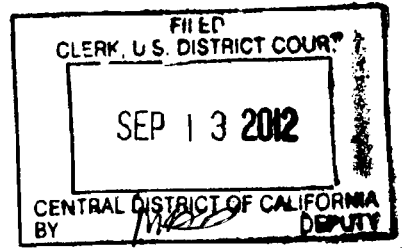


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ET



Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA**

CARLSSON, Courtney
HASHEMI FARSAANI, Badrialsadat
JIANG, Guidong
KONG, DeQing
LAI, Ye Yen
LEE, Wong Ai
LI, Ni
LI, Wei
LIM, Jimin
LUONG, Nuong Lien
MARTIN, David
PATEL, Rajeshbhai N.
SEYEDSALEHI, Giti
SHI, Hongli
TOOR, Amrit Pal
VAN DER HAM, Gerardus
YAO, Mengyou
YOO, Eun Sook

*1/5
60*

Case No: **CV 12-7893** - CAS
(AGRx)

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Plaintiffs,

v.

**UNITED STATES CITIZENSHIP &
IMMIGRATION SERVICES.**

1 NAPOLITANO, Janet, Secretary, U.S.
2 Dept. of Homeland Security;
3 MAYORKAS, Alejandro, Director,
4 U.S. Citizenship & Immigration
5 Services; MELVILLE, Rosemary,
6 Director, U.S. Citizenship &
7 Immigration Services, California
8 Service Center

9 Defendants.

10 Plaintiffs Courtney CARLSSON, et al., by and through their undersigned
11 counsel, sue Defendants, UNITED STATES CITIZENSHIP AND
12 IMMIGRATION SERVICES, Janet NAPOLITANO, Alejandro MAYORKAS,
13 and Rosemary MELVILLE, and allege as follows:

14 **PRELIMINARY STATEMENT**

15 1. This is an action brought by immigrant investors to challenge the
16 decision of the United States Citizenship and Immigration Services (“USCIS”)
17 to deny them conditional residency in the United States by revoking and/or
18 denying their investor (I-526) petitions which they filed after investing at least
19 one-half million dollars (\$500,000) in a United States business that was creating
20 jobs for U.S. workers. Plaintiff Investors have each invested these funds in
21 14575 Innovation Drive Limited Partnership (hereafter “Innovation LP” or
22 “LP”). The investment in Innovation LP aggregated funds of more than 20
23 investors for the purpose of renovating warehouse and commercial real estate
24 within a regional center (“American Life Development Company LLC”) in
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1 Riverside, California. The renovated space had lain dormant for almost two
2 years prior to plaintiffs' investment. As a result of the investment, the property
3 has already been renovated, has a tenant occupying the entire property, and is
4 projected to create a minimum of 278 new jobs for U.S. workers. The company
5 that formed the regional center and assisted in the formation of Innovation LP is
6 American Life Inc. of Seattle, Washington. American Life Inc. has engaged in
7 the same type of renovation projects successfully for over 15 years, resulting in
8 the approval of hundreds of immigrant investors' petitions. Despite never
9 receiving a denial for virtually identical real estate renovation projects,
10 American Life Inc., in this case, had their investors' petitions denied, or
11 approved and revoked, by USCIS on grounds that had no basis in fact or law.
12 The decisions by USCIS run counter to normal business practices, are irrational,
13 arbitrary and capricious, would prevent businesses from operating in a rational
14 manner to protect their financial interests, deprive plaintiffs of due process, and
15 would subvert the immigrant investor provisions of the Immigration and
16 Nationality Act ("INA"), which were designed to encourage, not discourage,
17 foreign investors to place their funds in the United States to create jobs for
18 qualifying American workers.

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27 The USCIS decisions denying the I-526 petitions also contain numerous
28 factual and legal errors. For example, the defendants claim the plaintiffs' capital

1 is not at risk, as the law requires. However, plaintiffs have *already invested* the
2 full amount of funds in Innovation LP which in turn has already spent millions
3 of dollars in the purchase and renovation of the warehouses. Defendants also
4 claim that the capital plaintiffs intend to pool for the project is \$11.5 million
5 dollars and not the \$12,000,000 originally contemplated. They fail to explain the
6 legal relevance of this fact, since \$11.5 million is sufficient to capitalize the
7 project and to cover the total number of *actual* investors at the required
8 \$500,000 investment per investor. Moreover, even if the funds had not fully
9 been invested or the jobs created at the time the denials and revocations were
10 issued, federal immigration does not require the plaintiffs to demonstrate such
11 compliance at the time the I-526 petition is approved.
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17 In accordance with INA § 203(b)(5), 8 U.S.C. § 1153(b)(5), a foreign
18 national who invests one-half million dollars (\$500,000) in a regional center
19 designated by immigration authorities may obtain residency for himself or
20 herself and his or her immediate family in the United States. The investment,
21 according to law, must create at least 10 jobs for U.S. workers. If the investment
22 is made in a regional center, such as here, investors may demonstrate by use of
23 “reasonable methodologies” that the jobs were created indirectly. 8 C.F.R.
24 §204.6(m)(7)(iii). An investor first initiates the process to become a lawful
25 permanent resident conditionally by filing Form I-526; if approved, the investor
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1 may then obtain residency conditionally by receiving an immigrant visa or
2 adjustment of status. The law provides, however, that neither all the funds must
3 be invested, nor all the jobs created at the time of filing the I-526. To the
4 contrary, the investor must only show that he or she has invested *or* “is actively
5 in the process of investing...” INA §203(b)(5)(A)(i), 8 U.S.C. §1153(b)(5)(A)(i)
6 the funds and “*will* create full-time positions for not fewer than 10 persons
7 either directly or indirectly.” 8 C.F.R. §§204.6(j)(4)(iii); 216.6(a)(4)(iv)
8 (emphasis added). Within 90 days of the second anniversary of receiving
9 conditional residency, an investor must file a second petition (Form I-829) to
10 remove the condition and become a full lawful permanent resident. Even then,
11 the investor must demonstrate only that that he or she is “actively investing” the
12 full amount of funds and that 10 or more jobs will be created within a
13 reasonable period of time. *See infra* ¶15.

14
15 In this case, the regional center application and the amendment to the
16 regional center were approved. The approvals recognized the use of IMPLAN as
17 a “reasonable methodology” that would be applied to meet the indirect job
18 creation requirements. Thereafter, many plaintiffs, using IMPLAN, had their I-
19 526 petitions approved. Some of them made plans to come to the U.S. or in fact
20 applied for conditional resident status. Notwithstanding their I-526 approvals,
21 USCIS revoked their petitions, alleging “good and sufficient cause” for such

1 revocation. Other plaintiffs' petitions were outright denied. Both the I-526
2 revocations and the I-526 denials were for identical reasons. The revocation of
3 plaintiffs' I-526 petitions or their outright denials have had serious, irreparable
4 consequences to plaintiffs. For example, plaintiffs Badrialsadat HASHEMI
5 FARSADANI, Giti SEYEDSALEHI, Amrit Pal TOOR, and Gerardus VAN
6 DER HAM all have children who turned 21 during the adjudication process of
7 their I-526 petitions. These children have "aged-out" and, absent a favorable
8 ruling from this Court, would be ineligible to obtain the benefits of investor
9 status under their parent's petition. One of the Van Der Ham's children, in fact,
10 will be out of status within weeks because of the improper denial. Plaintiff
11 DeQing KONG, absent a favorable ruling from this Court, would be separated
12 from his lawful permanent resident spouse and parent for the next several years.
13 Similarly, Courtney CARLSSON, a former U.S. citizen is now out-of-status and
14 would be barred from returning to the United States for many years absent a
15 favorable ruling from this Court.

22 **IMMIGRANT INVESTOR PROGRAM**

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24 2. The Immigration and Nationality Act ("INA") of 1990, section
25 203(b)(5), 8 U.S.C. § 1153(b)(5), created a new preference allocation of visas
26 ("EB-5 visas") for immigrants who have invested, or are in the process of
27 investing, a designated amount of lawfully obtained capital in commercial
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1 enterprises, and can demonstrate the investment will create, or save, ten or more
2 jobs for qualified United States workers. Under this “Immigrant Investor Law,”
3 qualified immigrant investors may obtain lawful permanent residence in the
4 United States for themselves and their dependents.
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7 3. The law is intended to attract foreign capital; encourage economic
8 development, especially in economically depressed or rural areas in the United
9 States; promote job creation or job retention; and generally be of benefit to the
10 United States economy and labor market.
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13 4. The law made 10,000 immigrant visas available for qualified
14 foreign nationals who invest, or are “actively involved in the process of
15 investing,” the requisite capital in a “new commercial enterprise” and who
16 create full-time employment for not fewer than 10 qualified U.S. workers. To
17 qualify, the foreign national must invest or be actively in the process of
18 investing \$1 million. When the investment is made in a rural area or in a
19 “targeted employment area” (that is, an area of unemployment substantially
20 higher than the national average), as were the investments made by plaintiffs,
21 the minimum investment amount is reduced to \$500,000. INA § 203(b)(5), 8
22 U.S.C. § 1153(b)(5); 8 C.F.R. § 204.6(f)(2).
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27 5. On October 6, 1992, Congress established the Pilot Program, a sub-
28 program of the Immigrant Investor Program. The Pilot Program amended the

1 Immigrant Investor Law in order to encourage immigrants to pool their capital
2 and invest in “regional centers.” “Regional centers” are entities organized “for
3 the promotion of economic growth, including increased export sales, improved
4 regional productivity, job creation, and increased domestic capital investment.”
5 Section 610, Department of Justice and Related Agencies Appropriations Act of
6 1993, Pub. L. 102-395, 106 Stat. 1828, 1874 (“1993 Appropriations Act”).
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10 6. A “regional center” is “any economic unit, public or private, which
11 is involved in the promotion of economic growth, including increased export
12 sales, improved regional productivity, job creation, and increased domestic
13 capital investment.” 8 C.F.R. § 204.6(e). For purposes of the Pilot Program,
14 USCIS designates regional centers, each of which is designed to impact a
15 specific geographic area. In this case, the regional center designated by USCIS
16 serves Riverside, California.
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20 7. In a regional center, the requirement that each individual
21 investment create ten jobs for qualifying individuals is expressly relaxed. An
22 immigrant investor who invests in a regional center may demonstrate job
23 creation through “indirect” as well as direct (or a combination of both) job
24 growth resulting from his or her investment.
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27 8. On August 24, 1993, the then-Immigration and Naturalization
28 Service promulgated its Interim Rule governing the Immigrant Investor Pilot

1 Program. 59 Fed. Reg. 44606. The Service's Interim Rule provides that, in lieu
2 of strict adherence to the "10 jobs created" requirement in the original
3 immigrant investor program, "reasonable methodologies" could be used to
4 estimate the number of jobs created indirectly by investment in a regional
5 center. These methodologies *may* include "multiplier tables, feasibility studies,
6 analyses of foreign and domestic markets for the goods and services to be
7 exported, and other economically or statistically valid forecasting devices which
8 indicate the likelihood that the business will result in increased employment." 8
9 C.F.R. § 204.6(m)(7)(ii). Typically, USCIS has recognized often-used standard
10 input-output models such as IMPLAN or RIMS II as they are methodologies
11 either created by, or relied upon, by the federal government.
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17 9. The Service's final rule implementing the Pilot Program was
18 published on April 15, 1994. 59 Fed. Reg. 17920. No substantive changes were
19 made to the Interim Rule, but in responding to public comments, the Service
20 noted that the legislative history of section 610 of the 1993 Appropriations Act
21 "indicates that Congress intended to determine the viability of pooling
22 investments in specific regions of the United States." *Id.* (citing S. Rep. No.
23 918, 102 Cong., 2d Sess. (1992)).
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THE PETITION PROCESS

1 10. To obtain lawful permanent residence under the Immigrant Investor
2 Law, an immigrant investor must first file an I-526 Immigrant Petition by Alien
3 Entrepreneur setting forth information about the investor and the qualifying
4 investment. 8 C.F.R. § 204.6(a). The I-526 petition must be filed with the
5 USCIS Service Center having jurisdiction over the area in which the new
6 commercial enterprise is or will be principally doing business, 8 C.F.R. §
7 204.6(b), although all new petitions are now adjudicated by the California
8 Service Center located within this District.
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12 11. The I-526 petition must be accompanied by evidence that the alien
13 has invested, or is “actively in the process of investing,” lawfully obtained
14 capital in a new commercial enterprise in the United States that will create,
15 directly or indirectly, full-time positions for no fewer than 10 qualifying
16 employees.
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20 12. In the case of a petition submitted under the Immigrant Investor
21 Pilot Program, a petition must be accompanied by evidence that the immigrant
22 investor has invested, or is “actively in the process of investing,” capital
23 obtained through lawful means within a regional center designated by USCIS,
24 and that the petitioner has placed the required amount of capital at risk.
25 Petitions that are filed based on investments in a regional center, such as
26 petitions submitted by plaintiffs, must be accompanied by evidence that a
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1 regional center has been approved, that the investment will be made in a new
2 commercial enterprise within the regional center, and that the investment will
3 create 10 full-time positions either directly or indirectly through the alien
4 investor's investment in the new commercial enterprise.
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7 13. Submitting a petition based on investment in a regional center
8 requires several steps. First, the regional center must be approved. 8 C.F.R.
9 §204.6(m)(3). In order to obtain approval of the regional center, the applicant
10 must present information demonstrating how its activities will aid the
11 development of the named geographic area. It must provide "prediction[s]" as to
12 how it will have a positive impact in the region's development and it must use
13 "economically or statistically valid forecasting tools" 8 C.F.R. §204.6(m)(3)(v).
14 In order to secure approval, the regional center need not commit itself to any
15 *specific* project; rather, it need only present an actual or proposed project, or,
16 alternatively, a hypothetical project to exhibit how it will promote economic
17 growth and create jobs through increased domestic investment. 8 C.F.R.
18 §204.6(m)(3)(i). Typically, included in the economic analysis for the regional
19 center is an indication of the general types of economic development on which
20 the regional center will concentrate. Such areas of activity may include real
21 estate development, resort hotels, light industry, office space, warehouses and
22 commercial or industrial development. The regional center is thereafter
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1 approved to conduct certain *types* of economic activities. Once the regional
2 center gains approval for those economic activities, individual investors can file
3 I-526 petitions based on the approved job creation methodology.
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5 As a matter of practice, many of the individual projects in regional centers
6 have been executed through limited partnerships which attract numerous
7 investors. The project in which plaintiffs invested initially anticipated 24
8 investors to raise \$12,000,000 to renovate office/warehouse space. Per USCIS
9 regulations, the limited partnership in which investors become limited
10 partners—Innovation LP in plaintiffs’ case – constitutes the “new commercial
11 enterprise.” 8 C.F.R. §204.6(g)(1). Ultimately, 23 individuals invested \$11.5
12 million dollars in Innovation LP. Thereafter, the funds, as in this case, were
13 invested in a project designed to generate employment directly or indirectly.
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18 To determine whether 10 jobs will be created directly or indirectly, the
19 regulations recognize that there is no one certain formula for doing so. Rather,
20 “[s]uch evidence may be demonstrated by reasonable methodologies” 8 C.F.R.
21 §204.6(j)(4)(ii) including “economically or statistically valid forecasting devices
22 which indicate the likelihood that the business will result in increased
23 employment.” 8 C.F.R. §204.6(m)(7)(ii). Forecasting devices necessarily rely on
24 certain assumptions and are no more than an estimate of the project’s potential
25 to create employment, as the particulars of a project’s outcome are not
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1 predestined. When a project centers on property renovation, the precise identity
2 of the tenants who will occupy the property post-renovation and the way in
3 which said tenants will generate future jobs cannot be known with certainty
4 before the property is ready for occupancy. Once the identity of the tenants that
5 occupy the space becomes known, a project's initial forecast may change as was
6 the case in plaintiffs' project. Moreover, the regulations do not require that the
7 full amount of funds be expended or the jobs be created *before* the I-526 is
8 approved. Rather, a petitioner must merely show that the petitioner is "actively
9 involved in the process of investing," 8 C.F.R. §204.6(j)(2), and that the jobs
10 will be created based upon reasonable methodologies. After all, the petitioner
11 upon obtaining approval of the I-526 petition only becomes a *conditional*
12 resident. INA §216A; 8 U.S.C. §1186b; 8 C.F.R. §216.6 *et seq.* For this reason,
13 the regional center's approval expressly states, as it did in this case, that
14 investors must show only at the time of the removal of conditions that they
15 performed the activities described which formed the basis of the approved
16 methodology. *See* Designation of Regional Center for ALDC, Ex. A at p. 2.

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24 After submission of the required documents, USCIS adjudicates the I-526
25 petition. If USCIS determines the immigrant investor has met the requirements
26 of INA § 203(b)(5), 8 U.S.C. §1153(b)(5), the petition is approved and a Notice
27 of Approval is sent to the immigrant investor. As long as the immigrant
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1 investors' children were under 21 at the time the I-526 petition *was filed* they
2 are included in the petition and may obtain their residency on a conditional
3 basis. INA §203(h)(1), 8 U.S.C. §1153(h)(1). If USCIS approves the I-526 it
4 may not later revoke that approval except upon sufficient notice and "good and
5 sufficient" cause. INA §205, 8 U.S.C. §1155, 8 C.F.R. §205.2(b).
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8 Upon approval of the I-526, the immigrant investor and his or her
9 dependents may then obtain lawful permanent resident status on a conditional
10 basis either by visa processing at a State Department consular post abroad or
11 through adjustment of status in the United States by USCIS. Upon entering the
12 United States with valid immigrant visas or completion of the adjustment of
13 status process, the immigrant investor and his or her dependents are admitted for
14 permanent residence on a conditional basis.
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18 14. Thereafter, and within the 90-day period before the second
19 anniversary of the investor's lawful admission for conditional permanent
20 residence, the immigrant investor must file USCIS Form I-829 to have the
21 condition on his or her resident status, and that of his or her family members,
22 removed and full lawful permanent residence granted. 8 C.F.R. § 216.6(a)(1).
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25 15. An I-829 petition must be accompanied by evidence that the
26 investor: (1) invested or is "actively in the process of investing" the requisite
27 capital in the qualifying new commercial enterprise; (2) "sustained" the
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1 investment in the new commercial enterprise through the period of conditional
2 residence; and (3) is otherwise “conforming to the requirements” of the
3 immigrant investor statute. INA § 216A(d)(1).
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5 16. Neither INA § 216A nor 8 C.F.R. § 216.6 contains any provision
6 prohibiting changes in the job-creating project during the two-year conditional
7 residence period, except that USCIS may terminate conditional residence status
8 within the first two years if the investor fails to sustain the investment in the
9 new commercial enterprise or otherwise conform to the requirements of INA §
10 216A(b). After the two-year period, USCIS must adjudicate the I-829 within 90
11 days of the petition’s filing date or within 90 days of an interview, unless the
12 interview is waived by USCIS. If the petition is approved, the investor’s
13 conditional residence is removed, and he or she becomes a lawful permanent
14 resident, as do his or her immediate dependent family members. If the investor’s
15 petition is denied, he or she “may” request a review of that determination in
16 removal proceedings, but only if the government decides to place the investor in
17 removal proceedings. INA § 216A(c)(3)(D).
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24 **THE DENIALS AND REVOCATIONS OF PLAINTIFFS’**
25 **PETITIONS**

26 1. The Procedural History
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1 17. On June 23, 2009, USCIS approved American Life Development
2 Company LLC (“ALDC”) as a regional center. The geographic area for ALDC
3 was certain areas within Riverside County, California. The approval noted that
4 the targeted economic activities included “resort development and building
5 renovation.” *See* Ex. A at p. 1. At the time, USCIS also approved the regional
6 center’s use of the input-output IMPLAN economic methodology to reasonably
7 forecast indirect job creation relating to possible real estate-related projects.
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11 18. On October 12, 2010 USCIS approved an amended designation for
12 ALDC. The amended petition expanded the scope of targeted investment
13 industries to include: Commercial/Industrial Development; Mixed-Use
14 Development; Light Industry/Warehouse; Office; Retail; Civic/Public Facilities
15 Development. It also expanded its geographic area to all of Riverside County,
16 California. This approval again noted specifically that ALDC was relying on the
17 IMPLAN input-output model to establish indirect job creation. It also noted that
18 an I-526 submitted based on investment in ALDC “need not show that the new
19 commercial enterprise created ten new jobs indirectly” because “[t]his
20 determination has been established by way of USCIS’ acceptance of the final
21 economic analysis that is contained as part of the approved Regional Center
22 proposal and its indirect job creation model and multipliers contained within the
23 final approved Regional Center application package. Rather the investor must
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1 show *at the time of the removal of conditions* that they performed the activities
2 described in the model and on which the approved methodology is based.”
3 Amended Designation of Regional Center, Ex. B at pp.1-2 (emphasis added).
4

5 19. Subsequent to the amended approval, a limited partnership named
6 14575 Innovation Drive Limited Partnership (“Innovation LP” or “LP”) was
7 established on January 7, 2011 for the purpose of acquiring a 17.58 acre parcel
8 of real property in Riverside, California to own, renovate and manage two
9 single-story buildings for commercial lease. The comprehensive business plan
10 noted that Innovation LP will “own, renovate, lease and manage two single story
11 buildings with a combined 81,363 square feet of flex use space for office,
12 industrial or warehouse use with 480,000 square feet of parking.” The project
13 was subsequently expanded to purchase and improve an adjacent five-acre
14 parcel of land. To undertake this project, Innovation LP sought initially to attract
15 24 limited partners each investing \$500,000 to raise a total of \$12,000,000. The
16 partnership, however, attracted 23 investors and raised \$11,500,000. The
17 plaintiffs herein are limited partners who invested the requisite funds in
18 Innovation LP before filing their I-526 petitions. To date, Innovation LP has
19 purchased the initial property for \$6,050,000 with closing costs of \$320,700 and
20 made tenant improvements and minor renovations for \$609,000. It was moving
21 forward to make capital improvements of \$570,000 (est.) and to purchase and
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1 improve the adjacent five-acre property for \$2,430,000 (est.) when plaintiffs'
2 petitions were denied or revoked. The general partner of Innovation LP expects
3 to spend an additional \$1,150,000 (est.) on soft costs and developer fees and
4 \$368,000 (est.) for working capital—all for a total of \$11,500,000.
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7 20. To determine the number of jobs Innovation LP would establish,
8 Dr. Paul Sommers, an expert in the field and Ph.D. in economics, used an
9 IMPLAN input-output model that incorporated tenant occupancy estimates. The
10 IMPLAN methodology Dr. Sommers employed was the same methodology
11 USCIS relied upon when it approved the regional center application and the
12 same methodology Dr. Sommers had used in the approval of scores of other
13 applications for regional centers and investors for American Life, Inc. The job
14 impacts asserted in the IMPLAN were based upon proposed tenants that would
15 occupy the renovated warehouses and storage facilities. As the actual tenants
16 who would assume occupancy upon the warehouse's renovation were unknown
17 at the time, Dr. Sommers made reasonable assumptions and concluded that 426
18 jobs would be created by the project.
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23 21. During the fourth quarter of 2011, USCIS approved eight of the I-
24 526 petitions filed by investors in Innovation LP. In April 2012, USCIS changed
25 course. It began issuing notices of intent to revoke (NOIR) the approved
26 petitions and issued requests for evidence (RFE) on the petitions of investors
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1 that were not yet approved. The NOIRs and the RFEs were virtually identical in
2 content and argument.

4 2. Notices of Intent to Revoke and Requests for Evidence

5 22. Defendants NOIRs and RFEs contain numerous factual errors.
6
7 They assume incorrectly that Innovation LP had not purchased the property; its
8 funds had not been used to renovate the property; its funds were held in an
9 escrow account; and that plaintiffs' capital was not infused into the business and
10 the renovations. *See e.g.* Notice of Intent to Revoke of Doctor Rajeshbhai N.
11 Patel (Apr. 6, 2012), attached as Ex. C, at p. 4 (“[T]he property appears to have
12 been acquired and renovated without a single dollar of the petitioner’s
13 investment... ..[as] the petitioner has placed the required amount of EB-5
14 investment capital into an escrow account...”). USCIS also faulted plaintiffs for
15 not presenting a business plan that stated when the tenants would occupy the
16 building, the costs and nature of the property’s purchase and renovation and a
17 market analysis for leasing the property. Defendants, however, largely ignored
18 the detail provided in the I-526 petition and supporting documents that this was
19 a plan to purchase a specific property which would then be leased to one or
20 more tenants. Finally, the NOIR challenged the underlying assumptions in the
21 IMPLAN input-output methodology provided by Dr. Sommers, that had been
22 used many times previously in other renovation projects and used in *this* project
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1 when the regional center application was approved. USCIS' decision was more
2 ominous, however. Although cast as an RFE or NOIR, it ultimately determined
3 that no renovation project could meet the employment creation requirement
4 because jobs generated by tenants could not be counted: "[I]t is not appropriate
5 to take credit for the employment impacts created by the unrelated business
6 ventures of future tenants." See Ex. C at p. 9. This last statement reflected a new
7 approach advanced by USCIS, implemented *after* plaintiffs had filed their I-526
8 petitions, *after* a number of said petitions were approved, and *after* plaintiffs had
9 made their investments in the property. See USCIS Tenant Occupancy Notice,
10 attached as Ex. D.

15 3. Plaintiffs' Responses to the NOIRs and RFEs

16 23. Plaintiffs' counsel responded to the NOIRs and RFEs in identical
17 fashion. See *e.g.* Memorandum In Response to Request for Evidence in
18 Response to Notice of Intent to Revoke (without support documents), attached
19 as Ex. E. First, they corrected the numerous erroneous claims made in the
20 NOIRs and RFEs. The plaintiffs' funds had *not* been placed in escrow but had
21 been infused in Innovation LP. The funds *had* been used to purchase the
22 property and begin renovations on the property. Upon acquisition of the
23 property Innovation LP had in fact invested \$609,000 toward tenant
24 improvements and minor renovations. Most importantly, the project already *had*
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1 a tenant who had leased the entire space since January 2012. The tenant,
2 Container Connection of Southern California, was utilizing the eleven-acre yard
3 as container storage and maintained its management and logistics operations
4 housed in the renovated industrial building. The company services warehousing
5 facilities in the region and requires overflow storage space. Plaintiffs' responses
6 then detailed how the \$11.5 million in investment funds had been and was going
7 to be spent on the project: \$6,500,000 for acquisition of the property; \$320,700
8 for closing costs and commissions; \$609,000 for tenant improvements and
9 minor renovations; \$570,00 for estimated additional capital improvements on
10 the property; \$1,150,000 for estimated additional soft costs and developer fees;
11 \$368,000 for estimated working capital; and \$2,430,000 estimated to purchase
12 and improve an adjacent five-acre parcel.

18 24. Plaintiffs then responded to the assertion that they failed to provide
19 a detailed-enough market analysis which, in light of the rental of the *entire*
20 property to a tenant, seems superfluous. Nevertheless, plaintiffs provided a
21 detailed economic study by the Concord Group which explained, among other
22 findings, that properties having similar physical attributes to Innovation LP's
23 property had a 99% occupancy rate in the area and that without the renovations
24 it was highly likely that prospective tenants would have gone outside the
25 regional center.
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1 25. Plaintiffs also responded to the challenges to Dr. Sommers analysis
2 using IMPLAN by providing: (1) an updated version of his IMPLAN economic
3 analysis based upon the actual (versus hypothetical) tenant; (2) a separate
4 analysis from the Concord Group which independently evaluated the Sommers
5 report; and (3) a separate independent analysis by Dr. Peter D. Linneman, a
6 Ph.D. in economics from the University of Chicago and Professor Emeritus at
7 the University of Pennsylvania's Wharton School in the Department of Real
8 Estate, which determined that Dr. Sommers' input-output model yielded
9 "realistic multipliers" and that his "analysis and assumptions are reasonable." In
10 the final analysis Dr. Sommers concluded that applying IMPLAN to the current
11 actual tenant the project would create 278 jobs – more than enough to establish
12 that each Innovation LP investor would create at least 10 jobs.
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18 26. In regard to the NOIRs and RFEs, plaintiffs noted that defendants
19 violated their own deference policy stated in their memorandum of May 8, 2012,
20 attached as Ex. F. Moreover, the original regional center approval noted that any
21 issue regarding indirect job creation of the required 10 jobs would only be
22 considered if the activities of the individual projects differed from those
23 approved for the regional center when the regional center was approved. *See*
24 *supra* ¶18.
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1 27. Finally, plaintiffs in the NOIR responses noted that there simply
2 was not “good and sufficient” cause to revoke the approved I-526 petitions
3 because the revocations were based upon a misreading of the evidence and
4 because they relied upon *post-hoc* standards developed subsequent to the
5 approvals, investments and rental of the property.
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8 4. Revocation and/or Denial of Plaintiffs’ I-526 Petitions
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10 28. Defendants responded to plaintiffs responses in identical fashion.
11 *See e.g.* Notice of Revocation of Immigrant Petition of Dr. Rajeshbhai Patel
12 (August 3, 2012), attached as Ex. G. Ignoring their own regulations that do not
13 require any funds to be invested at the outset or any jobs to be filled before the
14 first two years *after* approval, defendants faulted plaintiffs for spending only
15 \$7.55 million thus far and not the \$11.5 million in accumulated capital.
16 Defendants revoked and denied the petitions because there is no “*assurance* that
17 the entire amount of the petitioner’s and the NCE’s [Innovation LP] EB-5
18 capital will in fact be used to carry out the business of the commercial enterprise
19 and placed at risk for the purpose of generating a return.” *Id.* at 5 (emphasis
20 added).
21

22 29. A second basis for denial was defendants’ assertion that the
23 “Record presents a number of discrepancies and/or material changes.” *Id.* at 7-8.
24 Defendants point to the decision to invest \$11.5 million instead of the initially
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1 contemplated \$12 million; the change from the initially forecasted
2 (hypothetical) tenants to one actual tenant, and the decision to expand the
3 project and use some funds to renovate an adjacent property as examples. None
4 of these changes, however, are material, nor are they “discrepancies.” They are
5 all completely consistent with the regulations that do *not* contemplate that a
6 project will be completed at the I-526 stage. In addition, defendants cite to the
7 wrong regulation arguing job creation must be established in the business plan,
8 citing 8 C.F.R. §204.6(j)(4)(i)(B), instead of the regulations pertaining to
9 indirect job creation through “reasonable methodologies” in regional centers at 8
10 C.F.R. §204.6(j)(4)(iii) and 8 C.F.R. §204.6(m)(7)(ii). *Id.* at 6-7.

15 30. Defendants then asserted that the Sommers and Concord Group
16 analyses were not reasonable methodologies because they rely on industry
17 codes, called NAICS (North American Industry Classification System) codes,
18 that do not “fit within any of the Regional Center’s 13 target industry economic
19 clusters which were approved in the Regional Center’s October 12, 2010
20 approval letter.” *Id.* at 12. The reference to NAICS codes as a ground for denial
21 is erroneous for several reasons. There were no NAICS codes used when the
22 regional center was approved. Its approval did not depend upon any NAICS
23 codes, but rather covered general areas of development and investment. Second,
24 defendants misconstrue the use of the codes. The regional center was approved
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1 for investments in commercial/industrial development; mixed-use development;
2 light industry/warehouse; office space; and retail development among others.
3
4 The defendants confuse the purpose of the regional center with the creation of
5 jobs by the tenants. The “reasonable methodologies” look to indirect job
6 creation through the tenants’ employment irrespective of whether that economic
7 activity is the same as the regional center’s approved economic investment
8 clusters. It is unlikely that they would be the same in any case. Although
9 defendants disavow the use of the tenant-methodology here, *see id.* at 12, the
10 result is the same. Defendants simply disregard accepted reasonable
11 methodologies because they no longer believe they can count jobs created by
12 tenants in a real estate renovation project.
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17 PARTIES

18 31. Plaintiff Courtney CARLSSON was born in Chicago, Illinois on
19 August 8, 1986, and became a U.S. citizen at birth. She expatriated, however, at
20 the age of 17 after leaving the United States at age eight with her father, who
21 was then a naturalized citizen. She is now seeking to regain her citizenship by
22 first regaining her residency through the EB-5 investor program. She invested
23 her \$500,000 and filed her I-526 petition on June 14, 2011. She was approved
24 on November 18, 2011 and subsequently filed an I-485 application for
25 adjustment of status in the U.S. to obtain her lawful permanent residence on a
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1 conditional basis. She also received permission to work. She had recently
2 obtained an Associate's degree in Fashion Marketing from Parsons New School
3 of Design in New York and with her employment authorization landed the job
4 of her dreams with Céline, LVMH, a French luxury fashion line in New York
5 City. After starting work at Céline, she bought a residence in New York City.
6
7 On August 3, 2012, she received a Notice of Revocation of Immigrant Petition,
8 attached as Ex. H. As a result, on August 16, 2012, her adjustment of status
9 application was denied. *See* Ex. I. She is now out-of-status because her F-1
10 (student) visa status expired while her adjustment of status application was
11 pending. The denial of her adjustment of status application means she must
12 immediately cease working and depart the United States. Her dreams of working
13 in the fashion industry in New York City are now over. If she is not provided
14 interim relief, her position with Céline in New York City will not be available
15 even if her employment authorization is subsequently reinstated upon a
16 successful challenge to the I-526 denial.
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22 32. Plaintiff Badrialsadat HASHEMI FARSADANI filed an I-526
23 petition for herself, her husband, and her child on July 14, 2011. At the time, her
24 child Roza was under 21 years of age. The family, coming from Iran, has
25 invested a good part of their life's savings and substantial time and effort to
26 make arrangements to come to the United States. On August 8, 2012, their I-526
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1 application was denied. *See* attached Notice, Ex. J. Their daughter, who is now
2 22 years old, has “aged-out” and is ineligible to be joined on any other petition
3 by her parents. Absent an order from this Court, she would be unable to
4 immigrate to the United States with her parents.
5

6
7 33. Plaintiff Guidong JIANG has worked in various managerial
8 positions in the food industry in China. Over the years, through his employment
9 and investment in commercial real estate, Mr. Jiang accumulated sufficient
10 capital to invest in Innovation LP. On November 17, 2011, USCIS approved
11 Mr. Jiang’s I-526 petition. On April 10, 2012, USCIS issued a notice of intent to
12 revoke to which he responded on June 28, 2012. USCIS issued a final
13 revocation of his I-526 petition on August, 3, 2012. *See* attached Notice, Ex. K.
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17 34. Plaintiff Deqing KONG has been living in the United States for
18 approximately 10 years since his graduation from high school in China. He
19 obtained a B.S. degree in Petroleum Engineering at the University of Texas and
20 is currently studying Economics at the University of Houston. Mr. Kong’s
21 mother is a lawful permanent resident. Mr. Kong’s step-father, with whom he is
22 close, is a U.S. citizen. On September 28, 2010, Mr. Kong married his current
23 wife who is also a lawful permanent resident (“LPR”). Although his wife
24 petitioned for him, the waiting time is years away. On November 17, 2011, Mr.
25 Kong’s I-526 petition was approved. He submitted an application for adjustment
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1 of status and obtained employment authorization. A NOIR was issued on April
2 10, 2012 and a final revocation on August 3, 2012. *See* attached Notice, Ex. L.
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4 The revocation resulted in his adjustment application being denied and his
5 employment authorization being revoked. The denial of Mr. Kong's I-526 will
6
7 cause him irreparable harm absent an order from this Court. If the denial stands
8 Mr. Kong must return to China upon the conclusion of his F-1 visa. He would
9
10 not be allowed to return until the priority date on his wife's petition for him
11 becomes current thus leaving him in China separated from his wife for several
12
13 years. He would also be separated from his U.S. citizen step-father and his
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15 lawful permanent resident mother. Moreover, Mr. Kong has not returned to
16
17 China for a decade and would be returning to a country where he no longer has
18
19 strong ties or connections thus making it difficult to find employment and to
20
21 support his lawful permanent resident wife. He would not be able to visit the
22
23 U.S. on a temporary basis because his submission of the I-526 petition attested
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25 to his desire to reside permanently in the U.S. Under those circumstances, it will
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27 be difficult, if not impossible, to obtain a temporary visa to visit his wife and
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family because to obtain a tourist visa he must prove that he has the intent to
return to China.

35. Plaintiff Ye Yen ("Scarlett") LAI is a 27-year-old citizen of the
United Kingdom. Ms. Lai entered the U.S. in 2003 to study at the University of

1 San Francisco (USF). She earned a Bachelor's degree in business in July 2007
2 and an MBA in 2011. She was on the Dean's List at USF and became a member
3 of the National Society of Collegiate Scholars. While a student, she volunteered
4 at the San Francisco SPCA and at her church's daycare program. On Apr. 28,
5 2011 she filed her I-526 petition. An RFE was issued on Apr. 5, 2012, to which
6 she responded on June 28, 2012. A final decision denying her I-526 was issued
7 on August. 3, 2012. *See* attached Notice, Ex. M.

11 36. Plaintiff Wong Ai LEE is a citizen of Malaysia and her husband is a
12 citizen of the United Kingdom ("UK"). Ms. Lee completed an investment in
13 Innovation LP derived from the sale of real estate in Malaysia. Plaintiff Lee's I-
14 526 petition was approved on December 20, 2011. USCIS issued a NOID on
15 April 10, 2012 which Ms. Lee responded to on June 27, 2012. A final decision
16 denying her I-526 was issued on August 8, 2012. *See* attached Notice, Ex. N.

19 37. Plaintiff Ni LI and her husband currently own a trading company in
20 China producing mobile phone accessories. Ms. Li has two teenage children and
21 was principally motivated to seek investor status because of her desire to
22 educate her children in the United States given our superior educational system.
23 The denial of her I-526 petition precludes her from obtaining a temporary visa
24 to enter the country and precludes her children from obtaining visas to study
25 here. The submission of an I-526 petition is an expression of intent to remain in
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1 the United States – an expression contrary to a tourist or student visa. Ms. Li
2 filed her I-526 petition on October 14, 2011. USCIS issued a RFE on April 19,
3 2012 which Ms. Li responded to on June 29, 2012. USCIS issued a final
4 decision, denying Ms. Li’s I-526 petition, on August 8, 2012, attached as Ex. O.
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7 38. Plaintiff Wei LI is a highly successful and educated business
8 professional and family man living in China with his wife and two sons. Mr. Li
9 sought to start a new life for his family in the United States while overseeing his
10 investment in Innovation LP. Mr. Li holds an MBA degree and from 2000 to the
11 present has served as Chairman of the Board of three different companies.
12 USCIS approved Mr. Li’s I-526 petition on September 15, 2011. USCIS issued
13 a NOIR on April 10, 2012 that Mr. Li responded to on June 5, 2012. USCIS
14 issued a final decision and revoked Mr. Li’s approved I-526 on August 16,
15 2012, attached as Ex. P.
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20 39. Plaintiff Jimin LIM is a citizen of South Korea and holds a
21 Bachelor of Arts degree in Oriental Painting from Ewha Womans University.
22 Ms. Lim seeks to immigrate with her son Jae Hwan Lee, age 17 and her husband
23 Ha Jin Lee. Ms. Lim derived the funds for her investment in Innovation LP from
24 loans issued to her husband who operates his own dental clinic in Seoul and is a
25 doctor of dental surgery with a Ph.D. in Dental Science. On November 17, 2011,
26 USCIS approved Ms. Lim’s I-526 petition. USCIS then changed its position and
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1 on April 10, 2012 sent Ms. Lim a NOIR. Ms. Lim responded on June 26, 2012.
2 USCIS issued a final decision revoking Ms. Lim's I-526 on August 7, 2012
3 attached as Ex. Q.
4

5 40. Plaintiff Nuong Lien LUONG is a citizen of Vietnam. Ms. Luong
6 works as an accountant, is divorced, and is raising her 3-year-old child. She
7 seeks to immigrate to the U.S. in the hope of finding a more accepting
8 environment and better life opportunities for her and her son. To assist her in
9 fulfilling her dreams, her parents provided the *inter vivos* gift that was the basis
10 for her investment. On August 1, 2011 she filed her I-526 petition. USCIS
11 issued an RFE on April 25, 2012 and she responded on June 29, 2012. On
12 August 8, 2012 USCIS issued a denial, attached as Ex. R.
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16 41. Plaintiff David Leslie MARTIN is a citizen of the United Kingdom
17 ("UK"). He has had a successful plastic and reconstructive surgery practice in
18 the UK for over 20 years. From 1979 to 2002 his wife served as a nurse at a
19 number of distinguished hospitals throughout the UK. The Martins sold
20 residential and other properties in the UK and invested those funds along with
21 Dr. Martin's retirement fund in Innovation LP. Dr. Martin filed his I-526
22 petition on October 14, 2011. An RFE was issued on April 19, 2012 to which
23 Mr. Martin responded on June 27, 2012. A final denial was issued on August 8,
24 2012, attached as Ex. S.
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1 42. Plaintiff Rajeshbhai PATEL holds M.B, B.S. and D.O. degrees as a
2 practicing Ophthalmologist in Gujarat, India. Dr. Patel's wife Shreyaban holds a
3 B.S. degree in statistics, economics and mathematics. The Patels have two
4 children: Axi and Axat. On January 3, 2012 Dr. Patel's I-526 petition was
5 approved. USCIS issued a NOIR on April 6, 2012, *see* Ex. C. On June 27, 2012
6 Mr. Patel responded in detail to the NOIR, *see Memorandum in Response*, Ex.
7 E. On August 3, 2012 USCIS issued a final Notice of Revocation of Immigrant
8 Petition revoking Mr. Patel's I-526, attached as Ex. G.

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12 43. Plaintiff Giti SEYEDSALEHI is a citizen of Iran and holds a B.A.
13 degree in Commercial and Administrative Services. She has been employed as a
14 financial manager and consultant. The entire \$500,000 invested in Innovation
15 LP derived from the March 2010 sale of property in Tehran that she and her
16 husband had purchased in 2005. Mrs. Seyedsalehi's I-526 petition included her
17 husband and her daughter Melika as dependents. At the time she filed her I-526
18 petition her daughter was under 21 years old and therefore was protected from
19 "aging-out." If her petition remains revoked her daughter is now over 21 and
20 would be ineligible to be joined on any future petition that her parents may file.
21 The family would also suffer additional irreparable harm. After Ms.
22 Seyedsalehi's I-526 petition was approved her case was forwarded to the
23 National Visa Center for processing. As a result she began to make initial
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1 arrangements to move to the U.S. with her family. She moved out of her house,
2 sold the majority of her furniture, and moved into an apartment awaiting the
3 processing of her conditional residency. She only arranged to stay at the
4 temporary apartment for a few months and is now facing great difficulty
5 convincing the landlord to allow her to continue renting; she fears eviction. In
6 addition, the depreciation of the Iranian Rial combined with the increasing
7 difficulty of transmitting funds out of Iran due to international sanctions has also
8 caused her to grow concerned regarding the diminishing value of her assets and
9 the ability to bring them to the U.S. Perhaps the strongest motivation for
10 resolving this case and leaving Iran as quickly as possible is her deep concern
11 for the safety of her daughter. Rapes of young women such as Melika by Iranian
12 police are quite common and go unreported. If this case is not resolved quickly
13 she fears for the safety of her daughter. Ms. Seyedsalehi's I-526 petition was
14 originally approved on September 16, 2011. A NOIR was issued on April 10,
15 2012 and responded to on June 29, 2012. A final decision denying her I-526 was
16 issued on August 3, 2012. *See* attached Notice, Ex. T.

23
24 44. Plaintiff Hongli SHI is the General Manager of a shoe
25 manufacturer in China. He began his current position in 2003, after working as a
26 salesman and eventually a sales manager at an electrical appliance factory. He
27 submitted his I-526 petition along with his wife Diyang and his two children,
28

1 Yuzhe and Yuxin. Mr. Shi was issued an RFE on August 9, 2012. *See* attached
2 Notice, Ex. U. The RFE issued to Mr. Shi is identical in substance and argument
3 to those issued to other plaintiffs, all of whom were denied. USCIS' current
4 adjudications policy will inevitably lead to a denial in Mr. Shi's case.
5

6
7 45. Plaintiff Amrit Pal TOOR is a Canadian citizen who has been in the
8 U.S. for over 14 years. He originally entered under an E-2 visa as an investor
9 and since 2010 has held an H-1B visa as a business manager which provides the
10 sole source of employment and business income for his family. Mr. Toor's
11 oldest child, Karanbir, was under 21 years of age when he filed his I-526
12 petition and therefore was protected from "aging-out" under U.S. law. This son
13 is currently a straight-A student at the University of California, Santa Barbara
14 with a double major in Physics and Computer Science. He is the author of a
15 paper on Artificial Intelligence and Machine Learning with Dr. Wim van Dam,
16 one of U.C. Santa Barbara's top computer scientists. Because he is now 21 years
17 old, he has "aged-out" and is ineligible to be joined on any other petition by his
18 parents. Absent an order from this Court, he would be unable to immigrate to
19 the United States with his parents. Mr. Toor's younger son, who will turn 21 in
20 March 2014, is similarly situated. He is in his second year at the University of
21 California, San Diego, majoring in Computer Science and doing pro bono work
22 for the California Institute for Telecommunications and Information Technology
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1 at U.C. San Diego where he works on mobile applications for the medical field.

2 If Plaintiff Toor does not receive relief before March 2014 his younger son
3 would also be ineligible to immigrate with his parents. Mr. Toor's I-526 petition
4 was approved on November 17, 2011. A NOIR was issued on April 10, 2012
5 and responded to on June 28, 2012. A final denial was issued August 3, 2012.
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8 *See attached Notice, Ex. V.*

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10 46. Plaintiff Gerardus VAN DER HAM and his wife Marian are
11 Dutch-born dairy farmers who have resided in the thumb area of Michigan for
12 the past 12 years. During that time as E-2 investors they acquired the Goetze
13 Dairy Farm and have significantly increased annual revenues to \$1.27 million
14 and assets of more than \$4 million, while maintaining 600 acres, 400 milking
15 cows, and 400 heifers and calves. The van der Hams have four children ranging
16 from 15 to 21 years of age. Their eldest child reached 21 during the pendency of
17 Mr. van der Ham's I-526 petition and thus "aged-out" of the process. He is now
18 ineligible to be joined on any other petition by his parents. At the age of 21 he is
19 also ineligible to remain as a dependent on his parents' E-2 visas. He has been
20 forced to change his status to a B-2 tourist to remain in the U.S. but that status
21 expires on October 1, 2012. Absent an order from this Court, he will be
22 unlawfully in the U.S. after October 1, 2012, would be subject to removal, and
23 would be unable to immigrate to the United States with his parents. The van der
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1 Hams invested in the American Life EB-5 renovation project because of the
2 very favorable track record and reputation established by the company over the
3 years. The van der Hams would never have invested in the EB-5 project, and in
4 fact would never have made their initial E-2 treaty investment in the U.S. if they
5 knew they would be separated from their children as each reached the age of 21.
6 Denial of their I-526 petition would be disastrous to this family, as their eldest
7 son has no way to remain in the U.S., followed by the next child's similar
8 predicament just 15 months from now. Mr. van der Ham filed his I-526 petition
9 on November 14, 2011. On May 16, 2012 he received an RFE which he
10 responded to on June 28, 2012. A final denial was issued August 2, 2012. *See*
11 attached Notice, Ex. W.
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17 47. Plaintiff Mengyou YAO is the Deputy General Manager of Fanski
18 Group, Inc. in China. Prior to her position with Fanski, she was the Chief
19 Financial Officer of Nanjin Zhu Gang, a real estate development company in
20 China. Her oldest child is currently studying in the United States and she
21 invested in Innovation LP, in part, with the hope of bringing her two other
22 children to the United States to study in our country. Ms. Yao was seeking to
23 immigrate with her husband, who is also a prominent executive, and their
24 children. A final denial was issued August 2, 2012. *See* attached Notice, Ex. X.
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28 The final denial of her I-526 petition may also now make it impossible for her

1 other children to obtain student visas to study in the United States because the I-
2 526 expresses a desire to remain permanently in our country and a student visa
3 requires permanent residence abroad.
4

5 48. Plaintiff Eun Sook YOO is a citizen of South Korea. She is married
6 to Tae Bong Jeong and they have one child. Mr. Tae Bong is a successful
7 executive and entrepreneur who founded U-Jin Cable Ind, Ltd. a company
8 engaged in the research, development and manufacturing of high frequency
9 coaxial cable. Part of the proceeds from the sale U-Jin Cable were placed in an
10 endowment life insurance policy that Ms. Yoo used to invest in Innovation LP.
11 Ms. Yoo filed her I-526 petition on July 15, 2011. USCIS issued an RFE on
12 April 5, 2012 and Ms. Yoo responded on June 27, 2012. A final denial was
13 issued August 3, 2012. *See* attached Notice, Ex. Y.
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18 49. Defendant Janet NAPOLITANO is the Secretary of the Department
19 of Homeland Security (“DHS”). She is sued in her official capacity. As the
20 Secretary of DHS she oversees the actions and has ultimate responsibility for the
21 actions of USCIS officers in denying and revoking plaintiffs’ I-526 petitions.
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24 50. Defendant Alejandro MAYORKAS is the Director of USCIS, a
25 subdivision of DHS. He is sued in his official capacity. In his capacity as
26 Director, he has the ultimate responsibility within USCIS for denying and
27 revoking plaintiffs’ I-526 petitions.
28

1 51. Defendant Rosemary MELVILLE is the Director of the USCIS
2 California Service Center, whose office address is 24000 Avila Road, Laguna
3 Niguel, CA 92677. She is sued in her official capacity. As the Director of the
4 California Service Center she has the ultimate responsibility within her office
5 for the erroneous decisions denying and revoking plaintiffs' I-526 petitions.
6

7
8 52. Defendant UNITED STATES CITIZENSHIP AND
9 IMMIGRATION SERVICES is the agency responsible for adjudicating I-526
10 petitions, through its Service Centers. Plaintiffs' I-526 petitions were denied or
11 revoked by USCIS's California Service Center. USCIS maintains the ultimate
12 responsibility within the federal government for adjudicating cases under the
13 Immigrant Investor Program including decisions regarding I-526 petitions, such
14 as Plaintiffs' petitions.
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17

18 **JURISDICTION**

19 53. The Court has jurisdiction over the subject matter of this action
20 pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), as it arises under
21 the laws of the United States, particularly the Immigration and Nationality Act
22 and related agency regulations and the Administrative Procedure Act ("APA"),
23 5 U.S.C. § 701 *et seq.* In addition, this Court has jurisdiction under 28 U.S.C. §
24 2201(a) (Declaratory Judgment Act). This action is also brought under 28
25 U.S.C. § 1346 (United States as a defendant).
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1 54. Plaintiffs have exhausted their administrative remedies. They have
2 or will have final denials of their I-526 petitions. There is no statutorily
3 mandated appeal from these decisions.
4

5 VENUE

6
7 55. Venue properly lies in the Central District of California pursuant to
8 28 U.S.C. § 1391(e)(2), as the denials of plaintiffs' I-526 petitions were issued
9 by the California Service Center. The actions occurred in this District because
10 the California Service Center and Defendant Melville's office at the Center are
11 in Laguna Niguel, California, which is located in the District.
12

13
14 56. Venue also lies in the Central District of California under 28 U.S.C.
15 § 1391(e)(1), as this is an action against officers and employees of the United
16 States acting in their official capacities, brought in the district where one of the
17 Defendants resides. Defendant Melville performs a significant amount of her
18 official duties and maintains her office in Laguna Niguel, California.
19
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21 CAUSES OF ACTION

22 Count I: Improper Retroactive Application

23
24 57. Plaintiffs hereby incorporate by reference as if set forth in full and
25 at length herein paragraphs 1 through 56 of this Complaint.
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1 58. Defendants, through their agents, have applied new rules, policies
2 and criteria in the adjudication of plaintiff investors' I-526 applications as set
3 forth above.
4

5 59. Defendants have imported the standards for the approval of I-829
6 applications into the I-526 stage of proceedings. At the I-526 stage a petitioner
7 need only prove *prospectively* what he or she intends to accomplish with her
8 investment. The regulations require the petitioner to demonstrate that: (1) a new
9 commercial enterprise was established; (2) the petitioner "has invested or is
10 actively in the process of investing the required amount of capital; and (3) that
11 10 jobs will be created directly or indirectly in the regional center context by
12 utilizing "reasonable methodologies" 8 C.F.R. §§204.6(j), (m). In contrast, at
13 the I-829 stage, a petitioner who wishes to have the condition on his or her
14 permanent residency removed must demonstrate that he or she "sustained" these
15 investments during the two year period. 8 C.F.R. §216.6(a)(4)(iii). In its denial
16 and revocation of plaintiffs I-526 petitions, USCIS imported I-829 standards
17 into its decisions. Plaintiffs had clearly established a new commercial enterprise
18 in Innovation LP; they had invested the funds in Innovation LP; they had
19 already expended over \$7.5 million by defendants' own calculations; they had
20 relied on the IMPLAN methodology which was approved at the regional center
21 approval stage by defendants and in the initial I-526 approved petitions, and
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1 which was a known reasonable methodology applied routinely in immigrant
2 investor cases; and they had renovated the property and had an existing tenant.
3
4 Defendants, however, claimed this did not provide them an “assurance” that the
5 remainder of the \$11.5 million in renovations would be expended and that the
6
7 IMPLAN analysis was not reasonable because it relied on certain NAICS codes.
8
9 The latter was tantamount to invalidating the regional center approval by
10 holding that the tenant’s prospective employees and the indirect jobs that the
11 tenant would create could not be attributed to the investment project itself. But
12 these are standards that either import proof required at the I-829 stage or are
13
14 entirely new standards, inconsistent with current regulations, that are
15 retroactively and without notice applied to the adjudication of I-526 petitions.
16
17 The retroactive changes were not published in the Federal Register and no
18 notice and comment period was granted to plaintiffs and the public in violation
19
20 of the APA.

21 60. Defendants’ retroactive applications of these rules, even if regarded
22 as interpretations, are impermissible and may not be applied to the detriment of
23
24 plaintiff investors and their families.

25 61. The retroactive application irreparably harms and impermissibly
26 burdens plaintiff investors and their families because they have detrimentally
27
28 relied on defendants’ former criteria, policies, and rules when investing in the

1 United States. By applying new rules and/or interpretations to plaintiff investors,
2 defendants have rendered it impossible for plaintiff investors and their families
3 to obtain lawful permanent residency on a conditional basis under the I-526
4 process, despite their compliance with all pre-existing standards.
5

6
7 62. Plaintiff Investors and their families relied substantially on the
8 former rules, policies and criteria of defendants with respect to the EB-5
9 program in making their investments. Indeed, Innovation LP and plaintiff
10 investors relied specifically on these rules, criteria and policies in designing and
11 executing the investment program in which plaintiff investors participated.
12

13
14 63. The retroactive applications of the new rules, even if regarded as
15 interpretations, are violative of the law in this circuit under *Montgomery Ward v.*
16 *FTC*, 691 F.2d 1322, 1333 (9th Cir. 1982), and *Chang v. United States*, 327
17 F.3d 911, 927-29 (9th Cir. 2003). They impose an impermissibly high burden on
18 plaintiff investors and their families. A number of the investors' children have
19 "aged-out" waiting through the process of approval, notice of intent to revoke,
20 and now revocation or denial of their investor parents' petitions. A number of
21 investors have sold their home or other property to make the necessary
22 investment, confident that they could rely on the criteria for investment and
23 approval previously articulated by USCIS. Some had applied for residency in
24 the U.S. or an immigrant visa abroad prior to USCIS revoking their petition.
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1 64. The statutory interest in applying these new rules, policies, and
2 criteria to plaintiffs' I-526 petitions does not outweigh plaintiff investors' and
3 their families' reliance on defendants' previous rules, policies, and criteria
4 applied to the adjudication of I-526 petitions.
5

6 65. The new criteria, policies, and rules, even if regarded as
7 interpretations, represent an abrupt departure from well-established policy and
8 practice and results in plaintiffs being irreparably harmed to their detriment by
9 defendants' retroactive application.
10
11

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14 **Count II: Arbitrary and Capricious Action in Violation**
15 **of the INA and the APA**
16

17 66. Plaintiffs hereby incorporate by reference as if set forth in full and
18 at length herein paragraphs 1 through 65 of this Complaint.
19

20 67. Defendants' practices, policies, rules, criteria, interpretations of
21 law, and conduct violate the Immigration and Nationality Act ("INA") and the
22 Administrative Procedure Act ("APA") and should be set aside pursuant to 5
23 U.S.C. § 706(2)(A) as arbitrary, capricious, an abuse of discretion, and
24 otherwise not in accordance with law, and pursuant to 5 U.S.C. § 706(2)(D) as
25 without observance of procedures required by law.
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1 68. Defendants' denials and revocations of plaintiff investors' Form I-
2 526 petitions violate the INA and the APA because, contrary to the INA and
3 their own regulations, defendants:
4

5 1. Impermissibly determined that:
6

7 (a) plaintiffs' funds were not at risk;

8 (b) plaintiffs failed to provide reasonable methodologies in
9 calculating indirect job creations;
10

11 (c) plaintiffs did not sufficiently demonstrate how the capital
12 would be spent;

13 (d) plaintiffs were required to expend all of their funds or
14 contract to spend all of their funds before USCIS could approve the I-526s;
15

16 (e) plaintiffs were required to give "assurances" to USCIS as
17 to how *all* funds, after being invested in the limited partnership, would be
18 expended before approval of the I-526s;
19

20 (f) plaintiffs' investment through Innovation LP of \$11.5
21 million instead of \$12 million was a material change;
22

23 (g) plaintiffs were prohibited from relying on certain NAICS
24 codes in calculating job creation;
25

26 (h) plaintiffs were prohibited when renovating property from
27 relying on jobs created by the tenants in determining indirect job creation;
28

1 (i) USCIS was not required to give any deference to its prior
2 decisions before revoking plaintiffs' I-526 petitions;
3

4 (j) USCIS could revoke plaintiffs' I-526 petitions without
5 new evidence of a clear error, fraud or material misrepresentation to suggest a
6 necessity for the revocation;
7

8 (k) USCIS could retroactively apply a different standard for
9 job creation methodology than it had approved in the regional center application
10 to deny or revoke I-526 petitions.
11

12 2. The decisions denying and revoking the I-526 petitions are
13 not supported by substantial evidence.
14

15 3. Defendants failed to consider evidence presented to them
16 demonstrating: (1) that the plaintiffs invested the \$11.5 million they had placed
17 at risk with Innovation LP; (2) that the methodology established by Sommers and
18 Concord Group were reasonable methodologies under the law; (3) the
19 reasonableness of the methodologies through the Linneman letter; and (4) the
20 future plans for the completion of the project.
21
22

23 4. Defendants sought to apply new criteria, policies and rules
24 retroactively and with full knowledge of the deleterious impact their application
25 would have on plaintiffs, including defendants' decision to treat the I-526
26 petition process as if it were the completed process under an I-829, in which
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1 petitioners are expected to prove where all the funds have been spent and where
2 the jobs were created. The I-526 process is merely the *proposed* plan for the
3 expenditure of funds and the creation of jobs. USCIS in this case treated the I-
4 526 process as if petitioners were required to demonstrate the final expenditures
5 of all funds and the creation of all jobs.
6
7

8 5. Defendants also applied retroactively a new standard for
9 determining job creation in renovation projects within a regional center. They
10 determined that plaintiffs could not rely on prospective jobs created by tenants
11 where the tenants' NAICS codes or activities did not match the economic
12 activities approved for the regional center. This change abruptly and radically
13 departed from their own prior publicly announced decisions and published rules,
14 policies, and criteria without providing notice to or considering the effect on
15 plaintiffs and without providing plaintiffs and the public with notice and an
16 opportunity to comment on the changes.
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20

21 6. Defendants abruptly and radically departed from their own
22 rules, policies, and criteria, which even if characterized as interpretations, are
23 not valid, because they failed to consider the factors enunciated in *Montgomery*
24 *Ward v. FTC*, 691 F.2d 1322, 1333 (9th Cir. 1982), and *Chang v. United States*,
25 327 F.3d 911, 927-29 (9th Cir. 2003), when they applied these radically
26
27
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1 different rules, policies and criteria to the adjudication of plaintiff investors' I-
2 526 petitions.
3

4 7. Defendants, in violation of the law in this Circuit in
5 *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010), sought unilaterally to impose
6 novel substantive and evidentiary requirements beyond those set forth in the
7 EB-5 regulations;
8

9 8. Defendants ignored their own policy of deference when they
10 revoked and denied plaintiffs' I-526 petitions after approving them;
11

12 9. Defendants ignored the statutory and regulatory criteria for
13 the revocation of an approved petition when they revoked plaintiffs' petitions
14 based upon impermissible criteria, and where the prior approval was not clearly
15 in error or based upon fraud or misrepresentation.
16
17

18 **Count III: Exceeding Statutory Authority**

19 69. Plaintiffs hereby incorporate by reference as if set forth in full and
20 at length herein paragraphs 1 through 68 of this Complaint.
21

22 70. Defendants' have exceeded their statutory authority under the INA
23 in revoking plaintiffs' approved I-526 petitions and in denying other I-526
24 petitions outright.
25

26 71. INA §205, 8 U.S.C. §1155, grants the Secretary of the Department
27 of Homeland Security the authority to revoke an approve petition but only
28

1 where it is for “good and sufficient cause.” Defendants’ revocation of plaintiffs’
2 petitions were not for “good and sufficient cause” as the original approvals of
3 the petitions were not due to “clear error” or arising from fraud or material
4 misrepresentation. The bases for the notices of intent to revoke the petitions
5 were clearly rebutted in plaintiffs’ responses to the notices. Defendants’
6 erroneous belief that plaintiffs’ funds had been placed in escrow and not
7 invested was debunked in plaintiffs’ responses, as was defendants’ false claim
8 that plaintiffs had not purchased the renovated property. So too were
9 defendants’ concerns that the business plan was not comprehensive. Plaintiffs
10 demonstrated in the rebuttals that the property had already been purchased,
11 renovated and *leased* with an actual, not hypothetical, tenant. Notwithstanding
12 this detailed evidence, USCIS invented new reasons, based on legally
13 impermissible or factually suspect grounds in revoking and denying plaintiffs’ I-
14 526 petitions. Defendants in their final denial claimed, for the first time, for
15 example, that plaintiffs had not provided “assurance that the entire amount” of
16 the \$11.5 million would be spent on the project. However, defendants
17 acknowledged that plaintiffs stated how the funds would be used and provided a
18 brochure of the additional property they intended to renovate and the cost of the
19 renovation. The claim that defendants needed “assurances” was legally
20 impermissible because plaintiffs under INA 203(b)(5)(A)(i) and the attendant

1 regulations are only required to show they are “actively in the process of
2 investing.” 8 C.F.R. §204.6(j)(2). Similarly, defendants’ final denials, not
3 included in its Notices of Intent to Deny, established new legal criteria, made
4 from whole cloth, regarding NAICS codes to determine reasonable
5 methodologies for job creation. In doing so, they interjected legally
6 impermissible new criteria that did not appear in their NOID. The requirement
7 that NAICS codes of the tenants had to match the economic activity of the
8 regional center before they could be utilized has never been a prerequisite to a
9 methodology being deemed reasonable. In addition, defendants sought to
10 quibble over the specific application of the reasonable methodology, rather than
11 determining whether the methodology used is in fact reasonable. In doing so
12 they transgressed congressional intent and their own regulations which require
13 only the use of reasonable methodologies. Second, there is no basis to import
14 NAICS codes in this case. The regional center, despite defendants’ erroneous
15 factual assertions, never relied on NAICS codes in designating its economic
16 investment activities and USCIS *never assigned NAICS codes* to the regional
17 center when it gave its approval. Defendants’ belated claim that the IMPLAN
18 methodology could not rely on certain NAICS codes in determining job creation
19 because they differed from the regional center’s economic cluster activities is
20 therefore factually erroneous and legally in error. Moreover, it flies in the face
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1 of normal business practice and common sense. Here the economic activities in
2 the regional center included *renovating* warehouses to be used by *tenants*.
3 Defendants' claim that the IMPLAN methodology could not use the codes for
4 the prospective or actual tenants to determine job creation because they were
5 different from the codes that theoretically apply to the regional center is
6 factually inaccurate in this case and confuses the purpose of the regional center
7 and the jobs that would be created from the investments and renovation. The
8 economic activity of the regional center, real estate development/renovation of
9 warehouses, is precisely to provide space for tenants that will create jobs.
10 Therefore, it is reasonable to rely on the NAICS codes of the tenants even if we
11 were to assume that reliance on any codes was a requirement. The tenant codes
12 are only relevant to the indirect job multiplier used by the economist; they are
13 not relevant to the regional center's business activities. Defendants "analysis" is
14 nothing more than a complete ban on investments in renovation projects that, as
15 here, create hundreds of jobs and stimulate the economy.
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22 72. Defendants' denials also fundamentally misconstrued the statutory
23 scheme governing the investor visa process, and exceed the authority granted
24 them by statute. In enacting INA §203(b)(5) and INA §216A, Congress created
25 a two-step process for an investor to earn unconditional permanent resident
26 status. If the investor can prove that he or she plans to invest in a new
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1 commercial enterprise which creates 10 jobs, the investor becomes a lawful
2 permanent resident *conditionally*. The investor then has a chance to implement
3 the investment plan before he or she is required to demonstrate success at the I-
4 829 stage. Defendants' denials of plaintiffs' I-526 petitions turned this statutory
5 scheme on its head. In USCIS' decision denying plaintiffs' I-526 petitions,
6 defendants acknowledge that a new commercial enterprise had been established,
7 that investments had been made, that property had already been renovated and
8 that a tenant was already in the property, yet determined that plaintiffs' funds
9 were not "at risk" and the business plan was not fully developed. In doing so,
10 defendants relied on such absurd claims as plaintiffs' failure to explain why they
11 were investing \$11.5 million instead of \$12 million in the project and why there
12 was not yet a contract to renovate an existing adjacent property. These matters,
13 to the extent they are relevant at all, are ones properly addressed at the I-829
14 stage.

21 **Count IV: Violation of Due Process**

22 73. Plaintiffs hereby incorporate by reference as if set forth in full and
23 at length herein paragraphs 1 through 72 of this Complaint.

24 74. Defendants' abrupt and radical revision of the regulatory scheme
25 governing I-526 petitions, their failure to consider evidence presented to them in
26 reaching their factual and legal conclusions, and their retroactive application of
27
28

1 the new requirements, violate plaintiffs' rights to due process under the Fifth
2 Amendment to the Constitution of the United States.

3
4 75. Plaintiff investors presented extensive documentation in their I-526
5 petitions, and in their responses to the Requests for Evidence and Notices of
6 Intent to Revoke. Plaintiff Investors presented evidence to prove, *inter alia*, that
7 their funds were not only at risk but had already been invested. In response to
8 the claims regarding a comprehensive business plan, plaintiffs provided
9 evidence that the plan had already been enacted because the property had
10 already been renovated and rented. Similarly, plaintiffs presented evidence from
11 three new sources to respond to defendants' concerns about the reasonableness
12 of plaintiffs' methodology involving job creation. Putting aside the issue that the
13 IMPLAN methodology used by plaintiffs' experts has long been recognized as
14 "reasonable" by USCIS, plaintiffs presented three new reports. Just as
15 defendants ignored the information regarding "at risk" and "comprehensive
16 business plan," they ignored plaintiffs' new evidence in regard to IMPLAN,
17 including Dr. Linneman's expert report on the reasonableness of the
18 methodology. In addition to ignoring evidence, defendants provided new
19 reasons for their denial in their final decisions without giving plaintiffs the
20 opportunity to respond. Thus, defendants relied on a new analysis concerning
21 NAICS codes in USCIS' final denials that was not provided in its NOIDs or
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1 RFEs. Ignoring evidence provided to the agency violates plaintiffs' Fifth
2 Amendment rights to due process. The lack of notice and opportunity to respond
3 also violated defendants' own regulations and plaintiffs' Fifth Amendment right
4 to notice under the Due Process Clause.
5

6
7 **ATTORNEY'S FEES**

8 76. As a result of defendants' unlawful actions, plaintiffs were required
9 to retain counsel and pay counsel reasonable fees and expenses. Because
10 Defendants were not substantially justified in pursuing their actions, Plaintiffs
11 are entitled to recover legal fees and all costs and expenses under the Equal
12 Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.
13
14

15 **RELIEF REQUESTED**

16
17 WHEREFORE, Plaintiffs respectfully request this Court enter judgment
18 on their behalf and issue the following:

19 a. an order declaring that defendants' denials and revocations
20 of plaintiffs' I-526 petitions are violative of the INA and its attendant
21 regulations; violative of the Administrative Procedure Act; *ultra vires*; arbitrary
22 and capricious, an abuse of discretion and not otherwise in accordance with law;
23 violative of Due Process under the Fifth Amendment; and constituted an
24 improper retroactive application of law that should be reversed;
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1 b. an order directing Defendants and their agents to issue
2 immediately all necessary and appropriate documents to plaintiff investors and
3 their dependents to evidence the approval of their I-526 petitions retroactive to
4 the date of the original decision granting the I-526 for those whose applications
5 were impermissibly revoked or the date of the denial for those who were
6 impermissibly denied;
7
8

9 c. an order directing defendants and their agents promptly to
10 provide documentation to all dependent children who have “aged-out” during
11 the pendency of this case so that they will continue to be treated as dependent
12 children who are in-status;
13
14

15 d. an order directing defendants and their agents to withdraw
16 the denials of plaintiffs’ I-526 petitions;
17

18 e. an order directing defendants and their agents to reinstate
19 retroactively all adjustment of status applications and employment
20 authorizations, as well as immigrant visa processes, that were filed and in
21 existence at the time of defendants’ revocation of plaintiffs’ I-526 petitions;
22
23

24 f. an order directing defendants and their agents not to consider
25 the plaintiffs’ and their dependents’ presence in the United States as unlawful
26 for any purpose during the period of time between the denial of their I-526
27 petitions and the disposition of this litigation;
28

1 g. an order enjoining defendants from placing plaintiffs or their
2 dependents in removal proceedings pending a final determination in this case;

3
4 h. an order enjoining defendants from taking any action to
5 deport, remove or deem inadmissible any of the plaintiffs or their dependents
6 from the United States pending a final determination in this case;

7
8 i. an order enjoining defendants from taking any action to
9 deprive plaintiffs and their dependents of their right to file adjustment of status
10 applications and be employed in the United States on the grounds that they were
11 out-of-status from the denial of their I-526 petitions to the completion of this
12 case;
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14

15 j. an order enjoining defendants from taking any action to
16 deprive plaintiffs and their dependents of the right to travel unhindered, within
17 or outside of the United States, during the pendency of the litigation;

18
19 k. a mandatory injunction requiring the approval of plaintiffs' I-
20 526 petitions absent fraud;

21
22 l. a prohibitory injunction preventing defendants and their
23 agents from applying any criteria they used or are considering using to deny
24 plaintiff investors' I-526 petitions including, but not limited to, defendants'
25 decision that reasonable methodologies for indirect job creation may not rely on
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1 the NAICS codes of tenants when those codes differ from the codes that may be
2 used to describe the economic clusters of the regional center;

3
4 m. a prohibitory injunction preventing defendants and their
5 agents from refusing to approve an I-526 petition in the regional center context
6 where petitioners have relied on a standard well-known methodology such as
7 IMPLAN or RIMS II to determine job creation;

8
9 n. an order declaring that any and all new rules, policies, and
10 criteria regarding the EB-5 investor program must be promulgated only in
11 accordance with the notice and comment provisions of the Administrative
12 Procedure Act and that such new rules, policies and criteria may only be applied
13 prospectively to I-526 petitions filed after the decision of this Court;

14
15 o. an order awarding plaintiffs their attorney's fees and costs;

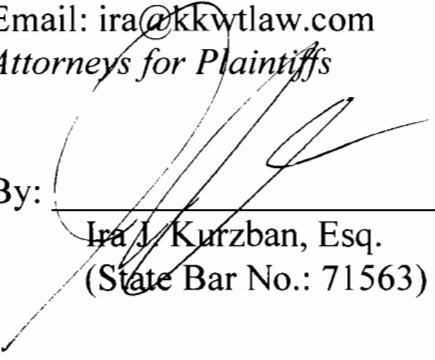
16
17 and

18
19 p. an order granting such other relief as the Court may deem
20 just, equitable, and proper.
21

22
23
24 Dated: September 13, 2012

25
26
27 Respectfully submitted,
28 KURZBAN KURZBAN WEINGER
TETZELI & PRATT, P.A.

1 2650 S.W. 27th Avenue, Suite 200
2 Miami, FL 33133
3 Tel. No. 305/444-0060
4 Fax No. 305/444-3503
5 Email: ira@kkwtlaw.com
Attorneys for Plaintiffs

6
7 By: 
8 Ira J. Kurzban, Esq.
9 (State Bar No.: 71563)
10
11

12
13 **PROOF OF SERVICE**
14

15 I, IRA J. KURZBAN, the undersigned, hereby declare:

16 I am over the age of eighteen years and not a party to the within action
17 or proceedings; my business address is: Kurzban Kurzban Weinger, Tetzeli
18 and Pratt, P.A., 2650 S.W. 27th Avenue, 2nd Floor, Miami, Florida 33133.

19 On September 13, 2012 I served a copy of the foregoing COMPLAINT
20 FOR DECLARATORY AND INJUNCTIVE RELIEF by hand-delivery or
21 certified mail on the following individuals and agencies:

22 1. Agency and Officers of the United States :

23 Andre Birotte Jr., U.S. Attorney
24 c/o Civil Process Clerk
25 The United States Attorney's Office
26 Central District of California
27 Civil Division
28 Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012

1
2 2. Agency and Officers of the United States:

3 Eric H. Holder, Jr.
4 U.S. Attorney General/U.S. Department of Justice
5 950 Pennsylvania Avenue, NW
6 Washington DC 20530-0001

7 3. United States Citizenship and Immigration Services

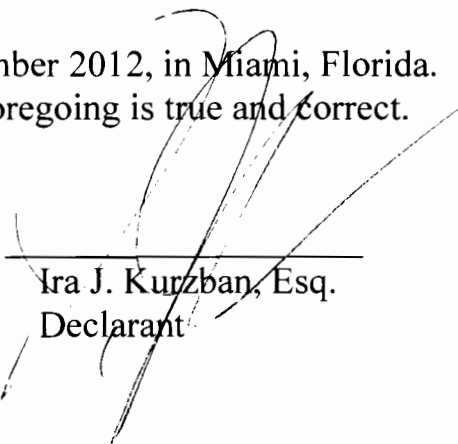
8 Ivan K. Fong, Esq.
9 Office of the General Counsel
10 U.S. Department of Homeland Security
11 Mail Stop 3650
12 Washington, D.C. 20528

13 4. Janet Napolitano, Secretary, Department of Homeland Security
14 U.S. Department of Homeland Security
15 Washington, D.C. 20528

16 5. Alejandro Mayorkas
17 United States Citizenship and Immigration Services
18 20 Massachusetts Avenue
19 Washington, D.C. 20528

20 6. Rosemary Melville, Director, CSC
21 California Service Center
22 24000 Avila Road, 20th Floor
23 Laguna Niguel, CA 92607

24 Executed on this 13th day of September 2012, in Miami, Florida. I
25 declare under penalty of perjury that the foregoing is true and correct.

26 By: 
27 Ira J. Kurzban, Esq.
28 Declarant

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself)
 CARLSSON, Courtney, HASHEMI FARSAANI, Badrialsadat, JIANG, Guidong,
 KONG, DeQing, LAI, Ye Yen, LEE, Wong Ai, LI, Ni, Li, Wei, LIM, Jimin,
 LUONG, Nuong Lien, MARTIN, David, PATEL, Rajeshbhai N., SEYEDSALEHI, Giti,
 SHI, Hongli, TOOR, Amrit Pal, VAN DER HAM, Gerardus, YAO, Mengyou, YOO, Eun Sook

DEFENDANTS
 UNITED STATES CITIZENSHIP & IMMIGRATION SERVICES,
 NAPOLITANO, Janet, Secretary, U.S. DHS; MAYORKAS, Alejandro, Director,
 USCIS; MELVILLE, Rosemary, Director, USCIS CSC

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Ira J. Kurzban, Esq. Kurzban, Kurzban, Weinger, Tetzeli & Pratt P.A.
 2650 S.W. 27th Avenue, 2nd Floor Miami, Florida 33133
 Tel. (305) 444-0060

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
 (Place an X in one box for plaintiff and one for defendant.)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in this State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. ORIGIN (Place an X in one box only.)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify): 6 Multi-District Litigation 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No

MONEY DEMANDED IN COMPLAINT: \$ _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Immigration and Nationality Act, 8 U.S.C. § 1153(b)(5); Administrative Procedures Act, 5 U.S.C. § 701: retroactive application, arbitrary and capricious agency action

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General Habeas Corpus	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE / PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	IMMIGRATION	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input checked="" type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RSI (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

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FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
LOS ANGELES	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER) _____ Date September 13, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))