

1 INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT  
2 Melissa S. Keaney (CA State Bar No. 265306)  
mkeaney@refugeerights.org  
3 PO Box 2291  
Fair Oaks, CA 95628  
4 Telephone: (916) 546-6125  
Facsimile: (929) 999-8119

5 INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT  
6 Alexandra Zaretsky\*  
7 azaretsky@refugeerights.org  
Mariko Hirose\*  
8 mhirose@refugeerights.org  
One Battery Park Plaza, Fourth Floor  
9 New York, NY 10004  
Telephone: (646) 522-3043  
10 Facsimile: (929) 999-8119

11 \*Pro hac vice applications forthcoming

12 *Attorneys for Plaintiffs*  
MOHAMMAD, H.S.P, and S.A.P.

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15

16 MOHAMMAD, individually and as next  
friend for H.S.P and S.A.P, his minor  
17 children,

18 Plaintiffs,

19 v.

20 ANTONY BLINKEN, in his official  
capacity as Secretary of State; and U.S.  
21 DEPARTMENT OF STATE,

22 Defendants.  
23  
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Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY,  
INJUNCTIVE, AND MANDAMUS RELIEF**  
IMMIGRATION MANDAMUS CASE

**INTRODUCTION**

1  
2 1. Plaintiffs are Mohammad, an Afghan father living in California, and his eleven-  
3 and nine-year-old sons, H.S.P. and S.A.P., who are trapped in Afghanistan. While still living in  
4 his native country, Mohammad spent four years promoting women’s and children’s rights across  
5 Afghanistan as part of a U.S. Agency for International Development (“USAID”)-funded initiative.  
6 Due to Mohammad’s affiliation with the U.S. government, he and his family have received  
7 repeated death threats.

8 2. After Mohammad escaped to the United States, his wife died of a heart attack  
9 because of a threatening encounter with the Taliban. Her death left H.S.P. and S.A.P. with no  
10 parent to care for them in Afghanistan.

11 3. The Taliban continue to target H.S.P. and S.A.P. because of Mohammad’s service  
12 to the United States. After the Taliban took over their city in August of this year, H.S.P. and S.A.P.  
13 fled and went into hiding. To elude the Taliban, they move to a different address in Afghanistan  
14 every few days. They cannot go to school—or even go outside—and their father is not present to  
15 comfort them when they are lonely or frightened. Every day that H.S.P. and S.A.P. remain in  
16 Afghanistan, the risk that the Taliban will find and kill them increases.

17 4. For more than two years, Mohammad has sought to bring his sons to safety in the  
18 United States through the Afghan Special Immigrant Visa (“SIV”) program. In 2009, Congress  
19 passed the Afghan Allies Protection Act (“AAPA”) to provide an escape hatch for Afghan  
20 nationals, like Mohammad and his sons, whose lives are in danger because of the faithful service  
21 that they or their close relatives provided the U.S. government during its military mission in  
22 Afghanistan. In recognition of the risks these Afghan allies face while their applications are being  
23 processed, the AAPA directs the U.S. Department of State (“State Department”) to protect or  
24 immediately evacuate SIV applicants and their derivative family members whom the agency  
25 determines to be in “imminent danger.”

26 5. In July 2021, as the Taliban seized control of major cities and advanced on Kabul,  
27 Defendant State Department began organizing evacuation flights for U.S.-affiliated Afghans. In  
28 August—after bullets from nearby fighting struck the house where H.S.P. and S.A.P. were living—

1 Mohammad petitioned the State Department under the AAPA to evacuate or otherwise provide  
2 protection to H.S.P. and S.A.P. On September 9, Mohammad reiterated his request for protection  
3 to the State Department.

4 6. To date, the State Department has not responded to Mohammad's petition for  
5 protection or made any effort to evacuate or protect H.S.P. and S.A.P.

6 7. Defendants have a legal and moral duty to ensure that H.S.P. and S.A.P. do not pay  
7 for their father's service to the U.S. government with their lives. Defendants' failure to respond to  
8 Mohammad's petition for protection, and to timely protect or evacuate H.S.P. and S.A.P. from  
9 Afghanistan, violates their obligations under the AAPA and the Administrative Procedure Act.

10 8. Plaintiffs seek an order from this Court compelling Defendants to respond to  
11 Mohammad's petition for protection and take appropriate action to protect his children.

12 **THE PARTIES**

13 9. Plaintiff Mohammad is an Afghan national living in [REDACTED] California.  
14 Mohammad applied for special immigrant status in May 2019. He has undergone initial eligibility  
15 and security checks, and has been in the final stages of processing since May 2021.

16 10. Plaintiff H.S.P. is the eleven-year-old biological son of Mohammad. He currently  
17 lives in Afghanistan but has no fixed residence. H.S.P. brings this lawsuit through his next friend  
18 and father, Mohammad. Mohammad brings this action on behalf of H.S.P. pursuant to Federal  
19 Rule of Civil Procedure 19(c)(2). Mohammad is dedicated to the best interest of H.S.P. and will  
20 advocate for those best interests in this action.

21 11. Plaintiff S.A.P. is the nine-year-old biological son of Mohammad. He currently  
22 lives in Afghanistan but has no fixed residence. S.A.P. brings this lawsuit through his next friend  
23 and father, Mohammad. Mohammad brings this action on behalf of S.A.P. pursuant to Federal  
24 Rule of Civil Procedure 19(c)(2). Mohammad is dedicated to the best interest of S.A.P. and will  
25 advocate for those best interests in this action.

26 12. Defendant Antony Blinken is sued in his official capacity as Secretary of State.  
27 Defendant Blinken exercises authority over Defendant U.S. Department of State.

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1 13. Defendant U.S. Department of State is an executive agency of the United States  
2 and is responsible for the administration of the Afghan SIV program, pursuant to the AAPA. Under  
3 the AAPA, the State Department is responsible for protecting, or immediately removing from  
4 Afghanistan, SIV applicants and their families who are in imminent danger while their applications  
5 are being processed.

6 **JURISDICTION AND VENUE**

7 14. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal  
8 question), 28 U.S.C. § 1361 (Mandamus Act), and 28 U.S.C. § 1651 (All Writs Act). This Court  
9 has additional remedial authority under 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act).

10 15. Venue in this Court is proper pursuant to 28 U.S.C. § 1391(e)(1) because Plaintiff  
11 Mohammad resides within this District. Each Defendant is an agency of the United States or an  
12 officer of the United States sued in his official capacity. No real property is involved in this action.

13 **INTRADISTRICT ASSIGNMENT**

14 16. A substantial part of the events or omissions which give rise to this claim occurred  
15 in Alameda County, where Mohammad resides. Accordingly, for purposes of Civil Local Rule 3-  
16 2(c) and 3-5(b), this case may be assigned to the San Francisco Division or Oakland Division.

17 **FACTUAL BACKGROUND**

18 **Afghan Allies Protection Act**

19 17. The AAPA creates a pathway for Afghans who have experienced threats because  
20 of their work in Afghanistan on behalf of the U.S. government to immigrate to the United States,  
21 or, if already in the United States, to adjust their status to become lawful permanent residents. This  
22 pathway is commonly known as the Afghan SIV program.

23 18. To qualify for special immigrant status under the AAPA, an applicant must be a  
24 citizen or national of Afghanistan; have worked for at least one year on behalf of the U.S.  
25 government; have provided “faithful and valuable service” in qualifying employment; and have  
26 experienced or be experiencing an ongoing serious threat due to their work for the U.S.  
27 government. AAPA § 602(b)(2)(A), *codified at* 8 U.S.C. § 1101 note.

28

1 19. Spouses and minor children of the principal applicant qualify for derivative special  
2 immigrant status based on their relative’s service to the United States government. AAPA §  
3 602(b)(2)(B).

4 20. As a first step, an SIV applicant must apply for and be granted approval from the  
5 designee of the Chief of Mission to Afghanistan. *See* AAPA § 602(b)(2)(D). Chief of Mission  
6 approval affirms that the applicant has met the threshold requirements for SIV status.

7 21. Once an SIV applicant obtains Chief of Mission approval, they must petition U.S.  
8 Citizenship and Immigration Services (“USCIS”) for special immigrant classification by filing a  
9 completed Form I-360.

10 22. On the Form I-360, the principal applicant can petition for special immigrant  
11 classification for qualifying family members, including minor children.

12 23. Once USCIS approves the Form I-360, SIV applicants outside of the United States  
13 can apply for a visa for themselves as well as for derivative family members who were listed on  
14 the approved Form I-360. The visa, once approved, permits the family to travel to the United  
15 States.

16 24. Afghans applying for special immigrant status from inside the United States must  
17 complete an additional step before their derivative family members can obtain a visa.

18 25. After USCIS approves the Form I-360, Afghans applying from inside the United  
19 States must file a Form I-485 application with USCIS to adjust their status to that of a U.S. lawful  
20 permanent resident.

21 26. Under Defendants’ current policy, derivative family members who remain in  
22 Afghanistan cannot apply for visas to travel to the United States—despite their approved Form I-  
23 360—until the principal applicant’s adjustment of status application is approved.

24 27. The AAPA reflects Congress’s concern for the safety of Afghan allies who remain  
25 in danger while awaiting processing of their SIV applications.

26 28. For example, to reduce applicants’ wait times in dangerous conditions, the AAPA  
27 requires the State Department to process Afghan SIV applications within nine months. AAPA §  
28 602(b)(4)(A); *see also Afghan & Iraqi Allies Under Serious Threat Because of Their Faithful Serv.*

1 *to the U.S. v. Pompeo*, No. 18-cv-01388 (TSC), 2019 WL 4575565 (D.D.C. Sept. 20, 2019), at \*6-  
2 10 (holding that the State Department’s failure to process SIV applications within nine months  
3 constitutes unreasonable delay).

4 29. As Congress recognized, some applicants cannot afford to wait even nine months.  
5 Congress thus directed the Secretary of State, in consultation with other agency heads, to make  
6 “reasonable effort[s]” to provide protection to Afghans seeking special immigrant status, including  
7 derivative family members, if the Secretary determines that such individuals are in “imminent  
8 danger.” AAPA § 602(b)(6) (“Protection Provision”).

9 **Mohammad’s Application for Special Immigrant Status**

10 30. Plaintiff Mohammad worked in senior and public-facing roles implementing  
11 USAID-funded initiatives in Afghanistan.

12 31. From 2016-19, Mohammad travelled across Afghanistan to promote women’s and  
13 children’s rights. This included travel to Eastern and Southern Afghanistan, where the Taliban  
14 maintained a strong presence throughout the duration of the U.S. military mission in Afghanistan.

15 32. In the course of his work with USAID, Mohammad worked directly with local and  
16 national government officials, and he was identified in widespread media promotion of USAID  
17 events.

18 33. As a result, Mohammad is well-known to the Taliban and other insurgents.

19 34. Because of his public affiliation with the U.S. government and his espousal of  
20 Western values, Mohammad and his family have received repeated death threats from the Taliban.

21 35. When these threats first began, Mohammad started taking different routes when  
22 traveling, changed his outward appearance and attire, and even moved his family hundreds of miles  
23 away from Kabul, where they had been living for ten years.

24 36. Despite these efforts, Mohammad continued to receive personalized threats.

25 37. In May 2019, Mohammad applied to the Afghan SIV program.

26 38. In August 2019, Mohammad travelled to California for business.

27 39. While he was in California, Mohammad learned that the Taliban had visited his  
28 former home in Kabul and left threatening notes.

1           40.     Recognizing that he could not safely return to Afghanistan to await processing of  
2 his SIV application, Mohammad sought asylum in the United States.

3           41.     Mohammad's wife and his two sons, H.S.P. and S.A.P., remained in Afghanistan.

4           42.     Mohammad intended to apply for his wife and sons to join him in the United States  
5 through the Afghan SIV program as soon as he was eligible to do so.

6           43.     In October 2020, the Taliban located Mohammad's family in Afghanistan, even  
7 though the family had relocated several times since 2019. A group of men arrived at the family's  
8 home and threatened Mohammad's wife.

9           44.     Mohammad's wife suffered a fatal heart attack from the stress of this encounter.

10          45.     H.S.P. and S.A.P. were deeply shaken by their mother's death.

11          46.     Because Mohammad could neither bring his sons to the United States nor safely  
12 return to Afghanistan, H.S.P. and S.A.P. remained in danger in Afghanistan without parents to  
13 care for them.

14          47.     Mohammad's mother and brothers are likewise in danger because of their  
15 relationship to Mohammad. Nonetheless, Mohammad's mother and one of his brothers travelled,  
16 at great personal risk, to care for H.S.P. and S.A.P. in Afghanistan until the boys could join their  
17 father in the United States.

18          48.     Meanwhile, Mohammad continued to pursue special immigrant status for himself  
19 and derivative status for his sons.

20          49.     In January 2021—a year and a half after he first applied for special immigrant  
21 status—Mohammad received Chief of Mission approval.

22          50.     In February 2021, Mohammad filed a Form I-360 petition for classification as a  
23 special immigrant, naming both of his sons as derivative beneficiaries.

24          51.     Citing the imminent and growing danger that his sons faced in Afghanistan,  
25 Mohammad requested expedited consideration of his Form I-360 petition.

26          52.     Mohammad's Form I-360 petition was approved soon thereafter.

27          53.     In May 2021, Mohammad filed a Form I-485 application to adjust his status to that  
28 of a U.S. lawful permanent resident—the final step in his SIV application process.

1 54. Mohammad requested expedited processing of his Form I-485 application because  
2 his sons were in “imminent danger” in Afghanistan.

3 55. Months later, Mohammad’s Form I-485 adjustment of status application is still  
4 pending.

5 56. H.S.P. and S.A.P. are eligible to apply for derivative special immigrant visas based  
6 on their father’s approved Form I-360 petition.

7 57. Nonetheless, H.S.P. and S.A.P. cannot obtain visas to enter the United States until  
8 Mohammad’s Form I-485 application to adjust his status to that of a U.S. lawful permanent  
9 resident is approved.

10 **Mohammad’s Petition for Protection**

11 58. In April 2021, the United States announced its plan to withdraw military forces  
12 from Afghanistan by September 2021.

13 59. As the date of the planned withdrawal approached, the Taliban and other insurgents  
14 increasingly targeted and threatened U.S.-affiliated Afghans who remained in Afghanistan.

15 60. In recognition of the imminent danger to SIV applicants and other U.S.-affiliated  
16 Afghans, the United States initiated “Operation Allies Refuge” to airlift vulnerable Afghans,  
17 including certain SIV applicants and their families, out of Afghanistan.

18 61. In August 2021, the Taliban seized control of major Afghan cities, including the  
19 city where H.S.P. and S.A.P. were living.

20 62. During the fighting, bullets struck the house where H.S.P. and S.A.P. were staying.

21 63. Although Mohammad had notified the government in multiple filings that H.S.P.  
22 and S.A.P. were in imminent danger, the State Department took no action to protect his children  
23 or to evacuate them as part of Operation Allies Refuge.

24 64. On August 18, 2021, Mohammad petitioned Defendant Blinken to fulfill his  
25 obligations under the Protection Provision of the AAPA by providing H.S.P. and S.A.P. with  
26 protection or immediate evacuation from Afghanistan.

27 65. At minimum, Mohammad requested that the government expedite the adjudication  
28 of his Form I-485 application, so that he could apply for visas for H.S.P. and S.A.P.



1           66.     A few days after submitting this petition, Mohammad arranged for H.S.P. and  
2     S.A.P. to undertake the dangerous journey to Kabul, so that they could be closer to the airport and  
3     to ongoing evacuations under Operation Allies Refuge.

4           67.     Between August 18, when Mohammad filed his petition, and August 30, when the  
5     last military flight departed Afghanistan, the U.S. government evacuated tens of thousands of  
6     Afghans from the airport in Kabul to the United States and third countries.

7           68.     During this period, the State Department did not respond to Mohammad's petition.

8           69.     During this period, the State Department made no effort to protect H.S.P. and  
9     S.A.P. or to remove them from Afghanistan, despite its awareness that these children were in  
10    imminent danger because of their father's service to the United States.

11          70.     When U.S. military evacuations ended in late August, H.S.P. and S.A.P. were left  
12    behind in Afghanistan.

13          71.     On September 9, 2021, Mohammad sent a letter to the State Department, reiterating  
14    the requests made in his petition for protection.

15          72.     In this letter, Mohammad explained that H.S.P. and S.A.P. remained in imminent  
16    danger, and he requested that the State Department fulfill its obligations under the Protection  
17    Provision of the AAPA.

18          73.     Mohammad requested that the State Department consider his children for  
19    immediate humanitarian parole and facilitate their ability to leave Afghanistan and travel to the  
20    United States.

21          74.     To date, the State Department has not responded—at all—to Mohammad's petition  
22    or subsequent communications.

23                           **H.S.P. and S.A.P.'s Current Condition**

24          75.     H.S.P. and S.A.P. remain in hiding in Afghanistan under the care of Mohammad's  
25    mother and brother.

26          76.     Mohammad's mother and brother were already in danger because of their  
27    relationship with Mohammad. Caring for H.S.P. and S.A.P. puts them at even greater risk from  
28    the Taliban.

1 77. H.S.P., S.A.P., and their caretakers must move every few days so that the Taliban  
2 do not learn where they live.

3 78. Moving from place to place is physically difficult, particularly for Mohammad's  
4 elderly mother. Changing locations every few days is harmful to H.S.P. and S.A.P.'s physical and  
5 mental health.

6 79. Because they are in hiding, H.S.P. and S.A.P. cannot leave the place where they are  
7 staying for any reason. When they are ill, they cannot see a doctor. They do not attend school or  
8 see other children.

9 80. H.S.P. and S.A.P. are frightened and lonely. When Mohammad is able to speak  
10 with his sons on the phone, S.A.P. cries and asks if he is going to die.

11 81. Mohammad has suffered severe mental anguish as a result of his separation from  
12 his sons. He cannot physically comfort H.S.P. and S.A.P., who are still grieving for their mother.  
13 And he cannot be with his sons to protect them.

14 82. Every day, Mohammad fears that his sons will be killed because of his decision to  
15 support the U.S. government.

16 83. It is practically and financially difficult for Mohammad to find safe locations for  
17 his sons and their caretakers to stay. Although H.S.P. and S.A.P. stay in each location for only a  
18 few days at a time, Mohammad is required to pay for the full rental period.

19 84. Because of his constant fear for H.S.P. and S.A.P., Mohammad is unable to  
20 concentrate at work. As a result, he is working fewer hours and making less income.

21 85. Mohammad brings this suit to secure the physical safety and mental welfare of  
22 H.S.P. and S.A.P. Removing his children from Afghanistan, where they are in daily peril, and  
23 reuniting them with their only remaining parent is essential to their survival and wellbeing.

24 **FIRST CLAIM FOR RELIEF**

25 **(Afghan Allies Protection Act)**

26 86. The foregoing allegations are repeated and realleged as though fully set forth  
27 herein.

28

1           87.     The Protection Provision of the AAPA creates a duty for the Secretary of State to  
2 make a determination as to whether SIV applicants, including derivative family members, are in  
3 imminent danger.

4           88.     The Protection Provision directs the State Department to make “reasonable  
5 effort[s]” to provide protection to and/or to evacuate SIV applicants and derivative family  
6 members who are in imminent danger while they are seeking special immigrant status. AAPA §  
7 602(b)(6).

8           89.     Plaintiff Mohammad sought special immigrant status for himself in May 2019, and  
9 derivative special immigrant status for H.S.P. and S.A.P.

10          90.     H.S.P. and S.A.P. are in imminent danger as a result of their father’s service to the  
11 United States government.

12          91.     The State Department is aware that H.S.P. and S.A.P. are in imminent danger.

13          92.     The State Department has made no effort to provide protection or to remove H.S.P.  
14 and S.A.P. from Afghanistan.

15          93.     The State Department has not responded to Mohammad’s petition for protection.

16          94.     The State Department has violated the Protection Provision of the AAPA.

17                                 **SECOND CLAIM FOR RELIEF**

18                                 **(Administrative Procedure Act)**

19          95.     The foregoing allegations are repeated and realleged as though fully set forth  
20 herein.

21          96.     The Administrative Procedure Act (“APA”) obligates the State Department to  
22 “conclude a matter presented” to the agency within a “reasonable time,” 5 U.S.C. § 555(b), and  
23 directs this Court to compel Defendants to “compel agency action . . . unreasonably delayed.” 5  
24 U.S.C. § 706(1).

25          97.     Plaintiff Mohammad’s application for special immigrant status for himself, and for  
26 H.S.P. and S.A.P. as derivative family members, is currently pending.

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1 98. On August 18, 2021, Mohammad petitioned the State Department to protect or  
2 evacuate H.S.P. and S.A.P. from Afghanistan while his application remained pending, as  
3 Defendants are required to do under the Protection Provision of the AAPA.

4 99. The State Department has not responded to Mohammad’s petition for protection,  
5 despite the agency’s knowledge that H.S.P. and S.A.P. are in imminent danger

6 100. Defendants have failed to respond to Mohammad’s petition within a reasonable  
7 time.

8 **THIRD CLAIM FOR RELIEF**

9 **(Mandamus Act)**

10 101. The foregoing allegations are repeated and realleged as though fully set forth  
11 herein.

12 102. The Mandamus Act, 28 U.S.C. § 1361, vests with this Court original jurisdiction  
13 over “any action in the nature of mandamus to compel an officer or employee of the United States  
14 or any agency thereof to perform a duty owed” to Plaintiffs.

15 103. The All Writs Act, 28 U.S.C. § 1651, authorizes this Court to issue all writs  
16 “necessary or appropriate” in aid of its jurisdiction.

17 104. Pursuant to the Protection Provision of the AAPA, Defendants have a duty to  
18 protect or evacuate derivative family members of Afghan SIV applicants if they are in imminent  
19 danger.

20 105. Plaintiffs H.S.P. and S.A.P. are the derivative family members of Plaintiff  
21 Mohammad, an Afghan national who applied for special immigrant status.

22 106. H.S.P. and S.A.P. are currently in imminent danger.

23 107. On August 18, Plaintiff Mohammad petitioned Defendants to fulfill their legal  
24 obligations under the Protection Provision of the AAPA.

25 108. The APA obligates Defendants to conclude a matter presented to the agency within  
26 a “reasonable time.” 5 U.S.C. § 555(b).

27 109. Defendants have failed to respond to Plaintiff Mohammad’s petition within a  
28 reasonable time.

1 110. Plaintiffs have brought this action because they have no other means to compel  
2 Defendants to fulfill their nondiscretionary duty under the Protection Provision of the AAPA.

3 111. Plaintiffs are entitled to a writ of mandamus pursuant to 28 U.S.C. §§ 1361 and  
4 1651 and under this Court's equitable authority to compel Defendants to act on Plaintiff  
5 Mohammad's petition.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff respectfully requests that this Court:

8 1. Declare that Defendants had a duty to determine whether H.S.P. and S.A.P. were  
9 in imminent danger under the Protection Provision of the AAPA;

10 2. Declare that Defendants had a duty to provide protection or to immediately remove  
11 H.S.P. and S.A.P. from Afghanistan under the Protection Provision of the AAPA;

12 3. Declare that Defendants' delay in responding to Plaintiff Mohammad's petition for  
13 protection was unreasonable;

14 4. Order Defendants to take immediate action in response to Plaintiff Mohammad's  
15 petition, to include, at minimum, assistance traveling to the United States via parole;

16 5. Award attorneys' fees and costs pursuant to 28 U.S.C. § 2412 and any other  
17 applicable statute, rule, or regulation; and

18 6. Award such other and further relief that the Court may deem just, equitable, and  
19 proper.

20  
21 Dated: October 7, 2021

Respectfully submitted,

22 /s/ Melissa S. Keaney

23 Melissa S. Keaney (CA State Bar No. 265306)  
24 INTERNATIONAL REFUGEE ASSISTANCE  
PROJECT  
25 mkeaney@refugeerights.org  
PO Box 2291  
26 Fair Oaks, CA 95628  
Telephone: (916) 546-6125  
27 Facsimile: (929) 999-8119  
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Alexandra Zaretsky\*  
azaretsky@refugeerights.org  
Mariko Hirose\*  
mhirose@refugeerights.org  
INTERNATIONAL REFUGEE  
ASSISTANCE PROJECT  
One Battery Park Plaza  
Fourth Floor  
New York, NY 10004  
Telephone: (646) 522-3043  
Facsimile: (929) 999-8119

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*Attorneys for Plaintiffs*  
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