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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FARANGIS EMAMI, *et al.*,

Plaintiffs,

v.

KIRSTJEN NIELSEN, *et al.*,

Defendants.

)
) CASE NO. 18-cv-1587-JD
)
)
) **JOINT PROPOSED INJUNCTION**
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Pursuant to the Court's March 26, 2024, Order (ECF No. 252), the parties hereby submit this Joint Proposed Injunction.

1. CLASS MEMBER IDENTIFICATION

As certified by the Court on March 26, 2024, the Class Members covered by the Proposed Injunction are:

"All applicants for visas who are nationals of Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen who (1) were refused visas under INA 212(f) pursuant to Proclamation 9645 between December 8, 2017 and January 20, 2021; (2) did not obtain a waiver of that refusal; and (3) have not subsequently obtained a visa. Excluded from the class are diversity visa applicants, and any individuals who have reapplied for a visa subsequent to the revocation of Proclamation 9645."

The following parameters will be used to identify Class Members:

1.1 individuals who made a nonimmigrant visa application (*see* 22 C.F.R. § 40.1(l)(1)) or immigrant visa application (*see* 22 C.F.R. § 40.1(l)(2)), and were refused under INA § 212(f) pursuant to Proclamation 9645 between December 8, 2017, and January 20, 2021;

1.2 no waiver of that visa refusal was issued;

1.3 the individual was not ultimately issued a visa on the same application after Proclamation 9645 was revoked;

1.4 the visa sought and refused under Proclamation 9645 was not a diversity visa; and

1.5 since the rescission of Proclamation 9645 on January 20, 2021, the applicant has not made another nonimmigrant visa application (*see* 22 C.F.R. § 40.1(l)(1)) or immigrant visa application (*see* 22 C.F.R. § 40.1(l)(2)), regardless of whether that application:

1.5.1 was refused and may be currently subject to administrative processing; or

1.5.2 was approved and a visa was issued.

2. ADJUDICATION PLAN

2.1 **Notice:** Within thirty (30) days of this order, the Department of State (“the Department”) shall provide the Class Notice of injunctive relief under this order to the Class Members as outlined in Section 3.1 below, and attached hereto as Attachment B. Final Class Notice language shall be updated within eighty (80) days of this order (*see* section 3.1.1), including all instructions needed for the verification of class membership, request for fee waivers, submission of new applications, and scheduling of consular appointments.

2.2 **Relief Date:** Within ninety (90) days of this order, the Department shall give full effect to the remaining terms of this order, including to begin accepting requests for fee waivers, verifying applicant class membership, and scheduling consular appointments.

2.3 New Nonimmigrant Visa Applications:

2.3.1 New DS-160 Form: For three-hundred-sixty-five (365) days from the Relief Date (in section 2.2), the Department shall accept new nonimmigrant visa application forms (DS-160) from Class Members, submitted via existing procedures for nonimmigrant visa application forms.

2.3.2 MRV Fee Credit: For three-hundred-sixty-five (365) days from the Relief Date (in section 2.2) and upon class membership verification, the Department will provide a one-time, non-transferrable Machine-Readable Visa (“MRV”) fee credit through the Department’s existing appointment system, as will be further outlined in the published instructions in the Class Notice (*see* section 3.1.1).

1 2.3.2.1 Class Members must follow the published instructions in the Class Notice
2 (see section 3.1.1) and (where applicable) contact the Department via the
3 approved Global Support Strategy (“GSS”) vendor to request class
4 membership verification. The Department will update the Class Notice (see
5 section 3.1.1) with the process by which it will verify class membership.
6

7 2.3.2.2 For those consular posts without GSS vendors, additional instructions will be
8 updated in the final Class Notice language (see section 3.1.1) for how to
9 verify class membership and receive an MRV fee credit.

10 2.3.2.3 The MRV fee credit will expire three-hundred-sixty-five (365) days
11 following/after its issuance.

12 2.3.2.4 The applicant may use the MRV fee credit to schedule a consular interview
13 through the standard appointment system process.
14

15 2.3.3 Class Membership Disputes: As will be further outlined in the published instructions
16 in the Class Notice (see section 3.1.1), if there is a dispute as to class membership,
17 or if any claim to class membership cannot be verified by a GSS vendor (or the
18 applicable process for consular posts without GSS vendors) within seven (7) business
19 days, the case will be forwarded to the Department’s Bureau of Consular Affairs for
20 resolution.
21

22 2.3.3.1 Within seven (7) business days, the Bureau of Consular Affairs will respond
23 with a final determination on class membership to the GSS vendor, who will
24 forward that determination to the applicant within seven (7) days.

25 2.3.3.2 If the average timeframe for review of class membership disputes by Bureau
26 of Consular Affairs extends beyond seven (7) business days, the Department
27 shall inform Class Counsel as to the reason.
28

2.3.3.3 The Department will provide Class Counsel a summary of the inquiries raised to the Bureau of Consular Affairs and how they were resolved on a monthly basis.

2.3.3.4 As outlined in section 4.2, the Department will file quarterly reports with the Court, to provide the number of class membership disputes from the quarter immediately preceding and a breakdown of how they were resolved.

2.3.3.5 Class Counsel may raise an individual case for review by contacting Defendants' trial team. Class Counsel has fifteen (15) days from learning of a class membership dispute to raise a request for review with Defendants' trial team. Defendants' trial team has fifteen (15) days to provide a response, and the parties will work with each other in good faith to resolve disputes as soon as practicable.

2.3.4 Scheduling an Interview Appointment:

2.3.4.1 After submitting a new nonimmigrant visa application form and obtaining an MRV fee credit, Class Members must follow the published instructions in the Class Notice (*see* section 3.1.1) and (where applicable) contact the Department via the approved GSS vendor to initiate scheduling an appointment. The Department will update the instructions for this process in the final Class Notice language (*see* section 3.1.1).

2.3.4.2 For those consular posts without GSS vendors, additional instructions will be updated in the final Class Notice language (*see* section 3.1.1) for how to schedule an interview appointment.

2.3.4.3 For three-hundred-sixty-five (365) days from the Relief Date (in section 2.2), at designated consular posts, to be listed in the final Class Notice

1 language (*see* section 3.1.1), Class Members may also make a request for
2 prioritization of the consular interview based on this order. Any such
3 request must be made at the same time the interview appointment is
4 scheduled via GSS (*see* section 2.3.4.1) or with a non-GSS post, if
5 applicable (*see* section 2.3.4.2), as per the published instructions in the
6 Class Notice (*see* section 3.1.1).
7

8 2.3.5 Consular Interview: Each applicant must schedule the consular interview utilizing
9 the MRV fee credit within three-hundred-sixty-five (365) days of receipt of that
10 unique MRV fee credit and follow the published instructions in the Class Notice (*see*
11 section 3.1.1).
12

13 2.3.5.1 The date of the interview may occur after the expiration date of the MRV fee
14 credit so long as the appointment is scheduled within the validity period of
15 the MRV fee credit.

16 2.3.5.2 The applicant shall appear for their consular interview on the scheduled date
17 at the scheduled time.

18 2.3.5.3 Any request to reschedule an interview must be submitted subject to the
19 standard practices of the interviewing consular post. If rescheduling is sought
20 within the prioritization period (*see* section 2.3.4.3), the applicant may utilize
21 the process for prioritization (*see* sections 2.3.4.3 and 3.1.1) for one
22 rescheduling request.
23

24 2.3.5.4 According to the standard practice for the particular visa sought, the applicant
25 must bring all required documentation to the interview. As Form DS-5535
26 may be required by the consular officer, applicants who wish to complete
27 Form DS-5535 in advance may choose to do so and electronically submit the
28

form to the consular officer as per the published instructions in the Class Notice (*see* section 3.1.1).

2.4 New Immigrant Visa Application:

2.4.1 Regardless of prior visa type refused, all Class Members who have or will have an approved immigrant petition within three-hundred-sixty-five (365) days from the Relief Date (in section 2.2) may seek relief under this order in support of an immigrant visa application. This is in addition to the relief already outlined by Proclamation 10141 and the regulatory fee exemption at 22 C.F.R. § 42.71(b)(3), available for those applicants who were previously refused an immigrant visa.

2.4.2 Previously Refused Immigrant Visas: Any Class Member who was previously refused an immigrant visa under Proclamation 9645, and wishes to make a new immigrant visa application, must contact the immigrant visa unit at the embassy or consulate where they previously applied to make arrangements for submission of a new immigrant visa application and, if necessary, transfer to the embassy or consulate of new residence. Consistent with Proclamation 10141, the Department will expedite consideration of those applications to the extent possible.

2.4.3 Previously Refused Nonimmigrant Visas: Any Class Member who is pursuing a new, first-time immigrant visa application, after a prior refusal of a nonimmigrant visa application under Proclamation 9645, will follow all standard immigrant visa processing steps as described on the Department of State's website at: <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-immigrant-visa-process/step-1-submit-a-petition.html>.

2.4.3.1 For any Class Member who, after a prior refusal of a nonimmigrant visa application under Proclamation 9645, is pursuing a new, first-time immigrant

1 visa application within three-hundred-sixty-five (365) days of the Relief Date
2 (in section 2.2), upon confirmation that the National Visa Center (“NVC”)
3 has received the immigrant petition file from USCIS, the applicant must
4 contact the NVC to request verification of class membership and the
5 immigrant visa fee credit, as per the published instructions in the Class Notice
6 (see section 3.1.1).
7

8 2.4.3.2 The class membership verification request referenced in section 2.4.3.1 must
9 be submitted via the Public Inquiry Form at:
10 [https://travel.state.gov/content/travel/en/us-visas/visa-information-](https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/ask-nvc.html)
11 [resources/ask-nvc.html](https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/ask-nvc.html), as per the published instructions in the Class Notice
12 (in section 3.1.1).
13

14 2.4.3.3 The applicant’s immigrant visa fee credit will remain valid as long as the
15 petition for which it was issued remains valid and until the immigrant visa
16 application is made.

17 2.4.4 Class Membership Disputes: Class membership will be confirmed by NVC staff
18 within seven (7) business days. If there is a dispute as to class membership, or if any
19 class membership cannot be verified by NVC staff, the case will be forwarded to the
20 Department’s Bureau of Consular Affairs for resolution.

21 2.4.4.1 Within seven (7) business days, the Bureau of Consular Affairs will respond
22 with a final determination on class membership to the NVC, who will forward
23 that determination to the applicant within seven (7) days.
24

25 2.4.4.2 If the average timeframe for review of class membership disputes by the
26 Bureau of Consular Affairs extends beyond seven (7) business days, the
27 Department shall inform Class Counsel as to the reason why.
28

1 2.4.4.3 The Department will provide Class Counsel a summary of the inquiries raised
2 to the Bureau of Consular Affairs and how they have been resolved on a
3 monthly basis.

4 2.4.4.4 As outlined in section 4.2, the Department will file quarterly reports with the
5 Court, to provide the number of class membership disputes from the quarter
6 immediately preceding and a breakdown of how they were resolved.

7 2.4.4.5 Class Counsel may raise an individual case for review by contacting
8 Defendants' trial team. Class Counsel has fifteen (15) days from learning of
9 a class membership dispute to raise a request for review with Defendants'
10 trial team. Defendants' trial team has fifteen (15) days to provide a response,
11 and the parties will work with each other in good faith to resolve the disputes
12 as soon as practicable.
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14 2.4.5 Consular Interview: Each consular interview must be scheduled according to the
15 standard NVC procedures, or as the published instructions in the Class Notice (*see*
16 section 3.1.1) may allow.
17

18 2.4.5.1 According to the standard practice for the particular visa sought, the applicant
19 must bring all required documentation to the interview. As Form DS-5535
20 may be required by the consular officer, applicants who wish to complete
21 Form DS-5535 in advance may choose to do so and electronically submit the
22 form to the consular officer as per the published instructions in the Class
23 Notice (*see* section 3.1.1).
24

25 **2.5 Decision:** After an interview, a decision will be rendered on a Class Member's visa
26 application based on the merits of each individual application. Defendants shall adjudicate
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a Class Member's visa application made under this order without regard to any prior visa denial pursuant to the now-rescinded Proclamation 9645 or its rescinded guidance.

2.5.1 A decision may include the following:

2.5.1.1 Refusal, to include refusals under INA § 221(g) (8 U.S.C. § 1201(g)) for security vetting or other administrative processing; or

2.5.1.2 Issuance.

2.5.2 For those new applications refused under INA § 221(g) (8 U.S.C. § 1201(g)), if administrative processing is pending longer than three-hundred-sixty-five (365) days, Class Counsel may raise an individual case for review by contacting Defendants' trial team. Defendants' trial team shall respond within thirty (30) days.

The parties agree to work together in good faith with a goal to resolve the inquiries.

3. NOTICE OF INJUNCTIVE RELIEF AND CLASS LIST

3.1 Website Notice of Injunctive Relief. Within thirty (30) days from the date of this order, the Department shall post the Class Notice attached to this order on travel.state.gov. Notice will be provided in the following languages: English, Arabic, and Farsi. Final Class Notice language shall be updated within eighty (80) days of this order (*see* section 3.1.1).

3.1.1 Defendants shall provide the updated notice language to Class Counsel within thirty (30) days from the date of this order, including the detailed instructions for non-GSS posts. The parties shall reach agreement on final notice language within sixty (60) days from the date of this order. Defendants shall publish final Class Notice on travel.state.gov, including the detailed instructions for seeking relief under this order, within eighty (80) days of this order.

3.2 Individual Notices. Within forty-five (45) days from the date of this order, Class Counsel will send, via the contact email and phone number information provided by each class

member, a copy of the Notice (in section 3.1) and a link to the website for future instructions on how to obtain relief under this order. Notice will be provided in the following languages: English, Arabic and Farsi.

3.3 Class List. The parties note that, on May 2, 2024, Defendants provided to Class Counsel a list of all Class Members, including any contact information provided on the visa applications denied pursuant to Proclamation 9645.

4. DEADLINE REPORTS

The Department shall file the following status reports, within fourteen (14) days of the following significant deadlines (“Deadline Reports”):

4.1 On the 90th day from the date of this order, from the Relief Date (*see* section 2.2), to provide the total number of Class Members eligible for relief;

4.2 On the 90th day, 180th day, 270th day, 365th day, and 455th day from the Relief Date (*see* section 2.2), to provide the number of class membership disputes (described in sections 2.3.3.1 and 2.4.4.1) and a breakdown of how they have been resolved;

4.3 On the 455th day from the Relief Date (*see* section 2.2), to provide the total number of Class Members who have successfully claimed their fee credit under this order;

4.4 To provide the total number of decisions (categorized in terms of issuances and refusals) for Class Members who received relief under this order as of that date:

4.4.1 on the 455th day from the Relief Date (*see* section 2.2), and

4.4.2 on the 365th day from the deadline report described in section 4.4.1.

5. EXPIRATION OF THIS INJUNCTION

This injunction shall expire one-hundred-eighty (180) days after reaching the deadline described in section 4.4.2.

1 **6. CONCLUSION**

2 The parties are submitting a proposed order that reflects the proposed injunction that, if
3 entered by the Court, should provide complete relief to the group impacted by Proclamation 9645.
4

5 DATED: May 10, 2024

Respectfully submitted,

SHEPPARD, MULLIN, RICHTER &
HAMPTON LLP

8 By

9 /s/ Babak G. Yousefzadeh
BABAK G. YOUSEFZADEH

10 *Attorney for Pars Plaintiffs*

11 LOTFI LEGAL LLC

12 /s/ Shabnam Lotfi
SHABNAM LOTFI

13 *Attorney for Emami Plaintiffs*

14 BRIAN M. BOYNTON

15 Principal Deputy Assistant Attorney General
16 Civil Division

17 WILLIAM C. PEACHEY

18 Director, Office of Immigration Litigation
19 District Court Section

20 SAMUEL P. GO

Assistant Director

21 NICOLE P. GRANT

22 DAVID KIM

23 Senior Litigation Counsel

24 /s/ Stephanie E. Gibbs
STEPHANIE E. GIBBS

25 JASON WISECUP

26 Trial Attorneys

Office of Immigration Litigation

27 Ben Franklin Station

P.O. Box 868

28 Washington, D.C. 20044

Telephone: (202) 880-0340
Email: Stephanie.E.Gibbs@usdoj.gov

Attorneys for Federal Defendants

ORDER

Pursuant to the Joint Proposed Injunction, IT IS SO ORDERED.

Dated: May 14, 2024



JAMES DONATO
United States District Judge

ATTACHMENT B

FARANGIS EMAMI, *et al.*,
Plaintiffs,

v.
KIRSTJEN NIELSEN, *et al.*,
Defendants.

)
) CASE NO. 18-cv-1587-JD
)
)
) **JOINT PROPOSED INJUNCTION,**
) **ATTACHMENT B: PROPOSED CLASS**
) **NOTICE**
)
)
)

Within 30 days from the date of the ordered injunction (*see* Attachment A – Joint Proposed Injunction, section 3.1), the U.S. Department of State shall post the following Class Notice on its website (travel.state.gov). Notice will be provided in the English, Arabic, and Farsi languages. Final Class Notice language shall be updated within 80 days of the ordered injunction (*see* Attachment A – Joint Proposed Injunction, section 3.1.1), including detailed instructions for seeking relief under the ordered injunction.

NOTICE OF CLASS-WIDE RELIEF

Class-wide relief will be available starting on [DATE – 90 days from the date of the ordered injunction].

Who Benefits Under the Court's Order

If you are a national of Iran, Libya, North Korea, Somalia, Syria, Venezuela, or Yemen and were denied a visa under P.P. 9645 between December 8, 2017, and January 20, 2021, and did not receive a waiver under P.P. 9645, you may be eligible for relief under the Court's Order.

You may be eligible for relief under this Order so long as:

- You have not submitted a new DS-160 Online Nonimmigrant Application form or a new DS-260 Immigrant Visa Electronic Application form since your prior application that was refused under P.P. 9645; or
- You have submitted a new DS-160 Online Nonimmigrant Application form or a new DS-260 Immigrant Visa Electronic Application form but have not yet appeared for a visa interview (consular appointment).

You are not eligible for relief under this Order if:

- Your application denied under P.P. 9645 was an application for diversity visa;
- You received a waiver while P.P. 9645 was in effect;
- You have received a visa since January 20, 2021; or
- You have made a new application, attended a visa interview (consular appointment) and have received a decision, including a refusal under INA 221(g), since January 20, 2021.

Individuals who benefit under this order are referred to as "class members." Only class members are eligible to benefit from this order.

How to Benefit from the Court's Order

The U.S. Department of State has reviewed its records to identify all class members who may receive relief under the Court's Order. The Department is actively working out the processes necessary to implement this Order and will update this notice by [DATE – 80 days from the date of the ordered injunction] with more detailed instructions on how class members may benefit from this Order. Please do NOT reach out to the Department to inquire about whether you benefit from this Order until we provide updates in this space.