

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

ALI ADAM
Baltimore County; *and*

ABDEL RAHMAN ABDALLA
Baltimore County,¹

Plaintiffs,

– *versus* –

MICHAEL POMPEO, in his official capacity as
Secretary of State,
2201 C Street NW
Washington, DC 20520;

CARL RISCH, in his official capacity as Assistant
Secretary of State for Consular Affairs,
2201 C Street NW
Washington, DC 20520;

CHAD WOLF, in his official capacity as Acting
Secretary of Homeland Security,
3801 Nebraska Avenue NW
Washington, DC 20016; *and*

KENNETH CUCCINELLI, in his official capacity as
Senior Official Performing the Duties of the Director of
United States Citizenship and Immigration Services,
c/o United States Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20016;

Defendants.

Case No. 1:20-cv-03079

COMPLAINT

¹ Plaintiffs respectfully request that the Court waive the requirement under Local Rule 102.2(a) to provide addresses, as explained in their concurrently filed motion.

INTRODUCTION

1. Plaintiffs are refugees who fled their home villages in the Darfur region of Sudan to escape ethnic cleansing by President Omar al-Bashir and armed militias. Plaintiffs are now safely resettled in Maryland, but their chaotic, forced flights from Sudan resulted in separation from their wives and children, who remain in Sudan.

2. Shortly after arriving in the United States, each Plaintiff filed a “follow-to-join” (“FTJ”) petition with Defendant U.S. Citizenship and Immigration Services (“USCIS”) to be reunited here with their spouses and children still stuck overseas. Since filing their petitions, Plaintiffs have waited a combined nearly eleven years for a decision from Defendants. This lawsuit challenges Defendants’ failure to adjudicate Plaintiffs’ FTJ applications within a reasonable time.

3. Congress created the FTJ pathway for family reunification to address the issue of family separation that commonly occurs during a refugee’s journey to be resettled in the United States. Defendants’ failure to adjudicate Plaintiffs’ petitions has put on indefinite hold the reunification of their families.

4. Plaintiff Ali Adam started the FTJ process when he filed two I-730 petitions in December 2013 seeking to bring his wife and then-three-year-old son to the United States. His son is now ten years old.

5. Plaintiff Abdel Rahman Abdalla started the FTJ process when he filed three I-730 petitions in November 2016 seeking to bring his wife and then-eleven-year-old son and ten-year-old daughter to the United States. Mr. Abdalla has only met his daughter once in a hastily arranged meeting at a Sudanese refugee camp when she was an infant.

6. In the many years that their families have been separated and Plaintiffs have waited for Defendants to adjudicate their petitions, they have missed significant milestones in

their children's lives—Mr. Adam missed the birth and first ten years of his son's life because his wife was pregnant with him when Mr. Adam fled Sudan. And Mr. Abdalla's children have no memory of their father because he was forced to flee when they were very young. Plaintiffs have longed for the companionship of their spouses and have felt constantly worried about the wellbeing and safety of their families, who remain in a dangerous and war-torn country. Plaintiffs' lives have been on hold as a result of this painful and prolonged separation, with no end in sight.

7. Plaintiffs now seek an order from this Court pursuant to the Administrative Procedure Act ("APA") and the Mandamus Act to compel Defendants to promptly adjudicate their FTJ petitions.

THE PARTIES

8. Plaintiff Ali Adam is a United States citizen residing in the Baltimore area, originally from the Darfur region of Sudan. Mr. Adam filed I-730 petitions for his wife and son in December 2013 and has not yet received a final adjudication of his petitions.

9. Plaintiff Abdel Rahman Abdalla is a U.S. lawful permanent resident residing in the Baltimore area, originally from the Darfur region of Sudan. Mr. Abdalla filed I-730 petitions for his wife, son, and daughter in November 2016 and has not yet received a final adjudication of his petitions.

10. Defendant Michael R. Pompeo is sued in his official capacity as the Secretary of State. Defendant Pompeo exercises authority over Defendant United States Department of State. Defendant Pompeo, along with Defendant Chad Wolf, is responsible for the processing and adjudication of Plaintiffs' FTJ petitions.

11. Defendant Carl Risch is sued in his official capacity as Assistant Secretary of State for Consular Affairs. Defendant Risch directly oversees all U.S. embassies, including the U.S. Embassy in Khartoum, Sudan, which is responsible for certain stages of the processing and adjudication of Plaintiffs' FTJ petitions.

12. Defendant Chad F. Wolf is sued in his official capacity as the purported Acting Secretary of Homeland Security. Defendant Wolf exercises authority over Defendant United States Department of Homeland Security. Defendant Wolf, along with Defendant Pompeo, is responsible for the processing and adjudication of Plaintiffs' FTJ petitions.

13. Defendant Kenneth T. Cuccinelli is sued in his official capacity as the Senior Official Performing the Duties of the Director of U.S. Citizenship and Immigration Services ("USCIS"), a component agency of the Department of Homeland Security. Defendant Cuccinelli directly oversees USCIS's operations, which includes processing and adjudication of Plaintiffs' FTJ petitions.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question) and 28 U.S.C. § 1361 (Mandamus Act). This Court has additional remedial authority under 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act)

15. Venue is proper in the District of Maryland under 28 U.S.C. § 1391(e)(1) and in this division under Local Rule 501.4.b. Plaintiffs reside in the Northern Division of this District. Each Defendant is an agency of the United States or an officer of the United States sued in his official capacity. No real property is involved in this action.

FACTUAL BACKGROUND

The Follow-to-Join Program

16. Congress enacted the follow-to-join statute as part of the Refugee Act of 1980. *See* Pub. L. No. 96-212, 94 Stat. 102, 103 (1980).

17. Although the decision of whether to admit a particular individual as a refugee is typically discretionary, the follow-to-join process is unique. The follow-to-join statute creates a non-discretionary entitlement to admission for spouses and unmarried children of refugees who have met the eligibility requirements and who are not subject to any applicable inadmissibility grounds. *See* 8 U.S.C. § 1157(c)(2)(A) (“A spouse or child . . . of any refugee . . . *shall . . . be entitled to the same admission status as such refugee if . . . following to join such refugee*); *see also* 8 C.F.R. § 207.7.

18. The FTJ statute reflects Congress’ considered judgement that family reunification is an important goal of U.S. refugee law.

The Follow-to-Join Application Process

19. The FTJ application process consists of two stages: domestic and international processing.

20. In the domestic processing stage, the refugee in the United States submits a separate Form I-730 (“Refugee/Asylee Relative Petition”) to USCIS for each eligible family member. The refugee petitioner must demonstrate that (1) she is a refugee or has adjusted from refugee status to become a legal permanent resident, (2) the proposed beneficiary is an eligible spouse or child, and (3) that the petition was filed within two years of the petitioner’s admission to the United States as a refugee. *See* 8 C.F.R. § 207.7(d), (e).

21. If USCIS determines that the petition is complete, timely, and that the petitioner and beneficiary appear to be eligible for this immigration benefit, USCIS approves the I-730 petition pending an admissibility determination of the petition’s beneficiary.

22. USCIS then sends the approved petition to the National Visa Center (“NVC”), which is within the State Department, for the second stage of processing.

23. In the international processing stage, NVC forwards the petition overseas for further processing.

24. DHS is responsible for final adjudication of FTJ petitions pursuant to 8 U.S.C. § 1157(c). In some instances, however, DHS has delegated this authority to the State Department.

25. The petition is either forwarded to a USCIS International Office or a U.S. Embassy (together “overseas post”), depending on the geographic location of the petition’s beneficiary.

26. During this stage, the overseas post confirms that the beneficiary of the approved petition is eligible to “follow to join” his or her spouse or parent and be admitted to the United States as a refugee.

27. To facilitate these determinations, the overseas post conducts an interview of the beneficiary.

28. The beneficiary’s biometric fingerprints are typically collected at the interview.

29. Before final approval, a beneficiary must complete a medical examination and clear security vetting and background checks.

30. With limited exceptions, a medical exam is valid for no more than 6 months from the examination date and must be repeated if it expires before entry to the United States.

31. Also, before final approval and travel, an FTJ beneficiary must receive a “sponsorship assurance,” which matches the beneficiary with one of nine U.S.-based voluntary resettlement agencies that contract with the State Department to assist refugees during their initial resettlement in the United States.

32. After a beneficiary receives a final approval, the U.S. Embassy will issue a “Travel Packet” and a Boarding Foil, valid for 180 days, for the beneficiary’s passport.

33. The International Organization for Migration (“IOM”) assists all approved FTJ beneficiaries in arranging for their departure to the United States.

34. An approved Form I-730 is valid indefinitely so long as the qualifying relationship between the petitioner and beneficiary continues to exist and the petitioner’s status has not been revoked. 8 C.F.R. § 207.7(f)(3).

Plaintiffs’ Follow-to-Join Petitions

35. During the domestic processing stage, USCIS approved Plaintiffs’ petitions and sent them to NVC.

36. Then, during the international processing stage, NVC forwarded the approved petitions to the U.S. Embassy in Khartoum (“Embassy”), Sudan because USCIS does not have an international office in Sudan where Plaintiffs’ spouses and children live.

37. Mr. Adam’s approved petitions have been pending at the Embassy for more than six years (since approximately April 2014).

38. Mr. Abdalla’s approved petitions have been pending at the Embassy for more than three years (since approximately May 2017).

Plaintiff Ali Adam

39. Plaintiff Ali Adam is a refugee from Darfur, Sudan, who was forced to flee his home and leave his then-pregnant wife because of Sudan’s civil war. Mr. Adam sought to bring his family to join him in the United States almost immediately after he arrived in the Baltimore area. He has waited more than six years for the Defendants to decide his petition for reunification with his wife and now ten-year-old son.

40. When Mr. Adam first fled in or around May 2010, he traveled to Libya and then to Egypt, where he waited approximately two years for his refugee application for resettlement in the United States to be processed. During this time, Mr. Adam's son was born.

41. Mr. Adam arrived in the United States as a refugee in September 2013. He was resettled in the Baltimore area with the assistance of the International Rescue Committee Baltimore ("IRC-Baltimore") office.

42. Within weeks of his arrival, Mr. Adam sought the help of IRC-Baltimore to file I-730 petitions for his wife and son. The petitions were filed in December 2013.

43. In April 2014, USCIS approved Mr. Adam's I-730 petitions. Shortly after, NVC forwarded the petitions to the Embassy for further processing.

44. Mr. Adam did not hear anything from the Embassy for several months despite repeated attempts to contact the Embassy for an update. Mr. Adam also enlisted the help of Senator Barbara Mikulski's office to obtain more information about why his family's case was not moving forward, but those efforts were not fruitful.

45. In January 2016, the Embassy requested DNA testing to confirm Mr. Adam and his wife's biological relationship with their son. They promptly complied and the testing confirmed the relationship.

46. More than two years after the petitions received an initial approval, the Embassy finally interviewed Mr. Adam's wife in early 2016. After, the Embassy instructed the family to submit their passports.

47. Because Mr. Adam and his family believed his wife and son's departure for the United States to be near at hand—and because travel from Darfur to Khartoum is dangerous,

costly and difficult—his wife and son moved to Khartoum to be closer to the Embassy for any necessary in-person appointments.

48. The move to Khartoum has brought additional hardship on Mr. Adam's family. He worries daily about his family's safety because it is very difficult to be a single mother and child living in Khartoum, a dangerous city with regular protests and violence. Khartoum is also experiencing extreme inflation and a high cost of living. It has been financially straining and difficult for Mr. Adam to continue to send money to his wife and son, though without it they would be alone in a foreign city, without support or any means to provide for themselves.

49. After hearing nothing from the Embassy for several months, Mr. Adam was informed that his wife and son were approved for refugee status in the United States. Mr. Adam was overjoyed and believed that his long-awaited reunion with his family was imminent. Processing in his family's case appeared to be nearing completion—the family underwent medical exams and received a sponsorship assurance, typically the final steps before travel is arranged.

50. However, for reasons Mr. Adam has never understood, travel for his family was never booked. Soon their medical exams expired (and they have since re-done the medical exam at least one time), the sponsorship assurance expired, and to this day—now nearly four years later—the Embassy still holds his family's passports.

51. Throughout the more than six years since USCIS approved Mr. Adam's petitions, he has repeatedly sought information about the status of his family's case. In that time, he has sent at least thirteen inquiries that have either not received a response or received a boilerplate response indicating that the case is still undergoing administrative processing. Defendants have not provided any other reason for the delay.

52. The distance separating Mr. Adam from his family grows more acute with each passing month. They manage to speak on the phone periodically; however, it is prohibitively expensive, and the connection is often too poor for them to have a conversation. In all this time, Mr. Adam's son, who is now ten years old, has had little more than semi-regular phone calls with his father to develop a relationship.

53. Mr. Adam feels as though a piece of himself is missing and he has been unable to fully start his new life here without his wife and son by his side. He also worries about his son who is growing up without his father in his life. Mr. Adam longs for the day that his family can finally be reunited and safe in the United States.

54. The delay in adjudication of Mr. Adam's petitions has been caused solely by Defendants' conduct. Mr. Adam and his family have responded promptly to any requests made by Defendants to provide additional information or complete a necessary processing step.

Plaintiff Abdel Rahman Abdalla

55. Plaintiff Abdel Rahman Abdalla grew up in a small village in Darfur, Sudan, where he and his wife lived for the first two years of their marriage. Mr. Abdalla describes this time as the best years of his life because he and his wife had a close bond and spent all their time together. Now it has been more than a decade since they have been together; and although he filed petitions to bring his wife and children to the United States nearly four years ago, Mr. Abdalla's petitions remain pending. Mr. Abdalla has all but lost hope that his family will ever be reunited and struggles daily because of an eyesight disability that makes living here without his family even more painful and difficult.

56. Although they lived together during the first years of their marriage, Mr. Abdalla's wife returned to her home village in 2004 to give birth to their first child, as was the

custom. During this period of time, civil unrest in Sudan was increasing and travel throughout the country was dangerous, especially for young Darfuri men like Mr. Abdalla who were targeted and detained by the government and the Janjaweed, an armed militia group.

57. As a result, it was very difficult for either Mr. Abdalla or his wife to travel and be reunified after his son was born. After about a year of waiting, they decided to try and meet in the middle in a city that they believed would be safe. They spent a short time together there and Mr. Abdalla finally met his son; however, soon it became dangerous and they had to depart, each back to their home villages.

58. Soon after, Mr. Abdalla learned that his wife was again pregnant. This time, she gave birth to their daughter, born in June 2006. Civil war was still raging across the country and it was too dangerous for Mr. Abdalla to try and leave to meet his family.

59. Instead, Mr. Abdalla's mother left their home to try and accompany his wife and children back to his village. But Mr. Abdalla's mother was killed during the journey and she never made it to Mr. Abdalla's family. Alone with their children, Mr. Abdalla's wife fled to a refugee camp that was controlled by the Sudanese army.

60. Upon hearing about his mother's murder and his family's situation, Mr. Abdalla decided to make the dangerous journey to see them at the refugee camp. There, he met his approximately seven-month-old daughter for the first time. This was the last time he saw his family. Mr. Abdalla could not take them from the refugee camp and had to flee for his own safety.

61. Mr. Abdalla fled from Sudan to Syria and then to Lebanon, where he sought refugee status and resettlement to the United States. During this time, communication between Mr. Abdalla and his family was very limited. Mr. Abdalla worried constantly about the safety of

his family as stories of people dying because of the conflict in Sudan reached Sudanese refugees in Lebanon on an almost daily basis.

62. While waiting in Lebanon for his refugee application to be decided, Mr. Abdalla worked as a dish washer and managed to save enough money to get his family out of the dangerous refugee camp, first to Khartoum, and then to Eastern Sudan. Now, Mr. Abdalla's family lives near his parents and brother.

63. In June 2016, Mr. Abdalla arrived in Maryland as a refugee and within weeks of his arrival, he worked with a local resettlement agency to complete the I-730 paperwork to petition for his family to be reunited with him in the United States.

64. Mr. Abdalla submitted I-730 petitions for his wife, son, and daughter in November 2016.

65. In April 2017, USCIS approved his petitions.

66. In correspondence dated May 15, 2017, the NVC informed Mr. Abdalla that his petitions had been granted expedited treatment and that it was transferring the approved petitions to the U.S. Embassy in Khartoum for further processing.

67. More than a year later, in approximately November 2018, the Embassy conducted an interview of Mr. Abdalla's family. At the direction of the Embassy, they also submitted their passports.

68. Shortly after the interview, the Embassy contacted Mr. Abdalla's wife to inform her that their daughter's case was approved and that she could travel to the United States within a week, with another family that was leaving Sudan for Nebraska. Because Mr. Abdalla's family believed their own departure was imminent and because they did not feel comfortable having their young daughter travel alone to a foreign country with strangers, they declined.

69. Throughout the more than three years since USCIS approved Mr. Abdalla's petitions, he has repeatedly sought information about the status of his family's case. In that time, he has sent at least six inquiries that have either not received a response or received a boilerplate response indicating that the case is still undergoing administrative processing. Defendants have not provided any other reason for the delay.

70. Without his family by his side, Mr. Abdalla is lonely and has been unable to fully settle into his new life in the United States. In addition, Mr. Abdalla suffers from a vision-related disability that has exacerbated the difficulties of his prolonged separation from his family. Mr. Abdalla's vision problems require surgery which he felt unable to undergo without his family here to help him with the recovery period. The required surgery is also expensive and although Mr. Abdalla works two jobs (totaling more than 70 hours per week), he has been unable to save sufficient money while also trying to send whatever money he can manage to his family in Sudan.

71. Electricity where Mr. Abdalla's family lives is unreliable, and they are often without phone reception or internet. As a result, Mr. Abdalla is usually only able to speak with his family periodically. If he is unable to reach them, he worries that something has happened to them. The family has also never been able to see each other by video because the network connection cannot support it. Mr. Abdalla longs to see his wife's face and see how his children have grown and matured in the years that they have been separated.

72. Although they would consider traveling to meet in a third country to finally see each other—even if only for a brief visit—Mr. Abdalla's family cannot leave Sudan because the Embassy still holds their passports.

73. Mr. Abdalla also worries because his children do not have access to a good education in Sudan, and each day that their arrival in the United States is delayed, the further behind they fall in their studies. He worries that this will limit their opportunities in the future. Mr. Abdalla dreams that someday his children can go to university and become educated because he did not have that opportunity.

74. Mr. Abdalla hopes that his family can be reunited in Maryland soon, so he can feel like his life is no longer on hold and that his families' lives are no longer in danger.

75. The delay in adjudication of Mr. Abdalla's petitions has been caused solely by Defendants' conduct. Mr. Abdalla and his family have responded promptly to any requests made by Defendants to provide additional information or complete a necessary processing step.

FIRST CAUSE OF ACTION
Administrative Procedure Act

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

77. Pursuant to the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1157(c)(2), and the regulations governing FTJ petitions, 8 C.F.R. § 207.7, Defendants have a nondiscretionary duty to adjudicate Plaintiffs' FTJ petitions.

78. The APA obligates Defendants to take these nondiscretionary actions within a "reasonable time," 5 U.S.C. § 555(b), and directs this Court to compel Defendants to take these actions when they are "unreasonably delayed," *id.* § 706(1).

79. Defendants have failed to adjudicate Plaintiffs' FTJ petitions within a reasonable time, which caused and continues to cause irreparable harm to Plaintiffs.

80. Plaintiffs are entitled to relief pursuant to 5 U.S.C. § 706(1) compelling Defendants to adjudicate their FTJ petitions.

SECOND CAUSE OF ACTION
Mandamus

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

82. The Mandamus Act, 28 U.S.C. § 1361, vests this Court with original jurisdiction over any action in the nature of mandamus to compel an officer or employee of the United States, or any agency thereof, to perform a nondiscretionary duty owed to Plaintiffs.

83. The All Writs Act, 28 U.S.C. § 1651, authorizes this Court to issue all writs “necessary or appropriate” in aid of its jurisdiction.

84. Pursuant to the INA, 8 U.S.C. § 1157(c)(2), and the regulations governing FTJ petitions, 8 C.F.R. § 207.7, Defendants have a nondiscretionary duty to adjudicate Plaintiffs’ FTJ petitions.

85. The APA obligates Defendants to complete these nondiscretionary actions within a “reasonable time.” 5 U.S.C. § 555(b).

86. Defendants have failed to adjudicate Plaintiffs’ FTJ petitions within a reasonable time.

87. Plaintiffs have brought this action because they have no other means to compel Defendants to perform the nondiscretionary duty that Defendants owe Plaintiffs.

88. Plaintiffs are entitled to a writ of mandamus pursuant to 28 U.S.C. §§ 1361 and 1651 and this Court’s inherent equitable authority compelling Defendants to adjudicate their FTJ petitions.

THIRD CAUSE OF ACTION
Fifth Amendment – Due Process

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

90. Plaintiffs, a U.S. citizen and legal permanent resident, have a statutorily created entitlement to adjudication of their FTJ petitions. Defendants' delay in adjudicating Plaintiffs' petitions constitutes a deprivation of Plaintiffs' protected interest without due process.

91. Defendants' delay is egregious and it is without any rational justification.

92. Defendants' conduct violates Plaintiffs' substantive and procedural due process rights protected by the Fifth Amendment of the Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, that Defendants' delay in the adjudication of Plaintiffs' FTJ petitions is unreasonable under the APA, 5 U.S.C. § 706(1), and a violation of Plaintiffs' Fifth Amendment Due Process rights.

2. Issue an order that requires Defendants to promptly adjudicate Plaintiffs' FTJ petitions;

3. Issue a writ of mandamus, pursuant to 28 U.S.C. §§ 1361 and 1651, directing Defendants to adjudicate Plaintiffs' FTJ petitions;

4. Retain jurisdiction over this action and any attendant proceedings until Defendants have in fact adjudicated Plaintiffs' FTJ applications, and have communicated the results of such adjudication to Plaintiffs and the Court;

5. Award Plaintiffs' attorneys' fees and costs pursuant to 28 U.S.C. § 2412; and

6. Award such other and further relief that the Court may deem just and proper.

Dated: October 22, 2020

Respectfully submitted,

Melissa S. Keaney*
International Refugee Assistance Project
PO Box 2291
Fair Oaks, CA
mkeaney@refugeerights.org
(916) 546-6125

/s/ Justin B. Cox
Justin B. Cox (Bar No. 17550)
International Refugee Assistance Project
PO Box 170208
Atlanta, GA 30317
jcox@refugeerights.org
(516) 701-4233

Kathryn Meyer*
Amira Mikhail*
International Refugee Assistance Project
One Battery Park Plaza 4th Floor
New York, NY 10004
kmeyer@refugeerights.org
(516) 838-1975
amikhail@refugeerights.org
(516) 416-0138

* Motion for *Pro Hac Vice* forthcoming