

Honorable James L. Robart

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BEFORE THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
IN SEATTLE

A.A., et al.,

Plaintiffs,

v.

United States Citizenship and Immigration
Services, et al.,

Defendants.

No. C15-0813-JLR

Plaintiffs' Response to Defendants'
Motion to Supplement the Record and
Cross-Motion to Supplement the Record

Note on calendar: 12/22/2017

I. INTRODUCTION.

The Court should deny Defendants' Motion to Supplement the Administrative Record with post-hoc rationalizations for their failure to comply with the regulation requiring adjudication of asylum seekers' initial applications for Employment Authorization Documents (EADs) within 30 days, 8 C.F.R. § 208.7(a)(1). This Court has twice held, in response to both Defendants' motions to dismiss, that the 30-day regulation is mandatory and enforceable. See Dkt. 55 at 23-26; Dkt. 95 at 21-22. Accordingly, Defendants' Exhibits B, C, E, and F, which document the unsuccessful efforts Defendants have made to comply with the regulation and



1 purport to explain why they have failed to do so, are irrelevant and should not be part of the
2 administrative record. Plaintiffs do not object to supplementing the administrative record with
3 Defendants' Exhibit A, which outlines the initial asylum EAD application and adjudication
4 processes, and Defendants' Exhibit D, which confirms that Defendants have met the 30-day
5 regulatory adjudication deadline in only 22% of cases, and that one in three initial asylum EAD
6 applications takes longer than 60 days to adjudicate.

7 **II. BASED ON THE COURT'S PRIOR HOLDINGS, DEFENDANTS' EXHIBITS B,**
8 **C, E AND F ARE NOT RELEVANT.**

9 This Court has ruled in no uncertain terms that the 30-day regulation is mandatory.
10 First, this Court has held that properly enacted regulations have the force of law and are
11 binding on the government. Dkt. 55 at 23, *citing Flores v. Bowen*, 790 F.2d 740, 742 (9th Cir.
12 1986). Second, the Court concluded that the 30-day regulation is enforceable by Plaintiffs. Dkt.
13 55 at 23-26, *citing Garcia v. Johnson*, No. 14-CV-01775-YGR, 2014 WL 6657591, at *8 (N.D.
14 Cal. Nov. 21, 2014). Third, the Court decided that the plain language of the regulation creates a
15 mandatory duty. Dkt. 55 at 24 ("This language is nondiscretionary."). Fourth, the Court found
16 its interpretation to be consistent with the goals of the regulatory scheme, which were intended
17 to confer "protection to asylum-based EAD applicants from an indefinite employability
18 purgatory during the often lengthy evaluation of their applications for asylum." Dkt. 55 at 24-
19 25. After so holding, the Court rejected Defendants' attempt to relitigate this issue. *See* Dkt. 95
20 at 21 ("the court has already concluded that those regulatory deadlines are mandatory"); Dkt.
21 95 at 21 n.10 (rejecting "Defendants' effort to relitigate whether the 30-day deadline is
22 directory or mandatory").



1 Defendants' request to submit a declaration and supporting data created for purposes of
2 this litigation falls far outside the limited parameters for supplementing the record in a case
3 involving claims under the Administrative Procedure Act (APA). Extra-record supplementation
4 of the administrative record by Defendants may be permitted only:

5 (1) if admission is necessary to determine "whether the agency has considered all
6 relevant factors and has explained its decision," (2) if "the agency has relied on
7 documents not in the record," (3) "when supplementing the record is necessary to
8 explain technical terms or complex subject matter," or (4) when plaintiffs make a
9 showing of agency bad faith.

10 *See Lands Council v. Powell*, 395 F.3d 1019, 1030 (9th Cir. 2005) (citing *Sw. Ctr. for Biological*
11 *Diversity v. U.S. Forest Serv.*, 100 F.3d 1443, 1450 (9th Cir. 1996)). These exceptions must be
12 "narrowly construed and applied." *Lands Council*, 395 F.3d at 1030.

13 Plaintiffs object to Exhibits B, C and E, which do not fall into any of the above
14 categories, for lack of relevance. Exhibit B provides a monthly accounting of initial EAD
15 applications pending between FY 2013 and FY 2017, but does not indicate whether Defendants
16 met or will meet the 30-day regulatory requirement for those applications. *See* Dkt. 103-2.
17 Exhibit C provides a snapshot of initial EAD applications in different categories that were
18 pending as of October 3, 2017, in many cases for longer than 30 days – thereby confirming
19 Defendants' failure to comply with their regulatory obligation. *See* Dkt. 103-3. Exhibit E
20 provides information about the scheduling of interviews in affirmative asylum cases, which is
21 likewise irrelevant to the processing of applications for initial asylum EADs. *See* Dkt. 103-5.

22 Plaintiffs also object to the Declaration of Donald W. Neufeld (Defendants' Exhibit F),
23 which is particularly concerning as a post-hoc rationalization for the agency's noncompliance
with its regulatory obligations. *See Fed. Power Comm'n v. Transcon. Gas Pipe Line Corp.*, 423

1 U.S. 326, 331 (1976) (“The focal point for judicial review should be the administrative record
2 already in existence, not some new record made initially in the reviewing court.”) (*citing Camp*
3 *v. Pitts*, 411 U.S. 138, 142 (1973)); *Envtl. Def. Fund, Inc. v. Costle*, 657 F.2d 275, 284–85 (D.C.
4 Cir. 1981) (noting that materials submitted should “be merely explanatory of the original record
5 and should contain no new rationalizations” for the agency's decision). The issue of *why*
6 Defendants have failed to comply with the mandatory regulation is simply not relevant.
7 Therefore, the Court should deny a request to supplement the administrative record with
8 immaterial explanations of the challenges of complying with the law. *See Nat'l Ass'n Of State*
9 *Util. Consumer Advocates v. F.C.C.*, 457 F.3d 1238, 1248 (11th Cir.), *opinion modified on*
10 *denial of reh'g*, 468 F.3d 1272 (11th Cir. 2006); Fed. R. Evid. Rule 401 & 402.

11 Defendants cite *Independence Mining Co. v. Babbitt*, 105 F.3d 502 (9th Cir. 1997), and
12 its progeny for the proposition that supplementation is permitted because this lawsuit
13 challenges agency inaction rather than final agency action. Dkt. 103 at 2. However, the cases
14 cited by Defendants are inapposite. None of those cases involved a mandatory regulatory
15 timeline for adjudication of a specific benefit. *See, e.g. Independence Mining Co., Inc. v.*
16 *Babbitt*, 105 F.3d 502, 508 (noting that “the General Mining Law provided no express timetable
17 or deadline for the issuance of the patents”). Instead, each involved challenges to a singular
18 agency action unlawfully withheld or unreasonably delayed where *no* record existed because
19 the agency had completely failed to act – as opposed to this case, where Plaintiffs are
20 challenging Defendants’ consistent failure to adjudicate class members’ initial asylum EADs
21 within the required regulatory timeframe. *See, e.g. Independence Mining Co., Inc. v. Babbitt*,



1 105 F.3d 502, 505, 511 (9th Cir. 1997) (challenging agency’s failure to “determine the validity
2 of [certain] mineral patent claims”).

3 The declaration from the agency was appropriate in *Independence Mining Company*
4 because there was no mandatory deadline for adjudication of the mining permits at issue in that
5 case, and thus the court applied the *TRAC* factors¹ to analyze whether the delay was
6 unreasonable. 105 F.3d at 507, n.7. One of the factors specifically requires an analysis of the
7 “effect of expediting delayed action on agency activities,” and, absent a declaration from the
8 agency, the administrative record would have been insufficient to permit the court to perform
9 this analysis. *Id.* at 507, n.7, 511. Thus, supplementation was permitted and appropriate in that
10 case.²

11 Not so here. This Court has already concluded that the *TRAC* analysis does not apply to
12 the timeline here because the deadline is mandatory. Dkt. 95 at 21. As a result, the information
13 conveyed by the Neufeld declaration is unnecessary for the resolution of this matter and falls
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17 1 *Telecomms. Research & Action v. F.C.C.*, 750 F.2d 70, 79-80 (D.C. Cir. 1984).

18 2 The other cases relied upon by the Defendants are further afield as they do not even
19 involve compelling agency action that has been delayed. *See* Dkt. 103 at 2. Rather, they
20 concern the failure of the agency to act in the first instance. *See, e.g., Friends of the Clearwater*
21 *v. Dombeck*, 222 F.3d 552, 554 (9th Cir. 2000) (challenging “the Forest Service's refusal to
22 prepare a supplemental environmental impact statement [] for certain timber sales in the Nez
23 Perce National Forest”); *San Francisco BayKeeper v. Whitman*, 297 F.3d 877, 881 (9th Cir.
2002) (arguing that EPA had a nondiscretionary duty to regulate California waterways and
challenging agency failure to do so); *Seattle Audubon Society v. Norton*, No. C05-1835L, 2006
WL 1518895, at *1 (W.D. Wash. 2006) (challenging government’s failure “to develop and
implement a recovery plan for the Northern Spotted Owl”).



1 outside the Ninth Circuit's limited exception for supplementation of the record for unreasonable
2 delay cases.³

3 **III. IF PERMITTED TO SUPPLEMENT THE RECORD WITH THE CONTESTED**
4 **EXHIBITS, DEFENDANTS SHOULD BE REQUIRED TO MAKE DONALD**
5 **NEUFELD AVAILABLE FOR DEPOSITION AND THE COURT SHOULD**
6 **PERMIT ADDITIONAL DOCUMENTATION TO ENSURE A FULL**
7 **PRESENTATION OF THE ISSUES.**

8 Defendants concede that they have failed to comply with the 30-day regulatory deadline
9 for adjudicating initial asylum EAD applications. *See* Dkt. 103-4. Indeed, their proposed
10 supplemental data reveals that, over the past seven years, they have met the 30-day deadline in
11 only 22% of initial asylum EAD cases, and that one in three such applications takes longer than
12 60 days to adjudicate. *See* Declaration of Walter Ewing, Dkt. 105, at ¶ 6; Dkt. 103-4.

13 Defendants assert that their failure to comply with the 30-day regulatory timetable has
14 multiple causes, including (1) delays caused by increased processing time for EADs based on
15 underlying defensive asylum applications, (2) the need to issue requests for evidence (RFEs)
16 for certain applications, (3) the referral of certain applications to the Background Check
17 Unit/Center Fraud Detection Operations (BCU/CFDO), and (4) the volume of applications for
18 initial asylum EADs. *See generally* Dkt. 103-6. However, Defendants provide only two
19 categories of information regarding total processing times for completed initial asylum EAD
20 applications: all such applications, and all such applications "exclud[ing] cases with an Initial
21 or Additional Request for Evidence." Dkt. 103-4. While this data demonstrates conclusively
22 that Defendants have failed to meet the regulatory requirement in a significant majority of
23

3 The Defendants' citation to *City of Santa Clarita v. U.S. Dep't of Interior*, No. CV 02-
4 0697 DT(FMOX), 2005 WL 2972987, at *3-4 (C.D. Cal. 2005), Dkt. 103 at 2, is puzzling as
5 the court in that case struck the extra-record affidavits, finding that the proffered evidence did
6 not fit within the narrow exceptions governing supplementing administrative records.

1 cases, it is still incomplete. This incomplete data leaves the Court both unable to determine
2 whether Defendants' representations are borne out by the facts, and unable to craft a remedy
3 addressing specific causes of Defendants' failure to comply with the regulation.

4 Should this court allow Defendants to supplement the record with the Neufeld
5 declaration, Plaintiffs request to the opportunity to depose Mr. Neufeld. Because "the courts are
6 not straightjacketed to the original record in trying to make sense of complex technical
7 testimony," *Bunker Hill Co. v. EPA*, 572 F.2d 1286, 1292 (9th Cir. 1977), a deposition is
8 necessary here to "insure there will be a full presentation of the issues" to the Court. *See Pub.*
9 *Power Council v. Johnson*, 674 F.2d 791, 795 (9th Cir. 1982). Mr. Neufeld provides numerous
10 reasons for Defendants' routine failure to process initial asylum EADs within 30 days, but the
11 data underlying his assertions is inadequate and plaintiffs have the right to depose him to
12 examine and confront his assertions. *See Citizens to Preserve Overton Park v. Volpe*, 401 U.S.
13 402, 420 (1977) (court on remand may require administrative officials to provide testimony
14 explaining their actions). For example, Mr. Neufeld asserts that "if USCIS were required to
15 maintain perfect compliance" with the 30-day regulatory requirement, it "may pose public
16 safety or other risks," yet he provides no support for that proposition. Dkt. 103-6 at ¶ 58.
17 Presumably, any risk to public safety posed by an asylum seeker would exist regardless of
18 whether the individual was employed, and could be addressed most effectively if the
19 government increased the pace of its adjudications. Thus, if the Court allows the Neufeld
20 declaration into the record—over Plaintiffs' objections—it must permit Plaintiffs to depose Mr.
21 Neufeld in order to ensure a full presentation of the issues addressed in his declaration.



1 The data Defendants provide to support the Neufeld declaration is also incomplete.
 2 First, it combines processing times for I-765 applications related to both affirmative and
 3 defensive asylum applications. *See* Dkt. 103-2, 103-3, 103-4. Although Defendants represent
 4 that processing initial asylum EADs for defensive asylum applications is “more labor
 5 intensive” and “may result in a longer adjudication time frame”⁴ *see* Dkt. 103-6 at ¶¶ 26-29,
 6 Exhibit D does not distinguish between affirmative and defensive filings.

7 Second, Defendants represent that significant delays may occur when an application is
 8 referred to the Background Check Unit/Center Fraud Detection Operations (BCU/CFDO) or
 9 where a Request for Evidence (RFE) is issued. *See* Dkt. 103-6 at ¶¶ 20-25. However,
 10 Defendants have not provided data regarding processing times for completed applications in
 11 either of these categories.⁵ They have only provided the percentage of cases in FY 2017 that
 12 were referred to BCU/CFDO, and data on *pending* cases referred to BCU/CFDO. *See* Dkt. 103-
 13 3. Without such data, this Court will be unable to determine the extent to which BCU/CFDO
 14 referrals and/or RFE issuance affect Defendants’ ability to meet the 30-day deadline.

15 _____
 16 4 Defendants assert that the process of calculating whether 180 days have passed since
 17 the filing of the asylum application (making the applicant eligible for an initial asylum EAD)
 18 causes significant delay. Dkt. 103-6 at 26-29. Importantly, Defendants fail to acknowledge that
 19 they can easily obtain that information through the Executive Office for Immigration Review’s
 20 automated systems. *See* U.S. Citizenship & Immigration Servs., *The 180-Day Asylum EAD*
 21 *Clock Notice*, USCIS.GOV, available at [https://www.uscis.gov/sites/default/files/USCIS/
 22 Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum_Clock_Joint_Notice.pdf](https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Asylum_Clock_Joint_Notice.pdf) (last
 23 visited Nov. 11, 2017)

5 In Exhibit D, Defendants provide completion times for all applications, and for all
 6 applications excluding those where an RFE was issued. Dkt. 103-4. Although Plaintiffs and this
 7 Court may draw some rudimentary conclusions from this data, *see* Ewing Dec., Dkt. 105 at ¶
 8 10 (concluding that the rate of RFE issuance peaked at 20.41% in Q1 of FY 2014 and has
 9 decreased steadily since then, to 4.82% in Q4 of FY 2017), it is incomplete for the reasons
 10 discussed above.



1 Given these deficiencies, Plaintiffs contend that if Defendants' motion is granted,
2 certain additional data regarding processing delays will be necessary "to determine if the
3 agency has considered all factors and explained its decision." *See, e.g., San Luis & Delta-*
4 *Mendota Water Authority v. Jewell*, 747 F.3d 581, 603 (9th Cir. 2014) (quoting *Fence Creek*
5 *Cattle Co. v. U.S. Forest Serv.*, 602 F.3d 1125, 1131 (9th Cir. 2010). Thus, in accordance with
6 the parties' Joint Status Report, *See* Dkt. 101 at 2-3, Plaintiffs hereby request that Defendants
7 provide, in machine-readable format, the number of completions by Quarter for Initial I-765s
8 with a class preference of C8, grouped by processing days (Received Date to Decision Date, in
9 30-day increments as in Exhibit D) from Fiscal Year 2010 to Fiscal Year 2017, for the
10 following categories:

- 11 • Total applications, broken down by underlying affirmative and defensive applications
12 for asylum;
- 13 • Applications for which an RFE has been issued, broken down by underlying
14 affirmative and defensive applications for asylum, as well as total combined
15 affirmative and defensive applications;
- 16 • Applications referred to BCU/CFDO, broken down by affirmative and defensive
17 applications for asylum, as well as total combined affirmative and defensive
18 applications;
- 19 • Applications referred to BCU/CFDO and for which an RFE has been issued, broken
20 down by affirmative and defensive applications for asylum, as well as total combined
21 affirmative and defensive applications.

22 Plaintiffs have identified four additional areas where further supplementation of the
23 administrative record is needed to understand the reasons for the agency's processing delays:

 First, Defendants have provided no data on historical average and median processing
times for initial asylum EADs. Without this information, the Court cannot properly evaluate
Defendants' claim that the increased volume of initial asylum EADs has been a driver of
Defendants' failure to meet the regulatory requirement. *See* Dkt. 103-6 at ¶¶ 31-41. To remedy



1 this omission, Defendants should be required to produce the following supplemental
2 information:

- 3 • Average and median completion time by quarter, Fiscal Year 2010 to Fiscal Year
4 2017, for the following subsets of I-765 applications with a class preference of C8,
5 broken down by affirmative and defensive applications for asylum, as well as total
6 combined affirmative and defensive applications.
 - 7 o All applications;
 - 8 o All applications for which an RFE was issued;
 - 9 o All applications that were referred to BCU/CFDO;
 - 10 o All applications filed that were referred to BCU/CFDO and for which an RFE
11 was issued.

12 Second, Defendants assert, without providing evidence, that some applications take
13 longer than 30 days to process if they are “filed at exactly or around the day the underlying
14 asylum application has been pending for 150 days,” because “If Day 180, when USCIS may
15 issue an approval on the application, arrives on a holiday or weekend, the decision [] will
16 necessarily” take longer than 30 days to issue. Dkt. 103-6 at ¶ 30, 52. To determine whether this
17 is one of the “major impediments,” Dkt. 103-6 at ¶ 49, 52, driving Defendants’ failure to meet
18 the regulatory timetable, or simply a rare outlier, Defendants should provide data, by quarter,
19 Fiscal Year 2010 to Fiscal Year 2017, for applications that could not be adjudicated within 30
20 days because they were “filed at exactly or around” day 150.

21 Third, Plaintiffs request that Defendants produce a copy of the March 31, 2017 memo
22 entitled “Jurisdiction and EAD Clock Procedures for Unaccompanied Alien Children (UACs),”
23 which is cited in Exhibit A. *See* Dkt. 103-1 at 29. As guidance which informs USCIS
processing of certain initial asylum EADs, this memo is directly relevant to the procedures
described in Exhibit A.

1 Finally, Plaintiffs request that the record be supplemented with the materials that have
2 already been submitted by the Plaintiffs in this case regarding the delays and the impacts of the
3 delays on class members. This would include the declarations and exhibits that are already on
4 file in this matter detailing the harms to class members from delayed adjudications as well as
5 documentation regarding the agency's failure to follow the mandatory regulatory deadline.
6 These materials are necessary to provide a complete picture to the court to insure "a full
7 presentation of the issues." See *Pub. Power Council v. Johnson*, 674 F.2d 791, 795 (9th Cir.
8 1982).

9 **IV. CONCLUSION.**

10 For the foregoing reasons, Defendants' motion should be denied with respect to Exhibits
11 B, C, E and F. However, if the Court allows these documents to be included in the
12 administrative record, then Defendants should be required to produce Mr. Neufeld for
13 deposition and to provide the additional information outlined above to ensure a full
14 presentation of the issues to the Court.

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Certificate of Service

I certify that on November 22, 2017, I electronically filed the foregoing document, together with all attachments, with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties.

/s/ Devin T. Theriot-Orr

Devin T. Theriot-Orr, WSBA 33995

The Honorable James L. Robart
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

A.A., ET AL.,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES, ET AL.,

Defendants

Case No. 2:15-cv-00813

DECLARATION OF WALTER EWING IN
SUPPORT OF PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION TO
SUPPLEMENT THE ADMINISTRATIVE
RECORD

DECLARATION OF WALTER EWING

I, Walter Ewing, declare as follows:

1. I am a Senior Researcher at the American Immigration Council. I have authored numerous reports for the Council, including *The Criminalization of Immigration in the United States* (co-written in 2015 with Daniel Gonzalez and Rubén Rumbaut). I have also published articles in the *Journal on Migration and Human Security, Society*, the *Georgetown Journal of Law and Public Policy*, and the *Stanford Law and Policy Review*, as well as a chapter in *Debates on U.S. Immigration*, published by SAGE in 2012. I hold a Ph.D. in Anthropology from the City University of New York (CUNY).

2. I have reviewed and analyzed Exhibit B (Dkt. 103-2) and Exhibit D (Dkt. 103-4) to Defendants' October 20, 2017 Motion to Supplement the Administrative Record in the above-captioned case. Dkt. 103-4 includes two data tables.

3. The first data table is entitled "U.S. Citizenship and Immigration Services Initial I-765 Application for Employment with a Classification of Asylum Applicant with Pending Asylum Application (C8) Completions." It purports to "represent[] the number of completions by Quarter for Initial I-765 with a class preference of C8 grouped by processing days (Received Date to Decision Date)." Dkt. 103-4 at 1-2.

4. The second data table is entitled "U.S. Citizenship and Immigration Services Initial I-765 Application for Employment with a Classification of Asylum Applicant with Pending Asylum Application (C8) Completions – Excludes cases with an Initial or Additional Request for Evidence (RFE)." It purports to "represent[] the number of completions by Quarter for Initial I-765 with a class preference of C8 grouped by processing days (Received Date to Decision Date), excluding cases with an Initial or Additional RFE." Dkt. 103-4 at 3-4.

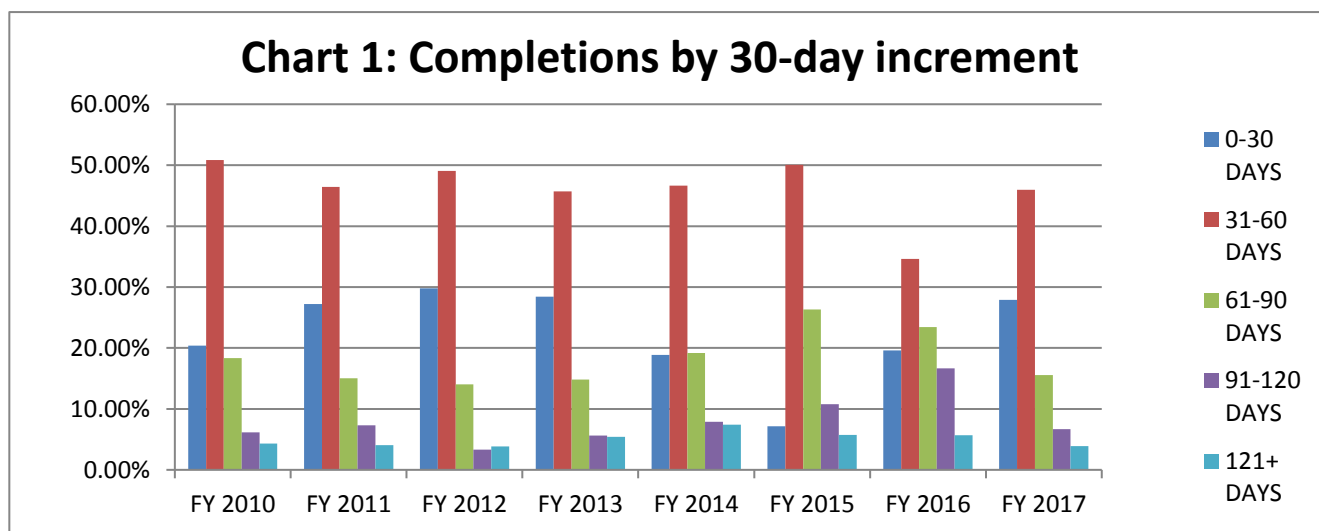
5. In order to analyze these data tables, I imported them into Microsoft Excel. Once the data was in the appropriate format, I was able to utilize the automated features of Microsoft Excel to analyze the underlying information provided by Defendants. Through these features, I was able to convert Defendants' raw numbers on completions, grouped by processing days for each quarter, into percentages, grouped by processing days for each quarter, and create two charts which provide visual representations of the data on overall delays and Requests for Evidence.

6. Through my analysis of Defendants' data, I was able to determine that from Fiscal Year (FY) 2010 to FY 2017, they completed only 154,629 out of 698,096 applications for initial

asylum Employment Authorization Documents (EADs) within the 30-day regulatory timeframe. This is a completion rate of only 22.15%. In other words, Defendants’ own data shows that they fail to meet the 30-day requirement in 77.85% of all cases.

7. In Dkt. 103-4, Defendants provided the number of applications completed by processing days, in 30-day increments, per quarter, as well as the “grand total” of applications completed each quarter. I was therefore able to determine what percentage of applications was completed in each 30-day period simply by dividing the number of completions in each 30-day increment by the “grand total” of applications completed in the corresponding quarter. The result of this analysis is attached as Exhibit A.

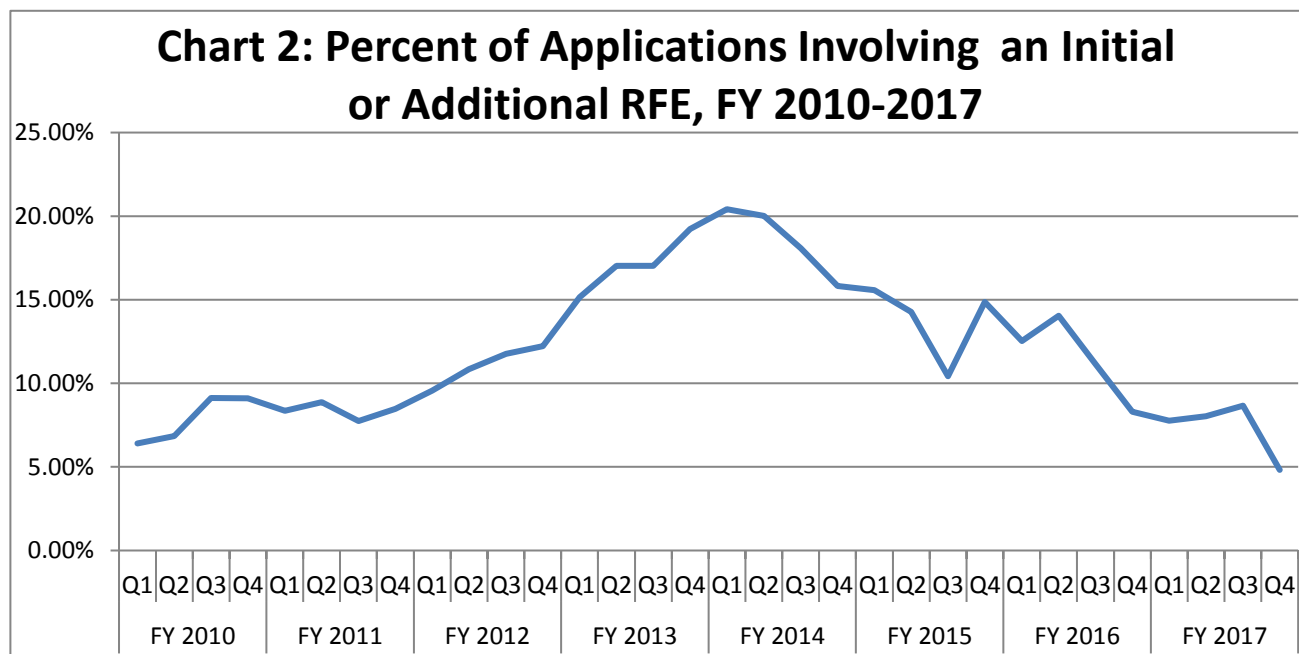
8. Exhibit A shows that in each fiscal year since FY 2010, Defendants have failed to adjudicate at least 70% of the total number of initial asylum EAD applications within the regulatory timeframe. In every year for which Defendants provided data, the largest number of completions is for applications which took between 30-60 days to process. Viewed over the seven-year period for which Defendants provided data, it is clear that Defendants have consistently failed to meet the 30-day requirement, even in Fiscal Years 2010-2014, which occurred prior to the increase in application volume reflected in Dkt. 103-2.



9. I also created a table containing information on Requests for Evidence.

Defendants provided data on total completions, as well as total completions “Excluding cases with an Initial or Additional Request for Evidence.” I subtracted the latter figure from the former figure to calculate the total number of RFEs for each quarter of FY 2010-2017. By dividing the number of completions involving an RFE in each quarter from the total number of completions in that quarter, I was able to determine what percentage of cases, each quarter, involved a Request for Evidence. This data table is attached as Exhibit B.

10. Analysis of Exhibit B shows that while the overall number of RFEs has increased since FY 2010, the overall percentage of cases involving an initial or additional RFE peaked at a high of 20.41% in Q1 of FY 2014, and has decreased steadily since then, down to a low of 4.82% in Q4 of FY 2017.



11. Thus, even though the number of total applications for initial asylum EADs has quadrupled from FY 2014 to FY 2017, the percentage of those applications involving RFEs has

Exhibit A: Underlying Data Table for Chart 1

USCIS Initial I-765 Application for Employment with a Classification of Asylum Applicant with Pending Asylum Application (C8) Completions						
Fiscal Year and Quarter		0-30 DAYS	31-60 DAYS	61-90 DAYS	91-120 DAYS	121+ DAYS
FY 2010	Q1	23.32%	46.46%	17.77%	7.16%	5.29%
	Q2	16.52%	56.84%	16.81%	5.67%	4.17%
	Q3	10.20%	58.09%	23.09%	5.26%	3.37%
	Q4	31.86%	41.62%	15.60%	6.46%	4.46%
Total FY 2010		20.39%	50.82%	18.35%	6.13%	4.31%
FY 2011	Q1	23.89%	45.03%	14.74%	10.98%	5.35%
	Q2	22.73%	52.52%	14.22%	6.52%	4.02%
	Q3	29.49%	45.19%	14.79%	6.99%	3.54%
	Q4	32.56%	42.61%	16.38%	5.12%	3.32%
Total FY 2011		27.19%	46.43%	15.04%	7.31%	4.03%
FY 2012	Q1	23.18%	44.45%	24.11%	4.61%	3.66%
	Q2	22.95%	56.65%	13.02%	3.28%	4.11%
	Q3	33.81%	49.52%	10.61%	2.22%	3.84%
	Q4	36.83%	44.86%	11.12%	3.49%	3.69%
Total FY 2012		29.78%	49.05%	14.02%	3.32%	3.83%
FY 2013	Q1	32.33%	46.83%	12.75%	3.75%	4.34%
	Q2	36.33%	40.39%	13.14%	4.78%	5.36%
	Q3	24.52%	51.50%	14.77%	4.47%	4.74%
	Q4	21.38%	44.63%	18.01%	8.97%	7.01%
Total FY 2013		28.40%	45.72%	14.81%	5.64%	5.44%
FY 2014	Q1	22.87%	41.67%	18.38%	8.17%	8.92%
	Q2	24.30%	46.52%	13.61%	7.60%	7.98%
	Q3	12.57%	49.60%	23.84%	7.78%	6.21%
	Q4	16.13%	48.35%	20.80%	8.08%	6.64%
Total FY 2014		18.86%	46.64%	19.19%	7.91%	7.40%
FY 2015	Q1	6.97%	52.59%	25.17%	9.00%	6.27%
	Q2	5.96%	35.28%	31.92%	19.92%	6.93%
	Q3	6.00%	56.14%	24.34%	8.11%	5.41%
	Q4	9.29%	51.90%	25.30%	8.49%	5.02%
Total FY 2015		7.13%	50.06%	26.30%	10.76%	5.75%
FY 2016	Q1	13.31%	46.81%	25.83%	8.34%	5.71%
	Q2	18.17%	30.79%	31.51%	14.32%	5.22%
	Q3	23.52%	30.15%	12.74%	27.81%	5.78%
	Q4	21.23%	34.04%	23.79%	15.01%	5.93%
Total FY 2016		19.62%	34.60%	23.43%	16.67%	5.68%
FY 2017	Q1	12.82%	70.46%	10.41%	2.56%	3.72%
	Q2	36.83%	50.74%	7.43%	2.28%	2.71%
	Q3	33.62%	40.76%	18.81%	3.36%	3.45%
	Q4	28.15%	30.47%	21.91%	14.41%	5.06%
Total FY 2017		27.89%	45.98%	15.53%	6.70%	3.89%

Exhibit B: Underlying Data Table for Chart 2

USCIS Initial I-765 Application for Employment with a Classification of Asylum Applicant with Pending Asylum Application (C8), Applications With an Initial or Additional Request for Evidence, Completions			
Fiscal Year and Quarter		Total Completions per Quarter Involving RFEs	Percent of Applications per Quarter Involving RFEs
FY 2010	Q1	391	6.40%
	Q2	424	6.85%
	Q3	574	9.12%
	Q4	558	9.11%
FY 2011	Q1	521	8.35%
	Q2	630	8.88%
	Q3	510	7.75%
	Q4	584	8.47%
FY 2012	Q1	637	9.56%
	Q2	956	10.85%
	Q3	1055	11.76%
	Q4	1182	12.23%
FY 2013	Q1	1208	15.15%
	Q2	1604	17.02%
	Q3	1536	17.02%
	Q4	1942	19.23%
FY 2014	Q1	2745	20.41%
	Q2	2871	20.00%
	Q3	2553	18.08%
	Q4	2506	15.83%
FY 2015	Q1	2718	15.57%
	Q2	2816	14.27%
	Q3	3343	10.43%
	Q4	4277	14.87%
FY 2016	Q1	3574	12.53%
	Q2	5496	14.03%
	Q3	4225	11.15%
	Q4	4579	8.30%
FY 2017	Q1	4430	7.77%
	Q2	4544	8.02%
	Q3	4992	8.67%
	Q4	4250	4.82%