IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARYAM [redacted]

N.S. [redacted]

I.S. [redacted]

PLAINTIFFS,

V.

MERRICK B. GARLAND, *in his official capacity as Attorney General of the United States*
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

ANTONY J. BLINKEN, *in his official capacity as Secretary of State*
The Executive Office
Office of the Legal Advisor, Suite 5.600
600 19th Street NW
Washington, DC 20522

IAN G. BROWNLEE, *in his official capacity as Acting Assistant Secretary for Consular Affairs*
U.S. Department of State
2201 C Street NW, Room 6811
Washington, DC 20520

ALEJANDRO MAYORKAS, *in his official*

[redacted]

PLAINTIFFS' PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

capacity as Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

HOLLY WAEGER MONSTER, *in her official capacity as Consul General U.S. Consulate, Calgary*
c/o Office of the Legal Advisor, Suite 5.600
600 19th Street NW
Washington, D.C. 20522-1705

JOHN DOES #1-#10, *in their official capacity as Consular Officers responsible for issuing visas at the U.S. Consulate, Calgary*
c/o Office of the Legal Advisor, Suite 5.600
600 19th Street NW
Washington, D.C. 20522-1705

SUSAN R. CRYSTAL, *in her official capacity as Consul General U.S. Consulate, Toronto*
c/o Office of the Legal Advisor, Suite 5.600
600 19th Street NW
Washington, D.C. 20522-1705

JOHN DOES #11-#20, *in their official capacity as Consul Officers responsible for issuing visas at the U.S. Consulate, Toronto*
c/o Office of the Legal Advisor, Suite 5.600
600 19th Street NW
Washington, D.C. 20522-1705

DEFENDANTS.

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

Plaintiffs-Petitioners ("Plaintiffs"), Dr. Maryam [redacted] and her minor children, N.S. and I.S., by and through the undersigned counsel, respectfully bring this Petition for Writ of Mandamus and Complaint for Declaratory and Injunctive Relief to compel Defendants-Respondents ("Defendants") to adjudicate Dr. [redacted] J-1 non-immigrant visa application and

N.S and I.S's J-2 non-immigrant visa applications without further delay. In support thereof, Plaintiffs allege as follows:

NATURE OF ACTION

1. Dr. Maryam [redacted] is a citizen of Canada and an applicant for a J-1 visa. She has been offered a prestigious two-year research fellowship at Harvard Medical School and Beth Israel Deaconess Medical Center ("BIDMC"), which was set to begin on May 1, 2021.

2. To date, despite having completed all the necessary steps to receive her J-1 visa to travel to the United States to begin her employment, Dr. [redacted] visa application remains in an indefinite state of administrative processing at the U.S. Consulate in Calgary, Canada. It was submitted on April 19, 2021, and has remained pending with no updates for over one year and counting, with no apparent timeline for completion. Additionally, N.S. and I.S.'s J-2 visa applications remain in administrative processing at the U.S. consulate in Toronto since their submission on August 4, 2021, with no updates since that time and no apparent timeline for completion.

3. Until Defendants adjudicate her application, Dr. [redacted] will continue to be forced to put her career on hold with no end in sight. Each day that passes is another day that Dr. [redacted] is prevented from contributing her extraordinary intellect to BIDMC's important research.

4. Congress has made clear what it considers to be a reasonable time for adjudicating immigration benefits. "It is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application, except that a **petition for a nonimmigrant visa under section 1184(c)**

of this title should be processed not later than 30 days after the filing of the petition." *See* 8 U.S.C. § 1571 (emphasis added).

5. Due to Defendants' delay in adjudicating the visa applications, Dr. [redacted] has already lost the opportunity to begin her fellowship, and now risks losing her position at BIDMC if her visa is not issued before her postponed start day of June 6, 2022. Despite the passage of 372 days — over 10 times the number of days intended by Congress for adjudicating non-immigrant visas — Defendants have failed to render a final decision on Dr. [redacted] pending visa application.

6. Defendants' failure to act deprives Dr. [redacted] of her rights under the Immigration and Nationality Act ("INA"), 8 U.S.C. § 11001 *et seq.*, and its implementing regulations, the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 555, 706, as well as agency policy. This inaction is causing Dr. [redacted] concrete and particularized injury in financial and professional losses, severe emotional distress, significant disruption of career plans, and disruption of life generally. The financial, professional, and emotional stresses that Dr. [redacted] has suffered because of Defendants' failure to adjudicate have exacted a significant toll on her and will not be relieved until her visa application is processed to conclusion.

7. A court may grant mandamus relief if (1) Plaintiffs have a clear right to the relief; (2) the Defendant has a clear duty to act; and (3) there is no other adequate remedy available to Plaintiffs. *Am. Hosp. Ass'n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016); *see also Nine Iraqi Allies Under Serious Threat Because of Their Faithful Serv. To the United States v. Kerry*, 168 F. Supp. 3d 268, 295–96 (D.D.C. 2016).

8. Here, Dr. [redacted] clearly meets all three of these criteria. She has fully complied with all the statutory and regulatory requirements in the visa application process. Accordingly, she has a clear right to a final decision on her visa application. Defendants have unreasonably failed to adjudicate the visa application within a reasonable amount of time, in dereliction of their non-discretionary duties. Dr. [redacted] has no alternative means to obtain relief because Defendants have denied her entry without a visa.

9. Accordingly, Dr. [redacted] and her minor children are entitled to a writ of mandamus and/or order (1) declaring that Defendants' continued failure to adjudicate their visa applications violates the APA, the INA, agency regulations, and agency policy; and (2) directing Defendants to complete all steps necessary to adjudicate Plaintiffs' visa applications forthwith.

THE PARTIES

10. Plaintiff MARYAM [redacted] is a citizen of Canada and an applicant for a J-1 nonimmigrant visa currently pending at the U.S. Consulate in Calgary since the date of her DS-160 filing on April 19, 2021. She is currently residing in Canada while she awaits issuance of her visa.

11. Plaintiffs N.S. and I.S. are citizens of Canada and are the minor children of Dr. [redacted]. They have applied for J-2 nonimmigrant visas currently pending at the U.S. Consulate in Toronto since the date of their DS-160 filing on August 4, 2021. They are currently residing in Canada while their mother awaits issuance of her J-1 visa.

12. Defendant MERRICK B. GARLAND is the Attorney General of the United States. Pursuant, *inter alia*, to 8 U.S.C. § 1103, he is charged with controlling the determination

of all issues of law pertaining to immigration and with representing the United States of America in various legal matters. Defendant Garland is sued in his official capacity.

13. Defendant ANTONY J. BLINKEN is the Secretary of State and as such has supervisory control over the Department of State and its employees and agents, including the staff of the U.S. Consulates in Calgary and Toronto. The Department of State is an agency of the United States Government that has an integral role in the visa application and adjudication process. Defendant Blinken also has supervisory authority over the Visa Office in Washington D.C. and its employees who conduct administrative processing for nonimmigrant visa cases. Defendant Blinken is sued in his official capacity.

14. Defendant IAN G. BROWNLEE is Acting Assistant Secretary for the Bureau of Consular Affairs at the U.S. Department of State. This suit is brought against Acting Assistant Secretary Brownlee in his official capacity, as he is charged with oversight of all consular matters, including nonimmigrant visas.

15. Defendant ALEJANDRO MAYORKAS is the Secretary of the Department of Homeland Security, an agency of the U.S. government responsible for implementing and enforcing the INA. The Department of Homeland Security is an agency which is also involved in administrative processing for nonimmigrant visas. Defendant Mayorkas is sued in his official capacity.

16. Defendant HOLLY WAEGER MONSTER is the Consul General of the U.S. consulate in Calgary, Canada. This suit is brought against the Consul General in her official capacity, as she is responsible for oversight of all consular activities of the Consulate.

17. Defendant Does 1-10 are the consular and other officials employed by the U.S. Department of State who are responsible for nonimmigrant visas at the U.S. consulate in Calgary, including but not limited to holding visa interviews; coordinating with the Department of State for administrative processing of applications for nonimmigrant visas; making final decisions on the issuance of nonimmigrant visas; issuing nonimmigrant visas; and receiving, adjudicating, and making final decisions regarding applications. Their identities are not publicly disclosed by the U.S. Department of State. They are sued in their official capacities.

18. Defendant SUSAN R. CRYSTAL is the Consul General of the U.S. consulate in Toronto, Canada. This suit is brought against the Consul General in her official capacity, as she is responsible for oversight of all consular activities of the Consulate.

19. Defendant Does 11-20 are the consular and other officials employed by the U.S. Department of State who are responsible for nonimmigrant visas at the U.S. consulate in Toronto, including but not limited to holding visa interviews; coordinating with the Department of State for administrative processing of applications for nonimmigrant visas; making final decisions on the issuance of nonimmigrant visas; issuing nonimmigrant visas; and receiving, adjudicating, and making final decisions regarding applications. Their identities are not publicly disclosed by the U.S. Department of State. They are sued in their official capacities.

JURISDICTION AND VENUE

20. This case arises under the INA, 8 U.S.C. § 1101 *et seq.*, and the APA, 5 U.S.C. § 701 *et seq*. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1361, and 2201–02.

21. There exists an actual and justiciable controversy between Plaintiffs and Defendants requiring resolution by this Court. Plaintiffs have no adequate remedy at law.

22. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e).

STATUTORY AND REGULATORY FRAMEWORK

ADJUDICATION OF J-VISAS

23. The purpose of the J-1 visa is to provide foreign nationals with the opportunity to "participate in educational and cultural programs in the United States and return home to share their experiences, and to encourage Americans to participate in educational and cultural programs in other countries." 22 C.F.R. § 62.1. Such educational and cultural exchanges "increase mutual understanding between the people of the United States and the people of other countries" and "assist the Department of State in furthering the foreign policy objectives of the United States." *Id*.

24. A J-2 visa holder is the spouse or minor child of a J-1 visa holder. 8 U.S.C. § 1101(a)(15)(J); 22 C.F.R. § 41.62(b).

25. To be eligible, an applicant for a J-1 visa must meet seven requirements: (1) have residence in a foreign country which she has no intention of abandoning; (2) be a bona fide student, scholar, trainee, teacher, professor, research assistant, specialist, leader in a field of specialized knowledge or skill, or other person of similar description; (3) be coming temporarily to the United States to participate in a program designated by the Bureau of Cultural Affairs, Department of State; (4) be coming for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training; (5) have sufficient funds or has made other arrangements to provide for expenses; (6) have sufficient knowledge of the English language to undertake the program; and (7) have her

acceptance documentation and fees verified by a consular official on the SEVIS or ISEAS database. INA § 101(a)(15)(J); 22 CFR § 41.62.

26. The applicant applies for a J-1 visa, and their derivatives for J-2 visas, by submitting Form DS-160 to a United States embassy or consulate, and the applicable fees. The applicant then completes an interview with a consular officer. Once the J-1 visa application is submitted "[c]onsular officers must ensure that the Form DS-160 . . . is properly and promptly processed in accordance with the applicable regulations and instructions." 22 C.F.R. § 41.106.

27. If the application was properly submitted, the officer must choose one of two options: she must either "issue" the visa or "refuse" it.

28. All refusals "must be based on legal grounds," that is, on the provisions of INA §§ 212(a), (e), (f), §§ 214(b), (l), § 221(g), § 222(g), or some other specific legal provision. 22 C.F.R. § 41.121(a). A quasi-refusal may not be used as the sole ground for a refusal. *See* 9 FAM 403.10-2(A).

29. If the consular officer determines that the visa should be refused, the officer "shall provide the applicant a timely written notice" that states the basis for refusal and lists the specific provisions of law. INA § 212(b), 8 U.S.C. § 1182(b); 22 C.F.R. § 41.121(b).

30. Nonimmigrant visa refusals must be reviewed by a consular supervisor or a designated alternate "to ensure compliance with applicable laws and procedures." 22 C.F.R. § 41.121(c). Review must take place "on the day of the refusal or as soon as is administratively possible." *Id*. If the reviewing officer disagrees with the decision and has the requisite consular title and commission, he can readjudicate the case. *Id*. If the reviewing officer disagrees with

the decision but lacks the requisite consular title and commission, he must consult with the Visa Officer or the adjudicating officer to resolve the conflict. *Id*.

31. Congress has made clear what it considers a reasonable time for adjudicating nonimmigrant visas, like J visas. "It is the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application, except that a **petition for a nonimmigrant visa under section 1184(c) of this title should be processed not later than 30 days after the filing of the petition**." 8 U.S.C. § 1571 (emphasis added). This language establishes a benchmark for what Congress considers a reasonable time for adjudicating immigration benefits.

32. Canadian citizens are not required to have visas to enter the United States and may enter as visa exempt. 22 C.F.R. § 41.2(a). Therefore, Canadian J-1 applicants usually are not required to obtain a J-1 visa from a Consulate and instead may enter the United States upon showing Form DS-2019 from the sponsoring institution to a Customs and Border Protection ("CBP") officer. As CBP has not allowed Plaintiffs' entry upon showing Form DS-2019, a visa is the only available option for Plaintiffs to enter the United States.

INADMISSABILITY GROUNDS

33. [redacted]

34. [redacted]

35. [redacted]

36. Consular officers are authorized to exempt spouses and children of those inadmissible under INA § 212(a)(3)(b), if the activity causing the finding of inadmissibility occurred more than 5 years before their application for entry to the United States. INA § 212(a)(3)(B)(i)(IX). Moreover, this ground of inadmissibility does not apply to a spouse or child who did not know or should not reasonably have known of the applicant's activity that caused the applicant to be found inadmissible. It also does not apply if the consular officer or the Secretary of Homeland Security finds that there are reasonable grounds to believe the spouse or child has renounced the activity causing the applicant to be found inadmissible. *See* INA § 212(a)(3)(B)(ii); 9 FAM 302.6-2(B)(4)(e).

37. A non-citizen at the time of application for admission who is not in possession of a valid unexpired immigrant visa, re-entry permit, border crossing identification card, or other valid entry document may be also found inadmissible under INA § 212(a)(7)(A)(i), 8 U.S.C. § 1182(a)(7)(A)(i).

38. Internal agency guidance mandates that exemptions and waivers must be considered by consular officers, including any exemption and/or waiver that is applicable to INA §§ 212(a)(3)(B), (a)(7)(A).

ADMINISTRATIVE PROCESSING

39. When a consular officer determines a visa application is otherwise approvable, but has an open, unresolved issue or requires additional information to determine the applicant's eligibility, that applicant can be referred to "administrative processing." *See* U.S. Dep't of State, Administrative Processing Information, https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/administrative-processing-information.html. In such cases, administrative processing is a "mandatory intermediate step" where the visa application remains pending. *Afghan & Iraqi Allies Under Serious Threat Because of Their Faithful Serv. to the United States v. Pompeo*, No. 18-CV-01388 (TSC), 2019 WL 367841, at *10 (D.D.C. Jan. 30, 2019). At the conclusion of "administrative processing," a visa may be issued or the visa application may be denied. Accordingly, "any Plaintiff with an application in 'administrative processing' has not yet received a final decision." *Nine Iraqi Allies*, 168 F. Supp. 3d at 287.

40. Historically, 85% of administrative processing cases have been cleared within 60 days.[1]

[1] *See* DOS FOIA response to Penn State Law regarding administrative processing statistics: https://pennstatelaw.psu.edu/sites/default/files/documents/FOIA%20email%20document%207.6.17.pdf.

41. Consular officers are required by law to act upon visa applications. *See Patel v. Reno*, 134 F.3d 929, 923 (9th Cir. 1997). "When the Government simply declines to provide a decision in the manner provided by Congress, it is not exercising its prerogative to grant or deny applications but failing to act at all." *Nine Iraqi Allies*, 168 F. Supp. 3d at 290-91.

42. "[W]here the application is still undergoing administrative processing, even where a refusal has been relayed, the decision is not final." *Ghadami v. U.S. Dep't of Homeland Sec*., No. 19-cv-00397 (ABJ), 2020 WL 1308376, at *5 (D.D.C. Mar. 19, 2020); *Afghan & Iraqi Allies*, 2019 WL 367841, at *10; *Nine Iraqi Allies*, 168 F. Supp. 3d at 287 ("[A]ny Plaintiff with an application in 'administrative processing' has not yet received a final decision."); *Mohamed v. Pompeo*, No. 1:19-cv-01345-LJO-SKO, 2019 WL 4734927, at *4 (E.D. Cal. Sept. 27, 2019) ("This Court ... finds persuasive the reasoning of other Courts that have found the 'administrative processing' designation insufficient to constitute a refusal."); *Alwan v. Risch*, No. 2:18-cv-0073, 2019 WL 1427909, at *4 (S.D. Ohio Mar. 29, 2019) (concluding that no final decision had been made when "applications [were] still entrenched in 'administrative processing'"); *Saleh v. Tillerson*, 293 F. Supp. 3d 419, 431 (S.D.N.Y. 2018) ("[A] visa that is in 'administrative processing' cannot be said to have received final approval.").

43. A refusal under INA § 221(g) is *not* a final refusal, but instead used where "a ***final determination*** of admissibility is deferred for additional evidence, further clearance, a namecheck, or some other reason." 9 FAM 403.10-3(B) (emphasis added). *See also Vulupala v. Barr*, No. 19-cv-378 (ABJ) (D.D.C. Feb. 7, 2020) (holding a refusal under INA § 221(g) is not final, and finding jurisdiction to review Plaintiff's APA claims).

44. Defendants have a mandatory duty to process visa applications and complete any administrative processing necessary for the consular officer to make a final adjudication on the visa application. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (agencies may not violate their own rules and regulations to the prejudice of others); *see also Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991) (doctrine can be applied to internal agency guidance because its "ambit is not limited to rules attaining the status of formal regulations").

FACTUAL ALLEGATIONS

FAMILY AND EDUCATIONAL BACKGROUND

45. Dr. Maryam [redacted] is a citizen and resident of Canada. Although she was born in Iran, she has not lived there since December 2007, when she moved to [redacted] to complete a Master of Science degree in Food Science [redacted]

46. After being awarded a prestigious scholarship award from the Natural Sciences and Engineering Research Council of Canada (NSERC), Dr. [redacted] moved to Canada in 2011 to pursue a PhD in Human Nutritional Sciences [redacted]. Dr. [redacted] PhD research focused on how temperature changes relate to changes in bioactive molecules found in wheat, and how those active molecules benefit pre-diabetes patients who suffer from elevated blood sugar.

47. Dr. [redacted] and her husband met in April 2005 and were married in September 2005. In 1996, approximately nine years before the two met, Dr. [redacted] husband completed his bachelor's degree in Iran and was subsequently conscripted into compulsory Iranian military service. He completed his mandatory military service in 2000, five years before meeting Dr. [redacted].

48. After earning his master's degree, Dr. [redacted] husband spent approximately nine years working in the food industry in Iran. It was during this time, while both were working at the same soft drink manufacturing company in Iran, that Dr. [redacted] met her husband. Her husband joined Dr. [redacted] in Canada after completing his PhD at [redacted] in 2012. Her husband is currently employed by the federal government of Canada [redacted]

49. Dr [redacted] and her husband purchased a home in [redacted] Canada in 2015. She received her PhD with honors in 2018. She and her husband were granted Canadian citizenship in 2018.

50. Dr. [redacted] minor children I.S. and N.S. are both citizens and residents of Canada. I.S. was born on [redacted]. N.S. was born on [redacted]. Both children, ages 6 and 2, were born in [redacted].

51. Dr. [redacted] currently resides in [redacted], with her husband and children, I.S. and N.S. Until April 2021, Dr. [redacted] worked as a postdoctoral research fellow at the [redacted]. Her work at the [redacted] involved conducting human clinical trials on patients suffering from chronic diseases such as diabetes, obesity, and chronic kidney disease. She resigned from her position at the [redacted] in order to move to Boston, Massachusetts, for a two-year fellowship position.

HARVARD MEDICAL SCHOOL RESEARCH FELLOWSHIP

52. In July 2020, Dr. [redacted] applied for and received an offer to join the Beth Israel Deaconess Medical Center ("BIDMC") and Harvard Medical School as a research fellow. Dr. [redacted] was one of 20 applicants selected from a pool of approximately 200 to interview for the

fellowship position. After a rigorous interview process, involving formal presentations of her work to the BIDMC community, she was selected as the most qualified candidate for a two-year fellowship position at Harvard—a rare and prestigious opportunity.

53. Given the opportunity to advance her work and expertise in diabetes research at a preeminent medical school, and apply that expertise to help diabetes patients in Canada upon her return, Dr. [redacted] accepted the two-year fellowship offer. She hoped that the skills and knowledge she would gain during her fellowship at Harvard would help her advance her goals of obtaining a tenure-track position at a Canadian university, and of having her own lab in Canada to conduct diabetes research.

54. Dr. [redacted] is an accomplished scholar and researcher. She holds a Bachelor of Science degree and Master of Science degree in Food Science. She earned her PhD with honors at [redacted] after being awarded a prestigious scholarship award from the Natural Sciences and Engineering Research Council of Canada. It was because of her expertise and her proven record of accomplishments and publications in the field of diabetes that Dr. [redacted] was selected to bring her expertise to bear upon the pioneering medical research being carried out at BIDMC and Harvard Medical School.

55. After accepting the offer from Harvard Medical School, Dr. [redacted] resigned from her position at [redacted] and prepared to start at Harvard on May 1, 2021.

TRAVEL TO THE UNITED STATES

56. After Dr. [redacted] accepted her offer, the Harvard International Office at Harvard University processed Forms DS-2019 (Certificate of Eligibility for Exchange Visitor Status) for Dr. [redacted] to obtain J-1 status, and for her husband and two children to receive J-2 dependent

status, in order for them to accompany her during her two-year stay in the United States. As a Canadian citizen, Dr. [redacted] does not require a visa to enter the United States as an exchange visitor. 22 C.F.R. § 41.2(a). As Canadian citizens, Dr. [redacted] husband and minor children also do not require visas to enter the United States as her dependents. *Id.*

57. On April 2, 2021, Dr. [redacted] traveled to the Pembina-Emerson U.S.-Canada border by car with her husband and two daughters, then ages 5 and 1, intending to enter the United States and begin her two-year stay in Boston as a research fellow at Harvard. Dr. [redacted] and her family brought with them their valid Canadian passports, their original DS-2019 forms issued by Harvard, their I-901 SEVIS fee receipts, Dr. [redacted] and her husband's marriage certificate, and the children's birth certificates.

58. Upon arrival at the Pembina, North Dakota port of entry, CBP officers instructed Dr. [redacted] and her husband to park their car and enter the CBP border facility. While CBP officers interviewed Dr. [redacted] s husband, and Dr. [redacted] waited with her children in a waiting area, other officers searched their car. CBP officers questioned Dr [redacted] husband extensively about his military service and trips to visit family in Iran. CBP officers then took Dr. [redacted] and her husband's fingerprints.

59. CBP officers also took DNA samples from Dr. [redacted] and her husband. After CPB officers refused to explain to Dr. [redacted] why CBP required her DNA sample, and how that sample would be processed and stored, Dr. [redacted] expressed her unwillingness to provide a sample. After CBP officers implied that Dr. [redacted] needed to provide a DNA sample in order to be released from CBP custody, she provided a sample against her will.

60. Dr. [redacted], her husband, and their children were all denied entry to the United States, and Dr. [redacted] and her children were permitted to withdraw their applications for admission to the United States. When Dr. [redacted] asked a CBP officer if she would still be able to travel to the United States to begin her fellowship at Harvard, she was told to attempt entry again in two weeks on her own.

61. CBP officers issued Dr. [redacted] a Form I-160A (Notice of Refusal of Admission/Parole into the United States) and Form I-275 (Withdrawal of Application for Admission/Consular Notification), according to which her denial was based on INA § 212(a)(7)(A)(i)(I) (immigrant intent).

62. This is despite the fact that Dr. [redacted] intended to enter the United States on a temporary basis for the duration of her two-year fellowship program at Harvard. Upon completion of her fellowship, Dr. [redacted] intends to return to Canada, her country of citizenship, place of residency for the previous 10 years, her husband's place of employment, and where she and her husband own and maintain a permanent home.

63. Dr. [redacted] and her husband also previously had been issued visitor visas to the United States, which they used to travel to various tourist destinations in the United States in December 2014. Additionally, in June 2018, Dr. [redacted] visited the United States to attend a conference. Both times, Dr. [redacted] and her husband returned to Canada without violating visa conditions, showing that they had no desire to remain in the United States.

64. Dr. [redacted] and her family were returned to their vehicle and permitted to return to Canada approximately 8 hours after their arrival at the Pembina-Emerson border.

65. On April 18, 2021, Dr. [redacted] attempted to travel to the United States without her husband and children, following the instructions she received from the CBP officer at the Pembina-Emerson border. She hoped to arrive in Boston in time to begin her fellowship at Harvard on May 1. On the afternoon of April 18, Dr. [redacted] arrived at Toronto Pearson International Airport and proceeded to US customs. She provided a CBP officer with her valid Canadian passport, her fellowship offer letter from Harvard, and her original DS-2019 form. The officer led Dr. [redacted] to secondary screening, where she was questioned by a CBP officer about her family and personal history and had her luggage searched. The officer then denied Dr. [redacted] entry to the United States, and Dr. [redacted] was again asked to withdraw her application for admission to the United States.

66. When Dr. [redacted] asked why she was being denied entry, she was told that "in order to enter the United States, [she] must wait for [her] husband to obtain the proper entry document or entry authorization." That reason has no basis in law because Dr. [redacted] is the individual seeking J-1 status to begin her fellowship, and her husband's J-2 status is dependent on Dr. [redacted].

67. Dr. [redacted] was also told she was being denied entry because she is "Iranian and there is a travel ban." That reason also has no basis in law. As Dr. [redacted] explained to the CBP officer, she is a Canadian citizen traveling with a Canadian passport, and the travel ban had been revoked. The CBP officer incorrectly told her that she was a native of Iran and therefore Iranian, and that CBP had not yet received "the executive protocols [for the revoked travel ban] yet." This was despite the fact that the travel ban had been revoked almost three months earlier,

on January 20, 2021. Dr. [redacted] was instructed to apply for a visa through the U.S. consulate because she was "Iranian, not Canadian."

68. The CBP officer issued Dr. [redacted] a Form I-877 (Record of Sworn Statement in Administrative Proceedings) and Form I-275 (Withdrawal of Application for Admission/Consular Notification). According to the Form I-275, Dr. [redacted] was again asked to withdraw her application for admission to the United States because she was unable to overcome the presumption of being an intending immigrant. This is despite the fact that Dr. [redacted] has no intention to immigrate to the United States.

J-1 AND J-2 VISA APPLICATION PROCESS

69. With fewer than two weeks before she was due to begin her dream fellowship, Dr. [redacted] was distraught and confused by a second denial of entry to the United States. Following the incident on April 18, 2021, Dr. [redacted] cried for several days, had trouble sleeping, and was prescribed anti-anxiety and anti-depression medication by her physician.

70. Following the instructions of the CBP officer at Toronto Airport, Dr. [redacted] applied for a J-1 visa at the U.S. Consulate in Calgary by filing a DS-160 form on April 19, 2021, despite her not requiring a J-1 visa to enter the United States as a Canadian citizen.

71. On June 14, 2021, Dr. [redacted] appeared for a visa interview at the U.S. Consulate in Calgary. Her J-1 visa application was placed in administrative processing, and the consular officer who interviewed Dr. [redacted] informed her that her husband's case had to be resolved before her visa could be granted. This is despite the fact that Dr. [redacted] is the individual seeking J-1 status, with her husband's J-2 status dependent on Dr. [redacted].

72. Following her visa interview on June 14, 2021, Dr. [redacted] received an email from the U.S. Consulate Calgary requesting further information in connection with her visa application. Dr. [redacted] provided the information as requested by email on June 24, 2021. She has received no further requests for information in connection with her visa application.

73. Dr. [redacted] J-1 visa application remains pending, and she has not been provided any information as to when she will receive a final decision on the application, despite multiple inquiries about the status of her application.

74. On May 7, 2021, Dr. [redacted] at Harvard Medical School, submitted a petition to CBP in support of Dr. [redacted] entry to the United States to begin her fellowship at BIDMC. In her petition, Dr. [redacted] outlined the selection process that led to Dr. [redacted] being awarded the fellowship, the importance of the research Dr. [redacted] was being recruited to conduct, and the harm that BIDMC's medical research project would suffer as a result of the delay in the adjudication of Dr. [redacted] visa.

75. On October 14, 2021, U.S. Senator Elizabeth Warren's staff made an inquiry to the Non-immigrant Visa Unit at the U.S. Consulate in Calgary concerning Dr. [redacted] pending J-1 visa application. The consulate responded on October 15, 2021, merely stating that Dr. [redacted] "case is under administrative processing," and that "[t]he duration of administrative processing will vary based on the individual circumstances of each case."

76. On January 7, 2022, Senator Elizabeth Warren's staff again made an inquiry to the U.S. Consulate in Calgary. The consulate responded on January 10, 2022, again stating only that Dr. [redacted] application is "still undergoing administrative processing in order to verify her qualifications for the visa," that "[t]he duration of administrative processing will vary

depending on the individual circumstances of each case," and that the consulate "cannot predict when the processing of [Dr.] [redacted] visa will be completed."

77. On March 28, 2022, Dr. [redacted] made an inquiry to the U.S. Consulate in Calgary regarding her pending J-1 visa application. The consulate responded by email that same day, merely stating that Dr. [redacted] case "is refused for ongoing administrative processing," that "[t]he duration of administrative processing will vary based on the individual circumstances of each case," and that "[o]nce the status of [her] application is available or if [the consulate] need[s] additional information," they would contact her.

78. On August 4, 2021, Dr. [redacted] two minor daughters I.S. and N.S. applied for J-2 visas and filed DS-160 forms with the U.S. Consulate in Toronto so that they can join their mother in the United States once her J-1 visa is approved. I.S's. and N.S.'s J-2 visa applications were also placed in administrative processing.

79. I.S.'s and N.S.'s J-2 visa applications remain pending, and they have not been provided any information as to when they will receive final decisions on the applications.

80. Upon information and belief, the delay in adjudicating Dr [redacted] visa is likely due to her husband's compulsory military service [redacted], which concluded 22 years ago. Indeed, Dr. [redacted] I-213 Record of Deportable/Inadmissible Alien, dated April 2, 2021, states that Dr. [redacted] husband "admitted he had served in the Iranian military" and "was referred to NTC for possible exclusion under Section 212(a)(3)(B)(i)(II)." Dr. [redacted] I-213 Record of Deportable/Inadmissible Alien, dated April 18, 2021, adds that Dr. [redacted] husband "was nominated by TRTT for possible 3B" and her "admissibility could not be

determined until 3B nomination is completed for her husband. At the time of entry there were no updates given by TRTT or NTC."

81. Dr. [redacted] was not yet married to her husband, nor had she ever met him at the time of his military service. Because her husband's military service concluded more than five years before she sought entry to the United States, Dr. [redacted] is not inadmissible under INA § 212(a)(3)(b)(i)(IX). Additionally, given that her husband's military service concluded five years before she met him, Dr. [redacted] "should not reasonably have known" of any activity that Defendants may contend could make her husband inadmissible. INA § 212(a)(3)(b)(ii)(I). Similarly, there is no doubt that Dr. [redacted] children, I.S. and N.S., "could not have known" about such activity that concluded nearly two decades before they were born. Therefore, Dr. [redacted] and her children are not inadmissible based on her husband's military service according to government policy, regulations, and agency guidance.

DEFENDANTS' UNREASONABLE DELAY HAS CAUSED DR. [redacted] AND HER CHILDREN IMMEDIATE AND IRREPARABLE HARM

82. Defendants have failed to provide any valid justification for why they have unreasonably delayed Dr. [redacted] J-1 visa application and have denied her entry into the United States.

83. Dr. [redacted] and her husband have been issued prior visitor visas to the United States, when she visited the United States in December 2014 for a period of approximately two weeks while Canadian permanent residents. Dr. [redacted] husband was issued his visitor visa after undergoing administrative processing and passing security checks. Therefore, any concerns with his inadmissibility would likely have been addressed at that time.

84. Dr. [redacted] also visited the United States as a Canadian citizen in June 2018 for approximately one week to attend a professional conference. Neither she nor her husband have had any issues on prior visits to the United States. They have always complied with the terms of their stay. Neither she nor her husband has any family in the United States.

85. Dr. [redacted], her husband, and their eldest daughter I.S. were also participants in the NEXUS program between the United States and Canada. The NEXUS program allows pre-screened travelers—who have passed comprehensive background investigations—expedited processing when entering the United States and Canada. In the days following their denial of entry at the Pembina-Emerson border on April 2, 2021, Dr. [redacted], her husband, and I.S. all received notice from CBP that their NEXUS memberships had been revoked for failure to "meet program eligibility requirements."

86. Dr. [redacted] only reason for seeking entry to the United States is to pursue the two-year fellowship position at Harvard in the hopes of contributing to the Harvard medical community and advancing her career once she returns home to Canada.

87. While it has now been over 11 months since Dr. [redacted] was due to begin her fellowship, BIDMC has granted her a delayed start date of June 6, 2022. If Dr. [redacted] is unable to gain entry to the United States as a J-1 exchange visitor by then, she will likely lose her fellowship opportunity at Harvard and all of the professional, educational, and financial benefits that come with it. The fellowship position at Harvard Medical School is a rare opportunity for Dr. [redacted] to advance her career in the field of diabetes, to develop the expertise necessary to better serve diabetes patients in Canada upon her return, and to make a valuable contribution to American medical science.

88. Dr. [redacted] was recruited to join a team of medical researchers at BIDMC at Harvard working to develop novel gene therapy-based approaches to treating Type I autoimmune diabetes. The capacity for research institutions like BIDMC to successfully deliver on such scientific promise relies on their ability to recruit exceptional scientists and researchers, like Dr. [redacted], from around the world.

89. Dr. [redacted] was selected by BIDMC, through a rigorous vetting process, because of her academic and scientific contributions to the field of diabetes, and because of the invaluable contributions she would make to the work underway at BIDMC. If Dr. [redacted] entry to the United States continues to be delayed, the project she was recruited to work on will suffer, and the potentially breakthrough diabetes therapy under development will be undermined. Not only will this cause harm to the medical community at Harvard, it will also negatively impact patients worldwide who stand to benefit from this breakthrough therapy.

90. Dr. [redacted] has suffered severe emotional harm due to her denials of entry to the United States in April 2021, and due to Defendants' delay in adjudicating her J-1 visa application. She has been prescribed [redacted] by her physician because of the impact the delay and her denials of entry have had on her mental health. Since April 2021, Dr. [redacted] caused by the uncertainty surrounding her entry denials, visa application delay, and their implications for her fellowship position and career.

91. Dr. [redacted] and her family have also suffered irreparable financial harm as a result of Defendants' delay in adjudicating her J-1 visa application. Because Dr. [redacted] had left her position at [redacted] at the end of March 2021, she was unemployed after being

denied entry to the United States in April 2021. She was unable to return to her position at the [redacted], as her prior role had already been filled. Dr. [redacted] incurred a loss of approximately [redacted] in lost wages as a result of her unemployment.

92. Dr. [redacted] and her family suffered additional financial harm as a result of Defendants' delay in adjudicating her visa application. In preparation for their two-year move to the United States, Dr. [redacted] and her husband sold a significant amount of furniture, which they had to repurchase at a cost of approximately [redacted]. The couple also were required to withdraw funds from their savings account in order to cover legal fees [redacted] and to cover their daughter's daycare expenses [redacted]. Because of these additional expenses and Dr. [redacted] lost wages, Dr [redacted] and her family were also required to make changes to their standards of living. They were required to withdraw their elder daughter from dance classes and swimming classes and were no longer able to take their children on recreational camping trips, activities integral to their children's educational development. Dr. [redacted] husband was also compelled to sell his home gym, ice-fishing equipment, and the family boat.

93. I.S. and N.S. stand to suffer severe injury if their J-2 visas are not granted alongside Dr. [redacted] J-1 visa. As Dr. [redacted] two minor children, I.S. and N.S. require their mother to care for them and cannot be separated from their mother for the two-year duration of her fellowship at Harvard.

94. The U.S. Consulate in Calgary has been made fully aware of Dr. [redacted] urgent circumstances, the timeline to begin her fellowship, and the professional harm caused by the delay. Despite inquiries into the state of her case, Defendants have failed to adjudicate her J-

1 visa application and have instead relegated her case to an indefinite state of administrative processing with no end in sight. Consequently, I.S. and N.S.'s J-2 visa applications remain pending. As a result, Dr. [redacted], I.S. and N.S. have suffered and will continue to suffer from severe, concrete, and particularized injury.

FIRST CLAIM FOR RELIEF

28 U.S.C. § 1361 – Writ of Mandamus to compel officers and agencies of the United States to perform a duty owed to Plaintiffs

95. The above paragraphs are incorporated herein by reference.

96. District courts have 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.

97. A mandamus plaintiff must demonstrate that: (i) he or she has a clear right to the relief requested; (ii) the defendant has a clear duty to perform the act in question; and (iii) no other adequate remedy is available. *Liberty Fund, Inc. v. Chao*, 394 F. Supp. 2d 105, 113 (D.D.C. 2005); *see also Patel*, 134 F.3d at 933 (duty to adjudicate an immigrant visa application).

98. The Plaintiffs clearly meet all three of these criteria. *See, e.g.*, *Raduga*, 440 F. Supp. 2d at 1149 ("Plaintiffs' claim here is clear and certain, and the consul's nondiscretionary, ministerial duty is plainly prescribed. Furthermore, Plaintiffs have no other means to compel the United States consul to make a decision.").

99. Dr. [redacted] and her minor children have fully complied with all statutory and regulatory requirements for the visas they seek, and Dr. [redacted] has timely responded to the Consulate's requests for further information. Defendants have failed to complete their

mandatory duty to adjudicate Plaintiffs' visa applications and to complete the related administrative processing within a reasonable time.

100. Adjudication of Dr. [redacted] and her children's visas are a purely ministerial, non-discretionary act which the Defendants are under obligation to perform in a timely manner; Plaintiffs have no alternative means to obtain adjudication of the visas; and their right to issuance of the writ is "clear and indisputable." *Allied Chemical Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980).

101. Mandamus action is also appropriate because Defendants have failed to act within a reasonable period of time. *See, e.g.*, *Liu v. Novak*, 509 F. Supp. 2d 1, 8 (D.D.C. 2007) (holding that the APA requires the government to act within a reasonable period of time); *see also Sierra Club v. Thomas*, 828 F.2d 783, 794 (D.C. Cir. 1987) (stating that "regardless of what course it chooses, the agency is under a duty not to delay unreasonably in making that choice"). Dr. [redacted] and her daughters have already waited over 12 and 8 months, respectively, for their applications to be adjudicated, without explanation from the Consulate for the delay, except that they are pending "administrative processing," which is inherently unreasonable. *See, e.g.*, *Nine Iraqi Allies*, 168 F. Supp. 3d at 282 (holding, in the context of administrative processing for Special Immigrant Visas, the government's "duty [to reach a final decision on an application] must 'ordinarily' be completed within nine months"); *Afghan & Iraqi Allies*, 2019 WL 367841 at *10 (same); *American Academy of Religion v. Chertoff*, 463 F. Supp. 2d 400, 421 (S.D.N.Y. 2006) (finding nine-month delay in adjudicating a non-immigrant visa unreasonable).

102. 22 C.F.R. § 41.106 expressly requires that consular officers process visas properly and promptly, while 22 C.F.R. § 41.121(a) mandates that consular officers either issue or refuse

a visa. Read together, these regulations make clear that allowing a visa application to stagnate undecided for an indefinite period of time is not a permissible option. *American Academy of Religion*, 463 F. Supp. 2d at 463 (Defendants ordered to adjudicate pending nonimmigrant visa because they failed to adjudicate it within a reasonable amount of time as required by the APA).

103. Defendants have a clear, non-discretionary, and mandatory duty to adjudicate Plaintiffs' pending visa applications. There is no legal bar to doing so. Accordingly, Plaintiffs have a clear and indisputable right to have their visa applications adjudicated. No alternative remedy exists to compel action by Defendants.

SECOND CLAIM FOR RELIEF

Administrative Procedure Act, 5 U.S.C. § 706(1) et seq.

104. The above paragraphs are incorporated herein by reference.

105. Pursuant to the APA, 5 U.S.C. § 555(b), Defendants have a nondiscretionary duty to act "within a reasonable time" upon a matter presented to it.

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

107. Pursuant to the APA, 5 U.S.C. §§ 706(1), 706(2)(A), 706(2)(D), a reviewing court may also "hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law" and agency action taken "without observance of procedure required by law."

108. Defendants have unreasonably delayed adjudication of the visa applications of Dr. [redacted] and her minor children.

109. Defendants have also engaged in a pattern and practice of unreasonably delaying adjudication of visa applications of people, like Dr. [redacted] and her minor children, who have any affiliation [redacted] no matter how attenuated or how long ago. The policy of delay and denial without consideration to available waivers or exemptions is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law.

110. Under the *Accardi* doctrine, administrative agencies are bound to follow their own rules and guidelines and can be sued for failing to abide by the rules and procedures they formulate to perform their duties. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). "Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures. This is so even where the internal procedures are possibly more rigorous than otherwise would be required." *Morton v. Ruiz*, 415 U.S. 199, 235 (1974). The doctrine applies to an agency's procedures however they might be denominated. *See, e.g.*, *Romeiro de Silva v. Smith,* 773 F.2d 1021, 1025 (9th Cir. 1985) (noting that the INS can be bound by its "Operations Instructions").

111. Defendants are "agencies" within the meaning of the APA. *Allen v. Milas*, 896 F.3d 1094, 1102–03 (9th Cir. 2018). Defendants are directed by agency guidance, regulations, and statutes to consider exemptions and waivers to the grounds of inadmissibility in INA § 212(a)(3)(B), yet they have failed to do so in blatant disregard of their duties.

112. Dr. [redacted] and her minor children are eligible for and have fulfilled all requirements for the visas they seek. They have submitted all necessary information and evidence supporting their applications, have no criminal background, or any other inadmissibility issues.

113. Defendants have failed to carry out the adjudicative and administrative functions delegated to them by law. 22 C.F.R. § 41.106 expressly requires that consular officers process nonimmigrant visas properly and promptly, while 22 C.F.R. § 41.121(a) mandates that consular officers either issue or refuse a visa. Read together, these regulations make clear that allowing visa applications to stagnate undecided for an indefinite period of time is not a permissible option. *See American Academy of Religion*, 463 F. Supp. 2d at 463 (Defendants ordered to adjudicate pending nonimmigrant visa because they failed to adjudicate it within a reasonable amount of time as required by the APA).

114. Defendants have failed to process Dr. [redacted] and her minor children's application "properly and promptly" by refusing to process them for about 12 and 8 months, respectively. Defendants have failed to base their refusal to adjudicate on legal grounds. Dr. [redacted], through her attorneys, has contacted Defendants multiple times to request information as to why her application is delayed. Each time, Defendants have failed to provide any valid substantive explanation for not issuing a final decision on the visa application, much less their legal grounds for doing so.

115. Defendants' failure to adjudicate the properly filed visa applications and relegation of Dr. [redacted] and her minor children's applications to an indefinite state of administrative processing without any rational basis, justification, or explanation, is arbitrary capricious and not in accordance with law and constitutes agency action wrongfully withheld or unreasonably delayed.

116. No alternative remedy exists to compel action by Defendants.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully ask this Court to issue judgment in their favor and against all Defendants, and to grant the following relief:

A. Compel the Defendants and those acting under them to complete all steps necessary to adjudicate Plaintiffs' visa applications within 15 days of the order pursuant to the Administrative Procedure Act;

B. Compel the Defendants and those acting under them to complete all steps necessary to adjudicate Plaintiffs' visa applications within 15 days of the order pursuant to the Court's Mandamus authority;

C. Declare that Defendants' continued failure to adjudicate Plaintiffs' visa applications, and their pattern and practice of blanket visa delays and denials without regard to existing exemption and waiver authority constitutes agency action unlawfully withheld or unreasonably delayed; and action that is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law;

D. Enjoin Defendants from continuing the indefinite delay in adjudication of Plaintiffs' visa applications;

E. Decide the action on an accelerated schedule in light of the ongoing harm Plaintiffs are suffering as a result of Defendants' refusal to act;

F. Retain jurisdiction over this action and any attendant proceedings until Defendants have in fact finally adjudicated Plaintiffs' visa applications, and communicated that fact to Plaintiffs and the Court;

G. Award Plaintiffs reasonable costs and attorney's fees pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412 et seq.;

H. Grant such further relief as this Court deems just and proper.

Dated: April 27, 2022

Respectfully submitted,

By: /s/ Sameer Ahmed
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