The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JUWEIYA ABDIAZIZ ALI, *et al.*,

Plaintiffs,

v.

DONALD TRUMP, President of the United States, *et al.*,

Defendants.

Case No. 2:17-cv-00135-JLR

DEFENDANTS' MOTION TO DISMISS

Noted for Consideration:
May 26, 2017

I. INTRODUCTION

Consistent with the Executive's broad constitutional authority over foreign affairs and national security, Sections 1182(f) and 1185(a) of Title 8 expressly authorize the President to restrict or suspend entry of any class of aliens when in the national interest. Exercising that authority, the President issued Executive Order No. 13,780 (Order), which, *inter alia*, temporarily suspends entry of certain aliens from six countries that the Administration determined pose a heightened terrorism risk. 82 Fed. Reg. 13,209 (2017). That suspension enables this Administration to most effectively review the Nation's screening and vetting procedures to ensure they adequately detect terrorists. For the past 30 years, every President has invoked his power to protect the Nation by suspending entry of categories of aliens; the Order is no different. The Order revoked Executive Order No. 13,769 ("Revoked Order"), which was issued on January 27, 2017. After the Ninth Circuit declined to stay a nationwide injunction against it, the President issued a new Order that applies only to certain aliens outside the United States without a visa—that is, individuals who "ha[ve] no constitutional rights regarding" their admission. *Landon v. Plasencia*, 459 U.S. 21, 32 (1982). Even as to them, the Order includes a comprehensive waiver process to mitigate any undue hardship. The Order also eliminates any preference for religious minorities.

Despite these revisions, plaintiffs seek an order enjoining the application of Sections 1(f), 2 and 3. Plaintiffs are not entitled to such relief because their claims are not justiciable. The nonresident, unadmitted alien plaintiffs are not entitled to judicial review, and their petitioning relatives cannot demonstrate any cognizable injury fairly traceable to the Order unless and until their alien relatives have been found eligible for a visa and denied a waiver. Plaintiffs' claims also fail on the merits. Two statutory provisions grant the President broad authority

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encompassing the Order's temporary entry suspension, and plaintiffs fail to demonstrate that this suspension is illegal or unconstitutional. For these reasons, this Court should dismiss plaintiffs' amended complaint.

II. BACKGROUND

III. STATUTORY BACKGROUND

The Immigration and Nationality Act, 8 U.S.C. §§1101 *et seq.*, governs admission of aliens into the United States. Admission generally requires a valid visa. *Id.* §§1181, 1182(a)(7)(A)(i), (B)(i)(II), 1203. The process of applying for a visa results in a decision by a State Department consular officer. *Id*. §§1201(a)(1), 1202, 1204. Eligibility for a visa depends on many factors.

Congress created various avenues to admission, and it also accorded the Executive broad discretion to restrict or suspend entry of aliens. First, Section 1182(f) provides:

> Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

Second, Section 1185(a)(1) makes it unlawful for an alien to enter or attempt to enter the country "except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe."[1]

[1] Congress has established a Visa Waiver Program (Program) that enables certain nationals of participating countries to seek temporary admission without a visa. 8 U.S.C. §§1182(a)(7)(B)(iv), 1187. In 2015, however, Congress excluded from travel under the Program individuals from Program-participating countries who are dual nationals of, or who recently traveled to, specific non-Program countries. *Id.* §1187(a)(12). Congress itself specifically excluded nationals of countries participating in the Program who are dual nationals of or had recently visited Iraq or Syria, where "[t]he Islamic State of Iraq and the Levant (ISIL) . . . maintain[s] a formidable force," and dual nationals of and recent visitors to countries designated by the Secretary of State

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IV. THE REVOKED ORDER

On January 27, 2017, the President issued Executive Order No. 13,769 ("Revoked Order"), which was revoked by the new Order on March 16. The Revoked Order was challenged in multiple courts including this one, which preliminarily enjoined it nationwide. *Wash. v. Trump*, No. 17-41, 2007 WL 462040 (W.D. Wash. Feb. 3, 2017). The Ninth Circuit declined to stay the injunction pending appeal. *Wash. v. Trump*, 847 F.3d 1151, 1156 (9th Cir. 2017) (per curiam). Acknowledging that the injunction may have been "overbroad," the court did not narrow it, concluding that "[t]he political branches are far better equipped" to do so. *Id*. at 1166-67.

VI. THE ORDER

Responding to the Ninth Circuit's invitation, and at the joint urging of the Attorney General and Secretary of Homeland Security,[2] the President issued the Order on March 6, 2017. The Order was to take on March 16, at which time it would replace the Revoked Order.

The Order's purpose is to enable the Administration to assess whether current screening and vetting procedures are sufficient to detect terrorists seeking to infiltrate the Nation. Order § 1(f). To facilitate that review, the President ordered a temporary, 90-day pause on entry of certain foreign nationals from six nations previously "identified as presenting heightened concerns about

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as state sponsors of terrorism (currently Iran, Sudan, and Syria). 8 U.S.C. §1187(a)(12)(A)(i)-(ii). Congress also authorized the Department of Homeland Security (DHS) to designate additional countries of concern, considering whether a country is a "safe haven for terrorists," "whether a foreign terrorist organization has a significant presence" in the country, and "whether the presence of an alien in the country . . . increases the likelihood that the alien is a credible threat to" U.S. national security, *id.* §1187(a)(12)(D)(i)-(ii), and in February 2016 DHS excluded recent visitors to Libya, Somalia, and Yemen, noting that the designation was "indicative of the Department's continued focus on the threat of foreign fighters," https://www.dhs.gov/news/2016/02/18/dhs-announces-further-travelrestrictions-visa-waiver-program.

[2] Joint Ltr. to President (Mar. 6, 2017), https://www.dhs.gov/sites/default/files/publications/17_0306_S1_DHS-DOJ-POTUS-letter_0.pdf (Ex. A).

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terrorism and travel to the United States": Iran, Libya, Somalia, Sudan, Syria, and Yemen. *Id.* § 1(a), (d)-(f). Each of the designated countries "is a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or contains active conflict zones." Order §1 (d). The Order details the circumstances that give rise to "heightened risk[s]" that terrorists from those countries could enter the United States and that those countries' governments may lack the "willingness or ability to share or validate important information about individuals seeking to travel to the United States" to screen them properly.

To that end, the Order "suspend[s] for 90 days" the "entry into the United States of nationals of those six countries." Order §2 (c). In response to the Ninth Circuit's ruling, however, the Order clarifies that the suspension applies only to aliens who: (1) are outside the United States on the Order's effective date, (2) do not have a valid visa on that date, and (3) did not have a valid visa at 5:00 P.M. (EST) on January 27, 2017. Order §3 (a).

The Order also contains a detailed waiver provision. Order §3(c). It permits consular officials (and the Commissioner of U.S. Customs and Border Protection or his delegee) to grant case-by-case waivers to individuals found otherwise eligible for visas where denying entry "would cause undue hardship" and "entry would not pose a threat to national security and would be in the national interest." *Id.* Moreover, §3(c) lists circumstances where waivers could be considered, including for (among others):

- foreign nationals who were previously "admitted to the United States for a continuous period of work, study, or other long-term activity," but who are currently outside the country and seeking to reenter;
- individuals who seek entry for "significant business or professional obligations"; and
- individuals who seek entry "to visit or reside with a close family member (e.g., a spouse, child, or parent) who is a U.S. citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa."

Finally, the Order specifies that requests for waivers will be processed "as part of the visa

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issuance process." Order §3 (c); *see also* U.S. Dep't of State, *Executive Order on Visas* (Mar. 22, 2017), https://travel.state.gov/content/travel/en/news/important-announcement.html.

V. PLAINTIFFS' AMENDED COMPLAINT, EMERGENCY MOTION FOR INJUNCTIVE RELIEF, AND MOTION TO CERTIFY A CLASS

On March 10, plaintiffs filed an amended complaint, a second motion to certify a class, and a motion for a temporary restraining order and preliminary injunctive relief.[3] The plaintiffs named in the amended complaint are (1) family-based immigrant visa petitioners in the United States, or (2) beneficiaries of an approved, family-based immigrant visa petition who are nationals of one of the designated countries and have applied for and have been refused or intend to apply for an immigrant visa overseas. To obtain a family-based immigrant visa, a U.S. citizen or lawful permanent resident (LPR) must file an immigrant visa petition (Form I-130). *See* 8 U.S.C. 1154(a)(1). If all the relevant requirements are satisfied, the beneficiary may apply for a visa. *See* 8 U.S.C. § 1201(a); 8 U.S.C. § 1202(a). The decision to issue or refuse a visa application

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[3] On March 15, 2017, the District Court for the District of Hawaii entered a TRO that enjoined enforcement of Sections 2 and 6 of the Order nationwide. *See Hawaii v. Trump*, No. 17-cv-50, 2017 WL 1011673, at *1 (D. Haw. Mar. 15, 2017). The following day, the District Court for the District of Maryland entered a nationwide preliminary injunction against enforcement of Section 2(c) of the Order. *See Int'l Refugee Assistance Project v. Trump*, No. 17-cv-361, 2017 WL 1018235, at *18 (D. Md. Mar. 16, 2017), *appeal docketed*, No. 17-1351 (4th Cir. Mar. 17, 2017). In light of these decisions and the possibility of appeal, this Court *sua sponte* stayed consideration of plaintiffs' TRO motion. "Given the significant overlap of issues between this case and *Hawaii*," the Court reasoned that "the Ninth Circuit's rulings on [the Order] in [*Hawaii*] will [] likely have significant relevance to—and potentially control—the court's subsequent ruling here." *Ali v. Trump*, 2017 WL 1057645, at *5 (W.D. Wash. Mar. 17, 2017). The Court further noted that this stay would permit the Court to "conserve its resources and . . . benefit from any Ninth Circuit rulings in *Hawaii*." *Id*. The district court in Hawaii converted its TRO into a preliminary injunction on March 29, 2017, *see Hawaii*, No. CV 17-00050, ECF No. 270. Defendants appealed that decision, *see id*., ECF No. 271, which granted a motion for expedited briefing as to a stay motion and the merits. *State of Hawaii v. Trump*, No. 17-15589, ECF No. 14 (9th Cir. Apr. 3, 2017). The case should be fully briefed by April 28, 2017, and is scheduled for argument on May 15. *Id*.

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rests with the consular officer. *See* 8 U.S.C. § 1201(a)(1). Neither the approval of a petition nor the issuance of an immigrant visa guarantees admission or entry to the United States. *See* 8 U.S.C. §§ 1154(e), 1201(h). Those decisions rest with the DHS officer following inspection at a U.S. port of entry.

The 10 named plaintiffs include six aliens currently outside the United States, each of whom is an unadmitted national of one of the six identified countries, and none of whom has been found eligible for a visa (collectively, "alien plaintiffs"). Each of the remaining plaintiffs (collectively, "petitioner plaintiffs") resides in the United States and filed an immigrant visa petition, as a parent or a spouse, on behalf of at least one of the alien plaintiffs. These plaintiffs include two U.S. citizens and two LPR petitioners.

Of the six alien plaintiffs, three have not yet applied for a visa. *See* ECF No. 71-1 (declaration of Chloe Dybdahl) (Dybdahl Decl.). The other three applied for immigrant visas but their applications were refused under 8 U.S.C. § 1201(g). *Id.*

VI. STANDARD OF REVIEW

Dismissal is appropriate under Rule 12(b)(1) when the district court lacks subject matter jurisdiction, which the plaintiff bears the burden of establishing. *Rio Prop's, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1019 (9th Cir. 2002). A court may not exercise jurisdiction if a claimant lacks standing or the claim is unripe. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992); *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003). A district court is free to hear evidence regarding jurisdiction and rule prior to trial. *Kingman Reef Atoll Investments, LLC v. U.S.*, 541 F.3d 1189, 1195 (9th Cir. 2008).

A Rule 12(b)(6) motion tests the legal sufficiency of the claims asserted in the complaint. *Van Buskirk v. Cable News Network, Inc.*, 284 F.3d 977, 980 (9th Cir. 2002). A complaint must be dismissed when a plaintiff's allegations fail to state a claim showing an entitlement to relief.

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Bell Atlantic Corp. v. Twombly, 550 U.S. 554, 555 (2007). Dismissal is also warranted where a complaint fails to allege facts under a cognizable legal theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). Although the Court must accept as true all factual allegations in the complaint, dismissal is appropriate if a claim for relief is not plausible under the facts alleged. *Cervantes v. United States*, 330 F.3d 1186, 1187 (9th Cir. 2003).

ARGUMENT

I. THERE IS NO JURISDICTION BECAUSE PLAINTIFFS' CLAIMS ARE NOT JUSTICIABLE

Plaintiffs' claims fail because they lack Article III or prudential standing, or their claims are not yet ripe. Plaintiffs must demonstrate a "legally and judicially cognizable" injury, *Raines v. Byrd*, 521 U.S. 811, 819 (1997), consisting of, at minimum, a "concrete and particularized" injury that is "actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S. at 560-61. Moreover, "a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." *Davis v. FEC*, 554 U.S. 724, 734 (2008). Plaintiffs have not done so.

First, the doctrine of consular nonreviewability has long provided that an alien abroad cannot obtain judicial review of a denial of a visa. *See Brownell v. Tom We Shung*, 352 U.S. 180, 184 n.3, 185 n.6 (1956); *Cardenas v. United States*, 826 F.3d 1164, 1169 (9th Cir. 2016). The Ninth Circuit has recognized a "limited exception" "where the denial of a visa implicates the constitutional rights of American citizens," *Cardenas*, 826 F.3d at 1169, but most of the petitioner plaintiffs' claims—and all of the alien plaintiffs' claims—fall outside that limited exception.

Second, the purported injury of a delay in visa issuance, should the non-resident unadmitted aliens be found eligible for visas, does not confer standing. *See Kodra v. Sec'y, Dep't of State*, 903 F. Supp. 2d 1323, 1327 (M.D. Fla. 2012). Here, however, that is precisely what plaintiffs complain of: they seek to challenge the Order's temporary, 90-day suspension on entry,

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which is subject to waivers even during that brief period.

Third, even if the petitioner plaintiffs had standing, their claims are not ripe. "The doctrine[] of . . . ripeness . . . originate[s] in Article III's 'case' or 'controversy' language, no less than standing does." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 351 (2006). Ripeness ensures that courts "avoid[] . . . premature adjudication," particularly where future determinations may change the character of the controversy or obviate the need for judicial relief altogether. *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2009). Here, the petitioner plaintiffs' claims are unripe—their relatives are all individuals for whom the Order specifically contemplates the possibility of waivers if they are found otherwise eligible for visas. *See* Order §§ 3(c)(iv), 6(c). Until the alien plaintiffs are denied a visa based on the Order, their ability to enter "rests upon 'contingent future events.'" *Texas v. United States*, 523 U.S. 296, 300 (1998).

Fourth, Plaintiffs' attempts to demonstrate standing based on the Establishment Clause fail. Although "the concept of injury for standing purposes is particularly elusive in Establishment Clause cases," a plaintiff cannot establish standing without showing a personal injury beyond "the psychological consequence presumably produced by observation of conduct with which one disagrees." *See Valley Forge Christian Coll. v. Ams. United for Separation of Church and State, Inc.*, 454 U.S. 464, 485-86 (1982). Plaintiffs, rather, must demonstrate a "particular and concrete injury to a personal constitutional right." *Id.* at 482. This, for example, could include a "direct harm of what is claimed to be an establishment of religion, such as a mandatory prayer in a public school classroom," or that plaintiffs "have incurred a cost or been denied a benefit on account of their religion," which, for example, "can result from alleged discrimination in the tax code, such as when the availability of a tax exemption is conditioned on religious affiliation." *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 133-34 (2011); *see also Catholic League for Religious & Civ. Rights v. City & Cnty. of San Francisco*, 624 F.3d

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1043, 1049-50 (9th Cir. 2010) (en banc).

Plaintiffs make neither showing here. First, they cannot demonstrate "direct harm" because the Order does not require plaintiffs to "see or do anything." *Lew*, 773 F.3d at 820; *see also Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1016 (9th Cir. 2010) (no personal injury where "nothing in the Pledge [or the statute codifying it] actually requires anyone to recite it"). In other words, the Order does not "convey[] a government message of disapproval and hostility toward their religious beliefs" that causes them to change their behavior by, for example, "forcing them to curtail their political activities . . . ." *Catholic League*, 624 F.3d at 1053

Likewise, plaintiffs cannot show they have incurred a cost or been denied a benefit on account of their religion. No benefit has been denied based on the Order—each alien plaintiff either has not made a visa application or has and was not found eligible. *See, e.g.*, *Lew*, 773 F.3d at 821; *see also* Dybdahl Decl. Indeed, given the comprehensive waiver process, plaintiffs' claims with respect to aliens seeking entry or a visa in the *future* are entirely speculative and therefore not ripe under Article III. *See, e.g.*, *Suhre v. Haywood County*, 131 F.3d 1083, 1091 (4th Cir. 1997).

Finally, plaintiffs' Establishment Clause claim is barred by prudential standing limitations. A plaintiff "generally must assert his own legal rights and interests," except in the limited circumstances where he has "third party standing to assert the rights of another." *Kowalski v. Tesmer*, 543 U.S. 125, 129 –30 (2004).[4] Here, the petitioner plaintiffs cannot assert an Establishment Clause claim on behalf of third-party aliens abroad. Lacking any substantial

[4] Although this rule has traditionally been framed as a "prudential standing" requirement, the Supreme Court recently reserved the question whether it is better characterized as a limitation on the "right of action on the claim." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1387 n.3 (2014). Regardless of the label, plaintiffs here fail to satisfy the substance of this well-established rule.

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connections to this country, those aliens abroad possess no Establishment Clause rights, *see United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990), and no constitutional rights regarding entry into this country, *see Mandel*, 408 U.S. at 762. Nor can those plaintiffs assert a claim that their *own* Establishment Clause rights are being violated because their religion is entirely immaterial to the purported discrimination against their family members abroad. *See Smith v. Jefferson Cnty. Bd. of Sch. Comm'rs,* 641 F.3d 197, 207 (6th Cir. 2011) (en banc).

II. PLAINTIFFS FAIL TO STATE A CLAIM

A. The Order Is A Valid Exercise Of The President's Authority

1. The Order falls squarely within the President's broad authority under Sections 1182(f) and 1185(a)

The "power to exclude aliens is inherent in sovereignty, necessary for maintaining normal international relations and defending the country against foreign encroachments and dangers—a power to be exercised exclusively by the political branches of the government." *Kleindienst v. Mandel*, 408 U.S. 753, 765 (1972) (internal quotation omitted). Congress also conferred expansive authority on the President, including the two provisions the Order invokes.

First, Section 1182(f) provides that "[w]henever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may . . . for such period as he shall deem necessary, suspend the entry of all aliens or of any class of aliens as immigrants or nonimmigrants," or "impose on the entry of aliens any restrictions he deems to be appropriate." "The President's sweeping proclamation power [under Section 1182(f)] provides a safeguard against the danger posed by any particular case or class of cases that is not covered by one of the [inadmissibility] categories in section 1182(a)." *Abourezk v. Reagan*, 785 F.2d 1043, 1049 n.2 (D.C. Cir. 1986), *aff'd*, 484 U.S. 1 (1987); *see Mow Sun Wong v. Campbell*, 626 F.2d 739, 744 n.9 (9th Cir. 1980). Every President

over the last thirty years has invoked that authority to suspend or restrict entry of certain classes of aliens.[5]

Second, Section 1185(a) broadly authorizes the "President" to "prescribe" reasonable "rules, regulations, and orders," and "limitations and exceptions" regarding entry of aliens. That provision is the latest in a line of statutory grants of authority tracing back nearly a century. *See* Pub. L. No. 65-154, § 1(a), 40 Stat. 559 (1918). Previously limited to times of war or declared national emergency, Congress removed that limitation in 1978, when it enacted Section 1185(a) in its current form. Pub. L. 95-426, §707(a), 92 Stat. 963, 992-93 (1978).

Both of those provisions comfortably encompass the Order's temporary suspension of entry of aliens from six countries that the President—in consultation with the Attorney General and the Secretaries of State and Homeland Security—concluded required special precautions while the review of existing screening and vetting protocols is completed. That temporary measure is a paradigmatic exercise of the President's authority to "suspend the entry" of "any class of aliens" he finds may be "detrimental to the interests of the United States," 8 U.S.C. § 1182(f), and to prescribe "limitations" and "exceptions" on entry, *id.* § 1185(a)(1).

2. Section 1152 does not restrict the President's broad authority

Plaintiffs contend that Section 1152(a)(1)(A), which prohibits discrimination on the basis of nationality in the allocation of immigrant visas, bars the President from drawing nationality-based distinctions under Sections 1182(f) and 1185(a), notwithstanding the fact that Presidents

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[5] *See, e.g.*, Proclamation 5517 (1986) (Reagan; Cuban nationals ad immigrants); Exec. Order No. 12,807 (1992) (George H.W. Bush; government officials who impeded anti-human-trafficking efforts); Proclamation 8342 (2009) (George W. Bush; same); Proclamation 6958 (1996) (Clinton; government officials and armed forces of Sudan); Proclamation 8693 (Obama; aliens subject to U.N. Security Council travel bans and meeting the criteria for certain financial sanctions).

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have done just that for decades. Plaintiffs are wrong. Section 1152(a)(1)(A) does not restrict the President's authority to draw nationality-based distinctions under Sections 1182(f) and 1185(a). Section 1152(a)(1)(A) was enacted in 1965 to abolish the system of nationality-based quotas for immigrant visas. Congress replaced that system with uniform, per-country percentage limits. Section 1152(a)(1)(A) addresses the subject of relative "preference" or "priority" in the allocation of immigrant visa numbers by making clear that the uniform percentage limits are the only limits that may be placed on the number of immigrant visas issued to nationals of any country.

Section 1152(a)(1)(A) thus governs the ordinary process of allocating and granting immigrant visas. Its text governs only "the issuance of an immigrant visa"; it does not purport to restrict the President's antecedent, longstanding authority to suspend entry of "any class of aliens" or to prescribe reasonable "rules, regulations, and orders" regarding entry as he deems appropriate. And it has never been understood to prohibit the President from drawing nationality-based distinctions under Section 1182(f). In addition, Section 1185(a)(1) grants the President broad general authority to adopt "reasonable rules, regulations, and orders" governing entry of aliens, "subject to such limitations and exceptions as [he] may prescribe." *Id.* § 1185(a)(1).

Interpreting Section 1152(a)(1)(A) to prohibit the President from drawing these and other nationality-based distinctions would raise serious constitutional questions that the Court must avoid if possible. *See Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988). Limiting the entry of nationals of particular countries can be critical to the President's ability to conduct the Nation's foreign affairs and protect its security. Yet plaintiffs' statutory interpretation would completely disable the President from restricting the entry of immigrants from any country—even one with which we were on the verge of war.

To read Section 1152(a)(1)(A) as narrowing the President's Section 1182(f) authority would be to treat it as a partial "'repeal[] by implication,'" which courts will not do unless

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Congress's "'intention'" is "'clear and manifest.'" *Nat'l Ass'n of Home Builders v. Defenders of Wildlife (NAHB)*, 551 U.S. 644, 662, 664 n.8 (2007). Sections 1152(a)(1)(A) and 1182(f) can, and therefore must, be reconciled by sensibly reading Section 1152(a)(1)(A)'s general, default provisions as not affecting the President's authority to suspend entry under Section 1182(f). *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2070-71 (2012). And, even if Section 1152(a)(1)(A) could be construed to narrow Section 1182(f), it cannot be read to narrow Section 1185(a)—which was substantially amended in 1978, *after* Section 1152(a)(1)(A)'s enactment. Nothing in Section 1185(a)'s current text or post-1978 history limits the President's authority to restrict entry by nationals of particular countries.

B. The Order Does Not Violate The Due Process Clause

1. Plaintiffs lack due-process rights with respect to their entry

The only persons subject to the Order are foreign nationals outside the United States with no visa or other authorization to enter this country. Order § 3(a)-(b). An "unadmitted and nonresident alien" has "no constitutional right of entry to this country," *Mandel*, 408 U.S. at 762, and "[w]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned." 338 U.S.at 544; *see also Bustamante v. Mukasey*, 531 F.3d 1059, 1062-63 (9th Cir. 2008). Congress, with limited exception, has not provided for any judicial review of a visa denial. *See, e.g.*, 6 U.S.C. § 236(f) (providing that the designation of authorities in Section 236 does not give rise to a private right of action against a consular officer to challenge a decision to issue or refuse a visa); 8 U.S.C. § 1201(i) (no judicial review of visa revocation except in limited circumstances not applicable here).[6] Thus, under the firmly entrenched doctrine

[6] Congress has repeatedly acknowledged the consular nonreviewability doctrine and chosen to leave it undisturbed. *See* ECF No. 71 at 20 n.9.

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of consular nonreviewability and the Supreme Court jurisprudence that cements its footing, the alien plaintiffs are entitled to no judicial review of a visa refusal or revocation under the Order.

2. The petitioner plaintiffs' due-process claims lack merit

First, due process confers no entitlement on persons in the United States regarding the entry of others. *See Kerry v. Din*, 135 S.Ct. 2129, 2131 (plurality opinion) ("There is no such constitutional right.") The Ninth Circuit did hold that a U.S. *citizen* spouse had a protected liberty interest in her husband's entry. *See Bustamante*, 531 F.3d at 1062. But Justice Kennedy's concurring opinion in *Din* expressly reserved judgment on whether a citizen in the United States has any due-process right even with respect to entry of her spouse; he found no "need [to] decide that issue" because "the Government satisfied any" due-process "obligation it might have had." *Din*, 135 S.Ct. at 2139, 2141. There (and in *Bustamante*), the alleged due-process right was tied to the fundamental right to marry, *see id*. at 2134 (plurality op.)—i.e., "a protected liberty interest in" and "freedom of personal choice in matters of marriage," *Bustamante*, 531 F.3d at 1062. To the extent that plaintiffs seek to assert claims based on the entry of non-spouses, or based on the rights of LPRs, *Din* and *Bustamante* do not support their claims. *See, e.g.*, *Santos v. Lynch*, 2016 WL 3549366, at *3-4 (E.D. Cal. June 29, 2016) (declining to extend *Din* to find "liberty interest as an adult child to live in the United States with her parents"); *L.H.* v. *Kerry*, No. 14-06212, slip op. 3-4 (C.D. Cal. Jan. 26, 2017) (same; daughter, son-in-law, and grandson).

Second, assuming the Due Process Clause applies to the petitioner plaintiffs, their procedural due-process claims fail because they do not explain what further process the Constitution should require. Of course, one reason for this is that their claims are premature, filed in advance of consular visa adjudications rather than after them, as was the case in *Din* and *Mandel*. Unlike the plaintiff in *Din*, the petitioner plaintiffs here do not seek additional explanation for an individualized immigration decision or contend that officials misapplied a

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legal standard. Instead, they challenge the President's decision to suspend the entry of certain nationals of six countries. Plaintiffs do not and cannot claim that due process requires notice or individualized hearings where, as here, the government acts through necessary categorical judgments rather than individual adjudications. *See Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 446 (1915).

Third, even if some individualized process were required, the Order provides it through the review of waiver requests. Order § 3(c)(iv); *see id.* § 3(c)(i)-(ix). In Justice Kennedy's concurring opinion in *Din*, the only process due was a notice of the decision along with a citation to the statutory basis for the refusal. 135 S.Ct. at 2140–41. The waiver process provides an avenue for those who establish they are otherwise eligible for visas to enter the United States. Importantly, visa processing will continue to move forward. *See* U.S. Dep't of State, Executive Order on Visas (2016), https://www.state.gov/documents/organization/258249.pdf.

C. The Order Does Not Discriminate Based On Religion

This Court should analyze plaintiffs' Establishment Clause claim under the *Mandel* standard and uphold the Order under it, given the President's facially legitimate, bona fide reason.

The Supreme Court has made clear that "[w]hen the Executive exercises" its authority to exclude aliens from the country "on the basis of a facially legitimate and bona fide reason, the courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against the" asserted constitutional rights of U.S. citizens. *Mandel*, 408 U.S. 770. *Mandel* itself rejected a claim that the Executive's exclusion of an alien violated the First Amendment rights of U.S. citizens who sought to "hear[] and meet[] with" the alien. *Id.* at 760, 763-70. Because the Attorney General had a "facially legitimate and bona fide" reason for denying the waiver—that the alien had violated the conditions of prior visas—the Court declined to "look behind the exercise of that discretion." *Id.* at 769-70.

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Mandel compels rejection of plaintiffs' claims because the Order is premised on a facially legitimate, bona fide reason: protecting national security. As discussed *supra*, the President determined that a review of the Nation's screening and vetting procedures is necessary, and that a temporary pause in entry from six countries of concern is important to "prevent infiltration by foreign terrorists" and "reduce investigative burdens" while the review is ongoing. Order § 2(c). To the extent this Court may review the order for bad faith, plaintiffs cannot meet their burden of demonstrating it. *See Din*, 135 S.Ct. at 2141 (Kennedy, J., concurring) (a court may question a consular officer's stated reason for denying a particular visa upon "an affirmative showing of bad faith . . . plausibly alleged with sufficient particularity," and even then only where the denial is alleged to violate a U.S. citizen's fundamental rights). The President's actions in response to concerns raised by the Ninth Circuit regarding the Revoked Order—and taken after consultation with the Executive officers responsible for legal, foreign-relations, national-security, and immigration matters—demonstrate *good* faith.

Even under domestic Establishment Clause standards, the Order is valid. It makes no mention of religion, and its operative effects are unrelated to religious belief or affiliation. *See Sarsour v. Trump*, No. 17-cv-0120, slip. Op. at 18 (E.D. Va. Mar. 24, 2017) (finding that the Order is facially neutral and does not distinguish based on religion). The Order is thus qualitatively different from the type of governmental action held to be unconstitutional.

Plaintiffs attempt to impute a religious motive by focusing on campaign statements and second-guessing the Order's national-security rationale. *See, e.g.*, ECF No. 52 at ¶¶ 87-90. But as the Supreme Court has made clear, official action must be adjudged by its "'text, legislative history, and implementation of the statute or comparable official act[ion],'" not through "judicial psychoanalysis of a drafter's heart of hearts." *McCreary County v. ACLU of Ky.*, 545 U.S. 844, 862 (2005) (quoting *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 308 (2000)). Stigmatization

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and alienation caused by the government sending a message one way or another regarding religion is the harm that Establishment Clause jurisprudence seeks to avoid. *See Board of Kiryas Joel v. Grumet*, 512 U.S. 687, 696 (1994). Where governmental action does not advance such a message, the Establishment Clause thus cannot be violated.

Under the controlling Establishment Clause test, "government action must have a secular purpose, 'its principal or primary effect must be one that neither advances nor inhibits religion,'" and it "must not foster excessive entanglement with religion." *Catholic League for Religious & Civil Rights v. City & Cty. of San Francisco*, 624 F.3d 1043, 1055 (9th Cir. 2010) (en banc) (quoting *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971)). Plaintiffs allege that the Order's purpose "is not secular" and its "principal effect is to inhibit religion." ECF No. 52 at ¶ 189. Yet plaintiffs' allegations raise neither *Lemon* claim past the plausibility threshold. Plaintiffs' allegations that, because the six identified countries have majority Muslim populations, subjecting their nationals to the Order's temporary procedures "will have the intended effect of limiting the ability of Muslims to immigrate to the United States and further stigmatize Islam as disfavored by the U.S. government," *id.*, where not flatly contradicted by the terms and effect of the Order itself, are so conclusory and lacking detail or explanation as to fail to raise the inference of wrongdoing to at least the level of plausibility. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

1. The Order's effect is to heighten security, not inhibit religion.

The "key consideration" in the *Lemon* analysis "is whether the government action 'primarily' disapproves of religious beliefs." *Vernon v. City of Los Angeles*, 27 F.3d 1385, 1398 (9th Cir. 1994). Because disapproval or inhibition of religion must "objectively be construed as the primary focus or effect," any message an observer would have to "infer" necessarily fails this objective test. *See Am. Family Ass'n, Inc. v. City & Cty. of San Francisco*, 277 F.3d 1114, 1122 (9th Cir. 2002); *Vernon*, 27 F.3d at 1398.

That the countries covered by Section 2(c) have "predominantly Muslim" populations, ECF No. 52 at ¶ 189, does not establish that the primary effect of Section 2(c) is to disapprove or inhibit the practice of Islam. Those countries were identified by Congress and a prior Administration for reasons that plaintiffs do not contend were religiously motivated or had a primary effect of inhibiting religion. The Order temporarily pauses entry from the countries in order to "prevent infiltration by foreign terrorists" during the review of screening and vetting procedures. Section 2(c) covers every national of those countries, including non-Muslims, if they meet the Order's criteria. Given the security orientation of the Order and absence of any reference to religion, *see Catholic League*, 624 F.3d at 1027, plaintiffs fail to plausibly allege that any discernable religious animus or inhibitory effect would be more than an "incidental or ancillary" addition to the secular, security objective. *See Am. Family Ass'n*, 277 F.3d at 1123.

Moreover, to regard the dominant religion of a foreign country as evidence of religious discrimination could intrude on every foreign policy decision made by the political branches because such measures often address particular nations with a dominant religion. *See Wash. v. Trump*, ---F.3d ---, 2017 WL 992527, at *7 (9th Cir. Mar. 5, 2017) (Bybee. J., dissenting from denial of rehearing en banc). In light of this overwhelming rejection of religious discrimination in a measure that targeted a far greater number of majority Muslim nations, plaintiffs' allegations fail to plausibly suggest that a "primary" religious effect may be inferred from the Order.

2. The Order cannot be restrained on the basis of campaign statements or the Revoked Order

As required by *Lemon*'s first prong, the Order serves a secular purpose, which is entitled to "deference" so long as it is "not merely secondary to a religious objective." *McCreary*, 545 U.S. at 864. Plaintiffs cannot establish that the Order has an impermissible "ostensibly and predominant purpose of advancing religion," however, because it is qualitatively different from

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the types of governmental actions struck down on that basis. *Id*. at 860. The Order is nothing like the nakedly sectarian symbols or actions in the four cases where the Supreme Court has found an impermissible religious purpose since *Lemon*. *See McCreary*, 545 U.S. at 859. In those cases, a governmental entity erected or promoted the Ten Commandments, the Christian crèche or cross, or prayer in a public forum—actions which unquestionably involved religiously affiliated symbols or activities. *Id.* at 859 n.9 (listing cases where these violations occurred); *see also Catholic League*, 624 F.3d at 1049-50 (listing Supreme Court cases finding standing to pursue an Establishment Clause claim, all of which involved a religious symbol or text).

Even where courts have struck actions under this *Lemon* prong that are not merely educational or symbolic, but have the effect of law, such enactments invariably reference and draw distinctions on the basis of religion. *See, e.g.*, *Catholic League*, 624 F.3d at 1049-50 (resolution specifically named and criticized directive by Catholic cardinal and Vatican). Plaintiffs can point to no support from the Supreme Court or circuits for their suggestion that an Executive Branch policy directive can be found to have an impermissible religious purpose when it lacks the barest mention of an idea, symbol, or practice associated with any or all religions.

While plaintiffs assert the need for a contextual inquiry that would encompass campaign statements, *McCreary* itself illustrates that searching the legislative context and sequence of events for a "legitimizing secular purpose" is, as that phrase suggests, an attempt to rebut the presumptively religious purpose—i.e., "openly available data support[] a commonsense conclusion that a religious objective permeate[s]"—that arises when the government employs an overtly religious symbol or names a particular sect, as occurred in *McCreary* with the County's attempt to display the Ten Commandments. *See* 545 U.S. at 869-73. The contextual inquiry was necessary to look for an alternative explanation to the "commonsense" presumption of religious intent drawn from information with an objective portent (i.e., a Commandments display

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undeniably has some relation to religion), that would evince a redeeming secular purpose. *See id.* No such contextual inquiry is thus required where, as here, the religiously neutral enactment in a separate policy sphere fails to trigger the "commonsense" presumption of religious purpose.

Even if the Court could look behind the President's facially legitimate reasons for suspending the entry of certain foreign nationals, campaign statements by the President or his surrogates that do not directly concern the Order are irrelevant. *See Hamdan v. Rumsfeld*, 548 U.S. 557, 623-24 & n.52 (2006). Using comments by political candidates to question the purpose of later action is particularly problematic. Candidates are not government actors, and statements of what they might attempt to achieve if elected, which are often simplified and imprecise, are not "official act[s]." *McCreary*, 545 U.S. at 862. They generally are made without the benefit of advice from an as-yet-unformed Administration, and cannot bind elected officials later on. *See Republican Party of Minn. v. White*, 536 U.S. 765, 780 (2002). Indeed, such statements by private persons cannot reveal "the government's ostensible object," *McCreary*, 545 U.S. at 859-60, because it is only an "official objective" of favoring or disfavoring religion gleaned from "readily discoverable fact" that implicates the Clause." *Id*. at 862; *see Salazar v. Buono*, 559 U.S. 700, 715 (2010) (plurality op.) (rejecting finding that Congress' stated purpose for land-transfer statute was "illicit" because the court "took insufficient account of the context in which the statute was enacted and the reasons for its passage"). Thus, Courts of Appeals routinely decline to rely on private communications that "cannot be attributed to any government actor" to impute an improper purpose to government action. *Glassman v. Arlington County*, 628 F.3d 140, 147 (4th Cir. 2010); *see Weinbaum v. City of Las Cruces*, 541 F.3d 1017, 1031 (10th Cir. 2008). Permitting campaign statements to contradict official pronouncements of the government's objectives would inevitably "chill political debate during campaigns." *Phelps v. Hamilton*, 59 F.3d 1058, 1068 (10th Cir. 1995) (declining to rely on campaign statements). It also would be unworkable,

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requiring the "judicial psychoanalysis" *McCreary* repudiated. 545 U.S. at 862; *see Board of Education v. Mergens*, 496 U.S. 226, 249 (1990). ("[W]hat is relevant is the legislative *purpose* of the statute, not the possibly religious *motives* of the legislators . . . .") (emphasis in original).

Even considering plaintiffs' proffered extrinsic evidence, none of it demonstrates that *this* Order was driven by religious animus. Plaintiffs' marquee statement proves the point: they cite a 15-month-old campaign press release advocating a "complete shutdown" on Muslims' entering the country. Am. Compl. ¶ 87. That release and other proffered statements reveal nothing about the Order's aim—far from banning Muslims indefinitely, the Order pauses for 90 days entry from countries previously identified as posing particular risks, which is subject to religion-neutral exceptions and waivers. There is a disconnect between plaintiffs' imputed purpose and the Order's actual effect. And even if that was not so, "the substantive revisions reflected in [the Order] have reduced the probative value of the President's [past] statements" and undercut any argument that "the predominate purpose of [the Order] is to discriminate against Muslims based on their religion." *Sarsour*, slip op. at 24.[7]

D. Plaintiffs' Equal Protection Claim is Unavailing

Plaintiffs claim that the Order violates the equal protection component of the Fifth Amendment's Due Process Clause. But again, the alien plaintiffs lack constitutional rights with respect to their request to enter the United States, and the petitioner plaintiffs are only entitled, if anything, to review under the "facially legitimate and bona fide" standard. *See Fiallo*, 430 U.S. at 796. In any event, where an equal protection claim is made to an immigration law, at most rational basis review applies. *See, e.g.*, *Mathews v. Diaz*, 426 U.S. 67, 83 (1976) (considering

[7] The Order also reflects the considered views of the Secretary of State, the Secretary of Homeland Security, and the Attorney General, who announced the Order and whose motives have not been impugned.

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whether a law making alienage distinctions was "wholly irrational"); *Jimenez–Angeles v. Ashcroft*, 291 F.3d 594, 603 (9th Cir. 2002) (nationality-based classification of noncitizens satisfies equal protection if it is rationally related to a legitimate government interest.).

Under this highly deferential standard, a classification must be upheld so long as "there is any reasonably conceivable state of facts that could provide a rational basis for the classification." *F.C.C. v. Beach Commc'ns, Inc*., 508 U.S. 307, 313 (1993). The Order easily satisfies this relevant standard. It is beyond dispute that "the Executive has the power to draw distinctions among aliens on the basis of nationality" where immigration and entry are at issue. *See Jean v. Nelson*, 727 F.2d 957, 978 n.30 (11th Cir. 1984) (en banc), *aff'd on non-constitutional grounds*, 472 U.S. 846 (1985); *accord e.g.*, *Narenji v. Civiletti*, 617 F.2d 745, 748 (D.C. Cir. 1979). Here, the President's determination that nationals from the six countries identified are associated with a heightened risk of terrorism creates a rational basis for the Order. Plaintiffs also allege that the Order violates the Equal Protection Clause because it stems from "substantially motivated by animus toward" Islam. Am. Compl. ¶ 186. But that argument is equivalent to plaintiffs' religious-discrimination claim under the Establishment Clause, and it fails for the same reason.

E. The Administrative Procedure and Mandamus Acts Provide no Relief

Plaintiffs fail to establish a substantial likelihood of success on the merits under the Administrative Procedure Act ("APA") and the Mandamus Act for several reasons. First, plaintiffs cannot state a claim under the APA against the Order because the President is not an "agency." In *Franklin v. Massachusetts*, 505 U.S. 788, 800-01 (1992), the Supreme Court concluded that the Presidency is not an agency as defined in the APA, § 701(b)(1). Courts have interpreted *Franklin* to prohibit review under the APA of actions by the President when he is exercising discretionary authority. *See, e.g.*, *Detroit Int'l Bridge Co. v. Gov't of Canada*, 189 F.

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Supp. 3d 85, 104 (D.D.C. 2016); *Sarsour*, slip. op. at 16-7. Here, Congress has granted the President authority to suspend entry for any class of aliens if he finds that such entry would be "detrimental to the interests of the United States." 8 U.S.C. § 1182(f). Pursuant to that grant of discretionary authority, the President issued the Order and suspended entry of aliens from the six subject countries. The President's action is thus unreviewable under the APA. *See Detroit Int'l Bridge*, 189 F. Supp. 3d at 104-05.

Second, the APA precludes judicial review of any agency action that is "committed to agency discretion by law." 5 U.S.C. § 701(a)(2); *see Webster v. Doe*, 486 U.S. 592, 594, 600-01 (1988). By its plain terms, 8 U.S.C. § 1182(f) vests discretion in the President to determine whether "the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States," for the period "as he shall deem necessary," and to impose such conditions of entry as "he may deem appropriate." As a result, there is no discernable standard for judicial review of the President's determinations. *See Haitian Refugee Ctr., Inc. v. Baker*, 789 F. Supp. 1552, 1575-76 (S.D. Fla. 1991). Thus, even if plaintiffs could challenge a presidential finding under the APA, the challenge would necessarily fail.

Third, to the extent the alien plaintiffs seek APA review, as explained *supra*, they have no right of admission or entry into this country.[8] Therefore, plaintiffs have no likelihood of success on the merits of a claim under the APA seeking to require the government to admit them into this country. The INA confers upon consular officers the exclusive authority to adjudicate visa applications. *See* 8 U.S.C. §§ 1104(a), 1201(a); *see also* 6 U.S.C. § 236(b), (c). It is well established, however, that "[o]btaining a visa from an American consul has never guaranteed an

[8] Insofar as plaintiffs are reasserting constitutional claims under the APA, their claims necessarily fail for the reasons stated earlier.

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alien's entry into the United States. A visa merely gives the alien permission to arrive at a port of entry and have an immigration officer independently examine the alien's eligibility for admission." *Saavedra Bruno v. Albright*, 197 F.3d 1153, 1157 (D.C. Cir. 1999) (citing 8 U.S.C. § 1201(h)); *see also* 8 U.S.C. § 1154(e). Any suggestion to the contrary by plaintiffs is incorrect.

Fourth, the APA affords no relief to the petitioner plaintiffs who claim a constitutionally-protected interest in their family life. APA review for arbitrary and capricious decision-making is incompatible with the doctrine of consular nonreviewability, which qualifies as one of the "limitations on judicial" review that overcomes the APA's presumption of reviewability. *See* 5 U.S.C. § 702(1); *Saavedra Bruno*, 197 F.3d at 1160-62 (the APA does not disturb the general rule that no judicial review is available regarding the decision to exclude an alien from the United States). To the extent that judicial review of those plaintiffs' claims it available, it would necessarily be limited to whether the decisions qualify as facially legitimate and bona fide, review under the APA does not apply. *Id.*; *Mandel*, 408 U.S. at 770.

Finally, plaintiffs' Mandamus claim fails because they do not identify any required discrete agency action. *See Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 63-64 (2004). To the extent plaintiffs claim that Congress's delegation through 8 U.S.C. § 1182(f) is limited by § 1152(a)(1)(A), the latter does not address—and thus does not circumscribe—the President's authority under § 1182(f). Thus, plaintiffs can find no relief under the APA or the Mandamus Act.

CONCLUSION

Defendants' motion to dismiss should be granted.

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DATED this 14th day of April, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorneys of record for the plaintiffs.

DATED this 14th day of April, 2017.

/s/ Stacey I. Young
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The Honorable James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JUWEIYA ABDIAZIZ ALI, *et al*.,

Plaintiffs,

v.

DONALD TRUMP, President of the United States, *et al*.,

Defendants.

Case No. 2:17-cv-00135-JLR

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

The Court having considered Defendants' Motion to Dismiss, and good cause having been shown, it is hereby

ORDERED that the case is dismissed with prejudice.

Dated this _____ day of _____, 2017.

_____
HON. JAMES L. ROBART
United States District Judge

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DECLARATION OF CHLOE DYBDAHL

I, Chloe Dybdahl, hereby declare under penalty of perjury:

1. I am employed by the United States Department of State as Chief of the Legal Affairs, Advisory Opinions Division of the Visa Office, Bureau of Consular Affairs. In that capacity, I am authorized to search the electronic Consular Consolidated Database (CCD) of the U.S. Department of State, Bureau of Consular Affairs, for replicated records of immigrant and non-immigrant visas adjudicated at U.S. embassies and consular posts overseas. I am also familiar with immigrant and non-immigrant visa processing procedures.

2. The CCD contains replicated electronic data recording visa applications, visa interviews, and visas issued and refused at U.S. diplomatic and consular posts worldwide.

3. The CCD reflects that the following individuals have not yet applied for a visa. The status of their cases is as follows:

- A.F.A. (related to Juweiya Abdiaziz ALI) is the beneficiary of an approved immigrant visa petition that is at the National Visa Center (NVC). The CCD reflects that on March 23, 2017 the case was documentarily qualified for visa application interview scheduling.
- G.E. (related to Reema Khaled DAHMAN) is the beneficiary of an approved immigrant visa petition classified by United States Citizenship and Immigration Services (USCIS) as a family-based second preference (F2A) with a priority date of October 19, 2015. The April 2017 Visa Bulletin reflects that the priority date for the F2A classification is currently set at June 8, 2015, meaning that visa numbers are available for individuals in the F2A category who have a priority date before June 8, 2015. As the applicant's priority date is after June 8, 2015, there is no visa number currently available. The case will remain at the NVC until a visa number is available.
- Seyedehfatemeh HAMEDANI (related to Jaffer Akhlaq HUSSAIN) is the beneficiary of an approved immigrant visa petition classified by USCIS as F2A with a priority date of 14 April 2015. The CCD reflects that on February 20, 2017 the case was documentarily qualified for visa application interview scheduling.

4. The CCD further reflects that the following individuals applied for immigrant visas and their applications were adjudicated and refused on the dates and grounds noted:

- Faduma Olad ISSA (related to Olad Issa Omar) made a visa application on March 13, 2017 and was refused under INA section 221(g) to provide proof of relationship with the petitioner, such as DNA, and a Kenyan police certificate. The CCD reflects that on April 11, 2017 a police certificate was received. The case remains refused under INA section 221(g) to provide proof of relationship with the petitioner, such as DNA.

- F.O.I. (related to Olad Issa Omar) made a visa application on March 13, 2017 and was refused under INA section 221(g) to provide proof of relationship with the petitioner, such as DNA, form I-864 Affidavit of Support, and the petitioner's 2015 U.S. tax returns. The CCD reflects that on April 11, 2017 a police certificate, form I-864 Affidavit of Support, and the petitioner's tax returns were received. The case remains refused under INA section 221(g) to provide proof of relationship with the petitioner, such as DNA.
- S.O.I. (related to Olad Issa Omar) made a visa application on March 13, 2017 and was refused under INA section 221(g) to provide proof of relationship with the petitioner, such as DNA, and power of attorney such that Faduma Issa may represent him at the interview.

I declare under the penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct to the best of my knowledge.

WASHINGTON, D.C.
APRIL 13, 2017

CHLOE DYBDAHL