

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

URBAN EQUALITY NOW,

Plaintiff,

vs.

**SECRETARY OF THE DEPARTMENT OF
HOMELAND SECURITY JEH JOHNSON,
and USCIS DIRECTOR LEON
RODRIGUEZ,**

Defendants.

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CIVIL ACTION NO.

PLAINTIFF’S ORIGINAL COMPLAINT

COMES NOW Plaintiff Urban Equality NOW (“Urban Equality NOW” or “Plaintiff”) and brings this mandamus and declaratory action against Defendants Department of Homeland Security (“DHS”) Secretary Jeh Johnson and United States Citizenship and Immigration Services (“USCIS”) Director Leon Rodriguez and in support of its cause of action alleges as follows:

I. PARTIES

1. Plaintiff Urban Equality NOW is a non-profit corporation established under the laws of the State of Texas.

2. Jeh Johnson, Secretary of the Department of Homeland Security, is the head of the government agency based in Washington, D.C., and must be served with process pursuant to regulations by serving the Office of the General Counsel, United States Department of Homeland Security, Washington, D.C. 20528.

3. Defendant USCIS Director Leon Rodriguez is the head of the government agency based in Washington, D.C., and may be served with process by serving the Office of the

Principal Legal Advisor, U.S. Citizenship and Immigration Services, United States Department of Homeland Security, 425 I Street NW, Room 6100, Washington, D.C. 20536.

II. JURISDICTION AND VENUE

4. This court has proper jurisdiction pursuant to 28 U.S.C. §1361, also known as “The Mandamus Act.” The statute provides that “the district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” In addition, Plaintiff has raised a federal question pursuant to 28 U.S.C. § 1331, to wit, 28 U.S.C. § 2201, the Declaratory Judgment Act.

5. Venue properly lies in this Court because the events giving rise to this suit (specifically the gerrymandered district addressed herein) lies in the District and Division in which suit has been filed.

III. FACTS SUPPORTING PLAINTIFFS’ CLAIMS

6. According to DHS, its mission includes managing U.S. borders and administering U.S. immigration laws. To administer U.S. immigration laws, DHS oversees USCIS.

7. According to USCIS, its mission includes granting immigration and citizenship benefits and ensuring the integrity of our immigration system.

8. DHS and USCIS have been charged with implementing various provisions of the Immigration and Nationality Act, including § 203(b).¹

9. Pursuant to INA § 203(b)(5), immigrant visas (i.e., Green Cards) “shall be made available...to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise.”

¹ Codified at 8 USC § 1153(b).

10. Foreign nationals intending to avail themselves of the opportunity established pursuant to INA § 203(b)(5) must invest at least one million dollars (\$1,000,000) or invest at least five hundred thousand dollars (\$500,000) in a targeted employment area. 8 USC § 1153(b)(5)(C)(ii). *See also* 8 C.F.R. § 204.6(f)(2).

11. “Targeted employment area” (“TEA”) means “at the time of the investment, a rural area or an area which has experienced high unemployment (of at least 150 percent of the national average rate).” 8 USC § 1153(b)(5)(B)(ii).

12. Immigrant investors may establish an investment lies within a TEA if

- a. the investment exists in a rural area, defined as “any area not within either a metropolitan statistical area (as designated by the Office of Management and Budget) or the outer boundary of any city or town having a population of 20,000 or more;” 8 C.F.R. § 204.6(e) or
- b. the State has designated a “particular geographic or political subdivision located within a metropolitan statistical area or within a city or town having a population of 20,000 or more within such state as an area of high unemployment (at least 150 percent of the national average rate).” 8 C.F.R. § 204.6(i).

13. High unemployment areas require:

- a. “Evidence that the metropolitan statistical area, the specific county within a metropolitan statistical area, or the county in which a city or town with a population of 20,000 or more is located, in which the new commercial enterprise is principally doing business has experienced an average

unemployment rate of 150 percent of the national average rate;” 8 C.F.R. § 204.6(j)(6)(ii)(A) or

- b. “A letter from an authorized body of the government of the state in which the new commercial enterprise is located which certifies that the geographic or political subdivision of the metropolitan statistical area or of the city or town with a population of 20,000 or more in which the enterprise is principally doing business has been designated a high unemployment area. The letter must meet the requirements of 8 C.F.R. § 204.6(i).” 8 C.F.R. § 204.6(j)(6)(ii)(B).

14. Contrary to the statutory requirements, and its own regulations, DHS and USCIS routinely grant immigrant investor visas to foreign nationals who invest \$500,000 in areas that do not qualify as TEAs.
15. In one instance, a group of immigrant investors propose to build a hotel conference center in Laredo, Texas. The hotel site falls in U.S. Census Tract “16.02, Webb County, Texas.” That census tract had an unemployment rate of 1.4%, far less than the required 12.15% (1.5 times the then-current national average of 8.1%). To manufacture the appearance of compliance with the statutes and regulations, the immigrant investors gerrymandered an area composed of over 190 census tracts spanning 5 counties from Laredo to Brownsville, Texas. No rational basis exists for establishing a TEA using data for citizens 200 miles away. Further, no rational basis exists for the premise that job creation in “Census Tract 16.02, Webb County, Texas” will have any job creation benefit for residents of

Brownsville, Texas, who must travel in excess of 3 hours to reach the site. See Exhibit A.

16. DHS' and USCIS' over-permissive interpretation of the applicable statutes and regulations also permitted the approval of multiple projects in New York City, including:
 - a. A \$1.7 billion project along New York City's "Billionaire's Row," where unemployment is nearly non-existent, linked to a poor neighborhood in East Harlem. The resulting TEA exists solely by virtue of each neighborhood's location adjacent to separate areas of New York City's Central Park. See Exhibit B.
 - b. A \$20 billion project ("Hudson Yards") located in lower Manhattan's upper-class West Chelsea area, where unemployment rates hover below 5%. The TEA submitted and approved by Defendants included the affluent West Chelsea Census Tract plus three tracts along the Hudson River and a final tract in West Harlem. The resulting unemployment rates exceed 18%. See Exhibit C.
 - c. A \$250 million office and condo tower in lower Manhattan, where unemployment rates approach a meager 3.8%. The resulting TEA exists thanks to Defendants' overly permissive policies that allow TEAs to use waterways to connect to impoverished areas, in this instance, public housing projects on the Lower East Side.

17. Upon information and belief, DHS and USCIS have approved similar TEA-based immigrant investor visa petitions, despite the fact that the investors have located their respective investments in affluent areas.
18. American citizens who actually experience high unemployment rates often are ethnic minorities, single mothers, and other economically disadvantaged U.S. citizens.²
19. Congress tasked DHS and USCIS with the ultimate responsibility for ensuring that immigrant investors who seek TEA-supported Green Cards do so by actually investing in areas experiencing high unemployment. Their collective failure to do so, however, deprives residents in these areas of the full benefit of the laws designed to assist them.
20. INA § 203(b)(5) only allocates 10,000 immigrant investor visas annually, which equates to approximately 3,300 investors, as spouses and eligible children count against the annual limit. With a limited number of investor visas annually, Defendants actually deprive truly economically distressed areas of the intended TEA opportunity when those tracts are used for gerrymandering TEA projects in affluent census tracts.
21. By approving the TEA-supported immigrant visa applications for areas that are usually White and affluent, DHS and USCIS have abrogated selective portions of the INA, a clear violation of Constitutionally-mandated separation of powers.

² According to the U.S. Bureau of Labor Statistics, African-American and Hispanic unemployment in February 2015 persisted at 10.4% and 6.6%, respectively. Both figures exceed White and Asian unemployment by 2%. A 2011 study by the Carsey School of Public Policy at the University of New Hampshire found that single mothers were nearly three times more likely to be unemployed, when compared to married mothers (14.2% versus 5.3%). Similarly, the U.S. Department of Labor found that U.S. military veterans experienced unemployment in 2013 (9%) and 2014 (7.2%) well above their civilian counterparts.

IV. STATEMENT OF CLAIMS

MANDAMUS RELIEF

22. Plaintiff Urban Equality NOW incorporates Paragraphs 1 through 20 hereinabove as if fully set forth herein at length.
23. In the Immigration and Nationality Act (INA), Congress conferred on Defendants a clear duty to adjudicate immigrant investor applications. Congress further set minimum standards and thresholds to qualify for immigrant investor visas.
24. Congress further stated its intent to stimulate investment in areas of high unemployment, including rural and urban areas. Congress tasked Defendants with establishing and enforcing regulations to effectuate that intent.
25. Defendants promulgated regulations that purportedly satisfied Congress' intent. Defendants, however, have failed to adjudicate immigrant investor petitions based on the letter or spirit of the law.
26. As a result, impoverished urban areas, the undeniable intended beneficiaries of INA § 203(b)(5)(B), continue to languish and suffer from inadequate investment and unemployment rates nearly double national averages.

DECLARATORY JUDGMENT

27. Plaintiff Urban Equality NOW incorporates Paragraphs 1 through 25 hereinabove as if fully set forth herein at length.
28. The explicit language of the INA requires immigrant investor identify a TEA before the immigrant investor may avail him/herself of the \$500,000 minimum investment. The INA, however, only requires the TEA be in an "area." Defendants, by regulation and policy memoranda, have permitted TEAs to exist in such a way as to frustrate Congress' explicit intent.

29. Urban Equality NOW seeks a Declaratory Judgment that the plain meaning and legislative intent behind the INA does not grant Defendants authority to implement regulations permitting gerrymandered TEAs that only satisfy Congressional mandates through the use of geographically disconnected areas, when cobbled together.

APPLICATION FOR PERMANENT INJUNCTION

30. Plaintiff Urban Equality NOW incorporates Paragraphs 1 through 28 hereinabove as if fully set forth herein at length.
31. Urban Equality NOW seeks an Order enjoining Defendants from granting applications under the INA where the immigrant investor seeks to avail him/herself of the benefits of INA § 203(b)(5)(B) through the use of gerrymandered TEAs.
32. Specifically, Urban Equality NOW seeks an Order from this Court enjoining Defendants from granting applications under INA § 203(b)(5)(B) unless the TEA includes one U.S. Census Tract wherein unemployment meets or exceeds the 150% threshold.

V. REMEDIES

33. WHEREFORE, Plaintiff prays that the Court grant him the following relief:
- a. For an Order directing Defendants to establish policies and procedures to ensure compliance with the Immigration and Nationality Act, with respect to immigrant investors under INA Sec. 203(b)(5)(B);
 - b. For an Order declaring Defendants' current policies and procedures implementing INA Sec. 203(b)(5)(B) inadequate and inconsistent with the statutory language and applicable Congressional intent;

- c. For an Order permanently enjoining Defendants from implementing INA Sec. 203(b)(5)(B) to permit Targeted Employment Areas be created in circumvention of INA Sec. 203(b)(5)(B);
- d. For an Order awarding Plaintiff the costs of the action;
- e. For an Order awarding Plaintiff its attorneys fees; and
- f. For an Order granting such other relief as may be necessary and appropriate.

VI. JURY TRIAL DEMAND

Plaintiff Urban Equality NOW demands a jury trial on all fact issues raised in this case.

Respectfully submitted,

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