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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

NORTHWEST IMMIGRANT RIGHTS
PROJECT and THE ADVOCATES FOR
HUMAN RIGHTS;

Wilman GONZALEZ ROSARIO, L.S., K.T.,
A.A., Karla DIAZ MARIN, Antonio MACHIC
YAC, Faridy SALMON, Jaimin SHAH,
Marvella ARCOS-PEREZ, Carmen OSORIO
BALLESTEROS, and W.H., Individually and
on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES; UNITED
STATES DEPARTMENT OF HOMELAND
SECURITY; Leon RODRIGUEZ, Director,
U.S. Citizenship and Immigration Services;
Jeh JOHNSON, Secretary, U.S. Department of
Homeland Security,

Defendants.

Case No. 2:15-CV-00813

AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND MANDAMUS

CLASS ACTION

1. Plaintiffs challenge Defendants’ policies and practices of unlawfully delaying adjudication of applications for employment authorization and refusing to issue interim employment authorization. Plaintiffs include individual noncitizens entitled to employment

1 authorization (“Individual Plaintiffs”) and the class members they seek to represent, as well as
2 the Northwest Immigrant Rights Project (“NWIRP”) and The Advocates for Human Rights
3 (“Organizational Plaintiffs”), non-profit legal services organizations in Washington State and
4 Minnesota, respectively, that serve low-income immigrants who are entitled to employment
5 authorization.

6
7 2. Employment authorization yields economic benefits not only for eligible
8 noncitizens, but also for the U.S. economy. Individuals who can prove their eligibility to work
9 in the United States earn higher wages than those who do not. Workers who earn higher wages
10 are better able to provide for themselves and their families, pay more in federal and state taxes,
11 and have more disposable income to spend on goods and services produced by U.S. businesses.
12 Delays by the federal government in providing employment authorization to eligible noncitizens
13 undermine these goals. In fact, employers may be forced to lay off these workers to avoid the
14 risk of fines imposed by Immigration and Customs Enforcement (“ICE”). Moreover, if an
15 asylum applicant does not have an extension of work authorization timely adjudicated and
16 continues to work without such authorization, he or she accrues unlawful presence which may
17 have potentially devastating consequences for future immigration to the United States.
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20 3. When hiring any employee, U.S. employers must verify his or her eligibility to
21 work by examining certain documents that, for noncitizens, commonly include an employment
22 authorization document (“EAD”) issued by the Department of Homeland Security (“DHS”). If
23 an employee presents a time-limited EAD at the time of hire, the employer must reverify the
24 employee’s work authorization prior to its expiration, or the employer may be subject to civil
25 fines for continuing to employ the individual.
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1 4. To obtain an EAD, an eligible individual generally must submit a Form I-765,
2 Application for Employment Authorization, to Defendant United States Citizenship and
3 Immigration Services (“USCIS”), an agency within Defendant United States Department of
4 Homeland Security. By regulation, USCIS *must* either adjudicate the I-765 application within a
5 fixed time period or issue interim employment authorization. In the case of Individual Plaintiffs,
6 Defendants have done neither, leaving them in a precarious situation, unable to work legally,
7 and at risk of losing their jobs and related benefits, as well as their driver’s licenses in some
8 states.
9

10 5. Under the regulations, USCIS is required to adjudicate all applications for
11 employment authorization, except an asylum applicant’s initial request for an EAD, within 90
12 days. Asylum applicants’ initial requests for EADs are to be adjudicated within 30 days.
13

14 6. By regulation, USCIS’s failure to timely adjudicate EAD applications “*will result*
15 *in* the grant of an employment authorization document for a period not to exceed 240 days.”
16 8 C.F.R. § 274a.13(d) (entitled “Interim Employment Authorization”) (emphasis added). Yet,
17 USCIS regularly fails to timely adjudicate EAD applications and never issues interim
18 employment authorization.
19

20 7. An August 18, 2006 Interoffice Memorandum from Michael Aytes, then-Acting
21 Director, Domestic Operations USCIS, to Regional Directors, Service Center Directors,
22 National Benefits Center Director and District Directors, affirms the mandatory requirements (at
23 page 3): “USCIS is required to adjudicate a pending Form I-765 within 90 days from the date of
24 receipt. 8 C.F.R. 274a.13(d). Failure to complete the adjudication within this time frame
25 requires the Service to grant an employment authorization document for a period not to exceed
26 240 days.”
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1 8. The USCIS instructions for the I-765 Application for Employment Authorization
2 provide the agency’s definition of “Interim EAD”:

3 **Interim EAD:** An EAD issued to an eligible applicant when USCIS has
4 failed to adjudicate an application within 90 days of a properly filed EAD
5 application, or within 30 days of a properly filed initial EAD application
6 based on an asylum application filed on or after January 4, 1995. The
interim EAD will be granted for a period not to exceed 240 days and is
subject to the conditions noted on this document.

7 Form I-765 Instructions at 1 (November 4, 2015).¹

8 9. The interim employment authorization process was intended to allow people to
9 work lawfully while awaiting final adjudication of pending EAD applications. In promulgating
10 the regulation, the former Immigration and Naturalization Service (“legacy INS”), now USCIS,
11 recognized “the importance of expeditious processing of employment authorization
12 applications.” 52 Fed. Reg. 16216 (May 1, 1987).

13 10. Despite this clear mandate, Defendants routinely violate the interim employment
14 authorization rules by consistently failing to issue interim employment authorization to EAD
15 applicants, including Individual Plaintiffs, who have waited longer than the requisite period. In
16 addition, Defendants provide incorrect and conflicting information to applicants who call the
17 agency’s 1-800 customer service number or visit USCIS offices for InfoPass appointments.
18 Defendants’ failure to issue interim employment authorization eviscerates the very purpose of
19 the regulation.
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21 11. Defendants’ policies and practices of failing to adjudicate employment
22 authorization applications within the required time period, and failing to issue interim
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28 ¹ This text is identical to the text in the August 6, 2014 version of the Instructions cited in the original Complaint.

1 employment authorization to Individual Plaintiffs who have waited longer than the required
2 time period, violate the governing regulations and the Administrative Procedure Act (APA).

3 12. Plaintiffs seek declaratory and injunctive relief to remedy Defendants' unlawful
4 failure to timely adjudicate EAD applications and their unlawful withholding of interim
5 employment authorization in violation of 8 C.F.R. §§ 274a.13(d), 274a.13(a)(2), 208.7(a), and
6 the Form I-765 Instructions. Plaintiffs seek this Court's intervention to compel the timely
7 adjudication of EAD applications or, alternatively, the timely issuance of interim employment
8 authorization to all noncitizens who have waited the relevant period.
9

10 **JURISDICTION AND VENUE**

11 13. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1331, as a civil
12 action arising under the laws of the United States, and the Mandamus and Venue Act of 1962,
13 28 U.S.C. § 1361. Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201-02. The
14 United States has waived its sovereign immunity pursuant to 5 U.S.C. § 702.
15

16 14. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because
17 Defendants are officers or employees of the United States or agencies thereof acting in their
18 official capacities. A substantial part of the events or omissions giving rise to the claims
19 occurred in this district, and Plaintiffs A.A., Karla DIAZ MARIN, Marvella ARCOS-PEREZ
20 and NWIRP reside in this district as do many of NWIRP's clients who are putative class
21 members. In addition, no real property is involved in this action.
22
23

24 **PARTIES**

25 15. Plaintiff Northwest Immigrant Rights Project is a non-profit immigration legal
26 services organization founded in 1984. Each year, NWIRP provides direct legal assistance in
27 immigration matters to over 10,000 low-income people from over 150 countries, speaking over
28

1 60 different languages and dialects. NWIRP serves the community from four offices in
2 Washington State in Seattle, Granger, Tacoma, and Wenatchee. NWIRP has clients who are
3 noncitizens entitled to employment authorization and challenges Defendants' policies and
4 practices that unlawfully prevent its clients from legally working in the United States by failing
5 to adjudicate EAD applications within the required time period and denying them interim
6 employment authorization. NWIRP's clients eligible to receive EADs and interim EADs, who
7 have been subject to unlawful adjudication delays, fall under a number of different EAD
8 eligibility categories, including but not limited to: 8 C.F.R. § 274a.12(a)(3) (refugees); (a)(5)
9 (asylum grantees); (c)(8) (both initial asylum and renewal asylum); (c)(9) (adjustment
10 applicants); (c)(10) (cancellation); (c)(11) (parolees); (c)(14) (deferred action); (c)(18) (order of
11 supervision). Defendants' practices and policies frustrate NWIRP's mission of assisting
12 immigrants in obtaining legal status and the right to lawfully work in the United States.
13 Defendants' policies and practices have caused NWIRP to divert scarce resources to assisting
14 and advising clients whose EAD applications have been delayed, and who have not received
15 interim employment authorization.
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19 16. Plaintiff The Advocates for Human Rights ("The Advocates") is a non-profit
20 human rights organization that provides free legal services to low-income immigrants seeking
21 political asylum. Since 1984, The Advocates has provided free legal advice and representation
22 before federal immigration agencies, immigration courts, and U.S. courts of appeals to
23 noncitizens who have fled persecution in their home countries. Primarily serving asylum
24 seekers in Minnesota, North Dakota, and South Dakota, The Advocates is the largest provider of
25 asylum-related legal services in the region. The Advocates' three staff attorneys regularly file
26 applications for employment authorization, including initial applications and applications to
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1 renew EADs previously granted, on behalf of their own asylum clients and, in some cases, on
2 behalf of asylum clients represented by volunteer attorneys. The Advocates challenges
3 Defendants' policies and practices that unlawfully prevent its clients from legally working in the
4 United States by failing to adjudicate EAD applications within the required time period and
5 denying them interim employment authorization. These policies and practices force the
6 Advocates to divert scarce resources to assisting and advising clients whose EAD applications
7 have not been timely adjudicated and frustrate The Advocates' primary mission of helping its
8 clients to apply for asylum. The Advocates' clients eligible to receive EADs and interim EADs,
9 who have been subject to unlawful adjudication delays, fall under category 8 C.F.R.
10 § 274a.12(c)(8), and include asylum seekers filing both initial requests for EADs and requests to
11 renew EADs.
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14 17. Individual Plaintiffs are all noncitizens eligible to obtain work authorization in the
15 United States, who have filed EAD applications that have been pending with USCIS beyond the
16 regulatory deadline for adjudication, and who would be eligible to work lawfully in the United
17 States but for Defendants' unlawful policies and practices.
18

19 18. Plaintiff Wilman GONZALEZ ROSARIO is a noncitizen granted deferred action
20 who currently resides in Philadelphia, Pennsylvania. After receiving deferred action, Mr.
21 GONZALEZ ROSARIO filed an application for employment authorization, which has been
22 pending with USCIS for more than ninety days from the agency's receipt of the application on
23 April 27, 2015. Mr. GONZALEZ ROSARIO has not received a Request for Evidence on his
24 EAD or underlying application. He completed his biometrics as scheduled by USCIS.
25 Defendants have failed to grant Mr. GONZALEZ ROSARIO interim employment authorization
26 as required by the regulations.
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1 19. Plaintiff L.S. is a noncitizen asylum applicant who currently resides in
2 Beachwood, Ohio. L.S.'s application to renew his EAD has been pending with USCIS for more
3 than ninety days from USCIS's receipt of the application on November 16, 2015. L.S.'s EAD
4 expired on February 18, 2016. L.S. has not received a Request for Evidence on his EAD or
5 underlying application, and USCIS has not scheduled his biometrics appointment. Defendants
6 have failed to grant L.S. interim employment authorization as required by the regulations.
7

8 20. Plaintiff K.T. is a noncitizen asylum applicant who currently resides in
9 Woodbridge, Virginia. K.T.'s application to renew his EAD has been pending with USCIS for
10 more than ninety days from USCIS's receipt of the application on July 30, 2015. His EAD
11 expired on October 26, 2015. K.T. did not receive a Request for Evidence on his EAD or
12 underlying application. K.T. completed his biometrics as scheduled by USCIS. Defendants
13 have failed to grant K.T. interim employment authorization as required by the regulations.
14

15 21. Plaintiff A.A. is a noncitizen asylum applicant who currently resides in Seattle,
16 Washington. A.A.'s application for an initial EAD has been pending for more than thirty days
17 from USCIS's receipt of his application on January 19, 2016, which was more than 150 days
18 after USCIS received his asylum application. A.A. has not received a Request for Evidence on
19 his EAD or underlying application. He completed his biometrics as scheduled by USCIS.
20 Defendants have failed to grant A.A. interim employment authorization as required by the
21 regulations.
22

23 22. Plaintiff Karla DIAZ MARIN is a noncitizen granted deferred action by USCIS
24 who currently resides in Seattle, Washington. After receiving deferred action, Ms. DIAZ
25 MARIN filed an application for employment authorization, which has been pending with
26 USCIS for more than ninety days from the agency's receipt of the application on August 3,
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1 2015. Ms. DIAZ MARIN has not received a Request for Evidence on her EAD or underlying
2 application. USCIS has not yet scheduled a biometrics appointment for her EAD application.
3 Defendants have failed to grant Ms. DIAZ MARIN interim employment authorization as
4 required by the regulations.

5 23. Plaintiff Antonio MACHIC YAC is a noncitizen asylum applicant who currently
6 resides in Portland, Oregon. Mr. MACHIC YAC's application for an initial EAD has been
7 pending for more than thirty days from USCIS's receipt of his application on December 31,
8 2015, which was more than 150 days after USCIS received his asylum application. Mr.
9 MACHIC YAC has not received a Request for Evidence on his EAD or underlying application.
10 He completed his biometrics as scheduled by USCIS. Defendants have failed to grant Mr.
11 MACHIC YAC interim employment authorization as required by the regulations.
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14 24. Plaintiff Faridy SALMON is a noncitizen granted deferred action by USCIS who
15 currently resides in Decatur, Georgia. After receiving deferred action, Ms. SALMON filed an
16 application for employment authorization, which has been pending with USCIS for more than
17 ninety days from the agency's receipt of the application on October 5, 2015. Ms. SALMON
18 has not received a Request for Evidence on her EAD application. Ms. SALMON had her
19 biometrics taken in connection with her deferred action request, but USCIS has not scheduled a
20 biometrics appointment for her EAD application. Defendants have failed to grant Ms.
21 SALMON interim employment authorization as required by the regulations.
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24 25. Plaintiff Jaimin SHAH is a noncitizen international student who currently resides
25 in Chicago, Illinois. Mr. SHAH's application for an EAD has been pending with USCIS for
26 more than ninety days from USCIS's receipt of his application on November 9, 2015. Mr.
27 SHAH did not receive a Request for Evidence on his EAD application and USCIS has not
28

1 scheduled his biometrics appointment. Defendants have failed to grant Mr. SHAH interim
2 employment authorization as required by the regulations.

3 26. Plaintiff Marvella ARCOS-PEREZ is a noncitizen who currently resides in
4 Tacoma, Washington. On May 22, 2015, when the initial Complaint was filed, Ms. ARCOS-
5 PEREZ's application to renew her EAD had been pending with USCIS for more than ninety
6 days from USCIS's receipt of the application on January 12, 2015. Ms. ARCOS-PEREZ did
7 not receive a Request for Evidence on the EAD or underlying application and did not fail to
8 appear for or request to reschedule a biometrics appointment. Defendants did not grant Ms.
9 ARCOS-PEREZ interim employment authorization and denied her EAD renewal application
10 on June 10, 2015. On October 15, 2015, Ms. ARCOS-PEREZ filed another application to
11 renew her EAD, which has been pending for more than ninety days. Ms. ARCOS-PEREZ has
12 not received a Request for Evidence on the EAD or underlying application and USCIS has not
13 scheduled her for biometrics. Defendants have failed to grant Ms. ARCOS-PEREZ interim
14 employment authorizations required by the regulations.

15 27. Plaintiff Carmen OSORIO BALLESTEROS is a noncitizen who currently resides
16 in Rockford, Illinois. On May 22, 2015, Ms. OSORIO BALLESTEROS' application to renew
17 her EAD had been pending with USCIS for more than ninety days from USCIS's receipt of the
18 application on December 29, 2014. Ms. OSORIO BALLESTEROS did not receive a Request
19 for Evidence on the EAD or underlying application and completed her biometrics requirement
20 as scheduled by USCIS. Defendants never granted Ms. OSORIO BALLESTEROS interim
21 employment authorization before approving her EAD application on June 3, 2015.

22 28. Plaintiff W.H. is a noncitizen who currently resides in St. Louis, Missouri. On
23 May 22, 2015, W.H. was an asylum applicant whose EAD application had been pending with
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1 USCIS for more than thirty days from USCIS's receipt of the application on January 9, 2015.
2 W.H. did not receive a Request for Evidence on the EAD or underlying application and had not
3 missed or asked to reschedule a biometrics appointment. Defendants never granted W.H.
4 interim employment authorization before approving his EAD application on June 16, 2015.

5 29. Defendant United States Department of Homeland Security is an executive
6 agency of the United States. As of March 1, 2003, DHS has been the agency responsible for
7 implementing the Immigration and Nationality Act ("INA"), including provisions relating to
8 employer I-9 requirements.
9

10 30. Within DHS, Defendant USCIS is the agency responsible for timely adjudicating
11 EAD applications and issuing interim employment authorization when it does not adjudicate
12 EAD applications within the required period, as provided in 8 C.F.R. §§ 274a.13(d),
13 274a.13(a)(2), 208.7(a), and the Form I-765 Instructions.
14

15 31. Defendant Jeh JOHNSON is the Secretary of DHS and has ultimate responsibility
16 for the administration and enforcement of the INA and all other laws relating to the
17 immigration of noncitizens. He is sued in his official capacity.
18

19 32. Defendant Leon RODRIGUEZ is the Director of USCIS and has ultimate
20 responsibility for the timely adjudication of EAD applications and the issuance of interim
21 employment authorization when EAD applications are not adjudicated within the required
22 period as provided in 8 C.F.R. §§ 274a.13(d), 274a.13(a)(2), 208.7(a), and the Form I-765
23 Instructions. He is sued in his official capacity.
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STATUTORY AND REGULATORY BACKGROUND

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3 33. When establishing the employment verification system in 1986, Congress
4 differentiated among: (a) documents that establish both employment authorization and identity;
5 (b) documents that establish only employment authorization; and (c) documents that establish
6 only identity. For documents evidencing only employment authorization, Congress identified a
7 “social security account number card” without any restriction as to employment authorization
8 and “other documentation ... which the Attorney General [now the DHS Secretary] finds, by
9 regulation, to be acceptable for purposes of this section.” 8 U.S.C. § 1324a(b)(1)(C). Pursuant
10 to this authority, DHS regulations identify eight categories of acceptable documents, including
11 an “employment authorization document issued by the Department of Homeland Security.”
12 8 C.F.R. §§ 274a.2(b)(1)(v)(C)(1)-(8). Other regulations define which foreign nationals must
13 separately apply for employment authorization. 8 C.F.R. §§ 274a.12(a), (c); 274a.13(a).

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16 34. Applicants for EADs must file Form I-765 with required supporting documents
17 and specify the classification that entitles them to employment authorization. For example, an
18 applicant for adjustment of status to lawful permanent resident may apply for an EAD under
19 8 C.F.R. § 274a.12(c)(9). Upon verifying that the underlying application for adjustment of
20 status remains pending, USCIS must adjudicate most EAD applications within ninety days
21 from the date of receipt or issue interim employment authorization. 8 C.F.R. § 274a.13(d).

22
23 35. Initial EAD applications filed by asylum applicants are subject to a different
24 timetable. An asylum applicant may submit an EAD application at any point after 150 days
25 have elapsed since the date USCIS received his or her complete asylum application. 8 C.F.R.
26 § 208.7(a)(1). USCIS *must* adjudicate the EAD application within thirty days of the date of
27 filing. *Id.* In recognition of the economic hardship asylum seekers may face during the asylum
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1 application process, this regulation enables them to work lawfully while they wait for their
2 underlying asylum cases to be decided, if their cases are delayed more than 180 days for
3 reasons other than applicant-caused delay. 8 C.F.R. §§ 208.7(a)(1), 1208.7(a)(1); *see also* 8
4 U.S.C. § 1158(d)(2). Asylum EAD renewals, however, are controlled by the 90-day rule of
5 8 C.F.R. § 274a.13(d). *See* 8 C.F.R. § 208.7(d).

6
7 36. Pursuant to 8 U.S.C. § 1324a(a), employers cannot employ lawfully, or continue
8 to employ, an individual who the employer knows is not work authorized. The employer must
9 view certain documents and complete an I-9 form based on these documents to meet the
10 requirements of the law, and to have an affirmative defense to an alleged “knowing hire”
11 violation. 8 U.S.C. § 1324a(a)(3).

12
13 37. For more than a quarter-century, the immigration regulations have mandated the
14 automatic provision of interim employment authorization to specified noncitizens if the agency
15 fails to timely adjudicate their EAD applications. Promulgated on May 1, 1987, 8 C.F.R.
16 § 274a.13(d) initially provided for interim employment authorization if the EAD application
17 was not adjudicated within sixty days of receipt. It read:

18
19 d) *Interim employment authorization.* The district director shall adjudicate
20 the application for employment authorization within 60 days from the date
21 of receipt of the application by the Service or the date of receipt of a
22 returned application by the Service. ***Failure to complete the adjudication
within 60 days will result in the grant of interim employment
authorization for a period not to exceed 120 days.*** Such authorization
23 shall be subject to any conditions noted on the employment authorization
24 document. However, if the district director adjudicates the application
25 prior to the expiration date of the interim employment authorization and
26 denies the individual's employment authorization application, the
27 employment authorization granted under this section shall automatically
28 terminate.

1 See 8 C.F.R. § 274a.13(d), *added by* 52 Fed. Reg. 16216 (May 1, 1987) (emphasis added).
2 The regulation also applied to initial asylum EAD applications. See 8 C.F.R. §§ 274a.13(a),
3 (d) (1988); *see also Ramos v. Thornburgh*, 732 F. Supp. 696, 701 (E.D. Texas 1989).

4 38. The preamble to the regulation makes clear that legacy INS's (now USCIS's)
5 obligation to issue interim employment authorization is mandatory and intended to remedy
6 agency delay in adjudicating EAD applications:
7

8 The final rule requires INS to adjudicate an application for employment
9 authorization within sixty days from the date of the receipt by INS of the
10 application or the date of the receipt of a returned application. Any
11 application for employment authorization not adjudicated within sixty
12 days ***will result in an automatic grant to the applicant of interim***
13 ***employment authorization*** for a period of up to 120 days. ***In***
14 ***promulgating this rule, INS recognizes the importance of expeditious***
15 ***processing of employment authorization applications***. As in the case of
16 the rule regarding employment authorizations for certain nonimmigrant
17 extension applicants, this regulation was developed in response to public
18 comment.

19 52 Fed. Reg. 16216 (emphasis added).

20 39. In late 1994, legacy INS extended the waiting period for interim employment
21 authorization issuance from 60 days to 90 days but exempted initial asylum-based EAD
22 applications from this period, requiring the agency to adjudicate initial asylum EAD
23 applications within 30 days. 59 Fed. Reg. 62284 (Dec. 5, 1994) (effective Jan. 1, 1995).

24 40. The current regulation reads:

25 (d) *Interim employment authorization*. USCIS will adjudicate the
26 application within 90 days from the date of receipt of the application,
27 except as described in 8 CFR 214.2(h)(9)(iv), and except in the case of an
28 initial application for employment authorization under 8 CFR
274a.12(c)(8), which is governed by paragraph (a)(2) of this section, and 8
CFR 274a.12(c)(9) insofar as it is governed by 8 CFR 245.13(j) and
245.15(n). ***Failure to complete the adjudication within 90 days will result***
in the grant of an employment authorization document for a period not
to exceed 240 days. Such authorization will be subject to any conditions
noted on the employment authorization document. However, if USCIS

1 adjudicates the application prior to the expiration date of the interim
2 employment authorization and denies the individual's employment
3 authorization application, the interim employment authorization granted
4 under this section will automatically terminate as of the date of the
5 adjudication and denial.

6 8 C.F.R. § 274a.13(d) (emphasis added).

7 41. The agency's interpretation of the regulations is spelled out in the instructions to
8 the I-765 Application for Employment Authorization, which describes how EAD applicants
9 become eligible for interim employment authorization once the EAD adjudication deadline has
10 passed:

11 **Interim EAD:** An EAD issued to an eligible applicant when USCIS has
12 failed to adjudicate an application within 90 days of a properly filed EAD
13 application, or within 30 days of a properly filed initial EAD application
14 based on an asylum application filed on or after January 4, 1995. The
15 interim EAD will be granted for a period not to exceed 240 days and is
16 subject to the conditions noted on this document.

17 Form I-765 Instructions at 1 (November 4, 2015).

18 42. Through 8 C.F.R. § 274a.13(d), legacy INS (now USCIS) acknowledged that
19 adjudications of EAD applications have been and continue to be subject to extensive delays.
20 The interim employment authorization regulation is intended to cure harm arising from these
21 delays. Defendants' failure to grant interim employment authorization in accordance with this
22 regulation leaves EAD applicants at risk of being unable to support themselves and their
23 families as a result of lost jobs or interruptions in employment. In some cases, the lack of
24 employment authorization can result in the loss of driver's licenses, as well as work-related
25 medical and other benefits. Moreover, Defendants' actions nullify Individual Plaintiffs'
26 regulatory right to interim employment authorization while their EAD applications are
27 pending.

1 43. Since 2013, the American Immigration Lawyers Association (AILA) has raised
2 the issue repeatedly with representatives from USCIS Service Center Operations as well as
3 USCIS headquarters. AILA chapters also have raised the issues of EAD delays in the course
4 of their local liaison efforts with USCIS field offices.

5 44. At a meeting with USCIS headquarters on April 16, 2015, agency representatives
6 indicated that “USCIS no longer produces interim EADs.”
7

8 **FACTUAL ALLEGATIONS**

9 45. Individual Plaintiffs are suffering and will continue to suffer serious and
10 irreparable harm due to Defendants’ unlawful failure to timely adjudicate EAD applications
11 and to issue interim employment authorization, in violation of 8 C.F.R. §§ 274a.13(d),
12 274a.13(a)(2), 208.7(a), and the Form I-765 Instructions.
13

14 46. On March 12, 2014, Plaintiff GONZALEZ ROSARIO was the victim of a
15 shooting, which resulted in a traumatic spinal cord injury that left him partially paralyzed.
16 After obtaining the necessary law enforcement certification, Mr. GONZALEZ ROSARIO filed
17 a Petition for U Nonimmigrant Status. On March 10, 2015, USCIS placed Mr. GONZALEZ
18 ROSARIO’s application on a waiting list and granted him deferred action.
19

20 47. On April 27, 2015, Mr. GONZALEZ ROSARIO filed an application for
21 employment authorization based upon USCIS’s grant of deferred action. USCIS failed to
22 adjudicate the EAD application by July 26, 2015, the ninetieth day after filing. At the time of
23 this filing, 229 days have passed since Defendants became obligated to grant Mr. GONZALEZ
24 ROSARIO interim employment authorization under 8 C.F.R. § 274a.13(d). Defendants have
25 not complied with the regulatory deadline and have failed to grant Mr. GONZALEZ
26 ROSARIO interim employment authorization as required by the regulations.
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1 48. On October 5, 2015, Mr. GONZALEZ ROSARIO's lawyer emailed a status
2 inquiry to USCIS's Vermont Service Center (VSC). When the VSC responded by email on
3 October 29, 2015, indicating that the application was under review, Mr. GONZALEZ
4 ROSARIO's lawyer submitted a request for assistance to the USCIS Ombudsman's office. On
5 December 8, the Ombudsman's office indicated that they had contacted USCIS about Mr.
6 GONZALEZ ROSARIO's case. When his lawyer followed up with the Ombudsman's office
7 on December 24, 2015, he was informed that an analyst was working on the case.
8

9 49. Defendants' failure to grant Mr. GONZALEZ ROSARIO interim employment
10 authorization has prevented him from securing a Social Security Number or State-issued
11 identification. Without an EAD, he also is unable to obtain a disabled status driver's license,
12 license plate or parking permit, which he requires because of his mobility issues.
13

14 50. On November 16, 2015, Plaintiff L.S. filed an application for renewal of his
15 employment authorization, which had been previously granted in conjunction with his
16 application for asylum. USCIS failed to adjudicate the EAD application by February 14, 2016,
17 the ninetieth day after filing. At the time of this filing, 26 days have passed since Defendants
18 became obligated to grant L. S. interim employment authorization under 8 C.F.R.
19 § 274a.13(d). Defendants have not complied with the regulatory deadline and have failed to
20 grant L.S. interim employment authorization as required by the regulations.
21

22 51. In December 2015, at his cousin's urging, L. S. moved to Beachwood, Ohio, with
23 the intention of obtaining employment and attending graduate school. He timely submitted his
24 change of address form to USCIS. On February 2, 2016, L.S.'s lawyer called USCIS to
25 request expedited processing of L.S.'s EAD application because he needed a valid,
26 unexpired EAD to obtain a driver's license in Ohio, legally work, and pay for graduate school.
27
28

1 By letter dated February 3, 2016, USCIS denied the request for expedited processing, stating:
2 “Although your situation appears serious, you have not provided evidence to support an
3 extreme emergent need.”

4 52. L. S.’s EAD expired on February 18, 2016. Defendants’ failure to grant him
5 interim employment authorization has prevented him from obtaining an Ohio driver’s license
6 or employment. He has been relying on his cousin for financial support, but does not know
7 how much longer he will be able to do so. He had planned to enroll in a university program,
8 but because he is financially dependent on his cousin and cannot work, he has only enrolled in
9 limited community college programs.

10 11 53. On July 30, 2015, Plaintiff K.T. filed an application for renewal of his
12 employment authorization, which had been previously granted in conjunction with his
13 application for asylum. USCIS failed to adjudicate the EAD application by October 28, 2015,
14 the ninetieth day after filing. At the time of this filing, 135 days have passed since Defendants
15 became obligated to grant K.T. interim employment authorization under 8 C.F.R.
16 § 274a.13(d). Defendants have not complied with the regulatory timetable and have failed to
17 grant K.T. interim employment authorization as required by the regulations.

18 19 54. K.T.’s lawyer has contacted USCIS’s National Customer Service Center
20 (“NCSC”) twice since the ninety day-deadline passed. On both occasions, USCIS said that an
21 additional 60 days was needed to make a decision. On January 14, 2016, K.T.’s lawyer sent an
22 email to USCIS’s Vermont Service Center inquiring about the status of K.T.’s EAD
23 application. USCIS responded that K.T.’s application had been assigned to an officer, who
24 would make a decision within 60 days.
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1 55. K.T. was fired from his construction job because he could not provide his
2 employer with proof of employment authorization beyond October 26, 2015. Without a valid
3 EAD, he cannot work and is forced to rely on his family, in particular his U.S. citizen brother,
4 for support.

5 56. Without a valid EAD, K.T. also lacks an identity document, which has prevented
6 him from enrolling in an electrician training program through which he had intended to acquire
7 the skills and training he needs to qualify for higher-paying jobs than he has held in the past.
8 Before his EAD expired, K.T. also was trying to get a learner's permit, but he cannot proceed
9 because he has no valid proof of identity acceptable to the Virginia Department of Motor
10 Vehicles.
11

12 57. On January 19, 2016, Plaintiff A.A. filed an initial application for employment
13 authorization in conjunction with an asylum application that had been pending since August
14 19, 2015. USCIS failed to adjudicate A.A.'s application by February 18, 2016, the thirtieth day
15 after filing. At the time of this filing, 22 days have passed since the day that Defendants
16 became obligated to grant A.A. interim employment authorization in accordance with 8 C.F.R.
17 §§ 274a.13(a)(2), 208.7(a), and the Form I-765 Instructions. Defendants have not complied
18 with the regulatory timetable and have failed to grant A.A. interim employment authorization
19 as required by the regulations.
20

21 58. Due to Defendants' failure to timely adjudicate his EAD application or grant him
22 interim employment authorization, A.A. is unable to obtain employment, which has caused
23 him substantial hardship because he has no other means of support while pursuing his
24 application for asylum. He relies on some friends who have been willing to support him while
25 his asylum application is pending.
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1 59. On March 18, 2014, Plaintiff Karla DIAZ MARIN filed a Petition for U
2 Nonimmigrant Status and an application for employment authorization. On February 24, 2015,
3 USCIS issued a notice stating that Ms. DIAZ MARIN appeared eligible for U visa status, but
4 that she would instead receive deferred action because the annual statutory cap for U visas had
5 been reached. The USCIS notice also indicated that Ms. DIAZ MARIN was eligible to apply
6 for employment authorization based on her grant of deferred action.
7

8 60. On August 3, 2015, Ms. DIAZ MARIN's attorney filed a second EAD
9 application, along with a copy of the February 24, 2015 USCIS notice. USCIS failed to
10 adjudicate the second EAD application by November 1, 2015, the ninetieth day after it was
11 filed. At the time of this filing, 131 days have passed since Defendants became obligated to
12 grant Ms. DIAZ MARIN interim employment authorization under 8 C.F.R. § 274a.13(d).
13 Defendants have not complied with the regulatory deadline and have failed to grant Ms. DIAZ
14 MARIN interim employment authorization as required by the regulations.
15

16 61. Ms. DIAZ MARIN is the single mother of one child. Due to Defendants' failure
17 to timely adjudicate her EAD application or grant her interim employment authorization, Ms.
18 DIAZ MARIN is unable to obtain a Social Security number or lawful employment, which
19 makes it difficult for her to support herself and her son and pay for other services they need,
20 such as counseling to mitigate the effects on both of them of domestic violence she suffered.
21

22 62. On December 31, 2015, Plaintiff Antonio MACHIC YAC filed an initial
23 application for employment authorization in conjunction with an asylum application filed with
24 USCIS on July 17, 2015. USCIS failed to adjudicate Mr. MACHIC YAC's application by
25 August 16, 2015, the thirtieth day after filing. At the time of this filing, 208 days have passed
26 since the day that Defendants became obligated to grant Mr. MACHIC YAC interim
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1 employment authorization in accordance with 8 C.F.R. §§ 274a.13(a)(2), 208.7(a), and the
2 Form I-765 Instructions. Defendants have not complied with the regulatory timetable and have
3 failed to grant Mr. MACHIC YAC interim employment authorization as required by the
4 regulations.

5 63. Defendants' failure to timely adjudicate Mr. MACHIC YAC's EAD application
6 or grant him interim employment authorization has caused him financial hardship. An
7 eighteen-year-old high school student, he resides with his aunt and uncle, who are pressuring
8 him to contribute financially to the household or find another place to live. Without an EAD,
9 he is unable to obtain employment and thus cannot contribute to rent or other living expenses.
10 He is also unable to obtain a driver's license without an EAD.

11 64. On October 5, 2015, Plaintiff Faridy SALMON filed an initial application for
12 employment authorization based on USCIS's grant of deferred action on humanitarian grounds
13 due to the special needs of her four-year old U.S. citizen daughter. Ms. SALMON's daughter
14 is severely autistic and has significant developmental delays for which she receives services
15 that are not available in Ecuador, Ms. SALMON's country of origin.

16 65. USCIS failed to adjudicate Ms. SALMON's EAD application by January 3, 2016,
17 the ninetieth day after filing. At the time of this filing, 68 days have passed since Defendants
18 became obligated to grant Ms. SALMON interim employment authorization under 8 C.F.R.
19 § 274a.13(d). On February 18, 2016, Ms. SALMON submitted a status inquiry to USCIS by
20 phone regarding her EAD application, but never received a response. Defendants have not
21 complied with the regulatory timetable and have failed to grant Ms. SALMON interim
22 employment authorization as required by the regulations.
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1 66. Due to Defendants' failure to timely adjudicate her EAD application or grant her
2 interim employment authorization, Ms. SALMON has not been able to obtain a Social Security
3 number or employment. As a single parent who receives no financial support from the father of
4 her child, she needs to work.

5 67. Without an EAD, Ms. SALMON cannot receive a driver's license in Georgia,
6 which would enable her to more easily transport her severely disabled U.S. citizen daughter to
7 special therapy classes. Having a driver's license also would give Ms. SALMON more options
8 when her daughter has a medical emergency, as happened recently. She currently is limited to
9 calling an ambulance, which is very expensive, or a taxicab or Uber.
10

11 68. On January 17, 2016, Plaintiff Jaimin SHAH completed his Juris Doctor degree at
12 The John Marshall Law School in Chicago, Illinois. On November 9, 2015, Mr. Shah filed an
13 application for employment authorization, in accordance with 8 C.F.R. § 214.2(f)(11)(i)(B)(2),
14 based on his law school's recommendation that he receive approximately ten months of Post-
15 Completion Optional Practical Training beginning in March 2016. The law school gave this
16 recommendation so that Mr. SHAH could gain experience as an associate attorney at Schiff
17 Hardin, LLP's Chicago office.
18

19 69. USCIS failed to adjudicate Mr. SHAH's EAD application by February 7, 2016,
20 the ninetieth day after filing. At the time of this filing, 33 days have elapsed since Defendants
21 became obligated to grant Mr. SHAH interim employment authorization under 8 C.F.R.
22 § 274a.13(d). Defendants have not complied with the regulatory timetable and have failed to
23 grant Mr. SHAH interim employment authorization as required by the regulations.
24

25 70. On February 8, 2016, Mr. SHAH contacted USCIS to ask about the status of his
26 application, which had been pending for more than 90 days. He received an email response on
27
28

1 February 9, indicating that his case was in line to be reviewed by an officer and that he should
2 contact USCIS again if he did not hear anything in 60 days.

3 71. Defendants' failure to timely adjudicate Mr. SHAH's EAD application or grant
4 him interim employment authorization has caused him great anxiety. He will experience
5 significant financial hardship if he cannot start his job as planned on March 28, 2016. He
6 would lose \$3,000 per week in salary, and would have to continue supporting himself out of
7 his limited savings. Mr. SHAH's monthly expenses include \$1100 for rent and about \$400-
8 \$500 for other living expenses. He would also miss out on valuable practical training, for
9 which the end date is fixed at January 9, 2017, and is worried about how long Schiff Hardin
10 will allow him to delay his start date.
11

12
13 72. Because Mr. SHAH does not yet have his EAD, he also had to cancel his annual
14 family visit to India, planned for March, which constitutes both a personal hardship and a
15 financial hardship because he incurred flight cancellation fees.

16
17 73. On January 12, 2015, Plaintiff Marvella ARCOS-PEREZ filed an application to
18 renew her employment authorization, which had been previously granted in conjunction with
19 an application for asylum. USCIS failed to adjudicate the EAD application by April 12, 2015,
20 the ninetieth day after filing. As of May 22, 2015, 40 days had passed since the day that
21 Defendants became obligated to grant Ms. ARCOS-PEREZ interim employment authorization
22 under 8 C.F.R. § 274a.13(d). Defendants did not comply with the regulation and did not grant
23 interim employment authorization before her EAD application was denied on June 10, 2015.
24

25 74. On October 15, 2015, Ms. ARCOS-PEREZ filed another application to renew her
26 EAD. USCIS failed to adjudicate the EAD application by January 13, 2016, the ninetieth day
27 after filing. At the time of this filing, 58 days have passed since Defendants became obligated
28

1 to grant Ms. ARCOS-PEREZ interim employment authorization under 8 C.F.R. § 274a.13(d).
2 On January 21, 2016, Ms. ARCOS-PEREZ's lawyer filed a service request with USCIS
3 because her EAD application was outside of the processing time and was told to wait 60 days
4 for a response. Defendants have not complied with the regulatory timetable and have failed to
5 grant Ms. ARCOS-PEREZ interim employment authorization as required by the regulations.
6

7 75. Ms. ARCOS-PEREZ is a widow who resides with and provides support for her
8 twenty-four year-old daughter, who has an intellectual disability. When Ms. ARCOS-PEREZ
9 was granted work authorization after filing her asylum application, she was hired to work at a
10 mattress company. Even with her income, however, Ms. ARCOS-PEREZ relied on her family
11 to provide some of the financial support she and her daughter require. Since Ms. ARCOS-
12 PEREZ's EAD expired, she has lost her job and has had to seek the help of other family
13 members for financial support.
14

15 76. On December 29, 2014, Plaintiff Carmen OSORIO BALLESTEROS filed an
16 application for renewal of her employment authorization in conjunction with a request for
17 renewal of Deferred Action for Childhood Arrivals (DACA). USCIS failed to adjudicate the
18 EAD application by March 29, 2014, the ninetieth day after filing. As of May 22, 2015, 54
19 days had passed since Defendants became obligated to grant Ms. OSORIO BALLESTEROS
20 interim employment authorization under 8 C.F.R. § 274a.13(d). Defendants did not comply
21 with the regulatory timetable and failed to grant interim employment authorization before
22 approving her EAD application on June 3, 2015.
23
24

25 77. On April 10, 2015, after Ms. OSORIO BALLESTEROS' applications had been
26 pending over 90 days, her lawyer requested case assistance from the USCIS Ombudsman's
27 Office. On May 15, 2015, her lawyer received an e-mail from the USCIS Ombudsman's Office
28

1 stating that Ms. OSORIO BALLESTEROS' pending applications were "actively being
2 reviewed."

3 78. When Ms. OSORIO BALLESTEROS' EAD expired on April 21, 2015, she lost
4 her full-time job and her health insurance and had difficulties supporting her three U.S. citizen
5 children and paying her utility and medical bills.

6
7 79. On January 9, 2015, Plaintiff W.H., who at that time had employment
8 authorization based on an approved Temporary Protected Status application, filed an
9 application for employment authorization in conjunction with an asylum application that had
10 been pending since March 12, 2014. USCIS acknowledged receipt of W.H.'s EAD application
11 on January 9, 2015. USCIS failed to adjudicate the EAD application by February 9, 2015, the
12 thirtieth day after filing.

13
14 80. W.H.'s lawyer called USCIS's NCSC hotline twice to inquire about the status of
15 W.H.'s EAD. On February 25, 2015, W.H.'s lawyer was told to expect a response by mail
16 within 15 days. On March 3, 2015, W.H.'s lawyer was told that the "application [wa]s
17 currently pending adjudication [but they] regret [they] are unable to provide [W.H.'s lawyer]
18 with a completion date at this time." W.H.'s lawyer did not receive a response by mail from
19 USCIS.

20
21 81. W.H.'s prior EAD expired on March 31, 2015. Due to Defendants' failure to
22 grant him interim employment authorization, he lost his Missouri driver's license and was
23 prevented from applying for another license for more than two months, until Defendants finally
24 approved his EAD application on June 16, 2015.

25
26 82. Defendants' untimely adjudication of EAD applications and failure to grant
27 interim employment authorization frustrate NWIRP's mission, which is to assist immigrants in
28

1 obtaining legal status and the right to lawfully work in the United States. Specifically,
2 Defendants' policies and practices have caused NWIRP to divert scarce resources to assisting
3 and advising clients whose EAD applications have been delayed, and who have not received
4 interim employment authorization.

5 83. NWIRP's clients eligible to receive EADs and interim EADs, who have been
6 subject to unlawful delay, include members of all three proposed subclasses. These NWIRP
7 clients fall under a number of different EAD eligibility categories, including: 8 C.F.R. §
8 274a.12(a)(3) (refugees); (a)(5) (asylum grantees); (c)(8) (both initial asylum and renewal
9 asylum); (c)(9) (adjustment applicants); (c)(10) (cancellation); (c)(11) (parolees); (c)(14)
10 (deferred action); and (c)(18) (order of supervision). NWIRP clients are understandably
11 anxious when their EAD applications are not timely adjudicated, and NWIRP staff must
12 respond to client calls and walk-ins, explain the EAD process, the reasons for delay, and the
13 lack of remedies. NWIRP staff make calls to the 1-800 customer service number, set up
14 InfoPass appointments, and email the USCIS Service Centers regarding delayed EADs.
15 NWIRP is not compensated by its clients for this diversion of resources to address delayed
16 EAD adjudication.

17 84. Due to Defendants' untimely adjudication of EADs and failure to grant interim
18 employment authorization, NWIRP is confronted with a Hobson's choice: either NWIRP
19 diverts resources to counsel and assist clients who are experiencing EAD delays, thereby
20 diminishing the organization's available staff time to provide direct assistance with
21 applications for immigration relief; or NWIRP turns away clients dealing with EAD delays,
22 thereby frustrating the organization's mission to counsel and assist individuals on their
23 immigration-related problems, which in the case of EADs may impact a client's very
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1 livelihood. If Defendants followed their own regulations and timely granted EADs or interim
2 employment authorization, NWIRP would not face this zero-sum question of whether to reduce
3 the number of clients they serve or reduce the scope of the services they provide to each client.

4 85. Defendants' delays in adjudicating EAD applications and their failure to grant
5 interim employment authorization also frustrate The Advocates' mission of providing legal
6 services to asylum seekers in Minnesota, North Dakota, and South Dakota. Defendants'
7 policies and practices have caused The Advocates to divert scarce staff resources to resolving
8 and addressing EAD adjudication delays under category 8 C.F.R. § 274a.12(c)(8), including
9 both initial requests for EADs and requests to renew EADs. In addition to fielding calls from
10 and meeting with worried clients, staff attorneys spend considerable time calling and e-mailing
11 USCIS, working with employers to hold jobs open until their clients' EADs are renewed,
12 intervening with the state on driver's license issues, and working with agency liaison and
13 congressional offices to try to obtain EADs for their clients. These tasks require significant
14 staff time, forcing the Advocates to divert very limited resources that should be used to screen,
15 place and support asylum cases.
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19 86. There are no administrative remedies for Plaintiffs to exhaust. No other remedy
20 exists for Plaintiffs to compel Defendants to comply with the APA, the INA, 8 C.F.R.
21 §§ 274a.13(d), 274a.13(a)(2), 208.7(a), and the I-765 Instructions.
22

23 CLASS ALLEGATIONS

24 87. Individual Plaintiffs bring this action on behalf of themselves and all others who
25 are similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). A class
26 action is proper because this action involves questions of law and fact common to the class, the
27 class is so numerous that joinder of all members is impractical, the claims of the Individual
28

1 Plaintiffs are typical of the claims of the class, the Individual Plaintiffs will fairly and
2 adequately protect the interests of the class, and Defendants have acted on grounds that apply
3 generally to the class, so that final injunctive relief or corresponding declaratory relief is
4 appropriate with respect to the class as a whole.

5 88. Individual Plaintiffs seek to represent the following nationwide class:

6 Noncitizens who have filed or will file applications for employment
7 authorization that were not or will not be adjudicated within the required
8 regulatory timeframe, comprising those who:

- 9
- 10 1. Have filed or will file applications for employment authorization
11 under 8 C.F.R. § 274a.13, excluding initial applications based on
12 pending asylum applications or requests to renew Deferred Action
13 for Childhood Arrivals, but who have not received or will not
14 receive a grant or denial of their EAD applications within 90 days
15 of filing, and who are entitled or will be entitled to interim
16 employment authorization under 8 C.F.R. § 274a.13(d), but who
17 have not received or will not receive interim employment
18 authorization. Applications for employment authorization based on
19 Deferred Action for Childhood Arrivals, U or T visa applications,
20 and self-petitions under the Violence Against Women Act are
21 excluded until USCIS has determined eligibility for the underlying
22 immigration benefit or granted deferred action (the “90-Day
23 Subclass”); or
 - 24 2. Are asylum applicants who have filed or will file initial
25 applications for employment authorization under 8 C.F.R. § 208.7,
26 but who, absent any applicant-caused delay, have not received or
27 will not receive a grant or denial of their EAD applications within
28 30 days of filing, and who have not received or will not receive
interim employment authorization (the “30-Day Subclass”); or
 3. Have filed or will file applications for employment authorization
under 8 C.F.R. § 274a.13 on the basis of requests to renew
Deferred Action for Childhood Arrivals, but who have not received
or will not receive a grant or denial of their EAD applications
within 90 days of filing, and who are entitled or will be entitled to
interim employment authorization under 8 C.F.R. § 274a.13(d), but
who have not received or will not receive interim employment
authorization (the “DACA Renewal Subclass”).

1 89. The 90-Day Subclass will be represented by Wilman GONZALEZ ROSARIO,
2 L.S., K.T., Karla DIAZ MARIN, Faridy SALMON, Jaimin SHAH and Marvella ARCOS-
3 PEREZ.

4 90. The 30-Day Subclass will be represented by A.A., Antonio MACHIC YAC and
5 W.H.

6 91. The DACA Renewal Subclass will be represented by Carmen OSORIO
7 BALLESTEROS.

8 92. The class is so numerous that joinder of all members is impracticable. Plaintiffs
9 are not aware of the precise number of potential class members because Defendants are in the
10 best position to identify such persons. Upon information and belief, there are thousands of
11 persons for whom Defendants have failed or will fail to timely adjudicate EAD applications
12 and from whom Defendants have withheld or will withhold interim employment authorization
13 in violation of 8 C.F.R. §§ 274a.13(d), 274a.13(a)(2), 208.7(a), and/or the I-765 Instructions.

14 93. Questions of law and fact common to the proposed class that predominate over
15 any questions affecting only the individually named Plaintiffs include whether Defendants
16 violate the APA and/or 8 C.F.R. §§ 274a.13(d), 274a.13(a)(2), 208.7(a), and the I-765
17 Instructions by failing to timely adjudicate EAD applications and failing to issue interim
18 employment authorization.

19 94. Individual Plaintiffs' claims are typical of the claims of the proposed class.
20 Defendants have failed to timely adjudicate EAD applications and failed to issue interim
21 employment authorization to the Individual Plaintiffs, as well as the proposed class, despite
22 their regulatory entitlement to these documents and their right under the APA to compel
23 agency action unlawfully withheld.
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1 95. The Individual Plaintiffs will fairly and adequately protect the interests of the
2 proposed class members because they seek relief on behalf of the class as a whole and have no
3 interest antagonistic to other class members.

4 96. The Individual Plaintiffs also are represented by competent counsel with
5 extensive experience in complex class actions and immigration law.
6

7 97. Defendants have acted on grounds generally applicable to the proposed class,
8 thereby making appropriate final declaratory and injunctive relief.

9 **DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS**

10 98. An actual and substantial controversy exists between the Individual Plaintiffs and
11 proposed class, the Organizational Plaintiffs, and the Defendants as to their respective legal
12 rights and duties. Plaintiffs contend that Defendants' actions violate Plaintiffs' rights and the
13 rights of the proposed class.
14

15 99. Defendants' policy and practice of failing to timely adjudicate EAD applications
16 and failing to issue interim employment authorization to individuals who are entitled to receive
17 it has caused and will continue to cause irreparable injury to the Individual Plaintiffs, and the
18 proposed class, and the Organizational Plaintiffs. Individual Plaintiffs and proposed class
19 members are not authorized to work unless they have received and are in possession of valid
20 EADs. Plaintiffs have no adequate remedy at law.
21

22 100. Interim employment authorization for Individual Plaintiffs and the proposed class
23 has been or will be withheld due to Defendants' policies and practices challenged herein.
24 Defendants' actions constitute final agency action for the purpose of the APA, 5 U.S.C. § 701,
25 *et seq.*
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1 101. The INA and applicable regulations provide for no administrative appeal from the
2 withholding of interim employment authorization. 8 C.F.R. § 274a.13(c). Accordingly,
3 Plaintiffs have exhausted their administrative remedies.

4 102. Under 5 U.S.C. §§ 702 and 704, the Individual Plaintiffs, the proposed class, and
5 the Organizational Plaintiffs have suffered a “legal wrong” and have been “adversely affected
6 or aggrieved” by agency action for which there is no adequate remedy in a court of law.
7

8 103. Based on the foregoing, the Court should grant declaratory and injunctive relief
9 under 28 U.S.C. §§ 2201, 2202, 5 U.S.C. § 702, and the Mandamus and Venue Act of 1962, 28
10 U.S.C. § 1361.

11 CAUSES OF ACTION

12 COUNT ONE

13
14 **Violation of 8 C.F.R § 274a.13(d) (mandamus claim on behalf of Plaintiffs Wilman**
15 **Gonzalez Rosario, L.S., K.T., Karla Diaz Marin, Faridy Salmon, Jaimin Shah and**
16 **Marvella Arcos-Perez, the proposed 90-Day Subclass, and the Organizational Plaintiffs)**

17 104. Plaintiffs Wilman GONZALEZ ROSARIO, L.S., K.T., Karla DIAZ MARIN,
18 Faridy SALMON, Jaimin SHAH and Marvella ARCOS-PEREZ and the proposed 90-Day
19 Subclass have a clear and certain claim to have their EAD applications adjudicated in
20 accordance with the Immigration and Nationality Act and governing regulations.

21 105. Defendants have a ministerial, non-discretionary duty to adjudicate EAD
22 applications, other than initial asylum EAD applications, within 90 days.

23 106. Defendants have a ministerial, non-discretionary duty to issue interim
24 employment authorization in the event that Defendants fail to adjudicate an EAD application
25 within 90 days.
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1 107. Plaintiffs Wilman GONZALEZ ROSARIO, L.S., K.T., Karla DIAZ MARIN,
2 Faridy SALMON, and Marvella ARCOS-PEREZ and the proposed 90-Day Subclass have no
3 adequate remedy at law.

4 108. By failing to timely adjudicate EAD applications and failing to issue interim
5 employment authorization to Plaintiffs Wilman GONZALEZ ROSARIO, L.S., K.T., Karla
6 DIAZ MARIN, Faridy SALMON, JAIMIN SHAH and Marvella ARCOS-PEREZ and the
7 proposed 90-Day Subclass, Defendants violate 8 C.F.R. § 274a.13(d).
8

9 109. Defendants' failure to timely adjudicate EAD applications and to issue interim
10 employment authorization likewise results in ongoing violations of 8 C.F.R. § 274a.13(d) to
11 the detriment and harm of the Organizational Plaintiffs, who must either reduce the number of
12 clients they serve or reduce the scope of the services they provide to each client, as described
13 in paragraphs 82-85.
14

15 110. Under the Mandamus and Venue Act of 1962, 28 U.S.C. § 1361, the Court may
16 order the Defendants to immediately adjudicate the EAD applications of Plaintiffs Wilman
17 GONZALEZ ROSARIO, L.S., K.T., Karla DIAZ MARIN, Faridy SALMON, Jaimin SHAH
18 and Marvella ARCOS-PEREZ and the members of the proposed 90-Day Subclass, or to issue
19 them interim employment authorization, in compliance with 8 C.F.R. § 274a.13(d).
20

21 **COUNT TWO**

22 **Regulatory Violations (mandamus claims on behalf of Plaintiffs A.A., Antonio Machic Yac**
23 **and W.H., the 30-Day Subclass, and Organizational Plaintiffs NWIRP and The Advocates)**

24 111. Plaintiffs A.A., Antonio MACHIC YAC and W.H. and the proposed 30-Day
25 Subclass have a clear and certain claim to have their initial asylum EAD applications
26 adjudicated in accordance with the Immigration and Nationality Act and governing regulations.
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1 112. Defendants have a ministerial, non-discretionary duty to adjudicate initial
2 properly filed initial asylum EAD applications within 30 days.

3 113. Defendants have a ministerial, non-discretionary duty to issue interim
4 employment authorization in the event that Defendants fail to adjudicate a properly filed initial
5 asylum EAD application within 30 days.

6 114. Plaintiffs A.A., Antonio MACHIC YAC and W.H. and the proposed 30-Day
7 Subclass have no adequate remedy at law.

8 115. By failing to timely adjudicate EAD applications and failing to issue interim
9 employment authorization to Plaintiffs A.A., Antonio MACHIC YAC and W.H. and the
10 proposed 30-Day Subclass, Defendants violate 8 C.F.R. §§ 208.7(a), 274a.13(a)(2),
11 274a.13(d), and the I-765 Instructions, which have the force of law and are incorporated into
12 the regulations by 8 C.F.R. § 103.2(a)(1).
13

14 116. Defendants' failure to timely adjudicate EAD applications and to issue interim
15 employment authorization likewise results in ongoing violations of §§ 208.7(a), 274a.13(a)(2),
16 274a.13(d), and the I-765 Instructions, to the detriment and harm of the Organizational
17 Plaintiffs, who must either reduce the number of clients they serve or reduce the scope of the
18 services they provide to each client, as described in paragraphs 82-85.
19

20 117. Under the Mandamus and Venue Act of 1962, 28 U.S.C. § 1361, the Court may
21 order the Defendants to immediately adjudicate the EAD applications of Plaintiffs A.A.,
22 Antonio MACHIC YAC and W.H. and the proposed 30-Day Subclass and to issue them
23 interim employment authorization in compliance with 8 C.F.R. §§ 208.7(a)(1), 274a.13(a)(2),
24 274a.13(d), and the I-765 Instructions.
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COUNT THREE

Regulatory Violations (mandamus claims on behalf of Plaintiff Carmen Osorio Ballesteros, the DACA Renewal Subclass, and Organizational Plaintiff NWIRP)

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118. Plaintiff Carmen OSORIO BALLESTEROS and the members of the proposed DACA Renewal Subclass have a clear and certain claim to have their EAD applications adjudicated in accordance with the Immigration and Nationality Act and governing regulations.

119. Defendants have a ministerial, non-discretionary duty to adjudicate EAD applications, other than initial asylum EAD applications, within 90 days.

120. Defendants have a ministerial, non-discretionary duty to issue interim employment authorization in the event that Defendants fail to adjudicate an EAD application within 90 days.

121. Individual Plaintiff Carmen OSORIO BALLESTEROS and the members of the proposed DACA Renewal Subclass have no adequate remedy at law.

122. By failing to timely adjudicate EAD applications and failing to issue interim employment authorization to Individual Plaintiff Carmen OSORIO BALLESTEROS and the members of the proposed DACA Renewal Subclass, Defendants violate 8 C.F.R. § 274a.13(d).

123. Defendants' failure to timely adjudicate EAD applications and to issue interim employment authorization likewise results in ongoing violations of 8 C.F.R. § 274a.13(d) to the detriment and harm of Organizational Plaintiff NWIRP, who must either reduce the number of clients it serves or reduce the scope of the services it provides to each client, as described in paragraphs 82-84.

124. Under the Mandamus and Venue Act of 1962, 28 U.S.C. § 1361, the Court may order the Defendants to immediately adjudicate the EAD applications of Plaintiff Carmen

1 OSORIO BALLESTEROS and the members of the proposed DACA Renewal Subclass and to
2 issue them interim employment authorization, in compliance with 8 C.F.R. § 274a.13(d).

3 **COUNT FOUR**

4 **Violation of Administrative Procedure Act**

5 **(on behalf of Plaintiffs Wilman Gonzalez Rosario, L.S., K.T., Karla Diaz Marin, Faridy**
6 **Salmon, Jaimin Shah and Marvella Arcos-Perez, the 90-Day Subclass, and Organizational**
7 **Plaintiffs NWIRP and The Advocates)**

8 125. Defendants' failure to timely adjudicate the EAD applications of Plaintiffs
9 Wilman GONZALEZ ROSARIO, L.S., K.T., Karla DIAZ MARIN, Faridy SALMON, Jaimin
10 SHAH and Marvella ARCOS-PEREZ and the proposed 90-Day Subclass or, where the
11 regulatory time period has elapsed, issue them interim employment authorization, constitutes
12 unlawfully withheld or unreasonably delayed agency action, is arbitrary and capricious, an
13 abuse of discretion, and otherwise not in accordance with the law in violation of the
14 Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*

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16 126. Plaintiffs Wilman GONZALEZ ROSARIO, L.S., K.T., Karla DIAZ MARIN,
17 Faridy SALMON, Jaimin SHAH and Marvella ARCOS-PEREZ and the proposed 90-day
18 Subclass have suffered final agency action within the meaning of 5 U.S.C. § 704 and have
19 exhausted all available remedies.
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21 127. Defendants' failure to timely adjudicate EAD applications and to issue interim
22 employment authorization likewise results in ongoing APA violations to the detriment and
23 harm of the Organizational Plaintiffs, who must either reduce the number of clients they serve
24 or reduce the scope of the services they provide to each client, as described in paragraphs 82-
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COUNT SIX

Violation of Administrative Procedure Act

**(on behalf of Plaintiff Carmen Osorio Ballesteros, the DACA Renewal Subclass,
and Organizational Plaintiff NWIRP)**

133. Defendants' failure to timely adjudicate the EAD application of Individual Plaintiff Carmen OSORIO BALLESTEROS and the proposed DACA Renewal Subclass or, where the regulatory time period has elapsed, issue them interim employment authorization, constitutes unlawfully withheld or unreasonably delayed agency action, is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law in violation of the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*

134. Plaintiff Carmen OSORIO BALLESTEROS and the proposed DACA Renewal Subclass have suffered final agency action within the meaning of 5 U.S.C. § 704 and have exhausted all available remedies.

135. Defendants' failure to timely adjudicate EAD applications and to issue interim employment authorization likewise results in ongoing APA violations to the detriment and harm of Organizational Plaintiff NWIRP, who must either reduce the number of clients it serves or reduce the scope of the services it provides to each client, as described in paragraphs 82-84.

136. Plaintiff Carmen OSORIO BALLESTEROS and the proposed DACA Renewal Subclass have a right to relief under 5 U.S.C. § 702.

REQUEST FOR RELIEF

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

- (1) Assume jurisdiction over this matter;
- (2) Certify the case as a class action, as proposed herein and in the accompanying

1 motion for class certification;

2 (3) Appoint Plaintiffs Wilman GONZALEZ ROSARIO, L.S., K.T., Karla DIAZ
3 MARIN, Faridy SALMON, Jaimin SHAH and Marvella ARCOS-PEREZ as representatives of
4 the 90-Day Subclass;

5 (4) Appoint Plaintiffs A.A., Antonio MACHIC YAC and W.H. as representatives of
6 the 30-Day Subclass;

7 (5) Appoint Plaintiff Carmen OSORIO BALLESTEROS as a representative of the
8 DACA Renewal Subclass;

9 (6) Appoint undersigned attorneys from the Northwest Immigrant Rights Project, the
10 American Immigration Council, Scott D. Pollock and Associates, P.C., Gibbs Houston Pauw,
11 Sunbird Law, PLLC and Van Der Hout, Brigagliano & Nightingale, LLP, as class counsel
12 pursuant to Federal Rule of Civil Procedure 23(g);

13 (7) Declare Defendants' failure to timely adjudicate Individual Plaintiffs' and
14 proposed class members' EAD applications or, where the regulatory time period has elapsed,
15 to provide them with interim employment authorization, to be arbitrary and capricious, an
16 abuse of discretion, and in violation of the applicable regulations;

17 (8) Order Defendants to comply with 8 C.F.R. § 208.7(a) by adjudicating initial
18 asylum EAD applications within 30 days of receipt;

19 (9) Order Defendants to comply with 8 C.F.R. § 274a.13(d) by adjudicating all EAD
20 applications, other than initial asylum EAD applications, within 90 days of receipt;

21 (10) Order Defendants to comply with 8 C.F.R. § 208.7(a) and 8 C.F.R.
22 §§ 274a.13(a)(2), (d) and the I-765 Instructions by immediately issuing interim employment
23 authorization to Individual Plaintiffs and all proposed class members in cases where the
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1 regulatory time period has elapsed;

2 (11) Award reasonable costs and attorneys' fees and expenses pursuant to the Equal
3 Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and

4 (12) Grant such other and further relief as the Court deems just and proper.

5 Dated this 10th day of March, 2016.

6
7 /s/ Christopher Strawn

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