

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

NORTHWEST IMMIGRANT RIGHTS
PROJECT and THE ADVOCATES FOR
HUMAN RIGHTS;

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.

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 authorization ("Individual Plaintiffs") and the class members they seek to represent, as well as

the Northwest Immigrant Rights Project (“NWIRP”) and The Advocates for Human Rights (“Organizational Plaintiffs”), non-profit legal services organizations in Washington State and Minnesota, respectively, that serve low-income immigrants.

2. Employment authorization yields economic benefits not only for eligible noncitizens, but also for the U.S. economy. Individuals who can prove their eligibility to work in the United States earn higher wages than those who do not. Workers who earn higher wages are better able to provide for themselves and their families, pay more in federal and state taxes, and have more disposable income to spend on goods and services produced by U.S. businesses. Delays by the federal government in providing employment authorization to eligible noncitizens undermine these goals. In fact, employers may be forced to lay off these workers to avoid the risk of fines imposed by Immigration and Customs Enforcement (“ICE”). Moreover, if an asylum applicant does not have an extension of work authorization timely adjudicated and continues to work without such authorization, he or she accrues unlawful presence which may have potentially devastating consequences for future immigration to the United States.

3. When hiring any employee, U.S. employers must verify his or her eligibility to work by examining certain documents that, for noncitizens, commonly include an employment authorization document (“EAD”) issued by the Department of Homeland Security (“DHS”). If an employee presents a time-limited EAD at the time of hire, the employer must reverify the employee’s work authorization prior to its expiration, or the employer may be subject to civil fines for continuing to employ the individual.

4. To obtain an EAD, an eligible individual generally must submit a Form I-765, Application for Employment Authorization, to Defendant United States Citizenship and Immigration Services (“USCIS”), an agency within Defendant United States Department of

Homeland Security. By regulation, USCIS *must* either adjudicate the I-765 application within a fixed time period or issue interim employment authorization. In the case of Individual Plaintiffs, Defendants have done neither, leaving them in a precarious situation, unable to work legally, and at risk of losing their jobs and related benefits, as well as their driver's licenses in some states.

5. Under the regulations, USCIS is required to adjudicate all applications for employment authorization, except initial EAD application based on asylum applications, within 90 days. Initial EAD applications based on an asylum application are to be adjudicated within 30 days.

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

7. An August 18, 2006 Interoffice Memorandum from Michael Aytes, then-Acting Director, Domestic Operations USCIS, to Regional Directors, Service Center Directors, National Benefits Center Director and District Directors, affirms the mandatory requirements (at page 3): "USCIS is required to adjudicate a pending Form I-765 within 90 days from the date of receipt. 8 C.F.R. 274a.13(d). Failure to complete the adjudication within this time frame requires the Service to grant an employment authorization document for a period not to exceed 240 days."

8. The USCIS instructions for the I-765 Application for Employment Authorization provide the agency's definition of "Interim EAD":

Interim EAD: An EAD issued to an eligible applicant when USCIS has failed to adjudicate an application within 90 days of a properly filed EAD application, or within 30 days of a properly filed initial EAD application 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.

Form I-765 Instructions at 1 (August 6, 2014).

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

10. Despite this clear mandate, Defendants routinely violate the interim employment authorization rules by consistently failing to issue interim employment authorization to EAD applicants, including Individual Plaintiffs, who have waited longer than the requisite period. In addition, Defendants provide incorrect and conflicting information to applicants who call the agency’s 1-800 customer service number or visit USCIS offices for Infopass appointments. Defendants’ failure to issue interim employment authorization eviscerates the very purpose of the regulation.

11. Defendants’ policies and practices of failing to adjudicate employment authorization applications within the required time period, and failing to issue interim employment authorization to Individual Plaintiffs who have waited longer than the required time period, violate the governing regulations and the Administrative Procedure Act (APA).

12. Plaintiffs seek declaratory and injunctive relief to remedy Defendants’ unlawful failure to timely adjudicate EAD applications and their unlawful withholding of interim employment authorization in violation of 8 C.F.R. §§ 274a.13(d), 274a.13(a)(2), 208.7(a), and

the Form I-765 instructions. Plaintiffs seek this Court's intervention to compel the timely adjudication of EAD applications or, alternatively, the timely issuance of interim employment authorization to all noncitizens who have waited the relevant period.

JURISDICTION AND VENUE

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

14. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because Defendants are officers or employees of the United States or agencies thereof acting in their official capacities. A substantial part of the events or omissions giving rise to the claims occurred in this district, and Plaintiff NWIRP resides in this district as do many of NWIRP's clients who are putative class members. In addition, no real property is involved in this action.

PARTIES

15. Plaintiff Northwest Immigrant Rights Project is a non-profit immigration legal services organization founded in 1984. Each year, NWIRP provides direct legal assistance in immigration matters to over 10,000 low-income people from over 150 countries, speaking over 60 different languages and dialects. NWIRP serves the community from four offices in Washington State in Seattle, Granger, Tacoma, and Wenatchee. NWIRP has clients who are noncitizens entitled to employment authorization and challenges Defendants' policies and practices that unlawfully prevent its clients from legally working in the United States by failing to adjudicate EAD applications within the required time period and denying them interim employment authorization. Defendants' practices and policies frustrate NWIRP's mission of

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

16. Plaintiff The Advocates for Human Rights ("The Advocates") is a non-profit human rights organization that provides free legal services to low-income immigrants seeking political asylum. Since 1984, The Advocates has provided free legal advice and representation before federal immigration agencies, immigration courts, and U.S. courts of appeal to noncitizens who have fled persecution in their home countries. Primarily serving asylum seekers in Minnesota, North Dakota, and South Dakota, The Advocates is the largest provider of asylum-related legal services in the region. The Advocates' three staff attorneys regularly file applications for employment authorization on behalf of their own asylum clients and, in some cases, on behalf of asylum clients represented by volunteer attorneys. The Advocates challenges Defendants' policies and practices that unlawfully prevent its clients from legally working in the United States by failing to adjudicate EAD applications within the required time period and denying them interim employment authorization. Defendants' practices and policies frustrate The Advocates' primary mission of helping its clients to apply for asylum. Defendants' policies and practices have caused The Advocates to divert scarce resources to assisting and advising clients whose EAD applications have been delayed, and who have not received interim employment authorization.

17. Individual Plaintiffs are all noncitizens eligible to obtain work authorization in the United States, who have filed EAD applications that have been pending with USCIS beyond the

regulatory deadline for adjudication, and who would be eligible to work lawfully in the United States but for Defendants' unlawful policies and practices.

18. Plaintiff Marvella ARCOS-PEREZ is a noncitizen who currently resides in Tacoma, Washington. Ms. ARCOS-PEREZ's EAD application has been pending with USCIS for more than ninety days from USCIS's receipt of the application on January 12, 2015, which obligates USCIS to issue interim employment authorization to Ms. ARCOS-PEREZ in accordance with 8 C.F.R. § 274a.13(d). Ms. ARCOS-PEREZ did not receive a Request for Evidence on the EAD or underlying application and did not fail to appear for or request to reschedule a biometrics appointment. Defendants have not yet issued Ms. ARCOS-PEREZ interim employment authorization.

19. Plaintiff Carmen OSORIO-BALLESTEROS is a noncitizen who currently resides in Rockford, Illinois. Ms. OSORIO-BALLESTEROS' EAD application has been pending with USCIS for more than ninety days from USCIS's receipt of the application on December 29, 2014, which obligates USCIS to issue interim employment authorization to Ms. OSORIO-BALLESTEROS in accordance with 8 C.F.R. § 274a.13(d). Ms. OSORIO-BALLESTEROS did not receive a Request for Evidence on the EAD or underlying application and completed her biometrics requirement on the scheduled date and time. Defendants have not yet issued Ms. OSORIO-BALLESTEROS interim employment authorization.

20. Plaintiff W.H. is a noncitizen asylum applicant who currently resides in St. Louis, Missouri. W.H.'s EAD application has been pending with USCIS for more than thirty days from USCIS's receipt of the application on January 9, 2015, which obligates USCIS to issue interim employment authorization to W.H. in accordance with 8 C.F.R. §§ 274a.13(a)(2), 208.7(a), and the Form I-765 instructions. W.H. did not receive a Request for Evidence on the EAD or

underlying application and has not missed or asked to reschedule a biometrics appointment. Defendants have not yet issued W.H. interim employment authorization.

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

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

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

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

STATUTORY AND REGULATORY BACKGROUND

25. When establishing the employment verification system in 1986, Congress differentiated among: (a) documents that establish both employment authorization and identity; (b) documents that establish only employment authorization; and (c) documents that establish only identity. For documents evidencing only employment authorization, Congress identified a

“social security account number card” without any restriction as to employment authorization and “other documentation . . . which the Attorney General [now the DHS Secretary] finds, by regulation, to be acceptable for purposes of this section.” 8 U.S.C. § 1324a(b)(1)(C). Pursuant to this authority, DHS regulations identify eight categories of acceptable documents, including an “employment authorization document issued by the Department of Homeland Security.”

8 C.F.R. §§ 274a.2(b)(1)(v)(C)(1)-(8). Other regulations define which foreign nationals must separately apply for employment authorization. 8 C.F.R. §§ 274a.12(a), (c); 274a.13(a).

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

27. Initial EAD applications filed by asylum applicants are subject to a different timetable. An asylum applicant may submit an EAD application at any point after 150 days have elapsed since the date USCIS received his or her complete asylum application. 8 C.F.R. § 208.7(a)(1). USCIS *must* adjudicate the EAD application within thirty days of the date of filing. *Id.* In recognition of the economic hardship asylum seekers may face during the asylum application process, this regulation enables them to work lawfully while they wait for their cases to be decided, if their cases are delayed more than 180 days through no fault of their own. 8 C.F.R. §§ 208.7(a)(1), 1208.7(a)(1); *see also* 8 U.S.C. § 1158(d)(2). Asylum EAD renewals, however, are controlled by the 90-day rule of 8 C.F.R. § 274a.13(d). *See* 8 C.F.R. § 208.7(d).

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

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

d) *Interim employment authorization.* The district director shall adjudicate the application for employment authorization within 60 days from the date of receipt of the application by the Service or the date of receipt of a 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 shall be subject to any conditions noted on the employment authorization document. However, if the district director adjudicates the application prior to the expiration date of the interim employment authorization and denies the individual's employment authorization application, the employment authorization granted under this section shall automatically terminate.

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

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

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

52 Fed. Reg. 16216 (emphasis added).

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

32. The current regulation, with a recent amendment promulgated this year,¹ reads:

(d) *Interim employment authorization.* USCIS will adjudicate the application within 90 days from the date of receipt of the application, except in the case of an initial application for employment authorization under § 274a.12(c)(8), which is governed by paragraph (a)(2) of this section, and § 274a.12(c)(9) insofar as it is governed by §§ 245.13(j) and 245.15(n) of this chapter. *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 adjudicates the application prior to the expiration date of the interim employment authorization and denies the individual's employment authorization application, the interim employment authorization granted under this section will automatically terminate as of the date of the adjudication and denial.

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

¹ DHS's most recent amendment, which will take effect on May 26, 2015, added the clause "except as described in 8 C.F.R. 214.2(h)(9)(iv)." 80 Fed. Reg. 10284, 10312 (Feb. 25, 2015).

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

Interim EAD: An EAD issued to an eligible applicant when USCIS has failed to adjudicate an application within 90 days of a properly filed EAD application, or within 30 days of a properly filed initial EAD application 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.

Form I-765 Instructions at 1 (August 6, 2014).

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

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

36. At a meeting with USCIS headquarters on April 16, 2015, agency representatives indicated that "USCIS no longer produces interim EADs."

FACTUAL ALLEGATIONS

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

38. On January 12, 2015, Plaintiff Marvella ARCOS-PEREZ filed an application for renewal of her employment authorization, which had been previously granted in conjunction with an application for asylum. USCIS failed to adjudicate the EAD application by April 12, 2015, the ninetieth day after filing. At the time of this filing, 40 days have passed since the day that Defendants became obligated to issue Ms. ARCOS-PEREZ interim employment authorization under 8 C.F.R. § 274a.13(d). Defendants have not complied with the regulation and have not issued an interim employment authorization document.

39. Ms. Arcos is a widow who resides with and provides support for her twenty-four year old daughter, who has an intellectual disability. When Ms. Arcos was granted work authorization after filing her asylum application, she was hired to work at a mattress company. Even with her income, however, Ms. Arcos relies on her family to provide some of the financial support she and her daughter require. The inability to lawfully work will cause a substantial and irreparable hardship to Ms. Arcos and her daughter. Ms. Arcos has no financial savings to rely on in place of earned income if she loses her job.

40. On December 29, 2014, Plaintiff Carmen OSORIO-BALLASTEROS filed an application for renewal of her employment authorization in conjunction with a request for renewal of Deferred Action for Childhood Arrivals (DACA). USCIS failed to adjudicate the EAD application by March 29, 2014, the ninetieth day after filing. At the time of this filing, 54

days have passed since Defendants' obligation to issue Ms. OSORIO-BALLASTEROS interim employment authorization arose under 8 C.F.R. § 274a.13(d). Defendants have not complied with the regulation and have not issued an interim authorization document.

41. On April 10, 2015, after Ms. OSORIO-BALLASTEROS' applications had been pending over 100 days, her lawyer requested case assistance from the USCIS Ombudsman's Office. On May 15, 2015, her lawyer received an e-mail from the USCIS Ombudsman's Office stating that Ms. OSORIO-BALLASTEROS' pending applications were "actively being reviewed."

42. When Ms. OSORIO-BALLASTEROS' EAD expired on April 21, 2015, she lost her full-time job, which she needed to support herself and her three minor U.S. citizen children. Because she does not have a valid EAD and is not a U.S. citizen or lawful permanent resident, she is not eligible to apply for unemployment benefits. She is no longer able to pay her utility bills and is not sure how she is going to pay for needed medical tests.

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

44. W.H.'s lawyer has called USCIS's NCSC hotline twice to inquire about the status of W.H.'s EAD. On February 25, 2015, W.H.'s lawyer was told to expect a response by mail within 15 days. On March 3, 2015, W.H.'s lawyer was told that the "application [wa]s currently pending adjudication [but they] regret [they] are unable to provide [W.H.'s lawyer] with a

completion date at this time.” To date, W.H.’s lawyer has not received a response by mail from USCIS.

45. W.H.’s prior EAD expired on March 31, 2015. Due to USCIS’s failure to grant him interim employment, he has lost his Missouri driver’s license.

46. Defendants’ untimely adjudication of EAD applications and failure to issue interim employment authorization frustrate NWIRP’s mission, which is to assist immigrants in obtaining legal status and the right to lawfully work in the United States. Defendants’ policies and practices have caused NWIRP to divert scarce resources to assisting and advising clients whose EAD applications have been delayed, and who have not received interim employment authorization. NWIRP clients are understandably anxious about not receiving timely adjudication of EAD applications, and NWIRP staff must respond to client calls and walk-ins, explaining the EAD process, the delay, and the lack of remedies. NWIRP staff make calls to the 1-800 customer service number, set up InfoPass appointments, and email the USCIS Service Centers regarding delayed EADs. NWIRP is not compensated by its clients for this diversion of resources to address delayed EAD adjudication.

47. Defendants’ delays in adjudicating EAD applications and their failure to issue interim employment authorization also frustrate The Advocates’ mission of providing legal services to asylum seekers in Minnesota, North Dakota, and South Dakota. Defendants’ policies and practices have caused The Advocates to divert scarce staff resources to resolving and addressing EAD adjudication delays. In addition to fielding calls from and meeting with worried clients, staff attorneys spend considerable time calling and e-mailing USCIS, working with employers to hold jobs open until their clients’ EADs are renewed, intervening with the state on driver’s license issues, and working with agency liaison and congressional offices to try

to obtain EADs for their clients. These tasks require significant staff time, forcing the Advocates to divert very limited resources that should be used to screen, place and support asylum cases.

48. There are no administrative remedies for Plaintiffs to exhaust. No other remedy exists for Plaintiffs to compel Defendants to comply with the APA, the INA and 8 C.F.R. §§ 274a.13(d), 274a.13(a)(2), 208.7(a), and the I-765 instructions.

CLASS ALLEGATIONS

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

50. Individual Plaintiffs seek to represent the following nationwide class:

Noncitizens who have filed or will file an application for employment authorization that was not or will not be adjudicated within the required regulatory timeframe, comprising those who:

1. Have filed or will file an application for employment authorization under 8 C.F.R. § 274a.13, 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 employment authorization or interim employment authorization (the “90-Day Subclass”); or
2. Have filed or will file an application for employment authorization under 8 C.F.R. § 208.7, and who are entitled or will be entitled to employment authorization under 8 C.F.R. § 208.7(a)(1), but who

have not received or will not receive employment authorization or interim employment authorization (the “30-Day Subclass”).

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

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

53. Individual Plaintiffs’ claims are typical of the claims of the proposed class. Defendants have failed to timely adjudicate EAD applications and failed to issue interim employment authorization to the named Plaintiffs, as well as the proposed class, despite their regulatory entitlement to these documents and their right under the APA to compel agency action unlawfully withheld.

54. The Individual Plaintiffs will fairly and adequately protect the interests of the proposed class members because they seek relief on behalf of the class as a whole and have no interest antagonistic to other class members.

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

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

DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

57. An actual and substantial controversy exists between the proposed class and the Defendants as to their respective legal rights and duties. Plaintiffs contend that Defendants' actions violate Plaintiffs' rights and the rights of the proposed class.

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

59. Interim employment authorization for Individual Plaintiffs and the proposed class has been or will be withheld due to Defendants' policies and practices challenged herein. Defendants' actions constitute final agency action for the purpose of the APA, 5 U.S.C. § 701, *et seq.*

60. The INA and applicable regulations provide for no administrative appeal from the withholding of interim employment authorization. 8 C.F.R. § 274a.13(c). Accordingly, Plaintiffs have exhausted their administrative remedies.

61. Under 5 U.S.C. §§ 702 and 704, Plaintiffs and proposed class members have suffered a "legal wrong" and have been "adversely affected or aggrieved" by agency action for which there is no adequate remedy in a court of law.

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

CAUSES OF ACTION

COUNT ONE

Violation of 8 C.F.R § 274a.13(d) (mandamus claim on behalf of Plaintiffs and the 90-Day Subclass)

63. Plaintiffs and the proposed 90-Day Subclass have a clear and certain claim to have their EAD applications adjudicated in accordance with the Immigration and Nationality Act and governing regulations.

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

65. 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.

66. Plaintiffs and the 90-Day Subclass have no adequate remedy at law.

67. By failing to timely adjudicate EAD applications and failing to issue interim employment authorization to Individual Plaintiffs and the proposed 90-Day Subclass, Defendants violate 8 C.F.R. § 274a.13(d).

68. Under the Mandamus and Venue Act of 1962, 28 U.S.C. § 1361, the Court may order the Defendants to timely adjudicate Individual Plaintiffs' and the proposed class members' EAD applications, and to issue interim employment authorization, in compliance with 8 C.F.R. § 274a.13(d).

COUNT TWO

Regulatory Violations (mandamus claims on behalf of Plaintiffs and 30-Day Subclass)

69. Plaintiffs and the proposed 30-Day Subclass have a clear and certain claim to have their initial asylum EAD applications adjudicated and approved in accordance with the Immigration and Nationality Act and governing regulations.

70. Defendants have a ministerial, non-discretionary duty to adjudicate initial asylum EAD applications within 30 days.

71. Defendants have a ministerial, non-discretionary duty to issue interim employment authorization in the event that Defendants fail to adjudicate an initial asylum EAD application within 30 days.

72. Plaintiffs and the proposed 30-Day Subclass have no adequate remedy at law.

73. By failing to timely adjudicate EAD applications and failing to issue interim employment authorization to Individual Plaintiffs and the proposed 30-Day Subclass, Defendants violate 8 C.F.R. §§ 208.7(a), 274a.13(a)(2), 274a.13(d), and the I-765 Instructions, which have the force of law and are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1).

74. Under the Mandamus and Venue Act of 1962, 28 U.S.C. § 1361, the Court may order the Defendants to timely adjudicate Individual Plaintiffs' and the proposed class members' EAD applications and to issue interim employment authorization in compliance with 8 C.F.R. §§ 208.7(a)(1), 274a.13(a)(2), 274a.13(d), and the I-765 Instructions.

COUNT THREE

Violation of Administrative Procedure Act

(on behalf of Plaintiffs and 90-Day Subclass)

75. Defendants' failure to timely adjudicate Plaintiffs' and proposed 90-Day Subclass members' EAD applications or, where the regulatory time period has elapsed, issue 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.*

76. Plaintiffs and the proposed 90-day Subclass have suffered final agency action within the meaning of 5 U.S.C. § 704 and have exhausted all available remedies.

77. Plaintiffs and the proposed 90-day Subclass have a right to relief under 5 U.S.C. § 702.

COUNT FOUR

Violation of Administrative Procedure Act

(on behalf of Plaintiffs and 30-day Initial Asylum EAD Subclass)

78. Defendants' failure to timely adjudicate Plaintiffs' and proposed 30-Day Subclass members' initial asylum EAD applications or, where the regulatory time period has elapsed, to issue interim employment authorization, constitutes unlawfully withheld or unreasonably delayed agency action, and 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.*

79. Plaintiffs and the proposed 30-day Subclass have suffered final agency action within the meaning of 5 U.S.C. § 704 and have exhausted all available remedies.

80. Plaintiffs and the proposed 30-day 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

motion for class certification;

(3) Appoint all individual Plaintiffs as representatives of the class;

(4) Appoint Northwest Immigrant Rights Project, the American Immigration Council, Scott D. Pollock and Associates, P.C., Gibbs Houston Pauw, and Van Der Hout, Brigagliano & Nightingale, LLP, as class counsel pursuant to Federal Rule of Civil Procedure 23(g);

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

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

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

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

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

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

Dated this 22nd day of May, 2015.

/s/ Christopher Strawn

Chris Strawn, WSBA No. 32243
Northwest Immigrant Rights Project
615 Second Avenue, Suite 400
Seattle, WA 98104
(206) 957-8611

Melissa Crow (*pro hac vice* admission pending)
Leslie K. Dellon (*pro hac vice* admission pending)
American Immigration Council
1331 G Street, NW, Suite 200
Washington, DC 20005
(202) 507-7523

/s/ Devin T. Theriot-Orr

Devin Theriot-Orr, WSBA 33995

/s/ Robert Gibbs

Robert H. Gibbs, WSBA 5932

/s/ Robert Pauw

Robert Pauw, WSBA 13613
Erin Cipolla, CA Bar No. 264016
Gibbs Houston Pauw
1000 Second Avenue, Suite 1600
Seattle, WA 98104-1003
(206) 682-1080

Scott D. Pollock (*pro hac vice* admission pending)
Christina J. Murdoch (*pro hac vice* admission pending)
Kathryn R. Weber (*pro hac vice* admission pending)
Scott D. Pollock & Associates, P.C.
105 W. Madison, Suite 2200
Chicago, IL 60602
(312) 444-1940

Marc Van Der Hout (*pro hac vice* admission pending)
Van Der Hout, Brigagliano & Nightingale, LLP
180 Sutter St., Fifth Floor
San Francisco, CA 84104
(415) 981-3000