

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

JANE DOE, c/o HOLWELL SHUSTER
& GOLDBERG, LLP,
425 Lexington Avenue
New York, NY 10017,¹

Plaintiff,

- against -

UR M. JADDOU, in her official capacity
as Director of United States Citizenship
and Immigration Services,
5900 Capital Gateway Drive
Camp Springs, MD 20746;

TROY A. MILLER, in his official capacity as
Senior Official Performing the Duties
of the Commissioner of United States
Customs and Border Protection,
1300 Pennsylvania Avenue NW, Suite 1500N
Washington, D.C. 20229; and

ALEJANDRO MAYORKAS, in his official
capacity as Secretary of the United States
Department of Homeland Security,
St. Elizabeths West Campus
2702 Martin Luther King Jr. Ave. SE
Washington, D.C. 20528

Defendants.

Case No.: 8:24-cv-650

COMPLAINT

¹ Plaintiff respectfully requests that the Court waive the requirement under Local Rule 102.2(a) to provide her name and address, as explained in the concurrently filed Motion for Leave to Proceed Under Pseudonym and for Waiver of Local Rule 102.2(a).

INTRODUCTION

1. The United States welcomes refugees fleeing persecution to seek humanitarian protection and resettlement within its borders. After resettlement, refugees may be faced with an urgent need for temporary travel outside the United States—if a close relative abroad becomes sick or is in dire need of support, for example—before they become eligible for a green card or U.S. passport. This case challenges unlawful restrictions on resettled refugees’ ability to reenter the United States after temporary travel abroad.

2. Plaintiff Jane Doe is an Iraqi refugee who fled persecution and resettled to the United States in 2016 with her two children. At the time, her husband’s refugee application remained pending, and she made the difficult decision to move with her children to safety before he received a determination. Soon after their arrival in the United States, Jane Doe received devastating news: her husband’s refugee application was denied and, around the same time, he received the same type of death threat that her father had received before he was killed. Fearing for his safety and panicked that it may be her and her children’s last opportunity to see him, Jane Doe rushed to arrange what was intended to be a temporary trip back to Iraq.

3. Jane Doe remains a refugee in the United States; her status has never been formally terminated. And as a refugee, Jane Doe is not required by law to have travel documents to be admitted to the United States. But Defendants’ policy requires returning refugees to have refugee travel documents to reenter the United States under their still-valid refugee status, contrary to statute. Jane Doe thus applied for refugee travel documents from abroad to return with her children to the United States.

4. After being stranded abroad awaiting a decision on their refugee travel document applications for five and a half years, during which time Jane Doe and her husband welcomed a

third child, Defendants ultimately denied Jane Doe's application but approved her two minor children's. Because of Defendants' unlawful policy, Jane Doe is now forced to choose between sending her children to safety in the United States by themselves or all remaining in Iraq under escalating threats of violence and forfeiting the children's ability to return.

5. Plaintiff thus respectfully requests that the Court enjoin Defendants from unlawfully requiring Jane Doe to have a refugee travel document to resume her refugee status in the United States.

PARTIES

6. Plaintiff Jane Doe is a refugee who fled Iraq and resettled to the United States in 2016 with her two minor children. She then urgently traveled to Iraq with her children for what was intended to be a temporary stay and submitted timely refugee travel document applications to return to the United States from abroad. U.S. Citizenship and Immigration Services ("USCIS") approved Jane Doe's children's refugee travel document applications but denied hers. The family remains in Iraq.

7. Defendant Ur M. Jaddou is sued in her official capacity as Director of USCIS, the component agency of the Department of Homeland Security ("DHS") that assumed responsibility from the prior Immigration and Naturalization Service and promulgated the refugee travel document regulations 8 C.F.R. § 223 *et seq.* Defendant Jaddou directly oversees USCIS's operations, which include adjudication of refugee travel document applications and administration of the policy requiring returning refugees to have an approved refugee travel document before they can be readmitted to the United States. USCIS is headquartered in Maryland.

8. Defendant Troy A. Miller is sued in his official capacity as Senior Official Performing the Duties of the Commissioner of Customs and Border Protection ("CBP"), the

component agency of the DHS that manages customs and immigration at the United States border. Defendant Miller directly oversees CBP's operations, including the policy of treating returning refugees without refugee travel documents as inadmissible.

9. Defendant Alejandro Mayorkas is sued in his official capacity as Secretary of the DHS. Defendant Mayorkas directly oversees DHS's operations and those of its component agencies, such as USCIS and CBP, including the policy of treating returning refugees without refugee travel documents as inadmissible to the United States.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question). This Court has additional remedial authority under 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act).

11. Venue is proper in the District of Maryland under 28 U.S.C. § 1391(e)(1) because USCIS resides in the District of Maryland. Each Defendant is an officer of the United States sued in their official capacity. No real property is involved in this action.

FACTUAL ALLEGATIONS

a. Defendants' Policy Violates Congress' Clear Exemption of Refugees from Documentation Requirements.

12. In 1980, Congress enacted the Refugee Act, which amended the Immigration and Nationality Act ("INA"). Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102. The Refugee Act establishes policies for the admission and resettlement of refugees in the United States. See 8 U.S.C. § 1157, *et seq.*

13. As part of the Refugee Act, Congress explicitly exempted refugees from the "Documentation Requirement" inadmissibility ground that otherwise bars noncitizens who lack a

“valid entry document” and “suitable travel document” as inadmissible. 8 U.S.C. § 1182(a)(7)(A); 8 U.S.C. § 1157(c)(3).

14. Congress also made clear that refugees are exempt from the requirement to “present[] a valid unexpired passport or other suitable travel document, or document of identity and nationality” in order to be admitted to the United States. 8 U.S.C. § 1181(a), (c).

15. However, Defendants’ policy deems returning refugees without refugee travel documents “inadmissible” to the United States pursuant to 8 U.S.C. § 1182(a)(7). Memorandum re: Readmission of Asylees and Refugees Without Travel Documents from Bo Cooper, Gen. Couns. (Nov. 23, 1999) (“Cooper Memo”).

16. USCIS travel document regulations, 8 C.F.R. § 223 *et seq.*, reflect this agency policy by requiring that “a person who holds refugee status . . . *must* have a refugee travel document to return to the United States after temporary travel abroad[.]” 8 C.F.R. § 223.1(b) (emphasis added).

b. USCIS Processes and Adjudicates Refugee Travel Document Applications.

17. Refugees apply for a refugee travel document by submitting the USCIS Form I-131, Application for Travel Document, *available at* <https://www.uscis.gov/i-131>.

18. Pursuant to USCIS regulations, refugees are instructed to submit an application for a refugee travel document “while in the United States and in valid refugee status.” 8 C.F.R. § 223.2(b)(2)(i).

19. However, “[a]s a matter of discretion,” officers “may accept and adjudicate an application for a refugee travel document from an [applicant] who previously had been admitted to the United States as a refugee . . . and who departed from the United States without having

applied for such refugee travel document,” when certain conditions are met. 8 C.F.R. § 223.2(b)(2)(ii).

20. In that circumstance, the overseas office must be satisfied that: (1) “the [applicant] did not intend to abandon his or her refugee or asylum status at the time of departure from the United States”; (2) “[t]he [applicant] did not engage in any activities while outside the United States that would be inconsistent with continued refugee or asylum status”; and (3) “[t]he [applicant] has been outside the United States for less than 1 year since his or her last departure.” *Id.*

21. Under this regulation, refugees who have been outside the United States for more than one year since their last departure are not eligible to apply for a refugee travel document from abroad to return to the United States. *Id.*

22. There is no timeframe by which USCIS must adjudicate a refugee travel document application, and average processing times are currently over a year long. *See* U.S. Citizenship & Immigr. Servs., Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year, <https://egov.uscis.gov/processing-times/historic-pt> (last visited Mar. 1, 2024) (FY24 average processing time for refugee travel document is 15.5 months, as of Jan. 31, 2024).

23. Approved refugee travel documents are valid for one year and may not be extended. 8 C.F.R. § 223.3(a)(2), (c); see also U.S. Citizenship & Immigr. Servs., Instructions for Application for Travel Document at 4, *available at* <https://www.uscis.gov/sites/default/files/document/forms/i-131instr.pdf>.

24. Refugees who return to the United States with valid refugee travel documents are readmitted under their refugee status, which, among other protections and benefits, provides them with automatic work authorization. 8 C.F.R. § 223.3(d)(2); 8 C.F.R. § 274a.12(a)(3).

25. Once a refugee is readmitted, their refugee status may only be terminated if the individual “was not in fact a refugee” when admitted to the United States as a refugee. 8 U.S.C. § 1157(c)(4). This is the “sole basis” upon which USCIS can terminate refugee status. USCIS Policy Manual, Vol. 7, Part L, Ch. 6, <https://www.uscis.gov/policy-manual/volume-7-part-l-chapter-6> (last visited Mar. 1, 2024).

26. USCIS regulations proscribe additional procedural protections for refugees in termination proceedings, including written notice of USCIS’s intent to terminate refugee status and 30 days for a refugee to submit rebuttal evidence. 8 C.F.R. § 207.9.

27. If, on the other hand, USCIS denies a refugee travel document application, there is no appeal of the decision.

28. Denied applicants may file a motion to reopen and/or reconsider the denial decision on a USCIS Form I-290B, Notice of Appeal or Motion. Motions to reopen must state new facts and be supported by documentary evidence, while motions to reconsider must establish that the decision was based on an incorrect application of law or policy based on the evidence in the record at the time of the decision. USCIS Administrative Appeals Office Practice Manual, Ch. 4, <https://www.uscis.gov/administrative-appeals/aao-practice-manual/chapter-4-motions-to-reopen-and-reconsider> (last visited Mar. 1, 2024).

29. Denied applicants may also have the option to apply for a discretionary grant of humanitarian or significant public benefit parole from USCIS under 8 U.S.C. § 1182(d)(5).

30. Parolees are not deemed to be formally admitted to the United States during their temporary parole period and are not entitled to automatic work authorization. 8 U.S.C. § 1182(d)(5)(A); 8 C.F.R. § 274a.12(c)(11).

31. If an individual who is verified to have been admitted in the past as a refugee (“verified refugee”) returns to a U.S. port of entry without a valid refugee travel document, an immigration officer considers whether they are eligible to apply for a refugee travel document. 8 C.F.R. § 235.3(a)(5)(iii).

32. If the refugee travel document application is accepted, the officer “shall readmit the refugee.” *Id.*

33. However, if the refugee is found ineligible to apply for a refugee travel document at the port of entry, the officer may initiate removal proceedings under section 240 of the INA. *Id.*

c. Jane Doe and Her Children Are Stranded in Iraq After USCIS Denied Her a Refugee Travel Document to Return to the United States.

Following Resettlement in the United States, Jane Doe Traveled to Iraq with Her Children and Timely Filed Refugee Travel Document Applications to Return

34. In 2016, Jane Doe resettled as a refugee to Charlottesville, Virginia with her two children at the time. In Iraq, they had been persecuted because of her father’s work for the United States as a translator, for which he was ultimately killed by a Shiite militia. Jane Doe and her family made the difficult decision that she would travel to safety with the children on their approved refugee applications while her husband, whose refugee application was still pending, awaited a final decision in Iraq.

35. Jane Doe was relieved at the prospect of raising her children in the United States, free of the threats and violence they faced in Iraq. She enrolled her children in school and began

attending English classes. She also participated in a job training program and considered potential career paths.

36. Shortly after she resettled to the United States, however, Jane Doe's husband received a death threat from a Shiite militia. The militia sent her husband a letter with a bullet enclosed, which was reminiscent of the threats Jane Doe's father received before being killed by the same militia group.

37. Around this time, her husband's refugee application to join them in the United States was denied.

38. Fearing for her husband's safety and believing that it might be the last chance for her to see her husband and for her children to see their father, she rushed to arrange travel to Iraq.

39. Jane Doe always intended to return to the United States with her children and believed that she could obtain travel documents for their return while abroad.

40. Less than three weeks after arriving in Iraq, Jane Doe contacted the International Refugee Assistance Project for help returning to the United States.

41. In July 2017, within one year of departing the United States, her *pro bono* counsel timely submitted the family's refugee travel document applications and her applications were accepted.

42. A little over a year after her return to Iraq, in September 2017, Jane Doe and her husband welcomed their third child.²

² Jane Doe's youngest child is filing a Humanitarian Parole application for permission to travel to the United States with Jane Doe and her two older children.

43. In the following years, Jane Doe and her two oldest children completed several processing steps for their refugee travel document applications, including responding to a USCIS Request for Evidence and traveling to Baghdad for an in-person USCIS interview at the U.S. Embassy.

44. However, despite five expedite requests detailing the family's urgent situation and escalating threats of violence in Iraq, USCIS did not decide Jane Doe's refugee travel document applications for over five years.³

Jane Doe Faced Escalating Threats in Iraq While Awaiting a Decision on her Applications

45. Since returning to Iraq, Jane Doe and her family have faced escalating threats and violence from a Shiite militia, which focuses on ferreting out U.S. influences.

46. Since the militia discovered her return to Iraq, she has relocated multiple times with her children for their protection. Jane Doe keeps a low profile and rarely leaves home. Because there was no security guard at the local public school, she decided not to enroll her eldest children in school and to home school them herself.

47. The militia also threatened to harm her husband unless he separated from her and took her children away from her as punishment. As a result, Jane Doe and her two eldest children have been separated for years with only sparing visits. Her eldest children are no longer receiving an education now that they live apart from Jane Doe, and she fears for their development.

³ Jane Doe's counsel submitted expedite requests to USCIS in July 2017, January 2019, March 2020, February 2021, and September 2021.

48. In another incident, Jane Doe was picking up medication at a local pharmacy when three armed men from the militia emerged from a truck and violently assaulted her. They accused her of spying for the United States government because she had traveled to the United States and returned to Iraq. The militia warned her that she had been put on a list.

49. Jane Doe now resides with her youngest child in the home of a relative without any male protection. She has developed asthma and depression since returning to Iraq.

Litigation Spurred a Decision on Jane Doe's Applications After Over Five Years

50. In August 2022, Jane Doe filed a lawsuit challenging USCIS's unreasonable delay in adjudicating her refugee travel document applications. *Doe v. Blinken*, No. 1:22-cv-02629 (D.D.C. Aug. 31, 2022).

51. In December 2022, USCIS approved Jane Doe's daughter's application and issued a request for her son to be fingerprinted. USCIS arranged for her son to be fingerprinted in March 2023 and approved his application in April 2023.

52. Jane Doe's son and daughter's refugee travel documents are both valid from May 10, 2023 until May 9, 2024.

53. In January 2023, USCIS denied Jane Doe's refugee travel document application.

After Jane Doe's Application was Denied, She Moved for USCIS to Reopen and Reconsider the Decision

54. USCIS denied Jane Doe's refugee travel document application because the adjudicating officer found that it did not meet the regulatory criteria for approval from abroad.

55. In April 2023, Jane Doe timely filed a motion to reopen and reconsider her refugee travel document denial via USCIS Form I-290B based on new evidence and the incorrect

applications of law and mischaracterizations of factual findings that the adjudicating officer relied on.

56. In November 2023, Jane Doe filed a request with the USCIS Ombudsman to expedite consideration of her motion to reopen and reconsider.

57. Her motion to reopen and reconsider her refugee travel document denial remains pending with USCIS.

58. Pursuant to USCIS regulations, Jane Doe is not eligible to submit a new refugee travel document application because she has been outside the United States for more than one year. *See* 8 C.F.R. § 223.2(b)(2)(ii)(C).

59. By the same regulation, when her children's refugee travel documents expire on May 9, 2024 they will also be ineligible to submit a new applications.

60. Because agency policy requires her to have a refugee travel document to resume her refugee status and treats her as inadmissible without one, Jane Doe is now stranded abroad in Iraq where she faces an excruciating choice. She could send her two minor children to the United States alone before the expiration of their refugee travel documents on May 9. Or they can stay in Iraq, where the Shiite militias that have targeted the family remain active, and forfeit their ability to ever return to safety in the United States under their still-valid refugee status.

CLAIM FOR RELIEF

FIRST CAUSE OF ACTION Administrative Procedure Act (“APA”)

61. The foregoing allegations are repeated and incorporated as though fully set forth herein.

62. Defendants' policy that returning refugees without refugee travel documents are inadmissible to the United States is contrary to Congress's unambiguous statutory command that refugees be exempt from the Documentation Requirement inadmissibility ground. 8 U.S.C. § 1157(c)(3); *see also* 8 U.S.C. § 1182(a)(7)(A).

63. Defendants' application of the refugee travel document regulation 8 C.F.R. § 223.1(b) to Jane Doe, such that she "must have a refugee travel document to return to the United States," should therefore be set aside pursuant to the Administrative Procedure Act because it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; and in excess of statutory jurisdiction, authority, or limitations, or short of statutory right. 5 U.S.C. §§ 702, 706(2)(A), (C).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Declare unlawful Defendants' policy that Plaintiff is inadmissible to resume her refugee status without a refugee travel document, pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02;
2. Enjoin Defendants and all those acting on their behalf from unlawfully applying the Documentation Requirement inadmissibility ground, 8 U.S.C. § 1182(a)(7), to Plaintiff due to lack of a refugee travel document;
3. Enjoin Defendants and all those acting on their behalf from enforcing the unlawful regulatory requirement that refugees "must" have a refugee travel document to return to the United States, 8 C.F.R. § 223.1(b), against Plaintiff;
4. Award Plaintiff reasonable attorney's fees and costs for this action; and
5. Grant any other relief this Court deems just and proper.

Dated: March 4, 2024

Respectfully submitted,

/s/ Melissa Keaney

Melissa Keaney (mkeaney@refugeerights.org)

(D. MD. Bar No. 29535)

INTERNATIONAL REFUGEE ASSISTANCE
PROJECT

P.O. Box 2291

Fair Oaks, CA 95628

(916) 546-6125

Kathryn C. Meyer (kmeyer@refugeerights.org)

Admission Pro Hac Vice pending

INTERNATIONAL REFUGEE ASSISTANCE
PROJECT

One Battery Park Plaza, 33rd Floor

New York, NY 10004

(516) 838-1975

Karen Sebaski (ksebaski@hsgllp.com)

Admission Pro Hac Vice pending

Paul Kemnitzer (pkemnitzer@hsgllp.com)

Admission Pro Hac Vice pending

HOLWELL SHUSTER & GOLDBERG LLP

425 Lexington Avenue, 14th Floor

New York, NY 10017

(646) 837-5151

Attorneys for Plaintiff Jane Doe