

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

Sahro Dahir MOHAMUD; Aniso Dahir
MOHAMUD; Abdikafi Dahir
MOHAMUD; and Nasra Bile
MOHAMUD,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY; U.S. DEPARTMENT OF
STATE,

Defendants.

Case No. 3:22-cv-195

COMPLAINT

INTRODUCTION

1. This case is about the Mohamud family: Sahro and Anisa, two Somali-American sisters living in Madison, and their mother Nasra and brother Dahir, who have been waiting for years to join them here.

2. It has been over 15 years since the family has lived together. When Sahro and Anisa were teenagers, Nasra helped them flee the escalating threats of violence against the family in Somalia while she remained with Dahir, then a young child.

3. Soon after the Mohamud sisters arrived in the United States as refugees in 2012, Sahro applied to have the rest of their family, who were by then living in exile in Kenya, join them here through the U.S. Refugee Admissions Program.

4. While Sahro and Anisa waited for the application to be processed, they began working as caregivers to support themselves and the rest of their family.

5. On October 24, 2017, Nasra and Dahir were on a flight to join the sisters here with approval to enter the United States as refugees.

6. But on the same day, the Trump Administration extended its “Muslim ban” to ban refugees from many Muslim-majority nations, including Somalia, from entering the United States.

7. Nasra and Dahir were stopped from boarding their connecting flight in Turkey because of the ban and were turned back to Uganda, even though they had nothing left there—no home, belongings, or family.

8. The Mohamud family did not hear anything more substantive from the U.S. government about their application until Dahir received an email last year stating that their case had been denied and was no longer being processed.

9. The Notice of Ineligibility that closed the Mohamud family’s case stated that the family’s application was being denied “as a matter of discretion.”

10. The Mohamuds want to live as a family and lead a safe and peaceful life together, just like any family in Madison. The sisters want to be able to care for their mother, who has been diagnosed with a number of medical conditions, including dementia, just like they care for their clients. The family’s dream has been shattered without adequate explanation.

11. The Mohamuds ask the Court to uphold the law; to find that the denial of their family reunification application was unlawful under *Accardi*, the Administrative Procedure Act, and the Constitution; and to give them another, fairer chance at living as a family, before their mother’s medical condition worsens.

PARTIES

12. Plaintiff Sahro Dahir Mohamud is a U.S. legal permanent resident from Somalia and a resident of Madison, Wisconsin. Sahro is Muslim.

13. Plaintiff Aniso Dahir Mohamud, who goes by “Anisa,” is a U.S. citizen from Somalia and a resident of Madison, Wisconsin. Anisa is Sahro’s younger sister. Anisa is Muslim.

14. Plaintiff Abdikafi Dahir Mohamud, who goes by “Dahir,” is a Somali citizen living in Uganda as a registered refugee. Dahir is Sahro and Anisa’s younger brother. Dahir is Muslim.

15. Plaintiff Nasra Bile Mohamud is a Somali citizen living in Uganda as a registered refugee. Nasra is the mother of Sahro, Anisa, and Dahir. Nasra is Muslim.

16. Defendant United States Department of Homeland Security (“DHS”) is a cabinet-level department of the U.S. federal government. DHS has authority to determine whether refugees in the U.S. Refugee Admissions Program are offered admission to the United States. United States Citizenship and Immigration Services (“USCIS”), which is responsible for the review and adjudication of refugee applications in the U.S. Refugee Admissions Program, is a component of DHS.

17. Defendant United States Department of State (“State Department”) is a cabinet-level department of the U.S. federal government. The State Department manages the U.S. Refugee Admissions Program. Within the State Department, the Bureau of Population, Refugees and Migration contracts with and supervises the Resettlement Support Center in Africa and the International Organization for Migration, both entities that facilitate the processing of refugees.

JURISDICTION AND VENUE

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

19. Venue is proper in the Western District of Wisconsin under 28 U.S.C. § 1391(e)(1), because Plaintiffs Sahro and Anisa reside within this District. Defendants are agencies of the United States. No real property is involved in this action.

FACTUAL ALLEGATIONS

A. The Mohamud Family Faces Persecution in Somalia

20. The Mohamud family used to live in relative peace and prosperity in their community in Mogadishu, Somalia.

21. When the civil war started, however, the Mohamud family became a target of violence because they belonged to an ethnic minority clan.

22. In around 1997, armed men came to the Mohamud family's home and raped the children's aunt.

23. In around 2000, armed men came to a house where the Mohamud family was staying and attempted to rape Nasra. The armed men murdered her father and one of her sons when they tried to stop the attack.

24. Once the Mohamud sisters, Sahro and Anisa, became teenagers, Nasra spent the family's savings to arrange for them to flee to Egypt before they were targeted for assault by militia men. Because the family had only enough money for the sisters' travel, Nasra stayed behind in Somalia with her youngest and sole surviving son, Dahir.

25. The Mohamud sisters registered as refugees in Egypt, but life continued to be dangerous for them as young women who did not speak the local language and who did not have any family to support and protect them.

26. Because the communications systems between Egypt and Somalia were poor, the Mohamud sisters lost touch with their parents and Dahir during this time.

B. The Mohamud Sisters Resettle in the United States and Their Family Reunification Application is Approved After Four Years

27. In 2012, the Mohamud sisters, in their early 20s at the time, resettled to the United States through the U.S. Refugee Admissions Program.

28. The U.S. Refugee Admissions Program is a U.S. government program administered by DHS and the State Department that allows a select group of the world's refugees to resettle in the United States. The refugees must generally be referred to the program by an entity like the United Nations High Commissioner for Refugees ("UNHCR") on the basis that they are particularly vulnerable.

29. Soon after arriving in the United States, the Mohamud sisters were able to use a service that assists separated families to locate their parents and Dahir, who were by then living in a refugee camp in Kenya.

30. In late 2012, Sahro submitted a P-3 family reunification application for her parents and Dahir to join her and Anisa in the United States.

31. The P-3 family reunification process allows resettled refugees from certain countries, including Somalia, to have their family members join them in the United States through the U.S. Refugee Admissions Program.

32. The Mohamud sisters dreamed of focusing on their education and attending college once they got to the United States, but they began working many shifts as caregivers to support their family.

33. The Mohamud sisters sent money they earned to their parents and Dahir, so that they could leave the refugee camp and relocate to better conditions in Uganda.

34. The Mohamud sisters' father passed away while waiting for their family reunification application to be decided by DHS.

35. Dahir, then a teenager, was left as the sole in-person caretaker for Nasra, whose mental and physical health was in decline.

36. In around August 2016, DHS approved the Mohamuds' family reunification application.

C. The Muslim Bans Are Issued Before the Mohamud Family Can Reunite

37. In January 2017, before the Mohamud family could reunite in the United States, Donald Trump became President of the United States.

38. As a presidential candidate, Trump campaigned on the platform of "a total and complete shutdown of Muslims entering the United States."

39. Candidate Trump explained that he thinks "Islam hates us" and that "[w]e're having problems with the Muslims, and we're having problems with Muslims coming into the country."

40. Candidate Trump equated people of Muslim faith with threat to the security and welfare of the United States.

41. Candidate Trump stated that he would implement his shutdown of Muslims by focusing on "territories."

42. Somalia is a Muslim country in Africa where over 99 percent of the population is Muslim.

43. When he took office, President Trump appointed and hired people in the White House and executive agencies who agreed with his agenda, including Stephen Miller, who had warned that immigrants are a threat to America's culture and identity as a white, Christian nation.

44. Immediately after taking office, on January 27, 2017, President Trump issued an executive order that became known as the first in a series of “Muslim bans.”

45. The January Executive Order banned entry to the United States of nationals of certain Muslim-majority countries, including Somalia, and of all refugees. *See* Executive Order 13769 (Jan. 27, 2017).

46. The January Executive Order contained an exception prioritizing refugees who belonged to a minority religion in their country and asserted a religious persecution claim, which President Trump explained was intended to help Christian refugees.

47. The January Executive Order also directed the Secretary of State, together with the DHS Secretary and in consultation with the Director of National Intelligence, to review the U.S. Refugee Admissions Program and to determine and implement additional processing steps to ensure “the security and welfare of the United States.”

48. A federal court temporarily restrained the January Executive Order. *See* *Washington v. Trump*, No. C17-0141, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017).

49. Shortly after the court temporarily restrained the January Executive Order, President Trump complained that 77 percent of the refugees allowed in since then “hail[ed] from seven suspect countries,” including Somalia.

50. On March 6, 2017, President Trump issued a second executive order banning entry into the United States of nationals of certain Muslim-majority countries, including Somalia, and of all refugees. *See* Executive Order 13780 (Mar. 6, 2017).

51. The March Executive Order also directed the Secretary of State, together with the DHS Secretary and in consultation with the Director of National Intelligence, to review the U.S.

Refugee Admissions Program and to determine and implement additional processing steps to ensure the “security and welfare of the United States.”

52. President Trump and his officials explained that the March Executive Order was intended to achieve “the same basic policy outcome for the country” as the January Executive Order.

53. In the months following the March Executive Order, DHS, the State Department, and the Office of National Intelligence convened a panel of national security officials to undertake the review of the U.S. Refugee Admissions Program required by the order.

54. The panel convened under the March Executive Order made certain recommendations for program changes and concluded that the U.S. Refugee Admissions Program should resume as to all nationalities.

55. Although the Trump Administration endorsed the March Executive Order panel’s recommendations on program changes, near the end of the 120-day period for the review it pressured DHS to find a way to continue to ban Somali refugees.

56. President Trump asked then-acting DHS Secretary Elaine Duke why he could not ban refugees from “f**king Somalia,” in a meeting described in a book written by two New York Times Washington correspondents.

57. The March Executive Order panel was not aware of, nor were they told of, any reasons for banning Somali refugees.

58. The March Executive Order panel found that the data did not show that Somalis posed any special risk to the United States.

59. Earlier in 2017, DHS had found that a person’s country of citizenship “is unlikely to be a reliable indicator of potential terrorist activity.”

60. One member of the March Executive Order panel who confirmed the pressure from the White House to ban Somalis called it “bulls**t” in an interview with National Public Radio.

61. On October 24, 2017, the day that the refugee portion of the March Executive Order was set to expire, President Trump issued an executive order resuming the U.S. Refugee Admission Program except as determined by the DHS Secretary, Secretary of State, and the Director of National Intelligence. *See* Executive Order 13815 (Oct. 24, 2017).

62. By a memorandum dated October 23, 2017, the DHS Secretary, Secretary of State, and the Director of National Intelligence continued to ban the entry of refugees from a list of countries, most of them Muslim-majority, including Somalia (“Muslim Refugee Ban”).

63. The Muslim Refugee Ban resulted from the Trump Administration’s desire to ban Somali refugees because of discriminatory animus towards Muslims.

64. In December 2017, a federal court preliminarily enjoined the Muslim Refugee Ban under the Administrative Procedure Act. *Doe v. Trump*, 288 F. Supp. 3d 1045 (W.D. Wash. 2017).

D. The Mohamuds Are Denied Family Reunification Because of the Muslim Refugee Ban

65. The State Department scheduled Nasra and Dahir to travel to the United States on October 24, 2017, the day that the portion of the March Executive Order banning refugees was set to expire.

66. For the State Department to schedule them for a flight, Nasra and Dahir had to be considered “Ready for Departure.”

67. A refugee is deemed “Ready for Departure” only after they have submitted to a long and extensive process, including biometrics and interviews; passed security vetting; attended cultural orientation to prepare for life in the United States; and cleared health screening.

68. In anticipation of their travel, Nasra and Dahir sold or gave away their belongings in Uganda and ended the lease for the house where they were living.

69. In anticipation of the arrival of Nasra and Dahir, Sahro and Anisa moved from their one-room apartment to a two-bedroom, two-bathroom apartment. They signed a two-year lease and furnished the apartment so that their mother and brother would have a comfortable place to sleep on their first night in the United States.

70. Early in the morning on October 24, 2017, Nasra and Dahir boarded a flight from Uganda as scheduled with paperwork that allowed them entry into the United States as refugees.

71. Nasra and Dahir landed in Istanbul on October 24, 2017, cleared security, and headed to the boarding area for their connecting flight to the United States.

72. While Nasra and Dahir were waiting in the boarding area with other refugees heading to the United States, staff from the International Office of Migration (“IOM”), which contracts with the State Department to arrange refugee travel, asked Nasra and Dahir to come to their office.

73. Nasra and Dahir waited in the IOM office at the airport for several hours before an IOM staff member told them that a ban had come down that day that banned refugees from multiple countries, including Somalia. The IOM staff member told Nasra and Dahir that even though they were cleared for travel, IOM could not allow them to board the flight to the United States because of the ban.

74. An IOM staff member also called Sahro and Anisa, who were waiting for their mother and brother's arrival. The IOM staff member told the Mohamud sisters that although other refugees would be arriving as scheduled, their family would not because they are Muslim and from a banned area. The IOM staff member said that it was not a problem with the family, but with their religion.

75. Nasra and Dahir were banned from the United States under the Muslim Refugee Ban as applied by DHS and the State Department.

76. IOM kept Nasra and Dahir at the Istanbul airport for a few days before putting them on a flight back to Uganda.

77. Nasra and Dahir did not have an apartment or any belongings left in Uganda since they were not planning to be back in the country.

78. Instead of welcoming their mother and brother to their home as they had expected, the Mohamud sisters had to pick up extra work shifts to pay for their mother and brother to stay at a hotel and to gather the deposit required to rent another apartment in Uganda.

79. The Mohamud sisters had to continue paying for their two-bedroom apartment in Madison, which they no longer needed, until they could get out of the lease. When they finally left the apartment, they left behind the furniture they had purchased for the family because they did not have a way to move it or a place to put it.

80. The Mohamud sisters stopped going to school at this time because of the extra work shifts that they had to pick up.

81. A few days after Nasra and Dahir returned to Uganda, a representative of the UNHCR apologized for what happened. The representative told the family that they would be the first to travel once the ban was lifted.

82. A few days after Nasra and Dahir returned to Uganda, Dahir checked the status of their family reunification application on the U.S. government's online portal and saw that their application was on "hold" but that their security checks remained clear.

83. The Mohamud family waited for further word from the U.S. government, hoping for the day when the ban would be over.

84. From 2018 to 2020, whenever Dahir periodically emailed the State Department's Resettlement Support Center to ask for a case update, he was told: "This case is pending a further review by USCIS and it's on hold."

85. In early 2021, when Dahir emailed the Resettlement Support Center for a case update, he was told: "Your case is pending a USCIS administrative action. Please be patient."

86. In November 2021, Dahir emailed the Resettlement Support Center to report a change in contact information.

87. The Resettlement Support Center responded to Dahir's November 2021 email with the following message: "The case is denied and closed, we are no longer processing it."

88. The November 2021 email from the Resettlement Support Center to Dahir contained instructions on how to request review of the denial but it did not include the Notice of Ineligibility from DHS that is supposed to contain the reason for the denial.

89. Dahir tried to obtain the Notice of Ineligibility from the Resettlement Support Center, but the Resettlement Support Center would not give him the notice.

90. Through efforts of counsel, the Mohamud family finally received a copy of their Notice of Ineligibility, dated April 26, 2021, on January 19, 2022. A true and correct copy of this Notice of Ineligibility is attached as Exhibit A to the Complaint, with case and registration numbers redacted.

91. The Mohamud family's Notice of Ineligibility stated that they were being denied "as a matter of discretion."

92. The exact language of the denial ground on the Mohamud family's Notice of Ineligibility is as follows:

7. **DISCRETION:** After review of all the information concerning your case, including your testimony, supporting documentation, background checks, country conditions, and other available information, negative factors outweigh positive factors in your case and therefore your application for refugee resettlement to the United States under INA § 207 has been denied as a matter of discretion.

93. The Mohamud family's Notice of Ineligibility did not have any other boxes for ineligibility checked off.

94. The Notice of Ineligibility issued to the Mohamud family stated that the applicant may request review of the decision.

95. The Notice of Ineligibility stated that in the request for review, the applicant must include one or both of the following: "(1) a detailed account explaining how a significant error was made by the adjudicating officer, and/or (2) new information that would merit a change in the determination."

96. In response to further efforts of counsel to obtain information for the family to submit a request for review, DHS stated that "the case was placed on hold on October 24, 2017, due to a not clear security result" and that the "case was ultimately denied because there was a national security concern that could not be resolved."

97. Counsel asked DHS to confirm that the security hold on October 24, 2017, was not a result of the Muslim Refugee Ban and not in error, as the family had cleared two security checkpoints at airports that day and their case portal showed that security checks remained clear a few days later.

98. DHS refused to confirm that the security hold was not because of the Muslim Refugee Ban.

99. DHS refused to confirm that the security hold was not in error.

100. The request for review is due on April 19, 2022, but the Mohamud family cannot file a meaningful request for review based on the information provided in the Notice of Ineligibility or on the additional information provided by DHS.

101. The Mohamud family remains separated, with Nasra's medical conditions worsening by the day.

102. Nasra and Dahir would be in the United States today, with Sahro and Anisa, if it were not for the Muslim Refugee Ban.

E. The Mohamuds Remain Eligible for Family Reunification Under the Refugee Act and Implementing Regulations

103. Nasra and Dahir remain eligible to come to the United States under the eligibility criteria set forth in the law.

104. DHS found that Nasra and Dahir met the statutory eligibility criteria for refugee admission.

105. DHS did not find Nasra and Dahir ineligible for refugee admission based on a security-related ground of ineligibility, or any other ground of ineligibility, legislated by Congress.

106. DHS purports to have denied Nasra and Dahir refugee admission because of a "not clear" security check result from another U.S. agency raising an unresolved security concern.

107. In the security check portion of the refugee admission process, information about refugees and their families, such as their names, date of birth, address, and phone numbers, are

shared with various U.S. government agencies, which then vet the information against their data systems and report the result to DHS for use in adjudicating the refugee application.

108. If an agency vetting a refugee's information objects to the refugee being admitted to the United States, it will return a security check as "not clear."

109. There are no statutory or regulatory limitations for when a U.S. agency may object to the refugee being admitted to the United States by returning a security check as "not clear."

110. A "not clear" security check result does not mean that a refugee applicant presents a security threat to the United States. A security check result may return as "not clear" for many reasons immaterial to whether an applicant presents a security threat to the United States, including because of information errors in the system, identity match errors, or an innocent interaction between the applicant and a target of a U.S. government investigation.

111. A DHS officer adjudicating the refugee application may not know the full reasoning behind why another U.S. agency returned a security check as "not clear."

112. If a DHS officer cannot decide, based on the information in their possession, whether a "not clear" security check result from another agency is warranted or unwarranted, it deems a refugee applicant as having an "unresolved security concern."

113. DHS's Adjudicator's Manual, issued April 12, 2021, requires a DHS officer to deny a refugee application if required security checks are "not clear."

F. The Muslim Refugee Ban Continues to Harm Muslim Families Like the Mohamuds

114. The Muslim Refugee Ban continues to harm Muslim refugee families like the Mohamud family.

115. Of 104 refugees who were “Ready for Departure” on the day of the Muslim Refugee Ban and were not permitted to travel because of the ban, 53 have since been denied admission.

116. The arrival of Muslim refugees to the United States fell by 93.3 percent in the four years after President Trump took office, from 38,900 in fiscal year 2016 to 2,600 in fiscal year 2020.

117. The proportion of Muslims within the population of refugees arriving to the United States fell in the four years after President Trump took office, from 45.8 percent in fiscal year 2016 to 22 percent in fiscal year 2020.

118. The arrival of Somali refugees to the United States fell by 98.1 percent in the four years after President Trump took office, from 9,020 in fiscal year 2016 to 174 in fiscal year 2020.

119. The proportion of Somalis within the population of refugees arriving to the United States fell in the four years after President Trump took office, from 10.6 percent in fiscal year 2016 to 1.5 percent in fiscal year 2020.

120. Conditions that created the need for resettlement of Somali refugees to the United States have not abated in the years since President Trump took office.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF EQUAL PROTECTION

(On Behalf of Plaintiffs Sahro and Aniso Mohamud Against All Defendants)

121. The deprivation of family reunification to Sahro and Anisa, including because of the Muslim Refugee Ban, violates the equal protection component of the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

SECOND CLAIM FOR RELIEF
ESTABLISHMENT CLAUSE
(On Behalf of Plaintiffs Sahro and Aniso Mohamud Against All Defendants)

122. The deprivation of family reunification to Sahro and Anisa, including because of the Muslim Refugee Ban, violates the Establishment Clause of the U.S. Constitution.

THIRD CLAIM FOR RELIEF
Accardi
(On Behalf of All Plaintiffs Against Defendant DHS)

123. Defendant DHS's regulation states: "When a [DHS] officer denies an application or petition filed under § 103.2 of this part, the officer shall explain in writing the specific reasons for denial." 8 C.F.R. § 103.3(a)(1)(i).

124. Defendant DHS's regulation further states: "If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by [DHS] and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section." 8 C.F.R. § 103.2(b)(16)(i).

125. Defendant DHS's regulation at 8 C.F.R. § 103.2(b)(16)(iii) states: "Where an application may be granted or denied in the exercise of discretion, the decision to exercise discretion favorably or unfavorably may be based in whole or in part on classified information not contained in the record and not made available to the applicant, provided the USCIS Director or his or her designee has determined that such information is relevant and is classified under Executive Order No. 12356 as requiring protection from unauthorized disclosure in the interest of national security."

126. The Mohamuds' family reunification application under the U.S. Refugee Admissions Program is an "application" under the language of 8 C.F.R. § 103.2 and § 103.3.

127. The Notice of Ineligibility issued to the Mohamud family is a final agency action that violates agency procedures, including those at 8 C.F.R. § 103.2(b)(16) and 103.3(a)(1)(i).

128. The Notice of Ineligibility should be set aside under *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

129. The Notice of Ineligibility should be set aside as unlawful under 5 U.S.C. §§ 702 and 706(2).

130. In issuing the Notice of Ineligibility, Defendant DHS unlawfully withheld action required by agency procedures and therefore the Court should compel agency action unlawfully withheld under 5 U.S.C. §§ 702 and 706(2).

**FOURTH CLAIM FOR RELIEF
MANDAMUS ACT
(On Behalf of All Plaintiffs Against Defendant DHS)**

131. The Mandamus Act, 28 U.S.C. § 1361, vests this Court with original jurisdiction over any action in the nature of mandamus to compel an officer or employee of the United States, or any agency thereof, to perform a nondiscretionary duty owed to Plaintiff. The All Writs Act, 28 U.S.C. § 1651, authorizes this Court to issue all writs “necessary or appropriate” in aid of its jurisdiction.

132. Plaintiffs have no other means to compel Defendant DHS to perform the duties imposed on it by its agency regulations.

**FIFTH CLAIM FOR RELIEF
ADMINISTRATIVE PROCEDURE ACT – RULEMAKING VIOLATION
(On Behalf of All Plaintiffs Against Defendant DHS)**

133. Upon information and belief, DHS did not engage in notice-and-comment rulemaking before adopting policies of automatically denying refugee applications based on a “not clear” security check result or an “unresolved security concern.”

134. The DHS policies of automatically denying refugee applications based on a “not clear” security check result or an “unresolved security concern” violate the Administrative Procedure Act’s requirement that agency action that is substantive or legislative in nature follow notice-and-comment procedures. 5 U.S.C. § 553.

135. The DHS policies of automatically denying refugee applications based on a “not clear” security check result or an “unresolved security concern” are unlawful and should be set aside pursuant to 5 U.S.C. § 706(2)(D).

136. The Notice of Ineligibility issued to the Mohamud family should be set aside for error because it is based on the DHS policies of automatically denying refugee applications based on a “not clear” security check result or an “unresolved security concern.”

**SIXTH CLAIM FOR RELIEF
ADMINISTRATIVE PROCEDURE ACT – UNLAWFUL POLICY
(On Behalf of All Plaintiffs Against Defendant DHS)**

137. The DHS policies of automatically denying refugee applications based on a “not clear” security check result or an “unresolved security concern” are final agency actions that represent the consummation of the agency’s decision-making process and that have the consequence of resulting in denials or rejections of refugee applications.

138. Upon information and belief, DHS did not adequately consider the adverse, discriminatory, and arbitrary impact that the DHS policies of automatically denying refugee applications based on a “not clear” security check result or an “unresolved security concern” would have on the refugee program, including the impact that they would have on refugees who have been marked “Ready for Departure” and those who await family reunification.

139. The DHS policies of automatically denying refugee applications based on a “not clear” security check result or an “unresolved security concern” are unlawful, including because

they are “arbitrary, capricious, an abuse of discretion, or not in accordance with law.” The policies should therefore be set aside pursuant to 5 U.S.C. § 702 and 5 U.S.C. § 706(2).

140. The Notice of Ineligibility issued to the Mohamud family should be set aside for error because it is based on the DHS policies of automatically denying refugee applications based on a “not clear” security check result or an “unresolved security concern.”

**SEVENTH CLAIM FOR RELIEF
DECLARATORY JUDGMENT
(On Behalf of All Plaintiffs Against All Defendants)**

141. An actual controversy exists between the parties because Defendants seek to rely upon the Notice of Ineligibility issued to the Mohamud family and Plaintiffs seek a determination that the Notice of Ineligibility is invalid and unlawful.

142. For the reasons stated herein and pursuant to 28 U.S.C. § 2201-02, Plaintiffs ask the Court to declare that the Notice of Ineligibility is unlawful.

PRAYER FOR RELIEF

WHEREFORE through the Complaint the Plaintiffs respectfully request that the Court:

- A. Declare that the Notice of Ineligibility issued to Plaintiffs is unlawful;
- B. Vacate the Notice of Ineligibility issued to Plaintiffs;
- C. Order injunctive and equitable relief requiring Defendants to comply with applicable agency regulations and the law;
- D. Declare unlawful the DHS policies of automatically denying refugee applications based on a “not clear” security check result or an “unresolved security concern”;
- E. Set aside the DHS policies of automatically denying refugee applications based on a “not clear” security check result or an “unresolved security concern” and any subsequent agency action with respect to Plaintiffs that relied on the unlawful policies;
- F. Award Plaintiffs reasonable attorney’s fees and costs for this action; and
- G. Grant any other relief the Court deems just and proper.

DATED: April 7, 2022

Respectfully submitted,

s/ Mariko Hirose

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