UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Deepthi Warrier Edakunni, Lavanya Mahadevaiah, Adrija Mamidipalli, Maansi Shashank Shandilya, Anubhav Khare, ShwethaVaidyanathan Ramkumar, Anusha Mallela, Dhanalakshmi Nataraj, Pooja Malviya, Pratima Gulati, Sandhya Ravi, Sruthi Manchala, Divya Jayaraj, Hemalatha Karthik, Naveen Deena Thomas, Shubhangini Singh, Naga Samyuktha Surapaneni, Sudha Rani Charkavarthula, Manoj Kumar Pandian, Manpreet Kaur, Radhika Ramasahayam, Meghana Reddy Bokka, Tina Bruecklmeier, Nikita Vilas Patil, Mary Rebecca Thokala, Anne De Val, Vishnu Sai Marri, Manorama Chepyala, Apurva Sharma, Jeeva Kochuparambil Jose, Dhara Shah, Anusha Arikatla, Subha Tirtha Datta, Sahithi Didugu, Radhika Sabbineni, Aashna Panjwani, Venkiteswaran Vaidyanathan, and Anuradha Mohanta, Plaintiffs, v. Alejandro Mayorkas, Secretary of the Department of Homeland Security, Defendant.	)	Case No. 2:21-cv-393 **COMPLAINT – CLASS ACTION**

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More than 91,000 people have lost their jobs because the Department of Homeland Security has not done its job. The agency has stalled processing visa extensions which in turn has killed existing and future work authorizations. The victims of the agency inaction are spouses of highly skilled and educated H-1B and L-1 visa holders, who themselves are highly educated. The United States invited them and their spouses to this country and allowed them to work as a way of encouraging their H-1B and L1 spouses to continue providing valuable services to the economy. The agency, through its inaction is now motivating these families to leave. The reason for the agency inaction is a policy founded on a demonstrably false premise. As such, the agency delays are arbitrary, capricious, and unreasonable. In the end, it is unconscionable for hard working people to lose their job because the government refuses to do its job.

PARTIES

1. Deepthi Warrier Edakunni resides in King County, Washington. She lawfully entered the United States on February 10, 2011 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant visa petition. She previously had an employment authorization document ("EAD") and worked as a Research Assistant while attending University of Washington to obtain her master's degree. Her EAD expired on October 8, 2020. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on June 12, 2020. This was approved on July 21, 2020. Concurrent with her spouse's extension, on June 12, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers LIN2022250718 and LIN2022250745. The agency has not scheduled her for biometrics. Plaintiff Deepthi Warrier

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Edakunni has no proof of legal status in the United States and has lost her job because of agency inaction.

2. Lavanya Mahadevaiah resides in King County, Washington. She lawfully entered the United States on May 12, 2016 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She currently has a job offer as Software Test Engineer for a Health Technology company. Her EAD expired on November 11, 2020. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on May 13, 2020. This was approved on June 5, 2020. Concurrent with her spouse's extension, on May 13, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers WAC2019150889 and WAC2019150927. The agency has not even scheduled her for biometrics. Plaintiff Lavanya Mahadevaiah has no proof of legal status in the United States and is in jeopardy of losing her job offer because of agency inaction.

3. Adrija Mamidipalli resides in King County, Washington. She lawfully entered the United States on January 16, 2014 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. The plaintiff is a doctor and currently employed as a clinical scientist at a reputed biotechnology company working on developing drugs and therapies for the treatment of cancer. Her EAD expires on May 24, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on December 1, 2020. This was approved on December 8, 2020. Concurrent with her spouse's extension, on December 1, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers LIN2105950599 and LIN2105950628. The

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agency has not scheduled her for biometrics. Plaintiff Adrija Mamidipalli will have no proof of legal status in the United States beginning on May 24, 2021 and is in jeopardy of losing her job because of agency inaction.

4. Maansi Shashank Shandilya resides in Sammamish, Washington. She lawfully entered the United States on March 30, 2013 as a spouse of an L-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She is employed as a Language Engineer II. Her EAD expires on May 31, 2021. Her spouse changed status to H-1B. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on August 13, 2020. This was approved on August 20, 2020. Concurrent with her spouse's extension, on August 13, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers SRC2028750809 and SRC2028750835. The agency has not scheduled her for biometrics. Plaintiff Maansi Shashank Shandilya has no proof of legal status in the United States and will lose her job because of agency inaction.

5. Anubhav Khare resides in Erie County, New York. He lawfully entered the United States on October 6, 2017 as a spouse of an L-1 visa holder. His spouse is the beneficiary of an approved employment-based immigrant petition. He previously had employment authorization and worked with HSBC Bank, USA. His EAD expired on July 26, 2020. His spouse's employer filed a petition to extend her nonimmigrant L-1 status on July 14, 2020. This was approved on January 20, 2021. Concurrent with her spouse's extension, on July 14, 2020, he filed application to extend his L-2 status on Form I-539. On August 20, 2020 he filed application to extend his EAD on Form I-765. These applications were assigned receipt numbers SRC2026650776 and

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EAC2090115333. The agency has informed him that they will reuse his prior biometrics. Plaintiff Anubhav Khare has no proof of legal status in the United States and has lost his job because of agency inaction.

6. Shwetha Vaidyanathan Ramkumar resides in Folsom, California. She lawfully entered the United States on March 20, 2017 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked at VSP Global as a Product Manager. Her EAD expired on October 30, 2020. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on June 11, 2020. This was approved on July 9, 2020. Concurrent with her spouse's extension, on June 11, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers WAC2021850978 and WAC2021850997. Shwetha attended her biometrics appointment on March 3, 2021.Plaintiff Shwetha Vaidyanathan Ramkumar has no proof of legal status in the United States and has been on unpaid leave of absence since October 31,2020 with maximum extension up to 6 months and will lose her job next month because of agency inaction.

7. Anusha Mallela resides in Lake County, Ohio. She lawfully entered the United States on February 28, 2013 as spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked at Dyna Infotech. Her EAD expired on December 31, 2020. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on September 2, 2020. This was approved on September 14, 2020. Concurrent with her spouse's extension, on September 2, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765.

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These applications were assigned receipt numbers SRC2030750563 and SRC2030750588. The agency has not scheduled her for biometrics. Plaintiff Anusha Mallela has no proof of legal status in the United States and has lost her job because of agency inaction.

8. Dhanalakshmi Nataraj resides in Morris County, New Jersey. She lawfully entered the United States on March 2, 2011 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked as an Associate Vice President for the banking sector. Her EAD expired on October 1, 2020. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on June 4, 2020. This was approved on July 1, 2020. Concurrent with her spouse's extension, on June 4, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers LIN2021150811 and LIN2021150826. The agency has not scheduled her for biometrics. Plaintiff Dhanalakshmi Nataraj has no proof of legal status in the United States and has lost her job and driver license because of agency inaction.

9. Pooja Malviya resides in Palo Alto, California. She lawfully entered the United States on June 21, 2016 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She is employed at Etsy, Inc as a Software Engineer. Her EAD expires on April 15, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on November 2, 2020. This was approved on November 5, 2020. Concurrent with her spouse's extension, on November 2, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers WAC2103350478 and WAC2103350500. The agency has not scheduled her for

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biometrics. Plaintiff Pooja Malviya will have no proof of legal status in the United States beginning April 15, 2021 and is in jeopardy losing her job because of agency inaction.

10. Pratima Gulati resides in San Jose, California. She lawfully entered the United States in 2014 as a spouse of an L-1 visa holder. In 2015 she converted to the spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization. Her EAD expired on February 28, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on September 9, 2020. This was approved on September 16, 2020. Concurrent with her spouse's extension, September 9, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers WAC2031050754 and WAC2031050816. The agency has not scheduled her for biometrics. Plaintiff Pratima Gulati has no proof of legal status in the United States and has lost out on job opportunities because of agency inaction.

11. Sandhya Ravi resides in California. She lawfully entered the United States on October 1, 2016 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She is employed as a Technology Analyst. Her EAD expires on March 25, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on October 1, 2020. This was approved on November 16, 2020. Concurrent with her spouse's extension, on October 1, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers WAC2100650978 and WAC2100651045. The agency has not scheduled her for biometrics.

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Plaintiff Sandhya Ravi will have no proof of legal status in the United States beginning on March 25, 2021 and is in jeopardy of losing her job because of agency inaction.

12. Sruthi Manchala resides in Texas. She lawfully entered the United States on April 14, 2014 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked as a Network Security Engineer. Her EAD expired on January 18, 2021. Her company put her on 90 day leave. If her case is not approved by April 7, 2021, she will lose her job. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on July 29, 2020. This was approved on August 7,2020. Concurrent with her spouse's extension, on July 29, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers LIN2026450693 and LIN2026450709. The agency has not scheduled her for biometrics. Plaintiff Sruthi Manchala has no proof of legal status in the United States and is in jeopardy of losing her job because of agency inaction.

13. Divya Jayaraj resides in Massachusetts. She first lawfully entered the United States on July 25, 2007 as an F-1 student visa holder. She reentered the United States on May 10, 2018 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked as a Quality Assurance Auditor at eClinicalWorks, an EMR/EHR solutions provider for HealthCare. Her EAD expired on November 18, 2020. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on August 25, 2020. This was approved on September 2, 2020. Concurrent with her spouse's extension, on August 25, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt

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numbers LIN2029251286 and LIN2029251297. The agency has not scheduled her for biometrics. Plaintiff Divya Jayaraj has no proof of legal status in the United States and has lost her job because of agency inaction.

14. Hemalatha Karthik resides in Arkansas. She lawfully entered the United States on June 13, 2015, as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked as a Senior Software Engineer for Walmart. Her EAD expired on December 15, 2020. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on December 28, 2018. This was approved on March 14, 2019. Concurrent with her spouse's extension, on December 28, 2018, she filed an application to extend her H-4 Status on Form I-539. Her Form I-539 was approved on March 14, 2019. On June 18, 2020, she filed an application to extend her EAD on Form I-765. This application was assigned receipt number EAC2090089330. This is a standalone H-4 EAD and not required any biometrics. Plaintiff created an expedite request around 5 times due to financial loss and medical reason, but they denied immediately without asking any supporting documents. Currently, they are having a health issue and need to have a biopsy but due to the current financial issue, they are not able to go for the surgery. Plaintiff Hemalatha Karthik is in jeopardy of losing her job position because of agency inaction.

15. Naveen Deena Thomas resides in Westchester County, New York. She lawfully entered the United States on November 14, 2013 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and was working as a Senior Quality Engineer at Affinity Solutions

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Inc. Her EAD expired on March 13, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on October 1, 2020. This was approved on October 21, 2020. Concurrent with her spouse's extension, on October 1, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers LIN2100550767 and LIN2100550784.The agency has not scheduled her for biometrics. Plaintiff Naveen Deena Thomas has no proof of legal status in the United States and has lost her work authorization and driver's license because of agency inaction.

16. Shubhangini Singh resides in Washington County, Oregon. She lawfully entered the United States on August 11, 2017 as an F-1 student visa holder. She became an H-4 visa holder on September 15, 2020. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked at Amazon as an Intern Program Coordinator. Her EAD expired on March 12, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on September 30, 2020. This was approved on November 17, 2020. Concurrent with her spouse's extension, on September 30, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers WAC2100651059 and WAC2100651109. The agency has not scheduled her for biometrics. Plaintiff Shubhangini Singh has no proof of legal status in the United States, she is in unpaid suspension and will lose her job on April 12 2021 because of agency inaction.

17. Naga Samyuktha Surapaneni resides in Dakota, Minnesota. She lawfully entered the United States on August 10, 2006 on an F-1 student visa. In July of 2016 she changed her status to the spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-

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based immigrant petition. She previously had employment authorization and worked at ICF Next as a QA Analyst. Her EAD expired on August 2, 2020. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on March 23, 2020. This was approved on April 28, 2020. Naga Samyuktha Surapaneni filed her application to extend her H-4 status on Form I-539 on March 13, 2020. She filed her EAD on Form I-765 on March 19, 2020. These applications were assigned receipt numbers EAC2015251165 and EAC2015251177. The agency scheduled her for biometrics on October 7, 2020. Plaintiff Naga Samyuktha Surapaneni has no proof of legal status in the United States and has lost her job because of agency inaction.

18. Sudha Rani Chakravarthula resides in Los Angeles, California. She lawfully entered the United States on September 28, 2013 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She is employed at Thinkbox Technology Group as a Consultant II. Her EAD expires on April 26, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on December 2, 2020. His H-1B Extension request is currently pending. His application was assigned receipt number EAC2106151014. Concurrent with her spouse's extension, on December 2, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765.These applications were assigned receipt numbers EAC2106151021 and EAC2106151026. The agency has scheduled her for biometrics. Plaintiff Sudha Rani Chakravarthula will lose her legal status in the United States on April 26,2021 and is in jeopardy of losing her job because of agency inaction.

19. Manoj Kumar Pandian resides in New Jersey. He lawfully entered the United States on June 15, 2012 as a spouse of an H-4 visa holder. His spouse is the beneficiary of an approved employment-based immigrant petition. He previously had employment authorization and is the

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Executive Chef at the restaurant he owns. His EAD expired on August 6, 2020. His spouse's employer filed a petition to extend her nonimmigrant H-1B status on June 2, 2020. This was approved on June 17, 2020. His application to extend her H-4 status on Form I-539 was also filed by his spouse's employer on June 2, 2020. On June 11, 2020 he filed his application to extend his EAD on Form I-765. These applications were assigned receipt numbers LIN2020950293 (I-539 application to extend status) and EAC2090086246 (I-765 for EAD). The agency has not scheduled for his biometrics. Plaintiff Manoj Kumar Pandian has no proof of legal status in the United States and is in jeopardy of shutting down his business because of agency inaction.

20. Manpreet Kaur resides in Santa Clara County, California. She lawfully entered the United States on April 14, 2017 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked in Cairn Biosciences as a Research Associate. She was responsible for their stem-cell projects. Her EAD expired on January 1, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on September 29, 2020. This was approved on October 14, 2020. Concurrent with her spouse's extension, on September 29, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers WAC2032851807 and WAC2032851850. The agency has not scheduled her for biometrics. She walked into the ASC office on March 17, 2021 and got her biometrics done. Plaintiff Manpreet Kaur has no proof of legal status in the United States and has lost her job because of agency inaction.

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21. Radhika Ramasahayam resides in East Greenbush, New York. She lawfully entered the United States on December 29, 2013 as an F-1 student visa holder. She converted to the spouse of an H-1B visa holder in November of 2017. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked as a Statistical Programmer. Her EAD expired on November 5, 2020. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on July 1, 2020. This was approved on July 24, 2020. Concurrent with her spouse's extension, on July 1, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers EAC2024751193 and EAC2024751210. The agency has not scheduled her for biometrics. Plaintiff Radhika Ramasahayam has no proof of legal status in the United States and has lost her job opportunities because of agency inaction.

22. Meghana Reddy Bokka resides in Bexar County, Texas. She first lawfully entered the United States on December 28, 2013 as an F-1 student visa holder. She changed her status to the spouse of an H-1B visa holder on February 12, 2021. Her spouse is the beneficiary of an approved employment-based immigrant petition. She is employed at iHeart Radio, Inc as a Senior Software Engineer. Her EAD expires on April 1, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on January 11, 2021. This was approved on January 19, 2021. Concurrent with her spouse's extension, on January 11, 2021, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers LIN2110051339 and LIN2110051361. The agency has scheduled her for biometrics. Plaintiff Meghana Reddy Bokka will have no proof of legal

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status in the United States beginning April 1, 2021 and is in jeopardy of losing her job because of agency inaction.

23. Tina Bruecklmeier resides in Ohio. She lawfully entered the United States on November 15, 2015 as a spouse of an L-1 visa holder. Her spouse is the beneficiary of an approved employment-based non-immigrant petition. She previously had employment authorization and worked at Nestlé USA. Her EAD expired on October 19, 2020. Her spouse's employer filed a petition to extend his nonimmigrant L-1 status on May 18, 2020. This was approved on August 18, 2020. Concurrent with her spouse's extension, on May 18, 2020, she filed applications to extend her L-2 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers SRC2020350354 and SRC2020350369. The agency has completed biometrics in September 2020. The L-2 was approved on February 12, 2021. Tina Bruecklmeier will lose her job in April because of agency inaction.

24. Nikita Vilas Patil resides in Santa Clara, California. She lawfully entered the United States on February 13, 2014 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked at Illumina Inc, biotech company. Her EAD expired on February 12, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on September 15, 2020.This was approved on October 1, 2020. Concurrent with her spouse's extension, on September 15, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers LIN2031151025 and LIN2031151051. The agency has not scheduled her for biometrics, but during her 4th walk-in attempt she successfully gave her biometrics at San Jose, ASC on March 17th, 2021.

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Plaintiff Nikita Vilas Patil has no proof of legal status in the United States and has been put on unpaid leave by her employer for 2 months & she will lose her job after April 12th, 2021 because of agency inaction.

25. Mary Rebecca Thokala resides in Georgia. She lawfully entered the United States on July 1, 2007 as an F-1 student visa holder. She worked on OPT and H-1B visa until November 29, 2013 and then re-entered the United States on January 14, 2014 as the spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked with Anthem, Inc as a Business Information Developer. Her EAD expired on January 22, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on August 24, 2020. This was approved on August 31, 2020. Concurrent with her spouse's extension, on August 24, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers SRC2029850501 and SRC2029850537. The agency has not scheduled her for biometrics. Plaintiff Mary Rebecca Thokala has no proof of legal status in the United States and has lost her job because of agency inaction.

26. Anne de Val resides in New York, New York. She lawfully entered the United States on February 10, 2018 as a spouse of an L-1 visa holder. Her spouse's employment-based immigrant petition is currently pending. She previously had employment authorization and worked as an IT Business Analyst for her employer in New York as a consultant. Her employer offered her a permanent position as Senior Business and Data Analyst beginning March 22, 2021. Her EAD expired on January 16, 2021. Her spouse's employer filed a petition to extend his nonimmigrant L-1 status on July 23, 2020. This was approved on November 5,

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2020. Concurrent with her spouse's extension, July 23, 2020, she filed applications to extend her L-2 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers WAC2026551433 and WAC2026551446.The agency scheduled her for biometrics on February 24, 2021. Plaintiff Anne de Val has no proof of legal status in the United States and is in jeopardy of losing her job because of agency inaction.

27. Vishnu Sai Marri resides in Irving, Texas. She first lawfully entered the United States on August 12th, 2006 on an F-1 student visa and then lawfully re-entered the United States on August 31, 2014 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked as an Information Technology Business Analyst/Project Manager. She is currently on unpaid leave. Her EAD expired on December 31, 2020. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on August 13, 2020. This was approved on August 18, 2020. Concurrent with her spouse's extension, on August 13, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers LIN2027951254 and LIN2027951284. The agency has not scheduled her for biometrics. Plaintiff Vishnu Sai Marri has no proof of legal status in the United States and is in jeopardy of losing her job because of agency inaction.

28. Manorama Chepyala resides in Fairfax, Virginia. She lawfully entered the United States on November 23, 2007 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. The plaintiff works for a not for profit, National Education Organization "The College Board". Her EAD expires on March 29, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on October 15, 2020.

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This was approved on October 20, 2020. Concurrent with her spouse's extension, on October 15, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers LIN2101550553 and LIN2101550583. She completed biometrics on February 22, 2021. Plaintiff Manorama Chepyala will have no proof of legal status in the United States beginning March 29, 2021 and is in jeopardy of losing her job because of agency inaction.

29. Apurva Sharma resides in Georgia. She lawfully entered the United States on December 29, 2015 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked at Warner Media as a Human Resources Business Partner. Her EAD expired on February 18, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on October 25, 2020. This was approved on October 31, 2020. Concurrent with her spouse's extension, on October 25, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers EAC2102651094 and EAC2102651098. The agency completed her biometrics on December 4, 2020. Plaintiff Apurva Sharma has no proof of legal status in the United States and has lost her job because of agency inaction. Furthermore, she has lost her employer provided health insurance for her and her family due to job loss.

30. Jeeva Kochuparambil Jose resides in Fairfax, Virginia. She lawfully entered the United States on December 5, 2014 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked as a Medical Technologist at Quest Diagnostics. Her EAD expired on

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March 19, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on October 1, 2020. This was approved on November 4, 2020. Concurrent with her spouse's extension, on October 1, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers LIN2100250168 and LIN2100250178. The agency has not scheduled her for biometrics. Plaintiff Jeeva Kochuparambil Jose has no proof of legal status in the United States and has lost her job because of agency inaction.

31. Dhara Shah resides in Sunnyvale, California. She lawfully entered the United States on August 19, 2011 on an F-1 student visa. She transferred to an H-1B on October 1, 2014 and her visa expired in August of 2020. She has filed application to acquire status as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously was employed at Google inc. on an H-1B visa. She is currently unable to seek new employment. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on February 6, 2020.This was approved on March 2, 2020. Plaintiff filed application to acquire H-4 status on Form I-539 on July 2, 2020 and on the same date filed application for EAD on Form I-765. These applications were assigned receipt numbers WAC2090135463 and WAC2090135462. The agency has not scheduled her for biometrics. Plaintiff Dhara Shah has no proof of legal status in the United States and has missed out on job opportunities because of agency inaction.

32. Anusha Arikatla resides in Massachusetts. She lawfully came to the United States on May 8, 2016 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and

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worked at Karyopharm Therapeutics. Her EAD expires on May 1, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on December 1, 2020.This was approved on December 8, 2020. Concurrent with her spouse's extension, on December 1, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers WAC2106150266 and WAC2106150284. The agency has not scheduled her for biometrics. Plaintiff Anusha Arikatla travelled to India and got her H-4 visa from U.S. Consulate General Chennai, India based on her spouse H-1B approval. Agency's inaction on her EAD petition by May 1, 2021 will lead to Anusha Arikatla losing the job.

33. Subha Tirtha Datta resides in Bergen County, New Jersey. He lawfully entered the United States on August 5, 2015 on an F-1 student visa. He has filed an application to acquire status as a spouse of an H-1B visa holder. His spouse is the beneficiary of an approved employment-based immigrant petition. He previously had employment authorization based on an F-1 OPT by virtue of a PhD degree from the USA. His EAD expired on September 13, 2020. His spouse's employer filed a petition to extend her nonimmigrant H-1B status on September 19, 2019. This was approved on October 2, 2019. Plaintiff filed an application to acquire H-4 status using Form I-539 on October 16, 2020 and on January 4, 2021 filed an application for EAD using Form I-765. These applications were assigned receipt numbers WAC2190007468 and EAC2190017124. He had his biometrics appointment on November 24, 2020. Plaintiff Subha Tirtha Datta has no proof of legal status in the United States for the past 5 months and is out of a job, despite being eligible for one, because of agency inaction.

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34. Sahithi Didugu resides in North Carolina. She lawfully entered the United States on May 27, 2015 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked as an Informatica Developer for client Wells Fargo through employer Collabera. Her EAD expired on March 15, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on September 29, 2020.This was approved on October 13, 2020. Concurrent with her spouse's extension, on September 29, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers EAC2033051417 and EAC2033051432. Biometrics was completed after a walk in at ASC on Feb 5th, 2021. Plaintiff Sahithi Didugu has no proof of legal status in the United States and has lost her job because of agency inaction.

35. Radhika Sabbineni resides in New York. She lawfully entered the United States on January 20, 2018 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked at Aspen Dental management Inc . Her EAD expired on March 1, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on September 25, 2020.This was approved on September 28, 2020. The plaintiff filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765 on October 29, 2020. These applications were assigned receipt numbers LIN2190061084 and EAC2190012249. The agency has not scheduled her for biometrics. Plaintiff Radhika Sabbineni has no proof of legal status in the United States and has lost her job because of agency inaction.

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36. Aashna Panjwani resides in Santa Clara, California. She lawfully entered the United States on May 5, 2018 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She previously had employment authorization and worked with Quinstreet Inc as a Product Manager for the Merchandising & Monetization division. Her EAD expired on March 5, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on June 2, 2020. This was approved on July 15, 2020. Plaintiff filed application to extend her H-4 status on Form I-539 on June 2, 2020 and on September 9, 2020 she filed application to extend EAD on Form I-765. These applications were assigned receipt numbers WAC2021050903 and WAC2090166667. Biometrics was completed on March 1, 2021. Plaintiff Aashna Panjwani has no proof of legal status in the United States and is in jeopardy of losing her job because of agency inaction.

37. Venkiteswaran Vaidyanathan resides in New Jersey. He lawfully came to the United States on May 16, 2015 as a spouse of an H-1B visa holder. His spouse is the beneficiary of an approved employment-based immigrant petition. He previously had employment authorization and worked at Raritan VAlves & Automation. His EAD expires on April 18, 2021. His spouse's employer filed a petition to extend his nonimmigrant H-1B status on November 6, 2020.This was approved on November 24, 2020. Concurrent with his spouse's extension, on November 6, 2020, he filed applications to extend his H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers LIN2103650901 and LIN2103650934. The agency has not scheduled his biometrics. Plaintiff Venkiteswaran Vaidyanathan will have no proof of legal status in the United States beginning April 19, 2021 and is in jeopardy of losing his job because of agency inaction.

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38. Anuradha Mohanta resides in New Jersey. She lawfully entered the United States on December 12, 2017 as a spouse of an H-1B visa holder. Her spouse is the beneficiary of an approved employment-based immigrant petition. She is employed at Wells Fargo and is responsible for the Liquidity Risk Management aspects of the firm. Her EAD expires on September 5, 2021. Her spouse's employer filed a petition to extend his nonimmigrant H-1B status on September 11, 2020. This was approved on September 15, 2020. Concurrent with her spouse's extension, on September 11, 2020, she filed applications to extend her H-4 status on Form I-539 and EAD on Form I-765. These applications were assigned receipt numbers LIN2030850893 and LIN2030850914. The agency has not scheduled her for biometrics. Plaintiff Anuradha Mohanta is in jeopardy of losing her job because of agency inaction.

39. Defendant Alejandro Mayorkas is the Secretary of the Department of Homeland Security. In his official capacity, he is in charge of adjudication of all immigration benefits requests, such as status under 8 U.S.C. § 6 U.S.C. §§ 112, 671. He is sued in his official capacity.

JURISDICTION AND VENUE

40. The Court has subject matter jurisdiction under 28 U.S.C. § 1331. *See Califano v. Sanders*, 430 U.S. 99, 106 (1977).

41. The United States has waived sovereign immunity over claims, other than relief seeking money damages, relating to agency action or inaction from which a person has suffered a legal wrong. *See* 5 U.S.C. § 702.

42. The Court is authorized to review final agency action or inaction under the Administrative Procedure Act (APA). *See* 5 U.S.C. §§ 702, 704.

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43. Under the APA, the Court is authorized to compel agency action unlawfully withheld or unreasonably delayed. *See* 5 U.S.C. § 706(1).

44. The Court is authorized to issue orders for declaratory and injunctive relief. *See* 5 U.S.C. § 703; 28 U.S.C. § 2201.

45. Venue is proper in this district under 28 U.S.C. § 1391(e)(1)(C) because Plaintiffs Deepthi Warrier Edakunni, Lavanya Mahadevaiah, Adrija Mamidipalli, and Maansi Shashank Shandilya reside in King Count, Washington, which lies within the jurisdiction of this Court.

LEGAL BACKGROUND

A. History and Framework of the Immigration and Nationality Act

46. The Immigration and Nationality Act separates employment-based visas into two categories: nonimmigrant (temporary) and immigrant (permanent, or green card). See 8 U.S.C. §§ 1101(a)(15), 1153 and 1182. Generally, each nonimmigrant visa has a corresponding immigrant visa category. *See id*.

47. Employment-based immigrant visas are limited by statute to 140,000 per year. 8 U.S. § 1151(d).

48. These 140,000 visas are further divided by visa categories in 8 U.S.C. § 1153(b).

49. The first preference category (EB1) is allotted 28.6% of the annual visas and includes visas for Multinational Executives and Managers (EB1C). 8 U.S.C. § 1153(b)(1)(C).

50. The EB1C visa corresponds to the nonimmigrant L visa for intercompany transferees. *Compare* 8 U.S.C. §§ 1101(a)(15)(L) and 1153(b)(1)(C).

51. Professional workers (requiring a bachelor's, master's degree, or equivalent to such degrees) may claim visas allotted to either visa categories for EB2-1, Professionals Holding

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Advanced Degrees, or EB3-2, Professionals. These categories correspond to the nonimmigrant H-1B. 8 U.S.C. § 1101(a)(15)(H)(i)(b).

52. There is no statutory limit on the number of L visas that may be granted in a fiscal year.

53. Spouses and minor children of L-1 visa holders are permitted to enter the United States as derivatives pursuant to 8 U.S.C. § 1101(a)(15)(L). 8 C.F.R. § 214.2(l)(7)(ii).

54. The law limits the number of H-1B visas that may be awarded in a fiscal year to 85,000.

55. Spouses and minor children of such H-1B workers are permitted to enter the United States through 8 U.S.C. § 1101(a)(15)(H) which also allows for entry of "the alien spouse and minor children of such alien specified in this paragraph if accompanying him or following to join him."

56. The "Immigration Services and Infrastructure Improvements Act of 2000," Pub. L. No. 106-313, codified at 8 U.S.C. § 1571(b), includes the following:

> It is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application, except that a petition for a nonimmigrant visa under section 1184(c) of this title should be processed not later than 30 days after the filing of the petition.

8 U.S.C. § 1571(b).

57. Section 1184(c) includes nonimmigrants described in 1101(a)(15)(H) and (L). Both subsections (H) and (L) explicitly include the primary beneficiary workers and their spouses.

58. Nonimmigrants seeking admission to the United States must possess a visa petition approved by the agency. 8 U.S.C. § 1184(c)(1).

59. If the visa petition is approved, they may appear at a consulate to receive the visa stamp. 8 U.S.C. § 1201(d).

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60. The approved petition and visa stamp are necessary for entry into the United States. 8 U.S.C. § 1184(a)(1).

61. Nonimmigrants may extend their authorized stay in the United States in one of two ways. First, they may exit the United States and apply for a new visa stamp at a United States consulate. 22 C.F.R. § 41.111(a). *See also* 9 FAM 402.10-14(A)(a); 9 FAM 402.12-16(A)(a). Alternatively, they may extend their stay in the United States without exiting the country by filing an application with the agency to extend the previously approved visa (or change status to a different visa category). 8 C.F.R. § 214.1(c)(2)

62. If a nonimmigrant departs the country after receiving an extension from the agency, they must appear at a consulate for a new visa stamp prior to seeking re-entry and readmission to the United States at a port of entry. 8 C.F.R. § 214.1(b); *see also* 9 FAM 402.10-14(A)(b); 9 FAM 402.12-16(A)(a).

63. Both H-4 and L-2 spouses are "derivative beneficiaries" and have status that may be concurrent but not exist independent of the primary H-1B or L-1 spouse. 8 U.S.C. §§ 1101(a)(15)(H), (L).

64. Extensions of H-4 and L-2 status may not exceed the duration of the primary beneficiary's approved stay. 8 C.F.R. § 214.1(c)(2); *see also* 9 FAM 402.10-14(A)(b); 9 FAM 402.12-16(A)(a).

65. An L-2 or H-4 nonimmigrant, whose spouse's L-1 or H-1B extension of stay has been approved by the agency, may extend their status by filing an I-539 petition with the agency or departing the United States and applying for a visa at the consulate. 8 C.F.R. § 214.1(c); 22 C.F.R. § 41.111(a); 22 C.F.R. §§ 41.112(c)-(d); *see also* 9 FAM 402.10-14(A)(b); 9 FAM 402.12-16(A)(a).

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B. L-1 and L-2 Visa History

66. Congress created the L-1 visa in 1970. Pub. L. 91-225 (April 7, 1970).

67. From the beginning Congress included spouses and minor children in the class of persons entitled to benefits under the L visa category. *Id.*

68. The purpose of the L visa was to facilitate greater investment in the United States by multinational companies. H. Rpt. 91-851, "*Numerical Limitation of Western Hemisphere Immigration, Exclusion of Officers and Managerial Personnel of Western Hemisphere Business*," Feb. 24, 1970.

69. Congress created the L visa following the immigration reform of 1965, which imposed caps on permanent immigration from the Western Hemisphere. *Id.* The caps ended the ability for Western Hemispheric companies to quickly transfer employees to the United States using permanent immigrant visas and, the Senate Judiciary Committee found in 1969, "resulted in a serious disruption of the traditional conduct of trade and commerce between Western Hemisphere countries and the United States." Congressional Record-Senate, pgs. 23,670-23,671 (August 13, 1969). *See also* PM-602-0111, L-1B Adjudications Policy (Aug. 17, 2015). ("Creation of the program reflected Congress' concerns with meeting the workforce needs of multinational employers operating in an increasingly global marketplace.").

70. Congress established the L-1 program to "eliminate problems now faced by American companies having offices abroad in transferring key personnel freely within the organization," and to allow for "the exchange and development of managerial personnel from other nations vital to American companies competing in modern-day world trade." House Rep. No. 91-851 (Feb. 24, 1970), 1970 U.S.C.C.A.N. 2750 at 2754.

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71. The 1970 statute was silent on the question of whether the spouse of an L visa employee should be granted employment authorization. *See* Pub. L. 91-225, § (b).

72. The defendant agency's predecessor, the Immigration and Nationality Service ("INS"), created a regulation addressing employment authorization of L visa dependents which states: "The spouse and unmarried minor children of the beneficiary are entitled to L nonimmigrant classification, subject to the same period of admission and limits as the beneficiary, if the spouse and unmarried minor children are accompanying or following to join the beneficiary in the United States. Neither the spouse nor any child may accept employment unless he or she has been granted employment authorization." 8 C.F.R. § 214.2(l)(7)(ii) (2000).

73. The INS never created a regulation specifically authorizing L spouses with the legal ability to obtain employment authorization. *See* 8 C.F.R. § 274a.12 (2000).

74. Congress amended the INA by passing the Immigration Act of 1990 ("IMMACT"). Pub. L. 101-649 (November 29, 1990).

75. Section 206 of the IMMACT added 8 U.S.C. § 1184(c)(2)(C), which reads: "The Attorney General shall provide a process for reviewing and acting upon petitions under this subsection with respect to nonimmigrants described in section 101(a)(15)(L) [8 USC § 1101(a)(15)(L)] within 30 days after the date a completed petition has been filed."

76. Both the L-1 visa employee and the L-2 visa spouse are nonimmigrants described in 8 U.S.C. § 1101(a)(15)(L).

77. To qualify for an L-2 visa the petitioner must establish two adjudicative facts: they have a qualifying relationship with an L-1 visa holder; and the L-1 visa has been approved. 8 U.S.C. § 1101(a)(15)(L); 8 C.F.R. § 214.2(l)(7)(ii)

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78. Congress again amended the INA in 2002, with Pub. L. 107-205, *Work Authorization for Spouses of Intracompany Transferees* (January 16, 2002), which added subsection (E) to 8 U.S.C. § 1184(c)(2), providing: “In the case of an alien spouse admitted under section 101(a)(15)(L), who is accompanying or following to join a principal alien admitted under such section, the Attorney General shall authorize the alien spouse to engage in employment in the United States and provide the spouse with an ‘employment authorized’ endorsement or other appropriate work permit.’’

79. The House of Representatives Committee Report 107-188 (Aug. 2, 2001) explained that:

> the current law allows spouses (and minor children) to come to the U.S. with the L visa recipients, spouses are not allowed to work in the U.S. Since working spouses are now becoming the rule rather than the exception in the U.S. and many foreign countries' multi-national corporations are finding it increasingly difficult to persuade their employees abroad to relocate to the United States. Spouses hesitate to forgo their own career ambitions or a second income to accommodate an overseas assignment. This factor places an impediment in the way of these employers' use of the L visa program and their competitiveness in the international economy. Thus, H.R. 2278 would allow the spouses of L visa recipients to work in the United States while accompanying the primary visa recipients.

Id.

80. In the wake of Pub. L. 107-205, neither the defendant agency nor its predecessor amended regulations relating to L-2 visa holder's employment authorization.

81. At present, 8 C.F.R. § 214.2(l)(7)(ii) (2020) still prohibits L-2 spouses from accepting employment “unless he or she has been granted employment authorization.”

82. At present, 8 C.F.R. § 274a.12 does not include provisions interpreting 8 U.S.C. § 1184(c)(2)(E)'s grant of employment authorization to L-2 visa holders.

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83. The agency does include a reference to L-2 visa holders in its instructions to Form I-765, pg. 10 (Current August 25, 2020), and states they may apply for employment authorization if they prove lawful L-2 status, and a relationship to an L-1 visa holder.

84. The adjudicative facts for the L-2 and EAD are the same.

85. The agency charges L-2 visa holders $410 to apply for the employment authorization application.

86. Congress amended the INA's with three ameliorative pieces of legislation: Pub. L. 91-225 (April 7, 1970) (creating the L category to allow international businesses flexibility to bring valued executives and their spouses to the U.S.); Section 206 of the IMMACT added 8 U.S.C. § 1184(c)(2)(C) (demanding the agency process L visas in 30 days); and, Pub. L. 107-205, *Work Authorization for Spouses of Intracompany Transferees* (requiring the agency grant employment authorization incident to status).

C. <u>H-1B and H-4 Visa History</u>

87. The current H-1B program was established through the passage of the Immigration Act of 1990, which was the product of a legislative compromise to afford businesses greater access to skilled foreign workers while providing protections to United States workers. *See* Pub. Law No. 101–649 § 205(c) (Nov. 29, 1990); *Greater Missouri Medical*, ARB No. 12-015 at 10 (Dep't of Labor, Admin. Rev. Bd. 2014),[1] *overruled on other grounds*, *Greater Mo. Med. Pro-Care Providers, v. Perez*, 812 F.3d 1132 (8th Cir. 2015).

[1] Available at: https://www.dol.gov/arb/decisions.htm (last visited May 1, 2020).

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88. As initially drafted, skilled H-1B workers were limited to a six-year period of authorized stay in the United States.

89. If employers sought to retain H-1B workers beyond six years, they would file immigrant visa petitions on behalf of those workers to retain their services as permanent residents. *See* 8 U.S.C. §§ 1153(b), 1154(b).

90. Based on the employer's approved immigrant visa petition, skilled H-1B workers may apply for adjustment of status to a permanent resident to remain in the United States. *See* 8 U.S.C. § 1255(a).

91. However, there is a mismatch in the annual number of employment-based immigrant visas for professionals and H-1B visas. As a result of those numerical limits, many of the employment-based preference categories are oversubscribed, limiting the ability of skilled H-1B workers to obtain permanent resident status and continue to fill the sustained needs of American companies. *See* 8 C.F.R. § 245.1(a); 80 Fed. Reg. 10284, 10286-87 (USCIS) (Feb. 25, 2015).

92. This scenario has rendered H-1B visa holders from India would not be eligible for an immigrant visa until long after their maximum nonimmigrant duration of six years expired. *See* 8 C.F.R. § 245.1(a); 80 Fed. Reg. at 10286-87.

93. In 2002, Congress legislated to fix this problem, and granted certain H-1B visa holders' new privileges. *See* American Competitiveness in the 21st Century Act (AC21), Pub. Law No. 106-313, § 106(a)-(b) (Oct. 17, 2000); Pub. Law No. 107-273 § 11030A(a)-(b) (Nov. 2, 2002).

94. Under AC21, H-1B holders who were also the beneficiaries of an approved employment-based immigrant visa were granted the ability to change jobs and stay in the United States beyond six years. See 8 U.S.C. § 1184(g)(4).

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95. Under this legislative mandate, USCIS acknowledged that "Congress therefore has passed legislation specifically encouraging, and removing impediments to, the ability of H-1B nonimmigrants to seek [lawful permanent resident] status, such that they may readily contribute permanently to United States economic sustainability and growth." 80 Fed. Reg. at 10289.

96. Although AC21 granted H-1B visa holders benefits similar to those enjoyed by lawful permanent residents, the question of H-4 spouse employment eligibility was left open.

97. The defendant agency noted that the overarching goal of AC21 was to retain high skilled professionals for United States employers by providing them most of the same benefits they would enjoy if they had an immigrant visa immediately available. *See* Notice of Proposed Rulemaking ("NPRM"), 79 Fed. Reg. 26891 (May 12, 2014).

98. The agency determined that many H-1B professionals are married to highly educated professionals who also have career ambitions. 80 Fed. Reg. 10284 (Feb. 25, 2015).

99. Despite AC21's allowance of H-1B extensions beyond the sixth year, many professionals were forced to leave the US because their dependent spouses lacked the ability to work while the spouses waited in queue for his or her immigration visa to become current. *Id.* ("These waiting periods increase the disincentives for H–1B nonimmigrants to pursue LPR status and thus increase the difficulties that U.S. employers have in retaining highly educated and highly skilled nonimmigrant workers").

100. To rectify this issue, in 2014, DHS issued a NPRM. *Employment Authorization for Certain H-4 Dependent Spouses*, 79 Fed. Reg. 26886 (May 12, 2014).

101. The 2014 NPRM discussed the statutory authority for extending employment authorization to certain H-4 visa holders, and how such a change was consistent with the purpose of AC21. *Id.*

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102. The agency analyzed the H-4 program in general and noted that in its experience administering the program: "DHS is not aware of any risk factors—such as fraud, criminal activity, or threats to public safety or national security—associated with H–4 dependent spouses as a whole that would support imposing [additional burdens]." 80 Fed. Reg. 10297

103. In response to commenters who requested the agency take additional steps to prevent fraud or enhance public safety prior to granting H-4s an EAD, the agency stated:

> Over 100 commenters raised concerns related to fraud and public safety, including issues related to resume fraud, marriage fraud, participation by individuals with criminal records, unauthorized employment, and employer abuse in the H–1B program. Strict consequences are already in place for immigration-related fraud and criminal activities, including inadmissibility to the United States, mandatory detention, ineligibility for naturalization, and removability.

80 Fed. Reg. at 10300.

104. The agency was concerned that gaps in H-4 employment authorization could occur because of processing delays in H-4 extension applications. *Id*. at 10299.

105. In 2015, when this regulation was finalized and promulgated, the agency had a regulation demanding it process all applications for employment authorization within 90 days.

106. In the analysis of the final rule, the agency noted that the H-1B, H-4 and EAD extension applications all require related inquiries and should be adjudicated together:

> DHS currently permits an H–4 dependent spouse to file Form I–539 concurrently with a Petition for a Nonimmigrant Worker (Form I–129) filed on behalf of the H–1B nonimmigrant. This provides several efficiencies, *as the status of the H–4 dependent spouse is based on the resolution of the H–1B nonimmigrant's Form I–129 petition and both forms may be processed at the same USCIS locations*. For similar reasons, DHS has decided to permit H–4 dependent spouses to file Applications for Employment

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> Authorization (Forms I–765) concurrently with certain related benefit requests: Applications to Extend/Change Nonimmigrant Status (Forms I–539) and, if applicable, with Petitions for a Nonimmigrant Worker (Form I–129). As noted previously, DHS has decided to issue EADs to eligible H–4 dependent spouses with validity dates that match their authorized periods of admission. That period of admission is determined as part of the Form I–539 application adjudication, which, in turn, is largely dependent on the H–1B nonimmigrant's period of admission determined as part of the Form I–129 adjudication. Because adjudication of those forms are interrelated, and because they are submitted to the same USCIS locations, DHS has determined that it is reasonable to allow those forms to be concurrently filed.

80 Fed. Reg. 10298.

107. In the agency's estimation, concurrently filing: "*should also help H-4 dependent spouses avoid gaps in employment authorization, as these forms may be filed concurrently up to six months in advance of the date of need*." *Id.* at 10299 (emphasis added).

108. To qualify for an H-4 visa the applicant need only be married to an H-1B visa beneficiary.

109. To qualify for an H-4 EAD the applicant need only to be married to an H-1B visa beneficiary who is also the beneficiary of an approved petition for an immigrant visa.

110. Congress amended the INA's H visa with several ameliorative provisions with the intent of making the United States more attractive to H-1B visa holders and improve United States businesses' ability to retain these employees. American Competitiveness in the 21st Century Act (AC21), Pub. Law No. 106-313, § 106(a)-(b) (Oct. 17, 2000); Pub. Law No. 107-273 § 11030A(a)-(b) (Nov. 2, 2002).

111. The agency implemented Congressional intent and created the H-4 EAD regulations to incentive H-1B workers and their families to stay in the United States.

FACTS

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A. Volume of Applications and Demands on Agency Resources

112. The agency requires applicants for extension or change of H-4 or L-2 status to submit a Form I-539.

113. The Form I-539 is used by 28 different visa categories. *See* Instructions to Form I-539 (October 15, 2019).

114. The L-2 and H-4 visas are two of the visa categories required to utilize this form for an extension or change of status.

115. The adjudicative facts required for an L-2 extension or change of status are: is the applicant married to a current L-1 visa holder.

116. The adjudicative facts required for an H-4 extension or change of status are: is the applicant married to a current H-1B visa holder.

117. The agency states that it takes adjudicators 0.51 hours (30.6 minutes) of touch time to adjudicate an extension of nonimmigrant status filed on a Form I-539. 84 Fed. Reg. 62289, 62292 (Nov. 14, 2019).

118. The agency projected it would process 231,000 Forms I-539, Application to Extend/Change Nonimmigrant Status. *Id.* at 62289.

119. Based on the agency's projected volume and average touch time, it takes 117,810-man hours to process the nation's entire I-539 workload.

120. Based on forty-hour weeks, it would take 59 full time employees to process the nation's entire I-539 workload in a year.

121. The agency has four service centers processing I-539s.

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122. In 2020 the Nebraska Service Center alone had 132 full time employees assigned to its "H-4 team" working on Form I-539s.

123. The agency requires L-2 visa holders to apply for an employment authorization document on Form I-765.

124. The agency requires eligible H-4 visa holders to apply for an employment authorization document on Form I-765.

125. Immigration benefits submitted on Forms I-539 and I-765 are processed by the agency at one of four service centers located in California, Nebraska, Texas, or Vermont.

126. The service centers are part of USCIS's Service Center Operations Directorate.

127. USCIS has increased the manning of its field operations, staff growing from 3,969 employees in 2016 to 5,197 in 2020.

128. The Nebraska Service Center alone increased its "H-4 team" from 59 employees in 2019 to 132 in 2020.

129. The agency states that it takes adjudicators 0.2 hours (12 minutes) of touch time to adjudicate an application for an employment authorization filed on a Form I-765. 84 Fed. Reg. 62289, 62292 (Nov. 14, 2019).

130. The 12-minute touch time for Form I-765 adjudications is an average of time spent on applications from all visa categories. The adjudicative facts required for an EAD application will vary in complexity depending on the underlying visa category.

131. The adjudicative facts in an L-2 EAD application are: Is the applicant married to an L-1 visa holder and is there time left on the L-1 validity period?

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132. In FY 2020 the agency received 24,168 applications for employment authorization filed by L-2 visa holders. https://www.uscis.gov/sites/default/files/document/reports/I-765_Application_for_Employment_FY03-20.pdf. pg. 2, line A18 (accessed March 16, 2021).

133. Even if one assumes the average I-765 touch time applies to L-2 EADs, based on the agency's projected volume, it takes 4,833.60-man hours to process the nation's entire I-539 workload.

134. Based on forty-hour weeks, it would take fewer than three full time employees to process the nation's entire L-2 I-765 workload in a year.

135. The agency concedes that L-2 EADs are statutorily mandated and nondiscretionary. *Id.* note 4.

136. The adjudicative facts for an H-4 EAD are: does the applicant have an H-4 visa; and does the H-1B visa holder spouse have an approved petition for an immigrant visa?

137. In FY 2020 the agency received 67,690 applications for employment authorization filed by H-4 visa holders. *Id.* at line C26.

138. Even if one assumes the average I-765 touch time applies to H-4 EADs, based on the agency's projected volume, it takes 13,538-man hours to process the nation's entire I-539 work load.

139. Based on forty-hour weeks, it would take fewer than seven full time employees to process the nation's entire H-4 I-765 workload in a year.

140. Some H-4 and L-2 applicants for an EAD already have approved status, and do not need to file a Form I-539 to extend status, they simply need the EAD adjudicated to begin working.

B. Identity Management Biometrics and the US VISIT Program

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141. The Department of Homeland Security and the Department of State collect biometrics from all aliens entering or seeking admission to the United States through the United States Visitor and Immigrant Status Indicator Technology Program ("US-VISIT"). 73 Fed. Reg. 77473 (December 19, 2008).

142. This program was originally implemented in 1994 and expanded in 2003 and again in 2009 to capture biometrics from nearly all applicants for admission to the United States.

143. Applicants for visas appear at the US consulate and provide their visa petition, biographic information (name, birth date, place of birth, names of family members), and biometrics. *Id.*

144. The information is then linked together, creating a unique user profile. *Id.*

145. When the applicant arrives at the port of entry they provide their passport, visa, and once again provide biometrics. *Id.*

146. The biometrics are then electronically compared against those given at the consulate. *Id.*

147. When the biographic and biometric information matches the applicant is admitted to the United States. *Id.*

148. "By linking the alien's biometric information with the alien's travel documents, DHS reduces the likelihood that another individual could assume the identity of an alien already recorded in US-VISIT or use an existing recorded identity to gain admission to the United States." *Id.*

149. Every H-1B, H-4, L-1, and L-2 visa applicant since 1994 has been required to give biometrics at least twice: once when applying for a visa at the consulate; and a second time at the port of entry when an officer inspects them for admission.

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150. Biometrics gathered through US-VISIT are retained by DHS in the Automated Biometric Identification System ("IDENT"). *Id*. at 77480.

151. The Department of Justice Federal Bureau of Investigation ("FBI") Criminal Justice Information Services (CJIS) Division administers the Integrated Automated Fingerprint Identification System (IAFIS)/Next Generation Identification (NGI). https://www.fbi.gov/services/information-management/foipa/privacy-impact-assessments/iafis-ngi-biometric-interoperability. (accessed March 17, 2021).

152. When US-VISIT/IDENT began collecting biometrics the system was not interoperable with FBI's IAFIS/NGI system. *Id*.

153. In a 1999 conference report (House Report 106-479) for Fiscal Year (FY) 2000 DOJ appropriations, Congress directed the DOJ to provide an implementation plan "to integrate the INS IDENT and the FBI IAFIS systems."

154. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Public Law 107-56 Section 403) required a "fully integrated means to share law enforcement and intelligence information."

155. Section 302 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (Public Law 107-173) stated that the integrated entry/exit system must "make interoperable all security databases relevant to making determinations of admissibility under Section 212 of the Immigration and Nationality Act."

156. In the conference report (Senate Report 108-280) for the DHS Appropriations Bill for Fiscal Year (FY) 2004, Congress directed that "[t]he biometric infrastructure being built [US VISIT] must be a viable long-term solution fully interoperable with the FBI Integrated Automated

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Fingerprint Identification System [IAFIS] that meets biometric standards of the National Institute of Standards and Technology [NIST].”

157. In response to the Congressional mandates DHS and FBI began working towards making US-VISIT/IDENT and IAFIS/NGI interoperable. *Interim Data Sharing Model (“iDSM”) for the Automated Biometric Identification System (IDENT)/Integrated Automated Fingerprint Identification System (IAFIS) Interoperability Project* (September 1, 2006) https://www.dhs.gov/sites/default/files/publications/privacy_pia_usvisit_007-2006.pdf (accessed March 17, 2021).

158. The FBI and DHS made a plan to achieved interoperability which was separated into three phases. *Id*.

159. Phase 1 was the “interim Data Sharing Model (iDSM).

160. This phase allowed US-VISIT/IDENT and IAFIS to share data for the purpose of biometric matching.

161. The iDSM established the platform and processes necessary to support limited data sharing and acted as the first step toward more extensive sharing. In this phase the data to be shared was limited to two data sets: data on immigration violators provided by Immigration and Customs Enforcement (ICE) and data on certain critical visa refusals provided by the Department of State (DOS). *Id*. The data shared under iDSM was limited to “high priority” immigration violators and certain critical visa refusals at DOS.

162. The FBI’s PIA on Phase 1 interoperability acknowledges that US-VISIT/IDENT and IAFIS data will be shared, and when needed IDENT information will be stored on IAFIS servers.

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https://www.fbi.gov/services/information-management/foipa/privacy-impact-assessments/iafis-ngi-biometric-interoperability (Accessed March 17, 2021).

163. Homeland Security Presidential Directive (HSPD) 24, June 5, 2008, established a framework to ensure that Federal executive departments and agencies use mutually compatible methods and procedures in the collection, storage, use, analysis, and sharing of biometric and associated biographic and contextual information of individuals in a lawful and appropriate manner.

164. On October 11, 2008, DHS published its PIA on the second phase of interoperability: Initial Operating Capability ("IOC"). https://www.dhs.gov/sites/default/files/publications/PIA%20US-VISIT%20IOC%20007-a-2008.pdf (accessed March 17, 2021).

165. IOC joined the IDENT and IAFIS systems, allowing a "single search" capability. *Id*.

166. DHS IDENT users were able to "obtain data from IAFIS indicating criminal history for biometrically-matched individuals." *Id*.

167. Prior to IOC, separate fingerprints were required to be submitted from each agency. *Id*. at pg. 4.

168. IOC streamlined the process, allowing IDENT and IAFIS users "to submit one set of fingerprints to either US-VISIT or CJIS and that set of fingerprints will be queried against both databases without additional input from the user." *Id.*

169. IOC also granted the FBI full access to data in the IDENT system unless sharing was explicitly forbidden by law. *Id*. at pg. 5.

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170. The PIA acknowledges that IDENT is composed of information collected by: DHS during entry/exit, immigration, enforcement, and credentialing encounters; and DOS visa encounter data. *Id*. at pg. 6.

171. "Most information stored in IDENT is collected directly from an individual through his or her interaction with an immigration and border management, credentialing, or law enforcement process. Such processes include, but are not limited to, applying for a visa, processing at a U.S. port of entry, seeking status as a lawful permanent resident, applying for Federal employment, or being arrested for an immigration violation." *Id*. at pg. 7.

172. Interoperability provides immigration officers an alert if an applicant's biometrics are connected to a file in IAFIS. *Id*. at pg. 8-9.

173. Immigration officers may then examine the record in IAFIS to determine if it impacts eligibility for benefits or admission. *Id.*

174. According to the DHS, interoperability between IDENT and IAFIS was on achieved on October 13, 2011 https://www.dhs.gov/sites/default/files/publications/privacy_pia_007-b-nppd_visit.pdf (accessed March 17, 2021).

175. The DHS-DOJ interoperability system has expanded to allow DOJ access to a "comprehensive IDENT response, containing up to all data fields captured in IDENT…" *Id*. at pg. 3.

176. At all times relevant to this suit, the agency has had the legal authority to share biometrics collected at the consulate and port of entry with the FBI through IDENT/IAFIS interoperability.

177. At all times relevant to this suit, the agency has had the technical ability to share biometrics collected at the consulate and port of entry with the FBI through IDENT/IAFIS interoperability.

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178. At all times relevant to this suit the agency has had the legal and technical ability to compare existing biometrics collected at the consulate or port of entry against the FBI IAFIS system through IDENT/IAFIS interoperability.

C. Pre-2019 Rule of Reason for Form I-539 and I-765 Processing

179. From 2015 to March 2019, the agency's rule of reason governing H-4 and L-2 extensions required concurrent adjudication with the primary H-1B or L-1 beneficiary's extension.

180. This increased efficiency as the same adjudicative facts were required to adjudicate all applications.

181. The agency followed this rule of reason with the express intent of avoid gaps in employment authorization and status that could be caused by processing delays.

182. If the primary H-1B or L-2 extension was submitted in premium processing the H-4 or L-2 would be processed in 15 days.

183. The agency's prior rule of reason resulted in the timely decision of applications and avoided gaps in employment authorization in nearly all cases.

D. Failed Attempts at H-4 EAD Recission and the Pretext for Requiring New Biometrics

184. Following the 2016 Presidential election, the Federation for American Immigration Reform ("FAIR") published its "Immigration Priorities for the 2017 Presidential Transition."

185. FAIR's listed priorities that dovetailed with the administration's immigration strategy for the following four years.

186. Among FAIR's priorities for the Trump administration was ending employment authorization for H-4 spouses. In part the document states: "DHS must revoke work authorization

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for H-1B spouses. The INA expressly denies work authorization to H-1B spouses and the Obama administration's decision to ignore the relevant statutes is blatantly illegal."

187. The Immigration Reform Law Institute ("IRLI") is FAIR's affiliated legal organization. https://www.fairus.org/about-fair/immigration-reform-law-institute (accessed February 4, 2021).

188. On March 6, 2017, President Trump issued Executive Order 13780, *Protecting the Nation from Foreign Terrorist Entry into the United States*. 82 Fed. Reg. 13209.

189. Section 8 of the Executive Order directs DHS to expedite completion of a "biometric entry-exit tracking system for in-scope travelers to the United States." *Id.* at 13216.

190. On August 30, 2019, the Transportation Security Administration and US Customs and Border Patrol published "Deployment of Biometric Technologies." https://www.tsa.gov/sites/default/files/biometricsreport.pdf (accessed March 17, 2021).

191. The report to Congress describes its development and deployment of the biometric entry-exit tracking system for in-scope travelers. *Id.* at 11.

192. The system referred to by the Executive Order, and deployed by CBP involves capturing facial images at the point of departure and using facial recognition software at the port of entry to process travelers. *Id.* at 11-13.

193. Nothing in the Executive Order discussed taking biometrics for nonimmigrant visa extensions.

194. In 2017 the agency announced that it intended to rescind the regulations granting H-4 EADs. RIN: 1615-AC15, Removing H-4 Dependent Spouses From the Class of Aliens Eligible for Employment Authorization.

195. The anticipated publication date for the new regulation was the Spring of 2018. *Id.*

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196. The agency failed to meet its self-imposed deadline to propose a regulation ending the H-4 EAD.

197. On information and belief this failure created tensions between the administration and the Director of USCIS, Lee Francis Cissna and his Chief Counsel Craig Symons.

198. On information and belief, when it became apparent the agency could not complete a proposed regulation on time, the administration sought to change its rule of reason governing the processing of H-4 extensions and EADs with the intent of creating gaps in employment authorization and status.

199. On April 30, 2018, the agency published its intent to create a new Form I-539. 83 Fed. Reg. 18858 (April 30, 2018) (discussing changes to OMB Control Number 1615-0003).

200. The new Form I-539 would require applicants to provide new biometrics at an agency ASC prior to receiving a decision on the H-4 or L-2 extension. *Id.*

201. The new form changed the agency's rule of reason that required concurrent adjudication of the primary beneficiary's H-1B or L-2 and the dependent H-4 or L-2s visa and EAD extensions. *Id.*

202. The agency's new rule of reason for processing H-4 and L-2 extensions required collection of new biometrics prior to adjudication.

203. Applicants for biometric appointments are required to pay a fee to cover the agency's costs associated with the process.

204. The agency anticipated the biometric requirement on Form I-539 applicants would begin in April 2018, when it published notice in the Federal Register.

205. It implemented the new form and biometric requirement on March 11, 2019.

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206. The agency had 10 months to prepare for the increased volume it created and expected at its ASCs.

207. On February 20, 2019, almost a month prior to the implementation of the new Form I-539, the agency finally transmitted the proposed rule to rescind the H-4 EAD regulation to the Office of Management and Budget ("OMB").

208. The Immigration Reform Law Institute communicated with the agency multiple times in early 2019 regarding the "H-4 Recission Rule."

209. In early 2019 IRLI and FAIR communicated several times with the administration regarding rescinding the regulation which allows H-4 EADs.

210. IRLI scheduled a meeting with the administration.

211. In March 2019, IRLI provided the agency with a point paper advocating the elimination of H-4 visa holders from the economy.

212. This paper expounded in greater detail its desire and reasoning for ending H-4 employment authorization.

213. On information and belief, the failure to complete a regulation revoking the regulation creating the H-4 EAD was a significant factor in Director Cissna's departure and Chief Counsel Symons' demotion.

214. In November 2020, OMB returned the proposed regulation to DHS for further analysis instead of publishing it for notice and comment in the Federal Register.

215. The agency continued to pursue publishing the regulation until it was officially withdrawn on January 25, 2021, concomitantly with the inauguration of President Biden.

E. Post March 2019 Rule of Reason: Biometric Requirement for I-539 Applicants

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216. On March 11, 2019, the agency announced the implementation of the new Form I-539 and its biometric requirement.

217. Citing EO 13780, the agency announced it would begin requiring applicants using Form I-539, Application to Extend/Change Nonimmigrant Status, to provide biometrics for the FBI system. *USCIS Teleconference on Revised Form I-539 and New Form I-539A,* https://www.uscis.gov/sites/default/files/document/outreach-engagements/USCIS_Teleconference_on_Revised_Form_I-539_and_New_Form_I-539A.pdf (accessed March 12, 2021).

218. Beyond the conclusory reference to the Executive Order, the agency did not explain how it applied to Form I-539 applicants, who are already in the United States seeking to extend an authorized stay and are not seeking entry or exit.

219. The agency stated the new biometrics were required for "identity management." *Id.*

220. The agency stated it need biometrics to ensure applicants "are who they claim to be." *Id.*

221. The agency noted that: "The Department of State fingerprints nonimmigrants when issuing a visa, and U.S. Customs and Border Protection (CBP) fingerprints nonimmigrants when entering the United States. In both cases, USCIS *may not* have access to all of the results of those fingerprint-based background checks." *Id*. (emphasis added).

222. The agency stated that biometrics collected by US Customs and Border Protection ("CBP") and Consulates (i.e. the US VISIT program biometrics) cannot be used "even if available, without first conducting a biometric-based identity verification prior to submission of fingerprints to the Federal Bureau of Investigation (FBI)." *Id.*

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223. The agency announcement did not explain why the IDENT/IAFIS interoperability program, which was designed to address the concerns in the statement, was no longer adequate to continue with the status quo.

224. Nor did the agency explain why new biometrics were required for identity management when reuse of biometrics from the US-VISIT/IDENT system had been preferred:

> Identity verification *may be done outside of the United States* (by DHS or DOS) or within the United States (at ASCs, USCIS offices, or other DHS facilities). Identity verification also *allows the reuse of enrolled identity data* (both biometric and biographic) that has already been vetted. Such reuse reduces the amount of erroneous or conflicting data that can be entered into systems and reduces the cost and complexity of repetitive collection and validation. Reusable fingerprints allow for more immediate and recurrent background checks, and reusable photographs allow for quick production of documents with high consistency and integrity. DHS recognizes that biometric reuse is acceptable, when there is identity verification, but in the case of children biometric reuse could be impacted by the rapidly changing physical attributes of children.

85 Fed. Reg. 56351.

225. In litigation on this specific point, the agency provided the sworn declaration of Mr. Brian J. Broderick, Deputy Chief of the Identity and Information Management Division within the Immigration Records and Identity Services Directorate. *See Gona v. USCIS*, 1:20-cv-3680 (RCL) (DDC 2021), ECF 11-1. Exhibit 1.

226. In defense of the agency's biometric requirement Mr. Broderick stated:

> USCIS cannot submit fingerprints to the Federal Bureau of Investigation for purposes of receiving a criminal background check without performing the appropriate identity verification. Identity verification can either be accomplished through a one-to-one match with fingerprints previously collected at an ASC, or by an exact match of the applicant's biographic information and USCIS assigned Alien-number.

Id. at ⁋ 9.

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227. Mr. Broderick and the agency's position contradicts agency statements in the Federal Register and other official statements regarding interoperability of IDENT and IAFIS systems.

228. Mr. Broderick goes on to say:

> USCIS does not have the technical (information technology) capability to submit fingerprints collected by Department of State or U.S. Customs and Border Protection to the Federal Bureau of Investigation. Additionally, USCIS does not have the legal authority to use biometrics collected by a criminal justice agency or from a non-criminal justice agency when the biometrics were collected for a different purpose.

Id. at ⁋ 10.

229. Mr. Broderick's assertion that the agency lacks the capability to use biometrics gathered by US-VISIT/IDENT to query FBI's IAFIS is contradicted by every government publication that has examined this issue.

230. Mr. Broderick's assertion that the agency lacks legal authority to use the FBI IAFIS system when adjudicating immigration benefits is contradicted by statutes authorizing and demanding interoperability, regulations, and official publications.

<u>F. Disparate Impact of The Agency's New Rule of Reason on H-4 and L-2 Extensions Compared to Various Benefit Types Requiring Biometrics</u>

231. In the wake of the new Form I-539 processing times dramatically increased and creating gaps in the employment authorization of H-4 and L-2 spouses.

232. The agency blamed these delays on a lack of available appointments at its ASCs.

233. Comparing the most recent published data for biometrics processed at the agency's ASCs (3,928,588 in FY 2017) and Form I-539s adjudications for that same year (172,000 in FY 2017) the new biometric requirement could be expected to increase total biometric appointments by 4.38%. *Compare* 84 Fed. Reg at 62292 and 85 Fed. Reg. at 56371, Table 5.

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234. On information and belief, these appointment backlogs were not impacting all categories of applicants needing biometrics.

235. The agency's Form G-1055 lists which applications require biometrics to be provided.

236. The agency also publishes quarterly data related to forms it processes which shows pending cases, new cases receive, approved cases, and denied cases. https://www.uscis.gov/sites/default/files/document/reports/Quarterly_All_Forms_FY2020Q4.pdf (accessed March 14, 2021).

237. According to the agency the immigrant and nonimmigrant forms requiring biometrics with the highest volume are: I-485 Employment-based (99,115 received); I-90 (699,591 received); I-131 Advance Parole (364,162 received); and I-539 (442,808 received).

238. Comparing the number of pending cases per form type at the beginning and end of FY 2020 the percentage change in pending ("backlogged") cases is as follows: I-485 Employment-based (17.1% decrease in backlog); I-90 (30.9% decrease in backlog); I-131 Advance Parole (8.1% decrease in backlog); and I-539 (246.7% increase in backlog). *Id*.

239. Even though COVID-19 impacted agency operations, it was able to decrease backlogs in processing forms that require biometrics.

240. The agency also notes on its instructions to Form I-765 that applicants who qualify for an EAD by virtue of their eligibility under Deferred Action for Childhood Arrivals ("C33") must also provide biometrics.

241. The agency publishes data on applications, approvals, and denials of Form I-765 by eligibility criteria. https://www.uscis.gov/sites/default/files/document/reports/I-765_Application_for_Employment_FY03-20.pdf (accessed March 14, 2021).

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242. In FY 2020 the agency received 389,290 Forms I-765 from DACA beneficiaries. The agency approved 391,814 and denied 4,045. *Id.* The agency processed more applications that it received and decreased the prior year's backlog.

243. Even though COVID-19 impacted agency operations, it was able to decrease backlogs in processing DACA EADs that require biometrics.

244. The agency does not allow applicants to schedule their own biometric appointments, but rather gives them notices to appear at an ASC for an appointment.

245. The agency does not have a first in first out process for scheduling appointments for applicants who need new or original biometrics.

246. On information and belief, the agency prioritizes applicants for other forms over applicants for I-539.

247. On information and belief, I-539 applicants who have not been scheduled for biometrics related to that form, have subsequently filed a Form I-485 and have been scheduled for biometrics related to that form.

248. On information and belief, the agency is not permitting biometrics collected for I-485 to be applied to the same applicant's I-539.

249. On information and belief, applicants with both an I-485 and I-539 pending are required by the agency to appear twice for biometrics.

250. The agency does not have a first in first out process for scheduling biometrics for Form I-539 applicants at an ASC.

251. For instance, as of March 15, 2021, the following applicants, assigned to the Seattle, Washington, ASC experienced this:

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Initials of Applicant	Date Form I-539 was filed	Has applicant been scheduled?
R.K.M.	2/27/2020	Yes
P.J.	4/6/2020	No
M.D.	4/21/2020	Yes
S.U.	5/7/2020	No
S.K.	6/1/2020	Yes
D.W.E.	6/12/2020	No
U.M.	7/9/2020	No
N.P.	7/30/2020	Yes
P.R.	8/19/2020	No*
J.J.D.	9/24/2020	No
A.S.	11/18/2020	No

252. Two of the applicants assigned to the Seattle ASC also have filed Forms I-485. Applicant P.R. filed a Form I-539 on August 19, 2020 and more than two months later on October 27, 2021 filed a Form I-485. The agency scheduled applicant P.R. for biometrics related to the Form I-485 only, even though the Form I-485 form had been pending for far less time.

253. Applicant U.W. filed a Form I-485 on November 2, 2021, a week after applicant P.R., and has not been scheduled for any biometrics.

254. On information and belief none of the agency's ASCs biometric schedules for I-539 applicants is on first in first out system.

255. On information and belief, the agency's appointment scheduling database has deleted or otherwise lost thousands of I-539 applicants' information. Despite having receipt notices from the agency, applicants have been told they will not be scheduled for an appointment because they are not in the system.

256. On information and belief, the agency is scheduling applicants for biometrics with February application dates while applicants with much older applications are not being scheduled.

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257. Applicants who have fallen out of the system are unable to provide biometrics at an ASC where walk-ins are allowed.

258. On information and belief, I-539 applicants the agency has no consistent policy on walk-in appointments.

259. On information and belief, some ASCs allow walk-ins and some refuse walk-in appointments.

260. On information and belief, I-539 applicants routinely attempt to walk-in and provide biometrics and witness empty or nearly empty offices, and idle employees.

261. Applicants who have attempted to walk-in have witnessed employees watching movies while the refuse to allow walk-in appointments.

262. Applicants who have attempted to walk-in have received rude treatment while being refused walk-in appointments.

263. The agency is intentionally and arbitrarily and capriciously underutilizing ASC resources, and unnecessarily limiting access to applicants.

264. On January 20, 2021, President Biden rescinded EO 13780. *Proclamation on Ending Discriminatory Bans on Entry to The United States* (https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/proclamation-ending-discriminatory-bans-on-entry-to-the-united-states/ (March 12, 2021).

265. At present, the executive order underpinning the requirement for new biometrics for I-539 processing is no longer valid. No regulations have been promulgated requiring new biometrics.

G. Agency Resources and Service Center Processing

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266. The agency's Service Center Operations Directorate's manning is at an all-time high, with 5,190 full time employees.

267. The agency has stated that because of COVID-19 they have seen an historic decrease in the number of applications available for adjudicators to process. 85 C.F.R. 46793 (August 3, 2020).

268. The agency's service centers will not adjudicate, or even begin to adjudicate, an H-4 or L-2's I-539 until the biometric requirement has been completed.

269. The biometric requirement may be completed by the agency's decision and notice to reuse previously provided biometrics or by the agency scheduling an appointment and collecting new biometrics at an ASC.

270. On information and belief, the agency takes more than three months before making a decision whether to reuse biometrics.

271. On information and belief, the agency takes more than five months to adjudicate an I-539 after deciding to accept previously provided biometrics.

THE ADMINISTRATIVE PROCEDURE ACT AND UNREASONABLE DELAY

272. The APA requires the agency to adjudicate Plaintiff's applications "within a reasonable amount of time." 5 U.S.C. § 555(b).

273. Applicants may challenge the agency's delay of a final agency action where an unreasonable amount of time has transpired. 5 U.S.C. §706(1).

274. Courts evaluate claims of unreasonable delay under the six factors laid out in *Telecommunications Research & Action Ctr. v. FCC* ("*TRAC*"), 750 F.2d 70 (D.C. Cir. 1984). These factors are:

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

Cmty. Voice v. United States EPA (*In re Cmty. Voice*), 878 F.3d 779, 786 (9th Cir. 2017)

A. TRAC 1: Existence of a Statutory or Regulatory Deadline or Rule of Reason

275. When Congress or the agency regulation has provided a deadline for performance the TRAC factors are not necessary. *See Rosario v. United States Citizenship*, 2017 U.S. Dist. LEXIS 111761, *23 (W.D. Wash. 2017) ("However, the Ninth Circuit has rejected the TRAC standard where 'Congress has specifically provided a deadline for performance.'"), *citing Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1177 n.11 (9th Cir. 2002); *see also Ctr. for Food Safety v. Hamburg*, 954 F. Supp. 2d 965, 970-71 (N.D. Cal. 2013 ("[W]here Congress has specifically provided a deadline for performance by an agency, 'no balancing of factors is required or permitted.'").

276. If a statutory deadline is ambiguous the agency may promulgate a regulation and clarify the matter. *See Perfectly Fresh Farms, Inc. v. United States Dep't of Agric.*, 692 F.3d 960, 966-967 (9th Cir. 2012).

277. Such a regulation is entitled to *Chevron* deference if Congress granted the agency regulatory authority, and the agency used its official power to interpret the statute. *Id.*

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278. Promulgated regulations are strong indications that an agency has used its official power to interpret the statute. *Sierra Club v. United States EPA*, 671 F.3d 955, 962 (9th Cir. 2012).

279. To determine whether the statute unambiguously bars an agency interpretation courts “apply[] the normal 'tools of statutory construction.'” *Valenzuela Gallardo v. Lynch*, 818 F.3d 808, 815 (9th Cir. 2016) (quoting *INS v. St. Cyr*, 533 U.S. 289, 320 n.45 (2001)).

280. Reviewing courts will look at the purpose and text of a statutory provision when evaluating if ambiguity exists. *Ledezma-Cosino v. Sessions*, 857 F.3d 1042, 1055 (9th Cir. 2017) (“we examine the legislative history, the statutory structure, and "other traditional aids of statutory interpretation" in order to ascertain congressional intent.”).

281. The Ninth Circuit has consistently held that ameliorative immigration laws enacted by the legislature to forestall harsh consequences should be interpreted in an ameliorative fashion. *Lopez-Birrueta v. Holder*, 633 F.3d 1211, 1216 (9th Cir. 2011) (noting that the ameliorative doctrine is especially strong when interpreting immigration legislation.).

282. For the purposes of the first TRAC factor, agencies are bound by deadlines they establish through regulation. *Rosario*, 2017 U.S. Dist. LEXIS 111761, *23 (finding regulation establishing a 30-day timeline for an EAD adjudication satisfied the first TRAC factor).

283. When evaluating whether an agency’s regulation creates an unambiguous deadline courts analyze the text structure and history of the regulation. *Kisor v. Wilkie*, 139 S. Ct. 2400, 2414, 204 L. Ed. 2d 841 (2019).

284. Whether a regulation creates a deadline for agency action can be discerned from the purpose of a regulation. *See Sec'y of Labor v. Seward Ship's Drydock, Inc.*, 937 F.3d 1301, 1310

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(9th Cir. 2019) (finding the preamble to the Occupational Safety and Health Administration's regulation established the purpose of the regulation and resolved any purported ambiguity).

285. In the absence of a statutory or regulatory deadline for performance, courts first look at the cause of the delay. *Singh v. Still*, 470 F. Supp. 2d 1064, 1068 (N.D. Cal. Jan. 8, 2007).

286. Courts typically consider the source of the delay, including the complexity of the investigation and the extent to which each party contributed to the delay. *Id.*

287. The agency is required to provide evidence it follows a rule of reason. *Huang v. Mukasey*, 545 F. Supp. 2d 1170, 1175-1176 (W.D. Wash. 2008) (requiring the agency to provide more than generalized claims to explain why applications filed on the same date had different processing times), and *Hong Wang v. Chertoff*, 550 F. Supp. 2d 1253, 1258-1259, (W.D. Wash. 2008) ("the court finds no 'rule of reason' guiding the Government's processing of Wang's application. The Government asserts that name checks are processed in 'first in, first out' fashion. A comparison of the one-week processing of Yuxin Wang's name check to Wang's still-pending name check quickly disproves this assertion.").

B. <u>TRAC 2: Statutorily Suggested Timetable</u>

288. Courts in the Ninth Circuit have found that the timelines created in 8 U.S.C. § 1571 "provide a meaningful standard for the pace of adjudication. *See Guoping Ma v. Gonzales*, 2007 U.S. Dist. LEXIS 68864, *14-15 (W.D. Wash. 2007) ("Several courts facing the same issue have concluded that [a]lthough Congress has not established a mandatory time frame for the USCIS to complete the adjudication, Congress sets a normative expectation in 'The Immigration Services and Infrastructure Improvements Act of 2000' of a reasonable processing time for an immigrant benefit application as no more than 180 days after initial application.") (citations omitted).

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C. TRAC 3 and 5: Impact on Health and Human Welfare and Nature and Extent of Harm Prejudiced by Delay

289. The “third and fifth [TRAC] factors overlap, requiring the court to consider whether human health and welfare are at stake, and the nature and extent of the interests prejudiced by the delay,” *Islam v. Heinauer*, 32 F. Supp. 3d 1063, 1073 (N.D. Cal. 2014) ("Islam II") (internal citation omitted) leading courts to considers them together.

290. Plaintiffs facing loss of status and employment authorization due to government delay satisfy the third and fifth TRAC Factors. *Ray v. Cuccinelli*, 2020 U.S. Dist. LEXIS 205342, *25-26, 2020 WL 6462398 (N.D. Cal. 2020) (“The inability of Plaintiffs to "be able to work in the United States or renew [their] driver's license[s] . . . almost certainly has a negative effect on [Plaintiffs'] welfare" and weighs the third and fifth factors in favor of Plaintiffs”)(citations omitted).

D. TRAC 4: Existence of Higher Competing Priorities

291. Under the fourth TRAC factor, competing higher priorities may be based in policy or on physical capacity.

292. When discussing the fourth TRAC factor courts in the Ninth Circuit require an agency to explicitly identify any competing higher policy priorities that would be impacted by processing a plaintiff’s application. *Tewolde v. Wiles*, 2012 U.S. Dist. LEXIS 30197, *25-26, 2012 WL 750542 (W.D. Wash. 2012) (“Defendants, however, have presented no evidence that they would be unable to expedite consideration of Mr. Tewolde's application or that doing so would impact USCIS's competing priorities.”).

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293. If the agency's claimed higher competing priority is based on a false factual or legal premise it is not entitled to a presumption of regularity. *See Code v. McCarthy*, 959 F.3d 406, 422 (D.C. Cir. 2020) (agency decision based on incorrect facts was not entitled to presumption of regularity and was arbitrary and capricious). This is because an Agency action that stands on a faulty legal premise is arbitrary and capricious. *See Sea-Land Serv. v. DOT*, 137 F.3d 640, 646 (D.C. Cir. 1998); *Prill v. NLRB*, 755 F2d 941, 948 (D.C. Cir. 1985). The same is similarly true when an agency action is explained using inaccurate or unreasoned justification for a decision. *See EDF v. EPA*, 922 F.3d 446, 454 (D.C. Cir. 2019).

294. The identity of competing higher policy priorities must be established by evidence, and not vague assertions. *Huang v. Mukasey*, 545 F. Supp. 2d 1170, 1176, 2008 U.S. Dist. LEXIS 16998, *15 (W. D. Wash. 2008) ("Ultimately, defendants may not hide behind the guise of governmental deference or national security each time its policies or procedures are questioned without a specific and compelling justification otherwise. Therefore, the Court requires defendants to come forth with particularized information regarding plaintiffs' applications.") The agency is required to identify a higher competing priority.").

295. To evaluate the existence and impact of a competing higher priority or constraints on resources the government is required to provide the Court data regarding how many USCIS employees are assigned to adjudicate a particular case type, the volume of cases USCIS receives, how long it takes USCIS to adjudicate a case. *A.C.C.S. v. Nielsen*, 2019 U.S. Dist. LEXIS 226750, *17-18, 2019 WL 7841860 (C.D. Cal. 2019). Without such data the Court cannot accept the government's assertion that the delay is reasonable. *See id*.

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296. Courts will not withhold relief from plaintiffs just because other applicants are also subject to the same unreasonable delay caused by policy. *Ali v. Mukasey*, 2008 U.S. Dist. LEXIS 18171, *10, 2008 WL 682257 (W.D. Wash. 2008) ("In examining the fourth TRAC factor, the court must consider the effect of expediting Ali's application on other USCIS priorities. USCIS offers evidence that expedited and priority name checks can cause delay in processing other name checks. While the court acknowledges this concern, it cannot deny relief to a person whose application has been unreasonably delayed merely because there are others who have perhaps also been unreasonably delayed.").

297. Agency claims that delays are caused by allocation of resources to a higher competing priority, or that they lack resources to handle the caseload are required to provide evidence to substantiate those claims. *Chen v. Chertoff*, 2007 U.S. Dist. LEXIS 64664, *17, 2007 WL 2570243 (W.D. Wash. 2007).

E. TRAC Factor 6: Bad Faith and Agency Impropriety

298. Delays resulting from intentional actions or impropriety are per se unreasonable. Unexplained discrepancies in processing data analyzed under the fourth TRAC factor may indicate a delay is the result of agency misconduct. *A.C.C.S. v. Nielsen*, 2019 U.S. Dist. LEXIS 226750, *17-18, 2019 WL 7841860.

CLASS ALLEGATIONS

299. Individual H-4 and L-2 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, for each class as defined below, 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

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claims of the Individual H-4 and L-2 Plaintiffs are typical of the claims of the class, the Individual H-4 and L-2 Plaintiffs and class counsel 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 order granting relief is appropriate to remedy the harms to the class as a whole.

300. Individual H-4 Plaintiffs with pending visa extensions filed on Form I-539 seek to represent the following nationwide class:

> Noncitizens who have filed or will file an application on Form I-539 to extend status or change status to a H-4 spouse of a H-1B visa holder that was not or will not be either adjudicated concurrently with the primary H-1B extension petition or within the required regulatory timeframe of 180 days.

301. Individual L-2 Plaintiffs with pending visa extensions filed on Form I-539 seek to represent the following nationwide class:

> Noncitizens who have filed or will file an application on Form I-539 to extend status or change status to L-2 that was not or will not be adjudicated within the required statutory timeframe of 30 days of filing as required under the law.

302. Individual H-4 Plaintiffs with pending employment authorization extensions filed on Form I-765 seek to represent the following nationwide class:

> Noncitizens who have filed or will file an extension for employment authorization on Form I-765 as the H-4 spouse of a primary H-1B visa holder who have not received an adjudication concurrently with the primary H-1B extension petition or within 90 days of filing, whichever is earlier.

303. Individual L-2 Plaintiffs with pending employment authorization extensions filed on Form I-765 seek to represent the following nationwide class:

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Noncitizens who have filed or will file an application for an L-2 visa and were not or will not be provided employment authorization incident to status.

CAUSES OF ACTION

COUNT I
(H-4 Visa Extensions: Agency Action Unreasonably Delayed)

304. H-4 Plaintiffs incorporate by reference the allegations above as if fully restated here.

305. The Agency is unreasonably delaying adjudication of Plaintiff's H-4 visa extension applications. *See Telecommunications Research & Action Ctr. v. FCC ("TRAC")*, 750 F.2d 70, 80 (D.C. Cir. 1984). *Id.* at 80. Each TRAC factor favors a finding that the Agency's delay is unreasonable. *Id.*

<u>TRAC Factors 1 and 2: Statutory or Regulatory Deadline</u>

306. Congress created the H-4 visa, and the agency created the H-4 EAD regulation to incentivize highly skilled H-1B workers to remain in the country by allowing their spouses to also stay and work.

307. The H-4 EAD regulatory change was in response to Congress' overhaul of the H-1B visa, which ameliorated provisions in the prior law that acted to encourage these high skilled workers and their families to leave the United States.

308. The agency recognized a need to avoid gaps in H-4 status and employment authorization caused by lengthy delays in adjudication.

309. With the 2015 regulation allowing H-4 employment authorization the agency created a new rule of reason which directed concurrently adjudicating H-1B extension, H-4 extension, and H-4 EAD extension.

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310. The agency allowed concurrent filing up to 180 days prior to the date of need.

311. The agency determined that 180 days would be sufficient to avoid gaps in status and employment authorization caused by processing delay.

312. The agency set a deadline for itself to act, and the regulatory timeline for a decision on the applications is 180.

313. This 180-day window exceeds the sense of Congress that a nonimmigrant benefit application should be adjudicated within 30 days.

314. In March 2019, the agency abandoned its rule of reason that directed concurrent processing of H-1B, H-4, and H-4 EAD extension applications.

315. In March 2019, the agency made processing changes, requiring new biometrics from H-4 extension applicants, that it knew would delay adjudications of H-4 extension applications and their connected H-4 EAD extensions.

316. The agency has not followed a rule of reason for deciding H-4 extension requests or H-4 work authorization requests since March 2019.

317. The agency does not schedule biometrics appointments with any discernable relationship to filing dates.

318. Currently the agency is giving biometric appointments to very recent H-4 extension applications while applications between four months and a year are not given appointments.

319. The agency waives biometric requirements or gives biometric appointment scheduling preference to applicants for other immigration benefits ahead of H-4 applicants.

320. The agency fails to process H-4 and their H-4 EAD extension applications in a predictable order after biometrics have been collected.

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321. The agency cannot show it follows a first-in-first-out process. .

322. The agency has arbitrarily and unreasonably exceeded both Congress' expectation and its own regulatory deadline for processing plaintiffs' H-4 and H0-4 EAD applications.

323. The first and second TRAC factors weigh in plaintiffs' favor.

TRAC Factors 3 and 5: Impact on Health and Human Welfare and Nature and Extent of Harm Prejudiced by Delay

324. H-4 Plaintiffs have lost proof of lawful immigration status as a result of agency delay.

325. H-4 Plaintiffs have lost employment authorization as a result of agency delays in processing their applications.

326. H-4 Plaintiffs have lost income needed to support their families as a result of agency delays in processing their applications.

327. H-4 Plaintiffs have suffered mental anguish from uncertainty caused by losing status, employment authorization, and jobs.

328. The agency delay in processing has had a direct and profoundly harmful effect on plaintiff's health and welfare.

329. The third and fifth TRAC factors weighs heavily in plaintiffs' favor.

TRAC 4: Existence of Higher Competing Priorities

330. The agency has two competing policy priorities: avoiding gaps in plaintiffs' employment caused by processing delays and collecting new biometrics prior to processing plaintiffs' applications for extension of status.

331. The agency has explicitly weighed these two priorities in the comments to the H-4 EAD regulation. The agency unequivocally found the higher of the two priorities was avoiding gaps in

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employment authorization. The agency stated that there was little risk of criminality, fraud, or national security concerns from H-4 visa holders.

332. The agency's policy to recollect biometrics from plaintiffs is allegedly based on an Executive Order that has since been rescinded. Even when fully in effect, that Executive Order contained no language that can fairly be construed to require the agency's current policy of collecting new biometrics.

333. The agency irrationally explains its new policy satisfies its need to ensure identity management and check for criminal records for applicants. The agency claims that current technology does not allow it to reuse previously provided biometrics for this purpose. The agency also states that current legal authorities prohibit if from using previously collected biometrics for this purpose.

334. The agency's explanation is contradicted by publicly available facts describing the interoperability of the agency's IDENT biometric system and the FBI's biometric system. At all times relevant to plaintiffs' applications the agency has had the technical ability to compare previously provided biometrics to the FBI biometric database. The agency has the technology to satisfy its stated need for criminal history checks without delaying the adjudication of plaintiffs' applications.

335. The agency's claims that it lacks legal authority to compare biometrics in the IDENT system with the FBI biometric database is contradicted by statute, statements in the Federal Register, and the agency's own publications announcing the two systems are fully interoperable.

336. Nor does the agency have evidence that it lacks resources to process H-4 Plaintiffs' applications in 180 days. The agency's manning at its Service Center Operations Directorate is at

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a record high level of 5,197. Based on the agency's published touch time for Plaintiffs applications, the Nebraska Service Center alone has the personnel capacity to process the entire agency's workload for Form I-539 without a delay exceeding 180 days. Further, the agency has announced that its record high levels of manning coincide with a record low volume of applications being submitted for adjudication. The agency has sufficient resources to adjudicate plaintiffs' applications in 180 days.

337. The third, fourth and fifth TRAC factors weigh entirely in the favor of H-4 Plaintiffs.

TRAC Factor 6: Agency Delays Caused by Bad Faith or Impropriety

338. The agency sought to take away H-4 Plaintiffs' legal ability to work in the United States. The agency was unable to achieve this goal through regulation. When it became evident that the agency's attempts at legal recission of the H-4 EAD regulation were sputtering, the agency began the process of creating a new Form I-539 which would require recollecting biometrics. The agency knew and anticipated that this requirement would create delays in processing plaintiffs' status and EAD extensions. Prior to March 2019, H-4 status and EAD extensions were timely processed, all within 180 days. The new policy created delays over more than 180 days immediately.

339. The agency created the requirement for new biometrics with the intent of damaging H-4 EAD applicants' ability to maintain employment authorization and their jobs.

340. Further evidence of bad faith is the agency's factually and legally unsupportable justification for the new biometric requirement. First, the Executive Order the requirement is allegedly based on cannot be reasonably read to require collection of new biometrics from people already in the United States.

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341. Second, the agency's claim that plaintiffs' biometrics stored in the IDENT system cannot be used to query the FBI's biometric system are factually incorrected.

342. Third, the agency's claim that it lacks legal authority to share IDENT biometrics with the FBI is contradicted by statute, regulation, and the agency's own publications.

343. The sixth TRAC factor slams the scales in the Plaintiffs' favor and strips away any weight the prior factors may have lent to the agency's pan.

344. This Court must find that the agency's delay is unreasonable and order the agency to adjudicate Plaintiffs' H-4 and H-4 EAD extensions.

345. These delays are substantially unjustified.

COUNT II
(H-4 EAD Extensions: Agency Action Unreasonably Delayed)

346. H-4 Plaintiffs incorporate by reference the allegations above as if fully restated here. The agency is unreasonably delaying adjudication of Plaintiffs' H-4 visa extensions and H-4 stand-a-lone EAD applications. *See Telecommunications Research & Action Ctr. v. FCC ("TRAC")*, 750 F.2d 70, 80 (D.C. Cir. 1984). *Id.* at 80. Each TRAC factor favors a finding that the Agency's delay is unreasonable. *Id.*

TRAC Factors 1 and 2: Statutory or Regulatory Deadline

347. The agency created the H-4 EAD regulation to incentivize highly skilled H-1B workers to remain in the country by allowing their spouses to work.

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348. This regulatory change was in response to Congress' overhaul of the H-1B visa, which ameliorated provisions in the prior law that acted to encourage these high skilled workers and their families to leave the United States.

349. The agency recognized a need to avoid gaps in H-4 status and employment authorization caused by lengthy delays in adjudication.

350. With the 2015 regulation allowing H-4 employment authorization the agency created a new rule of reason which directed concurrently adjudicating H-1B extension, H-4 extension, and H-4 EAD extension.

351. The agency allowed concurrent filing up to 180 days prior to the date of need.

352. The agency determined that 180 days would be sufficient to avoid gaps in status and employment authorization caused by processing delay.

353. The agency set a deadline for itself to act, and the regulatory timeline for a decision on the applications is 180 days.

354. This 180-day window exceeds the sense of Congress that a nonimmigrant benefit application should be adjudicated within 30 days.

355. In March 2019, the agency abandoned its rule of reason that directed concurrent processing of H-1B, H-4, and H-4 EAD extension applications.

356. In March 2019, the agency made processing changes, requiring new biometrics from H-4 extension applicants, that it knew would delay adjudications of H-4 extension applications and their connected H-4 EAD extensions.

357. The agency has not followed a rule of reason for deciding H-4 extension requests or H-4 work authorization requests since March 2019.

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358. The agency does not schedule biometrics appointments with any discernable relationship to filing dates.

359. The agency waives biometric requirements or gives biometric appointment scheduling preference to applicants for other immigration benefits ahead of H-4 applicants.

360. The agency fails to process H-4 and their H-4 EAD extension applications in a predictable order after biometrics have been collected.

361. The agency cannot show it follows a first-in-first-out process.

362. The agency has arbitrarily and unreasonably exceeded both Congress' expectation and its own regulatory deadline for processing Plaintiffs' H-4 and H0-4 EAD applications.

363. The first and second TRAC factors weigh in Plaintiffs' favor.

TRAC Factors 3 and 5: Impact on Health and Human Welfare and Nature and Extent of Harm Prejudiced by Delay

364. H-4 Plaintiffs have all lost proof of lawful immigration status as a result of agency delay.

365. H-4 Plaintiffs have all lost employment authorization as a result of agency delays in processing their applications.

366. H-4 Plaintiffs have all lost income needed to support their families as a result of agency delays in processing their applications.

367. H-4 Plaintiffs have all suffered mental anguish from uncertainty caused by losing status, employment authorization, and jobs.

368. The agency delay in processing has had a direct and profoundly harmful effect on H-4 Plaintiffs' health and welfare.

TRAC Factor 4: Competing Higher Priorities

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369. The agency has two competing policy priorities: avoiding gaps in Plaintiffs' employment caused by processing delays and collecting new biometrics prior to processing plaintiffs' applications for extension of status.

370. The agency has explicitly weighed these two priorities in the comments to the H-4 EAD regulation. The agency unequivocally found the higher of the two priorities was avoiding gaps in employment authorization. The agency stated that there was little risk of criminality, fraud, or national security concerns from H-4 visa holders.

371. The agency's policy to recollect biometrics from plaintiffs is allegedly based on an Executive Order that has since been rescinded. Even when fully in effect, that Executive Order contained no language that can fairly be construed to require the agency's current policy of collecting new biometrics.

372. The agency irrationally explains its new policy satisfies its need to ensure identity management and check for criminal records for applicants. The agency claims that current technology does not allow it to reuse previously provided biometrics for this purpose. The agency also states that current legal authorities prohibit if from using previously collected biometrics for this purpose.

373. The agency's explanation is contradicted by publicly available facts describing the interoperability of the agency's IDENT biometric system and the FBI's biometric system. At all times relevant to plaintiffs' applications the agency has had the technical ability to compare previously provided biometrics to the FBI biometric database. The agency has the technology to satisfy its stated need for criminal history checks without delaying the adjudication of plaintiffs' applications.

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374. The agency's claim that it lacks legal authority to compare biometrics in the IDENT system with the FBI biometric database is contradicted by statute, statements in the Federal Register, and the agency's own publications announcing the two systems are fully interoperable.

375. Nor does the agency have evidence that it lacks resources to process Plaintiffs' applications in 180 days. The agency's manning at its Service Center Operations Directorate is at a record high level of 5,197. Based on the agency's published touch time for Plaintiffs' applications, the Nebraska Service Center alone has the personnel capacity to process the entire agency's workload for Form I-539 without a delay exceeding 180 days. Further, the agency has announced that its record high levels of manning coincide with a record low volume of applications being submitted for adjudication. The agency has sufficient resources to adjudicate H-4 Plaintiffs' applications in 180 days.

376. The third, fourth and fifth TRAC factors weigh entirely in the favor of H-4 Plaintiffs.

<u>TRAC Factor 6: Agency Delays Caused by Bad Faith or Impropriety</u>

377. The agency sought to take away H-4 Plaintiffs' legal ability to work in the United States. The agency was unable to achieve this goal through regulation. When it became evident that the agency's attempts at legal recission of the H-4 EAD regulation were sputtering, the agency began the process of creating a new Form I-539 which would require recollecting biometrics. The agency knew and anticipated that this requirement would create delays in processing plaintiffs' status and EAD extensions. Prior to March 2019, H-4 status and EAD extensions were timely processed, all within 180 days. The new policy created delays over more than 180 days immediately.

378. The agency created the requirement for new biometrics with the intent of damaging H-4 EAD applicants' ability to maintain employment authorization and their jobs.

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379. Further evidence of bad faith is the agency's factually and legally unsupportable justification for the new biometric requirement. First, the Executive Order the requirement is allegedly based on cannot be reasonably read to require collection of new biometrics from people already in the United States.

380. Second, the agency's claim that plaintiffs' biometrics stored in the IDENT system cannot be used to query the FBI's biometric system are factually incorrected.

381. Third, the agency's claim that it lacks legal authority to share IDENT biometrics with the FBI is contradicted by statute, regulation, and the agency's own publications.

382. The sixth TRAC factor slams the scales in the H-4 Plaintiffs' favor and strips away any weight the prior factors may have lent to the agency's pan.

383. This Court must find that the agency's delay is unreasonable and order the agency to adjudicate plaintiffs' H-4 and H-4 EAD extensions.

384. The delay for Plaintiffs' H-4 extension request is unreasonable.

385. The delay for Plaintiffs' H-4 work authorization request is unreasonable.

386. These delays are substantially unjustified.

COUNT III
(L-2 Visa Extensions: Agency Action Unreasonably Delayed)

387. Plaintiffs incorporate by reference the allegations above as if fully restated here.

388. L-2 Plaintiffs' spouses are currently in the United States in lawful L-1 classification.

389. L-2 Plaintiffs have met all statutory and regulatory conditions required for submitting complete and timely I-539 filings with USCIS to extend their L-2 statuses.

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390. The APA requires USCIS to adjudicate L-2 Plaintiffs' requests for extension of status "within a reasonable time." 5 U.S.C. § 555(b).

391. The INA requires USCIS to complete the processing of L-2 Plaintiffs' requests for continued classification as L-2 nonimmigrants within 30 days. 8 U.S.C. § 1184(c)(2)(C).

392. USCIS's failure to provide L-2 Plaintiffs an employment authorized endorsement or other appropriate work permit constitutes a violation of 8 U.S.C. § 1184(c)(2)(E).

393. USCIS has sufficient resources to process and adjudicate L-2 Plaintiffs' requests for extension of status within the 30-day statutory timeframe based on its receipt of filing fees in connection with I-539 filings.

394. Compelling agency action here would have no effect on any of USCIS's higher or competing priorities.

395. The current delay in finalizing the adjudication of L-2 Plaintiffs' Form I-539 filings is not due to a lack of agency resources because USCIS sets and adjusts filing fees collected from petitioners and applicants to pay for personnel and resources to process filings in a timely fashion. USCIS charges fees that recapture the actual expenses incurred in the adjudication process.

396. The funds taken through filing fees are sufficient to accomplish the task of adjudicating I-539 filings for L-2 nonimmigrants within thirty days of filing.

397. The applicable statutory deadline, USCIS's available resources, the agency's inability to justify the delay in processing I-539 filings for L-2 nonimmigrants, and the agency's irrational ordering of the adjudication of I-539 filings without a rule of reason show that the agency's delay in adjudicating, or withholding the adjudication of, Plaintiffs' I-539 filings is unreasonable, unauthorized, or not in accordance with law.

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398. The Court is authorized to compel USCIS's action unreasonably delayed or unlawfully withheld in failing to finalize Plaintiffs' Form I-539 filings. *See* 5 U.S.C. § 706(1).

399. These delays are substantially unjustified.

400.

COUNT IV
(L-2 Employment Authorization: Agency Action Unlawfully Withheld)

401. L-2 Plaintiffs incorporate by reference the allegations above as if fully restated here.

402. L-2 Plaintiffs are married to L-1 visa holders.

403. L-2 Plaintiffs have been forced to submit, apply, and pay a separate fee to request an employment authorization document.

404. The statute grants L-2 visa holders the right to work incident to status and directs the agency to provide such authorization at the time the L-2 visa is approved.

405. USCIS's failure to provide L-2 Plaintiffs with an employment authorized endorsement or other appropriate work permit as part of their L-2 visa extension to the United States violates the statutory directive under 8 U.S.C. § 1184(c)(2)(E).

406. The Court has authority under the APA to compel CBP to take action unlawfully withheld. *See* 5 U.S.C. § 706(1).

407. These delays are substantially unjustified.

PRAYER FOR RELIEF

Plaintiffs hereby pray for the following relief:

408. Take jurisdiction over this case;

409. Certify each class identified above;

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410. Declare the Defendant's adjudication delays of Plaintiffs' and class members' Forms I-539 seeking H4 status unreasonable;

411. Compel the Defendant to adjudicate all Plaintiffs' and class members' pending Forms I-539s seeking H4 status within 7 days;

412. Declare the Defendant's adjudication delays of Plaintiffs' and class members' Forms I-765 seeking EADs based on their H4 status unreasonable;

413. Compel the Defendant to adjudicate all Plaintiffs' and class members' pending Forms I-765 seeking EADs based on their H4 status within 7 days;

414. Declare the Defendant's adjudication delays of Plaintiffs' and class members' Forms I-539 seeking L2 status unreasonable;

415. Compel the Defendant to adjudicate all Plaintiffs' and class members' pending Forms I-539s seeking L2 status within 7 days;

416. Declare the Defendant's adjudication delays of Plaintiffs' and class members' Forms I-765 seeking EADs based on their L2 status unreasonable;

417. Compel the Defendant to adjudicate all Plaintiffs' and class members' pending Forms I-765 seeking EADs based on their L2 status within 7 days;

418. Declare Defendant's biometrics policies for Forms I-539 unlawful;

419. Award Plaintiffs attorneys' fees under the Equal Access to Justice Act or any other provision of law; and

420. Enter all relief that is necessary for justice to be done.

March 22, 2021

Respectfully Submitted,

s/Kripa Upadhyay

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s/Jonathan D. Wasden
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pro hac vice forthcoming

s/Jesse M. Bless
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Director of Litigation
American Immigration Lawyers Association
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Washington, DC 2005
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Fax: 202-783-7853
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s/Steven A. Brown
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Houston, Texas 77042
(713) 429-4793 Voice
(713) 953-7797 Fax
steven@rnlawgroup.com

pro hac vice forthcoming

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DEEPIKA GONA, PLAINTIFFS, V. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, DEFENDANT.	CIVIL ACTION NO.: 20-3680(RCL)

DECLARATION OF BRIAN J. BRODERICK

I, Brian J. Broderick, hereby declare under penalty of perjury, the following:

1. I am employed by the U.S. Department of Homeland Security ("DHS"), U.S. Citizenship and Immigration Services ("USCIS") as the Deputy Chief of the Identity and Information Management Division within the Immigration Records and Identity Services Directorate, which is responsible for overseeing the operation of all USCIS Application Support Centers (each, an "ASC"). The following declaration is based on my personal knowledge and information acquired in my official capacity and in the performance of my official functions as well as upon reasonable inquiry of appropriate DHS databases and personnel.

2. As part of its administration of immigration benefits, USCIS has the general authority to require and collect biometrics, which include fingerprints, photographs, and digital signatures for any person seeking an immigration benefit. For this purpose, including for the adjudication of both Form I-539, Application to Extend/Change Nonimmigrant Status ("I-539 application") and Form I-765, Application for Employment Authorization ("I-765 application"), USCIS collects biometrics at 131 ASCs across the United States and its territories.

3. In the normal course of business, there are several steps associated with the biometrics collection process. Appointment notices are sent to applicants between two and three weeks in advance of their appointments. In addition to this, there are several factors beyond USCIS' control that may affect the timeframe for biometrics collection (e.g., applicant's availability to appear at the scheduled time, applicant's request to reschedule, unplanned ASC closures for weather, wildfires, etc.).

4. Due to the worldwide COVID-19 pandemic, USCIS closed all in-person offices to the public, including all ASCs on March 18, 2020.

5. USCIS began the process of reopening ASCs on July 13, 2020, doing so in a phased manner dependent on a number of factors, including the ability to procure and deliver protective barriers and other engineering controls and other pandemic-related circumstances in each particular ASC's locale, such as state and local stay-at-home orders. ASC closures and subsequent re-openings were detailed at https://egov.uscis.gov/office-locator/#/asc.

6. As a result of the temporarily suspended in-person services, approximately 280,000 previously scheduled appointments were cancelled. Based on capacity limitations unique to each ASC, USCIS has not yet rescheduled all cancelled appointments. USCIS is scheduling approximately 10,400 appointments per day. As of February 22, 2021, approximately 1.1 million applications are still awaiting biometrics appointments.

7. Even after reopening, ASCs remain challenged by reduced capacity related to measures instituted to combat the spread of COVID-19. From July 2020 to September 2020, ASCs were operating at below 50 percent of pre-COVID levels. In late October 2020, ASCs were able to increase efficiencies to operate at about 65% of pre-COVID-19 throughput, and remain at those levels today. Some of the factors limiting capacity include reduced waiting-room space due to social-distancing requirements, the need to clean equipment and barriers between each applicant, and the need to conduct screening (ensuring a valid appointment and asking standard COVID-19 questions) before allowing entry to the ASC.

8. USCIS is scheduling appointments with all deliberate speed to collect biometrics from applicants affected by the ASC closures and return to a more normal operating posture as soon as conditions allow.

9. USCIS cannot submit fingerprints to the Federal Bureau of Investigation for purposes of receiving a criminal background check without performing the appropriate identity verification. Identity verification can either be accomplished through a one-to-one match with fingerprints previously collected at an ASC, or by an exact match of the applicant's biographic information and USCIS assigned Alien-number.

10. USCIS does not have the technical (information technology) capability to submit fingerprints collected by Department of State or U.S. Customs and Border Protection to the Federal Bureau of Investigation. Additionally, USCIS does not have the legal authority to use biometrics collected by a criminal justice agency or from a non-criminal justice agency when the biometrics were collected for a different purpose.

11. USCIS is reusing biometrics previously collected by USCIS to conduct background and security checks when possible. USCIS is required to perform identity verification through the exact match of an applicant's USCIS assigned Alien number and biographic information declared on their application to the biographic information associated with the biometrics previously collected by USCIS. If the applicant has not been assigned an alien number or the biographic information does not exactly match the information provided when the applicant's biometrics were previously collected by USCIS, then the biometrics cannot be reused. Further, if the applicant's biometrics have not previously

been collected by USCIS, reuse is not available. If USCIS will reuse biometrics for a pending application, a notice is mailed to the applicant.

12. Current guidance regarding the reuse of biometrics is as follows: With respect to applications, petitions, or benefit requests with an associated biometrics requirement that are filed with USCIS, USCIS will reuse biometrics when the following circumstances are met:

    1. the individual previously submitted fingerprints (10-prints) and a photograph at an ASC (or other authorized collection site);
    2. there is an exact A-file number, name, and date of birth (DOB) match between the pending filing and the previous filing from which the biometrics were collected; and
    3. the individual:
        a. was scheduled for an ASC appointment that was canceled since the temporary closure of ASCs on March 18, 2020,
        b. is unable to schedule an ASC appointment (or appointment for biometrics collection at an embassy or consulate, where applicable), or
        c. filed a benefit request with an associated biometrics requirement after March 18, 2020.

    If the identity verification requirements stated above are not met or, if an officer has articulable concerns about the individual's true identity, any existing biometrics will not be reused and the applicant must be scheduled for an appointment to collect new or initial biometrics at an ASC.

13. USCIS is not able to leverage reuse of biometrics for many I-539 applicants for two primary reasons. First, USCIS began requiring biometrics for all I-539 applications beginning March 11, 2019, so only those applicants who previously filed I-539 applications since that date, or have had biometrics taken for another application/petition/request filed with USCIS, would have biometrics available for reuse. Generally, most applicants with I-539 applications pending at this time did not submit an I-539 application prior to March 11, 2019 or have not submitted another benefit request requiring biometrics, so USCIS would not have previously collected their biometrics and would have no biometrics available to reuse. Second, as mentioned above, in order to reuse biometrics, USCIS is required to confirm the identity of the applicant to ensure that the previously collected fingerprints do in fact belong to the applicant. One of those vetting requirements includes the USCIS issued A-file number, which the majority of I-539 applicants do not have. Ultimately, USCIS has found reuse of biometrics for I-539 applications viable in only about 5% of cases.

14. Working within the social distancing limitations currently placed on the ASCs due to the COVID-19 pandemic, USCIS is doing everything it can to prioritize I-539 applicants for biometric appointments at the ASCs. Since beginning the phased reopening of the ASCs in July 2020, USCIS has scheduled nearly 360,000 biometrics appointments for I-539 applicants, to include over 68,000 appointments scheduled for February 2021. Scheduling I-539 applicants for biometrics has been an agency priority since the phased reopening of

the ASCs in July 2020, including expanding the reuse of biometrics across other eligible form types to free up additional capacity at the ASCs to make more appointments available to I-539 applicants. I-539 applications have been the second most heavily scheduled form during this period.

I declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

BRIAN J BRODERICK Digitally signed by BRIAN J BRODERICK Date: 2021.02.22 16:12:58 -05'00'

_February 22, 2021
DATE

Brian J. Broderick
Deputy Chief, USCIS IRIS IIMD
Camp Springs, MD

JS 44 (Rev. 10/20)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Deepthi Warrier Edakunni, et al.

(b) County of Residence of First Listed Plaintiff King
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Kripa Upadhyay, Orbit Law, PLLC
2459 152nd Avenue NE, Suite 17-2459
Redmond, WA 98052 (T) 206.312.8086

DEFENDANTS

Alejandro Mayorkas, Secretary of the Department of Homeland Security

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- [ ] 1 U.S. Government Plaintiff
- [ ] 3 Federal Question *(U.S. Government Not a Party)*
- [x] 2 U.S. Government Defendant
- [ ] 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	[ ] 1	[ ] 1	Incorporated *or* Principal Place of Business In This State	[ ] 4	[ ] 4
Citizen of Another State	[ ] 2	[ ] 2	Incorporated *and* Principal Place of Business In Another State	[ ] 5	[ ] 5
Citizen or Subject of a Foreign Country	[ ] 3	[ ] 3	Foreign Nation	[ ] 6	[ ] 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- [ ] 110 Insurance
- [ ] 120 Marine
- [ ] 130 Miller Act
- [ ] 140 Negotiable Instrument
- [ ] 150 Recovery of Overpayment & Enforcement of Judgment
- [ ] 151 Medicare Act
- [ ] 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- [ ] 153 Recovery of Overpayment of Veteran's Benefits
- [ ] 160 Stockholders' Suits
- [ ] 190 Other Contract
- [ ] 195 Contract Product Liability
- [ ] 196 Franchise

REAL PROPERTY
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 290 All Other Real Property

TORTS

PERSONAL INJURY
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers' Liability
- [ ] 340 Marine
- [ ] 345 Marine Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury
- [ ] 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- [ ] 365 Personal Injury - Product Liability
- [ ] 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

CIVIL RIGHTS
- [ ] 440 Other Civil Rights
- [ ] 441 Voting
- [ ] 442 Employment
- [ ] 443 Housing/ Accommodations
- [ ] 445 Amer. w/Disabilities - Employment
- [ ] 446 Amer. w/Disabilities - Other
- [ ] 448 Education

PRISONER PETITIONS

Habeas Corpus:
- [ ] 463 Alien Detainee
- [ ] 510 Motions to Vacate Sentence
- [ ] 530 General
- [ ] 535 Death Penalty

Other:
- [ ] 540 Mandamus & Other
- [ ] 550 Civil Rights
- [ ] 555 Prison Condition
- [ ] 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- [ ] 625 Drug Related Seizure of Property 21 USC 881
- [ ] 690 Other

LABOR
- [ ] 710 Fair Labor Standards Act
- [ ] 720 Labor/Management Relations
- [ ] 740 Railway Labor Act
- [ ] 751 Family and Medical Leave Act
- [ ] 790 Other Labor Litigation
- [ ] 791 Employee Retirement Income Security Act

IMMIGRATION
- [ ] 462 Naturalization Application
- [x] 465 Other Immigration Actions

BANKRUPTCY
- [ ] 422 Appeal 28 USC 158
- [ ] 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- [ ] 820 Copyrights
- [ ] 830 Patent
- [ ] 835 Patent - Abbreviated New Drug Application
- [ ] 840 Trademark
- [ ] 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- [ ] 861 HIA (1395ff)
- [ ] 862 Black Lung (923)
- [ ] 863 DIWC/DIWW (405(g))
- [ ] 864 SSID Title XVI
- [ ] 865 RSI (405(g))

FEDERAL TAX SUITS
- [ ] 870 Taxes (U.S. Plaintiff or Defendant)
- [ ] 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- [ ] 375 False Claims Act
- [ ] 376 Qui Tam (31 USC 3729(a))
- [ ] 400 State Reapportionment
- [ ] 410 Antitrust
- [ ] 430 Banks and Banking
- [ ] 450 Commerce
- [ ] 460 Deportation
- [ ] 470 Racketeer Influenced and Corrupt Organizations
- [ ] 480 Consumer Credit (15 USC 1681 or 1692)
- [ ] 485 Telephone Consumer Protection Act
- [ ] 490 Cable/Sat TV
- [ ] 850 Securities/Commodities/ Exchange
- [ ] 890 Other Statutory Actions
- [ ] 891 Agricultural Acts
- [ ] 893 Environmental Matters
- [ ] 895 Freedom of Information Act
- [ ] 896 Arbitration
- [ ] 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- [ ] 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- [x] 1 Original Proceeding
- [ ] 2 Removed from State Court
- [ ] 3 Remanded from Appellate Court
- [ ] 4 Reinstated or Reopened
- [ ] 5 Transferred from Another District *(specify)*
- [ ] 6 Multidistrict Litigation - Transfer
- [ ] 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
5 U.S.C. 706

Brief description of cause:
APA Challenge to Visa Delays

VII. REQUESTED IN COMPLAINT:

- [x] CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: [ ] Yes [x] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE
Mar 22, 2021

SIGNATURE OF ATTORNEY OF RECORD
s/Kripa Upadhyay

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked**.** (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

Deepthi Warrier Edakunni, et al., *Plaintiff(s)* v. Alejandro Mayorkas, Secretary of the Department of Homeland Security, *Defendant(s)*	)	Civil Action No. 2:21-cv-393

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Alejandro Mayorkas, Secretary of the Department of Homeland Security

Office of the General Counsel
U.S. Department of Homeland Security
2707 Martin Luther King Jr. Ave, SE
Washington, DC 20528-0485

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kripa Upadhyay
Orbit Law, PLLC
2459 152nd Avenue NE, Suite 17-2459
Redmond, WA 98052

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: ____________________

____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* ______________________
was received by me on *(date)* ______________ .

❒ I personally served the summons on the individual at *(place)* ______________________
______________________ on *(date)* ______________ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* ______________
______________________ , a person of suitable age and discretion who resides there,
on *(date)* ______________ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* ______________________ , who is
designated by law to accept service of process on behalf of *(name of organization)* ______________
______________________ on *(date)* ______________ ; or

❒ I returned the summons unexecuted because ______________________ ; or

❒ Other *(specify)*:

My fees are $ __________ for travel and $ __________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: ______________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

Deepthi Warrier Edakunni, et al.,		
Plaintiff(s)		
v.		Civil Action No. 2:21-cv-393
Alejandro Mayorkas, Secretary of the Department of Homeland Security,		
Defendant(s)		

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Alejandro Mayorkas, Secretary of the Department of Homeland Security

c/o Tessa M. Gorman, Acting United States Attorney for the Western District of Washington
c/o Civil Process Clerk United States Attorney's Office
700 Stewart Street, Suite 5220
Seattle, WA 98101-1271

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kripa Upadhyay
Orbit Law, PLLC
2459 152nd Avenue NE, Suite 17-2459
Redmond, WA 98052

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: ______________________

____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* ______________________
was received by me on *(date)* ______________ .

❐ I personally served the summons on the individual at *(place)* ______________________
______________________ on *(date)* ______________ ; or

❐ I left the summons at the individual's residence or usual place of abode with *(name)* ______________
______________________ , a person of suitable age and discretion who resides there,
on *(date)* ______________ , and mailed a copy to the individual's last known address; or

❐ I served the summons on *(name of individual)* ______________________ , who is
designated by law to accept service of process on behalf of *(name of organization)* ______________
______________________ on *(date)* ______________ ; or

❐ I returned the summons unexecuted because ______________________ ; or

❐ Other *(specify)*:

My fees are $ ________ for travel and $ ________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: ______________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

Deepthi Warrier Edakunni, et al.,

Plaintiff(s)

v.

Alejandro Mayorkas, Secretary of the Department of Homeland Security,

Defendant(s)

Civil Action No. 2:21-cv-393

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Alejandro Mayorkas, Secretary of the Department of Homeland Security

c/o Merrick B. Garland U.S. Attorney General
US Attorney General's Office
950 Pennsylvania Ave. NW
Washington, D.C. 20530-0001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Kripa Upadhyay
Orbit Law, PLLC
2459 152nd Avenue NE, Suite 17-2459
Redmond, WA 98052

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: ____________________

____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* ____________________
was received by me on *(date)* __________ .

❒ I personally served the summons on the individual at *(place)* ____________________
____________________ on *(date)* __________ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* __________
____________________ , a person of suitable age and discretion who resides there,
on *(date)* __________ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* ____________________ , who is
designated by law to accept service of process on behalf of *(name of organization)* __________
____________________ on *(date)* __________ ; or

❒ I returned the summons unexecuted because ____________________ ; or

❒ Other *(specify)*:

My fees are $ __________ for travel and $ __________ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: __________

____
Server's signature

____
Printed name and title

____
Server's address

Additional information regarding attempted service, etc: