

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

AFGHAN AND IRAQI ALLIES UNDER SERIOUS  
THREAT BECAUSE OF THEIR FAITHFUL SERVICE  
TO THE UNITED STATES, ON THEIR OWN AND ON  
BEHALF OF OTHERS SIMILARLY SITUATED,

Plaintiffs,

– against –

ANTONY BLINKEN, *et al.*,

Defendants.

Case No. 18-cv-01388-TSC

**JOINT STATUS REPORT**

Plaintiffs and Defendants (hereinafter “Parties”), by and through undersigned counsel, submit this Joint Status Report pursuant to the Court’s March 15, 2022 Minute Order. The Court directed: “The stay in this action is hereby extended, *nunc pro tunc*, until further order of the court. The parties shall file a joint status report and proposed order by 3/16.” Minute Order (Mar. 15, 2022).

**Defendants’ Statement**

**I. The Court Should Continue the Stay Because There Have Been Material Developments Affecting this Litigation and Aspects of This Case May Be Moot**

Defendants request that the Court continue the current stay of litigation and Approved Adjudication Plan (ECF No. 113-1).<sup>1</sup> *See* Minute Order (Mar. 15, 2022). The Parties sought a stay on October 19, 2021 (ECF No. 144) to explore settlement. Those negotiations have now reached a stalemate.

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<sup>1</sup> Defendants’ Proposed Order accompanies this Joint Status Report (Exhibit A).

The Court should continue the stay so that it may be advised of, and properly consider, the many material developments that have impacted the implementation of the Afghan and Iraqi Special Immigrant Visa (SIV) programs since the Court awarded injunctive relief and adopted the Approved Adjudication Plan. As the Court's May 27, 2021 Minute Order correctly implied, the Court should receive information regarding the following developments: (1) any relevant developments affecting this litigation; (2) any portion or portions of this case which the parties believe to have been mooted by Defendants' actions in response to the Executive Orders; and (3) any portion(s) of this case which the parties wish to stay for any reason. Indeed, several changed circumstances over the last two years have fundamentally altered the SIV program and its administration such that they may potentially moot key aspects of this case. These changes include, but are not limited to, the following:

- The suspension of operations at the U.S. Embassy in Kabul, the withdrawal of U.S. military forces from Afghanistan, and the sudden and significant increase in email inquiries and SIV Chief of Mission (COM) applications submitted to the Department of State and Form I-360 petitions to U.S. Citizenship and Immigration Services (USCIS) as a result of the humanitarian crisis.
- Material changes to the implementation of the visa application process (affecting steps 11 and 12 of the Approved Adjudication Plan) resulting from the suspension of operations at the U.S. Embassy in Kabul.
- Continued security threats at the U.S. Embassy in Baghdad.
- Material changes to the implementation of the Chief of Mission (COM) approval process (affecting steps 1 through 5 of the Approved Adjudication Plan).
- Legislative changes to the Afghan SIV program.

- The review by Defendants and other U.S. government agencies of the Iraqi and Afghan SIV programs pursuant to Executive Order 14013; increased staffing and other resource investments; and the ongoing efforts to implement streamlining measures and identify any additional opportunities to improve processing efficiencies.

Defendants look forward to providing fulsome explanations of these and other changes in due course.

These changes to the SIV programs and world events impacting the implementation of those programs have materially altered the circumstances as they existed at the time the Court awarded injunctive relief and evaluated and adopted the Approved Adjudication Plan.

Accordingly, Defendants intend to file a motion for leave to respond to the Court's May 27, 2021 Order. As Defendants' motion will establish, a continuation of the stay of litigation and Approved Adjudication Plan would economize the Court's and the Parties' resources by avoiding unnecessary litigation and reviving a Plan that has been overcome by events. Continuing the stay will also permit the Parties to provide the responses necessary to the Court's May 27, 2021 Order within 30 days so that the Court may evaluate this matter based on present-day, on-the-ground information on a changed SIV program.

## **II. Defendants Intend to Seek Relief From the Court's Previous Orders Given the Changed Circumstances of the SIV Program**

The material changes to the Afghan and Iraqi SIV programs since the Court adopted the Approved Adjudication Plan render the present relief ordered incompatible with the present-day SIV program realities. In addition to Defendants' request for leave to file a response to the Court's May 27, 2021 minute order, Defendants plan to seek relief from the Court's orders based on the changed circumstances highlighted above, Defendant's concurrently filed motion, and Defendants' forthcoming responses to the May 27, 2021 order. Defendants also intend to file

their previously filed motion to dismiss certain counts of the Amended Complaint. *See* Minute Order (Jan. 11, 2022) (denying Defendants' Motion to Dismiss without prejudice), as well as file any other potential motions.

Plaintiffs' Statement

Recognizing that the parties have reached a stalemate in their negotiations, Defendants assert they are nonetheless entitled to a stay of the Court-ordered relief in the case as well as of Plaintiffs' ability to enforce that relief while they pursue their chosen litigation strategy. But Plaintiffs do not consent to a further extension of the stay of the Court-ordered relief in this case, which imposes substantial costs on class members. Nor do Plaintiffs consent to a further extension of the stay of motion practice, which operates asymmetrically to limit Plaintiffs' ability to enforce the Court's orders. *See* ECF No. 144, ¶ 8.

Because Plaintiffs have not given consent, the stay should terminate on March 16, 2022, consistent with the parties' prior agreement. *See* ECF No. 153; ECF No. 144 ¶ 9. Notwithstanding Defendants' stated intent to file numerous motions, the Court should withhold consideration of any new stay unless and until Defendants have moved for one and Plaintiffs have had an adequate opportunity to respond. While Plaintiffs are not opposed to filing a response to the Court's May 27, 2021 Minute Order, Plaintiffs request that the Court specify that any request Defendants make for relief from their Court-ordered obligations should be by motion. Plaintiffs' proposed order is attached as Exhibit B. Plaintiffs reserve the right to seek further relief from the Court as necessary.

**I. Plaintiffs Have Not Consented to a Stay Beyond March 16, 2022**

Plaintiffs never consented to an open-ended stay of the Court-ordered relief in their favor or to an open-ended stay of their ability to enforce the Court’s orders, and do not consent to any further stay.

In September 2019, the Court granted Plaintiffs summary judgment, “[d]eclar[ing] that Defendants’ delays in the processing and adjudication of the SIV applications of the Plaintiffs and members of the Class are unreasonable” and ordering Defendants to “submit a plan for promptly processing and adjudicating the applications of current class members” in light of the already unreasonable delay. *See* ECF No. 76. In June 2020, the Court approved and ordered an adjudication plan (“Approved Adjudication Plan”) setting time frames according to which Defendants would adjudicate class members’ applications and requiring Defendants to report regularly on their progress. *See* ECF Nos. 113, 113-1. The plan covered all members of the class as of May 21, 2020, *see* ECF No. 113-1, at 1, and had no set termination date. As of October 19, 2021—over a year after the court ordered the plan—thousands of class members whose cases were already unreasonably delayed as of May 21, 2020 still awaited final adjudication of their applications. *See* ECF No. 144, at 2.

On October 19, 2021, Plaintiffs consented to a limited, 60-day stay of Defendants’ obligations under the plan to “allow the Parties to pursue the possible resolution of this case, which would include, among other things, a revised or new plan, as appropriate, in light of changed circumstances, for the prompt processing and adjudication of all class members’ SIV applications and that allows the Court and Plaintiffs to evaluate Defendants’ progress in doing so.” ECF No. 144, at 3. On November 23, 2021, Plaintiffs consented to extend the stay period by 23 days, to January 10, 2022. ECF No. 147 ¶ 4. In January 2022, having yet to receive a

proposal from Defendants for the expeditious processing of all SIV applicants, Plaintiffs agreed to extend the current stay up to and including March 11, 2022 on the condition, among others, that Defendants provide such a proposal by February 15, 2022. *See* ECF No. 150.

On March 8, 2022, Plaintiffs informed Defendants that they did not believe that a further stay on existing terms was an appropriate condition to further settlement conversations. Plaintiffs invited Defendants to propose a more narrow stay (*e.g.*, of motion practice) for Plaintiffs' consideration, but Defendants declined to do so. On March 11, 2022, the day the stay was to expire, Defendants invited Plaintiffs to propose additional reporting to address some of Plaintiffs' concerns regarding the substantial costs of an additional 30-day stay of relief. Given that Defendants have not reported their progress in carrying out the Court's orders to the Court and Plaintiffs since July 2021, Plaintiffs proposed that Defendants file with the Court an accounting of the status of the applications of class members identified in the Approved Adjudication Plan, including the number of cases pending at each stage of the application process, and the number of cases pending in certain increments of time beyond those set out in the Approved Adjudication Plan. That day, Defendants also requested to meet and confer regarding a proposed motion for, among other things, a stay of relief and litigation, which Defendants indicated they would file if the parties did not reach agreement on a stay. Plaintiffs indicated that they would oppose Defendants' motion. They nonetheless agreed to join in a request for a five-day extension of the existing stay for the limited purpose of allowing Defendants additional time to consider whether they would be willing to file with the Court the requested accounting in exchange for Plaintiffs' consent to a 30-day stay while the parties exchanged further views regarding settlement. Today, Defendants informed Plaintiffs that they were unwilling to agree to file the proposed accounting.

In light of the costs to class members of the stay, Defendants' refusal to file the requested accounting, and the breakdown of settlement conversations, Plaintiffs do not consent to a further stay.

## II. The Costs to the Class of the Stay Are Substantial

The costs to the class of the stay are substantial. Defendants' delays continue to exact a grave toll on both Afghan and Iraqi applicants. The vast majority of Afghan applicants were left behind in Afghanistan following the withdrawal of U.S. troops.<sup>2</sup> According to reporting this year, there have been “credible allegations” that more than 100 members of the ousted Afghan government, its security forces and those who worked with international troops have been killed since the Taliban took over.”<sup>3</sup> In recent weeks, the Taliban have conducted large-scale door-to-door raids targeting, among others, those perceived to be political enemies.<sup>4</sup> People in Afghanistan are also facing what the United Nations yesterday described as “a food insecurity

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<sup>2</sup> Compare Jessica Donati, *More Than 60,000 Interpreters, Visa Applicants Remain in Afghanistan*, The Wall Street Journal (Dec. 16, 2021), <https://www.wsj.com/articles/more-than-60-000-interpreters-visa-applicants-remain-in-afghanistan-11639689706> (reporting statement from State Department official that more than 60,000 applicants and family members were left behind in Afghanistan) with Dep't of Homeland Sec., Operation Allies Welcome Afghan Evacuee Report (Dec. 2021), [https://drive.google.com/file/d/1\\_WZNPmIn7QLxIXj1y-MzDsR\\_nsE4ape5/view](https://drive.google.com/file/d/1_WZNPmIn7QLxIXj1y-MzDsR_nsE4ape5/view) (reporting that among 82,015 Afghan evacuees, fewer than half were SIV-eligible and only an undisclosed number from that group had even applied); see also George Packer, *The Betrayal*, The Atlantic (Jan. 31, 2022), <https://www.theatlantic.com/magazine/archive/2022/03/biden-afghanistan-exit-american-allies-abandoned/621307/> (reporting that U.S. Embassy in Kabul “burn bags” which were incinerated prior to the evacuation “included the passports of Afghan visa hopefuls”).

<sup>3</sup> Associated Press, *Afghanistan: More Than 100 Believed Killed Despite Taliban Amnesty Offer, Says UN*, The Guardian (Jan. 30, 2022), <https://www.theguardian.com/world/2022/jan/31/afghanistan-more-than-100-believed-killed-despite-taliban-amnesty-offer-says-un>.

<sup>4</sup> See Susannah George, *Taliban Launches Sweeping House-to-House Raids Across Kabul in Search of Weapons*, Washington Post (Feb. 27, 2022), <https://www.washingtonpost.com/world/2022/02/27/taliban-raids-afghanistan/>.

and malnutrition crisis of unparalleled proportions.”<sup>5</sup> For Afghan applicants who are outside Afghanistan, delays also continue to be costly, extending the wait in often precarious circumstances and preventing them from reuniting with family members who remain in danger in Afghanistan.<sup>6</sup>

Iraqi applicants continue to face safety risks and other costs as well, fueled by deepening anti-Western sentiment and increased ISIS activity.<sup>7</sup> Delayed resolution of Iraqi cases is all the more egregious in light of Defendants’ admission in December 2021 that they had overlooked the cases of dozens of applicants awaiting decision at the Chief of Mission stage, and that those applicants saw no movement in their cases across the four reporting cycles that preceded the stay. *See* ECF No. 149.

The stay exacerbates harm to class members by not only relaxing Defendants’ adjudication obligations but also making it more difficult for class counsel and the Court to track

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<sup>5</sup> Statement by Dr. Ramiz Alakbarov, Deputy Special Representative for the Secretary General, Resident Coordinator and Humanitarian Coordinator, on the Continued Food Insecurity and Malnutrition Crisis Facing People in Afghanistan (Mar. 15, 2022), [https://reliefweb.int/sites/reliefweb.int/files/resources/UN\\_RCHC\\_STATEMENT\\_AFGHANISTAN\\_FOOD\\_INSECURITY\\_AND\\_MALNUTRITION\\_CRISIS\\_15MARCH2022.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/UN_RCHC_STATEMENT_AFGHANISTAN_FOOD_INSECURITY_AND_MALNUTRITION_CRISIS_15MARCH2022.pdf) (reporting that 95 percent of the population—and nearly 100 percent of those in female-headed households—do not have enough food).

<sup>6</sup> *See, e.g.*, Jessica Donati, *Afghan Refugees Held for Months in the U.A.E. Protest the Conditions*, Wall Street Journal (Feb. 10, 2022), <https://www.wsj.com/articles/afghan-refugees-held-for-months-in-the-u-a-e-protest-the-conditions-11644511778> (describing the uncertainty and difficult living conditions faced by Afghans, including SIV applicants, in third countries); *see also* Conor Finnegan, *Afghan Father Who Worked for US Sues State Dept. to Bring Sons to Safety* (Oct. 31, 2021), ABC News, <https://abcnews.go.com/Politics/afghan-father-worked-us-sues-state-dept-bring/story?id=80770328> (SIV applicant’s sons trapped in Afghanistan while their father awaited a decision on his long-pending application).

<sup>7</sup> *See* Jane Arraf & Ben Hubbard, *As Islamic State Resurges, U.S. Is Drawn Back into the Fray*, N.Y. Times (Jan. 25, 2022), <https://www.nytimes.com/2022/01/25/world/middleeast/isis-syria.html>; *see also* Nafiseh Kohnavard, *Iraqi Interpreters ‘Stalked by Death Squads’ for Helping the British*, BBC News (Dec. 30, 2020), <https://www.bbc.com/news/world-middle-east-55481651>.

Defendants' adjudication progress or lack thereof. It has been nearly eight months since Defendants provided an accounting to Plaintiffs and the Court of the status of applications that were already unreasonably delayed as of May 2020. *See* ECF No. 138 (July 2021 Progress Report), *as amended by* ECF Nos. 142, 149 (citing errors).

The limited information available to Plaintiffs points to persistent and, in some instances, dramatically increasing delays. For example, on March 15, 2022, government staff responsible for reviewing correspondence regarding applications for Chief of Mission approval, including appeals, reported to an IRAP attorney that following the agency's first-in, first out system, they were still reviewing and responding to emails received seven months ago, on August 22, 2021. IRAP has several clients whose I-360 petitions have been pending for several months without a decision. Far from indicating that the Approved Adjudication Plan "has been overcome by events" as Defendants vaguely suggest, this information and other information alluded to in Defendants' statement demonstrates the urgent need for Defendants to be held accountable for prompt adjudication of class members' already unreasonably delayed applications, to explain any failures to meet target timeframes, and to specify the actions they intend to take to address any such failures, as provided in the Approved Adjudication Plan.

### **III. No Stay Should Issue Before Defendants Move for a Stay and Plaintiffs Have Had the Opportunity to Respond**

Defendants should not be permitted to avoid their obligations under the Court's orders without making the requisite showing of the procedural and substantive basis for such an extraordinary measure, and without providing Plaintiffs an opportunity to respond.

Defendants cite no legal authority for a stay pending their response to the Court's May 27, 2021 order or their planned motion for relief, nor do they provide any cogent explanation as to why such a stay would be reasonable. The parties' joint stipulations and motions

contemplated that Defendants’ obligations would resume at the conclusion of the agreed-upon stay period—that is, on March 17, 2022, *see* ECF No. 144 ¶ 9, ECF No. 153—and that the parties would respond to the Court’s May 27, 2021 order, if at all, at some remove from the termination of that stay, *see* ECF No. 146, at 2 (proposing that the parties respond “one week after the proposed stay period would end”); ECF No. 150 ¶ 5 (proposing that the parties’ response be delayed to one week after the end of the proposed extended stay); Minute Order dated January 11, 2022 (staying the response until further order of the Court). The class should not be forced to bear the cost of Defendants’ choice to wait until the expiration of the agreed-upon stay to seek a further stay of the Court-ordered relief. *See* ECF No. 144 ¶¶ 6, 8 (staying Plaintiffs’, but not Defendants’, ability to file motions with the Court). In contrast, absent a stay Defendants will simply be required to comply with the Court’s orders—which they have been obligated to do since September 2019, but for the limited period for which Plaintiffs consented to a stay—unless and until they justify relief from their obligations.<sup>8</sup>

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<sup>8</sup> Plaintiffs reserve the right to respond to Defendants’ vague and unsubstantiated assertions that certain policy changes Defendants have made and various world events “may potentially moot key aspects of this case” or that a stay “would economize the Court’s and the Parties’ resources by avoiding unnecessary litigation and reviving a Plan that has been overcome by events.” There is no indication that any of these developments would address Defendants’ liability in this case, as determined by the Court in September 2019, or would discharge the relief previously ordered—the final adjudication of thousands of class members’ SIV applications—which remains overdue.

Dated: March 16, 2022

/s/ Deepa Alagesan

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# EXHIBIT A

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

AFGHAN AND IRAQI ALLIES UNDER SERIOUS  
THREAT BECAUSE OF THEIR FAITHFUL SERVICE  
TO THE UNITED STATES, ON THEIR OWN AND ON  
BEHALF OF OTHERS SIMILARLY SITUATED,

Plaintiffs,

– against –

ANTONY BLINKEN, *et al.*,

Defendants.

Case No. 18-cv-01388-TSC

**[PROPOSED] ORDER**

Upon consideration of the Parties' Joint Status Report, it is

ORDERED that the stay of litigation and the Approved Adjudication Plan is hereby continued until further order of the Court.

ORDERED that Plaintiffs and Defendants shall each submit a response to the Court's May 27, 2021 Minute Order within 30 days.

**IT IS SO ORDERED:**

\_\_\_\_\_  
HON. TANYA S. CHUTKAN  
United States District Judge

Dated: \_\_\_\_\_, 2022

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

AFGHAN AND IRAQI ALLIES UNDER SERIOUS  
THREAT BECAUSE OF THEIR FAITHFUL SERVICE  
TO THE UNITED STATES, ON THEIR OWN AND ON  
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Plaintiffs,

– against –

ANTONY BLINKEN, *et al.*,

Defendants.

Case No. 18-cv-01388-TSC

**[PROPOSED] ORDER**

On January 11, 2022, this Court extended the stay contemplated by the Parties' Joint Stipulation, ECF No. 147, until March 11, 2022. On March 11, 2022, the Parties filed a Joint Motion and Stipulation, ECF No. 153, requesting a five-day extension of the stay period to March 16, 2022. On March 15, 2022, the Court issued a Minute Order extending the stay period *nunc pro tunc* until further order of the Court and ordering the Parties to submit a Joint Status Report and proposed order on March 16, 2022.

Upon consideration of the Parties' March 16, 2022 Joint Status Report and the proposed orders submitted by the Parties, it is hereby ORDERED that:

1. The stay as extended by the Court's minute order dated March 15, 2022, is lifted *nunc pro tunc*, and expired on March 16, 2022. Defendants' obligations under the Approved Adjudication Plan, ECF No. 113-1, recommenced as of March 17, 2022.

2. Defendants' next progress report pursuant to the Approved Adjudication Plan will be due on or before June 24, 2022, and will cover the 90-day period from March 17, 2022 to June 14, 2022.
3. Any request by Defendants for relief from their Court-ordered obligations should be made by motion.

**IT IS SO ORDERED.**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
THE HONORABLE TANYA S. CHUTKAN  
United States District Judge