

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:
APRIL 9, 2021

ORAL ARGUMENT REQUESTED

PLAINTIFFS' MOTION FOR CIVIL CONTEMPT

I. Introduction

As this Court has already explained, 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 now warranted. Defendants’ March 10, 2021, Status Report reveals that, in the first four months of Fiscal Year 2021, only 22.3% of class member employment authorization document (EAD) applications adjudicated were completed within the 30 days mandated by the Court’s permanent injunction. Defts’ March 2021 Status Report (“March 2021 Report”), ECF No. 170-1 at 3. Further, as of January 31, 2021, Defendants had 13,515 pending class member EAD applications; of those, 48.4% had been pending more than 30 days. *Id.* at 4. In other words, after demonstrating substantial compliance for more than eighteen months by timely adjudicating greater than 96% of class members’ applications, Defendants’ compliance has now dropped even below their 27.2% compliance rate in FY2015—the year Plaintiffs filed this action. *Id.* at 1. And these numbers likely overestimate Defendants’ compliance, because they do not include unreceipted applications. Decl. of Joseph Evall (“Evall Decl.”) at ¶ 37.

Defendants’ explanation for this drastic drop in compliance—the purported challenge of implementing the preliminary injunction in *CASA de Maryland v. Mayorkas*—is no defense against a finding of contempt, because Defendants failed to take all reasonable steps to implement this Court’s injunction. Defendants had ample notice that if the pending motion for preliminary injunctive relief in *CASA de Maryland* were granted, they would accordingly be required to continue adjudicating those applications within the time period laid out in this Court’s order. *See* Plts. Response to Mot. to Vacate, ECF No. 162 at 6-7. Significantly, this was

1 in August of 2020, and yet more than seven months later they continue to rely on the preliminary
2 injunction as an excuse. Indeed, Defendants' failure to comply is even more remarkable because
3 currently this Court's injunction applies to a much smaller group of class members.

4 Defendants' failure to comply with the permanent injunction has significant and real-
5 world consequences for class members. Defendants' widespread delay in adjudicating the initial
6 EAD applications of asylum-seekers threatens class members' ability to support themselves and
7 their families. Sanctions are necessary to ensure that Defendants do not continue to disregard this
8 Court's command.

10 **II. Relevant Facts**

11 For over a year and a half, through August 2020, Defendants substantially complied with
12 this Court's clear order, adjudicating no less than 96% of all initial asylum EAD applications
13 within the mandated 30-day processing window. March 2021 Report, ECF No. 170-1 at 2. In
14 FY2020, Defendants adjudicated an average of 17,000 class member applications per month in
15 30 days or less. *Id.* As proof of compliance, Defendants voluntarily provided class counsel with
16 monthly compliance reports, in addition to the six-month status reports required by the Court.
17 Decl. of Devin Theriot-Orr ("Theriot-Orr Decl.") at ¶ 3; *see Rosario v. U. S. Citizenship &*
18 *Immigr. Servs.*, 365 F. Supp. 3d 1156, 1163 (W.D. Wash. 2018) (ordering Defendants "to submit
19 status reports every six (6) months regarding the rate of compliance with the 30-day timeline").
20 If U.S. Citizenship and Immigration Services (USCIS) failed to adjudicate a class member
21 application within 25 days, the member could follow the agreed Implementation Plan for dispute
22 resolution. Implementation Plan, ECF No. 134-1 at 1. A class member would contact the USCIS
23 Contact Center to lodge a service request (referred to as SMRT Customer Service Requests). *Id.*
24 If the member did not receive a response within 8 business days, the class member could then
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1 send an inquiry to a designated email address at the USCIS Texas Service Center (TSC),
2 tsc.classaction@uscis.dhs.gov, copying class counsel. *Id.* at 2.

3 A. The Repeal of the 30-day Rule and the *CASA de Maryland* Injunction

4 On June 22, 2020, Defendants published a rule that repealed the 30-day processing
5 deadline for initial asylum EAD applications, effective for applications filed on or after August
6 21, 2020. 85 Fed. Reg. 37,502-37,546 (June 22, 2020) (eliminating 30-day deadline in 8 C.F.R. §
7 208.7(a)(1)). Several weeks later, on July 21, membership organizations CASA de Maryland
8 (CASA) and Asylum Seekers Advocacy Project (ASAP), and others, sought vacatur of the rule
9 in *CASA de Maryland, Inc., et al. v. Mayorkas, et al.*, 8:20-cv-02118-PX (D. Md., filed July 21,
10 2020). Evall Decl. at ¶¶ 3-4. On July 24, the *CASA de Maryland* plaintiffs sought a stay of the
11 new rule’s effective date or, in the alternative, a preliminary injunction. *Id.* at ¶ 8.
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14 Despite the pending motion in *CASA de Maryland* and the prospective nature of the new
15 rule, on July 28, Defendants moved to vacate this Court’s injunction based on the rule repealing
16 the 30-day deadline. Defs. Mot. to Vacate, ECF No. 161. Plaintiffs opposed, arguing, *inter alia*,
17 that (a) the injunction remained necessary for those class members still entitled to 30-day
18 processing under the regulation in effect prior to August 21 and (b) that modification of the
19 injunction was premature given the pending litigation in *CASA de Maryland*. Plts. Response to
20 Mot. to Vacate, ECF No. 162 at 6-7. Defendants subsequently withdrew their motion to vacate,
21 ECF No. 164, but simultaneously stopped providing class counsel with monthly compliance
22 reports. Theriot-Orr Decl. at ¶ 3. Defendants’ last monthly report included data through June
23 2020. *Id.*
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26 On August 21, 2020, the new rule went into effect. 85 Fed. Reg. 37,502. Defendants
27 promptly moved to implement it, including “making changes to the way employment
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1 authorization applications are processed.” Decl. of Connie Nolan (“Nolan Decl.”), ECF No. 170-
 2 2 at 3 ¶ 12. Defendants began sending automatic responses from the TSC designated email
 3 address to class members informing them of the timeline repeal rule and advising that their EAD
 4 applications had to be received “prior to August 20” to be considered under *Rosario*.¹ Theriot-
 5 Orr Decl. at ¶ 6.

7 On September 11, 2020, the *CASA de Maryland* court preliminarily enjoined enforcement
 8 of the new rule against CASA and ASAP members. *CASA de Maryland, Inc. v. Wolf*, 486 F.
 9 Supp. 3d 928, 973 (D. Md. 2020). Nearly one month later, on October 9, Defendants
 10 implemented a system to identify CASA and ASAP EAD applications. Evall Decl. at ¶ 25; Decl.
 11 of Swapna Reddy (“Reddy Decl.”) at ¶ 15. Though Defendants received approximately 22,000
 12 asylum EAD applications in the period between the date the preliminary injunction issued and
 13 October 9, the *CASA de Maryland* court permitted Defendants to reject those applications en
 14 masse. Evall Decl. at ¶¶ 22-23, 28-29. Defendants did just that, adjudicating only around 1,000
 15 of the 22,000 backlogged initial applications filed by ASAP class members and rejecting the rest
 16 at a rate of roughly 1,000 per day. *See id.* at ¶ 30 & n.4. This process was likely completed in
 17 November. *Id.* at ¶ 31.

20 B. Defendants Fail to Implement *CASA de Maryland* Injunction in Violation of this
 21 Court’s Permanent Injunction

22 By virtue of the *CASA de Maryland* preliminary injunction, CASA or ASAP members
 23 who file initial asylum EAD applications are also *Rosario* class members. Nolan Decl., ECF No.
 24 170-2 at 4 ¶14 (“USCIS considers individual CASA and ASAP members who filed an asylum-
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27 ¹ Even prior to the *CASA de Maryland* injunction, this was incorrect because the rule applied
 28 only to applications received on or after the August 21 effective date. 85 Fed. Reg. at 37,502,
 37,507.

1 based initial Form I-765 on or after August 21, 2020 to be class members in the *Rosario*
 2 litigation[.]”). Yet Defendants failed to take even basic steps to comply with the injunction, as
 3 required by this Court’s order. Until mid-January 2021, Defendants (a) continued sending emails
 4 to *Rosario* class members incorrectly advising them that they had to have filed an application
 5 before August 20 to benefit from this Court’s injunction and (b) failed to update the USCIS
 6 *Rosario* webpage to advise class members of their rights in light of the *CASA de Maryland*
 7 injunction. Theriot-Orr Decl. ¶¶ 6, 8-9; *see also* Implementation Plan, ECF No. 134-1 at 1
 8 (“Defendants will amend the processing time webpage to inform putative class members of their
 9 rights as class members and the remedies discussed herein.”). These errors were corrected only
 10 after class counsel repeatedly raised the issue with Defendants’ counsel. Theriot-Orr Decl. ¶¶ 7-
 11 11, 15-16. Although these issues were eventually resolved, Defendants have allowed other
 12 serious problems with implementation to continue:
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 15 *First, Defendants Fail to Issue Timely Receipt Notices:* Class members experienced and
 16 continue to experience long delays (30 days or more) in receiving receipt notices. Theriot-Orr
 17 Decl. ¶ 13, 20, 24, 28; Evall Decl. at 42; Reddy Decl. at ¶¶ 24-26; Decl. of Gustavo Torres
 18 (“Torres Decl”) at ¶ 12; Decl. of Ashley Huebner (“Huebner Decl.”) at ¶¶ 5, 9. A receipt notice,
 19 which is issued by USCIS Lockbox intake centers, is required to initiate the dispute resolution
 20 procedure outlined in the agreed Implementation Plan, and it serves as a necessary precondition
 21 to adjudicating an EAD application. Reddy Decl. ¶ 35; Huebner Decl. ¶ 9. Moreover,
 22 unreceipted EAD applications do not appear in Defendants’ compliance reports. Evall Decl. at ¶
 23 37. Class counsel and *CASA de Maryland* plaintiffs repeatedly raised this issue with Defendants.
 24 Theriot-Orr Decl. at ¶¶ 16-17; Evall Decl. ¶¶ 35, 38, 41. Defendants’ solution was to require
 25 class members to send an inquiry to lockboxsupport@uscis.dhs.gov and wait for a response—
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1 thereby adding another step causing additional delays for class members seeking to enforce their
2 rights. Theriot-Orr Decl. at ¶ 19; Reddy Decl. at ¶¶ 27-30. Class members continue to see delays
3 in receiving receipt notices, even after sending an inquiry to the lockbox address. Reddy Decl. at
4 ¶ 29; Theriot-Orr Decl. at ¶ 28.

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6 *Second, Defendants Provide Incorrect Information and Prevent Class Members from*
7 *Lodging Service Requests with the USCIS Contact Center:* When USCIS has not adjudicated an
8 EAD application within 25 days, class members and their immigration attorneys are frequently
9 unable to lodge service requests with the USCIS Contact Center, as required by the agreed
10 Implementation Plan. *See* Implementation Plan, ECF No. 134-1 at 1. The problems that class
11 members confront include: (a) an inability to contact a live representative; (b) long waits to
12 contact a representative; (c) initial (Tier I) USCIS representatives refuse to lodge a service
13 request because the application is purportedly within “normal processing times” even though it
14 has been pending for more than 30 days; (d) Tier I representatives tell class members and their
15 attorneys that only a Tier II representative can enter a service request and the person must wait a
16 week or more for a return call; and (e) Tier II representatives either never call or call and refuse
17 to lodge a service request because the application is purportedly within “normal processing
18 times.” Theriot-Orr Decl. at ¶¶ 12, 18, 21-24, 27-28; Reddy Decl. at ¶¶ 30-35; Torres Decl. at ¶
19 13; Huebner Decl. at ¶ 9. Class counsel have repeatedly raised these concerns with Defendants’
20 counsel, and yet the problems persist. Theriot-Orr Decl. at ¶¶ 15, 18, 25.

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24 Defendants’ failure to implement the Court’s permanent injunction manifested into a
25 larger problem: by December 2020, class counsel, CASA, and ASAP were receiving reports of
26 significant delays in the adjudication of class member EAD applications. Reddy Decl. at ¶ 20;
27 Torres Decl. at ¶ 11. Between January 7 and February 3, *CASA de Maryland* plaintiffs provided
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1 Defendants with three lists of nearly 3,000 CASA and ASAP members whose initial EAD
2 applications had been pending for at least 35 days. Evall Dec. at ¶ 36; Reddy Decl. at ¶ 21. In
3 emails on December 8, January 5, January 22, February 2, and February 23, and in a telephone
4 call on January 27, class counsel raised with Defendants' counsel reports of extensive delays in
5 processing class member applications, as well as the myriad problems with the agreed-upon
6 compliance mechanisms. Theriot-Orr Decl. at ¶¶ 7, 9, 15, 16, 18, 25. In light of these concerns,
7 in January class counsel twice requested a new compliance report to determine the extent of the
8 violations experienced by class members, noting that it had been six months since Defendants'
9 July 2020 report. Theriot-Orr Decl. at ¶¶ 15-16; *see also Rosario*, 365 F. Supp. 3d at 1163. On
10 February 5, Defendants, through counsel, refused to provide a report, taking the position that
11 USCIS was not required to submit a compliance report until six months from the date
12 Defendants filed their last status report—in other words, six months from September 10, 2020,
13 the date Defendants filed their July 2020 compliance report with the Court. Theriot-Orr Decl. at
14 ¶ 19. This meant that, although Defendants prepared a compliance report on February 5,
15 Defendants would not file it with the Court, or provide it to class counsel, until March 10.
16 Theriot-Orr Decl. at ¶ 30; *see also* March 2021 Report, ECF No. 170-1 at 2 (showing report
17 created on February 5).

21 Defendants' March 10 Status Report confirmed class counsel's concerns—compliance
22 with this Court's injunction had plummeted. Based on Defendants' Status Report, in September
23 2020, Defendants adjudicated only 67.7% of receipted EAD applications within 30 days, down
24 from 96.6% in August 2020. March 2021 Report, ECF No. 170-1 at 3. By October 2020, the rate
25 was a mere 9.8%. *Id.* While the numbers crept up in November, they dropped again in December
26 and January. *Id.* Overall, in the first four months of FY2020—October 1, 2020, to January 31,
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1 2021—Defendants reported a compliance rate of 22.3%. *Id.* By comparison, Defendants’
2 compliance rate in FY2015, the year Plaintiffs filed this class action, was 27.2%. *Id.* at 1.

3 Worse yet, the magnitude of Defendants’ failures is almost certainly greater than
4 disclosed in the Status Report. For one, Defendants’ calculations only account for the percentage
5 of applications that have been adjudicated, not the total number of applications that are pending.
6 *Id.* at 4. As of January 31, 2021, Defendants possessed 13,515 pending class member EAD
7 applications, nearly half of which (48.4%) had been pending more than 30 days. *Id.*
8 Furthermore, given the widespread delays in receipting EAD applications in recent months, it is
9 likely that there remain an unknown number of class member applications that do not appear in
10 Defendants’ status report at all. *See* Evall Decl. at ¶ 37.
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12 For these reasons, Plaintiffs were forced to seek intervention from this Court.
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14 **III. Argument**

15 A. Legal Standard for Civil Contempt

16 “Civil contempt occurs when a party fails to comply with a court order.” *Gen. Signal*
17 *Corp. v. Donallco, Inc.*, 787 F.2d 1376, 1379 (9th Cir. 1986). “Intent is irrelevant to a finding of
18 civil contempt and, therefore, good faith is not a defense.” *Stone v. City & Cty. of San Francisco*,
19 968 F.2d 850, 856 (9th Cir. 1992). Once the moving party shows by clear and convincing
20 evidence that the other party has violated a court order, the burden shifts to the non-moving party
21 to show why they were unable to comply. *Stone*, 968 F.2d at 856 n.9; *Puget Soundkeeper All. v.*
22 *Rainier Petroleum Corp.*, No. C14-0829JLR, 2017 WL 6515970, at *7 (W.D. Wash. Dec. 19,
23 2017). “[S]ubstantial compliance with a court order is a defense to an action for civil contempt.”
24 *Gen. Signal Corp.*, 787 F.2d at 1379. However, “[a] contemnor in violation of a court order may
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1 avoid a finding of civil contempt only by showing it took *all* reasonable steps to comply with the
 2 order.” *Kelly v. Wengler*, 822 F.3d 1085, 1096 (9th Cir. 2016) (emphasis in original).

3 B. Defendants Are In Contempt of This Court’s Permanent Injunction

4 The bleak compliance statistics speak for themselves. There can be no dispute that
 5 Defendants are in violation of this Court’s permanent injunction, which enjoined Defendants
 6 “from further failing to adhere to the 30-day deadline for adjudicating EAD applications, as set
 7 forth in 8 C.F.R. § 208.7(a)(1).” *Rosario*, 365 F. Supp. 3d at 1163; *see also id.* at 1158 (finding
 8 “no dispute that USCIS failed to meet its 30-day deadline . . . for class members,” where, “from
 9 2010 to 2017, USCIS met its 30-day deadline in only 22% of cases”). It is likewise clear that
 10 Defendants have not taken “*all* reasonable steps to comply.” *Kelly*, 822 F.3d at 1096. History
 11 provides the proof. When Defendants take all reasonable steps to comply, they reach nearly
 12 100% compliance. From February 2019 through July 2020, despite a higher volume of class
 13 member applications, Defendants’ compliance never dropped below 97%. March 2021 Report,
 14 ECF No. 170-1 at 3.
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17 In defense of their contempt, Defendants rely primarily on logistical difficulties in
 18 implementing the *CASA de Maryland* injunction. Nolan Decl., ECF No. 170-2 at 4-8, ¶¶ 13-22.
 19 However, the facts show that despite having ample notice, Defendants failed to take even basic
 20 steps to ensure that CASA and ASAP members continued to receive protections as required by
 21 this Court’s injunction. *See supra* Part II. Defendants moved quickly to dismantle the safeguards
 22 put in place to enforce this Court’s order, despite being well aware of pending litigation to enjoin
 23 enforcement of the rule eliminating the 30-day processing requirement. Nolan Decl., ECF No.
 24 170-2 at 3-4, ¶ 12; Plts. Response to Mot. to Vacate, ECF No. 162 at 6-7; *supra* Part II.
 25 Moreover, to the extent that Defendants claim their noncompliance “is largely due to continued
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1 efforts to clear the backlog of cases that accumulated while the parties in [*CASA de Maryland*]
 2 developed an identification mechanism for CASA and ASAP member,” Nolan Decl., ECF No.
 3 170-2 at 6, ¶ 22, such a claim is belied by the easy remedy provided by the *CASA de Maryland*
 4 court—the wholesale rejection of those initial 22,000 applications, which insulated Defendants
 5 from having to comply.² Evall Decl. at ¶¶ 28-31.

7 Finally, the other “agency challenges” identified by Defendants—an unknown number of
 8 unfilled staff positions and increased absences, and the “long-planned” transition to a new
 9 processing system—cannot justify Defendants’ failure to comply with the Court’s order.³ Nolan
 10 Decl., ECF No. 170-2 at 6-7, ¶ 23-26. These are precisely the sort of “resource constraints” that
 11 the Court rejected when it granted summary judgment to Plaintiffs. *Rosario*, 365 F. Supp. 3d at
 12 1163 n.6 (finding that “resource constraints . . . ‘do not justify departing from the [law’s] clear
 13 text’”) (quoting *Pereira v. Sessions*, 138 S.Ct. 2105, 2118 (2018)). Because Defendants have
 14 failed to substantially comply with this Court’s order, a finding of civil contempt is warranted.

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

17 “A court may employ civil contempt sanctions to coerce compliance with a court order.”
 18 *N. Seattle Health Ctr. Corp. v. Allstate Fire & Cas. Ins. Co.*, No. C14-1680-JLR, 2017 WL

21 ² Defendants suggest that CASA and ASAP members’ “filing errors” have contributed to
 22 USCIS’ widespread failure to timely adjudicate EAD applications. Nolan Decl., ECF No. 170-2
 23 at 5-6, ¶ 19. Notably, Defendants have failed to provide any detail regarding the number of filing
 24 errors plaguing the agency. Moreover, the one error identified by Defendants—ASAP and CASA
 25 members wrongly paying biometrics fees—cannot account for the agency’s reported delays,
 26 because those applications are necessarily excluded from Defendants’ compliance report. March
 2021 Report, ECF No. 170-1 at 3, Note 8 (“Individuals who pay a biometrics fee and submit
 evidence of CASA/ASAP membership are not identifiable in USCIS’ systems and are not
 included.”).

27 ³ Defendants also point to delays due to winter weather in Texas in mid-February 2021. Nolan
 Decl., ECF No. 170-2 at 7, ¶ 27. However, this cannot account for Defendants’ reported delays,
 28 which cover a period through January 31, 2021. *See* March 2021 Report, ECF No. 170-1.
 Disturbingly, it does suggest that Defendants have fallen even further out of compliance.

1 1325613, at *3 (W.D. Wash. Apr. 11, 2017); *Gen. Signal Corp.*, 787 F.2d at 1380 (“Sanctions
2 for civil contempt may be imposed to coerce obedience to a court order, or to compensate the
3 party pursuing the contempt action for injuries resulting from the contemptuous behavior, or
4 both.”). The Court should order the following sanctions to ensure Defendants’ future
5 compliance:

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7 *First, Clear Any Backlog by May 24, 2021:* Defendants must clear the backlog in pending
8 class member applications by May 24, 2021. Defendants have represented to *CASA de Maryland*
9 counsel that USCIS is capable of working through any backlog by that date. Evall Decl. at ¶¶ 39-
10 40. In light of Defendants’ noncompliance, an order from this Court is necessary to ensure this
11 occurs.

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13 *Second, Establish and Maintain 95% Compliance Rate:* Defendants must reach a 95%
14 compliance rate by May 24, 2021, and maintain a 95% or higher rate of compliance going
15 forward. Defendants have shown that they are capable of consistently reaching a 97%
16 compliance rate or higher. 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 demonstrated their failure to
19 perform substantial compliance absent this Court’s intervention, Plaintiffs request this Court to
20 enforce its order. *See Gompers v. Buck Stove & Range Co.*, 221 U.S. 418, 450 (1911) (“If a party
21 can make himself a judge of the validity of orders which have been issued, and by his own act of
22 disobedience set them aside, then are the courts impotent, and what the Constitution now
23 fittingly calls the ‘judicial power of the United States’ would be a mere mockery.”)

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26 *Third, Provide Monthly Compliance Reports, To Include Receipting Data:* Defendants
27 must resume providing class counsel with monthly compliance reports on the 15th day of each
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1 month, beginning on April 15, 2021. The compliance reports should include data regarding the
2 receipt of applications and the issuance of receipt notices. Defendants' noncompliance with this
3 Court's injunction occurred simultaneously with Defendants' decision to halt providing monthly
4 compliance reports. Monthly compliance reports will allow class counsel to better monitor
5 Defendants' performance and protect class members' rights.

6
7 *Fourth, Issue Receipt Notices Within Two Business Days of Actual Receipt:* Timely
8 receipt notices are essential to ensure Defendants' compliance with the Court's order.

9 *Fifth, Streamline the Dispute Resolution Mechanism:* Defendants must modify the
10 dispute resolution mechanism so that class members may raise claims of delay by sending a
11 single email and without attempting to lodge a service request with the USCIS Contact Center.
12 Despite repeated efforts by class counsel, the Contact Center has consistently failed to promptly
13 make service requests or expedite the adjudication of class members' EAD applications. In
14 practice, the two-step process outlined in the Implementation Plan adds at least another week of
15 delay to the resolution of class member claims. Likewise, for class members whose receipt
16 notices are delayed, requiring a separate email to the lockbox extends the delays in adjudications.
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19 The foregoing are reasonable sanctions in light of Defendants' failure to comply and are
20 necessary to enforce the Court's order.

21 **IV. Conclusion**

22 Plaintiffs ask the Court to find that Defendants have not substantially complied with the
23 Court's permanent injunction, hold Defendants in contempt, and impose the sanctions requested.
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26 Respectfully submitted this 25th day of March, 2021.
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/s/ Matt Adams
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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2021, 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 March, 2021.

s/ Matt Adams
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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON**

WILMAN GONZALEZ ROSARIO, *et al.*,

Plaintiffs,

– *versus* –

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

Defendants.

Case No. C15-0813JLR

**DECLARATION OF JOSEPH EVALL IN SUPPORT OF MOTION FOR CONTEMPT
AND TO ENFORCE PERMANENT INJUNCTION**

JOSEPH EVALL, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am an attorney admitted to practice in the State of New York and a member of the law firm Gibson, Dunn & Crutcher LLP.

2. I am one of the attorneys who represents Plaintiffs in *CASA de Maryland, Inc. et al. v. Mayorkas et al.*, No. 8:20-cv-2118-px, which is pending before United States District Judge Paula Xinis of the United States District Court for the District of Maryland (hereinafter, “*CASA v. Mayorkas*”), where I have been admitted *pro hac vice*. I am fully familiar with the facts and procedure of that litigation. I make this declaration at the request of counsel for Plaintiffs in the above-captioned action to provide information about the proceedings in *CASA v. Mayorkas*.

Background of *CASA v. Mayorkas*

3. Plaintiffs in *CASA v. Mayorkas* are CASA de Maryland, Inc. (“CASA”), Asylum Seeker Advocacy Project, Inc. (“ASAP”), Centro Legal de la Raza (“Centro Legal”), Oasis Legal Services (“Oasis”), and Pangea Legal Services (“Pangea”) (together, the “CASA Plaintiffs”), five not-for-profit organizations that provide a variety of services to immigrants, including with respect

to asylum applications and with respect to the efforts of asylum applicants to obtain employment authorization (“EADs,” or “I-765(c)(8) applications”). Defendants are the U.S. Department of Homeland Security (“DHS”) and Alejandro Mayorkas in his official capacity as Secretary of Homeland Security.

4. On July 21, 2020, this firm, along with co-counsel ASAP and International Refugee Assistance Project (“IRAP”) (together, “Plaintiffs’ Counsel”), commenced the *CASA v. Mayorkas* litigation in the District of Maryland, Southern Division.¹ The case was assigned to U.S. District Judge Paula Xinis. The Complaint stated five causes of action against Defendants, each relating to two final rules issued by DHS in June 2020 (the “Asylum EAD Rules”).

5. One rule, which issued on June 22, 2020, repealed the requirement that DHS adjudicate asylum seekers’ initial employment authorization document (“EAD”) applications within 30 days of their filing (the “Timeline Repeal Rule”). The effective date of the Timeline Repeal Rule was August 21, 2020.

6. The second rule, issued on June 26, 2020, delayed, burdened, and substantially narrowed asylum seekers’ eligibility for EADs through a variety of substantive and procedural mechanisms (the “Broader EAD Rule”). The effective date of the Broader EAD Rule was August 25, 2020.

7. Plaintiffs challenged the Asylum EAD Rules as, *inter alia*, arbitrary and capricious under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* Plaintiffs also sought to invalidate

¹ At the time the case was commenced, Chad Wolf was putative Acting Secretary of the Department of Homeland Security and was named as defendant in that capacity. By operation of law, the current Secretary of the Department of Homeland Security, Alejandro Mayorkas, has been substituted as the relevant party. All references to “Defendants’ Counsel” in this Declaration refer to Defendants’ counsel in *CASA v. Mayorkas*.

the Asylum EAD Rules on the ground that then-putative-Acting Secretary Chad Wolf lacked the authority (under various statutes governing succession of federal officers) to promulgate the rules.

8. On July 24, 2020, Plaintiffs moved to stay the effective date of the Asylum EAD Rules pursuant to 5 U.S.C. § 705, or in the alternative, to preliminarily enjoin their enforcement.

Fourth Circuit Opinion in *CASA de Maryland v. Trump*

9. On August 5, 2020, during the parties' briefing on the preliminary injunction motion in *CASA v. Mayorkas*, the Fourth Circuit issued a decision in another immigration case brought by Plaintiff CASA. In that case, the district judge had preliminarily enjoined, throughout the country, a new rule that redefined "public charges" for the purpose of excluding certain immigrants from the United States. The Fourth Circuit's decision vacated the preliminary injunction, and in the process, limited organizational standing in that circuit and cautioned courts not to issue nationwide injunctions "absent the most extraordinary circumstances." *See CASA de Maryland, Inc. v. Trump*, 971 F.3d 220, 258-60 (4th Cir. 2020).

10. On December 3, 2020, the Fourth Circuit granted *en banc* review of the Fourth Circuit panel's decision in *CASA de Maryland v. Trump*, resulting in its vacatur.

11. On March 9, 2021, the government moved to dismiss its appeal of the district court's preliminary injunction in *CASA de Maryland v. Trump*. The Fourth Circuit granted the government's motion and dismissed the *en banc* appeal on March 11, 2021.

12. Although the Fourth Circuit's panel decision in *CASA de Maryland v. Trump* has been vacated, it was governing law at the time that Judge Xinis held the preliminary injunction hearings in *CASA v. Mayorkas*.

13. On August 14, 2020, Judge Xinis heard oral argument on Plaintiffs' motion for preliminary relief, and over the next several weeks received supplemental briefing from the parties

and held additional argument.

14. The Timeline Repeal Rule took effect on August 21, 2020, and the Broader EAD Rule took effect on August 25, 2020.

The Preliminary Injunction

15. On September 11, 2020, after the Asylum EAD Rules went into effect, Judge Xinis issued an Order granting Plaintiffs' motion in part (the "Order") and entering a preliminary injunction (the "Preliminary Injunction"). The Order preliminarily enjoined enforcement of the Timeline Repeal Rule and certain aspects of the Broader EAD Rule, but only as against members of Plaintiffs CASA and ASAP. *See CASA de Maryland v. Wolf*, 486 F. Supp. 3d 928, 935 (D. Md. 2020). Judge Xinis denied Plaintiffs' broader request for a stay of the effective dates of the Asylum EAD Rules or, in the alternative, a nationwide injunction as to the Asylum EAD Rules in their entirety. *Id.* at 973.

16. The District Court's Order expressly limited the scope of the Preliminary Injunction based on the Fourth Circuit's August 5, 2020 decision in *CASA de Maryland, Inc. v. Trump*, 971 F.3d 220 (4th Cir. 2020), which the Court described as limiting organizational standing and cautioning courts "to avoid issuance of nationwide injunctions absent the most extraordinary circumstances." *CASA de Maryland v. Wolf*, 486 F. Supp. 3d at 971 (citing *CASA de Maryland v. Trump*, 971 F.3d at 258-60). The Court held that such extraordinary circumstances were "not present here . . . , especially in light of the Fourth Circuit's recent pronouncement [in a case involving whether the same plaintiff organization had organizational standing based on direct harm to the organization]." *Id.*²

² On November 10, 2020, Defendants noticed an interlocutory appeal from the Preliminary Injunction, and on November 23, 2020, Plaintiffs cross-appealed. No party sought a stay of

Counsel Discuss Defendants' Implementation of the Preliminary Injunction

17. Because the Preliminary Injunction applies only to members of ASAP and CASA, Plaintiffs needed guidance on how their members would indicate clearly to the government their status as ASAP and/or CASA members on their EAD applications to ensure that they received the benefit of the injunction.

18. Accordingly, beginning on September 14, 2020, we (*i.e.*, Plaintiffs' Counsel) reached out to Defendants' Counsel to seek guidance on how ASAP and CASA members could identify themselves to DHS in order to benefit from the terms of the Preliminary Injunction. We also requested that DHS update its website with information about the Preliminary Injunction and how members were to identify themselves to the agency. *See* ECF No. 79.³

19. The next week, we sent a detailed proposal to Defendants' Counsel on how DHS could implement the preliminary injunction. We also began sending Defendants' Counsel lists of the A-numbers of certain ASAP and/or CASA members who had pending initial EAD applications to identify them as members of ASAP and/or CASA. *Id.*

20. Over the next few weeks, we repeatedly requested that the Government implement procedures to comply with the Order. *Id.* Defendants' Counsel was unable to provide any information about its plans for complying with the Order, apart from confirming that (a) while Counsel were discussing the mechanisms for ensuring compliance, EAD applications (some of which might be from ASAP and/or CASA members) would not be denied; and (b) DHS received

enforcement of the Preliminary Injunction, either before the district court or in the Fourth Circuit. The parties jointly moved to dismiss both appeals on March 22, 2021, the day that the Government's brief was due.

³ All ECF citations herein are to the docket in *CASA v. Mayorkas*, No. 8:20-cv-2118-px (D. Md.).

the lists of A-numbers that we provided and that those individuals would be flagged to DHS as ASAP and/or CASA members.

21. We also reached an agreement with Defendants that they would accept as proof of membership in ASAP and/or CASA either a copy of a membership card, or a letter from ASAP and/or CASA confirming an applicant's membership.

22. On October 3, 2020, Defendants' Counsel informed us that "one important decision . . . has been made." Specifically, Counsel informed us that DHS planned to reject all 14,000 then-pending EAD applications submitted by asylum seekers that had not included the biometrics fee (imposed by the Broader EAD Rule) or a biometrics fee waiver, or with an incorrect biometrics fee ("Defendants' mass rejection plan"). Defendants agreed that they would not reject the member applications that we had specifically identified directly by A-number as belonging to an ASAP and/or CASA member. *Id.*

23. Defendants maintained that "from an operational perspective, this approach [would] ensure CASA and ASAP member applications are processed in the quickest possible time compared to the alternatives." ECF No. 76.

24. We believed that this process violated the Preliminary Injunction, which enjoined Defendants from enforcing the biometrics fee requirement of the Broader EAD Rule with respect to ASAP and CASA members. We immediately wrote to Defendants' Counsel to express our concerns about the Government's plan. *Id.*

25. On October 9, 2020, United States Citizenship and Immigration Services ("USCIS") updated its website to provide (a) notice of the Preliminary Injunction in *CASA v. Mayorkas* (then known as "*CASA v. Wolf*"), and (b) information describing the proof of membership that ASAP and/or CASA members needed to provide to the Government to obtain

the benefits of the Preliminary Injunction. Specifically, USCIS updated the Form I-765 and Form I-589 landing pages to include the following notice:

If you are a member of CASA or ASAP, you must submit proof of membership with each individual Form I-589 or Form I-765 based on an asylum application to benefit from limited injunctive relief under *Casa de Maryland et al v. Chad Wolf*. We will only accept a properly completed Form I-765 based on an asylum application without the biometric services fee if we receive evidence of membership with your filing.

Proof of membership must be in the form of a copy of your membership card or a letter from either organization certifying your membership. If necessary, children under 21 may instead submit proof of their parent's membership along with documentary evidence establishing the parent-child relationship, such as a copy of the child's birth certificate. Please place the evidence of your, or your parent's, membership immediately behind your Form I-765 or Form I-589. The government will use information related to membership to comply with the court order.

The October 19, 2020 Court Conference

26. On October 19, 2020, Judge Xinis held a status conference in *CASA v. Mayorkas* at the parties' request, to address Defendants' mass rejection plan, as well as other questions related to implementation of the Preliminary Injunction

27. At the conference, Judge Xinis confirmed to the parties that the Preliminary Injunction applied to individuals who were members of ASAP and/or CASA as of the time that they filed their EAD application. ECF No. 83.

28. Judge Xinis also accepted the Defendants' mass rejection plan, under which Defendants would provide notice to rejected applicants that they were permitted to refile their EAD applications with membership evidence, the biometrics fee, or a biometrics fee waiver. ECF No. 83.

29. Defendants' Counsel informed the Court during the status conference that there were, at that time, approximately 22,000 pending asylum seeker EAD applications that would be rejected as a result of Defendants' mass rejection plan. *See also* ECF No. 83.

30. We continued to meet and confer with Defendants' Counsel after the October 19 Court conference, and prepared and submitted a Joint Status Report to the Court, memorializing the parties' agreement to the following:

- (a) With respect to the M-180 Notice and instructions that would accompany the return of the I-765(c)(8) applications that were held in the Lockbox (i.e., those that were submitted after August 25, 2020 without a biometrics fee or a request for fee waiver, or with an incorrect biometric service fee), the parties had agreed on the text of such Notice and instructions;
- (b) Defendants would continue to accept A numbers of ASAP and/or CASA members referred from Plaintiffs' counsel until 10:00 a.m. on October 26, 2020, and would make reasonable attempts to identify whether those individuals have a pending I-765(c)(8) application. Defendants would process such identified member applications in accordance with the Preliminary Injunction, rather than return them to the applicants;⁴ and
- (c) Defendants would begin to return the other pending applications on October 30, 2020, with the agreed-upon M-180 Notice. Defendants estimated that approximately 1,000 pending applications would be prepared for return and mailed to applicants each business day. *Id.*

31. Based on the foregoing, we anticipated that the return of applications held in the Lockbox would be completed by the end of November.

⁴ In total, Plaintiffs provided Defendants with a list of over 1200 A numbers of ASAP and/or CASA members with pending I-765(c)(8) applications on or before 10:00 a.m. on October 26, 2020.

Skyrocketing Reports of Additional Delays in Processing ASAP and CASA Members' Applications

32. After we reached an agreement on the types of evidence ASAP and/or CASA could submit with their I-765(c)(8) applications in order to identify as members, it was our understanding that, after October 9, 2020, all ASAP and/or CASA members who submitted the required identification materials with their I-765(c)(8) applications would receive the benefits of the Preliminary Injunction, and that the Government would identify them as members in the course of processing their I-765(c)(8) applications.

33. We soon became aware that many ASAP and/or CASA members were reporting that their initial EAD applications had been pending for more than 30 days. We notified Defendants' Counsel of this concern in an email transmitted on November 23, 2020.

34. The member reports of initial EAD applications awaiting processing and subject to delays beyond the 30-day regulatory processing period continued to grow. By email transmitted on December 15, 2020, we notified Defendants' Counsel of additional ASAP and/or CASA members who reported that their initial applications for EADs had been pending for at least 30 days, as well as other members who reported that their initial EAD applications may have been erroneously denied for reasons prohibited by the Preliminary Injunction.

35. Since December 15, 2020, we notified Defendants' Counsel multiple times by email and during several telephone conferences of additional ASAP and CASA members (a) who had applications pending at least 30 days, many for significantly longer than 30 days; (b) whose applications may have been erroneously denied on grounds enjoined as to members by the Order; and (c) who had never received a Form I-797C receipt notice from the agency acknowledging its receipt of their applications, one of the early steps for processing I-765(c)(8) applications.

36. We also continued to provide Defendants' Counsel with lists of the A-numbers for affected members. On January 7, 2021, we transmitted by email a list of approximately 100 ASAP and/or CASA members who reported applications pending over 30 days; on January 20, we sent by email another list of more than 1200 ASAP and/or CASA members who reported applications pending over 30 days; and on February 3, 2021, we informed Defendants' Counsel by email of an additional nearly 1,600 ASAP and/or CASA members who reported that their initial EAD applications had been pending for longer than 30 days. We provided A numbers, receipt numbers, or both, for all of these members.

It Appears That Many ASAP and/or CASA Applications that Were Submitted More than 30 Days Ago Are Not Classified As "Pending Applications" Because No Receipt Notice Was Issued for the Applications

37. In addition to the growing number of ASAP and/or CASA member applications that are not adjudicated within the required 30-day regulatory timeframe, a large number of ASAP and/or CASA member applications appear to have been excluded from the Government's report filed in the *Rosario* litigation on March 10, 2021, because no receipt notices were issued for the applications. Specifically, Defendants' Counsel explained to us that a member application is not "counted" in the statistics concerning pending applications unless and until such a receipt notice is generated. For example, if a complete member application is received by the Government on January 15, 2021, but no receipt is generated until March 15, 2021, that application will not be included as a "pending application" in data collected on March 1, 2021, even though the Government had received the application 45 days earlier. On March 16, however, it would be classified an application pending for 60 days.

38. Accordingly, we have repeatedly expressed concern to Defendants' Counsel that a large number of ASAP and/or CASA applications are not being adjudicated within 30 days, but

that the full extent of this failure is not measured in the report filed by the Government because the non-receipted applications are not included in that report.

The Government's Proposal to Resolve the Processing Delays

39. By February 24, 2021, it was clear that the Government was not adjudicating the initial EAD applications of many ASAP and/or CASA members in accordance with the requirements of the Preliminary Injunction.

40. By telephone conference that day, Defendants' Counsel conveyed to us that Defendants planned to address the processing delays relating to ASAP and CASA members' applications by reallocating resources for 90 days to clear the "backlog" of ASAP and CASA members' I-765(c)(8) applications.

41. During that same telephone call, we expressed our continuing concern about the un-receipted applications, and the fact that those applications were not accounted for in the Government's *Rosario* reporting.

42. By email transmitted on March 8, 2021, at the suggestion of Defendants' Counsel, we provided a list of 89 ASAP and CASA members who experienced delays receiving a receipt notice for their initial I-765(c)(8) EAD applications and were still unreceipted; those 89 members were intended to be a small sample of the larger population of unreceipted members. The delays reflected in this sampling are substantial: 45 members had already waited between 31 and 60 days to receive a receipt notice, and were still waiting; an additional 15 members had already waited between 61 and 90 days for a receipt notice, and were still waiting; and two members had already waited more than 120 days for their receipt notice, and were still waiting. Our email explained that this list only represented a small portion of the CASA and ASAP members with initial I-765(c)(8) applications who had experienced receipting delays.

43. On March 19, 2021, we had a further telephone conference with Defendants’ counsel. During that telephone conference, we were apprised that a significant portion of the 89 “unreceipted” applications had been submitted by Federal Express or other express courier, and had simply sat—unopened—without being processed.

44. In an email memorializing portions of this conversation, Defendants’ counsel indicated that “[i]n October, the agency experienced a surge of filing as the result of the proposed fee rule change.” Defendants’ counsel indicated that during the time when the agency experienced the surge of filing, “some [I-765(c)(8) applications] got mixed into the volume and not prioritized.” Defendants’ counsel could not say, however, how many member applications had been impacted. We understood, from our conversation with Defendants’ counsel on March 19, that “the proposed fee rule change” in the email referred to a USCIS Fee Rule that was slated to go into effect on October 2, 2020. *See* 85 Fed. Reg. 46788. That USCIS Fee Rule is distinct from the Broader EAD Rules at issue in the *CASA v. Mayorkas* litigation, and unrelated to that litigation.

45. The Government has begun to issue receipts for such applications, but the date listed for when the application was “received” on the I-797C receipt notice form does not always appear to reflect the date when the application was delivered—instead, for some applications, the date listed appears to reflect the date that the Government began processing the application. Accordingly, even after receipt, the reporting generated on such unreceipted (or delayed receipted) applications appears not to measure the true lapse in time after the application was submitted.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in New York, NY on March 25, 2021.



JOSEPH EVALL

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2021, 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 March, 2021.

s/ Matt Adams
Matt Adams
Northwest Immigrant Rights Project
615 Second Avenue, Suite 400
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(206) 957-8611
(206) 587-4025 (fax)

**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 GUSTAVO TORRES, EXECUTIVE DIRECTOR OF
CASA DE MARYLAND, INC.**

Pursuant to Title 28 U.S.C. Section 1746, I, Gustavo Torres, hereby declare and state as follows:

1. I am over the age of eighteen years. I have personal knowledge of the facts set forth herein and am competent to testify thereto.
2. I am the Executive Director of CASA de Maryland, Inc. (“CASA”), a non-profit 501(c)(3) membership organization founded in 1985 and headquartered in Langley Park, Maryland. In this capacity, in which I have served since 1994, my job is to lead an organization that builds power and fights for justice alongside the immigrant, Latino, and working-class community in the United States. Over my 26 years at the helm of this organization, we have grown from a small welcome center for Central American refugees to the mid-Atlantic’s largest immigrant advocacy organization, serving our community in Virginia, Maryland, Pennsylvania, and the District of Columbia. Through that work, we have grown our membership to over 110,000 members. We have done this through

providing services our community needs and deserves, through organizing working-class immigrants in the U.S. from over 140 countries around the world whom we are proud to count as members, and by standing with them in the streets, in the halls of power, and in courtrooms as they fight for justice, dignity, and the opportunity to thrive.

Background on CASA and its Membership

3. CASA is a non-profit 501(c)(3) membership organization headquartered in Langley Park, Maryland, with offices in Maryland, Virginia, and Pennsylvania. CASA is the largest membership-based immigrant rights organization in the mid-Atlantic region, with more than 110,000 members. Since its founding in 1985, CASA has been committed to assisting refugees and asylum seekers fleeing wars and civil strife and to working tirelessly to empower immigrant communities.
4. CASA's mission is to create a more just society by building power and improving the quality of life in low-income immigrant communities, including those seeking asylum. At CASA, we envision a future where we stand in our own power, our families live free from discrimination and fear, and our diverse communities thrive as we work with our partners to achieve human rights for all.
5. In furtherance of this mission, CASA offers a wide variety of social, health, job training, employment, and legal services to asylum seekers and other members of immigrant communities in Maryland, as well as the greater Washington DC metropolitan area, Virginia, and Pennsylvania. For example, CASA provides employment placement; workforce development and training; health education and services; citizenship and legal services; financial education and assistance; and language and literacy training. Most of CASA's services are offered only to members or at a reduced cost to members.

6. CASA is also a national leader in advocating for immigrant rights and social justice. Over the last three decades we have been a visible and vocal proponent for the communities that our members come from, demanding equal rights for immigrants at the local, state, and national level.

CASA Asylum-Seeking Members Face Delays in Initial Employment Authorization

7. CASA's more than 110,000 members are integral to driving the organization's priorities and agenda. CASA's membership includes thousands of asylum seekers and asylees who have filed an Application for Asylum and for Withholding of Removal (Form I-589) with USCIS or in immigration court and who have filed or anticipate filing an Application for Employment Authorization (Form I-765) to obtain or renew work authorization (also called an Employment Authorization Document ("EAD")).
8. A large portion of CASA's members that have filed or will file for asylum do so defensively while in removal proceedings. Because our asylum-seeking members typically wait many months, and sometimes even years, before they obtain a decision on their asylum application, many of CASA's asylum-seeking members rely on EADs to support themselves and their families while they wait.
9. CASA has devoted significant time and resources to educating our members about their rights under the District of Maryland's September 11, 2020 order enjoining the government from applying certain work authorization rules to our members. *See CASA de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928 (D. Md. 2020). We have distributed educational materials to inform members how to submit their I-765(c)(8) applications for work authorization according to USCIS's instructions to ensure their applications are

processed correctly and timely. CASA has also distributed letters verifying membership that members can use when they apply for work authorization.

- 10.** CASA has not provided direct representation or pro se assistance to members submitting work authorization applications; however, our legal staff has been in direct communication with members who have requested individualized assistance to troubleshoot issues that have arisen with their I-765(c)(8) applications. Moreover, CASA hosts monthly public calls with hundreds of our members, where CASA staff and attorneys make themselves available to answer member questions about EAD application processing as well as other issues. CASA also offers weekly in-person consultations to our members at a rate of approximately 25 consultations a week. Over the past four months, about 30% of CASA's consultations, and a majority of member questions on CASA's public calls, have related to work authorization applications.
- 11.** Since December 2020, an increasing number of CASA members in calls and consultations have reported experiencing delays in excess of 30 days in the processing of their initial I-765(c)(8) applications. In addition, CASA has received emails on a daily basis from members concerning delays in the adjudication of these work authorization applications. Many members have complained of delays lasting even two or three months. CASA members continue to report new cases of delays and the anecdotal reports of delays appear to have increased over time.
- 12.** Of the members who have contacted CASA regarding their pending initial I-765(c)(8) applications from December 2020 until today, most have reported they have waited months for a receipt notice and some have reported they have waited for more than 30 days after receiving a receipt notice to receive a decision on their application.

13. Members report that they have reviewed the USCIS website to look for guidance, researched the issue online, and called the USCIS Contact Center directly. Members report that these efforts to seek more information or resolve delays have been unsuccessful. Since many of the members have not yet received receipt notices, they do not have the information required by USCIS to check the status of their application using the agency's case status check webpage.
14. Continuing through March, asylum-seeking CASA members have reported that their initial I-765(c)(8) applications are not being processed in 30 days and they are not even receiving receipt notices within 30 days of submitting their applications, and often much longer.
15. CASA has been unable to collect information from all members who may be experiencing significant delays in the processing of their applications for initial work authorization, because it would be prohibitively time- and resource-intensive to canvass all of our 110,000 members to understand the full scope of the processing delays they are experiencing. Nevertheless, CASA has already devoted significant resources, including approximately 300 hours of staff time, to addressing members' questions and concerns about work authorization applications and processing delays. Because we have been unable to canvass our membership in its entirety, the reports of delays we have received likely represent only a fraction of those experienced by CASA members.
16. The delays are very stressful and burdensome for our members. Without a work permit, members cannot legally work. I understand from conversations with our members that most members are struggling to pay for their and their families' basic needs as well as for immigration counsel. Members have expressed frustration and a feeling of powerlessness

because they have followed all the procedures required by USCIS to have their I-765(c)(8) applications processed, but they still do not receive the work permit they are entitled to and do not know when or if they will receive it.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of March, 2021 in Maryland.

Gustavo Torres

Gustavo Torres

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2021, 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 March, 2021.

s/ Matt Adams
Matt Adams
Northwest Immigrant Rights Project
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Seattle, WA 98104
(206) 957-8611
(206) 587-4025 (fax)

**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 SWAPNA C. REDDY

I, Swapna Reddy, 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, paralegals, 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.

Background

3. In 2015, I co-founded ASAP. ASAP is a membership-based 501(c)(3) nonprofit organization incorporated in New York with its primary address in New York City. ASAP employs staff in Colorado, the District of Columbia, Florida, Illinois, Massachusetts, New York, North Carolina, Texas, and Virginia.

4. ASAP's mission is to build a future where the United States welcomes individuals fleeing violence. ASAP works alongside its thousands of members to make this vision a reality by providing critical information to members about the U.S. immigration system, connecting members to legal support, and engaging in member-led nationwide systemic reform through litigation, press, and other advocacy.

5. ASAP accepts members who have sought or are seeking asylum in the United States, are 14 years of age or older, and agree with ASAP's mission as stated above. Individuals who apply are screened for eligibility and approved by ASAP staff before becoming members.

6. Most ASAP members live throughout the United States in all 50 states and the District of Columbia. There are also some ASAP members located in Mexico who have pending U.S. immigration court cases under the "Migrant Protection Protocols" program.

7. Members are in various stages of their immigration proceedings. For example, some members are in affirmative proceedings before USCIS, some are awaiting notice of a first hearing in immigration court, some have pending immigration court cases, some have won asylum, and some have pending asylum appeals.

8. ASAP attorneys represent a limited number of ASAP members in their immigration proceedings. Other ASAP members secure immigration legal representation from non-ASAP attorneys, and others do not have immigration legal representation. ASAP staff also provide *pro se* assistance to address additional member needs, such as employment authorization application filing, as capacity permits.

9. ASAP provides daily support to members Monday through Friday. ASAP staff produce educational materials and host live video sessions to answer members' questions about asylum and the immigration court process, as well as questions related to work, access to health

care, and education. Members also have continuous access to ASAP-created information and resources shared online, and ASAP sends members relevant updates by text message on a regular basis.

The *CASA de Maryland, Inc. v. Mayorkas* Litigation

10. ASAP members set the priorities and goals for ASAP’s systemic reform and advocacy work. ASAP staff facilitate discussions among members about what advocacy goals are important to them and should be a priority for ASAP.

11. ASAP members expressed serious concern when the Department of Homeland Security (“DHS”) announced proposed changes to the employment authorization document (“EAD”) application process in 2019. DHS first announced that it intended to remove the 30-day processing requirement for initial (c)(8) I-765 applications on September 9, 2019. *See Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications*, 84 Fed. Reg. 47,148 (proposed September 9, 2019). DHS then proposed a second rule on November 14, 2019 that would substantially limit, and in many cases eliminate, asylum seekers’ eligibility for work authorization. *See Asylum Application, Interview, and Employment Authorization for Applicants*, 84 Fed. Reg. 62,374 (proposed November 14, 2019).

12. After hearing members’ concerns, ASAP staff worked to oppose these proposed rules, submitting formal comments opposing each rule during its notice-and-comment period. ASAP’s comments detailed the devastating impact ASAP anticipated the proposed rules would have on members. Despite these and other comments, DHS issued final rules in 2020 (effective August 21, 2020 and August 25, 2020, respectively) that were substantially similar to the rules it had proposed in 2019. *See Removal of 30-Day Processing Provision for Asylum Applicant-*

Related Form I-765 Employment Authorization Applications, 85 Fed. Reg. 37,502 (June 22, 2020); Asylum Application, Interview, and Employment Authorization for Applicants, 85 Fed. Reg. 38,532 (June 26, 2020).

13. On July 21, 2020, ASAP and four other organizations filed suit to challenge the final rules in the District of Maryland. *See CASA de Maryland, Inc. v. Mayorkas*, No. 8:20-cv-02118-PX (D. Md. filed July 21, 2020) (“*CASA*”). Because the final rules would have delayed or eliminated many members’ ability to obtain work authorization, and therefore to provide stable housing, food, medical care, and other necessities for themselves and their families (potentially leaving them financially unable to pursue their claims for asylum), ASAP and the other plaintiffs in *CASA* moved for a preliminary injunction on July 24, 2020.

14. On September 11, 2020, the court in *CASA* issued a preliminary injunction barring the government from applying significant portions of the final rules, including the repeal of the 30-day processing requirement for initial (c)(8) I-765 applications, against ASAP members and members of *CASA de Maryland, Inc.* (“*CASA*”), a co-plaintiff in the litigation. *See CASA de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928 (D. Md. 2020). The preliminary injunction also barred the government from applying a new biometrics requirement and corresponding \$85 biometrics services fee for (c)(8) I-765 applications from ASAP members and members of *CASA*.

15. For weeks after the preliminary injunction issued, USCIS did not provide any guidance on how ASAP or *CASA* members should identify themselves on their I-765 applications in order to obtain the benefit of the court’s order. In fact, USCIS did not implement a procedure to identify member I-765 applications until October 9, 2020 — nearly a month after the preliminary injunction was issued.

16. Once USCIS implemented its procedure for identifying members, ASAP staff created detailed instructions on how members should submit their applications.¹

Delays in Adjudication of ASAP Members' Initial (c)(8) I-765 Applications

17. Although ASAP does not directly represent a majority of members in their immigration cases, ASAP is sometimes able to offer *pro se* assistance to members with their (c)(8) I-765 applications. Through their *pro se* assistance work with ASAP members, ASAP staff have amassed extensive experience in preparing and filing I-765 application packets. ASAP staff have also created written guidance and toolkits to assist members and their attorneys in the preparation of these applications.

18. ASAP staff have prepared a number of initial (c)(8) I-765 applications since the issuance of the *CASA* court's preliminary injunction and have personal knowledge that those application packets were assembled according to USCIS's instructions to *CASA* and ASAP members.

19. ASAP staff prepared and submitted approximately 30 initial (c)(8) I-765 application packets on behalf of members between October 9, 2020 (when USCIS implemented procedures to comply with the *CASA* injunction) and February 23, 2021 (30 days prior to this declaration). The overwhelming majority of these applications have not been processed within 30 days of being received by USCIS. In fact, for most of the applications, USCIS did not even issue Form I-797C receipt notices (let alone fully process the applications) within 30 days of having received them. Of the applications ASAP staff prepared and submitted, only two were adjudicated by USCIS within approximately 30 days. Five of these applications were adjudicated after 70 days

¹ See Asylum Seeker Advocacy Project, *Work Permits for ASAP Members*, <https://asylumadvocacy.org/work-permits-for-asap-members/> (last updated Mar. 18, 2021).

or more, another eight were adjudicated after 50 days or more, and another seven were adjudicated after 40 days or more. Four applications have yet to be processed at all.

20. In addition to the approximately 30 applications mentioned above that ASAP took an active role in preparing and submitting, beginning in late December 2020, growing numbers of ASAP members and their attorneys began reporting to ASAP staff delays of longer than 30 days in the adjudication of their initial (c)(8) I-765 applications.

21. In response to these reports, ASAP staff conducted opt-in surveys of ASAP members beginning in December 2020. Based on ASAP members' responses and additional reports from CASA members, between January 7 and February 3, 2021, ASAP's counsel provided the government's counsel in *CASA* three lists totaling nearly 3,000 ASAP and CASA members who reported having their initial (c)(8) I-765 applications unlawfully pending for more than 35 days.

22. ASAP's counsel did not conduct further opt-in member surveys after February 3 because the government's counsel in *CASA* represented that the government was unwilling to investigate individual reports of delays collected by ASAP. Nonetheless, ASAP members and their counsel have continued to contact ASAP to report that their initial (c)(8) I-765 applications have not been adjudicated within 30 days. Some of these members have been waiting for receipt notices for weeks, if not more than 30 days.

23. ASAP also operates an email inbox to collect and respond to member inquiries regarding (c)(8) I-765 application processing delays and other processing problems. In January of 2021 alone, ASAP staff responded to approximately 100 different member inquiries requesting assistance due to delays in processing their initial (c)(8) I-765 applications. In February of 2021, that number grew to nearly 200. ASAP staff responded to approximately 80 such inquiries in the

first half of March of 2021. Members have often emphasized their urgent need to work in order to survive in the United States and to support their families while their asylum cases are pending.

Delays in Receipting of ASAP Members' Initial (c)(8) I-765 Applications

24. Among the members who have reported delays in their initial (c)(8) I-765 applications, there are significant numbers of members who allege that they have not received receipt notices for weeks or months after their applications have arrived at USCIS. Moreover, members have reported that the receipt notices they received reflect delays in receipting that exceed 30 days. *See* Ex. A (redacted sample receipt notices from ASAP members showing delays of approximately two months before issuance of receipt notice).

25. On March 8, 2021, ASAP's counsel supplied the government's counsel in *CASA* with a sample of approximately 90 initial (c)(8) I-765 applications from ASAP and *CASA* members that had remained unreceipted for a significant period of time after their arrival at the agency. I understand that ASAP's counsel provided this list in an attempt to help the agency investigate the causes of receipting delays. All of these applications had not received receipts for at least 13 days after arriving at the agency, and many experienced significantly longer receipting delays, including some members who reported delays of up to 131 days.

26. Based on the information available to me, I am concerned that significant delays continue to affect ASAP members' initial (c)(8) I-765 applications. In addition, I am concerned that ASAP members' initial (c)(8) I-765 applications continue to experience significant delays in receipting.

Failures in USCIS's Remedial Processes

27. The government's counsel in *CASA* has communicated to ASAP's counsel that members who experience delays in receipting of their (c)(8) I-765 applications should email the

Lockbox, and that members who experience delays post-receipting should utilize the negotiated *Rosario* dispute resolution process—i.e., calling the USCIS Contact Center, receiving a service request number, and emailing the agency after eight business days. ASAP members, attorneys, and staff have tried to utilize these mechanisms, but they have frequently failed to result in the timely processing of members' initial (c)(8) I-765 applications.

28. Since the effective dates of the rules, ASAP staff have faced challenges in contacting USCIS in most cases.

29. ASAP members have reported that the Lockbox has not timely responded, or responded at all, to their email inquiries regarding unreceipted applications. ASAP staff have sometimes, but not always, received responses from the Lockbox.

30. As for the *Rosario* dispute resolution process, ASAP members regularly report that they are unable even to reach a representative through the USCIS Contact Center's automated phone menu, which means they cannot receive the "service request number" required to proceed beyond the first step.

31. ASAP staff have reported several instances in which they are waiting on the phone line with the USCIS Contact Center and the line disconnected without reason or warning.

32. Even once they have reached representatives at the USCIS Contact Center to report processing delays, ASAP members, their attorneys, and ASAP staff have reported responses that do not accurately reflect application status and USCIS policy. For example, an ASAP staffer and ASAP member who together called the USCIS Contact Center on March 15, 2021 were informed by a representative that the representative could not assist the ASAP member because 30 days had not passed from when that member had been issued a receipt notice. This information was incorrect because USCIS itself had notified the ASAP member that the agency had received her

application nearly two months prior (on January 21, 2021). The USCIS representative refused to provide this member a service request number during that call. The member was eventually able to receive a service request number after an ASAP staffer called a second time on March 18, 2021. During that second call, the ASAP staffer spent over an hour on the phone with the USCIS Contact Center representative explaining the member's rights as an ASAP member and *Rosario* class member before the USCIS representative was willing to provide the service request number.

33. In other cases, ASAP staff have experienced similarly lengthy call times because representatives at the USCIS Contact Center place members and ASAP staff on hold and transfer their calls to other USCIS representatives. In addition, Contact Center representatives have expressed that they are unaware of ASAP members' rights under the *CASA* preliminary injunction, such that ASAP staff are required to explain the injunction and USCIS's procedures to the representatives before USCIS will issue a service request number.

34. Since ASAP began directing members to the *Rosario* dispute resolution process in February, a number of members have reported that representatives at the USCIS Contact Center have declined to assist them and advised them to expect months-long processing times, even after members report that they have identified themselves as ASAP members and/or *Rosario* class members and informed USCIS that their initial (c)(8) I-765 applications have been pending for more than 30 days.

35. Based on ASAP staff's experience, the *Rosario* process appears to be entirely unavailable to ASAP members whose initial (c)(8) applications have been pending for over 30 days and who have not yet received receipt notices. In such cases, representatives at the USCIS Contact Center have declined to assist ASAP staff and members calling to report processing delays, and have declined to assign the "service request number" required to proceed past the first

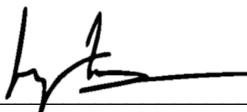
step of the *Rosario* process. ASAP members and staff do not receive receipt numbers until the government issues the receipt notices with the number to the ASAP member.

Closing

36. ASAP's investigation of the processing delays described above requires a substantial allocation of ASAP resources, both in terms of staff time, as well as in terms of financial costs associated with communicating with members. To date, ASAP has spent over 520 hours of staff time and more than \$25,000 in both personnel and direct expenses in order to collect and organize member reports of delays, respond to individual member inquiries regarding delays, assist individual members with Lockbox or *Rosario* advocacy, and write and update guidance for members with instructions as to how to use the Lockbox and *Rosario* processes.

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

Dated: March 25, 2021
Chicago, Illinois



Swapna Reddy

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2021, 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 March, 2021.

s/ Matt Adams
Matt Adams
Northwest Immigrant Rights Project
615 Second Avenue, Suite 400
Seattle, WA 98104
(206) 957-8611
(206) 587-4025 (fax)

EXHIBIT A

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

NOTICE TYPE Receipt		NOTICE DATE March 01, 2021
CASE TYPE I-765, Application for Employment Authorization		USCIS ALIEN NUMBER [REDACTED]
RECEIPT NUMBER IOE [REDACTED]	RECEIVED DATE December 23, 2020	PAGE 1 of 1
		DATE OF BIRTH [REDACTED]



PAYMENT INFORMATION:

Application/Petition Fee: \$0.00
 Total Amount Received: \$0.00
 Total Balance Due: \$0.00

NAME AND MAILING ADDRESS

Eligibility Category: C08

We have received your form and are currently processing the above case. If this notice contains a priority date, this priority does not reflect earlier retained priority dates. We will notify you separately about any other case you filed.

If we determine you must submit biometrics, we will mail you a biometrics appointment notice with the time and place of your appointment.

If you have questions or need to update your personal information listed above, please visit the USCIS Contact Center webpage at uscis.gov/contactcenter to connect with a live USCIS representative in English or Spanish.

This notice, by itself, does not grant any immigration status or benefit, nor is it evidence that this case is still pending. However, this Notice of Action automatically extends the validity of your Employment Authorization Document (EAD) for up to 180 days from the expiration date printed on the front of the card and can be used for employment eligibility verification (Form I-9) purposes if:

- You have timely filed to renew your current Form I-766, Employment Authorization Document (EAD);
- Your EAD renewal is under a category that is eligible for an automatic 180-day extension (see uscis.gov/i-765 for a list of categories);
- The category on your current EAD matches the "Class Requested" listed on this notice (if you are a TPS beneficiary or applicant, your EAD and this notice must contain either the A12 or C19 category, but they do not need to match each other); and
- You do not receive your renewal EAD before your current EAD expires.

If we deny your renewal application, the automatic extension immediately ends and cannot be used for Form I-9 purposes. If your EAD is a combo card, the automatic extension does not apply to advance parole.

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 uscis.gov/rosario webpage for further information about the *Rosario* class action and how to investigate the status of your employment authorization application.

USCIS Office Address:

USCIS
 Texas Service Center
 6046 N. Beltline Rd STE. 110
 Irving, TX 75038

USCIS Contact Center Number:

(800)375-5283
 ATTORNEY COPY

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CASE TYPE I-765, Application for Employment Authorization		USCIS ALIEN NUMBER [REDACTED]
RECEIPT NUMBER IOE [REDACTED]	RECEIVED DATE December 23, 2020	PAGE 1 of 1
		DATE OF BIRTH [REDACTED]



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USCIS Office Address:

USCIS
Texas Service Center
6046 N. Beltline Rd STE. 110
Irving, TX 75038

USCIS Contact Center Number:

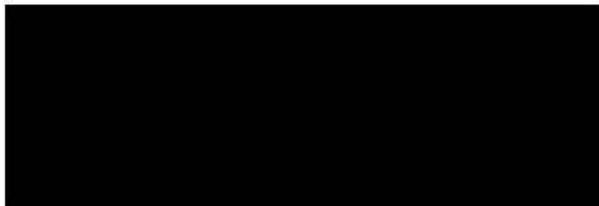
(800)375-5283
ATTORNEY COPY

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NOTICE TYPE Receipt		NOTICE DATE March 01, 2021
CASE TYPE I-765, Application for Employment Authorization		USCIS ALIEN NUMBER [REDACTED]
RECEIPT NUMBER IOE [REDACTED]	RECEIVED DATE December 21, 2020	PAGE 1 of 1
		DATE OF BIRTH [REDACTED]

PAYMENT INFORMATION:

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Total Amount Received: \$0.00
Total Balance Due: \$0.00



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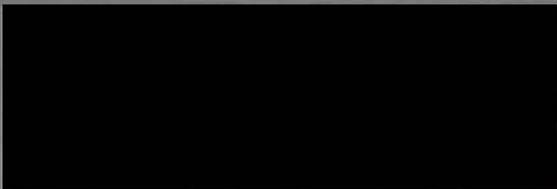


Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-797C, Notice of Action

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

NOTICE TYPE Receipt		NOTICE DATE February 25, 2021
CASE TYPE I-765, Application for Employment Authorization		USCIS ALIEN NUMBER [REDACTED]
RECEIPT NUMBER IOE [REDACTED]	RECEIVED DATE December 28, 2020	PAGE 1 of 1
		DATE OF BIRTH [REDACTED]



PAYMENT INFORMATION:

Application/Petition Fee: \$0.00
Total Amount Received: \$0.00
Total Balance Due: \$0.00

NAME AND MAILING ADDRESS

Eligibility Category: C08

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- The category on your current EAD matches the "Class Requested" listed on this notice (if you are a TPS beneficiary or applicant, your EAD and this notice must contain either the A12 or C19 category, but they do not need to match each other); **and**
- You do not receive your renewal EAD before your current EAD expires.

If we deny your renewal application, the automatic extension immediately ends and cannot be used for Form I-9 purposes. If your EAD is a combo card, the automatic extension does not apply to advance parole.

You may be a member of the class action, *Rosario v. USCIS*, Case No. C15-08131LR, 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 uscis.gov/rosario webpage for further information about the *Rosario* class action and how to investigate the status of your employment authorization application.

USCIS Office Address:

USCIS
Texas Service Center
6046 N. Beltline Rd STE. 110
Irving, TX 75038

USCIS Contact Center Number:

(800)375-5283

If this is an interview or biometrics appointment notice, please see the back of this notice for important information.

Form I-797C 04/01/19

Department of Homeland Security
U.S. Citizenship and Immigration Services

Form I-797C, Notice of Action

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NOTICE TYPE Receipt		NOTICE DATE February 25, 2021
CASE TYPE I-765, Application for Employment Authorization		USCIS ALIEN NUMBER [REDACTED]
RECEIPT NUMBER IOE [REDACTED]	RECEIVED DATE December 28, 2020	PAGE 1 of 1
		DATE OF BIRTH [REDACTED]

PAYMENT INFORMATION:

Application/Petition Fee: \$0.00
Total Amount Received: \$0.00
Total Balance Due: \$0.00

NAME AND MAILING ADDRESS

Eligibility Category: C08

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Department of Homeland Security
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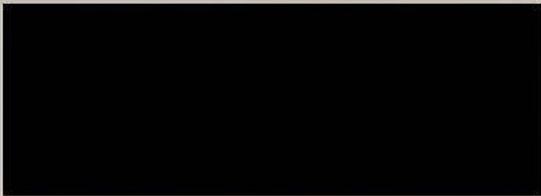
Form I-797C, Notice of Action

THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.

NOTICE TYPE Receipt		NOTICE DATE February 18, 2021
CASE TYPE I-765, Application for Employment Authorization		USCIS ALIEN NUMBER [REDACTED]
RECEIPT NUMBER IOE [REDACTED]	RECEIVED DATE November 25, 2020	PAGE 1 of 1
		DATE OF BIRTH [REDACTED]

PAYMENT INFORMATION:

Application/Petition Fee: \$0.00
Total Amount Received: \$0.00
Total Balance Due: \$0.00



NAME AND MAILING ADDRESS

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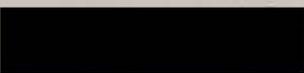
You may be a member of the class action, *Rosario v. USCIS*, Case No. C15-0813JLR, if USCIS does not adjudicate within 30 days your initial (first) Form I-765, *Application for Employment Authorization*, based on your pending asylum application, AND:

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Irving, TX 75038

USCIS Contact Center Number:
(800)375-5283



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The Honorable James L. Robart

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

WILMAN GONZALEZ ROSARIO, *et al.*,

Plaintiffs,

v.

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

Defendants.

No. 15-cv-00813-JLR

Declaration of Devin Theriot-Orr

I, Devin T. Theriot-Orr, do declare the following under penalty of perjury:

1. I am an attorney licensed to practice in Washington state since 2003. I am one of the class counsel for the Plaintiffs in this matter. The statements in this declaration are from my personal knowledge.

2. Following the Court’s July 16, 2018 permanent injunction, class counsel took steps to ensure that Defendants adhered to the 30-day deadline for adjudicating employment authorization (EAD) applications, as set forth in 8 C.F.R. § 208.7(a)(1). As part of the September 2018 implementation plan, class counsel created and monitored a class counsel email address, which class members copy when contacting the Texas Service Center (TSC) designated email address about delayed EAD applications. *See* Implementation Plan, ECF No.



1 134-1. In addition, in March 2019 class counsel prepared and circulated a Frequently Asked
2 Questions (FAQs) resources to offer guidance to class members and their representatives. Class
3 counsel most recently updated and recirculated those FAQs in March 2021.

4 3. Consistent with the implementation plan, Defendants began providing class
5 counsel with monthly compliance reports in October 2018. Those reports showed steady
6 improvement in Defendants' compliance. While the first report showed a compliance rate of
7 92.8% for October-December 2019, the compliance rates rose to 96.9% by the end of the 2019
8 fiscal year, and by the time of the Defendants' previous status report on July 8, 2020 it was
9 98.1%. From February 2020, through the last monthly report provided on July 8, 2020,
10 Defendants' compliance rate never dropped below 97%. Consistent with these reports, class
11 counsel observed relatively few inquiries to the TSC designated email address. Defendants
12 continued to provide monthly reports through their final monthly report, which they provided
13 class counsel on July 8, 2020. Defendants then stopped providing monthly reports. When we
14 queried Defendants regarding the absence of monthly reports, Defendants advised that they are
15 only mandated to provide reports every six months.

16 4. On June 22, 2020, Defendants published a rule that repealed the 30-day
17 processing deadline for initial asylum EAD applications, effective for applications filed on or
18 after August 21, 2020. 8 Fed. Reg. 37,502-37,546 (June 22, 2020). On July 28, 2020,
19 Defendants moved to vacate this Court's injunction based on the rule repealing the 30-day
20 deadline. ECF No. 161. Because there would continue to be class members who would benefit
21 from this Court's injunction, and because Plaintiffs were aware of pending legal actions to
22 challenge the new rule, Plaintiffs opposed the motion. ECF No. 162. Among other arguments,
23 Plaintiffs maintained that that modification of the injunction was premature given the pending

1 litigation seeking vacatur of the rule in *CASA de Maryland, Inc., et al. v. Mayorkas, et al.*, 8:20-
2 cv-02118-PX (D. Md., filed July 21, 2020). *Id.* at 6-7. In light of Plaintiffs' opposition,
3 Defendants subsequently withdrew their motion. ECF No. 164.

4 5. On August 21, 2020, the final rule took effect eliminating the 30-day processing
5 deadline for initial applications for work authorization filed by asylum applicants. However, the
6 *CASA de Maryland* court issued a Preliminary Injunction on September 11, 2020 enjoining
7 enforcement of the new rule as to members of the two plaintiff organizations: CASA de
8 Maryland (CASA) and the Asylum Seekers Advocacy Project (ASAP). As a result of the
9 injunction, the 30-day processing deadline, and this Court's injunction, continue to apply
10 CASA and ASAP members. *CASA de Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928 (D. Md.
11 2020).

12 6. In early December 2020, class counsel observed several problems related to
13 Defendants' response to the *CASA de Maryland* decision. First, counsel observed that
14 Defendants had failed to update the U.S. Citizenship and Immigration Services (USCIS)
15 *Rosario* implementation page to reflect that ASAP and CASA members continue to benefit
16 from the *Rosario* injunction. Second, the TSC designated email address was informing class
17 members that because of the timeline repeal rule EAD applications had to be received by
18 August 20, 2020 to benefit from the *Rosario* injunction. These emails failed to mention the
19 *CASA de Maryland* injunction.

20 7. On December 8, 2020, I notified counsel for Defendants of the problems that
21 our class members were experiencing with regard to the Defendants' compliance with this
22 court's July 26, 2018 injunction. I requested, on behalf of the class, that USCIS update its
23 website to reflect accurate information and that USCIS representatives be trained so that class

1 members experiencing delays can seek redress from the agency per our agreed implementation
2 plan.

3 8. Nearly a month later, on January 4, 2021, I received an email that an asylum
4 applicant had received from the TSC designated email address in response to their query about
5 their delayed initial work permit. In the email, USCIS again took the position that the *Rosario*
6 injunction only applied to a “(c)(8) application [filed] prior to August 20.” USCIS did not
7 provide any information about the *CASA de Maryland* injunction or the rights of CASA and
8 ASAP members as *Rosario* class members.

9 9. I followed up with a second email to Defendants’ counsel on January 5. I noted
10 that the USCIS website had not yet been updated and that USCIS “representatives continue to
11 give false information to CASA/ASAP class members regarding the continued viability of the
12 *Rosario* injunction”

13 10. On January 7, 2021, I received a response from Defendants’ counsel indicating
14 that USCIS was working on website changes and that USCIS was “also working with the
15 Contact Center to address incorrect responses on inquiries.”

16 11. On January 15, 2021, USCIS updated its website to reflect that CASA and
17 ASAP members continue to be covered by the 30-day deadline. *See*
18 [https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notice-and-](https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notice-and-agreements/rosario-class-action)
19 [agreements/rosario-class-action](https://www.uscis.gov/laws-and-policy/other-resources/class-action-settlement-notice-and-agreements/rosario-class-action) (last accessed Mar. 18, 2021). However, counsel for
20 Defendants advised on the same day that he did not have any updates on the incorrect
21 information being provided by USCIS.

22 12. During the first three weeks of January, I and other class counsel began to
23 receive additional complaints regarding Defendants’ failure to follow the dispute resolution

1 system put in place by the *Rosario* implementation plan. By monitoring the class counsel email
2 address and through reports directly to me, class counsel learned that representatives at the
3 USCIS Contact Center were telling class members or their attorneys that they could not enter a
4 service request because the application was within “normal processing times,” even though the
5 applicants were ASAP or CASA members and thus, their applications were outside the 30-day
6 mandatory window. At least one service representative told an immigration attorney that the
7 computer system would not allow them to make a *Rosario* service request.

8 13. During the same time period, I also heard multiple reports of class members
9 whose applications were delayed beyond the 30 days. Several reported that they had not even
10 received a receipt notice from USCIS within the 30-day deadline, much less an adjudication on
11 the work permit request.

12 14. On January 21, 2021, I learned from ASAP that they had received widespread
13 reports of delays of their members’ initial asylum EAD applications. I learned that the *CASA de*
14 *Maryland* plaintiffs have provided Defendants with a list of over 1,000 ASAP and CASA
15 members whose applications had not been adjudicated within the 30-day regulatory time
16 period.

17 15. On January 22, 2021, I wrote a third email to Defendants’ counsel regarding
18 these problems. I noted that there were over one thousand CASA/ASAP members who have
19 filed initial (c)(8) EAD applications that have not been adjudicated within the 30-day
20 regulatory time period. I further indicated that the implementation plan was no longer
21 functioning because class members could not place service requests with the USCIS Contact
22 Center and that sending a follow-up email to the TSC designated email address did not result in
23 a timely adjudication. I further noted that the TSC email address auto-response continued to

1 provide incorrect information about the viability of the 30-day regulation. I noted that Plaintiffs
2 were “facing the prospect of filing a motion for contempt with the court to address these
3 issues.” I further noted that because Defendants had last provided a compliance report in July
4 2020, we anticipated receiving another compliance report shortly. Finally, I requested a call
5 with Defendants’ counsel within the next week.

6 16. On January 27, 2021, I and other co-counsel participated in a meet and confer
7 with Defendants’ counsel. During that call, Defendants’ counsel reported that by January 29,
8 2021 USCIS would resolve the problems with lodging a *Rosario* service request with the
9 USCIS Contact Center and cease sending emails from the TSC designated email address
10 incorrectly advising applicants that it was necessary to file an application before August 20,
11 2020¹ to benefit from the *Rosario* injunction. When class counsel renewed our request for a
12 compliance report, Defendants’ counsel maintained that class counsel was not entitled to a
13 compliance report until six months had passed from the date of the filing of Defendants’ last
14 status report—September 10, 2020, even though that report only included data through the end
15 of July 2020. During this call class counsel also raised the reports we had received of
16 significant delays in the issuance of receipt notices for class member EAD applications.

17 17. Following the January 27 call, class counsel provided Defendants’ counsel with
18 multiple examples of pending class member applications who had not received a receipt within
19 30 days.

20 18. On February 2, 2021, I emailed Defendants’ counsel to notifying him that my
21 own office had been unable to place a service request with the USCIS Contact Center regarding

22 _____
23 1 Notably, even absent the *CASA de Maryland* injunction, this was incorrect because the
rule applied only to applications received on or after the August 21 effective date. 8 Fed. Reg. at
37,502, 37,507.

1 a delayed class member application, because the initial (Tier I) representative informed our
2 office that a Tier II representative was required to enter this request. I explained that entering a
3 service request with a Tier II representative requires waiting for a return call. This return call
4 can take between 7 and 14 days.

5 19. On February 5, 2021, Defendants' counsel sent an email addressing these issues.
6 For the first time, Defendants' counsel reported widespread delays in "processing times" for
7 class member EAD applications, which Defendants' counsel attributed to issues regarding the
8 implementation of the *CASA de Maryland* decision and other problems at the TSC. With
9 respect to delays in receipt notices, Defendants' counsel advised that class members should
10 email to lockboxsupport@uscis.dhs.gov, with the subject line "CASA/ASAP/Rosario,"
11 regarding delayed receipt notices. Defendants' counsel advised that a technical issue had been
12 resolved at the USCIS Contact Center and now Tier I representatives would be able to accept
13 service requests and that the auto response email to the TSC designated mailbox had been
14 resolved. Finally, Defendants' counsel maintained that the next compliance report was not due
15 until March 10, 2021—six months from when the last compliance report was filed with the
16 Court. Defendants' counsel reported that "USCIS is discussing internally the possibility of
17 providing a compliance report before March 10, but I have nothing further to report on this
18 item at this time."

19 20. Unfortunately, *Rosario* class members continue to experience significant
20 problems. On February 16, 2021, I received correspondence from a *Rosario* class member who
21 filed his initial EAD application on December 23, 2020. As of February 16, 55 days from filing,
22 USCIS had not even generated a receipt notice.
23

1 21. Also on February 16, an attorney representing a *Rosario* class member indicated
2 that the USCIS Contact Center refused to permit her to place a service request on behalf of her
3 client because “there was a backlog” and “they would let us know once they had processed the
4 I-765s.”

5 22. On February 17, another attorney representing a *Rosario* class member indicated
6 that they had not received an adjudication on an initial EAD application that was filed on
7 October 29, 2020. Further, he was not able to place a service request because the USCIS
8 Contact Center representative stated that the application “was within normal processing time.”

9 23. On February 22, another attorney representing a *Rosario* class member reported
10 that a USCIS Contact Center Tier I representative refused to accept the request and told the
11 attorney to wait for a call back from Tier II in the next 14 days.

12 24. On February 23, another attorney representing a *Rosario* class member reported
13 that she had not received a receipt notice for an initial EAD application USCIS received on
14 January 14, 2021. The attorney explained to a Tier I representative that her client was an ASAP
15 member and a *Rosario* class member. The Tier I representative told the attorney that the
16 application had not been entered into the system yet so they could not initiate a service request.
17 The representative read a statement about the office being busy and COVID impacting staffing.
18 The representative then said that the new timeline is 90 days, not 30 days for a receipt. The
19 representative told the attorney to wait 90 days and then call back if the class member had not
20 yet received a receipt.

21 25. I summarized these continuing issues in an email to Defendants’ counsel dated
22 February 23, 2021. I notified Defendants that USCIS continues to fail to generate receipt
23 notices within 25 days and that ASAP/CASA members continue to be advised by USCIS that

1 they must wait 90 days before USCIS can take any action. Regarding the contact center, I
2 reported numerous problems reaching a live person, that Tier I representatives continue to
3 refuse to issue a service request because the case is purportedly within normal processing times
4 and that the contact center is advising ASAP/CASA members that they must wait 90 days for a
5 receipt notice.

6 26. On February 26, I received a response from Defendants' counsel. Defendants
7 claimed that while there are receipt notice delays for other applications, there should not be any
8 delays for I-765 filed in the (c)(8) category and that the agency had performed additional
9 training on these points. Specifically, he explained that "[i]n general, a receipt notice is
10 generated and mailed out within 24 hours of when a decision to either accept or return the
11 application is made in the Lockbox review process." Defendants confirmed that *Rosario*
12 service requests should be able to access a Tier I representative by stating they are calling for
13 an I-765 if they mention the *Rosario* case, or ASAP/CASA. Defendants stated that they had
14 performed additional training for Contact Center representatives.

15 27. Unfortunately, the problems discussed herein continue to impact *Rosario* class
16 members. On March 5, another attorney representing a *Rosario* class member reported that on
17 February 12 a Tier I representative refused to enter a service request for a class member EAD
18 application delayed more than 30 days. The attorney requested to speak to a Tier II
19 representative. Eighteen days later, which would be after the corrective training referenced in
20 Defendants' February 26 email, the attorney received a call from a Tier II representative, who
21 told the attorney that she could not put in a service request for this case because it was not
22 pending outside of processing times. She said that she was unaware of any 30-day adjudication
23 deadline for ASAP members. She said even if there were a 30-day rule, the USCIS system

1 cannot differentiate between individuals protected by the *CASA de Maryland* injunction and
2 those who are not.

3 28. On March 11, another attorney representing a *Rosario* class member reported
4 that her client's EAD application had been received by USCIS on December 23, 2020.
5 However, on March 2, 2021, the attorney sent an inquiry to the lockbox and on March 9—76
6 days after USCIS received the application—she finally received a receipt number. The attorney
7 then spoke to a Tier I representative and a supervisor who refused to enter a service request and
8 claimed the class member needed to wait 30 days from the date of the receipt notice, not the
9 date the application was received.

10 29. Class counsel, by monitoring the class counsel email address and the emails sent
11 to the TSC designated email address, have seen many similar reports of lengthy delays in
12 receipt notices and adjudication of EAD applications. Between March 15 and March 19, class
13 counsel noted one (1) inquiry regarding a class member application received in October 2020,
14 seven (7) inquiries regarding class member applications received in November 2020, eleven
15 (11) inquiries regarding class member applications received in December 2020, and twenty-one
16 (21) inquiries regarding class member applications received in January 2020. Class counsel
17 have likewise seen similar difficulty lodging service requests.

18 30. On March 10, Defendants filed a status report indicating that in the first four
19 months of Fiscal Year 2021, only 22.3% of class member EAD applications adjudicated were
20 completed within the 30 days mandated by the Court's permanent injunction. Although
21 Defendants generated the compliance report on February 5, Defendants did not provide the
22 report to class counsel until filing the report on March 10. Notably, the actual state of
23

1 compliance may be much worse because it is unclear whether the compliance report tracks
2 cases where a receipt notice has not been issued.

3 31. On March 12, I responded to a March 5 email from Defendants' counsel asking
4 for Plaintiffs' consent to modify the implementation plan to eliminate the requirement that
5 USCIS centralize the adjudication of class member EAD applications at the TSC. In my March
6 12 email I notified Defendants' counsel that Plaintiffs would be amendable to filing a joint
7 motion to modify the implementation plan if Defendants also agreed to modify the plan to
8 specify that substantial compliance requires 95% timely completion rate.

9 32. After receiving no response on March 22, we reached out to Defendants by
10 email to request a meet and confer to address Plaintiffs' need to file a motion to enforce the
11 injunction issued by this Court. We explained that given Defendants' recent status report and
12 USCIS' refusal to provide monthly compliance reports, Plaintiffs planned to seek an order to
13 enforce the injunction. We stated that Plaintiffs would consider foregoing a contempt finding if,
14 by March 25, Defendants agreed to a stipulated order requiring 97% compliance and monthly
15 compliance reports.

16 33. Defendants advised that they would not be able to agree to such a stipulation by
17 email on March 24, 2021. In a follow-up telephone call on the same date, Defendants asked
18 whether Plaintiffs would forego filing a motion for contempt in view of Defendants'
19 representations in a Joint Status Report filed in the *CASA de Maryland* matter that they would
20 clear the backlog within 90 days. We advised Defendants that we did not feel that this was an
21 adequate solution to the ongoing compliance issues and that we would continue to seek
22 enforcement of the Court's order.

1 Signed this 25th day of March, 2021 in Kent, Washington.
2

3 */s/ Devin T. Theriot-Orr*

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Devin T. Theriot-Orr, WSBA No. 33995

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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2021, 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 March, 2021.

s/ Matt Adams
Matt Adams
Northwest Immigrant Rights Project
615 Second Avenue, Suite 400
Seattle, WA 98104
(206) 957-8611
(206) 587-4025 (fax)

**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

DECLARATION OF ASHLEY HUEBNER

1. I, Ashley Huebner, make the following declaration based on my personal knowledge and declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.
2. I am an associate director of legal services at the National Immigrant Justice Center (NIJC), where I have worked since 2008. NIJC is a nonprofit organization that provides direct legal services to and advocates for immigrants through policy reform, impact litigation, and public education. NIJC has offices in Illinois, Indiana, California, and Washington, D.C.
3. As an associate director of legal services, I oversee NIJC's Asylum Project and Immigrant Children's Protection Project. Both of these projects provide direct legal representation to asylum seekers through in-house representation and through volunteer *pro bono* attorneys who represent NIJC asylum clients with NIJC support.

As part of the legal services NIJC provides to asylum seekers, NIJC staff and *pro bono* attorneys regularly file I-765 applications for work authorization for clients with pending asylum applications.

4. I make this sworn statement based upon personal knowledge, files and documents of NIJC that I have reviewed, such as case files, reports, and collected case metrics, as well as information supplied to me by employees of NIJC whom I believe to be reliable, including NIJC's management, attorneys, paralegals, 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 NIJC's business.
5. Since October 9, 2020, NIJC has filed at least 76 initial I-765 applications for asylum seekers who are ASAP or CASA members. This does not include all applications filed by *pro bono* attorneys on behalf of NIJC clients.
6. Since October 2020, one of these I-765 applications was denied because USCIS asserted that the client did not have an asylum application on file, even though the client was listed as a derivative on the application of her mother and was eligible for work authorization on that basis.
7. Only nine of the 76 I-765 applications have been granted. Each of the nine applications took over 30 days to be adjudicated, despite the fact that these clients are ASAP members. The majority of the I-765 applications that were granted had been filed in November 2020.
8. Of the 76 I-765 applications NIJC has filed for ASAP or CASA members since October 2020, 66 are still pending a decision. Of these 66 pending applications, 36

have been pending for over 30 days. Many of these applications have been pending since October, November, or December of 2020.

9. Until around late February or early March of this year, the majority of our clients' pending I-765 applications had not received receipt notices. Without a receipt notice, it was next-to-impossible to submit an inquiry to U.S. Citizenship and Immigration Services (USCIS) about the status of the case because USCIS typically asserted that a case status could not be investigated without a receipt number. Though NIJC has recently had success obtaining receipt numbers for *Rosario/CASA* class members by emailing the USCIS Office of Intake and Document Production Lockbox, it then takes significant time for attorneys to submit case status inquiries to USCIS due to the structure of the USCIS customer service line. On average, it takes at least 30-60 minutes to submit a USCIS case status inquiry for one application via the USCIS customer service line.
10. In addition, when the Lockbox provides receipt numbers, they frequently list a receipt date that is 20-30 days later than the receipt date indicated by NIJC's Federal Express tracking number for the application. This creates further confusion when attempting to follow up with USCIS on pending applications, particularly class member applications that have been pending for over 30 days.
11. All of these additional steps and delays create added barriers for our clients who are already struggling without access to work authorization. It has also created significant burdens on the attorneys and staff at NIJC who have to spend many hours following up on missing receipt notices and delayed adjudications.

12. Employment authorization is crucial for NIJC's asylum-seeking clients. Many of our clients have been forced to rely on family or friends to support them while they await employment authorization and are in precarious living situations. They are anxious to obtain their work permits so they can support themselves and their children, and become more independent while they await the adjudication of their asylum claims. Having to wait over 30 days for their work permits to be processed, or even for a receipt notice, creates needless additional stress and uncertainty for our clients.

Executed on March 24, 2021 in Chicago, Illinois.



Ashley Huebner
Associate Director of Legal Services
National Immigrant Justice Center
312.660.1303
ahuebner@heartlandalliance.org

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2021, 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 March, 2021.

s/ Matt Adams
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