

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

XXXXXXXXXXXXXX,

Plaintiff,

v.

JOHN KELLY, SECRETARY OF HOMELAND SECURITY; JAMES MCCAMENT, ACTING DIRECTOR OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; DONALD NEUFELD, DIRECTOR OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES SERVICE CENTER OPERATIONS; LAURA ZUCHOWSKI, DIRECTOR OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES VERMONT SERVICE CENTER; and MARK HAZUDA, DIRECTOR OF UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES NEBRASKA SERVICE CENTER,

Defendants.

Civil Action No. XXXXXXXXX

June 14, 2017

FIRST AMENDED COMPLAINT

Plaintiff XXXXXXXXXXXXX brings this action to enforce his rights as a bona fide petitioner for a U-visa, a form of immigration status available to certain victims of qualifying crimes who provide assistance to law enforcement authorities. XXXXXXXXXXXXX provided critical assistance to the New York Police Department and Queens District Attorney's Office that led to the arrest and prosecution of XXXXXXXX. That assistance served as the basis for a bona fide U-visa petition which has now been pending with the United States Citizenship and Immigration Services ("USCIS") for over 22 months. Although a federal statutes and regulations

require that XXXXXXXXX's petition and accompanying application for work authorization be timely adjudicated, to date USCIS has taken no action whatsoever. XXXXXXXXX therefore brings this suit for declaratory, mandamus, and injunctive relief, seeking an order compelling Defendants to determine his eligibility for placement on the formal U-visa waitlist, to adjudicate his application for an employment authorization document ("EAD"), and to issue him an interim EAD until such time as the EAD adjudication is complete.

To ensure that victims of crimes like XXXXXXXXX can remain in the country, access benefits to which they are entitled, and work lawfully to provide for their families, USCIS created by regulation a formal waitlist on which eligible U-visa petitioners are placed, automatically receiving deferred action or parole and the opportunity to apply for employment authorization on that basis. Under the Administrative Procedure Act (APA), 5 U.S.C. § 555, the determination of waitlist eligibility must be made within a reasonable time. Recognizing the importance of providing petitioners with the opportunity to work to provide for themselves and their families while they await this determination, Congress rendered U-visa petitioners eligible to apply for an EAD during the pendency of their petitions. 8 U.S.C. § 1184(p)(6). Under § 1184(p)(6), these EAD applications must be adjudicated while an individual's petition remains pending. USCIS also has a duty under its own regulations to adjudicate EAD applications like XXXXXXXXX's within 90 days of application. If it does not meet that deadline, USCIS must issue U-visa petitioners an interim EAD.

USCIS received XXXXXXXXX's bona fide U-visa petition and application for an EAD on August 12, 2015. The agency has now failed to determine XXXXXXXXX's eligibility for a U-visa or to adjudicate his EAD application for 672 days. Because of these failures by Defendants, XXXXXXXXX is being deprived of his ability to lawfully support himself and his family, and he

faces the threat of deportation and separation from XXXXXXXX. Deprivation of all these rights has caused severe and irreparable harm to XXXXXXXX. Because of their failure to make a determination of XXXXXXXX's U-visa eligibility, to adjudicate his EAD application, or even to grant him an interim EAD, Defendants are in violation of the Administrative Procedure Act, 5 U.S.C. §§ 555 and 701–702; 8 C.F.R. § 214.14(d)(2); 8 U.S.C. § 1184(p)(6); and former 8 C.F.R. § 274a.13(d). XXXXXXXX is clearly entitled to relief under the APA, 5 U.S.C. §§ 555 and 701–702; the Mandamus Act, 28 U.S.C. § 1361; and the Declaratory Judgment Act, 28 U.S.C. § 2201.

Defendants John Kelly, James McCament, Donald Neufeld, Laura Zuchowski, and Mark Hazuda (collectively, “Defendants”) are sued in their official capacities as officers and employees of the United States.

In support of this action, XXXXXXXX alleges as follows:

JURISDICTION AND VENUE

1. This action arises under § 214(p)(6) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1184(p)(6); and §§ 6, 10(a) and 10(e) of the APA, 5 U.S.C. §§ 555, 702, and 706(1)–(2)(A).
2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.
3. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1361, which provides that the “district courts shall have original jurisdiction of any action in the nature of mandamus.” 28 U.S.C. § 1361.
4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1)(C), which provides that a suit against federal officials acting in their official capacities can be brought in any judicial district where a plaintiff in the action resides if no real property is involved in the action. Plaintiff XXXXXXXX resides within the Eastern District of New York.

PARTIES

5. XXXXXXXXX is a resident of Queens, New York and a victim of XXXXXXXXX. His bona fide petition for U nonimmigrant status and application for employment authorization has been pending with Defendants since August 12, 2015.
6. Defendant John Kelly is the Secretary of Homeland Security and is charged with implementing the immigration laws of the United States. XXXXXXXXX sues Defendant Johnson in his official capacity.
7. Defendant James McCament is the Acting Director of USCIS, a component agency of the Department of Homeland Security, and is charged with administering the services and benefits functions of the immigration laws of the United States. XXXXXXXXX sues Defendant McCament in his official capacity.
8. Defendant Donald Neufeld is Director of Service Center Operations for USCIS, in which capacity he oversees activities at both the USCIS Vermont and Nebraska Service Centers. XXXXXXXXX sues Defendant Neufeld in his official capacity.
9. Defendant Laura Zuchowski is the Director of the Vermont Service Center, a component of USCIS, which oversees the filing, data entry, and adjudication of certain applications for immigration services and benefits, including petitions for U nonimmigrant status and employment authorization. XXXXXXXXX sues Defendant Zuchowski in her official capacity.
10. Defendant Mark Hazuda is the Director of the Nebraska Service Center, a component of USCIS, which oversees the filing, data entry, and adjudication of certain applications for immigration services and benefits, including petitions for U nonimmigrant status and employment authorization. XXXXXXXXX sues Defendant Hazuda in his official capacity.

OVERVIEW OF U NONIMMIGRANT STATUS REGIME

11. Individuals are eligible for U nonimmigrant status if they are the victim of qualifying criminal activity, have suffered substantial physical or mental abuse as a result, and have been helpful to law enforcement in the investigation and prosecution of such criminal activity. 8 U.S.C. § 1101(a)(15)(U).
12. Defendants automatically grant employment authorization to applicants who receive U nonimmigrant status incident to this status. *See* 8 U.S.C. § 1184(p)(3)(B); 8 C.F.R. § 214.14(c)(7).
13. The Vermont Service Center and the Nebraska Service Center have exclusive jurisdiction over petitions for U nonimmigrant status. Specifically, petitioners for U nonimmigrant status submit Form I-918 to the Vermont Service Center. The Vermont Service Center and the Nebraska Service Center jointly process U-visa petitions. The USCIS form on which XXXXXXXX petitioned for U nonimmigrant status permitted simultaneous application for employment authorization.
14. Congress has imposed a statutory maximum of ten thousand (10,000) grants of primary U (U-1) nonimmigrant status per fiscal year. 8 U.S.C. § 1184(p)(2)(A). At the end of December 2016, USCIS had over 92,000 primary U-visa petitions pending. The statutory cap for fiscal year 2016 was reached as of December 2015, USCIS, *USCIS Approves 10,000 U Visas for 7th Straight Fiscal Year*. December 29, 2015, and Defendants resumed issuing U-visas for the 2017 fiscal year on October 1, 2016.
15. Defendants continue to receive, process, and review U-visa petitions despite having reached the statutory cap on grants of U-1 nonimmigrant status. Defendants must place petitioners who otherwise would receive such status but for the statutory cap on a waitlist. *See* 8 C.F.R. § 214.14(d)(2) (“All eligible petitioners who, due solely to the cap, are not granted U-1

nonimmigrant status *must be placed* on a waiting list and receive written notice of such placement.”) (emphasis added). Petitioners who are placed by USCIS on this waitlist receive deferred action or parole. *Id.* (“USCIS will grant deferred action or parole to U-1 petitioners and qualifying family members while the U-1 petitioners are on the waiting list”). They also may apply for an employment authorization document. *See* 8 C.F.R. §§ 274a.12(c)(14), 274a.13(a)(1) (describing the availability of employment authorization based on deferred action).

16. 5 U.S.C. § 555(b) requires Defendants to determine XXXXXXXXX eligibility for a U-visa within a reasonable period of time after he filed his petition. Under this statute and 8 C.F.R. § 214.14(d)(2), USCIS has a non-discretionary duty to place on the formal waitlist petitioners whose U-visa petitions would be approved but for the statutory cap within a reasonable period of time.

17. USCIS implemented the waitlist regulations with the stated goals of “assisting law enforcement . . . [,] improving customer service by allowing victims to remain in the United States, giving them an opportunity to access victims services to which they may be entitled[,] and providing employment authorization to alien victims so they will have a lawful means through which to support themselves and their families.” Department of Homeland Security, New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status; Interim Rule, 72 Fed. Reg. 179, 53033 (Sep. 17, 2007).

18. During the pendency of his U-visa petition, there are no administrative remedies available for Plaintiff to exhaust. No other remedy exists for XXXXXXXXX to compel Defendants to comply with the APA, the INA, and 8 C.F.R. § 214.14(d)(2) and former § 274a.13(d).

EMPLOYMENT AUTHORIZATION FOR PETITIONERS FOR U NONIMMIGRANT STATUS

19. 8 U.S.C. § 1184(p)(6) requires USCIS to adjudicate EAD applications submitted by noncitizens who have pending, bona fide petitions for U nonimmigrant status. USCIS has discretion as to whether such applications should be granted or denied.
20. Defendants have failed to implement 8 U.S.C. § 1184(p)(6) and lack a mechanism for bona fide petitioners for U nonimmigrant status to obtain work authorization while their petitions are pending. *See* USCIS, *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008: Changes to T and U Nonimmigrant Status and Adjustment of Status Provisions; Revisions to Adjudicator’s Field Manual (AFM) Chapters 23.5 and 39 (AFM Update AD10-38)* 4 (“USCIS may grant employment authorization to any alien who has a pending, bona fide petition for U nonimmigrant status. INA § 214(p)(6). This authority will be addressed in a separate memorandum.”).
21. In violation of the requirements of 8 U.S.C. § 1184(p)(6), instead of adjudicating EAD applications for applicants with pending, bona fide petitions for U nonimmigrant status, USCIS does not grant or even adjudicate EAD applications for such applicants until those individuals receive U nonimmigrant status or are placed on the waitlist by USCIS.
22. 8 C.F.R. § 274a.13(d) (2009, amended 2017) requires USCIS to adjudicate EAD applications within 90 days of the date of their receipt. If it fails to do so, USCIS must issue to the applicant a temporary, interim EAD for no more than 240 days or until such time as the EAD application is adjudicated.¹

¹ On November 18, 2016, the U.S. Department of Homeland Security issued a final rule that amended regulations relating to certain nonimmigrant visa programs, effective January 17, 2017 (the “Final Rule”). Among other things, the Final Rule eliminated the “regulatory provisions that require adjudication of the Application for Employment Authorization (Form I-765 or EAD application) within 90 days of filing and that authorize interim EADs in cases where such adjudications are not conducted within the 90-day timeframe.” 81 Fed. Reg. 82398-01, 82401

23. In violation of 8 C.F.R. § 274a.13(d) (2009, amended 2017), USCIS does not issue interim EADs to non-waitlisted petitioners for U nonimmigrant status if their applications for EADs are not adjudicated within 90 days.

24. On information and belief, USCIS ceased granting interim EADs altogether at least one year prior to repealing the former 8 C.F.R. § 274a.13(d).

**PLAINTIFF'S PETITION FOR U NONIMMIGRANT STATUS AND APPLICATION
FOR EMPLOYMENT AUTHORIZATION**

25. XXXXXXXXX has resided continually in the New York City area since 2004.

26. XXXXXXXXX is eligible for U nonimmigrant status as the victim of qualifying criminal activity (XXXXXXX), who has suffered substantial mental and emotional harm as a result of that crime, and who has been certified by law enforcement officials as having been helpful in the investigation and prosecution of the criminal activity. 8 U.S.C. § 1101(a)(15)(U).

27. Consistent with such eligibility, XXXXXXXXX petitioned for U nonimmigrant status on August 11, 2015. His petition was received by the Vermont Service Center on August 12, 2015.

28. XXXXXXXXX U-visa petition was based on the events of XXXXXXXXX.

29. XXXXXXXXX called the police and subsequently XXXXXXXXX.

30. Approximately a month later, XXXXXXXXX truthfully testified to the best of his ability before a grand jury.

31. In part due to XXXXXXXXX's cooperation, XXXXXXXXX.

32. XXXXXXXXX completed and signed a form 1-918 Supplement B, U Nonimmigrant Status Certification in support of XXXXXXXXX's U-visa petition.

(Nov. 18, 2016), *available at* 2016 WL 6804771. The Final Rule applies only to applications for EADs filed on or after January 17, 2017.

33. XXXXXXXXX appended to the signed I-918 Supplement B a letter to the Vermont Service Center attesting to the fact that XXXXXXXXX was “helpful to the investigation and prosecution of the crimes committed against him,” that he reported the crime to the New York City Police Department, that he discussed the case with employees of the Queens District Attorney’s Office, and that he agreed to testify at trial, as required.
34. As a victim of a qualifying crime, XXXXXXXXX submitted a bona fide petition for U nonimmigrant status. The petition included DHS Form I-918 (Petition for U Nonimmigrant Status); an index of supporting documents; an affidavit by XXXXXXXXX detailing XXXXXXXXX, including the substantial harm he suffered and his cooperation with law enforcement; a DHS Form I-918 Supplement B (U Nonimmigrant Status Certification with an accompanying letter from the Queens District Attorney’s Office); a deposition of the police officer whom XXXXXXXXX; a copy of the indictment of XXXXXXXXX by the Supreme Court of the State of New York; a certificate of disposition for the case against XXXXXXXXX.
35. On his Form I-918 petition, XXXXXXXXX checked the “yes” box for Part 2, Question 7, which states “I want an Employment Authorization Document.” This constituted XXXXXXXXX’s application for an EAD. *See New Classification for Victims of Criminal Activity; Eligibility for “U” Nonimmigrant Status*, 72 Fed. Reg. 53,014, 53,029 (Sept. 17, 2007) (codified at 8 C.F.R. §§ 103, 212, 214, 274a and 299) (“USCIS has designed the Form I-918 so that it serves the dual purpose of requesting U Nonimmigrant status and employment authorization to streamline the application process.”).

36. On August 14, 2015, XXXXXXXXX received notice from the Vermont Service Center acknowledging Defendants' August 12, 2015 receipt of his I-918 Petition for U Nonimmigrant Status.
37. Nearly two years have passed since the filing of XXXXXXXXX's complete and bona fide petition for U nonimmigrant status. The Defendants have taken no action on the petition for XXXXXXXXX since it was properly filed on August 12, 2015.
38. USCIS is currently processing U-visa petitions from June 2014. The current processing time for petitions for U nonimmigrant status is therefore approximately three years. *USCIS*, <https://egov.uscis.gov/cris/processTimesDisplayInit.do> (after clicking "Service Center Processing Dates" for drop-down menu selection "Vermont Service Center") (last visited June 14, 2017).
39. On December 21, 2016, 497 days after Defendants received his application for an EAD, XXXXXXXXX called the Vermont Service Center Hotline and requested an interim EAD. To date, he has not received from USCIS any form of employment authorization or an adjudication of his application for an EAD.
40. XXXXXXXXX is currently eligible for employment authorization on two different bases: First, because XXXXXXXXX has a pending, bona fide petition for U nonimmigrant status, he is eligible for employment authorization under 8 U.S.C. § 1184(p)(6). Second, because Defendants have taken more than 90 days to adjudicate his application for employment authorization, XXXXXXXXX has a clear right to an interim EAD under the former 8 C.F.R. § 274a.13(d). Furthermore, if USCIS had determined XXXXXXXXX's U-visa eligibility within a reasonable time, as it was statutorily required to do, and subsequently placed him on

the waitlist, he would be eligible for work authorization on the basis of deferred action or parole.

41. Defendants' unreasonable delays have harmed XXXXXXXX. Each day that XXXXXXXX is deprived of employment authorization, he is restricted in his ability to secure lawful employment and gain the financial means necessary support himself and his family. XXXXXXXX's ability to adequately provide and care for XXXXXXXX is prejudiced by the ongoing failure of Defendants to determine his eligibility for placement on the U-visa waitlist, to adjudicate his application for an EAD, or issue him an interim EAD. And because of the failure of USCIS to determine whether he is eligible for a U-visa, which would entitle him to deferred action or parole, XXXXXXXX lives under the threat of removal from the country and separation from XXXXXXXX.

COUNT I – ADMINISTRATIVE PROCEDURE ACT

[UNREASONABLE DELAY OF DETERMINATION OF PLAINTIFF'S ELIGIBILITY FOR
U-VISA WAITLIST]

42. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.
43. The Defendants have a nondiscretionary obligation to determine XXXXXXXX's eligibility for placement on the U-visa waitlist within a reasonable time. 5 U.S.C. § 555(b); 8 C.F.R. § 214.14(d)(2). Once USCIS determines that XXXXXXXX is eligible for the waitlist, it has a nondiscretionary duty to place him on the waitlist and grant him deferred action or parole. 8 C.F.R. § 214.14(d)(2).
44. The Defendants' delay of nearly two years without making this eligibility determination on XXXXXXXX's U-visa petition is unreasonable, in violation of the APA, 5 U.S.C. §§ 555(b) and 706(1).

45. Because of USCIS's unreasonable delay, Plaintiff has suffered and will continue to suffer substantial and irreparable harm to his welfare and that of XXXXXXXXX, for which there is no adequate remedy at law.

COUNT II – ADMINISTRATIVE PROCEDURE ACT

**[FAILURE TO COMPLY WITH STATUTORY TIMELINE MANDATING EAD
ADJUDICATION]**

46. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

47. In enacting 8 U.S.C. § 1184(p)(6), Congress imposed a nondiscretionary duty on USCIS to adjudicate applications for EADs from petitioners with pending U-visa petitions. The statute only affects petitioners who have not yet been placed on the waitlist, therefore imposing on USCIS an obligation to adjudicate applications for EADs separate from making the waitlist determination.

48. USCIS has withheld adjudication of employment authorization for pending, bona fide petitioners for U nonimmigrant status who are not on the waitlist by refusing to undertake such adjudication until an applicant has either (i) been granted a U-visa, or (ii) submitted a new EAD application pursuant to placement on the formal U-visa waitlist.

49. USCIS's failure to adjudicate Plaintiff's application for employment authorization concurrent with his pending, bona fide petition for U nonimmigrant status is therefore "agency action unlawfully withheld or unreasonably delayed" under 5 U.S.C. § 706(1), and "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under 5 U.S.C. § 706(2)(A).

50. In addition to the timeline imposed by Congress through 8 U.S.C. § 1184(p)(6), USCIS had an obligation to adjudicate Plaintiff's EAD application within a reasonable period of time. 5

U.S.C. § 555(b). The Defendants' delay of 672 days is unreasonable and therefore violates 5 U.S.C. § 555(b).

51. Because of USCIS's unlawful withholding of adjudication of his EAD application, and its failure to adjudicate the EAD application within a reasonable period of time, Plaintiff has suffered and will continue to suffer substantial and irreparable harm to his welfare and that of XXXXXXXX, for which there is no adequate remedy at law.

COUNT III – ADMINISTRATIVE PROCEDURE ACT

[FAILURE TO COMPLY WITH REGULATORY TIMELINE MANDATING EAD ADJUDICATION AND FAILURE TO ISSUE INTERIM EAD AS REQUIRED BY REGULATION]

52. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.

53. Plaintiff's application for an EAD has been pending for longer than 90 days and has not been adjudicated. Plaintiff's application for an EAD was received by USCIS on August 12, 2015.

54. Contrary to the requirements of former 8 C.F.R. § 274a.13(d), USCIS has failed to issue an interim EAD.

55. The failure of USCIS to comply with its own regulation was "agency action unlawfully withheld or unreasonably delayed" under 5 U.S.C. § 706(1) and constitutes agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" under 5 U.S.C. § 706(2)(A).

56. Because of USCIS's failure to comply with its own regulatory requirements, Plaintiff has suffered and will continue to suffer substantial and irreparable harm to his welfare for which there is no adequate remedy at law.

COUNT IV – MANDAMUS ACT

[FAILURE TO PERFORM STATUTORY AND REGULATORY DUTIES TO DETERMINE ELIGIBILITY FOR U-VISA WAITLIST, ADJUDICATE EAD APPLICATION, AND ISSUE INTERIM EAD]

57. Plaintiff incorporates each of the preceding paragraphs as if fully set forth herein.
58. The Mandamus Act authorizes federal district courts to compel an officer or employee of a United States agency to perform a duty owed to a plaintiff. 28 U.S.C. § 1361. Issuance of a writ of mandamus is appropriate where the following requirements are satisfied: (1) the plaintiff has a right to have the act performed; (2) the defendant is under a clear nondiscretionary duty to perform the act requested; and (3) no other adequate remedy is available.

Unlawful Failure to Determine Plaintiff's Eligibility for U-Visa Waitlist

59. XXXXXXXXX satisfies all of the requirements of a writ of mandamus compelling Defendants to determine his eligibility for the waitlist.
60. Once XXXXXXXXX properly filed his complete and bona fide U-visa petition, he had a clear right to a determination of eligibility for the waitlist, 8 C.F.R. § 214.14(d)(2), and a clear right to that determination within a reasonable period of time. 5 U.S.C. §§ 555(b).
61. Once USCIS received XXXXXXXXX's U-visa petition, it had a nondiscretionary, ministerial duty to decide within a reasonable amount of time whether he was eligible for placement on the waitlist. 5 U.S.C. §§ 555(b); 8 C.F.R. § 214.14(d)(2).
62. USCIS has not determined whether XXXXXXXXX is eligible for the U-visa waitlist, in violation of its obligations under 5 U.S.C. §§ 555(b) and 8 C.F.R. § 214.14(d)(2).
63. No other adequate remedy is available to XXXXXXXXX. Because of USCIS's unreasonable delay, Plaintiff is living under the threat of removal and separation from his family and has been denied the opportunity to seek lawful employment to support himself and

XXXXXXXX, and will continue to suffer substantial and irreparable harm to his welfare and that of XXXXXXXX, for which there is no adequate remedy at law.

Unlawful Failure to Adjudicate EAD Application Under Statutory Timeline

64. XXXXXXXX also satisfies all of the requirements of a writ of mandamus compelling Defendants to adjudicate his EAD application under § 1184(p)(6)'s statutorily imposed timeline.
65. XXXXXXXX has a clear right to adjudication of his EAD application while his petition for a U-visa is pending under § 1184(p)(6).
66. When XXXXXXXX filed his form I-918 petitions, he applied for an EAD by checking "yes" in response to part 2, question 7, which states "I want an employment authorization document."
67. In enacting 8 U.S.C. § 1184(p)(6), Congress imposed a nondiscretionary duty on USCIS to adjudicate applications for EADs from petitioners with pending U-visa petitions.
68. Defendants have violated their obligation under 8 U.S.C. § 1184(p)(6) by unlawfully withholding adjudication of employment authorization applications submitted by pending, bona fide petitioners for U nonimmigrant status who are not on the waitlist until such applicant have either (i) been granted a U-visa, or (ii) submitted a new EAD application pursuant to placement on the formal U-visa waitlist.
69. No other adequate remedy is available to XXXXXXXX. Without the adjudication of his application for an EAD, XXXXXXXX has been and continues to be unable to obtain lawful employment in the United States. As a result, XXXXXXXX has been and continues to be at risk of being unable to lawfully support himself and XXXXXXXX. An order from this Court

is XXXXXXXXX only avenue of relief with respect to his right to the timely adjudication of his EAD application.

Unlawful Failure to Adjudicate EAD Application or Issue an Interim EAD in Violation of Regulation

70. XXXXXXXXX satisfies all of the requirements of a writ of mandamus compelling Defendants to adjudicate his EAD application and grant him an interim EAD pursuant to former 8 C.F.R. § 274a.13(d).
71. XXXXXXXXX has a clear right to adjudication of his EAD application within 90 days of its filing or, failing such adjudication, to receive an interim EAD. 8 C.F.R. § 274a.13(d) (2009, amended 2017).
72. Former 8 C.F.R. § 274a.13(d) imposes a nondiscretionary duty on USCIS to adjudicate EAD applications within 90 days or to issue an interim EAD when an application has not been adjudicated within 90 days of receipt. *See* 8 C.F.R. § 274a.13(d) (2009, amended 2017) (providing that “USCIS *shall* adjudicate the application [for an EAD] within 90 days from the date of receipt of the application by USCIS” and that “[f]ailure to complete the adjudication within 90 days *will* result in the grant of an [EAD] for a period not to exceed 240 days”) (emphases added).
73. Defendants have violated their obligation to adjudicate XXXXXXXXX’s EAD or to issue him an interim EAD. XXXXXXXXX’s EAD application has been pending for more than 90 days and has not been adjudicated, nor has he been granted an interim EAD.
74. No other adequate remedy is available to XXXXXXXXX. Without the adjudication of his application for an EAD or interim authorization, XXXXXXXXX has been and continues to be unable to obtain lawful employment in the United States. As a result, XXXXXXXXX has been and continues to be at risk of being unable to lawfully support himself and XXXXXXXXX. An

order from this Court is XXXXXXXXX's only avenue of relief with respect to his right to the timely adjudication of his EAD application.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests that this Court grant the following relief:

1. Declare that Defendants' actions and omission complained of herein violate 5 U.S.C. §§ 555(b), 706(1), and 706(2)(A); 8 U.S.C. § 1184(p)(6); former 8 C.F.R. § 274a.13(d); and 8 C.F.R. § 214.14(d)(2).
2. Enjoin Defendants—and each of their officers, agents, servants, employees, successors in office, and those acting in privity or concert with them—and enter an order:
 - (a) compelling Defendants to timely determine XXXXXXXXX's eligibility for placement on the U-visa waitlist pursuant to 8 C.F.R. § 214.14(d)(2);
 - (b) compelling Defendants to timely adjudicate XXXXXXXXX's employment application while his U-visa petition remains pending, pursuant to 8 U.S.C. § 1184(p)(6); and
 - (c) compelling Defendants to adjudicate XXXXXXXXX's employment application and grant him an interim EAD pursuant to former 8 C.F.R. § 274a.13(d).
3. Award attorneys' fees and costs of this litigation to XXXXXXXXX.
4. Grant any and all further relief that the Court deems just and proper.

Dated: June 14, 2017

/s/ Michael J. Wishnie

Michael J. Wishnie (MW1952), Supervising Attorney
Muneer I. Ahmad, Supervising Attorney*
Marisol Orihuela, Supervising Attorney*
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** For identification purposes only. This complaint has been prepared by a clinic operated by Yale Law School, but does not purport to present the school's institutional views, if any.

CERTIFICATE OF SERVICE

I, Michael J. Wishnie, hereby certify that on June 14, 2017, the foregoing First Amended Complaint will be served electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants by First Class Mail.

/s/ Michael J. Wishnie

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