separated and unable to
8 move forward with their lives because Plaintiffs and the class members are denied the
9 opportunity to become U.S. lawful permanent residents. In the stay of removal context, and
10 equally applicable here, the Ninth Circuit has recognized separation from family members as an
11 important factor in demonstrating irreparable harm. *Leiva-Perez v. Holder*, 640 F.3d 962, 969-70
12 (9th Cir. 2001) (per curiam) (citing *Andreiu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001) (en
13 banc)).

14 66. Defendant USCIS received a fee of \$715 (\$630 filing/\$85 biometrics) from Plaintiffs and
15 class members to adjudicate their applications for provisional unlawful presence waivers. In the
16 final rule setting the \$630 filing fee, the agency stated: “USCIS understands the importance of
17 facilitating family unification, as well as the advantages that [lawful permanent resident] status
18 and citizenship provide.” *U.S. Citizenship and Immigration Services Fee Schedule*, 81 Fed. Reg.
19 73292, 73296 (Oct. 24, 2016).⁴ In the July 2016 final rule expanding eligibility for the
20 provisional waiver application process, DHS/USCIS responded to commenters who thought the
21 agency should collect thousands of dollars in fines or fees from applicants: “DHS has already
22 established an appropriate filing fee for the I-601A application as authorized by the statute.”
23 81 Fed. Reg. at 50260.

24 67. Family unity is a compelling reason for requiring Defendant USCIS to adjudicate
25 applications for provisional unlawful presence waivers within a reasonable time, which Plaintiffs
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27 ⁴ The biometrics fee remained unchanged at \$85. 81 Fed. Reg. at 73295.

1 assert is the 180-day benchmark. Prioritizing a judicial remedy for one type of application when
2 Defendant USCIS is also unreasonably delaying the adjudication of other types of requests for
3 immigration benefits should not be the basis for weighing TRAC Factor 4 in favor of
4 Defendants. In Fiscal Year 2022, USCIS apparently received approximately \$529.2 million
5 appropriated by Congress. *U.S. Citizenship and Immigration Services Fee Schedule and Changes*
6 *to Certain Other Immigration Benefit Request Requirements, Proposed Rule*, 88 Fed. Reg. 402,
7 416 (Jan. 4, 2023). “The appropriations support several DHS priorities, for example, decreasing
8 USCIS application processing times, reducing the backlog of requests already on hand and being
9 adjudicated (and for which a fee may already have been paid).” *Id.*

10 **TRAC Factor 6: Unreasonable Delay Does Not Require Impropriety**

11 68. USCIS is required to decide the applications for provisional unlawful presence waiver
12 filed by Plaintiffs and class members within a reasonable time. Agency delay—processing times
13 currently at around three years—is unreasonable; unreasonableness does not have to be the result
14 of bad faith or other impropriety.

15 **CLASS ACTION ALLEGATIONS**

16 69. Plaintiffs Guevara Enriquez, Callejas Venegas, Jimenez Rivas, and Montes Cisneros
17 bring this action on behalf of themselves and others similarly situated pursuant to Federal Rules
18 of Civil Procedure 23(a) and 23(b)(2), including the other individually named Plaintiffs. A class
19 action is proper because this action involves questions of law and fact common to the class, the
20 class is so numerous that joinder of all members is impracticable, The claims of Plaintiffs
21 Guevara Enriquez, Callejas Venegas, Jimenez Rivas, and Montes Cisneros are typical of the
22 claims of the class, Plaintiffs Guevara Enriquez, Callejas Venegas, Jimenez Rivas, and Montes
23 Cisneros will fairly and adequately represent the interests of the class, and Defendants USCIS
24 and Jaddou have acted on grounds that apply generally to the class, so that final injunctive or
25 corresponding declaratory relief is appropriate with respect to the class as a whole.

1 70. Plaintiffs Guevara Enriquez, Callejas Venegas, Jimenez Rivas, and Montes Cisneros seek
2 to represent the following class:

3 All individuals:

4 (a) who filed, or will file in the future, an application with USCIS for a provisional
5 unlawful presence waiver (Form I-601A or any successor form), and

6 (b) whose applications have been pending for at least twelve months from the date of filing.

7 71. The proposed class is so numerous that joinder of all members is impracticable. Plaintiffs
8 Guevara Enriquez, Callejas Venegas, Jimenez Rivas, and Montes Cisneros are not aware of the
9 precise number of potential members but reasonably estimate that there are at least 70,000
10 potential class members. This estimate is based upon USCIS' data that during Fiscal Year 2022
11 (October 1, 2021 through September 30, 2022), the agency received 36,309 applications for
12 provisional unlawful presence waiver, decided 6,064, while 121,793 applications remained
13 pending. USCIS Number of Service-wide Forms, July – Sept. 2022. The median processing time
14 for Fiscal Year 2022 was 31.7 months (meaning the time to complete 50% of the applications
15 during that year). USCIS Median Processing Time FY 2018 – Dec. 31, 2022.

16 72. Questions of law and fact predominate over any questions affecting Plaintiffs Guevara
17 Enriquez, Callejas Venegas, Jimenez Rivas, and Montes Cisneros. Common questions of law
18 include:

19 (1) Has USCIS unreasonably delayed in deciding applications for provisional
20 unlawful presence waiver?

21 Common questions of fact include:

22 (1) Has USCIS utilized a “first in, first out” policy in deciding applications for
23 provisional unlawful presence waiver?

24 (2) What has USCIS done with the fees the agency collected from applicants for a
25 provisional unlawful presence waiver?
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1 (3) Why has the processing time for the application for provisional unlawful
2 presence waiver increased from under five months for six years (from Fiscal Year
3 2013 through 2018) to 8.7 months in Fiscal Year 2019, to highs of 32 to 38
4 months?

5 73. The claims of Plaintiffs Guevara Enriquez, Callejas Venegas, Jimenez Rivas, and Montes
6 Cisneros are typical of those of the entire class as each filed an application for provisional
7 unlawful presence waiver at least 12 months ago and their application has not been decided by
8 USCIS. Specifically, Plaintiff Guevara Enriquez's application was filed with USCIS on July 12,
9 2021; Plaintiff Callejas Venejas' application was filed with USCIS on September 28, 2020;
10 Plaintiff Jimenez Rivas' application was filed with USCIS on October 8, 2020; and Plaintiff
11 Montes Cisneros' application was filed with USCIS on April 17, 2020. Plaintiffs Guevara
12 Enriquez, Callejas Venegas, Jimenez Rivas, and Montes Cisneros share a common harm with the
13 proposed class as USCIS' delay in deciding the applications for provisional unlawful presence
14 waiver denies them the opportunity to proceed with their immigrant visa applications.

15 74. Plaintiffs Guevara Enriquez, Callejas Venegas, Jimenez Rivas, and Montes Cisneros will
16 fairly and adequately represent the interests of the proposed class as they seek relief on behalf of
17 the class as a whole and they have no interest antagonistic to the class members.

18 75. Plaintiffs Guevara Enriquez, Callejas Venegas, Jimenez Rivas, and Montes Cisneros are
19 represented by competent counsel with extensive experience in both complex class actions and
20 immigration law.

21 76. By increasing the processing time from under five months from Fiscal Years 2013
22 through 2018, to current processing times of 34 months at the Nebraska Service Center and 39.5
23 months at the Potomac Service Center, for an application that is predicated on establishing
24 extreme hardship to a U.S. citizen or U.S. lawful permanent resident spouse or parent,
25 Defendants USCIS and Jaddou have acted and will continue to act on grounds generally
26 applicable to the entire class, thus making final declaratory or other relief appropriate to remedy
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1 harms to the class as a whole. The class may therefore be properly certified under Fed. R. Civ. P.
2 23(b)(2).

3 **FIRST CAUSE OF ACTION**

4 **(APA – Unreasonable Delay in Deciding Form I-601A Provisional Waiver Applications)**

5 77. Plaintiffs reallege and incorporate by reference all allegations above as though fully
6 restated here.

7 78. The APA provides for judicial review when a person is adversely affected by agency
8 action. 5 U.S.C. § 702. Agency action includes an agency’s failure to act. 5 U.S.C. § 551(13). A
9 court “shall compel agency action . . . unreasonably delayed.” 5 U.S.C. § 706(1).

10 79. Defendant USCIS has a non-discretionary duty to decide Plaintiffs’ pending Forms I-
11 601A provisional waiver applications. USCIS is required to give notice of an approval or denial
12 for all properly filed benefits requests. *See* 8 C.F.R. § 103.2(b)(19) (defining procedures for
13 notification of approvals); 8 C.F.R. § 103.3 (defining notification procedures for denials). More
14 specifically, USCIS “*will* notify the [noncitizen] and the [noncitizen’s] attorney of record or
15 accredited representative of the decision [on a Form I-601A] in accordance with 8 CFR
16 103.2(b)(19).” 8 C.F.R. § 212.7(e)(9)(i) (emphasis added). “With due regard for the convenience
17 and necessity of the parties or their representatives and within a reasonable time, each agency
18 *shall proceed to conclude a matter presented to it.*” 5 U.S.C. § 555(b) (emphasis added). “[B]y
19 using the term ‘shall’ in requiring that the courts compel action unlawfully withheld or
20 unreasonably delayed, Congress imposed a mandatory duty in that regard.” *Saini v. U.S.*
21 *Citizenship & Immigr. Servs.*, 553 F. Supp. 2d 1170, 1176 (E.D. Cal. 2008).

22 80. Defendant USCIS’ duty to adjudicate an application is a discrete, ministerial act that
23 applicants pay for in advance and that USCIS must complete within a reasonable time. USCIS
24 set an appropriate fee for the application for unlawful presence waiver based on the statute.
25 81 Fed. Reg. at 50260.

1 81. USCIS has no rule of reason for adjudicating the Form I-601A provisional waiver
2 application.

3 82. Even if USCIS has a processing methodology, it is not a rule that is reasonable given the
4 unbounded growth in processing times. USCIS identified median processing times for the Form
5 I-601A provisional waiver application of 4.5 months in FY 2018, 11.2 months in FY 2020, 31.7
6 months in FY 2022. USCIS Median Processing Time FY 2018 – 2023 (up to Dec. 31, 2022).

7 83. This Court should not consider USCIS’s current published processing times dispositive
8 of whether a delay is reasonable because the processing times are inconsistent and not credible.
9 *See Barrios*, 25 F.4th at 454.

10 84. USCIS’ delay in deciding Plaintiffs’ provisional waiver applications impacts human
11 health and welfare, not merely economic interests, as Plaintiffs are denied the opportunity to
12 obtain lawful status in the United States; to seek authorized employment, 8 C.F.R. § 212.7(e)(2);
13 and to plan their future with their families. The delay leaves Plaintiffs and their families in a state
14 of uncertainty about whether they will be able to continue living together in the United States
15 and leaves them without work authorization.

16 85. Family unity, which Defendants USCIS and Jaddou recognize as a priority, is a
17 compelling reason for requiring USCIS to process the provisional waiver applications within the
18 180-day benchmark that Congress identified.

19 86. USCIS’ failure to adjudicate provisional unlawful presence waivers within 180 days after
20 filing constitutes an unreasonable delay.

21 87. Plaintiffs and class members have no alternative remedy available.

22 88. Plaintiffs and class members have suffered irreparable harm from Defendants’ delay in
23 adjudicating their provisional waiver applications.

24 **PRAYER FOR RELIEF**

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

26 A. Take jurisdiction over this matter;

- 1 B. Certify the case as a class action as proposed herein;
- 2 C. Appoint Plaintiffs Guevara Enriquez, Callejas Venegas, Jimenez Rivas, and Montes
- 3 Cisneros as representatives of the class;
- 4 D. Appoint Plaintiffs' counsel as class counsel;
- 5 E. Declare that Defendants USCIS and Jaddou have violated the Administrative Procedure
- 6 Act by unreasonably delaying the adjudication of the provisional waiver applications of
- 7 Plaintiffs and class members;
- 8 F. Enter an order to Defendant Jaddou compelling Defendant USCIS to decide the
- 9 provisional waiver applications of the individually named Plaintiffs, and others who are
- 10 class members as of the date the order is issued, within 30 days, and if USCIS issues a
- 11 Request for Evidence, order the USCIS to adjudicate the provisional waiver application
- 12 within 30 days of the agency's receipt of the response to the Request for Evidence;
- 13 G. Enter an order to Defendant Jaddou compelling Defendant USCIS to decide an
- 14 application for a provisional unlawful presence waiver filed in the future for the waiver of
- 15 the three- or ten-year bars against returning to the United States after departure, within
- 16 180 days from the date the application is filed with USCIS;
- 17 H. Award Plaintiffs' counsel reasonable attorneys' fees and costs under the Equal Access to
- 18 Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and
- 19 I. Enter and issue other relief that this Court deems just and proper.

20
21 January 23, 2023

Respectfully submitted,

22
23 /s/ Adam W. Boyd
24 WSBA # 49849
25 GIBBS HOUSTON PAUW
26 1000 Second Ave. Suite 1600
27 Seattle, WA 98104
28 206-682-1080
Adam.boyd@ghp-law.net

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JESSE M. BLESS
MA Bar No. 660713*
Bless Litigation
6 Vineyard Lane
Georgetown MA 01833
Tel: 781-704-3897
jesse@blesslitigation.com

KATHERINE E. MELLOY GOETTEL
IA Bar. No. 23821*
LESLIE K. DELLON
DC Bar No. 250316*
SUCHITA MATHUR
NY Bar No. 5373162*
American Immigration Council
1331 G. St. NW
Washington, DC 20005
Tel: 202-507-7552 (Goettel)
kgoettel@immcouncil.org
ldellon@immcounil.org
smathur@immcouncil.org

CHARLES H. KUCK
GA Bar No. 429940*
Kuck Baxter LLC
365 Northridge Rd., Suite 300
Atlanta, Georgia 30350
Tel: 404-949-8154
ckuck@immigration.net

AARON C. HALL
CO Bar No. 40376*
Joseph & Hall, P.C.
12203 E. Second Avenue
Aurora, CO 80011
Tel: 303-297-9171
aaron@immigrationissues.com

GREGORY H. SISKIND
TN Bar No. 014487*
Siskind Susser, PC
1028 Oakhaven Road
Memphis, TN 38119
Tel: 901-682-6455

gsiskind@visalaw.com

Attorneys for Plaintiffs

*Applications for Leave to Appear
Pro Hac Vice Forthcoming

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