CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Peter A. Schey (Cal. Bar No. 58232)
Daniel Bral (Cal. Bar No. 335951)
256 South Occidental Blvd.
Los Angeles, CA 90057
Telephone: (213) 388-8693, ext. 309
Facsimile: (213) 386-9484
Email: pschey@centerforhumanrights.org
daniel@centerforhumanrights.org
Attorneys for Plaintiffs. (Additional counsel listed next page)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASA LIBRE/FREEDOM HOUSE; EL RESCATE; CLERGY AND LAITY UNITED FOR ECONOMIC JUSTICE (CLUE); SALVADORAN AMERICAN LEADERSHIP & EDUCATIONAL FUND (SALEF); CENTRAL AMERICAN RESOURCE CENTER (CARECEN-DC); LA RAZA CENTRO LEGAL, INC.; RENE GABRIEL FLORES MERINO; HILDNER EDUARDO CORONADO AJTUN; CARLOS ABEL HERNANDEZ AREVALO; AXEL YAFETH MAYORGA AGUILERA; RENE ISAI SERRANO MONTES; PAMELA ALEJANDRA RIVERA 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. 2:22-cv-01510-ODW-JPR

FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Additional Counsel for Plaintiffs:

CAMILA ALVAREZ (Cal. Bar No. 305813)
RUTH N. CALVILLO (Cal. Bar No. 312129)
LILIT MELKONYAN (Cal. Bar No. 319834)
Central American Resource Center (CARECEN-LA)
2845 W 7th Street
Los Angeles, CA 9005
Telephone: (213) 385-7800, extension 161
Email: CAlvarez@carecen-la.org
RCalvillo@carecen-la.org
LMelkonyan@carecen-la.org

STEPHANY ARZAGA (Cal. Bar No. 314925)
CYNTHIA HENNING (Cal. Bar No. 295709)
CLAUDIA QUINTANA (Cal. Bar No. 178613)
Legal Services for Children
1254 Market St–3rd Floor
San Francisco, CA 94102
Telephone: (415) 863-3762
Email: stephany@lsc-sf.org
cynthia@lsc-sf.org
claudiaq@lsc-sf.org

CARL BERGQUIST (DC BAR # 1720816)
MARITZA AGUNDEZ (Cal. Bar No. 322158)
Coalition for Humane Immigrant Rights (CHIRLA)
2533 West Third St., Suite 101
Los Angeles, CA 90057
Telephone: (213) 201-3781
Email: magundez@chirla.org

STEPHEN ROSENBAUM (Cal. Bar No. 98634)
MARCOS PACHECO (Cal. Bar No. 341355)
La Raza Centro Legal, Inc.
474 Valencia Street, #295
San Francisco, CA 94103
Telephone: (415) 575-3500
Email: srosenbaum@law.berkeley.edu
Email: marcos@lrcl.org

Additional Counsel for Plaintiffs:

ALEX HOLGUIN (Cal. Bar No. 271861)
Dream Act Lawyers
714 W Olympic Blvd, #450
Los Angeles, CA 90015
Telephone: (213) 765-6084
Email: aholguin@dalimmigration.com
(Appearing for Plaintiff El Rescate)

SILVIA AGUIRRE (Cal. Bar No. 254150)
The Aguirre Law Firm, APC
3521 Whittier Blvd
Los Angeles, CA 90023-1709
Telephone: (213) 386-4649
Email: silvia@getjustice.us
(Appearing for Plaintiff El Rescate)

CRISTEL MARTINEZ (Cal. Bar No. 323658)
Law Offices of Martinez, Nguyen & Magana
13200 Crossroads Pkwy. N., Suite 115
Industry, CA 91746
Telephone: (213) 246-2197
Email: abogada@cristelmartinez.com

JIM TOM HAYNES (DC Bar # 340422)
Haynes Novick Immigration
2001 S Street NW, Suite 550
Washington, DC 20009
Phone: 202-350-3933 direct
Email jimtom@dcimmigrationattorney.com

GENEVIEVE AUGUSTIN (MD BAR # 20079)
Central American Resource Center (CARECEN-DC)
1460 Columbia Road NW, Suite C-1
Washington, DC 20009
Telephone: (202) 328-9799
Email: Genevieve.Augustin@carecendc.org

I.

INTRODUCTION

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

2. Plaintiffs challenge Defendants' refusal to permit abused, neglected, or abandoned immigrant youth seeking Special Immigrant Juvenile status ("SIJ status") to apply for Employment Authorization Documents ("EADs") until their SIJ petitions are approved *and* Defendants, in the exercise of their discretion and on a "case by case" basis--with no published criteria how this discretion will be exercised--decide whether to grant them "deferred action" status.[1] Many of the individual Plaintiffs and members of the class they seek to represent were unaccompanied minors who fled their home countries after being abused, neglected, or abandoned, or are juveniles who experienced abuse, neglect or abandonment in this country. Congress has granted these minors and youth a clear path to SIJ status and later to file applications for Adjustment of Status to obtain lawful permanent resident status.

3. Until March 7, 2022, the day the Complaint in this case was filed, Defendants adhered to a policy that a SIJ petitioner could not file an application for or be granted EADs until their SIJ petitions were approved and they were at the front of the visa quota line such that they could finally file applications for Adjustment of

[1] USCIS defines "deferred action" as "an act of prosecutorial discretion that defers proceedings to remove a noncitizen from the United States for a certain period. Deferred action does not provide lawful status." USCIS, USCIS TO OFFER DEFERRED ACTION FOR SPECIAL IMMIGRANT JUVENILES (March 7, 2022), https://www.uscis.gov/newsroom/alerts/uscis-to-offer-deferred-action-for-special-immigrant-juveniles#:~:text=Deferred%20action%20is%20an%20act,does%20not%20provide%20lawful%20status.

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

Status to obtain lawful permanent resident status. Because of visa quota backlogs, many SIJ petitioners could not file applications for Adjustment of Status for several years after their SIJ petitions were approved.

4. Now, pursuant to Defendants' March 7, 2022, Policy Alert, issued the same day Plaintiffs filed with their Complaint with advance notice to Defendants' counsel, USCIS will, in its "discretion," and on a "case-by-case" basis, consider granting "deferred action" status to SIJ petitioners with approved SIJ petitions and, if such petitioners are granted deferred action status, Defendants will then allow them to apply for EADs. USCIS, POLICY ALERT (March 7, 2022), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20220307-SIJAndDeferredAction.pdf ("Policy Alert"). This "Policy Alert" was issued without public notice or comment, and, showing Defendants' haphazard approach to the issue of SIJ petitioner's eligibilty for EADs, was followed *the very next day* by the publication of "final" SIJ regulations, which maintain defendants' pre-Policy Alert policy of only allowing SIJ petitioners to file applications for EADs when their SIJ petitions were approved and they were at the front of the visa quota line and could finally file applications for Adjustment of Status.

5. Defendants' Policy Alert and their final regulations often force Plaintiffs and the tens of thousands of class members they seek to represent to go cold, hungry, or with unstable housing for many years, and to work in underground exploitative jobs in order to survive during the time it takes before Defendants allow them to apply for or receive EADs under the Policy Alert or the final regulations.

6. Defendants' policy and practice violates the Equal Protection guarantee of the Fifth Amendment. While Defendants' policy forces SIJ petitioners to wait for what could be years to apply for or obtain employment authorization, for no rational reason Defendants allow other vulnerable immigrants filing visa petitions to apply for and be granted employment authorization while their visa petitions are pending or when they are approved. There is no rational, substantial, or compelling reason for the disparate and discriminatory way in which Defendants treat young abused, neglected,

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

and abandoned immigrants filing SIJ petitions. Defendants' policy irrationally causes Plaintiffs and tens of thousands of class members to often suffer severe and irreparable harms, including the inability to obtain the basic necessities of life. However, the Policy Alert and the final regulations, whichever Defendants elect to follow, also incredibly invite *thousands* of unscrupulous employers to violate 8 U.S.C. § 1324a, which makes it unlawful for employers to hire immigrants who do not possess valid employment authorization documents.

7. While Congress did not address when or how Defendants should provide SIJ petitioners with EADs, it is doubtful it contemplated these petitioners would live on the streets, or go hungry, or work for employers universally violating federal employer sanctions laws, not to mention work safety and minimum wage laws, while their SIJ petitions are pending.

8. Plaintiffs also challenge Defendants' violation of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457 ("TVPRA"), codified at 8 U.S.C. §1232(d)(2), which provides in part 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) (emphasis added). Defendants routinely flout and exceed the 180-day mandate set forth in 8 U.S.C. §1232(d)(2).

9. Defendants March 7, 2022, Policy Alert does not address compliance with 8 U.S.C. §1232(d)(2). However, the final regulations, issued the day after Plaintiffs filed their Complaint, state that if a SIJ petition is "missing [any] required initial evidence," the 180-day time period imposed by 8 U.S.C. §1232(d)(2) "will start over from the date of receipt of the required initial evidence ..." 8 C.F.R. § 103.2(b)(10)(i). 87 Fed. Reg. 13066, 13112 (March 8, 2022) ("SIJ Regulations"). In addition, if Defendants for any reason request that the SIJ petitioner "submit additional evidence," any time limitation imposed by 8 U.S.C. §1232(d)(2) "will be suspended as of the date of request ... [and] will resume at the ... point where it

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

stopped when USCIS receives the requested evidence or response, or a request for a decision based on the evidence." *Id*. Nothing in the text of 8 U.S.C. §1232(d)(2) supports the "start-stop" rules adopted in Defendants final regulations.

10. By this action, Plaintiffs seek injunctive and declaratory relief on behalf of themselves and all similarly situated petitioners for SIJ status requiring that Defendants promptly permit them to file applications for EADs upon their filing of approvable petitions, and adjudicate their SIJ petitions within 180 days from the date they are filed.

II.
JURISDICTION AND VENUE

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

12. This Court also has jurisdiction over the Defendants pursuant to 28 U.S.C. § 1391(e)(1), because Defendants are agencies and officers of the United States.

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

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

III.
PARTIES

15. Plaintiff Casa Libre/Freedom House is a state licensed group home in Los Angeles that provides transitional living services and related social and legal services for detained and homeless unaccompanied immigrant minors and youth. *See* www.casalibrela.org. Casa Libre's clients have experienced a range of harms caused

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

by Defendants' prior policy of refusing to allow them to seek EADs until their priority dates were current and they could apply for Adjustment of. Status, and will continue to suffer a range of harms caused by Defendants' March 7, 2022, policy under which Defendants will, in their "discretion," and on a "case-by-case" basis, consider granting "deferred action" status to some SIJ petitioners with approved SIJ petitions and then allow them to apply for EADs. Defendants' challenged policies and practices, including their failure to adjudicate SIJ petitions within 180 days, make Casa Libre's accomplishment of its core goals far more difficult and diverts its limited resources to assisting former residents facing extreme difficulties trying to survive on their own without employment authorization.

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

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

18. Plaintiff Salvadoran American Leadership & Educational Fund (SALEF)

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

is a non-profit organization based in Los Angeles, California. *See* www.salef.org. SALEF has worked closely with SIJ-eligible immigrant juveniles and SIJ petitioners, including former residents of Plaintiff Casa Libre, referring them for legal representation and providing them with wrap-around services including temporary housing, referrals for medical care, and gang-intervention programs. Defendants' challenged policies and practices as described above make Plaintiff SALEF's work substantially more difficult and time consuming and diverts its limited resources from the provision of services for other low-income clients.

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

20. Plaintiff La Raza Centro Legal, Inc. is a community-based legal services organization dedicated to empowering Latino, immigrant, and low-income communities throughout the Bay Area in California, and advocating for their civil and human rights. *See* https://lrcl.org/. Plaintiff La Raza Centro Legal, Inc. represents abused, neglected, and abandoned SIJ eligible immigrant juveniles. Defendants' challenged policies and practices as described above make Plaintiff La Raza Centro Legal, Inc.'s work substantially more difficult and time consuming and diverts its limited resources from the provision of services for other low-income clients.

21. Plaintiff Rene Gabriel Flores Merino ("Plaintiff Merino") is a resident of Los Angeles County, California. On or about November 9, 2021, USCIS approved Plaintiff Merino's SIJ status. Pursuant to Defendants' challenged EAD policies and practices, Plaintiff Merino has experienced and continues to experience a range of

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

harms including, but not limited to, inability to secure stable employment and housing.

22. Plaintiff Hildner Eduardo Coronado Ajtun ("Plaintiff Ajtun") is a resident of Los Angeles, California. On or about January 5, 2021, USCIS approved Plaintiff Ajtun's SIJ petition. Pursuant to Defendants' challenged EAD policies and practices, Plaintiff Ajtun has experienced and continues to experience a range of harms including, but not limited to, inability to secure stable employment and housing.

23. Plaintiff Carlos Abel Hernandez Arevalo ("Plaintiff Arevalo") is a resident of Los Angeles County, California. On or about December 8, 2021, Plaintiff Arevalo filed a SIJ petition with the USCIS. His petition remains pending. Pursuant to Defendants' challenged EAD policies and practices, Plaintiff Arevalo has experienced and continues to experience a range of harms including, but not limited to, inability to secure stable employment and housing, and an inability to continue his education.

24. Plaintiff Axel Yafeth Mayorga Aguilera ("Plaintiff Aguilera") is a resident of Alexandria, Virginia. Plaintiff Aguilera is eligible for and on or about August 29, 2019, applied for SIJ status. On or about March 13, 2020, USCIS approved Plaintiff Aguilera's SIJ Petition. Pursuant to Defendants' challenged EAD policies and practices, Plaintiff Aguilera has experienced and continues to experience a range of harms including, but not limited to, securing a stable job with lawful wages and constant exposure to housing instability.

25. Plaintiff Rene Isai Serrano Montes ("Plaintiff Montes") is a resident of Los Angeles, California. Plaintiff Montes is eligible for and on August 30, 2021 applied for SIJ status. His petition remains pending. Pursuant to Defendants' challenged EAD policies and practices, and failure to adjudicate SIJ petitions within six months, Plaintiff Montes' SIJ application has not been adjudicated within six months of submission, and he has experienced and continues to experience a range of harms including, but not limited to, securing a stable job with lawful wages.

26. Plaintiff Pamela Alejandra Rivera Cambara ("Plaintiff Cambara") is a resident of Los Angeles, California. Plaintiff Cambara is eligible for and on or about July 1, 2021 applied for SIJ status. Her petition remains pending. Pursuant to

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

Defendants' challenged EAD policies and practices, and failure to adjudicate SIJ petitions within six months, she has experienced and continues to experience a range of harms including, but not limited to, securing a job with lawful wages while attending school.

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

28. Defendant Jaddou is the Director of the U.S. Citizenship and Immigration Services, a component agency of DHS and the Government of the United States. She is sued in her official capacity. Defendant Jaddou and USCIS are responsible for administering the nation's immigration laws. Amongst other tasks, Defendant and USCIS oversee the adjudication of petitions for SIJ and for employment authorization. *See* Section 451(b) of the Homeland Security Act of 2002, Pub. L. 107-296 (PDF), 116 Stat. 2135, 2205 (November 25, 2002); 6 U.S.C. § 271; 8 CFR § 274a.12.

29. Defendant USCIS is a component agency of DHS and the Government of the United States. Defendant USCIS is responsible for administering the nation's immigration system. Amongst other tasks, Defendant USCIS adjudicates petitions for SIJ and applications for employment authorization. *See* Section 451(b) of the Homeland Security Act of 2002, Pub. L. 107-296 (PDF), 116 Stat. 2135, 2205 (November 25, 2002); 6 U.S.C. § 271; 8 CFR § 274a.12.

IV.

STATEMENT OF FACTS

A. Basic SIJ Statutes and Rules

30. Congress created the SIJ status in 1990 as a means of alleviating "hardships experienced by some dependents of United States juvenile courts by

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

providing qualified aliens with the opportunity to apply for special immigrant classification and lawful permanent resident status, with possibility of becoming citizens of the United States in the future." 58 Fed. Reg. 42843, 42844 (Aug. 12, 1993). SIJ status is available if:

> (i) [the juvenile immigrant] has been declared dependent on a juvenile court located in the United States or whom such a court has legally committed to, or placed under the custody of, an agency or department of a State, or an individual or entity appointed by a State or juvenile court located in the United States, and whose reunification with 1 or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;
>
> (ii) [it] has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien's or parent's previous country of nationality or country of last habitual residence; and
>
> (iii) … the Secretary of Homeland Security consents to the grant of special immigrant juvenile status ....

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

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

32. In 2008, Congress passed the Trafficking Victims Protection Reauthorization Act 2008 ("TVPRA"), Pub. L. No. 110-457, §235(d), 112 Stat. 5044 (2008), which *inter alia* replaced a foster care requirement with more expansive language providing that young immigrants could apply for SIJ status based on a state court's finding that "reunification with one or both of the immigrant's parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law." TVPRA §235(d)(1)(A); INA § 101(a)(27)(J)(i), 8 U.S.C. 1101(a)(27)(J)(i). The TVPRA also clarified that an applicant's eligibility for SIJ status is dependent on the

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

juvenile's age at the time he or she applied for SIJ status rather than at the time the petition is processed. *Id*. §235(d)(6). *It also amended the SIJ statute, adding a provision that USCIS adjudicate SIJ petitions within 180 days of filing*. TVPRA § 235; 8. U.S.C. § §1232(d)(2).

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

34. The adjustment of status statute, 8 U.S.C. §1255(h), provides in part that "[i]n applying this section to a special immigrant described in section 1101(a)(27)(J) of this title - (1) such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States; and (2) in determining the alien's admissibility as an immigrant-(A) paragraphs (4)[2], (5)(A)[3], (6)(A)[4], (6)(C)[5],

---

[2] Paragraph 4 provides, in part, that any noncitizen "who ... in the opinion of the 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).

[3] Paragraph 5(A) provides, in part, that any noncitizen "who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless 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, qualified…and available at the time of application for a visa." 8 U.S.C. § 1182(a)(5)(A).

[4] Paragraph 6(A) provides, in part, that a noncitizen "present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible." 8 U.S.C. § 1182(a)(6)(A).

[5] Paragraph 6(C) provides, in part, that any noncitizen "who, by fraud or willfully 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).

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

(6)(D)[6], (7)(A)[7], and (9)(B)[8] of section 1182(a) of this title shall not apply; and (B) the Attorney General may waive other paragraphs of section 1182(a) of this title (other than paragraphs (2)(A)[9], (2)(B)[10], (2)(C)[11] ..." 8 U.S.C. §1255(h).

35. Until March 7, 2022, the day Plaintiffs filed their Complaint, SIJ petitioners had to wait until their "priority dates" were "current" so they could file Adjustment of Status applications and only then did Defendants permit them to apply for employment authorization. Pursuant to 8 CFR § 274a.12(c)(9), as Defendants made applicable to SIJ petitioners, the "classes of aliens authorized to accept employment [include a SIJ applicant] … who has filed an application for adjustment of status to

---

[6] Paragraph 6(D) provides, in part, that any noncitizen "who is a stowaway is inadmissible." 8 U.S.C. § 1182(a)(6)(D).

[7] Paragraph 7(A) provides, in part, that any immigrant "(I) who is not in possession of a valid unexpired immigrant visa ... or other valid entry document ... and a valid 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 inadmissible." 8 U.S.C. § 1182(a)(7)(A).

[8] Paragraph 9(B) provides, in part, that any noncitizen "(other than a[] [noncitizen] 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 departed the United States…prior to the commencement of proceedings…and again 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 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).

[9] Paragraph (2)(A) provides, in part, that any noncitizen "convicted of, or who admits having committed ... (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or (II) a violation of ... any law or regulation ... relating to a controlled substance ... is inadmissible." 8 U.S.C. § 1182(a)(2)(A).

[10] Paragraph (2)(B) provides, in part, that any noncitizen "convicted of 2 or more offenses ... regardless of whether the conviction was in a single trial ... for which the aggregate sentences to confinement were 5 years or more is inadmissible." 8 U.S.C. § 1182(a)(2)(B).

[11] 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).

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

lawful permanent resident pursuant to part 245 of this chapter." 8 CFR § 274a.12(c)(9); *see also* USCIS, INSTRUCTIONS FOR APPLICATION FOR EMPLOYMENT AUTHORIZATION, at 1, 15 (Aug. 25, 2020), https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf ("You may file Form I-765 if you…[are an] Adjustment Applicant under Section 245--(c)(9). File Form I-765 together with Form I-485, Application to Register Permanent Residence or Adjust Status…").

36. 8 U.S.C. § 1255(a) provides in part, an immigrant may be granted lawful permanent residence if the immigrant (1) makes an application for such adjustment, (2) is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) "an immigrant visa is immediately available to him *at the time his application[for Adjustment of Status] is filed*." 8 U.S.C. § 1255(a) (emphasis added). *See also* 8 CFR § 245.1(a) ("Any [noncitizen in the U.S.] ... may apply for adjustment of status to that of a lawful permanent resident of the United States if the applicant is eligible to receive an immigrant visa and an immigrant visa is immediately available at the time of filing of the application…"). 8 CFR § 245.1(g)(1) similarly provides that an immigrant "is ineligible for the benefits of section 245 of the Act unless an immigrant visa is immediately available to him or her at the time the application is filed."

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

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

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

39. Under Defendants' policy challenged in Plaintiffs' Complaint, and their "final" regulations issued the day after Plaintiffs filed their Complaint, only when a SIJ petitioner's priority date was current in the 'EB-4' preference category was the petitioner permitted to apply for permanent resident status and an EAD.

40. On March 7, 2022, having been provided advance notice of the filing of Plaintiffs' Complaint, Defendants announced a new policy now stating that USCIS would exercise its "discretion" on a "case-by-case basis" whether to grant "deferred action" status (i.e. temporary stays of removal) to certain SIJ petitioners with already approved SIJ petitions, and, if granted deferred action status, these SIJ petitioners could then apply for EADs. Policy Alert at 2. Defendants provided no criteria or time-line on how or when they would decide if a SIJ petitioner with an approved petition would be granted deferred action status.

41. Yet, one day later, on March 8, 2022, Defendants issued "final" regulations addressing the adjudication of SIJ petitions, and like their pre-Policy Alert position, the final regulations state that "[a] SIJ petitioner or beneficiary may apply for employment authorization pursuant to the pending adjustment application via Form I-765, Application for Employment Authorization." SIJ Regulations, FR at 13100. *See also* SIJ Regulations, FR at 13104 ("The affected population of newly eligible SIJ classified individuals who have filed a Form I-485, may go on to file a Form I-765, to apply for an Employment Authorization Document (EAD).").

42. Defendants March 7, 2022, Policy Alert does not address compliance with the 180-day adjudication rule set forth in 8 U.S.C. §1232(d)(2). However, the SIJ

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

Regulations issued March 8, 2022, state that if a SIJ petition is "missing [any] required initial evidence," the 180-day time period imposed by 8 U.S.C. §1232(d)(2) "will start over from the date of receipt" of the required additional evidence. SIJ Regulations, FR at 13112. In addition, if Defendants for any reason request that the SIJ petitioner submit additional evidence, any time limitation imposed by 8 U.S.C. §1232(d)(2) "will be suspended as of the date of request ... [and] will resume at the ... point where it stopped when USCIS receives the requested evidence or response, or a request for a decision based on the [existing] evidence." *Id*.

43. Defendants maintain that they appropriately incorporated standards from a separate regulation, 8 C.F.R. § 103.2, under which USCIS may toll some adjudication deadlines when it requires additional evidence from the petitioner to adjudicate the application. That regulation addresses other immigration benefit applications that do not include the clear 180-day statutory deadline Congress adopted in 8 U.S.C. §1232(d)(2). Plaintiffs' experiences and Defendants' own data demonstrate that in thousands of cases Defendants have delayed adjudicating petitions past the 180-day deadline, whether or not additional evidence was requested. In the event a SIJ petition is denied during the mandatory 180-day adjudication period because a petitioner did not timely submit requested additional evidence, under 8 C.F.R. § 103.5, the petitioner may move to reopen or reconsider the decision once s/he gathers any additional evidence required. Alternatively, the petitioner may appeal the decision pursuant to 8 C.F.R. § 204.11(e) and submit additional evidence on appeal.

B. Facts Regarding the Plaintiffs

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

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

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

of Health and Human Services ("ORR").

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

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

48. On or about November 23, 2020, Plaintiff Merino filed a SIJ petition with USCIS. On November 9, 2021, long after the six months within which the law requires such petitions to be adjudicated, Defendants approved Plaintiff Merino's SIJ petition. However, Defendants' long-standing policy and practice did not permit Plaintiff Merino to file an application for employment authorization for several more years until Plaintiff Merino was eligible to apply for Adjustment of Status under INA § 245. Under Defendants' new SIJ Regulations, Plaintiff Merino still may not apply for an EAD until Plaintiff Merino is eligible to apply for Adjustment of Status. Under Defendants' March 7, 2022, Policy Alert, Plaintiff Merino cannot apply for an EAD unless and until Defendants, in their "discretion", and on a "case-by-case" basis, at an unknown time, applying unknown criteria, decide whether to grant Plaintiff Merino "deferred action" status. Only if Defendants eventually grant Plaintiff Merino deferred action status will they allow Plaintiff Merino to apply for an EAD.

49. Defendants' EAD policies and practices have caused Plaintiff Merino to experience a range of irreparable harms including but not limited to housing insecurity, an inability to secure a stable job with lawful wages, and an inability to afford basic living expenses including for food and clothing. The lack of work authorization has prevented Plaintiff Merino from obtaining a social security number or accessing

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

unemployment insurance and social security benefits. If Plaintiff Merino must work to support themself, Plaintiff Merino must find employment only with an employer violating federal employer sanctions laws.

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

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

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

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

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

55. On March 12, 2020, Plaintiff Ajtun filed a SIJ petition with USCIS. On January 5, 2021, long after it was required to adjudicate his petition, Defendants finally approved Plaintiff Ajtun's SIJ petition. Defendants' long-standing policy and practice

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

did not permit Plaintiff Ajtun to receive an application for employment authorization for several more years until he was eligible to apply for adjustment of status under INA § 245. Under Defendants' new SIJ Regulations, Plaintiff Ajtun still may not apply for an EAD until he is eligible to apply for Adjustment of Status. Under Defendants' March 7, 2022, Policy Alert, Plaintiff Ajtun cannot apply for an EAD unless and until Defendants, in their "discretion", and on a "case-by-case" basis, at an unknown time, applying entirely unknown criteria, decide whether to grant him "deferred action" status. Only if Defendants eventually grant Plaintiff Ajtun deferred action status will they allow him to apply for an EAD.

56. Defendants' EAD policies and practices have caused Plaintiff Ajtun to experience and continue to experience a range of irreparable harms including but not limited to housing insecurity, employment exploitation, and inability to secure a stable job with lawful wages. In 2019 and 2020 he was forced to work for an unlicensed contractor under unsafe and exploitative working. The employer violated federal employer sanctions laws (8 U.S.C. § 1324a) by hiring Plaintiff Ajtun. Plaintiff Ajtun was illegally paid below the minimum wage and was often forced to work without pay for several weeks.

57. Although Plaintiff Ajtun knew that he was being exploited, when working he was afraid to report labor law and health and safety law violations to any state or federal authorities as he feared retaliation by his employer, who knew Plaintiff Ajtun was not authorized to be employed. Plaintiff Ajtun was threatened by his employer that it would contact immigration authorities and have him arrested and deported if he complained to authorities about his working conditions. To this date, Plaintiff Ajtun continues to experience unfair treatment, exploitation, unfair wages, and unsafe working conditions.

58. Plaintiff Aguilera is a resident of Alexandria, Virginia. He is a citizen and native of Honduras. He is currently 20 years of age. In Honduras Plaintiff Aguilera was harassed, kidnapped, and beaten by gang members. Plaintiff Aguilera's father abandoned and neglected him and his mother neglected him and forced him to work

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

rather than attend school from the age of thirteen. Plaintiff Aguilera fled Honduras as a result of gang threats and neglect and abandonment by his parents.

59. On or about February 21, 2018, Plaintiff Aguilera entered the United 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 him for about thirteen months. Plaintiff Aguilera was then released to Plaintiff Casa Libre/Freedom House on or about March 19, 2019 and resided in the shelter until about April 2020.

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

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

62. Under Defendants' long-standing policy and procedure Plaintiff Aguilera was not eligible to receive employment authorization for several years until his priority date was current so that he can apply for permanent resident status. Under Defendants' new SIJ Regulations, Plaintiff Aguilera still may not apply for an EAD until he is eligible to apply for Adjustment of Status. Under Defendants' March 7, 2022, Policy Alert, Plaintiff Aguilera cannot apply for an EAD unless and until Defendants, in their "discretion", and on a "case-by-case" basis, at an unknown time, applying entirely unknown criteria, decide whether to grant him "deferred action" status. Only if Defendants eventually grant Plaintiff Aguilera deferred action status will they allow him to apply for an EAD.

63. Defendants' EAD policies and practices have caused Plaintiff Aguilera to experience and continue to experience a range of harms including, but not limited to securing a stable job with lawful wages and exposure to constant housing instability.

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

When he has worked, Plaintiff Aguilera was illegally paid below the minimum wage. Because of Defendants' EAD policy, every employer Plaintiff Aguilera works for is violating federal employer sanctions laws.

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

65. Plaintiff Arevalo does not know his parents' whereabouts. He had no one 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 in the United States.

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

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

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

69. Under Defendants' long-standing policy and procedure Plaintiff Arevalo was not eligible to receive employment authorization for several years until his priority date was current and he can apply for permanent resident status. Under Defendants' new SIJ Regulations, Plaintiff Arevalo still may not apply for an EAD until he is eligible to apply for Adjustment of Status. Under Defendants' March 7, 2022, Policy Alert, Plaintiff Arevalo cannot apply for an EAD unless and until Defendants first

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

approve his SIJ petition and then, in their "discretion", and on a "case-by-case" basis, at an unknown time, applying entirely unknown criteria, decide whether to grant him "deferred action" status. Only if Defendants eventually grant Plaintiff Arevalo deferred action status will they allow him to apply for an EAD.

70. Defendants' EAD policies and practices have caused Plaintiff Arevalo to experience and continue to experience a range of harms including, but not limited to inability to secure a stable job with lawful wages and exposure to constant housing instability. Plaintiff Arevalo currently has temporary housing in a shelter in Los Angeles. Without employment authorization, when required to leave his temporary housing he will not be able to afford stable housing.

71. Plaintiff Montes is a resident of Los Angeles, California. He is a citizen 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 Plaintiff Montes was three years old, his mother left him at the care of his grandmother. After moving in with his grandmother, Plaintiff Montes had little communication with his mother. Plaintiff Montes grew up in poverty with his grandmother. He was not able to finish high school in Honduras due to inadequate financial support.

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

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

74. Under Defendants' long-standing policy and procedure Plaintiff Montes was also not eligible to receive employment authorization for several years until his

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

priority date was current and he could apply for permanent resident status. Under Defendants' new SIJ Regulations, Plaintiff Montes still may not apply for an EAD until he is eligible to apply for Adjustment of Status. Under Defendants' March 7, 2022, Policy Alert, Plaintiff Montes cannot apply for an EAD unless and until Defendants first approve his SIJ petition and then, in their "discretion", and on a "case-by-case" basis, at an unknown time, applying entirely unknown criteria, decide whether to grant him "deferred action" status. Only if Defendants eventually grant Plaintiff Montes deferred action status will they allow him to apply for an EAD.

75. Defendants' EAD policies and practices have caused Plaintiff Montes to experience and continue to experience a range of harms including, but not limited to inability to secure a stable job with lawful wages and exposure to constant housing instability.

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

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

78. Plaintiff Cambara is eligible for and on or about July 1, 2021, applied for SIJ status. More than six months later, her petition remains pending. At Defendants' current rate of processing, her SIJ petition will not be adjudicated for several more months, significantly longer than the six months required by statute.

79. Under Defendants' long-standing policy and procedure Plaintiff Cambara was not eligible to receive employment authorization for several years until her priority date was current and she can apply for permanent resident status. Under Defendants' new SIJ Regulations, Plaintiff Cambara still may not apply for an EAD until she is eligible to apply for Adjustment of Status. Under Defendants' March 7, 2022, Policy Alert, Plaintiff Cambara cannot apply for an EAD unless and until

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

Defendants first approve her SIJ petition and then, in their "discretion", and on a "case-by-case" basis, at an unknown time, applying entirely unknown criteria, decide whether to grant her "deferred action" status. Only if Defendants eventually grant Plaintiff Cambara deferred action status will they allow her to apply for an EAD.

80. Defendants' EAD policies and practices have caused Plaintiff Cambara to experienced and continue to experience a range of harms including, but not limited to, inability to secure stable employment to help with household expenses while she attends school.

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

C. Defendants make employment authorization promptly available to other categories of visa applicants but not to SIJ petitioners

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

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

84. Unlike with SIJs petitioners, Defendants permit other vulnerable petitioners for temporary or permanent residence to apply for employment authorization when their underlying petitions or applications are pending or when they are approved.

85. For example, created by The Victims of Trafficking and Violence

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464-1548 (2000), T-1 nonimmigrant beneficiaries are victims of trafficking. 22 U.S.C. §7105, the statute outlining "protection and assistance for victims of trafficking," says nothing about the issuance of employment authorization to T-1 nonimmigrant applicants. . However, under 8 U.S.C. § 1101(i)(2), "with respect to each nonimmigrant alien described in subsection (a)(15)(T)(i), "the Secretary of Homeland Security shall, during the period the alien is in lawful temporary resident status under that subsection [i.e. has been granted T visa status], grant the alien authorization to engage in employment in the United States and provide the alien with an 'employment authorized' endorsement or other appropriate work permit." However, as a matter of policy, Defendants permit bona fide T-1 nonimmigrant applicants to apply for and be granted employment authorization *before* their T visa applications are adjudicated. 8 CFR § 214.11(e). USCIS policy states that "DHS is authorized to grant an EAD in connection with a *bona fide determination* [of T visa petitions] …Once an application is deemed bona fide ... the applicant can request employment authorization ... *See* 8 CFR 274a.12(c)(14)." 81 Fed. Reg. 92266, 92285 (Dec. 19, 2016) (emphasis added). A 2009 Memorandum from Acting USCIS Deputy Director Aytes confirms "[i]f a[ ] [T visa] application is *deemed bona fide*, USCIS will provide written confirmation to the applicant and use various means ... whether through continued presence or as a result of a bona fide determination, [to] grant[ ] employment authorization ..." *Id.* (Emphasis added). Defendants also "automatically" grant T visa petitioners with bona fide applications deferred action status, "stay[ing] the execution of any final order of removal, deportation, or exclusion." 8 CFR 214.11(e)(3). For no rational reason, the same protections are not provided to young vulnerable SIJ petitioners who file "bona fide" petitions.

86. In addition, Defendants' policy provides that:

> An alien granted T-1 nonimmigrant status *is authorized to work incident to status*. *There is no need for an alien to file a separate form to be granted employment authorization*. USCIS will issue an initial Employment Authorization Document

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

> (EAD) to such aliens, which will be valid for the duration of the alien's T-1 nonimmigrant status.

8 CFR 214(d)(11) (emphasis added). For no rational reason, even under Defendants March 7, 2022, Policy Alert, SIJ petitioners actually granted SIJ status are not "authorized to work incident to status," but may only apply for EADs if, in Defendants' "discretion," on a :"case-by-case" basis, they are also granted deferred action status.

87. In summary, Defendants have the authority to promptly issue employment authorization to SIJ petitioners before their SIJ applications are approved. Nothing in the legislative scheme suggests that Defendants' discrimination against immigrant minors and youth who have been abused, neglected, or abandoned, is something Congress required or intended.

D. Unreasonable Delay

88. In the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, codified at 8 U.S.C. §1232(d)(2), Congress prioritized the adjudication of SIJ petitions filed by vulnerable youth by clearly providing 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) (emphasis added).

89. Defendants routinely flout and exceed the 180-day mandate set forth in 8 U.S.C. §1232(d)(2). Current processing times of SIJ petitions often exceed Congress's 180-day mandate. At present, at Defendants' California Processing Center, the "estimated time range" for processing I-360 petitions is "17.5 Months to 23 Months." USCIS, CHECK CASE PROCESSING TIMES, https://egov.uscis.gov/processing-times/ (last checked April 22, 2022). At Defendants' Vermont Processing Center, the "estimated time range" for processing I-360 petitions is 9.5 Months to 12.5 Months. *Id*.

90. Defendants' March. 7, 2022, Policy Alert nowhere addresses compliance with 8 U.S.C. §1232(d)(2). However, Defendants' March 8, 2022, final SIJ regulations

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

state that even if a SIJJ opetition is filed but is later deemed to be "missing [any] required initial evidence," the 180-day time period imposed by 8 U.S.C. §1232(d)(2) "will start over from the date of receipt of the required initial evidence ..." SIJ Regulations, FR at 13112. Further, if after a SIJ petition is filed Defendants for any reason request that the SIJ petitioner submit additional evidence, any time limitation imposed by 8 U.S.C. §1232(d)(2) "will be suspended as of the date of request ... [and] will resume at the ... point where it stopped when USCIS receives the requested evidence or response, or a request for a decision based on the [existing] evidence." *Id*. Nothing in the plain text of 8 U.S.C. §1232(d)(2) supports Defendants' new "start-stop" rules.

91. Defendants' interpretation of 8 U.S.C. §1232(d)(2) as allowing "start-stop" rules has been rejected by the District Court for the Western District of Washington in *Moreno Galvez* v. *Cuccinelli,* No. 2:19-cv-321-RSL (W.D. Wash. Oct. 5, 2020) (Docket No.76), *appeal docketed*, *Moreno Galvez v. Renaud* No. C19-0321-RSL (9th Cir. Dec. 4, 2020).

92. The individual Plaintiffs and the clients of the organizatiional Plaintiffs have routinely experienced delays in the adjudication of their SIJ petitions for well over 180 days.

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

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

V.

CLASS ACTION ALLEGATIONS

95. The named individual Plaintiffs bring this action pursuant to Federal Rule

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

of Civil Procedure 23(a) and (b)(2) and (3) on behalf of themselves and the following similarly situated proposed class members:

(a) All persons who have or will submit approvable SIJ petitions (Form I-360) to the United States Citizenship and Immigration Services ("USCIS"), and who are deemed ineligible to apply for or receive employment authorization until their priority dates are current and they may apply for Adjustment of Status or their SIJ petitions have been approved and in Defendants' discretion they have been granted deferred action status.

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

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

97. As to proposed sub-class (a), the claims of all of the individual Plaintiffs and those of the proposed class members raise common questions of law and fact concerning whether Defendants' policies and practices of denying employment authorization to SIJ petitioners and beneficiaries until they have an approved SIJ petition and are granted deferred action status violates the Equal Protection guarantee of the Fifth Amendment. All individual plaintiffs may serve as class representatives.

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

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

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

100. The claims of all of the individual Plaintiffs and those of the proposed class members raise common questions of law and fact concerning whether Defendants' policies and practices of not adjudicating SIJ applications within 180 days violates 8 U.S.C. §1232(d)(2) and 5 U.S.C. § 706(1) and 2(A), and whether not permitting SIJ petitioners to apply for EADs until their priority dates are current and they may apply for Adjustment of Status, or in Defendants' discretion are granted deferred action, violates the Equal Protection guarantee of the Fifth Amendment.

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

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

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

104. Plaintiffs are represented by highly experienced lead counsel with years of experience litigating complex class actions on behalf of children and foreign nationals, including Class Counsel for the nationwide plaintiff class of detained minors in *Flores v. Garland,* Case No. CV 85-4544-DMG-AGRx (Central District of California). Plaintiffs' counsel have succeeded in numerous major class action cases

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

brought on behalf of vulnerable immigrants and refugees. *See, e.g. In re Alien Children Education Litigation, Doe v. Plyler*, 457 U.S. 202, 102 S.Ct. 2382, 95 L.Ed.2d 786 (1982) (striking down Texas law expelling all undocumented children from the public schools); *League of United Latin American Citizens, et al. v. Pete Wilson, et al*., No. Cv. 94-7569-MRP (C.D. Cal.), *LULAC v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995) (striking down California's anti-immigrant Proposition 187); *Haitian Refugee Center v. Smith*, 676 F.2d 1023 (1982) (halting deportation of thousands of Haitian refugees seeking political asylum in the United States); *Lopez v. INS*, Cv. No. 78-1912-WB(xJ) (Central District of California) (nationwide settlement involving the right to legal counsel of persons arrested by the former INS, now Immigration and Customs Enforcement (ICE)); *Orantes-Hernandez v. Smith*, 541 F.Supp. 351 (C.D. Cal. 1982) (injunction covering about 30,000 Salvadoran asylum seekers); *Catholic Social Services v. Meese*, 113 S.Ct. 2485 (1993) (nation-wide class action granting legalization opportunity for 200,000 immigrants who briefly traveled abroad during one-time "amnesty" program).

VI.

FIRST CAUSE OF ACTION

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

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

106. Defendants' refusal to accept or adjudicate employment authorization applications by the individual named Plaintiffs and their proposed class members with pending or approved SIJ petitions before they may file for Adjustment of Status, or in Defendants' discretion on a case-by-case basis using unknown criteria are granted deferred action status, is unreasonable and arbitrary, and does not rest upon any rational, substantial, or compelling ground of difference with applicants for T visas who are permitted to apply for and be granted employment authorization when their underlying petitions are pending and are automatically granted employment authorization incident to their status when their petitions are approved. There exists

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

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 for employers universally violating federal employer sanctions laws, and to often go cold, hungry, and without stable housing while awaiting adjudication of their SIJ petitions or applications for Adjustment of Status.

VII.

SECOND CAUSE OF ACTION

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

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

108. 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).

109. Defendants' policy and practice of routinely delaying the adjudication of SIJ petitions for longer than 180 days and SIJ Regulation stopping the clock on §1232(d)(2)'s 180 day rule whenever Defendants decide that (i) a SIJ petition is "missing [any] required initial evidence," in which case the 180 day time period imposed by 8 U.S.C. §1232(d)(2) "will start over from the date of receipt of the required initial evidence," or (ii) a SIJ petitioner must submit additional evidence, in which case the time limit imposed by §1232(d)(2) "will be suspended as of the date of request ... [and] will resume ... when USCIS receives the requested evidence or response, or a request for a decision based on the [existing] evidence," violate the terms of 8 U.S.C. §1232(d)(2) and the Administrative Procedure Act, 5 U.S.C. § 706(1) and 2(A), thereby causing unnecessary delay and harm to abused, neglected, or abandoned juveniles in need of the prompt protections that Congress envisioned SIJ status would extend to them.

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

VIII.

IRREPARABLE INJURY

110. As described above, the individual Plaintiffs and their proposed class members and the SIJ clients of the organizational Plaintiffs have suffered and will continue to suffer irreparable harm because of Defendants' policies and practices as challenged herein. Defendants have deprived and will continue to deprive Plaintiffs and those similarly situated of their Equal Protection rights under the Fifth Amendment and their right to have their SIJ petitions adjudicated within 180 days under 8 U.S.C. §1232(d)(2). Defendants not only routinely violate their statutory obligation to expeditiously adjudicate SIJ petitions, but also create an arbitrary timeline for SIJ petitioners to apply for and obtain employment authorization.

111. Collectively, these actions are inconsistent with Congress's intent to provide these abused, neglected, and abandoned juveniles with prompt relief. In doing so, Defendants needlessly force Plaintiffs and those similarly situated to work illegally in order to survive with all the well-known risks of illegal exploitation. Defendants also cause Plaintiffs and their proposed class members to often go cold, hungry, and with unstable housing as they wait for several months, if not years, before they may be granted employment authorization. Without employment authorization it is often extremely difficult, if not impossible, for a young SIJ petitioner to properly feed him or herself, to obtain safe and stable housing, or to procure a social security number, a state ID card, or driver's license, and in-state tuition at public colleges and universities. Defendants' policy also encourages thousands of employers to violate federal employer sanctions laws by hiring Plaintiffs and their proposed class members who are not authorized by Defendants to be lawfully employed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court —

1. Assume jurisdiction of this cause.

2. Certify classes as proposed by Plaintiffs of (i) all SIJ applicants with SIJ petitions pending without adjudication for more than six months, and (ii) all SIJ

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

applicants unable to apply for or receive employment authorization until their SIJ petitions have been approved and, in Defendants' discretion, they have been granted deferred action status.

3. Enter declaratory judgment that Defendants' policies and practices as challenged herein are unlawful.

4. Issue temporary and permanent injunctions enjoining Defendants from precluding SIJ petitioners with approvable petitions from applying for employment authorization and only permitting SIJ petitioners with approved petitions granted deferred action status to apply for or receive employment authorization, and requiring that Defendants adjudicate SIJ petitions within six months of submission.

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

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

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

Dated: April 22, 2022

Respectfully submitted,

/s/ Peter A. Schey
Peter A. Schey
Attorneys for Plaintiffs

PETER A. SCHEY
DANIEL BRAL
Center for Human Rights & Constitutional Law

CAMILA ALVAREZ
RUTH N. CALVILLO
LILIT MELKONYAN
CARECEN-LA (Central American Resource Center)

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

CARL BERGQUIST
MARITZA AGUNDEZ
Coalition for Humane Immigrant Rights (CHIRLA)

STEPHANY ARZAGA
CYNTHIA HENNING
CLAUDIA QUINTANA
Legal Service for Children

STEPHEN ROSENBAUM
MARCOS PACHECO
La Raza Centro Legal, Inc.

ALEX HOLGUIN
Dream Act Lawyers

SILVIA AGUIRRE
The Aguirre Law Firm, APC

CRISTEL MARTINEZ
Law Offices of Martinez, Nguyen & Magana

JIM TOM HAYNES
Haynes Novick Immigration

GENEVIEVE AUGUSTIN
CARECEN-DC (Central American Resource Center)

/ / /

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693

CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2022, I served the foregoing FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF on all counsel of record by means of the District Clerk's CM/ECF electronic filing system.

/s/Peter Schey
Counsel for Plaintiffs
CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW
Peter A. Schey

Center for Human Rights & Constitutional Law
256 S. Occidental Blvd.
Los Angeles, CA 90057
213/388-8693