Curtis Lee Morrison, Esq. (CSBN 321106)
RED EAGLE LAW, L.C.
5256 S. Mission Road,
Suite 135
Bonsall, CA 92003
phone: 714-661-3446
Email: curtis@redeaglelaw.com

Paris Etemadi Scott (CSBN 2488999)
Legal Director
PARS Equality Center
1635 The Alameda
San Jose, CA 95126
Phone: (408) 261-6405
Email: petemadi@parsequalitycenter.org

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO AND OAKLAND DIVISION

PARS EQUALITY CENTER, [redacted]

Civil No.: 3:24-cv-00001

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDAMUS

[redacted],

Plaintiffs,

v.

ANTONY J. BLINKEN, *in his official capacity as U.S. Secretary of State,*

JULIE M. STUFFT, *in her official capacity as Acting Deputy Assistant Secretary and Managing Director for Visa Services Bureau of Consular Affairs,*

Defendants.

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INTRODUCTION

1. Plaintiffs including Organizational Plaintiff Pars Equality Center, and 14 Iranian American families, including Plaintiffs [redacted], and [redacted], by and through the undersigned counsel, respectfully bring this Complaint for Declaratory and Injunctive Relief and Petition for Writ of Mandamus to compel Defendants ANTONY J. BLINKEN, and JULIE M. STUFFT, ("Defendants"), and those acting under them, to cease preventing the collection of Form DS-5535, *Supplemental Questions for Visa Applicants* prior to immigrant visa interviews ("DS-5535 Scheme"), because the policy is incongruent with law, and causing unreasonable delays for Iranian immigrant visa applicants, including plaintiffs here. Plaintiffs also ask the Court to compel Defendants to remedy Plaintiffs' injuries by providing their final adjudications for the immigrant visa applications of Beneficiary Plaintiffs without further delay.

2. Defendants' implementation of the DS-5535 Scheme is unlawful because it violates the text of 8 U.S.C. 1202(b). Simply, Congress was clear that "[e]very alien applying for an immigrant visa…shall furnish to the consular officer ***with his application*** a copy of a certification by the appropriate police authorities stating what their records show concerning the immigrant; a certified copy of any existing prison record, military record, and record of his birth; and a certified copy of all other records ***or documents concerning him or his case which may be required by the consular officer***. The copy of each document so furnished shall be permanently attached to the application and become a part thereof." 8 U.S.C. §1202(b), (emphasis added).

3. By implementing the DS-5535 Scheme and preventing Iranian immigrant visa applicants from submitting the DS-5535 prior to interviews, Defendants have extended the period of time it takes for Iranian immigrant visa applicants to receive final adjudications of their applications by a period that varies from several months to years.

4. Plaintiffs here who are United States Citizens or Lawful Permanent Residents ("Petitioner Plaintiffs") are petitioners for the approved immigrant visa petitions filed on behalf of their Iranian spouses, children, parents, or siblings. ("Beneficiary Plaintiffs").

5. All Beneficiary Plaintiffs in this action submitted their Form DS-260, *Online Immigrant Visa and Alien Registration Applications* ("DS-260"), and those DS-260 applications were found by NVC to be "Documentarily Qualified" or "Documentarily Complete."

6. All Beneficiary Plaintiffs have been interviewed by a consular officer at a US Embassy or Consulate. At all those interviews, all Beneficiary Plaintiffs presented valid unexpired passports or other suitable travel documents. Further, all Beneficiary Plaintiffs furnished to the consular officers with their applications all documents concerning them or their individual cases which may be required by the consular officer. Yet, because Defendants' DS-

5535 Scheme prevented all Beneficiary Plaintiffs from submitting completed DS-5535 questionnaires at or prior to their interviews, the final adjudications of all Beneficiary Plaintiffs have been unreasonably delayed.

7. Through Department guidance and software, Defendants' DS-5535 Scheme requires consular officers to request Iranian visa applicants to complete the DS-5535. The decisions to request the completion of the DS-5535 are not made by consular officers. This is contrary to law, and the proposition and methodology described in the State Department's notices.

8. Following their immigrant visa interviews, Beneficiary Plaintiffs' cases were placed in administrative processing. They were told Defendants required vetting of their DS-5535 responses, which embassies, consulates, and consular officers refuse to accept prior or even at the immigrant visa interviews.

9. Beneficiary Plaintiffs' immigrant visa applications remain in administrative processing since their interviews. Beneficiary Plaintiffs have yet to receive final adjudications of their immigrant visa applications.

10. Beneficiary Plaintiffs have fulfilled all necessary administrative requirements to obtain the immigrant visas, but Defendants have unreasonably delayed in making final decisions on their ability to immigrate to the United States, leaving the Plaintiffs and their families in a perpetual status of uncertainty about their future.

11. The delays in adjudications of Beneficiary Plaintiffs' visa applications have placed severe emotional and financial strain on the Plaintiffs, individually and in the aggregate. Plaintiffs have been unable to definitively plan for their families' futures.

12. Statutes, regulations, and agency guidance make clear that the Defendants have a mandatory duty to adjudicate Beneficiary Plaintiffs' visa applications within a reasonable time – a duty which they have failed to fulfill.

13. As a result of the unreasonable delay in final adjudications, Plaintiffs have suffered concrete, severe, and particularized injury. Plaintiffs have been separated from one another with no idea of when, or if, they will ever be reunited. They are faced with the prospect of being separated indefinitely. The Organizational Plaintiff serves individuals in similar straits.

14. Beneficiary Plaintiffs are entitled to a decision on their immigrant visa applications. See 22 C.F.R. § 42.81(a) ("Issuance or refusal mandatory. When a visa application has been properly completed and executed before a consular officer in accordance with the provisions of INA and the implementing regulations, the consular officer must either issue or refuse the visa[.]") (emphasis added); see also sections 101(a)(9), (16), 201(b)(2)(A)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1101(a)(9), (16), 1201(b)(2)(A)(i); *Patel v. Reno*, 134 F.3d 929, 932 (9th Cir. 1997) ("A consular office is required by law to act on visa applications.").

15. If a visa is refused, the application must be reconsidered if "within one year from the date of refusal [the applicant] adduces further evidence tending to overcome the ground of ineligibility on which the refusal was based." 22 C.F.R. § 42.81(e). (Emphasis added).

16. Beneficiary Plaintiffs' immigrant visa applications remain within the jurisdiction of the Defendants, who have improperly withheld action on them for a range of 229 to 645 days since their immigrant visa interviews, to the extreme detriment of the rights and privileges of Plaintiffs.

17. Plaintiffs turn to the Court seeking an order to compel the Defendants and those acting under them to cease the DS-5535 Scheme, and immediately and forthwith take all appropriate action to fulfill their mandatory, non-discretionary duty to provide final adjudications Beneficiary Plaintiffs immigrant visa applications.

JURISDICTION

18. This case arises under the United States Constitution; the INA, 8 U.S.C. § 1101 *et seq.*; and the APA, 5 U.S.C. § 555(b) and § 701 *et seq*. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1329, and 1361.

19. This is a civil action brought pursuant to 28 U.S.C. § 1361. ("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.") Jurisdiction is further conferred by 8 U.S.C. § 1329 (jurisdiction of the district courts) and 28 U.S.C. § 1331 (federal subject matter jurisdiction). This Court also has authority to grant declaratory relief under 28 U.S.C. § 2201 and 2202, and injunctive relief under 5 U.S.C. § 702 and 28 U.S.C. § 1361.

20. Under 28 U.S.C. § 1361, "[t]he 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."

21. Plaintiffs are challenging the Defendants' authority to refuse to adjudicate Plaintiff's immigrant visa application, and not challenging a decision which is within the discretion of the Defendants. Therefore, jurisdiction exists for this Court to consider whether Defendants have the authority to withhold adjudication. *See Patel*, 134 F.3d at 932; *Raduga USA Corp. v. United States Dep't of State*, 440 F. Supp. 2d 1140, 1149 (S.D. Cal. 2005) (finding

mandamus jurisdiction where "Plaintiffs simply seek to compel the consul to render a final decision on Plaintiff's visa application which is mandated under [8 C.F.R.] § 42.81(a)").

22. Jurisdiction is also conferred pursuant to 5 U.S.C. §§ 555(b) and 702, the Administrative Procedure Act ("APA"). The APA requires the Defendants to carry out their duties within a reasonable time. 5 U.S.C. § 555(b) provides that "[w]ith due regard for the convenience and necessity of the parties or their representatives and *within a reasonable time*, each agency shall proceed to conclude a matter presented to it." (Emphasis added). The Defendants are subject to 5 U.S.C. § 555(b). *See Patel*, 134 F.3d at 931-32 ("Normally a consular official's discretionary decision to grant or deny a visa petition is not subject to judicial review. However, when the suit challenges the authority of the consul to take or fail to take an action as opposed to a decision taken within the consul's discretion, jurisdiction exists.") (Internal citations omitted); *Raduga USA*, 440 F. Supp. 2d at 1146 ("[T]he Court finds that Plaintiffs have sufficiently demonstrated Article III standing to bring this APA mandamus action.") *See also Trudeau v. FTC*, 456 F.3d 178, 185 (D.C. Cir. 2006) (finding that district court has jurisdiction under the APA, in conjunction with 28 U.S.C. § 1331, to review Plaintiffs' complaint for declaratory and injunctive relief against federal agency); *Liberty Fund, Inc. v. Chao*, 394 F. Supp. 2d 105, 114 (D.D.C. 2005) ("The [APA] requires an agency to act, within a reasonable time," 5 U.S.C. § 555(b), and authorizes a reviewing court to compel agency action … unreasonably delayed," 5 U.S.C. § 706(1).")

23. Section 242 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1252, does not deprive this Court of jurisdiction. INA § 242(a)(5) provides that "a petition for review filed with an appropriate court of appeals in accordance with this section, shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision

of this Act[.]" As the present action does not seek review of a removal order, but is simply an action to compel the Defendants to adjudicate the Plaintiffs' unreasonably delayed application, this Court retains original mandamus jurisdiction under 28 U.S.C. § 1361. See *Liu v. Novak,* 509 F. Supp. 2d 1, 5 (D.D.C. 2007) ("[T]here is … significant district court authority holding that [8 U.S.C.] § 1252(a)(2)(B)(ii) does not bar judicial review of the pace of application processing or the failure to take action.") As set forth below, the delay in adjudicating Plaintiffs' immigrant visa applications is unreasonable.

24. Under the APA, a reviewing court may order action unlawfully withheld, and may also "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law" and agency action taken "without observance of procedure required by law" *See* 5 U.S.C. §§706(1), 706(2)(A), 706(2)(D).

25. The Code of Federal Regulations is unambiguous that the Embassy has a mandatory and affirmative duty to adjudicate a properly filed immigrant visa application where the underlying Form I-130, *Petition for Alien Relative* ("Form I-130") has been approved by USCIS and forwarded to the appropriate overseas embassy. 22 C.F.R. § 42.81(a); *see also* INA § 201(c)(1)(A-C) ("Worldwide Level of Family-Sponsored Immigrants.").

26. The court has further remedial authority under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.,* and the Administrative Procedure Act, 5 U.S.C. § 500 *et seq.*

INTRADISTRICT ASSIGNMENT

27. Pursuant to L.R. 3-2(d), the basis for assignment to the San Francisco and Oakland Division is that the case is a civil action which arise[s] in the counties of "Alameda,

Contra Costa, Marin, Napa, San Francisco, San Mateo or Sonoma," because the Organizational Plaintiff Pars Equality Center is headquartered in Menlo Park, California, within San Mateo County, and Petitioner Plaintiff [redacted] resides Redwood City, also within San Mateo County. Further, Petitioner Plaintiff [redacted] resides in Livermore, within Alameda County - all within the San Francisco and Oakland Division.

VENUE

28. Pursuant to 28 U.S.C. § 1391(e), venue is proper in this district on the following grounds: this is a civil action in which (1) Defendants are officers of the United States acting in their official capacity or an agency of the United States; (2) Organizational Plaintiff Pars Equality Center is headquartered in Menlo Park and Petitioner Plaintiff [redacted] resides Redwood City, both within San Mateo County, and Petitioner Plaintiff [redacted] resides in Livermore, within Alameda County - all within this judicial district; and (3) a substantial part of the acts or omissions giving rise to the claim occurred in this judicial district.

29. Since at least one Plaintiff resides in the Northern District of California, venue is proper before this court for all Plaintiffs. *Mosleh v. Pompeo*, No. 1:19-cv-00656-LJO-BAM, 2019 U.S. Dist. LEXIS 102765, at *5 (E.D. Cal. June 19, 2019); Also see *Californians for Renewable Energy v. United States Envtl. Prot. Agency*, No. C 15-3292 SBA, 2018 WL 1586211, at *5-6 (N.D. Cal. Mar. 30, 2018)(ruling only one Plaintiff must reside within the forum district for venue purposes, and collecting cases holding the same).

PARTIES

Organizational Plaintiff

30. Plaintiff Pars Equality Center ("Pars") is a 501(c)(3) non-profit corporation headquartered in Menlo Park, California, with offices in San Jose, Los Angeles, and Fremont California. Pars Equality Center's offices are recognized by the U.S. Department of Justice, Office of Legal Accreditation Program. Pars' legal staff members include licensed attorneys and accredited U.S. Department of Justice immigration representatives.

31. Pars is a community-based social and legal services organization dedicated to helping Iranian-American and other Persian-speaking communities fulfill their full potential as informed, self-reliant, and responsible members of American society. Since its inception in 2010, Pars has expanded its social and legal services to other immigrant and refugee communities, including Middle-Eastern, Southeast Asian, and Hispanic communities.

32. Pars provides programs and services to communities affected by the DS-5535 Scheme, including, primarily, the Iranian community. Pars' immigration services include assisting individuals with a range of immigration processes, including citizenship/naturalization applications, green card applications and renewals, domestic violence-based immigration petitions, family-based petitions, I-730 Refugee/Asylee petitions, travel documents, National Visa Center processing, employment authorization applications, requests for fee waivers, and representation at USCIS interviews. Pars' work also encompasses assisting individuals with more complex immigration relief such as humanitarian reinstatements, humanitarian parole, and, notably, consular advocacy for those affected by the DS-5535 Scheme.

33. In addition, Pars offers education and outreach services including in-house and mobile workshops, seminars, and roundtable discussions on immigrant rights issues such as immigration arrests and detentions, and rights at the border.

34. Pars provides social services to its clientele and the broader community, including but not limited to English as a Second Language (ESL) instruction, citizenship classes, computer training and access to employment resources such as job fairs, assistance in navigating the U.S. social and medical systems, assistance with tax preparation, and cross-cultural and cross-generational support and training.

35. In 2022, Pars served over to 6,000 individuals through its social, legal, and education and outreach services.

36. Plaintiff Pars asserts claims on behalf of itself and on behalf of its clients.

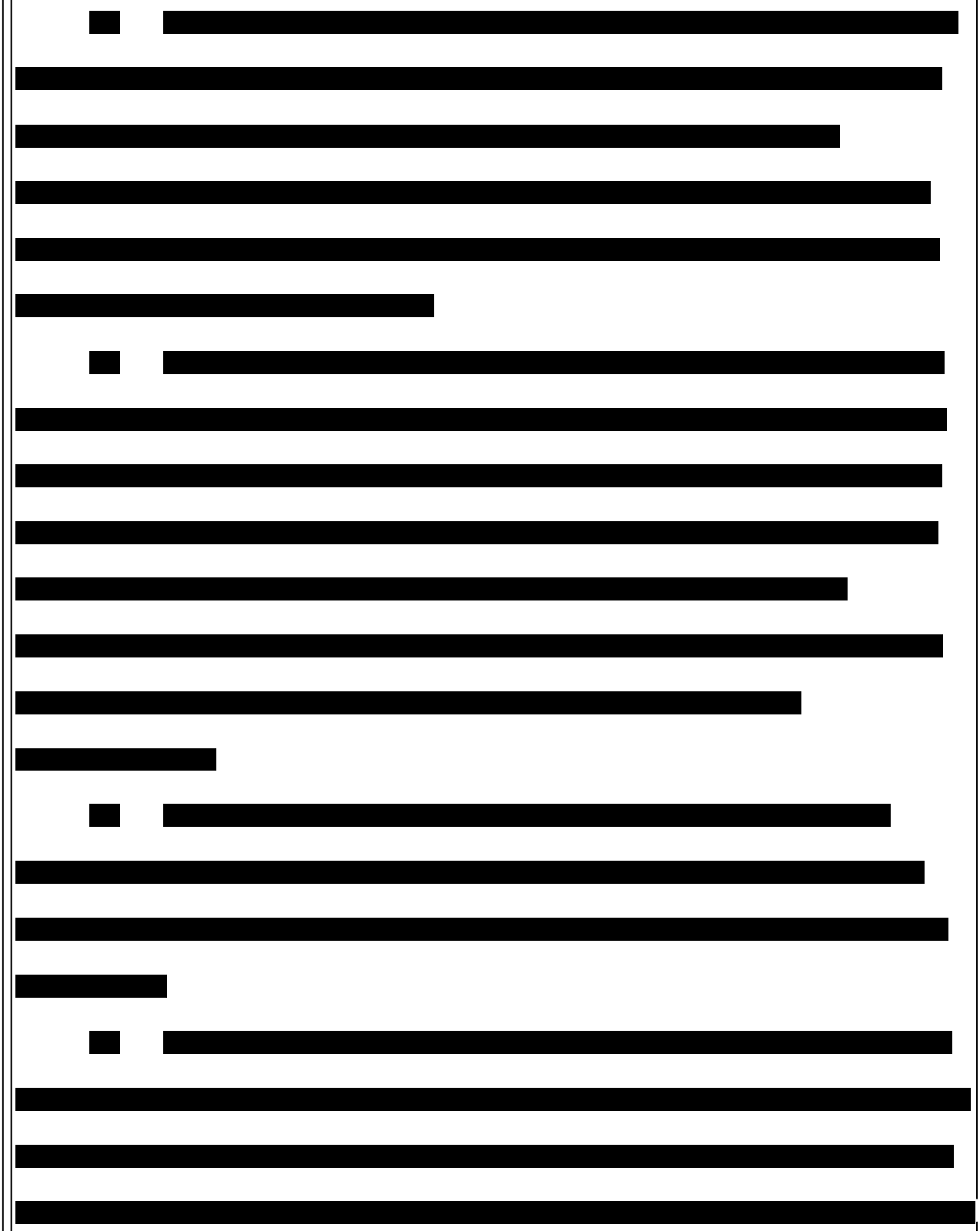
Individual Plaintiffs

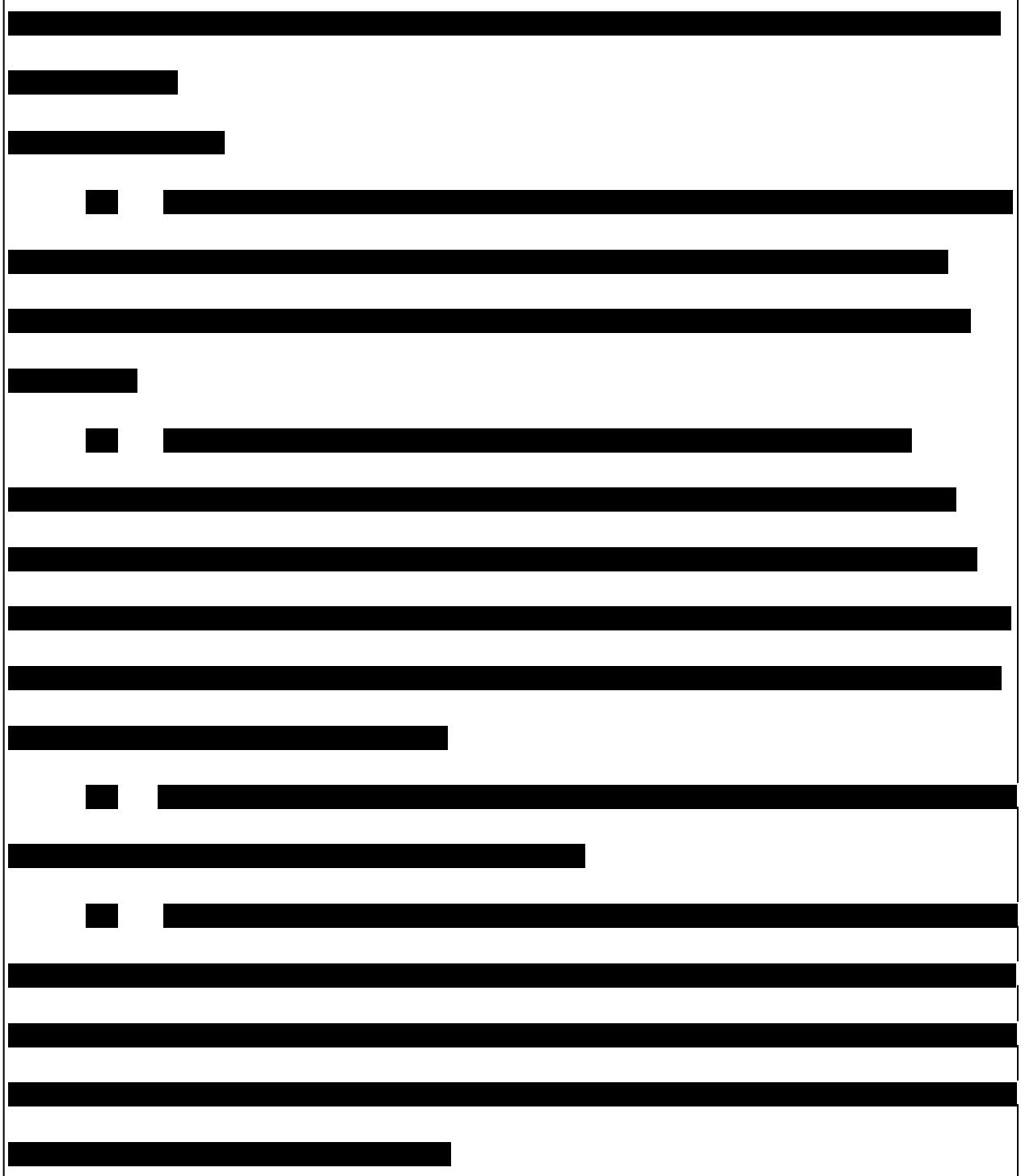
[redacted]

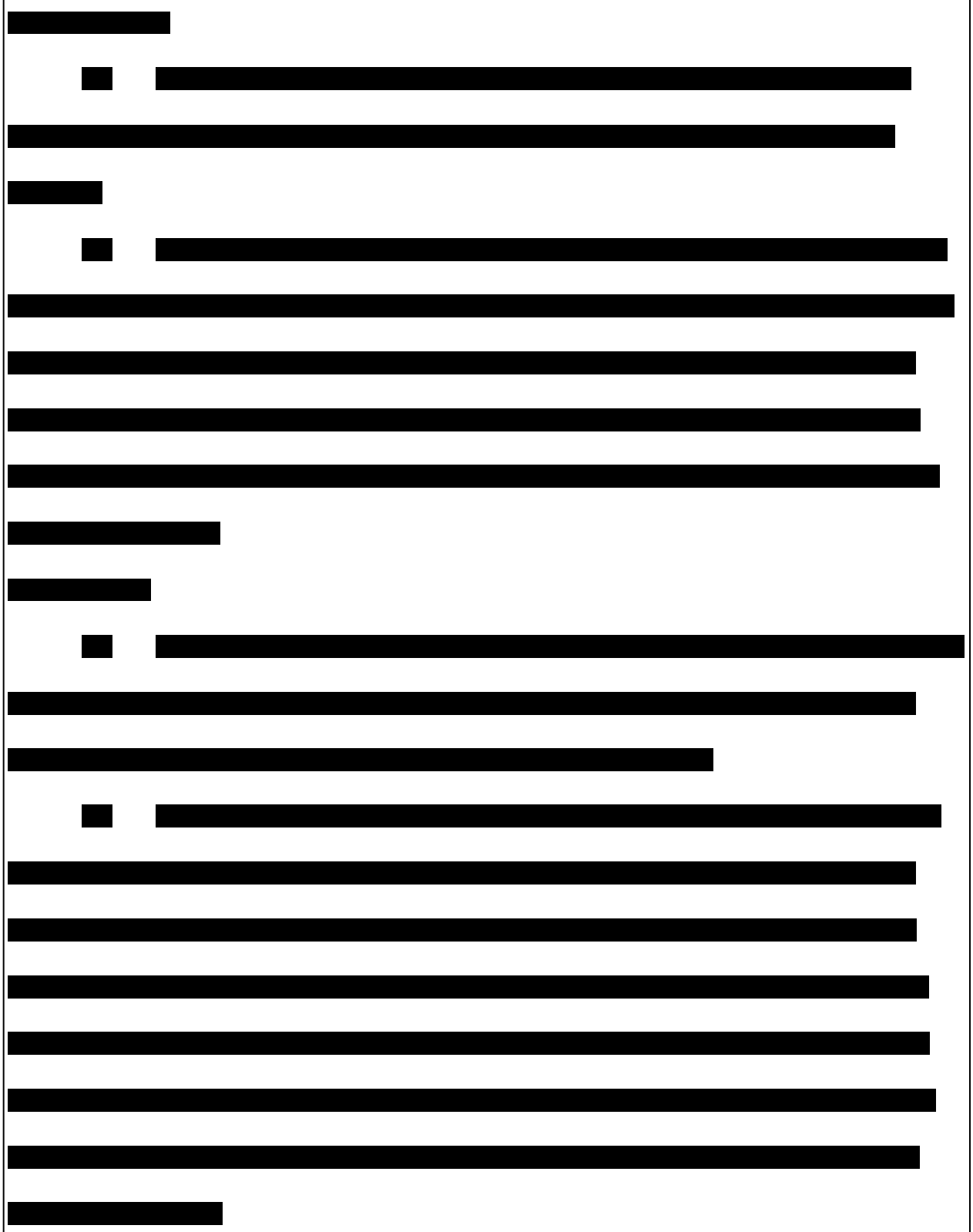
[redacted]

[redacted]

[redacted]







[redacted]

Defendants

68. Defendant ANTONY J. BLINKEN ("SECRETARY BLINKEN") is the Secretary of the U.S. Department of State, the department under which the U.S. embassies and consulates operate. The U.S. Department of State is responsible for the issuance visas following evaluation of Form DS-5535. As such, SECRETARY BLINKEN has supervisory responsibility over the U.S. Embassy, and the issuance visas following evaluation of Form DS-5535. SECRETARY BLINKEN is sued in his official capacity.

69. Defendant JULIE M. STUFFT ("DIRECTOR STUFFT") is the Acting Deputy Assistant Secretary and Managing Director for Visa Services, Bureau of Consular Affairs. DIRECTOR STUFFT is charged with all matters relating to visas and the administration of visa-related laws. DIRECTOR STUFFT is sued in her official capacity.

STATUTORY AND REGULATORY FRAMEWORK

I. Statutory and Regulatory Framework for Visa Adjudications

70. Family reunification, which has long been a key principle underlying U.S. immigration policy, is embodied in the Immigration and Nationality Act (the "INA").

71. In 1952, Congress enacted the INA and has amended it several times since.

72. The Immigration and Nationality Act Amendments of 1965 (P.L. 89-236), enacted during a period of broad social reform, eliminated the national origins quota system, which was widely viewed as discriminatory, and gave priority to immigrants with relatives living permanently in the United States. In 1990, Congress passed the Immigration Act of 1990. Pub. L. 101-649.

73. The INA established a complex system of immigrant visa availability to classes of foreign nationals. Congress's chief goals in writing the INA were reunifying families, admitting skilled immigrants, protecting humanitarian interests, and promoting diversity. *See, e.g.*, Solis-Espinoza v. Gonzales, 401 F.3d 1090, 1094 (9th Cir. 2005).

74. The INA authorizes consular officers to issue immigrant and nonimmigrant visas to foreign nationals who are eligible for those visas and who are admissible to the United States. *See* 8 U.S.C. § 1201; 22 C.F.R. § 42.71.

75. One of the primary methods by which foreign nationals seek to immigrate to the United States is immigration based on their familial relationship with a United States citizen or lawful permanent resident. Under the INA, family-sponsored visas may be issued to, *inter alia*, the children of U.S. citizens. 8 U.S.C. § 1153(a)(1)-(4).

76. A spouse or child (derivative) is entitled to the same status as the foreign national if accompanying or following to join, the foreign spouse or parent. 8 U.S.C. § 1153(d).

77. A family-based immigrant visa application is first initiated when a U.S. citizen or legal permanent resident submits Form I-130, Petition for Alien Relative with USCIS. 8 U.S.C. §

1154. USCIS then verifies that the petitioner is a United States citizen or legal permanent resident and that a qualifying relationship exists between the petitioner and the beneficiary. 8 C.F.R. § 204.1(a)(1).

78. Upon I-130 approval, if the beneficiary of the immigrant visa petition is residing outside of the United States, the petition is then sent to the National Visa Center ("NVC") for pre-processing and the beneficiary is able to begin the process of formally applying for an immigrant visa by submitting Form DS-260.

79. When introduced, the State Department noted that the "Form DS–260 will be used to elicit information to determine the eligibility of aliens applying for immigrant visas." 74 FR 6686.

80. When visa applicants first sign in to complete a DS-260, they're told on the website that "[t]he information solicited ***on this form*** will be used by consular officers to determine an applicant's eligibility for a visa." (emphasis added).

81. After completing the DS-260, filing supporting documentation and submitting fees, forms and supporting documentation to the NVC for review, the application is then sent to the Embassy having jurisdiction over the applicant's place of residence for interview.

82. Generally, Department regulations designate the applicant's residence as the determining factor for the place of application under normal circumstances. 9 FAM 504.4-8(A).

83. However, for "homeless" applicants, The Visa Office (VO) has designated specific posts to process those IV applications. 9 FAM 504.4-8(E)(2)(c).

84. A homeless visa applicant is a national of a country in which the United States has no consular representation or the political or security situation is tenuous or uncertain enough that the limited consular staff is not authorized to process IV applications. 9 FAM 504.4-

8(E)(1)(a).[1] Iranian visa applicants are considered homeless and are typically assigned processing posts in Abu Dhabi, Ankara, and Yerevan. 9 FAM 504.4-8(E)(1)(b).

85. The Department of State website instructs that "if a visa is available for [the] relative's category, and their case involves a life-or-death medical emergency, processing of [the] case may be expedited," and that "[consular sections overseas [are] able to expedite [the] interview date if there is an urgent, unforeseen situation such as a funeral, medical emergency, or school start date."

II. Defendants' Mandatory Duty to Adjudicate Beneficiary Plaintiffs' Visa Applications.

86. Congress requires that "[e]very alien applying for an immigrant visa…shall furnish to the consular officer ***with his application*** a copy of a certification by the appropriate police authorities stating what their records show concerning the immigrant; a certified copy of any existing prison record, military record, and record of his birth; and a certified copy of all other records ***or documents concerning him or his case which may be required by the consular officer***. The copy of each document so furnished shall be permanently attached to the application and become a part thereof." 8 U.S.C. §1202(b) (emphasis added).

87. Defendants have a mandatory duty to adjudicate Plaintiffs' visa applications within a reasonable time. *Mohamed v. Pompeo*, No. 1:19-cv-01345-LJO-SKO, 2019 U.S. Dist. LEXIS 167266 (E.D. Cal. Sep. 27, 2019) (issuing a mandatory injunction ordering the DOS to

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[1] The Foreign Affairs Manual ("FAM") and associated Handbooks ("FAHs") are internal sources for the Department of State's organization structures, policies, and procedures that govern the operations of the State Department. The FAM (generally policy) and the FAHs (generally procedures) together convey internal policies to Department of State staff and contractors so they can carry out their responsibilities.

complete adjudications of immigrant visa applications); 5 U.S.C § 555(b) (requiring agencies to, "within a reasonable time … conclude the matter presented to it"); *Nine Iraqi Allies Under Serious Threat Because of Their Faithful Serv. to the United States v. Kerry* ("*Nine Iraqi Allies*"), 168 F. Supp. 3d 268, 293 n. 22, 295–96 (D.D.C. 2016).

88. The INA, its implementing regulations, and preexisting Department policies in the FAM all mandate timely adjudication of immigrant visa applications.

89. Every foreign national executing an immigrant visa application "*must be interviewed by a consular officer* who shall determine on the basis of the applicant's representations and the visa application and other relevant documentation - (1) The proper immigrant classification, if any, of the visa applicant, and (2) The applicant's eligibility to receive a visa." 22 C.F.R. § 42.62 (b).

90. After completing a medical examination, and paying applicable fees, the beneficiary is interviewed by a consular officer at the beneficiary's applicable U.S. Embassy or consulate. During the interview, the applicant executes Form DS-260 by swearing to or affirming its contents and signing it before a consular officer. *See* 22 C.F.R. §42.67.

91. Defendants have promulgated a regulation that says that a consular officer may require "the submission of additional information or question the alien on any relevant matter ***whenever the officer believes*** that the information provided in Form DS-230 or Form DS-260 is inadequate to determine the alien's eligibility to receive an immigrant visa." 22 C.F.R. §42.63 (emphasis added).

92. The Department of State website instructs that at the end of one's immigrant visa interview at the U.S. Embassy or Consulate, the consular officer will inform the applicant

whether their visa application is approved or denied. "If your visa is denied, you will be informed by the consular officer why you are ineligible to receive a visa."

93. At the interview, a consular officer must issue a visa to an eligible applicant.

94. Under 22 C.F.R. § 42.81(a), "when a visa application has been properly completed and executed before a consular officer in accordance with the provisions of the INA and the implementing regulations, the consular officer *must* issue the visa [or] refuse the visa under INA 212(a) or 221(g) or other applicable law."

95. If the applicant is admissible to the United States, the consular officer "shall" issue the selectee an immigrant visa and may only refuse a visa "upon a ground specifically set out in the law or implementing regulations." 22 C.F.R. § 40.6.

96. The FAM reiterates that "[o]nce an application has been executed, you must either issue the visa or refuse it [...]. You cannot temporarily refuse, suspend, or hold the visa for future action. If you refuse the visa, you must inform the applicant of the provisions of law on which the refusal is based, and of any statutory provision under which administrative relief is available." 9 FAM § 504.9-2.

97. If the consular officer determines that a visa should be issued, the officer is required to arrange the appropriate visa documentation and sign and seal the immigrant visa, consistent with the requirements set forth in 22 C.F.R. § 42.73. "The immigrant visa shall then be issued by delivery to the immigrant or the immigrant's authorized agent or representative." *Id.* § 42.73(d).

98. Conversely, if the consular officer determines that the visa should be refused, the officer must have a basis for refusal that is "specifically set out in the law or implementing regulations." 22 C.F.R. § 40.6.

99. The officer also must comply with the refusal procedure outlined in 22 C.F.R. § 42.81(b), which mandates, in relevant part, that the "consular officer shall inform the applicant of the provision of law or implementing regulation on which the refusal is based and of any statutory provision of law or implementing regulation under which administrative relief is available."

100. According to 9 FAM 504.11-2(A), there are no exceptions to the rule that once a visa application has been properly completed and executed before a consular officer, a visa must be either issued or refused. Further, any foreign national to whom a visa is not issued by the end of the working day on which the application is made, or by the end of the next working day if it is normal post procedure to issue visas to some or all applicants the following day, must be found ineligible under one or more provisions of INA 212(a), 212(e), or 221(g). Furthermore, INA 221(g) is not to be used when a provision of INA 212(a) is applicable.

101. The regulations and the FAM specify what are valid grounds for refusal.

102. If the consular officer determines that the visa should be refused, the officer "shall provide the applicant a timely written notice" that states the basis for the denial and lists the specific provisions of the law under which the visa was refused. INA § 212(b), 8 USC § 1182(b); 22 § CFR 41.121(b).

103. The FAM categorizes Section 221(g) refusals issued for the purpose of conducting administrative processing as "Quasi-Refusal Cases." 9 FAM § 504.11-3(B).

104. When a "quasi-refusal" is issued pursuant to INA § 221(g), the applicant must be notified **both** orally and through a refusal letter, which is required to "[e]xplicitly state the provision of the law under which the visa was refused." 9 FAM § 504.11-3(A)(1) (emphasis added).

105. In the event that a visa is refused, the application **must** be reconsidered if "within one year from the date of refusal [the applicant] adduces further evidence tending to overcome the ground of ineligibility on which the refusal was based." 22 C.F.R. § 42.81(e) (emphasis added).

106. In addition, 22 C.F.R. § 40.6 states that "[a] visa can be refused only upon a ground specifically set out in the law or implementing regulations."

107. A consular officer cannot temporarily refuse, suspend, or hold the visa for future action.

108. If the consular officer refuses the visa, he or she must inform the applicant of the provisions of law on which the refusal is based, and of any statutory provision under which administrative relief is available. 9 FAM 504.1-3(g); see 9 FAM § 504.11-2(A)(b) ("There is no such thing as an informal refusal or a pending case once a formal application has been made."); *see also* Alharbi v. Miller, 368 F. 3d 527, 558 (E.D.N.Y. 2019) (holding that consular officers have a "nondiscretionary binary" duty to issue or refuse visas).

109. "Section 237 of Public Law 106-113 and subsequent legislation require that the Department establish a policy under which immediate relative (and fiancé(e)) visas be processed within 30 days of receipt of the necessary information from the applicant and the Department of Homeland Security (DHS); all other family-based IV ***must*** be processed within 60 days." *See* 9 FAM 504.7-2(b), and District of Columbia Appropriations Act, 1999, Public Law 106-113, sec 237. (Emphasis added). The Department expects all posts to strive to meet the 30/60-day requirements *See* 9 FAM 504.7-2(b).

110. When read together, the INA, regulations, and DOS policy require applicants to submit their application including "documents concerning him or his case which may be required

by the consular officer", and then for Defendants to process, interview, and issue visas to eligible visa applicants. 8 U.S.C. §1202(b).

STATEMENT OF FACTS

I. THE EVOLUTION OF THE DS-5535 SCHEME

111. By creating a false narrative that immigrants are a threat to our country, former President Donald Trump enacted a series of "extreme vetting" policies to restrict entry into the United States

112. On May 4, 2017, the State Department first introduced the DS-5535 when it published a notice of request for emergency Office of Management and Budget approval and public comment. The methodology explained that consular officers at visa-adjudicating posts would ask the additional DS-5535 questions "***when the consular officer determines*** that the circumstances of a visa applicant, a review of a visa application, or responses in a visa interview indicate a need for greater scrutiny. The additional questions may be sent electronically to the applicant or be presented orally or in writing ***at the time of the interview***." Exhibit A, 82 FR 20956. (emphasis added). In 2021, the Department requested extension of the DS-5535 under Paperwork Reduction Act which was neither requested nor granted on an emergency basis. 86 Fed. Reg. 8475. The Office of Management and Budget approved that request on May 11, 2021.

113. In early July 2019, the State Department instituted a new procedure to run an enhanced automated screening and vetting process for all immigrant and nonimmigrant visa applicants, including those subject to Presidential Proclamation 9645, *Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats*. 82 Fed. Reg. 45161, ("PP 9645"). The new enhanced review was automated, occurring prior to the interview, and providing consular officers with the information

required to make most PP 9645 waiver determinations much more quickly than before. The new procedure made it possible for many visas to be issued within days of the interview, should the security check done prior to the interview not identify any concerns, and the consular officer determined that the applicant met all criteria for a PP 9645 waiver.

114. The enhanced automated screening and vetting process is no longer being implemented.

115. On October 3, 2019, the VO hosted an outreach event with AILA's State Department Liaison Committee and addressed a broad range of visa-related questions presented by the Committee. The State Department revealed that the it "does not track the number of applicants requested by a consular officer to provide responses to the questions contained in Form DS-5535 as our systems do not have this specific capability," and that "[w]hile every visa applicant is required to submit a Form DS-160 or DS260 visa application, a consular officer may request responses to the questions contained in Form DS-5535 only when the consular officer determines that information is needed to confirm identity or conduct more rigorous national security vetting of that particular applicant."

116. On January 20, 2021, President Biden called the need for the DS-5535 into question; ordering "[a] description of the current screening and vetting procedures for those seeking immigrant and nonimmigrant entry to the United States. This should include information about any procedures put in place as a result of any of the Executive Order and Proclamations revoked in section 1 of this proclamation and should also include an evaluation of the usefulness of form DS–5535." Presidential Proclamation No. 10141, *Ending Discriminatory Bans on Entry to the United States*, January 20, 2021 ("PP10141").

117. Plaintiffs' counsel has a FOIA request pending since September 5, 2023, #F-2023-12770, seeking the requested evaluation of DS-5535.

118. There is a section of the FAM code, 9 FAM 304.5-9(D), that deals specifically with Iran. Further, 9 FAM 304.5-9(D)(2) and (D)(3), deal directly with State Department policies pertaining to Iranian IV and NIV applicants, respectively. Despite President Biden's direction under PP10141, as of October 12, 2021 (nine months later), Defendants had not updated either sub-section of the FAM code. In fact, neither sub-section had been updated since April 14, 2020. Exhibit B, *9 FAM 304.5-9(D) as of October 12, 2021*.

119. Modernly, the vetting process for the DS-5535 is the same vetting process for a waiver of PP 9645 under the Trump administration.

120. Modernly, consular officers do not decide which visa applicants require the DS-5535, because State Department software makes that determination for them.

121. Modernly, consular officers often ask the Form DS-5535 questions in the body of an email without referencing the form.

122. Modernly, when consular officers receive responses to DS-5535 from immigrant visa applicants whose applications they have refused under 221(g), they transmit that information to Washington, DC via a Security Advisory Opinion, often called SAO.

123. After the DS-5535 responses are submitted to Washington, D.C., consular officers have no control over the adjudication of the visa applications.

II. DEFENDANTS FAILED TO CONSIDER IMPORTANT ASPECT OF THE PROBLEM.

124. Before introducing the DS-5535 Scheme, the Defendants failed to consider three important aspects of the problem.

125. First, Defendants failed to consider the unreasonable and unnecessary delays that would ensue by only requesting the information at the end of the process. These delays are pronounced for Iranian immigrants specifically as the three US Embassies where most interview, Abu Dhabi, Ankara, and Yerevan, also have backlogs that cause applicants not to be scheduled for interviews for several months up to two years after their cases are determined to be documentarily qualified by NVC. **This is a period where the DS-5535 could be completed concurrently, but Defendants never considered that.**

126. Second, Defendants failed to consider the State Department's own institutional animus against and deeply irrational fixations on Iranian visa applicants and how the discretion inherent in the DS-5535 Scheme could be used as a pseudo-travel ban.

127. Third, Defendants failed to consider how the DS-5535 Scheme could be used in bad faith by Defendants as a tool to evade judicial review of the timeliness of visa adjudications. Specifically, when defending against lawsuits brought challenging unreasonable delays in administrative processing, Defendants always try to hide behind a regulation only requiring that a consular officer "issue the visa, refuse the visa under INA 212(a) or 221(g) or other applicable law or, pursuant to an outstanding order under INA 243(d), discontinue granting the visa." See 22 C.F.R. § 42.81(a).

III. IMMIGRANT VISA APPLICANTS CAN ONLY FURNISH DS-5535 RESPONSES AFTER THEY ARE REFUSED UNDER INA 221(g).

128. In 2021, Defendant Stufft posted the following in the Federal Register:

> "Department of State consular officers at visa-adjudicating posts worldwide will ask the additional questions to resolve an applicant's identity or to vet for terrorism, national security-related, or other visa ineligibilities when the consular officer determines that the circumstances of a visa applicant, a review of a visa application, or responses in a visa interview indicate a need for greater scrutiny. *The additional questions may be sent*

electronically to the applicant or be presented orally or in writing at the time of the interview."

86 FR 8475, 8476, (emphasis added).

129. While Defendant Stufft's post in the Federal Register suggests who gets a DS-5535 is determined by the consular officer, what happens in practice is a flag triggered by an algorithm or artificial intelligence pops up on their computer screen, leaving the consular officer no other choice but to issue a 221(g) notice and collect the DS-5535 responses. Since that flag does not show up until after the interview is in process or completed, the scenario where a consular officer would request the DS-5535 responses in advance of the interview does not exist.

130. A U.S. Embassy Ankara webpage makes clear that the DS-5535 can only be sent after interviews: "[c]ase[s] requiring administrative processing will receive additional instructions via email. Please fully and accurately complete DS-5535 form and send it to us ***after*** your interview" Exhibit I, *US Embassy Ankara - After the Interview*.

131. U.S. Embassy Mumbai informs visa applicants to "Please ***only*** complete [Form DS-5535] ***if*** a visa officer has requested you to at the time of your visa interview." Exhibit D, *US Embassy Mumbai*, DS-5535, (emphasis added).

132. On its website, U.S Embassy Djibouti instructs visa applicants to complete the DS-5535 "only if instructed to do so by a consular officer in the letter you received at your interview or by email."

133. When asked if Iranian applicants can submit their DS-5535 questionnaire before their interviews, U.S. Embassy Ankara responded: "We do not request or accept a DS-5535 prior to the interview for applicants." Exhibit E, *US Embassy Ankara answer to general question*.

IV. DEFENDANTS HAVE SET ARBITRARY EXPECTATIONS THAT ARE ALL OVER THE PLACE.

134. Many U.S. Embassies have estimated wait times for administrative processing listed on their websites as between 60 to 90 days.

135. U.S. Embassy in Iran's website says, "most administrative processing is resolved within 60 days of the visa interview." Exhibit F, *U.S. Virtual Embassy Iran AP Estimation*.

136. Plaintiffs who inquired with U.S. Embassy Abu Dhabi received an auto-reply email that informs visa applicants that administrative processing is a "process" that "can last between 60-90 days" but "it can take significantly longer," and that "[w]e realize that these extended time periods cause frustration but we must adjudicate visas in accordance with the provision of the law," without noting any provision of law. Exhibit G, *US Embassy Abu Dhabi Automatic reply*.

137. U.S. Embassy Abu Dhabi's webpage reads: "*Administrative processing* takes additional time after the interview. Most administrative processing is resolved within 60 days. However, the timing varies based on the circumstances of each case. Before inquiring about the status of administrative processing, please wait **at least** 90 days after your interview." Exhibit H, *US Embassy Abu Dhabi, United Arab Emirates – ABD webpage*.

138. U.S. Embassy in Ankara has a webpage for advising applicants "After the Interview". It reads: "If administrative processing is required, the consular officer will inform the applicant at the interview. Duration of administrative processing varies but ***most administrative processing is resolved within 6 months***. However, the timing varies based on the circumstances of each case. ***Before inquiring about the status of administrative processing, please wait at least 6 months after your interview***." Exhibit I**,** *US Embassy Ankara - After the Interview*, (emphasis added).

V. PLAINTIFFS' HARDSHIP AND HARM SUFFERED.

139. Years ago, Petitioner Plaintiffs began the process to bring their immediate family members to the United States by each filing a Form I-130 *Petition for Alien Relative* on their behalf. Finally, from March 27, 2022, to May 18, 2023, Beneficiary Plaintiffs were interviewed by the Consular Section of the U.S. Embassies in either Abu Dhabi, Ankara, or Yerevan.

140. Following their immigrant visa interviews, Beneficiary Plaintiffs were informed that their applications would have to undergo mandatory administrative processing.

141. Following their interviews, consular officers gave non-final 221(g) refusal notices to Beneficiary Plaintiffs.

142. The consular officers also requested that Beneficiary Plaintiffs complete and submit the DS-5535, requesting, in some cases 15 years of detailed history, including addresses, employment, travel, and social media handles. As explained on their website, US Embassy Ankara requires "the applicant's entire employment history." Exhibit I, *US Embassy Ankara - After the Interview*.

143. Beneficiary Plaintiffs promptly completed and submitted their detailed response to the questionnaires.

144. As of the date of filing, Plaintiff families are still separated, and awaiting clearance of their submitted DS-5535 responses from unclear and opaque government agencies, and/or government contractors.

145. For a range of **229 to 645 days, an average of 387 days** since their interviews, Beneficiary Plaintiffs have remained patiently waiting, their visa application status on the State Department CEAC website continues to show that their cases as "Refused" and informs them

that "[their] case will remain refused while undergoing such processing" and that they "will receive another adjudication once such processing is complete." Exhibit J, *CEAC Online Case Statuses as of January 1, 2024*.

146. As the beneficiaries of approved I-130 petitions, Beneficiary Plaintiffs are entitled to the issuance of the immigrant visa unless they are ineligible under a specific ground of ineligibility set forth in the governing statutes and regulations.

147. As a direct result of Defendant's failure to issue final decisions on Beneficiary Plaintiffs' immigrant visa applications, Plaintiffs have experienced, and will continue to experience, severe, particularized, and concrete injury.

148. Due to the persistent delay in the final adjudication of Beneficiary Plaintiffs' visa applications, what was meant to be a temporary separation has become a nightmare. Due to the lack of substantive updates from Defendants, Plaintiffs live with the ever-increasing fear that they will be separated indefinitely.

149. Plaintiffs desperately wish to live normal lives as families and have been forced to resort to phone calls and costly brief, and dangerous, trips as their only source of comfort and emotional support.

150. The failure of the Defendants to timely adjudicate Beneficiary Plaintiffs' applications is causing severe emotional distress and psychological harm to the entire family by forcing them to remain separated with no idea when they will be reunited.

151. Plaintiffs' separation has also caused an immense amount of financial strain as it requires them to financially maintain two homes, one in the United States and one abroad. Daily life has become unbelievably expensive for the everyday person, and Plaintiffs are no exception. Plaintiffs have been forced to spend from their savings and cannot afford any further expenses.

152. Plaintiffs are now left in an untenable situation with no apparent end in sight. As a result, they are suffering from extreme emotional and psychological harm due to the uncertainty of their family's future.

153. Despite all reasonable attempts by Plaintiffs to determine the nature of the delay in visa issuance, Defendants have unreasonably delayed making a final decision on Plaintiffs' visa applications without explanation or on the grounds of any rational basis.

154. Defendant's delay in adjudication is unreasonable and is causing irreparable injury to the Plaintiffs.

155. The physical, financial, and emotional stresses that Plaintiffs have suffered, all of which Defendants are fully aware of, because of Defendants' failure to act have exacted a significant toll on Plaintiffs that will not be relieved until Beneficiary Plaintiffs' visa applications are adjudicated.

156. Organizational Plaintiff, Pars Equality Center has suffered and will continue to suffer harm because of the arbitrary delays caused by the DS-5535 Scheme. Since Defendants began implementing the DS-5535 Scheme, Pars legal team has been inundated with telephone calls, emails, and messages from community members asking questions and expressing concerns. Immigrant Visa petitioners and their overseas beneficiaries waiting months and, at times, years following the submission of the DS-5535 questionnaire, contact Pars **daily** with anxious questions about the unconscionable delay. Responding to these inquiries has diverted significant resources from other areas of Pars's practice and services. Instead of devoting its resources to representing clients in their immigration cases, Pars legal team has been forced to spend most of its time advising clients and other community members on the DS-5535 Scheme and the ensuing arbitrary administrative processing.

157. In addition to providing limited legal advice on the DS-5535 Scheme, Pars legal team is directly representing over fifty clients who are affected by lengthy delays following the DS-5535 submission. For these direct representations, Pars provides ongoing consular advocacy and continually seeks support of elected congressional representatives to end the seemingly interminable administrative processing. The time and effort spent in advocating on behalf of clients have exhausted Pars's legal resources, an expenditure that often goes to waste because advocacy does not seem to resolve the opaque and arbitrary administrative processing.

158. Furthermore, the DS-5535 Scheme's pseudo-travel ban has the long-term effect of reducing Pars's potential client pool – indefinitely. One of the central tenets of Pars's mission is to assist Iranian immigrants with their integration into American society. Close to 80 percent of Pars's immigration and social services clients are Iranian immigrants. The DS-5535 Scheme's indefinite visa refusal of Iranian applicants puts Pars's continued operation in serious jeopardy.

159. The grants that Pars receives from local and state governments are dependent on the number of immigration consultations performed and the number of immigration cases filed per fiscal year. Because Iranian immigrants are routinely subjected to the DS-5535's pseudo-travel ban Pars risks losing 80 percent of its clients, thereby putting Pars at risk of failing to meet its grant deliverables. This would have a devastating impact on Pars's operating budget, potentially forcing it to drastically cut its workforce and even forcing cessation of its operations.

CAUSES OF ACTION

COUNT ONE:
Violation of the APA, § 706(2)(A) and (D)

160. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

161. The Department is an Agency subject to the requirements of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A) and (D).

162. The APA prohibits federal agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or is conducted "without observance of procedure required by law." 5 U.S.C. § 706(2)(A) and (D).

163. The DS-5535 was promulgated for waivers of the now-rescinded PP 9645, but now is required on most Iranian visa applicants.

164. The essence of Defendants' DS-5535 Scheme is a decision by Defendants to prohibit Iranian immigrant visa applicants from submitting the DS-5535 prior to their immigrant visa interviews.

165. The action of preventing Iranian immigrant visa applicants from furnishing DS-5535 responses prior to their interviews, is arbitrary and capricious.

166. The arbitrariness of the DS-5535 Scheme is underscored by the US Embassy Ankara posting a tip on their webpage suggesting that immigrant visa applicants attempt a little hustle, by sneaking in their entire work history for their whole life on the DS-260, even though the DS-260 only requests work history for 10 years. This work history is just one of the questions on the DS-5535. The US Embassy Ankara contains no tip about how to furnish consular officers answers to other DS-5535 questions, like travel history, prior to interview. Exhibit I, *US Embassy Ankara - After the Interview*.

COUNT TWO:
Violation of the APA, 5 U.S.C. § 706(2)
Withholding of Plaintiff's Immigrant Visa Application

167. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

168. The Department is an Agency subject to the requirements of the APA, 5 U.S.C. § 701(b)(1).

169. Under 5 U.S.C. § 706(2), courts shall hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations; or without observance of procedure required by law.

170. The APA defines action, in part, as a "failure to act." 5 U.S.C. § 551(13).

171. The APA authorizes courts to compel agency action for two distinct types of "failures to act" – (1) unlawful withholding of agency action or (2) unreasonable delay of agency action. 5 U.S.C. § 706(1).

172. Here, Defendants have unlawfully withheld agency action in contravention of statutes, regulations, and stated policy pronouncement.

173. Beneficiary Plaintiffs have fulfilled all requirements, paid all fees, and is otherwise eligible for an immigrant visa. Yet Defendants have failed to adjudicate Plaintiffs' applications within a reasonable time and have instead unlawfully withheld agency action, leaving Plaintiffs in an indefinite limbo.

174. Fully adjudicating an immigrant visa application for a relative of a U.S. citizen within 30 days of receipt of the necessary information from the applicant and the Department of Homeland Security is a discrete and required action. *See Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004).

175. The unlawful withholding and unreasonable delay in the adjudication and issuance of Beneficiary Plaintiffs' immigrant visas constitute a final agency action that is

reviewable by this Court. *Whitman v. Am. Trucking Ass'n*, 531 U.S. 457, 478 (2001); *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997).

176. Agency action "cover[s] comprehensively every manner in which an agency may exercise its power." *Whitman*, 531 U.S. at 478.

177. Agency action that is final is "mark[ed by] the consummation of the agency's decision-making process" and "be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997).

178. As demonstrated above, Defendants have failed to timely adjudicate Beneficiary Plaintiffs' immigrant visa application, effectively suspending the processing and adjudication of a visa for an otherwise qualified and eligible applicant.

179. In this case, the legal consequences flowing from the consummation of the State Department's decision-making process are the Defendants' withholding and delay in processing Beneficiary Plaintiffs' immigrant visas well beyond the 30/60-day requirement by which they are required. *Bennett*, 520 U.S. 154; *Cal. Cmtys. Against Toxics v. EPA*, 934 F.3d 627, 637 (D.C. Cir. 2019); *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1023 (D.C. Cir. 2000); *Ciba-Geigy Corp. v. EPA*, 801 F.2d 430, 438 (D.C. Cir. 1986).

180. Defendants' inaction, in this case, creates jurisdiction. *Moghaddam v. Pompeo*, 424 F. Supp. 3d 103, 114 (D.D.C. 2020) (quoting *Patel v. Reno*, 134 F.3d 929, 931–32 (9th Cir. 1997)); *see also Nine Iraqi Allies*, 168 F. Supp. 3d at 290–91, ("When the Government simply declines to provide a decision in the manner provided by Congress, it is not exercising its prerogative to grant or deny applications but failing to act at all.").

181. Plaintiffs and their clients or members were harmed by Defendants' inaction and delay.

182. Plaintiffs and their clients or members will continue to be irreparably harmed by these unlawful acts absent an injunction from this Court enjoining Defendants from withholding adjudication of Beneficiary Plaintiffs' immigrant visa applications.

COUNT THREE:
Violation of the APA, 5 U.S.C. § 706(1)
Withholding of a Mandatory Entitlement Owed to Plaintiffs

183. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

184. Section "706(1) grants judicial review if a federal agency has a 'ministerial or non-discretionary' duty amounting to a 'specific, unequivocal command.'" *Anglers ConservationNetwork v. Pritzker*, 809 F.3d 664, 670 (D.C. Cir. 2016).

185. Under section 706(1) of the APA, the court may "compel agency action unlawfully withheld." 8 U.S.C. § 706(1).

186. The timely adjudication of and decision on a properly filed pending applications are not optional. This is not committed to agency discretion, nor are the statutes, regulations, and policies, so broad as to provide no meaningful standard to judge the agency's action. Rather, these duties and how Defendants must undertake them are detailed in the INA, the FAM, and its governing regulations.

187. Defendants' conduct is contrary to the INA's mandate that all immigrant and nonimmigrant "visa applications *shall* be reviewed and adjudicated by a consular officer" 8 U.S.C. § 1202(b), (d), and 8 U.S.C. § 1201(a)(1) which provides that a "consular officer may issue" a visa to an individual who has "made proper application therefor."

188. Pursuant to sections 1202(b) and 1202(d) of the INA, Defendants owe a nondiscretionary duty to Beneficiary Plaintiffs, which require that all immigrant and nonimmigrant visa applications "*shall* be reviewed and adjudicated by a consular officer" and creates a discrete, legally required action. 8 U.S.C. § 1202(b), (d) (emphasis added).

189. Congress's use of the word "shall" imposes a mandatory non-ministerial duty on consular officers to review, adjudicate, and issue fiancé visas. Sierra Club v. E.P.A., 705 F.3d 458, 467 (D.C. Cir. 2013) ("the word 'shall' ... evidences a clear legislative mandate…")

190. Likewise, the Code of Federal Regulations is unambiguous that Defendants have a mandatory and affirmative duty to interview immigrant visa applicants and adjudicate properly filed immigrant visa applications. Under 22 C.F.R. § 42.81(a), "when a visa application has been properly completed and executed before a consular officer in accordance with the provisions of the INA and the implementing regulations, the consular officer *must* issue the visa [or] refuse the visa under INA 212(a) or 221(g) or other applicable law."

191. Defendants have a "nondiscretionary, ministerial" duty to act. The INA governs visa processing and "confers upon consular officers' exclusive authority to review applications for visas. *Saavedra Bruno v. Albright,* 197 F. 3d 1153, 1156 (D.C. Cir. 1999); *see also* § 201(e), INA §§ 101(a)(9), (16); a "consular office is required by law to act on visa applications." *Patel v. Reno,* 134 F.3d 929, 932 (9th Cir. 1997).

192. Defendants owe Plaintiffs a nondiscretionary, ministerial duty to act upon the immigrant visa application, one that they have failed to fulfill. *See* INA §201(e); INA §§ 101(a)(9), (16); 22 C.F.R.§ 42.62; *see also, e.g., Donovan v. United States*, 580 F.2d 1203,

1208 (3d Cir. 1978) (holding that mandamus is an appropriate remedy whenever a party demonstrates a clear right to have an action performed by a government official who refuses to act).

193. Defendants have refused to adjudicate Beneficiary Plaintiffs' immigrant visa application despite being eligible for adjudication and visa issuance.

194. Defendants are unlawfully withholding discrete action they are required to take within the temporal limits imposed by statute and the express intent of Congress, and as outlined above they have failed to adjudicate Plaintiffs immigrant visa applications in contravention of that nondiscretionary duty.

COUNT FOUR:
Violation of the APA; 5 U.S.C. § 555(b)
Unreasonably Delayed Adjudications

195. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

196. Pursuant to the APA, Defendants have a nondiscretionary duty to conclude a matter presented to it within a reasonable time. *See* 5 U.S.C. § 555(b).

197. Pursuant to the APA, 5 U.S.C. §706(1), a court may compel agency action unlawfully withheld or unreasonably delayed.

198. Plaintiffs' claims implicate the statutory mandates that "*[a]ll* immigrant visa applications *shall* be reviewed and adjudicated by a consular officer," 8 U.S.C. § 1202(b) (emphases added). Defendants' DS-5535 Scheme should not give them a workaround for this congressionally mandated duty.

199. Defendants have unreasonably delayed processing Beneficiary Plaintiffs' visa applications since the date of their immigrant visa interviews, which were between 229 and 645 days ago.

200. The Department of State, its employees, and its subsidiaries, are required to process immediate relative immigrant visas "within 30 days of receipt of the necessary information from the applicant and the Department of Homeland Security" and all family-based immigrant visas "within 60 days of receipt of the necessary information from the applicant and the Department of Homeland Security." See 9 FAM § 504.7-2(b), and District of Columbia Appropriations Act, 1999, Public Law 106-113, sec 237. The FAM makes clear that "the Department expects all posts to strive to meet the 30/60-day requirements." *Id*. This is a clear indication of the speed with which the agency is expected to process immediate relative and family-based immigrant visa applications.

201. "Reasonable time for agency action is typically counted in weeks or months, not years." *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004).

202. Plaintiffs' human welfare is "at stake" in this case and the prejudice from any further delay is devastating and unconscionable to their families. If Defendants continue to neglect adjudication of Beneficiary Plaintiffs' visa applications, Plaintiffs will continue to suffer financially, psychologically, and emotionally indefinitely until they are reunited. *Telecommunications Research & Action Center v. FCC* ("TRAC"), 750 F.2d 70, 80 (D.C. Cir. 1984).

203. Defendants' adoption and implementation of the DS-5535 Scheme as a workaround to allow them indefinitely delay the adjudication of Iranian immigrant visa applications demonstrates—although not needed to satisfy the CO analysis—that

Defendants act with impropriety in creating "agency lassitude." Further, Defendants' blatant disregard for the indefinite suffering of separated families and the time-sensitive nature of Plaintiffs' visa applications also show—that Defendants act with impropriety in creating "agency lassitude."

204. Defendants have failed to adjudicate immigrant visas for Beneficiary Plaintiffs within a reasonable time.

205. Beneficiary Plaintiffs have submitted all required information, documents, and payments and are eligible for the visa they seek, and yet, Defendants have failed to issue final decisions on their immigrant visa applications.

206. Defendants have already cost Plaintiffs years of precious time together by unreasonably delaying the adjudications of their immigrant visas. Plaintiffs have missed memories, milestones, and the shared joys of daily family life that they cannot regain or recreate.

207. Absent an order from this Court, Defendants will continue to delay and fail to provide final adjudications on Beneficiary Plaintiffs' immigrant visa applications. With each passing day, the risk of irreparable intergenerational harm to their families substantially increases.

208. Plaintiffs and their clients or members were harmed and will continue to suffer irreparable harm if Defendants persist in unreasonably delaying the final adjudications of Beneficiary Plaintiffs' immigrant visa applications.

COUNT FIVE:
Mandamus Act, 28 U.S.C. § 1361

209. Plaintiffs repeat and incorporate by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

210. Under 28 U.S.C. § 1361, "[t]he 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."

211. A mandamus plaintiff must demonstrate that: (i) he or she has a clear right to the relief requested; (ii) the defendant has a clear duty to perform the act in question; and (iii) no other adequate remedy is available. *Liberty Fund, Inc. v. Chao*, 394 F. Supp. 2d 105, 113 (D.D.C. 2005); *see also Patel*, 134 F. 3d at 933 (duty to adjudicate an immigrant visa application).

212. The Plaintiffs clearly meet all three of these criteria. *See, e.g.*, *Raduga USA*, 440 F. Supp. 2d at 1146 ("Plaintiffs' claim here is clear and certain, and the consul's nondiscretionary, ministerial duty is plainly prescribed. Furthermore, Plaintiffs have no other means to compel the United States consul to make a decision.") United States v. Kerry, 168 F.Supp.3d 268, 291-92 (D.D.C. 2016)(holding the doctrine of consular non-reviewability did not apply where plaintiffs' visa applications were not formally refused, but were held in "administrative processing"); see also *Patel v. Reno,* 134 F.3d 929, 932-33 (9th Cir. 1997)(affirming the granting of mandamus relief where plaintiff's application had only been "provisionally refused"); *Maramjaya v. U.S. Citizenship & Immigration Servs.*, 2008 WL 9398947, at 4 (D.D.C. Mar. 26, 2008)(holding that the doctrine of consular non-reviewability did not apply when the case had not procedurally progressed to the point where consular immunity would bar judicial review").

213. Plaintiffs have fully complied with all statutory and regulatory requirements for obtaining immigrant visas for Beneficiary Plaintiffs, including obtaining approval of an I-130 petitions, applying for their visa with a properly filed DS-260, and submitting all necessary documentation and paying all required fees.

214. Defendants have a clear non-discretionary duty to adjudicate immigrant visa applications and issue visas to Beneficiary Plaintiffs who are eligible to receive visas and not inadmissible under 8 U.S.C. § 1182(a).

215. Defendants owe Plaintiffs a duty to act upon Beneficiary Plaintiffs' immigrant visa applications. The INA and the relevant regulations impose on the Defendants a non-discretionary duty to timely adjudicate Beneficiary Plaintiffs' visa applications and to complete any background checks, interviews, or other investigations required by the Defendants to do so.

216. This duty is owed under the INA, federal regulations, and published agency guidance. *See* INA § 201(b)(2)(A)(i); INA §§ 101(a)(9), (16); 22 C.F.R. § 42.81(a); *see also, e.g.*, *Donovan v. United States*, 580 F.2d 1203, 1208 (3d Cir. 1978) (holding that mandamus is an appropriate remedy whenever a party demonstrates a clear right to have an action performed by a government official who refuses to act).

217. The Department of State, its employees, and its subsidiaries are required to process immediate relative visas "within 30 days of receipt of the necessary information from the applicant and the Department of Homeland Security; all other family-based immigrant visas (IV) must be processed within 60 days." *See* 9 FAM § 504.7-2(b), and District of Columbia Appropriations Act, 1999, Public Law 106-113, sec 237.

218. Nonetheless, Defendants have willfully and unreasonably failed to adjudicate Beneficiary Plaintiffs' immigrant visa applications, thereby depriving Beneficiary Plaintiffs of their rights under 22 C.F.R. § 42.81(a), 8 U.S.C. 1184(d)(1), and the APA to have a properly filed visa application decided in a timely manner.

219. Adjudication of Beneficiary Plaintiffs' immigrant visa applications are a purely ministerial, non-discretionary act which the Defendants are under obligation to perform in a timely manner; the Plaintiffs have no alternative means to obtain adjudication of the visa; and their right to issuance of the writ is "clear and indisputable." *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980); *see also First Federal Savings and Loan Ass'n of Durham*, 860 F.2d at 138; *Patel*, 134 F.3d at 933 ("[W]e find that the consulate had a duty to act and that to date ... the consulate has failed to act in accordance with that duty and the writ [of mandamus] should issue.").

220. Mandamus action is also appropriate because Defendants failed to act within a reasonable time. *See, e.g.*, *Liu v. Novak*, 509 F. Supp. 2d 1, 9 (D.D.C. 2007) (holding that the APA requires the government to act within a reasonable period of time); *see also Sierra Club v. Thomas*, 828 F.2d 783, 794 (D.C. Cir. 1987) (stating that "regardless of what course it chooses, the agency is under a duty not to delay unreasonably in making that choice").

221. It is the sense of Congress that the processing of an immigration benefit application should be **completed not later than 180 days after the initial filing** of the application. *See* 8 U.S.C. § 1571 and (Pub. L. 106–313, title II, §202, Oct. 17, 2000, 114 Stat. 1262.)

222. Defendants have failed in their duty to adjudicate Plaintiff's visa application by refusing to act for an entirely unreasonable amount of time and well over 180 days.

223. Defendants have failed to carry out the adjudicative and administrative functions delegated to them by law. *See* INA § 201(b)(2)(A)(i), INA §§ 101(a)(9), (16); 22 C.F.R. § 42.81(a) and 42.81(e).

224. Defendants have a clear, non-discretionary, and mandatory duty to adjudicate the visa applications. There is no legal bar to doing so.

225. Defendants have no legal basis for failing to proceed with the applications and for their failure to timely adjudicate the applications and any background checks or other investigations required.

226. No alternative remedy exists to compel action by Defendants.

227. Accordingly, Beneficiary Plaintiffs have a clear and indisputable right to final visa adjudications of their visa applications.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court grant them the following relief:

A. Declare the Defendants' DS-5535 Scheme as unlawful and inconsistent with 8 U.S.C. §1202(b), and thus, Plaintiffs were injured by the DS-5535 Scheme;

B. Declare that the Defendants' delay in adjudicating Beneficiary Plaintiffs' applications for immigrant visa is unreasonable and violates the INA and applicable statutes, regulations, agency guidance, and that Plaintiffs are entitled to a prompt adjudication of the immigrant visa application pursuant to the Declaratory Judgement Act 28 U.S.C. § 2201;

C. Issue a writ of mandamus compelling the Defendants and those acting under them to perform their duty to complete all steps necessary to adjudicate Beneficiary

Plaintiffs' immigrant visa applications, within thirty (30) days from the date of the order pursuant to the Court's mandamus authority under 28 U.S.C. § 1361;

D. Issue an order compelling the Defendants and those acting under them to perform their duty to adjudicate the immigrant visa application of Beneficiary Plaintiffs within 30 days of the order pursuant to the Administrative Procedure Act;

E. Enjoin Defendants and those acting under them from any further unreasonable delay in adjudication of Beneficiary Plaintiffs' pending immigrant visa applications;

F. Retain jurisdiction over this action to monitor and enforce Defendants' compliance with all orders of this Court;

G. Award Plaintiffs reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 42 U.S.C. § 1988, 5 U.S.C. § 504, 28 U.S.C. § 2412 and any other applicable law; and

H. Grant such further relief as this Court deems just and proper.

DATED: January 2, 2024

Bonsall, California

Respectfully submitted,

/s/ Curtis Lee Morrison

Curtis Lee Morrison
Red Eagle Law, L.C.
Email: curtis@redeaglelaw.com

Paris Etemadi Scott
Legal Director
PARS Equality Center
petemadi@parsequalitycenter.org