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15 **Pro hac vice forthcoming*

16 *Attorneys for Plaintiffs*

17 **UNITED STATES DISTRICT COURT**
18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
19 **SAN FRANCISCO DIVISION**

20 Soheil Vazehrad; Atefehossadat Motavaliabyazani;
21 Behnam Babalou; Hoda Mehrabi Mohammad Abadi;
22 Mahdi Afshar Arjmand; Ehsan Heidaryan; Najmeh
23 Maharlouei; Nastaran Hajiheydari; Afrooz
24 Kharazmi; Afshan Alamshah Zadeh; Bamshad Azizi;
25 Roghayeh Azizikoutenaei; Hojjatollah
Azizikoutenaei; Clyde Jean Tedrick II; Mitra
Farnoodian-Tedrick; Farajollah Farnoudian; Farangis
Emami; Tannaz Toloubeydokhti; Fathollah Tolou
Beydokhti; Behnaz Malekghaeini; Maral Charkhtab
Tabrizi; Zahra Rouzbehani; Bahram Charkhtab
Tabrizi; Maryam Mozafari; Nahid Golestanian;
Mohammad Mehdi Mozaffary

Plaintiffs,

Civil Case No.

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

CLASS ACTION

**ADMINISTRATIVE
PROCEDURE ACT CASE**

1 -against-

2 DONALD J. TRUMP, as President of the United
3 States of America; JEFFERSON BEAUREGARD
4 SESSIONS III, in his official capacity as Attorney
5 General of the United States; U.S. DEPARTMENT
6 OF JUSTICE; KIRSTJEN NIELSEN, in her official
7 capacity as Secretary of Homeland Security; U.S.
8 DEPARTMENT OF HOMELAND SECURITY;
9 REX W. TILLERSON, in his official capacity as
Secretary of State; U.S. DEPARTMENT OF STATE;
DAN COATS, in his official capacity as
Director of National Intelligence; OFFICE OF THE
DIRECTOR OF NATIONAL INTELLIGENCE

Defendants.

10 **INTRODUCTION**

11 1. Mania Pour Aghdasi is a U.S. citizen residing in California. In September 2016, Ms.
12 Aghdasi's brother passed away after battling brain cancer in the house in which her father lived
13 in Iran. Ms. Aghdasi is her father's last remaining family member. She assisted her father, a 78-
14 year-old Iranian national, in applying for a visitor's visa so they could be together in their grief.
15 During the long 14 months that followed, Ms. Aghdasi repeatedly contacted the U.S. Embassy,
16 her congressional representatives, the State Department, the White House—anyone who would
17 listen—to get her father's visa approved as his health deteriorated. Ms. Aghdasi's father died on
18 December 24, 2017, waiting for his visa to be issued. Two weeks later, his visa application was
19 denied pursuant to the Presidential Proclamation that established the latest travel ban. At no
20 point did anyone consider Ms. Aghdasi's father for a waiver from the travel ban. Nonetheless
21 his visa was denied. Ms. Aghdasi's story is emblematic of the destruction and tragedy that has
22 been wrought by the Proclamation's reckless implementation, but her experience is sadly not
23 uncommon.
24

1 2. Plaintiffs and proposed class members are American citizens, U.S. lawful permanent
2 residents, and foreign nationals who have approved visa petitions, or who have assisted family
3 members with filing for U.S. visas, and who seek entry to the United States to be reunited with
4 their American families or fulfill significant U.S. business relations.

5 3. In 2017, President Donald J. Trump attempted to institute three travel bans via executive
6 order and presidential proclamation. Each ban applied mostly to Muslim-majority countries. The
7 first two versions were struck down by federal district and appellate courts. The constitutionality
8 of the third travel ban is currently being litigated at the U.S. Supreme Court. On December 4,
9 2017, the Court issued a decision allowing the third travel ban to be implemented while the case
10 was heard on its merits.

11 4. On December 8, 2017, Defendants began implementing the third version of the travel
12 ban in a way that violates the Administrative Procedure Act (“APA”), the Immigration and
13 Nationality Act (“INA”), and Plaintiffs’ right to due process under the Fifth Amendment to the
14 U.S. Constitution. The Presidential Proclamation (“Proclamation”) that established this ban
15 specifically states that “case-by-case waivers” may be granted by consular officers under a non-
16 exclusive list of circumstances for visa applicants from the banned countries. Nonetheless, in
17 direct contravention of the terms of the Proclamation, Defendants have refused to consider such
18 waivers and have instead issued blanket denials of visas, regardless of personal circumstances
19 and without giving applicants the opportunity to argue their cases, thereby violating the APA,
20 the INA, and Plaintiffs’ right to Fifth Amendment due process.

21 5. These claims are backed up by numbers published by Defendants themselves: State
22 Department has revealed that, as of March 6, 2018, only about a hundred waivers had been
23 granted to visa applicants from the banned countries, a rejection rate of more than 98%.

1 6. Defendants' unlawful and discriminatory actions have shattered Plaintiffs' lives and
2 their prospects for being reunited with their loved ones as well as the lives and reunification
3 prospects of the scores of similarly situated families and individuals they seek to represent
4 through this action. They seek this Court's intervention to cease visa denials due to the
5 Proclamation. Such intervention is needed to prevent ongoing and future harm to such
6 applicants and to protect the integrity of the U.S. visa process.

7 7. At issue in this suit is Section 3 of the Proclamation, which allows for case-by-case
8 waivers from the Proclamation for visa applicants from the countries banned by the
9 Proclamation.

10
11 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

12 8. Jurisdiction is proper under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1361
13 (Mandamus and Venue Act of 1962), 5 U.S.C. § 702 (APA), and 28 U.S.C. § 220 (Declaratory
14 Judgment Act). The United States has waived its sovereign immunity pursuant to 5 U.S.C. §
15 702. This Court may grant declaratory and injunctive relief pursuant to 5 U.S.C. § 702, 28
16 U.S.C. § 1651, and 28 U.S.C. § 2201–2202. A claim for attorney's fees will be brought pursuant
17 to 5 U.S.C. § 504 and 28 U.S.C. § 2412(d).

18 9. Venue is proper in the Northern District of California under 28 U.S.C. § 1391(e) because
19 Defendants are officers or employees of the United States acting in their official capacities and
20 agencies of the United States, many Plaintiffs reside in this judicial district, and no real property
21 is involved in this action. Plaintiffs have exhausted all administrative remedies.
22

1 10. Intradistrict assignment is proper in the San Francisco Division because a substantial
2 part of the events or omissions that give rise to the claim occurred in San Francisco and Napa
3 Counties. Civil L. R. 3-2(c), (d).

4
5 **PARTIES**

6 11. Plaintiff Soheil Vazehrad is a U.S. citizen, residing in Napa, California.

7 12. Plaintiff Atefehossadat Motavaliabyazani is an Iranian national residing in Iran.

8 13. Ms. Motavaliabyazani has a pending nonimmigrant visa based on Mr. Vazehrad's
9 approved K1 fiancée visa petition.

10 14. Plaintiff Mr. Behnam Babalou is an Iranian national residing in Iran who invested
11 \$500,000.00 in CMB Infrastructure Investment Group XIV, L.P., located in San Bernardino,
12 California.

13 15. Plaintiff Mr. Behnam Babalou has an approved immigrant visa petition based on his
14 investments and significant business ties in CMB Infrastructure Investment Group XIV, L.P.

15 16. Plaintiff Hoda Mehrabi Mohammad Abadi is an Iranian national residing in Iran who
16 and has an approved immigrant visa petition based on her \$500,000.00 investment in Kimpton
17 Hotels & Restaurants in Milwaukee, Wisconsin.

18 17. Plaintiff Dr. Mahdi Afshar Arjmand is an Iranian national, currently residing in Iran,
19 who has an approved immigrant visa petition based on his extensive record of achievements as
20 an alien with extraordinary ability.

21 18. Plaintiff Dr. Ehsan Heidaryan is an Iranian national, currently residing in Brazil, who
22 has an approved immigrant visa petition based on his extensive record of achievements as an
23 alien with extraordinary ability.
24

1 19. Plaintiff Najmeh Maharlouei is an Iranian national currently residing in Shiraz, Iran,
2 who has an approved immigrant visa petition based on her extensive record of achievements and
3 the fact that her work is in the U.S. national interest.

4 20. Plaintiff Nastaran Hajiheydari is an Iranian national, currently residing in Iran, who has
5 an approved immigrant visa petition based on her extensive record of achievements and the fact
6 that her work is in the U.S. national interest.

7 21. Plaintiff Afrooz Kharazmi is a U.S. citizen residing in Loveland, Ohio.

8 22. Plaintiff Afshan Alamshah Zadeh is an Iranian national residing in Iran.

9 23. Ms. Alamshah Zadeh has a pending immigrant visa based on Ms. Kharazmi's approved
10 family-based immigrant visa petition for her.

11 24. Plaintiff Bamshad Azizi is a U.S. lawful permanent resident residing in San Jose,
12 California.

13 25. Plaintiffs Roghayeh Azizikoutenaei and Hojjatollah Azizikoutenaei are Iranian nationals
14 residing in Iran.

15 26. Mr. Bamshad Azizi assisted his parents, Ms. Azizikoutenaei and Mr. Azizikoutenaei,
16 with filing for tourist visas to visit him in San Jose, California.

17 27. Plaintiff Clyde Jean Tedrick II is an American citizen residing in Rockville, Maryland.

18 28. Plaintiff Mitra Farnoodian-Tedrick is a U.S. lawful permanent resident residing in
19 Rockville, Maryland.

20 29. Plaintiffs Farajollah Farnoudian and Farangis Emami are Iranian nationals currently
21 residing in Iran.

22 30. Mr. Tedrick and Ms. Farnoodian-Tedrick assisted Mr. Farnoudian and Ms. Emami with
23 applying for tourist visas.
24

1 31. Plaintiff Tannaz Toloubeydokhti is a U.S. citizen who resides in San Diego, California.

2 32. Plaintiffs Fathollah Tolou Beydokhti and Behnaz Malekghaeini are Iranian nationals
3 residing in Iran.

4 33. Mr. Beydokhti and Ms. Malekghaeini have pending immigrant visas based on Ms.
5 Toloubeydokhti's approved family-based immigrant visa petitions.

6 34. Plaintiff Maral Charkhtab Tabrizi is a U.S. lawful permanent resident living in Tempe,
7 Arizona, who is married to a U.S. citizen and has just given birth to her first child.

8 35. Plaintiffs Zahra Rouzbehani and Bahram Charkhtab Tabrizi are Iranian nationals
9 residing in Iran.

10 36. Ms. Tabrizi assisted her parents, Ms. Rouzbehani and Mr. Charkhtab Tabrizi, with filing
11 for tourist visas.

12 37. Plaintiff Maryam Mozafari is an U.S. lawful permanent resident residing in San
13 Francisco, California.

14 38. Plaintiffs Nahid Golestanian and Mohammad Mehdi Mozaffary are Iranian nationals
15 residing in Iran.

16 39. Ms. Mozafari assisted her parents, Mrs. Golestanian and Mr. Mozaffary with filing for
17 tourist visas.

18 40. Defendant Donald J. Trump is the President of the United States and is sued in his
19 official capacity. President Trump issued the Proclamation challenged in this suit.

20 41. Defendant Jefferson Beauregard Sessions III is the U.S. Attorney General and is sued in
21 his official capacity. Attorney General Sessions is responsible for overseeing the activities of the
22 Department of Justice ("DOJ") with respect to the implementation and enforcement of the
23 Proclamation.
24

1 42. Defendant DOJ is a cabinet-level department of the U.S. federal government. The
2 Proclamation assigns DOJ a variety of responsibilities regarding its implementation and
3 enforcement.

4 43. Defendant Kirstjen Nielsen is the Secretary of Homeland Security and is sued in her
5 official capacity. Secretary Nielsen is responsible for administration of the INA by the U.S.
6 Department of Homeland Security (“DHS”) and for overseeing enforcement and
7 implementation of the Proclamation by all DHS staff.

8 44. Defendant DHS is a cabinet-level department of the U.S. federal government. Its
9 components include U.S. Citizenship and Immigration Services (“USCIS”), Customs and
10 Border Protection (“CBP”), and Immigration and Customs Enforcement (“ICE”). USCIS’s
11 responsibilities include adjudicating requests for immigration benefits for individuals located
12 within the United States. CBP’s responsibilities include inspecting and admitting immigrants
13 and nonimmigrants arriving with U.S. visas at international points of entry, including airports
14 and land borders. ICE’s responsibilities include enforcing federal immigration law within the
15 interior of the United States. The Proclamation assigns DHS a variety of responsibilities
16 regarding its enforcement.
17

18 45. Defendant Rex W. Tillerson is the Secretary of State and is sued in his official capacity.
19 Secretary Tillerson is responsible for overseeing enforcement and implementation of the
20 Proclamation by all U.S. Department of State (“State Department”) staff.

21 46. Defendant State Department is a cabinet-level department of the U.S. federal
22 government responsible for the issuance of immigrant and nonimmigrant visas abroad. The
23 Presidential Proclamation assigns the State Department a variety of responsibilities regarding its
24 implementation and enforcement.

1 47. Defendant Dan Coats is the Director of National Intelligence and is sued in his official
2 capacity. Director Coats is responsible for overseeing enforcement and implementation of the
3 Proclamation by all Office of the Director of National Intelligence (“ODNI”) staff.

4 48. Defendant ODNI is an independent agency of the U.S. federal government which has
5 specific responsibilities and obligations with respect to implementation of the Proclamation.
6

7
8 **FACTUAL ALLEGATIONS**

9 **I. Background**

10 49. On September 24, 2017, President Trump signed the third version of the travel ban,
11 Presidential Proclamation 9645, entitled “Enhancing Vetting Capabilities and Processes for
12 Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats.”
13 Presidential Proclamation 9645, 82 Fed. Reg. 45161 (Sept. 27, 2017). (Exhibit A) The
14 Proclamation provides for discretionary case-by-case waivers from a now-indefinite travel ban
15 on nationals of the six Muslim-majority countries.

16 50. Affected states and individuals immediately brought suit against the Proclamation in
17 federal district court in Hawaii and Maryland, seeking to block implementation of the travel
18 ban. On October 17, 2017, the Hawaii court granted a nationwide temporary restraining order
19 and, the following day, the Maryland court issued a nationwide preliminary injunction.

20 51. The government appealed these decisions to the Ninth and Fourth Circuit Courts of
21 Appeal. It also requested the U.S. Supreme Court to issue a stay of the Hawaii and Maryland
22 courts’ decisions blocking the Proclamation’s implementation pending disposition of its appeals
23 of those decisions in the circuit courts. The U.S. Supreme Court granted that request on
24

1 Monday, December 4, 2017, thereby allowing the Proclamation's travel ban to take full effect.
2 Oral arguments in the circuit courts proceeded.

3 52. On Friday, December 22, 2017, the Ninth Circuit affirmed the Hawaii court's
4 preliminary injunction order but stayed its decision pending review by the U.S. Supreme Court.
5 On February 14, 2018, the Fourth Circuit affirmed the Maryland court's preliminary injunction
6 order, but also stayed its decision pending review by the U.S. Supreme Court.

7 53. In the midst of the legal challenges to the Proclamation, the State Department began
8 implementing the travel ban. Since the U.S. Supreme Court allowed full implementation of the
9 latest iteration of the ban, officials at consulates and embassies in the banned countries have
10 engaged in a pattern of indiscriminately denying immigrant and non-immigrant visas to
11 applicants from the banned countries.
12

13 54. Indeed, in a response to an inquiry by two U.S. senators, the State Department has
14 revealed that, as of January 8, 2018, only two waivers were granted to applicants of the banned
15 countries out of a total of 6,555 applicants who were eligible to be considered for waivers.
16 Letter from Mary K. Waters, U.S. Department of State, to Chris Van Hollen, U.S. Senator (Feb.
17 22, 2018), <http://fingfx.thomsonreuters.com/gfx/reuterscom/1/60/60/letter.pdf> (Exhibit B) As of
18 March 6, 2018, the State Department had apparently issued 100 more waivers, meaning that
19 consular officers have rejected more than 98% of visa applicants. Yaganeh Torbati & Mica
20 Rosenberg, *Exclusive: Visa Waivers Rarely Granted Under Trump's Latest U.S. Travel Ban*,
21 Reuters (Mar. 6, 2018), [https://www.reuters.com/article/us-usa-immigration-travelban-exclusive/exclusive-visa-waivers-rarely-granted-under-trumps-latest-u-s-travel-ban-data-](https://www.reuters.com/article/us-usa-immigration-travelban-exclusive/exclusive-visa-waivers-rarely-granted-under-trumps-latest-u-s-travel-ban-data-idUSKCN1GI2DW)
22 [idUSKCN1GI2DW](https://www.reuters.com/article/us-usa-immigration-travelban-exclusive/exclusive-visa-waivers-rarely-granted-under-trumps-latest-u-s-travel-ban-data-idUSKCN1GI2DW). (Exhibit C)
23
24
25

1 55. The two most recent versions of the travel ban specifically provided for “case-by-case
2 waivers” to be granted by consular officers under a non-exclusive list of circumstances for visa
3 applicants from the banned countries. Nonetheless, in direct contravention of the terms of the
4 Proclamation, Defendants have refused to consider such waivers and have instead issued blanket
5 denials of visas, regardless of personal circumstances and without giving applicants the
6 opportunity to argue their cases. Thus, irrespective of an applicant’s personal circumstances or
7 bona fide relationship to the United States, the government has found a way to circumvent both
8 the courts and its own instruction and fully implement the Muslim travel ban.

9 56. A mere three days after the U.S. Supreme Court’s lifting of the stays preventing
10 implementation of the travel ban, the State Department, without taking time to develop
11 standards or protocols, recklessly and irresponsibly executed a ban that greatly harmed, and
12 continues to harm, more than 150 million visa applicants worldwide. Visa applicants contacted
13 embassies and consulates abroad to ask for clarity but were given the runaround. Attorneys
14 contacted the State Department for clarification but received inadequate and inconsistent
15 responses. The problem continues. As of the date of filing of this complaint, the State
16 Department also lacks protocols for considering waiver applications for individuals whose cases
17 were pending administrative processing¹ at the time the ban went into effect and for visa
18 applicants whose visas were approved prior to implementation of the ban.
19
20
21

22 ¹ Administrative processing is a period after a visa interview during which applicants undergo
23 additional screening outside of “normal” visa processing. Maggio & Kattar & The Pennsylvania
24 State University Law School’s Center for Immigrants’ Rights, Administrative Processing FAQ,
25 *1, <https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Immigrants/Administrative-Processing-FAQ.pdf> (accessed Jan. 21, 2018). “Before issuing a visa, consular officers review different databases to determine if information exists that may impact individual eligibility for a
COMPLAINT - 11

1 57. The process remains so opaque that, in addition to the formal request for information
2 from U.S. senators, civil rights organizations have filed a FOIA request seeking documents from
3 the State Department related to the travel ban waiver process. (Exhibit D) As of the date of
4 filing, Defendants have not yet complied with the request.

5
6 **II. Relevant Law**

7 58. Section 3 of the Proclamation contains a subsection entitled “Waivers,” which states:

8
9 Notwithstanding the suspensions of and limitations on entry set
10 forth in section 2 of this proclamation, a consular officer, or the
11 Commissioner, United States Customs and Border Protection
12 (CBP), or the Commissioner’s designee, as appropriate, may, in
13 their discretion, grant waivers on a case-by-case basis to permit
the entry of foreign nationals for whom entry is otherwise
suspended or limited if such foreign nationals demonstrate that
waivers would be appropriate and consistent with subsections (i)
through (iv) of this subsection [laying out waiver standards].

14 82 Fed. Reg. at 45167.

15 59. The Proclamation explains that a waiver may be granted if, in a consular officer’s or
16 CBP’s discretion, a foreign national has demonstrated that (1) a denial of entry “would cause the
17 foreign national undue hardship”; (2) his or her “entry would not pose a threat to the national
18 security or public safety of the United States”; and (3) his or her “entry would be in the national
19 interest.” 82 Fed. Reg. at 45168.

20 60. The Proclamation then specifies that while “case-by-case waivers may not be granted
21 categorically,” they “may be appropriate, subject to the limitations, conditions, and requirements
22 set forth” in subsection (c), “in individual circumstances” *Id.* It proceeds to give a number of
23 examples of such circumstances under which issuance of a waiver may be appropriate,
24 including:

1 (A) the foreign national has previously been admitted to the
2 United States for a continuous period of work, study, or other
3 long-term activity, is outside the United States on the applicable
4 effective date ... of this proclamation, seeks to reenter the United
5 States to resume that activity, and the denial of reentry would
6 impair that activity;

7 (B) the foreign national has previously established significant
8 contacts with the United States but is outside the United States on
9 the applicable effective date ... of this proclamation for work,
10 study, or other lawful activity;

11 (C) the foreign national seeks to enter the United States for
12 significant business or professional obligations and the denial of
13 entry would impair those obligations;

14 (D) the foreign national seeks to enter the United States to visit or
15 reside with a close family member (e.g., a spouse, child, or parent)
16 who is a United States citizen, lawful permanent resident, or alien
17 lawfully admitted on a valid nonimmigrant visa, and the denial of
18 entry would cause the foreign national undue hardship;

19 (E) the foreign national is an infant, a young child or adoptee, an
20 individual needing urgent medical care, or someone whose entry
21 is otherwise justified by the special circumstances of the case

22 82 Fed. Reg. at 45169.

23 61. The Proclamation also instructs that, “[t]he Secretary of State and the Secretary of
24 Homeland Security shall coordinate to adopt guidance addressing the circumstances in which
25 waivers may be appropriate for foreign nationals seeking entry as immigrants or
nonimmigrants.” 82 Fed. Reg. at 45168. It further directs the Secretaries to:

[A]ddress the standards, policies and procedures for:

(A) determining whether the entry of a foreign national would not
pose a threat to the national security or public safety of the United
States;

(B) determining whether the entry of a foreign national would be
in the national interest;

1 (C) addressing and managing the risks of making such a
2 determination in light of the inadequacies in information sharing,
3 identity management, and other potential dangers posed by the
4 nationals of individual countries subject to the restrictions and
5 limitations imposed by this proclamation;

6 (D) assessing whether the United States has access, at the time of
7 the waiver determination, to sufficient information about the
8 foreign national to determine whether entry would satisfy the
9 requirements of subsection (i) of this subsection; and

10 (E) determining the special circumstances that would justify
11 granting a waiver under subsection (iv)(E) of this subsection.

12 *Id.*

13 62. Defendants have not yet developed such guidance and have instead proceeded full speed
14 to implement the ban, rejecting more than 98% of visa applicants.

15 **III. Plaintiffs have been denied due consideration for a waiver of the Proclamation**

16 63. Plaintiff Soheil Vazehrad is a U.S. citizen who is employed as a registered dental
17 hygienist and resides in Napa, California. He filed an application with USCIS for a fiancée visa
18 for his soon-to-be wife, Ms. Atefehossadat Motavaliabyazani, in April 2016. Ms.
19 Motavaliabyazani is an Iranian national who currently resides in Iran. USCIS approved Mr.
20 Vazehrad's petition on May 11, 2016. Ms. Motavaliabyazani attended her interview at the U.S.
21 Embassy in Yerevan, Armenia, on October 20, 2016, and was told that her case would go
22 through routine administrative processing. On January 4, 2018, she received an email stating the
23 following:

24 Dear Applicant:

25 This is to inform you that a consular officer found you ineligible
for a visa under Section 212(f) of the Immigration and Nationality

1 Act, pursuant to Presidential Proclamation 9645. Today's decision
2 cannot be appealed....

3 Taking into account the provisions of the Proclamation, a waiver
4 will not be granted in your case.

5 (Exhibit E)

6 64. Thus, Ms. Motavaliabyazani's visa was refused pursuant to the Proclamation and she
7 was ineligible for a waiver of the Proclamation, despite the facts that her fiancé, Mr. Vazehrad,
8 is a U.S. citizen, that her interview took place almost a year *before* the Proclamation was signed,
9 and that, once the Proclamation came into effect, she was never given the opportunity to request
10 a waiver of the Proclamation.

11 65. Mr. Benham Babalou is an Iranian national who invested five hundred thousand dollars
12 (\$500,000.00 USD) in the United States as part of his petition for an employment-based fifth
13 preference (EB-5) investment visa² in 2011. USCIS adjudicated his case and sent him an
14 approval notice four years later, on December 15, 2015. Mr. Babalou then attended his
15 immigrant visa interview at the U.S. Embassy in Yerevan, Armenia, on May 24, 2016, after
16 which his case was placed in administrative processing. On December 22, 2017, six years after
17 his initial investment, he received a visa denial via an email identical to that sent to Ms.
18 Motavaliabyazani.

19 66. Thus, Mr. Babalou's visa was refused pursuant to the Proclamation and he was
20 ineligible for a waiver of the Proclamation, despite the facts that the Proclamation would not

21 _____
22 ² The EB-5 investment visa is designed to give permanent resident status to entrepreneurs (and
23 their spouses and unmarried children under 21) who (1) “[m]ake the necessary investment in a
24 commercial enterprise in the United States” (either \$500,000 or \$1 million); and (2) “[p]lan to
25 create or preserve 10 permanent full-time jobs for qualified U.S. workers.” USCIS, EB-5
Immigrant Investor Program, <https://www.uscis.gov/eb-5> (accessed Jan. 21, 2018).

1 come into existence until almost a year and a half *after* Mr. Babalou's interview at the Embassy
2 and, further, that once the Proclamation came into effect, he was never given the opportunity to
3 request a waiver of the Proclamation. His attorneys continue to request a waiver of the
4 Proclamation to no avail.

5 67. Ms. Hoda Mehrabi Mohammad Abadi is an Iranian national who invested five hundred
6 thousand dollars (\$500,000.00) in the United States as part of her petition she filed on August 5,
7 2014, for an employment-based fifth preference (EB-5) investment visa. USCIS adjudicated her
8 case and sent her an approval notice nearly two years later, on June 9, 2016. Ms. Mehrabi
9 Mohammad Abadi attended her immigrant visa interview at the U.S. Embassy in Yerevan,
10 Armenia, on February 23, 2017, after which her case was placed in administrative processing.
11 On December 14, 2017, her attorney received the same email that Mr. Babalou received stating
12 that her visa was refused pursuant to the Proclamation and she was ineligible for a waiver.
13

14 68. Her attorney tried to request the Embassy to consider Ms. Mehrabi Mohammad Abadi's
15 case for a waiver from the Proclamation, but the Embassy responded again on December 17,
16 2017, with the following:

17 Dear inquirer,

18 Unfortunately, your case is not eligible for a waiver under
19 Presidential Proclamation 9645. This refusal under Section 212(f)
20 of the Immigration and Nationality Act applies only to the current
21 visa application. Please be advised that Presidential Proclamation
22 9645 currently restricts issuance of most visas to nationals of Iran
23 and seven other countries.

24 (Exhibit F)

25 69. This despite the facts that the Proclamation would not come into existence until long
after her visa interview and, further, that once it came into effect, she was never given the

1 opportunity to request a waiver of the Proclamation, nor was she informed of her right to be
2 considered for a waiver.

3 70. Dr. Mahdi Afshar Arjmand is an Iranian national who filed for an EB-1A (alien with
4 extraordinary ability) immigrant visa on December 27, 2016, and received an approval notice on
5 January 9, 2017. He attended his immigrant visa interview with his family on July 25, 2017 at
6 the U.S. Embassy in Yerevan, Armenia. The officer informed them that their case looked good,
7 but just needed to go through administrative processing. On January 12, 2018, the Embassy
8 emailed Dr. Afshar Arjmand the same denial letter that Mr. Babalou and Ms. Mehrabi
9 Mohammad Abadi received. The consulate never mentioned anything about a waiver process.
10 Dr. Afshar Arjmand had a job offer from the University of California, San Diego, to work as a
11 researcher and professor. The Embassy refused to consider Dr. Afshar Arjmand for a waiver
12 even though the university had sent multiple emails to the Embassy requesting it to issue Dr.
13 Afshar Arjmand's visa so he could start his position there.
14

15 71. Dr. Ehsan Heidaryan, a world-renowned professor of chemical engineering and Iranian
16 national, filed a petition for an employment-based first preference visa for aliens with
17 extraordinary ability (EB-1A)³ with USCIS on February 7, 2017. Based on his impressive
18 record of achievements in his field, USCIS approved Dr. Heidaryan's petition on March 3,
19 2017. He attended his immigrant visa interview at the U.S. Consulate General in Rio de Janeiro,
20 Brazil, on December 23, 2017. Thereafter, the Consulate emailed Dr. Heidaryan to inform him
21

22 ³ To qualify for an EB-1A visa an applicant "must be able to demonstrate extraordinary ability
23 in the sciences, arts, education, business, or athletics through sustained national or international
24 acclaim." USCIS, Employment-Based Immigration: First Preference EB-1,
25 <https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-first-preference-eb-1> (accessed Jan. 21, 2018).

1 that since he is an Iranian national, his immigrant visa must be refused because of the
2 Proclamation. Specifically, the consulate wrote:

3 Dear Sir,

4 Unfortunately your immigrant visa is refused under Presidential
5 Proclamation 9645 and now considered closed. Do not need to fill
6 out the questionnaire we sent by email.

7 (Exhibit G)

8 Not only did the Consulate never mention anything about a waiver process or how Dr.
9 Heidaryan could prove his eligibility, but it affirmatively stopped him from even completing his
10 visa application.

11 72. Ms. Najmeh Maharlouei is an Iranian national currently residing in Shiraz, Iran, where
12 she is employed as a health researcher and Associate Professor of Community Medicine at
13 Shiraz University of Medical Sciences. She filed an application with USCIS for an immigrant
14 visa under the category of employment-based second preference (EB-2) with a National Interest
15 Waiver⁴ on June 20, 2015. Her case was approved on March 4, 2016, and Ms. Maharlouei
16 attended her immigrant visa interview at the U.S. Embassy in Yerevan, Armenia, on October 6,
17 2016. She was told at that interview that there were no problems with her case, but that she
18 would have to undergo routine administrative processing. Ms. Maharlouei received a notice
19

20 _____
21 ⁴ An applicant can acquire permanent residency under the EB-2 category if she is a foreign
22 national who has an advanced degree and exceptional ability in the sciences, art, or business.
23 USCIS, Employment-Based Immigration: Second Preference EB-2,
24 [https://www.uscis.gov/working-united-states/permanent-workers/employment-based-](https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-second-preference-eb-2)
25 [immigration-second-preference-eb-2](https://www.uscis.gov/working-united-states/permanent-workers/employment-based-immigration-second-preference-eb-2) (accessed Jan. 21, 2018). This category usually requires
that the applicant's employer get a labor certification from the U.S. Department of Labor, but an
applicant can receive a National Interest Waiver of that requirement if she shows that her work
is in the U.S. national interest.

1 denying her visa application pursuant to the Proclamation on December 22, 2017. She at no
2 point had the opportunity to request a waiver of the Proclamation despite the fact that the very
3 reason her immigrant visa petition was approved by USCIS was a determination that her work is
4 in the U.S. national interest. The Proclamation would not come into existence until more than a
5 year after Ms. Maharlouei's interview.

6 73. Plaintiff Nastaran Hajiheydari is an Iranian national currently residing in Iran where she
7 works in the field of Information Technology Business as an Associate Professor at the
8 University of Tehran. She filed an application with USCIS for an immigrant visa under the
9 category of employment-based second preference (EB-2) with a National Interest Waiver on
10 October 14, 2016. Her case was approved less than 40 days later in November 2016, and Ms.
11 Hajiheydari and her family attended their immigrant visa interviews at the U.S. Embassy in
12 Yerevan, Armenia, on October 26, 2017. Their cases were placed in routine administrative
13 processing. Ms. Hajiheydari received an email notice denying her family's visa applications
14 pursuant to the Proclamation on January 16, 2018. She at no point had the opportunity to request
15 a waiver of the Proclamation despite the fact that the very reason her immigrant visa petition
16 was approved by USCIS was a determination that her work is in the U.S. national interest.

18 74. Plaintiff Afrooz Kharazmi, a U.S. citizen residing in Loveland, Ohio, filed an immigrant
19 visa petition with USCIS on June 1, 2004, for her sister, Plaintiff Afshan Alamshah Zadeh, an
20 Iranian national currently residing in Iran. Ms. Alamshah Zadeh waited in line for 12 years for
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22
23
24
25

1 her priority date⁵ to become current. USCIS approved her petition in October 2016. The U.S.
2 Embassy in Abu Dhabi, UAE, scheduled Ms. Alamshah Zadeh's immigrant visa interview for
3 January 7, 2018. She attended the interview and was informed that her immigrant visa was
4 denied pursuant to the Proclamation. Ms. Alamshah Zadeh did not have the opportunity to apply
5 for a waiver, thus the consular officer did not consider the fact that she has two U.S. citizen
6 parents and a U.S. citizen sister with whom she seeks to be reunited, or the fact that she
7 patiently waited in line for 12 years for her visa number to become current.

8 75. Plaintiff Bamshad Azizi is a U.S. lawful permanent resident residing in San Jose,
9 California, and co-founder of a cybersecurity startup in the United States. His parents,
10 Roghayeh Azizikoutenaei and Hojjatollah Azizikoutenaei applied for tourist visas to come visit
11 him and his sister. They attended their interview at the U.S. Consulate General in Dubai, UAE,
12 on September 12, 2017, 12 days before the signing of the Proclamation, and were told that their
13 visas would be ready in two weeks. In disbelief at their luck, Mr. and Mrs. Azizikoutenaei asked
14 if their visas would really be ready in only two weeks, and the interviewing officer smiled and
15 confirmed. On October 3, 2017, they received an email from the Embassy requesting that they
16 send their passports so that their visas could be stamped. They did so and, to their dismay, their
17 passports were returned eleven days later with no visas and with a letter stating that their
18 applications had been placed in administrative processing. After following up multiple times
19 with the Embassy and receiving only automated responses, Mr. and Mrs. Azizikoutenaei
20

21
22 ⁵ An applicant's priority date is the date upon which her application was filed. An applicant's
23 priority date must become "current" before she can apply for an adjustment of status to that of
24 permanent resident. Spouses, parents, and minor children of U.S. citizens do not have to wait for
25 visas to become available, so their priority dates are irrelevant, but all other categories of
immigrants have to wait in line, in some cases for decades, for their priority dates to become
current.

1 received rejections on January 10, 2018. Mrs. Azizikoutenaie was diagnosed with cancer about
2 a year ago and had to undergo two surgeries and a series of intense chemotherapy sessions. Mr.
3 Azizikoutenaie also had surgery recently. They are both still quite weak and the family just
4 wants to be reunited. They were unable to tell officers about their circumstances as they did not
5 have the opportunity to request a waiver from the Proclamation at any point.

6 76. Plaintiff Clyde Jean Tedrick II is an American citizen residing in Rockville, Maryland,
7 with Plaintiff Mitra Farnoodian-Tedrick, U.S. lawful permanent resident. They assisted Ms.
8 Farnoodian-Tedrick's parents, Farajollah Farnoudian and Farangis Emami, with applying for
9 tourist visas to attend their wedding on May 27, 2018. Mr. Farnoudian and Ms. Emami had
10 visited the U.S. before and had fully complied with the terms of their tourist visas. They
11 attended their visa interview on October 17, 2017, at the U.S. Consulate General in Dubai,
12 UAE. Mr. Farnoudian's visa application was placed in administrative processing, but Ms.
13 Emami's visa application was approved. Mr. Farnoudian received an email on January 8, 2018,
14 informing him that his visa had been denied pursuant to the Proclamation. Ms. Emami was
15 never notified that her already-approved visa had been denied pursuant to the Proclamation, but
16 only found out after checking the status of her case online. At no point did anyone in the family
17 have an opportunity to request a waiver. Due to the lack of opportunity to request a waiver, Mr.
18 Tedrick and Ms. Farnoodian-Tedrick were forced to cancel their wedding.

19
20 77. Plaintiff Tannaz Toloubeydokhti is a U.S. citizen who resides in San Diego, California.
21 She is employed as an obstetric-gynecologist and has dedicated her career to improving the lives
22 of American mothers and babies. She is herself in her last trimester of pregnancy and, knowing
23 how difficult labor and caring for a newborn can be, she seeks family support for help both in
24 delivery of the baby and with childcare afterwards. Ms. Toloubeydokhti petitioned for

1 immigrant visas for her parents, Fathollah Tolou Beydokhti and Behnaz Malekghaeini, Iranian
2 nationals, on September 1, 2016. Their cases were approved, and her parents attended their
3 immigrant visa interviews on December 21, 2017, at the U.S. Embassy in Yerevan, Armenia.
4 Mr. Beydokhti and Ms. Malekghaeini, went prepared to their interviews, ready to request
5 waivers of the Proclamation with supporting documents in hand. But when they presented their
6 documents, the officer refused to review them, told them that they did not qualify for a waiver,
7 and their visas were denied.

8
9 78. Plaintiff Maral Charkhtab Tabrizi is a U.S. lawful permanent resident residing in
10 Arizona who is married to a U.S. citizen and is pregnant with her first child. Her parents,
11 Plaintiffs Zahra Rouzbehani and Bahram Charkhtab Tabrizi, who have traveled to the United
12 States many times before, applied for tourist visas to witness the birth of their first grandchild.
13 They attended their interviews at the U.S. Consulate General in Dubai, UAE, on October 19,
14 2017. Ms. Rouzbehani was approved right away, but Mr. Charkhtab Tabrizi's case was sent for
15 administrative processing. Ms. Rouzbehani decided to not send the passport for visa stamping
16 immediately, but to wait for her husband's administrative processing to be completed first so
17 that they could travel together to the United States. Immediately after the Supreme Court
18 allowed the Proclamation to go into effect, Ms. Rouzbehani sent her passport for visa stamping.
19 Near the end of December 2017, the passport was returned without a visa and their visas were
20 refused pursuant to the Proclamation. They were not given the opportunity to apply for a waiver.

21 79. Had they been given that opportunity, Ms. Charkhtab Tabrizi's parents would have told
22 the adjudicating officer that they wanted to be there to support their daughter for a number of
23 reasons. The first is financial. Ms. Charkhtab Tabrizi's household finances depend heavily on
24 her salary and, because she is a contractor for Google and has been there for less than 12 months

1 and is therefore not eligible for maternity leave or for time off under the Family Medical Leave
2 Act, she had planned to return to work as soon as possible. Without her parents, Ms. Charkhtab
3 Tabrizi will be unable to go back to work as quickly as she had hoped and will be unable to
4 afford daycare after an unpaid leave during which time she and her husband will be depleting
5 their savings. The second reason is medical. Ms. Charkhtab Tabrizi has a connective tissue
6 disorder which has caused her severe pain during her pregnancy and makes her daily activities
7 very difficult. She had hoped that her parents could be there to support her during her recovery
8 so she could go back to work quickly; this is important because her contract may end before she
9 has fully recovered and she may lose all of her benefits and her opportunity to extend her
10 contract. The denial of Ms. Rouzbehani's and Mr. Charkhtab Tabrizi's visas is causing Ms.
11 Charkhtab Tabrizi severe financial hardship and may even cost her her job.
12

13 80. Plaintiff Maryam Mozafari is a U.S. permanent resident currently residing in San
14 Francisco, California. She is pregnant and wanted her parents, Ms. Nahid Golestani and Mr.
15 Mohammad Mehdi Mozaffary, to come visit her and provide her the support she needs during
16 this stressful time. They had both visited the United States in 2014, and had left the country well
17 in advance of the expiration of their visas, and were thus confident they would be granted tourist
18 visas again. On December 28, 2016, they applied for tourist visas at the U.S. Consulate General
19 in Dubai, UAE. Ms. Golestani's visa was granted immediately. Mr. Mozaffary was asked for
20 his mandatory military service documents. He did not have them with him, as the documents
21 were not mentioned in the list of required documents for the visa application, and he was asked
22 to reapply and bring the documents with him to the next interview.
23

24 81. Because of the timing of the first two travel bans, Mr. Mozaffary had to delay his
25 interview, and was not able to get back in to the Consulate until July 30, 2017. He was told by

1 the consular officer that his documents appeared to be in order, but that he would be sending
2 Mr. Mozaffary additional forms to fill out. Mr. Mozaffary received the forms in August and
3 returned them to the Consulate soon thereafter. For the next several months, Ms. Mozafari and
4 Mr. Mozaffary sent several emails to the Consulate to inquire about the status of the cases, but
5 either received no reply at all or a system-generated standard response. On January 11, 2018,
6 Mr. Mozaffary's visa was denied pursuant to the Proclamation. He did not have an opportunity
7 to request a waiver. Mr. Mozaffary suffers from a heart condition which requires that he be
8 accompanied at all times. During this time, Ms. Golestanian came to the United States to visit
9 Ms. Mozafari. She wants to stay with Ms. Mozafari to support her during her pregnancy, but she
10 feels torn between her daughter and her ailing husband. She has been put in an impossible
11 position.
12

13 82. Despite the fact that the Proclamation contains examples of specific circumstances under
14 which issuance of a waiver to an applicant would be appropriate, Defendants have abrogated
15 their duty to consider Plaintiffs' individual circumstances—all of which fall cleanly under one
16 or more of these examples—and have instead engaged in categorical refusals to consider waiver
17 applications and, thus, categorical denials of visas to the individuals affected by the travel ban.
18

19 **IV. President Trump's ongoing promise to implement "a total and complete**
20 **shutdown of Muslims entering the United States"**

21 83. Prior to his election, President Trump campaigned on the promise that he would ban
22 Muslims from entering the United States. On December 7, 2015, then-candidate Trump issued a
23 press release calling for "a total and complete shutdown of Muslims entering the United States."
24
25

1 Donald J. Trump Campaign, *Donald J. Trump Statement on Preventing Muslim Immigration*
2 (Dec. 7, 2015). (Exhibit H)

3 84. When asked on the following day what the customs process would look like for a
4 Muslim non-citizen attempting to enter the United States, candidate Trump stated, “[T]hey
5 would say, ‘are you Muslim?’” Nick Gass, *Trump not bothered by comparisons to Hitler*,
6 POLITICO (Dec. 8, 2015), [https://www.politico.com/trump-muslims-shutdown-hitler-](https://www.politico.com/trump-muslims-shutdown-hitler-comparison)
7 [comparison](https://www.politico.com/trump-muslims-shutdown-hitler-comparison). Candidate Trump then confirmed that, if they answered in the affirmative, they
8 would not be allowed into the country. *Id.*

9 85. On June 13, 2016, candidate Trump reiterated his promise to ban all Muslims entering
10 this country until the United States is “in a position to properly and perfectly screen those
11 people coming into our country.” Ryan Teague Beckwith, *Read Donald Trump’s Speech on the*
12 *Orlando Shooting*, TIME (Jun. 13, 2016), [http://time.com/4367120/orlando-shooting-donald-](http://time.com/4367120/orlando-shooting-donald-trump-transcript/)
13 [trump-](http://time.com/4367120/orlando-shooting-donald-trump-transcript/)
14 [transcript/](http://time.com/4367120/orlando-shooting-donald-trump-transcript/).

15 86. In a foreign policy speech delivered on August 15, 2016, candidate Trump noted that the
16 United States could not “adequate[ly] screen[.]” immigrants because it admits “about 100,000
17 permanent immigrants from the Middle East every year.” *Donald Trump Foreign Policy Speech*
18 *in Youngstown*, C-SPAN (Aug. 15, 2016), [https://www.c-span.org/video/?413977-1/donald-](https://www.c-span.org/video/?413977-1/donald-trump-delivers-foreign-policy-address)
19 [trump-delivers-foreign-policy-address](https://www.c-span.org/video/?413977-1/donald-trump-delivers-foreign-policy-address) (quoted remarks at 50:46). Candidate Trump proposed
20 creating an ideological screening test for immigration applicants, which would “screen out any
21 who have hostile attitudes towards our country or its principles – or who believe that Sharia law
22 should supplant American law.” He referred to this proposal as “extreme, extreme vetting.” *Id.*
23
24
25

1 87. On June 5, 2017, after litigation against the first travel ban led to its replacement by a
2 revised ban, President Trump issued a series of tweets criticizing the revision and calling for a
3 return to the first travel ban. He stated, “The Justice Dept. should have stayed with the original
4 Travel Ban, not the watered down, politically correct version they submitted to S.C.” (Exhibit I)
5 President Trump also tweeted: “People, the lawyers and the courts can call it whatever they
6 want, but I am calling it what we need and what it is a TRAVEL BAN!” (Exhibit J)

7 88. Defendants have pointed to the existence of a waivers provision in the Proclamation as
8 proof of its constitutionality. But the president’s statements, both before and during his time in
9 office, combined with the blanket denials of waivers and visas to applicants from the banned
10 Muslim-majority countries lay bare Defendants’ intent to institute a complete ban on Muslims
11 entering the United States.
12

13
14 **V. President Trump’s promise to end family reunification, a.k.a. chain migration**

15 89. On January 4, 2018, President Trump tweeted, “...We must BUILD THE WALL, stop
16 illegal immigration, end chain migration & cancel the visa lottery.” (Exhibit K)

17 90. On January 16, 2018, President Trump tweeted, “[W]e need to keep America safe,
18 including moving away from a random chain migration and lottery system, to one that is merit-
19 based.” (Exhibit L)

20 91. On January 25, 2018, the White House issued a fact sheet entitled, “White House
21 Framework on Immigration Reform & Border Security,” where it stated one of the
22 administration’s goal is to “[p]romote nuclear family migration by limiting family sponsorship
23 to spouses and minor children only (for both Citizens and LPRs), ending extended-family chain
24 migration.” (Exhibit M)

1 92. Defendants have changed the terms of the travel ban that they themselves wrote by
2 categorically limiting the number of visa applicants who can request consideration for a waiver
3 of the travel ban. Defendants are therefore bypassing Congress and the INA and working to
4 effectively end family reunification in the banned countries.

5
6
7
8 **VI. Existing guidance from the State Department is inadequate to guide either**
9 **consular officers or visa applicants with respect to the Proclamation's waiver**
10 **process**

11 93. The guidance provided by the Proclamation itself is minimal, and the Proclamation
12 directs the Secretary of State and the Secretary of Homeland Security to develop specific
13 guidance for consular officers and visa applicants on how the waivers provision will be
14 implemented. 82 Fed. Reg. at 45168; *see Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir.
15 2017) (“The Government ... has offered no explanation for how these [discretionary waiver]
16 provisions would function in practice: how would the "national interest" be determined, who
17 would make that determination, and when?”).

18 94. After the Supreme Court's lifting of the stays on the Proclamation, the State Department
19 issued guidance regarding its immediate implementation on its website. Dep't of State, *New*
20 *Court Order on Presidential Proclamation* (Dec. 4, 2017), [https://travel.state.gov/content/travel/](https://travel.state.gov/content/travel/en/News/visas-news/new_court_orders_on_presidential_proclamation.html)
21 [en/News/visas-news/new_court_orders_on_presidential_proclamation.html](https://travel.state.gov/content/travel/en/News/visas-news/new_court_orders_on_presidential_proclamation.html). (Exhibit N) The
22 guidance indicates that consular officers will review eligibility for a waiver at the time of an
23 applicant's interview. *Id.*

1 95. But the State Department’s guidance does not offer definitions of key terms from the
2 Proclamation’s waivers provision like “undue hardship” or “significant contacts” or any
3 explanation for how applicants can show that their entry into the United States would be in the
4 national interest.

5 96. This lack of clarity leaves applicants guessing as to what the standards of eligibility are
6 for waivers—whether their hardships are undue, whether their contacts are significant—and
7 presumably also leaves consular officers guessing as to which applicants are eligible.

8 97. The State Department’s guidance does provide a definition of “close family member,”
9 and indicates that the definition for purposes of the Proclamation is the same as the definition
10 for “immediate relative” that can be found elsewhere in immigration law. *See* 8 U.S.C.
11 § 1151(b)(2)(A)(i).

12 98. But according to an email received by counsel from the U.S. Consulate General in
13 Vancouver, Canada, visa applicants who seek to be reunited with a parent in the U.S. are
14 ineligible for consideration of a waiver if they are over 21 years old, the opposite of the
15 definition under the rest of immigration law. The email exchange reads in relevant part as
16 follows:
17

18 COUNSEL: [I]t appears as though my client, [REDACTED], has
19 been denied the opportunity to request a waiver of the presidential
20 proclamation.

21 According to the presidential proclamation itself and guidance on
22 the State Department's website, foreign nationals who seek to
23 enter the US to be reunited with a close family member (e.g.
24 spouse, child, or parent) are eligible for requesting a waiver.

25 My client is the daughter of a United States citizen. Could you
kindly explain why your office has denied my client the
opportunity to request a waiver of the presidential proclamation?

1 CONSULATE: A consular officer may issue a visa based on a
2 listed waiver category to nationals of countries identified in the
Presidential Proclamation on a case-by-case basis.

3 It has been determined that your client, [REDACTED], does not
4 meet the definition of close family as she is over 21 years of age.

5 This decision cannot be appealed.

6 (Exhibit O)

7 99. Defendants have thus limited the meaning of “close family member” to suit their
8 intended goal of broadly denying waivers to applicants from banned countries.

9 100. The guidance also does not explain how consular officers should consider the eligibility
10 for a waiver of applicants, like several Plaintiffs, who were interviewed *prior* to implementation
11 of the Proclamation but were in administrative processing during the periods when the
12 Proclamation was being implemented.

13 101. Nor does the guidance explain how applicants stuck in administrative processing should
14 handle the situation. Applicants are thus at a loss for what to do—they do not know whether
15 they are supposed to contact the embassy or whether the embassy will contact them; whether
16 they should wait until administrative processing is completed or request a waiver while their
17 cases are still pending administrative processing. Applicants fear that, if they contact the
18 embassy, attention will be brought to their cases, which will result in an immediate denial due to
19 the Proclamation. This fear is not unfounded: counsel have personal knowledge of cases in
20 which this occurred.

21
22 102. Visa applicants have stated that when they attend interviews at embassies and consulates
23 abroad, the officers inform them that waivers are processed in Washington, D.C. This undercuts
24 the State Department’s guidance which states that visa applicants’ eligibility for waivers will be

1 determined by the consular officer at the time of the interview and further muddies the water.
2 Applicants do not even know *who* is adjudicating their requests for waivers, much less what the
3 standards are to qualify for one.

4 103. In a letter to two U.S. senators published on March 6, 2018, the State Department issued
5 more guidance on the waiver process. (Exhibit B) This guidance contradicts both the
6 Proclamation and the State Department's previous guidance on the process.

7 104. For example, the letter states that "the applicant's travel may be considered in the
8 national interest if the applicant demonstrates to the consular officer's satisfaction that a U.S.
9 person or entity would suffer hardship if the applicant could not travel until after visa
10 restrictions ... are lifted." *Id.* Neither the Proclamation nor the guidance from the State
11 Department's website ever make any mention of visa applicants being required to show that
12 U.S. citizens or entities would suffer hardship if the applicant were not granted a visa, which
13 belies the State Department's contention that "[t]he Department's worldwide guidance to
14 consular officers regarding waivers is drawn directly from the Proclamation." *Id.*

15
16 105. It is thus clear that Defendants are making things up as they go along, saying one thing
17 on government websites, another thing to visa applicants and attorneys, and yet another thing
18 when a U.S. senator is doing the inquiring.

19
20 **VII. Denial letters issued by consular officers reveal Defendants' policy and practice**
21 **of refusing to give applicants due consideration for waivers**

22 106. Defendants provided the consulates and embassies abroad with a template letter to give
23 to visa applicants when they have been denied a visa pursuant to the Proclamation. The letter
24 has two options for a consular officer to select: (1) "Taking into account the provisions of the
25

1 Proclamation, a waiver will not be granted in your case”; or (2) “The consular officer is
2 reviewing your eligibility for a waiver under the Proclamation.” (Exhibit P)

3 107. This begs the question: why are consular officers not considering *all* applicants for a
4 waiver? And on what basis does an officer decide in the first instance whether an applicant
5 should be considered for a waiver at all?

6 108. These form letters betray Defendants’ policy and practice of judging applicants’
7 eligibility for waivers based not on their personal circumstances or on a consideration of the
8 guidance provided by the Proclamation, but instead on applicants’ nationality and country of
9 origin.

10 109. These form letters also contradict the guidance found on the State Department website.
11 *See* Dep’t of State, *New Court Order on Presidential Proclamation* (Dec. 4, 2017),
12 https://travel.state.gov/content/travel/en/News/visasnews/new_court_orders_on_presidential_pr
13 [oclamation.html](https://travel.state.gov/content/travel/en/News/visasnews/new_court_orders_on_presidential_pr). That guidance tells officers that if they are faced with a visa applicant who is
14 subject to the Proclamation, they will determine whether the applicant “may be eligible for a
15 waiver under the Proclamation and therefore issued a visa.” The guidance goes on to state
16 explicitly that, “[a] consular officer will carefully review each case to determine whether the
17 applicant is affected by the Proclamation . . . and, if so, whether the applicant qualifies for an
18 exception or a waiver.” *Id.*

19
20 110. The fact that the form letters reveal that officers are not considering all applicants for
21 waivers, and that the letters are inconsistent with the guidance given by State Department which
22 explicitly tells officers to consider all applicants, shows that Defendants are making decisions
23 based on inappropriate considerations of country of origin and nationality and not on valid and
24 good faith considerations of applicants’ personal circumstances.

1
2 **VIII. Plaintiffs and proposed class members have suffered and continue to suffer**
3 **irreparable harm because of the flawed waiver process**

4 111. Defendants' reckless and irresponsible implementation of the Proclamation, and their
5 policy and practice of refusing to consider in good faith the facts of individual cases, has caused
6 significant and irreparable harm to Plaintiffs and proposed class members.

7 112. Mr. Vazehrad has suffered a loss of consortium as he has been deprived and continues to
8 be deprived of the opportunity to be with his fiancée, Ms. Motavaliabyazani. Both Plaintiffs are
9 suffering ongoing severe emotional and mental distress as a result of their prolonged separation.
10 Because the Proclamation made the travel ban of indeterminate length, the separation may well
11 be permanent. The couple have also paid thousands of dollars in attorney's fees, filing fees,
12 travel costs, and medical fees, which they will never recoup.

13 113. Mr. Babalou is at risk of losing a \$500,000 investment in the United States. From his
14 home in Iran, he is unable to fulfill the duties assigned to him as part of running a business,
15 unable to oversee the U.S. citizens he has employed, and therefore unable to effectively grow
16 his business and continue contributing to the U.S. economy. In addition to the large investment
17 he made into a U.S. business, Mr. Babalou has incurred substantial incidental costs over the last
18 seven years, including \$50,000 paid to a regional center for assistance with overseeing his
19 investment and thousands of dollars more in attorney's fees, filing fees, travel costs, and
20 medical fees. These are costs that Mr. Babalou can never recoup.

21
22 114. Ms. Mehrabi Mohammad Abadi is also at risk of losing a \$500,000 investment in the
23 United States. From her home in Iran, she is unable to fulfill the duties assigned to her as part of
24 running a business, unable to oversee the U.S. citizens she has employed, and therefore unable

1 to effectively grow her business and continue contributing to the U.S. economy. In addition to
2 her large investment, Ms. Mehrabi Mohammad Abadi incurred substantial incidental costs,
3 including \$50,000 paid to a regional center for assistance with overseeing her investment and
4 thousands of dollars more in attorney's fees, filing fees, travel costs, and medical fees. These are
5 costs that Ms. Mehrabi Mohammad Abadi will never recover.

6 115. Dr. Afshar Arjmand risks losing a once-in-a-lifetime research and teaching opportunity
7 at the University of California, San Diego, one of the world's leading public research
8 universities. This despite the fact that Dr. Afshar Arjmand was deemed by USCIS to be
9 "extraordinary"—and it would thus clearly be in the U.S. national interest to allow him to
10 enter—and despite the university's persistence and assistance in the matter borne of its desire to
11 secure Dr. Afshar Arjmand and his prodigious talent and expertise for its faculty. In addition to
12 missing out on this incredible opportunity, he has also paid thousands of dollars in attorney's
13 fees, filing fees, travel costs, and medical fees, which he will be unable to recoup.

14 116. Dr. Heidaryan risks losing the opportunity to use his hard-won skills and experience,
15 deemed "extraordinary" by USCIS, to conduct research and teach in his area of expertise—
16 chemical engineering—in America's top tier universities. Relatedly, Dr. Heidaryan risks losing
17 the opportunity to take advantage of the substantial resources American universities have to
18 more effectively further his research and, thus, the opportunity to contribute his expertise to the
19 United States. He has also paid thousands of dollars in attorney's fees, filing fees, travel costs,
20 and medical fees, which he cannot recover.

21 117. Ms. Maharlouei also risks losing the opportunity to conduct research in the United States
22 in her field of medical sciences, despite the fact that USCIS already deemed her research to be
23 in the U.S. national interest. Ms. Maharlouei risks losing the opportunity to take advantage of
24

1 American universities' substantial resources to more effectively further her research and, thus,
2 the opportunity to contribute her substantial expertise to the United States. She has also paid
3 thousands of dollars in attorney's fees, filing fees, travel costs, and medical fees, which she will
4 be unable to recoup.

5 118. Ms. Hajiheydari risks losing the opportunity to conduct research in the United States,
6 despite the fact that USCIS already determined that her work is in the U.S. national interest. Ms.
7 Hajiheydari risks losing the opportunity to take advantage of American universities' substantial
8 resources to more effectively further her research and, thus, the opportunity to contribute her
9 expertise to the United States. She has also paid thousands of dollars in attorney's fees, filing
10 fees, travel costs, and medical fees, for herself and three family members, all of which she will
11 be unable to recoup.
12

13 119. Plaintiff Afrooz Kharazmi and Plaintiff Afshan Alamshah Zadeh waited in line for more
14 than 12 years for Ms. Alamshah Zadeh's priority date to become current, enduring years of
15 hardship, separation, and sacrifice. Ms. Alamshah Zadeh's entire family are American citizens
16 residing in the United States, and she is therefore at risk of permanently losing the ability to visit
17 any member of her family and being left permanently alone in Iran. The sisters have also paid
18 thousands of dollars in attorney's fees, filing fees, travel costs, and medical fees, which they
19 cannot recover.

20 120. Plaintiff Bamshad Azizi and his parents, Roghayeh and Hojjatollah Azizikoutenaei, have
21 suffered and are suffering significant emotional distress at their ongoing separation. Mrs.
22 Azizikoutenaei has been suffering from cancer for the last year and Mr. and Ms. Azizikoutenaei
23 both recently underwent surgeries. All the family wants is to be together, but, because the travel
24 ban is of an indeterminate length, and Mr. and Mrs. Azizikoutenaei are quite weak after their
25

1 illnesses and surgeries, they are unsure that they will ever get to be reunited. This prospect is
2 also causing Mr. Azizi and his parents ongoing and significant emotional distress. The family
3 have paid thousands of dollars in attorney's fees, filing fees, and travel costs, which they will be
4 unable to recoup.

5 121. Plaintiff Clyde Jean Tedrick II and Plaintiff Mitra Farnoodian-Tedrick cancelled their
6 wedding and lost \$3,976.76 because of Defendants' denial of Plaintiff Farajollah Farnoudian
7 and Plaintiff Farangis Emami's case. They have all suffered considerable stress in connection
8 with the wedding and have lost, perhaps permanently, an experience that everyone should get to
9 enjoy: celebrating a wedding with one's parents. They have also paid thousands of dollars in
10 attorney's fees, filing fees, and travel costs, which they cannot recoup.

11 122. Plaintiff Tannaz Toloubeydokhti has suffered significant emotional distress as she has
12 been deprived of the opportunity to have her parents, Mr. Fathollah Tolou Beydokhti and Ms.
13 Behnaz Malekghaeini present during her pregnancy. They are also at risk of missing the birth of
14 Ms. Toloubeydokhti's child. These experiences are ones none of them can ever get back and this
15 loss is irreparable. Ms. Toloubeydokhti is also at risk of enduring a significant financial burden,
16 as she had hoped that her parents would assist her with childcare for her newborn. She may have
17 to seek hired help, an expensive prospect. Ms. Toloubeydokhti and her parents have also paid
18 thousands of dollars in attorney's fees, filing fees, and travel costs, which they will be unable to
19 recoup.
20

21 123. Plaintiff Maral Charkhtab Tabrizi has suffered significant emotional distress as she was
22 deprived of the opportunity to have her parents, Plaintiffs Zahra Rouzbehani and Bahram
23 Charkhtab Tabrizi, present during her pregnancy. She also suffered increased physical pain and
24 suffering, as she has a connective tissue disorder with associated pain that would have been
25

1 lessened with the assistance of her parents. Additionally, Ms. Rouzbehani and Mr. Charkhtab
2 Tabrizi missed the birth of their first grandchild. This is an experience none of them can never
3 get back and their loss is therefore irreparable. Ms. Charkhtab Tabrizi is also at risk of enduring
4 a significant financial burden, as she had hoped that her parents would assist her with childcare
5 for her newborn. Because Ms. Charkhtab Tabrizi cannot take paid time off, without her parents'
6 assistance, she will have to increase the amount of time she takes off, thereby losing far more
7 money than she would have had her parents been present. Her unpaid leave, potentially
8 extended due to Ms. Rouzbehani and Mr. Charkhtab Tabrizi's absence, may also result in the
9 cancellation of her job contract and the loss of her medical benefits, harms that would be
10 irreparable. Ms. Charkhtab Tabrizi and her parents have also paid thousands of dollars in
11 attorney's fees, filing fees, and travel costs, which they will be unable to recoup.
12

13 124. Applicants are told in their denial letters they can apply for visas again. But Defendants
14 have no protocols in place and, despite having more than five months to do so, have issued no
15 guidance to officers or applicants. Thus, applicants will have to pay application fees, buy plane
16 tickets, make hotel reservations, and pay, again, all of the costs associated with applying for a
17 visa and traveling to a U.S. embassy to attend yet another interview with no hope of achieving a
18 different result.

19 125. As a result, Plaintiffs' rights continue to be violated and they continue to be separated
20 from their families, jobs, research, and investments on the basis of the unlawful and
21 unconstitutional waiver process.
22

23 CLASS ALLEGATIONS

1 126. Individual Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil
2 Procedure 23(b)(1) and (b)(2), on behalf of themselves and all other persons similarly situated.

3 A class action is proper because the class is so numerous that joinder of all members is
4 impractical, this action involves questions of law and fact common to the class, Plaintiffs’
5 claims are typical of the claims of the class, Plaintiffs will fairly and adequately protect the
6 interests of the class, and Defendants have acted on grounds that apply generally to the class, so
7 that final injunctive relief or corresponding declaratory relief is appropriate with respect to the
8 class as a whole.

9 127. In addition to the named plaintiffs, there are many other similarly situated individuals
10 who have been denied waivers and visas pursuant to the Proclamation. Each of these similarly
11 situated individuals is entitled to bring a complaint for declaratory and injunctive relief to
12 prohibit Defendants’ policy, pattern, and practice of denying waivers and visas to applicants
13 from banned countries without a good faith consideration of their applications.
14

15 128. The proposed class is defined as follows:

16 All petitioners and beneficiaries of immigrant or nonimmigrant
17 visa petitions that were refused or will be refused pursuant to the
18 Proclamation without the opportunity to request a waiver of the
19 Proclamation or that were refused or will be refused despite
20 clearly falling under the examples provided by the Proclamation
21 for circumstances under which a waiver may be appropriate. All
22 individuals who were or will be considered for a waiver of the
23 Proclamation and refused a waiver due to Defendants’ narrow and
24 incorrect definition of a “close family member.”
25

21 129. The proposed class meets the requirements of Rule 23(a)(1) because it is so numerous
22 that joinder of all members is impracticable. The number of individuals who have been wrongly
23 denied waivers is not known with precision by Plaintiffs but is easily ascertainable by
24 Defendants. On any given day, thousands of visa applications are adjudicated at embassies and
25

1 consulates abroad. As such, more individuals will become class members in the future, as
2 Defendants continue to deny applicants a good faith opportunity to request a waiver of the
3 Proclamation. The members of the class are ascertainable and identifiable by Defendants.

4 130. The proposed class meets the commonality requirements of Rule 23(a)(2) because all
5 proposed class members have been or will be subject to Defendants' common policy, pattern,
6 and practice of refusing to consider applicants for waivers of the Proclamation. Plaintiffs and the
7 proposed class share the same legal claims, which include, but are not limited to: whether
8 Defendants' refusal to consider applicants for waivers in good faith and failure to develop
9 standards or guidance for consular officers and visa applicants to follow violate the APA, the
10 INA, and the Due Process Clause of the Fifth Amendment.

11 131. Similarly, the proposed class meets the typicality requirements of Rule 23(a)(3) because
12 the claims of the representative Plaintiffs are typical of the claims of the class as a whole.
13 Plaintiffs, as with the class they seek to represent, are all individuals who have been or will be
14 denied the chance to request a waiver of the Proclamation and who have been or will be stymied
15 in their attempts to apply by a dearth of guidance from Defendants.

16 132. The adequacy requirements of Rule 23(a)(4) are also met. Plaintiffs know of no conflict
17 between their interests and those of the proposed class. Plaintiff seek the same relief as other
18 members of the class, namely that the Court (a) order Defendants to immediately cease their
19 unlawful policy and/or practice of refusing to receive or consider requests for waivers of the
20 Proclamation; (b) retract visa denials due to the arbitrary and capricious nature of Defendants'
21 decision to implement the ban without appropriate guidance in place; (c) provide clear guidance
22 that defines key words and sets clear standards for consular officers and applicants to use; and
23 (d) abide by the terms of the Proclamation and consider case-by-case waivers in good faith. In
24
25

1 defending their own rights, the individual Plaintiffs will defend the rights of all class members
2 fairly and adequately. Plaintiffs are represented by counsel with deep knowledge of immigration
3 law and extensive experience litigating class actions and complex cases. Counsel have the
4 requisite level of expertise to adequately prosecute this case on behalf of Plaintiffs and the
5 proposed class.

6 133. The proposed class satisfies Rule 23(b)(2) because Defendants have acted on grounds
7 generally applicable to the class in refusing to fairly adjudicate waiver requests. Thus, final
8 injunctive and declaratory relief is appropriate with respect to the class as a whole.
9

10
11
12 **CAUSES OF ACTION**

13 **COUNT ONE**
14 **(Violation of Administrative Procedure Act)**

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

17 135. The APA prohibits federal agency action that is “arbitrary, capricious, an abuse of
18 discretion, or otherwise not in accordance with law,” or is conducted “without observance of
19 procedure required by law.” 5 U.S.C. § 706(2).

20 136. The INA prohibits discrimination in the issuance of immigrant visas based on
21 nationality, place of birth, or place of residence. 8 U.S.C. § 1152(a)(1)(A). The INA’s
22 implementing regulations specify the procedures for issuance or denial of a visa. 22 C.F.R.
23 42.81; 22 CFR 41.121; 22 C.F.R. § 40.6. Under these regulations, a denial must be based on
24 legal grounds and made in conformance with the INA.

1 137. In denying waivers and visas to Plaintiffs and proposed class members based on their
2 country of origin or nationality, Defendants have acted arbitrarily, capriciously, and not in
3 accordance with the INA.

4 138. Defendants' actions have resulted in the indefinite—and possibly permanent—
5 separation of U.S. citizens and U.S. lawful permanent residents from their family members in
6 contravention of Congress' purpose in enacting the INA: promoting family reunification. This
7 conduct is not in accordance with the INA.

8 139. Defendants have discriminated against Plaintiffs and proposed class members based on
9 the proscribed grounds in implementing the Proclamation's waivers provisions. In this respect,
10 they have failed to use the discretion granted them by law. They are therefore in violation of the
11 APA.

12 140. Defendants have a non-discretionary duty under the Proclamation to develop standards
13 to guide visa applicants in compiling their applications for waivers and for consular officers to
14 reference in adjudicating waiver and visa applications. *See* 82 Fed. Reg. at 45168. Defendants
15 have failed to promulgate such guidance and have nonetheless proceeded in denying waivers
16 and visas. Defendants have also failed to follow existing procedures prescribed by the INA and
17 implementing regulations and the Foreign Affairs Manual in issuing these denials. In failing to
18 develop or follow any procedures, instead basing their decisions on applicants' country of origin
19 or nationality, Defendants have conducted themselves arbitrarily and capriciously and in
20 contravention of the Proclamation, the INA, and the U.S. Constitution, and they have thus
21 violated the APA.
22
23
24
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1 141. Defendants' violations of these laws have harmed and continue to harm Plaintiffs and
2 proposed class members by indefinitely denying them access to their families and to economic
3 and research opportunities.

4
5 **COUNT TWO**
6 **(Violation of Due Process Clause of the Fifth Amendment)**

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

9 143. The Due Process Clause of the Fifth Amendment of the U.S. Constitution protects all
10 individuals from the government denying equal protection of the law.

11 144. The blanket denials of visas to applicants from banned countries without the opportunity
12 to argue for a waiver from the Proclamation, together with statements made by Defendants
13 concerning their intent and the application of the travel ban, makes clear that Defendants are
14 targeting individuals for discriminatory treatment based on their country of origin or nationality,
15 without any lawful justification.

16 145. Defendants' implementation of the waivers provision has a disparate impact on
17 applicants from certain countries and of certain nationalities.

18 146. Defendants' discriminatory implementation of the waivers provisions serves no
19 compelling government interest and is not narrowly tailored.

20 147. Defendants' conduct violates the Fifth Amendment's guarantee of equal protection.

21 148. The Due Process Clause of the Fifth Amendment also prohibits the federal government
22 from depriving individuals of their fundamental rights without due process of law, i.e.,
23 substantive due process.
24

1 149. Plaintiffs’ fundamental rights include their right to the "integrity of the family unit."
2 *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

3 150. The implementation of the waiver provision of the Proclamation directly and
4 substantially infringes on Plaintiffs’ fundamental rights.

5 151. The Due Process Clause forbids Defendants from infringing on Plaintiffs’ fundamental
6 rights unless the infringement is narrowly tailored to serve a compelling governmental interest.

7 152. As applied, the Proclamation’s waivers provision fails this test. It is not narrowly
8 tailored to protect national security interests—it operates to block nearly all persons from
9 banned countries from entry into the United States, regardless of their relationship to violence or
10 terrorism. It is both under- and over-inclusive.

11 153. The Due Process Clause of the Fifth Amendment guarantees procedural due process
12 rights, e.g., the right to fair and impartial processes, even to foreign nationals. Those due process
13 rights are implicated by the deprivation of a fundamental liberty interest, e.g., family integrity,
14 and they may also arise from statute. *See Lanza v. Ashcroft*, 389 F.3d 917, 927 (9th Cir. 2004)
15 (“The due process afforded aliens stems from those statutory rights granted by Congress and the
16 principle that ‘minimum due process rights attach to statutory rights.’”) (quoting *Dia v.*
17 *Ashcroft*, 353 F.3d 228, 239 (3d Cir. 2003). The INA and its implementing regulations mandate
18 various procedures for the processing of visas, procedures which Defendants have failed to
19 follow.
20

21 154. In refusing to consider Plaintiffs’ applications in good faith, Defendants have violated
22 Plaintiffs’ Fifth Amendment right to equal protection under the law and to substantive and
23 procedural due process.
24

1 155. Defendants' violations of these laws have harmed and continue to harm Plaintiffs and
2 proposed class members by indefinitely denying them access to their families and economic and
3 research opportunities.

4
5 **COUNT THREE**
6 **(Writ of Mandamus)**

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

9 157. Defendants owe Plaintiffs and class members a duty to adjudicate in good faith their
10 requests for waivers of the Proclamation. The adjudication of waivers and development of
11 guidance on such adjudication are clear, non-discretionary duties imposed upon Defendants by
12 the INA and implementing regulations and by section 3 of the Proclamation.

13 158. Defendants are unlawfully ignoring Plaintiffs' requests for waivers of the Proclamation
14 and have failed to carry out the adjudicative and administrative functions delegated to them by
15 law with regard to Plaintiffs' cases.

16 159. Defendants' refusal to consider applicants' eligibility for waivers on a case-by-case basis
17 or develop meaningful guidance is, as a matter of law, arbitrary, capricious, and not in
18 accordance with the law and is thus violative of the APA.

19 160. Defendants' policy and practice of denying visa applications and waivers to people of a
20 certain country of origin or nationality violates Plaintiffs' right against discrimination under the
21 INA and implementing regulations.

22 161. Defendants' discriminatory behavior in issuing blanket denials to visa applicants from
23 banned countries without consideration of their personal circumstances violates Plaintiffs' Fifth
24

1 Amendment rights to equal protection under the law and substantive and procedural due
2 process.

3 162. Because there are no other adequate remedies available to Plaintiffs, mandamus is
4 appropriate. *See* 5 U.S.C. § 704.

5 163. Defendants' violation of the law in denying Plaintiffs the opportunity to present waiver
6 applications as a matter of course, and thereby refusing to consider waivers on a case-by-case
7 basis, is substantially unjustified. Plaintiffs are, therefore, entitled to reasonable attorney's fees
8 under the Equal Access to Justice Act, 28 U.S.C. § 2412.

9
10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs pray for the following relief:

- 13 1. A temporary restraining order and/or preliminary and permanent injunction enjoining
14 Defendants from denying visa applications due to the Proclamation;
- 15 2. An order requiring Defendants to immediately retract all visa denials due to the
16 Proclamation and notify applicants that they may apply for a waiver of the Proclamation
17 without submitting a new visa application, paying associated fees, and attending another
18 interview;
- 19 3. An order requiring Defendants to fulfill their duties by providing clear and consistent
20 guidelines for the waiver process, including definitions of key terms, standards for
21 applicants to meet, and examples of documents needed to meet those standards;
- 22 4. An order requiring Defendants to abide by the terms of the Proclamation and consider
23 applicants' waiver applications on a case-by-case basis without discriminating based on
24 applicants' country of origin or nationality;
- 25

- 1 5. An order declaring Defendants' refusal to consider waiver applications in good faith as
- 2 violative of the APA, the INA, and the Due Process Clause of the Fifth Amendment;
- 3 6. An order awarding Plaintiffs costs of suit and reasonable attorney's fees under the Equal
- 4 Access to Justice Act and any other applicable law;
- 5 7. Such other and further relief as this Court deems equitable, just, and proper.

6 DATED: March 13, 2018

7 Kent, Washington

8 Respectfully Submitted,

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18 Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document should automatically be served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

I further certify that copies of the same will be served, via United States Postal Service, Certified Mail, Return Receipt Requested, to the following on March 13, 2018:

Kirstjen Nielsen
Secretary of the Department of Homeland Security
Department of Homeland Security
Washington, DC 20528

The Honorable Secretary of State Rex W. Tillerson
U.S. Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Office of the Director of National Intelligence
Washington, DC 20511

Office of the General Counsel
U.S. Department of Homeland Security
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/s/ Luis Cortes Romero
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EXHIBIT A



Presidential Documents

Proclamation 9645 of September 24, 2017

Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats

By the President of the United States of America

A Proclamation

In Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), on the recommendations of the Secretary of Homeland Security and the Attorney General, I ordered a worldwide review of whether, and if so what, additional information would be needed from each foreign country to assess adequately whether their nationals seeking to enter the United States pose a security or safety threat. This was the first such review of its kind in United States history. As part of the review, the Secretary of Homeland Security established global requirements for information sharing in support of immigration screening and vetting. The Secretary of Homeland Security developed a comprehensive set of criteria and applied it to the information-sharing practices, policies, and capabilities of foreign governments. The Secretary of State thereafter engaged with the countries reviewed in an effort to address deficiencies and achieve improvements. In many instances, those efforts produced positive results. By obtaining additional information and formal commitments from foreign governments, the United States Government has improved its capacity and ability to assess whether foreign nationals attempting to enter the United States pose a security or safety threat. Our Nation is safer as a result of this work.

Despite those efforts, the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, has determined that a small number of countries—out of nearly 200 evaluated—remain deficient at this time with respect to their identity-management and information-sharing capabilities, protocols, and practices. In some cases, these countries also have a significant terrorist presence within their territory.

As President, I must act to protect the security and interests of the United States and its people. I am committed to our ongoing efforts to engage those countries willing to cooperate, improve information-sharing and identity-management protocols and procedures, and address both terrorism-related and public-safety risks. Some of the countries with remaining inadequacies face significant challenges. Others have made strides to improve their protocols and procedures, and I commend them for these efforts. But until they satisfactorily address the identified inadequacies, I have determined, on the basis of recommendations from the Secretary of Homeland Security and other members of my Cabinet, to impose certain conditional restrictions and limitations, as set forth more fully below, on entry into the United States of nationals of the countries identified in section 2 of this proclamation.

NOW, THEREFORE, I, DONALD J. TRUMP, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(f) and 1185(a), and section 301 of title 3, United States Code, hereby find that, absent the measures set forth in this proclamation, the immigrant and nonimmigrant entry into the United States of persons described in section 2 of this proclamation would be detrimental to the

interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Policy and Purpose. (a) It is the policy of the United States to protect its citizens from terrorist attacks and other public-safety threats. Screening and vetting protocols and procedures associated with visa adjudications and other immigration processes play a critical role in implementing that policy. They enhance our ability to detect foreign nationals who may commit, aid, or support acts of terrorism, or otherwise pose a safety threat, and they aid our efforts to prevent such individuals from entering the United States.

(b) Information-sharing and identity-management protocols and practices of foreign governments are important for the effectiveness of the screening and vetting protocols and procedures of the United States. Governments manage the identity and travel documents of their nationals and residents. They also control the circumstances under which they provide information about their nationals to other governments, including information about known or suspected terrorists and criminal-history information. It is, therefore, the policy of the United States to take all necessary and appropriate steps to encourage foreign governments to improve their information-sharing and identity-management protocols and practices and to regularly share identity and threat information with our immigration screening and vetting systems.

(c) Section 2(a) of Executive Order 13780 directed a “worldwide review to identify whether, and if so what, additional information will be needed from each foreign country to adjudicate an application by a national of that country for a visa, admission, or other benefit under the INA (adjudications) in order to determine that the individual is not a security or public-safety threat.” That review culminated in a report submitted to the President by the Secretary of Homeland Security on July 9, 2017. In that review, the Secretary of Homeland Security, in consultation with the Secretary of State and the Director of National Intelligence, developed a baseline for the kinds of information required from foreign governments to support the United States Government’s ability to confirm the identity of individuals seeking entry into the United States as immigrants and nonimmigrants, as well as individuals applying for any other benefit under the immigration laws, and to assess whether they are a security or public-safety threat. That baseline incorporates three categories of criteria:

(i) *Identity-management information.* The United States expects foreign governments to provide the information needed to determine whether individuals seeking benefits under the immigration laws are who they claim to be. The identity-management information category focuses on the integrity of documents required for travel to the United States. The criteria assessed in this category include whether the country issues electronic passports embedded with data to enable confirmation of identity, reports lost and stolen passports to appropriate entities, and makes available upon request identity-related information not included in its passports.

(ii) *National security and public-safety information.* The United States expects foreign governments to provide information about whether persons who seek entry to this country pose national security or public-safety risks. The criteria assessed in this category include whether the country makes available, directly or indirectly, known or suspected terrorist and criminal-history information upon request, whether the country provides passport and national-identity document exemplars, and whether the country impedes the United States Government’s receipt of information about passengers and crew traveling to the United States.

(iii) *National security and public-safety risk assessment.* The national security and public-safety risk assessment category focuses on national security risk indicators. The criteria assessed in this category include whether the country is a known or potential terrorist safe haven, whether it is

a participant in the Visa Waiver Program established under section 217 of the INA, 8 U.S.C. 1187, that meets all of its requirements, and whether it regularly fails to receive its nationals subject to final orders of removal from the United States.

(d) The Department of Homeland Security, in coordination with the Department of State, collected data on the performance of all foreign governments and assessed each country against the baseline described in subsection (c) of this section. The assessment focused, in particular, on identity management, security and public-safety threats, and national security risks. Through this assessment, the agencies measured each country's performance with respect to issuing reliable travel documents and implementing adequate identity-management and information-sharing protocols and procedures, and evaluated terrorism-related and public-safety risks associated with foreign nationals seeking entry into the United States from each country.

(e) The Department of Homeland Security evaluated each country against the baseline described in subsection (c) of this section. The Secretary of Homeland Security identified 16 countries as being "inadequate" based on an analysis of their identity-management protocols, information-sharing practices, and risk factors. Thirty-one additional countries were classified "at risk" of becoming "inadequate" based on those criteria.

(f) As required by section 2(d) of Executive Order 13780, the Department of State conducted a 50-day engagement period to encourage all foreign governments, not just the 47 identified as either "inadequate" or "at risk," to improve their performance with respect to the baseline described in subsection (c) of this section. Those engagements yielded significant improvements in many countries. Twenty-nine countries, for example, provided travel document exemplars for use by Department of Homeland Security officials to combat fraud. Eleven countries agreed to share information on known or suspected terrorists.

(g) The Secretary of Homeland Security assesses that the following countries continue to have "inadequate" identity-management protocols, information-sharing practices, and risk factors, with respect to the baseline described in subsection (c) of this section, such that entry restrictions and limitations are recommended: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. The Secretary of Homeland Security also assesses that Iraq did not meet the baseline, but that entry restrictions and limitations under a Presidential proclamation are not warranted. The Secretary of Homeland Security recommends, however, that nationals of Iraq who seek to enter the United States be subject to additional scrutiny to determine if they pose risks to the national security or public safety of the United States. In reaching these conclusions, the Secretary of Homeland Security considered the close cooperative relationship between the United States and the democratically elected government of Iraq, the strong United States diplomatic presence in Iraq, the significant presence of United States forces in Iraq, and Iraq's commitment to combating the Islamic State of Iraq and Syria (ISIS).

(h) Section 2(e) of Executive Order 13780 directed the Secretary of Homeland Security to "submit to the President a list of countries recommended for inclusion in a Presidential proclamation that would prohibit the entry of appropriate categories of foreign nationals of countries that have not provided the information requested until they do so or until the Secretary of Homeland Security certifies that the country has an adequate plan to do so, or has adequately shared information through other means." On September 15, 2017, the Secretary of Homeland Security submitted a report to me recommending entry restrictions and limitations on certain nationals of 7 countries determined to be "inadequate" in providing such information and in light of other factors discussed in the report. According to the report, the recommended restrictions would help address the threats that the countries' identity-management protocols, information-sharing inadequacies, and other risk factors pose to the security and welfare of the United

States. The restrictions also encourage the countries to work with the United States to address those inadequacies and risks so that the restrictions and limitations imposed by this proclamation may be relaxed or removed as soon as possible.

(i) In evaluating the recommendations of the Secretary of Homeland Security and in determining what restrictions to impose for each country, I consulted with appropriate Assistants to the President and members of the Cabinet, including the Secretaries of State, Defense, and Homeland Security, and the Attorney General. I considered several factors, including each country's capacity, ability, and willingness to cooperate with our identity-management and information-sharing policies and each country's risk factors, such as whether it has a significant terrorist presence within its territory. I also considered foreign policy, national security, and counterterrorism goals. I reviewed these factors and assessed these goals, with a particular focus on crafting those country-specific restrictions that would be most likely to encourage cooperation given each country's distinct circumstances, and that would, at the same time, protect the United States until such time as improvements occur. The restrictions and limitations imposed by this proclamation are, in my judgment, necessary to prevent the entry of those foreign nationals about whom the United States Government lacks sufficient information to assess the risks they pose to the United States. These restrictions and limitations are also needed to elicit improved identity-management and information-sharing protocols and practices from foreign governments; and to advance foreign policy, national security, and counterterrorism objectives.

(ii) After reviewing the Secretary of Homeland Security's report of September 15, 2017, and accounting for the foreign policy, national security, and counterterrorism objectives of the United States, I have determined to restrict and limit the entry of nationals of 7 countries found to be "inadequate" with respect to the baseline described in subsection (c) of this section: Chad, Iran, Libya, North Korea, Syria, Venezuela, and Yemen. These restrictions distinguish between the entry of immigrants and nonimmigrants. Persons admitted on immigrant visas become lawful permanent residents of the United States. Such persons may present national security or public-safety concerns that may be distinct from those admitted as nonimmigrants. The United States affords lawful permanent residents more enduring rights than it does to nonimmigrants. Lawful permanent residents are more difficult to remove than nonimmigrants even after national security concerns arise, which heightens the costs and dangers of errors associated with admitting such individuals. And although immigrants generally receive more extensive vetting than nonimmigrants, such vetting is less reliable when the country from which someone seeks to emigrate exhibits significant gaps in its identity-management or information-sharing policies, or presents risks to the national security of the United States. For all but one of those 7 countries, therefore, I am restricting the entry of all immigrants.

(iii) I am adopting a more tailored approach with respect to nonimmigrants, in accordance with the recommendations of the Secretary of Homeland Security. For some countries found to be "inadequate" with respect to the baseline described in subsection (c) of this section, I am restricting the entry of all nonimmigrants. For countries with certain mitigating factors, such as a willingness to cooperate or play a substantial role in combatting terrorism, I am restricting the entry only of certain categories of nonimmigrants, which will mitigate the security threats presented by their entry into the United States. In those cases in which future cooperation seems reasonably likely, and accounting for foreign policy, national security, and counterterrorism objectives, I have tailored the restrictions to encourage such improvements.

(i) Section 2(e) of Executive Order 13780 also provided that the "Secretary of State, the Attorney General, or the Secretary of Homeland Security may also submit to the President the names of additional countries for which

any of them recommends other lawful restrictions or limitations deemed necessary for the security or welfare of the United States.” The Secretary of Homeland Security determined that Somalia generally satisfies the information-sharing requirements of the baseline described in subsection (c) of this section, but its government’s inability to effectively and consistently cooperate, combined with the terrorist threat that emanates from its territory, present special circumstances that warrant restrictions and limitations on the entry of its nationals into the United States. Somalia’s identity-management deficiencies and the significant terrorist presence within its territory make it a source of particular risks to the national security and public safety of the United States. Based on the considerations mentioned above, and as described further in section 2(h) of this proclamation, I have determined that entry restrictions, limitations, and other measures designed to ensure proper screening and vetting for nationals of Somalia are necessary for the security and welfare of the United States.

(j) Section 2 of this proclamation describes some of the inadequacies that led me to impose restrictions on the specified countries. Describing all of those reasons publicly, however, would cause serious damage to the national security of the United States, and many such descriptions are classified.

Sec. 2. *Suspension of Entry for Nationals of Countries of Identified Concern.* The entry into the United States of nationals of the following countries is hereby suspended and limited, as follows, subject to categorical exceptions and case-by-case waivers, as described in sections 3 and 6 of this proclamation:

(a) *Chad.*

(i) The government of Chad is an important and valuable counterterrorism partner of the United States, and the United States Government looks forward to expanding that cooperation, including in the areas of immigration and border management. Chad has shown a clear willingness to improve in these areas. Nonetheless, Chad does not adequately share public-safety and terrorism-related information and fails to satisfy at least one key risk criterion. Additionally, several terrorist groups are active within Chad or in the surrounding region, including elements of Boko Haram, ISIS-West Africa, and al-Qa’ida in the Islamic Maghreb. At this time, additional information sharing to identify those foreign nationals applying for visas or seeking entry into the United States who represent national security and public-safety threats is necessary given the significant terrorism-related risk from this country.

(ii) The entry into the United States of nationals of Chad, as immigrants, and as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, is hereby suspended.

(b) *Iran.*

(i) Iran regularly fails to cooperate with the United States Government in identifying security risks, fails to satisfy at least one key risk criterion, is the source of significant terrorist threats, and fails to receive its nationals subject to final orders of removal from the United States. The Department of State has also designated Iran as a state sponsor of terrorism.

(ii) The entry into the United States of nationals of Iran as immigrants and as nonimmigrants is hereby suspended, except that entry by such nationals under valid student (F and M) and exchange visitor (J) visas is not suspended, although such individuals should be subject to enhanced screening and vetting requirements.

(c) *Libya.*

(i) The government of Libya is an important and valuable counterterrorism partner of the United States, and the United States Government looks forward to expanding on that cooperation, including in the areas of immigration and border management. Libya, nonetheless, faces significant challenges in sharing several types of information, including public-safety

and terrorism-related information necessary for the protection of the national security and public safety of the United States. Libya also has significant inadequacies in its identity-management protocols. Further, Libya fails to satisfy at least one key risk criterion and has been assessed to be not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States. The substantial terrorist presence within Libya's territory amplifies the risks posed by the entry into the United States of its nationals.

(ii) The entry into the United States of nationals of Libya, as immigrants, and as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is hereby suspended.

(d) *North Korea.*

(i) North Korea does not cooperate with the United States Government in any respect and fails to satisfy all information-sharing requirements.

(ii) The entry into the United States of nationals of North Korea as immigrants and nonimmigrants is hereby suspended.

(e) *Syria.*

(i) Syria regularly fails to cooperate with the United States Government in identifying security risks, is the source of significant terrorist threats, and has been designated by the Department of State as a state sponsor of terrorism. Syria has significant inadequacies in identity-management protocols, fails to share public-safety and terrorism information, and fails to satisfy at least one key risk criterion.

(ii) The entry into the United States of nationals of Syria as immigrants and nonimmigrants is hereby suspended.

(f) *Venezuela.*

(i) Venezuela has adopted many of the baseline standards identified by the Secretary of Homeland Security and in section 1 of this proclamation, but its government is uncooperative in verifying whether its citizens pose national security or public-safety threats. Venezuela's government fails to share public-safety and terrorism-related information adequately, fails to satisfy at least one key risk criterion, and has been assessed to be not fully cooperative with respect to receiving its nationals subject to final orders of removal from the United States. There are, however, alternative sources for obtaining information to verify the citizenship and identity of nationals from Venezuela. As a result, the restrictions imposed by this proclamation focus on government officials of Venezuela who are responsible for the identified inadequacies.

(ii) Notwithstanding section 3(b)(v) of this proclamation, the entry into the United States of officials of government agencies of Venezuela involved in screening and vetting procedures—including the Ministry of the Popular Power for Interior, Justice and Peace; the Administrative Service of Identification, Migration and Immigration; the Scientific, Penal and Criminal Investigation Service Corps; the Bolivarian National Intelligence Service; and the Ministry of the Popular Power for Foreign Relations—and their immediate family members, as nonimmigrants on business (B-1), tourist (B-2), and business/tourist (B-1/B-2) visas, is hereby suspended. Further, nationals of Venezuela who are visa holders should be subject to appropriate additional measures to ensure traveler information remains current.

(g) *Yemen.*

(i) The government of Yemen is an important and valuable counterterrorism partner, and the United States Government looks forward to expanding that cooperation, including in the areas of immigration and border management. Yemen, nonetheless, faces significant identity-management challenges, which are amplified by the notable terrorist presence within its territory. The government of Yemen fails to satisfy critical identity-management requirements, does not share public-safety and terrorism-related information adequately, and fails to satisfy at least one key risk criterion.

(ii) The entry into the United States of nationals of Yemen as immigrants, and as nonimmigrants on business (B–1), tourist (B–2), and business/tourist (B–1/B–2) visas, is hereby suspended.

(h) *Somalia*.

(i) The Secretary of Homeland Security's report of September 15, 2017, determined that Somalia satisfies the information-sharing requirements of the baseline described in section 1(c) of this proclamation. But several other considerations support imposing entry restrictions and limitations on Somalia. Somalia has significant identity-management deficiencies. For example, while Somalia issues an electronic passport, the United States and many other countries do not recognize it. A persistent terrorist threat also emanates from Somalia's territory. The United States Government has identified Somalia as a terrorist safe haven. Somalia stands apart from other countries in the degree to which its government lacks command and control of its territory, which greatly limits the effectiveness of its national capabilities in a variety of respects. Terrorists use under-governed areas in northern, central, and southern Somalia as safe havens from which to plan, facilitate, and conduct their operations. Somalia also remains a destination for individuals attempting to join terrorist groups that threaten the national security of the United States. The State Department's 2016 Country Reports on Terrorism observed that Somalia has not sufficiently degraded the ability of terrorist groups to plan and mount attacks from its territory. Further, despite having made significant progress toward formally federating its member states, and its willingness to fight terrorism, Somalia continues to struggle to provide the governance needed to limit terrorists' freedom of movement, access to resources, and capacity to operate. The government of Somalia's lack of territorial control also compromises Somalia's ability, already limited because of poor record-keeping, to share information about its nationals who pose criminal or terrorist risks. As a result of these and other factors, Somalia presents special concerns that distinguish it from other countries.

(ii) The entry into the United States of nationals of Somalia as immigrants is hereby suspended. Additionally, visa adjudications for nationals of Somalia and decisions regarding their entry as nonimmigrants should be subject to additional scrutiny to determine if applicants are connected to terrorist organizations or otherwise pose a threat to the national security or public safety of the United States.

Sec. 3. *Scope and Implementation of Suspensions and Limitations.* (a) *Scope.* Subject to the exceptions set forth in subsection (b) of this section and any waiver under subsection (c) of this section, the suspensions of and limitations on entry pursuant to section 2 of this proclamation shall apply only to foreign nationals of the designated countries who:

(i) are outside the United States on the applicable effective date under section 7 of this proclamation;

(ii) do not have a valid visa on the applicable effective date under section 7 of this proclamation; and

(iii) do not qualify for a visa or other valid travel document under section 6(d) of this proclamation.

(b) *Exceptions.* The suspension of entry pursuant to section 2 of this proclamation shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any foreign national who is admitted to or paroled into the United States on or after the applicable effective date under section 7 of this proclamation;

(iii) any foreign national who has a document other than a visa—such as a transportation letter, an appropriate boarding foil, or an advance parole document—valid on the applicable effective date under section 7 of this proclamation or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission;

(iv) any dual national of a country designated under section 2 of this proclamation when the individual is traveling on a passport issued by a non-designated country;

(v) any foreign national traveling on a diplomatic or diplomatic-type visa, North Atlantic Treaty Organization visa, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; or

(vi) any foreign national who has been granted asylum by the United States; any refugee who has already been admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

(c) *Waivers.* Notwithstanding the suspensions of and limitations on entry set forth in section 2 of this proclamation, a consular officer, or the Commissioner, United States Customs and Border Protection (CBP), or the Commissioner's designee, as appropriate, may, in their discretion, grant waivers on a case-by-case basis to permit the entry of foreign nationals for whom entry is otherwise suspended or limited if such foreign nationals demonstrate that waivers would be appropriate and consistent with subsections (i) through (iv) of this subsection. The Secretary of State and the Secretary of Homeland Security shall coordinate to adopt guidance addressing the circumstances in which waivers may be appropriate for foreign nationals seeking entry as immigrants or nonimmigrants.

(i) A waiver may be granted only if a foreign national demonstrates to the consular officer's or CBP official's satisfaction that:

(A) denying entry would cause the foreign national undue hardship;

(B) entry would not pose a threat to the national security or public safety of the United States; and

(C) entry would be in the national interest.

(ii) The guidance issued by the Secretary of State and the Secretary of Homeland Security under this subsection shall address the standards, policies, and procedures for:

(A) determining whether the entry of a foreign national would not pose a threat to the national security or public safety of the United States;

(B) determining whether the entry of a foreign national would be in the national interest;

(C) addressing and managing the risks of making such a determination in light of the inadequacies in information sharing, identity management, and other potential dangers posed by the nationals of individual countries subject to the restrictions and limitations imposed by this proclamation;

(D) assessing whether the United States has access, at the time of the waiver determination, to sufficient information about the foreign national to determine whether entry would satisfy the requirements of subsection (i) of this subsection; and

(E) determining the special circumstances that would justify granting a waiver under subsection (iv)(E) of this subsection.

(iii) Unless otherwise specified by the Secretary of Homeland Security, any waiver issued by a consular officer as part of the visa adjudication process will be effective both for the issuance of a visa and for any subsequent entry on that visa, but will leave unchanged all other requirements for admission or entry.

(iv) Case-by-case waivers may not be granted categorically, but may be appropriate, subject to the limitations, conditions, and requirements set forth under subsection (i) of this subsection and the guidance issued under subsection (ii) of this subsection, in individual circumstances such as the following:

(A) the foreign national has previously been admitted to the United States for a continuous period of work, study, or other long-term activity, is outside the United States on the applicable effective date under section 7 of this proclamation, seeks to reenter the United States to resume that activity, and the denial of reentry would impair that activity;

(B) the foreign national has previously established significant contacts with the United States but is outside the United States on the applicable effective date under section 7 of this proclamation for work, study, or other lawful activity;

(C) the foreign national seeks to enter the United States for significant business or professional obligations and the denial of entry would impair those obligations;

(D) the foreign national seeks to enter the United States to visit or reside with a close family member (e.g., a spouse, child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and the denial of entry would cause the foreign national undue hardship;

(E) the foreign national is an infant, a young child or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by the special circumstances of the case;

(F) the foreign national has been employed by, or on behalf of, the United States Government (or is an eligible dependent of such an employee), and the foreign national can document that he or she has provided faithful and valuable service to the United States Government;

(G) the foreign national is traveling for purposes related to an international organization designated under the International Organizations Immunities Act (IOIA), 22 U.S.C. 288 *et seq.*, traveling for purposes of conducting meetings or business with the United States Government, or traveling to conduct business on behalf of an international organization not designated under the IOIA;

(H) the foreign national is a Canadian permanent resident who applies for a visa at a location within Canada;

(I) the foreign national is traveling as a United States Government-sponsored exchange visitor; or

(J) the foreign national is traveling to the United States, at the request of a United States Government department or agency, for legitimate law enforcement, foreign policy, or national security purposes.

Sec. 4. *Adjustments to and Removal of Suspensions and Limitations.* (a) The Secretary of Homeland Security shall, in consultation with the Secretary of State, devise a process to assess whether any suspensions and limitations imposed by section 2 of this proclamation should be continued, terminated, modified, or supplemented. The process shall account for whether countries have improved their identity-management and information-sharing protocols and procedures based on the criteria set forth in section 1 of this proclamation and the Secretary of Homeland Security's report of September 15, 2017. Within 180 days of the date of this proclamation, and every 180 days thereafter, the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, the Director of National Intelligence, and other appropriate heads of agencies, shall submit a report with recommendations to the President, through appropriate Assistants to the President, regarding the following:

(i) the interests of the United States, if any, that continue to require the suspension of, or limitations on, the entry on certain classes of nationals of countries identified in section 2 of this proclamation and whether the restrictions and limitations imposed by section 2 of this proclamation should be continued, modified, terminated, or supplemented; and

(ii) the interests of the United States, if any, that require the suspension of, or limitations on, the entry of certain classes of nationals of countries not identified in this proclamation.

(b) The Secretary of State, in consultation with the Secretary of Homeland Security, the Secretary of Defense, the Attorney General, the Director of National Intelligence, and the head of any other executive department or agency (agency) that the Secretary of State deems appropriate, shall engage the countries listed in section 2 of this proclamation, and any other countries that have information-sharing, identity-management, or risk-factor deficiencies as practicable, appropriate, and consistent with the foreign policy, national security, and public-safety objectives of the United States.

(c) Notwithstanding the process described above, and consistent with the process described in section 2(f) of Executive Order 13780, if the Secretary of Homeland Security, in consultation with the Secretary of State, the Attorney General, and the Director of National Intelligence, determines, at any time, that a country meets the standards of the baseline described in section 1(c) of this proclamation, that a country has an adequate plan to provide such information, or that one or more of the restrictions or limitations imposed on the entry of a country's nationals are no longer necessary for the security or welfare of the United States, the Secretary of Homeland Security may recommend to the President the removal or modification of any or all such restrictions and limitations. The Secretary of Homeland Security, the Secretary of State, or the Attorney General may also, as provided for in Executive Order 13780, submit to the President the names of additional countries for which any of them recommends any lawful restrictions or limitations deemed necessary for the security or welfare of the United States.

Sec. 5. *Reports on Screening and Vetting Procedures.* (a) The Secretary of Homeland Security, in coordination with the Secretary of State, the Attorney General, the Director of National Intelligence, and other appropriate heads of agencies shall submit periodic reports to the President, through appropriate Assistants to the President, that:

(i) describe the steps the United States Government has taken to improve vetting for nationals of all foreign countries, including through improved collection of biometric and biographic data;

(ii) describe the scope and magnitude of fraud, errors, false information, and unverifiable claims, as determined by the Secretary of Homeland Security on the basis of a validation study, made in applications for immigration benefits under the immigration laws; and

(iii) evaluate the procedures related to screening and vetting established by the Department of State's Bureau of Consular Affairs in order to enhance the safety and security of the United States and to ensure sufficient review of applications for immigration benefits.

(b) The initial report required under subsection (a) of this section shall be submitted within 180 days of the date of this proclamation; the second report shall be submitted within 270 days of the first report; and reports shall be submitted annually thereafter.

(c) The agency heads identified in subsection (a) of this section shall coordinate any policy developments associated with the reports described in subsection (a) of this section through the appropriate Assistants to the President.

Sec. 6. *Enforcement.* (a) The Secretary of State and the Secretary of Homeland Security shall consult with appropriate domestic and international partners, including countries and organizations, to ensure efficient, effective, and appropriate implementation of this proclamation.

(b) In implementing this proclamation, the Secretary of State and the Secretary of Homeland Security shall comply with all applicable laws and regulations, including those that provide an opportunity for individuals to enter the United States on the basis of a credible claim of fear of persecution or torture.

(c) No immigrant or nonimmigrant visa issued before the applicable effective date under section 7 of this proclamation shall be revoked pursuant to this proclamation.

(d) Any individual whose visa was marked revoked or marked canceled as a result of Executive Order 13769 of January 27, 2017 (Protecting the Nation from Foreign Terrorist Entry into the United States), shall be entitled to a travel document confirming that the individual is permitted to travel to the United States and seek entry under the terms and conditions of the visa marked revoked or marked canceled. Any prior cancellation or revocation of a visa that was solely pursuant to Executive Order 13769 shall not be the basis of inadmissibility for any future determination about entry or admissibility.

(e) This proclamation shall not apply to an individual who has been granted asylum by the United States, to a refugee who has already been admitted to the United States, or to an individual granted withholding of removal or protection under the Convention Against Torture. Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture, consistent with the laws of the United States.

Sec. 7. *Effective Dates.* Executive Order 13780 ordered a temporary pause on the entry of foreign nationals from certain foreign countries. In two cases, however, Federal courts have enjoined those restrictions. The Supreme Court has stayed those injunctions as to foreign nationals who lack a credible claim of a bona fide relationship with a person or entity in the United States, pending its review of the decisions of the lower courts.

(a) The restrictions and limitations established in section 2 of this proclamation are effective at 3:30 p.m. eastern daylight time on September 24, 2017, for foreign nationals who:

- (i) were subject to entry restrictions under section 2 of Executive Order 13780, or would have been subject to the restrictions but for section 3 of that Executive Order, and
- (ii) lack a credible claim of a bona fide relationship with a person or entity in the United States.

(b) The restrictions and limitations established in section 2 of this proclamation are effective at 12:01 a.m. eastern daylight time on October 18, 2017, for all other persons subject to this proclamation, including nationals of:

- (i) Iran, Libya, Syria, Yemen, and Somalia who have a credible claim of a bona fide relationship with a person or entity in the United States; and
- (ii) Chad, North Korea, and Venezuela.

Sec. 8. *Severability.* It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the national security, foreign policy, and counterterrorism interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its other provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or

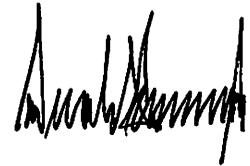
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(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of September, in the year of our Lord two thousand seventeen, and of the Independence of the United States of America the two hundred and forty-second.



[FR Doc. 2017-20899
Filed 9-26-17; 11:15 am]
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EXHIBIT B

United States Department of State
Washington, D.C. 20520
Feb. 22, 2018

The Honorable
Chris Van Hollen
United States Senate
Washington, DC 20510

Dear Senator Van Hollen:

Thank you for your letter of January 31 regarding Presidential Proclamation 9645 on *Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public Safety Threats* (the Proclamation), which suspended the entry into the United States of certain nationals of eight designated countries, Chad, Iran, Libya, Syria, Yemen, North Korea, Venezuela and Somalia. In particular you request information regarding the processing of waivers for nationals of these countries following the Supreme Court's December 4, 2017 stay of injunctions entered by lower courts which enjoined the implementation of the Proclamation. We are responding questions posed in your letter that relate to the Department of State. The Department of Homeland Security will write to you relating to issues under its authority.

Section 1(b) of the Proclamation stresses that it is the policy of the United States to protect its citizens from terrorist attacks and other public-safety threats and that screening and vetting protocols and procedures associated with visa adjudications and other immigration processes play a critical role in implementing that policy. Further, the Proclamation notes that information-sharing and identity-management protocols and practices of foreign governments are important for the effectiveness of the screening and vetting protocols and procedures of the United States. It determines that the governments of Chad, Iran, Libya, Syria, Yemen, North Korea, Venezuela and Somalia had inadequate identity-management protocols, information-sharing practices, and risk factors, such that entry restrictions and limitations are required.

Section 3(b) of the Proclamation specifically excepts certain nationals of the designated countries from the Proclamation's entry restrictions, and section 3(c) provides for a case-by-case waivers of the entry restrictions. The entry restrictions of the Proclamation may be waived if a consular officer determines that the applicant meets each of the following three criteria: (1) denying entry would cause the foreign national undue hardship; (2) entry would not pose a threat to the national security or public safety of the United States; and (3) entry would be in the national interest.

As part of the visa application process, all aliens are required to submit an online visa application form. The application form requests a variety of information about the alien's history and background, including his family relationships, work experience, and criminal record. See, e.g., 8 U.S.C. § 1202(b). The visa application process includes an in-person interview and results in a decision by a consular officer, 8 U.S.C. §§ 1201(a)(1), 1202(h), 1204; 22 C.F.R. §§ 41.102, 42.62.

When adjudicating the visa application of an applicant subject to the Proclamation, the consular officer must first determine whether the applicant is eligible for a visa under the provisions of the

Immigration and Nationality Act (INA). The applications of both immigrant and nonimmigrant visa applicants from the designated countries are processed in the same manner as all other applicants for U.S. visas. This processing includes screening of their fingerprints and biometric information through the Department's Consular Lookout and Support System (CLASS) database; and screening through IDENT (which contains DHS fingerprint records), NGI (the FBI Next Generation Identification database), and the Department's Facial Recognition database, which contains watchlist photos of known and suspected terrorists obtained from the FBI's Terrorist Screening Center (TSC) as well as the entire gallery of prior visa applicant photos. If an applicant from one of the designated countries is determined to be otherwise eligible for a visa under the INA, the interviewing officer must then determine whether the applicant falls into one of the exceptions to the Proclamation. Only if the otherwise eligible applicant does not fall within an exception, will the consular officer consider the applicant for a waiver. Each applicant who meets the conditions set forth in section 3(c) of the Proclamation must be considered for a waiver. There is no waiver form to be completed by the applicant.

Consular officers may grant waivers on a case-by-case basis when the applicant demonstrates to the officer's satisfaction that he or she meets the three criteria discussed above. First, to satisfy the undue hardship criterion, the applicant must demonstrate to the consular officer's satisfaction that an unusual situation exists that compels immediate travel by the applicant and that delaying visa issuance and the associated travel plans would defeat the purpose of travel. Second, the applicant's travel may be considered in the national interest if the applicant demonstrates to the consular officer's satisfaction that a U.S. person or entity would suffer hardship if the applicant could not travel until after visa restrictions imposed with respect to nationals of that country are lifted.

Finally, to establish that the applicant does not constitute a threat to national security or public safety, the consular officer considers the information-sharing and identity-management protocols and practices of the government of the applicant's country of nationality as they relate to the applicant. If the consular officer determines, after consultation with the Visa Office, that an applicant does not pose a threat to national security or public safety and the other two requirements have been met, a visa may be issued with the concurrence of a consular manager.

Section 3(c)(iv) of the Proclamation provides examples of the circumstances in which a waiver might be appropriate. The Department's worldwide guidance to consular officers regarding waivers is drawn directly from the Proclamation. Further, consular officers may consult with the Visa Office if a consular officer believes a case may warrant a waiver but the applicant's circumstances do not align with one of the examples in the Proclamation.

Your letter also requests statistical information about the number of applicants from the designated countries who have applied for visas and those who have received waivers. Unfortunately, some of the information you seek is not readily available in the form you have requested. Nonetheless, we can provide the information attached.

We hope this information is responsive to your concerns. Please do not hesitate to contact us further should you require additional information.

Sincerely,

Mary K. Waters
Assistant Secretary
Legislative Affairs

Enclosure: As stated

SENSITIVE BUT UNCLASSIFIED

**VISA APPLICATIONS RECEIVED AND PROCESSED FROM NATIONALS SUBJECT TO
PRESIDENTIAL PROCLAMATION 9645
(From December 8, 2017 to January 8, 2018)**

*This non-public information is being provided to address your request as fully as possible.
Not for public release without prior consultation with the Department of State.*

Applications for nonimmigrant and immigrant visas:	8,406
Applicants refused for reasons unrelated to the Proclamation:	1,723
Applicants qualifying for an exception:	128
Applicants who failed to meet the criteria for a waiver	6,282
Applications refused under the Proclamation with waiver consideration:	271
Waivers approved (as of February 15):	2

SENSITIVE BUT UNCLASSIFIED

EXHIBIT C

Exclusive: Visa waivers rarely granted under Trump's latest U.S. travel ban: data

www.reuters.com

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WASHINGTON/NEW YORK (Reuters) - In the first weeks after President Donald Trump's latest travel ban was implemented on Dec. 8, around 100 waivers were granted to thousands of applicants for U.S. visas from the eight countries subject to its restrictions, according to State Department data provided to Reuters.

Between Dec. 8 and Jan. 8, more than 8,400 people applied for U.S. visas from Chad, Iran, Libya, North Korea, Syria, Somalia, Yemen and Venezuela, the countries listed in the ban.

Of those, 128 applicants qualified for visas because they fell into categories exempted from the ban, according to a letter from the State Department sent last month to U.S. Senator Chris Van Hollen, a Democrat. Exemptions to the ban are made for lawful permanent residents of the United States and certain other categories of applicants.

Sponsored

The ban contains a provision that those who do not qualify for exceptions can be considered for waivers in special circumstances, such as a need for urgent medical care or to accommodate adoptions. Waivers can also be granted to those previously granted visas who

want to return to employment or studies in the United States. Significant business obligations or close U.S. family ties can also be taken into consideration for a waiver.

As of Feb. 15 only two of the initial month's applicants had been approved for the waivers, according to the letter, which was seen by Reuters. Since then, more than 100 additional waivers have been granted, the State Department told Reuters on Tuesday. It was not clear how many of those additional waivers went to applicants from the initial month.

The White House did not immediately respond to a request for comment about the issue. A State Department official said the policy is being implemented as called for in the president's proclamation.

(For the text of the State Department letter to Van Hollen, see: [tmsnrt.rs/2Ficpgs](https://www.washingtonpost.com/news/immigration/wp/2017/02/15/state-department-letter-to-van-hollen-2017-02-15/))

Van Hollen, along with Republican Senator Jeff Flake requested information about visas from the State Department in late January, saying in a letter to the agency and the Department of Homeland Security that they had "received reports of the near uniform denial of waivers for visas."

"The Trump administration claims that the waiver system can be used by people who pose no threat to our country.... But these facts show that system is a farce designed to hide President Trump's true purpose," Van Hollen said in a statement to Reuters on Tuesday. "Appellate courts have found that this is a de facto Muslim ban in violation of our Constitution and our immigration laws, and this high refusal rate bears that out."

↗
↙

FILE PHOTO: International travelers (reflected in a closed door) arrive on the day that U.S. President Donald Trump's limited travel ban, approved by the U.S. Supreme Court, goes into effect, at Logan

Airport in Boston, Massachusetts, U.S., June 29, 2017. REUTERS/Brian Snyder/File Photo

Six of the eight countries included in the ban are majority Muslim. The Trump administration has said the travel ban is needed to protect U.S. residents from terrorism.

Courts struck down the first two versions of the Republican president's travel ban, and the current one is narrower in scope than its predecessors. The Supreme Court will consider its legality this spring, and a decision is expected in June.

Many visa applications from the eight countries were denied even before the travel ban. And since it took effect, more than 1,700 of the 8,400 visa applications were denied for reasons other than the travel ban, according to the State Department's data.

Exact comparisons with previous years are not possible, because data is not available for all types of visa applications. But for the 2016 federal fiscal year, State Department data shows that applicants from the eight countries were refused tourist and business visas, called B visas, at rates of between 15 percent and 64 percent, depending on the country. North Koreans had the lowest rate of denials, while Somalis had the highest. In the first month after the travel ban took effect, more than 95 percent of U.S. visa applications from the countries were denied.

Attorneys representing applicants abroad who were turned down for visas say consular officials have not clearly explained why their clients did not qualify for waivers.

“There is a feeling of extreme frustration. People are operating basically in the blind,” said Diala Shamas, an attorney at the Center for Constitutional Rights, a New York-based nonprofit group that assists Yemeni applicants waiting for visas at the U.S. embassy in Djibouti. “An outsider might think that the impact of the proclamation would be mitigated by the waivers, but in reality that is not at all the case.”

Trump's proclamation of a travel ban outlined three broad requirements for a visa waiver. Applicants must face undue hardship if denied a visa, the travel must be in the U.S. interest and the applicant must not pose a security risk.

For an applicant to be cleared of being a security threat, consular officers are told to consider "the information-sharing and identity-management protocols of the applicant's country of nationality as they relate to the applicant," according to the letter.

That last consideration could prove complicated for most applicants, given that the reason a country winds up on the banned list is that it does not meet U.S. standards for information sharing and identity management.

(Refiling to make it "data" instead of "letter" in headline)

Reporting by Yeganeh Torbati in Washington and Mica Rosenberg in New York; additional reporting by Grant Smith; editing by Sue Horton, Lisa Shumaker and Jonathan Oatis

Our Standards:The Thomson Reuters Trust Principles.



EXHIBIT D



January 23, 2018

VIA CERTIFIED MAIL AND EMAIL

Dr. James V.M.L. Holzer
Deputy Chief FOIA Officer
The Privacy Office
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC 20032

Kellie Robinson, Public Liaison
U. S. Department of State
A/GIS/IPS/PP
SA-2, Suite 8100
Washington, DC 20522-0208

Sabrina Burroughs
U.S. Customs and Border Protection
FOIA Officer/ Public Liaison
1300 Pennsylvania Avenue, NW, Room 3.3D
Washington, DC 20229

U.S. Citizenship and Immigration Services
National Records Center, FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010

**Re: Freedom of Information Act Request Regarding the Waiver Process Provided
for in Presidential Proclamation 9645**

To Whom It May Concern:

Muslim Advocates and the Center for Constitutional Rights ("Requestors") submit this letter as a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.* for documents, communications, and all other materials related to the implementation of the waiver provisions of President Donald Trump's September 24, 2017 Proclamation 9645, titled

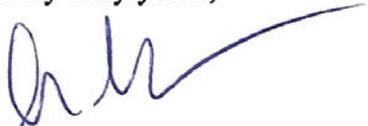
Please furnish the applicable records to:

Sirine Shebaya
MUSLIM ADVOCATES
P.O. Box 66408
Washington, DC 20035
sirine@muslimadvocates.org

If you have any questions regarding the processing of this request, please contact Sirine Shebaya at (202) 897-1894 or Diala Shamas at (212) 614-6426.

We affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. See 5 U.S.C. § 552(a)(6)(E)(vi).

Very truly yours,



Sirine Shebaya
Nimra Azmi
MUSLIM ADVOCATES
P.O. Box 66408
Washington, DC 20035
sirine@muslimadvocates.org



Diala Shamas
Noor Zafar
Center for Constitutional Rights
Broadway, 7th Fl.
New York, NY
dshamas@ccrjustice.org

EXHIBIT E

3/12/2018

Lotfi Legal LLC Mail - Fwd: YRV2016718001



Shabnam Lotfi <shabnam@lotfilegal.com>

Fwd: YRV2016 [REDACTED]

To: shabnam@lotfilegal.com

Mon, Feb 5, 2018 at 5:46 PM

Soheil Vazehrad, RDH,
[REDACTED]

Begin forwarded message:

From: atefe motevally [REDACTED]
Date: January 5, 2018 at 10:06:59 PM PST
To: Soheil Vazehrad [REDACTED]
Subject: Fw: YRV2016 [REDACTED]
Reply-To: atefe motevally [REDACTED]

On Thursday, January 4, 2018 10:47 AM, "Yerevan, Iran IV" <IranIVYerevan@state.gov> wrote:



*Consular Section of the
Embassy of the United States of America
Yerevan, Armenia*

Dear Applicant:

This is to inform you that a consular officer found you ineligible for a visa under Section 212(f) of the Immigration and Nationality Act, pursuant to Presidential Proclamation 9645. Today's decision cannot be appealed.

Taking into account the provisions of the Proclamation, a waiver will not be granted in your case.

The consular officer is reviewing your eligibility for a waiver. To approve your waiver, the consular officer must determine that denying your entry would cause undue hardship, that

3/12/2018

Lotfi Legal LLC Mail - Fwd: YRV2016

your entry would not pose a threat to the national security or public safety of the United States, and that your entry would be in the national interest of the United States. This can be a lengthy process, and until the consular officer can make an individualized determination on these three factors, your application will remain refused under Section 212(f). You will be contacted with a final determination on your application as soon as practicable.

Regards,

Immigrant Visa Unit

متقاضی گرامی،

به اطلاع می‌رسانیم افسر کنسولگری تعیین کردند که شما طبق بند 212(ف) قانون مهاجرت و تابعیت آمریکا مطابق بیانیه رییس جمهور، فاقد شرایط لازم برای اخذ ویزا هستید. تصمیم امروز غیر قابل تجدید نظر است.

■ با در نظر گرفتن مقررات این بیانیه، در پرونده شما این محدودیت چشم پوشی نخواهد شد.
□ افسر کنسولگری صلاحیت شما جهت چشم پوشی از این بیانیه را بررسی می‌کند. برای تأیید این چشم پوشی، افسر کنسولگری باید تعیین کند که رد ورود شما منجر به سختی‌های ناخوشایند خواهد شد و ورود شما تهدیدی برای امنیت ملی یا عمومی آمریکا نخواهد بود و به نفع منافع ملی ایالات متحده آمریکا خواهد بود. این روند ممکن است طولانی باشد و تا هنگامی که افسر کنسولگری بتواند در مورد این سه عامل تصمیمی برای پرونده شما بگیرد، درخواست ویزای شما طبق بند 212(ف) رد شده باقی خواهد ماند. ما در اسرع وقت با شما درباره تصمیم نهایی پرونده تان تماس خواهیم گرفت.

با تشکر،
بخش ویزای مهاجرتی

3/12/2018

Lotfi Legal LLC Mail - Fwd: YRV2016718001

Privacy/PII

This email is UNCLASSIFIED.



image002.jpg
4K

EXHIBIT F

From: Yerevan, Iran IV [<mailto:IranIVYerevan@state.gov>]
Sent: Sunday, December 17, 2017 9:21 PM
To: Anthony Ravani <[REDACTED]>
Subject: RE: YRV2016 [REDACTED]

Dear inquirer,

Unfortunately, your case is not eligible for a waiver under Presidential Proclamation 9645. This refusal under Section 212(f) of the Immigration and Nationality Act applies only to the current visa application. Please be advised that Presidential Proclamation 9645 currently restricts issuance of most visas to nationals of Iran and seven other countries.

Consular Section | Immigrant Visa Unit
U.S. Embassy Yerevan | 1 American Ave, Yerevan 0082, Armenia

This email is UNCLASSIFIED.

From: Anthony Ravani [[mailto:\[REDACTED\]](mailto:[REDACTED])]
Sent: Friday, December 15, 2017 10:38 PM
To: Yerevan, Iran IV
Subject: RE: YRV2016 [REDACTED]

Dear officer,

Based on the following FAM procedure can you please fully explain why you determined the applicant is not eligible for a waiver.

9 FAM 504.11-3 (U) REFUSAL PROCEDURES

(U) If you determine that the applicant is not eligible for a visa, the following procedures should be followed.

9 FAM 504.11-3(A)(1) (U) Inform the Alien Orally and in Writing

b. (U) INA 212(b) requires officers to provide timely written notice that the alien is inadmissible. The written notification should provide the alien (and the attorney of record) with:

(1) (U) The provision(s) of law on which the refusal is based;

(2) (U) The factual basis for the refusal (unless such information is classified) please also see "Exceptions to Notice Requirements" below;

Sincerely,

Anthony B. Ravani,

Principal Attorney at Law

Immigration & Business Law

Anywhere in USA

Phone: [REDACTED]

[REDACTED]

[REDACTED]

FAX: [REDACTED]

Lotus Law Group, PLLC

800 Fifth Ave., Suite 400

300 Spectrum Center Dr., Suite 400

Seattle, WA. 98104 AND Irvine, CA. 92618

www.Lotus-Lawgroup.com

Please be advised that in all my work I follow the USA laws and all appropriate Regulations and Policies relevant to your inquiry.

WARNING: The information contained in this email (including any attachments) is **CONFIDENTIAL**, and may be **PRIVILEGED**. If you are not the intended recipient of this email, you may not read, retain, copy, distribute, or disclose the content of this email. If you have received this email in error, please advise us by return email and call the sender at [REDACTED].
[REDACTED] Thank you.

From: Yerevan, Iran IV [<mailto:IranIVYerevan@state.gov>]
Sent: Thursday, December 14, 2017 11:48 PM
To: Anthony Ravani [REDACTED]
Subject: YRV2016 [REDACTED]

*Consular Section of the
Embassy of the United States of America
Yerevan, Armenia*

Dear Applicant:

This is to inform you that a consular officer found you ineligible for a visa under Section 212(f) of the Immigration and Nationality Act, pursuant to Presidential Proclamation 9645. Today's decision cannot be appealed.

Please see the letter attached.

■ Taking into account the provisions of the Proclamation, a waiver will not be granted in your case.

□ The consular officer is reviewing your eligibility for a waiver. To approve your waiver, the consular officer must determine that denying your entry would cause undue hardship, that your entry would not pose a threat to the national security or public safety of the United States, and that your entry would be in the national interest of the United States. This can be a lengthy process, and until the consular officer can make an individualized determination on these three factors, your application will remain refused under Section 212(f). You will be contacted with a final determination on your application as soon as practicable.

Regards,

Immigrant Visa Unit

متقاضی گرامی،

به اطلاع می‌رسانیم افسر کنسولگری تعیین کردند که شما طبق بند 212(ف) قانون مهاجرت و تابعیت آمریکا مطابق بیانیه رییس جمهور، فاقد شرایط لازم برای اخذ ویزا هستید. تصمیم امروز غیر قابل تجدید نظر است.

■ با در نظر گرفتن مقررات این بیانیه، در پرونده شما این محدودیت چشم پوشی نخواهد شد.

□ افسر کنسولگری صلاحیت شما جهت چشم پوشی از این بیانیه را بررسی می کند. برای تأیید این چشم پوشی، افسر کنسولگری باید تعیین کند که رد ورود شما منجر به سختی های ناخوشایند خواهد شد و ورود شما تهدیدی برای امنیت ملی یا عمومی آمریکا نخواهد بود و به نفع منافع ملی ایالات متحده آمریکا خواهد بود. این روند ممکن است طولانی باشد و تا هنگامی که افسر کنسولگری بتواند در مورد این سه عامل تصمیمی برای پرونده شما بگیرد، درخواست ویزای شما طبق بند 212(ف) رد شده باقی خواهد ماند. ما در اسرع وقت با شما درباره تصمیم نهایی پرونده تان تماس خواهیم گرفت.

با تشکر،

بخش ویزای مهاجرتی

Privacy/PII

This email is UNCLASSIFIED.

2 attachments

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13K

 .pdf
774K

EXHIBIT G

1/2/2018

mail.com - RE: Fwd: RDJ2017 [REDACTED] - HEIDARYAN, EHSAN



RE: Fwd: RDJ2017 [REDACTED] - HEIDARYAN, EHSAN

From: "Immigration, Rio" <ImmigrationRio@state.gov>
To: "Heidaryan, Ehsan" <[REDACTED]>
Cc: "M [REDACTED]" <[REDACTED]>
Date: Dec 27, 2017 2:13:57 PM

Dear Sir,

Unfortunately your immigrant visa case is refused under Presidential Proclamation 9645 and now considered closed. Do not need to fill out the questionnaire we sent by email.

Atenciosamente,
Best regards,

Immigrant Visa Unit
United States Consulate General
Rio de Janeiro - RJ - Brazil
br



Official

UNCLASSIFIED

From: Immigration, Rio
Sent: Wednesday, December 27, 2017 10:16 AM
To: "Heidaryan, Ehsan"
Cc: [REDACTED]
Subject: RE: Fwd: RDJ2017 [REDACTED] HEIDARYAN, EHSAN

Dear Sir,

You must download cenehade extension in your computer to open the form. After fill out you may send it by mail.

Atenciosamente,
Best regards,

Immigrant Visa Unit
United States Consulate General
Rio de Janeiro - RJ - Brazil
br



Official

UNCLASSIFIED

From: Heidaryan, Ehsan [mailto:[REDACTED]]
Sent: Tuesday, December 26, 2017 1:09 PM
To: Immigration, Rio
Cc: [REDACTED]
Subject: Re: Fwd: RDJ2017 [REDACTED] HEIDARYAN, EHSAN

Dear Sir/Madam,

Many thanks for your message!

1. Due to information provided by my case officer on the day of the interview, it supposed that email would be sent to me who I am the principal applicant. But it was sent to my wife who is my dependent! By the way, it is OK and please in the future messages consider me as the primary receiver of your message and put her in the copy.
2. Your email was contained DSS535.far which is weird to me, would you please let me know how to open it?
3. Regarding returning the completed form, should I upload it to my dropbox and provide you with its link or you have a particular account for that?

Kind regards,
Ehsan Heidaryan
RDJ2017 [REDACTED]

1/2/2018

mail.com - RE: Fwd: RDJ2017593001 - HEIDARYAN, EHSAN

Sent: Tuesday, December 26, 2017 at 9:58 AM
From: "Liliani Festi"
To: [REDACTED]
Subject: Fwd: RDJ2017 [REDACTED] HEIDARYAN, EHSAN

Enviado do meu iPhone

Início da mensagem encaminhada:

De: "Immigration, Rio" <immigrationrio@state.gov>
Data: 26 de dezembro de 2017 09:43:18 BRST
Para: [REDACTED]
Assunto: RDJ2017 [REDACTED] HEIDARYAN, EHSAN

Dear Immigrant Visa Applicant,

Please find the attached document requiring review and completion by the principal applicant. Please complete the form in English. Once you have completed the form, print it and send to us by drop box or mail.

Be advised that incomplete or unclear responses will delay the processing of your case.

Atenciosamente,

Best regards,

Immigrant Visa Unit

United States Consulate General

Rio de Janeiro - RJ -Brazil

br

Attachments

- [REDACTED].png

EXHIBIT H



DONALD J. TRUMP

XLV President of the United States: 2017-present

Statement by Donald J. Trump Statement on Preventing Muslim Immigration

December 7, 2015

(New York, NY) December 7th, 2015, -- Donald J. Trump is calling for a total and complete shutdown of Muslims entering the United States until our country's representatives can figure out what is going on. According to Pew Research, among others, there is great hatred towards Americans by large segments of the Muslim population. Most recently, a poll from the [Center for Security Policy](#) released data showing "25% of those polled agreed that violence against Americans here in the United States is justified as a part of the global jihad" and 51% of those polled, "agreed that Muslims in America should have the choice of being governed according to Shariah." Shariah authorizes such atrocities as murder against non-believers who won't convert, beheadings and more unthinkable acts that pose great harm to Americans, especially women.

Mr. Trump stated, "Without looking at the various polling data, it is obvious to anybody the hatred is beyond comprehension. Where this hatred comes from and why we will have to determine. Until we are able to determine and understand this problem and the dangerous threat it poses, our country cannot be the victims of horrendous attacks by people that believe only in Jihad, and have no sense of reason or respect for human life. If I win the election for President, we are going to Make America Great Again." - *Donald J. Trump*

Citation: Donald J. Trump: "Statement by Donald J. Trump Statement on Preventing Muslim Immigration," December 7, 2015. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*.
<http://www.presidency.ucsb.edu/ws/?pid=113841>.

COLLECTION:
Campaign 2016



Trump: Make America Great Again

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The American Presidency Project

facebook

Name:
The American Presidency Project



Fans:
14170

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EXHIBIT I



Donald J. Trump

@realDonaldTrump

Follow

The Justice Dept. should have stayed with the original Travel Ban, not the watered down, politically correct version they submitted to S.C.

3:29 AM - 5 Jun 2017

14,910 Retweets 69,311 Likes



11K

15K

69K

EXHIBIT J



Donald J. Trump

@realDonaldTrump

Follow

People, the lawyers and the courts can call it whatever they want, but I am calling it what we need and what it is, a TRAVEL BAN!

3:25 AM - 5 Jun 2017

21,040 Retweets 86,662 Likes



16K

21K

87K

EXHIBIT K



Donald J. Trump

@realDonaldTrump

Follow

Thank you to the great Republican Senators who showed up to our mtg on immigration reform. We must BUILD THE WALL, stop illegal immigration, end chain migration & cancel the visa lottery. The current system is unsafe & unfair to the great people of our country - time for change!

3:53 PM - 4 Jan 2018

29,898 Retweets 136,536 Likes



24K

30K

137K

EXHIBIT L

Donald J. Trump

@realDonaldTrump

Follow

...we need to keep America safe, including moving away from a random chain migration and lottery system, to one that is merit-based.

3:20 PM - 16 Jan 2018

18,883 Retweets 81,226 Likes



16K

19K

81K

EXHIBIT M

White House Framework on Immigration Reform & Border Security

www.whitehouse.gov

1 min read

B ORDER SECURITY: Securing the Southern and Northern border of the United States takes a combination of physical infrastructure, technology, personnel, resources, authorities, and the ability to close legal loopholes that are exploited by smugglers, traffickers, cartels, criminals and terrorists.

- The Department of Homeland Security must have the tools to deter illegal immigration; the ability to remove individuals who illegally enter the United States; and the vital authorities necessary to protect national security.
- These measures below are the minimum tools necessary to mitigate the rapidly growing surge of illegal immigration.
 - \$25 billion trust fund for the border wall system, ports of entry/exit, and northern border improvements and enhancements.
 - Close crippling personnel deficiencies by appropriating additional funds to hire new DHS personnel, ICE attorneys, immigration judges, prosecutors and other law enforcement professionals.

- Hiring and pay reforms to ensure the recruitment and retention of critically-needed personnel.
- Deter illegal entry by ending dangerous statutorily-imposed catch-and-release and by closing legal loopholes that have eroded our ability to secure the immigration system and protect public safety.
- Ensure the detention and removal of criminal aliens, gang members, violent offenders, and aggravated felons.
- Ensure the prompt removal of illegal border-crossers regardless of country of origin.
- Deter visa overstays with efficient removal.
- Ensure synthetic drugs (fentanyl) are prevented from entering the country.
- Institute immigration court reforms to improve efficiency and prevent fraud and abuse.

DACA LEGALIZATION: Provide legal status for DACA recipients and other DACA-eligible illegal immigrants, adjusting the time-frame to encompass a total population of approximately 1.8 million individuals.

- 10-12 year path to citizenship, with requirements for work, education and good moral character.
- Clear eligibility requirements to mitigate fraud.
- Status is subject to revocation for criminal conduct or public safety and national security concerns, public charge, fraud, etc.

PROTECT THE NUCLEAR FAMILY: Protect the nuclear family by emphasizing close familial relationships.

- Promote nuclear family migration by limiting family sponsorships to spouses and minor children only (for both Citizens and LPRs), ending extended-family chain migration.

- Apply these changes prospectively, not retroactively, by processing the “backlog.”

ELIMINATE LOTTERY AND REPURPOSE VISAS: The Visa Lottery selects individuals at random to come to the United States without consideration of skills, merit or public safety.

- This program is riddled with fraud and abuse and does not serve the national interest.
- Eliminate lottery and reallocate the visas to reduce the family-based “backlog” and high-skilled employment “backlog.”



EXHIBIT N

December 4, 2017 - New Court Order on Presidential Proclamation

On December 4, 2017, the U.S. Supreme Court granted the government's motions for emergency stays of preliminary injunctions issued by U.S. District Courts in the Districts of Hawaii and Maryland. The preliminary injunctions had prohibited the government from fully enforcing or implementing the entry restrictions of Presidential Proclamation 9645 (P.P.) titled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats" to nationals of six countries: Chad, Iran, Libya, Syria, Yemen, and Somalia. Per the Supreme Court's orders, those restrictions will be implemented fully, in accordance with the Presidential Proclamation, around the world, beginning December 8 at open of business, local time.

The District Court injunctions did not affect implementation of entry restrictions against nationals from North Korea and Venezuela. Those individuals remain subject to the restrictions and limitations listed in the Presidential Proclamation, which went into effect at 12:01 a.m. eastern time on Wednesday, October 18, 2017, with respect to nationals of those countries.

Additional Background: The President issued Presidential Proclamation 9645 on September 24, 2017. Per Section 2 of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry Into The United States), a global review was conducted to determine what additional information is needed from each foreign country to assess whether foreign nationals who seek to enter the United States pose a security or safety threat. As part of that review, the Department of Homeland Security (DHS) developed a comprehensive set of criteria to evaluate the information-sharing practices, policies, and capabilities of foreign governments on a worldwide basis. At the end of that review, which included a 50-day period of engagement with foreign governments aimed at improving their information sharing practices, there were seven countries whose information sharing practices were determined to be "inadequate" and for which the President deemed it necessary to impose certain restrictions on the entry of nonimmigrants and immigrants who are nationals of these countries. The President also deemed it necessary to impose restrictions on one country due to the "special concerns" it presented. These restrictions are considered important to addressing the threat these existing

information-sharing deficiencies, among other things, present to the security and welfare of the United States and pressuring host governments to remedy these deficiencies.

Nationals of the eight countries are subject to various travel restrictions contained in the Proclamation, as outlined in the following table, subject to exceptions and waivers set forth in the Proclamation.

Country	Nonimmigrant Visas	Immigrant and Diversity Visas
Chad	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas
Iran	No nonimmigrant visas except F, M, and J visas	No immigrant or diversity visas
Libya	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas
North Korea	No nonimmigrant visas	No immigrant or diversity visas
Somalia		No immigrant or diversity visas
Syria	No nonimmigrant visas	No immigrant or diversity visas
Venezuela	No B-1, B-2 or B-1/B-2 visas of any kind for officials of the following government agencies Ministry of Interior, Justice, and Peace; the Administrative Service of Identification, Migration, and Immigration; the Corps of Scientific Investigations, Judicial and Criminal; the Bolivarian Intelligence Service; and the People's Power Ministry of Foreign Affairs, and their immediate family members.	
Yemen	No B-1, B-2, and B-1/B-2 visas	No immigrant or diversity visas

We will not cancel previously scheduled visa application appointments. In accordance with the Presidential Proclamation, for nationals of the eight designated countries, a consular officer will make a determination whether an applicant otherwise eligible for a visa is exempt from the Proclamation or, if not, may be eligible for a waiver under the Proclamation and therefore issued a visa.

No visas will be revoked pursuant to the Proclamation. Individuals subject to the Proclamation who possess a valid visa or valid travel document generally will be permitted to travel to the United States, irrespective of when the visa was issued.

We will keep those traveling to the United States and our partners in the travel industry informed as we implement the order in a professional, organized, and timely way.

[FAQs on the Presidential Proclamation - Department of Homeland Security](#)

[The President's Proclamation on Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats](#)

Frequently Asked Questions

What are the exceptions in the Proclamation?

The following exceptions apply to nationals from all eight countries and will not be subject to any travel restrictions listed in the Proclamation:

- a) Any national who was in the United States on the applicable effective date described in Section 7 of the Proclamation for that national, regardless of immigration status;
- b) Any national who had a valid visa on the applicable effective date in Section 7 of the Proclamation for that national;
- c) Any national who qualifies for a visa or other valid travel document under section 6(d) of the Proclamation;
- d) Any lawful permanent resident (LPR) of the United States;

- e) Any national who is admitted to or paroled into the United States on or after the applicable effective date in Section 7 of the Proclamation for that national;
- f) Any applicant who has a document other than a visa, valid on the applicable effective date in Section 7 of the Proclamation for that applicant or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as advance parole;
- g) Any dual national of a country designated under the Proclamation when traveling on a passport issued by a non-designated country;
- h) Any applicant traveling on a diplomatic (A-1 or A-2) or diplomatic-type visa (of any classification), NATO-1 -6 visas, C-2 visa for travel to the United Nations, or G-1, G-2, G-3, or G-4 visa; except certain Venezuelan government officials and their family members traveling on a diplomatic-type B-1, B-2, or B1/B2 visas
- i) Any applicant who has been granted asylum; admitted to the United States as a refugee; or has been granted withholding of removal, advance parole, or protection under the Convention Against Torture.

Exceptions and waivers listed in the Proclamation are applicable for qualified applicants. In all visa adjudications, consular officers may seek additional information, as warranted, to determine whether an exception or a waiver is available.

If a principal visa applicant qualifies for an exception or a waiver under the Proclamation, does a derivative also get the benefit of the exception or waiver?

Each applicant, who is otherwise eligible, can only benefit from an exception or a waiver if he or she individually meets the conditions of the exception or waiver.

Does the Proclamation apply to dual nationals?

This Proclamation does not restrict the travel of dual nationals, so long as they are traveling on the passport of a non-designated country.

Our embassies and consulates around the world will process visa applications and issue nonimmigrant and immigrant visas to otherwise eligible visa applicants who apply with a passport from a non-designated country, even if they hold dual nationality from one of the eight restricted countries.

Does this apply to U.S. Lawful Permanent Residents?

No. As stated in the Proclamation, lawful permanent residents of the United States are not affected by the Proclamation

Are there special rules for permanent residents of Canada?

Waivers may not be granted categorically to any group of nationals of the eight countries who are subject to visa restrictions pursuant to the Proclamation, but waivers may be appropriate in individual circumstances, on a case-by-case basis. The Proclamation lists several circumstances in which case-by-case waivers may be appropriate. That list includes foreign nationals who are Canadian permanent residents who apply for visas at a U.S. consular section in Canada. Canadian permanent residents should bring proof of their status to a consular officer.

A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation during each phase of the implementation and, if so, whether the applicant qualifies for an exception or a waiver.

Will you process waivers for those affected by the Proclamation? How do I qualify for a waiver to be issued a visa?

As specified in the Proclamation, consular officers may issue a visa based on a listed waiver category to nationals of countries identified in the PP on a case-by-case basis, when they determine: that issuance is in the national interest, the applicant poses no national security or public safety threat to the United States, and denial of the visa would cause undue hardship. There is no separate application for a waiver. An individual who seeks to travel to the United States should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for a waiver.

What is a “close family member” for the purposes of determining if someone is eligible for a waiver?

Section 201(b) of the INA provides a definition of immediate relative, which is used to interpret the term “close family member” as used in the waiver category. This limits the relationship to spouses, children under the age of 21, and parents. While the INA definition includes only children, spouses, and parents of a U.S. citizen, in the context of the Presidential Proclamation it also includes these relationships

with LPRs and aliens lawfully admitted on a valid nonimmigrant visa in addition to U.S. citizens.

Can those needing urgent medical care in the United States still qualify for a visa?

Applicants who are otherwise qualified and seeking urgent medical care in the United States may be eligible for an exception or a waiver. Any individual who seeks to travel to the United States should apply for a visa and disclose during the visa interview any information that might qualify the individual for an exception or waiver. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation, and if so, whether the case qualifies for an exception or a waiver.

The Proclamation provides several examples of categories of cases that may be appropriate for consideration for a waiver, on a case-by-case basis, when in the national interest, when entry would not threaten national security or public safety, and denial would cause undue hardship. Among the examples provided, a foreign national who seeks to enter the United States for urgent medical care may be considered for a waiver.

I'm a student or short-term employee that was temporarily outside of the United States when the Proclamation went into effect. Can I return to school/work?

If you have a valid, unexpired visa and are outside the United States, you can return to school or work per the exception noted in the Proclamation.

If you do not have a valid, unexpired visa and do not qualify for an exception you will need to qualify for the visa and a waiver. An individual who wishes to apply for a nonimmigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for a waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for a waiver.

I received my immigrant visa but I haven't yet entered the United States. Can I still travel there using my immigrant visa?

The Proclamation provides specifically that no visas issued before the effective date of the Proclamation will be revoked pursuant to the Proclamation, and it does not apply to nationals

of affected countries who have valid visas on the date it becomes effective.

I recently had my immigrant visa interview at a U.S. embassy or consulate overseas, but my case is still being considered. What will happen now?

If your visa application was refused under Section 221(g) pending updated supporting documents or administrative processing, you should proceed to submit your documentation.

After receiving any required missing documentation or completion of any administrative processing, the U.S. embassy or consulate where you were interviewed will contact you with more information.

I am currently working on my case with NVC. Can I continue?

Yes. You should continue to pay fees, complete your Form DS-260 immigrant visa applications, and submit your financial and civil supporting documents to NVC. NVC will continue reviewing cases and scheduling visa interviews overseas.

During the interview, a consular officer will carefully review the case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for an exception or may qualify for a waiver.

What immigrant visa classes are subject to the Proclamation?

All immigrant visa classifications for nationals of Chad, Iran, Libya, North Korea, Syria, Yemen, and Somalia are subject to the Proclamation and restricted. All immigrant visa classifications for nationals of Venezuela are unrestricted. An individual who wishes to apply for an immigrant visa should apply for a visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for an exception or waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the case qualifies for an exception or a waiver.

I sponsored my family member for an immigrant visa, and his interview appointment is after the effective date of the Proclamation. Will he still be able to receive a visa?

All immigrant visa classifications for nationals of Chad, Iran, Libya, North Korea, Syria, Yemen, and Somalia are subject to the Presidential Proclamation and suspended. An individual who wishes to apply for an immigrant visa should apply for a

visa and disclose during the visa interview any information that might demonstrate that he or she is eligible for an exception or waiver per the Proclamation. A consular officer will carefully review each case to determine whether the applicant is affected by the Proclamation and, if so, whether the applicant qualifies for an exception or a waiver.

I am applying for a K (fiancé) visa. My approved I-129 petition is only valid for four months. Can you expedite my case?

The National Visa Center already expedites all Form I-129F petitions to embassies and consulates overseas. Upon receipt of the petition and case file, the embassy or consulate will contact you with instructions on scheduling your interview appointment.

I received my Diversity Visa but I haven't yet entered the United States. Can I still travel there using my Diversity Visa?

The Proclamation provides specifically that no visas issued before the effective date of the Proclamation will be revoked pursuant to the Proclamation, and it does not apply to nationals of affected countries who have valid visas on the date it becomes effective.

I recently had my Diversity Visa interview at a U.S. embassy or consulate overseas, but my case is still being considered. What will happen now?

If your visa application was refused under Section 221(g) pending updated supporting documents or administrative processing, please provide the requested information. The U.S. embassy or consulate where you were interviewed will contact you with more information.

Will my case move to the back of the line for an appointment?

No. KCC schedules appointments by Lottery Rank Number. When KCC is able to schedule your visa interview, you will receive an appointment before cases with higher Lottery Rank Numbers.

I am currently working on my case with KCC. Can I continue?

Yes. You should continue to complete your Form DS-260 immigrant visa application. KCC will continue reviewing

cases and can qualify your case for an appointment. You will be notified about the scheduling of a visa interview.

What if my spouse or child is a national of one of the countries listed, but I am not?

KCC will continue to schedule new DV interview appointments for nationals of the affected countries. A national of any of those countries applying as a principal or derivative DV applicant should disclose during the visa interview any information that might qualify the individual for a waiver/exception. Note that DV 2018 visas, including derivative visas, can only be issued during the program year, which ends September 30, 2018, and only if visa numbers remain available. There is no guarantee a visa will be available in the future for your derivative spouse or child.

What if I am a dual national or permanent resident of Canada?

This Proclamation does not restrict the travel of dual nationals, so long as they are traveling on the passport of a non-designated country. You may apply for a DV using the passport of a non-designated country even if you selected the nationality of a designated country when you entered the lottery. Also, permanent residents of Canada applying for DVs in Montreal may be eligible for a waiver per the Proclamation, but will be considered on a case-by-case basis. If you believe one of these exceptions, or a waiver included in the Proclamation, applies to you and your otherwise current DV case has not been scheduled for interview, contact the U.S. embassy or consulate where your interview will take place/KCC at KCCDV@state.gov.

Does this Proclamation affect follow-to-join asylees?

The Proclamation does not affect V92 applicants, follow-to-join asylees.

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EXHIBIT O

3/12/2018

Lotfi Legal LLC Mail - Request for Clarity: [REDACTED]; Case Number [REDACTED]



Shabnam Lotfi <shabnam@lotfilegal.com>

Request for Clarity: [REDACTED] **Case Number** [REDACTED]

Vancouver, NIV Unit <vancouverniv@state.gov>
To: Shabnam Lotfi <shabnam@lotfilegal.com>

Tue, Jan 9, 2018 at 2:42 PM

Dear Shabnam Lotfi,

A consular officer may issue a visa based on a listed waiver category to nationals of countries identified in the Presidential Proclamation on a case-by-case basis.

It has been determined that your client, [REDACTED], does not meet the definition of close family as she is over 21 years of age.

This decision cannot be appealed.

Non-Immigrant Visa Unit

U.S. Consulate General Vancouver

From: Shabnam Lotfi [mailto:shabnam@lotfilegal.com]
Sent: Wednesday, January 03, 2018 12:41 PM
To: Vancouver, NIV Unit
Cc: [REDACTED]
Subject: Request for Clarity: [REDACTED] Case Number [REDACTED]

Dear Consular Officer,
Per your communication (see attached), it appears as though my client, [REDACTED], has been denied the opportunity to request a waiver of the presidential proclamation.

According to the presidential proclamation itself and guidance on the [State Department's website](#), foreign nationals who seek to enter the US to be reunited with a close family member (e.g. spouse, child, or parent) are eligible for requesting a waiver.

My client is the daughter of a United States citizen. Could you kindly explain why your office has denied my client the opportunity to request a waiver of the presidential proclamation?

Respectfully,

3/12/2018

Lotfi Legal LLC Mail - Request for Clarity: [REDACTED]; Case Number [REDACTED]

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EXHIBIT P



Consular Section of the
Embassy of the United States of America
Yerevan, Armenia

Dear Applicant:

This is to inform you that a consular officer found you ineligible for a visa under Section 212(f) of the Immigration and Nationality Act, pursuant to Presidential Proclamation 9645. Today's decision cannot be appealed.

- ✓ Taking into account the provisions of the Proclamation, a waiver will not be granted in your case.
- The consular officer is reviewing your eligibility for a waiver under the Proclamation. To approve a waiver, the consular officer must determine that denying your entry would cause undue hardship, that your entry would not pose a threat to the national security or public safety of the United States, and that your entry would be in the national interest of the United States. This can be a lengthy process, and until the consular officer can make an individualized determination on these three factors, your visa application will remain refused under Section 212(f). You will be contacted with a final determination on your visa application as soon as practicable.

Regards,
Nonimmigrant Visa Unit

متقاضی گرامی،

به اطلاع می‌رسانیم افسر کنسولگری تعیین کردند که شما طبق بند 212(ف) قانون مهاجرت و تابعیت آمریکا مطابق بیانیه رییس جمهور، فاقد شرایط لازم برای اخذ ویزا هستید. تصمیم امروز غیر قابل تجدید نظر است. ✓ با در نظر گرفتن مقررات این بیانیه، در پرونده شما این محدودیت چشم پوشی نخواهد شد.

□ افسر کنسولگری صلاحیت شما جهت چشم پوشی از این بیانیه را بررسی می‌کند. برای تأیید این چشم پوشی، افسر کنسولگری باید تعیین کند که رد ورود شما منجر به سختی‌های ناخوشایند خواهد شد و ورود شما تهدیدی برای امنیت ملی یا عمومی آمریکا نخواهد بود و به نفع منافع ملی ایالات متحده آمریکا خواهد بود. این روند ممکن است طولانی باشد و تا هنگامی که افسر کنسولگری بتواند در مورد این سه عامل تصمیمی برای پرونده شما بگیرد، درخواست ویزای شما طبق بند 212(ف) رد شده باقی خواهد ماند. ما در اسرع وقت با شما درباره تصمیم نهایی پرونده تان تماس خواهیم گرفت.

با تشکر
بخش ویزای غیر مهاجرتی