IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JANE DOE #1,

JANE DOE #2,

JOHN DOE #1,

JANE DOE #3,

JANE DOE #4,

JOHN DOE #2,

and

JOHN DOE #3,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY
3801 Nebraska Avenue NW,
Washington, DC 20016

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES
20 Massachusetts Ave NW,
Washington, DC 20008

U.S. DEPARTMENT OF STATE
2201 C Street NW,
Washington, DC 20037

ELAINE DUKE, in her official capacity as
Acting Secretary of Homeland Security
3801 Nebraska Avenue NW,
Washington, DC 20016

Civil Action No.: _____

JAMES MCCAMENT, in his official capacity as Acting Director of United States Citizenship and Immigration Services
20 Massachusetts Ave NW,
Washington, DC 20008

JOSEPH LANGLOIS, in his official capacity as District Director of United States Citizenship and Immigration Services,
9500 Rome Place
Washington, DC 20521

REX W. TILLERSON, in his official capacity as Secretary of State
2201 C Street NW,
Washington, DC 20037

and

JOHN DOES #1-5, in their official capacities as the consular officials responsible for issuing immigration visas in Lebanon,

Defendants.

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

Plaintiffs-Petitioners ("Plaintiffs"), appearing individually under pseudonyms, respectfully bring this Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief to compel Defendants-Respondents ("Defendants") to issue and/or reissue Plaintiffs' visas. In support thereof, Plaintiffs allege as follows:

NATURE OF ACTION

1. Plaintiff Jane Doe #1 is a United States citizen who has lived in the United States since October 1996 and has been a citizen since February 2001. On

January 5, 2004, she filed an I-130 Petition for Alien Relative on behalf of her sister, her sister's husband, and their four children—all of whom are residents of Syria (collectively, the "Plaintiff Family"). The petition was approved on May 7, 2010.

2. In the thirteen years since they filed the petition, Plaintiffs have diligently pursued the lengthy and rigorous immigrant visa application process, which entails, *inter alia*, filing immigrant visa applications, paying several thousand dollars in filing and processing fees and related costs, and undergoing security screenings, visa interviews, and medical examinations.

3. In January 2017, the Plaintiff Family was interviewed by the Consular Section of the U.S. Embassy in Beirut, Lebanon ("Consulate"). On or about February 16, 2017, the Consulate informed the family that their application had been approved and instructed the family to bring their passports to the Embassy in Lebanon so that the passports could be stamped with the visas. The Embassy also provided Plaintiffs these instructions by email. In reliance on Defendants' representations, Plaintiff John Doe # 1, the sole breadwinner for the family, resigned from his employment; the four children withdrew from school; and the family traveled from Syria to Lebanon to deliver their passports to the Embassy. On February 27th, the Consulate informed the family that their visas could be picked up from the Embassy on March 10, 2017.

4. In the interim, on March 6, President Trump issued Executive Order 13780, which suspended visa issuance for nationals of six Muslim-majority

countries, including Syria. By its own terms, Executive Order 13780 was not scheduled to take effect until March 16, 2017. In an abrupt change of course after the issuance of the Executive Order, however, on March 9, just one day before the family had been scheduled to pick up their visas, a consular official called to inform them that they would not be able to pick up their visas the following day. The family asked for an explanation but was not provided with one.

5. On March 15th, the day before Executive Order 13780 was supposed to go into effect, it was enjoined. Due to several ongoing legal challenges, the Order did not actually go into effect until June 26, 2017, when the Supreme Court partially lifted the injunction—permitting limited application of the Order to individuals who, unlike the Plaintiff Family, have no "bona fide" ties to the United States. Thus, the Executive Order was not applicable to the Plaintiff Family on March 9, and it has not become applicable to them since that time.

6. On information and belief, however, Defendants wrongfully applied the Executive Order to Plaintiffs and to other similarly situated persons around the world, delaying the processing of their visas in order to allow the Executive Order to fully take effect. Because of Defendants' unlawful application of the Executive Order, Plaintiffs' visa processing was suspended, and they are now trapped in a state of administrative limbo. Despite having completed all the administrative steps to receive their visas and having been told that their visas were approved and would be ready for pickup nearly six months ago, Plaintiffs still have not received their visas.

7. Since that time, the Plaintiff Family eventually found themselves with no choice but to return to Syria, having overstayed their authorized period of stay in Lebanon while waiting for Defendants to issue their U.S. visas. More pressing, the eldest son, John Doe #2, recently turned 18 and therefore is subject to mandatory service in the Syrian military unless he obtains an exemption from the Syrian government to pursue his education. To shield him from conscription, the Plaintiff Family returned to Syria to enroll him in university and apply for this waiver, which may only protect him in the short term. While awaiting resolution of their U.S. visas, the family remains in Syria, exposed to potential violence and instability from the ongoing civil war. The children are trying to catch up after missing what amounts to an entire school year, and John Doe # 1 has been unable to find new employment.

8. Defendants' refusal to issue the approved visas deprives Plaintiffs of their rights under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 11001 *et seq.*, and its implementing regulations, the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 555, 706, as well as agency policy. This inaction also has separated Plaintiffs from their loved ones and exposed them to serious, prolonged, and imminent threats to their lives and well-being. It has cost the family thousands of dollars and caused significant disruptions in their educations and careers. The financial, physical, and emotional stresses that Plaintiffs have suffered as a result of Defendants' failure to act have exacted a significant toll on the family and will not be relieved until the visas are issued, as required by law.

9. This case does not challenge the President's power to issue Executive Order 13780, nor the scope of that Order. Instead, this case challenges Defendants' unlawful refusal to issue and/or reissue visas that had already been approved well in advance of Executive Order 13780's effective date. As explained below, by February 16, 2017, Defendants had approved Plaintiffs' application and informed the family of the decision to issue their visas. Plaintiffs relied on Defendants' representation, upending their lives with the expectation that the visas would be issued. All that remains is for Defendants to implement this decision through the ministerial act of affixing the visas to Plaintiffs' passports. Accordingly, Plaintiffs are entitled to a writ of mandamus compelling Defendants to issue the visas.

10. A court may grant mandamus relief if (1) the plaintiff has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is no other adequate remedy available to the plaintiff. *Am. Hosp. Ass'n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016); *see also Nine Iraqi Allies Under Serious Threat Because of Their Faithful Serv. to the United States v. Kerry*, 168 F. Supp. 3d 268 (D.D.C. 2016).

11. Here, Plaintiffs clearly meet all three of these criteria. Plaintiffs have fully complied with all of the statutory and regulatory requirements in the visa application process and were told that their applications had been approved. Accordingly, they have a clear right to the issuance of the visas. Defendants have unreasonably failed to issue the approved visas, in dereliction of their non-discretionary duties, and despite providing Plaintiffs assurances to the contrary

shortly before they abruptly and arbitrarily changed course. Plaintiffs have no alternative means to obtain relief.

12. Based on the foregoing, Plaintiffs are also entitled to relief under the APA, which authorizes courts to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). "Agency action" includes, in relevant part, "an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13). Defendants' failure to issue the visas constitutes agency action unlawfully withheld or unreasonably delayed, entitling Plaintiffs to relief.

13. Accordingly, Plaintiffs are entitled to a writ of mandamus and/or order (1) declaring that Defendants' continued failure to issue Plaintiffs' visas violates the APA, the INA, agency regulations, and agency policy; (2) declaring that Defendants are not—and never have been—subject to Executive Orders 13780 and 13769, and that any application of these orders to Plaintiffs is unlawful; and (3) directing Defendants to issue Plaintiffs' immigration visas forthwith.

THE PARTIES

14. Plaintiff Jane Doe # 1 is a U.S. citizen who resides in Houston, Texas. She was born in Syria in 1980, moved to the United States in 1996, and became a U.S. citizen in 2001.

15. Plaintiff Jane Doe # 2 is the sister of Jane Doe # 1. She was born in Lebanon in 1974 and is a Palestinian national who resides in Syria. As a Syrian-

Palestinian, her official identification and travel documents are issued by the Syrian government.

16. Plaintiff John Doe # 1 is the husband of Jane Doe # 2. He was born in Syria in 1965 and is a Palestinian national who resides in Syria. As a Syrian-Palestinian, his official identification and travel documents are issued by the Syrian government.

17. Plaintiff Jane Doe # 3 is the daughter of Jane Doe # 2 and John Doe # 1. She was born in Syria in 1995 and is a Palestinian national who resides in Syria. As a Syrian-Palestinian, her official identification travel documents are issued by the Syrian government.

18. Plaintiff Jane Doe # 4 is the daughter of Jane Doe # 2 and John Doe # 1. She was born in Syria in 1996 and is a Palestinian national who resides in Syria. As a Syrian-Palestinian, her official identification and travel documents are issued by the Syrian government.

19. Plaintiff John Doe # 2 is the son of Jane Doe # 2 and John Doe # 1. He was born in Syria in 1999 and is a Palestinian national who resides in Syria. As a Syrian-Palestinian, his official identification and travel documents are issued by the Syrian government.

20. Plaintiff John Doe # 3 is the son of Jane Doe # 2 and John Doe # 1. He was born in Syria in 2009 and is a Palestinian national who resides in Syria. As a Syrian-Palestinian, his official identification and travel documents are issued by the Syrian government.

21. Defendant Department of Homeland Security ("DHS") is an agency of the United States Government. DHS is responsible for implementing and enforcing the INA.

22. Defendant Elaine Duke is the Acting Secretary of DHS and is the senior official of DHS. She is sued in her official capacity.

23. Defendant United States Citizenship and Immigration Services ("USCIS") is a component of DHS responsible for, *inter alia*, adjudicating immigrant visa petitions filed on behalf of foreign nationals seeking to immigrate to the United States. USCIS plays an integral role in the immigrant visa application and adjudication process.

24. Defendant James McCament is the Acting Director of USCIS and is the senior official of USCIS. He is sued in his official capacity.

25. Defendant Joseph Langlois is the USCIS District Director for the Europe, Middle East, and Africa District. He is sued in his official capacity.

26. Defendant Department of State is an agency of the United States Government. State has an integral role in the immigrant visa application and adjudication process.

27. Defendant Rex W. Tillerson is the Secretary of State and is the senior official of State. He is sued in his official capacity.

28. Defendants John Does #1-5 are the consular officials employed by the U.S. Department of State who are responsible for issuing U.S. immigration visas in

Lebanon. Their identities are not publicly disclosed by the U.S. Department of State. They are sued in their official capacities.

JURISDICTION AND VENUE

29. This case arises under the United States Constitution; the INA, 8 U.S.C. § 1101 *et seq.*; and the APA, 5 U.S.C. § 701 *et seq*. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1361, and 2201–2202.

30. There exists an actual and justiciable controversy between Plaintiffs and Defendants requiring resolution by this Court. Plaintiffs have no adequate remedy at law.

31. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

BACKGROUND

I. Statutory and Regulatory Framework

32. Immigration based on a foreign national's familial relationship with a United States citizen or lawful permanent resident (LPR) is the primary method by which foreign nationals may seek to immigrate to the United States.

33. Under the INA, family-sponsored visas may be issued to, *inter alia*, the siblings of U.S. citizens. 8 U.S.C. § 1153(a)(1)-(4). The spouses and children of the sibling applicant are permitted to apply for immigrant visas as derivative beneficiaries. *Id.* § 1153(d).

34. The family-sponsored immigration process is initiated when a citizen or LPR sponsors a qualifying family member by filing a Petition for Alien Relative (Form I-130) with USCIS. 8 U.S.C. § 1154. USCIS then verifies that the petitioner

is a United States citizen or LPR and that a qualifying familial relationship exists between the petitioner and the beneficiary. 8 C.F.R. § 204.1(a)(1).

35. Filing a Form I-130 establishes a "priority date," which is used to determine when the beneficiary of a petition—along with any derivative beneficiaries—is permitted to move forward with the visa application process. 8 C.F.R. § 204.1(c). Because the number of individuals seeking to immigrate under the family-sponsored preference system far outpaces the number of visas available in any given year, visas are issued chronologically according to petition priority dates.

36. If an I-130 petition is approved, USCIS forwards the approved petition to the Department of State, National Visa Center (NVC). Once the priority date becomes "current"—indicating that a visa is available based on the beneficiary's preference status—the beneficiary is able to begin the process of formally applying for a visa by submitting a DS-260 Online Immigrant Visa and Alien Registration Application with the NVC.

37. After completing the DS-260 application, filing supporting documentation, completing a medical examination, and paying applicable fees, a beneficiary is interviewed by a consular officer at the beneficiary's applicable U.S. embassy or consulate.

38. 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. The Department of State website instructs that "[a]t the end of your

immigrant visa interview at the U.S. Embassy or Consulate, the consular officer will inform you whether your visa application is approved or denied." The Immigrant Visa Process, U.S. Department of State, Bureau of Consular Affairs, *available at* https://travel.state.gov/content/visas/en/immigrate/immigrant-process/interview/after.html (last visited Sept. 26, 2017).

39. Once "a visa application has been properly completed and executed before a consular officer in accordance with the provisions of the INA and its implementing regulations, the consular officer must either issue or refuse the visa under INA 212(a) or INA 221(g) or other applicable law." 22 C.F.R. § 42.81(a). The Department of State Foreign Affairs Manual (FAM) further explains that "[o]nce an application has been executed, the consular officer must either issue the visa or refuse it. A consular officer cannot temporarily refuse, suspend, or hold the visa for future action. 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(f).

40. 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).

41. 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. 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."[1]

42. If a consular officer determines that additional information is required from an applicant or that a Security Advisory Opinion—known as "administrative processing"—is necessary to determine an applicant's eligibility, the officer must deny the application under INA § 221(g), pending future consideration once additional information is received or administrative processing is concluded. *See* 9 FAM 504.11-3(B)(2)(a) ("If, after interviewing the applicant, you decide that an advisory opinion is necessary, you must first refuse the alien under INA 221(g).") 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).

43. 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

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[1] State Department guidelines provide additional details regarding the manner in which visa applications should be refused, including a requirement that officers notify applicants, orally and in writing, who are refused a visa under INA Sections 212(a) or 221(g). *See* 9 FAM § 504.11-3(A)(1) (setting forth the required contents of 212(a) and 221(g) refusal letters).

required to "[e]xplicitly state the provision of the law under which the visa was refused." 9 FAM 504.11-3(A)(1).

44. 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).

II. Factual Background

A. Executive Orders 13769 and 13780

45. On January 27, 2017, President Trump issued Executive Order 13769, "Protecting the Nation From Foreign Terrorist Entry Into the United States." 82 Fed. Reg. 8977 (Feb. 1, 2017) ("EO-1"). Section 3(c) of EO-1 suspended visa adjudication and issuance for nationals of seven Muslim-majority countries: Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen.

46. EO-1 was immediately challenged in several courts and was quickly enjoined in large part, most significantly by a nationwide injunction issued on February 3, 2017. *See Washington v. Trump*, No. C17-0141-JLR, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017) (enjoining sections 3(c), 5(a)-(c), and 5(e) of EO-1); *Darweesh v. Trump*, No. 17 CV 480, 2017 WL 388504 (E.D.N.Y. Jan. 28, 2017) (prohibiting the government from removing individuals pursuant to EO-1); *Aziz v. Trump*, No. 1:17 CV 116, 2017 WL 580855 (E.D. Va. Feb. 13, 2017) (granting preliminary injunction of portions of EO-1 on Establishment Clause grounds).

47. On March 6, 2017, President Trump issued a second executive order, which revoked and replaced the first. *See* Exec. Order No. 13780, "Protecting the Nation from Foreign Terrorist Entry Into the United States," 82 Fed. Reg. 13209 (Mar. 9, 2017) ("EO-2" or "Second Executive Order"). As relevant here, section 2(c) of EO-2 bans nationals of six (rather than seven) overwhelmingly Muslim countries from "entry into the United States" for a period of 90 days, beginning on the order's effective date of March 16, 2017. Order § 2(c); *see id.* § 1(g) (stating that the Order omits Iraq because of its "close cooperative relationship" with the United States).

48. Section 12(c) of the Second Executive Order provides that "no immigrant or nonimmigrant visa issued before the effective date of this order shall be revoked pursuant to this order." Order § 12(c).

49. The stated effective date of the Second Executive Order was March 16, 2017. *See id.* § 14. Accordingly, between March 6, 2017 (the date the Order was issued), and March 15, 2017, the Order was not in effect. As with the first Executive Order, the second was also immediately challenged in court.

50. Acknowledging the delayed effective date, the State Department issued a cable on March 10, 2017, providing guidance to all diplomatic and consular posts regarding EO-2. *See* (SBU) New Executive Order 13780: Protecting The Nation From Foreign Terrorist Entry Into The United States - Guidance To Visa-Issuing Posts, 17 STATE 23338. The cable announced the issuance of EO-2, the rescission of EO-1, and explained that "[w]e are working with the Department of Justice to determine when and how we may proceed with implementing the new E.O., in light

of pending litigation. . . . Although posts should be prepared to implement this guidance as of [March 16, 2017], do not begin implementation until you receive authorization to do so; such authorization will be sent in a subsequent cable." *Id.* ¶ 1. On March 15, 2017, the U.S. District Court for the District of Hawai'i issued a nationwide injunction enjoining Defendants from enforcing or implementing sections 2 and 6 of the Second Executive Order. *Hawai'i v. Trump*, No. CV 17-00050 DKW-KSC, 2017 WL 1011673 (D. Haw. Mar. 15, 2017). Thus, this ruling enjoined the section suspending entry of nationals from Syria into the United States before it ever took effect.

51. On March 16, 2017, the Department of State issued another cable providing guidance to visa-issuing posts to halt implementation of EO-2, based on District of Hawai'i ruling. *See* (SBU) Executive Order 13780: Protecting the Nation From Foreign Terrorist Entry into the United States - Guidance to Visa Issuing Posts: Halt Implementation, 17 STATE 24800. The cable instructed that the March 15 order in *Hawai'i v. Trump* "took effect immediately, so all enforcement of the visa suspension in the Executive Order must not be implemented and visa processing must continue as normal . . . ." *Id.* ¶ 1.

52. On June 12, 2017, the U.S. Court of Appeals for the Ninth Circuit issued an order upholding, in large part, the injunction issued by the U.S. District Court for the District of Hawai'i. *See Hawai'i v. Trump*, 859 F.3d 741 (9th Cir.

2017) (per curiam).[2] On May 25, 2017, the U.S. Court of Appeals for the Fourth Circuit issued a decision in *International Refugee Assistance Project v. Trump*, affirming a preliminary injunction against enforcement of section 2(c) of the Executive Order. 857 F.3d 554 (4th Cir. 2017) (en banc) (affirming in part *Int'l Refugee Assistance Project v. Trump*, 241 F. Supp. 3d 539 (D. Md. 2017)).

53. Defendants in those cases petitioned the Supreme Court for a writ of certiorari and applied for a stay of the injunctions pending appeal. On June 26, 2017, the Supreme Court granted certiorari, granted the stay application in part, and consolidated the two cases. *See Trump v. Int'l Refugee Assistance Project*, Nos. 16-1436 and 16-1540 (June 26, 2017) (per curiam).

54. The Court stayed the Hawai'i injunction with respect to "foreign nationals abroad who have no connection to the United States," but it reaffirmed that sections 2(c), 6(a), and 6(b) of EO-2 "may not be enforced against foreign nationals who have a credible claim of a bona fide relationship with a person or entity in the United States." *Id.* at 11-13. That standard, the Supreme Court made clear, protects any foreign national with a "close familial relationship" with a person in the United States. *Id.* at 11-12. The government almost immediately conceded

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[2] The Ninth Circuit affirmed the injunction as to section 2(c), which suspended entry of nationals from the six designated countries for 90 days; section 6(a), which suspended the U.S. Refugee Admissions Program for 120 days; and section 6(b), which capped the entry of refugees to 50,000 in fiscal year 2017. The Court vacated the portions of the injunction that prevented the government from conducting internal reviews, as otherwise directed in sections 2 and 6, and the injunction to the extent that it ran against the President. *Hawai'i v. Trump*, 859 F.3d 741 (9th Cir. 2017) (per curiam).

that sibling relationships count as a "bona fide relationship" that prevents the application of the Executive Order.

55. Following the Supreme Court's ruling, the Department of State began to enforce the non-enjoined portions of the Second Executive Order, adopting a narrow interpretation of the "close familial relationship" exception. This practice was challenged in court, and on July 13, 2017, the U.S. District Court for the District of Hawai'i modified its preliminary injunction to prohibit the Government from applying sections 2(c), 6(a) and 6(b) of EO-2 to grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins of persons in the United States. The Court concluded that such individuals have sufficiently "close family relationship" to fall within the ambit of the preliminary injunction, as modified by the Supreme Court. *Hawai'i v. Trump*, No. CV 17-00050 DKW-KSC, 2017 WL 2989048 (D. Haw. July 13, 2017).

56. On July 19, 2017, the Supreme Court denied the Government's motion seeking clarification of the Court's June 26, 2017 order, thereby leaving the Hawai'i court's July 13, 2017 modified injunction in place. *See Trump v. Hawai'i*, No. 16-1540, --- S. Ct. ---, 2017 WL 3045234 (U.S. July 19, 2017).

57. The State Department's website subsequently instructed that "[i]n light of the July 13, 2017 U.S. District Court of Hawai'i ruling regarding the definition of 'close familial relationship' as that phrase was used in the Supreme Court's June 26, 2017 order on implementing section 2(c) of E.O. 13780, a close familial relationship is defined as a parent (including parent-in-law), spouse, fiancé,

child, adult son or daughter, son-in-law, daughter-in-law, sibling, grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts and uncles, nephews and nieces, and cousins." Ex. 1.

58. On information and belief, between March 6, 2017 (the date of issuance of the second Executive Order) and March 15, 2017 (the date the Order was enjoined), some consulates or consular officials began to halt or delay the processing of visa applications for nationals from the six-impacted countries, including Plaintiffs', while awaiting further instructions on how to implement the terms of the Order.

B. Plaintiffs' Visa Applications

59. On January 5, 2004, Plaintiff Jane Doe # 1 filed an I-130 Petition on behalf of her sister, Jane Doe # 2, her sister's husband John Doe # 1, and her sister's four children. The Petition was approved on May 7, 2010.

60. In the seven years since the petition was approved, Plaintiffs have diligently pursued the lengthy and rigorous immigrant visa process, which entails, *inter alia*, filing immigrant visa applications, paying thousands of dollars in filing fees and related costs, and undergoing security screenings and medical examinations.

61. On January 9, 2017, Jane Doe # 2 and her family were interviewed by the Consular Section of the U.S. Embassy in Beirut, Lebanon. *See* Ex. 2. After the interview, the Consulate requested more paperwork from Plaintiffs and asked Jane

Doe # 2 to submit a new passport. On or around January 23, 2017, Plaintiffs submitted the requested materials.

62. On February 16, 2017, Jane Doe # 2 received a phone call from the Consulate in Lebanon, telling her that Plaintiffs' visa application had been approved. The Consulate further instructed her to bring the family's passports to the Embassy in Lebanon so that their visas could be stamped onto the passports. After the phone conversation, Jane Doe # 2 emailed the Consulate asking for written confirmation of this information in the event she needed to provide it to Lebanese border officials. The same day, the Consulate responded to the email, stating "[y]ou can send your passports any working day. . . , with anyone on your behalf. Whoever will submit the passports will get a receipt to receive the visas after one week." Ex. 3.

63. After receiving this verbal and written confirmation that the visa application had been approved and the visas would be issued, John Doe # 1—the family's sole breadwinner—resigned from his job, the children left school mid-semester, and the family packed up their lives and traveled to Lebanon in anticipation of immigrating to the United States. Plaintiffs did not make these decisions lightly. Instead, Plaintiffs accepted these major disruptions in their lives and put their financial stability and personal safety at risk in reliance on Defendants' assurances that their visas would be issued within a matter of weeks.

64. In compliance with the Consulate's instructions, the family submitted their passports to the Embassy in Lebanon on February 27, 2017, and received a receipt directing them to retrieve their passports on March 10, 2017. *See* Ex. 4.

65. On March 9, 2017, three days after the issuance of the Second Executive Order, John Doe # 1 received a phone call from a consular official informing him that the visas would not be available the next day as promised. No explanation was provided for this abrupt change in what they previously had been told. As noted above, at this point in time the Second Executive Order had just been issued but was not yet in effect. On information and belief, consular officials wrongly applied it to Plaintiffs' visas and failed to issue them as scheduled.

66. On March 23, 2017, Jane Doe # 1 emailed the Consulate requesting an update on the status of the family's visas. The Consulate responded via email the same day, stating that the family's case was undergoing administrative processing. *See* Ex. 5.

67. Prior to receiving the Consulate's March 23, 2017 email response, the family was never notified that their case was undergoing administrative processing. This is despite State Department guidelines requiring such notification in the form of a Section 221(g) refusal letter outlining the "provision of law under which the visa is refused."

68. After nearly three months without receiving a single update despite multiple requests for information, Jane Doe # 1 sent an email to the Consulate on June 11, 2017, stating that her sister would retrieve the family's passports from the

Embassy on June 14, 2017. *See* Ex. 6. She explained that her sister "was told that her visas would be issued after ten days and her ten days have become a hundred." *Id.*

69. On June 14, 2017, Jane Doe # 2 retrieved the passports from the Embassy. Her passport contained a visa with an issue date of March 15, 2017, which was subsequently stamped "Cancelled Without Prejudice." Ex. 7. None of the remaining family members' passports contained a visa or were stamped in any manner. Jane Doe # 2 was told by consular officials that she would be contacted once her family's visas had been reissued.

70. Around the time EO-1 and EO-2 were issued, many visa applicants from the affected nations had their passports returned to them with visas stamped "Cancelled Without Prejudice."

71. On June 20, 2017, the family's retained immigration counsel emailed the Consulate to inquire about the status of the visas. The attorney explained that the family "successfully [was] interviewed at the U.S. Embassy in Beirut and [was] told [their] visa[s] would be issued shortly." Ex. 8. She further explained that the delay in issuing the visas "has caused extreme hardship to the family including delaying the children's education, having to leave Syria and wait in Lebanon while waiting for their visas." *Id.* She requested that the visas be issued as soon as possible.

72. On June 27, 2017, the Consulate responded via email, explaining that the family's visas were still undergoing administrative processing and that the Consulate could not predict when the processing would be complete. *See* Ex. 9.

73. On July 5, 2017, the attorney emailed the Consulate again, emphasizing that the family's situation was now urgent. *See* Ex. 10. The attorney explained that "due to the delay [Jane Doe # 2] and her derivatives have overstayed in Lebanon for circumstances beyond their control. Now [John Doe # 2] must return to Syria before his 18th birthday on July 28, 2017 or he will be automatically be drafted to the Syrian army." *Id.* Given the urgent situation, the attorney asked the Consulate to issue the visas immediately or, in the alternative, to allow the family to return temporarily to Syria to resolve the issue of John Doe # 2's draft status, and then return to Lebanon to continue awaiting the issuance of their visas. To date, Plaintiffs have not received a response to this inquiry.

74. On July 5, 2017, the attorney also emailed the Department of Homeland Security to request assistance on this matter. To date, Plaintiffs have not received a response to this inquiry.

75. On July 24, 2017, the Plaintiff Family returned to Syria from Lebanon, where they had been waiting for nearly six months for their visas to be issued. The family's eldest son, Plaintiff John Doe # 2, turned eighteen on July 28th, and the family needed to return to Syria to enroll him in university and obtain an educational waiver to avoid his automatic conscription into the Syrian army. The family currently resides in Syria, awaiting information about their visas.

76. At no time have Defendants explained the reason Plaintiffs' visas are purportedly in administrative processing, and this claim is contradicted by other information provided by Defendants. Beginning in at least May 2017 up to the date of the filing of this complaint, the State Department website continues to indicate that Jane Doe # 2's visa has been "issued." *See* Ex. 11. The website further explains that "[y]our visa has been printed. Depending on local procedures at the location where you were interviewed, your visa will be mailed or available for pickup soon. If there are further questions, or if we need updated contact information, you will be contacted." *Id.*

77. The website further indicates that two of the family members' visas have been placed in administrative processing: John Doe # 1 and John Doe # 2. *See* Exs. 12 and 13. According to the website, "[t]his processing can take several weeks." *Id.* *See also* Administrative Processing Information, U.S. Department of State, Bureau of Consular Affairs, *available at* https://travel.state.gov/content/visas/en/general/administrative-processing-information.html (last visited Sept. 26, 2017) ("Most administrative processing is resolved within 60 days of the visa interview.").

78. The website reflects that the remaining family members' visas are "Ready." *See* Exs. 14, 15, and 16. The website instructs that "[y]our case is ready for your interview when scheduled at the U.S. Consular section. If you have already scheduled an appointment for an interview, please prepare your documents as directed in your appointment letter and appear at the consulate on the appointed

date and time. Otherwise, please wait until you have been notified of your interview appointment." *Id.* This explanation as applied to their visas is obviously incorrect, since the family was interviewed in January 2017 and subsequently told that their visas had been approved.

III. Defendants' Inaction is Unreasonable and Unlawful

79. Plaintiffs contend that Defendants' failure to issue the family's approved visas is a direct result of the unlawful application of the Second Executive Order, an application that should immediately be enjoined. Plaintiffs' visa applications had been completed, executed, and approved, and their visas were about to be issued when the issuance of EO-2 abruptly halted the process. Three days after EO-2 was issued, the Consulate suddenly reversed course and informed John Doe # 1 that the visas would not be issued. The "cancelled without prejudice" stamp on Jane Doe # 2's visa is the same as stamps that were used in a widespread manner during implementation of the first Executive Order, providing further support for Plaintiffs' understanding that a wrongful application of EO-2 is the cause of the delay in issuance of their visas. Defendants have provided no alternative explanation for why Plaintiffs' approved visas were suddenly canceled or stalled precisely at the time the Second Executive Order was issued.

80. Plaintiffs, however, were not lawfully subject to either executive order, as the first order was enjoined on February 3, 2017—prior to Defendants' approval of Plaintiffs' visa applications—and the second order was enjoined before its effective date of March 16, 2017.

81. Moreover, even though a limited version of EO-2 went into effect on June 26, EO-2, it does not apply to Plaintiffs because of their bona fide close familial relationship with a U.S. citizen. *See Trump v. IRAP*, Nos. 16-1436 and 16-1540, slip op. at 11-13; Executive Order on Visas, Frequently Asked Questions, TRAVEL.STATE.GOV, *available at* http://travel.state.gov/content/travel/en/news/important-announcement.html ("Qualified applicants in the immediate-relative and family-based immigrant visa categories are exempt from the E.O. under the Supreme Court's order, because having a credible claim of a bona fide close familial relationship is inherent in the requirements for the visa.").

82. Furthermore, to the extent that Jane Doe # 2's visa that was issued on March 15, 2017 was subsequently "cancelled without prejudice" due to the Second Executive Order, such action violates the express terms of EO-2, which state that "[n]o immigrant or nonimmigrant visa issued before the effective date of this order shall be revoked pursuant to this order." Order § 12(c).

83. Accordingly, the executive orders are not valid grounds on which Defendants can refuse to issue Plaintiffs' visas, cancel their visas, or delay the adjudication of their applications. There is no other lawful justification for Defendants' inaction.

IV. Plaintiffs Have Been Harmed By Defendants' Inaction

84. As a result of Defendants' failure to issue Plaintiffs' visas in a timely manner, Plaintiffs have suffered substantial, concrete, and particularized injury.

85. As an initial matter, Plaintiffs have incurred significant expenses as a result of the delay. The Plaintiff Family spent thousands of dollars traveling to the Consulate in Lebanon and renting an apartment in Tripoli, Lebanon for six months while they waited for Defendants to issue their visas. As noted above, Plaintiff John Doe # 1 resigned from his job because of Defendants' assurances that the visas would be issued, costing the family many thousands of dollars in lost wages and other benefits. He has been unable to find new employment and cannot return to his previous employment because he retired based on Defendants' assurances. These losses are not recoverable from Defendants.

86. Additionally, Plaintiffs suffered substantial emotional trauma and threats to their health and well-being as a result of the delay. On the basis of Defendants' assurances that their visas would be issued within a matter of weeks, the family's four children left school and university in the middle of the school year, significantly disrupting their educations and resulting in a lost school year that they are now having to repeat.

87. The family also faced extreme anxiety, insecurity, and fear of deportation during their time in Lebanon. The family was forced to overstay their Lebanese visas because of Defendants' delay, and for over four months Plaintiffs waited anxiously in Lebanon, knowing that they could be deported at any time.

88. Having now returned to Syria, the Plaintiff Family is exposed to the threat of violence on a daily basis. Although they are in a relatively stable location

compared to other areas of the country, car bombings and other violence are still common, and the ongoing civil war renders any security tenuous.

89. Upon returning to Syria, John Doe # 2, the eldest son, was able to enroll in school and obtain an educational waiver from conscription into the Syrian army through March 2018. However, as the war continues, the Syrian government has progressively been tightening the rules surrounding such exemptions and has been applying those rules far more stringently. There is no guarantee that John Doe # 2 will be able to renew his waiver or allowed to leave the country, and the family fears that he could be forced into military service.

90. Plaintiffs have suffered enormous stress and emotional trauma not only from their disappointment and uncertainty regarding their visas, but also from their concerns for the well-being and safety of their family. Moreover, all Plaintiffs face indefinite separation from their close family members in the United States, creating irreparable harm by further delay. Such separation has had a significant emotional impact on Plaintiffs, heightened by the ambiguity surrounding when this separation will end.

V. Plaintiffs Are Entitled To Relief

91. District courts have mandamus jurisdiction to "compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. §1361. Moreover, a district court reviewing agency action under the APA may "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1). "Agency action" includes, in relevant part, "an agency

rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act." 5 U.S.C. § 551(13).

92. The APA requires administrative agencies to conclude matters presented to them "within a reasonable time." 5 U.S.C. § 555. The INA's implementing regulations further provide that "[w]hen 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 under INA 212(a) or INA 221(g) or other applicable law." 22 C.F.R. 42.81 (emphasis added). Similarly, State Department policy makes clear that "[o]nce an application has been executed, the consular officer must either issue the visa or refuse it. A consular officer cannot temporarily refuse, suspend, or hold the visa for future action." 9 FAM 504.1-3(f). Under State Department policy, "[t]here are no exceptions to th[is] rule." 9 FAM 504.1-3(h).

93. Here, Defendants adjudicated Plaintiffs' visa applications and determined no later than February 16, 2017, that the visas would be issued. That decision, which was communicated to Plaintiffs, triggered Defendants' obligation to issue the visas. Indeed, the Consulate provided Plaintiffs with written confirmation of this arrangement: Plaintiffs were to submit their passports and could expect to receive their visas within one week. *See* Ex. 3. Because Defendants have determined that Plaintiffs' visas will be issued, all that remains is for Defendants to implement this decision through the ministerial act of affixing the visas to Plaintiffs' passports.

94. Defendants' failure to act violates the APA, 5 U.S.C. § 706(1), the INA and its implementing regulations, and agency policy. Because Defendants have failed to carry out their duties and obligations under the law and governing regulations, thereby depriving Plaintiffs of their clearly-established rights, Plaintiffs are entitled to a writ of mandamus and/or relief under the APA directing Defendants to issue their visas forthwith.

FIRST CLAIM FOR RELIEF
28 U.S.C. § 1361
Writ of Mandamus to compel officers and agencies of the United States to perform a duty owed to Plaintiffs

95. The above paragraphs are incorporated herein by reference.

96. The INA and the regulations issued pursuant to it impose on Defendants a non-discretionary duty to issue visas once the decision to issue them has been made. The APA further requires agencies to "proceed to conclude a matter presented" to the agency "within a reasonable time." 5 U.S.C. § 555(b).

97. No later than February 16, 2017, Defendants approved Plaintiffs' visa application and determined that Plaintiffs' visas would be issued. All that remains is the final, ministerial act of affixing the visas to Plaintiffs' passports and tendering them to Plaintiffs.

98. The issuance of Plaintiffs' visas after the decision has been made to issue them is a nondiscretionary duty imposed upon Defendants by statute and/or regulation. Plaintiffs have a clear right to the issuance of the visas.

99. Defendants have failed and refused to issue Plaintiffs' visas. This failure and refusal have caused and continue to cause Plaintiffs harm, including

separating Plaintiffs from their family members and exposing them to serious, prolonged, and imminent threats to their life and well-being.

100. Plaintiffs have brought this action because Plaintiffs have no other means to compel Defendants to perform the duties Defendants owe to them. Plaintiffs have exhausted all available remedies.

101. Based on the foregoing, Plaintiffs are entitled to a writ of mandamus directing Defendants to issue the visas forthwith.

SECOND CLAIM FOR RELIEF
Administrative Procedure Act, 5 U.S.C. § 706(1):
Agency Action Unreasonably Delayed or Unlawfully Withheld

102. The above paragraphs are incorporated herein by reference.

103. The INA and the regulations issued pursuant to it impose on Defendants a non-discretionary duty to issue visas once the decision to issue them has been made. The APA further requires agencies to "proceed to conclude a matter presented" to the agency "within a reasonable time." 5 U.S.C. § 555(b).

104. Here, Defendants have failed to issue Plaintiffs' visas within a reasonable time after deciding to issue them and this failure constitutes agency action "unlawfully withheld or unreasonably delayed" within the meaning of 5 U.S.C. § 706(1).

105. This failure has caused and continues to cause Plaintiffs harm including separating Plaintiffs from their family members and exposing them to serious, prolonged, and imminent threats to their life and well-being.

106. Plaintiffs have brought this action because Plaintiffs have no other means to compel Defendants to act. Plaintiffs have exhausted all available remedies.

107. Based on the foregoing, Plaintiffs are entitled to an order directing Defendants to issue Plaintiffs' visas forthwith in accordance with the APA.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully ask this Court to issue judgment in their favor and against Defendants, and to grant the following relief:

A. Issue a writ of mandamus and a temporary, preliminary, and permanent injunction directing Defendants to effectuate the issuance of Plaintiffs' visas within fourteen (14) days of the issuance of the writ;

B. Issue an order and a temporary, preliminary, and permanent injunction pursuant to the Administrative Procedure Act, 5 U.S.C. § 706(1), directing Defendants to effectuate the issuance of Plaintiffs' visas within fourteen (14) days of the issuance of the order;

C. Declare that Defendants' continued failure to issue Plaintiffs' approved visas constitutes agency action unlawfully withheld or unreasonably delayed;

D. Declare that Plaintiffs are not—and never have been—subject to Executive Orders 13780 or 13769 and that any application of the Executive Orders to Plaintiffs' applications is unlawful;

E. Decide the action on an accelerated schedule in light of the ongoing harm Plaintiffs are suffering as a result of Defendants' refusal to act;

F. Retain jurisdiction over this action and any attendant proceedings until Defendants have in fact finally affixed Plaintiffs' visas to their passports, tendered those passports to Plaintiffs, and communicated that fact to the Court;

G. Award Plaintiffs reasonable attorney's fees and expenses for the cost of this action; and

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

Respectfully submitted,

/s/ Mark H. Lynch
Mark H. Lynch (DC Bar No. 193110)
Megan Crowley* (NY Bar No. 4930376)†
Jon-Michael Dougherty* (DC Bar No. 1032660)
Kyle Haley* (DC Bar No. 1021926)
Rebecca Smith* (CA Bar No. 315840)†
COVINGTON & BURLING LLP
One CityCenter
850 Tenth Street NW
Washington, DC 20004-2401
(202) 662-6000 (Telephone)
(202) 662-6291 (Fax)

Johnathan Smith (DC Bar No. 1029373)
Sirine Shebaya (DC Bar No. 1019748)
MUSLIM ADVOCATES
P.O. Box 66408
Washington, D.C. 20035
Phone: 202.897.1894

Maha Khalil (TX Bar No. 24097935)
THE MODI LAW FIRM
1415 North Loop West, Suite 612
Houston, TX 77008
Phone: 832.422.7789
Pro hac vice application forthcoming

Attorneys for Plaintiffs

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* *Pro hac vice* pending.

† DC Bar application pending.