

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

\_\_\_\_\_  
ALYSE SANCHEZ )  
10225 Frederick Ave., Apt. 514 )  
Kensington, MD 20895 )  
Montgomery County )

and )

ELMER ONAN SANCHEZ HERNANDEZ )  
10225 Frederick Ave., Apt. 514 )  
Kensington, MD 20895 )  
Montgomery County )

and )

AMIRA ABBAS ABDALLA )  
645 S Avondale Rd )  
Baltimore, MD 21222 )  
Baltimore City )

and )

JEAN CLAUDE EYEGE-NANA )  
8001 Mandan Road )  
Greenbelt, MD 20770 )  
Prince George's County )

and )

THERESA RODRIGUEZ PEÑA )  
P.O. Box 4713 )  
Baltimore, MD 21211 )  
Baltimore City )

and )

MISAEAL RODRIGUEZ PEÑA )  
P.O. Box 4713 )  
Baltimore, MD 21211 )  
Baltimore City )

and )

OLIVIA ALDANA MARTINEZ )  
212 Prince Street )  
Salisbury, MD 21804 )  
Wicomico County )

and )

JOSE CARLOS ALDANA MARTINEZ )  
212 Prince Street )  
Salisbury, MD 21804 )  
Wicomico County )

and )

TATYANA MURITHI )  
545 Elm Frost Blvd )  
Rockville, MD 20850 )  
Montgomery County )

and )

MWITI MURITHI )  
545 Elm Frost Blvd )  
Rockville, MD 20850 )  
Montgomery County )

and )

BIBIANA NDULA )  
3822 Terka Circle )  
Randallstown, MD 21133 )  
Baltimore County )

and )

ERIC NDULA )  
3822 Terka Circle )  
Randallstown, MD 21133 )  
Baltimore County )

Plaintiffs-Petitioners, )

v. )

KEVIN MCALEENAN, Acting Secretary, )  
Department of Homeland Security )

Civil No. 1:19-cv-01728-GJH

Secretary of Homeland Security )  
 Washington, D.C. 20528 )  
 )  
 and )  
 )  
 MATTHEW ALBENCE, Acting Director, )  
 Immigration and Customs Enforcement )  
 500 12th St., SW )  
 Washington, D.C. 20536 )  
 )  
 and )  
 )  
 DIANNE WITTE, Director, )  
 Maryland Field Office of ICE )  
 Enforcement and Removal Operations )  
 31 Hopkins Plaza 7th Floor )  
 Baltimore, MD 21201 )  
 Baltimore City )  
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 )  
 Defendants-Respondents. )  
 \_\_\_\_\_ )

**AMENDED CLASS ACTION COMPLAINT  
 AND PETITION FOR WRIT OF HABEAS CORPUS**

**INTRODUCTION**

1. This civil rights action challenges a policy or practice by immigration officials of unlawfully separating families by detaining and deporting noncitizens who, pursuant to federal regulations, have properly applied to obtain legal status by virtue of their lawful marriages to American citizens.

2. In 2013, the federal government enacted rules allowing noncitizens to remain in the United States while they seek legal status arising from their valid marriages with US citizens, and in 2016, the government expanded those rules to allow noncitizens with removal orders to remain in the country during the application process. Both of these changes were intended to promote family unity and to avoid the grievous consequences of forcing a spouse or parent to leave the United States for years to pursue lawful immigration status from their country of origin while their

US citizen families remained in this country.

3. Plaintiffs-Petitioners' claims arise from the unlawful practice of the Department of Homeland Security (DHS), which is using the process by which a non-citizen married to a U.S. citizen can acquire legal status as a lure to arrest, detain, and remove immigrants from this country, and to prevent them from completing the provisional waiver process. When citizens and their noncitizen spouses appear at a federal immigration office in Baltimore, Maryland for a scheduled interview meant to demonstrate the bona fides of their marriage and family life, Immigration and Customs Enforcement (ICE) agents have arrested, detained or sought to remove the noncitizen spouse, ostensibly because that spouse is subject to a final order of removal.

4. DHS thus defeats the "stateside" provisional waiver process's express purpose, which is to protect United States citizens and their spouses from the extended and potentially indefinite family separation that would occur if the non-citizen spouses had to leave the U.S. for the duration of their efforts to regularize their immigration status. DHS has deliberately ignored regulations specifically designed to protect family-unity and has cruelly twisted those regulations, using them as an unlawful bait-and-switch to deceive the very people the regulations were designed to protect. Law-abiding noncitizens and their US citizen families are being lured to expend significant time, money, and effort to apply for support under these family-unity regulations, which DHS has no intention of honoring.

5. As this Court has previously recognized, "Defendants have taken a rule that was promulgated for one purpose and used it for the opposite purpose," and in doing so, have rendered the provisional waiver program a nullity. The policy is unlawful under the due process and equal protection guarantees of the U.S. Constitution, the Immigration and Nationality Act and its regulations, and the Administrative Procedure Act.

6. Two of the Plaintiffs-Petitioners are married couples—each comprising one U.S. citizen and one noncitizen with a final order of removal—whose lives have been unlawfully and unconstitutionally upended by this cruel and deceitful practice. The remaining Plaintiffs-Petitioners are married couples—also comprising one U.S. citizen and one noncitizen with a final order of removal—who have been afraid to pursue the legalization process afforded to immigrants married to U.S. citizens, because they fear that if they do the Government will arrest and detain the noncitizen spouse.

7. Upon information and belief, many other American citizens — both in Maryland and elsewhere — have also had their noncitizen spouses suddenly taken from them under this practice. Many others have been scared away from seeking legalization of their immigration status by virtue of their marriage to an American citizen out of fear that they will be detained and deported if they do. On behalf of themselves and all others similarly situated, Plaintiffs-Petitioners seek declaratory and injunctive relief preserving their ability to remain with their families while availing themselves of the 2016 provisional waiver regulations. Without this Court's intervention, DHS will continue systematically targeting the very individuals that the provisional waiver regulations were meant to protect, at great cost to them and their U.S. citizen spouses.

### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction under Art. I, § 9, cl. 2 of the United States Constitution (Suspension Clause); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2201 (Declaratory Judgment Act); 28 U.S.C. § 2241 (habeas corpus), and 28 U.S.C. § 1361 (federal employee mandamus action).

9. Venue is proper in the District of Maryland under 28 U.S.C. § 1391(c)(1) because

Plaintiffs-Petitioners and members of the proposed Class are domiciled in Maryland and/or are subject to the jurisdiction of the ICE-ERO Maryland Field Office. Accordingly, a substantial part of the events or omissions giving rise to the claims have occurred and will occur in the District of Maryland, including decisions concerning the detention and/or removal of noncitizen Plaintiffs-Petitioners and other noncitizen members of the proposed Class.

### **PARTIES**

10. Plaintiff-Petitioner Alyse Sanchez is a U.S. citizen, who lives at 10225 Frederick Ave Apt 514, Kensington, Maryland. She is the wife of Plaintiff-Petitioner Elmer Onan Sanchez Hernandez.

11. Plaintiff-Petitioner Elmer Onan Sanchez Hernandez is a citizen of Honduras who resides at 10225 Frederick Ave Apt 514, Kensington, Maryland. He was arrested by ICE-ERO officers in Baltimore, Maryland on May 7, 2019, and was previously detained by Defendants-Respondents and held in immigration detention. He has been released subject to an order of supervision. He is subject to the jurisdiction of the ICE-ERO Maryland Field Office.

12. Plaintiff-Petitioner Jean Claude Eyeghe-Nana (Jean Claude Nana) is a citizen of Cameroon who resides at 8001 Mandan Road, Greenbelt, MD 20770, and who was detained by Defendants-Respondents and was held in immigration detention in Frederick, Maryland. He was released on June 14, 2019 on an order of supervision. He is subject to the jurisdiction of the ICE-ERO Maryland Field Office.

13. Plaintiff-Petitioner Amira Abbas Abdalla is a U.S. citizen who resides at 9107 5th Street Lanham, MD 20706. She is the wife of Plaintiff-Petitioner Jean Claude Nana.

14. Plaintiff-Petitioner Theresa Rodriguez Peña is a U.S. citizen, living in Baltimore City with a P.O. box at P.O. Box 4713 Baltimore, MD 21211. She is the wife of Plaintiff-Petitioner

Misael Rodriguez Peña.

15. Plaintiff-Petitioner Misael Rodriguez Peña is a citizen of Honduras who lives in Baltimore City with his wife and maintains a P.O. box at P.O. Box 4713 Baltimore, MD 21211. He has a final order of removal issued to him *in absentia*, on August 10, 2005, and is eligible for the waivers of the provisional waiver process. He did not attend his interview out of fear of arrest. He is subject to the jurisdiction of the ICE-ERO Maryland Field Office.

16. Plaintiff-Petitioner Olivia Aldana Martinez is a U.S. citizen who resides at 212 Prince Street Salisbury, MD 21804. She is the wife of Plaintiff-Petitioner Jose Carlos Aldana Martinez. She and plaintiff-petitioner Jose Carlos Aldana Martinez are waiting for a rescheduled interview date from USCIS.

17. Plaintiff-Petitioner Jose Carlos Aldana Martinez is a citizen of Mexico who lives at 212 Prince Street Salisbury, MD 21804. He was issued a final order of removal on March 6, 2018 and is eligible for the waivers of the provisional waiver process. He did not attend his I-130 interview out of fear of arrest, and he is waiting for a rescheduled interview date from USCIS.

18. Plaintiff-Petitioner Tatyana Murithi is a U.S. citizen who resides at 545 Elm Frost Boulevard, Rockville, MD 20850. She is the wife of Plaintiff-Petitioner Mwiti Murithi. She and plaintiff-petitioner Mwiti Murithi postponed their I-130 interview that was scheduled for June 7, 2019, and are awaiting a rescheduled date for their I-130 interview.

19. Plaintiff-Petitioner Mwiti Murithi is a citizen of Kenya, who resides at 545 Elm Frost Boulevard, Rockville, MD 20850. Plaintiff-petitioner Mwiti Murithi is eligible for the waivers of the provisional waiver process. He postponed the June 7, 2019 interview, and is currently awaiting a new interview date from USCIS.

20. Plaintiff-Petitioner Bibiana Ndula is a U.S. citizen who resides at 3822 Terka

Circle, Randallstown, MD 21133. She is the wife of Plaintiff-Petitioner Eric Ndula. She and plaintiff-petitioner Eric Ndula have a scheduled I-130 interview for August 6, 2019, and Eric is currently at risk of arrest because of his final order of removal.

21. Plaintiff-Petitioner Eric Ndula is a citizen of Cameroon, who resides at 3822 Terka Circle, Randallstown, MD 21133. He has a final order of removal as of November 13, 2002, and has a pending I-130 with the Baltimore USCIS Office. His interview date is August 6, 2019.

22. Defendant-Respondent Kevin McAleenan is the Acting Secretary of Homeland Security, the department of the federal government responsible for the enforcement of immigration laws. Secretary McAleenan is the ultimate legal custodian of the Plaintiff-Petitioners who are or were detained. He is also ultimately responsible for the enforcement tactics employed by ICE. He is sued in his official capacity.

23. Defendant-Respondent Matthew Albence is the Acting Director for ICE, the department of DHS responsible for apprehending, detaining, and removing noncitizen Plaintiff-Petitioners. Acting Director Albence is a legal custodian of the Plaintiff-Petitioners who are or were detained. He is also responsible for enforcement tactics and policy changes employed by ICE. He is sued in his official capacity.

24. Defendant-Respondent Dianne Witte is the Field Office Director for the ICE-ERO Maryland Field Office. She is a legal custodian of the Plaintiff-Petitioners who are or were detained. She is also responsible for the enforcement of changes in policy and the tactics that are used at the Maryland ICE-ERO Field Office. She is sued in her official capacity.

### **LEGAL BACKGROUND**

25. The noncitizen spouses of U.S. citizens are eligible to become lawful permanent residents of the United States despite previously having been ordered removed, but to do so, they

need to leave the country in order to apply for an immigrant visa at a U.S. consulate abroad—a procedure known as consular processing.

26. Departure from the United States can trigger several grounds of inadmissibility. 8 U.S.C. 1182(a). One of the most common applies to anyone who has left the U.S. after spending over a year here without authorization. 8 U.S.C. § 1182(a)(9)(B)(i)(II). Similarly, anyone who has been ordered removed is deemed “inadmissible.” 8 U.S.C. § 1182(a)(9)(A). Both of these grounds of inadmissibility require that a person who has left the United States remain abroad for ten years prior to returning—unless the ground of inadmissibility is waived. *See* 8 U.S.C. § 1182(a)(9)(B)(v) (waiver of inadmissibility for unlawful presence if separation from U.S.-citizen or LPR spouse or parent will cause that person extreme hardship); 8 U.S.C. § 1182(a)(9)(A)(iii) (waiver of inadmissibility for prior removal order if applicant obtains consent to reapply for admission). But the process of applying for a waiver of inadmissibility is unpredictable and can require a wait of months or years, during which time a non-U.S. citizen spouse who has left the country must remain abroad, away from his or her family.

27. Prior to 2013, the unpredictability of this process and long wait time outside the country deterred many noncitizen spouses from leaving the U.S. to become permanent residents. *See Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives, Proposed Rule*, 77 Fed. Reg. 19902, 19906 (Apr. 2, 2012) (“many immediate relatives who may qualify for an immigrant visa are reluctant to proceed abroad to seek an immigrant visa”). For those who did depart, the long wait times abroad often caused their U.S.-citizen family members precisely the type of hardship that the waivers were intended to avoid. *Id.*

28. In 2013, USCIS addressed this problem by promulgating regulations that made it possible for the spouses of U.S. citizens who had been present in the U.S. without authorization to

apply for a waiver of inadmissibility for unlawful presence *prior* to leaving the U.S. to consular process. This application is known as a “stateside” waiver. In 2016, the agency expanded the stateside waiver process to make it available to noncitizens with final orders of removal. *See Expansion of Provisional Unlawful Presence Waivers of Inadmissibility; Final Rule*, 81 Fed. Reg. 50244, 50245 (July 29, 2016). Both regulations were promulgated through notice and comment.

29. The purpose of these amendments to federal regulations was to encourage people who would otherwise be reluctant to pursue lawful status outside the U.S. to do so and to promote family unity during the process. *Provisional Unlawful Presence Waivers of Inadmissibility for Certain Immediate Relatives; Final Rule*, 78 Fed. Reg. 536-01 (Jan. 3, 2013); 81 Fed. Reg. at 5024-01 (expansion of waiver program will “reduce[] separation time among family members” and bring about “humanitarian and emotional benefits derived from reduced separation of families”). By permitting noncitizens to obtain waivers in the U.S. prior to departing, the regulations reduced the time that noncitizen spouses would have to spend outside the U.S. and separated from their families from months or years to a few weeks and reduced “the financial and emotional impact on the U.S. citizen and his or her family due to the [noncitizen] immediate relative's absence from the United States.” 77 Fed. Reg. at 19907; *see also* 81 Fed. Reg. at 50245-46. This would “encourage individuals to take affirmative steps” to obtain lawful status that they might not otherwise take, 77 Fed. Reg. at 19902-01, including an estimated 100,000 people who, like some of the plaintiffs in this case, became eligible for the provisional waiver process only after it was expanded in 2016. 81 Fed. Reg. at 50244.

30. USCIS's Field Manual states, "As a general rule, any alien who appears for an interview before a USCIS officer in connection with an application or petition seeking benefits under the Act shall *not* be arrested during the course of the interview, even though the alien may

be in the United States illegally." USCIS Field Manual § 15.1(c)(2) (emphasis added).

31. For noncitizen spouses with an outstanding order of removal, the process to obtain legal status via consular processing with a stateside provisional waiver now has five parts.

32. First, the U.S.-citizen or Lawful Permanent Resident spouse files a Form I-130, Petition for Alien Relative, which requires establishing that the petitioner and beneficiary have a bona fide relationship. USCIS may require an appearance at an interview to determine this.

33. Second, once the I-130 is approved, the noncitizen spouse files a Form I-212, Permission to Reapply for Admission into the United States After Deportation or Removal. As amended in 2016, the regulations governing this waiver state that it can be conditionally approved for a person with a removal order prior to that person's departure from the U.S. 8 C.F.R. § 212.2(j); 2016 Final Rule, 81 Fed. Reg. at 50262. An I-212 application filed as part of the stateside waiver process is adjudicated by the local USCIS field office, which usually takes several months.

34. Third, once a Form I-212 is conditionally approved, a noncitizen spouse applies for a provisional unlawful presence waiver using Form I-601A, Application for Provisional Unlawful Presence Waiver. 8 C.F.R. § 212.7(e)(4)(iv) (establishing eligibility of a person with a removal order who "has already filed and USCIS has already granted... an application for consent to reapply for admission"). This application also takes several months to adjudicate.

35. Fourth, once the noncitizen obtains a provisional unlawful presence waiver, he or she must go abroad to appear for an immigrant visa interview at a U.S. consulate. 8 C.F.R. § 212.7(e)(3)(v). The departure from the U.S. executes the prior removal order. 8 U.S.C. § 1101(g); 8 C.F.R. § 1241.7. After the interview, if the Department of State determines no other ground of inadmissibility applies, it may issue an immigrant visa.

36. Fifth, the noncitizen may travel to the United States with his or her immigrant visa. Upon admission to the United States, the noncitizen becomes a lawful permanent resident.

37. In sum, these regulations allow an otherwise eligible individual who is the spouse of a U.S. citizen or Lawful Permanent Resident and who lives in the U.S. unlawfully and with a final order of removal to 1) come forward voluntarily; 2) apply for legal status via marriage to a U.S. citizen or legal permanent resident; 3) undergo the provisional waiver process; 4) if all the requirements are met and the waivers granted, to depart the country to obtain an immigrant visa once the grounds of inadmissibility that departure will trigger have been waived.

38. Although the 2016 regulations remain in effect, ICE has adopted a policy and practice of detaining and seeking to remove individuals availing themselves of the I-130 procedure, which allows non-citizens married to U.S. citizens or lawful permanent residents to gain lawful immigration status, arresting and deporting them before they can access the process that allows non-citizens to seek a waiver of inadmissibility while remaining in the U.S.

### **SPECIFIC FACTS**

#### **I. Plaintiffs-Petitioners Alyse Sanchez and Elmer Onan Sanchez Hernandez**

39. The Plaintiffs-Petitioners Alyse Sanchez and Elmer Onan Sanchez Hernandez have been married since August 7, 2013 and have two children together. Their first son, Aaron, was born on September 16, 2015, and their second son, Matthew, was born on July 27, 2017. The family resides in Kensington, Maryland, which is in Montgomery County.

40. Ms. Alyse Sanchez is a U.S. citizen and Mr. Elmer Onan Sanchez Hernandez (“Mr. Sanchez”) is a citizen of Honduras. Mr. Sanchez was ordered removed from the U.S. *in absentia* on September 6, 2005 because he did not receive notice of his hearing.

41. Ms. Sanchez submitted a petition for alien relative I-130 on behalf of her husband

on September 4, 2018, as the first step in a family based petition.

42. Mr. and Ms. Sanchez were scheduled for an interview on their I-130 application at the USCIS-Baltimore Field Office, located at 3701 Koppers Street, in Baltimore, Maryland, on May 7, 2019. The interview notice and USCIS's own guidance and procedures indicated that the interview was solely to confirm the bona fides of the couple's marriage. Mr. and Ms. Sanchez attended the interview with their attorney and an interpreter on May 7, and at the conclusion of their interview, the interviewer approved the I-130 petition and sent a formal approval in the mail that was received the following day.

43. After the USCIS officer granted the I-130, he said that his supervisor had to come and authenticate the case, so Ms. Sanchez needed to go wait in the waiting room. A few minutes later the attorney and interpreter came out to tell Ms. Sanchez that ICE had detained her husband and they handed her his belongings. Mr. Sanchez was placed in handcuffs and taken away without Ms. Sanchez being able to say goodbye.

44. Even though the couple's I-130 was approved by USCIS before Mr. Sanchez was detained, ICE refused to release Mr. Sanchez. Mr. Sanchez was originally detained at the Frederick County Adult Detention Center in Frederick, Maryland, but he was moved a number of times. He was under an imminent threat of removal to Honduras, where he feared for his life.

45. Mr. Sanchez's detention and imminent deportation caused his wife and children significant harm. Ms. Sanchez was shocked and distraught by her husband's arrest, and broke down in tears. She called her mother to help talk with the immigration lawyer because she was too upset to ask about next steps.

46. During Mr. Sanchez's detention, his children asked for him every day. The younger son, Matthew, now feels separation anxiety and did not want to be left alone. Aaron, the older

son, acting out and misbehaving since Mr. Sanchez has been detained. Aaron constantly asked for his father.

47. During Mr. Sanchez's detention, Ms. Sanchez's mental health also deteriorated. Before his detention, she does not remember a day being separated from her husband. After he was detained, she felt empty, and not like herself, and felt overwhelmed. She nearly wrecked her car and took herself to the hospital, where she was held under observation for several hours because of her mental state. The hospital sent her to a mental health crisis center, and she has since gone back to visit the Rockville Department of Health and Human Services' crisis center for mental health services.

48. Mr. Sanchez is the primary income earner in the family, as the owner of a home remodeling company called Sanchez Painting and Remodeling LLC, and during his detention the family struggled to pay the bills, and were in danger of eviction from their apartment.

49. Ms. Sanchez's family and work life balance were also completely disrupted. She had to bring the couple's two children to her parents' house for a few days at a time in Salisbury, because she had to work shifts that take place at late hours or on the weekend.

50. Mr. Sanchez attempted to have his removal case reopened to prevent his deportation by filing a motion to reopen in immigration court, but the motion was denied on June 3, 2019.

51. Mr. and Ms. Sanchez filed this lawsuit and request for TRO, resulting in Defendants agreeing to Mr. Sanchez's conditional release from custody under an order of supervision on June 19, 2019.

52. The Sanchez family has been shut out of the only means left to them to obtain lawful immigration status for Mr. Sanchez without undergoing an indefinite and painful separation, which is precisely what USCIS regulations are intended to avoid.

**II. Plaintiffs-Petitioners Jean Claude Nana and Amira Abbas Abdalla**

53. Jean Claude Nana and his wife Amira Abbas Abdalla married on April 14, 2017. He is from Cameroon, currently living in Prince George's County with his brother, and Amira is a naturalized U.S. citizen from Sudan, who is currently living with her parents. They previously were renting an apartment together, but because he lost his job as a maintenance engineer at Georgetown University Hotel while in immigration detention, they have not been able to financially recover to rent an apartment together again.

54. They have no children, but have younger siblings whom they care for as their own children.

55. Jean Claude entered the U.S. with a B-1 visitor's visa on April 19, 2011, traveling through Gabon. He claimed asylum based on fear of persecution for his political opinion, but was denied and was ordered removed on May 3, 2016. His appeals to the Board of Immigration Appeals and to the U.S. Court of Appeals for the Fourth Circuit failed, denied on February 17, 2017 at the BIA and October 12, 2017 at the Fourth Circuit. His only option to receive a Green Card is through his marriage to Amira.

56. Amira filed an I-130 petition on June 1, 2017 and USCIS acknowledged receipt on September 12, 2017.

57. Jean Claude and Amira went to the I-130 marriage interview on August 22, 2018 at the Baltimore USCIS Office. After the interview ended, Jean Claude was brought to another room where he was told he would be fingerprinted, but instead two armed ICE officers arrested him and placed him in handcuffs. He was extremely confused and when the officers arrested him they said they would deport him. He was never fingerprinted and he was never given the chance to say goodbye to Amira.

58. Jean Claude was held in detention for 296 days, nearly ten months, and was finally released on June 14, 2019 when counsel were made aware that he would be imminently deported on June 13, 2019 and were able to negotiate with opposing counsel regarding delaying any removal and releasing Jean Claude in connection with this case.

59. While Jean Claude was in detention, Amira tried to call him every night, but he was nevertheless extremely lonely since she could not visit him, since she does not have a driver's license. Amira also had to take care of her siblings and Jean Claude's siblings on her own, and had to look for an additional job to make up for Jean Claude's lost income.

60. Jean Claude was the breadwinner of the family, and when he lost his job while he was held in immigration detention, he was not able to support the family, and still has not been able to find work. Amira had to leave their apartment and move in with her parents because she could not afford the apartment on her income alone. Jean Claude's income also supported Amira's parents, and the loss of his income forced her parents to move into a smaller home.

61. Amira's mother loves Jean Claude and felt powerless to help him. Jean Claude's younger brother and Amira's seven-year-old sister both adore Jean Claude, and he helped take care of them emotionally and financially. Before Jean Claude's detention, he and Amira supported his brother while he was taking classes in college, so when Jean Claude was detained, his brother had to find a job in order to support himself.

62. The stress from his arrest and prolonged detention causes Jean Claude emotional anxiety, and he and his family are afraid that he might be taken away from his family again, and his family will be left alone to handle the economic and emotional trauma this situation has caused. As the breadwinner and protector of his family, this worries him and makes him feel helpless.

63. Jean Claude and Amira are now very distrustful of the process, and are unsure whether they can trust the U.S. government moving forward, but feel they need to continue or else Jean Claude will not be able to receive a Green Card. They have not yet received a decision on their I-130 petition.

### **III. Plaintiffs-Petitioners Misael Rodriguez Peña and Theresa Rodriguez Peña**

64. Misael Rodriguez Peña is from Honduras and married his wife, Theresa Rodriguez Peña is a U.S. citizen. They met in 2007 through a mutual friend, and married on March 8, 2010 and live in Maryland. Theresa is a clerk at Royal Farms in Baltimore, Maryland, and Misael has worked in the construction industry and in restaurants in Maryland. They have four U.S. citizen children together: Misael Jr., who is ten years old; Luis, who is nine years old, Sofia, who is six years old, and EliAna, who is four years old. Misael also has two children from a prior relationship who live with them and are under their care: Mari, who is sixteen years old and Kevin, who is fourteen years old.

65. Misael has a final order of removal that was issued to him *in absentia*, on August 10, 2005 from an immigration court in San Antonio, Texas.

66. Misael is eligible for a Green Card through the provisional waiver process, as the spouse of a U.S. citizen. On March 26, 2018, Theresa submitted an I-130 petition, the first step of the process, to the USCIS office in Baltimore. Their interview was scheduled for May 6, 2018 at 7:30 AM. Prior to the interview, their attorney, Mikhael Borgonos of the Esperanza Center of Catholic Charities in Baltimore, informed them of reports that ICE was arresting potential I-130 beneficiaries such as Misael during their marriage interviews. This made them both very anxious and fearful and they decided that on May 6, only Theresa and Mr. Borgonos would attend the interview without Misael, for fear that he might be arrested, detained, and deported.

67. On May 6, 2019, the I-130 interview appointment began at 8:03 AM. The interviewer, Officer Byrd, asked where Misael was and Mr. Borgonos explained that Misael had decided not to attend the interview because USCIS and ICE have a practice of arresting people at their marriage interviews. He also said to Officer Byrd that USCIS has created a chilling effect for beneficiaries to attend these interviews by detaining and removing individuals with final orders of removal.

68. Theresa began explaining the bona fides of their marriage when they were interrupted by Officer Byrd's supervisor, Ms. Baker, who halted the interview because Misael was absent. She asked where Misael was, and Theresa began to cry because she was so nervous and afraid of what was happening. Mr. Borgonos repeated to Ms. Baker that Misael had not come because he was afraid that he would be arrested at the interview. He further informed Ms. Baker that, per the recent ruling in *Lin v. Nielsen*, USCIS could not use the I-130 interview as a trap to detain and remove potentially eligible applicants. Ms. Baker stated that Misael had a pending removal order from 2005 and Mr. Borgonos responded that the removal order was not relevant for the purpose of an I-130. Theresa felt that had Misael been there, he would have been arrested and taken away from them. Officers Byrd and Baker ended the interview a mere 30 minutes after it began, and Theresa was not allowed to present any more information about the bona fides of her marriage.

69. Theresa and Misael remain extremely anxious and fearful that, because Misael was not at the interview, their I-130 petition will be denied and they will have to go through the process again and risk arrest. Theresa would be devastated if Misael were deported back to Honduras and their children are very scared that their father might be separated from them. They live in fear of the increased immigration raids they hear about on the news. Misael and Theresa still talk about

the interview and the children cry because they are worried that their father may be taken away any day, and Misael and Theresa worry about the psychological toll that this is taking on the family.

**IV. Plaintiffs-Petitioners Jose Carlos Aldana Martinez and Olivia Aldana**

70. Jose Carlos Aldana Martinez was born in Mexico and Olivia Aldana was born in the United States and is a U.S. citizen. They met in June of 2017, when Olivia interviewed for a position at an Outback Steakhouse, where Jose Carlos is the manager, began dating and married on February 24, 2018. Olivia is now employed at a Dunkin Donuts, and Jose Carlos is still a Manager at Outback Steakhouse. They have one U.S. citizen child together: Elizabeth, who was born in November 2018, and is eight months old. They are also the caregivers for Jose Carlos' son and Olivia's step son, Liam, who is seven years old. Since he was a toddler, Liam has dealt with developmental delays, ADHD, anxiety, and depression, and requires specialized services and care. He has attended speech, occupational, and behavioral therapy appointments since he was three years old.

71. Jose Carlos attempted to obtain legal status by filing for cancellation of removal, but the request was denied because the immigration judge found that he could not meet the continuous presence requirement. He was issued a final order of removal by Judge Williams of the Baltimore Immigration Court on March 6, 2018.

72. Because he is the spouse of a U.S. citizen and not currently in removal proceedings, Jose Carlos is eligible for the I-130 and provisional waiver process. On May 21, 2018, Olivia submitted an I-130 petition to USCIS in Baltimore. The interview was scheduled for June 14, 2019, but because the couples' attorney Steven Planzer of the law firm Castaneda Planzer in Salisbury, Maryland, informed them of reports that ICE was arresting potential I-130 beneficiaries

during their marriage interviews, they were nervous and did not want Jose Carlos to attend the interview. They decided that Olivia alone would attend the marriage interview scheduled for June 14 to avoid arrest, detention, and deportation.

73. During the I-130 interview on June 14, 2019, Olivia informed the interviewer that Jose Carlos was not present because he had to be at work. The interviewer did not ask any additional questions and ended the interview. Olivia was given a piece of paper and told by the officer to write down that Jose Carlos could not be there and that USCIS would need to reschedule the interview. Olivia wrote this down and left the statement with a woman at the front desk.

74. Before leaving, Olivia told the interviewer that she was worried that Jose Carlos would be arrested at a future interview. The interviewer told her that her husband would have to attend the rescheduled interview and that USCIS could not arrest anyone because they had no authority to do so, but did not say anything about ICE arresting people.

75. The interview has not yet been rescheduled. Since Olivia was not allowed to continue the interview on her own and prove the bona fides of their marriage, they will have to have another interview and are simply waiting on a rescheduled date.

76. Jose Carlos and Olivia remain extremely anxious and fearful that he might be deported. They have trouble sleeping at night due to the constant worry that Jose Carlos will be deported, leaving Olivia to raise their infant daughter on her own. Jose Carlos is also afraid that he will be arrested any time he leaves the house to go to work or pick up their son from his weekly therapy appointments. They are afraid to tell Liam that his father might be deported because he would likely feel scared and confused. In the last two years, Liam has made great strides in his development through therapy, and losing his father – the adult figure he trusts the most – would set him back significantly. In addition, Jose Carlos is the primary breadwinner in the family. His

paycheck covers their most essential expenditures – rent, utilities, the car payment, and food – while Olivia’s much smaller paycheck goes towards miscellaneous expenses. Without Jose Carlos, they would be at risk of becoming homeless.

**V. Plaintiffs-Petitioners Mwiti Murithi and Tatyana Murithi**

77. Mwiti Murithi is a citizen of Kenya, and his wife, Tatyana Murithi, was born in the United States and is a United States citizen. They met through Tatyana’s sister, who was a classmate of Mwiti, started dating and married on May 23, 2014. Mwiti is a Technician at a pathology lab in Maryland that processes samples for skin cancer diagnosis and treatment and Tatyana is a Human Resources Generalist at Mary’s Center, a community health center in Washington, DC.

78. Mwiti came to the United States on an A-3 employment visa in July 2004 to work as a domestic servant for a Kenyan diplomat. In 2006, he enrolled as a student at Montgomery College and in 2008, after his employment with the Kenyan consulate ended, he transferred to the University of Maryland College Park to study cell biology and molecular genetics. He received an F-1 student visa on August 12, 2009.

79. In 2010, while he was in school, he fell behind on his tuition payments and could not continue studying at UMD College Park, breaching his visa and triggering removal proceedings. ICE arrested him on June 28, 2010, but he was released soon after with an ankle monitor. He was granted voluntary departure by the immigration judge on December 8, 2010, and his ankle monitor was taken off, but he never departed.

80. Because he failed to depart the country, his voluntary departure order was converted to a final removal order on April 7, 2011. He was arrested on the evening of November 3, 2011 and detained at the Frederick County Detention Center for nine months before being released by

ICE on August 17, 2012 on an order of supervision due to ICE's inability to obtain travel documents for him. He was able to gather enough funds to re-enroll in school and graduated with a Bachelor of Science in Molecular Biology and Genetics in May of 2017.

81. As the spouse of a U.S. citizen and an immigrant who is not in removal proceedings, he is eligible to apply for an I-130 and the necessary waivers through the provisional waiver process to obtain a Green Card. On July 2, 2018, Tatyana submitted an I-130 petition to the USCIS to their Potomac Regional Service Center in Arlington, VA, and the petition was then transferred to the local USCIS field office in Baltimore. The I-130 interview was initially scheduled for June 7, 2019. Prior to the interview, Mwiti and Tatyana's immigration attorney, Eric Singer, of Singer Immigration Law Firm in Bethesda, Maryland, advised that ICE was arresting I-130 beneficiaries during their marriage interviews. This made Mwiti and Tatyana very anxious and fearful, so their immigration lawyer postponed the interview.

82. Mwiti and Tatyana have not yet received notice of a rescheduled interview, but expect that it will come soon.

83. Both Mwiti and Tatyana are very worried that he will be arrested and deported. The thought of being separated from Tatyana makes Mwiti very anxious and upset. They want to start a family together, but have put off having children because they do not want to subject any children they have together to the fear that Mwiti might be deported and the resulting instability.

#### **VI. Plaintiffs-Petitioners Eric Ndula and Bibiana Ndula**

84. Eric Ndula was born in Cameroon. His wife, Bibiana Ndula, was born in Nigeria, immigrated to the United States and became a naturalized citizen on May 14, 2010. The two met at church in 2004, fell in love, and married on August 21, 2015. Eric is a Machine Operator for a manufacturing company in Baltimore and Bibiana is a Registered Nurse at Maxim Healthcare

Services in Towson. They have two U.S. citizen children together: Laura, who is almost fourteen years old; and Kelly, who is ten years old. They are also the primary caregivers for Bibiana's daughter – and Eric's step-daughter – Mary, who is eighteen years old.

85. Eric came to the United States on May 14, 2000 to seek asylum. He was denied, but appealed to the Board of Immigration Appeals, which denied his petition on November 13, 2002, and the U.S. Court of Appeals for the Fourth Circuit then denied his petition for review on January 13, 2004. Eric's order of removal became final on November 13, 2002, when the Board of Immigration Appeals denied his appeal and administratively closed his case.

86. As the spouse of a U.S. citizen and currently not in removal proceedings, he is eligible for a Green Card through the I-130 and provisional waiver process. On September 21, 2017, Bibiana submitted an I-130 petition to the USCIS office in Baltimore. The interview was initially scheduled for August 24, 2018, but their attorney Mary Ann Berlin of the law firm Berlin & Associates, P.A. in Baltimore, Maryland, advised that ICE was arresting potential I-130 beneficiaries during their marriage interviews. Eric and Bibiana decided to postpone the interview out of concern that Eric might be arrested. The interview was rescheduled for September 17, 2018, but they postponed it again because they remained anxious that Eric might be deported. The interview has been rescheduled for August 6, 2019. They are still fearful that Eric will be arrested at this upcoming interview. Ms. Berlin has informed them that she believes that if they tried to postpone this upcoming interview, the application would be considered abandoned.

87. Bibiana suffers from hypertension and sleep apnea and the stress caused by this situation has worsened her health. Eric is scared about what might happen if he is deported back to Cameroon, where he has not lived for nearly 20 years and would not be safe. He came from a region that was once a part of British Cameroon; the political situation in Cameroon has rendered

the region dangerous for non-French-speaking Cameroonians like Eric, who are being marginalized and killed by the Francophone majority. Eric and Bibiana's children are old enough to understand what is happening and would be devastated if he were deported.

### **CLASS ACTION ALLEGATIONS**

88. In addition to the named Plaintiffs-Petitioners, counsel for Plaintiffs-Petitioners has been made aware of numerous other instances in which applicants with outstanding removal orders have been detained at I-130 interviews in Maryland. Some of those arrested and detained have subsequently been removed from the United States. Counsel for Plaintiffs-Petitioners has also been made aware of numerous instances in which US citizens and their non-citizen spouses in Maryland have been afraid of attending their I-130 interviews out of fear that the non-citizen spouses will be detained at the interview and removed.

89. Plaintiffs-Petitioners now bring this action for themselves and as a class action on behalf of others similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2), or, in the alternative, as a representative habeas corpus petition, on behalf of a class of people pursuing the I-130 and provisional waiver application process. This proposed class is defined as:

Any U.S. citizen and his or her noncitizen spouse who (1) has a final order of removal and has not departed the U.S. under that order; (2) is the beneficiary of a pending or approved I-130, Petition for Alien Relative, filed by the U.S. citizen spouse; and (3) is not "ineligible" for a provisional waiver under 8 C.F.R. § 212.7(e)(4)(i) or (vi).

90. *Numerosity*: The proposed class meets the requirements of Federal Rule of Civil Procedure 23(a)(1) because it is so numerous that joinder would be impracticable. On information and belief, the proposed class presents a common scenario in Maryland's immigrant communities, and there are well over 40 putative class members. In addition, as U.S. citizens continue to file I-130 applications for noncitizen spouses who are subject to final orders of removal, additional members will join the class. Indeed, Mr. Sanchez was detained at his I-130 interview on May 7,

2019, months after a Maryland lawsuit was filed challenging DHS's unlawful practice. USCIS published data also shows that in 2019 alone, there were 1,162 new I-130 petitions filed on behalf of immediate relatives, and 7,600 pending a decision.<sup>1</sup>

91. *Commonality*: The proposed Class meets the requirements of Federal Rule of Civil Procedure 23(a)(2) because class members share common issues of law and fact, including, but not limited to, whether the government may detain or remove noncitizen class members on the basis of their removal orders alone, and without regard to their efforts to correct deficiencies in their immigration status under the I-130 process and 2016 provisional waiver regulations.

92. *Typicality*: The requirements of Federal Rule of Civil Procedure 23(a)(3) are satisfied because Plaintiffs-Petitioners' claims are typical of those of the proposed class as a whole. Plaintiffs-Petitioners' and the class of individuals they seek to represent are all either: (1) subject to final removal orders, married to U.S. citizens, and have a pending or approved I-130 petition submitted by their spouse, or (2) the U.S. citizen spouse of such a person. Plaintiffs-Petitioners assert that detaining or taking steps toward removing noncitizen petitioners violates all Plaintiffs-Petitioners' Fifth Amendment rights to due process, the Immigration and Nationality Act and applicable regulations, and the Administrative Procedure Act. Their claims therefore raise the same legal questions at the core of the class claims.

93. *Adequacy*: The requirements of Federal Rule of Civil Procedure 23(a)(4) are satisfied. Plaintiffs-Petitioners will adequately represent the proposed class because they seek the same relief as the other members of the proposed class and do not have any interests adverse to

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<sup>1</sup> DHS USCIS Performance Reporting Tool, Number of Form I-130, Petition for Alien Relative By Category of Relative, Case Status, and USCIS Field Office or Service Center Location January 1 - March 31, 2019 (Fiscal Year 2019, Quarter 2) (Apr. 2019) [https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Family-Based/I130\\_performancedata\\_fy2019\\_qtr2.pdf](https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Family-Based/I130_performancedata_fy2019_qtr2.pdf).

those of the proposed class as a whole. In addition, the proposed class is represented by counsel from Venable LLP and the American Civil Liberties Union Foundation of Maryland. These counsel have experience litigating class actions, including class actions involving the rights of noncitizens.

94. Finally, the proposed Class satisfies Federal Rule of Civil Procedure 23(b)(2) because immigration authorities have acted on grounds that are generally applicable to the proposed Class, in that all class members or their spouses have pending I-130 petitions and face potential detention or removal without regard to their efforts to correct deficiencies in their immigration status under the 2016 provisional waiver regulations. Class-wide injunctive and declaratory relief is therefore appropriate.

### **CAUSES OF ACTION**

#### **FIRST CLAIM**

#### **VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT AND APPLICABLE REGULATIONS (8 U.S.C. § 1182)**

95. Plaintiffs-Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

96. The INA does not condemn individuals who are married to U.S. citizens but who have received final orders of removal to permanent separation from their U.S. citizen spouses and children. Instead, it allows these individuals, if otherwise eligible, to leave the U.S. temporarily and return as lawful permanent residents—if they are granted waivers of applicable inadmissibility grounds under 8 U.S.C. § 1182(a). Specifically, § 1182(a)(9)(A)(iii) allows an individual who departed under an order of removal to avoid a bar on admission by obtaining the “consent[]” of the Attorney General. And § 1182(a)(9)(B)(v) allows an individual who lived in the United States unlawfully to avoid a similar 3-to-10-year bar by demonstrating that a denial of admission would

cause “extreme hardship” to a U.S. citizen spouse or parent.

97. These regulations thus allow an otherwise eligible individual who is the spouse of a U.S. citizen—and who lives in the United States unlawfully and with a final order of removal—to demonstrate the bona fide nature of his or her marriage, prove his or her eligibility for required waivers, depart the country briefly to complete processing of an immigrant visa application at a U.S. consulate, and then return to the United States to rejoin his or her family lawfully.

98. The Defendants-Respondents’ threat to detain and remove and/or detention and removal of noncitizen Plaintiffs-Petitioners and other noncitizen members of the proposed class without regard to their efforts to pursue legalization under the consular processing and provisional waiver regulations violates the INA and applicable regulations. The Defendants-Respondents’ use of the I-130 interview to trap noncitizen Plaintiffs-Petitioners and other noncitizen members of the proposed class to be detained and deported also violates the INA and applicable regulations.

99. Through Defendants-Respondents’ actions, noncitizen Plaintiffs-Petitioners and other noncitizen members of the proposed class are unable to benefit from the regulations that outline how noncitizens with removal orders may become legal permanent residents through a “stateside” waiver process that allows them to avoid lengthy and often traumatic separations from their families..

100. Through Defendants-Respondents’ actions, the petitions by citizen Plaintiffs-Petitioners and other citizen members of the proposed class on behalf of their noncitizen spouses and the approval of those petitions are meaningless because the benefit of having their spouses with them during the “stateside” waiver process is frustrated by Defendants-Respondents’ actions.

**SECOND CLAIM**  
**VIOLATION OF THE DUE PROCESS CLAUSE OF**  
**THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION**

101. Plaintiffs-Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

102. Due process protects a noncitizen's liberty interest in the adjudication of applications for relief and benefits made available under the immigration laws. Moreover, noncitizen Plaintiffs-Petitioners and noncitizen members of the proposed class have a liberty interest in being able to remain in the United States in order to pursue adjudications for relief under the provisional waiver process—which was specifically designed to allow them to take steps towards legalization from within the United States in order to avoid protracted separation from their U.S. citizen spouses and other family members.

103. Due process also protects a U.S. citizen's liberty interest in living with his or her spouse in the United States. The citizen Plaintiffs-Petitioners and other citizen members of the proposed class have a protected due process interest in their spouse's ability to remain in the United States while seeking lawful permanent residency through the consular processing/provisional waiver process.

104. Finally, due process protects Plaintiffs-Petitioners and other members of the proposed class from being the victims of the bait-and-switch practice that ICE is engaged in out of its Baltimore ERO office.

105. The threat to detain and remove and/or detention and removal of noncitizen Plaintiffs-Petitioners and other noncitizen members of the proposed class without allowing them to follow the 2016 provisional waiver procedures violates all their rights under the Due Process Clause of the Fifth Amendment.

**THIRD CLAIM**  
**VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT**  
(5 U.S.C. § 702, 5 U.S.C. § 706, 5 U.S.C. § 553)

106. Plaintiffs-Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

107. The APA also sets forth rulemaking procedures that agencies must follow before adopting substantive rules. DHS followed these rulemaking procedures to establish the provisional waiver process for the unlawful presence waiver, and to expand the availability of that waiver to noncitizens living with final orders of removal.

108. ICE's sudden decision to prohibit some noncitizens with final orders of removal from pursuing the process created by these regulations—a prohibition accomplished in this case by detaining and attempting to remove noncitizen Plaintiffs-Petitioners and other noncitizen members of the proposed class in the midst of their efforts to legalize their status—improperly alters these substantive rules without notice-and-comment rulemaking and without considering the reliance interests created by the regulations, in violation of the APA. The Defendants-Respondents' use of the I-130 interview to trap noncitizen Plaintiffs-Petitioners and other noncitizen members of the proposed class to be detained and deported also violates the APA.

109. The Defendants-Respondents' threat to detain and remove, and/or detention and removal of noncitizen Plaintiffs-Petitioners and other noncitizen members of the proposed class from the U.S. will violate the Administrative Procedure Act's prohibition on agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

**FOURTH CLAIM**  
VIOLATION OF THE SUSPENSION CLAUSE ARTICLE I § 9 CLAUSE 2 OF THE U.S.  
CONSTITUTION

110. Plaintiffs-Petitioners repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

111. The Defendants-Respondents' detention and removal of any noncitizen Plaintiffs-

Petitioners and other noncitizen members of the proposed class without any opportunity for meaningful judicial review of the unlawfulness of that detention and removal would violate the Suspension Clause, Article I § 9 Clause 2 of the U.S. Constitution.

112. The removal of such noncitizen Plaintiffs-Petitioners and other noncitizen members of the proposed class would be the final culmination of the unlawful bait-and-switch practice that ICE is engaged in out of its Baltimore ERO office.

**PRAYER FOR RELIEF**

WHEREFORE Plaintiffs-Petitioners respectfully request that the Court:

A. Order the immediate unconditional release of any noncitizen Plaintiffs-Petitioners from ICE custody and any noncitizen member of the proposed class or, in the alternative, require the government to provide them with a prompt bond hearing;

B. Declare that the Defendants-Respondents' policy or practice of arresting or detaining noncitizens on the basis of a final order of removal who have undertaken the initial step of the provisional waiver process is contrary to law;

C. Preliminarily, and permanently enjoin the arrest, detention, or removal of Plaintiffs-Petitioners and members of the proposed class from the U.S. while they are pursuing legalization by way of the consular processing/provisional waiver process beginning with the initial step of an I-130 petition and ending with the noncitizen's consular processing;

D. Award attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d) and 5 U.S.C. § 504, if applicable; and

E. Grant any further relief that the Court deems just and proper.

Dated: August 5, 2019  
Baltimore, MD

Respectfully Submitted,

/s/

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