IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No.: 7:18-cv-135-BO

Ansberto Fernandez Gonzalez, Plaintiff, v. L. Frank Cissna, Director, United States Citizenship and Immigration Services; and United States Citizenship and Immigration Services, Defendants.	)	FIRST AMENDED COMPLAINT

Pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), Plaintiff now files a first amended complaint as of right, and respectfully requests this Court to compel the Defendant to make decisions on Plaintiff's I918 work authorization request and whether to place the Plaintiff on the U-Visa waiting list, and award the Plaintiff reasonable attorneys' fees and costs under the Equal Access to Justice Act.

PARTIES

1. Plaintiff Ansberto Fernandez Gonzalez is a permanent resident of New Hanover County, North Carolina. He is also a citizen and national of Mexico.

2. Defendant L. Frank Cissna is the Director of the United States Citizen and Immigration Services ("USCIS"). In his official capacity, he is responsible for enforcing the Immigration and Nationality Act and its attendant regulations, including but not limited to timely adjudicating I-918, Petitions for U Nonimmigrant Status, U-visa derivative applications, and U-visa collateral benefits. 8 C.F.R. § 214.14(c).

3. United States Citizenship and Immigration Services is the agency responsible for adjudicating immigration benefits and responding to requests under the Freedom of Information Act about those benefits.

VENUE AND JURISDICTION

4. This Court has jurisdiction over this complaint under 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

5. Venue is proper in this Court under 28 U.S.C. § 1391 and 5 U.S.C. § 552(a)(4)(B) because a substantial part of the events or omissions giving rise to the claim occurred in the Eastern District of North Carolina and Plaintiff resides in New Hanover, North Carolina.

6. Plaintiff has exhausted all administrative remedies.

7. Plaintiff has constructively exhausted all administrative remedies.

8. Plaintiff has no other recourse.

FACTS

U-Visa Framework

9. Foreign nationals that are victims of crimes committed in the United States may qualify for a visa under 8 U.S.C. § 1101(a)(15)(U) ("U-Visa").

10. To qualify, the foreign national must be the victim of a qualifying crime, including but not limited to:

> Rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.

8 C.F.R. § 214.14(a)(9). These are all serious crimes.

11. To apply for a U-Visa, first, victims who suffer direct and proximate harm as a consequence of such qualifying crime must acquire a U-Visa "certification" from a "certifying agency" that states, inter alia, the foreign national possesses important information about the crime and he or she will cooperate in the agency's ongoing investigation or prosecution. 8 C.F.R. § 214.14(c)(2)(i).

12. A "certifying agency" is a "federal, state, or local law enforcement agency, prosecutor, judge, or other authority, that has responsibility for the investigation or prosecution of a qualifying crime or criminal activity." 8 C.F.R. § 214.14(a)(2).

13. After they get a U-Visa certification, the foreign national must complete and submit an I-918, Petition for U Nonimmigrant Status ("U-Visa Petition"), comprising the U-Visa Petition, the U-Visa certification, and other evidence of eligibility. See Form I-918 Instructions at 10-13 (Feb. 7, 2107) available at https://www.uscis.gov/i-918 (then click on link to "Form I-918 Instructions") (last visited July 24, 2018).[1]

14. In addition to the victim/applicant, "qualifying family members" of the victim may also apply for U-Visas. 8 C.F.R. § 214.14(f). Such derivative beneficiaries' petitions rise and fall with the principle applicant's petition.

15. Upon filing a *bona fide* U-Visa application, USCIS "may grant work authorization." 8 U.S.C. § 1184(p)(6).

16. On the U-Visa application in force at the time Plaintiff filed ("2016 U-Visa Application"), the petitioner had an option to request work authorization.

[1] USCIS's forms and instructions carry the force of law and control when inconsistent with regulations. 8 C.F.R. § 103.2(a)(1).

17. Question 7 on page 2 of the 2016 U-Visa Application stated: "I want an Employment Authorization Document." The petitioner could then choose yes or no.

18. The instructions for the 2016 U-Visa Application did not state that a petitioner was required to file any other form to apply for work authorization. The instructions did not indicate that a petitioner had to take any additional action to apply for work autorotation.

19. The work authorization application instructions at the time even noted that U-Visa petitioners should not file a Form I765 request for work authorization if they requested an employment authorization on their I918.

20. This one-step work authorization process comported with the information in a contemporaneous rulemaking:

> For principal aliens seeking their first [work authorization] based upon U nonimmigrant status, USCIS will use the information contained in the Form I-918 to automatically generate [work authorization], such that a separate request for [work authorization] is not necessary . . . USCIS has designed the Form I-918 so that it serves the dual purpose of requesting U nonimmigrant status and their employment authorization to streamline the application process. Therefore, principal aliens will not have to file additional paperwork to obtain an initial [work authorization.
>
> New Classification for Victims of Criminal Activity; Eligibility for "U" Nonimmigrant Status, 72 Fed. Reg. 53,014 (Sep. 17, 2007).

21. At this same time, USCIS had a mandatory duty to adjudicate all work authorization requests within 90 days: "USCIS will adjudicate [work authorization] application[s] within 90 days from the date of receipt of the application" and "failure to complete the adjudication within 90 days will result in the grant of an employment authorization document for a period not to exceed 240 days." 8 C.F.R. § 274a.13(d) (2016).

22. This mandate was removed via notice and comment rulemaking in January 2017.

23. Thus, U-Visa applicants who filed I918s prior to January 2017 on the 2016 U-Visa Application were entitled to work authorization within 90 days of filing or entitled to interim work authorization.

24. However, USCIS never issued work authorization based on the requests for work authorization contained in the 2016 U-Visa Applications.

25. Similarly, upon filing a *prima facie* eligible U-Visa application, USCIS may grant a stay of removal. 8 U.S.C. § 1227(d)(1).

26. These collateral benefits are intended to allow the foreign national to maintain a life in the United States while he or she assists law enforcement.

27. Without these collateral benefits, U-Visas would be rendered worthless because the backlog for U-Visas is so long; simply said, a U-Visa applicant does not have the tools to work and live in the United States for years without work authorization and deferred action.

28. This backlog arises because Congress allocates only 10,000 U-Visas per fiscal year. 8 C.F.R. § 214.14(d)(1). The cap has been reached every year since 2008.

29. In light of this backlog, USCIS created a waiting list ("U-Visa Waiting List"). 8 C.F.R. § 214.14(d)(2).

30. Section 214.14(d)(2) states in full:

> (2) *Waiting list.* 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. Priority on the waiting list will be determined by the date the petition was filed with the oldest petitions receiving the highest priority. In the next fiscal year, USCIS will issue a number to each petition on the waiting list, in the order of highest priority, providing the petitioner remains admissible and eligible for U nonimmigrant status. After U-1 nonimmigrant status has been issued to qualifying petitioners on the waiting list, any remaining U-1 nonimmigrant numbers for that fiscal year will be issued to new qualifying petitioners in the order that the petitions were properly filed.

Id.

31. Once a U-Visa Applicant is placed on the U-Visa Waiting list USCIS *must* grant deferred action to the applicant and his or her qualifying family members: "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." *Id.* (emphasis added).

32. Similarly, once a U-Visa Applicant is placed on the U-Visa Waiting list, USCIS may grant work authorization to the applicant and his or her qualifying family members: "USCIS, in its discretion, may authorize employment for such petitioners and qualifying family members." *Id.*

33. Once a foreign national acquires work authorization, he or she can acquire a social security number.

34. And once a foreign national permanently residing in North Carolina acquires a social security number and work authorization, he or she becomes eligible for a North Carolina driver's license.

35. Thus, when USCIS places a U-Visa applicant and his or her derivatives on the U-Visa Wait List, the applicant and qualifying family members will acquire deferred action and may acquire work authorization, a social security number, and a North Carolina driver's license.

Plaintiff's Facts

36. Plaintiff was the victim of robbery, burglary, and false imprisonment in the United States.

37. These are qualifying crimes for under 8 U.S.C. § 1101(a)(15)(U).

38. Plaintiff suffered substantial physical and mental abuse as a result of these crimes.

39. The crimes were the direct and proximate cause of such harm.

40. A certifying agency determined that Plaintiff was the victim of a qualifying crime.

41. A certifying agency determined that Plaintiff possessed valuable information about such crime.

42. A certifying agency determined that Plaintiff was helpful in the investigation or prosecution of the crime.

43. A certifying agency issued Plaintiff a U-Visa certification.

44. On July 11, 2016, Plaintiff submitted a complete 2016 U-Visa Application to USCIS.

45. Plaintiff checked "yes" on question 7 on page 2 to request work authorization on the 2016 U-Visa Application.

46. Upon information and belief, within one week of submission, USCIS determined that Plaintiff's application was a pending "*bona fide* application" under 8 U.S.C. § 1184(p)(6).

47. Upon information and belief, within one week of submission, USCIS determined that Plaintiff's application set "forth a *prima facie* case for approval" under 8 U.S.C. § 1227(d).

48. Since making these determinations, upon information and belief, USCIS has taken no adjudicatory action on Plaintiff's Application.

49. Plaintiff is eligible for U-Visa status.

50. Plaintiff is eligible for work authorization or interim work authorization.

51. Regardless, USCIS has not made a decision about whether to put Plaintiff on the U-Visa Wait List.

52. USCIS had not issued work authorization or interim work authorization.

53. This delay has deprived Plaintiff of acquiring deferred action.

54. This delay has also deprived Plaintiff of work authorization.

55. This delay has precluded Plaintiff from acquiring a social security number and a North Carolina driver's license.

56. On June 25, 2018, Plaintiff filed a request under the Freedom of Information Act for the entirety of her alien registration file with USCIS and information on USCIS's U-Visa processing.

FIRST CAUSE OF ACTION
(Mandamus Act - Work Authorization Request in 2016 U-Visa Application)

57. Plaintiff re-alleges all of the allegations contained herein.

58. USCIS has a non-discretionary, ministerial duty to make a decision on Plaintiff's request for work authorization in the 2016 U-Visa Application.

59. USCIS had a non-discretionary, ministerial duty to make such decision within 90 days of receipt of the application. 8 C.F.R. § 274a.13(d) (2016); *see Rodriguez v. Nielsen*, — F.3d —, 2018 WL 4783977 (E.D.N.Y. Sep. 30, 2018).

60. USCIS also had a non-discretionary duty to issue interim work authorization if it failed to issue work authorization within 90 days. *Id.*

61. USCIS wholly fails to issue work authorization under § 1184(p)(6) to pending, *bona fide* U-Visa applications.

62. Such failure is unreasonable and substantially unjustified.

63. Plaintiff has a vested right in adjudication of the work authorization request in his 2016 U-Visa Application within 90 days.

64. Under 28 U.S.C. § 1361 this Court is empowered to order USCIS to issue work authorization to Plaintiff based on the request in his 2016 U-Visa Application and former § 274a.13(d).

65. This Court should order USCIS to make a decision on Plaintiff's pending request for work authorization in his 2016 U-Visa Application.

SECOND CAUSE OF ACTION
(Administrative Procedure Act – Unreasonably Delayed Work Authorization Decisions)

66. Plaintiff re-alleges all of the allegations contained herein.

67. USCIS has a non-discretionary, ministerial duty *to make a decision* on the request for work authorization contained in the 2016 U-Visa Application. 8 U.S.C. § 1184(p)(6).

68. Though USCIS may not have a mandatory duty *to grant* such application, it has a non-discretionary, ministerial duty to adjudicate a pending work authorization request.

69. Upon information and belief, USCIS has determined Plaintiff's U-Visa application is pending and *bona fide*.

70. Plaintiff's request for work authorization in his 2016 U-Visa Application has been pending for more than twenty-eight months; the regulations in place at the time required a decision to be made within 90 days or issue interim work authorization for 240 days. § 274a.13(d) (2016).

71. This is an unreasonable delay under the factors laid out in *Telecommunications Research & Action Ctr. v. FCC ("TRAC")*, 750 F.2d 70 (D.C. Cir. 1984). Those factors comprise:

> (1) "the time an agency takes to make a decision should be governed by a 'rule of reason' "; (2) "[t]he content of a rule of reason can sometimes be supplied by a congressional indication of the speed at which the agency should act"; (3) "the reasonableness of a delay will differ based on the nature of the regulation; that is, an unreasonable delay on a matter affecting human health and welfare might be reasonable in the sphere of economic regulation"; (4) "the effect of expediting delayed actions on agency activity of a higher or competing priority . .

. [and] the extent of the interests prejudiced by the delay"; and (5) "a finding of unreasonableness does not require a finding of impropriety by the agency."

Id. at 80.

72. First, the agency lacks a rule of reason for adjudicating requests for work authorization contained in 2016 U-Visa Applications because it takes no action whatsoever on those requests.

73. Second, USCIS has given an indication at the speed at which it should act in its former regulation at § 274a.13(d). At the time the 2016 U-Visa Application was filed, USCIS mandated that all such work authorization requests must be decided within 90 days and it required interim work authorization if USCIS failed to meet that deadline. Even if this regulation is no longer in force, it still indicates work authorization requests should be decided in a matter of months, not years.

74. Third, work authorization is a matter affecting human health and welfare because, without it, Plaintiff is unable to work lawfully in the United States.

75. Fourth, issuing work authorization would not negatively effect any agency activity of a higher or competing priority. *See Rodriguez*, 2018 WL 4783977 at *19. Plaitniff's right to work authorization in a timely fashion has already vested under former § 274a.13(d). *Id.*

76. Fifth, this requires no finding of agency impropriety.

77. USCIS delay is unreasonable and substantially unjustified.

78. This Court should compel adjudication of the work authorization request contained in the 2016 U-Visa Application.

THIRD CAUSE OF ACTION
(APA - Unreasonable Delay on I765)

79. Plaintiff realleges all of the allegations contained herein.

80. In addition to the request in the 2016 U-Visa Application, Plaintiff filed a work authorization application on Form I765 on July 11, 2016, over two years ago.

81. USCIS has taken no adjudicatory action on it.

82. USCIS has a duty under the Administrative Procedures Act ("APA") to take action on Plaintiff's pending work authorization application "within a reasonable amount of time." 5 U.S.C. § 555(b).

83. This is an unreasonable delay under the factors laid out in *Telecommunications Research & Action Ctr. v. FCC ("TRAC")*, 750 F.2d 70 (D.C. Cir. 1984). Those factors comprise:

> (1) "the time an agency takes to make a decision should be governed by a 'rule of reason' "; (2) "[t]he content of a rule of reason can sometimes be supplied by a congressional indication of the speed at which the agency should act"; (3) "the reasonableness of a delay will differ based on the nature of the regulation; that is, an unreasonable delay on a matter affecting human health and welfare might be reasonable in the sphere of economic regulation"; (4) "the effect of expediting delayed actions on agency activity of a higher or competing priority . . . [and] the extent of the interests prejudiced by the delay"; and (5) "a finding of unreasonableness does not require a finding of impropriety by the agency."

Id. at 80.

84. First, USCIS's delay on Plaintiff's work authorization application is not governed by a rule of reason.

85. USCIS does not adjudicate work authorizations filed along side a U-Visa application on a first in, first out basis.

86. USCIS's own "processing times" are expressed in a range, demonstrating that earlier filed applications are adjudicated at the same time as later filed applications.

87. Second, USCIS and congress intend work authorization applications filed with U-Visa applications to be decided within six months of their filing.

88. When this work authorization application was filed, USCIS had a regulation requiring adjudication of work authorization applications within 90 days.

89. USCIS has since rescinded that rule, but it still provides an indication of the speed at which the agency has acted and should act on work authorization applications.

90. USCIS processing times report that the Vermont Service Center typically adjudicates all "other applications for employment authorization" within a range of time of 3.5 months to 5.5 months.

91. These processing times are inaccurate, but they provide an indication of the speed at which the agency has acted or should act on work authorization applications.

92. Congressional policy indicates that all immigration benefits applications should be decided within six months:

> 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).

93. USCIS tries to meet this deadline as evidenced by its previous regulation and its reported "processing times" for work authorization applications.

94. Third, USCIS's work authorization decisions impact human health and welfare.

95. Plaintiff cannot lawfully work. This is a significant impediment.

96. Because Plaintiff does not have work authorization, Plaintiff is unable to acquire a social security number. This prevents Plaintiff from various things such as opening a bank account, paying into social security, and acquiring a North Carolina driver's license.

97. Plaintiff is unable to acquire a North Carolina driver's license.

98. All of these deprivations impact Plaintiff's health and welfare. This delay, therefore, affects health and welfare interests, not purely economic interests.

99. Fourth, compelling a decision on work authorization applications filed with U-Visa applications would have no effect on an "agency activity of a higher or competing priority." *TRAC*, 750 F.2d at 80.

100. Similarly, compelling USCIS to make a decision on Plaintiff's pending work authorization application would have no effect on USCIS granting other work authorizations for other individuals with *bona fide*, pending U-Visa applications.

101. Finally, compelling USCIS action on Plaintiff's work authorization under § 1184(p)(6) does not require a finding of bad faith on the part of the agency.

102. Under 5 U.S.C. § 706(a), this Court is empowered to order USCIS to make a decision on the pending work authorization application under § 1184(p)(6).

103. This delay is substantially unjustified.

104. This Court should order USCIS to make a decision on Plaintiff's pending work authorization application.

FOURTH CAUSE OF ACTION
(Administrative Procedure Act – Unreasonably Delayed Waiting List Decisions)

105. Plaintiff re-alleges all of the allegations contained herein.

106. At the time of filing this Amended Complaint, Plaintiff's U-Visa application has been pending for twenty-four months, and Plaintiff is an eligible petitioner.

107. USCIS does not have discretion to withhold Waiting List decisions from eligible petitioners: "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*." 8 C.F.R § 214.14(d)(2).

108. USCIS has a duty under the Administrative Procedures Act ("APA") to take action on whether to put a U-Visa Applicant and his or her qualifying family members on the U-Visa Waitlist "within a reasonable amount of time." 5 U.S.C. § 555(b).

109. Plaintiffs can state a claim for unreasonable delay under the APA for delay on U-Visa Waiting List decisions by alleging significant delay: *See, e.g., See Rodriguez*, 2018 WL 4783977 at *19; *Perez v. Cissna*, No. CV 2:18-00069-MBS, 2018 WL 5013857, at *1 (D.S.C. Oct. 15, 2018); *Berduo v. Cissna*, No. CV 9:18-00082-MBS, 2018 WL 5013593, at *1 (D.S.C. Oct. 15, 2018); *Gutierrez v. Cissna*, No. CV 2:18-00076-MBS, 2018 WL 5013642, at *1 (D.S.C. Oct. 15, 2018); *Martinez v. Cissna*, No. CV 2:18-00077-MBS, 2018 WL 5013834, at *1 (D.S.C. Oct. 15, 2018); *Mata v. Cissna*, No. CV 2:18-00073-MBS, 2018 WL 5013838, at *1 (D.S.C. Oct. 15, 2018).

110. First, there is no rule of reason controlling USCIS's U-Visa Waiting List decisions.

111. USCIS does not make U-Visa Waiting List decisions on a first in, first out basis.

112. USCIS prioritizes some applications over others for U-Visa Waiting List decisions.

113. There is no cap for the U-Visa Waiting List.

114. USCIS's processing times for U-Visa adjudications are inaccurate.

115. Because the processing times are expressed in a range, later-filed applications get U-Visa Waiting List decisions ahead of earlier filed applications.

116. USCIS regularly makes waiting list decisions for foreign nationals in removal proceedings or subject to a final order of removal ahead of U-Visa applicants who are not in removal proceedings and U-Visa applicants who do not have a final order of removal.

117. There is no rule of reason to USCIS's U-Visa processing.

118. Second, Congress has indicated that all immigration applications for benefits, including U-Visa Waiting List decisions, should be made in six months.

119. Congressional policy indicates that all immigration application should be decided within six months:

> 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).

120. USCIS strives to meet this six-month timeline, indicating that section 1571(b) does provide content for USCIS's timelines.

121. Third, USCIS's U-Visa Waiting List decisions impact human health and welfare.

122. Plaintiff is unable to acquire deferred action.

123. Plaintiff is unable to acquire work authorization. Plaintiff cannot lawfully work. This is a significant impediment.

124. Plaintiff is unable to acquire a social security number. This prevents Plaintiff from various things such as opening a bank account, paying into social security, and acquiring a North Carolina driver's license.

125. Plaintiff is unable to acquire a North Carolina driver's license.

126. All of these deprivations impact Plaintiff's health and welfare. This delay, therefore, affects health and welfare interests, not purely economic interests.

127. Fourth, compelling agency action on USCIS's decision to put Plaintiff on the U-Visa Waiting List would have no effect on a USCIS activity of a higher or competing priority.

128. USCIS claims that timely adjudication of U-Visa Applications is a priority. Compelling agency action here would comport with USCIS policy.

129. USCIS is treating Plaintiff differently than other U-Visa applicants because it is making U-Visa Waiting List decisions for later-filed applications.

130. USCIS treats Plaintiff differently than U-Visa applicants in removal proceedings; in fact, it treats them better.

131. USCIS treats Plaintiff differently than U-Visa applicants with final orders of removal; in fact, it treats them better.

132. USCIS knowingly cites to inaccurate processing times to claim that Plaintiff's U-Visa Waiting List decision is within processing times.

133. Compelling USCIS to make a Waiting List decision for Plaintiff would not simply push Plaintiff to "the front of the line" because there is no "line." USCIS does not make U-Visa Waiting List decisions on a first in, first out basis.

134. Compelling USCIS to make a Waiting List decision for Plaintiff would not affect higher or competing interests because there is no cap on the U-Visa Waiting List.

135. USCIS expedites U-Visa Waiting List decisions for seven different reasons outlined in the USCIS, Policy Manual, Volume 1, Part A, Chapter 12.

136. USCIS expedites U-Visa Waiting List decisions upon the request of Immigration and Customs Enforcement.

137. When USCIS expedites consideration of these decisions, it does not interfere with a competing priority of USCIS.

138. Immigration Service Officers that adjudicate U-Visas do not adjudicate any other types of visas. Thus, compelling USCIS action on U-Visa Waiting List decisions does not impact the adjudication of any other type of visa.

139. Further, to the extent compelling USCIS to make U-Visa Waiting List decisions delays adjudication of earlier filed applications, it only delays such decisions by the amount of time it takes an immigration service officer to make such decision. Upon information and belief, this time is matter of mere hours. Thus, any effect is *de minimis* and has no impact on the overall adjudication waiting times or process.

140. USCIS has sufficient resources to make U-Visa Waiting List decisions in a reasonable amount of time.

141. Additional resources do not affect processing times; thus, the delays associated with U-Visa Waiting List are not due to lack of resources.

142. Upon information and belief, the relevant service centers have increased efficiency through procedural changes, rather than additional resources.

143. In December 2016, USCIS raised application fees on various immigration benefits applications to ensure sufficient resources to adjudicate applications with no filing fees, like U-Visa applications.

144. On the other hand, Plaintiff's interests are prejudiced by the continued delay. Plaintiff is deprived of the right to deferred action and the right to apply for work authorization, a social security number, and a North Carolina driver's license.

145. Fifth, a finding that a twenty-eight month delay in its decision to put the Plaintiff on the U-Visa Waiting List does not require a finding of agency impropriety.

146. The TRAC Factors weigh in favor of this Court compelling USCIS to determine immediately whether Plaintiff should be put on the U-Visa Waiting List.

147. It is, however, inappropriate for this Court to make a decision on the merits of this case—whether the TRAC Factors militate in favor or against a finding of unreasonable delay—unless or until USCIS answers and produces a certified administrative record revealing the agency's actual reasons for this delay.

148. Whether a delay is reasonable under the APA requires a case by case analysis.

149. Further, a declaration or affidavit from the agency is an insufficient substitute for the actual reason for the delay contained in the certified administrative record.

150. This court cannot take judicial notice of inaccurate processing times, even if they are published on government website.

151. Twenty-four months is an unreasonable delay for USCIS to decide whether to place Plaintiff on the U-Visa Waiting List.

152. Once Plaintiff is put on the U-Visa Waiting List, they will still have to wait years to actually receive a U-Visa.

153. The delay is not substantially justified.

FIFTH CAUSE OF ACTION
(Freedom of Information Act)

154. Plaintiff re-alleges all of the allegations contained herein.

155. Plaintiff filed a Freedom of Information Act request with USCIS on June 25, 2018.

156. USCIS has unlawfully withheld such documents. 5 U.S.C. § 552(a)(6)(A)(i).

157. Plaintiff is entitled to an order compelling USCIS to provide those documents. 5 U.S.C. § 552(a)(4)(B).

158. Plaintiff is entitled to reasonable attorney's fees and costs. 5 U.S.C. § 552(a)(4)(E)(i).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF PRAY THAT THIS COURT WILL:

159. Take jurisdiction over this delayed adjudication;

160. Declare USCIS has a mandatory duty to issue work authorization for request son 2016 U-Visa Applications within 90 days of receipt or, if it fails, issue interim work authorization for up to 240 days;

161. Order USCIS to issue work authorization immediately;

162. Order USCIS to issue work authorization within 90 days;

163. Order USCIS to issue interim work authorization for at least 240 days;

164. Declare that it is unreasonable for USCIS to delay for twenty-eight months its decision on Plaintiff's work authorization application;

165. Declare that it is unreasonable for USCIS to delay for twenty-eight months its decision to place a U-Visa Applicant and any derivatives on the U-Visa Waitlist;

166. Order USCIS to make a decision on Plaintiff's work authorization application within 7 days;

167. Order USCIS to make a decision about whether to place Plaintiff on the U-Visa Waitlist within 7 days;

168. Order USCIS to produce a response to Plaintiff's FOIA request within 7 days;

169. Order USCIS to pay Plaintiff's reasonable attorney's fees for the entire cost of this litigation; and

170. Enter and issue other relief that this Court deems just and proper.

November 21, 2018

Respectfully submitted,

s/Christopher M. Hinnant/
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Certificate of Service

I declare that I filed the foregoing on the court's electronic filing system, which forwarded an electronic copy to all counsel of record.

November 21, 2018

Respectfully submitted,

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