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9 Attorneys for Plaintiffs

10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 **CALIFORNIA-MEXICO STUDIES**)
CENTER, INC. (A California Non-)
14 **Profit Agency); and MIRIAM**)
GUADALUPE DELGADO GOMEZ,)
15 **NELLY XIMENA PULLUTASIG**)
LLUMITASI, GEOMARA)
16 **ESTEPHANIA PULLUTASIG**)
LLUMITASI, CARLOS)
17 **EDUARDO CORNEJO QUEZADA,**)
18 **[name additional plaintiffs] (Individual**)
Applicants),)

19 **Plaintiffs,**)

20 **vs.**)

21 **U.S. DEPARTMENT OF**)
HOMELAND SECURITY ("DHS");)
22 **U.S. CITIZENSHIP AND**)
IMMIGRATION SERVICES)
23 **("USCIS"); ALEJANDRO**)
MAYORKAS, SECRETARY OF)
24 **DHS; TRACY RENAUD, DIRECTOR**)
OF USCIS; FELICIA ESCOBAR)
25 **CARRILLO, CHIEF OF STAFF TO**)
DIRECTOR,)

26 **Defendants.**)
27)
28)

Case No.: CV

**PETITION FOR WRIT OF
MANDAMUS AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1
2 1. Plaintiffs California-Mexico Studies Center, Inc. (“CMSC”), and
3 MIRIAM GUADALUPE DELGADO GOMEZ, NELLY XIMENA
4 PULLUTASIG LLUMITASI, GEOMARA ESTEPHANIA PULLUTASIG
5 LLUMITASI, CARLOS EDUARDO CORNEJO QUEZADA, (Individual
6 Applicants), hereby petition for a Writ of Mandamus. The Individual Applicants
7 are recipients of deferred action under the Deferred Action for Childhood Arrivals
8 program (DACA) who seek to compel Defendants Department of Homeland
9 Security (“DHS”), and U.S. Customs and Immigration Services (“USCIS”) to
10 promptly and expeditiously adjudicate applications for “advance parole” they filed
11 in August and September 2020. Individual Applicants are students whose course of
12 study requires them to study abroad beginning in May 2021. As deferred action
13 recipients, Plaintiffs are required to secure advance parole—that is, pre-approval to
14 re-enter the United States upon completing their study abroad—lest they be
15 deemed inadmissible aliens, denied re-entry, and thereby separated from their
16 homes and family in the United States. Despite multiple requests that Defendants
17 adjudicate Plaintiffs’ applications for advance parole, Defendants have failed to
18 discharge their duty to do so, causing CMSC and the Individual Applicants to
19 suffer extreme hardship and threatening them with irreparable injury.

20 2. In June 2012, the Secretary of Homeland Security issued a
21 memorandum announcing an immigration relief program for certain young people
22 who were brought to this country as children. Known as DACA, the program
23 applies to childhood arrivals who were under age 31 in 2012; have continuously
24 resided here since 2007; are current students, have completed high school, or are
25 honorably discharged veterans; have not been convicted of any serious crimes; and
26 do not threaten national security or public safety. DHS concluded that individuals
27 who meet these criteria warrant favorable treatment under the immigration laws

1 because they lacked the intent to violate the law, are productive contributors to our
2 society, and know only this country as home.

3 3. To prevent such individuals from being removed from the United
4 States, DHS directed Immigration and Customs Enforcement to exercise
5 prosecutorial discretion to defer action to remove them for a period of two years,
6 subject to renewal. In addition, DHS directed USCIS to accept applications to
7 determine whether these individuals qualify for work authorization during this
8 period of deferred action, as permitted under 8 CFR §274a.12(c)(14) (2012).
9 Deferred action recipients are considered “lawfully present” in the United States, 8
10 CFR §1.3(a)(4)(vi); 42 CFR §417.422(h) (2012), and in addition to work
11 authorization, are entitled to social security numbers, 8 C.F.R. § 1.3(a)(4)(vi), **advance**
12 **parole**, *id.* § 212.5, and a limited class of public assistance, such as state and federal
13 aid for medical emergencies, 8 U.S.C. §§ 1611(b)(1), 1621(b)(1). Benefits like these
14 allowed DACA recipients to work, travel abroad, access credit, and otherwise lead
15 productive lives during their periods of deferred action

16 4. In November 2014, DHS announced that it would expand DACA
17 eligibility by removing the age cap, shifting the date-of-entry requirement from
18 2007 to 2010, and extending the deferred action and work authorization period to
19 three years.

20 5. Plaintiff CMSC is a California non-profit agency whose mission is to
21 educate and advocate for recipients of deferred action under the DACA program.
22 DACA recipients are young immigrants who were brought to the United States as
23 children. Since 2012, the federal government has afforded DACA recipients
24 protection from deportation and permission to work legally in the United States.
25 CSMC conducts a program for DACA recipients to study abroad. The Individual
26 Applicants are students in CSMC’s DACA program.

1 6. Plaintiffs MIRIAM GUADALUPE DELGADO GOMEZ, NELLY
2 XIMENA PULLUTASIG LLUMITASI, GEOMARA
3 ESTEPHANIA PULLUTASIG LLUMITASI, CARLOS EDUARDO CORNEJO
4 QUEZADA, are among 84 DACA recipients who submitted an application for
5 advance parole to Defendant USCIS in or about August 2020, so that they may
6 study abroad pursuant to CMSC’s DACA program. (See Exhibit A)

7 7. Under the leadership of Professor Armando Vasquez-Ramos, the
8 CMSC offers an educational/cultural program in which DACA recipients travel to
9 Mexico and conduct studies pertaining to the relationship between Mexico and the
10 United States, particularly in terms of national security, to conduct individual
11 ethnographic family research, and to publish findings in a compendium of
12 academic policy papers on migration, border security, economic and regional
13 independence.

14 8. Moreover, the program will provide recipients with academic and
15 field study exposure to cultural lifestyle, educational system, and social institutions
16 of Mexico. (See Exhibit B, attachment to each individual application).

17 9. The Individual Applicants first applied to Defendant USCIS for
18 advance parole in advance of the Winter 2020 program, slated to be held from
19 December 15, 2020 to January 19, 2021, but they were forced to postpone their
20 studies when USCIS failed to adjudicate their applications. The Individual
21 Applicants thereafter notified USCIS they intended to study abroad from May 15,
22 2021 to July 31, 2021, and implored it to adjudicate their applications for advance
23 parole on or before May 15, 2021.

24 10. Despite additional correspondence and communications with USCIS
25 officials Defendant has failed to do so. (Ex. C, D)

JURISDICTION

1
2 11. This Court has subject-matter jurisdiction pursuant to 28 U.S.C. §
3 1331 because this is a civil action arising under the Constitution, laws, or treaties
4 of the United States. Plaintiffs seeks relief pursuant to the Administrative
5 Procedures Act ("APA"), 5 U.S.C. §§ 555(b), 702, 706(1), and the Mandamus and
6 Venue Act, 28 U.S.C. § 1361. *See Khan v. Johnson*, 65 F. Supp. 3d 918, 925 (C.D.
7 Cal. 2014) (holding the court had subject-matter jurisdiction to determine whether
8 USCIS failed to fulfill its non-discretionary duty to process adjustment of status
9 applications within a reasonable period of time under the APA); *see also*
10 *Abdulmajid v. Arellano*, No. CV 08-796-GHK VBKx, 2008 WL 2625860, at *2
11 (C.D. Cal. June 27, 2008) (finding subject-matter jurisdiction over delayed
12 naturalization applications under both the APA and the Mandamus and Venue
13 Act); *Soneji v. Dep't of Homeland Sec.*, 525 F. Supp. 2d 1151, 1154-1157 (N.D.
14 Cal 2007) (finding subject-matter jurisdiction over delayed adjustment of status
15 applications under both the APA and the Mandamus and Venue Act).

16 12. The APA provides individuals who have been injured by agency
17 inaction with a means of seeking judicial review and it vests this Court with the
18 power to "compel agency action unlawfully withheld or unreasonably delayed." 5
19 U.S.C. § 706(1); *see also id.* § 702 ("[a] person suffering legal wrong because of
20 agency action . . . is entitled to judicial review thereof"); *id.* § 551(13) (defining
21 "agency action" to include "failure to act").

22 13. The Mandamus and Venue Act provides that "[t]he district courts
23 shall have original jurisdiction of any action in the nature of mandamus to compel
24 an officer or employee of the United States or any agency thereof to perform a duty
25 owed to the plaintiff." 28 U.S.C. § 1361.

26 14. The Mandamus and Venue Act provides that "[t]he district courts
27 shall have original jurisdiction of any action in the nature of mandamus to compel
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1 an officer or employee of the United States or any agency thereof to perform a duty
2 owed to the plaintiff.” 28 U.S.C. § 1361.

3 **VENUE**

4 15. Venue is proper in the Central District of California under 28 U.S.C. §
5 1391(e)(1), which states that:

6 A civil action in which a defendant is an officer or employee of the
7 United States or any agency thereof acting in his official capacity . . .
8 [may] be brought in any judicial district in which . . . (B) a substantial
9 part of the events or omissions giving rise to the claim occurred, or . . .
10 . (C) the plaintiff resides if no real property is involved in the action.

11 28 U.S.C. § 1391(e)(1).

12 16. This is a civil action against officers of the United States in their
13 official capacities. Plaintiffs communicated and interacted with USCIS's offices in
14 Washington D.C. regarding the 84 applications for advance parole. But Plaintiff
15 CMSC and many of the Individual Applicants reside in this district. The DHS and
16 USCIS have local offices in this district. As a substantial part of the events giving
17 rise to the claim occurred in this district and Plaintiff resides in this district, venue
18 is proper under 28 U.S.C. § 1391(e)(1).

19 **THE PARTIES**

20 17. Plaintiff CMSC has its offices in the City of Long Beach, California,
21 and as such, currently resides in Los Angeles County, California. Central to
22 CMSC’s mission is advocating for and educating DACA recipients. The DACA
23 recipients CMSC educates are the functional equivalents of its members. The
24 rights of DACA recipients the CMSC seeks to protect in this action are germane to
25 its mission and purpose. CMSC has trained almost 200 DACA recipients through
26 its study abroad program. Defendants’ failure to adjudicate the Individual
27 Applicants’ eligibility for advance parole, as alleged herein, makes it substantially

1 more difficult for CMSC to carry out its mission. CMSC has limited resources and
2 has devoted a substantial amount of such resources to making arrangements for the
3 Individual Applicants to study abroad. Defendants’ failure to adjudicate the
4 Individual Applicants’ requests for advance parole has previously wasted CMSC’s
5 limited resources and will again waste such resources should Defendants persist in
6 failing to grant the Individual Applicants advance parole. CMSC’s ability to retain
7 its funding depends on its successfully placing students in its study-abroad
8 program. CMSC accordingly has a direct institutional interest in ensuring that the
9 Individual Applicants receive a timely adjudication of their applications for
10 advance parole.

11 18. Plaintiffs **MIRIAM GUADALUPE DELGADO GOMEZ, NELLY**
12 **XIMENA PULLUTASIG LLUMITASI, GEOMARA**
13 **ESTEPHANIA PULLUTASIG LLUMITASI, CARLOS EDUARDO CORNEJO**
14 **QUEZADA**, are a representative sample of the Individual Applicants, who live
15 throughout the United States, although a large contingent live in Los Angeles
16 County.

17 19. Defendant U.S. Department of Homeland Security (“DHS”) is an
18 agency of the executive branch of the United States government that, among other
19 things, administers and enforces federal immigration laws.

20 20. Defendant USCIS is the component agency within DHS that, among
21 other things, is responsible for the adjudication of applications for advance parole.
22 *See* 8 C.F.R. § 212.5 (2020).

23 21. This suit is brought against Mr. Mayorkas in his official capacity, as
24 the Secretary of the Department of Homeland Security. He is responsible for the
25 administration and enforcement of these laws, including a duty to control, direct,
26 and supervise all DHS employees and establish implementing regulations. *See* 8
27

1 U.S.C. § 1103(a). Mr. Mayorkas is ultimately responsible for the actions of DHS
2 and USCIS.

3 22. Tracy Renaud is the Acting Director of USCIS, and Felicia Escobar is
4 the Chief of Staff to Director Renaud. This suit is brought against them in their
5 official capacity, as they are responsible for managing the adjudication of the
6 applications for advanced parole.

7 **FACTUAL BACKGROUND**

8 23. The Individual Applicants herein submitted virtually the same
9 applications for advance parole in August or September 2020 for permission to
10 travel to Mexico and attend the Winter program in Mexico from December 15,
11 2020 to January 19, 2021, but were forced to postpone their program until this
12 summer due to USCIS's refusal to adjudicate their applications. Proper notices
13 were provided to update the USCIS of the adjustments to the new time period for
14 which the Individual Applicants intend to study abroad. (Ex. E, F)

15 24. Effective December 7, 2020, the USCIS implemented guidelines
16 pursuant to Court order that it was accepting first time requests for DACA, renewal
17 requests, and applications for advance parole based on the terms in effect prior to
18 September 5, 2017.²

19 25. Since submitting the applications for advanced parole Individual
20 Applicants have received no substantive communication from USCIS regarding
21 their applications. The Individual Applicants, and each of them, are prima facie
22 eligible for advance parole, there are no facts that make Plaintiffs' applications
23 complex, and Defendant USCIS has given no indication that it has any reason to
24 deny or delay the adjudication of the Individual Applicants' advance parole
25

26 2. <https://www.uscis.gov/i-131>
27

1 applications. Plaintiff CMSC has inquired about the delay and attempted to
2 ascertain the progress of the applications numerous times without avail. (Ex. D)

3 26. Defendants have violated their legal obligation to adjudicate Plaintiffs'
4 applications for advance parole within a reasonable timeframe and deprived him of
5 the substantial privileges and benefits that come from obtaining advance
6 permission to travel abroad, in particular attending the course of study offered by
7 CMSC, including having it postponed once already from the Winter 2020 session.
8 Plaintiffs have exhausted all other available avenues of relief and have no other
9 option but to ask this Court, pursuant to the Administrative Procedure Act
10 ("APA"), 5 U.S.C. §§ 555(b), 702, 706(1), and the Mandamus and Venue Act, 28
11 U.S.C. § 1361, to compel Defendants and those acting under them to take
12 immediate and all appropriate action on Plaintiffs' application for advance parole
13 permitting them to travel abroad.

14 **DEFERRED ACTION FOR CHILDHOOD ARRIVALS**

15 27. DACA was established in 2012 under President Barack Obama to
16 allow children brought into the United States without proper immigration
17 authorization to defer deportation and who maintain good behavior to receive
18 a work permit to remain in the U.S.; such children were also called "Dreamers"
19 based on the failed DREAM Act.

20 28. On his election, President Donald Trump vowed to end the DACA,
21 and the DHS rescinded the program in September 5, 2017. Numerous lawsuits
22 were filed, including one by the University of California system, which many
23 "Dreamers" attended, asserting that the rescission violated the APA and denied
24 procedural due process in violation of the Fifth Amendment. The University
25 sought and received an injunction from District Court Judge William Alsup to
26 require DHS to maintain the DACA until the case was decided. DHS challenged
27 this order to the United States Court of Appeals for the Ninth Circuit, which upheld

1 Judge Alsup's ruling in November 2018, and ordered the DHS to maintain the
2 DACA throughout the U.S. *Regents Univ. California v. D.H.S.*, 908 F.3d 476
3 (2018).

4 29. DHS petitioned to the Supreme Court, which accepted the case in
5 June 2019, joining it with two other DACA-related lawsuits, *Trump v.*
6 *NAACP* (321 F.Supp.3d 143 (D.D.C. 2018)), which had been filed by
7 the NAACP who argued that rescinding the DACA had a disproportionate impact
8 on minorities, and *Wolf v. Vidal*, 291 F.Supp.3d 260, 279 (EDNY 2018), which
9 had been filed by a DACA recipient. Oral arguments were heard in November
10 2019, and the 5–4 decision given on June 18, 2020. While all nine Justices
11 concurred in part on the judgement, the five in majority, with Chief Justice John
12 Roberts writing for the majority, focused only on the application of the due process
13 of the APA in the DHS's decision to rescind the DACA and found it unlawful. _____
14 U.S. ____, 140 S.Ct. 2664, 206 L.Ed.2d 820 (2020).

15 30. Under the Obama administration, the Deferred Action for Children
16 Arrivals (DACA) Program as established and since 2012, DACA recipients were
17 able to apply for Advance Parole travel authorization for educational reasons, to
18 exercise employment opportunities requiring foreign travel, and for humanitarian
19 reasons to be with loved ones suffering from serious illnesses or facing imminent
20 death.

21 31. Consistent with the federal government's having authorized advance
22 parole for DACA recipients who wish to study abroad, in 2014 the CMSC
23 pioneered a study abroad program for DACA recipients. Professor Armando
24 Vazquez-Ramos led 6 groups of Dreamers from January 2015 to August 2017,
25 providing over 160 Dreamers the opportunity to return to their birthplace,
26 reconnect with their family and cultural roots, reaffirm their identity, and develop
27

1 skills and insights that would assist them serve underprivileged communities in the
2 United States.

3 32. But on September 5, 2017, the Department of Homeland Security
4 (DHS) suspended the Advance Parole provision for DACA beneficiaries, after the
5 Trump Administration ordered the termination of the DACA program. As a result
6 of this arbitrary and discriminatory administrative practice, DACA beneficiaries
7 were unable to be with their loved ones at critical moments and/or take
8 advantage of important educational and employment opportunities abroad.

9 33. However, the U.S. District Court for the Northern District of
10 California preliminary injunction filed on January 9, 2018 ruled that the
11 government had the discretion to accept and approve Advance Parole applications
12 from DACA recipients for “**deserving cases**” per lines 14-16 of page 46.
13 Furthermore, the court ruled that, “*nor does this order bar the agency from*
14 *granting advance parole in individual cases it finds deserving, or from granting*
15 *deferred action to new individuals on an ad hoc basis*”. In addition, lines 12-13
16 of page 47 state, “*nothing in this order would bar individuals from asking for*
17 *such agency relief [advance parole] or bar the agency from granting it in*
18 *deserving cases*”. *Regents*, Case 3:17-cv-05211-WHA, Document 234, Filed
19 01/09/18.

20 34. Nevertheless, although federal courts in New York, Washington,
21 D.C., and California had enjoined Defendants to continue the DACA program,
22 USCIS continued to refuse to grant DACA recipients Advance Parole.

23 35. Consequently, the CMSC launched in 2018 the National Campaign to
24 Restore DACA’s Advance Parole, based upon the principle that the continued
25 denial of Advance Parole travel permits for DACA beneficiaries is causing
26 inhumane and irreparable suffering, and the consequences have been devastating.

1 to act”). The reviewing court may “compel agency action unlawfully withheld or
2 unreasonably delayed.” 5 U.S.C. § 706(1).

3 40. A Plaintiff adversely affected by agency inaction is entitled to relief
4 under the APA when (1) an agency has a duty to take a discrete agency action and
5 (2) the agency has unreasonably delayed in acting on that duty. *Norton v. S. Utah*
6 *Wilderness All.*, 542 U.S. 55, 63-65 (2004). Here, both elements are satisfied.
7 Defendants have a duty to adjudicate Plaintiff’s application for advance parole and
8 have unreasonably delayed in performing this duty.

9 **1. Defendants have a non-discretionary duty to adjudicate Plaintiff’s**
10 **application for advance parole.**

11 41. Defendants have a non-discretionary duty to adjudicate Plaintiffs’
12 applications for advance parole without undue delay. Regulations promulgated to
13 implement 8 U.S.C. § 1182(d)(5)(A), provide, “When parole is authorized for an
14 alien who will travel to the United States without a visa, the alien *shall be issued*
15 *an appropriate document authorizing travel.*” 8 C.F.R. § 212.5 (2021) (emphasis
16 added) .

17 42. Courts have construed such language to support the finding of a non-
18 discretionary duty on the government to act. *See, e.g. Singh v. Still*, 470 F.Supp.2d
19 1064, 1067 (N.D. Cal. 2007) (finding that similar language in the regulations for
20 asylum-based adjustment of status supports a mandatory duty to act on the
21 applications).

22 43. In addition, although whether or not to approve an application for
23 advance parole is in USCIS’s discretion, its duty to adjudicate the application is
24 not. *See Khan v. Johnson*, 65 F. Supp. 3d 918, 927 (C.D. Cal. 2014). Therefore, the
25 Court is not barred from compelling the government to act on an application for
26 advance parole granting the DACA recipients permission to travel abroad for
27 educational purposes.

1 a nondiscretionary duty to complete background checks necessary for certain
2 immigration benefits based upon the fees it collects to perform such checks).

3 52. Plaintiffs do not have any other adequate remedies because they have
4 exhausted all available administrative remedies. Plaintiffs have submitted multiple
5 services requests and other inquiries to the USCIS (See Exhibits D through F), in
6 an attempt to determine the progress of their application for advance parole and to
7 confirm whether other information that USCIS needs to finalize the adjudication of
8 the application. This has not progressed Plaintiffs' applications and their
9 applications remain pending.

10 53. The unreasonable delay is without justification and, pursuant to 28
11 U.S.C. § 1361, this Court should compel Defendants to take immediate action to
12 promptly process and adjudicate Plaintiffs' applications for advance parole granting
13 the DACA recipients permission to travel abroad.

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16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs respectfully request that the Court:

19 1. Declare that Defendants' delay in adjudicating the Individual Applicants
20 applications for advance parole violate the Immigration and Nationality Act and
21 the Administrative Procedure Act;

22 2. Enjoin Defendants to adjudicate the Individual Applicants' Applications
23 for Advance Parole without further delay;

24 3. Retain jurisdiction during the adjudication of the I-131 Applications for
25 Advance Parole in order to ensure compliance with the Court's orders;

26 4. Grant attorney's fees and costs of court to Plaintiffs under the Equal
27 Access to Justice Act, 28 U.S.C. § 2412; and

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5. Grant such other and further relief as this Court deems just and equitable.

Dated: April 26, 2021

LAW OFFICES OF JORGE GONZALEZ

By: /s/ *Jorge Gonzalez*
Jorge Gonzalez, Esq.

Attorney for Plaintiffs