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TONY N., KAREN M., JACK S.,
HEGHINE MURADYAN, DAYANA
VERA DE APONTE,
Individually and on Behalf of All Others
Similarly Situated,

Plaintiffs,

v.

U.S. CITIZENSHIP & IMMIGRATION
SERVICES; DEPARTMENT OF
HOMELAND SECURITY; ALEJANDRO
MAYORKAS, Secretary of Homeland
Security; UR JADDOU, Director of USCIS

Defendants.

Case No. 4:21-cv-08742-KAW

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION AND
PROVISIONAL CLASS
CERTIFICATION**

Magistrate Judge Kandis A. Westmore
Hearing: December 16, 2021, 1:30 pm

1 **NOTICE OF MOTION FOR PRELIMINARY INJUNCTION**
2 **AND PROVISIONAL CLASS CERTIFICATION**

3 PLEASE TAKE NOTICE that on December 16, 2021 at 1:30 pm or as soon
4 thereafter as the matter may be heard at the Oakland Federal Courthouse, 1301 Clay Street,
5 Oakland, CA 94612, with the Honorable Kandis A. Westmore, Plaintiffs move the Court for
6 a preliminary injunction compelling Defendants to adjudicate class member applications to
7 renew their employment authorization within the 180-day automatic extension period at 8
8 C.F.R. § 274a.13(d) and to adjudicate renewal applications already pending beyond the 180-
9 day automatic extension period within 14 days.
10

11 Plaintiffs also move the Court to provisionally certify a class and to grant a
12 preliminary injunction as to the class. *See* Fed. R. Civ. P. 23(a). Plaintiffs ask the Court to
13 certify the following class:

14 All individuals:

- 15 a. who filed applications to renew their employment authorization documents
16 pursuant to 8 C.F.R. §§ 208.7(b); 274a.12(c)(8); and
17 b. who received a 180-day automatic extension of their employment
18 authorization pursuant to 8 C.F.R. § 274a.13(d); and
19 c. whose applications have a processing time of at least 180 days pursuant to 8
20 C.F.R. § 103.2(b)(10)(i).

21 This motion is based on the Memorandum of Points and Authorities, *infra*, the
22 pleadings, records and files in this action, and such other evidence and argument as may be
23 presented at the time of hearing.

24 A proposed order accompanies this filing.
25
26
27

1 DATE: November 11, 2021

Respectfully submitted,

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**PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION AND
PROVISIONAL CLASS CERTIFICATION
MEMORANDUM OF POINTS OF LAW AND AUTHORITY**

I. INTRODUCTION

Plaintiffs and class members—people with pending asylum applications who Defendant U.S. Citizenship and Immigration Services (USCIS) has previously authorized to work—seek a preliminary injunction to compel Defendants USCIS and Department of Homeland Security (DHS) to do what Defendants have long-represented they would do: adjudicate employment authorization document (EAD) renewal applications within the 180-day automatic extension of employment authorization at 8 C.F.R. § 274a.13(d). Abandoning their own rule of reason, Defendants are taking upwards of ten months to adjudicate EAD renewal applications for asylum seekers. Plaintiffs and proposed class members have lost jobs, employment benefits, and driver’s licenses, and as a result are unable to support themselves and their families, suffer from anxiety, separation from communities of support, and a loss of essential stability. At a time when the United States is in desperate need of workers, Defendants are preventing Plaintiffs from doing that work. Because Plaintiffs are likely to succeed on their claims that Defendants have unreasonably delayed in adjudicating their EAD renewal applications under the Mandamus Act or, in the alternative, under the Administrative Procedure Act (APA), and because Plaintiffs have shown serious, irreparable harm from those delays, this Court should enter a preliminary injunction compelling Defendants to adjudicate Plaintiffs’ renewal applications within the automatic extension period. Plaintiffs also ask the Court to certify a provisional class and to provide the class with preliminary injunctive relief.

1 **II. LEGAL BACKGROUND AND STATEMENT OF FACTS**

2 **A. Statement of Facts**

3 Plaintiff Tony N. is an asylum seeker from East Africa and a truck driver who
4 delivered personal protective equipment across the country during the pandemic. Ex. A,
5 Decl. of Tony N., ¶¶ 1, 8-10. At the time his current work authorization expired, Mr. N. was
6 on the verge of starting his own truck driving business. *Id.* ¶ 11. But because of Defendants'
7 delay in processing his work authorization application he instead lost his driver's license and
8 his current job. *Id.* ¶ 12. Living without any support network in the United States, Mr. N. has
9 been forced to deplete his savings because he cannot work and he struggles with paying for
10 necessities such as rent and health insurance. *Id.* ¶¶ 13-14.
11

12 Plaintiff Muradyan is an asylum seeker from Armenia and a medical doctor. Ex. B,
13 Decl. of Dr. Heghine Muradyan, ¶¶ 1-2, 7. Doctor Muradyan has now lost her residency
14 positions at two hospitals, as well as her health insurance, due to the delay in processing her
15 work permit renewal, and, as a result, she can no longer provide care to her patients or
16 support herself and her young son. *Id.* ¶¶ 7, 13-14. If Doctor Muradyan is unable to work for
17 over three months, she will lose her Postgraduate Training License to practice medicine in
18 different states and will need to redo an entire year of residency beginning in July 2022. *Id.*
19 ¶¶ 11-12.
20

21 Plaintiff Karen M. is a pregnant asylum seeker from El Salvador with three other
22 young children she supports. Ex. C, Decl. of Karen M., ¶¶ 1-2. Ms. M. works as a manager at
23 McDonald's and has been informed by her employer that if her work permit is not renewed
24 by November 15, 2021, she will be terminated from her position. *Id.* ¶¶ 4-5. Ms. M. has
25 already been unable to renew her driver's license because of the delay in processing her work
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1 permit application, and now, a month before she is scheduled to give birth, she fears that she
2 will also lose her primary means to support herself and her family. *Id.* ¶¶ 6-8. Ms. M. will
3 face significant economic hardship without her employment authorization, and will struggle
4 to cover necessities such as rent, food, and clothing for herself and her young children. *Id.* ¶
5 6.

7 Plaintiff Jack S. is an asylum seeker and an Apple, Inc. employee. Ex. D, Decl. of
8 Jack S., ¶¶ 2, 7. Mr. S recently lost his position because of the delay in renewing his work
9 permit and will soon lose his employer-based health insurance coverage. *Id.* ¶¶ 12, 17, 20. In
10 addition, Mr. S has lost his driver's license as a result of Defendants' delay and can no longer
11 drive to important medical appointments or easily acquire necessities such as groceries. *Id.* ¶¶
12 15-16. Mr. S is suffering significant economic hardship without employment authorization
13 and is struggling with how to pay his bills and cover his basic needs as he has nearly used up
14 his savings. *Id.* ¶¶ 13, 14, 18.

16 Plaintiff Vera de Aponte is an asylum seeker from Venezuela and a Registered
17 Behavior Technician for special needs children. Ex. E, Decl. of Dayana Vera de Aponte
18 Decl. ¶¶ 2, 7. Ms. Vera de Aponte is the primary source of income for her family. *Id.* ¶ 9. She
19 was recently terminated because her work authorization was not renewed. *Id.* ¶ 8. She is at
20 risk of losing her Medicaid provider number, which Medicaid typically revokes after a period
21 of inactivity, which could have serious long-term implications for her career. *Id.* ¶¶ 11-13.

23 Plaintiffs Tony N., Muradyan, Karen M., Jack S., and Vera de Aponte all experience
24 significant mental anguish, emotional pain and severe anxiety as a result of the delays in
25 processing their renewal applications. Tony N. Decl. ¶¶ 14-15; Muradyan Decl. ¶¶ 9, 13-15;
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1 Karen M. Decl. ¶¶ 6-7, 9; Jack S. Decl. ¶¶ 9, 11, 13-14, 20; Vera de Aponte Decl. ¶¶ 9, 14,
2 17-18.

3 **B. Statutory, Regulatory, and Administrative Background Relevant to**
4 **Asylum Applicants Renewing EADs**

5 Congress authorized the DHS Secretary (and previously the Attorney General) to
6 provide work authorization to asylum applicants by regulation. 8 U.S.C. § 1158(d)(2). By
7 regulation, eligible people with asylum applications pending before DHS or the Executive
8 Office of Immigration Review (EOIR) may obtain employment authorization, as evidenced
9 by a valid EAD. 8 C.F.R. §§ 208.7, 274a.12(c)(8). An EAD for an asylum applicant is
10 usually valid for two years. Compl. ¶ 27. An asylum applicant may apply to renew the EAD
11 if their asylum application remains pending. 8 C.F.R. § 208.7(b). Defendant USCIS provides
12 an automatic 180-day extension of the asylum applicant's current work authorization, if the
13 applicant meets certain criteria, including filing their renewal application before their EAD
14 expires. 8 C.F.R. § 274a.13(d). The automatic extension is a 180-day maximum; it ends if the
15 renewal application is approved or denied earlier and it ends even if the renewal application
16 remains pending on the expiration date. *Id.* The agency also advises employers that certain
17 people may receive an automatic 180-day extension of their work authorization while USCIS
18 adjudicates the renewal application. Compl. ¶ 33.

21 To renew an EAD, an asylum applicant files with the Dallas Lockbox a Form I-765
22 Application for Employment Authorization, required evidence, filing fee or fee waiver
23 request, and a biometrics fee (unless an ASAP or CASA member) or fee waiver request.
24 Compl. ¶ 40. The Form I-765 and instructions identify information collected from all EAD
25 applicants and additional information and documentation asylum applicants must provide.
26 *See id.* ¶ 38. The Dallas Lockbox accepts or rejects the EAD renewal application; if accepted,
27

1 deposits any payments, issues a Notice of Action to acknowledge receipt of the application,
2 and forwards the application to a USCIS Service Center for processing. *Id.* ¶ 40. The Notice
3 of Action, commonly referred to as a “receipt notice,” provides proof that the applicant is
4 entitled to a 180-day extension of their work authorization, identifies the assigned Service
5 Center, and has a receipt number that the applicant can use to track status. *Id.* ¶¶ 41-42.

7 C. USCIS Delays in Adjudicating Renewal EADs for Asylum Applicants

8 From Fiscal Year (FY) 2017 through July of FY 2021, the median processing time for
9 all EAD applications ranged between 2.6 and 3.9 months. USCIS, *Historical National*
10 *Median Processing Times (in Months) for All USCIS Offices for Select Forms By Fiscal*
11 *Year*, USCIS, <https://egov.uscis.gov/processing-times/historic-pt> (last visited Nov. 10, 2021).
12 But by the end of FY 2020, Defendant USCIS was taking longer than 180 days to adjudicate
13 EAD renewals for many asylum applicants and processing times have continued to increase.
14 Ex. G, Decl. of Swapna Reddy, ¶¶ 17-19 (reporting that of 1,253 respondents to an October
15 25, 2021 survey, 454 asylum seekers with pending EAD renewal applications had been
16 waiting over six months for adjudication of their applications and 165 had been waiting over
17 had been waiting over nine months); Ex. I, Decl. of Jenna Gilbert, ¶ 8; Ex. F, Decl. of Rachel
18 Kafele, ¶ 24. In fact, Defendant USCIS reports that a “normal processing time” is ten months
19 at the Potomac Service Center, and seven months at the Nebraska and Texas Service Centers.
20 USCIS, *Check Case Processing Times*, <https://egov.uscis.gov/processing-times/> (selecting
21 “Form: I-765 Application for Employment Authorization” and “Field Office or Service
22 Center: Potomac Service Center” or “Field Office or Service Center: Nebraska Service
23 Center” or “Field Office or Service Center: Texas Service Center” and scrolling down to
24 “Form type: Based on a pending asylum application [(c)(8)]”) (last visited Nov. 9, 2021).
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1 These delays are not happenstance. Defendants made a series of policy changes that
2 unnecessarily slowed adjudications processes and led to adjudication delays across benefits.
3 These delays included requiring interviews of all applicants for employment-based lawful
4 permanent residents, overturning longstanding practice; substantially increasing requests for
5 evidence for nonimmigrant petitions for H-1B specialty occupation workers; rescinding a
6 2004 policy memorandum that authorized adjudicators under certain circumstances to defer
7 to a prior nonimmigrant visa petition approval when deciding an extension petition;
8 implementing a “no blank space rejection policy” forcing thousands of applicants for
9 humanitarian relief, including asylum, to resubmit their applications to USCIS; and
10 implementing a biometrics requirement for Form I-539 applications to extend or change
11 nonimmigrant status. Am. Immigr. Lawyers Ass’n, *Deconstructing the Invisible Wall: How*
12 *Policy Changes by the Trump Administration are Slowing and Restricting Legal*
13 *Immigration* 7 (March 2018), 17-18,
14 https://www.immigrationresearch.org/system/files/Deconstructing_the_Invisible_Wall.pdf;
15 Compl. ¶¶ 69-75. While Defendants eventually rescinded many of these policy changes,
16 sometimes under the threat of litigation, Defendants have failed to resolve the resulting
17 delays. *See* Compl. ¶¶ 69-75. In August 2021, the Government Accountability Office (GAO)
18 reported that Defendant USCIS had not implemented plans or identified resources and
19 funding to reduce the backlogs or established timeliness performance measures for EAD
20 application adjudications. GAO, *Report to Congressional Requesters, U.S. Citizenship and*
21 *Immigration Services, Actions Needed to Address Pending Caseload* 24-27, 36-38 (Aug.
22 2021), <https://www.gao.gov/products/gao-21-529>. Plaintiffs are paying the price.
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1 **III. ARGUMENT**

2 **A. Standard for Preliminary Injunction**

3 To receive a preliminary injunction, plaintiffs must satisfy four elements: (1) likely to
4 succeed on the merits, (2) likely to suffer irreparable harm without preliminary relief, (3)
5 balance of equities tips in their favor, and (4) an injunction is in the public interest. *Winter v.*
6 *Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit continues to recognize
7 an alternative that includes a “sliding scale” for the first and third factors. A preliminary
8 injunction is also warranted if plaintiffs demonstrate (1) “serious questions going to the
9 merits,” (2) they are likely to suffer irreparable harm without preliminary relief, (3) the
10 balance of equities “tips sharply” in plaintiffs’ favor, and (4) an injunction is in the public
11 interest. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011) (citations
12 omitted).
13
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15 In evaluating the preliminary injunction factors, courts also consider whether the
16 preliminary relief requested is prohibitory or mandatory. *Ariz. Dream Act Coal. v. Brewer*,
17 757 F.3d 1053, 1060 (9th Cir. 2014) (*ADAC*). A prohibitory injunction precludes a party
18 from acting “and preserves the status quo pending a determination of the action on the
19 merits.” *Id.* (quoting *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d
20 873, 878–879 (9th Cir. 2009)). A mandatory injunction requires a party to act. *Id.* (citing
21 *Marlyn Nutraceuticals*, 571 F.3d at 878–879). A mandatory injunction may be granted if
22 “extreme or very serious damage will result.” *Marlyn Nutraceuticals*, 571 F.3d at 879. As
23 discussed below, Plaintiffs seek a prohibitory injunction, but even if this Court determines
24 the relief is mandatory, Plaintiffs can meet the higher standard.
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1 **B. Plaintiffs Are Likely to Succeed on Their Claims under the APA and the**
2 **Mandamus Act**

3 Plaintiffs make two claims arising from Defendants’ delay in adjudicating their EAD
4 renewal applications. Under the Mandamus Act, courts have the power “to compel an officer
5 or employee of the United States or any agency thereof to perform a duty owed to the
6 plaintiff.” 28 U.S.C. § 1361. Similarly, under the APA courts “shall compel agency action
7 unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1). Where, as here, Plaintiffs
8 seek identical relief under both causes of action, courts analyze unreasonable delay claims
9 under the APA standard. *Indep. Min. Co. v. Babbitt*, 105 F.3d 502, 507 (9th Cir. 1997).
10 Because Plaintiffs have established that Defendants have unreasonably delayed their duty to
11 adjudicate EAD renewal applications for asylum applicants, Plaintiffs are likely to succeed
12 on both claims. *See id.*

14 1. *Defendants Have a Duty to Timely Adjudicate Plaintiffs’ Applications*
15 *to Renew Their EADs*

16 Defendants are required by regulation to accept, process, and adjudicate all EAD
17 applications, including EAD applications by asylum applicants. 8 C.F.R. § 208.7 (“USCIS
18 has exclusive jurisdiction over all applications for employment authorization and
19 employment authorization documentation based on a pending application for asylum under 8
20 C.F.R. § 274a.12(c)(8) . . .”), 274a.13 (requiring that applicants “shall be notified” of the
21 decision to grant or deny an EAD application); *see also* 274a.12. By court order, Defendant
22 USCIS has no discretion to deny EADs to otherwise eligible asylum applicants who are
23 members of the Asylum Seeker Advocacy Project (ASAP) or CASA de Maryland. *CASA de*
24 *Maryland, Inc. v. Wolf*, 486 F. Supp. 3d 928, 974 (D. Md. 2020). In the circumstances where
25 Defendants may deny an EAD to an otherwise eligible applicant in the exercise of discretion,
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1 Defendants continue to have a duty to adjudicate those applications. *See Babbitt*, 105 F.3d at
 2 507 n.6 (stating an agency “cannot simply refuse to exercise [its] discretion”). Furthermore,
 3 “[e]ven where no time limits are imposed by the enabling-statute, Defendants have a non-
 4 discretionary duty to adjudicate immigration-related petitions ‘within a reasonable period of
 5 time.’” *Doe v. Risch*, 398 F. Supp. 3d 647, 655 (N.D. Cal. 2019) (quoting 8 U.S.C. § 555(b)).
 6

7 2. *Defendants Have Unreasonably Delayed Adjudicating EAD Renewal*
 8 *Applications of Asylum Seekers by Failing to Adjudicate Within the*
 9 *180-Day Automatic Extension Period*

10 The crux of Plaintiffs’ claims is unreasonable delay. As such, the Court’s analysis
 11 turns on the six factors first laid out in *Telecommunications Research & Action v. FCC*
 12 (*TRAC*), 750 F.2d 70, 80 (D.C. Cir. 1984). They are:

13 (1) the time agencies take to make decisions must be governed by a “rule of
 14 reason”; (2) where Congress has provided a timetable or other indication of the
 15 speed with which it expects the agency to proceed in the enabling statute, that
 16 statutory scheme may supply content for this rule of reason; (3) delays that
 17 might be reasonable in the sphere of economic regulation are less tolerable
 18 when human health and welfare are at stake; (4) the court should consider the
 19 effect of expediting delayed action on agency activities of a higher or competing
 20 priority; (5) the court should also take into account the nature and extent of the
 21 interests prejudiced by the delay; and (6) the court need not “find any
 22 impropriety lurking behind agency lassitude in order to hold that agency action
 23 is unreasonably delayed.”

24 *Brower v. Evans*, 257 F.3d 1058, 1068–69 (9th Cir. 2001). Because these factors weigh in
 25 Plaintiffs’ favor, the Court should find that Plaintiffs are likely to show that Defendants have
 26 unreasonably delayed in the adjudication of their EAD renewal applications.

27 a. *TRAC* Factors One and Two: “Rule of Reason” and the
 Statutory, Regulatory Timetable

 Defendants themselves have provided the content for the “rule of reason” through
 rulemaking. *See Rosario v. U.S. Citizenship & Immigr. Servs.*, 365 F. Supp. 3d 1156, 1161-
 62 (W.D. Wash. 2018) (holding a regulation may supply content for the rule of reason);

1 *Garcia v. Johnson*, No. 14-cv-01775-YGR, 2014 WL 6657591, at *8, 13 (N.D. Cal. Nov. 21,
2 2014) (finding plaintiffs stated a claim under the APA for unreasonable delay based on
3 failure to comply with a regulatory deadline). While there is no regulation that sets a
4 mandatory processing time from receipt to decision, Defendants’ rulemaking makes clear
5 that adjudication must be completed within the 180-day automatic extension at 8 C.F.R. §
6 274a.13(d).
7

8 Defendants have repeatedly represented in their rulemaking that that they would and
9 could adjudicate EAD renewal applications—and in particular, EAD renewal applications for
10 asylum seekers—within the automatic extension period. Defendants issued the 180-day
11 automatic extension rule in November 2016, at the same time they removed a 90-day
12 processing deadline from receipt to decision, for the express purpose of “ensur[ing]
13 continued employment authorization for many renewal applicants and prevent[ing] any work
14 disruptions for both the applicants and their employers.” Retention of EB-1, EB-2, and EB-3
15 Immigrant Workers and Program Improvements Affecting High-Skilled Nonimmigrant
16 Workers, 81 Fed. Reg. 82398, 82456 (Nov. 18, 2016). Defendants then went further. In June
17 2020, Defendants removed as “unnecessary” a prior requirement that EAD applicants with
18 pending asylum applications submit their renewal applications 90 days prior to the expiration
19 of their EADs “[i]n order for employment authorization to be renewed before its expiration.”
20 8 U.S.C. § 208.7 (d) (1997); Removal of 30-Day Processing Provision for Asylum-Applicant
21 Related Form I-765 Employment Authorization Applications, 85 Fed. Reg. 37502, 37509
22 (June 22, 2020). Defendants provided this explanation for eliminating the requirement:
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1 Because [the 180-day automatic extension at 8 C.F.R. § 274a.13(d)(1)]
2 *effectively prevents gaps in work authorization for asylum applicants* with
3 expiring employment authorization and EADs, DHS finds it unnecessary to
4 continue to require that pending asylum applicants file for renewal of their
employment authorization 90 days before the EAD's scheduled expiration in
order to prevent gaps in employment authorization.

5 *Id.* (emphasis added). In other words, Defendants through notice and comment rulemaking
6 told the public, including asylum seekers and their attorneys, in June 2020 that they did not
7 have to submit their renewal applications 90 days before expiration of their EADs in order to
8 avoid gaps in employment authorization because Defendants *would* adjudicate their
9 applications *within the 180-day automatic extension period. Id.*

10
11 A rule of reason that requires Defendants to adjudicate applications within the 180-
12 day automatic extension period is consistent with, and supported by, the sense of Congress
13 that “the processing of an immigration benefit application should be completed not later than
14 180 days after the initial filing of the application” 8 U.S.C. § 1571(b); *see Risch*, 398 F.
15 Supp. 3d at 657 (finding the sense of Congress “suffices to ‘tip the second *TRAC* factor in
16 [Plaintiffs’] favor”) (quoting *Islam v. Heinauer*, 32 F. Supp. 3d 1063, 1073 (N.D. Cal.
17 2014)). It is also entirely reasonable that Defendant USCIS adjudicate EAD applications in
18 180 days for asylum seekers who it has *already determined are authorized to work*, when
19 Congress intended that the underlying asylum application—the ultimate high stakes and
20 complex application—be adjudicated in 180 days. *See* 8 U.S.C. § 1158(d)(5)(A)(iii).

21
22 Asylum applicants and their attorneys reasonably relied on Defendants’ repeated
23 representations that Defendant USCIS would adjudicate EAD renewal applications within the
24 180-day automatic extension period—consistent with its longstanding practice of
25 adjudicating these applications in less than six months. Kafele Decl. ¶ 23; Reddy Decl. ¶ 27.
26 Defendants cannot now abandon this rule of reason without notice or explanation. *See Encino*
27

1 *Motorcars, LLC v. Navarro*, 579 U.S. 211, 136 S. Ct. 2117, 2125–26 (2016) (holding when
2 an agency changes a policy it must provide ““a reasoned explanation”” where that policy
3 ““engendered serious reliance interests””) (quoting *FCC v. Fox Television Stations, Inc.*, 556
4 U.S. 502, 515-16 (2009)); *Nat’l Urb. League v. Ross*, 489 F. Supp. 3d 939, 999 (N.D. Cal.),
5 *order clarified*, 491 F. Supp. 3d 572 (N.D. Cal. 2020) (“[R]eliance interests should be
6 considered even where the document giving rise to reliance expressly disclaims conferring
7 any rights.”).

9 Yet this is precisely what Defendants have done. According to Defendant USCIS’
10 webpage, the “normal” processing time at all three Service Centers adjudicating EAD
11 renewal applications for asylum seekers is well over 180 days. *Supra* Part II.C. Moreover,
12 Defendants have not replaced their prior rule of reason with any rule at all. Defendant USCIS
13 is not adjudicating applications on a first-in, first out basis. Ex. H, Decl. of Aidan Castillo, ¶
14 8; Reddy Decl. ¶ 22. For all these reasons, the first and second *TRAC* factors weigh in
15 Plaintiffs’ favor.
16

17 b. *TRAC* Factors Three and Five: The Prejudice to Human
18 Health and Welfare Due to Delay

19 There can be no dispute that Defendants’ delay has resulted in significant harm to the
20 welfare of Plaintiffs and proposed class members. *See infra* Part III.C. Defendants
21 themselves have recognized the importance of maintaining employment authorization in
22 order to avoid “work disruptions.” 81 Fed. Reg. at 82456. Plaintiffs and class members have
23 suffered or will imminently suffer job loss, loss of government-issued identification cards
24 and driver’s licenses, and employee benefits due to Defendants’ failure to adjudicate EAD
25 renewal applications within the 180-day automatic extension period. Ex. I, Decl. of Jenna
26 Gilbert, ¶¶ 6-8; Ex. J, Decl. of Rachel Sheridan, ¶¶ 5-7; Castillo Decl. ¶¶ 13-14; *see infra*
27

1 Part III.C. The resulting instability and inability to support themselves and their families has
2 additional consequences for asylum seekers who frequently have experienced significant
3 trauma such that stability, support, and access to health insurance and other employee
4 benefits are essential. Sheridan Decl. ¶¶ 5-7; Gilbert Decl. ¶ 8. Given these significant harms,
5 *TRAC* factors three and five weigh heavily in Plaintiffs’ favor. *See Rosario*, 365 F. Supp. 3d
6 at 1162 (finding *TRAC* factors three and five “strongly weigh in favor” of plaintiffs when
7 USCIS delays in adjudicating EADs for asylum seekers); *Yea Ji Sea v. U.S. Dep’t of*
8 *Homeland Sec.*, No. CV-18-6267-MWF, 2018 WL 6177236, at *6 (C.D. Cal. Aug. 15, 2018)
9 (finding factors three and five weighed in favor of plaintiff where, among other things,
10 “Plaintiff is unable to work or obtain a driver’s license, and therefore will be unable to
11 support herself”).
12

13
14 c. *TRAC* Factor 4: Higher or Competing Priorities

15 An EAD application is inherently a high priority for prompt adjudication. For
16 noncitizens who do not automatically gain work authorization by virtue of their status, an
17 EAD provides permission to work for the period of their temporary immigration status or the
18 time it takes for Defendant USCIS to adjudicate the complex and high stakes underlying an
19 application for immigration status. *See* 8 C.F.R. § 274a.12(c) (listing categories of
20 noncitizens required to apply for authorization to work, with an additional nine categories
21 “reserved”). An EAD application for an asylum applicant, and in particular an EAD *renewal*
22 application, is neither high stakes nor particularly complex, but is an essential stopgap
23 measure so people can support themselves while they pursue asylum protection. *See* Rules
24 and Procedures for Adjudication of Applications for Asylum and Withholding of Deportation
25 and for Employment Authorization, 59 Fed. Reg. 14779, 14780 (Mar. 30, 1994) (stating that
26
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1 150 days from the initial filing of an asylum application was the period “beyond which it
2 would not be appropriate to deny work authorization to a person whose claim has not been
3 adjudicated”). Mandating that Defendant USCIS abide by its own rule of reason and
4 adjudicate EAD renewal for asylum applicants within the 180-day automatic extension
5 period is entirely consistent with the priority that such applications take over applications that
6 carry more significant immigration consequences. Defendant USCIS has acknowledged this
7 as a priority, by promising applicants that the agency would adjudicate these applications
8 within the 180-day automatic extension. *See* 85 Fed. Reg. at 37509.

9
10 Moreover, this is not a matter of cutting ahead in line. There is no line. Defendant
11 USCIS is not adjudicating applications on a first in-first out methodology—or in any
12 apparent order. *See* Castillo Decl. ¶ 8; Reddy Decl. ¶ 22. But more importantly, Plaintiffs
13 seek to enforce the rule of reason as to *all* proposed class members who received a 180-day
14 automatic extension of their work authorization. As such, the fourth *TRAC* factor also weighs
15 in Plaintiffs’ favor.

16
17 d. *TRAC* Factor 6: Impropriety

18 Defendants’ delays in adjudicating EAD renewal applications for asylum seekers are
19 unreasonable, even if the explanation for the delays is not unscrupulous.

20
21 **C. Plaintiffs Will Be Irreparably Harmed Absent Preliminary Relief**

22 1. *Plaintiffs Seek a Prohibitory Injunction But Can Meet the Higher*
23 *Mandatory Injunction Standard*

24 The relief Plaintiffs request in this lawsuit is a prohibitory injunction. “[T]he ‘status
25 quo’ refers to the legally relevant relationship *between the parties* before the controversy
26 arose.” *ADAC*, 757 F.3d at 1061 (emphasis in original, citing *McCormack v. Hiedeman*, 694
27 F.3d 1004, 1020 (9th Cir. 2012)). The legally relevant relationship comes from the regulation

1 providing a 180-day automatic extension of the EADs—the time frame Defendants selected
 2 because the agency expected that this timeframe would be sufficient to avoid gaps in
 3 employment for most renewal applicants. 8 C.F.R. § 274a.13(d); 81 Fed. Reg. at 82455-56.
 4 The status quo is Defendant USCIS adjudicating EAD renewals for asylum applicants within
 5 the 180-day automatic extension. *See, e.g.*, Castillo Decl. ¶ 10; Rachel Kafele Decl. ¶ 16;
 6 Jack S. Decl. ¶ 4. The status quo for individual asylum seekers is retention of their
 7 authorization to work. The preliminary relief is prohibitory because USCIS would be
 8 enjoined from deviating from the status quo by taking longer than 180 days to adjudicate
 9 EAD renewals. *See ADAC*, 757 F.3d at 1061. Even if the Court finds that this is a mandatory
 10 injunction, Plaintiffs have and will continue to suffer extreme or very serious damage absent
 11 a preliminary injunction due to job loss and an inability to pursue a chosen career path, loss
 12 of employer-based benefits, loss of drivers' licenses, and emotional distress.¹

15 2. *Loss of Employment Authorization Prevents Plaintiffs From*
 16 *Supporting Themselves and Their Families Financially*

17 Cut off from their only source of income, Plaintiffs and their families face economic
 18 hardship, and possible homelessness, due to their loss of work authorization. Muradyan Decl.
 19 ¶ 13; Jack S. Decl. ¶ 14; Vera De Aponte Decl. ¶ 9; *see also* Karen M. Decl. ¶¶ 6-7; Tony N.
 20 Decl. ¶¶ 13-14. Plaintiffs are or will be suddenly unable to pay basic expenses such as their
 21 mortgages, food, medical care, and rent. Muradyan ¶ 13; Jack S. Decl. ¶ 14; Karen M. Decl.
 22 ¶ 6; Tony N. Decl. ¶¶ 13-14. This is particularly devastating for Plaintiffs who are a primary
 23

24 _____
 25 ¹ The Ninth Circuit has recognized that Plaintiffs are entitled to an injunction where harms
 26 are either current or immediately threatened. *City of Los Angeles v. Lyons*, 461 U.S. 95
 27 (1983) (requiring there be a “real and immediate threat” of harm to qualify for an injunction).
 Even where their work authorization has not yet lapsed, given USCIS’ extreme delays in
 processing thousands of renewal applications, Plaintiffs are almost certain to suffer the harms
 described above. Thus, Plaintiffs can easily show that they are suffering, or are immediately
 threatened with, extreme and very serious harm.

1 source of income for their families. *See* Vera De Aponte Decl. ¶ 9; Muradyan Decl. ¶ 13;
2 Karen M. Decl. ¶ 6. These harms are typical of class members as well. Reddy Decl. ¶¶ 28-30;
3 Kafele Decl. ¶¶ 12-13; Gilbert Decl. ¶ 6.

4 This loss of income is a monetary harm for which Plaintiffs have no means of future
5 recovery. *See* 5 U.S.C. § 702 (waiving sovereign immunity for “relief other than money
6 damages”). The Ninth Circuit has found that where Plaintiff has no way of recovering
7 monetary damages, economic harm is irreparable. *See E. Bay Sanctuary Covenant v. Trump*,
8 993 F.3d 640, 677 (9th Cir. 2021) (“[W]here parties cannot typically recover monetary
9 damages flowing from their injury—as is often the case in APA cases—economic harm can
10 be considered irreparable.”); *California v. Azar*, 911 F.3d 558, 581 (9th Cir. 2018) (“[S]uch
11 harm is irreparable here because the states will not be able to recover monetary damages
12 connected to the IFRs.”); *Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) (“If
13 expenditures cannot be recouped, the resulting loss may be irreparable.”). Plaintiffs have lost
14 not only months of income, but they also have been forced to deplete their savings as they
15 have struggled to survive without work. Tony N. Decl. ¶ 13; Jack S. Decl. ¶ 14. They stand
16 to remain unemployed for an indeterminate amount of time absent an injunction. They have
17 no legal recourse for recovering these lost wages now or in the future and are thus entitled to
18 an injunction to prevent extreme and very serious harm.

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21
22 3. *Without Employment Authorization Plaintiffs Stand to Lose Health
23 Insurance and Disability Benefits*

24 When Plaintiffs lose their jobs because of a lapse in work authorization, they also lose
25 their employer-based health insurance coverage and disability benefits for themselves and
26 their families. Jack S. Decl. ¶ 13, 17; Muradyan Decl. ¶ 14; Vera De Aponte Decl. ¶ 14.
27 Without valid work authorization, many Plaintiffs also cannot apply for alternative health

1 insurance through the government. *See* HealthCare.gov, *Immigration Status and the*
2 *Marketplace*, <https://www.healthcare.gov/immigrants/immigration-status/> (last visited Nov.
3 8, 2021) (“Applicants for asylum are eligible for Marketplace coverage only if they’ve been
4 granted employment authorization or are under the age of 14 and have had an application
5 pending for at least 180 days.”); Covered California, *Proof of Immigration Status or Lawful*
6 *Presence*, Covered California, [https://www.coveredca.com/documents-to-confirm-](https://www.coveredca.com/documents-to-confirm-eligibility/immigration-status/)
7 [eligibility/immigration-status/](https://www.coveredca.com/documents-to-confirm-eligibility/immigration-status/) (last visited Nov. 8, 2021). *See also* Vera De Aponte Decl. ¶
8 14; Kafele Decl. ¶ 10; Gilbert Decl. ¶ 7. A need for health care, and the consequences of its
9 loss, is not speculative harm for Plaintiffs. For example, Plaintiff Jack S. is worried about
10 disruptions to his HIV treatment once he loses his employer-based insurance. Jack S. Decl. ¶
11 18. Plaintiff Muradyan is unable to access mental health services to treat her depression
12 because she has lost her employer-based health insurance. Muradyan Decl. ¶ 14.

15 The Ninth Circuit has recognized that the deprivation of benefits, such as disability
16 benefits, amounts to irreparable harm. *See, e.g., Lopez v. Heckler*, 713 F.2d 1432 (9th Cir.
17 1983); *Leschniok v. Heckler*, 713 F.2d 520, 524 (9th Cir. 1983) (“We fail to comprehend the
18 Secretary’s argument that financial compensation at some future date, should the claimants
19 survive and prevail, mitigates the hardship which is visited upon claimants and their families
20 each and every day” due to loss of disability benefits). In *Lopez v. Heckler*, the Ninth Circuit
21 noted that “[d]eprivation of benefits pending trial might cause economic hardship, suffering
22 or even death. Retroactive restoration of benefits would be inadequate to remedy these
23 hardships.” 713 F.2d at 1437. The very serious harm suffered from a loss of access to health
24 insurance is only heightened during a pandemic, and alone shows that Plaintiffs have
25 satisfied the harm standard necessary for a preliminary injunction.
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1
2 4. *Defendants' Delays Prevent Plaintiffs From Advancing in Their*
3 *Careers*

4 In addition to irreparable harm due to loss of current employment, Defendants' delays
5 also prevent Plaintiffs from advancing in their careers. Stripped of their work authorization
6 through no fault of their own, Plaintiffs and class members have had to forego long-term
7 employment contracts, promotions, and the option to pursue their chosen profession. *See*
8 Vera De Aponte Decl. ¶¶ 11-13; Muradyan Decl. ¶¶ 11-12; Tony N. Decl. ¶¶ 11-13. For
9 example, Plaintiff Dayana Vera de Aponte's lapse in work authorization could force her to
10 lose her license as a Registered Behavior Technician. Vera De Aponte Decl. ¶¶ 7, 11.
11 Granting of work permit later will not restore Plaintiff Vera de Aponte's license and will
12 therefore have long-term career consequences, because she will be required to reapply, a
13 process that can take many months, and new applications are not being accepted currently.
14 *Id.* ¶¶ 11-13. Plaintiff Haghine Muradyan will also lose her Postgraduate Training License
15 and Drug Enforcement Administration licenses, which allow her to practice medicine and
16 prescribe medication in different states. Muradyan Decl. ¶ 12. Plaintiff Tony N. worked as a
17 truck driver, an essential job during the pandemic. He had been saving his money to start his
18 own trucking business and had even registered his business before his work authorization
19 expired. Tony N. Decl. ¶¶ 11-13. Unable to work or even drive, he has been forced to set
20 aside his dream of owning his own business and use up his savings in order to survive. *Id.*

21
22 The Ninth Circuit has recognized harms to people's career opportunities as
23 irreparable even in less severe cases. *See ADAC*, 757 F.3d at 1068 (finding irreparable harm
24 to plaintiffs because the inability to acquire a driver's license and drive legally limited their
25 professional and career opportunities in the state of Arizona, where 87 percent of the
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1 workforce drives to work); *see also Semmes Motors, Inc. v. Ford Motor Co.*, 429 F.2d 1197,
2 1205 (2d Cir. 1970) (“[T]he right to continue a business . . . is not measurable entirely in
3 monetary terms, the [Plaintiffs] Semmes want to sell automobiles, not to live on the income
4 from a damages award.”). Here, Plaintiffs have not only been deprived of their means to
5 commute to work, but the ability to obtain any employment at all. Like the Plaintiffs in
6 *ACDC*, many are in formative stages of their careers. *See* Muradyan Decl. ¶¶ 11-12; Vera de
7 Aponte Decl. ¶ 11; *see also* Reddy Decl. ¶ 33; Ex. L, Decl. of Maria Odom, ¶ 9 (“Children
8 turning 18, particularly those who are forced out of foster care at that time, require
9 employment authorization to be able to support themselves, or to acquire work or internship
10 experience as an essential step toward becoming self-supporting.”).

11
12
13 5. *Defendants’ Delay Denies Plaintiffs’ Access to Driver’s Licenses and*
14 *Government- Issued Identification Necessary to Pursue Work and*
Care for Themselves and Their Families

15 Due to the expiration of their work authorization, Plaintiffs are not able to renew their
16 drivers’ licenses and have lost the ability to drive. Tony N. Decl. ¶ 12; Karen M. Decl. ¶ 8;
17 Jack S. Decl. ¶ 15; *see also*, Sheridan Decl. ¶ 8; Gilbert Decl. ¶ 7. This has caused severe
18 hardship for Plaintiffs. For example, Plaintiff Tony N. relied on his driver’s license to work
19 as a truck driver. The company he worked for has been unable to assign him to any jobs since
20 September because of his expired license. Tony N. Decl. ¶ 12. For Plaintiff Karen M. it has
21 become very difficult to complete daily tasks, such as dropping her children off at school and
22 attending doctor’s appointments as an expecting mother. Karen M. Decl. ¶ 9-10. Plaintiff
23 Jack S. has also faced significant hardship by being unable to drive to medical appointments
24 and to secure necessities such as groceries. Jack S. Decl. ¶ 16. Moreover, as displaced asylum
25 seekers many Plaintiffs here do not have family and networks who they can rely on for
26
27

1 transportation and support. *See* Tony N. Decl. ¶ 14; Karen M. Decl. ¶ 6, 10; *see also*, Kafele
 2 Decl. ¶ 13. Thus, the harm here extends beyond the inability to commute to work and has had
 3 even more severe consequences than the harm in *ADAC*. *See* 757 F.3d at 1068.

4 Moreover, without a valid EAD card, many Plaintiffs and class members have also
 5 lost their only form of government identification. Karen M. Decl. ¶ 12; *see also*, Odom Decl.
 6 ¶ 9 (“In many states, an EAD or social security number is required to obtain state
 7 identification documents, a driver’s license, a bank account, or funding for higher
 8 education—all critical steps toward establishing a young person’s future independence and
 9 stability.”); Gilbert Decl. ¶ 7 (“Often, without work authorization asylum seekers cannot
 10 apply for state-issued identification cards or driver’s licenses, further limiting their access to
 11 transportation, banking, or other private support services.”); Sheridan Decl. ¶ 5 (noting that
 12 “[s]etbacks in meeting their basic life needs such as . . . valid identification have serious
 13 consequences”). This is especially difficult for asylum seekers like Plaintiff Karen M. and
 14 her children, who are unable to acquire passports as alternative identification because doing
 15 so would require their father’s consent and could endanger them. Karen M. Decl. ¶ 12.

18 6. *Long Delays in Processing Plaintiffs’ EAD Renewal Applications*
 19 *Causes Severe Emotional Distress that is Especially Damaging to*
 20 *Asylum Seekers who have Suffered Severe Trauma*

21 Defendants’ delays have also caused Plaintiffs emotional distress and psychological
 22 injury. Tony N. Decl. ¶¶ 14-15; Jack S. Decl. ¶¶ 9, 11, 13, 20; Vera de Aponte Decl. ¶¶ 9, 14,
 23 17-18; Muradyan Decl. ¶¶ 9, 13-15; Karen M. Decl. ¶¶ 6-7, 9. For Plaintiffs, losing their
 24 work authorization has resulted in anxiety, loss of sleep, and depression. Muradyan Decl. ¶¶
 25 9, 14; Jack S. Decl. ¶ 20; Tony N. Decl. ¶ 14-15; Vera de Aponte Decl. ¶ 9, 14, 18; *see also*
 26 Kafele Decl. ¶ 15 (noting that asylum seekers suffer from severe depression and even
 27 suicidal ideation as a result of loss of work authorization). The Ninth Circuit in *Chalk v. US*

1 *District Court Cent. Dist.* found that emotional and psychological injury constituted
2 irreparable harm, when a teacher was denied the opportunity to pursue a particular teaching
3 position based on his AIDS diagnosis. *Chalk v. United States Dist. Court Cent. Dist.*, 840
4 F.2d 701, 709-10 (9th Cir. 1988). Even though the plaintiff in *Chalk* was offered alternative
5 employment, that job involved different, and less preferable, job duties, and “[id] not utilize
6 his skills, training or experience.” *Id.* at 709. The court of appeals found that the alleged
7 discrimination deprived the teacher of work that brought him “tremendous personal
8 satisfaction and joy” and the resulting “emotional and psychological” injury was irreparable.
9 *Id.* at 709-10. Here, Plaintiffs and class members suffer from significant emotional distress
10 and do not have alternative employment options currently available to them because they are
11 not authorized to work at all. Thus, Plaintiffs’ harm rises to the level of extreme and very
12 serious damage necessary for an injunction.
13
14

15 Moreover, the loss of stability that comes with unemployment is especially harmful
16 for asylum seekers, who have escaped from traumatic situations and are often recovering
17 from Post-Traumatic Stress Disorder (PTSD) while working to get their lives in order. *See*
18 Sheridan Decl. ¶¶ 5-7. Losing their income and the ability to support themselves and their
19 families causes extreme emotional distress and can be immensely triggering. Jack S. Decl. ¶¶
20 9, 11, 13-14, 20; Tony N. Decl. ¶¶ 14-15; Vera de Aponte Decl. ¶ 9, 14, 17-18; *see also*,
21 Sheridan Decl. ¶ 6. Moreover, losing work authorization can also lead to an interruption in
22 mental health care, which can exacerbate the risk of homelessness for asylum seekers. *See*
23 Kafele Decl. ¶ 15.
24

25 For all these reasons—loss of income that cannot be recovered, loss of essential
26 employment-based benefits including health insurance and disability benefit, loss of the
27

1 ability to pursue one’s chosen career, loss of driver’s licenses and government-issued
2 identification, and emotional distress—Plaintiffs have established that they will suffer severe
3 harm if a preliminary injunction is not entered.

4 **D. The Balance of Equities and the Public Interest Favor Plaintiffs**

5
6 When the government is a party, the balance of equities and public interest factors are
7 merged. *E. Bay Sanctuary Covenant*, 993 F.3d at 668 (citing *Nken v. Holder*, 556 U.S. 418,
8 435 (2009)). Plaintiffs and proposed class members, the government, and the public all have
9 an interest in asylum applicants who qualify for renewal of their EADs having their
10 applications adjudicated before the 180-day extension period expires. Loss of work
11 authorization due to Defendants’ adjudications delays harms the public interest because the
12 U.S. economy is severely impacted by a shortage of workers. Without work authorization,
13 Plaintiffs and proposed class members can no longer legally be part of the workforce. The
14 need for such workers is great. The U.S. Department of Labor reported that in August 2021
15 there were 10.4 million job openings, while the number of people leaving employment rose
16 to 4.3 million, the highest monthly level reported since December 2000. Compl. ¶ 3 “The
17 U.S. labor force participation rate has only recovered about half of what it lost at the onset of
18 the pandemic,” attributable to reasons such as early retirement, no childcare, and relocation.
19 K. Marino, *Immigrants could help fill America’s millions of job openings*, Axios (Nov. 3,
20 2021), [https://www.axios.com/immigration-jobs-employment-pandemic-labor-shortage-](https://www.axios.com/immigration-jobs-employment-pandemic-labor-shortage-2c5af6a4-4c90-451c-9b8a-124ee55ceb7b.html)
21 [2c5af6a4-4c90-451c-9b8a-124ee55ceb7b.html](https://www.axios.com/immigration-jobs-employment-pandemic-labor-shortage-2c5af6a4-4c90-451c-9b8a-124ee55ceb7b.html).
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23

24 As leading economic experts have long recognized, authorizing immigrants, like the
25 named plaintiffs and proposed class members, to work can play a crucial role in mitigating
26 labor shortages. *See, e.g.*, N. Narea, *Immigrants Could Fix the US Labor Shortage*, Vox (Oct.
27

1 26, 2021), <https://www.vox.com/business-and-finance/2021/10/26/22733082/labor-shortage->
2 [inflation-immigration-foreign-workers](https://www.vox.com/business-and-finance/2021/10/26/22733082/labor-shortage-) (quoting such experts on the importance of immigrant
3 workers in addressing the shortage). Plaintiffs work in essential industries where demand for
4 workers is especially great. *See* Jennifer Smith, *Where Are All the Truck Drivers? Shortage*
5 *Adds to Delivery Delays*, Wall Street Journal (Nov. 3,
6 2021), <https://www.wsj.com/articles/truck-driver-shortage-supply-chain-issues-logistics->
7 [11635950481](https://www.wsj.com/articles/truck-driver-shortage-supply-chain-issues-logistics-); Gaby Galvin, *Nearly 1 in 5 Health Care Workers Have Quit Their Jobs*
8 *During the Pandemic*, Morning Consult (Oct. 4,
9 2021), <https://morningconsult.com/2021/10/04/health-care-workers-series-part-2->
10 [workforce/](https://morningconsult.com/2021/10/04/health-care-workers-series-part-2-).

11
12 The equities and public interest also tip in favor of Plaintiffs and proposed class
13 members because of the particular vulnerability of asylum seekers. *See supra*, Part III.C.

14 **E. Provisional Class Certification is Warranted**

15
16 Plaintiffs also move the Court to provisionally certify a class and to grant a
17 preliminary injunction as to the class. *See* Fed. R. Civ. P. 23(a); *Meyer v. Portfolio Recovery*
18 *Assocs., LLC*, 707 F.3d 1036, 1041-43 (9th Cir. 2012) (allowing for provisional class
19 certificate for the purpose of preliminary injunctive relief). As discussed fully in Plaintiffs'
20 Motion for Class Certification and accompanying memorandum of points and authority, ECF
21 No. 16, Plaintiffs meet the requirements for class certification under Federal Rule of Civil
22 Procedure 23.

23
24 Plaintiffs seek class certification because joinder would be impracticable in this
25 case; Plaintiffs estimate that hundreds, if not more than 1,000, geographically dispersed
26 asylum seekers are affected by Defendant USCIS' delays. Fed. R. Civ. P. 23(a)(1). *See*
27

1 Reddy Decl. ¶ 18. Common questions of law and fact predominate any questions affecting
2 the individually named Plaintiffs, including whether there is a duty to adjudicate the EAD
3 renewal applications of asylum applicants within the 180-day automatic extension at 8
4 C.F.R. § 274a.13(d), and whether Defendants' delays are unreasonable. *See* Fed. R. Civ.
5 P. 23(a), 23(b)(2). Plaintiffs' claims are typical of the claims of the entire class as they
6 are all asylum applicants whose applications to renew their EADs have been pending with
7 Defendant USCIS for at least 180 days pursuant to 8 C.F.R. § 103.2(b)(10)(i) and they
8 received the 180-day automatic extension. Fed. R. Civ. P. 23(a)(3). Plaintiffs will fairly and
9 adequately represent the interests of the proposed class as they seek relief on behalf of the
10 class as a whole and they have no interest antagonistic to the class members. Fed. R. Civ. P.
11 23(a)(4). Plaintiffs are represented by competent counsel with extensive experience in both
12 complex class actions and immigration law and can fairly, competently, and ethically
13 represent the interests of the class. *See* Fed. R. Civ. P. 23(a)(4); Mot. Class Cert. Decls. I, J.

14
15
16 Finally, class-wide relief under Rule 23(b)(2) is appropriate. Plaintiffs challenge—
17 and seek declaratory and injunctive relief from—systemic policies and practices that
18 consistently prevent the timely adjudication of EAD renewal applications for asylum
19 seekers.

20 Accordingly, Plaintiffs ask the Court to certify the following class:

21 All individuals:

- 22
- 23 a. who filed applications to renew their employment authorization documents
24 pursuant to 8 C.F.R. §§ 208.7(b); 274a.12(c)(8); and
 - 25 b. who received a 180-day automatic extension of their employment authorization
26 pursuant to 8 C.F.R. § 274a.13(d); and
 - 27 c. whose applications have a processing time of at least 180 days pursuant to 8
C.F.R. § 103.2(b)(10)(i).

1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiffs request that the Court certify a provisional class
3 and enter a preliminary injunction compelling Defendants to adjudicate Plaintiffs' and class
4 members' renewal applications within the 180-day automatic extension period at 8 C.F.R.
5 § 274a.13(d) and to adjudicate renewal applications already pending beyond the 180-day
6 automatic extension period within 14 days.
7

8
9 DATE: November 11, 2021

Respectfully submitted,

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**Pro hac vice motions pending*