UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIAN C. SCHMITT P.O. Box 540 (419 Main St.) New Windsor, MD 21776 BRUCE A. HAKE P.O. Box 540 (419 Main St.) New Windsor, MD 21776 BRUCE A. HAKE, P.C. dba Hake & Schmitt P.O. Box 540 (419 Main St.) New Windsor, MD 21776 *Plaintiffs*, v. JEH JOHNSON, Secretary U.S. Department of Homeland Security Washington, D.C. 20528 LEON RODRIGUEZ, Director U.S. Citizenship and Immigration Services Office of the Director MS 2000 20 Massachusetts Ave., N.W. Washington, D.C. 20529 KATHY A. BARAN, Director U.S. Citizenship and Immigration Services California Service Center P.O. Box 10129 Laguna Niguel, CA 92607 LORETTA E. LYNCH, Attorney General of the United States U.S. Department of Justice 950 Pennsylvania Ave., N.W. Washington, D.C. 20530 *Defendants*.	Civ. No.

COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MANDAMUS RELIEF

Plaintiffs by their undersigned lawyer allege as follows:

1. Plaintiff Brian C. Schmitt is a citizen of the United States. He is a plaintiff in his capacity as a lawyer and a business owner. His business address is P.O. Box 540 (419 Main St.), New Windsor, MD 21776 (Carroll County).

2. Plaintiff Bruce A. Hake is a citizen of the United States. He is a plaintiff in his capacity as a lawyer and a business owner. His business address is P.O. Box 540 (419 Main St.), New Windsor, MD 21776 (Carroll County).

3. Bruce A. Hake, P.C., is a Maryland Professional Corporation owned by plaintiffs Brian C. Schmitt and Bruce A. Hake. The firm does business as Hake & Schmitt, a trade name registered with the State of Maryland. The corporation's business address is P.O. Box 540 (419 Main St.), New Windsor, MD 21776 (Carroll County).

4. Defendant Jeh Johnson is the United States Secretary of Homeland Security, the head of the United States Department of Homeland Security, an agency of the United States. He is named in his official capacity. His address is: U.S. Department of Homeland Security, Washington, D.C. 20528.

5. Defendant Leon Rodriguez is the Director of the United States Citizenship and Immigration Services (USCIS), which is part of the Department of Homeland Security and is an agency of the United States. He is named in his official capacity. His address is: Office of the Director MS 2000, U.S. Citizenship and Immigration Services, 20 Massachusetts Ave., N.W., Washington, D.C. 20529.

6. Defendant Kathy A. Baran is the Director of the USCIS California Service Center, an agency of the United States. She is named in her official capacity. Her address is: USCIS California Service Center, P.O. Box 10129, Laguna Niguel, California 92607-1012.

7. Defendant Loretta E. Lynch is the Attorney General of the United States. She is named in her official capacity. Her address is: U.S. Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D.C. 20530.

I. Jurisdiction and Venue

8. This is an action to review administrative agency action of the USCIS. The action arises under the Immigration and Nationality Act of 1952, as amended (the "Act"), 8 U.S.C. § 1101 et seq., and the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 et seq. Subject matter jurisdiction is based on 28 U.S.C. §§ 1331 and 1361 (mandamus). This Court may grant relief pursuant to the Act, the APA, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., 28 U.S.C. §§ 1361, and 28 U.S.C. § 1651 (the All Writs Act).

9. Defendants Jeh Johnson, Leon Rodriguez, and Kathy Baran had duties to act in conformity with the statute, the regulations, precedential decisional law, and the legislative history in adjudicating the Form I-612 hardship and persecution waiver applications filed by this law firm.

10. Venue is proper in the United States District Court for the District of Columbia under 28 U.S.C. § 1391(e) because this is an action against officers and agencies of the United States in their official capacities, brought in the district where a substantial part of the events or omissions giving rise to the plaintiffs' claim occurred. The Defendant Jeh Johnson is sued in his official capacity as Secretary of the Department of Homeland Security ("DHS"), a United States

federal agency and resident in this district. The Defendant Leon Rodriguez is sued in his official capacity as Director of USCIS, a United States federal agency and resident in this district. The Defendant Kathy Baran is sued in her official capacity as Director of the USCIS California Service Center, a United States federal agency. Because national policy concerning adjudication of applications for immigration benefits — including I-612 hardship and persecution waiver applications — is formulated by the DHS and implemented by the USCIS, venue is proper in this district.

II. Introduction and Legal Background

11. This section of the complaint gives an introduction of what happened and what is at stake, followed by a summary of the legal procedures involved.

12. Many persons admitted to the United States in J-1 or J-2 status under 8 U.S.C. § 1101(a)(15)(J) are subject to the two-year foreign residence requirement of 8 U.S.C. § 1182(e).

13. Persons subject to that requirement have certain disabilities, including the inability to apply for an H or L visa stamp, the inability to apply for change of status, and the inability to apply for permanent residence or an immigrant visa. See 8 U.S.C. §§ 1182(e) and 1258.

14. 8 U.S.C. § 1182(e) sets forth three reasons why a J-1 or J-2 nonimmigrant can become subject to the foreign residence requirement, and it sets forth four ways in which such a person can obtain a waiver of the requirement.

15. Two of those waiver categories (exceptional hardship and persecution) require filing of a form called the I-612 with the USCIS. The other two waiver categories (no objection

and interested government agency) do not involve the I-612 or any other kind of USCIS application or petition form.

15. The law firm of Hake & Schmitt has concentrated on Form I-612 hardship and persecution waiver applications for more than 20 years. Most of the firm's clients are medical professionals and research scientists, but we also represent clients from all walks of life. On information and belief, Hake & Schmitt has filed more I-612s than any other law firm in the world.

17. All hardship and persecution waivers are filed at the USCIS California Service Center (CSC). These cases are adjudicated in three phases. The first step is a determination by the USCIS as to whether the applicant has met his or her burden of proof for a hardship or persecution waiver. If the USCIS makes a favorable determination, it must seek the recommendation of the State Department Waiver Review Division (WRD). If the WRD makes a favorable recommendation, the USCIS will grant the waiver.

18. Over the past decade, there have been four hostile adjudications climates at the USCIS CSC. The first was in 2007, when approximately 18 I-612 hardship waiver applications filed by Hake & Schmitt were denied. All cases that were appealed by this office were sustained by the USCIS Administrative Appeals Office (AAO). During that time there was evidence of the CSC's open defiance of AAO orders, retaliation for the substance of appellate briefs, and possible civil rights violations, which were apparently under investigation by the Civil Rights Division of the Department of Justice (DOJ).

19. After an investigation by the USCIS General Counsel's office, in 2008 things returned to normal for I-612 adjudications at the CSC. Then, for a 10-week period in the summer

of 2009, nearly every I-612 case filed by Hake & Schmitt were denied. All of these cases were won on appeal to the AAO. The denials during this 10-week period resembled the denials from the 2007 crisis. Hake & Schmitt's record on AAO appeal in this kind of case is 43 victories and 1 defeat. With respect to the lone defeat, the firm filed a de novo application several years later and won that case administratively.

20. From the fall of 2009 to the summer of 2013, the adjudications climate returned to normal. During that span of time, Hake & Schmitt received one extremely hostile denial on a rock solid I-612 hardship waiver case, following a pro forma Request for Evidence (RFE) asking for a birth certificate. Hake & Schmitt appealed that denial and the USCIS overturned the denial on its own motion. This denial resembled the denials during the hostile adjudications climate in 2007 and the summer of 2009.

21. From the summer of 2013 through February 13, 2014 Hake & Schmitt started receiving hostile RFEs on many of the cases we filed during that time. The firm received nine RFEs during that period of time. The firm considered one of the nine RFEs to be legitimate. The remaining eight RFEs asked questions that were legally irrelevant and/or objectionable. These eight RFEs were conclusory and did not reflect a genuine review of record evidence. Many of the RFEs asked for evidence already submitted with the original application. These RFEs generally ignored nearly all of the evidence submitted with the applications. The RFEs also ignored precedentially binding decisional law that has not changed in more than 40 years. One RFE was issued in a case that was previously approved by the Service. One RFE was overcome after an aggressive response, where the State Department issued a favorable recommendation on the case. We responded to another RFE, which resulted in a heartless denial,

which was appealed to the AAO. The AAO sustained the appeal, remanding the case to the USCIS. All other RFEs during this period were overcome with aggressive responses, with the exception of one case where the client terminated the lawyer-client relationship and another case where we withdrew from the representation.

22. From February 13, 2014 to April 29, 2016, the adjudications climate returned to normal. No hostile RFEs or denials were received by Hake & Schmitt during this span of time. During that time, this firm filed more than 60 I-612 hardship or persecution waiver applications.

23. From April 29, 2016 to present, Hake & Schmitt has received 10 abusive RFEs, involving nearly all cases filed.[1] This abrupt and sudden hostile change in the adjudications climate is the subject of the instant action. This resembles the abuses in 2007, 2009, and the RFE crisis of 2013 and 2014.

24. Hake & Schmitt has observed the CSC taking cases out of order, which is unusual. Specifically, after the firm submitted an aggressive response in the Castillo persecution waiver case (WAC-16-044-50769), the CSC took two of the firm's cases out of order and issued short RFEs on the same day. Such action has the appearance of retaliation for a strongly worded RFE response. The same thing happened in the other crises.

III. RFE History

25. All 10 of the recent RFEs violated Service policy on the issuance of RFEs. The RFEs asked irrelevant and/or objectionable questions. Other questions tended to indicate that

[1] The first of the RFEs was a rock-solid Venezuelan persecution waiver case. Hake & Schmitt filed an aggressive response to the RFE issued in the case. The USCIS CSC sat on the RFE response for more than three months, and then issued a heartless and cruel denial. Suit has been filed seeking judicial review of that decision. See Castillo v. Johnson, No. Civ. 16-cv-01784 (D.D.C. filed Sep. 6, 2016).

large portions of the waiver application were wholly ignored, or even that the entire application was ignored. RFEs should only be issued when the evidence raises underlying questions regarding eligibility or does not fully establish eligibility. See February 16, 2005 William R. Yates Interoffice Memorandum, Requests for Evidence (RFE) and Notices of Intent to Deny (NOID).[2] All 10 RFEs violate the 2005 Yates memo because they do not clarify how the evidence submitted in the original filing did not fully establish eligibility. Indeed, all 10 applications were approvable as filed. Additionally, each applicant met his/her burden of proof and thus made a prima facie case for approval. See USCIS Adjudicator's Field Manual (AFM) § 11.1(c). The standard of proof applied in an I-612 persecution waiver application is the "preponderance of the evidence" standard. Id. The CSC ignored the burden of proof in issuing all of these RFEs.

26. The RFEs represent a dramatic change in the adjudication of J-1 persecution and hardship waiver applications. Courts have held that an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed. See Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970). The issuance of RFEs in perfectly sound hardship and persecution cases without explaining the change in policy and standards violates federal decisional law that mandates such explanations. No such explanations were present in any of the RFEs.

27. Four of the cases receiving RFEs were persecution waivers. Each RFE included the following irrelevant and objectionable question: "Have you ever applied for political asylum on Form I-589, Request for Asylum in the United States? If yes, provide photocopies of the

[2] Attached as Exhibit 1.

disposition of the case." That is not a legal requirement under 8 U.S.C. § 1182(e). Such a question is objectionable based on relevance. The governing law for each persecution waiver case was set forth in the lawyer letter accompanying the application. That law was uniformly ignored in each persecution waiver application. The consideration of whether the applicant has ever applied for asylum is not reasonably calculated to elicit relevant information concerning the persecution claims in each case, and the question is wholly irrelevant. Consideration of any evidence generated in response to this inquiry would be improper and legally erroneous. This line of inquiry has no basis in the statute, regulations, and administrative and federal decisional law in this area. It would be an abuse of discretion to consider evidence submitted in response to this inquiry, and consideration of this inquiry raises constitutional concerns.

28. One of the RFEs sought *ultra vires* proof of derivative citizenship in contravention of 22 U.S.C. § 2705. See WAC-16-075-51027.

29. Every RFE asked many legally irrelevant questions.

30. Every RFE indicates that the adjudicator improperly ignored and/or disregarded almost the entire waiver application.

31. In response to these general issues, plaintiffs filed a complaint with the DHS Inspector General's (IG) Office.[3] At that point, six RFEs had been received. Upon witnessing that an additional RFE was issued in another case, Plaintiffs forwarded the IG complaint to the

[3] Attached as Exhibit 2. Eight exhibits were attached to this complaint. These included a spreadsheet showing the pertinent information from each RFE; the February 16, 2005 William R. Yates Interoffice Memorandum, Requests for Evidence (RFE) and Notices of Intent to Deny (NOID); and the first six RFEs, with responses. These exhibits will be included elsewhere in this complaint.

DHS Office of General Counsel.[4] Plaintiffs have not yet received a response from the Defendants on these complaints.

32. The first of the 10 RFEs came in the Castillo persecution waiver case. That case was filed on December 3, 2015 and was given case number WAC-16-044-50769. The RFE was issued on April 29, 2016 by USCIS officer number CSC7795. A response to the RFE was filed by this law firm on May 18, 2016, with a request for supervisory review.[5] The RFE ignored nearly all of the submitted evidence. It violated the USCIS RFE policy. It asked many legally irrelevant questions. It asked about financial hardship even though that was not argued. Specifically, the regulations only require documentation of financial hardship when it is "pertinent" and this factor was not pertinent in this case. See 8 C.F.R. § 212.7(c)(7). It unlawfully asked about a prior asylum application. It showed a great misunderstanding of the law and policy in this kind of case.

33. As set forth above, the USCIS CSC sat on the RFE response for more than three months, when it proceeded to issue a heartless and cruel denial. Judicial review has been sought on that decision. Significantly, nothing in the RFE was used as a basis for the denial. The adjudicator simply fabricated new bases for the denial. Namely, the adjudicator misconstrued the evidence and/or construed the evidence in the light most unfavorable to the application. In other words, USCIS officer CSC7795 acted in bad faith in adjudicating the waiver application.[6]

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[4] Attached as Exhibit 3. A spreadsheet summarizing all RFEs is attached to this Complaint as Exhibit 4.

[5] The RFE is attached as Exhibit 5.

[6] The First-Amended Complaint is attached as Exhibit 6.

34. The second of the 10 RFEs came in a hardship case, case number WAC-16-075-51027. This case was filed on January 20, 2016. The RFE was issued on May 23, 2016. This RFE was also issued by USCIS officer CSC7795. The RFE ignored most of the evidence submitted. It violated the USCIS RFE policy. It asked an ultra vires question on proof of derivative citizenship in violation of 22 U.S.C. § 2705. A response to this RFE was filed on June 6, 2016.[7] The case was sent to the State Department Waiver Review Division (WRD). The WRD issued a favorable recommendation on the case on August 24, 2016. The USCIS issued an approval notice on this waiver application on August 30, 2016.

35. The applicant in case number WAC-16-075-51027 was severely injured by the delay in the adjudication of the waiver application. He is a gifted surgeon who missed out on an opportunity to accept a cutting-edge fellowship at the Mayo Clinic. He has also been delayed in the commencement of his first job as a surgeon. U.S. medicine and many prospective patients were also harmed by the delay in the waiver application. Furthermore, to comply with U.S. immigration law, he departed the United States at the conclusion of his program and returned to his home country of Lebanon, where he was exposed to a substantial risk of physical harm. If the applicant died, he would have left a U.S. citizen wife and child. The U.S. public interest would have also been permanently deprived of this gifted surgeon.

36. The third of the 10 RFEs came in a persecution waiver case, number WAC-16-088-51118. The case was filed on February 8, 2016. The RFE was issued on June 6, 2016. This RFE was issued by USCIS officer CSC7336. This RFE ignored most of the evidence. It violated the USCIS RFE policy. It also asked the same irrelevant question about whether the applicant

[7] The RFE and response are submitted as Exhibit 7.

previously filed an asylum application. A response to this RFE was filed on June 14, 2016.[8] The case was sent to the WRD to seek its recommendation. The WRD issued a favorable recommendation on the case on July 20, 2016. The USCIS issued an approval notice on this waiver application on July 26, 2016.

37. The fourth of the 10 RFEs came in another persecution waiver case, number WAC-16-061-50736. This case was filed on December 28, 2015. The RFE was issued on June 6, 2016. This RFE was issued by USCIS officer CSC3353.[9] This RFE ignored most of the submitted evidence. It violated the USCIS RFE policy. It also asked the irrelevant question about whether the applicant previously filed an asylum application. A response to the RFE was filed on June 16, 2016.[10] The case was sent to the WRD to seek its recommendation. The WRD issued a favorable recommendation on September 26, 2016. It is expected that the USCIS will issue an approval notice shortly.

38. The fifth of the 10 RFEs was issued in case number WAC-16-106-51227. This hardship waiver case was filed on March 4, 2016. The RFE was issued on July 7, 2016 by USCIS officer CSC7450. This RFE ignored most of the evidence submitted. It violated the USCIS RFE policy. It asked about financial hardship when this was not claimed in the waiver

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[8] The RFE and response are submitted as Exhibit 8.

[9] The RFEs for WAC-16-088-51118 and WAC-16-061-50736 were issued on the same day. The USCIS took both of these cases out of order and issued similar RFEs on the same date. That happened shortly after the Castillo RFE response, which requested supervisory review, was received by the USCIS. It appears that the supervisor may have directed these officers to pull two cases out of order to issue summary RFEs in retaliation for a strongly worded RFE response in the Castillo case.

[10] The RFE and response are submitted as Exhibit 9.

application. Specifically, the regulations only require documentation of financial hardship when it is "pertinent" and this factor was not pertinent in this case. See 8 C.F.R. § 212.7(c)(7). A response to the RFE was filed on August 12, 2016.[11] As of this date, the RFE response is still pending with the USCIS.

39. The sixth of the 10 RFEs was issued in case number WAC-16-078-50977. This persecution waiver case was filed on January 22, 2016. The RFE was issued on July 14, 2016 by USCIS officer CSC7795. The RFE ignored most of the evidence submitted. It violated the USCIS RFE policy. It asked legally irrelevant questions, such as about financial hardship even though this was not argued. It unlawfully asked about a prior asylum application. It showed a great misunderstanding of the law and policy in this kind of case. A response to the RFE was filed on August 11, 2016.[12] As of this date, the RFE response is still pending with the USCIS.

40. The seventh and eighth of the 10 RFEs were issued in the parallel hardship waiver cases of case numbers WAC-16-157-51397 and WAC-16-157-51376.[13] These cases were filed on May 6, 2016. The RFEs were issued on August 31, 2016 by USCIS officer CSC7795. The RFEs ignored most of the evidence submitted. They violated the USCIS RFE policy. They asked legally irrelevant questions, such as about financial hardship even though this was not argued. They completely disregarded a letter from the applicants' child's physician on a life-threatening peanut allergy. The letter submitted with the applications met the regulatory requirement for

[11] The RFE and response are submitted as Exhibit 10.

[12] The RFE and response are submitted as Exhibit 11.

[13] A parallel case is one filed by two J-1 spouses where the substance of both applications is the same.

medical evidence. See 8 C.F.R. § 212.7(c)(7). Specifically, the letter was ". . . from a qualified physician setting forth in terms understandable to a layman the nature and effect of the illness and prognosis as to the period of time the spouse or child will require care or treatment." A response to these RFEs is currently being prepared.

41. The ninth of the 10 RFEs was issued in case number WAC-16-099-51124. This hardship waiver case was filed on February 24, 2016. The RFE was issued on August 31, 2016 by USCIS officer CSC3759. The RFE ignored most of the evidence submitted. It violated the USCIS RFE policy. It asked legally irrelevant questions, such as about financial hardship even though this was not argued. Specifically, the regulations only require documentation of financial hardship when it is "pertinent" and this factor was not pertinent in this case. See 8 C.F.R. § 212.7(c)(7).

42. Two aspects of this RFE for WAC-16-099-51124 stand out as cruel and unworthy of the government. The first is the following statement:

> • It is also noted that your children would suffer psychological, developmental, educational, and sociocultural setbacks and evidence submitted appears to indicate that these setbacks may have a higher impact to your older child, Mohammad who is enrolled in a gifted program. **However, these limitations appear to be of little significance at this stage in their lives and are not likely to be in the future.**

This showed that the adjudicator improperly ignored the vast majority of the evidence submitted with the waiver application concerning psychological, developmental, educational, and sociocultural hardships. It is heartless and cruel to state that a child who suffered an intraventricular brain bleed (equivalent of a stroke) would not face serious psychological, developmental, educational, and sociocultural setbacks if the family was compelled to relocate to

Jordan. This is especially true in view of the overwhelming volume of evidence submitted in this case.

43. The second statement that was cruel and unworthy of the U.S. Government is:

> • While it is indicated that your father-in-law, a United States lawful permanet [*sic*] resident, would also suffer exceptional hardship if your family had to return to Jordan; **however, the evidence does not support how this separation can be considered as exceptional hardship as other families are faced with this similar situation.**

The father-in-law has terminal prostate cancer and recently lost his wife. This RFE was the first of 10 to take such an extremely inhumane and cruel position.

44. A response to this RFE was filed on September 20, 2016.[14]

45. The tenth of 10 RFEs was issued in case number WAC-16-137-53923. This hardship waiver application was filed on April 14, 2016. The RFE was issued on September 23, 2016 by USCIS officer CSC7336. Notwithstanding the prior cruel and inhumane RFE in the prior case, this RFE is by far the worst. The RFE did not make a single reference to even one single fact in the case. It's only reference to supposed facts in the case is one sentence that misstated the immigration status and the nationality of the applicant's spouse. That is a Service failure. It was riddled with errors and inaccuracies, presumably from material that was cut and pasted from some other case. It violated the USCIS RFE policy. It was obviously issued in bad faith. A response to this RFE was filed on October 4, 2016.[15]

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[14] The RFE and response are submitted as Exhibit 14.

[15] The RFE and response are submitted as Exhibit 15.

46. The 10 referenced RFEs came from five different adjudicators. This, coupled with the fact that there is strong evidence of retaliation for a strong RFE response in the Castillo case, indicates a supervisor or someone at a higher level of USCIS is directing such unlawful and abusive behavior. This is especially true given the fact this firm filed more than 60 I-612 hardship or persecution waiver applications without any hostile RFEs or denials between February 13, 2014 and April 20, 2016. This is also true given the fact that the law for these kinds of cases has not changed in more than 40 years.

47. USCIS officer CSC7795 issued RFEs in 5 of the 10 cases. As shown above, he/she previously adjudicated the Castillo application in bad faith. Officer CSC7336 issued two extremely low-quality RFEs. The rest of the RFEs were issued by other officers who only issued one RFE each. As shown above, all of the RFEs are improper and abusive.

IV. Irreparable Injury

48. Paragraphs 1-47 above are repeated and realleged as though fully set forth herein.

49. Based on the forgoing, the lives of many U.S. citizens have been, and will continue to be, severely injured by this current trend. In particular, many of our clients have exacting time pressures with respect to visa status. Further, this law firm and its owners have suffered and will continue to suffer financial and other harms if this unlawful trend is not stopped.

50. If this trend persists, it is possible that some clients will abandon their waiver application. The result would be a denial. On the other hand, these abusive and unlawful practices will persist in the cases where the RFE was responded to and the application was ultimately approved. In such cases, the unlawful and abuse practice of issuing such RFEs is capable of repetition and, as such, will continue to evade review. This is precisely what has

happened in the following approved cases: WAC-16-075-51027, WAC-16-088-51118, and WAC-16-061-50736. RFEs continue to be issued after these cases were favorably resolved, indicating no change in the adjudications climate.

51. The delay created by the need to respond to these frivolous and abusive RFEs may have life-and-death consequences for many U.S. citizens. Lawyer time wasted in responding to these frivolous and abusive RFEs has meant a reduction in the number of hardship and persecution waiver cases that Hake & Schmitt can handle. As a result, the general public is being deprived of top-flight legal services and prospective applicants will be disadvantaged in seeking relief to which they may be legally entitled.

52. It is also difficult for a lawyer to predict the timing in this kind of case given the high likelihood of frivolous and abusive RFEs. This creates a tremendous amount of stress on the lawyer, the applicant, and the applicant's family.

53. Physicians applying for hardship and persecution waivers will have difficulty securing employment following their residencies because of the delay in processing these cases. That will irreparably harm their career, which will harm the applicant's family. Such a delay severely harms the U.S. public interest because the unlawful delay in the adjudication of these applications is depriving the United States of many qualified physicians.

54. This kind of behavior stands out as cruel and unworthy of the U.S. Government. Further, these RFEs comprise abuses of civil rights and liberties, for example, Fifth Amendment Due Process and equal treatment. The actions of the CSC present a serious danger to the public health and safety in that many of the affected clients are physicians. Furthermore, the lives of the

applicants and their family members have also been put in danger by these actions. The issuance of these frivolous RFEs also reflects government waste.

COUNT ONE: ABUSE OF DISCRETION AND VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

55. Paragraphs 1-54 above are repeated and realleged as though fully set forth herein.

56. The defendants' issuance of RFEs in the 10 cases described above is contrary to the statutory standards, the regulations, the legislative history, the intent of Congress, and USCIS policy, and it is therefore arbitrary and capricious, because the defendants failed to consider all the evidence in the record before issuing an RFE, ignored substantial evidence in the record without any rational basis, and /or failed to state a valid reason for the RFEs and/or denial.

57. The defendants acted outside of the scope of discretion granted by Congress.

58. The defendants acted outside of the scope of discretion granted by the USCIS.

59. The challenged conduct is that of a widespread pattern and practice of constitutional, statutory, regulatory, and policy violations to unlawfully prolong and thwart the adjudication of perfectly sound I-612 hardship and persecution waiver applications.

60. The challenged conduct in favorably adjudicated cases, as well as cases where a final adjudication has not yet occurred, makes the challenged conduct capable of repetition yet evading review. See Southern Pacific Terminal Co. v. Interstate Commerce Com., 219 U.S. 498, 515 (1911); Delta Air Lines, Inc. v. Civil Aeronautics Bd., 674 F.2d 1, 4 (D.C. Cir. 1982).

61. The challenged conduct has continued because the USCIS continues to issue groundless RFEs in new cases.

62. The defendants' conduct in these cases therefore violates the Administrative Procedure Act, 5 U.S.C. §§ 555(b), 702, and 706(1), and otherwise constitutes abuse of discretion.

COUNT TWO: FAILURE TO PROVIDE REASONED ANALYSIS DESCRIBING A MARKED CHANGE IN POLICY IN THE ADJUDICATION OF I-612 PERSECUTION WAIVER CASES

63. Paragraphs 1-62 above are repeated and realleged as though fully set forth herein.

64. Courts have held that an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed. See Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970).

65. The RFEs represent a dramatic change in the adjudication of J-1 persecution and hardship waiver applications. The issuance of RFEs in perfectly sound hardship and persecution cases without explaining the change in policy and standards violates federal decisional law that mandates such explanations. No such explanations were present in any of the RFEs.

COUNT THREE: DECLARATORY JUDGMENT

66. Paragraphs 1-65 above are repeated and realleged as though fully set forth herein.

67. This Court has authority to issue a declaratory judgment regarding the rights, privileges, and duties of the parties under 28 U.S.C. § 2201.

68. This Court should declare that all 10 of the RFEs violated Service policy on the issuance of RFEs. Specifically, this court should declare that USCIS has violated the February 16, 2005 William R. Yates Interoffice Memorandum, Requests for Evidence (RFE) and Notices of Intent to Deny (NOID) in all 10 cases.

69. This Court should declare that the issuance of these RFEs represents a dramatic change in the adjudication of J-1 persecution and hardship waiver applications.

70. This Court should declare that an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed. See Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1970).

71. This Court should declare that the issuance of RFEs in perfectly sound hardship and persecution cases without explaining the change in policy and standards violates federal decisional law that mandates such explanations.

72. This Court should declare that the following question in persecution RFEs is a legally improper question based on relevance: "Have you ever applied for political asylum on Form I-589, Request for Asylum in the United States? If yes, provide photocopies of the disposition of the case." The reason that this is irrelevant and improper is because filing for asylum is not a legal requirement for this kind of waiver under 8 U.S.C. § 1182(e).

73. This Court should declare that the decisional law set forth in the lawyer letters for persecution cases in Exhibits 5, 8, 9, and 11 is the proper legal standard for the adjudication persecution waiver cases.

74. This Court should declare that the Defendants disregarded and violated the proper legal standard for the adjudication of persecution waiver applications in case numbers: WAC-16-044-50769, WAC-16-088-51118, WAC-16-061-50736, and WAC-16-078-50977.

75. This Court should declare that the decisional law set forth in the lawyer letters for hardship waiver cases in Exhibits 7, 10, and 12-15 is the proper legal standard for the adjudication of hardship waiver cases.

76. This Court should declare that the Defendants disregarded and violated the proper legal standard for the adjudication of hardship waiver applications in case numbers: WAC-16-

075-51027, WAC-16-106-51227, WAC-16-157-51397, WAC-16-157-51376, WAC-16-099-51127, and WAC-16-137-53923.

77. This Court should declare that the request for ultra vires proof of derivative citizenship in case number WAC-16-075-51027 violated 22 U.S.C. § 2705.

78. This Court should declare that the every RFE asked many legally irrelevant questions.

79. This Court should declare that each RFE indicates that the adjudicator improperly ignored and/or disregarded almost the entire waiver application.

80. This Court should declare that the defendants' adjudication of all of these cases receiving RFEs violates the statute, regulations, legislative intent, and agency policy.

81. This Court should declare that the defendants' issuance of the RFEs in all 10 cases was unlawful, arbitrary and capricious, contrary to the statute, regulations, legislative history, congressional intent, and in violation agency policy.

82. This Court should declare that the defendants' misconduct regarding bad RFEs has caused financial and psychological damage to the plaintiffs and their clients.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs pray for the following relief:

A. Order the defendants to immediately forward all cases where RFE responses are pending to the State Department to seek its recommendation;

B. Order the defendants to immediately cease the issuance of additional hostile and abusive RFEs that do not comply with the statute, regulations, legislative history, congressional intent, and in violation of agency policy;

C. Grant an award of attorneys' fees and costs; and

D. Grant such other relief as the Court may deem just and proper.

Dated: October 14, 2016

/s/ Brian C. Schmitt
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