

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

ASISTA IMMIGRATION ASSISTANCE, Inc.,
SANCTUARY FOR FAMILIES, Inc.,

Plaintiffs,

v.

MATTHEW T. ALBENCE, in his official
capacity, *et al.*,

Defendants.

Case No. 3:20-cv-00206-JAM

Judge: Hon. Jeffrey A. Meyer

**PLAINTIFFS' LOCAL RULE 56(a)2 STATEMENT OF
FACTS IN OPPOSITION TO SUMMARY JUDGMENT AND
LOCAL RULE 56(a)1 STATEMENT OF UNDISPUTED MATERIAL FACTS
IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT**

**LOCAL RULE 56(a)2 STATEMENT OF FACTS IN OPPOSITION
TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Defendants' Statement of Facts:

1. "Defendant Matthew T. Albence became Deputy Director of ICE on April 27, 2019."

Plaintiffs' Response:

1. Plaintiffs do not dispute that someone purported to appoint Defendant Albence to the position of Deputy Director on that date. Plaintiffs do not have sufficient information to assess whether this appointment was lawful.

**LOCAL RULE 56(a)1 STATEMENT OF UNDISPUTED MATERIAL FACTS IN
SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT**

The U-Visa System

1. The U nonimmigrant visa, or "U visa," is a form of immigration relief available to noncitizens who (1) have been the victims of certain crimes in the United States, including sexual assault, domestic violence, and stalking; (2) have experienced mental or physical abuse as a result of those crimes; and (3) have aided law enforcement in the investigation or prosecution of the relevant crime. *See* 8 U.S.C. § 1101(a)(15)(U).

2. U.S. Citizenship and Immigration Services (USCIS) is permitted by statute to grant a maximum of 10,000 U visas each year. *See* 8 U.S.C. § 1184(p)(2)(A). This cap applies to "principal" applicants and does not apply to U visas for a principal applicant's spouse, children, or, where the principal applicant is a child, the applicant's parents. *Id.* § 1184(p)(2)(B).

3. For principal applicants, there is currently a backlog of U-visa applications that have been approved but have not yet resulted in visas solely as a result of this statutory cap.

Exhibit A to Declaration of Brittany Williams (“Williams Decl.”).

4. A U-visa applicant must currently wait more than four years before her application is processed so that she can be added to the U-visa waiting list. Williams Decl.

Ex. B.

History of ICE’s Leadership

5. U.S. Immigration and Customs Enforcement (ICE) has not had a Senate-confirmed Director in more than three years. Williams Decl. Ex. D.

6. Sarah Saldaña, the last Senate-confirmed Director of ICE, retired at the end of the Obama administration. Williams Decl. Exs. D and E.

7. Thomas Homan was named Acting ICE Director in January 2017, and nearly ten months later, on November 14, 2017, he was nominated by President Trump to serve as ICE Director. Williams Decl. Ex. D.

8. Homan’s nomination was withdrawn on May 15, 2018. Williams Decl. Ex. F.

9. Three months later, on August 16, 2018, President Trump made a second nomination to fill the office, nominating Ronald Vitiello to be ICE Director. Williams Decl.

Ex. D.

10. Although the Senate held a confirmation hearing for Vitiello, he was not confirmed. On January 3, 2019, his nomination was returned under Senate rules when the Senate adjourned. Williams Decl. Ex. G.

11. On April 11, 2019, the Acting Director of ICE, Ronald Vitiello, sent an email to ICE employees informing them that “[b]eginning tomorrow I will be out of the office, during

which time Acting Deputy Director Matt Albence will be leading the agency.” Williams Decl. Ex. I.

12. The U.S. Government Accountability Office (GAO) “receives and records the information” that the FVRA requires agencies to report to the Comptroller General about vacancies. Williams Decl. Ex. J.

13. GAO’s public-vacancies database confirms that Matthew Albence served as the Acting Director of ICE in 2019 but that his tenure as Acting Director was supposed to end on August 1, 2019. Williams Decl. Ex. D.

14. On August 5, 2019, the Department of Homeland Security (DHS) submitted FVRA paperwork stating that the “discontinuation of service in an acting role” for Albence occurred on August 1, 2019. Williams Decl. Ex. K.

15. An August 19, 2019, filing with the United States Supreme Court represented that Albence was the “Acting Director of ICE.” Williams Decl. Ex. L, at ii.

16. The ICE website continued to identify Albence as the agency’s Acting Director until at least February 13, 2020, when the complaint in this action was filed. Williams Decl. Ex. M.

17. Sometime thereafter, the ICE website was changed to identify Albence as “Deputy Director and Senior Official Performing the Duties of the Director.” Williams Decl. Ex. N.

18. The “DHS Leadership” website identifies Albence as both “Deputy Director” and “Senior Official Performing the Duties of the Director, U.S. Immigration and Customs Enforcement.” Williams Decl. Ex. C.

ICE's U-Visa Stay of Removal Policy

19. On August 2, 2019, Matthew Albence issued ICE Directive 11005.2, which he signed as the “Acting Director” of ICE. Dkt. No. 34-1.

20. Prior to Albence's action, ICE followed a 2009 policy with respect to stays of removal for U-visa applicants. Williams Decl. Ex. O. Under the 2009 policy, when a person who had applied for a U visa requested a stay of removal, ICE was required to contact USCIS to request a *prima facie* determination regarding that person's application. *Id.* at 2.

21. ICE has described the *prima facie* determination as “a simple confirmation that the petition was filed correctly and . . . not a substantive review of the petition.” Williams Decl. Ex. P.

22. Under the prior policy, if USCIS reported that an individual had established *prima facie* eligibility for a U visa, and as long as certain “serious adverse factors” were not present, ICE's detention and removal operations field office director was required to “favorably view” the request for a stay. Williams Decl. Ex. O at 2. The “serious adverse factors” that weighed against granting a stay were “(1) national security concerns; (2) evidence that the alien is a human rights violator; (3) evidence that the alien has engaged in significant immigration fraud; (4) evidence that the alien has a significant criminal history; and (5) any significant public safety concerns.” *Id.*

23. The prior policy required that, in the absence of these serious adverse factors, the field office director “should generally grant the alien a Stay of Removal when USCIS has found the alien to be *prima facie* eligible for a U-visa.” *Id.* The field office director was also required to “consider favorably any humanitarian factors related to the alien or the alien's close relatives who rely on the alien for support.” *Id.* If the field office director found that serious adverse

factors existed and was therefore “inclined to deny the Stay request despite the USCIS *prima facie* eligibility finding,” the field office director was required to “provide a summary of the case to [detention and removal] Headquarters for further review.” *Id.* at 3.

24. Under Defendant Albence’s ICE Directive 11005.2, ICE no longer routinely requests *prima facie* determinations from USCIS. Dkt. No. 34-1. Indeed, ICE no longer employs the *prima facie* standard at all. *Id.*

25. Instead, each ICE field office director is given discretion to “consider the totality of the circumstances,” including “any favorable or adverse factors . . . and any federal interest(s) implicated,” in deciding whether to grant a stay. *Id.* at 2; *see* Williams Decl. Ex. P.

26. As a result of this change, some U-visa applicants who have properly filed a petition that raises no serious adverse factors—and who, for that reason, would have received a stay under ICE’s prior policy—will be denied a stay under ICE’s new policy and consequently will be deported as they await adjudication of their U-visa applications. Declaration of Gail Pendleton (“Pendleton Decl.”) ¶¶ 17, 30-32; Declaration of Pooja Asnani (“Asnani Decl.”) ¶¶ 14, 17-18.

27. Deportation creates serious harms for U-visa applicants. Pendleton Decl. ¶ 50; Asnani Decl. ¶¶ 7, 9-10. Deported U-visa applicants will need to await adjudication of their applications abroad, which may take nearly a decade. Pendleton Decl. ¶ 18; Asnani Decl. ¶ 7. Applicants are often separated from their families during this time. Asnani Decl. ¶ 7. Moreover, even successful applicants may not be able to reenter the United States, as deportation could trigger additional grounds of inadmissibility for which they would have to separately secure waivers in order to return to the United States. *See* 8 U.S.C. § 1182(a)(9)(A), (B)(i)(II).

28. Avoiding deportation is extremely important to U-visa applicants. Asnani Decl. ¶ 8. Under ICE's new policy, protecting a U-visa applicant who is not yet on the waiting list from deportation is a much more time-intensive process. Pendleton Decl. ¶¶ 20-29; Asnani Decl. ¶¶ 12-18. Whereas attorneys could previously assume that a person who had demonstrated *prima facie* eligibility for a U visa could secure a stay of removal in the absence of serious adverse factors, they now must try to demonstrate that the client should prevail under a totality-of-the-circumstances analysis. Pendleton Decl. ¶¶ 12-13, 15-17, 21, 24; Asnani Decl. ¶¶ 14-16.

29. Moreover, the significantly increased risk that ICE will deny a stay of removal to a U-visa applicant means that attorneys must also prepare to initiate federal litigation to protect their clients from deportation, demanding additional time and resources. Pendleton Decl. ¶¶ 25-29.

30. As a result, the new policy has forced Plaintiff ASISTA and Plaintiff Sanctuary for Families to divert significant resources away from other work in order to adequately protect U-visa applicants from deportation. Pendleton Decl. ¶¶ 33-34, 36, 39-46; Asnani Decl. ¶¶ 12-20.

31. By making it harder to protect immigrant survivors of violence from deportation, ICE's new policy has also impaired the ability of ASISTA and Sanctuary for Families to achieve their organizational missions. Pendleton Decl. ¶¶ 48-50; Asnani Decl. ¶¶ 22-24.

Dated: May 26, 2020

/s/ Brianne J. Gorod
Brianne J. Gorod

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