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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

Fayez MANSOR, Ecclesiaste COISSY, Cabdi Ibrahim XAREED, and Shukria ZAFARI, on behalf of themselves as individuals and on behalf of others similarly situated,

Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; Alejandro MAYORKAS, Secretary, United States Department of Homeland Security; and Ur M. JADDOU, Director, United States Citizenship and Immigration Services,

Defendants.

Case No. 2:23-cv-347

COMPLAINT—CLASS ACTION

INTRODUCTION

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2 1. Temporary Protected Status (TPS) is a form of humanitarian relief that provides
3 lawful immigration status to foreign nationals from war-ravaged or disaster-stricken countries.

4 2. After the Department of Homeland Security (DHS) designates a country for TPS,
5 most of that country’s foreign nationals who are present in the United States become eligible for
6 TPS.

7 3. One of TPS’s main benefits is employment authorization.

8 4. Congress recognized that without the ability to work lawfully, TPS applicants and
9 recipients would be forced to choose between remaining in the United States without the ability
10 to subsist and returning to unsafe conditions in their countries of origin.

11 5. Recognizing that forcing noncitizens to make that choice would defeat TPS’s
12 purpose, Congress mandated that the government issue employment authorization documentation
13 to eligible TPS applicants and TPS recipients alike.

14 6. But United States Citizenship and Immigration Services (USCIS), the agency
15 responsible for administering the TPS program, is violating its statutory obligation to provide
16 such employment authorization documentation.

17 7. USCIS shirks its obligation to issue interim employment authorization
18 documentation for applicants who are prima facie eligible for TPS, forcing such applicants to
19 remain jobless during the months (and sometimes years) it takes for USCIS to decide their TPS
20 applications.

21 8. Within the last year, the Secretary of Homeland Security designated or re-
22 designated TPS status for persons from Afghanistan, Cameroon, Ethiopia, Haiti, Myanmar
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1 (Burma), Somalia, South Sudan, Sudan, Syria, Ukraine, Venezuela, and Yemen. USCIS
2 currently is adjudicating initial TPS applications from individuals from each of these countries.

3 9. Each Named Plaintiff is a citizen of a country designated for TPS because of an
4 ongoing political and economic crisis. Each Plaintiff applied for TPS and qualifies for
5 employment authorization documentation based on an application that establishes their prima
6 facie eligibility.

7 10. USCIS, however, in violation of the TPS statute and its implementing regulations,
8 has failed to provide Plaintiffs with documentation they can use to obtain lawful employment in
9 the United States.

10 11. This lawsuit seeks to remedy USCIS's violation by declaring Plaintiffs' rights and
11 setting aside Defendants' policy for class members, and by compelling USCIS to immediately
12 issue the Named Plaintiffs evidence of their authorization to work lawfully in the United States.

13 JURISDICTION

14 12. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C.
15 § 1101 *et seq.*, the regulations implementing the INA, and the Administrative Procedure Act
16 (APA), 5 U.S.C. § 701 *et seq.*

17 13. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as the instant case is a
18 civil action arising under the laws of the United States. The Court may grant relief pursuant to
19 5 U.S.C. § 706 and 28 U.S.C. §§ 2201–02, and its equitable powers.

20 VENUE

21 14. Venue properly lies in the Western District of Washington pursuant to 28 U.S.C.
22 § 1391(e) because this is a civil action in which one of the defendants is an agency of the United
23 States, a Plaintiff resides in the judicial district, and there is no real property involved.

PARTIES

15. Plaintiff Fayez Mansor is a noncitizen from Afghanistan. He resides in Kent, Washington. Mr. Mansor filed for TPS on February 21, 2023. His application is currently pending.

16. Plaintiff Ecclesiaste Coissy is a noncitizen from Haiti. He resides in Miami, Florida. Mr. Coissy filed for TPS on September 28, 2021. His application is currently pending.

17. Plaintiff Cabdi Ibrahim Xareed is a noncitizen from Somalia. He has recently been released from immigration detention in the Northwest ICE Processing Center in Tacoma, Washington, and is currently in King County, Washington. Mr. Xareed filed for TPS on February 23, 2023. His application is currently pending.

18. Plaintiff Shukria Zafari is a noncitizen from Afghanistan. She resides in Cleveland, Ohio. She applied for TPS on January 3, 2023. Her application is currently pending.

19. Defendant USCIS is a component of DHS, 6 U.S.C. § 271(a)(1), and an “agency” within the meaning of the APA, 5 U.S.C. § 551(1). USCIS is the agency responsible for adjudicating TPS applications and issuing employment authorization documentation.

20. Defendant Alejandro Mayorkas is the Secretary of DHS. In that capacity, he is charged with the administration and enforcement of the INA and oversees USCIS. He is sued in his official capacity.

21. Defendant Ur M. Jaddou is the Director of USCIS. In that capacity, she is ultimately responsible for processing and adjudicating applications for TPS and TPS-based employment authorization documents in accordance with the laws and lawfully promulgated regulations of the United States. She is sued in her official capacity.

1 **STATEMENT OF FACTS**

2 **I. Statutory and Regulatory Background**

3 22. Congress established the Temporary Protected Status (TPS) program as part of
4 the Immigration Act of 1990, Pub L. No. 101-649, § 302, 104 Stat. 4978, 5030-36, to provide
5 temporary relief to noncitizens from countries facing wars, disasters, or emergencies that make
6 safe return to their countries of origin impossible.

7 23. The Secretary of Homeland Security (DHS Secretary) may designate a country
8 for TPS if the Secretary makes one of the following three findings: (A) there is an ongoing
9 armed conflict in the country and that due to such conflict, the return of noncitizens to that
10 country “would pose a serious threat to their personal safety”; (B) there has been an
11 “environmental disaster in the state resulting in a substantial, but temporary, disruption of living
12 conditions,” where the state cannot handle return of the country’s nationals, and where the
13 foreign state officially requests TPS designation; or (C) there “exist extraordinary and temporary
14 conditions in the foreign state that prevent” noncitizens from safely returning. *See* 8 U.S.C.
15 § 1254a(b)(1).

16 24. Initial TPS designations last between six to eighteen months. 8 U.S.C.
17 § 1254a(b)(2). Notice of a country’s designation for TPS must be published in the Federal
18 Register. *Id.* § 1254a(b)(2).

19 25. The DHS Secretary may extend TPS designations beyond the initial designation
20 period. At least 60 days before a country’s designation expires, the DHS Secretary reviews
21 conditions in the country and determines whether the country still meets the conditions for TPS.
22 *Id.* § 1254a(b)(3)(A). The DHS Secretary may also affirmatively extend a country’s TPS
23 designation for a period of up to eighteen months through notice published in the Federal
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1 Register. If the DHS Secretary does not affirmatively terminate TPS, the designation is
2 automatically extended for six months. *Id.* § 1254a(b)(3)(C).

3 26. After a country is designated for TPS, most nationals of that country who are
4 present in the United States become eligible for TPS.

5 27. To qualify for TPS, a national of a TPS-designated country must show that the
6 applicant: (1) was “continuously physically present in the United States since the effective date
7 of the [country’s] most recent designation”; (2) “continuously resided in the United States” since
8 the TPS designation date; and (3) “is admissible as an immigrant,” with certain exceptions and
9 opportunities for waivers. *Id.* § 1254a(c)(1)(A)(i)–(iii).

10 28. To obtain TPS benefits, a noncitizen must apply on Form I-821 during the
11 “registration period” established by the DHS Secretary, which must last at least 180 days. *Id.*
12 § 1254a(c)(1)(A)(iv).

13 29. If TPS is granted, DHS “shall not remove the [noncitizen] from the United States
14 during the period in which [TPS] status is in effect.” *Id.* § 1254a(a)(1)(A).

15 30. Moreover, DHS “shall authorize the [noncitizen] to engage in employment in the
16 United States and provide the [noncitizen] with an ‘employment authorized’ endorsement or
17 other appropriate work permit.” *Id.* § 1254a(a)(1)(B).

18 31. Employment authorization granted to a TPS recipient “shall be effective
19 throughout the period the [noncitizen] is in temporary protected status.” *Id.* § 1254a(a)(2).

20 32. Under the TPS statute, these two benefits are not limited to those *granted* TPS;
21 they also extend to *applicants* for TPS whose applications establish prima facie eligibility for
22 TPS. *Id.* § 1254a(a)(4)(B).

1 33. These interim, [t]emporary treatment” benefits for eligible TPS applicants are
2 granted to cover the gap between the filing of a TPS application and USCIS’s final adjudication
3 of that application. *Id.* § 1254a(a)(4). Such benefits “shall” be granted when an applicant
4 “establishes a prima facie case of eligibility for benefits,” and remain effective “until a final
5 determination with respect to the [noncitizen’s] eligibility for such benefits . . . has been made.”
6 *Id.* § 1254a(a)(4)(B).

7 34. Taken together, these provisions guarantee TPS-eligible noncitizens the right to
8 employment authorization documentation from the time they apply for TPS through the time
9 their country’s TPS designation ends.

10 35. USCIS’s regulations reflect this statutory scheme.

11 36. The regulations defining when USCIS will grant interim “temporary treatment”
12 benefits make clear USCIS’s obligation to issue work authorization to TPS applicants upon
13 receipt of an application that establishes prima facie eligibility.

14 37. Section 244.5(b) of Title 8 of the Code of Federal Regulations, titled “Temporary
15 treatment benefits for eligible [noncitizens],” provides that “[u]pon the filing of an application
16 for Temporary Protected Status, the [noncitizen] shall be afforded temporary treatment benefits,
17 if the application establishes the [noncitizen]’s prima facie eligibility for Temporary Protected
18 Status.”

19 38. These “temporary treatment” benefits are defined to include protection against
20 removal, as well as employment authorization. 8 C.F.R. § 244.10(e)(1). The regulations further
21 require the agency to provide an “an employment authorization document” as proof of these
22 benefits. *Id.*

1 39. Such benefits, including interim employment authorization, “shall remain in
2 effect until a final decision has been made on the application for Temporary Protected Status.”
3 *Id.* § 244.10(e)(2); *see also id.* § 244.13(a) (“Temporary treatment benefits terminate upon a final
4 determination with respect to the [noncitizen]’s eligibility for Temporary Protected Status.”).

5 40. The receipt of a *completed* application establishes the necessary *prima facie*
6 eligibility for temporary benefits. The regulations state that “[u]pon the filing of an application
7 for [TPS], the [noncitizen] shall be afforded temporary treatment benefits, if the application
8 establishes the [noncitizen]’s *prima facie* eligibility for [TPS].” *Id.* § 244.5(b) (emphasis added);
9 *see also id.* § 244.10(a) (“USCIS will grant temporary treatment benefits to the applicant if the
10 applicant establishes *prima facie* eligibility for Temporary Protected Status . . .”).

11 41. The regulations define *prima facie* eligibility to mean “eligibility established *with*
12 *the filing of a completed application* for Temporary Protected Status containing factual
13 information that if unrebutted will establish a claim of eligibility.” *Id.* § 244.1 (emphasis added).
14 In other words, if a TPS application includes evidence of eligibility, and USCIS does not already
15 have information in its possession to rebut that evidence, the submission of a “completed”
16 application alone establishes *prima facie* eligibility for TPS, entitling the applicant to immediate
17 issuance of employment authorization documentation. When USCIS issues a receipt notice,
18 therefore, that receipt notice serves as proof that the applicant is *prima facie* eligible for TPS.

19 42. The agency understood this obligation when it promulgated the TPS regulations.
20 In official regulatory commentary, the agency agreed with commenters “that temporary
21 treatment benefits should be issued immediately after the applicant establishes his or her *prima*
22 *facie* eligibility,” and that such eligibility is established by the filing of a completed application
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1 that contains the requisite information. *See* Temporary Protected Status, 56 Fed. Reg. 23,491,
2 23,493 (May 22, 1991).

3 43. Consistent with the TPS statute, this regulatory scheme—if properly executed by
4 the agency—ensures that eligible TPS applicants are issued evidence of employment
5 authorization from the time they apply for TPS through the end of their country’s designation for
6 TPS.

7 **II. USCIS Routinely Violates this Statutory and Regulatory Scheme**

8 44. As a matter of policy and practice, USCIS violates this statutory and regulatory
9 framework by depriving TPS applicants of employment authorization documents.

10 45. Although USCIS is required to issue interim “temporary treatment” benefits,
11 including work authorization, upon receipt of a completed application, USCIS routinely fails to
12 do so.

13 46. Instead, upon information and belief, USCIS does not grant interim “temporary
14 treatment” benefits in the form of employment authorization documentation, skipping that
15 statutorily-mandated step entirely.

16 47. In most cases, the agency only grants work authorization upon final approval of
17 the TPS application.

18 48. The agency instructs TPS applicants to apply for work authorization that will be
19 provided only upon the approval of the TPS application, reinforcing that work authorization for
20 pending applications is not available.

1 49. USCIS’s online guidance for TPS applications instructs applicants that the
2 “correct code for an initial TPS EAD is A12.”¹ The A12 code is for *approved* TPS applications,
3 while code C19 is for pending TPS applications.

4 50. In addition, USCIS does not even permit initial applicants who apply online to
5 apply for work authorization based on their pending TPS applications. Instead, applicants who
6 apply online can select only the A12 category for approved TPS applications when the applicants
7 jointly submit TPS and work authorization applications.

8 51. Regardless, even for those applicants who do manage to communicate they want
9 work authorization while their application is pending, USCIS typically does not provide such
10 work authorization.

11 52. Although USCIS issues receipt notices to TPS applicants who submit completed
12 TPS applications, USCIS fails to provide “an ‘employment authorized’ endorsement” on the TPS
13 receipt notice or to provide other documentation demonstrating their employment authorization,
14 as the statute and regulations require. 8 U.S.C. § 1254a(a)(1)(B), (4)(B); 8 C.F.R. § 244.10(e)(1).

15 53. TPS applications typically take many months to adjudicate. Indeed, according to
16 USCIS’s own statistics, it takes over a year for USCIS to adjudicate most initial TPS
17 applications.²

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20 ¹ USCIS, *Temporary Protected Status (TPS)- Questions and Answers*, at Q15 (last accessed Mar.
8, 2023), https://www.uscis.gov/sites/default/files/document/questions-and-answers/Temporary_Protected_Status_TPS_Webinar_Questions_and_Answers.pdf.

21 ² See USCIS, *Check Case Processing Times*, <https://egov.uscis.gov/processing-times/home> (last
22 accessed Mar. 8, 2023) (reporting that USCIS adjudicates 80% of initial applications from Haiti
23 within 13.5 months; 80% of initial applications Myanmar (Burma) within 11 months; 80% of
24 initial applications from Nepal within 21 months; 80% of initial applications from Sudan within
4.5 months; 80% of initial applications from Somalia within 16.5 months; 80% of initial
applications from South Sudan within 30.5 months; 80% of initial applications from Syria within
14.5 months; 80% of initial applications from Ukraine within 6 months; 80% of initial

1 54. Unlike other immigration statuses where noncitizens may show their employment
2 authorization though presentation of alternative documents (like Forms I-94), USCIS guidance
3 prohibits the presentation of a TPS application receipt notice as evidence of the noncitizen’s
4 authorization to work. In other words, USCIS does not treat TPS applicants or persons who
5 obtain TPS as being authorized for employment incident to status as the statute and regulations
6 require.

7 55. These USCIS policies and practices have resulted in substantial delays between a
8 noncitizen’s statutory entitlement to evidence of employment authorization pursuant to the
9 submission of an application for TPS and USCIS’s issuance of such evidence.

10 56. As a result, one of TPS’s central benefits—the ability to work in the United States
11 so that eligible people do not “self-deport” out of inability to sustain themselves—has become an
12 empty promise for tens of thousands of TPS-eligible noncitizens.

13 **III. TPS Designations**

14 57. Over the past few years, DHS has designated several countries for TPS. In other
15 cases, DHS has re-designated a country, meaning that people who have since entered the United
16 States or who did not apply for TPS during the first TPS designation (and are otherwise eligible)
17 may apply for TPS.

18 58. These recent designations have resulted in large numbers of new, initial TPS
19 applicants. There are tens of thousands of initial applications to register for TPS pending before
20 USCIS.

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24 applications from Venezuela within 15.5 months; and 80% of initial applications from Yemen
within 12.5 months).

1 59. Countries recently designated for TPS include Afghanistan, Cameroon, Ethiopia,
2 Haiti, Myanmar (Burma), Somalia, South Sudan, Sudan, Syria, Ukraine, Venezuela, and Yemen.
3 The period for individuals from each of these countries to file initial applications either remains
4 open or recently closed, such that USCIS is continuing to adjudicate applications from all such
5 countries.

6 60. USCIS data shows that as of September 30, 2022, the agency had 2,551 TPS
7 applications pending for individuals from Afghanistan.³

8 61. USCIS data shows that as of September 30, 2022, the agency had 1,521 TPS
9 applications pending for individuals from Cameroon.

10 62. USCIS data is not yet available for TPS applications for Ethiopia.

11 63. USCIS data shows that as of September 30, 2022, the agency had 66,635 TPS
12 applications pending for individuals from Haiti. Because DHS re-designated Haiti for TPS and
13 has extended a previous TPS designation, some of these applications may be to re-register
14 individuals for TPS and are not initial registrations.

15 64. USCIS data shows that as of September 30, 2022, the agency had 249 TPS
16 applications pending for individuals from Myanmar (Burma).

17 65. USCIS data shows that as of September 30, 2022, the agency had 233 TPS
18 applications pending for individuals from Somalia. Because DHS re-designated Somalia for
19 TPS, some of these applications may be to re-register individuals for TPS and are not initial
20 registrations.

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22 ³ The data provided in ¶¶ 60-71 is from USCIS, *Number of Form I-821, Application for*
23 *Temporary Protected Status By Country of Designation, Quarter, and Case Status*, October 1,
24 2021 – September 30, 2022,
https://www.uscis.gov/sites/default/files/document/data/I821_RADP_FY22_Q4.pdf (last
accessed Mar. 8, 2023).

1 66. USCIS data shows that as of September 30, 2022, the agency had 71 TPS
2 applications pending for individuals from South Sudan. Because DHS re-designated South Sudan
3 for TPS, some of these applications may be to re-register individuals for TPS and are not initial
4 registrations.

5 67. USCIS data shows that as of September 30, 2022, the agency had 229 TPS
6 applications pending for individuals from Sudan.

7 68. USCIS data shows that as of September 30, 2022, the agency had 2,462 TPS
8 applications pending for individuals from Syria. Because DHS re-designated Syria for TPS,
9 some of these applications may be to re-register individuals for TPS and are not initial
10 registrations.

11 69. USCIS data shows that as of September 30, 2022, the agency had 19,537 TPS
12 applications pending for individuals from Ukraine.

13 70. USCIS data shows that as of September 30, 2022, the agency had 148,657 TPS
14 applications pending for individuals from Venezuela. Some of these applications may be to re-
15 register for TPS, as DHS extended Venezuela's TPS designation on September 8, 2022,
16 requiring those already with TPS to re-register. *See* Extension of the Designation of Venezuela
17 for Temporary Protected Status, 87 Fed. Reg. 55024 (Sept. 8, 2022).

18 71. USCIS data shows that as of September 30, 2022, the agency had 519 TPS
19 applications pending for individuals from Yemen. Because DHS re-designated Yemen for TPS,
20 some of these applications may be to re-register individuals for TPS and are not initial
21 registrations.

1 **IV. Plaintiffs' TPS Applications**

2 A. Fayez Mansor

3 72. Plaintiff Fayez Mansor is a noncitizen from Afghanistan. He entered the United
4 States with parole on September 9, 2021, after being evacuated from Afghanistan.

5 73. Mr. Mansor applied for TPS and employment authorization incident to TPS status
6 on February 21, 2023.

7 74. Mr. Mansor is prima facie eligible for TPS for Afghan nationals. He has resided
8 in the United States since his entry, and therefore satisfies the continuous presence requirement.
9 He included proof of his Afghan nationality and his continuous presence in the United States
10 with his application for TPS.

11 75. USCIS issued a receipt notice for Mr. Mansor's TPS application the same day that
12 he applied for TPS. USCIS also advised Mr. Mansor that it would be issuing him an employment
13 authorization application receipt notice on or before the week of March 13. Mr. Mansor's
14 applications remain pending before the agency.

15 76. While Mr. Mansor currently has employment authorization, that authorization is
16 scheduled to expire on October 3, 2023. Like many Afghans, Mr. Mansor's employment
17 authorization is tied to his parole status, which expires two years after his entry. Yet because
18 USCIS takes many months and often a year to adjudicate TPS applications, he will lose his
19 authorization in October.

20 77. The lack of work authorization will cause Mr. Mansor significant harm. Without
21 work authorization, he will lose his job and be unable to pay for basic expenses, like housing,
22 gas, car insurance, groceries, and clothes. The prospect of losing his work authorization causes
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1 him significant stress, and he worries about how he will continue to live in the United States
2 without such authorization.

3 B. Eclesiaste Coissy

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5 78. Plaintiff Eclesiaste Coissy is a noncitizen from Haiti. He entered the United States
6 in July 2021.

7 79. Mr. Coissy applied for TPS and employment authorization incident to TPS status
8 on September 28, 2021.

9 80. Mr. Coissy is prima facie eligible for TPS. He has resided in the United States
10 since his entry, and therefore satisfies the continuous presence requirement. He included proof of
11 his Haitian nationality and his continuous presence in the United States with his application for
12 TPS.

13 81. USCIS issued receipt notices for Mr. Coissy's TPS and employment authorization
14 applications on October 1, 2021. Mr. Coissy's applications remain pending before the agency.

15 82. Lack of work authorization is causing Mr. Coissy significant harm. He and his
16 wife are expecting a child in July 2023. Because they do not have work authorization, they have
17 been dependent on others to meet their basic needs. Mr. Coissy also has a 14-year-old daughter
18 from a previous relationship who lives with his mother in Haiti. Because he does not have work
19 authorization, he is not able to send resources to his family in Haiti to help provide for his
20 daughter. He is depressed and stressed over his financial situation and worries about how he will
21 provide for his baby.

22 B. Cabdi Ibrahim Xareed

23 83. Plaintiff Cabdi Ibrahim Xareed is a noncitizen from Somalia. He entered the
24 United States without authorization around September 23, 2022, to seek asylum.

1 84. He was apprehended by immigration authorities shortly after his arrival and was
2 in immigration detention until March 8, 2023, when he was released to a sponsor on bond. He is
3 in removal proceedings.

4 85. Mr. Xareed applied for TPS and employment authorization incident to TPS status
5 on February 23, 2023.

6 86. Mr. Xareed is prima facie eligible for TPS for Somali nationals. He has resided in
7 the United States since his entry, and therefore satisfies the continuous presence requirement. He
8 included proof of his Somali identity and his continuous presence in the United States with his
9 application for TPS.

10 87. USCIS has not yet issued receipt notices for Mr. Xareed's TPS and employment
11 authorization applications.

12 88. Employment authorization is critical for Mr. Xareed, as he does not have family
13 or financial resources here in the United States. He plans to live with a sponsor but will need to
14 provide financially for himself to cover his expenses.

15 89. Additionally, in fleeing Somalia, Mr. Xareed lost contact with his wife and two-
16 year-old daughter, whom he believes are still in hiding in the country. He will need financial
17 resources to locate them and to provide for them until he is able to bring them here lawfully.

18 90. The lack of employment authorization while his TPS application is pending will
19 thus cause Mr. Xareed significant harm.

20 D. Shukria Zafari

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22 91. Plaintiff Shukria Zafari is a noncitizen from Afghanistan. She entered the United
23 States with parole on September 8, 2021, after being evacuated from Afghanistan.

1 92. Ms. Zafari applied for TPS and employment authorization incident to TPS status
2 on January 3, 2023.

3 93. Ms. Zafari is prima facie eligible for TPS for Afghan nationals. She has resided in
4 the United States since her entry, and therefore satisfies the continuous presence requirement.
5 She included proof of her Afghan nationality and her continuous presence in the United States
6 with her application for TPS.

7 94. USCIS issued receipt notices for Ms. Zafari's TPS and employment authorization
8 applications on January 5, 2023. Her applications remain pending before the agency.

9 95. While Ms. Zafari currently has employment authorization, that authorization is
10 scheduled to expire in September 2023. Like many Afghans, Ms. Zafari's employment
11 authorization is tied to her parole status, which expires two years after her entry. Yet because
12 USCIS takes many months and often a year to adjudicate TPS applications, she will lose her
13 authorization in September.

14 96. The lack of work authorization will cause Ms. Zafari significant harm. Ms. Zafari
15 is a single mother. Two of her children, who are ten and twelve years old, live with her here in
16 the United States. A third child lives in Afghanistan. Without work authorization, Ms. Zafari will
17 be unable to care for herself and her children. She will also be unable to afford the expenses
18 necessary to bring her child in Afghanistan to the United States, which she hopes to do.

19 **CLASS ACTION ALLEGATIONS**

20 97. Plaintiffs bring this action on behalf of themselves and all others who are
21 similarly situated pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2). A class action
22 is proper because this action involves questions of law and fact common to the class, the class is
23 so numerous that joinder of all members is impractical, Plaintiffs' claims are typical of the
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1 claims of the class, and Plaintiffs will fairly and adequately protect the interests of the class.
2 Defendants have acted on grounds that apply generally to the class, so that declaratory relief and
3 relief under the Administrative Procedure Act is appropriate with respect to the class as a whole.

4 98. Plaintiffs seek to represent the following class: “All individuals who have
5 submitted or will submit an initial application for Temporary Protected Status (TPS), who have
6 received or will receive a notice of receipt for such an application, who have not received a final
7 decision on the TPS application, and who have not been issued employment authorization
8 documentation incident to their pending TPS application.”

9 99. The proposed class meets the numerosity requirements of Federal Rule of Civil
10 Procedure 23(a)(1). The class is so numerous that joinder of all members is impracticable.
11 USCIS is in sole possession of the information regarding the precise number of potential class
12 members. Agency records reflect that tens of thousands of people have pending initial
13 applications for TPS, and Plaintiffs estimate that the number of class members are similar.

14 100. The proposed class meets the commonality requirements of Federal Rule of Civil
15 Procedure 23(a)(2). The members of the class are all subject or will be subject to USCIS’s
16 unlawful policy or practice of refusing to provide employment authorization documentation to
17 initial TPS applicants. The lawsuit raises questions of law common to members of the proposed
18 class, including whether the agency’s policy or practice violates the INA and is arbitrary and
19 capricious.

20 101. The proposed class meets the typicality requirements of Federal Rule of Civil
21 Procedure 23(a)(3) because the claims of the representative Plaintiffs are typical of the class.
22 Each of the class members will be without employment authorization documentation despite
23 having submitted or intending to submit a prima facie application for TPS, even though the INA
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1 expressly requires Defendants to provide them with employment authorization upon receipt of
2 such an application. Plaintiffs and the proposed class share the same legal claims, which assert
3 the same substantive and procedural rights under the INA and APA.

4 102. The proposed class meets the adequacy requirements of Federal Rule of Civil
5 Procedure 23(a)(4). The representative Plaintiffs seek the same final relief as the other members
6 of the class—namely, an order declaring Defendants’ policy or practice unlawful, setting aside
7 the policy under the APA, and declaring Plaintiffs’ rights under the INA and the Constitution.
8 Plaintiffs will fairly and adequately protect the interests of the proposed class members because
9 they seek relief on behalf of the class as a whole and have no interest antagonistic to other class
10 members.

11 103. Plaintiffs are represented by competent counsel with extensive experience in
12 complex class actions and immigration law.

13 104. The proposed class also satisfies Federal Rule of Civil Procedure 23(b)(2).
14 Defendants have acted on grounds generally applicable to the proposed class, thereby making
15 final declaratory and APA relief appropriate.

16 **CAUSES OF ACTION**

17 **Count I**
18 **Declaratory Judgment**
28 U.S.C. § 2201

19 105. All of the foregoing allegations are repeated and realleged as though fully set
20 forth herein.

21 106. Under 28 U.S.C. § 2201(a), a court “may declare the rights and other legal
22 relations of any interested party seeking such declaration.”
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1 107. Plaintiffs seek a declaration stating that 8 U.S.C. § 1254a requires Defendants to
2 provide employment authorization documentation while Plaintiffs’ applications for TPS are
3 pending.

4 108. Section 1254a(a) explicitly states that certain TPS benefits, including work
5 authorization, “shall” be provided to applicants who are prima facie eligible for TPS status. 8
6 U.S.C. § 1254a(a)(1)(B), (a)(4). Federal regulations also mandate that Plaintiffs “shall be
7 afforded” such benefits. 8 C.F.R. § 244.5(b); *see also id.* § 244.10(a), (e).

8 109. Defendants have a policy and practice of ignoring this statutory and regulatory
9 mandate.

10 110. Accordingly, Plaintiffs request that the Court declare their right under the INA
11 and implementing regulations.

12 **Count II**
13 **Administrative Procedure Act**
14 **5 U.S.C. § 706(2)(A), (C)**

15 111. All of the foregoing allegations are repeated and realleged as though fully set
16 forth herein.

17 112. The APA entitles “a person suffering legal wrong because of agency action, or
18 adversely affected or aggrieved by agency action . . . to judicial review.” 5 U.S.C. § 702.

19 113. The APA compels a reviewing court to “hold unlawful and set aside agency
20 action, findings, and conclusions found to be . . . arbitrary [or] capricious, . . . otherwise not in
21 accordance with law,” *id.* § 706(2)(A), or “short of statutory right,” *id.* § 706(2)(C).

22 114. Defendants’ policy and practice is arbitrary and capricious. It deprives individuals
23 lawfully entitled to work authorization of the ability to find a job. This threatens Plaintiffs’
24 ability to care for themselves and their families. It also endangers their ability to stay in the

1 United States, as without the ability to work, some Plaintiffs may feel they need to return to their
2 dangerous or unstable country of origin in order to eat, to find shelter, and to provide for family.

3 115. Defendants' policy and practice is also not in accordance with law and short of
4 statutory right. The INA and implementing regulations mandate that Defendants provide TPS
5 applicants who are prima facie eligible with employment authorization documentation, yet
6 Defendants do not do so.

7 116. Accordingly, Plaintiffs request that the Court set aside Defendants' policy and
8 practice of refusing to provide employment authorization documentation to Plaintiffs.

9 **Count III**
10 **Administrative Procedure Act**
11 **5 U.S.C. § 706(1)**

12 117. All of the foregoing allegations are repeated and realleged as though fully set
13 forth herein.

14 118. The APA empowers federal courts to "compel agency action unlawfully withheld
15 or unreasonably delayed." 5 U.S.C. § 706(1).

16 119. Defendants have unlawfully withheld employment authorization documentation
17 from Plaintiffs. The INA and implementing regulations state that Defendants have a mandatory
18 duty to provide Plaintiffs with work authorization, but Defendants do not do so.

19 120. Accordingly, the Named Plaintiffs request that the Court compel Defendants to
20 provide them with work permits or other documents demonstrating their employment
21 authorization, as Defendants have unlawfully withheld such authorization from them.

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Count IV
Fifth Amendment
Due Process Clause and
Administrative Procedure Act
5 U.S.C. § 706(2)(D)

121. All of the foregoing allegations are repeated and realleged as though fully set forth herein.

122. The INA and its implementing regulations guarantee Plaintiffs employment authorization pursuant to their pending applications for TPS or full grant of TPS.

123. Plaintiffs have a due process right to implementation of a process or procedure to afford them evidence of the employment authorization guaranteed to them by statute and regulation. *See, e.g., McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991) (“[T]he impact of a denial on the opportunity to obtain gainful employment is plainly sufficient to mandate constitutionally fair procedures in the application process.”). The APA also compels a reviewing court to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

124. By refusing to implement a process or procedure to afford Plaintiffs evidence of employment authorization, Defendants have violated Plaintiffs’ substantive and procedural due process rights and are not implementing procedures required by the INA and its implementing regulations.

125. Accordingly, the Court should declare that Defendants have violated Plaintiffs’ constitutional right to due process and that the Due Process Clause affords Plaintiffs the right to a process and procedure to provide them evidence of employment authorization and/or set aside Defendants’ policy and practice of refusing to provide employment authorization documentation to Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Certify the case as a class action as proposed herein and in the forthcoming motion for class certification;
- (3) Declare that Defendants have violated Plaintiffs’ statutory, regulatory, and constitutional rights by denying employment authorization documentation to initial TPS applicants;
- (4) Declare that Defendants have a mandatory duty to provide employment authorization documentation to initial TPS applicants;
- (5) Set aside Defendants’ current policy and practice of failing to provide employment authorization documentation to initial TPS applicants;
- (6) Compel Defendants to provide employment authorization documentation to the Named Plaintiffs;
- (7) Enjoin Defendants from applying their policy and practice as to the Named Plaintiffs, and require that Defendants issue the Named Plaintiffs employment authorization documentation;
- (8) Award costs and reasonable attorney fees under the Equal Access to Justice Act, 28 U.S.C. § 2412; and
- (9) Grant such further relief as the Court deems just and proper.

Dated: March 9, 2023.

Respectfully submitted,

s/ Matt Adams
Matt Adams, WSBA No. 28287
matt@nwirp.org

s/ Mary Kenney
Mary Kenney*
mary@immigrationlitigation.org

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s/ Aaron Korthuis
Aaron Korthuis, WSBA No. 53974
aaron@nwirp.org

s/ Trina Realmuto
Trina Realmuto*
trina@immigrationlitigation.org

s/ Glenda M. Aldana Madrid
Glenda M. Aldana Madrid, WSBA No. 46987
glenda@nwirp.org

s/ Kristin Macleod-Ball
Kristin Macleod-Ball*
kristin@immigrationlitigation.org

NORTHWEST IMMIGRANT
RIGHTS PROJECT
615 Second Ave., Suite 400
Seattle, WA 98104
(206) 957-8611

NATIONAL IMMIGRATION
LITIGATION ALLIANCE
10 Griggs Terrace
Brookline, MA 02446
(617) 819-4648

s/ Ira J. Kurzban
Ira J. Kurzban*
ira@kktplaw.com

s/ Edward F. Ramos
Edward F. Ramos*
eramos@kktplaw.com

KURZBAN KURZBAN
TETZELI & PRATT, P.A.
131 Madeira Avenue
Coral Gables, FL 33134

(305) 444-0060

Counsel for Plaintiffs

** Pro hac vice applications forthcoming*