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11 \*\*Admission pending

12  
13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

16 TONY N., KAREN M., JACK S.,  
17 HEGHINE MURADYAN, DAYANA  
18 VERA DE APONTE,  
19 Individually and on Behalf of All Others  
20 Similarly Situated,

21 Plaintiffs,

22 v.

23 U.S. CITIZENSHIP & IMMIGRATION  
24 SERVICES; DEPARTMENT OF  
25 HOMELAND SECURITY; ALEJANDRO  
26 MAYORKAS, Secretary of Homeland  
27 Security; UR JADDOU, Director of USCIS

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**CLASS ACTION  
Immigration Case**

**INTRODUCTION**

1  
2 1. Plaintiffs are asylum seekers who have lost or will lose their authorization to work  
3 due to Defendants’ unreasonable delays. Plaintiff Tony N., a truck driver who delivered  
4 personal protective equipment across the country during the pandemic, has lost his driver’s  
5 license and his job, and has seen his dreams of starting his own truck driving business  
6 indefinitely postponed. Plaintiff Doctor Heghine Muradyan, a medical doctor, has now lost  
7 her positions at two hospitals caring for underserved populations, and as a result, she can no  
8 longer provide care to her patients or support herself and her young son. Plaintiff Karen M., a  
9 pregnant mother supporting three other young children, faces the imminent loss of her job as  
10 a manager at McDonald’s a month before she is scheduled to give birth. Plaintiff Jack S., an  
11 Apple, Inc. employee, recently lost his position and will soon lose his employer-based health  
12 insurance coverage. Plaintiff Dayana Vera de Aponte, a Registered Behavior Technician for  
13 special needs children, has lost her job and now risks losing her Medicaid provider number, a  
14 necessary license for her profession.  
15  
16

17 2. Plaintiffs, on behalf of themselves and the class members they seek to represent,  
18 challenge Defendant U.S. Citizenship and Immigration Services’ (USCIS) unlawful delay in  
19 adjudicating applications to renew employment authorization documents (EADs) for asylum  
20 seekers. USCIS has already determined that each of these asylum seekers is authorized to  
21 work pursuant to 8 C.F.R. § 274a.12(c)(8). Plaintiffs seek to renew their EADs so they may  
22 maintain or resume their employment and support themselves and their families while  
23 awaiting adjudication of their asylum claims. Work authorization provides access to health  
24 insurance, other employee benefits, and driver’s licenses, and ensures support and stability  
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1 that is key for asylum seekers who frequently suffer from trauma and are less likely to have  
2 access to other means of financial support.

3 3. Plaintiffs' loss of work authorization is occurring while the United States is facing a  
4 widespread national worker shortage. In August 2021 the U.S. Labor Department reported  
5 that there were 10.4 million job openings, whereas the number of individuals leaving  
6 employment rose to 4.3 million, the highest monthly level reported since December 2000.  
7 U.S. Bureau of Labor Statistics, Job Openings and Labor Turnover Report — August 2021,  
8 Economic New Release (Oct. 12, 2021), <https://www.bls.gov/news.release/jolts.nr0.htm>;  
9 Christopher Rugaber, *Americans quit their jobs at a record pace in August*, AP News (Oct.  
10 12, 2021), <https://apnews.com/article/business-459c0884721a213985cdf0185a1176f8>.  
11  
12 Leading economic experts have long maintained that authorizing immigrants to work, like  
13 the asylum seeker plaintiffs here, can play a critical role in ameliorating labor shortages. *See*,  
14 *e.g.*, Nicole Narea, *Immigrants Could Fix the US Labor Shortage*, Vox (Oct. 26, 2021)  
15 [https://www.vox.com/business-and-finance/2021/10/26/22733082/labor-shortage-inflation-](https://www.vox.com/business-and-finance/2021/10/26/22733082/labor-shortage-inflation-immigration-foreign-workers)  
16 [immigration-foreign-workers](https://www.vox.com/business-and-finance/2021/10/26/22733082/labor-shortage-inflation-immigration-foreign-workers) (including quotes from leading economic experts on the  
17 importance of immigrant workers in addressing the ongoing labor shortage).  
18

19 4. Plaintiffs work in essential industries where demand for workers is especially great.  
20 Tony N., who delivered personal protective equipment and other necessary goods across the  
21 country, has lost his ability to work while the trucking industry is in desperate need of  
22 drivers. Jennifer Smith, *Where Are All the Truck Drivers? Shortage Adds to Delivery Delays*,  
23 Wall Street Journal (Nov. 3, 2021), [https://www.wsj.com/articles/truck-driver-shortage-](https://www.wsj.com/articles/truck-driver-shortage-supply-chain-issues-logistics-11635950481)  
24 [supply-chain-issues-logistics-11635950481](https://www.wsj.com/articles/truck-driver-shortage-supply-chain-issues-logistics-11635950481). Doctor Muradyan cared for COVID-19 patients  
25 in tents when her hospital was at 150% capacity and now cannot serve her patients despite  
26  
27

1 the tremendous need for her services. Gaby Galvin, *Nearly 1 in 5 Health Care Workers Have*  
2 *Quit Their Jobs During the Pandemic*, Morning Consult (Oct. 4, 2021),

3 <https://morningconsult.com/2021/10/04/health-care-workers-series-part-2-workforce/>.

4  
5 5. Defendants USCIS and U.S. Department of Homeland Security (DHS) have  
6 repeatedly represented that it should take no more than 180 days to adjudicate renewal EADs  
7 for asylum applicants. The agency codified that adjudicatory timeline at 8 C.F.R.  
8 § 274a.13(d), which authorizes an automatic extension of employment authorization up to  
9 180 days from the date of expiration on the prior EAD. Yet Defendant USCIS is routinely  
10 exceeding that deadline, taking ten months or more to grant or deny an EAD renewal request  
11 for an asylum applicant.

12  
13 6. Due to Defendants' delays, Plaintiffs and class members have lost, or will soon lose,  
14 their jobs, businesses, driver's licenses, ability to pay for basic necessities such as housing  
15 and food, access to health insurance, professional licenses, and other benefits.

16 7. Defendants made a series of policy decisions in recent years that contributed to delays  
17 across benefits.

18 8. Defendant USCIS has not taken sufficient steps to address delays and timely  
19 adjudicate EAD renewal applications for asylum applicants.

20  
21 9. Defendant DHS is aware of USCIS' unreasonable delay in adjudicating EAD renewal  
22 applications for asylum applicants and has not taken sufficient steps to reduce delays.

23 10. Due to Defendants' delays and the resulting harm they cause, Plaintiffs seek class  
24 certification, declaratory relief, and injunctive relief under the Mandamus Act or the  
25 Administrative Procedure Act (APA), ordering Defendants DHS and USCIS to adjudicate  
26  
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1 EAD renewal applications for asylum applicants within the 180-day automatic extension of  
2 employment authorization. *See* 5 U.S.C. §§ 555(b), 706(1); 28 U.S.C. §1361.

3  
4 **JURISDICTION**

5 11. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C.  
6 § 1331 (federal question) and 28 U.S.C. § 1361 (mandamus).

7 12. This Court has the authority to grant relief under the Mandamus and Venue Act,  
8 28 U.S.C. § 1361, the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, and the  
9 Declaratory Judgment Act, 28 U.S.C. §§ 2201-02. The United States has waived sovereign  
10 immunity under 5 U.S.C. § 702.

11 **VENUE**

12 13. Venue in this jurisdiction is proper under 28 U.S.C. § 1391(e)(1)(C) because  
13 Plaintiffs Tony N., Karen M., and Jack S. reside in this District and no real property is  
14 involved in this action.  
15

16 **DIVISIONAL ASSIGNMENT**

17 14. This action is properly assigned to the San Francisco/Oakland Division of this Court  
18 as Plaintiffs Tony N., Karen M., and Jack S. reside in Contra Costa County, Alameda  
19 County, and San Francisco County, respectively, and a substantial part of the events which  
20 give rise to this claim occurred in those counties.  
21

22 **PARTIES**

23 15. Plaintiff Tony N. is a noncitizen asylum seeker who currently resides in Walnut  
24 Creek, California. His application to renew his EAD has been pending with USCIS for 322  
25 days since USCIS received his application on December 23, 2020. He received a 180-day  
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27

1 automatic extension of his work authorization, which ended on October 11, 2021. Plaintiff  
2 Tony N. has not received a Request for Evidence on his application to renew his EAD.

3 16. Plaintiff Karen M. is a noncitizen asylum seeker who currently resides in Hayward,  
4 California. Her application to renew her EAD has been pending with USCIS for 222 days  
5 since USCIS received her application on April 2, 2021. She received a 180-day automatic  
6 extension of her work authorization, which ends on November 15, 2021. Plaintiff Karen M.  
7 has not received a Request for Evidence on her application to renew her EAD.  
8

9 17. Plaintiff Jack S. is a noncitizen asylum seeker who currently resides in San Francisco,  
10 California. His application to renew his EAD has been pending with USCIS for 247 days  
11 since USCIS received his application on March 8, 2021. He received a 180-day automatic  
12 extension of his work authorization, which ended on October 18, 2021. Plaintiff Jack S. has  
13 not received a Request for Evidence on his application to renew his EAD.  
14

15 18. Plaintiff Doctor Heghine Muradyan is a noncitizen asylum seeker who currently  
16 resides in Los Angeles, California. Her application to renew her EAD has been pending with  
17 USCIS for 218 days since USCIS received her application on April 6, 2021. She received a  
18 180-day automatic extension of her work authorization, which ended on October 13, 2021.  
19 Plaintiff Muradyan has not received a Request for Evidence on her application to renew her  
20 EAD.  
21

22 19. Plaintiff Dayana Vera de Aponte is a noncitizen asylum seeker who currently resides  
23 in Miami, Florida. Her application to renew her EAD has been pending with USCIS for 258  
24 days since USCIS received her application on February 25, 2021. She received a 180-day  
25 automatic extension of her work authorization, which ended on November 9, 2021. Plaintiff  
26  
27

1 Vera de Aponte has not received a Request for Evidence on her application to renew her  
2 EAD.

3 20. Defendant DHS is an executive agency of the United States. Since March 1, 2003,  
4 DHS has been the agency responsible for implementing the Immigration and Nationality Act  
5 (INA), including, but not limited to, provisions relating to the employment authorization of  
6 noncitizens.  
7

8 21. Defendant Alejandro Mayorkas is the Secretary of DHS. As DHS Secretary, he has  
9 ultimate responsibility for the administration and enforcement of the INA. He is sued in his  
10 official capacity.

11 22. Defendant USCIS is a component of DHS, 6 U.S.C. § 271, and an agency within the  
12 meaning of the APA, 5 U.S.C. § 551(1). USCIS is responsible for adjudicating immigration  
13 benefits including applications for the renewal of EADs. USCIS did not adjudicate Plaintiffs'  
14 applications to renew their EADs within the 180-day time period for automatic extension of  
15 their employment authorization. Plaintiffs' applications to renew their EADs remain pending  
16 with USCIS.  
17

18 23. Defendant Ur M. Jaddou is the Director of USCIS. As Director, she is responsible for  
19 overseeing, and has ultimate responsibility for, the timely adjudication of immigration  
20 benefits and establishing and implementing governing policies. She is sued in her official  
21 capacity.  
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**FACTUAL AND LEGAL BACKGROUND**

**A. The Legal Basis and Administrative Process for Renewing EADs for Asylum Applicants**

24. A person with an asylum application pending before DHS or the Executive Office for Immigration Review (EOIR) may obtain employment authorization, the proof of which is a valid EAD. 8 C.F.R. §§ 208.7, 274a.12(c)(8); *see* 8 U.S.C. § 1158(d)(2).

25. Defendant USCIS is required by regulation to accept, process, and adjudicate all EAD applications, including EAD applications by asylum applicants. *See* 8 C.F.R. §§ 208.7, 274a.12(c), 274a.13.

26. An EAD does not grant temporary or permanent immigration status. Instead, an EAD is proof of authorization to work for the validity period of the EAD.

27. An EAD for an asylum applicant is typically valid for two years.

28. An asylum applicant may apply to renew their EAD if their asylum application remains pending. 8 C.F.R. § 208.7(b).

29. A person may have an asylum application pending before USCIS or they may apply for asylum in EOIR immigration court.

30. Defendant USCIS instructs people not to file for a renewal EAD more than 180 days before the original EAD expires. USCIS, *Employment Authorization Document; Renew an EAD*, <https://www.uscis.gov/green-card/green-card-processes-and-procedures/employment-authorization-document> (last updated April 5, 2018).

31. If USCIS grants an application to renew an EAD before the original EAD expires, the two-year period of the renewed EAD will begin to run from the approval date and will overlap with the two-year period of the initial EAD. In other words, the asylum seeker will

1 be required to seek any subsequent renewal earlier than they would have had they filed their  
2 renewal application on or immediately before their original EAD expired.

3 32. A person seeking to renew an EAD based on a pending asylum application will  
4 receive an automatic 180-day extension of their current employment authorization if they file  
5 that application before their EAD expires. 8 C.F.R. § 274a.13(d).  
6

7 33. Defendant USCIS advises employers that certain individuals may be granted an  
8 automatic 180-day extension of their employment authorization while USCIS adjudicates the  
9 renewal application. USCIS, *Automatic Extensions of Employment Authorization Documents*  
10 *(EADs) in Certain Circumstances*, [https://www.uscis.gov/i-9-  
11 resources/handbook-for-employers-m-274/40-completing-section-2-of-form-i-9/44-  
12 automatic-extensions-of-employment-authorization-documents-eads-in-certain-  
13 circumstances](https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/40-completing-section-2-of-form-i-9/44-automatic-extensions-of-employment-authorization-documents-eads-in-certain-circumstances) (last updated July 19, 2021).  
14

15 34. The process for applying to renew an EAD requires applicants to fill out a standard  
16 form. Defendant USCIS has created Form I-765, Application for Employment Authorization,  
17 a seven-page form that all EAD applicants must use, regardless of the basis of their  
18 eligibility. The form collects basic biographic, immigration, contact, interpreter, and preparer  
19 information.  
20

21 35. Form I-765 includes eight questions for determining EAD eligibility for an asylum  
22 applicant.

23 36. An asylum seeker is ineligible for an EAD if (a) the person has a conviction for an  
24 aggravated felony defined at 8 U.S.C. § 1101(a)(43), (b) the person has a conviction for a  
25 particularly serious crime on or after August 25, 2020, (c) there are serious reasons to believe  
26 that on or after August 25, 2020 the person committed a serious non-political crime outside  
27

1 the United States, (d) an asylum officer or an immigration judge denied the person's asylum  
2 application before the adjudication of the initial request for an EAD, (e) the person entered  
3 the United States without inspection after August 25, 2020 and did not promptly present  
4 themselves to DHS, or (f) the person caused a delay in the adjudication of their asylum  
5 application that has not been resolved when the EAD application is filed. 8 C.F.R.

6 § 208.7(a)(1)(iii). In addition, the regulations bar people from employment authorization if  
7 they filed their application on or after August 25, 2020 and after the one-year filing deadline  
8 for asylum applications. *Id.* This final provision has been enjoined as to members of the  
9 Asylum Seekers Advocacy Project (ASAP) and CASA de Maryland (CASA). *CASA de*  
10 *Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928, 973-74 (D. Md. 2020). The regulations also  
11 incorporate new regulatory mandatory bars to asylum at 8 C.F.R. § 208.13(c)(6) as bars to  
12 employment authorization. 8 C.F.R. § 208.7(a)(1)(iii)(D). However, the mandatory bars are  
13 subject to a nationwide injunction. *Pangea Legal Servs. v. DHS*, 501 F. Supp. 3d 792 (N.D.  
14 Cal. 2020).

15  
16  
17 37. Defendant USCIS may deny an EAD to an asylum applicant in the exercise of  
18 discretion, 8 C.F.R. § 274a.13(a)(1), unless the applicant is an ASAP or CASA member,  
19 *CASA de Maryland*, 486 F. Supp. 3d at 973-74.

20  
21 38. Defendant USCIS requires two types of additional evidence for EAD applications by  
22 asylum applicants. USCIS, *Instructions for Application for Employment Authorization 4-5*  
23 (Aug. 25, 2020), <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf>.  
24 First, the Form I-765 instructions require evidence that the person filed an asylum application  
25 and that it remains pending before DHS or EOIR. *Id.* Second, the instructions require people  
26 to submit any criminal records. *Id.*

1 39. In addition, ASAP and CASA members who seek to benefit from the injunction in  
2 *CASA de Maryland* must submit a copy of their membership card or a letter from either  
3 organization certifying membership. USCIS, *Update: Preliminary Injunction Impact CASA*  
4 *and ASAP Members*, <https://www.uscis.gov/i-765> (last updated Sept. 29, 2021).

5  
6 40. People applying for renewal of their EAD based on a pending asylum application  
7 must submit the Form I-765, the \$410 filing fee or a request for a waiver of the filing fee, and  
8 any required evidence to the Dallas Lockbox. People who are not ASAP or CASA members  
9 must also submit a \$85 biometrics fee or request a waiver of that fee. The Lockbox accepts or  
10 rejects the application, deposits any payments, sends a Notice of Action, and forwards the  
11 application to a USCIS Service Center for further processing.

12  
13 41. USCIS issues a Notice of Action, Form I-797C, to acknowledge receipt of asylum  
14 applicants' EAD renewal applications, commonly referred to as a "receipt notice."

15 42. The receipt notice provides proof that the applicant is entitled to a 180-day automatic  
16 extension of their work authorization. The receipt notice also includes a receipt number that  
17 can be used to check on the status of a pending application through the USCIS website.  
18 Finally, the receipt notice identifies the assigned Service Center.

19  
20 43. The Texas Service Center adjudicates initial EADs for asylum applicants. Upon  
21 information and belief, Defendant USCIS currently sends EAD renewal applications for  
22 asylum applicants only to the Potomac Service Center, the Nebraska Service Center, and the  
23 Texas Service Center. Upon information and belief, the Dallas Lockbox assigns applications  
24 to a particular Service Center based on the residence of the applicant.

25 44. If the adjudicator at the assigned Service Center requires additional evidence,  
26 Defendant USCIS will issue a Request for Evidence (RFE). Issuing an RFE impacts how  
27

1 USCIS calculates how long an application has been pending. 8 C.F.R. § 103.2(b)(10)(i). If  
2 USCIS sends an RFE for required initial evidence, the processing time restarts when USCIS  
3 receives the required initial evidence. *Id.* If USCIS sends an RFE for supplemental evidence,  
4 the processing time is paused as of the date of the request and does not resume accruing until  
5 USCIS receives the requested evidence or a request for a decision based on the initial  
6 evidence. *Id.* In other words, in complicated cases where additional evidence is needed, the  
7 processing time either restarts or pauses, depending on whether USCIS asks for initial or  
8 supplemental evidence.  
9

10 45. Upon information and belief, the vast majority of EAD renewal applications by  
11 asylum applicants are resolved based on the initial filing with no need for an RFE. For  
12 instance, in a recent survey of its members with pending renewal applications, ASAP found  
13 that only 11 percent of its members applying for renewal applications reported receiving an  
14 RFE.  
15

16 **B. Defendants Create A 180-Day Rule of Reason**

17 46. For almost three decades, legacy Immigration and Naturalization Service (INS) and  
18 subsequently Defendant USCIS were required by regulation to adjudicate most EAD  
19 applications, including EAD renewal applications by asylum applicants, within a set  
20 timeline—initially 60 days and later 90 days. *See* Control of Employment of Aliens, 52 Fed.  
21 Reg. 16216, 16228 (May 1, 1987) (to be codified at 8 C.F.R. pts. 109, 274a); Powers and  
22 Duties of Service Officers; Availability of Service Records, Control of Employment of  
23 Aliens, 56 Fed. Reg. 41767, 41782 (Aug. 23, 1991) (to be codified at 8 C.F.R. pts. 103,  
24 274a). These regulations required *initial* EADs by asylum applicants to be adjudicated in just  
25 30 days, because asylum applicants were required by regulation (and later by statute) to wait  
26  
27

1 150 days from the filing of their asylum applications to file for an EAD. *See* Rules and  
2 Procedures for Adjudication of Applications for Asylum or Withholding of Deportation and  
3 for Employment Authorization, 59 Fed. Reg. 14779, 14780 (Mar. 30, 1994) (stating that 150  
4 days was the period “beyond which it would not be appropriate to deny work authorization to  
5 a person whose claim has not been adjudicated”); *see* 8 U.S.C. § 1158(d)(2) (providing that  
6 an asylum applicant may not receive employment authorization until 180 days after the  
7 asylum application is filed).  
8

9 47. In addition, Defendants told asylum applicants that “[i]n order for employment  
10 authorization to be renewed before its expiration, the application for renewal must be  
11 received by the [INS, subsequently USCIS] 90 days prior to expiration of the employment  
12 authorization.” 8 C.F.R. § 208.7(d) (1997).  
13

14 48. On November 18, 2016, Defendant DHS, through its component Defendant USCIS,  
15 issued a final rule that eliminated the requirement that USCIS either adjudicate applications  
16 by asylum applicants to renew their EADs and other applications for employment  
17 authorization included in 8 C.F.R. § 274a.13(d) within 90 days of filing or issue interim work  
18 authorization. Retention of EB-1, EB-2, and EB-3 Immigrant Workers and Program  
19 Improvements Affecting High-Skilled Nonimmigrant Workers, 81 Fed. Reg. 82398, 82455  
20 (Nov. 18, 2016). In eliminating 90 days as a processing requirement, the agency professed its  
21 commitment to a 90-day adjudication timeframe as a “processing goal.” 81 Fed. Reg. at  
22 82456. This final rule took effect on January 17, 2017. *Id.* at 82398.  
23

24 49. At the same time that DHS eliminated the 90-day processing requirement, DHS also  
25 established a benchmark by when adjudications delayed beyond 90 days should be  
26 completed. “[T]o help prevent gaps in employment authorization,” the agency provided for  
27

1 “the automatic extension of expiring EADs . . . for up to 180 days” for noncitizens who  
2 timely apply to renew their EADs in the same employment authorization category as  
3 previously granted. 81 Fed. Reg. at 82455.

4 50. The agency identified specific renewal categories, including EAD renewals by  
5 asylum applicants, that would receive the 180-day automatic extension. 81 Fed. Reg. at  
6 82455 & n. 98. The automatic extension provides an additional 180 days of work  
7 authorization unless USCIS adjudicates the renewal application before then.

8 51. The agency envisioned the 180-day automatic extension as sufficient to protect  
9 against employment interruptions and job loss:

10  
11 DHS anticipates that the automatic EAD extension will ensure continued  
12 employment authorization for many renewal applicants and prevent any  
13 work disruptions for both the applicants and their employers.

14 81 Fed. Reg. at 82456.

15 52. In June 2020, Defendant DHS issued a final rule eliminating the requirement that  
16 asylum applicants submit their EAD renewal applications 90 days before the EAD expires in  
17 order to avoid a gap in authorization and eliminated the 30-day processing rule for initial  
18 EAD applications. Removal of 30-Day Processing Provision for Asylum Applicant-Related  
19 Form I-765 Employment Authorization Applications, 85 Fed. Reg. 37502, 37502, 37510  
20 (June 22, 2020). (The portion of the final rule eliminating the 30-day processing requirement,  
21 which took effect on August 21, has been enjoined as to ASAP and CASA members. *CASA*  
22 *de Maryland*, 486 F. Supp. 3d at 973-74.) Defendant DHS justified eliminating the 90-day  
23 advance filing rule for renewals because it was “unnecessary” in light of the 180-day  
24 automatic extension at 8 C.F.R. § 274a.13(d)(1):

25  
26 Because [the 180-day automatic extension at 8 C.F.R. § 274a.13(d)(1)]  
27 effectively prevents gaps in work authorization for asylum applicants with

1 expiring employment authorization and EADs, DHS finds it unnecessary to  
2 continue to require that pending asylum applicants file for renewal of their  
3 employment authorization 90 days before the EAD's scheduled expiration in  
order to prevent gaps in employment authorization.

4 85 Fed. Reg. at 37509.

5 53. The 180-day benchmark for agency adjudication of applications to renew EADs is  
6 consistent with “the sense of Congress that the processing of an immigration benefit  
7 application should be completed not later than 180 days after the initial filing of the  
8 application.” 8 U.S.C. § 1571(b).

9 54. Asylum seekers, their attorneys, and advocates relied on Defendants’ representations  
10 in their rulemaking that Defendant USCIS would continue to adjudicate EAD renewal  
11 applications for asylum seekers within the 180-day automatic extension period. Oasis Legal  
12 Service, which represents Plaintiff Jack S. in his asylum case and work permit application,  
13 relied upon both USCIS’ auto-extension regulation and the representation that EADs would  
14 be adjudicated within this 180-day period and communicated to their clients that as long as  
15 they filed their EAD renewal before their current EAD expired, they would not be in danger  
16 of losing their work authorization due to expiration of the 180-day period. ASAP also relied  
17 on USCIS’ representation that asylum seekers who received the automatic extension period  
18 would not experience gaps in work authorization coverage, and, until recently had declined  
19 to recommend to its members that they needed to file renewal applications well in advance of  
20 their prior work permit’s expiration.  
21  
22

23 **C. Defendants Abandon the 180-Day Rule of Reason**

24 55. Until recently, Defendant USCIS consistently adjudicated EAD renewal applications  
25 by asylum applicants in less than 180 days.  
26  
27

1 56. According to USCIS’ publicly available data, the median processing time for all  
2 Form I-765 applications from Fiscal Year (FY) 2017 through September of FY 2021 ranged  
3 between 2.6 and 3.9 months. USCIS, *Historical National Median Processing Times (in*  
4 *Months) for All USCIS Offices for Select Forms By Fiscal Year* (Sept. 2021),  
5 <https://egov.uscis.gov/processing-times/historic-pt> (last visited Nov. 9, 2021).  
6

7 57. Upon information and belief, beginning with applications filed in December 2020,  
8 Defendant USCIS began to take more than 180 days to adjudicate EAD renewals for many  
9 asylum applicants.

10 58. Processing times have continued to increase. According to Defendant USCIS, the  
11 estimated time range for adjudicating EAD renewals for asylum applicants at the Potomac  
12 Service Center is 9.5 to 10 months. USCIS, *Check Case Processing Times*,  
13 <https://egov.uscis.gov/processing-times/> (selecting “Form: I-765 Application for  
14 Employment Authorization” and “Field Office or Service Center: Potomac Service Center”  
15 and scrolling down to “Form type: Based on a pending asylum application [(c)(8)]”) (last  
16 visited Nov. 9, 2021).  
17

18 59. According to Defendant USCIS, the estimated time range for adjudicating EAD  
19 renewals for asylum applicants at the Nebraska Service Center is 5.5 to 7.5 months. USCIS,  
20 *Check Case Processing Times*, <https://egov.uscis.gov/processing-times/> (selecting “Form: I-  
21 765 Application for Employment Authorization” and “Field Office or Service Center:  
22 Nebraska Service Center” and scrolling down to “Form type: Based on a pending asylum  
23 application [(c)(8)]”) (last visited Nov. 9, 2021).  
24

25 60. According to Defendant USCIS, the estimated time range for adjudicating both initial  
26 and renewal EAD applications for asylum applicants at the Texas Service Center is 3 weeks  
27

1 to 8 months. USCIS, *Check Case Processing Times*, <https://egov.uscis.gov/processing-times/>  
2 (selecting “Form: I-765 Application for Employment Authorization” and “Field Office or  
3 Service Center: Texas Service Center” and scrolling down to “Form type: Based on a  
4 pending asylum application [(c)(8)]”) (last visited Nov. 9, 2021). Because many *initial* EAD  
5 applications for asylum applicants must be adjudicated within 30 days, the estimated time  
6 range for adjudication at the Texas Service Center does not accurately reflect the actual,  
7 longer time range for *renewal* EAD applications.  
8

9 61. If an application is delayed “outside normal processing time” an applicant may ask  
10 USCIS to investigate through a case inquiry. USCIS, *Case Inquiry*, [https://egov.uscis.gov/e-](https://egov.uscis.gov/e-request/Intro.do)  
11 [request/Intro.do](https://egov.uscis.gov/e-request/Intro.do).

12 62. Defendant USCIS will not accept an “outside normal processing time” case inquiry  
13 for an EAD renewal application by an asylum applicant currently pending at the Potomac  
14 Service Center that was filed after January 12, 2021. *See* USCIS, *Outside Normal Processing*  
15 *Time*, [https://egov.uscis.gov/e-](https://egov.uscis.gov/e-request/displayONPTForm.do;jsessionid=4D4757218B03C758E302ABF286D9581D?sroPa)  
16 [request/displayONPTForm.do;jsessionid=4D4757218B03C758E302ABF286D9581D?sroPa](https://egov.uscis.gov/e-request/displayONPTForm.do;jsessionid=4D4757218B03C758E302ABF286D9581D?sroPa)  
17 [geType=onpt&entryPoint=init](https://egov.uscis.gov/e-request/displayONPTForm.do;jsessionid=4D4757218B03C758E302ABF286D9581D?sroPa) (permitting a case inquiry “*if your case has been pending*  
18 *longer than the processing time posted*” (emphasis added)) (last visited Nov. 10, 2021). In  
19 other words, according to Defendant USCIS, an application that has been pending at the  
20 Potomac Service Center for approximately ten months – or 302 days – is within “normal  
21 processing time.”  
22

23 63. Defendant USCIS will not accept an “outside normal processing time” case inquiry  
24 for an EAD renewal application by an asylum applicant currently pending at the Nebraska  
25 Service Center that was filed after March 29, 2021. *Id.* In other words, according to  
26  
27

1 Defendant USCIS, an application that has been pending at the Nebraska Service Center for  
2 over seven months – or 226 days – is within “normal processing time.”

3 64. Defendant USCIS will not accept an “outside normal processing time” case inquiry  
4 for an EAD renewal application by an asylum applicant currently pending at the Texas  
5 Service Center that was filed after March 24, 2021. *Id.* In other words, according to  
6 Defendant USCIS, an application that has been pending at the Nebraska Service Center for  
7 over seven months – or 231 days – is within “normal processing time.”

8 65. Upon information and belief, based on the number of applications that were filed in  
9 November and December 2020 that remain pending with Defendant USCIS, the current  
10 processing time for EAD renewals by asylum applicants is longer than the estimated time  
11 range posted by Defendant USCIS.  
12

13 66. Upon information and belief, Defendant USCIS is not adjudicating EAD renewal  
14 applications by asylum applicants based on first in-first out processing. Applications sent to  
15 the Nebraska Service Center are adjudicated, on average, more quickly than earlier-filed  
16 applications sent to the Potomac Service Center. Applications sent to the Potomac Service  
17 Center are sometimes adjudicated faster than earlier-filed applications at the same service  
18 center.  
19

20 67. For example, one attorney with Centro Legal de la Raza filed four EAD renewal  
21 applications for asylum applicants on October 5, 2020. The Potomac Service Center  
22 approved those on May 24, 2021, June 7, 2021, June 11, 2021, and August 31, 2021.  
23 Defendant USCIS did not submit RFEs for any of these applications and the attorney could  
24 not identify any reason why some applications took two to three months longer to adjudicate  
25 than others.  
26  
27

1 68. On November 2, 2021, members of Congress wrote to USCIS Director Jaddou and  
2 reported that their “offices have numerous cases of individuals who have applied for their  
3 renewals in a timely manner but have already lost or will lose their jobs because their  
4 renewal has not been processed by USCIS.” Letter from Rep. Val Demings et al. to Director  
5 Jaddou (Nov. 2, 2021),  
6 [https://demings.house.gov/sites/demings.house.gov/files/Letter%20to%20USCIS%20Directo  
7 r%20re%20EAD%20Applications%20-%20Final.pdf](https://demings.house.gov/sites/demings.house.gov/files/Letter%20to%20USCIS%20Director%20re%20EAD%20Applications%20-%20Final.pdf). The representatives requested that  
8 USCIS increase the automatic extension period from 180 to 360 days. *Id.*

10 **D. Defendants’ Policy Decisions Contribute to Delay Across Benefits**

11 69. Defendants’ pattern and practice of delayed adjudication of renewal EADs for asylum  
12 applicants is part of a series of policy changes over the past four years that have  
13 unnecessarily burdened Defendant USCIS’ adjudication processes, leading to unlawful  
14 delays.  
15

16 70. For example, on October 1, 2017, Defendant USCIS departed from longstanding  
17 practice and began requiring interviews of all applicants for employment-based lawful  
18 permanent resident status even if eligibility was clear. *See Am. Immigr. Laws. Ass’n,*  
19 *Deconstructing the Invisible Wall: How Policy Changes by the Trump Administration Are*  
20 *Slowing and Restricting Legal Immigration* 17 (March 2018),  
21 [https://www.immigrationresearch.org/report/other/deconstructing-invisible-wall-how-policy-  
22 changes-trump-administration-are-slowing-and-r](https://www.immigrationresearch.org/report/other/deconstructing-invisible-wall-how-policy-changes-trump-administration-are-slowing-and-r) (“*Deconstructing the Invisible Wall*”).  
23 USCIS field office staff subsequently “stated that new interview requirements increased field  
24 offices’ workload and contributed to longer processing times.” U.S. Gov’t Accountability  
25 Off. (GAO), GAO-21-529, *U.S. Citizenship and Immigration Services: Actions Needed to*  
26  
27

1 *Address Pending Caseload* 19 (Aug. 2021) (“GAO Report”),  
2 <https://www.gao.gov/assets/gao-21-529.pdf>. This policy continued until May 2018. USCIS,  
3 PA-2018-04, *Policy Alert: Adjustment of Status Interview Guidelines and Waiver Criteria*  
4 (May 15, 2018) (adopted at USCIS Policy Manual, Vol. 7: Adjustment of Status, Part A,  
5 Adjustment of Status Policies and Procedures, Ch. 5, Interview Guidelines),  
6 [https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20180515-](https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20180515-AdjustmentInterview.pdf)  
7 [AdjustmentInterview.pdf](https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20180515-AdjustmentInterview.pdf) (last visited Nov. 9, 2021).

9 71. Defendant USCIS also substantially increased RFEs issued with respect to  
10 nonimmigrant petitions for H-1B specialty occupation workers in 2017. From January  
11 through August 2017, USCIS issued 85,000 RFEs on H-1B petitions, a forty-five percent  
12 increase over the same eight months in 2016. *Deconstructing the Invisible Wall* at 10. Issuing  
13 RFEs and reviewing responses increases the time an adjudicator must spend on an H-1B  
14 petition.

16 72. At the same time, Defendant USCIS rescinded a policy memorandum from 2004 that  
17 authorized adjudicators to give deference to a prior nonimmigrant visa petition approval  
18 when adjudicating an extension petition filed by the same employer for the same worker in  
19 the same job. *Deconstructing the Invisible Wall* at 17. No deference to prior approval meant  
20 more time to adjudicate, with a greater use of RFEs and more documentation being submitted  
21 to reestablish eligibility for the same job with the same petitioner. *Id.* USCIS reinstated the  
22 deference policy in April 2021. *See USCIS, Policy Alert, Deference to Prior Determinations*  
23 *of Eligibility in Requests for Extensions of Petition Validity* (Apr. 27, 2021),  
24 [https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-](https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf)  
25 [Deference.pdf](https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf).

1 73. In late 2019, without notice to the public, Defendant USCIS implemented a new “no  
2 blank space rejection policy” that led the agency to reject thousands of humanitarian  
3 applications for relief, including asylum applications. Under this policy, Defendant USCIS  
4 rejected applications if any field was left blank on multi-page forms, irrespective of the  
5 materiality or applicability of the unanswered question. Defendant USCIS therefore required  
6 applicants to re-submit nearly identical applications and supporting documentation inserting  
7 terms like “N/A” throughout—increasing the volume of applications that had to be reviewed  
8 and processed by its service centers. In response to litigation, Defendant USCIS ceased the  
9 practice pursuant to a settlement agreement approved on July 20, 2021. USCIS, *Notice of*  
10 *Settlement Agreement in Vangala v. USCIS* (Aug. 19, 2021), [https://www.uscis.gov/laws-](https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notices-and-agreements/notice-of-settlement-agreement-in-vangala-v-us-citizenship-and-immigration-services-no-420-cv-08143)  
11 [and-policy/other-resources/class-action-settlement-notices-and-agreements/notice-of-](https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notices-and-agreements/notice-of-settlement-agreement-in-vangala-v-us-citizenship-and-immigration-services-no-420-cv-08143)  
12 [settlement-agreement-in-vangala-v-us-citizenship-and-immigration-services-no-420-cv-](https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notices-and-agreements/notice-of-settlement-agreement-in-vangala-v-us-citizenship-and-immigration-services-no-420-cv-08143)  
13 [08143](https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notices-and-agreements/notice-of-settlement-agreement-in-vangala-v-us-citizenship-and-immigration-services-no-420-cv-08143). Under the settlement agreement, applicants may now *resubmit* their applications  
14 through July 2022, *see id.*, creating more work for the agency—work which could have been  
15 completely avoidable.

16 74. USCIS also created unnecessary delays in adjudicating applications to extend or  
17 change nonimmigrant status, Form I-539, by implementing a biometrics requirement in  
18 March 2019. Many I-539 applicants are the spouses or children of employment-based  
19 nonimmigrants and they are already vetted as part of visa issuance and/or the inspection and  
20 admission process upon entering the United States. In response to litigation, USCIS  
21 suspended the biometrics requirements for Form I-539s for certain categories pending as of  
22 May 17, 2021,  
23  
24  
25  
26  
27

1 75. where no biometrics notice had been issued or for applications submitted to USCIS  
2 on or after May 17. USCIS, *USCIS Temporarily Suspends Biometrics Requirement for*  
3 *Certain Form I-539 Applicants* (May 13, 2021), [https://www.uscis.gov/news/alerts/uscis-](https://www.uscis.gov/news/alerts/uscis-temporarily-suspends-biometrics-requirement-for-certain-form-i-539-applicants)  
4 [temporarily-suspends-biometrics-requirement-for-certain-form-i-539-applicants](https://www.uscis.gov/news/alerts/uscis-temporarily-suspends-biometrics-requirement-for-certain-form-i-539-applicants).  
5

6 76. In August 2021, the Government Accountability Office (GAO) reported that  
7 Defendant USCIS had significant backlogs across benefits, including EAD applications.  
8 GAO Report at 10-11. The GAO found that for six of the seven forms it reviewed, the  
9 median processing time (from agency receipt to decision) increased even though the number  
10 of applications and petitions “remained between about 8 and 10 million each fiscal year from  
11 2015 through 2019.” *Id.* at “What GAO Found.”  
12

13 77. Despite these significant delays, GAO found that “USCIS has developed several  
14 potential plans to reduce its pending caseload but has not implemented the plans or identified  
15 the resources and funding that would be needed to address the pending caseload.” *Id.* at 36.  
16

17 78. While Defendant USCIS has complained of resource constraints that reportedly limit  
18 its ability to reduce application backlog and timely adjudicate applications, it has not  
19 identified what resources it needs to implement such plans to either the Office of  
20 Management and Budget or Congress. *Id.* at 37-38.  
21

22 79. Moreover, the GAO found that Defendant USCIS has not established timeliness  
23 performance measures for the adjudication of EAD applications and other high-volume  
24 applications, even though “high-quality performance metrics that are valid, reliable, and  
25 strongly correlated with outcomes can be helpful in understanding agency progress in  
26 achieving an outcome.” *Id.* at 24-27. Similarly, the GAO reported that “USCIS has not  
27 established performance measures for its projects to assess the extent to which they are

1 contributing to reduced processing times—a key focus in light of the agency’s growing  
2 pending caseload.” *Id.* at 29.

3 80. The American Immigration Lawyers Association (AILA), a national non-profit  
4 association of immigration lawyers and law school professors with more than 15,000  
5 members, has repeatedly raised these problems with USCIS. Between March 2018 and May  
6 2021, AILA issued two reports and provided public comment, among other advocacy efforts,  
7 identifying for USCIS policy choices it has made that have produced widespread delays and  
8 advocating with USCIS to adequately address backlogs. AILA, *Re: Identifying Barriers*  
9 *Across U.S. Citizenship and Immigration Services (USCIS) Benefits and Services; Request*  
10 *for Public Input (Docket ID No. USCIS-2021-0004; RIN: 1615-ZB87)* (May 19, 2021),  
11 <https://www.regulations.gov/comment/USCIS-2021-0004-7107>; AILA, *Walled Off: How*  
12 *USCIS Has Closed Its Doors on Customers and Strayed from Its Statutory Customer Service*  
13 *Mission* (Feb. 12, 2021), [https://www.aila.org/advo-media/aila-policy-briefs/policy-brief-](https://www.aila.org/advo-media/aila-policy-briefs/policy-brief-walled-off-how-uscis-has-closed)  
14 [walled-off-how-uscis-has-closed](https://www.aila.org/advo-media/aila-policy-briefs/policy-brief-walled-off-how-uscis-has-closed); *Deconstructing the Invisible Wall*.

15 81. Defendant USCIS has still failed to adequately address backlogs and delays.

16  
17 **E. Plaintiffs Will Suffer or Have Suffered Irreparable Harm**

18 82. Plaintiff Tony N. is an asylum seeker from East Africa and a truck driver who  
19 delivered personal protective equipment across the country during the pandemic. At the time  
20 his current work authorization expired, Mr. N. was on the verge of starting his own truck  
21 driving business. But because of Defendants’ delay in processing his work authorization  
22 application, Mr. N. instead lost his driver’s license and his current job. Living without any  
23 support network in the United States, Mr. N. has been forced to deplete his savings because  
24  
25  
26  
27

1 he cannot work and he struggles with paying for necessities such as his rent and health  
2 insurance.

3 83. Plaintiff Muradyan is an asylum seeker from Armenia and a medical doctor. Doctor  
4 Muradyan has now lost her residency positions at two hospitals, as well as her health  
5 insurance, due to the delay in processing her work permit renewal, and, as a result, she can  
6 no longer provide care to her patients or support herself and her young son. If Doctor  
7 Muradyan is unable to work for over three months, she will lose her Postgraduate Training  
8 License to practice medicine in different states and will need to redo an entire year of  
9 residency beginning in July 2022.  
10

11 84. Plaintiff Karen M. is a pregnant asylum seeker with three other young children she  
12 supports. Ms. M. works as a manager at McDonald's and has been informed by her employer  
13 that if her work permit is not renewed by November 15, 2021, she will be terminated from  
14 her position. Ms. M. has already been unable to renew her driver's license because of the  
15 delay in processing her work permit application, and now, a month before she is scheduled to  
16 give birth, she fears that she will also lose her primary means to support herself and her  
17 family. Ms. M will face significant economic hardship without her employment  
18 authorization, and will struggle to cover necessities such as rent, food, and clothing for  
19 herself and her young children.  
20

21 85. Plaintiff Jack S. is an asylum seeker and an Apple, Inc. employee. Mr. S. recently lost  
22 his position because of the delay in renewing his work permit and will soon lose his  
23 employer-based health insurance coverage. In addition, Mr. S. has lost his driver's license as  
24 a result of Defendants' delay and can no longer drive to important medical appointments or  
25 easily acquire necessities such as groceries. Mr. S. is suffering significant economic hardship  
26  
27

1 without employment authorization and is struggling with how to pay his bills and cover his  
2 basic needs as he has nearly used up his savings.

3 86. Plaintiff Vera de Aponte is an asylum seeker from Venezuela and a registered  
4 Behavior Health Technician for special needs children. Ms. Vera de Aponte is the primary  
5 source of income for her family. She was recently terminated by her employer because her  
6 work authorization was not renewed. She is at risk of losing her Medicaid provider number,  
7 which Medicaid typically revokes after a period of inactivity, which could have serious long-  
8 term implications for her career. Without her work permit, she will also be unable to renew  
9 her marketplace health insurance when it expires in March 2022.

10  
11 87. Plaintiffs Tony N., Doctor Muradyan, Karen M., Jack S., and Vera de Aponte, all  
12 experience significant mental anguish, emotional pain, and severe anxiety as a result of the  
13 delays in processing their renewal applications.  
14

### 15 **TRAC FACTORS AND UNREASONABLE DELAY**

16 88. Courts generally evaluate claims of unreasonable delay under the six factors laid out  
17 in *Telecomms. Rsch. & Action Ctr. v. FCC* (“TRAC”), 750 F.2d 70, 80 (D.C. Cir. 1984):

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

*Brower v. Evans*, 257 F.3d 1058, 1068–69 (9th Cir. 2001) (quoting *Independence  
Mining Co. v. Babbitt*, 105 F.3d 502, 507 n.7 (9th Cir.1997).

1 **A. TRAC Factors 1 and 2: “Rule of Reason” and the Statutory, Regulatory**  
2 **Timetable**

3 89. Defendant DHS’ rulemaking for its component USCIS establishes that Defendants  
4 have a policy interest in ensuring that asylum seekers do not experience gaps in employment  
5 authorization and that EADs for asylum applicants should be adjudicated in no more than  
6 180 days.

7 90. For decades, Defendant USCIS adjudicated EAD renewal applications for asylum  
8 seekers in less than 180 days.

9 91. Defendants have represented to the public, to asylum seekers, and to their attorneys,  
10 that Defendant USCIS would adjudicate EAD renewal applications for asylum seekers within  
11 the 180-day automatic extension of employment authorization as adopted at 8 C.F.R.  
12 § 274a.13(d).

13 92. Upon information and belief, Defendant USCIS does not employ a first in/first out  
14 “rule of reason.”

15 **B. TRAC Factors 3 and 5: Prejudice and Harm to Human Health and Welfare Due**  
16 **to Delay**

17 93. Plaintiffs and class members have lost jobs and the ability to support themselves and  
18 their families because of Defendants’ delays.

19 94. Plaintiffs and class members have been threatened with the imminent loss of jobs and  
20 the ability to support themselves and their families because of Defendants’ delays.

21 95. Plaintiffs have lost or face the imminent loss of access to employee benefits,  
22 including health insurance, and services because of Defendants’ delays.

23 96. Class members have lost income or face the imminent loss of income necessary to  
24 pay for legal representation to pursue their asylum claims because of Defendants’ delays.  
25  
26  
27

1 97. Many states issue driver’s licenses and identification cards that are only valid for the  
2 validity period of an EAD. Plaintiffs and class members have lost or face the imminent loss  
3 of a driver’s license or government-issued ID because of Defendants’ delays.

4 98. Plaintiffs and class members are asylum seekers who have suffered trauma and who  
5 still suffer the consequences of that trauma, including post-traumatic stress disorder. Stability  
6 is essential for people coping with trauma. The ability to work, to be productive, and to  
7 support oneself is essential for people coping with trauma. Plaintiffs and class members  
8 suffer increased anxiety, a lack of stability, and a reduced ability to cope with trauma due to  
9 Defendants’ delays.

10 99. Plaintiffs and class members reasonably relied on continued authorization to work  
11 during the pendency of their asylum claims so long as they applied to renew their EADs  
12 before the expiration date.  
13  
14

15 **C. TRAC Factor 4: Competing Priorities**

16 100. Expediting the processing of EAD renewal applications by asylum applicants will not  
17 unduly interfere with other higher priorities.

18 101. Upon information and belief, Defendant USCIS prioritizes the prompt adjudication of  
19 EAD applications over other benefits that confer temporary or permanent immigration status.

20 102. Plaintiffs do not seek to move one application to the front of the line. Instead, they  
21 seek to enforce the 180-day rule of reason for all putative class members.  
22

23 **D. TRAC Factor 6: Impropriety**

24 103. Defendants’ delays in adjudicating EAD renewal applications for asylum seekers are  
25 unreasonable, even if the explanation for the delays is not unscrupulous.  
26  
27

**CLASS ALLEGATIONS**

1  
2 104. Named Plaintiffs bring this action on behalf of themselves and all others who are  
3 similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). A class  
4 action is proper because this action involves questions of law and fact common to the class,  
5 the class is so numerous that joinder of all members is impracticable, Plaintiffs' claims are  
6 typical of the claims of the class, Plaintiffs will fairly and adequately protect the interests of  
7 the class, and Defendants have acted on grounds that apply generally to the class, so that final  
8 injunctive relief or corresponding declaratory relief is appropriate with respect to the class as  
9 a whole.  
10

11 105. The named Plaintiffs seek to represent the following class:

12 All individuals:

13 (a) who filed applications to renew their employment authorization documents  
14 pursuant to 8 C.F.R. §§ 208.7(b); 274a.12(c)(8); and  
15

16 (b) who received a 180-day automatic extension of their employment authorization  
17 pursuant to 8 C.F.R. § 274a.13(d); and

18 (c) whose applications have a processing time of at least 180 days pursuant to 8 C.F.R.  
19 § 103.2(b)(10)(i).  
20

21 106. The proposed class is so numerous that joinder of all members is impracticable. The  
22 named Plaintiffs are not aware of the precise number of potential class members but  
23 reasonably estimate that the number of current class members totals at least 500. Defendants  
24 are in a position to identify this number.

25 107. ASAP is a nonprofit organization that serves and connects individuals seeking asylum  
26 in the United States. ASAP offers membership to individuals who are at least 14 years old,  
27

1 have sought or are seeking asylum in the United States, and believe in its mission. At least  
2 454 of ASAP's members filed applications to renew their EADs based on their status as  
3 pending asylum applicants; all members who applied to renew their employment  
4 authorization before the expiration of their current EADs received the 180-day automatic  
5 extension of their employment authorization; and their applications have a processing time of  
6 at least 180 days pursuant to 8 C.F.R. § 103.2(b)(10)(i).

7  
8 108. As there are also organizations that provide services to asylum applicants which  
9 include preparing and filing applications to renew their EADs and attorneys in private  
10 practice who prepare and file applications to renew the EADs of asylum seekers, it is  
11 reasonable to infer that the number of putative class members is significantly larger than 454.

12 As additional asylum applicants file to renew their EADs, an unknown number of future  
13 putative class members, coupled with the reasonable estimate of current putative class  
14 members, makes joinder impracticable. In Fiscal Year 2020, Defendant USCIS received  
15 256,034 EAD renewal applications by asylum applicants. USCIS, *Form I-765, Application*  
16 *for Employment Authorization, Eligibility Category and Filing Type FY 2003-2020* (Jan. 25,  
17 2021), [https://www.uscis.gov/sites/default/files/document/reports/I-](https://www.uscis.gov/sites/default/files/document/reports/I-765_Application_for_Employment_FY03-20.pdf)  
18 [765\\_Application\\_for\\_Employment\\_FY03-20.pdf](https://www.uscis.gov/sites/default/files/document/reports/I-765_Application_for_Employment_FY03-20.pdf).

19  
20  
21 109. Questions of law and fact predominate over any questions affecting the individually  
22 named plaintiffs. Common questions of law include whether there is a duty to adjudicate the  
23 applications to renew the EADs of asylum applicants within the 180-day automatic extension  
24 at 8 C.F.R. § 274a.13(d) and whether it is unreasonable for applications to renew the EADs  
25 of asylum applicants to be pending for more than 180 days pursuant to 8 C.F.R.  
26 § 103.2(b)(10)(i). Common questions of fact include whether USCIS has delayed the  
27

1 adjudication of asylum applicant EAD renewals, and whether DHS and USCIS have a policy  
2 and practice of failing to adjudicate asylum applicant EAD renewals within the automatic  
3 180-day renewal period set forth in the regulations. Resolution of these common questions  
4 will resolve the entire case.

5  
6 110. Plaintiffs' claims are typical of the claims of the entire class as they are asylum  
7 applicants whose applications to renew their EADs have been pending with Defendant  
8 USCIS for at least 180 days pursuant to 8 C.F.R. § 103.2(b)(10)(i) and they received the 180-  
9 day automatic extension.

10 111. Plaintiffs will fairly and adequately represent the interests of the proposed class as  
11 they seek relief on behalf of the class as a whole and they have no interest antagonistic to the  
12 class members.

13  
14 112. Plaintiffs are represented by competent counsel with extensive experience in both  
15 complex class actions and immigration law.

16 113. In not adjudicating the applications to renew the EADs of asylum applicants within  
17 the 180-day automatic extension period at 8 C.F.R. § 274a.13(d), Defendants have acted and  
18 will continue to act on grounds generally applicable to the entire class, thus making final  
19 injunctive or other relief appropriate to remedy harms to the class as a whole. The class may  
20 therefore be properly certified under Fed. R. Civ. P. 23(b)(2).  
21  
22  
23  
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**COUNT ONE**

**Mandamus Act – 28 U.S.C. § 1361**

**Mandamus Act Violation by Unlawfully Delaying the Adjudication of  
Asylum EAD Renewal Applications**

114. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the allegations above.

115. Plaintiffs and the proposed class have a clear and certain claim to have their applications to renew their EADs adjudicated within the 180-day automatic extension period at 8 C.F.R. § 274a.13(d).

116. Defendants have a ministerial, nondiscretionary duty to adjudicate the applications of asylum applicants to renew their EADs within the 180-day automatic extension period at 8 C.F.R. § 274a.13(d).

117. Plaintiffs and the proposed class have no other adequate remedy at law to compel Defendants' duty to adjudicate their applications to renew their EADs.

118. By failing to adjudicate the applications of asylum applicants to renew their EADs within the 180-day automatic extension period at 8 C.F.R. § 274a.13(d), Defendants have violated the 180-day rule of reason.

119. There are no available administrative remedies for Plaintiffs to exhaust.

**COUNT TWO**

**Administrative Procedure Act—5 U.S.C. § 706(1)**

**Administrative Procedure Act Violation by Unreasonably Delaying  
Adjudication of Asylum EAD Renewal Applications**

120. Plaintiffs reallege and incorporate by reference, as if fully set forth herein, the allegations above.

1 121. Plaintiffs assert this cause of action as an alternative in the event that the Court does  
2 not find that they have met the criteria for relief under 28 U.S.C. § 1361.

3 122. The APA provides for judicial review when a person is adversely affected by agency  
4 action. 5 U.S.C. § 702. Agency action includes an agency’s failure to act. 5 U.S.C. § 551(13).  
5 A court “shall compel agency action . . . unreasonably delayed.” 5 U.S.C. § 706(1).  
6

7 123. Defendants’ failure to adjudicate the applications of Plaintiffs and proposed class  
8 members to renew their EADs within the 180-day automatic extension period at 8 C.F.R.  
9 § 274a.13(d) constitutes an unreasonable delay. Plaintiffs and proposed class members no  
10 longer have authorization to work because the 180-day automatic extension of their EADs  
11 has expired or are at imminent risk of losing work authorization. Inability to work and to  
12 support oneself and ones family, loss of employee benefits including health insurance, loss of  
13 driver’s licenses, inability to pursue a chosen career path, and emotional distress are among  
14 the substantial injuries that Plaintiffs have incurred while waiting for Defendants to  
15 adjudicate an application that takes USCIS a few minutes to adjudicate.  
16

17 124. There are no available administrative remedies for Plaintiffs to exhaust.

18 **REQUEST FOR RELIEF**

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

- 20 (1) Assume jurisdiction over this matter;
- 21 (2) Certify the case as a class action, as proposed herein;
- 22 (3) Appoint Plaintiffs as representatives of the class and Plaintiffs’ counsel as  
23 class counsel;
- 24 (4) Declare Defendants’ delayed adjudication of Plaintiffs’ and class members’  
25 applications to renew their EADs unreasonable;  
26  
27

1 (5) Compel Defendants to adjudicate Plaintiffs' and class members' applications  
2 to renew their EADs within the 180-day automatic extension period at 8 C.F.R.

3 § 274a.13(d);

4 (6) Issue a permanent injunction;

5 (7) Award Plaintiffs' counsel reasonable attorneys' fees and costs under the Equal  
6 Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable  
7 law; and

8 (8) Grant such other and further relief as the Court deems just, equitable, and  
9 appropriate.  
10

11 DATE: November 10, 2021

Respectfully submitted,

12 /s/ Judah Lakin

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\*Motions for admission pro hac vice forthcoming

\*\*Admission pending