UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

P.K., *et al.*, Plaintiffs,	)	
v.	)	Civil Action No. 1:17-cv-01533-TSC
REX W. TILLERSON, in his official capacity as Secretary of State, *et al.*, Defendants.	)	

DEFENDANTS' RESPONSE TO PLAINTIFFS' REQUEST FOR A PRELIMINARY INJUNCTION AND MANDAMUS RELIEF

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Defendants, by and through counsel, hereby oppose Plaintiffs' Request for Preliminary Injunction and Emergency Mandamus Relief (ECF No. 2) (together with the Memorandum in Support thereof (ECF No 2-1), "Plaintiff's Motion" or "Pls.' Mot.").

INTRODUCTION

Plaintiffs, aliens abroad who concede that they lack any bona fide relationship with a person or entity in the United States, seek preliminary injunctive relief and a writ of mandamus to compel the State Department to issue diversity visas to them if they are statutorily eligible for such visas, even though Section 2(c) of Executive Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (hereinafter, "the Executive Order")—which plaintiffs do not challenge—currently bars them from entering the United States. Plaintiffs' claims, however, are barred by two threshold considerations: (1) the Supreme Court's stay in *Trump v. Int'l Refugee Assistance Project* ("*IRAP*"), 137 S. Ct. 2080 (2017) (per curiam), and (2) the doctrine of consular non-reviewability. First, the Supreme Court is currently considering the validity of the Executive Order, and in doing so has already determined how it may be implemented pending Supreme Court review: the Court held that the suspension of admissions in Section 2(c) of the Executive Order may be enforced against aliens abroad who seek admission but who lack bona fide relationships to U.S. persons or entities. *IRAP*, 137 S. Ct. at 2087 ("We grant the Government's applications to stay the injunctions, to the extent the injunctions prevent enforcement of § 2(c) *with respect to foreign nationals who lack any bona fide relationship with a person or entity in the United States*.") (emphasis added). This means that Plaintiffs are covered by the Supreme Court's decision and that Defendants are not required to issue them visas while they are subject to the Executive Order's suspension of admission. Second, the principle of consular nonreviewability, a fundamental separation-of-powers principle, precludes judicial review of the political branches' decisions to exclude aliens abroad. That

principle precludes review of Plaintiffs' claims.

But even if this Court could get past those threshold arguments and were to assess the merits, Plaintiffs are not entitled to relief because they have failed to show that they have any likelihood of success or irreparable injury. Aliens who are ineligible to enter because they are subject to a suspension of entry under section 1182(f)—including aliens subjection to Section 2(c) of the Executive Order—are statutorily ineligible under 8 U.S.C. § 1201(g) to receive a visa. *See* 8 U.S.C. §§ 1182(a) (describing classes of aliens who are "ineligible to receive visas" including those designated under 1182(f)); 1201(g) (visas may not issue if the applicant "is ineligible to receive a visa ... under [S]ection 1182"). Refusing to issue diversity visas to aliens who are ineligible to enter the United States, therefore, is neither "arbitrary or capricious" nor a failure to perform a non-discretionary duty.

STATUTORY AND REGULATORY BACKGROUND

I. Diversity Visas.

Under the Immigration and Nationality Act ("INA"), Congress has granted the State Department the authority to issue a type of immigrant visa known as the diversity visa. *See* 8 U.S.C. § 1154(a)(1)(I). Congress intended diversity visas to increase the number of immigrants from countries and regions of the world that send relatively few immigrants to the United States. *See* David Weissbrodt & Laura Danielson, *Immigration Law and Practice* 160 (6th ed. 2011). The diversity visa statutes authorize the State Department to issue 50,000 diversity visas annually.[1]

[1] The statute makes available up to 55,000 permanent resident visas annually for the diversity visa program, but 5,000 of those visas are reserved for aliens covered by the Nicaraguan Adjustment and Central America Relief Act of 1997. 8 U.S.C. § 1151(e).

Under the diversity visa program, the State Department must allot diversity visas in accordance with 8 U.S.C. § 1153(c), which establishes distribution parameters by country and world region. The statute requires the State Department to select potential applicants to the diversity visa program at random. 8 U.S.C. § 1153(e)(2) ("Immigrant visa numbers made available under subsection (c) (relating to diversity immigrants) shall be issued to eligible qualified immigrants *strictly in a random order* established by the Secretary of State for the fiscal year involved." (emphasis added)). This aspect of randomness has caused the program to be described as a diversity "visa lottery." *See* 59 Fed. Reg. at 15303.

The demand for these visas is high. This year, for example, the State Department received about 12.4 million applications for the diversity visa program. *DV 2015 – Selected Entrants*, U.S. Dep't of State, https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-july-2016.html (last visited Aug. 17, 2017). To determine who is eligible to apply, the State Department, consistent with its legal obligation to make a random selection from among the applicants, conducts a drawing to identify the approximately 84,000 selectees. *Id.* Certain selectees—but not all—may then file applications for diversity visas with the State Department overseas or, if they are already present within the United States, can apply to U.S. Citizenship and Immigration Services ("USCIS") for adjustment of status to that of a permanent resident. Because many diversity visa selectees do not ultimately apply for a visa or do not establish eligibility for a visa, the State Department selects many more potential visa applicants to the diversity visa program than the number of diversity visas actually available. *Id.* And since the State Department may issue no more than 50,000 diversity visas for a given fiscal year, 8 U.S.C. § 1151(e), the diversity visas allocated to a particular country or region may become exhausted. Diversity visas for a fiscal year cannot be issued after midnight of September 30 of that year. *Id.* at

§ 1154(a)(1)(I)(ii)(II); 22 C.F.R. § 42.33(a)(1). Therefore, the State Department encourages selectees to complete the diversity visa application "immediately." *See The Diversity Visa Process*, U.S. Dep't of State, Bureau of Consular Affairs, https://travel.state.gov/content/visas/en/immigrate/diversity-visa/entry/selection-of-applicants.html (last visited Aug. 17, 2017). Importantly, not every visa application that is timely filed is issued by the end of the fiscal year, and in such circumstances, no visa is available. *See, e.g.*, *Nyaga v. Ashcroft*, 323 F.3d 906, 914 (11th Cir. 2003) ("[The language in § 1154] plainly means that aliens, like Nyaga, who have been randomly selected to qualify for a visa under the diversity visa program cannot be issued a visa after midnight of the final day of the fiscal year for which they were selected."); *Mwasaru v. Napolitano*, 619 F.3d 545, 550–51 (6th Cir. 2010) (same); *Mohamed v. Gonzales*, 436 F.3d 79, 81 (2d Cir. 2006) (same); *Coraggioso v. Ashcroft*, 355 F.3d 730, 734 (3d Cir. 2004) (same). "Though unforgiving, this strict interpretation of the diversity visa statute has been adopted by every circuit court to have addressed the issue." *Keli v. Rice*, 571 F. Supp. 2d 127, 132 (D.D.C. 2008) (quoting *Mogu v. Chertoff*, 550 F. Supp. 2d 107, 109 (D.D.C. 2008)); *see also Smirnov v. Clinton*, 806 F. Supp. 2d 1, 24 (D.D.C. 2011).

Each year, the diversity visa program begins with an entry or registration process, lasting approximately thirty days, during which aliens may submit petitions to a website maintained by the State Department. 22 C.F.R. § 42.33(b)(3); *see generally* https://travel.state.gov/content/visas/en/immigrate/diversity-visa/entry/submit-an-entry.html. To be eligible for selection, the alien must complete a diversity visa petition, which includes the selectee's children or spouses. *Id.* at § 42.33(b). After the process closes, the State Department sorts the petitions into different world regions and numbers them in a database according to the order in which they are received. *See id.* at § 42.33(c) ("Entries received during the petition submission period established for the fiscal

year in question and meeting all of the requirements of paragraph (b) of this section will be assigned a number in a separate numerical sequence established for each regional area specified in [8 U.S.C. § 1153](c)(1)(F).”). Once the petitions are sorted by region and numbered in order of receipt, the State Department conducts a random selection of entrants. *Id.* The State Department then rank orders the petitions at random. *Id.* (“Upon completion of the numbering of all petitions, all numbers assigned for each region will be separately rank-ordered at random by a computer using standard computer software for that purpose.”).

The State Department subsequently selects a certain number of petitions from the top of the list for each world region. *Id.* (“The Department will then select in the rank orders determined by the computer program a quantity of petitions for each region estimated to be sufficient to ensure, to the extent possible, usage of all immigrant visas authorized under [8 U.S.C. § 1153](c) for the fiscal year in question.”). These selected petitions from each world region list constitute the “selectees” of the diversity visa program. *Id.* Selectees may then apply for one of the 50,000 available diversity visas. *See* https://travel.state.gov/content/visas/en/immigrate/diversity-visa/if-you-are-selected.html (“It is important to remember that selection does not guarantee you will receive a visa. In order to receive a diversity visa to immigrate to the United States, selectees must still meet all eligibility requirement under U.S. law.”).

To be eligible for a diversity visa, a selectee must have a high school education, or its equivalent, or two years of qualifying work experience as defined by U.S. law. 22 C.F.R. § 42.33(a)(1). The selectee must prepare supporting documents and, once a visa number is available to the alien’s country and region, make a visa application before a consular officer and be interviewed. Visa interviews will only be scheduled if a visa number for the alien’s country and region is available. *See The Diversity Visa Process*, U.S. Dep’t of State, Bureau of Consular

Affairs, https://travel.state.gov/content/visas/en/immigrate/diversity-visa/interview.html (last visited Aug. 17, 2017). Before being interviewed, a diversity visa applicant must complete a medical examination and pay the required fee. At the end of the interview, the applicant will be informed whether the visa is approved or refused. 8 U.S.C. § 1201(g). Some visa applications are refused because the applicant has failed to establish eligibility for a visa, including where they require further administrative processing. *See The Diversity Visa Process*, U.S. Dep't of State, Bureau of Consular Affairs, https://travel.state.gov/content/visas/en/immigrate/diversity-visa/interview/after-the-interview.html (last visited Aug. 17, 2017) ("When administrative processing is required, the timing will vary based on individual circumstances of each case."). That processing can take a significant amount of time, and there is no guarantee that it will be completed by the end of the fiscal year.

Thus, selectees are not entitled to a diversity visa or even any specific action upon a visa application, but only the opportunity to apply for one. *See Ahmed v. DHS*, 328 F.3d 383, 384 (7th Cir. 2003) (affirming dismissal of Administrative Procedure Act ("APA") and mandamus claims because "'winning' the lottery meant only winning a chance to secure a visa, and that chance had an expiration date and time" where "bureaucratic delays and difficulties … prevented [plaintiff] from completing her application before that expiration date"); *Tongatapu Woodcraft Haw. Ltd. v. Feldman*, 736 F.2d 1305, 1308 (9th Cir. 1984) ("[A] *visa petition* is not the same thing as a *visa*[.]"); *Joseph v. Landon*, 679 F.2d 113, 115 (7th Cir. 1982) (per curiam); *Rahman v. McElroy*, 884 F. Supp. 782, 784 (S.D.N.Y. 1995).

II. The Executive Order And Its Legal Background.

Under the INA, admission to the United States generally requires a valid immigrant or nonimmigrant visa. *See* 8 U.S.C. §§ 1181, 1182(a)(7)(A)(i), 1182(a)(7)(B)(i)(II), 1203. The

process of applying for a visa typically includes an in-person interview and results in a decision by a State Department consular officer. *Id.* at §§ 1201(a)(1), 1202, 1204. While Congress created various paths for aliens' admission into the United States, the INA also grants the President broad discretion to restrict or suspend the entry of aliens. Specifically, Section 1182(f) provides:

> Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.

Section 1185(a)(1) similarly grants the President broad authority to adopt "reasonable rules, regulations, and orders" governing entry of aliens, "subject to such limitations and exceptions as [he] may prescribe." *Id.* at § 1185(a)(1).

On March 6, 2017, the President issued the Executive Order at issue in this case. The Executive Order was adopted in accordance with a recommendation of the Secretary of Homeland Security and the Attorney General, who expressed "particular concerns about our current screening and vetting processes for nationals of certain countries that are either state sponsors of terrorism, or that have active conflict zones in which the central government has lost control of territory to terrorists or terrorist organizations, such as ISIS, core al-Qa'ida, and their regional affiliates." Letter from Jefferson B. Sessions III, Att'y Gen., & John Francis Kelly, Sec'y of Homeland Sec., to President Donald J. Trump, at 2 (Mar. 6, 2017), https://www.dhs.gov/sites/default/files/publications/17_0306_S1_DHS-DOJ-POTUS-letter.pdf.

Section 2 of the Executive Order directs the Secretary of Homeland Security, in consultation with the Secretary of State and Director of National Intelligence, to conduct a worldwide review of screening and vetting procedures to determine whether and what additional information may be needed from foreign countries to assess whether their nationals seeking entry

pose a security threat. *See* Executive Order at § 2(a). During this worldwide review, Section 2(c) places a temporary, 90-day suspension on the admission of certain nationals of six countries that Congress and the Executive had previously identified as presenting heightened terrorism-related concerns: Iran, Libya, Somalia, Sudan, Syria, and Yemen. The Executive Order explains that each of the six countries "is a state sponsor of terrorism, has been significantly compromised by terrorist organizations, or contains active conflict zones," which is why Congress or the Executive previously designated them. *Id.* at § 1(d)); *see also id.* at § 1(b)(i).

"[I]n light of the[se] national security concerns," and pursuant to his authority under 8 U.S.C. §§ 1182(f) and 1185(a), the President determined "that the unrestricted entry into the United States" of those six countries' nationals during the 90 days "would be detrimental to the interests of the United States." Executive Order at § 2(c). The President also adopted the suspension "[t]o temporarily reduce investigative burdens on relevant agencies during the review period," "to ensure the proper review and maximum utilization of available resources for the screening and vetting of foreign nationals," and "to ensure that adequate standards are established to prevent infiltration by foreign terrorists." *Id.*[2]

The Executive Order includes a detailed provision permitting case-by-case waivers from Section 2(c)'s entry suspension when denying entry "would cause undue hardship" and "entry would not pose a threat to national security and would be in the national interest." *Id.* at § 3(c). It provides a nonexhaustive list of circumstances in which a waiver could be appropriate, including when the applicant seeks entry "to visit or reside with a close family member (such as a spouse,

[2] The Executive Order specifies that the suspension applies only to aliens who (1) were outside the United States on the Order's effective date, (2) did not have a valid visa on that date, and (3) did not have a valid visa on the effective date of the earlier executive order addressing travel.

child, or parent) who is a United States citizen, lawful permanent resident, or alien lawfully admitted on a valid nonimmigrant visa." *Id.* at § 3(c)(iv). Waivers may be requested, and are decided by a consular officer, "as part of the visa issuance process," or by the Commissioner of U.S. Customs and Border Protection (or his delegatee). *Id.* at § 3(c).[3]

Although lower courts preliminarily enjoined enforcement of Section 2(c) of the Executive Order, on June 26, 2017, the Supreme Court disagreed with the equitable balancing undertaken by those courts. The Court stayed the injunctions imposed by the lower courts and permitted enforcement of Section 2(c) against aliens "with respect to foreign nationals who lack any bona fide relationship with a person or entity in the United States." *IRAP*, 137 S. Ct. at 2088. Additionally, the Court rejected the lower court orders to the extent they "also bar enforcement of § 2(c) against foreign nationals abroad who have no connection to the United States at all" because "[d]enying entry to such a foreign national does not burden any American party by reason of that party's relationship with the foreign national." *Id*. The Court in turn recognized that the "Government's interest in enforcing § 2(c), and the Executive's authority to do so, are undoubtedly at their peak when there is no tie between the foreign national and the United States." *Id.* (recognizing in this context that the "interest in preserving national security is 'an urgent objective of the highest order'"). The Court concluded by explaining that while the injunctions would stand for foreign nationals with bona fide connections to the United States, "[a]ll other foreign nationals are subject to the provisions of [the Executive Order]." *Id.*

[3] *See Executive Order on Visas*, Bureau of Consular Affairs, U.S. Dep't of State (July 14, 2017), https://travel.state.gov/content/travel/en/news/important-announcement.html; *Q&A: Protecting the Nation from Foreign Terrorist Entry to the United States*, U.S. Dep't of Homeland Sec. (Mar. 6, 2017), https://www.dhs.gov/news/2017/03/06/qa-protecting-nation-foreign-terrorist-entry-united-states.

In addition to staying the injunctions in part, the Supreme Court granted certiorari to review the case, including the issue presented here—whether the State Department can lawfully implement the Executive Order by declining to issue visas in light of other provisions addressing visa issuance. *See* Brief of Donald J. Trump, President of the United States, *et al.*, Petitioners, in *IRAP*, at 51 (Nos. 16-1436, 16-1540) (Aug. 10, 2017) ("Section 1152(a)(1)(A) does not compel the issuance of a visa to an alien who is validly barred from entering the country, including under a suspension proclamation issued pursuant to Section 1182(f).").

Pursuant to a memorandum issued by the President on June 14, 2017, Section 2(c)'s effective date is "the date and time at which the referenced injunctions are lifted or stayed with respect to that provision," 82 Fed. Reg. 27,965 (June 19, 2017), meaning that Section 2(c)'s 90-day suspension did not begin to run until June 26, 2017, and will expire on September 24, 2017.

III. The State Department's Implementation of the Executive Order

In the wake of the Supreme Court's stay ruling permitting enforcement of Section 2(c) against aliens without a "credible claim of a bona fide relationship with a person or entity in the United States," the State Department issued guidance to its consular officers regarding implementation of the Executive Order. *IRAP*, 137 S. Ct. at 2088. As is relevant here, that guidance provides that, if an applicant is determined to be otherwise eligible for a diversity visa, consular officers should determine whether the applicant is exempt from the Executive Order due to the existing injunctions as narrowed by the Supreme Court (because he has a credible claim of a bona fide relationship) and, if not, whether the applicant qualifies for a waiver. If the applicant is not exempt and does not qualify for a waiver, the guidance instructs consular officers not to issue a diversity visa to such an alien pursuant to 8 U.S.C. § 1201(g). Aliens who are ineligible to enter the United States because they are subject to a suspension of entry under the INA's Section

1182(f)—including aliens subject to Section 2(c) of the Executive Order—are ineligible under 8 U.S.C. § 1201(g) to receive a visa. *See* 8 U.S.C. § 1201(g) (providing that a visa may not issue if the applicant "is ineligible to receive a visa ... under [S]ection 1182").

FACTUAL BACKGROUND

Plaintiffs are four foreign nationals who were selected in May 2016 to apply for a diversity visa. Compl. at ¶ 34. Each of the four applicants is a citizen of a country covered by Section 2(c) of the Executive Order; none has alleged in the Complaint a credible claim of a bona fide relationship with a person or entity in the United States that would exempt them from its application. *Id.* Plaintiffs do not challenge the Executive Order itself, but solely the State Department's policy of denying diversity visas to aliens who are otherwise eligible to receive a diversity visa on the ground that they are subject to the Order's suspension of entry. Pls.' Mot. at 2. They contend that such a policy is arbitrary and capricious, in violation of the APA. They further allege that if they are statutorily eligible for a diversity visa, the State Department has a non-discretionary duty to process and issue them a visa prior to September 30, 2017. *Id.* Plaintiffs seek a writ of mandamus and injunctive relief requiring the State Department to process and issue such diversity visas before September 30, 2017.

The first Plaintiff, P.K., is an Iranian national seeking to immigrate with his wife and two children. Compl. at ¶ 11–13. He was interviewed on November 8, 2016 in Armenia, but his visa application was refused on that same day for further administrative processing. *See* Declaration of Chloe Dybdahl ("Dybdahl Declaration") at ¶ 5.

The second, Sorkhab, is also an Iranian national seeking to immigrate with his wife and three children. Comp. at ¶ 14–16. The Department of State interviewed Sorkhab on December 14, 2016. Compl. at ¶ 37. The consular officer refused him a visa the same day for further

administrative processing. Dybdahl Declaration at ¶ 6. Although Sorkhab was re-interviewed in June, that was in connection with his newborn baby, whom Sorkhab sought to add as a derivative diversity visa beneficiary. *Id.*

The third Plaintiff, Almaqrami, is a Yemeni national. Compl. ¶ 17. Almaqrami was interviewed and refused a visa on May 25, 2017. *Id.* at ¶ 38. On July 12, 2017, the Department of State contacted Almaqrami. *Id.* On August 4, 2017, Almaqrami replied in an e-mail to the Department of State stating that he has a bona fide relationship with a U.S. entity. Almaqrami followed up on this issue and provided documentation to this same effect on August 18, 2017. Dybdahl Declaration at ¶ 7. These admissions conflict with the allegations in the Complaint, which state that "Almaqrami does not have any family in the United States, nor does he currently have a job offer or other connections to an organization in the United States that would qualify under the Supreme Court's 'bona fide relationship' standard." Compl. ¶ 38.

The fourth Plaintiff, Furooz, is also a Yemeni national. *Id.* at ¶ 18. After Furooz was interviewed and refused a visa for further administrative processing on December 15, 2016, he sent an e-mail to the U.S. Embassy in Kuala Lumpur, Malaysia on July 27, 2017 indicating that he has a bona fide relationship with a cousin in the United States. Dybdahl Declaration at ¶ 8. In the Complaint, filed one week later, Furooz alleges that he "ha[s] not established any bona fide relationship with any person or entity in the United States that would qualify [him] for an exception to the [Order]." Compl. ¶ 34. Regardless of this inconsistency, Furooz provided documentation of his relationship to his cousin within the United States on August 18, 2017. Dybdahl Declaration at ¶ 8.

LEGAL STANDARDS

I. Preliminary Injunctive Relief.

In order to prevail on a motion for a preliminary injunction, the movants must show "that [they are] likely to succeed on the merits, [are] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [their] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A preliminary injunction is an "extraordinary and drastic remedy" that is "never awarded as of right." *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008) (citations omitted). Accordingly, preliminary injunctions "should be granted only when the party seeking the relief, by a clear showing, carries the burden of persuasion." *Cobell v. Norton*, 391 F.3d 251, 258 (D.C. Cir. 2004) (citation omitted).

Because the basic function of a preliminary injunction is to preserve the status quo pending a determination of the action on the merits, *Aamer v. Obama*, 742 F.3d 1023, 1043 (D.C. Cir. 2014); *Dorfmann v. Boozer*, 414 F.2d 1168, 1173 (D.C. Cir. 1968) (per curiam) ("The power to issue a preliminary injunction, *especially a mandatory one*, should be sparingly exercised.") (emphasis added) (internal quotations omitted), courts generally require a movant to meet a higher degree of scrutiny where the movant seeks to alter rather than maintain the status quo, or where issuance of the injunction will provide the movant with substantially all of the relief that would be available after a trial on the merits. *See, e.g.*, Schwarzer, Tashima & Wagstaffe, *Federal Civil Procedure Before Trial* § 13:46 (2017 ed.); *cf. Allina Health Servs. v. Sebelius*, 756 F. Supp. 2d 61, 69–70 (D.D.C. 2010) (noting how "courts have held the movant for a mandatory injunction to a higher burden").

II. Review Under The Administrative Procedure Act.

Whether the State Department has complied with the APA is a question of law. *See Am.*

Bioscience, Inc. v. Thompson, 269 F.3d 1077, 1083 (D.C. Cir. 2001). The Court can set aside agency action, findings, or conclusions only if they are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Courts have stressed that this is a "deferential" standard, *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 658 (2007), that "presume[s] the validity of agency action," *Southwestern Bell Tel. Co. v. FCC*, 168 F.3d 1344, 1352 (D.C. Cir. 1999), and bars courts from substituting their own judgment for that of the agency's. *See Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

III. Review Under The Mandamus Act.

The extraordinary writ of mandamus is available "to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361. The writ of mandamus is "a drastic and extraordinary remedy reserved for really extraordinary causes." *Cheney v. United States Dist. Court*, 542 U.S. 367, 380 (2004) (internal quotations and citation omitted); *accord Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34 (1980). Mandamus relief is available only if "(1) the plaintiff has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is no other adequate remedy available to the plaintiff." *In re Medicare Reimbursement Litig.*, 414 F.3d 7, 10 (D.C. Cir. 2005) (citations omitted)."[T]he standards for obtaining relief [through mandamus and through the APA] are essentially the same." *Viet. Veterans of Am. v. Shinseki*, 599 F.3d 654, 659 n.6 (D.C. Cir. 2010) (citing *In re Core Commc'ns Inc.*, 531 F.3d 849, 855 (D.C. Cir. 2008)).

ARGUMENT

I. The Plaintiffs Have No Likelihood Of Success.

To demonstrate a likelihood of success on the merits, the Plaintiffs must make a

"substantial indication of probable success." *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977); *see also Demjanjuk v. Meese*, 784 F.2d 1114, 1117-18 (D.C. Cir. 1986) (Bork, J.) (denying equitable relief where, despite threat of irreparable harm, petitioner failed to demonstrate likelihood of success). Here, Plaintiffs' claims are centered on whether the State Department has acted arbitrarily or capriciously in the adjudication of their diversity visa applications, or has violated a clear duty in not already issuing diversity visas to Plaintiffs. They do not challenge the Executive Order itself.

Plaintiffs' central argument on the merits is that "the policy set forth in the cable is contrary to law and must be set aside" because (1) "[n]othing authorizes the State Department to impose additional eligibility requirements for an immigrant visa"; (2) "the State Department cable illegally discriminates by making national origin relevant to the decision to issue immigrant visas"; and (3) "[t]he plain text of the Executive Order, consistent with the authorizing statute, only limits entry and does not prohibit visa issuance." Pls.' Mot. at 11–12. Plaintiffs' claims, however, are barred by two threshold considerations: (1) the Supreme Court's stay in *IRAP* and (2) the doctrine of consular non-reviewability. Even if this Court were to assess the merits, however, Plaintiffs have failed to show that they have any likelihood of success. Refusing to issue diversity visas to aliens who are ineligible to enter the United States pursuant to 8 U.S.C. § 1182(f) is neither "arbitrary or capricious" nor a failure to perform a non-discretionary duty.

A. The Plaintiffs' Claims Are Precluded By the Supreme Court's Stay in IRAP.

As a threshold matter, the Supreme Court is currently considering the validity of the Executive Order, and in doing so has already balanced the equities in determining how that Order may be implemented pending its consideration. The relief Plaintiffs seek here is contrary to that Supreme Court determination regarding preliminary relief. Specifically, the Court held that the

suspension in Section 2(c) of the Executive Order may be enforced against aliens abroad who seek admission but who lack a credible claim of a bona fide relationship with U.S. persons or entities. *IRAP*, 137 S. Ct. at 2088; *see also id.* at 2087 ("We grant the Government's applications to stay the injunctions, to the extent the injunctions prevent enforcement of § 2(c) *with respect to foreign nationals who lack any bona fide relationship with a person or entity in the United States*.") (emphasis added). Importantly, the Court's equitable balance was made when faced with the legal claim, embraced by the district court in *IRAP* and the court of appeals in *Hawai'i v. Trump*, that the State Department was unlawfully implementing the § 1182(f) suspension on entry by denying visas to foreign nationals. *See IRAP v. Trump*, — F. Supp. 3d —, 2017 WL 1018235, at *9 (D. Md. Mar. 16, 2017) (holding that visas could be issued to individuals who could not enter under Section 1182(f)); *Hawai'i v. Trump*, 859 F.3d 741, 778 (9th Cir. 2017); *see also* Brief of Donald J. Trump, President of the United States, *et al.*, Petitioners, in *IRAP*, at 51 (Nos. 16-1436, 16-1540) (Aug. 10, 2017) (other statutes do "not compel the issuance of a visa to an alien who is barred from entering the country" under 1182(f)). Thus, the Supreme Court's stay order has already determined, at least implicitly, that pending the Supreme Court's consideration of the merits, the Government may implement the Executive Order by denying visas to foreign nationals who are suspended from entering the country (unless those foreign nationals have a bona fide relationship with a person or entity in the United States). Here, Plaintiffs' Complaint concedes that "[t]hey have not established any bona fide relationship with any person or entity in the United States that would qualify them for an exception to the Executive Order." Compl. ¶ 34. This indicates that they are therefore covered by the Supreme Court's decision in June regarding the issuance of visas.

Plaintiffs' contrary interpretation—that visas must be issued even if a person is lawfully barred from entry by the Executive Order—would potentially create confusion and uncertainty at

the borders and ports of entry by allowing individuals to travel on valid visas, but then be prevented from entering the United States at the border. Given that the Supreme Court permitted the Executive Order to go into effect except to the extent it said otherwise, and did so in the face of arguments and one circuit court's holding that visa requirements override the President's Section 1182(f) authority, this Court should not issue an injunction that would require the issuance of visas in the face of the unchallenged entry bar.

More importantly, Plaintiffs' attempt to artfully plead around this problem is in effect an effort to circumvent the Supreme Court's holding on the balance of equities in this context, where foreign nationals abroad lack any bona fide connection to the United States, yet seek court intervention in their efforts to gain entry to the United States. The Supreme Court unambiguously stated that in those circumstances, preliminary relief is not warranted because "[d]enying entry to such a foreign national does not burden any American party by reason of that party's relationship with the foreign national" and the "Government's interest in enforcing §2(c), and the Executive's authority to do so, are undoubtedly at their peak when there is no tie between the foreign national and the United States." *IRAP*, 137 S. Ct. at 2087. The Supreme Court concluded that while the injunctions would stand for foreign nationals with bona fide connections to the United States, "*[a]ll other foreign nationals are subject to the provisions of [the Executive Order]*." *Id*. (emphasis added). This Court should reach the same conclusion regarding the equitable balance presented by Plaintiffs here. Striking a different balance and granting the relief Plaintiffs request would contradict the Supreme Court's determination on preliminary relief.

B. The Doctrine of Consular Non-Reviewability Bars Plaintiffs' Claims.

It is a fundamental separation-of-powers principle, long recognized by Congress and the Supreme Court, that the political branches' decisions to exclude aliens abroad generally are not

judicially reviewable. That firmly established principle bars any review of Plaintiffs' claims. The Supreme Court has permitted limited review only when a U.S. citizen asserts a cognizable claim that exclusion of an alien abroad infringes the citizen's own rights. No such claims are at issue here, as Plaintiffs admit in their Complaint.

"The exclusion of aliens is a fundamental act of sovereignty" that the Constitution entrusts to the political branches. *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950). "The right to" exclude aliens "stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation." *Id.* The Supreme Court accordingly "ha[s] long recognized the power to … exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (quoting *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953)).

As Justice Jackson explained in *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952), "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government." *Id*. at 588–89. "Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Id.* at 589. "The conditions of entry for every alien, the particular classes of aliens that shall be denied entry altogether, the basis for determining such classification, the right to terminate hospitality to aliens, [and] the grounds on which such determination shall be based" are "wholly outside the power of this Court to control." *Fiallo*, 430 U.S. at 796 (citation omitted).

Of course, Congress generally "may, if it sees fit, … authorize the courts to" review decisions to exclude aliens. *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892). Absent

such affirmative authorization, however, judicial review of exclusion of aliens outside the United States is ordinarily unavailable. Courts have applied the fundamental and longstanding principle of nonreviewability to conclude that the denial or revocation of a visa for an alien abroad "is not subject to judicial review … unless Congress says otherwise." *Saavedra Bruno v. Albright*, 197 F.3d 1153, 1159 (D.C. Cir. 1999). Courts have referred to that principle as "the doctrine of consular nonreviewability," *id.*, but this shorthand label merely reflects the context in which the principle most often arises—that is, challenges to decisions by consular officers adjudicating visa applications. The principle underlying that doctrine applies regardless of the manner in which the Executive decides to deny entry to an alien abroad. *See, e.g.*, *Doan v. INS*, 160 F.3d 508, 509 (8th Cir. 1998) (R. Arnold, J.) (applying the doctrine to a non-consular officer's decision who was the "functional equivalent … because he [wa]s an Executive Branch official … deciding questions of admissibility brought before him by aliens who are also located outside the United States").

The Supreme Court has recently affirmed these basic principles, engaging in limited review *only* when a *U.S. person* contended that the denial of a visa to an alien abroad violated the citizen's *own* rights. *See Kerry v. Din*, 135 S. Ct. 2128, 2139–41 (2015) (Kennedy, J., concurring); *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972). Here, Plaintiffs have conceded that they lack connections to the United States, and the rights of a person here are therefore not implicated—making even the limited judicial review in *Mandel* and *Din* unavailable.

This precludes review of Plaintiffs' claims where, as here, Congress has declined to provide for judicial review of decisions to exclude aliens abroad. Specifically, Congress has not authorized judicial review of visa denials. Although Congress has created in the APA "a general cause of action" for "persons 'adversely affected or aggrieved by agency action within the meaning of a relevant statute,'" *Block v. Cmty. Nutrition Inst.*, 467 U.S. 340, 345 (1984) (citation omitted), that

cause of action does not permit review because the APA does not displace the general rule barring such review of decisions to exclude aliens abroad. *Saavedra Bruno*, 197 F.3d at 1157–62; *see also* 5 U.S.C. §§ 701(a), 702(1).

And if courts cannot review a consular officer's decision to deny a visa, then *a fortiori*, Plaintiffs cannot seek review of the timing or pace of administrative processing prior to the scheduling of a visa interview. *See, e.g.*, *Saleh v. Holder*, 84 F. Supp. 3d 135, 139 (E.D.N.Y. 2014) (holding that "courts lack subject matter jurisdiction to review the visa-issuing process itself"); *Castillo v. Rice*, 581 F. Supp. 2d 468, 474 (S.D.N.Y. 2008) (collecting cases for the proposition that "Petitioners simply do not have a right to an expedited interview date from the Consulate"). That is particularly true given that the diversity visa program does not specify any timeline or maximum length of time for administrative processing. The State Department lacks authority to issue diversity visas after the end of the fiscal year. It cannot, and is not required to, find all diversity visa applicants eligible and issue them visas before that date. Indeed, the State Department selects more aliens than the number of visas it may issue, in part because of the recognition that not all applicants will be able to establish eligibility and be issued visas by the end of the fiscal year. *See DV 2015 – Selected Entrants*, U.S. Dep't of State, https://travel.state.gov/content/visas/en/law-and-policy/bulletin/2016/visa-bulletin-for-july-2016.html (last visited Aug. 17, 2017).

C. Plaintiffs Fail to Show a Likelihood of Success on the Merits.

Even assuming this Court could assess the merits of Plaintiffs' claims, those claims have no likelihood of success. Plaintiffs contend that the State Department's policy of denying diversity visas to applicants they believe are eligible is contrary to law because (1) it must issue visas to otherwise qualified applicants and (2) its denial of visas to nationals of the six countries in the

Executive Order violates the statutory bar on discrimination. Plaintiffs' claims lack merit.

Congress has directed that a visa may not be issued if the applicant "is ineligible to receive a visa … under [S]ection 1182." 8 U.S.C. § 1201(g). Section 1182 lists many such grounds for ineligibility—among them health, criminal history, and terrorist affiliation. Whatever the relevant underlying ground in any individual case, the alien is denied a visa because he is "ineligible" to enter "under [S]ection 1182." *Id.*

That is true of aliens who are ineligible to enter because they are subject to a suspension of entry under Section 1182(f)—including aliens subject to Section 2(c) of the Executive Order. The Department of State treats aliens covered by exercises of the President's Section 1182(f) authority as ineligible for visas. *See* U.S. Dep't of State, 9 *Foreign Affairs Manual*, 302.14-3(B) (2016). Indeed, the very premise of Plaintiffs' argument is mistaken because it overlooks how "as an absolute precondition to admission, an alien must submit his proof *that he is not excludable* to a preliminary screening by a consular officer." *Castaneda-Gonzalez v. INS*, 564 F.2d 417 (D.C. Cir. 1977) (interpreting 8 U.S.C. § 1201(g) (emphasis added)); *see also* 8 U.S.C. § 1182(a). The conditions for being "excludable"—the statutory forerunner to inadmissibility—are contained in 8 U.S.C. § 1182, and therefore encompass the President's § 1182(f) authority to restrict the entry of certain foreign nationals. Section 1182(a) explains quite plainly that "aliens who are inadmissible under the following paragraphs" (including Section 1182(f)) "*are ineligible to receive visas*." 8 U.S.C. § 1182(a) (emphasis added). In conjunction with this provision, Section 1201(g) provides that "[n]o visa ... shall be issued to an alien if ... it appears to the consular officer ... that such alien is ineligible to receive a visa ... under section 1182." 8 U.S.C. § 1201(g). Because Plaintiffs do not challenge the Executive Order, and Plaintiffs are inadmissible pursuant to that Order, Sections 1182(a) and 1201(g) specify plainly that no visa may be issued.

Thus, if an alien is subject to Section 2(c) and does not qualify for a waiver, he is properly denied an immigrant visa because he is ineligible as someone barred from entering the country under Section 1182(f)—not because the State Department is disregarding the visa statutes or rules created by the diversity visa program. Instead, the Department is fully complying with those rules in making the determination whether the alien seeking a diversity visa is subject to any other bars on admissibility including, as relevant here, those under Section 1182(f) and the Executive Order. Moreover, it would make little sense to issue a visa to an alien whom the consular officer knows is barred from entering the country, only for the alien to be denied admission upon arrival. A visa entitles the alien to travel to the United States, but does not entitle the alien to be admitted if, upon arrival, "he is found to be inadmissible." 8 U.S.C. § 1201(h). Applying the Executive Order at that time would result in administrative confusion, in spite of Plaintiffs' assurances that they will forgo travel until the Executive Order admission restriction is lifted.

The implications of Plaintiffs' argument extend far beyond the current controversy regarding the Executive Order. Section 1182 includes the full range of inadmissibility grounds, including based on health concerns, § 1182(a)(1); criminal activity, § 1182(a)(2); terrorism, § 1182(a)(3); and illegal entrants and smugglers, § 1182(a)(6). Under Plaintiffs' erroneous theory that the diversity visa statutes override these limitations, the State Department would be required to issue visas to not only those covered by the Executive Order, but to all such groups of inadmissible aliens. That is not the way the statutes work together. *See* 8 U.S.C. § 1182(a) (individuals in these groups "are ineligible to receive visas *and* ineligible to be admitted") (emphasis added). Moreover, Plaintiffs' general view that being selected in the "visa lottery" carries with it an entitlement to a diversity visa must be wrong because the State Department selects a number of potential applicants (around 100,000) that far exceeds the number of available visas

(50,000). Plaintiffs' logic—and their rhetoric of "entitlement" to a diversity visa once they win the lottery—would wholly upend the way the State Department operates the diversity visa program in a broad range of circumstances where there is no Executive Order suspending entry.

Accordingly, Plaintiffs' claims that the State Department must issue them diversity visas if they are statutorily eligible, even if they are otherwise ineligible to receive a visa by virtue of Section 1182(f), lacks merit.

II. The Plaintiffs Cannot Demonstrate Any Irreparable Harm.

Parties moving for a preliminary injunction must demonstrate that they are "likely to suffer irreparable harm in the absence of preliminary relief." *Abdullah v. Obama*, 753 F.3d 193, 197 (D.C. Cir. 2014). As with the other factors, the movants have the burden of making a "clear showing" that they face such injury. *Id.*; *see, e.g.*, *Fisheries Survival Fund v. Jewell*, — F. Supp. 3d —, 2017 WL 629246, at *3 (D.D.C. Feb. 15, 2017) (Chutkan, J.) (noting how "[t]he standard for irreparable harm is particularly high in the D.C. Circuit"). The Supreme Court has made clear that a court may not issue "a preliminary injunction based only on a *possibility* of irreparable harm ... [since] injunctive relief [i]s an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." 555 U.S. at 22 (emphasis added). If a party makes no showing of imminent irreparable injury, the court may deny the motion for injunctive relief without considering the other factors. *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995).

In this case, Plaintiffs claim that if the Court does not preliminarily enjoin Defendants from implementing the alleged cable guidance, then "Plaintiffs face the imminent prospect of an injury that cannot later be cured." Pls.' Mot. at 10. But as previously discussed, the Supreme Court has already balanced the relevant equities here—between "foreign nationals who lack any bona fide

relationship with a person or entity in the United States" and the Government's "interest in preserving national security is 'an urgent objective of the highest order'" and is "undoubtedly at [its] peak when there is no tie between the foreign national and the United States." *IRAP*, 137 S. Ct. at 2088. That same balance applies here, and requires the denial of preliminary relief in these circumstances, as the Supreme Court concluded. *See id*. ("All other foreign nationals are subject to the provisions of [the Executive Order].").

Moreover, Plaintiffs have failed to show that they are otherwise eligible for diversity visas notwithstanding the Executive Order. Being selected as a winner of the diversity visa lottery does not guarantee a visa will issue. 8 U.S.C. § 1154(a)(1)(I)(ii)(II) (entitling a diversity visa only to "[a]liens who qualify"). Aliens invited to apply for a diversity visa must still demonstrate that they are eligible and admissible under 8 U.S.C. § 1182, and that they will remain so eligible through the end of the fiscal year. *Id.*; *see also id.* § 1182(a) ("Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas[.]"); 8 U.S.C. § 1361 (noting that visa applicants bear the burden of establishing eligibility). The visa application process is complex, and requires the applicant to submit numerous records, including birth records, court and prison records, military records, and records concerning education or work experience. *Id.* at § 1202(a), (b). Plaintiffs make no real argument that they have satisfied, or will satisfy, all of the admissibility and other requirements for a diversity visa by the end of fiscal year 2017. *See* Compl. ¶ 40 (stating in conclusory fashion that, *to date*, "Plaintiffs are statutorily eligible to receive the visa" and "do not fall within any of the grounds of inadmissibility under 8 U.S.C. § 1182(a)"). Indeed, three of the named Plaintiffs were denied visas for administrative processing *prior* to the effective date of the Executive Order becoming enforceable (the fourth, Mr. Almaqrami, was originally interviewed on May 25, 2017 but provided documentation of a bona

fide relationship to a U.S. entity on August 18, 2017). Thus, they have not "clear[ly]" shown that any potential visa denial would be a result of the State Department's allegedly unlawful policy implementing the Executive Order, as opposed to Plaintiffs' failure to prove that they satisfy the diversity visa eligibility requirements. And even if they could, Plaintiffs' asserted need for the extraordinary remedy of preliminary injunctive relief is undermined by their own delay in seeking such relief. *Newdow v. Bush*, 355 F. Supp. 2d 265, 292 (D.D.C. 2005).

Thus, Plaintiffs have not met the "considerable burden" of proving that their purported injuries are "certain, great and actual—not theoretical—and imminent, creating a clear and present need for extraordinary equitable relief to prevent harm." *Power Mobility Coal. v. Leavitt*, 404 F. Supp. 2d 190, 204 (D.D.C. 2005) (quoting *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)) (internal quotation marks omitted).

III. Both The Balance Of Hardships And The Public Interest Favor Defendants.

The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See, e.g.*, *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, courts must "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312–13 (1982). At its core, Plaintiffs' motion is asking for special treatment from our nation's immigration laws, but they make no showing that their alleged "irreparable injury" outweighs the threatened harm that an injunction would cause, or that it would not "adversely affect [the] public interest[.]" *Id.*; *Southdown, Inc. v. Moore McCormack Res., Inc.*, 686 F. Supp. 595, 596 (S.D. Tex. 1988) (noting how it is the petitioner's burden to show injunction causes "no disservice to unrepresented third parties"). Here, the public interest and the balance of

harms call for denying the request for an injunction.[4]

Any order that enjoins a governmental agency from enforcing statutes and executive orders promulgated by the duly elected representatives of the people constitutes an irreparable injury that weighs heavily against the entry of injunctive relief. *See, e.g.*, *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977). Moreover, the part of the Executive Order at issue here—which restricts such aliens' entry—reflects a national security judgment of the President and Cabinet-level officials. *Cf. Louhghalam v. Trump*, 230 F. Supp. 3d 26, 34, 37 (D. Mass. 2017) (declining to issue a preliminary injunction because it would "encroach upon the 'delicate policy judgment' inherent in immigration decisions" and noting how "the public interest in safety and security in this ever-more dangerous world is strong") (quoting *Plyler v. Doe*, 457 U.S. 202, 225 (1982)).

Indeed, as explained above, the Supreme Court has already conducted such a balancing and has concluded that the temporary suspension of admitting foreign nationals from the six affected countries should *not* be enjoined. As the Court recently put it, "[t]o prevent the Government from pursuing [national-security] objective[s] by enforcing § 2(c) [of the Order] against foreign nationals unconnected to the United States would appreciably injure its interests, without alleviating obvious hardship to anyone else." *IRAP*, 137 S. Ct. at 2088 ("The interest in preserving national security is 'an urgent objective of the highest order.'") (quoting *Holder v. Humanitarian Law Project*, 561 U.S. 1, 28 (2010)). In fact, the Supreme Court has stated that

[4] Defendants also note that the harm balance is affected because there is an annual cap in the number of visas that may be issued, and many more potential selectees than visas available. Thus, any benefit to Plaintiffs' individual interests from receiving a visa would need to be balanced against the harm caused to others not before the Court who might lose their opportunity to apply for a visa given the statutory cap.

"[f]ew interests can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985). Plaintiffs' request to short-circuit the orderly, national-security processing of their diversity visas is wholly out of keeping with this interest and the furthest thing from not "injuring the government or the public at all." Pls.' Mot. at 23.

CONCLUSION

For the foregoing reasons, this Court should deny Plaintiffs' motion for a preliminary injunction and mandamus relief. Plaintiffs have failed to show that they have a likelihood of success on the merits, that they will be irreparably injured absent injunctive relief, that the balance of harms weighs in their favor, or that injunctive relief would be in the public interest. Defendants therefore respectfully request that the Court deny Plaintiffs' motion.

Dated: August 18, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this August 18, 2017, I electronically filed the foregoing DEFENDANTS' RESPONSE TO PLAINTIFFS' REQUEST FOR A PRELIMINARY INJUNCTION AND MANDAMUS RELIEF with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

/s/ Joshua S. Press
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