District Judge Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

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

Plaintiff,

v.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES, et al.,

Defendants.

No. 3:22-cv-05984

DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS CLASS ACTION COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) AND FED. R. CIV. P. 12(b)(6)

Oral Argument Requested

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In May 2022, the Supreme Court decided *Patel v. Garland*, 142 S. Ct. 1614 (2022), giving an expansive interpretation to the bar on judicial review of discretionary relief proceedings at 8 U.S.C. § 1252(a)(2)(B)(i). In the ten months since, a panoply of courts has applied *Patel* to preclude judicial review of discretionary decisions related to adjustment of status regardless of whether the decision occurs in removal proceedings or is made by U.S. Citizenship and Immigration Services ("USCIS") outside of proceedings. This includes every circuit court of appeals to have examined the issue[1] and district courts nationwide.[2]

Against this array of authority stands the single decision of *Hernandez v. USCIS*, No. 22-cv-904, --- F. Supp. ---, 2022 WL 17338961 (W.D. Wash. Nov. 30, 2022) (Pechman, J.), which gave an unnaturally narrow reading of section 1252(a)(2)(B) that finds no support in the statute's text. *Hernandez* also provides a pathway to challenge USCIS's decision under section 1252(a)(2)(D) based on an equally audacious judicial rewriting of that provision. *Id.* at *7. Plaintiff now asks this Court to replicate *Hernandez's* erroneous rulings by finding that section 1252(a)(2)(B)'s jurisdictional bar applies to USCIS adjustment decisions only if they occur simultaneously with removal proceedings. The Court should join the vast majority of courts that have examined this issue, reject Plaintiff's misplaced reliance on *Hernandez*, and find that it lacks jurisdiction to review USCIS's adjustment denial in this case. In the alternative, the Court should find that USCIS properly denied Plaintiff's application in its discretionary authority to determine whether adjustment was in the public interest.

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[1] *See Abuzeid v. Mayorkas*, No. 21-5003, --- F.4th ---, 2023 WL 2543024 (D.C. Cir. Mar. 17, 2023); *Britkovyy v. Mayorkas*, 60 F.4th 1024 (7th Cir. 2023); *Doe v. Sec'y, U.S. Dep't of Homeland Sec.*, No. 22-11818, 2023 WL 2564856 (11th Cir. Mar. 20, 2023).

[2] *See, e.g.*, *Khakshouri v. Garland*, No. 22-cv-8508, 2023 U.S. Dist. LEXIS 50094 (C.D. Cal. Mar. 23, 2023); *see also Atanasovska v. Barr*, --- F. Supp. 3d ---, No. 20-cv-2746, 2022 WL 17039146, at *2 (W.D. Tenn. Nov. 8, 2022) (dismissing a challenge to a USCIS adjustment of status denial for lack of jurisdiction based on *Patel*); *Chaudhari v. Mayorkas*, No. 22-cv-0047, 2023 WL 1822000, at *7 (D. Utah Feb. 8, 2023) ("the language of § 1252(a)(2)(B)(i) compels the court to conclude *Patel's* holding applies whether or not removal proceedings have commenced"); *Fernandes v. Miller*, No. 22-cv-12335, 2023 WL 1424171, at *4 (E.D. Mich. Jan. 31, 2023) ("[a]s a result, the fact that Fernandes is not currently in removal proceedings does not meaningfully distinguish this case from *Patel*"); *Morina v. Mayorkas*, No. 22-cv-02994, 2023 WL 22617, at *9 (S.D.N.Y. Jan. 3, 2023) ("[i]f either of these provisions [8 U.S.C. §§ 1252(a)(2)(B)(i) and (ii)] was intended to apply only in removal proceedings, there would have been no need for Congress to state that it applied regardless of whether the judgment was reached in a removal proceeding"); *Walsh v. Mayorkas*, No. 20-cv-0509, 2022 WL 17357729, at *3 (N.D. Ill. Dec. 1, 2022) ("[s]ection 1252(a)(2)(B)(i), as clarified in *Patel*, bars this Court from reviewing the denial by USCIS of Plaintiff's request for an adjustment of status").

ARGUMENT

I. 8 U.S.C. § 1252(a)(2)(B)(i) precludes judicial review of USCIS's adjustment denials

Plaintiff does not dispute that the "regardless of whether the judgment. . . is made in removal proceedings" clause of section 1252(a)(2)(B) establishes the scope of that section's bar on judicial review. But Plaintiff argues, with no legal basis, that the "regardless" clause applies only to USCIS adjustment denials made after an individual's removal proceedings has already commenced. Pl.'s Opp'n 2-5; *see also id.* at 4 ("Thus, Section § 1252(a)(2)(B) instructs that a respondent *in removal proceedings* cannot separately challenge such judgments, decisions, or actions, except through the petition for review process laid out in § 1252 after a final order of removal is issued.") (emphasis added). The Court should reject that interpretation as entirely unmoored from the actual text of the provision. The plain text of section 1252(a)(2)(B) precludes courts from reviewing adjustment decisions "regardless of whether the judgment, decision, or action is made in removal proceedings." It does not proceed to state "but only if the judgment, decision, or action is made during ongoing removal proceedings." Plaintiff, therefore, has no basis to argue that it does. *See In re Cavanaugh*, 306 F.3d 726, 738 (9th Cir. 2002) ("we may not add to the statute terms that Congress omitted").

If Congress had wanted to apply section 1252(a)(2)(B)'s jurisdictional bar only when an individual was already in removal proceedings, it knew how to include such a provision, as it did in multiple other immigration statutes. *See, e.g.*, 8 U.S.C. § 1429 (precluding naturalization proceedings "if there is pending against the applicant a removal proceeding pursuant to a warrant of arrest issued under the provisions of this chapter or any other Act."); 8 U.S.C. § 1229b(d)(1) (creating the so-called "stop-time rule" for cancellation of removal so that "any period of continuous . . . presence in the United States shall be deemed to end . . . when the alien is served a notice to appear" that commences removal proceedings); 8 U.S.C. § 1503(a)(2) (precluding individuals from raising claims of U.S. citizenship if that person's citizenship "is in issue in any such removal proceeding"). But the jurisdictional bar at section 1252(a)(2)(B) contains no such language limiting its application to instances in which an individual is in removal proceedings, and the Court should not read into the statute a provision that Congress did not include. *See In re*

Cavanaugh, 306 F.3d at 738; *see also United States v. X-Citement Video, Inc.*, 982 F.2d 1285, 1295 n.6 (9th Cir. 1992) (Kozinski, J., dissenting) (in performing statutory interpretation, courts "may not add anything to the statute that is not already there"), *rev'd*, 513 U.S. 64 (1994).

In arguing that the section 1252(a)(2)(B) bar applies only when an applicant finds herself in removal proceedings, Plaintiff claims that Defendants are taking the statute's "regardless" clause out of context by "ignoring that it is discussing '[j]udicial review of orders of removal.'" Pl.'s Opp'n 4. But as shown by Plaintiff's failure to cite to a specific provision of section 1252, no language in the actual statutory text limits section 1252(a)(2)(B)'s jurisdictional bar to only USCIS adjudications "related to cases in removal proceedings." *Id.* at 3. To support her claim that section 1252(a)(2)(B) applies only when USCIS adjudicates the adjustment application of an individual who is in proceedings, Plaintiff cites only the title of section 1252, "Judicial review of orders of removal." *Id*. But statutory titles hold little value as an interpretive tool where, as here, they were not enacted at the same time and by the same legislature that drafted the body of the statute. *See United States v. Schopp*, 938 F.3d 1053, 1061 n.3 (9th Cir. 2019) ("When section headings are discounted, it is ordinarily because they are not part of the statute as originally enacted and therefore have no bearing on statutory meaning or congressional intent."). The title of section 1252 originated in the Illegal Immigration Reform and Immigration Responsibility Act of 1996. *See* Pub. L. No. 104-208, div. C, § 306, 110 Stat. 3009-546, 3009-607 (1996). Congress added the "regardless" clause nine years later, in the REAL ID Act of 2005. *See* Pub. L. No. 109-13, div. B, § 101(f)(2), 119 Stat. 302, 305 (2005); *see also Mejia Rodriguez v. U.S. Dep't of Homeland Sec.*, 562 F.3d 1137, 1142 n.13 (11th Cir. 2009) (explaining that Congress added "regardless" clause "presumably to resolve a disagreement between some of [the] circuits and district courts as to whether § 1252(a)(2)(B) applied outside the context of removal proceedings"). As the D.C. Circuit concluded after examining this legislative history, "[i]t appears that Congress simply neglected to amend the title of the statute to account for the new provision that it added." *Abuzeid v. Mayorkas*, No. 21-5003, --- F.4th ---, 2023 WL 2543024, at *5 (D.C. Cir. Mar. 17, 2023). The title of section 1252 provides no guidance on the proper reading of subsection 1252(a)(2)(B).

Plaintiff errs in relying on the title of Section 1252 for a second reason: "the title of a statute and the heading of a section cannot limit the plain meaning of the text." *Bhd. of R.R. Trainmen v. Balt. & Ohio R.R. Co.*, 331 U.S. 519, 528–29 (1947). There is no ambiguity in 1252(a)(2)(B) that permits reference to the title of section 1252. *See Abuzeid*, 2023 WL 2543024, at *5. The Court thus has no basis to apply the title of section 1252 in analyzing it.

The Court should reject Plaintiff's attempts to create an ambiguity in the "regardless" clause of section 1252(a)(2)(B) so that it can mean either (1) any adjustment of status decisions made outside of removal proceedings, or (2) only adjustment of status decisions made outside of removal proceedings that still relate to *relief* from removal. Pl.'s Opp'n 3. First, the title of section 1252 cannot be used to create an ambiguity in the meaning of subsection 1252(a)(2)(B)'s "regardless" clause. *See United States v. Osuna-Alvarez*, 788 F.3d 1183, 1185 (9th Cir. 2015) (finding statute unambiguous despite being contradicted by statute title); *see also* 2A *Sutherland Statutory Construction* § 47:14 (7th ed. 2007) ("headings and notes are not binding, may not be used to create an ambiguity, and do not control an act's meaning by injecting a legislative intent or purpose not otherwise expressed in the law's body."). Second, there can be no ambiguity in the statute because the reading that Plaintiff advances, Pl.'s Opp'n 3-5, creates an "untenable contradiction." *See Abuzeid*, 2023 WL 2543024, at *6. The jurisdictional limitation cannot apply only in cases involving relief from removal proceedings, while at the same time operate regardless of whether the judgment, decision, or action – that is, the *relief* – is made in removal proceedings. *See id.* Plaintiff's untenable reading of the "regardless" clause of section 1252(a)(2)(B) does not create an ambiguity, but rather an internal statutory contradiction. *See Harco Nat. Ins. Co. v. Bobac Trucking, Inc.,* No. 93-cv-01295, 1995 WL 482330, at *3 (N.D. Cal. Aug. 4, 1995) ("Courts will not adopt an unreasonable interpretation to create an ambiguity where none exists."), *aff'd*, 107 F.3d 733 (9th Cir. 1997).

Plaintiff argues that accepting Defendants' position on the scope of section 1252(a)(2)(B)(i) would fly in the face of "'a familiar principle of statutory construction: the presumption favoring judicial review of administrative action.'" Pl.'s Opp'n 7 (quoting *Kucana v. Holder*, 558 U.S. 233, 251 (2010)). But *Kucana* also held that Congress can overcome that

presumption with "clear and convincing evidence" of its intent to limit judicial review. *Kucana*, 558 U.S. at 252. Section 1252(a)(2)(B) includes clear and convincing language reflecting Congress's intent to strictly circumscribe the jurisdiction of federal courts over cases involving adjustment of status. *See Abuzeid*, 2023 WL 2543024, at *6; *Commandant v. Rinehart*, No. 20-cv-23630, 2021 WL 422177, at *3 (S.D. Fla. Feb. 1, 2021) ("The *current* statute at issue includes this clear congressional language, precluding review in district court of "any judgment" regarding denials of adjustment of status applications"). Moreover, *Patel* illustrates that in the Supreme Court's view, Congress's intent in enacting § 1252(a)(2)(B)(i) was sufficiently clear to overcome any presumption of judicial review, even where it may foreclose review "unless and until removal proceedings are initiated." *Patel*, 142 S. Ct. at 1626-27. While the *Patel* Court was not dealing with USCIS decisions outside of proceedings, it stated that the application of the jurisdictional bar to USCIS decisions "would be consistent with Congress' choice to reduce procedural protections in the context of discretionary relief." *Id*. There is no basis to treat USCIS claims in this context differently from claims raised in removal proceedings, and *Patel* compels the same result here. *See id*.

Relatedly, Plaintiff argues that the Court should not apply the jurisdictional bar of section 1252(a)(2)(B)(i) to USCIS's denial of U nonimmigrant adjustment applications because if it did, Plaintiff "would thus never be able to obtain judicial review of USCIS's decision, no matter how arbitrary, capricious, or illegal." Pl.'s Opp'n 7. But that outcome necessarily results from the plain meaning of the statute and from the reasoning of *Patel*, in which the Supreme Court acknowledged that its analysis might well lead to this outcome. *See Patel*, 142 S. Ct. at 1626 ("If the jurisdictional bar is broad and subparagraph (D) is inapplicable [because it applies only to removal proceedings], Patel and the Government say, USCIS decisions will be wholly insulated from judicial review."). But the *Patel* Court stated that "it is possible that Congress did, in fact, intend to close that door." *Id.* at 1626. The Ninth Circuit has long acknowledged that no due process right attaches to purely discretionary determinations. *See, e.g.*, *Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005) (dismissing due process claim arising from claim that immigration judge abused his discretion, "a matter over which we have no jurisdiction" and

citing section 1252(a)(2)(B)(i)). Adjustment of status is a discretionary form of relief. *See Doe v. Sec'y, U.S. Dep't of Homeland Sec.*, No. 22-1181, 2023 WL 2564856, at *3 (11th Cir. Mar. 20, 2023); *Catholic Charities CYO v. Chertoff*, 622 F. Supp. 2d 865, 872 (N.D. Cal. 2008). Consistent with that position, and despite understanding that its ruling might lead to the insulation of USCIS decisions from judicial review, the *Patel* Court declined to interpret the statute to ensure review, stating that "policy concerns cannot trump the best interpretation of the statutory text." *Patel*, 142 S. Ct. at 1627. Thus, although the Supreme Court avoided deciding in *Patel* whether section 1252(a)(2)(B)(i) precludes the review of decisions by USCIS to deny adjustments of status, it nevertheless considered the implications of its ruling for such cases and made clear that "the best interpretation of the statutory text" should govern. *Id.*; *Abuzeid*, 2023 WL 2543024, at *6.

Finally, the Court should reject Plaintiff's reliance on section 1252(a)(2)(D) to create a fallback pathway to judicial review of USCIS's adjustment denial. Pl.'s Reply in Support of Mot. for Prelim. Injunction 7 ("Should the Court read § 1252(a)(2)(B) to apply to cases outside of removal proceedings, § 1252(a)(2)(D) must similarly be read to permit judicial review of constitutional claims and questions of law for cases outside of removal proceedings."), Dkt. 34. But as Plaintiff herself explains, the avenue for judicial review created by 8 U.S.C. § 1252(a)(2)(D) is reserved for "judicial review of an *order of removal.*" Pl's Opp'n 3 (emphasis in original). USCIS's denials of U nonimmigrant adjustment applications are not orders of removal. *See Torres-Tristan v. Holder*, 656 F.3d 653, 658 (7th Cir. 2011) (explaining that final orders of removal appealable under section 1252(a)(2)(D) do not include "[a]ncillary determinations made outside the context of a removal proceeding" and decided by USCIS), *cited in J.E.F.M. v. Lynch*, 837 F.3d 1026, 1032 (9th Cir. 2016). By Plaintiff's own logic, the provision for judicial review established by section 1252(a)(2)(D) is thus irrelevant to this action.[3] In *Hernandez*, the court admitted to rewriting section 1252(a)(2)(D) to permit the

[3] If, on the other hand, USCIS's denial of a U nonimmigrant adjustment application were actually an order of removal, it would fall within Plaintiff's misguided interpretation of section 1252(a)(2)(B)(i) that limits that statute's jurisdictional bar to "decisions not made by an IJ but that bear directly on cases in removal proceedings." Pl.'s Opp. 4; *see* above at 2. In either instance, this Court lacks jurisdiction to review USCIS's denial.

plaintiff to seek judicial review of her adjustment denial by USCIS. *See Hernandez*, 2022 WL 17338961, at *7 ("notwithstanding the plain language of Subparagraph (D) specifying the court of appeals as the judicial forum, the Court construes Subsection (D) in this unique circumstance to allow Rubio Hernandez to seek judicial review before this Court"). But as *Patel* explained, with section 1252(a)(2)(B), Congress intended to foreclose judicial review of USCIS's discretionary determination of adjustment applications. *See Patel*, 142 S. Ct. at 1626-27. *Hernandez* erred by ignoring the clear intent of Congress, expressed unambiguously in section 1252(a)(2)(B). *Cavanaugh*, 306 F.3d at 738; *see also Jennings v. Rodriguez*, 138 S. Ct. 830, 836 (2018) (holding that courts in all cases "must *interpret* the statute, not rewrite it"). Finally, the Court should reject Plaintiff's argument that any statutory bar on judicial review raises "serious constitutional questions." Pl.'s Opp'n 10-11. Plaintiff cites several cases, but they are inapposite because they involved constitutional rights not implicated here *See id.* (citing *INS v. St. Cyr*, 533 U.S. 289, 300 (2001) (finding in a petition for habeas corpus case that the Constitution's Suspension Clause required some judicial intervention in deportation cases); *Johnson v. Robison*, 415 U.S. 361, 366 (1974) (considering whether a statute precluded a conscientious objector from raising First and Fifth Amendment claims seeking veteran's benefits)). Here, Plaintiff has raised no constitutional claims, and the claims she has raised do not implicate the Suspension Clause or any other constitutional provision. Contrary to Plaintiff's implication, the limitation of judicial review is not a per se constitutional concern, and the unavailability of 8 U.S.C. § 1252(a)(2)(D) does not raise serious constitutional questions.

II. The APA precludes judicial review of USCIS's adjustment denials

Because the default remedy of judicial review in the APA must yield to immigration-specific jurisdictional limitations, *see Britkovyy*, 60 F.4th at 1027, the bar on judicial review at section 1252(a)(2)(B)(i) precludes APA review of USCIS's adjustment denials. But even without section 1252(a)(2)(B)(i), the APA requires dismissal of Plaintiff's claim because there are no meaningful standards to apply in reviewing USCIS's exercise of discretion to adjust U nonimmigrants based on a "public interest" determination. *See* 5 U.S.C. § 701(a)(2); 8 U.S.C. § 1255(m). Plaintiff argues that "[t]here is clearly 'law to apply'" in this case because she

characterizes her challenge to USCIS's denial of her adjustment application as a question of law that some legal standard must surely resolve. Pl.'s Opp'n 12. But in determining whether agency action is committed to agency discretion by law, "it is not significant that there may be law, in the abstract, that could possibly be applied." *Perez Perez v. Wolf*, 943 F.3d 853, 863–64 (9th Cir. 2019). "Instead, [the court] must determine whether in this case there is any specific law to apply. . . . In other words, it is only in the context of [Plaintiff's] complaint that [the court] can determine if there is law to be applied in the instant case." *Id.* (internal quotations and citations omitted). Plaintiff claims that USCIS abused its discretion under 8 U.S.C. § 1255 to determine whether her adjustment of status satisfied the public interest by requiring a record of medical examination and vaccination, and that "there are 'legal standards that apply and against which the Court may judge the agency's action.'" Pl.'s Opp'n 12 (quoting *Hernandez*, 2022 WL 17338961, at *7). But she identifies none, thus indicating that no such legal standards apply. *See Drakes Bay Oyster Co. v. Salazar*, 921 F. Supp. 2d 972, 988–89 (N.D. Cal. 2013) (finding no meaningful standard of review where plaintiffs "cannot identify the precise requirements against which the Court should review the matter"). Demonstrating her inability to articulate a meaningful standard, Plaintiff conflates the standard for reviewing the denial of a U visa petition with the decision at issue here: the denial of an adjustment of status application. *Id.* at 11-12. For a U nonimmigrant adjustment application, USCIS's determination can turn, ultimately, on whether adjustment serves the public interest. *See* 8 U.S.C. § 1255(m)(1)(B). For that determination, which operates separately from the statutes and regulations attendant to U visa eligibility determinations, there are no meaningful standards of review. *See Spherix, Inc. v. United States*, 58 Fed. Cl. 351, 358 (Fed. Cl. 2003) ("Absent regulations, it might be more persuasive that the phrase 'in the public interest' provides no meaningful standard of review.").

III. USCIS properly denied Plaintiff's adjustment application

USCIS properly denied Plaintiff's adjustment application after she failed to submit medical and vaccine records. In drafting section 1255(m), Congress enumerated the war crimes-related inadmissibility ground at 8 U.S.C. § 1182(a)(3)(E) as a disqualifying criterion for adjustment by U nonimmigrants. But unlike the statute for registry applicants, which explicitly

excludes the health-related inadmissibility ground as a consideration, the U nonimmigrant adjustment statute empowers USCIS to also consider whatever factors it believes constitute the "public interest." 8 U.S.C. § 1255(m)(1)(B). Thus, when USCIS requires medical examination and vaccination records to establish whether lawful permanent residence would be in the public interest of maintaining public health and safety, USCIS is not acting "contrary to the statute" *See* Pl.'s Opp'n 15. USCIS is, instead, exercising its authority granted by the statute.

Plaintiff cannot dispute that the public interest encompasses protecting public health and safety. *See City & Cnty. of San Francisco v. U.S. Citizenship & Immigr. Servs.*, 408 F. Supp. 3d 1057, 1127 (N.D. Cal. 2019). Nor can Plaintiff dispute that courts must defer to an agency when the agency must "exercise its administrative discretion in deciding how, in light of internal organizational considerations, it may best proceed to develop the needed evidence." *Fed. Power Comm'n v. Transcon. Gas Pipe Line Corp.*, 423 U.S. 326, 333 (1976). Plaintiff, instead, claims that treating the "public interest" provision of section 1255(m)(1)(B) as an independent requirement for adjustment by U nonimmigrants is "incongruous with Section 1255, which discusses the 'public interest' in a permissive and generous manner." *Id.* 14-15. But that "public interest" clause is no mere license for USCIS to exercise discretion in the applicant's favor in every instance it is invoked. Within the structure of section 1255(m), "public interest" grounds presented by the applicant must justify, in the agency's opinion, adjustment of status. *See Rashtabadi v. I.N.S.*, 23 F.3d 1562, 1568 (9th Cir. 1994) (noncitizen "has the burden of persuading [USCIS] to exercise [its] discretion favorably" in adjustment of status) (internal citation omitted); *see also J.M.O. v. United States*, 3 F.4th 1061, 1064 (8th Cir. 2021) ("failure to establish that adjustment of status is . . . in the public interest…is a discretionary determination…") (internal quotations omitted). There is no incongruity in this framework.

Plaintiff similarly argues that because provisions for the adjustment of other categories of non-citizens in Section 1255 do not incorporate inadmissibility grounds under a "public interest" clause, the U nonimmigrant adjustment provision cannot do so, either. Pl.'s Opp'n 13. But she ignores the differences between those statutes. The T nonimmigrant adjustment statute, for example, imposes all of section 1182's inadmissibility provisions but grants USCIS the

discretion to issue waivers of inadmissibility. 8 U.S.C. § 1255(l)(2). The statute providing for adjustment of special immigrant juveniles requires applicants to establish they are not inadmissible under certain provisions of 8 U.S.C. § 1182(a) but permits USCIS to waive those inadmissibility grounds if in the public interest. 8 U.S.C. § 1255(h)(2). Meanwhile, the U nonimmigrant adjustment statute employs the "public interest" in an entirely different manner: not to justify waivers of inadmissibility but as a factor for USCIS to consider in the exercise of its discretion on the adjustment application. 8 U.S.C. § 1255(m)(1)(B). USCIS regulations reasonably interpreted that public interest provision to include consideration of section 1182's inadmissibility grounds in the overall discretionary analysis. 8 U.S.C. § 1255(m)(1)(B); 8 C.F.R. § 245.24(d)(11). The differing language of the statutes have led to unique administrative standards and procedures for U nonimmigrant adjustment applications, and the agency's regulation was a reasonable implementation of the U nonimmigrant adjustment statute. *See United States v. Fiorillo*, 186 F.3d 1136, 1148 (9th Cir. 1999) ("Congress does not use different language in different provisions to accomplish the same result").

Plaintiff also argues that USCIS cannot rely on the "public interest" clause to extend unenumerated inadmissibility grounds to U nonimmigrant adjustment applicants because section 1255(m) distinguishes the public interest from inadmissibility. Pl.'s Opp'n 14. But while the "public interest" clause permits USCIS to consider inadmissibility grounds, the public interest is not defined strictly or solely by those grounds. *See* 8 C.F.R. § 245.24(d)(11) (". . . USCIS may take into account *all* factors, including [but not limited to] acts that would otherwise render the applicant inadmissible, in making its discretionary decision on the application") (emphasis added); *Include*, *Black's Law Dictionary* (10th ed. 2014) (noting that "including" "indicates a partial list"). And because the public interest is not co-extensive with inadmissibility grounds, USCIS need not identify, as Plaintiff claims, Pl.'s Opp'n 15, an inadmissibility ground applicable to Plaintiff before rejecting her adjustment application.

CONCLUSION

For the foregoing reasons and those provided in Plaintiff's motion to dismiss, the Court should grant Defendants' motion to dismiss the complaint.

DATED: April 4, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing DEFENDANTS' REPLY IN SUPPORT OF MOTION TO DISMISS CLASS ACTION COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(1) AND 12(b)(6) with the Clerk of Court using the CM/ECF system. The CM/ECF system will serve a copy of the foregoing to the following attorneys for Plaintiffs-Petitioners registered as CM/ECF filers:

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