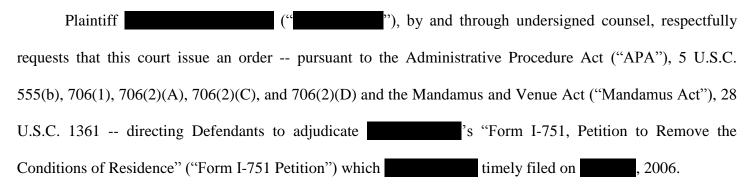
## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

,	)	
Plaintiff,	)	Case No.
v.	)	Judge:
Alejandro Mayorkas, as Director of U.S.	)	
Citizenship and Immigration Services,	)	
in his official capacity;	)	
Tony Bryson, as District Director of U.S.	)	
Citizenship and Immigration Services for	)	
Pennsylvania, Delaware, and West Virginia;	)	
in his official capacity;	)	
Angela Klapakis, Philadelphia Field Office Director	.)	
for U.S. Citizenship and Immigration Services;	)	
in her official capacity;	)	
Robert Mueller, as Director of the Federal Bureau	)	
of Investigation, in his official capacity;	)	
John J. Brosnan, as Acting Special Agent in Charge	)	
of the Federal Bureau of Investigation	)	
Philadelphia Division, in his official capacity;	)	
Eric Holder, as Attorney General of the U.S.	)	
Janet Napolitano, as Secretary of the Department	)	
of Homeland Security, in her official capacity;	)	
	)	
Defendants.	)	

## PLAINTIFF'S COMPLAINT FOR INJUNTIVE AND MANDAMUS RELIEF



## **INTRODUCTION**

was first issued a green card as a "Conditional Permanent Resident" ("CPR") in 2004, based upon his valid marriage to a United States citizen. Under these circumstances, CPR status is granted to

allow immigration officials to investigate the validity of the marriage, and CPR status is intended to continue for no longer than two (2) years to allow sufficient time for that investigation. By design, if an immigrant is granted CPR status based upon marriage to a U.S. citizen and files a timely Form I-751 Petition before the expiration of that two-year time period, the United States Customs and Immigration Services ("USCIS") is required to complete its investigation into the validity of that marriage and grant the immigrant "Lawful Permanent Resident" ("LPR") status.

first obtained CPR status on 2004, and timely filed his Form I-751 Petition to become a LPR of the United States on , 2006. That Form I-751 Petition remains within the jurisdiction of the Defendants who, collectively, have refused to adjudicate that petition as required by federal immigration law. Since 2006, the USCIS has failed to investigate the validity of adjudicate his Form I-751 Petition. To adjudicate 's Form I-751 Petition, the sole issue before the USCIS is the validity of 's 2003 marriage to a United States citizen. Since entering into the has resided continuously with his wife, has financially supported his wife, has filed joint tax returns with his wife, and has co-parented the four (4) biological children he shares with his wife, all of whom are United States citizens. Additionally, upon information and belief, the Federal Bureau of Investigation ("FBI") has affirmatively directed USCIS not to adjudicate 's Form I-751 Petition, is not the subject of any lawful FBI investigation, and even though the FBI acknowledges that even though the USCIS needs no additional information, or other approval, from the FBI in order to adjudicate 's Form I-751 Petition.

has been deprived of the opportunity to apply for, and attain, all of the rights and privileges accorded to United States citizens, including, but not limited to, the following: the right to vote and fully participate in our democracy, the right to receive a United States passport, the right to travel freely into and out of the United States, the right to run for public office, and the right to hold a job that is restricted to United States citizens.

Because of Defendants' collective refusal to adjudicate 's Form I-751 Petition,

### JURISDICTION AND VENUE

- This action is brought pursuant to federal statutory law; therefore, jurisdiction is proper pursuant to 28
   U.S.C. § 1331, which provides that "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."
- 2. Venue is proper under 28 U.S.C. § 1391(e)(C), because Defendants are acting in their official capacity as agents of the United States, and resides in Philadelphia, Pennsylvania, which is located within the Eastern District of Pennsylvania.

#### **PARTIES**

- 3. (Alien Registration Number is # ) is a citizen of and lawful resident of the United States who resides at place. Philadelphia, Pennsylvania Since entering the United States in 1999, has resided exclusively in the United States, and he has married and supported a family consisting entirely of United States citizens (i.e., his wife and children are United States citizens). He currently operates a business which financially supports his family, as well as the families of the individuals he employs.
- 4. Defendant Alejandro Mayorkas is being sued in his official capacity as Director of USCIS and is the official generally charged with supervisory authority over all operations of the USCIS with certain specific exceptions not relevant under the facts asserted herein. 8 CFR § 103.1(g)(2)(ii)(B). The USCIS is the agency charged with the duty to adjudicate petitions to adjust immigration status, such as the "Form I-751, Petition to Remove the Conditions of Residence" which was filed by Plaintiff in 2006 and which is the subject of this Complaint.
- 5. Defendant Tony Bryson is being sued in his official capacity as District Director of the USCIS offices in Pennsylvania, Delaware, and West Virginia. Defendant Angela Klapakis is being sued in her official capacity as Philadelphia Field Office Director of USCIS. Pursuant to 8 C.F.R. §310.2, Mr. Bryson and Ms. Klapakis have been delegated authority to control all USCIS activities within the Philadelphia District,

which was filed by in 2006 and which is the subject of this Complaint.

- 6. Defendant Janet Napolitano is being sued in her official capacity as the Secretary of the United States

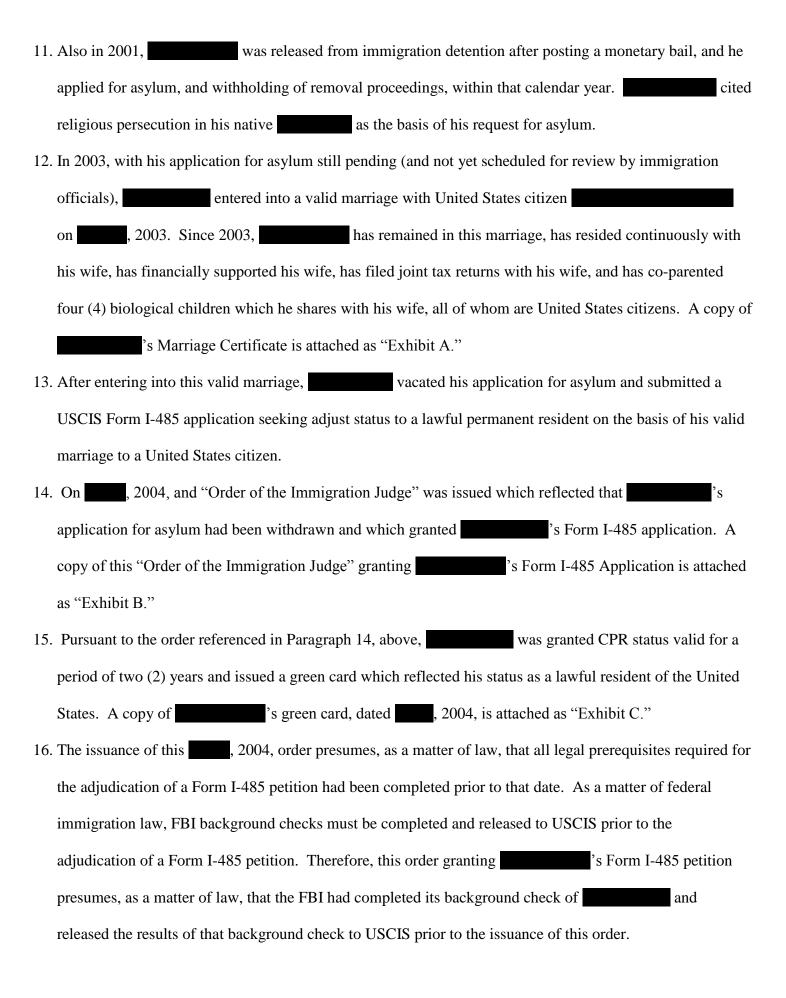
  Department of Homeland Security under which USCIS operates. In this role, Ms. Napolitano is generally charged with enforcement of the Immigration and Naturalization Act, including adjudications of petitions to adjust immigration status such as adjudicate the "Form I-751, Petition to Remove the Conditions of Residence" which was filed by in 2006. She is further authorized to delegate such powers and authority to subordinate employees of DHS pursuant to 8 USC § 1103(a) and has, specifically, delegated her authority to adjudicate Form I-751 petitions to USCIS.
- 7. Defendant Robert Mueller is being sued in his official capacity as Director of the FBI, the law enforcement agency that conducts the necessary background checks required for USCIS adjudication of certain petitions seeking to adjust immigration status. Defendant John J. Brosnan is being sued in his official capacity as Acting Special Agent in Charge of the FBI Philadelphia Division.
- 8. Defendant Eric Holder is being sued in his official capacity as United States Attorney General and, in this capacity, he is responsible for the activities of the FBI. In addition, pursuant to 8 § USC 1103, he is charged with determining all issues of law pertaining to immigration and representing the United States of America in various legal matters.

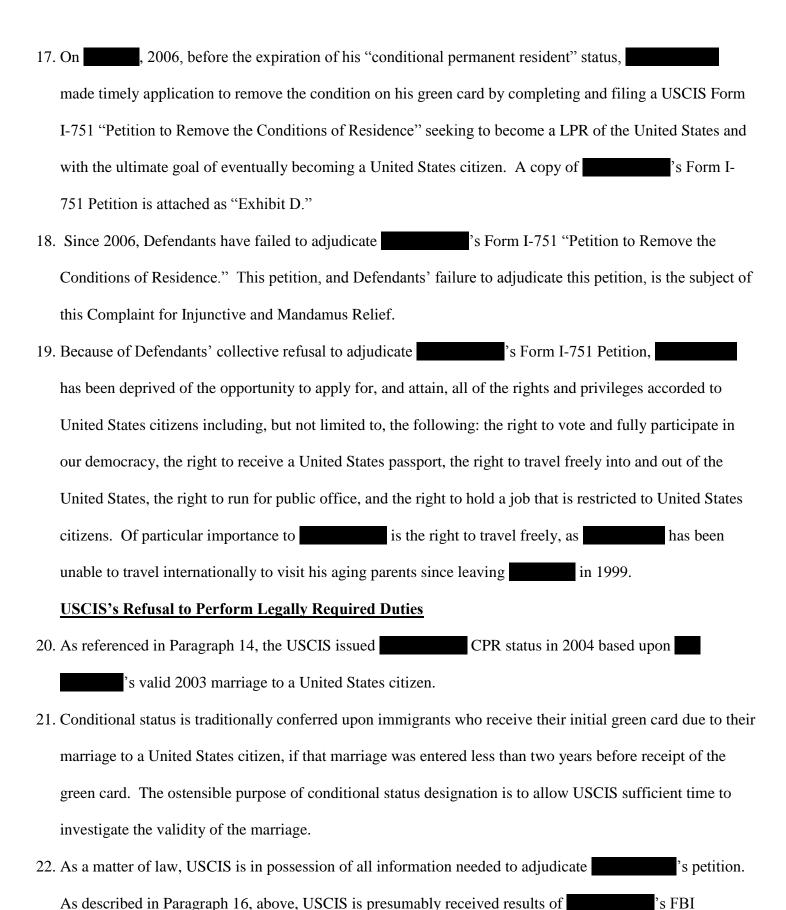
## FACTUAL BACKGROUND

## Overview of 's Immigration History

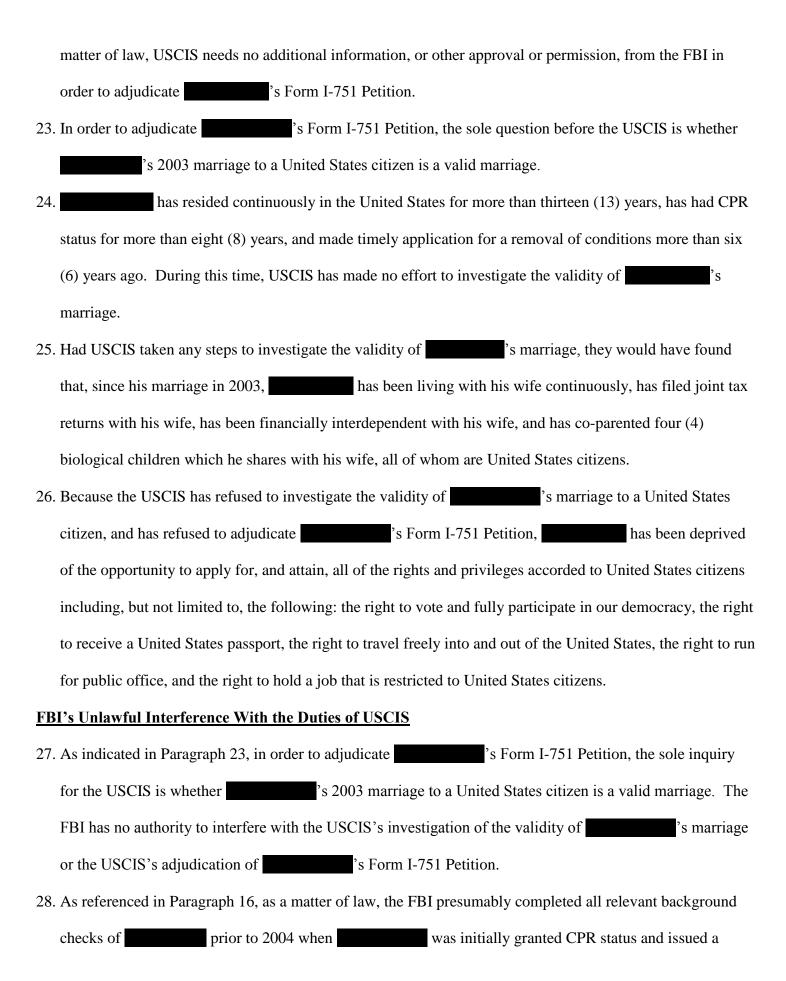
- 9. entered the United States lawfully on 1999 from his country of national origin,

  His port of entry was John F. Kennedy airport in New York and was granted entry on a student visa.
- 10. Pennsylvania upon expiration of that student visa.





background checks prior to 2004 when first became obtained CPR status. Therefore, as a



	green card. Therefore, the FBI has no additional information or legal authority to interfere with the
	USCIS's investigation of service and servi
29.	The FBI has advised the subject of any currently is not the subject of any currently
	active FBI investigation. Furthermore, upon information and belief, the FBI has no reason to contact
	in connection with any lawful investigation.
30.	Upon information and belief, asserts that the FBI has interfered with the USCIS's adjudication
	of simmigration petition. More specifically, upon information and belief, the FBI contacted
	USCIS and directed USCIS not to adjudicate representation of a second representation of the result o
	no lawful reason to investigate and has no lawful authority to interfere with USCIS's
	adjudication of service servic
31.	The FBI has had contact with in the past, in relation to a past investigation concerning
	nationals. However, that investigation concluded when a federal court determined that the
	government (which, incidentally, did not have an extradition treaty with the United States during the
	relevant time period) had no credible concerns regarding the subjects of the investigation and, instead, was
	engaging in the persecution of religiously observant nationals.
32.	Because the FBI affirmatively interfered with the USCIS's adjudication of second secon
	Petition, has been deprived of the opportunity to apply for, and attain, all of the rights and
	privileges accorded to United States citizens including, but not limited to, the following: the right to vote
	and fully participate in our democracy, the right to receive a United States passport, the right to travel freely
	into and out of the United States, the right to run for public office, and the right to hold a job that is
	restricted to United States citizens.
	Exhaustion of Remedies
33.	Neither the APA, nor the Mandamus Act, require to exhaust any administrative remedies prior
	to bringing a civil action.

34. Nonetheless, has attempted to resolve this matter without the need for court involvement. On at least two occasions, he has contacted the USCIS to inquire about the status of that agency's adjudication of his Form I-751 Petition. Attached as "Exhibit E" and "Exhibit F" are copies of USCIS's responses to 's inquiries as to the status of his case.

35. Most recently, attended a scheduled InfoPass appointment on purpose of inquiring as to the status of his Form I-751 Petition. Attached as "Exhibit G" is a copy of solution infoPass appointment letter for purpose of inquiring as to the status of his Form I-751 Petition. Attached as "Exhibit G" is a copy of solution at the InfoPass appointment on that date.

# CLAIMS FOR RELIEF COUNT ONE ADMINISTRATIVE PROCEDURES ACT

- 36. The allegations contained in paragraphs 1 through 35 above are repeated and incorporated as though fully set forth herein.
- 37. The purpose of the Administrative Procedures Act ("APA") is to prevent abuse of discretion by federal agencies by granting the federal judiciary authority to review the actions of such agencies.
- 38. One mechanism the APA uses to prevent abuse of discretion is to place time constraints upon agencies so that agencies do not use prolonged delays for the sole purposes of harassment and intimidation, or as a method to disguise a refusal to act. For this reason, the APA requires administrative agencies to conclude matters presented to them "within a *reasonable* time." 5 U.S.C. § 555 (emphasis added).
- 39. The APA also empowers federal courts to review federal agencies to "compel agency action unlawfully withheld or *unreasonably* delayed." 5 U.S.C. § 706(1) (emphasis added).
- 40. The court also may hold unlawful and set aside agency action that, inter alia, is found to be: "arbitrary, capricious, an *abuse of discretion*, or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A) (emphasis added); "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C); or "without observance of procedure required by law," 5 U.S.C. § 706(2)(D). "Agency

- action" includes, in relevant part, "an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or *failure to act*." 5 U.S.C. §551 (13) (emphasis added).
- 41. The failure of USCIS, which is under the supervision of Defendants Mayorkas, Bryson, Klapakis, and Napolitano, to adjudicate specifically specified raises legal issues under the APA in two ways:
  - a. Since \_\_\_\_\_\_ filed his Form I-751 Petition in 2006, the USCIS has refused to investigate the validity of \_\_\_\_\_\_ 's marriage. Such refusal to investigate is "failure to act" within the scope of the APA, and such "failure to act" constitutes an "agency action" within the definition of the APA. The APA, therefore, grants this court authority to review that agency action (i.e., refusal to investigate the validity of marriage) to determine whether such agency action constitutes an "abuse of discretion" or has been an "unreasonably delayed" in violation of the APA.
  - b. Since filed his Form I-751 Petition in 2006, the USCIS has refused to adjudicate specifically adjudicate for possession of all information needed to adjudicate the petition and needs no additional information, or approval, from the FBI. The USCIS's refusal to adjudicate is a "failure to act" within the scope of the APA, and such "failure to act" constitutes "agency action" within the definition of the APA. The APA, therefore, grants this court authority to review that agency action (i.e., refusal to adjudicate) to determine whether such agency action constitutes an "abuse of discretion" or has been "unreasonably delayed" in violation of the APA.
- 42. The FBI, which is under the supervision of Defendants Mueller, Brosnan, and Holder, has affirmatively interfered with USCIS's adjudication of specific petition, and this interference violates the APA.

  Upon information and belief, the FBI directly contacted USCIS and directed USCIS not to adjudicate specific petition. Such action by the FBI constitutes "agency action" within the meaning of the APA, and the APA grants this court authority to review that action to determine whether such act constitutes an "abuse of discretion" under the APA.

## COUNT TWO MANDAMUS ACT

- 43. The allegations contained in paragraphs 1 through 43 above are repeated and incorporated as though fully set forth herein.
- 44. The purpose of the Mandamus Act is to prevent federal officials from acting outside the permissible scope of their discretion, and the Act seeks to prevent such abuse by giving federal courts the authority to compel federal officials to perform acts required of them or, conversely, to refrain from acts which it is not authorized to perform.
- 45. Because the USCIS, which is under the supervision of Defendants Mayorkas, Bryson, Klapakis, and Napolitano, has refused to take any action to adjudicate 's petition, USCIS's failure to adjudicate 's petition raises legal issues under the Mandamus Act in one of two possible ways: The USCIS has made no effort to investigate the validity of 's marriage since filed his Form I-751 Petition in 2006. Therefore, the USCIS has failed to perform duties legally required of it under federal immigration law, and the Mandamus Act grants this court authority to compel USCIS to perform the duties legally required of it under federal law. The Mandamus Act, therefore, grants this court legal authority to compel USCIS to take all steps necessary to investigate the validity of 's marriage. b. The USCIS has failed to adjudicate 's petition, even though it presumably, as a matter of law, has been in possession of all information needed to adjudicate 's petition since 2004. Therefore, the USCIS has refused to perform duties legally required of it under federal immigration law, and the Mandamus Act grants this court authority to compel USCIS to perform duties legally required of it under federal law. The Mandamus Act, therefore, grants this court legal authority to compel USCIS to adjudicate 's petition. 46. The FBI, which is under the supervision of Defendants Mueller, Brosnan, and Holder, has affirmatively interfered with USCIS's adjudication of 's petition, and this interference violates the

Mandamus Act. Upon information and belief, the FBI directly contacted USCIS and directed USCIS not to

adjudicate some 's petition. Such action by the FBI is outside the scope of the FBI's authority, and the Mandamus Act grants this court authority to compel the FBI to refrain from acts which it is not authorized to perform.

## PRAYER FOR RELIEF

WHER	REFORI	E, for the reasons stated above, Plaintiff	respectfully requests
that thi	s Hono	rable Court:	
	A.	Provide declaratory relief by declaring the following acts to be in direct vio	lation of the

Administrative Procedures Act and the Mandamus Act:

- 1. The FBI's affirmative actions to interfere with USCIS's adjudication of service of Form I-751 Petition by directing USCIS to refrain from adjudicating such petition, notwithstanding the fact that the FBI has no authority to interfere with the USCIS's adjudication of specific or petition and the FBI no reason to contact in connection with any lawful investigation;
- 2. The USCIS's failure to investigate the validity of solution 2004 marriage to a United States citizen, despite the fact that the validity of this marriage is the sole factor to be considered by USCIS in the adjudication of solution 3°s Form I-751 Petition which was filed in 2006; and
- 3. The USCIS's failure to adjudicate services some services of the services of Residence, which was filed in 2006.
- B. Provide injunctive and mandamus relief as follows:
  - 1. Prohibit the FBI from performing any act to interfere with the USCIS's adjudication of 's Form I-751 Petition;
  - 2. Compel the USCIS to take all necessary actions to investigate the validity of 's marriage;

3.

Compel the USCIS to adjudicate 's Form I-751, "Petition to Remove the

Conditions of Residence";

- Grant attorney's fees and costs; and C.
- Grant any other relief as this Honorable Court deems just and proper. D.

Respectfully submitted,

BY COUNSEL:

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Email: achaudhry@cair.com

## **List of Exhibits:**

Exhibit A: "Original Marriage Certificate" – scanned carbon copy

Exhibit B: "Order of the Immigration Judge" – scanned carbon copy

Exhibit C: "Permanent Resident Card" (i.e., "green card") – scanned carbon copy

Exhibit D: "Form I-751 Petition to Remove Conditions on Residence" – scanned carbon copy

Exhibit E: USCIS response to \_\_\_\_\_\_\_\_''s inquiry regarding status of case – scanned carbon copy (date stamped "\_\_\_\_\_\_\_\_'' by USCIS)

Exhibit F: USCIS response to grading the status of his case – scanned carbon copy (date stamped "by USCIS)

Exhibit G: Copy of InfoPass e-Ticket for , 2013 InfoPass appointment