IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

P.K., *et al.*, on behalf of themselves and all others similarly situated,	)	No. _____
Plaintiffs/Petitioners,	)	
v.	)	
REX W. TILLERSON, *et al.*,	)	
Defendants/Respondents.	)	

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION AND EMERGENCY MOTION FOR MANDAMUS RELIEF

Plaintiffs hereby move this court for a preliminary injunction and for emergency mandamus relief pursuant to Fed. R. Civ. P 65 and LCvR. 65.1(c).

In support of their motion, Plaintiffs rely on the accompanying Memorandum, declarations, and exhibits.

A proposed order is attached.

STATEMENT PURSUANT TO LOCAL RULE 7(m)

Pursuant to Local Rule 7(m), Plaintiffs' counsel unsuccessfully attempted to contact Defendants' counsel to determine if Defendants would consent to the relief requested in this motion.

July 31, 2017

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF REQUEST FOR PRELIMINARY INJUNCTION AND EMERGENCY MOTION FOR MANDAMUS RELIEF

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INTRODUCTION

Plaintiffs are non-citizens who have a once-in-a-lifetime opportunity to become Americans that the government is unlawfully blocking. Plaintiffs took part in the diversity visa lottery program, under which 50,000 individuals a year are able to immigrate to the United States. They were extremely fortunate to be selected to apply for immigrant visas this fiscal year. For the diversity visas to be issued in the current fiscal year, more than 19.3 million individuals and their derivatives entered the lottery, from which fewer than 84,000 were chosen for the opportunity to apply for one of 50,000 visas.[1] Provided that they meet the eligibility requirements for the visa and are in fact issued visas, Plaintiffs' selection entitles them to immigrate to the United States, become permanent residents, and eventually apply for citizenship.

This opportunity, though, comes with an important deadline: their immigrant visas must be issued by the end of this fiscal year, that is, by September 30, 2017. 8 U.S.C. § 1154(a)(1)(I)(ii)(II). If their visas are not issued by that date, Plaintiffs will effectively and irretrievably lose their chance to immigrate. The State Department, however, is refusing to adjudicate their visa applications and issue visas to those who are statutorily eligible because each Plaintiff comes from one of the six countries subject to the 90-day temporary *entry* ban set forth in Section 2(c) of Executive Order 13,780, 82 Fed. Reg. 13,209 (March 6, 2017), amended by 82 Fed. Reg. 27,965 (June 14, 2017) (the "Order" or "Executive Order").[2] However, the

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[1] U.S. Dep't of State, Visa Bulletin for July 2016 (June 8, 2016), https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-july-2016.html (lasted visited July 31, 2017). As the Department of State explains, more than 50,000 applicants are selected because some lottery winners cannot or do not pursue their cases to visa issuance. *See id.*

[2] As is typical among diversity visa applicants—given the program's goal of providing an alternative to family- or employer-based visas for individuals from historically-underrepresented

Executive Order does not require or authorize the State Department's policy, and the policy violates the controlling statute and regulations.

In this litigation, Plaintiffs do not seek permission to enter the United States prior to the expiration of the Order's entry ban. They also do not ask this Court to decide the validity of the Executive Order. That issue is currently pending before the United States Supreme Court. Instead, they request only that Defendants comply with the statute and *process their visa applications* under the ordinary rules and procedures as required by law before the September 30 deadline.

Defendants' obligation to process the applications, and issue visas to those statutorily eligible to receive them, is clear under the statute and regulations and is not altered by the Executive Order. The State Department is required by statute to issue visas to winners of the diversity visa lottery who meet the statutory criteria for eligibility, 8 U.S.C. § 1153(c)(1) (stating that diversity immigrants "shall be allotted visas each fiscal year"); 22 C.F.R. § 40.6 (consular official may refuse a visa "only upon a ground specifically set out in the law or implementing regulations."), and it is expressly forbidden from refusing to do so on account of an applicant's nationality. 8 U.S.C. § 1152(a)(1)(A) (providing that "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's … nationality," except as expressly authorized by Congress). Neither the Executive Order nor the statutes on which it relies, Section 212(f) of the Immigration and Nationality Act, 8 U.S.C. § 1182(f), and Section 215(a) of the Immigration and Nationality Act, 8 U.S.C. § 1185(a),

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countries—Plaintiffs do not have relationships with individuals or entities in the United States that would exempt them from the entry ban under decisions enjoining portions of the Executive Order. *See Trump v. International Refugee Assistance Project*, 137 S. Ct. 2080, 2088 (2017) (per curiam).

purports to prohibit Defendants from issuing visas that the governing statutes and regulations otherwise require to be issued. The Executive Order and statutes suspend only *entry*.

Despite the clarity of the statutes, regulations, and the Executive Order, Defendants have instituted a policy to prohibit the issuance of Plaintiffs' visa applications based on an unsustainable reading of the Order. Defendants' policy is spelled out in a State Department cable that requires the refusal of applications even from individuals who are statutorily entitled to receive diversity immigrant visas. Because that policy violates the statute and its implementing regulations, and is not authorized by the Executive Order, Plaintiffs are entitled to a declaratory judgment, a writ of mandamus, and injunctive relief requiring Defendants to comply with the statute and process the visas as required by law.

A preliminary injunction is appropriate. The September 30 deadline is rapidly approaching and the traditional standards for interim equitable relief are met. Plaintiffs are likely to succeed in their claim because the statutory requirements are clear and mandatory and nothing in the Executive Order alters their right to have their visa applications adjudicated and to have visas issued if they are found to be statutorily eligible. Defendants' policy will, if left in place, irreparably harm Plaintiffs by eliminating their chance to immigrate to the United States once the prohibition on entry in the Executive Order's entry ban expires on its own terms in late September. In contrast, there is no harm to the government from simply processing the visas as required by statute.

FACTUAL BACKGROUND

A. The Diversity Visa Program.

Congress created the diversity visa program to allow for more immigration from countries with traditionally low rates of immigration to the United States. The Attorney General

is required to identify states and regions of the world with low rates of admission and allocate a fixed number of immigrant visas at random among applicants from those places. *Iddir v. INS*, 301 F.3d 492, 494 (7th Cir. 2002). The process is intensively competitive. For visas to be issued in the current fiscal year, more than 19.3 million people entered a lottery to be selected to apply for 50,000 visas—a success rate of a quarter of one percent.[3] Once selected in the lottery, applicants finalize their applications and complete the interview and other procedural steps. Provided that they are eligible and that processing is complete by the end of the fiscal year, they will then receive visas that allow them to immigrate to the United States and become lawful permanent residents. 8 U.S.C. § 1154(a)(1)(I)(ii)(II) (diversity visa winners "shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected."); *Keli v. Rice*, 571 F. Supp. 2d 127, 132 (D.D.C. 2008). The current fiscal year ends on September 30, 2017. Once issued, the visa is valid for six months. 8 U.S.C. § 1201(c)(1) ("An immigrant visa shall be valid for such period, not exceeding six months."). Upon receiving an immigrant visa, Plaintiffs in this case would have until early 2018 to enter the United States. The exact date will depend on when they receive their visas.

B. The Executive Order and the State Department's Illegal Policy.

President Trump issued the Executive Order on March 9, 2017. Section 2(c) suspends for 90 days the right to enter the United States for nationals of six countries: Iran, Libya, Somalia, Sudan, Syria, and Yemen.[4] The Executive Order was quickly challenged on constitutional

[3] U.S. Dep't of State, Visa Bulletin for July 2016 (June 8, 2016), https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-july-2016.html (lasted visited July 31, 2017).

[4] The Executive Order is a modified version of Executive Order 13769, issued January 27, 2017, which was challenged and enjoined almost immediately. *See Trump*, 137 S. Ct. at 2083. The United States abandoned that litigation, revoked the prior order, and issued the current Executive Order as a replacement.

grounds on several different litigation tracks. By the end of March, two injunctions prohibited the enforcement of Section 2(c), the provision including the entry ban. *See Trump*, 137 S. Ct. at 2084-85. Both injunctions were affirmed in relevant part on appeal. *International Refugee Assistance Project v. Trump*, 857 F.3d 554 (4th Cir. 2017) (en banc), *cert. granted* 137 S. Ct. 2080 (2017); *Hawaii v. Trump*, 859 F.3d 741 (9th Cir. 2017), *cert. granted* 137 S. Ct. 2080 (2017). The government sought review in the Supreme Court. While the petition for certiorari was pending, the President issued a memorandum regarding the Executive Order, indicating that the 90-day entry ban provision would become effective on the date the injunctions in the litigation were lifted or stayed. *See Trump*, 137 S. Ct. at 2085.

On June 26, 2017, the Supreme Court granted certiorari and partially granted a stay of the injunction. The Court stayed the injunctions on the entry restrictions of Section 2(c), allowing the entry ban to go into effect, only as to those who do not "have a credible claim of a bona fide relationship with a person or entity in the United States." *Id.* at 2088. Consistent with the scope of the Executive Order and its restriction, the Supreme Court did not discuss visa issuance.[5]

Following the Supreme Court's decision, the United States has begun the process of implementing the portions of the Executive Order that are not currently enjoined. On June 28,

[5] A district court held that qualifying family relationships include "grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles, nieces, nephews, and cousins" along with the other family relationships the government had previously acknowledged qualify: a parent (including parent-in-law), spouse, child, adult son or daughter, fiancé(e), son-in-law, daughter-in-law, and sibling, whether whole or half. *State v. Trump*, No. CV 17-00050 DKW-KSC, 2017 WL 2989048, at *10 (D. Haw. July 13, 2017); Dep't of Homeland Security, Frequently Asked Questions on Protection the Nation from Foreign Terrorist Entry into the United States, https://www.dhs.gov/news/2017/06/29/frequently-asked-questions-protecting-nation-foreign-terrorist-entry-united-states. The Supreme Court declined to stay that aspect of the district court's order, which has been appealed to the Ninth Circuit. *Trump v. Hawaii*, No. 16-1540, 2017 WL 3045234 (U.S. July 19, 2017).

2017, the State Department issued a cable directed to all diplomatic and consular posts discussing the visa procedures to be followed after the June 29, 2017, implementation date of the Executive Order. *See* Declaration of Matthew E. Price (attached as Exhibit A) ¶ 2 & Ex. A thereto (emphasis added).With respect to diversity visas, the cable provides consular officials the following instructions:

> 8. (SBU) For Diversity Visa (DV) applicants already scheduled for interviews falling after the E.O. implementation date of 8:00 p.m. EDT June 29, 2017, post should interview the applicants. Posts should interview applicants following these procedures:
>
> > a.) *Officers should first determine whether the applicant is eligible for the DV, without regard to the E.O.* If the applicant is not eligible, the application should be refused according to standard procedures.
> >
> > b.) *If an applicant is found otherwise eligible, the consular officer will need to determine during the interview whether the applicant is exempt from the E.O.'s suspension of entry provision* (see paragraphs 10-13), and if not, whether the applicant qualifies for a waiver (paragraphs 14 and 15).
> >
> > c.) *DV applicants who are not exempt from the E.O.'s suspension of entry provision and who do not qualify for a waiver should be refused* 221(g) and the consular officer should request an advisory opinion from VO/L/A following current guidance in 9 FAM 304.3-1.
>
> Based on the Department's experience with the DV program, we anticipate that very few DV applicants are likely to be exempt from the E.O.'s suspension of entry or to qualify for a waiver. [Consular Affairs] will notify DV applicants from the affected nationalities with scheduled interviews of the additional criteria to allow the potential applicants to determine whether they wish to pursue their application.
>
> 9. (SBU) The Kentucky Consular Center (KCC) will continue to schedule additional DV-2017 appointments for cases in which the principal applicant is from one of these six nationalities. While the Department is mindful of the requirement to issue Diversity Visas prior to the end of the Fiscal Year on September 30, direction and guidance to resume normal processing of visas following the 90-day suspension will be sent [in a separate cable].

See Price Decl., Ex. A (emphasis added).

The policy reflected in this cable violates the statute and regulations. Consular officials are instructed to decide first whether the applicant "is eligible for" a diversity visa, "without regard to the Executive Order." Under the statutes and regulations, if that determination is made, then the visa should issue. Yet the cable goes on to direct that consular officials should *refuse* a visa to statutorily eligible individuals if they fall within the Executive Order's restrictions on *entry*. The reference in paragraph 8(c) of the cable to "221(g)" is a reference to 8 U.S.C. § 1201(g), which provides: "No visa or other documentation shall be issued to an alien if (1) it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa. . ." The State Department's policy, therefore, is that the Executive Order makes individuals covered by the Order ineligible to receive a diversity visa. That policy is contrary to law and should be enjoined. Relatedly, instructing consular officials to refuse visas to applicants who are "otherwise eligible" violates a mandatory duty imposed by the Immigration and Nationality Act. As a result, mandamus relief is also appropriate and the Court should direct the issuance of visas to Plaintiffs and other similarly situated individuals who are statutorily eligible to receive them.

C. Plaintiffs.

Plaintiff P.K. is a national of Iran and was selected in the diversity visa lottery for FY2017. Declaration of P.K. (attached as Exhibit B) ¶ 5. A mechanical engineer with 18 years of work experience, he wants to immigrate to the United States with his wife, Plaintiff N.H., and their minor children, Plaintiffs M.K.1 and M.K.2. *Id.* ¶¶ 2-3. He believes that his children will have a better life in the United States. *Id.* He had twice previously entered the diversity lottery and was not selected. *Id.* ¶ 4. Because there is no United States embassy in Iran, all four members of the family were required to travel to Yerevan, Armenia for their interview, a trip that

involved substantial time and financial cost. *Id.* ¶ 7. The State Department website indicates that his visa application is in "Administrative Processing" and he is not aware of any reason he cannot be issued a visa apart from the policy at issue in this case. *Id.* ¶ 9.

Plaintiff Afshin Asadi Sorkhab is also a national of Iran and was selected in the diversity visa lottery for FY2017. Declaration of Afshin Asadi Sorkhab (attached as Exhibit C) ¶ 5. A trained chemical engineer, he wants to immigrate to the United States with his wife, Plaintiff Neda Dehkordi, and their 16 year old daughter, their 7 year old daughter, and their two month old son, Plaintiffs Y.S.1, Y.S.2 and Y.S.3. *Id.* ¶ 3. The family was required to travel to Abu Dhabi in the United Arab Emirates for their interview in December 2016, requiring significant time and financial investment. *Id.* ¶¶ 7, 9. After his infant son was born in May 2017, the family was required to return to the embassy in Abu Dhabi. The State Department website indicates that his visa application is in "Administrative Processing" and he is not aware of any reason he cannot be issued a visa apart from the policy at issue here. *Id.* ¶ 11.

Plaintiff Hamed Sufyan Othman Almaqrami is a Yemeni national who was selected as a diversity lottery winner on May 3, 2016. Declaration of Hamed Sufyan Othman Almaqrami (attached as Exhibit D) ¶¶ 2,3. Mr. Almaqrami has a master's degree in linguistics and is currently a Ph.D. student in linguistics at Annamalai University in India. *Id.* ¶ 2. His interview was at the U.S. Embassy in Kuala Lumpur, Malaysia on May 25, 2017. *Id.* ¶ 4. At great expense, he traveled from India, where he is living for his doctoral studies, to Yemen to retrieve all of the necessary documents, and then came back to India for additional documents. *Id.* He waited for five weeks in Malaysia. *Id.* He spent nearly $3,000, which he borrowed from friends, in order to gather documents, travel to Malaysia, pay the visa processing fees, and stay there for the five weeks after the interview and two weeks before the interview. *Id.* ¶ 5. He may not be awarded

my Ph.D. on time because he was absent for so long. *Id.* He did not understand why he was not issue a visa, until he received a letter from the State Department on July 12, 2017, stating: "a visa applicant from one of the six affected countries who does not have a credible claim of a bona fide relationship with a person (i.e., a close familial relationship) in the United States or of a bona fide relationship with an entity in the United States (which relationship is formal, documented, and formed in the ordinary course, rather than to evade the Executive Order) is ineligible for a visa." *Id.* ¶ 6. He does not have any family in the United States, and is concerned that he will now be treated as ineligible for a visa. *Id.*

Plaintiff Radad Fauiz Furooz is a Yemeni national who was selected as a diversity lottery winner on May 4, 2016. Declaration of Radad Fauiz Furooz (attached as Exhibit E) ¶¶ 2,3. Mr. Furooz has graduated high school and is currently studying educational technology at Ibb University in Yemen. *Id.* ¶ 2. His interview was at the U.S. Embassy in Kuala Lumpur, Malaysia on May 25, 2017. *Id.* ¶ 4. In June 2017, the U.S. Embassy called and told him to come for a second interview. *Id.* ¶ 6. That interview took place on June 21, 2017. *Id.* ¶ 6. On July 7, 2017, he received a letter from the U.S. Embassy returning his passport without a visa. The letter stated that his case would remain in administrative processing, and that he would be notified when the Embassy could proceed with his case. *Id.* ¶ 7. The reason given was: "due to nationality from one of 6 countries affected by EO13780 sec 2(c)." *Id.* The letter says the application was "refused under section 221(g) pending administrative processing." *Id.* ¶ 8.

ARGUMENT

To obtain a preliminary injunction, a party must show that (1) it is likely to succeed on the merits of the claim; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of the equities tips in its favor, and (4) a preliminary injunction is in the

public interest. *Gordon v. Holder*, 632 F.3d 722, 724 (D.C. Cir. 2011). These requirements are met here and the Plaintiffs are entitled to a preliminary injunction prohibiting the State Department from carrying out the policy set forth in its cable and requiring consular officials to process their visa applications pursuant to the statute.

I. Plaintiffs Will Suffer Irreparable Harm Without a Preliminary Injunction

Plaintiffs face the imminent prospect of an injury that cannot later be cured. The regulation governing diversity visas states that "[u]nder no circumstances may a consular officer issue a visa or other documentation to an alien after the end of the fiscal year during which an alien possesses diversity visa eligibility." 22 C.F.R. § 42.33(a)(1). The end of the fiscal year is September 30, 2017. "Though unforgiving, this strict interpretation of the diversity visa statute has been adopted by every Circuit Court to have addressed the issue." *Mogu v. Chertoff*, 550 F. Supp. 2d 107, 109 (D.D.C. 2008); *see also Mohamed v. Gonzales*, 436 F.3d 79, 81 (2d Cir. 2006) ("Despite the harsh consequences of this result, we are compelled, as our sister circuits have recognized, to apply the unambiguous language of the operative statutory framework."); *Coraggioso v. Ashcroft*, 355 F.3d 730, 733-34 (3d Cir. 2004); *Nyaga v. Ashcroft*, 323 F.3d 906, 914-15 (11th Cir. 2003). A recognized exception to the statutory bar is where the visa applicant seeks *and obtains* injunctive relief before the year concludes. *Compare Przhebelskaya v. U.S. Bureau of Citizenship & Immigration Servs.*, 338 F. Supp. 2d 399, 405 (E.D.N.Y. 2004) (injunction issued prior to end of fiscal year) *and Panescu v. INS*, 76 F. Supp. 2d 896, 898-99 (N.D. Ill. 1999) (same) *with Keli*, 571 F. Supp. 2d at 135 (denied as moot on the grounds that injunctive relief had not been sought prior to the end of the year); *See Coraggioso*, 355 F.3d at 734 n.8 (finding statutory bar to relief but noting that had petitioner "sought relief prior to the expiration of the 1998 fiscal year, our analysis may have been different"); *Iddir*, 301 F.3d at 501

n.2 ("It would be a different case had the district court ordered the INS to adjudicate the appellants' status while the INS maintained the statutory authority to issue the visas.").

No subsequent judgment will make up for a lost immigrant visa due to the expiration of the fiscal year. Absent court intervention, Plaintiffs will lose their chance, after the Executive Order's temporary entry ban expires in late September, to come to the United States and start a new life. The extremely low odds of selection in the lottery make it very unlikely the opportunity will occur again. The injury to their employment and educational prospects alone would be sufficient injury to make this lost opportunity adequate irreparable harm to support an injunction. *Arizona Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) ("Plaintiffs' inability to obtain driver's licenses likely causes them irreparable harm by limiting their professional opportunities."). When combined with the myriad other benefits of American citizenship—benefits that led 19.3 million people to enter a lottery for 50,000 visas[6]—the irreparable harm requirement is easily met in this case.

II. Plaintiffs are Likely to Succeed on the Merits of Their APA Claim.

The Administrative Procedure Act permits district courts to set aside final agency actions if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The policy set forth in the cable is contrary to law and must be set aside. First, the governing statute and regulations require the government to issue visas to the plaintiffs because Plaintiffs are statutorily eligible for visas. Nothing authorizes the State Department to impose additional eligibility requirements for an immigrant visa that are nowhere to be found in the statutes Congress wrote. Second, the State Department cable illegally

[6] U.S. Dep't of State, Visa Bulletin for July 2016 (June 8, 2016), https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-july-2016.html (lasted visited July 31, 2017).

discriminates by making national origin relevant to the decision to issue immigrant visas that Congress has authorized. Congress specifically prohibited the denial of immigrant visas on the basis of nationality, except as it specifically provided in statute. Finally, to the extent that Defendants claim to be implementing the Executive Order, their reliance is misplaced. The plain text of the Executive Order, consistent with the authorizing statute, only limits entry and does not prohibit visa issuance.

A. The Statute and Regulations Require That Consular Officials Issue Visas to Individuals, Like Plaintiffs, Who Are Statutorily Eligible To Receive Them.

1. The Government May Refuse a Visa Only Upon a Ground Set Forth in the Governing Law and Regulations.

The statute and governing regulations impose an affirmative obligation on Defendants to adjudicate visa applications and to issue diversity immigrant visas to those eligible to receive them. 22 C.F.R § 42.81(a) states "[w]hen a visa application has been properly completed and executed . . , the consular officer must either issue or refuse the visa under INA 212(a) or INA 221(g) or other applicable law. Every refusal must be in conformance with the provisions of 22 CFR 40.6."

Section 40.6, in turn, states that "[a] visa can be refused only upon a ground specifically set out in the law or implementing regulations." 22 C.F.R § 40.6. Thus, unless plaintiffs are ineligible under the statute or regulations, these regulations entitle them to receive visas.

The INA does impose a statutory limit on visa eligibility, but it does not apply to the Plaintiffs in this case. First, a diversity immigrant visa recipient must satisfy certain educational or employment criteria: he or she must have a high school education or at least two years of work experience in an occupation that requires at least two years of training or experience. 8 U.S.C.

§ 1153(c)(2). Second, a diversity immigrant visa recipient may not be inadmissible under 8 U.S.C. § 1182:

> No visa or other documentation shall be issued to an alien if (1) it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law . . .

8 U.S.C. § 1201(g). The operative language of this section is a cross-reference to Section 212 of the INA, 8 U.S.C. § 1182. Subsection (a) provides a list of individuals who "are ineligible to receive visas and ineligible to be admitted to the United States." 8 U.S.C. § 1182(a). Such grounds include, for example, health-related grounds, *id.* § 1182(a)(1); criminal grounds, *id.* § 1182(a)(2); national security grounds arising from the applicant's own conduct, *id.* § 1182(a)(3); grounds arising from concerns that the applicant will be a public charge, *id.* § 1182(a)(4); and certain other grounds. *See generally id.* § 1182(a). If a diversity visa applicant falls within one of Subsection (a)'s grounds for inadmissibility, or does not satisfy the educational/work requirement for a diversity visa, then the applicant can be refused. Otherwise, a diversity visa must be issued.

The policy set forth in the State Department cable violates these statutes and regulations because it imposes an additional requirement for visa issuance that is nowhere to be found in the statutes and regulations: namely, that an applicant be a national of a country other than Iran, Yemen, Somalia, Sudan, Syria or Libya. Thus, the cable instructs consular officials to "first determine whether the applicant is eligible for the DV, without regard to the E.O. [barring entry of nationals of those six countries] … If an applicant is found otherwise eligible, the consular officer will need to determine during the interview whether the applicant is exempt from the E.O.'s suspension of entry provision (see paragraphs 10-13), and if not, whether the applicant qualifies for a waiver (paragraphs 14 and 15).… DV applicants who are not exempt from the

E.O.'s suspension of entry provision and who do not qualify for a waiver should be refused 221(g)..." Price Decl. ¶ 2 & Ex. A thereto. The policy set forth in the cable violates the law because it instructs consular officials to refuse an immigrant visa on a ground other than those specifically set forth in the "law or implementing regulations." 22 C.F.R § 40.6.

2. Denying an Immigrant Visa on Account of the Applicant's Nationality Violates the Law.

Additionally, the policy set forth in the cable directly violates Section 1152(a)(1)(A) of the INA, which prohibits discrimination "in the issuance of an immigrant visa because" of nationality. 8 U.S.C. § 1152(a)(1)(A). Section 3 of the cable states "applicants who are nationals of the affected countries and who are determined to be otherwise eligible for visas" will be refused visas if they lack a bona fide relationship or are otherwise entitled to a waiver. As another district court has already held, the government may not adopt a policy that "would have the specific effect of halting the issuance of visas to nationals of the Designated Countries. Under the plain language of the statute, the barring of immigrant visas on that basis would run contrary to § 1152(a)." *IRAP v. Trump*, No. 17-cv-0361, 2017 WL 1018235, at *9 (D. Md. Mar. 16, 2017), *aff'd in part, rev'd in part*, 857 F.3d 554 (4th Cir.) (en banc), *cert. granted*, 137 S. Ct. 2080 (2017). Because the cable directly contravenes the statute by expressing classifying visa applicants based on their national origin and then suspending the issuance of visas to individuals from certain nations, it violates Section 1152(a) and is invalid under the APA.

3. The Executive Order Only Limits Entry, Not Visa Issuance.

The cable relies on the Executive Order to justify the policy of refusing to issue diversity immigrant visas to individuals covered by the Executive Order.

The Court is not presented with the question of whether the President could issue an Executive Order directing that the visas at issue in this case be denied, because the Executive

Order by its terms does not prohibit the issuance of visas. The Executive Order directs the suspension of *entry*. The operative language in Section 2(c) halts "the entry into the United States" of those subject to its scope. It does not impose any limit on the process of issuing a visa. Visa issuance and entry are two different matters that involve independent components of the Executive Branch and are often widely separated in time and place. For the Plaintiffs in this case, who seek eventually to immigrate to the United States on a permanent basis, the first step is receiving an immigrant visa from the relevant consular official, an employee of the State Department, at the official's office outside the United States. The second step, entry, may occur up to six months later. A visa holder must travel to the United States border and seek admission from the United States Customs and Border Protection, a component of the Department of Homeland Security.

Notably, both underlying statutes on which the Executive Order relies, INA Sections 212(f) and 215(a), reflect the distinction between entry and visa issuance. Section 212(f) provides the authority to the President only to impose restrictions on entry and does not authorize limitations on visa issuance:

> (f) Suspension of entry or imposition of restrictions by President
>
> 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.

8 U.S.C. § 1182(f). Section 215(a) only provides the President the authority to regulate the process by which aliens enter or depart or attempt the United States. *See* 8 U.S.C. § 1185(a). Neither section provides the President the power to alter the visa process mandated by statute.

Courts likewise have recognized the distinction between visa issuance and entry. *See IRAP v. Trump*, 2017 WL 1018235, at *9 (distinguishing between Section 1182(f), which concerns *entry*, and Section 1152(a), which concerns *visa issuance*). As Circuit Judge Thacker has explained, conflating the suspension of entry with the suspension of visa issuance would create a conflict between Section 1182(f) and 1152(a):

> Reading § 1182(f) as bestowing upon the President blanket authority to carry out a suspension of entry, which involves rejecting a particular country's immigrant visa applications as a matter of course, would effectively nullify the protections in § 1152(a)(1)(A) and create an end-run around its prohibitions against discrimination. It would collapse the statutory distinction between entry and visa issuance . . . and ultimately allow the chief executive to override any of Congress's carefully crafted visa criterion or grounds for inadmissibility.

IRAP, 857 F.3d at 637-38 (4th Cir. 2017) (en banc) (Thacker, J., concurring). In sum, "the § 1182(f) authority to bar entry does not extend to the issuance of immigrant visas." *IRAP*, 2017 WL 1018235, at *9; *see also Hawaii v. Trump*, 859 F.3d at 776-77 (concluding that the entry ban violates Section 1152(a) because it is "in substance" and "effectively" a ban on issuing visas).

Indeed, the government itself has insisted on the distinction between entry and visa issuance in defending the Executive Order against the claim that it violated Section 1152(a)'s non-discrimination provision. In both the *Hawaii* and *IRAP* cases, the government contended that Section 1152(a) was not implicated, because the Executive Order *only* spoke to entry and not to visa issuance.[7]

[7] *See* Defendants' Memorandum in Opposition to Plaintiff's Motion for a Preliminary Injunction and/or Temporary Restraining Order of the Executive Order, at 21-22, No. 17-CV-0361, 2017 WL 1018235 (D. Md. Mar. 16, 2017), 2017 WL 1047713; Defendants' Memorandum in Opposition to Plaintiff's Motion for a Temporary Restraining Order at 28, *Hawaii v. Trump*, CV No. 17-0015, _ F. Supp. 3d __, 2017 WL 1011673 (D. Haw. Mar. 15, 2017), ECF No. 145.

Despite the clarity of the Executive Order in applying to *entry*, not *visa issuance*, the cable conflates the two. In the Section 1, titled "Summary," the cable states (emphasis added):

> On June 26, 2017, the Supreme Court partially lifted preliminary injunctions that barred the Department from enforcing section 2 of Executive Order (E.O.) 13780, which suspends the entry to the United States of, and the issuance of visas to, nationals of six designated countries.

Section 4 also claims the Executive Order "suspends for 90 days entry into the United States of, and issuance of visas to," nationals from the six nations. Section 8 then implements this policy by directing that those unable to enter "should be refused" visas. *See* Price Decl., Ex. A.

Notwithstanding the plain language of both the Executive Order and the statutes on which it is based, the government has defended its policy of refusing to issue visas to individuals subject to the Executive Order on the ground that it would "be pointless to issue a visa to an alien who the consular officer already knows is barred from entering the country." *See* Br. for Appellants, at *32-33, *IRAP v. Trump*, 857 F.3d 554 (4th Cir. Mar. 24, 2017) (No. 17-1351), ECF No. 36. But it is not pointless for Plaintiffs to receive their immigrant visa. It is a mandatory statutory prerequisite to immigration, and it must occur by the end of the fiscal year. Once Plaintiffs have their immigrant visas in hand, they will be able to use them to enter the United States once the entry ban in the Executive Order expires in late September. And, as already explained, the rejection of their applications during the entry ban period will mean they will lose the chance to *ever* obtain those visas. Thus, for these Plaintiffs, obtaining a visa even if entry is temporarily barred is the opposite of "pointless."

The government has also cited the State Department Foreign Affairs Manual, claiming an administrative practice of treating "aliens covered by exercises of the President's Section

1182(f) authority as ineligible for visas." *Id.* The Foreign Affairs Manual, however, does not justify the government's position. As an initial matter, because the Manual has not gone through the notice and comment process, it is not entitled to *Chevron* deference. Policy statements of this type have force "only to the extent that those interpretations have the 'power to persuade'." *Christensen v. Harris County*, 529 U.S. 576, 587 (2000) (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)); *see also Scales v. INS*, 232 F.3d 1159, 1166 (9th Cir. 2000) (Foreign Affairs Manual does not receive *Chevron* deference.). Unlike regulations, agencies cannot rely on them as the sole source of authority for future action. *Pacific Gas & Elec. Co. v. Fed. Power Comm'n*, 506 F.2d 33, 38 (D.C. Cir. 1974) (agencies issuing policy statements "must be prepared to support the policy just as if the policy statement had never been issued.").

In any event, the Foreign Affairs Manual conflicts with Sections 40.6 and 42.81(a), the actual regulations that do have the force of law. *See* 22 C.F.R § 42.81(a) ("When a visa application has been properly completed and executed . . . the consular officer must either issue or refuse the visa under INA 212(a) or INA 221(g) or other applicable law. Every refusal must be in conformance with the provisions of 22 CFR 40.6.") *id.* § 40.6 ("A visa can be refused only upon a ground specifically set out in the law or implementing regulations."). These State Department regulations narrowly constrain the ability to refuse visas and do not provide room for visa refusals for other reasons, including an entry prohibition such as the one in the Executive Order. As a result, these regulations controls over the inconsistent Foreign Affairs Manual.[8]

[8] The history of prior prohibitions on entry under Section 212(f) also undermines the government's position. As the Ninth Circuit has recognized, the Executive Order is quite different from earlier Section 212(f) entry bans. Typically, those prohibitions were narrowly focused on specific individuals or small groups of non-citizens. "[P]rior executive orders and proclamations did not suspend classes of aliens on the basis of national origin, but instead on the basis of affiliation or culpable conduct." *Hawaii*, 859 F.3d at 778-79; *see also* Kate M. Manuel, Cong. Research Serv., R44743, *Executive Authority to Exclude Aliens: In Brief* 6–10, (2017)

* * *

In sum, the State Department has a duty to issue diversity immigrant visas to the individuals that Congress has deemed eligible to receive them. It may not flout that duty by grafting additional eligibility requirements into its review process. And it certainly may not refuse to issue visas to individuals on account of their nationality, when Congress has expressly prohibited. To the extent the State Department seeks to rely on the Executive Order to justify its policy, that reliance is misplaced, because the Executive Order bars only *entry*, not visa issuance. Accordingly, Plaintiffs have a strong likelihood of success on the merits of their claim that the State Department's policy is arbitrary and capricious and in violation of law.

III. Plaintiffs are Likely To Succeed on the Merits of Their Mandamus Claim

A. The District Court Has Mandamus Jurisdiction to Require Consular Officials to Act on Diversity Visa Applications

Section 1361 provides the district courts broad mandamus jurisdiction "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. Other circuits have held that mandamus is the appropriate path to require immigration officials to act on visa applications, including applications by winners of the diversity visa lottery. For example, in *Patel v. Reno*, the Court of Appeals for the Ninth Circuit issued a writ of mandamus directed at the United States Consulate in Bombay, India and ordered it to process a pending diversity visa application. 134 F.3d 929, 933 (9th Cir. 1997).

(summarizing the history of 212(f) orders). They are also indefinite. The Executive Order here not only applies to broad groups of non-citizens, it is explicitly limited in duration for 90 days. Whatever the merits of refusing visas to individuals permanently prohibited from entering the United States, the situation is completely different for non-citizens who are subject to a temporary entry ban that will expire in September 2017.

Similarly, in *Iddir v. INS*, the Seventh Circuit faced mandamus requests brought by winners of the diversity visa lottery to force action on their completed visa applications. 301 F.3d at 493. The *Iddir* court held that mandamus was an available remedy for requiring action on diversity visa applications prior to the close of the fiscal year and that the statute imposes a mandatory obligation on the government to act on these visa applications. *Id.* at 500. The Court of Appeals further concluded that because the fiscal year had expired, the agency could no longer grant a visa and relief was unavailable. *Id.*

However, *Iddir* expressly recognized the availability of mandamus relief when, as here, an injunction would issue prior to the conclusion of the fiscal year.

> It would be a different case had the district court ordered the INS to adjudicate the appellants' status while the INS maintained the statutory authority to issue the visas. In such a situation, the INS would be on notice to reserve visas and must complete the task, as ordered, before time expires. Allowing the INS to claim inability to issue visas at that point would impinge the authority of the court.

Id. at 501 n.2 (citations omitted). This analysis in *Iddir* is consistent with the approach in *Panescu v. INS,* 76 F. Supp. 2d 896 (N.D. Ill. 1999) and *Przhebelskaya v. U.S. Bureau of Citizenship & Immigration Servs.*, 338 F. Supp. 2d 399 (E.D.N.Y. 2004). In both of those cases, the district court took jurisdiction, ordered a preliminary injunction prior to the expiration of the fiscal year, and entered a further order requiring that a visa be processed. *See also Coraggioso*, 355 F.3d at 734 n.8 (concluding visas should not issue but noting that had petitioner "sought relief prior to the expiration of the 1998 fiscal year, our analysis may have been different"); *Keli*, 571 F. Supp. 2d at 135-36 (denying visas because injunction was not sought prior to the end of the fiscal year).

B. The Requirements for Mandamus Relief Are Met.

Plaintiffs seeking mandamus must demonstrate a clear and indisputable right to relief, that the government agency or official is violating a clear duty to act, and no adequate alternative remedy exists. *In re Medicare Reimbursement Litig.*, 414 F.3d 7, 10 (D.C. Cir. 2005). In this case, all three prongs are present.

With respect to the diversity visa program, Congress has imposed a set of non-discretionary obligations on the government. These create the necessary right to relief. Section 1153 mandates that, subject to the statutory limitations, "diversity immigrants shall be allotted visas each fiscal year." 8 U.S.C. § 1153(c)(1). The use of the word "shall" is repeated throughout the provisions relating to diversity visas. *See, e.g.*, *id.* § 1153(c)(1)(A) ("The Attorney General *shall* determine. . ." (emphasis added)); *id.* § 1153(e)(2) ("Immigrant visa numbers made available under subsection (c) (relating to diversity immigrants) *shall* be issued to eligible qualified immigrants . . ." (emphasis added)). Consistent with its plain meaning, the D.C. Circuit has recognized that this such statutory language imposes an obligation to act. "As we have repeatedly noted, 'shall' is usually interpreted as the language of command." *Sierra Club v. Jackson*, 648 F.3d 848, 856 (D.C. Cir. 2011) (internal quotations marks omitted); *Ass'n of Civilian Technicians, Mont. Air Chapter No. 29 v. Fed. Labor Relations Auth.*, 22 F.3d 1150, 1153 (D.C. Cir. 1994) ("The word 'shall' generally indicates a command that admits of no discretion on the part of the person instructed to carry out the directive."). The Seventh Circuit held in *Iddir* that this repeated use of mandatory language entitles the plaintiffs to have their applications processed according to the statute. *Iddir*, 301 F.3d at 500.

The government also has a duty to act. Consular officials *must* adjudicate a visa application. *See* 22 C.F.R § 42.81(a) ("When a visa application has been properly completed and

executed . . . the consular officer must either issue or refuse the visa under INA 212(a) or INA 221(g) or other applicable law. Every refusal must be in conformance with the provisions of 22 CFR 40.6."). In *Nine Iraqi Allies Under Serious Threat Because of Their Faithful Service to the United States v. Kerry*, the court held that the consular failure to act in a timely matter on special immigrant visas where applicants faced hardship was reviewable and mandamus relief was available. 168 F. Supp. 3d 268, 295-96 (D.D.C. 2016).

Moreover, the statute and implementing regulations expressly limit the government's ability to refuse visas. 8 U.S.C. § 1182(a) outlines a range of statutory grounds for inadmissibility, which make one ineligible to receive a visa. However, these provisions are exclusive. 22 C.F.R. § 40.6 states that a consular official may refuse a visa "only upon a ground specifically set out in the law or implementing regulations." And national origin is specifically prohibited as a basis to deny visas. 8 U.S.C. § 1152(a)(1)(A) (providing that "no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person's … nationality," except as expressly authorized by Congress). As argued above, neither the statute nor the Executive Order justifies denying these visas. As a result, the government must process the visas consistent with its statutory obligations.

Plaintiffs also have no adequate alternative remedy. The approaching September 30 deadline precludes options other than relief in this litigation. Only expedited action by this court in the form of a preliminary injunction and then an ultimate order on mandamus can preserve the rights of the Plaintiffs. Furthermore, aside from Plaintiffs' argument regarding APA review of the State Department policy, no viable alternative legal path is obviously available. The D.C. Circuit has recognized that mandamus relief may be appropriate if direct review is not available. *United States v. Monzel*, 641 F.3d 528, 544 (D.C. Cir. 2011) (dismissing an appeal but permitting

mandamus to proceed as a result). If Plaintiffs were to wait, the statutory deadline may bar any later action. Due to both the time constraints and legal restrictions on review, no adequate alternative to mandamus exists.

IV. The Balance of the Equities and the Public Interest Support Preliminary Relief.

The balance of the equities and the public interest also support the requested injunction. As the Supreme Court has noted in the related context of stay requests, "[t]hese factors merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009).

Granting the requested injunction would impose no injury on the government or the public. As noted above, in the course of processing Plaintiffs' visa applications the government will assess whether Plaintiffs should be denied their visas on any legitimate ground, including national security grounds. Moreover, Plaintiffs would still be subject both to the Executive Order's temporary ban on entry and, thereafter, to the government's authority to refuse admission even to individuals who have visas, if they are found to be inadmissible. 8 U.S.C. § 1201(h) ("Nothing in this chapter shall be construed to entitle any alien, to whom a visa or other documentation has been issued, to be admitted" if, upon arrival, "he is found to be inadmissible under this chapter"). Simply processing Plaintiffs' visa applications according to law will prevent a severe and irreparable injury to Plaintiffs without injuring the government or the public at all.

CONCLUSION

Plaintiffs seek only to hold defendants to the requirements of the immigration laws. Despite the temporary ban on their entry to the United States, Plaintiffs are legally entitled to receive their immigrant visas. They are likely to succeed on the merits of their claim for both

declaratory and mandamus relief and will suffer irreparable harm if the fiscal year ends before they receive their visas. This court should issue a preliminary injunction to preserve their rights.

July 31, 2017

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

P.K., *et al.*,	)	
on behalf of themselves and all others similarly situated,	)	No. _____
Plaintiffs/Petitioners,	)	
v.	)	
REX W. TILLERSON, *et al.*,	)	
Defendants/Respondents.	)	

[PROPOSED] ORDER GRANTING PRELIMINARY INJUNCTION AND EMERGENCY MOTION FOR MANDAMUS RELIEF

Upon consideration of Plaintiffs' Motion for Preliminary Injunction and Emergency Motion for Mandamus Relief dated July 31, 2017, the memoranda of law and exhibits submitted in support and in opposition thereto, and the entire record herein, it is hereby

ORDERED that Plaintiffs' Motion for Preliminary Injunction and Emergency Motion for Mandamus Relief, dated July 31, 2017, is

GRANTED; it is further

ORDERED that

A. The State Department and its employees, officers, and agents are enjoined from implementing the policy of refusing diversity visas to applicants from Iran, Syria, Sudan, Somalia, Yemen, and Libya notwithstanding their statutory eligibility;

B. Defendants John Does #1-50, who are consular officials responsible for adjudicating diversity visa applications and issuing diversity visas, are directed to adjudicate diversity immigrant visa applications and issue diversity immigrant visas to all visa applicants from Iran, Syria, Sudan, Somalia, Yemen, and Libya who are statutorily eligible to receive a diversity visa before September 30, 2017.

Date: _____

_____

United States District Judge

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

P.K., *et al.*, on behalf of themselves and all others similarly situated,	)	No. _____
Plaintiffs/Petitioners,	)	**DECLARATION OF MATTHEW E. PRICE IN SUPPORT OF REQUEST FOR PRELIMINARY INJUNCTION AND EMERGENCY MOTION FOR MANDAMUS RELIEF**
v.	)	
REX W. TILLERSON, *et al.*,	)	
Defendants/Respondents.	)	

DECLARATION OF MATTHEW E. PRICE

1. I am a partner at the law firm of Jenner & Block LLP and am counsel to Plaintiffs in the above-captioned case.

2. Attached as Exhibit A to this Declaration is a true and correct copy of a June 28, 2017 State Department cable, as reported by Reuters, concerning how diversity immigrant visa applicants should be processed in light of Executive Order 13780. The cable is available at: http://live.reuters.com/Event/Live_US_Politics/989297085.

I declare under penalty of perjury that the foregoing is true and correct.

July 31, 2017

Washington, DC

Matthew E. Price

EXHIBIT A

FROM

Live: U.S. Politics

U.S. lays out criteria for visa applicants from six Muslim nations

Visa applicants from six Muslim-majority countries must have a close U.S. family relationship or formal ties to a U.S. entity to be admitted to the United States under guidance distributed by the U.S. State Department on Wednesday.

Here is the text of the cable:

Date:
June 28, 2017 at 7:57:39 PM EDT

Subject: (SBU) IMPLEMENTING EXECUTIVE ORDER 13780 FOLLOWING SUPREME COURT RULING – GUIDANCE TO VISA-ADJUDICATING POSTS

From: SECSTATE WASHDC

Action: ALL DIPLOMATIC AND CONSULAR POSTS COLLECTIVE IMMEDIATE

1. (SBU) Summary: On June 26, 2017, the Supreme Court partially lifted preliminary injunctions that barred the Department from enforcing section 2 of Executive Order (E.O.) 13780, which suspends the entry to the United States of, and the issuance of visas to, nationals of six designated countries, as well as section 6, which relates to the Refugee Admissions Program. A June 14, 2017 Presidential Memorandum announced each enjoined provision would become effective the date and time at which the referenced injunctions are lifted or stayed, with implementation of each relevant provision within 72 hours after all applicable injunctions are lifted or stayed with respect to that provision. As a result, implementation of those sections for which injunctions have been lifted will begin June 29, 2017, as detailed below.

2. (SBU) This cable provides guidance for implementing provisions of section 2(c) of the E.O. impacting visa adjudication and issuance procedures. The E.O.'s 90-day suspension of entry will be implemented worldwide at 8:00 p.m. Eastern Daylight Time (EDT) June 29, 2017. All visa adjudicating posts should carefully review and prepare to implement this guidance at that time or at opening of the next business day if not open at 8:00 p.m. EDT June 29, 2017. Any modifications to this guidance, due to litigation or other reasons, will be sent in a subsequent cable. Public talking points and additional operational resources will be updated and available on CA Webhttp://intranet.ca.state.sbu/content/caweb/visas/news/100011.html> End Summary.

3. (SBU) The Supreme Court's partial lifting of the preliminary injunctions allows the E.O.'s suspension to be enforced only against foreign nationals who lack a "bona fide relationship with a person or entity in the United States." Therefore, applicants who are nationals of the affected countries who are determined to be otherwise eligible for visas and to have a credible claim of a bona fide relationship with a person or entity in the United States are exempt from the suspension of entry in the United States as described in section 2(c) of the E.O. Applicants who are nationals of the affected countries and who are determined to be otherwise eligible for visas, but who are determined not to have a qualifying relationship, must be eligible for an exemption or waiver as described in section 3 of the E.O. in order to be issued a visa. For adjudication purposes, the Supreme Court criteria have been couched in this guidance as exemptions from the E.O.'s suspension of entry in paragraph 10.

(SBU) Suspension of Entry into the United States for Aliens from Certain Countries

4. (SBU) The E.O. exercises the President's authority under sections

212(f) and 215(a)(1) of the Immigration and Nationality Act (INA) and suspends for 90 days entry into the United States of, and issuance of visas to, certain aliens from the following countries: Iran, Libya, Somalia, Sudan, Syria, and Yemen. Implementation of the suspension, for purposes of visa issuance, will begin at 8:00 p.m. EDTJune 29, 2017, worldwide. The suspension of entry in the E.O. does not apply to individuals who are inside the United States on June 29, 2017, who have a valid **visa on June 29, 2017,** or who had a valid visa at 8:00 p.m. EDT January 29, 2017, even after their visas expire or they leave the United States. The suspension of entry also does not apply to other categories of individuals, as detailed below. No visas will be revoked based on the E.O., even if issued during the period in which Section 2(c) was enjoined by court order or during the 72-hour implementation period. New applicants will be reviewed on a case-by-case basis, with consular officers taking into account the scope and exemption provisions in the E.O. and the applicant's qualification for a discretionary waiver. Direction and guidance to resume normal processing of visas following the 90-day suspension will be sent septel.

(SBU) Nonimmigrant Visas

5. (SBU) GSS vendors and posts will continue scheduling NIV applicants of the six indicated nationalities. The E.O. provides for a number of exemptions from its scope and includes waiver provisions, and whether an applicant is exempt or qualified for a waiver can only be determined on a case-by-case basis during the course of a visa interview.

6. (SBU) Beginning 8:00 p.m. EDT June 29, 2017, NIV applicants presenting passports from any of the six countries included in the E.O. should be interviewed and adjudicated following these procedures:

a.) Officers should first determine whether the applicant is eligible for a visa under the INA, without regard to the E.O. If the applicant is not eligible, the appropriate refusal code should be entered into the Consular Lookout and Support System (CLASS). See 9 FAM 303.3-4(A). Posts must follow existing FAM guidance in 9 FAM 304.2 to determine whether an SAO must be submitted. Applicants found ineligible for grounds unrelated to the E.O. should be refused according to standard procedures.

b.) If an applicant is found otherwise eligible for the visa, the consular officer will need to determine during the interview whether the applicant is exempt from the E.O.'s suspension of entry provision (see paragraphs 10-13), and if not, whether the individual qualifies for a waiver (see paragraphs 14 and 15).

c.) Applicants who are not exempt from the E.O.'s suspension of entry provision and who do not qualify for a waiver should be refused by entering the code "EO17" into the Consular Lookout and Support System (CLASS). As coordinated with DHS, this code represents a Section 212(f) denial under the E.O.

(SBU) Immigrant Visas

7. (SBU) The National Visa Center (NVC) will continue to schedule immigrant visa (IV) appointments for all categories and all nationalities. Posts should continue to interview all other IV applicants presenting passports from any of the six countries included in the E.O., following these procedures:

a.) Officers should first determine whether the applicant is eligible for the visa, without regard to the E.O. If the applicant is not eligible, the application should be refused according to standard procedures.

b.) If an applicant is found otherwise eligible for the visa, the consular officer will need to determine during the interview whether the applicant is exempt from the E.O.'s suspension of entry provision (see paragraphs 10-13), and if not, whether the applicant qualifies for a waiver (paragraphs 14 and 15).

c.) Immigrant visa applicants who are not exempt from the E.O.'s suspension of entry provision and who do not qualify for a waiver should be refused 221(g) and the consular officer should request an advisory opinion from VO/L/A.

(SBU) Diversity Visas

8. (SBU) For Diversity Visa (DV) applicants already scheduled for interviews falling after the E.O. implementation date of 8:00 p.m. EDTJune

If you have $10 in your pocket and have absolutely zero debts, you are allegedly wealthier than 25% of American citizens.

< PREVIOUS NEXT >

29, 2017, post should interview the applicants. Posts should interview applicants following these procedures:

a.) Officers should first determine whether the applicant is eligible for the DV, without regard to the E.O. If the applicant is not eligible, the application should be refused according to standard procedures.

b.) If an applicant is found otherwise eligible, the consular officer will need to determine during the interview whether the applicant is exempt from the E.O.'s suspension of entry provision (see paragraphs 10-13), and if not, whether the applicant qualifies for a waiver (paragraphs 14 and 15).

c.) DV applicants who are not exempt from the E.O.'s suspension of entry provision and who do not qualify for a waiver should be refused 221(g) and the consular officer should request an advisory opinion from VO/L/A following current guidance in 9 FAM 304.3-1.

Based on the Department's experience with the DV program, we anticipate that very few DV applicants are likely to be exempt from the E.O.'s suspension of entry or to qualify for a waiver. CA will notify DV applicants from the affected nationalities with scheduled interviews of the additional criteria to allow the potential applicants to determine whether they wish to pursue their application.

9. (SBU) The Kentucky Consular Center (KCC) will continue to schedule additional DV-2017 appointments for cases in which the principal applicant is from one of these six nationalities. While the Department is mindful of the requirement to issue Diversity Visas prior to the end of the Fiscal Year on September 30, direction and guidance to resume normal processing of visas following the 90-day suspension will be sent septel.

(SBU) Individuals Who Are Exempt from the E.O.'s Suspension of Entry

10. (SBU) The E.O.'s suspension of entry does not apply to the following:

a.) Any applicant who has a credible claim of a bona fide relationship with a person or entity in the United States. Any such relationship with a "person" must be a close familial relationship, as defined below. Any relationship with an entity must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading the E.O. Note: If you determine an applicant has established eligibility for a nonimmigrant visa in a classification other than a B, C-1, D, I, or K visa, then the applicant is exempt from the E.O., as their bona fide relationship to a person or entity is inherent in the visa classification. Eligible derivatives of these classifications are also exempt. Likewise, if you determine an applicant has established eligibility for an immigrant visa in the following classifications – immediate relatives, family-based, and employment-based (other than certain self-petitioning employment-based first preference applicants with no job offer in the United States and SIV applicants under INA 101a(27)) – then the applicant and any eligible derivatives are exempt from the E.O.

b.) Any applicant who was in the United States on June 26, 2017;

c.) Any applicant who had a valid visa at 5:00 p.m. EST on January 27, 2017, the day E.O. 13769 was signed;

d.) Any applicant who had a valid visa on June 29, 2017;

e.) Any lawful permanent resident of the United States;

f.) Any applicant who is admitted to or paroled into the United States on or after June 26, 2017;

g.) Any applicant who has a document other than a visa, valid on June 29, 2017, or issued on any date thereafter, that permits him or her to travel to the United States and seek entry or admission, such as advance parole;

h.) Any dual national of a country designated under the order when traveling on a passport issued by a non-designated country;

i.) Any applicant travelling on an A-1, A-2, NATO-1 through NATO-6 visa, C-2 for travel to the United Nations, C-3, G-1, G-2, G-3, or G-4 visa, or a diplomatic-type visa of any classification;

j.) Any applicant who has been granted asylum; any refugee who has already been

admitted to the United States; or any individual who has been granted withholding of removal, advance parole, or protection under the Convention Against Torture; and

k.) Any V92 or V93 applicant.

11. (SBU) "Close family" is defined as a parent (including parent-in-law), spouse, child, adult son or daughter, son-in-law, daughter-in-law, sibling, whether whole or half. This includes step relationships. "Close family" does not include grandparents, grandchildren, aunts, uncles, nieces, nephews, cousins, brothers-laws and sisters-in-law, fiancés, and any other "extended" family members.

12. (SBU) A relationship with a "U.S. entity" must be formal, documented, and formed in the ordinary course rather than for the purpose of evading the E.O. A consular officer should not issue a visa unless the officer is satisfied that the applicant's relationship complies with these requirements and was not formed for the purpose of evading the E.O. For example, an eligible I visa applicant employed by foreign media that has a news office based in the United States would be covered by this exemption. Students from designated countries who have been admitted to U.S. educational institutions have a required relationship with an entity in the United States. Similarly, a worker who accepted an offer of employment from a company in the United States or a lecturer invited to address an audience in the United States would be exempt. In contrast, the exemption would not apply to an applicant who enters into a relationship simply to avoid the E.O.; for example, a nonprofit group devoted to immigration issues may not contact foreign nationals from the designated countries, add them to client lists, and then secure their entry by claiming injury from their inclusion in the E.O. Also, a hotel reservation, whether or not paid, would not constitute a bona fide relationship with an entity in the United States.

13. (SBU) When issuing an IV or an NIV to an individual who falls into one of the categories listed in paragraph 10, the visa should be annotated to state, "Exempt or Waived from E.O. 13780." Interviewing officers must also enter a clear case note stating the specific reason why the applicant is exempt from the E.O.'s suspension of entry. If consular officers are unclear if an applicant qualifies for an exemption, the cases should be refused under INA 221(g) and the consular officer should request an advisory opinion from VO/L/A following current guidance in 9 FAM 304.3-1.

(SBU) Qualification for a Waiver and Process

14. (SBU) The E.O. permits consular officers to grant waivers and authorize the issuance of a visa on a case-by-case basis when the applicant demonstrates to the officer's satisfaction that the following three criteria are all met:

a.) Denying entry during the 90-day suspension would cause undue hardship;

b.) His or her entry would not pose a threat to national security; and

c.) His or her entry would be in the national interest.

15. (SBU) The E.O. lists the following examples of circumstances in which an applicant may be considered for a waiver, subject to meeting the three requirements above. Note that some of the waiver examples listed in the E.O. are now considered exemptions in light of the Supreme Court's ruling. Consular officers should determine whether individuals are exempt from the E.O. under standards described above, before considering the availability of a waiver under the standards described in this paragraph. Unless the adjudicating consular officer has particular concerns about a case that causes the officer to believe that that issuance may not be in the national interest, a determination that a case falls under any circumstance listed in this paragraph is a sufficient basis for concluding a waiver is in the national interest. Determining that a case falls under some of these circumstances may also be a sufficient basis for concluding that denying entry during the 90-day suspension would cause undue hardship:

a.) The applicant has previously established significant contacts with the United States but is outside the United States on the effective date of the E.O. for work, study, or other lawful activity;

b.) The applicant seeks to enter the United States for significant business or professional obligations and the denial of entry during the suspension period would impair those obligations;

c.) The applicant is an infant, a young child, or adoptee, an individual needing urgent medical care, or someone whose entry is otherwise justified by

the special circumstances of the case;

d.) The applicant is traveling for purposes related to an international organization designated under the International Organizations Immunities Act, traveling for purposes of conducting meetings or business with the United States government, or traveling to conduct business on behalf of an international organization not designated under the IOIA; or

e.) The applicant is a permanent resident of Canada who applies for a visa at a location within Canada.

16. (SBU) Listed in this paragraph are other circumstances in which an applicant may be considered for a waiver, subject to meeting the three requirements in paragraph 14. Consular officers should determine whether individuals are exempt from the E.O. under standards described above, before considering the availability of a waiver under the standards in paragraph

15. Unless the adjudicating consular officer has particular concerns about a case that suggest issuance may not be in the national interest, determining that a case falls under any circumstance listed in this paragraph is a sufficient basis for concluding a waiver is in the national interest. Determining that a case falls under some of these circumstances may also be a sufficient basis for concluding that denying entry during the 90-day suspension would cause undue hardship:

a.) The applicant is a high-level government official traveling on official business who is not eligible for the diplomatic visa normally accorded to foreign officials of national governments (A or G visa). Examples include governors and other appropriate members of sub-national (state/local/regional) governments; and members of sub-national and regional security forces; and

b.) Cases where all three criteria in paragraph 14 are met and the Chief of Mission or Assistant Secretary of a Bureau supports the waiver.

17. (SBU) If the applicant qualifies for a waiver based on criteria in paragraphs 14 or 15, the consular officer may issue the visa with the concurrence of the Visa Chief (IV or NIV) or the Consular Section Chief. The visa should be annotated to read, "Exempt or Waived from E.O. 13780." Case notes must reflect the basis for the waiver; the undue hardship that would be caused by denying entry during the suspension; the national interest; and the position title of the manager concurring with the waiver. To document national interest in case notes in circumstances falling under paragraph 14 or paragraph 15(a), (b), or (c), the consular officer may write, "National interest was established by the applicant demonstrating satisfaction of the requirements for the waiver based on [insert brief description of category of waiver]."

18. (SBU) If the applicant does not qualify under one of the listed waiver categories in paragraphs 14 or 15, but the interviewing officer and consular manager believe that the applicant meets the requirements in paragraph 14 above and therefore should qualify for a waiver, then the case should be submitted to the Visa Office for consideration. These cases should be submitted via email to countries-of-concern-inquiries@state.gov. The Visa Office will review these requests and reply to posts within two business days. Consular officers should be able to approve the majority of waiver cases without review by the Visa Office due to the broad authority granted in the E.O.

(SBU) Refugees

19. (SBU) The U.S. Refugee Admissions Program (USRAP) is suspended for 120 days, except for those cases where the Supreme Court has kept the temporary injunction in place for any applicant who has a credible claim of a bona fide relationship with a person or entity in the United States. Any such relationship with a "person" must be a close familial relationship, as defined above in paragraph 11. Any relationship with an entity must be formal, documented, and formed in the ordinary course, rather than for the purpose of evading the E.O as described in paragraph 12. We believe that by their nature, almost all V93 cases will have a clear and credible close familial relationship with the Form I-730 petitioner in the United States and qualify for issuance under this exemption.

20. (SBU) Posts should not cancel any V93 appointments, and NVC will continue to schedule new V93 appointment as normal. Beginning 8:00 p.m. EDT Thursday June 29, 2017, V93 applicants presenting passports from any of the six countries included in the E.O. should be interviewed and adjudicated following these procedures:

a.) Officers should first determine whether the applicant is eligible for a V93 under the current policy, without regard to the E.O. If the applicant is not eligible, the appropriate refusal code should be entered into the Consular

Lookout and Support System (CLASS). Applicants found ineligible for grounds unrelated to the E.O. should be refused according to standard procedures. See 9 FAM 203.6.

b.) If an applicant is found otherwise eligible for the V93 foil, the consular officer will need to determine during the interview whether the applicant is exempt from the E.O.'s suspension of entry provision based on a credible claim of a bona fide relationship with a person or entity in the United States per paragraph 19.

c.) Applicants who are not exempt from the E.O.'s suspension of entry provision should be refused by entering the code "EO17" into the Consular Lookout and Support System (CLASS). Please contact your VO/F liaison with any questions about V93 processing or adjudication under the E.O.

(SBU) V92 Cases

21. (SBU) The E.O. does not affect V92 applicants, and post should adjudicate these cases per standard guidance.

22. (SBU) Posts with questions regarding this guidance should contact their post liaison officer in CA/VO/F.

by *elizabeth.culliford* 6/29/2017 12:26:59 PM June 29 at 8:26 AM
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EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

P.K., *et al.*, on behalf of themselves and all others similarly situated,	)	No. _____
Plaintiffs/Petitioners,	)	
v.	)	
REX W. TILLERSON, *et al.*,	)	
Defendants/Respondents.	)	

DECLARATION OF P.K.

I, P.K., declare that the following facts are true to the best of my knowledge, information, and belief:

1. I have personal knowledge of the facts set out below. If I were called as a witness, I could competently testify about what I have written in this declaration.
2. I am 39 years old and a citizen of Iran. I have a bachelor's degree in mechanical engineering and I have worked as an engineer for 18 years. I speak and read English.
3. My wife, N.H., and I reside in Iran with our son, MK1, age 11, and our daughter, MK2, age 7. We want to raise our children in the United States because we believe they will have a better life in America.
4. I entered the lottery for a diversity visa in both 2014 and 2016. I was not selected in either year.

5. I entered the 2017 diversity visa lottery. On May 3, 2016, I received a letter from the United States Department of State. It said that I had been randomly selected as part of the diversity visa program. A copy of this letter with my name redacted is attached as Exhibit A.
6. I completed my DS-260 application in May 2016. In September 2016, I received another letter from the United States Department of State. That letter told me that my interview was scheduled on November 8, 2016. A copy of this letter with our names redacted is attached as Exhibit B.
7. There is no United States embassy in Iran so my interview took place at the United States embassy in Yerevan, Armenia. My wife and two children travelled with me to Armenia for the interview. We had to stay in Armenia for about 12 days. The flights and hotels cost thousands of dollars. I paid a $330 fee for each person in my family at the embassy.
8. At my interview, the consular officer told me that I had a very good case and I should expect to hear in about 3 months.
9. I did not receive any more information for several months. I regularly checked the State Department website and it said my case is in "Administrative Processing." In March 2017, I emailed the consulate in Yerevan and they said that they could not predict how much longer it would take.
10. My case is still listed as in "Administrative Processing" and was last updated in May 2017. A copy of a recent screenshot is attached as Exhibit C.
11. To the best of my knowledge, I am eligible to receive an immigrant visa. I do not know of any reason to deny my visa application.

12. I believe that I will no longer be eligible to receive a visa after September 30, 2017. The State Department website says that diversity visas cannot be issued after September 30. I am very concerned that my family and I might lose our opportunity to receive a visa and might not be able to emigrate to the United States.
13. I am not aware of any close relatives who live in the United States. I do not currently have a job offer or other connections to an organization in the United States.

Pursuant to 28 U.S.C. § 1746, I, P.K., declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 31, 2017

P.K. P.k.

EXHIBIT A

United States Department of State
Kentucky Consular Center
3505 North Highway 25W
Williamsburg, KY 40769
U.S.A

May 03, 2016

[redacted]

Dear [redacted]

You have been randomly selected for further processing in the Diversity Immigrant Visa Program for the fiscal year 2017 **(October 1, 2016 to September 30, 2017)**. Selection does not guarantee that you will receive a visa because the number of applicants selected is greater than the number of visas available. Therefore, it is very important that you carefully follow instructions to increase your chances of possible visa issuance. The instructions are located on the Department of State website at http://www.dvsclectee.state.gov. All DV applicants must use the online DS-260 Immigrant Visa and Alien Registration Application. Paper forms will not be accepted.

Please print out this letter and take it with you to your visa interview. Your case will not be scheduled for an interview appointment until a visa number is available. If you are scheduled for an interview, you will receive a notification message at the e-mail address you provided when you submitted your initial application.

If you need to contact the Kentucky Consular Center (KCC) about your case, you may write to KCCDV@state.gov. **When writing to KCC, you must always include your name and case number as they appear below. You must also include your complete date of birth as stated on your original entry.** You may call the Kentucky Consular Center at (+1) 606-526-7500 between 7:30am and 4:00pm EST.

Case Number:	2017AS00001197
Principal Applicant Name:	[redacted]
Preference Category:	DV DIVERSITY
Foreign State Chargeability:	IRAN
Post:	ANKARA

You may call the Kentucky Consular Center at (+1) 606-526-7500 between 7:30am and 4:00pm EST. E-mail inquiries should be addressed to KCCDV@state.gov.

EXHIBIT B

(http://www.state.gov)

U.S. Department of State
Bureau of Consular Affairs
eDV ESC: 05.01.00

Print , Help (./Help.aspx) ESC Home (./Default.aspx)

United States Department of State
Kentucky Consular Center
3505 North Highway 25W
Williamsburg, KY 40769
U.S.A

September 22, 2016

[redacted]

Dear DV Applicant,

This is the official notice for you to pursue your application for a DV-2017 visa. An appointment has been scheduled for you at the U.S. Embassy or Consulate stated below. You and all members of your family who wish to apply for a Diversity Visa must appear at the appointed date and time for your interview. Please notify the office listed if you cannot keep the appointment.

You and any eligible family members will be required to submit sufficient proof of identity upon arrival. If you fail to obtain a DV-2017 visa by September 30, 2017, your registration will expire. Your family members must also obtain their visas prior to September 30, 2017, or they will not be permitted to join you in the United States under the DV-2017 program.

Please follow all of the instructions provided at http://www.dvselectee.state.gov (http://www.dvselectee.state.gov) to prepare for your interview. It is very important that you follow the instructions carefully and completely. The Diversity Lottery Fee for each applicant and each member of the family must be paid in full at the Consulate or Embassy at the time of your interview. There is only one fee and you should only make a payment at the Embassy or Consulate when instructed to do so at the time of your interview. The fee is non-refundable, even if the visa is refused for any reason.

Interview Appointment

YEREVAN
U.S. Embassy
Consular Section
1 American Avenue
YEREVAN

November 08, 2016 09:00 AM

The Kentucky Consular Center has completed the processing of your case and forwarded it to the interviewing office. Further inquiries should be addressed to the interviewing office. When communicating with the Embassy/Consulate, always refer to your name and case number exactly as they appear below. Contact information for the consular section in YEREVAN can be found on usembassy.gov.

Case Number: 2017AS00001197
Principal Applicant Name: [redacted]
Preference Category: DV DIVERSITY
Foreign State Chargeability: IRAN

Case Number: 2017AS00001197
Applicant Name: [redacted]

Beneficiaries: [redacted]

Guide for New Immigrants: https://www.uscis.gov/tools/green-card-resources/welcome-united-states (https://www.uscis.gov/tools/green-card-resources/welcome-united-states)

PAPERWORK REDUCTION ACT: Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time required for searching existing data sources, gathering the necessary documentation, providing the information and/or documents required, and reviewing the final collection. You do not have to supply this information unless this collection displays a currently valid OMB control number. If you have comments on the accuracy of this burden estimate and/or recommendations for reducing it, please send them to: PRA_BurdenComments@state.gov.

CONFIDENTIALITY STATEMENT: AUTHORITIES: The information asked for on this form is requested pursuant to Section 222 of the Immigration and Nationality Act. Section 222(f) provides that the records of the Department of State and of diplomatic and consular offices of the United States pertaining to the issuance and refusal of visas or permits to enter the United States shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States. Certified copies of such records may be made available to a court provided the court certifies that the information contained in such records is needed in a case pending before the court. PURPOSE: The U.S Department of State uses the facts you provide on this form primarily to determine your classification and eligibility for a U S. immigrant visa. Individuals who fail to submit this form or who do not provide all the requested information may be denied a U.S. immigrant visa. Although furnishing this information is voluntary, failure to provide this information may delay or prevent the processing of your case. ROUTINE USES: If you are issued an immigrant visa and are subsequently admitted to the United States as an immigrant, the Department of Homeland Security will use the information on this form to issue you a Permanent Resident Card, and, if you so indicate, the Social Security Administration will use the information to issue a social security number. The information provided may also be released to federal agencies for law enforcement, counterterrorism and homeland security purposes; to Congress and courts within their sphere of jurisdiction; and to other federal agencies who may need the information to administer or enforce U.S. laws.

EXHIBIT C

U.S. Department of State
IMMIGRANT VISA APPLICATION

Administrative Processing

Immigrant Visa Case Number: **2017AS1197 01 YRV**
Case Created: 15-Oct-2015
Case Last Updated: 04-May-2017

Your visa case is currently undergoing necessary administrative processing. This processing can take several weeks. Please follow any instructions provided by the Consular Officer at the time of your interview. If further information is needed, you will be contacted. If your visa application is approved, it will be processed and mailed/available within two business days. Under the U.S. Immigration and Nationality Act, Immigrant Visas for "Diversity Visas" cannot be issued after September 30th of the year in which you were selected to apply for a Diversity Visa. For example, entrants into the Diversity Visa Program in Fall of 2011 were selected for Diversity Visa 2012 Program, and selectees MUST apply and receive their visa prior to September 30, 2012 otherwise they lose eligibility to receive a Diversity Immigrant Visa, regardless of additional administrative processing. In addition, please note that some immigrant visas may not be able to be issued if the annual numerical limit for that category has been reached.
For more information, please visit TRAVEL.STATE.GOV.

Your search has returned multiple results. Please select the Case Number to display the status.

Case Number	Status
2017AS1197 01 YRV	**Administrative Processing**
2017AS1197 02 YRV	**Administrative Processing**
2017AS1197 03 YRV	**Administrative Processing**
2017AS1197 04 YRV	**Administrative Processing**

Close

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

P.K., *et al.*, on behalf of themselves and all others similarly situated,	)	No. _____
Plaintiffs/Petitioners,	)	
v.	)	
REX W. TILLERSON, *et al.*,	)	
Defendants/Respondents.	)	

DECLARATION OF PEJMAN YOUSEFZADEH

I, Pejman Yousefzadeh, declare that the following facts are true to the best of my knowledge, information, and belief:

1. I have personal knowledge of the facts set out below. If I were called as a witness, I could competently testify about what I have written in this declaration.
2. I am an employee of Jenner & Block. I am a fluent speaker of both Persian and English.
3. On July 27, 2017 and July 31, 2017, I spoke with on the phone with P.K. I translated his declarations from English into Persian before he signed them.
4. He confirmed that the information was correct before signing the English version of the declarations.

Pursuant to 28 U.S.C. § 1746, I, Pejman Yousefzadeh, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 31, 2017

PEJMAN YOUSEFZADEH

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

P.K., *et al.*, on behalf of themselves and all others similarly situated,	)	No. _____
Plaintiffs/Petitioners,	)	
v.	)	
REX W. TILLERSON, *et al.*,	)	
Defendants/Respondents.	)	

DECLARATION OF AFSHIN ASADI SORKHAB

I, Afshin Asadi Sorkhab, declare that the following facts are true to the best of my knowledge, information, and belief:

1. I have personal knowledge of the facts set out below. If I were called as a witness, I could competently testify about what I have written in this declaration.
2. I am 44 years old and a citizen of Iran. I have a bachelor's degree in chemical engineering and I have worked as an engineer since 1999. I currently am a manager responsible for the commissioning and startup of oil projects in Southern Iran.
3. My wife, Neda Heidari Dehkordi, and I reside in Iran with our 16 year old daughter, our 7 year old daughter, and our two month old son, Plaintiffs YS1, YS2, and YS3.

4. My older daughter encouraged me to participate in the diversity visa lottery so that she can go to school in the United States.
5. I entered the 2017 diversity visa lottery. On May 3, 2016, I received a letter from the United States Department of State. It said that I had been randomly selected as part of the diversity visa program. A copy of this letter is attached as Exhibit A.
6. I completed my DS-260 application in May 2016. In October 2016, I received another letter from the United States Department of State. That letter told me that my interview was scheduled for December 14, 2016. A copy of this letter with the names of my children redacted is attached as Exhibit B.
7. There is no United States embassy in Iran so my interview took place at the United States embassy in Abu Dhabi in the United Arab Emirates. My wife and two daughters travelled with me to Abu Dhabi for the interview. We stayed in Abu Dhabi for approximately 8 days on this trip.
8. At the interview, we informed the consular official that my wife was pregnant. We were told we needed to return after the baby was born with a copy of the baby's passport. Just before the baby was born, I emailed the embassy to inform them and they told me to return with our entire family.
9. My entire family travelled to Abu Dhabi again in June 2017 in order to present the baby and show his passport. The entire family had to return because our medical exams had expired. We stayed approximately four days in Abu Dhabi on this trip. The total cost of both trips to Abu Dhabi was thousands of dollars.

10. I regularly check the State Department website and it says that my case is in "Administrative Processing." It was last updated in July 2017. A copy of a recent screenshot is attached as Exhibit C.
11. To the best of my knowledge, I am eligible to receive an immigrant visa. I do not know of any reason to deny my visa application.
12. I believe that I will no longer be eligible to receive a visa after September 30, 2017. The State Department website says that diversity visas cannot be issued after September 30. I am very concerned that my family and I might lose our opportunity to receive a visa and might not be able to emigrate to the United States.
13. I am not aware of any close relatives who live in the United States. I do not currently have a job offer or other connections to an organization in the United States.

Pursuant to 28 U.S.C. § 1746, I, Afshin Asadi Sorkhab, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 27, 2017

July 27, 2017

AFSHIN ASADI SORKHAB

EXHIBIT A

United States Department of State
Kentucky Consular Center
3505 North Highway 25W
Williamsburg, KY 40769
U.S.A

May 03, 2016

AFSHIN ASADI SORKHAB
c/o MR.ASADI SORKHAB
NO.2285-13TH BLOCK-APS.MANAZEL
SHAHRAK NAFT
AHVAZ, KHUZESTAN 6165796986
IRAN

Dear AFSHIN ASADI SORKHAB,

You have been randomly selected for further processing in the Diversity Immigrant Visa Program for the fiscal year 2017 **(October 1, 2016 to September 30, 2017)**. Selection does not guarantee that you will receive a visa because the number of applicants selected is greater than the number of visas available. Therefore, it is very important that you carefully follow instructions to increase your chances of possible visa issuance. The instructions are located on the Department of State website at http://www.dvselectec.state.gov. All DV applicants must use the online DS-260 Immigrant Visa and Alien Registration Application. Paper forms will not be accepted.

Please print out this letter and take it with you to your visa interview. Your case will not be scheduled for an interview appointment until a visa number is available. If you are scheduled for an interview, you will receive a notification message at the e-mail address you provided when you submitted your initial application.

If you need to contact the Kentucky Consular Center (KCC) about your case, you may write to KCCDV@state.gov. **When writing to KCC, you must always include your name and case number as they appear below. You must also include your complete date of birth as stated on your original entry.** You may call the Kentucky Consular Center at (+1) 606-526-7500 between 7:30am and 4:00pm EST.

Case Number:	2017AS00003178
Principal Applicant Name:	ASADI SORKHAB, AFSHIN
Preference Category:	DV DIVERSITY
Foreign State Chargeability:	IRAN

Post: ANKARA

You may call the Kentucky Consular Center at (+1) 606-526-7500 between 7:30am and 4:00pm EST. E-mail inquiries should be addressed to KCCDV@state.gov.

EXHIBIT B

United States Department of State
Kentucky Consular Center
3505 North Highway 25W
Williamsburg, KY 40769
U.S.A

October 14, 2016

AFSHIN ASADI SORKHAB
NO.2285-13TH BLOCK-APS.MANAZEL
SHAHRAK NAFT
AHVAZ KHUZESTAN 6165796986
IRAN

Dear DV Applicant,

This is the official notice for you to pursue your application for a DV-2017 visa. An appointment has been scheduled for you at the U.S. Embassy or Consulate stated below. You and all members of your family who wish to apply for a Diversity Visa must appear at the appointed date and time for your interview. Please notify the office listed if you cannot keep the appointment.

You and any eligible family members will be required to submit sufficient proof of identity upon arrival. If you fail to obtain a DV-2017 visa by September 30, 2017, your registration will expire. Your family members must also obtain their visas prior to September 30, 2017, or they will not be permitted to join you in the United States under the DV-2017 program.

Please follow all of the instructions provided at http://www.dvselectee.state.gov to prepare for your interview. It is very important that you follow the instructions carefully and completely. The Diversity Lottery Fee for each applicant and each member of the family must be paid in full at the Consulate or Embassy at the time of your interview. There is only one fee and you should only make a payment at the Embassy or Consulate when instructed to do so at the time of your interview. The fee is non-refundable, even if the visa is refused for any reason.

Interview Appointment

ABU DHABI
EMBASSY OF THE UNITED STATES
VISA UNIT
AL-SUDAN ST
PO BOX 4009
ABU DHABI
UNITED ARAB EMIRATES
971-2-414-2200
December 14, 2016 08:00 AM

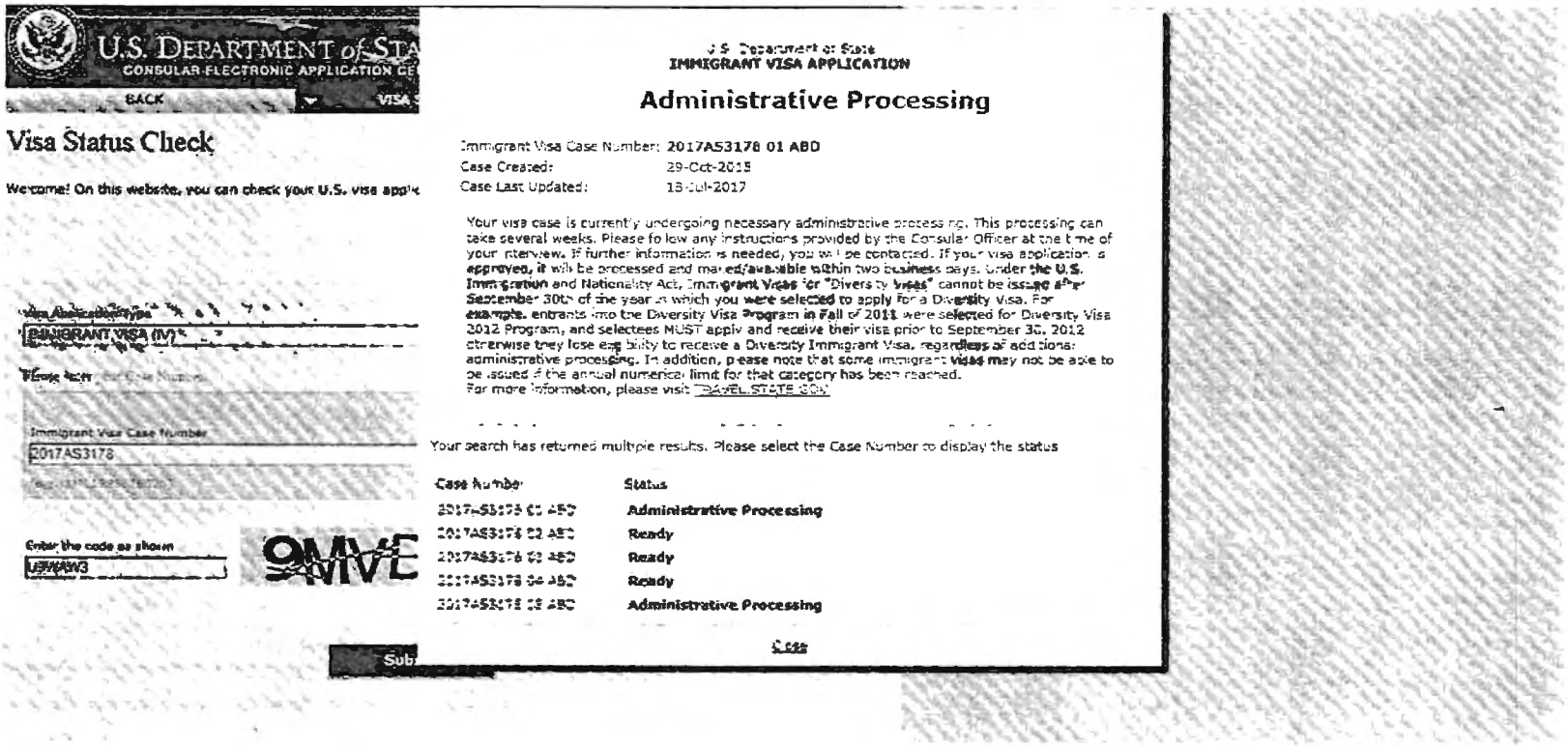
The Kentucky Consular Center has completed the processing of your case and forwarded it to the interviewing office. Further inquiries should be addressed to the interviewing office. When communicating with the Embassy/Consulate, always refer to your name and case number exactly as they appear below. Contact information for the consular section in ABU DHABI can be found on usembassy.gov.

Case Number:	2017AS00003178
Principal Applicant Name:	ASADI SORKHAB, AFSHIN
Preference Category:	DV DIVERSITY
Foreign State Chargeability:	IRAN

Case Number:	2017AS00003178
Applicant Name:	AFSHIN ASADI SORKHAB
	NEDA HEIDARI DEHKORDI
Beneficiaries:	[redacted]

Guide for New Immigrants: https://www.uscis.gov/tools/green-card-resources/welcome-united-states

EXHIBIT C



U.S. DEPARTMENT of STA
CONSULAR ELECTRONIC APPLICATION CE
BACK

Visa Status Check

Welcome! On this website, you can check your U.S. visa appli

IMMIGRANT VISA (M)

Immigrant Visa Case Number
2017AS3178

Enter the code as shown
UPWAW3

U.S. Department of State
IMMIGRANT VISA APPLICATION

Administrative Processing

Immigrant Visa Case Number: 2017AS3178 01 ABD
Case Created: 29-Oct-2015
Case Last Updated: 15-Jul-2017

Your visa case is currently undergoing necessary administrative processing. This processing can take several weeks. Please follow any instructions provided by the Consular Officer at the time of your interview. If further information is needed, you will be contacted. If your visa application is approved, it will be processed and made available within two business days. Under the U.S. Immigration and Nationality Act, Immigrant Visas for "Diversity Visas" cannot be issued after September 30th of the year in which you were selected to apply for a Diversity Visa. For example, entrants into the Diversity Visa Program in Fall of 2011 were selected for Diversity Visa 2012 Program, and selectees MUST apply and receive their visa prior to September 30, 2012 otherwise they lose eligibility to receive a Diversity Immigrant Visa, regardless of additional administrative processing. In addition, please note that some immigrant visas may not be able to be issued if the annual numerical limit for that category has been reached.
For more information, please visit TRAVEL.STATE.GOV

Your search has returned multiple results. Please select the Case Number to display the status

Case Number	Status
2017AS3178 01 ABD	Administrative Processing
2017AS3178 02 ABD	Ready
2017AS3178 03 ABD	Ready
2017AS3178 04 ABD	Ready
2017AS3178 05 ABD	Administrative Processing

Close

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

P.K., *et al.*, on behalf of themselves and all others similarly situated,	)	No. _____
Plaintiffs/Petitioners,	)	
v.	)	
REX W. TILLERSON, *et al.*,	)	
Defendants/Respondents.	)	

DECLARATION OF EHSAN KHAH

I, Ehsan Khah, declare that the following facts are true to the best of my knowledge, information, and belief:

1. I have personal knowledge of the facts set out below. If I were called as a witness, I could competently testify about what I have written in this declaration.
2. I am an employee of Jenner & Block. I am a native speaker of both Persian and English.
3. On July 27, 2017, I spoke with Afshin Asadi Sorkhab on the phone. I translated his declaration from English into Persian before he signed it.
4. He confirmed that the information was correct before signing the English version of the declaration.

Pursuant to 28 U.S.C. § 1746, I, Ehsan Khah, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 27, 2017

EHSAN KHAH

EXHIBIT D

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

P.K., *et al.*,	)	No. _____
Plaintiffs/Petitioners,	)	
v.	)	
REX W. TILLERSON, *et al.*	)	
Defendants/Respondents.	)	

DECLARATION OF HAMED SUFYAN OTHMAN ALMAQRAMI

I, Hamed Sufyan Othman Almaqrami, declare that the following facts are true to the best of my knowledge, information, and belief:

1. I have personal knowledge of the facts set out below. If I were called as a witness, I could competently testify about what I have written in this declaration.

2. I am 29 years old and a citizen of Yemen. I have a master's degree in linguistics and I am currently a Ph.D. student in linguistics at Annamalai University in India.

3. I entered the 2017 diversity visa lottery. I hope to immigrate to the United States to have access to better educational opportunities. On May 3, 2016, I learned that I had been randomly selected as part of the diversity visa program. A copy of this letter is attached as Exhibit A.

4. My case is being processed through the U.S. Embassy in Kuala Lumpur, Malaysia. At great expense, I traveled from India, where I have been living for my doctoral studies, to Yemen to retrieve all of the necessary documents, and then came back to India for additional documents. Then, I went to Malaysia for my interview. I had my interview on May 25, 2017.

5. At my interview, I was asked to provide information about my previous residences, travel history, employment history, and family, and I was told to submit that information by email to the embassy. I was informed that when my file was complete, I would be contacted to drop off my passport and receive my visa. Therefore, I stayed in Kuala Lumpur after my interview. I waited there five weeks but still my visa did not issue. Finally, I returned to India, having missed several months of my studies. I spent nearly $3,000, which I borrowed from friends, in order to gather my documents, travel to Malaysia, pay the visa processing fees, and stay there for the five weeks after my interview and two weeks before my interview. That is an enormous sum of money for me, and I may not be awarded my Ph.D. on time because I was absent for so long.

6. I did not understand why my visa was not issued, until I received an email from the U.S. State Department on July 12, 2017. The email is attached as Exhibit B. It said that "a visa applicant from one of the six affected countries who does not have a credible claim of a bona fide relationship with a person (i.e., a close familial relationship) in the United States or of a bona fide relationship with an entity in the United States (which relationship is formal, documented, and formed in the ordinary course, rather than to evade the Executive Order) is ineligible for a visa." I do not have any family in the United States, and I am concerned that I will now be treated as ineligible for a visa.

7. The email from the State Department also said that "all diversity visa applications will expire on October 1, 2017. Therefore, it is plausible that your case will not be issuable due to the Executive Order." I am very concerned that all of the sacrifices I have made as part of the visa application process will be in vain.

Pursuant to 28 U.S.C. § 1746, I, Hamed Sufan Othman Almaqrami, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 27, 2017

28/07/2017

HAMED SUFAN OTHMAN ALMAQRAMI

EXHIBIT A

United States Department of State
Kentucky Consular Center
3505 North Highway 25W
Williamsburg, KY 40769
U.S.A

May 03, 2016

HAMED SOFYAN ALMAQRAMI
c/o ACRAM FOR TRANSLATION
TAIZ STREET
IBB, IBB 00967
YEMEN

Dear HAMED SOFYAN ALMAQRAMI,

You have been randomly selected for further processing in the Diversity Immigrant Visa Program for the fiscal year 2017 **(October 1, 2016 to September 30, 2017)**. Selection does not guarantee that you will receive a visa because the number of applicants selected is greater than the number of visas available. Therefore, it is very important that you carefully follow instructions to increase your chances of possible visa issuance. The instructions are located on the Department of State website at http://www.dvselectee.state.gov. All DV applicants must use the online DS-260 Immigrant Visa and Alien Registration Application. Paper forms will not be accepted.

Please print out this letter and take it with you to your visa interview. Your case will not be scheduled for an interview appointment until a visa number is available. If you are scheduled for an interview, you will receive a notification message at the e-mail address you provided when you submitted your initial application.

If you need to contact the Kentucky Consular Center (KCC) about your case, you may write to KCCDV@state.gov. **When writing to KCC, you must always include your name and case number as they appear below. You must also include your complete date of birth as stated on your original entry.** You may call the Kentucky Consular Center at (+1) 606-526-7500 between 7:30am and 4:00pm EST.

Case Number:	2017AS00004579
Principal Applicant Name:	ALMAQRAMI, HAMED SOFYAN
Preference Category:	DV DIVERSITY
Foreign State Chargeability:	YEMEN
Post:	MUMBAI (BOMBAY)

You may call the Kentucky Consular Center at (+1) 606-526-7500 between 7:30am and 4:00pm EST. E-mail inquiries should be addressed to KCCDV@state.gov.

EXHIBIT B

-------- Original Message --------
Subject: 2017AS4579 - ALMAQRAMI, HAMED SUFYAN OTHMAN
From: Kuala Lumpur IV
To: Hamed_almaqrami@yahoo.com
CC:

Dear Sir/Madam,

You have a diversity visa (DV) application pending at the U.S. Embassy in Kuala Lumpur. We have identified your "Foreign State of Chargeability" as one of the six countries affected by Section 2(c) of Executive Order 13780, "Protecting the Nation From Foreign Terrorist Entry Into the United States" (Iran, Libya, Somalia, Sudan, Syria, and Yemen).

On June 26, 2017, the Supreme Court of the United States allowed travel restrictions in Section 2(c) of the Executive Order to go into effect, in part. Under the Court's order, a visa applicant from one of the six affected countries who does not have a credible claim of a bona fide relationship with a person (i.e., a close familial relationship) in the United States or of a bona fide relationship with an entity in the United States (which relationship is formal, documented, and formed in the ordinary course, rather than to evade the Executive Order) is ineligible for a visa unless the applicant qualifies for an exemption or waiver under the Executive Order. Many DV applicants from the six affected countries will not be eligible for an exemption or a waiver under the Executive Order and, therefore, will not be eligible for a visa.

If you believe you have a relationship that would qualify you for a visa issuance, please send information to demonstrate that relationship, as explained above. If you do not have such a credible claim of a bona fide relationship with a person or entity in the United States, your application will remain in administrative processing during the 90-day period of this travel restriction. As a reminder, all diversity visa applications will expire on October 1, 2017. Therefore, it is plausible that your case will not be issuable due to the Executive Order.

عزيزي مقدم طلب تأشيرة الهجرة التنوعية (DV) :

لديك معاملة تأشيرة الهجرة التنوعية (DV) قيد الإنتضار في سفارة الولايات المتحدة الامريكية في كوالالمبور . و لقد قمنا بتحديد "بلد الإستحقاق" الذي تنتمي إليه كواحد من الدول السته المتأثرة بالبند 2(c) من الامر التنفيذي 13780 , "حماية الشعب من دخول الارهابيين الاجانب الى الولايات المتحدة الامريكية " (ايران ,ليبيا, الصومال ,السودان ,سوريا , و اليمن) .

في تاريخ 26 يونيو ,2017 المحمكة العليا في الولايات المتحدة الامريكية سمحت لقيود السفر في البند (2(c من القرار التنفيذي أن تدخل حيز التنفيذ . بموجب قرار المحكمة, مقدم طلب التأشيرة الذي ينتمي لاحد الدول السته المتأثرة بهذا القرار ممن ليس لديهم إدعاء موثق بوجود صلة قرابة عائلية مع شخص في الولايات المتحدة الامريكية او كيان في الولايات المتحدة الامريكية(بشرط ان تكون علاقه رسمية , موثقة و اسست بطريقة طبيعية بدلا من أن تكون فقط من أجل تجنب القرار التنفيذي) غير مؤهل للحصول على التاشيرة إلا في حال وجود إعفاء او إستثناء بموجب القرار التنفيذي . العديد من مقدمي طلب تأشيرة الهجرة التنوعية للولايات المتحدة الامريكية لن يكونوا مؤهلين للحصول على إستثناء او إعفاء بموجب القرار التنفيذي ,لذلك لن يكونوا مؤهلين للحصول على التأشيرة .

إذا كنت تعتقد بان لديك علاقة من الممكن أن تساعدك على إصدار التأشيرة , الرجاء إرسال المعلومات التي توضح نوع تلك العلاقة ,كما هو موضح أعلاه . أذا لم يكن لديك إدعاء موثق بوجود علاقة مع شخص أو كيان في الولايات المتحدة الامريكية فإن حالة المعاملة سوف تكون قيد الاجراءات الادارية خلال ال 90-يوم من هذا القرار ,للتذكير , فإن جميع معاملات الهجرة التنوعية سوف تنتهي بتاريخ 1 اكتوبر 2017 .لذلك ,من المحتمل عدم إصدار التأشيرة بسبب هذا القرار التنفيذي .

Best Regards,
US Consular
Immigrant Visa Unit
Kuala Lumpur

Privacy/PII
This email is UNCLASSIFIED.

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

P.K., *et al.*,	)	No. _____
Plaintiffs/Petitioners,	)	
v.	)	
REX W. TILLERSON, *et al.*	)	
Defendants/Respondents.	)	

DECLARATION OF RADAD FAUIZ FAROOZ

I, Radad Fauiz Farooz, declare that the following facts are true to the best of my knowledge, information, and belief:

1. I have personal knowledge of the facts set out below. If I were called as a witness, I could competently testify about what I have written in this declaration.

2. I am 21 years old and a citizen of Yemen. I have graduated high school and I am currently studying educational technology at IBB University in Yemen.

3. I entered the 2017 diversity visa lottery. I want to immigrate to the United States to have better educational opportunities. On May 4, 2016, I learned that I had been randomly selected as part of the diversity visa program.

4. My case is being processed through the U.S. Embassy in Kuala Lumpur, Malaysia. I collected money from my friends and family to prepare to travel there. I had my interview in Kuala Lumpur on December 15, 2016.

5. At the conclusion of my interview, I was told my application would enter administrative processing. I stayed in Malaysia to wait for my visa. When I didn't hear about the

status of my application for a few weeks, I inquired with the Yemeni Embassy and found out that I needed to get a new passport. I received a new passport and submitted that to the U.S. Embassy in April 2017. The U.S. Embassy then asked me for some additional information including my travel history, the names of my family members, my current address and previous addresses, my employment history, and copies of any previous passports I may have had. I provided that to them as well.

6. On June 19, 2017, the U.S. Embassy called and told me to come for a second interview. I had that interview on June 21, 2017. I also updated my medical examination and submitted the medical forms to the U.S. Embassy on July 6, 2017.

7. The next day, July 7, 2017, I received a letter from the U.S. Embassy returning my passport to me without a visa. The letter is attached as Exhibit A. The letter stated that my case would remain in administrative processing, and that I would be notified when the Embassy could proceed with my case. The reason given was: "due to nationality from one of 6 countries affected by EO13780 sec 2(c)." I understand this refers to President Trump's Executive Order forbidding Yemenis from entering the United States.

8. The letter says my application was "refused under section 221(g) pending administrative processing." I understand that is not a final refusal. In fact, on July 27, 2017, the U.S. Embassy asked me for a translated copy of my birth certificate, which I submitted the next day.

9. However, the July 7 letter says at the bottom that "Under no circumstances can a visa be issued … in your case after September 30, 2017." I am very concerned that I will not receive a visa before that deadline because of the Executive Order.

Pursuant to 28 U.S.C. § 1746, I, Radad Fauiz Furooz, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 28, 2017

RADAD FAUIZ FUROOZ

EXHIBIT A

EMBASSY OF THE UNITED STATES OF AMERICA
Kuala Lumpur, Malaysia
Email: kliv@state.gov

Date: July 7, 2017

FULGAR, RAOAD MAUIZ ALVAREZ

Visa Symbol: DV

Case Number: 2017[illegible]1482

Dear visa applicant:

☐ **Your application is refused under section 221(g) pending the provision of missing documentation.** Your passport and original documents are returned to you. This is a routine procedure in the U.S. Immigrant Visa process. We will continue processing your application upon receipt of the information and/or documents listed below. Detailed and complete documentation will help is decide your case quickly, while incomplete or vague answers may result further delays.

Submit this letter through Aramex courier service office (http://www.ustraveldocs.com/my/) with the documents listed below:

___Affidavit of Support from your sponsor
___Your medical exam results from the panel physician
___A police clearance from _____
___A recent photograph
___Evidence of your education qualifications
___Evidence of the claimed relationship between yourself and your petitioner, including photographs, letters, e-mail correspondences, long distance telephone bills, birth certificates, etc.
___ Other: _____

☒ **Your application is refused under section 221(g) pending administrative processing.** No action from you is currently required. Your passport and original documents are returned to you. This is a routine procedure in the U.S. Immigrant Visa process. You will be notified when we can proceed with your case.

Other: due to nationality from one of 6 countries affected by EO 13780 sec 2(c)

Attention:
Under no circumstances can a visa be issued or an adjustment of status occur in your case after September 30, 2017.

Because of the limited number of visas that may be issued under this program, visas may cease to be available even before this date. This is especially true the closer to September 30 an application or re-application is made.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

P.K., *et al.*,	)	No. _____
Plaintiffs/Petitioners,	)	
v.	)	
REX W. TILLERSON, *et al.*	)	
Defendants/Respondents.	)	

DECLARATION OF DANA MASHAL

I, Dana Mashal, declare that the following facts are true to the best of my knowledge, information, and belief:

1. have personal knowledge of the facts set out below. If I were called as a witness, I could competently testify about what I have written in this declaration.

2. I am an employee of American-Arab Anti-Discrimination Committee. I am [fluent] a naïve speaker of] both Arabic and English.

3. On July 28, 2017, I spoke with Radad Fauiz Farooz on the phone. I translated his declaration from English into Arabic and read it to him in Arabic before he signed it.

4. Mr. Farooz confirmed that the information in the declaration was correct before signing the English version of the declaration.

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

Executed on July 28, 2017

_____