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16 Rasha Muzahem Alwan Al Salihi

17 **UNITED STATES DISTRICT COURT**
18 **SOUTHERN DISTRICT OF CALIFORNIA**

19 RASHA MUZAHEM ALWAN AL
20 SALIHI,

21 Plaintiff,

22 vs.

23 ANTONY BLINKEN, in his official
24 capacity as Secretary of State; RENA
25 BITTER, in her official capacity as
26 Assistant Secretary of State for
27 Consular Affairs, Department of State;
28 ALEJANDRO MAYORKAS, in his
official capacity as Secretary of State of
the Department of Homeland Security;
UR JADDOU, in her official capacity
as Director of United States Citizenship
and Immigration Services,

Defendants.

Case No. 3:23-cv-00718-MMA-AHG

FIRST AMENDED COMPLAINT

Trial Date: None Set

1 Plaintiff Rasha Muzahem Alwan Al Salihi (“Plaintiff”) hereby alleges the
2 following for her first amended complaint:

3 **INTRODUCTION**

4 1. Plaintiff Rasha Muzahem Alwan Al Salihi (“Plaintiff” or “Rasha”) is a
5 refugee from Iraq who fled that country with her now thirteen-year-old daughter
6 Rose after Rasha’s father was shot and killed by insurgents who then continuously
7 threatened the rest of her family. The family has sought various avenues of reuniting
8 with Rasha’s husband and Rose’s father, Naser Samer Naji, and get him to safety in
9 the United States, including by submitting and pursuing adjudication of an
10 application for family reunification through the follow-to-join process.

11 2. Now approaching six years, while Rasha has been waiting for the final
12 processing of the application to reunite her with her husband and Rose’s father, she
13 and Rose have been separated from Mr. Naji. Their separation from Mr. Naji has
14 created tremendous hardship and fear for them as to Mr. Naji’s safety and health in
15 that his continued presence in Iraq places him in danger from violence, such as the
16 violence visited upon Rasha’s father when he was killed by insurgents, as well as
17 serious medical conditions he suffers from. Hardship is felt here, too, where Rasha
18 has worked to provide for Rose and created a life for her here, and pursued and
19 obtained U.S. citizenship, while Rose has wondered when she will see her father
20 again.

21 3. Only after Rasha filed the present lawsuit did USCIS conditionally
22 approve her form I-730 petition, signifying that she had completed the first stage of
23 processing. Still, Rasha’s wait is far from over. Before Defendants decide whether
24 to admit Rasha’s husband and Rose’s father to the United States, her application
25 must pass through additional processing stages, which are administered by
26 Defendants Antony Blinken and Rena Bitter of the U.S. Department of State (“State
27 Department”) on behalf of USCIS.

28 4. Rasha has now been waiting for close to six years since filing her I-730

1 Refugee/Asylee Petition for the final processing of her application to be reunited
2 with her husband and Rose’s father. She brings this action under 5 U.S.C. §§ 555,
3 706 and 28 U.S.C. § 1361 against Defendants who have violated her rights by
4 delaying the final adjudication of that application and seeks an order from this Court
5 pursuant to the Administrative Procedure Act (“APA”) and the Mandamus Act to
6 compel Defendants to fully complete the processing of that application so that she
7 may be reunited with her husband and they can begin their life together here in
8 California. She and her family are harmed every day they are apart.

9 **PARTIES**

10 5. Plaintiff Rasha Al Salihi is a refugee who fled Iraq along with her
11 young daughter Rose because of threats and violence directed at their family due to
12 work performed by Rasha’s father for the United States government, who was shot
13 and killed by Iraqi insurgents inside his home. Rasha applied for her husband, the
14 father to her daughter, to come to safety and be reunited with them in the United
15 States after her husband’s refugee application was denied. Rasha presently resides
16 in Oceanside, California along with her daughter. Rasha recently obtained United
17 States citizenship.

18 6. Defendant Antony Blinken is sued in his official capacity as the
19 Secretary of State and oversees the activities of Defendant Rena Bitter, the Assistant
20 Secretary of Consular Affairs, a component agency of the State Department, to
21 which USCIS has delegated responsibility for certain stages of processing family
22 reunification applications, including conducting in-person interviews with the
23 beneficiaries, collecting biometrics, arranging medical exams, and facilitating travel
24 to the United States.

25 7. Defendant Rena Bitter is sued in her official capacity as Assistant
26 Secretary of State for Consular Affairs, a component agency of the State
27 Department. Defendant Bitter directly oversees all U.S. Embassies, including the
28 U.S. Embassy in Baghdad, Iraq, to which USCIS has delegated responsibility for

1 certain stages of processing family reunification applications, including conducting
2 in-person interviews with the beneficiaries, collecting biometrics, arranging medical
3 exams, and facilitating travel to the United States.

4 8. Defendant Alejandro Mayorkas is sued in his official capacity as the
5 Secretary and head of the Department of Homeland Security (“DHS”), which
6 oversees USCIS, a component agency of the DHS, and which is responsible for the
7 processing and adjudication of Rasha’s application for family reunification.

8 9. Defendant Ur Jaddou is sued in her official capacity as the Director of
9 USCIS, a component agency of the DHS. Defendant Jaddou directly oversees
10 USCIS’s operations, including the processing and adjudication of Rasha’s
11 application for family reunification.

12 **JURISDICTION AND VENUE**

13 10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331
14 (federal question) because this action arises under federal statutes, including 28
15 U.S.C. § 1346 (providing jurisdiction in civil actions against the United States); and
16 the Mandamus Act 28 U.S.C. § 1361 (providing jurisdiction to compel officers and
17 employees of federal agencies to do their duties). This Court has power to award the
18 declaratory and injunctive relief requested herein under the Declaratory Judgment
19 Act (28 U.S.C. §§ 2201–2202), the APA (5 U.S.C. § 706), and 28 U.S.C. § 1361.

20 11. Venue is proper pursuant to 28 U.S.C. § 1391 because this is a civil
21 action in which Defendants are employees or officers of the United States, acting in
22 their official capacities, and agencies of the United States, and because a substantial
23 part of the events or omissions giving rise to the claims occurred in the Southern
24 District of California because Plaintiff resides there.

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1 **FACTUAL BACKGROUND**

2 **Rasha and her daughter flee Iraq due to threats of violence and resettle in the**
3 **United States and USCIS grants Mr. Najj a re-interview to reconsider the**
4 **denial of his refugee application**

5 12. Rasha and her husband Mr. Najj were married in 2008.

6 13. Rasha, Mr. Najj and their daughter applied to USCIS for refugee status
7 by submitting I-590 forms (“I-590 Refugee Application”).

8 14. Rasha’s and their daughter’s I-590 Refugee Applications were
9 approved on May 11, 2015, while Mr. Mr. Najj’s application was denied.

10 15. Rasha and Rose, her daughter, remained in Iraq after the approval of
11 their I-590 Refugee Applications for a time in the hope that the denial of Mr. Najj’s
12 application would be reversed. After waiting more than two years, they were
13 ultimately forced to flee Iraq and leave Mr. Najj behind because USCIS informed
14 them that they may not be permitted to resettle in the United States if they continued
15 to remain in Iraq.

16 16. In August 2017, Rasha and Rose arrived as refugees in the United
17 States and joined Rasha’s brother and his family as well as Mr. Najj’s siblings who
18 had left Iraq and resettled in the United States already.

19 17. Shortly after Rasha and Rose arrived in the United States, USCIS
20 granted Mr. Najj a re-interview in response to a Request for Review that he filed,
21 identifying significant errors and providing substantial new information that merited
22 a change in USCIS’s initial denial of his I-590 Refugee Application that was
23 premised on his answers to questions during his USCIS interview regarding his low-
24 level service in the Iraqi army and technical membership in the Ba’ath Party.

25 18. Mr. Najj’s re-interview has never been scheduled and his I-590
26 Refugee Application remains stalled.

27 19. Rasha’s and Rose’s separation from Mr. Najj, which is now
28 approaching six years, has created tremendous fear for them as to Mr. Najj’s safety

1 and health in that his continued presence in Iraq places him in danger from violence
2 similar to the danger that led to the death of Rasha's father, as well as serious
3 medical conditions he suffers, such as diabetes which has caused Mr. Naji to faint
4 several times while living alone since Rasha and their daughter had come to the
5 United States.

6 20. Additionally, Rasha's and Rose's life without Mr. Naji has been very
7 difficult as Rasha has been overburdened having to raise their daughter on her own
8 and has been unable to work to better their financial condition, a condition that
9 would certainly improve if Mr. Naji were here with them in the United States and
10 could utilize his skills as a trained civil engineer to obtain work and support them.

11 21. Furthermore, their daughter Rose, who has not seen her father for
12 almost six years now, continues to ask why she cannot see her father and when he
13 will be able to pick her up from school like other children's fathers.

14 22. Rasha, Rasha's brother and his family as well as Mr. Naji's siblings are
15 all now United States citizens.

16 23. Plaintiff and Rose eventually settled in Oceanside, California, where
17 they reside today.

18 **Rasha's Right to Family Reunification**

19 24. Congress enshrined a family's right to reunification as part of the
20 Refugee Act of 1980. See Pub. L. No. 96-212, 94 Stat. 102, 103 (1980).

21 25. Under the Refugee Act, a refugee who has been admitted to the United
22 States has the right to bring their spouse and unmarried children to join them here,
23 as long as they establish the family connection and the spouse and children are not
24 inadmissible, through the follow-to-join application process. See 8 U.S.C. §
25 1157(c)(2)(A).

26 26. The right to family reunification encompasses the entire follow-to-join
27 family reunification application process, until such time as eligible beneficiaries are
28 physically admitted to the United States as refugees.

1 27. Adjudicating family reunification applications encompasses both
2 conditional approval of the Form I-730 petitions and final approval of the
3 applications following overseas processing.

4 28. In countries where USCIS does not maintain a designated field office,
5 including Iraq, USCIS outsources responsibility for overseas processing of refugees,
6 including follow-to-join beneficiaries, to the State Department.

7 **Phase I: Initial Eligibility Determination**

8 29. To exercise the right to family reunification, a refugee who has reached
9 the United States must file a Form I-730 petition with USCIS for each eligible
10 family member demonstrating that: (1) the petitioner entered the United States as a
11 refugee; (2) the proposed beneficiary is an eligible spouse or unmarried minor child;
12 and (3) the petition has been filed within two years of the petitioner’s admission to
13 the United States as a refugee. See 8 C.F.R. § 207.7(d), (e).

14 30. Per USCIS’s regulation, “[i]f the evidence submitted with a benefit
15 request establishes eligibility, USCIS *will* approve the benefit” if the benefit in
16 question is non-discretionary. 8 C.F.R. § 103.2 (b)(8)(i) (emphasis added).

17 31. Benefits under the follow-to-join family reunification application
18 process for eligible beneficiaries are non-discretionary. See 8 U.S.C. §
19 1157(c)(2)(A).

20 32. If USCIS determines that the I-730 petition is complete and timely and
21 that the petitioner and beneficiary appear to be eligible for this immigration benefit,
22 USCIS must conditionally approve the petition pending an admissibility
23 determination of the beneficiary.

24 33. Once USCIS conditionally approves the I-730 petition, it sends the
25 conditionally approved petition to the National Visa Center within the State
26 Department.

27 **Phase II: Overseas Processing and Admission to the United States**

28 34. The National Visa Center forwards the conditionally approved petition

1 to an overseas post, which “act[s] as agents of USCIS” for a determination on
2 whether the beneficiary is admissible. FAM 203.5-2(a)(6). The overseas post may
3 be a USCIS International Office or a U.S. Embassy, depending on the location of
4 the beneficiary.

5 35. The overseas post makes the admissibility determination by
6 interviewing the beneficiary, collecting fingerprints if necessary, and reviewing
7 results from a medical exam, security vetting, and background checks.

8 36. Even where the overseas post is a U.S. Embassy performing the
9 processing duties on behalf of USCIS, USCIS policy provides that USCIS remains
10 responsible for resolving any questions that come up during the security and
11 background process.

12 37. If the overseas post determines that the beneficiary is not admissible or
13 uncovers information suggesting that the I-730 petition should not have been
14 conditionally approved, the post must return the I-730 petition to USCIS for
15 reconsideration and possible denial. This process is known as a consular return.

16 38. Following a consular return, USCIS may: (1) reaffirm the I-730 petition
17 and send it back to the overseas post, via the National Visa Center, for continued
18 processing; (2) request that the petitioner provide additional evidence to prove
19 eligibility; and/or (3) finally deny the I-730 petition.

20 39. On the other hand, if the overseas post determines that the beneficiary
21 is admissible, it must issue a “travel packet” and a boarding foil that allow the
22 beneficiary to travel to the United States.

23 40. The International Organization for Migration, a State Department
24 contractor, assists the approved beneficiary in arranging travel to the United States.

25 41. Before the beneficiary is admitted into the United States, the
26 government agencies involved in processing the family reunification applications
27 may revoke a prior approval, cancel scheduled travel to the United States, and/or
28 return the application to previous processing steps.

1 42. Medical exams, security checks, and the boarding foil all have
2 expiration dates after which they must be repeated or reissued. If the beneficiary
3 does not travel before the respective expiration dates, the beneficiary will have to
4 repeat the processing steps.

5 **Rasha files an I-730 Petition, Refugee/Asylee Relative Petition on behalf of**
6 **Mr Naji while Mr. Naji’s re-interview with USCIS to reconsider the denial of**
7 **his refugee application has not yet been scheduled**

8 43. On October 3, 2017, less than two months after she was admitted to the
9 United States as a refugee, Rasha submitted a timely I-730, Refugee/Asylee Relative
10 Petition on behalf of Mr. Naji (the “I-730 Petition”), within the two-year deadline
11 under 8 C.F.R. § 207.7(d). By submitting the I-730 petition, Rasha initiated the
12 follow-to-join family reunification application process.

13 44. Near the end of September 2020, after hearing nothing from USCIS on
14 the I-730 Petition, Rasha, through pro bono counsel, submitted a request for
15 assistance regarding the petition with the Office of the Citizenship and Immigration
16 Services Ombudsman (the “Ombudsman Office”).

17 45. In April 2021, Rasha received from USCIS a “Notice of Intent to Deny
18 Form I-730, Refugee/Asylee Relative Petition” (the “Notice of Intent to Deny”) as
19 to her I-730 Petition, which stated that it was based “on derogatory information
20 [about Mr. Naji] of which you may be unaware.”

21 46. The Notice of Intent to Deny also stated that “[t]he petition may be
22 denied based upon this information, but we cannot disclose the information to you
23 without the beneficiary’s consent,” but “[i]f the beneficiary agrees to provide
24 permission for USCIS to share this information with you, please return to us the
25 enclosed Release of Information Consent form signed by the beneficiary” within
26 “thirty-three (33) days from the date of this letter[.]”

27 47. The Notice of Intent to Deny also indicated Rasha would be permitted
28 to appeal or request reconsideration of any decision made by USCIS on her I-730

1 Petition.

2 48. Upon information and belief, the USCIS errors that formed the basis
3 for USCIS's initial denial Mr. Naji's I-590 Refugee Application, which Mr. Naji
4 successfully identified in his request for reconsideration which USCIS granted in
5 granting him a re-interview, which has not yet been conducted, are the very same
6 errors that served as the basis for USCIS issuing the Notice of Intent to Deny.

7 49. Upon information and belief, those same errors constituted the
8 information USCIS referred to in the Notice of Intent to Deny that it stated it would
9 release to Rasha upon her submitting the attached release and consent form.

10 50. On April 28, 2021, Rasha's pro bono counsel received a response from
11 the Ombudsman Office indicating that Rasha had "until July 10, 2021 to respond" to
12 the Notice of Intent to Deny.

13 51. In May 2021, Rasha, through her pro bono counsel submitted to USCIS
14 a duly signed and executed Release of Information Consent Form by Mr. Naji dated
15 April 13, 2021 (the "Release Consent"), within the 33-day deadline as USCIS had
16 instructed in the Notice of Intent to Deny.

17 52. On July 9, 2021, Rasha, through her pro bono counsel, submitted a
18 timely "Response to Notice of Intent to Deny" (the "Intent to Deny Response") in
19 response to the Notice of Intent to Deny.

20 53. The Intent to Deny Response noted that despite Mr. Naji having been
21 granted a re-interview for the purpose of reconsidering his I-590 Refugee
22 Application in October 2017, that re-interview had never been scheduled and to date
23 Mr. Naji has not been re-interviewed by USCIS for his I-590 Refugee Application.

24 54. The Intent to Deny Response also noted that despite Rasha having
25 submitted the executed Release Consent, Rasha had not yet received any disclosure
26 of the purported information upon which the I-730 Petition might be denied.

27 55. The Intent to Deny Response stated that it assumed the Notice of Intent
28 to Deny was based on the same errors that led to USCIS initially denying Mr. Naji's

1 I-590 Refugee Application.

2 56. The Intent to Deny Response stated that Rasha’s I-730 Petition should
3 be granted for the same underlying facts that had been clarified in Mr. Naji’s request
4 which USCIS had granted him in October 2017 by granting him a re-interview.

5 **Rasha files the present lawsuit to compel USCIS action**
6 **on her Family Reunification Application**

7 57. Having not received any response from USCIS to the Intent to Deny
8 Response, despite having submitted it to USCIS by the July 10, 2021 deadline as
9 instructed by the Ombudsman Office, nor having received any disclosure of the
10 purported information which USCIS referenced in the Notice of Intent to Deny upon
11 which it stated Rasha’s I-730 family reunification application might be denied,
12 despite having submitted the timely, executed Release Consent, Rasha filed the
13 present lawsuit on April 19, 2023. Document (“Doc.”) 1.

14 58. Only after Rasha filed the present lawsuit did USCIS take any action on
15 her I-730 family reunification application when it issued her a “Notice of Approval”
16 for her I-730 Petition on July 6, 2023, informing her that it had “approved [her]
17 Form I-730” and that it had “forwarded [her] petition to the Department of State
18 National Visa Center . . . [which] will notify the U.S. Embassy or Consulate abroad
19 having jurisdiction over the area where the beneficiary resides.”

20 59. Although the Notice of Approval purports to “complete[] USCIS action
21 on this matter,” initial approval of the I-730 petition does not authorize travel, nor
22 does it finally decide whether Rasha’s husband will be admitted to the United States
23 as a refugee. Further, the notice reserves the right for USCIS to verify information,
24 including through in-person interviews, and to reconsider the initial approval.

25 60. Because Defendants must still determine that the beneficiary, Mr. Naji,
26 is admissible and eligible to travel, USCIS’s initial approval of the I-730 petition is
27 conditional and does not constitute final adjudication of Rasha’s family reunification
28 application, but rather only constitutes completion of Phase I of the application

1 process.

2 61. Phase II of the application process as detailed above is still pending and
3 thus Rasha’s follow-to-join family reunification application has not been fully
4 adjudicated.

5 62. Notwithstanding USCIS finally, after almost six years, taking action on
6 Rasha’s family reunification application and completing Phase I of the application
7 process, Rasha and her daughter continue to be separated from Mr. Naji and will
8 continue to be until Phase II of the application process is completed and thus full
9 adjudication of the family reunification application has yet to be completed.

10 63. USCIS’s role in the process is still ongoing, both because the
11 conditional approval of Rasha’s I-730 Petition granted on July 6, 2023 may be
12 returned to USCIS and because USCIS oversees the Assistant Secretary of State for
13 Consular Affairs, the component agency of the State Department that USCIS has
14 delegated to be responsible for certain stages of Phase II in the application process.

15 64. Additionally, even where the State Department initiates security checks
16 for follow-to-join beneficiaries, USCIS remains responsible for resolving any hits
17 and verifying that the checks included all pertinent information.

18 **FIRST CAUSE OF ACTION**

19 **Administrative Procedure Act**

20 65. The foregoing allegations are repeated and incorporated as though fully
21 set forth herein.

22 66. Defendants have a nondiscretionary duty to adjudicate Plaintiff’s
23 family reunification application. See 8 U.S.C. § 1157(c)(2); 8 C.F.R. § 207.7; 5
24 U.S.C. § 555(b).

25 67. Defendants have violated the Administrative Procedure Act by failing
26 to adjudicate Plaintiff’s family reunification application within a reasonable time.
27 See 5 U.S.C. § 555(b).

28 68. Plaintiff is entitled to an order compelling Defendants to adjudicate her

1 family reunification application to completion. See 5 U.S.C. § 706(1).

2 **SECOND CAUSE OF ACTION**

3 **Mandamus**

4 69. The foregoing allegations are repeated and incorporated as though fully
5 set forth herein.

6 70. Defendants owe Plaintiff a non-discretionary duty to adjudicate her
7 family reunification application. See U.S.C. § 1157(c)(2); 8 C.F.R. § 207.7; 5
8 U.S.C. § 555(b).

9 71. Plaintiff has no other means to compel Defendants to perform the
10 nondiscretionary duty that Defendants owe her.

11 72. Plaintiff is entitled to a writ of mandamus under 28 U.S.C. §§ 1361 and
12 1651 and the Court’s inherent equitable authority compelling Defendants’ to
13 promptly adjudicate Plaintiff’s family reunification application.

14 **THIRD CAUSE OF ACTION**

15 **Fifth Amendment – Due Process**

16 73. The foregoing allegations are repeated and incorporated as though fully set
17 forth herein.

18 74. Plaintiff, who is a citizen of the United States, has a statutorily created
19 entitlement to the adjudication of her family reunification application. Defendants’ delay in
20 adjudicating Plaintiff’s application constitutes a deprivation of Plaintiff’s protected interest
21 without due process.

22 75. Defendants’ delay is egregious and it is without any rational justification.

23 76. Defendants’ conduct violates Plaintiff’s procedural due process rights
24 protected by the Fifth Amendment of the Constitution.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff respectfully request that this Court:

27 1. Declare pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201,
28 that Defendants’ delay in the adjudication of Plaintiff’s family reunification

