

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
SOUTHERN DIVISION

CASA de MARYLAND, INC., ET AL.  
Plaintiffs,

– versus –

ALEJANDRO MAYORKAS, ET AL.  
Defendants.

Case No. 8:20-cv-02118-PX

DECLARATION OF ZACHARY MANFREDI

ZACHARY MANFREDI, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am an attorney admitted to practice in the State of California and have been admitted pro hac vice to appear before this Court in this case, which challenges two Employment Authorization regulations: *Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications*, 85 Fed. Reg. 37,502 (June 22, 2020) (“Timeline Repeal Rule”) and *Asylum Application, Interview, and Employment Authorization for Applicants*, 85 Fed. Reg. 38,532 (June 26, 2020) (“EAD Bar Rule”) (together, “the 2020 EAD Rules”). In my role as Litigation and Advocacy Director at the Asylum Seeker Advocacy Project (“ASAP”), I am counsel for Plaintiffs in this case and have been since it was commenced. I am fully familiar with the proceedings. I make this declaration based on my personal knowledge and review of docket filings.

**Asylumworks Order and This Court's June 3, 2022 Conference**

2. On February 7, 2022, the Court in *Asylumworks v. Mayorkas* issued an order vacating the 2020 EAD Rules. The government's deadline to appeal the *Asylumworks* order expired on April 8, 2022, and Defendants confirmed in an April 12 status conference before this Court that they would not appeal the *Asylumworks* order. See ECF Nos. 168-169. On April 13, 2022, and May 9, 2022, I wrote to Defendants' counsel in this case to express our continuing concerns about the government's implementation of the 2020 EAD Rules notwithstanding the *Asylumworks* court's order of vacatur of those Rules.

3. Defendants sent a letter dated June 3, 2022 in response to the concerns raised in my emails.

4. This Court held a status conference on June 13, 2022 to discuss the government's implementation of the *Asylumworks* court's order of vacatur.

5. At the June 13, 2022 status conference, Defendants requested that the Court dismiss this case as moot. The Court denied Defendants' request, citing the concerns Plaintiffs raised about the government's ongoing application of the vacated 2020 EAD Rules and issued an order scheduling further briefing. ECF No. 175. The Court also scheduled a second status conference for July 15, 2022 and instructed counsel to confer in advance of that conference to see if they could resolve their concerns without court involvement.

**This Court's July 15, 2022 Status Conference**

6. On July 14, 2022, the day before this Court's scheduled conference, Defendants provided a second letter, in response to concerns raised by Plaintiffs.

7. At the July 15, 2022 status conference, I raised concerns about the government's continued application of the 2020 EAD Rules, notwithstanding the *Asylumworks* order of vacatur and this Court's Preliminary Injunction, which was (and is) still in effect. I explained, *inter alia*, that the USCIS website was not clear as to whether the 2020 EAD Rules were in effect, causing considerable confusion for users, including Plaintiffs' members and clients. The Court thereafter again declined to dismiss the case as moot and instructed the parties to submit briefing consistent with its June 13 order.

8. On July 18, 2022 Defendants' counsel sent an email to me asking for Plaintiffs' input that "would be helpful in making [USCIS's web-] site more user-friendly." A true and correct copy of this email is included as part of Exhibit A, Party Correspondence, Item 1.

9. On July 18, 2022, I replied, noting that "the failure to update the form instructions is just one of [Plaintiffs'] many concerns" and that in Plaintiffs' view nearly all of their concerns had still not been adequately addressed by Defendants. I also wrote that "[Plaintiffs' counsel] have always welcomed an opportunity to speak with your clients directly about all issues relating to the CASA PI and our concerns about our clients and their members and clients continuing to suffer irreparable harm as a result of the challenged rules. We think the most productive use of everyone's time at this late date would be to have a phone call in which counsel for the parties discuss all of our concerns, with your clients present and participating in the call, and seek to come to a stipulated agreement to resolve them." A true and correct copy of this email is included as part of Exhibit A, Party Correspondence, Item 1.

### **Conversations Among Counsel**

10. Counsel for the Parties then scheduled a series of calls to discuss Plaintiffs' ongoing concerns with Defendants' continued application of the 2020 EAD Rules and its impact on Plaintiffs' clients and members.

11. The first teleconference was on July 22, 2022. During this conference, I reiterated Plaintiffs' concerns about Defendants' ongoing application of the 2020 EAD Rules and their impact on Plaintiffs' clients and members. We also discussed whether Defendants were continuing to comply with this Court's Preliminary Injunction:

(a) I asked whether Defendants had made any changes to how they processed ASAP and CASA members' initial work permit applications—a system that had been the subject of a negotiated agreement among the Parties as to the implementation of this Court's Preliminary Injunction, and which was predicated on the government identifying applications submitted by ASAP and CASA members as part of its processing system.

(b) Defendants told us that the previous month they had dismantled the system for identifying ASAP and CASA members' applications.

(c) I informed Defendants that Plaintiffs believed undertaking this action unilaterally without consultation with Plaintiffs constituted a violation of the Preliminary Injunction and could result in precisely the harm to ASAP and CASA members that the Preliminary Injunction was instituted to prevent.

(d) I asked Defendants to clarify when and how they had arrived at the decision to stop identifying ASAP and CASA members, what impact this decision would have on the processing times of ASAP and CASA members' work permit applications, and why they had made these changes only four months after the *Asylumworks* vacatur order. Defendants' counsel told us that

they would investigate this issue and the other concerns raised by Plaintiffs and that they hoped to be able to provide more updates on our next call.

12. After the call on July 22, 2022, Defendants' counsel wrote to me to ask if Plaintiffs "were amenable to submitting a joint/consent motion to temporarily stay the briefing schedule?" because Defendants believed that "some sort of agreement over these issues (whole or in part), seems possible." A true and correct copy of this email is included as part of Exhibit A, Party Correspondence, Item 2.

13. The Parties spoke on July 25, 2022. During that call, Defendants stated that they believed the changes to requested updates to the I-765 form and form instructions would be implemented "almost immediately" after they had received approval from the Office of Information and Regulatory Affairs (OIRA). Defendants were unable to provide additional updates during this call regarding their plans to update the Code of Federal Regulations. Defendants were also unwilling to provide any additional information about their decision to dismantle the system for identifying ASAP and CASA members. Defendants offered to have another call the following week during which they said they hoped to have additional information and requested that Plaintiffs again elaborate their remaining concerns over email.

14. On August 2, 2022, I sent Defendants' counsel an email flagging the concerns about the continued harm Plaintiffs were suffering as a result of the 2020 EAD Rules, including requests for updates from Defendants on: "(a) the timeline for amending the I-765 form and instructions (as well as information of the substance of the proposed changes); (b) current data on processing times for initial applications and updates on processing targets; (c) more details on how and when the system for identifying ASAP and CASA members was dismantled; (d) information about the new proposed rulemaking that the agency identified [and updates on] (e) ...the case

processing tool, which [Defendants' counsel] previously said would be updated within two weeks in your July 13 submission to the court, but as of today [August 2, 2022], appears unchanged." A true and correct copy of this email is included as part of Exhibit A, Party Correspondence, Item 3.

15. Counsel for the parties spoke again on August 4, 2022. During this call Defendants informed us that the request to update the I-765 form and form instructions had been approved by OIRA and that the only barrier to publication of the form and instructions was implementation by USCIS. Defendants informed us that they believed they were on target to be "substantially compliant" with 30-day processing of initial asylum seeker work permit applications by September of 2022, and they agreed to provide Plaintiffs with a copy of the July 2022 *Rosario* report processing data as evidence of their avowed progress in reducing the backlog of pending applications. At the conclusion of this call, Defendants informed us they would be unavailable for a call the following week, but that they would be available for a call the week of August 13, 2022.

16. On August 4, 2022, after our call, Defendants' counsel emailed me a copy of the July 2022 *Rosario* report. A true and correct copy of that report is included as Exhibit B, July *Rosario* Report.

17. On August 15, 2022, I emailed Defendants' counsel a list of outstanding concerns that Plaintiffs had about the continued harms of the 2020 EAD Rules on their clients and members. I raised the issue that the July 2022 *Rosario* report did not reflect that Defendants were making meaningful progress on clearing the backlog of pending applications, and that based on the data provided in the report and current processing rates, Plaintiffs were unable to understand how Defendants could conclude that they would achieve substantial compliance with 30-day processing by September 2022. A true and correct copy of this email is included as part of Exhibit A, Party Correspondence, Item 4.

18. On August 16, 2022, I emailed Defendants' counsel an additional list of outstanding concerns that Plaintiffs had about the continued harms of the 2020 EAD Rules on their clients and members that had recently come to our attention. A true and correct copy of this email is included as part Exhibit A, Party Correspondence, Item 5.

19. Counsel for the Parties spoke again on August 17, 2022. During this call, I elaborated in detail on Plaintiffs' continued concerns with Defendants' ongoing application of the 2020 EAD Rules, including the fact that I-765 form and form instructions have not been updated, that the Code of Federal Regulations continues to incorrectly state that the 2020 EAD Rules remain in effect, and that asylum seekers' initial work permit applications are not being processed within 30 days of receipt. I reiterated Plaintiffs' view that Defendants had not yet made meaningful progress in ceasing their implementation of the 2020 EAD Rules and that Plaintiffs' members and clients continued to suffer as a result.

20. In response, Defendants stated that their estimates of compliance with 30-day processing were based on historical estimates of application volume, ranging from 18,000 to 22,000 applications per month. I noted that in the six months since the *Asylumworks* vacatur, Defendants' own data indicated that approximately 30,000 applications were filed per month, *see* Exhibit B, and I asked what additional resources Defendants planned to allocate to processing initial applications in order to reach substantial compliance by September in light of this data.

21. Defendants stated that they had no plans to allocate additional resources. Defendants were also not able to respond to Plaintiffs' concerns that they were currently processing fewer applications per month than they were receiving, and that the backlog of nearly 80,000 pending applications had remained relatively unchanged over the past two months. *See* Exhibit B.

22. In light of their ongoing concerns, Plaintiffs offered to draft a proposed stipulation to see if the Parties could reach a mutual agreement and resolution without court intervention. Defendants agreed to review and consider the draft submission Plaintiffs would provide.

23. On the August 17, 2022 call Defendants asked Plaintiffs to consent to a second motion to extend the briefing schedule in light of their willingness to consider Plaintiffs' proposed stipulation. Plaintiffs agreed to a one-week extension and stated that they would be open to a further extension if negotiations over the proposed stipulation were productive and ongoing.

24. Defendants filed the consent motion on August 18, 2022, *see* ECF No. 184, but the Court has not yet adjudicated Defendants' motion.

#### **Plaintiffs' Proposed Stipulation**

25. On August 18, 2022, Plaintiffs provided Defendants with the requested draft stipulation. A true and correct copy of this proposed stipulation is included as Exhibit C, Proposed Stipulation. A true and correct copy of the email conveying the stipulation to Defendants is attached as Exhibit A, Party Correspondence, Item 6.

26. On August 22, 2022, having not heard back from Defendants regarding the proposed Stipulation, I wrote to Defendants' counsel requesting an update on their review of the proposed stipulation and providing a follow-up about additional concerns and issues that we had discussed on the August 17, 2022 call. A true and correct copy of this email is included as part of Exhibit A, Party Correspondence, Item 7.

27. On August 23, 2022, Defendants' counsel replied that he was "conferring with the agency and will be in touch soon." A true and correct copy of this email is included as part of Exhibit A, Party Correspondence, Item 8.

28. If granted, Defendants' consent motion for an extension of time, *see* ECF No. 184, would have made Defendants' opening brief due on August 26, 2022. On August 26, 2022, after receiving no additional updates from Defendants' counsel, I wrote again to request an update on their review of the proposed stipulation and responses to the concerns we had raised on the August 17, 2022 call. A true and correct copy of this email is included as part of Exhibit A, Party Correspondence, Item 9.

29. Later that day, at 6:22pm Eastern Time, Defendants' counsel emailed me stating that "the agency cannot agree to the proposed stipulation," because "publication of the forms and the CFR vacatur rule...are outside the agency's control." A true and correct copy of this email is included as part of Exhibit A, Party Correspondence, Item 10. This was the last communication I received from Defendants' counsel on August 26, 2022.

30. At 10:39pm that day, Defendants filed a motion requesting a stay of the case pending the resolution of motions in the *AsylumWorks* and *Rosario* cases. *See* ECF No. 185.

### **Rosario Data**

31. On September 6, 2022, I accessed via Pacer and downloaded the August 2022 *Rosario* report which was filed on the docket in the *Rosario v U.S. Citizenship & Immigr. Servs.*, No. 2:15-cv-00813-JLR (W.D. Wash. Sept. 2, 2022), ECF Nos. 201, 201-1. A true and correct copy of this report is included as Exhibit D.

32. I used the data in the March 2022 *Rosario* Report filed by Defendants in this case, *see* ECF No. 185-5 at 55, to calculate the percentage of CASA and ASAP member initial I-765(c)(8) applications processed within 30 days between November 2020 and May 2021, inclusive, out of the total number of member applications processed during that time period. Specifically, I calculated the sum of the numbers in the "0-30 Days" column from "NOV"

to "MAY" in FY 2021: 27,447. Then, I calculated the sum of the numbers in the "Grand Total" column from "NOV" to "MAY" in FY 2021: 64,146. Finally, I divided 24,447 by 64,146 to reveal the percentage, expressed as a fraction here: 0.42788326629.

### **Court Transcripts**

33. Plaintiffs' counsel ordered copies of the transcript for this Court's August 28, 2020 hearing. On September 14, 2020, the Court provided Plaintiffs' counsel with a copy of that transcript via email. A true and correct copy of the August 28, 2020 hearing transcript is included as Exhibit E. *See also* ECF No. 72.

34. Plaintiffs' counsel ordered copies of the transcripts for this Court's February 14, 2022 status conference. On September 7, 2022, the Court provided Plaintiffs' counsel with a copy of that transcript via email. A true and correct copy of the February 14, 2022 status conference transcript is included as Exhibit F. *See also* ECF No. 186.

35. Plaintiffs' counsel ordered copies of the transcripts for this Court's April 12, 2022 status conference. On September 7, 2022, the Court provided Plaintiffs' counsel with a copy of that transcript via email. A true and correct copy of the April 12, 2022 status conference transcript is included as Exhibit G. *See also* ECF No. 187.

36. Plaintiffs' counsel ordered copies of the transcripts for this Court's July 18, 2022 status conference. On September 7, 2022, the Court provided Plaintiffs' counsel with a copy of that transcript via email. A true and correct copy of the July 18, 2022 status conference transcript is included as Exhibit H. *See also* ECF No. 188.

### **Forms, Instructions and Regulations**

37. As of September 9, 2022, USCIS I-765 website continues to instruct members of ASAP and CASA that they must include membership evidence with their I-765(c)(8) applications

to avoid being subject to the provisions of the 2020 EAD Rules enjoined by this Court's PI. Attached as Exhibit I is a true, correct, and complete copy of USCIS's I-765 webpage, which I accessed on September 9, 2022 at <https://www.uscis.gov/i-765> and then downloaded and saved as PDF.<sup>1</sup>

38. As of September 9, 2022, the Code of Federal Regulations and its electronic public copies continue to reflect the text of the 2020 EAD Rules. Attached as Exhibit J is a true, correct, and complete copy of the electronic CFR page for 8 C.F.R. § 208.7(a), which I accessed on September 9, 2022 at <https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-208#208.7> and then downloaded and saved as a PDF.<sup>2</sup>

39. A true and correct copy of the I-765 application form in effect between May 31, 2022 and September 6, 2022, is attached as Exhibit K, which I downloaded on September 5, 2022 from <https://www.uscis.gov/sites/default/files/document/forms/i-765.pdf>.<sup>3</sup>

40. A true and correct copy of the I-765 application instructions in effect between May 31, 2022 and September 6, 2022, is attached as Exhibit L, which I downloaded on September 5, 2022 from <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf>.<sup>4</sup>

41. A true and correct copy of the current I-765 application form, published on the USCIS website on or about September 6, 2022, is attached as Exhibit M, which I downloaded on September 9, 2022 from <https://www.uscis.gov/sites/default/files/document/forms/i-765.pdf>.<sup>5</sup>

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<sup>1</sup> See USCIS, I-765, APPLICATION FOR EMPLOYMENT AUTHORIZATION, <https://www.uscis.gov/i-765> (last updated Sept. 6, 2022).

<sup>2</sup> See 8 C.F.R. § 208.7(a), <https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-208#208.7> (last visited Sept. 9, 2022).

<sup>3</sup> USCIS, OMB No. 1615-0040, APPLICATION FOR EMPLOYMENT AUTHORIZATION (publ'd May 31, 2022).

<sup>4</sup> USCIS, OMB No. 1615-0040, INSTRUCTIONS FOR APPLICATION FOR EMPLOYMENT AUTHORIZATION (publ'd May 31, 2022).

<sup>5</sup> USCIS, OMB No. 1615-0040, APPLICATION FOR EMPLOYMENT AUTHORIZATION (publ'd Sept. 6, 2022), <https://www.uscis.gov/sites/default/files/document/forms/i-765.pdf>.

42. A true and correct copy of the current I-765 application instructions, published on the USCIS website on or about September 6, 2022, is attached as Exhibit N, which I downloaded on September 9, 2022 from <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf>.<sup>6</sup>

43. A true and correct copy of the current I-589 application instructions, published on the USCIS website on or about September 6, 2022, is attached as Exhibit O, which I downloaded on September 9, 2022 from <https://www.uscis.gov/sites/default/files/document/forms/i-589instr.pdf>.<sup>7</sup>

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 9, 2022:

Washington, D.C.



Zachary Manfredi

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<sup>6</sup> USCIS, OMB No. 1615-0040, INSTRUCTIONS FOR APPLICATION FOR EMPLOYMENT AUTHORIZATION (publ'd Sept. 6, 2022), <https://www.uscis.gov/sites/default/files/document/forms/i-765instr.pdf>.

<sup>7</sup> USCIS, OMB No. 1615-0067, I-589, APPLICATION FOR ASYLUM AND FOR WITHHOLDING OF REMOVAL, (publ'd Sept. 6, 2022), <https://www.uscis.gov/sites/default/files/document/forms/i-589.pdf>.