Chief Magistrate Judge J. Richard Creatura

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Miriam VELASCO DE GOMEZ, et al. Plaintiffs, v. UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, et al. Defendants.	Case No. 2:22-cv-368 **PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION** Noted on Motion Calendar: May 6, 2022 ORAL ARGUMENT REQUESTED

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

TABLE OF CONTENTS

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

I. INTRODUCTION

Plaintiffs and proposed class members (hereinafter "Plaintiffs") seek preliminary relief from U.S. Citizenship and Immigration Services' (USCIS) policy and practice that unlawfully delays and denies Plaintiffs the opportunity to obtain lawful permanent residence. Plaintiffs are beneficiaries of visa petitions filed by family members or employers, and they have applied to adjust their status to become lawful permanent residents. Pursuant to 8 U.S.C. § 1182(a)(9)(B)(i), all Plaintiffs were previously inadmissible for either a three- or ten-year period, starting from the date of their last departure from the United States. As a result, they were ineligible to apply to adjust their status until the specified time period elapsed. However, USCIS has interpreted the statute to extend beyond the specified time period if a noncitizen reenters the United States and remains in the United States without lawful status.

USCIS's restrictive policy and practice is ultra vires to the statutory framework created by Congress. The statute specifies only that the three- or ten-year period of inadmissibility runs from the date of the noncitizen's departure following a period of unlawful presence. It does not extend the period of inadmissibility based on actions taken after the noncitizen departs the United States. In contrast, other parts of the Immigration and Nationality Act (INA) *do* penalize applicants who reenter the United States without status or remain in the United States after their lawful status has expired. Despite the fact that § 1182(a)(9)(B)(i) does not include such language, Defendant USCIS has grafted onto the statute such a requirement, adopting a policy and practice of extending the period of inadmissibility beyond the three- and ten-year period. That policy and practice is "in excess of statutory . . . authority," and thus should be set aside by this Court pursuant to the Administrative Procedure Act. *See* 5 U.S.C. § 706(2)(C).

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

Moreover, Defendants' restrictive interpretation of the statute causes irreparable harm to Plaintiffs, impeding their ability to obtain lawful permanent residence, depriving them of employment authorization, and jeopardizing their very right to remain in this country, thereby threatening to separate them from their families, homes, and employment. Accordingly, Plaintiffs seek a preliminary injunction to alleviate the harm they continue to suffer as a result of USCIS's unlawful interpretation of 8 U.S.C. § 1182(a)(9)(B)(i).

Because Plaintiffs are likely to prevail on the merits of their challenge to the agency policy and practice, because the unlawful agency action causes Plaintiffs irreparable harm, and because the remaining factors also favor Plaintiffs, this Court should issue preliminary relief. In doing so, the Court should enjoin Defendants from finding Plaintiffs ineligible and denying their applications based on Defendants' unlawful interpretation of 8 U.S.C. § 1182(a)(9)(B)(i).

II. STATEMENT OF FACTS

A. Legal Background to Defendants' Unlawful Presence Bar Policy

1. Adjustment of Status to Legal Permanent Residence

Noncitizens present in the United States may apply for lawful permanent resident (LPR) status based on certain family and employment-based categories. 8 U.S.C. §§ 1153, 1154, 1255. Adjustment of status allows applicants to apply to become LPRs while remaining in the United States, instead of requiring them to first return to their home countries and apply for immigrant visas from a U.S. embassy or consulate abroad. Among other requirements, an applicant seeking to adjust status and become an LPR must demonstrate that they are admissible. *See, e.g.*, *id.* 1255(a), (i)(2)(A). The INA lists at 8 U.S.C. § 1182 the grounds of inadmissibility that would render an applicant ineligible to adjust status. The grounds of inadmissibility relevant to this case

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

are listed at § 1182(a)(9)(B)(i), which render a noncitizen inadmissible based on (1) prior unlawful presence in the United States and (2) a prior departure or removal from the country.

Unlawful presence in the United States generally occurs in one of two ways. First, a noncitizen can enter and remain in the United States without permission. *Id.* § 1182(a)(9)(B)(ii). Second, a noncitizen can be inspected and admitted at the border, but then overstay their period of authorized stay. *Id.* For example, the latter situation might occur if a noncitizen is admitted as a visitor or tourist for a maximum of 180 days, but the person continues to reside in the country after the 180 days have passed.

Under § 1182(a)(9)(B)(i), a noncitizen can be subject to what are commonly known as the three-year and ten-year unlawful presence bars. The three-year bar to admissibility is triggered when a noncitizen departs the United States after having been unlawfully present for "more than 180 days but less than 1 year." *Id.* § 1182(a)(9)(B)(i)(I). The ten-year bar on admissibility is triggered when a noncitizen departs the United States after having been unlawfully present "one year or more." *Id.* § 1182(a)(9)(B)(i)(II).

A discretionary waiver of the three- or ten-year periods of inadmissibility is available to some applicants who seek to apply for admission *prior to* the expiration of the three- or ten-year period. Specifically, 8 U.S.C. § 1182(a)(9)(B)(v) provides a waiver of inadmissibility if an applicant demonstrates that "refusal of admission to such immigrant [noncitizen] would result in extreme hardship to the citizen or lawfully resident spouse or parent of such [noncitizen]." However, many people do not have a qualifying relative to make them eligible to even apply for the waiver. And those who do not qualify for such a waiver are required to wait for the specified period to elapse before applying for admission as a lawful permanent resident. Those who do qualify must pay an additional $930 filing fee in order to have any chance to be granted the

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

discretionary waiver. *See* USCIS, I-601, Application for Waiver of Grounds of Inadmissibility (last updated Mar. 23, 2022), https://www.uscis.gov/i-601.

2. Defendants' Unlawful Presence Bar Policy and Practice

As detailed below, the INA does not state that a noncitizen must remain *outside* of the United States during the three- or ten-year time period. Nor does the INA state that the specified time period is paused if the non-citizen re-enters the United States without status or fails to maintain lawful status during the time period. Rather, the statute states only that the departure of the noncitizen commences the three- or ten-year period of inadmissibility. 8 U.S.C. § 1182(a)(9)(B)(i) (stating that the periods of inadmissibility run from "the date of such [noncitizen's] departure or removal").

Notwithstanding the statute's plain language, Defendants have a policy and practice of requiring agency adjudicators to conclude that Plaintiffs are inadmissible—and therefore ineligible to adjust status—because they did not complete the three- or ten-year period while they were outside the United States or in lawful status in the United States. As detailed below, all of the Plaintiffs were similarly situated, and USCIS denied all of their claims on the basis of the same rationale. *Infra*. Sec. II.B. Other cases throughout the country have challenged the same unlawful policy and practice. *See, e.g.*, *Neto v. Thompson*, 506 F. Supp. 3d 239, 243 (D.N.J. 2020); *Kanai v. United States Dep't of Homeland Sec.*, No. 2:20-cv-05345-CBM-(KSx), 2020 WL 6162805, at *2 (C.D. Cal. Aug. 20, 2020); *Ordaz v. USCIS*, No. 3:21-cv-04079, Dkt. 1 (N.D. Cal. May 28, 2021); *Reis v. USCIS*, No. 21-cv-03077, Dkt. 1 (N.D. Cal. Apr. 27, 2021). And attorneys from across the country have submitted declarations demonstrating that the agency regularly rejects their clients' adjustment applications on this ground. *See* Anderson Decl. ¶¶ 3–4; Heflin Decl. ¶ 3; Hernandez Decl. ¶ 3; Jones Decl. ¶ 3; Klein Decl. ¶¶ 3–4; Nelson Decl.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

¶ 3; Rich Decl. ¶ 3; Scheuerlein Decl. ¶ 3; Stratton Decl. ¶ 3. This consistent practice shows the agency denies proposed class members' applications based on a uniform, nationwide policy and practice. *See, e.g.*, *Damus v. Nielsen*, 313 F. Supp. 3d 317, 332 (D.D.C. 2018) (concluding that agency practice of "no parole" for certain noncitizens existed where "nearly every application for parole from such individuals has been denied"); *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 184 (D.D.C. 2015) (concluding that agency policy existed where record showed that Immigration & Customs Enforcement officers were required to assess a certain factor in custody determinations, notwithstanding the absence of an official policy).

B. Named Plaintiffs' Factual Backgrounds

1. Plaintiff Miriam Velasco de Gomez

Plaintiff Miriam Velasco de Gomez (Ms. Velasco) is a noncitizen from Mexico. Velasco Decl. ¶ 2. She has lived in the United States for over twenty years and has two U.S. citizen children, along with two other children who are lawful permanent residents of the United States. *Id.* ¶¶ 2–3. She has one other child who is a citizen of Mexico. *Id.* ¶ 3.

Ms. Velasco entered the United States in June 1996 on a B-2 visitor visa. *Id.* ¶ 4. After entering in 1996, she remained in the United States for almost four years, until departing in March of 2000. *Id.* As a result, she accrued more than one year of unlawful presence during this time and became subject to the ten-year unlawful presence bar at 8 U.S.C. § 1182(a)(9)(B)(i)(II). Ms. Velasco then reentered the United States on April 8, 2000, again on a B-2 visa. *Id.* ¶ 6. She has remained in the United States since that date. *Id.* ¶¶ 2, 6.

On July 19, 2018, well over ten-years since she last departed the United States, Ms. Velasco filed an application for adjustment of status on Form I-485, Application to Register Permanent Resident or Adjust Status. *Id.* ¶ 7. Her son Kevin Gomez, a U.S. citizen, concurrently

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

filed Form I-130, Petition for [Noncitizen] Relative. *Id.* That form listed Ms. Velasco as the beneficiary. *Id.* USCIS approved the I-130 petition on March 27, 2020. *Id.* ¶ 8. Because Ms. Velasco is an immediate relative of her son under the INA and because she was present pursuant to a lawful admission, she was eligible to adjust her status immediately under § 1255(a). *See* 8 U.S.C. § 1255(a); *id.* § 1151(b)(2)(A)(i) (defining "immediate relative" and explaining that such individuals are not subject to visa limits).

Nevertheless, on March 27, 2020, USCIS issued a Request for Evidence (RFE), stating that Ms. Velasco was subject to the ten-year unlawful presence bar at 8 U.S.C. § 1182(a)(9)(B)(i)(II). Maltese Decl. Ex. A; Velasco Decl. ¶ 9. Ms. Velasco timely responded to the RFE, explaining that she was no longer subject to the unlawful presence bar because ten years had elapsed since she became subject to it. Velasco Decl. ¶ 9.

On January 27, 2021, USCIS denied Ms. Velasco's application for adjustment of status. Maltese Decl. Ex. B; Velasco Decl. ¶ 10. The sole reason for USCIS's decision was that in the agency's view, Ms. Velasco remained inadmissible under 8 U.S.C. § 1182(a)(9)(B)(i)(II) because ten years did not elapse between her departure in 2000 and subsequent reentry. Maltese Decl. Ex. B. Following the denial, Ms. Velasco submitted Form I-290B, Notice of Appeal or Motion, seeking a reopening or reconsideration of her adjustment application. Velasco Decl. ¶ 11. Ms. Velasco again argued that she was not subject to the unlawful presence bar under 8 U.S.C. § 1182(a)(9)(B)(i)(II) because more than two decades had passed since her last departure. That motion remains pending. *Id.*

Ms. Velasco faces significant harm because of USCIS's unlawful interpretation. The agency's policy prohibits her from adjusting status, depriving her of the benefits that accompany lawful permanent residence, including employment authorization. *Id.* ¶¶ 13–14. Notably, Ms.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

Velasco is not even eligible for a waiver of the unlawful presence bar under 8 U.S.C. § 1182(a)(9)(B)(v) because she does not have a qualifying relative. *Id.* ¶ 12. In addition, without the security of LPR status, Ms. Velasco may face removal and separation from her family, including her U.S. citizen children and grandchildren. *Id.* ¶ 13. This separation would negatively affect Ms. Velasco's children in many ways, including by taking away from them the care and financial support Ms. Velasco provides. *Id.* ¶¶ 13–14.

2. Plaintiffs Elena Gonzalez Tavira and Carlos Gonzalez Martinez

Plaintiffs Elena Gonzalez Tavira (Ms. Gonzalez) and Carlos Gonzalez Martinez (Mr. Gonzalez) are married noncitizens from Mexico. E. Gonzalez Decl. ¶ 2, C. Gonzalez Decl. ¶ 2; *see also* Dkt. 1 ¶ 45. They have lived in the United States for over twenty years and have four U.S. citizen children. E. Gonzalez Decl. ¶¶ 2–3; C. Gonzalez Decl. ¶¶ 2–3.

In addition to other prior entries and exits, Mr. and Ms. Gonzalez entered the United States without inspection in 1995 and remained in the United States until December 1997. E. Gonzalez Decl. ¶ 4, C. Gonzalez Decl. ¶ 4. The couple began to accrue unlawful presence on April 1, 1997, and accrued 8 months of unlawful presence prior to their departure.[1] E. Gonzalez Decl. ¶ 5, C. Gonzalez Decl. ¶ 5. By accruing this unlawful presence, they became subject to the three-year unlawful presence bar at 8 U.S.C. § 1182(a)(9)(B)(i)(I) when they departed the United States in December 1997.

The Gonzalezes entered without inspection when they returned to the United States in 1999 and have lived here since that time. E. Gonzalez Decl. ¶¶ 2, 6; C. Gonzalez Decl. ¶¶ 2, 6.

[1] The unlawful presence bar at 8 U.S.C. § 1182(a)(9)(B)(i) became law as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Pub. L. No. 104-208, Div. C § 301(b), 1101 Stat. 3009-1, 3009-575–78. Under IIRIRA, the new unlawful presence bar provisions became effective on April 1, 1997. *See* Pub. L. No. 104-208, Div. C § 301(b)(3), 1101 Stat. at 3009-578; *see also Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 597 (9th Cir. 2002).

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

On February 22, 2018, nearly twenty years later and far more than three years after their last departure, Mr. and Ms. Gonzalez submitted I-485 adjustment applications to USCIS. E. Gonzalez Decl. ¶ 7, C. Gonzalez Decl. ¶ 7. At the same time, their eldest son, Juan Carlos, submitted an I-130 to petition for each of them as his immediate relatives. E. Gonzalez Decl. ¶ 7, C. Gonzalez Decl. ¶ 7. Although Mr. and Ms. Gonzalez entered the United States without inspection in 1999, they are eligible for adjustment of status under 8 U.S.C. § 1255(i). Pursuant to that subsection, Congress permits noncitizens who entered without inspection to adjust status if (1) they are the beneficiary of an immigrant petition that was filed before April 30, 2001 (or if they filed an application for labor certification under 8 U.S.C. § 1182(a)(5)(A) before that date) and (2) they were present in the United States on December 21, 2000, so long as they pay an additional penalty fee of $1,000. 8 U.S.C. § 1255(i). The Gonzalezes satisfy these requirements. E. Gonzalez Decl. ¶ 7, C. Gonzalez Decl. ¶ 7.

On June 13, 2019, USCIS issued an RFE for both Mr. and Ms. Gonzalez's adjustment of status applications, stating that they were subject to the three-year unlawful presence bar at 8 U.S.C. § 1182(a)(9)(B)(i)(I). E. Gonzalez Decl. ¶ 8, C. Gonzalez Decl. ¶ 8. The Gonzalezes responded that they were not inadmissible pursuant to that subsection because three years had elapsed since their last departure. E. Gonzalez Decl. ¶ 8, C. Gonzalez Decl. ¶ 8. USCIS subsequently denied Mr. and Ms. Gonzalez's applications for adjustment of status on January 13, 2021. Maltese Decl. Exs. C–D; E. Gonzalez Decl. ¶ 9, C. Gonzalez Decl. ¶ 9. The sole reason for USCIS's decision was that in the agency's view, Mr. and Ms. Gonzalez remained inadmissible under 8 U.S.C. § 1182(a)(9)(B)(i)(I) because three years did not elapse between their departure in 1997 and their return to the United States in 1999. Maltese Decl. Exs. C–D.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

Following the denial, on March 12, 2021, the Gonzalezes submitted a motion to reopen or reconsider on Form I-290B, Notice of Appeal or Motion. E. Gonzalez Decl. ¶ 10, C. Gonzalez Decl. ¶ 10. Mr. and Ms. Gonzalez again argued that they were not subject to the unlawful presence bar of 8 U.S.C. § 1182(a)(9)(B)(i)(I) because more than two decades had passed since their last departure. USCIS denied the motion. Maltese Decl. Exs. E–F; E. Gonzalez Decl. ¶ 11, C. Gonzalez Decl. ¶ 11. Like Ms. Velasco, the Gonzalezes are not eligible for a waiver of the unlawful presence bar under 8 U.S.C. § 1182(a)(9)(B)(v). E. Gonzalez Decl. ¶ 12, C. Gonzalez Decl. ¶ 12.

Mr. and Ms. Gonzalez now face significant harm because of USCIS's unlawful interpretation. USCIS's denial terminated the Gonzalezes' employment authorization, causing Ms. Gonzales to lose her job, E. Gonzalez Decl. ¶¶ 13–14, and jeopardizing Mr. Gonzales's employment, C. Gonzalez Decl. ¶¶ 13–14. This loss of employment has produced serious financial hardship, including the threat of eviction and difficulty in covering basic living expenses, like medical needs. E. Gonzalez Decl. ¶ 14, C. Gonzalez Decl. ¶ 14. The agency's policy also prohibits them from adjusting status, depriving them of the benefits that accompany lawful permanent residence. E. Gonzalez Decl. ¶ 13, C. Gonzalez Decl. ¶ 13. Notably, without LPR status, Mr. Gonzalez cannot travel to see his aging father. C. Gonzalez Decl. ¶ 13. In addition, without the security of LPR status, the Gonzalezes may face removal and separation from their family, including their U.S. citizen children. E. Gonzalez Decl. ¶ 13, C. Gonzalez Decl. ¶ 13.

3. Plaintiff Manuel Alvarez Garcia

Plaintiff Manuel Alvarez Garcia is a noncitizen from Mexico. Alvarez Decl. ¶ 1. He has lived in the United States for nearly twenty years and has five children, three of whom are U.S.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

citizens and one of whom is an LPR. *Id.* ¶ 3. Mr. Garcia entered the United States in December 1998 on a B-2 visitor visa. *Id.* ¶ 4. He departed again a year later, in December 1999. *Id.* He reentered later that month, staying until sometime in 2000. *Id.* Mr. Garcia then reentered the United States later in 2000 and departed in 2003. *Id.* His last entry to the United States was in July 2003 pursuant to his B-2 visitor visa. *Id.* ¶ 6. He has lived in the United States since then. *Id.* ¶¶ 2, 7. Because Mr. Garcia stayed in the United States past the periods of stay authorized by his visa, he accrued more than one year of unlawful presence. He therefore became subject to the ten-year unlawful presence bar at 8 U.S.C. § 1182(a)(9)(B)(i)(II) when he departed the United States in 2003.

On October 11, 2019, long after the passage of ten years since his last departure, Mr. Garcia filed an application to adjust status under 8 U.S.C. § 1255(a). *Id.* ¶ 7. Along with the application, his U.S. citizen son and member of the U.S. Army, Manuel Eduardo Alvarez Villalpando (Mr. Alvarez), filed Form I-130. *Id.* That form listed Mr. Garcia as the beneficiary. *Id.* USCIS approved the Form I-130 on March 31, 2021. *Id.* ¶ 8. Because Mr. Garcia is an immediate relative of his son under the INA and because he is present pursuant to a lawful admission, he is eligible to adjust his status immediately. *See* 8 U.S.C. §§ 1255(a), 1151(b)(2)(A)(i). Around the same time, on March 24, 2021, USCIS interviewed Mr. Garcia about his adjustment of status application. *Id.* ¶ 9.

Months later, on July 9, 2021, USCIS issued Mr. Garcia an RFE, stating that Mr. Garcia appeared to be subject to the ten-year unlawful presence bar at 8 U.S.C. § 1182(a)(9)(B)(i)(II). Maltese Decl. Ex. G; Alvarez Decl. ¶ 9. Mr. Garcia timely responded to the RFE, explaining that he was no longer subject to the unlawful presence bar because ten years had elapsed since he became subject to it. Alvarez Decl. ¶ 9. The RFE did not indicate any other grounds for possible

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

denial or reasons for concern regarding Mr. Garcia's adjustment application. Maltese Decl. Ex. G. Mr. Garcia's application to adjust status now remains pending, Alvarez Decl. ¶ 10, and will be denied based on USCIS's erroneous legal interpretation of the unlawful presence bar at 8 U.S.C. § 1182(a)(9)(B).

Just like the other Plaintiffs, Mr. Garcia faces significant harm because of USCIS's unlawful interpretation. He is not eligible for a waiver of the inadmissibility ground, Alvarez Decl. ¶ 11, and as a result, Defendants' policy will prohibit him from becoming an LPR. That would expose him to removal, which would separate Mr. Alvarez from his five children and six grandchildren, all of whom live in Washington. *Id.* ¶ 12. In addition, without LPR status, Mr. Alvarez cannot travel to see family in Mexico, who he has not seen since 2003. *Id.* ¶ 12. The lack of LPR status and the delay the agency has caused by demanding he meet an inapplicable requirement also make it difficult for Mr. Alvarez to further develop his business. *Id.* ¶ 13.

4. Aleciana Costa Soares

Plaintiff Aleciana Costa Soares (Ms. Costa) is a noncitizen from Brazil. Costa Decl. ¶ 2. She has lived in the United States since 2018 and is married to her LPR husband. *Id.* ¶¶ 2, 14. She has four children, three of whom are U.S. citizens. *Id.* ¶ 3.

Ms. Costa entered the United States on a B-2 visitor visa on August 3, 2001. *Id.* ¶ 4. She departed the United States in December of 2003 and reentered the United States on a B-2 visitor visa in February of 2004. *Id.* In 2007, Ms. Costa's stepson filed an I-130 on her behalf. *Id.* ¶ 5. That I-130 was approved on June 4, 2007. *Id.* Ms. Costa also filed an application for adjustment of status and a waiver of inadmissibility, but those applications were denied. *Id.* She left the United States again in December of 2009. *Id.* ¶ 6. Because Ms. Costa stayed in the United States past the periods of stay authorized by her visa, she accrued more than one year of unlawful

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

presence. She therefore became subject to the ten-year unlawful presence bar at 8 U.S.C. § 1182(a)(9)(B)(i)(II) when she last departed the United States in 2009.

On September 8, 2010, while Ms. Costa was outside of the United States, she was ordered removed in absentia by an Immigration Judge (IJ). *Id.* ¶ 8. On April 30, 2018, Ms. Costa reentered the United States on B-2 visitor visa. *Id.* ¶ 9. Prior to reentering, she applied for and was granted consent to reapply for admission pursuant to 8 U.S.C. § 1182(a)(9)(A)(iii). *Id.* Ms. Costa has remained in the United States since her reentry in 2018.

Following her most recent entry in 2018, Ms. Costa again applied to adjust status. *Id.* ¶ 10. To do so, she first requested reopening of her removal proceedings. *Id.* The IJ reopened the proceedings, and on August 16, 2021, granted a motion to terminate the removal proceedings. *Id.* This allowed Ms. Costa to seek adjustment of status before USCIS. *Id.* Then, on September 10, 2021, Ms. Costa submitted her application to adjust status to USCIS. *Id.* ¶ 11. That application was based on the Form I-130 that had previously been approved in 2007. Because Ms. Costa is an immediate relative of her son under the INA and because she was present pursuant to a lawful admission, she was eligible to adjust her status immediately under § 1255(a). *See* 8 U.S.C. §§ 1255(a), 1151(b)(2)(A)(i).

On March 14, 2022, USCIS issued an RFE regarding Ms. Costa's application. Maltese Decl. Ex. H; Costa Decl. ¶ 12. In the RFE, the agency stated that she appears to be subject to the ten-year unlawful presence bar at 8 U.S.C. § 1182(a)(9)(B)(i)(II) and is therefore inadmissible to the United States. Maltese Decl. Ex. H; Costa Decl. ¶ 12. The agency instructed Ms. Costa to file Form I-601, Application for Waiver of Grounds of Inadmissibility. Maltese Decl. Ex. H; Costa Decl. ¶ 13. The filing fee for Form I-601 is $930. Costa Decl. ¶ 13.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

Ms. Costa faces significant harm because of USCIS's unlawful interpretation. Because of the agency's policy, she must file Form I-601 and pay the additional $930 filing fee. *Id.* ¶ 13. In addition, the discretionary waiver is granted only if Ms. Costa is able to demonstrate that refusing her admission "would result in extreme hardship to [her] citizen or lawfully resident spouse or parent." 8 U.S.C. § 1182(a)(9)(B)(v). The statute also specifies that "[n]o court shall have jurisdiction to review a decision or action by the Attorney General regarding" the discretionary waiver. *Id.* As a result, Ms. Costa suffers significant emotional stress because she does not know if she would even be granted a waiver. *Id.* ¶ 15. Alternatively, if Ms. Costa decided to assert her statutory rights and insist that no waiver is required, USCIS would deny her application and she would face potential removal proceedings and separation from her family. *Id.* ¶ 14. Moreover, without LPR status, she is unable to travel and see her father, who is aging and has experienced significant health issues in recent years. *Id.* Finally, obtaining LPR status would guarantee Ms. Costa work authorization, empowering her to better support her family's struggling financial situation. *Id.* ¶¶ 13–14.

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. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 21 (2008); *Am. Trucking Ass'ns v. City of L.A.*, 559 F.3d 1046, 1052 (9th Cir. 2009). 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). Here, the facts and the law clearly favor Plaintiffs,

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

and this Court should accordingly grant their request for a preliminary injunction.

A. Plaintiffs Are Likely to Succeed on the Merits.

Defendants' policy and practice interpreting the unlawful presence bars at 8 U.S.C. § 1182(a)(9)(B)(i) is contrary to the plain language of the statute. The Administrative Procedure Act (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 that 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 are able to demonstrate the policy and practice at issue concerns agency action in excess of statutory authority and not in accordance with law.

USCIS's restrictive interpretation of the INA defies the statute's plain language. The text of the statute itself ties the inadmissibility period to a departure or removal following the accrual of unlawful presence. Nowhere does the statute require that a noncitizen wait three or ten years outside of the country, or else continuously maintain lawful status while inside the United States for that period of time. In contrast, as detailed below, other related inadmissibility provisions *do* require that an individual wait outside the United States or else maintain continuous lawful status. Basic canons of statutory construction thus confirm that Congress intentionally chose not to include in 8 U.S.C. § 1182(a)(9)(B)(i) the requirements USCIS imposes, further clarifying that the agency policy and practice is in excess of statutory authority.

First, the plain language of the statute renders a person inadmissible for either three or ten years following the date of their departure. Indeed, the statue expressly instructs that the inadmissibility period shall run from the date of the noncitizen's departure or removal, stating

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

that any non-citizen who:

> (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission *within 3 years of the date of such [noncitizen's] s departure or removal*, or
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission *within 10 years of the date of [such noncitizen's] departure or removal* from the United States, is inadmissible.

8 U.S.C. § 1182(a)(9)(B)(i) (emphasis added). The three- and ten-year bars thus run from the date of the noncitizen's "departure or removal." The statute provides no basis to stop or restart the specified time period based on other factors. The statute does not require that the noncitizen then remain outside of the United States while waiting for the time period to elapse before applying for admission. Nor does the INA require, for those noncitizens who do reenter, that they remain in lawful status while waiting for the three- or ten-year period of inadmissibility to run. Rather, the statute's text demonstrates that the prior departure alone commences the three- or ten-year period of inadmissibility. *See Matter of Rodarte-Roman,* 23 I. & N. Dec. 905, 909 (BIA 2006) (holding that "Congress has tied the relevant period of inadmissibility . . . to the date when the [noncitizen] departs the United States, voluntarily or otherwise"); *see also Neto*, 506 F. Supp. 3d at 251 (observing that USCIS's interpretation "would operate as a punishment with permanent effects, rather than as a time-limited deterrent," an effect that "is inconsistent with both [the statute's] wording and its evident purpose"); *Kanai v. U.S. Dep't of Homeland Sec.*, No. 2:20-cv-05345-CBM-(KSx), 2020 WL 6162805, at *2 (C.D. Cal. Aug. 20, 2020) (holding that plaintiff was inadmissible only for ten years following last departure, notwithstanding a subsequent unlawful entry prior to the expiration of the ten years); *id.* at *3 ("Congress intended to make departure the event that triggers inadmissibility, rather than unlawful presence.").

In contrast to the three- and ten-year unlawful presence bars at 8 U.S.C.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

§ 1182(a)(9)(B)(i), the very next subparagraph creates a bar that explicitly penalizes a noncitizen for re-entering or attempting to re-enter the country after having resided unlawfully in the United States. Section 1182(a)(9)(C)(i) specifies that any noncitizen who has been unlawfully present for more than a year or has been ordered removed, "and who enters or attempts to reenter the United States without being admitted is inadmissible." Thus, under § 1182(a)(9)(C)(i), the bar to inadmissibility is triggered by the reentry (or attempted reentry). This stands in clear contrast to § 1182(a)(9)(B)(i), which focuses only the date of departure.

Moreover, § 1182(a)(9)(C)(ii) then provides an exception to the bar at § 1182(a)(9)(C)(i) if at least ten years have elapsed since the date of the last departure. Notably, the exception explicitly requires that the Secretary of Homeland Security permit the noncitizen to reapply for admission "*prior* to the [noncitizen's] reembarkation *at a place outside of the United States* or attempt to be readmitted from a foreign contiguous country." 8 U.S.C. § 1182(a)(9)(C)(ii) (emphasis added). A similar exception also exists for individuals subject to the inadmissibility grounds at 8 U.S.C. § 1182(a)(9)(A)(iii), another neighboring subparagraph. These exceptions again underscore that when Congress sought to require a person to remain and apply for admission outside of the United States, it used express language. As the Supreme Court has explained, "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." *Nken v. Holder,* 556 U.S. 418, 430 (2009) (alteration and citation omitted); *see also, e.g.*, *Medina Tovar v. Zuchowski*, 982 F.3d 631, 635 (9th Cir. 2020) (holding that USCIS's interpretation of INA violated statute's plain language where USCIS required a U visa derivative to satisfy a requirement that Congress only imposed for certain other individuals); *Toor v. Lynch*, 789 F.3d 1055, 1062–63 (9th Cir. 2015) (holding

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

that agency's interpretation of INA violated the law where Congress enumerated certain bars on a form of relief but did not enumerate a bar to relief imposed by the agency).

Similarly, the agency errs in its policy and practice of refusing to count the years that have elapsed since the departure if the applicant for admission reenters the United States with inspection, but thereafter fails to maintain lawful presence. As noted, nothing in the statute provides a basis for the agency to stop the "clock" with respect to the three- and ten-year bars. Moreover, another provision in the INA explicitly requires that a person seeking admission demonstrate that they "maintain continuously a lawful status since entry into the United States" to be eligible to apply for adjustment of status. *See* 8 U.S.C. § 1255(c)(2) (rendering ineligible any applicant who fails to maintain lawful status prior to applying for admission *unless* they are an immediate relative or qualify for other specified exceptions). That statutory restriction—and its absence from § 1182(a)(9)(B)(i)—demonstrate that the three- and ten-year bars contain no requirement that a person inside the United States maintain lawful status for the specified time period to run. Once again, the fact that Congress chose to include that requirement in a separate section, but not in § 1182(a)(9)(B)(i), further confirms that the agency policy and practice is ultra vires to the agency's statutory authority.

Notably, the Board of Immigration Appeals (BIA) recognizes this fact and has correctly concluded that a noncitizen may reside in the United States while waiting out the penalty imposed by the three- and ten-year bars. *See* Dkt. 1-1, *Matter of Armando Cruz*, at 2 (BIA Apr. 9, 2014). The BIA has reached this conclusion even for individuals who have spent their time waiting for the unlawful presence bar to expire while unlawfully present in the United States. *See id.* at 1 (noting that after the departure triggering the inadmissibility bar, the noncitizen "returned to the United States illegally . . . and never departed"); *see also* Dkt. 1-2, *Matter of*

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

TapiaCervantes (BIA Dec. 21, 2018) (similar).[2]

In sum, despite the absence of statutory language requiring that Plaintiffs wait outside the United States or maintain continuous lawful status to satisfy the three or ten-year period, USCIS has determined that Plaintiffs are inadmissible and has either (1) denied or will deny Plaintiffs' applications, or (2) required or will require them to seek discretionary waivers to the ground of inadmissibility. Those determinations violate the plain language of the INA, are not in accordance with law, and are arbitrary and capricious. As such, Plaintiffs have demonstrated they are likely to prevail on the merits.

B. Plaintiffs Will Suffer Irreparable Harm in the Absence of Preliminary Relief.

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). Here, USCIS's unlawful requirement and the delays that requirement produces in adjudicating adjustment applications have caused and will continue to cause irreparable harm that cannot be remedied if this Court waits until the end of trial to grant relief.

First, Plaintiffs suffer irreparable harm by losing the opportunity to adjust to LPR status. For the reasons explained above, they are all statutorily eligible to adjust status. While some class members may be eligible for an expensive waiver, *see* Costa Decl. ¶ 13; Anderson Decl. ¶¶ 4, 7; Heflin Decl. ¶ 8, many will not be, *see* Velasco Decl. ¶ 12; E. Gonzalez Decl. ¶ 12; C. Gonzalez Decl. ¶ 12; Alvarez Decl. ¶ 11; Anderson Decl. ¶¶ 5–6; Heflin Decl. ¶ 9; Hernandez

[2] Notably, in recent cases USCIS has acceded to Plaintiffs' position rather than defending the agency denials in court. *See Ordaz*, No. 4:21-cv-04079, Dkt. 29 (N.D. Cal. Dec. 3, 2021); *Reis*, No. 21-cv-03077, Dkt. 29 (N.D. Cal. Aug. 30, 2021).

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

Decl. ¶ 7; Nelson Decl. ¶ 7; Rich Decl. ¶ 8, Scheuerlein Decl. ¶ 4; Stratton Decl. ¶ 8, and a denial on their adjustment application is the end of the road, with no hope to become an LPR unless USCIS abandons its unlawful policy and practice. 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 (Moreno I)*, 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) (plaintiff was deprived of opportunity to apply for cancellation of removal, which provides a pathway to become an LPR); *Young v. Trump*, 506 F. Supp. 3d 921, 937 (N.D. Cal. 2020) (plaintiffs risked "aging out" of a visa category, and accordingly, the opportunity to become an LPR); *J.L. v. Cissna*, 341 F. Supp. 3d 1048, 1068–69 (N.D. Cal. 2018) (plaintiffs would have lost benefits of a particular legal status, including the ability to adjust status and become an LPR).

Second, and relatedly, the denial of Plaintiffs' adjustment applications will in many cases 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 unless a proposed class member has another legal basis for requesting work authorization, proposed class members will be without a lawful route to employment. Velasco Decl. ¶ 14; E. Gonzalez Decl. ¶ 14; C. Gonzalez Decl. ¶ 14; Alvarez Decl. ¶ 12; Heflin Decl. ¶ 7, Nelson Decl. ¶ 8. Indeed, some Plaintiffs have already lost their jobs for this very reason. E. Gonzalez Decl. ¶ 14. 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.

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

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 needs. Velasco Decl. ¶ 14; E. Gonzalez Decl. ¶ 14; C. Gonzalez Decl. ¶ 14.

Third, 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). Regardless, 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 spouses, children, and siblings, and prevent Plaintiffs from being able to financially support those family members. Velasco Decl. ¶¶ 13–14; E. Gonzalez Decl. ¶¶ 3, 13; C. Gonzalez Decl. ¶¶ 3, 13; Alvarez Decl. ¶ 12; Costa Decl. ¶¶ 3, 14; Heflin Decl. ¶ 7; Hernandez Decl. ¶ 7; Jones Decl. ¶ 7; Stratton Decl. ¶¶ 7–8. 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); *Abdur-Rahman*, 814 F. Supp. 2d at 1097 ("The harm alleged here is particularly great to the children."). 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. Velasco Decl. ¶ 2; E. Gonzalez Decl. ¶ 2; C. Gonzalez Decl. ¶ 2; Alvarez Decl. ¶ 2; Costa Decl. ¶¶ 2, 4, 6, 10; Anderson Decl. ¶¶ 5–7; Heflin Decl. ¶ 4; Hernandez Decl. ¶ 4; Jones Decl. ¶ 4; Klein Decl. ¶ 5; Nelson Decl. ¶ 4; Scheuerlein Decl. ¶ 4; Stratton Decl. ¶ 7. Thus, for Plaintiffs,

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

the denial of their adjustment applications and the removal to which that exposes them "visit[s] a great hardship" on them, as they may lose "all that makes life worth living." *Bridges v. Wixon*, 326 U.S. 135, 147 (1945).

Fourth, USCIS's unlawful policy and practice delays the adjudication of Plaintiffs' adjustment applications. As explained above, some proposed class members are eligible for a waiver because they have a qualifying family member. But under the statute's plain text, no such waiver is needed. Nevertheless, USCIS requests one, often delaying the adjudication of applications by many months by requiring proposed class members to compile and submit evidence. Such delays constitute harm for which there is "no adequate legal remedy, such as an award of damages." *Ariz. I*, 757 F.3d at 1068; *see also Doe*, 288 F. Supp. 3d at 1082 (noting that "the Ninth Circuit has at least implicitly rejected the notion that delay is not irreparable harm" (citing *Hawaii v. Trump*, 859 F.3d 741, 768 (9th Cir. 2017), *opinion vacated on procedural grounds by Trump v. Hawaii*, 138 S. Ct. 377 (2017))).

Indeed, as this Court has recognized in similar settings, delaying noncitizens' ability to obtain LPR status and the accompanying benefits that status affords, such as the ability to travel internationally and visit family, constitutes irreparable harm. *See Moreno Galvez v. Cuccinelli (Moreno II)*, 492 F. Supp. 3d 1169, 1181 (W.D. Wash. 2020); *see also* C. Gonzalez Decl. ¶ 13 (delay in receiving LPR status prevents plaintiff from visiting aging father); Costa Decl.¶ 14 (similar); Alvarez Decl. ¶¶ 12–13 (delay in receiving LPR status prevents plaintiff from visiting brothers in Mexico and hampers ability to grow business). Furthermore, but for Defendants' unlawful policy and practice, Plaintiffs and proposed class members could become eligible for naturalization five years after being granted LPR status. 8 U.S.C. § 1427(a). Delaying the ability to apply for citizenship also constitutes irreparable harm. S*ee, e.g.*, *Kirwa v. U.S. Dept. of Def.*,

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

285 F. Supp. 3d 21, 42 (D.D.C. 2017) (citing cases).

Finally, Defendants' unlawful policy inflicts substantial emotional and mental stress on class members. As one named plaintiff, Ms. Costa, explains, she already suffers from anxiety and depression, and "[t]he delay with my application only aggravates my mental and physical condition, and could include the prescription of a higher do[]se of the medication, which is not good for my overall health. . . . I can no longer live with all this uncertainty in life." Costa Decl. ¶ 15; *see also* Heflin Decl. ¶ 7; Hernandez Decl. ¶ 7. Such "emotional stress, depression, and reduced sense of well-being" further support a finding of irreparable harm. *Chalk v. U.S. Dist. Ct.*, 840 F.2d 701, 709 (9th Cir. 1988); *see also Moreno II*, 492 F. Supp. 3d at 1181–82.

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

The final two factors for a preliminary injunction also demonstrate that such relief is appropriate in this case. "These factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Many of the same facts that demonstrate irreparable harm also weigh in Plaintiffs' favor for the balance of hardships and public interest factors. First, the balance of hardships and public interest 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 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," which is likely to occur here in the absence of an

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400
Seattle, WA 98104
Tel. (206) 957-8611

injunction. *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 I*, 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). 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 and the proposed class members.

IV. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court preliminarily enjoin Defendants from (1) finding Plaintiffs inadmissible based on their unlawful interpretation of 8 U.S.C. § 1182(a)(9)(B)(i), and (2) denying their applications or requiring that Plaintiffs submit a waiver to overcome the purported grounds of inadmissibility at 8 U.S.C. § 1182(a)(9)(B)(i). In addition, the Court should order Defendants to reopen the adjustment of status applications of any Named Plaintiff whose application was denied pursuant to Defendants' policy and practice regarding 8 U.S.C. § 1182(a)(9)(B)(i).

DATED this 14th day of April, 2022.

s/ Matt Adams
Matt Adams, WSBA No. 28287

s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974

s/ Leila Kang
Leila Kang, WSBA No. 48048

s/ Margot Adams
Margot Adams, WSBA No. 56573

NORTHWEST IMMIGRANT RIGHTS PROJECT
615 Second Avenue, Suite 400

Seattle, WA 98104
Telephone: (206) 957-8611
Email: matt@nwirp.org
leila@nwirp.org
aaron@nwirp.org
margot@nwirp.org