

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

<hr/>)	
AFGHAN AND IRAQI ALLIES UNDER))	
SERIOUS THREAT BECAUSE OF THEIR))	
FAITHFUL SERVICE TO THE UNITED))	
STATES, ON THEIR OWN AND ON BEHALF))	
OF OTHERS SIMILARLY SITUATED,))	
))	
Plaintiffs,))	
))	
v.))	Civil Action No. 1:18-cv-01388-TSC
))	
ANTONY BLINKEN, <i>et al.</i> ,))	
))	
Defendants.))	
<hr/>)	

DEFENDANTS’ NOTICE OF LODGING PROGRESS REPORT

Defendants, through their undersigned counsel, file this notice of lodging for Defendants’ Progress Report pursuant to the Court’s June 14, 2020 Order, ECF No. 113, and the Court’s June 14, 2020 and September 3, 2020 Minute Orders.

Defendants’ Progress Report covers the period of January 1, 2021 to March 31, 2021. A copy of the Progress Report is attached as Exhibit A.

Date: April 12, 2021

Respectfully submitted,

CHANNING D. PHILLIPS
D.C. Bar No. 415793
Acting United States Attorney

BRIAN P. HUDAK
Acting Chief, Civil Division

/s/ Joseph F. Carilli, Jr.
JOSEPH F. CARILLI, JR.
N.H. Bar No. 15311
Assistant United States Attorney
Civil Division
555 4th St. N.W.
Washington, D.C. 20530
Telephone: (202) 252-2561
Facsimile: (202) 252-2599
E-mail: joseph.carilli@usdoj.gov

Counsel for Defendants

Exhibit A

PROGRESS REPORT

Defendants submit this Progress Report as required under the Court's June 14, 2020 Order (Docket No. 113) and the Court's June 14, 2020 and September 3, 2020 Minute Orders. The Progress Report is for the period of January 1, 2021 to March 31, 2021.

I. Class Member Breakdown¹**Afghan Allies Protection Act of 2009**

	Number of Class Members at the beginning of reporting period (as of January 1, 2021)	Number of Class Members at the end of reporting period (as of March 31, 2021)	Number of Class Members who entered the step during the reporting period	Number of Class Members who completed the step during the reporting period	Number of Class Members who began and ended the reporting period in the step
Step 4	[4280]	[3159]	[346]	[1249]	[128]
Step 7	[762] (awaiting government action) [28] (awaiting applicant action) [2] (national security cases pending between 90 to 180 days)	[498] (awaiting government action) [64] (awaiting applicant action) [11] (national security cases pending between 90 to 180 days)	[1212]	[1385] (approved) [12] (denied)	[15] (awaiting government action) [36] ² (awaiting applicant action) [2] (national security cases pending between 90 to 180 days)

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

² This number is larger than that in Column 1 because it includes cases that were awaiting government action as of January 1, 2021 and which USCIS has since returned to the applicant for applicant action.

	[0] (national security cases pending between 181 to 240 days)	[1] (national security cases pending between 181 to 240 days)			[1] (national security cases pending between 181 to 240 days)
	[2] (national security cases pending greater than 241 days)	[2] (national security cases pending greater than 241 days)			[2] (national security cases pending greater than 241 days)
Step 11	[585] (awaiting interview scheduling)	[1297] (awaiting interview scheduling)	[712]	[1]	[585] (awaiting interview scheduling)
	[1] (awaiting interview)	[0] (awaiting interview)			[0] (awaiting interview)
Step 13	[299] (cases in administrative processing)	[339] (cases in administrative processing)	[266]	[225]	[266] (cases in administrative processing)
	[234] (national security cases pending greater than 120 days)	[246] (national security cases pending greater than 120 days)			[266] (national security cases pending greater than 120 days)
	[229] (national security cases pending greater than 180 days)	[229] (national security cases pending greater than 180 days)			[229] (national security cases pending greater than 180 days)
	[186] (national security cases pending greater than 1 year)	[218] (national security cases pending greater than 1 year)			[218] (national security cases pending greater than 1 year)
Step 14				[135] principal	

				applicants issued (SQ1) [653] derivative applicants issued (SQ2 and SQ3)	
--	--	--	--	--	--

II. Performance Standards for the Afghan SIV Program

A. Standards Met

For the period of this Progress Report, Defendants met the performance standards in the Joint Adjudication Plan for government-controlled Steps 2, 3, 5, 7, 8, 10, and 12.

B. Standards Not Met

For the period of this Progress Report, Defendants did not meet the performance standards in the Joint Adjudication Plan for Steps 4, 11, and 13.

Step 4

- a. *Performance Standard:* “The COM Committee will adjudicate a completed application or appeal within 120 days of receipt from the NVC. For class members currently in Step 4, the COM Committee will adjudicate the completed application or appeal within 120 days of the date of the Court’s approval of the Plan.”
- b. *Actual Performance:* The COM Committee continued to adjudicate completed applications or appeals, as feasible, and with support from staff located in Washington, DC, processing a total of 2,032 (litigation and non-litigation) cases. On average during this reporting period, the COM Committee adjudicated a completed application or appeal from a class member within 722 days of receipt from NVC, down from 901 days during the previous reporting period.
- c. *Explanation:* Despite constraints due to the COVID pandemic, the COM Committee continued to adjudicate completed applications or appeals as feasible. Fluctuations in staffing related to the COVID-19 pandemic, high caseload volume, and implementation of the congressionally-mandated prioritization plan (which requires high-priority tiers be processed first, leaving low-priority tiers to wait longer for review and analysis) contributed to the Department of State’s inability to meet the target timeframe. In addition, the Department of State is directing resources to the review of the SIV program directed by the President in Executive Order 14013.

Step 11

- a. *Performance Standard:* “After the NVC determines the application is complete, the NVC will offer the applicant the next available interview within 10 days of making that determination. The NVC will schedule the interview within 60 days of contacting the applicant unless the applicant

requests a different interview location or interview time or unless there are reasonable circumstances for the delay as explained in the Progress Reports.”

- b. *Actual Performance:* During this quarter, the U.S. Embassy in Kabul reopened for immigrant visa interviews, prioritizing SIVs, in February 2021. During this quarter, however, the Embassy conducted interviews for cases (including both SIV cases and other immigration visa cases) that had been initially scheduled for March and April of 2020 at the Embassy and that were previously cancelled due to the suspension of routine in-person visa services caused by the COVID-19 global pandemic. NVC was not able to schedule additional interviews at Embassy Kabul as the Visa Section continued to work through the previously postponed cases. Therefore, NVC could not schedule interviews at the U.S. Embassy in Kabul within 10 days of determining an application complete. NVC was able to schedule one Afghan SIV interview at the U.S. Embassy in Paris. The Department of State notes that due to COVID restrictions, Afghans’ ability to travel out of Afghanistan is limited.

- c. *Explanation:* During this quarter, the U.S. Embassy in Kabul began conducting immigrant visa services following the 11-month suspension of routine in-person visa services due to COVID-19. However, Embassy Kabul interviewed cases (both SIV cases and other immigrant visa cases) with previously-scheduled interview appointments that were cancelled in March and April of 2020. (Note: Since appointments are scheduled in advance, appointments for March and April of 2020 had been scheduled already when services were abruptly suspended due to COVID-19). NVC did schedule interviews at other U.S. embassies as they reopened to the public, as feasible. In addition, the Department of State is directing resources to the review of the SIV program directed by the President in Executive Order 14013.

Step 13

- a. *Performance Standard:* “All cases refused under INA section 221(g) for administrative processing that is solely within the Department of State’s control, including Advisory Opinions, will be completed within 90 days. For class members currently in Step 13 who are in administrative processing that is solely with the Department of State’s control, administrative processing will be completed within 90 days of the date of the Court’s approval of the Plan. All cases refused under INA section 221(g) for administrative processing that is not solely with the Department of State’s control and which require additional processing time to reconcile any national security concerns, see AAPA § 602(b)(4)(B), RCIA § 1242(c)(2), will be identified in the progress report in the following manner: number of cases pending greater than 120 days; number of cases pending greater than

180 days; and number of cases pending greater than one year. For the purpose of progress reporting, the beginning date for these cases is the date the consular officer placed the case in administrative processing.”

- b. *Actual Performance:* Notwithstanding the constraints due to the COVID-19 pandemic, the Department of State continued the administrative processing of cases in Step 13, as feasible. On average, administrative processing for those cases was completed within 92 days. During this period, 90% of Afghan case closures fell within the 90-day processing time, but closure of a handful of cases over a year old increases the statistic.
- c. *Explanation:* Factors that contributed to the Department of State’s inability to meet the target timeframe for administrative processing under Step 13 included reduced staffing and delays within the interagency process. Additionally, when the administrative processing of old cases is completed in Step 13, the average processing time reflects the age of those cases. Even though the majority of cases in Step 13 were completed within the 90-day target timeframe for this quarter, the closure of 22 Afghan cases that were created between 2014 and 2020 pushed the overall average above 90 days. In addition, the Department of State is directing resources to the review of the SIV program directed by the President in Executive Order 14013.

PROGRESS REPORT

Defendants submit this Progress Report as required under the Court's June 14, 2020 Order (Docket No. 113) and the Court's June 14, 2020 and September 3, 2020 Minute Orders. The Progress Report is for the period of January 1, 2021 to March 31, 2021.

I. Class Member Breakdown¹**Refugee Crisis in Iraq Act of 2007**

	Number of Class Members at the beginning of reporting period (as of January 1, 2021)	Number of Class Members at the end of reporting period (as of March 31, 2021)	Number of Class Members who entered the step during the reporting period	Number of Class Members who completed the step during the reporting period	Number of Class Members who began and ended the reporting period in the step
Step 4	[0]	[0]	[0]	[0]	[0]
Step 7	[2] (awaiting government action) [7] (awaiting applicant action) [0] (national security cases pending between 90 to 180 days) [0] (national security cases pending)	[0] (awaiting government action) [14] (awaiting applicant action) [0] (national security cases pending between 90 to 180 days) [0] (national security cases pending)	[8]	[1] (approved) [2] (denied)	[0] (awaiting government action) [6] (awaiting applicant action) [0] (national security cases pending between 90 to 180 days) [0] (national security cases pending)

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

	between 181 to 240 days) [0] (national security cases pending greater than 241 days)	between 181 to 240 days) [0] (national security cases pending greater than 241 days)			between 181 to 240 days) [0] (national security cases pending greater than 241 days)
Step 11	[5] ² (awaiting interview scheduling) [0] (awaiting interview)	[8] (awaiting interview scheduling) [0] (awaiting interview)	[3]	[0]	[5] (awaiting interview scheduling) [0] (awaiting interview)
Step 13	[61] (cases in administrative processing) [55] (national security cases pending greater than 120 days) [44] (national security cases pending greater than 180 days) [41] (national security cases pending greater than 1 year)	[69] (cases in administrative processing) [63] (national security cases pending greater than 120 days) [59] (national security cases pending greater than 180 days) [43] (national security cases pending greater than 1 year)	[9]	[11]	[64] (cases in administrative processing) [64] (national security cases pending greater than 120 days) [59] (national security cases pending greater than 180 days) [43] (national security cases pending greater than 1 year)
Step 14				[2] ³ principal applicants issued (SQ1)	

² This number has been revised from the FY2020 Quarterly Report. It was determined that one case did not fit into the litigation class.

³ Although the Department completed administrative processing in 11 Iraqi SIV cases, only two principal applicants were issued this quarter. The U.S. Embassy Baghdad remains closed for all immigrant visa services. Individual applicants must transfer their cases to other embassies or consulates for issuance.

				[2] derivative applicants issued (SQ2 and SQ3)	
--	--	--	--	--	--

II. Performance Standards for the Iraqi SIV Program

A. Standards Met

For the period of this Progress Report, Defendants met the performance standards in the Joint Adjudication Plan for government-controlled Steps 2, 3, 4, 5, 7, 8, 10, and 12.

B. Standards Not Met

For the period of this Progress Report, Defendants did not meet the performance standards in the Joint Adjudication Plan for Steps 11 and 13.

Step 11

- a. *Performance Standard:* “After the NVC determines the application is complete, the NVC will offer the applicant the next available interview within 10 days of making that determination. The NVC will schedule the interview within 60 days of contacting the applicant unless the applicant requests a different interview location or interview time or unless there are reasonable circumstances for the delay as explained in the Progress Reports.”
- b. *Actual Performance:* NVC did not schedule interviews for applicants of any visa classification at Embassy Baghdad and therefore could not schedule interviews within 10 days of determining an application complete.
- c. *Explanation:* As of December 31, 2019, Embassy Baghdad suspended all consular services due to considerable damage done by Iranian-backed militia supporters who attacked the Embassy compound. Public visa services will not resume until the Consular CAC is reconstructed, approximately 18-24 months from the start of construction; this project has not commenced due to difficulties associated with the global pandemic and security situation. Some cases that were near completion at the time of the attack were able to be processed to completion by Consulate General Erbil, although it is not an IV processing post. Due to the attack on Embassy Baghdad, all immigrant visa paper files were destroyed to protect the identities of the applicants. The cases must be re-created by NVC before being transferred to a regional post for processing. In addition, the

Department of State is directing resources to the review of the SIV program directed by the President in Executive Order 14013.

Step 13

- d. *Performance Standard:* “All cases refused under INA section 221(g) for administrative processing that is solely within the Department of State’s control, including Advisory Opinions, will be completed within 90 days. For class members currently in Step 13 who are in administrative processing that is solely with the Department of State’s control, administrative processing will be completed within 90 days of the date of the Court’s approval of the Plan. All cases refused under INA section 221(g) for administrative processing that is not solely with the Department of State’s control and which require additional processing time to reconcile any national security concerns, *see* AAPA § 602(b)(4)(B), RCIA § 1242(c)(2), will be identified in the progress report in the following manner: number of cases pending greater than 120 days; number of cases pending greater than 180 days; and number of cases pending greater than one year. For the purpose of progress reporting, the beginning date for these cases is the date the consular officer placed the case in administrative processing.”
- e. *Actual Performance:* The Department continued the administrative processing of cases in Step 13, as feasible. On average, administrative processing for those cases was completed within 34 days. During this period, 82% of Iraqi case closures fell within the 90-day processing time.
- f. *Explanation:* Factors that contributed to the Department of State’s inability to meet the target timeframe for all administrative processing under Step 13 included reduced staffing and delays within the interagency process. Additionally, when the administrative processing of old cases is completed in Step 13, the average processing time reflects the age of those cases. However, the Department notes that administrative processing for 82% of cases was completed within a 90-day processing time. In addition, the Department of State is directing resources to the review of the SIV program directed by the President in Executive Order 14013.