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

URBAN EQUALITY NOW,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	**CIVIL ACTION NO.**
SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY JEH JOHNSON, and USCIS DIRECTOR LEON RODRIGUEZ,	§	
	§	
Defendants.	§	

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,

THE COLES FIRM P.C.
4925 Greenville Ave., Suite 200
Dallas, Texas 75206
(214) 443-7860 (Telephone)
(972) 692-7145 (Facsimile)

By: _/s/ Michael E. Coles_____
Michael E. Coles, Lead Attorney
State Bar No. 24007025
Federal I.D. No. 632940
Elizabeth Aten Lamberson
State Bar No. 24027044
Federal I.D. No.

ATTORNEYS FOR PLAINTIFF

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Urban Equality NOW

(b) County of Residence of First Listed Plaintiff Cameron
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Michael E. Coles, The Coles Firm PC, 4925 Greenville Ave., Suite 200, Dallas, Texas 75206, (214) 443-7860

DEFENDANTS

Sec. of the Dept. of Homeland Security Jeh Johnson and USCIS Director Leon Rodriguez

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

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

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ☒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
8 USC § 1153(b)(5) and 28 U.S.C. § 2201

Brief description of cause:
Plaintiff seeks a declaration that DHS and USCIS have not applied INA 203(b)(5) constitutionally.

VII. REQUESTED IN COMPLAINT:

❒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE
November 10, 2015

SIGNATURE OF ATTORNEY OF RECORD
Michael E. Coles

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

EXHIBIT A

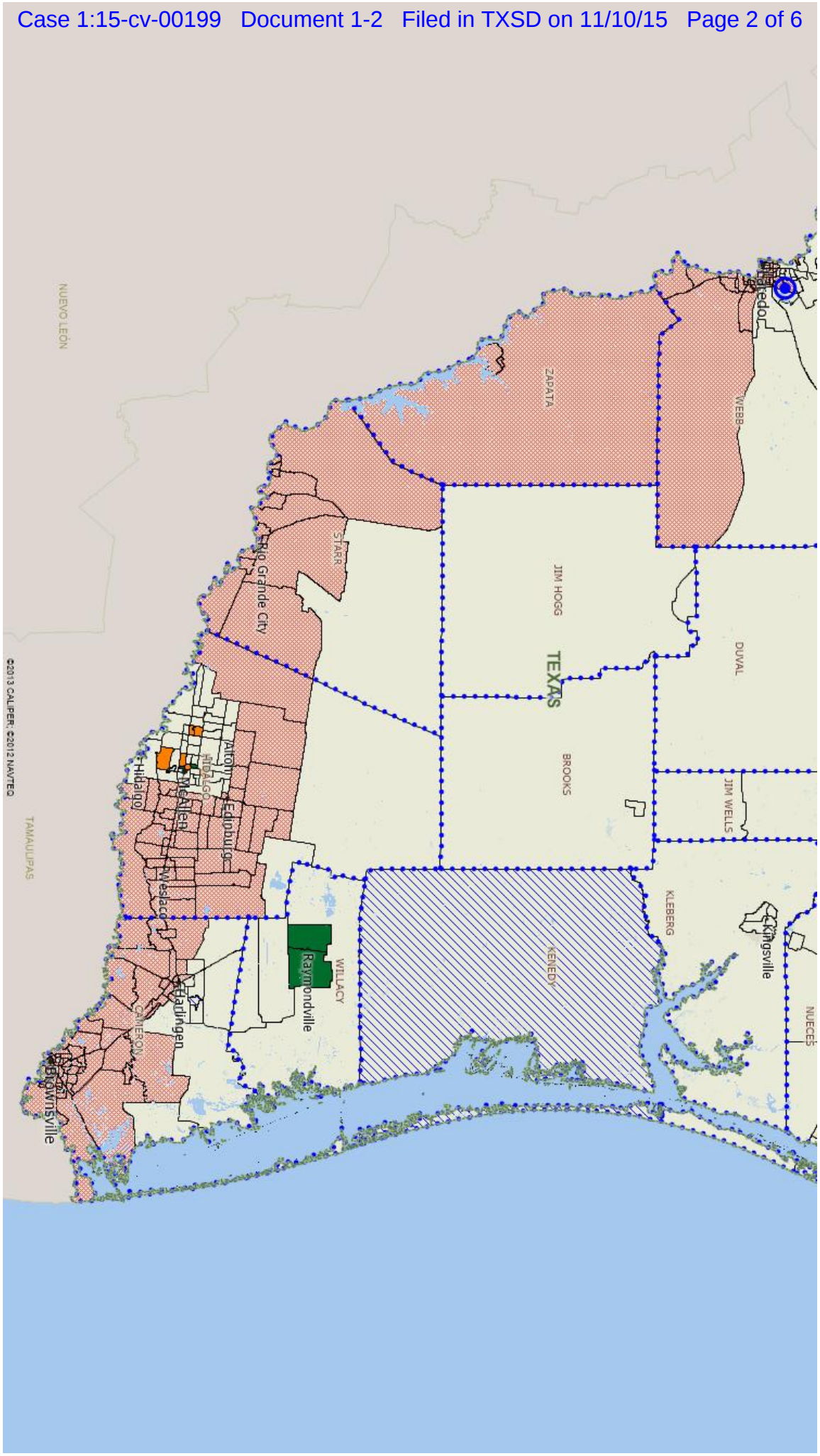
NUEVO LEÓN
TAMAULIPAS
ZAPATA
WEBB
STARR
JIM HOGG
DUVAL
TEXAS
BROOKS
JIM WELLS
KLEBERG
KENEDY
WILLACY
CAMERON
NUECES
Laredo
Rio Grande City
Hidalgo
Alton
Edinburg
McAllen
Weslaco
Harlingen
Raymondville
Brownsville
Kingsville
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EXHIBIT B

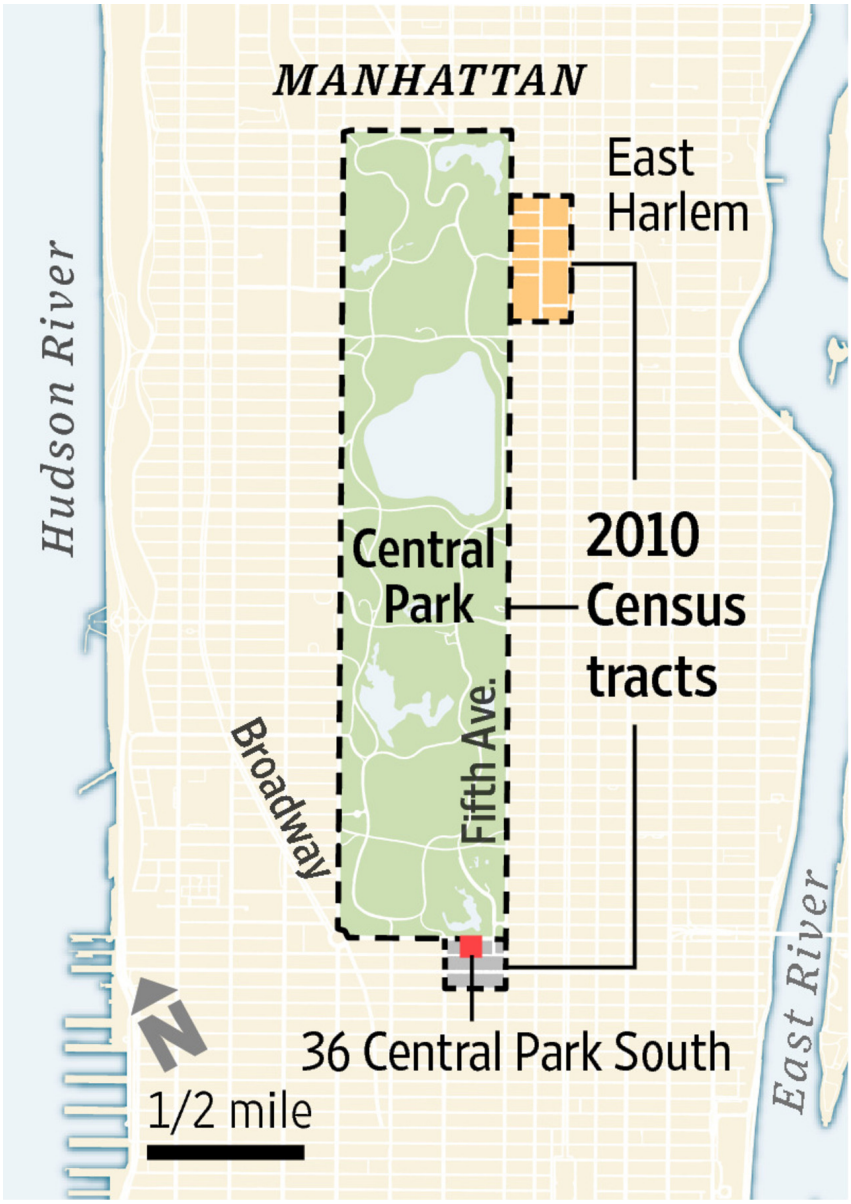
MANHATTAN
East Harlem
Hudson River
Central Park
2010 Census tracts
Broadway
Fifth Ave.
East River
36 Central Park South
N
1/2 mile

EXHIBIT C


New Construction
New York state crafted a high-jobless district for the big Hudson Yards project, helping it get financing under the EB-5 immigration program.
Targeted employment area
BRONX
NEW JERSEY
Manhattanville Houses
Hudson River
Central Park
Hudson Yards
QUEENS
MANHATTAN
BROOKLYN
1 mile
East River
Sources: Hudson Yards; Census Bureau
THE WALL STREET JOURNAL.