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 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' Complaint (ECF No. 1) 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"). However, these claims lack merit because the Visa Applications were already adjudicated and refused by consular officers.

Plaintiffs also challenge the legality of Presidential Proclamations 10,949 and 10,998, and State Department implementation. This challenge fails 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 because consular officers may properly deny visas to aliens who are barred from entry by the Proclamation. 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. In light of this, Plaintiffs 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 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). The INA in turn has certain provisions describing bases for refusing visa applications. "[A]s the Circuit states quite plainly that the consul's refusing to grant an application and placing it in

[1] Local Civil Rule 7(n) requires Defendants to file a certified list of the administrative record when filing a dispositive motion. Local Civ. R. 7(n). This Local Rule applies to cases involving "judicial review of administrative agency action." *Id.* 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).

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).

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 additional countries. *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]

II. Factual Background

Much of the 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).

"Plaintiffs are noncitizens who have applied for various nonimmigrant and immigrant visas, paid the required fees, and in some cases, been interviewed by a consular officer, and in some cases denied a visa based solely on Section 1182(f). Their visa applications have either had their processing paused entirely, or they have been placed into 'administrative processing' for an indeterminate period of time. In some of these cases, Defendants has [sic] marked the visa as

[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.

'refused.'" Compl. ¶ 6. Plaintiffs received refusals under section 212(f) of the INA, 8 U.S.C. § 1182(f), or section 221(g) of the INA, 8 U.S.C. § 1201(g). *Id.* ¶¶ 66-67.

The twenty-six Plaintiffs are citizens of the following countries: Zimbabwe, Afghanistan, Iran, Nigeria, Eritrea, Syria, Yemen, Laos, Togo, Benin, Burma, and Libya. *Id.* ¶¶ 15–40. 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 seeks an immigrant visa, and 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 can be used to seek nonimmigrant visas of various kinds. 87 Fed. Reg 33571 (Jun. 2, 2022). The first Plaintiff, [redacted] Chikumba, is a citizen of Zimbabwe. She "has a pending DS-260 immigrant visa application…at the U.S. Consulate General in Johannesburg, South Africa." *Id.* ¶ 15. The other Plaintiffs similarly submitted a DS-260 or DS-160 application at a U.S. Consulate.[3]

Plaintiffs filed a three-count Complaint. Plaintiffs' lawsuit alleges a legal, material distinction between State issuing a visa and entry into the United States. *See, e.g.*, *id.* ¶¶ 1–5, 43–50, 56. Count I under the APA alleges that State's reliance on Proclamations 10,949 and 10,998 to suspend adjudicating and issuing visas is unlawful, arbitrary and capricious, an abuse of discretion, and in excess of statutory authority. *Id.* ¶¶ 74–82. Count II under the APA alleges that State has unlawfully withheld and unreasonably delayed Plaintiffs' visa applications. *Id.* ¶¶ 84–92. Count III under the APA, brought only for those Plaintiffs seeking immigrant (as opposed to

[3] Plaintiffs attach as Exhibit 1 to their 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.

non-immigrant) visas, alleges that State unlawfully suspended adjudicating and issuing visas based on the Proclamations because this runs 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. *Id.* ¶¶ 94–99; *see also id.* ¶ 71.

As relief, Plaintiffs seek an order that State "resume issuing and reissuing visas to Plaintiffs and resume adjudication of all visa applications in an expedited manner," *id.* ¶¶ 82, 92, and "'hold unlawful and set aside' the visa pause as applied to Plaintiffs." *Id.* ¶ 99. They also seek, *inter alia*, issuance of visas to Plaintiffs who have been approved but have not yet received their visas, rescheduling of interviews for Plaintiffs, "re-issuance of visas for Plaintiffs denied visa applications on the basis of INA § 212(f)," and "extension of the validity dates for the medical exam and police clearance certificates, so that the issuance of Plaintiffs' visas will not be further delayed." *Id.* at 26-27 (Request 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.

ARGUMENT

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

Because Plaintiffs are seeking to compel action after a consular officer has refused the requested visas, this suit runs headfirst into the consular nonreviewability doctrine. This requires the claims' dismissal 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. 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), *appeal filed*, No. 25-5357 (D.C. Cir.). Plaintiff pleads the same claim as alleged unreasonable delay, withholding of a duty, and mandamus. Because Plaintiff's 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))).

Because these claims are nonreviewable, the Court should dismiss them for lack of subject-matter jurisdiction.

II. The State Department Has Legally Implemented Presidential Proclamations 10,949 and 10,998

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

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 three counts of the Complaint fail.

The Supreme Court's decision in *Trump v. Hawaii* also defeats Count III specifically. Count III under the APA, brought only for those Plaintiffs seeking immigrant (as opposed to non-immigrant) visas, alleges that State unlawfully suspended adjudicating and issuing visas based on the Proclamations because this runs 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. *Id.* ¶¶ 94–99; *see also id.* ¶ 71. In other words, Plaintiffs argue that State's application of § 212(f) denials based on the Proclamations violates Section 1152's prohibition on national origin discrimination as to immigrant visas. The Supreme Court explained, however, that the prohibition on national origin discrimination only operates on the category of immigrants who are eligible for admission. *Hawaii*, 585 U.S. at 695. Discussing the interplay between the statutory provisions, the Court wrote,

> Sections 1182(f) and 1152(a)(1)(A) thus operate in different spheres: Section 1182 defines the universe of aliens who are admissible into the United States (and therefore eligible to receive a visa). Once § 1182 sets the boundaries of admissibility into the United States, § 1152(a)(1)(A) prohibits discrimination in the allocation of immigrant visas based on nationality and other traits. The distinction between admissibility—to which § 1152(a)(1)(A) does not apply—and visa issuance—to which it does—is apparent from the text of the provision, which

> specifies only that its protections apply to the "issuance" of "immigrant visa[s]," without mentioning admissibility or entry.

Id. Here, under the Proclamations and State Department guidance, Plaintiffs and others from the 39 countries are not admissible. Thus, under the statutory logic of the INA explained by the Supreme Court in *Hawaii*, the prohibition on national origin discrimination does not apply.

Furthermore, history is replete with examples of excluding for admission the nationals of specific countries. *See id.* at 696. The Supreme Court explained that was appropriate in *Hawaii*. *Id.* It cannot then be said that the INA's prohibition on national origin discrimination prevents the government from refusing to issue visas when it has made the lawful threshold determination about who may enter the United States in the first place.

Moreover, the number of countries covered defies the logic of national origin discrimination. Here, the Government has restricted visa issuance for nationals of thirty-nine countries. The Government's restrictions are not aimed at a particular nationality. So even if a standard of review applied, that would be rational basis. *Cf. id.* at 705-06. Here, like in *Hawaii*, a rational basis exists: "The Proclamation is expressly premised on legitimate purposes: preventing entry of nationals who cannot be adequately vetted and inducing other nations to improve their practices." *Id.* at 706. Thus, Plaintiff's claim for national origin discrimination the INA should be dismissed.

Finally, to the extent Plaintiffs

> challenges "visa adjudication procedures" more broadly, such a claim is "outside the purview of [Section 1152]." *Algazali v. Blinken*, No. 23-CV-6038 (LGS), 2025 WL 357721, at *5 (S.D.N.Y. Jan. 31, 2025). While Section 1152(a)(1)(A) prohibits discrimination in the issuance of a visa, "[t]his anti-discrimination guarantee ... is subject to one overriding limitation, that '[n]othing in this paragraph shall be construed to limit the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications.' " *Id.* (quoting 8 U.S.C. § 1152(a)(1)(B)). Thus, insofar as Count 2 challenges the "procedures for the processing of immigrant visa applications," it is barred by Section 1152(a)(1)(B).

Alhariri v. Blinken, Civ. A. No. 22-1036 (NGG) (TAM), 2025 WL 1434317, at *11 (E.D.N.Y. May 19, 2025).

Thus, Plaintiff's claim for national origin discrimination the INA should be dismissed.

B. 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

Instead of contesting the Proclamation directly, Plaintiffs argue that there is a fundamental distinction between entry and visas. They argue that the President can lawfully deny entry under Section 212(f) but argue 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*, No. 21-cv-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.").

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

Plaintiffs' challenge to State Department policy fails because Plaintiffs' reading of the statute 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 (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.

D. Plaintiffs Challenge to the Absence of a National Interest Exception Fails

Plaintiffs challenge the State Department's refusal to consider national interest exceptions. But it is indisputable that agency actions such as this that are "committed to agency discretion by law" are "unreviewable under the APA." *Detroit Int'l Bridge Co. v. Canada*, 883 F.3d 895, 903 (D.C. Cir. 2018). 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 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.").

Moreover, Plaintiffs cannot enforce the "national interest exception" in the Executive Order because the Executive Order is not privately enforceable. "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). 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 v. Pompeo*, 464 F. Supp. 3d 93, 101–02 (D.D.C. 2020) (no judicial review of application of waivers adjudicated where the proclamation explained it did not create any right). Finally, 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)).

For these reasons, Plaintiffs' claims should be dismissed.

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

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 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 v. Abate*, No. 23-5178, 2024 WL 3517852, at *3 (D.C. Cir. July 24, 2024). *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. *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)).

CONCLUSION

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' Complaint. A proposed order is attached.

Dated: September 4, 2026

Respectfully submitted,

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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, and the entire record herein, it is hereby

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

ORDERED that Plaintiffs' Complaint is DISMISSED.

SO ORDERED:

_____
Date

_____
AMY BERMAN JACKSON
United States District Judge