

1 LATHAM & WATKINS LLP
 2 Belinda S Lee (Bar No. 199635)
 3 Katherine M. Larkin-Wong (Bar No. 281038)
 4 Caroline N. Esser (Bar No. 307745)
 5 Devon A. Diggs (Bar No. 329380)
 505 Montgomery Street, Suite 2000
 4 San Francisco, CA 94111-6538
 Tel: +1.415.391.0600
 5 Fax: +1.415.395.8095
 Email: *Belinda.Lee@lw.com*
 6 *Katherine.Larkin-Wong@lw.com*
 7 *Caroline.Esser@lw.com*
Devon.Diggs@lw.com

8 Keith L. Williams (Bar. No. 314503)
 10250 Constellation Blvd., Suite 1100
 9 Los Angeles, CA 90067
 Tel: +1.424.653.5500
 10 Fax: +1.424.653.5501
 Email: *Keith.Williams@lw.com*

11 INTERNATIONAL REFUGEE
 12 ASSISTANCE PROJECT
 Mariko Hirose (*pro hac vice*)
 13 Kathryn C. Meyer (*pro hac vice*)
 Deepa Alagesan (*pro hac vice*)
 14 One Battery Park Plaza, 4th Fl.
 New York, NY 10004
 15 Tel: +1.516.701.4620
 Fax: +1.929.999.8115
 16 Email: *mhirose@refugeerights.org*
kmeyer@refugeerights.org
 17 *dalagesan@refugeerights.org*

18 Melissa S. Keaney (Bar No. 265306)
 PO Box 2291
 19 Fair Oaks, CA 95628
 Tel: +1.916.546.6125
 20 Email: *mkeaney@refugeerights.org*

21 *Attorneys for Plaintiffs Does 1-4, 6-8, and the Amended*
 22 *Claim Class 6*

23 **UNITED STATES DISTRICT COURT**
 24 **NORTHERN DISTRICT OF CALIFORNIA**

SAN JOSE DIVISION

25 JANE DOE 1, JOHN DOE 2, JANE DOE 3,
 26 JANE DOE 4, JANE DOE 6, JOHN DOE 7,
 and JANE DOE 8 individually and on behalf
 of all others similarly situated;

27 Plaintiffs,
 28

CASE NO. 5:18-cv-02349-BLF (VKD)

**FIRST AMENDED COMPLAINT FOR
 DECLARATORY, INJUNCTIVE, AND
 MANDAMUS RELIEF**

CLASS ACTION

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v.

CHAD WOLF, in his official capacity as Acting Secretary of Homeland Security; KENNETH T. CUCCINELLI, in his official capacity as the Acting Director of U.S. Citizenship and Immigration Services; JENNIFER B. HIGGINS, in her official capacity as the Associate Director of U.S. Citizenship and Immigration Services for Refugee, Asylum, and International Operations Directorate; MICHAEL POMPEO, in his official capacity as the Secretary of State; U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. DEPARTMENT OF STATE;

Defendants.

REDACTED VERSION PURSUANT TO 7/24/20 ORDER, DKT. 401

I. INTRODUCTION

1. This case involves momentous—and previously undisclosed—changes that Defendants made to the U.S. refugee admissions program.¹ Since Congress created the modern refugee admissions program through the Refugee Act of 1980, the program has allowed millions of refugees fleeing persecution in their countries to apply for resettlement in the United States while located in a third country. But recent changes that Defendants have made to security vetting have mutated and warped the program from how it has successfully operated for decades, with one profound consequence being the catastrophe at the heart of this lawsuit: the mass denial of Iranian refugees of minority faiths who are seeking to reunify with their family members in the United States.

2. When proclaiming January 16, 2018, as Religious Freedom Day, President Trump called the United States “the paramount champion for religious freedom around the world” and promised to “be undeterred in our commitment to monitor religious persecution and implement policies that promote religious freedom.”² But just one month later, his administration took the

¹ The term “refugees” as used in this case refers to refugees applying for resettlement to the United States from abroad, as distinct from asylum seekers who apply for asylum after they have reached U.S. territory.

² Donald J. Trump, *President Donald J. Trump Proclaims January 16, 2018, as Religious Freedom Day*, White House Proclamation (Jan. 16, 2018),

1 unprecedented step of denying *en masse* the refugee applications of nearly 90 Christians,
2 Mandaean, and other persecuted religious minorities from Iran who had applied for refugee
3 status under the Vienna-based Lautenberg-Specter program (“Vienna Lautenberg-Specter
4 program”). They all received the same stock response—that their refugee applications had been
5 “denied as a matter of discretion.” Each such unexplained denial was contrary to law.

6 3. In 1989, Congress enacted the Lautenberg Amendment to facilitate refugee
7 admission of persecuted religious minorities and other vulnerable groups from certain specified
8 countries by lowering the evidentiary burden of eligibility and mandating certain procedural
9 protections. Congress specifically added Iranian religious minorities to these protections in 2004
10 through the Specter Amendment and has consistently reauthorized both Amendments, including
11 as recently as February 15, 2019. The Vienna Lautenberg-Specter program allows persecuted
12 religious minorities in Iran to have a U.S. person sponsor their refugee application process, travel
13 to Vienna after they pass initial screening, and apply for refugee status there under the special
14 protections of the Lautenberg Amendment. Until the mass denial, nearly 100% of the Iranian
15 refugee applicants who were invited to travel to Vienna were granted refugee admission within a
16 few months.

17 4. The unprecedented mass denial of the Iranian refugees who had already traveled
18 to Vienna was the result of an ill-considered decision by Defendants Department of Homeland
19 Security (“DHS”) and the Department of State (“DOS”) to significantly alter the Security
20 Advisory Opinion (“SAO”) vetting for refugees conducted by the Federal Bureau of
21 Investigation’s (“FBI”)—one of many vetting checks that applies to refugees from certain
22 countries including Iran. Defendants implemented this decision even as to the Vienna
23 Lautenberg-Specter refugees who had already fled their homes at the U.S. government’s
24 invitation after passing initial security checks.

25 5. Specifically, in late 2015, Defendants approved the transfer of SAO vetting to the
26 FBI’s Foreign Terrorist Threat Task Force (“FBI Task Force”), which had capacity to conduct

27 _____
28 <https://www.whitehouse.gov/presidential-actions/president-donald-j-trump-proclaims-january-16-2018-religious-freedom-day/>.

1 new vetting that the FBI had not employed before for this purpose.

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 Adopting a “zero risk tolerance” threshold, the FBI Task Force issued a SAO
9 “not clear” result and labeled the case a security threat whenever it found that [REDACTED]

10 [REDACTED]
11 [REDACTED]

12 6. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 7. Under the FBI Task Force’s new vetting method, SAO “not clear” results
21 increased significantly. The percentage of SAO “not clear” results for refugees jumped by as
22 much as [REDACTED] upsetting the refugee system as a whole. For example, according to a news report,
23 the Pentagon raised alarm about the increase in Iraqi refugees who were receiving SAO “not
24 clear” results given that many of them had helped American military troops in battle; of the 88
25 Iraqi refugees vetted under SAO checks during a certain time after vetting had been transferred
26 to the FBI Task Force, 87 refugees, or nearly 99%, received “not clear” results.³ In Nauru, a

27 ³ Yeganeh Torbati, *Exclusive: Pentagon Raises Alarm About Sharp Drop in Iraqi Refugees*
28 *Coming to U.S.*, Reuters, Aug. 20, 2018, <https://www.reuters.com/article/us-usa-immigration->

1 remote island in the South Pacific where refugees were awaiting processing for years in dire
 2 conditions, DHS denied refugee admission to over 90 Iranians, including families with children,
 3 leading an Iranian refugee to attempt suicide.⁴

4 8. And in Vienna, where Iranian refugees of minority faiths are living in limbo
 5 awaiting reunification with their families in the United States, DHS and DOS denied or rejected
 6 refugee applications of at least 67 people, and likely many more, who had either received SAO
 7 “not clear” results from the FBI Task Force or who were seeking to resettle with those refugees
 8 receiving SAO “not clear” results. These denials and rejections stranded Iranians of minority
 9 religious faiths in Vienna, putting them at risk of deportation, and preventing American families
 10 from reuniting with their parents, children, and other close relatives whom they had been
 11 prepared to welcome to their homes and communities.

12 9. Plaintiffs Does 1, 2, 7, 8, and other similarly situated class members, are U.S.
 13 persons who paid thousands of dollars to sponsor the Vienna Lautenberg-Specter refugee
 14 applications of their close family members so that they can reunite in the United States.
 15 Plaintiffs Does 3, 4, 6 and other class members are refugee applicants who were or are currently
 16 stranded in Vienna because of the denials of their refugee applications.

17 10. Among the Plaintiffs are a mother in San Jose, California who sought to reunite
 18 with her Mandaean diabetic daughter and young grandchild; a son who was eager to bring his
 19 Mandaean mother and developmentally disabled adult brother to the United States for access to
 20 treatment and caregiving support; an ethnically-Armenian Christian woman stranded in Vienna
 21 with her husband and young child after their flight to reunite with family in the U.S. was
 22 canceled on their way to the airport; a U.S. citizen who had successfully helped around half a
 23 dozen of his persecuted Mandaean relatives resettle in the United States through the Vienna

24
 25 [refugees-iraq-exclusi/exclusive-pentagon-raises-alarm-about-sharp-drop-in-iraqi-refugees-coming-to-u-s-idUSKCN1L51N9](https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/4/).

26 ⁴ *Nauru Refugees from Iran, Somalia Rejected by U.S.*, RNZ, May 8, 2018,
 27 <https://www.rnz.co.nz/international/pacific-news/356900/nauru-refugees-from-iran-somalia-rejected-by-us>;
 28 Refugee Council of Australia, Offshore Processing Statistics: U.S. Resettlement, Oct. 27, 2019, <https://www.refugeecouncil.org.au/operation-sovereign-borders-offshore-detention-statistics/4/>.

1 Lautenberg-Specter program but whose aunt, uncle, and four cousins were denied and stranded
2 in Vienna under the new vetting regime; and a U.S. citizen aunt in Santa Clara county who
3 sponsored the application of her nephew so that he could reunite with family and live free from
4 religious persecution. Plaintiffs and class members seek the Court's intervention to enforce the
5 Lautenberg Amendment and other laws, so that the refugee applicants whose futures hang in the
6 balance have a fair opportunity to reunite with their family members in the United States and
7 practice their religion in the safety of this country, as Congress intended.

8 **II. PARTIES**

9 11. Plaintiff Jane Doe 1 is a U.S. citizen and a resident of San Jose, California. She
10 served as the U.S. tie for the refugee application of her daughter, Jane Doe 3, and young
11 grandson.

12 12. Plaintiff John Doe 2 is a U.S. citizen and a resident of West Chicago, Illinois. He
13 served as the U.S. tie for the refugee application of his mother, Jane Doe 4, and disabled brother.

14 13. Plaintiff Jane Doe 3 is an Iranian citizen formerly located in Vienna, Austria. She
15 is Mandaean and applied for refugee status for herself and her eight-year-old son through the
16 Vienna Lautenberg-Specter program.

17 14. Plaintiff Jane Doe 4 is an Iranian citizen formerly located in Vienna, Austria. She
18 is Mandaean and applied for refugee status with her developmentally disabled son through the
19 Vienna Lautenberg-Specter program.

20 15. Former Plaintiff Jane Doe 5 is an Iranian citizen currently located in Vienna,
21 Austria. She is Armenian Christian, a widow, and applied for refugee status with her elderly
22 father and her disabled son through the Vienna Lautenberg-Specter program. She received
23 asylum in Austria after this Court certified the class and granted partial summary judgment on
24 July 10, 2018 and has withdrawn her application to the Vienna Lautenberg-Specter program.
25 She is no longer a Plaintiff in the case.

26 16. Plaintiff Jane Doe 6 is an Iranian citizen currently located in Vienna, Austria. She
27 is an ethnically Armenian Christian woman who applied for refugee status with her husband and
28 their young daughter through the Vienna Lautenberg-Specter program.

1 17. Plaintiff John Doe 7 is a U.S. Citizen and a resident of Texas. He served as the
2 U.S. tie for the refugee application of his aunt, her husband, and their four children.

3 18. Plaintiff Jane Doe 8 is a U.S. Citizen and a resident of Santa Clara county,
4 California. She served as the U.S. tie for the refugee application of her nephew.

5 19. Defendant United States Department of Homeland Security (“DHS”) is a cabinet-
6 level department of the United States federal government. DHS has authority to determine if
7 refugees are offered admission to the United States. DHS may require or authorize employees of
8 the Department of Justice to perform or exercise any of the powers, privileges, or duties
9 conferred or imposed on the Department, 8 U.S.C. § 1103(a)(4), and DHS has required or
10 authorized DOJ to perform one aspect of refugee vetting called SAO vetting. Within DOJ, the
11 FBI Task Force conducts vetting of refugees, including SAO vetting. United States Citizenship
12 and Immigration Services (“USCIS”), which is responsible for the review and adjudication of
13 refugee applications, is a component of DHS.

14 20. Defendant Chad Wolf is sued as a federal official in his official capacity as Acting
15 Secretary of Homeland Security. Acting Secretary Wolf is responsible for managing DHS’s
16 operations and supervising officials who oversee DHS’s involvement in refugee processing,
17 including Vienna Lautenberg-Specter program adjudications.

18 21. Defendant Kenneth T. Cuccinelli is sued as a federal officer in his official
19 capacity as Acting Director of USCIS. Acting Director Cuccinelli is responsible for overseeing
20 the Refugee, Asylum and International Operations Directorate (“RAIO”), which determines
21 eligibility, interviews, and screens refugee applications, including for the Vienna Lautenberg-
22 Specter program.

23 22. Defendant Jennifer B. Higgins is sued as a federal officer in her official capacity
24 as the Associate Director of USCIS for RAIO. Associate Director Higgins manages RAIO
25 operations, including refugee processing. She oversees the Refugee Affairs Division (“RAD”)
26 within RAIO, which adjudicates refugee applications, conducts refugee interviews with the
27 USCIS Refugee Corps, and oversees the determinations of refugee Requests for Review
28

1 (“RFR”). RAIIO is the governmental entity that issued the mass denials to Vienna Lautenberg-
2 Specter program applicants in or around February 2018.

3 23. Defendant United States Department of State (“DOS”) is a cabinet-level
4 department of the United States federal government. DOS manages the United States Refugee
5 Admissions Program, which includes the Vienna Lautenberg-Specter program. Within DOS, the
6 Bureau of Population, Refugees and Migration contracts with and supervises HIAS, Inc., a non-
7 profit organization, that operates the Resettlement Support Center for Vienna Lautenberg-
8 Specter applicants in Vienna, Austria.

9 24. Defendant Michael Pompeo is sued as a federal official in his official capacity as
10 Secretary of State. Secretary Pompeo manages DOS’s operations and supervises officials who
11 oversee DOS’s involvement in refugee processing, including the Vienna Lautenberg-Specter
12 program.

13 **III. JURISDICTION AND VENUE**

14 25. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal
15 question); 28 U.S.C. § 1361 (Mandamus Act); and 5 U.S.C. §§ 701-706 (Administrative
16 Procedure Act). This Court has additional remedial authority under 28 U.S.C. §§ 2201-02
17 (Declaratory Judgment Act).

18 26. Venue is proper in the Northern District of California under 28 U.S.C.
19 § 1391(e)(1), because plaintiff Jane Doe 1 and Jane Doe 8 reside within this District. Each
20 Defendant is an agency of the United States or an officer of the United States sued in his or her
21 official capacity. No real property is involved in this action.

22 **IV. INTRADISTRICT ASSIGNMENT**

23 27. Pursuant to Civil Local Rule 3-2(e), this matter should be assigned to the San Jose
24 Division, because Plaintiff Jane Doe 1 and Jane Doe 8 reside within Santa Clara County.

25 **V. FACTUAL ALLEGATIONS**

26 **A. Congress Passed the Lautenberg and Specter Amendments to Facilitate**
27 **Refugee Admissions of Persecuted Religious Minorities**

28

1 28. Congress enacted the Lautenberg Amendment in 1989 to facilitate the refugee
2 admission of certain persecuted categories of individuals, including Jews and Christians from the
3 Former Soviet Union. P.L. 101-167, Title V, § 599D. The Lautenberg Amendment lowers the
4 evidentiary burden for eligibility for refugee admissions, as it permits applicants in the specified
5 groups to demonstrate a well-founded fear of persecution by establishing membership in the
6 group, asserting a subjective fear of persecution, and asserting “a credible basis for concern
7 about the possibility of such persecution.” *Id.* (a). The Lautenberg Amendment further requires
8 that “each decision to deny an application for refugee status . . . shall be in writing and shall
9 state, to the maximum extent feasible, the reason for the denial.” *Id.* (c); *see also* 8 U.S.C. §
10 1157 (note).

11 29. In passing the Amendment, Senator Frank Lautenberg and the Immigration
12 Subcommittee made clear that it was intended to secure admission of persecuted religious
13 minorities to the United States and to curtail the exercise of discretion to deny applicants only to
14 “isolated” and “extremely limited” cases:

15 Mr. LAUTENBERG. Mr. President, under this amendment, a
16 refugee applicant may choose to qualify for refugee status by
17 demonstrating that he or she has been the victim one of several acts
18 of mistreatment or prejudicial actions. I understand that the ranking
19 member of the Immigration Subcommittee believes that the
20 provision nonetheless reserves discretion to the Attorney General.
21 Would he agree that any discretion which this allows the AG to
22 deny cases is extremely limited in scope--that it is only for the
23 isolated case which cannot now be foreseen--in which a conferral
24 of refugee status, would not be appropriate, or otherwise not in the
25 national interest?

26 Mr. SIMPSON. Yes.

27 Mr. LAUTENBERG. Is that the Chairman's view as well?

28 Mr. KENNEDY. Yes, it is.

 101 Cong. R. S11,525 (daily ed. Sept. 20, 1989).

29 30. In 2004, Congress passed the Specter Amendment, adding Iranian religious
30 minorities to the categories of people eligible for the special protections of the Lautenberg
31 Amendment. P.L. 108-199, Division E, Title II, § 213.

1 31. Congress has reauthorized the Lautenberg and Specter Amendments consistently,
2 including as recently as February 15, 2019 as part of the FY 2019 Consolidated Appropriations
3 Act. P.L. 116-6, Division J, §7034(m)(5). Since its inception, approximately 30,000 Iranian
4 religious minorities have resettled in the United States under the Lautenberg Amendment.

5 32. The passing and continued re-authorization of the Lautenberg and Specter
6 Amendments reflect the dire reality for religious minorities in Iran, a country that is
7 approximately 99% Muslim and proclaims Shi'a Islam to be its official religion. Iranian law
8 prohibits Muslim citizens from changing or renouncing their religious beliefs, and the penal code
9 specifies the death sentence for proselytizing, attempts by non-Muslims to convert Muslims, and
10 *sabb al-nabi* (“insulting the prophet”). The only Iranian state-recognized religious minorities are
11 Zoroastrians, Jews, and Christians (excluding Evangelicals, but including Sabean-Mandaeans,
12 although the group does not consider themselves to be Christian).

13 33. The U.S. government has long recognized that Iran engages in particularly severe
14 violations of religious freedom. The U.S. Commission on International Religious Freedom
15 (“USCIRF”) has designated Iran as a “Country of Particular Concern” under the International
16 Religious Freedom Act for 17 consecutive years.⁵ In 2017, the USCIRF found that in the
17 preceding year:

- 18 a. “[T]he government of Iran engaged in systematic, ongoing, and egregious
19 violations of religious freedom, including prolonged detention, torture,
20 and executions based primarily or entirely upon the religion of the
21 accused.”

22
23 ⁵ U.S. Commission on International Religious Freedom, Annual Report 2017 (“USCIRF”) at 13,
24 <http://www.uscirtf.gov/sites/default/files/2017.USCIRFAnnualReport.pdf>. “USCIRF is an
25 independent, bipartisan U.S. federal government commission” that was created by the
26 International Religious Freedom Act of 1998. The USCIRF “reviews the facts and
27 circumstances of religious freedom violations abroad and makes policy recommendations to the
28 President, the Secretary of State, and Congress. USCIRF Commissioners are appointed by the
President and the Congressional leadership of both political parties.” United States Commission
on International Religious Freedom, *About USCIRF*, <http://www.uscirtf.gov/about-uscirtf> (last
visited April 12, 2018).

1 b. “Killings, arrests, and physical abuse of detainees have increased in recent
2 years, including for religious minorities . . . who dissent or express views
3 perceived as threatening the government’s legitimacy.”

4 c. Even government-recognized religious minorities face official harassment,
5 intimidation, discrimination, arrests, and imprisonment.

6 34. In 2017, the U.N. Special Rapporteur on Iran also found that religious minorities
7 in Iran face arbitrary arrests, harassment, and detention based on their religious beliefs.⁶

8 **B. Until the End of 2016, Nearly 100% of the Iranian Refugee Applicants Who**
9 **Had Already Traveled to Vienna in the Vienna Lautenberg-Specter Program Were**
10 **Admitted**

11 35. Applications for refugee status generally are processed at a U.S. Department of
12 State facility, such as a U.S. embassy. However, because the United States does not have an
13 embassy in Iran, religious minorities in Iran who seek to apply for refugee status under the
14 Lautenberg Amendment may do so through the Vienna-based Lautenberg Specter program.⁷

15 36. The application process for this program begins with a U.S.-based person with
16 lawful status in the United States (“U.S. tie”), usually a close family member, submitting an
17 application on behalf of refugee applicants in Iran. The application is processed by HIAS, a non-
18 profit organization based in Maryland, which has an agreement with the U.S. State Department
19 to operate a Resettlement Support Center⁸ in Vienna, Austria, to aid the Iranian Lautenberg-
20 Specter applicants.

21 37. Before the application can proceed, the U.S. tie and the primary refugee applicant
22 must enter into a contract with HIAS to pay for all expenses associated with the application,

23 _____
24 ⁶ UN Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, Report
25 to the Human Rights Council, A/HRC/34/65 at para. 78 (Mar. 17, 2017) available at
<http://undocs.org/A/HRC/34/65>.

26 ⁷ This program is distinct from the original Lautenberg program, which applies to groups from
Eurasia and the Baltics identified in the Lautenberg Amendment.

27 ⁸ The DOS funds and manages nine Resettlement Support Centers around the world, which are
28 offices operated by international and nongovernmental organizations (and one U.S. interests
section), to prepare eligible refugee applications for U.S. resettlement consideration and provide
support to refugee applicants.

1 including a non-refundable \$330 administrative fee per case, to pledge financial support for the
2 refugee applicants, and to cover any liabilities during processing in Vienna. With the contract,
3 the U.S. tie deposits a minimum of \$3,000 per single applicant or \$2,600 per applicant on a case
4 for a family of two or more, plus more if there are unique circumstances such as health concerns.

5 38. Once HIAS receives the application and the deposit and the refugee applicant
6 passes an initial screening process, the Austrian government issues a visa to the refugee
7 applicants at the request of the U.S. government, permitting them to travel to Austria for the sole
8 purpose of continuing processing for the Vienna Lautenberg-Specter program. At this point,
9 most refugee applicants sell their belongings and prepare to restart their lives in the United
10 States. Refugee applicants are responsible for paying for their own travel.

11 39. Refugee applicants are permitted to travel to Austria only after they have
12 completed initial vetting conducted by the U.S. government while they are still in Iran.

13 40. Once in Austria, HIAS assists the refugee applicants in preparing additional
14 application materials before USCIS officers interview the applicants. Refugee applicants also
15 undergo medical screening, attend cultural orientation, and receive an assurance of sponsorship
16 from a resettlement agency in the United States that has agreed to assist with their resettlement.

17 41. Refugee applicants are admitted to the United States only after they have
18 completed final vetting conducted by the U.S. government.

19 42. According to HIAS, Vienna Lautenberg-Specter applicants in the program prior
20 to the fall of 2016 typically stayed in Austria for only a few months before completing
21 processing. Both HIAS and the U.S. State Department have reported that nearly 100% of
22 applicants who made it to Vienna prior to fall of 2016 were approved for admission to the United
23 States.⁹

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25
26 ⁹ Nina Shea, *America Shouldn't Send Endangered Religious Minority Refugees Back to Iran*,
27 Hudson Institute (Mar. 14, 2018), [https://www.hudson.org/research/14210-america-shouldn-t-
28 send-endangered-religious-minority-refugees-back-to-iran](https://www.hudson.org/research/14210-america-shouldn-t-send-endangered-religious-minority-refugees-back-to-iran); Department of State, July-December,
2010 International Religious Freedom Report, Appendix G,
https://www.state.gov/j/drl/rls/irf/2010_5/168190.htm.

1 **C. Undisclosed Program Changes Caused Applications of Nearly 100 Iranian**
2 **Religious Minorities to Stall Since the End of 2016 and to be Denied En Masse in February**
3 **2018**

4 43. The end of 2016, however, marked a significant change—and perhaps even the
5 beginning of the end—to the Vienna-based Lautenberg-Specter program.

6 44. First, Lautenberg-Specter applicants arriving in Vienna began to experience
7 slower processing times.

8 45. Then, in January 2017, President Trump issued Executive Order 13769—the first
9 of many Executive actions taken by the Trump Administration in an attempt to ban refugees
10 from the United States.

11 46. After Executive Order 13769 was enjoined by the courts, President Trump issued
12 Executive Order 13780, which again sought to ban refugees from the United States. The courts
13 enjoined that Executive Order too, although the Supreme Court allowed it to take effect with
14 respect to refugees without bona fide relationships to persons or entities in the United States
15 pending appeal. *Trump v. International Refugee Assistance Project*, 137 S. Ct. 2080 (2017).
16 The Supreme Court instructed that a person with a “close familial relationship” to a U.S. person
17 has a bona fide relationship. *Id.* at 2088. The Administration initially limited the application of
18 “close familial relationship” to parents, parents-in-law, spouses, fiancés, children, adult sons or
19 daughters, sons-in-law, daughters-in-law, siblings (whole or half), and step-relationships, but the
20 Ninth Circuit held that grandparents, grandchildren, brothers-in-law, sisters-in-law, aunts, uncles,
21 nieces, nephews, and cousins must be included within the meaning of a “close familial
22 relationship.” *See Hawai’i v. Trump*, 871 F.3d 646, 658-59 (9th Cir. 2017).

23 47. When Executive Order 13780 expired, the Administration issued an agency
24 memorandum in October 2017 suspending refugee processing and admissions for nationals of
25 certain countries, including Iran. On December 23, 2017, the Western District of Washington
26 enjoined this suspension for refugees with bona fide relationships.

27 48. In January 2018, the Administration announced further changes to refugee
28 processing that affect Iranian nationals. Although there is yet little known about the content of

1 those changes, one change mandated was to issue supplementary guidance and to train DHS
 2 officers on when it may be appropriate to deny refugee applicants as a matter of discretion based
 3 on the totality of the circumstances.

4 49. By February 2018, Defendants had marooned approximately 100 Vienna
 5 Lautenberg-Specter applicants (including both primary applicants and derivative relatives) in
 6 Austria, having stalled their applications for nearly one year.

7 50. On or around February 19, 2018, DHS issued denials to approximately 83 of the
 8 100 Iranian Lautenberg-Specter applicants who were in Vienna awaiting a decision on their
 9 applications. These applicants, including the Plaintiffs Does 3, 4, and 6, and their derivative
 10 relatives named on their applications, and Doe 8’s nephew, received identical Notices of
 11 Ineligibility.

12 51. The Notices of Ineligibility that the Plaintiffs received as part of the mass denial
 13 on or around February 19, 2018 was a notice with seven checkboxes, issued by the RAIO
 14 Directorate within USCIS. The first six checkboxes of the Notice of Ineligibility identify
 15 specific grounds of ineligibility, some of which have additional line items and space for further
 16 explaining that ground of ineligibility. The seventh box is a catchall box: “OTHER
 17 REASON(S).”

18 For the reason(s) indicated below, we have determined that you are not eligible for resettlement to the
 19 United States.

20 1. **SPECIAL HUMANITARIAN CONCERN.** You did not establish that you are of special
 21 humanitarian concern to the United States in order to qualify for access to the U.S. Refugee
 22 Admissions Program (USRAP).

23 2. **REFUGEE CLAIM.** You did not establish that you meet the definition of refugee pursuant to
 24 the Lautenberg (§ 599D (a) of the Foreign Operations Appropriations Act for FY1990) and
 25 Specter Amendments (§ 213 of the Consolidated Appropriations Act, 2004, Pub. L. No.108-199)
 26 because:
 27 You did not assert a fear of remaining in, or returning to, your country of nationality.
 28 You did not establish a credible basis for concern about the possibility of persecution.

3. **PERSECUTION OF OTHERS.** You did not establish that you have not ordered, incited,
 assisted, or otherwise participated in the persecution of others on account of race, religion,
 nationality, membership in a particular social group, or political opinion.

4. **FIRM RESETTLEMENT.** You did not establish that you are not firmly resettled in a third
 country.

5. **ADMISSIBILITY.** You failed to meet your burden of proof to establish you are admissible to
 the United States pursuant to the following INA § 212(a) (8 U.S.C. § 1182(a)) inadmissibility
 ground(s):

A waiver of the inadmissibility ground(s) cited above may be requested.
 A waiver is not available for the inadmissibility ground(s) cited above.

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You may not apply for a waiver of the inadmissibility ground(s) cited above at this time, because you have been denied on other grounds that a waiver cannot address. If you wish to have your decision reconsidered, you must submit a request for review of the decision (*see below*).

6. **CREDIBILITY.** After careful consideration of all available information (including evidence and testimony provided at your refugee status interview), your claim for refugee resettlement in the United States was found not credible because of concerns that relate to the credibility of the testimony or other evidence you provided regarding:

- Your qualification(s) to access the USRAP (Special Humanitarian Concern)
- Your refugee claim (Refugee Claim)
- Your involvement in acts of persecution or your involvement in an entity known to commit acts of persecution (Persecution of Others)
- Your status and/or resettlement in a third country (Firm Resettlement)
- Your admissibility to the United States (Admissibility)
- Other: _____

During your interview, the USCIS officer informed you of concerns about the credibility of your testimony and provided you an opportunity to explain the following:

- Inconsistency(ies) within your testimony before USCIS
- Inconsistency(ies) between your testimony and other evidence (e.g. country conditions, other testimony, other case file documents, etc.)
- Insufficiently detailed testimony
- Part(s) of your testimony or other evidence was determined to be implausible
- Your demeanor, lack of candor, or unresponsiveness
- Your failure to provide other reasonably available evidence necessary to corroborate your eligibility
- Other: _____

Because you were unable to provide a reasonable explanation for these problems, it has been determined that your testimony lacked credibility on those facts.

7. **OTHER REASON(S):** After review of all the information concerning your case, including your testimony, supporting documentation, background checks, country conditions, and other available information, your application for refugee resettlement to the United States under INA §207 has been denied as a matter of discretion.

52. DHS did not select any of the first six checkboxes, and instead, DHS selected the seventh checkbox. In the space provided, DHS wrote identical language in all of the Plaintiffs’ Notices of Ineligibility:

After review of all the information concerning your case, including your testimony, supporting documentation, background checks, country conditions, and other available information, your application for refugee resettlement to the United States under INA §207 has been *denied as a matter of discretion*. (emphasis added).

53. DHS provided no further reasons for the denial in these Notices of Ineligibility and failed to state the reason for the denial “to the maximum extent feasible,” as it is expressly

1 required to do under the Lautenberg Amendment. The denials not only failed to meet that
2 statutory standard, but also fell short of USCIS regulations at 8 C.F.R. § 103.2(b)(16) and USCIS
3 Adjudicators' Field Manual, which contain instructions for disclosing to the applicant the basis
4 of a negative decision on an immigration benefit application.

5 54. The USCIS policy manual on discretion, dated November 2015 and supplemented
6 in April 2018, also mandates that absent any negative factors, discretion must be exercised
7 positively. When discretion is exercised negatively, the “decision must contain a complete
8 analysis of the factors considered in exercising discretion, with a specific and cogent explanation
9 of why you exercised discretion negatively.”

10 55. Notably, although DHS has indicated when a denial is security-related in denials
11 that it has issued in other refugee programs, these Notices of Ineligibility did *not* indicate that the
12 denials were security-related. Nor did the Notices indicate that the denials were based on
13 inadmissibility, such as criminal or security-related grounds of inadmissibility.

14 56. These Notices of Ineligibility also informed the Vienna Lautenberg-Specter
15 applicants that they have 90 days from the date of the notice to submit a Request for Review
16 (“RFR”) of their application and that USCIS will accept only one request that is postmarked or
17 received by that date.

18 57. These Notices of Ineligibility directed the applicant to set forth in the RFR: “(1) a
19 detailed account explaining how a significant error was made by the adjudicating officer, or (2)
20 new information that would merit a change in the determination.” For refugee applicants who
21 received Notices of Ineligibility dated February 19, 2018, the deadline to submit a RFR was May
22 20, 2018.

23 58. USCIS has reported in the past that RFRs are frequently determined in favor of
24 the applicant. But because these Notices of Ineligibility did not include any information on why
25 the refugee applications were denied, they did not provide the refugee applicants with any
26 information with which they could in fact pursue an RFR. In effect, the refugee applicants had
27 no way of pursuing the administrative review process that Defendants themselves created and
28 offered.

1 **D. Undisclosed Program Changes Caused Mass Denials of Vienna Lautenberg-**
 2 **Specter Refugee Applicants**

3 59. Defendants adopted and implemented program changes to the Vienna
 4 Lautenberg-Specter program for Iranians that are currently in effect and caused this mass denial
 5 of refugee applications. DOS has confirmed in response to media requests that changes to the
 6 program caused the mass denials and the drop in the admission rate under the program.¹⁰ The
 7 program changes were final agency actions that had direct legal consequences for a minimum of
 8 67 refugee applicants and their family members, and likely many more individuals.

9 60. Neither DHS nor DOS, nor any other agency, engaged in notice and comment
 10 rulemaking before implementing the program changes.

11 61. Neither DHS nor DOS, nor any other agency, has provided a reasoned
 12 explanation for the program changes.

13 **1. Defendants Approved New FBI Task Force Vetting Without Regard**
 14 **to Impact on Lautenberg Specter Refugees**

15 62. Under the Refugee Act, DHS has the authority and responsibility for determining
 16 whether to admit a refugee so long as the determination is consistent with the constraints set
 17 forth by Congress and the annual refugee admissions ceiling set by the President each year. 8
 18 U.S.C. § 1157(c)(1).¹¹ Although DHS administers the refugee program jointly with DOS, DHS
 19 has the ultimate responsibility for deciding refugee admissions.

20 63. DHS and DOS work with many partner vetting agencies to manage the extensive
 21 vetting that refugees undergo prior to being admitted to the United States.

22 64. One of the security checks that DHS and DOS has long required for certain
 23 refugees is SAO Merlin vetting, which applies to all refugee applicants of most ages from Iran,
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25 _____
 26 ¹⁰ Shea, *see supra*; Miriam Jordan, *Spurned by U.S. and Facing Danger Back Home, Iranian*
 27 *Christians Fear the Worst*, New York Times (Mar. 1, 2018),
 28 <https://www.nytimes.com/2018/03/01/us/iranian-christian-refugees.html>.

¹¹ Statutory reference to the Attorney General in Section 1157(c) is now deemed to refer to the
 Secretary of Homeland Security. *See* 6 U.S.C. § 557.

1 as well as Iraq, Somalia, Sudan, South Sudan, Syria, Yemen, Egypt, Libya, Mali, and North
2 Korea.¹²

3 65. In 2015, the National Security Council expressed concerns about inefficiencies
4 and significant backlogs in SAO Merlin vetting, prompting DHS and DOS to convene the SAO
5 Requirements Review Board to review SAO Merlin vetting. The SAO Requirements Review
6 Board is an inter-agency committee accountable to the Secretaries of Homeland Security and
7 State and chaired and vice-chaired by DHS and DOS, respectively. The Board's charter grants
8 the Board with authority to mandate changes in SAO criteria and procedures with the
9 concurrence of DHS and DOS. It also gives DHS the responsibility for directing the SAO
10 Requirements Review Board and for being accountable for the implementation of its decisions.

11 66. At the time of the 2015 review of SAO Merlin, the FBI, also a participant in the
12 SAO Requirements Review Board, was conducting SAO Merlin vetting through its National
13 Name Check Program.

14 67. The FBI National Name Check Program involved a search of the FBI's files for
15 instances where the refugee applicant was the subject of an FBI investigation or where the
16 applicant's name was referenced in an investigation, for example as associates, witnesses, or co-
17 conspirators.¹³

18 68. During SAO Review Board process, the FBI agreed that it cease conducting the
19 name checks because it was duplicative of other vetting but proposed that the FBI remain
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21 ¹² Until 2017, SAO Merlin applied only to male refugees of certain ages from these countries.
22 Currently, it applies to all refugee applicants between the ages of 14-50 from these countries.
23 See Yaganeh Torbati & Mica Rosenberg, *Under Trump Plan, Refugees from 11 Countries Face*
24 *Additional U.S. Barriers*, Reuters, Oct. 24, 2017, <https://www.reuters.com/article/us-usa-immigration-refugees/under-trump-plan-refugees-from-11-countries-face-additional-u-s-barriers-idUSKBN1CT2IV>; U.S. Refugee Admissions Plummet in FY 18, International Rescue
25 Committee, <https://www.rescue.org/sites/default/files/document/3557/ircusrefugeeadmissionsplummetinfy18.pdf>.

26 ¹³ Citizenship and Immigration Services Ombudsman, Annual Report 2016 at 37 (June 29,
27 2016), https://www.dhs.gov/sites/default/files/publications/cisomb/cisomb_2016-annual-report-to-congress.pdf; Testimony of David M. Hardy, Acting Assistant Director, Record/Information
28 Dissemination Section Records Management Division, Federal Bureau of Investigation, Before the Senate Subcommittee on International Operations and Terrorist, Washington D.C. Oct. 23, 2003, <https://archives.fbi.gov/archives/news/testimony/the-fbi-name-check-process>.

1 involved in SAO Merlin vetting by transferring the SAO Merlin vetting function to the Foreign
2 Terrorist Tracking Task Force (“FBI Task Force”). The FBI represented that the FBI Task Force
3 could employ a new vetting method that would screen against alternative FBI data holdings.

4 69. Neither DHS nor DOS considered what the new FBI Task Force vetting would
5 involve nor what type of FBI data holdings it would use for the vetting.

6 70. Neither DHS nor DOS, nor any other agency involved in the SAO Requirements
7 Review Board, considered how the change would affect refugee applicants who were mid-
8 processing like the Lautenberg-Specter refugees who had already traveled to Austria.

9 71. Despite this lack of considered discussion on the merits of the vetting change,
10 Defendants, through the SAO Requirements Review Board, agreed that SAO Merlin vetting
11 should be transferred from the National Name Check Program to the FBI Task Force and that the
12 Task Force should begin its vetting on January 1, 2016.

13 72. Furthermore, Defendants, through their participation in another interagency
14 committee known as Refugee and Special Immigrant Visa Inter-Agency Policy Committee,
15 reviewed and approved the Board’s decision.

16 73. Following this decision, the FBI transferred SAO Merlin vetting to the FBI Task
17 Force and the FBI Task Force began SAO Merlin vetting using its new vetting method on
18 January 1, 2016.

19 **2. The FBI Task Force’s New Vetting Method Involved Finding People**
20 **to Be Security Threats Based on** [REDACTED]

21 74. The transition of SAO Merlin Vetting to the FBI Task Force’s new vetting
22 method beginning in January 2016 was “clunky,” as one DHS official explained, because the
23 FBI Task Force had “signed up to do something their staff had never done.”

24 75. This new vetting method involved [REDACTED] As the
25 Court has already noted, Plaintiffs believe that this method is similar to “the program that the
26 National Security Agency [(“NSA”)] conducted” that provoked public controversy starting in
27 2013. *See Doe 1 v. McAleenan*, No. 18-cv-02349-BLF(VKD), 2019 WL 4235344, at *6 (N.D.
28 Cal. Sept. 6, 2019).

1 76. On June 5, 2013, Americans first learned that the NSA has been engaging in bulk
2 collection of their telephone metadata.¹⁴ Telephone metadata refers to details about telephone
3 calls other than voice content, such as the number from which the call was made, the phone
4 number called, and the length of a call. Bulk collection of data, as defined by DOJ, refers to “a
5 collection of a significant amount of data that is unrelated to an individual, group, or entity that is
6 a target of an investigation, where the data is acquired or updated periodically on an ongoing
7 basis. Typically, a ‘bulk collection’ of data captures records relating to broad categories of
8 transactions, such as the non-content records of all telephone calls handled by a particular
9 telecommunications service provider. Collections of bulk data may include millions or even
10 billions of data points and are often loaded into computers and analyzed by means of automated
11 searches.”¹⁵

12 77. Under this program, the NSA used secret orders issued under the Foreign
13 Intelligence Surveillance Act to systematically collect all telephone metadata held by U.S.
14 telecommunications providers regardless of any connection to any investigation, covering
15 virtually all calls made or received in the United States.

16 78. The NSA would then search this bulk database to identify all phone numbers that
17 were in touch with a target phone number of interest in an investigation, otherwise known as
18 numbers within “one hop” of the target. The NSA would then search all numbers that were in
19 touch with the numbers within “one hop,” thus identifying all phone numbers that were within
20 “two hops” of the target. The NSA would then search all numbers that were in touch with the
21 numbers within “two hops,” identifying all phone numbers that were within “three hops” of the
22 target.

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26 ¹⁴ Glenn Greewald, *NSA Collecting Phone Records of Millions of Verizon Customers Daily*, June
27 3, 2013, [https://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-
28 order](https://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order).

¹⁵ Department of Justice, Office of the Inspector General, *A Review of the Drug Enforcement
Administration’s Use of Administrative Subpoenas to Collect or Exploit Bulk Data* (March
2019), <https://oig.justice.gov/reports/2019/o1901.pdf>.

1 79. In January 2014, in response to the public outcry following the disclosure of the
2 existence of the program, President Obama limited the number of “hops” that the NSA can
3 search within its bulk database of telephone metadata records from three hops to two hops.

4 80. Then in May 2015, the Second Circuit found that the bulk, systematic collection
5 of telephone metadata in the NSA program exceeded the scope of what Congress has authorized
6 in the Foreign Intelligence Surveillance Act. *See ACLU v. Clapper*, 785 F.3d 787 (2d Cir. 2015).

7 81. Finally, Congress ended the NSA’s use of the Foreign Intelligence Surveillance
8 Act to systematically collect telephone metadata records of every call made in the United States
9 regardless of a connection to an investigation. Congress, however, permitted U.S. government
10 agencies, including the NSA, to retain their authority to amass telephone metadata records for
11 people within two hops of a target of an investigation—i.e., all records of the target of an
12 investigation and of everyone with whom the target has been in contact. In 2018, the NSA
13 vacuumed up more than 543 million records of phone calls and text messages from
14 telecommunications providers in this way.¹⁶

15 82. [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 83. [REDACTED]
19 [REDACTED]

20 84. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 ¹⁶ Charlie Savage, *N.S.A. Triples Collection of Data from U.S. Phone Companies*, N.Y. Times,
28 May 4, 2018, <https://www.nytimes.com/2018/05/04/us/politics/nsa-surveillance-2017-annual-report.html>.

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86. In employing this new vetting method, the FBI Task Force adopted a “zero risk tolerance” threshold. On information and belief, under the zero risk tolerance threshold, the FBI Task Force reports a “not clear” result—indicating a security threat—when [REDACTED]

[REDACTED]

87. The FBI investigation that triggers the concern could be any level of investigation outlined in the FBI Domestic Investigations and Operations Guide.¹⁷ A preliminary investigation, for example, may be opened on the basis of any “allegation or information” indicative of possible criminal activity or threats to national security, without even reasonable suspicion.

88. The FBI Task Force adopted this zero-risk tolerance threshold for its SAO Merlin vetting [REDACTED]

¹⁷ FBI, FBI Domestic Investigations and operations Guide, 2016, <https://vault.fbi.gov/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29/FBI%20Domestic%20Investigations%20and%20Operations%20Guide%20%28DIOG%29%202016%20Version>.

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[REDACTED]

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[REDACTED]

93. On information and belief, the decision to adopt the zero-risk tolerance threshold did not adequately consider the adverse, discriminatory, and arbitrary impact that the decision would have on refugee admissions from countries on the SAO list. [REDACTED]

[REDACTED]

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]

4 94. On information and belief, the decision to adopt the zero-risk tolerance threshold
 5 did not consider the adverse, discriminatory, and arbitrary impact that the decision would have in
 6 particular on the Lautenberg-Specter refugees who had already traveled to Vienna at the time
 7 that the FBI was conducting SAO Merlin vetting under the National Name Check Program.

8 95. The Defendants have not adequately informed the public of vetting changes to the
 9 refugee program. A recent rule proposed by DHS to revise forms used for refugee applications
 10 explains, for example, that “U.S. Government departments and agencies involved in screening
 11 and vetting, to include DHS, identified 15 data elements that would constitute a new baseline
 12 threshold of data to be collected for identity verification and national security vetting.” Among
 13 the data elements are “telephone number(s)” and “U.S. Point of Contact Telephone Number,”
 14 which USCIS and screening partners “use internally . . . to confirm or disprove an association
 15 between an applicant and information of interest and the strength of that association in the
 16 context of the underlying information.”¹⁹ Although DHS purports to seek comments in response
 17 to this proposed rule, this vague statement about form changes does not adequately advise the
 18 public of what impact the proposed rule will have on security vetting and cannot be considered a
 19 good-faith attempt to solicit public comments.

20 **3. DHS and DOS Denied or Closed Cases Based on the SAO “Not Clear”**
 21 **Results Issued by the FBI Task Force Using Its New Vetting Method**

22 96. The FBI Task Force’s new vetting method caused a significant uptick in the “not
 23 clear” rate for refugees and for other types of visa applicants vetted by the FBI Task Force. For
 24 refugees, the SAO Merlin “not clear” rate jumped to [REDACTED]

25 ¹⁸ See Jonathan Mayer et al., Evaluating the Privacy Properties of Telephone Metadata, 113
 26 PNAS 5536, 5538 (2016), available at <https://www.pnas.org/content/113/20/5536>; Pete Yost,
 27 *NSA Spying Under Fire: “You’ve Got a Problem,”* AP, July 17, 2013,
 28 <https://news.yahoo.com/nsa-spying-under-fire-youve-got-problem-164530431.html>.

¹⁹ Agency Information Collection Activities: Generic Clearance for Information on Immigration
 and Foreign Travel Forms, <https://www.regulations.gov/document?D=DHS-2019-0043-0003>.

1 97. For the Vienna Lautenberg-Specter program, the results were dire. Prior to
2 September 2016, no Iranian refugee applicant who had reached Vienna had received a “not
3 clear” result in SAO Merlin vetting. One person, or 0.2% of the population who reached Vienna
4 in fiscal year 2016, received a “not clear” result. In fiscal year 2017, that percentage shot up at
5 one point to 20%, or an increase by 100 times, in “not clear” results.

6 98. Because of the increase in “not clear” SAO results, DOS stopped Iranian refugees
7 from traveling to Austria, effectively shutting down the congressionally-created and supported
8 Vienna Lautenberg-Specter program.

9 99. By early 2018, the FBI had notified DHS and DOS that the FBI Task Force issued
10 SAO “not clear” results to dozens of Iranian refugees fleeing religious persecution and already in
11 Vienna because [REDACTED]

12 [REDACTED]
13 100. For both DHS and DOS, an SAO “not clear” result is outcome determinative: it
14 means that the refugee applicant cannot be admitted to the United States; therefore DHS will
15 deny cases that it has already interviewed and DOS will administratively close cases that DHS
16 has not yet interviewed.

17 101. Accordingly, starting in February 2018, DHS issued denials to at least fifty-five
18 (55) refugee applicants who had received a SAO “not clear” under the FBI Task Force’s new
19 vetting method.

20 102. DHS also issued denials to at least eight (8) refugee applicants who were cross-
21 referenced with another applicant who received a “not clear” SAO result. A cross-reference
22 indicates a relationship between cases; for example, family members traveling together may have
23 separate cases but their cases are cross-referenced. In the case of a refugee applicant who was
24 denied because of a cross-reference, the applicant themselves may be [REDACTED]

25 [REDACTED]
26 103. For its part, DOS issued administrative closure letters (i.e., rejections) to at least
27 four (4) refugee applicants who had received a SAO “not clear” under the FBI Task Force’s new
28 vetting method while waiting for their DHS interview.

1 **E. Named Plaintiffs and Class Members Have Been Harmed By the Mass**
2 **Denials**

3 104. Defendants' actions in changing SAO Merlin vetting starting in January 2016
4 resulted in stranding a minimum of 67 Iranian refugee applicants, and on information and belief
5 many more, in Vienna, and putting them at risk of being deported back to Iran—a country that
6 they thought they had fled for good.

7 105. The vast majority of Iranian refugee applicants who had received the initial and
8 deficient Notices of Ineligibility in February 2018, as detailed in paragraphs 55 and 56 above,
9 were denied refugee admission because of a SAO “not clear” result or because of a cross-
10 reference to a refugee applicant with a SAO “not clear” result. A minority who were denied
11 were denied for other reasons.

12 106. As a result of the Court's class certification and partial summary judgment order
13 on July 10, 2018 declaring the initial Notices of Ineligibility deficient and unlawful (“July 2018
14 Order”), DHS re-opened the cases of all Iranian refugee applicants in Vienna who had received
15 the deficient Notices of Ineligibility.

16 107. After re-opening these cases, DHS admitted to the United States sixteen refugee
17 applicant class members who had been previously issued the deficient Notices of Ineligibility,
18 including Plaintiffs Doe 3 and 4.

19 108. With respect to the remainder of the refugee applicant class members whose cases
20 were re-opened following the July 2018 Order, including Doe 5, Doe 6, and Doe 8's nephew,
21 DHS issued Security-Related Notices of Ineligibility, which checked the ineligibility ground of
22 “Other Reason,” as in the original Notices of Ineligibility, and stated: “After review of all the
23 information concerning your case, including your testimony, supporting documentation,
24 background checks, country conditions, and other available information, your application for
25 refugee resettlement to the United States under INA § 207 has been denied as a matter of
26 discretion for the following reason(s): National security-related reasons based on classified
27 information that is material to the decision.”
28

1 109. On information and belief, a majority, if not all, of the class members who
2 received the Security-Related Notices of Ineligibility were denied admission because of a SAO
3 “not clear” result.

4 110. Defendants stipulated to extend the time that these refugee applicants have to file
5 RFRs in response to the Security-Related Notices of Ineligibility and this time period remains
6 open.

7 111. On information and belief, in addition to the refugee applicants who had initially
8 received the deficient Notices of Ineligibility, other Lautenberg-Specter applicants are stranded
9 in Vienna because of Defendants’ SAO vetting change. This includes applicants who never
10 received the deficient Notices of Ineligibility but received the Security-Related Notices of
11 Ineligibility, such as Doe 7’s aunt and her family. This also includes applicants who received
12 administrative closure letters from DOS based on security-related reasons even before they had
13 the opportunity to interview with DHS.

14 112. Although many of these Iranian refugee applicants have now received asylum in
15 Austria, many of them continue to seek to reunite with their family members in the United States
16 rather than stay in a country that was intended to serve only as a transit point for them after
17 traveling there at the invitation of the U.S. government. The refugee applicants had applied for
18 asylum in Austria only to avoid the risk of deportation back to Iran.

19 **1. Plaintiffs Does 1 & 3**

20 113. Jane Doe 1 (“Doe 1”) is a U.S. Citizen residing in San Jose, California, who
21 sponsored the Vienna Lautenberg-Specter applications of her diabetic daughter, Jane Doe 3
22 (“Doe 3”), and Doe 3’s eight-year-old son, each of whom are Mandaean.

23 114. Doe 1, her husband, and four of her five children came to the United States
24 through the Vienna Lautenberg-Specter program between 2004 and 2008. Based on that
25 experience, Doe 1, Doe 3, and their family believed that the program would provide a path for
26 Doe 3 and Doe 3’s son to escape religious discrimination against Mandaeans in Iran and safely
27 reunite with their family in America. Doe 1 is very close with her daughter Doe 3. They are best
28 friends and speak nearly every day. Due to their Mandaean religion, Doe 3 faced religious

1 discrimination in Iran, including people throwing rocks during religious baptisms and her son
2 being expelled from school for his religion.

3 115. Doe 1 submitted an application for the Vienna Lautenberg-Specter program on
4 behalf of Doe 3 and her grandson and paid a \$5,200 deposit to HIAS to cover the administrative
5 fee and her daughter and grandson's living expenses during what she thought would be a short
6 stay in Vienna. Doe 3 received her visa to travel from Iran to Vienna on or around October 25,
7 2016. Before leaving Iran, Doe 3 and her husband gave up their apartment and sold their
8 appliances because they believed she was never coming back.

9 116. Once in Vienna, Doe 3 was interviewed twice by Defendant DHS. Contrary to
10 their expectations, on February 19, 2018, Doe 3 and her son received Notices of Ineligibility with
11 language identical to that detailed in paragraphs 55 and 56 above—i.e., they were “denied as a
12 matter of discretion.” The lack of explanation in the denial has critically impaired their ability to
13 submit a meritorious RFR of the denial. In fact, when Doe 3 submitted an RFR shortly
14 thereafter, it was denied on the basis that it failed to provide new information or identify an error
15 in the original denial.

16 117. The trauma of the denials had grievous physical and psychological repercussions
17 for Does 1, 3, and their family. Doe 1 was devastated by the denial; she could barely sleep,
18 became depressed, and her blood pressure fluctuated. Doe 3 was terrified of retaliation in Iran if
19 her and her family were forced to return after fleeing to the United States as a refugee and had
20 become depressed as well.

21 118. Doe 3's case was re-opened after July 2018 Order, and she and her son were
22 ultimately admitted to the United States as refugees.

23 **2. Plaintiffs Does 2 & 4**

24 119. John Doe 2 (“Doe 2”) is a U.S. Citizen residing in West Chicago, Illinois, who
25 sponsored the Lautenberg-Specter applications for his mother, Jane Doe 4 (“Doe 4”), and his
26 developmentally disabled youngest brother. Doe 4's oldest son was separately sponsored by
27 another brother in the U.S. and was similarly stranded in Vienna with Doe 4.

28 120. Doe 2 and two of his siblings came to the United States through the Vienna

1 Lautenberg-Specter program and therefore he believed that the program would allow his mother
2 and youngest brother to come to the United States for freedom to practice their Mandaean
3 religion and access to humane medical care for his youngest brother. Doe 2 and Doe 4 are very
4 close and usually speak every other day. The entire family is Mandaean and Doe 4 faced
5 religious discrimination in Iran, including watching her children face difficulties enrolling in
6 school and finding jobs due to pervasive prejudice against Mandaeans.

7 121. Doe 2 submitted an application for the Vienna Lautenberg-Specter program on
8 behalf of his mother and youngest brother and deposited approximately \$8,600 with HIAS to
9 cover the application fee and care and maintenance expenses for his mother and youngest brother
10 while in Vienna, including an extra \$3,000 to cover his brother's heightened needs. Before
11 leaving Iran in the fall of 2016, Doe 4 sold all of her belongings because she believed she would
12 not return.

13 122. Once in Vienna, Doe 4 was interviewed by Defendant DHS, completed two
14 medical checks, and was scheduled to attend a cultural orientation. HIAS told Doe 4 that her
15 case was a priority because of her son's disability.

16 123. On February 19, 2018, however, Doe 4 received a Notice of Ineligibility with
17 language identical to that detailed in paragraphs 55 and 56 above—i.e., they were “denied as a
18 matter of discretion.” Her youngest son received an identical denial letter around that time, as
19 did her oldest son. The lack of explanation in the denials critically impairs their ability to submit
20 meritorious RFRs. Doe 4 submitted letters from her and Doe 2 to HIAS asking to be resettled to
21 the United States, but they were denied shortly thereafter on the basis that the letters failed to
22 provide new information or identify an error in the original denial.

23 124. Doe 2 was very distressed to learn of the denials and was concerned about Doe 4
24 and his brothers' dire living situation in Vienna. Doe 4 was scared to leave her apartment in
25 Vienna and barely had money for rent and diapers for her youngest son. Doe 4 ended up moving
26 to a refugee camp with her youngest son. Doe 4 was concerned about retaliation if forced to
27 return to Iran because they may be viewed as spies for HIAS, a Jewish organization.

28 125. Doe 4's case was re-opened after the July 2018 Order, and she, her youngest son,

1 and her eldest son and his family were admitted to the United States as refugees.

2 **3. Plaintiff Doe 6**

3 126. Jane Doe 6's ("Doe 6") uncle sponsored her, her parents, her husband, and their
4 young daughter, to resettle to the U.S. and reunite with family through the Vienna Lautenberg-
5 Specter program. Doe 6 and her family were persecuted in Iran for being Christian Armenians
6 and seek to reunite with her close relatives in the United States. Doe 6 and her family traveled to
7 Vienna, Austria for processing under the Lautenberg program in the fall of 2016. Before leaving
8 Iran in the fall of 2016, Doe 6 and her family gave away their apartment and sold all their
9 appliances. Doe 6 believed, based on the experience of her family members, that her and her
10 family would only be in Vienna for a short while for final processing.

11 127. Once in Vienna, Doe 6 and her family were interviewed by DHS, successfully
12 completed medical checks, and were conditionally approved for resettlement in the U.S. in April
13 2017. They packed their bags, gave away their apartment in Vienna, and made travel
14 arrangements to the United States.

15 128. On the way to the airport, however, Doe 6 and her family were notified by HIAS
16 that their flight had been cancelled. They returned to sleep outside in the hallway of their old
17 apartment building and were told that they would be rebooked soon, but did not receive an
18 update about their case for over ten months.

19 129. Doe 6's uncle in the United States was subsequently visited by a DHS agent who
20 asked him questions about Doe 6's case and verified information.

21 130. Doe 6 was told that her parents could travel to the U.S. sooner if they separated
22 their cases. They reluctantly agreed to do so, and Doe 6's parents resettled near family in Los
23 Angeles, California in October 2017.

24 131. On February 19, 2018, Doe 6, her husband, and their daughter received a Notice
25 of Ineligibility with language identical to that detailed in paragraphs 55 and 56 above—i.e., they
26 were "denied as a matter of discretion." In reality, Doe 6's application was denied based on a

27 

28

1 132. Doe 6’s case was re-opened after the July 2018 Order. However, Doe 6
2 subsequently received another Notice of Ineligibility in September 2018 with language identical
3 to that detailed in paragraph 112 above—i.e. they were “denied as a matter of discretion for the
4 following reason(s): National security-related reasons based on classified information that is
5 material to the decision.” Doe 6 has not yet filed her RFR from this denial because of the
6 government’s agreement to extend the deadline for class members.

7 133. Because she feared deportation to Iran and severe retribution from the Iranian
8 government for fleeing to the United States, Doe 6 and her family applied for asylum in Austria
9 in 2018. Doe 6, her husband, and their daughter received asylum in June 2019, but the family
10 remains desperate to reunite with Doe 6’s parents and other close family members in the United
11 States.

12 134. Doe 6, her husband, and their daughter were denied refugee admission due to the
13 


14 **4. Plaintiff Doe 7**

15 139. John Doe 7 (“Doe 7”) is a U.S. Citizen residing in central Texas who
16 sponsored the Vienna Lautenberg-Specter applications of his aunt, her husband, and their four
17 children. Doe 7 came to the United States through the Vienna Lautenberg-Specter program in
18 2006 and since then has successfully sponsored half a dozen other relatives who resettled in the
19 U.S. through the program. Based on that experience, Doe 7 and his family believed that the
20 program would provide a path for Doe 7’s aunt and her family to escape religious discrimination
21 against Mandaean in Iran and safely reunite with their family in America.

22 140. Doe 7 submitted applications for the Vienna Lautenberg Specter program on
23 behalf of his aunt and her family and deposited approximately \$16,800 with HIAS to cover the
24 application fee and care and maintenance expenses for his family while in Vienna. Before
25 leaving Iran in the fall of 2016, Doe 7’s family sold their house for close to half price because
26 they were in a rush to flee and pay back the loan Doe 7 took out to cover the sponsorship funds.
27 Doe 7 believed, based on his own experience and that of his other relatives, that his aunt and her
28 family would spend only a short while in Vienna for final processing.

1 141. Once in Vienna, Doe 7's family was interviewed by DHS and was conditionally
2 approved for resettlement in the U.S. in September 2017. They made travel arrangements to the
3 U.S. and the resettlement agency in Texas called Doe 7 to ask about his plans to pick up his aunt
4 and her family from the airport in a matter of days. Immediately before they were supposed to
5 travel, HIAS told Doe 7's family that their case was being placed on hold and that they would
6 rebook their flights shortly. The family did not hear an update about their case for over a year.

7 142. Doe 7 was subsequently contacted by the FBI regarding his aunt and her family's
8 Vienna Lautenberg-Specter applications. FBI agents questioned Doe 7 over the course of two
9 meetings, including asking him if he recognized two men in photographs that the agent brought
10 (he did not) and if he had taken his car for repairs at a particular auto shop in San Antonio (he
11 could not remember).

12 143. Doe 7's aunt and her family subsequently received Notices of Ineligibility on
13 November 5, 2018 with language identical to that detailed in paragraph 112 above—i.e. they
14 were “denied as a matter of discretion for the following reason(s): National security-related
15 reasons based on classified information that is material to the decision.” On information and
16 

17 144. Doe 7's aunt and her family submitted RFRs of their applications in January 2019
18 but have not yet received a response.

19 145. Because they feared deportation to Iran and severe retribution from the Iranian
20 government for fleeing to the United States, Doe 7's aunt and her family applied for asylum in
21 Austria in 2018. Doe 7's aunt and her family received asylum in 2019 but remain desperate to
22 reunite with their family members in the United States.

23 146. On information and belief, Doe 7's aunt and her family were denied refugee
24 

25 above.

26 **5. Plaintiff Doe 8**

27 147. Jane Doe 8 (“Doe 8”) is a U.S. citizen residing in Santa Clara county who
28 sponsored the Vienna Lautenberg-Specter application of her nephew. Doe 8 came to the United

1 States through the Lautenberg-Specter program in 2007 and since then has successfully
2 sponsored her sister who resettled with her husband and child through the program. Based on
3 that experience, Doe 8 believed that the program would provide a path for her nephew to escape
4 religious discrimination against Christian Armenians in Iran and safely reunite with their family
5 in America.

6 148. Doe 8 submitted applications for the Vienna Lautenberg Specter program on
7 behalf of her nephew and deposited \$3,000 with HIAS to cover the application fee and care and
8 maintenance expenses for her nephew while in Vienna.

9 149. Doe 8's nephew traveled to Vienna in January 2017. As his application began to
10 stall, Doe 8's nephew ran out of the money that was only intended to cover him for a short time
11 in Vienna and lived in fear of being arrested for overstaying his short-term Austrian visa
12 provided through the Lautenberg program.

13 150. On or about February 19, 2018 Doe 8's nephew received Notices of Ineligibility
14 with language identical to that detailed in paragraphs 55 and 56 above—i.e., they were “denied
15 as a matter of discretion.” [REDACTED]
16 result.

17 151. Doe 8's nephew's case was re-opened after the July 2018 Order. However, Doe
18 8's nephew received a new Notice of Ineligibility in September 2018 with language identical to
19 that detailed in paragraph 112 above—i.e. he was “denied as a matter of discretion for the
20 following reason(s): National security related reasons based on classified information that is
21 material to the decision.” Doe 8's nephew filed an RFR from this denial but has not yet received
22 a response.

23 152. Because he feared deportation to Iran and severe retribution from the Iranian
24 government for fleeing to the United States, Doe 8's nephew applied for asylum in Austria and
25 received it in 2019, but remains desperate to reunite with his family in the United States.

26 153. Doe 8's nephew was denied refugee admission due to the program changes to
27 [REDACTED]

28 VI. CLASS ALLEGATIONS

1 154. On July 10, 2018, the Court appointed Plaintiffs Does 1-5 as class representatives
2 and certified a Class for Claims 1-4 and 6 that includes:

3 All Iranian refugees who (1) applied for refugee admission to the United States
4 under the Lautenberg Amendment, whether as a principal applicant or derivative
5 relatives; (2) traveled to Vienna, Austria, for processing; and (3) received denials
6 from the United States government in or after February 2018 with the sole
7 explanation that: “After review of all information concerning your case, including
8 your testimony, supporting documentation, background checks, country
9 conditions, and other available information, your application for refugee
10 resettlement to the United States under INA § 207 has been denied as a matter of
11 discretion,” and their U.S.-based Close Family Members who served as their U.S.
12 ties.

13 155. On June 16, 2020, the Court appointed Plaintiffs 6-8 as class representatives and
14 certified an Amended Claim 6 Class that includes:

15 All Iranian refugees who (1) applied for refugee admission to the
16 United States under the Lautenberg Amendment, whether as a
17 principal applicant or derivative relatives; (2) traveled to Vienna,
18 Austria, for processing; and (3) denials under SAO security vetting
19 conducted by the FBI after the change in SAO vetting was
20 implemented beginning January 1, 2016; and their U.S.-based Close
21 Family Members who served as their U.S. ties.

22 156. The 2018 certified class included all Iranian refugees in the Lautenberg-Specter
23 program who had traveled to Vienna and received the initial Notices of Ineligibility and their
24 U.S.-based Close Family Members. The amended class is broader in that it includes all Iranian
25 refugees in the Lautenberg-Specter program who had traveled to Vienna but were denied as a
26 result of a “not clear” in SAO vetting, regardless of whether that denial was in the form on an
27 initial Notice of Ineligibility, the Security-Related Notice of Ineligibility, or an administrative
28 closure letter. The amended class is also narrower in that a minority of the refugees who had
received initial Notices of Ineligibility were denied for reasons other than a SAO “not clear”
result.

 157. “Close Family Member” as used in the class definition is defined as parents,
parents-in-law, spouses, fiancés, children, adult sons or daughters, sons-in-law, daughters-in-law,
siblings (whole or half), and step-relationships, grandparents, grandchildren, brothers-in-law,
sisters-in-law, aunts, uncles, nieces, nephews, and cousins.

 158. Separate subclasses may be appropriate for the proposed classes defined above.

1 159. Joinder is impracticable not only because the proposed classes are so numerous,
2 but also because many members of the proposed classes are currently in Vienna, Austria and are
3 both physically and financially unable to access the U.S. court system to pursue an action on
4 their own. There were 83 class members in the class certified by the Court as of the date of the
5 filing of this Complaint. There are a minimum of 67 class members in the Amended Claim 6
6 Class, which includes applicants in the initial Class that were affected by SAO “not clear”
7 vetting changes²⁰ and additional applicants who were affected by SAO “not clear” vetting
8 changes but did not receive the initial, inadequate Notice of Ineligibility.

9 160. The members of the Class shared common issues of fact and law, including but
10 not limited to: (1) whether the Notices of Ineligibility denying refugee status “as a matter of
11 discretion” violate the Lautenberg and Specter Amendments, the Administrative Procedure Act,
12 and the *Accardi* doctrine; and (2) whether relief is available under those provisions and the
13 Mandamus Act.

14 161. The members of the Amended Claim 6 Class share common issues of fact and
15 law, including but not limited to whether the undisclosed program change violated the
16 Administrative Procedure Act.

17 162. The claims or defenses of the Plaintiffs Doe 6, 7, and 8 are typical of the claims or
18 defenses of members of the proposed Amended Claim 6 Class.

19 163. Plaintiffs Doe 6, 7, and 8 will fairly and adequately protect the interests of the
20 proposed Amended Claim 6 Class and any subclasses. Plaintiffs Doe 6, 7, and 8 have no interest
21 that is now or may later be antagonistic to the interests of the proposed classes. The attorneys
22 representing the Plaintiffs include experienced attorneys who are considered able practitioners in
23 federal civil litigation, including complex litigation, and should remain class counsel.

24 164. Defendants have acted on grounds generally applicable to the proposed Amended
25 Claim 6 Class, thereby making final injunctive and declaratory relief appropriate to the class as a
26
27

28 ²⁰ [REDACTED]

1 whole. The class should therefore be amended to the Amended Claim 6 Class under Federal
2 Rule of Civil Procedure 23.

3 **VII. CLAIMS FOR RELIEF**

4 **FIRST CLAIM FOR RELIEF – RESOLVED**

5 **DECLARATORY JUDGMENT**

6 **(On Behalf of Plaintiffs Doe 1-4, Including the Class, Against All Defendants)**

7 165. The First Claim for Relief in Plaintiffs’ original Complaint asked the Court to
8 declare that the Notices of Ineligibility issued to them were unlawful.

9 166. The First Claim for Relief was resolved in Plaintiffs’ favor by the Court’s July
10 2018 Order granting partial summary judgment as to Plaintiffs’ claim for declaratory relief.
11 DHS complied with the July 2018 Order by re-opening all cases in which it had issued the
12 Notices of Ineligibility.

13 **SECOND CLAIM FOR RELIEF – RESOLVED**

14 **LAUTENBERG AMENDMENT & ADMINISTRATIVE PROCEDURE ACT**

15 **(On Behalf of Plaintiffs Doe 1-4, including the Class, Against DHS Defendants)**

16 167. The Second Claim for Relief in Plaintiffs’ original Complaint asked the Court to
17 set aside the Notices of Ineligibility under 5 U.S.C. § 702 and 5 U.S.C. § 706(2).

18 168. The Second Claim for Relief was resolved in Plaintiffs’ favor by the July 2018
19 Order granting partial summary judgment as to Plaintiffs’ claim for relief under 5 U.S.C. § 702
20 and 5 U.S.C. § 706(2). DHS complied with the order by re-opening all cases in which it had
21 issued the Notices of Ineligibility.

22 **THIRD CLAIM FOR RELIEF – RESOLVED**

23 **ACCARDI DOCTRINE & ADMINISTRATIVE PROCEDURE ACT**

24 **(On Behalf of Plaintiffs Doe 1-4, Including the Class, Against DHS Defendants)**

25 169. The Third Claim for Relief in Plaintiffs’ original Complaint asked the Court to set
26 aside the Notices of Ineligibility under 5 U.S.C. § 702 and 5 U.S.C. § 706(2).

27 170. The Third Claim for Relief was resolved in Plaintiffs’ favor by the Court’s July
28 2018 Order granting partial summary judgment as to Plaintiffs’ claim for relief under 5 U.S.C. §

1 702 and 5 U.S.C. § 706(2). DHS complied with the order by re-opening all cases in which it had
2 issued the Notices of Ineligibility.

3 **FOURTH CLAIM FOR RELIEF – RESOLVED**

4 **MANDAMUS ACT**

5 **(On Behalf of Plaintiffs Doe 1-4, including the Class, Against DHS Defendants)**

6 171. The Fourth Claim for Relief in Plaintiffs’ original Complaint asked Court to issue
7 a writ of mandamus under the Mandamus Act, 28 U.S.C. § 1361, to compel an officer or
8 employee of the United States or any agency thereof to perform a duty owed to Plaintiffs.

9 172. The Fourth Claim for Relief was resolved in Plaintiffs’ favor by the July 2018
10 Order. DHS complied with the order by re-opening all cases in which it had issued the Notices
11 of Ineligibility.

12 **FIFTH CLAIM FOR RELIEF – WITHDRAWN**

13 **FIFTH AMENDMENT TO THE U.S. CONSTITUTION**

14 **(On Behalf of Does 1 and 2 Against DHS Defendants)**

15 173. Plaintiffs no longer bring the Fifth Claim for Relief.

16 174. On October 12, 2018, Plaintiffs filed a joint stipulation dismissing the Fifth Claim
17 for Relief without prejudice in light of the Court’s partial summary judgment order on July 10,
18 2018, which declined to adjudicate the claim because “principles of judicial restraint and
19 constitutional avoidance directs this Court to refrain from addressing the constitutional issue
20 when Plaintiffs’ claims can be fully disposed on statutory grounds.”

21 **SIXTH CLAIM FOR RELIEF**

22 **ADMINISTRATIVE PROCEDURE ACT**

23 **(On Behalf of Plaintiffs Doe 6, 7 and 8, including the Amended Claim 6 Class, Against All**
24 **Defendants)**

25 175. Plaintiffs re-allege and incorporate by reference herein each and every allegation
26 contained in paragraphs 1 through 164 above.

27 176. Plaintiffs Doe 6, Doe 7’s aunt, and Doe 8’s nephew, and members of the
28 Amended Claim 6 Class, have received the Security-Related Notices of Ineligibility or

1 administrative closure letters denying them refugee admission because of changes that
2 Defendants made to SAO Merlin vetting beginning in January 2016.

3 177. These changes include: the decision by Defendants to allow the FBI Task Force
4 to use its [REDACTED] capabilities in SAO Merlin vetting and DHS
5 and DOS's decisions to adopt the policy and practice of denying or rejecting refugee cases based
6 on a "not clear" result from the FBI's SAO Merlin vetting using [REDACTED]
7 [REDACTED]

8 178. These changes constitute final agency actions because they represent the
9 consummation of the agency's decision-making process and because they had the consequence
10 of resulting in denials or rejections of refugee applications.

11 179. These changes reflect one or more substantive rules because they substantively
12 change the eligibility criteria for refugee admissions. However, Defendants did not follow
13 rulemaking procedures for any of the changes.

14 180. These changes were made without adequate consideration for Congress's intent in
15 creating a U.S. refugee program, and a Lautenberg-Specter program, that represents the U.S.'s
16 commitment to help those who are fleeing violence and persecution.

17 181. These changes were made without adequate consideration for the adverse,
18 discriminatory, and arbitrary impact that the changes would have on the refugee program, and
19 particularly the impact that they would have on Lautenberg-Specter refugees who had already
20 traveled to Vienna at the invitation of the U.S. government to complete refugee processing.

21 182. These changes were made without adequate consideration for the distress that the
22 changes would cause to the Lautenberg-Specter refugees who had already traveled to Vienna
23 given that they abandoned their homes in Iran, were placed at risk of deportation back to Iran,
24 and were stranded without any path to reuniting with their family members in the United States.

25 183. Defendants' actions violate the Administrative Procedure Act because these
26 changes were unlawful, including because they were "arbitrary, capricious, an abuse of
27 discretion, or not in accordance with law." The agency actions should therefore be set aside
28 pursuant to 5 U.S.C. § 702 and 5 U.S.C. § 706(2).

1 184. Defendants’ actions violate the Administrative Procedure Act’s requirement that
2 agency action that is substantive or legislative in nature follow notice-and-comment procedures.
3 5 U.S.C. § 553. The agency actions should therefore be held unlawful and set aside pursuant to 5
4 U.S.C. § 706(2)(D).

5 **PRAYER FOR RELIEF**

6 WHEREFORE through the First Amended Complaint the petitioners respectfully request that the
7 Court:

- 8 A. Determine that the claims alleged herein may be maintained as a class action and
- 9 amend the existing Class to the Amended Claim 6 Class pursuant to Fed. R. Civ. P. 23;
- 10 B. Declare unlawful the program changes that resulted in the mass denials;
- 11 C. Set aside as unlawful the program changes that resulted in the mass denials and
- 12 any subsequent agency actions that relied on such unlawful program changes;
- 13 D. Award Plaintiffs reasonable attorney’s fees and costs for this action; and
- 14 E. Grant any other relief the Court deems just and proper.

15
16
17 Dated: July 2, 2020

Respectfully submitted,

18
19 By: /s/ Belinda S Lee

20 LATHAM & WATKINS LLP
 21 Belinda S Lee (Bar No. 199635)
 Katherine M. Larkin-Wong (Bar No. 281038)
 22 Caroline N. Esser (Bar No. 307745)
 Devon A. Diggs (Bar No. 329380)
 23 505 Montgomery Street, Suite 2000
 San Francisco, CA 94111-6538
 24 Tel: +1.415.391.0600
 Fax: +1.415.395.8095
 25 Email: *Belinda.Lee@lw.com*
Katherine.Larkin-Wong@lw.com
Caroline.Esser@lw.com
 26 *Devon.Diggs@lw.com*

27 Keith L. Williams (Bar. No. 314503)
 10250 Constellation Blvd., Suite 1100
 28 Los Angeles, CA 90067

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Tel: +1.424.653.5500
Fax: +1.424.653.5501
Email: *Keith.Williams@lw.com*

Dated: July 2, 2020

By: /s/ Mariko Hirose

INTERNATIONAL REFUGEE
ASSISTANCE PROJECT
Mariko Hirose (*pro hac vice*)
Kathryn C. Meyer (*pro hac vice*)
Deepa Alagesan (*pro hac vice*)
One Battery Park Plaza, 4th Fl.
New York, NY 10004
Tel: +1.516.701.4620
Fax: +1.929.999.8115
Email: *mhirose@refugeerights.org*
kmeyer@refugeerights.org
dalagesan@refugeerights.org

Melissa S. Keaney (Bar No. 265306)
PO Box 2291
Fair Oaks, CA 95628
Tel: +1.916.546.6125
Email: *mkeaney@refugeerights.org*

*Attorneys for Plaintiffs Does 1-4, 6-8, and the
Amended Claim 6 Class*

CIVIL LOCAL RULE 5-1(i)(3)

Pursuant to Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from each of the signatories hereto.

 /s/ Belinda S Lee

Belinda S Lee
*Attorneys for Plaintiffs Does 1-4, 6-8, and the
Amended Claim 6 Class*