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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA

Linda CABELLO GARCIA, on behalf of
herself and others similarly situated,

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. 3:22-cv-5984

**CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

1 **INTRODUCTION**

2 1. Plaintiff Linda Cabello Garcia was granted U nonimmigrant status in 2016.
3 Commonly known as the “U visa,” U nonimmigrant status provides lawful status to qualifying
4 noncitizens who, like Ms. Cabello Garcia, are victims of specified crimes causing them
5 substantial abuse and provide helpful information to law enforcement.

6 2. As a critical component of this benefit, Congress also provided U visa recipients a
7 pathway to lawful permanent residence. After three years with U visa status, U visa recipients
8 are granted a one-year window to apply to adjust their status to lawful permanent residence. In
9 August 2020, Ms. Cabello Garcia timely applied for U-based adjustment of status before U.S.
10 Citizenship and Immigration Services (USCIS). However, USCIS denied the application for
11 adjustment of status based solely on its policy or practice that requires U visa adjustment of
12 status applicants to provide a completed medical exam with their application. Ms. Cabello Garcia
13 could not obtain the expensive medical examination because of the very significant, diagnosed
14 panic disorder she suffers from, which prevented her from going to a doctor’s office for the
15 exam.

16 3. Under the Immigration and Nationality Act (INA), most applicants for adjustment
17 of status are subject to the public health inadmissibility grounds, as prescribed by 8 U.S.C.
18 § 1182(a)(1), and are required to obtain medical exams to demonstrate they are not inadmissible
19 under those grounds. However, U visa recipients seeking to adjust their status to that of lawful
20 permanent resident (LPR) are *not* subject to the public health inadmissibility grounds. Thus,
21 there is no basis for USCIS to require a medical exam from Ms. Cabello Garcia or from other U
22 visa recipients who are applying to adjust status. As a result, USCIS’s denial of Ms. Cabello
23 Garcia’s application for failing to address these non-applicable inadmissibility grounds was
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1 “arbitrary, capricious,” “not in accordance with law,” and “in excess of statutory . . . authority.”
2 5 U.S.C. § 706(2)(A), (C).

3 4. Accordingly, Ms. Cabello Garcia seeks relief under the Administrative Procedure
4 Act (APA) and requests that this Court set aside Defendants’ unlawful denial and order USCIS
5 to re-adjudicate her application in accordance with the law. Ms. Cabello Garcia also seeks class-
6 wide relief to declare unlawful and enjoin USCIS’s policy or practice of requiring medical
7 examinations for U visa adjustment of status applicants, as the INA does not impose this
8 requirement on this group.

9 **JURISDICTION**

10 5. This case arises under the INA, 8 U.S.C. § 1101 *et seq.*, the regulations
11 implementing the INA, and the APA, 5 U.S.C. § 701 *et seq.*

12 6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as the instant case is a
13 civil action arising under the laws of the United States. The Court may grant relief pursuant to
14 5 U.S.C. § 706 and 28 U.S.C. §§ 2201–02.

15 **VENUE**

16 7. Venue properly lies in the Western District of Washington pursuant to 28 U.S.C.
17 § 1391(e) because this is a civil action in which one of the defendants is an agency of the United
18 States, Plaintiff resides in the judicial district, and there is no real property involved.

19 **PARTIES**

20 8. Plaintiff Linda Cabello Garcia is a citizen of Mexico who was granted U
21 nonimmigrant status in October 2016. She lives in Tacoma, Washington.

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

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

7 11. Defendant Ur M. Jaddou is the Director of USCIS. In that capacity, she is
8 ultimately responsible for processing and adjudicating applications for U-based adjustment of
9 status in accordance with the laws and lawfully promulgated regulations of the United States.
10 She is sued in her official capacity.

11 LEGAL FRAMEWORK

12 U Nonimmigrant Status

13 12. Congress created U nonimmigrant status, commonly known as the “U visa,” to
14 protect noncitizen victims of serious crimes and to increase public safety by encouraging those
15 noncitizens to assist law enforcement in investigating and prosecuting those crimes. *See* Victims
16 of Trafficking and Violence Protection Act of 2000 (VTVPA), Pub. L. No. 106-386, § 1513(a),
17 114 Stat. 1464, 1533–34.

18 13. To obtain U status, an applicant must satisfy several criteria. The applicant must
19 (1) be the victim of qualifying criminal activity; (2) have suffered substantial physical or mental
20 abuse as a result of that criminal activity; (3) possess credible and reliable information
21 concerning the criminal activity; and (4) have received a signed, third-party certification from a
22 law enforcement official, prosecutor, judge, or other similar official attesting to their helpfulness
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1 in the investigation or prosecution of the criminal activity. *See* 8 U.S.C. §§ 1101(a)(15)(U),
2 1184(p)(1); 8 C.F.R. § 214.14(b).

3 14. In addition to meeting each of these eligibility criteria, a U visa applicant must
4 either be admissible to the United States or be granted a waiver for any ground of inadmissibility
5 that pertains to them. *See* 8 U.S.C. §§ 1182(d)(14), 1184(a)(1); 8 C.F.R. § 214.1(a)(3)(i).

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). Once granted,
8 U status comes with work authorization, 8 U.S.C. § 1184(p)(3)(B), and is generally valid for four
9 years, *id.* § 1184(p)(6).

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

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

18 17. Generally, individuals seeking to adjust status and become LPRs must
19 demonstrate that they are admissible. *See id.* § 1255(a) (a noncitizen seeking to adjust status
20 must, among other requirements, be “admissible to the United States for permanent residence”).

21 18. In contrast, U visa holders applying to adjust status and become LPRs are not
22 required to demonstrate that they are admissible at the time of applying for adjustment of status.
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1 8 U.S.C. § 1255(m)(1) (identifying 8 U.S.C. § 1182(a)(3)(E) as the only inadmissibility ground
2 applicable to U-based adjustment applicants).

3 19. Federal regulations explicitly recognize this point. *See* 8 C.F.R. § 245.24(d)(11)
4 (“U adjustment applicants are not required to establish that they are admissible.”). The Federal
5 Register notice implementing these regulations also noted that U-based adjustment of status
6 applications were to be treated differently from other adjustment applications, explaining that the
7 “[t]he adjustment provisions contained in section [8 U.S.C. § 1255(m)] are stand-alone
8 provisions and not simply a variation of the general adjustment rules contained in [8 U.S.C.
9 § 1255(a)].” *Adjustment of Status to Lawful Permanent Resident for Aliens in T or U
10 Nonimmigrant Status*, 73 Fed. Reg. 75540, 75548 (Dec. 12, 2008).

11 20. Specifically relevant to this case, § 1255(m)(1) does not require a U-visa
12 adjustment applicant to satisfy the public health-related inadmissibility grounds specified under 8
13 U.S.C. § 1182(a)(1).

14 21. This differs from most adjustment of status cases, where the applicant must
15 submit Form I-693, Report of Medical Examination and Vaccination Record.

16 22. USCIS requires the completion of Form I-693 “to establish that applicants who
17 are seeking immigration benefits are not inadmissible to the United States on public health
18 grounds.” USCIS, *Instructions for Report of Medical Examination and Vaccination Record*, 1
19 (Jul. 19, 2022), <https://www.uscis.gov/sites/default/files/document/forms/i-693instr.pdf>.

20 23. That form allows a civil surgeon certified by USCIS to examine a noncitizen and
21 provide USCIS with information to make the health-related inadmissibility determination. To do
22 so, the civil surgeon examines the individual for certain illnesses, reviews vaccination records,
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1 and administers any tests or vaccines necessary to address the health-related inadmissibility
2 grounds.

3 24. Civil surgeon medical exams typically cost several hundred dollars.

4 25. Congress, however, imposed no medical-exam requirement for U status holders.

5 26. Instead, § 1255(m) requires only that the applicant demonstrate they are “not
6 described in section 1182(a)(3)(E)”—i.e., that they have not participated in “Nazi persecution,
7 genocide, or the commission of . . . torture or extrajudicial killing,” 8 U.S.C. § 1182(a)(3)(E)—
8 and that they have not “unreasonably refused to provide assistance in a criminal investigation or
9 prosecution,” *id.* § 1255(m)(1).

10 27. In addition to not being a person described in § 1182(a)(3)(E), a U visa holder
11 must meet two additional statutory requirements to adjust status. First, the applicant must
12 demonstrate three years of continuous physical presence in the United States since being
13 admitted as a U nonimmigrant. *Id.* § 1255(m)(1)(A). Second, the applicant must establish that
14 their “continued presence in the United States is justified on humanitarian grounds, to ensure
15 family unity, or otherwise in the public interest.” *Id.* § 1255(m)(1)(B); *see also* 8 C.F.R.
16 § 245.24(b)(6), (d)(10).

17 28. Even though the INA does not require U visa holders applying to adjust status to
18 overcome other grounds of inadmissibility, Defendants have a policy or practice of requiring
19 such applicants to submit a Form I-693 with their adjustment applications.

20 29. 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,
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1 1491–1539, and as part of that reauthorization, created U visas and U-based adjustment of status,
2 *see id.* at 1533–37.

3 30. This has important implications, as VAWA is “a generous enactment, intended to
4 ameliorate the impact of harsh provisions of immigration law on abused women.” *Lopez-*
5 *Birrueta v. Holder*, 633 F.3d 1211, 1215 (9th Cir. 2011) (citation omitted).

6 31. In determining the legality of adjudications under § 1255(m) as part of that
7 ameliorative statutory scheme, the agency must therefore “adhere[] to the general rule of
8 construction that when the legislature enacts an ameliorative rule designed to forestall harsh
9 results, the rule will be interpreted and applied in an ameliorative fashion.” *Id.* at 1216 (citation
10 omitted).

11 **FACTUAL ALLEGATIONS**

12 **Ms. Cabello Garcia’s Applications for a U Visa and Waiver of Inadmissibility**

13 32. Ms. Cabello Garcia is a native and citizen of Mexico, who originally entered the
14 United States in 1999. She has lived here ever since.

15 33. Beginning in 2011, Ms. Cabello Garcia was the victim of increasingly aggressive
16 stalking. She reported the stalking to the Juneau Police Department in 2012, and sought a
17 restraining order against her stalker, which was granted.

18 34. Ms. Cabello Garcia subsequently requested that the Juneau Police Department
19 sign a Form I-918B, U Nonimmigrant Status Certification, confirming that she had been helpful
20 with the investigation of the stalking crime. The Department provided the signed certification.

21 35. Ms. Cabello Garcia then submitted her application for a U visa, with the signed
22 Form I-918B, in October 2013. As part of her initial U visa application, Ms. Cabello Garcia
23 requested a waiver for any applicable grounds of inadmissibility.

1 36. USCIS subsequently granted the waiver of grounds of inadmissibility and
2 approved Ms. Cabello Garcia's U visa application on October 28, 2016, thus finding her
3 admission "to be in the public or national interest." 8 U.S.C. § 1182(d)(14).

4 37. Her status was valid for four years from the date of USCIS's decision.

5 **USCIS's Denial of Plaintiff's Application for U-based Adjustment of Status**

6 38. On August 10, 2020, Ms. Cabello Garcia submitted her application for U-based
7 adjustment of status under 8 U.S.C. § 1255(m), after having been continuously present in the
8 United States for more than three years while in U status.

9 39. As part of the application, she provided voluminous evidence demonstrating
10 physical presence in the United States. She also provided documents to support a favorable
11 exercise of discretion. Among other things, that evidence showed that Ms. Cabello Garcia is
12 married to a U.S. citizen and also has a U.S. citizen sister. The application further explained that
13 Ms. Cabello Garcia has no criminal history.

14 40. Over a year later, on August 23, 2021, USCIS issued a Request for Evidence
15 (RFE) requesting a few missing pages of Ms. Cabello Garcia's passport and the medical exam,
16 Form I-693.

17 41. Ms. Cabello Garcia responded to the RFE on January 13, 2022. In the response,
18 Ms. Cabello Garcia provided a complete copy of her passport.

19 42. In addition, she requested that the agency approve her application without a
20 medical exam.

21 43. Ms. Cabello Garcia explained that U-based adjustment of status does not require
22 an applicant to demonstrate that they are admissible under the public-health inadmissibility
23 grounds.

1 44. As the Form I-693 is required solely so USCIS can assess whether an adjustment
2 applicant satisfies the health-related grounds of inadmissibility, Ms. Cabello Garcia explained
3 the form was inapplicable to her case.

4 45. She also provided a letter from her husband attesting to the severe anxiety and
5 panic attacks that Ms. Cabello Garcia suffers when seeking medical help.

6 46. USCIS responded by issuing a notice of intent to deny (NOID) on February 4,
7 2022.

8 47. The sole reason the NOID cited for USCIS's planned denial of the application
9 was the fact that Ms. Cabello Garcia did not submit the Form I-693.

10 48. Ms. Cabello Garcia responded to the NOID on June 28, 2022.

11 49. In her response, she reiterated that she is not subject to the health-related grounds
12 of inadmissibility at 8 U.S.C. § 1182(a)(1), and therefore should not be required to undertake a
13 medical exam to adjust status.

14 50. Ms. Cabello Garcia also provided a detailed declaration explaining the significant
15 panic attacks she experiences related to "anything medical." The declaration further addressed
16 any potential health-related inadmissibility grounds (even though they did not apply), explaining
17 that Ms. Cabello Garcia does not have any of the diseases or illnesses that the medical exam
18 would touch on. In addition, Ms. Cabello Garcia provided the vaccine records that were available
19 to her, even though she should not be required to obtain the vaccinations to satisfy 8 U.S.C.
20 § 1182(a)(1).

21 51. Ms. Cabello Garcia also submitted a document from a behavioral health specialist
22 from the Sea Mar office in Tacoma, Washington, affirming that Ms. Cabello Garcia had been
23 diagnosed with ICD-10 Generalized Anxiety Disorder and Panic Disorder.

1 52. Ms. Cabello Garcia further provided evidence that the DHS Office of Civil Rights
2 and Civil Liberties, which she had contacted for help, had attempted, unsuccessfully, to obtain
3 accommodations from various civil surgeons so that she could comply with USCIS's
4 requirement that she submit a completed Form I-693.

5 53. On August 1, 2022, USCIS denied Ms. Cabello Garcia's application for
6 adjustment of status.

7 54. The sole reason provided for the denial was the failure to provide the Form I-693.

8 55. The agency denied Ms. Cabello Garcia's application notwithstanding the fact that
9 the INA does not require U-based adjustment applicants to complete a medical exam to satisfy 8
10 U.S.C. § 1182(a)(1), as that provision does not apply to them.

11 56. It did so notwithstanding the evidence Ms. Cabello Garcia submitted as to the
12 obstacles she faced in obtaining a medical exam due to her medical disability.

13 57. USCIS's denial did not point to any authority in the INA for the agency's
14 requirement.

15 58. Instead, the agency cited only 8 C.F.R. § 103.2(a)(1) and 42 C.F.R. § 34.1(d).¹

16 59. The former provision merely requires an applicant to submit the forms required
17 for a particular application per the instructions provided on that form.

18 60. It also provides that a particular form's instructions are "incorporated into the
19 regulations requiring its submission." 8 C.F.R. § 103.2(a)(1).

20 61. The instructions for the Form I-485, Application to Register Permanent Residence
21 or Adjust Status, note that "Form I-485 applicants for adjustment of status are required to have a
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24 ¹ The agency denial cited 8 C.F.R. § 102.3(a)(1). Upon information and belief, that was a
mistake, as it is 8 C.F.R. § 103.2(a)(1) that contains the language quoted in the denial letter.

1 medical examination to show that they are free from health conditions that would make them
2 inadmissible.” USCIS, *Instructions for Application to Register Permanent Residence or Adjust*
3 *Status*, 13 (Jul. 15, 2022), [https://www.uscis.gov/sites/default/files/document/forms/i-](https://www.uscis.gov/sites/default/files/document/forms/i-485instr.pdf)
4 [485instr.pdf](https://www.uscis.gov/sites/default/files/document/forms/i-485instr.pdf). The instructions exempt certain applicants from this obligation; however, they do
5 not exempt U-based adjustment applicants.

6 62. As to 42 C.F.R. § 34.1(d), it merely clarifies that its provisions, concerning
7 “Medical Examination of [Noncitizens],” apply to “the medical examination of” noncitizens
8 “applying for adjustment of status.”

9 63. Despite these regulations, the INA does not impose the requirement Defendants
10 cited to deny Ms. Cabello Garcia’s application.

11 CLASS ACTION ALLEGATIONS

12 64. Plaintiff brings this action on behalf of herself and all others who are similarly
13 situated pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(2). A class action is proper
14 because this action involves questions of law and fact common to the classes, the class is so
15 numerous that joinder of all members is impractical, Plaintiff’s claims are typical of the claims of
16 the class, and Plaintiff will fairly and adequately protect the interests of the class. Defendants
17 have acted on grounds that apply generally to the class, so that final injunctive relief or
18 corresponding declaratory relief is appropriate with respect to the class as a whole.

19 65. Plaintiff seeks to represent the following class: “All individuals with approved U
20 status under 8 U.S.C. § 1101(a)(15)(U) who have submitted an application for adjustment of
21 status that has not yet been approved or who will submit an application for adjustment of status,
22 and whom USCIS has required, or will require, to submit a Form I-693, Report of Medical
23 Examination and Vaccination Record.”

1 66. The proposed class meets the numerosity requirements of Federal Rule of Civil
2 Procedure 23(a)(1). The class is so numerous that joinder of all members is impracticable.
3 Plaintiff is not aware of the precise number of potential class members. Because far more than
4 10,000 individuals receive U status every year (between principal and derivative applicants),
5 Plaintiff estimates there are thousands of class members and that there will be many more future
6 class members.

7 67. The proposed class meets the commonality requirements of Federal Rule of Civil
8 Procedure 23(a)(2). The members of the class are all subject to USCIS’s unlawful I-693 policy or
9 practice. The lawsuit raises questions of law common to members of the proposed class,
10 including whether the agency’s policy or practice violates the INA and is arbitrary and
11 capricious.

12 68. The proposed class meets the typicality requirements of Federal Rule of Civil
13 Procedure 23(a)(3) because the claims of the representative Plaintiff are typical of the class. Each
14 of the class members will be required to submit a Form I-693 even though the INA imposes no
15 such requirement on them. Plaintiff and the proposed class share the same legal claims, which
16 assert the same substantive and procedural rights under the INA and APA.

17 69. The proposed class meets the adequacy requirements of Federal Rule of Civil
18 Procedure 23(a)(4). The representative Plaintiff seeks the same relief as the other members of the
19 class—namely, an order declaring Defendants’ policy or practice unlawful and enjoining USCIS
20 from applying it. Plaintiff and class members who have been denied solely on this basis also seek
21 re-adjudication of their applications pursuant to a lawful interpretation of the INA. Plaintiff will
22 fairly and adequately protect the interests of the proposed class members because she seeks relief
23 on behalf of the class as a whole and has no interest antagonistic to other class members.

1 70. Plaintiff is also represented by competent counsel with extensive experience in
2 complex class actions and immigration law.

3 71. The proposed class also satisfies Federal Rule of Civil Procedure 23(b)(2).
4 Defendants have acted on grounds generally applicable to the proposed class, thereby making
5 appropriate final declaratory and injunctive relief.

6 **CAUSE OF ACTION**

7 **Administrative Procedure Act**
8 **5 U.S.C. § 706(2)(A)**

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

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

13 74. Defendants’ denial of Ms. Cabello Garcia’s application for adjustment of status
14 constitutes “agency action” under the APA. *Id.* § 551(13). Defendants’ denial also constitutes
15 “final agency action for which there is no other adequate remedy in a court.” *Id.* § 704.
16 Defendants’ policy or practice of requiring a completed I-693 for U-based adjustments of status
17 also constitutes final agency action under 5 U.S.C. § 704.

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

21 76. Here, Defendants unlawfully denied Ms. Cabello Garcia’s application for
22 adjustment of status by requiring her to submit to a medical exam that the INA does not require.
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1 77. Accordingly, Defendants' denial of Ms. Cabello Garcia's application for
2 adjustment of status was arbitrary, capricious, contrary to the law, and in excess of statutory
3 authority.

4 **PRAYER FOR RELIEF**

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

- 6 (1) Assume jurisdiction over this matter;
- 7 (2) Certify the case as a class action as proposed herein and in the forthcoming motion for
8 class certification;
- 9 (3) Declare unlawful and set aside the DHS decision denying Ms. Cabello Garcia's
10 application for adjustment of status;
- 11 (4) Instruct DHS to remand this matter to USCIS with instructions to re-adjudicate Ms.
12 Cabello Garcia's application for adjustment of status in accordance with the law;
- 13 (5) Declare unlawful Defendants' policy or practice of requiring U-based adjustment of
14 status applicants to submit Form I-693;
- 15 (6) Enjoin Defendants, their subordinates, agents, employees, and all others acting in concert
16 with them from applying USCIS's policy or practice of denying U-based applications for
17 adjustment of status based solely on the applicant's failure to submit Form I-693;
- 18 (7) Award costs and reasonable attorney fees under the Equal Access to Justice Act, 28
19 U.S.C. § 2412; and
- 20 (8) Grant such further relief as the Court deems just and proper.

21 Dated: December 16, 2022.

Respectfully submitted,

22 s/ Matt Adams

23 Matt Adams, WSBA No. 28287

24 matt@nwirp.org

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Forthcoming*

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