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Families in Limbo: What the Biden Administration Can Do Now to Address Unreasonable Delays in Refugee and Asylee Family Reunification

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About IRAP

The International Refugee Assistance Project (IRAP) organizes law students and lawyers to develop and enforce a set of legal and human rights for refugees and other displaced persons. Mobilizing direct legal aid, litigation, and systemic advocacy, IRAP serves the world's most persecuted individuals and empowers the next generation of human rights leaders.

This report compiles information that IRAP has learned in litigation, as well as through individual representation of clients in the refugee admissions process, engaging in policy advocacy, and pursuing Freedom of Information Act (FOIA) requests.

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Executive Summary

Protecting and welcoming individuals fleeing oppression is written into U.S. law: more than 40 years ago, Congress passed the Refugee Act, which declares it to be the “historic policy of the United States to respond to the urgent needs” of refugees.¹

The Refugee Act also reflects our complementary interest in ensuring family unity.² This is important because during their

difficult and sometimes chaotic flight from persecution and dangerous conditions to safety, family members often become separated. The Follow-to-Join (FTJ) process was built into the U.S. refugee system to address this problem by creating a pathway specifically for refugee and asylee family reunification.

The Trump Administration’s four-year targeted offensive against refugees and other forced migrants decimated the FTJ program, introducing so many hurdles for families seeking to reunify that the resulting delays and backlogs in the FTJ program have nearly ground it to a halt. During the Trump Administration, average processing times for only the first part of the FTJ process almost tripled, increasing from 6.5 months in Fiscal Year (FY) 2016 to 18.6 months in FY 2020.³ **In Fiscal Year 2019 (the last year for which data is available), the number of refugees admitted through the FTJ process was just a quarter of the average over the three years preceding President Trump.**

The growing delays in the FTJ program have kept families separated in contravention of U.S. law and the basic values this country was founded upon. This report explains this vital humanitarian program and details the myriad ways that the Trump Administration intentionally sought to dismantle it. This report also provides a roadmap for the Biden Administration to unwind actions taken by the prior administration. Swift action is urgently required in order to reunify families who have been torn apart by circumstance and kept apart by the prior administration.

Recommendations at a Glance

- Roll back Trump-era agency actions that added unnecessary layers of process and review intended to delay the FTJ program.
- Provide a short-term surge of resources to address the processing backlogs that resulted from the Trump era.
- Reform the vetting process to make it more efficient, meaningful, and fair.
- Streamline the opaque domestic processing structure and ensure that the roles of all entities that touch an FTJ petition are clear and necessary.
- Bring clarity and uniformity to the process by making USCIS responsible for managing all aspects of FTJ processing.
- Increase transparency by making public all policies and procedures related to the FTJ process.
- Increase overseas processing capacity by reopening USCIS International Offices and expanding the use of video-teleconference technology.
- Improve the quality of adjudications by the State Department by providing training, requiring a standardized process, and ensuring accountability.
- Consider the use of humanitarian parole for cases pending longer than two years as well as those involving unaccompanied children and, at minimum, expedite processing in all such cases.

1 Refugee Act of 1980 § 101(b), Pub. L. No. 96-212, 94 Stat. 102 (1980).

2 See, e.g., 8 U.S.C. §§ 1157(c)(2)-(3), 1522(a)(2)(C)(i).

3 “Historical National Average Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year,” USCIS, accessed Feb. 26, 2021, <https://egov.uscis.gov/processing-times/historic-pt>. The reported processing times “only include the time that it takes to process the petition domestically.” CLINIC, *I-730 Refugee/Asylee Family Reunification Practice Manual* (Oct. 2019), 55, <https://cliniclegal.org/resources/asylum-and-refugee-law/i-730-refugeeasylee-family-reunification-practice-manual> (“CLINIC Manual”).

“Every day I’m still worried about my family. You can’t live every day away from your wife or kid. I left my daughter before she was even old enough to speak. Now she is five years old. It is really stressful to only see her on video when she asks me when I will come to visit her or when she will come to me.”

- Joe Sankisha, a refugee in the U.S. from the Democratic Republic of Congo

I. Introduction

“Delays in administering [the U.S. Refugee Admissions Program] and other humanitarian programs are counter to our national interests, can raise grave humanitarian concerns, and should be minimized.”

- President Joseph R. Biden Jr.⁴

The Follow-to-Join (FTJ) program is a unique and important pathway for refugee and asylee families separated during their flight from persecution to be reunified in the United States. The statutory basis for the FTJ program is found in the sections of the Refugee Act governing refugee resettlement and asylum, which allow for the spouse and children of refugees and asylees to “follow-to-join” the principal refugee or asylee.⁵ FTJ processing is a shared responsibility between U.S. Citizenship and Immigration Services (USCIS) and the U.S. State Department (together, “the agencies”).⁶

As a result of changes made to the FTJ program during the Trump Administration, lengthy delays and opaque policies have come to define the process. Prior to the Trump Administration, USCIS’s annual reporting on processing totals reflects that the agency had processed more FTJ petitions during the 2016 Fiscal Year than it received during that time period.⁷ That figure took a sharp turn under the Trump Administration, during which USCIS reported that on average it had processed fewer than half of the FTJ petitions it received per year.⁸ As a result, while the Trump Administration inherited a backlog of 7,420 FTJ cases, the Biden Administration has inherited a backlog of 25,994 FTJ cases.⁹ During this same time period, the number of refugees admitted through the FTJ process plummeted. In the years prior to the Trump Administration, between 1,600 and 2,000 refugee relatives were admitted into the United States each year.¹⁰ In comparison, for 2019 (the last year for which data is available) only 555 individuals were admitted.¹¹

4 Exec. Order. No. 14013 § 1(c), 86 Fed. Reg. 8839 (Feb. 4, 2021).

5 See 8 U.S.C. § 1157(c)(2) (refugees); 8 U.S.C. § 1158(b)(3) (asylees).

6 As explained in more detail below, the agency responsible for processing various stages of processing for FTJ petitions may vary based on the geographic location of the petition’s beneficiary. See CLINIC Manual, *supra* fn. 3, 8.

7 See “Number of Service-wide Forms by Fiscal Year To-Date,” USCIS (2016), https://www.uscis.gov/sites/default/files/document/data/all_forms_performancedata_fy2016_qtr4.pdf (reporting that for Fiscal Year 2016, USCIS received 13,708 FTJ petitions and approved 14,135).

8 For Fiscal Year 2019, USCIS reported receiving 15,607 FTJ petitions; however, it approved only 6,613 and denied 1,115. See “Number of Service-wide Forms by Fiscal Year To-Date,” USCIS (2019), https://www.uscis.gov/sites/default/files/document/data/Quarterly_All_Forms_FY19Q4.pdf. For Fiscal Year 2020, USCIS received 12,952 FTJ petitions and approved only 4,675, while denying 606. See “Number of Service-wide Forms by Fiscal Year To-Date,” USCIS (2020), https://www.uscis.gov/sites/default/files/document/reports/Quarterly_All_Forms_FY2020Q4.pdf.

9 Compare “Number of Service-wide Forms by Fiscal Year To-Date,” (2016), *supra* fn. 8, with “Number of Service-wide Forms by Fiscal Year To-Date,” (2020), *supra* fn. 8.

10 See, e.g., Nadwa Mossad, *Annual Flow Report: Refugees and Asylees 2016* (Washington, D.C.: U.S. Department of Homeland Security, Office of Immigration Statistics, Jan. 2018), 3, https://www.dhs.gov/sites/default/files/publications/Refugees_Asylees_2015.pdf (reporting that 1,787 FTJ refugees were admitted in fiscal year 2014, 2,035 in 2015, and 1,582 in 2016).

11 Ryan Baugh, *Annual Flow Report: Refugees and Asylees 2019* (Washington, D.C.: U.S. Department of Homeland Security, Office of Immigration Statistics, 2020), 4, https://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2019/refugee_and_asylee_2019.pdf.

President Trump's repeated attacks on the U.S. Refugee Admissions Program (USRAP) through his various Muslim Ban executive orders, and actions the agencies took in furtherance of those orders, had a profound impact on the efficacy of the FTJ program. This impacted processing for both FTJ refugees and asylees. As discussed in this report, delays in FTJ processing have resulted from explicit suspensions of the program; repeated transfers of responsibility within or between the agencies; unnecessary, confusing, and sometimes unannounced changes to the process; and inefficient and ineffective changes to security vetting and background checks that have all but brought FTJ processing to a standstill.

For families seeking reunification through the FTJ process, the impact cannot be overstated. Prolonged separation from family members has a profoundly negative impact on individuals who have fled persecution and eventually—after many years of waiting—been resettled in the United States. Not only are these individuals without a fundamental source of support, they are also burdened with the daily worry about the safety and well-being of their spouses and children, who remain stuck abroad in dangerous and precarious situations. Because of these delays, parents have missed milestones in their children's lives, spouses have missed years of companionship and support, and the lives of thousands of families have been on hold, with no end in sight. At the same time, the safety and security of family members stuck abroad is in jeopardy. Many of these family members live in areas of the world where there is ongoing and active conflict, or persecution and discrimination against refugee populations.

Case Example

Jacqueline¹² is a refugee from the Democratic Republic of Congo. She and her four children were resettled to the United States on March 28, 2018. Immediately after arrival, Jacqueline sought out information on how to reunite with her husband, Robert, the children's father, who was living as a refugee in Kenya. She filed an FTJ petition in May 2018. Because of the debilitating stress Jacqueline faced, constantly worrying about her husband, she enrolled in a Wellness Program offered by the local resettlement agency. USCIS acknowledged receipt of Jacqueline's petition on October 16, 2018. No further information came after that date. Tragically, Robert died in Kenya in January of 2021. Jacqueline and the children were unable to be present for his burial.

12 This individual's name has been changed to protect her identity.

II. The Follow-to-Join Process¹³

Eligible refugees and asylees (the “petitioners”) may file an I-730 *Refugee/Asylee Relative Petition* with USCIS on behalf of their spouse and unmarried children (the “beneficiaries”) within two years of admission to the United States as a refugee or within two years of being granted asylum.¹⁴ For both refugee and asylee petitions, the beneficiary does not have to prove her own refugee or asylum claim: she derives her refugee or asylee status from the petitioner based on their relationship. There are key differences in the process for refugees and asylees. Importantly, in the context of refugees, the decision of whether to approve the FTJ petition is non-discretionary, meaning the beneficiary is statutorily eligible to admission as a refugee so long as the petitioner and beneficiary are eligible and the beneficiary is not subject to a relevant ground of inadmissibility.¹⁵ **While this report will examine the FTJ process for both asylees and refugees, it will focus exclusively on the process for FTJ (asylee and refugee) beneficiaries who are located outside¹⁶ of the United States.**¹⁷

When the beneficiary of an FTJ petition is located outside of the United States, the FTJ process consists of two stages: domestic and then international processing. Domestic processing is principally about ensuring that the petition meets the statutory and regulatory requirements. USCIS has exclusive responsibility for domestic processing of FTJ petitions, but recently shifted some of that case load internally. Meanwhile, the responsibilities of international processing, which largely relate to the beneficiary’s eligibility to be admitted to the United States, are fragmented across USCIS and the State Department, with far too little uniformity, process, or transparency. Each stage of processing is discussed further below.

13 For a visual of FTJ case processing, please see Appendix A.

14 See 8 C.F.R. § 207.7(d) (refugees); 8 C.F.R. § 208.21(c), (d) (asylees). USCIS has discretion to grant an extension of the two year filing period based on humanitarian reasons. *Id.* What qualifies as a “humanitarian reason” is solely at the discretion of USCIS and varies widely from case to case. Some examples of humanitarian reasons may include: petitioner illness, inability to locate beneficiaries, or receiving erroneous immigration advice.

15 See 8 U.S.C. § 1157(c)(2)(A) (“A spouse or child . . . of any refugee . . . shall . . . be entitled to the same admission status as such refugee if . . . following to join such refugee.” (emphasis added)); see also 8 C.F.R. § 207.7(a). In contrast, the decision of whether to admit a particular individual as a refugee *outside* of the FTJ process is generally discretionary.

Congress’s decision to make mandatory the refugee FTJ process is nonetheless undermined by the fact that refugees admitted under the FTJ program count against the annual refugee admissions cap; when the cap is low (as it was under President Trump), the agencies can no longer treat (as a practical matter) refugee FTJ adjudications as mandatory. For these and other reasons, IRAP does not believe refugee FTJ beneficiaries should count under the annual cap, but that outcome would require a legislative fix.

16 For asylee (but not refugee) families, the beneficiaries of an FTJ petition may be inside of the United States during processing. This report does not examine the process for beneficiaries of an asylee FTJ petition who are inside the United States. For more information on this process, please refer to the CLINIC Manual, *supra* fn. 3.

17 For refugee families, there is another pathway for family reunification commonly called the “P3 process,” for certain family members who are refugees abroad with their own claim to refugee status. This report will focus exclusively on the FTJ process, though many of the issues and delays it identifies are relevant to the P3 process as well.

At the domestic processing stage, the refugee or asylee petitioner already in the United States submits an I-730 petition for each eligible family member.¹⁸ The petition is submitted to one of two USCIS Service Centers based on where the refugee or asylee lives in the United States.¹⁹

After conducting a preliminary check that all required documents have been submitted, the USCIS Service Center reviews the application (in the case of an asylee FTJ petition) or forwards the petition to the I-730 Processing Unit at the USCIS Los Angeles Asylum Office (“ZLA”) (in the case of a refugee FTJ petition).²⁰ After reviewing the petition, USCIS transfers an approved or approvable²¹ petition to the State Department’s National Visa Center (NVC).

To begin the international phase of processing, NVC forwards the petition to an overseas post—either USCIS or the State Department’s Bureau of Consular Affairs, depending on the geographic location of the beneficiary. If the beneficiary is located close to one of only a few remaining USCIS International Offices (IOs), the petition is routed there. Otherwise (and more typically), NVC transfers the petition to the State Department’s Bureau of Consular Affairs via a U.S. embassy or consulate.

The purpose of the overseas phase of FTJ processing is to confirm that the beneficiary of the approved or approvable petition is eligible to “follow-to-join” his or her spouse or parent (i.e., that the claimed relationship is legitimate) and to be admitted to the United States as a refugee or asylee (i.e., that the beneficiary is admissible). To facilitate these determinations, the overseas post interviews the beneficiary.

Before final approval, a beneficiary must complete a medical examination and clear security vetting and background checks. Currently this process, including the wait for the initial interview, can take several years and many cases become stuck in “administrative processing” (the term used to describe a case that is still undergoing security or background checks). Further, because a medical exam is valid for no more than six months from the examination date and must be repeated if it expires before entry to the United States, any delays can have a cascading effect.²² For cases in which a U.S. embassy or consulate is responsible for

18 This report examines IRAP’s best understanding of the *current* process that FTJ cases undergo, which has changed considerably over the past several years.

19 See “I-730, Refugee/Asylee Petition: Where to File,” USCIS, last visited Feb. 26, 2021, <https://www.uscis.gov/i-730>.

20 In 2017, domestic processing of refugee FTJ petitions was transferred from the Service Centers to the International Adjudications Support Branch (IASB). Then IASB, which had been co-located with the USCIS Los Angeles Asylum Office, was subsumed under the Los Angeles Asylum Office as a result of USCIS’s closure of its International Operations Division. See *generally* “Refugee, Asylum, and International Operations Directorate: About Us,” USCIS, last updated Mar. 10, 2020, <https://www.uscis.gov/about-us/directorates-and-program-offices/refugee-asylum-and-international-operations-directorate>.

21 This language reflects a processing distinction that exemplifies a core issue with FTJ processing: lack of a uniform process within and across agencies. Sometimes the USCIS Service Center or ZLA will approve the petition before transferring it overseas, and sometimes it will simply mark the petition as “approvable” without making a formal determination before the petition is transferred.

22 See *Doe v. Trump*, 288 F. Supp. 3d 1045, 1059 (W.D. Wash. 2017) (referring to a Ninth Circuit decision in finding that “[e]ven short delays can have cascading effects that prolong a refugee’s processing and ultimate admission.” (quoting *Hawaii v. Trump*, 871 F.3d 646, 664 (9th Cir. 2017))).

processing, if the embassy/consulate believes it cannot approve the case, the case is sent back to USCIS stateside (commonly referred to as a “consular return”), where it undergoes another review—adding another layer of delay.²³ Often, the petitioner and beneficiary are not even informed that the case has been subject to a “consular return.”²⁴

At each of these steps in processing, from the beginning to the end, the agencies can request additional information or documentation by issuing a “Request for Evidence” (RFE).²⁵ At any point, a case that has been flagged for vetting concerns may be referred to USCIS’s Security Vetting and Program Integrity (SVPI) Branch for further processing.²⁶ As will be discussed further below, RFEs are far too often issued based on specious grounds and many cases languish for months, even years, awaiting review by SVPI.

Case Example

In 2015, Khua submitted FTJ petitions for his wife and daughter, residing as refugees in Malaysia. Eight months later, USCIS approved the petitions and they were transferred to the U.S. Embassy in Kuala Lumpur. The beneficiaries attended an interview at the Embassy in December 2016 and completed their medical exams shortly thereafter. The cases were subsequently approved and assured to the IRC Baltimore office in 2017. Khua was informed that his family would arrive in the United States within a few months. Subsequent changes to the FTJ process, however, resulted in numerous delays and confusion. In 2017, the case was put in administrative processing, and on multiple occasions over the last four years the Embassy has requested documentation and information already provided. Khua has never met his daughter and has not seen his wife in over seven years. He is desperate to be reunited with his family.

23 See CLINIC Manual, *supra* fn. 3, 82-83 (explaining that “[a] Consular Return occurs when the Consular Post sends the case back to USCIS jurisdiction recommending denial of the Form I-730” and “USCIS may take several months to one year, or more, to investigate the return”).

24 *Id.*

25 When an embassy or consular post is responsible for the overseas processing of an FTJ case, they do not issue an RFE, but may also request that the beneficiary provide additional documentation or evidence. In most cases, this request will be in the form of verbal instructions or a simple check-list and is typically communicated directly to the beneficiary but not to the petitioner or a legal representative. See *id.* at 42.

26 Typically any referred petition would go to the Fraud Detection and National Security (FDNS) Directorate. For further discussion about delays caused by an increase in referrals to FDNS, see Section III.D.

III. Examining the Causes of Delays in FTJ Processing

A. Trump's Muslim Ban Executive Orders Suspended Processing

The Trump Administration repeatedly targeted USRAP, including refugee resettlement under the FTJ process. Executive Order 13769, President Trump's first attempt at instituting his promised "Muslim Ban," suspended USRAP for a period of 120 days and required a review of security vetting procedures for refugees.²⁷ That order was replaced by Executive Order 13780, which also imposed a 120-day suspension and mandated a vetting review. While litigation challenging these USRAP suspensions was initially successful, the Supreme Court permitted Executive Order 13780's suspension to take partial effect; as a result, very few FTJ cases moved forward in the process during this time.²⁸

The product of these 120-day reviews was announced on October 23, 2017 in a memorandum (hereinafter, the "Agency Memo") to the President from then-Secretary of State Rex Tillerson, then-Acting Secretary of Homeland Security Elaine Duke, and then-Director of National Intelligence Daniel Coates.²⁹ The Agency Memo was accompanied by a third executive order, Executive Order 13815, which "resumed" USRAP with the exception of the suspensions called for in the Agency Memo, and based upon certain "security enhancements" that were detailed in the Agency Memo.³⁰

Most relevant here, the Agency Memo suspended *all* FTJ processing for refugees.³¹ (The Agency Memo also suspended processing and admission for refugees from eleven particular countries designated on the "Security Advisory Opinion" or "SAO" list³² regardless of the particular pathway.) Although litigation successfully challenged the FTJ suspension, and processing of FTJ petitions (including for SAO nationals) was to resume immediately after the district court issued an injunction on December 23, 2017,³³ IRAP learned that the process was far from smooth and processing for FTJ and SAO cases continued to be delayed.³⁴ The

27 Exec. Order No. 13,769, 82 Fed. Reg. 8977 (Feb. 1, 2017).

28 See *Trump v. Int'l Refugee Assistance Project*, 137 S. Ct. 2080, 2089 (2017).

29 Joint Memorandum to the President, "Resuming the United States Refugee Admissions Program with Enhanced Vetting Capabilities," (Oct. 23, 2017), https://www.dhs.gov/sites/default/files/publications/17_1023_S1_Refugee-Admissions-Program.pdf ("Agency Memo").

30 Exec. Order No. 13,815, 82 Fed. Reg. 50,055 (Oct. 27, 2017).

31 While the Agency Memo's suspension targeted refugee FTJ processing in particular, many of the changes made in furtherance of President Trump's Executive Order and the Agency Memo affected asylee FTJ processing as well, as will be discussed throughout this report.

32 Those countries were reported to be Egypt, Iran, Iraq, Libya, Mali, North Korea, Somalia, South Sudan, Sudan, Syria, and Yemen. Refugee Council USA, "Security Advisory Opinion Fact Sheet" (Nov. 13, 2017), <https://rcusa.org/resources/security-advisory-opinion-fact-sheet/>.

33 *Doe v. Trump*, 288 F. Supp. 3d 1045 (W.D. Wash. 2017) (granting Plaintiffs' motion for a preliminary injunction).

34 See, e.g., Ex. 1 (JFS Plaintiffs' Motion to Reinstate Their Cross-Motion for Limited Expedited Discovery on Compliance with Preliminary Injunction). All exhibits to the report are listed at Appendix B and available at <https://refugeerights.org/appendix-b-list-of-exhibits/>.

cumulative effect of the FTJ suspension and the agencies' slow compliance with the injunction was further delays and backlogs in FTJ processing.

Case Example

Floribert is a refugee from the Democratic Republic of Congo. His family fled from persecution to Ethiopia and Floribert was resettled in the United States. He filed FTJ petitions for his daughter and wife, who is from Burundi. Floribert's petitions were approved and his family passed all background and medical checks. They were scheduled to depart for the United States on October 24, 2017. Unfortunately, the U.S. Embassy in Addis Ababa did not provide the proper documentation to Floribert's family that was required for Ethiopia to issue exit permits. As a result, they were not allowed to travel before the ban on FTJ cases went into effect, and, as of the date of this report's publication, the family remains separated.

B. Endless Processing Loops & Insufficient Resources

In addition to the high-profile suspensions called for by Trump's Muslim Ban executive orders, several lesser-known processing and vetting changes made in furtherance of these executive orders dramatically increased the backlog of FTJ cases.

In October 2017, USCIS transferred processing responsibility for refugee FTJ cases from the agency's Service Centers to its International Adjudications Support Branch (IASB), which was described as "an operational outcrop" of the Agency Memo's mandate to align processing of I-730 beneficiaries with that of principal refugees.³⁵ The transfer did not go smoothly and major delays resulted from USCIS's failure to adequately plan and prepare for this transition.

First, officials had to update various databases, which was only begun after the transfer was announced and the Service Centers stopped processing the petitions in their possession.³⁶ Then the Service Centers with FTJ petitions were directed to physically mail the files to IASB.³⁷ On at least one occasion, there was confusion over the number of boxes shipped and concerns that a box of petitions was missing.³⁸ Once IASB received

35 Ex. 2 (Feb. 13, 2019 Dep. of Jennifer B. Higgins, Associate Director USCIS Refugee, Asylum, and Int'l Operations).

36 See Ex. 3 (Dec. 2017 Emails re updating CLAIMS database); Ex. 4 (Nov. 7, 2017 Email re Questions for new FCO) (following up on request for approval for necessary changes in database and issuing notices).

37 Ex. 5 (Nov. 21, 2017 Email re mailing physical files to IASB) ("The cases need to be sent to our physical address.").

38 Ex. 6 (Jan. 19, 2018 Email re missing box).

the files, the petitions had to be manually entered into a new database.³⁹ USCIS staff completing data entry were ordered to “focus on **QUALITY** and **ACCURACY**, rather than speed.”⁴⁰ A snapshot of the situation obtained via FOIA revealed that some four and a half months after changes were announced, 1,100 applications had been physically transferred to the IASB,⁴¹ but only 284 cases had been entered into the IASB database.⁴² One obvious solution that would have avoided these issues would have been to make IASB responsible for domestic processing of all cases filed *after* a certain date, while allowing the Service Centers to complete processing of all FTJ cases received up until that date. There is, however, no evidence that the agency considered this alternative.

Practitioner Notes

“Significant delays in FTJ processing over the past four years have come from lengthy case transfers on the domestic processing side and the resulting confusion as to which office is responsible for adjudicating the FTJ petition. For many cases, we have received up to three separate case transfer notices for the petition, spanning several years, without any officer actually reviewing the merits of the case. In one case, involving an FTJ petition filed on behalf of a spouse, the case was filed with the Texas Service Center in August 2015. The case was transferred to the National Benefits Center in June 2017, transferred back to the Texas Service Center in October 2018, back again to the National Benefits Center in June 2019, and then back to the Texas Service Center in December 2020. We have filed 7 ‘Outside Normal Processing Time’ requests and there has been no forward movement in the case in over five years.” **Rebecca Schaeffer, Senior Immigration Counselor, Church World Service, North Carolina.**

39 Ex. 7 (Jan. 19, 2018 Email re Data entry for I-730s) (IASB leadership noted: “We are insufficiently staffed support-wise currently to leave the data entry exclusively to our very hardworking colleagues and even if we had enough staff the backlog we are starting with is large and we need to tackle it using all-hands.”).

40 Ex. 8 (Mar. 6, 2018 I-730 Domestic Processing: Initial Data Entry) (emphasis in original).

41 Ex. 9 (Powerpoint Presentation on Domestic Processing Transfer from SCOPS to RAIO), 593.

42 *Id.* at 602.

Practitioner Notes

“The majority of our FTJ cases have been transferred numerous times, from office to office. We have frequently received multiple Requests for Evidence for the same case from different USCIS offices. For one FTJ petition, we received three separate RFEs from three different USCIS offices over the span of three years. Each RFE requested almost identical documentation and information (which had already been provided). Our FTJ cases seem to be stuck in a domestic processing loop. Of the over 100 refugee FTJ petitions submitted by our office since the beginning of 2018, *not a single case* has been approved and moved beyond domestic processing.” **Laura Brown, Program Manager, IRC, Baltimore, Maryland.**

In addition to creating confusion, USCIS’s repeated intra-agency transfers have resulted in officers unfamiliar with and insufficiently trained in the particulars of the FTJ process applying the wrong legal standard and requirements to FTJ petitions. USCIS adjudicators often demand documents that are either unavailable or not relevant to adjudicating an FTJ petition by issuing an RFE.⁴³ Even where documents may be available, issuance of an RFE itself delays the case.

Practitioner Notes

“The I-730 Processing Unit at the Los Angeles Asylum Office, which received cases previously at the IASB, has issued RFEs requesting primary evidence when secondary evidence permitted under the regulations was provided with the initial I-730 petition. The preponderance of the evidence standard was already met so approvals, rather than RFEs, should have been issued. Other examples of frivolous RFEs that reflect an ignorance of the applicable regulations include requests to show a *bona fide* parent-child relationship when the petitionable relationship does not require such evidence (e.g., a biological mother or a father when the child was born in wedlock).” **Katherine Reynolds, Director of the Humanitarian Immigration Law Clinic at Elon University School of Law.**

43 See IRAP, *Expanding Complementary Pathways for Refugees and Displaced Persons: A Blueprint for the U.S. Government* (Nov. 20, 2020), 20-22, <https://refugeerights.org/wp-content/uploads/2020/11/Expanding-Complementary-Pathways-for-Refugees-and-Displaced-Persons-A-Blueprint-for-the-U.S.-Government.pdf>.

Case Example

Joe Sankisha is a refugee from the Democratic Republic of Congo. During the resettlement process, Joe became separated from his wife and young daughter. In April 2016, he agreed to travel without his family because he was told that he could file a follow-to-join petition when he arrived and that his family would be quickly reunited. Unfortunately, Joe did not arrive until December 2016, just one month before President Trump assumed office. Joe filed his FTJ petitions for his wife and daughter in October 2017. However, he did not receive a Request for Evidence until almost three years later—in August 2020. Joe submitted his response to the Request for Evidence in September 2020, but his case is still pending at this time.

Transfers of responsibility for FTJ processing and the resulting confusion have also impacted the international phase of FTJ processing. Several actions by the Trump Administration in late 2017 and early 2018 resulted in repeated case transfers for FTJ petitions pending overseas. First, the Trump Administration’s decision to close most USCIS International Offices⁴⁴ meant that FTJ petitions pending at any of the now closed IOs had to be transferred⁴⁵ to either one of only seven remaining IOs or to the State Department’s Bureau of Consular Affairs.⁴⁶

Second, an outgrowth of the security vetting changes made in furtherance of President Trump’s Muslim Ban executive orders was a January 31, 2018 USCIS memorandum that ordered yet another transfer of FTJ cases pending overseas.⁴⁷ According to the memorandum, U.S. embassies that process only non-immigrant visas could no longer process FTJ cases.⁴⁸ As a result, all FTJ cases processed at non-immigrant visa posts had to be transferred to either an immigrant visa post or one of two particular USCIS IOs (Nairobi and Johannesburg). When USCIS subsequently closed the USCIS IO in Johannesburg, cases that had only recently been transferred there (from embassies providing only non-immigrant visas) had to be transferred yet again.

44 See Miriam Jordan, “Trump Administration Plans to Close Key Immigration Operations Abroad,” *New York Times* (Mar. 12, 2019), <https://www.nytimes.com/2019/03/12/us/united-states-citizenship-immigration-uscis.html>.

45 Because the agencies rely on a physical file, transfer of a case requires physically mailing the case file. The time required to mail the case file in addition to the time required for the office receiving the case file to familiarize itself with the new case both add to the processing delays.

46 See “International Immigration Offices,” USCIS, accessed Feb. 25, 2021, <https://www.uscis.gov/about-us/find-a-uscis-office/international-immigration-offices>.

47 Ex. 10 (Enhanced Vetting Implementation Memo).

48 *Id.*

Practitioner Notes

“In 2017, FTJ cases with beneficiaries in Ethiopia were sent to USCIS IO Nairobi ‘in anticipation of USCIS IO Addis Ababa opening soon.’ The USCIS IO Addis Ababa, however, was never opened, and these cases had to be transferred to the U.S. Embassy in Addis Ababa. All such cases had NVC numbers beginning with ‘NRB,’ however, the U.S. Embassy in Addis Ababa requires an NVC number beginning with ‘ADD’ in order to access the online portal to schedule an interview for an FTJ beneficiary. Getting a new NVC number requires action by the Embassy, which has not responded to emails since March 2020.” **Katherine Reynolds, Director of the Humanitarian Immigration Law Clinic at Elon University School of Law.**

The closure of USCIS IOs also exacerbated a major issue that has long plagued FTJ processing: the confusion and lack of uniformity resulting from the fact that two agencies—USCIS and the Department of State—share responsibility for overseas FTJ processing. International processing of FTJ beneficiaries has always been a shared responsibility because USCIS has a limited global footprint (even before the mass closure of its IOs) and many FTJ beneficiaries live in locations where USCIS does not operate.

As a result of the closure of USCIS IOs, an increasingly significant number of FTJ cases are now processed by the Department of State. Unfortunately, U.S. embassies and consulates are inconsistent in officer exposure to refugee and asylee issues. Some locations have dedicated staff members who process FTJ cases; others, however, assign staff who usually work on other types of cases.⁴⁹ U.S. embassies and consulates also lack a standardized process for FTJ processing and practices vary widely across posts. Furthermore, the State Department does not provide information about average processing times or any mechanism for an FTJ petitioner or her representative to automatically check the status of the petition.⁵⁰ Instead, petitioners and their representatives are limited to emailing the embassy or consulate for an update; such emails often go unanswered or receive a nonsensical, boilerplate response.

49 For example, embassies and consular posts often handle Form I-130 processing. Form I-130 refers to the process whereby U.S. citizens and Lawful Permanent Residents can petition to allow eligible family members abroad to apply to immigrate to the United States. See “I-130, Petition for Alien Relative,” USCIS, accessed Feb. 25, 2021, <https://www.uscis.gov/i-130>.

50 The State Department Consular Affairs does provide such a tracking mechanism for other family-based petitions. The Consular Electronic Application Center (CEAC) allows immigrant and non-immigrant visa petitioners and applicants to automatically check the status of their petition or application by entering the case number (which is assigned by the NVC before the case is sent abroad for processing). See “Visa Status Check,” U.S. Department of State, Consular Electronic Application Center, accessed Feb. 26, 2021, <https://ceac.state.gov/CEACStatTracker/Status.aspx?App=IV>; see also “Immigrant Visa Process,” U.S. Department of State, Bureau of Consular Affairs, accessed Feb. 26, 2021, <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition.html>.

Practitioner Notes

“Many embassy and consular officers are not properly trained in I-730 processing and misapply procedures or standards from other case types that they process. For example, consular officers more familiar with adjudicating I-130 petitions have often applied the I-130’s heavier burden of proof (‘clear and convincing evidence’) to I-730 cases, which only have to meet the lesser ‘preponderance of the evidence’ standard. In many of my cases, this has resulted in the consular post returning the case stateside for re-adjudication and denial, and in every single one of these cases, we have argued successfully that the consular officer misapplied the regulatory or statutory standard. These erroneous ‘consular returns’ further delay our cases.” **Rebecca Schaeffer, Senior Immigration Counselor, Church World Service, North Carolina.**

Practitioner Notes

“In one of my cases, the Embassy wrongly informed me that all routine processing but for a few specific case types was halted due to the Presidential Proclamation that was issued in response to COVID-19. *The officer failed to recognize that FTJ petitions were among the list of exceptions.* The Embassy also wrongly stated requirements regarding this particular case, citing the need for an interview and new passports when both had been completed and delivered to the USCIS international office prior to that office being closed. After finally learning that the next step would be a medical check, I was unable to obtain any information, instructions, or guidance on how my clients should schedule the checks. After reaching out to the petitioner’s congressional office, one staffer asked that I refrain from following up with the Embassy because it is short-staffed.” **Amira Mikhail, Senior Staff Attorney, International Refugee Assistance Project, New York.**

Finally, staffing and resource constraints have burdened the FTJ processing backlog. For example, when USCIS’s Fraud Detection and National Security Directorate (FDNS) saw a sudden increase in the number of FTJ cases requiring the “Enhanced FDNS Review” (EFR) (see discussion *infra* Section II.D.), FDNS staff notified USCIS leadership that they “are not getting additional resources to do the FTJ cases, and . . . it would be

impossible to estimate processing times.”⁵¹ Budget cuts and practical limitations imposed by the COVID-19 pandemic have also impacted processing capacity.⁵²

Practitioner Notes

“I have a significant number of FTJ cases that seem to be stuck at the LA Asylum Office, cases that were initially filed with USCIS three or more years ago. For at least six of my cases, we responded to a Request for Evidence several months ago. Of those cases, two were closed because we could not secure DNA testing due to COVID restrictions on embassy services and one was approved and forwarded to the National Visa Center. The rest have received no response.” **Angie Plummer, Executive Director, Community Refugee & Immigration Service (CRIS) Ohio.**

Practitioner Notes

“Consular resources appear to be particularly limited for FTJ processing. For example, on February 11, 2021, I received this email from the U.S. Embassy at Addis Ababa: ‘This is in response to your email concerning an I-730 V92/V93 - Refugee Asylee visa petition. Due to the *recent* decision by USCIS to close all of its overseas offices, the U.S. Embassy Addis Ababa is resuming I-730 operations *in April 2019*. We will contact you once we receive your file and it is ready for interview with instructions on how to proceed. Given the large number of cases, please expect that it could be some time before you will be contacted.’ (emphasis added).” **Kelly Chauvin, Immigration Services Coordinator, Church World Service, North Carolina.**

C. Additional Recent Processing Changes Compounded Delays

In furtherance of the Agency Memo, USCIS started requiring I-730 petitioners to submit a completed I-590, *Registration for Classification as Refugee*, for every beneficiary. The I-590 is the form that is completed when a principal (e.g., non-FTJ) refugee seeks to be considered for refugee admission to the United States. Prior to this change in October 2017, the I-590 was typically completed by a USCIS or State Department official

⁵¹ Ex. 11 (Jan 4, 2018 Email re EFR), 231.

⁵² Lara Jakes, Zolan Kanno-Youngs, Maggie Haberman & Michael D. Shear, “Biden to Welcome More Refugees, but Far From All Will Get In,” *New York Times* (Feb. 3, 2021), <https://www.nytimes.com/2021/02/03/us/politics/biden-immigration-refugee-policy.html?smid=tw-share>.

during the interview of the FTJ beneficiary. As with other changes, this one significantly delayed cases because of how poorly USCIS prepared for and managed the change.

First, when the change was announced, the Form I-590 had to be revised and the existing version could not be used in the interim; imposing a new requirement to submit a Form I-590 precisely when no such usable form was available caused considerable confusion and unnecessary false starts.⁵³ Second, most FTJ petitions that were previously submitted—the existing backlog—had not been submitted with the I-590 because the form was neither required nor available. IASB staff thus had to issue an RFE to each petitioner who submitted an I-730 without an I-590.⁵⁴ It took nearly a year before those RFEs were ready to be mailed out.⁵⁵ And only after receiving the response to the RFE (the completed form) and processing its new information could USCIS complete domestic processing of the petition.⁵⁶

Third, while the Form I-590 is now available online,⁵⁷ USCIS has never updated its Form I-730 instructions to direct FTJ refugee applicants to submit the I-590 with the petition.⁵⁸ This is particularly devastating for FTJ petitioners proceeding without a legal representative who is familiar with FTJ processing. If an FTJ petition is submitted without the Form I-590, USCIS issues an RFE and requires submission of the I-590 before the case can proceed.

53 Ex. 12 (Nov. 2017 - Jan. 2018 Emails re revision of Form I-590 to include questions from decommissioned Form G-325C).

54 Ex. 13 (Jan. 10 2018 Email re RFE envelopes) (“The Service will now require that the petitioners file an I-590 for each follow-to-join beneficiary before the case is processed. The IASB . . . will send requests for evidence (RFE) to petitioners asking for I-590 submission for each.”).

55 Ex. 14 (Mar. 8, 2018 Email re RFE issuance). This delay was largely due to the fact that the Form I-590 was not publicly available, and USCIS had not assessed the best way to disseminate it. This meant that IASB had to print thousands of pages of Form I-590 and order custom envelopes. Ex. X (Email re RFE envelopes) (“We estimate that we’ll need approximately 5,000 envelopes this calendar year . . . our storage is taken up with the I-590s pretty much!”). While the form was published online in May 2018, the delays and costs of printing and mailing the forms may have been avoided with a more intentional planning process. See Ex. 15 (May 7, 2018 Email re I-590 Electronic Access).

56 Ex. 9 (Powerpoint Presentation on Domestic Processing Transfer from SCOPS to RAIO), 598.

57 The I-590 was not previously available online and it took repeated advocacy by practitioners to convince the agency to publish it online. See Ex. 16 (Mar. 24 2018 Email re making I-590 electronically available), 608.

58 “Form I-730 Instructions,” USCIS, last updated Sept. 17, 2019, <https://www.uscis.gov/sites/default/files/document/forms/i-730instr.pdf>.

Practitioner Notes

“Part 10 of the Form I-590 requests that the preparer, interpreter, and the (beneficiary) refugee certify that the form was completed based only on the responses of the registrant (beneficiary) and to swear under penalty of perjury to the accuracy of the information included on the form. When the beneficiary is overseas, the petitioner and their legal representative are filling out the preceding parts to the best of the petitioner’s knowledge. It is unethical and impractical to demand that anyone unable to ask these questions face-to-face with the beneficiary and a trained interpreter should have to sign under a penalty of perjury. In the principal refugee context, only USCIS refugee officers sign Form I-590s. Yet, when Form I-590s are submitted without Part 10 completed, the I-730 Processing Unit has issued RFEs stating that the entire Form (except Part 8)⁵⁹ must be completed.” **Katherine Reynolds, Director of the Humanitarian Immigration Law Clinic at Elon University School of Law.**

Recently, USCIS announced a new policy that is currently being implemented and threatens to cause further delays in FTJ processing. Under this policy, refugees and asylees filing FTJ petitions for their family members must submit to an in-person interview (in addition to the existing practice of requiring an interview for all FTJ beneficiaries).⁶⁰ This process is particularly duplicative because refugees and asylees in the United States have already undergone extensive vetting and interviews with USCIS. Moreover, in other family reunification contexts, such as the I-130 process, petitioners in the United States are not routinely required to undergo an in-person interview.⁶¹ Particularly now, when USCIS capacity is significantly limited and in-person appointment requirements have proven difficult to fulfill because of the COVID-19 pandemic, newly requiring in-person interviews of FTJ petitioners as a categorical matter will unnecessarily compound the already-considerable existing delays.

59 Part 8 of Form I-590 is not legally relevant to the FTJ context because it requests information about the individual’s refugee claim, which (as explained above) is not required in this case because an FTJ beneficiary does not need to have an independent refugee claim.

60 Policy Memorandum 602-0180, “Expanding Interviews to Refugee/Asylee Relative Petitions,” USCIS (Nov. 18, 2020), <https://www.aila.org/infonet/uscis-issues-memo-on-expanding-interviews>.

61 “Adjudicator’s Field Manual,” USCIS, accessed Feb. 26, 2021, chap. 21, part 11, <https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm21-external.pdf> (“Most [I-130] petitions will be completed without the need of a personal interview.”).

D. “Extreme” Vetting Creates Further Backlogs

The Trump Administration’s Agency Memo announced a series of vetting changes that were an outgrowth of the Muslim Ban’s mandate to review and “enhance” security vetting of refugees. These changes largely targeted SAO nationals,⁶² and those that most directly impacted FTJ processing included the following:

- Increased data collection, including a new requirement to obtain from all applicants (including FTJ beneficiaries) ten years of contact information (phone numbers, physical addresses, and email addresses) rather than just the five years’ worth previously required. Critically, this change was **applied retroactively for SAO nationals**, regardless of how far along in the process they had already gotten. For FTJ beneficiaries who are SAO nationals, this meant security checks had to be redone using the now expanded contact information, even in cases that had already completed security checks and in fact were ready to travel to the United States.
- Expansion of the criteria governing who is required to undergo an SAO check to include all men *and women* between certain ages. Previously, only men between the age of 16 to 50 from an SAO country⁶³ were required to undergo an SAO check, so this expansion effectively **more than doubled the pool of refugees, including FTJ beneficiaries, who newly required an SAO check merely on the basis of their age and nationality.**
- Expansion of the Enhanced FDNS Review (“EFR”) security check for SAO nationals, which includes checks against certain social media and classified databases, to *any* case involving an SAO national who was interviewed after October 24, 2017.⁶⁴

These changes contributed to a tremendous and growing backlog of FTJ cases requiring new or redone security checks. Indeed, after these security changes were made, the Secretary of State and the head of USCIS IO sent guidance instructing that, as a result of the changes to the security checks, SAO checks had to be resubmitted for cases with “cleared or pending SAOs if the boarding foil has yet to be issued.”⁶⁵ Thus even cases that were at the very final stages of processing and had already received a cleared SAO check—

62 See *supra* fn. 32.

63 Refugee Council USA, “Security Advisory Opinion Fact Sheet” (Nov. 13, 2017), <https://rcusa.org/resources/security-advisory-opinion-fact-sheet/>.

64 Agency Memo, *supra* fn. 29, at Addendum 3. For more information on EFR vetting, see IRAP, *Debunking “Extreme Vetting”: Recommendations to Build Back the U.S. Refugee Admissions Program* (October 2020), 42, <https://refugeerights.org/wp-content/uploads/2020/10/Vetting-Report-2020.pdf>, (“Vetting Report”).

65 Ex. 17 (Jan. 31, 2018 Consular Affairs Revised FTJ Procedures Guidance); Ex. 10 (Jan. 31, 2018 USCIS Enhanced Vetting Implementation Memo), 20.

indeed, any case in which the document needed to board a plane to the United States had not yet been issued—had to go back to the starting line for a new SAO check.⁶⁶

Case Example

Ali Adam arrived in the United States as a refugee from the Darfur region of Sudan in September 2013. Within weeks he sought assistance in filing FTJ petitions on behalf of his wife and minor son, whom Ali had never met because he was born after Ali fled Sudan due to the civil war. USCIS approved the petitions in April 2014 and transferred them to the U.S. Embassy in Khartoum for international processing. After almost two years of waiting, the Embassy finally interviewed Ali’s wife, and she and her son underwent medical exams. The case was subsequently approved and assured to a resettlement agency in the United States. Although typically this would signal that the case was nearing the final steps before travel is arranged, travel was never booked and the case was placed in administrative processing. It seems highly probable that one reason was the changes to security vetting, which would have newly required Ali’s wife to undergo an SAO check and may have required already-completed checks to be redone. Since that time, Ali’s family has undergone medical checks at least two more times and, more than seven years later, the case is still pending.

Case Example

Mohamed⁶⁷ is a refugee from Somalia who was resettled to the United States in April of 2016. Shortly after arriving he petitioned to bring his wife and infant son through the FTJ process. In 2017, he paid for DNA testing to establish paternity. The case was approved domestically. His wife was interviewed by USCIS in Nairobi and a deferred decision was issued on December 2, 2019, presumably because his wife now requires an SAO check. No further information has been available. Meanwhile, Mohamed has missed these first, formative years of his young son’s life, time he can’t get back. Given no forward progress in the case, Mohamed decided to take leave from his job last month so he could go visit his family in Kenya.

66 As IRAP has documented in another report, SAO checks cause processing delays and return dubiously high “not clear” results. See Vetting Report, *supra* fn. 64, 11-13.

67 This individual’s name has been changed to protect his identity.

IV. A Roadmap for Addressing FTJ Processing Delays

President Biden has already signaled that the policy of the new administration will be to alleviate the delays keeping refugee families separated. On February 4, 2021, President Biden signed Executive Order 14013, *Executive Order on Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration* (“the Executive Order”). The Executive Order recognizes that delays in processing “are counter to our national interests, [and] can raise grave humanitarian concerns” and instructs that U.S. humanitarian programs should be administered in a way that “reflects the principle that reunifying families is in the national interest.”⁶⁸

In order to fulfill these policy directives laid out by President Biden and improve the delayed and backlogged FTJ process, the agencies must take concrete steps in the short-term, while laying out a clear path for long-term change.

A. Recommended Actions for the Biden Administration

1. Roll Back Trump-Era Agency Actions

The agencies must immediately review the procedural roadblocks put up by the Trump Administration and begin rolling back those actions. The Executive Order requires that by May 5, 2021, the Secretaries of State and Homeland Security provide a report to the President “describing *all* agency actions” taken in furtherance of President Trump’s now-revoked executive order from October 24, 2017.⁶⁹ **In fidelity to both this directive from President Biden, as well as the policy statements put forth in the Executive Order decrying delays and championing family reunification, the agencies should not simply review previous agency actions detrimental to the FTJ program. Rather, they should do so with a critical eye towards dismantling those impediments and implementing a more equitable and efficient system.**

The agency actions that fall under this directive include:

- Repeated transfers of responsibility of individual FTJ cases within or between agencies in furtherance of the Trump Administration’s Agency Memo;
- The decision to require that a Form I-590 be submitted for all FTJ beneficiaries at the time the FTJ petition is submitted;⁷⁰
- The increased data collection requirements implemented by the Agency Memo; and

68 Exec. Order No. 14013 § 1(c), (f), 86 Fed. Reg. 8839 (Feb. 4, 2021).

69 *Id.* § 2(c) (emphasis added); *see also* discussion *supra* Section III.A.

70 In addition to revisiting this decision to determine whether this requirement unnecessarily delays case processing, the agencies should, at minimum, ensure that FTJ petitioners and their legal representatives are given accurate information on USCIS’s website and the form instructions page.

- The decision to expand the pool of FTJ beneficiaries requiring an SAO and EFR check as described in the Agency Memo.

In addition, previous agency actions taken apart from the Agency Memo, such as the USCIS policy change to expand in-person interviews of FTJ petitioners, should also be rescinded.⁷¹ Finally, given the delays that have resulted from the various actions taken by the Trump Administration, a surge of resources, at least in the short term, is required to address the current backlog.

2. Improve the Vetting Process

The Biden Administration's review of the FTJ program must also pay special attention to the time FTJ petitions spend in "administrative processing" and what steps can be taken to make this process more efficient and transparent.⁷² For example, a thorough inter-departmental examination of the SAO vetting process is critical because SAO vetting has become such a significant source of processing delays in FTJ cases.⁷³ **In addition to considering how security vetting can be made more efficient, the agencies' review should consider limiting the pool of individuals subject to SAO vetting and revisiting the thresholds applied to SAO vetting.**⁷⁴

3. Streamline Processing & Increase Transparency

Reviewing and rolling back Trump Administration policies will not on its own be sufficient to create a timely process. The Executive Order contemplates this and requires the Secretary of State, in consultation with the Attorney General and the Secretary of Homeland Security to "develop and ensure adherence to a plan that addresses USRAP processing backlogs" and submit a copy of the plan to the President by June 4, 2021.⁷⁵ A comprehensive, agency-wide plan to address processing backlogs is urgently required, and it *must* include a review of the FTJ process. Furthermore, the plan must be accompanied by an implementation timeline with clear actions and benchmarks that allow for continual monitoring and evaluation.

This review and implementation should pay close attention to the complex and opaque domestic processing structure set up before a petition is even sent to an overseas post. **Eligibility criteria for FTJ adjudications are relatively straightforward and, for refugee FTJ adjudications, approval is not discretionary; it should not take over 18 months to determine if a petition is approved or approvable pending**

71 See Policy Memo *supra* fn. 60.

72 See Exec. Order No. 14013 § 5.

73 The Executive Order requires that within 30 days of the order, all "agencies involved in the Security Advisory Opinion process and other inter-agency vetting processes for refugee applicants, including follow-to-join refugee applicants, submit to the National Vetting Governance Board [NVGB]" details about the security vetting. Exec. Order No. 14013 § 4(e). It further directs the NVGB to consider and report about "if and how agency processes and staffing levels should change to improve security reviews and make refugee arrivals more efficient." *Id.*

74 See Vetting Report, *supra* fn. 64, (describing various problems with current refugee vetting, including SAO vetting).

75 Exec. Order No. 14013 § 5(a)-(c).

an interview. The role of each entity that touches the file must be reviewed to see whether it is necessary and adds to the quality or efficiency of the process. This includes a review of the Service Centers, the I-730 Processing Unit at ZLA, and the NVC to determine what is working and what is not, and to compare the processing of FTJ refugees versus FTJ asylees.

The Executive Order directs the agencies to ensure that “current policies and procedures related to USRAP are publicly available on [the agencies’] respective websites.”⁷⁶ This must include policies and procedures related to the FTJ process; advocates and individuals should not have to engage in extensive FOIA requests or litigation to understand how the FTJ process functions (as was required for IRAP to compile this report). USCIS should also reestablish the Service Centers’ client-facing contact as well as establish one for the I-730 Processing Unit at ZLA. Petitioners and their legal representatives should have the ability to make inquiries about their case and expect to receive a response within a reasonable time.

4. Increase Overseas Processing Capacity & Ensure Uniformity

Furthermore, in order to alleviate delays and backlogs, overseas processing must be improved and made more efficient as well. **First, the agencies should bring uniformity and clarity to the process by making USCIS responsible for managing all aspects of FTJ processing.** To the extent that other agencies, such as the State Department, have a role, it should be accountable to the process that USCIS establishes and manages.

The most significant step to improving overseas processing capacity is to reestablish and potentially expand USCIS’s International Offices. As detailed above, IOs play an integral role in processing and adjudication of FTJ cases. When IOs closed, this work fell to already-overburdened embassies and consular posts, who were generally not as familiar with the FTJ process.⁷⁷ Tasking IOs with conducting FTJ interviews can also free up interview capacity on refugee circuit rides for refugee adjudications. Where IOs do not exist or in-person services are limited, USCIS should expand the use of video-teleconference technology for FTJ adjudications.⁷⁸

Since embassy and consular posts will likely always have a role in FTJ processing, steps should be taken to improve the quality of adjudications by the State Department. **This should include regular training provided by USCIS; standardized interview procedures across embassies and consular posts; a mechanism for responding to inquiries, providing status updates,⁷⁹ and publicizing average**

⁷⁶ *Id.* § 4(m).

⁷⁷ USCIS should also provide a full accounting of the impact that the closure of International Offices had on the provision of services and USCIS personnel. See H.P. Rep. No. 116-458 (2021) (noting that “[t]he Committee remains concerned by USCIS’s lack of planning and transparency as it closed and plans to continue closing several of its international offices” and requiring USCIS to resubmit its report to Congress), [H. Rept. 116-458 - DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS BILL, 2021](#).

⁷⁸ See Exec. Order No. 14013 § 4(c)(ii).

⁷⁹ As discussed above, this mechanism already exists for immigrant and non-immigrant visas and there is no reason to think that this existing tracking functionality could not be utilized in the context of FTJ petitions processed by the State Department. See *supra* fn. 50 (discussing the CEAC).

processing times broken down by embassy/consulate; and providing sufficient notice to clients and legal representatives when additional evidence is requested or when the case is being returned to USCIS for further processing. FTJ petitions must be given at least equal attention and resources as similar, more routine, family reunification petitions. Finally, to expand capacity, non-immigrant visa posts should be allowed to once again process FTJ petitions.

5. Expand the Use of Humanitarian Parole and Expedite Requests for Certain FTJ Cases

The Executive Order further directed that the agencies “should explore the use of all available authorities for humanitarian protection to assist individuals for whom USRAP is unavailable.”⁸⁰ Pursuant to this directive, the Secretary of Homeland Security should consider the use of humanitarian parole on a case-by-case basis in delayed FTJ cases for urgent humanitarian reasons or for significant public benefit to the United States.⁸¹ **FTJ cases pending longer than two years and those involving unaccompanied children should be automatically considered for humanitarian parole, which would permit separated family members to enter via parole while the agencies complete processing of their pending FTJ petitions.**⁸²

Furthermore, for any FTJ petitioner whose case is pending longer than one year, the agencies should provide regular and specific updates regarding the reason for the delay and the path to restart processing of the case. Finally, while the agencies should ensure that domestic and international processing of FTJ cases is completed within 180 days,⁸³ the agencies should expedite processing of FTJ cases pending longer than two years.

V. Conclusion

While IRAP applauds the Biden Administration for its stated intent to address FTJ processing delays and to bring more fairness and clarity to the process, it will take swift and decisive action to remedy the harms caused by the prior administration’s actions. These are all actions that the Biden Administration can initiate immediately, without waiting for an act of Congress. IRAP calls upon the administration to act swiftly: refugee families awaiting reunification through the FTJ process have already waited long enough.

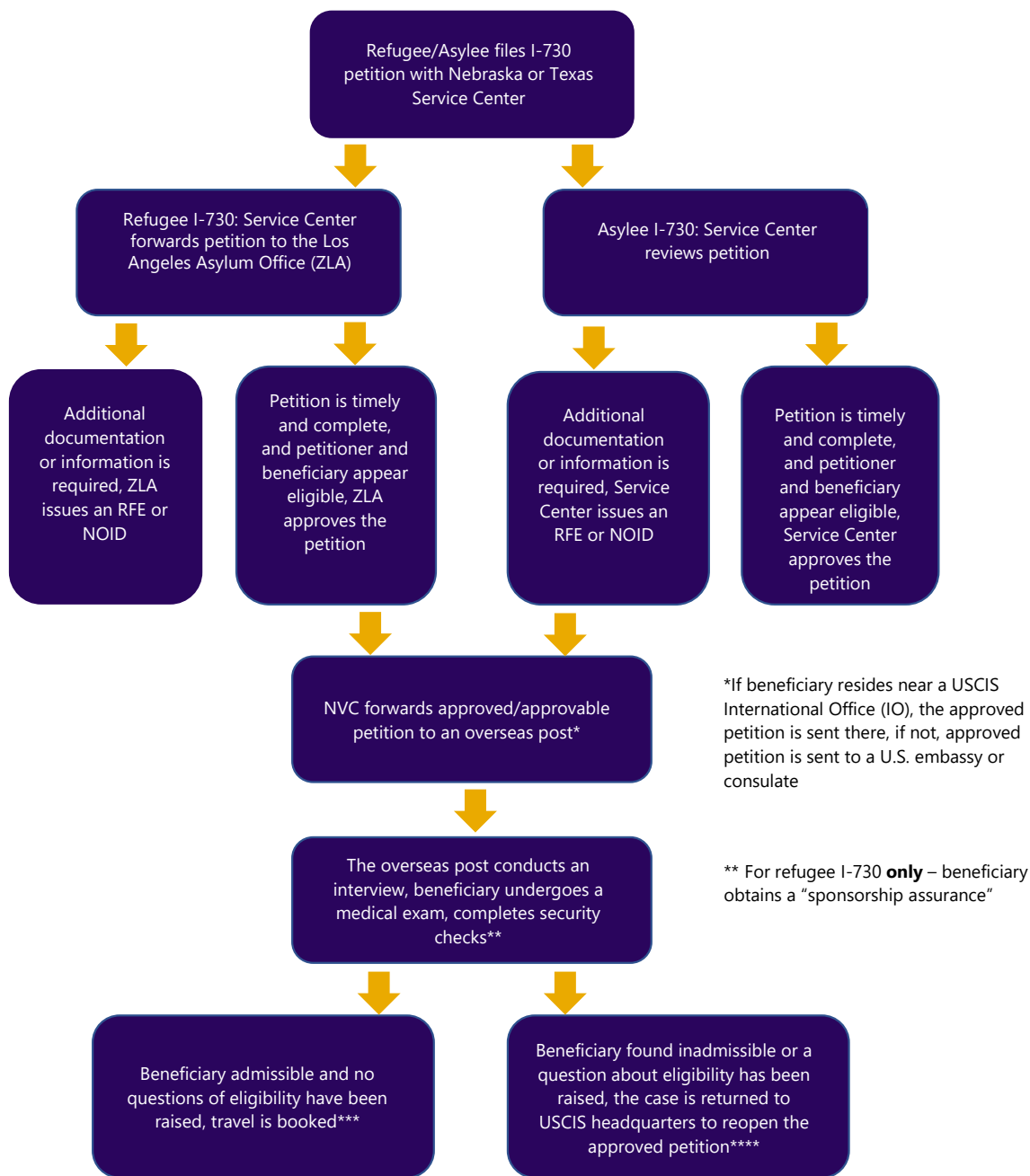
80 Exec. Order No. 14013 § 1(h).

81 See 8 U.S.C. § 1182(d)(5)(A).

82 Precedent exists for such an action. In 1999, the U.S. flew Kosovar refugees from Macedonia to Fort Dix, New Jersey, for the completion of processing. See IRAP, *Refugee Reset: Mid-Year Increases to the U.S. Refugee Admission Target* (Jan. 28, 2021), 12-13, <https://refugeerights.org/wp-content/uploads/2021/01/Refugee-Reset-Mid-Year-Increases-to-the-U.S.-Refugee-Admissions-Target.pdf>.

83 See Exec. Order No. 14013 § 5(b)(ii).

Appendix A: Summary of Follow-to-Join Processing Where Beneficiary is Overseas



*If beneficiary resides near a USCIS International Office (IO), the approved petition is sent there, if not, approved petition is sent to a U.S. embassy or consulate

** For refugee I-730 **only** – beneficiary obtains a “sponsorship assurance”

*****Note:** for refugee FTJs, this decision is non-discretionary

****several things can happen in these circumstances – sometimes the beneficiary may be able to overcome the issue by presenting more documentation, but other times, a NOID may be issued

Appendix B: List of Exhibits

Exhibits are available at <https://refugeerights.org/appendix-b-list-of-exhibits/>. The source of the document, where not evidence is indicated in parentheses.

1. [Plaintiffs' Motion to Reinstate Their Cross-Motion for Limited Expedited Discovery on Compliance with Preliminary Injunction, ECF No. 131, JFS v. Trump, No. C17-1707JLR \(W.D. Wash.\)](#)
2. [Portions of Deposition Transcript of Jennifer B. Higgins, Associate Director USCIS Refugee, Asylum, and International Operations, JFS v. Trump No. C17-1707JLR \(W.D. Wash.\)](#)
3. [December 2017 Emails re updating the CLAIMS database](#)
4. [November 7, 2017 Email re Questions for new FCO](#)
5. [November 21, 2017 Email re mailing physical files to IASB](#)
6. [January 19, 2018 Email re missing box](#)
7. [January 19, 2018 Email re Data entry for I-730s](#)
8. [March 6, 2018 I-730 Domestic Processing: Initial Data Entry](#)
9. [Powerpoint Presentation on Domestic Processing Transfer from SCOPS to RAIO](#)
10. [Enhanced Vetting Implementation Memo](#)
11. [January 4, 2018 Email re EFR](#)
12. [November 2017 - January 2018 Emails re revision of Form I-590 to include questions from decommissioned Form G-325C](#)
13. [January 10, 2018 Email re RFE envelopes](#)
14. [March 8, 2018 Email re RFE issuance](#)
15. [May 7, 2018 Email re I-590 Electronic Access](#)
16. [Email re Making I-590 electronically available](#)
17. [January 31, 2018 Consular Affairs Revised FTJ Procedures Guidance](#)