

The Honorable James L. Robart  
United States District Judge

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WILMAN GONZALEZ ROSARIO, *et al.*,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND  
IMMIGRATION SERVICES, *et al.*,

Defendants.

Case No. 2:15-cv-00813-JLR

**PLAINTIFFS' MOTION FOR CIVIL  
CONTEMPT AND TO ENFORCE  
PERMANENT INJUNCTION**

NOTE ON MOTION CALENDAR:  
SEPTEMBER 9, 2022

**ORAL ARGUMENT REQUESTED**

**PLAINTIFFS' MOTION FOR CIVIL CONTEMPT  
AND TO ENFORCE PERMANENT INJUNCTION**

**I. Introduction**

For the second time in less than two years, Defendants have so flagrantly violated this Court's permanent injunction that Plaintiffs are compelled to seek court intervention. As this Court instructed, where "Defendants have failed to comply with the court's injunction, [Plaintiffs'] remedy is a motion for civil contempt." *Rosario v. U.S. Citizenship & Immigr. Servs.*, No. C15-0813JLR, 2019 WL 1275097, at \*3 (W.D. Wash. Mar. 20, 2019). That remedy is once again warranted. In July 2022, Defendant U.S. Citizenship and Immigration Services (USCIS) adjudicated just 4.4% of class members' employment authorization document (EAD) applications within 30 days. Declaration of Emma Winger (Winger Decl.), Exh. P. This follows months of declining compliance. Defendants have accrued a backlog of 49,482 class member applications pending more than 30 days. *Id.* Since May 2022, USCIS has adjudicated progressively *fewer* applications per month. *Id.* This pattern continued to such a great extent that, in July, USCIS adjudicated over five thousand fewer class member applications than it received. *Id.* These numbers make clear that, at present, almost no class members are receiving the benefit of this Court's permanent injunction and Defendants are not taking all reasonable steps to achieve substantial compliance.

Defendants are likely to argue that this drastic drop in compliance is the unavoidable result of the order in *AsylumWorks v. Mayorkas*, No. 20-CV-3815 (BAH), 2022 WL 355213 (D.D.C. Feb. 7, 2022), which vacated the rulemaking that eliminated the 30-day processing requirement, thereby restoring the full *Rosario* class. Feb. 17, 2021 Joint Status Report, ECF No. 190 at 2. Defendants would be wrong. Their current noncompliance is the direct result of their own actions (or inaction). Even after one federal district court found that the rulemaking was

1 likely unlawful, and while two lawsuits seeking vacatur of the rule ran their course, USCIS  
2 allowed a backlog of over 66,000 initial asylum EAD applications pending more than 121 days  
3 to develop—applications the agency itself has said should take on average 12 minutes to process.  
4 February 2022 Compliance Report, ECF No. 191-1. Six months after the *Asylum Works* decision,  
5 Defendants are nowhere near substantial compliance. All that Plaintiffs ask is that Defendants do  
6 what they successfully did for over a year and half: adjudicate no less than 95% of all initial  
7 asylum EAD applications within the mandated 30-day processing window. March 2021  
8 Compliance Report, ECF No. 170-1.

9  
10 Defendants' failure to comply with the permanent injunction has significant and real-  
11 world consequences for class members. Defendants' widespread delay in adjudicating the initial  
12 EAD applications of asylum-seekers threatens class members' ability to support themselves and  
13 their families. Sanctions are necessary to ensure that Defendants do not continue to violate this  
14 Court's order.

## 15 16 **II. Relevant Facts**

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18 For nearly a decade, beginning in 2010, Defendants adjudicated only 22% of initial  
19 asylum EAD applications within the 30 days required by 8 C.F.R. § 208.7(a)(1). *Rosario v. U. S.*  
20 *Citizenship & Immigr. Servs.*, 365 F. Supp. 3d 1156, 1158 (W.D. Wash. 2018). Only after this  
21 Court entered its permanent injunction “enjoin[ing] Defendants from further failing to adhere to  
22 the 30-day deadline for adjudicating EAD applications,” did Defendants begin to follow their  
23 own regulation. *Id.* at 1163; *see* March 2021 Compliance Report, ECF No. 170-1 at 1-2. Under  
24 the Court-approved Implementation Plan, Defendants centralized the adjudication of class  
25 member applications at the Texas Service Center (TSC) and reallocated 50 officers to work full  
26 time on class member applications. ECF No. 134-1 at 1. For over a year and a half, from  
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1 February 2019 through August 2020, Defendants substantially complied with this Court’s clear  
2 order, adjudicating no less than 96% of all initial asylum EAD applications within the mandated  
3 30-day processing window. March 2021 Compliance Report, ECF No. 170-1 at 2.

4 A. The Repeal of the 30-day Rule and Subsequent Litigation

5 On June 22, 2020, Defendants published a rule that repealed the 30-day processing  
6 deadline for initial asylum EAD applications, effective for applications filed on or after August  
7 21, 2020. 85 Fed. Reg. 37,502-37,546 (June 22, 2020) (eliminating 30-day deadline in 8 C.F.R. §  
8 208.7(a)(1)) [hereinafter “Timeline Repeal Rule”]. Several weeks later, on July 21, 2020,  
9 membership organizations CASA de Maryland (CASA) and Asylum Seekers Advocacy Project  
10 (ASAP), among others, sought vacatur of the rule in *CASA de Maryland, Inc., et al. v. Wolf, et*  
11 *al.*, No. 8:20-cv-02118-PX (D. Md., filed July 21, 2020). On August 21, 2020, the new rule went  
12 into effect. 85 Fed. Reg. 37,502. Defendants’ efforts to promptly implement the new rule  
13 included “making changes to the way employment authorization applications are processed.”  
14 Decl. of Connie Nolan (Nolan Decl.), ECF No. 170-2 at 3 ¶ 12.

15 On September 11, 2020, the *CASA de Maryland* court found the plaintiffs likely to  
16 succeed on their claims that purported Acting Secretary Chad Wolf lacked authority to  
17 promulgate the Timeline Repeal Rule and that the rulemaking violated the requirements of the  
18 Administrative Procedure Act. *CASA de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928, 957-60,  
19 961-64 (D. Md. 2020). The court preliminarily enjoined enforcement of the new rule against  
20 CASA and ASAP members. *Id.* at 973.

21 On December 23, 2020, legal services organizations and individual asylum applicants  
22 filed a second lawsuit seeking vacatur of the Timeline Repeal Rule. *AsylumWorks, et al. v. Wolf,*  
23 *et al.*, No. 1:20-cv-03815-BAH (D.D.C., filed Dec. 23, 2020).

1 B. Defendants Fail to Implement *CASA de Maryland* Injunction in Violation of This  
2 Court’s Permanent Injunction

3 Defendants acknowledged that, by virtue of the *CASA de Maryland* preliminary  
4 injunction, *CASA* or *ASAP* members who filed initial asylum EAD applications were also  
5 *Rosario* class members, as the prior regulation continued to require USCIS to adjudicate the  
6 applications within 30 days. Nolan Decl., ECF No. 170-2 at 4 ¶14 (“USCIS considers individual  
7 *CASA* and *ASAP* members who filed an asylum-based initial Form I-765 on or after August 21,  
8 2020 to be class members in the *Rosario* litigation[.]”). Yet Defendants failed to timely  
9 adjudicate the initial asylum EAD applications, violating this Court’s permanent injunction. *See*  
10 First Contempt Motion, ECF No. 171. In the first four months of FY2020, Defendants reported a  
11 compliance rate of 22.3% and a backlog of 13,515 applications pending more than 30 days.  
12 March 2021 Compliance Report, ECF No. 170-1 at 3-4. At the same time, Defendants stopped  
13 providing Plaintiffs with monthly compliance reports, ceased issuing timely receipts for class  
14 members applications which are necessary for the dispute resolution mechanism outlined in the  
15 Implementation Plan, and otherwise prevented class members from lodging service requests  
16 regarding their delayed applications. First Contempt Motion, ECF No. 171 at 5-7.

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19 For these reasons, on March 25, 2021, Plaintiffs filed a motion for contempt. *Id.* On May  
20 28, 2021, the Court denied Plaintiffs’ motion without prejudice, but authorized Plaintiffs to  
21 renew their motion if Defendants did not reach substantial compliance within 120 days. ECF No.  
22 184. In addition, the Court further ordered Defendants to submit compliance reports for the  
23 months of May, June, July, and August 2021. *Id.* Only after the Court issued its May 2021 order  
24 did Defendants again return to a 95% compliance rate. February 2022 Compliance Report, ECF  
25 No. 191-1.  
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1 been taking more than four months to adjudicate initial EAD applications for the majority of  
2 asylum applicants who did not benefit from the *CASA de Maryland* preliminary injunction. *Id.*

3 Despite repeated requests and another meet and confer on March 17, 2022, the only plan  
4 for reaching compliance that Defendants shared with Plaintiffs was to decentralize the  
5 adjudication of class member applications. Winger Decl., ¶¶ 7-10. Defendants’ plan lacked any  
6 information about increased staffing or resources, or an explanation of how decentralization  
7 would accomplish faster processing. *Id.* at ¶¶ 7-13, 15. In April, after Defendants amended their  
8 proposal to address Plaintiffs’ concern that complete decentralization would cause unnecessary  
9 confusion, Plaintiffs agreed to a modification of the Implementation Plan. *Id.* ¶¶ 13, 15.  
10 Nevertheless, for months Defendants continued to refuse to provide Plaintiffs with *any* timeline  
11 for when they would reach substantial compliance. *Id.* ¶¶ 8, 10, 15-16.

14 Plaintiffs persisted in working in good faith with Defendants’ counsel to try to resolve  
15 this issue without seeking the Court’s intervention. On June 17, 2022, the parties had a meet and  
16 confer where Plaintiffs’ counsel advised Defendants’ counsel that Plaintiffs would move for  
17 contempt if Defendants had not reached substantial compliance—that is, adjudicating 95% of  
18 class member applications within 30 days—by August 7, six months from the vacatur of the  
19 Timeline Repeal Rule. *Id.* ¶ 19. At that time, Defendants’ counsel reported that USCIS estimated  
20 it would reach compliance by the end of September. *Id.* ¶ 20. On August 11, 2022, after Plaintiffs  
21 received Defendants’ July 2022 compliance report showing a compliance rate of just 4.4%, and  
22 fewer overall adjudications than in June 2022, the parties had another meet and confer. *Id.* ¶¶ 23-  
23 24. Plaintiffs’ counsel explained that Plaintiffs intended to file a contempt motion due to USCIS’  
24 pattern of adjudicating fewer applications each month and its abysmal compliance rate. *Id.* ¶ 24.  
25 While Defendants’ counsel repeated USCIS’ “estimate” that it would reach compliance by the  
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1 end of September, Defendants did not outline any plan to do so or explain the worsening  
2 adjudication rates. *Id.* Despite an inquiry, USCIS has also not clarified what it considers to be  
3 “compliance.” *Id.* ¶ 25.

4 That Defendants have no adequate plan to reach substantial compliance is reflected in  
5 their own data, as illustrated in the chart below. Each month since the vacatur of the Timeline  
6 Repeal Rule, Defendants have adjudicated fewer class member applications than they received.  
7 *Id.* ¶¶ 14, 17, 18, 22, 23. Each month, the percentage of timely adjudicated applications has also  
8 significantly decreased. In July, USCIS adjudicated only 4.4% of applications within 30 days.  
9 Winger Decl. Exh. P. Moreover, there is no indication that Defendants will reach substantial  
10 compliance in the foreseeable future. Since May, Defendants have adjudicated *fewer total*  
11 *applications each month*—and have not reached the maximum number of adjudications they  
12 achieved in August and September 2017. Winger Decl. Exh. P (showing USCIS adjudicated  
13 25,694 applications in July 2022, down from 29,014 in June 2022 and 31,474 in May 2022);  
14 March 2021 Compliance Report, ECF No. 170-1 at 1 (showing USCIS adjudicated 33,669 in  
15 August 2017 and 37,174 in September 2017). While Defendants focused their resources on  
16 eliminating the backlog of long-pending applications, they have allowed a backlog of newer  
17 applications to accrue, such that by the end of July, there were 49,482 class member applications  
18 that had been pending more than 30 days. Winger Decl. Exh. P.  
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	<b>Approximate # New Applications<sup>1</sup></b>	<b># Adjudications</b>	<b># Pending More Than 30 Days<sup>2</sup></b>	<b>Compliance Rate</b>
<b>March</b>	31,942	22,492	79,424	68%
<b>April</b>	28,908	26,473	73,265	41.2%
<b>May</b>	33,638	31,474	57,244	20.7%
<b>June</b>	30,915	29,014	51,021	6.1%
<b>July</b>	31,139	25,694	49,482	4.4%

Defendants' delays carry serious consequences for class members, all of whom are asylum seekers who have already waited at least 150 days to apply for their first EAD. 8 C.F.R. § 208.7(a)(1). While waiting for delayed EADs, class members are unable to support themselves and their families, risk loss of housing, are left without access to key employee benefits such as health care, and experience extreme anxiety and depression. Declaration of Conchita Cruz (Cruz Decl.), ¶ 9. An HIV-positive class member came close to losing his home due to the delay in the adjudication of his EAD, which in turn threatened his access to necessary HIV medication. *Id.* ¶ 11. A doctor could not accept a residency placement—and risked losing his residency spot, leaving the hospital short-staffed—because of the delay in his initial EAD decision. *Id.* ¶ 12. Class members have had to reject job offers, deplete savings, and forgo supporting loved ones, all due to Defendants' egregious and widespread delays. *Id.* ¶¶ 13-15.

<sup>1</sup> These figures were calculated by adding the 0-30 column in the "Pending" row on page 3 of the compliance report for March (Winger Decl. Ex. I), and page 2 of the reports for April (Winger Decl. Ex. L), May (Winger Decl. Ex. M), June (Winger Decl. Ex. O), and July (Winger Decl. Ex. P), to the number of applications adjudicated between 0 and 30 days during the relevant month, as reflected at page 1 of the July compliance report. These numbers are approximate, because applications that require a request for evidence will have their time adjusted. *See* Exhibit P at 3, Table 1 Notes 4, 5.

<sup>2</sup> These figures were calculated using the "Pending" row on page 3 of the compliance report for March (Winger Decl. Ex. I), and page 2 of the reports for April (Winger Decl. Ex. L), May (Winger Decl. Ex. M), June (Winger Decl. Ex. O), and July (Winger Decl., Ex. P) and subtracting the number of applications pending between 0-30 days from the total.

1 In light of the agency’s failure to demonstrate any significant progress toward substantial  
 2 compliance, and the harm they are causing class members, Plaintiffs now seek intervention from  
 3 the Court.

### 4 **III. Argument**

#### 5 A. Legal Standard for Civil Contempt

6 “Civil contempt occurs when a party fails to comply with a court order.” *Gen. Signal*  
 7 *Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1379 (9th Cir. 1986). “Intent is irrelevant to a finding of  
 8 civil contempt and, therefore, good faith is not a defense.” *Stone v. City & Cty. of San Francisco*,  
 9 968 F.2d 850, 856 (9th Cir. 1992). Once the moving party shows by clear and convincing  
 10 evidence that the other party has violated a court order, the burden shifts to the non-moving party  
 11 to show why they were unable to comply. *Stone*, 968 F.2d at 856 n.9; *Puget Soundkeeper All. v.*  
 12 *Rainier Petroleum Corp.*, No. C14-0829JLR, 2017 WL 6515970, at \*7 (W.D. Wash. Dec. 19,  
 13 2017). “[S]ubstantial compliance with a court order is a defense to an action for civil contempt.”  
 14 *Gen. Signal Corp.*, 787 F.2d at 1379. However, “[a] contemnor in violation of a court order may  
 15 avoid a finding of civil contempt only by showing it took *all* reasonable steps to comply with the  
 16 order.” *Kelly v. Wengler*, 822 F.3d 1085, 1096 (9th Cir. 2016) (emphasis in original).  
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#### 20 B. Defendants Are in Contempt of This Court’s Permanent Injunction

21 The agency’s own statistics speak for themselves. There can be no dispute that  
 22 Defendants are in violation of this Court’s permanent injunction, which enjoined Defendants  
 23 “from further failing to adhere to the 30-day deadline for adjudicating EAD applications, as set  
 24 forth in 8 C.F.R. § 208.7(a)(1).” *Rosario*, 365 F. Supp. 3d at 1163; *see also id.* at 1158 (finding  
 25 “no dispute that USCIS failed to meet its 30-day deadline . . . for class members,” where, “from  
 26 2010 to 2017, USCIS met its 30-day deadline in only 22% of cases”). It is likewise clear that  
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1 Defendants have not taken “*all* reasonable steps to comply.” *Kelly*, 822 F.3d at 1096. History  
2 provides the proof. When Defendants take all reasonable steps to comply, they reach nearly  
3 100% compliance. From February 2019 through August 2020, Defendants’ compliance never  
4 dropped below 96%. March 2021 Compliance Report, ECF No. 170-1 at 3. As discussed, since  
5 May of this year, Defendants have adjudicated fewer total applications each month—and have  
6 not reached the maximum number of adjudications they achieved in August and September  
7 2017. Winger Decl. Exh. P; March 2021 Compliance Report, ECF No. 170-1 at 1.

9 Defendants’ noncompliance is not the unavoidable result of the vacatur of the Timeline  
10 Repeal rule. For nearly two years, since the September 2020 preliminary injunction order issued  
11 in *CASA de Maryland*, Defendants have been on notice that their rulemaking was likely unlawful  
12 and that vacatur was, at a minimum, a realistic possibility. 486 F. Supp. 3d at 957-60. Yet  
13 Defendants allowed a backlog of over 66,000 applications pending more than 121 days to  
14 accrue—applications USCIS itself has reported it takes on average 12 minutes to adjudicate. 84  
15 Fed. Reg. 62280, 62292 (Nov. 14, 2019) (proposed rule noting each application takes on average  
16 .2 hours to adjudicate). Nor should Defendants be permitted to argue that they lack resources to  
17 comply with this Court’s permanent injunction. They were able to comply prior to implementing  
18 the rule that was subsequently vacated. Moreover, in FY2022, USCIS received an additional  
19 \$250,000,000 in congressional appropriations specifically to fund application processing and  
20 backlog reduction. Consolidated Appropriations Act, 2022, Pub. L. 117-103, 136 Stat. 49, 332  
21 (Mar. 15, 2022); *see* Dep’t of Homeland Security, *United States Citizenship and Immigration*  
22 *Services Budget Overview Fiscal Year 2023*, 4, [https://www.dhs.gov/sites/default/files/2022-](https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Citizenship%20and%20Immigration%20Services_Remediated.pdf)  
23 [03/U.S.%20Citizenship%20and%20Immigration%20Services\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2022-03/U.S.%20Citizenship%20and%20Immigration%20Services_Remediated.pdf) (stating that  
24 USCIS’ FY 2022 budget included \$250,000,000 appropriate for “application processing”). And  
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1 in any event, as this Court has held, “resource constraints . . . ‘do not justify departing from the  
2 [law’s] clear text.’” *Rosario*, 365 F. Supp. 3d at 1163 n.6 (quoting *Pereira v. Sessions*, 138 S.Ct.  
3 2105, 2118 (2018)).

4 C. The Court Should Impose Sanctions Designed to Ensure Future Compliance

5 “A court may employ civil contempt sanctions to coerce compliance with a court order.”  
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7 *N. Seattle Health Ctr. Corp. v. Allstate Fire & Cas. Ins. Co.*, No. C14-1680-JLR, 2017 WL  
8 1325613, at \*3 (W.D. Wash. Apr. 11, 2017); *Gen. Signal Corp.*, 787 F.2d at 1380 (“Sanctions  
9 for civil contempt may be imposed to coerce obedience to a court order, or to compensate the  
10 party pursuing the contempt action for injuries resulting from the contemptuous behavior, or  
11 both.”). The Court should order the following sanctions to ensure Defendants’ future  
12 compliance:  
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14 *First, Order USCIS to Establish and Maintain 95% Compliance Rate:* Defendants must  
15 reach a 95% compliance rate by September 30, 2022, and maintain a 95% or higher rate of  
16 compliance going forward. This Court previously denied Plaintiffs’ request for compliance  
17 benchmarks, stating that Plaintiffs’ remedy for noncompliance was a motion for contempt.  
18 *Rosario*, 2019 WL 1275097, at \*3. Now that Defendants have repeatedly demonstrated their  
19 failure to achieve substantial compliance absent this Court’s intervention, Plaintiffs request this  
20 Court to enforce its order. *See Gompers v. Buck Stove & Range Co.*, 221 U.S. 418, 450 (1911)  
21 (“If a party can make himself a judge of the validity of orders which have been issued, and by his  
22 own act of disobedience set them aside, then are the courts impotent, and what the Constitution  
23 now fittingly calls the ‘judicial power of the United States’ would be a mere mockery.”).

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26 *Second, Order USCIS to Clear Any Backlog by September 30, 2022:* Defendants must  
27 clear the backlog in pending class member applications by September 30, 2022. Defendants have  
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1 represented to Plaintiffs that USCIS is capable of working through any backlog and reaching  
2 compliance by that date. Winger Decl. at ¶ 24. In light of Defendants’ noncompliance, an order  
3 from this Court is necessary to ensure this occurs.

4 *Third, Order USCIS to Provide Monthly Compliance Reports:* Defendants must continue  
5 providing class counsel with monthly compliance reports by the 5th day of each month. Monthly  
6 compliance reports are the only way class counsel can effectively monitor Defendants’  
7 performance and protect class members’ rights.

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9 The foregoing are reasonable sanctions in light of Defendants’ failure to comply and are  
10 necessary to enforce the Court’s order.

11 **IV. Conclusion**

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13 Plaintiffs ask the Court to find that Defendants have not substantially complied with the  
14 Court’s permanent injunction, hold Defendants in contempt, and impose the sanctions requested.

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1 Respectfully submitted this 25th day of August, 2021.

2 /s/ Matt Adams

3 Matt Adams, WSBA No. 28287  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 25, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system.

DATED this 25th day of August, 2022.

s/ Matt Adams  
Matt Adams  
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The Honorable James L. Robart  
United States District Court Judge

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IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WILMAN GONZALEZ ROSARIO, *et al.*,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND  
IMMIGRATION SERVICES, *et al.*,

Defendants.

Case No. 2:15-cv-00813-JLR

[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR CIVIL  
CONTEMPT AND TO ENFORCE  
PERMANENT INJUNCTION

NOTE ON MOTION CALENDAR:  
SEPTEMBER 9, 2022

Upon review of Plaintiffs' Motion for Civil Contempt and to Enforce Permanent Injunction and all supporting declarations and exhibits, Plaintiffs' Motion for Civil Contempt and to Enforce Permanent Injunction is GRANTED.

Defendants are held to be in contempt of this Court's order granting injunctive relief to class members. Accordingly, it is hereby ordered:

1. Defendants shall demonstrate a minimum of 95% compliance rate by September 30, 2022, and maintain a 95% or higher rate of compliance going forward; and
2. Defendants shall clear the backlog in pending class member applications by September 30, 2022;
3. Defendants shall provide class counsel with monthly compliance reports on the



5th day of each month, beginning on September 5, 2022.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
JAMES L. ROBART  
United States District Court Judge

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The Honorable James L. Robart  
United States District Judge

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WILMAN GONZALEZ ROSARIO, *et al.*,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND  
IMMIGRATION SERVICES, *et al.*,

Defendants.

Case No. 2:15-cv-00813-JLR

**DECLARATION OF EMMA WINGER**

Pursuant to 28 U.S.C. § 1746, I, Emma Winger, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice in the Commonwealth of Massachusetts and a Senior Attorney at the American Immigration Council. I am counsel for Plaintiffs in this matter.

2. On February 8, 2022, I sent an email to Defendants’ counsel requesting a meet and confer to discuss the February 7, 2022 order in *AsylumWorks v. Mayorkas*, No. 20-cv-3815 (D.D.C.), which vacated the Timeline Repeal Rule, and the parties’ forthcoming joint status report. The parties agreed to speak on February 15, 2022. That email is attached as Exhibit A.

3. On February 10, 2022, I sent a follow-up email requesting “data from [U.S. Citizenship and Immigration Services] as to how many people, at least in recent months, have been subject to

Declaration of Emma Winger  
Case No. 2:15-cv-00813-JLR

1 the Timeline Repeal Rule and how long those applications have been taking.” That email is  
2 attached as Exhibit B.

3 4. On February 15, 2022, Defendants’ counsel explained that he did not have data on the  
4 number of people who had been subjected to the Timeline Repeal Rule. During the parties’ meet  
5 and confer, Defendants’ counsel also reported that he did not have any information about how  
6 USCIS would implement the vacatur of the Timeline Repeal Rule.

8 5. On March 5, 2022, Defendants filed a status report with the Court that revealed a backlog  
9 of 79,895 first-time asylum employment authorization document (EAD) applications that had  
10 been pending for more than 30 days. Of those, 66,935 had been pending for more than 121 days.  
11 ECF No. 191-1.

13 6. On March 7, 2022, I sent an email to Defendants’ counsel requesting a meet and confer to  
14 address the backlog. In that email I explained: “When we last spoke, you did not have any  
15 information about how the agency intended to implement the AsylumWorks decision. Now that a  
16 month has passed, we hope that you can provide more information about USCIS’ plan.” That  
17 email is attached as Exhibit C.

19 7. On March 17, 2022, the parties had a meet and confer in which Defendants’ counsel  
20 explained that, to implement the AsylumWorks decision, USCIS planned to decentralize the  
21 adjudication of class member applications, such that applications would be adjudicated at not just  
22 the Texas Service Center (TSC) but also at other USCIS service centers. Defendants’ counsel  
23 requested Plaintiffs’ consent to modify the Court’s Implementation Plan. Plaintiffs’ counsel  
24 explained that we were open to decentralization but required more information about how this  
25 plan would ensure compliance with the Court’s order.  
26  
27

1 8. Approximately one hour after the meet and confer, I sent an email to Defendants’ counsel  
2 memorializing the discussion at the meet and confer. In that email, I explained that Plaintiffs  
3 required details about how the agency would add the necessary resources to address the backlog,  
4 including whether additional adjudicators would begin processing class member applications and  
5 whether additional overtime would be employed. I asked “the agency to provide a timeline for  
6 how long it will take to work through the backlog and come into compliance, assuming the  
7 additional resources discussed above.” That email is attached as Exhibit D.

9 9. On March 21, 2022, Defendants’ counsel emailed Plaintiffs a proposed update to the  
10 Implementation Plan. The proposed revised Implementation Plan called for the adjudication of  
11 class member applications to be completely decentralized without providing for any increased  
12 staffing to address the backlog. The proposed revised Implementation Plan also altered the  
13 enforcement mechanism, such that “The Texas Service Center will be the lead service center for  
14 coordinating SRMT Customer Service Requests.” Defendants’ March 21 proposed revised  
15 Implementation Plan is attached as Exhibit E.

17 10. In the March 21 email, Defendants’ counsel explained that the only details he could  
18 provide were the staffing levels and adjudication rates in June 2021—i.e., before the Timeline  
19 Repeal Rule was vacated. Defendants’ counsel added: “I do not have any additional details or  
20 information as to when the agency will be able to provide such details.” Defendants’ email is  
21 attached as Exhibit F.

23 11. On March 23, 2022, I emailed Defendants’ counsel to explain that Plaintiffs could not  
24 agree to the revised Implementation Plan without more information. I explained that, unlike the  
25 original implementation plan, which provided for more adjudicators, the revised plan appeared to  
26 leave staffing levels static. I expressed our concern that absent information about how the  
27

1 revisions would help bring the agency into compliance, decentralization “will simply cause more  
2 confusion for class members and the agency.” That email is attached as Exhibit G.

3 12. On March 28, 2022, Defendants’ counsel responded that he needed to confer with the  
4 agency about Plaintiffs’ concerns regarding Defendants’ proposal.

5 13. On April 5, 2022, Defendants’ counsel emailed with an amended proposed modification  
6 to the Implementation Plan. Under Defendants’ new plan, the TSC would remain the primary  
7 service center adjudicating class member applications, but USCIS could reassign cases to other  
8 service centers as resources became available. Defendants’ counsel explained: “For purposes of  
9 addressing the backlog and increased workload, USCIS would train adjudicators at other service  
10 centers to adjudicate initial c8 I-765s, and then, considering the workload and priorities at other  
11 service centers, USCIS would have the flexibility to move batches of pending cases out of the  
12 TSC and assign them to available trained adjudicators elsewhere.” Defendants’ counsel added:  
13 “To be clear, USCIS did not and does not propose to reassign or reallocate resources/personnel at  
14 the TSC currently dedicated to c8 I-765s.” Defendants’ counsel’s email is attached as Exhibit H.

15 14. Also on April 5, Defendants’ counsel emailed USCIS’ March 2022 compliance report,  
16 which showed a backlog of 79,424 cases pending more than 30 days. USCIS received  
17 approximately 31,942 new applications and adjudicated 22,493 class member applications in  
18 March 2022.<sup>1</sup> Of those applications USCIS adjudicated, 68% were adjudicated within 30 days.  
19 Defendants’ March 2022 compliance report is attached as Exhibit I.

20  
21  
22  
23  
24  
25 <sup>1</sup> Here and below, I calculated the number of new applications by adding the number of  
26 applications pending between 0-30 days for the relevant month (reflected at page 3 of the  
27 compliance report) to the number of applications adjudicated between 0-30 days in the relevant  
28 month (using USCIS’ revised numbers from page 1 of the July 2022 compliance report, the most  
recent status report, referenced below as Exhibit P). These numbers are approximate, because

1 15. On April 8, 2022, I informed Defendants' counsel that Plaintiffs were willing to agree to  
2 this modification of the Implementation Plan. I also requested a meet and confer with agency  
3 counsel. I explained: "The agency has not provided any timeline or benchmarks for coming into  
4 compliance, but we will need standards by which to evaluate USCIS' progress to determine  
5 when to seek court intervention. We intend to come up with our own metrics and would  
6 appreciate input from the agency." That email is attached as Exhibit J.

8 16. On April 15, 2022, at Defendants' request, I provided Defendants' counsel with a list of  
9 questions. Defendants' counsel responded more than three weeks later and explained that USCIS  
10 did not have a timeframe for reducing or eliminating the backlog. He further reported that there  
11 were currently 90 adjudicators working on class member applications and that USCIS was in the  
12 process of training and hiring additional adjudicators. That email is attached as Exhibit K.

14 17. On May 4, 2022, Defendants' counsel emailed USCIS' April 2022 compliance report,  
15 which showed a backlog of 73,265 cases pending more than 30 days. USCIS received  
16 approximately 28,908 new applications and adjudicated 26,473 class member applications in  
17 April 2022. Of those applications USCIS adjudicated, 41.2% were adjudicated within 30 days.  
18 Defendants' April 2022 compliance report is attached as Exhibit L.

20 18. On June 3, 2022, Defendants' counsel emailed USCIS' May 2022 compliance report,  
21 which showed a backlog of 57,244 cases pending more than 30 days. USCIS received  
22 approximately 33,638 new applications and adjudicated 31,474 class member applications in  
23 May 2022. Of those applications USCIS adjudicated, 20.7% were adjudicated within 30 days.  
24 Defendants' May 2022 compliance report is attached as Exhibit M.  
25

26  
27 applications that require a request for evidence will have their time adjusted. *See* Exhibit P at 3,  
28 Table 1 Notes 4, 5.

Declaration of Emma Winger  
Case No. 2:15-cv-00813-JLR

1 19. On June 17, 2022, the parties engaged in a meet and confer. During that conversation,  
2 Plaintiffs' counsel explained that, because Defendants continued to be far from substantial  
3 compliance, with a growing backlog of newer class member applications, Plaintiffs were  
4 contemplating court intervention. Plaintiffs' counsel explained that if Defendants had not  
5 reached substantial compliance by August 7—six months from the *AsylumWorks* decision—  
6 Plaintiffs would begin preparing a contempt motion.  
7

8 20. During the June 17 meet and confer, Defendants' counsel shared USCIS' estimate that  
9 the agency would reach compliance by the end of September.

10 21. On June 21, 2022, I emailed Defendants' counsel to clarify that Plaintiffs consider  
11 substantial compliance to be adjudicating 95% of class member applications within 30 days of  
12 receipt. That email is attached as Exhibit N.  
13

14 22. On July 1, 2022, Defendants' counsel emailed USCIS' June 2022 compliance report,  
15 which showed a backlog of 51,021 cases pending more than 30 days. USCIS received  
16 approximately 30,915 new applications and adjudicated 29,014 class member applications in  
17 June 2022. Of those applications USCIS adjudicated, 6.1% were adjudicated within 30 days.  
18 Defendants' June 2022 compliance report is attached as Exhibit O.  
19

20 23. On August 5, 2022, Defendants' counsel emailed USCIS' July 2022 compliance report,  
21 which showed a backlog of 49,482 cases pending more than 30 days. USCIS received  
22 approximately 31,139 new applications and adjudicated 25,694 applications in July 2022. Of  
23 those applications USCIS adjudicated, 4.4% were adjudicated within 30 days. Defendants' July  
24 2022 compliance report is attached as Exhibit P.  
25

26 24. On August 11, 2022, the parties had another meet and confer. During that discussion,  
27 Plaintiffs' counsel explained that we intended to file a contempt motion in two weeks.  
28

1 Defendants' counsel emphasized that USCIS had largely cleared the backlog of cases pending  
2 more than 121 days and that, while he could not provide Plaintiffs with a definitive timeline, the  
3 agency estimated it would reach compliance by the end of September. Plaintiffs' counsel  
4 communicated their concern that, based on the current adjudication pattern, the September  
5 deadline was unrealistic absent a significant change. Since May, USCIS had been adjudicating  
6 fewer applications each month. Plaintiffs therefore explained that Court intervention was still  
7 required.  
8

9 25. Later in the afternoon of August 11, I sent a follow-up email to Defendants' counsel  
10 asking that he explain what Defendants consider to be compliance with the Court's permanent  
11 injunction. On August 12, 2022, Defendants' counsel acknowledged the question and reported  
12 that he had forwarded the question to USCIS. To date, Defendants have not defined what they  
13 consider compliance.  
14

15 I declare under penalty of perjury that the foregoing is true and correct. Executed this 24th of  
16 August 2022 in Dorchester, New Hampshire.  
17



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27  
28  

---

Emma Winger



# Exhibit A

**From:** [Emma Winger](#)  
**To:** [Goldsmith, Aaron \(CIV\)](#)  
**Cc:** [Devin T. Theriot-Orr](#); [matt@nwirp.org](mailto:matt@nwirp.org); [Johnny Sinodis](#)  
**Subject:** AsylumWorks decision - Rosario status report  
**Date:** Tuesday, February 8, 2022 10:01:00 AM

---

Hi Aaron,

As I'm sure you're aware, the timeline repeal rule was vacated yesterday in *AsylumWorks v. Mayorkas*, No. 20-cv-3815 (DDC). While Judge Robart's order required a status report within 10 days of a decision in *CASA de Maryland*, I assume he'd want a similarly timely joint status report given this decision. Can we set up a brief meet and confer to discuss the contents?

Emma

**Emma Winger**

*Staff Attorney*

Pronouns: She/Her

202-507-7512 | [ewinger@immcouncil.org](mailto:ewinger@immcouncil.org)

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# Exhibit B

**From:** [Emma Winger](#)  
**To:** [Goldsmith, Aaron \(CIV\)](#)  
**Cc:** [Devin T. Theriot-Orr](#); [matt@nwirp.org](mailto:matt@nwirp.org); [Johnny Sinodis](#)  
**Subject:** RE: AsylumWorks decision - Rosario status report  
**Date:** Thursday, February 10, 2022 4:43:00 PM

---

Hi Aaron,

We had one request before our call next Tuesday. It would be helpful to have a better sense from USCIS whether *AsylumWorks* is likely to significantly expand our class. It's our understanding that ASAP and CASA now have a huge number of members and so it's not clear how many people have been subject to the Timeline Repeal Rule. Would it be possible to get data from USCIS as to how many people, at least in recent months, have been subject to the Timeline Repeal Rule and how long those applications have been taking? That information would help us understand the impact of the decision on our class and give us a better sense of what implementation may look like.

Emma

**Emma Winger**

*Staff Attorney*

Pronouns: She/Her

202-507-7512 | [ewinger@immcouncil.org](mailto:ewinger@immcouncil.org)

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[www.ImmigrationImpact.com](http://www.ImmigrationImpact.com)

---

**From:** Goldsmith, Aaron (CIV) <[Aaron.Goldsmith@usdoj.gov](mailto:Aaron.Goldsmith@usdoj.gov)>  
**Sent:** Tuesday, February 8, 2022 4:46 PM  
**To:** Emma Winger <[EWinger@immcouncil.org](mailto:EWinger@immcouncil.org)>  
**Cc:** Devin T. Theriot-Orr <[devin@opensky.law](mailto:devin@opensky.law)>; [matt@nwirp.org](mailto:matt@nwirp.org); Johnny Sinodis <[jsin@vblaw.com](mailto:jsin@vblaw.com)>  
**Subject:** RE: AsylumWorks decision - Rosario status report

How about Tuesday, 3:00 ET? Thank you.

---

**From:** Emma Winger <[EWinger@immcouncil.org](mailto:EWinger@immcouncil.org)>  
**Sent:** Tuesday, February 08, 2022 12:43 PM  
**To:** Goldsmith, Aaron (CIV) <[Aaron.Goldsmith@usdoj.gov](mailto:Aaron.Goldsmith@usdoj.gov)>  
**Cc:** Devin T. Theriot-Orr <[devin@opensky.law](mailto:devin@opensky.law)>; [matt@nwirp.org](mailto:matt@nwirp.org); Johnny Sinodis <[jsin@vblaw.com](mailto:jsin@vblaw.com)>  
**Subject:** [EXTERNAL] RE: AsylumWorks decision - Rosario status report

Hi Aaron,

Why don't we try for February 15? I think we need to get a JSR on file on February 17 – that is, 10 days from the AsylumWorks decision (consistent with Judge Robart's order for a JSR within 10 days of any CASA de Maryland order). We're available during these windows on February 15: 11-2:30 ET, 3-4 ET.

# Exhibit C

**From:** [Emma Winger](#)  
**To:** [Goldsmith, Aaron \(CIV\)](#)  
**Cc:** [matt@nwirp.org](mailto:matt@nwirp.org); [Devin T. Theriot-Orr](#); [Johnny Sinodis](#)  
**Subject:** RE: Activity in Case 2:15-cv-00813-JLR Rosario, et al v. United States Citizenship and Immigration Services et al Status Report  
**Date:** Monday, March 7, 2022 12:07:00 PM

---

Hi Aaron,

I'm following up on Defendants' status report and our recent meet and confer. We understand from this report that USCIS has a very large backlog of class member applications – 72,412 class member applications have been pending for more than 90 days. When we last spoke, you did not have any information about how the agency intended to implement the *AsylumWorks* decision. Now that a month has passed, we hope that you can provide more information about USCIS' plan. Can we schedule another call for this week?

Emma

**Emma Winger**

*Senior Attorney*

Pronouns: She/Her

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[www.ImmigrationImpact.com](http://www.ImmigrationImpact.com)

---

**From:** ECF@wawd.uscourts.gov <ECF@wawd.uscourts.gov>

**Sent:** Saturday, March 5, 2022 5:58 PM

**To:** ECF@wawd.uscourts.gov

**Subject:** Activity in Case 2:15-cv-00813-JLR Rosario, et al v. United States Citizenship and Immigration Services et al Status Report

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

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U.S. District Court

United States District Court for the Western District of Washington

# Exhibit D

**From:** [Emma Winger](#)  
**To:** [Goldsmith, Aaron \(CIV\)](#)  
**Cc:** [matt@nwirp.org](mailto:matt@nwirp.org); [Devin T. Theriot-Orr](#); [Johnny Sinodis](#)  
**Subject:** RE: Activity in Case 2:15-cv-00813-JLR Rosario, et al v. United States Citizenship and Immigration Services et al Status Report  
**Date:** Thursday, March 17, 2022 1:25:00 PM

---

Hi Aaron,

For the benefit of us all, I thought I'd memorialize our earlier conversation and add two clarifying points/questions. As mentioned, we are open to considering USCIS' suggestion to decentralize the adjudication of class member applications from the Texas Service Center, but we would like specific details about how the agency intends to add the necessary resources to address the backlog—through decentralization or otherwise. How many adjudicators are currently processing class member applications and how many additional adjudicators does the agency intend to add? Is additional overtime being considered? What other additional resources are needed and would result from decentralizing adjudication?

One clarifying point (and you may have answered this, but Devin and I have different memories of our conversation): Would the lockbox remain the same or would that also be decentralized? We have more concerns about decentralizing the filing location.

Finally, we were not explicit about this on the call, but we would also like the agency to provide a timeline for how long it will take to work through the backlog and come into compliance, assuming the additional resources discussed above.

Emma

**Emma Winger**

*Senior Attorney*

Pronouns: She/Her

202-507-7512 | [ewinger@immcouncil.org](mailto:ewinger@immcouncil.org)

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[www.ImmigrationImpact.com](http://www.ImmigrationImpact.com)

---

**From:** Goldsmith, Aaron (CIV) <Aaron.Goldsmith@usdoj.gov>  
**Sent:** Tuesday, March 8, 2022 11:11 AM  
**To:** Emma Winger <EWinger@immcouncil.org>  
**Cc:** [matt@nwirp.org](mailto:matt@nwirp.org); [Devin T. Theriot-Orr <devin@opensky.law>](mailto:Devin.T.Theriot-Orr@opensky.law); [Johnny Sinodis <jsin@vblaw.com>](mailto:Johnny.Sinodis@vblaw.com)  
**Subject:** RE: Activity in Case 2:15-cv-00813-JLR Rosario, et al v. United States Citizenship and Immigration Services et al Status Report

Emma:

Would you be available to talk next week either the afternoon of March 16 or March 17 10:00-1:00



# Exhibit E

**REVISED AGREED IMPLEMENTATION PLAN**

By stipulated motion on September 14, 2018, the parties submitted an Agreed Implementation Plan governing certain aspects of the implementation of this Court's July 26, 2018, judgment (hereinafter also, the "Court's order"). Since that time, circumstances have changed making it necessary to revise the plan.

Therefore, the parties hereby agree that effective \_\_\_\_\_ the following Revised Agreed Implementation Plan will supersede and replace the September 14, 2018, Agreed Implementation Plan:

1. Defendants have taken, and pursuant to this agreement will work to maintain the following steps to address the Court's order:
  - a. Defendants reallocated 50 Immigration Service Officers to work full time on initial c8 applications (subject to modification upward or downward depending on workload, as determined by USCIS).
  - b. Defendants will continue to recalculate compliance rates to account for requests for initial evidence.
  - c. Defendants will continue to accept SRMT Customer Service Requests for initial c8 applications after they have been pending for 25 days.
  - d. Service Centers adjudicating initial c8 applications will work with their Background Check Units (BCU) to re-prioritize their workload so initial c8s sent to them are a top priority.
  - e. Defendants will continue to implement internal training and customer outreach to address misfiling with the lockbox (e.g., c8 extension requests that have been misrouted to the Texas Service Center, either due to applicant filing error or lockbox error.)
  - f. Defendants will work to ensure that SRMT Customer Service Request are accepted at 25 days. The Texas Service Center will be the lead service center for coordinating SRMT Customer Service Requests.
  - g. Defendants' webpage language and receipt notices have been updated, and will be updated going forward, as necessary, and consistent with further agreement or court decisions impacting initial c8 applications including the following:
    - i. Defendants will continue to update the processing time webpage to inform putative class members of their rights as class members and the remedies discussed herein.
    - ii. Defendants will maintain information on the USCIS website and receipt notices (Form I-797) issued to newly filed I-765 applicants consistent with this agreement.
  - h. Defendants will report to class counsel initial c8 adjudication rates, in the format previously used by Defendants, on a monthly basis, by the 15<sup>th</sup> day of each month for the next \_\_\_\_ months following submission of this Revised Agreed Implementation Plan. Thereafter, the parties will meet and confer regarding whether further reporting will occur, and if so for what duration.

2. Dispute Resolution: For individual initial c8 applications that remain pending beyond 30-days following use of the SRMT process, individuals seeking resolution of a dispute must:
  - a. Initiate this process no earlier than 8 business days after submission of an SRMT request.
  - b. Provide the following information:
    - i. Name
    - ii. A-number
    - iii. SRMT receipt number
    - iv. Date of SRMT request
    - v. Form I-756 receipt number
    - vi. Date of filing to a USCIS email address
  - c. Copy class counsel via email to an agreed upon address.
  - d. Allow 8 business days for response before the individual may file an action as specified by further Order of this Court.

# Exhibit F

**From:** [Goldsmith, Aaron \(CIV\)](#)  
**To:** [Emma Winger](#)  
**Cc:** [matt@nwirp.org](mailto:matt@nwirp.org); [Devin T. Theriot-Orr](#); [Johnny Sinodis](#)  
**Subject:** Rosario - Draft Revised Implementation Plan  
**Date:** Monday, March 21, 2022 11:51:55 AM  
**Attachments:** [DRAFT changes to 2018 Agreed Partial Implementation Plan.docx](#)

---

Emma:

To follow-up on our call on Thursday, attached is a proposed revised implementation plan. I do not have any additional details or information as to when the agency will be able to provide such details.

The best I could come up with is that back in June 2021, USCIS advised that there were 53 full time employees assigned to the initial C8 EAD workload at the Texas Service Center (TSC). At that time, USCIS advised that under normal conditions TSC's capacity to adjudicate initial C8 EADs would be approximately 11,000 per month with 53 full time employees. USCIS further estimated that, on average, an officer has approximately 140 adjudicative hours available per month at an approximate completion per hour rate of 1.5. This estimate did not account for additional factors such as employee attrition, temporary assignments, and leave.

Thank you.

Aaron S. Goldsmith  
Senior Litigation Counsel  
Office of Immigration Litigation  
U.S. Department of Justice  
Liberty Square Building  
450 5th Street, NW  
Washington, DC 20530-0001  
Tel: (202) 532-4107  
[aaron.goldsmith@usdoj.gov](mailto:aaron.goldsmith@usdoj.gov)

# Exhibit G

**From:** [Emma Winger](#)  
**To:** [Goldsmith, Aaron \(CIV\)](#)  
**Cc:** [matt@nwirp.org](mailto:matt@nwirp.org); [Devin T. Theriot-Orr](#); [Johnny Sinodis](#)  
**Subject:** RE: Rosario - Draft Revised Implementation Plan  
**Date:** Wednesday, March 23, 2022 9:54:00 AM

---

Hi Aaron,

We have reviewed the revised draft implementation plan, but cannot, without more detail, agree to these revisions. Unlike the original implementation plan, which called for more resources to adjudicate class member applications, this revised plan does not provide any information about how the agency will address the large backlog and instead appears to suggest that staffing levels will remain static (as does the information you provided below).

As we said on our call, we are open to the possibility of decentralizing the adjudication of class member applications, but only to the extent that it will ensure compliance with the Court's permanent injunction. In the absence of any information about how the decentralization would further that goal, we are concerned that it will simply cause more confusion for class members and the agency. For example, it is unclear the impact of the proposed revisions on the enforcement mechanism—as you know, right now the Texas Service Center responds to all inquiries. It's unclear what is meant by "The Texas Service Center will be the lead service center for coordinating SRMT Customer Service Requests."

As a separate note, I want to mention that the TSC is still including this boilerplate language in its responses to class member inquiries: "USCIS will only accept documentary evidence of your CASA or ASAP membership if submitted at the time you file your Form I-765. USCIS will not consider evidence of CASA or ASAP membership that you provide to USCIS after you have filed your Form I-765." Can you raise this with the agency?

Emma

**Emma Winger**

*Senior Attorney*

Pronouns: She/Her

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[www.ImmigrationImpact.com](http://www.ImmigrationImpact.com)

---

**From:** Goldsmith, Aaron (CIV) <Aaron.Goldsmith@usdoj.gov>  
**Sent:** Monday, March 21, 2022 11:52 AM  
**To:** Emma Winger <EWinger@immcouncil.org>  
**Cc:** [matt@nwirp.org](mailto:matt@nwirp.org); [Devin T. Theriot-Orr <devin@opensky.law>](mailto:Devin.T.Theriot-Orr@opensky.law); [Johnny Sinodis <jsin@vblaw.com>](mailto:Johnny.Sinodis@vblaw.com)  
**Subject:** Rosario - Draft Revised Implementation Plan

Emma:

# Exhibit H



**From:** [Goldsmith, Aaron \(CIV\)](#)  
**To:** [Emma Winger](#)  
**Cc:** [matt@nwirp.org](mailto:matt@nwirp.org); [Devin T. Theriot-Orr](#); [Johnny Sinodis](#)  
**Subject:** Rosario - alternative approach with respect to the Implementation Plan  
**Date:** Tuesday, April 5, 2022 6:03:58 PM

---

Emma:

I forwarded to USCIS your email response regarding their proposed changes to the Agreed Implementation Plan. I think I understand your concerns, specifically your objection to eliminating paragraph 1(b). USCIS has had a chance to consider your comments and is clarifying what it is that they are requesting. Instead of making the host of changes set forth in Revised Implementation Plan, USCIS simply wants to change paragraph 1(c) as follows:

c. Reallocated 50 Immigration Service Officers to work full time on initial (c)(8) applications (subject to modification upward or downward depending on workload, as determined by USCIS). Further, USCIS may transfer initial (c)(8) applications out of the TSC for adjudication at other service centers, depending on workload at those service centers and as determined by USCIS, to help address the increased workload of initial (c)(8) cases and any backlog of cases waiting for adjudication.

Under this approach the Texas Service Center (TSC) would remain the primary service center adjudicating these cases and USCIS would not be requesting any changes to the lockbox or intake processes. To be clear, USCIS did not and does not propose to reassign or reallocate resources/personnel at the TSC currently dedicated to c8 I-765s. What USCIS wants is the flexibility to reassign cases out of the TSC to adjudicators at other service centers, as additional adjudication resources become available. For purposes of addressing the backlog and increased workload, USCIS would train adjudicators at other service centers to adjudicate initial c8 I-765s, and then, considering the workload and priorities at other service centers, USCIS would have the flexibility to move batches of pending cases out of the TSC and assign them to available trained adjudicators elsewhere.

In this way, USCIS plans to increase the number of adjudicators available to work initial c8 I-765 applications. At this time, it would be difficult to quantify how many additional adjudicators would be assigned to work these cases. They would be drawn from other service centers from personnel who already have an adjudication workload. Rather, USCIS would figure out where additional capacity can be found, and then assign out batches of initial c8 I-765s accordingly.

Thank you.

Aaron S. Goldsmith  
Senior Litigation Counsel  
Office of Immigration Litigation  
U.S. Department of Justice  
Liberty Square Building  
450 5th Street, NW

Washington, DC 20530-0001

Tel: (202) 532-4107

aaron.goldsmith@usdoj.gov

# Exhibit I

Table 1  
I-765 - Application for Employment Authorization  
Eligibility Category: C08, Pending Asylum  
Initial Permission to Accept Employment  
Completions by Processing Time Buckets  
August 1, 2020 - March 31, 2022  
Aggregated by Fiscal Year and Month  
Potential Rosario Class Members



U.S. Citizenship  
and Immigration  
Services

Period		Processing Time						Compliance Percentage	
Fiscal Year	Month	0-30 Days	31-60 Days	61-90 Days	91-120 Days	121+ Days	Grand Total	% Completed within 30 Days	% Completed within 60 Days
2020	AUG	20,456	514	167	15	35	21,187	96.5%	99.0%
	SEP	14,387	6,600	177	16	71	21,251	67.7%	98.8%
<b>2020 Total</b>		<b>34,843</b>	<b>7,114</b>	<b>344</b>	<b>31</b>	<b>106</b>	<b>42,438</b>	<b>82.1%</b>	<b>98.9%</b>
2021	OCT	864	7,555	216	30	94	8,759	9.9%	96.1%
	NOV	791	317	73	46	26	1,253	63.1%	88.4%
	DEC	480	258	102	45	27	912	52.6%	80.9%
	JAN	952	889	869	85	101	2,896	32.9%	63.6%
	FEB	1,738	2,659	1,740	461	29	6,627	26.2%	66.3%
	MAR	5,694	7,541	3,503	741	327	17,806	32.0%	74.3%
	APR	5,609	7,151	1,835	789	466	15,850	35.4%	80.5%
	MAY	12,183	5,902	377	197	143	18,802	64.8%	96.2%
	JUN	11,641	798	94	17	7	12,557	92.7%	99.1%
	JUL	10,418	415	64	14	6	10,917	95.4%	99.2%
	AUG	10,446	501	109	12	11	11,079	94.3%	98.8%
	SEP	10,026	482	20	1	5	10,534	95.2%	99.8%
<b>2021 Total</b>		<b>70,842</b>	<b>34,468</b>	<b>9,002</b>	<b>2,438</b>	<b>1,242</b>	<b>117,992</b>	<b>60.0%</b>	<b>89.3%</b>
2022	OCT	8,679	604	13	4	3	9,303	93.3%	99.8%
	NOV	6,010	1,189	27	4	6	7,236	83.1%	99.5%
	DEC	4,854	5,147	190	28	20	10,239	47.4%	97.7%
	JAN	11,476	893	55	24	9	12,457	92.1%	99.3%
	FEB	3,115	66	10	4	3	3,198	97.4%	99.5%
	FEB*	7,024	106	29	14	353	7,526	93.3%	94.7%
	MAR*	15,307	1,401	66	54	5,666	22,494	68.0%	74.3%
<b>2022 Total</b>		<b>56,465</b>	<b>9,406</b>	<b>390</b>	<b>132</b>	<b>6,060</b>	<b>72,453</b>	<b>77.9%</b>	<b>90.9%</b>
<b>Grand Total</b>		<b>162,150</b>	<b>50,988</b>	<b>9,736</b>	<b>2,601</b>	<b>7,408</b>	<b>232,883</b>	<b>69.6%</b>	<b>91.5%</b>

**NOTE:**

- 1) The report reflects the most up-to-date data available at the time the system was queried.
- 2) The data reflects initial decisions on an application by the officer only. Reopened cases are excluded.
- 3) Processing time is represented by the elapsed number of days between receipt date to initial decision date.
- 4) Applications with a request for initial evidence will reset the processing time to 0 upon receiving the evidence.
- 5) Applications with a request for additional evidence will have the processing time paused and resumed upon receiving the evidence.
- 6) Postmark date is not generally reportable in USCIS' electronic systems. Received date is used as a proxy for postmark date when defining potential class members.
- 7) Prior to the Feb. 7, 2022 Asylumworks vacatur decision, potential Rosario class members were defined as initial EAD applications received on or prior to Aug. 20, 2020 or received Aug. 21, 2020 or after and, in accordance with USCIS website instructions related to the CASA preliminary injunction, did not pay a biometrics fee and included evidence of CASA/ASAP membership or paid a biometrics fee and included evidence of CASA/ASAP membership. Previously, individuals who paid a biometrics fee and submitted evidence of CASA/ASAP membership were not identifiable in USCIS' systems. USCIS developed an automated utility to detect and classify electronic evidence to establish CASA/ASAP membership. Once the utility identifies the evidence, a flag is used to prioritize and assign CASA/ASAP membership cases for adjudication.
- 8) Prior to the Feb. 7, 2022 Asylumworks vacatur decision, individuals who did not submit CASA/ASAP membership evidence, but did not pay a biometrics fee due to a Request for a Fee Waiver were not included as potential class members.
- 9) All C08 initial applications adjudicated on or after Feb. 8, 2022 are considered potential Rosario class members regardless of CASA/ASAP membership. Note there are two entries for Feb. 2022. The second entry with the asterisk (\*) reports the number of applications adjudicated on or after the Feb. 8, 2022 date.

Database Queried: April 1, 2022

Report Created: April 1, 2022

System: C3 Consolidated, ELIS

Office of Performance and Quality (OPQ), Performance Analysis and External Reporting (PAER)

Parameters

Form(s): I-765

Class Preference(s): C08

Initial RFE Codes: FBA, FBC, 109, 1436, 1438

Additional RFE Codes: FBB, 1437

RFE Received Codes: HA, 110

ELIS Base Fee Code : E

Time Period(s): August 1, 2020 - March 31, 2022

Data Type(s): Processing Time

Table 2  
 I-765 - Application for Employment Authorization  
 Eligibility Category: C08, Pending Asylum  
 Initial Permission to Accept Employment  
 Pending by Processing Time Buckets  
 Pending as of March 31, 2022  
 Potential Rosario Class Members



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Data Type	Processing Time						Compliance Percentage	
	0-30 Days	31-60 Days	61-90 Days	91-120 Days	121+ Days	Grand Total	% Pending 0-30 Days	% Pending 0-60 Days
Pending	16,627	5,970	3,102	3,905	66,447	96,051	17.3%	23.5%

**NOTE:**

- 1) The report reflects the most up-to-date data available at the time the system was queried.
- 2) The data reflects initial decisions on an application by the officer only. Reopened cases are excluded.
- 3) Processing time is represented by the elapsed number of days between receipt date to initial decision date.
- 4) Applications with a request for initial evidence will reset the processing time to 0 upon receiving the evidence.
- 5) Applications with a request for additional evidence will have the processing time paused and resumed upon receiving the evidence.
- 6) All C8 initial applications pending on or after February 8, 2022 are considered as potential class members regardless of CASA/ASAP membership.

Database Queried: April 1, 2022

Report Created: April 1, 2022

System: C3 Consolidated, ELIS

Office of Performance and Quality (OPQ), Performance Analysis and External Reporting (PAER)

Parameters

Form(s): I-765

Class Preference(s): C08

Initial RFE Codes: FBA, FBC, 109, 1436, 1438

Additional RFE Codes: FBB, 1437

RFE Received Codes: HA, 110

ELIS Base Fee Code : E

Time Period(s): Pending as of March 31, 2022

Data Type(s): Pending

# Exhibit J

**From:** [Emma Winger](#)  
**To:** [Goldsmith, Aaron \(CIV\)](#)  
**Cc:** [matt@nwirp.org](mailto:matt@nwirp.org); [Devin T. Theriot-Orr](#); [Johnny Sinodis](#)  
**Subject:** RE: Rosario - alternative approach with respect to the Implementation Plan  
**Date:** Friday, April 8, 2022 3:00:00 PM

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Aaron,

We are willing to agree to this modification to the implementation plan. However, we still think it would be valuable to schedule a meet and confer, ideally with an agency representative. The agency has not provided any timeline or benchmarks for coming into compliance, but we will need standards by which to evaluate USCIS' progress to determine when to seek court intervention. We intend to come up with our own metrics and would appreciate input from the agency.

Emma

**Emma Winger**

*Senior Attorney*

Pronouns: She/Her

202-507-7512 | [ewinger@immcouncil.org](mailto:ewinger@immcouncil.org)

**American Immigration Council**

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[www.AmericanImmigrationCouncil.org](http://www.AmericanImmigrationCouncil.org)

[www.ImmigrationImpact.com](http://www.ImmigrationImpact.com)

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**From:** Goldsmith, Aaron (CIV) <Aaron.Goldsmith@usdoj.gov>  
**Sent:** Tuesday, April 5, 2022 6:04 PM  
**To:** Emma Winger <EWinger@immcouncil.org>  
**Cc:** [matt@nwirp.org](mailto:matt@nwirp.org); [Devin T. Theriot-Orr](#) <devin@opensky.law>; [Johnny Sinodis](#) <jsin@vblaw.com>  
**Subject:** Rosario - alternative approach with respect to the Implementation Plan

Emma:

I forwarded to USCIS your email response regarding their proposed changes to the Agreed Implementation Plan. I think I understand your concerns, specifically your objection to eliminating paragraph 1(b). USCIS has had a chance to consider your comments and is clarifying what it is that they are requesting. Instead of making the host of changes set forth in Revised Implementation Plan, USCIS simply wants to change paragraph 1(c) as follows:

c. Reallocated 50 Immigration Service Officers to work full time on initial (c)(8) applications (subject to modification upward or downward depending on workload, as determined by USCIS). Further, USCIS may transfer initial (c)(8) applications out of the TSC for adjudication at other service centers, depending on workload at those service centers and as determined by USCIS, to help address the increased workload of initial (c)(8) cases and any backlog of cases waiting for adjudication.

Under this approach the Texas Service Center (TSC) would remain the primary service center adjudicating these cases and USCIS would not be requesting any changes to the lockbox or intake processes. To be clear, USCIS did not and does not propose to reassign or reallocate



# Exhibit K

**From:** [Goldsmith, Aaron \(CIV\)](#)  
**To:** [Emma Winger](#)  
**Cc:** [matt@nwirp.org](mailto:matt@nwirp.org); [Devin T. Theriot-Orr](#)  
**Subject:** RE: April 2022 Report  
**Date:** Monday, May 9, 2022 4:05:04 PM

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Emma:

In response to your questions, we can advise as follows:

Does USCIS have a timeframe for reducing and ultimately eliminating the backlog? USCIS does not have a timeframe for reducing and eliminating the backlog, but is working hard to achieve those goals. Since the *Asylumworks* vacatur, USCIS has worked to pivot resources to address the pending cases not previously covered under *Rosario*. In addition to overarching agency backlog reduction efforts including the use of overtime, new hiring, and working to better leverage technology to automate pre-processing tasks to allow cases to move to an “adjudication ready” state more rapidly, USCIS has worked to add resources through training additional officers at TSC and engaging resources from other service centers to assist. USCIS will continue to surge resources to the greatest degree possible until the backlog is eliminated, at which point the resources necessary to maintain compliance will be evaluated and adjusted accordingly.

How many employees are currently assigned to adjudicate initial C8 EADs at the Texas Service Center? The Implementation Plan requires USCIS to allocate 50 officers to work full time on initial (c)(8) applications. Presently USCIS has approximately 90 adjudicators working (c)(8) initials in Texas full time. This number may fluctuate upward or downward in the future, consistent with available resources.

You reported that, in June 2021, a full-time officer has approximately 140 adjudicative hours available per month at an approximate complete per hour rate of 1.5. Is that still true today? Internal data shows that completions per hour (CpH) are exceeding the benchmark.

Of those employees assigned to adjudicate initial C8 EADs part time, what number of adjudicative hours are they assigned to initial C8 EADs per month? The officers are assigned to C8 adjudications on a full-time basis.

Are there other employees currently assigned to initial C8 EADs at other service centers? If yes, what number? Are the employees working full time or part time adjudicating initial C8 EADs? If part time, what adjudicative hours are devoted to initial C8 EADs? USCIS has temporarily assigned officers from other Service Centers to support C8 initial adjudications in the weeks after the *Asylumworks* vacatur.

Does USCIS intend to assign additional adjudicators in the future? If so, how many and when? USCIS is in the process of training additional officers, both new hires and reassignments to assist in backlog reduction efforts. USCIS plans to assign C8 initial work to additional officers based on available resources and priorities. USCIS is analyzing internal data to identify how many officers can be reassigned to C8 initials for a predetermined amount of time to work the C8 initial backlog while minimizing harm to other product lines.

You reported that in June 2021, USCIS had 53 full time employees and that under normal conditions TSC's capacity to adjudicate initial C8 EADs would be approximately 11,000 per month. But in June 2021, USCIS adjudicated 13,217 applications. From March through June 2021 USCIS consistently adjudicated more than 11,000 initial C8 EAD applications. Can you explain this apparent inconsistency? The number fluctuates given overtime, personnel movements, and leave usage. Additionally, the June 2021 report was based recent historic data and current operational realities at the time. SCOPS has continuously worked to increase production through enhancements to the case management system (ELIS) and operational procedures

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**From:** Goldsmith, Aaron (CIV)  
**Sent:** Thursday, May 05, 2022 9:55 AM  
**To:** Emma Winger <EWinger@immcouncil.org>  
**Cc:** matt@nwirp.org; Devin T. Theriot-Orr <devin@opensky.law>  
**Subject:** RE: April 2022 Report

Emma:

I have a call with the agency this afternoon about the questions. I expect to be able to provide you answers by Monday.

Thank you.

---

**From:** Emma Winger <EWinger@immcouncil.org>  
**Sent:** Wednesday, May 04, 2022 9:50 PM  
**To:** Goldsmith, Aaron (CIV) <Aaron.Goldsmith@usdoj.gov>  
**Cc:** matt@nwirp.org; Devin T. Theriot-Orr <devin@opensky.law>  
**Subject:** [EXTERNAL] RE: April 2022 Report

Thank you, Aaron. Do you have any report on the questions we sent you on April 15?

Emma

**Emma Winger**  
*Senior Attorney*

Pronouns: She/Her  
202-507-7512 | [ewinger@immcouncil.org](mailto:ewinger@immcouncil.org)

**American Immigration Council**

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[www.ImmigrationImpact.com](http://www.ImmigrationImpact.com)

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**From:** Goldsmith, Aaron (CIV) <[Aaron.Goldsmith@usdoj.gov](mailto:Aaron.Goldsmith@usdoj.gov)>  
**Sent:** Wednesday, May 4, 2022 5:30 PM  
**To:** Emma Winger <[EWinger@immcouncil.org](mailto:EWinger@immcouncil.org)>  
**Cc:** [matt@nwirp.org](mailto:matt@nwirp.org); Devin T. Theriot-Orr <[devin@opensky.law](mailto:devin@opensky.law)>  
**Subject:** April 2022 Report

Emma, attached is the April 2022 Report. Thank you.

# Exhibit L

**Table 1**  
**I-765 - Application for Employment Authorization**  
**Eligibility Category: C08, Pending Asylum**  
**Initial Permission to Accept Employment**  
**Completions by Processing Time Buckets**  
**August 1, 2020 - April 30, 2022**  
**Aggregated by Fiscal Year and Month**  
**Potential Rosario Class Members**



U.S. Citizenship  
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Services

Period		Processing Time (in Days)						Compliance Percentage	
Fiscal Year	Month	0-30	31-60	61-90	91-120	121+	Total	% Completed within 30 Days	% Completed within 60 Days
2020	AUG	20,457	517	165	15	33	21,187	96.6%	99.0%
	SEP	14,388	6,603	173	16	71	21,251	67.7%	98.8%
	Total	34,845	7,120	338	31	104	42,438	82.1%	98.9%
2021	OCT	864	7,555	216	30	94	8,759	9.9%	96.1%
	NOV	790	318	73	46	26	1,253	63.0%	88.4%
	DEC	480	258	102	45	27	912	52.6%	80.9%
	JAN	952	889	869	85	101	2,896	32.9%	63.6%
	FEB	1,738	2,659	1,740	461	29	6,627	26.2%	66.3%
	MAR	5,694	7,541	3,503	741	327	17,806	32.0%	74.3%
	APR	5,608	7,152	1,835	789	466	15,850	35.4%	80.5%
	MAY	12,183	5,902	377	197	143	18,802	64.8%	96.2%
	JUN	11,641	798	94	17	7	12,557	92.7%	99.1%
	JUL	10,419	415	63	14	6	10,917	95.4%	99.2%
	AUG	10,448	500	109	11	11	11,079	94.3%	98.8%
	SEP	10,026	482	20	1	5	10,534	95.2%	99.8%
	Total	70,843	34,469	9,001	2,437	1,242	117,992	60.0%	89.3%
2022	OCT	8,679	604	13	4	3	9,303	93.3%	99.8%
	NOV	6,010	1,189	27	4	6	7,236	83.1%	99.5%
	DEC	4,854	5,147	190	28	20	10,239	47.4%	97.7%
	JAN	11,476	893	55	24	9	12,457	92.1%	99.3%
	FEB	3,115	67	10	4	2	3,198	97.4%	99.5%
	FEB*	7,024	106	29	14	354	7,527	93.3%	94.7%
	MAR*	15,315	1,398	66	54	5,661	22,494	68.1%	74.3%
	APR*	10,907	1,026	192	25	14,323	26,473	41.2%	45.1%
	Total	85,376	20,005	6,285	3,030	75,492	190,188	44.9%	55.4%
	Grand Total	382,128	123,188	31,248	10,996	153,676	701,236	54.5%	72.1%

See Notes page for all notes and assumptions.

**I-765 - Application for Employment Authorization**  
**Eligibility Category: C08, Pending Asylum**  
**Initial Permission to Accept Employment**  
**Notes and Assumptions**  
**Report Date: April 30, 2022**



**U.S. Citizenship  
and Immigration  
Services**

Period	Processing Time (in Days)						Compliance Percentage	
	0-30	31-60	61-90	91-120	121+	Total	% Completed within 30 Days	% Completed within 60 Days
Pending	17,996	9,575	5,703	2,873	55,114	91,261	19.7%	30.2%

See Notes page for all notes and assumptions.

**I-765 - Application for Employment Authorization**  
**Eligibility Category: C08, Pending Asylum**  
**Initial Permission to Accept Employment**  
**Notes and Assumptions**  
**Report Date: April 30, 2022**



**U.S. Citizenship  
and Immigration  
Services**

**Table 1 Notes:**

- 1)** The report reflects the most up-to-date data available at the time the system was queried.
- 2)** The data reflects initial decisions on an application by the officer only. Reopened cases are excluded.
- 3)** Processing time is represented by the elapsed number of days between receipt date to initial decision date.
- 4)** Applications with a request for initial evidence will reset the processing time to 0 upon receiving the evidence.
- 5)** Applications with a request for additional evidence will have the processing time paused and resumed upon receiving the evidence.
- 6)** Postmark date is not generally reportable in USCIS' electronic systems. Received date is used as a proxy for postmark date when defining potential class members.
- 7)** Prior to the Feb. 7, 2022 Asylumworks vacatur decision, potential Rosario class members were defined as initial EAD applications received on or prior to Aug. 20, 2020 or received Aug. 21, 2020 or after and, in accordance with USCIS website instructions related to the CASA preliminary injunction, did not pay a biometrics fee and included evidence of CASA/ASAP membership or paid a biometrics fee and included evidence of CASA/ASAP membership. Previously, individuals who paid a biometrics fee and submitted evidence of CASA/ASAP membership were not identifiable in USCIS' systems. USCIS developed an automated utility to detect and classify electronic evidence to establish CASA/ASAP membership. Once the utility identifies the evidence, a flag is used to prioritize and assign CASA/ASAP membership cases for adjudication.
- 8)** Prior to the Feb. 7, 2022 Asylumworks vacatur decision, individuals who did not submit CASA/ASAP membership evidence, but did not pay a biometrics fee due to a Request for a Fee Waiver were not included as potential class members.
- 9)** All C08 initial applications adjudicated on or after Feb. 8, 2022 are considered potential Rosario class members regardless of CASA/ASAP membership. Note there are two entries for Feb. 2022. The second entry with the asterisk (\*) reports the number of applications adjudicated on or after the Feb. 8, 2022 date.

**Table 2 Notes:**

- 1)** The report reflects the most up-to-date data available at the time the system was queried.
- 2)** The data reflects initial decisions on an application by the officer only. Reopened cases are excluded.
- 3)** Processing time is represented by the elapsed number of days between receipt date to initial decision date.
- 4)** Applications with a request for initial evidence will reset the processing time to 0 upon receiving the evidence.
- 5)** Applications with a request for additional evidence will have the processing time paused and resumed upon receiving the evidence.
- 6)** All C8 initial applications pending on or after February 8, 2022 are considered as potential class members regardless of CASA/ASAP membership.

**Parameters:**

Form(s): I-765  
 Class Preference(s): C08  
 Initial RFE Codes: FBA, FBC, 109, 1436, 1438  
 Additional RFE Codes: FBB, 1437  
 RFE Received Codes: HA, 110  
 ELIS Base Fee Code : E



# Exhibit M

**Table 1**  
**I-765 - Application for Employment Authorization**  
**Eligibility Category: C08, Pending Asylum**  
**Initial Permission to Accept Employment**  
**Completions by Processing Time Buckets**  
**August 1, 2020 - May 31, 2022**  
**Aggregated by Fiscal Year and Month**  
**Potential Rosario Class Members**



U.S. Citizenship  
and Immigration  
Services

Period		Processing Time (in Days)						Compliance Percentage	
Fiscal Year	Month	0-30	31-60	61-90	91-120	121+	Total	% Completed within 30 Days	% Completed within 60 Days
2020	AUG	20,457	517	165	15	33	21,187	96.6%	99.0%
	SEP	14,388	6,603	173	16	71	21,251	67.7%	98.8%
	Total	34,845	7,120	338	31	104	42,438	82.1%	98.9%
2021	OCT	864	7,555	216	30	94	8,759	9.9%	96.1%
	NOV	790	318	73	46	26	1,253	63.0%	88.4%
	DEC	480	258	102	45	27	912	52.6%	80.9%
	JAN	952	889	869	85	101	2,896	32.9%	63.6%
	FEB	1,738	2,659	1,740	461	29	6,627	26.2%	66.3%
	MAR	5,694	7,541	3,503	741	327	17,806	32.0%	74.3%
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	JUN	11,641	798	94	17	7	12,557	92.7%	99.1%
	JUL	10,419	415	63	14	6	10,917	95.4%	99.2%
	AUG	10,448	500	109	11	11	11,079	94.3%	98.8%
	SEP	10,026	482	20	1	5	10,534	95.2%	99.8%
	Total	70,843	34,469	9,001	2,437	1,242	117,992	60.0%	89.3%
2022	OCT	8,679	604	13	4	3	9,303	93.3%	99.8%
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	MAR*	15,315	1,398	66	53	5,661	22,493	68.1%	74.3%
	APR*	10,911	1,026	192	25	14,319	26,473	41.2%	45.1%
	MAY*	6,506	1,288	287	86	23,307	31,474	20.7%	24.8%
	Total	101,020	21,326	10,701	5,495	76,232	214,774	47.0%	57.0%
Grand Total	413,416	125,830	40,080	15,926	155,156	750,408	55.1%	71.9%	

See Notes page for all notes and assumptions.

**I-765 - Application for Employment Authorization**  
**Eligibility Category: C08, Pending Asylum**  
**Initial Permission to Accept Employment**  
**Notes and Assumptions**  
**Report Date: May 31, 2022**



**U.S. Citizenship  
and Immigration  
Services**

Period	Processing Time (in Days)						Compliance Percentage	
	0-30	31-60	61-90	91-120	121+	Total	% Completed within 30 Days	% Completed within 60 Days
Pending	27,130	9,608	9,832	5,253	32,551	84,374	32.2%	43.5%

See Notes page for all notes and assumptions.

**I-765 - Application for Employment Authorization**  
**Eligibility Category: C08, Pending Asylum**  
**Initial Permission to Accept Employment**  
**Notes and Assumptions**  
**Report Date: May 31, 2022**



**U.S. Citizenship  
and Immigration  
Services**

**Table 1 Notes:**

- 1)** The report reflects the most up-to-date data available at the time the system was queried.
- 2)** The data reflects initial decisions on an application by the officer only. Reopened cases are excluded.
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- 7)** Prior to the Feb. 7, 2022 Asylumworks vacatur decision, potential Rosario class members were defined as initial EAD applications received on or prior to Aug. 20, 2020 or received Aug. 21, 2020 or after and, in accordance with USCIS website instructions related to the CASA preliminary injunction, did not pay a biometrics fee and included evidence of CASA/ASAP membership or paid a biometrics fee and included evidence of CASA/ASAP membership. Previously, individuals who paid a biometrics fee and submitted evidence of CASA/ASAP membership were not identifiable in USCIS' systems. USCIS developed an automated utility to detect and classify electronic evidence to establish CASA/ASAP membership. Once the utility identifies the evidence, a flag is used to prioritize and assign CASA/ASAP membership cases for adjudication.
- 8)** Prior to the Feb. 7, 2022 Asylumworks vacatur decision, individuals who did not submit CASA/ASAP membership evidence, but did not pay a biometrics fee due to a Request for a Fee Waiver were not included as potential class members.
- 9)** All C08 initial applications adjudicated on or after Feb. 8, 2022 are considered potential Rosario class members regardless of CASA/ASAP membership. Note there are two entries for Feb. 2022. The second entry with the asterisk (\*) reports the number of applications adjudicated on or after the Feb. 8, 2022 date.

**Table 2 Notes:**

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- 4)** Applications with a request for initial evidence will reset the processing time to 0 upon receiving the evidence.
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- 6)** All C8 initial applications pending on or after February 8, 2022 are considered as potential class members regardless of CASA/ASAP membership.

**Parameters:**

Form(s): I-765  
 Class Preference(s): C08  
 Initial RFE Codes: FBA, FBC, 109, 1436, 1438  
 Additional RFE Codes: FBB, 1437  
 RFE Received Codes: HA, 110  
 ELIS Base Fee Code : E

# Exhibit N

**From:** [Emma Winger](#)  
**To:** [Goldsmith, Aaron \(CIV\)](#)  
**Cc:** [matt@nwirp.org](mailto:matt@nwirp.org); [Devin T. Theriot-Orr](#)  
**Subject:** Follow-up on Rosario call 6.17.22  
**Date:** Tuesday, June 21, 2022 8:55:00 PM

---

Aaron,

I wanted to follow up on our Friday call. As discussed, the agency's May 2022 report suggests that the agency has shifted resources to older class member applications and away from newer applications, with the result that the agency's compliance rate was just 20.7%, with a growing backlog of newer applications on top of the significant backlog of older cases. We are concerned that the agency is nowhere near compliance with the court's permanent injunction. August 7 would be six months from the date of the *Asylumworks* decision—and is still almost two months away. At that point, if USCIS has not reached substantial compliance (that is, return to adjudicating at least 95% of all class member applications within 30 days – as the agency did for more than a year before implementing the timeline repeal rule), we plan to begin preparing a contempt motion.

Also as discussed on the call, and previously raised to you back on April 11, the [e-Request - Outside Normal Processing Time \(uscis.gov\)](#) still provides incorrect information to class members. Here is the language that is currently posted:

You may be a member of the class action, *Rosario v. USCIS*, Case No. C15-0813JLR, if USCIS does not adjudicate within 30 days your initial (first) Form I-765, *Application for Employment Authorization*, based on your pending asylum application, AND:

- You are a member of either CASA de Maryland (CASA) or the Asylum Seeker Advocacy Project (ASAP) and are entitled to limited relief under the injunction in *CASA de Maryland Inc. et al. v. Chad Wolf et al.*; or
- You filed your Form I-765 before Aug. 21, 2020, and it has not yet been adjudicated.

Please see the [www.uscis.gov/rosario](http://www.uscis.gov/rosario) webpage for further information about the *Rosario* class action and how to investigate the status of your employment authorization application.

On April 14 you advised that the agency was reviewing its pages and was in the process of updating the language on the pages. Can you again raise this issue with the agency to correct?

We anticipate meeting again closer to August 7.

Emma

**Emma Winger**  
Senior Attorney  
Pronouns: She/Her  
202-507-7512 | [ewinger@immcouncil.org](mailto:ewinger@immcouncil.org)

**American Immigration Council**  
1331 G Street, NW, Suite 200

Washington, DC 20005

[www.AmericanImmigrationCouncil.org](http://www.AmericanImmigrationCouncil.org)

[www.ImmigrationImpact.com](http://www.ImmigrationImpact.com)

# Exhibit O



**Table 1**  
**I-765 - Application for Employment Authorization**  
**Eligibility Category: C08, Pending Asylum**  
**Initial Permission to Accept Employment**  
**Completions by Processing Time Buckets**  
**August 1, 2020 - June 30, 2022**  
**Aggregated by Fiscal Year and Month**  
**Potential Rosario Class Members**



U.S. Citizenship  
and Immigration  
Services

Period		Processing Time (in Days)						Compliance Percentage	
Fiscal Year	Month	0-30	31-60	61-90	91-120	121+	Total	% Completed within 30 Days	% Completed within 60 Days
2020	AUG	20,457	517	165	15	33	21,187	96.6%	99.0%
	SEP	14,388	6,603	173	16	71	21,251	67.7%	98.8%
	Total	34,845	7,120	338	31	104	42,438	82.1%	98.9%
2021	OCT	864	7,555	216	30	94	8,759	9.9%	96.1%
	NOV	790	318	73	46	26	1,253	63.0%	88.4%
	DEC	480	258	102	45	27	912	52.6%	80.9%
	JAN	952	889	869	85	101	2,896	32.9%	63.6%
	FEB	1,738	2,659	1,740	461	29	6,627	26.2%	66.3%
	MAR	5,694	7,541	3,503	741	327	17,806	32.0%	74.3%
	APR	5,608	7,152	1,835	789	466	15,850	35.4%	80.5%
	MAY	12,183	5,902	377	197	143	18,802	64.8%	96.2%
	JUN	11,641	798	94	17	7	12,557	92.7%	99.1%
	JUL	10,419	415	63	14	6	10,917	95.4%	99.2%
	AUG	10,448	500	109	11	11	11,079	94.3%	98.8%
	SEP	10,026	482	20	1	5	10,534	95.2%	99.8%
	Total	70,843	34,469	9,001	2,437	1,242	117,992	60.0%	89.3%
2022	OCT	8,679	604	13	4	3	9,303	93.3%	99.8%
	NOV	6,010	1,189	27	4	6	7,236	83.1%	99.5%
	DEC	4,854	5,147	190	28	20	10,239	47.4%	97.7%
	JAN	11,476	893	55	24	9	12,457	92.1%	99.3%
	FEB	3,115	67	10	4	2	3,198	97.4%	99.5%
	FEB*	7,024	106	29	14	354	7,527	93.3%	94.7%
	MAR*	15,315	1,398	66	53	5,661	22,493	68.1%	74.3%
	APR*	10,912	1,026	192	25	14,318	26,473	41.2%	45.1%
	MAY*	6,507	1,288	287	86	23,306	31,474	20.7%	24.8%
	JUN*	1,756	261	90	65	26,842	29,014	6.1%	7.0%
	Total	75,648	11,979	959	307	70,521	159,414	47.5%	55.0%
Grand Total	181,336	53,568	10,298	2,775	71,867	319,844	56.7%	73.4%	

See Notes page for all notes and assumptions.

**I-765 - Application for Employment Authorization**  
**Eligibility Category: C08, Pending Asylum**  
**Initial Permission to Accept Employment**  
**Notes and Assumptions**  
**Report Date: June 30, 2022**



**U.S. Citizenship  
and Immigration  
Services**

Period	Processing Time (in Days)						Compliance Percentage	
	0-30	31-60	61-90	91-120	121+	Total	% Completed within 30 Days	% Completed within 60 Days
Pending	29,158	23,678	9,354	9,737	8,252	80,179	36.4%	65.9%

See Notes page for all notes and assumptions.

**I-765 - Application for Employment Authorization**  
**Eligibility Category: C08, Pending Asylum**  
**Initial Permission to Accept Employment**  
**Notes and Assumptions**  
**Report Date: June 30, 2022**



U.S. Citizenship  
and Immigration  
Services

**Table 1 Notes:**

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- 4) Applications with a request for initial evidence will reset the processing time to 0 upon receiving the evidence.
- 5) Applications with a request for additional evidence will have the processing time paused and resumed upon receiving the evidence.
- 6) Postmark date is not generally reportable in USCIS' electronic systems. Received date is used as a proxy for postmark date when defining potential class members.
- 7) Prior to the Feb. 7, 2022 Asylumworks vacatur decision, potential Rosario class members were defined as initial EAD applications received on or prior to Aug. 20, 2020 or received Aug. 21, 2020 or after and, in accordance with USCIS website instructions related to the CASA preliminary injunction, did not pay a biometrics fee and included evidence of CASA/ASAP membership or paid a biometrics fee and included evidence of CASA/ASAP membership. Previously, individuals who paid a biometrics fee and submitted evidence of CASA/ASAP membership were not identifiable in USCIS' systems. USCIS developed an automated utility to detect and classify electronic evidence to establish CASA/ASAP membership. Once the utility identifies the evidence, a flag is used to prioritize and assign CASA/ASAP membership cases for adjudication.
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**Table 2 Notes:**

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- 6) All C8 initial applications pending on or after February 8, 2022 are considered as potential class members regardless of CASA/ASAP membership.

**Parameters:**

Form(s): I-765  
 Class Preference(s): C08  
 Initial RFE Codes: FBA, FBC, 109, 1436, 1438  
 Additional RFE Codes: FBB, 1437  
 RFE Received Codes: HA, 110  
 ELIS Base Fee Code : E

# Exhibit P

**Table 1**  
**I-765 - Application for Employment Authorization**  
**Eligibility Category: C08, Pending Asylum**  
**Initial Permission to Accept Employment**  
**Completions by Processing Time Buckets**  
**August 1, 2020 - July 31, 2022**  
**Aggregated by Fiscal Year and Month**  
**Potential Rosario Class Members**



U.S. Citizenship  
and Immigration  
Services

Period		Processing Time (in Days)						Compliance Percentage	
Fiscal Year	Month	0-30	31-60	61-90	91-120	121+	Total	% Completed within 30 Days	% Completed within 60 Days
2020	AUG	20,457	517	165	15	33	21,187	96.6%	99.0%
	SEP	14,388	6,603	173	16	71	21,251	67.7%	98.8%
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	Total	70,843	34,469	9,001	2,437	1,242	117,992	60.0%	89.3%
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	JUN*	1,757	262	90	65	26,840	29,014	6.1%	7.0%
	JUL*	1,140	230	2,563	11,579	10,182	25,694	4.4%	5.3%
	Total	76,790	12,210	3,522	11,886	80,700	185,108	41.5%	48.1%
Grand Total	182,478	53,799	12,861	14,354	82,046	345,538	52.8%	68.4%	

See Notes page for all notes and assumptions.

**I-765 - Application for Employment Authorization**  
**Eligibility Category: C08, Pending Asylum**  
**Initial Permission to Accept Employment**  
**Notes and Assumptions**  
**Report Date: July 31, 2022**



**U.S. Citizenship  
and Immigration  
Services**

Period	Processing Time (in Days)						Compliance Percentage	
	0-30	31-60	61-90	91-120	121+	Total	% Completed within 30 Days	% Completed within 60 Days
Pending	29,999	24,755	22,279	1,395	1,053	79,481	37.7%	68.9%

See Notes page for all notes and assumptions.

**I-765 - Application for Employment Authorization**  
**Eligibility Category: C08, Pending Asylum**  
**Initial Permission to Accept Employment**  
**Notes and Assumptions**  
**Report Date: July 31, 2022**



**U.S. Citizenship  
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Services**

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**Parameters:**

Form(s): I-765  
 Class Preference(s): C08  
 Initial RFE Codes: FBA, FBC, 109, 1436, 1438  
 Additional RFE Codes: FBB, 1437  
 RFE Received Codes: HA, 110  
 ELIS Base Fee Code : E

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Wilman Gonzalez ROSARIO, *et al.*,

*Plaintiffs,*

– *versus* –

UNITED STATES CITIZENSHIP AND  
IMMIGRATION SERVICES, *et al.*,

*Defendants.*

**Case No. 2:15-cv-00813-JLR**

**DECLARATION OF CONCHITA CRUZ**

I, Conchita Cruz, declare:

1. I am a Co-Executive Director of the Asylum Seeker Advocacy Project (“ASAP”).
2. I make this sworn statement based upon personal knowledge, files and documents of ASAP that I have reviewed (such as case files, reports, and collected case metrics), and information supplied to me by employees of ASAP whom I believe to be reliable (including ASAP’s management, attorneys, and administrative staff). These files, documents, and information are of a type that is generated in the ordinary course of our business and that I would customarily rely upon in conducting ASAP business.
3. ASAP is a membership organization of asylum seekers living within the United States. ASAP provides community and legal support to its members and engages in advocacy to reform the immigration system in accordance with its members’ priorities. ASAP members live in all 50 states and all U.S. territories and come from over 175 countries.



4. ASAP regularly communicates with its members via email, text, and multiple social media platforms.

5. ASAP members often reach out to the organization when they have questions or concerns about their work permit or asylum applications. ASAP members have reported significant delays in processing initial work permit applications since the *AsylumWorks* vacatur.

6. ASAP receives numerous daily reports from members that the delays in processing initial work permit applications are having a major negative impact on them.

7. Since May of 2022, reports of initial work permit application processing delays and the negative consequences these delays have on ASAP members have increased substantially.

8. When an ASAP member reports to ASAP that their initial work permit application is taking longer than 25 days to process, ASAP provides members with instructions on how to use the *Rosario* process to report the delay to USCIS. ASAP has given these instructions to over 200 ASAP members over email since May of 2022. Of the 95 people who confirmed with ASAP that they tried to use the *Rosario* process to address a delay, all of them reported that it did not result in the timely adjudication of their application.

9. Delays in processing initial work permit applications prevent ASAP members from working to support themselves and their families. ASAP members report that without a valid work permit they cannot secure necessities such as housing, food, and medical care. ASAP members report that the absence of work authorization has a significant impact on their ability to care for children, spouses, and other family members. Many ASAP members stated that the serious collateral consequences of not having a work permit make living in the United States extremely difficult. For example, ASAP members are unable to get driver's licenses or access health care coverage unless they have a social security number, which they cannot receive until their work

permit application has been processed. ASAP members also report that work permit processing delays cause significant mental health consequences, including extreme anxiety and depression.

10. Several ASAP members have spoken to staff at ASAP and shared the details of the impact of these delays on them and their families, including the following five examples.

11. Nelson is an ASAP member who fled Jamaica because of persecution based on his sexual orientation. Nelson has HIV and he relies on medication that he receives regularly as part of his state health insurance. In order to receive this medication, Nelson must be able to provide a stable home address. When Nelson's initial work permit application was delayed for over two months, he became at risk of losing his housing and becoming homeless. Without a home address, Nelson would be unable to receive the HIV medication he needs. Nelson also told ASAP that after fleeing to the United States in a state of crisis, the long wait time for processing his work permit application was retraumatizing.

12. Yusuf Ali Sendil is a doctor and an ASAP member from Turkey who fled political persecution. He is a specialist in treating psychosis and schizophrenia but was unable to work as a medical doctor because of his months-long delay in processing his initial work permit. Mr. Sendil had an offer to work as a medical resident at Rutgers University, but he was unable to start the program on time and begin treating his prospective patients because of the delay in processing his work permit. This delay also impacted his hospital, which was already short-staffed, as they struggled to find other qualified medical staff to cover for him. The delay in processing Mr. Sendil's work permit application put his eligibility for the residency at Rutgers University's hospital at risk. The delay also caused him depression and anxiety.

13. T.C. is an ASAP member who fled political persecution in Hong Kong. He now lives in Kansas and hopes to work in the IT (information technology) field, in which he has

significant professional experience. T.C. had interviewed for jobs believing his work permit application would be processed within 30 days. However, because his work permit was delayed, T.C. had to give up multiple job offers. Without a work permit, T.C. was forced to rely on his dwindling savings to survive. He was unable to get a driver's license, which is a necessity in Kansas to work, attend appointments, and shop for food. T.C. told ASAP's staff that he was praying every day that he would not get sick, because without the ability to work he does not have health insurance to cover a trip to the hospital.

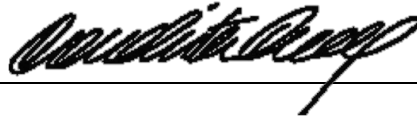
14. B.S. is an ASAP member who fled persecution in Honduras. His initial work permit application was not processed for almost three months. B.S. lives alone in the United States, but he would like to financially support his parents and brother who are still living in Honduras and are facing dangers that could be helped in part through financial support. Because of this, the long delay in USCIS processing his work permit had a devastating impact on him financially and emotionally. He received a job offer to be a warehouse supervisor but was unable to accept the offer initially because his work permit had not been approved. This delay meant that he was not able to send his family money and that he was extremely anxious about covering his own living costs. Moreover, the company was not able to find someone else to immediately take the position.

15. D.B. is an ASAP member from Colombia. D.B. lives in Boston and waited three months for his work permit to be approved. In order to afford food and shelter, he had to exhaust his entire savings and sell his car. D.B. is a commercial pilot and was qualified for many job openings in the field of aviation during the months while he waited for his work permit to be processed. D.B. was unable to take on new employment as a result of the delay in processing his initial work permit application. D.B. shared that the extended wait caused him severe stress and depression.

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

Dated: August 24, 2022

Falls Church, Virginia

A handwritten signature in black ink, appearing to read "Conchita Cruz", is written over a horizontal line.

Conchita Cruz