UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[redacted] CHIKUMBA, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF STATE, et al.,

Defendants.

Civil Action No. 26-0332 (ABJ)

MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT AND MEMORANDUM IN SUPPORT THEREOF

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Defendants, the Department of State and Marco Rubio, in his official capacity as Secretary of State, respectfully move to dismiss Plaintiffs' Amended Complaint (ECF No. 8) under Federal Rules of Civil Procedure ("Rule") 12(b)(1) for lack of jurisdiction and 12(b)(6) for failure to state a claim.

INTRODUCTION

Plaintiffs claim unreasonable delay and seek to compel the government to act on applications for immigrant and nonimmigrant visas (collectively, the "Visa Applications"). Plaintiffs also challenge the legality of Presidential Proclamations 10,949 and 10,998, including the National Interest Exception, and State Department implementation, which restrict visa issuance to foreign nationals from thirty-nine countries.

These challenges fail because the Proclamations are based on a broad grant of power to the President which the Supreme Court upheld in *Trump v. Hawaii*, 585 U.S. 667, 679 (2018). To the extent that Plaintiffs challenge the application of the Proclamations to their applications, they are simply challenging the consular officer's decision, and that decision remains nonreviewable under the doctrine of consular nonreviewability. The consular nonreviewability doctrine also precludes a prospective declaration that consular officers may not rely on the Proclamation in any future re-adjudications. Constitutional, statutory, and historical considerations mandate that the Court refrain from interfering with consular officers' visa decisions.

Even if the consular nonreviewability doctrine did not preclude this suit, Plaintiffs' claims fail. Plaintiffs challenge whether Defendant can deny visas under Section 212(f) of the INA. However, consular officers may properly deny visas to aliens who are barred from entry by the Proclamation, as Defendants have done for decades. The INA's provisions and structure, the historical practice that Congress has legislated in light of, and the practical problems posed by Plaintiffs' interpretation all support the State Department's position. Plaintiffs nevertheless

impermissibly demand that the Secretary of State issue visas to them even though they are within the scope of the Proclamations.

For these reasons, which are explored in depth below, the Court should dismiss all of Plaintiffs' claims.[1]

BACKGROUND

I. Legal Background

A. The Immigration and Nationality Act

The Immigration and Nationality Act ("INA"), as amended, provides the legal framework under which Congress has exercised and delegated its constitutional authority to determine who is permitted to enter the United States, who is permitted to remain in the United States, and for what reasons persons may be admitted to or removed from the United States. State Department regulations promulgated under authority of the INA provide as follows for immigrant visas: "When a visa application has been properly completed and executed before a consular officer in accordance with the provisions of the INA and the implementing regulations, the consular officer must issue the visa, refuse the visa under INA 212(a) or 221(g) or other applicable law or, pursuant to an outstanding order under INA 243(d), discontinue granting the visa." 22 C.F.R. § 42.81(a).

[1] Local Civil Rule 7(n) requires the filing of a certified list of the administrative record when filing a dispositive motion in cases involving "judicial review of administrative agency action." Local Civ. R. 7(n). However, Defendants respectfully request that the Court relieve them of compliance with this rule because Defendants' motion does not require reference to an administrative record; it is premised on Plaintiffs' Complaint and the refusals of Plaintiffs' visas—not on any further factual development. *See Arab v. Blinken*, 600 F. Supp. 3d 59, 65–66 n.2 (D.D.C. 2022) ("Following the general practice in this Court, defendants' motion to waive compliance with Local Civil Rule 7(n) is granted because 'the administrative record is not necessary for [the court's] decision.'") (alteration in original) (citing *Connecticut v. Dep't of Interior*, 344 F. Supp. 3d 279, 294 (D.D.C. 2018) (granting the Government's motion to be relieved of complying with Local Civil Rule 7(n) when the administrative record was not required to decide defendants' motion to dismiss)). Therefore, Defendants respectfully request that the Court relieve them of complying with Local Civil Rule 7(n).

The INA in turn has certain provisions describing bases for refusing visa applications. "[T]he Circuit states quite plainly that the consul's refusing to grant an application and placing it in administrative processing is a final refusal[.]" *Ibrahim v. Spera*, Civ. A. No. 23-3563 (ABJ), 2024 WL 4103702, at *3 (D.D.C. Sept. 6, 2024).

"The exclusion of aliens is a fundamental act of sovereignty," and "[t]he right to do so stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950). In this regard, 8 U.S.C. § 1182(f) provides broad authority to the President to suspend the entry of aliens into the United States:

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

8 U.S.C. § 1182(f). "By its terms, § 1182(f) exudes deference to the President in every clause," and "entrusts to the President the decisions whether and when to suspend entry . . . ; whose entry to suspend . . . ; for how long . . . ; and on what conditions . . . ." *Hawaii*, 585 U.S. at 684. The President has broad authority to adopt "reasonable rules, regulations, and orders" governing the entry of aliens, and the President may make entry "subject to such limitations and exceptions as [he] may prescribe." 8 U.S.C. § 1185(a)(1). Thus, where, as here, the President acts pursuant to an express or implied authorization of Congress, that is, 8 U.S.C. §§ 1182(f) and 1185(a)(1), coupled with the President's Article II powers over foreign affairs and national security, "his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring); *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015) ("In

considering claims of Presidential power this Court refers to Justice Jackson's familiar tripartite framework from [*Youngstown*].").

Over the last few decades, Presidents have frequently invoked this statutory authority to suspend or impose restrictions on the entry of certain aliens or classes of aliens, and there is a consistent history of implementing those proclamations through visa denials to covered individuals. *See, e.g.*, Proclamation 5517, §§ 1–2, 51 Fed. Reg. 30,470, 30,470 (Aug. 22, 1986) (President Reagan); Exec. Order 12,807, 57 Fed. Reg. 23,133, 23,133 (May 24, 1992) (President George H.W. Bush); Proclamation 6574, § 1, 58 Fed. Reg. 34,209, 34,209 (June 21, 1993) (President Clinton); Proclamation 7452, § 5, 66 Fed. Reg. 34,775, 34,775–76 (June 29, 2001) (President George W. Bush); Proclamation 8693, 76 Fed. Reg. 44,751, 44,751 (July 24, 2011) (President Obama).

B. Presidential Proclamations 10,949 and 10,998

On January 20, 2025, the President issued Executive Order 14,161, entitled: "Protecting the United States from Foreign Terrorists and Other National Security and Public Safety Threats." 90 Fed. Reg. 8451 (Jan. 30, 2025). In the Order, the President directed the Secretary of State to, among other things, submit to the President a report "identifying countries throughout the world for which vetting and screening information is so deficient as to warrant a partial or full suspension on the admission of nationals from those countries" under Section 1182(f). *Id.* at 8451 (§ 2(b)(i)).

After receiving the report, the President issued the Proclamation under 8 U.S.C. § 1182(f). *Restricting the Entry of Foreign Nationals to Protect the United States from Foreign Terrorists and Other National Security and Public Safety Threats*, 90 Fed. Reg. 24,497 (June 4, 2025). The Proclamation refers to the report, noting that the "Secretary determined that a number of countries remain deficient with regards to screening and vetting" and that the President "accepted" his Cabinet members' recommendations to impose "restrictions and limitations" on immigration. *Id.*

at 24,497–98 (Preamble). Accordingly, the Proclamation "fully restrict[s] and limit[s] the entry of nationals" from certain countries. 90 Fed. Reg. at 24,499, 24,501 (§§ 1(f), 2(k), 2(*l*)).

The Proclamation includes several exceptions, including for lawful permanent residents, adoptions, and Afghan Special Immigrant Visas. *See id.* at 24,502–03(§ 4). As is relevant here, the exception "may be made case-by-case for individuals for whom the Secretary of State finds, in his discretion, that the travel by the individual would serve a United States national interest. These exceptions shall be made by only the Secretary of State or his designee, in coordination with the Secretary of Homeland Security or her designee." *Id.* at 24,503 (§ 4(d)).

Within ninety days of the date of the Proclamation, and every one hundred and eighty days thereafter, the Secretary of State, in consultation with other Executive Branch officials, must submit a report to the President "describing his assessment and recommending whether any suspensions and limitations imposed . . . should be continued, terminated, modified, or supplemented." *Id.* (§ 5).

After receiving the latest report, the President issued Proclamation 10,998, finding that "most of the countries identified in Proclamation 10,949 . . . continue to exhibit woeful inadequacies in screening, vetting, and provision of information." *Restricting and Limiting the Entry of Foreign Nationals To Protect the Security of the United States*, 90 Fed Reg. 59,717, 59,717 (Dec. 19, 2025). Accordingly, the President "determined to continue to fully restrict and limit the entry of nationals" from previously identified countries as well as additional ones. *Id.* at 59,721 (§ 1(g), § 2). Collectively, these two Proclamations prohibit entry of foreign nationals from 39 countries.

To implement both Proclamations, State issued guidance. *See* U.S. Dep't of State, Presidential Proclamation 10,998 on Restricting and Limiting the Entry of Foreign Nationals,

travel.state.gov (Dec. 23, 2025); U.S. Dep't of State, Suspension of Visa Issuance to Foreign Nationals to Protect the Security of the United States (last updated Feb. 2, 2026), travel.state.gov. Per State's guidance,

> the United States is suspending or limiting entry and visa issuance to nationals of 39 countries as well as individuals applying using travel documents issued or endorsed by the Palestinian Authority. With Presidential Proclamation 10998, as of the effective date of January 1, 2026, the following categorical exceptions provided in Presidential Proclamation 10949 for nationals subject to the suspension on entry are no longer available under Presidential Proclamation 10998: immediate family immigrant visas (IR-1/CR-1, IR-2/CR-2, IR-5); adoption visas (IR-3, IR-4, IH-3, IH-4); and Afghan Special Immigrant Visas.

Id. (Dec. 23, 2025). Further,

> In his discretion, the Secretary of State or his designee, in coordination with the Secretary of Homeland Security, may find, on a case-by-case basis, that travel by an individual would serve the U.S. national interest. The Secretary of Homeland Security or her designee, in coordination with the Secretary of State, may also find, on a case-by-case basis, that travel by an individual would serve the U.S. national interest.

Id. State clarified that, "Applicants who are subject to Presidential Proclamation 10998 may still submit visa applications and attend scheduled interviews, but they may be ineligible for visa issuance or admission to the United States." *Id.* State added that, "We are protecting our nation and its citizens by using rigorous, security-focused screening and vetting procedures to ensure that individuals approved for a visa do not endanger national security or public safety." *Id.* (Feb. 2, 2026).

State continues to permit limited exceptions. For the 19 countries covered by Proclamation 10998, "for all nonimmigrant and immigrant visa categories, there are "limited exceptions" to suspension of issuance of visas for:

- Certain diplomatic and official visas
- Immigrant visas for ethnic and religious minorities facing persecution in Iran
- Dual nationals applying with a passport of a nationality not subject to a suspension
- Special Immigrant Visas (SIVs) for U.S. government employees under 8 U.S.C. 1101(a)(27)(D)
- Participants in certain major sporting events
- Lawful Permanent Residents (LPRs)

Id. For the 19 countries covered by Proclamation 10998, only "for nonimmigrant B-1/B-2 visitor visas and F, M, J student and exchange visitor visas, and all immigrant visas," there are "limited exceptions" to suspension of issuance of visas for:

- Immigrant visas for ethnic and religious minorities facing persecution in Iran
- Dual nationals applying with a passport of a nationality not subject to a suspension
- Special Immigrant Visas (SIVs) for U.S. government employees under 8 U.S.C. 1101(a)(27)(D)
- Participants in certain major sporting events
- Lawful Permanent Residents (LPRs)

Id. Furthermore,

> Also, with Presidential Proclamation 10998, as of the effective date of January 1, 2026, the following categorical exceptions provided in Presidential Proclamation 10949 for nationals subject to the suspension on entry are no longer available under the PP: immediate family immigrant visas (IR-1/CR-1, IR-2/CR-2, IR-5); adoption visas (IR-3, IR-4, IH-3, IH-4); and Afghan Special Immigrant Visas.

Id. Finally,

> In his discretion, the Secretary of State or his designee, in coordination with the Secretary of Homeland Security, may find that travel by an individual would serve the U.S. national interest on a case-by-case basis. The Secretary of Homeland Security or her designee, in coordination with the Secretary of State, may also find that travel by an individual would serve the U.S. national interest on a case-by-case basis. The Attorney General, in coordination with the Secretary of State and Secretary of Homeland Security, may find the travel of an individual would advance a critical U.S. national interest involving the Department of Justice.

Id.[2]

[2] State also issued guidance for citizens and nationals of Turkmenistan, but none of the Plaintiffs are from there, so Defendants do not discuss that guidance. Likewise, guidance on children being adopted by Americans is not relevant to Plaintiffs' lawsuit.

C. Visa Adjudication

The decision to grant or deny a visa application rests exclusively with the consular officer. *See* 8 U.S.C. § 1201(a)(1); 22 C.F.R. §§ 42.71, 42.81. Visa applicants bear the burden of establishing eligibility for a visa to the consular officer's satisfaction. 8 U.S.C. § 1361. The consular officer must ensure the applicant is "not inadmissible under any provision" of the INA. *See id.* If a consular officer is not satisfied that an applicant is eligible, the consular officer must refuse the visa application. 8 U.S.C. § 1201(g) ("No visa . . . shall be issued to an alien if . . . it appears to the consular officer, from statements in the application, or in the papers submitted therewith, that such alien is ineligible to receive a visa . . . under section 1182 of this title, or any other provision of law[]" or if "the consular officer knows or has reason to believe that [the] alien is ineligible to receive a visa . . . under section 1182 . . . or any other provision of law."); *id.* § 1361; *see* 22 C.F.R. § 40.6. After the interview's conclusion, the consular officer must either issue or refuse the visa under 8 U.S.C. § 1182(a), 8 U.S.C. § 1201(g), or other applicable law. 22 C.F.R. §§ 42.81(a), 41.121(a).

Because a refusal under § 221(g) of the INA (8 U.S.C. § 1201(g)) is based on the applicant's failure to demonstrate eligibility for a requested visa, consular officers refusing visas on that ground often afford applicants additional administrative processes, which may generate evidence unavailable to the applicant that may provide a basis for the officer to reconsider the refusal. *See* Dep't of State, Bureau of Consular Affairs, Administrative Processing Information, https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/administrativeprocessing-information.html (last visited Sept. 23, 2026); *see Karimova v. Abate*, No. 23-5178, 2024 WL 3517852, at *2 (D.C. Cir. July 24, 2024). Such administrative processes thus benefit a refused applicant by "keeping the door open" to potential reconsideration of eligibility should new information surface. *Karimova*, 2024 WL 3517852, at *2.

II. Factual Background

Twenty-six Plaintiffs filed the Complaint. ECF No. 1. Defendants moved to dismiss. ECF No. 6. Plaintiffs filed the Amended Complaint, adding as plaintiffs the three minor children of one of the plaintiffs. ECF No. 8.

Much of the Amended Complaint consists of unnecessary legal background and inappropriate legal argument that the Court should disregard because "it is generally inappropriate to include a legal argument…within a complaint." *Jennings v. Hunt Companies, Inc.*, 367 F. Supp. 3d 66, 71 (S.D.N.Y. 2019) (citation and internal quotation marks omitted). *See also Scranton Quincy Hosp. Co., LLC v. Azar*, 514 F. Supp. 3d 249, 263 n.6 (D.D.C. 2021) (observing that an "overabundance of legal arguments and case citations" in a complaint "would have been better saved for the briefing of dispositive motions"); *United States ex rel. Garst v. Lockheed-Martin Corp.*, 328 F.3d 374, 378 (7th Cir. 2003) ("Length may make a complaint unintelligible[] by scattering and concealing in a morass of irrelevancies the few allegations that matter.") (collecting cases from First, Third, and Eighth Circuits). Rule 8 requires a "short and plain statement" with allegations that are "simple, concise, and direct"—not a merits brief embedded in a complaint.

"Plaintiffs are twenty-six noncitizens who have applied for immigrant or nonimmigrant visas[.]" Am. Compl. ¶ 6. Their applications have been refused. *Id.*

The twenty-six Plaintiffs are citizens of the following countries: Zimbabwe, Afghanistan, Iran, Eritrea, Syria, Yemen, Laos, Togo, Benin, Burma, Libya, and "a stateless Palestinian refugee born in Syria." Am. Compl. ¶¶ 8–33. They have all submitted DS-260 applications, except two, who have submitted DS-160 applications. *Id.* A DS-260, Electronic Application for Immigrant Visa and Alien Registration, application is an application used by noncitizens who seek an immigrant visa, and it can be used to seek immigrant visas of various kinds. 90 Fed. Reg. 52129 (Nov. 19, 2025). A DS-160, Nonimmigrant Visa Application, is an application used by noncitizens

who seek a nonimmigrant visas, and it can be used to seek nonimmigrant visas of various kinds. 87 Fed. Reg 33571 (Jun. 2, 2022). The [redacted], is a citizen of Zimbabwe. She is awaiting scheduling of a consular interview and has not made and executed an application for an immigrant visa. *Id.* ¶ 8. The other Plaintiffs similarly submitted DS-260 or DS-160 forms.[3]

The Amended Complaint groups Plaintiffs into three groups. First, "Pending-Adjudication Plaintiffs"—who have not yet attended a consular interview and made and executed a visa application. Am. Compl. ¶ 87. Second, "Administrative Processing Plaintiffs"—"those Plaintiffs who appeared for a consular interview [and] whose applications were refused under 8 U.S.C. § 1201(g) for administrative processing[.]" *Id.* ¶ 88. Third, "Refused Plaintiffs"—"those Plaintiffs whose applications have been refused with a citation to 8 U.S.C. § 1182(f) or to a Proclamation." *Id.* ¶ 89.

The Amended Complaint contains three counts. ECF No. 8. Plaintiffs allege a legal, material distinction between State issuing a visa and allowing entry into the United States. *See, e.g.*, *id.* ¶¶ 1–5. Count I under the Administrative Procedure Act ("APA") alleges that the "Visa-Issuance Suspension Policy is final agency action" "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," and "otherwise not in accordance with law." *Id.* ¶¶ 99, 103 (citing 5 U.S.C. § 706(2)(A), (C)). Count II under the APA alleges that the Policy is "arbitrary, capricious, and an abuse of discretion within the meaning of 5 U.S.C. § 706(2)(A)" for allegedly failing to give a reasoned explanation, failing to consider important aspects of the problem, and departing without explanation from prior policy on visa adjudication. *Id.* ¶¶ 105–10. Count III

[3] Plaintiffs attach as Exhibit 1 to their Amended Complaint a document which purports to be a document from State's consulate in Almaty, Kazakhstan, writing that applicants will be refused under INA § 221(g). Compl. Ex. 1. However, this document, undated, is irrelevant because none of the Plaintiffs are from Kazakhstan or applied for visas at the consulate there.

under the APA alleges that the "National Interest Exception Policy is arbitrary and capricious and contrary to law" for two reasons: they allege, (1) "the Department has maintained an exception process in name while rendering it unattainable in fact," and (2) "[b]y assigning national interest exception determinations to Chiefs of Mission rather than to the consular officers[.]" *Id.* ¶¶ 111–17. Count IV under the APA alleges, for the "Pending Adjudication and Administrative-Processing Plaintiffs Only," that State has unlawfully withheld or unreasonably delayed adjudication of their visa applications, either by failing to decide them, issuing refusals under 8 U.S.C. § 1201(g), or issuing refusals under 8 U.S.C. § 1182(f). *Id.* ¶¶ 118–125. Count IV is very much like the ordinary wave of visa mandamus claims which have flooded this Court.[4]

As relief, Plaintiffs seek new decisions on their visa applications. *Id.* at 30. Specifically, Plaintiffs seek, inter alia, that the Court declare that "8 U.S.C. § 1182(f) does not authorize Defendants to suspend the issuance of visas, to decline to review and adjudicate visa applications, or to refuse a visa application," that the Court "[d]eclare unlawful and set aside" the State Department's implementation of Proclamation 10,949 and Proclamation 10,998 with respect to adjudication of visas, including the guidance of December 23, 2025," "[d]eclare unlawful and set aside the National Interest Exception Policy," "[e]njoin Defendants from refusing, declining to

[4] In the original Complaint, Count III, under the APA, brought only for those Plaintiffs seeking immigrant (as opposed to non-immigrant) visas, alleged that State unlawfully suspended adjudicating and issuing visas based on the Proclamations because this ran afoul of § 1152(a)(1)(A)'s prohibition on national origin discrimination, is *ultra vires*, otherwise not in accordance with the law, and short of statutory right. Compl. ¶¶ 94–99 (ECF No.1); *see also id.* ¶ 71. In other words, Plaintiffs argued that State's application of § 212(f) denials based on the Proclamations violated Section 1152's prohibition on national origin discrimination as to immigrant visas.

Defendants moved to dismiss this count and argued that Section 1152's prohibition did not apply to Plaintiffs' claims. ECF No. 6 at 14–16. In response, Plaintiffs dropped this claim. The Amended Complaint does not include this claim. So Defendants do not further discuss that claim.

adjudicate, or suspending the adjudication of Plaintiffs' visa applications on the basis of 8 U.S.C. § 1182(f), Proclamation 10,949, Proclamation 10,998, or any guidance implementing them;" "[c]ompel Defendants to review and adjudicate the visa applications of the Pending-Adjudication and Administrative-Processing Plaintiffs within a reasonable time, and to do so applying the same standards applied in every other case, without regard to 8 U.S.C. § 1182(f);" and "exten[d] [ ] the validity of medical examinations and police clearance certificates." *Id.* at 29-30 (Prayer for Relief).

LEGAL STANDARDS

Under Rule 12(b)(1), a plaintiff bears the burden of establishing jurisdiction by a preponderance of the evidence. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992). A court considering a Rule 12(b)(1) motion must "assume the truth of all material factual allegations in the complaint and 'construe the complaint liberally, granting plaintiff the benefit of all inferences that can be derived from the facts alleged.'" *Am. Nat'l Ins. Co. v. FDIC*, 642 F.3d 1137, 1139 (D.C. Cir. 2011) (quoting *Thomas v. Principi*, 394 F.3d 970, 972 (D.C. Cir. 2005)). A court may examine materials outside the pleadings as it deems appropriate to resolve the question of its jurisdiction. *See Herbert v. Nat'l Acad. of Scis.*, 974 F.2d 192, 197 (D.C. Cir. 1992).

Under Rule 12(b)(6), the Court may dismiss a Complaint where a plaintiff fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When resolving a motion to dismiss pursuant to Rule 12(b)(6), the pleadings are construed broadly so that all facts pleaded therein are accepted as true, and all inferences are viewed in a light most favorable to the plaintiff. *See Iqbal*, 556 U.S. at 678. A court, however, is not required to accept conclusory allegations or unwarranted factual deductions

as true. *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. Likewise, a court need not "accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Ultimately, the focus is on the language in the complaint and whether that sets forth sufficient factual allegations to support a plaintiff's claims for relief.

Under the APA, a court may "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). "The scope of review under the 'arbitrary and capricious' standard is narrow and a court is not to substitute its judgment for that of the agency." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). An agency action is arbitrary and capricious when "the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Id.*

ARGUMENT

I. The Pending-Adjudication Plaintiffs Lack Article III Standing Because They Lack a Cognizable Injury In Fact or an Injury Traceable to State Department Policy

"The Constitution grants Article III courts the power to decide 'Cases' or 'Controversies.'" *Carney v. Adams*, 592 U.S. 53, 58 (2020) (citing Art. III, § 2). The Supreme Court "[has] long understood that constitutional phrase to require that a case embody a genuine, live dispute between adverse parties, therefore preventing the federal courts from issuing advisory opinions." *Id.*

Plaintiffs suing in federal courts must have standing to raise their claims. *City of Waukesha v. E.P.A.*, 320 F.3d 228, 233 (D.C. Cir. 2003) (citing *Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002). This requires a plaintiff to "show (1) it has suffered a 'concrete and particularized'

injury (2) that is 'fairly traceable to the challenged action of the defendant' and (3) that is 'likely' to be 'redressed by a favorable decision,' *i.e.*, a decision granting the plaintiff the relief it seeks."' *Elec. Priv. Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity*, 878 F.3d 371, 377 (D.C. Cir. 2017) (citing *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102 (1998). The plaintiff carries the burden of establishing these factors. *Tanner-Brown v. Haaland*, 105 F.4th 437, 443 (D.C. Cir. 2024) (citing *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015)). Courts examining a plaintiff's standing "accept facts alleged in the complaint as true and draw all reasonable inferences from those facts in the plaintiffs' favor." *Humane Soc'y of the U.S. v. Vilsack*, 797 F.3d 4. 8 (D.C. Cir. 2015) (citing *Bell Atl. Corp.*, 550 U.S. at 556–57).

A. The Pending-Adjudication Plaintiffs Have No Injury

The first prong of standing requires a plaintiff to show that it suffered an injury-in-fact that is "concrete, particularized, and . . . 'actual or imminent' rather than speculative." *Attias v. Carefirst, Inc.*, 865 F.3d 620, 625 (D.C. Cir. 2017) (citations omitted). And in support, the "plaintiff must allege some 'concrete interest' that is 'de facto,' 'real,' and 'actually exist[s].'" *Hancock v. Urban Outfitters, Inc.*, 830 F.3d 511, 514 (D.C. Cir. 2016) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016)). This is generally satisfied by a showing of a "tangible harm," such as physical or monetary damage, but may include "intangible harms." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021). However, to allege an intangible harm sufficient to establish standing, plaintiffs must show that the harm is one "that has traditionally been regarded as providing a basis for a lawsuit in English or American courts." *Jeffries v. Volume Servs. Am., Inc.*, 928 F.3d 1059, 1064 (D.C. Cir. 2019) (citing *Spokeo*, 578 U.S. at 340).

The "Pending-Adjudication Plaintiffs"—those Plaintiffs who have not appeared for a consular interview and made and executed a visa application, Am. Compl. ¶ 87—lack standing.

They have not made visa applications, and consequently, State has not yet adjudicated their visa applications, so they have not suffered an injury.

B. The Pending-Adjudication Plaintiffs Have Not Alleged An Injury Traceable to State Department Policy

The Pending-Adjudication Plaintiffs have no injury traceable to State's implementation of the two Proclamations. The second prong of standing requires plaintiffs to show "a causal connection between the asserted injury and the challenged conduct, such that the injury is fairly traceable to the challenged conduct and not the result of independent action by a third party not before the court." *Freedom Republicans, Inc. v. Fed. Election Comm'n*, 13 F.3d 412, 415 (D.C. Cir. 1994). That causal connection must be clear, as "the mere possibility that causation is present is not enough; the presence of an independent variable between either the harm and the relief or the harm and the conduct makes causation sufficiently tenuous that standing should be denied." *Mideast Sys. & China Civ. Const. Saipan Joint Venture, Inc. v. Hodel*, 792 F.2d 1172, 1178 (D.C. Cir. 1986). For the Pending-Adjudication Plaintiffs, put another way, they have not plausibly alleged that they have not received decisions on their unexecuted visa applications or scheduled interviews because of State's implementation of the two Proclamations. Accordingly, the Pending-Adjudication Plaintiffs have not offered "substantial evidence of a causal relationship" to remove any doubt of causation and affirm that favorable adjudication would redress the claimed injury. *Nat'l Wrestling Coaches Ass'n v. Dep't of Educ.*, 366 F.3d 930, 941 (D.C. Cir. 2004), *abrogated on other grounds*, *Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 620 (D.C. Cir. 2017).

Thus, with respect to State's implementation of the two Proclamations, the Pending-Adjudication Plaintiffs seek only an advisory opinion. "[W]hat makes [a judicial pronouncement]—a proper judicial resolution of a 'case or controversy' rather than an advisory opinion—is in the settling of some dispute *which affects the behavior of the defendant towards the*

plaintiff." *Nat'l Ass'n of Home Builders v. Salazar*, 827 F. Supp. 2d 1, 7 (D.D.C. 2011) (emphasis in original; citing *Hewitt v. Helms*, 482 U.S. 755, 761 (1987)). Thus, a declaratory judgment itself cannot be the relief sought if there is no corresponding relief that would compel a change between the parties. *See Hewitt*, 482 U.S. at 761, ("At the end of the rainbow lies not a judgment, but some action (or cessation of action) by the defendant that the judgment produces—the payment of damages, or some specific performance, or the termination of some conduct.").

Therefore, the Pending-Adjudication Plaintiffs lack standing.

II. Plaintiffs' Claims (Counts I-IV) Fail Under the Consular Nonreviewability Doctrine

Because all Plaintiffs are seeking to compel action after a consular officer has refused the requested visas (with the exception of the Pending-Adjudication Plaintiffs, who should be dismissed for lack of standing, *see supra*), this suit runs headfirst into the consular nonreviewability doctrine. This requires the dismissal of all claims under Rule 12(b)(6). Most recently, the Supreme Court reaffirmed this doctrine, and its scope, in *Department of State v. Muñoz*, 602 U.S. 899 (2024). There, the Supreme Court recognized "the longstanding principle 'that the United States can, as a matter of public policy . . . forbid [noncitizens] or classes of [noncitizens] from coming within their borders,' and '[n]o limits can be put by the courts upon' that power." *Id.* at 915 (quoting *Wong Wing v. United States*, 163 U.S. 228, 237 (1896)). Further, "Congress may delegate to executive officials the discretionary authority to admit noncitizens" which is "immune from judicial inquiry or interference." *Id.* at 907–08 (citing *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–91 (1952)). And upon exercising this authority, the consular officer's decision "'to admit or to exclude [a noncitizen]' 'is final and conclusive.'" *Id.* (quoting *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950)). Rather than explicitly cabin the doctrine of consular nonreviewability, the Supreme Court emphasized that the INA "does

not authorize judicial review of a consular officer's denial of a visa" absent express congressional authorization. *Id.*

The D.C. Circuit has been equally clear, "[c]onsular nonreviewability shields a consular officer's decision to issue *or withhold* a visa from judicial review, at least unless Congress says otherwise." *Baan Rao Thai Rest. v. Pompeo*, 985 F.3d 1020, 1024 (D.C. Cir. 2021) (emphasis added) (citing *Saavedra Bruno v. Albright*, 197 F.3d 1153, 1159 (D.C. Cir. 1999)); *see also Colindres v. Dep't of State*, 71 F.4th 1018, 1021 (D.C. Cir. 2023) ("Reflecting the limited role of the judiciary, the consular-non-reviewability doctrine shields a consular official's decision to issue or withhold a visa from judicial review, with two narrow exceptions." (citation modified)). This is because "[d]ecisions regarding the admission and exclusion of noncitizens may implicate relations with foreign powers, or involve classifications defined in the light of changing political and economic circumstances and, accordingly, such judgments are frequently of a character more appropriate to either the Legislature or the Executive." *Baan Rao*, 985 F.3d at 1024 (citation modified); *see Knauff*, 338 U.S. at 543 ("it is not within the province of any court, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given [noncitizen]"); *Wan Shih Hsieh v. Kiley*, 569 F.2d 1179, 1181 (2d Cir. 1978) (stating it is "settled that the judiciary will not interfere with the visa-issuing process").

Indeed, by confining the two limited exceptions to the doctrine and noting that the doctrine prevents review of decisions to "withhold" visas, the Supreme Court's approach in *Muñoz* and the D.C. Circuit's approach in *Baan Rao* mirrors the widely held view of courts in the Second Circuit that "the doctrine of consular nonreviewability applies not only when 'a plaintiff challenges an official's discretionary decision to approve or deny a visa application,' but also 'where a plaintiff seeks to compel an official to simply adjudicate a visa application.'" *Abdo v. Tillerson*, Civ. A.

No. 17-7519, 2019 WL 464819, at *3 (S.D.N.Y. Feb. 5, 2019) (collecting cases; noting limited exception for "cases brought by U.S. citizens raising constitutional, rather than statutory, claims"). As such, under the Supreme Court's and D.C. Circuit's recent guidance, Plaintiffs' complaint fails to state a claim for relief. *Baan Rao*, 985 F.3d at 1027–29.

No matter how Plaintiffs' challenges are construed, they contravene the principles of the consular nonreviewability doctrine. This includes whether Plaintiffs' claims are viewed as alleging unreasonable delay, withholding of a duty, or mandamus. Because Plaintiffs' applications have been refused, that compels the conclusion that the consular nonreviewability doctrine is implicated and precludes any judicial intervention in Plaintiffs' visa cases. *See Muñoz*, 602 U.S. at 908 ("The action of an executive officer to admit or exclude an alien is final and conclusive."); *Thein v. Trump*, Civ. A. No. 25-2369 (SLS), 2025 WL 2418402, at *7 (D.D.C. Aug. 21, 2025). Plaintiff pleads the same claim as challenges to both State's implementation of Presidential Proclamations 10,949 and 10,998.[5]

Thus, the Court should dismiss all of Plaintiffs' claims under the consular non-reviewability doctrine.

III. The Presidential Proclamations 10,949 and 10,998 and the State Department's Implementation of Them Is Neither Arbitrary Nor Capricious

A. The State Department's Approach Is Lawful Under the Rules of the Supreme Court's Decision in *Trump v. Hawaii*

Even if the consular nonreviewability doctrine did not pose a bar to this suit, Plaintiffs' claims fail. It is lawful for consular officers to rely on proclamations issued pursuant to 8 U.S.C.

[5] Moreover, for Plaintiffs whose visas were refused, any claim of unreasonable delay is moot. *See Mehneh v. Rubio*, 164 F.4th 928, 931 (D.C. Cir. Jan. 16, 2026) ("Because the Department completed administrative processing and issued the visa, we 'cannot grant any effectual relief' to Mr. Nejat." (quoting *Calderon v. Moore*, 518 U.S. 149, 150 (1996))).

§ 1182(f) to deny visa applications. Further, Defendant's policy of refusing visa applications to aliens covered by the Proclamations is not arbitrary and capricious.

A visa allows a noncitizen to "obtain transportation to the United States" and seek admission at a port of entry. 1 Charles Gordon et al., *Immigration Law and Procedure* § 8.04[1] (2016). Under Section 1201(g), a visa may not be issued if the applicant "is ineligible to receive a visa … under section 1182 of [the INA], or any other provision of law." 8 U.S.C. § 1201(g). That text reflects a commonsense design under which consular officers issue visas to persons whom they assess will be able to enter the country under Section 1182, but not to persons whom they assess to be unable to enter the country.

In *Trump v. Hawaii*, the Supreme Court recognized the logic of this structure. Section 1182 "defines the pool of individuals who are admissible to the United States," and its "restrictions come into play at two points in the process of gaining entry (or admission) into the United States." *Hawaii*, 585 U.S. at 695. First, "any alien who is inadmissible under § 1182 . . . is screened out as 'ineligible to receive a visa'" (and thus is ineligible to enter the United States). *Id.* (citing 8 U.S.C. § 1201(g)). Second, even if a consular officer issues a visa, admission is not guaranteed: a visa does not entitle a noncitizen to be admitted to the United States if, upon arrival at a port-of-entry, an officer with the Department of Homeland Security determines that he is "inadmissible under this chapter, or any other provision of law—including Section 1182(f)." *Id.* (citing 8 U.S.C. § 1201(h)). Congress thus created a "'double check' system, which requires an alien to demonstrate his admissibility before two different administrative officials with independent and coequal authority." *Castaneda-Gonzalez v. INS*, 564 F.2d 417, 426–27 (D.C. Cir. 1977). "[T]he statutory framework . . . requires consular officers and [DHS] independently to address the same issues in different contexts." *Id.*

Accordingly, "[b]efore issuing a visa, the consular officer must ensure the alien is not inadmissible under any provision of the INA." *Kerry v. Din*, 576 U.S. 86, 89 (2015) (plurality opinion) (citing 8 U.S.C. § 1361). That includes ensuring that the alien is not barred from entering the country under Section 1182(f), which provides that the President "may . . . suspend entry of . . . any class of aliens . . . or impose on the entry of aliens any restrictions he may deem to be appropriate." 8 U.S.C. § 1182(f).

The Presidential Proclamations at issue here are materially indistinguishable from the Presidential proclamation approved in *Trump v. Hawaii*, 585 U.S. 667 (2018). As the Supreme Court held in that case, "By its plain language, § 1182(f) grants the President broad discretion to suspend the entry of aliens into the United States. . . . § 1182(f) exudes deference to the President in every clause. . . . It is therefore unsurprising that we have previously observed that § 1182(f) vests the President with 'ample power' to impose entry restrictions in addition to those elsewhere enumerated in the INA." *Hawaii*, 585 U.S. at 683–84.

The Plaintiffs here, like the foreign nationals considered in *Hawaii*, are noncitizens outside of the United States. Thus, challenges to the lawfulness of the Proclamation here "would be futile." *Jahani v. Rubio,* Civ. A. No. 25-0989 (TSC), 2025 WL 3653542, at *6 (D.D.C. Dec. 17, 2025). Therefore, all four counts of the Complaint fail.

B. Plaintiffs' Argument Ignores How Entry and Visas Are Intertwined

Plaintiffs' challenge to State Department policy fails because Plaintiffs' reading of the statute—that visas and entry are two entirely separate workstreams (Am. Compl. ¶¶ 1-5)—ignores the way in which visas and entry are intertwined. Under Section 1201(g), a visa may not be issued if "the consular officer knows or has reason to believe that such [noncitizen] is ineligible to receive a visa or such other documentation under section 1182 of this title, or any other provision of law[.]" Accordingly, "[b]efore issuing a visa, the consular officer must ensure the alien is not inadmissible

under any provision of" the INA, and specifically Section 1182. *Kerry v. Din*, 576 U.S. 86, 89 (2015) (plurality opinion) (citing 8 U.S.C. § 1361); *see also Din*, 576 U.S. at 102 (Kennedy, J., concurring) ("[t]he plurality is correct" that the visa was properly denied but did not need to "decid[e] … whether Din has a protected liberty interest"); *accord Aramnahad v. Rubio*, Civ. A. No. 24-1817 (MAU), 2025 WL 3706645, at *4 (D.D.C. Dec. 22, 2025) ("[T]he 212(f) Refusal *is* a final decision on Plaintiffs' visa application."). In *Castaneda-Gonzalez v. INS*, the D.C. Circuit explained that "consular officers" at State and individuals who are now at DHS both "address the same issues in different contexts" when they review visa applications and admissibility for entry. 564 F.2d 417, 427 (D.C. Cir. 1977). Therefore, the consular officers, applying the same standard, should not issue visas to individuals inadmissible under Section 212(f) and the proclamation issued thereunder.

Congress's actions reinforce this reading of the statute. For instance, the Homeland Security Act of 2002 made plain that Congress understood and ratified the State Department's practice of denying visas to people subject to a Presidential proclamation by specifying that "[n]othing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under . . . 8 U.S.C. § 1182(f)." 6 U.S.C. § 236(d)(2); *see also* 6 U.S.C. § 236(c)(2)(H) (addressing "the authorities of the Secretary of State under . . . 8 U.S.C. 1182(f))"). Sections 1182e(a) and 1182f(a) provide further statutory support. The title of each section explains that it is about "denial of entry." To implement that denial, the "Secretary [] may not issue any visa to" covered individuals. 8 U.S.C. § 1182e(a); 8 U.S.C. § 1182f(a).

Similarly, Presidential proclamations have been implemented by the Secretary of State through visa denials for decades. *See, e.g.*, Proclamation 6574, § 6, 58 Fed. Reg. 34,209, 34,209

(June 21, 1993) ("The Secretary of State shall have responsibility to implement this proclamation pursuant to procedures that the Secretary may establish."); Proclamation 6730, § 5, 59 Fed. Reg. 50,683 (Sept. 30, 1994); Proclamation 6925, § 6, 61 Fed. Reg. 52,233, 52,234 (Oct. 3, 1996) ("The Secretary of State shall have responsibility to implement this proclamation pursuant to procedures the Secretary may establish."); Proclamation 7452, § 5, 66 Fed. Reg. 34,775, 34,776 (June 29, 2001) ("The Secretary of State shall have responsibility for implementing this proclamation pursuant to such procedures as the Secretary may establish."); Proclamation 7524, § 5, 67 Fed. Reg. 8857, 8858 (Feb. 22, 2002) ("The Secretary of State shall have responsibility for implementing this proclamation pursuant to such procedures as the Secretary may establish."); Proclamation 8693, § 3, 76 Fed. Reg. 44,751, 44,751 (July 24, 2011) ("The Secretary of State shall have responsibility for implementing this proclamation pursuant to such procedures as the Secretary, in consultation with the Secretary of the Treasury and Secretary of Homeland Security, may establish."). If the entry restrictions had no bearing on visa issuance, implementation would have been assigned to the Attorney General (head of the legacy Immigration and Naturalization Service) or the Secretary of Homeland Security (in charge of U.S. Customs and Border Protection).

As part of its argument that visas and entry are two entirely separate workstreams, Plaintiffs point to 8 U.S.C. § 1202(b), which states in part, "All immigrant visa applications shall be reviewed and adjudicated by a consular officer." 8 U.S.C. § 1202(b). Although Plaintiffs contend that this language creates a nondiscretionary duty to process their visa applications, Plaintiffs misread the statute. Contrary to Plaintiffs' assertion, it merely "concludes" a paragraph that "describes the documentation that visa applicants must provide, to whom they must provide it." *Babamuradova v. Blinken*, 633 F. Supp. 3d 1, 14 (D.D.C. 2022); *Zarei v. Blinken*, Civ. A. No. 21-2102 (CJN), 2021 WL 9146060, at *1 (D.D.C. Sept. 30, 2021) (similar). Section 1202(d)'s final

sentence provides, "All nonimmigrant visa applications shall be reviewed and adjudicated by a consular officer." "[R]ead in context, the last sentence of § 1202(b) more likely dictates who reviews visa applications without creating a nondiscretionary duty to adjudicate any particular application within a given timeframe." *Khamrabaeva v. Blinken*, Civ. A. No. 22-1219 (RC), 2022 WL 4446387, at *6 (D.D.C. Sept. 24, 2022). And even if the statute imposed a non-discretionary duty, Plaintiff cannot reasonably dispute that the government has done all that was required because a consular officer has "reviewed and adjudicated" his visa application.

Plaintiffs' argument, that section 1202(b) mandates processing and issuing their visas, would have the State Department act as though the Proclamations at-issue did not exist. But issuing a proclamation that limits entry does not limit consular officers' "authority" any more than any other grounds of inadmissibility prescribed by statute or regulation. *Cf. Kolesnikov*, 2024 WL 3638345, at *2 (plaintiff cannot demand consular officers "exercise actual discretion in processing and adjudicating [a] new application for a [ ] visa[]").

Furthermore, decoupling admissibility from the visa issuance process would be illogical. Under Plaintiffs' view, consular officers would be compelled to issue visas to someone who cannot enter the country in any event. It would potentially encourage the unwary to engage in illegal activity. *See* 8 U.S.C. § 1185(a) (unlawful "for any [noncitizen] to . . . attempt to . . . enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe"). It would unnecessarily burden Customs and Border Patrol with the duty to turn away noncitizens with visas that are inadmissible, which would be nontrivial given the scope of the relevant proclamations. Plaintiffs' atom-splitting on admissibility does not accord with the statute or policy.

C. Visa Refusals Under Section 1182(f) Also Comport with Prior Congressional Enactments and Historical State Department Practice

To the extent there is dispute about the meaning of the statute's text, "[p]ast practice drives the point home." *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin*, 174 F.4th 81, 101 (D.C. Cir. 2026) (looking to how Section 212(f) proclamations were used); *accord Abourezk v. Reagan*, 785 F.2d 1043, 1054–55 (D.C. Cir. 1986) ("[E]vidence of congressional acquiescence . . . in an administrative construction of the statutory language during the thirty-four years since the current act was passed could be telling. Information about such acquiescence, or the absence of it, would rank as a significant indicator of the legislature's will."), *aff'd by an equally divided court*, 484 U.S. 1 (1987). Consistent with the double-check system Congress established, the State Department has long considered noncitizens who are barred from entry by exercises of the President's Section 1182(f) authority to be ineligible for visas, as reflected in the Foreign Affairs Manual. *See* 9 FAM 302.14-3(B). Presidential proclamations have thus been implemented by the Secretary of State through visa denials for decades. *See Washington v. Trump*, 858 F.3d 1168, 1176 (9th Cir. 2017) (Bybee, J., dissenting from denial of reconsideration en banc) ("Many presidents have invoked the authority of § 1182(f) to bar the entry of broad classes of aliens from identified countries."). For examples, see Proclamation No. 5517, § 2, 51 Fed. Reg. 30,470 (Aug. 26, 1986); Proclamation No. 6574, § 6, 58 Fed. Reg. 34,209 (June 21, 1993) ("The Secretary of State shall have responsibility to implement this proclamation pursuant to procedures that the Secretary may establish."); Proclamation No. 6730, § 5, 59 Fed. Reg. 50,683 (Sept. 30, 1994); Proclamation No. 6925, § 6, 61 Fed. Reg. 52,233, 52,234 (Oct. 3, 1996); Proclamation No. 7452, § 5, 66 Fed. Reg. 34,775, 34,776 (June 29, 2001); Proclamation No. 7524, § 5, 67 Fed. Reg. 8857, 8858 (Feb. 22, 2002); and Proclamation No. 8693, §§ 2-3, 76 Fed. Reg. 44,751 (July 24, 2011).

If the entry restrictions had no bearing on visa issuance, it would have made more sense to place implementation in the hands of the Attorney General (head of the legacy Immigration and Naturalization Service) or the Secretary of Homeland Security (in charge of U.S. Customs and Border Protection). Thus, State has properly denied visas based on these proclamations for decades. *See, e.g.*, *Encuentro Del Canto Popular v. Christopher*, 944 F. Supp. 805, 806 (N.D. Cal. 1996) (upholding refusal of visa under Section 212(f)).

Congress has also repeatedly recognized that visas may be denied to persons who cannot enter the country due to a proclamation under Section 1182(f), as it has several times enacted provisions calling on or assuming the State Department's authority to deny visas based on an entry restriction under the provision. For example, in the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995, Congress specified that consular officers must check the Automated Visa Lookout System "or any other system . . . which maintains information about the excludability of aliens under the [INA] [and that] there is no basis under such system for the exclusion of such alien."[6] Pub. L. No. 103-236, § 140(c), 108 Stat. 382, 399–400 (1994), *as amended*, Pub. L. No. 103–415, § 1(d), 108 Stat. 4299, 4299 (1994) (codified at 8 U.S.C. § 1182 note). Congress required the Attorney General and the Secretary of State to develop "exclusion lists" that both sets of officials would use—one abroad and one at ports of entry—to identify aliens who were excludable. *See* Immigration Act of 1990, Pub. L. No. 101-649 § 601(c), 104 Stat. 4978, 5075 (8 U.S.C. § 1182 note).

Similarly, the Homeland Security Act of 2002 made plain that Congress understood and ratified the State Department's practice of denying visas to people subject to a Presidential

[6] The term "excludable" in the statute was the precursor to the term "inadmissible," *see Judulang v. Holder*, 565 U.S. 42, 46 (2011), which itself is "used interchangeably" with entry, *see Hawaii*, 585 U.S. at 695 n.4.

proclamation by specifying that "[n]othing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)[.]" 6 U.S.C. § 236(d)(2); *see also* 6 U.S.C. § 236(c)(2)(H) (addressing "the authorities of the Secretary of State under … 8 U.S.C. 1182(f))"). In referencing the role of the *Secretary*, Congress was referring to the denial of visas, as Presidents have long directed the Secretary of State to implement proclamations by denying visas, as discussed above. *See, e.g.*, Proclamation No. 6574, § 6. Congress accordingly recognized and ratified this practice in 6 U.S.C. § 236(c)(2)(H) and (d)(2). A contrary reading would effectively render these Homeland Security Act provisions of little significance. *See T.R.W. Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (stating that a statute should be construed so that "no clause, sentence, or word shall be superfluous, void, or insignificant" (quoting *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (internal quotation marks omitted))).

Similarly, the Cuban Liberty and Democratic Solidarity Act of 1996 also showed that Congress understood visas were denied to people subject to a Presidential proclamation. That law specified that "[i]t is the sense of the Congress that the President should instruct the Secretary [] and the Attorney General to enforce fully existing regulations to deny visas to Cuban nationals considered by the Secretary [] to be officers or employees of the Cuban Government or of the Communist Party of Cuba." *See* Pub. L. No. 104-114, § 102(e), 110 Stat. 785, 793 *codified at* 22 U.S.C. § 6032(e). At the time, the only authority that allowed the denial of visas to Cuban officials or communist party members as such was a proclamation under § 1182(f)—Proclamation No. 5377, 50 Fed. Reg. 41,329 (Oct. 4, 1985). Thus, Congress expressly linked visa denial to a bar on entry. Similarly, in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Congress provided in Section 570(a) that "the United States should not grant entry visas to any

Burmese government official" with limited exceptions until the government of Burma "implement[ed] democratic government." Pub. L. No. 104-208, § 570(a)(3), 110 Stat. 3009, 3009-166. Congress provided no new authority in the INA to achieve that objective, but within a week of it becoming law, President Clinton issued Proclamation No. 6925, invoking Section 1182(f) to suspend entry of Burmese nationals "who formulate, implement, or benefit from policies that impede Burma's transition to democracy." 61 Fed. Reg. 52,233, 52,233 (1996).

The headings in Sections 1182e and 1182f provide further statutory support. Those provisions refer to "denial of entry" and then provides that, to implement that denial, the "Secretary shall direct consular officers not to issue a visa to" covered individuals. 8 U.S.C. §§ 1182e(a), 1182f(a). This is not materially different form 8 U.S.C. § 1182d(a), which refers to "Denial of visas" in its heading.

Plaintiffs' interpretation would require consular officers to issue visas, notwithstanding a Section 1182(f) entry bar, knowing that CBP officers would be required to deny entry to those very visa holders. It would also require the State Department to issue documents suggesting the opposite of the Executive's policy; namely, that the bearer may not enter the country. Moreover, requiring the State Department to issue visas to individuals who will be denied entry may create unintended administrative confusion, resource costs, and risks to national security. *Milligan v. Pompeo*, 502 F. Supp. 3d 302, 316 (D.D.C. 2020) ("[T]he Court acknowledges Defendants' concern that 'requiring consular officers to issue visas to aliens subject to presidential exclusion orders under section 1182(f) would create unnecessary confusion and could lead to screening errors of aliens whose presence in the United States may compromise national security.'"). In *Milligan*, the Court suggested this could be avoided if Defendant declined to issue visas to individuals ineligible under other sections or law. *See Milligan*, 502 F. Supp. 3d at 316. But the

confusion runs deeper than that. The automatic consequence of Plaintiffs' reading of the statue is that the government would be forced to issue visas to individuals who must be turned away at the border. Indeed, this could subject those individuals to criminal liability because they are likely to believe their visa grants them the right to enter the United States. *See* 8 U.S.C. § 1185(a) (unlawful "for any [noncitizen] to . . . attempt to . . . enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe").

Moreover, the State Department, Department of Homeland Security, or both, may have to explain to officers at ports of entry to beware of aliens who have valid visas but are nonetheless ineligible to enter under the Proclamations. This in turn could result in the unintended entry of inadmissible aliens as the Government will have lost one check of the dual screen for admissibility that Congress established, or at the very least could result in confusion and administrative burdens. Such an outcome would be absurd.

D. The Consular Nonreviewability Doctrine Bars Plaintiffs' Indirect Challenge to Denial of their Visa Applications by Their Claims that the State Department Has a Legally Impermissible Policy

Plaintiffs also indirectly challenge the two Proclamations, arguing that there is a material, legal distinction between entry and visas. As addressed above, they argue that the President can lawfully deny entry under Section 212(f) but that they still must receive visas. At bottom, Plaintiffs' challenge to a purported policy is really a challenge to the nonreviewable decision to refuse their visas, as discussed above. The doctrine of consular nonreviewability still applies even if, as Plaintiffs allege, the Department misapplied the law: "The doctrine [of consular nonreveiwability] sweeps wide and deep." *Aboutalebi v. Dep't of State*, Civ. A. No. 19-2605 (TJK), 2019 WL 6894046, at *3 (D.D.C. Dec. 18, 2019). It precludes judicial review "even where it is alleged that the consular officer failed to follow regulations, where the applicant challenges

the validity of the regulations on which the decision was based, or where the decision is alleged to have been based on a factual error." *Id.* (quoting *Van Ravenswaay v. Napolitano*, 613 F. Supp. 2d 1, 4 (D.D.C. 2009)); *see also Rahman v. Blinken*, Civ. A. No. 23-3235 (JDB), 2024 WL 4332603, at *6 (D.D.C. Sept. 27, 2024) ("Nor can a court review such a decision where it 'is alleged to have been based on a factual or legal error.'" (quoting *Chun v. Powell*, 223 F. Supp. 2d 204, 206 (D.D.C. 2002))). Specifically, *Aboutalebi* rejected Plaintiff's argument that the denial of a noncitizen's visa application was "unlawful" because a presidential proclamation "concern[ed] 'suspension of entry,' which she argues is separate from a finding of ineligibility for a visa." 2019 WL 6894046, at *3. The court explained that that purported distinction "makes no difference here, because [the plaintiff's] claims challenge the reason for the denial of her specific visa application, which is prohibited by the doctrine [of consular non-reviewability]." *Id.* (citing *Saavedra Bruno*, 197 F.3d at 1160).

A plaintiff cannot "circumvent the doctrine by claiming that he is not seeking a review of the consular officer's decision, but is challenging some other, related aspect of the decision[,]" by seeking, for example, "an order requiring Defendants to . . . 'exercise actual discretion in processing and adjudicating Plaintiffs' new application for a [ ] visa[.]'" *Kolesnikov v. Blinken*, Civ. A. No. 23-1675 (TSC), 2024 WL 3638345, at *2 (D.D.C. Aug. 2, 2024). *See also Malyutin v. Rice*, 677 F. Supp. 2d 43, 46 (D.D.C. 2009), *aff'd*, No. 10-5015, 2010 WL 2710451 (D.C. Cir. July 6, 2010) (rejecting a plaintiff's "attempts to circumvent the doctrine [of consular nonreviewability] by claiming that he is not seeking a review of the consular officer's decision, but is challenging some other, related aspect of the decision."); *Edae v. U.S. Dep't of State*, Civ. A. No. 21-2048 (CRC), 2022 WL 3211760, at *3 (D.D.C. Aug. 9, 2022) (rejecting plaintiffs' "proposed procedural exception," including argument that consular officer failed to comply with 22 C.F.R. § 41.105.

The doctrine of consular nonreviewability applies quite broadly, including, as here, "where it is alleged that the consular officer failed to follow regulations, where the applicant challenges the validity of the regulations on which the decision was based, or where the decision is alleged to have been based on a factual error"); *Keyhanpoor v. Blinken*, 633 F. Supp. 3d 88, 95 (D.D.C. 2022) ("Plaintiffs' APA claim asks the Court to look behind the consular officers' refusals of the IRGC Plaintiffs' visa applications to the merits and policies informing those outcomes. But under the consular nonreviewability doctrine, it cannot.").

Again, all Plaintiffs' claims should be dismissed because Defendants' actions are not arbitrary, capricious, or contrary to law.

IV. Defendants' Policy Is Not Arbitrary and Capricious (Count II)

Count II raises an arbitrary and capricious challenge. Am. Compl. ¶¶ 105–10. "Review under the arbitrary and capricious standard is deferential," *Home Builders*, 551 U.S. at 658 (2007), and a "court is not to substitute its judgment for that of the agency," *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 513-14 (2009). Courts will not find an agency's decision arbitrary and capricious unless it: (i) "has relied on factors which Congress had not intended it to consider"; (ii) "entirely failed to consider an important aspect of the problem"; (iii) "offered an explanation that runs counter to the evidence before the agency"; or (iv) "is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicles Mfrs.*, 463 U.S. at 43. Courts will uphold even "a decision of less than ideal clarity" as long as "the agency's path may reasonably be discerned." *Home Builders*, 551 U.S. at 658 (citation omitted).

Here, the State Department's decision to refuse visas to aliens from countries covered by the Proclamations is both reasonable and reasonably explained. Initially, Defendants refer the Court to the discussion above regarding the historical use of Section 212(f) of the INA as a ground on which consular officers adjudicate and refuse applications. The Proclamation presupposed that

visas would be refused or even revoked. *See, e.g.*, 90 Fed. Reg. at 24,504 ("No immigrant or nonimmigrant visa issued before the applicable effective date of this proclamation shall be revoked pursuant to this proclamation."); 90 Fed. Reg. at 59,728 (same). The very purpose of the Proclamations is to prevent the issuance of visas to aliens from countries that lack adequate vetting procedures. *See* 90 Fed. Reg. at 24,497 ("[T]he United States must be vigilant during the visa-issuance process to ensure that those aliens approved for admission into the United States do not intend to harm Americans or our national interests."); *id.* at 24,498 ("It is the policy of the United States to protect its citizens from terrorist attacks and other national security or public-safety threats. Screening and vetting protocols and procedures associated with visa adjudications and other immigration processes play a critical role in implementing that policy."); 90 Fed. Reg. at 59,717 ("The United States must exercise extreme vigilance during the visa-issuance and immigration processes to identify, prior to their admission or entry into the United States, foreign nationals who intend to harm Americans or our national interests."); *id.* at 59,718 ("In another country, civil documents like marriage licenses and birth certificates are handwritten and stamped on regular paper, making them highly susceptible to alteration, and there is a fraudulent document market that produces all types of falsified records, making written corroboration of any visa application practically impossible."); *id.* at 59,719 ("excepting most immigrant visa applicants from the countries whose risks and deficiencies most gravely threaten America is inconsistent with protecting our national security and with the purpose of driving greater cooperation and vetting improvements by these specific countries").

Plaintiffs' approach, by contrast, would require consular officers to issue visas to these aliens before their countries have improved procedures. Indeed, striking down the Department's

policy would result in the Department being required to issue visas to nationals of such countries before those countries have improved vetting procedures, jeopardizing national security.

The Department's implementation of the two Proclamations is also consistent with decades of State Department practice, as discussed above. Therefore, Plaintiffs are incorrect to allege that Defendants have changed their position, much less failed to explain it. Am. Compl. ¶ 109.

Finally, Plaintiffs' position would require the State Department to issue official documents to subjects of entry bans that suggest the opposite of the Executive's policy towards them. That is particularly problematic given that Section 1182(f) proclamations are often issued to advance foreign policy objectives. *See, e.g.*, Procl. 6730, *Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Formulate or Implement Policies that Are Impeding the Transition to Democracy in Liberia or Who Benefit from Such Policies*, 59 Fed. Reg. 50,683 (Oct. 5, 1994); Procl. 6958, *Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Are Members or Officials of the Sudanese Government or Armed Forces*, 61 Fed. Reg. 60,007 (Nov. 26, 1996); Procl. 7062, *Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Are Members of the Military Junta in Sierra Leone and Members of Their Families*, 62 Fed. Reg. 2871 (Jan. 16, 1998). Requiring the State Department to issue visas to the subjects of such entry suspensions if those subjects decide to sue would undermine an important foreign policy tool and bring courts into an area that is "vitally and intricately interwoven with both the conduct of foreign relations and the war power—and so is largely immune from judicial inquiry or interference." *Goodluck v. Biden*, 104 F.4th 920, 925 (D.C. Cir. 2024) (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952)) (internal quotation marks omitted); *see also Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 734 (D.C. Cir. 2007) (confirming that "extreme" deferential review is

required "in an area at the intersection of national security, foreign policy, and administrative law"). Thus, Plaintiffs' claims should be dismissed.

V. Plaintiffs Challenge to the Proclamations' National Interest Exception (Count III) Fails

Plaintiffs challenge the Proclamations' National Interest Exception and State's implementation. Am. Compl. ¶¶ 111–17 (Count III). Count III under the APA alleges that the "National Interest Exception Policy is arbitrary and capricious and contrary to law" for two reasons: they allege, (1) "the Department has maintained an exception process in name while rendering it unattainable in fact," and (2) "[b]y assigning national interest exception determinations to Chiefs of Mission rather than to the consular officers[.]" *Id.* ¶¶ 111–17. This challenge fails.

A. The Proclamations' National Interest Exception Does Not Create a Cause of Action

Plaintiffs cannot enforce the "national interest exception" in the Executive Order because the Executive Order is not privately enforceable. The APA "does not expressly allow review of the President's actions." *Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992). "As a general rule, there is no private right of action to enforce obligations imposed on executive branch officials by executive orders." *Hester v. Mayorkas*, Civ. A. No. 21-0639 (DLF), 2022 WL 4464876, at *3 (D.D.C. Sept. 26, 2022) (quoting *Chen Zhou Chai v. Carroll*, 48 F.3d 1331, 1338 (4th Cir. 1995), *superseded on other grounds by statute,* 8 U.S.C. § 1101(a)(42)(B), *as recognized in Li v. Gonzales,* 405 F.3d 171, 176 (4th Cir. 2005)), *aff'd*, No. 22-5312, 2023 WL 3829323 (D.C. Cir. June 2, 2023). The "Supreme Court made clear in *Trump v. Hawaii* that the President had the authority to issue [the Proclamations] under 8 U.S.C. § 1182(f), and the President was under no obligation to allow for waivers at all, as no separate statute or regulation requires waivers." *Joorabi v. Pompeo*, 464 F. Supp. 3d 93, 101 (D.D.C. 2020). "The logical inference is that any

right to have a waiver request adjudicated in a specific manner must be found in the Proclamation itself." *Id.*

Here, each Proclamation expressly says that it "is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person." Proclamation No. 10,949, § 9(c), 90 Fed. Reg. at 24, 504; Proclamation No. 10,998, § 11(c), 90 Fed. Reg. at 59,728. As a result, Plaintiffs have no right to challenge the State Department's implementation of the national interest exception. *See Joorabi*, 464 F. Supp. 3d at 101–02 (no judicial review of application of waivers adjudicated where the proclamation explained it did not create any right). Relatedly, Plaintiffs, who are noncitizens abroad, have no constitutional right to additional "process." *See, e.g.*, *Armah v. Dep't of State*, Civ. A. No. 22-1714 (BAH), 2024 WL 2721634, at *10 (D.D.C. May 28, 2024) ("[A] noncitizen has neither a right to a visa, nor 'a constitutionally-protected interest in the procedures by which such visas are obtained[.]'" (citations omitted)). As a result, Plaintiffs have no right to challenge Defendants' implementation of the National Interest Exemption provision.

Plaintiffs improperly rely on *Moghaddam v. Pompeo*, 424 F. Supp. 3d 104 (D.D.C. 2020), and *Ashtari v. Pompeo*, 496 F. Supp. 3d 462 (D.D.C. 2020). Am. Compl. ¶ 113. *Moghaddam* and *Ashtari* are distinguishable because, in those cases, the courts determined that plaintiffs could bring a claim based on whether the agency was adhering to its "own guidance and pronouncements." *Moghaddam*, 424 F. Supp. 3d at 121; *Ashtari*, 496 F. Supp. 3d at 469. Here, Plaintiffs' challenge is not an *Accardi*-type challenge to Defendant's adherence to its own guidance, but based on Plaintiffs' belief that the Secretary's discretion should be exercised in line with Plaintiffs' preferences. Unlike *Moghaddam* and *Ashtari* where plaintiffs relied on administrative guidance,

Plaintiffs point to nothing when they insist that their eligibility for a visa and for an exception must be evaluated on separate records rather than all at once. As such, it does not fall within the exception to the rule that Presidential proclamations cannot be challenged.

B. The National Interest Exception Provision Also Is Not Reviewable under the APA Because the Discretionary National Interest Determinations Are Committed to Agency Discretion by Law

APA review is unavailable for "agency action [that] is committed to agency discretion by law." 5 U.S.C. § 701(a)(2); *Detroit Int'l Bridge Co. v. Canada*, 883 F.3d 895, 903 (D.C. Cir. 2018). While the APA does allow abuse-of-discretion review of some discretionary agency decisions, *see* 5 U.S.C. § 706(2)(a), agency action remains unreviewable where the relevant statute is "drawn in such broad terms that in a given case there is no law to apply," *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971), or "if no judicially manageable standards are available for judging how and when an agency should exercise its discretion," *CREW v. FEC*, 892 F.3d 434, 441 (D.C. Cir. 2018) (quoting *Heckler v. Chaney*, 470 U.S. 821, 830 (1985)). That is because "[i]f no judicially manageable standards are available for judging how and when an agency should exercise its discretion, then it is impossible to evaluate agency action for 'abuse of discretion.'" *Alhabra v. Rubio*, Civ. A. No. 24-0854 (SLS), 2025 WL 985457, at *6 (D.D.C. Apr. 2, 2025) (quoting *Heckler*, 470 U.S. at 830); *Jafari v. Pompeo*, 459 F. Supp. 3d 69, 76 (D.D.C. 2020) ("Under the APA, a plaintiff may not seek judicial review if the court 'would have no meaningful standard against which to judge the agency's exercise of discretion.'").

Here, there are no judicially manageable standards for judging the exercise of discretion when making National Interest Exception determinations. The relevant statute is the one under which the President issued the Proclamations—8 U.S.C. § 1182(f). Section 1182(f) authorizes the President to suspend entry to classes of aliens that he finds "would be detrimental to the interests

of the United States" and further authorizes him to "impose on the entry of aliens any restrictions he may deem to be appropriate." 8 U.S.C. § 1182(f).

The President made such a determination when issuing the Proclamations and committed case-by-case exceptions to the discretion of the Secretary of State or Secretary of Homeland Security in coordination with each other. Section 4(d) of the Proclamation provides discretion to the Secretary of State to allow certain individuals into the United States despite the relevant bans if the Secretary "finds . . . that the travel by the individual would serve a United States national interest": "Exceptions to the suspension of and limitation on entry pursuant to sections 2 and 3 of this proclamation may be made case-by-case for individuals for whom the Secretary of State finds, in his discretion, that the travel by the individual would serve a United States national interest. These exceptions shall be made by only the Secretary of State or his designee, in coordination with the Secretary of Homeland Security or her designee." Proclamation 10,949, 90 Fed. Reg. 24,497, 24,503 (June 4, 2025); *see also* Proclamation 10,998 § 6(e), 90 Fed. Reg. 59,717, 59,727 (Dec. 16, 2025) ("Exceptions to the suspension of and limitation on entry pursuant to sections 2, 3, 4, and 5 of this proclamation may be made on a case-by-case basis for individuals for whom the Secretary of State finds, in his discretion, that the travel by the individual would serve a United States national interest. These exceptions shall be made by only the Secretary of State or his designee, in coordination with the Secretary of Homeland Security or her designee.").

The Supreme Court has evaluated similarly worded statutes and held they provide no judicially manageable standards of review. In *Webster v. Doe*, 486 U.S. 592 (1988), the statute at issue "allows termination of [a CIA] employee whenever the Director 'shall deem such termination necessary or advisable in the interests of the United States.'" *Id*. at 600 (quoting 50 U.S.C. § 403(c)). "This standard fairly exudes deference to the Director, and appear[ed] to [the Court] to

foreclose the application of any meaningful judicial standard of review." *Id.* Similarly, in *Poursina v. USCIS*, 936 F.3d 868 (9th Cir. 2019), the statute at issue provides that "the Attorney General may, when the Attorney General deems it to be in the national interest, waive the [labor certification requirement]." *Id.* at 871 (quoting 8 U.S.C. § 1153(b)(2)(B)(i)) (emphasis omitted). The Court analogized the statute to the one at issue in *Webster* and concluded that "Congress's use of 'deems' connotes that the Attorney General's determination involves some measure of judgment. And the invocation of the 'national interest' is a core example of a consideration that lacks a judicially manageable standard of review." *Id.* Indeed, "the 'national interest' standard invokes broader economic and national-security considerations, and such determinations are firmly committed to the discretion of the Executive Branch—not to federal courts." *Id.* at 874 (citing *Hawaii*, 585 U.S. at 686). That is why the D.C. Circuit has held that similar "national interest" considerations in the immigration context are not subject to judicial review. *See Zhu v. Gonzales*, 411 F.3d 292, 293–95 (D.C. Cir. 2005).

The same is true here. Section 1182(f) "exudes deference to the President in every clause." *Hawaii*, 585 U.S. at 684. Like in *Webster* and *Poursina*, the standards Congress provided for the President's exercise of discretion are that (i) the President finds that entry would be contrary to "the interests of the United States" (*i.e.*, national interest), and (ii) the entry restrictions the President directs are those "he may deem to be appropriate." 8 U.S.C. § 1182(f). Likewise, the standard the President delineated in the Proclamations to the Secretaries of State and Homeland Security were that the Secretaries, in their discretion, determine if an individual alien's travel to the United States "would serve a United States national interest." 90 Fed. Reg. at 24,504 (§ 9(c)); Proclamation No. 10,998, 90 Fed. Reg. at 59,728 (§ 11(c)). Together, Congress's invocation of "the interests of the United States" in Section 1182(f) and the President's invocation of "national

interest" in the Executive Order are "core example of a consideration that lacks a judicially manageable standard of review." *Poursina*, 936 F.3d at 871.

In short, the Proclamation provides that the Secretary of State exercise discretion when determining waivers, and the exercise of that discretion is unreviewable. *See Kangarloo v. Pompeo*, Civ. A. No. 20-0354 (CJN), 2020 WL 4569341 (D.D.C. Aug. 7, 2020) ("The processing of waiver requests is therefore likely "committed to agency discretion" and unreviewable under the APA."). Plaintiffs demand that this Court arrogate to itself the Secretary's discretion; Plaintiffs would have the Court create a detailed procedure of Plaintiffs' choosing. This, of course, the APA does not permit.

C. Plaintiffs Have No Claim that the National Interest Exception Must Be Decided by Consular Officers Rather Than Chiefs of Mission

Plaintiffs have failed to explain how Defendants act unlawfully "[b]y assigning national interest exception determinations to Chiefs of Mission rather than to the consular officers[.]" Am. Compl. ¶ 116. Plaintiffs do not describe how the Secretary's (or his designee's) determination that a visa applicant gets a national interest exception is somehow not consistent with the INA or its implementing regulations. Plaintiffs are not seeking to apply existing legal standards. Instead, they seek to create new standards of their choosing.

Turning to the law, the Proclamations clearly state that the decision will be made by the "Secretary of State or his designee, in coordination with the Secretary of Homeland Security or her designee." 90 Fed. Reg. at 24,503 (§ 4(d)); 90 Fed Reg. at 59,727 (§ 6(e)); *accord* AR755 ("The Secretary of State has delegated the authority to approve NIEs on a case-by-case basis to the CA assistant secretary or SBO.").[7] The Proclamations make clear that the Secretary has the

[7] In granting a National Interest Exception, the Secretary or his designee is only determining whether certain provisions of the Presidential Proclamation apply to the individual. That determination is not an adjudication of the visa application. The consular officer is still charged

discretion to decide who to designate as his designee to make decisions on National Interest Exceptions. Thus, that decision is committed to agency discretion by law and thus unreviewable under the APA.

D. Defendants' Implementation of the National Interest Exception Is Not Arbitrary or Capricious

To the extent Plaintiff's challenge as arbitrary or capricious Defendants' implementation of the National Interest Exception, that claim fails. "Review under the arbitrary and capricious standard is deferential," *National Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 658 (2007), and a "court is not to substitute its judgment for that of the agency," *FCC v. Fox Tel. Stations, Inc.*, 556 U.S. 502, 513–14 (2009). Courts will not find an agency's decision arbitrary and capricious unless it: (i) "has relied on factors which Congress had not intended it to consider"; (ii) "entirely failed to consider an important aspect of the problem"; (iii) "offered an explanation that runs counter to the evidence before the agency"; or (iv) "is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicles Mfrs.*, 463 U.S. at 43. Courts will uphold even "a decision of less than ideal clarity" as long as "the agency's path may reasonably be discerned." *Home Builders*, 551 U.S. at 658 (citation omitted).

Defendants have provided all the explanation required by law. That guidance fully comports with the Proclamations and does not implicate any of the four problematic scenarios described in *Motor Vehicles Manufacturers*. The Proclamations give the Secretary of State complete discretion to decide whether to grant case-by-case NIEs. The only standard the Proclamations require the Secretary to follow is that a visa applicant's travel must, in the Secretary's view, "serve a United States national interest." 90 Fed. Reg. at 24,503 (§ 4(d)); 90 Fed

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with adjudicating the visa application and determining whether the applicant is eligible under the INA.

Reg. at 59,727 (§ 6(e)). After all, Congress provided no factors for the Secretary to consider when deciding whether to grant National Interest Exceptions, as Section 1182(f) does not require the President to allow for case-by-case exceptions to an entry suspension at all, *see Joorabi*, 464 F. Supp. 3d at 101–02. The Secretary is therefore free to take a narrow (or broad) view of what type of travel rises to the level of a "United States national interest" and direct consular officers accordingly. Finally, with respect to the National Interest Exception, Plaintiffs provide no support whatsoever for their sweeping allegation that "the Department has maintained an exception process in name while rendering it unattainable in fact." Am. Compl. ¶ 114. With no factual support, the Court should reject that conclusory allegation.

Thus, the Court should dismiss Count III.

VI. Plaintiffs Claim that Their Visas Have Been Unreasonably Delayed (Count IV) Fails Because There is No Discrete Agency Action that a Consular Officer is Required to Take Once They Have Been Refused

Count IV alleges agency action unlawfully withheld and unreasonably delayed on their visas applications. Plaintiffs cannot identify a clear, non-discretionary duty requiring a consular officer to take any action on their Visa Applications now that they have been refused. This means Plaintiffs have failed to state a claim upon which relief can be granted, and the Court should dismiss this suit with prejudice. *See Belizan v. Hershon*, 434 F.3d 579, 583 (D.C. Cir. 2006) ("dismissal with prejudice is warranted [ ] when a trial court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency") (quoting *Firestone v. Firestone*, 76 F.3d 1205, 1209 (D.C. Cir. 1996)).

Plaintiffs bear the burden of establishing their eligibility for a visa to the satisfaction of the consular officer. 8 U.S.C. § 1361. Upon the execution of a visa application, a consular officer must issue or refuse a visa. Specifically, under 22 C.F.R. § 42.81(a):

> [w]hen a visa application has been properly completed and executed before a consular officer in accordance with the provisions of the INA and implementing regulations, the consular officer must issue the visa, refuse the visa under INA 212(a) or 221(g) or other applicable law or, pursuant to an outstanding order under INA 243(d), discontinue graining the visa.

The refusal of a visa under the law encompasses refusal under INA § 221(g) and "other applicable law." *Id*. Moreover, as argued in this motion, section 212(f) of the INA is a proper ground of visa refusal.

Plaintiffs' claims lack merit under the D.C. Circuit views expressed in *Karimova v. Abate*, No. 23-5178, 2024 WL 3517852 (D.C. Cir. July 24, 2024), and the Supreme Court's recent ruling in *Department of State v. Muñoz*, 602 U.S. 899 (2024). Instead, the D.C. Circuit in *Karimova* made clear that after a consular officer refuses a visa application under Section 221(g) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1201(g), there is no further statutory or regulatory command to act, precluding mandamus relief under the Mandamus Act or the Administrative Procedure Act ("APA"). Additionally, the *Karimova* court made clear that a visa application considered by a consular officer and officially refused completes adjudication and an INA Section 221(g) refusal is a "final" refusal on the merits of a visa application, and thus, under *Muñoz* the consular nonreviewability doctrine also bars this suit.

"District courts can compel agency action only in the 'extraordinary' case when they find the official committed a 'transparent violation of a clear duty to act' and has 'unreasonably delayed the contemplated action.'" *Karimova*, 2024 WL 3517852, at *1 (citation modified; quoting *In re Core Commc'ns, Inc.*, 531 F.3d 849, 855 (D.C. Cir. 2008)). Plaintiffs in suits of this type typically bring both a claim under the APA and a mandamus claim under 28 U.S.C. § 1361. On the latter, "[t]o obtain a writ of mandamus, the petitioner must show, among other things, that the agency has violated 'a crystal-clear legal duty.'" *Karimova*, 2024 WL 3517852, at *3 (citing *In re Ctr. for Biological Diversity*, 53 F.4th 665, 670 (D.C. Cir. 2022), and *In re Nat'l Nurses United*, 47

F.4th 746, 752 (D.C. Cir. 2022)). "Similarly, to make out a claim of agency inaction under Section 706 of the APA, the plaintiff must 'identify a legally required, discrete act that the agency has failed to perform.'" *Karimova*, 2024 WL 3517852, at *3 (citation modified; quoting *Montanans for Multiple Use v. Barbouletos*, 568 F.3d 225, 227 (D.C. Cir. 2009)). "Those two paths to compulsory relief share a common threshold: The court may act 'only where a plaintiff asserts that an agency failed to take a discrete agency action that it is required to take.'" *Karimova*, 2024 WL 3517852, at *2 (quoting *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) (emphasis omitted)). Indeed, because the claims are functionally identical in this circumstance, *see Kangarloo v. Pompeo*, 480 F. Supp. 3d 134, 142 (D.D.C. 2020) (Nichols, J.), Defendants address them together herein.

Here, there is no discrete agency action that a consular officer is required to take now that the visa applications have been refused. This defeats Plaintiff's claims under both section 706 of the APA and for a writ of mandamus. *See Karimova*, 2024 WL 3517852, at *3*; see also Hemmat v. Blinken*, Civ. A. No. 23-2085 (TSC), 2024 WL 4210658, at *4 (D.D.C. Sept. 17, 2024) ("The *Karimova* decision is fatal to Plaintiffs' claim of unreasonable delay."). The D.C. Circuit's holding in *Karimova* is dispositive of the claims for visas refused under section 221(g). Accordingly, the Court should dismiss this suit because Defendants have no duty to act further on the visa application at issue in this action. *Ibrahim v. Spera*, Civ. A. No. 23-3563 (ABJ), 2024 WL 4103702, at *4 (D.D.C. Sept. 6, 2024) (determining "[t]his Court is bound to follow" *Karimova* and holding that "one cannot read *Karimova* as saying anything other than a 221(g) refusal and placement in administrative processing was a conclusion"); *see also Pour v. Rubio*, Civ A. No. 25-573 (JEB), 2025 WL 2374559, at *5 (D.D.C. Aug. 14, 2025) ("Regardless of whether *Karimova* is actually binding, it is still a case decided by the Circuit that contains reasoning that the Court

finds persuasive as to the APA. That Act, accordingly, is not the source of a nondiscretionary duty."); *id.* at *5-8 (concluding the same for the INA, State Department regulations, and the Foreign Affairs Manual—i.e., none contain a clear non-discretionary duty to further act on a visa refused under INA § 221(g)).

Thus, the Court should dismiss Count IV of the Amended Complaint.

VII. Count IV Should Also Be Dismissed Under TRAC Because Plaintiffs Do Not Allege Sufficiently Long Delays in their Visa Applications

Some Plaintiffs allege delays in their visa applications in Count IV. On the merits, those Plaintiffs fail to plead a plausible claim of unreasonable delay under the factors set forth in *Telecommunications Research & Action Center* ("*TRAC*") *v. Federal Communications Commission*, 750 F.2d 70, 79 (D.C. Cir. 1984). Plaintiffs allege insufficiently long delays to state a claim. *See*, *e.g.*, *Akrayi v. Dep't of State*, Civ. A. No. 22-1289 (CRC), 2023 WL 2424600, at *3 (D.D.C. Mar. 9, 2023) (nearly three-year delay "falls comfortably within the range of reasonableness" under *TRAC*); *Da Costa v. Immigr. Inv. Program Off.*, 80 F.4th 330, 339 (D.C. Cir. 2023) (rejecting contention that a four-and-a-half year delay in granting immigration benefits is "per se unreasonable"); *Ghadami v. Dep't of Homeland Sec.*, Civ. A. No. 19-0397 (ABJ), 2020 WL 1308376, at *8 (D.D.C. Mar. 19, 2020) ("[M]any courts evaluating similar delays have declined to find a two-year period to be unreasonable as a matter of law.").

VIII. Remedies

Plaintiffs have not justified any relief. If the Court disagrees, the relief sought by Plaintiffs is too broad and should not issue.

As regards requests for declaratory relief, to the extent Plaintiffs intend to bind Defendants' relationship with nonparties, the Court should decline to do so. *See Trump v. CASA, Inc.*, 606 U.S. 831 (2025) ("'[N]either declaratory nor injunctive relief,' we have said, 'can directly interfere with

enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs.'" (quoting *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975))).

CONCLUSION

Defendants may properly deny visas under Section 1182(f) to aliens whose entry is barred by the Proclamations. The State Department's practice conforms with the INA, other Congressional enactments, historical practice, and the real-world difficulties of a contrary approach. And *Trump v. Hawaii* does not require otherwise.

For these reasons, Defendants, the Department of State and Secretary of State Marco Rubio, respectfully request that the Court grant their motion to dismiss Plaintiffs' Amended Complaint. A proposed order is attached.

Dated: October 23, 2026

Respectfully submitted,

JEANINE FERRIS PIRRO
United States Attorney

By: */s/ Mason D. Bracken*
MASON D. BRACKEN
Assistant United States Attorney
601 D Street, NW
Washington, DC 20530
(202) 252-2523
mason.bracken@usdoj.gov

Attorneys for the United States of America

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[redacted] CHIKUMBA, et al.,

Plaintiffs,

v.

U.S. DEPARTMENT OF STATE, et al.,

Defendants.

Civil Action No. 26-0332 (ABJ)

[PROPOSED] ORDER

UPON CONSIDERATION of Defendants' Motion to Dismiss Plaintiffs' Amended Complaint, and the entire record herein, it is hereby

ORDERED that Defendants' Motion is GRANTED, and it is further

ORDERED that Plaintiffs' Amended Complaint is DISMISSED.

SO ORDERED:

_____
Date

_____
AMY BERMAN JACKSON
United States District Judge