

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Nikonov, Denys

Plaintiff,

v.

DEPARTMENT OF HOMELAND SECURITY;
ALEJANDRO MAYORKAS, in his official capacity
as SECRETARY, DEPARTMENT OF HOMELAND
SECURITY; UNITED STATES CITIZENSHIP AND
IMMIGRATION SERVICES (USCIS);
UR M. JADDOU, in his official capacity as
DIRECTOR, USCIS; NEWARK ASYLUM OFFICE;
SUSAN RAUFER, in her official capacity as
DIRECTOR, NEWARK, ASYLUM OFFICE, USCIS

Defendants

Civil Action No. 1:23-cv-05749

COMPLAINT AND ACTION IN MANDAMUS

INTRODUCTION

1. Plaintiff Denys Nikonov (“Mr. Nikonov”) came to the United States to escape life-threatening persecution and obtain asylum. Mr. Nikonov is a homosexual man who fled harassment, threats, physical violence, and police indifference and abuse in Ukraine. Mr. Nikonov lives in constant fear of being sent back to Ukraine, where he may be killed or attacked due to the prevalence of persecution of homosexual people.

2. Mr. Nikonov lawfully presented to the United States Citizenship and Immigration Service (“USCIS”) his meritorious claim for asylum in February 2017 pursuant to Immigration and Nationality Act (“INA”), § 208(a), 8 U.S.C. § 1158(a). Since then, USCIS has failed to comply with its statutory duty to hold a hearing within 45 days and adjudicate his claim within 180 days of the application. Instead, Mr. Nikonov has waited more than six years without USCIS scheduling his asylum interview or adjudicating his claim for asylum, and there is no likely end in sight to his waiting for a chance to have his claim heard.

3. Under policies USCIS enacted in January 2018 that prioritize the adjudication of applications that have been pending for 21 days or less (commonly knowns as the “last in, first out” policy), USCIS placed Mr. Nikonov’s asylum application in de facto indefinite suspension and may never adjudicate his claim. Defendants have, therefore, violated their non-discretionary, statutory duty to schedule his asylum interview and adjudicate his asylum claim.

4. USCIS’ inaction has left Mr. Nikonov in limbo, suffering uncertainty and an inability to settle into a stable and secure life.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the claims asserted in this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1361, and 28 U.S.C. § 1651 because Mr. Nikonov asks this Court to

compel Defendants, officers of the United States, to perform their duty under INA § 208(d)(5)(A)(ii)-(iii), 8 U.S.C. § 1158(d)(5)(A)(ii)-(iii).

6. Jurisdiction is also conferred on this Court pursuant to 5 U.S.C. § 704 as Mr. Nikonov is aggrieved by adverse agency action which this Court is authorized to remedy under the Administrative Procedures Act, 5 U.S.C. §§ 702 *et seq.*

7. The jurisdiction of this Court is also invoked pursuant to 28 U.S.C. §§ 2201-02 which authorizes the issuance of declaratory judgments.

8. Jurisdiction is also conferred pursuant to 5 U.S.C. §§ 555(b) and 702, the Administrative Procedure Act (“APA”). The APA requires USCIS to carry out its duties within a reasonable time. 5 U.S.C. § 555(b) provides that “[w]ith due regard for the convenience and necessity of the parties or their representatives and *within a reasonable time*, each agency *shall* proceed to conclude a matter presented to it.” (Emphasis added).

9. Mr. Nikonov seeks costs and fees pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. §§ 2412(2) *et seq.*

10. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because plaintiff resides in Manhattan and no real property is involved in the action.

THE PARTIES

11. Plaintiff Denys Nikonov is a citizen of Ukraine who currently lives in New York, New York. Mr. Nikonov submitted an asylum application to USCIS in February 2017.

12. Defendant USCIS assigned Mr. Nikonov’s asylum application to the Newark Asylum Office, then located in Lyndhurst, NJ, now located in Newark NJ. The Newark Asylum Office has yet to schedule his interview.

13. Defendant USCIS is an agency of the United States Department of Homeland Security (“DHS”) charged with, *inter alia*, scheduling asylum interviews and adjudicating applications for asylum.

14. Defendant the Newark Asylum Office, currently located at Gateway 3, 100 Mulberry St Suite 199, Newark, NJ 07102 (previously located at 1200 Wall Street West, 4th Floor; Lyndhurst, NJ 07071) is an office within USCIS and the federal agency with direct authority and responsibility to schedule Plaintiff’s asylum interview and adjudicate his asylum application.

15. Defendant Alejandro Mayorkas is the Secretary of the DHS and oversees DHS. In his official capacity, he is charged with the administration and enforcement of the INA, has the authority to determine the refugee status of applicants pursuant to 8 U.S.C. § 1158(b)(1)(A), and is authorized to delegate such powers and authority to employees of DHS, including those of USCIS. *See* 8 U.S.C. § 1103(a)(1). Defendant Mayorkas is named in this complaint in his official capacity.

16. Defendant Ur M. Jaddou is the Director of USCIS, the agency charged with scheduling Plaintiff’s asylum interview and adjudicating Plaintiff’s asylum application. Defendant Jaddou is named in her official capacity.

17. Defendant Susan Raufer is the Director of the Newark Asylum Office, to which Plaintiff’s asylum case has been assigned. Defendant Raufer is named in her official capacity.

FACTS

A. Defendants Have a Statutory Duty to Process Plaintiff’s Asylum Application

18. Individuals who fear persecution in their countries of origin can affirmatively seek asylum in the United States. In order to do so, applicants must submit an asylum application to USCIS. After receiving the asylum application, USCIS is responsible for scheduling an asylum

interview in order to process the asylum application. Under INA 208 § 1158(a), 8 U.S.C. § 1158(a), USCIS has a non-discretionary duty to adjudicate Plaintiff's asylum claim.

19. “[I]n the absence of exceptional circumstances, the initial interview or hearing on the asylum application *shall* commence *not later than 45 days* after the date an application is filed.” Immigration and Nationality Act, INA 208 § 1158(d)(5)(A)(ii), 8 U.S.C. § 1158(d)(5)(A)(ii) (emphasis added). Following this interview, USCIS must issue a decision on the application. The relevant statute provides that, “in the absence of exceptional circumstances, final administrative adjudication of the asylum application, not including administrative appeal, shall be completed within 180 days after the date an application is filed.” 8 U.S.C. § 1158(d)(5)(A)(iii).

20. As set forth in greater detail below, Plaintiff Mr. Nikonov fears persecution in his home country and has a meritorious claim for asylum. He filed the requisite asylum application but, at the time this Complaint is being filed, USCIS has not scheduled him for an asylum interview despite USCIS' statutory duty and despite him having filed his application more than six years ago.

B. Plaintiff's Meritorious Claim for Asylum

21. Plaintiff Denys Nikonov is a homosexual man who fled Ukraine after experiencing persecution for being homosexual.

22. Individuals perceived to be gay face grave persecution in Ukraine. Homosexual Ukrainians are at a high risk of being attacked, extorted, and even killed.

23. The Ukrainian police and government are unwilling and unable to protect homosexuals in Ukraine. Mr. Nikonov has submitted a sworn affidavit with his asylum application stating that once it became known he was gay, he was physically and sexually assaulted as a minor

by a police department worker whom he could not report. He also affirmed that he was physically beaten on more than one occasion for being gay and he tried to report it to the police who did nothing. In Ukraine, people have been beaten and murdered because of perceived or actual sexual orientation and seldom are the attacks investigated.¹ Ukraine is currently at war with Russia, and the invading country has institutionalized homophobia. The Ukrainian government has passed many anti-gay laws, including so-called gay propaganda laws, which criminalize the dissemination or distribution of “non-traditional” materials (that is, literature or media inclusive of homosexuality).²

24. In view of the past persecution he has suffered and his knowledge of the persecution of other Ukrainians who are homosexual or perceived to be homosexual, Mr. Nikonov has a well-founded fear that he will be persecuted on account of his membership in the social group of homosexual Ukrainians.

25. Mr. Nikonov grew up in Khakhovka, Ukraine with mother, twin sister, and younger brother until age twelve, until his mother died of uterine cancer. He then lived in orphanages in Herson and Novaya, Ukraine until he was in about tenth grade, when he moved back into his mother’s apartment alone. He then moved to Kiev, Ukraine for college until he came to the United States. At every place he lived in Ukraine, he faced violent attacks because of his sexual orientation including beatings and sexual assault.

¹ Amnesty International. Ukraine: Discrimination and Violent Attacks in Pervasive Climate of Homophobia (May 2013), *available at* <https://www.amnesty.org/en/latest/news/2013/ukraine-discrimination-and-violent-attacks-pervasive-climate-homophobia>

² *See, e.g.,* Ivana Kottasová & Anna Chernova, *Putin Signs Expanded Anti-LGBTQ Laws in Russia, in Latest Crackdown on Rights*, CNN (Dec. 5, 2022, 11:28 AM), <https://www.cnn.com/2022/12/05/europe/Russia-lgbtq-propaganda-law-signed-by-putin-intl/index.html>.

26. Mr. Nikonov sees a major difference in the treatment of LGBT people between the United States and Ukraine. In the United States, he feels safe and supported. He feels he can openly celebrate his identity, and has attended the gay pride parade in New York City.

27. Mr. Nikonov fears returning to Ukraine due to the threat of him being attacked, raped, beaten, or killed.

C. Defendants' Failure to Comply with Their Statutory Duty to Adjudicate Plaintiff's Asylum Claim Has Prejudiced Plaintiff by Leaving Him in Legal Limbo for Six Years and Counting

28. Mr. Nikonov filed his affirmative asylum application on February 2017. His application has now been pending for more than six years. During that time, Defendants have not taken any steps to schedule his asylum interview or adjudicate his asylum application.

29. Defendants' failure to schedule his asylum interview and adjudicate his asylum application has been prejudicial to Mr. Nikonov. Plaintiff wants to live safely and build a permanent life in the United States, where he will be free from the persecution and threats to his life that he faced in Ukraine. However, having his claim for asylum unadjudicated makes it impossible for Plaintiff to make long-term plans for the future and leaves him in perpetual uncertainty about his legal status in this country.

30. Defendants' delay in adjudicating Plaintiff's claim is prejudicing Plaintiff's ability to obtain asylum. With the passage of years, Plaintiff's memories will fade, increasing the risk that he will forget details and unknowingly give inconsistent testimony, and it will be harder to obtain evidence and witnesses to corroborate his claims. Not only are Defendants' delays negatively impacting Mr. Nikonov's ability get asylum, such delays also delay his ability to obtain lawful permanent residence status (if his asylum application were approved), which comes with many benefits including the ability to lawfully work, own property, receive financial assistance

for college, and eventually apply for citizenship. Mr. Nikonov's current status is one of legal limbo where he has no such rights and protections.

D. Defendants Violated Their Duty to Schedule Plaintiff's Asylum Interview and Adjudicate His Claim for Asylum

31. In January 2018, USCIS adopted a "last in, first out" policy for scheduling asylum interviews. Under this policy, applicants are divided up into three pools. First priority applicants are those being rescheduled for interviews that were previously cancelled by either the applicant or USCIS. Second priority goes to new applications pending 21 days or fewer. Third priority goes to those in the asylum backlog who are waiting for interviews, starting with the most recently added applicant.³ Under these procedures, Defendants have effectively placed Plaintiff's asylum application in an indefinite suspension, such that his claim may never be adjudicated. Moreover, under this policy, USCIS has clearly failed to perform its statutory non-discretionary duty to adjudicate Plaintiff's asylum claim.

32. Statistics released by USCIS illustrate that it will be nearly impossible for Plaintiff and others in the backlog to receive an interview. This is because applicants in the backlog will only be scheduled for an interview if all newly filed applications have already received interviews. But, based on publicly available information and on information and belief, every month USCIS adjudicates thousands fewer asylum applications than it receives. Thus, the number of applicants waiting in the backlog increases each month, and applicants are not being pulled from the backlog to receive interviews.

³ See *Affirmative Asylum Interview Scheduling*, USCIS (May 31, 2022), <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/affirmative-asylum-interview-scheduling>.

33. By way of example, during the period from October 2022 to December 2022, the most recent quarter for which USCIS statistics are publicly available, USCIS received 100,139 asylum applications but only adjudicated 7,918 applications, increasing the backlog of pending applications to 708,099 applications.⁴ This was a quarter-to-quarter increase of more than 100,000 pending applications, up from 605,027 pending applications at the end of September 2022.⁵ It is also more than double the backlog that existed in January 2018, when USCIS adopted the new last-in-first-out policy and had 313,995 cases pending.

34. The number of pending, backlogged asylum applications show no sign of decreasing. The Newark Office specifically has not decreased. In March 2017, shortly after Mr. Nikonov filed his asylum application there were 26,103 pending applications.⁶ As of September 2022, there were 34,724 applications pending.⁷ The backlog of asylum seekers in legal limbo remains enormous and continues to grow with no end in sight.

35. Defendants created a system where some new applicants are randomly selected to receive an interview immediately and have their claims adjudicated within weeks. Other new

⁴ See *All USCIS Application and Petition Form Types (FY2023 Q1)*, USCIS (Apr. 05, 2023), available at https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY2023_Q1.pdf.

⁵ See *Asylum Division Quarterly Statistics for FY2022 Q4*, USCIS (Jan. 19, 2023), available at https://www.uscis.gov/sites/default/files/document/data/AsylumDivisionQuarterlyStatsFY22Q4_I589_Stats_revised_I589_FilingCompletionPending.csv.

⁶ See *Affirmative Asylum Statistics: March 2017*, USCIS (April 18, 2017), available at https://www.uscis.gov/sites/default/files/document/data/PED-Affirmative_Asylym_Statistics_-_March_2017.pdf

⁷ *Form I-589, Application for Asylum and for Withholding of Removal, By Status, Office, Month (Fiscal Year 2022, 4th Quarter, July 1 - September 30, 2022)*. Jan. 19, 2023; available at https://www.uscis.gov/sites/default/files/document/data/AsylumDivisionQuarterlyStatsFY22Q4_I589_Stats_revised_I589_FilingCompletionPending.csv

applicants and applicants who applied before the change in policy are placed in the backlog indefinitely and, on information and belief, will never receive interviews under USCIS procedures.

36. Defendants could have implemented additional procedures to mitigate the harm caused by their last-in-first-out policy, such as prioritizing applicants waiting longer than a “five-year cutoff” period or designating a portion of asylum officers to work “back to front.” In September 2021, forty members of Congress wrote a letter to Defendants Mayorkas and Jaddou expressing concerns about the affirmative asylum application backlog and suggesting that USCIS adopt just such a system.⁸

37. Instead of implementing these mitigation measures, Defendants have adopted a policy that, as applied to Mr. Nikonov and others like him, leaves legitimate asylum seekers in legal limbo indefinitely.

38. Defendants’ delay in processing Mr. Nikonov’s asylum application is unreasonable. USCIS’ placement of Mr. Nikonov in the backlog, while other applicants are randomly scheduled for near-immediate interviews, renders the delay even more unreasonable. Defendants’ particular implementation of the last-in-first-out policy violates their duty to carry out the adjudicative and administrative functions delegated to them by law with regard to Mr. Nikonov’s claim.

COUNT ONE
Violation of the Administrative Procedure Act
§ 706(1) — Unreasonable Delay

39. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein and incorporates them by reference.

⁸ See Letter from Congress to USCIS (Sept. 9, 2021), *available at* https://www.uscis.gov/sites/default/files/document/foia/Affirmative_asylum_application_backlog-Representative_Cicilline.pdf.

40. Plaintiff has a statutory right to apply for asylum and to be considered for that relief pursuant to INA § 208(a), 8 U.S.C. § 1158(a). Defendants failed to perform this non-discretionary duty and, under Defendants' last-in-first-out policy, will continue to indefinitely delay performing this duty.

41. Plaintiff has no adequate remedy at law, and will suffer irreparable harm if Defendants do not promptly adjudicate his asylum application.

42. Under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(1), the Court is authorized to compel agency action which has been unreasonably delayed.

43. Defendants' delay in providing an interview to Plaintiff is unreasonable because:

- (1) The delay is not governed by a "rule of reason." Moreover, USCIS' decision to adopt a last-in-first-out policy and, thereby, deny adjudication to older filed applications represents a failure of reason as applied to Plaintiff.
- (2) Congress has provided a statutory deadline of 45 days to schedule an interview and 180 days for the adjudication of an asylum claim. INA § 208(d), 8 U.S.C. § 1158(d). Plaintiff has waited over six years to receive an interview and have his claim adjudicated.
- (3) The delay impacts every aspect of Plaintiff's life, hindering his ability to make permanent plans, move, and find long term employment.
- (4) The delay here is especially intolerable because it impacts Plaintiff's health and welfare, as well as his economic interests. Among the injuries Plaintiff has suffered are an inability to travel, a precarious work situation since is Employment Authorization Card needs to be renewed every two years,

difficulty finding stable housing and employment and the daily psychological trauma of not knowing if he can build a new life in the United States or if he will be sent back to Ukraine where he will face a severe risk of persecution.

- (5) Expediting the delayed adjudication would not impact Defendant agency USCIS' other priorities. Plaintiff does not ask USCIS to devote greater capacity to adjudicating asylum claims; rather he asks the agency to use its existing capacity to adjudicate his asylum application in turn.
- (6) Finally, Defendants' decision to adopt a last-in-first-out policy was arbitrary and capricious as applied to Plaintiff, and has had a disparate impact on Plaintiff's ability to obtain an adjudication of his asylum application in contrast to those whose applications have randomly received priority treatment.

44. Having diligently followed the procedures set forth by Defendants, Plaintiff seeks a court order compelling Defendants to schedule and adjudicate his asylum application pursuant to 5 U.S.C. § 706(1).

COUNT TWO
Violation of the Administrative Procedure Act
§ 706(2)(C) — Exceeds Statutory Authority

45. Plaintiff incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

46. Under the APA, courts must “hold unlawful and set aside agency action” that is “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right.” 5 U.S.C.

§ 706(2)(C). Defendants may only exercise authority conferred by statute. *City of Arlington v. FCC*, 569 U.S. 290, 297-98 (2013).

47. Defendants’ last-in-first-out policy, as applied to Plaintiff, exceeds Defendants’ statutory authority because it violates Plaintiff’s statutory right to apply for asylum and to be considered for that relief within the timeframes specified at INA § 208(a), 8 U.S.C. § 1158(a) and the APA’s requirement that Defendants discharge this duty without unreasonable delay.

48. The last-in-first-out policy, as applied to Plaintiff, is therefore “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” in violation of the APA. 5 U.S.C. § 706(2)(C).

49. Defendants’ violation causes ongoing harm to Plaintiff.

COUNT THREE
Violation of the Administrative Procedure Act
§ 706(2)(A) — Not in Accordance with Law

50. Plaintiff incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

51. Under the APA, a court must set “aside agency action” that is “not in accordance with law.” 5 U.S.C. § 706(2)(A). Defendants’ last-in-first-out policy, as applied to Plaintiff, exceeds Defendants’ statutory authority because it violates Plaintiff’s statutory right to apply for asylum and to be considered for that relief pursuant to INA § 208(a), 8 U.S.C. § 1158(a), and the APA’s requirement that Defendants discharge this duty without unreasonable delay.

52. The last-in-first-out policy as applied to Plaintiff is therefore “not in accordance with law,” as required by the APA. 5 U.S.C. § 706(2)(A).

53. Defendants’ violation causes ongoing harm to Plaintiff.

COUNT FOUR
Violation of the Administrative Procedure Act
§ 706(2)(A) — Arbitrary and Capricious

54. Plaintiff incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

55. The APA provides that courts must “hold unlawful and set aside” agency action that is “arbitrary, capricious, [or] an abuse of discretion.” 5 U.S.C. § 706(2)(A).

56. Defendants’ last-in-first-out policy is arbitrary and capricious because they effectively created a system where some applicants arbitrarily receive an interview immediately and have their claims adjudicated within weeks. Others, such as Plaintiff, are arbitrarily placed in the backlog indefinitely and, on information and belief, will not ever receive interviews under USCIS procedures. The impact of USCIS’ policy has been to exacerbate the asylum office backlog and leave thousands of legitimate asylum seekers in indefinite legal limbo.

57. Moreover, USCIS’ stated purpose for the policy—*i.e.*, “to deter those who might try to use the existing backlog as a means to obtain employment authorization” by identifying “frivolous, fraudulent or otherwise non-meritorious asylum claims earlier and plac[ing] those individuals into removal proceedings”⁹—cannot take precedence over the agency complying with federal law in regard to holding an asylum interview within 45 days and adjudicating asylum claims within 180 days. If allowed to continue prioritizing such “deterrence” goal, the USCIS’ systematic violation of the Immigration and Naturalization Act will continue unchecked.

⁹ See January 31, 2018 Press Release, *USCIS to Take Action to Address Asylum Backlog*, available at <https://www.uscis.gov/archive/uscis-to-take-action-to-address-asylum-backlog#:~:text=Returning%20to%20a%20%E2%80%9Clast%20in,Affirmative%20Asylum%20Interview%20Scheduling%20page> (last visited May 2023).

58. Defendants' last-in-first-out policy is therefore "arbitrary, capricious, [or] an abuse of discretion" in violation of the APA. 5 U.S.C. § 706(2)(A).

59. Defendants' violation causes ongoing harm to Plaintiff.

COUNT FIVE
MANDAMUS

60. Plaintiff repeats and realleges the foregoing paragraphs as if fully set forth herein and incorporates them by reference.

61. Plaintiff seeks mandamus relief in the alternative. Under the Mandamus Act, 28 U.S.C. § 1361, relief may be granted because Defendants owe Plaintiff a non-discretionary statutory duty and Plaintiff has exhausted all other avenues of relief.

62. Plaintiff, by his attorney, has made numerous attempts to obtain his interview. On April 25, 2022, Mr. Nikonov through his counsel contacted Senator Gillibrand's office seeking a congressional inquiry into his case. The Senator's office provided no assistance.

63. On December 30, 2022, Mr. Nikonov's counsel sent a prosecutorial discretion request to the Newark Asylum Office, asking that they stipulate to asylum in lieu of an interview based on the existing record before them. No response was received.

64. On February 22, 2023, Mr. Nikonov's counsel emailed Jamie Bagliebter at the DOJ to advise of the possibility of filing a mandamus on behalf of Mr. Nikonov. On March 8, 2023, Joshua Stallings from the DOJ responded to the email and asked for more time to check with USCIS.

65. On March 21, 2023, Joshua Stallings informed Mr. Nikonov and his counsel that USCIS would not be adjudicating Mr. Nikonov's application at this time because "they do not have the resources to accommodate jumping this individual to the front of the line in light of the many

applicants in front of him with similarly compelling stories and competing demands for asylum officer resources at the southwest border."

66. Plaintiff has a statutory right to apply for asylum and to be considered for that relief pursuant to the Immigration and Nationality Act. INA § 208(a), 8 U.S.C. § 1158(a). Defendants have failed to perform their nondiscretionary duty.

67. Though USCIS has discretion in granting or denying applications, it has no discretion to decline to schedule interviews and to adjudicate Plaintiff's application for asylum.

68. Aside from claims brought under the APA, *supra*, Plaintiff has no adequate remedy at law, and will suffer irreparable harm if his asylum application is not promptly adjudicated.

69. Having diligently followed the procedures set forth by Defendants, Plaintiff seeks a writ of mandamus or in the nature of mandamus to end Defendants' unreasonable delay and refusal to adjudicate his asylum application.

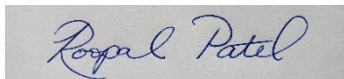
PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to:

- a. Accept jurisdiction and maintain continuing jurisdiction of this action;
- b. Declare Defendants' actions in this matter an abuse of discretion and not in accordance with the law pursuant to 5 U.S.C. § 706(1), 5 U.S.C. § 706(2)(C), and 28 U.S.C. §§ 2201-02;
- c. Declare that Defendants' last-in-first-out policy as applied to Plaintiff is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law within the meaning of 5 U.S.C. § 706(2)(A);
- d. Issue a permanent injunction pursuant to 28 U.S.C. § 1361 and 5 U.S.C. § 706(1) compelling Defendants to schedule an asylum interview and make a determination on Plaintiff's I-589 Application for Asylum and Withholding of Removal;
- e. Issue a writ of mandamus or in the nature of mandamus, pursuant to 28 U.S.C. § 1361, 28 U.S.C. § 1651, and/or 5 U.S.C. § 706(1), compelling Defendants to schedule an asylum interview and make a determination on Plaintiff's I-589, Application for Asylum and Withholding of Removal;
- f. Grant attorneys' fees and costs of this suit under the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412(2), *et seq.*; and
- g. Grant such other relief as the Court deems necessary and proper.

Dated: July 5, 2023

By:

A rectangular box containing a handwritten signature in blue ink that reads "Roopal Patel".

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