UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Bianey GARCIA PEREZ, Maria MARTINEZ CASTRO, J.M.Z., Alexander MARTINEZ HERNANDEZ, on behalf of themselves as individuals and on behalf of others similarly situated,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES; Ur JADDOU, Director, U.S. Citizenship and Immigration Services; EXECUTIVE OFFICE FOR IMMIGRATION REVIEW; David NEAL, Director, Executive Office for Immigration Review,

Defendants.

Case No. 2:22-cv-806

CLASS ACTION COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

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INTRODUCTION

1. Plaintiffs and the class members that they seek to represent are asylum and withholding of removal applicants. They challenge Defendants' policies and practices that unlawfully deny them work authorization while their asylum and withholding claims are pending adjudication by Defendants beyond the six-month time period prescribed by the Immigration and Nationality Act (INA). Due to Defendants' unlawful policies and practices preventing them from qualifying for employment authorization, Plaintiffs and proposed class members are in dire financial straits. They have been forced to rely on the goodwill of others to support themselves and their families while they await final decisions on their applications.

2. Under the INA, Congress directed Defendants to adjudicate asylum applications within 180 days after the application is filed. During this 180-day period, an asylum applicant is not eligible to work. In most cases, however, asylum applications filed by individuals in removal proceedings are not—and, at times, cannot be—adjudicated within 180 days. Indeed, many applications will linger for years. In recognition of the economic hardship asylum seekers generally face, Congress also provided asylum applicants with the right to obtain an Employment Authorization Document (EAD) when their asylum applications have been pending for more than 180 days and they meet other eligibility requirements. By regulation, the running of this 180-day waiting period for an EAD—referred to here as "the asylum EAD clock"—may be suspended only for applicant-caused delay in adjudicating an asylum application.

3. Defendants have adopted uniform nationwide policies and practices to administer the asylum EAD clock. Significantly, however, Plaintiffs and proposed class members are at Defendants' mercy as to how Defendants administer the asylum EAD clock, because there is no notice requirement and no viable mechanism to challenge when the clock starts, stops, or does

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not restart. The policies and practices at issue in this case unlawfully prevent applicants who are otherwise statutorily eligible for work authorization on account of meeting the 180-day mark.

4. Indeed, numerous systemic problems have plagued the administration of the asylum EAD clock since its inception over two decades ago. Ten years ago, two of the undersigned counsel represented a nationwide class before this very Court, challenging Defendants' policies and practices regarding the asylum EAD clock. *See A.B.T. v. U.S. Citizenship & Immigr. Servs.*, No. C11-2108 RAJ (W.D. Wash. 2011). The lawsuit alleged, inter alia, that Defendants unlawfully (1) failed to provide legally sufficient notice of actions that would stop the time on the asylum EAD clock and a meaningful opportunity to challenge such determinations; (2) refused to start the asylum EAD clock by requiring applicants to wait until their next hearing (oftentimes for more than year) to file their applications; and (3) failed to restart the asylum EAD clock after asylum applicants prevailed on an appeal of an immigration judge (IJ)'s denial of an asylum application.

5. On November 4, 2013, this Court approved a final settlement for a certified nationwide class. *See A.B.T. v. U.S. Citizenship & Immigr. Servs.*, No. C11-2108 RAJ, 2013 WL 5913323 (W.D. Wash. Nov. 4, 2013). *See also* Maltese Decl. Ex. A, *A-B-T-* Settlement Agreement.

6. The *A-B-T-* Settlement Agreement provided critical relief to thousands of class members. The agreement allowed them to qualify for and obtain employment authorization so that they could support themselves and their family members while waiting for adjudication of their asylum claims. However, the settlement expired on May 7, 2019.[1] Shortly thereafter,

[1] Section II.B.1. of the agreement provided that the effective date was the date the Court preliminarily approved the settlement. Ex. A. That occurred on May 8, 2013. *See A.B.T.*, 2013

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Defendants eliminated several of the safeguards they had put in place under the *A-B-T-* Settlement Agreement. As Defendant U.S. Citizenship and Immigration Services (USCIS) explained on its website, "[t]he *A-B-T-* Settlement Agreement has expired. Note: Effective Aug. 25, 2020, USCIS implemented new procedures for determining whether an applicant for asylum would be eligible for employment authorization." USCIS, *The ABT Settlement Agreement* (last updated June 14, 2019), https://www.uscis.gov/archive/the-abt-settlement-agreement.

7. Defendant USCIS and its parent agency, the Department of Homeland Security (DHS), introduced two new rules in June 2020 that took effect in August 2020: Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, 85 Fed. Reg. 37502 (June 22, 2020), and Asylum Application, Interview, and Employment Authorization for Applicants, 85 Fed. Reg. 38532 (June 26, 2020) (the "2020 asylum rules"). Among other things, these new rules extended the waiting period for EAD eligibility from 180 days to 365 days, eliminated employment authorization for a large groups of asylum applicants, and prohibited employment authorization during any period of judicial review of a denied application for asylum or withholding of removal.

8. However, on February 7, 2022, the U.S. District Court for the District of Columbia vacated the new rules in *Asylumworks v. Mayorkas*, No. 20-CV-3815 (BAH), --- F. Supp. 3d ---, 2022 WL 355213 (D.D.C. Feb. 7, 2022). The government did not appeal the vacatur.

9. Accordingly, the D.C. district court's order restored the prior rules—which were controlling at the time of the *A-B-T-* Settlement Agreement and had remained in effect through

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WL 5913323, at *1. Pursuant to Section II.C.14, the agreement terminated six years after the effective date. Maltese Decl. Ex. A, *A-B-T-* Settlement Agreement.

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August 24, 2020. However, to date, Defendants have not restored the critical safeguards implemented under the *A-B-T-* Settlement Agreement. Consequently, Plaintiffs now challenge Defendants' policies and practices that continue to unlawfully prevent them from working while their asylum and withholding claims are pending.

10. Specifically, Plaintiffs challenge four of Defendants' policies and practices as violating the INA, the governing regulations, the Administrative Procedure Act (APA), and the U.S. Constitution. First, on behalf of all putative class members, Plaintiffs challenge Defendants' policy and practice of failing to provide notice and a meaningful opportunity to contest decisions adversely impacting their asylum EAD clocks. Defendants' decision to stop, not start, or not restart an applicant's asylum EAD clock is made without written notice and without an adequate mechanism for the applicant to challenge or remedy Defendants' improper determination.

11. Second, the Remand Subclass challenges Defendants' policy and practice of failing to restart the asylum EAD clock and to credit time accrued where an IJ denies an asylum or withholding of removal application, but the applicant then prevails on appeal to the Board of Immigration Appeals (BIA) or a federal court of appeals—thereby restoring the pendency of their application. In the *A-B-T-* Settlement Agreement, Defendants agreed to restart the asylum EAD clock in such a situation and to credit the time during which the application was pending on appeal. However, after the *A-B-T-* Settlement Agreement expired and DHS implemented the 2020 asylum rules, Defendants rescinded this safeguard. Even though the 2020 rules have since been vacated, Defendants have not restored the *A-B-T-* policy to protect the Remand Subclass.

12. Third, for the Unaccompanied Children Subclass, Plaintiffs challenge Defendants' policy and practice of stopping the asylum EAD clock where the application is transferred from the immigration court to USCIS pursuant to the statutory directive at 8 U.S.C. § 1158(b)(3)(C)

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that USCIS be the first agency to adjudicate an unaccompanied child's asylum application. Defendants unlawfully and prematurely stop the EAD clock even though any potential delay is not applicant-caused. Instead, the delay is the result of the statutory mandate coupled with USCIS's failure to timely adjudicate the application.

13. Fourth, for the Change of Venue Subclass, Plaintiffs challenge Defendants' practice of stopping the asylum EAD clock where the asylum applicant seeks a change of venue to another immigration court, including after being released from custody or otherwise permitted to enter the country and relocate to a new residence. Defendants' practice violates their own policy in some instances, as the Executive Office for Immigration Review (EOIR)'s policy manual specifically dictates that the asylum EAD clock does *not* stop where an applicant is released from custody and their case is transferred to a non-detained docket.

14. Plaintiffs and the class and subclasses they seek to represent have actively pursued their asylum and/or withholding applications beyond the 180-day waiting period, excluding any periods of applicant-caused delay. However, as a direct result of the challenged policies and practices, Plaintiffs and putative class members have been or will be unlawfully deprived of timely, adequate notice of asylum EAD clock determinations and a meaningful opportunity to challenge or remedy these determinations. Plaintiffs and the putative subclasses also have been or will be unlawfully denied work authorization due solely to Defendants' policies and practices regarding the asylum EAD clock.

JURISDICTION AND VENUE

15. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq., the regulations implementing the INA, and the Administrative Procedure Act (APA), 5 U.S.C. § 701 et seq.

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16. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the United States. The Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201–2202 and 5 U.S.C. § 702. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e)(1) because Defendants are U.S. agencies and officers of the United States acting in their official capacities. A substantial part of the events or omissions giving rise to the claims occurred in this District, Plaintiffs Bianey Garcia Perez and J.M.Z. reside in this District, and no real property is involved in this action.

PARTIES

17. Plaintiffs are all noncitizens in the United States who have been placed in removal proceedings, have filed complete Applications for Asylum and Withholding of Removal (Form I-589 or "asylum application"), have filed or will file an Application for Employment Authorization (Form I-765 or "EAD application") pursuant to 8 C.F.R. § 274a.12(c)(8), and would be eligible for employment authorization but for Defendants' unlawful policies and practices.

18. Plaintiff Bianey Garcia Perez is a citizen of Mexico who resides in Burien, Washington.

19. Plaintiff Maria Martinez Castro is a citizen of Mexico who resides in Irving, Texas.

20. Plaintiff J.M.Z. is a citizen of Honduras who resides in Seattle, Washington.

21. Plaintiff Alexander Martinez Hernandez is a citizen of El Salvador who resides in San Jose, California.

22. Defendant USCIS is a component agency of the Department of Homeland Security responsible for the timely and accurate processing and adjudication of EAD

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applications. In making determinations to grant or deny EAD applications, USCIS is responsible for the calculation of the asylum EAD clock and for lawfully determining whether there has been delay requested or caused by the applicant for purposes of the asylum EAD clock.

23. Defendant Ur Jaddou is the Director of USCIS and has ultimate responsibility for the timely and accurate processing and adjudication of EAD applications and for the accurate calculation of the asylum EAD clock. She is sued in her official capacity.

24. Defendant EOIR is a component agency of the Department of Justice responsible for conducting removal hearings of noncitizens. Asylum applications are filed with EOIR when an applicant is in removal proceedings. With respect to asylum cases over which it has jurisdiction, EOIR has responsibility for the calculation of the asylum EAD clock and for lawfully determining whether there has been delay requested or caused by the applicant for purposes of the asylum EAD clock.

25. Defendant David L. Neal is the Director of EOIR and has ultimate responsibility for overseeing the operation of the immigration courts and the Board of Immigration Appeals, including the calculation of the asylum EAD clock. He is sued in his official capacity.

LEGAL AND FACTUAL BACKGROUND

Asylum Application Process

26. Any noncitizen who is in the United States or seeking admission at a port of entry may apply for asylum and/or withholding of removal. 8 U.S.C. §§ 1158(a)(1), 1231(b)(3)(A). An applicant must demonstrate either past persecution or a fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1)(B)(i), 1231(b)(3)(A).

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27. Absent exceptional circumstances, an asylum application must be adjudicated within 180 days after it is filed. 8 U.S.C. § 1158(d)(5)(A)(iii). USCIS and EOIR are responsible for calculating this 180-day period for applications pending before each agency. 8 C.F.R. §§ 208.7(a)(2), 1208.7(a)(2).[2] Delay requested or caused by the applicant will toll this period. *Id.* For asylum applications heard during removal proceedings, EOIR has adopted an asylum adjudications clock to track the 180-day period.

28. Noncitizens who are not in removal proceedings may file "affirmative" asylum applications with USCIS. They must attend an interview with a USCIS asylum officer, who may grant, deny, refer the case to EOIR, or dismiss the application. 8 C.F.R. §§ 208.9(b), 208.14(c).

29. In some cases, after a noncitizen files an "affirmative" asylum application, an asylum officer may "refer" the case to EOIR, thus initiating removal proceedings. 8 C.F.R. §§ 208.14(c), 1208.14(c). The asylum application is then considered a "defensive" asylum application. Referral to an IJ is not a final decision in the case and does not constitute a denial of the application. *Id.* Instead, an IJ reviews the previously-filed asylum application *de novo*.

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[2] Effective May 31, 2022, DHS's and EOIR's regulations were updated to reflect the revisions codified by a new, joint rule issued by DHS and EOIR. *See* Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 Fed. Reg. 18078 (Mar. 29, 2022). Plaintiffs cite to the regulations as in effect on May 31, 2022.

Both 8 C.F.R. § 208.7 and 8 C.F.R. § 1208.7, as well as other provisions cited in this complaint, were also modified by new rules in 2020 that have since been vacated or enjoined. Section 208.7 was modified by Asylum Application, Interview, and Employment Authorization for Applicants, 85 Fed. Reg. 38532 (June 26, 2020). As noted above, this rule was vacated by *Asylumworks v. Mayorkas*, No. 20-CV-3815 (BAH), --- F. Supp. 3d ---, 2022 WL 355213 (D.D.C. Feb. 7, 2022). The government has not appealed that decision.

Section 1208.7 was rescinded by EOIR's new asylum rule in 2020. *See* Procedures for Asylum and Withholding of Removal, 85 Fed. Reg. 81698 (Dec. 16, 2020). However, this rule also has since been enjoined. *See Pangea Legal Servs. v. U.S. Dep't of Homeland Sec.*, 512 F. Supp. 3d 966 (N.D. Cal. 2021). Because of those court decisions, the previous versions of these regulations remain in effect, except as modified by DHS and EOIR's new rule that took effect on May 31, 2022.

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30. If the IJ denies an application for asylum and/or withholding of removal, the applicant may appeal to the BIA. 8 U.S.C. § 1158(d)(5)(A)(iv). If the BIA affirms the denial, the applicant may file a petition for review with the appropriate federal court of appeals. 8 U.S.C. § 1252(a), (b)(2).

EAD Application Process for Applicants in Removal Proceedings

31. The INA authorizes DHS to adopt regulations authorizing employment for asylum applicants. 8 U.S.C. § 1158(d)(2). While regulations prescribe that USCIS has discretion to grant or deny EAD applications for over a dozen categories of immigrants and nonimmigrants, they afford USCIS no such discretion with respect to EAD applications filed by asylum applicants. *Compare* 8 C.F.R. § 274a.13(a)(1), *with id.* § 274a.13(a)(2).[3] Thus, an asylum applicant who has met the regulatory requirements has a right to work authorization. 8 C.F.R. § 274a.13(a)(2).

32. If an asylum and/or withholding of removal application is not adjudicated within 180 days (not including periods of applicant-caused delay), an applicant may be provided employment authorization. 8 U.S.C. § 1158(d)(2).

33. USCIS is responsible for adjudicating all EAD applications, including those filed by individuals in removal proceedings. An asylum seeker may file an EAD application (Form I-765) with USCIS any time after the first 150 days of the 180-day waiting period. 8 C.F.R. § 208.7(a)(1).

34. When an asylum applicant is in removal proceedings, USCIS uses EOIR's 180-day asylum adjudications clock to calculate the 180-day waiting period for EAD eligibility.

[3] As with 8 C.F.R. § 208.7, the previous version of this rule prior to the 2020 asylum rules is currently in effect. Under that version of the regulation, USCIS has no discretion to deny an EAD application filed by an asylum applicant.

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35. Once an EAD has been granted, the applicant remains eligible to renew it throughout the adjudication of the asylum application, including administrative and judicial appeals. 8 C.F.R. §§ 208.7(b), 1208.7(b).

The Asylum EAD Clock

36. For both affirmative and defensive asylum applicants, the 180-day asylum EAD clock begins to run on the date the applicant files a complete asylum application. 8 C.F.R. §§ 208.7(a)(1), 1208.7(a)(1), 208.3(c)(3), 1208.3(c)(3), 208.4, 1208.4.

37. Significantly, the asylum EAD clock continues to run except for any period of "delay requested or caused by the applicant," 8 C.F.R. §§ 208.7(a)(2), 1208.7(a)(2), or unless the asylum application is denied before USCIS adjudicates the EAD application, 8 C.F.R. §§ 208.7(a)(1), 1208.7(a)(1). Applicant-caused delays include an applicant's "failure without good cause to follow the requirements for fingerprint processing" and a failure to appear in person to receive and acknowledge receipt of a USCIS asylum officer's decision. 8 C.F.R. §§ 208.7(a)(2), 208.9(d).

38. Defendants USCIS and EOIR are jointly responsible for calculating the 180-day waiting period for EAD eligibility for asylum applicants. 8 C.F.R. §§ 208.7(a)(2), 1208.7(a)(2). For EAD applications filed in connection with affirmative asylum cases, USCIS tracks the 180-day waiting period and relies upon its own calculations to decide if the 180-day requirement is satisfied. In contrast, for EAD applications filed in connection with defensive asylum applications before the immigration court—whether referred from USCIS or filed directly with the immigration court—USCIS relies upon EOIR's calculation of the 180-day waiting period.

39. EOIR's asylum EAD clock is operated by IJs and court staff. Staff and judges use adjournment codes to classify the latest proceedings in a removal case. EOIR maintains the list

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of adjournment codes as part of its policy manual. *See* Maltese Decl. Ex. I, EOIR Policy Manual, App'x O – Adjournment Codes (last updated May 18, 2022). The adjournment codes contain a list of codes with definitions and earmarks that indicate whether a code "will stop the EAD Clock until the next hearing." *Id*.

40. EOIR takes the position that:

> [b]ecause the [asylum] EAD Clock is an administrative function, and decisions regarding the [asylum] EAD Clock are not adjudications, immigration courts will reject any motion related to the [asylum] EAD Clock, and Immigration Judges will not issue orders regarding the [asylum] EAD Clock. If an asylum applicant believes the [asylum] EAD Clock in his or her case is incorrect, he or she should address the matter to the Court Administrator—or the Board Clerk's Office if the case is pending before the Board—in writing. However, USCIS remains the appropriate adjudicator of [noncitizen] employment authorization applications. Thus, an asylum applicant who—after contacting EOIR—continues to believe the [asylum] EAD Clock in his or her case is incorrect should contact USCIS regarding his or her application.

Maltese Decl. Ex H, Mem. from James R. McHenry III, Director, to All of EOIR, PM 21-06, at 5 n.15 (Dec. 4, 2020). In contrast, USCIS refers to EOIR all applicants with cases before an immigration court or the BIA who have questions or disputes over asylum EAD clock calculations. *See* Maltese Decl. Ex. G, USCIS, Applicant-Caused Delays in Adjudication of the "Form I-589, Application for Asylum and for Withholding of Removal" and Impact on Employment Authorization (Aug. 25, 2020).

Defendants' Unlawful Policies and Practices

41. Plaintiffs and putative class members challenge four specific policies and practices with respect to the asylum EAD clock. For convenience, these are identified as "Notice and Opportunity to Challenge Policy and Practice," "Remand Policy and Practice," "Unaccompanied Child Policy and Practice," and "Change of Venue Practice." These policies and practices conflict with the INA, governing regulations, the APA, and the U.S. Constitution.

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42. *Notice and Opportunity to Challenge Policy and Practice*. Defendants' decisions to stop, not start, or not restart the asylum EAD clock are made without written notice or explanation, and are often made off the record at an immigration hearing. For applicants in removal proceedings, the IJ and staff are under no obligation to inform the asylum applicant when they select an adjournment code that will stop, not start, or not restart the asylum EAD clock. Applicants generally do not learn of asylum EAD clock determinations unless they call the automated court system or until after USCIS denies their EAD applications. And even those who call will only learn how many days are on their asylum EAD clock and must call back on consecutive days to determine whether their clock is running or stopped.

43. Asylum applicants generally are not informed of the reasons that the asylum EAD clock was stopped, not started, or not restarted in their cases unless and until they make a specific inquiry. This is true even where USCIS denies an EAD application based on the asylum EAD clock. USCIS's EAD denial decisions do not address how USCIS calculated the applicant's asylum EAD clock or any derogatory evidence on which USCIS relied.

44. USCIS relies on EOIR to administer the asylum EAD clock for persons in removal proceedings. However, contrary to 8 C.F.R. 103.2(b)(16)(i), USCIS does not disclose this information to an asylum applicant when it denies the applicant's EAD application based on EOIR's calculation of the asylum EAD clock.

45. Moreover, Plaintiffs and proposed class members do not have a meaningful opportunity to contest or remedy improper asylum EAD clock determinations. Nor is there any administrative mechanism to compel Defendants to issue work authorizations for which an applicant is otherwise eligible after the 180-day waiting period has expired.

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46. Implementing regulations prohibit any administrative appeal of an agency decision to deny an EAD application, even where the basis is improper calculation of the asylum EAD clock. *See* 8 C.F.R. 274a.13(c).

47. Prior to the *A.B.T.* Settlement Agreement, the USCIS Ombudsman recognized that the lack of a mechanism for asylum seekers to acquire accurate information about the amount of time accrued on their asylum EAD clocks creates confusion about employment eligibility. In August 2011, the USCIS Ombudsman issued recommendations acknowledging the existence of systemic asylum EAD clock problems, including the lack of a mechanism for an applicant to acquire accurate information about his or her asylum EAD clock and the lack of a standard procedure for correcting errors in the asylum EAD clock. *See* Maltese Decl. Ex. O USCIS Ombudsman, *Employment Authorization for Asylum Applicants: Recommendations to Improve Coordination and Communication* 1, 5–6 (Aug. 26, 2011).

48. To contest a miscalculation of the asylum EAD clock, applicants must resort to an informal and scattershot inquiry process that is inadequate to remedy legal and factual errors. Indeed, the USCIS Ombudsman previously recognized the problems created by the lack of any standard procedure for correcting erroneous asylum EAD clock determinations:

> Ensuring that a delay is correctly identified as attributable either to the applicant or to the Federal Government is critical. Problems occur when delays are incorrectly attributed to the asylum applicant in circumstances that are actually caused by EOIR or USCIS. Additionally, when a delay that was caused by or requested by the applicant comes to an end, there is no easy way for the applicant to work with the Federal Government to restart the clock.

Id. at 2.

49. Even though USCIS is responsible for adjudicating EAD applications, USCIS does not accept responsibility for correcting the asylum EAD clock for individuals in removal proceedings. Applicants who are fortunate enough to discover that the asylum EAD clock has

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not started, is stopped, or has not restarted have no mechanism to correct such errors through USCIS. Instead, Defendants require such applicants to contact the immigration court or the BIA.

50. There is no formal process for contesting the determinations made by the immigration court or BIA. Complaints about asylum EAD clock decisions are handled by local court administrators or the clerk at the BIA. IJs will not entertain motions regarding the asylum EAD clock.

51. There is no formal process for contacting immigration court administrators regarding the asylum EAD clock. Instead, this is sometimes done by written correspondence, email, phone conversations, or direct communications at the court window, depending upon the preferences of local immigration court officials. There is no requirement that court administrators provide any written notice of decisions regarding the asylum EAD clock, even if they believe that the asylum EAD clock was improperly stopped. There is no opportunity to challenge a court administrator's decision.

52. By failing to provide applicants with written notice of decisions on their asylum EAD clocks and an adequate opportunity to challenge improper asylum EAD clock determinations, Defendants violate asylum applicants' rights under the Due Process Clause of the Fifth Amendment, the APA, and governing regulations.

53. *Remand Policy and Practice.* Defendants have a nationwide policy and practice of not starting or restarting the asylum EAD clock after a previously denied asylum and/or withholding application has been remanded from either the BIA or a federal court of appeals for further adjudication. The asylum EAD clock stops running when an asylum or withholding of removal application is denied before an EAD has been issued. 8 C.F.R. §§ 208.7(a)(1), 1208.7(a)(1). However, some of these applicants later prevail in an administrative appeal before

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the BIA or on a petition for review before a circuit court. Those decisions result in a remand of the case, and there is no longer a basis to keep the asylum EAD clock stopped.

54. In this situation, the asylum EAD clock should restart as of the point at which it had previously stopped. However, Defendants' policy and practice is to permanently stop the asylum EAD clock upon the IJ's denial of an asylum or withholding application and to refuse to start or restart it upon a remand from the BIA or a circuit court.

55. Defendants previously remedied this problem in the *A-B-T-* Settlement Agreement. The agreement provided that:

> [f]ollowing a BIA remand of a case for the adjudication of an asylum claim, whether on appeal from an immigration judge decision or following a remand from a U.S. Court of Appeals, for purposes of EAD eligibility, the applicant will be credited with the number of days that elapsed between the initial immigration judge denial and the date of the BIA remand order. In addition, the applicant will accrue time creditable toward employment authorization from the date of the BIA remand order going forward, exclusive of applicant caused delays.

Maltese Decl. Ex. A, *A-B-T-* Settlement Agreement, at 19.

56. However, now that the *A-B-T-* Settlement Agreement has expired, Defendants have returned to their prior practice of refusing to acknowledge that a remand restarts the clock. Instead, Defendants have a policy and practice of deeming the asylum EAD clock permanently stopped any time an asylum or withholding of removal application is denied, even if the denial is later vacated and the case is remanded.

57. By refusing to start or restart the asylum EAD clocks of applicants whose cases have been remanded for further adjudication, Defendants' Remand Policy and Practice unlawfully prevents applicants from obtaining employment authorization.

58. *Unaccompanied Children Policy and Practice.* Defendants have a policy and practice of stopping the asylum EAD clocks of unaccompanied children in removal proceedings

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when a case is adjourned to permit USCIS to adjudicate a pending asylum application. *See, e.g.*, Maltese Decl. Ex. I, EOIR Policy Manual, App'x O - Adjournment Codes ("*7A . . . Adjourned to allow the adjudication of an application pending with DHS.").

59. Congress enacted special protections for unaccompanied children, as defined at 6 U.S.C. § 279(g)(2). One of the protections is that USCIS asylum officers, not IJs, must initially adjudicate any asylum application submitted by an unaccompanied child, regardless of whether the child is in removal proceedings. *See* 8 U.S.C. § 1158(b)(3)(C) ("[A]n asylum officer . . . shall have initial jurisdiction over any asylum application filed by an unaccompanied [noncitizen] child.").

60. Thus, pursuant to 8 U.S.C. § 1158(b)(3)(C), when an unaccompanied child files an asylum application while in removal proceedings, the IJ must adjourn removal proceedings to comply with the statutory mandate that USCIS adjudicate the asylum application in the first instance.

61. However, Defendants have a policy and practice of stopping the asylum EAD clock when the IJ adjourns or administratively closes the case to await adjudication of an unaccompanied child's asylum application by USCIS. Defendants use a particular code that stops the asylum EAD clock in such cases. *See* Maltese Decl. Ex. I, EOIR Policy Manual, App'x O - Adjournment Codes ("*7A . . . Adjourned to allow the adjudication of an application pending with DHS."). The clock stoppage occurs even though the initial adjudication by USCIS is required by statute, and even though USCIS has complete control over how long it will take to adjudicate the application and is able to calculate any periods of applicant-caused delay while the application is pending before it. Consequently, Defendants deprive unaccompanied children of the right to obtain employment authorization.

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62. *Change of Venue Practice*. Defendants have a widespread practice of stopping the asylum EAD clock when a person in removal proceedings has filed an asylum application, but subsequently files a motion to change venue to the immigration court which has jurisdiction over the place where the applicant currently resides in the United States.

63. This practice routinely affects two groups in particular. First, it affects those who are released from detention. Many asylum applicants are stopped at the southern border, detained by DHS, and placed in removal proceedings. While in DHS custody, they file asylum applications. Some are then released. Yet the stoppage of the asylum EAD clock penalizes them for being released, as if the necessary change of venue constitutes an applicant-caused delay.

64. Second, this practice affects asylum applicants who have been placed in DHS's "Migrant Protection Protocols," a program through which DHS forces certain asylum seekers to wait in Mexico for a hearing date at a southern-border immigration court. These individuals file their applications while being forced to remain in Mexico. Yet many later enter the United States and then move to locations far from the southern border where their court hearings previously took place.

65. When asylum applicants establish a new residence, the venue for their immigration court proceedings is generally transferred (upon the request of the applicant or DHS) to the court with jurisdiction over their new place of residence. 8 C.F.R. § 1003.20. However, even though these transfers follow standard practice and are often initiated by DHS, Defendant EOIR has a widespread practice of stopping the asylum EAD clock by classifying the transfer as a delay attributable to the applicant.

66. Defendants' practice is inconsistent with their own adjournment codes. Those codes instruct that the asylum EAD clock should not be stopped when a case is "[a]djourned

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because [it] was transferred to a non-detained docket." Maltese Decl. Ex. I, EOIR Policy Manual, App'x O – Adjournment Codes, 1B.

INDIVIDUAL PLAINTIFFS' ALLEGATIONS

Bianey Garcia Perez

67. Plaintiff Bianey Garcia Perez is a noncitizen from Mexico who applied for asylum on April 5, 2018.

68. Ms. Garcia Perez and her three daughters initially sought admission to the United States on November 15, 2017. The family was placed in removal proceedings three days later, on November 18.

69. At a master calendar hearing (MCH) before the Seattle Immigration Court on April 5, 2018, Ms. Garcia Perez filed her application for asylum and chose a non-expedited date for her individual calendar hearing (ICH). Because she chose a non-expedited date, EOIR did not start her asylum EAD clock.

70. On December 19, 2018, Ms. Garcia Perez attended her ICH. At that hearing, the IJ denied Ms. Garcia Perez's asylum application and ordered her removed.

71. Ms. Garcia Perez subsequently filed a notice of appeal with the BIA. Over two years later, on April 19, 2021, the BIA denied the appeal.

72. On May 17, 2021, Ms. Garcia Perez filed a petition for review with the Ninth Circuit Court of Appeals. The Court remanded Ms. Garcia Perez's case on January 3, 2022, vacating the agency decision denying her asylum and withholding application. However, following the remand, EOIR did not start Ms. Garcia Perez's asylum EAD clock. The clock remains at zero days.

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73. As a result, and due solely to Defendants' Remand Policy and Practice, Ms. Garcia Perez cannot accrue time towards EAD eligibility. But for that policy, Ms. Garcia Perez would be eligible for an EAD.

74. Defendants' policy causes Ms. Garcia Perez significant harm. She is the sole financial provider for her family, and without an EAD, she will need to continue her irregular work as a house cleaner, at construction sites, or as a waiter, making only around $500 a month on average. Ms. Garcia Perez does not have any other forms of income, and the father of her children provides no financial help. Consequently, she must depend on the assistance of family and friends to survive.

75. However, even with this assistance, Ms. Garcia Perez's inability to obtain employment authorization has resulted in significant financial instability. She and her three daughters have often had to rent a single room in an apartment, at times living with strangers. They have been evicted twice and have been homeless, living in an abandoned house.

76. By unlawfully delaying the date of Ms. Garcia Perez's EAD eligibility, Defendants prolong these harms and effectively deprive Ms. Garcia Perez and her family of the ability to obtain basic shelter and financial stability.

Maria Martinez Castro

77. Plaintiff Maria Martinez Castro is a noncitizen from Honduras who first applied for asylum on April 19, 2019.

78. Ms. Martinez did not accept the earliest date for her initial immigration court hearing, and thus her asylum clock did not begin to run until this hearing occurred on July 30, 2019.

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79. On August 9, 2019, the IJ issued a decision denying Ms. Martinez's asylum application, and her asylum EAD clock stopped at that point.

80. Ms. Martinez appealed the IJ's decision to the BIA, which dismissed the appeal on January 17, 2020.

81. Ms. Martinez subsequently filed a petition for review with the Ninth Circuit Court of Appeals. On July 14, 2021, the Ninth Circuit granted the petition for review, vacated the agency decision ordering Ms. Martinez removed, and remanded the case to the BIA for further consideration of Ms. Martinez's asylum application.

82. However, despite the court order vacating the agency decision and remanding Ms. Martinez's asylum application for further consideration, EOIR and USCIS did not restart the asylum EAD clock. The clock remains stopped at nine days.

83. Due to Defendants' Remand Policy and Practice, Ms. Martinez's asylum EAD clock cannot accrue time towards EAD eligibility. But for Defendants' Remand Policy and Practice, Ms. Martinez would be eligible for an EAD at this time.

84. Instead, Defendants consider Ms. Martinez ineligible for an EAD.

85. Ms. Martinez's inability to obtain an EAD has caused her and her family significant harm. Ms. Martinez cares for her three teenage grandchildren and two great grandchildren. The family of six depends on Ms. Martinez. This has also caused Ms. Martinez depression, as she is unable to provide her family with the financial support they need.

J.M.Z.

86. Plaintiff J.M.Z. is a minor and a noncitizen from Honduras who applied for asylum on April 23, 2018.

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87. J.M.Z. was designated as an unaccompanied child when she entered the United States. She was placed in removal proceedings, but because of her designation as an unaccompanied child, federal law requires USCIS to initially adjudicate her asylum application.

88. For this reason, J.M.Z. filed her asylum application with USCIS's San Francisco asylum office. J.M.Z. also filed a courtesy copy of J.M.Z.'s asylum application with EOIR.

89. Because USCIS must first adjudicate the asylum application, EOIR stopped or never started J.M.Z.'s asylum EAD clock. EOIR entered an adjournment code that classified the pending asylum application as applicant-caused delay, even though federal law requires USCIS to first adjudicate the asylum application.

90. J.M.Z. filed an application for an EAD on Form I-765 on December 18, 2018, over 180 days after submitting her application for asylum.

91. On January 28, 2019, USCIS denied J.M.Z.'s EAD application. According to USCIS, J.M.Z. had not accrued the 180 days necessary to apply for an EAD.

92. J.M.Z. subsequently filed a written request for reconsideration with USCIS, explaining that J.M.Z.'s application had been pending 180 days and that there was no applicant-caused delay associated with her application. USCIS never responded to that request.

93. J.M.Z. filed a new application for an EAD in June 2021. That application remains pending.

94. Due to Defendants' UC Policy and Practice, J.M.Z.'s asylum EAD clock is stopped. But for that practice, J.M.Z. would be eligible for an EAD.

Alexander Martinez Hernandez

95. Plaintiff Alexander Martinez Hernandez is a noncitizen from El Salvador who applied for asylum on August 16, 2021.

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96. Mr. Martinez applied for asylum while detained at Winn Correctional Center in Winnfield, Louisiana. He submitted his application to the Oakdale Immigration Court through EOIR's online portal. His asylum EAD clock began to run that same day or shortly thereafter.

97. Mr. Martinez was scheduled to have an ICH in his case on December 6, 2021. However, on December 2, 2021, he was released from detention.

98. As a result of that release, Mr. Martinez's ICH was cancelled. He and DHS then filed a joint motion to change venue of his immigration case from the Oakdale Immigration Court to the San Francisco Immigration Court, near where Mr. Martinez began to reside after his release.

99. The motion to change venue led EOIR to stop Mr. Martinez's EAD clock. The clock has not restarted to this day and remains frozen at 148 days.

100. Mr. Martinez was scheduled to attend an MCH before the San Francisco Immigration Court in March 2022. Attending that hearing would have restarted Mr. Martinez's asylum EAD clock. However, EOIR cancelled that hearing sua sponte and did not restart Mr. Martinez's asylum EAD clock. EOIR rescheduled Mr. Martinez's MCH to September 2022.

101. Due to Defendants' Change of Venue Practice, Mr. Martinez's asylum EAD clock is stopped. But for that policy, Mr. Martinez would be eligible for an EAD.

102. Mr. Martinez's inability to obtain an EAD has caused him significant harm. After being released from detention, Mr. Martinez faced a prolonged, abusive situation in the home of his sponsor, but was unable to immediately leave that dangerous environment because he lacked an EAD.

103. In addition, Mr. Martinez's situation and Defendants' practice forced him to choose between continuing detention and being released without employment authorization. To

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keep the clock running, Mr. Martinez would have been forced to remain many more weeks in detention, where he faced a hostile environment and suffered physical abuse and solitary confinement. Defendants' policy effectively forces asylum seekers to choose between these two options, depriving people of either physical liberty or the ability to provide financially for themselves and their families.

CLASS ALLEGATIONS

104. Plaintiffs bring this action on behalf of themselves and all other persons who are similarly situated, pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). A class action is proper because this action involves questions of law and fact common to the class; the class is so numerous that joinder of all members is impractical; the claims of the Plaintiffs are typical of the claims of the class, the Plaintiffs will fairly and adequately protect the interests of the class; and Defendants have acted on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole.

Notice and Opportunity to Challenge Class

105. All Plaintiffs seek to represent a "Notice and Opportunity to Challenge Class" consisting of:

> All noncitizens in the United States who have been or will be placed in removal proceedings; who filed or will file with Defendants a complete I-589 (Application for Asylum and Withholding of Removal); who would be eligible for employment authorization under 8 C.F.R. § 274a.12(c)(8) but for the fact that the asylum EAD clock was stopped or not started prior to 180 days; and whose asylum EAD clock determinations have been or will be made without written notice or a meaningful opportunity to contest such determinations.

106. The Notice and Opportunity to Challenge Class is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the exact number of putative class members

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as Defendants are uniquely positioned to identify such persons. Upon information and belief, there are thousands of asylum and withholding of removal applicants to whom Defendants have failed or will fail to provide written notice of the status of their asylum EAD clocks and a meaningful opportunity to contest improper asylum EAD clock determinations.

107. The proposed class meets the commonality requirement of Federal Rule of Civil Procedure 23(a)(2). All class members present the same question of whether Defendants' notice and opportunity to challenge policies violate the Due Process Clause of the Fifth Amendment and federal regulations. They are not provided written notice advising them of the basis for stopping the asylum EAD clock, nor an opportunity to rebut any derogatory evidence, contrary to 8 C.F.R. § 103.2(b)(16)(i).

108. The Named Plaintiffs' claims are typical of the class, as they face the same injury as the class and assert the same claims and rights as the class.

109. The proposed class meets the adequacy requirement of Federal Rule of Civil Procedure 23(a)(4). The Named Plaintiffs seek an order applicable to the whole class, are represented by competent class counsel, and will fairly and adequately protect the class's interest.

Remand Subclass

110. Plaintiffs Bianey Garcia Perez and Maria Martinez Castro seek to represent a subclass, entitled "Remand Subclass," consisting of:

> Asylum and/or withholding of removal applicants whose asylum EAD clocks were or will be stopped following a decision by an immigration judge and whose asylum EAD clocks are not or will not be started or restarted following an appeal in which either the BIA or a federal court of appeals remands their case resulting in further adjudication of their asylum and/or withholding of removal claims.

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111. The Remand Subclass is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the exact number of potential class members because Defendants are uniquely positioned to identify such persons. However, upon information and belief, there are hundreds of asylum and withholding of removal applicants who have been or will be prevented from qualifying for employment authorization because Defendants unlawfully failed to start or restart their asylum EAD clocks following remand.

112. The proposed subclass meets the commonality requirement of Federal Rule of Civil Procedure 23(a)(2). All class members present the same question of whether Defendants' remand policy and practice violates the INA, federal immigration regulations, and the APA.

113. Plaintiffs Garcia Perez and Martinez Castro's claims are typical of the subclass, as they face the same injury as the class and assert the same claims and rights as the class.

114. The proposed class meets the adequacy requirement of Federal Rule of Civil Procedure 23(a)(4). The proposed class seeks an order applicable to the whole subclass, is represented by competent immigration counsel, and Plaintiffs Garcia Perez and Martinez Castro will fairly and adequately protect the subclass's interest.

Unaccompanied Children Subclass

115. Plaintiff J.M.Z. seeks to represent a subclass entitled, "Unaccompanied Children Subclass," consisting of:

> Asylum applicants in removal proceedings who are deemed unaccompanied children pursuant to 6 U.S.C. 279(g) and whose asylum EAD clocks are not started or will be stopped while waiting for USCIS to initially adjudicate the filed asylum application.

116. The Unaccompanied Children Subclass is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the exact number of potential subclass members because Defendants are uniquely positioned to identify such persons. Upon information

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and belief, there are hundreds of asylum applicants who are unaccompanied children in removal proceedings whose asylum applications have been, or will be filed with USCIS for initial adjudication and, consequently, their EAD clocks either has been stopped or was never started or will be stopped or not started.

117. The proposed subclass meets the commonality requirement of Federal Rule of Civil Procedure 23(a)(2). All class members present the same question of whether Defendants' policy and practice of stopping the EAD clock while USCIS adjudicates an asylum application violate the INA, federal immigration regulations, and the APA.

118. Plaintiff J.M.Z.'s claim is typical of the subclass, as she faces the same injury as the class and asserts the same claims and rights as the class.

119. The proposed class meets the adequacy requirement of Federal Rule of Civil Procedure 23(a)(4). The proposed class seeks an order applicable to the whole subclass, is represented by competent immigration counsel, and Plaintiff J.M.Z. will fairly and adequately protect the subclass's interest.

Change of Venue Subclass

120. Plaintiff Alexander Martinez Hernandez seeks to represent a subclass, entitled "Change of Venue Subclass," consisting of:

> Asylum and/or withholding of removal applicants in removal proceedings who have changed residence or will change residence within the United States after having filed asylum and/or withholding of removal applications with the immigration court, whose proceedings have been or will be transferred to a different immigration court with jurisdiction over their new place of residence, and, as a consequence, for whom EOIR has stopped or will stop the asylum EAD clock based solely on the change of venue.

121. The Change of Venue Subclass is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the exact number of potential subclass members

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because Defendants are uniquely positioned to identify such persons. Upon information and belief, there are hundreds of asylum applicants whose asylum EAD clocks were or will be stopped following a change of venue to an immigration court with jurisdiction over the asylum applicants' new place of residence, and consequently, will be prevented from qualifying for employment authorization.

122. The proposed subclass meets the commonality requirement of Federal Rule of Civil Procedure 23(a)(2). All class members present the same question of whether Defendants' Change of Venue Practice violate the INA, federal immigration regulations, and the APA.

123. Plaintiff Martinez Hernadnez's claims are typical of the subclass, as he faces the same injury as the class and asserts the same claims and rights as the class.

124. The proposed class seeks an order applicable to the whole subclass, is represented by competent immigration counsel, and Plaintiff Martinez Hernandez will fairly and adequately protect the subclass's interest.

DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

125. Defendants' practices and policies regarding the asylum EAD clock have caused and will continue to cause irreparable injury to Plaintiffs and members of the proposed class and subclasses. Plaintiffs have no plain, speedy, and adequate remedy at law.

126. The EAD applications of Plaintiffs and members of the proposed class and subclasses have been or will be denied due to Defendants' policies and practices challenged herein. Defendants' actions constitute final agency action for the purpose of the APA.

127. Under 5 U.S.C. §§ 702 and 704, Plaintiffs and members of the proposed class and subclass have suffered a "legal wrong" and have been "adversely affected or aggrieved" by agency action for which there is no other adequate remedy in a court of law.

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128. Based on the foregoing, the Court should grant declaratory and injunctive relief under 28 U.S.C. §§ 2201, 2202, and 5 U.S.C. §§ 702, 706.

Count I
Violation of the Due Process Clause of the Fifth Amendment
Lack of Notice and Opportunity to Challenge
(on Behalf of All Plaintiffs and the Notice and Opportunity to Challenge Class)

129. Plaintiffs incorporate by reference the allegations of fact set forth in the previous paragraphs.

130. Defendants have a nationwide policy and practice of not providing written notice to asylum and withholding of removal applicants when their asylum EAD clocks are stopped, not started, or restarted during removal proceedings, and of failing to provide a meaningful opportunity to contest asylum EAD clock determinations and EAD application denials. This policy and practice deprives Plaintiffs and proposed class members of the opportunity to discover any errors in the calculation of the asylum EAD clock, as well as a meaningful opportunity to respond to and contest an incorrect decision concerning their asylum EAD clocks and EAD applications.

131. As a direct result of this policy and practice, Defendants deprive Plaintiffs and the proposed Notice and Opportunity to Challenge Class of a benefit provided under law without due process, in violation of the Fifth Amendment to the Constitution.

Count II
Violation of the Administrative Procedure Act
Lack of Notice and Opportunity to Challenge
(on Behalf of All Plaintiffs and the Notice and Opportunity to Challenge Class)

132. Plaintiffs incorporate by reference the allegations of fact set forth in the previous paragraphs.

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133. Defendants' failure to provide asylum and withholding of removal applicants with written notice or a meaningful opportunity to contest asylum EAD clock determinations and EAD denials is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law. Defendants' failure to provide Plaintiffs and proposed class members an opportunity to rebut the derogatory information also violates 8 C.F.R. § 103.2(b)(16)(i). As such, it violates the APA. 5 U.S.C. § 706(2).

Count III
Violation of the Administrative Procedure Act
Failure to Restart the Asylum EAD Clock after Remand
(on Behalf of Plaintiffs Bianey Garcia Perez, Maria Martinez Castro, and the Remand Subclass)

134. Plaintiffs incorporate by reference the allegations of fact set forth in the previous paragraphs.

135. Defendants have a nationwide Remand Policy and Practice dictating that the asylum EAD clock does not start or restart after the BIA or a federal appeals court has remanded the case.

136. This policy and practice violates the INA and implementing federal regulations by continuing to consider the asylum application as denied, notwithstanding the order remanding the case. There is no legal basis to stop the asylum EAD clock upon a remand from the BIA or a federal court of appeals. *See* 8 U.S.C. §1158(d)(2); 8 C.F.R. §§ 274a.12(c)(8), 274a.13(a), 208.7(a)(2), 1208.7(a)(2).

137. Through this policy and practice, Defendants unlawfully prevent Plaintiff Garcia Perez, Plaintiff Martinez Castro, and the proposed Remand Subclass from receiving work authorization.

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138. This policy and practice is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law, and as such, it violates the APA. 5 U.S.C. § 706(2).

Count IV
Violation of the Administrative Procedure Act
Stopping or Refusing to Start the Asylum EAD Clock for Unaccompanied Children
(on Behalf of Plaintiff J.M.Z. and the Unaccompanied Children Subclass)

139. Plaintiffs incorporate by reference the allegations of fact set forth in the previous paragraphs.

140. Defendants have a nationwide Unaccompanied Children Policy and Practice dictating that asylum EAD clocks will not start or continue running while asylum applications for unaccompanied children in removal proceedings are pending before USCIS for initial adjudication, even though the statute requires this process and, thus, it is not delay attributable to the unaccompanied children.

141. This policy and practice violates the INA and federal regulations by categorizing such action as an applicant-caused delay. However, federal law requires USCIS to adjudicate the pending asylum applications of unaccompanied children in removal proceedings, and no basis exists under federal law to classify that procedure or the administrative closure that IJs use to facilitate it as an applicant-caused delay. *See* 8 U.S.C. §§ 1158(d)(2), 1158(b)(3)(C); 8 C.F.R. §§ 274a.12(c)(8), 274a.13(a), 208.7(a)(2), 1208.7(a)(2).

142. Through this policy and practice, Defendants unlawfully prevent Plaintiff J.M.Z. and the proposed Unaccompanied Children Subclass from receiving work authorization.

143. This policy and practice is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law, and as such, it violates the APA. 5 U.S.C. § 706(2).

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Count V
Violation of the Administrative Procedure Act
Stopping the Asylum EAD Clock for Change of Venue
(on Behalf of Plaintiff Alexander Martinez Hernandez and the Change of Venue Subclass)

144. Plaintiffs incorporate by reference the allegations of fact set forth in the previous paragraphs.

145. Defendants have a widespread Change of Venue Practice of stopping the asylum EAD clocks where asylum and withholding of removal applicants change the venue of their removal proceedings to another immigration court with jurisdiction over the applicants' newly established place of residence.

146. This practice violates the INA and implementing federal regulations by counting the subclass's change of venue as applicant-caused delay, even though the case transfer is not properly attributable as such. *See* 8 U.S.C. §1158(d)(2); 8 C.F.R. §§ 274a.12(c)(8), 274a.13(a), 208.7(a)(2), 1208.7(a)(2).

147. Through this practice, Defendants unlawfully prevent Plaintiff Martinez Hernandez and the proposed Change of Venue Subclass from receiving work authorization.

148. This practice is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law, and as such, it violates the APA. 5 U.S.C. § 706(2).

PRAYER FOR RELIEF

WHEREFORE,

A. Plaintiffs respectfully request that this Court:

1. Assume jurisdiction over this matter;

2. Certify this case as a class action, and certify a Notice and Opportunity to Challenge Class, Remand Subclass, Unaccompanied Children Subclass, and Change of Venue Subclass;

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3. Appoint all Named Plaintiffs as representatives of the Notice and Opportunity to Challenge class;
4. Appoint Plaintiffs Bianey Garcia Perez and Maria Martinez Castro as representatives of the Remand Subclass; Plaintiff J.M.Z. as representative of the Unaccompanied Children Subclass; and Plaintiff Alexander Martinez Hernandez as representative of the Change of Venue Subclass;
5. Appoint undersigned counsel as class counsel pursuant to Federal Rule of Civil Procedure 23(g).

B. As remedies for each of the causes of action asserted above, Plaintiffs and proposed class members request:

1. A declaratory judgment finding Defendants' failure to provide written notice to applicants whose asylum EAD clocks are stopped, not started, or restarted during removal proceedings and a meaningful opportunity to contest and remedy errors to be arbitrary and capricious, an abuse of discretion, and in violation of the INA, the regulations implementing the INA, and a violation of due process;
2. A declaratory judgment finding Defendants' Remand Policy and Practice, Unaccompanied Children Policy and Practice, and Change of Venue Practice to be arbitrary and capricious, an abuse of discretion, and in violation of the INA and the regulations implementing the INA;
3. A permanent injunction ordering that if an asylum applicant is in removal proceedings before an IJ, then any decision to stop or not start or restart the asylum EAD clock must be made with written notice;

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4. A permanent injunction ordering Defendants to establish a mechanism that provides asylum applicants a meaningful opportunity to contest an asylum EAD clock or EAD decision;
5. A permanent injunction ordering Defendants to start or restart the asylum EAD clock following a remand of an asylum and/or withholding of removal case by either the BIA or a federal court of appeals;
6. A permanent injunction prohibiting Defendants from stopping or not starting the asylum EAD clock while unaccompanied children placed in removal proceedings are awaiting adjudication of their asylum applications by USCIS;
7. A permanent injunction prohibiting Defendants from stopping the asylum EAD clock because removal proceedings are transferred to an immigration court location based on an applicant's newly established place of residence.

C. Reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), 5 U.S.C. § 504, or any other applicable law; and

D. Such further relief as this Court deems just and appropriate.

DATED this 9th day of June, 2022.

s/ Matt Adams
Matt Adams, WSBA No. 28287

s/ Leila Kang
Leila Kang, WSBA No. 48048

s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974

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**Pro hac vice applications forthcoming*