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)

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT

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I. INTRODUCTION

Congress has directed that "[a]ll immigrant visa applications shall be reviewed and adjudicated by a consular officer," and that "[a]ll nonimmigrant visa applications shall be reviewed and adjudicated by a consular officer." 8 U.S.C. § 1202(b), (d). In 2025, the President issued two proclamations under 8 U.S.C. § 1182(f) restricting the entry of nationals of thirty-nine countries. The Department of State ("Department") implemented those entry restrictions by announcing that "the United States is suspending or limiting entry and visa issuance to nationals of 39 countries," and by directing consular officers to refuse the visa applications of covered nationals without any finding that they are ineligible on a ground Congress enacted. First Amended Complaint ("FAC"), ECF No. 8 ¶¶ 2, 68-75, 90-91. Plaintiffs are nationals of covered countries whose visa applications are pending, in administrative processing, or refused under that policy. They challenge the Department's policy. They do not challenge the Proclamations or the President's authority to restrict entry. FAC ¶¶ 7, 113.

Defendants' Motion to Dismiss Plaintiffs' Amended Complaint ("Defs.' Br."), ECF No. 10, should be denied. Plaintiffs who have applied for visas, paid the Department's fees, and are waiting on an agency that has announced it will refuse them have standing. The doctrine of consular nonreviewability shields a consular officer's decision on a particular application, and it leaves room for the forward-looking challenge to written policy that Plaintiffs bring here. Section 1182(f) authorizes the President to suspend entry, and Defendants identify no statute that makes a suspension of entry a ground for refusing a visa. And the Department adopted its policy without any explanation for treating an entry restriction as a bar on visa issuance; the reasons Defendants now offer come from counsel.

II. BACKGROUND

A. Statutory and Regulatory Framework

The Immigration and Nationality Act ("INA") requires that "[a]ll immigrant visa applications shall be reviewed and adjudicated by a consular officer," and that "[a]ll nonimmigrant visa applications shall be reviewed and adjudicated by a consular officer." 8 U.S.C. § 1202(b), (d); FAC ¶ 52. The Department's regulations provide that once an immigrant visa application has been properly completed and executed, "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); FAC ¶ 53. The Department has also bound itself to the rule that "[a] visa can be refused only upon a ground specifically set out in the law or implementing regulations." 22 C.F.R. § 40.6; FAC ¶ 54.

The INA addresses visa eligibility and admission at two separate points. Section 1182(a) provides that "aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States." 8 U.S.C. § 1182(a). Section 1201(g) bars issuance of a visa to a person who "is ineligible to receive a visa . . . under section 1182 of this title, or any other provision of law." 8 U.S.C. § 1201(g). A visa holder, in turn, is not entitled "to be admitted" if, on arrival, an immigration officer finds him "inadmissible under this chapter, or any other provision of law." 8 U.S.C. § 1201(h); FAC ¶¶ 46-50. Section 1182(f) authorizes the President, by proclamation, to "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); FAC ¶ 57.

B. The Proclamations and the Visa-Issuance Suspension Policy

In 2025, the President issued Proclamation 10,949 and Proclamation 10,998 under 8 U.S.C. § 1182(f). Each "fully restrict[s] and limit[s] the entry of nationals" of designated countries. 90

Fed. Reg. at 24,499; 90 Fed. Reg. at 59,721; FAC ¶¶ 63-66. Each provides for case-by-case national interest exceptions in the discretion of the Secretary of State or his designee. FAC ¶ 67.

On December 23, 2025, the Department announced that "the United States is suspending or limiting entry and visa issuance to nationals of 39 countries," and that covered applicants "may still submit visa applications and attend scheduled interviews, but they may be ineligible for visa issuance or admission to the United States." FAC ¶ 68. The Department captioned its companion announcement "Suspension of Visa Issuance to Foreign Nationals to Protect the Security of the United States." FAC ¶ 69. Plaintiffs refer to that announced practice, and the implementing guidance that carries it out, as the "Visa-Issuance Suspension Policy" (or "Policy"). FAC ¶ 2. The Policy operates categorically: consular officers are directed to refuse covered applicants under § 1182(f), or to refuse them under 8 U.S.C. § 1201(g) and place them in administrative processing, without any finding of ineligibility under a ground Congress enacted. FAC ¶¶ 70-75, 90-94; ECF No. 8-1.

The Department has also issued guidance governing the national interest exception. A Department document produced in litigation states that an exception "should be used rarely and the relationship of the travel to U.S. national interests should be exceptional in nature," and lists as travel that would "likely NOT qualify for an NIE absent other factors" travel to visit family members who are U.S. citizens or lawful permanent residents, travel for education or work, travel that would avoid hardship, travel to assist a U.S. citizen family member, and routine business travel. FAC ¶ 77. The Department has directed that exception requests be made by Chiefs of Mission, and, on information and belief, has granted exceptions under Proclamation 10,998 in a negligible number of cases, if any. FAC ¶¶ 79-80. Plaintiffs refer to these directives as the "National Interest Exception Policy." FAC ¶ 80.

C. Plaintiffs

Plaintiffs are nationals of countries designated in the Proclamations. FAC ¶ 86. Each applied for an immigrant or nonimmigrant visa, paid the required fees, and submitted the documentation the Department required. *Id.* The FAC groups them in three categories. The "Pending-Adjudication Plaintiffs" are those whose applications remain pending without an interview, or whose scheduled interviews were cancelled or not rescheduled. FAC ¶ 87. The "Administrative-Processing Plaintiffs" appeared for interviews, were refused under § 1201(g) for administrative processing, and have been told their cases "will receive another adjudication once such processing is complete." FAC ¶ 88. The "Refused Plaintiffs" were refused with a citation to § 1182(f) or to a Proclamation. FAC ¶ 89. No Plaintiff has been found inadmissible under 8 U.S.C. § 1182(a), and no Plaintiff has been found ineligible for the visa sought on any ground enacted by Congress. FAC ¶¶ 90-91.

D. The Harm the Policy Inflicts on Plaintiffs

The Policy has left Plaintiffs without the adjudication Congress guaranteed them, and the consequences compound with time. Several Pending-Adjudication Plaintiffs have never been scheduled for an interview. FAC ¶¶ 8-10, 12, 30-31, 33. Two had interviews scheduled for August 4 and September 4, 2026, which the Department then cancelled. FAC ¶¶ 19, 22. The minor Plaintiffs, who are the stepchildren of a lawful permanent resident, were interviewed on October 25, 2025, and refused under § 1201(g), and have remained in administrative processing since. FAC ¶ 11. Plaintiff [redacted] was interviewed on June 10, 2024, refused under § 1201(g), and later refused again under § 1182(f). FAC ¶ 25.

Plaintiffs face prolonged separation from family and lost employment and educational opportunities. FAC ¶ 95. Their medical examinations and police clearance certificates, which they paid to obtain and which expire, are running out, and they face the prospect of re-applying, re-

interviewing, and paying the Department's fees again. *Id.* For Plaintiffs living in conditions of conflict or instability, the delay means continuing danger. *Id.* And if the Policy remains in place, the backlog it creates will delay the issuance of visas, and therefore entry, even after the temporary entry restrictions are lifted. FAC ¶ 96.

E. Plaintiffs' Claims

The FAC asserts four claims under the Administrative Procedure Act ("APA"): that the Policy exceeds statutory authority and is not in accordance with law (Count I); that the Policy is arbitrary and capricious (Count II); that the National Interest Exception Policy is arbitrary, capricious, and contrary to law (Count III); and, for the Pending-Adjudication and Administrative-Processing Plaintiffs, that the Department has unlawfully withheld and unreasonably delayed adjudication (Count IV). FAC ¶¶ 97-125.

III. LEGAL STANDARD

To establish standing, a plaintiff must show an injury in fact that is fairly traceable to the challenged conduct and likely to be redressed by a favorable decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). "At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice." *Id.* at 561. On a motion under Rule 12(b)(1), the Court 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)). On a motion under Rule 12(b)(6), a complaint survives if it "contain[s] 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)).

IV. ARGUMENT

A. Plaintiffs Have Standing.

Defendants solely challenge the standing of the Pending-Adjudication Plaintiffs. Defs.' Br. at 13-16. They do not contest the standing of the Administrative-Processing Plaintiffs or the Refused Plaintiffs, each of whom has received a refusal under the challenged Policy. FAC ¶¶ 88-89. The Pending-Adjudication Plaintiffs satisfy each element of standing: they have suffered a concrete and particularized injury, that injury is fairly traceable to Defendants, and the relief they seek would redress that injury. *Lujan*, 504 U.S. at 560-61.

1. The Pending-Adjudication Plaintiffs Have Suffered an Injury in Fact.

The withholding of a statutorily required adjudication is a concrete injury. Congress commanded that "[a]ll" immigrant and nonimmigrant visa applications "shall be reviewed and adjudicated by a consular officer." 8 U.S.C. § 1202(b), (d). Each Pending-Adjudication Plaintiff submitted an application, paid the required fees, and supplied the documentation the Department required. None has received the adjudication Congress guaranteed them. That deprivation, paired with each Plaintiff's concrete interest in obtaining the visa for which he or she applied and paid, is an injury in fact. The harm is tangible as well as procedural. The Pending-Adjudication Plaintiffs have paid application fees the Department has retained; their medical examinations and police clearance certificates are expiring; and they face prolonged separation from family, lost employment and educational opportunities, and, for those living in conditions of instability or conflict, continuing danger. FAC ¶ 95. Monetary loss and the expiration of paid-for, time-limited documents are "tangible harms" of the kind that "readily qualify as concrete injuries under Article III." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021).

Defendants' "no application" argument conflates a regulatory term of art with Article III. Defendants contend that the Pending-Adjudication Plaintiffs "have not made visa applications."

Defs.' Br. at 14-15. The argument rests on the Department's regulatory definition, under which an immigrant visa application is "made" when the applicant appears before a consular officer and verifies the application under oath. 22 C.F.R. § 40.1(l). But Article III does not incorporate the Department's definitions, and the INA itself describes the forms these Plaintiffs completed as applications. Congress requires every noncitizen "applying for an immigrant visa" to "make application therefor in such form and manner and at such place as shall be by regulations prescribed," 8 U.S.C. § 1202(a), and the Department prescribes the DS-260 and DS-160 as those forms. Defendants themselves describe them the same way. They define the Pending-Adjudication Plaintiffs' DS-260s and DS-160s as Plaintiffs' "Visa Applications," Defs.' Br. at 1, describe the DS-260 as an "application used by noncitizens who seek an immigrant visa," *id.* at 9, and quote the Department's own guidance that covered "[a]pplicants" "may still submit visa applications," *id.* at 6. The Pending-Adjudication Plaintiffs have done everything the Department permits them to do; the only remaining step, the interview, is one the Department controls and has either not scheduled or has affirmatively cancelled. A plaintiff whose application sits with the agency, unadjudicated, because of the agency's own scheduling decisions has suffered an injury no less real than a plaintiff whose interview has occurred. And if the absence of an interview were enough to defeat standing, the Department could insulate the challenged Policy from review simply by declining to schedule interviews for covered nationals, which is what the FAC alleges has occurred. FAC ¶¶ 19, 22, 87.

To the extent Defendants' argument rests on ripeness, the claims are fit for decision and withholding review would impose hardship. *Abbott Labs. v. Gardner*, 387 U.S. 136, 149 (1967). Whether § 1182(f) authorizes the Department to refuse visas is a purely legal question that does

not depend on any Plaintiff's individual facts, and the Policy is a final, written, worldwide directive. FAC ¶¶ 44, 68-75, 99. The hardship of delay is described above and in the FAC.

2. The Refusal the Challenged Policy Prescribes for the Pending-Adjudication Plaintiffs Is Certainly Impending.

Independently, the Pending-Adjudication Plaintiffs face an imminent injury from the challenged Policy itself. A future injury supports standing if it is "certainly impending," or if there is a "substantial risk" that the harm will occur. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409, 414 n.5 (2013); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). The Department has announced what will happen when these Plaintiffs are interviewed: covered applicants "may still submit visa applications and attend scheduled interviews, but they may be ineligible for visa issuance." FAC ¶ 68; Defs.' Br. at 6. Its implementing guidance directs that an otherwise eligible applicant who is "subject to [the Proclamation]" "must be refused . . . unless [she] qualifies for one of the [Proclamation's] narrowly defined exceptions." FAC ¶ 70 (quoting *Thein v. Trump*, No. 25-cv-2369 (SLS), 2025 WL 2418402, at *3 (D.D.C. Aug. 21, 2025)). The Department has told applicants from at least one post that "[a]ll applicants, in the absence of any other ineligibility, will be refused under INA Section 221(g) pending further guidance." ECF No. 8-1; FAC ¶ 94. And Defendants confirm in this Court that "[t]he very purpose of the Proclamations is to prevent the issuance of visas to aliens from countries" the Proclamations cover, and that the Department has made a "decision to refuse visas to aliens from countries covered by the Proclamations." Defs.' Br. at 30-31.

Nothing about the outcome is speculative. Plaintiff [redacted] for example, is scheduled to be interviewed on December 30, 2026. FAC ¶ 16. Under the Policy as Defendants describe it, her application will be refused on that date unless she falls within an exception, and no exception is alleged to apply. FAC ¶¶ 76-80. The same is true of every Pending-Adjudication Plaintiff when

the Department schedules an interview. When the government has announced a categorical rule and defends it in litigation, the risk that it will be applied to the people it covers is "substantial." *Susan B. Anthony List*, 573 U.S. at 158, 164-65.

Defendants cannot have it both ways. Throughout their brief, they describe a refusal under the challenged Policy as a foregone conclusion for every covered applicant, Defs.' Br. at 30-32, and argue that requiring visas to issue to these nationals would "jeopardiz[e] national security," *id.* at 32. Having told the Court that the Pending-Adjudication Plaintiffs will be refused, Defendants cannot also maintain that any injury from that refusal is too speculative to support standing.

3. The Injury Is Fairly Traceable to Defendants.

Defendants' traceability argument rests on authorities addressing injuries caused by "independent action by a third party not before the court." Defs.' Br. at 15 (quoting *Freedom Republicans, Inc. v. FEC*, 13 F.3d 412, 415 (D.C. Cir. 1994)); *see id.* (citing *Mideast Sys. & China Civ. Constr. Saipan Joint Venture, Inc. v. Hodel*, 792 F.2d 1172, 1178 (D.C. Cir. 1986), and *Nat'l Wrestling Coaches Ass'n v. Dep't of Educ.*, 366 F.3d 930, 941 (D.C. Cir. 2004)). There is no third party here. The only actor between Plaintiffs and the adjudication of their applications is the Department, which is a Defendant. It accepts the applications, schedules or cancels the interviews, adopts the challenged Policy, and directs its consular officers to apply it. An injury caused by a defendant's own conduct is the paradigm of a traceable injury.

Defendants next assert that the Pending-Adjudication Plaintiffs "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." Defs.' Br. at 15. The FAC alleges exactly that. It alleges that Defendants "have declined to adjudicate, or have purported to refuse, Plaintiffs' applications by reason of the Proclamations and the Visa-Issuance Suspension Policy," FAC ¶ 92; that "[t]he sole operative reason for Defendants' treatment of Plaintiffs' applications is

Plaintiffs' nationality," FAC ¶ 93; and that posts have advised applicants categorically that covered nationals will be refused, FAC ¶ 94; ECF No. 8-1. It alleges that the Department scheduled interviews for Plaintiffs [redacted] for August 4 and September 4, 2026, respectively, and then cancelled them, FAC ¶¶ 19, 22, months after the Department announced that it was "suspending . . . visa issuance" to nationals of their countries. FAC ¶ 68. Those allegations must be accepted as true, and the inference that they support (that a Department that has announced a suspension of visa issuance to covered nationals is not scheduling or completing their cases because of that suspension) is a reasonable one. *Am. Nat'l Ins. Co.*, 642 F.3d at 1139. Defendants' demand for "substantial evidence of a causal relationship," Defs.' Br. at 15, misstates the standard governing a motion to dismiss, where "general factual allegations of injury resulting from the defendant's conduct may suffice." *Lujan*, 504 U.S. at 561.[1]

Traceability for Count IV is, if anything, more direct. Count IV alleges that the Department has unlawfully withheld and unreasonably delayed the adjudication of the Pending-Adjudication Plaintiffs' applications. FAC ¶¶ 118-25. Whatever the reason for the delay, the delay is the Department's. Defendants' traceability argument is addressed only to "State's implementation of the two Proclamations," Defs.' Br. at 15-16, and does not engage Count IV at all.

4. The Relief Plaintiffs Seek Would Redress the Injury.

Plaintiffs ask the Court to set aside the Policy, to enjoin Defendants from refusing, declining to adjudicate, or suspending the adjudication of Plaintiffs' applications on the basis of §

[1]Defendants also call the Almaty notice, ECF No. 8-1, "irrelevant because none of the Plaintiffs are from Kazakhstan or applied for visas at the consulate there." Defs.' Br. at 10 n.3. Plaintiffs offer the notice for what it shows about the challenged Policy: that a consular post has told applicants, categorically, that "[a]ll applicants, in the absence of any other ineligibility, will be refused under INA Section 221(g) pending further guidance." ECF No. 8-1. A worldwide policy does not become irrelevant because one illustration of it comes from a post at which no Plaintiffs applied. Defendants do not suggest that the notice misdescribes Department practice.

1182(f), the Proclamations, or implementing guidance, and to compel adjudication of the Pending-Adjudication and Administrative-Processing Plaintiffs' applications within a reasonable time. FAC at 29-30 (Prayer for Relief ¶¶ C, E, F). Each form of relief removes the barrier that stands between these Plaintiffs and a lawful adjudication. To establish redressability, Plaintiffs must show that a favorable decision would remove that barrier and secure the adjudication Congress required. "[A] plaintiff satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his every injury." *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982). The injury is redressed "even if a Plaintiff's application is ultimately denied on a lawful ground." FAC ¶ 41 (citing *Thein*, 2025 WL 2418402, at *6).

The redress is practical as well as legal. A Plaintiff who receives an immigrant visa holds a document that is valid for up to six months, 8 U.S.C. § 1201(c)(1), during which the entry restrictions, which the Proclamations themselves subject to periodic review every 180 days, may be modified or lifted. Defs.' Br. at 5; FAC ¶ 41. An adjudication under the challenged Policy forecloses that possibility; an adjudication under the statute preserves it. That is "a necessary first step on a path that could ultimately lead to relief fully redressing the injury." *Thein*, 2025 WL 2418402, at *6 (quoting *Tel. & Data Sys., Inc. v. FCC*, 19 F.3d 42, 47 (D.C. Cir. 1994)).

5. Plaintiffs Seek Coercive Relief, and the Court's Judgment Would Change Defendants' Conduct Toward Them.

Defendants contend that the Pending-Adjudication Plaintiffs "seek only an advisory opinion" because "a declaratory judgment itself cannot be the relief sought if there is no corresponding relief that would compel a change between the parties." Defs.' Br. at 15-16 (citing *Hewitt v. Helms*, 482 U.S. 755, 761 (1987)). Plaintiffs agree with the principle. *Hewitt* holds that "[a]t the end of the rainbow lies . . . 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." 482 U.S. at 761. That is the relief that Plaintiffs seek. They ask the Court to vacate the challenged Policy under 5 U.S.C. § 706(2), to enjoin Defendants from applying it to Plaintiffs, to compel adjudication under 5 U.S.C. § 706(1), and to order status reports every thirty days. FAC at 29-30 (Prayer for Relief ¶¶ C, E, F, G). Each would produce the "termination of some conduct" (refusals and non-adjudications under the challenged Policy) and "specific performance" (adjudication on lawful grounds). *Hewitt*, 482 U.S. at 761. The declaratory relief Plaintiffs request accompanies that coercive relief. The plaintiff in *Hewitt* had been released from custody and sought a declaration that could no longer affect how defendants treated him. Here, the Department continues to hold Plaintiffs' applications and continues to apply the Policy to them.

6. The Refused and Administrative-Processing Plaintiffs' Claims Are Not Moot.

In a footnote, Defendants assert that "for Plaintiffs whose visas were refused, any claim of unreasonable delay is moot." Defs.' Br. at 18 n.5 (citing *Mehneh v. Rubio*, 164 F.4th 928, 931 (D.C. Cir. 2026)). Plaintiffs agree with part of that proposition. The Refused Plaintiffs do not assert Count IV, which the FAC brings on behalf of the Pending-Adjudication and Administrative-Processing Plaintiffs only. FAC at 28. And should any Plaintiff receive a visa while this case is pending, Plaintiffs agree that Plaintiff's Count IV claim would no longer present a live controversy, and Plaintiffs will promptly notice its dismissal.

That is the extent of the concession. *Mehneh* held that a claim became moot because "the Department completed administrative processing and issued the visa." Defs.' Br. at 18 n.5 (quoting *Mehneh*, 164 F.4th at 931). No Plaintiff here has received a visa. A case becomes moot "only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (internal quotation marks omitted). The Court can grant effectual relief on Counts I through III to every Plaintiff, including every Refused and Administrative-

Processing Plaintiff. Those Counts challenge the Policy and the National Interest Exception Policy as forward-looking rules, and vacatur would require Defendants to adjudicate Plaintiffs' pending applications without them. FAC ¶¶ 43-45, 104, 110, 117. A refusal entered under the challenged Policy is the injury those Counts seek to redress, and the Court can redress it. *Tate v. Pompeo*, 513 F. Supp. 3d 132, 142 (D.D.C. 2021); *Al-Shakliah v. Rubio*, No. 25-cv-3870 (JEB), 2026 WL 1283663 (D.D.C. May 11, 2026). Defendants' own brief confirms that the controversy remains live; Defendants describe the post-refusal administrative process as one that "benefit[s] a refused applicant by 'keeping the door open' to potential reconsideration of eligibility." Defs.' Br. at 8 (quoting *Karimova v. Abate*, No. 23-5178, 2024 WL 3517852, at *2 (D.C. Cir. July 24, 2024)). Whether that reconsideration occurs under the Policy or under the statute is precisely what Counts I through III ask the Court to decide.

B. The Doctrine of Consular Nonreviewability Does Not Bar Plaintiffs' Challenge to the Department's Written Policies.

Defendants argue that the doctrine of consular nonreviewability requires dismissal of every claim because Plaintiffs "are seeking to compel action after a consular officer has refused the requested visas." Defs.' Br. at 16. The argument describes a different lawsuit. Counts I through III ask the Court to set aside written policies the Department adopted, and to enjoin their application to Plaintiffs. FAC ¶¶ 99-117; FAC at 29-30 (Prayer for Relief ¶¶ C-E). Plaintiffs do not ask the Court to review any consular officer's assessment of any applicant, and they do not ask the Court to order any visa issued. FAC ¶ 7.

1. The Doctrine Reaches a Consular Officer's Decision on a Particular Application.

Defendants' own authorities define the doctrine by its object. It "shields a consular officer's decision to issue or withhold a visa from judicial review." *Baan Rao Thai Rest. v. Pompeo*, 985 F.3d 1020, 1024 (D.C. Cir. 2021); *see Colindres v. U.S. Dep't of State*, 71 F.4th 1018, 1021 (D.C.

Cir. 2023) (doctrine "shields a consular official's decision to issue or withhold a visa from judicial review" (citation modified)); Defs.' Br. at 17. Policies the Secretary adopts to govern those decisions stand on different footing. The D.C. Circuit has explained that "when plaintiffs pursue forward-looking challenges to the lawfulness of regulations or policies governing consular decisions, courts may review them." *Pietersen v. U.S. Dep't of State*, 138 F.4th 552, 560 (D.C. Cir. 2025). In *International Union of Bricklayers & Allied Craftsmen v. Meese*, the D.C. Circuit held that the doctrine did not bar a claim that a general INS operations instruction governing the admission of nonimmigrant workers violated the INA, explaining that the federal courts have jurisdiction "to assure that the executive departments abide by the legislatively mandated procedures." 761 F.2d 798, 801 (D.C. Cir. 1985).

Judge Boasberg applied that distinction to the Department's implementation of Proclamation 10,949. In *Al-Shakliah*, he held that the doctrine "bars judicial review of the particular determinations that consular officers render in specific cases," but "does not prohibit forward-looking challenges to the policies and rules that govern those determinations." *Al-Shakliah*, 2026 WL 1283663, at *6; FAC ¶ 43. He allowed the plaintiffs' challenge to the Department's no-visa policy to proceed, and dismissed the claims of refused applicants to the extent they sought review of the particular consular determinations in their cases. FAC ¶ 85. Plaintiffs' claims fall on the reviewable side of that line. They challenge "categorical, written, worldwide directives," which "exist independent of any particular plaintiff's adjudication," and the relief they seek "is prospective." FAC ¶ 44 (quoting *Al-Shakliah*). A policy challenge of this kind proceeds even where the named plaintiffs have themselves received refusals issued under the challenged policy. *Tate*, 513 F. Supp. 3d at 142.

2. Defendants' Authorities Involved Challenges to Individual Refusals.

Each decision Defendants invoke involved a plaintiff asking a court to look behind a particular refusal. *Department of State v. Muñoz* addressed whether a U.S. citizen has a constitutionally protected interest in her noncitizen spouse's admission that entitles her to review of the consular officer's refusal of his visa. 602 U.S. 899 (2024). In *Baan Rao*, a restaurant and its prospective employees challenged the refusal of the employees' visas. 985 F.3d at 1023. Defendants' own descriptions of their district court authorities make the same point. The plaintiff in *Aboutalebi* brought "claims [that] challenge the reason for the denial of her specific visa application." Defs.' Br. at 29 (quoting *Aboutalebi v. Dep't of State*, No. 19-cv-2605 (TJK), 2019 WL 6894046, at *3 (D.D.C. Dec. 18, 2019)). The plaintiffs in *Keyhanpoor* asked the court "to look behind the consular officers' refusals of the IRGC Plaintiffs' visa applications." *Id.* at 30 (quoting *Keyhanpoor v. Blinken*, 633 F. Supp. 3d 88, 95 (D.D.C. 2022)). The plaintiff in *Kolesnikov* sought an order requiring Defendants to "exercise actual discretion in processing and adjudicating Plaintiffs' new application." *Id.* at 29 (quoting *Kolesnikov v. Blinken*, No. 23-cv-1675 (TSC), 2024 WL 3638345, at *2 (D.D.C. Aug. 2, 2024)). And the plaintiffs in *Edae* argued that the consular officer "failed to comply with 22 C.F.R. § 41.105" in their case. *Id.* (describing *Edae v. U.S. Dep't of State*, No. 21-cv-2048 (CRC), 2022 WL 3211760, at *3 (D.D.C. Aug. 9, 2022)).

Aboutalebi is the closest Defendants come, because the plaintiff there argued that a proclamation "concern[ed] 'suspension of entry,' which she argues is separate from a finding of ineligibility for a visa." Defs.' Br. at 29 (quoting *Aboutalebi*, 2019 WL 6894046, at *3). The court held that the distinction "makes no difference here, because [the plaintiff's] claims challenge the reason for the denial of her specific visa application." *Id.* (quoting *Aboutalebi*, 2019 WL 6894046, at *3). The court's reasoning turned on the object of the claim. Counts I through III do not seek

review of the reason any Plaintiff was refused. They seek vacatur of the Policy that provides that reason for every covered applicant.

3. The Doctrine Has No Application to Plaintiffs Whose Applications Have Not Been Decided.

Defendants exclude the Pending-Adjudication Plaintiffs from their consular nonreviewability argument, Defs.' Br. at 16, and rightly so. "[T]he doctrine of consular nonreviewability is not triggered until a consular officer has made a decision with respect to a particular visa application." *Nine Iraqi Allies Under Serious Threat Because of Their Faithful Serv. to the U.S. v. Kerry*, 168 F. Supp. 3d 268, 290 (D.D.C. 2016). No consular officer has decided the Pending-Adjudication Plaintiffs' applications. FAC ¶¶ 87, 121. The same is true of the Administrative-Processing Plaintiffs, who have been told that their cases "will receive another adjudication once such processing is complete." FAC ¶ 88. A refusal entered to permit administrative processing is not the yes-or-no determination that puts an application to rest. *Janay v. Blinken*, 743 F. Supp. 3d 96, 112 (D.D.C. 2024); FAC ¶ 45. Defendants rely on *Karimova* and on this Court's decision in *Ibrahim v. Spera* for the contrary view. Defs.' Br. at 3, 41-42. Plaintiffs address those decisions in connection with Count IV below. Whatever their effect on a claim to compel further action on a particular application, they do not convert Plaintiffs' challenge to the Policy into a challenge to an individual consular decision.

C. Section 1182(f) Does Not Authorize the Department to Refuse Visas.

8 U.S.C. § 1182(f) "[b]y its plain text . . . authorizes the president to suspend *only* the 'entry' of foreign individuals into the United States." *Refugee & Immigrant Ctr. for Educ. & Legal Servs. v. Mullin*, 174 F.4th 81, 100 (D.C. Cir. 2026) (emphasis added). "The word 'entry,' as used in the immigration context since Congress enacted Section 1182(f), means 'any coming of an alien into the United States, from a foreign port or place or from an outlying possession, whether

voluntarily or otherwise.'" *Id.* at 100-01. A visa, by contrast, "merely gives the alien permission to arrive at a port of entry and have an immigration officer independently examine the alien's eligibility for admission." *Saavedra Bruno v. Albright*, 197 F.3d 1153, 1157 (D.C. Cir. 1999). Visa eligibility is determined by consular officers at the Department of State; permission to enter, or be "admitted," lies with officers of Customs and Border Protection stationed at ports of entry. 8 U.S.C. § 1201(g), (h). Accordingly, whether someone may *enter* the United States has long been understood as a separate question from whether someone may receive a *visa* to seek entry in the first instance; indeed, that "basic distinction between admissibility determinations and visa issuance . . . runs throughout the INA." *Trump v. Hawaii*, 585 U.S. 667, 694 (2018).

For this reason, "courts in this District have held that the Department of State cannot rely on proclamations issued pursuant to 8 U.S.C. § 1182(f) to deny visa applications. *See , e.g.*, *Rai*, 567 F. Supp. 3d at 194; *Filazapovich*, 560 F. Supp. 3d at 233-35; *Milligan*, 502 F. Supp. 3d at 314-16; *Gomez I*, 485 F. Supp. 3d at 191-94. Today, this Court joins that chorus. . . . *Plain as day, Subsection 1182(f) addresses only the question of entry, not the issuance of* **visas**." *Thein*, 2025 WL 2418402, at *15-16 (emphasis added). Defendants nonetheless relitigate a question that courts throughout this circuit have already resolved. For the same reasons that Defendants' arguments failed there, they fail here.

First, Defendants argue that *Trump v. Hawaii* permits a visa ban based on a § 1182(f) ban on entry. Defs.' Br. at 18-20. Specifically, Defendants contend that *Trump v. Hawaii* endorses 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." *Id.* at 19. But *Trump v. Hawaii* does not support that design by (1) locating the power to render an alien "ineligible to receive a visa" in whether that alien is deemed

"inadmissible under § 1182" (*Hawaii*, 585 U.S. at 695) and (2) establishing that this inadmissibility function is separate from consular officers' determinations that an alien is "ineligible to receive visas." *Hawaii*, 585 U.S. at 694 n.3. Courts in this district have embraced this reading of *Trump v. Hawaii*, noting that "all the examples the Court listed are in Subsection 1182*(a)*, which expressly provides that its categories for inadmissibility also render noncitizens ineligible to receive a visa," *Thein*, 2025 WL 2418402, at *16; thus, "the Court never held that the President's suspension of entry under § 1182(f) renders a person ineligible to receive a visa." *Gomez v. Trump*, 485 F. Supp. 3d 145, 192 (D.D.C. 2020). Defendants cite no court which has found that *Hawaii* permits an entry ban to be converted into a visa issuance ban because no such authority exists.

Second, Defendants argue that consular officers are required to deny visas where an entry ban is in effect, citing 8 U.S.C. § 1201(g)'s requirement that "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[.]'" Defs.' Br. at 20. This is essentially the same as Defendants' previous argument regarding *Trump v. Hawaii*. As there, Defendants face the same issue: what justifies the inferential leap that § 1182(f) renders someone "ineligible to receive a visa"? "The categories of persons deemed ineligible to receive a visa pursuant to § 1201(g) appear in § 1182(a), not § 1182(f)." *Gomez*, 485 F. Supp. 3d at 191-92.

The cases Defendants cite are non sequiturs to this central question. *Kerry v. Din*, 576 U.S. 86, 89 (2015), repeats the truism that a consular officer must ensure an alien is not inadmissible before issuing a visa. *Aramnahad v. Rubio*, No. 24-cv-1817 (MAU), 2025 WL 3706645, at *4 (D.D.C. Dec. 22, 2025), concerns whether a denial of a visa based on an entry ban is a *final decision*, not whether that final determination was lawful. And *Castaneda-Gonzalez v. INS*, 564

F.2d 417, 427 (D.C. Cir. 1977), stands for the proposition that both consular officers and Customs and Border Protection officers adjudicate the same inadmissibility grounds "described in section 212(a)," not that an entry ban *is* one of the inadmissibility grounds each adjudicates. *Castaneda-Gonzalez*, 564 F.2d at 426.

The statutes Defendants then cite are similarly irrelevant. Defs.' Br. at 21. 6 U.S.C. § 236(d)(2) establishes that there are "delegations of authority to the Secretary of State by the President pursuant to" 8 U.S.C. § 1182(f), not that these delegations encompass a visa ban. Indeed, the same statute grants the Secretary of State authority to deny a visa based on foreign policy considerations. 6 U.S.C. § 236(c)(1). "[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Nken v. Holder*, 556 U.S. 418, 430 (2009) (quoting *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987)). So too here: Congress established that it knew how to delegate authority to the Secretary of State to deny visas in the same section yet refused to do so in 6 U.S.C. § 236(d)(2). Accordingly, 6 U.S.C. § 236(d)(2) is best read as preserving the Secretary of State's authority to assist with entry ban implementation by, for example, identifying the individuals subject to the entry ban and relaying the information to the Attorney General. Indeed, the Proclamations Defendants subsequently cite in support of their argument do exactly this. *See* Proclamation No. 8693, §§ 2, 4, 76 Fed. Reg. 44,751 (July 24, 2011) ("Persons covered by section 1 of this proclamation shall be identified by the Secretary of State, in his or her sole discretion . . . the Secretary of State shall consult the Secretary of Homeland Security on *matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland* **Security**.") (emphasis added).

Finally, Defendants' argument concerning 8 U.S.C. §§ 1182e(a), 1182f(a) "asks the Court to read too much into a statutory heading, especially when § 1182e notably states both that 'the Secretary of State *may not issue any visa* to, and the Attorney General *may not admit to the United States'* specified individuals—explicitly distinguishing between visa issuance and admission or entry." *Kinsley v. Blinken*, No. 21-cv-00962 (JEB), 2021 WL 4551907, at *9 (D.D.C. Oct. 5, 2021) (emphasis in original).

Third, Defendants argue that "decoupling admissibility from the visa issuance process would be illogical" and that it would "potentially encourage the unwary to engage in illegal activity." Defs.' Br. at 23. Such arguments "are, at bottom, policy concerns. And 'even the most formidable' policy arguments cannot 'overcome' clear statutory text. *B.P. P.L.C. v. Mayor and City Council of Balt.*, 593 U.S. 230, 245 (2021) (quoting *Kloeckner v. Solis*, 568 U.S. 41, 56 n.4 (2012)). More generally, '[i]t is not [the Court's] place to question whether Congress adopted the wisest or most workable policy, only to discern and apply the policy it did adopt.' *Ysleta Del Sur Pueblo v. Texas*, 596 U.S. 685, 706 (2022). If the Defendants think 'good governance requires a different set of rules, its appeals are better directed to those who make the laws than those charged with following them.' *Id.*" *Thein*, 2025 WL 2418402, at *17 (rejecting a nearly identical argument).

Fourth, Defendants argue that "[p]ast practice drives the point home," pointing to instances where Presidential Proclamations have been used to deny visas. Defs.' Br. at 24 (quoting *Refugee & Immigrant Ctr.*, 174 F.4th at 101). As noted previously, the "past practice" drove home the "point" that "Section 1182(f) authorizes the President to suspend only the 'entry' of foreign individuals into the United States." *Id.* at 100-01. Indeed, "Presidents of both political parties have invoked Section 1182(f) at least 90 times over the last four decades. Every one of those uses was

confined to preventing foreign individuals from *entering* the territorial land or waters of the United States." *Id.* at 101-02 (emphasis in original). The D.C. Circuit did cite two instances where the President attempted to use a § 1182(f) ban to ban visa issuance, but both citations are to cases where courts prevented the President from banning visas and required that the President narrow the ban to be limited to entry. *Id.* at 102 (citing *Goodluck v. Biden*, 104 F.4th 920, 922 (D.C. Cir. 2024), and *Doe #1 v. Trump*, 957 F.3d 1050, 1056 (9th Cir. 2020)). Indeed, that *Refugee & Immigrant Center for Education & Legal Services v. Mullin* relied on *Goodluck*—which held that a "section 1182(f) proclamation prevents entry into the United States but does not prevent the issuance of visas"—defeats Defendants' argument. *Goodluck*, 104 F.4th at 924-25.

Moreover, the examples Defendants cite as examples of a § 1182(f) ban barring visa issuance do nothing of the sort. Defendants cite the following: Proclamation No. 5517, § 2, 51 Fed. Reg. 30,470 (Aug. 26, 1986); Proclamation No. 6574, § 6, 58 Fed. Reg. 34,209 (June 21, 1993); 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). Defs.' Br. at 24. Each of these purports to ban only "entry" into the United States, and none contains the word "visa." *See* Proclamation Nos. 5517, 6574, 6730, 6925, 7452, 7524 & 8693, *supra*. Indeed, Proclamation No. 8693 provides that "the Secretary of State shall consult the Secretary of Homeland Security on matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland Security." If the Department of State nonetheless tried to convert these "entry" bans into "visa issuance" bans—something which Defendants do not establish in their brief—they did so in a manner which exceeded the Proclamation's claimed delegation of authority. A court in this

district rejected this argument by observing that "the Defendants saying . . . the Court [should] defer to the Department of State's 'longstanding practice' of refusing visas to noncitizens 'who are barred from entering the United States by a presidential action under § 1182(f)' . . . does not make it so—it just highlights the lacuna in the Defendants' brief where one might expect to find citations." *Thein*, 2025 WL 2418402, at *17. So too here.

And whatever the extent to which the Department of State used entry bans to justify visa bans, that does not justify deviating from courts' long-held reading of § 1182(f). An agency incorrectly interpreting a statute does not require Congress to "legislatively reiterate an already clear statutory command in order to fend off an impermissible interpretation," particularly where the relevant "provisions have been clear all along." *Ohio v. U.S. Dep't of the Interior*, 880 F.2d 432, 458 (D.C. Cir. 1989). Here, courts have repeatedly rejected the Department's argument that an entry ban justifies a visa ban, and Congress had no need to amend a statute whose meaning the courts have consistently enforced.

Relatedly, Defendants argue that several congressional enactments suggest Congress intended Defendants to deny visas based on entry bans. Defs.' Br. at 25-26. None of these laws "say that the officer shall not issue a visa to an individual listed in it" and it is thus "entirely unclear what consequences would follow from a consular officer's issuance of a visa to an individual listed in the system." *Gomez v. Biden*, No. 20-cv-1419 (APM), 2021 WL 3663535, at *14 (D.D.C. Aug. 17, 2021). The laws instead suggest that being subject to an entry ban should raise a consular officer's level of suspicion towards an applicant, since entry bans reflect a presidential determination that a class of aliens is "detrimental to the interests of the United States." 8 U.S.C. § 1182(f). It is thus unclear how these provisions are "inconsistent, or even in tension, with [the court's] interpretation of § 1182(f)." *Tate*, 513 F. Supp. 3d at 146.

Nor does the LIBERTAD Act rescue Defendants' argument. Defs.' Br. at 26-27. Section 102(e) merely expresses the "sense of the Congress" that the President should direct officials to enforce existing visa-denial regulations. 22 U.S.C. § 6032(e). It neither mentions § 1182(f) nor grants visa-denial authority. Moreover, Defendants' assertion that Proclamation 5377 was "the only authority that allowed the denial of visas to Cuban officials or communist party members as such" is incorrect. Congress had already expressly rendered immigrant applicants who belonged to or were affiliated with Communist parties ineligible for visas. 8 U.S.C. § 1182(a)(3)(D)(i) (1994).

D. Plaintiffs State a Claim That the Policy Is Arbitrary and Capricious (Count II).

Count II alleges that the Department offered no reasoned explanation for treating a restriction on entry as a bar on visa issuance; failed to consider important aspects of the problem, including the statutory duty to adjudicate, the closed list of refusal grounds, the temporary character of the Proclamations, the expiration of medical examinations and police clearance certificates, and the backlog the Policy creates; and departed without acknowledgment from the Department's own regulatory framework. FAC ¶¶ 105-10. Defendants respond that the Policy is "both reasonable and reasonably explained." Defs.' Br. at 30. Their brief identifies no explanation the Department gave.

1. The Court Reviews the Policy on the Grounds the Department Invoked When It Adopted It.

An agency must "examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The explanation must be the agency's own. "[C]ourts may not accept appellate counsel's *post hoc* rationalizations for

agency action." *Id.* at 50. "It is a 'foundational principle of administrative law' that judicial review of agency action is limited to 'the grounds that the agency invoked when it took the action.'" *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 20 (2020) (quoting *Michigan v. EPA*, 576 U.S. 743, 758 (2015)). Defendants' own authority confirms the rule: a court may uphold "a decision of less than ideal clarity" only if "the agency's path may reasonably be discerned." Defs.' Br. at 30 (quoting *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007)). The path must be the agency's.[2]

2. The Department Gave No Explanation for Converting an Entry Restriction into a Bar on Visa Issuance.

The Policy, as announced, consists of a statement of what the Department would do: it was "suspending or limiting entry and visa issuance to nationals of 39 countries," and covered applicants "may be ineligible for visa issuance." FAC ¶ 68. The Department's companion announcement adds that "[w]e 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." Defs.' Br. at 6. That sentence describes vetting and leaves unexplained why an applicant who completes rigorous vetting, and is found eligible under

[2]Defendants ask the Court to relieve them of Local Civil Rule 7(n), which requires the filing of a certified list of the contents of the administrative record with any dispositive motion in a case involving judicial review of agency action, on the ground that their motion "does not require reference to an administrative record." Defs.' Br. at 2 n.1. The same brief then quotes a document it cites as "AR755" for the proposition that "[t]he Secretary of State has delegated the authority to approve NIEs on a case-by-case basis to the CA assistant secretary or SBO." *Id.* at 38. No administrative record has been filed in this case. Either Defendants have assembled a record on which they rely, in which case Local Civil Rule 7(n) requires them to file the certified list, or the citation refers to a record from another proceeding, in which case it is not before the Court and should be disregarded. In either event, Defendants' defense of Counts II and III rests on factual assertions about the Department's reasoning and practice that only the record can establish, and Plaintiffs oppose relief from Local Civil Rule 7(n) to the extent Defendants seek dismissal of those Counts on the ground that the Department's policies were reasonably explained.

every ground Congress enacted, must nonetheless be refused a visa because the President has restricted her entry. The FAC alleges that the Department offered no reasoned explanation for that choice. FAC ¶ 107. Defendants do not identify one.

Defendants instead offer two substitutes. The first is the President's reasoning. Defendants quote the Proclamations' findings about deficient screening and vetting in the designated countries. Defs.' Br. at 31 (quoting 90 Fed. Reg. at 24,497-98; 90 Fed. Reg. at 59,717-19). Those findings explain the President's decision to restrict entry, which Plaintiffs do not challenge. The Department's separate decision about how to implement that restriction required its own explanation. The passages Defendants quote speak to vigilance "during the visa-issuance process" and to "[s]creening and vetting protocols and procedures associated with visa adjudications." *Id.* (quoting 90 Fed. Reg. at 24,497-98). Those statements call for rigorous adjudication, and the INA supplies the grounds for it, including the security-related and terrorism-related grounds of inadmissibility. *See* 8 U.S.C. § 1182(a)(3)(A)-(B). Nothing in the quoted language directs the Department to stop issuing visas to applicants who survive that adjudication. Defendants also observe that the Proclamations direct that visas issued before their effective dates not be revoked, and argue that the Proclamations therefore "presupposed that visas would be refused or even revoked." Defs.' Br. at 30-31 (citing 90 Fed. Reg. at 24,504; 90 Fed. Reg. at 59,728). The provision addresses revocation of previously issued visas. Whatever inference that provision supports, it is the President's text, and it does not supply the Department's reasoning.

The second substitute is counsel's reasoning. Defendants' brief offers a series of justifications for the Policy: preserving the "double check" system, avoiding burdens on Customs and Border Protection, protecting visa holders from criminal exposure under 8 U.S.C. § 1185(a), avoiding "administrative confusion," and preserving § 1182(f) as a foreign-policy tool. Defs.' Br.

at 19, 23, 27-28, 32. None appears in the December 23, 2025 guidance or in any other document the FAC identifies as part of the Policy. FAC ¶¶ 68-75. They are "appellate counsel's *post hoc* rationalizations," and the Court may not accept them. *State Farm*, 463 U.S. at 50. Judge Mehta reached that conclusion as to the Department's prior no-visa policy, concluding that the plaintiffs were likely to show it arbitrary and capricious because the Department gave no "rational explanation for the policy" and "failed to consider [an] important aspect of the problem." *Gomez*, 485 F. Supp. 3d at 194, 199. And Judge Boasberg declined to dismiss an arbitrary-and-capricious challenge to the Department's implementation of Proclamation 10,949. *Al-Shakliah*, 2026 WL 1283663, at *13; FAC ¶ 85.

3. The Department Failed to Consider Important Aspects of the Problem.

An agency acts arbitrarily and capriciously when it "entirely fail[s] to consider an important aspect of the problem." *State Farm*, 463 U.S. at 43. The FAC identifies several the Department did not address. FAC ¶ 108.

The statutory and regulatory framework. The Policy directs consular officers to refuse visas on a ground the Department's own regulation excludes, 22 C.F.R. § 40.6, and to withhold the issuance or refusal that 22 C.F.R. § 42.81(a) requires, in the face of a statutory command that "[a]ll" applications "shall be reviewed and adjudicated." 8 U.S.C. § 1202(b), (d). Defendants cite § 40.6 once, in a string citation, Defs.' Br. at 8, without addressing its operative sentence. Nothing in the Policy acknowledges those provisions or explains how the Policy can be reconciled with them. FAC ¶¶ 102, 108.

The temporary character of the Proclamations. The Proclamations require the Secretary to report every 180 days on whether the restrictions should be "continued, terminated, modified, or supplemented." Defs.' Br. at 5. An immigrant visa remains valid for up to six months. 8 U.S.C. § 1201(c)(1). Under the statutory scheme, an applicant who is issued a visa while entry is restricted

can travel if the restriction is lifted or modified during the visa's validity. The Policy forecloses that possibility and ensures that, when the restrictions end, every covered applicant must begin again. FAC ¶¶ 41, 96. The Department did not consider it.

Concrete costs and reliance. Plaintiffs paid the Department's fees, obtained medical examinations and police clearance certificates that expire, and arranged their lives around the adjudication the statute guaranteed. FAC ¶¶ 86, 95, 108. Many seek immigrant visas to join family in the United States; the minor Plaintiffs, for example, are the stepchildren of a lawful permanent resident. FAC ¶ 11. When an agency changes course, it must assess "whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." *Regents*, 591 U.S. at 33. The Policy reflects no such assessment.

The backlog. An expiring entry restriction leaves the visa-issuance pipeline intact, while a suspension of visa issuance empties it. When the restrictions are lifted, applicants who could have held valid visas will instead join a backlog of re-applications and re-interviews, delaying entry long after the President has determined that entry should resume. FAC ¶¶ 96, 108. The Department did not consider that consequence.

The obvious alternative. An agency must consider alternatives "within the ambit of the existing policy." *Regents*, 591 U.S. at 30 (quoting *State Farm*, 463 U.S. at 51). The most obvious alternative here is the one the statute prescribes: adjudicate applications under § 1182(a) and § 1201(g), issue visas to eligible applicants, and enforce the entry restriction at the port of entry under § 1201(h), the second checkpoint Defendants themselves describe. Defs.' Br. at 19. Judge Boasberg identified that path when he considered, and rejected, the Department's concern about confusion and screening errors. *Milligan v. Pompeo*, 502 F. Supp. 3d 302, 316 (D.D.C. 2020); Defs.' Br. at 27. The Policy does not mention it.

Judicial decisions holding the practice unlawful. Since 2020, judges of this Court have concluded, in reasoned opinions, that the Department may not rely on a § 1182(f) proclamation to refuse a visa, FAC ¶¶ 81-85, and the D.C. Circuit has described a § 1182(f) proclamation as one that "prevents entry into the United States but does not prevent the issuance of visas." *Goodluck*, 104 F.4th at 924-25. The Department adopted the Policy without acknowledging any of those decisions. An agency that adopts a policy courts have repeatedly rejected, without addressing why those decisions do not control, has failed to consider an important aspect of the problem.

4. The Department Departed from Its Prior Position Without Acknowledging the Change or Explaining It.

An agency changing its position must "display awareness that it is changing position" and show "that there are good reasons for the new policy." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Where the prior policy "has engendered serious reliance interests," a "more detailed justification" is required. *Id.*; *see Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221-22 (2016). "[A]n unexplained inconsistency in agency policy is a reason for holding an interpretation to be an arbitrary and capricious change from agency practice." *Encino*, 579 U.S. at 222 (internal quotation marks omitted).

The FAC alleges a departure from the Department's longstanding regulatory framework governing visa adjudication and refusal. FAC ¶ 109. That framework includes the closed list of refusal grounds in 22 C.F.R. § 40.6, the issue-or-refuse command of 22 C.F.R. § 42.81(a), and the Department's own instruction that a consular officer "cannot temporarily refuse, suspend, or hold the visa for future action." 9 FAM 504.1-3(g); FAC ¶¶ 53-55. It also includes the Department's conduct following the decisions in *Gomez*, *Milligan*, and *Tate*, in which judges of this Court granted relief against the Department's prior no-visa policy, FAC ¶¶ 82-83, and the Department's conduct under the preliminary injunction in *Thein*, under which the Department "adjudicated

nearly all of the applications" of covered applicants. FAC ¶ 84. The Policy displays no awareness of any of this. It does not acknowledge the regulations it overrides or the judicial decisions that led the Department to process covered applications in the past.

Defendants' answer is that the Policy is "consistent with decades of State Department practice," so there was no change to explain. Defs.' Br. at 32. That answer fails at this stage for two reasons. First, it is a factual assertion about the content and history of Department practice that contradicts the FAC's well-pleaded allegations, FAC ¶¶ 81-85, 109, and that can be resolved only on an administrative record Defendants have not produced. Second, the practice Defendants describe is one judges of this Court have repeatedly rejected since 2020. FAC ¶¶ 81-85. Reinstating a practice after courts have granted relief against it, without acknowledging those decisions, is the kind of "unexplained inconsistency" *Encino* describes. 579 U.S. at 222. Defendants' historical account, even if accurate, would establish only that the Department has returned to a position it was required to abandon, which is a change the Department was obliged to acknowledge and explain.

5. Deference in Matters of Foreign Affairs Does Not Excuse the Absence of Reasoned Decisionmaking.

Defendants close by invoking the deference owed to the political branches in matters of foreign affairs and national security. Defs.' Br. at 32-33. The language they quote describes the political branches' power over the admission and exclusion of noncitizens, which Plaintiffs do not contest. *Id.* (quoting *Goodluck*, 104 F.4th at 925). And the decision Defendants cite for "extreme" deference reviewed the agency action before it under the APA. *Id.* (citing *Islamic Am. Relief Agency v. Gonzales*, 477 F.3d 728, 734 (D.C. Cir. 2007)). Deference to an agency's reasoning presupposes that the agency supplied reasoning. In *Regents*, the Supreme Court held the rescission

of an immigration program arbitrary and capricious because the agency failed to consider important aspects of the problem. 591 U.S. at 30-33. Count II states a claim.

E. Count III States a Claim Against the Department's National Interest Exception Policy.

The Proclamations provide that exceptions "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." FAC ¶ 112. Count III alleges that the Department's implementing guidance has narrowed that exception to a nullity, by directing that exceptions be granted "rarely" and only for interests "exceptional in nature" and by excluding from eligibility substantially every category of travel for which covered applicants apply, and that the Department has reassigned exception requests to Chiefs of Mission. FAC ¶¶ 76-80, 114-16. Defendants raise four arguments. Defs.' Br. at 33-40. None supports dismissal.

1. Plaintiffs Challenge Agency Action, Which the APA Makes Reviewable.

Defendants first argue that the Proclamations do not create a private right of action, and that the President's actions are not reviewable under the APA. Defs.' Br. at 33-34 (citing *Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992)). Count III does not seek to enforce the Proclamations, and it does not challenge any action of the President. FAC ¶ 113. It challenges the Department's guidance implementing the exception, and the APA supplies the cause of action. 5 U.S.C. §§ 702, 704, 706. *Franklin* held that the President is not an "agency" under the APA. 505 U.S. at 800-01. The Department is. 5 U.S.C. § 701(b)(1); FAC ¶ 98. The First Circuit recently applied that distinction to the implementation of a § 1182(f) proclamation, explaining that "agency action that carries out a presidential directive is ordinarily subject to APA review." *California v. Mullin*, 183 F.4th 42, 51 (1st Cir. 2026) (quoting *Agatha v. Trump*, 151 F.4th 9, 11 (1st Cir. 2025)); FAC ¶ 99. The Proclamations' statement that they create no enforceable right, Defs.' Br. at 34, governs claims

to enforce the Proclamations. It does not purport to strip the APA's cause of action against agency action.

Defendants acknowledge that in *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), "the courts determined that plaintiffs could bring a claim based on whether the agency was adhering to its 'own guidance and pronouncements.'" Defs.' Br. at 34 (quoting *Moghaddam*, 424 F. Supp. 3d at 121). Defendants distinguish those decisions on the ground that Plaintiffs here seek to have the Secretary's discretion "exercised in line with Plaintiffs' preferences." *Id.* That misreads the FAC. Count III challenges the Department's guidance as arbitrary and capricious because it converts a case-by-case exception into a categorical exclusion without explanation. FAC ¶¶ 114-15. That is a challenge to the Department's own guidance. And in *Al-Shakliah*, Judge Boasberg declined to dismiss a challenge to the Department's national interest exception policy under Proclamation 10,949 on the theory that the Department "maintains a waiver process in name but has narrowed it to a nullity in practice." *Al-Shakliah*, 2026 WL 1283663, at *10; FAC ¶ 85.

2. The Department's Guidance Is Not Committed to Agency Discretion by Law.

The exception in 5 U.S.C. § 701(a)(2) for action "committed to agency discretion by law" is read "quite narrowly," and applies only in "those rare circumstances where the relevant statute is drawn so that a court would have no meaningful standard against which to judge the agency's exercise of discretion." *Dep't of Commerce v. New York*, 588 U.S. 752, 771-72 (2019) (internal quotation marks omitted). Defendants' authorities concern individual discretionary determinations: the termination of a particular CIA employee in *Webster v. Doe*, 486 U.S. 592, 600 (1988), and the denial of a particular national interest waiver in *Poursina v. USCIS*, 936 F.3d 868, 871 (9th Cir. 2019). Defs.' Br. at 36-38. Plaintiffs do not ask the Court to review whether any individual's travel would serve the national interest. They challenge guidance that excludes whole

categories of travel from consideration. FAC ¶¶ 77-78, 114. The standards for reviewing that guidance are the APA's requirement of reasoned decisionmaking, *State Farm*, 463 U.S. at 43, and the case-by-case structure the guidance purports to implement, FAC ¶ 112. A policy or practice of declining to grant exceptions altogether is reviewable.

3. The Reassignment of Exception Requests to Chiefs of Mission Is Reviewable Under § 706(2)(D).

Defendants argue that the Proclamations commit the choice of designee to the Secretary. Defs.' Br. at 38-39. The Secretary's authority, however, operates within the INA, which excludes from the Secretary's powers "those powers, duties, and functions conferred upon the consular officers relating to the granting or refusal of visas," 8 U.S.C. § 1104(a), and assigns the review and adjudication of visa applications to consular officers, 8 U.S.C. § 1202(b), (d). Defendants say that an exception determination "is not an adjudication of the visa application." Defs.' Br. at 38 n.7. Under the Policy, though, an exception is the only route by which a covered applicant who falls outside the Proclamations' categorical exceptions can obtain a visa, so the person who decides the exception request decides the visa. FAC ¶¶ 70, 79. And the record document Defendants cite says that the Secretary delegated exception authority to "the CA assistant secretary or SBO," Defs.' Br. at 38 (quoting "AR755"), while the FAC alleges that the Department has directed that exception requests be made by Chiefs of Mission. FAC ¶ 79. That factual question cannot be resolved against Plaintiffs on a motion to dismiss. A challenge to the relocation of exception authority is cognizable under 5 U.S.C. § 706(2). *Al-Shakliah*, 2026 WL 1283663, at *11; FAC ¶ 85.

4. The FAC Pleads Specific Facts Supporting Count III.

Defendants contend that Plaintiffs "provide no support whatsoever" for the allegation that the Department "has maintained an exception process in name while rendering it unattainable in fact." Defs.' Br. at 40. The FAC quotes the Department's own document, which states that an

exception "should be used rarely and the relationship of the travel to U.S. national interests should be exceptional in nature," and which lists as travel that would "likely NOT qualify for an NIE absent other factors" travel "to visit or attend events involving family members who are U.S. citizens, LPRs, or lawfully admitted aliens"; travel "for education, work, or training in the United States"; travel that "if denied, would cause the applicant financial hardship, personal hardship (including but not limited to emotional distress), educational hardship, or non-critical harm to an applicant's health and well-being"; travel "to provide assistance to a U.S. citizen family member"; and travel "for routine commercial or business purposes." FAC ¶ 77. The FAC alleges that those exclusions eliminate substantially every category of travel for which Plaintiffs seek visas, and that exceptions under Proclamation 10,998 have been granted in a negligible number of cases, if any. FAC ¶¶ 78, 80. Those allegations are specific and plausible. *Iqbal*, 556 U.S. at 678.

Defendants respond that 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.'" Defs.' Br. at 40. Whatever latitude the Secretary has, the Department must explain the view it takes. Defendants identify no explanation in the guidance for treating family reunification with U.S. citizens and lawful permanent residents as presumptively outside the national interest, or for adopting a categorical approach under a provision that calls for case-by-case determinations. FAC ¶¶ 77, 112, 114. Count III states a claim.

F. Count IV States a Claim for Unlawfully Withheld and Unreasonably Delayed Adjudication.

Defendants' argument against Count IV rests on a single premise: that "there is no discrete agency action that a consular officer is required to take now that the visa applications have been refused." Defs.' Br. at 42. Count IV is brought by the Pending-Adjudication and Administrative-

Processing Plaintiffs only. FAC at 28. The premise does not apply to the first group, and the second group's claim survives as pleaded.

1. The Pending-Adjudication Plaintiffs' Applications Have Not Been Refused.

No consular officer has refused the Pending-Adjudication Plaintiffs' applications. FAC ¶¶ 87, 121. Defendants' argument, and the authority on which it rests, addresses what remains to be done "after a consular officer refuses a visa application." Defs.' Br. at 41 (describing *Karimova*). For these Plaintiffs, the entire adjudication remains to be done. Congress requires it: "[a]ll" immigrant and nonimmigrant visa applications "shall be reviewed and adjudicated by a consular officer." 8 U.S.C. § 1202(b), (d). Judges of this Court have held that § 1202(b) imposes a nondiscretionary duty to adjudicate. *Filazapovich v. Dep't of State*, 560 F. Supp. 3d 203, 235 (D.D.C. 2021); *Rai v. Biden*, 567 F. Supp. 3d 180, 195 (D.D.C. 2021); FAC ¶ 52. The APA independently requires an agency to "proceed to conclude a matter presented to it" "within a reasonable time." 5 U.S.C. § 555(b). And Defendants agree that once an application is executed, "a consular officer must issue or refuse a visa." Defs.' Br. at 40 (citing 22 C.F.R. § 42.81(a)).

Defendants' authorities reading the final sentence of § 1202(b) as identifying who adjudicates visa applications addressed whether the statute requires adjudication "within a given timeframe." Defs.' Br. at 23 (quoting *Khamrabaeva v. Blinken*, No. 22-cv-1219 (RC), 2022 WL 4446387, at *6 (D.D.C. Sept. 24, 2022)). The timing question is the one TRAC answers. Defendants' own position is that the duty is discharged by a decision to issue or refuse, Defs.' Br. at 23, 40, and the Pending-Adjudication Plaintiffs have received neither. To the extent Defendants contend that the duty attaches only after an interview, the interview is a step the Department controls and has declined or cancelled for these Plaintiffs. FAC ¶¶ 8-10, 12, 19, 22, 30-31, 33.

2. The Administrative-Processing Plaintiffs' Claims Survive as Pleaded.

The Administrative-Processing Plaintiffs were refused under § 1201(g) and told that their cases "will receive another adjudication once such processing is complete." FAC ¶¶ 88, 122. The FAC alleges that those refusals are placeholders entered under the Policy. FAC ¶¶ 74, 94; ECF No. 8-1 ("All applicants, in the absence of any other ineligibility, will be refused under INA Section 221(g) pending further guidance."). A refusal entered to permit administrative processing is not the yes-or-no determination that concludes an application. *Janay*, 743 F. Supp. 3d at 112; FAC ¶ 122.

Plaintiffs recognize that this Court, in *Ibrahim v. Spera*, concluded that it was bound to follow *Karimova* and that "one cannot read *Karimova* as saying anything other than a 221(g) refusal and placement in administrative processing was a conclusion." Defs.' Br. at 42 (quoting *Ibrahim v. Spera*, No. 23-cv-3563 (ABJ), 2024 WL 4103702, at *4 (D.D.C. Sept. 6, 2024)). Plaintiffs respectfully submit that *Karimova* does not control where, as alleged here, the § 1201(g) refusal was entered pursuant to a categorical instruction to hold covered applications "pending further guidance," ECF No. 8-1, rather than following an individualized determination that the applicant had failed to establish eligibility. Plaintiffs also note that *Karimova* is an unpublished judgment, Defs.' Br. at 42 (quoting *Pour v. Rubio*, No. 25-cv-573 (JEB), 2025 WL 2374559, at *5 (D.D.C. Aug. 14, 2025) ("Regardless of whether *Karimova* is actually binding . . . .")), and preserve the argument that it does not bind this Court. Whatever the Court concludes on that question, the Administrative-Processing Plaintiffs' claims under Counts I through III remain live for the reasons set out in Section IV.A.6.

G. The TRAC Factors Cannot Be Resolved Against Plaintiffs on the Pleadings.

Defendants' alternative argument under *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 79-80 (D.C. Cir. 1984) ("TRAC"), consists of a single paragraph citing

decisions that found particular durations of delay reasonable. Defs.' Br. at 43. Defendants do not apply the factors. The TRAC factors are "not ironclad," *In re Core Commc'ns, Inc.*, 531 F.3d 849, 855 (D.C. Cir. 2008), and "[e]ach case must be analyzed according to its own unique circumstances," *Air Line Pilots Ass'n, Int'l v. Civil Aeronautics Bd.*, 750 F.2d 81, 86 (D.C. Cir. 1984). Judges of this Court have declined to resolve the TRAC balance on a motion to dismiss in visa cases, describing the inquiry as a "complicated and nuanced task." *Thomas v. Pompeo*, 438 F. Supp. 3d 35, 44 (D.D.C. 2020); *see Moghaddam*, 424 F. Supp. 3d at 117; *but see Bagherian v. Pompeo*, 442 F. Supp. 3d 87, 96 (D.D.C. 2020) (applying the factors at the motion to dismiss stage).

The first factor, which asks whether the time an agency takes is "governed by a rule of reason," is the most important. *In re Core Commc'ns*, 531 F.3d at 855; *TRAC*, 750 F.2d at 80. Defendants' duration cases measured the time applicants had spent in a processing queue. *See* Defs.' Br. at 43 (citing *Akrayi v. Dep't of State*, No. 22-cv-1289 (CRC), 2023 WL 2424600, at *3 (D.D.C. Mar. 9, 2023); *Da Costa v. Immigr. Inv. Program Off.*, 80 F.4th 330, 339 (D.C. Cir. 2023); *Ghadami v. DHS*, No. 19-cv-0397 (ABJ), 2020 WL 1308376, at *8 (D.D.C. Mar. 19, 2020)). Plaintiffs allege something else: a categorical pause, imposed on the basis of nationality, with no end date. FAC ¶¶ 93, 124. "A delay in adjudication caused by the agency's failure to follow any rule of reason is, almost tautologically, unreasonable." *Liu v. Mayorkas*, No. 20-cv-654 (CRC), 2021 WL 2115209, at *3 (D.D.C. May 25, 2021). On the second factor, Congress directed that "all" applications "shall" be adjudicated. 8 U.S.C. § 1202(b), (d). On the third and fifth factors, the delay implicates human welfare: family separation, lost livelihoods, expiring medical and police clearances, and personal safety. FAC ¶¶ 95, 124. On the fourth factor, Defendants identify no higher or competing priority that would be served by declining to adjudicate applications that

have already been filed and paid for. FAC ¶ 124. And the sixth factor requires no finding of impropriety. *TRAC*, 750 F.2d at 80. Taken as true, the FAC's allegations state a plausible claim of unreasonable delay.

H. Defendants' Objections to the Scope of Relief Are Premature.

Defendants argue that if the Court grants relief, it should not grant declaratory relief that binds Defendants' relationship with nonparties. Defs.' Br. at 43-44 (citing *Trump v. CASA, Inc.*, 606 U.S. 831 (2025)). Plaintiffs' requested injunctive relief runs to Plaintiffs' own applications. FAC at 29-30 (Prayer for Relief ¶¶ E, F). Plaintiffs' request that the Court "hold unlawful and set aside" the Policy rests on the APA itself. 5 U.S.C. § 706(2). *CASA* addressed universal injunctions and expressly reserved the question whether the APA authorizes vacatur. *CASA*, 606 U.S. at 847 n.10 ("Nothing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action."). The appropriate scope of relief can be addressed if and when the Court reaches the merits. It provides no basis for dismissal.

V. CONCLUSION

The Pending-Adjudication Plaintiffs have standing, and the claims of every Plaintiff remain live. Section 1182(f) authorizes the President to suspend entry, and the Department adopted a policy converting that suspension into a bar on visa issuance without statutory authority and without explanation. Defendants' motion to dismiss should be denied.

Dated: November 6, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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