

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JOHN DOE, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

CASE NO. C17-0178JLR

JEWISH FAMILY SERVICES, et al.,

Plaintiffs,

v.

DONALD TRUMP, et al.,

Defendants.

CASE NO. C17-1707JLR

(RELATING TO CASE NO. C17-0178JLR)

**DECLARATION OF AJ DE VRIES IN SUPPORT OF *DOE* PLAINTIFFS'  
OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND  
DISSOLVE PRELIMINARY INJUNCTION AS MOOT**

DECL. OF AJ DE VRIES  
IN SUPP. OF DOE PLS.' OPP'N  
TO DEFS.' MOT. TO DISMISS  
AND DISSOLVE PRELIM. INJ.  
AS MOOT - 1  
(2:17-cv-00178-JLR)

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1201 Third Avenue, Suite 3200  
Seattle, WA 98101-3052  
Tel.: (206) 623-1900  
Fax: (206) 623-3384

1 Pursuant to 28 U.S.C. § 1746, I, AJ de Vries, hereby declare and state:

2  
3 1. I am a Paralegal at the law firm of Keller Rohrback L.L.P. I have knowledge of  
4 the facts set forth herein and could testify competently to them if called upon to do so.

5 2. The Internet Archive is a website that provides access to a digital library of  
6 Internet sites in digital form. The Internet Archive has created a service known as the Wayback  
7 Machine. The Wayback Machine makes it possible to surf more than 400 billion pages stored in  
8 the Internet Archive's web archive. Visitors to the Wayback Machine can search archives by  
9 URL (i.e., a website address). If archived records for a URL are available, the visitor will be  
10 presented with a list of available dates. The visitor may select one of those dates, and then begin  
11 surfing on an archived version of the Web. The archived data made viewable and browseable by  
12 the Wayback Machine is compiled using software programs known as crawlers that surf the Web  
13 and automatically store copies of website files, preserving these files as they exist at the point of  
14 time of capture.  
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16 3. The Internet Archive assigns a URL on its site to the archived files in the format  
17 [http://web.archive.org/web/\[Year in yyyy\]\[Month in mm\]\[Day in dd\]\[Time code in hh:mm:ss\]/](http://web.archive.org/web/[Year in yyyy][Month in mm][Day in dd][Time code in hh:mm:ss]/)  
18 [\[Archived URL\]](#). Thus, the Internet Archive URL <http://web.archive.org/web/19970126045828/>  
19 <http://www.archive.org/> would be the URL for the record of the Internet Archive home page  
20 HTML file (<http://www.archive.org/>) archived on January 26, 1997 at 4:58 a.m. and 28 seconds  
21 (1997/01/26 at 04:58:28). A web browser may be set such that a printout from it will display the  
22 URL of a web page in the printout's footer.  
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1 4. Attached hereto as Exhibit A is a true and correct copy of the webpage entitled  
2 “Follow-to-Join Refugees and Asylees,” which is publicly available at the U.S. Department of  
3 State’s website. The record of the HTML file for the URL [https://travel.state.gov/content/visas/  
4 en/immigrate/join-refugees-and-asylees.html](https://travel.state.gov/content/visas/en/immigrate/join-refugees-and-asylees.html) was collected by me on November 4, 2017. This is  
5 the file Plaintiffs’ relied upon when they filed their Third Amended Class Action Complaint for  
6 Declaratory and Injunctive Relief, Dkt. # 42, on November 6, 2017.

8 5. According to the Wayback Machine calendar, on December 29, 2017, the URL  
9 <https://travel.state.gov/content/visas/en/immigrate/join-refugees-and-asylees.html> was redirected  
10 to the URL [https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-join-refugees-  
11 and-asylees.html](https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-join-refugees-and-asylees.html).

12 6. Attached hereto as Exhibit B is a true and correct copy of the webpage entitled  
13 “Follow-to-Join Refugees and Asylees,” which is publicly available at the U.S. Department of  
14 State’s website. The Internet Archive’s record of the HTML file for the URL [https://web.archive.  
15 org/web/20180131164504/https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-  
16 join-refugees-and-asylees.html](https://web.archive.org/web/20180131164504/https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-join-refugees-and-asylees.html) was captured on January 31, 2018 at 16:45:04 and was collected  
17 by me on June 4, 2018.

19 7. Attached hereto as Exhibit C is a true and correct copy of the webpage entitled  
20 “Follow-to-Join Refugees and Asylees,” which is publicly available at the U.S. Department of  
21 State’s website. The Internet Archive’s record of the HTML file for the URL [https://web.archive.  
22 org/web/20180205151345/https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-  
23 join-refugees-and-asylees.html](https://web.archive.org/web/20180205151345/https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-join-refugees-and-asylees.html) was captured on February 5, 2018 at 15:13:45 and was collected  
24 by me on June 4, 2018.

1 8. Based on the foregoing, sometime between January 31, 2018, and February 5,  
2 2018, Defendants started requiring “follow-to-join” refugees—the spouses and children of  
3 already admitted refugees—of certain countries to travel to embassies or consulates other than  
4 where they currently reside.

5 9. Attached hereto as Exhibit D is a true and correct copy of Defendants’ Motion to  
6 Dismiss the Appeal, and to Vacate the Judgment and Remand for Dismissal, on Grounds of  
7 Mootness, filed in *Doe v. Trump*, Nos. 18-35015, 18-35026 (9th Cir. Feb. 6, 2018), Appeal Dkt.  
8 # 24-1.  
9

10 I declare under penalty of perjury that the foregoing is true and correct to the best of my  
11 knowledge.

12 EXECUTED this 19th day of June, 2018, at Seattle, Washington.

13 

14 AJ de Vries  
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# EXHIBIT A

SEARCH

[travel.state.gov](#) > [Visas](#) > [Immigrate](#) > **Follow-to-Join Refugees and Asylees**[Print](#) [Email](#)

## Follow-to-Join Refugees and Asylees

### Follow-to-Join Refugees and Asylees

#### Court Order on Presidential Proclamation on Visas October 17, 2017

On October 17, 2017, the U.S. District Court for the District of Hawaii ordered that the government not enforce or implement Sections 2(a), (b), (c), (e), (g), and (h) of Presidential Proclamation 9645 (P.P.) titled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats."

In light of this order, visa applicants who are nationals of Chad, Iran, Libya, Syria, Yemen, and Somalia are not subject to any of the restrictions or limitations under the Presidential Proclamation, regardless of whether they have a credible claim of a bona fide relationship with a person or entity in the United States. Their visa applications will be adjudicated in accordance with the INA, any other applicable immigration laws, and generally applicable visa processing standards, without regard to the Presidential Proclamation or related implementing procedures. Note that the entry restrictions in Executive Order 13780 have expired by their terms.

The order did not affect Sections (d) and (f) of the Proclamation, so nationals from North Korea and Venezuela are subject to the restrictions and limitations listed in the Presidential Proclamation, which went into effect at 12:01 a.m. EDT on Wednesday, October 18, 2017, with respect to nationals of those countries.

We will keep those traveling to the United States and partners in the travel industry informed as we implement the Proclamation, to the extent permitted by applicable court orders, in a professional, organized, and timely way.

#### Presidential Proclamation on Visas

On September 24, 2017, the President issued a Presidential Proclamation (the P.P.), titled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats." Per Section 2 of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry Into The United States), a global review was conducted to determine what additional information is needed from each foreign country to assess whether foreign nationals who seek to enter the United States pose a security or safety threat. As part of that review, the Department of Homeland Security (DHS) developed a comprehensive set of criteria to evaluate the information-sharing practices, policies, and capabilities of foreign governments on a worldwide basis. At the end of that review, which included a 50-day period of engagement with foreign governments aimed at improving their information sharing practices, there were seven countries whose information sharing practices were classified as "inadequate" and for which the President deemed it necessary to impose certain restrictions on the entry of nonimmigrants and immigrants who are nationals of these countries. The President also deemed it necessary to impose restrictions on one country due to the "special concerns" it presented. These restrictions are considered important to addressing the threat these existing information-sharing deficiencies, among other things, present to the security and welfare of the United States and pressuring host governments to remedy these deficiencies.

The P.P. does not affect V92 applicants, follow-to-join asylees.

While the new P.P. does not affect V93, follow-to-join refugees, they continue to be subject to Section 6 of E.O. 13780, which remains in effect, subject to the Supreme Court exceptions regarding "bona fide relationships" with close family members or entities in the United States.

We do not plan to cancel previously scheduled visa application appointments. The P.P. provides specifically that no visas issued before its effective date will be revoked pursuant to the P.P.

## Spouse and Unmarried Minor Children Abroad Following to Join a Refugee or Asylee in the United States

Welcome to the webpage dedicated to follow-to-join refugee and asylee processing. You have come to this webpage if you have a USCIS approved I-730 petition, and you received an email or letter from the National Visa Center (NVC) telling you that your petition was sent overseas for processing. Find the subject in the list below and click to visit that section of the page.

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- [Follow-to-Join Overseas Processing Steps](#)
- [Overseas Interview Appointment Scheduling](#)
- [Documentation Needed for the Overseas Interview](#)
- [Medical Examination and Vaccination Requirements](#)
- [How Long Will it Take to Process a Case Overseas?](#)
- [Ineligibilities - What if a Beneficiary is Ineligible?](#)
- [Fees](#)
- [Case Inquiries](#)

## Overview – Follow-to-Join Refugees and Asylees

Using a Form I-730, Refugee/Asylee Relative Petition, a person who has been granted asylum or refugee status in the United States (the petitioner) may petition to have his or her spouse and/or unmarried children, who are called beneficiaries, join him or her in the United States. Overseas, the beneficiaries of Forms I-730 filed by asylees in the United States are known as **follow-to-join asylees**. Beneficiaries of Forms I-730 filed by refugees are known as **follow-to-join refugees**.

## Follow-to-Join Overseas Processing Steps

**1. Petition Filing:** An individual (petitioner) who was granted asylum in the United States as a principal asylee or who was resettled to the United States as a principal refugee can file an I-730, Refugee/Asylee Relative Petition, within the first two years of arrival, with the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), on behalf of his or her spouse and unmarried child(ren) (beneficiary). Further details on petition filing are available on the USCIS website under [Form I-730, Refugee/Asylee Relative Petition](#).

**2. National Visa Center (NVC) Pre-Processing Case Assignment:** If the beneficiary of an approved petition is located overseas, USCIS sends the approved Form I-730 petition to the [National Visa Center \(NVC\)](#). NVC then forwards the case file to the overseas location where the beneficiary will interview. NVC sends the petitioner a letter or email telling him/her which office will interview the beneficiary, how to get in touch with that office, and what steps to take next.

**3. Beneficiary Interview:** The beneficiary will be interviewed by either a Department of State consular officer or USCIS officer at a U.S. Embassy or Consulate overseas. This interview will confirm the beneficiary's identity, claimed relationship to the petitioner, and eligibility to travel to the United States. During the interview process, the beneficiary must provide ink-free, digital fingerprint scans. The beneficiary interview requires careful preparation, including having all required original documents available for the interview. Some beneficiaries also must complete a [medical examination](#) prior to interview. See the "Documentation Needed for the Overseas Interview" section below for details on what to bring to the interview.

**4. Approval to Travel as a Follow-to-Join Refugee or Follow-to-Join Asylee:** The interviewing officer will tell the beneficiary if he or she has been found eligible to travel to the United States.

**5. After Interview Processing:** Some cases require further [administrative processing](#), which takes additional time after the beneficiary's interview. Follow-to-join refugee beneficiaries, for example, undergo post-approval processing to arrange for sponsorship by a voluntary resettlement agency in the United States upon arrival. (NOTE: All follow-to-join refugee beneficiaries are required to have a sponsorship assurance from a resettlement agency before travel to the United States in order to receive refugee benefits.)

**6. Issuance of Boarding Foil and Travel Packet:** An officer will place a boarding foil in the approved beneficiary's passport or other travel document. The beneficiary also will receive a sealed envelope – called a "travel packet" – containing the documents for review by a DHS immigration official when the beneficiary enters the United States.

**7. Travel Arrangements:** The beneficiary must enter the United States before the expiration date printed on the boarding foil. The officer who conducted the interview will advise the beneficiary about travel arrangements to the United States. Typically, follow-to-join asylee beneficiaries are instructed to make their own travel arrangements. Travel arrangements for follow-to-join refugee beneficiaries, on the other hand, are required to be arranged and managed by the International Organization for Migration (IOM). Follow-to-join refugee beneficiaries who arrive in the United States without IOM coordination will not receive the reception and placement benefits to which they are entitled.

**8. Entering the United States:** The boarding foil issued to the beneficiary allows him or her to travel to the U.S. port of entry to request permission to enter the United States. However, the boarding foil does not guarantee entry into the United States. The DHS Customs and Border Protection (CBP) officials at the U.S. port-of-entry have the authority to permit or deny admission to the United States. Upon arrival at the port-of-entry, the beneficiary must give the CBP officer his or her passport (or other travel document) with boarding foil and the unopened/sealed travel packet envelope. Beneficiaries should review important information about admission and entry requirements on the CBP website under [Travel](#) .

## Overseas Interview Appointment Scheduling

All follow-to-join refugee and asylee beneficiaries must be interviewed by a USCIS officer or Department of State consular officer at a U.S. Embassy. When a case is ready for interview, the embassy will send the applicant or petitioner a letter with instructions explaining how to schedule an interview appointment.

Failure by a beneficiary to schedule an interview appointment will result in processing delays. It is critical that the overseas office conducting the beneficiary interview has the current contact information – including physical and mailing addresses, telephone numbers, and email addresses – for the petitioner, beneficiary, and if applicable, the representative of record on the case.

For interviews conducted by the Consular Section: Please follow the instructions the U.S. Embassy sends you and the guidance in the below section titled "Documentation Needed for the Overseas Interview." You can also visit [Interview Preparation – Interview Guidelines](#) for general information on how to prepare for an interview at a U.S. Embassy or Consulate. **Important:** *Not all of the documents required for immigrant visa applicants are necessary for beneficiaries of I-730 petitions.* The information on this link should be used as a general outline of what an interview is like.

For interviews conducted by an overseas USCIS office: After the interview is scheduled, the USCIS office will send the beneficiary a confirmation notice, which will outline the requirements that the beneficiary must fulfill before his or her interview.

## Documentation Needed for the Overseas Interview

1. **The original** and a photocopy of the following civil documents for each beneficiary, as applicable. These documents confirm the beneficiary's identity and relationship to the petitioner in the United States:

- a. Birth certificate;
- b. Marriage certificate;
- c. Certified adoption decree;
- d. Divorce certificate  
(if needed to prove the legal termination of previous marriages);
- e. Death certificate  
(if needed to prove the legal termination of previous marriages); and
- f. Documentation of any legal name change.
- g. Six photographs of the beneficiary  
(see the photograph requirements); and
- h. A photocopy of the biographical data page of the beneficiary's passport, if available.

Note: Documents written in a language other than English must be accompanied by a certified English translation. When the beneficiary is interviewed overseas, the interviewing officer may ask for additional information, such as photographs and other proof that the relationship with the U.S. petitioner is genuine.



2. **One or more travel document(s)**, such as a passport, with a validity date at least six months beyond the beneficiary's intended date of entry into the United States and/or picture identity card (for example, a refugee travel document).
3. **Other evidence of relationship** between the beneficiary and petitioner, such as photographs, available school records, family correspondence, phone bills, documentation demonstrating financial support, and other proof that the relationship is genuine.
4. **Completed Medical Examination Report**, which will be provided by an embassy-approved panel physician after the beneficiary has successfully completed a medical examination and vaccinations (see below).

## Medical Examination and Vaccination Requirements

**Important Notice:** Follow-to-join asylee beneficiaries must complete their medical exam **before** their interviews with a USCIS officer or Department of State consular officer, and they are responsible for paying the cost of the medical examination. Follow-to-join refugee beneficiaries typically are instructed to complete their medical exams after their interviews, and the U.S. Government pays all costs associated with the medical examination.

Before the issuance of a follow-to-join refugee or asylee boarding foil, every beneficiary, regardless of age, must undergo a medical examination, which **must be performed by an authorized panel physician**.

See [Medical Examination](#) for more information. You can find a list of approved panel physicians by country on our [Interview Preparation – Interview Guidelines](#) web page.

Follow-to-join refugee and asylee beneficiaries are encouraged to get certain vaccinations. Although vaccinations are not required prior to travel to the United States, they will be required when adjusting status to that of lawful permanent resident. Beneficiaries are therefore encouraged to fulfill these vaccination requirements at the time of the medical examination. See [Vaccination Requirements for IV Applicants](#) for the list of vaccinations.

## How Long Will it Take to Process a Case Overseas?

Once a case has been transferred by NVC to the appropriate USCIS office or U.S. Embassy Consular Section, the length of time needed to complete the case varies according to its circumstances, and cannot be predicted with any accuracy. (It is important to provide correct postal addresses, telephone numbers, and email addresses for both the petitioner and the beneficiary to the U.S. Embassy or USCIS office processing the case. See [Case Inquiries](#) below). Some cases require further [administrative processing](#), which takes additional time after the beneficiary's interview.

Please visit [My Case Status](#) on the USCIS website to obtain a status on an I-730, Refugee/Asylee Relative Petition. If the case has been transferred overseas by NVC, the petitioner or beneficiary may contact the USCIS office or U.S. embassy processing the case for information.

## Ineligibilities

Certain conditions and activities may make the beneficiary ineligible for admission to the United States. If a beneficiary is ineligible, he or she will be informed by the USCIS officer or Department of State consular officer at the time of interview, and advised whether there is a [waiver](#) of ineligibility and what the waiver process is. Ineligible cases are returned to the USCIS Service Centers that initially approved them for further action.

## Fees

There is no cost to file a Form I-730, Refugee/Asylee Relative Petition. There is no cost to schedule a Form I-730 beneficiary interview.

## Case Inquiries

If petitioners, beneficiaries, or representatives have a question concerning a follow-to-join refugee or asylee case in progress at a USCIS office or U.S. Embassy, first contact the appropriate USCIS office or U.S. Embassy for status information. Case status information also is available on the USCIS website under [My Case Status](#) .

Before making an inquiry, petitioners and representatives should carefully review this website for answers to questions. Because of the volume of inquiries received, USCIS and the Department of State cannot promise an immediate reply to an inquiry.

Department of State contact information is available at [Contact Us](#). USCIS contact information is available at [Contact Us](#) .

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- [Diversity Visa Program](#)
- [Visa Waiver Program](#)
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- [VisitTheUSA](#)



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# EXHIBIT B

<https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-join-refugees-and-asylees.html>

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U.S. Visa: Reciprocity and Civil Documents by Country

[Travel.State.Gov](#) > [U.S. Visas](#) > [Immigrate](#)

Family Immigration

The Immigrant Visa Process

Diversity Visa Program - Entry

Employment-Based Immigrant Visas

Important Announcement

## Follow-to-Join Refugees and Asylees

### Important Notice

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**FAQS: ABOUT VISAS - THE BASICS**

**A GUIDE FOR NEW IMMIGRANTS**

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- [Fees](#)
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### Follow-to-Join Overseas Processing Steps

**1. Petition Filing:** An individual (petitioner) who was granted asylum in the United States as a principal asylee or who was resettled to the United States as a principal refugee can file an I-730, Refugee/Asylee Relative Petition, within the first two years of arrival, with the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), on behalf of his or her spouse and unmarried child(ren) (beneficiary). Further details on petition filing are available on the USCIS website under [Form I-730, Refugee/Asylee Relative Petition](#).

https://travel.state.gov/content/travel/en/us-visa/overseas-interviews/overseas-interview-appointment-scheduling.html

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**3. Beneficiary Interview:** The beneficiary will be interviewed by either a Department of State consular officer or USCIS officer at a U.S. Embassy or Consulate overseas. This interview will confirm the beneficiary's identity, claimed relationship to the petitioner, and eligibility to travel to the United States. During the interview process, the beneficiary must provide ink-free, digital fingerprint scans. The beneficiary interview requires careful preparation, including having all required original documents available for the interview. Some beneficiaries also must complete a [medical examination](#) prior to interview. See the "Documentation Needed for the Overseas Interview" section below for details on what to bring to the interview.

**4. Approval to Travel as a Follow-to-Join Refugee or Follow-to-Join Asylee:** The interviewing officer will tell the beneficiary if he or she has been found eligible to travel to the United States.

**5. After Interview Processing:** Some cases require further [administrative processing](#), which takes additional time after the beneficiary's interview. Follow-to-join refugee beneficiaries, for example, undergo post-approval processing to arrange for sponsorship by a voluntary resettlement agency in the United States upon arrival. (NOTE: All follow-to-join refugee beneficiaries are required to have a sponsorship assurance from a resettlement agency before travel to the United States in order to receive refugee benefits.)

**6. Issuance of Boarding Foil and Travel Packet:** An officer will place a boarding foil in the approved beneficiary's passport or other travel document. The beneficiary also will receive a sealed envelope – called a "travel packet" – containing the documents for review by a DHS immigration official when the beneficiary enters the United States.

**7. Travel Arrangements:** The beneficiary must enter the United States before the expiration date printed on the boarding foil. The officer who conducted the interview will advise the beneficiary about travel arrangements to the United States. Typically, follow-to-join asylee beneficiaries are instructed to make their own travel arrangements. Travel arrangements for follow-to-join refugee beneficiaries, on the other hand, are required to be arranged and managed by the International Organization for Migration (IOM). Follow-to-join refugee beneficiaries who arrive in the United States without IOM coordination will not receive the reception and placement benefits to which they are entitled.

**8. Entering the United States:** The boarding foil issued to the beneficiary allows him or her to travel to the U.S. port of entry to request permission to enter the United States. However, the boarding foil does not guarantee entry into the United States. The DHS Customs and Border Protection (CBP) officials at the U.S. port-of-entry have the authority to permit or deny admission to the United States. Upon arrival at the port-of-entry, the beneficiary must give the CBP officer his or her passport (or other travel document) with boarding foil and the unopened/sealed travel packet envelope. Beneficiaries should review important information about admission and entry requirements on the CBP website under [Travel](#) .

### Overseas Interview Appointment Scheduling

All follow-to-join refugee and asylee beneficiaries must be interviewed by a USCIS officer or Department of State consular officer at a U.S. Embassy. When a case is ready for interview, the embassy will send the applicant or petitioner a letter with instructions explaining how to schedule an interview appointment.

Failure by a beneficiary to schedule an interview appointment will result in processing delays. It is critical that the overseas office conducting the beneficiary interview has the current contact information – including physical and mailing addresses, telephone numbers, and email addresses – for the petitioner, beneficiary, and if applicable, the representative of record on the case.

For interviews conducted by the Consular Section: Please follow the instructions the U.S. Embassy sends you and the guidance in the below section titled "Documentation

https://travel.state.gov/content/travel/en/us-visas/immigration/follow-to-join-refugees-and-asylees/needed-for-the-overseas-interview-f... Interview Preparation | Go

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Interview Guidelines for general information on how to prepare for an interview at a U.S. Embassy or Consulate. **Important:** *Not all of the documents required for immigrant visa applicants are necessary for beneficiaries of I-730 petitions.* The information on this link should be used as a general outline of what an interview is like.

For interviews conducted by an overseas USCIS office: After the interview is scheduled, the USCIS office will send the beneficiary a confirmation notice, which will outline the requirements that the beneficiary must fulfill before his or her interview.

### Documentation Needed for the Overseas Interview

1. **The original** and a photocopy of the following civil documents for each beneficiary, as applicable. These documents confirm the beneficiary's identity and relationship to the petitioner in the United States:

- a. Birth certificate;
- b. Marriage certificate;
- c. Certified adoption decree;
- d. Divorce certificate  
(if needed to prove the legal termination of previous marriages);
- e. Death certificate  
(if needed to prove the legal termination of previous marriages); and
- f. Documentation of any legal name change.
- g. Six photographs of the beneficiary  
(see the photograph requirements); and
- h. A photocopy of the biographical data page of the beneficiary's passport, if available.

Note: Documents written in a language other than English must be accompanied by a certified English translation. When the beneficiary is interviewed overseas, the interviewing officer may ask for additional information, such as photographs and other proof that the relationship with the U.S. petitioner is genuine.

2. **One or more travel document(s)**, such as a passport, with a validity date at least six months beyond the beneficiary's intended date of entry into the United States and/or picture identity card (for example, a refugee travel document).
3. **Other evidence of relationship** between the beneficiary and petitioner, such as photographs, available school records, family correspondence, phone bills, documentation demonstrating financial support, and other proof that the relationship is genuine.
4. **Completed Medical Examination Report**, which will be provided by an embassy-approved panel physician after the beneficiary has successfully completed a medical examination and vaccinations (see below).

### Medical Examination and Vaccination Requirements

**Important Notice:** Follow-to-join asylee beneficiaries must complete their medical exam **before** their interviews with a USCIS officer or Department of State consular officer, and they are responsible for paying the cost of the medical examination. Follow-to-join refugee beneficiaries typically are instructed to complete their medical exams after their interviews, and the U.S. Government pays all costs associated with the medical examination.

Before the issuance of a follow-to-join refugee or asylee boarding foil, every beneficiary, regardless of age, must undergo a medical examination, which **must be performed by an authorized panel physician.**

See [Medical Examination](#) for more information. You can find a list of approved panel physicians by country on our [Interview Preparation – Interview Guidelines](#) web page.

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vaccinations. Although vaccinations are not required prior to travel to the United States, they will be required when adjusting status to that of lawful permanent resident. Beneficiaries are therefore encouraged to fulfill these vaccination requirements at the time of the medical examination. See [Vaccination Requirements for IV Applicants](#) for the list of vaccinations.

**How Long Will it Take to Process a Case Overseas?**

Once a case has been transferred by NVC to the appropriate USCIS office or U.S. Embassy Consular Section, the length of time needed to complete the case varies according to its circumstances, and cannot be predicted with any accuracy. (It is important to provide correct postal addresses, telephone numbers, and email addresses for both the petitioner and the beneficiary to the U.S. Embassy or USCIS office processing the case. See [Case Inquiries](#) below). Some cases require further [administrative processing](#), which takes additional time after the beneficiary's interview.

Please visit [My Case Status](#) on the USCIS website to obtain a status on an I-730, Refugee/Asylee Relative Petition. If the case has been transferred overseas by NVC, the petitioner or beneficiary may contact the USCIS office or U.S. embassy processing the case for information.

**Ineligibilities**

Certain conditions and activities may make the beneficiary ineligible for admission to the United States. If a beneficiary is ineligible, he or she will be informed by the USCIS officer or Department of State consular officer at the time of interview, and advised whether there is a [waiver](#) of ineligibility and what the waiver process is. Ineligible cases are returned to the USCIS Service Centers that initially approved them for further action.

**Fees**

There is no cost to file a Form I-730, Refugee/Asylee Relative Petition. There is no cost to schedule a Form I-730 beneficiary interview.

**Case Inquiries**

If petitioners, beneficiaries, or representatives have a question concerning a follow-to-join refugee or asylee case in progress at a USCIS office or U.S. Embassy, first contact the appropriate USCIS office or U.S. Embassy for status information. Case status information also is available on the USCIS website under [My Case Status](#) .

Before making an inquiry, petitioners and representatives should carefully review this website for answers to questions. Because of the volume of inquiries received, USCIS and the Department of State cannot promise an immediate reply to an inquiry.

Department of State contact information is available at [Contact Us](#). USCIS contact information is available at [Contact Us](#) .

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# EXHIBIT C

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## Follow-to-Join Refugees and Asylees

### Important Notice

#### Court Order on Presidential Proclamation on Visas October 17, 2017

On October 17, 2017, the U.S. District Court for the District of Hawaii ordered that the government not enforce or implement Sections 2(a), (b), (c), (e), (g), and (h) of Presidential Proclamation 9645 (P.P.) titled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats."

In light of this order, visa applicants who are nationals of Chad, Iran, Libya, Syria, Yemen, and Somalia are not subject to any of the restrictions or limitations under the Presidential Proclamation, regardless of whether they have a credible claim of a bona fide relationship with a person or entity in the United States. Their visa applications will be adjudicated in accordance with the INA, any other applicable immigration laws, and generally applicable visa processing standards, without regard to the Presidential Proclamation or related implementing procedures. Note that the entry restrictions in Executive Order 13780 have expired by their terms.

The order did not affect Sections (d) and (f) of the Proclamation, so nationals from North Korea and Venezuela are subject to the restrictions and limitations listed in the Presidential Proclamation, which went into effect at 12:01 a.m. EDT on Wednesday, October 18, 2017, with respect to nationals of those countries.

We will keep those traveling to the United States and partners in the travel industry informed as we implement the Proclamation, to the extent permitted by applicable court orders, in a professional, organized, and timely way.

### More Information

- [A-Z Index](#)
- [Latest News](#)
- [What is a U.S. Visa?](#)
- [Diversity Visa Program](#)
- [Visa Waiver Program](#)
- [Fraud Warning](#)
- [Find a U.S. Embassy or Consulate](#)
- [Straight Facts on U.S. Visas](#)

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**FAQS: ABOUT VISAS - THE BASICS**

https://travel.state.gov/content/travel/en/us-visas/immigration/Presidential-Proclamation-on-Visas-and-asylees.html  JAN FEB MAR  
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On September 24, 2017, the President issued a Presidential Proclamation (the P.P.), titled "Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry into the United States by Terrorists or other Public-Safety Threats." Per Section 2 of Executive Order 13780 of March 6, 2017 (Protecting the Nation from Foreign Terrorist Entry Into The United States), a global review was conducted to determine what additional information is needed from each foreign country to assess whether foreign nationals who seek to enter the United States pose a security or safety threat. As part of that review, the Department of Homeland Security (DHS) developed a comprehensive set of criteria to evaluate the information-sharing practices, policies, and capabilities of foreign governments on a worldwide basis. At the end of that review, which included a 50-day period of engagement with foreign governments aimed at improving their information sharing practices, there were seven countries whose information sharing practices were classified as "inadequate" and for which the President deemed it necessary to impose certain restrictions on the entry of nonimmigrants and immigrants who are nationals of these countries. The President also deemed it necessary to impose restrictions on one country due to the "special concerns" it presented. These restrictions are considered important to addressing the threat these existing information-sharing deficiencies, among other things, present to the security and welfare of the United States and pressuring host governments to remedy these deficiencies.

The P.P. does not affect V92 applicants, follow-to-join asylees.

While the new P.P. does not affect V93, follow-to-join refugees, they continue to be subject to Section 6 of E.O. 13780, which remains in effect, subject to the Supreme Court exceptions regarding "bona fide relationships" with close family members or entities in the United States.

We do not plan to cancel previously scheduled visa application appointments. The P.P. provides specifically that no visas issued before its effective date will be revoked pursuant to the P.P.

**IMPORTANT ANNOUNCEMENT: Follow-to-Join Refugee Case Processing Now Centralized**

Due to processing changes, follow-to-join refugee cases processed by Department of State embassies and consulates will only be processed at embassies or consulates offering immigrant visa services, or U.S. Citizenship and Immigration Service (USCIS) international field offices. This will mean that cases currently being processed at posts that only adjudicate nonimmigrant visa applications will be transferred and follow-to-join refugee beneficiaries may need to travel to another country in order to be interviewed. If your case is being transferred, you will be notified by the Department of State.

The list of U.S. embassies and consulates below reflect some of the processing locations that will no longer process follow-to-join refugee cases, along with the newly designated embassy, consulate, or USCIS international field office to which the cases will be transferred. For example, a follow-to-join refugee case arising in the consular district of the U.S. Embassy in Bamako, Mali, will now be processed at the U.S. Embassy in Dakar, Senegal.

Previous Location	IV Designated Processing Location
Bamako, Mali	Dakar, Senegal
Banjul, The Gambia	Dakar, Senegal
Conakry, Guinea	Dakar, Senegal
Dushanbe, Tajikistan	Almaty, Kazakhstan
Gaborone, Botswana	Johannesburg, South Africa (USCIS)
Jeddah, Saudi Arabia	Riyadh, Saudi Arabia
Maputo, Mozambique	Johannesburg, South Africa (USCIS)
Mbabane, Swaziland	Johannesburg, South Africa (USCIS)
Nouakchott, Mauritania	Dakar, Senegal
Bandar Seri Begawan, Brunei	Singapore, Singapore
Bujumbura, Burundi	Nairobi, Kenya (USCIS)
N'Djamena, Chad	Yaoundé, Cameroon

Location	Location	Go	JAN	FEB	MAR
<a href="#">47 captures</a>	Copenhagen, Denmark	Stockholm, Sweden		05	
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	Maseru, Lesotho	Johannesburg, South Africa (USCIS)	2017	2018	2019
	Oslo, Norway	Stockholm, Sweden			
	Lisbon, Portugal	Paris, France			
	Kampala, Uganda	Nairobi, Kenya (USCIS)			

For a more complete list, you can visit [Visa Issuing Posts](#) in order to confirm whether an embassy or consulate nearest to your residence will process your follow-to-join refugee case. If the location provides "All" visa services, then your follow-to-join refugee case can be processed there, unless there is a USCIS international field office in that country. Locations marked only as "NIV" will no longer process follow-to-join refugee cases. Embassies or consulates that only offer nonimmigrant visa (NIV) services will note the designated processing post for immigrant visas (and follow-to-join refugees) on their websites <https://www.usembassy.gov/>.

Please note that the change **only** impacts follow-to-join refugees. Follow-to-join asylees can still be processed at locations offering just NIV services.

#### What if I was already interviewed?

If you have not been issued a boarding foil, then your case file will be transferred to the regional processing location noted above or on the [Visa Issuing Posts](#) page.

#### How will I know if my case has been transferred?

The Department of State will notify you if your case is transferred to another location.

#### What if I choose to have my case transferred to another location, since I am unable to travel to this NEW designated location?

Follow-to-join refugee beneficiaries may request to process their cases at another immigrant visa processing U.S. embassy or consulate that is different than the one designated. If you would like to have your case transferred to a different embassy, consulate, or USCIS international field office, then you must provide justification for the case transfer and show that you can legally be present in the country while your case is being processed. You will first need to submit a request directly with the National Visa Center (NVC) through the [Ask NVC](#) online submission form. You should select the "How can I request to have my interview scheduled at a different U.S. Embassy overseas?" in the question dropdown list. In the box entitled "Additional comments or questions not in the above list", you should include a justification for requesting the different location and note that it is in regards to "follow-to-join refugee centralization."

#### Can I use my still valid medical exam at a new processing location?

Yes, the results of a still valid medical exam completed in another location can be transferred to another embassy, consulate, or USCIS international field office.

#### Spouse and Unmarried Minor Children Abroad Following to Join a Refugee or Asylee in the United States

Welcome to the webpage dedicated to follow-to-join refugee and asylee processing. You have come to this webpage if you have a USCIS approved I-730 petition, and you received an email or letter from the National Visa Center (NVC) telling you that your petition was sent overseas for processing. Find the subject in the list below and click to visit that section of the page.

- [Overview – Follow-to-Join Refugees and Asylees](#)
- [Follow-to-Join Overseas Processing Steps](#)
- [Overseas Interview Appointment Scheduling](#)
- [Documentation Needed for the Overseas Interview](#)
- [Medical Examination and Vaccination Requirements](#)
- [How Long Will it Take to Process a Case Overseas?](#)
- [Ineligibilities - What if a Beneficiary is Ineligible?](#)
- [Fees](#)
- [Case Inquiries](#)

#### Overview – Follow-to-Join Refugees and Asylees

https://travel.state.gov/content/travel/en/us-visa/immigration/Refugee/Asylee/Relative-Petition... FEB 05 2018 2019

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Using Form I-730, Refugee/Asylee Relative Petition, a person who has been granted asylum or refugee status in the United States (the petitioner) may petition to have his or her spouse and/or unmarried children, who are called beneficiaries, join him or her in the United States. Overseas, the beneficiaries of Forms I-730 filed by asylees in the United States are known as **follow-to-join asylees**. Beneficiaries of Forms I-730 filed by refugees are known as **follow-to-join refugees**.

### Follow-to-Join Overseas Processing Steps

**1. Petition Filing:** An individual (petitioner) who was granted asylum in the United States as a principal asylee or who was resettled to the United States as a principal refugee can file an I-730, Refugee/Asylee Relative Petition, within the first two years of arrival, with the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), on behalf of his or her spouse and unmarried child(ren) (beneficiary). Further details on petition filing are available on the USCIS website under [Form I-730, Refugee/Asylee Relative Petition](#).

**2. National Visa Center (NVC) Pre-Processing Case Assignment:** If the beneficiary of an approved petition is located overseas, USCIS sends the approved Form I-730 petition to the [National Visa Center \(NVC\)](#). NVC then forwards the case file to the overseas location where the beneficiary will interview. NVC sends the petitioner a letter or email telling him/her which office will interview the beneficiary, how to get in touch with that office, and what steps to take next.

**3. Beneficiary Interview:** The beneficiary will be interviewed by either a Department of State consular officer or USCIS officer at a U.S. Embassy or Consulate overseas. This interview will confirm the beneficiary's identity, claimed relationship to the petitioner, and eligibility to travel to the United States. During the interview process, the beneficiary must provide ink-free, digital fingerprint scans. The beneficiary interview requires careful preparation, including having all required original documents available for the interview. Some beneficiaries also must complete a [medical examination](#) prior to interview. See the "Documentation Needed for the Overseas Interview" section below for details on what to bring to the interview.

**4. Approval to Travel as a Follow-to-Join Refugee or Follow-to-Join Asylee:** The interviewing officer will tell the beneficiary if he or she has been found eligible to travel to the United States.

**5. After Interview Processing:** Some cases require further [administrative processing](#), which takes additional time after the beneficiary's interview. Follow-to-join refugee beneficiaries, for example, undergo post-approval processing to arrange for sponsorship by a voluntary resettlement agency in the United States upon arrival. (NOTE: All follow-to-join refugee beneficiaries are required to have a sponsorship assurance from a resettlement agency before travel to the United States in order to receive refugee benefits.)

**6. Issuance of Boarding Foil and Travel Packet:** An officer will place a boarding foil in the approved beneficiary's passport or other travel document. The beneficiary also will receive a sealed envelope – called a "travel packet" – containing the documents for review by a DHS immigration official when the beneficiary enters the United States.

**7. Travel Arrangements:** The beneficiary must enter the United States before the expiration date printed on the boarding foil. The officer who conducted the interview will advise the beneficiary about travel arrangements to the United States. Typically, follow-to-join asylee beneficiaries are instructed to make their own travel arrangements. Travel arrangements for follow-to-join refugee beneficiaries, on the other hand, are required to be arranged and managed by the International Organization for Migration (IOM). Follow-to-join refugee beneficiaries who arrive in the United States without IOM coordination will not receive the reception and placement benefits to which they are entitled.

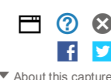
**8. Entering the United States:** The boarding foil issued to the beneficiary allows him or her to travel to the U.S. port of entry to request permission to enter the United States. However, the boarding foil does not guarantee entry into the United States. The DHS Customs and Border Protection (CBP) officials at the U.S. port-of-entry have the authority to permit or deny admission to the United States. Upon arrival at the port-of-entry, the beneficiary must give the CBP officer his or her passport (or other travel document) with boarding foil and the unopened/sealed travel packet envelope.

https://travel.state.gov/content/travel/en/us-visas/immigration/overseas-interview-appointment-scheduling.html

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### Overseas Interview Appointment Scheduling

All follow-to-join refugee and asylee beneficiaries must be interviewed by a USCIS officer or Department of State consular officer at a U.S. Embassy. When a case is ready for interview, the embassy will send the applicant or petitioner a letter with instructions explaining how to schedule an interview appointment.

Failure by a beneficiary to schedule an interview appointment will result in processing delays. It is critical that the overseas office conducting the beneficiary interview has the current contact information – including physical and mailing addresses, telephone numbers, and email addresses – for the petitioner, beneficiary, and if applicable, the representative of record on the case.

For interviews conducted by the Consular Section: Please follow the instructions the U.S. Embassy sends you and the guidance in the below section titled "Documentation Needed for the Overseas Interview." You can also visit [Interview Preparation – Interview Guidelines](#) for general information on how to prepare for an interview at a U.S. Embassy or Consulate. **Important:** *Not all of the documents required for immigrant visa applicants are necessary for beneficiaries of I-730 petitions.* The information on this link should be used as a general outline of what an interview is like.

For interviews conducted by an overseas USCIS office: After the interview is scheduled, the USCIS office will send the beneficiary a confirmation notice, which will outline the requirements that the beneficiary must fulfill before his or her interview.

### Documentation Needed for the Overseas Interview

1. **The original** and a photocopy of the following civil documents for each beneficiary, as applicable. These documents confirm the beneficiary's identity and relationship to the petitioner in the United States:

- a. Birth certificate;
- b. Marriage certificate;
- c. Certified adoption decree;
- d. Divorce certificate  
(if needed to prove the legal termination of previous marriages);
- e. Death certificate  
(if needed to prove the legal termination of previous marriages); and
- f. Documentation of any legal name change.
- g. Six photographs of the beneficiary  
(see the photograph requirements); and
- h. A photocopy of the biographical data page of the beneficiary's passport, if available.

Note: Documents written in a language other than English must be accompanied by a certified English translation. When the beneficiary is interviewed overseas, the interviewing officer may ask for additional information, such as photographs and other proof that the relationship with the U.S. petitioner is genuine.

2. **One or more travel document(s)**, such as a passport, with a validity date at least six months beyond the beneficiary's intended date of entry into the United States and/or picture identity card (for example, a refugee travel document).

3. **Other evidence of relationship** between the beneficiary and petitioner, such as photographs, available school records, family correspondence, phone bills, documentation demonstrating financial support, and other proof that the relationship is genuine.

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### Medical Examination and Vaccination Requirements

**Important Notice:** Follow-to-join asylee beneficiaries must complete their medical exam **before** their interviews with a USCIS officer or Department of State consular officer, and they are responsible for paying the cost of the medical examination. Follow-to-join refugee beneficiaries typically are instructed to complete their medical exams after their interviews, and the U.S. Government pays all costs associated with the medical examination.

Before the issuance of a follow-to-join refugee or asylee boarding foil, every beneficiary, regardless of age, must undergo a medical examination, which **must be performed by an authorized panel physician**.

See [Medical Examination](#) for more information. You can find a list of approved panel physicians by country on our [Interview Preparation – Interview Guidelines](#) web page.

Follow-to-join refugee and asylee beneficiaries are encouraged to get certain vaccinations. Although vaccinations are not required prior to travel to the United States, they will be required when adjusting status to that of lawful permanent resident. Beneficiaries are therefore encouraged to fulfill these vaccination requirements at the time of the medical examination. See [Vaccination Requirements for IV Applicants](#) for the list of vaccinations.

### How Long Will it Take to Process a Case Overseas?

Once a case has been transferred by NVC to the appropriate USCIS office or U.S. Embassy Consular Section, the length of time needed to complete the case varies according to its circumstances, and cannot be predicted with any accuracy. (It is important to provide correct postal addresses, telephone numbers, and email addresses for both the petitioner and the beneficiary to the U.S. Embassy or USCIS office processing the case. See [Case Inquiries](#) below). Some cases require further [administrative processing](#), which takes additional time after the beneficiary's interview.

Please visit [My Case Status](#) on the USCIS website to obtain a status on an I-730, Refugee/Asylee Relative Petition. If the case has been transferred overseas by NVC, the petitioner or beneficiary may contact the USCIS office or U.S. embassy processing the case for information.

### Ineligibilities

Certain conditions and activities may make the beneficiary ineligible for admission to the United States. If a beneficiary is ineligible, he or she will be informed by the USCIS officer or Department of State consular officer at the time of interview, and advised whether there is a [waiver](#) of ineligibility and what the waiver process is. Ineligible cases are returned to the USCIS Service Centers that initially approved them for further action.

### Fees

There is no cost to file a Form I-730, Refugee/Asylee Relative Petition. There is no cost to schedule a Form I-730 beneficiary interview.

### Case Inquiries

If petitioners, beneficiaries, or representatives have a question concerning a follow-to-join refugee or asylee case in progress at a USCIS office or U.S. Embassy, first contact the appropriate USCIS office or U.S. Embassy for status information. Case status information also is available on the USCIS website under [My Case Status](#).

Before making an inquiry, petitioners and representatives should carefully review this website for answers to questions. Because of the volume of inquiries received, USCIS and the Department of State cannot promise an immediate reply to an inquiry.

<https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-join-refugees-and-asylees.html>

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# EXHIBIT D

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

JANE DOE, et al.,  
Plaintiffs-Appellees-Cross-Appellants,

v.

DONALD TRUMP, in his official capacity as  
President of the United States, et al.,  
Defendants-Appellants-Cross-Appellees.

Nos. 18-35015,  
18-35026

**DEFENDANTS' MOTION TO DISMISS THE APPEAL, AND  
TO VACATE THE JUDGMENT AND REMAND  
FOR DISMISSAL, ON GROUNDS OF MOOTNESS**

The district court in this case entered a nationwide preliminary injunction barring the enforcement of two provisions of a Memorandum to the President issued on October 23, 2017, by the Secretaries of State and Homeland Security and the Director of National Intelligence (DNI).<sup>1</sup> The challenged provisions (1) temporarily de-prioritized, during a 90-day review period, processing of refugee applications of nationals of 11 countries previously identified as posing a higher risk to the United States through their designation on the Security Advisory Opinion (SAO) list, and (2) temporarily

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<sup>1</sup> Copies of the preliminary injunction (Op.; DE# 92) and the Memorandum to the President (Agency Memo; DE# 46-2) are included with this motion.

suspended, pending additional security screening procedures, admission of following-to-join (FTJ) derivative refugees. The 90-day SAO review period and de-prioritization specified in the October 23 Memorandum expired by its own terms on January 22, 2018; and on February 1, 2018, the government implemented the additional security screening procedures for FTJ refugees that terminates the FTJ suspension by its own terms. Thus, the district court's injunction no longer has any effect because the enjoined provisions of the Memorandum have both ended by their own terms. Because these cross-appeals are now moot, the government respectfully requests that the Court dismiss the appeal, and vacate the injunction below and remand with instructions to dismiss the underlying claims, on grounds of mootness, pursuant to the doctrine recognized by the Supreme Court in *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950). That "established practice," *ibid.*, was followed by the Supreme Court just last year when the challenged refugee provisions of a related Executive Order expired by their own terms, mooting the Supreme Court's review. See *Trump v. Hawaii*, 138 S. Ct. 377 (Mem.), No. 16-1540 (Oct. 24, 2017).

## **BACKGROUND**

1. Plaintiffs brought these cases (consolidated by the district court) to challenge two provisions in a Memorandum to the President issued on October 23, 2017, which the district court referred to as the "Agency Memo," *see* Op. 9 & n.4. The Agency Memo explained that an earlier suspension of the United States Refugee

Admissions Program (USRAP) had ended, and that, in light of a multi-agency review, that program could resume. However, the Agency Memo also identified security-related concerns arising from the government's processing of two particular categories of refugee applications:

a. *The SAO Provision.* The Agency Memo explained that the Secretaries of State and Homeland Security and the DNI “continue to have concerns regarding the admission of nationals of, and stateless persons who last habitually resided in, 11 particular countries previously identified as posing a higher risk to the United States through their designation on the Security Advisory Opinion (SAO) list.” The SAO list, which was first established following the September 11, 2001, attacks, identifies particular countries that pose a higher risk to the national security of the United States. The current version of the refugee SAO list was adopted in 2015 and identifies 11 such countries. Agency Memo 2; Op. 10-11. The Agency Memo explained that the Secretaries of State and Homeland Security, along with the DNI, would “conduct a detailed threat analysis and review” for refugee applicants who were either nationals of the 11 countries previously identified in the SAO list or stateless persons who last habitually resided in one of those countries. *Ibid.* That analysis and review was expected to take 90 days, and during that time “the Secretary of State and the Secretary of Homeland Security will temporarily prioritize refugee applications from other non-SAO countries” and reallocate resources “to process

applicants from non-SAO countries.” Agency Memo 2. That 90-day period ended on January 22, 2018 (January 21 was a Sunday). The Agency Memo’s prioritization of refugee applications from non-SAO countries thus no longer has any effect.

b. *The FTJ Provision.* The Agency Memo indefinitely suspended entry into the United States of FTJ refugees. Agency Memo 2-3; Op. 9-10. FTJ refugees are the spouses and unmarried minor children of admitted principal refugees who travel to join the principal refugee more than four months after the principal refugee’s admission. Op. 9 n.5; Agency Memo 2 n.1. As the Agency Memo observed, the majority of FTJ refugees did not then undergo the same security screening procedures as the principal refugees they seek to join in the United States. Agency Memo 2-3. Accordingly, the Agency Memo indefinitely suspended processing of FTJ refugee applications, and directed that “additional security measures must be implemented before admission of following-to-join refugees can resume”; the Agency Memo provided that, “once those enhancements have been implemented,” admission of FTJ refugees “will resume.” *Id.* at 3. Implementation of the security enhancements called for by the Agency Memo has now been completed, as of February 1, 2018, and processing of FTJ refugees now incorporates that additional screening. Because the Agency Memo called for the suspension of FTJ refugee processing to end once those enhancements were completed, the challenged FTJ provision no longer has any effect.

2. The Agency Memo followed an earlier review of refugee policy, called for by the President on March 6, 2017, in Executive Order 13,780 (EO-2). *See* 82 Fed. Reg. 13,209 (Mar. 9, 2017).<sup>2</sup> In relevant part, Section 6 of EO-2 suspended the travel of refugees into the United States under the USRAP, and also suspended decisions on refugee applications. Both suspensions were to last for 120 days. EO-2 § 6(a). EO-2 also directed the Secretary of State, in conjunction with the Secretary of Homeland Security and in consultation with the DNI, to review the USRAP application process to determine what additional procedures should be used to ensure that individuals seeking admission as refugees do not pose a threat to the security and welfare of the United States, and to implement such additional procedures. *Ibid.* Based on that review, the agencies adopted the measures described in the Agency Memo.

A federal district court in Hawaii preliminarily enjoined Section 6 of EO-2, *Hawaii v. Trump*, 245 F. Supp. 3d 1227 (D. Haw. 2017), and this Court partially affirmed, upholding the injunction in substantial part but allowing the Government to conduct its internal review, *Hawaii v. Trump*, 859 F.3d 741 (9th Cir. 2017). The Supreme Court granted certiorari and partially stayed the injunction, concluding that the injunction should apply only to individuals “who can credibly claim a bona fide

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<sup>2</sup> EO-2 was preceded by Executive Order 13,769, which was revoked by EO-2.

relationship with a person or entity in the United States.” *Trump v. IRAP*, 137 S. Ct. 2080 (2017). After EO-2’s refugee suspension expired by its own terms, the Supreme Court vacated the *Hawaii* decision and remanded to this Court with instructions to dismiss the challenge as moot. *Trump v. Hawaii*, 138 S. Ct. 377 (Mem.), No. 16-1540 (Oct. 24, 2017).

3. Shortly after the Agency Memo, the President issued Executive Order 13,815 on October 24, 2017. *See* 82 Fed. Reg. 50,055 (Oct. 27, 2017). In relevant part, Executive Order 13,815 stated that the Secretary of State, the Secretary of Homeland Security, and the DNI had informed the President that recent “improvements to the USRAP vetting process are generally adequate to ensure the security and welfare of the United States,” and thus that the refugee program may resume. *Id.* § 2(a). The Order further directed the Secretary of State and the Secretary of Homeland Security to continue to assess and address any risks posed by particular refugees. *Id.* § 3.

4. On December 23, 2017, approximately 30 days before the expiration of the 90-day period for SAO threat analysis and review, the district court entered a nationwide preliminary injunction barring enforcement of the FTJ and SAO

provisions of the Agency Memo.<sup>3</sup> The district court first held that plaintiffs have Article III standing to assert their claims; that plaintiffs' claims are not barred by the doctrine of consular nonreviewability; that the Agency Memo constitutes final agency action under the Administrative Procedure Act (APA); and that the Secretary's action is not committed to agency discretion. Op. 19-38. The court then concluded that plaintiffs were likely to succeed on the merits because the Agency Memo failed to comply with notice-and-comment requirements under the APA, Op. 39-46, and because the provisions were contrary to the Immigration and Nationality Act, Op. 47-56. The court declined to reach any other merits argument. Op. 19, 56 n.29. The court found that plaintiffs would suffer irreparable harm in the absence of an injunction, Op. 56-58, and that the balance of the remaining equitable factors warranted injunctive relief, Op. 59-62. The district court entered a nationwide injunction prohibiting enforcement of the challenged portions of the Agency Memo

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<sup>3</sup> As the district court noted, plaintiffs narrowly challenged only two provisions of the Agency Memo: the 90-day de-prioritization under the SAO provision and the temporary suspension under the FTJ provision. Plaintiffs did not seek to enjoin the government's efforts to implement additional security screening mechanisms for FTJ refugees, nor did plaintiffs seek to enjoin the government's threat analysis and review of the SAO countries to determine if additional safeguards are necessary. Plaintiffs did not seek a guarantee of admissions into the United States for the refugees at issue. Op. 38.



for all foreign nationals with a credible claim of a bona fide relationship with a person or entity in the United States. Op. 61-65.

5. The government filed a notice of appeal on January 4, 2018. Plaintiffs in one of the consolidated cases filed a cross-appeal on January 11, 2018. This Court established a briefing schedule for the cross-appeals, and the Circuit Mediator subsequently entered an order vacating that briefing schedule and establishing a schedule for the Court's consideration of this motion.

6. On January 22, 2018, 90 days after the date of the Agency Memo, the SAO provision challenged in this case expired by its own terms. The government recently informed the district court of subsequent developments, explaining that the Secretary of Homeland Security issued a memorandum on January 29, 2018, outlining additional security enhancements and recommendations to strengthen the integrity of the USRAP. See Notice, Jan. 31, 2018 (DE# 119). As the Department of Homeland Security summarized in a related press release, these security enhancements and recommendations include: (1) "Additional screening for certain nationals of high-risk countries"; (2) "Administering the USRAP in a more risk-based manner when considering the overall refugee admissions ceiling, regional allocations, and the groups of applicants considered for resettlement"; and (3) "A periodic review and update of the refugee high-risk country list and selection criteria." Press Release, Dep't of Homeland Sec., DHS Announces Additional,

Enhanced Security Procedures for Refugees Seeking Resettlement in the United States (last updated Jan. 31, 2018), <https://www.dhs.gov/news/2018/01/29/dhs-announces-additional-enhanced-security-procedures-refugees-seeking-resettlement>.

7. Shortly thereafter, the government implemented the additional security screening procedures for processing FTJ refugees. Processing of FTJ refugee applications using the new screening procedures began on February 1, 2018. The Departments of State and Homeland Security have posted information about the new screening procedures. See <https://travel.state.gov/content/travel/en/us-visas/immigrate/follow-to-join-refugees-and-asylees.html>; <http://www.uscis.gov/i-730> (Special Instructions: “New security measures for following-to-join refugees”).

## ARGUMENT

### I. THE APPEALS OF THE PRELIMINARY INJUNCTION ARE MOOT

“A case becomes moot – and therefore no longer a ‘Case’ or ‘Controversy’ for purposes of Article III – ‘when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982) (per curiam)). Thus, even if there is a live controversy when the case is filed, courts should refrain from addressing the merits of claims if “the requisite personal interest that must exist at the commencement of the litigation” is no longer present. *Arizonans for Official*

*English v. Arizona*, 520 U.S. 43, 67-68 & n.22 (1997). Because the challenged provisions in this case have expired by their own terms, there is no longer a present case or controversy, and plaintiffs lack a legally cognizable interest in the outcome of their challenges to the expired provisions.

The Agency Memo, issued on October 23, 2017, specified that the Secretaries of State and Homeland Security and the DNI would “conduct a detailed threat analysis and review for nationals” from SAO countries and stateless persons who last habitually resided in those countries. Agency Memo 2. The Agency Memo further specified that the de-prioritization of refugees from SAO countries would continue only “[w]hile the temporary review is underway,” and that the review period would be “complete[d] \* \* \* no later than 90 days from the date of this memorandum.” *Ibid.* As the district court observed, plaintiffs “d[id] not seek to enjoin the agencies from conducting their 90-day ‘detailed threat analysis and review’ of the SAO countries to determine what additional safeguards the agencies believe are necessary with respect to the admission of refugees from those countries,” Op. 38, and the district court’s preliminary injunction did not prohibit the government from completing such a review. As specified in the Agency Memo, the government’s SAO review was completed on January 22, 2018, 90 days after the Agency Memo was issued. Accordingly, the de-prioritization of SAO refugees by

the Agency Memo has ended and is now without any effect, as are the portions of the preliminary injunction prohibiting enforcement of the SAO provision.

The FTJ provisions similarly became moot by their own terms when the government implemented additional security screening procedures on February 1, 2018. As with the SAO provision, plaintiffs did not “seek to enjoin the agencies’ efforts to implement screening mechanisms for FTJ refugees,” Op. 38, and the district court’s preliminary injunction did not prohibit the government from doing so. Because the new FTJ security measures have now been implemented, the processing and admission of following-to-join refugees is no longer suspended under the terms of the Agency Memo. Agency Memo 3. Accordingly, as of February 1, 2018, the FTJ provision of the Agency Memo ceased to have any effect, and the preliminary injunction prohibiting enforcement of the FTJ provision similarly ceased to have any effect.

Because the provisions of the Agency memo that plaintiffs have challenged in this case have expired by their own terms, the preliminary injunction has no continuing effect, and the appeals from the district court’s decision are moot. *See University of Tex. v. Camenisch*, 451 U.S. 390, 394 (1981) (When enjoined conduct has ceased, “the correctness of the decision to grant [the] preliminary injunction \* \* \* is moot.”). The merits of the government’s appeal and the plaintiffs’ cross-appeal thus present questions with no ongoing practical or legal import. A decision

from this Court on any of the merits issues addressed by the district court would be an advisory opinion.

For the same reasons, the Agency Memo itself no longer imposes any harm on plaintiffs. *See Arizonans for Official English*, 520 U.S. at 67 (“To qualify as a case fit for federal-court adjudication, ‘an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.’”) (citation omitted). Even if, as the district court concluded, plaintiffs were harmed by the SAO and FTJ provisions at the time these cases were brought and decided below, Op. 20-21, those provisions have now expired; thus, they will not and cannot cause any ongoing harm.

No exception to mootness applies in this case. The limited exception when a legal question is capable of repetition yet evades review “applies ‘only in exceptional situations,’” where “the challenged action [is] in its duration too short to be fully litigated prior to cessation or expiration,” and “there [is] a reasonable expectation that the same complaining party [will] be subject to the same action again.” *Kingdomware Technologies, Inc. v. United States*, 136 S. Ct. 1969, 1976 (2016) (citation omitted; brackets in original). Here, there is no significant likelihood that the same parties will again be subject to the same action, which was expressly temporary and for limited purposes, which have since been met.

The government has completed its review of refugees from SAO countries, and has taken steps to implement the recommendations that resulted from that

review, including (1) additional screening for certain nationals of high-risk countries; (2) administering the USRAP in a more risk-based manner when considering the overall refugee admissions ceiling, regional allocations, and the groups of applicants considered for resettlement; and (3) a periodic review and update of the refugee SAO list and selection criteria. Those recommendations are new steps, not within the terms of the Agency Memo's 90-day review and related temporary SAO de-prioritization. If plaintiffs seek to challenge any new policy, they may do so by filing new or amended complaints, but the current challenge to the temporary de-prioritization of SAO refugees in the Agency Memo is not likely to be repeated.

Similarly, the government has now fully implemented the new FTJ security measures called for in the Agency Memo, and the related temporary suspension of FTJ refugee application processing has accordingly ended by the Agency Memo's own terms. Plaintiffs are not likely to be subjected to another temporary suspension of FTJ refugee processing to allow those new measures to be put in place, because the called-for measures were put in place as of February 1, 2018. *See also America Cargo Transport., Inc. v. United States*, 625 F.3d 1176, 1180 (9th Cir. 2010) ("The government's change of policy presents a special circumstance in the world of mootness").

The exception to mootness for a defendant’s “voluntary cessation” of “allegedly illegal conduct” also does not apply here. *City of Mesquite v. Aladdin’s Castle, Inc.*, 455 U.S. 283, 289 n.10 (1982). That exception exists because “a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior.” *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 285 n.1 (2001). But the government has not altered its behavior or the terms of the Agency Memo. The terms of the Agency Memo always contemplated that the temporary SAO and FTJ provisions would terminate. The Agency Memo specified that the SAO provision would only continue during the government’s 90-day review (which ended on January 22), and that processing of FTJ refugees would resume once new security measures were implemented (which took place February 1). The challenged provisions have thus expired by their own terms.

In *Burke v. Barnes*, 479 U.S. 361 (1987), Members of the House of Representatives sued to challenge the President’s pocket-veto of a bill pertaining to U.S. military aid to El Salvador. *Id.* at 363. When the “bill in question expired by its own terms \* \* \* a few weeks after the Court of Appeals entered its judgment,” the Supreme Court held “that any issues concerning whether [the bill] became a law were mooted.” *Ibid.* The same is true here. The challenged SAO provision expired by its own terms on January 22, and the FTJ provisions expired when new security measures were implemented on February 1. *See also Log Cabin Republicans v.*

*United States*, 658 F.3d 1162, 1166 (9th Cir. 2011) (“[T]he Supreme Court and our court have repeatedly held that a case is moot when the challenged statute \* \* \* expires \* \* \*.”).

Similarly, after the Supreme Court granted certiorari to review the preliminary injunction against certain provisions of Section 6 of EO-2 and allowed those provisions to take effect on a limited basis, the earlier suspension of USRAP expired by its own terms after 120 days. Relying on *Burke v. Barnes*, the Supreme Court concluded that because the suspension had expired by its own terms, the appeal of the preliminary injunction was moot and no longer presented a live case or controversy. *Trump v. Hawaii*, 138 S. Ct. 377 (Mem.), No. 16-1540 (Oct. 24, 2017). Just as the passage of time resulted in the expiration of the challenged provisions of EO-2 and thus mooted the appeal of a preliminary injunction addressed to those provisions, so too does the expiration of the SAO and FTJ provisions moot this appeal of a preliminary injunction addressed to those provisions.

## **II. THE DISTRICT COURT’S JUDGMENT SHOULD BE VACATED**

Where, as here, an appeal becomes moot before the appealing party can obtain review, the “established practice” is to “vacate the judgment below and remand with a direction to dismiss.” *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950). This rule is “commonly utilized,” *id.* at 41, and is the “normal” procedure for mootness, *Camreta v. Green*, 563 U.S. 692, 713 (2011). The rule serves important



purposes: vacatur “clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance.” *Munsingwear*, 340 U.S. at 40. In addition, a “party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment.” *U.S. Bancorp Mortgage Co. v. Bonner Mall P’ship*, 513 U.S. 18, 25 (1994).<sup>4</sup>

While there is an exception where the party seeking vacatur has mooted the case by settlement, *Bancorp*, 513 U.S. at 25, or failed to pursue an appeal, *Karcher v. May*, 484 U.S. 72, 83 (1987), vacatur is the proper course when a case becomes moot due to the expiration of a challenged law. *See Burke*, 479 U.S. at 363; *Log Cabin Republicans*, 658 F.3d at 1167 (“The ‘established’ practice when a civil suit becomes moot on appeal is to vacate the district court’s judgment and remand for dismissal of the complaint.”) (citing *Munsingwear*). In *Burke*, where the case was mooted when the challenged bill “expired by its own terms,” the Supreme Court vacated the court of appeals’ judgment and remanded with instructions to dismiss the complaint. *Id.* at 365. And when EO-2 § 6 expired by its own terms after 120 days, the Supreme Court not only instructed this Court to dismiss the challenge as

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<sup>4</sup> Pursuant to this Court’s practice, it may also dismiss the appeal as moot, in conjunction with vacatur and direction to dismiss on remand. *See, e.g., Alaska Wilderness League v. Jewell*, 637 Fed. Appx. 976, 981 (9th Cir. 2015).

moot, but (citing *Burke*) vacated the judgment below following the Court’s “established practice.” *Hawaii*, 138 S. Ct. 377 (Mem.), No. 16-1540 (Oct. 24, 2017). The same established practice applies here, and the same disposition is appropriate here as well: This Court (like the Supreme Court in *Hawaii*) should vacate the judgment below and remand with instructions to dismiss the claims underlying the injunction as moot.

### CONCLUSION

For these reasons, defendants respectfully request that this Court dismiss the appeal, and vacate the district court’s judgment and remand with instructions to dismiss, on grounds of mootness.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-volume limitations of Fed. R. App. P. 27(d)(2)(A). This motion contains 3,807 words, excluding the parts of the motion excluded by Fed. R. App. P. 27(d)(2) and 32(f).

/s/ H. Thomas Byron III

H. Thomas Byron III

## CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2018, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ H. Thomas Byron III

H. Thomas Byron III