Court Decision Ensures Timely Adjudication of Employment Applications Filed by Initial Asylum Applicants

Frequently Asked Questions[1]
March 1, 2021

Introduction

On July 26, 2018, in a national class action, the U.S. District Court for the Western District of Washington ruled that the U.S. Citizenship and Immigration Services (USCIS) must adjudicate asylum applicants' ***initial*** (first time) applications for employment authorization documents (EADs) within 30 days pursuant to 8 C.F.R. § 208.7(a)(1) (2018). *Rosario v. U.S. Citizenship & Immigration Servs.*, 365 F. Supp. 3d 1156 (W.D. Wash. 2018). Specifically, the court ordered USCIS to cease "failing to adhere to the 30-day deadline" and to submit status reports every six months informing the court of the agency's compliance rates. *Id.* at 1163. The parties subsequently agreed to a partial plan to implement the court's decision. On March 20, 2019, following supplemental briefing by the parties, the district court ruled that it need not require USCIS to fully comply with the regulation by a date certain, but that class counsel may file a motion for civil contempt if USCIS fails to comply with the court's order. The court also held that individual class members seeking to compel adjudication of an individual EAD application may file separate actions in other appropriate venues. *Rosario v. U.S. Citizenship & Immigration Servs.*, 2019 U.S. Dist. LEXIS 46615, *11-12; 2019 WL 1275097, *4 (W.D. Wash. Mar. 20, 2019).

While Defendants initially appealed the district court's July 26, 2018 decision, Defendants subsequently moved to dismiss their own appeal following oral argument. The Ninth Circuit Court of Appeals dismissed the appeal, leaving the district court's permanent injunction in place.

---

[1] The information contained in this FAQ is not a substitute for independent legal advice supplied by a lawyer familiar with a client's case. The original version of this FAQ was drafted by Angélica Durón, a 3L at Northeastern University School of Law.

On June 22, 2020, the Department of Homeland Security (DHS) published a rule that removes the 30-day processing deadline for initial asylum EAD applications. 85 Fed. Reg. 37,502-37,546 (June 22, 2020) (eliminating 30-day deadline in 8 C.F.R. § 208.7(a)(1)). The new rule took effect on August 21, 2020. 8 Fed. Reg. at 37,502. However, on September 11, 2020, a district court judge preliminarily enjoined enforcement of this new rule against members of Asylum Seekers Advocacy Project (ASAP) and Casa de Maryland (CASA). *Casa de Maryland, Inc. v. Wolf,* No. 8:20-CV-02118-PX, 2020 U.S. Dist. LEXIS 166613, at *100-01, 2020 WL 5500165, at *33–34 (D. Md. Sept. 11, 2020). More information about the *Casa de Maryland* case, including how to become an ASAP member, is available here.

The district court's order, the partial implementation plan, and the LEXIS version of the district court's March 20, 2019 decision follow this FAQ as Exhibits A, B, and C, respectively.

1. Who is currently covered by the *Rosario* certified class?

To benefit from the district court's decision and the agreed partial implementation plan, an individual must be a member of the certified class, which is defined as follows:

> Noncitizens who have filed or will file applications for employment authorization that were not or will not be adjudicated within . . . 30 days . . . and who have not or will not be granted interim employment authorization. [This class] consists of only those applicants for whom 30 days has accrued or will accrue under the applicable regulations, 8 C.F.R. §§ 103.2(b)(10)(i), 208.7(a)(2), (a)(4).

Rosario, 365 F. Supp. 3d at 1159.

Thus, the class definition is limited to individuals entitled to 30-day processing under the applicable regulations. *Id.* Effective August 21, 2020, DHS eliminated the 30-day processing rule for initial asylum EAD applications. 8 Fed. Reg. 37,502-37,546. Individuals who did not submit their EAD applications before the August 21, 2020 effective date and who are not members of CASA or ASAP are not covered by the *Rosario* class.

However, the class continues to include CASA and ASAP members who are asylum applicants whose pending applications for their ***initial*** (first time) EADs, filed pursuant to 8 C.F.R. § 274a.12(c)(8), were not adjudicated within the required 30-day regulatory time frame and who did not receive an interim EAD.[2]

If the *Casa de Maryland* court ultimately strikes down the new rule eliminating the 30-day processing requirement, the prior version of the regulation and the original *Rosario* class will be restored.

Finally, asylum applicants who are applying to renew an EAD are not part of the class and different rules apply to them.

---

[2] If USCIS issues a Request for Additional Evidence (RFE), the 30-day adjudication period is paused from the time the RFE is issued until USCIS receives the response to the RFE. 8 C.F.R. § 103.2(b)(10)(i).

2. What did the district court decide in the July 26, 2018 decision?

The court found Defendants violated former 8 C.F.R. § 208.7(a)(1) (2020), which provides that, for an ***initial*** asylum EAD application, USCIS:

> shall have 30 days from the date of filing of the request [for] employment authorization to grant or deny that application, except that no employment authorization shall be issued to an asylum applicant prior to the expiration of the 180-day period following the filing of the asylum application filed on or after April 1, 1997.

Rosario, 365 F. Supp. 3d at 1158. Although the government did not dispute that USCIS failed to adjudicate ***initial*** asylum EAD applications within 30 days, Defendants argued that injunctive relief was not warranted because USCIS cannot achieve 100% compliance due to limited resources for the large volume of applications, and the government already had made efforts to comply. *Id.* at 1162. The court found that not only was "an injunction compelling agency action . . . appropriate here" but also that the court was *compelled* to issue such an injunction under the relevant case law. *Id.* at 1161. According to the court, "the purpose of promulgating the 30-day deadline on top of . . . [the] 150-day waiting period was to cabin what was already—in the agency's view—an extraordinary amount of time to wait for work authorization." *Id.* The court determined that the regulation's "plain language and clear objectives" intended expeditious adjudications and compelled the court to grant injunctive relief. *Id.*

3. What did the district court order in the July 26, 2018 decision?

The district court enjoined the government "from further failing to adhere to the 30-day deadline for adjudicating EAD applications, as set forth in 8 C.F.R. § 208.7(a)(1)." *Rosario*, 365 F. Supp. 3d at 1163. The order also requires the government "to submit status reports every six (6) months regarding the rate of compliance with the 30-day deadline." *Id.*

4. Did the government appeal the order?

Yes, but it is no longer on appeal. While Defendants initially filed a notice of appeal, Defendants moved to dismiss their own appeal after oral argument on the case, *NWIRP v. USCIS*, No. 18-35806 (9th Cir.). The court of appeals granted Defendants' motion to dismiss their appeal.

5. Does the district court's order remain in effect?

Yes. However, as discussed at Q1, the *Rosario* class has narrowed because of the new rule eliminating the 30-day processing deadline. USCIS is compelled to adhere to the 30-day deadline only for individuals who filed their initial asylum EAD applications before August 21, 2020 or who are members of ASAP or CASA.

6. How is the order being implemented?

Under the agreed-upon implementation plan, the government has committed to reallocating resources to effectuate the court's order, including: (a) centralizing ***initial*** asylum EAD applications at the Texas Service Center (TSC); (b) reallocating 50 USCIS officers to adjudicate these applications; (c) prioritizing these applications at the TSC Background Check Unit; (d) addressing misfiling with the lock box instead of the TSC; and (e) ensuring acceptance of

telephonic service requests by the National Customer Service Center after an application has been pending for 25 days.[3]

USCIS also is providing notice of rights and remedies pursuant to *Rosario* on its processing time webpage (https://www.uscis.gov/rosario) and on EAD receipt notices (Form I-797, Notice of Action).

The implementation plan indicates the appropriate steps individuals should take for cases pending 25 days or more, which can be initiated through a telephone call to the National Customer Service Center by the applicant or his or her legal representative. These steps are described below in Q7.

7. What can *Rosario* class members do if their EAD application has been pending for 25 days?

These individuals should take the following steps:

1. After an ***initial*** EAD application has been pending for 25 days, the applicant or his or her legal representative should initiate a service request to inquire about the status of the application. To initiate a service request, call USCIS at **1-800-375-5283**. To reach a Tier 1 representative, individuals should indicate that they are calling about an I-765 *and* either say "Rosario," "CASA," "ASAP," or "(c)(8)". Unlike other service requests, these requests must be initiated by a telephone call. They cannot be submitted electronically on the USCIS website. These service requests should be completed by the first representative who answers the call, *i.e.* completed at Tier 1.[4]

2. If there is no response to the service request after 8 business days, send an email to the USCIS Texas Service Center (TSC) Class Action email box at tsc.classaction@uscis.dhs.gov and copy class counsel at asylumEAD@nwirp.org. Include the applicant's name, A-number, service request number, date of the service request, Form I-765 receipt number, and date USCIS received Form I-765. Where relevant, the applicant should also include proof of ASAP or CASA membership.

3. If USCIS does not respond within 8 business days of that email, a class member may file an action to compel USCIS to adjudicate his or her ***initial*** asylum EAD application in any district court where venue is proper. 2019 U.S. Dist. LEXIS 46615, at *11-12; 2019 WL

---

[3] The implementation plan refers to these customer service requests as SRMT Customer Service Requests. SRMT stands for Service Request Management Tool.

[4] If a USCIS customer service representative indicates that the request is *not* outside the normal processing times and therefore refuses to complete the service request at Tier 1, callers should explain that the service request is made for an ***initial*** (c)(8) EAD application pursuant to *Rosario*. If the first USCIS representative refuses to the lodge the service request or passes the call to another representative, please contact Devin Theriot-Orr at devin@opensky.law or Emma Winger at ewinger@immcouncil.org, who are members of the class counsel team.

If a class member is unable to initiate a service request because USCIS has not issued a receipt notice within 25 days, the class member should send an inquiry to lockboxsupport@uscis.dhs.gov, with the subject line "CASA/ASAP/Rosario," that includes the class member's A-number and the delivery tracking number for the Form I-765. In addition, the class member should send an email as described in step 2 and include the date of the attempted service request and the delivery tracking number in lieu of a service request number.

1275097, at *4. *See* 28 U.S.C. § 1391(e). Class members are **not required** to file in the U.S. District Court for the Western District of Washington. *Id. See* Q8.

Information is also available at https://www.uscis.gov/rosario and in the implementation plan at the end of this FAQ (Exhibit B).

8. What did the district court decide in its March 20, 2019 order?

Following the July 26, 2018 order, the parties could not agree on two issues with respect to implementation of the district court's order. First, the parties disputed the extent of compliance required by the court's order. Plaintiffs argued that the order required the government to adjudicate all ***initial*** EAD asylum applications within the 30-day deadline by January 27, 2019, the due date of Defendants' first status report. In contrast, Defendants argued that they need only demonstrate "substantial compliance" with the court's order.

Second, the parties disagreed on the proper venue for class members filing federal court actions for violations of the district court order after they have completed the service request process discussed above in Q7. Defendants' asserted that the U.S. District Court for the Western District of Washington has sole jurisdiction to adjudicate whether individual class members and USCIS have complied with the service request process and whether USCIS has violated the court's order. Plaintiffs argued that class members should be permitted to file suit in any district court where venue is proper under 28 U.S.C. § 1391 because requiring class members to file only in the Western District of Washington would unduly burden the court and out-of-state class members.

On March 20, 2019, "the court (1) decline[d] to require full compliance with its injunction by a date certain, and (2) decline[d] to require individuals who seek to compel [USCIS] to adjudicate a specific EAD application to file their action in the [same district] court." 2019 U.S. Dist. LEXIS 46615, at *11-12; 2019 WL 1275097, at *4.

With respect to compliance rates, the court reasoned that an implementation order specifying full compliance would constitute an improper modification of the injunction, in part because Plaintiffs have not demonstrated "a significant change in circumstances warrant[ing] a revision." 2019 U.S. Dist. LEXIS 46615, at *7; 2019 WL 1275097, at *2. The court emphasized USCIS's increase in its compliance rates as support for their finding that a modification of the order is unwarranted. 2019 U.S. Dist. LEXIS 46615, at *7; 2019 WL 1275097, at *2. Furthermore, the court adopted USCIS's position that requiring full compliance with the order would preclude the agency from utilizing substantial compliance as a defense if class counsel files a motion for civil contempt against USCIS. 2019 U.S. Dist. LEXIS 46615, at *7-8; 2019 WL 1275097, at *3.

With respect to venue, the court noted that the "class is numerous and inherently transitory," and, therefore, requiring individuals to file actions exclusively in the Western District of Washington would unreasonably burden both the court and class members. 2019 U.S. Dist. LEXIS 46615, at *9-10; 2019 WL 1275097, at *3. The court further reasoned that suits to compel USCIS to adjudicate a particular ***initial asylum*** EAD application falling outside of the 30-day deadline will require the court to engage in individualized factual determinations inapplicable to the class as a whole and "would require examination of more than what the court already decided." 2019 U.S. Dist. LEXIS 46615, at *9-11; 2019 WL 1275097, at *3. Accordingly, the court held that only actions for class-wide relief must be filed in the Western District of Washington. 2019 U.S. Dist. LEXIS 46615, at *11; 2019 WL 1275097, at *4.

365 F.Supp.3d 1156
United States District Court, W.D. Washington, at Seattle.

Wilman GONZALEZ ROSARIO, et al., Plaintiffs,

v.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, et al., Defendants.

CASE NO. C15-0813JLR
|
Signed July 26, 2018

Synopsis

Background: Aliens who had filed asylum-based employment authorization documents brought class action against United States Citizenship and Immigration Services (USCIS), the Department of Homeland Security (DHS), and various officials, seeking to compel USCIS to abide by regulatory deadline for adjudicating applications for employment authorization documents. Parties cross-moved for summary judgment, and aliens moved for permanent injunction.

[Holding:] The District Court, James L. Robart, J., held that aliens were entitled to injunction to compel USCIS to comply with 30-day regulatory deadline for adjudicating their applications.

Aliens' motions granted, and defendants' motion denied.

West Headnotes (5)

[1] Federal Civil Procedure Matters considered

A district court deciding a motion for summary judgment need not consider arguments raised for the first time in a reply brief.

[2] Administrative Law and Procedure Compelling Agency Action

Under the Administrative Procedure Act (APA), a court may compel administrative agency action when an injunction is necessary to effectuate the congressional purpose behind a statute. 5 U.S.C.A. § 706(1).

1 Cases that cite this headnote

[3] Aliens, Immigration, and Citizenship Injunction

Aliens who filed asylum-based employment authorization documents were entitled to injunction to compel the United States Citizenship and Immigration Services (USCIS) to comply with 30-day mandatory regulatory deadline for adjudicating applications for employment authorization documents; it was undisputed that USCIS had duty to adjudicate the applications within the 30-day period, and that the USCIS had regularly violated that duty and continued to do so, and clear purpose of the regulatory deadline was to ensure that bona fide asylum-seekers were eligible to obtain employment authorization as quickly as possible, so that injunction was necessary to effectuate clear regulatory purpose. 5 U.S.C.A. § 706(1); 8 C.F.R. § 208.7(a)(1).

3 Cases that cite this headnote

[4] Administrative Law and Procedure Force of law in general

Properly enacted regulations have the force of law and are binding on the government until properly repealed.

[5] Administrative Law and Procedure Unlawfully withheld or unreasonably delayed action

The factors a court may consider in determining the reasonableness of an administrative agency's delay in complying with a deadline, for purpose of deciding whether to issue injunction against agency under the Administrative Procedure Act

(APA), include: (1) whether the delay complies with the "rule of reason," (2) whether Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, (3) whether the delay concerns the sphere of economic regulation or whether human health and welfare are at stake, (4) the effect of expediting delayed action on agency activities of a higher or competing priority, (5) the nature and extent of the interests prejudiced by the delay, and (6) whether there is any impropriety lurking behind the delay. 5 U.S.C.A. § 706(1).

1 Cases that cite this headnote

Attorneys and Law Firms

***1157** Christina J. Murdoch, Pro Hac Vice, Kathryn R. Weber, Pro Hac Vice, Scott D. Pollock, Pro Hac Vice, Scott D. Pollock & Associates, PC, Chicago, IL, Leslie K. Dellon, Pro Hac Vice, American Immigration Council, Washington, DC, Marc Van Der Hout, Pro Hac Vice, Vanderhout Brigagliano and Nightingale, San Francisco, CA, Trina Realmuto, Pro Hac Vice, American Immigration Council, Brookline, MA, Christopher Strawn, Northwest Immigrant Rights Project, Devin T. Theriot-Orr, Sunbird Law PLLC, Robert H. Gibbs, Robert Pauw, Gibbs Houston Pauw, Seattle, WA, for Plaintiffs.

Jeffrey S. Robins, John Joseph William Inkeles, U.S. Department of Justice, Washington, DC, for Defendants.

ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

JAMES L. ROBART, United States District Judge

I. INTRODUCTION

Before the court are (1) named Plaintiffs A.A., Antonio Machic Yac, and W.H. and class members' (collectively, "Plaintiffs") motion for summary judgment (Pls. MSJ ***1158** (Dkt. # 118)); and (2) Defendants United States Citizenship and Immigration Services ("USCIS"), United States Department of Homeland Security ("DHS"), Director of USCIS L. Francis Cissna, and Secretary of DHS Kirstjen Nielsen's (collectively, "Defendants") motion for summary judgment (Defs. MSJ (Dkt. # 119)). Each party opposes the other's motion. (*See* Pls. Resp. (Dkt. # 123); Defs. Resp. (Dkt. # 122).) The court has considered the motions, the parties' submissions in support of and in opposition to the motions, the administrative record, and the applicable law. The court also heard oral argument from parties on July 26, 2018. (*See* Min. Order (Dkt. # 126).) Being fully advised, the court GRANTS Plaintiffs' motion and DENIES Defendants' motion.

II. BACKGROUND

Plaintiffs seek to compel USCIS to abide by regulatory deadlines for adjudicating noncitizens' applications for employment authorization documents ("EADs"). (*See generally* Am. Compl. (Dkt. # 58).) The court reviews the regulatory structure governing the EAD application process before turning to the factual and procedural background of this case.[1]

A. Regulatory Structure

Asylum seekers can obtain an employment authorization prior to adjudication of their asylum applications. *See* 8 C.F.R. §§ 208.7(a)(1), 274a.12(c)(8), 274a.13(d); *see also Carballo v. Meissner*, No. C00-2145, 2000 WL 1741948, at *2 (N.D. Cal. Nov. 17, 2000). To do so, an individual must file Form I-765 with DHS and obtain an EAD, which is evidence that the holder is authorized to work in the United States. (Supp. Admin. Rec. ("SAR") (Dkt. ## 103-1, 103-2, 103-3, 103-4, 103-5) at 2-3.) Generally, an individual must wait 150 days after filing an asylum application to file an initial EAD application. 8 C.F.R. § 208.7(a)(1). Upon receiving the initial EAD application, the regulation states that USCIS:

> shall have 30 days from the date of filing of the request [for] employment authorization to grant or deny that application, except that no employment authorization shall be issued to an asylum applicant prior to the expiration of the 180-day period following the filing of the asylum application filed on or after April 1, 1997.

Id. § 208.7(a)(1); *see also* 8 U.S.C. § 1158(d)(2).

B. Factual Background

A.A., Mr. Machic Yac, and W.H. are initial asylum EAD applicants who allege that Defendants failed to adjudicate their EAD applications within the required 30-day period. (Am. Compl. ¶¶ 21, 23, 28, 57, 62, 81; *see also* Machic

Yac AR (Dkt. # 67-6) at 3 (EAD application received on December 31, 2015, and adjudicated March 31, 2016); A.A. AR (Dkt. # 67) at 3 (EAD application submitted around January 12, 2016, and adjudicated March 16, 2016); W.H. AR (Dkt. # 38) at 42-50 (EAD application received on December 15, 2014, and adjudicated June 16, 2015).) There is no dispute that USCIS failed to meet its 30-day deadline, both for the named Plaintiffs and more broadly for class members. (*See* Defs. MSJ at 7 ("USCIS was not able to adjudicate 100 percent of initial asylum EADs within 30 days.").) Defendants' data reveals that from 2010 to 2017, USCIS met its 30-day deadline in only 22% of cases—that is, out of 698,096 total applications, USCIS resolved only 154,629 applications on time. (*See* SAR at 89-90.) In 2017, USCIS ***1159** timely resolved only 28% of applications. (*See id.* at 90.)

USCIS made some changes in response to the need to more quickly adjudicate EAD applications. First, USCIS increased the validity period of an initial asylum EAD from one year to two years. *USCIS Increases Validity of Work Permits to Two Years for Asylum Applicants*, U.S. Citizenship and Immigration Services (Oct. 6, 2016), https://www.uscis.gov/news/alerts/uscis-increases-validity-work-permits-two-years-asylum-applicants. Second, USCIS provided checklists on its websites to assist applicants who are submitting applications. *Form M-1162, Optional Checklist for Form I-765(c)(8) Filings Asylum Applications (With a Pending Asylum Application) Who Filed for Asylum on or after January 4, 1995*, U.S. Citizenship and Immigration Services (July 17, 2017), https://www.uscis.gov/system/files_force/files/form/m01162.pdf.

C. Procedural Background

Plaintiffs brought a putative class action on May 22, 2015. (*See* Compl. (Dkt. # 1).) On August 10, 2015, Defendants moved to dismiss the suit and argued that the "30-day regulatory deadline is discretionary." (2/10/16 Order at 21; *see* MTD (Dkt. # 34) at 10-13.) The court disagreed and held that not only did the "plain language of the regulation favor[ ] a mandatory interpretation," but "[r]eading the 30-day timeline as mandatory also comports with the regulation's overall goals and related regulations." (2/10/16 Order at 24; *see also id.* at 24-26.)

On July 18, 2017, the court granted Plaintiffs' motion for class certification and certified the following class:

> Noncitizens who have filed or will file applications for employment authorization that were not or will not be adjudicated within ... 30 days ... and who have not or will not be granted interim employment authorization. [This class] consists of only those applicants for whom 30 days has accrued or will accrue under the applicable regulations, 8 C.F.R. §§ 103.2(b)(10)(i), 208.7(a)(2), (a)(4).

(7/18/17 Order at 26-27.) The court additionally reiterated that the regulatory 30-day deadline is "mandatory" and found "no reason to differentiate those mandatory regulatory deadlines from the mandatory statutory deadlines in [Ninth Circuit precedent]." (*Id.* at 21.) The court explicitly rejected Defendants' argument that the regulations only created a mandatory duty to act and not a mandatory timeline to follow, stating that it will not entertain "Defendants' effort to relitigate whether the 30-day deadline is directory or mandatory." (*Id.* at 21 n.10.)

Subsequently, both parties sought to supplement the administrative record. (Defs. Mot. to Supp. (Dkt. # 103); Pls. Mot. to Supp. (Dkt. # 104).) The court granted in part and denied in part both motions (4/17/18 Order at 13-14), and parties accordingly filed a supplemental administrative record (*see* Not. of SAR (Dkt. # 116)).

Both parties then moved for summary judgment. (*See* Pls. MSJ; Defs. MSJ.) The court now addresses both motions.

III. ANALYSIS

The parties agree that USCIS has a duty to adjudicate initial EAD applications within 30 days. (*See* Pls. Reply (Dkt. # 124) at 1; Defs. MSJ at 9 (acknowledging that the court "has previously held that Defendants have a mandatory duty to adjudicate initial EAD applications within 30 days").) The parties further agree that USCIS violates this duty. (*See* Pls. Reply at 1-2; Defs. MSJ at 9 (acknowledging that "they are unable to meet that [30-day] requirement for every application").) Thus, ***1160** the sole remaining question is what remedy is proper. (*See* Pls. Resp. at 2; Defs. MSJ at 9 (stating "a question for this [c]ourt remains: what remedy is appropriate?").)

[1] Plaintiffs request (1) a declaration that USCIS has violated the mandatory deadline, and (2) an injunction compelling Defendants to comply with the regulation. (Pls. MSJ at 11.) Defendants do not dispute the declaratory relief

Plaintiffs request.[2] (*See* Defs. MSJ; Defs. Resp.) Instead, Defendants focus their arguments on the impropriety of injunctive relief. (*See* Defs. MSJ at 9-15.) The court disagrees and finds that an injunction compelling agency action is appropriate here.

[2] The Administrative Procedure Act ("APA") provides that a court may compel "agency action unlawfully withheld or unreasonably delayed."[3] 5 U.S.C. § 706(1). A court may compel agency action when "an injunction is necessary to effectuate the congressional purpose behind the statute." *Badgley*, 309 F.3d at 1177 (citing *TVA v. Hill*, 437 U.S. 153, 194, 98 S.Ct. 2279, 57 L.Ed.2d 117 (1978)). In *Badgley*, the Ninth Circuit considered whether an injunction should issue for an agency's failure to comply with a deadline laid out in the Endangered Species Act (the "ESA"). *See id.* at 1176-78. Because the clear purpose of the ESA was to assure adequate protection for endangered species, and violation of the ESA deadlines impeded that purpose, the court held that the ESA "removed the traditional discretion of courts in balancing the equities before awarding injunctive relief." *Id.* at 1177. In other words, because the statute was "abundantly clear that the balance [of equities] has been struck in favor of affording endangered species the highest of priorities," it removed the usual discretion a court exercises in determining whether an injunction should issue and compelled the court to grant injunctive relief. *Id.* at 1177-78 (internal quotation marks omitted) (quoting *TVA*, 437 U.S. at 194, 98 S.Ct. 2279).

[3] As the court has previously found (*see* 2/10/16 Order at 24), one of the "chief purposes" of the 30-day deadline, as part of the larger regulatory amendments issued in January 1995, was "to ensure that bona fide asylees are eligible to obtain employment authorization as quickly as possible," 62 Fed. Reg. at 10,318 (1997). The focus on expediency is reinforced by how the agency described the proposed rule: "The INS will adjudicate these applications for work authorization within 30 days of receipt, regardless of the merits of the underlying asylum claim." 50 Fed. Reg. at 14,780 (1994). This elevation of the 30-day deadline above the merits of the underlying asylum claim reflects, as in *Badgley*, that the balance of equities has been struck in favor of adhering to the deadline so that applicants can obtain employment ***1161** authorization. *See* 309 F.3d at 1177.

The goal of timely employment authorization is further evidenced by the reason why the 30-day deadline was implemented. The January 1995 amendments imposed a 150-day waiting period before an asylum seeker may submit an initial EAD application. 50 Fed. Reg. at 14,780. But even though the agency imposed a waiting period, it made clear that "[i]deally ... few applicants would ever reach the 150-day point." *Id.* Indeed, the INS selected 150 days because it was a period "beyond which it would not be appropriate to deny work authorization to a person whose claim has not been adjudicated." *Id.* Thus, the purpose of promulgating the 30-day deadline on top of that 150-day waiting period was to cabin what was already—in the agency's view—an extraordinary amount of time to wait for work authorization. *See id.* This context further elucidates that the 30-day deadline was instituted to promote timeliness.

In light of the plain language and clear objectives behind the regulation at issue, the court concludes that, as in *Badgley*, it is "abundantly clear that the balance [of equities] has been struck in favor" of expedient adjudication of initial EAD applications so that asylum seekers may obtain work authorization when waiting—often for years—to have their asylum applications resolved. *See* 309 F.3d at 1177; (*see* SAR at 93-95 (showing that asylum applicants wait at least two years, and sometimes, up to four years, for an asylum interview).) Thus, much like *Badgley*, the court is compelled to issue injunctive relief. *See* 309 F.3d at 1177.

[4] Defendants attempt to distinguish *Badgley* on the basis that *Badgley* involved a deadline set by a congressional statute rather than an agency regulation. (Defs. MSJ at 11-12.) But it is settled law that "properly enacted regulations have the force of law and are binding on the government until properly repealed." *Flores v. Bowen*, 790 F.2d 740, 742 (9th Cir. 1986). And nothing in *Badgley* expressly limits its reasoning to statutes enacted by Congress. *See* 309 F.3d at 1176-78. Moreover, Defendants provide no authority interpreting *Badgley* in the way they propose, either in their briefing or at oral argument. (*See* Defs. MSJ at 11-12.) Indeed, Congress, in its statutory directive, defers to the agency regulations to govern the process of granting work authorization. *See* 8 U.S.C. § 1158(d)(2) ("[S]uch authorization may be provided under regulation."). Thus, the court discerns no reason to differentiate the mandatory regulatory deadlines at issue here from the mandatory statutory deadlines in *Badgley*.

Badgley also forecloses Defendant's argument that the court should apply the six-factor reasonableness analysis from *Telecommunications Research & Action Center v. F.C.C. ("TRAC ")*, 750 F.2d 70, 80 (D.C. Cir. 1984). (*See* Defs. MSJ at 12-13 (urging the court to apply the *TRAC* factors).) As the court previously concluded (*see* 7/18/17 Order at

20-21), *Badgley* rejected the *TRAC* analysis when the law "specifically provide[s] a deadline for performance," *see* 309 F.3d at 1177 n.11; *see also Garcia v. Johnson*, No. 14-cv-01775-YGR, 2014 WL 6657591, at *12 (N.D. Cal. Nov. 21, 2014). Here, there is undisputedly a deadline established by regulation. *See* 8 C.F.R. § 208.7(a)(1). Thus, the court rejects the Defendants' contention that the *TRAC* factors should be applied.

[5] But even if Defendants are correct that the *TRAC* factors apply, they weigh in favor of granting injunctive relief. The *TRAC* factors measure whether the agency has unreasonably delayed action, as is required to issue injunctive relief under the APA. 750 F.2d at 79-80; *see* 5 U.S.C. § 706(1); ***1162** *Am. Hosp. Ass'n v. Burwell*, 812 F.3d 183, 190 (D.C. Cir. 2016) (applying *TRAC* factors in the mandamus context to determine whether mandamus should issue). The factors include:

> (1) the time agencies take to make decisions must be governed by a "rule of reason," (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason, (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake, (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority, (5) the court should also take into account the nature and extent of the interests prejudiced by the delay, and (6) the court need not "find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed."

TRAC, 750 F.2d at 80 (internal citations omitted). Defendants discuss only their current efforts to meet the 30-day timeline and the reasons why they cannot achieve 100% compliance, both of which fall within the fourth *TRAC* factor.[4] (*See* Defs. MSJ at 13-15.) Specifically, Defendants cite "resource and logistical constraints in the face of an astronomical increase in both asylum applications and subsequent [EAD] applications" and the two changes they have made in an effort to comply: (1) extending the validity of initial asylum EADs; and (2) preparing a checklist for initial EAD applicants so that applications are properly filled out.[5] (*Id.* at 13-14.)

Even accepting Defendants' assertions on their face and assuming that the fourth *TRAC* factor weighs against an injunction, that factor is outweighed by the remaining factors. Most importantly, the overlapping third and fifth *TRAC* factors, both of which assess the impact of the agency's delay on the public welfare, strongly weigh in favor of an injunction. *See TRAC*, 750 F.2d at 80. As *TRAC* recognizes, delays are "less tolerable when human health and welfare are at stake." *Id.* And that is exactly what is at stake here: Asylum seekers are unable to obtain work when their EAD applications are delayed and consequently, are unable to financially support themselves or their loved ones. (*See* SAR at 3 (noting that asylum seekers "are not authorized to work unless they are specifically granted [EADs]").) This negative impact on human welfare is further compounded by the length of the USCIS's delay. For example, in 2017, 10,103 applications took over 121 days to adjudicate, on top of the 150 days those applicants already had to wait, unable to work, after filing their asylum application. (SAR at 90.)

The first and second *TRAC* factors additionally suggest that Defendants' delay is unreasonable. Although Congress has not included a timetable specific to EAD applications, it has stated that the final adjudication ***1163** of the asylum application "shall be completed within 180 days after the date an application is filed." 8 U.S.C. § 1158(d)(5)(A)(iii). This timetable syncs up with the regulatory requirements—that after the asylum application has been pending for 150 days, the EAD application should be resolved in 30 days. *See* 8 C.F.R. § 208.7(a)(1). Yet, the agency is taking far longer than 30 days. (*See* Machic Yac AR at 3 (91 days); A.A. AR at 3 (about 64 days); W.H. AR at 42-50 (183 days).)

Considered in combination with the third and fifth factors, the court concludes that the totality of the *TRAC* factors indicates that Defendants' delay in resolving EAD applications is unreasonable in these circumstances.[6] Accordingly, the court grants an injunction compelling Defendants to adhere to the 30-day deadline as laid out in 8 C.F.R. § 208.7(a)(1).

IV. CONCLUSION

For the foregoing reasons, the court GRANTS Plaintiffs' motion for summary judgment (Dkt. # 118) and DENIES Defendants' motion for summary judgment (Dkt. # 119). The court FINDS that Defendants are in violation of 8 C.F.R. § 208.7(a)(1) and ENJOINS Defendants from further failing to adhere to the 30-day deadline for adjudicating EAD applications, as set forth in 8 C.F.R. § 208.7(a)(1). The court ORDERS Defendants to submit status reports every six (6) months regarding the rate of compliance with the 30-day timeline.

The court DIRECTS the Clerk to provisionally file this order under seal and ORDERS the parties to meet and confer regarding the need for redaction. The court further ORDERS the parties to jointly file a statement within ten (10) days of the date of this order to indicate any need for redaction.

All Citations

365 F.Supp.3d 1156

Footnotes

1 The court has previously detailed at length the background of this case. (*See* 2/10/16 Order (Dkt. # 55); 10/5/16 Order (Dkt. # 80); 7/18/17 Order (Dkt. # 95); 4/17/18 Order (Dkt. # 113).) Thus, here, the court recounts only the information pertinent to the instant motions.

2 In reply, Defendants argue for the first time that a declaratory judgment "is not appropriate in this case." (Defs. Reply (Dkt. # 125) at 1 (bolding removed).) As a preliminary matter, the court "need not consider arguments raised for the first time in a reply brief." *Zamani v. Carnes*, 491 F.3d 990, 997 (9th Cir. 2007). But even if the court considered Defendants' argument, Defendants merely purport that a declaratory judgment "alone would not be sufficient" but provide no support that this alleged insufficiency should prevent a declaratory judgment from issuing. (*See* Defs. Reply at 2.) Indeed, the court finds that the parties are "immersed in a substantial controversy regarding the proper interpretation of" the regulations at issue and thus, the court has the authority to issue a declaratory judgment regarding the rights of Plaintiffs. *See Biodiversity Legal Found. v. Badgley*, 309 F.3d 1166, 1172-73 (9th Cir. 2002).

3 Both parties recognize that an injunction pursuant to the APA is identical to mandamus relief under 28 U.S.C. § 1361. (*See* Pls. MSJ at 6-7; Defs. MSJ at 8.)

4 Although the Defendants urge the court to apply the *TRAC* factors, their briefing does not explicitly make arguments under each factor; instead, they raise general practical concerns involving their resources. (*See* Defs. MSJ at 12-15.) At oral argument, Defendants identified the fourth *TRAC* factor as the one most likely to encompass resource concerns, and in its own review of the factors, the court agrees that these practical concerns best fit into the fourth *TRAC* factor.

5 Defendants also indicate that they are in the process of amending the regulations to eliminate the 30-day deadline. (Defs. MSJ at 8; Defs. Resp. at 3.) But the current regulation remains binding until it is properly repealed. *See Flores*, 790 F.2d at 742. Moreover, the status of the amendment is unclear, and its outcome is equally unclear. Thus, the court declines to rely on a potential amendment in its consideration of the instant motions.

6 To the extent Defendants rely on resource constraints as a standalone argument, that argument is unavailing. The Supreme Court recently rejected a similar argument from an agency citing "a number of practical concerns." *Pereira v. Sessions*, —— U.S. ——, 138 S.Ct. 2105, 2118, 201 L.Ed.2d 433 (2018). The Court found these "meritless" considerations "do not justify departing from the [law's] clear text." *Id.* The court concludes the same here.

Rosario v. USCIS, No. C15-0813-JLR
AGREED IMPLEMENTATION PLAN

1. Defendants have already taken, and will maintain the following steps with to reallocate resources to address the Court's Order:

    a. Centralize the initial (c)(8) workload at the Texas Service Center (TSC).
    b. Deliver (c)(8) applications filed at the lockbox to the TSC rather than shipping such applications.
    c. Reallocated 50 Immigration Service Officers to work full time on initial (c)(8) applications (subject to modification upward or downward depending on workload, as determined by USCIS).
    d. Recalculate compliance rates to take into account the requests for initial evidence.
    e. Accept SRMT Customer Service Requests for initial (c)(8) applications pending for 25 days.

2. Defendants have implemented the following reallocation of resources to address the Court's Order:

    a. The TSC Background Check Unit (BCU) will re-prioritize their work load so that the initial (c)(8)s sent to them are a top priority.
    b. Take steps, to include internal training and customer outreach, to address misfiling with the lock box (e.g., (c)(8) extension requests that have been misrouted to the TSC, either due to applicant filing error or lock box error).
    c. Take steps to ensure that SRMT Customer Service Requests are accepted at 25 days.

3. Defendants will provide notice to all class members as follows:

    a. Defendants will amend the processing time webpage to inform putative class members of their rights as class members and the remedies discussed herein.
    b. USCIS will include on subsequently issued I-797 receipt notices issued to newly filed I-765 applications, informing them of the implementation mechanisms outlined in sections 1.e. above and 4 below.
    c. The webpage language and receipt notices will be updated on December 8, 2018, so long as the parties agree to final language by September 30, 2018. If the parties have not finalized language by that date, then the webpage and receipt notices will be updated February 23, 2019.
    d. Defendants will report to class counsel initial (c)(8) adjudication rates, in the format previously used by Defendants, on a monthly basis, on the 15th day of each month beginning on October 15th (or the following business day if the 15th day is a weekend or holiday), until Defendants file their first six month status report with the Court. Thereafter, the parties will meet and confer regarding the requirement and frequency on further reporting.

4. Dispute Resolution: For individual cases that remain pending beyond 30-days following use of the SRMT process, individuals seeking resolution must:

Exhibit B

i. Initiate this process no earlier than 8 business days after SRMT request.
ii. Provide name, A-number, SRMT receipt number and date of SRMT request, Form I-765 receipt number, and date of filing to a USCIS email address.
iii. Copy class counsel via email to an agreed-upon email address.
iv. Allow 8 business days for response before the individual may file an action as specified by further Order of this Court.

Exhibit B

Rosario v. United States Citizenship & Immigration Servs.

United States District Court for the Western District of Washington

March 20, 2019, Decided; March 20, 2019, Filed

CASE NO. C15-0813JLR

Reporter
2019 U.S. Dist. LEXIS 46615 *

WILMAN GONZALEZ ***ROSARIO***, et al., Plaintiffs, v. ***U.S***. CITIZENSHIP AND IMMIGRATION SERVICES, et al., Defendants.

Core Terms

injunction, parties, compliance, status report, district court, rates, applications, adjudicate, letters, civil contempt, court order, issues, steps, authorization, deadline, venue, days, individualized, circumstances, modification, Plaintiffs', responsive, concludes, declines, asylum, notice, certification, class-wide, considers, obligated

Counsel: **[*1]** For Northwest Immigrant Rights Project, The Advocates for Human Rights, Marvella Arcos-Perez, Individually and on behalf of all others similarly situated, Carmen Osorio-Ballesteros, Individually and on behalf of all others similarly situated, W. H., Individually and on behalf of all others similarly situated, Plaintiffs: Christina J Murdoch, Scott D Pollock, LEAD ATTORNEY, PRO HAC VICE, SCOTT D. POLLOCK & ASSOCIATES, PC, CHICAGO, IL; Devin T Theriot-Orr, LEAD ATTORNEY, SUNBIRD LAW PLLC, SEATTLE, WA; Kathryn R Weber, LEAD ATTORNEY, PRO HAC VICE, SCOTT D. POLLOCK & ASSOCIATES PC, CHICAGO, IL; Leslie K Dellon, LEAD ATTORNEY, PRO HAC VICE, AMERICAN IMMIGRATION COUNCIL, WASHINGTON, DC; Marc Van Der Hout, LEAD ATTORNEY, PRO HAC VICE, VANDERHOUT BRIGAGLIANO AND NIGHTINGALE, SAN FRANCISCO, CA; Melissa Crow, LEAD ATTORNEY, PRO HAC VICE, AMERICAN IMMIGRATION COUNCIL, WASHINGTON, DC; Robert H. Gibbs, LEAD ATTORNEY, GIBBS HOUSTON PAUW, SEATTLE, WA; Robert Pauw, LEAD ATTORNEY, GIBBS HOUSTON PAUW, SEATTLE, WA; Christopher Strawn, NORTHWEST IMMIGRANT RIGHTS PROJECT (SEA), SEATTLE, WA.

For United States Citizenship and Immigration Services, United States Department of Homeland Security, Leon Rodriguez, **[*2]** Director, U.S. Citizenship and Immigration Services, Jeh Johnson, Secretary, U.S. Department of Homeland Security, Defendants: Adrienne Zack, Jeffrey S Robins, BEN FRANKLIN STATION, WASHINGTON, DC; John Joseph William Inkeles, US DEPT OF JUSTICE, CIVIL DIVISION, OFFICE OF IMMIGRATION LITIGATION, WASHINGTON, DC.

Judges: JAMES L. ROBART, United States District Judge.

Opinion by: JAMES L. ROBART

Opinion

ORDER

I. INTRODUCTION

Before the court are two letter briefs filed by the parties. (Plf. Ltr. (Dkt. # 138); Def. Ltr. (Dkt. # 139).) The parties filed these letters pursuant to a stipulated order directing them to do so. (*See* Stip. Order (Dkt. # 137).) The parties ask the court to resolve two disputes concerning the parties' agreed plan to implement the court's injunction in this matter. (*See generally* Plf. Ltr.; Def. Ltr.; *see also* Agreed Imp. Plan (Dkt. # 134-1); SJ Order/Injunction (Dkt. # 127).) In addition to their initial filings, the court ordered the parties to simultaneously file responsive letters (11/15/18 Order (Dkt. # 140)), and those letters are also before the court (Plf. Resp. Ltr. (Dkt. # 141); Def. Resp. Ltr. (Dkt. # 142)). Based on the parties' initial and responsive letters, the court resolves the **[*3]** parties' disputes as described below.

II. BACKGROUND

On July 18, 2017, the court granted in part and denied in part Plaintiffs' motion for class certification. (CC Order

(Dkt # 95) at 27.) The court certified a class of noncitizens who have filed or will file applications for employment authorization that were not or will not be adjudicated within 30 days and who have not or will not be granted interim employment authorization. (*Id.* at 26.) The court further stated that the class consists of only those applicants for whom 30 days has accrued or will accrue under the applicable regulation, 8 C.F.R. §§ 103.2(b)(10)(i), 208.7(a)(2), (a)(4). (*Id.* at 27.)

On July 26, 2018, the court granted Plaintiffs' motion for summary judgment and found Defendants in violation of 8 C.F.R. § 208.7(a)(1). (SJ Order at 12.) The court also enjoined Defendants "from further failing to adhere to the 30-day deadline for adjudicating [employment authorization document ("EAD")] applications [for asylum seekers], as set forth in 8 C.F.R. § 208.7(a)(1)." (*Id.*) Finally, the court ordered Defendants "to submit status reports every six (6) months regarding the rate of compliance with the 30-day timeline." (*Id.*) At the time of the order, Defendants' own data revealed that from 2010 to 2017, Defendant U.S. Citizenship and **[*4]** Immigration Services ("USCIS") met the 30-day deadline in in only 22% of cases. (*See id.* at 3.)

On September 14, 2018, the parties submitted a joint plan for implementation of the court's order and injunction. (Joint Statement (Dkt. # 134); *see also* Agreed Imp. Plan.) Nevertheless, the parties stated they had not been able to come to agreement on two points: "(1) whether the [c]ourt should specify specific rates of compliance for employment authorization document (EAD) adjudication as part of an implementation order and what those rates should be; [and] (2) the appropriate venue for filing any Federal District Court action where an EAD application is not adjudicated in compliance with this [c]ourt's order, after the individual has complied with the steps set forth in the implementation plan." (Joint Statement at 1.) The parties asked the court if they could "simultaneously file short letter-briefs of no more than three pages addressing these two issues" and have the court "resolve this lingering dispute." (*Id.*) On October 3, 2018, the court entered an order consistent with the parties' stipulated motion. (10/3/18 Order (Dkt. # 137); *see also* Plf. Ltr.; Def. Ltr.) At the direction of the court, **[*5]** the parties also simultaneously filed responsive letters. (11/15/18 Order; Plf. Resp. Ltr.; Def. Resp. Ltr.)

On September 21, 2018, Defendants filed a notice of appeal concerning the court's summary judgment order and injunction. (Not. of App. (Dkt # 135).)

On January 25, 2019, Defendants submitted their first status report pursuant to the court's order. (Status Report (Dkt. # 144); *see also* SJ Order at 12.) Defendants' status report indicates that Defendants achieved a 96.3% compliance rate with 8 C.F.R. § 208.7(a)(1) in December 2018, and an average compliance rate of 92.7% for the final quarter of 2018. (Status Report at 2; *see also* Status Report Ex. A (Dkt. # 144-1) at 3.)

The court now considers the issues presented in the parties' letters.

III. ANALYSIS

A. Jurisdiction

Because Defendants filed a notice of appeal (Not. of App. (Dkt. # 135)), the court initially considers its jurisdiction. The filing of a notice appeal generally divests the district court of jurisdiction over the matters appealed. McClatchy Newspapers v. Cent. Valley Typographical Union No. 46, Int'l Typographical Union, 686 F.2d 731, 734 (9th Cir. 1982), *amended sub nom.* McClatchy Newspaper v. Local 46, 686 F.2d 731 (9th Cir. 1982). Nevertheless, the district court retains jurisdiction to enforce an injunction under certain exceptions to this rule. First, Federal Rule of Civil Procedure 62(d) provides **[*6]** that "[w]hile an appeal is pending from . . . [a] final judgment that grants . . . an injunction, the court may suspend, modify, restore or grant an injunction on terms for bond or other terms that secure the opposing party's rights." Fed. R. Civ. P. 62(d). Second, until its judgment is superseded on appellate review, the district court retains jurisdiction to enforce the injunction and to preserve the status quo. *See* Nat. Res. Def. Council, Inc. v. Sw. Marine Inc., 242 F.3d 1163, 1166 (9th Cir. 2001); Robinson v. Delgado, No. 1:02-CV-01538-NJV, 2012 U.S. Dist. LEXIS 144101, 2012 WL 4753493, at *1 (N.D. Cal. Oct. 4, 2012). Thus, the court concludes that it retains jurisdiction to consider the issues that the parties have stipulated to place before this court.

B. Rates of Compliance

Plaintiffs argue that the court should require Defendants to be in full compliance with 8 C.F.R. § 208.7(a)(1) by a date certain instead of simply requiring 6-month status reports. (Plf. Ltr. at 1.) Defendants assert that an order

specifying Defendants' rate of compliance would be an improper modification of the court's injunction and would improperly curtail the scope of the court's adjudication of Defendants' "substantial compliance" with the injunction if Plaintiffs were to pursue an enforcement action. (Def. Ltr. at 2.)

The court agrees that adding such a provision to the injunction when the court has already specified that **[*7]** Defendants are to submit status reports at regular intervals would be an improper modification to the court's injunction. A party seeking to modify an injunction bears the burden of establishing that a significant change in circumstances warrants a revision of the injunction. *See* Rufo v. Inmates of Suffolk Cty. Jail, 502 U.S. 367, 383, 112 S. Ct. 748, 116 L. Ed. 2d 867 (1992). Here, even if the court had jurisdiction to order such a change, *see supra* § III.A., Plaintiffs have failed to meet their burden. Defendants' January 25, 2019, status report demonstrates clear improvement in Defendants' compliance rates. (*See* Status Report.) Given that the adjudication rate reflects significant improvement since the court entered its injunction, modification of the court's injunction to include specific rates of compliance is not justified by any change in the law or facts.

Further, if Plaintiffs at some point allege that Defendants have failed to comply with the court's injunction, their remedy is a motion for civil contempt. Civil contempt is defined as "a party's disobedience to a specific and definite court order by failure to take all reasonable steps within the party's power to comply." Reno Air Racing Ass'n., Inc. v. McCord, 452 F.3d 1126, 1130 (9th Cir. 2006). As Defendants point out, substantial compliance is a defense to civil contempt. Gen. Signal Corp. v. Donallco, Inc., 787 F.2d 1376, 1379 (9th Cir. 1986). "If a violating **[*8]** party has taken all reasonable steps to comply with the court order, technical or inadvertant [sic] violations of the order will not support a finding of civil contempt." *Id.* (internal quotations omitted); *see also* Kelly v. Wengler, 822 F.3d 1085, 1096 (9th Cir. 2016) ("A contemnor in violation of a court order may avoid a finding of civil contempt only by showing it took *all* reasonable steps to comply with the order.") (italics in original). Thus, the court concludes that adoption of specific rates of compliance would not be appropriate because such rates would invite the possibility of arbitrary enforcement actions that would fail to take into account the reasonable steps that Defendants take to comply with the court's order.

Based on the foregoing analysis, the court declines to require Defendants to be in full compliance with 8 C.F.R. § 208.7(a)(1) by a date certain.

C. Venue for Future Individual Actions

The parties agree that only this court has jurisdiction to enforce compliance with issues that affect all or a substantial part of the class. (Plf. Resp. Ltr. at 3; Def. Ltr. at 3 ("[T]o the extent that Plaintiffs seek enforcement of this [c]ourt's injunction . . . on a[] . . . class-wide basis—the only proper venue is in this [c]ourt."). The parties disagree **[*9]** on whether this court is the only court to have jurisdiction over an action filed by an individual class member seeking to compel adjudication of his or her individual EAD application. Plaintiffs argue that any district court that would otherwise have venue should be able to adjudicate individual plaintiffs' claims to compel timely adjudication of their individual EAD applications. (Plf. Ltr. at 2-3; Plf. Resp. Ltr. at 3.) Defendants insist that all such individual claims must be filed in this court. (Def Ltr. at 3; Def. Resp. Ltr. at 1-2.)

Defendants' position is both practically problematic and legally incorrect. As Plaintiffs point out, there were over 200,000 initial asylum EAD applications filed in Fiscal Years 2017 and 2018. (*See* Plf Ltr. at 2, Ex. A.) The class is numerous and inherently transitory. As such, there will be class members in various locations throughout the country who may wish to file mandamus or *Administrative Procedure Act* district court actions if their EAD applications are not decided within 30 days. Requiring all of these actions to be filed in this court would represent an unreasonable and unwarranted burden on both this court and the individual plaintiffs who may be involved. Further, any such district **[*10]** court action would require examination of more than what this court already decided—that USCIS is obligated to comply with the 30-day deadline in 8 C.F.R. § 208.7(a)(1). (*See generally* SJ Order.) For example, based on the specific facts alleged, such individual actions may require the court to engage in additional factual inquiry to determine whether the 30-day clock has run, whether the EAD application was complete, and whether the individual met the requirements of the implementation plan, was responsible for any delay, or had been convicted of an aggravated felony.

This court's binding resolution of the common question whether USCIS is obligated to adjudicate initial asylum EADs within 30 days is distinct from the factual questions that may arise in individual actions. The general principle of class litigation is that court may

resolve common questions—in this case the 30-day deadline—but individual, future claims for individualized relief can still be brought separately. *See, e.g.*, *Cooper v. Fed. Reserve Bank of Richmond, 467 U.S. 867, 881, 104 S. Ct. 2794, 81 L. Ed. 2d 718 (1984)* (observing that *Rule 23* class action procedures are designed to provide a mechanism for the expeditious decision of common questions, but would not bar later exclusively individual claims); *In re TFT-LCD (Flat Panel) Antitrust Litig., No. M 07-1827 SI, 2012 U.S. Dist. LEXIS 11369, 2012 WL 273883, at *3 (N.D. Cal. Jan. 30, 2012)* **[*11]** ("[A] *Rule 23(b)(2)* judgment, with its one-size-fits-all approach and its limited procedural protections, will not preclude later claims for individualized relief."); *Cameron v. Tomes, 990 F.2d 14, 17 (1st Cir. 1993)* ("[I]n *Cooper*, . . . the Supreme Court confirmed what common sense would suggest: a class action judgment . . . binds the class members as to matters actually litigated but does not resolve any claim based on individual circumstances that was not addressed in the class action.").

Thus, the court concludes that any class-wide relief requested by either Plaintiffs or Defendants, including any contempt motions, are properly directed to this court. However, the class certification order in this case does not preclude individual class members from filing separate actions in other appropriate forums because the delay in a particular case involves individual circumstances and would require the court to go beyond the legal issues already decided by this court.

IV. CONCLUSION

Based on the foregoing analysis, the court (1) declines to require full compliance with its injunction by a date certain, and (2) declines to require individuals who seek to compel Defendants to adjudicate **[*12]** a specific EAD application to file their action in this court.

Dated this 20th day of March, 2019.

/s/ James L. Robart

JAMES L. ROBART

United States District Judge