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IN THE UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

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|---|---|
| JORGE RODRIGUEZ RUIZ; ELEUTERIO RODRIGUEZ RUIZ; JANE DOE 1; JANE DOE 2; JANE DOE 3; JANE DOE 4; MINOR 1 and MINOR 2, through their next friend, JANE DOE 3; MINOR 3, through her next friend, JANE DOE 4; EL RESCATE; CENTRAL AMERICAN RESOURCE CENTER; HERMANDAD MEXICANA NACIONAL,<br><br>Plaintiffs,<br><br>-vs-<br><br>MICHAEL CHERTOFF, Secretary, U.S. Department of Homeland Security; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY,<br><br>Defendants. | Case No. EDCV 05-0966<br><br>COMPLAINT FOR MANDAMUS, DECLARATORY AND INJUNCTIVE RELIEF<br><br>[CLASS ACTION] |

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I

PRELIMINARY STATEMENT

1. This is a class action seeking mandamus, declaratory, and injunctive relief compelling Defendants Michael Chertoff, Secretary of the U.S. Department of Homeland Security ("DHS") and the United States Citizenship and Immigration Services ("USCIS") to discharge their statutory duty to confer temporary lawful immigration status on crime victims, including survivors of criminal domestic violence, who are assisting or have assisted law enforcement officers in investigating or prosecuting criminal offenders.

2. On October 28, 2000—nearly five years ago—the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, Div. A, 114 Stat. 1464 (2000), *codified at, inter alia,* 8 U.S.C. § 1101(a)(15)(U) ("Crime Victims Act" or "Act"), was signed into law. Among other things, the Act permits undocumented immigrants who are victims of serious crimes, and who cooperate with law enforcement in the investigation or prosecution of those crimes, to apply for and receive "U" visas. 8 U.S.C. § 1101(a)(15)(U). This provision reflects Congress's judgment that certain crime victims should be permitted to remain lawfully in the United States both for humanitarian reasons and to bring dangerous, violent criminals to justice.

3. Defendants DHS Secretary Michael Chertoff and one of the agencies that he directs, the USCIS, have flouted and violated this important law – a law intended, among other things, to promote the national safety and security by encouraging crime victims and survivors to cooperate with local and federal law enforcement agencies to secure convictions of violent criminals.

4. Despite knowing for nearly five years that they were required to afford crime victims a path to legal status, Defendants and their predecessors in office have unlawfully refused and failed to implement the U visa provisions of the Crime Victims Act.



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Defendants have refused to promulgate regulations, establish procedures or publish application forms by which the victims of serious crimes might apply for U visas. Consequently, crime victims, including the survivors of criminal domestic violence, have no way to apply for the relief Congress said five years ago should be available to them: There is no formal application form, no application fee, no filing instructions, no formal application procedure, nor any DHS officers trained or assigned to adjudicate U visa applications. When individuals who are prima facie eligible for U visas, including the named individual Plaintiffs herein, have demanded that Defendants issue such relief, or issue regulations and procedures permitting them to obtain such relief, Defendants have refused to do so.

5. Rather than granting crime victims U visas as directed by Congress, DHS Secretary Chertoff and the CIS have instead issued to some U visa-eligible crime victims a quasi-legal, non-statutory temporary status known as "deferred action." Essentially, deferred action is equivalent to an exercise of prosecutorial discretion not to seek a crime victim's deportation or removal. However, it confers no legal status and simply defers an individual's deportation from the United States. In contrast, recipients of U visa status, among other benefits, are entitled to travel abroad and, most importantly, may, pursuant to INA § 245(m), 8 § 1255(m), be granted lawful permanent residence after they have held a U visa for three years.

6. The named individual Plaintiffs have repeatedly requested Defendants to issue them U visas or to issue regulations and procedures so that that may apply for U visas. Defendants have ignored these entreaties, and these Plaintiffs now seek judicial relief on behalf of themselves and those similarly situated—namely, crime victims, including survivors of criminal domestic violence, who are eligible U visa applicants—requiring Defendants to promulgate regulations implementing the U visa law without further delay and to adjudicate pending applications for U visas in accordance with the Crime Victims


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Act.

## II

## JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 8 U.S.C. § 1361 (jurisdiction to compel an officer to perform a duty owed to plaintiffs).

8. Declaratory judgment is sought pursuant to 28 U.S.C. §§ 2201-02.

9. Venue is properly in this district pursuant to 28 U.S.C. § 1391(b) and (e)(1), (2), (4) because the some of the acts complained of occurred in this district, some of the plaintiffs reside in this district, defendants have offices in this district, and no real property is involved in this action.

## III

## PARTIES

10. Plaintiffs JORGE RODRIGUEZ RUIZ, ELEUTERIO RODRIGUEZ RUIZ, JANE DOE 1, JANE DOE 2, JANE DOE 3, and JANE DOE 4, are victims of violent crime in the United States. Each plaintiff is *prima facie* eligible for a U visa under federal law because —

(a) she or he "suffered substantial physical or mental abuse as a result of having been the victim of criminal activity;"

(b) she or he "possesses information concerning the criminal activity;"

(c) she or he "has been helpful, is being helpful, or is likely to be helpful to Federal, State, or local law enforcement official investigating or prosecuting…[the] criminal activity;"

(d) "the criminal activity…violated the laws of the United States or occurred in the United States," and

(e) the criminal activity…involv[ed] … rape, … trafficking, … domestic violence, … sexual assault, false imprisonment … [or] felonious assault…"



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8 U.S.C. § 1101(a)(15)(U).

11. The individual named Plaintiffs, and each of them, have petitioned Defendants, in writing, to issue them U visas and to promulgate regulations implementing the Crime Victims Act. Defendants have unlawfully ignored these requests, just as they have ignored for nearly five years their duty to faithfully execute the law as enacted by Congress.

12. Plaintiffs MINOR 1 and MINOR 2 are minor children of Plaintiff JANE DOE 3. Plaintiff MINOR 3 is a minor child of Plaintiff JANE DOE 4. The Crime Victims Act provides in part that "the Attorney General may also grant status … based upon certification of a government official listed in clause (i)(III) [including "Federal, State, or local law enforcement official[s]…"] that an investigation or prosecution would be harmed without the assistance of the … child … of the [crime victim]." INA § 101(a)(15)(U)(ii). Local law enforcement officials made such certifications for each of the above-mentioned minor Plaintiffs. Defendants have unlawfully refused to adjudicate the U visa applications filed on behalf of plaintiffs MINOR 1, MINOR 2, and MINOR 3.

13. Plaintiff JORGE RODRIGUEZ RUIZ is a citizen and national of Mexico. He is a resident of the City of Stockton, State of California. He is a victim of an aggravated assault perpetrated by a United States citizen vigilante armed with a deadly weapon and is statutorily eligible for the issuance of a U visa. On or about June 30, 2005, he petitioned the USCIS to issue him a U visa and promulgate regulations pursuant to which he and those similarly situated may have their eligibility for U visas lawfully determined in accordance with the Crime Victims Act. Defendants have refused to grant or respond to either of Plaintiff JORGE RODRIGUEZ RUIZ's requests.

14. Plaintiff ELEUTERIO RODRIGUEZ RUIZ is a citizen and national of Mexico. He is a resident of the City of Stockton, State of California. He is a victim of an aggravated assault perpetrated by a United States citizen vigilante armed with a deadly weapon and is


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statutorily eligible for the issuance of a U visa. On or about June 30, 2005, he petitioned the USCIS to issue him a U visa and promulgate regulations pursuant to which he and those similarly situated may have their eligibility for U visas lawfully determined in accordance with the Crime Victims Act. Defendants have refused to grant or respond to either of Plaintiff ELEUTERIO RODRIGUEZ RUIZ's requests.

15. JANE DOE 1 is a citizen and national of Mexico. She resides in the City of Los Angeles, State of California. She is a survivor of criminal domestic violence and is statutorily eligible for a U visa. On or about August 17, 2005, she petitioned the USCIS to issue her a U visa and promulgate regulations pursuant to which she and those similarly situated may have their eligibility for U visas lawfully determined in accordance with the Crime Victims Act. Defendants have refused to grant or respond to either of Plaintiff JANE DOE 1's requests.

16. Plaintiff JANE DOE 2 is a citizen and national of Mexico. She resides in the City of Los Angeles, State of California. She is a crime victim and is statutorily eligible for the issuance of a U visa. On or about August 26, 2005, she petitioned the USCIS to issue her a U visa and promulgate regulations pursuant to which she and those similarly situated may have their eligibility for U visas lawfully determined in accordance with the Crime Victims Act. Defendants have refused to grant or respond to either of Plaintiff JANE DOE 2's requests.

17. Plaintiff JANE DOE 3 is a citizen and national of Mexico. She resides in the City of Phoenix, State of Arizona. She is a survivor of criminal domestic violence and is statutorily eligible for the issuance of a U visa. On or about August 30, 2005, she petitioned the USCIS to issue her a U visa and promulgate regulations pursuant to which she and those similarly situated may have their eligibility for U visas lawfully determined in accordance with the Crime Victims Act. Defendants have refused to grant or respond to either of Plaintiff JANE DOE 3's requests.



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18. Plaintiffs MINOR 1 and MINOR 2 are minors and citizens and nationals of Mexico and the children of Plaintiff JANE DOE 3. They are residents of the City of Phoenix, State of Arizona. An authorized law enforcement official has certified that an investigation or prosecution would be harmed without the assistance of MINOR 1 and MINOR 2 and they are otherwise statutorily eligible for a U visa. On or about August 30, 2005, their mother petitioned the USCIS to issue MINOR 1 and MINOR 2 U visas and to promulgate regulations pursuant to which her children and those similarly situated may have their eligibility for U visas lawfully determined in accordance with the Crime Victims Act. Defendants have refused to grant or respond to either request. Plaintiffs MINOR 1 and MINOR 2 sue by and through their next friend and parent, Plaintiff JANE DOE 3.

19. Plaintiff JANE DOE 4 is a citizen and national of Mexico. She resides in the City of Austin, State of Texas. She is a survivor of criminal domestic violence and is statutorily eligible for the issuance of a U visa. On or about September 9, 2005, she petitioned the USCIS to issue her a U visa and promulgate regulations pursuant to which she and those similarly situated may have their eligibility for U visas lawfully determined in accordance with the Crime Victims Act. Defendants have refused to grant or respond to either of Plaintiff JANE DOE 4's requests.

20. Plaintiff MINOR 3 is a minor citizen and national of Mexico. She is the daughter of Plaintiff JANE DOE 4. An authorized law enforcement official has certified that an investigation or prosecution would be harmed without the assistance of MINOR 3, and she is otherwise statutorily eligible for a U visa. On or about September 9, 2005, her mother petitioned the USCIS to issue MINOR 3 a U visa and to promulgate regulations pursuant to which her daughter and those similarly situated may have their eligibility for U visas lawfully determined in accordance with the Crime Victims Act. Defendants have refused to grant or respond to either request. Plaintiff MINOR 3 sues by and through her next


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friend and parent, Plaintiff JANE DOE 4.

21. Plaintiff EL RESCATE is a California not-for-profit corporation located in Los Angeles, California, that, among other activities, represents low-income immigrants generally unable to afford retained counsel and who appear to be eligible to legalize their status in the United States under the Immigration and Nationality Act, 8 U.S.C. § 1101, et seq., including clients who are prima facie eligible for the issuance of U visas because they are the victims of violent crimes, including the survivors of domestic violence, who have or are cooperating with appropriate law enforcement authorities in order to secure investigations or prosecutions of the crimes perpetrated on them. The failure of the Defendants to process U visas or to issue U visa regulations, forms, procedures, or decisions, interferes with and makes the achievement of EL RESCATE's goals and the implementation of its work on behalf of U visa-eligible immigrants substantially more difficult to achieve.

22. Plaintiff CENTRAL AMERICAN RESOURCE CENTER is a California not-for-profit corporation located in Los Angeles, California, that, among other activities, works to support permanent resident status, family reunification, and active citizenship and provides no-fee representation and consultation for immigration court proceedings and procedures to Central American immigrants. CENTRAL AMERICAN RESOURCE CENTER represents low-income immigrants generally unable to afford retained counsel and who appear to be eligible to legalize their status in the United States under the Immigration and Nationality Act, 8 U.S.C. § 1101, et seq., including clients who are prima facie eligible for the issuance of U visas because they are the victims of violent crimes, including the survivors of domestic violence, who have or are cooperating with appropriate law enforcement authorities in order to secure investigations or prosecutions of the crimes perpetrated on them. The failure of the Defendants to process U visas or to issue U visa regulations, forms, procedures, or decisions, interferes with and makes the achievement


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of CENTRAL AMERICAN RESOURCE CENTER's goals and the implementation of its work on behalf of U visa-eligible immigrants substantially more difficult to achieve.

23. Plaintiff HERMANDAD MEXICANA NACIONAL is a membership and social and legal services not-for-profit California corporation with several offices located in the County of Los Angeles. HERMANDAD MEXICANA NACIONAL has approximately 15,000 members, most of whom are documented and undocumented immigrants. HERMANDAD MEXICANA NACIONAL has members who are the victims of violent crimes in the United States, including survivors of domestic violence, who suffered extreme mental or physical injuries as a result of such crimes, have reported such crimes to law enforcement officers and cooperated with such officers, and are prima facie eligible for U visas. HERMANDAD MEXICANA NACIONAL'S members are unable to obtain such visas because of Defendants' refusal to process or issue such visas. Some members are unwilling to apply for U visas before the Defendants issue regulations or guidelines relating to eligibility standards because they fear that they may be placed in deportation proceedings if Defendants later issue guidelines or regulations deeming them to be ineligibe for U visas after they apply for such relief. The Defendants' failure to process U visa applications or issue U visa regulations also makes the implementation of HERMANDAD MEXICANA NACIONAL's goals and objectives, including the provision of legal services to undocumented immigrants who are eligible to legalize their status under laws enacted by Congress, substantially more difficult to achieve.

24. Defendant Michael CHERTOFF is the Secretary of the United States Department of Homeland Security. Defendant CHERTOFF is charged with the implementation of the Immigration and Nationality Act, 8 U.S.C. §§ 1101, *et seq.*, and with the administration of the United States Citizenship and Immigration Services. He is sued in his official capacity.

25. Defendant United States Citizenship and Immigration Services is a Bureau of the U.S. Department of Homeland Security. USCIS is charged with the implementation of


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the Immigration and Nationality Act, 8 U.S.C. §§ 1101, *et seq.*, including those provisions establishing the U visa and requiring the promulgation of regulations and forms pursuant to which the individual named Plaintiffs and those similarly situated may have their eligibility for U visas lawfully determined in accordance with the Crime Victims Act.

## IV

## FACTUAL ALLEGATIONS

26. Plaintiff JORGE RODRIGUEZ RUIZ is a victim of felonious aggravated assault, false imprisonment, and unlawful criminal restraint. On or about April 10, 2005, he was falsely imprisoned at gunpoint and otherwise victimized in an act of vigilante violence along the Mexico-United States border in the State of Arizona, and suffered extreme mental abuse as a result. Section 1512 of the Crime Victims Act of 2000 declares the victims of such crimes eligible for U visas. Plaintiff JORGE RODRIGUEZ RUIZ gave detailed statements to law enforcement officials regarding this crime, and the perpetrator was arrested for felonious aggravated assault with a deadly weapon. A law enforcement officer has certified that Plaintiff JORGE RODRIGUEZ RUIZ possesses information concerning the criminal activity, has been helpful to local law enforcement in its investigation, and remains willing to cooperate with any further investigation into the crime. On or about June 30, 2005, Plaintiff JORGE RODRIGUEZ RUIZ presented Defendants with a written request for the issuance of U visa regulations and for the approval and issuance of a U visa pursuant to the Victims Protection Act. However Defendants have failed to issue regulations implementing the U visa provisions of the Victims Protection Act, and have failed to adjudicate Plaintiff JORGE RODRIGUEZ RUIZ's application for a U visa. On information and belief, Plaintiff JORGE RODRIGUEZ RUIZ alleges that Defendants have not and will not adjudicate his application for a U visa until and unless Defendants first issue



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implementing regulations. Defendants' failure to issue implementing regulations deprives Plaintiff JORGE RODRIGUEZ RUIZ and those similarly situated of procedures, standards, and forms by which they may obtain a U visa. Defendants' unlawful failure and refusal to adjudicate Plaintiff JORGE RODRIGUEZ RUIZ's application for a U visa blocks his ability to travel abroad or accrue three years temporary residence as required by the Victims Protection Act before he may obtain permanent residence.

27. Plaintiff ELEUTERIO RODRIGUEZ RUIZ is a victim of felonious aggravated assault, false imprisonment, and unlawful criminal restraint. On or about April 10, 2005, he was falsely imprisoned at gunpoint and otherwise victimized in an act of vigilante violence along the Mexico-United States border in the State of Arizona, and suffered extreme mental abuse as a result. Section 1512 of the Crime Victims Act of 2000 declares the victims of such crimes eligible for U visas. Plaintiff ELEUTERIO RODRIGUEZ RUIZ gave detailed statements to law enforcement officials regarding this crime, and the perpetrator was arrested for felonious aggravated assault with a deadly weapon. A law enforcement officer has certified that Plaintiff ELEUTERIO RODRIGUEZ RUIZ possesses information concerning the criminal activity, has been helpful to local law enforcement in its investigation, and remains willing to cooperate with any further investigation into the crime. On or about June 30, 2005, Plaintiff ELEUTERIO RODRIGUEZ RUIZ presented Defendants with a written request for the issuance of U visa regulations and for the approval and issuance of a U visa pursuant to the Victims Protection Act. However Defendants have failed to issue regulations implementing the U visa provisions of the Victims Protection Act, and have failed to adjudicate Plaintiff ELEUTERIO RODRIGUEZ RUIZ's application for a U visa. On information and belief, Plaintiff ELEUTERIO RODRIGUEZ RUIZ alleges that Defendants have not and will not adjudicate his application for a U visa until and unless Defendants first issue implementing regulations. Defendants' failure to issue implementing regulations deprives Plaintiff ELEUTERIO RODRIGUEZ RUIZ and those


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similarly situated of procedures, standards, and forms by which they may obtain a U visa. Defendants' unlawful failure and refusal to adjudicate Plaintiff ELEUTERIO RODRIGUEZ RUIZ's application for a U visa blocks his ability to travel abroad and accrue three years temporary residence as required by the Victims Protection Act before he may obtain permanent residence.

28. Plaintiff JANE DOE 1 is a victim of rape, domestic violence, and felonious assault.

Section 1512 of the Crime Victims Act of 2000 declares the victims of such crimes eligible for U visas. Plaintiff JANE DOE 1 reported these crimes to the Los Angeles Police Department, and the perpetrator was arrested and prosecuted as a result. A law enforcement officer has certified that Plaintiff JANE DOE 1 possesses information concerning this criminal activity and was helpful to the prosecution of the perpetrator. On or about August 17, 2005, Plaintiff JANE DOE 1 presented Defendants with a written request for a U visa, including a request for the immediate issuance of regulations implementing the U visa provisions of the Victims Protection Act. Defendants have refused and failed to issue such regulations and to adjudicate Plaintiff JANE DOE 1's application for a U visa. On information and belief, Plaintiff JANE DOE 1 alleges that Defendants have not and will not adjudicate her application for a U visa until after they promulgate implementing regulations, something they have failed to do for almost five years. Defendants' failure to issue implementing regulations deprives Plaintiff JANE DOE 1 and those similarly situated of procedures, standards, and forms by which they may obtain a U visa. Defendants' unlawful failure and refusal to adjudicate Plaintiff JANE DOE 1's application for a U visa blocks her ability to travel abroad and accrue three years temporary residence as required by the Victims Protection Act before she may obtain permanent residence.



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29. Plaintiff JANE DOE 2 is a victim of false imprisonment and human trafficking. Section 1512 of the Crime Victims Act of 2000 declares the victims of such crimes eligible for U visas. Plaintiff JANE DOE 2 reported this criminal activity to the Riverside County Sheriff's Department and one of the perpetrators was arrested for false imprisonment. A law enforcement officer has certified that Plaintiff JANE DOE 2 possesses information concerning this criminal activity, has been helpful and is likely to be helpful, to local law enforcement in the investigation of crime. On or about August 30, 2005, Plaintiff JANE DOE 2 presented Defendants with a written request for a U visa, including a request for the immediate issuance of regulations implementing the U visa provisions of the Victims Protection Act. Defendants have refused and failed to issue such regulations and to adjudicate Plaintiff JANE DOE 2's application for a U visa. On information and belief, Plaintiff JANE DOE 2 alleges that Defendants have not and will not adjudicate her application for a U visa until after they promulgate implementing regulations, something they have failed to do for almost five years. Defendants' failure to issue implementing regulations deprives Plaintiff JANE DOE 2 and those similarly situated of procedures, standards, and forms by which they may obtain a U visa. Defendants' unlawful failure and refusal to adjudicate Plaintiff JANE DOE 2's application for a U visa blocks her ability to travel abroad and accrue three years temporary residence as required by the Victims Protection Act before she may obtain permanent residence.

30. Plaintiff JANE DOE 3 is a victim of rape, criminal assault, and death threats. Section 1512 of the Crime Victims Act of 2000 declares the victims of such crimes eligible for U visas. Plaintiff JANE DOE 3 reported these crimes to the City of Phoenix Police Department; as a result the perpetrator was arrested and is being prosecuted. A law enforcement officer has certified that Plaintiff JANE DOE 3 possesses information concerning criminal activity and is being helpful in its prosecution. The law enforcement certification also states that the criminal investigation and prosecution would be harmed


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without the assistance of Plaintiff JANE DOE 3's children, Plaintiffs MINOR 1 and MINOR 2. On or about August 30, 2005, Plaintiff JANE DOE 3 presented Defendants a written request that they issue her and her children, Plaintiffs MINOR 1 and MINOR 2, U visas. She also requested that defendants immediately issue regulations implementing the U visa provisions of the Victims Protection Act. Defendants have refused and failed to issue such regulations and to adjudicate Plaintiff JANE DOE 3's, MINOR 1's and MINOR 2's applications for U visas. On information and belief, Plaintiff JANE DOE 3 alleges that Defendants have not and will not adjudicate her or her children's applications for U visas until after they promulgate implementing regulations, something Defendants have failed to do for almost five years. Defendants' failure to issue implementing regulations deprives Plaintiffs JANE DOE 3, MINOR 1, and MINOR 2, and those similarly situated of procedures, standards, and forms by which they may obtain a U visa. Defendants' unlawful failure and refusal to adjudicate Plaintiffs JANE DOE 3's, MINOR 1'S, and MINOR 2'S applications for a U visa blocks their ability to travel abroad and accrue three years temporary residence as required by the Victims Protection Act before they may obtain permanent residence.

31. Plaintiff JANE DOE 4 is a victim of rape, domestic violence, and felonious assault. Section 1512 of the Crime Victims Act of 2000 declares the victims of such crimes eligible for U visas. Plaintiff JANE DOE 4 reported this criminal activity to law enforcement and the perpetrator was arrested and convicted of assault as a result. A law enforcement officer has certified that Plaintiff JANE DOE 4 possesses information concerning criminal activity and was helpful to local law enforcement in the investigation and prosecution of the criminal activity. The law enforcement certification also states that the investigation or prosecution would have been harmed without the assistance of Plaintiff JANE DOE 4's child, Plaintiff MINOR 3. On or about September 9, 2005, Plaintiff JANE DOE 4 presented Defendants a written request that they issue her and her child, MINOR 3, U visas. She also


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requested that defendants immediately issue regulations implementing the U visa provisions of the Victims Protection Act. Defendants have refused and failed to issue such regulations and to adjudicate Plaintiff JANE DOE 4's and MINOR 3's applications for U visas. On information and belief, Plaintiff JANE DOE 4 alleges that Defendants have not and will not adjudicate her or her child's applications for U visas until after they promulgate implementing regulations, something Defendants have failed to do for almost five years. Defendants' failure to issue implementing regulations deprives Plaintiffs JANE DOE 4 and MINOR 3, and those similarly situated, of procedures, standards, and forms by which they may obtain a U visa. Defendants' unlawful failure and refusal to adjudicate Plaintiffs JANE DOE 4's and MINOR 3'S applications for a U visa blocks their ability to travel abroad and accrue three years temporary residence as required by the Victims Protection Act before they may obtain permanent residence.

## V

## CLASS ALLEGATIONS

32. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated pursuant to Fed.R.Civ.Proc. Rule 23(a) and 23(b)(2). Plaintiffs provisionally propose this action be certified on behalf of the following class:

> All persons who are *prima facie* eligible for a U visa, who have applied for legal benefits under § 1512 of the Victims of Trafficking and Violence Protection Act of 2000, and whose right to a U visa is blocked or delayed by Defendants' failure to issue U visas or promulgate regulations implementing § 1512 of the Victims of Trafficking and Violence Protection Act of 2000.

33. Members of the proposed class number in the hundreds or thousands. The class members are so numerous that joinder of all members is impracticable. The claims of the proposed class representatives and those of the proposed class members raise common


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questions of law and fact concerning, *inter alia*, whether the USCIS may lawfully refuse to provide a path by which individuals who are *prima facie* eligible for U visas may apply for the immigration benefit Congress has made available to them. These questions are common to the named Plaintiffs and to the members of the proposed class because Defendants have acted and will continue to act on grounds generally applicable to both the named Plaintiffs and proposed class members. The individual named Plaintiffs' claims are typical of the class claims. The individual named Plaintiffs will adequately represent all members of the proposed class.

34. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications establishing incompatible standards of conduct for Defendants. The issuance of regulations, forms, standards and/or procedures is a national function of the USCIS, not a function performed differently in each individual case or in each USCIS district or region. Prosecution of separate actions would also create the risk that individual class members will secure court orders that would as a practical matter be dispositive of the claims of other class members not named parties to this litigation, thereby substantially impeding the ability of unrepresented class members to protect their interests.

35. Defendants, their agents, employees, and predecessors and successors in office have acted or refused to act, and will continue to act or refuse to act, on grounds generally applicable to the class, thereby making appropriate injunctive relief or corresponding declaratory relief with respect to the class as a whole. The individual named Plaintiffs will vigorously represent the interests of unnamed class members. All members of the proposed class will benefit by the action brought by the individual named Plaintiffs. The interests of the individual named Plaintiffs and those of the proposed class members are identical. Plaintiffs are represented by counsel associated with non-profit public interest law firms and pro bono counsel including attorneys highly experienced in federal class


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action litigation involving the rights of foreign nationals, children, and refugees within the United States.

## VI

## IRREPARABLE INJURY

36. The Plaintiffs and those similarly situated to the individual named Plaintiffs will suffer irreparable injury unless this Court orders equitable relief. Such injury includes, *inter alia*, deprivation of due process and equal protection through denial of rights under the U visa provisions of the Victims Protection Act and the tolling of the three years immigrants must hold U visas before they may apply for permanent resident status. Damages cannot adequately address the injuries suffered by Plaintiffs and their proposed class members, including the inability to legalize their immigration status in a manner made available by the United States Congress, the loss of ancillary benefits available to U visa holders, or the accrual of time toward eligibility for lawful permanent residence.

## VII

## FIRST CAUSE OF ACTION

[Refusal to adjudicate U visa applications or issue U visas]

37. Plaintiffs incorporate by this reference the allegations set out in Paragraphs 1-36 above as though fully re-alleged here.

38. Defendants' refusal and failure to issue U visas to, and to adjudicate the U visa applications of, the individual named Plaintiffs and similarly situated individuals and the clients and members of the organizational Plaintiffs who are *prima facie* eligible for U visas, is agency action unlawfully withheld or unreasonably delayed, and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.


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39. Defendants' refusal and failure to issue U visas to, and to adjudicate the U visa applications of, Plaintiffs and similarly situated individuals and the clients and members of the organizational Plaintiffs who are *prima facie* eligible for U visas violate (i) the Victims Protection Act of 2000, Pub. L. No. 106-386, Div. A, 114 Stat. 1464 (2000), *codified at, inter alia,* 8 U.S.C. § 1101(a)(15)(U); (ii) the Immigration and Nationality Act, 8 U.S.C. § 1103; (iii) the Administrative Procedure Act, §§ 5 U.S.C. §§ 551 *et seq.*; (iv) the due process clause and equal protection guarantee of the Fifth Amendment to the United States Constitution; and (v) Article II, §§ 1 and 3, of the United States Constitution.

VIII

SECOND CAUSE OF ACTION

[Failure to promulgate regulations implementing 8 U.S.C. § 1101(a)(15)(U)]

40. Plaintiffs incorporate by this reference the allegations set out in Paragraphs 1-36 above as though fully re-alleged here.

41. Defendants' refusal and failure to promulgate regulations implementing 8 U.S.C. § 1101(a)(15)(U) is agency action unlawfully withheld or unreasonably delayed, and is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

42. Defendants' refusal and failure to promulgate regulations implementing 8 U.S.C. § 1101(a)(15)(U) violate (i) the Victims Protection Act of 2000, Pub. L. No. 106-386, Div. A, 114 Stat. 1464 (2000), *codified at, inter alia,* 8 U.S.C. § 1101(a)(15)(U); (ii) the Immigration and Nationality Act, 8 U.S.C. § 1103; (iii) the Administrative Procedure Act, §§ 5 U.S.C. §§ 551 *et seq.*; (iv) the due process clause and equal protection guarantee of the Fifth Amendment to the United States Constitution; and (v) Article II, §§ 1 and 3, of the United States Constitution.

IX



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## PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Assume jurisdiction over this action;

2. Certify this action as a class action pursuant to Rule 23(b)(2), Fed.R.Civ.Proc.;

3. Declare that Defendants' refusal to adjudicate duly submitted applications for U visas, and failure to issue U visa regulations or procedures to adjudicate U visa applications, violate the Immigration and Nationality Act, as amended by the Victims Protection Act; the Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*; the due process clause and equal protection guarantee of the Fifth Amendment to the United States Constitution; and Article II, §§ 1 and 3, of the United States Constitution;

4. Issue preliminary and permanent injunctions requiring that Defendants, their agents, employees, and successors in office timely adjudicate U visa applications presented by the individual named Plaintiffs, their proposed class members, and the members and clients of the organizational Plaintiffs, and promulgate regulations or procedures implementing the U visa provisions of the Victims Protection Act;

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5. Award Plaintiffs costs of suit and attorney's fees reasonably incurred as a result of this lawsuit; and

6. Grant such further relief as the Court may deem just and proper.

Dated: October 17, 2005.

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*On Behalf of Attorneys for Plaintiffs*

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