

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

MANAGEMENT HEALTH SYSTEMS, LLC,  
d/b/a MEDPRO,  
1580 Sawgrass Corporate Parkway,  
Suite 200  
Sunrise, FL 33323;

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY,  
245 Murray Lane, SW  
Washington, DC 20528;

CHAD WOLF, in his official capacity as the  
Acting Secretary of Homeland Security,  
245 Murray Lane, SW  
Washington, DC 20528;

UNITED STATES CITIZENSHIP AND  
IMMIGRATION SERVICES,  
20 Massachusetts Avenue, NW  
Washington, DC 20529;

and

KENNETH T. CUCCINELLI, in his official  
capacity as the Senior Official Performing the  
Duties of the Director,  
20 Massachusetts Avenue, NW  
Washington, DC 20529;

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

## PRELIMINARY STATEMENT

1. Our healthcare industry cannot serve its constituency—patients—without an adequate supply of highly skilled and qualified healthcare professionals. This is no more true than in times of health crisis, as we are experiencing now due to the threat of the coronavirus. *See Interim US Guidance for Risk Assessment and Public Health Management of Persons with Potential 2019 Novel Coronavirus (2019-nCoV) Exposure in Travel-associated or Community Settings*, Ctrs. for Disease Control & Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/php/risk-assessment.html> (last updated Feb. 5, 2020) (warning that “[i]nfections with 2019-nCoV . . . are being reported in a growing number of international locations, including the United States”). And competition for such professionals (like competition for professionals in most specialty occupations) is steep. In recognition of that reality, Congress created the H-1B visa, which allows U.S. employers to temporarily employ foreign workers in specialty occupations. *See* 8 U.S.C. § 1101(a)(15)(H)(i)(b). Under the Immigration and Nationality Act (INA, or the Act), “upon petition of the importing employer,” the Secretary of Homeland Security “shall” determine whether to grant a petition for an H-1B visa. 8 U.S.C. § 1184(c)(1). And Congress recognized that it was not just important that U.S. employers be able to obtain temporary visas for specialty foreign workers—it recognized that employers should be able to obtain such visas *quickly*. As part of the American Competitiveness in the Twenty-first Century Act of 2000, Congress thus codified its view that petitions for H-1B visas “should be processed not later than 30 days after the filing of the petition.” Pub. L. No. 106-313, § 202(b), 114 Stat. 1251 (Oct. 17, 2000).

2. Management Health Systems, LLC, d/b/a MedPro (MedPro) is a leading healthcare staffing company that has for years relied on the H-1B visa program to hire highly qualified foreign-educated healthcare professionals and staff them at healthcare facilities across the U.S. MedPro’s clients often cannot locate and hire a sufficient number of qualified healthcare

professionals, and these facilities thus turn to MedPro to help them fill their vacancies. MedPro recruits both domestic and foreign professionals, and places them at client sites with unmet needs. MedPro files hundreds of visa petitions for healthcare professionals each year, and MedPro's ability to serve its clients depends on its petitions being adjudicated within a reasonable timeframe.

3. The U.S. Citizenship and Immigration Services (USCIS), a component of the U.S. Department of Homeland Security (DHS) and the agency tasked with adjudicating visa petitions, has historically had a solid track record for timely adjudicating H-1B visa petitions. Over the last three years, however, that has changed. *See generally* Am. Immigration Lawyers Ass'n, *Policy Brief: USCIS Processing Delays Have Reached Crisis Levels Under the Trump Administration* (Jan. 30, 2019), <https://www.aila.org/infonet/aila-policy-brief-uscis-processing-delays>.

4. MedPro brings this case because USCIS's delay in adjudicating MedPro's H-1B petitions has become untenable. MedPro has been waiting for the agency to adjudicate 156 H-1B petitions for 311 days and counting—a delay exceeding *ten times* the 30-day period Congress contemplated for the adjudication of H-1B petitions. And numerous inquiries and other attempts to prompt USCIS to adjudicate MedPro's petitions have proven unsuccessful. USCIS's dilatory adjudication is neither reasonable nor warranted.

5. MedPro thus seeks a judgment from this Court (i) compelling Defendants, under 5 U.S.C. § 706(1), to adjudicate MedPro's H-1B petitions listed in the chart below within 15 days of this Court's judgment (or, alternatively, to issue a writ of mandamus requiring Defendants to do so); (ii) requiring Defendants, under 8 C.F.R. § 103.7(e)(2)(i), to refund MedPro's premium-processing fees for the 9 petitions that MedPro paid that fee for; (iii) retaining jurisdiction of this case for a reasonable period of time to ensure Defendants' compliance with this Court's judgment; (iv) awarding MedPro, under 5 U.S.C. § 504 and 28 U.S.C. § 2412, reasonable attorneys' fees and

costs for the expenses it incurred in bringing this case; and (v) awarding any other relief the Court deems just and proper.

### **PARTIES**

6. Plaintiff MedPro is a Florida limited liability company with its headquarters in Sunrise, Florida. MedPro is a leading healthcare staffing company that places on assignment healthcare professionals such as laboratory medical technologists at healthcare facilities throughout the United States. To meet the high demand for these professionals, MedPro recruits and employs both U.S.- and foreign-educated healthcare professionals and regularly files visa petitions, including petitions for H1-B visas, on behalf of foreign-educated professionals.

7. Defendant United States Department of Homeland Security is an executive department of the United States government. Its headquarters are located at 245 Murray Lane, SW, Washington, DC 20528, but its governmental activities occur nationwide.

8. Defendant Chad Wolf is the Acting Secretary of Homeland Security and the head of DHS. He is charged with the administration and enforcement of our nation's immigration laws, including the adjudication of the H-1B visa petitions underlying this case. *See* 8 U.S.C. §§ 1101(a)(15)(H)(i)(b), 1184(c)(1); 8 C.F.R. § 103.2(b)(8)(i).

9. Defendant United States Citizenship and Immigration Services is a United States government agency within DHS that administers our nation's immigration laws. Its headquarters are located at 20 Massachusetts Avenue, NW, Washington, DC 20529, but its governmental activities occur nationwide.

10. Defendant Kenneth T. Cuccinelli is the Senior Official Performing the Duties of the Director of USCIS, and ostensibly the current head of USCIS. *See Kenneth T. (Ken) Cuccinelli, Senior Official Performing the Duties of the Director, U.S. Citizenship and Immigration Services; Director (vacant), USCIS: Leadership, <https://www.uscis.gov/about-us/leadership/kenneth-t-ken->*

[cuccinelli-senior-official-performing-duties-director-us-citizenship-and-immigration-services-director-vacant](#) (last updated Jan. 17, 2020).

### **JURISDICTION, VENUE, AND REVIEWABILITY**

11. This case arises under the Administrative Procedure Act (APA), 5 U.S.C. § 701 *et seq.*, and the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*

12. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this case arises under federal law and under 28 U.S.C. § 1346 because the United States is a defendant by virtue of its department, agency, and officials being named as defendants for their official conduct. And this Court has subject-matter jurisdiction under 28 U.S.C. § 1361 because this is an “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.”

13. This Court has personal jurisdiction over Defendants because they all reside in this District. And venue is proper in this District under 28 U.S.C. § 1391(e)(1) because all Defendants reside in this District.

14. MedPro’s requests for declaratory and injunctive relief are authorized by the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the APA, 5 U.S.C. § 706. MedPro’s request for a writ of mandamus is authorized by the Mandamus and Venue Act of 1962, 28 U.S.C. § 1361. And MedPro’s request for costs and fees is authorized by 5 U.S.C. § 504 and 28 U.S.C. § 2412.

15. Defendants have a non-discretionary legal duty to adjudicate MedPro’s H-1B visa petitions, *see* 8 U.S.C. § 1184(c)(1); 8 C.F.R. § 103.2(b)(8)(i)—and no statutory provision bars review of Defendants’ unreasonable delay in complying with this duty. Because MedPro’s claim is one of unreasonable agency delay, neither the lack of final agency action nor the failure to exhaust administrative remedies is a bar to this Court’s review. *See, e.g., Telecomms. Research & Action Ctr. v. FCC*, 750 F.2d 70, 79 (D.C. Cir. 1984) (holding that courts have jurisdiction over

claims of unreasonable delay and that failure to exhaust is no bar because, with such claims, there is “no need for the court to consider the merits of the issue before the agency”); *Fort Sill Apache Tribe v. Nat’l Indian Gaming Comm’n*, 103 F. Supp. 3d 113, 120 (D.D.C. 2015) (recognizing that claims of unreasonable agency delay do not require final agency action or exhaustion). And no statute or regulation requires exhaustion either. *See Darby v. Cisneros*, 509 U.S. 137, 154 (1993) (“[W]here the APA applies, an appeal to ‘superior agency authority’ is a prerequisite to judicial review *only* when expressly required by statute or when an agency rule requires appeal before review and the administrative action is made inoperative pending that review.”).

16. MedPro has also exhausted every practical option short of litigation. MedPro has contacted USCIS on numerous occasions through the agency’s online tool to inquire about the status of MedPro’s H-1B visa petitions, and to seek adjudication of those petitions. *See Outside Normal Processing Time*, USCIS, <https://egov.uscis.gov/e-request/displayONPTForm.do?entryPoint=init&sroPageType=onpt> (last visited Feb. 6, 2020). Every inquiry was met with a vague response that the petition was still being reviewed, and these responses provided no expected timeframe for a decision. MedPro has also taken other steps to encourage Defendants to adjudicate its H-1B visa petitions, all to no avail.

## **BACKGROUND**

### ***Defendants’ Non-Discretionary Duties to Adjudicate H-1B Visa Petitions, And To Do So Within a Reasonable Time***

17. Defendants have a non-discretionary legal duty to adjudicate H-1B visa petitions. The INA mandates that, “upon petition of the importing employer,” “[t]he question of importing any alien as a nonimmigrant under subparagraph (H) . . . of [8 U.S.C. § 1101(a)] . . . shall be

*determined* by the Attorney General, after consultation with appropriate agencies of the Government[.]” 8 U.S.C. § 1184(c)(1) (emphasis added).<sup>1</sup>

18. USCIS’s regulations recognize this statutory mandate. 8 C.F.R. § 103.2(b)(8)(i) provides that—if a petitioner establishes its eligibility to an H-1B visa—“USCIS *will approve*” the petition. (emphasis added).

19. Not only must Defendants adjudicate H-1B petitions, but the APA requires that Defendants do so “within a reasonable time.” 5 U.S.C. § 555(b).

20. Congressional policy instructs that petitions for nonimmigrant visas, like petitions for H-1B visas, should be decided within 30 days. 8 U.S.C. § 1571(b) (“It is the sense of Congress . . . that a petition for a nonimmigrant visa under [8 U.S.C. § 1184(c)] should be processed not later than 30 days after the filing of the petition.”). Defendants are also authorized by the Act “to establish and collect a premium fee for employment-based petitions and applications,” which the statute says “shall be used to provide certain premium-processing services to business customers, and to make infrastructure improvements in the adjudications and customer-service processes.” 8 U.S.C. § 1356(u).

21. Defendants have exercised their authority under § 1356(u) and established a premium-processing service by which petitioners “may request 15 calendar day processing” of certain petitions, including H-1B petitions. 8 C.F.R. § 103.7(b)(1)(SS), (e); *How Do I Request*

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<sup>1</sup> The Act originally assigned the responsibility for adjudicating these petitions to the Attorney General, and § 1184(c)(1) as codified still says that an H-1B petition will be adjudicated “by the Attorney General”—but Congress separately delegated the responsibility of adjudicating these petitions to USCIS and the Secretary of Homeland Security when it created DHS in 2002. *See* 6 U.S.C. § 271(b); *see also Nielsen v. Preap*, 139 S. Ct. 954, 959 n.2 (2019) (“We replace ‘Attorney General’ with ‘Secretary’ because Congress has empowered the Secretary to enforce the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, though the Attorney General retains the authority to administer removal proceedings and decide relevant questions of law.”).

*Premium Processing?*, USCIS, <https://www.uscis.gov/forms/how-do-i-request-premium-processing> (last updated Jan. 28, 2020) (designating H-1B visa petitions as eligible for premium processing). If USCIS fails to reach a decision on a premium-processed petition within the 15-day period, “USCIS will refund the premium processing service fee, but continue to process the case.” 8 C.F.R. § 103.7(e)(2)(i).

## **GROUNDINGS FOR REQUIRING DEFENDANTS TO ADJUDICATE MEDPRO’S H-1B PETITIONS**

### *MedPro’s H1-B Petitions*

22. On April 1, 2019, MedPro filed H-1B visa petitions for laboratory medical technologists whom MedPro seeks to employ in the United States, 156 of which remain pending. Of these 156 petitions, 9 were filed using premium processing. (A chart with USCIS’s “receipt number” for each petition and information about which petitions were premium processed is included at the bottom of this Complaint.)

23. USCIS regulations provide that an employer may file an H-1B petition “6 months before the date of actual need for the beneficiary’s services or training.” 8 C.F.R. § 214.2(h)(2)(i)(I). Each of the foreign professionals that MedPro filed H-1B petitions for on April 1, 2019, was needed—and was scheduled to start working—on October 1, 2019.

24. As of the filing of this Complaint, Defendants have not adjudicated 156 of MedPro’s H-1B petitions. These petitions have thus been pending for **311 days** and counting—and 128 days past the professionals’ October 1, 2019 start date.

25. Congress’s instruction that H-1B petitions should be adjudicated “not later than 30 days after the filing of the petition,” 8 U.S.C. § 1571(b), along with USCIS’s own recognition that a 15-day period is reasonable for premium-processed petitions, confirms that Defendants’ delayed adjudication of MedPro’s H-1B petitions is unreasonable. Indeed, the average processing time



between fiscal years 2015 and 2019 for H-1B petitions across all USCIS offices is approximately 18 days for premium-processed petitions and has hovered around 4 months for non-premium-processed petitions. See *Historical National Average Processing Time for All USCIS Offices*, USCIS, <https://egov.uscis.gov/processing-times/historic-pt> (last visited Feb. 6, 2020) (processing times for Form I-129 (the H-1B-petition form) petitions).

### ***MedPro's Injuries***

26. Defendants' failure to adjudicate MedPro's H-1B petitions within a reasonable time has caused and continues to cause MedPro significant harm, including by causing MedPro to lose valuable highly skilled and qualified employees and client goodwill.

27. MedPro's H-1B petitions concern skilled positions for laboratory medical technologists. Our nation suffers from a drastic shortage of medical laboratory professionals, with "a total demand that exceeds current [domestic] educational output by more than double." Am. Soc'y for Clinical Lab. Sci., *Addressing the Clinical Laboratory Workforce Shortage* 4 (Aug. 2, 2018), [http://www.ascls.org/images/publications/Clinical\\_Laboratory\\_Workforce\\_FINAL\\_20180824.pdf](http://www.ascls.org/images/publications/Clinical_Laboratory_Workforce_FINAL_20180824.pdf). Indeed, the U.S. Department of Health and Human Services has projected that demand for laboratory medical technologists will grow by 22% between 2012 and 2025. See Nat'l Ctr. for Health Workforce Analysis, Health Res. & Servs. Admin., U.S. Dep't of Health & Human Servs., *Health Workforce Projections: Health Technologist and Technician Occupations*, [https://bhw.hrsa.gov/sites/default/files/bhw/nchwa/projections/health\\_technologisttechniciansapril2015.pdf](https://bhw.hrsa.gov/sites/default/files/bhw/nchwa/projections/health_technologisttechniciansapril2015.pdf) (Apr. 2015).

28. MedPro, as a healthcare staffing company, helps to address this shortage by facilitating the entry of highly skilled foreign-educated professionals into the American workforce, and staffing these professionals at client facilities needing their services. At significant expense, MedPro has developed the infrastructure to locate these foreign professionals, train them in both

clinical and English skills, ensure they are properly trained and credentialed by U.S. standards, and guide them through the immigration process.

29. MedPro's business model depends on its ability to provide its clients with highly qualified and properly credentialed professionals. And given the drastic shortage, high demand, and significant competition for qualified medical laboratory professionals, MedPro's ability to meet its clients' needs depends in significant part on MedPro's ability to employ foreign-educated professionals and obtain visas for those professionals. Although MedPro makes very extensive efforts to recruit healthcare professionals domestically, there are simply not enough domestic workers available.

30. Defendants' unreasonably delayed adjudication of MedPro's H-1B petitions has impeded and will continue to impede the ability of MedPro to serve its clients—and, by extension, Defendants' delay is impairing the ability of MedPro's clients to efficiently and effectively meet the medical needs of individuals nationwide.

31. Defendants' unreasonably delayed adjudication of MedPro's H-1B petitions has also caused—and will continue to cause—MedPro to lose goodwill with its clients. MedPro has a longstanding track record as a healthcare staffing company with a robust cadre of skilled healthcare professionals, enabling MedPro to provide professionals to meet its clients' staffing needs. Defendants' failure to timely adjudicate MedPro's H-1B petition has impaired MedPro's ability to meet its clients' staffing needs and has thus harmed MedPro's goodwill with its clients.

32. Until Defendants adjudicate MedPro's H-1B petitions, MedPro will continue to suffer these injuries.

#### **CLAIM FOR RELIEF**

33. MedPro incorporates each of the above paragraphs as if included in full here.

**CLAIM I: VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT  
AGENCY ACTION UNLAWFULLY WITHHELD OR UNREASONABLY DELAYED  
Violation of 5 U.S.C. § 555(b), 706(1)**

34. Defendants have a non-discretionary legal duty to adjudicate MedPro’s H-1B petitions, 8 U.S.C. § 1184(c)(1); 8 C.F.R. § 103.2(b)(8)(i), and to do so “within a reasonable time,” 5 U.S.C. § 555(b).

35. Defendants’ failure to adjudicate MedPro’s H-1B petitions for 311 days (and counting) contravenes Congress’s codified policy that petitions for H-1B visas “should be processed not later than 30 days after the filing of the petition.” 8 U.S.C. § 1571(b). And Defendants’ failure to adjudicate MedPro’s 9 premium-processed H-1B petitions for 311 days flouts the 15-day processing period for such petitions that USCIS has itself established. *See* 8 C.F.R. § 103.7(b)(1)(SS), (e).

36. Defendants’ dilatory adjudication of MedPro’s H-1B petitions is thus unreasonable within 5 U.S.C. § 555(b) and § 706(1). And Defendants’ failure to provide any meaningful explanation for their delay, or a timeframe by which they will decide MedPro’s H-1B petitions, compounds the unreasonableness of Defendants’ delayed adjudication.

**REQUEST FOR RELIEF**

MedPro thus seeks a judgment from this Court:

A. Compelling Defendants, under 5 U.S.C. § 706(1), to adjudicate MedPro’s H-1B petitions listed in the chart below within 15 days of this Court’s judgment—or, alternatively, to issue a writ of mandamus requiring Defendants to do so;

B. Requiring Defendants, under 8 C.F.R. § 103.7(e)(2)(i), to refund MedPro’s premium-processing fees for the 9 petitions that MedPro paid that fee for;

C. Retaining jurisdiction of this case for a reasonable period of time to ensure Defendants’ compliance with this Court’s judgment;

D. Awarding MedPro, under 5 U.S.C. § 504 and 28 U.S.C. § 2412, reasonable attorneys' fees and costs for the expenses it incurred in bringing this case; and,

E. Awarding any other relief the Court deems just and proper.

**RELEVANT PETITIONS**

<u>USCIS Receipt Number</u>	<u>Premium Processed</u>
WAC1918150320	Yes
WAC1918452232	Yes
WAC1918051906	Yes
WAC1917953346	Yes
WAC1918454160	Yes
WAC1918452509	Yes
WAC1918552918	Yes
WAC1918552673	Yes
WAC1917952404	Yes
WAC1918453155	No
WAC1917952564	No
WAC1918453288	No
WAC1918453455	No
WAC1918550453	No
WAC1918053295	No
WAC1917953994	No
WAC1918651465	No
WAC1917851356	No
WAC1918552135	No

WAC1918553140	No
WAC1918453577	No
WAC1917854043	No
WAC1918450220	No
WAC1918054339	No
WAC1918051424	No
WAC1918452052	No
WAC1917851281	No
WAC1918654359	No
WAC1917950740	No
WAC1918550503	No
WAC1918450578	No
WAC1918450817	No
WAC1918454759	No
WAC1918152371	No
WAC1918450873	No
WAC1918450533	No
WAC1918550852	No
WAC1918552053	No
WAC1918551175	No
WAC1918153269	No
WAC1918552271	No
WAC1918551514	No
WAC1918451836	No

WAC1918551496	No
WAC1918454005	No
WAC1918551376	No
WAC1918452370	No
WAC1918052734	No
WAC1918450504	No
WAC1918553718	No
WAC1918553183	No
WAC1918251401	No
WAC1918751970	No
WAC1918550741	No
WAC1918551093	No
WAC1918551207	No
WAC1918051807	No
WAC1918551400	No
WAC1918451514	No
WAC1918551989	No
WAC1918550119	No
WAC1918551997	No
WAC1918651195	No
WAC1918451794	No
WAC1918550906	No
WAC1918452173	No
WAC1918550664	No

WAC1918550787	No
WAC1918451319	No
WAC1918451036	No
WAC1918451675	No
WAC1918452068	No
WAC1918453667	No
WAC1918451656	No
WAC1918550389	No
WAC1918453031	No
WAC1918552788	No
WAC1917951818	No
WAC1918451125	No
WAC1917952198	No
WAC1918452646	No
WAC1918551029	No
WAC1917950649	No
WAC1918150279	No
WAC1918550419	No
WAC1918551502	No
WAC1918053314	No
WAC1918551258	No
WAC1918453635	No
WAC1918452890	No
WAC1918454060	No

WAC1918552862	No
WAC1917951601	No
WAC1918051249	No
WAC1918453241	No
WAC1917951502	No
WAC1918454263	No
WAC1918051576	No
WAC1918052988	No
WAC1917951797	No
WAC1917952992	No
WAC1917950140	No
WAC1918550751	No
WAC1918054123	No
WAC1918452872	No
WAC1918051243	No
WAC1918050437	No
WAC1918453339	No
WAC1917952055	No
WAC1918454436	No
WAC1918051443	No
WAC1918453333	No
WAC1917952672	No
WAC1918051296	No
WAC1917953666	No



WAC1918053336	No
WAC1918453757	No
WAC1917954247	No
WAC1918452338	No
WAC1918453120	No
WAC1918052703	No
WAC1917954192	No
WAC1918652275	No
WAC1918150397	No
WAC1918451868	No
WAC1918452700	No
WAC1918151616	No
WAC1918151018	No
WAC1918151355	No
WAC1918051137	No
WAC1918454718	No
WAC1918451694	No
WAC1918553485	No
WAC1918650255	No
WAC1918454111	No
WAC1918451835	No
WAC1918050751	No
WAC1918151760	No
WAC1918051481	No

WAC1918051550	No
WAC1918452993	No
WAC1918151184	No
WAC1918452903	No
WAC1918550266	No
WAC1918454162	No
WAC1918450998	No
WAC1917951735	No
WAC1918451530	No
WAC1918451819	No
WAC1917951822	No
WAC1917951673	No
WAC1918153250	No
WAC1918451030	No
WAC1917950078	No
WAC1918550062	No
WAC1918052743	No

Dated: February 6, 2020

Respectfully submitted,

*/s/ Andrew D. Prins*

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Andrew D. Prins (DC Bar No. 998490)  
Gregory B. in den Berken (DC Bar No. 252848)  
LATHAM & WATKINS LLP  
555 Eleventh Street, NW  
Suite 1000  
Washington, D.C. 20004-1304  
Phone: (202) 637-2200  
Fax: (202) 637-2201  
Email: [andrew.prins@lw.com](mailto:andrew.prins@lw.com)

*Counsel for Plaintiff MedPro*