

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MOHAMMED AHMED SALEH ALOBAHY;
AHMED ABDULWAHAB MOHAMMED;
and HUSSAIN MOHAMED SALEH;

Plaintiffs,

v.

Case No. 18 CV _____

DONALD TRUMP, in his official capacity as
President of the United States; MICHAEL
POMPEO, in his official capacity as Secretary of
the Department of State; KIRSTJEN NIELSEN,
in her official capacity as Secretary of the
Department of Homeland Security; THE
UNITED STATES OF AMERICA; THE
UNITED STATES DEPARTMENT OF STATE;
and THE UNITED STATES DEPARTMENT
OF HOMELAND SECURITY;

Defendants.

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

Plaintiffs Mohammed Ahmed Saleh Alobahy, Ahmed Abdulwahab Mohammed, and Hussain Mohamed Saleh (collectively, “Plaintiffs”), by and through their undersigned attorneys, allege as follows on personal knowledge, and on information and belief, for their Complaint against Defendants:

BACKGROUND

1. Plaintiffs, three United States citizens of Yemeni descent, bring this Complaint to require the United States Department of State (the “State Department”) to effectuate its decision – and fulfill its nondiscretionary duty – to provide Plaintiffs’ immediate family members Amal

Abdulaziz Mohammed Mohammed Al Rabuoi, Aisha Mahyoub Hasan Ahmed Al Shameri, and Sawsan Sufyan Murshed Al-Mardahi (collectively, “Plaintiffs-Beneficiaries”) immigrant visas to travel to the United States, which are being unlawfully withheld.

2. Plaintiffs all sought to protect their families from violence, famine, disease, and the general collapse of their home country of Yemen due to civil war and to live together in safety in this country, which Plaintiffs, as U.S. citizens, call home.

3. The United Nations Humanitarian Coordinator estimates that more than 16,000 civilians have been killed or injured in Yemen since the war began, the majority by airstrikes, which regularly target civilian sites including farms, markets, water treatment facilities, power plants, hospitals, clinics, and food storage facilities.¹

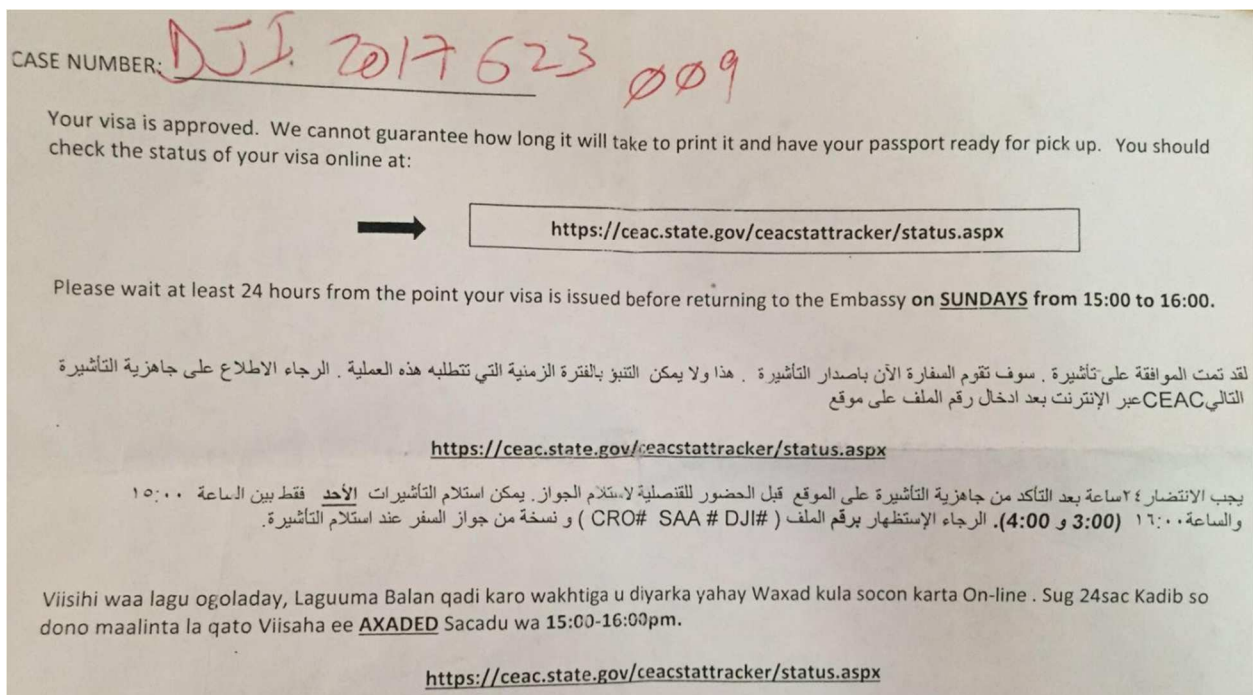
4. In addition to the dangers of the armed conflict, the economic consequences of the long-running war, perpetuated by the economic and military involvement of neighboring Saudi Arabia, have “landed on the backs of civilians, laying the economy to waste and driving millions deeper into poverty.” The economic crisis has deepened recently; Mark Lowcock, the United Nations Under-Secretary-General for Humanitarian Affairs, told the United Nations Security Council on October 23, 2018 that eight million Yemenis were dependent on emergency food aid to survive, and predicted that that figure could soon rise to 14 million, or half the country’s population.²

¹ Sudarsan Raghavan, *Saudi role in devastating Yemen war comes under new scrutiny after Khashoggi murder*, THE WASHINGTON POST (Oct. 30, 2018), https://www.washingtonpost.com/world/saudi-role-in-devastating-yemen-war-comes-under-new-scrutiny-after-khashoggi-murder/2018/10/29/fabc8f68-dbad-11e8-8bac-bfe01fcdc3a6_story.html?

² Declan Walsh, *The Tragedy of Saudi Arabia’s War*, THE NEW YORK TIMES (Oct. 26, 2018), <https://www.nytimes.com/interactive/2018/10/26/world/middleeast/saudi-arabia-war-yemen.html>.

5. Plaintiffs each filed I-130 petitions in 2015 or 2016 on behalf of Plaintiffs-Beneficiaries, their spouses, seeking to bring their loved ones to the United States. All Plaintiffs had their applications approved by the Department of Homeland Security (“DHS”), and Plaintiffs-Beneficiaries were granted interviews with State Department consular officers at the United States Embassy in Djibouti (the “Embassy”) between September and November 2017.³

6. At the conclusion of the interviews, Plaintiffs or Plaintiffs-Beneficiaries were told by Embassy officials that their petitions for visas had been granted. All were given a formal document from the Embassy stating, “[y]our visa is approved.” An example of one such document given to Plaintiffs by consular officials appears below:



³ Because of the violence in Yemen, consular services have been suspended in Sana’a and immigrant visa applications for Yemeni citizens have been transferred to the United States Embassy in Djibouti.

7. Under applicable State Department policy, the interview and subsequent approval or denial, subject to narrow exceptions not applicable here, constitutes the final discretionary step in the visa adjudication process.

8. Plaintiffs-Beneficiaries were instructed to hand their passports over to Embassy officials so that the Embassy could undertake the ministerial act of printing out the visas, as indicated in their visa approval notices.

9. Instead of printing Plaintiffs-Beneficiaries' approved immigrant visas, however, Embassy officials delayed for months and ultimately informed each Plaintiff-Beneficiary that her visa had been denied pursuant to Presidential Proclamation 9645 (the "Proclamation"). The Proclamation is also commonly referred to as the "Muslim Ban" or "Travel Ban."

10. President Trump issued the Proclamation on September 24, 2017. The Proclamation sought to bar nationals from certain countries, including Yemen, from entry into the United States. However, before it took effect, the Proclamation as it applied to Plaintiffs and Plaintiffs-Beneficiaries was enjoined by a United States court on the grounds that it violated the Establishment Clause and the Immigration and Naturalization Act ("INA"). While the Proclamation was enjoined as unlawful, it had no legal force, and the Embassy continued to process and approve immigrant visa applications for Yemeni citizens.

11. The government petitioned the Supreme Court for a stay of the injunctions against the Proclamation. The Supreme Court granted a stay on December 4, 2017, allowing the Proclamation to go into effect. The State Department subsequently announced that it would begin implementing the Proclamation on December 8, 2017.⁴

⁴ U.S. DEP'T OF STATE, *Presidential Proclamation Fully Implemented Today*, (Dec. 8, 2017), <https://www.state.gov/r/pa/prs/ps/2017/12/276376.htm>.

12. Despite the fact that Plaintiffs-Beneficiaries' visas were approved prior to the implementation of the Proclamation, Embassy officials—acting, on information and belief, according to instructions from President Donald Trump, Secretary Michael Pompeo (and/or his predecessors in office), and Secretary Kirstjen Nielsen (and/or her predecessors in office)—improperly and unlawfully delayed providing Plaintiffs-Beneficiaries' printed visas and then refused⁵ to issue said previously approved visas after the injunction was lifted, in purported reliance on the Proclamation.

13. Months after Plaintiffs-Beneficiaries were told in writing that their visas had been approved, Defendants returned Plaintiffs-Beneficiaries' passports without visas and told Plaintiffs-Beneficiaries that their visas had been denied pursuant to the Proclamation. Each Plaintiff-Beneficiary was given a document that stated, "This is to inform you that a consular officer found you ineligible for a visa under Section 212(f) of the INA, pursuant to Presidential Proclamation 9645 . . . Taking into account the provisions of the Proclamation, a waiver will not be granted in your case."

14. Defendants relied on the Proclamation to refuse to provide Plaintiffs-Beneficiaries immigrant visas, which were all approved before the State Department implemented the Proclamation, despite the fact that the Proclamation states that it cannot be used to revoke previously issued visas.

15. Defendants' actions were also contrary to public statements by the State Department, which stated on its website, "No visas will be revoked pursuant to [Presidential

⁵ Because communications from the consulate to visa applicants, including application status information provided online via the State Department's Consular Electronic Application Center ("CEAC"), have used inconsistent terminology, any references to "refusals" and decisions to "refuse" visas in this complaint also encompass "denials" and decisions to "deny" visas.

Proclamation] 9645. Individuals subject to [Presidential Proclamation] 9645 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.”⁶

16. Defendants’ actions violated the Proclamation and State Department policy, as well as clearly established law governing the issuance of visas. In order to correct their *ultra vires* actions, Defendants and their agents and employees must be compelled to undertake their non-discretionary duty to render the previously authorized visas to Plaintiffs-Beneficiaries.

17. Defendants had no lawful authority—from the Proclamation or otherwise—to refuse to issue the visas granted to Plaintiffs-Beneficiaries before the Proclamation was implemented, causing ongoing irreparable harm to Plaintiffs and their families.

18. Plaintiffs and their loved ones sit in legal purgatory, afraid to return to their devastated home country, emotionally and financially exhausted from separation and Plaintiffs-Beneficiaries’ seemingly indefinite stay in Djibouti, and diminishingly hopeful to be reunited with their families in safety in the United States. Plaintiffs seek an order from this Court declaring Defendants’ actions unlawful and mandating that they issue Plaintiffs-Beneficiaries their lawfully approved immigrant visas.

THE PARTIES

19. Plaintiff Mohammed Ahmed Saleh Alobahy is a citizen of the United States, residing in Bay Ridge in Brooklyn, New York. His wife, Plaintiff-Beneficiary Amal Abdulaziz Mohammed Mohammed Al Rabuoi, has been in Djibouti since November 2017. Alobahy and Al Rabuoi have not seen each other for almost three years.

⁶ U.S. DEP’T OF STATE, *June 26 Supreme Court Decision on Presidential Proclamation 9645*, https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/presidential-proclamation-archive/june_26_supreme_court_decision_on_presidential_proclamation9645.html (last visited Dec. 13, 2018).

20. Plaintiff Ahmed Abdulwahab Mohammed is a citizen of the United States, residing in Bay Ridge in Brooklyn, New York. His wife, Plaintiff-Beneficiary Aisha Mahyoub Hasan Ahmed Al Shameri, has been in Djibouti since October 2017, and has been alone with her infant daughter there since March 2018, separated from her husband and four-year-old daughter who were forced to return to the United States without her.

21. Plaintiff Hussain Mohamed Saleh is a citizen of the United States, residing in Brooklyn, New York. Saleh, his wife, Plaintiff-Beneficiary Sawsan Sufyan Murshed Al-Mardahi, and their three United States citizen children have been in Djibouti since October 2017. They are unable to return to Yemen and Saleh is unwilling to leave Al-Mardahi, who suffers from health issues, alone in Djibouti while the rest of the family travels to the United States.

22. Defendant Donald Trump is the President of the United States of America, and is sued in his official capacity only. President Trump issued the Proclamation and has instructed his Cabinet officials and their respective Departments to enforce its terms. President Trump is also responsible for ensuring that all officers, employees, and agents of the United States act in accordance with applicable law.

23. Defendant Michael Pompeo is the Secretary of State, and is sued in his official capacity only. Secretary Pompeo is the highest-ranking official within Defendant the United States Department of State. Secretary Pompeo is responsible for the implementation of certain provisions of the INA relating to the issuance of visas, and is responsible for ensuring that the laws of the United States are followed in its embassies and other facilities abroad.

24. Defendant Kirstjen Nielsen is the Secretary of the Department of Homeland Security, and is sued in her official capacity only. Secretary Nielsen is the highest-ranking official within Defendant the United States Department of Homeland Security (“DHS”).

Secretary Nielsen is also responsible for the implementation of the INA, and oversees United States Customs and Border Protection (“USCBP”), the agency responsible for immigration and customs at the borders and ports of entry into the United States.

JURISDICTION AND VENUE

25. This Court has subject-matter jurisdiction of this action pursuant to 28 U.S.C. section 1331, as Plaintiffs’ claims arise under the Constitution of the United States and the laws of the United States.

26. This Court further has subject-matter jurisdiction of Plaintiffs’ request for injunctive relief as to Defendants Trump, Pompeo, and Nielsen pursuant to 28 U.S.C. section 1361.

27. Venue is proper in this judicial district pursuant to 28 U.S.C. section 1391(e)(1) because Plaintiffs reside in this judicial district and no real property is involved in this action.

STATEMENT OF FACTS

Background Allegations Common to All Plaintiffs

28. The visa process relevant to this case begins with the filing of an I-130 petition with the U.S. Customs and Immigration Service (“USCIS”) by a U.S. citizen who seeks to have his or her relative classified as an immediate relative and granted a visa to enter the U.S. 8 U.S.C. 1154(a)(1)(A); *see id.* 1151(b)(2)(A)(i) (defining immediate relatives). Once USCIS approves the classification of the beneficiary as an “immediate relative,” it refers the case to the National Visa Center (“NVC”), which processes the visa application.

29. The petitioner must then pay a fee and submit several supporting documents to complete the application. Once this process is complete, the beneficiary becomes eligible for an interview. *See* 9 FAM 504.5-6. The NVC provides the beneficiary with an appointment for an

interview at an overseas consular office after the petitioner has properly submitted all necessary documents, paid all the necessary fees, and the beneficiary has undergone a medical exam. *See* 9 FAM 504.4-3(A)(3) (Medical Screening Forms); 9 FAM 504.4-4 (Supporting Documents).

30. According to the State Department, the interview with a consular officer is the last stage of the immigrant visa adjudication process, which will result in a decision on the visa application. The State Department’s website explains that “[a]t the end of your immigrant visa interview at the U.S. Embassy or Consulate, the consular officer will always inform you whether your visa application is approved or denied.”⁷

31. After the interview, during which the consular officer has the opportunity to question the applicant and review the application materials, the consular officer has a nondiscretionary duty either to issue the visa or to refuse it. A consular officer cannot temporarily refuse, suspend, or hold the visa for future action. If the consular officer refuses the visa, he or she must inform the applicant of the provisions of law on which the refusal is based, and of any statutory provision under which administrative relief is available. *See* 9 FAM 504.1-3(g) & 504.11 (refusal procedure); 9 FAM 301.5 (waiver relief).

32. In some cases, a consular officer may inform individuals that their visa petition requires the issuance of a Security Advisory Opinion (“SAO”). Even when an SAO is required, the consular officer must nevertheless refuse the visa. Indeed, there are “no exceptions to the rule that once a visa application has been properly completed and executed before a consular officer, a visa must either be issued or refused.” 9 FAM 504.1-3(i)(1)(c). In the event of a refusal, even if due to the need for an SAO, the consular officer must still provide notice to the

⁷ U.S. DEP’T OF STATE, *After the Interview*, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/interview/after-the-interview.html> (last visited Dec. 13, 2018).

applicant that his or her visa has been refused either orally or in writing. 9 FAM 504.11-3(A)(1)(a). There are only three exceptions to this notice requirement, all of which contemplate explicit instructions from the Department of Justice. 9 FAM 504.11-3(A)(1)(c).

33. State Department procedure dictates that an immigrant visa that has been approved may only be thereafter revoked in three “rare circumstances”: (i) if the visa was procured by “fraud, a willfully false or misleading representation, the willful concealment of a material fact, or other unlawful means,” (ii) if the State Department later obtains factual information establishing that the alien was ineligible to receive the particular visa at the time it was issued, or (iii) if the State Department “establish[es] that, subsequent to the issuance of the visa, a ground of ineligibility has risen in the alien’s case.” 9 FAM 504.1-4(A)(1)(2).

34. All Plaintiffs are United States citizens of Yemeni descent. They seek to help their spouses, Plaintiff-Beneficiaries, escape the devastating civil war in Yemen and to reunite with their families in the United States.

35. Beginning in 2015 or early 2016, all Plaintiffs started the process to bring their immediate relatives to United States. Each filed I-130 immigrant petitions for Plaintiffs-Beneficiaries, their spouses abroad, and all Plaintiffs-Beneficiaries received notice of their interview dates before the Proclamation was issued.

36. All Plaintiffs-Beneficiaries appeared for visa interviews at the Embassy in October or November of 2017 and, following the completion of those interviews, were informed, pursuant to consular officials’ non-discretionary duties, of a decision on their visas: in each case, they were told that their visas were approved.

37. At the end of each of their interviews, all Plaintiffs-Beneficiaries also received a document from the Embassy that stated, “**Your visa is approved.** We cannot guarantee how

long it will take to print it and have your passport ready for pick up,” (emphasis added). Each Plaintiff-Beneficiary surrendered her passport to the Embassy in order to be issued the printed visa.

38. Despite the fact that their visa applications were approved pursuant to law, none of Plaintiffs-Beneficiaries were actually provided their immigrant visas. Instead, the Embassy held their passports for a period of time – ranging from three to five months – and then informed Plaintiffs-Beneficiaries that their visa applications had been denied pursuant to the Proclamation.

39. To date, the Embassy still has not issued Plaintiffs-Beneficiaries’ immigrant visas.

40. The protracted and indefinite limbo that Plaintiffs-Beneficiaries experience while forced to remain in Djibouti, during which time they cannot work and are separated from their families and communities, has taken a heavy and painful financial, emotional, and physical toll on Plaintiffs and their families.

The Proclamation

41. On January 27, 2017, Defendant President Trump issued Executive Order 13769, Protecting the Nation from Foreign Terrorist Entry into the United States (“First Travel Ban”). The First Travel Ban prohibited the entry of nationals of seven Muslim-majority countries for 90 days pending a worldwide review to be conducted by the Secretary of Homeland Security, suspended the entire Refugee Admissions Program for 120 days, and indefinitely barred entry of all Syrian refugees. Exec. Order 13,769, 82 Fed. Reg. 8977 (Jan. 27, 2017). Within a week, federal courts around the country granted Motions for Stay of Removal, barring the government from enforcing the First Travel Ban in its entirety. *See, e.g. Washington v. Trump*, 847 F.3d 1151, 1161–64 (9th Cir. 2017) (per curiam), *reconsideration en banc denied*, 853 F.3d 933 (9th Cir. 2017).

42. On March 6, 2017, President Trump issued Executive Order 1378 (the “Second Travel Ban”). Again, federal courts unanimously barred enforcement of this order. *Int’l Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir.), as amended (May 31, 2017), as amended (June 15, 2017), and *vacated and remanded sub nom. Trump v. Int’l Refugee Assistance*, 138 S. Ct. 353 (2017); *Hawaii v. Trump*, 859 F.3d 741 (9th Cir.), *cert. granted sub nom. Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080 (2017), and *vacated and remanded*, 138 S. Ct. 377 (2017). The Supreme Court granted certiorari in both the Fourth and Ninth circuit cases and left the injunctions in place pending review, except as to persons who lacked a “credible claim of a bona fide relationship with a person or entity in the United States.” *Trump v. IRAP*, 137 S. Ct. 2080, 2088 (2017).

43. On September 24, 2017, President Trump issued the Proclamation at issue in this case. 82 Fed. Reg. 45161 (2017). The Proclamation expands on the previous executive orders by applying entry restrictions to nationals of eight states, and by applying the restrictions for an indefinite amount of time. For Yemeni citizens, Section 2(g)(ii) of the Proclamation restricts entry of nationals seeking immigrant visas and nonimmigrant business or tourist visas.

44. The Proclamation provided certain protections for individuals who were granted visas before the Proclamation took effect. Section 3(ii) of the Proclamation stated that the restrictions on entry did not apply to individuals who had already been issued visas before the effective date of the Proclamation. Additionally, Section 6(c) of the Proclamation stated that no immigrant visa issued before the effective date of the Proclamation “shall be revoked pursuant to this Proclamation.”

45. On October 17, 2017, before the provisions of the Proclamation applicable to Plaintiffs-Beneficiaries could take effect, the U.S. District Court for the District of Hawaii issued

a Temporary Restraining Order prohibiting the enforcement of certain provisions of the Proclamation, including those pertaining to Yemeni citizens. *Hawaii v. Trump*, 265 F.Supp.3d 1140 (D. Haw.), *aff'd in part, vacated in part*, 878 F.3d 662 (9th Cir. 2017), *cert. granted*, 138 S. Ct. 923, (2018), *rev'd and remanded*, 138 S. Ct. 2392, 201 L. Ed. 2d 775 (2018).

46. The Government appealed, and on December 4, 2018, the Supreme Court issued a stay of the injunction and allowed the Proclamation to go into full effect pending the ultimate outcome of the appeal. *Trump v. Hawaii*, 138 S. Ct. 542 (2017). The State Department announced that it would begin implementing the Proclamation shortly thereafter, on December 8, 2017.

47. On June 26, 2018, the Supreme Court issued a judgment vacating the injunction and upholding the Proclamation. *Trump v. Hawaii*, 138 S. Ct. 2392, 201 L. Ed. 2d 775 (2018). The Proclamation remains in effect for Yemeni citizens currently seeking immigrant visas.

48. As a result of the injunction and delayed implementation, the Proclamation had no legal force as applicable to Plaintiffs-Beneficiaries prior to December 8, 2018. It could not be a basis to revoke or deny a visa that was lawfully granted prior to December 8, 2018.

Plaintiff Mohammed Ahmed Saleh Alobahy

49. Alobahy is a United States Citizen who moved to the United States from Yemen in 2006. He resides in the Bay Ridge section of Brooklyn, New York.

50. In January 2016, Alobahy traveled to Yemen to marry his wife, Amal Abdulaziz Mohammed Mohammed Al Rabuoi, who was an English tutor in Yemen while finishing her university degree in English. Alobahy and Al Rabuoi have known each other since they were childhood neighbors. They were married on January 11, 2016.

51. In February 2016, Alobahy filed an I-130 petition seeking a visa for his wife to join him in the United States. After submitting all of the information requested by the State Department, Alobahy was informed in May 2017 that his petition was approved. Al Rabuoi was scheduled for an interview at the Embassy on November 14, 2017.

52. Al Rabuoi travelled from Yemen to Djibouti with her brother, arriving on November 2, 2017.

53. Al Rabuoi had her interview at the Embassy as scheduled on November 14, 2017. She brought all required paperwork with her to the interview, which was conducted in English.

54. At the conclusion of the interview, the consular officer told Al Rabuoi that her visa was approved and provided her with a notice stating that her visa was approved and identifying her by her redress number, DJI 2017 623 009. **Exhibit A.**

55. The consular officer took Al Rabuoi's passport and informed her that her visa would likely be issued within two weeks. Alobahy and Al Rabuoi understood that Al Rabuoi's visa had been approved, as her passport was taken by the Embassy and she was provided paperwork stating plainly that her visa had been approved.

56. Al Rabuoi did not hear anything from the Embassy for several months. On March 6, 2018, Al Rabuoi received a phone call from the Embassy asking her to come to the Embassy. When Al Rabuoi did so, she was given back her passport and provided a notice that stated that her visa had been denied pursuant to the Proclamation and that she was not eligible for a waiver. **Exhibit B.**

57. On June 9, 2018, Alobahy received an email from the Embassy, stating that Al Rabuoi's application for a visa was being reconsidered for a waiver. According to the USCIS website, her application is currently in administrative processing.

58. Al Rabuoi has lived in Djibouti since she arrived on November 2, 2017, in advance of her interview. Alobahy is employed in the United States as a structural engineer, and, in order to maintain his job, he is unable to relocate to Djibouti. He provides financial support to his wife and her brother, who remains in Djibouti with Al Rabuoi, in the amount of approximately \$2000.00 per month.

59. Al Rabuoi's health has deteriorated during her stay in Djibouti. She has suffered fainting spells, fatigue, and lack of appetite, which Alobahy attributes to stress. Al Rabuoi did not have these symptoms prior to arriving in Djibouti.

60. In the summer of 2018, Al Rabuoi was hospitalized due to her health issues.

61. Al Rabuoi has not been issued a visa.

Plaintiff Ahmed Abdulwahab Mohammed

62. Mohammed is a United States citizen. He currently resides in Bay Ridge in Brooklyn, New York.

63. In January 2016, Mohammed filed an I-130 Petition for his wife, Aisha Mahyoub Hasan Ahmed Al Shameri, his daughter, and his mother, who are all Yemeni.

64. In June 2017, Mohammed and his family received a date for their interview. They were told that their interview would take place on July 30, 2017, at the Embassy.

65. Mohammed travelled to Yemen to accompany his family to Djibouti prior to their interview. Because of the civil war in Yemen, it was impossible for Mohammed and his family to travel safely and quickly to Djibouti, and they were required to postpone their interview at the Embassy. It was rescheduled for October 4, 2017.

66. After travelling through Sudan to Djibouti with his mother, three-year-old daughter, and pregnant wife, Mohammed and his family completed and submitted the required

medical exams and appeared as scheduled for their interview. They were asked to return the following day, October 5, 2017, and to submit an additional form DS-5535 that was required for his wife to complete the interview; they did as instructed. The next day, after the conclusion of the interview, the consular officer told Mohammed that the visas for his wife, daughter, and mother were approved and provided him with a notice stating that the visas were approved and identifying his wife by her redress number, DJI 2016 828 063. **Exhibit C.**

67. The consular officer took the passports of Mohammed's wife, daughter, and mother, and informed them that their visas would likely be issued within two weeks. Mohammed and his family understood that their request for visas had been approved and that no further steps remained in their application process, as their passports were taken by the Embassy and they were provided paperwork stating plainly that their visa had been approved.

68. Mohammed's mother and daughter received their visas on October 11, 2017 and October 15, 2017, respectively. However, Al Shameri did not receive her visa. Mohammed's mother traveled to the United States in December 2017, but Mohammed remained in Djibouti with his wife and daughter while they waited for the Embassy to issue Al Shameri her visa.

69. As of March 2018, Al Shameri still had not been provided her visa. Because the visa issued to Mohammed's daughter was about to expire, Mohammed travelled with her to the United States, leaving Al Shameri behind in Djibouti. At the time, Al Shameri was eight months pregnant. Prior to departing, in February 2018, Mohammed contacted the Embassy to determine whether Al Shameri's visa would be issuing soon and whether he could retrieve her passport so that she could return to Yemen while she waited for her visa. He was told that the Embassy needed to retain her passport until the visa was issued. He had no choice but to leave his wife alone in Djibouti.

70. Soon after Mohammed left, Al Shameri gave birth to a daughter in Djibouti. A friend accompanied her to the hospital so that she would not be alone. Mohammed has never met his second daughter.

71. On February 28, 2018, Al Shameri was issued a letter stating that her application for a visa had been denied due to the Proclamation and that she was not eligible for a waiver.

Exhibit D.

72. On June 2, 2018, Al Shameri was issued an “updated refusal letter” stating that she was being considered for a waiver under the provisions of the Proclamation.

73. Al Shameri has not received a waiver or otherwise been issued a visa.

Plaintiff Hussain Mohamed Saleh

74. Saleh is a United States citizen who lives in Brooklyn, New York. He has three children who are also United States citizens.

75. Saleh married his wife, Sawsan Sufyan Murshed Al-Mardahi, a Yemeni national, in Yemen on August 31, 2007.

76. After the war broke out in Yemen in 2015, Saleh traveled to Yemen to help his wife and children escape the dangerous conditions in the country. They traveled to Malaysia, where Saleh attempted to file an I-130 petition on behalf of his wife. He was instructed that he had to return to the United States and file his petition there.

77. Saleh was forced to take his wife and children back to Yemen. He then returned to the United States and filed an I-130 petition on behalf of his wife in April 2016. The petition was approved in March 2017.

78. Al-Mardahi was scheduled for an interview at the Embassy on October 10, 2017. Saleh travelled to Yemen and from there, with his wife and children, to Djibouti for Al-Mardahi's interview.

79. At the conclusion of the interview, the consular official told Al-Mardahi that her visa was approved and provided her with a notice stating that the visa was approved and identifying her by her redress number, DJI 2017 587 020. **Exhibit E.**

80. The consular officer took Al-Mardahi's passport and informed her that her visa would likely be issued within two weeks. Saleh and Al-Mardahi understood that their request for a visa had been approved and that no further steps remained in the application process as Al-Mardahi's passport was taken by the Embassy and they were provided paperwork stating plainly that her visa had been approved.

81. Al-Mardahi's passport remained at the Embassy for five months, during which time Saleh called the Embassy on multiple occasions and was told only that he should wait for her visa to be issued. On March 6, 2018, they received a call from the Embassy telling Al-Mardahi to return to the Embassy. When she did so, her passport was returned, and she was given a notice stating that her visa had been denied due to the Proclamation and that she would not be granted a waiver. **Exhibit F.**

82. Al-Mardahi, who is diabetic, experienced an episode of dangerously elevated blood sugar after receiving the news that her visa had been denied. Al-Mardahi and Saleh went straight from the Embassy to the hospital, where Al-Mardahi remained for three days.

83. Saleh has remained in Djibouti to be with his family and to care for his wife through her health issues. Saleh is unable to work in Djibouti and has been forced to borrow money from friends and relatives in order to support his family.

84. Because of the high cost of living in Djibouti, Saleh and his family will likely have no option but to return to Yemen despite the rising hostilities in their respective hometowns.

85. Al-Mardahi has not been issued a visa.

FIRST CAUSE OF ACTION

(Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A)-(D))

86. The foregoing allegations are repeated and incorporated as though fully set forth herein.

87. Defendants have taken action in purported reliance on the Proclamation to revoke Plaintiffs-Beneficiaries' previously approved immigrant visas.

88. The actions Defendants have taken in purported reliance on the Proclamation constitute final agency action within the meaning of the Administrative Procedure Act. *See Bennett v. Spear*, 520 U.S. 154 (1997).

89. This Court has the power under 5 U.S.C. § 706(1) to redress agency actions which are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law.

90. Defendants' actions, practices, interpretations of law, and failure to issue Plaintiffs-Beneficiaries previously approved immigrant visas constitute agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction,

authority, or limitations, or short of statutory right; and without observance of procedure required by law” in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A)-(D).

91. Plaintiffs began the immigrant visa process for Plaintiff-Beneficiaries in 2015 or early 2016 and the State Department approved Plaintiff-Beneficiaries’ immigrant visas before the Proclamation was in lawful effect. Under the applicable and binding regulations in effect at the time, Defendants were required to timely print and issue Plaintiffs-Beneficiaries approved immigrant visas. Federal regulations prescribe that “[w]hen a visa application has been properly completed and executed in accordance with the provisions of the INA and the implementing regulations, the consular officer *must* either issue or refuse the visa.” 22 C.F.R. § 41.121(a) (emphasis added). If a consular officer refuses a visa, “he or she must inform the alien of the ground(s) of ineligibility . . . and whether there is, in law or regulations, a mechanism (such as a waiver) to overcome the refusal.” 22 C.F.R. § 41.121(b)(1); *see also* 22 C.F.R. § 42.81.

92. Following their visa interviews, Defendants informed Plaintiffs-Beneficiaries, orally and in writing, that their visas had been approved. Defendants did not inform Plaintiffs-Beneficiaries that they were ineligible. Under applicable law, the approval decision was the final determination in the visa application process. Defendants later withheld, revoked or denied said visas pursuant to the Proclamation, which had no lawful force at the time Plaintiffs-Beneficiaries completed their visa interviews and when Defendants were legally required to either approve or refuse their visa applications. Defendants’ actions were based on legal error, particularly in light of the reliance issues at stake, and were therefore arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law, and in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

93. Defendants' actions, as set forth above, are contrary to constitutional rights, including Plaintiffs' rights not to be deprived of their liberty interest in family reunification, and statutory and regulatory rights to petition for visas for their family members, without due process and as protected by the First and Fifth Amendments to the U.S. Constitution, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(B).

94. Defendants' actions, practices, interpretation of law in withholding or denying the Plaintiffs-Beneficiaries' previously approved immigrant visas, as set forth above, are *ultra vires* and exceed any authority granted by the Proclamation, State Department regulations, and the INA, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(C).

95. Defendants' actions, as set forth above, affect Plaintiffs' substantive rights and were made without observance of procedure required by law in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(D).

96. Defendants' actions, practices, and failure to issue Plaintiffs-Beneficiaries' previously approved immigrant visas, as set forth above, contravene the State Department's own policy and procedures and therefore should be set aside under the *Accardi* doctrine, which invalidates agency actions that contravene an agency's own policies. *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Defendants' actions are therefore arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

97. Defendants' continued actions to withhold Plaintiffs-Beneficiaries' previously approved immigrant visas have caused Plaintiffs and Plaintiffs-Beneficiaries to suffer and continue to suffer irreparable harm and damages entitling them to declaratory, injunctive and other relief.

SECOND CAUSE OF ACTION

(Fifth Amendment Procedural Due Process)

98. The foregoing allegations are repeated and incorporated as though fully set forth herein.

99. Defendants' actions, practices, and failure to issue Plaintiffs-Beneficiaries' previously approved immigrant visas violate Plaintiffs' procedural due process rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

100. The Due Process Clause provides that "[n]o person . . . shall be deprived of life, liberty, or property, without due process of law."

101. Congress has created statutory rights related to the petitioning for and issuance of immigrant visas.

102. Federal agencies have likewise created regulatory rights related to the petitioning for and issuance of immigrant visas.

103. Individuals must be given due process prior to the deprivation of these statutory and regulatory rights.

104. Defendants' failure to adhere to applicable statutory and regulatory requirements pertaining to the adjudication of visa applications violated Plaintiffs' procedural due process rights.

105. Additionally, United States citizens have constitutionally protected liberty interests in family reunification and in the ability of their family members to travel to the United States. Individuals must be given due process prior to the deprivation of these liberty interests.

106. Defendants' actions, as set forth above, have deprived Plaintiffs of their aforementioned statutory and regulatory rights and constitutional liberty interests without due process of law.

107. Defendants' violation of Plaintiffs' constitutionally guaranteed rights have caused Plaintiffs to suffer and continue to suffer irreparable harm and entitle them to declaratory, injunctive and other relief.

THIRD CAUSE OF ACTION

(Mandamus Act, 28 U.S.C. § 1361; 28 U.S.C. § 1651)

108. The foregoing allegations are repeated and incorporated as though fully set forth herein.

109. Defendants are severally and jointly charged with the mandatory responsibility to administer and implement the INA and corresponding regulations, which limit their discretion and impose non-discretionary duties on Defendants.

110. Defendants each severally and jointly bear responsibility for timely adjudication of applications for immigrant visas and issuance of approved visas and have the authority and jurisdiction required to adjudicate and influence the issuance of Plaintiffs-Beneficiaries' immigrant visas.

111. Defendants have willfully and unreasonably delayed and or refused to perform their clear, non-discretionary duties by failing to properly and in good faith, timely complete the printing of Plaintiff-Beneficiaries' approved visas as is required by the INA and applicable regulations.

112. Plaintiffs have exhausted any administrative remedies that may exist and there exists no other adequate remedy.

113. The injury to Plaintiffs will be redressed by compelling Defendants to carry out their nondiscretionary duty to issue Plaintiffs-Beneficiaries' previously approved visas without any further unduly delay.

114. The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to Plaintiffs. *See* 28 U.S.C. § 1361.

115. Pursuant to 28 U.S.C. § 1361, Defendants must be compelled to discharge their statutory duties owed to Plaintiffs by order declaring Defendants' actions contrary to law and compelling the issuance of Plaintiffs-Beneficiaries' previously approved visas.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for the following relief:

116. Declare that Defendants' actions in withholding, denying or revoking Plaintiff-Beneficiaries' previously approved visas were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; and without observance of procedure required by law, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A)-(D);

117. Enjoin Defendants, their officials, agents, employees, assigns, and all persons acting in concert or participating with them from implementing or enforcing any portion of Section 3(c) of the Proclamation in a manner that violates the APA, the INA, the United States Constitution, or the Proclamation;

118. Mandate that Defendants issue Plaintiffs-Beneficiaries' previously approved immigrant visas;

119. Award counsel for Plaintiffs costs and attorneys' fees; and
120. Grant any further relief that this Court deems just and proper.

Dated: December 17, 2018

Respectfully submitted,

/s/ David W. Rivkin
David W. Rivkin

DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, New York 10022
Tel.: (212) 909-6000
dwrivkin@debevoise.com

Baher Azmy
Diala Shamas
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway 7th Floor
New York, NY 10012
Tel.: (212) 614-6464

Attorneys for Plaintiffs