UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

Amado de Jesus MORENO; Nelda Yolanda REYES; Jose CANTARERO ARGUETA; Haydee AVILEZ ROJAS,

Plaintiffs,

v.

Kirstjen NIELSEN, Secretary, U.S. Department of Homeland Security, in her official capacity; U.S. DEPARTMENT OF HOMELAND SECURITY; L. Francis CISSNA, Director, U.S. Citizenship and Immigration Services, in his official capacity; U.S. CITIZENSHIP AND IMMIGRATION SERVICES,

Defendants.

Case No. 1:18-cv-01135-RRM

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(1), 12(b)(3), 12(b)(6), OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

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## I. INTRODUCTION

This case challenges the failure of Defendant U.S. Citizenship and Immigration Services (USCIS) to adjudicate applications to adjust from Temporary Protected Status (TPS) to that of a lawful permanent resident (LPR) pursuant to USCIS' written policy as set forth in the USCIS Policy Manual. U.S. Citizenship & Immigration Services, USCIS Policy Manual, Vol. 7, Part B, Ch. 2(A)(5) (May 23, 2018), https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume7-PartB-Chapter2.html. Plaintiffs challenge the written policy as in conflict with the plain language of the Immigration and Nationality Act (INA) and congressional intent. Plaintiffs contend that contrary to the USCIS policy, the plain language of 8 U.S.C. § 1254a(f)(4) requires that TPS holders be considered as "being in, and maintaining, lawful status as a nonimmigrant," and thus, are deemed to have been inspected and admitted "for purposes of adjustment of status."

Nothing in Defendants' motion to dismiss and alternative motion for summary judgment prevents this Court from deciding this merits question in Plaintiffs' favor. Contrary to Defendants' contentions, venue properly lies in this District and this Court can and should afford relief to all Plaintiffs under the Administrative Procedure Act (APA) and mandamus statute. As to the merits, Plaintiffs' interpretation of the statute is based upon the plain language of 8 U.S.C. § 1254a(f)(4). Defendants' contrary interpretation already has been rejected by two courts of appeals and two district courts that addressed the issue currently before this Court. Defendants do not, and cannot, effectively distinguish this weight of authority in Plaintiffs' favor. Lastly, this Court should reject Defendants' invitation to defer to their interpretation, as the unambiguous statutory language resolves the questions presented. Moreover, even if the statute were ambiguous, Defendants' interpretation fails to correspond to

the statutory scheme demonstrating Congressional intent to provide relief for TPS holders, so they are not forced to return to the insecure conditions that gave rise to TPS designations.

## II. UPDATED FACT STATEMENT

At this time, Defendants have denied the adjustment applications of all named Plaintiffs. As of June 12, 2018, when the parties cross-served their motions, USCIS had denied the applications of Plaintiffs Moreno, Reyes, and Avilez Rojas. *See* Defendants' Memorandum of Law in Support of Motion to Dismiss or in the Alternative Motion for Summary Judgment (Dfs. Memo) at 4-5.[1] On June 13, 2018, USCIS issued a denial of Plaintiff Cantarero Argueta's adjustment application, finding that he was barred from adjusting because he had failed to maintain continuous lawful presence since entry into the United States, 8 U.S.C. § 1255(c)(2), and was ineligible for a waiver of this under 8 U.S.C. § 1255(k) because he was not present pursuant to a lawful admission. *See* Plaintiffs' Exh. SS, Cantarero Argueta I-485 Denial. In so deciding, USCIS rejected Plaintiff Cantarero Argueta's argument that his grant of TPS constituted an admission for purposes of his adjustment of status application.

## III. ARGUMENT

### A. This Action Should Not be Dismissed Pursuant to Fed. R. Civ. P. 12(b)(1)

Defendants' effort to pursue dismissal of this action based on USCIS' denial of Plaintiffs' adjustment of status applications suffers from two fatal flaws. *See* Dfs. Memo at 13-15. First, it ignores Plaintiffs' claim under the APA, which specifically authorizes courts to "set aside agency action" that is "not in accordance with law." 5 U.S.C. § 706(2). Second, it fails to recognize this

[1] Plaintiff Avilez Rojas' adjustment application was denied on June 7, 2018. Dfs. Memo at 5. Plaintiffs' counsel was unaware of this on June 12, 2018, when she served Defendants' counsel with Plaintiffs' Motion for Summary Judgment and Rule 56.1 Statement of Undisputed Facts, and thus mistakenly stated that no decision had yet been made. *See* Pls. Rule 56.1 Statement of Undisputed Material Facts ¶ 24.

Court's authority to order the reopening of denied applications. Accordingly, the Court should exercise jurisdiction over Plaintiffs' claims.

First, as explained in their motion for summary judgment, Plaintiffs raise three distinct claims in the amended complaint: an APA claim under 5 U.S.C. § 706(2) (to set aside agency action "not in accordance with law"); an APA claim under 5 U.S.C. § 706(1) (to "compel agency action unlawfully withheld"); and a mandamus claim under 28 U.S.C. § 1361. *See* Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment (Pls. S.J. Memo) at 11-18. Plaintiffs refer to these claims as Counts One, Two and Three.[2] Although Defendants acknowledge that "Plaintiffs generally contend that Defendants have violated the APA," Dfs. Memo at 13, their dismissal argument focuses entirely on Counts Two and Three, i.e., Plaintiffs' claims under 5 U.S.C. § 706(1) and 28 U.S.C. § 1361. Defendants do not meaningfully engage with Plaintiffs' claim under 5 U.S.C. § 706(2).[3] Notably, courts have granted claims under 5 U.S.C. § 706(2) and have ordered USCIS to set aside denials of adjustment applications that do not accord with 8 U.S.C. §§ 1254a(f)(4) and 1255, the TPS and adjustment of status provisions of the INA. *See*, *e.g.*, *Ramirez v. Brown*, 852 F.3d 954, 957-58 (9th Cir. 2017); *Bonilla v. Johnson*, 149 F. Supp. 3d 1135, 1137 (D. Minn. 2016); *Medina v. Beers*, 65 F. Supp. 3d 419, 439 (E.D. Pa. 2014).

To the extent that Defendants may have declined to address Plaintiffs' APA claim under 5 U.S.C. § 706(2) because the amended complaint does not specifically cite this subparagraph, Federal Rule of Civil Procedure 8(a)(2) "generally requires only a plausible 'short and plain'

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[2] Count Three was inadvertently labeled Count Two.

[3] In passing, Defendants note that "even assuming, *arguendo*, that the Court finds that another APA claim exists in this case, the Court should, at minimum, dismiss Plaintiffs' mandamus claims." Dfs. Memo at 15.

statement of the plaintiff's claim, not an exposition of his legal argument." *Skinner v. Switzer*, 562 U.S. 521, 530 (2011). "Accordingly, a complaint that plausibly states a factual basis for the claim, so as to give notice to the opponent, may not be dismissed for failure to indicate the statute on which the claim is based." 2 James Wm. Moore et al., *Moore's Federal Practice – Civil* § 8.04[3] (Matthew Bender 3d Ed. 2018); *see also Johnson v. City of Shelby*, 135 S. Ct. 346, 347 (2014) (rejecting lower court's grant of summary judgment on the basis that the complaint failed to invoke 42 U.S.C. § 1983 and remanding to afford petitioners the opportunity to add the citation to their complaint). As such, this Court has ample authority to resolve Count One.

Secondly, Plaintiffs dispute Defendants' contention that USCIS' denials of Plaintiffs' adjustment applications render their claims under Counts Two and Three moot. Courts treat a claim under 5 U.S.C. § 706(1) as equivalent to a claim for mandamus relief under 28 U.S.C. § 1361. *Norton v. S. Utah Wilderness Alliance*, 542 U.S. 55, 63 (2004). Such treatment makes sense because both claims seek to compel an agency to act in accordance with the law. However, where the agency has acted but has failed to apply the proper law, this Court still can afford relief by compelling the agency to apply the correct interpretation of the law. *See, e.g.*, *Richards v. Napolitano*, 642 F. Supp. 2d 118, 133-34 (E.D.N.Y. 2009) (granting mandamus relief in the form of reopening an adjustment application where USCIS' denial of the application was not "in accordance with law"); *Maclean v. Napolitano*, No. 09-14118-CIV, 2009 WL 10668501 (S.D. Fla. Sept. 25, 2009) (unpublished) (same); *Samirah v. Holder*, 627 F.3d 652, 655 (7th Cir. 2010) (remanding the case "for the issuance of a mandamus commanding the Attorney General to take whatever steps are necessary to enable the plaintiff to reenter the United States for the limited purpose of reacquiring the status, with respect to his application for adjustment of status," that he lost when his advance parole was revoked); *cf. Miguel v. McCarl*,

291 U.S. 442, 451-52 (1934) (holding that mandamus can compel an act involving some discretion to conform to applicable governing statutes). Accordingly, because the Court can order USCIS to reopen and readjudicate adjustment applications denied based on its unlawful policy, this Court can grant Plaintiffs relief. Thus, the Court also should not dismiss Count Two or Count Three.

**B. The Eastern District of New York is a Proper Venue for This Action**

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(3) based on the pleadings, "the plaintiff need only make a *prima facie* showing of [venue]." *Gulf Ins. Co. v. Glasbrenner*, 417 F.3d 353, 355 (2d Cir. 2005) (quoting *CutCo Indus. v. Naughton*, 806 F.2d 361, 364 (2d Cir. 1986)) (alteration in original). In assessing whether the plaintiff has made a *prima facie* showing of proper venue, a court must "view all the facts in a light most favorable to plaintiff." *Phillips v. Audio Active, Ltd.*, 494 F.3d 378, 384 (2d Cir. 2007). Plaintiffs have made this showing. Thus, the Court should reject Defendants' suggestion that venue is improper in this Court. *See* Dfs. Memo at 15-16.

Venue is proper in this District because Plaintiff Moreno resides in Brooklyn, New York, within the jurisdiction of this Court. Dkt. 12 ¶¶ 10, 11. The issues before this Court are legal in nature and no real property is involved. As such, Plaintiffs have established venue. *See* 28 U.S.C. § 1391(e)(1)(C) (providing that, for a case in which a defendant is an officer or employee of the United States or its agencies, venue is proper in the district of a plaintiff's residence, if no real property is involved in the action).

Plaintiffs submit that this Court has jurisdiction over Plaintiff Moreno's (and thus all named Plaintiffs') APA claims under 5 U.S.C. § 706(2) (Count I) and 5 U.S.C. § 706(1) (Count II) and mandamus claim under 28 U.S.C. § 1361 (Count III). *See supra* § III.A. As such, venue

is satisfied. Even if the Court determined that it lacked jurisdiction over Plaintiff Moreno's (and all Plaintiffs') claims under 5 U.S.C. § 706(1) and 28 U.S.C. § 1361, Counts Two and Three, respectively, the Court nevertheless would have jurisdiction over his (and his co-Plaintiffs') claims under 5 U.S.C. § 706(2), Count I. *Id*. Thus, this District would remain an appropriate venue for this suit.[4]

**C. Defendants Misread the Plain Language of 8 U.S.C. § 1254a(f)(4)**

As explained fully in Plaintiffs' Motion for Summary Judgment, Congress made clear in 8 U.S.C. § 1254a(f)(4) its intent that a grant of TPS constitutes an inspection and admission "for purposes of adjustment of status." Pls. S.J. Memo at 19-27. Section 1254a(f)(4) mandates that TPS holders "shall be considered as being in" lawful nonimmigrant status for purposes of adjustment of status. Because an inspection and admission is a prerequisite to obtaining

[4] However, even if the Court were to disagree and dismiss Plaintiff Moreno, it should transfer this action rather than dismiss it. The Court "enjoy[s] considerable discretion in deciding whether to transfer a case in the interest of justice." *Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 435 (2d Cir. 2005); *see also* 28 U.S.C. § 1406(a) (authorizing transfer from one district court to another "if it be in the interest of justice" and suit could have been brought in the transferee court). Although a case that is a "sure loser" on the merits should not be transferred, *Gonzalez v. Hasty*, 651 F.3d 318, 324 (2d Cir. 2011) (quotation omitted), the favorable decisions on the same issue in the Sixth and Ninth Circuits demonstrate that the merits here are strong and that Plaintiffs are likely to prevail. In other instances, the Second Circuit invoked or upheld transfer to cure venue defects "as a matter of judicial economy and in accord with the functional purpose of § 1406(a)," which is "to eliminate impediments to the timely disposition of cases and controversies on their merits." *Minnette v. Time Warner*, 997 F.2d 1023, 1027 (2d Cir. 1993) (transferring action that would otherwise be time-barred); *see also Gonzalez*, 651 F.3d at 325 (instructing district court to transfer action that would otherwise be time-barred if current venue is improper).

Here, the timely disposition of Plaintiffs' claims and the claims of putative class members is of paramount importance; the court must decide whether they are eligible to adjust status in advance of the expiration of their TPS status in order to afford them a meaningful opportunity to pursue their applications. Thus, if the Court were inclined to dismiss Plaintiff Moreno, it should transfer this case to the District of New Jersey or the District of Maryland. Plaintiffs Avilez Rojas and Cantarero Argueta reside in those districts, respectively, and those venues are most convenient for counsel for the parties, the majority of whom are located on the east coast.

nonimmigrant status, "being in" that status demonstrates that the individual was inspected and admitted. *See* Pls. S.J. Memo at 19-22. Moreover, by using the phrase "shall be considered as" prior to the phrase "being in, and maintaining, lawful status as a nonimmigrant," Congress made clear that TPS holders who are not—and never were—"in" and/or "maintaining" lawful nonimmigrant status nevertheless are deemed to be so for purposes of adjustment of status. *See id*. at 22-24.

Significantly, Defendants agree that § 1254a(f)(4) is a provision that treats a TPS holder applying for adjustment as having met certain requirements set forth in 8 U.S.C. § 1255, regardless of whether the person actually satisfies those requirements. *See* Dfs. Memo at 16 (labeling § 1254a(f)(4) as a "deemed 'lawful status' provision"), 18 (same), 17 (stating that § 1254a(f)(4) "deems [TPS holders] to be maintaining lawful status as a nonimmigrant."). In particular, Defendants maintain that § 1254a(f)(4) operates to allow a TPS holder who was in nonimmigrant status at the time of the TPS grant to be found to have maintained that status even if they do not subsequently maintain that original status. Dfs. Memo at 17 (explaining that § 1254a(f)(4) is "a 'bridge' for [noncitizens] in lawful immigration status who obtain TPS and deems them to be maintaining lawful status as a nonimmigrant").

Defendants' interpretation erroneously restricts the class of TPS holders who would benefit from § 1254a(f)(4), narrowing it to only those individuals who: 1) initially were inspected and admitted; 2) were granted TPS while in lawful status; 3) lost their lawful status after receipt of TPS; and 4) are neither immediate relatives nor able to benefit from the exemption to the bar on adjustment for failure to maintain continuous lawful immigrant status since entry. *See*, *e.g.*, Dfs. Memo at 17, 19. The sole purpose of § 1254a(f)(4), according to

Defendants, is to ensure that this very small group is not barred from adjusting under § 1255 (c)(2) for failure to have maintained lawful nonimmigrant status. *Id*.

The plain language of § 1254a(f)(4) belies such a narrow reading.[5] First, by stating that § 1254a(f)(4) applied "for purposes of adjustment of status under [§ 1255]," Congress made clear that the provision applies to *all* of § 1255, not simply § 1255(c)(2). Had Congress meant to restrict the purpose to this one subsection, it would have so specified; its omission of this specific subsection must be presumed intentional. *See, e.g., Hernandez v. Sessions*, 884 F.3d 107, 110-11 (2d Cir. 2018); *see also Flores v. U.S. Citizenship & Immigration Services*, 718 F.3d 548, 553 (6th Cir. 2013) ("We see no reason why Congress would have written the exception in § 1254a(f) the way it did if it actually has to do only with § 1255(c)(2)—a quite specific reference—rather than what the statute actually says, which is § '1255.' . . . The language of § 1254a is written as applying to § 1255, as a whole, and we interpret it as written."); *Ramirez*, 852 F.3d at 962 ("But the general reference to § 1255 cuts against the government's effort to confine the effect of § 1254a(f)(4) to one specific subsection in § 1255. Such an interpretation appears particularly crabbed when Congress easily could have written the statute to refer solely to subsection (c)(2) but chose not to do so."). In fact, throughout the INA, including in other TPS provisions, Congress made clear its intent to limit the application of a provision to a specific

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[5] The plain meaning of § 1254a(f)(4) is derived from the specific language chosen by Congress. For that reason, Defendants' comparison to the Extended Voluntary Departure Program (EVD) and the Family Unity Program (FUP) is inapt. *See* Dfs. Memo at 21 n.11. EVD was an executive branch program for providing humanitarian relief to noncitizens in certain emergencies and has no statutory basis whatsoever. However, it was "considered an 'ad hoc' approach" and thus "Congress saw fit to replace it with a statute"—the TPS provisions. *Matter of Sosa Ventura*, 25 I&N Dec. 391, 394 (BIA 2010). FUP was adopted by Congress in § 301 of the Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978 (1990). Notably, the TPS statute was enacted in the very next section, § 302, of the same Act. There is nothing in the FUP that resembles § 1254a(f)(4). As such, it must be inferred that Congress intended to provide a benefit to TPS holders not available to recipients of FUP.

subsection or paragraph. *See*, *e.g.*, 8 U.S.C. § 1254a(c)(2)(A) ("for purposes of subparagraph (A)(iii) of paragraph (1)"), (c)(4)(A) ("for purposes of paragraphs (1)(A)(i) and (3)(B)"), (c)(4)(B) ("for purposes of paragraphs (1)(A)(ii)").

Second, nothing in the text of § 1254a(f)(4) indicates that Congress intended it to benefit only a limited group of TPS holders. To the contrary, Congress specified that § 1254a(f)(4), as well as the other three subsections of § 1254a(f), apply without restriction to noncitizens "granted temporary protected status under this section." *See Ramirez*, 852 F.3d at 962 ("Restricting § 1254a(f)(4) in [the way the government suggests] seems especially peculiar in the face of § 1254a(f)(4)'s indication that it benefits all TPS grantees and the government's failure to offer any explanation or clear language indicating that Congress meant for such a limited operation."). By deeming TPS holders to be in and maintaining lawful status as a nonimmigrant for purposes of adjustment of status, Congress placed all TPS holders in the identical position as individuals in and maintaining nonimmigrant status who are seeking to adjust. Those who had an independent basis to adjust—such as a qualifying relative or an employer who could petition for them—would be able to pursue this path, exactly like their nonimmigrant counterparts with a qualifying petitioner.

Third, Defendants' interpretation renders the term "being in" superfluous.[6] If, as Defendants argue, Congress intended § 1254a(f)(4) to apply only to those who already *were in*

[6] Defendants fail to provide a meaning for this term's inclusion in § 1254a(f)(4). At one point, however, they attempt to confuse the issue by arguing that "[i]f 'inspected and admitted' under 8 U.S.C. § 1255(a) meant the same thing as 'being in, and maintaining, lawful status[]' [as a nonimmigrant], 8 U.S.C. § 1254a(f)(4), there would be no need for section 1255 to separately refer to admission or parole as a threshold requirement in section (a), and to the failure to maintain lawful status as a bar to eligibility in section (c)(2)." Dfs. Memo at 18-19. Of course, these terms do not mean the same thing, and Plaintiffs have never argued differently. Rather, the phrase "being in" nonimmigrant status demonstrates Congress' intent to consider TPS holders as having been inspected and admitted for purposes of adjustment of status. In turn, § 1254a(f)(4)'s

lawful nonimmigrant status at the time that they received TPS but who subsequently failed to maintain that status, it would have stated simply that the TPS holder "shall be considered as maintaining lawful status as a nonimmigrant." Congress' inclusion of the additional phrase "being in . . . lawful status as a nonimmigrant" indicates its intent to cover TPS holders who had not been admitted as nonimmigrants prior to their receipt of TPS, in addition to those who were so admitted but who had failed to continuously maintain such status. *See, e.g.*, *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (noting the "cardinal principle of statutory construction" that "no clause, sentence, or word shall be superfluous, void, or insignificant") (quotation omitted); *State St. Bank & Trust Co. v. Salovaara*, 326 F.3d 130, 139 (2d Cir. 2003) ("It is well-settled that courts should avoid statutory interpretations that render provisions superfluous . . . .").

To be in nonimmigrant status requires an admission. *See* Pls. S.J. Memo at 6-8, 19-20. Defendants acknowledge this. Dfs. Memo at 29 ("Nonimmigrants, in the ordinary course, are admitted into the United States . . . ."). Defendants further indicate that Congress could have resolved the issue by stating that TPS holders "'shall be in, and maintain, lawful nonimmigrant status,' without using the phrase 'shall be considered as being in[.]'" Dfs. Memo at 30. This position is significant as it acknowledges that "being in" nonimmigrant status necessarily means that the individual was inspected and admitted.[7] Defendants fail to recognize that Congress only sought to afford TPS holders this treatment in the limited context of applications for adjustment of status under § 1255, as explicitly stated in § 1254a(f)(4). Thus, Congress could not simply

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reference to "maintaining" lawful nonimmigrant status indicates Congress' intent to exempt TPS holders from the bar to adjustment in § 1255(c)(2).

[7] Defendants' example underscores why it was unnecessary for Congress to have used the words "inspected and admitted," since "being in" nonimmigrant status necessarily includes an inspection and admission. *Cf*. Dfs. Memo at 29. Similarly, because § 1254a(f)(4) creates a legal fiction, requiring that a TPS holder be treated as a nonimmigrant, there is no need for an application for admission. *See* Dfs. Memo at 29 n.14.

declare them to be in nonimmigrant status. Instead, Congress made clear that "for purposes of adjustment" TPS holders "shall be considered as being in" nonimmigrant status.

Moreover, Defendants' argument also fails in its contradictory treatment of the phrase "shall be considered as." On the one hand, Defendants acknowledge that, with respect to the term "maintaining," this phrase operates to ensure that a TPS holder whose nonimmigrant status expired nevertheless will be treated as having maintained lawful nonimmigrant status for purposes of adjustment. Dfs. Memo at 17. On the other hand, Defendants interpret § 1254a(f)(4) to require a TPS holder to have been admitted as a nonimmigrant. Dfs. Memo at 29 (contending that TPS holders "are not nonimmigrants—they only maintain status as if they were"). Defendants cannot have it both ways. The plain meaning of the phrase is that it deems TPS holders both to be "in" and "maintaining" lawful nonimmigrant status for purposes of adjustment.[8]

### D. *Flores* and *Ramirez* Directly, and Correctly, Address the Question in this Case

Defendants urge this Court to dismiss the Sixth and Ninth Circuit decisions as inapposite, even though both cases directly addressed the key legal question presented by Plaintiffs: whether TPS holders must be considered as nonimmigrants for the sole purpose of applying for adjustment of status and thus deemed to have been inspected and admitted. *See Ramirez*, 852

[8] Defendants' remaining points are equally unavailing. Dfs. Memo at 29-30. It is unsurprising that 8 U.S.C. § 1159(a)(1) specifies that a refugee must have been "admitted" prior to adjusting status since this provision is, for refugees, the equivalent to the adjustment of status provision for nonimmigrants, 8 U.S.C. § 1255. Moreover, the use of the term "admission" with respect to the L nonimmigrant visa, *see* 8 U.S.C. § 1184(c)(2)(D), is simply further evidence that nonimmigrants must be admitted. Finally, Congress failed to adopt the amendment to § 1254a(f)(4) proposed in the Act to Sustain the Protection of Immigrant Residents Earned through TPS Act of 2017, H.R. 4384, 115th Cong. § 3(b) (2017), thereby indicating that it found clarification of the provision unnecessary.

F.3d at 957 ("[T]he question we confront is whether the grant of TPS allows [a noncitizen] . . . to meet the 'inspected and admitted or paroled' requirement in § 1255(a)."); *id.* at 959 (noting that the Sixth Circuit "squarely address[ed] the same interpretive issue"). The issue is not whether all TPS holders are admitted by virtue of their status or whether TPS holders have been admitted as defined under 8 U.S.C. § 1101(a)(13)(A). *See infra* § III.E. Rather, the issue is whether Congress created a path for TPS holders who independently qualify for an immediately available visa, in order to alleviate the risk of requiring them to return to the insecure conditions in a TPS designated country. *See Flores*, 718 F.3d at 554 ("The issue is not whether all TPS beneficiaries automatically qualify for LPR adjustment under § 1255."); *Ramirez*, 852 F.3d at 958 (explaining that plaintiff is eligible to adjust status because "an immigrant visa is immediately available through his American citizen wife"). Both Courts of Appeals addressed the same issue presented to this Court: whether the plain language of 8 U.S.C. § 1254a(f)(4) requires TPS holders to be considered as being in lawful status as a nonimmigrant *for purposes of* adjustment of status under § 1255.

With respect to *Flores*, Defendants contend that the Sixth Circuit erred in discussing the admissibility of TPS holders, an issue that is distinct from other eligibility requirements for adjustment of status under § 1255. *See* Dfs. Memo at 26-27. For instance, Defendants take issue with the Sixth Circuit's determination that TPS does not constitute a "categorical[] bar[]" to admissibility under 8 U.S.C. § 1182, the statute that enumerates grounds of inadmissibility. *See* Dfs. Memo at 26; *see also Flores*, 718 F.3d at 554 ("[Section 1182] makes no mention of TPS beneficiaries being categorically barred from visa or admission eligibility."). Yet this discussion of admissibility was prompted by USCIS' argument that TPS holders who entered without inspection "can never satisfy the threshold requirement of being 'admitted or paroled' *or*

*'admissible.'"* *Flores*, 718 F.3d at 552 (emphasis added); *see also id*. at 551 (explaining the parties' disagreement over the meaning of "inspected and admitted or paroled," § 1255(a), "*and also* § 1255(a)(2)," which requires the applicant to be "admissible") (emphasis added).[9] In other words, the Sixth Circuit addressed the issue of admissibility specifically because the parties were disputing that issue, not because it was conflating admissibility with other eligibility requirements under § 1255.

Defendants also argue that *Flores* is inapposite because it "failed to interpret" the definition of "admission" under 8 U.S.C. § 1101(a)(13). Dfs. Memo at 27. This argument stems from Defendants' mistaken focus on the question of whether TPS constitutes an admission under 8 U.S.C. § 1101(a)(13)(A). The Sixth Circuit, however, did not need to determine whether a TPS holder has been admitted under § 1101(a)(13)(A) because it found that "[t]he plain language of the [TPS] statute answers the question before the Court." *Flores*, 718 F.3d at 551. Because 8 U.S.C. § 1254a(f)(4), by its plain terms, applies to all § 1255, the *Flores* Court correctly concluded that the statute allowed TPS holders "to be considered as being in lawful status as a nonimmigrant for purposes of adjustment of status . . . ." *Flores*, 718 F.3d at 553. In other words, the Sixth Circuit, and subsequently the Ninth Circuit in *Ramirez*, recognized that, under § 1254a(f)(4), TPS holders are treated as being in lawful nonimmigrant status—and thus also treated as having been inspected and admitted—regardless of whether they are, in fact, in such status. For this reason, Plaintiffs agree with Defendants that TPS holders "are not necessarily nonimmigrants (or admitted as nonimmigrants), but . . . are merely '*considered as being in*, and

[9] In fact, Defendants make this same argument here. *See* Dfs. Memo at 32 n.16 ("[I]f [a noncitizen] is inadmissible even after obtaining TPS due to his entry without admission or parole, then it stands to reason that the [noncitizen] cannot demonstrate that he is admissible for purposes of adjustment of status.").

maintaining, lawful status *as a* nonimmigrant,' and only so for the limited purpose of seeking adjustment (or change) of status. 8 U.S.C. § 1254a(f)(4) (emphasis added)." Dfs. Memo at 27; *see also supra* § III.C.

Defendants' attempts to distinguish the Ninth Circuit's decision in *Ramirez* are equally unavailing. Defendants correctly restate *Ramirez*'s determination that "since nonimmigrants have necessarily been admitted, so too have [noncitizens] granted TPS." Dfs. Memo at 27 (citing *Ramirez*, 852 F.3d at 960). However, Defendants argue that the Ninth Circuit erred because "TPS [holders] are not necessarily nonimmigrants" but instead "are merely 'considered as being in, and maintaining, lawful status as a nonimmigrant.'" Dfs. Memo at 27 (quoting 8 U.S.C. § 1254a(f)(4)). But that is precisely the point: TPS holders are not actually nonimmigrants. Instead, in order to afford them the right to apply for adjustment of status if they are the beneficiary of a qualifying visa petition, Congress has declared that they shall be considered as—or deemed to be—nonimmigrants. Congress thus made clear that even though TPS holders are not nonimmigrants, and thus have not been admitted as nonimmigrants pursuant to 8 U.S.C. § 1184, they shall be treated as such for the sole purpose of applying for adjustment of status. While the Ninth Circuit further explained the similarities between the admission process for nonimmigrants and the application process for TPS, *Ramirez*, 852 F.3d at 960, it clearly specified that "*[i]n the current context* . . . [a noncitizen] granted TPS is considered 'admitted.'" *Id.* at 961. Furthermore, as Defendants acknowledge, *see* Dfs. Memo at 27, Plaintiffs do not contest that TPS holders are deemed to be in lawful status as nonimmigrants solely for the purpose of adjustment of status.

Finally, Defendants request that this Court reject *Ramirez* because it applies a "results-oriented rationale," Dfs. Memo at 28, as the Court recognized that the government's

interpretation of 8 U.S.C. § 1254a(f)(4) would "rob the statute of much force." *Ramirez*, 852 F.3d at 962. However, Defendants fail to mention that the Ninth Circuit considered both "textual and practical incongruities" that result from the government's interpretation of § 1254a(f)(4), noting the clear indication that § 1254a(f)(4) "benefits all TPS grantees" and not only employment-based applicants for adjustment. *Id*. Furthermore, through examination of the practical ramifications of the government's interpretation, the Ninth Circuit effectively applied longstanding canons of statutory interpretation that require courts to avoid interpretations that produce absurd results or ones that are unreasonable because they are "plainly at variance with the policy of the legislation as a whole." *United States v. American Trucking Ass'ns*, 310 U.S. 534, 543 (1940) (quoting *Ozawa v. United States*, 260 U.S. 178, 194 (1922)); *see also Chrzanoski v. Ashcroft*, 327 F.3d 188, 196 (2d Cir. 2003).

Just as Defendants' attempts to undercut *Flores* and *Ramirez* fail, so too does their attempt to bolster the Eleventh Circuit's reasoning in *Serrano v. U.S. Att'y Gen.*, 655 F.3d 1260 (11th Cir. 2011). Dfs. Memo. at 19. Defendants admit that the Eleventh Circuit considered whether § 1254a(f)(4) "alter[ed]" the statutory eligibility requirements for adjustment of status. *Id*. (quoting *Serrano*, 655 F.3d at 1263). This is not the proper question, however, and certainly not one raised by Plaintiffs. Rather, the issue before this Court—and that was addressed in both *Flores* and *Ramirez*—is whether § 1254a(f)(4) treats a TPS holder as having satisfied those requirements. The Eleventh Circuit's failure to consider this question is not "irrelevant," Dfs. Memo at 19 n.10, because it resulted in the court failing to consider the meaning of the specific terms in § 1254a(f)(4). Since these words drive the resolution of this issue, this failure was central to the Eleventh Circuit's flawed analysis.

Both *Flores* and *Ramirez* directly address the issues presented by Plaintiffs in this case. This Court should follow the approaches taken by the Sixth and Ninth Circuits.

**E. Because TPS Holders Are Deemed to Have Been Admitted for Purposes of Adjustment of Status, an Actual Admission is Unnecessary**

Defendants argue that a TPS is not an admission, as defined at 8 U.S.C. § 1101(a)(13)(A), because it does not require "entry" into the United States. *See* Dfs. Memo at 22-25. This emphasis on whether TPS holders are admitted as defined by § 1101(a)(13)(A) is misguided. The issue before this Court is not whether a TPS grant qualifies as an admission under § 1101(a)(13)(A). Rather, the issue presented is whether Congress, through § 1254a(f)(4), created an express path for adjustment for TPS holders who had not been admitted by requiring that they be considered as being in and maintaining nonimmigrant status for purposes of adjustment under § 1255.

Despite Defendants' insistence that an admission is defined as "the lawful entry of the [noncitizen] into the United States after inspection and authorization by an immigration officer," 8 U.S.C. § 1101(a)(13)(A), they ultimately acknowledge, as they must, that there are several exceptions providing for admissions outside of the statutory definition. *See* Dfs. Memo at 22-25. Indeed, the BIA itself has explained that § 1101(a)(13)(A) does not "provid[e] the exclusive definition" of the terms "admission" and "entry." *Matter of Agour*, 26 I&N Dec. 566, 571-72 (BIA 2015) (quotation omitted). Moreover, the adjustment statute refers to certain nonimmigrants as being "admitted," even where the acquisition of these statuses does not require an authorized entry into the United States. For example, to obtain T nonimmigrant status, applicants are required be "physically present in the United States," and thus are not admitted at a port of entry upon the grant of nonimmigrant status. 8 C.F.R. § 214.11(g). Yet they are deemed "admitted" under 8 U.S.C. § 1255(l), which provides for the adjustment of "a

nonimmigrant *admitted into* the United States under section 1101(a)(15)(T)(i)." (emphasis added). Similarly, individuals who obtain S or U nonimmigrant status are deemed to have been "admitted" even though a grant of these nonimmigrant classifications does not require entry. *See* 8 U.S.C. § 1255(j), (m).

Thus, Defendants are forced to acknowledge that "there are exceptions to [the] general concept" that "admission" is defined by "entry" to the United States. Dfs. Memo at 23-24. However, Defendants fail to acknowledge that the BIA also has adopted different, context-specific definitions of admission even for the same immigration status. For example, 8 C.F.R. § 1209.2 refers to a grant of asylum as a form of admission in the context of adjustment of status. Notably, however, one's "asylum status does not qualify him as [a noncitizen] 'in and admitted' to the United States" for purposes of removal proceedings. *Matter of V-X-*, 26 I&N Dec. 147, 152 (BIA 2013). The examples acknowledged by Defendants, *see* Dfs. Memo at 23-24, as well as those identified by Plaintiffs, evidence that an admission under the INA is not always tied to entry and certainly may be defined differently for limited purposes, such as for adjustment of status or removal.

Moreover, even though Defendants acknowledge that § 1255 subsequently created additional avenues to adjust for those who had not originally been admitted, Dfs. Memo at 20-21, they continue to argue that § 1254a(f)(4) should not be similarly recognized. *Id.* at 25 ("Congress did not modify 8 U.S.C. § 1255(a) with respect to TPS [holders] the way it did for VAWA self-petitioners and Special Immigrant Juveniles. The Court may not read such a specification into the unambiguous statutory language based on equities."). Defendants' position ignores the fact that Congress spoke directly to their eligibility for adjustment when it specified the benefits that accrue to TPS holders in § 1254a(f)(4)—that is, by mandating that TPS holders be "considered

as being in" lawful nonimmigrant status for purposes of adjustment.

Defendants err in arguing that Plaintiffs are ineligible to adjust because there exists no "special pathway[] to adjustment" for TPS holders under 8 U.S.C. § 1255, unlike for categories of noncitizens like VAWA self-petitioners or special immigrant juveniles (SIJ). *See* Dfs. Memo at 24-25. As the *Medina* Court observed, this is an "apples to oranges" comparison. *Medina*, 65 F.Supp.3d at 434. The VAWA and SIJ provisions "deal with Congress' ability or intent to allow whole classes of [noncitizens] to qualify for adjustment of status based on certain circumstances," whereas § 1254a(f)(4) only permits TPS holders who have an independent ground to adjust under § 1255, such as their relationship to a qualifying family member or employer, to do so. *Id.* In *Ramirez*, the Ninth Circuit further explained that these provisions "do not bear on the remaining language in § 1255 or the TPS statute" and that "they were added to the code after the enactment of § 1255(a)'s 'admitted' requirement and the TPS statute." *Ramirez*, 852 F.3d at 963.

The *Flores* Court came to a similar conclusion, rejecting analogous arguments that broad Cuban and Haitian adjustment programs allowing a path to LPR status indicate that Congress did not intend to do so with TPS recipients. *Flores*, 718 F.3d at 554 ("The USCIS's argument is not on-point to the issue presented here."). Indeed, these programs demonstrate that Congress has used multiple paths to allow different classes of applicants to seek adjustment of status. Just as the pathway for SIJS adjustment does not map the pathway for U visa adjustment, the path provided by Congress for TPS holders is distinct. Indeed, it had to be distinct because, as other courts have recognized, Congress was not carving a path to adjustment for all TPS holders. *See, e.g.*, *Flores*, 718 F.3d at 554; *Medina*, 65 F. Supp. 3d at 433 n.9. Instead, it created a pathway for those with an independent basis to apply for permanent resident status—specifically those

who are the beneficiaries of visa petitions submitted by qualifying family members or employers.

Plaintiffs do not argue that the TPS statute is "a program of entry [for a noncitizen]," as Defendants suggest. Dfs. Memo at 24 (quoting *De Leon v. Att'y Gen.*, 622 F.3d 341, 354 (3d Cir. 2010)). The Court need not conclude that TPS status is an admission as defined by 8 U.S.C. § 1101(a)(13)(A), nor must it determine that it qualifies as an admission to the U.S. for all purposes under the INA. *See Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989) ("[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme."). Instead, the Court need only find, as § 1254a(f)(4) expressly states, that this benefit is provided to TPS holders for purposes of adjustment of status under § 1255. Accordingly, the Court should reject Defendants' argument that Plaintiffs are ineligible for adjustment because TPS does not constitute an admission under § 1101(a)(13)(A).

### F. Defendants' Interpretations of 8 U.S.C. §§ 1255 and 1254a(f)(4) Are Not Entitled to Deference

#### *1. Defendants Are Not Entitled to Deference Because the Plain Language of the Statute Is Clear*

Plaintiffs challenge Defendants' written policy, as set forth in the USCIS Policy Manual, as well as the unpublished decisions issued in their individual cases, interpreting 8 U.S.C. § 1254a(f)(4) as not providing that a grant of TPS constitutes an inspection and admission for purposes of adjustment of status under 8 U.S.C. § 1255. *See* Dkt. 12 ¶¶ 1, 62; *see also* USCIS Policy Manual, Vol. 7, Part B, Ch. 2(A)(5) (May 23, 2018). Defendants assert that their interpretation of §§ 1254a(f)(4) and 1255 is entitled to deference under *Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984) or *Skidmore v. Swift & Co.*, 323 U.S. 134 (1944). Dfs. Memo. at 30. However, the Court should not afford any deference to this interpretation because it is contrary to the plain language of the statute. *See Pereira v. Sessions*,

No. 17-459, 585 U.S. _, 2018 U.S. LEXIS 3838, at *33 (Jun. 21, 2018) (Kennedy, J., concurring) (cautioning against "abdication of the Judiciary's proper role in interpreting federal statutes" and "reflexive deference" in *Chevron* analysis).

Under the *Chevron* test, when reviewing an agency's construction of a statute, agency interpretations which are "manifestly contrary to the statute" are invalid, because the court and the agency must give effect to the "unambiguously expressed intent of Congress." *Chevron,* 467 U.S. at 842-44. If the court finds the intent of Congress to be clear, "that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id*. at 842-43. In assessing the intent of Congress, a court is to look first at the plain language of the statute. Where there is ambiguity, a court may discern Congressional intent from legislative history and from the language and design of the entire statute. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 n.12 (1987); *see also K-Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988). In this case, the plain language of 8 U.S.C. §§ 1255 and 1254a(f)(4), interpreted in context and combined with evidence of congressional intent, is clear and precludes Defendants' interpretation. *See supra* §§ III.C, E; *Ramirez*, 852 F.3d at 958; *Flores*, 718 F.3d at 551; *Bonilla*, 149 F. Supp. 3d at 1138-39; *Medina*, 65 F. Supp. 3d at 436; *see also Cardoza-Fonseca*, 480 U.S. at 449 (noting the "longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the [noncitizen]"); *Sepulveda v. Gonzales*, 407 F.3d 59, 62 (2d Cir. 2005) (same). Because the statute is clear, the Court need not consider the second step of *Chevron* analysis, which would address whether the agency's interpretation of the statute is rational or consider the persuasive power of Defendants' position pursuant to *Skidmore*.

*2. Even if the Statutory Language Is Ambiguous, Defendants Are Not Entitled to Deference, Regardless of the Test This Court Applies*

Furthermore, regardless of the test applied, this Court should not afford deference to Defendants' position. If this Court were to apply *Chevron*, Defendants' position is not entitled to deference because it is not reasonable. *See Shi Liang Lin v. Dep't of Justice*, 494 F.3d 296, 304 (2d Cir. 2007) ("Only if the statute is silent or ambiguous do we turn to the second inquiry-whether the BIA's interpretation constitutes 'a permissible construction of the statute.'") (quoting *Chevron*, 467 U.S. at 843). Courts must avoid statutory interpretations that produce absurd results or are unreasonable because they are "plainly at variance with the policy of the legislation as a whole." *American Trucking Ass'ns*, 310 U.S. at 543 (quoting *Ozawa,* 260 U.S. at 194). Here, Defendants' interpretation as manifested in its policy is patently unreasonable because it ignores entirely Congress' mandate that TPS holders are to be considered as "being in" lawful nonimmigrant status. *See supra* § III.C. Additionally, Defendants' interpretation produces an absurd result at odds with the purpose of § 1254a(f)(4). As discussed in Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment, Defendants' interpretation would require the Court to conclude that Congress intended, on the one hand, to withhold the benefit of § 1254a(f)(4) to TPS holders who entered without inspection, but on the other hand, allow those same TPS holders to benefit from § 1254a(f)(4) simply by traveling abroad after they have been granted TPS. Pls. S.J. Memo at 27-29. Moreover, Defendants' interpretation belies the whole point of the TPS statute, to provide protection to individuals from designated countries to ensure that they are not forced to return to the unsafe conditions that gave rise to the TPS designation. Defendants' interpretation flatly contradicts the ameliorative purpose of the statute.

Furthermore, Defendants have not demonstrated that their interpretation of the statute should be entitled to deference under *Chevron.* As the Ninth Circuit noted in *Ramirez*, "the

government has not identified any controlling agency interpretation to which we owe deference." 852 F.3d at 958-59. Defendants have not published regulations, subject to notice and comment, in which they set forth their interpretation of whether, under the relevant statutes, a grant of TPS constitutes an inspection and admission for purposes of adjustment of status are set forth.[10] At most, pursuant to *Skidmore* this Court could provide weight to Defendants' position according to "the thoroughness evident in [the agency's] consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." 323 U.S. at 140.

Under *Skidmore*, their position is not persuasive. Even if consistency were to weigh in the agency's favor—although Defendants have not provided evidence in their motion of such consistency—the remaining factors weigh in favor of Plaintiffs for the reasons articulated in Sections III.C-E. *See Skidmore*, 323 U.S. at 140; *cf. Zheng Zheng v. Gonzales*, 422 F.3d 98, 120 (3d Cir. 2005) ("While the statute may be ambiguous enough to allow for some regulatory eligibility standards, it does not so totally abdicate authority to the Attorney General as to allow a regulation . . . that essentially reverses the eligibility structure set out by Congress."). As the Sixth Circuit noted in considering similar claims, "[b]eing consistently wrong does not afford the agency more deference than having valid reasoning." *Flores*, 718 F.3d at 555; *see also Bonilla*,

[10] The decisions issued to Plaintiffs were non-precedential. Defendants themselves appear to concede that the INS General Counsel opinion they cite is subject only to *Skidmore* deference, and the only other agency opinion they cite, *Matter of Sosa Ventura*, 25 I&N Dec. 391 (BIA 2010), does not address the issue raised in this case. *See* Dfs. Memo at 31. Finally, the Second Circuit has held that agency policy manuals, such as the USCIS Policy Manual containing Defendants' written policy, are generally not subject to *Chevron* deference. *Estate of Landers v. Leavitt*, 545 F.3d 98, 106 (2d Cir. 2008) ("[W]e are aware of few, if any, instances in which an agency manual, in particular, has been accorded *Chevron* deference."); *see also Paiva v. Curda*, 162 F. Supp. 3d 1056, 1066 (C.D. Cal. 2016) (declining to afford deference to the USCIS Policy Manual).

149 F. Supp. 3d at 1139 n.3 (same); *Medina*, 65 F. Supp. 3d at 437 (same).

*3. The Arguments Defendants Provide in Support of Deference Are Not Persuasive*

Finally, Defendants' deference arguments rely on inapposite authority or inaccurate descriptions of Plaintiffs' claims. They claim that deference is appropriate based on two prior agency opinions. However, one, the BIA decision *Matter of Sosa Ventura*, does not mention, let alone decide, whether a grant of TPS constitutes an admission *for the purposes of adjustment of status* and thus never even refers to either of the two statutory provisions—8 U.S.C. § 1255 and 8 U.S.C. § 1254a(f)(4)—at issue in this case. 25 I&N Dec. 391 (BIA 2010). The other, a single legacy INS opinion from 1991 addressing hypothetical concerns rather than any individual case, affords a single paragraph to § 1254a(f)(4) which does not explain—or, apparently consider—why an individual who is "considered as being in, and maintaining, lawful status as a nonimmigrant" would not necessarily be considered as having been inspected and admitted to the United States. *See* INS Genco Op. No. 91-27, 1991 WL 1185138, *2 (INS Mar. 4, 1991).

Similarly, Defendants rely on inapposite information to suggest that Plaintiffs' claims are inconsistent with the purpose of TPS. Plaintiffs do not suggest that TPS would "create a permanent immigration status in the United States." Dfs. Memo at 33. Instead, as the *Flores* Court held, § 1254a(f)(4) provides a means for otherwise eligible TPS holders to adjust their status. *Flores*, 718 F.3d at 554 ("The issue is not whether all TPS beneficiaries automatically qualify for LPR adjustment … [but whether] a TPS beneficiary, who has been deemed to have good moral character and has a visa available to him on an independent basis—here through the immediate-relative petition filed by his wife— . . . therefore qualifies for consideration of adjustment of status under § 1255."). All Plaintiffs and proposed class members are otherwise eligible for adjustment of status based on their relationships to U.S. citizen family members and

U.S. employers—not based on their TPS status—and they only seek that USCIS properly apply 8 U.S.C. § 1254a(f)(4) by considering them to be in lawful nonimmigrant status—with its attendant inspection and admission—for purposes of adjustment of status.

Finally, as Plaintiffs have explained in their motion for summary judgment, their interpretation of the statute is consistent with Congressional intent behind the TPS statute as a whole. Pls. S.J. Memo at 25-27; *see also supra* §§ III.C, E. Defendants' suggestion that 8 U.S.C. § 1254a(f)(4) was intended to be limited to ensuring that TPS applicants already in another nonimmigrant status would not lose the ability to seek LPR status, with no other purpose, is not a reasonable interpretation because, among other reasons, it renders the term "being in" entirely superfluous. *See supra* § III.C. Instead, consistent with Congress' intent to ensure that individuals are not forced to return to their country of origin where a natural disaster, war or other crisis event initiated the TPS designation, Congress intended that *all* TPS holders who now qualify for an immigrant visa have a means to secure lawful permanent residence from within the United States, rather than forcing them to leave the country to apply through consular processing abroad.

## IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court deny Defendants' Motion to Dismiss or in the Alternative, Motion for Summary Judgment.

Dated July 3, 2018

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

In accordance with III.B.5 of the Individual Rules of Judge Rosylyn R Mauskopf, I, Mary Kenney, hereby certify that on July 3, 2018, I sent the foregoing Opposition to Defendants' Motion to Dismiss or in the Alternative, for Summary Judgment, index of exhibit, authenticating declaration of Trina Realmuto, and exhibit in support to opposing counsel via email at the following addresses:

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