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11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 CASA LIBRE/FREEDOM HOUSE;  
14 EL RESCATE; CLERGY AND LAITY  
15 UNITED FOR ECONOMIC JUSTICE  
16 (CLUE);  
17 SALVADORAN AMERICAN LEADERSHIP &  
18 EDUCATIONAL FUND (SALEF);  
19 CENTRAL AMERICAN RESOURCE  
20 CENTER (CARECEN-DC);  
21 LA RAZA CENTRO LEGAL, INC.;  
22 RENE GABRIEL FLORES MERINO;  
23 HILDNER EDUARDO CORONADO AJTUN;  
24 CARLOS ABEL HERNANDEZ AREVALO;  
25 AXEL YAFETH MAYORGA AGUILERA;  
26 RENE ISAI SERRANO MONTES;  
27 PAMELA ALEJANDRA RIVERA  
28 CAMBARA,

Plaintiffs,

v.

ALEJANDRO MAYORKAS, SECRETARY,  
U.S. DEPARTMENT OF HOMELAND  
SECURITY; UR M. JADDOU, DIRECTOR,  
U.S. CITIZENSHIP AND IMMIGRATION  
SERVICE; U.S. CITIZENSHIP AND  
IMMIGRATION SERVICE,

Defendants.

Case No.

**COMPLAINT FOR  
INJUNCTIVE AND  
DECLARATORY RELIEF**

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I.

INTRODUCTION

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3 1. This is an action for injunctive and declaratory relief challenging certain  
4 policies and practices of Defendant Alejandro Mayorkas (“Defendant Mayorkas”),  
5 Secretary of U.S. Department of Homeland Security (“DHS”), Defendant Ur M.  
6 Jaddou (“Defendant Jaddou”), Director of U.S. Citizenship and Immigration Services  
7 (“USCIS”), and Defendant USCIS.

8 2. Plaintiffs challenge Defendants’ refusal to adjudicate and approve  
9 applications for Employment Authorization Documents (“EADs”) to minors and  
10 youth who State courts have determined have been abused, neglected, or abandoned  
11 and have pending or approved petitions for Special Immigrant Juvenile status (“SIJ  
12 status”). Many of the individual Plaintiffs and members of the class they seek to  
13 represent were unaccompanied minors who fled their home countries after being  
14 abused, neglected, or abandoned, or are juveniles who experienced abuse, neglect or  
15 abandonment in this country. Congress has granted these minors and youth a clear path  
16 to SIJ status and later to file applications for Adjustment of Status to obtain lawful  
17 permanent resident status. Defendants adhere to a policy that a SIJ petitioner cannot  
18 file applications for or be granted EADs unless and until they are able to file  
19 applications for Adjustment of Status to obtain lawful permanent resident status.  
20 However, because of visa quota backlogs, many SIJ petitioners cannot file applications  
21 for Adjustment of Status for five or six years after filing their SIJ petitions.  
22 Defendants’ policy, which is an administrative decision not required by any federal  
23 law, often forces Plaintiffs and the tens of thousands of class members they seek to  
24 represent to go cold, hungry, or homeless for many years, and to work in underground  
25 exploitative jobs in order to survive during the years it takes before Defendants allow  
26 them to apply for EADs.

27 3. Defendants’ policy and practice violates the Equal Protection guarantee  
28 of the Fifth Amendment. While Defendants’ policy forces SIJ petitioners to wait for  
several years to request and obtain employment authorization, for no rational reason,

1 Defendants allow other vulnerable immigrants filing visa petitions to apply for and be  
2 granted employment authorization while their visa petitions are pending or when they  
3 are approved, long before they can apply for Adjustment of Status. There is no rational,  
4 substantial, or compelling reason for the disparate and discriminatory way in which  
5 Defendants treat young abused, neglected, and abandoned immigrants filing SIJ  
6 petitions. Defendants' policy irrationally causes Plaintiffs and tens of thousands of  
7 class members to often suffer severe and irreparable harms, including hunger,  
8 homelessness, and unstable housing, and the need to work in conditions that are  
9 exploitative and violate state and federal workplace wage and safety laws. Defendants  
10 irrationally discriminate against Plaintiffs and class members despite their playing by  
11 the rules and presenting approvable petitions for SIJ status as Congress has authorized.

12 4. Plaintiffs also challenge Defendants' routine violation of the William  
13 Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No.  
14 110-457 ("TVPRA"), codified at 8 U.S.C. §1232(d)(2), which provides in part that  
15 "[a]ll applications for special immigrant status under section 101(a)(27)(J) of the  
16 Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) *shall* be adjudicated by the  
17 Secretary of Homeland Security *not later than 180 days after the date on which the*  
18 *application is filed.*" 8 U.S.C. §1232(d)(2) (emphasis added). Defendants routinely  
19 flout and exceed the 180-day mandate set forth in 8 U.S.C. §1232(d)(2).

20 5. By this action, Plaintiffs seek injunctive and declaratory relief on behalf  
21 of themselves and all similarly situated applicants for SIJ status requiring that  
22 Defendants promptly permit them to work upon their filing of approvable petitions,  
23 and thereafter adjudicate their SIJ petitions within 180 days from the date they are  
24 filed.

## 25 II.

### 26 JURISDICTION AND VENUE

27 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331  
28 as a civil action arising under the laws of the United States.

7. This Court also has jurisdiction over the Defendants pursuant to 28

1 U.S.C. § 1391(e)(1), because Defendants are agencies and officers of the United  
2 States.

3 8. Plaintiffs' action for declaratory relief is brought pursuant to 28 U.S.C.  
4 §§ 2201 and 2202, and 5 U.S.C. § 703.

5 9. Venue is properly in this court pursuant to 28 U.S.C. § 1391(b) and (e)(1),  
6 as the acts complained of herein occurred in this district, Plaintiffs Merino, Ajtun and  
7 Arevalo reside in and Casa Libre/Freedom House, El Rescate, Clergy and Laity United  
8 for Economic Justice (CLUE), and the Salvadoran American Leadership &  
9 Educational Fund (SALEF) are located in this judicial district, Defendants have offices  
10 in this district, and no real property is involved in this action.

### 11 III.

### 12 PARTIES

13 10. Plaintiff Casa Libre/Freedom House is a state licensed group home in Los  
14 Angeles that provides transitional living services and related social and legal services  
15 for detained and homeless unaccompanied immigrant minors and youth. *See*  
16 [www.casalibrela.org](http://www.casalibrela.org). Casa Libre's clients have experienced and continue to  
17 experience a range of harms caused by Defendants' refusal to grant employment  
18 authorization to SIJ petitioners until their priority dates are current, a process that often  
19 takes several years. Defendants' challenged policies and practices make Casa Libre's  
20 accomplishment of its core goals far more difficult and diverts its limited resources to  
21 assisting former residents facing extreme difficulties trying to survive on their own  
22 without employment authorization.

23 11. Plaintiff El Rescate is a non-profit organization based in the City of Los  
24 Angeles that provides free and low-cost legal services to low-income immigrants,  
25 including Central American refugees and juveniles who have been abused, neglected,  
26 or abandoned. Defendants' challenged policies and practices make Plaintiff El  
27 Rescate's work substantially more difficult and time consuming and diverts its limited  
28 resources from the provision of services for other low-income clients.

12. Plaintiff Clergy and Laity United for Economic Justice (CLUE) is

1 headquartered in Los Angeles, CA and is a non-profit corporation consisting of clergy  
2 and lay leaders of all faiths with workers, immigrants, and low-income families with  
3 a goal of creating a just economy that works for all and protects those most vulnerable.  
4 See <https://www.cluejustice.org/>. Plaintiff CLUE has dedicated substantial time and  
5 effort to providing housing and services for unaccompanied minors many of whom  
6 have been abused, neglected, or abandoned and are therefore eligible for SIJ status.  
7 Defendants' challenged policies and practices make CLUE's accomplishment of its  
8 goals far more difficult and diverts its limited resources assisting young immigrants  
9 who face extreme difficulties trying to survive on their own without employment  
10 authorization.

11 13. Plaintiff Salvadoran American Leadership & Educational Fund (SALEF)  
12 is a non-profit organization based in Los Angeles, California. See [www.salef.org](http://www.salef.org).  
13 SALEF has worked closely with SIJ-eligible immigrant juveniles and SIJ petitioners,  
14 including former residents of Plaintiff Casa Libre, referring them for legal  
15 representation and providing them with wrap-around services including temporary  
16 housing, referrals for medical care, and gang-intervention programs. Defendants'  
17 challenged policies and practices make Plaintiff SALEF's work substantially more  
18 difficult and time consuming and diverts its limited resources from the provision of  
19 services for other low-income clients.

20 14. Plaintiff Central American Resource Center – DC (CARECEN-DC) is a  
21 non-profit organization based in Washington, DC. See <https://carecencdc.org/>. It  
22 provides screening, advice, referrals, and immigration legal services to immigrants and  
23 asylum seekers. It provides advice and referrals to SIJ eligible immigrant juveniles and  
24 assists those with approved SIJ petitions to apply for employment authorization and  
25 adjustment of status. Defendants' challenged policies and practices make Plaintiff  
26 CARECEN-DC's work substantially more difficult and time consuming and diverts  
27 its limited resources from the provision of services for other low-income clients.

28 15. Plaintiff La Raza Centro Legal, Inc. is a community-based legal services  
organization dedicated to empowering Latino, immigrant, and low-income

1 communities throughout the Bay Area in California, and advocating for their civil and  
2 human rights. See <https://lrcl.org/>. Plaintiff La Raza Centro Legal, Inc. represents  
3 abused, neglected, and abandoned SIJ eligible immigrant juveniles. Defendants'  
4 challenged policies and practices make Plaintiff La Raza Centro Legal, Inc.'s work  
5 substantially more difficult and time consuming and diverts its limited resources from  
6 the provision of services for other low-income clients.

7 16. Plaintiff Rene Gabriel Flores Merino ("Plaintiff Merino") is a resident of  
8 Los Angeles County, California. On or about November 9, 2021, USCIS approved  
9 Plaintiff Merino's SIJ status. Because pursuant to Defendants' challenged policies  
10 Plaintiff Merino is ineligible to receive employment authorization for several more  
11 years, Plaintiff Merino has experienced and continues to experience a range of harms  
12 including, but not limited to, inability to secure stable employment and housing.

13 17. Plaintiff Hildner Eduardo Coronado Ajtun ("Plaintiff Ajtun") is a resident  
14 of Los Angeles, California. On or about January 5, 2021, USCIS approved Plaintiff  
15 Ajtun's SIJ petition. Because pursuant to Defendants' challenged policies Plaintiff  
16 Ajtun is ineligible to receive employment authorization for several more years, he has  
17 experienced and continues to experience a range of harms including, but not limited  
18 to, inability to secure stable employment and housing.

19 18. Plaintiff Carlos Abel Hernandez Arevalo ("Plaintiff Arevalo") is a  
20 resident of Los Angeles County, California. On or about December 8, 2021, Plaintiff  
21 Arevalo filed a SIJ petition with the USCIS. Pursuant to Defendants' challenged policy  
22 and practice, Plaintiff Arevalo is ineligible to receive employment authorization for  
23 several years until he is eligible to apply for Adjustment of Status. Because of  
24 Defendants' challenged policies he has experienced and continues to experience a  
25 range of harms including, but not limited to, inability to secure stable employment and  
26 housing, and an inability to continue his education.

27 19. Plaintiff Axel Yafeth Mayorga Aguilera ("Plaintiff Aguilera") is a  
28 resident of Alexandria, Virginia. Plaintiff Aguilera is eligible for and on or about  
August 29, 2019, applied for SIJ status. Under Defendants' policy Plaintiff Aguilera

1 is not eligible to receive employment authorization until his priority date becomes  
2 current so that he can apply for Adjustment of Status. As a result of Defendants’ policy  
3 and practice, Plaintiff Aguilera has experienced and continues to experience a range  
4 of harms including, but not limited to, securing a stable job with lawful wages and  
5 constant exposure to housing instability.

6 20. Plaintiff Rene Isai Serrano Montes (“Plaintiff Montes”) is a resident of  
7 Los Angeles, California. Plaintiff Montes is eligible for and on August 30, 2021  
8 applied for SIJ status. Under Defendants’ policy Plaintiff Montes is not eligible to  
9 receive employment authorization for several years until his priority date becomes  
10 current and he can apply for Adjustment of Status. As a result of Defendants’ policies  
11 and practices, Plaintiff Montes’ SIJ application has not been adjudicated within six  
12 months of submission, and he has experienced and continues to experience a range of  
13 harms including, but not limited to, securing a stable job with lawful wages.

14 21. Plaintiff Pamela Alejandra Rivera Cambara (“Plaintiff Cambara”) is a  
15 resident of Los Angeles, California. Plaintiff Cambara is eligible for and on or about  
16 July 1, 2021 applied for SIJ status. Under Defendants’ policy Plaintiff Montes is not  
17 eligible to receive employment authorization for several years until her priority date  
18 becomes current and she can apply for Adjustment of Status. As a result of Defendants’  
19 policies and practices, Plaintiff Cambara’s SIJ application has not been adjudicated  
20 within six months of submission, and she has experienced and continues to experience  
21 a range of harms including, but not limited to, securing a job with lawful wages while  
22 attending school.

23 22. Defendant Alejandro Mayorkas is the Secretary of the Department of  
24 Homeland Security (“DHS”) and is sued in his official capacity. Defendant Mayorkas  
25 is charged with the administration of the DHS and implementation of the Immigration  
26 and Nationality Act. As such, pursuant to 8 U.S.C. §1103(a), he is authorized to issue  
27 EADs to applicants for SIJ status. Pursuant to 8 U.S.C. §1232(d)(2), he is directed to  
28 adjudicate all SIJ petitions no later than 180 days after the date on which the petition  
was filed.



- 1 (ii) [it] has been determined in administrative or judicial proceedings that it
- 2 would not be in the alien’s best interest to be returned to the alien’s or parent’s
- 3 previous country of nationality or country of last habitual residence; and
- 4 (iii) ... the Secretary of Homeland Security consents to the grant of special
- 5 immigrant juvenile status ....

6 8 U.S.C. §1101(a)(27)(J). If granted, SIJ status provides a pathway to lawful  
7 permanent residency and, ultimately, citizenship. See 8 U.S.C. §§1255, 1427.

8 26. The CJS 1998 Appropriations Act revised the SIJ definition to  
9 specifically cover juveniles eligible for long-term foster care “due to abuse, neglect,  
10 or abandonment...” Departments of Commerce, Justice, and State, the Judiciary, and  
11 Related Agencies Appropriations Act, 1998, H.R. 2267, 105th Cong., at 22 (1998).

12 27. To further protect immigrant youth who had been abused, neglected, or  
13 abandoned, in the 2005 Violence Against Women Act, Pub. L. No. 109-162, 119 Stat.  
14 2960, Congress added section 287(h) to the INA, “protecting a child applying for SIJ  
15 status from being compelled to contact the child’s alleged abuser or any family  
16 members of the abuser.” Special Immigrant Juvenile Petitions (“Special Immigrant  
17 Juvenile Petitions”) 76 Fed. Reg. 54978, 54979 (proposed Sept. 6, 2011); *see also* 8  
18 U.S.C. 1357(h).

19 28. In 2008, Congress passed the Trafficking Victims Protection  
20 Reauthorization Act 2008 (“TVPRA”), Pub. L. No. 110-457, §235(d), 112 Stat. 5044  
21 (2008), which *inter alia* replaced a foster care requirement with more expansive  
22 language providing that prior to applying for SIJ status, a state court had to issue a  
23 finding that “reunification with one or both of the immigrant’s parents is not viable  
24 due to abuse, neglect, abandonment, or a similar basis found under State law.” TVPRA  
25 §235(d)(1)(A); INA § 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i).

26 29. The TVPRA also clarified that an applicant’s eligibility for SIJ status is  
27 dependent on the juvenile’s age at the time he or she applied for SIJ status rather than  
28 at the time the petition was processed. *Id.* §235(d)(6). It also made SIJ status available  
to juveniles who had been “legally committed to, or placed under the custody of, an

1 agency or department of a State, or an individual or entity appointed by a State or  
2 juvenile court” in addition to those who had been “declared dependent on a juvenile  
3 court.” §235(d)(1)(B) (amending 8 U.S.C. §1101(a)(27)(J)).

4 30. Following enactment of the TVPRA, a petitioner for SIJ status must be  
5 (a) under twenty-one years of age, (b) unmarried, (c) declared dependent on a juvenile  
6 court or placed in the custody of a state agency or individual appointed by the court,  
7 and (d) the subject of state court findings that (i) reunification with one or both parents  
8 is not viable because of abuse, neglect, abandonment, or similar basis under state law  
9 and (ii) it is not in the juvenile’s best interests to be returned to his or her country of  
10 origin. Despite the amendments, the implementing regulations continue to reference  
11 pre-TVPRA statutory text conditioning SIJ status on eligibility for long-term foster  
12 care. *See* 8 C.F.R. §204.11(a), (c)(4)–(5) (2009) (“SIJ regulation”).

13 31. Section 153(b)(1) of the Immigration Act of 1990, P.L. 101-649,  
14 §153(b)(1), assured that certain specified deportation grounds “shall not apply to [SIJ  
15 applicants] ... based upon circumstances that exist before the date the alien was  
16 provided such special immigrant status.” Act, §153(b)(1) at 29; 8 U.S.C. §1251(c); 8  
17 U.S.C. §1227(c).

18 32. The adjustment of status statute, 8 U.S.C. §1255(h), provides in part that  
19 “[i]n applying this section to a special immigrant described in section 1101(a)(27)(J)  
20 of this title - (1) such an immigrant shall be deemed, for purposes of subsection (a), to  
21 have been paroled into the United States; and (2) in determining the alien's  
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1 admissibility as an immigrant-(A) paragraphs (4)<sup>[1]</sup>, (5)(A)<sup>[2]</sup>, (6)(A)<sup>[3]</sup>, (6)(C)<sup>[4]</sup>,  
2 (6)(D)<sup>[5]</sup>, (7)(A)<sup>[6]</sup>, and (9)(B)<sup>[7]</sup> of section 1182(a) of this title shall not apply; and  
3 (B) the Attorney General may waive other paragraphs of section 1182(a) of this title  
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8 <sup>1</sup> Paragraph 4 provides, in part, that any noncitizen “who ... in the opinion of the  
9 Attorney General at the time of application for admission or adjustment of status, is  
likely at any time to become a public charge is inadmissible.” 8 U.S.C. § 1182(a)(4).

10 <sup>2</sup> Paragraph 5(A) provides, in part, that any noncitizen “who seeks to enter the United  
11 States for the purpose of performing skilled or unskilled labor is inadmissible, unless  
12 the Secretary of Labor has determined and certified to the Secretary of State and the  
Attorney General that “there are not sufficient workers who are able, willing,  
13 qualified...and available at the time of application for a visa.” 8 U.S.C. §  
1182(a)(5)(A).

14 <sup>3</sup> Paragraph 6(A) provides, in part, that a noncitizen “present in the United States  
15 without being admitted or paroled, or who arrives in the United States at any time or  
16 place other than as designated by the Attorney General, is inadmissible.” 8 U.S.C. §  
1182(a)(6)(A).

17 <sup>4</sup> Paragraph 6(C) provides, in part, that any noncitizen “who, by fraud or willfully  
18 misrepresenting a material fact, seeks to procure ... a visa ... or admission into the  
United States ... is inadmissible.” 8 U.S.C. § 1182(a)(6)(C).

19 <sup>5</sup> Paragraph 6(D) provides, in part, that any noncitizen “who is a stowaway is  
inadmissible.” 8 U.S.C. § 1182(a)(6)(D).

20 <sup>6</sup> Paragraph 7(A) provides, in part, that any immigrant “(I) who is not in possession of  
21 a valid unexpired immigrant visa ... or other valid entry document ... and a valid  
22 unexpired passport, or other suitable travel document ... or (II) whose visa has been  
issued without compliance with the provisions of section 1153 of this title, is  
23 inadmissible.” 8 U.S.C. § 1182(a)(7)(A).

24 <sup>7</sup> Paragraph 9(B) provides, in part, that any noncitizen “(other than a[] [noncitizen]  
25 lawfully admitted for permanent residence) who-(I) was unlawfully present in the  
United States for a period of more than 180 days but less than 1 year, voluntarily  
26 departed the United States...prior to the commencement of proceedings...and again  
27 seeks admission within 3 years of the date of such alien's departure ... or (II) has been  
unlawfully present in the United States for one year or more, and who again seeks  
28 admission within 10 years of the date of such alien’s departure or removal ...from the  
United States, is inadmissible.” 8 U.S.C. § 1182(a)(9)(B).

1 (other than paragraphs (2)(A)<sup>[8]</sup>, (2)(B)<sup>[9]</sup>, (2)(C)<sup>[10]</sup> ...” 8 U.S.C. §1255(h).

2 33. Under Defendants’ challenged policy and practice, SIJ petitioners must  
 3 wait until their “priority dates” are “current” to file Adjustment of Status applications  
 4 before they may apply for employment authorization. Pursuant to 8 CFR §  
 5 274a.12(c)(9), as applicable to SIJ petitioners, the “classes of aliens authorized to  
 6 accept employment [include] ... [a]n alien who has filed an application for adjustment  
 7 of status to lawful permanent resident pursuant to part 245 of this chapter.” 8 CFR §  
 8 274a.12(c)(9); *see also* USCIS, INSTRUCTIONS FOR APPLICATION FOR EMPLOYMENT  
 9 AUTHORIZATION, at 1, 15 (Aug. 25, 2020),  
 10 <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf> (“You may  
 11 file Form I-765 if you...[are an] Adjustment Applicant under Section 245--(c)(9). File  
 12 Form I-765 together with Form I-485, Application to Register Permanent Residence  
 13 or Adjust Status...”).

14 34. 8 U.S.C. § 1255(a) provides in part that an immigrant may be granted  
 15 lawful permanent residence if the immigrant (1) makes an application for such  
 16 adjustment, (2) is eligible to receive an immigrant visa and is admissible to the United  
 17 States for permanent residence, and (3) “an immigrant visa is immediately available  
 18 to him *at the time his application is filed.*” 8 U.S.C. § 1255(a) (emphasis added). *See*  
 19 *also* 8 CFR § 245.1(a) (“Any [noncitizen] who is physically present in the United  
 20 States ... may apply for adjustment of status to that of a lawful permanent resident of

21 <sup>8</sup> Paragraph (2)(A) provides, in part, that any noncitizen “convicted of, or who admits  
 22 having committed ... (I) a crime involving moral turpitude (other than a purely  
 23 political offense) or an attempt or conspiracy to commit such a crime, or (II) a  
 24 violation of ... any law or regulation ... relating to a controlled substance ... is  
 25 inadmissible.” 8 U.S.C. § 1182(a)(2)(A).

26 <sup>9</sup> Paragraph (2)(B) provides, in part, that any noncitizen “convicted of 2 or more  
 27 offenses ... regardless of whether the conviction was in a single trial ... for which the  
 28 aggregate sentences to confinement were 5 years or more is inadmissible.” 8 U.S.C. §  
 1182(a)(2)(B).

<sup>10</sup> Paragraph (2)(C) provides, in part, that any noncitizen “who the consular officer or  
 the Attorney General knows or has reason to believe-(i) is or has been an illicit  
 trafficker in any controlled substance ... is inadmissible.” 8 U.S.C. § 1182(a)(2)(C).

1 the United States if the applicant is eligible to receive an immigrant visa and an  
2 immigrant visa is immediately available at the time of filing of the application...”). 8  
3 CFR § 245.1(g)(1) similarly provides that an immigrant “is ineligible for the benefits  
4 of section 245 of the Act unless an immigrant visa is immediately available to him or  
5 her at the time the application is filed.”

6 35. In terms of visa availability, SIJ recipients are subject to the fourth  
7 preference employment-based (EB-4) category, 8 U.S.C. §1153(b)(4), which is  
8 allocated 7.1% of the 140,000 visas generally available for employment-based visas  
9 per year, or approximately 9,940 visas per year. 8 U.S.C. § 1153(b)(4) (“Visas shall  
10 be made available, in a number not to exceed 7.1 percent of such worldwide level, to  
11 qualified special immigrants described in section 1101(a)(27) of this title...”). Per 8  
12 U.S.C. § 1153(b)(4), the 9,940 total applies to all “special immigrants described in  
13 section 1101(a)(27) of this title,” not just immigrants granted SIJ status. *Id.* Plaintiffs  
14 are unaware of any authority indicating how many visas are reserved particularly for  
15 SIJs.

16 36. Pursuant to 8 U.S.C. § 1152(a)(2), with certain exceptions, “the total  
17 number of immigrant visas made available to natives of any single foreign state or  
18 dependent area under subsections (a) and (b) of section 1153 of this title in any fiscal  
19 year may not exceed 7 percent (in the case of a single foreign state) ... of the total  
20 number of such visas made available under such subsections in that fiscal year.” *Id.* 7  
21 percent of approximately 9,940 means that each country is allocated about 696 visas  
22 per year.

23 37. Only when a SIJ petitioner’s priority date is current in the ‘EB-4’  
24 preference category is the petitioner permitted to apply for permanent resident status.

25 38. At this stage, many years after young immigrants applied for SIJ visas,  
26 Defendants finally allow SIJ applicants to apply for work permits. Defendants’  
27 challenged policy and practice is that SIJ petitioners are only eligible to apply for  
28 employment authorization when they have reached the front of the visa line (*i.e.*, their  
“priority date” is current), and they may file applications for Adjustment of Status.

1           39. Based on the Visa Bulletin for March 2022, the current priority date for  
2 the EB-4 preference category for El Salvador, Guatemala, and Honduras is May 1,  
3 2017. Visa Bulletin for March 2022, U.S. DEPT. STATE,  
4 [https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-](https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-march-2022.html)  
5 [bulletin-for-march-2022.html](https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-march-2022.html) (last visited March 2, 2022).<sup>11</sup> In short, as of March 1,  
6 2022, only youth from El Salvador, Guatemala, and Honduras who filed their SIJ  
7 petitions before about May 1, 2017, may apply for adjustment of status and  
8 employment authorization. Even then, it takes Defendants close to a year on average  
9 before they approve Plaintiffs’ and class members’ employment authorization  
10 applications. USCIS, CHECK CASE PROCESSING TIMES,  
11 <https://egov.uscis.gov/processing-times/home> (last visited Jan. 14, 2022). The March  
12 2022 Final Action Dates are a significant two-year retrogression from what they were  
13 just a month ago; in February 2022, the Final Action Dates for El Salvador,  
14 Guatemala, and Honduras was March 15, 2019. Visa Bulletin for February 2022, U.S.  
15 DEPT. STATE, [https://travel.state.gov/content/travel/en/legal/visa-law0/visa-](https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-february-2022.html)  
16 [bulletin/2022/visa-bulletin-for-february-2022.html](https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2022/visa-bulletin-for-february-2022.html). A two-year retrogression is a  
17 significant blow for juveniles escaping abuse, neglect, and abandonment, and inflicts  
18 even greater hardships given that the wait for both adjustment of status and a work  
19 permit is now about five or six years from the time they filed their SIJ petitions.

19           B. Facts Regarding the Plaintiffs

20           40. Plaintiff Merino is a resident of Los Angeles, California. Plaintiff Merino  
21 is a citizen and native of El Salvador. Plaintiff Merino is 20 years of age. Plaintiff  
22 Merino entered the United States on or about August 6, 2016, at or near El Paso, Texas.

23           41. Subsequent to entry Plaintiff Merino was declared an “unaccompanied  
24 alien child,” as defined in 6 U.S.C. §279(g)(2) (“unaccompanied minor”), by the  
25 Department of Homeland Security (“DHS”). The U.S. Border Patrol turned Plaintiff  
26 Merino over to the custody of the Office of Refugee Resettlement, U.S. Department  
27

28 <sup>11</sup> The current priority date for citizens of Mexico is April 1, 2020. *Id.*

1 of Health and Human Services (“ORR”).

2 42. Plaintiff Merino was released to an uncle on September 10, 2016, and  
3 subsequently transferred into Plaintiff Casa Libre/Freedom House on September 25,  
4 2018. Plaintiff Merino resided at Casa Libre until about April 3, 2021. Casa Libre staff  
5 continue to provide Plaintiff Merino with support services made all the more necessary  
6 by Defendants’ refusal to permit Plaintiff Merino to apply for or receive employment  
7 authorization.

8 43. On or about October 16, 2020 the Los Angeles County Superior Court  
9 issued Orders finding that Plaintiff Merino had been neglected and abandoned and that  
10 reunification with Plaintiff Merino’s parents was not viable due to abandonment and  
11 neglect.

12 44. On or about October 22, 2019, Plaintiff Merino filed a SIJ petition. On  
13 November 9, 2021, long after the six months within which the law requires such  
14 petitions to be adjudicated, Defendants approved Plaintiff Merino’s SIJ petition.  
15 However, Defendants’ policy and practice do not permit Plaintiff Merino to file an  
16 application for employment authorization for several more years until Plaintiff Merino  
17 is eligible to apply for Adjustment of Status under INA § 245.

18 45. While under Defendants’ challenged policy Plaintiff Merino is not  
19 eligible to apply for or receive employment authorization, Plaintiff Merino  
20 nevertheless has forwarded a completed employment authorization application to  
21 Defendants. Because Plaintiff Merino is not eligible to receive employment  
22 authorization, Plaintiff Merino has experienced and continues to experience a range of  
23 irreparable harms including but not limited to housing insecurity, an inability to secure  
24 a stable job with lawful wages, and an inability to afford basic living expenses  
25 including for food and clothing. The lack of work authorization prevents Plaintiff  
26 Merino from obtaining a social security number or accessing unemployment insurance  
27 and social security benefits.

28 46. Plaintiff Merino is currently enrolled in college and, as a student without  
a job, has found it increasingly difficult to afford books, school supplies, and tuition.

1 Plaintiff Merino is often forced to attend classes without access to the essential  
2 materials needed to successfully complete college courses.

3 47. Plaintiff Merino is currently living at a shelter for homeless youth.  
4 Plaintiff Merino cannot afford a place to live and has relied on shelters like Casa Libre  
5 to provide temporary housing and food. However, these shelters do not provide long  
6 term housing, and Plaintiff Merino may soon be forced to move out of the shelter  
7 where Plaintiff Merino now resides. Unless able to obtain a valid work permit, Plaintiff  
8 Merino will be at high risk of homelessness.

9 48. Plaintiff Ajtun is a resident of Los Angeles, California. He is a citizen and  
10 native of Guatemala. He is currently 20 years of age. Plaintiff Ajtun entered the United  
11 States on or about October 2, 2018. He left his home country because he did not feel  
12 safe there after being attacked and robbed several times by gang members. Plaintiff  
13 Ajtun's parents sent him to the United States without parental supervision and without  
14 ensuring that someone would be able to care for him when he arrived in the U.S.

15 49. Plaintiff Ajtun entered the U.S. at the Mexicali Port of Entry. The U.S.  
16 Border Patrol turned him over to the custody of the ORR, which detained him for about  
17 three months.

18 50. Plaintiff Ajtun was released to Plaintiff Casa Libre/Freedom House on  
19 January 7, 2019, and resided in the shelter until March 2020. Casa Libre staff continue  
20 to provide Plaintiff Ajtun with support services made all the more necessary by  
21 Defendants' refusal to permit him to apply for or receive employment authorization.

22 51. On or about December 12, 2019, the Los Angeles County Superior Court  
23 issued Orders finding that Plaintiff Ajtun had been neglected and that reunification  
24 with his parents was not viable due to neglect. It also found it was not in his best  
25 interest to be returned to his country of origin.

26 52. On March 13, 2020, Plaintiff Ajtun filed a SIJ petition with USCIS. On  
27 January 5, 2021, long after it was required to adjudicate his petition, Defendants finally  
28 approved Plaintiff Ajtun's SIJ petition. Defendants' policy and practice do not permit  
Plaintiff Ajtun to receive an application for employment authorization for several more

1 years until he is eligible to apply for adjustment of status under INA § 245.

2 53. While under Defendants' challenged policy Plaintiff Ajtun is not eligible  
3 to apply for or receive employment authorization, he has nevertheless forwarded a  
4 completed employment authorization application to Defendants. Because he is not  
5 eligible to receive employment authorization, Plaintiff Ajtun has experienced and  
6 continues to experience a range of irreparable harms including but not limited to  
7 housing insecurity, employment exploitation, and inability to secure a stable job with  
8 lawful wages. In 2019 and 2020 he was forced to work for an unlicensed contractor  
9 under unsafe and exploitative working. The employer violated federal employer  
10 sanctions laws (8 U.S.C. § 1324a) by hiring Plaintiff Ajtun. Plaintiff Ajtun was  
11 illegally paid below the minimum wage and was often forced to work without pay for  
12 several weeks.

13 54. Although Plaintiff Ajtun knew that he was being exploited, when  
14 working he was afraid to report labor law and health and safety law violations to any  
15 state or federal authorities as he feared retaliation by his employer, who knew Plaintiff  
16 Ajtun was not authorized to be employed. Plaintiff Ajtun was threatened by his  
17 employer that it would contact immigration authorities and have him arrested and  
18 deported if he complained to authorities about his working conditions.

19 55. To this date, Plaintiff Ajtun continues to experience unfair treatment,  
20 exploitation, unfair wages, and unsafe working conditions

21 56. Plaintiff Aguilera is a resident of Alexandria, Virginia. He is a citizen and  
22 native of Honduras. He is currently 20 years of age. In Honduras Plaintiff Aguilera  
23 was harassed, kidnapped, and beaten by gang members. Plaintiff Aguilera's father  
24 abandoned and neglected him and his mother neglected him and forced him to work  
25 rather than attend school from the age of thirteen. Plaintiff Aguilera fled Honduras as  
26 a result of gang threats and neglect and abandonment by his parents.

27 57. On or about February 21, 2018, Plaintiff Aguilera entered the United  
28 States as an unaccompanied minor at or near the Calexico, California Port of Entry.  
The U.S. Border Patrol turned him over to the custody of the ORR, which detained

1 him for about thirteen months. Plaintiff Aguilera was then released to Plaintiff Casa  
2 Libre/Freedom House on or about March 19, 2019 and resided in the shelter until about  
3 April 2020

4 58. On August 27, 2019, the Los Angeles County Superior Court issued  
5 Orders finding that Plaintiff Aguilera's father abandoned and neglected him shortly  
6 after he was born and his mother neglected him. The Court also found that  
7 reunification with his parents was not viable due to neglect. It also found it was not in  
8 his best interest to be returned to his country of origin

9 59. Plaintiff Aguilera is eligible for and on or about August 29, 2019, applied  
10 for SIJ status. On March 13, 2020, Defendants approved Plaintiff Aguilera's SIJ  
11 petition.

12 60. While under Defendants' challenged policy Plaintiff Aguilera is not  
13 eligible to apply for or receive employment authorization because he's from Honduras  
14 and his priority date is August 29, 2019, he has nevertheless forwarded a completed  
15 employment authorization application to Defendants. Under Defendants' challenged  
16 policy and procedure Plaintiff Aguilera is not eligible to receive employment  
17 authorization for several more years until his priority date is current so that he can  
18 apply for permanent resident status. As a result of the challenged policy and practice,  
19 Plaintiff Aguilera has experienced and continues to experience a range of harms  
20 including, but not limited to securing a stable job with lawful wages and exposure to  
21 constant housing instability. When he has worked, Plaintiff Aguilera was illegally paid  
22 below the minimum wage.

23 61. Plaintiff Arevalo is a resident of Los Angeles County, California. He is a  
24 citizen and native of Honduras. He is 20 years of age. When Plaintiff Arevalo was four  
25 years old, he was abandoned by his parents in Honduras. He had no adults to rely on  
26 and for many years was homeless until entering the United States.

27 62. Plaintiff Arevalo does not know his parents' whereabouts. He had no one  
28 to rely on in his home country and he lived in fear of being kidnapped and murdered  
by gang members. When he was seventeen years old, he fled Honduras to seek safety

1 in the United States.

2 63. Plaintiff Arevalo entered the United States on or about February 25, 2019,  
3 at or near San Ysidro Port of Entry. He was held in ORR's Southwest Key facility from  
4 about February 26, 2019, to about March 2019 and was then transferred to the care of  
5 Plaintiff Casa Libre/Freedom. Upon his transfer into Casa Libre, Plaintiff Arevalo  
6 began to learn English with the help of Casa Libre staff and was enrolled in school.

7 64. On or about October 8, 2019, the Los Angeles County Superior Court  
8 issued Orders finding that Plaintiff Arevalo had been abandoned and neglected by his  
9 parents and it would not be in his best interest to return to his country of origin. The  
10 Court found that his parents' abandonment left Plaintiff Arevalo vulnerable to  
11 homelessness and without any provision for support in Honduras.

12 65. On December 8, 2021, Plaintiff Arevalo filed a SIJ petition with  
13 Defendants. His petition remains pending.

14 66. While under Defendants' challenged policy Plaintiff Arevalo is not  
15 eligible to apply for or receive employment authorization because his priority date is  
16 December 8, 2021, he has nevertheless forwarded a completed employment  
17 authorization application to Defendants. Under Defendants' challenged policy and  
18 procedure Plaintiff Arevalo is not eligible to receive employment authorization for  
19 several years until his priority date is current and he can apply for permanent resident  
20 status.

21 67. As a result of the challenged policy and practice, Plaintiff Arevalo has  
22 experienced and continues to experience a range of harms including, but not limited  
23 to inability to secure a stable job with lawful wages and exposure to constant housing  
24 instability. Plaintiff Arevalo currently has temporary housing in a shelter in Los  
25 Angeles. Without employment authorization, when required to leave his temporary  
26 housing he will not be able to afford stable housing.

27 68. Plaintiff Montes is a resident of Los Angeles, California. He is a citizen  
28 and native of Honduras. He is currently 21 years of age. Plaintiff Montes never met  
his father, who was killed when Plaintiff Montes was about five months old. When

1 Plaintiff Montes was three years old, his mother left him at the care of his grandmother.  
2 After moving in with his grandmother, Plaintiff Montes had little communication with  
3 his mother. Plaintiff Montes grew up in poverty with his grandmother. He was not able  
4 to finish high school in Honduras due to inadequate financial support.

5 69. Plaintiff Montes entered the United States on or about 2018 to flee from  
6 gangs, poverty, and violence in Honduras. On August 27, 2021, the Los Angeles  
7 County Superior Court issued Orders finding that Plaintiff Montes had been  
8 abandoned by both his parents. The Court also found that reunification with his parents  
9 was not viable due to said abandonment. It also found it was not in his best interest to  
10 be returned to his country of origin.

11 70. Plaintiff Montes is eligible for and on or about August 30, 2021, applied  
12 for SIJ status. More than six months later, his petition remains pending. At  
13 Defendants' current rate of processing, his SIJ petition will not be adjudicated for  
14 several more months, significantly longer than the six months required by statute.

15 71. Under Defendants' challenged policy and procedure Plaintiff Montes is  
16 also not eligible to receive employment authorization for several years until his priority  
17 date is current and he can apply for permanent resident status.

18 72. As a result of the challenged policy and practice, Plaintiff Montes has  
19 experienced and continues to experience a range of harms including, but not limited  
20 to inability to secure a stable job with lawful wages and exposure to constant housing  
21 instability.

22 73. Plaintiff Cambara is a resident of Los Angeles, California. She is a citizen  
23 and native of El Salvador.

24 74. Plaintiff Cambara entered the United States when she was thirteen years  
25 old. On June 1, 2021, the Los Angeles County Superior Court issued Orders finding  
26 that Plaintiff Cambara had been abandoned by her father. The Court also found that  
27 reunification with her father was not viable due to said abandonment. It also found that  
28 it was not in her best interest to be returned to her country of origin.

75. Plaintiff Cambara is eligible for and on or about July 1, 2021, applied for

1 SIJ status. More than six months later, her petition remains pending. At Defendants’  
2 current rate of processing, her SIJ petition will not be adjudicated for several more  
3 months, significantly longer than the six months required by statute.

4 76. Under Defendants’ challenged policy and procedure Plaintiff Cambara is  
5 not eligible to receive employment authorization for several years until her priority  
6 date is current and she can apply for permanent resident status.

7 77. As a result of the challenged policy and practice, Plaintiff Cambara has  
8 experienced and continues to experience a range of harms including, but not limited  
9 to, inability to secure stable employment to help with household expenses while she  
10 attends school.

11 78. The Plaintiff organizations provide free social and legal services to SIJ  
12 petitioners, and their task is made far more difficult and diverts their limited resources  
13 because of Defendants’ challenged policy and procedure which leaves their SIJ clients  
14 without stable incomes and housing.

15 C. Defendants make employment authorization available to numerous  
16 categories of visa applicants but not to SIJ petitioners

17 79. Discretionary employment authorization is established by regulation 8  
18 CFR 274a.12(c) and is based on the Secretary’s statutory authority under INA §  
19 103(a), as well as the provision at INA § 274A(h)(3). *See also* USCIS Policy Manual,  
20 Chapter 1 - Purpose and Background Vol. 10, Part b, Chapter 1 (Current as of February  
21 23, 2022) available at [https://www.uscis.gov/policy-manual/volume-10-part-b-](https://www.uscis.gov/policy-manual/volume-10-part-b-chapter-1#footnote-2)  
22 [chapter-1#footnote-2](https://www.uscis.gov/policy-manual/volume-10-part-b-chapter-1#footnote-2) (last checked March 1, 2022).

23 80. SIJ petitioners have by definition already been determined by State courts  
24 to have been abused, neglected, or abandoned, and that it would not be in their best  
25 interest to return to their home countries. Their SIJ petitions are therefore almost  
26 universally approvable.

27 81. Unlike with SIJs petitioners, Defendants permit other vulnerable  
28 petitioners for temporary or permanent residence to apply for employment  
authorization when their underlying petitions or applications are pending and before

1 they can apply for lawful permanent resident status.

2 82. For example, created by The Victims of Trafficking and Violence  
3 Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000), T-1  
4 nonimmigrant beneficiaries are victims of trafficking. 22 U.S.C. §7105, the statute  
5 outlining “protection and assistance for victims of trafficking,” says nothing about  
6 the issuance of employment authorization to T-1 nonimmigrant applicants. 8 CFR §  
7 214.11 states that “[a]n alien granted T-1 nonimmigrant status is authorized to work  
8 incident to status. There is no need for an alien to file a separate form to be granted  
9 employment authorization.” 8 CFR § 214.11(d)(11). Bona fide T-1 nonimmigrant  
10 applicants may apply for and be granted employment authorization *before* their T  
11 visa applications are adjudicated. 8 CFR § 214.11(e). USCIS policy states that “DHS  
12 is authorized to grant an EAD in connection with a bona fide determination [of T  
13 visa petitions] ...Once an application is deemed bona fide ... the applicant can  
14 request employment authorization ... *See* 8 CFR 274a.12(c)(14).” 81 Fed. Reg.  
15 92266, 92285 (Dec. 19, 2016). A 2009 Memorandum from Acting USCIS Deputy  
16 Director Aytes confirms “[i]f a [ ] [T visa] application is deemed bona fide, USCIS  
17 will provide written confirmation to the applicant and use various means ... whether  
18 through continued presence or as a result of a bona fide determination, [to] grant[ ]  
19 employment authorization ...” *Id.*

20 83. The statute authorizing the issuance of Temporary Protected Status  
21 (“TPS”) says nothing about the issuance of employment authorization to TPS  
22 applicants. TPS applicants, who unlike SIJ petitioners are *not* authorized to  
23 eventually seek lawful permanent resident status, can simultaneously file a request  
24 for employment authorization with their Form I-821, Application for Temporary  
25 Protected Status. *See* INSTRUCTIONS FOR APPLICATION FOR EMPLOYMENT  
26 AUTHORIZATION, at 6. 8 CFR § 244.12(a) states that “[u]pon approval of an  
27 application for Temporary Protected Status, USCIS shall grant an employment  
28 authorization document.” 8 CFR § 244.12(a). However, Defendants’ policy provides  
that “USCIS will review your case to determine whether you are eligible to work

1 *before* we make a final decision on your TPS application. If you are found to be  
2 eligible upon initial review of your TPS application (prima facie eligible) you will  
3 receive an EAD.” USCIS, TEMPORARY PROTECTED STATUS,  
4 <https://www.uscis.gov/humanitarian/temporary-protected-status> (last updated Dec.  
5 21, 2021) (emphasis added).

6 84. Section 203 of The Nicaraguan Adjustment and Central American Relief  
7 Act (“NACARA”), Pub. L. No. 105-100, and 8 U.S.C. § 1101 allows certain  
8 immigrants from Nicaragua, Cuba, El Salvador, Guatemala and countries of the former  
9 Soviet Union to seek status. The statute does not address the issuance of employment  
10 authorization to NACARA applicants. However, regulatory language at 8 CFR §  
11 274a.12(c)(10), provides that “[a]n alien who has filed an application for ... special  
12 rule cancellation of removal under section 309(f)(1) of the Illegal Immigration Reform  
13 and Immigrant Responsibility Act of 1996, enacted as Pub. L. 104-208 (110 Stat.  
14 3009-625) (as amended by the Nicaraguan Adjustment and Central American Relief  
15 Act (NACARA))...[may] apply for work authorization.” 8 CFR § 274a.12(c)(10).  
16 NACARA applicants are permitted to apply for and be granted employment  
17 authorization when filing their Applications for Suspension of Deportation or Special  
18 Rule Cancellation of Removal (Pursuant to Section 203 of Public Law 105-100  
19 (NACARA)). *See* INSTRUCTIONS FOR APPLICATION FOR EMPLOYMENT  
20 AUTHORIZATION, *Id.* at 7 (“If you are eligible to apply for NACARA 203 relief with  
21 USCIS, you may file Form I-765 together with your Form I-881.”); *see also* 8 CFR §  
22 274a.12(c)(10).

23 85. On June 14, 2021, Defendants released a directive entitled “Bona Fide  
24 Determination Process for Victims of Qualifying Crimes, and Employment  
25 Authorization and Deferred Action for Certain Petitioners” (“Policy Alert”) revising  
26 the guidelines for employment authorization permits for applicants for U status.  
27 USCIS, POLICY ALERT (June 14, 2021),  
28 [https://www.uscis.gov/sites/default/files/document/policy-manual-](https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210614-VictimsOfCrimes.pdf)  
updates/20210614-VictimsOfCrimes.pdf. U visa applicants are immigrants who were

1 victims of serious crimes, suffered serious injury, and cooperated with law  
2 enforcement in the investigation or prosecution of the crime. Because of the “growing  
3 backlog awaiting placement on the waiting list or final adjudication,” not unlike the  
4 SIJ backlog, USCIS has “decided to exercise its discretion under INA 214(p)(6) to  
5 conduct bona fide determinations (BFD) and provide EADs [work authorization] and  
6 deferred action to [U visa applicants] with pending, bona fide petitions who meet  
7 certain discretionary standards.” USCIS, POLICY ALERT at 2.

8 86. In summary, Defendants have the authority to issue employment  
9 authorization to SIJ petitioners. For no rational or compelling reason, unlike with  
10 young and often vulnerable SIJ petitioners, Defendants extend relatively prompt  
11 employment authorization to a range of applicants before their applications are  
12 adjudicated and before their priority dates become current allowing them to apply for  
13 adjustment to lawful permanent resident status. Nothing in the legislative scheme  
14 suggests that this discrimination against immigrant minors and youth who have been  
15 abused, neglected, or abandoned, is something Congress required or intended.

16 D. Unreasonable Delay

17 87. In the William Wilberforce Trafficking Victims Protection  
18 Reauthorization Act of 2008, codified at 8 U.S.C. §1232(d)(2), Congress prioritized  
19 the adjudication of SIJ petitions filed by vulnerable youth by clearly providing that  
20 “[a]ll applications for special immigrant status under section 101(a)(27)(J) of the  
21 Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) *shall* be adjudicated by the  
22 Secretary of Homeland Security *not later than 180 days after the date on which the  
23 application is filed.*” 8 U.S.C. §1232(d)(2) (emphasis added).

24 88. Defendants routinely flout and exceed the 180-day mandate set forth in 8  
25 U.S.C. §1232(d)(2). Current processing times of SIJ petitions often may exceed  
26 Congress’s 180-day mandate. Defendants acknowledge that processing times have  
27 historically ranged from as prompt as 5.5 months to 16.8 months or longer. USCIS,  
28 HISTORICAL NATIONAL MEDIAN PROCESSING TIME (IN MONTHS) FOR ALL USCIS  
OFFICES FOR SELECT FORMS BY FISCAL YEAR, <https://egov.uscis.gov/processing->

1 times/historic-pt (last visited Dec. 13, 2021).

2 89. Plaintiff Montes’s SIJ petition has been pending for nearly seven months.  
3 Plaintiff Cambara’s SIJ petition has been pending for eight months. Plaintiff Merino’s  
4 SIJ petition, for example, was pending for over two years before being approved.

5 90. Defendants’ delay in adjudicating SIJ petitions violates both 8 U.S.C.  
6 §1232(d)(2) and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706(2)(A),  
7 because it is inconsistent with the governing statute.

8 91. The APA provides an avenue through which to compel timely agency  
9 action: it grants courts the power to compel “agency action unlawfully withheld or  
10 unreasonably delayed.” 5 U.S.C. §706(1). When determining whether an agency has  
11 acted within “a reasonable time” for purposes of 5 U.S.C. §555(b), the timeline  
12 established by Congress serves as the frame of reference.

13 V.

14 CLASS ACTION ALLEGATIONS

15 92. The named individual Plaintiffs bring this action pursuant to Federal Rule  
16 of Civil Procedure 23(a) and (b)(2) and (3) on behalf of themselves and the following  
17 similarly situated proposed class members:

18 (a) All persons who have or will submit SIJ petitions (Form I-360) to the  
19 United States Citizenship and Immigration Services (“USCIS”), and who are  
20 deemed ineligible to apply for or receive employment authorization until their  
21 priority dates are current and they may apply for Adjustment of Status.

22 (b) All persons who have or will submit SIJ petitions (Form I-360) to the  
23 USCIS, and whose SIJ petitions have not been adjudicated within 180 days of  
24 being filed, except as to members of the certified class in the case entitled  
25 *Moreno-Galvez v. Cuccinelli*, Case No. C19-0321RSL (U.S. District Court for  
26 the Western District of Washington).

27 93. The exact size of the proposed classes is unknown, but includes tens of  
28 thousands of young immigrants who have applied for SIJ status.

94. As to proposed sub-class (a), the claims of all of the individual Plaintiffs

1 and those of the proposed class members raise common questions of law and fact  
2 concerning whether Defendants' policies and practices of denying employment  
3 authorization to SIJ petitioners and beneficiaries until they are permitted to file  
4 adjustment of status applications violates the Equal Protection guarantee of the Fifth  
5 Amendment. All individual plaintiffs may serve as class representatives.

6 95. As to proposed sub-class (b), the claims of the individual Plaintiffs  
7 Montes and Cambara and those of the proposed class members raise common  
8 questions of law and fact concerning whether Defendants' failure to adjudicate SIJ  
9 petitions within 180 days violates 8 U.S.C. §1232(d)(2) and 5 U.S.C. § 706(1) and  
10 2(A). Plaintiffs Montes and Cambara may serve as class representatives.

11 96. The exact size of the proposed classes is unknown, but the proposed  
12 classes include tens of thousands of young immigrants who have applied for SIJ status.

13 97. The claims of all of the individual Plaintiffs and those of the proposed  
14 class members raise common questions of law and fact concerning whether  
15 Defendants' policies and practices of not adjudicating SIJ applications within 180 days  
16 violates 8 U.S.C. §1232(d)(2) and 5 U.S.C. § 706(1) and 2(A), and whether denying  
17 employment authorization to SIJ petitioners and beneficiaries for several years until  
18 they are permitted to file adjustment of status applications violates the Equal  
19 Protection guarantee of the Fifth Amendment.

20 98. Defendants have acted and will continue to act on grounds generally  
21 applicable to the individual Plaintiffs and the proposed class members. Plaintiffs'  
22 claims are typical of the class members' claims.

23 99. The prosecution of separate actions by individual members of the  
24 proposed class would create a risk of inconsistent or varying adjudications establishing  
25 incompatible standards of conduct for Defendants. Proposed class members are  
26 predominantly indigent, non-English-speaking abused, neglected, or abandoned  
27 youth. Unless this matter proceeds as a class action, the majority of class members  
28 have little chance of securing judicial review of the policy and practice challenged  
herein.

1           100. Defendants, their agents, employees, and predecessors and successors in  
2 office have acted or refused to act, and will continue to act or refuse to act, on grounds  
3 generally applicable to the proposed classes, thereby making injunctive relief and  
4 corresponding declaratory relief appropriate with respect to the class as a whole.  
5 Plaintiffs will vigorously represent the interests of unnamed class members. All  
6 members of the proposed class will benefit by this action. The interests of the named  
7 individual Plaintiffs and those of the proposed class members are identical.

8           101. Plaintiffs are represented by highly experienced lead counsel with years  
9 of experience litigating complex class actions on behalf of children and foreign  
10 nationals, including Class Counsel for the nationwide plaintiff class of detained minors  
11 in *Flores v. Garland*, Case No. CV 85-4544-DMG-AGR<sub>x</sub> (Central District of  
12 California). Plaintiffs' counsel have succeeded in numerous major class action cases  
13 brought on behalf of vulnerable immigrants and refugees. *See, e.g. In re Alien Children*  
14 *Education Litigation, Doe v. Plyler*, 457 U.S. 202, 102 S.Ct. 2382, 95 L.Ed.2d 786  
15 (1982) (striking down Texas law expelling all undocumented children from the public  
16 schools); *League of United Latin American Citizens, et al. v. Pete Wilson, et al.*, No.  
17 Cv. 94-7569-MRP (C.D. Cal.), *LULAC v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995)  
18 (striking down California's anti-immigrant Proposition 187); *Haitian Refugee Center*  
19 *v. Smith*, 676 F.2d 1023 (1982) (halting deportation of thousands of Haitian refugees  
20 seeking political asylum in the United States); *Lopez v. INS*, Cv. No. 78-1912-WB(xJ)  
21 (Central District of California) (nationwide settlement involving the right to legal  
22 counsel of persons arrested by the former INS, now Immigration and Customs  
23 Enforcement (ICE)); *Orantes-Hernandez v. Smith*, 541 F.Supp. 351 (C.D. Cal. 1982)  
24 (injunction covering about 30,000 Salvadoran asylum seekers); *Catholic Social*  
25 *Services v. Meese*, 113 S.Ct. 2485 (1993) (nation-wide class action granting  
26 legalization opportunity for 200,000 immigrants who briefly traveled abroad during  
27 one-time "amnesty" program).  
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VI.

FIRST CAUSE OF ACTION

DEFENDANTS’ POLICY & PRACTICE VIOLATES THE EQUAL PROTECTION GUARANTEE OF THE FIFTH AMENDMENT

102. Plaintiffs incorporate by this reference Paragraphs 1 to 101 above.

103. Defendants’ refusal to accept and adjudicate employment authorization applications by the individual named Plaintiffs and their proposed class members with pending or approved SIJ petitions before they may file applications for Adjustment of Status to lawful permanent resident status is unreasonable and arbitrary, and does not rest upon any rational, substantial, or compelling ground of difference with applicants for other visas or temporary status who are permitted to apply for and be granted employment authorization without having to simultaneously apply for lawful permanent resident status. There exists neither a rational, substantial, nor compelling reason for Defendants’ discriminatory policy that forces young immigrants with pending or approved SIJ petitions to work without authorization to support themselves, endure exploitative working conditions, and often to go cold, hungry, and without stable housing while Defendants do not permit them to apply for or obtain employment authorization until their “priority dates” are current at which time they may file applications for Adjustment of Status.

VII.

SECOND CAUSE OF ACTION

DEFENDANTS ROUTINELY VIOLATE 8 U.S.C. §1232(D)(2)

104. Plaintiffs incorporate by this reference Paragraphs 1 to 101 above.

105. The TVPRA, codified at 8 U.S.C. §1232(d)(2), states that “[a]ll applications for special immigrant status under section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) shall be adjudicated by the Secretary of Homeland Security not later than 180 days after the date on which the application is filed.” 8 U.S.C. §1232(d)(2).

106. Defendants’ policy and practice of routinely delaying the adjudication of

1 SIJ petitions for far longer than 180 days violates 8 U.S.C. §1232(d)(2) and the  
2 Administrative Procedure Act, 5 U.S.C. § 706(1) and 2(A), thereby causing  
3 unnecessary harm to abused, neglected, or abandoned juveniles in need of the  
4 protections that Congress envisioned SIJ status would extend to them.

5 VIII.

6 IRREPARABLE INJURY

7 107. The individual Plaintiffs and their proposed class members have suffered  
8 and will continue to suffer irreparable harm because of Defendants’ policies and  
9 practices as challenged herein. Defendants have deprived and will continue to deprive  
10 Plaintiffs and those similarly situated of their Equal Protection rights under the Fifth  
11 Amendment and their right to have their SIJ petitions adjudicated within 180 days  
12 under 8 U.S.C. §1232(d)(2). Defendants not only routinely violate their statutory  
13 obligation to expeditiously adjudicate SIJ petitions, but also create an arbitrary, years-  
14 long timeline for SIJ petitioners to apply for and obtain employment authorization.

15 108. Collectively, these actions are inconsistent with Congress’s intent to  
16 provide these abused, neglected, and abandoned juveniles with prompt relief. In doing  
17 so, Defendants needlessly force Plaintiffs and those similarly situated to work illegally  
18 in order to survive with all the well-known risks of illegal exploitation. Defendants  
19 also cause Plaintiffs and their proposed class members to often go cold, hungry, and  
20 without stable housing as they wait for several years before they may be granted  
21 employment authorization. Without employment authorization it is often extremely  
22 difficult, if not impossible, for a young SIJ petitioner to properly feed him or herself,  
23 to obtain safe and stable housing, or to procure a social security number, a state ID  
24 card, or driver’s license, and in-state tuition at public colleges and universities.

25 IX.

26 PRAYER FOR RELIEF

27 WHEREFORE, Plaintiffs pray that this Court —

- 28
1. Assume jurisdiction of this cause.
  2. Certify classes as proposed by Plaintiffs of (i) all SIJ applicants with SIJ

1 petitions pending without adjudication for more than six months, and (ii) all SIJ  
2 applicants unable to apply for or receive employment authorization until they are  
3 permitted to file applications for Adjustment of Status.

4 3. Enter declaratory judgment that Defendants’ policies and practices as  
5 challenged herein are unlawful.

6 4. Issue temporary and permanent injunctions enjoining Defendants from  
7 precluding SIJ petitioners from receiving employment authorization while their SIJ  
8 petitions are pending before Defendants and requiring that Defendants adjudicate SIJ  
9 petitions within six months of submission.

10 5. Award the SIJ named individual Plaintiffs nominal damages pursuant to  
11 *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388  
12 (1971).

13 6. Award Plaintiffs costs and attorney’s fees pursuant to the Equal Access  
14 to Justice Act, 28 U.S.C. § 2412.

15 7. Issue such further relief as the Court deems just and proper.

16 Dated: March 7, 2022

Respectfully submitted,

17 /s/ Peter A. Schey

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