UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

American Immigration Lawyers Association, 1331 G Street, NW Suite 300 Washington, D.C. 20005-3142, Benach Collopy LLP 4530 Wisconsin Ave NW Suite 400 Washington, DC 20016, Plaintiffs, v. U.S. Citizenship and Immigration Services; c/o Office of the Chief Counsel 5900 Capital Gateway Drive Camp Springs, MD 20588-0009, Defendant.	Case No. 25-678 CIVIL COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF UNDER THE ADMINISTRATIVE PROCEDURE ACT

INTRODUCTION

1. On March 3, 2025, and March 4, 2025, without any warning or notice to the public, the United States Immigration and Citizenship Services ("USCIS") implemented a sweeping and profound policy change whereby they said that effective immediately, they would not accept prior versions of certain forms[1]. Under their stated policy, the only version of these forms they would accept for filing are those with an edition date of January 20, 2025, including those in transit to USCIS at the time of the announcement in the afternoon on March 3, 2025. In the absence of immediate relief, USCIS's policy change will mandate the rejection

[1] https://www.uscis.gov/forms/forms-updates (last visited on March 5, 2025).

of a listed form if it was received on or after March 3, 2025, but utilized a prior edition of the same form. Employees for USCIS would be forced to arbitrarily reject thousands of applications from noncitizens who had otherwise properly and completely submitted their applications for consideration under the immigration laws.

2. The identified forms include:

Form I-192, Application for Advance Permission to Enter as a Nonimmigrant	March 3, 2025
Form I-134, Declaration of Financial Support	March 3, 2025
Form G-325A, Biographic Information (for Deferred Action)	March 3, 2025
Form I-485, Application to Register Permanent Residence or Adjust Status	March 3, 2025
I-485 Supplement A, Supplement A to Form I-485, Adjustment of Status Under Section 245(i)	March 3, 2025
Form I-485 Supplement J, Confirmation of Valid Job Offer or Request for Job Portability Under INA Section 204(j)	March 3, 2025
Form I-918, Petition for U Nonimmigrant Status	March 3, 2025
Form I-918, Supplement B, U Nonimmigrant Status Certification	March 3, 2025
Form I-131, Application for Travel Documents, Parole Documents, and Arrival/Departure Records	March 4, 2025
Form N-400, Application for Naturalization	March 4, 2025

Table A

3. In violation of the Administrative Procedure Act ("APA"), the "zero grace period policy" was not published in the Federal Register nor subject to notice and comment rulemaking prior to being implemented. As a result, the agency arbitrarily disregarded settled reliance interests of applicants, the needs of pro se petitioners, and alternatives to the policy that allowed for reasonable and timely notice to the public of the proposed changes.

4. A close examination of prior versions of these forms as compared to the current versions reveals that in some cases other than the edition date, the sole difference is

that the new revised form eliminates certain gender markers; a change that stems from Executive Order ("E.O.") 14168, dated January 20, 2025[2].

5. While an EO is a signed, written, and published directive from the President of the United States that manages operations of the federal government, it cannot override constitutional rights or federal law. EO 14168 itself raises constitutional questions in so far as the definitions of gender identity included in EO 14168 are discriminatory and a violation of the equal protection clause. Additionally, EO 14168 creates an inaccurate definition of sex and ignores the "the difference between sex and gender[3]" calling for impermissible, unlawful disparate treatment of people.

6. Such changes mean, at a minimum, that forms that were in transit to USCIS for filing on the day that the form changes were announced, but delivered on or after the effective dates of March 3 or 4, 2025, would be subject to rejection for failing to be on the new version of the forms. Moreover, blanket rejections, based solely on the version of a form alone, are wholly arbitrary and capricious since it is statistically likely that the sex identified on the forms complies with EO 14168. Put another way, the applicant could have already marked either "male" or "female' and no changes at all are needed when transferring the information from the old version of the form to the new version. Yet, given the absolute nature of the effective date, with no exceptions, each of these forms would be rejected, nonetheless. A classic case of form over substance.

7. Moreover, there are some forms, like the I-918B U Nonimmigrant Status

[2] Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government, 2025-02090 (90 FR 8615).
[3] https://www.ashasexualhealth.org/asha-denounces-executive-order-on-sex-as-inaccurate-and -harmful/ (last visited on March 5, 2025).

Certifications, which are signed by law enforcement agencies for victims of crime. These forms are a necessary component of the U visa filing process. Once law enforcement completes and signs these forms, they have a validity of 6 months. This allows applicants to gather all necessary documents for filing their applications and provides time for them to seek the necessary mental health assistance because of their victimization without fear that the certification will expire prior to their seeking benefits. The arbitrary and unannounced actions of UCIS in mandating that all I-918B forms filed after March 3, 2025, must be on the new version of the form will require these certifications to be reissued. This is true even if the certifications were issued on valid, currently unexpired versions of the form.

8. The extreme and innumerable hardships caused by Defendant's arbitrary and capricious actions will result in irreparable harm. Law enforcement, applicants, attorneys, and organizations that advocate for applicants will be severely adversely affected. Law enforcement will be asked to expend additional resources to re-issue otherwise valid certifications. Applicants will incur double fees since a second application on the revised form must be submitted and will experience further delays due to later re-filings of forms with an agency already prone to crippling backlogs. Attorneys will be forced to duplicate prior work on complex applications including transferring nearly identical information from a completed and previously submitted form to the new version of the applicable form. AILA's attorney members are irreparably injured because USCIS's failure to provide adequate guidance regarding whether a grace period applies to the revised forms impairs their ability to properly advise and counsel clients. Finally, and importantly, AILA is and will continue to expend extensive resources to provide research and guidance to its members addressing the

complex legal issues and overwhelming consequences of USCIS' unannounced, illegal, and immediate change mandating that only the new version of certain forms will be accepted with no exceptions.

9. USCIS provided no reasons to justify the immediate change that would cause such a system-wide disruption to not only Plaintiffs, but their own staff who were also kept in the dark.

10. USCIS' failure to examine on a case-by-case basis, each application to determine if EO 14168 is even applicable to a given filing is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

11. USCIS has acted arbitrarily, unreasonably and unlawfully in failing to provide sufficient notice for its actions thus causing thousands of applications to be at risk of improper rejections. Such rejections undoubtably will result in long delays and cause some applicants to lose eligibility for certain benefits.

12. This complaint further challenges Defendant's whole-scale failure to accept certain current, unexpired forms based on their unannounced, change without any notice. These arbitrary actions have placed in peril thousands of applications from applicants who have detrimentally relied upon the expiration dates on the forms they utilized when filing for benefits.

13. This Court should declare Defendant's actions as arbitrary, capricious and unlawful and enjoin USCIS from engaging in such activities.

PARTIES

Plaintiffs:

14. AILA is the national bar association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its more than 17,000 members.

15. Benach Collopy LLP is a Washington, DC-based immigration law firm. The firm was founded in 2012, and its founding partners focused their work on immigration law and practice. Sarah Beth Pitney is a Partner with the firm and began work as an immigration attorney in 2017, first in Florida and then in DC. Sarah Beth Pitney, along with partners, Ava Benach and Erica Reily, employ a staff of 13, all devoted to providing immigration services. These attorneys are members of AILA. Benach Collopy LLP derives all income from the provision of the immigration legal services, which requires the collection of information on USCIS forms.

Defendant:

16. Defendant USCIS is a component agency of the Department of Homeland Security ("DHS") and shares responsibility for the implementation of the INA and immigration-related laws of the United States. USCIS is specifically tasked with the adjudication of immigration benefits, which includes the publication of forms individuals and employers must use to properly apply for immigration benefits.

JURISDICTION

17. Plaintiffs brings this civil action seeking declaratory and injunctive relief against USCIS under the Administrative and Procedure Act ("APA"), 5 U.S.C. § 701, et. seq.

18. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as a civil action arising under the laws of the United States.

19. The United States has waived its sovereign immunity pursuant to 5 U.S.C. § 702.

20. The individual plaintiff has standing. Defendant's actions and omissions have injured Plaintiff Benach Collopy LLP. by substantially impairing its ability to conduct its business which largely consists of properly filing immigration petitions and applications and accurately advising and counseling non-citizens and employers seeking immigration benefits.

21. Defendant's actions and omissions have injured Plaintiff American Immigration Lawyers Association ("AILA"). AILA has organizational standing because the USCIS's above-described actions have significantly effected its core, daily activity and interest in advising, serving, and educating its member-attorneys with appropriate guidance and information on immigration laws and regulations. Insofar as USCIS has acted arbitrarily, unlawfully and without notice, Plaintiff AILA is unable to properly fulfil its core function of advising its members on best practices and ethical considerations in addressing the inevitable injury that will befall members and their clients with the massive rejections of forms filed using current, unexpired forms. *See* U.S. Const. art. III, § 2; *Chamber of Commerce v. EPA*, 642 F.3d 192, 199, 395 U.S. App. D.C. 193 (D.C. Cir. 2011); *Summers v. Earth Island Inst.*, 555 U.S. 488, 493, 129 S. Ct. 1142 (2009). *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378-79, 102 S.Ct. 1114 (1982); *Equal Rights Ctr. v. Post Props., Inc.*,

633 F.3d 1136, 1138, 394 U.S. App. D.C. 239 (D.C. Cir. 2011) (an organization "can assert standing on its own behalf, on behalf of its members or both" where it has suffered a "concrete and demonstrable injury to [its] activities.").

22. In addition, AILA has associational standing to sue on behalf of its members because its members would otherwise have standing to sue in their own right, the interests AILA seeks to protect are germane to its purpose, and neither the claims asserted nor the relief requested requires the participation of individual AILA members in the lawsuit. *See, e.g., Nuclear Energy Inst., Inc. v. Env't Prot. Agency*, 373 F.3d 1251, 1265 (D.C. Cir. 2004).

23. Defendant's unlawful actions have materially frustrated AILA's core mission of assisting members in effectively and competently pursuing their law practice and enhancing their professional capacity. The failure to accept current, unexpired versions of certain forms necessary to apply or petition for immigration benefits without proper notice and allow for a period of transition, has significantly interfered with AILA's mission and will, if left unchecked, continue to impose substantial, tangible costs on the organization.

24. Defendant's whole-scale anticipatory repudiation of otherwise valid, unexpired forms necessary to apply for immigration benefits, without notice or lawful justification, will dramatically reduce and impair the number of members that AILA can effectively serve.

25. Defendant's harm has already caused AILA to divert scarce resources—including substantial staff time to: (1) preparing affected members for any and all consequences of large scale rejections of otherwise properly tendered and filed

applications; (2) seeking answers from the agencies to prepare its members for the consequences of such an onslaught of rejections; (3) advising members on strategies to employ to avoid delays from Defendant's arbitrary actions; and (4) creating new resources and materials to diligently prepare members for the upcoming changes.

26. Defendant's actions will cause a perceptible impairment of AILA's mission that will make its overall tasks more difficult. *Nat'l Treasury Emps. Union v. United States*, 101 F.3d 1423, 1430, 322 U.S. App. D.C. 135 (D.C. Cir. 1996); *Fair Emp't Council of Greater Washington, Inc. v. BMC Mktg. Corp.*, 28 F.3d 1268, 1276, 307 U.S. App. D.C. 401 (D.C. Cir. 1994).

27. The Plaintiffs injuries are traceable to the unlawful actions of the Defendant and this Court could redress the harms by immediately enjoining, setting aside, and holding unlawful the Policy Change. The Court could also order USCIS to accept any filings received using the previous forms until Defendant properly follows the notice and comment rulemaking process.

VENUE

28. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(e)(1)(C) because(1) this is a civil action in which Defendant an agency of the United States;(2) a substantial part of the events or omissions giving rise to the claim occurred in the District of Colombia, AILA and Benach Collopy are headquartered or located within this district; and there is no real property involved in this action.

LEGAL BACKGROUND

29. USCIS's new zero-grace period policy creates significant procedural hurdles preventing applicants from successfully submitting applications. In addition, the delays caused by the zero-grace period policy substantively impact, and in some cases, permanently foreclose individuals from qualifying for the benefits provided by Congress.

30. The INA, as amended, sets forth various statutory provisions that allow non-citizens and sponsoring employers to apply for various family based, employment based or humanitarian based immigration benefits.

31. By regulation, "[e]very form, benefit request, or other document **must** be submitted to DHS and executed in accordance with the form instructions regardless of a provision of 8 CFR chapter I to the contrary." 8 C.F.R. § 103.2(a)

32. "An applicant or petitioner may be represented by an attorney in the United States, as defined in § 1.2 of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter." 8 C.F.R. § 103.2(a)(3)

33. "All benefit requests must be filed in accordance with the form instructions." 8 C.F.R. § 103.2(a)(3). These published instructions go through notice and comment procedures and are available with the forms on the USCIS website. The instructions are incorporated into the regulations governing the submission of each form and therefore carry the force of law. 8 C.F.R. § 103.2(a)(1).

34. For the vast majority of USCIS forms, including some at issue in this case, an application is submitted to USCIS by sending a completed paper copy of the application

form, with supporting documentation, to a specific USCIS office. If USCIS accepts the application form, USCIS sends the applicant a Notice of Action on Form I-797C acknowledging its receipt of the application (including any supplements) "as of the actual date of receipt." 8 C.F.R. § 103.2(a)(7)(i). The paper documents list an edition date at the bottom left-hand corner of the application.

35. "USCIS will consider a benefit request received and will record the receipt date as of the actual date of receipt at the location designated for filing such benefit request whether electronically or in paper format." 8 C.F.R. §103.2(a)(7)(i).

36. "A benefit request which is rejected will not retain a filing date." 8 C.F.R. § 103.2(a)(7)(A)(ii)

37. Under the regulations, a benefit request can *only* be rejected by USCIS if it is not: (A) Signed with valid signature; (B) Executed; (C) Filed in compliance with the regulations governing the filing of the specific application, petition, form, or request; and (D) Submitted with the correct fee(s). If a check or other financial instrument used to pay a fee is returned as unpayable, USCIS will re-submit the payment to the remitter institution once. If the instrument used to pay a fee is returned as unpayable a second time, the filing will be rejected, and a charge will be imposed in accordance with 8 CFR 103.7(a)(2)." 8 C.F.R. § 103.2(a)(7)(A)(ii)(iii) A rejection of a filing with USCIS may not be appealed. 8 C.F.R. § 102.2(a)(7)(A)(iii).

38. The APA requires a minimum of thirty days between the announcement of a final rule and its effective date, 5 U.S.C.S. § 553(d).

39. USCIS' zero grace period policy is a sudden departure from USCIS'

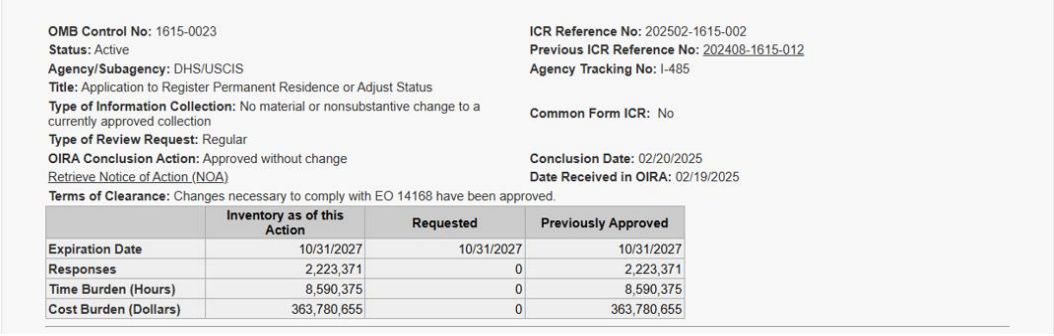
longstanding past practices and legal mandates of fair notice.

FACTUAL BACKGROUND

40. On March 3 and 4, 2025, Defendant published updates to 12 different forms (listed above in Table A). Although the forms were dated January 20, 2025, the forms were published for the first time nearly 1 1/2 months later and made mandatory for use on the same day. Defendant will not accept any former editions of those forms if postmarked on or after March 3, 2025, or March 4, 2025. This is because they announced that the new versions of the form will be effective "immediately" They made their announcement on the same day that the new version of the forms went into effect. No consideration or exception was made for any applications that were in transit to USCIS or had been properly completed using unexpired versions of the forms.

41. For some forms, the sole change in question involves limiting the ability of the applicant to select either "male" or "female" as their sex classification. The forms eliminated any other gender marker options. Other than this change, no other substantive changes were made to some of the forms.

42. USCIS has itself advised the Office of Information and Regulatory Affairs ("OIRA"), Office of Management and Budget that the materiality or substance of the forms have not changed.



OMB Control No: 1615-0023
Status: Active
Agency/Subagency: DHS/USCIS
Title: Application to Register Permanent Residence or Adjust Status
Type of Information Collection: No material or nonsubstantive change to a currently approved collection
Type of Review Request: Regular
OIRA Conclusion Action: Approved without change
Retrieve Notice of Action (NOA)
Terms of Clearance: Changes necessary to comply with EO 14168 have been approved.

ICR Reference No: 202502-1615-002
Previous ICR Reference No: 202408-1615-012
Agency Tracking No: I-485
Common Form ICR: No
Conclusion Date: 02/20/2025
Date Received in OIRA: 02/19/2025

	Inventory as of this Action	Requested	Previously Approved
Expiration Date	10/31/2027	10/31/2027	10/31/2027
Responses	2,223,371	0	2,223,371
Time Burden (Hours)	8,590,375	0	8,590,375
Cost Burden (Dollars)	363,780,655	0	363,780,655

43. In approving the form change on February 20, 2025, OIRA noted that the "terms of the previous clearance remain in effect."

44. In light of USCIS' assertions to OIRA, USCIS' zero grace period policy, is arbitrary since it mandates that all applicants, even those who have selected "male" or "female" as their sex classification, must re-submit their applications using the revised forms; there are no exceptions. This is true even in the case where the forms were mailed to USCIS, but not yet received by USCIS prior to their announcement on March 3, 2025.

45. On behalf of its membership, AILA has spent considerable time and resources trying to understand the immediate and detrimental fallout that has resulted from USCIS's failure to provide reasonable notice of the forms change and their immediate effective date.

46. Benach Collopy LLP has expended significant staff resources and time, including attorney and paralegal time preparing forms for clients on forms listed on Table A above that were in effect at the time they mailed the forms. Since many of Benach Collopy LLP's clients are LGBTQ+ immigrants the zero-grace period policy, which specifically targets gender markers on USCIS forms, will directly impact them. USCIS' arbitrary and unannounced policy changes, with immediate effect, have caused Benach Collopy LLP attorneys and staff to expend vast amounts of time and resources to address client concerns, uncertainty and fears.

47. Benach Collopy LLP has expended hundreds of hours for many clients preparing filings using new versions of immigration benefit forms and their supporting documentation. These applications, which were timely submitted just prior to the announcement of the zero-grace period policy, are all at risk of being rejected and the work

rendered worthless. Having to redo and resubmit these applications comes at an extraordinary loss to Benach Collopy LLP.

48. USCIS's failure to timely publish and provide adequate notice of revised and new forms substantially impairs the ability of attorneys, like those at Benach Collopy LLP, individual applicants and employers to prepare any applications for immigration benefits. It also places in immediate peril those applications that were correctly prepared and submitted but not received by USCIS prior to the form revisions.

49. Despite the gravity of these changes, the scale of the impacted populations, and USCIS' immediate implementation of the revised forms to the exclusion of all other versions, USCIS maintains that it will not accept any of the above forms in Table A if it is received by USCIS after the day the change was announced.

50. Some forms like the I-918B U Nonimmigrant Status Certifications, which are signed by law enforcement agencies for victims of crime, are a necessary component of the U visa filing process and remain valid for 6 months from the date of signing. *See* 8 C.F.R. 214.14(c)(2)(i). The arbitrary and unannounced actions of UCIS in mandating that all I-918B forms filed after March 3, 2025, must be on the new version of the form will require these certifications to be reissued. This is true even if the certifications were issued on valid, currently unexpired versions of the form. No justification has been provided by USCIS as to why a law enforcement form, properly completed, and within its period of validity must now be re-executed just to comply with the zero-grace period policy.

51. USCIS' unannounced arbitrary and capricious actions have prompted significant confusion among the public, local and state law enforcement, immigration

attorneys, and organizations, like AILA. In addition, the strict compliance requirement has sparked fear and panic over the potential immigration consequences and loss of benefits to applicants, employers and families. USCIS has abandoned all efforts to provide guidance or clarification or calm the panic in stakeholder communities regarding already submitted but not received applications. In addition, USCIS has made no efforts to provide guidance or clarification on how it will ensure that they will not engage in discriminatory conduct in the assessment and adjudication of applications for applicants who do not gender identify as "male" or "female".

52. The harm, in large part, would be mitigated by the agency permitting current versions of the forms identified in Table A above to be valid for a 90-day period from their announcement dates of March 3, 2025, and March 4, 2025, respectively. This grace period would also allow USCIS to comply with the notice and comment requirements under the APA.

53. In addition, USCIS should abstain from impermissibly and unconstitutionally discriminating against those who do not identify their gender in terms of "male" or "female".

54. AILA has exhausted considerable resources attempting to raise and resolve the issue of USCIS's failure to provide a grace period regarding the forms at issue with USCIS personnel.

55. USCIS has not made any public announcement other than to state that filings using the prior versions of the forms would be rejected, including those already in transit when USCIS suddenly changed the acceptable forms.

56. The failure to receive any notice of revision of the forms for immigration benefits as outlined in Table A above has significantly impacted AILA's ability to comply with its respective core functions, including advising its members on how to comply with immigration laws and regulations, a focus well within the zone of interests protected under the INA that provides for attorney representation, but only if the applicant non-citizen retains counsel on his or her own.

57. AILA has diverted resources away from other priorities to serve its members through this crisis with educational materials and practice alerts on all developments.

58. Defendant's arbitrary and unlawful acts have significantly impacted AILA's ability to service its membership, and it will continue to suffer irreparable harm.

STATEMENT OF CLAIMS

Count One:
Violation of the Administrative Procedure Act, 5 U.S.C. § 701, *et. seq:*
(Arbitrarily, and Capriciously Agency Action-Failure to Provide Reasonable Notice)

59. Plaintiffs reallege the allegations in paragraphs 1-58 as if they were fully alleged herein.

60. The zero-grace period policy contravenes USCIS's longstanding procedure and practice of fair notice.

61. When USICS implemented its zero-grace period policy regarding the enumerated forms as identified in Table A, it did not provide notice in the Federal Register in advance. The only way applicants subject to the policy, as well as their attorneys, learned about this immediate change was through alerts posted in different locations on the USCIS

webpage for each application type.

62. The APA entitles "a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action . . . to judicial review thereof." 5 U.S.C. § 702.

63. The APA empowers this Court to set aside a final agency action where, as here, the agency action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

64. USCIS also did not engage in notice and comment rulemaking prior to implementing the new rejection policy. This lack of procedure has led to widespread chaos, confusion and panic among applicants and their attorneys.

65. The agency likewise failed to provide reasoned explanation for why the implementation of the zero-grace period policy requires immediate effect with full disregard for reliance interests of applicants, or their attorneys. Importantly USCIS did not consider the ability of many pro-se applicants to access the notice of change, or to understand why their otherwise properly tendered applications were being returned. USCIS also did not consider that this zero-grace policy would create unnecessary delay and potentially cost pro-se applicants their eligibility for relief.

66. The Agency failed to consider the less onerous alternative of simply complying with their longstanding procedures of allowing notice, comment and a reasonable grace period.

67. The consequences of the agency's zero grace period policy are significant in that many applicants will suffer greater delays and the potential for a loss of benefits altogether. Extensive processing delays compound the harm caused by the rejection

policy. USCIS routinely takes weeks to process the applications it receives and to determine whether to accept or reject the submission. It often takes USCIS at least a month to inform an applicant that it has rejected an application. The applicant (or their attorney, if any) must then refile the amended application, a process which takes additional time and can add additional costs related to preparation, mailing, or legal services fees.

68. "Agency action," for purposes of the APA includes, an agency's "failure to act." 5 U.S.C. § 551(13); *see also Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 62, 124 S. Ct. 2373 (2004) (stating that the "the reviewing court shall . . . compel agency action unlawfully withheld or unreasonably delayed").

69. USCIS's arbitrary and unlawful failure to provide fundamentally fair notice of revisions to the forms listed in Table A and subsequent unwillingness to accept applications on or after March 3, 2025, that are on prior unexpired versions of those forms for immigration benefits represents an arbitrary and capricious agency action.

70. Unless remedied by this Court, eligible applicants, their representatives, and organizations like AILA, will lose their respective ability to properly know, apply and provide immigration services authorized under law with any level of predictability.

71. Defendants have acted arbitrarily, capriciously and unlawfully in failing to provide adequate notice and an opportunity to prepare for the revised forms for immigration benefits that, if summarily rejected, would result in irreparable and in some cases irreversible harm.

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

73. USCIS was found to have violated the APA in the 2019 decision in *Guilford College v. McAleenan*, 389 F. Supp. 3d 377 (M.D.N.C. 2019). In *Guilford College*, the plaintiffs challenged a policy announcement regarding the calculation of unlawful presence under the Immigration and Nationality Act ("INA"). The plaintiffs sought declaratory and injunctive relief finding that the policy was arbitrary and capricious and that USCIS failed to engage in required notice and comment. The district court found that USCIS's policy announcement was a change in policy and was a "revised definition of unlawful presence." *Id.*, at 392. To enact such a change, USCIS was required to promulgate it in compliance with the APA's notice and comment procedures. *Id.*, at 393, citing to 5 U.S.C. § 553. The district court granted partial summary judgment, finding that the plaintiffs had standing, the policy conflicted with the statute, and permanently enjoined USCIS's policy memorandum in a subsequent decision. *See Guilford College v. Wolf*, 1:18CV891, 2020 WL 586672, *4-12 (M.D.N.C. Feb. 6, 2020).

Count 2
Violation of APA
(*Notice Requirement*)

74. Paragraphs 1 to 58 are incorporated as if fully set forth herein.

75. Even if the zero grace period policy did not require notice and comment rulemaking, the policy is either a "rule[] of procedure," "substantive rule of general applicability," "statement of general policy," or "interpretation[] of general applicability" that requires publication in the Federal Register. 5 U.S.C. § 552(a)(1).

76. As relevant here, the Federal Register notice requirement serves the important purpose of apprising applicants, and their legal representatives, who are subject to an agency's policy or procedural rules of how an agency will treat an application. It avoids, as has happened here, undue surprise which leads to consequences of irreparable and irreversible harm.

77. Defendant failed to provide notice of the zero-grace policy in the Federal Register

78. This failure has harmed Plaintiffs in significant ways because the rejections which are imminent which will undoubtedly result in increased delays and the potential loss of benefits. Because Defendants did not explain or inform the public about the policy in a meaningful way or give any indication that they would fundamentally depart for the grace period policies of the past, Defendants have cause panic, chaos and uncertainty without justification.

Count 3
Violation of APA
(*Not in Accordance with Law-Violation of Agency Regulations*)

79. Paragraphs 1 to 58 are incorporated as if fully set forth herein.

80. Under the APA, a court may set aside agency action that is "not in accordance with law." 5 U.S. C. §706(a)(A). Agency regulations are laws that bind and govern an agency's conduct.

81. The zero-grace period policy conflicts with the regulations, which set out the only reason a filing can be rejected. Under this regulation a benefit request can *only* be rejected by USCIS if it is not: (A) Signed with valid signature; (B) Executed; (C) Filed in compliance with the regulations governing the filing of the specific application, petition, form, or request; and (D) Submitted with the correct fee(s). 8 CFR 103.7(a)(2)." 8 C.F.R. § 103.2(a)(7)(A)(ii)(iii) A rejection of a filing with USCIS may not be appealed. 8 C.F.R. § 103.2(a)(7)(A)(iii).

82. Defendant's zero-grace period policy which arbitrarily rejects all otherwise properly filed applications simply because they were submitted on forms which were current and unexpired but prior to the effective date of the revised forms is contrary to the plain language of the regulations.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests that this Court grant the following relief:

A. Assume jurisdiction over this matter;

B. Declare that Defendant's rejection of immigration benefits applications based on the zero-grace period policy violates the Administrative

Procedure Act;

C. Enjoin Defendants from rejecting filings prepared on unexpired editions of the Forms outlined in Table A above until such time as a hearing can be held on Plaintiffs' motion for preliminary injunction;

D. Permanently enjoin Defendant USCIS from rejecting any immigration benefits application which was properly filed and submitted prior to implementation of the zero-grace period policy.

E. Order Defendants to ensure that any revisions to immigration benefits applications or immigration forms be consistent with the US Constitution.

F. Award attorneys' fees, costs, and interest as permitted by law; and

G. Grant such further and other relief as may be just and proper;

March 7, 2025

Respectfully Submitted,

/s/Rekha Sharma-Crawford
Rekha Sharma-Crawford
U.S. District Court Bar ID #MO0018
Sharma-Crawford Attorneys
515 Avenida Cesar E. Chavez
Kansas City, MO 64108
P: (816) 994-2300
F: (816) 994-2310
rekha@sharma-crawford.com

/s/Brian Scott Green
Brian Scott Green
US District, Court, Bar ID # MD0013
Law Office of Brian Green
9609 S University Boulevard
#630084

Highlands Ranch, CO 80130
(443) 799-4225
BrianGreen@greenUSimmigration.com

/s/ Jennifer R. Coberly
Jennifer R. Coberly,
U.S. District Court Bar Application Pending
American Immigration Lawyers Association
1331 G. St. NW
Washington, DC 20005
Tel: 202-507-7692
Jcoberly@AILA.org

/s/Jesse M. Bless
Jesse M. Bless
U.S. District Court Bar ID #MA0020
Bless Litigation
6 Vineyard Lane
Georgetown MA 01833
781.704.3897
jesse@blesslitigation.com

Attorneys For Plaintiffs