

DECLARATION OF JESSICA VAUGHAN

BEFORE ME, the undersigned authority, personally appeared, Jessica M. Vaughan who upon being first duly sworn, states as follows:

1. My name is Jessica M. Vaughan, and I serve as Director of Policy Studies for the Center for Immigration Studies (“CIS”), a Washington, D.C.-based research institute that examines the impact of immigration on American society and educates policymakers and opinion leaders on immigration issues. I have worked with the CIS since 1992, and my area of expertise is immigration policy and operations. I have extensively covered the topic of visa programs, regulations and policy.

2. Prior to joining CIS, I served as a Foreign Service Officer with the State Department in Belgium and Trinidad & Tobago. I have had articles published in the Washington Post, Boston Globe, The Economist, the National Interest, Providence Journal, Hartford Courant, Arizona Republic and other publications. My articles can be found at www.cis.org. I have testified before Congress more than a dozen times, and several times before state legislatures. I advise state and local lawmakers and agencies on immigration issues. I have served as an expert witness in several state and federal court cases. I am frequently cited in news-media reports on immigration and I have appeared many times on national, international and local broadcast news programs. I have given presentations at many academic, government and law enforcement conferences and trainings as a subject matter expert on immigration. I earned a Master’s degree from Georgetown University and a Bachelor’s degree in International Studies at Washington College in Maryland.

3. I have spent nearly 30 years investigating and researching the policies and actions of the government agencies in charge of implementing the nation’s immigration laws, namely the U.S. Department of Homeland Security (“DHS”) and its component agency United States Citizenship and Immigration Services (USCIS) and their predecessor agency the Immigration and Naturalization Service (“INS”). I have written numerous Freedom of Information Act requests and examined numerous government and academic data and reports on immigration. I have interviewed U.S. and foreign immigration officials, including consular officers, immigration benefits examiners, and fraud investigators. The expertise I have developed has allowed me to understand and recognize the actual effects and significance of the discretionary policy actions taken and regulations promulgated by the prior agency INS and the current agency DHS and its component agency USCIS that concern the entry into and settlement within the United States by large numbers of foreign nationals.

4. Based on my experience, I can identify at least 80 major related actions, which, collectively, have had significant impacts on the human environment that have also specifically injured the instant plaintiffs. As shown in the attached exhibit, these actions have allowed the entry of more than 40 million foreign nationals since 1970, including the areas in which

Plaintiffs live. Population growth itself is a primary concern of the National Environmental Policy Act (“NEPA”), and entails a host of environmental impacts (See discussion of the environmental impacts of population by Phil Cafaro, Ex. 6). In this declaration, therefore, I am attaching a report listing the actions which have caused population growth, and an estimate of the population growth impact in the United States as a whole and the areas where Plaintiffs are or have been affected.

5. These actions may not be an exhaustive list of all actions that regulate the entry and settlement into the United States. While I have tried to be comprehensive, it is difficult to catalog without omissions every regulation created by DHS (and legacy INS) and every instance where it has used its authority to implement laws, regulations or policies in a way in which its decisions are capable of affecting the numbers of foreign nationals entering and/or settling into this country as inhabitants in at least some way. Though parties argue about the boundaries of precisely how much authority is proper under various statutes, there is no doubt that, as a practical reality, the nation’s immigration agencies have frequently engaged in the kind of discretionary final actions to which NEPA applies to substantially create population growth in the United States.

FURTHER AFFIANT SAYETH NOT.

Jessica M. Vaughan

EXHIBIT A

**ACTIONS IMPLEMENTED OR COIMPLEMENTED BY THE DEPARTMENT
OF HOMELAND SECURITY THAT HAVE INCREASED OR WILL INCREASE
THE SETTLED POPULATION INTO THE UNITED STATES**

Introduction

The introduction of foreign nationals into the United States and the granting of citizenship is governed statutorily by the Immigration and Nationality Act (“INA”), which authorizes agencies of the federal government to regulate the entry and settlement of foreign nationals. The Fifth Circuit has described the INA as an “intricate regulatory scheme.” (*Texas v. U.S.A.*, 809 F. 3d 134 (5th Cir. 2015)). This regulatory scheme under the INA, while authorized by statute, allows for a significant degree of agency discretion. One immigration expert describes the administration of the INA as “a patchwork of promulgations,” and notes that “Congress has delegated broad, and, arguably, unchecked discretion to myriad government agencies to enforce the immigration statutes.” (RICHARD BOSWELL, *ESSENTIALS OF IMMIGRATION LAW* 1 (2d ed. 2009).) Given the patchwork quality of the immigration-related actions, that is, actions that regulate the entry and settlement of foreign nationals into the United States, there may be even more immigration related actions than I have been able to identify.

DHS and, within it, USCIS, the defendant in this lawsuit, is currently the agency with the ultimate authority to implement the actions that govern the entry and settlement of foreign nationals in the United States and the granting of citizenship.¹ The regulatory scheme set up by the INA has profound environmental impacts, because a very large number of foreign nationals have entered and settled into the United States, especially since the enactment of NEPA. The most significant of these impacts is population growth within the United States. DHS undoubtedly has the capacity to predict, assess and monitor how many foreign nationals enter the United States under the auspices of their actions, as well as the particular geographic areas in which they are settling or likely to settle. Such analysis is a necessary step in considering the environmental impacts of the actions implemented by DHS and USCIS.

Tens of millions of foreign nationals became settled inhabitants of the United States via these actions. Population growth occurs not because foreign nationals enter the country, but because a large number remain on a permanent or long-term basis. Such immigration-caused population growth and the environmental impacts can be particularly significant in certain local communities. These actions significantly increase the overall population of the United States, and noticeably increase the population concentration of many localities around the country. These actions all involve varying degrees of executive discretion, and are major final decisions that affect how many foreign nationals enter and settle in the United States, the pace of settlement, and locations of settlement.

The following table shows the total number of immigrants admitted to the United States from the inauguration of NEPA in 1970 to 2018, which is the most recent year for which data

¹ Other agencies with authority over programs that regulate the entrance and settlement of foreign nationals into the United States are the Department of State, the Department of Health and Human Services, and the Department of Labor, but, since the passage of the Homeland Security Act of 2002, DHS has ultimate authority over visa policy, even when these other agencies are involved in promulgating and implementing such regulations.

are available to the public. Figures are provided for the nation and for selected states. A significant share of these immigrants were processed by the State Department and issued immigrant visas. Those who did not enter on an immigrant visa were processed by INS or USCIS. Most of those processed in the United States for adjustment to permanent status would have originally entered on a non-immigrant visa, such as F-1 student visa, H-1B or L-1 non-immigrant work visa, J-1 exchange visa, or other legal status allowing for adjustment (and thus implicating the non-immigrant visa regulations discussed in this report). An unknown but small share of these settled immigrants will drop out of the population over time as a result of death, emigration, or deportation.

Immigrants Admitted to the United States and Selected States: 1970-2018	
National Total	40,169,091
Massachusetts	1,089,033
California	10,082,189
Pennsylvania	819,095
Source: DHS Yearbook of Immigration Statistics	

In addition, several hundred thousand foreign nationals who enter on non-immigrant visas are estimated to have overstayed these visas and settled illegally in the United States each year. According to the most recent report on overstays from DHS, approximately 300-400,000 aliens remained long after their authorized duration of stay.²

The population growth that produces environmental impacts occurs not only as a result of the settlement of foreign nationals, but also from children they give birth to here and from the subsequent entry of immigrating family members, known as chain migration. For example, it has been estimated that 336,400 beneficiaries of one such executive action, Temporary Protected Status, have added another 219,700 U.S.-born children to the population, making the true population impact of this action much larger than the number of the direct beneficiaries.³ Regarding the impact of chain migration, a prominent team of researchers has calculated a chain migration multiplier, based on data on family-sponsored immigration for the period 1996-

² “Fiscal Year 2018 Entry Exit Overstay Report,” Department of Homeland Security, available at https://cis.org/sites/default/files/2020-01/19_0417_fy18-entry-and-exit-overstay-report.pdf.

³ According to the plaintiffs in *Centro Presente v Trump*, the 242,900 citizens of El Salvador who had received TPS had 192,700 US-born children. The 93,500 citizens of Haiti who had received TPS had 27,000 U.S.-born children. See the plaintiffs’ filing in case 1:18-cv-10340, filed on February 22, 2018, <http://d279m997dpfwgl.cloudfront.net/wp/2018/02/TPS-Complaint-FINAL-FILED.pdf>.

2000.”⁴ According to these scholars, every 100 original immigrants to the United States during the period studied sponsored another 345 family members as immigrants. This multiplier (3.45) could be used to inform estimates of the number of additional immigrants that likely would be sponsored by the original beneficiaries of the agency programs described in the appendix. NEPA analysis of DHS programs should be expected to account for both U.S.-born children and chain migration in assessing the future environmental impacts of programs that lead to the entrance and settlement of foreign nationals in the United States.

Figure 1 shows annual immigration admissions to four selected states from 1970 to 2018. The impact of chain migration is apparent in these historical trends, as the annual numbers entering and settling have increased significantly, even though the base annual levels of immigration have not changed significantly since 1965. The only exception is the time period following the 1986 amnesty, when approximately 3 million illegal aliens and their family members were given permanent residency.

Despite the clear significant environmental impacts of the executive actions listed in this exhibit, none of them have ever gone through NEPA review. DHS has implemented and continues to administer these actions through the adoption of regulations and policy memoranda, and while NEPA applies to such final actions, neither the DHS nor its predecessor agency the INS did an environmental analysis before finalizing these actions.

Below, I list and briefly describe the Defendant’s and its predecessor agency’s actions which increased the population of the United States. I provide an estimate of the total numbers of people who have entered and settled into the United States through visas issued by Defendant. Where possible, I also provide estimates for certain U.S. states where these individuals have settled. DHS and its predecessor agency ignored the obligation to comply with NEPA on all these actions, until 2015. At that time, DHS inappropriately began to cite categorical exclusions that were not meant to apply to visa-related actions.

⁴ Stacie Carr and Marta Tienda, *Family Sponsorship and Late-Age Immigration in Aging America: Revised and Expanded Estimates of Chained Migration*, POPUL. RES. POLICY REV., Dec. 2013, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3884518/>.

Government Actions that have Increased Long Term Settled American Population

Grouped by Type of Regulation and Chronology

Refugee Visas

- 46 Fed. Reg. 45118 (Sept. 10, 1981): Initially implementing the Refugee Act of 1980 and setting out refugee procedures.
- 56 Fed. Reg. 26897 (Jun. 12, 1991): Implementing the procedures by which a refugee adjusts status to LPR)
- 57 Fed. Reg. 42883 (Sept. 17, 1992): Amending procedures for filing for LPR status.
- 62 Fed. Reg. 10312 (Mar. 6, 1997): Amending handling of refugee claims.
- 63 Fed. Reg. 3795 (Jan. 27, 1998): Establishing guidelines for the policy governing admitting the family members of refugees.
- 63 Fed. Reg. 30105 (Jun. 3, 1998): Changing procedures for refugees to adjust status to LPR.

Granting of Citizenship

- 47 Fed. Reg. 940 (Jan. 8, 1982): Regulatory language defining subject to the jurisdiction very broadly.

Non Immigrant Visas

- 52 Fed. Reg. 42590 (Nov. 5, 1987), with minor corrections at 53 Fed. Reg. 9172 (Mar. 21, 1988): Creation of number of various rules for entry, including temporary visitors for business or pleasure, border crossing cards, visas (B-visas, BCC-visas), student visas, temporary workers, spouses and children of certain non immigrant visa holders, and miscellaneous others.
- 59 Fed. Reg. 41818 (Aug. 15, 1994): Implementing new provisions of several temporary worker program.
- 59 Fed. Reg. 511101 (Oct. 7, 1994): Allowing certain temporary workers to apply to become lawful permanent residents (LPRs).
- 60 Fed. Reg. 44260 (Aug. 25, 1995): Corrected at 60 Fed. Reg. 52248 (Oct. 5, 1995): Adding T-visa.
- 62 Fed. Reg. 10422 (Mar. 7, 1997): Revising h-1, h-2, h-13(ii).
- 62 Fed. Reg. 48138 (Sept. 12, 1997): Revising visa for treaty investor.
- 63 Fed. Reg. 31872 (Jun. 10, 1998): Allowing F-1 students to work.
- 64 Fed. Reg. 29208 (Jun. 1, 1999): Revising H-1 and L-1 status during pending application, corrected at 64 Fed. Reg. 30103 (Jun. 4, 1999).
- 64 Fed. Reg. 32146 (Jun. 15, 1999): Extending period of duration of status for F and J nonimmigrants.

- 65 Fed. Reg. 10678 (Feb. 29, 2000): Revising petitions for H-1B, interim.
- 66 Fed. Reg. 31107 (Jun. 11, 2001): Created a new visa category for nurses.
- 66 Fed. Reg. 46697 (Sept. 7, 2001): Adding another V nonimmigrant visa.
- 67 Fed. Reg. 4783 (Jan. 31, 2002): Implementing new classification for trafficking victims.
- 67 Fed. Reg. 18062 (Apr. 12, 2002): Requiring change of status from B to F before taking course of study.
- 67 Fed. Reg. 54941 (Aug. 27, 2002): Reducing required course load for F and M students near border.
- 70 Fed. Reg. 23775 (May 5, 2005): Allocating additional H-1B visas under 2004 H-1B Visa Reform Act.
- 72 Fed. Reg. 18856 (Apr. 16, 2007): Changing petitioning requirements for O and P visas.
- 72 Fed. Reg. 19100 (Apr. 17, 2007): Giving more flexibility to USCIS in processing applications.
- 73 Fed. Reg. 53014 (Sept. 17, 2007): Establishing the requirements and procedures for seeking U visa status; updated further by 73 Fed. Reg. 75560 (Dec. 12, 2008)
- 73 Fed. Reg. 15389 (Mar. 24, 2008): Clarifying treatment of H-1B workers subject to numerical limitations.
- 73 Fed. Reg. 61332 (Oct. 16, 2008): Extending TN visas.
- 73 Fed. Reg. 18944, April 8, corrected at 74 Fed. Reg. 26514 (Jun. 3, 2009): Extending period graduated students can stay in the country while working in the OPT program.
- 73 Fed. Reg. 55683 (Sept. 26, 2008): Adjusting Student and Exchange Visitor Program fees.
- 73 Fed. Reg. 75540 (Dec. 12, 2008): Allowing T or U visa holders to apply for permanent resident status.
- 73 Fed. Reg. 76891 (Dec. 18, 2008): Removing certain limitation on H-2A employers.
- 75 Fed. Reg. 47699 (Aug. 9 2010): Granting work authorization for dependents of foreign officials.
- 77 Fed. Reg. 8119 (Feb. 14, 2012): Extending validity of L visas by DOS beyond that set by DHS.
- 77 Fed. Reg. 76353 (Dec. 28, 2012): Making corrections to H-2A petitions, rules.
- 78 Fed. Reg. 24047 (Apr. 24, 2013): Making interim rule, with the Department of labor, changing methodology of H-2B petitions.
- 78 Fed. Reg. 58867 (Sept. 25, 2013): Issuing notification of numerical limitation for Northern Mariana Islands for FY 2014.
- 78 Fed. Reg. 68992 (Nov. 13, 2013): Creation of T visa for those approved by DHS.
- 74 Fed. Reg. 61517 (Nov. 25, 2013): Implementing the S-visa classifications (DHS created the program).
- 79 Fed. Reg. 58241 (Sept. 29, 2014): Setting numerical limitations on CW-1 workers in northern Mariana Islands.

- 80 Fed. Reg. 10284 (Feb. 25, 2015): Allowing H-4 dependent spouses to have work permits.
- 80 Fed. Reg. 24145 (Apr. 29, 2015): Implementing wage methodology for H-2B program.
- 80 Fed. Reg. 63911 (Oct. 10, 2015): Setting numerical limitation of CW-1 workers in Northern Mariana Islands.
- 81 Fed. Reg. 2068, January 15, 2016 (loosening employer rules for H-1B1, CW, and EB visas)
- 81 Fed. Reg. 60581 (Sept. 2, 2016): Setting numerical limitation of CW-1 workers in Northern Mariana Islands.
- 81 Fed. Reg. 82398 (Nov. 18, 2016): Increasing flexibility in worker programs.
- 81 Fed. Reg. 92266 (Dec. 19, 2017): Changing regulations governing T visas.
- 82 Fed. Reg. 32987 (Jul. 19, 2017): Increasing H-2B agricultural workers.
- 83 Fed. Reg. 24905 (May 31, 2018): Increasing agricultural workers.
- 84 Fed. Reg. 888 (Apr. 1, 2019): Changing H-1B program, filing petitions)

Entrance without Visas

- 54 Fed. Reg. 24901 (Jun. 30, 1988): Creation of the Visa Waiver Program
 - 73 Fed. Reg. 67711 (Nov. 17, 2008): Addition of countries to the Visa Waiver Program: Czech Republic, Estonia, Hungary, Latvia, Lithuania, the Republic of Korea, and the Slovak Republic
 - 73 Fed. Reg. 79595 (Dec. 30, 2008): Addition of Malta to the Visa Waiver Program
 - 77 Fed. Reg. 64409 (Oct. 22, 2012): Addition of Taiwan to the Visa Waiver Program
 - 79 Fed. Reg. 17852 (Mar. 31, 2014): Addition of Chile to the Visa Waiver Program

Employment Immigrant Visas

- 56 Fed. Reg. 60897 (Nov. 29, 1991): Creation of employment visa program.
- 58 Fed. Reg. 44606 (Aug. 24, 1993): Creation of a pilot investor program.
- 71 Fed. Reg. 19805, (Apr. 18, 2006): Rules for special alien broadcasters.
- 81 Fed. Reg. 2068 (Jan. 15, 2016): Allowing increased work authorizations.
- 81 Fed. Reg. 82398 (Nov. 18, 2016): Increased benefits for certain work based visa holders.

Family Immigrant Visas

- 57 Fed. Reg. 41053 (Sept. 9, 1992): Expanding family members eligible for immigration benefits.
- 60 Fed. Reg. 38947 (Jul. 31, 1995): Clarifying the process of adjusting status.
- 61 Fed. Reg. 13061 (Mar. 26, 1996): Creating a process for victimized relatives.

- 71 Fed. Reg. 35732 (Jun. 21, 2006): Creating an easier process for sponsoring family members.
- 72 Fed. Reg. 19100 (Apr. 17, 2007): Making it easier to grant immigration benefits.
- 76 Fed. Reg. 28303 (May 17, 2011): Allowing certain petitioners to file abroad.

Student and Exchange Visitor Program

- 58 Fed. Reg. 15196 (Mar. 19, 1993): Implementation of overhaul of the exchange visitor program.
- 67 Fed. Reg. 60107 (Sept. 25, 2002): Initial implementation overall of (still operating) Student and Exchange Visitor Program (SEVP) visa program. Further revisions by DOS including:
 - 67 Fed. Reg. 76256 (Dec. 11, 2002): Changing retention and reporting for SEVP
 - 69 Fed. Reg. 39814, July 1, 2004: Authorizing fee collection for SEVP)
- 70 Fed. Reg. 96 (May 19, 2005): extending stay for professors and researchers (coordinated with DHS).
- 71 Fed. Reg. 33237 (Jun 8, 2006): au pair program expanded.
- 72 Fed. Reg. 33669 (Jul. 2007): Expanding Trainee and intern program.
- 73 Fed. Reg. 34861 (Jun. 19, 2008): au pair program expanded.
- 73 Fed. Reg. 55683 (Sept. 26, 2008): Adjusting program fees, recertification of schools.
- 75 Fed. Reg. 48555 (Aug. 11, 2010): expanding the trainee and intern program.
- 75 Fed. Reg. 65975 (Oct. 27, 2010): revising secondary school rules for exchange program.
- 76 Fed. Reg. 23177 (April 26, 2011): Amending summer work travel program.
- 80 Fed. Reg. 23680 (Apr. 29, 2015): Expanding the Student Exchange Visitor program.
- 81 Fed. Reg. 4945 (Jan. 29, 2016): Amending Teacher category in exchange program.
- 81 Fed. Reg. 13040 (Mar. 11, 2016): Expanding time F-1 visa holders can stay and work in the country after graduation in the “OPT program.”