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 – MICHAEL R. POMPEO, et al., Defendants.	Case No. 18-cv-01388-TSC **ORAL ARGUMENT REQUESTED**

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Plaintiffs John/Jane Does Alpha, Bravo, Charlie, Delta, and Echo, on behalf of themselves and the proposed class (***Plaintiffs***), by and through their undersigned counsel, respectfully move this Court pursuant to Rule 65 of the Federal Rules of Civil Procedure and Local Rule 65.1(c) of this Court for a preliminary injunction order declaring unreasonable Defendants' delay in the processing of Plaintiffs' SIV applications and ordering Defendants to (1) submit within 30 days a plan for promptly processing and adjudicating the applications, which should be developed with Plaintiffs' input, and (2) submit progress reports every 30 days thereafter. The parties have conferred on the filing of this motion pursuant to Local Rule 7(m) and Defendants have indicated that they will oppose the motion.

In support of this motion, Plaintiffs submit the accompanying Memorandum of Points and Authorities; the Declarations of John/Jane Does Alpha, Bravo, Charlie, Delta, and Echo; the

Declarations of Col. (Ret.) Steven Miska, Stephen Poellot, and Allison Wilson; and a Proposed Order. Pursuant to Local Rule 7(f), Plaintiffs request oral argument on the motion.

Dated: New York, New York
September 7, 2018

/s/ Deepa Alagesan
Deepa Alagesan (D.D.C. Bar No. NY0261)
Mariko Hirose (D.D.C. Bar No. NY0262)
INTERNATIONAL REFUGEE ASSISTANCE PROJECT
40 Rector Street, 9th Floor
New York, New York 10006
Telephone: (646) 602-5639
dalagesan@refugeerights.org
mhirose@refugeerights.org

/s/ Shannon M. Leitner
Linda H. Martin (D.D.C. Bar No. NY0210)
David Y. Livshiz (D.D.C. Bar No. NY0269)
Shannon M. Leitner (D.D.C. Bar No. NY0268)
Rebecca L. Curwin (D.D.C. Bar No. NY0267)
Allison C. Wilson (D.D.C. Bar No. NY0271)
FRESHFIELDS BRUCKHAUS DERINGER US LLP
601 Lexington Avenue, 31st Floor
New York, New York 10022
Telephone: (212) 277-4000
Facsimile: (212) 277-4001
linda.martin@freshfields.com
david.livshiz@freshfields.com
shannon.leitner@freshfields.com
rebecca.curwin@freshfields.com
allie.wilson@freshfields.com

Attorneys for Plaintiffs and Proposed Class Counsel

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 – MICHAEL R. POMPEO, et al., Defendants.	Case No. 18-cv-01388-TSC **ORAL ARGUMENT REQUESTED**

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION FOR A PRELIMINARY INJUNCTION

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Cases **Page(s)**

Cases **Page(s)**

Statutes

Other Authorities

INTRODUCTION

Through this motion, Plaintiffs seek preliminary relief enforcing Defendants' mandatory duty to process and adjudicate their Special Immigrant Visa ("SIV") applications.[1] Plaintiffs in this action, or "Allies," are Afghan and Iraqi nationals who provided critical support to the U.S. government's operations, face daily threats to their safety, and have been waiting for over nine months—the statutory timeframe that Congress mandated—for their SIV applications to be processed and finally adjudicated. Because of their service to the United States, Plaintiffs' and their families' lives are in danger in their home countries while they wait for Defendants to act on their SIV applications: Plaintiffs have been followed and threatened with death, and seen their family members and friends attacked and murdered because of their connection to the United States. Having faithfully served the United States, they now live in hiding and in constant fear for their future.

Recognizing the debt owed by the United States to Plaintiffs, and the clear and present danger that they, and their families, face every day, Congress took action, creating the SIV program and instructing Defendants to process and adjudicate SIV applications promptly, and in all events, within nine months. Defendants have failed to do so, with the result that Plaintiffs, and those like them, frequently wait months and years longer than the congressionally mandated nine-month period for their applications to be processed and adjudicated.

---

[1] "Plaintiffs" or "Allies" as used in this memorandum refers to named plaintiffs and proposed Class members. Plaintiffs' class certification motion is fully briefed and pending before the Court. *See* Mot. for Class Cert., ECF No. 3. To the extent the class certification is not resolved by the time this motion is adjudicated, Plaintiffs request that the Court provisionally certify the Class for purposes of this motion. *See Damus v. Nielsen*, 313 F. Supp. 3d 317, 329 (D.D.C. 2018) (holding that only provisional class certification is necessary in order for the court to grant class-wide preliminary relief).

This is precisely the type of situation that justifies the preliminary relief that Plaintiffs seek. Plaintiffs are irreparably harmed because of the delay; indeed, they confront the risk of the ultimate irreparable harm—death—every day. They are likely to succeed on the merits because they have been waiting over nine months, and often years, for the processing of their visas, far beyond the timeframe that Congress mandated. The balance of equities and the public interest favor the relief.

Plaintiffs support this motion with the attached Declaration of Col. (Ret.) Steven Miska opining on the severe prejudice that delays in processing and adjudicating SIVs causes to the Allies and to U.S. national security interests;[2] the Declaration of Stephen Poellot explaining how the difficulties in assisting individuals with the SIV process compound when the process is prolonged;[3] the Declaration of Allison C. Wilson attaching exhibits, including Defendants' own official reports showing persistent delays;[4] and the previously filed declarations of the named Plaintiffs describing the months and years that they have been living in fear, waiting for Defendants to process their SIVs.[5]

FACTUAL BACKGROUND

Plaintiffs Are Afghan and Iraqi Allies Who Served the United States and Who Now Face Serious Threats to Their Safety Because of Their Service.

When the U.S. government operates in conflict zones like Afghanistan and Iraq, it relies on the support of local interpreters and other civilians like the Allies to provide critical services.

---

2 Declaration of Col. (Ret.) Steven Miska, ("Miska Decl."), September 7, 2018.

3 Declaration of Stephen Poellot ("Poellot Decl."), September 7, 2018.

4 Declaration of Allison C. Wilson ("Wilson Decl."), September 7, 2018.

5 Declaration of John Doe-Alpha ("Alpha Decl."), May 8, 2018, ECF No. 3-5; Declaration of Jane Doe-Bravo ("Bravo Decl."), May 14, 2018, ECF No. 3-6; Declaration of John Doe-Charlie ("Charlie Decl."), April 28, 2018, ECF No. 3-7; Declaration of Jane Doe-Delta ("Delta Decl."), April 15, 2018, ECF No. 3-8; Declaration of John Doe-Echo ("Echo Decl."), April 27, 2018, ECF No. 3-9.

See Miska Decl. ¶¶ 11, 24. The Plaintiffs in this case are brave Afghan and Iraqi men and women who have worked side-by-side with Americans and their allies and provided critical support as interpreters for the U.S. military, employees for military communications contractors, and managers of local development projects. *See* Alpha Decl. ¶ 3 (senior director of a U.S. contractor with over five years of experience working for U.S.-funded projects); Bravo Decl. ¶ 3 (employee of a U.S. contractor for five years); Charlie Decl. ¶ 3 (interpreter for U.S. military contractors for nearly four years); Delta Decl. ¶ 3-4 (employee of a U.S. contractor deploying communications infrastructure for over five years); Echo Decl. ¶ 3 (translator for a U.S. military contractor who spent eight months training the Iraqi police as part of the work).

These Allies and their family members took on extreme risks when they decided to support U.S. efforts. Miska Decl. ¶ 29. The value of their service to the United States makes them a strategic target for adversaries, including terrorist groups, militias, and insurgents. *Id.* ¶ 24. As a result, untold numbers of Allies and their colleagues have been killed or severely physically injured in the course of the conflicts in Afghanistan and Iraq. *Id.* ¶¶ 26-30.

Today, fifteen years after the start of the conflicts in Afghanistan and Iraq, these countries remain extremely unstable and dangerous for American-affiliated individuals like the Allies. Miska Decl. ¶¶ 26-30 (describing current conditions for the Allies in Afghanistan and Iraq and the inability of the host governments to protect them); *see also* Wilson Decl. Ex. 1 (Dep't of State, Afghanistan Travel Advisory) (warning that travel to all areas of Afghanistan is unsafe and that attacks have targeted, *inter alia,* U.S. government convoys and facilities); *id.* Ex. 2 (Dep't of State, Iraq Travel Advisory) (warning against travel because "U.S. citizens in Iraq are at high risk for violence and kidnapping" and "[a]nti-U.S. sectarian militias may also threaten U.S. citizens and Western companies throughout Iraq"). Many Allies are forced to live apart from

their families and to go into hiding for fear of their lives. Miska Decl. ¶ 29. The experiences of the named Plaintiffs are representative of the danger that the Allies face every day:

- ***John Doe-Alpha*** had to flee his home village with his wife and young daughter after the Taliban threatened his family if he did not quit his job. *See* Alpha Decl. ¶¶ 7-10. Mr. Doe-Alpha and his family have been unable to return home to visit the remaining family members because of continued threats, and they continue to live elsewhere in Afghanistan fearing the day that the Taliban may discover his complete employment history and whereabouts. *See id.* ¶¶ 10-12, 16.

- ***Jane Doe-Bravo*** has received numerous death threats from members of the Taliban who have accused her of being an American spy and especially for paving the way for other Afghan women to start working with the Americans. Bravo Decl. ¶¶ 5, 9-11. She has moved her family and changed her phone number and currently lives in hiding in Afghanistan. *Id.* ¶ 12.

- ***John Doe-Charlie*** has received numerous death threats from the Taliban. Charlie Decl. ¶¶ 4-5. In 2013, the Taliban attacked and stabbed his brother, mistaking him for Mr. Doe-Charlie, and in 2014, they killed one of his neighbors who was also a former interpreter for the U.S. forces. *Id.* ¶¶ 5-6. Mr. Doe-Charlie has not returned home since the attack on his brother and he and his family live in hiding in Afghanistan in fear of their lives. *Id.* ¶ 7.

- ***Jane Doe-Delta*** has been accosted by masked Taliban members at gunpoint and accused on the streets of being a prostitute and a "broker" providing Afghan women to the U.S. military for sex. *See* Delta Decl. ¶¶ 6-8. The Taliban has threatened to kill her, her father, and other family members because of her work. *See id.* ¶¶ 6-9. Ms. Doe-Delta does not feel safe in Afghanistan; every day "is another day that the Taliban may follow through on its promise to kill [her] or [her] family." *Id.* ¶ 14.

- ***John Doe-Echo*** has been in hiding since members of a local Iraqi militant group kidnapped and murdered his father in 2007 and later shot at his family's home, all in retaliation for Mr. Doe-Echo's work with the Americans. *See* Echo Decl. ¶¶ 4-5. Although Mr. Doe-Echo initially fled to Jordan, he could not support himself there. He is currently living in Iraq in hiding, holding on to the hope that people who know of his work with the United States will not be able to find him. *See id.* ¶¶ 6, 14.

Congress Created the Iraqi and Afghan SIV Programs to Protect the Allies.

Recognizing the grave risks faced by the Afghan and Iraqi Allies and the importance of their work for the United States, Congress passed legislation creating SIV programs that offered those Allies an opportunity to permanently immigrate to the United States. *See* Afghan Allies Protection Act of 2009 ("AAPA"), Pub. L. 111-8, 123 Stat. 807 (2009) codified at 8 U.S.C.

§ 1101 (note);[6] Refugee Crisis in Iraq Act of 2007 ("RCIA"), Pub. L. 110-181, 122 Stat. 395 (2007), codified at 8 U.S.C. § 1157 (note).[7] Since then, Congress has reauthorized and expanded the SIV programs repeatedly with bipartisan support, affirming the widespread recognition that offering protection to the Allies is critical for continued support from local nationals in conflict zones and for fulfilling the central ethos of the military that no team members be left behind. *See, e.g.*, National Defense Authorization Act for FY 2018, Section 1213 of Public Law 115-91 (legislation passed last year making available 3,500 additional Afghan SIVs).

The Afghan and Iraqi SIV programs provide avenues for people like the Allies to receive immigrant visas. Iraqi nationals qualify for an SIV if they submitted an application prior to September 30, 2014, worked for at least one year for or on behalf of the U.S. government in Iraq between March 20, 2003 and September 30, 2013, provided "faithful and valuable service," and had experienced or were experiencing an "ongoing, serious threat" as a result of their service. RCIA § 1244(b)(1), (c); Wilson Decl. Ex. 3 (State Dep't, Special Immigrant Visas for Iraqis). Afghan nationals qualify if they meet the employment eligibility requirements,[8] have provided "faithful and valuable service," and have experienced or are experiencing an "ongoing, serious

---

6 This memorandum cites to provisions of the AAPA with the Act's abbreviation and section number (*e.g.*, AAPA § 602). "Afghan SIV" refers to SIVs authorized pursuant to the AAPA.

7 This memorandum cites to provisions of the RCIA with the Act's abbreviation and section number (*e.g.*, RCIA § 1244). "Iraqi SIV" refers to SIVs authorized pursuant to the RCIA.

8 Specifically, the Afghan SIV program requires at least one year of employment between October 2001 and December 2020 for or on behalf of the U.S. government in Afghanistan or the International Security Assistance Force or a successor mission (if the applicant applied prior to September 30, 2015), or at least two years of employment under the same conditions (if the applicant applied after September 2015). *See* Wilson Decl. Ex. 4 (State Dep't, Special Immigrant Visas for Afghans).

threat" as a result of their service. AAPA § 602(b)(2)(A); Wilson Decl. Ex. 4 (State Dep't, Special Immigrant Visas for Afghans).

Congress tasked the Departments of Homeland Security and State with implementing the SIV programs, *see* RCIA § 1244(a); AAPA § 602, and according to reports authored by Defendants on the SIV programs, these Defendant agencies constructed a fourteen-step process, largely coordinated by the State Department's National Visa Center ("NVC"), for adjudicating both the Afghan and Iraqi SIV applications. *See* Poellot Decl. Ex. A (Apr. 2018 Afghan SIV Joint Report) at 1; *id.* Ex. B (Apr. 2018 Iraqi SIV Joint Report) at 1. This process begins when the applicant sends their initial SIV application materials, called the Chief of Mission ("COM") Application, to the NVC (Step 1). The NVC reviews the package for completeness (Step 2) before forwarding it to the U.S. Embassies in Kabul or Baghdad to "conduct a risk assessment of the alien and an independent review of records maintained by the United States Government or hiring organization or entity to confirm employment and faithful and valuable service to the United States Government" (Step 3). AAPA § 602(b)(2)(D)(i); RCIA § 1244(b)(4)(A). The U.S. Embassies then make their decision on the application (Step 4), and the NVC communicates the decision to the applicant (Step 5). An applicant who is denied COM approval may appeal the denial as of right within 120 days of receiving the denial letter. AAPA § 602(b)(2)(D)(i); RCIA § 1244(b)(4)(B)(i)(I).[9] COM appeals are routinely granted: Defendants most recently reported that the success rate for COM appeals in the Afghan SIV program was 58 percent, Ex. A (Apr. 2018 Afghan SIV Report) at 5, and 40 percent in the Iraqi SIV program, Ex. B (Oct. 2017 Iraqi SIV Report) at 5.

[9] SIV applicants who have their COM approval subsequently revoked are also entitled to an appeal as of right under the same provision. *See* AAPA § 602(b)(2)(D)(i), (14)(H); RCIA § 1244(b)(4)(B)(i)(I).

Once an applicant receives COM approval, they move on to the next step of submitting a petition soliciting certain biographic information to the U.S. Citizenship and Immigration Service ("USCIS") (Step 6). USCIS then renders its decision on the petition and sends the petition to NVC (Step 7).

Next, NVC provides instructions to the applicant requesting additional documentation, including a form called "DS-260" (Step 8), and the applicant submits the required documents to NVC (Step 9). NVC reviews the documents for completeness (Step 10) and schedules the applicant for an interview at the Embassy (Step 11). A consular officer interviews the applicant at the scheduled interview (Step 12), and administrative processing, which consists of additional screening and security checks, takes place following the interview (Step 13). Once administrative processing has been completed, the applicant is directed to obtain a medical exam (Step 14).

It is only once all these steps are completed that Defendants finally issue an SIV to the applicant and any derivative applicants. Defendants' official reports concede that every step in the SIV application process is within the agencies' control, except for four steps: the submission of the initial SIV application materials (step 1), the submission of the petition to USCIS (step 6), the submission of additional documentation, including DS-260 (step 9), and the completion of a medical exam (step 14). *See* Poellot Decl. Ex. B (Apr. 2018 Iraqi SIV Joint Report) at 1-4; *id*. Ex. A (Apr. 2018 Afghan SIV Joint Report) at 1-3.

Congress Passed Amendments to the Afghan and Iraqi SIV Programs Specifically Requiring Processing and Adjudication of Applications Within Nine Months.

In 2013, Congress took notice that the SIV programs that they had established to help Afghan and Iraqi Allies were failing to accomplish their purpose because of unreasonable delays in processing and adjudication of SIV applications by the Defendant agencies. By mid-2011,

four years into the Iraqi SIV program, nearly 30,000 Iraqi principal applicants and their family members had applied for SIVs, but only 4,000 applications had been processed. Wilson Decl. Ex. 5 (George Packer, *Iraqi Refugees: A Debt Defaulted*, New Yorker, July 29, 2011). For the Afghan SIV program, the first SIV was not granted until 2011, two years after Congress passed the AAPA. *Id.* Ex. 6 (Eline Gordts, *America's Afghan and Iraqi Interpreters Risk Lives but Wait Years in Danger for Visas*, Huff. Post, June 23, 2013). By mid-2012, three years after the AAPA was passed, only 32 Afghan SIVs had been granted out of a total of 5,700 applicants. *Id.* Ex. 7 (Kevin Sieff, *Facing Taliban Threats, Afghan Interpreters Wait for U.S. Visas*, Wash. Post, Oct. 25, 2012).

Meanwhile, the casualty list of Afghan and Iraqi Allies killed in relation to their service to the U.S. forces continued to climb. *See* Wilson Decl. Ex. 8 (Doug Bandow, *Endangered Wartime Interpreters: The U.S. Should Protect Those Who Protect Us*, Forbes.com, Feb. 25, 2013); *id.* Ex. 9 (Kevin Sieff, *In Afghanistan, interpreters who helped U.S. in war denied visas; U.S. says they face no threat*, Wash. Post, Nov. 10, 2013). By December 2009, company officials from the primary government contractor responsible for hiring interpreters and translators in Iraq reported that 1,200 of its employees had been injured and 360 had been killed since the invasion of Iraq. Wilson Decl. Ex. 10 (T. Christian Miller, *Chart: Iraqi Translators: a Casualty List*, Pro Publica (Dec. 18, 2009)). In Afghanistan in 2010, the Taliban took credit for abducting four interpreters as they participated in a wedding procession and leaving their dead bodies the next day. *See id.* Ex. 11 (Rod Nordland, *Taliban Say They Killed 4 Afghan Interpreters*, N.Y. Times, May 15, 2010).

Former Representative Earl Blumenauer (D, OR), one of the original sponsors of the AAPA and the RCIA, complained that the State Department was "drag[ging] its feet on these

visas for Afghans" after only "a trickle" of the visas that were authorized had been approved four years into the program's existence. 150 Cong. Rec. 162, 1 (2013). He lamented that "[t]here is no excuse to fail to make the SIV program work," noting that "[i]nnocent lives are at stake, American honor is on the line, and our future actions may be compromised." *Id.*

As a response to persistent delays and the extreme risks faced by the Allies, Congress amended the RCIA and AAPA to ensure more efficient and speedy processing and adjudication of the SIVs. *See* National Defense Authorization Act for Fiscal Year 2014, Section 1218 & 1219 of Public Law 113-66 ("FY 2014 NDAA"). Significantly, and centrally to Plaintiffs' claims in this case, Congress mandated that Defendants "shall improve the efficiency by which applications for special immigrant visas . . . are processed so that all steps under the control of the respective departments incidental to the issuance of such visas, including required screenings and background checks, should be completed **not later than 9 months** after the date on which an eligible alien submits all required materials to complete an application for such visa." AAPA §§ 602(b)(4)(A); RCIA § 1242(c)(1) (emphasis added).

To monitor compliance with the nine-month timeframe, Congress imposed reporting requirements on Defendants. First, Congress required Defendants to submit a report to Congress within 120 days describing, *inter alia*, "the implementation of improvements" to the processing of applications for SIVs, including data at various stages of processing as well as information relating to "[e]nhancing existing systems for conducting background and security checks . . . which shall . . . provide for . . . orderly processing . . . without significant delay." *See* AAPA § 602(b)(12)(B); RCIA § 1248(f). Second, Congress required Defendants to publish public quarterly reports "that describe[] the efficiency improvements made" in SIV processing, which include "the reasons for the failure to process any applications that have been pending for longer

than 9 months," data on the total number of applications that are pending due to the failure to receive COM approval, to complete processing of the petition to USCIS, to conduct a visa interview, or to issue the visa; and the average wait times at each stage (the "Joint Reports"). AAPA § 602(b)(13); RCIA § 1248(g).

Despite the Congressional Amendments, the Allies Continue to Experience Unreasonable Delays in the Processing and Adjudication of SIV Applications.

Despite the clear congressional intent and mandate to promptly adjudicate SIVs, Afghan and Iraqi Allies' SIV applications have continued to languish in Defendants' control far beyond the prescribed nine-month period. Named Plaintiffs' experiences are illustrative: at the time of the filing of this case over two months ago, Defendants had already been in control of the named Plaintiffs' applications for a minimum of over 18 months (more than twice the statutory time frame) and as long as 52 months (nearly six times the statutory time frame). *See* Alpha Decl. ¶ 5-6 (52 months); Echo Decl. ¶¶ 7-11 (52 months); Bravo Decl. ¶¶ 7-8 (30 months); Charlie Decl ¶¶ 10-12 (22 months); Delta Decl. ¶¶ 11-13 (18 months). Mr. Doe-Alpha and Mr. Doe-Echo have been waiting for over three years and two years, respectively, for Defendants to complete just the last government-controlled step of administrative processing. *See* Alpha Decl. ¶ 6; Echo Decl. ¶ 11. Ms. Doe-Delta has been waiting over a year and a half for Defendants to decide her COM Application, Delta Decl. ¶¶ 11-13, Mr. Doe-Charlie has been waiting 17 months for Defendants to decide his COM appeal, Charlie Decl. ¶¶ 11-12, and Ms. Doe-Bravo waited for 27 months for Defendants to grant her COM appeal;[10] because these applications are only at the initial steps of the process, *see supra* at 6-7, it will likely take many more months, if not years, longer to complete processing of their SIVs.

[10] As reflected in the Amended Complaint, Ms. Doe-Bravo received COM approval on July 9, 2018, approximately one month after the filing of this lawsuit, and intends to file the petition to USCIS shortly. *See* Am. Compl. ¶ 59.

These delays are not unique to the named Plaintiffs. In 2016, a group of Afghan and Iraqi applicants whose SIV applications had been pending in government-controlled steps for years sued in this District and the defendants agreed in a settlement to adjudicate their applications after the court denied the defendants' motion to dismiss. *See Nine Iraqi Allies Under Serious Threat Because of Their Faithful Serv. to the United States v. Kerry*, 168 F. Supp. 3d 268, 298 (D.D.C. 2016) ("*Nine Iraqi Allies"*). Yet despite the *Nine Iraqi Allies* lawsuit, including the decision denying the motion to dismiss, Defendants have continually acknowledged in the Joint Reports that administrative processing—the final government-controlled step in the application process—alone can take over nine months on its own for both Afghans and Iraqis. *See, e.g.*, Poellot Decl. Ex. A (Jan. 2016 Afghan SIV Joint Report) at 3 ("Even if an applicant has acted promptly in each of the applicant-controlled steps that precede step 13 of the SIV application process, applications may be pending longer than nine months for completion of administrative processing . . . ."); *id.* Ex. A (Apr. 2018 Afghan SIV Joint Report) at 4 (same); *id.* Ex. B (Jan. 2016 Iraqi SIV Joint Report) at 3 (same); *id.* Ex. B (Apr. 2018 Iraqi SIV Joint Report) at 4 (same).[11]

The Joint Reports also reflect other indicators of persistent delays. In the Afghan program, government processing time jumped from 410 days in government-controlled steps in the first Joint Report in calendar year 2017 to nearly twice that number—712 days—by the end of that calendar year. *Compare id.* Ex. A (Jan. 2017 Afghan SIV Joint Report) at 3 with *id.*

[11] *See also* Poellot Decl. Ex. A (Apr. 2017 Afghan SIV Joint Report) at 3 ("Even if an applicant acted promptly in each of the applicant-controlled steps that precede step 13 of the SIV application process, applications may pend longer than nine months for completion of administrative processing . . ."); *id.* Ex. B (Apr. 2017 Iraqi SIV Joint Report) at 4 (same); *id.* Ex. A (Oct. 2017 Afghan SIV Joint Report) at 4 ("Even if an applicant has acted promptly in each of the applicant-controlled steps that precede step 13 of the SIV application process, applications may be pending longer than nine months for scheduling visa interviews and administrative processing . . .").

Ex. A (Oct. 2017 Afghan SIV Joint Report) at 3. In the most recent Afghan Joint Report, Defendants conceded that they are taking, on average, 700 days—just shy of two years, or over 2.5 times the statutory time frame—to complete their adjudication of an Afghan SIV application, without accounting for time spent adjudicating any COM appeals. *See* Poellot Decl. Ex. A (Apr. 2018 Afghan SIV Joint Report) at 3. In the corresponding Iraqi Joint Report, Defendants admit to taking, on average, 205 days—nearly seven months—to complete only the last stages of the SIV application process. *See id.* Ex. B (April 2018 Iraqi SIV Joint Report) at 3.[12]

These Defendant-reported numbers, moreover, likely significantly undercount the backlog and delays experienced by Afghan and Iraqi SIV applicants. As Defendants admit, their reported averages omit significant waiting times experienced by applicants whose applications remain pending. *See id.* Ex. A (April 2018 Afghan SIV Joint Report) at 4 ("Average processing time for cases that remain pending cannot be calculated until they are completed."); Ex. B (April 2018 Iraqi SIV Joint Report) at 4 (same). This means, for example, that the delay experienced by Mr. Doe-Echo, who has been in administrative processing since February 3, 2016, *see* Echo Decl. ¶ 11, is not included in Defendants' calculation of processing times because Defendants have not completed administrative processing for his case.

PROCEDURAL HISTORY

Plaintiffs commenced this action on June 12, 2018. *See* Compl., ECF No. 1. Concurrently with the Complaint, Plaintiffs moved to certify a class of all people who have applied for an Afghan SIV or an Iraqi SIV by submitting an application for COM Approval and whose applications have been in government-controlled steps for longer than nine months. *See*

[12] Moreover, all Iraqi SIV applicants were required to apply on or before September 30, 2014, *see supra* at 5, which means that all Iraqi SIV applicants currently waiting for their SIVs completed the first step of the SIV process at least three and a half years ago.

Mot. for Class Cert., ECF No. 3. The class certification motion is now fully briefed and awaiting scheduling of oral argument.

On August 13, 2018, Defendants filed a partial Motion to Dismiss, ECF No. 30, following Defendants' failure to produce data in informal discovery that should have been simple for them to produce. In order to avoid further delay, Plaintiffs are filing this Motion for Preliminary Injunction contemporaneously with their Motion for Expedited Discovery and their Opposition to the Motion to Dismiss. As explained in further detail in the discovery motion, Plaintiffs are entitled to expedited discovery relating to data and other information that Defendants should be maintaining in order to produce the Joint Reports, so that they can understand the full measure of the delays faced by members of the proposed class and Defendants' failure to meet the congressional mandate. Plaintiffs respectfully request permission to supplement this Motion for Preliminary Injunction once discovery is complete.

ARGUMENT

Plaintiffs move for preliminary injunctive relief on Counts One and Two, which challenge Defendants' egregious delay in adjudicating their SIV applications in light of the nine-month timeframe mandated by the statute. As a court in this District held in a nearly identical case brought by individual SIV applicants suffering from unreasonable delays in SIV processing, Plaintiffs have standing to bring this case and the Court has authority to remedy their injuries. *See Nine Iraqi Allies*, 168 F. Supp. 3d at 282 (denying motion to dismiss after concluding that plaintiffs have standing to bring unreasonable delay claims regarding their pending SIV applications and that the court had jurisdiction to review the claims).

In the face of continued government failure to take systemic measures to improve SIV processing since *Nine Iraqi Allies* and the irreparable harm that mounts each day, Plaintiffs ask

the Court to issue a limited and modest preliminary injunction that requires Defendants to submit a preliminary proposal for promptly processing and adjudicating the SIV applications pending within government control and to file periodic compliance reports. Plaintiffs meet the requirements for obtaining this preliminary injunction here because (1) they are "likely to suffer irreparable harm in the absence of preliminary relief"; (2) they are "likely to succeed on the merits"; (3) the "balance of equities" tips in their favor; and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

I. PLAINTIFFS WILL SUFFER IRREPARABLE HARM ABSENT INJUNCTIVE RELIEF.

As made clear above, Plaintiffs are suffering or are likely to suffer irreparable harm of several forms as a result of the unreasonable delay in the adjudication of their SIV applications. The severe threats to the safety of Plaintiffs and their families—and the uncertainty of their circumstances—are either already existent in their lives or "imminent," "certain and great," "actual and not theoretical," and "beyond remediation." *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 7-8 (defining irreparable harm) (internal quotation marks omitted).

First, as described above, Plaintiffs face imminent risks of irreparable harm in the form of death, torture, or severe physical injury. *See* Miska Decl. ¶¶ 23-30 (describing risks of murder, torture, and other severe harm); *see also* Alpha Decl. ¶¶ 7-12, 16; Bravo Decl. ¶¶ 5, 9-11; Charlie Decl. ¶¶ 4-7; Delta Decl. ¶¶ 6-9, 14; Echo Decl. ¶¶ 4-6, 14. Indeed, Congress has recognized that the Allies, by definition, face an ongoing serious threat to their safety due to their service to the United States. AAPA § 602(b)(2)(A)(iv); RCIA § 1244(b)(1)(D). Although the Allies take steps to conceal their identities, locations, and connections to the United States, each day that Defendants delay SIV adjudications is another day that the Allies are at risk of retaliation by terrorists, militias, insurgents, or other anti-U.S. groups and individuals. *See* Miska

Decl. ¶¶ 23-30 (describing "extreme risks" the Allies face while working for U.S. forces in Afghanistan and Iraq); *see also Emails From A Dead Man*, This American Life (June 28, 2013), https://www.thisamericanlife.org/takingnames/ (cataloging numerous emails from Iraqi Allies in danger due to their service). The severe physical harm, torture, and death that may result as Allies await government action are paradigmatic examples of injury that is irremediable and thus irreparable. *See, e.g.*, *Al-Joudi v. Bush*, 406 F. Supp. 2d 13, 20 (D.D.C. 2005) (holding that "where the health of a . . . vulnerable person is at stake, irreparable harm can be established" and granting relief given plaintiffs' vulnerability to physical deterioration and possible death due to hunger strike); *Wilson v. Grp. Hospitalization & Med. Servs., Inc.*, 791 F. Supp. 309, 314 (D.D.C. 1992) (granting preliminary injunction to continue insurance coverage where plaintiffs' health was "in serious doubt" and noting that death is "the ultimate irreparable injury").

Second, courts have recognized that delay in the adjudication of immigration applications itself constitutes irreparable harm to the applicant even without the severe threats that the Allies are facing. *See, e.g.*, *Kirwa v. U.S. Dep't of Def.*, 285 F. Supp. 3d 21, 42 (D.D.C. 2017) ("[D]elaying naturalization applications after applicants have been promised an expedited path to citizenship constitutes irreparable harm."); *Nio v. U.S. Dep't of Homeland Sec.*, 270 F. Supp. 3d 49, 62 (D.D.C. 2017) ("All eight plaintiffs are suffering irreparable harm because they are not obtaining citizenship rights and benefits, and, as a result of the legal limbo DHS Defendants have left them in pending resolution of their naturalization applications, their ability to travel and pursue professional and personal opportunities has been curtailed."). Without decisions on their SIV applications, Plaintiffs are stuck in limbo, uncertain of whether they will be able to relocate to the United States. *See* Alpha Decl. ¶ 15; Bravo Decl. ¶¶ 14-15;

Charlie Decl. ¶ 15; Delta Decl. ¶¶ 13-14; Echo Decl. ¶ 13. Although adjudication of Plaintiffs' pending visa applications does not guarantee that a visa will be granted, the indefinite delay of a decision prevents Plaintiffs' ability to make appropriately informed life decisions like whether they should be pursuing higher education, finding new work, purchasing a home, or exploring alternative ways to leave the country and reach safety. *See, e.g.*, Alpha Decl. ¶ 15 ("[T]he uncertainty of knowing whether my SIV application will be granted makes me unsure about my family's future."); Bravo Decl. ¶ 15 ("The uncertainty . . . makes me feel hopeless, and makes it extremely difficult to plan for the future.").

Moreover, the mounting delays magnify the likelihood of irreparable harm by causing a domino effect on Plaintiffs' pending applications. Employment information becomes harder to verify as supervisors leave and employers reorganize. *See* Poellot Decl. ¶¶ 16-17. Passports and clearances can expire because of the delay in SIV processing. *See, e.g.*, Poellot Decl. Ex. A (Apr. 2018 Afghan SIV Joint Report) at 3 (observing that, "[i]n some cases, the passport will have expired and the applicant is required to renew the passport" before a visa can be issued). Delays thus cause further delays, prolonging the time that Plaintiffs live in limbo in hope of reaching safety one day. *Cf. Hawaii v. Trump*, 871 F.3d 646, 664 (9th Cir. 2017) (recognizing potential for even short delays to postpone a refugee's potential admission "as certain security and medical checks expire and must then be re-initiated").

II. PLAINTIFFS ARE LIKELY TO PREVAIL ON THEIR CLAIMS.

A. The APA Authorizes this Court to Remedy Unreasonable Delay in the Adjudication of SIV Applications.

It is well-established that the APA authorizes lawsuits like the instant one challenging unreasonable delay in agency actions. *See* 5 U.S.C. § 555(b) (requiring agencies to, "within a reasonable time . . . conclude a matter presented to it"); 5 U.S.C. § 706(1) (authorizing courts to

"compel agency action unlawfully withheld or unreasonably delayed"). To state such a cause of action, Plaintiffs only need to point to an agency's failure to take discrete action that it is required to take. *See Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004) ("[A] claim under § 706(1) can proceed . . . where a plaintiff asserts that an agency failed to take a discrete agency action that it is required to take.") (emphasis omitted).[13]

Plaintiffs state a cause of action for unreasonable delay here because Defendants are required by both statute and regulation to adjudicate SIV applications, but they have failed to do so. *See Nine Iraqi Allies*, 168 F. Supp. 3d at 293 n.22, 295-96 (holding that plaintiffs had stated a claim for unreasonable delay in processing their SIV applications given agencies' mandatory duty to adjudicate visas). Specifically, the Department of State regulations governing adjudication of immigrant visa applications like SIVs provide that "[i]ssuance or refusal [is] mandatory." 22 C.F.R. § 42.81(a); *see also Ctr. for Biological Diversity v. Zinke*, 260 F. Supp. 3d 11, 21 (D.D.C. 2017) (quoting *S. Utah Wilderness All.*, 542 U.S. at 64) ("[T]he 'law' that generates a mandatory duty need not be a statute—it can also be an "agency regulation[ ] that ha[s] the force of law[.]"). The AAPA and RCIA also specify that Defendants must review applications for COM approval, *see* AAPA § 602(b)(2)(D)(i); RCIA § 1244(b)(4)(A), and that applicants initially denied COM approval have an appeal as of right, AAPA § 602(b)(2)(D)(ii); RCIA § 1244(b)(4)(B)(i)(A)(II). Accordingly, Defendants have no discretion to refuse to

[13] The Mandamus Act, 28 U.S.C. § 1361, similarly authorizes a remedy "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." Because the Mandamus Act is only available where there is no other remedy, and the remedy can be granted under the identical standards of the APA, *Nine Iraqi Allies*, 168 F. Supp. 3d at 295-96 (analyzing both together), Plaintiffs need not separately move on the Mandamus Act claim (Claim 3). *See Hamandi v. Chertoff*, 550 F. Supp. 2d 46, 53 (D.D.C. 2008).

process or withhold decisions on SIV applications and cannot unreasonably delay their adjudication.

B. This Court Should Remedy Defendants' Unreasonable Delay in the Adjudication of SIV Applications.

This Court should grant the injunction sought by Plaintiffs because the agency's delay of over nine months, as well as years, in processing and adjudication of SIV applications is "so egregious" as to warrant a remedy. *Telecomm. Research & Action Ctr. v. Fed. Commc'n. Comm'n*, 750 F.2d 70, 79 (D.C. Cir. 1984) ("*TRAC*"). Here, each of the factors that guide the inquiry in this Circuit over whether an agency's delay warrants judicial intervention, the so-called "*TRAC* factors," weighs in Plaintiffs' favor:

> (1) the time agencies take to make decisions must be governed by a rule of reason; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is unreasonably delayed.

See TRAC, 750 F.2d at 80 (internal quotation marks and citations omitted). Defendants' violation of the nine-month statutory timeframe, although not dispositive, "cuts strongly in favor of" granting relief. *In re People's Mojahedin Org. of Iran*, 680 F.3d 832, 837 (D.C. Cir. 2012) (ordering the Secretary of State to act on a petition for revocation of Foreign Terrorist Organization listing within a specified time given the twenty-month delay in meeting a 180-day congressional deadline).

a. The "rule of reason" factors (factors 1 and 2) favor relief.

The first two *TRAC* factors relating to the "rule of reason," "the first and most important" of the *TRAC* factors, weigh in favor of plaintiffs' requested relief. *In re People's Mojahedin Org. of Iran*, 680 F.3d at 837. The first *TRAC* factor asks this Court to assess whether Defendants' timeframe in responding is "governed by a 'rule of reason,'" and the second provides that the content of such a rule may be found in a "timetable or other indication . . . in the enabling statute." *TRAC*, 750 F.2d at 80.

Here, the delays in the processing of SIV applications, *see supra* at 10-11, violate the "timetable" for reasonableness set forth in the AAPA and RCIA: nine months for completing all "steps under the control of the respective departments incidental to the issuance of such visas." *See* AAPA § 602(4)(A); RCIA § 1242(c)(1); *see also Nine Iraqi Allies*, 168 F. Supp. 3d at 268, 293-94 ("Congress has provided a clear nine-month timeframe for the adjudication of SIV applications.").[14] As the Joint Reports make clear, *see* Poellot Decl. Ex. A (Apr. 2018 Afghan SIV Joint Report) at 1-4; *id.* Ex. B (Apr. 2018 Iraqi SIV Joint Report) at 1-4, those steps include each step of the fourteen-step process following the submission of COM application, except for the submission of the petition to USCIS (step 6), the submission of the additional materials (step 9), and the completion of a medical exam (step 14). *See Nine Iraqi Allies*, 168 F. Supp. 3d at 293 (holding that the nine-month timeframe applies to each of the fourteen steps in Defendants' control, including COM approval and administrative processing); *Airaj v. U.S. Dep't of State*,

[14] Both statutes permit the Secretary "to take longer than 9 months to complete those steps incidental to the issuance of such visas in high-risk cases for which satisfaction of national security concerns requires additional time." AAPA § 602(4)(B); RCIA § 1242(c)(2). However, there is no evidence that the named Plaintiffs or class members have been deemed "high-risk"; to the extent that Defendants submit evidence on this point, the issue can be addressed in the scope of the preliminary injunction. Further, *Nine Iraqi Allies* made clear that the national security exception was not meant to swallow the rule. 168 F. Supp. 3d at 268, 295.

No. CV 15-983 (ESH), 2016 WL 1698260, at *9 (D.D.C. Apr. 27, 2016) (holding that the nine-month timeframe "includes all steps incidental to the issuance of [SIV] visas, including . . . COM approval") (internal quotations and citations omitted). A delay of the magnitude experienced by Plaintiffs beyond the statutory timeframe of nine months justifies relief, especially where, as here, systemic delays have persisted despite congressional action and prior court challenges. *See Nine Iraqi Allies*, 168 F. Supp. 3d at 282; *Doe v. U.S. Dep't of State*, No. 15-cv-01971 (RWR) (D.D.C.) (similarly challenging delay in SIV processing); *see supra* at 8-10. *See also, e.g.*, *In re People's Mojahedin Org. of Iran*, 680 F.3d at 837 (ordering relief for delay of over three times the statutory timeframe especially given prior court order); *In re Ctr. for Auto Safety*, 793 F.2d 1346, 1353-54 (D.C. Cir. 1986) (holding that, despite a short delay in terms of absolute time period, relief was warranted where defendants exhibited patterns of delay that were long relative to the congressional mandate); *SAI v. Dep't of Homeland Sec.*, 149 F. Supp. 3d 99, 120-21 (D.D.C. 2015) (ordering relief for delay of over five times the statutory timeframe).

Moreover, even apart from this explicit nine-month timeframe, Defendants' preferred pace of taking years to process SIV applications, *see supra* at 10-12, violates the congressional intent that Defendants process SIVs reasonably quickly. *See In re Am. Rivers and Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004) (noting that when there is no statutory timeframe, "a reasonable time for agency action is typically counted in weeks or months, not years" (quoting *In re Int'l Chem. Workers Union*, 958 F.2d 1144, 1149 (D.C. Cir. 1992))); *Muwekma Tribe v. Babbitt*, 133 F. Supp. 2d 30, 38 (D.D.C. 2000) (holding that, even where there is no statutory timeframe, the second TRAC factor weighs in favor of relief where Congress did not intend petitions "to languish in the review process indefinitely"). Congress not only imposed the nine-month processing requirement on the agencies in amending the SIV programs, but reporting

obligations for monitoring compliance with that requirement. *See supra* at 9-10. Congress further required the designation of certain personnel within the Defendant agencies who would be responsible for ensuring speedy processing at all steps of the application process. *See* AAPA § 602(b)(2)(D)(ii)(II) (requiring SIV Coordinator in Afghanistan "responsible for overseeing the efficiency and integrity" of the processing of SIVs, particularly those in the COM process); RCIA § 1244(b)(4)(B)(ii) (same for Iraq); RCIA § 1248(h) (requiring designation of a Senior Coordinating Official with "sufficient expertise, authority, and resources" to "develop proposals to improve the efficiency and effectiveness of the SIV processes," "coordinate and monitor the implementation of such proposals," include the proposals in the required congressional and public reports, and implement appropriate actions to carry out the improvements described in those reports). Given these strong indicators of congressional intent to speed up processing and adjudications of SIVs, it is unreasonable for Defendants to proceed at their chosen pace.

b. The prejudice factors (factors 3 and 5) favor relief.

The third and fifth *TRAC* factors, which ask the Court to assess "the nature and extent of the interests prejudiced by the delay," taking into account that "delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake," also favor relief in this case. *TRAC*, 750 F.2d at 80. Delays that affect human health and welfare are particularly intolerable where, as here, "the very purpose of the governing Act is to protect" Plaintiffs' lives. *Pub. Citizen Health Research Grp. v. Auchter*, 702 F.2d 1150, 1157-58 (D.C. Cir. 1993) (finding unreasonable the delay in rulemaking on workplace exposure to ethylene oxide given the "significant risk of grave danger" to "the lives of current workers and the lives and well-being of their offspring").

Given the purpose of the AAPA and the RCIA to protect the Allies from danger, the systemic delays in processing of SIVs is egregious and merits relief. As Colonel Miska opines

based on his decades of experience in Iraq and his academic research on the topic of protection of the Allies, the delays in the processing of SIVs severely prejudice the welfare of the Allies, whom Congress intended to protect, by continuing to put their lives in danger. *See* Miska Decl. ¶¶ 23-30. The delays force the Allies to continue to live under the stress and anxiety of trying to protect themselves and their families from looming danger: Mr. Doe-Alpha testifies that "[t]he fear of being identified by the Taliban has taken a toll" on his family, Alpha Decl. ¶ 12, while Mr. Doe-Echo testifies that knowing that his father was killed because of his work leaves him "terrified" that he or members of his family "will meet the same fate." Echo Decl. ¶ 12. And the uncertainty of the SIV process and adjudication prevents the Allies from adequately planning for their future. *See, e.g.*, *supra* at 10-11. Mr. Doe-Alpha explains that the uncertainty makes him unsure about his family's future, Alpha Decl. ¶ 15, and Ms. Doe-Bravo explains that the uncertainty makes her "feel hopeless, and makes it extremely difficult to plan for the future." Bravo Decl. ¶ 15; *see also Geneme v. Holder*, 935 F. Supp. 2d 184, 194 (D.D.C. 2013) (concluding that third and fifth *TRAC* factors weighed in favor of an asylee waiting to adjust status because "she cannot adequately plan for her future without knowing" the outcome of her application, and "this uncertainty has a substantial and substantially negative impact on her welfare and on her peace of mind").

Above and beyond the prejudice to the Allies, the delays also harm the national interest of the United States and the welfare of the U.S. service members and others serving abroad. *See* Miska Decl. ¶¶ 31-38. The delays undermine the Allies' reliance and trust in the U.S. government and the willingness and ability of local nationals to vigorously support U.S. efforts in Afghanistan and Iraq, as well as in other conflict zones. *See id.* ¶ 33. And the delays signal that the United States does not follow through on its commitments to those who support U.S.

efforts and thus undermine the U.S. government's relationship with other allied countries, the credibility of U.S. diplomats, the effectiveness of law enforcement investigations in the counterterrorism area, and the morale of the veterans who are left powerless to respond to distress signals coming from their former colleagues in Afghanistan and Iraq. *See id.* ¶¶ 34-37. The interests prejudiced by the delays in the SIV processing are thus significant and the extent of the prejudice is severe.

c. The competing priorities factor (factor 4) favors relief.

The fourth *TRAC* factor, which asks the Court to assess the agencies' competing priorities, weighs in favor of Plaintiffs given that Defendants cannot continue to rely on this factor to violate statutory directives four years after they were enacted. *See Am. Hosp. Ass'n v. Burwell*, 812 F.3d 183, 191 ("'However many priorities the agency may have, and however modest its personnel and budgetary resources may be, there is a limit to how long it may use these justifications to excuse inaction in the face of' a statutory deadline.") (quoting *In re United Mine Workers of Am. Int'l Union*, 190 F.3d 545, 554 (D.C. Cir. 1999)). Congress was well aware of the challenges faced by Defendants in administering the SIV program and decided to impose a nine-month time limit nonetheless because of the importance of the program. *See In re People's Mojahedin Org. of Iran*, 680 F.3d at 837 (rejecting defendant's argument regarding competing priorities because "the Congress undoubtedly knew the enormous demands placed upon the Secretary and nonetheless limited her time to act"). Defendants' continued disregard of the congressional mandate cannot be excused by competing priorities.

d. The bad faith factor (factor 6) favors relief.

The sixth and final *TRAC* factor favors relief because it clarifies that this Court need not find bad faith or "impropriety" behind Defendants' delays to order them to act. *TRAC*, 750 F.2d

at 80. On the other hand, it is far from clear that Defendants have acted in "good faith" given that the challenged delays have persisted, visibly and unremedied, for years since the amendments to the AAPA and the RCIA, *see supra* at 9-12, and despite lawsuits putting Defendants on notice of their obligations, *see Nine Iraqi Allies*, 168 F. Supp. 3d at 282; *Doe v. U.S. Dep't of State*, No. 15-cv-01971 (RWR) (D.D.C.. *See In re Barr Labs., Inc.*, 930 F.2d 72, 76 ("Where the agency has manifested bad faith, as by . . . asserting utter indifference to a congressional deadline, the agency will have a hard time claiming legitimacy for its priorities."); *In re Aiken Cty.*, 725 F.3d 255, 267 n.12 (D.C. Cir. 2013) ("In the face of such deliberate and continued agency disregard of a statutory mandate, our precedents strongly support a writ of mandamus."). But in any event, regardless of whether Defendants' inaction is in good or bad faith, the ongoing delays experienced by Plaintiffs are unreasonable and merit judicial intervention.

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST WEIGH IN FAVOR OF PLAINTIFFS' REQUEST FOR A PRELIMINARY INJUNCTION.

The balance of equities and the public interest, which merge in cases against the government, *see Nken v. Holder*, 556 U.S. 418, 435 (2009), support the issuance of the limited and modest injunction Plaintiffs seek. Plaintiffs recognize that Defendants, although they have failed to adhere to Congress's timeframe to date, are best positioned to propose, at least initially, how they will promptly adjudicate those applications they have unreasonably delayed. *See Cobell v. Norton*, 240 F.3d 1081, 1108-09 (D.C. Cir. 2001) (noting that an order requiring Defendants to develop policies and procedures and provide regular reporting to the Court is "relatively modest" as it grants "agencies that have acted in an unlawful manner discretion to determine in the first instance how to bring themselves into compliance") (internal quotations omitted). Accordingly, at this preliminary stage Plaintiffs are requesting only that the Court order Defendants to file

within 30 days a proposal for promptly adjudicating Plaintiffs' pending SIV applications and to report on compliance with the plan on a monthly basis. *Cf, e.g.*, *TRAC*, 750 F.2d at 81 (without deciding whether mandamus should issue, ordering agency to inform court of its timetable for resolution within 30 days and requiring progress reports every 60 days thereafter); *In re United Mine Workers*, 190 F.3d at 556 (without issuing a mandamus, ordering the agency to advise the court on the final agency disposition and status of the matter); *Pub. Citizen Health Research Grp. v. Brock*, 823 F.2d 626, 629 (D.C. Cir. 1987) (ordering agency to comply with the timetable it submitted in response to plaintiffs' motion and to submit progress reports).

This limited remedy minimizes the burden on the Defendants, *see Cobell*, 240 F.3d at 1108 (calling a similar order "relatively modest"), while supporting the public interest. *See Protect Democracy Project, Inc. v. U.S. Dep't of Def.*, 263 F. Supp. 3d 293, 301-03 (D.D.C. 2017) (holding that the balance of hardships and public interest supported ordering expedited processing of FOIA requests, even if not a production order by date certain at that stage). Further, the "issuance of a preliminary injunction would serve the public's interest in maintaining a system of laws" where the Government must comply with its legal obligations. *O'Donnell Constr. Co. v. Dist. of Columbia*, 963 F.2d 420, 429 (D.C. Cir. 1992). Courts in this District have recognized that "[t]he public interest is served when administrative agencies comply with their obligations under the APA." *N. Mariana Islands v. United States*, 686 F. Supp. 2d 7, 21-22 (D.D.C. 2009) (granting preliminary injunction against DHS); *see also R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 191 (D.D.C. 2015) (granting preliminary injunction against DHS).

Moreover, the efficient administration of the Afghan and Iraqi SIV programs in accordance with the timeframes enacted by Congress is squarely in the public interest, as detailed in Col. Miska's declaration. *See* Miska Decl. ¶¶ 31-38; *supra* at 22-23. As the Senate Committee on

Armed Services confirmed several months ago in connection with the Afghan SIV program in a report accompanying the John S. McCain National Defense Authorization Act for Fiscal Year 2019: "Afghan allies work with the United States and coalition partners, often at great personal risk and sacrifice. Sustaining support from Afghan individuals willing to partner with the U.S. Government is critical to the mission in Afghanistan." *See* S. Rep. No. 116-262, at § 1214 (2018).

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court declare unreasonable Defendants' delay in the processing of Plaintiffs' SIV applications and order Defendants to (1) submit within 30 days a plan for promptly processing and adjudicating the applications, which should be developed with Plaintiffs' input, and (2) submit compliance reports every 30 days thereafter.

Date: September 7, 2018
New York, New York

/s/ Deepa Alagesan
Deepa Alagesan (D.D.C. Bar No. NY0261)
Mariko Hirose (D.D.C. Bar No. NY0262)
INTERNATIONAL REFUGEE ASSISTANCE PROJECT
40 Rector Street, 9th Floor
New York, New York 10006
Telephone: (646) 602-5639
dalagesan@refugeerights.org
mhirose@refugeerights.org

/s/ Shannon M. Leitner
Linda H. Martin (D.D.C. Bar No. NY0210)
David Y. Livshiz (D.D.C. Bar No. NY0269)
Shannon M. Leitner (D.D.C. Bar No. NY0268)
Rebecca L. Curwin (D.D.C. Bar No. NY0267)
Allison C. Wilson (D.D.C. Bar No. NY0271)
FRESHFIELDS BRUCKHAUS DERINGER US LLP
601 Lexington Avenue, 31st Floor
New York, New York 10022
Telephone: (212) 277-4000
Facsimile: (212) 277-4001
linda.martin@freshfields.com
david.livshiz@freshfields.com
shannon.leitner@freshfields.com
rebecca.curwin@freshfields.com
allie.wilson@freshfields.com

Attorneys for Plaintiffs and Proposed Class Counsel