

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

American Association of University
Professors, *et al.*,

Plaintiffs,

v.

U.S. Department of Homeland Security, *et al.*,

Defendants.

Civ. No. 26-300 (RJL)

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

HAROLD CRAIG BECKER (D.C. Bar No.
371239)
NORMAN EISEN (D.C. Bar No. 435051)
STEVE JONAS (D.C. Bar No. 90037069)
BRIAN C. WARD (*pro hac vice*)
LINDSAY W. ZIMLIKI (D.C. Bar No. 475890)
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Avenue SE, #15180
Washington, DC 20003
(202) 594-9958
craig@democracydefenders.org

SARAH S. WILSON (D.D.C. Bar No. GA0058)
DAVID KIM (D.D.C. Bar No. IL0143)
COLOMBO & HURD PL
301 E. Pine Street, #450
Orlando, Florida 32801
(407) 478-1111

ALLISON M. ZIEVE (D.C. Bar. No. 424786)
ADAM R. PULVER (D.C. Bar No. 1020475)
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Attorneys for Plaintiffs

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INTRODUCTION

By statute and regulation, employment-based visas, known as EB visas, are scarce resources made available to outstanding individuals who meet demanding statutory criteria. Through the extra-statutory “Gold Card” program, Defendants are offering employment-based visas for sale to wealthy people, allowing them to buy visas without meeting the statutory criteria and to use a less burdensome, expedited process for obtaining visas from the limited pool that Congress specified would be employment-based. As the Gold Card website boasts, Gold Card applicants receive their visa, and thus U.S. residency, in “record time,” based on a \$1 or \$2 million gift and a short application.

The special access given to Gold Card applicants creates a significant competitive disadvantage for those who seek EB visas through the means established by statute and regulation, including the Individual Plaintiffs and members of Plaintiffs American Association of University Professors (AAUP) and United Automobile Aerospace, and Agricultural Implement Workers of America (UAW) (together, Organizational Plaintiffs). at. Defendants’ suggestion that this disadvantage is insufficient to create standing to challenge the Gold Card Program misunderstands the injury and the law.

Gold Card applicants have advantages at each stage of the EB visa process. First, because the Gold Card application process is less burdensome than the process under existing regulations, Gold Card applicants can submit a complete application and get in line far more quickly than applicants applying under the preexisting regulatory process. The Gold Card applicants apply using a single form, estimated to take five hours, while other applicants must spend time compiling extensive evidence and, where applicable, completing the labor-certification steps needed to support their petitions. Because the submission date determines the applicant’s place in line, the discrepancy in the time required to apply gives Gold Card applicants a significant competitive

advantage in seeking one of the limited number of EB visas. Second, after applications are submitted, Defendants promise that Gold Card applicants will be processed through the U.S. Citizenship and Immigration Services (USCIS) in a matter of weeks, as opposed to the typically years-long process for non-Gold Card applicants. This expedited process allows Gold Card applicants to move to the consular processing stage and claim one of the limited number of EB visas more quickly than other applicants.

By making EB visas available to individuals who do not satisfy the statutory criteria, Defendants have reduced the number of EB visas available to those, like the Individual Plaintiffs and members of the Organizational Plaintiffs, who do. As Defendants seem to recognize, for applicants from China and India in particular, there is a direct trade-off between every visa issued to a Gold Card applicant and visas available for non-Gold Card applicants.

The Gold Card Program thus advantages Gold Card applicants over those who meet the statutory criteria but cannot afford to pay a million dollars. The consequence is an array of harms to the careers and livelihoods of these statutorily eligible applicants, like the Individual Plaintiffs and members of the Organizational Plaintiffs. Plaintiffs accordingly have standing to challenge the Gold Card Program. Defendants' motion to dismiss should be denied.

BACKGROUND

The Employment-Based Immigration System

The Constitution grants Congress the authority to make rules for the admission of noncitizens into the United States. U.S. Const. art. I, § 8, cl. 4. Consistent with its constitutional authority, Congress enacted the Immigration and Nationality Act (INA), which “established a ‘comprehensive federal statutory scheme for regulation of immigration and naturalization’ and set ‘the terms and conditions of admission to the country and the subsequent treatment of aliens

lawfully in the country.’” *Chamber of Com. v. Whiting*, 563 U.S. 582, 587 (2011) (quoting *De Canas v. Bica*, 424 U.S. 351, 353, 359 (1976)).

In 1990, Congress established the current preference system for visa allocation, which prioritizes certain groups of immigrants based either on their relationships to U.S. citizens or lawful permanent residents, known as family visas, or for their skills and contribution to the United States economy, known as employment-based, or EB, visas. *See* 8 U.S.C. §§ 1151, 1153. Employment-based immigrants acquire lawful permanent resident status through one of five preference categories: three categories based on qualifications and needed skills (EB-1, EB-2, and EB-3); a special-immigrant category (EB-4); and an immigrant-investor category (EB-5). *Id.* § 1153(b)(1)–(5).

Each employment-based immigrant category is subject to strict eligibility requirements, specified in both statute and regulation, and fixed numerical limits. Through the INA, Congress set a “worldwide level” of employment-based visas per year: a baseline of 140,000 visas per fiscal year plus the number of unused family-based visas from the previous year. 8 U.S.C. § 1151(d)(1), (2). Congress then subdivided that finite pool of employment-based visas among the preference categories in set proportions. *Id.* § 1153(b). Relevant here, the EB-1, EB-2, and EB-3 categories each receive a fixed share of the worldwide level, not to exceed 28.6% for each category, and account for 86% of all employment-based visas. *Id.* Congress further constrained the visa supply through per-country limits. As a general rule, the total number of immigrant visas available to natives of any single foreign state may not exceed 7% of the total number of family-sponsored and employment-based visas made available for that fiscal year. *Id.* § 1152(a)(2).¹

¹ The per-country ceiling is subject to a separate quarterly reallocation rule: When the numbers available within an employment-based preference exceed the qualified demand that can receive

To manage the demand for the limited number of immigrant visas, Congress specified that visas be issued to eligible immigrants in the order in which the relevant petition was filed. 8 U.S.C. § 1153(e)(1). Every applicant's petition is thus assigned a "priority date," which is based on the date the petition is accepted for filing and represents the individual's place in line for their visa. *Id.*; 8 C.F.R. § 204.5(d). For employment-based categories that require a labor certification, the priority date is the date the Department of Labor accepts the labor-certification application for processing. 8 C.F.R. § 204.5(d). For EB-1 and EB-2 "national interest waiver" petitions, which do not require labor certification, the priority date is the date on which USCIS accepts the immigration petition for filing. *Id.*²

Each month, the State Department publishes a report, known as the Visa Bulletin, that provides updates on the availability of immigrant visas. *See* Wilson Decl., ECF No. 34-2 ¶ 6. It lists cut-off dates, or "final action dates," for different visa categories and countries, which informs applicants, based on their priority dates, when their visa can be finally adjudicated. *Id.* A visa applicant is not eligible to receive their visa until their priority date becomes "current." *Id.* The priority date is current when (1) it is earlier than the "final action date" published in the monthly Visa Bulletin for the applicant's category or country, or (2) the applicant's category or

them under the ordinary per-country limit, the excess numbers are issued without regard to that limit for the remainder of the quarter. 8 U.S.C. § 1152(a)(3), (a)(5)(A).

² The requirement to obtain a labor certification from the Department of Labor is waived where the Secretary of Homeland Security determines that the waiver is "in the national interest." 8 U.S.C. § 1153(b)(2)(B)(i). An EB-2 national-interest-waiver petitioner must demonstrate that (1) the individual is coming to the United States to pursue a proposed endeavor that has substantial merit and national importance; (2) the individual is well positioned to advance the endeavor; and (3) it would benefit the United States to waive the job-offer and labor-certification requirement. *See* Employment Based Classifications in USCIS Policy Manual, vol. 6, pt. F, Ch. 5, Chapter 5 – Advanced Degree or Exceptional Ability, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5>.

country is marked “C” or “current” and no “final action date” is given. *Id.* ¶ 8.³ The final action dates are not fixed, and they can move in either direction depending on demand and the remaining supply for the fiscal year. For example, if it becomes necessary during the monthly allocation process, the State Department may retrogress a final action date—that is, reset it to an earlier date—such that additional visa requests are honored only if the applicants’ priority dates are earlier than the newly announced date. *See* Parker Decl., ECF No. 34-1 ¶¶ 10, 16–17. And if an annual limit is reached for a category, the Department must immediately make the category unavailable, and no further requests for visas can be honored that year. *See* Wilson Decl., ECF No. 34-2 ¶¶ 9–11.

Those Visa Bulletin movements have particular significance where demand already exceeds supply. In backlogged countries and categories, applicants advance only when enough visas are available to move the relevant final action date forward or keep it from retrogressing. *Id.* ¶¶ 10–12. To alleviate that scarcity, the INA permits employment-based visas that would otherwise go unused in one category to be issued to applicants in a backlogged category: When employment-based visa numbers remain available in a quarter after satisfying demand within the ordinary per-country limits, those visas may be issued without regard to the per-country ceiling. 8 U.S.C. § 1152(a)(3), (a)(5)(A). In addition, if there are unused EB-1 visas, those visas will be made available to individuals waiting for EB-2 visas. *Id.* § 1153(b)(2)(A). Similarly, if there are unused EB-1 and EB-2 visas, those visas will be made available to individuals waiting for EB-3 visas. *Id.* § 1153(b)(3)(A).

³ *See also* Dep’t of State, *Visa Bulletin for August 2026*, Employment-Based Preferences, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-august-2026.html> (“Final Action Dates for Employment-Based Preference Cases”).

The EB-1 and EB-2 Application Process

To be able to claim one of the limited number of visas made available each fiscal year, an applicant must proceed through multiple steps, set out by statute and regulation, and involving multiple federal agencies. If the visa category requires a labor certification, the first step is obtaining a certification from the Department of Labor. *Id.* § 1182(a)(5). The U.S. employer who is sponsoring the foreign worker usually performs this step, but for some visa categories, including the EB-1A and EB-2 national-interest-waiver classifications, the foreign worker files his own application, known as “self-petitioning,” and does not need to have a job offer from a U.S. employer. *Id.* § 1153(b)(1)(A), (b)(2)(B)(i); 8 C.F.R. § 204.5(k)(4)(ii). If no labor certification is required, the process begins with the applicant filing an Immigrant Petition for Alien Worker (Form I-140) with USCIS. *See* 8 U.S.C. §§ 1153(e)(1), 1154(a)(1)(E).

To obtain an EB-1A visa, an applicant must show extraordinary ability through “sustained national or international acclaim” and recognition in the applicant’s field of expertise. 8 C.F.R. § 204.5(h)(3). The regulations set out a structured evidentiary rubric for the foreign worker to demonstrate they are one of a small number of professionals who have reached “the very top” of their field. *Id.* § 204.5(h)(2)–(3). The applicant’s “initial evidence” must show that he or she “has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise evidence,” including either evidence of a “one-time achievement” on the level of a major, internationally recognized award—such as the Nobel Prize—or satisfy at least three of ten specified criteria. *Id.* § 204.5(h)(3). A well-developed EB-1A filing commonly runs to hundreds of pages, containing not only primary records such as scholarly publications, patents,

grant materials, and research, but letters from experts and collaborators, citation reports, and press coverage. Rand Decl. ¶¶ 6–9.⁴

The EB-2 classification, though slightly less demanding than the EB-1 classification, similarly requires the applicant to meet specific criteria to demonstrate eligibility. Congress limited EB-2 eligibility to professionals holding advanced degrees or individuals of “exceptional ability.” 8 U.S.C. § 1153(b)(2)(A). The governing regulation defines exceptional ability as “a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” 8 C.F.R. § 204.5(k)(2). To obtain an EB-2 visa based on exceptional ability, the applicant must submit at least three kinds of evidence of achievement from a menu of six options, including recognition for significant contributions to the field; recommendation letters showing at least ten years of full-time experience in the relevant field; licenses and membership in professional organizations; and letters showing at least ten years of full-time experience in the relevant field. *Id.* § 204.5(k)(3). The applicant must first show an advanced degree or exceptional ability, and then show that their “proposed endeavor” is one of substantial merit and national importance, that the individual is well positioned to advance it, and, for a national-interest-waiver applicant, that, on balance, waiving the job-offer and labor-certification requirements would benefit the United States. Rand Decl. ¶ 10; *see* USCIS Employment Based Classifications, *in* USCIS Policy Manual, *supra* n.2, vol. 6, pt. F, Ch. 5. A successful EB-1 petition applicant must contain detailed evidence of both the applicant’s past accomplishments (for example, the applicant’s educational and employment history and prior research results) and their proposed endeavor (for example, a detailed plan, evidence of financing, market or industry information, and personal endorsements). Rand Decl. ¶¶ 11–12.

⁴ All declarations without an ECF reference are being concurrently filed with this memorandum.

Adjudication of the Petition

When the applicant files, USCIS will assign a priority date based on the date when the application is accepted for filing. *See* 8 CFR 204.5(d). It will also review the application, after which it may approve it, deny it, request additional evidence by issuing a Request for Evidence (RFE), or issue a Notice of Intent to Deny (NOID). *Id.* § 103.2(b)(8). If USCIS requests additional evidence or issues a NOID, the petitioner must respond before the agency completes adjudication. *Id.* § 103.2(b)(11). That process can require an applicant to submit additional records, supplemental expert letters, and more legal argument, prolonging an already-lengthy petition process. Rand Decl. ¶ 18; First Amended Complaint, ECF No. 32 ¶¶ 41, 46 (hereafter, FAC). USCIS does not publish an average length of time for this process, but USCIS data show that only 80% of petitions are processed within 28 months.⁵ Those published times do not include the time necessary for petition preparation before filing, a labor certification where required, or waiting for a visa to become available. Rand Decl. ¶ 13.

Once USCIS approves a petition, the applicant waits for his or her priority date to become current. If it already has or when it does, the applicant moves to the final step in the green card process: visa issuance. *See* Selby Decl., ECF No. 34-3 ¶ 7.⁶ If there is a backlog, the applicant

⁵ USCIS, Case Processing Times, <https://egov.uscis.gov/processing-times>.

⁶ *See* Dep't of State, *Immigrant Visa Process, Step 2: Begin NVC Processing*, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition/step-2-begin-nvc-processing.html>. As far as Plaintiffs are aware, the forms and process at the final stage are the same for Gold Card and other applicants.

must wait until the Visa Bulletin shows that a visa is available.⁷ *See* Parker Decl., ECF No. 34-1 ¶ 6.

The Gold Card Program

On September 19, 2025, the President issued Executive Order 14351, entitled “The Gold Card.” 90 Fed. Reg. 46031 (Sept. 24, 2025). The Executive Order directed the Secretary of Commerce, the Secretary of State, and the Secretary of Homeland Security to “establish a ‘Gold Card’ program authorizing an alien who makes an unrestricted gift to the Department of Commerce under 15 U.S.C. 1522 (or for whom a corporation or similar entity makes such a gift) to establish eligibility for an immigrant visa using an expedited process.” Exec. Order 14351, § 2(a). The Executive Order set the requisite gift amount at \$1,000,000 for an individual, or \$2,000,000 if made by a sponsoring entity on an individual’s behalf, and it directed the Secretaries of State and Homeland Security to treat such a gift as evidence of eligibility for EB-1 visas, of the requisite exceptional business ability and national benefit for EB-2 visas, and of eligibility for a national interest waiver for EB-2 visas. *Id.* § 2(a)–(b). Defendants describe the program the same way, as giving Gold Card applicants “a new means of establishing eligibility” and “an alternative way to establish eligibility” for EB-1 and EB-2 visas. Defs. Mem. at 1, 9.

The Executive Order also directed the Secretaries of Commerce, State, and Homeland Security to “take all necessary and appropriate steps to implement the Gold Card program” within 90 days, including establishing a process for application and an expedited adjudication track for Gold Card petitions, visa issuance, and adjustment of status. Exec. Order 14351, § 3. The Executive Order further directed the agencies to establish fees to cover the cost of “expedited processing,” *id.*, while the White House Fact Sheet describes the program as one that “facilitates

⁷ *Id.*

expedited immigrant visas” and uses the required gifts to “expedit[e] adjudication,” The White House, *Fact Sheet: President Donald J. Trump Launches the Gold Card Program*, Sept. 19, 2025.⁸

As directed by the Executive Order, the agencies established and implemented the program. On November 18, 2025, USCIS announced that the “U.S. Department of Commerce, in coordination with the Secretary of State and the Secretary of Homeland Security, established the Gold Card Program,” and that, other than a Paperwork Reduction Act (PRA)-approved application form, “all the mechanisms are in place to immediately meet the current demand for the Gold Card.” USCIS, Supporting Statement for Immigrant Petition for the Gold Card Program, at 1, 2 (Nov. 18, 2025) (hereafter, Supporting Statement).⁹ OMB granted the requested PRA clearance for the new Form I-140G on November 19, 2025.¹⁰

Under the process established by the agencies, an applicant first completes a Gold Card application through a website, “trumpcard.gov,” that the agencies have established. *See* The Trump Gold Card, *Apply Now*, <http://www.trumpcard.gov> (Gold Card Website). The Department of Homeland Security will then begin the applicant’s vetting process. *Id.* at *Essential Information and Guidance* (“What are applicants responsible for and how can they apply?”). USCIS will then contact and direct the applicant to pay a nonrefundable \$15,000 petition fee through the pay.gov portal, before completing and submitting Form I-140G. *See* Supporting Statement at 9. “Upon successful vetting [by USCIS], the applicant will be asked to submit a gift to the United States” in the required amount. Gold Card Website (“What are applicants responsible for and how can they

⁸ <https://www.whitehouse.gov/fact-sheets/2025/09/fact-sheet-president-donald-j-trump-launches-the-gold-card-program/>.

⁹ Available at Office of Information and Regulatory Affairs, ICR Documents, I-140G NEW Supporting Statement, https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202504-1615-001.

¹⁰ Office of Information and Regulatory Affairs, Information Collection Request, OMB Control No. 1516-0167, https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202504-1615-001.

apply?”). The applicant will then be contacted by the State Department to submit the visa application fee and payments for the required medical examination, before the State Department issues an EB-1 or EB-2 visa. *Id.* “Once an applicant’s processing fee and application are received, the process should take weeks.” *Id.* (“How long does the process take?”). The Gold Card Website promises that donors will “receive U.S. residency in record time.” *Id.* (“Special Benefits” “For Individuals”). The website also informs businesses that a \$2 million contribution will lead to “U.S. residency in record time ... for [their] employees.” *Id.* (“Special Benefits” “For Business”). The portal for applications opened on December 10, 2025. *See* Dep’t of Commerce, *The Trump Gold Card: Unlock Life in America*, Dec. 11, 2025.¹¹

In its initial request for an emergency PRA clearance for Form I-140G, USCIS estimated that 1,000 I-140G petitions would be submitted each year. Supporting Statement at 7. It further estimated that completing the I-140G form would take five hours, *id.*, and that applicants would incur related costs of only \$515 for tasks like “document translation and preparation services, attorney and legal fees, and costs associated with gathering documentation,” *id.* at 9. In connection with its March 2026 request for a renewal of the I-140G clearance, USCIS revised its estimate to 1,520 individual petitioners and 72 corporate petitioners each year. *See* USCIS, Notice, Agency Information Collection Activities; Revision of a Currently Approved Collection: Immigrant Petition for the Gold Card Program, 91 Fed. Reg. 11559, 11560 (Mar. 10, 2026). In January 2026, the Department of Commerce stated that “\$1.3 billion has already been committed through the program,” characterizing the program as part of the Administration’s first-year overhaul of the

¹¹ <https://www.commerce.gov/news/blog/tweets/trump-gold-card-unlock-life-america>.

immigration system. Dep't of Commerce, *First Year Accomplishments under Secretary Howard W. Lutnick*, Jan. 20, 2026.¹²

The Individual and Organizational Plaintiffs

Plaintiffs include both individuals and two organizations, AAUP and UAW. The Individual Plaintiffs, Rodrigo Cerna-Chavez, William Daniel Moscoso Barerra, Yu-Ting Tsai, Aldo Salvador Estrada-Montaño, Elena Hernandez Cepeda, and Richmond Djorgbenoo (collectively, the Individual Plaintiffs), are each foreign citizens who have applied, or plan to soon apply, to the EB-1 and/or EB-2 program. FAC ¶¶ 17–24.

Plaintiff Cerna-Chavez is a Mexican citizen and resident who is preparing to apply for lawful permanent residence through an EB-2 NIW petition. Cerna-Chavez Decl. ¶ 1. A member of AAUP, he is a biomedical researcher specializing in stem cell research and retinal cell biology. Cerna-Chavez Decl. ¶¶ 4–6. Securing permanent residency in the U.S. is essential for his ability to pursue funding opportunities, fellowships, and leadership positions in academia and industry, and any delays in the visa process threaten his career trajectory. *Id.* ¶¶ 13, 15.

Plaintiff Hernandez Cepeda is a Mexican citizen who filed an EB-2 petition in May 2026 with a request for a national interest waiver as a self-petitioner. Hernandez Cepeda Decl. ¶¶ 1, 6; *see* FAC ¶ 23. It took her six months of work to prepare her petition, which is based upon her work as a psychologist addressing critical gaps in child sexual abuse prevention and trauma-informed care for vulnerable school populations. Hernandez Cepeda Decl. ¶ 6. She has been invited to collaborate with American educational institutions, but she is not able to take advantage of these

¹² <https://www.commerce.gov/news/press-releases/2026/01/first-year-accomplishments-under-secretary-howard-w-lutnick>.

professional opportunities until she secures her visa. *Id.* ¶¶ 12–14. Each day of delay risks her missing out on the opportunity. *Id.* ¶ 14.

Plaintiff Estrada-Montaña is a Mexican citizen, currently residing in Canada, who has begun the process of preparing to apply for lawful permanent residence through an EB-2 petition with a request for a national interest waiver as a self-petitioner, based on his scientific training and ongoing research work. Estrada-Montaña Decl. ¶¶ 1, 7–13; FAC ¶ 22. He is a renowned chemist responsible for innovations that span many disciplines, including an important innovation for cataract surgery. Estrada-Montaña Decl. ¶¶ 3–5. He began preparing his application in January 2026, and expects to finalize and file it in the coming months. *Id.* ¶ 7. Each day Plaintiff Estrada-Montaña is not permitted to relocate to the United States hinders his ability to obtain employment and costs him valuable time that could be spent collaborating on new projects and training others on his research. *Id.* ¶¶ 14–17. He is anxious to take these next steps in his career but has had to postpone many important personal and professional decisions until he can obtain his visa. *Id.* ¶ 18.

Plaintiffs Moscoso, Tsai, and Djorgbenoo have temporary authorization to live and work in the United States, authorization that will end unless they are able to secure an immigrant visa. FAC ¶¶ 20, 21, 24. Plaintiff Moscoso, a Colombian citizen, is a member of AAUP and a biomedical engineer whose work centers on creating assistive devices for individuals with disabilities, wearable technologies for pain management, and neurostimulation systems to improve sleep and mobility. Moscoso Decl. ¶¶ 1, 3, 5. He is living and working in the United States on an H-1B visa. *Id.* ¶ 1. His status, however, imposes a number of restrictions on his ability to carry out his research and advance his career. *Id.* ¶¶ 8–9, 19–20. Dr. Moscoso’s nonimmigrant status limits opportunities to form new collaborations or pursue additional funding as it is difficult to justify awards that may extend beyond the expiration of his non-immigrant visa. *Id.* ¶¶ 19–20. Obtaining

permanent residency would allow Dr. Moscoso to access additional research funding opportunities reserved for lawful permanent residents and citizens, such as NIH and DARPA grants, and make him eligible for additional leadership roles within his current institution. *Id.* ¶¶ 9, 19. After two months of work, he filed an EB-1A petition in December 2025 based on his record of research contributions and inventions in biomedical engineering and medical-device technology. *Id.* ¶ 10–16. USCIS is still adjudicating his petition. *Id.* ¶ 10.

Plaintiff Tsai, a Taiwanese citizen, is an accomplished researcher and academic specializing in cancer biology, pharmacology, and immunotherapy. Tsai Decl. ¶¶ 1, 7; FAC ¶ 21. A member of AAUP, he is in the United States on a nonimmigrant F-1 student visa and has filed an EB-2 petition with a request for a national interest waiver to continue his cancer research in the United States and lend his expertise to addressing critical healthcare challenges. Tsai Decl. ¶¶ 3, 4, 6, 7. Plaintiff Tsai has received strong interest from potential collaborators at the Center for Cardiovascular Research at Nationwide Children’s Hospital and The Ohio State University. *Id.* ¶ 16. However, delays in securing his visa jeopardize these collaborations, as most funding opportunities from the National Institutes of Health and National Cancer Institute require permanent residency. *Id.* Without timely resolution, his research projects could lose essential funding, slowing progress, delaying clinical trials, and limiting the dissemination of findings through publications and conferences. *Id.* ¶ 16. His work cannot be rebuilt in Taiwan. *Id.* ¶¶ 18–19. In addition, the delay is creating an economic and emotional strain on Tsai’s household as his wife is unable to work as a derivative of his F-1 nonimmigrant status, though she would be able to upon issuance of his EB-2 visa. *Id.* ¶ 17.

Plaintiff Djorgbenoo is a Ghanaian citizen, in the United States on a nonimmigrant F-1 student visa and is working through the OPT program as an applied chemist. Djorgbenoo Decl.

¶¶ 1, 5. His current work authorization expires in January 2027. *Id.* ¶ 1. After months of meticulous effort to compile his application, he filed an EB-2 National Interest Waiver petition in March 2026 based on his ongoing work which is both of public-health and industrial importance. *Id.* ¶¶ 2, 6, 9. USCIS is still adjudicating his petition. *Id.* ¶ 2. If delays in obtaining an EB-2 visa make it so he is not able to remain in the United States, he will not only lose employment opportunities, but opportunities for collaboration with U.S. institutions. *Id.* ¶¶ 7–8. Delays would also have an impact on his family, forcing them to uproot their lives and disrupting his children’s education and overall well-being. *Id.* ¶ 10.

Plaintiff American Association of University Professors (AAUP) is a nonprofit membership association and labor union of faculty, graduate students, and other academic professionals with chapters at colleges and universities throughout the country. Wolfson Decl. ¶ 4; FAC ¶ 17. AAUP’s mission is to advocate for its members in relation to all aspects of their relationship to their employers and federal, state, and local governments; advance academic freedom and shared governance; define fundamental professional values and standards for higher education; promote the economic security of faculty, academic professionals, graduate students, postdoctoral fellows, and all those engaged in teaching and research in higher education; help the higher education community organize to accomplish their goals; and ensure higher education’s contribution to the common good. Wolfson Decl. ¶ 6. AAUP has an interest in American universities being able to hire and retain the most talented individuals, as well as interest in ensuring that its members can achieve professional success and access professional opportunities. *Id.* ¶ 8.

Many of AAUP’s members are noncitizens in U.S. academic and research positions who are pursuing or are eligible to pursue employment-based immigrant visas under 8 U.S.C.

§ 1153(b), including EB-1 and EB-2 visas, including Plaintiffs Moscoso, Tsai, and Cerna-Chavez. Wolfson Decl. ¶¶ 8–9; Moscoso Decl. ¶ 5; Tsai Decl. ¶ 6; Cerna-Chavez Decl. ¶ 5; FAC ¶ 17. Some AAUP members have approved employment-based petitions but are unable to adjust their status due to visa backlogs in their categories. *See, e.g.*, Wolfson Decl. ¶ 8 (discussing broader membership), ¶¶ 13–14 (discussing member Roe 1); Roe 2 Decl. ¶¶ 3–4.

Plaintiff UAW is a labor organization that works to protect the rights of working people and improve working conditions. Carey Decl. ¶¶ 2–3. UAW members include, among others, graduate students, researchers, and other academic employees. *See id.* ¶ 2; FAC ¶ 18. UAW’s Higher Education Department, in particular, aims to increase security and support for its members who are international academic workers—a mission it has long worked towards by providing immigration-related resources to its members, and by advocating for international workers before employers, legislatures, and courts. Carey Decl. ¶¶ 3–4.

Among UAW’s members are people who have applied or plan to apply in the near future for employment-based immigrant visas, including EB-1 and EB-2 visas, and meet the statutory criteria for the grant of such visas. Carey Decl. ¶¶ 7–8. UAW has members who have applied for EB-1 and EB-2 visas from oversubscribed countries whose ability to obtain permanent residence depends on the orderly allocation of limited visa numbers. *Id.* ¶¶ 9–12. UAW has a direct interest in protecting its members from an unauthorized payment-based pathway that disadvantages them in the competition for capped EB-1 and EB-2 visas. *See* FAC ¶ 18.

LEGAL STANDARD

Defendants have moved to dismiss the complaint for lack of jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1). When reviewing such a motion, the Court must accept as true all of the factual allegations contained in the complaint and draw all reasonable inferences in favor of the plaintiff. *See Schmidt v. U.S. Capitol Police Bd.*, 826 F. Supp. 2d 59, 65 (D.D.C.

2011). The court may consider such materials outside the pleadings as it deems appropriate to resolve the question whether it has jurisdiction in the case. *Id.* The Court may also consider “additional declarations or affidavits provided by a plaintiff to support standing,” *Ctr. for Biological Diversity v. U.S. Int’l Dev. Fin. Corp.*, 585 F. Supp. 3d 63, 70 (D.D.C. 2022), as well as other “undisputed facts evidenced in the record,” *Tanner-Brown v. Jewell*, 153 F. Supp. 3d 102, 108 (D.D.C. 2016) (quoting *Herbert v. Nat’l Acad. of Scis.*, 974 F.2d 192, 197 (D.C. Cir. 1992)).

ARGUMENT

Because of the Gold Card Program, each Plaintiff has “suffered or likely will suffer an injury in fact,” that “was caused or will be caused by the defendant,” and that “likely would be redressed by the requested judicial relief”—that is, vacatur of the program. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 380 (2024). The Gold Card Program creates a competitive advantage for Gold Card applicants that pushes those applicants through the process to quickly secure a priority date, leaving other applicants behind them in line. As the White House has stated, “[t]he Gold Card *prioritizes* entry for high-value contributors,” White House Fact Sheet, *supra* n.8 (emphasis added), enabling Gold Card applicants to “receive U.S. residency in record time,” Gold Card Website, *supra*. The Gold Card Program also allows individuals who would not otherwise be eligible for EB visas to take from the limited pool for a given year, by allowing them to evade the statutory requirements by making a financial “gift.” The resulting delay, particularly for applicants like AAUP and UAW’s members from backlogged countries, will impede the professional advancement of the Individual Plaintiffs and members of AAUP and UAW and may force them to find ways to maintain their nonimmigrant statuses while waiting for their immigrant visas to become available. Plaintiffs thus have standing to seek redress of the injury caused by the Gold Card Program.

I. The Gold Card Program harms the Individual Plaintiffs and members of AAUP and UAW.

A. The Gold Card Program creates a substantial risk of delay in obtaining a visa for the Individual Plaintiffs and members of AAUP and UAW.

At several steps of the EB-visa process, applicants proceed on a first-come, first-served basis. By design, though, the Gold Card applicants move through those steps more quickly than statutorily eligible applicants, like the Individual Plaintiffs and members of AAUP and UAW, thus putting Gold Card applicants ahead in line and, necessarily, delaying the receipt of visas by others. *See* Exec. Order 14351, § 3(a) (directing Defendants to establish a process for “expedited adjudication of Gold Card petitions”). These delays, in turn, cause real, cognizable harm. *See Babaei v. U.S. Dep’t of State*, 725 F. Supp. 3d 20, 26 (D.D.C. 2024) (recognizing that “judges in this District have consistently held” that similar harms flowing from delays in visa processing constitute injury-in-fact).

1. The Gold Card Program puts EB applicants applying through the statutory pathway at a competitive disadvantage.

Gold Card applicants have a meaningful timing advantage at two stages of the application process. First, Gold Card applicants can submit their applications—and thus obtain priority dates—more quickly. Second, the review time for Gold Card petitions is a fraction of the review time for applications from other applicants. As a result, Gold Card applicants can reach petition approval sooner, which secures their place in line for visa approval. Because of the limited number of visas available, those advantages have the effect of delaying the receipt of visas by non-Gold Card applicants—particularly those applying from backlogged countries.

To start, Gold Card applications take substantially less time to prepare than Plaintiffs’ applications. For non-Gold Card applicants, the application requirements for both EB-1 and EB-2 visas are demanding. As explained above, *supra* pp. 6–7, non-Gold Card EB-1A and EB-2

applicants must first develop a record of professional achievement, and then assemble extensive evidence showing that the record satisfies demanding statutory and regulatory standards. 8 C.F.R. § 204.5(h)–(k). For a scientist, that may mean publications, peer review, grant support, or widespread institutional reliance. For an investor or entrepreneur, it may mean patents, product adoption, revenue, investment, or evidence that the work has changed practice in the field. The applicant must then convert that record into a petition that maps the evidence to USCIS’s criteria and can withstand detailed agency scrutiny. *Rand Decl.* ¶ 12. This process typically takes months. *See, e.g., Estrada-Montaña Decl.* ¶¶ 7–13; *Moscoso Decl.* ¶ 10; *Djorgbenoo Decl.* ¶ 9; *Hernandez Cepeda Decl.* ¶ 6; *Wolfson Decl.* ¶ 14.

By contrast, the Gold Card Program replaces the statutorily mandated, time-intensive, merits-based showings with a monetary payment and a streamlined application that, according to Defendants, takes about five hours to complete. *See* Supporting Statement at 7. The Gold Card Program moves Gold Card applicants through USCIS processing quickly through a custom Gold Card portal (www.trumpcard.gov). A Gold Card applicant secures a priority date (and the all-important place in line) in a matter of minutes through that portal. From there, the Gold Card applicant is ushered through the remaining steps with concierge-level service: USCIS issues a notice directing the applicant to log in to an online account to upload Form I-140G. Gold Card Website *supra*, *Essential Information and Guidance* (“What are applicants responsible for and how can they apply?”). The Form I-140G does not require anywhere near the level of documentation non-Gold Card applicants must provide, focusing on the \$1 or \$2 million “gift.” *See* Form I-140G at 7–8.¹³

The advantages for Gold Card applicants continue at the review stage after submission of

¹³ <https://www.uscis.gov/sites/default/files/document/forms/i-140g.pdf>.

the application. Because the requirements of Gold Card Form I-140G are so minimal, Gold Card applicants may reach an approvable, visa-ready posture “in a matter of weeks.” *See* Gold Card Website, *supra*, *Essential Information and Guidance* (“How long does the process take?”). By contrast, because of the extensive showing required for statutorily eligible EB-1A and EB-2 national interest waiver applicants, the review process is longer and, often, requires submission of additional information, such as a “request for evidence” or Notice of Intent to Deny. 8 C.F.R. §§ 103.2(b)(8), (11); 22 C.F.R. § 42.63(c). When that occurs, an EB-1A and EB-2 national-interest-waiver applicant may need to submit additional records, expert support, and legal argument directed to the applicant’s professional accomplishments, proposed endeavor, or eligibility for a waiver. *Rand Decl.* ¶ 18. Gold Card applicants thus move to approval quickly, while statutorily eligible applicants are subject to prolonged review of evidence of sustained acclaim, national importance, or other showings of merit.

The substantial advantages in the application process are increased by the staff dedicated to processing Gold Card applicants. According to Defendants, the ratio of staff to applicants is higher by a multiple of at least 10 for Gold Card applicants compared to that of non-Gold Card applicants. *See* Defs. Mem. 19. The inevitable result is faster adjudication of Gold Card applications. Indeed, current USCIS-published processing times for EB-1A and EB-2 classifications may exceed 28 months. *See supra*, n.5. Meanwhile, Defendants indicate that Gold Card processing will take only weeks. Gold Card Website, *supra*, *Essential Information and Guidance* (“How long does the process take?”). Gold Card applicants are thus on a fast track to approval, while other applicants may still be assembling their record of accomplishments or defending it before USCIS.

Defendants’ contention that “Gold Card applicants will not *necessarily* have their petitions adjudicated faster than any non-Gold-Card applicant,” Defs. Mem. 8 (emphasis added); *see id.* at 21, is both wrong and misleading. To start, Gold Card applicants “necessarily” can submit a complete application and receive a priority date more quickly than other applicants, because the Form I-140G and the eligibility criteria are designed expressly to create “an expedited process.” Exec. Order 14351, § 2. And the review after submission is streamlined as well, because that review focuses on a single, easily answered question: did the applicant make the requisite monetary gift? *See* Defs. Mem. 9 (conceding that “a Gold Card application may require less processing time” because “the \$1-or-\$2-million gift provides evidence of eligibility”). By contrast, the review for other EB applicants entails a comprehensive analysis of a voluminous submission of publications, degrees, and other achievements. The Court, therefore, should not credit Defendants’ memorandum when it disputes the allegation that the Gold Card applicants move “through a streamlined application and adjudicatory process that gives them access to earlier priority dates and faster approval timelines.” Defs. Mem. 16–17 (quoting FAC ¶ 5).¹⁴

¹⁴ As explained in Plaintiffs’ response to Defendants’ motion for relief from Local Rule 7(n)(1), if the Court has any hesitation in rejecting Defendants’ assertion that Gold Card applicants “largely proceed through the same process” as other EB applicants, Defs. Mem. 20, it should order Defendants to produce the administrative record and provide Plaintiffs an opportunity to supplement their opposition to the motion to dismiss. *See Immigrant Advocs. Response Collaborative v. United States*, Civ. No. 25-2279 (TNM), 2026 WL 746923, at *7–8 (D.D.C. Mar. 17, 2026) (accepting the plaintiffs’ allegations about a challenged policy in resolving a motion to dismiss where the defendants refused to provide the administrative record); *Vargus v. McHugh*, 87 F. Supp. 3d 298, 301–02 (D.D.C. 2015) (compelling production of the administrative record in light of agency affidavits about the challenged action submitted in support of a motion to dismiss and noting the “‘asymmetry in information that undermines the reliability of a court’s review’” “where one party might be unaware of some parts of the record” (quoting *Boswell Mem’l Hosp. v. Heckler*, 749 F.2d 788, 793 (D.C. Cir. 1984)); *Owner-Operator Indep. Drivers Ass’n v. Foxx*, Civ. No. 12-1158 (BAH), 2015 WL 13651262, at *4 (D.D.C. Mar. 10, 2015) (denying a motion to dismiss where the parties’ dispute as to standing required production of the administrative record).

If factual disputes relevant to standing remain after production of the administrative record, discovery may be appropriate. *See Doe v. Off. of Pers. Mgmt.*, 813 F. Supp. 3d 156, 179 (D.D.C.

2. The Gold Card Program reduces available visas for EB applicants applying through the regulatory pathway.

Defendants agree that “visa numbers for Gold Card recipients, where approved, are charged against the statutorily available EB-1 or EB-2 numerical limits.” Wilson Decl., ECF 34-2 ¶ 3. Because of the Gold Card Program’s payment-based eligibility shortcut and expedited processing, Gold Card applicants reach the final stage of adjudication far more quickly, where they can claim the limited number of available visas ahead of applicants going through the standard process. Rand Decl. ¶¶ 20–28; Morrison Decl. ¶¶ 19, 37. Because the finite number of employment-based visas are awarded by priority date, even small differences in timing can result in months or even years of delay in receiving a visa. *See* Morrison Decl. ¶¶ 30–31. In addition, the Gold Card Program provides EB visas to individuals who do not meet the statutory criteria for receiving them, further depleting the number of visas available through other means. In short, giving visas to the wealthy, without regard for whether they satisfy the statutory criteria, through an “expedited” process criteria inherently delays the award of visas to others, like the Individual Plaintiffs and AAUP and UAW members, who do meet those criteria.

When the relevant visa category is current, the Gold Card applicant is poised to claim an available visa, while a non-Gold Card applicant who began at the same time may still be assembling an extensive evidentiary submission or awaiting petition adjudication after the agency has requested additional information. Rand Decl. ¶¶ 20, 23; Morrison Decl. ¶ 19. When the category is not current, the advantage is banked: once the final action date advances, Gold Card

2025) (“When faced with bona fide factual disputes, district courts have discretion to allow a party to obtain jurisdictional discovery if ‘allegations indicate its likely utility’ in determining a party’s standing to pursue the case.” (quoting *NRDC v. Pena*, 147 F.3d 1012, 1024 (D.C. Cir. 1998)); *AFL-CIO v. Dep’t of Labor*, 349 F.R.D. 243, 251 n.5 (D.D.C. 2025) (recognizing that “the contours of defendant agencies’ policies and actions [is] a question for which discovery can be appropriate in an APA case”).

applicants who have already moved through petition review are ready to request visas, while other applicants may still be working through the statutorily mandated merits-based process the Gold Card Program allows others to bypass. Rand Decl. ¶¶ 23–24; Morrison Decl. ¶ 19.¹⁵

This advantage is significant because EB-1 and EB-2 visas are subject to an annual cap, which was reached in both 2024 and 2025 for applicants from all countries and has already been reached for applicants from India this year. Morrison Decl. ¶ 14. When the cap is reached, no more visas can be issued for the remainder of the fiscal year. *Id.* ¶ 11. But because accelerated processing for Gold Card applicants gets them in line for a visa sooner, they are positioned to consume scarce visas before non-Gold Card applicants can complete the process prescribed by law. In a year when the annual limit is reached, that difference can push statutorily eligible applicants into the next fiscal year. *Id.* ¶ 11.

The problem is particularly acute for applicants—like AAUP members Roe 1 and 2 and UAW members Does 1 to 4—chargeable to China or India, because those countries are not “current,” meaning they have backlogged demand. Defendants describe backlogs as “aberrational,” Defs. Mem. 16, but they concede that EB-1 and EB-2 backlogs exist for China and India. *See id.* at 15–16. This backlog is not “aberrational”; visas for these two countries have been consistently backlogged since 2017.¹⁶ For statutorily eligible applicants chargeable to those

¹⁵ In addition, current wait times have been artificially reduced by the current pause in processing for applicants from 75 countries, under a policy recently declared unlawful. *Gomes v. Rubio*, Civ. No. 26-1883 (APM), 2026 WL 2212503, at *6–7 (D.D.C. July 31, 2026). Once that policy is lifted, the State Department will have to account for pent-up demand from applications with earlier priority dates that could not complete processing while the pause was in effect. That demand will force retrogression or may make a category unavailable for the remainder of the fiscal year. Morrison Decl. ¶¶ 21–23. Individuals caught on the wrong side of a retrogression can then be subject to months or years of additional delay, even if they began the process only weeks after a Gold Card applicant. *Id.* ¶ 23.

¹⁶ *See* Dep’t of State, *India Employment Preference Final Action Dates*, <https://travel.state.gov/content/dam/visas/employment-cut-off->

countries, additional Gold Card demand consumes visas in categories where demand already exceeds supply. Morrison Decl. ¶ 27. And because unused EB-1 and EB-2 visas may otherwise flow to other waiting applicants through the statutory reallocation process and per-country allocation rules, each Gold Card visa used in the EB-1 or EB-2 category reduces the finite supply available to relieve existing backlogs. *See* 8 U.S.C. § 1152(a)(3), (a)(5)(A); § 1153(b)(2)(A), (b)(3)(A); Morrison Decl. ¶ 26; Rand Decl. ¶ 27. Accepting the government’s prediction that there will be 1,592 Gold Card applicants per year and based on publicly available data, Plaintiffs’ expert has estimated that Roe 2 and Doe 4 would be pushed back by 796 numbers, extending their wait time for visas by approximately 2.4 to 3.8 years. *See* Morrison Decl. ¶¶ 24–35. For Roe 2, an additional wait of this duration is likely to make the difference between being able to claim his visa and losing the opportunity due to his age. Roe Decl. ¶ 8.

As to the impact on applicants from backlogged countries, Defendants respond only that Plaintiffs have not identified a specific member from such a country. *See* Defs. Mem. 23. But as Defendants acknowledge, the first amended complaint alleges that both AAUP and UAW have members “from countries for which there is currently a backlog of applicants.” FAC ¶¶ 17–18. And the declarations of AAUP’s President, UAW’s Higher Education Department Director, and Roe 2 establish that fact for particular members. *See* Wolfson Decl. ¶ 14; Carey Decl. ¶¶ 9–12; Roe 2 Decl. ¶¶ 3–4; *see also Ranchers-Cattlemen Action Legal Fund, United Stockgrowers of Am. v. USDA*, 573 F. Supp. 3d 324, 334–36 (D.D.C. 2021) (holding that an association need not identify in the complaint, or even at the motion to dismiss stage, a specific member with standing).

dates/Employment_Worldwide_India_FY23.pdf; Dep’t of State, *China Employment Preference Final Action Dates*, https://travel.state.gov/content/dam/visas/employment-cut-off-dates/Employment_Worldwide%20_China_FY21.pdf.

B. The advantages given to Gold Card applicants and predictable increased delays caused by the Gold Card Program cause injury to the Individual Plaintiffs and members of AAUP and UAW.

The delay that will inevitably result from Gold Card applicants being placed at the front of the line and receiving EB-1 and EB-2 visas creates harm for the Individual Plaintiffs and AAUP and UAW members analogous to the typical harm recognized in competitor standing cases. “The law of the circuit is clear that ‘any one competing for a governmental benefit may assert competitor standing when the Government takes a step that benefits his rival and therefore injures him economically.’” *Delta Constr. Co. v. EPA*, 783 F.3d 1291, 1299 (D.C. Cir. 2015) (quoting *Sherley v. Sebelius*, 610 F.3d 69, 72 (D.C. Cir. 2010) (cleaned up)). The doctrine of competitor standing “relies on economic logic to conclude that a plaintiff will likely suffer an injury-in-fact when the government acts in a way that increases competition or aids the plaintiff’s competitors.” *Canadian Lumber Trade All. v. United States*, 517 F.3d 1319, 1332 (Fed. Cir. 2008), *cited in Sherley*, 610 F.3d at 72. “To invoke competitor standing, a plaintiff must show that the challenged government action results in ‘an actual or imminent increase in competition, which increase [courts] recognize will almost certainly cause an injury in fact’ to any competitor in the relevant market.” *Air Excursions LLC v. Yellen*, 66 F.4th 272, 279–80 (D.C. Cir. 2023) (quoting *Sherley*, 610 F.3d at 73). The D.C. Circuit has applied that same logic where immigration rules alter competitive conditions for workers or applicants. *See Mendoza v. Perez*, 754 F.3d 1002, 1011–14 (D.C. Cir. 2014); *Save Jobs USA v. DHS*, 942 F.3d 504, 509–12 (D.C. Cir. 2019); *Wash. All. of Tech. Workers v. DHS*, 892 F.3d 332, 339–41 (D.C. Cir. 2018).

Agency action can cause this competitive harm either by expanding the pool of competitors, for example, by “allow[ing] new entrants into a fixed regulated market,” or by providing a more favorable set of conditions for a subset of competitors that will make it more difficult for others to compete. *Air Excursions LLC*, 66 F.4th at 280. Both are present here. The

Individual Plaintiffs and members of the Organizational Plaintiffs compete for a scarce governmental benefit: numerically capped EB-1 and EB-2 visas allocated through a priority-date system. The Gold Card Program introduces a preferred class of competitors into those same visa pools and gives them a streamlined means of obtaining the governmental benefit. The competitive injury, then, follows directly from the government’s creation of a program customized and structured for the express purpose of giving one group a competitive advantage over others. *See Sherley*, 610 F.3d at 72–74 (recognizing standing where agency guidelines expanded competition for a fixed pool of NIH research funds); *La. Energy & Power Auth. v. FERC*, 141 F.3d 364, 367 (D.C. Cir. 1998) (“We repeatedly have held that parties suffer constitutional injury in fact when agencies lift regulatory restrictions on their competitors or otherwise allow increased competition.”).

Defendants’ contrary argument misunderstands the injury. They emphasize that Gold Card petitions are few compared to ordinary EB-1 and EB-2 filings and that USCIS has not reassigned ordinary I-140 adjudicators to Gold Card work. *See* Defs. Mem. 18-19. But those points do not speak to the competition for visas. In a fixed allocation system, even a relatively small number of preferred competitors can matter. Each EB-1 or EB-2 visa issued through the Gold Card Program is a visa unavailable to statutorily eligible applicants in that category. Morrison Decl. ¶¶ 17, 24–26. And each such visa reduces the pool that may otherwise become available to relieve existing backlogs, including when unused visas spill down into lower-preference categories—*e.g.*, EB-1 numbers made available to EB-2 applicants—or when the INA permits otherwise available employment-based numbers to be issued without regard to the per-country ceiling for backlogged countries. *Id.* ¶ 25; *see* 8 U.S.C. § 1152(a)(3), (a)(5)(A); § 1153(b)(2)(A), (b)(3)(A).

Those delays cause cognizable harms. Each Individual Plaintiff has concrete plans to build careers and businesses in the United States, and has clear economic, professional, and personal interests in securing their visas. Because of the added delay, Plaintiffs Hernandez Cepeda, Estrada-Montaño, and Cerna Chavez must remain longer outside the United States, and are placed at a disadvantage for desirable employment and collaboration opportunities. *See, e.g.*, Hernandez Cepeda Decl. ¶¶ 12–14; Estrada-Montaño Decl. ¶¶ 14–18; Cerna Chavez Decl. ¶¶ 13, 15. For Plaintiffs Moscoso, Tsai, and Djorgbenoo, securing an employment-based visa would allow them to obtain more permanent employment, attain leadership positions, maintain and develop collaborations, and secure funding for long-term research projects. *See, e.g.*, Moscoso Decl. ¶¶ 8–9, 19–20; Tsai Decl. ¶¶ 15–16; Djogbenoo Decl. ¶ 8. For Plaintiff Djogbenoo, a delay in obtaining an employment-based visa would be particularly devastating as it would force him to uproot his family, including his U.S.-citizen daughter. Djogbenoo Decl. ¶ 10. And Plaintiff Tsai’s wife desires to work and contribute to the family’s income but cannot do so until he receives an EB-2 visa. Tsai Decl. ¶ 17. The Individual Plaintiffs therefore face economic harm for each week they are forced to wait outside of the United States or remain on nonimmigrant visas. *See, e.g., Babaei*, 725 F. Supp. 3d at 26 (delay in adjudicating visa that could injure plaintiff’s professional and financial interests can establish injury in fact); *Sheibani v. Garland*, Civ. No. 23-2773 (TJK), 2024 WL 3043156, at *3 (D.D.C. June 18, 2024) (same). The same goes for the identified AAUP and UAW members from China and India who have been approved by USCIS, but are awaiting visas due to backlogs. Roe 2, for example, is severely limited in employment options on their current employer-sponsored visa, and the longer they have to wait for their priority date to come current the greater the risk that their employer will withdraw sponsorship or decline to seek another extension. Roe 2 Decl. ¶ 6. In addition, their income is limited by the fact that, under their current

visa, they are not permitted to do any contract work to supplement their primary income. *Id.* ¶ 7. *See also* Wolfson Decl. ¶¶ 15–17 (discussing harms to Roe 1 associated with delay in receiving visa); Carey Decl. ¶¶ 9–12 (discussing harms to Does 1 through 4 associated with delays in receiving visas).

Defendants’ argument that applicants have no statutory right to prompt adjudication, Defs. Mem. 18, misses the point. Here, delay is the source of the competitive injury, not the basis of a cause of action. *Cf. Sheibani*, 2024 WL 3043156, at *3 (recognizing that delay in processing visa application can result in cognizable injury in fact even where plaintiff does not claim a right to a visa or to travel to the United States).

II. The harm caused by the Gold Card Program is redressable.

The redressability prong of standing is satisfied as well. Defendants’ brief argument that the injury is not redressable turns wholly on their argument that the Gold Card Program does not cause injury. *See* Defs. Mem. 19. As detailed above, however, Defendants’ establishment and implementation of the Gold Card Program grants certain applicants for EB-1 and EB-2 visas preferential treatment, and awards visas to individuals who would not otherwise obtain those visas, thereby placing the Individual Plaintiffs and AAUP and UAW members further back in line. *See supra* pp. 21–23, 25–26. An order setting aside the Gold Card Program would eliminate the preferred lane and restore the statutory allocation rules that have long been in place for EB-1 and EB-2 visas. *See Wash. All. of Tech. Workers*, 892 F.3d at 341 (holding that injury from increased competition can be redressed by order setting aside policy that allowed for that competition).

III. AAUP and UAW have associational standing based on the injuries to their members.

An organization has associational standing where: (1) “its members would otherwise have standing to sue in their own right”; (2) “the interests it seeks to protect are germane to the

organization’s purpose”; and (3) “neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977); see *Tanner-Brown v. Haaland*, 105 F.4th 437, 447 (D.C. Cir. 2024). Defendants challenge only the first requirement, Defs. Mem. 23–24, and AAUP and UAW satisfy all three requirements.

First, as discussed above, AAUP members Cerna, Moscoso, Tsai, and Roe 1 and 2, and UAW members Doe 1 to 5 have standing to bring a challenge to the Gold Card Program in their own right. As to the other factors, this action, which seeks to preserve the integrity and predictability of employment-based immigration pathways used by AAUP’s and UAW’s members, is germane to both organizations’ core missions. See *Nat’l Mar. Union of Am. v. Commander, Mil. Sealift Command*, 824 F.2d 1228, 1231 n.5 (D.C. Cir. 1987) (recognizing that unions’ “purposes unquestionably include maximizing their members’ employment”). As detailed in the declaration of its President, AAUP is committed to defending and advancing the rights of its non-citizen members to work in the U.S. under conditions that promote their scholarship, research, and economic security, as well as the interests of the universities and research institutions that recruit and rely on them. Wolfson Decl. ¶¶ 6–8. Likewise, UAW’s core mission is to improve the lives of its members, and to increase security and support for its members who are international academic workers. Its participation in this action is consistent with its activities providing immigration-related assistance to its members and advocating against immigration policies that harm its international worker members. See Carey Decl. ¶¶ 3–4.

Finally, “[m]ember participation is not required,” in a case like this one, where “Plaintiffs bring solely legal claims under the APA.” *Coal. for Humane Immigrant Rts. v. DHS*, 795 F. Supp. 3d 7, 13 (D.D.C. 2025) (first quoting *Ctr. for Sustainable Econ. v. Jewell*, 779 F.3d 588, 597 (D.C.

Cir. 2015)); *Robert F. Kennedy Human Rts. v. Dep't of State*, Civ. No. 25-1774 (JEB), 2026 WL 820811, at *11 (D.D.C. Mar. 25, 2026) (recognizing that individual member participation is not required where “[p]laintiffs seek vacatur rather than damages” (citing *UFCW Loc. 751 v. Brown Grp.*, 517 U.S. 544, 533–54 (1996))).

CONCLUSION

For the foregoing reasons, the Court should deny the Motion to Dismiss.

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Respectfully submitted,

/s/ Harold Craig Becker

HAROLD CRAIG BECKER (D.C. Bar No. 371239)
NORMAN EISEN (D.C. Bar No. 435051)
STEVE JONAS (D.C. Bar No. 90037069)
BRIAN C. WARD (*pro hac vice*)
LINDSAY W. ZIMLIKI (D.C. Bar No. 475890)
DEMOCRACY DEFENDERS FUND
600 Pennsylvania Avenue SE, #15180
Washington, DC 20003
(202) 594-9958
craig@democracydefenders.org

SARAH S. WILSON (D.D.C. Bar No. GA0058)
DAVID KIM (D.D.C. Bar No. IL0143)
COLOMBO & HURD PL
301 E. Pine Street, #450
Orlando, Florida 32801
(407) 478-1111

ALLISON M. ZIEVE (D.C. Bar. No. 424786)
ADAM R. PULVER (D.C. Bar No. 1020475)
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000

Attorneys for Plaintiffs