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12 UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 JANAN VARGHESE JACOB, et al.,
15 Plaintiffs,
16 v.
17 JOSEPH R. BIDEN, JR., et al.,
18 Defendants.

Case No. 3:21-cv-261-ECF

**Notice and Motion Plaintiffs’
Motion for Preliminary
Injunction**

**Date: March 4, 2021
Time: 1:30 PM
Judge: Hon. J. Edward M. Chen
Ctrm: 11**

19 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY INJUNCTION TO**
20 **THE COURT, ALL PARTIES AND COUNSEL OF RECORD:**

21 NOTICE IS HEREBY GIVEN THAT, on Thursday, March 4, 2021, at 1:30 p.m. at
22 the United States Courthouse for the Northern District of California, San Francisco
23 Courthouse, Courtroom 11, 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102,
24 Plaintiffs, by and through undersigned counsel, respectfully move this Court, pursuant to Rule
25 65 of the Federal Rules of Civil Procedure, for an Order:

- 26 (a) Defendants, their agents, servants, employees, and all others in active concert or
27 participation are enjoined from applying the Proclamation in any way that forecloses
28 or prohibits embassy personnel, consular officers, or any administrative processing

- 1 center (such as the Kentucky Consular Center or National Visa Center) from
2 processing, reviewing, or adjudicating Plaintiffs’ immigrant visa applications;
- 3 (b) Enjoining Defendants, their agents, servants, employees, and all other in active
4 concert or participation with them from interpreting and applying the COVID
5 Guidance to Plaintiffs in any way that requires embassy personnel, consular officers,
6 or administrative processing centers (such as the Kentucky Consular Center or
7 National Visa Center) to refuse processing, reviewing, adjudicating or issuing visas
8 on the ground that Plaintiffs do not qualify under “emergency” or “mission critical”
9 exception to the COVID Guidance;
- 10 (c) An Order mandating Defendants undertake good-faith efforts, directly and through
11 their designees, to expeditiously process and adjudicate the immigrant visa
12 applications for Named Plaintiffs;
- 13 (d) An Order mandating Defendants create guidance for the implementation of a plan to
14 remedy the backlog of immigrant visas applications caused by PP 10014 and its
15 implementation; and
- 16 (e) Retain jurisdiction over this action to monitor and enforce Defendants’ compliance
17 with all orders of this Court;

18 Plaintiffs request two hours for oral arguments.

19 Plaintiffs request to present oral testimony at the hearing.

20 This Motion is based on this Notice of Motion and Motion; the accompanying
21 Memorandum of Law in Support and its exhibits; the pleadings and papers filed in this action;
22 and such further argument, evidence, and matters as may be offered at the time of the hearing of
23 this Motion.

24 **ISSUES TO BE DECIDED (LOCAL RULE 7-4(A)(3))**

- 25 1. Is the implementation of the Proclamations suspending the adjudication of Plaintiffs visas
26 are lawful?
- 27 2. Are the adjudication of Plaintiffs’ immigrant visa applications unreasonably delayed due
28 to the categorical suspension of processing?

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Dated: January 25, 2021
Rancho Santa Margarita, CA

By: /s/ Curtis Lee Morrison

Curtis Lee Morrison, Esq.
The Law Office of Rafael Ureña
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Case No. 3:21-cv-261-ECF

**Memorandum in Support of
Plaintiffs' Motion for Preliminary
Injunction**

Hon. District J. Edward M. Chen

19 **Memorandum in Support of**
20 **Plaintiffs' Motion for Preliminary Injunction**

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 25 *Labor Market During the Economic Recovery Following the COVID-19 Outbreak*
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 26 85 Fed. Reg. at 23, 442-43 passim
 27 *Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor*
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1 *Suspension of Entry of Immigrants and Nonimmigrants Who Continue To Present*
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- 1. October 2020 Visa Bulletin**
- 2. February 2021 Visa Bulletin**

*All Exhibits submitted in support of Plaintiffs’ Renewed Motion for Temporary Restraining Order are incorporated herein and submitted in support of the instant motion and cited to by reference to the Docket Entry. If this Court requests, Plaintiffs can refile this Motion with the aforementioned exhibits.

I. Introduction

On April 22, 2020, then President Donald J. Trump issued Presidential Proclamation 10014, *Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak* (April 23, 2020), 85 Fed. Reg. at 23, 442-43 §§ 1, 2(a), 5. The Proclamation, rooted in the xenophobic fallacy that immigrants steal jobs from native-born Americans, broadly suspended the entry of immigrants to the United States. The Proclamation justified this suspension on the economic effect immigration had on the domestic labor market – an issue already squarely addressed by the Immigration and Nationality Act (INA). *See generally* Pls.’ Renewed Mot. for TRO, Dkt. 17. In its implementation of the Proclamation, the Department of State issued guidance categorically suspending the processing and issuance of immigrant visa applications subjected to the Proclamation’s suspension of entry.

Both the Proclamation and its implementation are unlawful. While *Plaintiffs’ Renewed Motion for Temporary Restraining Order*, Dkt. 17, addresses the unlawfulness of the Proclamation and its extensions and seeks a worldwide injunction, the instant *Motion for Preliminary Injunction* seeks to remedy the withholding of visa adjudications and the unreasonable delay caused by the suspension of processing of Plaintiffs’ immigrant visa applications.

Despite four Court’s enjoining the Department’s categorical suspension of processing of immigrant visas, the Department is persistent in their illegal conduct. *Young v. Trump*, No. 20-cv-07183-EMC, 2020 U.S. Dist. LEXIS 233614 (N.D. Cal. Dec. 11, 2020); *Milligan v. Pompeo*, Civil Action No. 20-2631 (JEB), 2020 U.S. Dist. LEXIS 217947, at *24-25 (D.D.C. Nov. 19, 2020); *Tate v. Pompeo*, Civil Action No. 20-3249 (BAH), 2021 U.S. Dist. LEXIS 8813, at *21-22 (D.D.C. Jan. 16, 2021); *Gomez v. Trump*, Civil Action No. 20-1419 (APM), 2020 U.S. Dist. LEXIS 163352, 2020 WL 5367010, at *27-28 (D.D.C. Sept. 4, 2020). The ramifications of the unlawful suspension are far-reaching. Hundreds of thousands of immigrant families are separated from their loved ones, hundreds of thousands more face elongated waiting times due to the loss of allocated visas, and tens of thousands more are at risk of losing their opportunity to

1 come to the United States altogether. Without immediate judicial intervention, the suspension of
2 processing of immigrant visa applications will cause irreparable injuries to the Plaintiffs and will
3 irreversibly damage our nation's immigration system.

4 **II. Relevant Facts**

5 **A. Immigrant Visa Application Process**

6 Upon the approval of an I-130, *Petition for Alien Relative* or selection pursuant to the
7 Diversity Visa program, an immigrant visa applicant is invited by the Department of State to
8 submit a DS-260, *Immigrant Visa Application and Visa Registration* through the Department's
9 Consular Electronic Application Center. See generally 9 FAM 504.1 – *Immigrant Visa Process*
10 *Overview*; see also 9 FAM 502.6-4 – *Diversity Visa Processing*. The National Visa Center
11 (NVC) or Kentucky Consular Center (KCC), depending on the visa category, are then charged
12 with the duty to process the immigrant visa application, schedule the mandatory immigrant visa
13 interview, and transfer the application to an US embassy or consulate for adjudication. *Id.*
14 Immigrant visa applicants are then required to attend an in-person interview before a consular
15 officer to determine eligibility to receive the visa. The consular officer must issue or refuse the
16 visa to the applicant. 22 CFR § 42.81.

17 **B. Allocations of Visas**

18 INA § 201(c) sets the allocation of immigrant visas that the Department of State should
19 issue to noncitizens seeking immigrant visa to become lawful permanent residents each year. 8
20 U.S.C. § 1181(c). Immigrant visas for immediate relatives of U.S. citizens are unlimited and
21 always available. 8 U.S.C. § 1181(b)(2)(A)(i). This includes the spouses, unmarried children of
22 under 21 years of age, and the parents of U.S. citizens at least 21 years of age. *Id.* Immigrant
23 visas for family-sponsored and employment visas are limited to 226,000 visas per year, and
24 employment visas are limited to 140,000 visas per year. 8 U.S.C. § 1181(c),(d). Both of these
25 categories are divided into several sub-categories, each of which receives a certain percentage of
26 the overall visa numbers prescribes by law. In addition, there are limits to the percentage of visas
27 that can be allotted based on an immigrant's country of chargeability, usually country of birth.
28 *See generally* 8 U.S.C. § 1181.

1 When the demand is higher than the supply of visas for a given year in any given
2 category or country, a visa queue (a waiting list or backlog) forms. *See, eg. Ex. 2, February 2021*
3 *Visa Bulletin*, Number 50, Volume X (Jan. 11, 2021) at p. 2. To distribute the visas among all
4 preference categories, the Department of State allocates the visas according to an intending
5 immigrant’s preference category, country of chargeability, and priority date. When the
6 Department of State uses the priority date, or for a diversity visa selectee their visa number, to
7 determine an immigrant’s place in the visa queue. The Visa Bulletin is the public summary of
8 the availability of allocated visa. *Id.* When the priority date or diversity number becomes
9 available, or is “current,” immigrants may be interviewed by the Department of State obtain
10 lawful permanent resident status, if otherwise eligible and admitted to the United States.

11 All Applicant Plaintiffs are at the front of this “visa queue,” they have been allocated
12 immigrant visas pursuant to the Visa Bulletin, and have submitted all documents necessary for
13 the adjudication of their applications.

14 **C. Presidential Proclamation 10014 and its Extensions**

15 On April 22, 2020, President Trump signed Presidential Proclamation 10014 (“PP
16 10014”), which suspends the “**entry** into the United States” of certain classes of immigrants who
17 did not already have a valid immigrant visa or travel document as of April 23, 2020, the effective
18 date of the Proclamation. 85 Fed. Reg. at 23,442-43 §§ 1, 2(a), 5 (emphasis added). The
19 Proclamation cites various reasons rooted in the fallacy that immigrants cause economic harm to
20 American workers to justify the suspension of entry. *See* 85 Fed. Reg. at 23,441–42. For these
21 alleged reasons, the President suspended all immigration to the United States but for nine narrow
22 exceptions for a 60-day period starting April 23, 2020 — effectively ending diversity and family-
23 based immigration to the United States for all but two visa categories. *Id.* at 23,443 §§ 4–5. The
24 Secretaries of State and Homeland Security were tasked with implementing the Proclamation. *Id.*
25 at 23,443 § 3. On June 22, 2020, the President issued a follow-up proclamation, which extended
26 PP 10014 through December 31, 2020. *See Proclamation Suspending Entry of Aliens Who*
27 *Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak* (June 22, 2020),
28 85 Fed. Reg. at 38,263 (“PP 10052”). On December 31, 2020, the President again extended the

1 duration of PP 10014 citing “a risk of displacing and disadvantaging United States workers.”
 2 *Suspension of Entry of Immigrants and Nonimmigrants Who Continue To Present a Risk to the*
 3 *United States Labor Market During the Economic Recovery Following the 2019 Novel*
 4 *Coronavirus Outbreak* (December 31, 2020), 86 Fed. Reg. at 417. (hereafter PP 10014 and its
 5 extension by PP 10052 and PP 10131 will be referred to as “the Proclamations”).

6 **D. Defendants’ Implementation of PP 10014 and its extensions and the COVID**
 7 **Guidance**

8 The State Department has interpreted the Proclamations to suspend not only entry but also
 9 the issuance of visas in categories covered under the Proclamations and not subject to one of the
 10 enumerated exceptions. Dkt ECF 17-2, Ex. 1, *Certified Administrative Record* “CAR” at 24
 11 (“The **issuance** of many immigrant visas . . . was suspended by Presidential Proclamation”
 12 10014.); CAR at 36 (explaining that “Presidential Proclamation . . . 10014 suspending **issuance**
 13 of certain immigrant visas has been extended)(emphasis added).

14 Based on this interpretation, the State Department has instructed consular posts that “[o]nly
 15 [visa] applicants that [the] post believes may meet an exception to the [Proclamation], including
 16 the national interest exception, and that constitute a mission-critical category should be
 17 adjudicated at this time,” and that officers “may not issue any [visas] that are not also excepted
 18 under the [Proclamation].” CAR at 24; see also CAR at 32 (“Posts may continue to schedule
 19 mission critical and emergency immigrant and nonimmigrant visa interviews as resources
 20 allow . . . , but should applicants not qualify for an exception under the relevant presidential
 21 proclamation, including in the national interest, post should refuse the case”); CAR at 44
 22 (“Under P.P. 10014, consular officers may continue to process visa applications for individuals
 23 who are expressly excepted from the Proclamation”). Thus, the State Department has
 24 suspended processing and issuance of covered visas unless they (1) are eligible for an exception
 25 to the Proclamations, and (2) qualify for mission critical or emergency services under the State
 26 Department’s COVID-19 Guidance. Though these two requirements are distinct, see Marwaha
 27 Decl. ¶ 7, they appear to overlap, with the “exceptions to the Presidential Proclamations” being
 28 “used as a guide for additional mission-critical or emergency travelers.” CAR at 38; *see also*

1 CAR at 189 (“Mission-critical immigrant visa categories include applicants who may be eligible
2 for an exception under these presidential proclamations.”). Conversely, if a visa category fall[s]
3 under the proclamation and is not eligible for an exception, then, pursuant to this overlapping
4 interpretation, it would not be considered mission critical, and a visa application would not move
5 forward.

6 Posts that have resumed routine visa services may process cases that are not designated as
7 mission critical pursuant to a detailed prioritization scheme, *see* CAR at 36–41, but those posts
8 are still forbidden from “resum[ing] routine processing of [covered] visa classifications, unless
9 the applicant qualifies for an exception under [Proclamations 10014], until given a specific
10 instruction to do so.” CAR at 38; *see also* CAR at 36. This policy of suspending all processing
11 and issuance of visas in categories covered by the Proclamations and its extensions and not
12 subject to an exception is referred to as the “No-Visa Policy.”

13 **E. The Effects of Department of State’s No-Visa Policy**

14 **1. Family Separation**

15 Family separations and its resulting emotional harm constitutes irreparable hardship for
16 purposes of a preliminary injunction. *Young v. Trump*, No. 20-cv-07183-EMC (N.D. Cal. Dec.
17 11, 2020)(citing *Ramos v. Nielsen*, 336 F. Supp. 3d 1075, 1085 (N.D. Cal. October 3, 2018),
18 *rev’d on other grounds, Ramos v. Wolf*, 975 F.3d 872 (9th Cir. 2020). As a result of the
19 suspension of Plaintiffs’ family-based visa applications processing, Plaintiffs are enduring
20 lengthy separation from their families. All status inquiries for family-based immigrant visa
21 applications subject to PP 10014 are met with generic responses informing Plaintiffs that there is
22 no timeframe for the adjudications of their visas. ECF 17-56, Ex. 55, *Email from Embassy in*
23 *Islamabad*. After previously enduring extended waiting times at the earlier stages of the family-
24 based immigration process, Plaintiffs now face indefinite family separation due to the
25 Department of State’s withholding and unreasonably delaying the mandatory adjudications of
26 their immigrant visa applications. These processing delays in turn cause exponential delays
27 throughout the immigration process causing Plaintiffs to lose out on the most sacred and
28 venerable parts of their lives with their wives, children, parents, and siblings. The result is

1 irreparable psychological harm and undeniably unamerican. *See* ECF 17-5, Ex. 4, *Declaration*
2 *of Adrian Dsouza* (emotional and psychological effect of the separation from his wife); ECF 17-
3 6, Ex. 5, *Declaration of Ofdilshan Gamaralalage* (attesting to the need for support from his wife
4 to care for his father and his battle with leukemia); ECF 17-8, Ex. 7, *Decalartion of Ali Gourame*
5 (discussing the strain on his marriage due to the separation and death of his mother-in-law); ECF
6 17-9, Ex. 8, *Declaration of Baljeet Kaur* (anxiety from separation from her daughter); ECF 17-
7 22, Ex. 23, *Declaration of Asad Ullah* (separated from his pregnant wife); *see generally* ECF
8 17-3-42, Ex. 2-41, *Plaintiff Declarations*.

9 **2. Loss of Ability to Immigrate for DV-2021**

10 Diversity Visa Plaintiffs face the imminent prospect of an injury that cannot be cured
11 should this Court not issue a preliminary injunction. *See* ECF 17-19, Ex. 18, *Declaration of*
12 *Dmitrii Efimov*. The INA and its implementing regulations state that “[u]nder no circumstances
13 may a consular officer issue a visa or other documentation to an alien after the end of the fiscal
14 year during which an alien possesses diversity visa eligibility.” 22 C.F.R. § 42.33(A)(1). While
15 the end of the fiscal year for the DV-2021 Program is September 30, 2021, without the immediate
16 resumption of adjudication of diversity visa applications, Plaintiffs will not receive an interview
17 before the deadline. “The strict interpretation of the diversity visa statute has been adopted by
18 every Circuit Court to have addressed the issue.” *Mogu v. Chertoff*, 550 Supp. 2d 107, 109
19 (D.D.C. 2008). A recognized exception to the statutory bar is where the visa applicant seeks and
20 obtains injunctive relief before the year concludes. *See Almaqrami v. Pompeo*, 933 F.3d 744
21 (2019).

22 The extremely low odds of selection, demonstrated by the number of times many of the
23 Plaintiffs have already entered the DV program and have not been selected and the likelihood of
24 future selection, make it extremely unlikely that Plaintiffs will have this opportunity again. *P.K.*
25 *v. Tillerson*, 302 F. Supp. 3d 1, 10 (D.D.C. 2017)(finding the loss of the opportunity to immigrate
26 to the US was irreparable harm); *see also Mohamed v. Pompeo*, No. 1:19-cv-01345-LJO-SKO,
27 2019 U.S. Dist. LEXIS 167266, at *1 (E.D. Cal. Sep. 27, 2019)(finding that absent an injunction
28 the loss of the diversity visa opportunity would irreparably harm Plaintiffs). While the odds of

1 selection in any given year are less than one percent, the odds of being selected in the subsequent
2 year fall to .00025%. *See* ECF17-21, Ex. 22, *Declaration of Abdoul-Bagui Armiyaou Gombo*
3 (first entered the DV program 15 years ago and was finally selected in 2020).

4 **3. Growing Backlog of Documentarily Qualified Visa Applications**

5 The categorical suspension of immigrant visa applications has caused an ever-rising
6 backlog of documentarily qualified visa applications. Plaintiffs' applications have been allocated
7 visas and Plaintiffs have submitted all necessary documents necessary for their applications'
8 adjudication. The delay in these cases is the Department of State's withholding of the
9 adjudication of their applications. The backlog will exasperate already long waiting times and
10 lengthen the separation of families.

11 As of December 31, 2020, there was a backlog of over 380,000 documentarily qualified
12 cases at NVC and tens of thousands more at embassies and consulates. The vast majority of this
13 backlog is not attributable to COVID-19, but by the categorical suspension of immigrant visa
14 application subjected to PP 10014 that commenced on April 22, 2020. At the current rate of
15 adjudication for the suspended categories, the backlog will take decades to remedy. That is an
16 insufferable scenario for Plaintiffs trying to bring spouses, children, and elderly parents to the
17 United States. Without judicial intervention, entire generations of immigrants are at risk of losing
18 years with their families.

19 **4. Loss of Allocated Immigrant Visa Application**

20 The INA states that allocated family preference visas must be used in the fiscal year.
21 While applicants do not lose the opportunity to immigrate if allocated visas are unused, unused
22 visas are reallocated to employment-based categories at the end of a fiscal year. 8 U.S.C. §
23 1182(d). Because the State Department has suspended the adjudication and issuance of family
24 preference visas, family preference visas are not being used. This means that tens, if not hundreds,
25 of thousands of family preference visas have been and will be reallocated to employment
26 categories. This was reflected in the October 2020 Visa Bulletin. Ex. 1, *Visa Bulletin*, Number
27 46 Vol. X (Oct. 2020) at p. 8 (showing rapid forward movement of eligibility for employment-
28 based visas due to the reallocation of immigrant visas to employment visa categories). In addition,

1 due to the backlog of visas accumulated during the suspension of visa adjudications there was no
2 forward movement for family-sponsored visa categories. *Id.*

3 To explain it a different way, because there is no movement at the front of the line and
4 unused visas are reallocated to employment visa categories, the wait times for family-based visas
5 simply get longer. This is a devastating prospect considering some categories already have to
6 wait more than twenty years before eligibility. *Ex. 2, February 2021 Visa Bulletin*, Number 50,
7 Volume X (Jan. 11, 2021) at p. 2 (showing a final action date of July 8, 1998 for Mexican F4
8 Visa Category).

9 **5. Children on the Verge of Aging Out**

10 Some visa applicants will turn 21 years old during the Proclamation's effective period.
11 These minor children are currently eligible for visas and have visas immediately available to
12 them, but the Proclamation, as wrongly interpreted and enforced by Defendants, forbids issuance
13 of those visas. If these minor children do not receive visas and enter the United States before
14 turning 21, they will "age out" of their current visa eligibility—meaning that they will lose the
15 opportunity to immigrate for the foreseeable future, and that Plaintiffs and similarly situated
16 individuals will lose the opportunity to reunite with their families—potentially for their lifetimes.

17 **6. Threats to Well-Being**

18 Many Plaintiffs are under immediate threats to their well-beings. Children Plaintiffs are
19 particularly at risk. For example, Plaintiff Maher Abdo Mohammed Ali, is a legal permanent
20 resident petitioning his thirteen-year-old child in Yemen. See ECF 17-3, *Ex. 2, Declaration fo*
21 *Maher Abdo Mohammed Ali*. Yemen is currently the world's worst humanitarian crisis. A still
22 enduring six-year war, famine, and disease have wreaked havoc on the country. Two million
23 children are not in school, cholera has killed thousands of children under 14, and malnutrition
24 and death by starvation threaten millions more. Mr. Ali's daughter is banned from entering the
25 United States and her visa application is remains suspended. These threats to well-being are not
26 unique to Yemen, and are common among the Plaintiffs. ECF 17-4, *Declaration of Martin John*
27 *Garado* (highlighting his daughter's brain disease and the desperate need for medical care); ECF
28 17-20, *Ex. 21, Declaration of Alaa Al Musawi* (attesting to fear of Iraqi militias).

III. Standard of Review

Under the traditional standard articulated by the U.S. Supreme Court in *Winter*, a plaintiff seeking a preliminary injunction must establish “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit employs an alternative “serious questions” standard (sometimes called the “sliding scale” variation of the *Winter* standard). *All. for the Wild Rockies v. Pena*, 865 F.3d 1211, 1217 (9th Cir. 2017). Under the sliding scale variation, if a plaintiff “can only show that there are ‘serious questions going to the merits’—a lesser showing than likelihood of success on the merits—then a preliminary injunction may still issue if the ‘balance of hardships tips sharply in the plaintiff’s favor,’ and the other two *Winter* factors are satisfied.” *Id.* (emphasis added); see also *Short v. Brown*, 893 F.3d 671, 675 (9th Cir. 2018) (“[t]he Ninth Circuit weighs these factors on a sliding scale, such that where there are only ‘serious questions going to the merits’—that is, less than a ‘likelihood of success’ on the merits—a preliminary injunction may still issue so long as ‘the balance of hardships tips sharply in the plaintiff’s favor’ and the other two factors are satisfied”).

IV. Argument

A. Defendants have a nondiscretionary, mandatory duty to adjudicate immigrant visa applications.

The Immigration and Nationality Act (INA), its implementing regulations, and preexisting Department policies implemented in the Department’s Field Affairs Manual (FAM) impose a nondiscretionary, mandatory duty to adjudicate and issue decisions on immigrant visa applications. *Mohamed v. Pompeo*, No. 1:19-cv-01345-LJO-SKO, 2019 U.S. Dist. LEXIS 167266 (E.D. Cal. Sep. 27, 2019)(issuing a mandatory injunction ordering the State Department to complete adjudications of immigrant visa applications). These laws, regulations, and policies reflect that adjudications must take place within a reasonable time after the allocation of an immigrant visa.

1 Pursuant to 8 U.S.C. § 1202(b), “[**a**ll] immigrant visa applications shall be reviewed and
 2 adjudicated by a consular officer.” (emphasis added). After a noncitizen applies for an immigrant
 3 visa, the applicant “shall be required to appear personally before a consular officer” and “must
 4 be interviewed by a consular officer who shall determine ... proper immigrant classification ...
 5 and eligibility to receive a visa.” 22 C.F.R. § 42.62(a); (b). When a visa application is completed
 6 and executed before a consular officer, “there are no exception to the rule that a visa must be
 7 either issued or refused.” 9 FAM 504.1-3(i)(I); *see also* 22 C.F.R. § 42.81. When these statute,
 8 regulations, and policies are read in conjunction, they create a mandatory duty to adjudicate
 9 immigrant visa applications. *See, e.g., Afghan and Iraqi Allies Under Serious Threat Because of*
 10 *Their Faithful Service to the United States v. Pompeo*, 2019 U.S. Dist. LEXIS 14465, 2019 WL
 11 367841, at *11 (D.D.C. Jan. 30, 2019) (denying a motion to dismiss claims brought under the
 12 Declaratory Judgment Act, the APA, and the Mandamus Act that alleged that the time the
 13 defendant was tasking to adjudicate plaintiffs' visa applications was unreasonable).

14 **B. The No-Visa Policy Unlawfully Withholds a Mandatory Duty to Adjudicate**
 15 **Plaintiffs’ Immigrant Visa Applications**

16 The Department of State’s No-Visa Policy implemented pursuant to PP 10014 suspends
 17 the processing of immigrant visa applications subjected to PP 10014’s suspension of entry. CAR
 18 at 24. The Department justifies the suspension of adjudication as a logical extension of the
 19 President’s suspension of entry under § 1182(f). However, the Department cannot rely on §
 20 1182(f) or any other authority, statute, or regulation to support the suspension of the adjudications
 21 and issuances of Congressionally allocated immigrant visas. *Young v. Trump*, No. 20-cv-07183-
 22 EMC, 2020 U.S. Dist. LEXIS 233614, at *55-56 (N.D. Cal. Dec. 11, 2020); *Milligan v. Pompeo*,
 23 Civil Action No. 20-2631 (JEB), 2020 U.S. Dist. LEXIS 217947, at *24-25 (D.D.C. Nov. 19,
 24 2020); *Tate v. Pompeo*, Civil Action No. 20-3249 (BAH), 2021 U.S. Dist. LEXIS 8813, at *21-
 25 22 (D.D.C. Jan. 16, 2021); ; *Gomez v. Trump*, Civil Action No. 20-1419 (APM), 2020 U.S. Dist.
 26 LEXIS 163352, 2020 WL 5367010, at *27-28 (D.D.C. Sept. 4, 2020)

27 “The categories of persons deemed ineligible to receive a visa pursuant to § 1201(g)
 28 appear in § 1182(a), not § 1182(f) ... A suspension of entry under § 1182(f) therefore has no

1 bearing on whether the person is ‘inadmissible’ under § 1182(a) or ineligible to receive a visa
 2 under § 1201(g).” *Id.* Defendants conflate admissibility determinations and entry determinations.
 3 Subsection 1201(g) governs whether applicants are eligible to receive a visa, in tandem with §
 4 1182(a), which prescribes a number of reasons why an alien abroad may be deemed inadmissible
 5 and consequently ineligible to receive a visa, *e.g.*, on health-related or criminal grounds. *See* 8
 6 U.S.C. § 1182(a) (“[e]xcept as otherwise provided in this Act, aliens who are inadmissible under
 7 the following paragraphs are ineligible to *receive* visas and ineligible to be admitted to the United
 8 States”) (emphasis added). Entry determinations, in contrast, are governed by § 1182(f). 8 U.S.C.
 9 § 1182(f) (“[w]henver the President finds that the entry of any aliens or of any class of aliens
 10 into the United States would be detrimental to the interests of the United States, he may by
 11 proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or
 12 any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any
 13 restrictions he may deem to be appropriate) (emphasis added).

14 Therefore, the Department of State cannot enact a complete and categorical suspension
 15 of the processing of visa applications pursuant to 1182(f). “When consular officers are directed
 16 to suspend the ordinary immigrant visa process (for applicants who are eligible to receive a visa)
 17 for reasons not dictated by resource limitations caused by urgencies such as the pandemic but
 18 because of an incorrect interpretation of 1182(f), and when such officers act without color of a
 19 valid Presidential directive or any other statutory authority, DOS acts ‘not in accordance with
 20 law’ and ‘in excess of statutory ... authority.’” *Young v. Trump*, No. 20-cv-07183-EMC, 2020
 21 U.S. Dist. LEXIS 233614, at *57 (N.D. Cal. Dec. 11, 2020)(citing 5 U.S.C. § 706(2)(A), (C)).

22 **C. Defendants Have Breached Their Mandatory Duty to Adjudicate Plaintiffs’**
 23 **Visas Within a Reasonable Time**

24 Defendants have a mandatory duty to adjudicate Plaintiffs’ visa applications within a
 25 reasonable time. 5 U.S.C § 555(b) (requiring agencies to, “within a reasonable time ... conclude
 26 the matter presented to it”); *Nine Iraqi Allies Under Serious Threat Because of Their Faithful*
 27 *Serv. to the United States v. Kerry* (“Nine Iraqi Allies”), 168 F. Supp. 3d 268, 293 n. 22, 295–96
 28

1 (D.D.C. 2016) (holding that plaintiffs had stated a claim for unreasonable delay in processing
2 their immigrant visa applications given agencies' mandatory duty to adjudicate visa applications).

3 The six "TRAC" factors to be balanced are:

4
5 (1) the time agencies take to make decisions must be governed by a
6 rule of reason; (2) where Congress has provided a timetable or other
7 indication of the speed with which it expects the agency to proceed
8 in the enabling statute, that statutory scheme may supply content for
9 this rule of reason; (3) delays that might be reasonable in the sphere
10 of economic regulation are less tolerable when human health and
11 welfare are at stake; (4) the court should consider the effect of
12 expediting delayed action on agency activities of a higher or
13 competing priority; (5) the court should also take into account the
14 nature and extent of the interests prejudiced by the delay; and (6) the
15 court need not find any impropriety lurking behind agency lassitude
16 in order to hold that agency action is unreasonably delayed."

13 *Doe v. Risch*, C 18-04583-SBA (N.D. Cal. July 26, 2019), Dkt. No. 40, Order Granting Pl. Mot.
14 for Summary Judgment, (quoting *Telecomm. Research & Action Ctr. V. FCC* ("TRAC"), 750
15 F.2d 70 (D.C. Cir. 1984)); *Brower v. Evans*, 257 F.3d 1058, 1068 (9th Cir. 2001)(finding agency
16 action was unreasonably delayed). In *Doe*, the Plaintiffs brought a single cause of action pursuant
17 to the APA, 5 U.S.C. § 701 et seq., and the Mandamus Act, 28 U.S.C. § 1361, to compel
18 Defendants to adjudicate a Form I-730 petition for derivative asylum of an Iranian national that
19 had been pending for nearly two and half years. *Id.* at 4, 8. The *Doe* court found the rule of reason
20 tipped in plaintiffs' favor, and in spite of no congressionally-mandated timetable for adjudicating
21 derivative asylum petitions, also found the second *TRAC* factor to also tip in plaintiffs' favor.
22 Importantly, as to the human health and welfare factors, the *Doe* court also found "[d]elay that
23 might be reasonable in another context is... 'less tolerable,' ...where an asylee files a follow-to-
24 join petition for a family member still residing in their native country." *Id.* at 10. As to the
25 competing priority factor, defendants had asserted the plaintiff should not be prioritized at the
26 expense of others ahead of him in the queue, but the court noted defendants established no
27 evidence of a queue, or plaintiffs' place within it. *Id.* at 11. Finally, as to impropriety,
28 the *Doe* court did not find defendants had acted in bad faith to cause the delay, but "neither [did]

1 it find that they...acted in good faith to address to delay such that judicial intervention is rendered
2 unnecessary.” *Id.* at 12, 13.

3 **1. Rule of Reason and Congressional Timetable or Indication of Speed**

4 The Immigration Act of 1990 and its implementing regulations and policies provide a
5 clear timetable and indication of speed of adjudication. The INA sets forth a yearly allocation of
6 visas, a visa floor, and the DV program’s implementing statute imposes an absolute, unyielding
7 deadline of September 30th for the adjudication and issuance of family-preference and diversity
8 visas. 8 U.S.C. § 1154(a)(1)(I)(ii)(II); 8 U.S.C. § 1153. These yearly allocations and statutory
9 deadlines for use provide a clear indication of the speed Congress intended for adjudications to
10 occur.

11 **a. Yearly Visa Allocation Family Preference and Loss of Visas**

12 A maximum of 480,000 family-sponsored visas can be issued each fiscal year. The total
13 number of family preference visas cannot exceed 480,000, which was set by Congress in 1990.
14 While there is no limitation on the number of visas issued to immediate relatives, the number of
15 those visas issued is subtracted from the 480,000 statutory limits, and thus determines how many
16 other relatives will be admitted to the U.S. each fiscal year.

17 To ensure that family visas are not only issued to immediate relatives, the INA sets a
18 “visa floor.” The INA requires that at least 226,000 family-sponsored visas be allocated per year
19 through the family preference categories. In addition to the numerical restrictions, immigration
20 law sets a 7 percent cap each year for family visas issued for each country, commonly referred
21 to as the “per-country limit.”

22 The INA also requires that any unused family-based visa numbers from the immediate
23 prior fiscal year be added to the employment-based allocation. This is a clear indication of the
24 speed Congress intended the Department to adjudicate family-based immigrant visa applications.
25 Not only did congress set a floor of how many visas should be issued, they also set a timeframe
26 in which the department should issue those visas or they would be lost.

27 **b. Diversity Visa Allocation and Deadline**

1 Section 1154(a) clearly specifies that visas are to be made available to eligible selectees
2 and must be issued before the deadline. 8 U.S.C. § 1154(a)(1)(I)(ii)(II); *see also* 9 FAM 502.6-
3 4(b)(3)(a), *Diversity Visa Application Validity*; ECF No. 123, at 68–69 (quoting *In re People’s*
4 *Mojahedin Org. of Iran*, 680 F.3d 832, 837 (D.C. Cir. 2012)) (“Here, ‘[t]he specificity and
5 relative brevity’ of the September 30 deadline manifest Congress’s intent that the State
6 Department undertake good-faith efforts to ensure that diversity visas are processed and issued
7 before the deadline.”).

8 The Department of State has delayed the adjudication of all Plaintiffs’ diversity visa
9 applications for four months (from October to January), but critically, this delay will create even
10 more adjudication delay for many more months and cause diversity visa selectees to permanently
11 lose the opportunity to receive an adjudication of their visa. As the *Gomez* Court recognized,
12 “surely a delay that results in the permanent loss of a statutory benefit is not reasonable.” *Gomez*
13 *v. Trump*, No. 20-cv-01419 (APM), 2020 U.S. Dist. LEXIS 163352, at *118 (D.D.C. Sep. 4,
14 2020). Without this Court’s intervention, Plaintiffs would have forever lost their opportunity to
15 immigrate to the United States. In any event, courts have routinely ordered the Department of
16 State to adjudicate delayed immigrant visa without a timetable. *See, e.g., Thomas v. Pompeo*, 438
17 F.Supp.3d 35, 43 (D.D.C. Feb. 7, 2020); *Afghan and Iraqi Allies Under Serious Threat Because*
18 *of Their Faithful Service to the United States v. Pompeo*, 2019 WL 367841, at *11 (D.D.C. Jan.
19 30, 2019) (denying a motion to dismiss by government alleging time defendant was tasked to
20 adjudicate plaintiffs’ visa applications was unreasonable).

21 The Department of State’s termination of processing and refusal to interview the DV-
22 2021 selectees, “simply by sitting on its hands and letting all pending diversity visa applicants
23 time out,” “plainly frustrates the congressional intent” behind the INA. *Gomez v. Trump*, No. 20-
24 cv-01419 (APM), 2020 U.S. Dist. LEXIS 163352, at *118 (D.D.C. Sep. 4, 2020); *In re People’s*
25 *Mojahedin Org. of Iran*, 680 F.3d at 837; *see* 8 U.S.C. §§ 1151(3), 1153(c)(1)(A).

26 Implementing regulations and DOS policy also clarify that the processing and interview
27 must be done with haste due to the statutory deadline for the adjudication of the visa.
28

1 *First*, the INA mandates that “diversity immigrants shall be allotted visas each fiscal year.”
 2 8 U.S.C. § 1153(c)(1); INA § 203(c)(1) (emphasis added). After the Attorney General determines
 3 the allotment per country and region, immigrant visas “*shall* be issued to eligible qualified
 4 immigrants strictly in a random order established by the Secretary of State for the fiscal year
 5 involved.” 8 U.S.C. § 1153(c)(1); INA § 203(c)(1) (emphasis added).

6 Then, Department policy sets forth a scheduling timeline based on the availability of the
 7 visa. The Department “will schedule an appointment for a documentarily qualified applicant
 8 when his or her regional lottery [number] is about to be current.” 9 FAM 592.6-4(2) (creating a
 9 duty to schedule diversity visas before they are current). Because Congress and the Department
 10 have set a timetable for the adjudication of diversity visas and Department policy creates a
 11 mandatory duty adjudicate those visas pursuant to this timetable, Defendants have breached their
 12 non-discretionary duties.

13 The time-sensitive nature of the diversity visa program and its termination by Defendants
 14 through the implementation of a No-Visa Policy weigh heavily in favor of Plaintiffs’ claim of
 15 unreasonable delay.

16 **2. Human Health and Welfare are at stake.**

17 Delay is “less tolerable” in cases like this one, where “human . . . welfare” is “at
 18 stake.” *TRAC*, 750 F.2d at *80. Plaintiffs have, without this Court’s intervention, been separated
 19 from their families, lost gainful employment, educational opportunities, and the chance at the
 20 American Dream, causing concrete and severe emotional and economic harm. Many Plaintiffs
 21 have sold the majority of their property to finance the immigrant visa application process. Many
 22 have foreclosed employment and business opportunities in their home country because they
 23 anticipated that they would begin a new life in America. Others have borrowed large amounts of
 24 money that they will never be able to pay if they remain in their native countries. Many of the
 25 Plaintiffs are fleeing war, disease, and famine and live in third countries as refugees, some are
 26 considered stateless. Others suffer discrimination from oppressive authoritarian regimes. Due to
 27 the dramatic loss of opportunity and the clear danger in remaining in their native countries, this
 28 factor clearly tips in the favor of the Plaintiffs. Like in *Doe*, for many plaintiffs, family separation

1 and the associated severe hardships are present here as outlined in Plaintiffs’ amended complaint
2 and they continue to accrue.

3 **3. Competing Priorities and the Nature of the Delay.**

4 The effects “of expediting delayed action on agency activities of a higher or competing
5 priority” are minimal. *TRAC* at 80 (citations omitted). Consular sections at US embassies and
6 consulates around the world have resumed adjudications of immigrant visa applications for
7 applicants not subject to PP 10014 suspension of entry. CAR at 35. Defendants, although
8 neglecting Plaintiffs’ visa adjudications, have admittedly “committed to processing visa services
9 that are deemed ‘mission-critical’” and provide no adequate explanation of why they do not
10 consider Plaintiffs’ visa applications to be mission critical—moreover, even when reopening
11 posts, Defendants considered family preference and diversity visa applications low-priority.
12 Marwaha Decl. ¶ 8; CAR at 17, 35. The mild inconvenience expediting delayed adjudication of
13 Plaintiffs’ immigrant visa will cause to the State Department is clearly outweighed by the drastic
14 consequences Plaintiffs will suffer would Defendants fail to issue DV visas prior to the
15 September 30, 2021, deadline and the deleterious effects of family separation. This balance tips
16 in the favor of the Plaintiffs’ claim of unreasonable delay.

17 **4. Impropriety**

18 Although this Court does not need to find that impropriety exists under the fifth *TRAC*
19 factor, there is sufficient evidence to make a finding of impropriety. *see* Proclamation at 23,443
20 § 3; CAR at 17, 38, 70, 167–74, 189. Then President Trump has shown in many forms his animus
21 against family based and diversity visa immigration, demonstrating his ulterior motive to stop
22 legal family and diversity immigration. Furthermore, the Department have never provided a
23 rational explanation for their actions nor examined the harms to diversity visa lottery selectees
24 or family-based immigrants awaiting adjudication of their immigrant visa applications. Even
25 after several injunctions against Defendants, they continued acting in bad faith, refusing to
26 resume processing of visas. *Young v. Trump*, No. 20-cv-07183-EMC, 2020 U.S. Dist. LEXIS
27 233614 (N.D. Cal. Dec. 11, 2020); *Milligan v. Pompeo*, Civil Action No. 20-2631 (JEB), 2020
28 U.S. Dist. LEXIS 217947, at *24-25 (D.D.C. Nov. 19, 2020); *Tate v. Pompeo*, Civil Action No.

1 20-3249 (BAH), 2021 U.S. Dist. LEXIS 8813, at *21-22 (D.D.C. Jan. 16, 2021); *Nat'l Ass'n of*
2 *Mfrs. v. United States Dep't of Homeland Sec.*, No. 20-cv-04887-JSW, 2020 U.S. Dist. LEXIS
3 182267 (N.D. Cal. Oct. 1, 2020); *Gomez v. Trump*, Civil Action No. 20-1419 (APM), 2020 U.S.
4 Dist. LEXIS 163352, 2020 WL 5367010, at *27-28 (D.D.C. Sept. 4, 2020). Because the
5 Department of State has repeatedly ignored repeated holdings that its interpretation of 1182(f)
6 is incorrect and persisted in suspending mandatory visa adjudications, this Court should now find
7 that the Department has acted with impropriety in delaying the Plaintiff's visa applications and
8 find that the factor tips in favor of the Plaintiffs.

9 **D. The State Department's Implementation of the "No-visa Policy" is Arbitrary**
10 **and Capricious.**

11 *First*, Defendants' application of (1) "mission critical" and "emergency" requirements
12 and (2) "Diplomacy Strong" adjudication requirements are arbitrary and capricious and usurps
13 consular officers' authority to issue visas, see 8. U.S.C. § 1201(a)(1); *Encuentro Del Canto*
14 *Popular v. Christopher*, 930 F. Supp. 1360, 1369 (N.D. Cal. 1996), and contravenes a binding
15 and "mandatory" regulatory requirement that "[w]hen a visa application has been properly
16 completed and executed..., the consular officer must either issue or refuse the visa..." 22 C.F.R.
17 § 42.81(a). Consular officers cannot exercise their authority or their duty to adjudicate visa
18 applications if the Department of State policy is to refuse to allow them to do so.

19 *Second*, the State Department has made few efforts to articulate a cogent rationale for
20 adopting a draconian No Vias Policy that precludes the processing and adjudication of family-
21 based and diversity immigrant visa applications. The State Department has not given meaningful
22 consideration to the exceptionally harsh result of failing to adjudicate family-based and diversity
23 visa applications.

24 *Third*, Defendants' application of the "Mission Critical" and "Emergency" requirements
25 and the "Diplomacy Strong" guidelines "lacks any coherence" and therefore "cannot withstand
26 judicial review." *Tripoli Rocketry Ass'n v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*,
27 437 F.3d 75, 77 (D.C. Cir. 2006). Indeed, those requirements and guidelines are being
28 irrationally applied among visa categories. "A fundamental norm of administrative procedure

1 requires to treat like cases alike.” *Agua Caliente of Cupeño Indians v. Sweeney*, 932 F.3d 1207,
 2 1219 n.10 (9th Cir. 2019). All current family-based and DV-2021 visa applicants have been
 3 Congressionally allotted an immigrant visa. Under the INA, there is no distinction as to the
 4 import of one visa over the other.

5 **E. Irreparable Harm**

6 The irreparable harms to the Plaintiffs are numerous and severe. *First*, family separation
 7 causes long lasting and severe psychological harm to the Plaintiffs. The lost moments with infant
 8 children or aging parents are unredeemable. *Second*, the loss ability to immigrate for Diversity
 9 Visa selectees and “age outs” are heartbreaking. Diversity visa plaintiffs have been given a once
 10 in a lifetime chance at the American Dream. Age outs may forever lose an opportunity to live in
 11 the United States with their families and face the prospect of being forever separated. *Third*, the
 12 categorical suspension of processing visa applications prolongs delays already faced by visa
 13 applicants, and courts have recognized that delay in the adjudication of immigration applications
 14 itself constitutes irreparable harm to the applicant even without the severe harm of family
 15 separation.¹ *Fourth*, the loss of allocated visas stands to exponentially protract the waiting time
 16 for visa applications in the queue and cannot be recaptured. *Finally*, the immediate threats to the
 17 well beings of Plaintiffs, particularly to the children, in places like Yemen are almost
 18 unimaginable.

19 For these reasons, the Court should find that the Plaintiffs face irreparable harm absent
 20 judicial intervention.

21
 22
 23 ¹ *See, e.g., Kirwa v. U.S. Dep’t of Def.*, 285 F. Supp. 3d 21, 42 (D.D.C. 2017)(“[D]elaying
 24 naturalization applications after applicants have been promised an expedited path to citizenship
 25 constitutes irreparable harm.”); *Nio v. U.S. Dep’t of Homeland Sec.*, 270 F. Supp. 3d 49, 62 (D.D.C.
 26 2017) (Finding irreparable harm because they are not obtaining citizenship rights and benefits.
 27 And as a result of the legal limbo, their ability to travel and pursue professional and personal
 28 opportunities has been curtailed.)

1 **F. The Balance of Equities**

2 In suits against the government, the balance of equities and public interest prongs merge.
 3 *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014). There is minimal hardship
 4 which the Department of State would face if it were to adjudicate Plaintiffs’ visa application
 5 compared to significant hardship Plaintiffs will continue to suffer due to Department of State’s
 6 categorical suspension of processing of immigrant visa application subjected to PP 10014 in the
 7 absence of preliminary injunction relief. The process has come to a complete standstill for
 8 Plaintiffs. They are separated from their families, some stand to face to lose the opportunity to
 9 immigrate to the United States all together, and others face immediate threats to their well-being.
 10 See ECF 17-3, Ex 2, *Declaration of Maher Abdo Mohammed Ali*. The freeze imposed by
 11 Department of State’s No Visa policy under its Diplomacy Strong framework has exacerbated
 12 the hardships they already face, and the balance of hardships tilts strongly in their favor.

13 **G. Relief Sought**

14 “Crafting a preliminary injunction is an exercise of discretion and judgment, often
 15 dependent as much on the equities of a given case as the substance of the legal issues it presents.”
 16 *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017). “The court may ‘mold
 17 its decree to meet the exigencies of the particular case,’ *id.* (quoting 11A C. Wright, A. Miller,
 18 & M. Kane, *Federal Practice and Procedure* § 2948, at 115 (3d ed. 2013)), and may ‘go beyond
 19 earlier orders . . . to address each [element] contributing to the violation,’ and ‘insure against the
 20 risk of inadequate compliance.’” *Gomez v. Trump*, No. 20-cv-01419 (APM), 2020 U.S. Dist.
 21 LEXIS 185414, at *19-20 (D.D.C. Sep. 14, 2020)(citing *Hutto v. Finney*, 437 U.S. 678, 687
 22 (1978)).

23 The exigencies in this action require the bold and immediate relief Plaintiffs seek. After
 24 ten months of unlawfully suspending processing family-based and diversity visa applications,
 25 the backlog of documentarily qualified cases has grown to more than 400,000 applications. The
 26 current pace of adjudication will cause years long delays in Plaintiffs visa applications and a loss
 27 of visas allocated for the family-sponsored visas. As a result, families awaiting their “priority
 28 dates” to become “current” will face exponential delays in their cases. Without a thorough and

1 proactive remedy, the current immigrant visa system will cease to be a conduit for family
2 unification and source of diversity to our nation and the will of Congress will be circumscribed
3 by unlawful policies.

4 **V. Conclusion**

5 For the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for
6 Preliminary Injunction and grant the entirety of the relief sought therein.

7
8 Dated: January 25, 2021
9 Rancho Santa Margarita, CA

10 /s/ Curtis Morrison
11 Curtis Morrison
12 *Attorney for the Plaintiff*
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CERTIFICATE OF SERVICE

On the below date, I electronically filed the **PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**, with the Clerk of the United States District Court for the Northern District of California, using the CM/ECF System. The Courts CM/ECF System will send an electronically email all noticed parties to the action who are registered with the Court's CM/ECF System.

Dated: January 25, 2021
Rancho Santa Margarita, California

/s/ Curtis Lee Morrison
Curtis Lee Morrison, Esq.
Attorney for the Plaintiffs



*United States Department of State
Bureau of Consular Affairs*

VISA BULLETIN

Number 46 Volume X

Washington, D.C.

IMMIGRANT NUMBERS FOR OCTOBER 2020

A. STATUTORY NUMBERS

This bulletin summarizes the availability of immigrant numbers during October for: "Final Action Dates" and "Dates for Filing Applications," indicating when immigrant visa applicants should be notified to assemble and submit required documentation to the National Visa Center.

Unless otherwise indicated on the U.S. Citizenship and Immigration Services (USCIS) website at www.uscis.gov/visabulletininfo, individuals seeking to file applications for adjustment of status with USCIS in the Department of Homeland Security must use the "Final Action Dates" charts below for determining when they can file such applications. When USCIS determines that there are more immigrant visas available for the fiscal year than there are known applicants for such visas, USCIS will state on its website that applicants may instead use the "Dates for Filing Visa Applications" charts in this Bulletin.

1. Procedures for determining dates. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; USCIS reports applicants for adjustment of status. Allocations in the charts below were made, to the extent possible, in chronological order of reported priority dates, for demand received by September 8th. If not all demand could be satisfied, the category or foreign state in which demand was excessive was deemed oversubscribed. The final action date for an oversubscribed category is the priority date of the first applicant who could not be reached within the numerical limits. If it becomes necessary during the monthly allocation process to retrogress a final action date, supplemental requests for numbers will be honored only if the priority date falls within the new final action date announced in this bulletin. If at any time an annual limit were reached, it would be necessary to immediately make the preference category "unavailable", and no further requests for numbers would be honored.

2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, EL SALVADOR, GUATEMALA, HONDURAS, INDIA, MEXICO, PHILIPPINES, and VIETNAM.

4. Section 203(a) of the INA prescribes preference classes for allotment of Family-sponsored immigrant visas as follows:

FAMILY-SPONSORED PREFERENCES

First: (F1) Unmarried Sons and Daughters of U.S. Citizens: 23,400 plus any numbers not required for fourth preference.

Second: Spouses and Children, and Unmarried Sons and Daughters of Permanent Residents: 114,200, plus the number (if any) by which the worldwide family preference level exceeds 226,000, plus any unused first preference numbers:

A. (F2A) Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. (F2B) Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.

Third: (F3) Married Sons and Daughters of U.S. Citizens: 23,400, plus any numbers not required by first and second preferences.

Fourth: (F4) Brothers and Sisters of Adult U.S. Citizens: 65,000, plus any numbers not required by first three preferences.

A. FINAL ACTION DATES FOR FAMILY-SPONSORED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

| <u>Family-Sponsored</u> | All Charge-ability Areas Except Those Listed | CHINA-mainland born | INDIA | MEXICO | PHILIPPINES |
|--------------------------------|--|---------------------|---------|---------|-------------|
| F1 | 15SEP14 | 15SEP14 | 15SEP14 | 08JAN98 | 15DEC11 |
| F2A | C | C | C | C | C |
| F2B | 08JUL15 | 08JUL15 | 08JUL15 | 08APR99 | 01AUG11 |
| F3 | 15JUN08 | 15JUN08 | 15JUN08 | 01AUG96 | 15FEB02 |
| F4 | 22SEP06 | 22SEP06 | 08MAR05 | 22JUN98 | 01JAN02 |

B. DATES FOR FILING FAMILY-SPONSORED VISA APPLICATIONS

The chart below reflects dates for filing visa applications within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier than the application date in the chart below may assemble and submit required documents to the Department of State's National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. The application date for an oversubscribed category is the priority date of the first applicant who cannot submit documentation to the National Visa Center for an immigrant visa. If a category is designated "current," all applicants in the relevant category may file applications, regardless of priority date.

The "C" listing indicates that the category is current, and that applications may be filed regardless of the applicant's priority date. The listing of a date for any category indicates that only applicants with a priority date which is **earlier** than the listed date may file their application.

Visit www.uscis.gov/visabulletininfo for information on whether USCIS has determined that this chart can be used (in lieu of the chart in paragraph 4.A.) this month for filing applications for adjustment of status with USCIS.

| Family-Sponsored | All Chargeability Areas Except Those Listed | CHINA-mainland born | INDIA | MEXICO | PHILIPPINES |
|-------------------------|--|----------------------------|--------------|---------------|--------------------|
| F1 | 22JUL15 | 22JUL15 | 22JUL15 | 22FEB00 | 08OCT12 |
| F2A | 01AUG20 | 01AUG20 | 01AUG20 | 01AUG20 | 01AUG20 |
| F2B | 01MAY16 | 01MAY16 | 01MAY16 | 01DEC99 | 01APR12 |
| F3 | 01JUN09 | 01JUN09 | 01JUN09 | 15AUG00 | 22DEC02 |
| F4 | 15SEP07 | 15SEP07 | 22NOV05 | 22APR99 | 01SEP02 |

5. Section 203(b) of the INA prescribes preference classes for allotment of Employment-based immigrant visas as follows:

EMPLOYMENT-BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, not more than 10,000 of which to "*Other Workers".

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which reserved for investors in a targeted rural or high-unemployment area, and 3,000 set aside for investors in regional centers by Sec. 610 of Pub. L. 102-395.

A. FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

| <u>Employment- Based</u> | All Charge- ability Areas Except Those Listed | CHINA- | EL SALVADOR | | MEXICO | PHILIPPINES | VIETNAM |
|--|--|------------------|-------------|----------|---------|-------------|---------|
| | | mainland born | GUATEMALA | HONDURAS | | | |
| 1st | C | 01JUN18 | C | 01JUN18 | C | C | C |
| 2nd | C | 01MAR16 | C | 01SEP09 | C | C | C |
| 3rd | C | 01JUL17 | C | 15JAN10 | C | C | C |
| Other Workers | C | 01DEC08 | C | 15JAN10 | C | C | C |
| 4th | C | C | 01AUG17 | C | 01SEP18 | C | C |
| Certain Religious Workers | U | U | U | U | U | U | U |
| 5th Non-Regional Center (C5 and T5) | C | 15AUG15 | C | C | C | C | 01AUG17 |
| 5th Regional Center (I5 and R5) | U | U | U | U | U | U | U |

*Employment Third Preference Other Workers Category: Section 203(e) of the Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997, as amended by Section 1(e) of Pub. L. 105-139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW final action date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002. For Fiscal Year 2021 this reduction will be limited to approximately 150.

B. DATES FOR FILING OF EMPLOYMENT-BASED VISA APPLICATIONS

The chart below reflects dates for filing visa applications within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier than the application date in the chart may assemble and submit required documents to the Department of State's National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. The application date for an oversubscribed category is the priority date of the first applicant who cannot submit documentation to the National Visa Center for an immigrant visa. If a category is designated "current," all applicants in the relevant category may file, regardless of priority date.

The "C" listing indicates that the category is current, and that applications may be filed regardless of the applicant's priority date. The listing of a date for any category indicates that only applicants with a priority date which is **earlier** than the listed date may file their application.

Visit www.uscis.gov/visabulletininfo for information on whether USCIS has determined that this chart can be used (in lieu of the chart in paragraph 5.A.) this month for filing applications for adjustment of status with USCIS.

| Employment-Based | All Charge-ability Areas Except Those Listed | CHINA - mainland born | EL SALVADOR GUATEMALA HONDURAS | INDIA | MEXICO | PHILIPPINES |
|---|---|------------------------------|---------------------------------------|--------------|---------------|--------------------|
| 1st | C | 01SEP20 | C | 01SEP20 | C | C |
| 2nd | C | 01OCT16 | C | 15MAY11 | C | C |
| 3rd | C | 01JUN18 | C | 01JAN15 | C | C |
| Other Workers | C | 01OCT08 | C | 01JAN15 | C | C |
| 4th | C | C | 01FEB18 | C | C | C |
| Certain Religious Workers | C | C | 01FEB18 | C | C | C |
| 5 th Non-Regional Center (C5 and T5) | C | 15DEC15 | C | C | C | C |
| 5 th Regional Center (I5 and R5) | C | 15DEC15 | C | C | C | C |

6. The Department of State has a recorded message with the Final Action date information which can be heard at: (202) 485-7699. This recording is updated on or about the seventeenth of each month with information on final action dates for the following month.

B. DIVERSITY IMMIGRANT (DV) CATEGORY FOR THE MONTH OF OCTOBER

Section 203(c) of the INA provides up to 55,000 immigrant visas each fiscal year to permit additional immigration opportunities for persons from countries with low admissions during the previous five years. The NACARA stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually allocated diversity visas will be made available for use under the NACARA program. This will result in reduction of the DV-2021 annual limit to approximately 54,850. DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For October, immigrant numbers in the DV category are available to qualified DV-2021 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

| Region | All DV Chargeability Areas Except Those Listed Separately | | | |
|-------------------------------------|---|---------|-------|-------|
| AFRICA | 2,900 | Except: | Egypt | 2,700 |
| ASIA | 1,600 | Except: | Iran | 1,000 |
| | | | Nepal | 1,050 |
| EUROPE | 2,500 | | | |
| NORTH AMERICA (BAHAMAS) | 2 | | | |
| OCEANIA | 250 | | | |
| SOUTH AMERICA, and the CARIBBEAN | 350 | | | |

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2021 program ends as of September 30, 2021. DV visas may not be issued to DV-2021 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2021 principals are only entitled to derivative DV status until September 30, 2021. DV visa availability through the very end of FY-2021 cannot be taken for granted. Numbers could be exhausted prior to September 30.

C. THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN NOVEMBER

For November, immigrant numbers in the DV category are available to qualified DV-2021 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

| Region | All DV Chargeability Areas Except Those Listed Separately | | | |
|-------------------------------------|---|---------|-------|-------|
| AFRICA | 5,100 | Except: | Egypt | 3,300 |
| ASIA | 2,800 | Except: | Iran | 1,300 |
| | | | Nepal | 2,700 |
| EUROPE | 4,800 | | | |
| NORTH AMERICA (BAHAMAS) | 3 | | | |
| OCEANIA | 350 | | | |
| SOUTH AMERICA, and the CARIBBEAN | 475 | | | |

D. FOR THE LATEST INFORMATION ON VISA PROCESSING AT U.S. EMBASSIES AND CONSULATES DURING THE COVID-19 PANDEMIC, PLEASE VISIT THE BUREAU OF CONSULAR AFFAIRS WEBSITE AT TRAVEL.STATE.GOV

E. MOVEMENT OF THE OCTOBER FINAL ACTION AND APPLICATION FILING DATES

Family-sponsored: Final Action Dates movement during the past six months focused on two goals: 1) to allow number use to be maximized should it become possible to return to normal visa processing levels at some point prior to the end of the fiscal year, and 2) to encourage applicants to continue acting on their cases in a timely manner to support long-term recovery from the suspension of routine services. This movement ensured sufficient demand would be available for adjudication throughout FY 2021 under a resumption of full operational status.

VO learned during October 2020 date determination, that movement of final action dates in the previous six months combined with the global suspension of routine visa services resulted in enough accumulated demand to fully utilize the numbers normally made available during the first quarter of the fiscal year. Therefore, no date movement is required at this time. VO will closely monitor the situation in the early months of the fiscal year.

Employment-based: All of the Final Action and Application Filing Dates have been advanced at a very rapid pace, in anticipation of the FY 2021 annual limit being approximately 261,500, an all-time high. The movement of these dates has been taken in consultation with USCIS Office of Policy and Strategy to accommodate processing plans for USCIS Offices during the coming fiscal year and to maximize number use within the FY 2021 annual limits. Pending demand, in the form of applications for adjustment of status, and documentarily qualified immigrant visa applicants, is well below the estimated annual limit of 261,500.

F. VISA AVAILABILITY IN THE COMING MONTHS

FAMILY-sponsored categories (potential monthly movement)

Worldwide dates:

F1: Up to three weeks
F2A: Current
F2B: Up to three weeks
F3: Up to two weeks
F4: Up to one week

EMPLOYMENT-based categories (potential monthly movement)

Employment First:

WORLDWIDE: Current
China: Rapid forward movement
India: Rapid forward movement

Employment Second:

Worldwide: Current
China: Rapid forward movement
India: Rapid forward movement

Employment Third:

Worldwide: Current
China: Rapid forward movement
India: Rapid forward movement
Mexico: Current
Philippines: Likely to remain at the Worldwide date

Employment Third - Other Workers:

Worldwide: Current
China: Steady forward movement

Employment Fourth: Current for most countries

El Salvador, Guatemala, and Honduras: Steady forward movement
Mexico: Steady forward movement

Employment Fifth: The category will remain "Current" for most countries

China: No forward movement
Vietnam: Limited forward movement

The above final action date projections for the Family and Employment categories indicate what is likely to happen on a monthly basis through January. The determination of the actual monthly final action dates is subject to fluctuations in applicant demand and a number of other variables.

G. SCHEDULED EXPIRATION OF TWO EMPLOYMENT VISA CATEGORIES

Employment Fourth Preference Certain Religious Workers (SR):

Pursuant to Section 102 of Division I, Title I of the Consolidated Appropriations Act, 2020 (Public Law 116-94), the non-minister special immigrant program expires on September 30, 2020. No SR visas may be issued overseas, or final action taken on adjustment of status cases, after midnight September 29, 2020. Visas issued prior to this date will only be issued with a validity date of September 29, 2020, and all individuals seeking admission as a non-minister special immigrant must be admitted (repeat, admitted) into the U.S. no later than midnight September 29, 2020.

The final action date for this category has been listed as "Unavailable" for October.

If there is legislative action extending this category for FY-2021, the final action date would immediately become "Current" for October for all countries except El Salvador, Guatemala, and Honduras which would be subject to an August 1, 2017 final action date and Mexico which would be subject to a September 1, 2018 final action date.

Employment Fifth Preference Categories (I5 and R5):

Section 104 of Division I, Title I of the Consolidated Appropriations Act, 2020 (Public Law 116-94) extended this immigrant investor pilot program until September 30, 2020. The I5 and R5 visas may be issued until close of business on September 30, 2020, and may be issued for the full validity period. No I5 or R5 visas may be issued overseas, or final action taken on adjustment of status cases, after September 30, 2020.

The final action dates for the I5 and R5 categories have been listed as "Unavailable" for October.

If there is legislative action extending them for FY-2021, the final action dates would immediately become "Current" for October for all countries except China-mainland born I5 and R5 which would be subject to an August 15, 2015 final action date and Vietnam I5 and R5 which would be subject to an August 1, 2017 final action date.

H. OBTAINING THE MONTHLY VISA BULLETIN

The Department of State's Bureau of Consular Affairs publishes the monthly Visa Bulletin on their website at www.travel.state.gov under the Visas section. Alternatively, visitors may access the Visa Bulletin directly by going to:

<http://www.travel.state.gov/content/visas/english/law-and-policy/bulletin.html>.

To be placed on the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

listserv@calist.state.gov

and in the message body type:

Subscribe Visa-Bulletin

(example: *Subscribe Visa-Bulletin*)

To be removed from the Department of State's E-mail subscription list for the "Visa Bulletin", send an e-mail message to the following E-mail address:

listserv@calist.state.gov

and in the message body type: **Signoff Visa-Bulletin**

The Department of State also has available a recorded message with visa final action dates which can be heard at: **(202) 485-7699**. The recording is normally updated on/about the 17th of each month with information on final action dates for the following month.

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

VISABULLETIN@STATE.GOV

(This address cannot be used to subscribe to the Visa Bulletin.)



*United States Department of State
Bureau of Consular Affairs*

VISA BULLETIN

Number 50 Volume X

Washington, D.C.

IMMIGRANT NUMBERS FOR FEBRUARY 2021

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2. Section 201 of the Immigration and Nationality Act (INA) sets an annual minimum family-sponsored preference limit of 226,000. The worldwide level for annual employment-based preference immigrants is at least 140,000. Section 202 prescribes that the per-country limit for preference immigrants is set at 7% of the total annual family-sponsored and employment-based preference limits, i.e., 25,620. The dependent area limit is set at 2%, or 7,320.

3. INA Section 203(e) provides that family-sponsored and employment-based preference visas be issued to eligible immigrants in the order in which a petition in behalf of each has been filed. Section 203(d) provides that spouses and children of preference immigrants are entitled to the same status, and the same order of consideration, if accompanying or following to join the principal. The visa prorating provisions of Section 202(e) apply to allocations for a foreign state or dependent area when visa demand exceeds the per-country limit. These provisions apply at present to the following oversubscribed chargeability areas: CHINA-mainland born, EL SALVADOR, GUATEMALA, HONDURAS, INDIA, MEXICO, PHILIPPINES, and VIETNAM.

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A. (F2A) Spouses and Children of Permanent Residents: 77% of the overall second preference limitation, of which 75% are exempt from the per-country limit;

B. (F2B) Unmarried Sons and Daughters (21 years of age or older) of Permanent Residents: 23% of the overall second preference limitation.

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A. FINAL ACTION DATES FOR FAMILY-SPONSORED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

| <u>Family-Sponsored</u> | All Charge-ability Areas Except Those Listed | CHINA-mainland born | INDIA | MEXICO | PHILIPPINES |
|--------------------------------|--|---------------------|---------|---------|-------------|
| F1 | 15SEP14 | 15SEP14 | 15SEP14 | 22JAN98 | 01JAN12 |
| F2A | C | C | C | C | C |
| F2B | 15JUL15 | 15JUL15 | 15JUL15 | 01JUN99 | 15AUG11 |
| F3 | 15JUL08 | 15JUL08 | 15JUL08 | 01SEP96 | 01MAR02 |
| F4 | 15OCT06 | 15OCT06 | 15MAR05 | 08JUL98 | 01FEB02 |

B. DATES FOR FILING FAMILY-SPONSORED VISA APPLICATIONS

The chart below reflects dates for filing visa applications within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier than the application date in the chart below may assemble and submit required documents to the Department of State's National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. The application date for an oversubscribed category is the priority date of the first applicant who cannot submit documentation to the National Visa Center for an immigrant visa. If a category is designated "current," all applicants in the relevant category may file applications, regardless of priority date.

The "C" listing indicates that the category is current, and that applications may be filed regardless of the applicant's priority date. The listing of a date for any category indicates that only applicants with a priority date which is **earlier** than the listed date may file their application.

Visit www.uscis.gov/visabulletininfo for information on whether USCIS has determined that this chart can be used (in lieu of the chart in paragraph 4.A.) this month for filing applications for adjustment of status with USCIS.

| Family-Sponsored | All Chargeability Areas Except Those Listed | CHINA-mainland born | INDIA | MEXICO | PHILIPPINES |
|-------------------------|--|----------------------------|--------------|---------------|--------------------|
| F1 | 08AUG15 | 08AUG15 | 08AUG15 | 01MAR00 | 22OCT12 |
| F2A | 01JAN21 | 01JAN21 | 01JAN21 | 01JAN21 | 01JAN21 |
| F2B | 22MAY16 | 22MAY16 | 22MAY16 | 22DEC99 | 15APR12 |
| F3 | 22JUN09 | 22JUN09 | 22JUN09 | 08SEP00 | 08JAN03 |
| F4 | 01OCT07 | 01OCT07 | 01DEC05 | 08MAY99 | 01OCT02 |

5. Section 203(b) of the INA prescribes preference classes for allotment of Employment-based immigrant visas as follows:

EMPLOYMENT-BASED PREFERENCES

First: Priority Workers: 28.6% of the worldwide employment-based preference level, plus any numbers not required for fourth and fifth preferences.

Second: Members of the Professions Holding Advanced Degrees or Persons of Exceptional Ability: 28.6% of the worldwide employment-based preference level, plus any numbers not required by first preference.

Third: Skilled Workers, Professionals, and Other Workers: 28.6% of the worldwide level, plus any numbers not required by first and second preferences, of which not more than 10,000 may be provided to "*Other Workers".

Fourth: Certain Special Immigrants: 7.1% of the worldwide level.

Fifth: Employment Creation: 7.1% of the worldwide level, not less than 3,000 of which are reserved for investors in a targeted rural or high-unemployment area, and 3,000 are set aside for investors in regional centers by Sec. 610 of Pub. L. 102-395.

A. FINAL ACTION DATES FOR EMPLOYMENT-BASED PREFERENCE CASES

On the chart below, the listing of a date for any class indicates that the class is oversubscribed (see paragraph 1); "C" means current, i.e., numbers are authorized for issuance to all qualified applicants; and "U" means unauthorized, i.e., numbers are not authorized for issuance. (NOTE: Numbers are authorized for issuance only for applicants whose priority date is **earlier** than the final action date listed below.)

| <u>Employment- Based</u> | | All Charge-ability Areas Except Those Listed | | | | | | |
|--|---|---|--------------------------------------|---------|---------|-------------|---------|--|
| | | CHINA-mainland born | EL SALVADOR GUATEMALA HONDURAS | INDIA | MEXICO | PHILIPPINES | VIETNAM | |
| 1st | C | 01JAN20 | C | 01JAN20 | C | C | C | |
| 2nd | C | 15JUN16 | C | 12OCT09 | C | C | C | |
| 3rd | C | 01JAN18 | C | 01APR10 | C | C | C | |
| Other Workers | C | 01APR09 | C | 01APR10 | C | C | C | |
| 4th | C | C | 15APR18 | C | 15DEC18 | C | C | |
| Certain Religious Workers | C | C | 15APR18 | C | 15DEC18 | C | C | |
| 5th Non-Regional Center (C5 and T5) | C | 15AUG15 | C | C | C | C | 01OCT17 | |
| 5th Regional Center (I5 and R5) | C | 15AUG15 | C | C | C | C | 01OCT17 | |

*Employment Third Preference Other Workers Category: Section 203(e) of the Nicaraguan and Central American Relief Act (NACARA) passed by Congress in November 1997, as amended by Section 1(e) of Pub. L. 105-139, provides that once the Employment Third Preference Other Worker (EW) cut-off date has reached the priority date of the latest EW petition approved prior to November 19, 1997, the 10,000 EW numbers available for a fiscal year are to be reduced by up to 5,000 annually beginning in the following fiscal year. This reduction is to be made for as long as necessary to offset adjustments under the NACARA program. Since the EW final action date reached November 19, 1997 during Fiscal Year 2001, the reduction in the EW annual limit to 5,000 began in Fiscal Year 2002. For Fiscal Year 2021 this reduction will be limited to approximately 150.

B. DATES FOR FILING OF EMPLOYMENT-BASED VISA APPLICATIONS

The chart below reflects dates for filing visa applications within a timeframe justifying immediate action in the application process. Applicants for immigrant visas who have a priority date earlier than the application date in the chart may assemble and submit required documents to the Department of State's National Visa Center, following receipt of notification from the National Visa Center containing detailed instructions. The application date for an oversubscribed category is the priority date of the first applicant who cannot submit documentation to the National Visa Center for an immigrant visa. If a category is designated "current," all applicants in the relevant category may file, regardless of priority date.

The "C" listing indicates that the category is current, and that applications may be filed regardless of the applicant's priority date. The listing of a date for any category indicates that only applicants with a priority date which is **earlier** than the listed date may file their application.

Visit www.uscis.gov/visabulletininfo for information on whether USCIS has determined that this chart can be used (in lieu of the chart in paragraph 5.A.) this month for filing applications for adjustment of status with USCIS.

| Employment-Based | All Charge-ability Areas Except Those Listed | CHINA - mainland born | EL SALVADOR GUATEMALA HONDURAS | INDIA | MEXICO | PHILIPPINES |
|---|---|------------------------------|---------------------------------------|--------------|---------------|--------------------|
| 1st | C | 01NOV20 | C | 01NOV20 | C | C |
| 2nd | C | 01OCT16 | C | 15MAY11 | C | C |
| 3rd | C | 01JUN18 | C | 01JAN14 | C | C |
| Other Workers | C | 01JUL09 | C | 01JAN14 | C | C |
| 4th | C | C | 01SEP18 | C | C | C |
| Certain Religious Workers | C | C | 01SEP18 | C | C | C |
| 5 th Non-Regional Center (C5 and T5) | C | 15DEC15 | C | C | C | C |
| 5 th Regional Center (I5 and R5) | C | 15DEC15 | C | C | C | C |

6. The Department of State has a recorded message with the Final Action date information which can be heard at: (202) 485-7699. This recording is updated on or about the seventeenth of each month with information on final action dates for the following month.

B. DIVERSITY IMMIGRANT (DV) CATEGORY FOR THE MONTH OF FEBRUARY

Section 203(c) of the INA provides up to 55,000 immigrant visas each fiscal year to permit additional immigration opportunities for persons from countries with low admissions during the previous five years. The NACARA stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually allocated diversity visas will be made available for use under the NACARA program. This will result in reduction of the DV-2021 annual limit to approximately 54,850. DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For February, immigrant numbers in the DV category are available to qualified DV-2021 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

| Region | All DV Chargeability Areas Except Those Listed Separately | | | |
|-------------------------------------|---|---------|-------|-------|
| AFRICA | 12,000 | Except: | Egypt | 7,200 |
| ASIA | 5,000 | Except: | Iran | 3,000 |
| | | | Nepal | 3,950 |
| EUROPE | 8,200 | | | |
| NORTH AMERICA (BAHAMAS) | 5 | | | |
| OCEANIA | 725 | | | |
| SOUTH AMERICA, and the CARIBBEAN | 875 | | | |

Entitlement to immigrant status in the DV category lasts only through the end of the fiscal (visa) year for which the applicant is selected in the lottery. The year of entitlement for all applicants registered for the DV-2021 program ends as of September 30, 2021. DV visas may not be issued to DV-2021 applicants after that date. Similarly, spouses and children accompanying or following to join DV-2021 principals are only entitled to derivative DV status until September 30, 2021. DV visa availability through the very end of FY-2021 cannot be taken for granted. Numbers could be exhausted prior to September 30.

C. THE DIVERSITY (DV) IMMIGRANT CATEGORY RANK CUT-OFFS WHICH WILL APPLY IN MARCH

For March, immigrant numbers in the DV category are available to qualified DV-2021 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

| Region | All DV Chargeability Areas Except Those Listed Separately | | | |
|-------------------------------------|---|---------|-------|--------|
| AFRICA | 14,000 | Except: | Egypt | 10,000 |
| ASIA | 6,200 | Except: | Iran | 3,800 |
| | | | Nepal | 4,200 |
| EUROPE | 9,400 | | | |
| NORTH AMERICA (BAHAMAS) | 6 | | | |
| OCEANIA | 900 | | | |
| SOUTH AMERICA, and the CARIBBEAN | 1,175 | | | |

D. FOR THE LATEST INFORMATION ON VISA PROCESSING AT U.S. EMBASSIES AND CONSULATES DURING THE COVID-19 PANDEMIC, PLEASE VISIT THE BUREAU OF CONSULAR AFFAIRS WEBSITE AT TRAVEL.STATE.GOV

E. VISA AVAILABILITY IN THE COMING MONTHS

FAMILY-sponsored categories (potential monthly movement)

Worldwide dates:

F1: Up to two weeks
F2A: Current
F2B: Up to two weeks
F3: Up to three weeks
F4: Up to two weeks

EMPLOYMENT-based categories (potential monthly movement)

Employment First:

Worldwide: Current
China: Up to six months
India: Up to six months

Employment Second:

Worldwide: Current
China: Up to three weeks
India: Up to two weeks

Employment Third:

Worldwide: Current
China: Up to one month
India: Up to three weeks
Mexico: Current
Philippines: Current

Employment Fourth: Current for most countries

El Salvador, Guatemala, and Honduras: Up to three months
Mexico: Up to one month

Employment Fifth: The category will remain "Current" for most countries

China: No forward movement
Vietnam: Up to three weeks

The above final action date projections for the Family and Employment categories indicate what is likely to happen on a monthly basis through May. The determination of the actual monthly final action dates is subject to fluctuations in applicant demand and a number of other variables impacting processing.

F. ANNUAL REPORT OF IMMIGRANT VISA APPLICANTS IN THE FAMILY-SPONSORED AND EMPLOYMENT-BASED PREFERENCES REGISTERED AT THE NATIONAL VISA CENTER AS OF NOVEMBER 1, 2020

The National Visa Center has provided the totals of applicants who are registered in the various numerically-limited immigrant categories for processing at overseas posts. This information is available on the Consular Affairs www.travel.state.gov website. The direct link to the item is:

<https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/immigrant-visa-statistics.html>

G. OBTAINING THE MONTHLY VISA BULLETIN

The Department of State's Bureau of Consular Affairs publishes the monthly Visa Bulletin on their website at www.travel.state.gov under the Visas section. Alternatively, visitors may access the Visa Bulletin directly by going to:

<http://www.travel.state.gov/content/visas/english/law-and-policy/bulletin.html>.

To be placed on the Department of State's E-mail subscription list for the "Visa Bulletin", please send an E-mail to the following E-mail address:

listserv@calist.state.gov

and in the message body type:

Subscribe Visa-Bulletin

(example: *Subscribe Visa-Bulletin*)

To be removed from the Department of State's E-mail subscription list for the "Visa Bulletin", send an e-mail message to the following E-mail address:

listserv@calist.state.gov

and in the message body type: **Signoff Visa-Bulletin**

The Department of State also has available a recorded message with visa final action dates which can be heard at: **(202) 485-7699**. The recording is normally updated on/about the 17th of each month with information on final action dates for the following month.

Readers may submit questions regarding Visa Bulletin related items by E-mail at the following address:

VISABULLETIN@STATE.GOV

(This address cannot be used to subscribe to the Visa Bulletin.)

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JANAN JACOB, et al.,

Plaintiffs,

v.

JOSEPH R. BIDEN, et al.,

Defendants.

Case No. 3:21-cv-261-EMC

[PROPOSED] ORDER

**[PROPOSED] ORDER GRANTING PLAINTIFFS’ MOTION FOR PRELIMINARY
INJUNCTION**

Upon consideration of Plaintiffs’ Motion for Preliminary Injunction dated January 25, 2021 the memoranda of law, and exhibits submitted in support, and the entire record herein, it is hereby

ORDERED that Plaintiffs; Motion for Preliminary Injunction is GRANTED; it is further ORDERED that

- (a) Defendants, their agents, servants, employees, and all others in active concert or participation are enjoined from applying the Proclamation in any way that forecloses or prohibits embassy personnel, consular officers, or any administrative processing center (such as the Kentucky Consular Center or National Visa Center) from processing, reviewing, or adjudicating Plaintiffs’ immigrant visa applications;
- (b) Enjoining Defendants, their agents, servants, employees, and all other in active concert or participation with them from interpreting and applying the COVID Guidance to Plaintiffs in any way that requires embassy personnel, consular officers, or administrative processing centers (such as the Kentucky Consular Center or

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National Visa Center) to refuse processing, reviewing, adjudicating or issuing visas on the ground that Plaintiffs do not qualify under “emergency” or “mission critical” exception to the COVID Guidance;

(c) An Order mandating Defendants undertake good-faith efforts, directly and through their designees, to expeditiously process and adjudicate the immigrant visa applications for Named Plaintiffs;

(d) An Order mandating Defendants create guidance for the implementation of a plan to remedy the backlog of immigrant visas applications caused by PP 10014 and its implementation; and

(e) Retain jurisdiction over this action to monitor and enforce Defendants’ compliance with all orders of this Court;

Dated:

United States District Judge Edward M. Chen