

ATTORNEY ADVERTISING

THE K-3 LAWSUIT: WHAT IT IS, WHAT IT IS NOT, AND HOW OTHER K-3 PETITIONERS CAN TAKE PART

Jimenez v. Mullin, No. 3:26-cv-01384 (D. Conn.)

Prepared by Simone Bertollini, Attorney at Law, for k3visa.org

Current as of October 14, 2026

1. WHY I WROTE THIS

Since the lawsuit was filed I have received a large number of individual messages asking the same questions: Is this a class action? Am I in it? Can I join? What will it do for my own K-3 petition? What does it cost? This document answers those questions in one place, as completely and as honestly as I can. Some of the answers are not what people hope to hear. I would rather you read them here than learn them later.

Part of the confusion is my own doing. The analysis page on mandamus.com that many of you found is titled as a class-action theory. That page describes a possible class action. The case as originally filed was not one. On October 14, 2026, I decided to ask the court to certify it as a class action. What that means, and what it does not mean, is explained below.

Nothing in this document is legal advice about your case. It is general information about a pending lawsuit and about how federal litigation of this kind works. You are not my client, and I am not your lawyer, unless and until we both sign an engagement letter.

2. THE CASE AS IT WAS ACTUALLY FILED

The parties. On August 27, 2026, I filed *Jimenez v. Mullin*, No. 3:26-cv-01384, in the United States District Court for the District of Connecticut. The case is assigned to the Honorable Omar A. Williams. The plaintiff is Omar Armando Jimenez, a United States citizen, a nine-year veteran of the United States Army and the Connecticut Army National Guard, and a detective with the Stratford, Connecticut Police Department. The defendants are the Secretary of Homeland Security, the Director of USCIS, the Director of the USCIS California Service Center, the Secretary of State, and the three agencies themselves. I represent Mr. Jimenez without charge. His stated purpose in bringing the case was to revive the K-3 classification for everyone, not only to obtain a visa for his own family.

The facts. On August 15, 2025, Mr. Jimenez filed a Form I-130 immigrant petition and a Form I-129F petition for K-3 classification for his wife, a citizen of Brazil who lives in Brazil with her two sons. When the case was filed, more than twelve months later, the Form I-129F had not been approved, denied, or made the subject of a request for evidence. USCIS's own published national median processing time for a Form I-129F filed in fiscal year 2025 is 7.7 months. USCIS's case-inquiry tool told him that the earliest date on which he could even ask about the petition was November 18, 2026.

The four claims. The complaint asks the court for four things, in plain terms:

Count One (unreasonable delay). Under the Administrative Procedure Act, an agency must conclude a matter presented to it within a reasonable time, and a court may compel action that is unreasonably delayed. The complaint asks the court to order USCIS to decide the Form I-129F. It does not, and cannot, ask the court to decide it in his favor.

Count Two (mandamus). The same request under the federal mandamus statute, 28 U.S.C. § 1361: an order compelling a federal officer to perform a duty owed to the plaintiff.

Count Three (the closure practice). This is the claim that matters to everyone who wrote to me. For years, once a Form I-130 is approved, the agencies have treated the pending Form I-129F as pointless and have administratively closed it, so that the K-3 visa is almost never issued. The complaint asks the court to declare that approval of the Form I-130 does not authorize closing the Form I-129F, and to forbid the agencies from closing Mr. Jimenez's petition on that ground. The argument is that the statute, 8 U.S.C. § 1101(a)(15)(K)(ii), admits the K-3 spouse to await both the approval of the petition and the availability of an immigrant visa, that the regulations list the events that end K-3 status and approval of the Form I-130 is not one of them, and that the closure practice was never adopted through notice-and-comment rulemaking.

Count Four (premium processing). The complaint does not claim a right to premium processing. It challenges the way the program is administered, because Congress restricted the use of premium-processing fees to purposes that include benefits for all petitioners, and family petitioners cannot buy expedited handling at any price.

What the complaint asks for. An order to adjudicate the Form I-129F within thirty days; declarations that the delay is unlawful and that the closure practice is contrary to law; an injunction against closing the petition on the

ground that the Form I-130 was approved; a declaration on premium processing; and attorney's fees under the Equal Access to Justice Act. The complaint does not ask for money damages, and it does not ask the court to order that a visa be issued. No court can do that.

3. WHAT THE CASE IS NOT

It is not yet a class action. The complaint as filed has one plaintiff and no class allegations. I have decided to amend it to add class allegations and two additional named plaintiffs, and to ask the court to certify a class of K-3 petitioners. The amended complaint is being prepared for filing by October 26, 2026. Until the court certifies a class, there is no class. Certification is decided by the court on a motion, after the government has responded, and it can be denied.

You are not in it. If you submitted the form on k3visa.org, sent me an email, or posted in a forum thread, you are on my intake list. That list is not a list of plaintiffs. Nobody becomes a party to a federal lawsuit by filling out a form. A person becomes a party only when a complaint naming that person is filed with the court, or when the court allows that person to be added. If the court certifies a class, every person who fits the class definition is covered by the judgment, whether or not that person ever contacted me or registered anywhere.

A win would not get you a visa. A judgment in a federal case binds the parties to that case. If Mr. Jimenez wins on Count Three, the order will tell the agencies what they may not do with his petition. It will not tell them what to do with yours. A written decision would be persuasive authority that other courts, and other judges in the same court, may follow or decline to follow. It would not be binding on them. The practical value of a decision to people outside the case is as a precedent and as leverage, and that value is real, but it is indirect.

The government can end it without a decision. The agencies can approve or deny the Form I-129F at any time. If they do, the delay claims become moot. If they issue an immigrant visa to the spouse, the closure claim may become moot too. The most common way a mandamus case ends is that the agency acts and the case is dismissed. That is a victory for the plaintiff and no ruling at all for anyone else.

4. WHERE THE CASE STANDS TODAY

Service and deadline. The United States Attorney for the District of Connecticut received the complaint on September 14, 2026. The

government's answer or motion to dismiss is due on Friday, November 13, 2026. As of this writing no government lawyer has appeared and nothing has been decided.

The I-130 approvals. On or about October 10, 2026, Mr. Jimenez reported that USCIS had approved all three Form I-130 petitions he filed: the one for his wife and the two for his stepsons. He has since reported that USCIS approved the Form I-129F as well. I disclose this because it changes the case. The agencies will argue that an approved Form I-130 leads to an immigrant visa, so the K-3 is unnecessary and there is nothing left to decide. Count Three was written for exactly this moment: it asks the court to rule that approval of the Form I-130 is not a lawful reason to close the Form I-129F. Whether the court reaches that question, or instead dismisses the case as moot, is the central uncertainty of the litigation right now. I will not predict the outcome.

The 75-country pause. From January 21 to August 21, 2026, the Department of State paused immigrant-visa issuance for nationals of 75 countries, Brazil among them. A federal court in New York vacated the pause on August 21, 2026 (*CLINIC v. Rubio*, S.D.N.Y.). The government has appealed to the Second Circuit (No. 26-2573) and on September 28, 2026 asked that court to stay the judgment while the appeal is decided. When I last checked, no ruling on that request had been entered. If the pause is reinstated, no immigrant visa can issue to Mr. Jimenez's wife, the K-3 becomes the only visa available to her, and the mootness argument weakens. If the pause stays vacated, the government's argument is stronger. This is outside my control and outside his.

What I expect next. The amended complaint with class allegations, filed by October 26, 2026. Then a motion to dismiss on mootness and related grounds, an opposition from me, possibly a reply, and a decision from the court. A motion for class certification follows on the schedule the court sets. Realistic timing for a decision on any of these motions is months, not weeks. If the National Visa Center or the consulate refuses or closes the approved Form I-129F on the basis of the Form I-130 approval, I expect to supplement the complaint to put that notice itself before the court.

5. WHAT A FEDERAL COURT CAN AND CANNOT DO FOR A K-3 PETITIONER

It can order a decision. A court can compel USCIS to adjudicate a petition that has been pending unreasonably long. In practice, USCIS usually decides the petition on its own after the suit is filed, and the case is then dismissed.

That decision can be an approval or a denial. A lawsuit cannot turn a weak petition into a strong one, and it invites a closer look at the file. If there is a problem with your marriage evidence, your prior immigration history, or your spouse's admissibility, we need to talk about it before you sue, not after.

It can review a policy. A court can declare that a practice the agencies follow is contrary to the statute or the regulations, or was adopted without the required procedure. That is what Count Three asks. This kind of claim has never been decided for the K-3 closure practice. It is novel, which means both that it could succeed and that there is no track record to point to.

It cannot order a visa. The decision to issue or refuse a visa belongs to the consular officer, and courts generally will not review it. A court can order the agencies to adjudicate and to forward a case; it cannot order the embassy to schedule you, to issue the visa, or to decide in your favor.

It cannot make the process fast. Filing a federal case takes weeks of preparation. The government has sixty days to respond after service. Motions take months. People who file expecting a result in thirty days are usually disappointed, even when the agency acts, because the agency often acts near the end of the sixty days, not at the beginning.

Fees. If the government's position was not substantially justified, a prevailing plaintiff may recover attorney's fees from the government under the Equal Access to Justice Act. Courts often find that an agency that adjudicates after suit was not a losing party in the legal sense, and fees are then denied. Do not count on recovering fees.

6. HOW OTHER K-3 PETITIONERS ARE COVERED: THE CLASS ACTION

The decision. The October 12 version of this guide described three vehicles, an individual lawsuit, a multi-plaintiff suit often called a mass action, and a class action, and said the number of qualifying petitioners would drive the choice. Enough petitioners came forward. I have chosen the class action. I will not be organizing a mass action, and nobody will be asked to join one.

What a Rule 23(b)(2) class action is. A small number of named plaintiffs sue on behalf of everyone in the same position and ask the court for a single declaration and injunction. If the court certifies the class, every member benefits from the judgment without signing anything, without paying anything, and without becoming my client. There is no opt-in and no opt-out. The class is defined by facts, such as having a Form I-129F for a spouse

pending beyond a stated period, or having had it refused or closed because the Form I-130 was approved. The court sets the definition when it certifies the class.

The honest limits. Certification can be denied. Novel class certifications in immigration cases are denied more often than they are granted, and a class built on delay is harder to certify than a class built on a written government practice, because the government will argue that whether a delay is unreasonable is different for each petitioner. If certification is denied, the named plaintiffs continue as individual plaintiffs and everyone else gets nothing from the case. If the class is certified and the case is won, the judgment addresses the government's practice; it does not order that anyone's visa be issued, and it does not award money.

What registering does. The court decides certification on evidence. Part of that evidence is how many families this practice affects and where they live, and the registrations on k3visa.org are the record of that. I may ask some registrants to sign a short declaration describing their own case. Registering does not make you my client, does not make you a plaintiff, and is not required to be in the class: if the court certifies a class and you fit its definition, you are covered whether or not you registered. Nothing about the timing or the outcome can be promised.

7. WHO QUALIFIES, AND WHAT I NEED TO KNOW

The basic profile. A United States citizen who filed a Form I-130 for a spouse and a Form I-129F for K-3 classification for that same spouse. This is about spouses only. K-1 fiancé(e) petitions are a different classification with a different problem, and they are not part of this.

The two situations that matter. First, a Form I-129F that has been pending well beyond USCIS's published median for the year you filed, with the Form I-130 still pending or approved. That supports a delay claim. Second, a Form I-129F that was administratively closed, refused under section 221(g), or returned because the Form I-130 was approved. That is the closure injury, and it is the fact pattern that a class action or a policy challenge needs most.

Facts that change the analysis. Your spouse's nationality (whether the country is in the Visa Waiver Program, and whether it was on the 75-country list). Whether your spouse has children who would travel as K-4 dependents. Whether a request for evidence has been issued. Whether either of you has a prior denial, a prior overstay, a criminal record, or any other issue that could affect admissibility. Whether you have already received an inquiry response

from USCIS or a congressional office, and what it said. Where you live, which determines where a case can be filed.

Documents I will ask for. The receipt notices for both petitions; any USCIS correspondence about the Form I-129F; any notice from the National Visa Center or the consulate; your marriage certificate; and a short written timeline.

8. A WARNING ABOUT INCONSISTENT RESULTS

Read this part twice. Even if a group of petitioners sues together in one complaint, with one lawyer, on one legal theory, the results for the people in that group can be very different, and probably will be. The reasons:

The agency acts case by case. USCIS may approve one plaintiff's Form I-129F a week after the suit is filed, deny another's, close a third on the basis of a Form I-130 approval, and do nothing about a fourth. Each of those events changes that plaintiff's claim and only that plaintiff's claim.

The court decides case by case. A delay that is unreasonable for a petitioner at eighteen months may not be for one at nine. A plaintiff whose spouse receives an immigrant visa may be dismissed as moot while a co-plaintiff's claim continues. The court may sever the case into separate cases before different judges.

The government settles case by case. The government may offer to adjudicate one plaintiff's petition in exchange for dismissal and make no offer to another.

The consulate decides case by case. Even an order compelling adjudication leads only to a consular interview, where each applicant is judged on his or her own admissibility.

So the fact that you are in the same lawsuit as someone else does not mean you will be treated the same, finish at the same time, or obtain the same outcome. If you need everyone to be treated alike, group litigation will frustrate you. In a class action the court's ruling on the government's practice is one ruling for everyone, but what the agency and the consulate do with each individual petition remains case by case.

9. COST

Members of the class pay nothing. There is no fee to be a member of the class, nothing to sign, and nothing to buy. The October 12 version of this guide gave a projected per-person fee for a group filing; that figure applied to

a mass action, which I am not pursuing, and it is withdrawn. If the case succeeds and the court awards attorney's fees, they are sought from the government under the Equal Access to Justice Act, not from class members.

Named plaintiffs. The named plaintiffs in *Jimenez v. Mullin* are represented without charge.

Your own individual lawsuit. If you prefer to file your own case rather than wait for the class action, that is quoted separately on request. The court's filing fee for an individual case is currently \$405. The evaluation is free: I review the information you submit and reply by email with whether your situation fits. I do not charge for that reply.

10. HOW TO PROCEED

Submit the form on k3visa.org, or email me with the facts listed in Part 7. I reply by email. I do not schedule telephone calls at the first contact; the written record is what lets me compare cases and keep the record organized. If you submitted the form before October 14, 2026, please submit it again: it now asks whether your Form I-130 has been approved, whether your Form I-129F was refused or closed for that reason, and whether your spouse is outside the United States. Your earlier entry is updated, not duplicated.

Please do not send original documents, and do not send anything you consider confidential until we have signed an engagement letter.

11. REQUIRED NOTICES

Attorney Advertising. Law Offices of Simone Bertollini, 9000 Clay Road, Suite 110, Houston, Texas 77080. Simone Bertollini is admitted in Texas, New York, New Jersey, and Missouri, and before the United States District Courts for the District of Connecticut and other federal courts. This document provides general information about a pending lawsuit and about federal litigation; it is not legal advice and does not create an attorney-client relationship. Prior results do not guarantee a similar outcome. The statements about *Jimenez v. Mullin* are made with the plaintiff's knowledge; the court file is public. The information about the status of the case is current as of the date on the first page and will not be updated automatically.