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UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

AKHILESH R. VANGALA; I.S.A.; and KENNY M.  
CASTANEDA PENATE, on behalf of themselves and  
all other similarly situated,

Plaintiffs,

v.

U.S. CITIZENSHIP AND IMMIGRATION SERVICES  
and U.S. DEPARTMENT OF HOMELAND  
SECURITY,

Defendants.

**CLASS ACTION  
COMPLAINT FOR  
INJUNCTIVE AND  
DECLARATORY RELIEF**

**INTRODUCTION**

1  
2           1.       In late 2019, without notice to the public, Defendant U.S. Citizenship and  
3 Immigration Services (USCIS) implemented a tectonic shift in immigration adjudications requiring  
4 its employees to arbitrarily reject thousands of applications from vulnerable immigrants. Notably,  
5 USCIS’s new policy targeted applications seeking humanitarian benefits: from those seeking  
6 refuge from persecution (asylum applications), survivors of domestic violence and other crimes  
7 who voluntarily cooperate with law enforcement (U visa petitions), survivors of human trafficking  
8 (T visa petitions), widows of U.S. citizens, special immigrant juveniles, and those seeking  
9 protection from an abusive spouse, parent, or child (I-360 petitions).  
10

11           2.       The new policy called for USCIS employees to reject these applications or petitions  
12 (hereinafter applications) if they found that any field was left blank on the multi-page applications,  
13 irrespective of the materiality or applicability of the unanswered question. Indeed, USCIS rejected  
14 thousands of applications pursuant to its new, draconian policy for either failing to respond to a  
15 question or for responding in a manner indicating that the field was not applicable that the USCIS  
16 determined was inappropriate.  
17

18           3.       This “rejection policy” or “blank space policy” has led to absurd and unfairly  
19 prejudicial results. One such example—Plaintiff I.S.A.—is a survivor of a violent crime who  
20 helped the police investigate her attackers and then sought a U visa for herself and her two minor  
21 children. USCIS rejected her application because she left blank fields that did not apply to her,  
22 such as the “other names” fields on her application forms. Neither she nor her sons have ever used  
23 other names. By the time USCIS rejected the application and she subsequently refiled, her older  
24 son had turned 21 years old and was no longer eligible to be included for the status that the rest of  
25 his family could obtain. Consequently, her son now faces deportation. As Ms. S.A.’s case  
26 demonstrates, the new rejection policy creates irrational and unnecessary obstacles that cause  
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28

1 irreparable harm for the most vulnerable noncitizens, separating families and depriving immigrants  
2 of the protections Congress sought to provide.

3 4. For decades prior to this unannounced new policy, USCIS accepted applications  
4 that left blank fields which did not apply to the applicant and which were not critical to eligibility  
5 for the requested benefit. For example, applicants regularly left blank fields for a “middle name” if  
6 they did not have one, for “other names used” if there were none, for family members if they had  
7 none, or for nonexistent address information, such as an apartment number. Knowing that such  
8 information did not affect an applicant’s eligibility or the agency’s ability to adjudicate such  
9 applications, USCIS accepted and processed the applications.  
10

11 5. In violation of the Administrative Procedure Act (APA), the new rejection policy  
12 (or blank space policy) was not published in the Federal Register or subject to notice and comment  
13 rulemaking. In fact, USCIS never explained its reasoning for the policy. As a result, the agency  
14 disregarded settled reliance interests of applicants, the needs of pro se applicants, and alternatives  
15 to the policy that would ensure that USCIS obtains the information it needs to adjudicate the  
16 application. Confoundingly, for some forms, the policy also contradicts specific instructions about  
17 how to complete the application—instructions that were published in the Federal Register and that  
18 have the force of law.  
19

20 6. The new policy has resulted in breathtakingly high rejection rates of applications  
21 and petitions. For example, from late-2019—when the policy was first implemented—to July  
22 2020, USCIS rejected nearly 12,000 U visa petitions filed by victims of enumerated crimes who  
23 have collaborated with law enforcement.  
24

25 7. Additionally, because the policy is confusing and internally inconsistent, USCIS  
26 often fails to apply it correctly or consistently. USCIS has rejected applications that do, in fact,  
27 include answers to all fields, as well as applications that leave a particular field blank, such as  
28

1 location of a parent, even when another answer specifically indicates that the field is not relevant  
2 (such as indicating that the parent is deceased).

3 8. Plaintiffs Akhilesh R. Vangala, I.S.A., and Kenny M. Castaneda Penate, on behalf  
4 of themselves and similarly situated individuals, challenge this “Kafkaesque new processing  
5 policy.”<sup>1</sup> Each had their application rejected pursuant to the policy or the misapplication of the  
6 policy. For each, the policy and the subsequent rejection has resulted in irreparable harm, such as  
7 loss of eligibility for their children to obtain status as derivatives, loss of the ability to even apply  
8 for an immigration benefit because a deadline has passed, or many months of additional delay  
9 before they will receive employment authorization and other benefits.

10 9. Plaintiffs seek declaratory and injunctive relief that would (1) set aside the rejection  
11 policy, and (2) compel Defendants to deem applications filed as of the date USCIS initially  
12 received them—and not as of the date the agency later accepted the refiling of the previously-  
13 rejected application.

### 14 **JURISDICTION AND VENUE**

15 10. This case arises under the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et*  
16 *seq.*

17 11. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as a civil action arising  
18 under the laws of the United States, and the Mandamus and Venue Act of 1962, 28 U.S.C. § 1361.  
19 The Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201–2202, 5  
20 U.S.C. § 702, and 28 U.S.C. § 1361. The United States has waived its sovereign immunity  
21 pursuant to 5 U.S.C. § 702.

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26 <sup>1</sup> Opinion, Catherine Rampell, *This Latest Trick from the Trump Administration Is One of the*  
27 *Most Despicable Yet*, Wash. Post (Feb. 13, 2020); *see also* Charles Davis, *Bureaucracy as a*  
28 *Weapon: How the Trump Administration Is Slowing Asylum Cases*, The Guardian (Dec. 23, 2019)  
(describing USCIS’s new policy of “pedantic” application rejections).



1 entered the United States in 2019 with her two minor children to seek asylum. On July 9, 2020,  
2 within one year of arriving in the United States, Ms. Castaneda filed an application for asylum  
3 (and associated relief) using Form I-589 and included her two children as derivatives. On July 14,  
4 2020, USCIS rejected Ms. Castaneda’s application based on the assertion that the application did  
5 not comply with its new policy. As a result, she missed the statutory one-year deadline for filing  
6 her asylum application.  
7

8 17. Defendant **U.S. Citizenship and Immigration Services** is a component of the  
9 Department of Homeland Security (DHS), 6 U.S.C. § 271(a)(1), and an “agency” within the  
10 meaning of the APA, 5 U.S.C. § 551(1). USCIS is responsible for adjudicating humanitarian  
11 immigration benefit applications.  
12

13 18. Defendant **U.S. Department of Homeland Security** is an executive agency of the  
14 United States and an “agency” within the meaning of the APA. 5 U.S.C. § 551(1). DHS is  
15 responsible for implementing the Immigration and Nationality Act (INA), including provisions  
16 relating to humanitarian immigration benefit applications. DHS has authority to adjudicate such  
17 applications and delegates this authority to USCIS.  
18

## 19 **LEGAL BACKGROUND**

20 19. USCIS’s new rejection policy creates significant procedural hurdles preventing  
21 Plaintiffs from successfully submitting applications. In addition, the delays caused by the rejection  
22 policy substantively impact, and in some cases, permanently foreclose, class members from  
23 qualifying for the humanitarian benefits provided by Congress.  
24

### 25 **I. Legal Framework for Immigration Benefits**

26 20. Plaintiffs and proposed class members are, inter alia, victims of violent crimes,  
27 human trafficking, and domestic violence; children who have been abandoned, abused, or  
28 neglected; widowers; and affirmative asylum seekers who have filed applications with USCIS in

1 order to secure lawful status in the United States.

2 21. Remarkably, in rolling out its new rejection policy, USCIS has targeted precisely  
3 those applications required to obtain humanitarian benefits, including the follow forms of relief:

4 A. Asylum

5 22. Noncitizens fleeing persecution or torture may apply to USCIS for asylum (and  
6 related relief) by filing Form I-589 (Application for Asylum and for Withholding of Removal).  
7 The asylum statute directs the Attorney General to “establish a procedure for the consideration of  
8 asylum applications” filed by noncitizens “physically present in the United States.” 8 U.S.C.  
9 § 1158(a), (e).

10 23. Asylum seekers must file applications within one year of their last arrival in the  
11 United States (with certain limited exceptions). *Id.* § 1158(a)(2)(B).

12 24. Following a waiting period, asylum applicants are eligible to apply for and be  
13 granted employment authorization while their asylum applications remain pending. 8 C.F.R.  
14 § 208.3(c)(3).

15 25. Those who are granted asylum may not be removed to the country in which they  
16 fear persecution, may obtain legal status, are authorized to work, and may apply for lawful  
17 permanent residence after one year. 8 U.S.C. § 1158(c)(1)(A) (prohibiting removal); *id.* § 1159(b)  
18 (authorizing adjustment of status); *id.* § 1158(c)(1)(B) (employment authorization); 8 C.F.R.  
19 § 208.7(a) (employment authorization). In addition, an asylee may seek to include a spouse and/or  
20 children in an application, or once it is granted, file a petition to accord them derivative asylum  
21 status. 8 C.F.R. §§ 208.21(a), 208.3(a).

22 B. U Visas

23 26. Congress passed the Victims of Trafficking and Violence Protection Act of 2000  
24 (VAWA 2000) in order to “combat trafficking in persons, especially into the sex trade, slavery,  
25  
26  
27  
28

1 and involuntary servitude,” and to reauthorize existing programs aimed at preventing violence  
2 against women. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106–386,  
3 114 Stat. 1464 (2000).

4 27. Victims of violent crimes who provide assistance to law enforcement officials may  
5 petition for a U visa for themselves and certain close relatives by filing Form I-918 (Petition for U  
6 Nonimmigrant Status), and the relevant accompanying forms, including Form I-918, Supplement  
7 A (Petition for Qualifying Family Member of U-1 Recipient), and the required Form I-918,  
8 Supplement B (U Nonimmigrant Status Certification completed by the certifying law enforcement  
9 officer or a judge). 8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.14.

10  
11 C. T Visas

12 28. Victims of human trafficking may petition for a T visa by filing Form I-914  
13 (Application for T Nonimmigrant Status), and relevant accompanying forms, including Form I-  
14 914, Supplement A (Application for Immediate Family Member of T-1 Recipient), and the  
15 optional Form I-914, Supplement B (Declaration of Law Enforcement Officer for Victim of  
16 Trafficking in Persons).

17  
18 29. To apply for a T Visa, a trafficking victim must file Form I-914 and initial evidence  
19 with USCIS. 8 C.F.R. § 214.11(d)(1)–(2). Noncitizens applying for T visas may also apply for  
20 derivative T visas for qualifying family members by submitting Form I-914, Supplement A and  
21 initial evidence to USCIS for each family member for whom the applicant seeks a derivative T  
22 visa. 8 U.S.C. § 1101(a)(T)(ii); 8 C.F.R. § 214.11(k)(1).

23  
24 D. Self-Petitions and Petitions to Remove Conditions of Residence

25 30. Congress created Special Immigrant Visas for several groups of noncitizens, 8  
26 U.S.C. § 1101(a)(27), including especially vulnerable populations such as children who have been  
27 placed with custodians by state courts due to abandonment, abuse, or neglect, *id.* § 1101(a)(27)(J).



1           31. To apply for a Special Immigrant Visa, the noncitizen must file Form I-360, along  
2 with the required supporting documentation. 8 C.F.R. §§ 204.5, 204.11.

3           32. A youth applying for a special immigrant juvenile visa—one type of Special  
4 Immigrant Visa—must first be declared dependent upon a juvenile court or placed in the custody  
5 of a state agency or a court appointed individual, and have been the subject of certain fact findings.  
6 8 C.F.R. § 204.11(c)(3)–(6). To obtain special immigrant status, the youth must then file an  
7 application before the state court loses jurisdiction over the youth, and in all cases, before the  
8 youth turns 21 years old. *Id.* § 204.11(c)(1).

9           33. Congress has also provided a process for self-petitions whereby widows and victims  
10 of domestic violence with qualifying relationships may file a self-petition in order to secure status  
11 and stability in this country without reliance on the U.S. citizen or lawful permanent resident  
12 family member. 8 U.S.C. §§ 1151(b)(2)(A)(i), 1154(a)(1)(A)(iii).

13           34. A self-petition is filed on Form I-360, along with the required supporting evidence.  
14 8 C.F.R. 204.2(b)(2); *id.* § 204.2(c)(6)(ii).

15           35. Noncitizens who have been granted conditional residence status due to their recent  
16 marriage to a U.S. citizen (or due to their biological parent’s marriage to a U.S. citizen), are  
17 required to file a joint petition to remove conditions of residence within two years of being granted  
18 such status. 8 U.S.C. § 1186a(c)(1)(A). Congress has also provided relief for conditional  
19 permanent residents who are widows or victims of domestic violence, allowing for them to seek a  
20 waiver from the joint filing. 8 U.S.C. § 1186a(c)(1)(A), (c)(4).

21           36. This petition to remove conditions of residence is submitted on Form I-751. 8  
22 C.F.R. § 216.4(a)(1).

1       **II. USCIS’s Instructions Regarding the Application and Receipt Process**

2           37. USCIS publishes written instructions for completing forms for immigration  
3 benefits, such as Form I-589, Form I-918, Form I-914, Form I-360, and Form I-751. These  
4 published instructions go through notice and comment procedures and are available with the forms  
5 on the USCIS website.

6           38. The instructions are incorporated into the regulations governing the submission of  
7 each form and therefore carry the force of law. 8 C.F.R. § 103.2(a)(1).

8           39. For the vast majority of USCIS forms, including those at issue in this case, an  
9 application is submitted to USCIS by sending a completed paper copy of the application form,  
10 with supporting documentation, to a specific USCIS office. If USCIS accepts the application form,  
11 USCIS sends the applicant a Notice of Action on Form I-797C acknowledging its receipt of the  
12 application (including any supplements) “as of the actual date of receipt.” 8 C.F.R.  
13 § 103.2(a)(7)(i).

14           40. If the application is missing evidence, the governing regulations provide that  
15 USCIS may either: (a) deny the benefit; (b) request that the applicant or petitioner submit more  
16 information or evidence by a date certain (Request for Evidence, or RFE); or (c) notify the  
17 applicant or petitioner of an intent to deny the benefit and require a response by a date certain  
18 (Notice of Intent to Deny, or NOID). 8 C.F.R. § 103.2(b)(8)(ii), (iii).

19           41. RFEs or NOIDs “specify the type of evidence required” to establish eligibility for  
20 the immigration benefit. *Id.* § 103.2(b)(8)(iv). USCIS sends these documents through regular or  
21 electronic mail.

22           42. When USCIS follows the governing regulatory RFE or NOID process, it does not  
23 reject the application. Rather, USCIS treats the application filed as of the date of receipt and  
24 provides a date certain by which an applicant must submit the missing information or evidence.  
25  
26  
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1           43.     Indeed, the regulations authorize USCIS to reject an application form in *only* four  
2 situations: if the application is not: 1) “[s]igned with [a] valid signature;” 2) “[e]xecuted;” 3)  
3 “[f]iled in compliance with the regulations governing the filing of the specific application, petition,  
4 form, or request;” or 4) “[s]ubmitted with the correct fee(s).” *Id.* § 103.2(a)(7)(ii)(A)–(D).

5           44.     If USCIS rejects an application for any of these four reasons, the rejected  
6 application “will not retain a filing date.” *Id.*; *see also* Form I-589 Instructions at 9 (indicating the  
7 one-year period an applicant must wait for employment authorization does not begin until USCIS  
8 accepts a completed application); Form I-918 Instructions at 15 (“A petition or supplement is not  
9 considered properly filed until accepted by USCIS.”); Form I-914 Instructions at 12 (same).

10  
11     **III.    The Rejection/Blank Space Policy**

12           45.     Application forms for immigration benefits all consist of questions and  
13 corresponding blank fields in which the petitioner or applicant may provide an answer.

14           46.     In 2019, USCIS began to implement a new rejection or blank spaces policy (or  
15 series of similar policies, which together are referred to here as a policy) that requires applicants to  
16 provide a written response to *each and every* field on certain application forms.

17           47.     For at least twenty years prior to this new policy, the agency consistently followed a  
18 uniform policy and practice regarding rejections.

19           48.     Prior to this new policy, USCIS followed the governing regulations and only  
20 rejected applications that were mailed or delivered to the correct filing address if (1) a page of the  
21 application form was missing or, the application was missing (2) a signature or (3) filing fee.

22           49.     Prior to this new policy, USCIS followed the governing regulations and did not  
23 reject an application simply because the applicant did not provide a response to every single field  
24 on the application.

25           50.     Prior to this new policy, USCIS followed the governing regulations and, if it  
26  
27  
28

1 determined that additional information was required, USCIS would issue an RFE or NOID.

2 51. Prior to this new policy, in most cases, USCIS would adjudicate—without issuing  
3 an RFE or NOID—applications that contained blank fields or missing information that was not  
4 essential.

5 52. The new rejection policy was an abrupt departure from USCIS’s past practice.

6 53. In implementing the new policy, USCIS did not change the published instructions  
7 to the relevant forms, but simply added, and periodically amended, text to its website.  
8

9 54. The new policy dramatically increased the number of rejections for forms subject to  
10 the new policy.

11 55. The new policy has resulted in the rejection of forms that were in compliance with  
12 the form instructions (but not the new policy), forms that were in compliance with the new policy,  
13 and forms that may or may not have been in compliance with the new policy, which was so  
14 imprecise it could not be consistently applied.  
15

16 A. Form I-589 (Asylum)

17 56. USCIS implemented its rejection policy first with respect to Form I-589.

18 In October 2019, USCIS posted the following “Alert” to its webpage concerning the I-589 form:  
19

20 We will not accept your Form I-589 if you leave any fields blank. You must provide a response to all questions on the  
21 form, even if the response is “none,” “unknown” or “n/a.” We will not accept a Form I-589 that is missing the explanation  
of why you are applying for asylum or that is missing any addendums that you reference in your application.

22 57. As of the date of this complaint, this specific Alert is no longer posted at the top of  
23 USCIS’s webpage.

24 58. Instead, USCIS has buried the following paragraph under a tab providing  
25

26 **You must complete all sections of your form.** We may reject your form if you leave a field blank. Read the  
27 form instructions for information on completing fields when your answer is “zero” or “not applicable (N/A).”  
We will not accept a Form I-589 that is missing the explanation of why you are applying for asylum or that is  
28 missing any addendums that you reference in your application.

1 information for “Where to File” and after listing where an applicant should send the Form I-589:

2 59. Around the same time the Alert was posted to the USCIS webpage, USCIS created,  
3 but did not provide public notice of, new internal Standard Operating Procedures for the Form I-  
4 589 (Form I-589 SOP). The new SOP was dated September 24, 2019. This SOP directed USCIS  
5 personnel charged with screening Form I-589s to reject applications that left certain fields blank.  
6 For example, the Form I-589 SOP directed adjudicators to reject applications that did not supply a  
7 response to fields requesting the asylum seeker’s middle name, other names used, passport or  
8 travel document number, certain family information, and the asylum seeker’s name written in their  
9 native alphabet, among others.

10  
11 60. Subsequently, USCIS began rejecting Form I-589s that left response fields to  
12 questions blank or did not use specific terminology to indicate that a question was inapplicable.

13  
14 61. Other than the “Alert” posted to that particular webpage, USCIS did not publicize  
15 its new Form I-589 rejection policy and the reversal of its longstanding prior practice and policy.

16 62. As a consequence of the rejection policy, hundreds of asylum seekers received  
17 rejection notices. An analysis conducted by the American Immigration Lawyers Association  
18 (AILA) of 189 rejected asylum applications received between November 29, 2019 and May 1,  
19 2020, revealed that all were rejected for having at least one blank space on the Form I-589. AILA,  
20 *AILA Policy Brief: USCIS’s “No Blank Space” Policy Leads to Capricious Rejections of Benefits*  
21 *Requests 3* (Oct. 22, 2020) (AILA Policy Brief).<sup>2</sup>

22  
23 63. The new rejection policy is inconsistent with the language on the Form I-589 itself.  
24 Form I-589’s use of the language “if any” or “if applicable” after many questions indicates that an  
25 applicant should leave a field blank if it does not apply to them. As an example of the specific  
26

27  
28 <sup>2</sup> Found at <https://www.aila.org/advo-media/aila-policy-briefs/uscis-no-blank-space>.

1 inconsistencies, the phrase “if any” is applied to the field requesting the applicants’ spouse or  
 2 children’s passport or identification number, yet the Form I-589 SOP directs an adjudicator to  
 3 reject an application if this field is left blank.

4 64. USCIS has not applied this new rejection policy in a consistent manner. For  
 5 example, USCIS has rejected an application that provides a response to every question simply  
 6 because it did not use USCIS’s preferred terminology of “N/A” rather than “not applicable” or  
 7 “none.” Such arbitrary rejections contravene the Form I-589 instructions, which permit responses  
 8 like “none” or “not applicable.” *See* Form I-589 Instructions at 5; *see also* AILA Policy Brief at 5.

9  
 10 B. Forms I-918, I-918 Supplement A, I-918, Supplement B (U Visa Status)

11 65. On December 30, 2019, USCIS expanded the rejection policy to include the Form I-  
 12 918 and Form I-918, Supplement A. That day, USCIS posted the following “Alert”<sup>3</sup> to its  
 13 webpage:  
 14

15 **Alert:** We may reject your Form I-918 or your Form I-918 Supplement A if you leave a field blank, unless the field is  
 16 optional. Optional fields include the safe mailing address as well as fields you should only complete if you answered yes  
 17 to a previous question. You must provide a response to all other questions, even if the response is “none,” “unknown” or  
 “n/a.” We will reject a Form I-918 or a Form I-918 Supplement A that has, for example, an empty field for middle name,  
 for current immigration status, or for information pertaining to a spouse or child.

18 66. USCIS also implemented new Standard Operating Procedures for the Form I-918  
 19 (Form I-918 SOP) and accompanying supplements on December 13, 2019. The new SOP, which  
 20 was not made public, directed USCIS personnel charged with screening the Form I-918 and Form  
 21 I-918, Supplement A to reject applications that left specified fields blank.

22 67. The rejection criteria in the updated Form I-918 SOP were significantly more  
 23 expansive than the rejection criteria in prior SOP. The prior version only required submission of  
 24 pages one through ten of Form I-918 and the signature of the applicant (or their parent’s signature  
 25

26 <sup>3</sup> USCIS subsequently amended the Alert to include information pertaining to the public  
 27 charge ground of inadmissibility, which is not at issue in the instant complaint. *See* USCIS, *I-918,*  
 28 *Petition for U Nonimmigrant Status*, <https://www.uscis.gov/i-918> (last updated Sept. 3, 2020).

1 if the applicant was younger than 14). Similarly, the rejection criteria for the Form I-918,  
2 Supplement A previously required only the submission of all pages of the form, the correct  
3 identifying information for the principal crime victim applicant and their qualifying family  
4 member, and the applicant's signature.

5  
6 68. USCIS further amended the Form I-918 SOP on May 7, 2020, which again was not  
7 published or made public. The amended Form I-918 SOP directs adjudicators to reject Forms I-918  
8 (and Forms I-918, Supplement A) that leave specified fields blank, such as middle name.

9 69. On June 30, 2020, USCIS expanded the Alert to include the Form I-918  
10 Supplement B:

11 **i** **ALERT:** We may reject your Form I-918, Petition for U Nonimmigrant Status; Form I-918, Supplement A,  
12 Petition for a Qualifying Family Member of a U Nonimmigrant; and Form I-918 Supplement B, U  
13 Nonimmigrant Status Certification; if you leave a field blank, unless the field is optional. Optional fields  
14 include the safe mailing address as well as fields you should only complete if you answered yes to a  
15 previous question. You must provide a response to all other questions, even if the response is "none,"  
"unknown" or "n/a." We will reject a Form I-918 or a Form I-918A that has, for example, an empty field  
for middle name, for current immigration status or for information pertaining to a spouse or child.

16 Other than these discreet Alert postings, USCIS did not notify the public of the expansion of the  
17 rejection policy to the Form I-918 and accompanying supplements.

18 70. The Alert conflicts with the published instructions for the Form I-918 (including  
19 Form I-918, Supplements A and B). Those published instructions explicitly direct crime victim  
20 applicants (completing the application and/or Form I-918, Supplement A) and certifying law  
21 enforcement officials (completing Form I-918, Supplement B) to leave certain fields blank either  
22 when a question does not apply or when the crime victim or certifying law enforcement official  
23 does not know the answer to the question. *See, e.g.*, Form I-918 Instructions at 4, 7; Form I-918  
24 Supplement B Instructions at 2.

25  
26 71. Other portions of the Form I-918, Supplement A instructions direct applicants to  
27 complete fields only when certain conditions apply, causing further confusion for being  
28

1 inconsistent with the Alerts. *See, e.g.*, Form I-918 Instructions at 8.

2 72. The rejection rate immediately after the initial implementation of the new policy  
3 reached as high as 99.6 percent on January 13, 2020. That day, only one Form I-918 or  
4 Supplement A of 234 reviewed was deemed acceptable. The weekly rejection rate remained above  
5 50 percent through March 13, 2020, and was still as high as 37.4 percent as of July 2020.

6 73. Moreover, USCIS rejected Form I-918 applications that *did* attempt to comply with  
7 the blank space policy. The agency also rejected some applications that completed all fields but  
8 answered one or more of the fields with one of the Alert’s suggested responses (*e.g.*, “none”)   
9 rather than another of the Alert’s suggested responses (*e.g.*, “N/A”).  
10

11 74. In some cases, USCIS also rejected applications that used “N/A” for blank fields.

12 75. The new rejection policy contradicts the instructions to Form I-918, Form I-918,  
13 Supplement A, and Form I-918, Supplement B.  
14

15 C. Forms I-914 and I-914 Supplement A (T Visas)

16 76. In March 2020, USCIS again expanded the new rejection policy to the Form I-914  
17 and Form I-914, Supplement A, for T visa applicants, posting the following Alert<sup>4</sup> to its webpage:

18 **i** **ALERT:** As required by Federal Regulations, all applications filed with USCIS must be properly  
19 completed, submitted, and executed in accordance with the applicable form instructions. See 8 CFR  
20 103.2(a)(1); 8 CFR 103.2(b)(1). Properly completed forms help ensure that USCIS can verify the identity  
21 and eligibility of applicants, and will help reduce the need for USCIS to issue requests for evidence  
22 because information is missing on applications.

23 USCIS may reject your Form I-914 and/or your Form I-914, Supplement A, if you leave a required field  
24 blank, unless the field is optional according to the form text or form instructions. Optional fields  
25 include those you should complete only if you answered “yes” to a previous question or fields that  
26 state “if any” in the heading for the field. **You must provide a response to all required questions,  
27 even if the response is “none,” “unknown,” or “n/a.”** We will reject a Form I-914 and, if applicable, a  
28 Form I-914, Supplement A, that has, for example, an empty field for gender, other names used, marital  
status, current immigration status, information about a spouse or child, or tables not completed where  
appropriate.

4 USCIS subsequently amended the Alert to include information pertaining to the public charge ground of inadmissibility, which is not at issue in this case. *See* USCIS, *I-914, Application for T Nonimmigrant Status*, <https://www.uscis.gov/i-914> (last updated Jun. 30, 2020).



1           77. This Alert conflicts with the instructions for the Form I-914, which direct  
2 trafficking victims to leave certain fields blank either when a question does not apply to the  
3 trafficking victim or her family member or when the trafficking victim does not know the answer  
4 to the question. *See, e.g.*, Form I-914 Instructions at 3–5.  
5

6           78. This Alert also creates confusion because it refers to reducing the need for USCIS  
7 to issue RFEs when information is missing. In practice, and pursuant to other language in the  
8 Alert, USCIS rejects applications with blank spaces rather than issuing RFEs.

9           D. Form I-360 (Self-Petitions)

10           79. Recently, USCIS further expanded the new rejection policy to the Form I-360 used  
11 by, inter alia, widows, children who have been neglected, abused or abandoned, and certain  
12 victims of domestic violence with a qualifying relationship.  
13

14           80. USCIS did not even include an Alert on the form’s web page. Instead, buried under  
15 a tab providing information for “Where to File,” and after listing where a petitioner should send  
16 the Form I-360, the following language now appears:

17           **You must complete all sections of your form. We may reject your form if you leave a field blank. Read the  
18 form instructions for information on completing fields when your answer is “zero” or “not applicable (N/A).”**

19           81. The website notation implementing the rejection policy directly conflicts with the  
20 Form I-360 as well as the form’s instructions.

21           82. For example, the Form I-360 explicitly directs petitioners to leave certain responses  
22 blank if the question is inapplicable or the answer is “none.” *See* Form I-360 at 3. Additionally, the  
23 form as well as its instructions repeatedly place the qualifiers of “if any” or “if applicable” in front  
24 of certain fields, suggesting to the petitioner that responses are not required.

25           E. Form I-751 (Petition to Remove Conditions)

26           83. Similarly, USCIS has also expanded the rejection policy to the Form I-751, which  
27 must be filed by spouses and step-children of U.S. citizens who have been granted conditional  
28

1 resident status. The form provides critical relief for, inter alia, widows and victims of domestic  
2 violence, by waiving the general requirement that the U.S. citizen join in filing the petition for  
3 removal of conditions of residence.

4 84. USCIS did not even include an Alert on the form’s web page. Instead, buried under  
5 a tab providing information for “Where to File,” and after listing where a petitioner should send  
6 the Form I-751, the following language now appears:  
7

8 **You must complete all sections of your form.** We may reject your form if you leave a field blank. Read the  
9 form instructions for information on completing fields when your answer is “zero” or “not applicable (N/A).”

10 85. The website notation and form instructions regarding the rejection policy conflict  
11 with the Form I-751.

12 **IV. Lack of Adequate Notice, Reasoning, and Required Procedures for the Rejection Policy**

13 86. The rejection policy contravenes USCIS’s longstanding policy and practice of  
14 accepting and either adjudicating forms containing blank answer fields or issuing RFEs and  
15 NOIDs if appropriate.

16 87. At the time USCIS implemented the rejection policy, it did not provide notice in the  
17 Federal Register. The only way that applicants subject to the policy, as well as their attorneys,  
18 could learn of the USCIS policy change was (1) through the “Alerts” posted in different locations  
19 on the USCIS webpages for each application type or (2) through a rejection.  
20

21 88. USCIS also did not engage in notice and comment rulemaking prior to  
22 implementing the new rejection policy.

23 89. Furthermore, the agency failed to provide a reasoned explanation for implementing  
24 the new policy. USCIS did not consider the reliance interests of applicants or their attorneys.  
25 Moreover, USCIS did not appear to consider the ability of the many pro se applicants to access,  
26 understand, and follow the new instructions, which (1) are only available in English and Spanish,  
27  
28

1 and only available on a webpage, (2) contradict the published form instructions, and (3) are  
2 inconsistent with the most natural reading of the forms to only require information applicable to  
3 the applicant.

4 90. USCIS also failed to consider the less onerous alternatives to the policy the  
5 governing regulations provide, such as issuing an RFE or NOID. This approach—which is set  
6 forth in the regulations and which USCIS has followed for years—preserves the applicant’s filing  
7 date and avoids the consequences of rejecting the application outright.  
8

9 91. The new policy requires adjudicators to reject applications for reasons that are  
10 irrelevant to their eligibility. The policy requires rejections even where applications fully disclose  
11 the necessary substantive information regarding eligibility for the immigration benefits.  
12

13 **V. Consequences of Rejection of an Application Under the New Rejection Policy**

14 92. The impact of the rejection policy on applications for immigration benefits has been  
15 significant and widespread. In many cases, the policy has led to dire consequences for  
16 exceptionally vulnerable individuals and families. Specifically, the rejection policy has prevented  
17 applicants from complying with the rigid statutory timelines governing deadlines and eligibility  
18 based on the age of the applicant or family member. As a result, many applicants have been or will  
19 be unable to secure a humanitarian benefit for themselves or for their families.  
20

21 93. Extensive processing delays compound the harm caused by the rejection policy.  
22 USCIS routinely takes weeks to process the applications it receives and to determine whether to  
23 accept or reject the submission. It often takes USCIS at least a month to inform an applicant that it  
24 has rejected an application. The applicant (or their attorney, if any) must then refile the amended  
25 application, a process which takes additional time and can add additional costs related to  
26 preparation, mailing, or legal services fees. Even then, due to inconsistent adjudication, USCIS  
27 may still reject the application under the new policy based on perceived deficiencies that were not  
28

1 identified in the first rejection notice, further delaying the applicant's ability to obtain status or  
2 contingent benefits such as employment authorization.

3 94. In many instances, the date on which USCIS acknowledges receipt of the petition  
4 directly impacts the substantive rights of the applicant and/or the applicant's qualifying family  
5 members.

6 95. For example, asylum seekers face serious harm from this policy. By statute, they  
7 must file their applications for asylum within one year of their arrival to the United States. 8  
9 U.S.C. § 1158(a)(2)(B). If USCIS rejects an asylum application, the rejection may cause the  
10 asylum seeker to miss the one-year deadline, rendering the applicant ineligible for asylum unless  
11 they meet one of the narrow exceptions. *Id.* § 1158(a)(2)(D). Meanwhile, the applicant could be  
12 arrested and detained for immigration purposes during this process. Pro se applicants for asylum  
13 are likely to be particularly vulnerable to such draconian consequences.

14 96. In addition, asylum seekers may include in their applications unmarried children  
15 who are under 21 years of age on the date USCIS acknowledges the Form I-589 as received. 8  
16 C.F.R. § 208.21(a). However, if USCIS rejects an asylum application and an applicant's child  
17 turns 21, the child would age out and no longer qualify as a derivative when the asylum seeker  
18 resubmits the application.

19 97. The rejection policy also delays asylum seekers' ability to obtain employment  
20 authorization. Asylum applicants must wait a specified period of time after their application is  
21 accepted until they can seek employment authorization based on the pending status of the  
22 application. Blank space policy rejections thus significantly delay asylum seekers' ability to obtain  
23 employment authorization, leaving them with no means to support themselves or their families for  
24 months.

25 98. Similarly, victims of crime and trafficking, including self-petitioners who seek to  
26  
27  
28

1 apply based on domestic violence, are eligible to include certain family members, but that is  
2 dependent upon the age of the applicant and the family member at the time of filing.<sup>5</sup>

3 99. Moreover, individuals may lose their ability to obtain a U visa, which is contingent  
4 on the acceptance of Form I-918 and initial evidence within six months of the date on which a law  
5 enforcement official or judge signed Form I-918, Supplement B. 8 C.F.R. § 214.14(c)(2)(i). Thus,  
6 when USCIS rejects Form I-918, the crime victim is unable to simply reapply if the certification  
7 has expired. Instead, the applicant must obtain a renewed certification. Acquiring a new  
8 certification is always time consuming and may be difficult or impossible as law enforcement  
9 officials may be unable or unwilling to issue a second certification.  
10

11 100. Third, because of the statutory limitation on the number of U and T visas which  
12 USCIS can award each year, extremely long waiting lists have developed. Every fiscal year,  
13 USCIS may award only 10,000 U visas to crime victims and 5,000 T visas to human trafficking  
14 victims (as principal applicants). 8 U.S.C. § 1184(p)(2)(A), (o)(2); 8 C.F.R. §§ 214.14(d)(1),  
15 214.11(j).  
16

17 101. For U visas, USCIS has reached the statutory cap every year since 2010, and by the  
18 end of the second quarter of 2020, more than 153,000 Form I-918s were pending. As of October  
19 2020, USCIS takes more than four and a half years to begin adjudicating Form I-918. For T visas,  
20 it takes USCIS anywhere from a year and a half to nearly two and a half years to begin  
21

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22 <sup>5</sup> Victims who are under 21 years of age on the date Form I-918 or Form I-914 is received  
23 may request a derivative U or T visa for four categories of family members: (i) a spouse, (ii)  
24 unmarried children under 21 years of age on the date Form I-918 or Form I-914 is received, (iii)  
25 parents, and/or (iv) unmarried siblings under 18 years of age on the date the petition is received.  
26 See 8 U.S.C. § 1101(a)(15)(T)(ii)(I), (a)(15)(U)(ii)(I); *id.* § 1184(o)(4)–(5), (p)(7); 8 C.F.R.  
27 §§ 214.14(a)(10), 214.11(k)(1)(ii). In contrast, victims who are 21 years of age or older when  
28 Form I-918 or Form I-914 is received may only request a derivative U or T visa for two categories  
of family members: (i) spouse and/or (ii) unmarried children under 21 years of age on the date the  
petition is received. 8 U.S.C. § 1101(a)(15)(T)(ii)(II), (a)(15)(U)(ii)(II); *id.* § 1184(o)(4),  
(p)(7)(A); 8 C.F.R. §§ 214.14(a)(10), 214.11(k)(1)(i).

1 adjudicating Form I-914. These time periods for adjudication have increased as the backlog  
2 steadily grows. Delays caused by USCIS’s rejection of a U or T visa application will  
3 disproportionately extend the individual’s wait due to these backlogs.

4 **INDIVIDUAL PLAINTIFFS’ ALLEGATIONS**

5  
6 102. **Plaintiff Akhilesh R. Vangala** (Mr. Vangala) is a noncitizen from India who  
7 originally entered the United States on an F1 visa to attend university.

8 103. While a student, Mr. Vangala was the victim of an armed assault and robbery. Mr.  
9 Vangala helped report the crime to police.

10 104. On April 1, 2020, Mr. Vangala submitted his petition for a U visa using Form I-918.  
11 Along with the application, he included Form I-918, Supplement B from the appropriate police  
12 department. The Supplement B certified that Mr. Vangala had been the victim of a qualifying  
13 crime and that he had been helpful to detectives investigating the crime.

14  
15 105. Mr. Vangala’s attorney filled out every field—including the inapplicable ones—on  
16 the Form I-918. Nevertheless, USCIS rejected the petition because, it claimed, Mr. Vangala did not  
17 mark “N/A” in all the required boxes. The notice also stated that Mr. Vangala may be required to  
18 fill out Parts 7 and 8—which request information regarding the preparer of the petition—even  
19 though Parts 7 and 8 were completed on the application.

20  
21 106. USCIS mailed the rejection notice on May 27, 2020—nearly two months after the  
22 submission—to the wrong address. USCIS then re-mailed the notice, which Mr. Vangala’s  
23 attorney did not receive until June 29, 2020, three months after the application was first submitted.

24 107. Mr. Vangala’s attorney resubmitted the same petition to USCIS on July 1, 2020,  
25 and received a receipt notice on August 20, 2020. The receipt notice did not apply the original  
26 submission date and instead adopted the refiling date.

27 108. The wrongful rejection of Mr. Vangala’s U visa petition places him many months  
28

1 later in the queue for adjudication of U visas.

2 109. **Plaintiff I.S.A.** (Ms. S.A.) is a noncitizen from Guatemala who has lived in the  
3 United States for more than 15 years.

4 110. In 2019, Ms. S.A. survived a violent crime in San Francisco, California and  
5 immediately sought law enforcement assistance. On December 28, 2019, Ms. S.A. submitted a  
6 petition for a U visa using Form I-918, and included Supplement A forms for her two minor  
7 children, J.W.L.S. (J.W.) who was just under 21, and J.A.L.S. (J.A.), who was well under 21.

8 111. At the time Ms. S.A. submitted her petition, USCIS had not yet posted its alert  
9 regarding the rejection policy on the webpage for Form I-918.

10 112. Ms. S.A.'s children J.W. and J.A. entered the United States in 2016 and are  
11 currently in removal proceedings. They face removal from the United States if either of them  
12 cannot obtain lawful status through their mother's U visa application. As a result, Ms. S.A. faces  
13 potentially indefinite separation from her oldest child because USCIS rejected her initial  
14 application.  
15

16 113. Ms. S.A.'s U visa petition contained responses to all applicable fields, and only left  
17 blank inapplicable fields, such as the fields for "Middle Name" under the "Other Names Used"  
18 category, and the "Province," "Postal Code," "Alien Registration Number," "U.S. Social Security  
19 Number," and "USCIS Online Account Number" fields.  
20

21 114. USCIS rejected Ms. S.A.'s petition based on the new policy on January 30, 2020.  
22 By this time, J.W.'s 21st birthday had passed and he had aged out of eligibility if USCIS did not  
23 retain the original filing date.

24 115. In the rejection notice, USCIS erroneously stated that the petition was incomplete  
25 for leaving several different fields on the application blank.  
26

27 116. Less than two weeks after USCIS's rejection notice, Ms. S.A. refiled the forms and  
28

1 supporting materials. She expressly requested that USCIS honor the original receipt date, which  
2 would have been December 30, 2019.

3 117. USCIS subsequently issued a receipt notice dated February 18, 2020. Because this  
4 date is after J.W. turned 21 years of age, he will not be eligible for derivative status.  
5

6 118. Plaintiff **Kenny M. Castaneda Penate** (Ms. Castaneda) is a noncitizen who entered  
7 the United States on July 14, 2019, to seek asylum. On July 9, 2020—within one year of entering  
8 the United States—Ms. Castaneda filed Form I-589 to request asylum (and associated relief).

9 119. Ms. Castaneda included her two minor daughters as derivatives on the I-589  
10 application.  
11

12 120. Ms. Castaneda’s attorney answered “Not Applicable” to several fields on the asylum  
13 application that were not relevant to Ms. Castaneda’s eligibility for asylum, such as fields related to  
14 the applicant’s spouse, since Ms. Castaneda does not have one.

15 121. Ms. Castaneda’s attorney included Ms. Castaneda’s passport number in the  
16 application, and thus did not list an alternative travel document number, as Ms. Castaneda does not  
17 have one. This was the only space left blank in Ms. Castaneda’ application.

18 122. USCIS rejected the application on July 14, 2020, on the single basis that the  
19 application did not place “N/A” in the field requesting Ms. Castaneda’s travel document number.  
20

21 123. Ms. Castaneda’s attorney refiled the application on August 4, 2020, answering “Not  
22 Applicable” to the request for Ms. Castaneda’s travel document number and requesting that the  
23 application be given a receipt notice reflecting the original receipt date of July 9, 2020.

24 124. USCIS accepted Ms. Castaneda’s subsequent application but noted it received as of  
25 August 5, 2020, instead of the original receipt date of July 9, 2020.

26 125. USCIS’s rejection notice caused Ms. Castaneda to miss the one-year filing deadline  
27 for asylum applicants set forth in 8 U.S.C. § 1158(a)(2)(B). Therefore, Ms. Castaneda and her two  
28



1 minor daughters will be barred from seeking asylum if they do not demonstrate they should be  
2 granted an exception to the one-year filing deadline.

3 **CLASS ACTION ALLEGATIONS**

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

11 127. Plaintiffs seek to represent the following nationwide class:

12 All individuals who have filed or will file an application with USCIS that USCIS has  
13 rejected or will reject (or has not issued or will not issue a filing receipt for) pursuant  
14 to the rejection policy.

15 The "rejection policy" refers to any and all policies of USCIS implemented in or after  
16 2019 to reject (or not issue a filing receipt for) an application because at least one  
17 response field to a question on the application was left blank (other than the signature  
18 of the applicant) or otherwise deemed to provide an inappropriate or incomplete  
19 response.

20 128. The proposed class meets the numerosity requirements of Federal Rule of Civil  
21 Procedure 23(a)(1). The class is so numerous that joinder of all members is impracticable. While  
22 Plaintiffs are not aware of the precise number of potential class members, at a minimum USCIS  
23 rejected several thousand humanitarian benefits applications pursuant to its new policy.

24 129. The proposed class meets the commonality requirements of Federal Rule of Civil  
25 Procedure 23(a)(2). The members of the class are subject to rejection of their applications based on  
26 the same USCIS policy. The lawsuit raises numerous questions of law common to members of the  
27 proposed class, including whether the government's action in rejecting these applications is  
28

1 arbitrary and capricious under the APA, whether the policy violated the APA’s rulemaking  
2 requirements and/or the APA’s notice requirements

3 130. The proposed class meets the typicality requirements of Federal Rule of Civil  
4 Procedure 23(a)(3) because the claims of the representative Plaintiffs are typical of the class. Each  
5 of the class members has had an application rejected or will have their application rejected based  
6 on USCIS’s policy and practice at issue in this case.

7  
8 131. The proposed class meets the adequacy requirements of Federal Rule of Civil  
9 Procedure 23(a)(4). The representative Plaintiffs seek the same relief as the other members of the  
10 class—namely, an order prohibiting USCIS from rejecting applications under the policy and  
11 compelling USCIS to honor the original filing date of applications rejected pursuant to the policy.

12  
13 132. Plaintiffs will fairly and adequately protect the interests of the proposed class  
14 members because they seek relief on behalf of the class as a whole and have no interest  
15 antagonistic to other class members.

16 133. Plaintiffs are also represented by competent counsel with extensive experience in  
17 complex class actions and immigration law.

18 134. The proposed class also satisfies Federal Rule of Civil Procedure 23(b)(2).  
19 Defendants have acted on grounds generally applicable to the proposed class, thereby making  
20 appropriate final declaratory and injunctive relief.  
21

22  
23 **CAUSES OF ACTION**

24 **COUNT I**

25 **Violation of the APA**

26 **(Arbitrary & Capricious Agency Action - Failure to Provide a Reasoned Explanation)**

27 135. All the foregoing allegations are repeated and realleged as though fully set forth  
28 herein.

1 136. Prior to late-2019, Defendants had a policy and practice of accepting and processing  
2 applications in accordance with governing regulations set forth in 8 C.F.R.  
3 § 103.2(a)(7)(ii), (b)(8).

4 137. Defendants abruptly changed this policy in 2019 without providing an explanation  
5 for the departure from their past policy and practice.  
6

7 138. Defendants' policy violates 5 U.S.C. § 706(2)(A) because: (a) it created an abrupt  
8 departure from past policy and practice without providing a reasonable justification for that shift;  
9 (b) is unnecessary given existing regulations; (c) conflicts with existing regulations; (d) failed to  
10 provide adequate notice to the relevant stakeholders; (e) failed to consider the reliance interests of  
11 all applicants and the ultimate impact it would have on them, and (f) failed to consider less onerous  
12 or consequential remedies for those whose applications are rejected.  
13

14 **COUNT II**  
15 **Violation of the APA**  
16 **(Arbitrary & Capricious Agency Action – Ambiguous Policy Creating**  
17 **Inconsistent Agency Practice)**

18 139. All the foregoing allegations are repeated and realleged as though fully set forth  
19 herein.

20 140. Prior to late-2019, Defendants had a policy and practice of accepting and processing  
21 applications in accordance with governing regulations set forth in 8 C.F.R. §§ 103.2(a)(7)(ii),  
22 103.2(b)(8).

23 141. Defendants abruptly changed this policy in 2019. Defendants' new policy has  
24 resulted in inconsistent, arbitrary, and capricious rejections. Such rejections include, but are not  
25 limited to, the rejection of Plaintiffs' applications, rejections of complete applications, rejections of  
26 applications with blank spaces for fields that do not apply, rejections of complete applications that  
27 include answers such as "none" instead of "n/a," rejections where applicants write "none" as a  
28

1 response for their middle name, rejections erroneously claiming that an applicant did not follow  
2 the policy, and rejections that conflict with the specific instructions for the form indicating that a  
3 response is optional.

4 142. In addition, because the policy is confusing and internally inconsistent, the policy  
5 invites inconsistency from USCIS employees responsible for processing the applications.  
6

7 143. Under the APA, an agency must apply consistent adjudication standards to each  
8 application or case before it.

9 144. Defendants' wildly divergent adjudications under the rejection policy are so  
10 inconsistent and unpredictable that they render the policy arbitrary and capricious.

11 145. These same actions demonstrate that the agency has acted in bad faith, issuing the  
12 new policy not for any valid reason, but instead as a means to arbitrarily reject applications.  
13

14 146. As a result, the rejection policy is arbitrary and capricious and violates the APA.

15 **COUNT III**  
16 **Violation of the APA**  
17 **(Notice and Comment Rulemaking)**

18 147. All the foregoing allegations are repeated and realleged as though fully set forth  
19 herein.

20 148. Defendants' new policy represents a dramatic departure from past practice that  
21 impacts the substantive rights of applicants.

22 149. This new policy imposes new obligations on applicants for immigration benefits  
23 and results in grave consequences for applicants whose applications are rejected.

24 150. Under the APA, new agency rules—regardless of whether they reverse a prior  
25 policy—must go through notice and comment rulemaking. *See* 5 U.S.C. § 553.

26 151. The rejection policy is a legislative rule that required notice and comment  
27  
28

1 rulemaking.

2 152. No other exception to notice and comment rulemaking applies to this policy.

3 153. Defendants implemented the rejection policy without notice-and-comment  
4 rulemaking, in violation of the APA.

5  
6 **COUNT IV**  
7 **Violation of the APA**  
8 **(Notice Requirement)**

9 154. All the foregoing allegations are repeated and realleged as though fully set forth  
10 herein.

11 155. Even if the rejection policy did not require notice and comment rulemaking, the  
12 policy is either a “rule[] of procedure,” “substantive rule of general applicability,” “statement of  
13 general policy,” or “interpretation[] of general applicability” that requires publication in the  
14 Federal Register. 5 U.S.C. § 552(a)(1).

15 156. As relevant here, the Federal Register notice requirement serves the important  
16 purpose of apprising applicants subject to an agency’s policy or procedural rules of how an agency  
17 will treat an application.

18 157. Defendants failed to provide notice of the rejection policy in the Federal Register.

19 158. This failure has harmed Plaintiffs and class members in significant ways. Because  
20 Defendants did not explain or inform the public about the policy in a meaningful way, Defendants  
21 rejected and continue to reject thousands of applications pursuant to the new policy.  
22

23 **COUNT V**  
24 **Violation of the APA**  
25 **(Not in Accordance with Law – Violation of Agency Regulations)**

26 159. All the foregoing allegations are repeated and realleged as though fully set forth  
27 herein.

28 160. Under the APA, a court may set aside agency action that is “not in accordance with

1 law.” 5 U.S.C. § 706(2)(A). Agency regulations are law that bind and govern an agency’s  
2 conduct.

3 161. The rejection policy violates agency regulations that govern the adjudication of  
4 applications because those regulations limit the bases on which USCIS may reject an application.  
5 See 8 C.F.R. § 103.2(a)(7)(ii). While USCIS may reject applications that are not “[f]iled in  
6 compliance with the regulations governing the filing of the specific application,” the regulations  
7 governing most forms do not require an applicant to complete every single field.  
8

9 162. In addition, USCIS’s rejection policy conflicts with the instructions for many of the  
10 forms at issue, which were formally published after notice and comment. Under agency  
11 regulations, these instructions are “incorporated into the regulations.” 8 C.F.R. § 103.2(a)(1). By  
12 disregarding the instructions, USCIS’s actions are not in accordance with law.  
13

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiffs respectfully request that the Court:

- 16 a. Assume jurisdiction over this matter;
- 17 b. Certify a class pursuant to Federal Rule of Civil Procedure 23 in accordance with this  
18 Complaint’s allegations;
- 19 c. Declare that Defendants’ rejection of immigration benefits applications based on the  
20 rejection policy violates the Administrative Procedure Act;
- 21 d. Permanently enjoin Defendant USCIS from rejecting any immigration benefits  
22 application based on the rejection policy;
- 23 e. Order USCIS to issue or reissue a receipt notice using the date on which the initial  
24 application was filed, not the date that an application was re-filed, for any application that  
25 was or will be rejected (or for which a filing receipt was not issued) because of the  
26  
27  
28

1 rejection policy;

2 f. Award Plaintiffs' counsel reasonable attorneys' fees under the Equal Access to Justice  
3 Act, and any other applicable statute or regulation; and

4 g. Grant such further relief as the Court deems just, equitable, and appropriate.  
5

6 Respectfully submitted,

7 s/ Trina Realmuto

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18 \* Application for admission *pro hac vice* forthcoming

19 Dated: November 19, 2020  
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