Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE

Linda CABELLO GARCIA, on behalf of herself and others similarly situated,

Plaintiff,

v.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES; Alejandro MAYORKAS, Secretary of Homeland Security; Ur M. JADDOU, Director, U.S. Citizenship and Immigration Services,

Defendants.

Case No. 3:22-cv-5984

MOTION FOR PRELIMINARY INJUNCTION

Oral Argument Requested

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I. INTRODUCTION

Plaintiff Linda Cabello Garcia (Ms. Cabello) and the putative class (collectively, Plaintiffs) are noncitizens who were granted U nonimmigrant status and thereafter applied for adjustment of status to lawful permanent residence. U nonimmigrants are individuals who received lawful temporary immigration status because they assisted law enforcement in investigating or prosecuting a crime of which they were a victim.

However, Defendants have put up an extra-statutory, unlawful barrier to obtaining lawful permanent resident status for these individuals: they require U-based adjustment applicants to submit a medical exam as part of their application. Under the Immigration and Nationality Act (INA), applicants for adjustment of status generally must demonstrate that they are "admissible." 8 U.S.C. § 1255(a). As a result, they are subject to the public health inadmissibility grounds prescribed by 8 U.S.C. § 1182(a)(1) and are required to obtain medical exams to demonstrate they are not inadmissible under those grounds. But Congress explicitly chose *not* to subject U visa adjustment applicants to this ground of inadmissibility, instead decreeing that the only ground of inadmissibility that applies to them is the inadmissibility provision at 8 U.S.C. § 1182(a)(3)(E) for certain serious human rights violations. *See id.* § 1255(m)(1). Defendants' medical exam requirement thus applies an additional inadmissibility ground—the health-related grounds under § 1182(a)(1)—to U-based adjustment applicants, contrary to the statute.

The consequences of this extra-statutory policy are dramatic for Plaintiffs. Collectively, they pay *millions* of dollars each year to civil surgeons to conduct an exam and complete a form (Form I-693) that the law does not require. Defendants' policy also results in the denial of status if someone is unable to submit Form I-693, like in the case of Ms. Cabello. This, in turn, places Plaintiffs at risk of deportation, with its potential for family separation and other serious harms.

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Accordingly, Plaintiffs seek preliminary injunctive relief. Only a preliminary injunction will ensure that Plaintiffs do not pay hundreds of dollars to a third-party civil surgeon—money that can never be recovered. And only preliminary relief will ensure that Defendants do not use their policy to deny class members from obtaining LPR status while this case proceeds.

II. STATEMENT OF FACTS

A. USCIS's U-Based Adjustment I-693 Policy & Its Consequences

Congress created U nonimmigrant status, commonly known as the "U visa," to protect noncitizen victims of serious crimes and to increase public safety by encouraging cooperation between noncitizen communities and law enforcement. *See* Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386, § 1513(a), 114 Stat. 1464, 1533–34. A U visa applicant must have been the victim of qualifying criminal activity and have received a certification from an appropriate official attesting to the applicant's helpfulness in investigating or prosecuting the crime. *See* 8 U.S.C. §§ 1101(a)(15)(U), 1184(p)(1). In addition, a U visa applicant must either be admissible to the United States or be granted a waiver for any relevant ground of inadmissibility. *See* 8 U.S.C. § 1182(d)(14). Only 10,000 individuals may receive U status per fiscal year, excluding derivative applicants. 8 U.S.C. § 1184(p)(2). U status comes with work authorization and is usually valid for four years. 8 U.S.C. § 1184 (p)(3)(B), (p)(6).

Congress provided a pathway to permanent residence for these crime victims. *See* VTVPA § 1513(a)(2)(C), 114 Stat. at 1534. After being continuously present in the United States for three years in U status, an individual has a one-year window in which to apply to adjust their immigration status to that of an LPR. 8 U.S.C. 8 U.S.C. § 1255(m)(1)(A); 8 C.F.R. § 245.24(b)(2)–(3). An applicant's U status is extended while the adjustment application is pending. 8 U.S.C. § 1184(p)(6).

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Generally, individuals seeking to adjust status to LPRs must demonstrate that they are admissible. *See id.* § 1255(a) (adjustment applicants must, inter alia, be "admissible to the United States for permanent residence"). However, unlike when they first applied for U visa status, U visa holders applying to adjust status to LPRs are not required to demonstrate general admissibility. *Id.* § 1255(m)(1). Instead, Congress identified 8 U.S.C. § 1182(a)(3)(E) as the only inadmissibility ground applicable to U-based adjustment applicants. *Id.*

Nevertheless, Defendants have a policy that requires U-based adjustment applicants to demonstrate they are not inadmissible for health-related reasons under 8 U.S.C. § 1182(a)(1) by requiring that they submit Form I-693, Report of Medical Examination and Vaccination Record. The Form I-693 serves only to screen for the § 1182(a)(1) public-health inadmissibility grounds, as the USCIS instructions for the form recognize. Maltese Decl., Ex. C, Form I-693 Instructions, at 1, 9. But even though the form only addresses inadmissibility grounds that are inapplicable to U-based adjustment applicants, USCIS still requires those applicants to submit the form. *Id.* Ex. A, Form I-485 Instructions, at 14 ("[A]pplicants for adjustment of status are required to have a medical examination to show that they are free from health conditions that would make them inadmissible."); *see also id.* Ex. C, Form I-693 Instructions, at 7 (stating that nearly all adjustment applicants must submit Form I-693 and listing no exceptions); *id.* Ex. B, Cabello Request for Evidence, at 2–3 (requiring Ms. Cabello to submit Form I-693); *id.* Ex. G, Cabello I-485 Denial Decision (USCIS denial of Ms. Cabello's adjustment application for failure to submit I-693 form). Notably the adjustment application instructions exempt certain applicants from this obligation, such as those applying for adjustment under registry pursuant to 8 U.S.C. § 1259.[1] *Id.*

[1] Registry applicants are not subject to the health inadmissibility grounds. *See* 8 U.S.C. § 1259.

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Ex. A, Form I-485 Instructions, at 14. While USCIS recognizes these other groups are exempt from § 1182(a)(1), it does not do the same for U-based adjustment applicants. *Id.*

Submission of Form I-693 is expensive and burdensome. Only a doctor certified by USCIS as a civil surgeon can complete a Form I-693, and they must so do during an in-person medical exam. *See id.* Ex. C, Form I-693 Instructions, at 5; *id.* Ex. F, Cabello Notice of Intent to Deny Response, at 1, 9. At a minimum, applicants typically must pay several hundred dollars for the exam. *See, e.g.*, Vazquez Arenas Decl. ¶ 7 ($1,800 for three different exams); Zarate Aguilar Decl. ¶ 7 ($650–$700). Here in Washington, local medical clinics advertise fees of $400 and above, not including any fees related to vaccinations that the clinic may deem necessary to administer during the exam. *See, e.g.*, Maltese Decl. Ex. I, Allcare Medical Clinic, I-693 Fees ($399); *id.* Ex. J, Creelman Family Practice, Immigration Exams ($545). For many noncitizens, this amount is very difficult to pay and creates a significant strain on their finances. *See, e.g.*, Zamacona Tellez Decl. ¶ 7; Trujillo Estrada Decl. ¶ 11; Urbina Morales Decl. ¶ 10; Coppin Decl. ¶ 7.

Finally, failure to submit a qualifying Form I-693 results in the denial of class members' applications. *See* Maltese Decl. Ex. G, Cabello I-485 Denial Decision; Gutierrez Acuña Decl. ¶¶ 7–9; Vazquez Arenas Decl. ¶ 6. That decision has serious consequences. U status typically lasts for only four years, 8 U.S.C. § 1184(p)(6), and as a result, a denied adjustment application will result in a loss of status. The noncitizen loses employment authorization and is potentially subject to removal and the consequences that flow from removal, *see id.* § 1227(a)(1)(C)(i), such as separation from family and home here in the United States.

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B. Plaintiff Linda Cabello Garcia's Adjustment Application

In 2022, USCIS denied Ms. Cabello's adjustment application for failure to satisfy its I-693 policy. Ms. Cabello is a long-time resident of the United States, having lived here since 1999. In October 2013, she applied for U nonimmigrant status after she was victim of a crime that she reported to the Police Department in Juneau, Alaska. *See* Maltese Decl. Ex. K, Cabello U Visa Receipt Notice. At that time, Ms. Cabello submitted a required waiver to overcome any applicable grounds of inadmissibility. *See* 8 C.F.R. § 214.14(c)(2)(iv). In October 2016, USCIS approved the application for U nonimmigrant status. Maltese Decl. Ex. L, Cabello I-918 Approval Notice. In granting the application, USCIS also waived any grounds of inadmissibility applicable to her, thus finding her admission "to be in the public or national interest." 8 U.S.C. § 1182(d)(14); *see also id.* Maltese Decl. Ex. D, Cabello I-192 Approval Notice.

On August 10, 2020, after living in the United States for more than three years with a U visa, Ms. Cabello timely submitted her application for U-based adjustment of status. Maltese Decl. Ex. M, Cabello I-485 Receipt Notice. As part of the application, she provided evidence demonstrating physical presence in the United States. *Id.* Cabello Decl. ¶ 7. She also provided documents to support a favorable exercise of discretion. Among other things, that evidence showed that Ms. Cabello is married to a U.S. citizen, has a U.S. citizen sister, and has no criminal history. *Id.*

Over a year later, on August 23, 2021, USCIS issued a Request for Evidence (RFE) requesting a few missing pages of Ms. Cabello's passport and Form I-693. Maltese Decl. Ex. B, Cabello RFE. Ms. Cabello responded to the RFE on January 13, 2022. *Id.* Ex. E, Cabello RFE Response. In the response, Ms. Cabello provided a complete copy of her passport. In addition, she requested that the agency approve her application without a medical exam. *Id.* at 1, 39–40.

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To support that request, Ms. Cabello explained that U-based adjustment of status does not require an applicant to demonstrate admissibility under the public-health inadmissibility grounds. *Id.* at 1. She also provided a letter from her husband attesting to the severe anxiety and panic attacks that Ms. Cabello suffers when seeking medical help. *Id.* at 39–40.

Rather than grant the application, USCIS responded by issuing a notice of intent to deny (NOID) on February 4, 2022. *Id.* Ex. N, Cabello NOID. The sole reason the NOID cited for USCIS's planned denial of the application was Ms. Cabello's failure to submit Form I-693. *Id.* Ms. Cabello responded to the NOID on June 28, 2022. *Id.* Ex. F, Cabello NOID Response. In her response, she reiterated that she is not subject to the health-related grounds of inadmissibility at 8 U.S.C. § 1182(a)(1), and therefore should not be required to undertake a medical exam to adjust status.[2] *Id.* at 2.

Subsequently, on August 1, 2022, USCIS denied Ms. Cabello's application for adjustment of status. *Id.* Ex. G, Cabello I-485 Denial Decision. The sole reason provided for the denial was the failure to provide the Form I-693. *Id.* USCIS justified its decision by citing only 8 C.F.R. § 103.2(a)(1) and 42 C.F.R. § 34.1(d), referring to the general instructions that adjustment applicants must submit a qualifying medical exam on Form I-693. *Id.* Ms. Cabello then filed the instant lawsuit.

III. ARGUMENT

To obtain a preliminary injunction, Plaintiffs must demonstrate that (1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest.

[2] Nonetheless, she also provided a detailed declaration explaining her panic attacks around "anything medical" and addressed any potential health-related inadmissibility grounds (even though they did not apply). Maltese Decl. Ex. F, Cabello NOID Response, at 3–5. She also submitted a document from a behavioral health specialist affirming that she had been diagnosed with ICD-10 Generalized Anxiety Disorder and Panic Disorder. *Id.* at 8.

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Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). Even if Plaintiffs raise only "serious questions going to the merits," the Court can nevertheless grant relief if the balance of hardships tips "sharply" in Plaintiffs' favor, and the remaining equitable factors are satisfied. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

A. Plaintiffs Are Likely to Succeed on the Merits.

Defendants' Form I-693 policy for U-based adjustment applications violates the Administrative Procedure Act (APA). The APA "sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts." *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992). A court "shall" set aside agency action if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), or if the agency action is "in excess of statutory . . . authority," *id.* § 706(2)(C). Here, Plaintiffs are likely to succeed on the merits of their claim, as they can demonstrate that Defendants' policy is arbitrary and capricious, not accordance with law, and is in excess of Defendants' statutory authority under the INA. *See E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 669–81 (9th Cir. 2021) (affirming preliminary injunction in APA case brought under § 706(2)).

As an initial matter, Defendants' policy contravenes the statute's plain language. Under the INA's adjustment provision, most adjustment applicants must demonstrate that they are "admissible to the United States for permanent residence." 8 U.S.C. § 1255(a). This includes the health-related grounds of admissibility found at § 1182(a)(1). By contrast, the special adjustment provision for U-based adjustment applicants states no such requirement. Instead, § 1255(m) applies only one inadmissibility ground, requiring that the applicant demonstrate they are "not described in section 1182(a)(3)(E)"—i.e., that they have not participated in "Nazi persecution,

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genocide, or the commission of . . . torture or extrajudicial killing," *id.* § 1182(a)(3)(E). In addition to not being a person described in § 1182(a)(3)(E), a U visa holder must meet three additional statutory requirements to adjust status. First, the applicant must not have "unreasonably refused to provide assistance in a criminal investigation or prosecution," *id.* § 1255(m)(1). Second, the applicant must demonstrate three years of continuous physical presence in the United States since being admitted as a U nonimmigrant. *Id.* § 1255(m)(1)(A). And finally, the applicant must establish that "continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest." *Id.* § 1255(m)(1)(B); *see also* 8 C.F.R. § 245.24(b)(6), (d)(10).

Nothing in the statute authorizes the requirement that Plaintiffs must submit Form I-693. To the contrary, the INA's inclusion of admissibility grounds in subsection (a) of Section 1255, while including only the human rights ground of inadmissibility in subsection (m), shows that Congress did *not* impose such a general admissibility requirement for U-based adjustment of status. *See Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 452 (2002) ("[W]hen Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (internal quotation marks omitted)); *see also Gonzalez v. United States Immigr. & Customs Enf't*, 975 F.3d 788, 814 (9th Cir. 2020) (similar, in case interpreting the INA).

A similar principle applies with respect to the requirement Congress *did* choose to list. As the Ninth Circuit has explained, "the inclusion of certain provisions in a statute implies the exclusion of others." *United States v. Kakatin*, 214 F.3d 1049, 1051 (9th Cir. 2000). Here, Congress listed only one applicable ground of inadmissibility for U-based adjustment applicants.

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See 8 U.S.C. § 1255(m). Congress's specific inclusion of § 1182(a)(3)(E) would be superfluous if it intended to make *all* admissibility grounds apply to U-based adjustment applicants. *See Ysleta Del Sur Pueblo v. Texas*, 142 S. Ct. 1929, 1939 (2022). There can thus be no genuine doubt that Congress intentionally excluded the other grounds of inadmissibility.

Nor does any other aspect of § 1255(m) justify Defendants' policy. The language in the statute does allow USCIS to consider whether adjustment "is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest." *Id.* § 1255(m)(1)(B). But nothing in § 1255 empowers Defendants to impose additional *categorical* requirements to establishing eligibility for adjustment, let alone categorical requirements Congress chose to impose on other groups in the same section of the statute but not to U-based adjustment applicants.[3]

Notably, federal regulations explicitly recognize that the statute must be read this way. *See* 8 C.F.R. § 245.24(d)(11) ("U adjustment applicants are not required to establish that they are admissible."). Indeed, the Federal Register notice implementing these regulations also noted that U-based adjustment of status applications were to be treated differently from other adjustment applications, explaining that the "[t]he adjustment provisions contained in section [8 U.S.C. § 1255(m)] are stand-alone provisions and not simply a variation of the general adjustment rules contained in [8 U.S.C. § 1255(a)]." Adjustment of Status to Lawful Permanent Resident for Aliens in T or U Nonimmigrant Status, 73 Fed. Reg. 75540, 75548 (Dec. 12, 2008).[4]

[3] In contrast, with respect to other benefits, Congress made clear where the Secretary or the Attorney General was authorized to establish additional substantive criteria. For example, in establishing eligibility for asylum, Congress instructed that "[t]he Attorney General may by regulation establish additional limitations and conditions . . . under which a[] [noncitizen] shall be ineligible for asylum." 8 U.S.C. § 1158(b)(2)(C). Congress provided no such authority regarding U-based adjustment applicants. Moreover, even with respect to asylum, Congress clarified any additional limitations must be "consistent with this section." *Id.*

[4] U-based adjustment applicants are not the only ones subject to different LPR adjustment eligibility rules under the INA. Under 8 U.S.C. § 1259, Defendants may register a person as an LPR if they entered the U.S. before a certain date and meet certain other requirements. Notably, Congress specified that only *certain* inadmissibility grounds apply to those registrants. *See* 8 U.S.C. § 1259. Accordingly, as noted above, *supra* p. 3 & n.1, USCIS recognizes

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Moreover, at the same time Congress enacted the adjustment provision for those with U visas, it enacted a similar provision for those with T-visas—victims of trafficking. *See* VTVPA § 107(f), 114 Stat. at 1479–80. Yet in contrast to adjustment for U nonimmigrants, Congress required that T nonimmigrants demonstrate either that they are admissible or that a specific ground of inadmissibility had already been waived when applying for the T visa. *See* 8 U.S.C. § 1255(*l*)(2). Indeed, Congress specifically referred to the health-related grounds of inadmissibility for T-visa holders, authorizing the Attorney General to waive that ground. *Id.* § 1255(*l*)(2)(a). Tellingly, Congress did not require such a showing of admissibility or require such a waiver for U-based adjustment applicants. *Id.* § 1255(m).

Defendants do not have authority to impose additional categorical requirements that Congress chose to set aside. It has long been "clear that 'regulations [or policies], in order to be valid must be consistent with the statute under which they are promulgated." *Pac. Gas & Elec. Co. v. United States*, 664 F.2d 1133, 1135 (9th Cir. 1981) (quoting *United States v. Larionoff*, 431 U.S. 864, 873 (1977)); *see also City of Arlington v. F.C.C.*, 569 U.S. 290, 297 (2013) ("Both [agencies'] power to act and how they are to act is authoritatively prescribed by Congress, so that when they act improperly, no less than when they act beyond their jurisdiction, what they do is ultra vires."). And "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *INS v. Cardoza–Fonseca*, 480 U.S. 421, 432 (1987) (alteration and citation omitted). "This is particularly true here, where [the amendments] were enacted as part of a unified overhaul of [parts of the INA]." *Nken v. Holder*, 556 U.S. 418, 430–31 (2009). USCIS may not simply ignore that Congress

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that § 1259 registry applicants are not subject to the health-related admissibility grounds by not requiring them to submit Form I-693. Similarly, there is no basis here to require U-based adjustment applicants to submit Form I-693.

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chose to create different requirements for different applicants.

Finally, the reasons Defendants provided to explain their policy in denying Ms. Cabello's application do not justify the decision and are arbitrary and capricious. To explain the denial, USCIS invoked 8 C.F.R. § 103.2(a)(1) and 42 C.F.R. § 34.1(d). Both are general regulations, and neither is specific to U-based adjustment. The first merely requires an applicant to submit the forms required for a particular application per the instructions provided on that form. 8 C.F.R. § 103.2(a)(1). It also states that a particular form's instructions are "incorporated into the regulations requiring its submission." *Id*. But of course, this does not explain how or where the INA authorizes Defendants to require an I-693; instead, it merely assumes the agency's policy is correct.

Nor does the agency's citation to 42 C.F.R. § 34.1(d) provide it any support. That regulation merely clarifies that its provisions apply to "the medical examination of" noncitizens "applying for adjustment of status." Notably, most of 42 C.F.R. Part 34 regulates civil surgeons and guides their examinations of noncitizens. Nowhere does it justify Defendants' policy.

For all these reasons, Plaintiffs are likely to succeed on the merits of their claim.

B. Plaintiffs Will Suffer Irreparable Harm Absent an Injunction.

Parties seeking preliminary injunctive relief must also show they are "likely to suffer irreparable harm in the absence of preliminary relief." *Winter*, 555 U.S. at 20. Irreparable harm is harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. Dream Act. Coal. v. Brewer (Ariz. I)*, 757 F.3d 1053, 1068 (9th Cir. 2014).

First, all Plaintiffs will suffer irreparable economic harm absent a preliminary injunction. While "[e]conomic harm is not normally considered irreparable," case law is clear that "such harm is irreparable [where the plaintiffs] will not be able to recover monetary damages."

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California v. Azar, 911 F.3d 558, 581 (9th Cir. 2018); *see also City & Cnty. of San Francisco v. U.S. Citizenship & Immigr. Servs.*, 981 F.3d 742, 762 (9th Cir. 2020) ("There is no dispute that . . . economic harm is sufficient to constitute irreparable harm because of the unavailability of monetary damages."). APA cases are one such exception, as the APA permits only "relief 'other than money damages.'" *Azar*, 911 F.3d at 581 (quoting 5 U.S.C. § 702); *see also City & Cnty. of San Francisco*, 981 F.3d at 762 (affirming district court preliminary injunction finding of irreparable harm in APA case where alleged irreparable harm was monetary).

Irreparable economic harm is present in this case. At a minimum, each class member suffers several hundred dollars in economic harm because of Defendants' policy requiring them to complete the expensive exam required for Form I-693. *See, e.g.*, Maltese Decl. Ex. I, Allcare Medical Clinic, I-693 Fees ($399 fee); *id.* Ex. J, Creelman Family Practice, Immigration Exams ($545 fee); Vazquez Arenas Decl. ¶ 7 ($1,800 for three different exams); Zarate Aguilar Decl. ¶ 7 ($650–$700 feee); Urbina Morales Decl. ¶ 10 (discussing financial strain completion of the Form I-693 and related costs posed for declarant and her household); Zamacona Tellez Decl. ¶ 7 (similar); Trujillo Estrada Decl. ¶ 11 (similar); Coppin Decl. ¶ 7 (similar). Collectively, this amounts to millions of dollars each year, as USCIS receives well over 10,000 U-based adjustment applications per year. *See* 8 U.S.C. § 1184(p)(2) (authorizing 10,000 U visas per year, plus derivatives). But Plaintiffs have no means of recovering this money. These funds are not paid to the agency, but rather to third-party doctors. Moreover, even if class members could otherwise seek reimbursement from Defendants, they have brought their case under the APA, and thus monetary damages are unavailable to them. The fees Plaintiffs pay constitute irreparable harm. *See Azar*, 911 F.3d at 581; *City & Cnty. of San Francisco*, 981 F.3d at 762.

Some class members, like Ms. Cabello, also suffer irreparable harm by losing the

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opportunity to adjust to LPR status. *See, e.g.*, Cabello Decl. ¶¶ 13–15; Maltese Decl. Ex. G, Cabello I-485 Denial Decision; Gutierrez Acuña Decl. ¶¶ 7–9; Vazquez Arenas Decl. ¶ 6. For these class members, a denial on their adjustment application means that they cannot become LPRs, and as a result, they are left without lawful status. This Court and others have recognized that an agency policy that unlawfully prohibits an applicant from adjusting status causes irreparable harm. *See, e.g.*, *Moreno Galvez v. Cuccinelli*, 387 F. Supp. 3d 1208, 1218 (W.D. Wash. 2019) (irreparable harm existed when government unlawfully denied plaintiffs Special Immigrant Juvenile Status, a status that provides a pathway to LPR status when a visa becomes available); *Abdur-Rahman v. Napolitano*, 814 F. Supp. 2d 1087, 1097 (W.D. Wash. 2010) (irreparable harm established where plaintiff was deprived of opportunity to apply for cancellation of removal, which provides a pathway to become an LPR) .

Third, and relatedly, the denial of Plaintiffs' adjustment applications will deprive them of work authorization. Federal regulations permit an adjustment of status applicant to apply for work authorization. 8 C.F.R. § 274a.12(c)(9). But that basis for work authorization ceases to exist once the application is denied, and except in the very rare case where a proposed class member has another legal basis for requesting work authorization, they will be without a lawful route to employment. *See, e.g.*, Cabello Decl. ¶ 15; Gutierrez Acuña Decl. ¶ 11; Coppin Decl. ¶¶ 5, 8. Such "loss of opportunity to pursue one's chosen profession constitutes irreparable harm." *Ariz. Dream Act Coal. v. Brewer (Ariz. II)*, 855 F.3d 957, 978 (9th Cir. 2017); *see also Medina v. DHS*, 313 F. Supp. 3d 1237, 1251 (W.D. Wash. 2018) (DACA recipient's potential loss of opportunity to pursue his profession constituted irreparable harm). Moreover, that same loss can result in eviction and the inability to pay other important costs, like utilities bills, children's tuition, or medical care.

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Finally, USCIS's denial of adjustment applications may result in Plaintiffs' removal from the United States. This too constitutes irreparable harm. Federal regulations permit USCIS immigration officers to issue a Notice to Appear that places individuals like Plaintiffs in removal proceedings once USCIS has denied their application. *See* 8 C.F.R § 239.1(a). But even without a referral to immigration court, Plaintiffs could face immigration enforcement actions such as detention, placement in removal proceedings, and eventual removal at any time absent a decision approving their adjustment applications. This would result in Plaintiffs' separation from their homes, spouses, children, and siblings, and prevent Plaintiffs from being able to financially support those family members. Cabello Decl. ¶¶ 14–15; Gutierrez Acuña Decl. ¶ 11. Such separation is a well-recognized form of irreparable harm. *Doe v. Trump*, 288 F. Supp. 3d 1045, 1082 (W.D. Wash. 2017) (finding irreparable harm because of family separation caused by federal immigration policy). Moreover, in many cases, removal would result in Plaintiffs' forced departure from the country that they have long called home, as the United States is the place where many of them have resided for decades. *See, e.g.*, Cabello Decl. ¶¶ 14–15; Gutierrez Acuña Decl. ¶¶ 2, 11. That outcome would "visit a great hardship" on them, as they may lose "all that makes life worth living." *Bridges v. Wixon*, 326 U.S. 135, 147 (1945) (citation omitted).

C. The Balance of Hardships and Public Interest Weigh Heavily in Plaintiffs' Favor.

The final two "factors merge when the Government is the opposing party," and here, they demonstrate relief is appropriate. *Nken*, 556 U.S. at 435. Many of the same facts that demonstrate irreparable harm also weigh in Plaintiffs' favor for the balance of hardships and public interest factors. First, these factors favor ensuring that Plaintiffs do not lose the opportunity to obtain legal status and the accompanying benefits that status would provide. *See, e.g., Batalla Vidal v. Nielsen*, 279 F. Supp. 3d 401, 436 (E.D.N.Y. 2018), *vacated and remanded on other grounds sub nom. DHS v. Regents of the Univ. of California*, 140 S. Ct. 1891 (2020); *Regents of Univ. of*

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California v. DHS, 279 F. Supp. 3d 1011, 1047–48 (N.D. Cal. 2018), *rev'd in part, vacated in part on other grounds sub nom. DHS v. Regents of the Univ. of California*, 140 S. Ct. 1891 (2020). Second, there is also "a public interest in preventing [noncitizens] from being wrongfully removed," as is threatened here. *Nken*, 556 U.S. at 436. Third, a strong public interest also lies in "avoiding separation of families." *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017).

Finally, because "the government's . . . policy is inconsistent with federal law, . . . the balance of hardships and public interest factors weigh in favor of a preliminary injunction." *Moreno Galvez*, 387 F. Supp. 3d at 1218. This is because "it would not be equitable or in the public's interest to allow the [government] . . . to violate the requirements of federal law, especially when there are no adequate remedies available." *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (first alteration in original) (citation omitted). Indeed, Defendants "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). Accordingly, the balance of hardships and the public interest overwhelmingly favor ensuring that USCIS complies with the law in its treatment of Plaintiffs.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request the Court to grant their motion for a preliminary injunction.[5]

[5] Counsel for Plaintiffs certify that on January 20, 2023, counsel for Plaintiffs informed Nickolas Bohl, Assistant U.S. Attorney for the Western District of Washington, that Plaintiffs intended to file motions for class certification and a preliminary injunction in this matter. Defendants have not yet filed a notice of appearance in this matter.

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Respectfully submitted,

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