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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

PARTO KAVOOSIAN; N.F.
(minor); BEHNAZ KAVOOSIAN;
KIYOU MARS KAVOOSIAN;
MANSOUR HARDANIAN;
ELAHEH ALIKHAN ZADEH;
MASOUD ABDI; SHIMA
MONTAKHABI; FATEMEH
KARIMI ALAMDARI;
S.A.(1)(minor); S.A.(2)(minor);
FARSHAD AMIRKHANI; ARASH
RAFII SERESHKI; BIJAN RAFII
SERESHKI;

Plaintiffs,

v.

MICHAEL R. POMPEO, in his
official capacity as Secretary of State;
JOEL D. NANTAIS, in his official
capacity as Director of Domestic
Operations, Visa Office, Bureau of
Consular Affairs, U.S.
DEPARTMENT OF STATE; ERIN
R. HOFFMAN, DEAN M. KAPLAN,
AND DANIEL E. MICKELSON, in

Case No. 19-cv-01417 JVS (DFMx)

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

1 their official capacity as members of
2 U.S. DEPARTMENT OF STATE's
3 "PP 9645 Brain Trust"; U.S.
4 DEPARTMENT OF STATE; CHAD
5 WOLF, Acting Secretary of the
6 Department of Homeland Security;
7 U.S. DEPARTMENT OF
8 HOMELAND SECURITY; and
9 DOES #3-#10, in their official
10 capacity as consular and other
11 officials employed by the U.S.
12 DEPARTMENT OF STATE,
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Defendants.

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INTRODUCTION

1. This case challenges the U.S. Government Defendants’ withholding of case-by-case adjudications of waivers of Presidential Proclamation 9645, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats. 82 Fed. Reg. 45161 (“PP 9645”). This case also challenges the patterns and policies causing the withholdings, including Defendants’ usurpation of the authority and discretion to approve case-by-case waivers from consular officers, and the designation of that authority to consular managers, visa chiefs, consular section chiefs, consular management, the Visa Office, and even non-Department of State (“DOS”) employees, such as Quality Support, Inc. contractors, which is unlawful under PP 9645.
2. Plaintiffs in this action are U.S. citizens and lawful permanent residents (“Petitioner Plaintiffs”), other affected family members, and their Iranian national immediate relatives who are visa applicants (“Beneficiary Plaintiffs”), who through Defendants’ unreasonable delays, have been denied timely adjudication of their case-by-case PP 9645 waivers. These unreasonable delays impede the Beneficiary Plaintiffs’ ability to immigrate to the United States and

1 have caused injuries to Petitioner Plaintiffs, Beneficiary Plaintiffs, and to the
2 United States.

3
4 3. Individually, Plaintiffs fulfilled all requirements to obtain family-based
5 immigrant visas, before their applications were eventually refused pursuant to
6 PP 9645 between 15 and 25 months ago (since PP 9645 was implemented).
7
8 Further, as Plaintiffs had already experienced unbearable burdens like travel,
9 costs, and other administrative delays – sometimes over a period of years -
10 before finally getting their visas denied under PP 9645, Plaintiffs’ injuries
11 caused by Defendants’ delays in adjudicating their waivers are even more
12 egregious and heartbreaking.

13
14 4. PP 9645 currently prohibits the entry of all immigrants and certain categories
15 of non-immigrants for nationals of Iran, Libya, Somalia, Syria, and Yemen,
16 and provides for case-by-case waivers from the ban for individuals who can
17 “demonstrate” that denial of entry “would cause undue hardship, . . . would not
18 pose a threat to national security, . . . and would be in the national interest.”
19 Presidential Proclamation No. 9645, 82 Fed. Reg. 45161 (Sept. 27, 2017), §
20 3(c).
21

22
23
24 5. Sec. 3(c) of PP 9645 provides that “a consular officer, or the Commissioner,
25 United States Customs and Border Protection (CBP), or the Commissioner’s
26 designee, as appropriate, may, *in their discretion*, grant waivers on a case-by-
27 case basis...” (emphasis added).
28

- 1 6. Plaintiffs suffer a range of ongoing harms because of Defendants' policies,
2 decisions and actions to unreasonably delay case-by-case waiver adjudications,
3 which includes extending an arbitrary and capricious authority and discretion
4 to consular managers, visa chiefs, consular section chiefs, consular
5 management, the Visa Office, and even non-DOS employees, such as Quality
6 Support, Inc. contractors.
7
- 9 7. PP 9645 itself requires the Secretary of State and the Secretary of Homeland
10 Security to adopt guidance establishing when waivers may be appropriate for
11 foreign nationals who would otherwise be banned.
12
- 13 8. Defendants, through a team called the "PP 9645 Brain Trust," have secretly
14 promulgated guidance on the waiver adjudication scheme that is inconsistent
15 with PP 9645 itself. To wit, Defendants have disclosed a requirement for
16 consular manager concurrence with consular officers on case-by-case waiver
17 adjudications. Further, Defendants have issued guidance that extends authority
18 and discretion over case-by-case waiver adjudications to visa chiefs, and
19 consular section chiefs. Finally, Defendants have represented that for a
20 consular officer to approve a waiver and issue a visa, consultation with
21 consular management and the Visa Office is required.
22
- 25 9. Collectively, this means Defendants, through the PP 9645 Brain Trust, have
26 unlawfully extended the authority and discretion - that PP 9645 granted only
27 with individual consular officers - to consular managers, visa chiefs, consular
28

- 1 section chiefs, consular management, the Visa Office, and even non-DOS
2 employees, such as Quality Support, Inc. contractors. Requirements contrary to
3 PP 9645, such as these that extend authority and discretion over case-by-case
4 waiver adjudications, demonstrate Defendants' pattern and policy of
5 unreasonable delay in dealing with waiver adjudication, as well as actions that
6 are arbitrary and capricious. Consular officers are "charged with adjudicating
7 visas under rules prescribed by law..." *Allen v. Milas*, 896 F.3d 1094, 1107
8 (9th Cir. 2018). The PP 9645 Brain Trust's rules designating authority and
9 discretion over case-by-case waiver adjudication to people and departments
10 other than individual consular officers, are rules not prescribed by law.
11
12
13
14 10. Requirements contrary to PP 9645, such as these that extend authority and
15 discretion over case-by-case waiver adjudications, demonstrate Defendants'
16 pattern and policy of unreasonable delay in dealing with waiver adjudication,
17 as well as actions that are arbitrary and capricious.
18
19
20 11. Defendants have unlawfully crafted a waiver adjudication scheme that, in its
21 application, leads to the ongoing untimely and unfair processing of case-by-
22 case waivers for Beneficiary Plaintiffs, as well as the case-by-case waivers of
23 all visa applicants similarly situated, and visa applicants who have been denied
24 visas as a result of the unlawful waiver adjudication scheme.
25
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1 12. As a result of Defendants’ unreasonable administrative delays, Beneficiary
2 Plaintiffs have waited for travel ban waivers an average of **676 days** since their
3 applications were refused pursuant to PP 9645.
4

5 13. Those days have been filled with unbearable hardships and a constant state of
6 distress that, absent intervention, will last indefinitely.
7

8
9 JURISDICTION AND VENUE

10 14. This Court has jurisdiction under 5 U.S.C. § 702, 28 U.S.C. §§ 1331, 1361,
11 and 42 U.S.C. § 1983.
12

13 15. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil
14 Procedure. The Court has further remedial authority under the Declaratory
15 Judgment Act, 28 U.S.C. § 2201 et seq., and the Administrative Procedure Act
16 (“APA”), 5 U.S.C. § 500 et seq.
17

18 16. Venue properly lies within the Central District of California pursuant to 28
19 U.S.C. § 1391(e)(1)(C) because two Plaintiffs reside in this district, and
20 Defendants are officers and employees of the United States sued in their
21 official capacities.
22

23 17. Since at least one Plaintiff resides in the Central District of California, venue is
24 proper before this court for all Plaintiffs. *Mosleh v. Pompeo*, No. 1:19-cv-
25 00656-LJO-BAM, 2019 U.S. Dist. LEXIS 102765, at *5 (E.D. Cal. June 19,
26 2019); *Also see Californians for Renewable Energy v. United States Env’tl.*
27
28

1 *Prot. Agency*, No. C 15-3292 SBA, 2018 WL 1586211, at *5-6 (N.D. Cal. Mar.
 2 30, 2018)(ruling only one Plaintiff must reside within the forum district for
 3 venue purposes, and collecting cases holding the same). Plaintiffs PARTO
 4 KAVOOSIAN, and N.F. reside in Irvine, California.

6 18. Because Defendants administer a pattern and policy of delay in dealing with all
 7 waiver adjudications, including the waiver adjudications for all Beneficiary
 8 Plaintiffs, the connection amongst Plaintiffs is sufficient to satisfy permissive
 9 joinder requirements. *Coughlin v. Rogers*, 130 F.3d, 1348 (9th Cir.1997).
 10
 11

12 PLAINTIFFS

13 **Parto Kavoosian Family**

14 19. Petitioner Plaintiff **PARTO KAVOOSIAN** and Plaintiff **N.F.** are U.S.
 15 Citizens and the daughter and granddaughter of Beneficiary Plaintiffs
 16 **BEHNAZ KAVOOSIAN** and **KIYOUMARS KAVOOSIAN**.
 17

18 20. Petitioner Plaintiff PARTO KAVOOSIAN filed a *Form I-130, Petition for*
 19 *Alien Relative* in 2017 for Beneficiary Plaintiffs BEHNAZ KAVOOSIAN and
 20 KIYOUMARS KAVOOSIAN and the NVC created a case for the petitions on
 21 June 16, 2017.
 22

23 21. PARTO KAVOOSIAN and N.F. reside in Irvine, California, while BEHNAZ
 24 KAVOOSIAN and KIYOUMARS KAVOOSIAN reside in Tehran, Iran.
 25
 26
 27
 28

1 22. BEHNAZ KAVOOSIAN and KIYOUMARS KAVOOSIAN attended their
2 consular interview on January 18, 2018, at which time they were notified that
3 because of PP 9645, their visa applications and waiver had to go through
4 administrative processing. Their applications have remained in that status ever
5 since.
6

7
8 23. In November 2017, PARTO KAVOOSIAN gave birth to her baby girl, N.F.,
9 without her mother to help her in the delivery room. She was terrified, and all
10 she could do was wish for her mother's presence. The delivery of the baby girl
11 was supposed to be one of the best days of her life, but instead, it was one of
12 the worst. PARTO KAVOOSIAN is desperate to be reunited with her parents.
13

14 24. N.F. is growing up quickly and her grandparents are being forced to miss it.
15

16 25. In addition to working fulltime, caring for a two-year-old at home, and
17 worrying about her parents, PARTO KAVOOSIAN is currently pregnant with
18 her second child.
19

20 26. PARTO KAVOOSIAN's obstetrician has warned that the increased emotional
21 stress caused by separation from her parents "could adversely affect the
22 patient's health as well as the health of her unborn child," and that
23 "[r]eunification with her parents would greatly help her both emotionally and
24 physically." Her obstetrician also notes "[s]he does not have any other family
25 living in close proximity to assist her."
26
27
28

1 27. As the three-year anniversary for filing her parents' visa applications
2 approaches, PARTO KAVOOSIAN cannot help but to realize how tragic it is
3 that the family will never get this time back.
4

5 28. Considerations of BEHNAZ KAVOOSIAN and KIYOUMARS

6 KAVOOSIAN's waivers have been pending for 720 days, since January 9,
7 2018.
8
9

10 **Mansour Hardanian Family**
11

12 29. Petitioner Plaintiff **MANSOUR HARDANIAN** is a U.S. Citizen and the wife
13 of Beneficiary Plaintiff **ELAHEH ALIKHAN ZADEH**.
14

15 30. Petitioner Plaintiff MANSOUR HARDANIAN filed a *Form I-130, Petition for*
16 *Alien Relative* for Beneficiary Plaintiff ELAHEH ALIKHAN ZADEH, and the
17 NVC created a case for the petition on March 21, 2018.
18

19 31. MANSOUR HARDANIAN resides in Boca Raton, FL, while ELAHEH
20 ALIKHAN ZADEH resides in Tehran, Iran.

21 32. MANSOUR HARDANIAN met ELAHEH ALIKHAN ZADEH in 2012
22 through friends back in Iran. They started talking and they fell in love.
23

24 33. MANSOUR HARDANIAN married ELAHEH ALIKHAN ZADEH on March
25 22, 2013, in Ankara, Turkey in a religious ceremony. They were issued a
26 religious marriage certificate that was unlawfully rejected by the U.S. Embassy
27 during ELAHEH ALIKHAN ZADEH's first consular interview on February
28

1 23, 2017. They subsequently obtained a government-issued marriage certificate
2 and started the process all over again from scratch. Thus, they had already been
3 waiting since March of 2013 for an opportunity to reunite and live together as a
4 family. Thus, MANSOUR HARDANIAN has been maintaining two separate
5 households since March of 2013.
6

7
8 34. MANSOUR HARDANIAN's neurologist has warned him that he is now at a
9 higher risk for stroke and that he must eliminate the stress from his life, but he
10 does not know how that is possible. He is worried sick for his wife. His
11 inability to do anything to expedite the process causes him to be frustrated,
12 which causes him to be angry and thus, his blood pressure rises, and that
13 concerns his neurologist and his family doctor as well. Currently, he is taking
14 blood pressure medicine on a daily basis. MANSOUR HARDANIAN's
15 neurologist has also wrote a letter stating that having his wife with him, and
16 avoiding stress, would greatly benefit his health.
17
18
19

20 35. Additionally, MANSOUR HARDANIAN suffers from diabetes, so despite his
21 stress, he has to watch everything he eats.
22

23 36. For important occasions in their marriage, MANSOUR HARDANIAN buys
24 flowers at Whole Foods, and takes them home where he takes a photo of them
25 and sends the photo to his wife.
26
27
28

1 37. In December, MANSOUR HARDANIAN was able to visit ELAHEH
2 ALIKHAN ZADEH for the first time in nine months in Istanbul, but the trip
3 was cut short because her grandmother unexpectedly passed away.
4

5 38. MANSOUR HARDANIAN is extremely depressed, and it is tearing him apart.
6 Things he used to do in the past, like exercise and cooking, he does not do
7 those things anymore because he no longer has joy in his life.
8

9 39. Consideration of ELAHEH ALIKHAN ZADEH's waiver has been pending for
10 468 days, since September 17, 2018.
11

12 **Masoud Abdi Family**

13 40. Petitioner Plaintiff **MASOUD ABDI** is a LPR and the husband of Beneficiary
14 Plaintiff **SHIMA MONTAKHABI**.
15

16 41. Petitioner Plaintiff MASOUD ABDI filed a *Form I-130, Petition for Alien*
17 *Relative* for Beneficiary Plaintiff SHIMA MONTAKHABI, and the NVC
18 created a case for the petition on November 1, 2016.
19

20 42. MASOUD ABDI resides in Champagne, IL, while SHIMA MONTAKHABI
21 resides in Tehran, Iran.
22

23 43. MASOUD ABDI met SHIMA MONTAKHABI in February 2012 while
24 visiting his family in Iran, as he returned there periodically to care for his
25 mother's chronic health condition. They had much in common, including that
26 they were both highly educated. SHIMA MONTAKHABI is famous in the
27 pharmaceutical field in Iran and has worked very hard in her career. MASOUD
28

1 ABDI immediately realized that she was a very good person, and he fell in love
2 with her. They married five months later in August 2012.

3
4 44. MASOUD ABDI's separation from his wife has caused him great hardship.

5 SHIMA MONTAKHABI is almost 43 years old and desperately wants to be a
6 mother, but her time for this is very limited. Every day, when they talk to each
7 other, she tells him how badly she wants to be a mother. It breaks MASOUD
8 ABDI's heart that, due the travel ban, he cannot give her this wish.

9
10 45. Consideration of SHIMA MONTAKHABI's waiver has been pending for 642
11 days, since March 29, 2018.

12
13 **Fatemeh Karimi Alamdari Family**

14 46. Petitioner Plaintiff **FATEMEH KARIMI ALAMDARI**, is a LPR and the
15 wife of Beneficiary Plaintiff **FARSHAD AMIRKHANI**.

16
17 47. Petitioner Plaintiff FATEMEH KARIMI ALAMDARI filed a *Form I-130*,
18 *Petition for Alien Relative* for Beneficiary Plaintiff FARSHAD AMIRKHANI,
19 and the NVC created a case for the petition on May 8, 2015.

20
21 48. FATEMEH KARIMI ALAMDARI resides in Lexington, Kentucky, with the
22 couple's LPR 14-year-old daughter Plaintiff **S.A.(1)** and LPR 11-year-old son
23 Plaintiff **S.A.(2)**, while FARSHAD AMIRKHANI resides in Tehran, Iran.

24
25 49. FATEMEH KARIMI ALAMDARI has been a LPR since January 2015, after
26 winning the Diversity Visa Lottery. At the time she applied for the lottery, she
27 was married to FARSHAD AMIRKHANI and they had children S.A.(1) and
28

1 S.A.(2). However, when the family attended their interview at the embassy in
2 July 2014, they were told there was a glitch in the system and there was no visa
3 for FARSHAD AMIRKHANI. The family made the difficult decision to come
4 to the U.S., counting on the ability of FATEMEH KARIMI ALAMDARI to
5 petition for her husband once they were here, which she did January 2015.
6

7
8 50.FATEMEH KARIMI ALAMDARI has been raising their two kids in

9 Lexington, Kentucky, without her husband, ever since, and it has been really
10 hard on the family. Her children are always sad. They miss their dad.
11

12 51.In August, S.A.(1) started high school, and S.A.(2) started middle school.

13 These are important milestones that carry with them lot of anxiety, but the only
14 support and comfort their father, FARSHAD AMIRKHANI could offer them
15 was through video chat.
16

17 52.For half of 11-year-old Plaintiff S.A.(2)'s life, and a one-third of Plaintiff

18 S.A.(1)'s life, the children have been separated from their father.
19

20 53.Consideration of FARSHAD AMIRKHANI's waiver has been pending for 753

21 days, since December 8, 2017, the day PP 9645 went into effect. However, that
22 does not tell the whole story because his consular interview was more than ten
23 months before that, on Jan. 24, 2017, and his original consular interview, for
24 which there was a glitch preventing him from receiving a visa, was in July
25 2014.
26

27
28 **Arash Rafii Sereshki Family**

1 54. Petitioner Plaintiff **ARASH RAFII SERESHKI** is a U.S. Citizen and the son
2 of Beneficiary Plaintiff **BIJAN RAFII SERESHKI**, who is 73 years old.

3
4 55. Petitioner Plaintiff **ARASH RAFII SERESHKI** filed a *Form I-130, Petition*
5 *for Alien Relative* for his father Beneficiary Plaintiff **BIJAN RAFII SERESHKI**
6 and his mother, Ghazaleh Sharifi, and the NVC created cases for their petitions
7 on April 22, 2016.

8
9 56. When the couple attended their consular interview on February 23, 2017,
10 Ghazaleh Sharifi was issued a visa but her husband, **BIJAN RAFII**
11 **SERESHKI**, was not.

12
13 57. **ARASH RAFII SERESHKI** resides in Carmel, California, while **BIJAN RAFII**
14 **SERESHKI** resides in Iran.

15
16 58. **BIJAN RAFII SERESHKI** is lonely and depressed, as his entire family,
17 including his wife, lives in the U.S. He is totally alone. Even his nephews are
18 in the U.S. He is the last member of his family who remains in Iran.

19
20 59. It is difficult for **BIJAN RAFII SERESHKI** to miss being a part of his two
21 grandkids' lives.

22
23 60. **ARASH RAFII SERESHKI** recognizes that the family can never get this time
24 that they have been separated back, and that makes him sad.

25
26 61. Consideration of **BIJAN RAFII SERESHKI**'s waiver has been pending for 753
27 days, since December 8, 2017, the day PP 9645 went into effect. However, that
28

1 does not tell the whole story because his consular interview was more than nine
2 months before that, on February 23, 2017.
3

4
5 DEFENDANTS

6 62. Defendant **MICHAEL R. POMPEO** (“POMPEO”) is the Secretary of State.

7
8 Defendant POMPEO is responsible for implementing and administering PP
9 9645 in the U.S. DOS, including the waiver process created by Section 3(c) of
10 PP 9645. POMPEO is sued in his official capacity. By overseeing unreasonable
11 systematic delays, POMPEO is not applying the system of case-by-case
12 waivers that PP 9645 contains, calling the lawfulness of Proclamation itself
13 into question.
14

15
16 63. Defendant **JOEL D. NANTAIS** (“NANTAIS”) was a Passport and Visa
17 Examiner with DOS, but he is now employed as the Director of Domestic
18 Operations, Visa Office, Bureau of Consular Affairs, DOS. On September 9,
19 2019, NANTAIS signed a declaration under penalty of perjury revealing that
20 consular officers do not have the discretion to approve case-by-case waivers of
21 PP 9645 because of what he called a “safety feature” in the software. See
22 Exhibit B. NANTAIS is sued in his official capacity.
23
24

25 64. Defendants **ERIN R. HOFFMAN, DEAN M. KAPLAN, AND DANIEL E.**
26 **MICKELSON** are DOS employees who are members of what Defendants call
27 the “PP 9645 Brain Trust.” They are the architects of the waiver adjudication
28

1 scheme's implementation in a manner that is both responsible for unreasonable
2 administrative delays, and inconsistent with PP 9645's waiver provision. They
3 are sued in their official capacities.
4

5 65. Defendant **DOS** is a federal cabinet agency responsible for implementing and
6 administering PP 9645, including the waiver process created by Section 3(c) of
7 PP 9645, and the family-based immigrant visa program, including but not
8 limited to holding visa interviews; conducting administrative processing of
9 applications for family-based immigrant visas; making final decisions on the
10 issuance of family-based immigrant visas; issuing family-based immigrant
11 visas; and receiving, adjudicating, and making final decisions regarding
12 applications for waivers under Section 3(c) of PP 9645. DOS is a Department
13 of the Executive Branch of the United States Government and is an agency
14 within the meaning of 5 U.S.C. § 552(f). DOS is not applying the system of
15 case-by-case waivers that PP 9645 mandates, calling the lawfulness of
16 Proclamation itself into question. One component of DOS is the National Visa
17 Center ("NVC"), which arranges for interviews of Beneficiary Plaintiffs on
18 their visa applications.
19
20
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22
23

24 66. Defendant **CHAD WOLF** ("WOLF") is the Acting Secretary of Homeland
25 Security and is sued in his official capacity. WOLF is responsible for
26 administration of the INA by the U.S. Department of Homeland Security
27
28

1 (“DHS”) and for overseeing enforcement and implementation of PP 9645 by
2 all DHS staff.
3

4 67. Defendant **DHS** is a cabinet-level department of the U.S. federal government.

5 Its components include U.S. Citizenship and Immigration Services (“USCIS”),
6 CBP, and Immigration and Customs Enforcement (“ICE”). USCIS’s
7 responsibilities include adjudicating requests for immigration benefits for
8 individuals located within the United States. PP 9645 assigns DHS a variety of
9 responsibilities regarding its enforcement.
10

11 68. PP 9645 states that “The Secretary of State and the Secretary of Homeland
12 Security shall coordinate to adopt guidance addressing the circumstances in
13 which waivers may be appropriate for foreign nationals seeking entry as
14 immigrants or nonimmigrants.”
15

16 69. Defendant **DOES 3-10** are the consular and other officials employed by the
17 DOS who are responsible for unreasonable delays in the waiver process created
18 by Section 3(c) of PP 9645, including but not limited to designating consular
19 managers, visa chiefs, consular section chiefs, consular management, and the
20 Visa Office with discretion and authority over the adjudication of waivers.
21 Their identities are not publicly disclosed by the DOS. They are sued in their
22 official capacities.
23
24
25

26 **STATEMENT OF FACTS**
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28

1 70. Issued September 24, 2017, the U.S. Supreme Court upheld the validity of PP
2 9645 in *Trump v. Hawaii* on June 26, 2018, in the context of challenges based
3 upon the Immigration and Nationality Act (“INA”), 66 Stat. 187, as amended,
4 and the Establishment Clause of the First Amendment. The decision that also
5 lifted an injunction against PP 9645’s enforcement.
6

7
8 71. For Iranian nationals, entry as immigrants and nonimmigrants was suspended,
9 “except that entry by such nationals under valid student (F and M) and
10 exchange visitor (J) visas is not suspended, although such individuals should be
11 subject to enhanced screening and vetting requirements.”
12

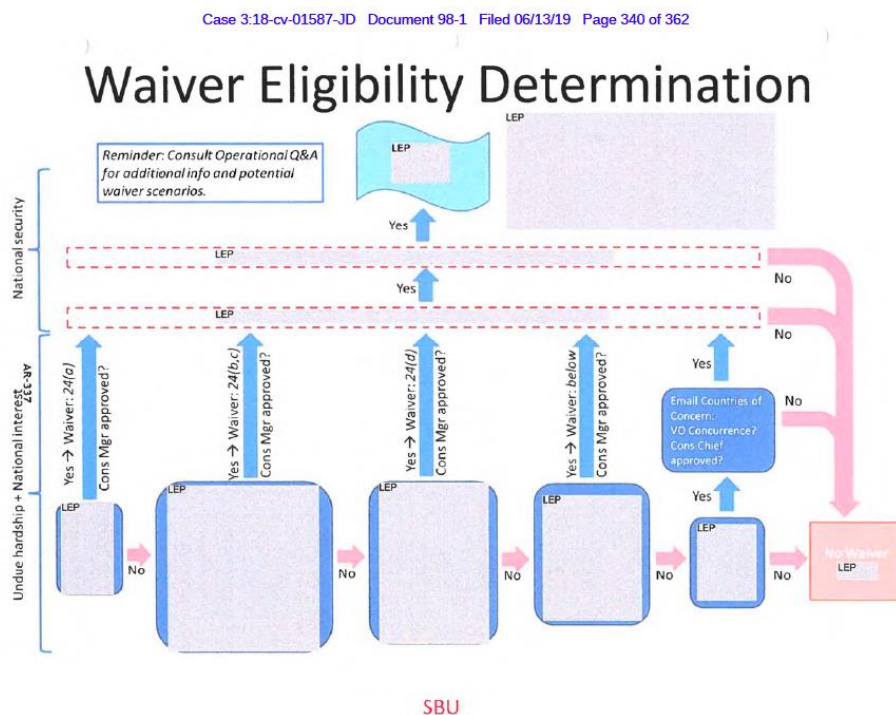
13 72. PP 9645 provided some examples of circumstances when a waiver would be
14 appropriate, including example “(D)” in which all Beneficiary Plaintiffs in this
15 action fit:
16

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

21 73. Defendants have implemented a policy that, if a visa applicant does not fit
22 under one of the waiver examples, but the interviewing consular officer and
23 consular manager believe that the applicant meets the undue hardship and
24 national interest requirements for the waiver for other reasons, the consular
25 officer must email countries-of-concern-inquiries@state.gov, staffed only by
26 the PP 9645 Brain Trust and Quality Support, Inc. contractors, and include the
27
28

facts they believe meet the undue hardship and national interest requirements.

Only if the Visa Office concurs that a waiver may be justified, can the visa applicant receive a waiver of the travel ban. These emails are mostly lost, with consular officers rarely receiving responses from the PP 9645 Brain Trust and Quality Support, Inc. contractors. This policy unlawfully usurps the authority explicitly granted to consular officers in PP 9645 §3(c) and serves to defeat the purpose and outcome of the PP 9645 waiver provision. This policy is well-demonstrated by the blue box that is not redacted in DOS' adjudicator flowchart submitted in the certified administrative record on the PP 9645 waiver provision on June 13, 2019, in litigation in the Northern District of California, *Emami, et al. v. McAleenan, et al.*, Case No. 3:18-cv-01587-JD (N.D. Cal. 2019). See below:



1
2 74. On November 17, 2017, Katherine O. Ray (“Ray”), with Office of Field
3 Operations, Visa Services of Defendant DOS, forwarded an inquiry from Sean
4 Whalen (“WHALEN”) with the Office of Field Operations, Visa Services
5 about PP 9645’s implementation to a group she called “My PP 9645 brain
6 trust.” Members of the PP 9645 brain trust include Defendants ERIN R.
7
8 HOFFMAN, DEAN M. KAPLAN, AND DANIEL E. MICKELSON.
9

10 75. On December 13, 2017, WHALEN with the Office of Field Operations, Visa
11 Services, a division of Defendant DOS, sent an email about PP 9645,
12 announcing they would begin sending answers via countries of concern, adding
13 “I’ll loop back to the brain trust if we need additional guidance/clarification on
14 any of them.”
15
16

17 76. On January 24, 2018, Defendant DOS employee Chloe J. Dybdahl, Attorney
18 Advisor in the Advisory Opinions Division, Office of Legal Affairs of the Visa
19 Office, Bureau of Consular Affairs, responds to an email with the subject line
20 “Iranian PP 9645 waiver case” from Jeremy P. Little, Consular Chief at the US
21 Embassy in Baku, by asking Visa Office employees she cc’d, including
22 WHALEN and the “countries-of-concern” email address, “do you have any
23 template waiver requests that could be useful to post?”
24
25
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27 77. In an April 11, 2018 email, Quality Support, Inc. Syria/Lebanon Visa Analyst
28 Contractor Kunduz Jenkins, informs Visa Office employees, “we’ve sent today

1 refusals under EO 17¹ for the following PP Waiver [Security Advisory
2 Opinions] back to post: [redacted information] Please let us know if you have
3 any questions.” See Exhibit A. Other redacted emails available in the DOS
4 FOIA reading room reveal Quality Support, Inc. contractors Ryan J. Huff,
5 Jenny Chang, and Joe Brown also adjudicating waiver requests.
6

7
8 78. Quality Support, Inc. contractors are not employees of DOS, therefore, they are
9 not consular officers in any context whatsoever.

10 79. Since Defendants designated Quality Support, Inc. contractors to make
11 adjudications of the national security and public safety prong of the waiver
12 adjudications, it is clear consular officers have been usurped of the authority
13 and discretion to make final case-by-case adjudications, powers designated to
14 them not by the State Department, but by President Donald J. Trump in the
15 plain language of PP 9645.
16

17
18 80. Defendants, through a team called the “PP 9645 Brain Trust,” have
19 promulgated guidance on the waiver adjudication scheme that is inconsistent
20 with the PP 9645 itself because it allows for nonconsular officers to make case-
21 by-case waiver adjudications. In addition to the evidence cited above
22 demonstrating that a Quality Support, Inc. contractor refused multiple waivers,
23 in a February 22, 2018 letter from Defendant DOS to Senator Chris Van Hollen
24 (“Van Hollen Letter”), Defendants disclosed a requirement for consular
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¹ “EO 17” is the refusal code for PP 9645 refusals.

1 manager concurrence with consular officers on visa waiver adjudications.
2 Further, Defendant DOS's "Operational Q&As on P.P. 9645," released
3 pursuant to a request through the Freedom of Information Act, also extends
4 authority and discretion over case-by-case waiver adjudications to visa chiefs,
5 and consular section chiefs. Also, in an April 11, 2019 "Department of
6 State/AILA Liaison Committee Meeting," Defendant represented that for a
7 consular officer to approve a waiver and issue an applicant a visa, consultation
8 with consular management and the Visa Office is required. Collectively, this
9 means Defendants have unlawfully extended the authority and discretion that
10 PP 9645 granted only with individual consular officers to consular managers,
11 visa chiefs, consular section chiefs, consular management, the Visa Office, and
12 even non-DOS employees, such as Quality Support, Inc. contractors.

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17 81. On July 8, 2019, Mary Elizabeth Taylor, Assistant Secretary, Bureau of
18 Legislative Affairs, DOS, sent a letter to U.S. Representative Ami Bera,
19 Chairman of the Subcommittee on Foreign Affairs, Committee on Foreign
20 Affairs, via a letter confirming that "consular officers confer with both a
21 consular manager and the Visa Office's Office of Field Operations prior to
22 issuing a waiver, to facilitate uniform implementation." The letter also
23 confirmed that "(Defendant DOS) determined that, until an automated
24 enhanced screening and vetting process could be put in place, applicants for
25 visas subject to PP 9645 who are being considered for a waiver under Section
26
27
28

1 3(c) of the Proclamation should undergo a post-interview security review by
2 the interagency (*sic*) to resolve whether their entry would not pose a threat to
3 the national security or public safety.” The letter did not define “the
4 interagency.”
5

6 82. According to a report called Presidential Proclamation 9645 Monthly Public
7 Reporting -November 2019, between December 8, 2017 and November 30,
8 2019, 45,778 nonimmigrant visa applications and 31,534 immigrant visa
9 applications (for a total of 77,312 visa applicants) were refused under PP
10 9645. See Exhibit D.
11

12 83. According to that same report, in that same period, Iranian nationals accounted
13 for 27,250 of the nonimmigrant visa applications refused, and 13,986
14 immigrant visa applications refused. That means 35% of the total visa
15 applications affected by PP 9645 affect the visa applications of Iranian
16 nationals. However, for the refusal of immigrant visas, the percentage of
17 Iranian nationals affected by PP 9645 is over 44% of the total affected in all
18 eight countries. See Exhibit D.
19

20 84. From December 8, 2017 to November 30, 2019, Defendant DOS issued only
21 2,610 immigrant visas to Iranian nationals. See Exhibit D.
22

23 85. As of November 30, 2019, there were 10,625 immigrant applications in the
24 backlog from Iranian nationals, which makes up over 64% of the total 16,439
25 immigrant visa applications in the backlog. See Exhibit D.
26
27
28

Overview of Defendants’ Waiver Adjudication Scheme for Iranian National Immigrant Visa Applicants Who Attended Consular Interviews Prior to the early-July 2019 Implementation of Automated Pre-Vetting

86. The Iranian national immigrant visa applicant applies for a visa, and then appears for an interview at a U.S. Embassy for an interview. Since the U.S. Embassy in Iran has been closed since 1979, Iranian national visa applicants must travel to Armenia, United Arab Emirates, or Turkey for visa interviews.

87. Provided the Iranian national visa applicant otherwise qualifies for the visa, the consular officer refuses the visa application of the Iranian national in accordance with PP 9645. The consular office then enters the refusal code “EO17” in the Consular Lookout and Support System (CLASS) database. This refusal, however, is only part of the process as PP 9645 provides that consular officers adjudicate waivers of PP 9645’s entry restrictions as part of the visa application process based on information provided in the standard visa application and in-person interview of the applicant. That adjudication is based upon three criteria:

- (1) undue hardship if entry is denied;
- (2) entry would be in the national interest; and
- (3) entry would not pose a threat to national security or public safety.

88. Based upon these criteria, a consular officer then finds an Iranian national visa applicant eligible or ineligible for a waiver. If found eligible for a waiver of PP 9645’s entry restrictions, the consular officer has the applicant complete a Form DS-5535 to collect information, including the applicant’s use of social

1 media. At that point, the consular officer must then seek to obtain concurrence
2 from consular managers, visa chiefs, consular section chiefs, and/or consular
3 management and the Visa Office. Defendants require this concurrence before
4 the consular officer is allowed to issue the applicant a visa, even though that
5 usurpation of consular officer authority is unlawful under PP 9645.
6

7
8 89.If the consular officer finds that a visa applicant's situation does not fit within
9 one of the examples provided in the text of PP 9645, Defendant DOS, through
10 its Visa Office, instructs consular officers to provide it information about a visa
11 applicant's undue hardship, national interest, and identity and criminal history
12 concerns, and that they can count on a Visa Office's response "within one
13 business day..." In cases where additional information is needed or if a case
14 requires further discussion with other offices and agencies, including
15 consultation with the PP 9645 Brain Trust, the Visa Office warns that its
16 response "could take a week or more."
17

18
19
20 90.If found ineligible for a waiver of PP 9645's entry restrictions, the consular
21 officer may, upon reconsideration, and concurrence from consular managers,
22 visa chiefs, consular section chiefs, and/or consular management the Visa
23 Office, and even non-DOS employees, such as Quality Support, Inc.
24 contractors (pursuant to Defendants' implementation of PP 9645 waiver
25 provision), find the applicant eligible for a waiver of PP 9645's entry
26 restrictions and issue the applicant a visa.
27
28

1 91. Defendants represent that waiver adjudication eligibility is automatic.

2 Defendants also represent that waiver adjudication eligibility is not
3 automatic. In the Van Hollen Letter, DOS states that in order to be considered
4 for a waiver, visa applicants must meet the criteria for a waiver. Under that
5 representation, all applicants who are under waiver consideration have already
6 been found by a consular officer to meet all criteria for a waiver, and the only
7 fruit of further administrative processing is unreasonable administrative delay.
8
9

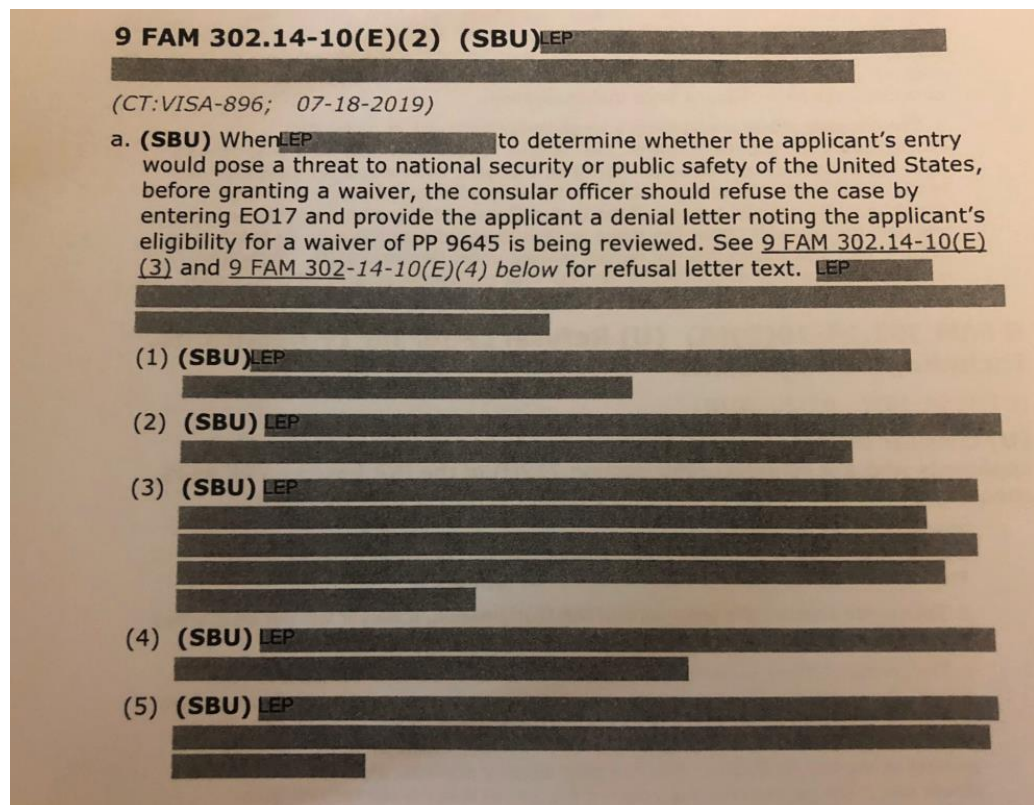
10 92. Defendants have unlawfully extended the authority and discretion that PP 9645
11 granted only with individual consular officers to: consular managers, visa
12 chiefs, consular section chiefs, consular management, the Visa Office, and
13 even non-DOS employees, such as Quality Support, Inc. contractors.
14
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16 93. As consular officers typically want to issue visas, especially to women,
17 children, the elderly, and families experiencing hardship - all of whom have
18 already been vetted to get to the consular interview stage- this unlawful and
19 unnecessary usurpation of consular officer authority and discretion
20 demonstrates how and why the travel ban itself is a boondoggle of a
21 government program that, absent judicial interference, will continue to cause
22 senseless irreparable injuries to American families.
23
24

25 94. When Defendants do adjudicate PP 9645 waivers, which belies the norm, they
26 do not adjudicate them in order, as they do with other immigration benefits. In
27 fact, on November 12, 2019, Defendants, through Department of Justice
28

counsel Joseph A. Darrow, admitted “Defendants were employing a figure of speech and did not, of course, mean that every waiver applicant had been assigned one specific number in line and that Defendants were proceeding number by number, as if at a deli counter.”

95. On July 18, 2019, the Foreign Affairs Manual, section 9 FAM 302.14-10(E)(2), was updated giving consular officers five specific instructions again usurping their authority and discretion to adjudicate case-by-case waivers, even after the Visa Office has concurred that those waivers may be justified. Defendants have kept these instructions secret from visa applicants subject to PP 9645, as well as the general public, by redacting them when released by asserting law enforcement privilege. See below.



1 96. In early July 2019, Defendants DOS implemented a new enhanced automated
2 screening and vetting process for all immigrant and nonimmigrant visa
3 applicants subject to the Proclamation. The new enhanced review is automated,
4 occurs prior to the interview, and provides consular officers with the
5 information required to make most P.P. 9645 waiver determinations much
6 more quickly. It is now possible that many cases may be issued within days of
7 the application, should the security check done prior to the interview not show
8 any concerns – once the consular officer has established all three criterion of
9 the waiver, the visa may be issued. However, this is not the case with visa
10 applicants like Beneficiary Plaintiffs, who have already had their interviews,
11 and are not benefitting from the automated system. See Exhibit C, at 3.
12
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16 **Consequences of Defendants' Waiver Adjudication Scheme on Plaintiffs**

17 97. As a direct result of Defendants' PP 9645 waiver adjudication scheme,
18 Beneficiary Plaintiffs in this action have waited unreasonable amounts of time,
19 from 468 up to 753 days, for the adjudication of their waivers. See Table A,
20 below.
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Table A

| U.S. CITIZEN OR LEGAL PERMANENT RESIDENT PETITIONER | IRANIAN NATIONAL BENEFICIARIES | DATE CASE CREATED BY NVC (per CEAC website) | DATE VISA REFUSED UNDER PP 9645 | DAYS AWAITING WAIVER ADJUDICATION (as of Dec. 30, 2019) |
|---|--|---|------------------------------------|--|
| Parto Kavoosian | Behnaz Kavoosian; Kiyoumars Kavoosian | 16-JUNE-2017 & 16-JUN-2017 | 09-JAN-2018 | 720 720 |
| Mansour Hardanian | Elaheh Alikhan Zadeh | 21-MAR-2018 | 17-SEP-2018 | 468 |
| Masoud Abdi | Shima Montakhabi | 01-NOV-2016 | 29-MAR-2018 | 642 |
| Fatemeh Karimi Alamdari | Farshad Amirkhani | 08-MAY-2015 | 08-DEC-2017 * | 753 |
| Arash Rafii Sereshki | Bijan Rafii Sereshki | 22-APR-2016 | 08-DEC-2017 ** | 753 |

*FARSHAD AMIRKHANI's consular interview was Jan. 24, 2017, but PP 9645 was technically not implemented until December 08, 2017.

** BIJAN RAFII SERESHKI's consular interview was Feb. 23, 2017, but PP 9645 was technically not implemented until December 08, 2017.

-

98.As a result of Defendants' withholding of adjudications of travel ban waivers, visa applicants, and all Beneficiary Plaintiffs in this action, suffer unreasonable hardship as their criminal status checks, medical examinations, and security advisor opinions perpetually expire during the post-refusal administrative processing. This perverse outcome leads to visa applicants, including Plaintiffs in the action, repeatedly incurring expenses for no good reason.

99.In the statistically unlikely event that stars align so that all the parties unlawfully designated by Defendants with authority over waiver adjudication concur that an applicant is deserving of a waiver, that applicant must act quickly because, of course, the waivers themselves expire as well.

1 100. As a result of Defendants' unreasonable administrative delays in the
2 adjudication of travel ban waivers, Iranian nationals visa applicants, including
3 some of the Plaintiffs in this action, are stranded in third countries different
4 from their national origin. The cost of maintaining a separate residence in a
5 foreign country is financially draining on Plaintiffs.
6

7
8 101. As a result of Defendants' unreasonable administrative delays in the
9 adjudication of their waiver, Plaintiffs have faced severe familial hardships.
10 For example, Plaintiffs MASOUD ABDI and SHIMA MONTAKHABI dream
11 of starting a family, but she is 42 years old and the window for their dream is
12 closing. In another example, Beneficiary Plaintiff BIJAN RAFII SERESHKI,
13 who is 73 years old, continues to be separated from his wife of many years,
14 because following their consular interview on February 23, 2017, her visa was
15 issued while his went into administrative processing. In another example,
16 Plaintiff MANSOUR HARDANIAN married his wife in 2013 and they have
17 waited nearly SEVEN years to be together. In another example, Plaintiff N.F.
18 is now two years old and she still has not met her grandparents in person.
19
20
21
22

23 102. As a result of Defendants' unreasonable administrative delays in the
24 adjudication of their waiver, Plaintiffs have faced all kinds of severe economic
25 hardship. For example, Plaintiff MASOUD ABDI is limited in how he can
26 assist his wife financially because of U.S. sanctions.
27
28

1 103. Beneficiary Plaintiffs have faced a uniquely severe economic hardship
2 because, unlike most families on earth, their loved ones in the United States are
3 prohibited from giving them financial assistance due to the sanctions against
4 Iran.
5

6 104. Plaintiffs have also faced severe economic hardship for the costs of
7 visiting each other as a substitute for reunification. However, because of the
8 expense of a visit for their family, FATEMEH KARIMI ALAMDARI, SA.(1),
9 and S.A.(2), who have been separated from FARSHAD AMIRKHANI, her
10 husband and their father, since 2014, have only been able to afford one short
11 visit in the summer of 2015, nearly five years ago.
12
13

14 105. Further, since Iran is so dangerous for U.S. citizens and, in fact,
15 Defendant DOS advises U.S. citizens not to travel to Iran, many of Plaintiffs'
16 family visits were in other countries, further exacerbating Plaintiffs' hardship.
17 For example, Plaintiff MANSOUR HARDANIAN has spent between \$7,000-
18 \$8,000 on each visit with his wife in third countries such as Turkey, and that is
19 for trips of only a couple weeks in duration at most. MANSOUR
20 HARDANIAN says the beginning of the visits are great, but the end, when he
21 must leave the airport without his wife, there is sadness and he is devastated.
22
23
24

25 106. Plaintiffs have also faced economic hardship in the form of missed
26 opportunities. For example, Plaintiff MASOUD ABDI has not had the time or
27 energy to continue his professional education as a physician and study for other
28

1 exams and certifications to further his career. He is working 10 to 12 hours a
 2 day without days off to support two households and pay for expenses incurred
 3 as a result of Defendants' withholding of his wife's waiver adjudication.
 4

5 107. If not for Defendants' unreasonable delays, Plaintiffs would not be
 6 suffering their current state of anxiety connected to the active conflict between
 7 the United States and Iran. While Plaintiffs have awaited their PP 9645 waiver
 8 adjudication, the conflict between the U.S. and Iran continues to escalate,
 9 amplifying Plaintiffs' anxiety. Sample moments of anxiety-causing
 10 escalation include:
 11
 12

- 13 • May 8, 2018: President Trump announces that the U.S. will pull out of the Iran
 14 nuclear deal.
- 15 • August 2018: U.S. implements sanctions against Iran.
- 16 • November 2018: U.S. implements more sanctions against Iran.
- 17 • April 8, 2019: the President designates the IRGC as a Foreign Terrorist Organization
- 18 • April 2019: U.S. implements more sanctions against Iran.
- 19 • May 5, 2019: National Security Adviser John Bolton issues a statement referring to
 20 impending Iranian attacks and announces U.S. aircraft carrier is en route to the
 21 region.
- 22 • May 8, 2019: On the anniversary of Trump's withdrawal of Iran nuclear deal, Iran
 23 announces it will increase uranium production.
- 24 • May 9, 2019: Acting Defense Secretary Patrick Shanahan presents plans for 120,000
 25 U.S. troops to be deployed to the Middle East in the event of an Iranian attack.
- 26 • May 10, 2019: The U.S. sends additional military hardware, including a warship, to
 27 the Middle East.
- 28 • May 12, 2019: Four oil tankers — two Saudi, one Emirati, one Norwegian — are
 attacked near the Strait of Hormuz. The U.S. later accuses Iran.
- May 14, 2019: Armed drones strike two Saudi pumping stations. Houthi rebels
 operating in Yemen, who the U.S. alleges are backed by Iran, claim responsibility.
- May 15, 2019: The U.S. orders a partial evacuation of its embassy in Baghdad, Iraq.
- June 13, 2019: Two tankers, one Norwegian and one Japanese, are struck near the
 Strait of Hormuz. In a statement, Defendant POMPEO bundles the attack with four
 incidents he alleges were carried out by surrogates, declaring they collectively
 "present a clear threat to international peace and security, a blatant assault on the
 freedom of navigation, and an unacceptable campaign of escalating tension by Iran."
- June 17, 2019: Iran announces that it will breach uranium enrichment levels under
 the 2015 deal in 10 days.

- 1 • June 17, 2019: The U.S. announces it will send an additional 1,000 troops to the Middle East.
- 2 • June 20, 2019: Iran shoots down a U.S. drone it says was in its airspace. The U.S. provides evidence it was over international waters.
- 3 • June 20, 2019: Trump tweets "Iran made a very big mistake!" He then approves strikes "on a handful of Iranian targets" but calls them off at the last minute.
- 4 • June 21, 2019: Iranian officials tell Reuters they received a message from Trump warning of impending U.S. attacks and seeking dialogue as Trump confirms he felt the planned strikes were "not proportionate."
- 5 • June 24, 2019: President Trump announces new sanctions and tells reporters that he did not need congressional consent for an initial strike on Iran.
- 6 • June 28, 2019: U.S. deploys nearly a dozen F-22 Raptor fighter jets to Qatar to "defend American forces and interests".
- 7 • July 16, 2019: U.S. announces it will send another 1,000 troops to the Middle East to counter Tehran, adding to the many thousands already in the region.
- 8 • July 18, 2019: U.S. claims to have taken defensive action against a drone in the Persian Gulf, but Iran denies any of the country's drones were brought down.
- 9 • July 19, 2019: Saudi King Salman approves hosting US Armed Forces in the Kingdom.
- 10 • July 20, 2019: Iran seizes British tanker in the Strait of Hormuz.
- 11 • July 21, 2019: Brazil, pursuant to stranglehold sanctions imposed by the U.S., refuses to refuel ships picking up grain from Brazil, stranding both the ships, and the grain from the people who need it.
- 12 • August 16, 2019: US files complaint for forfeiture of oil aboard Iranian tanker Grace I in U.S. District Court for District of Columbia.
- 13 • Sept. 14, 2019: Defendant Secretary of State Pompeo blames Iran for armed drone attacks on Saudi Arabia's massive Abqaiq oil processing facility, even though Yemen's Houthi rebels took responsibility, and sources suggest support for the attack originated in Iraq, not Iran.
- 14 • Sept. 18, 2019 President Trump tweets that he "just instructed the Secretary of the Treasury to substantially increase Sanctions on the country of Iran!"
- 15 • Oct. 11, 2019 Following two missiles hitting an Iranian oil tanker near the Saudi port of Jeddah, the Pentagon announces an additional 1,800 troops will be sent to Saudi Arabia, bringing the total number deployed within last month to 3,000 troops.
- 16 • Nov. 17, 2019 Following protests over Iran's 50 percent increase of government-set gasoline prices, the Iranian government implemented marshal law, turning off the country's internet for several days. Curfews were implemented, and an undisclosed number of protesters were slaughtered.
- 17 • Dec. 29, 2019 US forces conducted airstrikes in Iraq and Syria against five facilities the Pentagon says are tied to an Iranian-backed militia blamed for a series of attacks on joint US-Iraq military facilities housing American forces, causing Iranian Foreign Ministry spokesman Abbas Mosavi to say the US has "openly shown its support to terrorism and shown its negligence to the independence and national sovereignty of countries" and that "it must accept responsibility of the consequences of the illegal attacks."

1 Individually, these escalations and the rhetoric surrounding them
2 compound Plaintiffs' anxiety about their loved ones' safety and security.
3 Collectively, they have lodged Plaintiffs into a constant state of distress
4 that, absent intervention, will last for what appears to be an indefinite period
5 of time.
6
7

8 108. When the Iranian government cut off the internet in the country on
9 November 16, 2019, Petitioner Plaintiffs feared the worst. For example, minor
10 Plaintiffs S.A.(1) and S.A.(2) normally talk to their father every day on video
11 chat, but even they knew something was wrong when they couldn't, causing
12 S.A.(1) to cry and ignore everyone in her house, saying she only wants to talk
13 to her dad. Similarly, Plaintiff PARTO KAVOOSIAN could not get ahold of
14 her parents to know if they were ok, causing her to feel numb. Even though
15 Plaintiff MANSOUR HARDANIAN was still able to communicate with his
16 wife using a landline phone instead of video calls, he was very concerned for
17 her safety, worrying what they would do if the government cut the landline
18 phones, or even worse, closed the airports.
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CLAIMS FOR RELIEF

COUNT ONE

ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. §§ 555(b), 706(1)

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

109. Pursuant to the APA, 5 U.S.C. § 555(b), Defendants have a nondiscretionary duty “to conclude a matter presented to it” “within a reasonable time.” Defendants have failed to adjudicate the waivers of PP 9645 for Beneficiary Plaintiffs, and thus, have not concluded matters presented. Defendants have failed to adjudicate Beneficiary Plaintiffs visa waivers within 90 days, and thus, have not concluded matters presented within a reasonable time.

110. Because the actions Defendants take in adjudicating Plaintiffs’ waivers, through unlawful designations, is prohibited by the Proclamation, adjudication of waivers has been unlawfully withheld.

111. On December 14, 2017, DEFENDANT NANTAIS sent an email to then-Consular Section Chief at U.S. Embassy Djibouti Brian Sells, explicitly instructing him: “Please be clear that the goal of this effort is not to create timely processing of waivers for any applicant who is ineligible under the proclamation.”

1 112. Defendant DOS unlawfully designated consular managers, visa chiefs,
2 consular section chiefs, and consular management, the Visa Office, and even
3 non-DOS employees, such as Quality Support, Inc. contractors, to have
4 authority and discretion over final decisions about case-by-case waivers.
5

6 113. Defendants' requirement for consular manager concurrence for final
7 waiver decisions, as exposed in the Van Hollen Letter, demonstrates a pattern
8 and policy of delay in dealing with waiver adjudications. Defendants'
9 requirement for visa chief and consular section chief concurrence with final
10 waiver decisions, as exposed in Defendant's "Operational Q&As on P.P.
11 9645," demonstrates a pattern and policy of delay in dealing with waiver
12 adjudications.
13
14
15

16 114. Defendants' requirement for consular management and Visa Office
17 concurrence with final waiver decisions, as exposed in an April 11, 2019
18 "Department of State/AILA Liaison Committee Meeting," demonstrates a
19 pattern and policy of waiver adjudications delays.
20

21 115. Because Defendants administer a pattern and policy of delay in dealing
22 with all waiver adjudications, including the waiver adjudications for all
23 Beneficiary Plaintiffs, the connection amongst Plaintiffs is sufficient to satisfy
24 joinder requirements.
25

26 116. Pursuant to the APA, 5 U.S.C. § 706(1), a court may compel agency
27 action "unlawfully withheld or unreasonably delayed."
28

COUNT TWO
ADMINISTRATIVE PROCEDURE ACT, § 706(2)(A) and (D)

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

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

118. Defendants’ requirement for consular manager concurrence for final waiver decisions, as expressed in the Van Hollen Letter, is an appointment of the consular manager as designee to the consular officer, which is unlawful as it was not authorized by PP 9645.

119. Defendants’ requirement for visa chief and consular section chief concurrence with final waiver decisions, as exposed in Defendant’s “Operational Q&As on P.P. 9645,” is an appointment of visa chief and consular section chief as designees to the consular officer, which is unlawful as it was not authorized by PP 9645.

120. Defendants’ requirement for consular management and Visa Office concurrence with final waiver decisions, as exposed in an April 11, 2019 “Department of State/AILA Liaison Committee Meeting,” is an appointment of

1 consular management and the Visa Office as designees to the consular officer,
2 which is unlawful as it was not authorized by PP 9645.

3
4 121. While Section 3(C) of PP 9645 explicitly allows for the Commissioner
5 of CBP to appoint a designee “as appropriate, in their discretion,” it does not
6 allow for the consular officer to appoint a designee. Nor does PP 9645 extend
7 the authority to appoint a designee to POMPEO, or DOS. Further, PP 9645 was
8 specific as to “their discretion,” where “their” refers to the consular manager,
9 the CBP Commissioner, and the CBP Commissioner’s designee. Therefore,
10 designations of authority for waiver adjudications was settled within the four
11 corners of PP 9645. PP 9645 was silent as to any authority or discretion placed
12 with consular managers, visa chiefs, consular section chiefs, and consular
13 management, the Visa Office, and even non-DOS employees, such as Quality
14 Support, Inc. contractors, to adjudicate case-by-case waivers, so their required
15 concurrence is unlawful.

16
17 122. Thus, since Defendants’ appointment of consular managers, visa chiefs,
18 consular section chiefs, and consular management, the Visa Office, and even
19 non-DOS employees, such as Quality Support, Inc. contractors, as designees to
20 adjudicate final waiver decisions is also forbidden by, and unlawful under, PP
21 9645, the decision to make the unauthorized grant of discretion to the consular
22 manager, by Defendants POMPEO, DOS, and/or DOES #3-#10, was an
23 arbitrary and capricious abuse of discretion, and it is without observance of
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1 procedure required by law, because it conflicts explicitly with the text of PP
2 9645.
3

4 123. On March 27, 2019, Defendant POMPEO appeared before the House
5 Foreign Affairs Committee. When asked by U.S. Representative David Trone
6 to talk about the usurpation of consular officer authority and discretion in the
7 implementation of PP 9645 waiver scheme, Defendant POMPEO answered, “I
8 actually think we have the authorities here precisely right.”
9
10

11
12 **COUNT THREE**
13 **MANDAMUS**

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

17 124. Plaintiffs repeat and incorporate by reference each and every allegation
18 contained in the preceding paragraphs as if fully set forth herein.
19

20 125. As noted in Count One, the APA requires agencies to “proceed to
21 conclude a matter presented” to the agency “within a reasonable time.” 5
22 U.S.C. § 555(b). As a result of Defendants’ waiver adjudication scheme,
23 Plaintiffs in this action have been awaiting final waiver decisions from between
24 15 to 25 months. In failing to adjudicate their applications, Defendants have
25 failed to act “within a reasonable time” in violation of the APA.
26
27
28

1 126. Further, and as noted in Count Two, the APA prohibits federal agency
2 action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in
3 accordance with law,” or is conducted “without observance of procedure
4 required by law.” 5 U.S.C. § 706(2)(A) and (D).

6 127. Defendants’ requirement for consular manager concurrence with final
7 waiver decisions, as exposed in the Van Hollen Letter, is an appointment of the
8 consular manager as designee to the consular officer, and not authorized by PP
9 9645. Thus, the requirement is arbitrary, capricious, an abuse of discretion, as
10 well as not in accordance with law.
11

13 128. Defendants’ requirement for visa chief and consular section chief
14 concurrence with final waiver decisions, as exposed in Defendant’s
15 “Operational Q&As on P.P. 9645,” is an appointment of visa chief and
16 consular section chief as designees to the consular officer, and not authorized
17 by PP 9645. Thus, the requirement is arbitrary, capricious, an abuse of
18 discretion, as well as not in accordance with law.
19

21 129. Defendants’ requirement for consular management and Visa Office
22 concurrence with final waiver decisions, as exposed in an April 11, 2019
23 “Department of State/AILA Liaison Committee Meeting,” is an appointment of
24 consular management and the Visa Office as designees to the consular officer,
25 and not authorized by PP 9645. Thus, the requirement is arbitrary, capricious,
26 an abuse of discretion, as well as not in accordance with law.
27
28

1 130. Finally, Defendants have a non-discretionary duty to develop guidance
2 on the waiver process that results in the full, fairly, and adjudication of
3 Beneficiary Plaintiffs' considerations for waivers under PP 9645 within a
4 reasonable time. Instead, Defendants have developed inconsistent guidance that
5 leads to a waiver adjudication scheme that never gives individual consular
6 officers the discretion and authority PP 9645 requires. As designed by the PP
7 9645 Brain Trust, this scheme places visa applicants, including Plaintiffs, in a
8 perpetual loop of administrative processing.

9 131. Because there are no other adequate remedies available to Plaintiffs,
10 mandamus is appropriate. See 5 U.S.C. § 704.

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16 **COUNT FOUR**
17 **PROCEDURAL DUE PROCESS**

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

20 132. The Due Process Clause of the Fifth Amendment provides that "[n]o
21 person . . . shall be deprived of life, liberty, or property, without due process of
22 law."

23
24 133. Plaintiffs' fundamental rights include their right to the "integrity of the
25 family unit." *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). This includes a
26 cognizable liberty interest in their family members' ability to travel to the
27 United States. See *Bustamante v. Mukasey*, 531 F.3d 1059, 1062 (9th Cir.

1 2008); see also *Kerry v. Din*, 135 S.Ct. 2128, 2139 (2018) (Kennedy, J.,
2 concurring); *Cardenas v. United States*, 826 F.3d 1164, 1167 (9th Cir. 2016)
3 (noting that J. Kennedy’s concurrence in *Din* is controlling). Individuals must
4 be given due process prior to the deprivation of these liberty interests.
5

6 134. For example, due to Defendants’ withholding of PP 9645 waiver
7 adjudication for FARSHAD AMIRKHANI, S.A.(1), his 14-year-old daughter
8 S.A.(1), and 11-year-old son S.A.(2), have already been separated from their
9 father for two years more than they would have been without the withholding
10 of PP 9645 waiver adjudication.
11
12

13 135. Congress has created statutory rights and prescribed procedures
14 applicable to prospective immigrants. Due process rights attach to those
15 statutory rights, which create cognizable liberty and property interests for both
16 Petitioner Plaintiffs and Beneficiary Plaintiffs. See *Lanza v. Ashcroft*, 389 F.3d
17 917, 927 (9th Cir. 2004) (“The due process afforded aliens stems from those
18 statutory rights granted by Congress and the principle that ‘[m]inimum due
19 process rights attach to statutory rights.’”) (alteration in original) (quoting *Dia*
20 *v. Ashcroft*, 353 F.3d 228, 239 (3d Cir. 2003). Those interests include reliance
21 interests on the basis of which Plaintiffs have spent significant resources. See
22 *Perry v. Sindermann*, 408 U.S. 593, 601 (1972)(mutually explicit expectations
23 give rise to property interests).
24
25
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1 136. Federal agencies have likewise created regulatory rights related to the
2 petitioning and issuance of visas. Individuals must be given due process prior
3 to the deprivation of these statutory and regulatory rights.
4

5 137. The “very essence” of due process is the “protection of the individual
6 against arbitrary action.” *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564,
7 584 (1972). Any deprivation of liberty and property interests must, at the very
8 least, have a rational basis.
9

10 138. Defendants’ policies, decisions, and actions that caused and continue to
11 cause unreasonable administrative delays in the adjudication of Beneficiary
12 Plaintiffs’ waivers has already deprived and continues to deprive Plaintiffs of
13 protected liberty and property interests without due process of law.
14
15

16 139. There is no queue for visa applicants awaiting adjudications of PP 9645
17 waivers. Rather, Defendants have implemented a waiver adjudication scheme
18 that is at its heart, arbitrary madness. This is due in part to Defendants
19 implementing a system that, in addition to usurping consular officer authority
20 and discretion, fails to fully integrate a system for tracking which applications
21 were awaiting concurrence before the consular officer could approve the visas.
22 Waiver requests were submitted by consular officers to the countries-of-
23 concern@state.gov email address, with that email being the only digital, and
24 for that matter - the last, record of the requests.
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1 140. Most Iranian visa applicants, including all Beneficiary Plaintiffs in this
2 action, have seen other applicants who attended interviews months if not years
3 after them, have their visas issued already. Further, as a result of Defendants'
4 early-July implementation of automated pre-vetting, Iranian national visa
5 applicants attending their first consular interview today, are likely to have their
6 PP 9645 waiver adjudicated within months, and at least one to two years before
7 Iranian national visa applicants who attended their consular interviews prior to
8 early-July 2019.

9 141. By extending, by unlawful designation, authority and discretion to
10 consular managers to adjudicate, or have input to the adjudication of Plaintiffs'
11 waivers, Defendants have already deprived, and continue to deprive Plaintiffs
12 of protected liberty and property interests without due process of law.

13 142. Further, the waiver process Defendants have implemented is inherently
14 arbitrary and has deprived Plaintiffs of even the most minimal process that
15 attaches to the statutory benefits conferred on them by Congress. By not
16 allowing them or their family members the opportunity to be considered for a
17 waiver, Defendants have deprived Plaintiffs of the opportunity to show that
18 they meet the eligibility criteria for visa categories for which they or their
19 family members are eligible by statute. In doing so, Defendants have already
20 deprived, and continue to provide Plaintiffs, and all those similarly situated, of
21 protected liberty and property interests without due process of law.

1 143. Defendants' implementation of the PP 9645 waiver provision in such a
2 way as to guarantee visa applicants incurring the guaranteed and senseless
3 duplicative expenses like medical reports and travel to embassies in third
4 countries (Armenia, Turkey, and the U.A.E.) violates their property interests.
5

6 144. Defendants' violations of Plaintiffs' constitutionally guaranteed rights
7 have caused Plaintiffs to suffer and continue to suffer irreparable harm (by
8 indefinitely denying them access to their families and unnecessarily burdening
9 them with extraordinary expenses), and entitle them to declaratory, injunctive
10 and other relief.
11
12

13
14 **COUNT FIVE**
15 **VIOLATION OF EQUAL PROTECTION PRINCIPLES**
16 **EMBEDDED IN THE FIFTH AMENDMENT**

17 Plaintiffs hereby re-allege and incorporate by reference each of the allegations set
18 forth above.
19

20 145. Defendants have violated the equal protection principles of the
21 Fourteenth Amendment, embedded in the Due Process Clause of the Fifth
22 Amendment.
23

24 146. The affirmative aggregate acts of Defendants in usurping consular
25 officer authority and withholding Plaintiffs' waiver adjudications irreversibly
26 discriminates against Plaintiffs' exercise of their fundamental rights to life,
27 liberty, and property, and abridge central precepts of equality. The affirmative
28

1 aggregate acts of Defendants in usurping consular officer authority has caused
2 and continues to cause irreparable injury and hardship to Plaintiffs.

3
4 147. As a result, the irreparable injury and hardship caused by Defendants has
5 denied Plaintiffs the same protection of fundamental rights afforded to visa
6 applicants who had the arbitrary fortune to have their consular interviews
7 scheduled for after early-July 2019, and thus benefit from Defendants' new
8 automated processing.
9

10 148. The imposition of this disability on Plaintiffs serves to disrespect and
11 subordinate them. The Fifth Amendment's Due Process Clause and the Fifth
12 Amendment's equal protection principles are connected but set forth distinct
13 principles, which are implicated here.
14
15

16 149. Beneficiary Plaintiffs in this action are all Iranian nationals who attended
17 consular interviews prior to the Visa Office's early-July 2019 implementation
18 of an automated processing system, and they are members of a separate suspect
19 class in need of protection from the political process pursuant to the principles
20 of Equal Protection. As evidenced by their affirmative aggregate acts,
21 Defendants have a long history of deliberately discriminating against Iranian
22 nationals. In fact, the reason they implemented the automated processing
23 system when they did was to increase the number of approved waivers in
24 advance of a congressional hearing of the House Judiciary Committee
25 Subcommittee on Immigration and Citizenship and Foreign Affairs Committee
26
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28

1 Subcommittee on Oversight and Investigations, that eventually took place on
2 September 24, 2019.

3
4 150. At that congressional hearing, Edward Ramotowski, Deputy Assistant
5 Secretary, Bureau of Consular Affairs for Defendant DOS (“Mr.
6 Ramotowski”), revealed that the new automated processing “occurs prior to [a
7 visa applicant’s] interview,” before bragging that, “[i]n the short time this
8 system has been in place, the month-to-month change in visas issued pursuant
9 to a waiver rose from a steady 10 to 12 percent from before the new system, to
10 more than 50 percent each month.” Yet, in the same testimony, for the waiver
11 adjudications of Beneficiary Plaintiffs and those similarly situated, Mr.
12 Ramotowski would only say “the Department is working diligently to review
13 and process to conclusion existing P.P. 9645-subject cases, and that “[w]e
14 anticipate that a majority of pre-July 2019 waiver cases pending with the
15 Department, most of which require some degree of manual review, should be
16 completed by the end of 2019 or soon thereafter.” See Exhibit C.

17
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21 151. Beneficiary Plaintiffs are an insular minority with no voting rights and
22 no political power or influence over Defendants and their actions concerning
23 Defendants’ waiver adjudication scheme. Beneficiary Plaintiffs have
24 immutable characteristics, national origin and consular interview date, that they
25 cannot change.
26
27
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1 152. Beneficiary Plaintiffs do not have present political power or influence,
2 have immutable characteristics, and are also an insular minority.

3
4 153. Beneficiary Plaintiffs have no avenues of redress other than this court, as
5 Beneficiary Plaintiffs cannot challenge or alter the acts of Defendants usurping
6 consular officer authority or withholding their waiver adjudications. Plaintiffs
7 have experienced and will continue to suffer the irreparable impacts of
8 Defendants' indefinite withholding of their waiver adjudications, while visa
9 applicants attending their visa interviews today will suffer no such hardship.
10

11
12 154. No rational basis exists for why Defendants are using an efficient
13 automated process for adjudicating waivers for new visa applicants, but not
14 using the automated process for adjudicating waivers for Beneficiary Plaintiffs,
15 who have waited so long and endured so much hardship already.
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PRAYER FOR RELIEF

“Visa adjudication **software does not permit a consular officer to overcome the refusal** [entered by the consular officer at the end of the interview] and issue a visa while a formal request...is pending a response from the Department. This is **a safety feature** designed to ensure that a consular officer does not issue a visa unless and until they have all the information necessary to assess an applicant’s visa eligibility.”

- Exhibit B, Nantais Decl., at ¶14, (emphasis added).

1. Declare that Defendants’ administrative delays in adjudicating Plaintiffs’ consideration for waivers of PP 9645 have been unreasonable;
2. Declare that one year to adjudicate a PP 9645 § 3(c) waiver is unreasonable;
3. Declare that Defendants’ policies, patterns, decisions and actions that have led to the unreasonable delays are unlawful;
4. Declare that Defendants’ policies, patterns, decisions, and actions in designating consular managers, visa chiefs, consular section chiefs, consular management, the Visa Office, and even non-DOS employees, such as Quality Support, Inc. contractors, with the authority and discretion granted to consular officers over case-by-case waiver adjudication, have been arbitrary, capricious, and otherwise specifically contrary to Section 3(c) of PP 9645;
5. Declare Defendants’ policies, decisions, and actions in implementing and enforcing Section 3(c) of PP 9645 have violated Plaintiffs’ rights to procedural due process under the Fifth Amendment;

- 1 6. Declare Defendants' policies, decisions, and actions in implementing and
2 enforcing PP 9645 §3(c) have violated Plaintiffs' rights to equal protection
3 under the Fifth Amendment;
4
- 5 7. Enjoin Defendants from further violations of the Constitution underlying each
6 claim for relief;
7
- 8 8. Order Defendants to issue guidance and develop a waiver process that does not
9 violate the APA or the constitutional guarantees of due process and that
10 provides meaningful and timely adjudication for every individual visa
11 applicant's eligibility for a waiver;
12
- 13 9. Declare Defendants' bad faith implementation of Section 3(c) of PP 9645 to be
14 unconstitutional;
15
- 16 10. Declare PP 9645, absent the good faith implementation of Section 3(c), to be
17 unconstitutional;
18
- 19 11. Order Defendants to adjudicate the Beneficiary Plaintiffs' individual eligibility
20 for waivers of PP 9645;
- 21 12. Order Defendants to act on waiver considerations of those similarly situated to
22 Beneficiary Plaintiffs have been pending for an unreasonable period of time;
23
- 24 13. Order Defendants to evaluate whether other visa applicants were denied
25 waivers due to Defendants' policies, decisions and actions found unlawful by
26 the court, and if so, order Defendants to reconsider those visa applicants for
27 waivers of PP 9645, lawfully;
28

- 1 14. Retain jurisdiction over this action to monitor and enforce Defendants'
- 2 compliance with all orders of this Court;
- 3
- 4 15. Award Plaintiffs costs of suit and reasonable attorney's fees under the Equal
- 5 Access to Justice Act, 42 U.S.C. §1988, and any other applicable law; and
- 6 16. Grant such other and further relief as the Court deems just and proper.
- 7

8 DATED: December 30, 2019
9 Tustin, CA

10 Respectfully Submitted,

11
12 /s/ Curtis Lee Morrison
13 THE LAW OFFICE OF RAFAEL UREÑA
14 CURTIS LEE MORRISON (CABN 321106)
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CERTIFICATE OF SERVICE
Case No. 19-cv-01417 JVS (DFMx)

I declare under penalty of perjury under the laws of the United States of America that the following is true and correct. I am over the age of 18 and not a party to the above-titled action.

On the below date, I electronically filed the **PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR WRIT OF MANDAMUS** and all attached exhibits with the Clerk of the United States District Court for the Central District of California, using the CM/ECF System. The Courts CM/ECF System will send an electronically email all noticed parties to the action who are registered with the Court's CM/ECF System.

Dated: December 30, 2019
Tustin, California

Respectfully submitted:

/s/ Curtis Lee Morrison

Curtis Lee Morrison, Esq.
The Law Office of Rafael Ureña
Attorney for the Plaintiffs

From: Countries-of-concern-inquiries
Sent: Thursday, April 12, 2018 9:37 AM
To: Ray, Katherine O <RayKO@state.gov>; Kennedy, Angela Y <KennedyAY@state.gov>; Jenkins, Kunduz O <JenkinsKO@state.gov>; Shelstad, Jeffrey <ShelstadJ@state.gov>; Countries-of-concern-inquiries <Countries-of-concern-inquiries@state.gov>
Cc: SAONEA <SAONEA@state.gov>; Brandt, Emily R <BrandtER@state.gov>; Evans, Jewell E <EvansJE@state.gov>
Subject: RE: Follow up on PP9645 Waiver SAOs - EO17 Refusals for Syrian IVO Cases

RELEASE IN PART B5,B3
INA,B7(E),B6

Angela,

EXHIBIT A

For EO17 IV refusals, please follow the instructions in 09 FAM 601.6-3(C) for records disposition guidelines:
http://fam.a.state.sbu/fam/09FAM/09FAM060106.html#M601_6_3

B7(E)

Sean Whalen
Office of Field Operations, Visa Services (CA/VO/F/ET)

SBU
This email is UNCLASSIFIED.

From: Ray, Katherine O
Sent: Thursday, April 12, 2018 8:14 AM
To: Kennedy, Angela Y; Jenkins, Kunduz O; Shelstad, Jeffrey; Countries-of-concern-inquiries
Cc: SAONEA; Brandt, Emily R; Evans, Jewell E
Subject: RE: Follow up on PP9645 Waiver SAOs - EO17 Refusals for Syrian IVO Cases

+ VO/F

Official - SBU
UNCLASSIFIED

From: Kennedy, Angela Y
Sent: Thursday, April 12, 2018 3:45 AM
To: Jenkins, Kunduz O; Shelstad, Jeffrey
Cc: SAONEA; Brandt, Emily R; Evans, Jewell E
Subject: RE: Follow up on PP9645 Waiver SAOs - EO17 Refusals for Syrian IVO Cases

Thanks for this, Kim.

Thank you,
Angela

B3 INA
B5

Official
UNCLASSIFIED

From: Jenkins, Kunduz O
Sent: Wednesday, April 11, 2018 10:06 PM
To: Kennedy, Angela Y; Shelstad, Jeffrey
Cc: SAONEA; Brandt, Emily R; Evans, Jewell E
Subject: Follow up on PP9645 Waiver SAOs - EO17 Refusals for Syrian IVO Cases

Hi Angela and Jeff,

I wanted to let you know that we've sent today refusals under EO17 for the following PP Waiver SAOs back to post:

B3 INA
B5
B6
B7(E)

Please let me know if you have any questions!

Regards,
Kim

Kunduz Jenkins
Visa Analyst (Syria, Lebanon)
Bureau of Consular Affairs/ Visa Office
CA/VO/SAC
Contractor: Quality Support, Inc.
U.S. Department of State
202.485.7495
JenkinsKO@state.gov

Official - SBU
UNCLASSIFIED

EXHIBIT B

DECLARATION OF JOEL NANTAIS

I, Joel Nantais, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am the Director for Domestic Operations, Visa Office, Bureau of Consular Affairs, U.S. Department of State. I have served in that capacity since 2018. I have worked for the Department of State since 2009 in different roles within the Visa Office, the Consular Affairs Front Office, and the Bureau of Diplomatic Security. I have used visa-related data systems to adjudicate visa applications, review visa adjudications of consular officers, and manage visa application processes.

2. The Office of Domestic Operations in the Visa Office assists in the preparation of strategic planning, operational planning, program evaluation, management control and budget documents. My office also coordinates statistical reporting and analysis for the Visa Office, including the Report of the Visa Office. The Report of the Visa Office is an annual report providing statistical information on immigrant and non-immigrant visa issuances by U.S. consulates or embassies, as well as information on the use of visa numbers in numerically limited categories.

3. My office is also responsible for coordinating the Department of State's response to the reporting requirement referenced in the Senate Appropriation Committee Report on the Fiscal Year 2019 Department of State and Foreign Operations Bill (S. Rep. 115-282). Section 7019 of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2019 (Div. F, P.L. 116-6) requires the Secretary of State to "submit reports required, in the manner described...in Senate Report 115-282 ...". Senate Report 115-282 requires a report by the Department of State every 90 days during fiscal year 2019 on the implementation of Presidential Proclamation 9645, Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or Other Public-Safety Threats ("PP 9645") for seven designated countries, which were listed as Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen; however, nationals of Iraq and Sudan are not subject to visa restrictions under PP 9645.

4. In response to this reporting requirement, the Department of State generated statistical information related to visa applications made by nationals of the eight countries currently or previously subject to visa restrictions under PP 9645: Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen. My office coordinated closely with the Bureau of Consular Affairs, Office of Consular Systems and Technology (“CA/CST”) and the Visa Office to gather the statistical data and in drafting the report.

5. My office, Domestic Operations, had the lead for the Visa Office in preparation of the written report in response to the statutory requirement which I will refer to herein as the “Quarterly Report on PP 9645 Implementation.” As existing programs did not allow us to generate a standard report from the Consolidated Consular Database, the business intelligence analytics team in our office described to CA/CST what data was needed to create the report required by Congress. As explained in greater detail below in paragraph 17, the requirements for the Quarterly Report on PP 9645 Implementation were sent to CA/CST because user roles in my office did not allow the business intelligence analytics team to script and run ad-hoc reports in the Consolidated Consular Database. Ad-hoc reports here mean something other than the previously programmed standard reports.

6. CA/CST supports the Bureau of Consular Affairs information technology efforts through the design, development, deployment, and maintenance of consular information technology systems, databases, and infrastructure. CA/CST also develops and implements standards for the Bureau’s enterprise architecture, maintains the Consular Consolidated Database for access to consular records worldwide, and monitors data quality and ensures system architecture meets current and projected requirements.

7. In response to the requirements shared by our office, CA/CST wrote and ran a script in the Consolidated Consular Database to provide my office with monthly data on all nonimmigrant and immigrant visa applications made by applicants of nationalities currently and previously affected by PP 9645. The methodology in developing the Quarterly Report on PP 9645 Implementation is described in more detail in paragraphs 31-53 below.

The Consular Consolidated Database (CCD)

8. The CCD is a system of consolidated databases that holds all of the current and archived records of consular services entered by consular officers in U.S. embassies and consulates around the world and by consular staff in domestic facilities. The CCD is a web-based portal that allows certain Department of State and other agency employees access to consular information with certain restrictions based on their employment and user role.

9. The CCD is the official system of records memorializing the status and adjudication of each visa application. *See* 60 Fed. Reg. 39469-03 (Dep't of State Aug. 2, 1995); 77 Fed. Reg. 65245-03 (Dep't of State Oct. 25, 2012). Immigrant visa applications are adjudicated by consular officers electronically using the immigrant visa adjudication system software referred to as IVO. Nonimmigrant visa applications are adjudicated by consular officers electronically using the nonimmigrant visa adjudication system software referred to as NIV. One or both of these software packages are installed on computers at all visa-issuing posts. The primary functions of the these two visa adjudication systems are case management and visa applicant management, including the printing machine readable visa foils, running namechecks, collecting biometrics, and accounting for visa number allocation and use. Every one of these systems records, including adjudication outcomes whether issued or refused are replicated to the CCD. Data replication, the continuous copying of these records from posts' consular applications to the central CCD, is functioning for all posts for all applications. Replicated data for posts generally dates back to the late 1990s. Accordingly, the CCD contains records, including adjudication outcomes whether issued or refused, concerning immigrant and nonimmigrant visa applications adjudicated by consular officers at all visa-issuing posts dating as early as the late 1990s.

10. Data in the NIV and IVO systems are a combination of applicant-submitted application data which is uploaded into a case as well as Department-user entered data which pertains to confirmed application data as well as processing and adjudication processes. Visa applicants submit data through the Consular Electronic Application Center ("CEAC"). Department-users enter data in other applications,

including IVO and NIV software. Some data fields are free form and allow for manual entry by the applicant or Department-user up to a certain character limit, such as address. Other data fields are drop down lists that require the applicant or Department-user to select from a set list; for example, a list of refusal codes. The integrity of the data depends on the accuracy of the entry by the applicant or Department-user in every individual visa application, either appropriately entering information complete with proper spelling or selecting the correct drop down item. Many of these fields and outputs are available to the Visa Office through reports run from three systems: the CCD, the Immigrant Visa Allocation and Management System (“IVAMS”), and a separate data warehouse created from CCD data used for business intelligence and data analytics. IVAMS tracks the allocation of visa numbers in accordance with statutory limits of visa issuance.

11. A consular officer or other consular staff will record actions taken in processing of a particular case into the appropriate automated visa processing system, IVO or NIV. Preferably the actions of a consular officer or consular staff are entered at the time the action occurs. There are no visa adjudications done on paper.

12. The CCD, described above, maintains the replicated records from IVO and NIV of actions taken by consular officers in adjudicating visa applications. Those records may include: (1) archived dates consular staff ran a namecheck against other databases and the results of those checks; (2) dates of visa issuance, refusal, or revocation; (3) formal requests submitted to the Department such as Advisory Opinion (“AO”) requests and requests for enhanced vetting and screening from interagency partners, and the responses, if any (described further in paragraphs 18-22); and (4) biometrics information and (5) the oath taken by immigrant visa applicants and the certification provided by the nonimmigrant visa applicant that all the responses provided are true and correct. The CCD also maintains records of notes made by the consular officer and any case- or applicant-specific documents scanned into a particular case in either NIV or IVO. A consular officer may record other actions – such as a discussion about a case within the consular section or within the Department, communication about a case with the applicant or interested third party, or consideration of a waiver of any visa ineligibility grounds – by

creating a note or by scanning such communication into a particular case in either NIV or IVO. Because such additional actions do not reflect the adjudication of the consular officer on the application, such an action may not be required and may not be recorded in NIV or IVO in a particular visa case and therefore would not be reflected in the CCD. The result is that actions by Department-users, especially those in free form fields, may not be recorded in a uniform way across all visa applications such that those actions cannot be reliably extracted in a database query.

13. IVO, NIV, and other consular systems allow visa applicants or Department-users to scan in documents. These documents may be provided by visa applicants, voluntarily or by request of a consular officer, or generated by Department-users in connection with adjudication of a visa application, waiver application, or inquiries regarding those applications. Department users may or may not scan these documents into consular systems, normally at their discretion. Documents scanned into the software are saved as images and therefore cannot be searched in a text search with existing Department capabilities.

14. The CCD also stores all of the visa application information processed by the Visa Office Information Service (“VOIS”), the system through which the Department processes formal requests for AOs and interagency screening and vetting requests received from consular officers via the CCD. The Department sends responses to those formal requests back to the consular officer via VOIS. If such a request is required to determine visa or waiver eligibility, then the consular officer must refuse the visa application at the end of the interview and transmit the request at some time following the visa application interview and refusal. Visa adjudication software does not permit a consular officer to overcome the refusal and issue a visa while a formal request in VOIS or other consular system is pending a response from the Department. This is a safety feature designed to ensure that a consular officer does not issue a visa unless and until they have all the information necessary to assess an applicant’s visa eligibility.

Visa Data Sets

15. My office receives requests for visa data sets. Depending on the requirements of the request for visa data, data sets may be pulled from several sources such as the CCD, IVAMS, and our business analytics data warehouse. There are certain standard CCD searches, for example a search for a visa applicant by name. Each visa application in the IVO software is assigned a case number, although that case number can be changed. Department-users may reference the case number to identify a specific visa applicant. That case number may also be provided to the visa applicant, usually by the National Visa Center, and allows the visa applicant to use CEAC to complete visa application forms and upload documents. Standard CCD searches are available to regular users. Ad-hoc reports, that is requested data sets that are not standard or previously programmed reports, must be handled by CA/CST.

16. Using the annual Report of the Visa Office as an example, several different preexisting programmed reports are run in IVAMS to produce the immigrant visa data tables (the data originates from the IVO system, which are processed by IVAMS on a monthly basis). Nonimmigrant visa data stored in the CCD's NIV system is directly downloaded to IVAMS and then programmed reports in IVAMS are run to produce the nonimmigrant visa data tables. Someone in my office then enters the two data tables into a series of spreadsheets to produce the tables that make up the Annual Report of the Visa Office.

17. Any request for data my office cannot answer by querying the business analytics data warehouse, or by using existing IVAMS or CCD reports, is sent to CA/CST to fulfill because they have greater access to database fields than members of the Visa Office. Examples of user limitations include but are not restricted to analytics warehouse's date range for available data (past five fiscal years) and end user permissions for CCD and other systems, which regulates access to stored data depending on the user's needs to complete daily tasks as well as their office locations. For example, most employees of the Passport Office do not have access to visa-related data.

Advisory Opinions ("AOs") and Requests for Interagency Screening and Vetting

18. Consular officers can request AOs from the Department on certain questions involving proper visa classification and some specific grounds of visa ineligibility, as well as on other legal issues concerning visa applications. AOs are required for certain grounds of visa ineligibility, such as some criminal and prior immigration violation grounds, but AOs may be submitted by any consular officer with a question. AOs may be formally submitted via VOIS or they may be submitted informally by email to the Visa Office. An AO that is submitted by email may or may not identify the name or case number of the visa application. An AO may also inquire more broadly about similar cases and not identify the visa application or visa applications definitively. An AO that is submitted by email may or may not later be recorded by the consular officer in the case notes in NIV or IVO. As only a small portion of case-specific AO requests are captured in VOIS, a query of VOIS would not result in any reliable data regarding requests for AOs that are related to PP 9645.

19. The Visa Office coordinates screening and vetting of visa applicants with interagency partners. Formal requests for interagency screening and vetting may be submitted via VOIS but other screening and vetting actions may not be captured in VOIS.

20. Only after any required AO response is received and the consular officer has confirmed that the results show no ground of ineligibility may the visa be issued, provided the consular officer has determined the applicant remains otherwise eligible. For example, the FAM directs a consular officer to submit a formal AO in VOIS for review of visa ineligibility under INA sections 212(a)(2)(G) for participation in violation of religious freedom and 212(a)(10)(C) for international child abduction.

21. Likewise, if interagency screening and vetting is required to determine whether a visa applicant's entry could pose a threat to national security or public safety, then only after the response is received and the consular officer has reviewed the results and is satisfied that the results show no threat to nationality security and public safety may the consular officer proceed with consideration of a waiver of PP 9645.

22. The VOIS database allows the Visa Office to see when an individual visa applicant received or is pending a formal AO or interagency screening and vetting response. VOIS does not,

however, contain fields expressly designed for PP 9645 reporting purposes. The Department put the most recent build of VOIS that contained user functional changes (other than system compatibility changes) into production in May 2014, long before PP 9645 came into effect.

23. Visa applications involving consultations with the Visa Office, either through an AO or interagency screening and vetting request, may be captured in VOIS and replicated to the CCD. However, as described above, less formal consultation may not be available in the CCD and thus not capable of being correctly captured by creating and running a report.

24. The Department of State is not able to estimate how long an interagency screening and vetting process may take in order to provide a response to the consular officer.

Presidential Proclamation 9645

25. PP 9645 was the result of a worldwide review conducted as required per Section 2 of Executive Order 13780 (“EO 13780”) of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry Into The United States). Section 2 of EO 13780 ordered agencies to determine what additional information, if any, was needed from each foreign country to assess whether foreign nationals who seek to enter the United States pose a security or safety threat. After considering the results of the worldwide review, and accounting for the foreign policy, national security, and counterterrorism objectives of the United States, on September 24, 2017, the President issued PP 9645, which restricted and limited the entry of certain nationals of eight countries – Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen. The President determined these restrictions are necessary to prevent the entry of those foreign nationals about whom the U.S. 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. On April 10, 2018, the President issued Presidential Proclamation 9723, which removed the visa restrictions imposed on nationals of Chad.

26. Some visa applicants who are nationals of countries affected by the PP 9645 are nevertheless excepted from the Proclamation's entry restrictions, pursuant to PP 9645's terms. If an applicant does not fall into an exception category, a consular officer first determines whether, absent the Proclamation, the applicant would be eligible for a visa. If not, the visa is denied on that ground of ineligibility. If the applicant is otherwise eligible for a visa but for PP 9645, the consular officer denies the visa pursuant to INA section 212(f), and then automatically considers the applicant for a waiver of the Proclamation's entry restrictions based upon the three-part test set forth in PP 9645. There is no separate application for a waiver that is required of visa applicants, and no separate "waiver application" exists. Visa applicants who are subject to the Proclamation's entry restrictions may present evidence in their visa application and during their visa interview regarding their eligibility for a waiver, pursuant to the regulations applicable to immigrant and nonimmigrant visa applicants. Consular officers adjudicate waivers based on information provided in the standard visa application, in-person interview, and any other information received.

27. As specified in Section 3, paragraph (c) of PP 9645, consular officers may "grant waivers on a case-by-case basis" only if the foreign national "demonstrates to the consular officer's or Customs and Border Protection 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."

28. Consular officers have broad discretion to determine what, if any, information or documents may be necessary to assess applicant eligibility for a visa and a waiver. The visa application, supporting documentation, and required interview provide considerable information to the consular officer. The consular officer may also request additional information from the visa applicant, conduct a fraud investigation, and request Visa Office coordination to obtain screening and vetting information from interagency partners.

29. Following publication of PP 9645, the Visa Office created a new refusal code, "EO17", in NIV and IVO software systems in order to distinguish refusals made under INA section 212(f) based

on PP 9645 grounds that would be readily distinguishable from refusals under INA section 212(f) based on other presidential proclamations. The Foreign Affairs Manual (“FAM”) at 9 FAM 302.14-10, instructs consular officers to refuse a visa application with code EO17 if the applicant is subject to PP 9645, does not qualify for an exception, and would otherwise be eligible for the requested visa but for the Proclamation. The FAM also states that all visas issued pursuant to a waiver of or an exception to PP 9645 should be annotated with standard annotation text of “Presidential Proclamation Waived” for waiver cases and “Exception under Proclamation” for exceptions. That text should be entered by a Department-user in the annotation field in issuing the visa.

30. No new fields were created or designated in the CCD to indicate the fulfillment of individual criteria for a waiver of PP 9645. As such datum does not exist in any individual visa application record, the Department cannot create a script that would generate data distinguishing cases by separate waiver criteria.

Quarterly Report on PP 9645 Implementation

31. In response to the reporting requirement regarding PP 9645 imposed by Congress, the Bureau of Consular Affairs generated statistical information related to visa applications made by nationals of the eight countries currently or previously subject to visa restrictions under PP 9645: Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen. For the purposes of the report, we referred to visa applicants who, due to nationality and visa classification, are subject to visa restrictions under PP 9645.

32. Due to the time required to produce the Quarterly Report on PP 9645 Implementation, we provided statistics using March 31, 2019 as a cut-off date, which was likely to give a more accurate indication of the portion of applicants subject to PP 9645 who had been determined to be qualified for waivers and issued visas than earlier dates when consular officers had been able to complete consideration of fewer waiver requests. For Tables II-III in the Quarterly Report on PP 9645 Implementation, all statistics are cumulative from December 8, 2017—the date PP 9645 took effect in full

pursuant to an order by the U.S. Supreme Court—through the end of the month listed in the column header.

33. PP 9645 entry restrictions on Chadian nationals were lifted on April 10, 2018. The Department resumed normal visa processing for nationals of Chad beginning at 12:01 a.m., Eastern Daylight Time, on April 13, 2018. Therefore, all visa data for Chadian nationals in the Quarterly Report on PP 9645 Implementation was restricted to applications adjudicated prior to April 13, 2018.

34. In order to generate the Quarterly Report on PP 9645 Implementation, my office requested and received a data report from CA/CST in three excel spreadsheets each month. The software script that generated the spreadsheets pulled 28 data fields from NIV software, 25 data fields from IVO software (example fields from both NIV and IVO software include adjudication status such as refusal or issuance, adjudication date, applicant date of birth, applicant place of birth, visa class code, and refusal code), and about 100 data fields from VOIS and other CCD programs. Worldwide, approximately seven thousand new visa applications were made each month by nationals of the affected countries in the last quarter alone (April 2019 – June 2019), and when cumulatively added to spreadsheets received in prior months, this results in more than 150 data fields on approximately two hundred thousand visa applications. The annotation field, if any, is one of the captured data fields. Individual case notes are not one of the captured data fields.

35. We receive the spreadsheets for the prior month on about the twentieth day of the following month. For example, a report on January 2019 would be received about February 20, 2019. Each month in order to generate the data the software script is updated with the additional month's date range.

36. To run a report by each day would be significantly more time consuming to run and compile. For example, for the month of March 2019 rather than run one report CA/CST would have to script and run 31 separate reports.

37. The data fields included in each month's spreadsheet include applicant-specific biographic data (any case-specific ID numbers, date of birth, country of birth, passport country, etc.), visa

adjudication history (refusal codes, issuance and refusal dates, etc.), visa-specific data (annotation text, visa category, the diplomatic post where the visa application was first adjudicated, etc.), and interagency screening vetting data (request dates, response codes, etc.).

38. My office then takes the three spreadsheets received each month and uploads them into a statistical program called R. R allows us to restructure the data fields collected from the CCD by CA/CST and provided to us in the excel spreadsheets and categorize applications into relevant groupings. We generate the data regarding visa applications subject to PP 9645 by running a script that selects the passport country code and visa category entered for each visa application against the subject combinations outlined in Table 1 of the Quarterly Report on PP 9645 Implementation. For example, selecting passport country “Iran” and selecting each and all visa classifications except for F, M, and J student visa classifications (those are the only visa classifications exempted from PP 9645 for Iranians).

39. I would note that generally an applicant’s nationality is determined by running a script that selects the country that issued the applicant’s passport which was entered into the passport country data field in the individual visa applications in NIV or IVO adjudication software and then replicated in the CCD. However, Somali visa applicants present a unique challenge as they may not have a passport. Therefore, to generate a report for Somali visa applications subject to PP 9645, the script run in R selects all cases with Somalia listed as passport country, place of birth, and foreign state of chargeability and filters out those applicants who have a Somali place of birth or foreign state of chargeability code, but a passport nationality associated with another country affected by PP 9645. Trying to generate a report with all three fields for nationalities other than Somali would be expected to generate mistaken data. For example, a visa applicant born in Iran might have a German passport and, therefore, would not be subject to PP 9645. Therefore, we had to run a different script for Somalis than for the other nationalities subject to PP 9645 to try to ensure the integrity of the data generated.

40. Visas issued based on a waiver to PP 9645 are identified by 1) querying for an “EO17” refusal code, that designates prior refusal on PP 9645 grounds and 2) searching for visas issued with the annotation text, a free form text field (as distinguished from a drop-down selection), for the presence of

two keywords (“waiv” and “procl”) that designate a waiver issuance. Visas issued pursuant to an exception to PP 9645 are identified by searching for visas issued with the annotation text for the presence of keywords (“except” and “procl”) or (“exempt” and “procl”) that denote that an applicant qualified for an exception under the text of the PP 9645.

41. Where possible, the Visa Office’s reporting methodology favors querying reliable, standardized data fields, such as refusal codes, over performing keyword searches on free form text fields such as annotation and case note data fields. This is because, while consular officers are directed to input standard annotation language as discussed above in paragraph 29, consular systems do not contain technical controls such as data validation that would prevent misspellings or variations in wording, which induce a degree of error to keyword searches. As such, any keyword search run against a free form text field does not yield exact counts.

42. We mitigated potential underreporting of visa applications in which a consular officer might have failed to enter an EO17 refusal code, failed to annotate an issued visa, or misspelled a word in the annotation free form field by manually reviewing visa applications in the CCD with “EO17” refusal codes that were issued visas.

43. As discussed above in paragraph 23, not all such requests to the Department are submitted via VOIS. The majority of AOs are not submitted via VOIS, but rather may be emails. In the context of PP 9645, many of the AOs could have been sent to the countries-of-concern@state.gov mailbox, a mailbox created and controlled by the Visa Office for consular officers to raise any questions related to administration of PP 9645. Because those emails are outside of the CCD, no search of the CCD will yield data regarding which case was or was not the subject of an email. Moreover, as discussed in detail in paragraph 18 above, a search of emails would not definitively turn up the visa application or applications on which the AO question was based.

44. The monthly totals in Table I of the Quarterly Report on PP 9645 Implementation refer to the number of “new” visa applications subject to PP 9645. These visa applications are considered “new” in the sense that they were subject to PP 9645’s visa restrictions, once those restrictions took effect on

December 8, 2017. The visa applications may have previously been refused on other grounds prior to PP 9645 implementation, for example, if the visa application was refused under INA section 221(g) prior to December 8, 2017.

45. “New” visa applications may include applicants who applied more than once. For example, a Libyan applicant for a B1/B2 tourist visa might have applied in February 2017, been refused in accordance with PP 9645, and was not found eligible for a waiver. That same applicant could have applied again in February 2018, been refused in accordance with PP 9645, and then found eligible for a waiver because the applicant provided a different purpose of travel. That would be counted as two refused visa applications, even though they involved the same individual. In addition, as discussed in paragraphs 48-49, because ongoing waiver consideration cannot be captured in the data, that individual could subsequently be found eligible for a waiver, issued a visa, and reported as such in the future, while an earlier report would reflect the two visa refusals.

46. At the time PP 9645 came into effect, the Department of State determined that, until an automated interagency screening and vetting process could be put into place, applicants for visas subject to PP 9645 who are being considered for a waiver under Section 3(c) of the Proclamation should undergo a post-interview interagency security review to resolve whether their entry would not pose a threat to the national security or public safety. At the time of the Quarterly Report on PP 9645 Implementation, much of the interagency screening and vetting process was manual. As of March 31, 2019, there were more than 12,000 visa applications where a consular officer had made a preliminary determination that the applicant was likely to satisfy the first two waiver requirements (undue hardship and entry in the U.S. national interest), but where the application remained refused under PP 9645 due to the consular officer requesting interagency screening and vetting as part of consideration for a waiver. We arrived at the 12,000 plus number by running a query against cases with an “EO17” refusal and those cases that had a formal request for interagency screening and vetting pending in the VOIS system described above in paragraphs 18-23.

47. Not all visa applicants who are subject to PP 9645 currently require interagency screening and vetting before a consular officer can be satisfied that the applicant is eligible for a waiver. Therefore, we cannot presently determine which visa applicants refused because of PP 9645 have waivers pending specifically because of the national security and public safety requirement.

48. While the consular officer determines whether a visa applicant qualifies for a waiver, the applicant remains refused in the NIV or IVO software under the EO17 refusal code pursuant to PP 9645, consistent with the regulations that, if a visa cannot be issued at the time of the visa interview, the visa must be refused. As discussed above in paragraph 40, we can query the total number of visa applications refused in accordance with PP 9645. However, we cannot extract the exact number of applicants that are currently being considered for waivers of PP 9645 by consular officers because our systems do not differentiate between applications refused under the Proclamation and those which are refused and also being considered for a waiver. Consular officers are not directed to enter any particular text in a case note while they are considering a waiver of PP 9645 for a particular visa applicant.

49. Moreover, visa applicants may be 'reconsidered' for a waiver by the consular officer at a subsequent interview, after submitting additional information, etc. For example, an applicant who does not meet certain waiver criteria at the time of his or her first interview may later submit additional evidence and be found by the consular officer eligible for a waiver of a prior refusal in accordance with PP 9645. The Visa Office has previously estimated of the number of PP 9645-subject applications that are pending a response from interagency partners on screening and vetting to evaluate a waiver, but we cannot run a search to develop reliable data at this time because as discussed above in paragraphs 22-23, VOIS and other consular systems not, however, contain fields expressly designed for PP 9645 reporting purposes. Likewise, as described above in paragraph 48, we cannot extract the exact number of visa applicants who were denied a waiver for failure to demonstrate undue hardship or national interest.

50. Because the Department of State cannot extract how many visa applicants are refused, but are still being considered for a waiver of PP 9645, that means many of the visa applications that the

data reflect were refused in accordance with PP 9645 in Tables II(a) and II(c) of the Quarterly Report on PP 9645 Implementation may ultimately qualify for a waiver of PP 9645. Therefore, some of the refusals reported in Tables II(a) and II(c) will ultimately result in visa issuance, and will be reported as such in future reports at such time if the visa applicant is granted a waiver and issued a visa.

51. For Tables II(a)-II(d), refusal data for visa applications subject to PP 9645 are divided into “Cumulative Non-PP 9645 Refusals”, refusals on grounds unrelated to PP 9645, and “PP 9645 Refusal”, refusals on PP 9645 grounds. Cumulative refusal totals reflect the number of applications refused through the end of the month listed. For the reason discussed above, many of the visa applications currently refused in accordance with PP 9645 may result in a waiver being granted and a visa issued, and it is possible for cumulative refusal totals to decrease from one month to the next if applications move from a refused to an issued status.

52. Tables III(a) and III(b) of the report to Congress contain the cumulative total of all visa applicants from countries designated under PP 9645 that have been found eligible for a waiver and issued a visa. Tables III(a) and III(b) do not include visas issued under an exception to PP 9645. Both waiver issuances and issuances pursuant to an exception to PP 9645 are included under the Cumulative Issuances column header in Tables II(a) and II(c) of the report to Congress. Tables II(a) and II(c) also contain the cumulative total of all visa applicants from countries designated under PP 9645 who have been refused in accordance with PP 9645. These data have been disaggregated by nationality and visa classification.

53. While it is possible to disaggregate the data in the Quarterly Report on PP 9645 Implementation by the U.S. embassy or consulate where the visa application initially took place, it should be noted that visa applicants may have their cases transferred from one to location to another, which could result in data that is not accurate. For example, an applicant from Yemen who initially applied at the U.S. Embassy in Cairo and then had their case transferred to Djibouti would appear as a Djibouti case even though the refusal took place in Cairo.

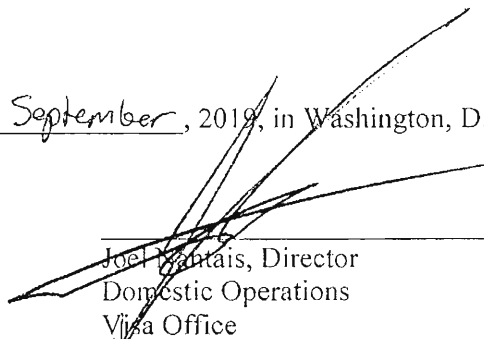
54. It took more than two months to capture the data, draft, review, and clear the Quarterly Report on PP 9645 within the Department. Once CA/CST and my office had generated the data sets for

the Quarterly Report on PP 9645 Implementation, my office worked with others in the Visa Office to draft the explanatory text. The Quarterly Report on PP 9645 Implementation was then reviewed and cleared by the Bureau of Consular Affairs, other relevant bureaus in the Department, and finally by the Bureau of Legislative Affairs before it was delivered to Congress. After the Quarterly Report on PP 9645 Implementation was delivered to Congress the Bureau of Consular Affairs also chose to publish the report on the Department's website.

55. The next Quarterly Report will provide cumulative statistics through June 30, 2019. My office has completed the data sets necessary for the next Quarterly Report using the same methodology described above. The next Quarterly Report is now being reviewed within the Department.

Pursuant to Title 28, United States Code, Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 9th day of September, 2019, in Washington, D.C.



Joel Bantais, Director
Domestic Operations
Visa Office
Bureau of Consular Affairs
U.S. Department of State

UNCLASSIFIED **EXHIBIT C**

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**Testimony of Edward Ramotowski
Deputy Assistant Secretary, Bureau of Consular Affairs
U.S. Department of State
September 24, 2019**

**House Judiciary Committee Subcommittee on Immigration and Citizenship and Foreign
Affairs Committee Subcommittee on Oversight and Investigations**

Chairwoman Lofgren, Chairman Bera, Ranking Member Zeldin and Ranking Member Buck, thank you for the opportunity to testify today about the Department of State's role in implementing Presidential Proclamation 9645 (P.P. 9645 or the Proclamation). Today I am honored to represent the many career consular officers dedicated to adjudicating visas according to the law and regulations set forth by the President and Congress. In my over 33 years of service with the State Department, I have observed first-hand how committed these career staff are to providing the best customer service possible, and to ensuring that each and every consular adjudication is made in adherence with the established requirements. As laws and regulations change, these career staff work hard to quickly adapt and implement new procedures in a professional manner.

President Trump issued Presidential Proclamation 9645, titled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats," on September 24, 2017. The issuance of the Proclamation was prompted by a global review conducted by the Department of Homeland Security (DHS), in consultation with the Department of State (the Department) and the Director of National Intelligence (DNI).

The 2017 review evaluated whether additional information would be needed from each foreign country to assess adequately if their nationals seeking to enter the United States pose a security or safety threat. That review focused on the integrity of documents required to travel to the United States, whether the country makes available certain types of information on terrorists, criminals, fraudsters and the traveling population; and a national security and public-safety risk assessment of the country.

The President deemed it necessary to impose certain restrictions on the entry of certain nonimmigrants and immigrants from nationals of eight countries, including Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen. P.P. 9645's travel restrictions were intended to address the information-sharing and other security risks to the United States and to encourage host governments to remedy these deficiencies. On April 10, 2018, a new Presidential Proclamation amended P.P. 9645 of September 24, 2017, removing the visa restrictions imposed on nationals of Chad based on the notable improvements of the government of Chad in identity management practices, handling of lost and stolen passports, and information sharing.

Although certain federal courts enjoined the government from enforcing P.P. 9645, on December 4, 2017, the Supreme Court allowed P.P. 9645 to be fully implemented. In accordance with that decision, on December 8, 2017, the Department undertook to fully implement the Proclamation. On June 26, 2018, the Supreme Court issued a decision that the Proclamation was a lawful

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exercise of the President's authority under the Immigration and Nationality Act. Consistent with the Court's decision, the Department continued processing visa applications in accordance with the Proclamation for subject nationals of the seven affected countries.

The Department of State's main role in the implementation of P.P. 9645 is to adjudicate visa applications from nationals of the seven designated countries and, where legally appropriate, to apply exceptions and waivers. This is a multi-step process.

First, a consular officer must determine whether an applicant is otherwise eligible for a visa under the immigration laws of the United States. Many applicants will be found ineligible at this stage, especially those seeking a temporary visitor visa who are unable to demonstrate that they have a residence abroad that they have no intention of abandoning.

Second, if otherwise eligible for the visa, the consular officer determines whether the applicant qualifies for an exception to the Proclamation's travel restrictions or, if not, whether the applicant is eligible for a waiver under the Proclamation, which allows for issuance of a visa. The restrictions imposed by the Proclamation vary by country, so that some nationals experience only limited impact. For example, only certain government officials from Venezuela are subject to the Proclamation's restrictions, while for Yemeni and Libyan nationals, the Proclamation only restricts short-term tourist and business nonimmigrant visas. Somali nationals face no restrictions on any nonimmigrant visa category.

The Department of State has devoted substantial efforts to ensure that the Proclamation's entry restrictions, exceptions and waivers are applied correctly and consistently by consular officers at embassies and consulates overseas. The Department has updated guidance as necessary for consular officers in the field to accomplish this task.

Some applicants benefit from the exceptions provided by the Proclamation. An applicant whose situation fits into one of the exceptions set forth in the Proclamation, and who is otherwise eligible for a visa, may be issued a visa without going through the Proclamation's waiver process. As specified in the Proclamation, these exceptions include:

- Individuals who were present in the United States when the proclamation went into effect
- Individuals who had valid visas when the proclamation went into effect
- Anyone whose visa was revoked or canceled as a result of E.O. 13769 who still qualifies
- Any Lawful Permanent Resident
- Anyone who subsequently travels to the United States under a proclamation waiver, or any other lawful means.
- Any dual national traveling on the passport of a non-subject country
- Diplomats and officials traveling to the United Nations and NATO
- Individuals who have been granted asylum, admitted to the United States as refugees, or have been granted withholding of removal, advance parole, or projection under the Convention Against Torture

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With respect to Proclamation waivers, if a visa applicant subject to P.P. 9645's visa restrictions has established eligibility for a visa (for example, has overcome INA section 214(b) and is not ineligible for a visa on a ground under INA 212(a)), the consular officer will *automatically* consider the applicant for a waiver based upon the criteria set forth in the Proclamation. There is no separate waiver application and no additional fee. As specified in the Proclamation, consular officers determine on a case-by-case basis if an applicant is eligible for a waiver, based on the following criteria: issuance of the visa is in the national interest; denial of the visa would cause the applicant undue hardship; and, the applicant poses no national security or public safety threat to the United States.

Consular officers, in consultation with their supervisors, determine whether applicants meet the waiver criteria, especially the first two (national interest and undue hardship) based on general guidance provided by the Department. Consular officers are in the best position to assess the applicant's personal circumstances and purpose of travel as part of the visa application process, and they can ask for additional information directly from the applicant if needed. For the third waiver criterion (national security) consular officers, until recently, were required to send the case to Washington for review, in a process similar to the security advisory opinion (SAO) procedure for other visa cases. A clear response on the security review would allow the consular officer to approve the waiver and issue the visa.

Up until July 2019, to comply with the national security criterion of the waiver process, applicants subject to P.P. 9645 underwent an intensive post-interview interagency security review, to provide consular officers information on whether or not the applicant's entry into the United States would pose a threat to national security or public safety. Until very recently, this interagency review was a time-consuming manual process, which led to a large backlog of waiver cases. During this time, the Department worked closely with consular officers in the field to identify and expedite processing of the most urgent cases, while maintaining the rigorous nature of the security review.

The Department, after extensive work with interagency partners and consistent with the March 6, 2017 Presidential Memorandum, "*Implementing Immediate Heightened Screening and Vetting of Applications for Visas and Other Immigration Benefits...*," and Section 5 of P.P. 9645 started in early July 2019 to run a new enhanced automated screening and vetting process for all immigrant and nonimmigrant visa applicants subject to the Proclamation. The new enhanced review is automated, occurs prior to the interview, and provides consular officers with the information required to make most P.P. 9645 waiver determinations much more quickly. It is now possible that many cases may be issued within days of the application, should the security check done prior to the interview not show any concerns – once the consular officer has established all three criterion of the waiver, the visa may be issued.

While it is too early to ascertain the full impact on new P.P. 9645-subject applications, initial evidence indicates that consular officers are now able to make most waiver decisions within a few days of the visa interview. In the short time this system has been in place, the month-to-month change in visas issued pursuant to a waiver rose from a steady 10 to 12 percent from before the new system, to more than 50 percent each month. This is evidence that under the new system, applicants who qualify for a waiver will receive their visas much sooner. Meanwhile,

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the Department is working diligently to review and process to conclusion existing P.P. 9645-subject cases. Since September 14, 2019 the Department issued more than 7,600 visas pursuant to a waiver of P.P. 9645. We anticipate that a majority of pre-July 2019 waiver cases pending with the Department, most of which require some degree of manual review, should be completed by the end of 2019 or soon thereafter. The new automated system is intended to significantly increase the speed and efficiency of the vetting process for both currently pending and future P.P. 9645-subject applications while enhancing security standards.

Finally, it should be noted that the Department is working closely with a number of other countries around the world to address other security and information sharing deficiencies that were identified by the Department of Homeland Security's ongoing P.P. 9645 review process. This policy of constructive diplomatic engagement aims to mitigate or eliminate the security deficiencies in a cooperative manner, without resorting to sanctions. As such, it will improve not only U.S. national security, but the security of the international community as well.

Thank you Madam Chairwoman and Mr. Chairman. I look forward to answering your questions and those of other members of the Subcommittees.

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Implementation of Presidential Proclamation (P.P.) 9645 **EXHIBIT D**

December 8, 2017 to November 30, 2019

Notes:

1. In this report, subject applications are visa applications which, due to nationality and visa classification, are subject to visa restrictions under P.P. 9645. Information related to both nonimmigrant visa (NIV) and immigrant visa (IV) applications is provided.
2. The following tables report data cumulatively across the entire effective period of P.P. 9645, covering December 8, 2017, through November 30, 2019. Monthly totals provided in prior P.P. 9645 Implementation Reports may not aggregate to equal the cumulative totals provided in the following tables. This is due in part to data system factors related to the processing of nonimmigrant K visa class applications, which make it difficult to consistently report when K visas were first adjudicated subject to P.P. 9645. Reporting methodology revisions made in accordance with Department waiver processing policy changes, minor data system factors related to compound visa classes, and the presence in the data of approximately 35 improper or subsequently revoked issuances also contribute to slight differences between the following figures and statistics included in the Department of State's Implementation Reports.
3. Subject applications not issued a visa are categorized as either "Ineligible on non-P.P. Grounds", i.e., ineligible on grounds unrelated to P.P. 9645, and "Ineligible under P.P. 9645". It is possible for totals of ineligible applications to decrease from one month to the next if applications move from an ineligible status to an issued status.
4. P.P. 9645 entry restrictions on Chadian nationals ended on April 10, 2018. The Department resumed normal visa processing for Chadian nationals beginning at 12:01 a.m., Eastern Daylight Time, on April 13, 2018. All visa data for Chadian nationals displayed below is restricted to adjudications that took place prior to April 13, 2018.

Table I: Applications of P.P. 9645 Affected Nationalities – Nonimmigrant and Immigrant Visas

236,781 nonimmigrant visa (NIV) and immigrant visa (IV) applications associated with nationals of countries impacted by P.P. 9645 were adjudicated between December 8, 2017 and November 30, 2019. Of these, **159,469** were associated with visa class and nationality combinations not covered by the Proclamation, leaving **45,778** NIV applications and **31,534** IV applications subject to P.P. 9645 restrictions.

Applications of Affected Nationalities – Nonimmigrant and Immigrant Visas

| Nationality | Total, Subject to P.P. 9645 | | | Issued as Exception to P.P. 9645 | | | Ineligible on non- P.P. 9645 Grounds | | | Ineligible under P.P. 9645 | | | Issued Pursuant to Waiver of P.P. 9645 | | |
|------------------------|--------------------------------|--------|--------|-------------------------------------|-------|-----|---|--------|-------|-------------------------------|--------|--------|---|-------|--------|
| | Total | NIV | IV | Total | NIV | IV | Total | NIV | IV | Total | NIV | IV | Total | NIV | IV |
| Chad ¹ | 201 | 195 | 6 | 11 | 11 | - | 110 | 106 | 4 | 67 | 65 | 2 | 13 | 13 | - |
| Iran | 41,506 | 27,520 | 13,986 | 2,268 | 2,169 | 99 | 4,992 | 4,340 | 652 | 30,830 | 20,205 | 10,625 | 3,416 | 806 | 2,610 |
| Libya | 1,459 | 1,050 | 409 | 100 | 82 | 18 | 273 | 255 | 18 | 688 | 605 | 83 | 398 | 108 | 290 |
| North Korea | 119 | 119 | - | 94 | 94 | - | 7 | 7 | - | 13 | 13 | - | 5 | 5 | - |
| Somalia ² | 2,976 | - | 2,976 | 82 | - | 82 | 378 | - | 378 | 1,636 | - | 1,636 | 880 | - | 880 |
| Syria | 15,151 | 12,386 | 2,765 | 2,731 | 2,599 | 132 | 4,566 | 4,447 | 119 | 5,594 | 4,629 | 965 | 2,260 | 711 | 1,549 |
| Venezuela ³ | - | - | - | - | - | - | - | - | - | - | - | - | - | - | - |
| Yemen | 15,900 | 4,508 | 11,392 | 731 | 701 | 30 | 2,982 | 1,998 | 984 | 4,771 | 1,643 | 3,128 | 7,416 | 166 | 7,250 |
| Grand Total | 77,312 | 45,778 | 31,534 | 6,017 | 5,656 | 361 | 13,308 | 11,153 | 2,155 | 43,599 | 27,160 | 16,439 | 14,388 | 1,809 | 12,579 |

1. P.P. 9645 restrictions on Chadian nationals ended on April 10, 2018. All visa data for Chadian applications is restricted to adjudications that took place prior to April 13, 2018.

2. Somali nonimmigrant visa (NIV) applications are not subject to P.P. 9645 restrictions.

3. P.P. 9645 restrictions on Venezuelan nationals are narrowly targeted. No Venezuelan applications subject to P.P. 9645 were adjudicated during the reporting period.

Table II: Applications Considered for P.P. 9645 Waivers – Nonimmigrant and Immigrant Visas

Of the 57,987 nonimmigrant visa (NIV) and immigrant visa (IV) applications considered for a waiver of P.P. 9645 between December 8, 2017 and November 30, 2019, 14,388 were issued visas pursuant to waivers, while 43,599 remained ineligible under P.P. 9645. For nearly a third of all applications ineligible for visas under P.P. 9645, it has been established that issuance of visas is in the national interest and that denial of visas would cause undue hardship. These applications are likely to be issued visas, pursuant to waivers of P.P. 9645, following completion of national security checks.

Applications Considered for P.P. 9645 Waivers¹ – Nonimmigrant and Immigrant Visas

| Nationality | Applications Considered for a Waiver | | | Not Qualified for Waiver, Ineligible under P.P. 9645 | | | Visa Issued Pursuant to Waiver of P.P. 9645 | | |
|------------------------|--------------------------------------|--------|--------|--|--------|--------|---|-------|--------|
| | Total | NIV | IV | Total | NIV | IV | Total | NIV | IV |
| Chad | 80 | 78 | 2 | 67 | 65 | 2 | 13 | 13 | - |
| Iran ² | 34,246 | 21,011 | 13,235 | 30,830 | 20,205 | 10,625 | 3,416 | 806 | 2,610 |
| Libya | 1,086 | 713 | 373 | 688 | 605 | 83 | 398 | 108 | 290 |
| North Korea | 18 | 18 | - | 13 | 13 | - | 5 | 5 | - |
| Somalia ³ | 2,516 | - | 2,516 | 1,636 | - | 1,636 | 880 | - | 880 |
| Syria | 7,854 | 5,340 | 2,514 | 5,594 | 4,629 | 965 | 2,260 | 711 | 1,549 |
| Venezuela ⁴ | - | - | - | - | - | - | - | - | - |
| Yemen | 12,187 | 1,809 | 10,378 | 4,771 | 1,643 | 3,128 | 7,416 | 166 | 7,250 |
| Grand Total | 57,987 | 28,969 | 29,018 | 43,599 | 27,160 | 16,439 | 14,388 | 1,809 | 12,579 |

1. Applications are considered for P.P. 9645 Waivers if they are subject to P.P. 9645 (i.e., the application is associated with an affected nationality and a restricted visa class), they do not qualify for an exception to P.P. 9645, and they are not otherwise ineligible for a visa on the basis of a non-P.P. 9645 ground of ineligibility.

2. P.P. 9645 restrictions on Chadian nationals ended on April 10, 2018. All visa data for Chadian applications is restricted to adjudications that took place prior to April 13, 2018.

3. Somali nonimmigrant visa (NIV) applications are not subject to P.P. 9645 restrictions.

4. P.P. 9645 restrictions on Venezuelan nationals are narrowly targeted. No Venezuelan applications subject to P.P. 9645 were adjudicated during the reporting period.