

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)
 AFGHAN AND IRAQI ALLIES UNDER)
 SERIOUS THREAT BECAUSE OF THEIR)
 FAITHFUL SERVICE TO THE UNITED)
 STATES, ON THEIR OWN AND ON BEHALF)
 OF OTHERS SIMILARLY SITUATED,)
)
 Plaintiffs,)
)
 v.)
)
 MICHAEL POMPEO, *et al.*,)
)
 Defendants.)
 _____)

Civil Action No. 1:18-cv-01388-TSC

NOTICE OF LODGING JOINT PROPOSED ADJUDICATION PLAN

Plaintiffs and Defendants (hereinafter “parties”), by and through undersigned counsel, respectfully file this notice of lodging for a Joint Proposed Adjudication Plan (“Plan”) (attached herein as Exhibit A) in accordance with the Court’s April 15, 2020 Order, ECF No. 106. The parties anticipate the Court will approve the Plan and render it effective by entering the Plan as a permanent injunction. There are several matters regarding the Plan that the parties separately seek to raise to the Court’s attention, which are provided below:

Plaintiffs’ Statement

Plaintiffs reserve the right to raise additional disputes regarding the joint adjudication plan during the monitoring phase of the plan. To the extent it becomes necessary to raise any issues, Plaintiffs intend to confer with Defendants first and to seek Court intervention only if necessary.

Unreasonable delays with cases designated as high-risk: Defendants contemplate that at two of the processing stages, Step 7 (I-360 Petition adjudication) and Step 13 (administrative

processing), there will be applications that require additional processing time to resolve national security concerns, including through the involvement of third-party vetting agencies. For such cases, Defendants have agreed only to request that third-party vetting agencies expedite the processing of class members in those steps. Plaintiffs, however, understand the Court's orders to require Defendants to provide relief to all class members, including those who Defendants subject to additional vetting in order to resolve national security concerns. *See* ECF No. 88 at 18. Due to Defendants' inability to provide firm commitments regarding the resolution of the cases that Defendants refer for additional vetting, Plaintiffs continue to be concerned that those cases will be unreasonably delayed. Plaintiffs reserve the right to seek additional relief from the Court, including additional reporting as needed, if Defendants appear to be unreasonably delaying without sufficient explanation the adjudication of class members' applications that are referred for additional vetting.

Unreasonable delays based on prioritization plan: As this Court has held, the plan remedy accommodates the policy changes that Defendants have made to prioritize the adjudication of certain SIV applications over others,¹ ECF No. 88 at 28, but Defendants' prioritization policy does not excuse them from the statutory nine-month timeframe for adjudication nor the Court's orders requiring them to promptly process and adjudicate current class members' applications. Thus, while Defendants were free to take into account their prioritization scheme in proposing and committing to the adjudication plan, and are free to do so in the future within the contours of the plan, the scheme does not provide them with reason to excuse their non-compliance with the plan, or to indefinitely delay the adjudication of certain

¹ Contrary to their assertions below, Defendants are not presently required by statute to prioritize SIV applications relative to each other. *See* Pls.' Opp'n to Defs' Mot. to Decertify the Class, ECF No. 102 at 6-7.

class members' applications. *See also* ECF No. 102 at 10. If Defendants fail, to an unreasonable extent and nature, to meet performance standards on the stated basis that they have chosen to prioritize the adjudication of other applicants, Plaintiffs reserve the right to seek enforcement of the Court's orders.

Final adjudications: Defendants have advised Plaintiffs that, as a logistical matter, they are unable to readily provide the Court with the number of class members who receive final adjudications in the form of visa refusals. Plaintiffs consider this information to be essential to monitoring Defendants' compliance with the Court's order and reserve the right to seek further relief if Defendants' reporting does not allow the Court and Plaintiffs to assess Defendants' progress in completing adjudications of class members' applications.

Chief of Mission adjudications: Defendants rejected Plaintiffs' proposals to include benchmarks in the joint adjudication plan that grant the Chief of Mission (COM) Committee additional flexibility to adjudicate the large number of pending COM applications in good faith in accordance with their statutory duties, including by providing fair and sufficient time to applicants and third parties to respond to requests for information. Should the COM Committee use the benchmarks in the joint adjudication plan or the Court's orders to justify bad-faith and premature COM denials, Plaintiffs intend to seek court intervention for unlawful and retaliatory conduct. *See* ECF 106 at 2 (finding that Defendants' initial plan to "target[] SIV applicants and force[] a reduction in their time to submit materials . . . misapprehends the nature of this suit and the court's holdings, which relate to Defendant's processing time").

Defendants' Statement

Although the Court has ordered Defendants to meet and confer and to file a joint adjudication plan, Defendants' actions herein do not signal that Defendants have altered any

positions stated in their prior pleadings to the Court, and Defendants expressly maintain and reserve their right to seek further review in this case.

Defendants note that external events beyond their control may affect the ability for Defendants to process and adjudicate the applications of the class members. Under 22 C.F.R. § 42.62, an applicant for an immigrant visa shall appear before a consular officer at a U.S. Embassy or Consulate overseas for a visa application interview. The vast majority of Afghan and Iraqi special immigrant visa applicants seek to schedule their visa application interviews in Afghanistan and Iraq. Presently, the Department of State has suspended routine visa services, including visa application interviews, at U.S. embassies and consulates worldwide, and is only providing emergency or mission critical visa services, to the extent that posts' resources allow, because of the COVID-19 worldwide pandemic. Bureau of Consular Affairs, U.S. Dep't of State, *Suspension of Routine Visa Services* (April 6, 2020), <https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html>. At this time, the Department of State is unable to determine the start date for the resumption of normal visa interview appointment scheduling. In addition to COVID-19, consular services in Iraq are severely limited due to the current security situation. U.S. Embassy & Consulates in Iraq, *Visas*, <https://iq.usembassy.gov/visas/>. Because of these events, Defendants' ability to meet the target timeframes set forth in this Plan may not be feasible in the immediate future.

In addition, Congress required the Secretary of State to develop and implement a Prioritization Plan for Afghan nationals seeking SIVs under the Afghan Allies Protection Act ("AAPA"). Thus, when processing Afghan applicants under this plan, the Secretary of State must account for the congressional mandate to implement a prioritization of applicants. The Secretary of State approved a Prioritization Plan in November 2019, which divides applicants

into tiers and gives preferential treatment and more expeditious processing to certain higher-priority applicants so that there is a greater likelihood that a visa would remain available to those applicants. Under the Prioritization Plan, the processing of lower-tier applicants follows behind the higher-priority applicants, even if the lower-tier applicants submitted their applications first. Therefore, depending on the volume of higher-tier applicants, it may be more challenging for the Department of State to meet target timelines for class members in the lower-tier.

Dated: May 21, 2020

/s/ Deepa Alagesan

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Exhibit A

JOINT [PROPOSED] ADJUDICATION PLAN

I. CLASS MEMBER IDENTIFICATION

Class members covered by the Joint Adjudication Plan are all people who applied for an Afghan or Iraqi Special Immigrant Visa (“SIV”) pursuant to the Afghan Allies Protection Act of 2009, Pub. L. No. 111-8, 123 Stat. 807 (“AAPA”), and Refugee Crisis in Iraq Act of 2007, Pub. L. No. 110-181, 222 Stat. 395 (“RCIA”), by submitting an application for Chief of Mission (“COM”) approval, and whose applications have been awaiting government action for longer than 9 months, as of May 21, 2020, the date of the submission of this plan. The following parameters will be used to identify class members:¹

- (1) submitted Chief of Mission (“COM”) applications to the National Visa Center (“NVC”) prior to August 21, 2019 [*i.e.*, (CASE_RECEIVE_DTE) is earlier than August 21, 2019], and whose COM applications are pending, either on original review or on appeal, or approved;
- (2) submitted COM applications to the NVC prior to August 21, 2019 and whose COM applications were denied after January 22, 2020 [*i.e.*, (CASE_RECEIVE_DTE) is earlier than August 21, 2019 AND (NOT_APPROVED_DTE) is later than January 22, 2020], and therefore are still within the statutorily allotted 120-day time period for appealing the denial;
- (3) submitted I-360 petitions that are pending or were issued a notice of approval [*i.e.*, (I-360 Filing Date) is earlier than May 21, 2020]; or

¹ The parties acknowledge that this methodology will result in over-inclusive class identification, but no class identification methodology will perfectly capture class members given the manner in which Defendants maintain records for SIV applicants and that any methodology will be over-inclusive and/or under-inclusive.

(4) are pre- or post- visa application interview [*i.e.*, whose NVC_CREATE_DATE is earlier than May 21, 2020], including those refused under INA section 221(g) for administrative processing.

II. ADJUDICATION PLAN

Stage		Description	Number of class members ²	Adjudication Plan Performance Standards
COM application process, including appeals	1	Applicant submits a COM application or appeal package to the NVC.		N/A: Applicant-Controlled
	2	The NVC reviews documents and evaluates whether the applicant submitted all of the required items.	N/A	The NVC will complete review within 15 days of receipt of the applicant's submission (a submission is an application or an appeal, or additional documentation if such documentation was requested by the NVC).
	3	The NVC sends completed application or appeal package to the COM Committee.	N/A	The NVC will send the application or appeal to the COM Committee within 5 days of determining the application or appeal to be documentarily complete.
	4	The COM Committee reviews the application or appeal and makes a decision to approve or deny.	AAPA: 9,210 awaiting government action RCIA: 21 awaiting government action	The COM Committee will adjudicate a completed application or appeal within 120 days of receipt from the NVC. For class members currently in Step 4, the COM Committee will adjudicate the completed application or appeal within 120 days of the date of the Court's approval of the Plan.

² The parties note that these numbers do not reflect the total number of class members per the parties agreed upon class identification method given that some class members are between government-controlled steps and cannot be easily identified unless or until they enter the next step. Because of the nature of Steps 2, 3, 5, and 8, the parties agreed that Defendants will not report the number of class members.

	5	The COM Committee advises the NVC of the determination on the COM application or appeal and NVC notifies the applicant of the decision.	N/A	<p>The COM Committee will advise the NVC within 5 days of the COM Committee making a determination on the COM Application or Appeal.</p> <p>The NVC will send the applicant the COM Application Approval or Denial letter, or COM Appeal determination within 5 days of the NVC receiving notification from the COM Committee.</p>
Form I-360 Petition adjudication process	6	Applicant submits Form I-360 to USCIS		N/A: Applicant-controlled
	7	USCIS adjudicates petition and sends to the NVC if approved.	<p>AAPA: 40 awaiting government action; 15 awaiting applicant action</p> <p>RCIA: 3 awaiting government action; 3 awaiting applicant action</p>	<p>Upon receipt of a petition from the applicant, USCIS will adjudicate the petition and send an approved petition to the NVC within 60 days unless USCIS issues a Request For Evidence (“RFE”) or a Notice of Intent to Deny (“NOID”) to the applicant.</p> <p>Upon receipt of a response to an RFE or a NOID, USCIS will adjudicate the petition and send an approved petition to the NVC within 60 days.</p> <p>Cases that require additional processing time to reconcile any national security concerns, <i>see</i> AAPA § 602(b)(4)(B), RCIA § 1242(c)(2), will be identified on the progress report in the following manner: number of cases pending between 90–180 days; number of cases pending between 181–240 days; and number of cases pending 241 days or more. For the purpose of progress reporting, the</p>

				<p>timeframes will be calculated starting from the date of receipt of the applicant's petition. USCIS will request that third party agencies prioritize the vetting of these cases. The parties understand that USCIS cannot require a third party agency to complete vetting in any particular timeframe.</p> <p>Based on these target timeframes, the parties expect that all cases awaiting USCIS adjudication as of the date of the beginning of each reporting period will be adjudicated before the end of the same reporting period, unless USCIS issued an RFE or a NOID or the case requires additional processing time to reconcile any national security concerns.</p>
Visa interview process, including pre- and post-interview	8	The NVC sends instruction packet to applicant requesting standard immigrant visa documentation.	N/A	Upon receipt of the petition from USCIS, the NVC will send an instruction packet to the applicant within 5 days.
	9	Applicant submits all required documentation, per the instruction packet, to the NVC.	<p>AAPA: 107 awaiting applicant action</p> <p>RCIA: 8 awaiting applicant action</p>	N/A: Applicant-controlled
	10	The NVC reviews documents and evaluates whether the applicant submitted the required items.	<p>AAPA: 12 awaiting government action</p> <p>RCIA: 1 awaiting government action</p>	<p>Upon receipt of the application or further information requested by the NVC, the NVC will determine whether the application is complete within 5 to 15 days of receipt.</p> <p>If the NVC determines that the application is not complete,</p>

				the NVC will notify the applicant within 5 days of that determination.
	11	The NVC schedules applicant for next available interview at U.S. embassy's consular section.	AAPA: 120 awaiting interview scheduling; 2 awaiting interview RCIA: 2 awaiting interview scheduling	<p>After the NVC determines the application is complete, the NVC will offer the applicant the next available interview within 10 days of making that determination.</p> <p>The NVC will schedule the interview within 60 days of contacting the applicant unless the applicant requests a different interview location or interview time or unless there are reasonable circumstances for the delay as explained in the Progress Reports.</p> <p>The parties acknowledge that the Department of State suspended all routine visa services worldwide due to COVID-19 worldwide pandemic, and, thus, the NVC is not scheduling interviews as of the date of the submission of this plan, except to the extent that a U.S. Embassy or Consulate's resources allow them to schedule emergency or mission-critical cases. In addition, the parties acknowledge that as of the date of the submission of the plan the Visa Unit at the U.S. Embassy in Afghanistan is closed and consular services in Iraq are severely limited.</p>
	12	Applicant is interviewed by consular officer on the scheduled appointment date. Administrative processing is initiated following the interview.	AAPA: 0 RCIA: 0	After completion of the visa application interview, if the consular officer refuses the visa application under section 221(g) for administrative processing, the consular

				<p>officer will initiate any administrative processing within 5 days.</p> <p>If the applicant is required to provide any additional information or documentation, the consular officer will initiate any administrative processing within 5 days of receipt of all necessary information or documentation.</p>
13	The applicant's case undergoes administrative processing.	<p>AAPA: 286 awaiting government action</p> <p>RCIA: 47 awaiting government action</p>	<p>All cases refused under INA section 221(g) for administrative processing that is solely within the Department of State's control, including Advisory Opinions, will be completed within 90 days.</p> <p>For class members currently in Step 13 who are in administrative processing that is solely with the Department of State's control, administrative processing will be completed within 90 days of the date of the Court's approval of the Plan.</p> <p>All cases refused under INA section 221(g) for administrative processing that is not solely with the Department of State's control and which require additional processing time to reconcile any national security concerns, <i>see</i> AAPA § 602(b)(4)(B), RCIA § 1242(c)(2), will be identified in the progress report in the following manner: number of cases pending greater than 120 days; number of cases pending</p>	

				<p>greater than 180 days; and number of cases pending greater than one year. For the purpose of progress reporting, the beginning date for these cases is the date the consular officer placed the case in administrative processing.</p> <p>The Department of State will request that third party agencies expedite the processing of class members. The parties understand that the Department of State cannot require a third party agency to complete their actions in any particular timeframe.</p>
<p>Visa issuance to eligible applicants</p>	<p>14</p>	<p>Upon completion of administrative processing, applicant is instructed to obtain a medical exam. The visa is issued if applicant is eligible. In some cases, the passport will have expired and requires renewal by the applicant.</p>		<p>N/A: Applicant-controlled</p>

III. PROGRESS REPORTS

Beginning 90 days after the Court approves the proposed joint adjudication plan and every 90 days thereafter, Defendants shall lodge a progress report with the Court, within 10 days of the 90-day reporting period. The progress report will include Defendants’ performance under the proposed adjudication plan during the prior 90-day period, and, if Defendants’ performance does not meet the target timeframe, will include an explanation regarding why Defendants’ performance did not meet the target timeframe and, if appropriate, also include actions to be

taken to bring performance back in line with the performance standard. The template for the progress report is attached hereto.

If Defendants' performance does not meet the target timeframe, and Plaintiffs on a good faith basis do not believe that Defendants' explanation or revised plan for adjudicating delayed applications is sufficient, the Parties agree to meet and confer to attempt to resolve any differences. Within fourteen (14) days after submission of the progress reports, Plaintiffs must notify Defendants in writing, specifying the basis for Plaintiffs' challenge to Defendants' performance. Within fourteen (14) days of receipt of Plaintiffs' correspondence, the parties will meet and confer.

PROGRESS REPORT

Defendants submit this Progress Report as required under the Court’s Month DD, 2020

order. The Progress Report is for the period of Month Year to Month Year.

I. Class Member Breakdown¹

Refugee Crisis in Iraq Act of 2007

	Number of Class Members at the beginning of reporting period (as of Month DD, Year)	Number of Class Members at the end of reporting period (as of Month DD, Year)	Number of Class Members who entered the step during the reporting period	Number of Class Members who completed the step during the reporting period	Number of Class Members who began and ended the reporting period in the step
Step 4	[x]	[x]	[x]	[x]	[x]
Step 7	[x] (awaiting government action) [y] (awaiting applicant action) [a] (national security cases pending between 90 to 180 days) [b] (national security cases pending between 181 to 240 days)	[x] (awaiting government action) [y] (awaiting applicant action) [a] (national security cases pending between 90 to 180 days) [b] (national security cases pending between 181 to 240 days)	[x]	[x] (approved) [y] (denied)	[x] (awaiting government action) [y] (awaiting applicant action) [a] (national security cases pending between 90 to 180 days) [b] (national security cases pending between 181 to 240 days)

¹ The parties acknowledge that this report may include SIV applicants outside of the Court’s class definition that the parties have nonetheless agreed to treat as class members because no class identification methodology can perfectly capture class members given the manner in which Defendants maintain records for SIV applicants.

	[c] (national security cases pending greater than 241 days)	[c] (national security cases pending greater than 241 days)			[c] (national security cases pending greater than 241 days)
Step 11	[x] (awaiting interview scheduling) [y] (awaiting interview)	[x] (awaiting interview scheduling) [y] (awaiting interview)	[x]	[x]	[x] (awaiting interview scheduling) [y] (awaiting interview)
Step 13	[x] (cases in administrative processing) [a] (national security cases pending greater than 120 days) [b] (national security cases pending greater than 180 days) [c] (national security cases pending greater than 1 year)	[x] (cases in administrative processing) [a] (national security cases pending greater than 120 days) [b] (national security cases pending greater than 180 days) [c] (national security cases pending greater than 1 year)	[x]	[x]	[x] (cases in administrative processing) [a] (national security cases pending greater than 120 days) [b] (national security cases pending greater than 180 days) [c] (national security cases pending greater than 1 year)
Step 14				[x] (visas issued)	

Afghan Allies Protection Act of 2009

	Number of Class Members at the beginning of reporting period (as of Month DD, Year)	Number of Class Members at the end of reporting period (as of Month DD, Year)	Number of Class Members who entered the step during the reporting period	Number of Class Members who completed the step during the reporting period	Number of Class Members who began and ended the reporting period in the step
Step 4	[x]	[x]	[x]	[x]	[x]
Step 7	[x] (awaiting government action) [y] (awaiting applicant action) [a] (national security cases pending between 90 to 180 days) [b] (national security cases pending between 181 to 240 days) [c] (national security cases pending greater than 241 days)	[x] (awaiting government action) [y] (awaiting applicant action) [a] (national security cases pending between 90 to 180 days) [b] (national security cases pending between 181 to 240 days) [c] (national security cases pending greater than 241 days)	[x]	[x] (approved) [y] (denied)	[x] (awaiting government action) [y] (awaiting applicant action) [a] (national security cases pending between 90 to 180 days) [b] (national security cases pending between 181 to 240 days) [c] (national security cases pending greater than 241 days)
Step 11	[x] (awaiting interview scheduling) [y] (awaiting interview)	[x] (awaiting interview scheduling) [y] (awaiting interview)	[x]	[x]	[x] (awaiting interview scheduling) [y] (awaiting interview)

Step 13	<input checked="" type="checkbox"/> (cases in administrative processing) <input type="checkbox"/> (a) (national security cases pending greater than 120 days) <input type="checkbox"/> (b) (national security cases pending greater than 180 days) <input type="checkbox"/> (c) (national security cases pending greater than 1 year)	<input checked="" type="checkbox"/> (cases in administrative processing) <input type="checkbox"/> (a) (national security cases pending greater than 120 days) <input type="checkbox"/> (b) (national security cases pending greater than 180 days) <input type="checkbox"/> (c) (national security cases pending greater than 1 year)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> (cases in administrative processing) <input type="checkbox"/> (a) (national security cases pending greater than 120 days) <input type="checkbox"/> (b) (national security cases pending greater than 180 days) <input type="checkbox"/> (c) (national security cases pending greater than 1 year)
Step 14				<input checked="" type="checkbox"/> (visas issued)	

II. Performance Standards

A. Standards Met

For the period of this Progress Report, Defendants met the performance standards in the Joint Adjudication Plan for Steps [list steps].

B. Standards Not Met

For the period of this Progress Report, Defendants did not meet the performance standards in the Joint Adjudication Plan for Steps [list steps].

1. Step [list Step Number]

a. Performance Standard [list Standard]

b. Actual Performance [list Performance]

c. Explanation [explain why Defendants did not meet standard and, if appropriate, actions to bring performance back in line with the performance standard]