UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EVELYN GOMEZ, KARLA ALVARADO PINEDA, and GILBERTO LANDAVERDE GARCIA, on behalf of themselves and all other similarly situated,

Plaintiffs,

v.

UR JADDOU, in her official capacity as Director of United States Citizenship and Immigration Services; UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; and UNITED STATES DEPARTMENT OF HOMELAND SECURITY,

Defendants.

Civil Action No. 21-cv-9203

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs Evelyn Gomez, Karla Alvarado, Gilberto Landaverde Garcia, and the class members they seek to represent are present in the United States in Temporary Protected Status (TPS). They have lived in the United States lawfully with TPS for years—in some cases for more than two decades. Although they originally entered the United States without being inspected and admitted or paroled, Defendant U.S. Citizenship and Immigration Services (USCIS) subsequently granted them permission to travel abroad; upon their return, they lawfully reentered the United States. They now seek to become lawful permanent residents (LPRs) based on a close family relationship with a U.S. citizen. However, their applications to adjust their status to that of a LPR have been or will be denied by USCIS due to the agency's August 2020 reversal of a policy that had been in place for thirty years.

2. For three decades, from 1991 until August 2020, USCIS and its predecessor, the Immigration and Naturalization Service (INS), followed a policy and practice of permitting TPS holders who temporarily traveled abroad with prior agency approval to be inspected and either admitted or paroled into the United States upon their return. Agency policy was that this inspection and admission or parole satisfied the adjustment of status requirement that the applicant have been "inspected and admitted or paroled into the United States." 8 U.S.C. § 1255(a). As a result, an untold number of TPS holders successfully became LPRs over the years, notwithstanding that they initially entered the United States without inspection.

3. On August 20, 2020, Defendant USCIS abruptly reversed its 30-year policy and practice. On that date, the agency's Administrative Appeals Office (AAO) issued a decision in an individual case entitled *Matter of Z-R-Z-C-*. The case held that a TPS holder's entry into the United States upon return from authorized travel abroad was neither an admission nor a parole. *See* USCIS Policy Memorandum, *Matter of Z-R-Z-C-*, Adopted Decision 2020-02, 2020 WL 5255637 (AAO August 20, 2020). USCIS officially adopted this decision as agency-wide policy, applying it to all authorized travel by TPS holders occurring after August 20, 2020. *Id*.

4. Under Defendants' *Matter of Z-R-Z-C-* policy, TPS holders who initially entered without inspection—such as Plaintiffs and putative class members—cannot demonstrate an inspection and admission or parole for purposes of adjustment of status, even though they are inspected and permitted to enter the United States following authorized travel abroad. Instead, Defendant USCIS treats the TPS holder as if he or she had never traveled abroad, claiming that the travel operates as a legal fiction.

5. Plaintiffs bring this challenge to Defendants' *Matter of Z-R-Z-C-* policy under the Administrative Procedure Act (APA). There is no lawful basis to support the agency's legal

fiction, as his or her entry into the United States following authorized travel must be found to be either an admission or a parole. The plain language of a statutory TPS travel provision demonstrates that a TPS holder is "inspected and admitted" upon return from authorized travel. Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA) Pub. L. 102-232, § 304(c), 105 Stat. 1733, 1749 (codified at 8 U.S.C. § 1254a note). Alternatively, governing regulations demonstrate that such a person is inspected and paroled into the United States upon return from authorized travel. 8 C.F.R. § 244.15(a) (authorizing USCIS to grant TPS holders "[p]ermission to travel abroad . . . pursuant to the [agency's] advance parole provisions"). Pursuant to either interpretation, a TPS holder who is permitted to enter the United States following authorized travel abroad satisfies the threshold requirement for adjustment of status.

JURISDICTION AND VENUE

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

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, as this is a civil action arising under the laws of the United States. The Court may grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201-2202 and 5 U.S.C. § 702 *et seq*. The United States has waived its sovereign immunity pursuant to 5 U.S.C. § 702.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because Defendants are agencies of the United States and officers or employees of the United States, or agencies thereof, acting in their official capacities, and Plaintiff Evelyn Gomez resides in this district, as do many putative class members. No real property is involved in this action.

PARTIES

9. Plaintiff Evelyn Gomez is a national of Honduras who first entered the United States without inspection in 1998. She was granted TPS in 2000 and has maintained that status ever since. In December 2020, she traveled abroad and returned to the United States with authorization. She has applied for adjustment of status but anticipates that Defendant USCIS will deny her adjustment application based solely on its erroneous policy that an authorized return after TPS-based travel does not constitute an inspection and admission or parole to the United States. Plaintiff Gomez resides in Bronx, New York.

10. Plaintiff Karla Alvarado Pineda is a national of El Salvador who first entered the United States without inspection in 1997. She was granted TPS in 2001 and has maintained that status ever since. In December 2020, she traveled abroad and returned to the United States with authorization. She has applied for adjustment of status but anticipates that Defendant USCIS will deny her adjustment application based solely on its erroneous policy that an authorized return after TPS-based travel does not constitute an inspection and admission or parole to the United States. Plaintiff Alvarado resides in Norristown, Pennsylvania.

11. Plaintiff Gilberto Landaverde Garcia is a national of El Salvador who first entered the United States without inspection in 2000. He was granted TPS in 2001 and has maintained that status ever since. In October 2020, he traveled abroad and returned to the United States with authorization. In December 2020, he applied for adjustment of status. In September 2021, Defendant USCIS denied his adjustment application based solely on its erroneous policy that an authorized return after TPS-based travel does not constitute an inspection and admission or parole to the United States. Plaintiff Landaverde resides in Springdale, Arkansas.

12. Defendant Ur Mendoza Jaddou is the Director of USCIS and is responsible for overseeing the adjudication of immigration benefits and establishing and implementing governing agency policies, such as the *Matter of Z-R-Z-C-* policy. Director Jaddou is sued in her official capacity.

13. Defendant U.S. Citizenship and Immigration Services is a component of the Department of Homeland Security (DHS), 6 U.S.C. § 271(a)(1), and an "agency" within the meaning of the APA, 5 U.S.C. § 551(1). USCIS adopted the *Matter of Z-R-Z-C-* policy. Moreover, it is responsible for adjudicating immigration benefit applications, including applications for lawful permanent residence.

14. Defendant Department of Homeland Security is an executive agency of the United States and an "agency" within the meaning of the APA. 5 U.S.C. § 551(1). DHS is responsible for implementing the INA, including provisions relating to authorization of travel for TPS holders and adjustment of status. DHS has authority to set agency policy and to adjudicate immigration benefit applications; it has delegated this authority to USCIS.

FACTUAL ALLEGATIONS

Evelyn Gomez

15. Plaintiff Evelyn Gomez is a 46-year-old noncitizen from Honduras who first entered the United States without inspection on or about March 1998. In 2000, Defendant USCIS granted her TPS. She has maintained that status for more than twenty years, renewing it and the attendant employment authorization regularly as required by USCIS.

16. Ms. Gomez resides in Bronx, New York, with her U.S. citizen spouse. She has two U.S. citizen children, ages 21 and 13.

17. In 2020, USCIS granted Ms. Gomez advance permission to travel outside of the United States. Upon her return, on or about December 7, 2020, DHS inspected and authorized

her entry into the United States as a TPS holder.

18. On October 27, 2021, Ms. Gomez filed an adjustment of status application with USCIS based on her marriage to her U.S. citizen spouse, and the petition which her husband filed on her behalf.

19. Ms. Gomez's adjustment of status application remains pending. Nevertheless, Ms. Gomez anticipates that her application will be denied based on USCIS's policy of not treating her inspection and permission to enter the country as an inspection and admission or parole for purposes of adjustment of status, solely because of Ms. Gomez's status as a TPS holder. But for Defendants' unlawful policy, Ms. Gomez will be found eligible for adjustment of status.

20. Ms. Gomez has been self-employed as a housekeeper since 2015. She seeks to become an LPR to avoid any future loss of her protected status, have a path to U.S. citizenship, remain with her family in the United States, and continue to maintain her work authorization. Should DHS terminate the TPS designation for Honduras, Ms. Gomez will lose her status, face deportation to a country in which she has not resided for over two decades, and be separated from her U.S.-citizen spouse and children. For all of these reasons, she wishes to have her adjustment application fairly adjudicated in accordance with the law.

Karla Alvarado Pineda

21. Plaintiff Karla Alvarado Pineda is a 33-year-old noncitizen from El Salvador who first entered the United States without inspection on or about May 1997, when she was 9 years old. In 2001, Defendant USCIS granted Ms. Alvarado TPS. She has maintained that status ever since, renewing it as required by USCIS.

22. Ms. Alvarado works as a registered nurse and resides in Norristown, Pennsylvania with her husband, a United States citizen. Ms. Alvarado and her husband have been together since Ms. Alvarado was eighteen years old, and were married in 2017.

23. In November 2019, Ms. Alvarado applied for permission to travel abroad so that she could visit El Salvador. USCIS approved the request for advance permission to travel on or about November 17, 2020.

24. On December 12, 2020, Ms. Alvarado traveled to El Salvador, and returned one week later on December 19, 2020. Upon her return to the United States through Miami International Airport, Ms. Alvarado presented her advance travel authorization document to immigration officials, who inspected her and allowed her to enter the United States.

25. In October 2021, Ms. Alvarado filed an adjustment of status application with USCIS based on her marriage to a United States citizen. Ms. Alvarado's husband had previously filed a visa petition on her behalf, which USCIS had approved in September 2018.

26. Ms. Alvarado's adjustment of status application remains pending. Nevertheless, Ms. Alvarado anticipates that her application will be denied based on USCIS's policy of not treating her inspection and permission to enter the country as an inspection and admission or parole for purposes of adjustment of status, solely because of Ms. Alvarado's status as a TPS holder. But for Defendants' unlawful policy, Ms. Alvarado will be found eligible for adjustment of status.

27. Ms. Alvarado will be harmed when USCIS denies her adjustment application. As a TPS holder, she faces uncertainty regarding her future status within the United States, where she arrived as a young child and has remained ever since. She seeks to become a LPR to ensure that she can remain in the United States with her husband and family, avoid any future loss of her protected status, and have a path to U.S. citizenship. Should DHS terminate the TPS designation for El Salvador, Ms. Alvarado will lose her status and face deportation to a country in which she has not resided since she was nine years old. Deportation would separate her from

her husband, with whom she has been for fifteen years. For all of these reasons, she wishes to have her adjustment application fairly adjudicated in accordance with the law.

Gilberto Landaverde Garcia

28. Plaintiff Gilberto Landaverde Garcia is a 43-year-old citizen of El Salvador who first entered the United States without inspection in or around 2000. In 2001, Defendant USCIS granted him TPS. He has maintained that status for over twenty years, renewing it and the attendant employment authorization regularly as required by USCIS.

29. Mr. Landaverde resides in Springdale, Arkansas, with his wife and children, ages 15 and 21, all of whom are U.S. citizens. He also has one son who resides in El Salvador.

30. Since his 2000 entry to the United States, Mr. Landaverde has worked mostly in landscaping and is the primary breadwinner for his family.

31. Mr. Landaverde took the first step in his visa application process in September 2019, when his wife filed a Form I-130 visa petition on his behalf. On or about June 15, 2020, USCIS granted the visa petition, establishing that there was an immigrant visa available to him as an immediate relative.

32. In 2020, USCIS granted Mr. Landaverde advance permission to travel outside of the United States. Mr. Landaverde traveled to El Salvador on or about October 24, 2020. Upon his return, on or about October 31, 2020, DHS inspected and authorized his entry into the United States as a TPS holder.

33. On or about December 22, 2020, Mr. Landaverde filed his application for adjustment of status with USCIS.

34. On or about September 9, 2021, USCIS denied his adjustment of status application. Citing *Matter of Z-R-Z-C-*, USCIS concluded that Mr. Landaverde was ineligible for adjustment of status because his authorized travel and return to the United States occurred after

August 20, 2020, and he did not provide evidence of a legal entry before that date.

35. Mr. Landaverde's adjustment application was denied based on USCIS's policy of not treating his inspection and permission to enter the country as an inspection and admission or parole for purposes of adjustment of status, solely because of Mr. Landaverde's status as a TPS holder. But for Defendants' unlawful policy, the agency would have found that he was eligible for adjustment of status.

36. Mr. Landaverde has and will continue to face harm from Defendants' erroneous policy and denial of his adjustment of status application. The denial of his adjustment of status application has denied him permanent legal status and a path to U.S. citizenship. As a TPS holder, he faces uncertainty regarding his ability to remain in the United States, a country in which he was lived for over two decades, raising and supporting his family. Should DHS terminate the TPS designation for El Salvador, Mr. Landaverde will lose his status and face separation from his U.S.-citizen wife and children. For all of these reasons, he wishes to have his adjustment of status application fairly adjudicated in accordance with the law.

BACKGROUND

Adjustment of Status

37. Adjustment of status is the process by which a noncitizen applies for lawful permanent residence from within the United States. To be eligible, the applicant must meet certain threshold requirements and also demonstrate that he or she is not barred from adjusting status. *See* 8 U.S.C. § 1255(a), (c).

38. One threshold requirement is that the noncitizen must demonstrate that he or she has been "inspected and admitted or paroled into the United States." *Id.* § 1255(a). The term "admitted" is defined by statute as "the lawful entry of [a noncitizen] into the United States after inspection and authorization by an immigration officer." *Id.* § 1101(a)(13)(A). In contrast,

"parole" is a means by which an immigration officer can authorize the temporary entry of a noncitizen into the United States without admitting them. A parole is not an admission. *Id.* § 1101(a)(13)(B) (stating that a noncitizen who has been paroled has not been admitted).

39. An adjustment of status applicant also must demonstrate that he or she is eligible to receive an immigrant visa (based on a qualifying relationship with a close family member or an employer) and has an immigrant visa immediately available at the time the individual files the adjustment of status application. *Id.* § 1255(a). Finally, the applicant must demonstrate admissibility to the United States, i.e., that he or she either is not subject to an enumerated ground of inadmissibility set forth in 8 U.S.C. § 1182 or qualifies for a waiver of any such ground. *Id*.

40. Generally, an otherwise eligible individual is barred from adjusting to LPR status if, inter alia, he or she has worked in the United States without authorization, is in unlawful immigration status on the date of filing an adjustment application or has failed to maintain continuously a lawful status since entry into the United States. *Id.* § 1255(c)(2). "Immediate relatives," however, are exempt from the § 1255(c)(2) bar to adjustment. *Id*. Immediate relatives are defined as the children and spouses of U.S. citizens and the parents of U.S. citizens, provided the citizen son or daughter is at least 21 years old. *See id.* § 1151(b)(2)(A)(i).

Temporary Protected Status

41. Congress enacted the TPS statute in 1990 as a humanitarian program. Pursuant to 8 U.S.C. § 1254a(b), the DHS Secretary may designate a foreign country for TPS due to conditions in the country that temporarily prevent its nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. USCIS may grant TPS to nationals of the designated countries who meet specific eligibility

criteria, including presence in the United States—whether lawful or unlawful—at the time of designation.

42. The Secretary has designated countries for TPS following environmental disasters, such as an earthquake or hurricane; epidemics; and ongoing armed conflicts, such as civil wars. Currently, the following countries are designated for TPS: Burma, Haiti, Somalia, South Sudan, Syria, Venezuela, and Yemen. *See* Temporary Protected Status, https://www.uscis.gov/humanitarian/temporary-protected-status (last visited Oct. 19, 2021). The DHS Secretary under the Trump administration terminated TPS for six countries—El Salvador, Haiti (a prior designation), Honduras, Nepal, Nicaragua, and Sudan—but TPS for those countries has been extended until December 31, 2022, as the result of ongoing lawsuits. *See* USCIS, Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal, 88 Fed. Reg. 50725, 50726 (Sept. 10, 2021). Consequently, TPS holders from these countries have continued in that status without interruption.

43. TPS designations for five countries were initially issued two or more decades ago: Somalia, 1991; Sudan, 1997; Honduras, 1999; Nicaragua, 1999; and El Salvador, 2001. The others all were designated within the last eleven years. *See* USCIS, Temporary Protected Status, https://www.uscis.gov/humanitarian/temporary-protected-status (last updated Sept. 9, 2021) (listing countries designated for TPS and providing separate webpages for each country listing initial designation dates).

44. An estimated 320,000 foreign nationals hold TPS in the United States. Jill H. Wilson, Cong. Rsch. Serv., RS20844, Temporary Protected Status and Deferred Enforced Departure (2021). The majority of these individuals have held that status for two decades or

longer. *Id.* at 6 tbl.1 (showing that Salvadorans and Hondurans account for the largest percentage of TPS holders).

45. Upon initial designation of a country for TPS, DHS issues a notice advising nationals of that country of a period in which they may apply for TPS if they meet certain eligibility requirements, including continuous presence in the United States since the date of the designation, continuous residence in the United States since a date specified in the DHS notice, and being admissible to the United States. 8 U.S.C. § 1254a(a)(3), (c). With respect to the admissibility requirement, certain grounds of inadmissibility are waived by statute and others may be waived at the discretion of DHS. *Id.* § 1254a(c)(1)(A)(iii), (2)(A). Individuals convicted of certain crimes or found to be a security risk are not eligible for TPS. *Id.* § 1254a(c)(2)(B).

46. Individuals otherwise eligible for TPS may receive that status regardless of whether they are in lawful status in the United States at the time of application. *Id.* § 1254a(a)(5). An individual who entered the United States without authorization may receive TPS.

47. The TPS application process is a rigorous one. Defendants screen applicants' biometrics, admissibility, and general eligibility for TPS. Applicants are approved only after they have been thoroughly screened for TPS. Pursuant to the statute, the DHS Secretary must review and either terminate or re-designate TPS designations every 6 to 18 months. 8 U.S.C. § 1254a(b)(3)(C). TPS holders must reapply after each re-designation to renew their status, verifying that they continue to satisfy all eligibility requirements.

48. When granted, TPS provides temporary lawful status to beneficiaries. While a noncitizen's TPS is in effect, he or she cannot be removed from the United States or detained by DHS for lack of immigration status and is entitled to employment authorization. 8 U.S.C. § 1254a(a)(1), (d)(4).

TPS Travel Provisions

49. Congress also authorized TPS holders to "travel abroad with the prior consent" of the immigration agency. 8 U.S.C. § 1254a(f)(3). The former INS promulgated final regulations in May 1991 stating that permission to travel would be granted "pursuant to the Service's advance parole provisions." Temporary Protected Status for Nationals of Designated States, 56 Fed. Reg. 23,496, 23,498 (May 22, 1991) (originally codified at 8 C.F.R. § 240.15(a) and subsequently recodified at 8 C.F.R. § 244.15(a)). With the exception of technical amendments not relevant here, this regulation has remained unchanged for 30 years. *Compare id. with* 8 C.F.R. § 244.15(a) (2001).

50. Advance parole is a form of temporary travel authorization which a noncitizen without a visa can obtain prior to departing the United States. When an advance parole application is approved, USCIS issues the noncitizen a document authorizing his or her travel for a certain period of time. 8 C.F.R. § 212.5(f). Upon return to the United States, an immigration officer will inspect and parole the individual into the United States if the advance parole document has not expired and if the individual is admissible.

51. USCIS's advance parole provisions include 8 C.F.R. § 212.5(f) and USCIS Form I-131, Application for Travel Document, and accompanying Instructions for Application for Travel Document. Form I-131 and Instructions are incorporated into the regulations. *Id.* § 103.2(a)(1).

52. Taken together, these regulations dictate that the travel authorization which USCIS may grant a TPS holder is authorization for the individual to be paroled into the United States upon return from the travel.

53. On December 12, 1991, after the promulgation of 8 C.F.R. § 244.15, Congress enacted the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Pub. L. No. 102-232, 105 Stat. 1733 (codified as amended at 8 U.S.C. § 1254a note). Section 304(c) of MTINA addresses travel by TPS holders, stating in relevant part that, where DHS authorizes temporary travel abroad and the TPS holder returns to the United States in accordance with such authorization, the TPS holder "shall be *inspected and admitted* in the same immigration status [he or she] had at the time of departure," unless found to be excludable on a ground referred to in 8 U.S.C. § 1254a(c)(2)(A)(iii). MTINA § 304(c)(1)(A)(ii) (emphasis added). The cited statutory provision lists grounds of inadmissibility that cannot be waived for purposes of TPS eligibility and thus render a noncitizen ineligible for TPS; these grounds include inadmissibility for certain criminal offenses, national security reasons, and participation in Nazi persecution or genocide.

54. At the time Congress enacted section 304(c) of MTINA, the phrase "inspected and admitted" existed in the neighboring statutory provision relating to adjustment of status to permanent residence. *See* 8 U.S.C. § 1255(a) (1991) (requiring that an applicant be "inspected and admitted or paroled" into the United States). Congress has not changed this threshold adjustment requirement since that time.

55. Neither INS nor USCIS amended the TPS travel regulation in the thirty years since Congress enacted section 304(c) of MTINA.

INS's and USCIS's longstanding interpretation of the TPS travel provision

56. For close to 30 years—from promulgation of 8 C.F.R. § 244.15 in 1991 until August 20, 2020—INS and, subsequently, USCIS, adhered to a policy and practice of treating a TPS holder's entry following authorized travel as satisfying the adjustment of status requirement

that an applicant have been "inspected and admitted or paroled" into the United States. Consequently, when a TPS holder who had traveled on advance parole and been permitted to enter the United States upon return later applied for adjustment of status, INS and USCIS would find that he or she satisfied 8 U.S.C. § 1255(a).

57. An INS General Counsel opinion issued in 1991 stated that a TPS holder who traveled abroad and reentered the United States pursuant to a grant of advance parole would satisfy the "inspected and . . . paroled" requirement of § 1255(a). *See* Paul W. Virtue, INS, Legal Opinion Letter on Temporary Protected Status and Eligibility for Adjustment of Status under Section 245, INS Gen. Counsel Op. No. 91-27, 1991 WL 1185138, at *2 (Mar. 4, 1991). After the passage of MTINA, an INS General Counsel opinion stated that such a person would be found to have been inspected and admitted for purposes of § 1255(a), based on the language of MTINA. Paul Virtue, INS, Legal Opinion Letter on Your HQ 245-C Request for Legal Opinion Regarding Eligibility for Adjustment of Status under CSPA of Person who Entered without Inspection, INS Gen. Counsel Op. 93-56, 1993 WL 1504003, at *2 (Aug. 10, 1993).

58. USCIS adopted the position of its predecessor that a TPS holder who traveled and returned pursuant to a grant of advance parole and who later sought to adjust her status satisfied § 1255(a), even where the individual initially had entered the United States without inspection. In its online policy manual, USCIS cited section 304(c) of MTINA, and stated that:

> DHS has authority to admit rather than parole TPS beneficiaries who travel and return with TPS-related advance parole documents. For purposes of adjustment eligibility, it does not matter whether the TPS beneficiary was admitted or paroled. In either situation, once the [foreign national] is inspected at a port of entry and permitted to enter to the United States, the [foreign national] meets the inspected and admitted or inspected and paroled requirement.

USCIS, Policy Manual, Vol. 7, Part B, Chap. 2.A.5, [https://web.archive.org/web/20200604161444/https://www.uscis.gov/policy-manual/volume-7-part-b-chapter-2] (last updated May 21, 2020) (footnote omitted).

59. On information and belief, INS and USCIS have granted adjustment of status to thousands of individuals who initially entered the United States without inspection but subsequently obtained TPS, traveled abroad pursuant to agency authorization, and were inspected and permitted to reenter the United States.

USCIS's abrupt reversal of policy

60. On August 20, 2020, USCIS's AAO issued a decision in the case of a single adjustment applicant—a TPS holder who had initially entered the United States without inspection—in which it reversed the agency's longstanding interpretation of the TPS travel provisions. USCIS held that TPS-authorized travel will not satisfy § 1255(a)'s requirement of being "inspected and admitted or paroled." *Matter of Z-R-Z-C-*, 2020 WL 5255637, at *6. Simultaneously, USCIS designated the decision as constituting agency-wide policy binding on all USCIS employees. *Id*. at *1.

61. In the decision, USCIS erroneously interpreted the phrase "inspected and admitted in the same immigration status," as used in section 304(c) of MTINA, to create a legal fiction that upon return from authorized travel abroad, notwithstanding their physical departure, TPS holders would be treated as if they never left the United States. *Id*. at 6. Refusing to apply MTINA's plain language—that the TPS holder was "inspected and admitted" upon return—and failing to apply its own regulation that provided for inspection and parole upon return, *see* 8 C.F.R. § 244.15(a), USCIS thus found that TPS holders were neither inspected and admitted nor inspected and paroled upon return, *Matter of Z-R-Z-C-*, 2020 WL 5255637, at *6.

62. Compounding this error, USCIS found that the immigration status to which TPS holders returned following authorized travel abroad was that of a TPS holder who is present in the United States without inspection and admission or parole. *Id.* at *9. No such immigration status exists under the immigration laws. The sole immigration status that a TPS holder returns to after authorized travel abroad is Temporary Protected Status. Being present in the United States without having been inspected and admitted or paroled is not an immigration status but rather a ground of inadmissibility. *See* 8 U.S.C. § 1182(a)(6)(A). An inadmissibility ground is not an immigration status.

63. USCIS erroneously conflated the statutory term "same immigration status" to include the "incidents" of such status and "circumstances" surrounding such status. *Matter of Z-R-Z-C-*, 2020 WL 5255637, at *7 (stating that a return to the "same immigration status" includes "all of the incidents attached to that status, *e.g.*, a TPS recipient present in the United States without inspection and admission or inspection and parole").

The Supreme Court's decision in* Sanchez v. Mayorkas *further confirms USCIS's interpretation of section 304(c) of MTINA is unlawful

64. On June 7, 2021, the Supreme Court issued *Sanchez v. Mayorkas*, 141 S. Ct. 1809 (2021), holding that a grant of TPS alone does not constitute an "admission" for purposes of adjustment of status under 8 U.S.C. § 1255(a). Although the Court did not address the impact of a TPS holder's authorized travel abroad, it did find that an individual who entered without inspection and subsequently was granted TPS is considered to be in "lawful status" for purposes of an application for adjustment of status. 141 S. Ct. at 1813 (citing 8 U.S.C. § 1254a(f)(4)). In so finding, *Sanchez* emphasized that manner of entry is a legally "distinct concept[]" from immigration status. *Id*.

65. In interpreting section 304(c) of MTINA, USCIS's *Matter of Z-R-Z-C-* policy fails to treat manner of entry and immigration status as distinct concepts. *Matter of Z-R-Z-C-*'s conclusion that a TPS recipient who initially entered without inspection and travels abroad pursuant to TPS travel authorization is returned to the status of a TPS holder who is present in the United States without inspection or admission erroneously treats the TPS holder's manner of entry as an immigration status. This conclusion is irreconcilable with *Sanchez.*

CLASS ALLEGATIONS

66. Plaintiffs bring this action on behalf of themselves and all others who are similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2). A class action is proper because this action involves questions of law and fact common to the classes, the class is so numerous that joinder of all members is impractical, Plaintiffs' claims are typical of the claims of the class, Plaintiffs will fairly and adequately protect the interests of the respective class, and Defendants have acted on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole.

67. Plaintiffs seek to represent the following class:

> All individuals with TPS whose initial entries into the United States were without inspection; who, after being granted TPS, traveled abroad with authorization from USCIS after August 20, 2020, and were permitted to reenter the United States; who have applied or will apply with USCIS for adjustment of status to lawful permanent residence as immediate relatives; and whose applications USCIS has denied or will deny based on its policy that a post-August 20, 2020 entry into the United States by a TPS holder pursuant to authorized travel is neither an admission nor a parole into the United States, as set forth in *Matter of Z-R-Z-C-*.

68. The class is so numerous that joinder of all members is impracticable. Plaintiffs are not aware of the precise number of putative class members; however, Defendants have in their sole possession the information needed to identify such persons. On information and belief,

there are at least scores of current TPS holders who satisfy the class definition and whose adjustment applications have been or will be denied by USCIS based upon its *Matter of Z-R-Z-C-* policy.

69. A question of law common to the proposed class predominates over any questions affecting only the individually named Plaintiffs, namely: whether USCIS's policy that an entry into the United States following pre-authorized travel is not an admission or a parole violates the INA and its implementing regulations, MTINA, and the APA. Plaintiffs and all putative class members share a central common fact: their adjustment of status applications have been or will be denied by USCIS pursuant to this policy.

70. Plaintiffs' claims are typical of the claims of the proposed class. Plaintiffs all entered the United States without inspection, subsequently were granted TPS and continue to hold that status, traveled abroad with authorization after August 20, 2020 and were permitted to reenter the United States, have applied for adjustment of status, and have been or will be denied adjustment by USCIS on the basis of Defendants' *Matter of Z-R-Z-C-* policy.

71. Plaintiffs will fairly and adequately protect the interests of the proposed class members because they seek relief on behalf of the class as a whole and have no interest antagonistic to other class members.

72. Plaintiffs are represented by competent counsel with extensive experience in complex class actions and immigration litigation.

73. Defendants have acted on grounds generally applicable to the proposed class, thereby making appropriate final declaratory and injunctive relief.

DECLARATORY AND INJUNCTIVE RELIEF ALLEGATIONS

74. An actual and substantial controversy exists between the proposed class and

Defendants as to their respective legal rights and duties. Plaintiffs contend that Defendants' actions violate Plaintiffs' and proposed class members' rights.

75. Defendants' *Matter of Z-R-Z-C-* policy, which has and will continue to result in unlawful denials of adjustment of status applications of TPS holders, has caused and will continue to cause irreparable harm to Plaintiffs and proposed class members. Plaintiffs and proposed class members have been denied, or are at risk of being denied, LPR status on the basis of alleged statutory ineligibility, in violation of the INA, MTINA, the APA, and governing regulations.

76. Plaintiffs have no adequate remedy at law. They do not seek a favorable exercise of USCIS's discretion to grant their adjustment of status applications, but instead seek an order declaring Defendants' policy unlawful and enjoining USCIS from applying it.

77. There are no administrative remedies that Plaintiffs are required to exhaust. *Darby v. Cisneros*, 509 U.S. 137 (1993).

78. Under 5 U.S.C. §§ 702 and 704, Plaintiffs and proposed class members have suffered a legal wrong and have been adversely affected or aggrieved by agency action for which there is no other adequate remedy in a court of law.

79. Based on the foregoing, the Court should grant declaratory and injunctive relief under 28 U.S.C. §§ 2201-2202 and 5 U.S.C. § 702.

CAUSES OF ACTION

COUNT ONE
A TPS holder is inspected and admitted upon return from authorized travel
(Violation of the INA as Amended by Section 304(c) of MTINA and of the APA, 5 U.S.C. § 706(2))

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

81. The APA compels a reviewing court to hold unlawful and set aside agency action, findings, and conclusions that are arbitrary, capricious, not in accordance with the law, in excess of statutory jurisdiction, authority or limitations, or short of statutory right. 5 U.S.C. § 706(2)(A), (C).

82. Section 304(c) of MTINA mandates that, upon return from authorized travel abroad, a TPS holder "shall be inspected and admitted in the same immigration status [he or she] had at the time of departure."

83. "Inspected" and "admitted" are unambiguous, statutory terms. In employing the phrase "inspected and admitted" in section 304(c) of MTINA, Congress chose to copy a phrase that it previously used in the adjustment of status statute, 8 U.S.C. § 1255. Congress's use of the identical phrase in section 304(c) evidences its intent that this phrase be given the same meaning as in 8 U.S.C. § 1255.

84. Defendants' *Matter of Z-R-Z-C-* policy violates the plain meaning of the statutory phrase "inspected and admitted" by failing to recognize that a TPS holder who has returned to the United States after authorized travel has been "inspected and admitted" for purposes of 8 U.S.C. § 1255.

85. Additionally, Defendants' *Matter of Z-R-Z-C-* policy misinterprets and misapplies the statute's directive that the TPS holder return in the "same immigration status" he or she had at the time of departure. It improperly expands the statutory phrase "same immigration status" as including all "incidents" attached to that status, and accordingly concluded that, for TPS holders who initially entered without inspection, their status at the time of departure is that of a TPS holder who is present in the United States without inspection and admission or parole.

86. A noncitizen's presence in the United States without inspection and admission or parole is a ground of inadmissibility, not an immigration status. Matter of *Z-R-Z-C-* confuses the concepts of "status" with "admission." Those are two distinct statutory terms.

87. The immigration status which all TPS holders—including those who initially entered the United States without inspection—have at the time of departure on authorized travel is TPS, a lawful status. Thus, the immigration status a TPS holder has on return from authorized travel abroad is TPS. TPS is a lawful status that may be—and in the case of Plaintiffs and putative class members, has been—conferred on those who initially entered without inspection. In contrast, being present without inspection or admission is an inadmissibility ground, not an immigration status. Once a TPS recipient returns from authorized travel abroad, he or she is "inspected and admitted" in the immigration status of a TPS holder—the only immigration status the individual held at the time of departure.

88. *Matter of Z-R-Z-C-* is also irreconcilable with *Sanchez v. Mayorkas*, which emphasized that an individual's immigration status is distinct from their manner of entry. 141 S. Ct. at 1813. *Sanchez* reaffirmed that a TPS holder is in lawful status for purposes of adjustment of status, notwithstanding an initial entry without inspection. The Court's reasoning reiterates that manner of entry is not an immigration status.

89. USCIS's misinterpretation and misapplication of section 304(c) of MTINA § 304(c) is arbitrary, capricious, and in violation of the law.

COUNT TWO
Alternative basis for relief:
A TPS holder is inspected and paroled upon return from authorized travel
(Violation of Agency Regulations and the APA, 5 U.S.C. § 706(2))

90. All of the foregoing allegations in paragraphs one through seventy-nine are repeated and realleged as though fully set forth herein.

91. The APA compels a reviewing court to hold unlawful and set aside agency action, findings, and conclusions that are arbitrary, capricious, or not in accordance with the law. 5 U.S.C. § 706(2)(A).

92. The means by which USCIS may grant a TPS holder permission to travel abroad is limited by regulation to the agency's advance parole provisions. 8 C.F.R. § 244.15(a). USCIS's advance parole provisions include 8 C.F.R. § 212.5(f) and USCIS Form I-131, Application for Travel Document, and Instructions. Form I-131 and Instructions are incorporated into the regulations. 8 C.F.R. § 103.2(a)(1).

93. Taken together, these regulations dictate that the travel authorization which USCIS may grant a TPS holder is authorization for the individual to be paroled into the United States upon return from the travel.

92. Defendants' *Matter of Z-R-Z-C-* policy violates the plain meaning of these regulations by failing to recognize that a TPS holder who has returned to the United States after authorized travel has been "inspected and . . . paroled" for purposes of 8 U.S.C. § 1255.

93. USCIS's misinterpretation and misapplication of its own regulations is arbitrary, capricious, and in violation of the law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for this Court to:

a. Assume jurisdiction over this matter;

b. Certify the case as a class action as proposed herein and in the forthcoming motion for class certification;

c. Declare that Defendants' *Matter of Z-R-Z-C-* policy is arbitrary, capricious, and in violation of the plain language of the INA, section 304(c) of MTINA, and the

regulations because, with respect to TPS holders who initially entered without inspection, it erroneously concludes that:

(i) such TPS holders are not inspected and admitted upon return from authorized travel abroad;

(ii) the inadmissibility ground of being present in the United States without inspection and admission or parole is an immigration status under section 304 (c) of MTINA; and/or

(iii) such TPS holders are not paroled into the United States upon return from authorized travel abroad;

d. Order Defendants to immediately cease applying their *Matter of Z-R-Z-C-* policy to Plaintiffs and class members;

e. Order Defendants to find that, upon return from authorized travel abroad, a TPS holder is inspected and admitted into the United States for purposes of 8 U.S.C. § 1255(a) pursuant to section 304(c) of MTINA;

f. Alternatively, order Defendants to find that, upon return from authorized travel abroad, a TPS holder is inspected and paroled into the United States for purposes of 8 U.S.C. § 1255(a) pursuant to governing regulations;

g. Order Defendants to reopen the adjustment of status applications of all Plaintiffs and class members whose applications were denied based on Defendants' *Matter of Z-R-Z-C-* policy, and to re-adjudicate those applications consistent with this Court's order;

h. Award Plaintiffs reasonable attorneys' fees under the Equal Access to Justice Act, and any other applicable statute or regulation; and

i. Grant such further relief as the Court deems just, equitable, and appropriate.

Dated: November 8, 2021

Respectfully Submitted,

s/ Kristin Macleod-Ball
Kristin Macleod-Ball
Mary Kenney*
National Immigration Litigation Alliance
10 Griggs Terrace
Brookline, MA 02446
(617) 506-3646
kristin@immigrationlitigation.org
mary@immigrationlitigation.org

Matt Adams*
Leila Kang*
Aaron Korthuis*
Margot Adams*
Northwest Immigrant Rights Project
615 Second Avenue, Suite 400
Seattle, WA 98104
(206) 857-9611
matt@nwirp.org
leila@nwirp.org
aaron@nwirp.org
margot@nwirp.org

Stacy Tolchin*
Law Offices of Stacy Tolchin
776 E. Green St. Suite 210
Pasadena, CA 91101
(213) 622-7450
stacy@tolchinimmigration.com

**Application for* pro hac vice *admission forthcoming*