

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

HATEM HAREJ	)	CASE NO:
	)	
	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	
	)	
WILLIAM BARR, Attorney General	)	
of the United States of America,	)	
	)	
CARMEN WHALING, District Director	)	
Of the United States Citizenship and	)	
Immigration Services,	)	
	)	
KENNETH CUCCINELLI, Senior Official	)	
Performing the Duties of the Director,	)	
United States Citizenship and Immigration	)	
Services,	)	
	)	
CHAD WOLF, Acting Secretary of the	)	
Department of Homeland Security,	)	
	)	
CHRISTOPHER WRAY, Director of the	)	
Federal Bureau of Investigation	)	
	)	
Defendants.	)	

**COMPLAINT FOR WRIT OF MANDAMUS**

This action is brought by Plaintiff Hatem Harej (“Plaintiff”) to compel Defendants to adjudicate his application for Adjustment of Status to Permanent Residence (Form I-485). Plaintiff first submitted Form I-485 to the United States Citizenship and Immigration Services (“USCIS”) on March 16, 2011. Having not received an adjudication of his application, and after several personal inquiries as well as inquiries by Plaintiff’s Congressional representatives,

Plaintiff re-submitted an application on December 16, 2016. Despite Plaintiff's multiple submissions, as well as numerous inquiries of and requests for adjudication of his application, Defendants have failed to adjudicate Plaintiff's I-485 application for adjustment of status after an unreasonable delay.

### **Jurisdiction and Venue**

1. This Court has jurisdiction over the present action under 28 U.S.C. § 1331; 5 U.S.C. §§ 701 et seq.; and 28 U.S.C. § 1361 to compel Defendants, officers of the United States, to perform their duty owed to Plaintiff under the Immigration and Naturalization Act ("INA") in general and 8 U.S.C. § 1255 in particular.

2. Venue is proper in Syracuse, New York and the Northern District of New York under 28 U.S.C. § 1391(e)(1), which holds that "[a] civil action in which a defendant is an officer or employee of the United States or any agency thereof acting in his official capacity or under color of legal authority, or an agency of the United States, or the United States, may . . . be brought in any judicial district in which the plaintiff resides if no real property is involved in the action." Plaintiff resides in Syracuse, New York, and no real property is involved in this action.

3. This Court has the authority to grant the sought relief requested herein pursuant to the Mandamus Act, 28 U.S.C. § 1361, and the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq.

### **Parties**

4. Plaintiff Hatem Harej is currently an applicant for adjustment of status to lawful permanent residence. He resides in Syracuse, New York.

5. Defendant William Barr is named in his official capacity as the Attorney General of the United States. Pursuant to 8 U.S.C. § 1103(g)(1), he is charged with controlling determination of all issues of law on immigration and with representing the United States of America in various legal matters.

6. Defendant Carmen Whaling is named in her official capacity as USCIS Syracuse Field Office Director. Under the authority that 8 U.S.C. 1103(a)(1) allocates to the Department of Homeland Security (DHS), she is charged with administering and enforcing all of the functions, powers and duties of USCIS in her District.

7. Defendant Kenneth Cuccinelli is named in his official capacity as Senior Official Performing the Duties of the Director of USCIS. Under 8 U.S.C. § 1103(a)(1), he is responsible for the administration and enforcement of all of the functions, powers and duties of USCIS nationally.

8. Defendant Chad Wolf is named in his official capacity as the Acting Secretary of DHS. Under 8 U.S.C. §1103(a)(1), he is charged with enforcing the INA, and is further authorized to delegate such powers and authority to subordinate employees of DHS. More specifically, Defendant Wolf is ultimately responsible for the adjudication of I-485 applications submitted to USCIS, an agency within DHS that is subject to Defendant Wolf's supervision.

9. Defendant Christopher Wray is named in his official capacity as the Director of the Federal Bureau of Investigation ("FBI"). Upon the request of USCIS, the FBI is responsible for performing "FBI name checks" and other background checks of all applications for adjustment of status.

### **Factual Background**

10. Plaintiff Hatem Harej is a native citizen of Iraq.

11. As a civilian living in Iraq during the Iraq War, militants shot Plaintiff on two occasions, the first resulting in a bullet wound in his right chest, the second striking his car and causing it to explode and Plaintiff to suffer severe burns. Plaintiff attests that militants targeted and threatened him in Iraq because of his Sunni faith. (Exhibit A; Excerpt of Persecution Story).

12. As a result of the attacks, Plaintiff feared for his safety and well-being. In 2006, Plaintiff and his family fled to Syria. While in Syria, in 2007, Plaintiff learned that militias had confiscated his house in Iraq. See Exhibit A.

13. Plaintiff applied for the United States Refugee Admissions Program in 2008. The USCIS processed and approved his application in June 2008, citing special humanitarian concerns and determining that Plaintiff was eligible for refugee resettlement pursuant to INA § 207. (Exhibit B).

14. Plaintiff arrived in the United States with his wife and three children on February 17, 2010, under refugee-asylum status.

15. On March 9, 2011, Plaintiff applied for adjustment of status to lawful permanent resident. USCIS processed the application on March 16, 2011 and issued Plaintiff receipt number LIN-11-904-37229.

16. On April 25, 2011, Plaintiff appeared at the USCIS Field Office in Syracuse, New York, for a fingerprinting appointment.

17. On September 12, 2011, 180 days had elapsed from the day USCIS processed Plaintiff's I-485 application. Congress has deemed 180 days a reasonable amount of time for USCIS to adjudicate an I-485 application.

18. On April 12, 2012, Plaintiff, having still not received a decision from USCIS, submitted a privacy consent and information form to Congresswoman Ann Marie Buerkle to request help with his application for adjustment of status to lawful permanent residence.

19. On April 2, 2013, Congressman Dan Maffei's office contacted USCIS on Plaintiff's behalf. On April 3, 2013, USCIS responded to Congressman Maffei's inquiry by stating that they were unable to provide an update on Plaintiff's application. (Exhibit C)

20. On May 8, 2013, Plaintiff contacted USCIS directly to inquire about the status of Plaintiff's I-485 application filed on March 21, 2011. USCIS responded on May 14, 2013, stating that the application "remains under active examination." (Exhibit D).

21. More than two years later, Plaintiff again contacted USCIS on July 7, 2015, to inquire about the application submitted on March 16, 2011. USCIS responded on July 15, 2015, stating that Plaintiff's "I-485 is currently pending adjudication" and that USCIS was "unable to provide [Plaintiff] with a completion date at this time." (Exhibit E).

22. Having received neither a decision nor any further information from USCIS, Plaintiff's wife contacted Congressman John Katko's office in August 2016. USCIS did not provide a substantive response to Congressman Katko's inquiry.

23. On August 17, 2016, Plaintiff again contacted USCIS to inquire about the application submitted on March 16, 2011. USCIS responded that his application was on hold "because the required security checks remain pending." (Exhibit F).

24. After more than five years of attempting to complete his application, which included at least three occasions in which three of Plaintiff's Congressional representatives inquired on his behalf, and three additional occasions in which Plaintiff inquired about his application directly with USCIS, Plaintiff submitted a new application for adjustment of status to

lawful permanent resident on December 16, 2016. USCIS processed this application on January 4, 2017.

25. As of December 2016, USCIS similarly had not rendered a decision for Plaintiff's wife and children's application for adjustment of status. As such, Plaintiff's wife and children also re-applied in 2016, this time separately from Plaintiff. Plaintiff's wife and children received their green cards in the latter half of 2019. Two of Plaintiff's children have seen gone on to become U.S. citizens.

26. On July 3, 2017, 180 days had elapsed since the day USCIS processed Plaintiff's December 16, 2016 application. Congress has deemed 180 days a reasonable amount of time for USCIS to adjudicate an I-485 application. To date, Plaintiff has not received a decision from USCIS regarding his December 16, 2016 application.

27. On August 29, 2019, Plaintiff participated in an interview with USCIS in Buffalo, NY, regarding his most recent I-485 application.

28. On August 31, 2020, Plaintiff's counsel provided Defendant USCIS a letter of his intent to file this instant lawsuit. Plaintiff's counsel also provided Defendant USCIS with a copy of this complaint. Plaintiff's counsel notified Defendant USCIS that Plaintiff would file this mandamus action if his I-485 application was not adjudicated by September 20, 2020. Plaintiff's counsel delivered the letter and copy of the complaint to Defendant Whaling via electronic mail. See Exhibit G; Email to Defendant Whaling. As of this filing, Defendants have not adjudicated Plaintiff's I-485 application.

29. Plaintiff's I-485 application has not been adjudicated for more than 1300 days or 45 months.

30. Defendant USCIS has had more than a year to adjudicate Plaintiff's I-485 application since Plaintiff's last interview.

### **Injury to Plaintiff**

31. Due to the unreasonable delay in adjudication of Plaintiff's permanent resident application, Plaintiff has been unable to achieve naturalized citizenship status. Thus, Defendants' unreasonable delay in adjudication has further deprived Plaintiff of citizenship benefits such as the right to vote and the ability to fully participate in our democracy; hold a job that is restricted to United States citizens; run for public office; and the ability to petition for any family members to immigrate to the U.S. as immediate relatives.

32. The Defendants' unreasonable delay in adjudicating Plaintiff's application has caused inordinate and unfair stress and hassle for Plaintiff, who is entitled to a decision on his application without further unreasonable delay.

### **Grounds for Relief**

#### **CLAIM I: Request for Adjudication of Plaintiff's I-485 Application**

##### **Pursuant to the Mandamus Act, 28 U.S.C. § 1361**

33. Plaintiff reasserts and re-alleges paragraphs 1-32 as if set forth fully herein.

34. Defendants have a ministerial, non-discretionary duty to Plaintiff to timely adjudicate his I-485 application and to complete the FBI name checks and other investigation required by USCIS. Defendants have failed in that duty.

35. Under 8 U.S.C. § 1571(b), Congress provides that applications for immigrant benefit applications should not be processed later than 180 days after the initial filing of the application. 8 U.S.C. § 1572(2) states that immigrant benefit applications "means any application

. . . to . . . adjust . . . any status granted under the Immigration and Nationality Act,” thereby encompassing Plaintiff’s I-485 application.

36. As of September 30, 2020, Defendants will have allowed 1,384 days (more than 45 months) to elapse since Plaintiff’s second I-485 application was submitted on December, 16, 2016.

37. Plaintiff asserts that Defendants have no legal basis for failing to proceed with his application, and he has no adequate remedy at law for Defendants’ failure to adjudicate his application and to complete the FBI name checks and any other investigations in a timely manner. Since refugees are one of the most thoroughly vetted groups of immigrants to gain immigration benefits while inside the United States, there is no reason for background and other checks to be delayed for this lengthy amount of time.

38. Defendants have failed in their duty to adjudicate Plaintiff’s I-485 Application by refusing to render a decision despite the passage of an unreasonable time.

39. Plaintiff has attempted to resolve the delay by making numerous inquiries regarding his application, including seeking the assistance of three members of Congress over three separate Congressional terms.

40. Plaintiff has exhausted any administrative remedies that may exist and there exists no other adequate remedy.

41. The injury to Plaintiff will be redressed by compelling Defendants to carry out their non-discretionary duty to adjudicate Plaintiff’s I-485 application.

42. The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to Plaintiff. *See* 28 U.S.C. § 1361.



43. Pursuant to 28 U.S.C. § 1361, Defendants must be compelled to discharge their statutory duties owed to Plaintiff by order declaring Defendants' actions contrary to law and compelling the adjudication of Plaintiff's I-485 application.

44. The Court should grant relief in the form of a Writ of Mandamus to compel Defendants to complete any investigations related to the proper adjudication of Plaintiff's application immediately and by a date certain.

**CLAIM II: Request for Adjudication of Plaintiff's I-485 Application  
Pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701 et seq.**

45. Plaintiff reasserts and re-alleges paragraphs 1-32 as if set forth fully herein.

46. The Administrative Procedure Act requires administrative agencies to conclude matters presented to them "within a reasonable time." 5 U.S.C. § 555. A district court reviewing agency action may "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). A district court may also 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; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law." 5 U.S.C. § 706(2)(A)-(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).

47. The failure of Defendants to adjudicate Plaintiff's application for adjustment of status within a reasonable time on the basis of delays in the processing of FBI name checks, as provided in 8 U.S.C. § 1446(d) and 8 C.F.R. §335.3, violates the Administrative Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A); 706(2)(C), 706(2)(D).

48. The failure of Defendants to complete Plaintiff's FBI name check and other background checks within a reasonable time period, with the full knowledge that USCIS requires the completion of such checks for adjudication of applications for adjustment of status, violates the Administrative Procedure Act, 5 U.S.C. § 555(b); 5 U.S.C. §§ 706(1), 706(2)(A); 706(2)(C), 706(2)(D).

49. Defendants' continued failure to adjudicate Plaintiff's I-485 application has caused Plaintiff to suffer irreparable harm and damages entitling them to the relief requested below.

### **Prayer for Relief**

WHEREFORE, Plaintiff respectfully requests that this Honorable Court:

- A. Order USCIS to immediately adjudicate Plaintiff's I-485 Application;
- B. Grant attorney's fees and cost of court to Plaintiff; and
- C. Grant any other relief as this Honorable Court deems just and proper.

Dated: September 30, 2020

Respectfully submitted,

COUNCIL ON AMERICAN-ISLAMIC RELATIONS, NEW YORK  
INC. (CAIR-NY)

By: /s/ Ahmed Mohamed

Ahmed Mohamed, Esq.  
Legal Director  
46-01 20th Avenue, Queens, NY 11105  
ahmedmohamed@cair.com  
T: (646) 665-7599  
F: (646) 934-6051

VOLUNTEER LAWYERS PROJECT OF ONONDAGA COUNTY,  
INC.

By: /s/ Sara McDowell

Sara McDowell, Esq.\*  
Director of CNY Immigration Program  
ONA Legal Counsel of CNY  
Volunteer Lawyers Project of Onondaga County, Inc.  
221 South Warren Street, Suite 200  
Syracuse, NY 13202  
T: (315) 579-0178

\* Admission forthcoming

*Attorneys for the Plaintiff*

**LISTS OF EXHIBITS:**

- Exhibit A: Excerpt of Persecution Story
- Exhibit B: Refugee Application Assessment
- Exhibit C: Congressman Maffei's Emails
- Exhibit D: USCIS Response to Plaintiff's Inquiry, 2013
- Exhibit E: USCIS Response to Plaintiff's Inquiry, 2015
- Exhibit F: USCIS Response to Plaintiff's Inquiry, 2016
- Exhibit G: Email to Defendant Whaling Providing Advance Copy of Complaint & Notice of Intent to Sue