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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE

Felix RUBIO HERNANDEZ,  
Plaintiff,

v.

U.S. CITIZENSHIP AND IMMIGRATION  
SERVICES; Alejandro MAYORKAS,  
Secretary of Homeland Security; Ur M.  
JADDOU, Director, U.S. Citizenship and  
Immigration Services.  
Defendants.

Case No. 2:22-cv-904

**COMPLAINT**

1 **INTRODUCTION**

2 1. Plaintiff Felix Rubio Hernandez was granted U nonimmigrant status in 2014 after  
3 suffering domestic violence and assault, and assisting law enforcement with the investigation and  
4 prosecution of those crimes. Commonly known as the “U visa,” U nonimmigrant status provides  
5 lawful status to qualifying noncitizens who, like Mr. Rubio Hernandez, are victims of specified  
6 crimes and provide helpful information to law enforcement.

7 2. As a critical component of this benefit, Congress also provided U visa recipients a  
8 pathway to lawful permanent residence. Having already been approved for U visa status, in  
9 October 2017, Mr. Rubio Hernandez submitted an application for U-based adjustment of status  
10 before U.S. Citizenship and Immigration Services (USCIS). Even though he presented  
11 substantial evidence of positive equities demonstrating humanitarian, family unity, and public  
12 interest factors, USCIS denied Mr. Rubio Hernandez’s application on the basis that he failed to  
13 present sufficient evidence pertaining to his criminal history. USCIS’s Administrative Appeals  
14 Office (AAO) subsequently dismissed Mr. Rubio Hernandez’s appeal.

15 3. Defendants’ denial of Mr. Rubio Hernandez’s adjustment of status application  
16 violates the Administrative Procedure Act (APA). The agency committed legal error by requiring  
17 Mr. Rubio Hernandez to submit police reports no longer in existence, even though he provided  
18 documentation showing that the records were purged by the relevant law enforcement agency,  
19 and even though the undisputed facts established that they pertained to charges that did not lead  
20 to any conviction. Defendants also legally erred by according undue weight to a 2004 arrest, for  
21 which Mr. Rubio Hernandez was found not guilty, and arrests from 2001 and 2013, which both  
22 resulted in dismissal. These errors render the agency’s denial arbitrary and capricious and not in  
23 accordance with law.

1 4. Accordingly, Mr. Rubio Hernandez seeks relief under the APA and requests that  
2 this Court set aside Defendants’ unlawful denials and order USCIS to readjudicate his  
3 application in accordance with the law.

4 **JURISDICTION**

5 5. This case arises under the Immigration and Nationality Act (INA), 8 U.S.C. §  
6 1101 *et seq.*, the regulations implementing the INA, and the Administrative Procedure Act  
7 (APA), 5 U.S.C. § 701 *et seq.*

8 6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as the instant case is a  
9 civil action arising under the laws of the United States. The Court may grant relief pursuant to  
10 5 U.S.C. § 706 and 28 U.S.C. §§ 2201–02.

11 **VENUE**

12 7. Venue properly lies in the Western District of Washington pursuant to 28 U.S.C.  
13 § 1391(e) because this is a civil action in which one of the defendants is an agency of the United  
14 States, Plaintiff resides in the judicial district, and there is no real property involved.

15 **PARTIES**

16 8. Plaintiff Felix Rubio Hernandez is a citizen of Mexico who was granted U  
17 nonimmigrant status in October 2014. He lives in Everett, Washington, with his lawful  
18 permanent resident spouse and three U.S. citizen children.

19 9. Defendant U.S. Citizenship and Immigration Services (USCIS) is a component of  
20 the U.S. Department of Homeland Security (DHS), 6 U.S.C. § 271(a)(1), and an “agency” within  
21 the meaning of the APA, 5 U.S.C. § 551(1). USCIS is the agency responsible for adjudicating  
22 applications for immigration benefits, including applications for U nonimmigrant status and U-  
23 based adjustment of status.



1 that pertains to them. *See* 8 U.S.C. § 1184(a)(1); 8 C.F.R. § 214.1(a)(3)(i). Congress enacted a  
2 specific inadmissibility waiver for those seeking U nonimmigrant status, making nearly any  
3 ground of inadmissibility waivable “in the Attorney General’s discretion . . . if the Secretary of  
4 Homeland Security considers it to be in the public or national interest.” 8 U.S.C. § 1182(d)(14);  
5 *see also* 8 C.F.R. § 212.17(b).

6 15. By statute, only 10,000 individuals may receive U status in any given fiscal year,  
7 not counting derivative applicants. 8 U.S.C. § 1184(p)(2); 8 C.F.R. § 214.14(d)(1). Individuals  
8 who would receive U status but for the statutory cap of 10,000 are placed on a waiting list  
9 pending a final grant or denial of their petition. 8 C.F.R. § 214.14(d)(2). Once granted, U status  
10 comes with work authorization, 8 U.S.C. § 1184(p)(3)(B), and is generally valid for four years,  
11 *id.* § 1184(p)(6).

#### 12 **U-based Adjustment of Statute under 8 U.S.C. § 1255(m)**

13 16. In creating the U visa, Congress also provided a pathway to permanent residence  
14 for victims of violent crime. *See* VTVPA § 1513(a)(2)(C), 114 Stat. at 1534. After being  
15 continuously present in the United States for three years in U status, an individual may apply to  
16 adjust their immigration status to that of a lawful permanent resident (LPR). 8 U.S.C.  
17 § 1255(m)(1)(A); 8 C.F.R. § 245.24(b)(2), (b)(3). An individual’s U status is automatically  
18 extended beyond the four-year period while an application for adjustment of status under  
19 § 1255(m) is pending. 8 U.S.C. § 1184(p)(6).

20 17. Generally, individuals seeking to adjust status and become LPRs must  
21 demonstrate that they are admissible. *See id.* § 1255(a). In contrast, U visa holders seeking to  
22 become LPRs on the basis of their U status are deemed “admitted to the United States” for  
23 purposes of adjustment of status under 8 U.S.C. § 1255(m)(1). Accordingly, § 1255(m)(1) does  
24

1 not impose a general admissibility requirement but instead requires only that the applicant  
2 demonstrate they are “not described in section 1182(a)(E)”—i.e., that they have not participated  
3 in “Nazi persecution, genocide, or the commission of . . . torture or extrajudicial killing”—and  
4 that they have not “unreasonably refused to provide assistance in a criminal investigation or  
5 prosecution.”

6 18. To be eligible for adjustment of status, a U visa holder must meet two additional  
7 statutory requirements. First, the applicant must demonstrate three years of continuous physical  
8 presence in the United States since being admitted as a U nonimmigrant. *Id.* § 1255(m)(1)(A).  
9 Second, the applicant must establish that their “continued presence in the United States is  
10 justified on humanitarian grounds, to ensure family unity, or otherwise in the public interest.” *Id.*  
11 § 1255(m)(1)(B); *see also* 8 C.F.R. § 245.24(b)(6), (d)(10).

12 19. Regulations implementing U-based adjustment also require the applicant to  
13 “show[] that discretion should be exercised in his or her favor.” 8 C.F.R. § 245.24(d)(11). In  
14 exercising its discretion, USCIS may “take into account all factors, including acts that would  
15 otherwise render the applicant inadmissible,” and weigh an applicant’s “adverse factors” against  
16 “mitigating equities.” *Id.* USCIS will generally deny an application “in cases where the applicant  
17 has committed or been convicted of a serious violent crime, a crime involving sexual abuse  
18 committed upon a child, or multiple drug-related crimes, or where there are security- or  
19 terrorism-related concerns.” *Id.*

20 20. U-based adjustment of status is part of the statutory scheme in the Violence  
21 Against Women Act (VAWA). As noted above, Congress created the U visa and U-based  
22 adjustment of status as part of the VTVPA. That Act reauthorized VAWA, *see* 114 Stat. at 1464,  
23 1491–1539, and as part of that reauthorization, created U visas and U-based adjustment of status,  
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1 *see id.* at 1534–37. This has important implications, as VAWA is “a generous enactment,  
2 intended to ameliorate the impact of harsh provisions of immigration law on abused women.”  
3 *Lopez-Birrueta v. Holder*, 633 F.3d 1211, 1215 (9th Cir. 2011) (citation omitted). In determining  
4 the legality of adjudications under § 1255(m) as part of that generous statutory scheme, the  
5 agency must therefore “adhere[] to the general rule of construction that when the legislature  
6 enacts an ameliorative rule designed to forestall harsh results, the rule will be interpreted and  
7 applied in an ameliorative fashion.” *Id.* at 1216 (citation omitted).

## 8 **FACTUAL ALLEGATIONS**

### 9 **Mr. Rubio Hernandez’s Applications for a U Visa and Waiver of Inadmissibility**

10 21. Mr. Rubio Hernandez is a native and citizen of Mexico, who originally entered  
11 the United States in 1991.

12 22. In June 2011, Mr. Rubio Hernandez suffered domestic violence at the hands of his  
13 ex-wife in an incident that followed a long history of similar abuse. A few months later, he was  
14 also physically assaulted by her cousin. Mr. Rubio Hernandez reported the crimes committed  
15 against him to the Snohomish County Sheriff’s Office and assisted with the criminal  
16 investigations that followed.

17 23. Mr. Rubio Hernandez then became eligible to apply for U nonimmigrant status  
18 when the Snohomish County Prosecuting Attorney signed a Form I-918B, U Nonimmigrant  
19 Status Certification, confirming that Mr. Rubio Hernandez had been helpful with the  
20 investigation and prosecution of the crimes of domestic violence and felonious assault.

21 24. As part of his initial U visa application, Mr. Rubio Hernandez requested a waiver  
22 of inadmissibility for any and all grounds deemed necessary. USCIS then submitted a request for  
23 evidence (RFE) regarding Mr. Rubio Hernandez’s arrest for petty theft in 1991 and simple  
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1 assault in 2001. He responded by submitting the evidence regarding his 1991 petty theft  
2 conviction and documents regarding the arrest for simple assault in 2001, where the charge was  
3 subsequently dismissed. Mr. Rubio Hernandez also submitted evidence of an arrest for simple  
4 assault in 2004, for which he was later found not guilty.

5 25. On October 20, 2014, USCIS approved Mr. Rubio Hernandez’s application for a  
6 waiver of inadmissibility under 8 U.S.C. § 1182(d)(14), thus finding his admission as a U  
7 nonimmigrant “to be in the public or national interest.” The following day, USCIS approved his  
8 U visa application, and Mr. Rubio Hernandez was granted U nonimmigrant status, valid from  
9 October 1, 2014, to September 30, 2018.

10 **USCIS’s Denial of Plaintiff’s Application for U-based Adjustment of Status**

11 26. On October 24, 2017, Mr. Rubio Hernandez submitted his application for U-based  
12 adjustment of status under 8 U.S.C. § 1255(m), after having been continuously present in the  
13 United States for more than three years in U status.

14 27. On December 26, 2018, USCIS issued an RFE seeking additional information on  
15 Mr. Rubio Hernandez’s criminal history. Specifically, the RFE sought records regarding his  
16 1991 arrest and conviction for petty theft; his 2000 arrest for driving under the influence; his  
17 2001 arrest for simple assault, which resulted in dismissal; his arrest in 2001 for driving with a  
18 suspended license; his 2004 arrest for assault in the fourth degree, for which he was found not  
19 guilty; his 2012 arrest by U.S. Customs and Border Protection; his 2013 fourth degree assault  
20 arrest and conviction; and his 2013 criminal trespass case, which had been dismissed. For each  
21 of these matters, the RFE asked for police reports, court records, evidence of sentence  
22 completion, and an explanatory affidavit regarding all of Mr. Rubio Hernandez’s arrests. The  
23 RFE also sought an explanation as to why Mr. Rubio Hernandez did not disclose all of his arrests  
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1 in this I-485 filing. Finally, the RFE requested additional evidence to establish positive equities  
2 demonstrating why a favorable exercise of discretion was warranted.

3 28. On March 4, 2019, Mr. Rubio Hernandez submitted a response to the RFE. The  
4 submitted records demonstrated that (1) his 2012 arrest by CBP resulted in no criminal  
5 convictions but placed him in removal proceedings, which were later dismissed by an  
6 immigration judge in 2016; (2) he was found not guilty of the 2004 assault arrest; (3) the charges  
7 for his 2001 fourth degree assault arrest were dismissed, and (4) his arrest for criminal trespass in  
8 August 2013 did not result in any filed charges. Mr. Rubio Hernandez also asserted that police  
9 reports are not part of the record of conviction and should not be requested because of the  
10 reports' inherent unreliability. *See* Fed. R. Evid. 803(8)(A); S. Rep. 93-1277, at 7064 (1974). In  
11 addition, he explained that no further records were available in relation to his 1991 arrest and  
12 conviction, and submitted additional records for his 2000 arrest for a DUI (which resulted in a  
13 conviction for negligent driving) and for his 2013 fourth degree assault arrest and conviction.  
14 Finally, Mr. Rubio Hernandez highlighted the numerous documents demonstrating positive  
15 equities already submitted with his adjustment of status application, including his declaration,  
16 proof of long-term employment and payment of taxes, and letters of support from friends,  
17 family, and community members.

18 29. On May 28, 2019, USCIS issued a Notice of Intent to Deny (NOID) Mr. Rubio  
19 Hernandez's application for adjustment of status. USCIS noted that Mr. Rubio Hernandez did  
20 not submit any police reports for his five arrests in 2000, 2001, 2004, and 2013. The agency  
21 requested those records even though three of the charges resulting from those arrests were either  
22 dismissed or resulted in a finding of not guilty.

1           30.     USCIS acknowledged that Mr. Rubio Hernandez submitted evidence supporting a  
2 favorable exercise of discretion on humanitarian and family unity grounds, including letters  
3 establishing his family ties in the United States and his role as a financial provider for his family,  
4 as well as proof of his need for ongoing medical treatment for both arthritis and a work-related  
5 leg injury. However, USCIS found that these positive equities did not outweigh his negative  
6 equities.

7           31.     In particular, USCIS stated that Mr. Rubio’s history of “Petty theft, arrests for  
8 Assault, and Negligent Driving poses a significant risk to the safety and property of others.”  
9 Notably, all of his arrest occurred prior to the approval of his U visa, and several years prior to  
10 the decision denying his adjustment of status application.

11           32.     Despite submitting court documents for these cases, and despite the age of the  
12 arrests and convictions, USCIS stated that the record did not have sufficient evidence regarding  
13 most of the arrests to determine whether a favorable exercise of discretion was warranted and the  
14 extent to which Mr. Rubio Hernandez poses a threat to public safety. USCIS further instructed  
15 that should Mr. Rubio Hernandez choose to respond to the NOID, he should submit the arresting  
16 officers’ police reports for all of his arrests.

17           33.     On June 24, 2019, Mr. Rubio Hernandez submitted a timely response to the  
18 NOID. With his response, Mr. Rubio Hernandez submitted all available law enforcement reports  
19 as well as documentation relating to all unavailable reports. Specifically, Mr. Rubio Hernandez  
20 submitted a notice from the Snohomish County Sheriff’s Office that no records were found with  
21 respect to his 2000 arrest for a DUI and negligent driving. Mr. Rubio Hernandez also provided  
22 notices from the Skagit County Sheriff’s Office showing that the narrative portions of the reports  
23 for his 2001 and 2004 arrests for fourth degree assault had been purged by the agency. He  
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1 provided the records that were otherwise available for those arrests. In addition, Mr. Rubio  
2 Hernandez provided the police reports for his 2013 arrests for fourth degree assault and criminal  
3 trespass, as well as additional court records demonstrating that the criminal trespass charge was  
4 dismissed with prejudice.

5 34. On December 16, 2020, USCIS denied Mr. Rubio Hernandez’s U-based  
6 adjustment of status application. USCIS again acknowledged that Mr. Rubio Hernandez had  
7 submitted evidence of family unity and humanitarian grounds. Ultimately, however, USCIS  
8 concluded that Mr. Rubio Hernandez’s prior arrests “raise concerns about the public safety, well-  
9 being of others, and risk to the property of others.”

10 35. A central reason underlying the denial was that the reports for Mr. Rubio  
11 Hernandez’s 2001 and 2004 arrests were “incomplete or redacted.” However, Mr. Rubio  
12 Hernandez provided all available records, as well as evidence showing that any additional  
13 records had been purged by the responsible law enforcement agency and that neither arrest had  
14 led to a conviction.

15 36. USCIS also reasoned in support of its exercise of discretion denying the  
16 application that he did not provide a statement regarding his 2004 arrest for assault. As noted,  
17 Mr. Rubio Hernandez was found not guilty for this offense.

18 37. The agency also erroneously faulted Mr. Rubio Hernandez for not providing a  
19 police report for his 1991 petty theft conviction. In fact, Mr. Rubio Hernandez supplied the  
20 requested report, which the decision then acknowledged in its conclusion.

21 38. Based on these reasons, USCIS determined that it was “unable to  
22 comprehensively weigh the positive equities in this case against [the] negative factors.” The  
23 agency denied the application on this basis, explaining that Mr. Rubio did not establish his  
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1 adjustment was warranted on humanitarian grounds, to ensure family unity, or in the public  
2 interest, as required by 8 U.S.C. § 1225(m)(1)(B).

3 **AAO's Dismissal of Plaintiffs' Administrative Appeal**

4 39. In March 2021, Mr. Rubio Hernandez appealed USCIS's denial to the agency's  
5 Administrative Appeals Office (AAO). He argued that USCIS erred when it required him to  
6 submit police reports that were no longer in existence, particularly in light of the documentary  
7 evidence from all relevant law enforcement agencies corroborating the unavailability of the  
8 reports. Mr. Rubio Hernandez also contended that USCIS's decision was arbitrary and  
9 capricious in its balancing of equities, as well as in concluding that he failed to submit sufficient  
10 documentary evidence demonstrating his adjustment of status was warranted on humanitarian  
11 grounds, to ensure family unity, or otherwise in the public interest.

12 40. On December 17, 2021, the AAO of USCIS dismissed Mr. Rubio Hernandez's  
13 appeal. While the AAO briefly acknowledged Mr. Rubio Hernandez's positive equities, it went  
14 on to conclude that they did not outweigh his criminal history.

15 41. First, the AAO highlighted his three arrests for fourth degree assault in 2001,  
16 2004, and 2013 as "violent in nature" and "especially serious." The AAO relied on these  
17 "adverse factors" notwithstanding the fact that Mr. Rubio Hernandez was found not guilty for the  
18 2004 arrest and the fact that the 2001 charge was dismissed.

19 42. Second, the AAO found that Mr. Rubio Hernandez did not submit sufficient  
20 information regarding his 2000 arrest because he did not provide a separate explanation about it.  
21 The AAO also reiterated that he failed to provide sufficient evidence regarding his 2001 and  
22 2004 arrests because the documents he submitted did not show the reasons for their dismissal,  
23 and because he did not submit certain records, like the police reports. Importantly, however, all  
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1 three of these incidents had occurred and had been disclosed to USCIS prior to his U visa grant.  
2 Furthermore, as noted above, the 2001 and 2004 arrests resulted in a dismissal and a finding of  
3 not-guilty, respectively. And as to both, complete police records no longer existed.

4 43. Lastly, the AAO found that Mr. Rubio Hernandez’s statements regarding his 2013  
5 arrests for criminal trespass and fourth degree assault were both contradicted by the relevant  
6 police reports. The AAO further determined that the “relative recency of [his] arrest and  
7 conviction” for assault, as well as the “serious and violent nature” of the crime, were “adverse  
8 factors to be considered in [the agency’s] discretionary determination.”

9 **CAUSE OF ACTION**

10 **Administrative Procedure Act**  
11 **5 U.S.C. § 706(2)(A)**

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

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

16 46. Defendants’ denial of Mr. Rubio Hernandez’s application for adjustment of status  
17 constitutes “agency action” under the APA. *Id.* § 551(13). Defendants’ denial also constitutes  
18 “final agency action for which there is no other adequate remedy in a court.” *Id.* § 704.

19 47. The APA compels a reviewing court to “hold unlawful and set aside agency  
20 action, findings, and conclusions found to be . . . arbitrary, capricious, . . . or otherwise not in  
21 accordance with law.” *Id.* § 706(2)(A).

22 48. Here, Defendants’ denial of Mr. Rubio Hernandez’s application for U-based  
23 adjustment of status was arbitrary, capricious, and not in accordance with law, because it was  
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1 based in part on Mr. Rubio Hernandez's failure to submit documentary evidence no longer in  
2 existence.

3 49. Defendants also acted in an arbitrary and capricious manner and not in accordance  
4 with law by according weight to Mr. Rubio Hernandez's 2004 arrest for fourth degree assault, for  
5 which he was found not guilty.

6 50. Defendants further acted in an arbitrary and capricious manner and not in  
7 accordance with law by weighing Mr. Rubio Hernandez's 2001 simple assault arrest against him,  
8 even though that charge was dismissed, and even though he supplied an explanation of events for  
9 that arrest, available court documents, and proof that a full police report was not available.

10 51. Defendants acted in an arbitrary and capricious manner by relying on events that  
11 the agency had already considered when granting Mr. Rubio Hernandez U visa status and the  
12 corresponding waiver for any applicable grounds of inadmissibility.

13 52. Accordingly, Defendants acted arbitrarily, capriciously, and contrary to the law in  
14 violation of the APA by denying Mr. Rubio Hernandez's application for adjustment of status  
15 based on these grounds.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays that this Court grant the following relief:

- 18 (1) Assume jurisdiction over this matter;
- 19 (2) Declare unlawful and set aside the DHS decisions denying Mr. Rubio Hernandez's  
20 application for adjustment of status;
- 21 (3) Instruct DHS to remand this matter to USCIS with instructions to re-adjudicate Mr.  
22 Rubio Hernandez's adjustment of status application in accordance with the law;
- 23
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1 (4) Award costs and reasonable attorney fees under the Equal Access to Justice Act, 28  
2 U.S.C. § 2412(b); and

3 (5) Grant such further relief as the Court deems just and proper.

4 Dated: June 27, 2022.

Respectfully submitted,

5  
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