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13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN FRANCISCO-OAKLAND DIVISION**

16 HOOMAN HAKIMI and SALOOMEH
17 YAVARI, on behalf of themselves and as next
18 friends for R.H., a minor, and H.H., a minor;
19 and HALEH HAKIMI,

20 PETITIONERS/PLAINTIFFS,

21 v.

22 MICHAEL POMPEO, in his official capacity as
23 Secretary of State; U.S. DEPARTMENT OF
24 STATE; and DOES #1-#10, in their official
25 capacity as consular officials,

26 RESPONDENTS/DEFENDANTS.

Case No. _____

PETITION FOR MANDAMUS AND
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF

Date Filed: July 5, 2018

Trial Date: None Set

IMMIGRATION MANDAMUS CASE

INTRODUCTION

1
2 1. Presidential Proclamation 9645 of September 24, 2017 (the “Proclamation”),
3 commonly referred to as the “Muslim Ban” and recently upheld by the United States Supreme
4 Court, prohibits the entry of nationals from seven countries, including Iran, but creates a process
5 for obtaining a waiver in individual cases. Plaintiffs and Petitioners (“Plaintiffs”) Hooman
6 Hakimi, his wife Saloomeh Yavari, and their minor children H.H. and R.H. are Iranian nationals
7 who received the rare and precious opportunity to immigrate to the United States through the
8 diversity visa program. By the terms of the diversity visa program, the Hakimi family must be
9 issued their diversity visas by September 30, 2018 or they will lose their slots. But as residents
10 and nationals of Iran, the Hakimi family has been blocked by the Proclamation from receiving
11 immigrant visas. They may be able to obtain their diversity immigrant visas, however, if they
12 obtain waivers under Section 3(c) of the Proclamation.

13 2. Statutes, regulations, the Proclamation, and agency guidance interpreting the
14 Proclamation make clear that Defendants and Respondents (“Defendants”) have a mandatory
15 duty to issue a reasonably prompt decision on visa applications and applications for waivers
16 under the Proclamation. Defendants have repeatedly represented that the Proclamation contains
17 a meaningful waiver process.

18 3. Over six months ago, Plaintiffs fulfilled all requirements to obtain a diversity visa
19 and applied for waivers. But Defendants have unreasonably delayed in making a final decision
20 on the Hakimi family’s ability to immigrate to the United States, leaving the family in a state of
21 administrative uncertainty. With the September 30, 2018 deadline looming, the Hakimi family
22 faces imminent, irreparable harm: the dire prospect of losing their chance to immigrate to the
23 United States to reunite with their family, including Mr. Hakimi’s sister, Plaintiff Haleh Hakimi,
24 and his elderly and ailing parents. Defendants’ delay in issuing final decisions in this case –
25 given the imminent September 30, 2018 deadline – is unreasonable, without justification, and
26 threatens to render the Proclamation’s waiver process a sham. Plaintiffs seek narrow but
27 potentially life-changing relief: an order directing Defendants to fulfill their mandatory duties to
28 render a prompt adjudication of Plaintiffs’ visa and waiver applications.

JURISDICTION AND VENUE

1
2 4. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1361. Jurisdiction is
3 further conferred by 5 U.S.C. § 702.

4 5. The Court has further remedial authority under the Declaratory Judgment Act, 28
5 U.S.C. § 2201 *et seq.*, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 500 *et seq.*

6 6. Venue properly lies within the Northern District of California pursuant to 28
7 U.S.C. § 1391(e)(1)(C) because Plaintiff Haleh Hakimi resides in this district and Defendants are
8 officers and employees of the United States sued in their official capacities.

9 **INTRADISTRICT ASSIGNMENT**

10 7. Pursuant to Civil Local Rule 3-2(d), intradistrict venue is proper in the San
11 Francisco-Oakland Division because Plaintiff Haleh Hakimi resides in Alameda County and
12 Plaintiffs Hooman Hakimi and Saloomeh Yavari intend to reside in Alameda County if granted
13 waivers and visas to immigrate to the United States.

14 **PARTIES**

15 8. Plaintiff and Petitioner Hooman Hakimi is a national and resident of Iran. He is
16 the principal applicant in an application for an immigrant visa through the United States diversity
17 immigrant visa program. He was selected as a diversity lottery winner on May 8, 2017. His visa
18 application awaits a final decision from Defendant U.S. Department of State. He has submitted
19 an application for a waiver under Section 3(c) of the Proclamation, which awaits a final decision
20 from Defendant U.S. Department of State. He is the husband of Plaintiff Saloomeh Yavari, the
21 father of Plaintiffs R.H. and H.H., and the brother of Plaintiff Haleh Hakimi. He files this
22 petition and complaint on his own behalf as well as next friend to his sons R.H. and H.H.

23 9. Plaintiff and Petitioner Saloomeh Yavari is a national and resident of Iran. She is
24 the wife of Plaintiff Hooman Hakimi and mother of Plaintiffs R.H. and H.H. She is an applicant
25 for an immigrant visa through the United States diversity immigrant visa program. She was
26 selected as a diversity lottery winner on May 8, 2017. Her visa application awaits a final
27 decision from Defendant U.S. Department of State. She has submitted an application for a
28 waiver under Section 3(c) of the Proclamation, which awaits a final decision from Defendant

1 U.S. Department of State. She files this petition and complaint on her own behalf as well as next
2 friend to her sons R.H. and H.H.

3 10. Plaintiff and Petitioner H.H. is a national and resident of Iran. He is the minor son
4 of Plaintiffs Hooman Hakimi and Saloomeh Yavari. He is an applicant for an immigrant visa
5 through the United States diversity immigrant visa program. He was selected as a diversity
6 lottery winner on May 8, 2017. His visa application awaits a final decision from Defendant U.S.
7 Department of State. He has submitted an application for a waiver under Section 3(c) of the
8 Proclamation, which awaits a final decision from Defendant U.S. Department of State.

9 11. Plaintiff and Petitioner R.H. is a national and resident of Iran. He is the minor son
10 of Hooman Hakimi and Saloomeh Yavari. He is an applicant for an immigrant visa through the
11 United States diversity immigrant visa program. He was selected as a diversity lottery winner on
12 May 8, 2017. His visa application awaits a final decision from Defendant U.S. Department of
13 State. He has submitted an application for a waiver under Section 3(c) of the Proclamation,
14 which awaits a final decision from Defendant U.S. Department of State.

15 12. Plaintiff and Petitioner Haleh Hakimi is a U.S. citizen and resident of Alameda
16 County, California. She is the sister of Hooman Hakimi. Due to Defendants' failure to make a
17 final decision on her brother's and his family's pending applications for diversity immigrant
18 visas and waivers under the Proclamation, Plaintiff Haleh Hakimi suffers from, among other
19 harms, prolonged separation from these family members, who currently live in Iran.

20 13. Defendant and Respondent Michael Pompeo is the Secretary of State. Defendant
21 Pompeo is responsible for implementing and administering the Proclamation, including the
22 waiver process created by Section 3(c) of the Proclamation. Further, Defendant Pompeo is
23 responsible for administering the U.S. diversity immigrant visa program. He is sued in his
24 official capacity.

25 14. Defendant and Respondent U.S. Department of State is a federal cabinet agency
26 responsible for implementing and administering the Proclamation, including the waiver process
27 created by Section 3(c) of the Proclamation, and the U.S. diversity immigrant visa program,
28 including but not limited to holding visa interviews; conducting administrative processing of

1 applications for diversity immigrant visas; making final decisions on the issuance of diversity
2 immigrant visas; issuing diversity immigrant visas; and receiving, adjudicating, and making final
3 decisions regarding applications for waivers under Section 3(c) of the Proclamation. The
4 Department of State is a Department of the Executive Branch of the United States Government,
5 and is an agency within the meaning of 5 U.S.C. § 552(f).

6 15. Defendant Does 1-10 are the consular and other officials employed by the U.S.
7 Department of State who are responsible for implementing and administering the Proclamation,
8 including the waiver process created by Section 3(c) of the Proclamation, and the U.S. diversity
9 immigrant visa program, including but not limited to holding visa interviews; conducting
10 administrative processing of applications for diversity immigrant visas; making final decisions
11 on the issuance of diversity immigrant visas; issuing diversity immigrant visas; and receiving,
12 adjudicating, and making final decisions regarding applications for waivers under Section 3(c) of
13 the Proclamation. Their identities are not publicly disclosed by the U.S. Department of State.
14 They are sued in their official capacities.

15 **BACKGROUND AND STATEMENT OF FACTS**

16 16. Defendants have a mandatory duty to issue reasonably prompt decisions on visa
17 applications and requests for waivers under the Proclamation.

18 Statutory and Regulatory Framework for Visa Adjudications

19 17. The Immigration and Nationality Act authorizes consular officers to issue
20 immigrant visas and nonimmigrant visas to foreign nationals who are eligible for those visas and
21 admissible to the United States. *See* 8 U.S.C. § 1201; 22 C.F.R. § 42.71.

22 18. One type of immigrant visa created by Congress is the diversity immigrant visa.
23 *See* 8 U.S.C. § 1153(c). The diversity immigrant visa program is intended to provide
24 immigration opportunities for people who live in countries with historically low rates of
25 immigration to the United States. To be eligible for a diversity visa, an applicant must be a
26 national of a country covered by the program, must have either a high school education or two
27 years of qualifying work experience, *see* 8 U.S.C. § 1153(c)(2), and must not be inadmissible
28 under 8 U.S.C. § 1182(a). Spouses and unmarried minor children of the applicant are entitled to

1 the same status as the applicant. *See* 8 U.S.C. § 1153(d).

2 19. Each fiscal year, the State Department conducts a lottery to award no more than
3 50,000 diversity visas from among the many millions of lottery entries it receives. The State
4 Department then processes the winners' applications for immigrant visas. The process requires
5 the winners to submit certain documents and attend a consular interview. If a lottery winner
6 satisfies the eligibility criteria and is not inadmissible under 8 U.S.C. § 1182(a), and if visas
7 remain available, then consular officials must issue an immigrant visa. *See* 8 U.S.C. § 1153(c)(1)
8 (making the issuance of diversity visas mandatory for eligible qualified immigrants); 22 C.F.R §
9 40.6 (visas may only be refused on "a ground specifically set out in the law or implementing
10 regulations").

11 20. While consular officials have discretion to deny or grant a visa, State Department
12 regulations create an unequivocal mandatory duty to issue a decision on the visa application. 22
13 C.F.R. 42.81(a) states "When a visa application has been properly completed and executed . . .
14 the consular officer *must* either issue or refuse a visa under INA 212(a) or INA 221(g) or other
15 applicable law." (Emphasis added.) If a visa is refused, and the applicant provides evidence
16 tending to overcome the ground of ineligibility on which the refusal was made, "the case shall be
17 reconsidered." 22 C.F.R. § 42.81(e).

18 21. Further, any decision by a consular officer on a visa application must be issued
19 "within a reasonable time." 5 U.S.C. § 555(b).

20 22. If a lottery winner does not receive his or her visa by the end of the fiscal year
21 (September 30), the winner loses his or her slot and must re-enter the lottery. *See* 8 U.S.C. §
22 1154(a)(1)(I)(ii)(II).

23 23. Further, because the State Department selects far more applicants to proceed in
24 the diversity visa lottery than the annual allotment of 50,000 diversity visas, the number of
25 remaining visas dwindles as the September 30 fiscal year end draws closer. Once the 50,000
26 visas have been issued, the program for Fiscal Year 2018 will end. Therefore, a diversity visa
27 lottery winner may be foreclosed from receiving a diversity visa if the State Department issues
28 all the diversity visas for that fiscal year.

1 24. For the Fiscal Year 2018 diversity visa program, the State Department received
2 approximately 14.6 million qualified entries, and selected at random over 115,000 winners to
3 proceed in the application process. Only a certain percentage of the 50,000 diversity visas for
4 Fiscal Year 2018 have been allocated for nationals of the Asia region countries, which includes
5 Iran.

6 The Presidential Proclamation and Visas for Nationals of Iran

7 25. The Proclamation has imposed restrictions on the issuance of visas and entry of
8 Iranian nationals to the United States, with limited exceptions not at issue here. Alongside the
9 suspension of visa issuance to Iranian nationals, the Proclamation created a waiver that could be
10 granted by consular officers to allow Iranian nationals to receive visas and travel to the United
11 States if they fulfilled certain criteria. The Proclamation and agency guidance interpreting the
12 Proclamation make clear that Defendants have a mandatory duty to act on applications for
13 waivers.

14 26. Proclamation 9645, entitled “Enhancing Vetting Capabilities and Processes for
15 Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats”
16 was issued on September 24, 2017. *See* 82 Fed. Reg. 45161 (Sept. 27, 2017), Exhibit A. On
17 April 10, 2018, the President issued a proclamation lifting the entry restrictions on nationals of
18 Chad, but leaving in place all other entry restrictions and provisions of the Proclamation of
19 September 24, 2017. *See* 83 Fed. Reg. 15937 (Apr. 13, 2018).

20 27. Section 2(b) of the Proclamation indefinitely suspends the entry of nationals of
21 Iran into the United States as immigrants and nonimmigrants, except under valid student and
22 exchange visitor visas and subject to case-by-case waivers described in section 3 of the
23 Proclamation.

24 28. Section 3(c) of the Proclamation establishes the waiver process by which
25 nationals of Iran can obtain a visa to enter the United States. Under this subsection, a consular
26 officer is authorized to grant a discretionary waiver, on a case-by-case basis, to an individual
27 whose entry is restricted under the Proclamation if that individual demonstrates that the waiver
28 “would be appropriate and consistent” with certain criteria listed in the Proclamation.

1 Specifically, the individual must demonstrate to the consular officer’s satisfaction that: “(A)
2 denying entry would cause the foreign national undue hardship; (B) entry would not pose a threat
3 to the national security or public safety of the United States; and (C) entry would be in the
4 national interest.” Proclamation § 3(c)(i).

5 29. The Proclamation specifies that a case-by-case waiver may be appropriate in
6 “individual circumstances” such as where a “foreign national seeks to enter the United States to
7 visit or reside with a close family member (e.g., a spouse, child, or parent) who is a United States
8 citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa, and
9 the denial of entry would cause the foreign national undue hardship.” Proclamation § 3(c)(iv).

10 30. The Proclamation was challenged in court. On December 4, 2017, the Supreme
11 Court granted Defendants’ application for a stay of the preliminary injunction entered by the
12 District Court for the District of Hawai‘i. *See Trump v. Hawai‘i*, No. 17A550, --- S. Ct. ----,
13 2017 WL 5987406 (Mem) (Dec. 4, 2017). The Proclamation’s suspensions on the issuance of
14 visas to Iranian nationals, and the waiver process established in Section 3(c) of the Proclamation,
15 became effective immediately.

16 31. Current State Department guidance setting forth its implementation of the
17 Proclamation confirms that consular officers must issue waivers to nationals of the countries
18 listed in the Proclamation when they determine that the visa applicant meets the three criteria
19 specified in Section 3(c): “issuance [of the visa] is in the national interest, the applicant poses no
20 national security or public safety threat to the United States, and denial of the visa would cause
21 undue hardship.”¹ The State Department explains that an individual who seeks a waiver “should
22 apply for a visa and disclose during the visa interview any information that might demonstrate
23 that he or she is eligible for a waiver.” *Id.*

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28 ¹ U.S. Dep’t of State, “Revisions to Presidential Proclamation 9645,”
<https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/presidential-proclamation-archive/RevisionatoPresidentialProclamation9645.html>.

1 32. In a February 22, 2018 letter (the “February 22 Letter”), the State Department
2 describes the process by which a consular officer assesses and determines whether to grant a
3 waiver to an applicant for an immigrant visa that is subject to the Proclamation.²

4 33. *First*, visa applicants subject to the Proclamation undergo the same visa
5 application process as visa applicants that are not subject to the Proclamation, including the
6 submission of a visa application form, background and security screening, and a consular
7 interview, which “results in a decision by a consular officer.” *Id.* at 1-2 (citing 8 U.S.C. §§
8 1201(a)(1), 1202(b), 1202(h), 1204; 22 C.F.R. §§ 41.102, 42.62).

9 34. *Second*, if the applicant is eligible for a visa, the consular officer must determine
10 whether the applicant falls within an exception to the Proclamation. *Id.*

11 35. *Third*, if an applicant does not fall into an exception, the consular officer must
12 consider the applicant for a waiver under the Proclamation. The Department of State states
13 unequivocally: “Each applicant who meets the conditions set forth in section 3(c) of the
14 Proclamation *must be considered for a waiver.*” *Id.* (emphasis added).

15 36. The February 22 Letter outlines how the waiver criteria are evaluated:
16 First, to satisfy the undue hardship criterion, the applicant must demonstrate to the
17 consular officer’s satisfaction that an unusual situation exists that compels
18 immediate travel by the applicant and that delaying visa issuance and the associated
19 travel plans would defeat the purpose of travel. Second, the applicant’s travel may
20 be considered in the national interest if the applicant demonstrates to the consular
21 officer’s satisfaction that a U.S. person or entity would suffer hardship if the
22 applicant could not travel until after visa restrictions imposed with respect to
23 nationals of that country are lifted. Finally, to establish that the applicant does not
24 constitute a threat to national security or public safety, the consular officer
25 considers the information-sharing and identity-management protocols and practices
26 of the government of the applicant’s country of nationality as they relate to the
27 applicant.

28 37. The February 22 Letter states that a consular officer may determine, in
consultation with the Department of State’s Visa Office, that an applicant does not
pose a threat to national security or public safety. *Id.* If the consular officer then also determines
that the other two criteria for a waiver have been met, the consular officer may issue a visa “with

² Letter from Mary K. Waters, U.S. Dep’t of State, to the Hon. Chris Van Hollen, U.S. Senate, Feb. 22, 2018, *available at* <https://www.aila.org/infonet/dos-responds-to-senator-van-hollens-concerns>.

1 the concurrence of a consular manager.” *Id.*

2 38. On April 25, 2018, the Supreme Court held oral argument in *Trump v. Hawaii*,
3 Case No. 17-965. During oral argument, the Solicitor General, appearing on behalf of Defendant
4 State Department, confirmed that “State Department consular officers automatically apply the
5 waiver process in the course of every visa application,” and that the waiver provision “does get
6 applied in every single case.”³

7 39. On June 26, 2018, the Supreme Court held that the plaintiffs challenging the
8 Proclamation in *Trump v. Hawaii* were unlikely to succeed on the merits of their claims and
9 reversed the grant of the preliminary injunction enjoining the Proclamation. *See Trump v.*
10 *Hawaii*, Case No. 17-965, --- U.S. ---, Slip Op. at 38 (U.S. June 26, 2018). In upholding the
11 Proclamation, the Court observed, “[T]he Proclamation creates a waiver program open to all
12 covered foreign nationals seeking entry as immigrants or nonimmigrants.” *Id.* at 37.

13 40. Despite the text of the Proclamation and Defendants’ statements that consular
14 officers must consider all visa applicants subject to the Proclamation for waivers, recent
15 statements from consular officers who adjudicate such waivers provides evidence that
16 Defendants delay or avoid fulfilling the officer’s non-discretionary duty to make decisions on
17 visa and waiver applications. On information and belief, a consular officer submitted a
18 declaration in pending litigation disclosing that, although consular officials are statutorily vested
19 with discretion to adjudicate visa applications, *see* 8 U.S.C. §§ 1101(a)(9), (16), and “regardless
20 of the [Proclamation’s] instructions that we had ‘discretion to grant the waiver,’ we were not
21 allowed to exercise that discretion. We were mandated to send to Washington that we found this
22 applicant eligible to apply and Washington would then make the decision to grant or deny the
23 waiver.”⁴

24 41. The Proclamation’s restrictions on the issuance of immigrant visas to Iranian
25 nationals, as well as the waiver provision of Section 3(c) are presently in effect.

26 ³ Tr. of Oral Argument, *Trump v. Hawaii*, Case No. 17-965, at 79:6-9, 76:12-13, available at
27 https://www.supremecourt.gov/oral_arguments/argument_transcripts/2017/17-965_3314.pdf.

28 ⁴ Jeremy Stahl, “The Waiver Process Is a Fraud,” *Slate*, June 15, 2018, available at
<https://slate.com/news-and-politics/2018/06/trump-travel-ban-waiver-process-is-a-sham-two-consular-officers-say.html>.

1 The Hakimi Family Won the Diversity Visa Lottery and Promptly Applied For Visas

2 42. The Hakimi family won the diversity visa lottery in May 2017 and has promptly
3 followed all State Department instructions for completing their application. They must receive
4 waivers, update their now-expired medical clearances, and be issued visas no later than
5 September 30, 2018, or lose their ability to receive diversity immigrant visas. In addition, as the
6 September 30, 2018 deadline approaches, the Hakimi family watches their chances to receive
7 diversity visas dwindle. They run the risk that the small portion of the diversity visas allocated
8 for Fiscal Year 2018 to the Asia region, which encompasses Iran, will be issued to other diversity
9 visa lottery winners.

10 43. Mr. Hakimi, his wife Saloomeh Yavari, and their sons R.H. and H.H. reside in
11 Iran. Mr. Hakimi works as a certified International Qualified Automotive Auditor in the
12 automotive industry.

13 44. Over the past decade, Mr. Hakimi's entire family has immigrated to the United
14 States. His sister Plaintiff Haleh Hakimi won the diversity visa lottery in 2006 and has been a
15 U.S. citizen since 2011. She is an engineer working in the San Francisco Bay Area. Mr. Hakimi
16 and Haleh Hakimi's parents have been lawful permanent residents since 2014 and live with
17 Haleh Hakimi in California. Mr. Hakimi and Haleh Hakimi's sister married an American man
18 and lives in Maryland. She has been a lawful permanent resident since 2015, and in June 2018
19 submitted her application to naturalize and become a U.S. citizen.

20 45. The Hakimi family, with Mr. Hakimi as principal applicant, submitted an
21 application in October 2016 for the diversity immigrant visa program administered by
22 Defendants.

23 46. On May 8, 2017, Mr. Hakimi learned that his family won the lottery and was
24 selected to proceed in the diversity immigrant visa program for Fiscal Year 2018.

25 47. Mr. Hakimi and his family were overjoyed in learning that they had the chance to
26 reunite with his parents and sisters in United State. H.H. is very close to his aunts, so when he
27 heard that his family won the diversity visa lottery, he started to count down for their visa
28 interview. R.H. was also excited to see his aunts in the United States.

1 48. On the same day he learned that the family won the diversity visa lottery, Mr.
2 Hakimi submitted Forms DS-260, electronic applications for immigrant visas, for himself, his
3 wife, and his sons.

4 49. In August 2017, the family received notices of their visa interview at the U.S.
5 consulate in Yerevan, Armenia, and instructions and information about the required steps to
6 complete in the diversity immigrant visa process.

7 50. Following these instructions, the Hakimi family traveled to Yerevan, Armenia in
8 October 2017 to pay for and undergo the medical examinations necessary to receive medical
9 clearances to enter the United States.

10 51. Mr. Hakimi, believing that having a job offer in the United States would serve as
11 a positive point at the visa interview, contacted American companies about job opportunities as
12 an automotive auditor in the United States. He received interest from one company, which
13 scheduled him for an interview.

14 52. On October 17, 2017, Mr. Hakimi and his family attended an in-person visa
15 interview at the U.S. consulate in Yerevan, Armenia. At the interview, the Hakimi family paid
16 \$330 per person in non-refundable application fees.

17 53. At the time of the interview, the Proclamation was supposed to go into effect the
18 next day, October 18, 2017. The executive order issued prior to the Proclamation, which also
19 restricted entry to the United States by Iranian nationals, had been stayed by courts and did not
20 apply to Iranian nationals who possessed bona fide relationships to the United States.

21 54. At the visa interview, the family was told by a consular officer conducting the
22 interview that submitting documents demonstrating that Mr. Hakimi's elderly parents and sisters
23 lived in the United States and that his parents needed the family's assistance and support would
24 assist to process and expedite review of their visa applications. The consular officer also
25 suggested that the family submit applications for waivers under Section 3(c) of the Proclamation
26 should it go into effect.

27 55. At the interview, Mr. Hakimi received a notice that the family's diversity
28 immigrant visa applications were placed in "administrative processing." The notice also stated:

1
2 Attention: Under no circumstances can a visa be issued or an adjustment of status occur in your case after September 30, 2018.

3 Very Important: Because of the limited number of visas that may be issued under
4 this program, visas may cease to be available even before this date. This is especially true the closer to September 30 an application or re-application is made.

5 56. On the same day of the visa interview, the U.S. consulate sent an email to Mr.
6 Hakimi requesting that he submit extensive information in order to conduct “administrative
7 processing” of his visa application. Mr. Hakimi submitted that information within days. He also
8 asked the consulate whether such information was required of his wife, but the consulate did not
9 respond to this question.

10 57. Instructions and information that Mr. Hakimi received from the State Department
11 describes “administrative processing” as:

12 Sometimes a consular officer is unable to make a decision on a visa application
13 because he/she needs to review additional documents or the case requires further
14 administrative processing. When additional documents are requested, the consular
15 officer will give you a refusal letter that asks you to submit additional documents.
The letter will include instructions on how to send those documents to the embassy.
Administrative processing takes additional time after the interview. Most
administrative processing is resolved *within 60 days*. (Emphasis added.)

16 The U.S. Consulate Erected Obstacles to the Hakimi Family’s Waiver Applications

17 58. To facilitate processing of the family’s immigrant visa applications and waivers
18 under Section 3(c) of the Proclamation should they be necessary, the Hakimi family’s attorney
19 contacted the U.S. consulate in Yerevan in November 2017. She requested instructions on how
20 to submit waiver applications and documentation of their bona fide relationships in the United
21 States. The consulate’s response stated only that the additional documents should be submitted
22 after the completion of administrative processing.

23 59. After the Proclamation entered into effect in December 2017, the Hakimi family’s
24 attorney again contacted the U.S. consulate in Yerevan in January 2017 for instructions on how
25 to submit waiver applications for the family. The attorney noted that the Department of State’s
26 guidance regarding waivers stated that an applicant should disclose during the visa interview any
27 information supporting the grant of a waiver, but that the family had been interviewed prior to
28 the Proclamation entering into effect.

1 60. Without first providing the family an opportunity to apply for a waiver, the U.S.
2 consulate initially informed the Hakimi family that they would not be considered for waivers
3 under the Proclamation.

4 61. Only after inquiries from a representative of Congresswoman Barbara Lee did the
5 U.S. consulate conduct a “secondary supervisory review” of the Hakimi family’s visa
6 applications. The consulate informed the Congresswoman’s representative that, even after the
7 “secondary supervisory review,” the family was not eligible for waivers but agreed to accept and
8 review additional material from the family.

9 62. On January 8, 2018, the Hakimi family submitted applications for each family
10 member to receive a waiver under Section 3(c) of the Proclamation.

11 63. On January 11, 2018, the consulate acknowledged receipt of the waiver
12 applications, confirmed they were under review, and told the family that they would be contacted
13 with a final determination on their visa applications.

14 The Hakimi Family’s Applications Demonstrate that They Qualify for Waivers Pursuant to
15 Section 3(c) of the Proclamation

16 64. The Hakimi family submitted waiver applications with sufficient evidence for
17 Defendants to make a timely decision on their waiver and visa applications. Further, the waiver
18 applications demonstrate that each member of the Hakimi family meets the standards for a
19 waiver under Section 3(c) of the Proclamation. Their individual circumstances match those
20 specified in Section 3(c)(iv)(D) of the Proclamation as ones where the grant of a waiver would
21 be appropriate, *i.e.*, they seek to enter the United States to reside with close family member who
22 are U.S. citizens or lawful permanent residents, including Mr. Hakimi’s elderly parents and his
23 sister.

24 65. As documented in the waiver applications, each member of the Hakimi family
25 would suffer undue hardship if they do not receive diversity immigrant visas. Mr. Hakimi and
26 his wife Ms. Yavari possess a close familial relationship with his elderly parents, who are lawful
27 permanent residents residing in Alameda County, California. Ms. Yavari is like a daughter to
28 Mr. Hakimi’s parents. Mr. Hakimi’s mother suffers from physical ailments, including a balance

1 disorder that has caused her to fall several times in the past year, diabetes, and deafness. She
2 also experiences depression from the recent deaths of her siblings. Mr. Hakimi's father must
3 undergo hip replacement surgery within the year, and requires ongoing care during his recovery
4 period. Haleh Hakimi, a U.S. citizen who lives with her parents and is the primary source of
5 support for them in the United States, faces serious challenges in attempting to maintain a full-
6 time career as an engineer while caring for her parents. Mr. Hakimi and Ms. Yavari intend to
7 care for Mr. Hakimi's parents once they immigrate to the United States. As the oldest child and
8 only son in his family, Mr. Hakimi feels an obligation to support his parents and experiences
9 concern not being around them on a daily basis. Failure to obtain immigrant visas would cause
10 undue hardship not only to Mr. Hakimi and Ms. Yavari, but also to Haleh Hakimi and their
11 elderly parents, by preventing Mr. Hakimi and his wife from sharing the physical, financial, and
12 emotional burdens of caring for their parents in the United States.

13 66. As documented in the waiver applications, R.H. and H.H. possess a close
14 relationship with their grandparents and their aunt Haleh Hakimi. When Mr. Hakimi's parents
15 travel to Iran, his children become upset and depressed upon their grandparents' return to the
16 United States. Similarly, when Haleh Hakimi leaves Iran after a visit with her nephews, they
17 often cry and leave messages wondering why they are unable to visit the United States and see
18 where their aunt lives. Failure to grant a waiver to R.H. and H.H. causes undue hardship to
19 them, their grandparents, and their aunt Haleh Hakimi by preventing them from living alongside
20 and seeing their family members on a regular basis.

21 67. The looming September 30, 2018 deadline for issuance of diversity immigrant
22 visas is "an unusual situation" that compels "immediate travel" by the Hakimi family, cited as
23 criteria in the February 22 Letter for receipt of waivers. If the issuance of the waiver and the visa
24 were delayed, the entire purpose of their travel—to immigrate to the United States in order to
25 reside with and support relatives here—would be defeated because September 30 extinguishes
26 their ability to immigrate.

27 68. As documented in the waiver applications, the Hakimi's family immigration to
28 the United States is in the national interest. Both Haleh Hakimi, a U.S. citizen, and her elderly

1 parents, who are lawful permanent residents, would suffer hardship if the Hakimi family could
2 not travel until after visa restrictions on Iranian nationals are lifted at some as-yet-undetermined
3 point in the future. As described above, Ms. Hakimi provides care and support to her elderly
4 parents, who suffer from a range of medical conditions. Her livelihood as an engineer would be
5 affected negatively if the Hakimi family were unable to enter the United States within the next
6 few months in order to assist her in caring for her parents. Ms. Hakimi's parents would also
7 suffer hardship from the deprivation of family attention, care, and support that would be
8 provided if the Hakimi family could immigrate to the United States. Finally, Mr. Hakimi
9 contacted several American automotive auditing companies about jobs after he learned that he
10 been selected for the diversity immigrant visa program. Mr. Hakimi's skills and experiences fill
11 a need in the American labor market. American companies would be deprived of his valuable
12 contributions to automotive safety, efficiency, and accountability in the United States if Mr.
13 Hakimi could not immigrate. One American company did not proceed with a job interview with
14 Mr. Hakimi when it learned that he had not yet received a visa.

15 69. The Hakimi family pose no threat to the national security or public safety of the
16 United States. Neither Mr. Hakimi nor Ms. Yavari have been arrested or committed any crimes.
17 They are law-abiding people. All four members of the Hakimi family have submitted extensive
18 information about themselves to the U.S. consulate for administrative processing purposes. Mr.
19 Hakimi has received permission to enter various countries for his work, including the United
20 Kingdom, France, Japan, China, and South Korea.

21 The State Department Has Unreasonably Withheld a Decision on the Hakimi Family's Waiver
22 and Diversity Immigrant Visa Applications

23 70. The Hakimi family completed their visa applications on eight and a half months
24 ago, on October 17, 2017, when they travelled to Yerevan for their visa interviews, and
25 completed their waiver applications six months ago, on January 8, 2018. They have since
26 supplemented their waiver applications with additional information demonstrating undue
27 hardship, and have responded to the consulate's requests for information for administrative
28 processing.

1 71. The Hakimi family, through their attorney, has contacted the U.S. consulate in
2 Yerevan on several occasions inquiring as to the status of their waiver applications. The Hakimi
3 family has noted in their communications with the consulate that the September 30, 2018
4 deadline for issuance of diversity immigrant visas necessitates a prompt decision on their waiver
5 and visa applications.

6 72. In response to their attorney's inquiries on March 12, 2018, April 11, 2018, and
7 May 10, 2018, the U.S. consulate informed the Hakimi family that their applications were
8 currently being reviewed for a waiver under the Proclamation.

9 73. On May 30, 2018, the Hakimi family, through their attorney, submitted an
10 additional letter of support for their waiver applications from Mr. Hakimi's brother-in-law.

11 74. In response, on June 4, 2018, the U.S. consulate informed the family that their
12 waiver applications were still being considered and requested extensive information for each of
13 the family members, including their two young sons, in order to conduct administrative
14 processing for each individual: countries to which they had traveled in the last 15 years; their
15 prior and current passport numbers and country of issuance; the names and dates of birth of
16 immediate relatives not included in the visa application (including siblings, children, and
17 spouse); their addresses during the last 15 years along with dates of residence; all phone
18 numbers, email addresses and social media account user names used in the last 5 years; and
19 employment history for the last 15 years. The consulate's email to the family requesting this
20 information made no mention of the fact that Mr. Hakimi had submitted this information
21 regarding himself in October 2017, over 8 months prior. The family submitted the information
22 about themselves within days of it being requested.

23 75. On June 20, 2018, the Hakimi family, through their attorney, notified the U.S.
24 consulate that Mr. Hakimi's sister who lives in Maryland had submitted her application for
25 naturalization to become a U.S. citizen.

26 76. To date, the Hakimi family has received no email or other communication from
27 the U.S. consulate or Defendants with a final decision on their waiver or visa applications. The
28

1 June 4, 2018 email from the consulate is the last communication the family and their attorney
2 have received from the consulate about their visa and waiver applications.

3 77. While the Hakimi family needs final decisions on their waiver and visa
4 applications no later than September 30, 2018 to have a chance to immigrate to the United States,
5 other circumstances warrant a final decision on their waiver and visa applications even sooner.
6 Since their prior medical clearances expired after six months, the Hakimi family must receive
7 new medical clearances. This involves travelling to Armenia to undergo new medical
8 examinations and tests by one of two doctors designated by Defendants, both of whom are in
9 Armenia. They must also receive the printed visas in their passport from the U.S. consulate in
10 Armenia. Finally, as the September 30, 2018 deadline approaches, the number of diversity visas
11 available for Fiscal Year 2018 decreases and the Hakimi family's ability to receive these visas
12 diminishes.

13 78. The Hakimi family's applications for waivers pursuant to Section 3(c) of the
14 Proclamation and their applications for diversity immigrant visas remain pending.

15 79. Defendants have not made a decision on whether they will issue waivers pursuant
16 to Section 3(c) of the Proclamation to the Hakimi family so that they may receive diversity
17 immigrant visas and enter the United States.

18 80. Defendants have not made a final determination on whether they will issue
19 diversity immigrant visas to the Hakimi family.

20 81. Plaintiffs are entitled to a decision by Defendants on whether the Hakimi family
21 will be issued waivers pursuant to Section 3(c) of the Proclamation and whether they will receive
22 diversity immigrant visas to enter the United States.

23 82. Defendants have a non-discretionary duty to adjudicate the waiver and diversity
24 immigrant visa applications submitted by the Hakimi family, imposed by 22 C.F.R. §§ 42.81(a),
25 42.81(e), Section 3(c) of the Proclamation, guidance issued by the State Department, and
26 Defendants' numerous statements in court submissions that Plaintiffs are entitled to a decision on
27 their waiver application.

28

1 83. Defendants have delayed unreasonably in deciding whether to issue waivers and
2 diversity immigrant visas to the family. Defendants' delay in making a decision on the waiver
3 and diversity immigrant visa applications is unreasonable given the September 30 deadline for
4 issuance of the diversity immigrant visas, that the Hakimi family's visa interview occurred over
5 eight months ago, and that the Hakimi family's waiver applications were submitted
6 approximately six months ago.

7 84. Defendants' failure to issue waivers prevents the issuance of a diversity
8 immigrant visa to the Hakimi family, thereby preventing Plaintiff Haleh Hakimi from being
9 reunited with her family in the United States.

10 85. Defendants' failure to issue waivers prevents the issuance of a diversity
11 immigrant visa to the Hakimi family, thereby preventing them from reuniting with their family in
12 the United States and providing crucial support to Plaintiff Haleh Hakimi.

13 86. Accordingly, Plaintiffs petition for a writ of mandamus and preliminary
14 injunction directing Defendants to make a final decision on the Hakimi family's waiver and
15 diversity immigrant visa applications; and for a declaration that Defendants have unreasonably
16 delayed the adjudication of the Hakimi family's waiver and diversity immigrant visa applications
17 in violation of the APA.

18 CLAIMS FOR RELIEF

19 **COUNT ONE**
20 **MANDAMUS**

21 87. Plaintiffs repeat and incorporate by reference each and every allegation contained
22 in the preceding paragraphs as if fully set forth herein.

23 88. Plaintiffs are eligible for and have fulfilled all requirements for the diversity
24 immigrant visa. They have submitted all necessary information and evidence supporting their
25 application for diversity immigrant visas.

26 89. Plaintiffs have fulfilled all requirements for requesting a waiver pursuant to
27 Section 3(c) of the Proclamation, have submitted sufficient evidence supporting their waiver
28 request, and meet the eligibility criteria for issuance of a waiver under Section 3(c).

90. Defendants have a clear and non-discretionary duty both to adjudicate

1 applications for visas and to adjudicate requests for waivers under Section 3(c) of the
2 Proclamation made by individuals subject to the Proclamation.

3 91. 22 C.F.R. § 42.81(a) states, “When a visa application has been properly
4 completed and executed . . . the consular officer must either issue or refuse a visa under INA
5 212(a) or INA 221(g) or other applicable law.”

6 92. 22 C.F.R. § 42.81(e) states, “If a visa is refused, and the applicant within one year
7 from the date of refusal adduces further evidence tending to overcome the ground of ineligibility
8 on which the refusal was based, the case shall be reconsidered.”

9 93. Section 3(c) the Proclamation establishes a process by which an individual that is
10 not exempt from the Proclamation can receive a waiver from the Proclamation’s restrictions on
11 entry, subsequently receiving a visa to travel to the United States.

12 94. Defendants’ subsequent guidance and statements in court further establish that
13 Defendants possess a duty to adjudicate waiver requests. While the decision to grant a waiver is
14 discretionary, Defendants’ own statements make clear that the duty to make a decision on an
15 application for a waiver is not.

16 95. Further, Defendants’ delay in taking action on the Hakimi family’s waiver and
17 diversity immigrant visa applications is unreasonable because the applications have been
18 pending for several months and the family will lose the chance to receive immigrant visas after
19 September 30, 2018.

20 96. Defendants have a clear, non-discretionary, and mandatory duty to adjudicate the
21 Hakimi family’s visa and waiver applications. There is no legal bar to doing so. Accordingly,
22 Plaintiffs have a clear and indisputable right to have their visa and waiver applications
23 adjudicated.

24 97. No alternative remedy exists to compel action by Defendants.

25
26 **COUNT TWO**
ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. §§ 555(b), 706(1)

27 98. Plaintiffs repeat and incorporate by reference each and every allegation contained
28 in the preceding paragraphs as if fully set forth herein.

1 99. Pursuant to the APA, 5 U.S.C. § 555(b), Defendants have a nondiscretionary duty
2 to act “within a reasonable time” upon a matter presented to it.

3 100. Pursuant to the APA, 5 U.S.C. § 706(1), a court may compel agency action
4 unlawfully withheld or unreasonably delayed.

5 101. Plaintiffs are eligible for and have fulfilled all requirements for the diversity
6 immigrant visa. They have submitted all necessary information and evidence supporting their
7 application for diversity immigrant visas.

8 102. Plaintiffs have fulfilled all requirements for requesting a waiver pursuant to
9 Section 3(c) of the Proclamation, have submitted sufficient evidence supporting their waiver
10 request, and meet the eligibility criteria for issuance of a waiver under Section 3(c).

11 103. Defendants have a clear and non-discretionary duty both to adjudicate
12 applications for visas and to adjudicate requests for waivers under Section 3(c) of the
13 Proclamation made by individuals subject to the Proclamation.

14 104. 22 C.F.R. § 42.81(a) states, “When a visa application has been properly
15 completed and executed . . . the consular officer must either issue or refuse a visa under INA
16 212(a) or INA 221(g) or other applicable law.”

17 105. 22 C.F.R. § 42.81(e) states, “If a visa is refused, and the applicant within one year
18 from the date of refusal adduces further evidence tending to overcome the ground of ineligibility
19 on which the refusal was based, the case shall be reconsidered.”

20 106. Section 3(c) the Proclamation establishes a process by which an individual that is
21 not exempt from the Proclamation can receive a waiver from the Proclamation’s restrictions on
22 entry, subsequently receiving a visa to travel to the United States.

23 107. Defendants’ subsequent guidance and statements in court further establish that
24 Defendants possess a duty to adjudicate waiver requests. While the decision to grant a waiver is
25 discretionary, Defendants’ statements make clear that the duty to make a decision on an
26 application for a waiver is not.

27 108. Further, Defendants’ delay in taking action on the Hakimi family’s waiver and
28 diversity immigrant visa applications is unreasonable because the applications have been

1 pending for several months and the family will lose the chance to receive immigrant visas after
2 September 30, 2018.

3 109. No alternative remedy exists to compel action by Defendants.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs pray that this Court grant the following relief:

6 1. Issue a writ of mandamus and preliminary injunction directing Defendants to
7 adjudicate Plaintiffs' applications for waivers pursuant to Section 3(c) of the Proclamation, and
8 issue a final determination on Plaintiffs' applications for diversity immigrant visas no later than
9 August 1, 2018;

10 2. Declare that Defendants' delay in adjudicating Plaintiffs' application for waivers
11 pursuant to Section 3(c) of the Proclamation and Plaintiffs' application for diversity immigrant
12 visa is unreasonable and violates the APA, and that Plaintiffs are entitled to a prompt adjudication
13 of their waiver and visa applications no later than August 1, 2018;

14 3. An award to Plaintiffs of reasonable costs and attorneys' fees; and

15 4. Such other and further relief that this Court may deem fit and proper.

16 Dated: July 5, 2018

17 AMERICAN CIVIL LIBERTIES UNION
18 FOUNDATION OF NORTHERN
19 CALIFORNIA

20 By: /s/ Vasudha Talla

Linda Lye
Vasudha Talla

21 Attorneys for Petitioners/Plaintiffs
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