



**U.S. Citizenship
and Immigration
Services**

Control Number: COW2020003136

January 22, 2025

Austin Evers
American Oversight
1030 15th St. NW
Suite B255
Washington, DC 20005

Dear Austin Evers:

This is in response to your Freedom of Information Act/Privacy Act (FOIA/PA) request received in this office on November 3, 2020 regarding records related to directive, order, decision, protocols, or guidance implementing Presidential Proclamation No. 10052.

Specifically, you requested all records reflecting any directive, order, decision, protocols, or guidance implementing the Presidential Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak, published at Presidential Proclamation No. 10052, 85 Fed. Reg. 38263 (June 22, 2020). Due to the subject matter of the request, USCIS transferred your request (COW20200002171) to the Department of Homeland Security (DHS) Privacy Office (2020-HQFO-01682). On February 23, 2021, DHS Privacy Office requested USCIS respond directly to you regarding this request.

We have considered the foreseeable harm standard when reviewing the record set and have applied the FOIA exemptions as required by the statute and the Attorney General's Guidance. We have completed the review of all documents and have identified 516 pages that are responsive to your request. Enclosed are 230 pages released in their entirety and 275 pages released in part. Additionally, we have referred 5 pages in their entirety to U.S. Department of State and 6 pages in their entirety to Department of Homeland Security. We have reviewed and have determined to release all information except those portions that are exempt pursuant to 5 U.S.C. § 552 (b)(5), (b)(6), and (b)(7)(C) of the FOIA.

The following exemptions are applicable:

Exemption (b)(6) permits the government to withhold all information about individuals in personnel, medical and similar files where the disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. The types of documents and/or information that we have withheld may consist of birth certificates, naturalization certificates, drivers' licenses, social security numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal.

Exemption (b)(7)(C) provides protection for personal information in law enforcement records, which could reasonably be expected to constitute an unwarranted invasion of personal privacy. We have withheld information relating to third-party individuals. The types of documents and/or information that we have withheld could consist of names, addresses, identification numbers, telephone numbers, fax numbers, or various other documents that are considered personal.

Exemption (b)(5) provides protection for inter-agency or intra-agency memorandums or letters, which would not be available by law to a party other than an agency in litigation with the agency. The types of documents and/or information that we have withheld under this exemption may consist of documents containing pre-decisional information, documents or other memoranda prepared in contemplation of litigation, or confidential communications between attorney and client.

There may be additional documents that contain discretionary releases of exempt information. If made, these releases are specifically identified in the responsive record. These discretionary releases do not waive our ability to invoke applicable FOIA exemptions for similar or related information in the future.

The enclosed record consists of the best reproducible copies available. Certain pages contain marks that appear to be blacked-out information. The black marks were made prior to our receipt of the file and are not information we have withheld under the provisions of the FOIA or PA.

You have the right to file an administrative appeal within 90 days of the date of this letter. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision. You may file an administrative FOIA appeal by mail to USCIS FOIA/PA Appeals Office, 150 Space Center Loop, Suite 500, Lee's Summit, MO 64064-2139. Both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact our USCIS FOIA Public Liaison at U.S. Citizenship and Immigration Services, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064-8010, or by email at FOIAPAQuestions@uscis.dhs.gov.

A USCIS FOIA Public Liaison is an agency official to whom FOIA requesters can raise concerns about the service the requester has received from the agency's FOIA Office. USCIS FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency, and understanding of the status of requests, and assisting in the resolution of disputes.

If you are unable to resolve your FOIA dispute through our USCIS FOIA Public Liaison, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; email ogis@nara.gov; telephone 202-741-5770; toll free 877-684-6448; or facsimile 202-741-5769.

The National Records Center does not process petitions, applications, or any other type of benefit under the Immigration and Nationality Act. If you have questions or wish to submit documentation relating to a matter pending with USCIS, please visit the Contact Us page at www.uscis.gov or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

[How to Submit Questions or Changes](#)

Questions concerning this FOIA/PA request may be mailed to U.S. Citizenship and Immigration Services, National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064-8010 or emailed to FOIAPAQuestions@uscis.dhs.gov. All FOIA/PA related requests, including address changes must be submitted in writing, and signed by the requester. Please include the control number listed above on all correspondence. For more information regarding the USCIS FOIA Program, please visit the USCIS website at www.uscis.gov/FOIA.

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Baxley". The signature is written in a cursive, flowing style.

James A Baxley
Chief FOIA Officer
Freedom of Information Act & Privacy Act Unit

Enclosure(s)

[REDACTED]

From: Miran, Maria Y
Sent: Tuesday, October 06, 2020 10:51 AM
To: Bump, Micah N; Cox, Robert H
Cc: Busch, Philip B; ALD; Choi, Heesun S (Sunny)
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504 [AS-008362]
Attachments: Incoming 8.4.20.pdf; Draft Response Neal (DHS Redline)10.2.20.docx; Draft Enclosure (DHS Redline) 10.2.20.docx; Cover Memo 10.2.20.doc; Draft Response Neal (Final) 10.2.20.docx; Draft Enclosure (Final) 10.2.20.docx; FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052
Importance: High

Here you go –

Maria (for ALD Box)

From: OCC-Clearance [REDACTED]ov>
Sent: Tuesday, October 6, 2020 11:04 AM
To: ALD [REDACTED]v>
Cc: Busch, Philip B [REDACTED]gov>
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504 [AS-008362]
Importance: High

ALD,

This FO inquiry relates to your previous review– STARS AS-008362. I have attached your response for easy reference.

Including Phil for visibility and input as needed – he was involved in the previous OCC review. Please include OCC-Clearance in your response to EXSO.

Thanks so much, Cathy

Catherine Muhletaler for OCC-Clearance
Special Counsel to the Deputy Chief Counsel
DHS | USCIS | Office of the Chief Counsel

This e-mail may contain attorney work product information that is privileged, confidential, or otherwise protected by applicable law. If the reader of this e-mail is not the intended recipient or the employee or agent responsible for delivering the e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you have received this e-mail in error, please notify us immediately by replying to this message, and please destroy all copies of this e-mail.

From: Brown, James R [REDACTED]ov>
Sent: Tuesday, October 06, 2020 10:54 AM
To: OCC-Clearance [REDACTED]gov>

Cc: USCIS Exec Congr Corresp [REDACTED] gov>

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Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504
Importance: High

Good Morning OCC,

The Director's Office has requested for you all to confirm if the proclamation being referred to may have been enjoined recently.

Please advise by 1pm today.

Thanks,

James

James R. Brown
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
Department of Homeland Security

[REDACTED] Office
[REDACTED] Cell

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Congress of the United States
Washington, DC 20515

August 4, 2020

The Honorable Michael R. Pompeo
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Health Workforce Implications of Proclamation 10052

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia:

We are writing to express our urgent concern about Proclamation 10052, which President Trump signed on June 22, 2020. As you are aware, in addition to extending the President's suspension on the admission of most immigrants announced in Proclamation 10014, Proclamation 10052 suspends the admission of certain temporary workers, including many H-1B health workers. Each year since at least Fiscal Year 2015, U.S. Citizenship and Immigration Services (USCIS) has granted more than 10,000 H-1B petitions to physicians and other health care workers who play a critical role in our health care workforce.¹ Although Proclamation 10052 exempts individuals providing medical care to COVID-19 patients and conducting COVID-19 research, this Proclamation is overly restrictive and harmful in the midst of this pandemic. Without broader exemptions for health care workers and researchers, the Administration's actions put all Americans at risk.

Critical to controlling any pandemic is the ability to rapidly deploy the health workforce to care for patients, mitigate spread, and advance health research agendas that offer rapid solutions. Without an adequate health and research workforce, we risk the unnecessary loss of

¹ U.S. Citizenship and Immigration Services, H-1B Approvals for Healthcare-Related Occupations (Fiscal Years 2015-2020 (YTD)), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I129_H1B_A_Healthcare_FY15-20.pdf.

more lives and impose further obstacles to our economic recovery. As noted by the American Association of Medical Colleges (AAMC), “[r]estricting these gifted international researchers and physicians from entering the U.S. will not help our economy, but rather will hamper the ability of our medical schools and teaching hospitals to make scientific progress.”² Ultimately, it will reduce health care access across our nation.

Recently, the Department of State issued guidance further defining the national interest exemptions for H-1B health workers.³ According to that guidance, an exemption to the Proclamation for H-1B nonimmigrants is available to public health or health care professionals or researchers “to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g. cancer or communicable disease research).”⁴ The guidance states that this includes H-1B nonimmigrants whose work will “alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic.”⁵ While this is a welcome interpretation of the Proclamation, it is unclear how it will be applied by consular and Customs and Border Protection (CBP) officers, and is still overly restrictive. The United States needs the strongest possible health care and research workforce now more than ever. Importantly, this includes individuals who provide care or conduct research in areas other than COVID-19. Health workers and researchers working on issues unrelated to COVID-19 free up others to focus on COVID-19, while continuing to provide essential care and conduct critical research that cannot stop because of the pandemic.

Further, as our nation surpasses 4.6 million cases of COVID-19 and over 154,000 deaths, it is important to consider infections and deaths of health workers and researchers when projecting workforce needs. Researchers project that, in the first year of the pandemic, millions of health care workers will test positive for COVID-19 and thousands will die from it.⁶ As such, visa programs are more important than ever to ensure that the health workforce is resilient and prepared both for the current wave of COVID-19 as well as the subsequent waves predicted to hit the country in the near future.

In July 2019, in recognition of the importance of ensuring all Americans have access to quality health care, the Committee on Ways and Means created the bipartisan Rural and Underserved Communities Health Task Force to address issues of health equity in rural and underserved communities across the country.⁷ Many of the physicians who serve our

² <https://www.aamc.org/news-insights/press-releases/aamc-statement-presidential-proclamation-limiting-non-immigrant-visas>.

³ Dep’t of State, National Interest Exceptions to Presidential Proclamations (10014 & 10052) Suspending the Entry of Immigrants and Nonimmigrants Presenting a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak (Jul. 22, 2020), <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html#:~:text=On%20June%2022%2C%20the%20President,%2C%20through%20December%2031%2C%202020>.

⁴ *Id.*

⁵ *Id.*

⁶ <https://depts.washington.edu/fammed/chws/how-many-health-care-workers-are-at-risk-of-being-sacrificed-to-covid-19-in-the-us/>.

⁷ <https://waysandmeans.house.gov/media-center/press-releases/ways-and-means-committee-launches-rural-and-underserved-communities>.

underserved communities are immigrant physicians who rely on temporary visas. Proclamation 10052 puts underserved communities at even more risk by restricting physician visas.

Section 4 of Proclamation 10052 directs the Secretary of Homeland Security to consult with Secretaries of State and Labor and to recommend to the President any necessary modifications to the Proclamation. As such, we urge you to recommend that the President modify Proclamation 10052 to exempt all health workers and researchers from the suspension on entry because they all serve the national interest. In the meantime, we request answers to the following questions by August 14, 2020:

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.
2. How will the “substantial public health benefit/secondary effect” exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.
3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?
4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

Thank you for attention to this important matter. We look forward to working with you to ensure that our front-line health and research workers have our nation’s full support during this crisis. If you have further questions about this letter or the questions raised, please contact Melanie Egorin at melanie.egorin@mail.house.gov.

Sincerely,



Richard E. Neal
Chairman
Committee on Ways and Means



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairwoman
Subcommittee on Immigration and Citizenship, Committee on the Judiciary

Cc: The Honorable Alex M. Azar II, Secretary of Health and Human Services

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Neal:

Thank you for your August 4, 2020 letter regarding ~~expressing support for~~ H-1B health workers and researchers. The Acting Secretary ~~has~~ well asked that I respond on his behalf.

The Department of Homeland Security (DHS) is committed to preserving and upholding the nation's prosperity and economic security. We recognize that individuals, employers, and

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¹ On June 29, 2020, the President issued further clarification in the "Proclamation on Amendment to Proclamation 10052."

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———Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

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² For USCIS policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

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**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.

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2. How will the "substantial public health benefit/secondary effect" exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.

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3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?

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**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

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³ *Suspending Entry of Aliens Who Present Risk to the U.S. Labor Market Following the COVID-19 Outbreak*, Proclamation 10052 (White House Proclamation 10052), available at <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/> (June 22, 2020); *see also* Proclamation on Amendment to Proclamation 10052, June 29, 2020, available at <https://www.whitehouse.gov/presidential-actions/proclamation-amendment-proclamation-10052/>.

⁴ Executive Order on Improving Rural Health and Telehealth Access, August 3, 2020, available at <https://www.whitehouse.gov/presidential-actions/executive-order-improving-rural-health-telehealth-access>.

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

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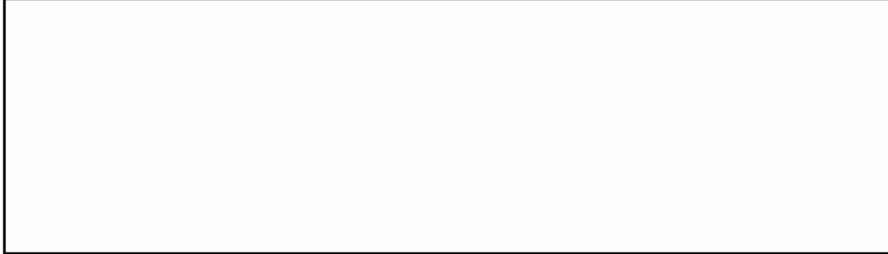
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⁵ White House Proclamation 10052 available at <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>.

⁶ Exceptions to Proclamation 10052, U.S. Department of State, available at <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html>.

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**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**



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⁷ <https://protect-public.hhs.gov/>.

⁸ <https://protect-public.hhs.gov/>.

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**U.S. Citizenship
and Immigration
Services**

MEMORANDUM FOR THE ACTING CHIEF OF STAFF

FROM: Aaron Calkins
Chief of Staff

SUBJECT: **Request for Approval: Response to Chairman Neal's
August 4, 2020 Letter Regarding Temporary Protected Status
for Lebanon (WF 1199281)**

Context: Chairman Neal wrote to Acting Secretary Wolf regarding Health Workforce Implications of Proclamation 10052.

OGC/Chief Counsel Coordination: This document has been reviewed in its entirety for legal sufficiency by Philip Busch, Senior Legal Advisor, USCIS Office of the Chief Counsel, and it has not been substantially changed since his review.

Clearance: The following Components have cleared the proposed response:

MGMT: Mark Carmel, cleared, 09/18/20, with edits.
CBP: John Yap, cleared, 9/21/20, with edits.
OLA: Eric Weise, cleared, 9/22/20, with edits.
PLCY: Kate Brown, cleared, 9/30/20, without edits.
OGC: Steve McCleary, cleared, 10/02/20, with edits.

Timeliness: This response was not submitted within the 7-business-day standard due to required clearances within USCIS and with DHS Components.

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

(b)(5)

Dear Chairman Neal:

Thank you for your August 4, 2020 letter regarding H-1B health workers and researchers. Acting Secretary Wolf asked that I respond on his behalf.



¹ On June 29, 2020, the President issued further clarification in the “Proclamation on Amendment to Proclamation 10052.”

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Thank you again for your letter and interest in this important issue. Enclosed are responses to the four questions posed. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

Enclosure

² For USCIS policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

- 1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.**

- 2. How will the “substantial public health benefit/secondary effect” exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.**

- 3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?**

¹ *Suspending Entry of Aliens Who Present Risk to the U.S. Labor Market Following the COVID-19 Outbreak*, Proclamation 10052 (White House Proclamation 10052), available at <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/> (June 22, 2020); *see also* Proclamation on Amendment to Proclamation 10052, June 29, 2020, available at <https://www.whitehouse.gov/presidential-actions/proclamation-amendment-proclamation-10052/>.

² Executive Order on Improving Rural Health and Telehealth Access, August 3, 2020, available at <https://www.whitehouse.gov/presidential-actions/executive-order-improving-rural-health-telehealth-access>.

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

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³ White House Proclamation 10052 available at <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>.

4. **How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?**

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⁴ Exceptions to Proclamation 10052, U.S. Department of State, available at <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html>.

⁵ <https://protect-public.hhs.gov/>.

[REDACTED]

From: Raymond, Robert R on behalf of ALD
Sent: Thursday, September 03, 2020 3:26 PM
To: Cox, Robert H; Bump, Micah N; Choi, Heesun S (Sunny); Busch, Philip B; OCC-Clearance; ALD
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052
Attachments: Draft Enclosure (Final) 9.1.20.ALDEDits.docx

Uploaded and concurred with comments in STARS.

From: Cox, Robert H [REDACTED] <[REDACTED]@ov>
Sent: Thursday, September 3, 2020 4:11 PM
To: ALD [REDACTED] <[REDACTED]@v>
Cc: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@v>; Bump, Micah N [REDACTED] <[REDACTED]@gov>
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

ALD box – could you upload this document to STARS? WE reviewed and just made a few edits/comments. Phil also reviewed.

From: McIntosh, Elton D [REDACTED] <[REDACTED]@v> On Behalf Of ALD
Sent: Tuesday, September 1, 2020 11:02 AM
To: ALD [REDACTED] <[REDACTED]@v>; Bump, Micah N [REDACTED] <[REDACTED]@ov>; Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@gov>; Cox, Robert H [REDACTED] <[REDACTED]@ov>
Cc: OCC-Clearance [REDACTED] <[REDACTED]@gov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Hi Micah & Robert,

Would you please be the lead for this review?

Thanks,

Elton

From: OCC-Clearance [REDACTED] <[REDACTED]@gov>
Sent: Tuesday, September 1, 2020 10:54 AM
To: ALD [REDACTED] <[REDACTED]@ov>
Cc: Busch, Philip B [REDACTED] <[REDACTED]@ov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

THIS IS A STARS EXSO ASSIGNMENT. PLEASE READ INSTRUCTIONS BELOW.

ALD,

Please take the lead on review and response of this assignment. Per STARS – OCC response due: 9/2/20. If you will not be able to meet the deadline established by EXSO, please request an extension of the review timeframe directly with EXSO and/or originating requestor, with cc to OCC-Clearance.

Since this is a STARS EXSO assignment, once you've completed your review, please use the link below to register your response in STARS and send a message to the OCC-Clearance Box indicating your response, with a copy of any uploaded document containing OCC edits/comments.

CCing Phil for visibility and input as needed.

Thanks so much, Cathy

Catherine Muhletaler for OCC-Clearance
Special Counsel to the Deputy Chief Counsel
DHS | USCIS | Office of the Chief Counsel

This e-mail may contain attorney work product information that is privileged, confidential, or otherwise protected by applicable law. If the reader of this e-mail is not the intended recipient or the employee or agent responsible for delivering the e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you have received this e-mail in error, please notify us immediately by replying to this message, and please destroy all copies of this e-mail.

From: Patricia Blanco [REDACTED] gov>

Sent: Tuesday, September 01, 2020 10:49 AM

(b)(6)

To: OCC-Clearance [REDACTED] ov>

Subject: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052



Please review the details below regarding the Clearance Request that has just been assigned to you.

Assignment Number: AS-008362

Service Item Subject: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Service Item Description: OLA to sign

Prepare for Assistant Secretary OLA Signature

MGMT, OGC, OLA, CBP

Instructions: OCC - Please review and clear OP&S draft response to Chm. Neal by 9/2.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t0000006vcCK>



**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

- 1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.**

- 2. How will the “substantial public health benefit/secondary effect” exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.**

- 3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?**

(b)(5)

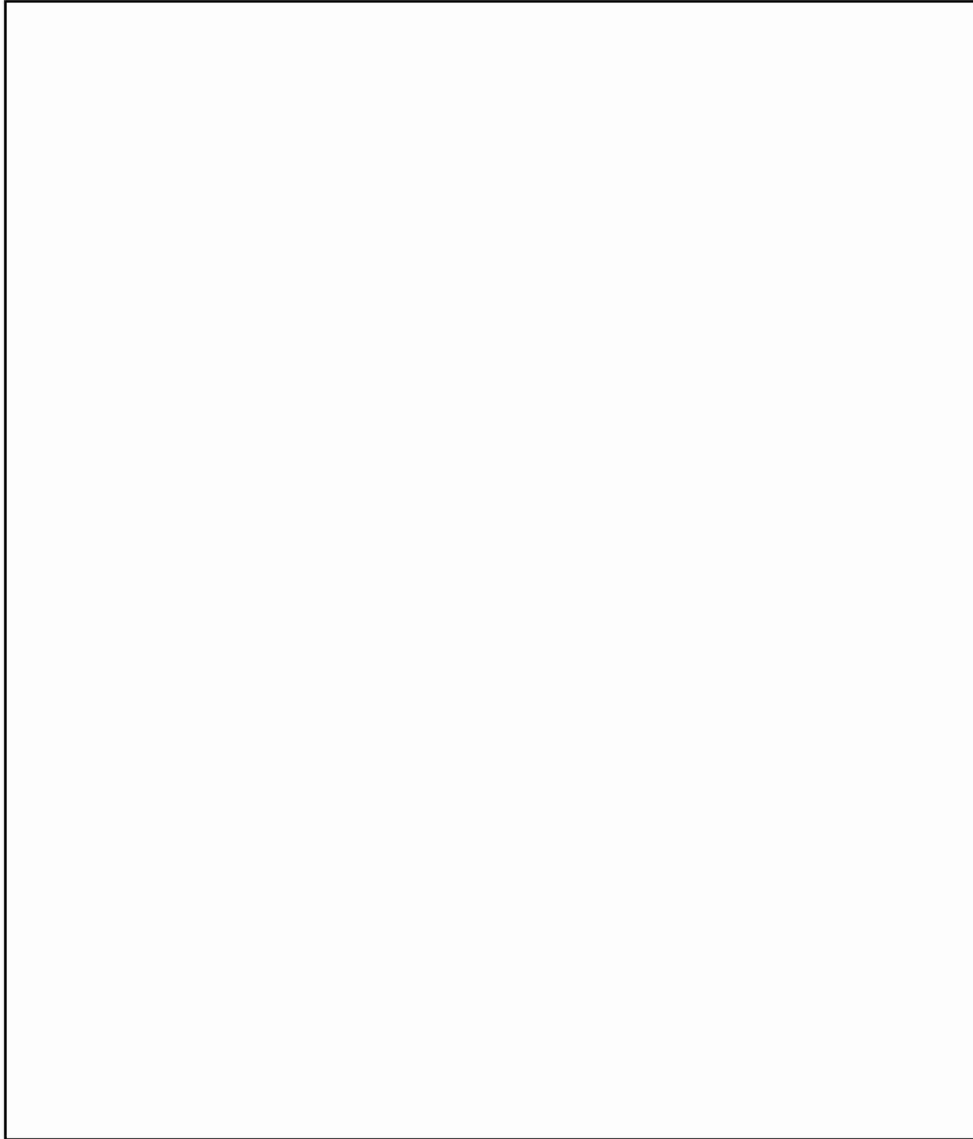
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DHS-20-2144-A-000022

(b)(5)

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**



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¹ *Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*, Proclamation 10052, available at <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/> (Aug. 3, 2020); *see also* Proclamation on Amendment to Proclamation 10052, June 29, 2020, available at <https://www.whitehouse.gov/presidential-actions/proclamation-amendment-proclamation-10052/>

² Executive Order on Improving Rural Health and Telehealth Access, August 3, 2020, available at <https://www.whitehouse.gov/presidential-actions/executive-order-improving-rural-health-telehealth-access>

³ White House Proclamation 10052.

(b)(5)

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

(b)(5)

4. **How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?**

⁴ Exceptions to Proclamation 10052, U.S. Department of State, available at <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html>.

⁵ <https://protect-public.hhs.gov/>.

(b)(5)

DHS-20-2144-A-000024

[REDACTED]

From: Raymond, Robert R on behalf of ALD
Sent: Wednesday, July 08, 2020 11:37 AM
To: Chase, Carmen M; Hunt, Brian J; Hale, Paola R; Cox, Robert H; Bump, Micah N
Cc: Choi, Heesun S (Sunny); ALD
Subject: FW: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program
Attachments: Draft Response - Rep. Curtis (OP&S response) 7.8.20 clean.docx; Incoming 7.1.20.pdf

Here you go.

From: OCC-Clearance <[REDACTED]@gov>
Sent: Wednesday, July 8, 2020 12:29 PM
To: ALD <[REDACTED]@gov>
Cc: Choi, Heesun S (Sunny) <[REDACTED]@gov>; Busch, Philip B <[REDACTED]@gov>
Subject: FW: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program

ALD,

Please take the lead on review/clearance of the attached documents. Copying Phil for his visibility.

Once you've completed your review, please register your response in STARS and send a message to the OCC-Clearance Box indicating your response along with a copy of any uploaded document containing OCC edits/comments.

Thanks,
Ian

From: Patricia Blanc <[REDACTED]@gov>
Sent: Wednesday, July 8, 2020 12:18 PM
To: OCC-Clearance <[REDACTED]@gov>
Subject: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program



Please review the details below regarding the Clearance Request that has just been assigned to you.

Assignment Number: AS-007775

Service Item Subject: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program

Service Item Description: D2P to sign

Prepare for Component Reply Direct and Cc

Instructions: OCC - Please review and clear attached draft response to Rep. Curtis. Provide response by 7/9/20.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t00000006Rsic>



|

The Honorable John R. Curtis
U.S. House of Representatives
Washington, DC 20515

Dear Representative Curtis:

Thank you for your July 1, 2020 letter regarding the Utah Dual Language Immersion Program. Acting Secretary Wolf asked that I respond on his behalf.

(b)(5)

You recommend that international teachers filling DLI teaching positions in the J-1 and H-1B visa programs be exempt from the limitations imposed by the June 22, 2020, Proclamation. With regard to such exemptions from the suspension of visa issuance for these classifications, we kindly defer to our colleagues at DOS, as visa issuances are under their area of responsibility.

¹ <https://www.uscis.gov/about-us/uscis-response-covid-19>

(b)(5)

The Honorable John R. Curtis
Page 2

Thank you again for your letter and interest in this matter. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

Congress of the United States
Washington, DC 20515

RECEIVED

By ESEC External at 11:55 am, Jul 02, 2020

July 1, 2020

The Honorable Michael Pompeo
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

The Honorable Eugene Scalia
Secretary
Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia,

We write concerning the President's "Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak," Proclamation 10052, and its effects on the Utah Dual Language Immersion (DLI) program.

Across Utah, there are nearly 300 DLI schools utilizing over 50 international teachers teaching Chinese, German, French, Portuguese, Russian, and Spanish. Because of the skills required to teach in a DLI program, many positions do not receive any qualified American applicants, and the programs turn to international teachers as a last resort. Not only do these teachers fill important teaching positions, they also facilitate an exchange of cultures and share their fluency in languages all deemed critical by the U.S. Department of Defense.

While we understand and support the prioritization of American workers, we are concerned that the recent prohibition of J-1 and H-1B visas will put DLI students at a disadvantage this school year – when schools already face uncertainty due to the COVID-19 pandemic. The Utah DLI program utilizes J-1 and H-1B visas to fill teacher openings if, and only if, those positions cannot be filled by American applicants, thus ensuring that international teachers are not replacing American workers.

Because of the importance of education and DLI programs to the future of our nation, we respectfully ask that you consider an exemption to the J-1 and H-1B visa ban for international teachers filling critical DLI teaching positions in programs that have been unsuccessful in filling

the positions with Americans. We believe that the ability to reopen schools safely in the fall and to provide a first-class education is in the national interest of Utah and American families.

If you have any clarifying questions, please have a member of your staff contact Rebekah Rodriguez (Rebekah.Rodriguez@mail.house.gov) in Representative Curtis's office. Thank you for your consideration of our request.

Sincerely,



John R. Curtis
Member of Congress



Ben McAdams
Member of Congress



Rob Bishop
Member of Congress



Chris Stewart
Member of Congress

(b)(6)

[REDACTED]

From: Choi, Heesun S (Sunny)
Sent: Wednesday, July 08, 2020 4:18 PM
To: Bump, Micah N; Chase, Carmen M; Hale, Paola R; Hunt, Brian J
Cc: Cox, Robert H
Subject: FW: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program
Attachments: Draft Response - Rep. Curtis (OPS response) 7.8.20 clean OCC.docx

I just sent this back.

From: Choi, Heesun S (Sunny)
Sent: Wednesday, July 8, 2020 5:17 PM
To: OCC-Clearance [REDACTED].gov>; ALD [REDACTED].gov>
Cc: Busch, Philip B [REDACTED].gov>; Cox, Robert H [REDACTED].gov>
Subject: RE: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program

I just uploaded the attached along with our concur with edits response into STARS.

Thanks,
Sunny

From: OCC-Clearance [REDACTED].gov>
Sent: Wednesday, July 8, 2020 12:29 PM
To: ALD [REDACTED].gov>
Cc: Choi, Heesun S (Sunny) [REDACTED].gov>; Busch, Philip B [REDACTED].gov>
Subject: FW: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program

ALD,

Please take the lead on review/clearance of the attached documents. Copying Phil for his visibility.

Once you've completed your review, please register your response in STARS and send a message to the OCC-Clearance Box indicating your response along with a copy of any uploaded document containing OCC edits/comments.

Thanks,
Ian

From: Patricia Blanco [REDACTED].gov>
Sent: Wednesday, July 8, 2020 12:18 PM
To: OCC-Clearance [REDACTED].gov>
Subject: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program

(b)(6)



Please review the details below regarding the Clearance Request that has just been assigned to you.

Assignment Number: AS-007775

Service Item Subject: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program

Service Item Description: D2P to sign

Prepare for Component Reply Direct and Cc

Instructions: OCC - Please review and clear attached draft response to Rep. Curtis. Provide response by 7/9/20.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t00000006Rsic>



The Honorable John R. Curtis
U.S. House of Representatives
Washington, DC 20515

Dear Representative Curtis:

Thank you for your July 1, 2020 letter regarding the Utah Dual Language Immersion (DLI) Program. Acting Secretary Wolf asked that I respond on his behalf.

(b)(5)

¹ <https://www.uscis.gov/about-us/uscis-response-covid-19>

Thank you again for your letter and interest in this matter. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

[REDACTED]

From: Choi, Heesun S (Sunny)
Sent: Tuesday, September 01, 2020 7:12 PM
To: Busch, Philip B
Cc: Bump, Micah N; Cox, Robert H
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052
Attachments: Incoming 8.4.20.pdf; Revised Draft Response Neal (Final) 9.1.20.docx; Draft Enclosure (Final) 9.1.20.ALDeDits.docx

Hi Phil – as this response is prepared for the Assistant Secretary for Legislative Affairs, would you mind reviewing our edits/comments to the enclosure (the third document attached to this email) especially as some of the answers are not responsive to the questions?

Thank you for your help!
Sunny

From: McIntosh, Elton D [REDACTED].gov> **On Behalf Of** ALD
Sent: Tuesday, September 1, 2020 11:02 AM
To: ALD [REDACTED]>; Bump, Micah N [REDACTED]>; Choi, Heesun S (Sunny) [REDACTED]>; Cox, Robert H [REDACTED]>
Cc: OCC-Clearance [REDACTED]>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Hi Micah & Robert,

Would you please be the lead for this review?

Thanks,

Elton

From: OCC-Clearance [REDACTED]>
Sent: Tuesday, September 1, 2020 10:54 AM
To: ALD [REDACTED]
Cc: Busch, Philip B [REDACTED]>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

THIS IS A STARS EXSO ASSIGNMENT. PLEASE READ INSTRUCTIONS BELOW.

ALD,

Please take the lead on review and response of this assignment. Per STARS – OCC response due: 9/2/20. If you will not be able to meet the deadline established by EXSO, please request an extension of the review timeframe directly with EXSO and/or originating requestor, with cc to OCC-Clearance.

Since this is a STARS EXSO assignment, once you've completed your review, please use the link below to register your response in STARS and send a message to the OCC-Clearance Box indicating your response, with a copy of any uploaded document containing OCC edits/comments.

CCing Phil for visibility and input as needed.

Thanks so much, Cathy

Catherine Muhletaler for OCC-Clearance
Special Counsel to the Deputy Chief Counsel
DHS | USCIS | Office of the Chief Counsel

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From: Patricia Blanco [REDACTED] <[REDACTED]@dhs.gov>

Sent: Tuesday, September 01, 2020 10:49 AM

(b)(6)

To: OCC-Clearance [REDACTED] <[REDACTED]@dhs.gov>

Subject: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052



Please review the details below regarding the Clearance Request that has just been assigned to you.

Assignment Number: AS-008362

Service Item Subject: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Service Item Description: OLA to sign

Prepare for Assistant Secretary OLA Signature

MGMT, OGC, OLA, CBP

Instructions: OCC - Please review and clear OP&S draft response to Chm. Neal by 9/2.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t0000006vcCK>



Congress of the United States
Washington, DC 20515

August 4, 2020

The Honorable Michael R. Pompeo
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Health Workforce Implications of Proclamation 10052

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia:

We are writing to express our urgent concern about Proclamation 10052, which President Trump signed on June 22, 2020. As you are aware, in addition to extending the President's suspension on the admission of most immigrants announced in Proclamation 10014, Proclamation 10052 suspends the admission of certain temporary workers, including many H-1B health workers. Each year since at least Fiscal Year 2015, U.S. Citizenship and Immigration Services (USCIS) has granted more than 10,000 H-1B petitions to physicians and other health care workers who play a critical role in our health care workforce.¹ Although Proclamation 10052 exempts individuals providing medical care to COVID-19 patients and conducting COVID-19 research, this Proclamation is overly restrictive and harmful in the midst of this pandemic. Without broader exemptions for health care workers and researchers, the Administration's actions put all Americans at risk.

Critical to controlling any pandemic is the ability to rapidly deploy the health workforce to care for patients, mitigate spread, and advance health research agendas that offer rapid solutions. Without an adequate health and research workforce, we risk the unnecessary loss of

¹ U.S. Citizenship and Immigration Services, H-1B Approvals for Healthcare-Related Occupations (Fiscal Years 2015-2020 (YTD)), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I129_H1B_A_Healthcare_FY15-20.pdf.

more lives and impose further obstacles to our economic recovery. As noted by the American Association of Medical Colleges (AAMC), “[r]estricting these gifted international researchers and physicians from entering the U.S. will not help our economy, but rather will hamper the ability of our medical schools and teaching hospitals to make scientific progress.”² Ultimately, it will reduce health care access across our nation.

Recently, the Department of State issued guidance further defining the national interest exemptions for H-1B health workers.³ According to that guidance, an exemption to the Proclamation for H-1B nonimmigrants is available to public health or health care professionals or researchers “to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g. cancer or communicable disease research).”⁴ The guidance states that this includes H-1B nonimmigrants whose work will “alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic.”⁵ While this is a welcome interpretation of the Proclamation, it is unclear how it will be applied by consular and Customs and Border Protection (CBP) officers, and is still overly restrictive. The United States needs the strongest possible health care and research workforce now more than ever. Importantly, this includes individuals who provide care or conduct research in areas other than COVID-19. Health workers and researchers working on issues unrelated to COVID-19 free up others to focus on COVID-19, while continuing to provide essential care and conduct critical research that cannot stop because of the pandemic.

Further, as our nation surpasses 4.6 million cases of COVID-19 and over 154,000 deaths, it is important to consider infections and deaths of health workers and researchers when projecting workforce needs. Researchers project that, in the first year of the pandemic, millions of health care workers will test positive for COVID-19 and thousands will die from it.⁶ As such, visa programs are more important than ever to ensure that the health workforce is resilient and prepared both for the current wave of COVID-19 as well as the subsequent waves predicted to hit the country in the near future.

In July 2019, in recognition of the importance of ensuring all Americans have access to quality health care, the Committee on Ways and Means created the bipartisan Rural and Underserved Communities Health Task Force to address issues of health equity in rural and underserved communities across the country.⁷ Many of the physicians who serve our

² <https://www.aamc.org/news-insights/press-releases/aamc-statement-presidential-proclamation-limiting-non-immigrant-visas>.

³ Dep’t of State, National Interest Exceptions to Presidential Proclamations (10014 & 10052) Suspending the Entry of Immigrants and Nonimmigrants Presenting a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak (Jul. 22, 2020), <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html#:~:text=On%20June%2022%2C%20the%20President,%2C%20through%20December%2031%2C%202020>.

⁴ *Id.*

⁵ *Id.*

⁶ <https://depts.washington.edu/fammed/chws/how-many-health-care-workers-are-at-risk-of-being-sacrificed-to-covid-19-in-the-us/>.

⁷ <https://waysandmeans.house.gov/media-center/press-releases/ways-and-means-committee-launches-rural-and-underserved-communities>.

underserved communities are immigrant physicians who rely on temporary visas. Proclamation 10052 puts underserved communities at even more risk by restricting physician visas.

Section 4 of Proclamation 10052 directs the Secretary of Homeland Security to consult with Secretaries of State and Labor and to recommend to the President any necessary modifications to the Proclamation. As such, we urge you to recommend that the President modify Proclamation 10052 to exempt all health workers and researchers from the suspension on entry because they all serve the national interest. In the meantime, we request answers to the following questions by August 14, 2020:

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.
2. How will the “substantial public health benefit/secondary effect” exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.
3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?
4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

Thank you for attention to this important matter. We look forward to working with you to ensure that our front-line health and research workers have our nation’s full support during this crisis. If you have further questions about this letter or the questions raised, please contact Melanie Egorin at melanie.egorin@mail.house.gov.

Sincerely,



Richard E. Neal
Chairman
Committee on Ways and Means



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairwoman
Subcommittee on Immigration and Citizenship, Committee on the Judiciary

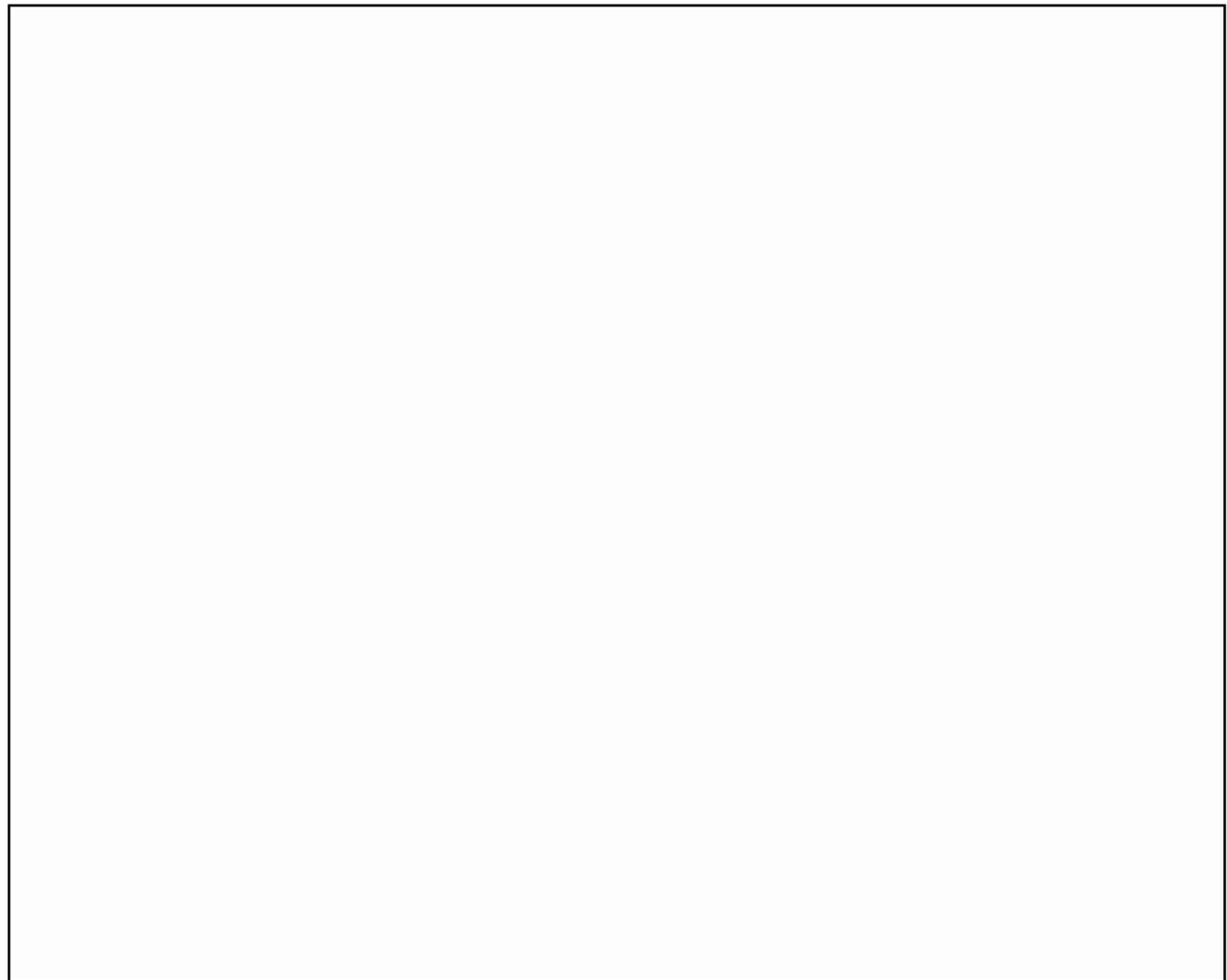
Cc: The Honorable Alex M. Azar II, Secretary of Health and Human Services

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Neal:

Thank you for your August 4, 2020 letter expressing support for H-1B health workers and researchers. Acting Secretary Wolf asked that I respond on his behalf.

(b)(5)



¹ On June 29, 2020, the President issued further clarification in the “Proclamation on Amendment to Proclamation 10052.”

² For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.



(b)(5)

Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

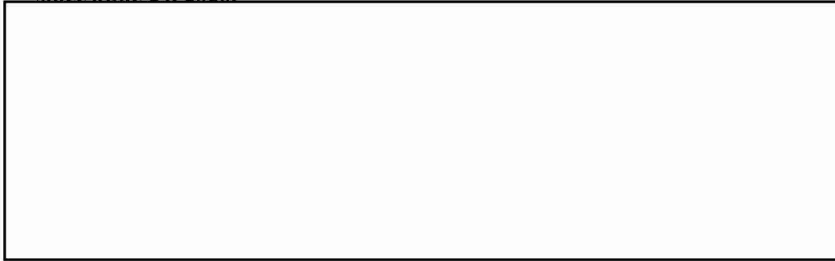
Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

(b)(5)

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.



2. How will the “substantial public health benefit/secondary effect” exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.



3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?



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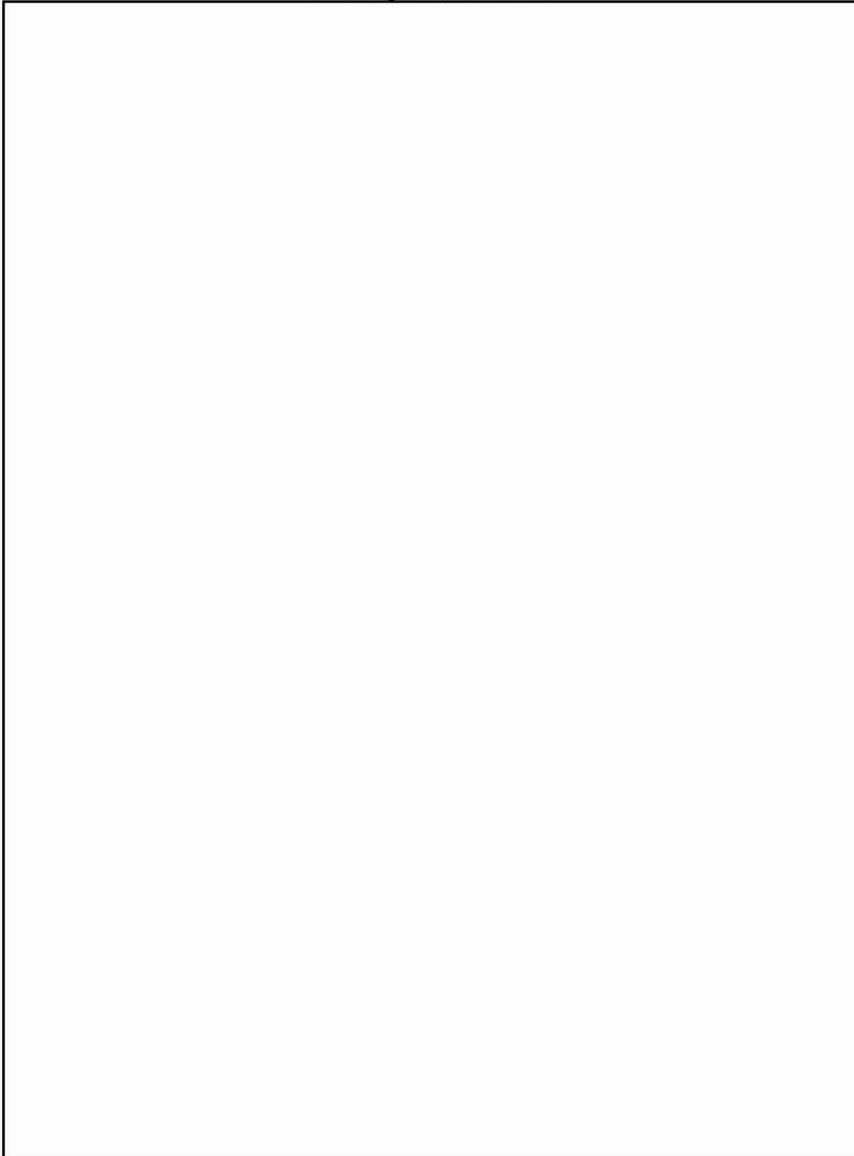
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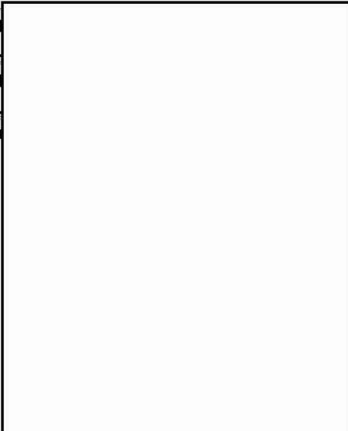
**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**



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¹ *Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*, Proclamation 10052, available at <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/> (Aug. 3, 2020); *see also* Proclamation on Amendment to Proclamation 10052, June 29, 2020, available at <https://www.whitehouse.gov/presidential-actions/proclamation-amendment-proclamation-10052/>

² Executive Order on Improving Rural Health and Telehealth Access, August 3, 2020, available at <https://www.whitehouse.gov/presidential-actions/executive-order-improving-rural-health-telehealth-access>

³ White House Proclamation 10052.

(b)(5)

(b)(5)

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

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⁴ Exceptions to Proclamation 10052, U.S. Department of State, available at <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html>,
⁵ <https://protect-public.hhs.gov/>.

(b)(5)

(b)(6)

From: McIntosh, Elton D on behalf of ALD
Sent: Tuesday, September 01, 2020 10:02 AM
To: ALD; Bump, Micah N; Choi, Heesun S (Sunny); Cox, Robert H
Cc: OCC-Clearance
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052
Attachments: Incoming 8.4.20.pdf; Draft Enclosure (Final) 9.1.20.docx; Revised Draft Response Neal (Final) 9.1.20.docx

Hi Micah & Robert,

Would you please be the lead for this review?

Thanks,

Elton

From: OCC-Clearance [REDACTED] <[REDACTED]@ov>
Sent: Tuesday, September 1, 2020 10:54 AM
To: ALD [REDACTED]
Cc: Busch, Philip B [REDACTED] <[REDACTED]@ov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

(b)(6)

THIS IS A STARS EXSO ASSIGNMENT. PLEASE READ INSTRUCTIONS BELOW.

ALD,

Please take the lead on review and response of this assignment. Per STARS – OCC response due: 9/2/20. If you will not be able to meet the deadline established by EXSO, please request an extension of the review timeframe directly with EXSO and/or originating requestor, with cc to OCC-Clearance.

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CCing Phil for visibility and input as needed.

Thanks so much, Cathy

Catherine Muhletaler for OCC-Clearance
Special Counsel to the Deputy Chief Counsel
DHS | USCIS | Office of the Chief Counsel

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From: Patricia Blanco [REDACTED]ov>

(b)(6)

Sent: Tuesday, September 01, 2020 10:49 AM

To: OCC-Clearance [REDACTED]ov>

Subject: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052



Please review the details below regarding the Clearance Request that has just been assigned to you.

Assignment Number: AS-008362

Service Item Subject: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Service Item Description: OLA to sign

Prepare for Assistant Secretary OLA Signature

MGMT, OGC, OLA, CBP

Instructions: OCC - Please review and clear OP&S draft response to Chm. Neal by 9/2.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t0000006vcCK>



Congress of the United States
Washington, DC 20515

August 4, 2020

The Honorable Michael R. Pompeo
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Health Workforce Implications of Proclamation 10052

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia:

We are writing to express our urgent concern about Proclamation 10052, which President Trump signed on June 22, 2020. As you are aware, in addition to extending the President's suspension on the admission of most immigrants announced in Proclamation 10014, Proclamation 10052 suspends the admission of certain temporary workers, including many H-1B health workers. Each year since at least Fiscal Year 2015, U.S. Citizenship and Immigration Services (USCIS) has granted more than 10,000 H-1B petitions to physicians and other health care workers who play a critical role in our health care workforce.¹ Although Proclamation 10052 exempts individuals providing medical care to COVID-19 patients and conducting COVID-19 research, this Proclamation is overly restrictive and harmful in the midst of this pandemic. Without broader exemptions for health care workers and researchers, the Administration's actions put all Americans at risk.

Critical to controlling any pandemic is the ability to rapidly deploy the health workforce to care for patients, mitigate spread, and advance health research agendas that offer rapid solutions. Without an adequate health and research workforce, we risk the unnecessary loss of

¹ U.S. Citizenship and Immigration Services, H-1B Approvals for Healthcare-Related Occupations (Fiscal Years 2015-2020 (YTD)), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I129_H1B_A_Healthcare_FY15-20.pdf.

more lives and impose further obstacles to our economic recovery. As noted by the American Association of Medical Colleges (AAMC), “[r]estricting these gifted international researchers and physicians from entering the U.S. will not help our economy, but rather will hamper the ability of our medical schools and teaching hospitals to make scientific progress.”² Ultimately, it will reduce health care access across our nation.

Recently, the Department of State issued guidance further defining the national interest exemptions for H-1B health workers.³ According to that guidance, an exemption to the Proclamation for H-1B nonimmigrants is available to public health or health care professionals or researchers “to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g. cancer or communicable disease research).”⁴ The guidance states that this includes H-1B nonimmigrants whose work will “alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic.”⁵ While this is a welcome interpretation of the Proclamation, it is unclear how it will be applied by consular and Customs and Border Protection (CBP) officers, and is still overly restrictive. The United States needs the strongest possible health care and research workforce now more than ever. Importantly, this includes individuals who provide care or conduct research in areas other than COVID-19. Health workers and researchers working on issues unrelated to COVID-19 free up others to focus on COVID-19, while continuing to provide essential care and conduct critical research that cannot stop because of the pandemic.

Further, as our nation surpasses 4.6 million cases of COVID-19 and over 154,000 deaths, it is important to consider infections and deaths of health workers and researchers when projecting workforce needs. Researchers project that, in the first year of the pandemic, millions of health care workers will test positive for COVID-19 and thousands will die from it.⁶ As such, visa programs are more important than ever to ensure that the health workforce is resilient and prepared both for the current wave of COVID-19 as well as the subsequent waves predicted to hit the country in the near future.

In July 2019, in recognition of the importance of ensuring all Americans have access to quality health care, the Committee on Ways and Means created the bipartisan Rural and Underserved Communities Health Task Force to address issues of health equity in rural and underserved communities across the country.⁷ Many of the physicians who serve our

² <https://www.aamc.org/news-insights/press-releases/aamc-statement-presidential-proclamation-limiting-non-immigrant-visas>.

³ Dep’t of State, National Interest Exceptions to Presidential Proclamations (10014 & 10052) Suspending the Entry of Immigrants and Nonimmigrants Presenting a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak (Jul. 22, 2020), <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html#:~:text=On%20June%2022%2C%20the%20President,%2C%20through%20December%2031%2C%202020>.

⁴ *Id.*

⁵ *Id.*

⁶ <https://depts.washington.edu/fammed/chws/how-many-health-care-workers-are-at-risk-of-being-sacrificed-to-covid-19-in-the-us/>.

⁷ <https://waysandmeans.house.gov/media-center/press-releases/ways-and-means-committee-launches-rural-and-underserved-communities>.

underserved communities are immigrant physicians who rely on temporary visas. Proclamation 10052 puts underserved communities at even more risk by restricting physician visas.

Section 4 of Proclamation 10052 directs the Secretary of Homeland Security to consult with Secretaries of State and Labor and to recommend to the President any necessary modifications to the Proclamation. As such, we urge you to recommend that the President modify Proclamation 10052 to exempt all health workers and researchers from the suspension on entry because they all serve the national interest. In the meantime, we request answers to the following questions by August 14, 2020:

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.
2. How will the “substantial public health benefit/secondary effect” exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.
3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?
4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

Thank you for attention to this important matter. We look forward to working with you to ensure that our front-line health and research workers have our nation’s full support during this crisis. If you have further questions about this letter or the questions raised, please contact Melanie Egorin at melanie.egorin@mail.house.gov.

Sincerely,



Richard E. Neal
Chairman
Committee on Ways and Means



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairwoman
Subcommittee on Immigration and Citizenship, Committee on the Judiciary

Cc: The Honorable Alex M. Azar II, Secretary of Health and Human Services

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

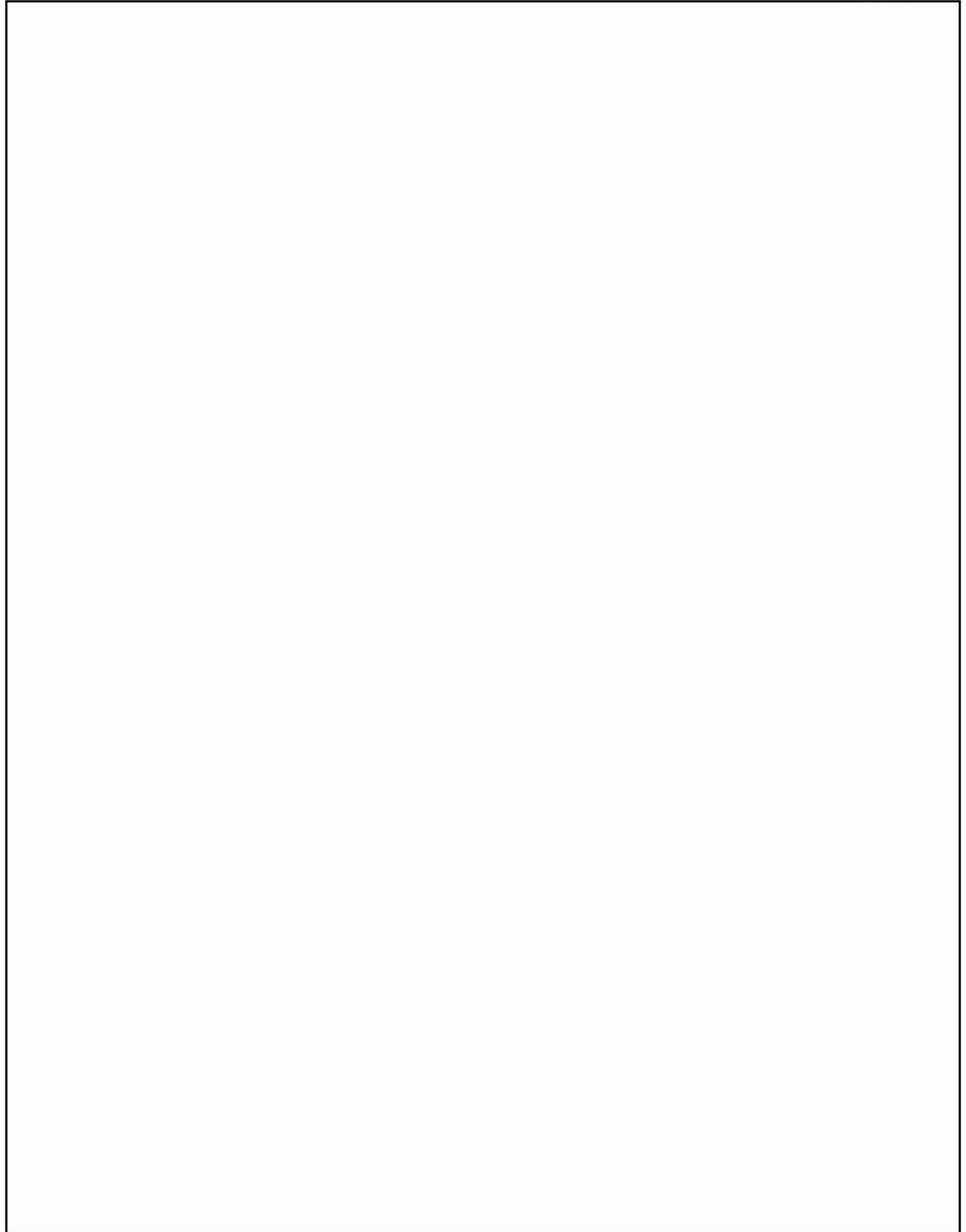
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- 2. How will the “substantial public health benefit/secondary effect” exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.**

- 3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?**

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

(b)(5)



¹ *Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*, Proclamation 10052, available at <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/> (Aug. 3, 2020); *see also* Proclamation on Amendment to Proclamation 10052, June 29, 2020, available at <https://www.whitehouse.gov/presidential-actions/proclamation-amendment-proclamation-10052/>

² Executive Order on Improving Rural Health and Telehealth Access, August 3, 2020, available at <https://www.whitehouse.gov/presidential-actions/executive-order-improving-rural-health-telehealth-access>

³ White House Proclamation 10052.

4. **How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?**

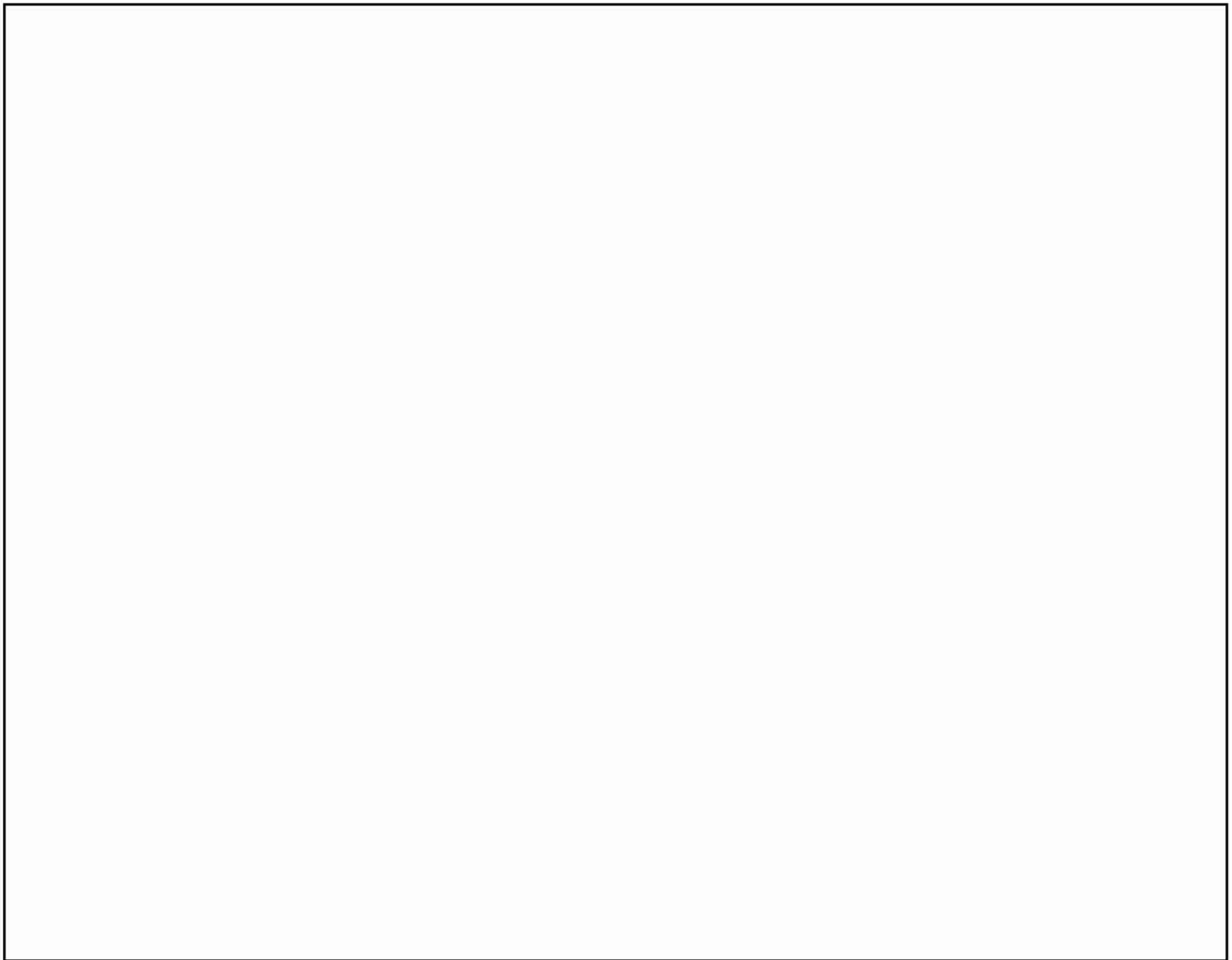
⁴ Exceptions to Proclamation 10052, U.S. Department of State, available at <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html>,

⁵ <https://protect-public.hhs.gov/>.

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Neal:

Thank you for your August 4, 2020 letter expressing support for H-1B health workers and researchers. Acting Secretary Wolf asked that I respond on his behalf. (b)(5)



¹ On June 29, 2020, the President issued further clarification in the “Proclamation on Amendment to Proclamation 10052.”

² For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.



(b)(5)

From: Raymond, Robert R on behalf of ALD
Sent: Thursday, September 03, 2020 3:26 PM
To: Cox, Robert H; Bump, Micah N; Choi, Heesun S (Sunny); Busch, Philip B; OCC-Clearance; ALD
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052
Attachments: Draft Enclosure (Final) 9.1.20.ALDeDits.docx

Uploaded and concurred with comments in STARS.

From: Cox, Robert H [redacted] gov>
Sent: Thursday, September 3, 2020 4:11 PM
To: ALD [redacted] gov>
Cc: Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

ALD box – could you upload this document to STARS? WE reviewed and just made a few edits/comments. Phil also reviewed.

From: McIntosh, Elton [redacted] gov> **On Behalf Of** ALD
Sent: Tuesday, September 1, 2020 11:02 AM
To: ALD [redacted] gov>; Bump, Micah N [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>
Cc: OCC-Clearance [redacted] gov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Hi Micah & Robert,

Would you please be the lead for this review?

Thanks,

Elton

From: OCC-Clearance [redacted] gov>
Sent: Tuesday, September 1, 2020 10:54 AM
To: ALD [redacted] gov>
Cc: Busch, Philip B [redacted] gov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

THIS IS A STARS EXSO ASSIGNMENT. PLEASE READ INSTRUCTIONS BELOW.

ALD,

Please take the lead on review and response of this assignment. Per STARS – OCC response due: 9/2/20. If you will not be able to meet the deadline established by EXSO, please request an extension of the review timeframe directly with EXSO and/or originating requestor, with cc to OCC-Clearance.

Since this is a STARS EXSO assignment, once you've completed your review, please use the link below to register your response in STARS and send a message to the OCC-Clearance Box indicating your response, with a copy of any uploaded document containing OCC edits/comments.

CCing Phil for visibility and input as needed.

Thanks so much, Cathy

Catherine Muhletaler for OCC-Clearance
Special Counsel to the Deputy Chief Counsel
DHS | USCIS | Office of the Chief Counsel

This e-mail may contain attorney work product information that is privileged, confidential, or otherwise protected by applicable law. If the reader of this e-mail is not the intended recipient or the employee or agent responsible for delivering the e-mail to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this e-mail or its contents is strictly prohibited. If you have received this e-mail in error, please notify us immediately by replying to this message, and please destroy all copies of this e-mail.

From: Patricia Blanco [REDACTED] gov>

Sent: Tuesday, September 01, 2020 10:49 AM (b)(6)

To: OCC-Clearance [REDACTED] gov>

Subject: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052



Please review the details below regarding the Clearance Request that has just been assigned to you.

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MGMT, OGC, OLA, CBP

Instructions: OCC - Please review and clear OP&S draft response to Chm. Neal by 9/2.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t0000006vcCK>



(b)(5)

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.



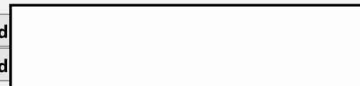
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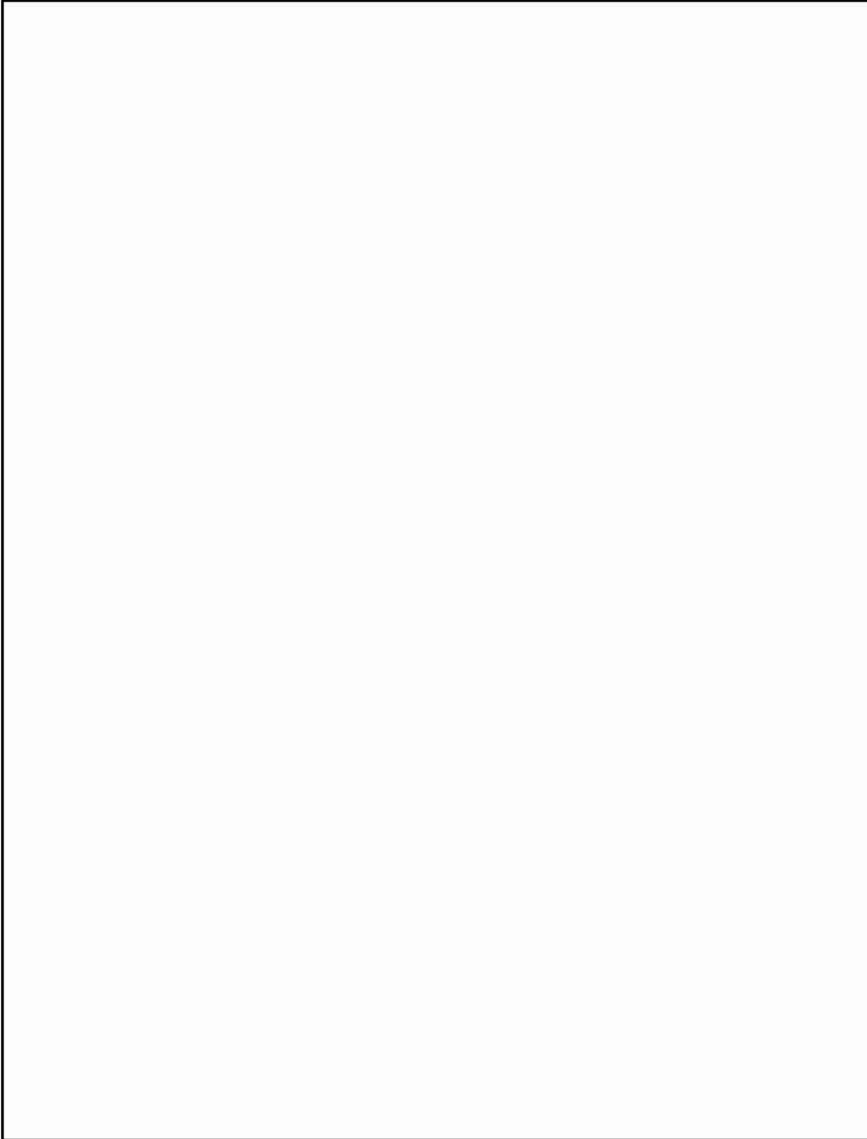
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Commented



(b)(5)

(b)(5)

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**



¹ *Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*, Proclamation 10052, available at <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/> (Aug. 3, 2020); *see also* Proclamation on Amendment to Proclamation 10052, June 29, 2020, available at <https://www.whitehouse.gov/presidential-actions/proclamation-amendment-proclamation-10052/>

² Executive Order on Improving Rural Health and Telehealth Access, August 3, 2020, available at <https://www.whitehouse.gov/presidential-actions/executive-order-improving-rural-health-telehealth-access>

³ White House Proclamation 10052.

(b)(5)

(b)(5)

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

⁴ Exceptions to Proclamation 10052, U.S. Department of State, available at <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html>,

⁵ <https://protect-public.hhs.gov/>.

(b)(5)

(b)(6)

From: Angustia, Kathleen M (Kate)
Sent: Monday, November 09, 2020 3:15 PM
To: Cox, Robert H
Subject: FW: AS-008783: WF 1201235 - Rep. Pallone wrote to AS1 regarding the Diversity Immigrant Visa Program
Attachments: ECF 151 - amended order.pdf; ECF No. 123-Gomez Memorandum Opinion - September 4.pdf
Importance: High

From: Gisser, Sheldon A (Alex) [REDACTED] <[REDACTED]@ov> (b)(6)
Sent: Monday, October 26, 2020 10:01 AM
To: Miran, Maria Y [REDACTED] <[REDACTED]@ov>; Angustia, Kathleen M (Kate) [REDACTED] <[REDACTED]@gov>
Subject: FW: AS-008783: WF 1201235 - Rep. Pallone wrote to AS1 regarding the Diversity Immigrant Visa Program
Importance: High

(b)(5)

From: Gisser, Sheldon A (Alex)
Sent: Monday, October 26, 2020 9:58 AM (b)(6) (b)(7)(C)
To: [REDACTED] (OCC) [REDACTED] <[REDACTED]@ov>; Hsiao, Joseph [REDACTED] <[REDACTED]@ov>; EICHLER, NATHANIEL [REDACTED] <[REDACTED]@gov>; [REDACTED] (OCC)
[REDACTED]
Cc: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@ov>; Salem, Claudia S [REDACTED] <[REDACTED]@ov>; (b)(6)
Raymond, Robert R [REDACTED] <[REDACTED]@ov>; Oshiro, Erin E [REDACTED] <[REDACTED]@ov>; Hollowell, Julie S [REDACTED] <[REDACTED]@gov>; Levy, Jason [REDACTED] <[REDACTED]@gov>; Franke, Evan R [REDACTED] <[REDACTED]@gov>; Roll, Annemarie E [REDACTED] <[REDACTED]@gov> (b)(6)
Subject: FW: AS-008783: WF 1201235 - Rep. Pallone wrote to AS1 regarding the Diversity Immigrant Visa Program
Importance: High

Hello [REDACTED] et al., (b)(6) (b)(7)(C)

This is the first we heard of this litigation, but as you can see below, the outcome of this appeal can potentially have a severe precedential impact on our adjustment of status program, if it is ultimately upheld. It would, of course, be contra to multiple US Circuit Court of Appeals decisions holding explicitly that DV numbers 'die' or 'expire' after September 30 of each relevant fiscal year.

We would greatly appreciate it if you would loop us in on matters, such as these, in which our components have a shared interest.

Thanks so much!

Alex
USCIS-OCC

(landline) (b)(6)
(cell)

From: [REDACTED]@state.gov> (b)(6)
Sent: Monday, October 26, 2020 9:49 AM
To: Gisser, Sheldon A (Alex) [REDACTED]@state.gov>
Cc: [REDACTED]@state.gov>; Raymond, Robert R [REDACTED]@state.gov>; Choi, Heesun S (Sunny) [REDACTED]@state.gov>; Hollowell, Julie S [REDACTED]@state.gov>; Levy, Jason [REDACTED]@state.gov>; Oshiro, Erin E [REDACTED]@state.gov> (b)(6)
Subject: RE: AS-008783: WF 1201235 - Rep. Pallone wrote to AS1 regarding the Diversity Immigrant Visa Program

Alex – here are the emails for individuals affiliated with DHS who have been on the email chains related to the case.

Thanks,
Matt

Hsiao, Joseph <[REDACTED]>;
Wolf, Liana [REDACTED]
EICHLER, NATHANIEL <[REDACTED]> (b)(6)

[REDACTED]@state.gov>;
[REDACTED] (OCC) <[REDACTED]>;
[REDACTED] (OCC) [REDACTED]@state.gov> (b)(6) (b)(7)(C)

Consultation with U.S. Department of State

SENSITIVE BUT UNCLASSIFIED

From: Gisser, Sheldon A (Alex) [REDACTED]@state.gov> (b)(6)
Sent: Monday, October 26, 2020 9:18 AM
To: [REDACTED]@state.gov>; [REDACTED]@state.gov>
Cc: [REDACTED]@state.gov>; Raymond, Robert R [REDACTED]@state.gov>; Choi, Heesun S (Sunny) [REDACTED]@state.gov>; Hollowell, Julie [REDACTED]@state.gov>; Levy, Jason [REDACTED]@state.gov>; Oshiro, Erin E [REDACTED]@state.gov> (b)(6)
Subject: RE: AS-008783: WF 1201235 - Rep. Pallone wrote to AS1 regarding the Diversity Immigrant Visa Program

Thanks [REDACTED] – this was a shocker indeed when I saw it the other day. Do you know who from DHS, if anyone, worked on this? To the extent we would – in a worst case scenario – be compelled to ask [REDACTED] for DV numbers for adjustment applicants, we’d be setting a horrific precedent and undoing decades of Circuit Court of Appeals precedent (not to mention the clear language of the INA re DVs).

(b)(6)
From: [REDACTED]@state.gov>
Sent: Monday, October 26, 2020 9:03 AM
To: Gisser, Sheldon A (Alex) [REDACTED]@state.gov>
Cc: [REDACTED]@state.gov>; Raymond, Robert R [REDACTED]@state.gov>; Choi, Heesun S (Sunny) [REDACTED]@state.gov>; Hollowell, Julie S [REDACTED]@state.gov> (b)(6)
Subject: RE: AS-008783: WF 1201235 - Rep. Pallone wrote to AS1 regarding the Diversity Immigrant Visa Program

[REDACTED] (b)(5)

(b)(5)

Thanks,

(b)(6)

Attorney Adviser, Team Lead
Office of the Legal Adviser, Visas
Advisory Opinions and Litigation

Consultation with U.S. Department of State

SENSITIVE BUT UNCLASSIFIED

From: Gisser, Sheldon A (Alex [redacted]@state.gov>
Sent: Friday, October 23, 2020 1:32 PM
To: [redacted]@state.gov>; [redacted]@state.gov>
Cc: [redacted]@state.gov>; Raymond, Robert R. [redacted]@state.gov>; Choi, Heesun S (Sunny) [redacted]@state.gov>; Hollowell, Julie S [redacted]@state.gov>
Subject: FW: AS-008783: WF 1201235 - Rep. Pallone wrote to AS1 regarding the Diversity Immigrant Visa Program

Hi [redacted] and [redacted]—

I just saw the attached today, and am unfamiliar with the litigation the Congressperson referred to. I see that both our Secretaries received this letter, and wonder whether DOS has responded to it yet.

Of greater concern, however, is that, unless I'm reading this wrong, based on the incoming letter, it appears that the court not only ordered that several thousand DV cases be adjudicated by October 1, but it went one step farther and essentially ordered DOS to hold available for use those DV visas even after September 30. To the extent that such numbers would, under this order, have to be made available to any DV adjustment of status applicants, this is of concern, as it is contra to well-established US Circuit Court DV case law, which, the last time I researched this a few years back, uniformly held that DV numbers die at the end of the relevant fiscal year, i.e., on October 1.

Anyway, I'm wondering if you are aware of this litigation and the actual court order, and if indeed it is to make FY2020 DV numbers available for use subsequent to September 30, whether there has been a decision to appeal the district court's order. I'm gaming this out, and this order, if it says what the Congressperson claims, raises potentially serious concerns on our end.

If you are aware of this case, if you have a moment, I would appreciate it if you could call me at [redacted] cell) or [redacted] to get me up to speed on this.

Thanks!

Alex

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DOMINGO ARREGUIN GOMEZ, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Case No. 20-cv-01419 (APM)

**MOHAMMED ABDULAZIZ
ABDUL MOHAMMED, et al.,**

Plaintiffs,

v.

MICHAEL R. POMPEO, et al.,

Defendants.

Case No. 20-cv-01856 (APM)

AFSIN AKER, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Case No. 20-cv-01926 (APM)

CLAUDINE NGUM FONJONG, et al.,

Plaintiffs,

v.	)	Case No. 20-cv-02128 (APM)
	)	
DONALD J. TRUMP, et al.,	)	
	)	
Defendants.	)	
_____	)	
	)	
CHANDAN PANDA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 20-cv-1907 (APM)
	)	
CHAD F. WOLF, et al.,	)	
	)	
Defendants.	)	
_____	)	

MEMORANDUM OPINION AND AMENDED ORDER

In a Memorandum Opinion and Order issued on September 4, 2020, the court ordered Defendants to “undertake good-faith efforts, directly and through their designees, to expeditiously process and adjudicate DV-2020 diversity visa and derivative beneficiary applications and issue or reissue diversity and derivative beneficiary visas to eligible applicants by September 30, 2020, giving priority to the named diversity visa Plaintiffs,” in these consolidated actions. Though Defendants have issued more than 3,000 diversity visas since the court’s order, many of the Plaintiffs’ applications have still not been finally adjudicated, and approximately 40,000 of the 55,000 diversity visas Congress has made available for Fiscal Year 2020 remain unissued. Plaintiffs fear that if no further relief is ordered, these unissued visas will lapse pursuant to the Immigration and Nationality Act (“INA”), which states that diversity visa selectees “shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.” 8 U.S.C. § 1154(a)(1)(I)(II). The fiscal year expires today, September 30, 2020, at

11:59 p.m. Plaintiffs ask the court to certify two classes of DV-2020 Selectees who have not yet received or been reissued visas, and to order Defendants to reserve 30,000 diversity visa numbers pending final resolution of this matter and to renew any FY 2020 diversity visas that expire after the end of the fiscal year. For the reasons that follow, the court grants in part and denies in part Plaintiffs' motions.

I. BACKGROUND

In its Memorandum Opinion and Order issued on September 4, 2020, the court held that Plaintiffs were likely to succeed on their claims that the U.S. Department of State (1) had arbitrarily and capriciously refused to review and adjudicate DV-2020 Selectees' visa applications pursuant to the State Department's implementation of Presidential Proclamation 10014 (the court refers to this as the "No-Visa Policy"), (2) had unreasonably delayed in processing those applications, and (3) had arbitrarily and capriciously failed to explain its exclusion of such applications from its "COVID-19 Guidance" setting forth the categories of visa applications eligible for "mission critical" and "emergency" processing. *See Gomez v. Trump*, No. 20-CV-01419 (APM), 2020 WL 5367010, at *26–33 (D.D.C. Sept. 4, 2020).

As a remedy for these violations, the court ordered Defendants (other than President Trump) to "undertake good-faith efforts, directly and through their designees, to expeditiously process and adjudicate DV-2020 diversity visa and derivative beneficiary applications and issue or reissue diversity and derivative beneficiary visas to eligible applicants by September 30, 2020, giving priority to the named diversity visa Plaintiffs," in these consolidated actions. *Id.* at *38 ¶ 2. The court declined to rule on Plaintiffs' request to order Defendants to reserve unissued DV-2020 visas past the September 30 deadline or until a final adjudication on the merits, but promised to revisit the issue closer to the deadline. *Id.* at *38 ¶ 4. The court also denied without prejudice the

Gomez and Aker Plaintiffs’ motions to certify classes of DV-2020 Selectees, finding that the relief issued under the Administrative Procedure Act would benefit all putative class members. *Id.* at *37, *38 ¶ 5.

Between September 5, 2020 and September 24, 2020, when the court last received an update on Defendants’ efforts to comply with the court’s Order, the Department of State had adjudicated 5,093 diversity visa applications, issuing 3,208 diversity visas and refusing 1,885 applications. *See* Defs.’ Suppl. Report On Good Faith Efforts to Implement the Prelim. Inj., ECF No. 143 [hereinafter Defs.’ Suppl. Report], Decl. of Brenda L. Grewe, ECF No. 143-2 [hereinafter Grewe Decl.], ¶ 5. These additional visa issuances bring the total number of diversity visas issued for FY 2020 to approximately 15,401¹ as of September 24, 2020, roughly 28 percent of the 55,000 visas annually afforded under the INA. *Id.* ¶ 6.

During the same time, and consistent with the court’s direction to prioritize them, the State Department issued 523 visas to the 974 Named Plaintiffs with DV-2020 applications in these consolidated actions. Defs.’ Suppl. Report, Decl. of Laura Chamberlin, ECF No. 143-1 [hereinafter Chamberlin Decl.], ¶¶ 3–4. Consular officers refused visas to 149 Named Plaintiffs pursuant to Section 221(g) of the INA, 8 U.S.C. § 1201(g), and refused 73 of their applications on other grounds. *Id.* ¶ 5. An additional 164 Named Plaintiffs were scheduled for interviews as of September 24, but had not yet received final decisions on their applications.

The INA provides that foreign nationals selected in the DV lottery “shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected,” in this case, September 30, 2020. 8 U.S.C. § 1154 (a)(1)(I)(II); *see also* 22 C.F.R. § 42.33(a)(1);

¹ This figure includes diversity visa numbers issued by the U.S. Citizenship and Immigration Services to applicants already in the United States. *See* Grewe Decl. ¶ 6. Though not technically visas, diversity visa numbers issued to these applicants count against the total 55,000 diversity visas numbers available. Courts use the term “diversity visas” to describe both processes. *See Almaqrami v. Pompeo*, 933 F.3d 774, 776 n.1 (D.C. Cir. 2019).

31 U.S.C. § 1102. With the September 30, 11:59 p.m. deadline rapidly approaching, Plaintiffs contend that Defendants’ efforts to comply with the court’s September 4 Order are too little, too late. *See* Pls.’ Joint Submission Regarding Further Relief, ECF No. 146 [hereinafter Pls.’ Mot. for Suppl. Relief]. Plaintiffs assert that additional relief is necessary both to cure Defendants’ failure to comply in good faith with the court’s previous order, and to adequately remedy the harms experienced by DV-2020 Selectees as a result of Defendants’ months-long refusal to process DV-2020 visa applications. *Id.* at 9–14. Plaintiffs ask the court to order Defendants to reserve approximately 30,000 FY 2020 diversity visa numbers for adjudication after September 30 pending a final decision on the merits. *Id.* at 14; 9/28/2020 Oral Arg. Draft Hr’g Tr. [hereinafter Draft Hr’g Tr.], at 13–15 (agreeing that if diversity visa applications are reserved after the fiscal year that it is “not paramount that they be processed immediately after September 30th”). They also ask the court to direct Defendants to renew FY 2020 diversity visas after the end of the fiscal year, as necessary to permit the visa recipients to have a reasonable opportunity to enter the country. *Id.* at 18. In addition, the *Gomez* and *Aker* Plaintiffs renew their motions for class certification. *Gomez & Aker* Pls.’ Renewed Mot. for Class Cert., ECF No. 144, at 1–6 [hereinafter Pls.’ Renewed Class Cert. Mot.]. Defendants filed their opposition to Plaintiffs’ requests for additional relief on September 25, 2020, *see* Defs.’ Suppl. Br., ECF No. 145 [hereinafter Defs.’ Opp’n to Suppl. Relief], and September 30, 2020, *see* Defs.’ Renewed Opp’n to Pls.’ Renewed Class Cert. Mot., ECF No. 150. The court heard oral argument on the matter on September 28, 2020. *See* 9/28/2020 Minute Entry.

II. DISCUSSION

The court first discusses Plaintiffs’ requests for supplemental equitable relief and then turns to the *Gomez* and *Aker* Plaintiffs’ motions for class certification.

A. Supplemental Equitable Relief

Plaintiffs primarily ask the court to order Defendants to reserve diversity visa numbers for adjudication after September 30 pending a final decision on the merits. Defendants assert that such relief is legally unavailable, unnecessary, and overbroad. The court discusses each contention in turn.

1. Authority to Issue Relief

Defendants argue that the “INA’s plain text imposes a limitation on DV eligibility based on the close of the fiscal year,” and that “courts may not craft an equitable remedy where a legislative temporal window has already closed.” Defs.’ Opp’n to Suppl. Relief at 2, 5. Plaintiffs retort that granting their requested relief would create no conflict with the INA where, as here, Plaintiffs have sought and received some relief before the end of the fiscal year. Pls.’ Mot. for Suppl. Relief at 7–8.

Plaintiffs have the better argument. In the case most comparable with this one, *P.K. v. Tillerson*, a group of DV-2017 plaintiffs sought a preliminary injunction, alleging that the State Department had unlawfully failed to process their diversity visa applications pursuant to the agency’s implementation of Executive Order No. 13,780. 302 F. Supp. 3d 1 (D.D.C. 2017). The *P.K.* court found that it could not direct the State Department to process the plaintiffs’ visas because of ongoing litigation at the Supreme Court over the validity of E.O. 13,780, and so it directed the State Department to “reserve any unused visa numbers for FY 2017 for processing following the Supreme Court’s decision.” *Id.* at 9–11. After the fiscal year deadline passed and

Executive Order 13,780 had lapsed on its own terms, the State Department argued that the *P.K.* action was moot. *See Almagrami v. Tillerson*, 304 F. Supp. 3d 1 (D.D.C. 2018). The court reiterated its earlier ruling that if it “were to require the State Department’s full compliance with its prior order, it would be within its inherent power to enforce prior orders to do so,” but it nevertheless dismissed the action as moot, finding that because the Supreme Court had dismissed the challenge to Executive Order No. 13,780 as moot, there was no additional relief that the court could grant the plaintiffs. *Id.* at 6–8.

On appeal, the D.C. Circuit reversed, holding that the district court improperly dismissed the case because it was “not implausible” that the court’s pre-September 30 Order left “open the possibility” that additional relief would be available notwithstanding the mootness of the challenge to Executive Order 13,780. *Almagrami v. Pompeo*, 933 F.3d 774, 781–82 & n.2 (D.C. Cir. 2019). The Circuit also rejected the Government’s argument that the case was moot because the fiscal year deadline had passed, finding that it was “not implausible that the district court here could rely on equity to take steps to compel the issuance of diversity visas, notwithstanding the end of FY 2017.” *Id.* at 781 (cleaned up).

Though the D.C. Circuit never reached the merits of the district court’s authority to issue post-fiscal year relief, its reasoning is instructive. The Circuit explained that “[c]ourts are often asked to intervene in disputes over diversity visas,” and that relief is unavailable where the plaintiff fails to file her lawsuit until after the relevant fiscal year has passed, or where the court fails to issue any relief until then. *Id.* at 780. In contrast, where “[t]he plaintiff files suit and the court grants some relief—but not the visa—before October 1 . . . , the court might lawfully take steps to compel the government to process the plaintiff’s application and issue her a diversity visa” even “after the fiscal year has ended.” *Id.* In such an instance, the court observed, a post-deadline order

would permissibly “give effect to the district court’s prior directive, entered before the end of the selection FY, to preserve an essential (and otherwise expiring) ingredient of relief.” *Id.* at 782.

Courts in other circuits also recognize this temporal distinction on the availability of relief for diversity visa selectees. In *Paunescu v. INS*, 76 F. Supp. 2d 896 (N.D. Ill. 1999), for example, the district court ordered the Government to adjudicate DV-1998 visa applications before the September 30 deadline, and after the Government failed to do so, the court ordered it to “process [the] applications and to grant [the applicants] all relief to which they would have been entitled had defendants processed their applications in a timely fashion”—even though the order compelling such relief was issued more than a year after the 1998 fiscal year had closed. *Id.* at 903. Likewise in *Przhebelskaya v. USCIS*, 338 F. Supp. 2d 399 (E.D.N.Y. 2004), the district court had issued an order on September 24, 2003, compelling the Government to adjudicate diversity visa applications, and when the Government failed to do so within the fiscal year, the court issued an order compelling adjudication of the applications after the fiscal year deadline, *see id.* at 406. The court explained that “the expiration of the statutory deadline” did not “extinguish[] the [defendants’] obligation to comply with the court’s order,” and that where the court has ordered the Government to act on a diversity visa application, “the court has the power to vindicate its own order” by compelling post-deadline adjudication. *Id.* at 403–04.²

Defendants attempt to distinguish *Paunescu* and *Przhebelskaya* on the ground that they involved diversity applicants already inside the United States seeking an adjustment of status,

² Likewise, in the cases where diversity visa plaintiffs have been unable to obtain relief because either the court or plaintiff did not act before the fiscal year, courts have recognized that it is “a different case” where “the district court order[s] the [Government] to adjudicate [visa applications] while the [Government] maintain[s] the statutory authority to issue the visas.” *Iddir v. INS*, 301 F.3d 492, 501 n.2 (7th Cir. 2002); *see also Coraggioso v. Ashcroft*, 355 F.3d 730, 734 n.8 (3d Cir. 2004) (observing that the court might have afforded relief if petitioner had “sought relief prior to the expiration of the . . . fiscal year”); *Ahmed v. DHS*, 328 F.3d 383, 387 (7th Cir. 2003) (*Iddir* properly “recognized that the case would have been different if it had been filed before the end of the visa year, while the [Government] still had statutory authority to issue the visa, and if the district court had acted within that time period.”); *Keli v. Rice*, 571 F. Supp. 2d 127, 135 (D.D.C. 2008) (drawing same distinction).

see Defs.’ Opp’n to Suppl. Relief at 7–10, but that is a distinction without a difference in the present context. To be eligible for an adjustment of status, an “applicant must be eligible to receive an immediately available immigration visa.” *Przhebelkaya*, 338 F. Supp. 2d at 400; *see also* 8 U.S.C. § 1255(a). Thus, the plaintiffs in *Paunescu* and *Przhebelkaya* were equally subject to the INA’s requirement that diversity visa selectees “shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.” 8 U.S.C. § 1154 (a)(1)(I)(II). Defendants also suggest that those cases “did not involve [] separation-of-powers and foreign affairs issues” because the foreign nationals in those case were already in the United States, but the Supreme Court has explained that “*any policy* toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations.” *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952) (emphasis added). The foreign/domestic distinction Defendants glean from *Paunescu* and *Przhebelkaya* thus cannot bear the weight they place on it.

Defendants insist that “neither *Przhebelkaya* nor *Paunescu* are applicable because in both cases the application files were already substantially complete before the court ordered the government to take action,” whereas here, Plaintiffs’ applications are in varying stages of completeness. Defs.’ Opp’n to Suppl. Relief at 9–10. But Defendants overlook that the delay in processing of Plaintiffs’ applications is largely due to Defendants’ own unlawful interpretation of Presidential Proclamation 10014 and 8 U.S.C. § 1201(g)—it is in no way the fault of Plaintiffs themselves. In any event, the differing levels of application completeness that Defendants’ identify is only a difference of degree, and Defendants cite no authority indicating why such differences have any bearing on the court’s authority to issue equitable relief.

Perhaps a more relevant distinction (though not one pressed by Defendants) is that *Paunescu* and *Przhebelskaya* both involve pre-deadline orders to *process* visas, whereas in this case, Plaintiffs are primarily asking the court to reserve visas past the fiscal year for future processing. But, as the D.C. Circuit noted, those cases “offer useful examples, not binding models,” and a pre-deadline order to reserve visas for future processing after the deadline “is more similar to *Paunescu* and *Przhebelskaya* than the cases dismissed as moot because the plaintiff filed too late or the court did not act in time.” *Almaqrami v. Pompeo*, 933 F.3d 774, 782 (D.C. Cir. 2019); *see also Almaqrami*, 304 F. Supp. 3d at 5–7 (opining that “whether a district court orders the immediate or future processing of diversity visas—as long as plaintiffs seek relief and the court issues an order granting relief prior to the September 30 deadline—the court is entitled to enforce its prior order”). Moreover, the D.C. Circuit has recognized in the analogous context of congressional appropriations that courts may suspend the operation of a statutory expiration date on an appropriation so long as the plaintiff requests relief before that date, thereby effectively reserving a congressionally afforded benefit past a statutory deadline. *See, e.g., City of Houston, Tex. v. Dep’t of Hous. & Urban Dev.*, 24 F.3d 1421, 1426 (D.C. Cir. 1994) (explaining that a court acting in equity may “award funds based on an appropriation even after the date when the appropriation lapses, so long as the lawsuit was instituted on or before that date,” and that “the equity powers of the courts allow them to take action to preserve the status quo of a dispute and protect their ability to decide a case properly before them. In such situations, the courts *simply suspend the operation of a lapse provision* and extend the term of already existing budget authority” (emphasis added) (cleaned up)); *see also State of Conn. v. Schweiker*, 684 F.2d 979, 997 (D.C. Cir. 1982); *Andrulis Research Corp. v. U.S. Small Bus. Admin.*, No. CIV. A. 90-2569

(CRR), 1990 WL 169318, at *2 (D.D.C. Oct. 19, 1990) (extending a statutory deadline and collecting cases in support of this authority).

Defendants invoke *INS v. Pangilinan*, 486 U.S. 875 (1988), for the proposition that lower courts cannot “create a remedy in violation of law,” Defs.’ Opp’n to Suppl. Relief at 4 (quoting 486 U.S. at. 883) (cleaned up), but as the D.C. Circuit has explained, “[t]he only form of relief specifically disapproved by the *Pangilinan* Court was the lower courts’ asserted power to make someone a citizen of the United States,” *In re Thornburgh*, 869 F.2d 1503, 1517 (D.C. Cir. 1989) (cleaned up). The *Pangilinan* Court did not “securely shut the door” on claims for relief where, as here, the “aliens in question complied with the statute by attempting to file applications in a proper and timely fashion.” *Id.* at 1516. Defendants also assert that “a court may not require an agency to render performance that is impossible,” *see* Defs.’ Opp’n to Suppl. Relief at 4 (quoting *Am. Hosp. Assoc. v. Price*, 867 F.3d 160, 167 (D.C. Cir. 2018)), but that doctrine is inapposite here, where Defendants have not even attempted to shoulder the “heavy burden” of demonstrating that “resource constraints” or other “practical challenges” render it impossible to reserve and potentially process diversity visas after September 30. 867 F.3d at 168 (cleaned up).

In sum, because the fiscal year has not yet passed, the court plainly has the equitable authority and discretion to order Defendants to reserve visas for future processing pending a final resolution of the merits. *See P.K.*, 302 F. Supp. 3d at 9 (holding that “[t]he court’s authority to grant such relief is clear”). Assuming Plaintiffs ultimately succeed on their claims, an order instructing the State Department to process these reserved visas would not create any conflict with the INA because “such an order would give effect to the district court’s prior directive, entered before the end of the selection FY, to preserve an essential (and otherwise expiring) ingredient of relief.” *Almaqrami*, 933 F.3d at 782; *see also Almaqrami*, 304 F. Supp. 3d at 6 (D.D.C. 2018) (explaining that “the court issued an order directing the State Department to act prior to the September 30 deadline, and if it were to require

the State Department’s full compliance with its prior order, it would be within its ‘inherent power to enforce prior orders’ to do so”). Defendants suggest that such an order would also run afoul of Congress’s intent, *see* Defs.’ Opp’n to Suppl. Relief at 2–3, but the court has already found that Defendants violated Congress’s design when they nearly extinguished the FY 2020 diversity visa program through their No-Visa Policy, *see Gomez*, 2020 WL 5367010, at *30. Defendants cannot credibly claim that, though they have effectively abrogated Congress’s policy for months through their unlawful and arbitrary actions, it would be inconsistent with Congress’s intent to grant a remedy for their wrongs. *Cf. Defy Ventures, Inc. v. U.S. Small Bus. Admin.*, No. CV CCB-20-1736, 2020 WL 3546873, at *12 (D. Md. June 29, 2020) (holding that, where the plaintiffs “risk [] losing a benefit for which they are eligible because of arbitrary and capricious agency action” and a rapidly approaching statutory deadline, an order extending the deadline and “giv[ing] the plaintiffs the chance to apply” for the benefit “would further, rather than contravene, Congress’s will that eligible [applicants] be able to apply”).

2. *Need for Relief*

Plaintiffs assert that supplemental relief is needed because Defendants “spent six months violating what they were required to do under the INA,” and the relief granted to date has not been sufficient to remedy that harm. Dr. Hr’g Tr. at 12; *see also* Pls.’ Mot. for Suppl. Relief at 9–14. The court agrees. For the reasons that follow, the court finds that additional relief is necessary to “meet the exigencies of the . . . case,” *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017) (quoting 11A C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2948, at 115 (3d ed. 2013)), and to adequately “address each element contributing to the violation,” *Hutto v. Finney*, 437 U.S. 678, 687 (1978).³

³ Plaintiffs also claim that supplemental relief is necessary because Defendants “have not complied with the letter and the spirit of the” the court’s September 4 Order. *See* Dr. Hr’g Tr. at 12. The court need not decide this question in

First, the raw numbers. As of September 24, 2020, Defendants have issued only approximately 15,041 visas, or 28% of the 55,000 diversity visas Congress made available for FY 2020. For comparison, between 1998 and 2016, the State Department issued an average of 47,404 diversity visas per year, or between 86% and 95% of the total annual diversity visas allotted by Congress. *See* Pls.’ Mot. for Suppl. Relief at 15; Dr. Hr’g Tr. at 19 (explaining that the yearly allotment of visas has vacillated between 50,000 and 55,000).

As discussed in greater detail in the following section, a substantial portion of this shortfall is undoubtedly caused by COVID-19-related disruptions outside of Defendants’ control, but not all of it. Defendants’ rate of visa processing after the court’s September 4, 2020 Order illustrates this point. In the 20 days after the court’s September 4 Order, the Department of State issued 3,208 diversity visas, at a rate of 160.4 per day (3,208 / 20). *See* Grewe Decl. ¶ 5. By comparison, in 2019, the State Department issued 8,834 immigrant visas between July 15, 2019 and September 4, 2019, at a rate of 173 per day (8,834 / 51). *See id.* ¶ 8. The roughly comparable daily rate of processing between these two periods suggests that, but for their No-Visa Policy and COVID-19 Guidance excluding DV selectees from mission critical processing, Defendants *could* have issued many more diversity immigrant visas in the weeks and months before the court issued its September 4 Order, notwithstanding the exigencies of the global pandemic.

The State Department’s efforts to make up for this shortfall since September 4 do not obviate the need for additional relief. The court acknowledges and appreciates the hard work undertaken by many State Department employees to process the huge backlog of diversity visa applications, but the fact remains that, unless additional relief is granted, approximately 72% of the available diversity visas for FY 2020 will go unissued, and several hundred of the Named

light of its finding that additional relief is necessary to grant DV-2020 Selectees a complete remedy for Defendants’ violations of the INA and Administrative Procedure Act.

Plaintiffs in this case may not receive final adjudication of their applications. Moreover, the State Department waited five days (three business days) to issue guidance implementing the court's order—nearly 20% of the time that remained before the deadline—and, during that time, unlawfully and arbitrarily imposed a “Quarantine Requirement” on DV-2020 Selectees from five separate regions, thereby further delaying many DV-2020 Selectees from receiving adjudication of their applications. *See* Amended Order, ECF No. 132, at 4–5; Pls.’ Request for an Emergency Status Conference, ECF No. 127, at 2 & n.2. This lost time and confusion engendered by Defendants’ implementing guidance further supports that supplemental relief is necessary to preserve a full remedy.

Additional relief is also needed to provide an adequate remedy to the DV-2020 Selectees who are not Named Plaintiffs in these actions. Defendants have, consistent with the court’s September 4 Order, prioritized the Named Plaintiffs’ applications, but the harm the court identified and the relief it ordered extended beyond just those individuals. Yet, only a tiny fraction of non-Named Plaintiffs have received relief since the court’s September 4 Order. The court has been presented with evidence that there has been confusion regarding these individuals’ entitlement to relief under the court’s earlier order, with personnel at consular offices and the Kentucky Consular Center (“KCC”) informing some applicants that “if you[’re] not [a] plaintiff, you lost your chance,” and “[w]e will not process your documents.” *See* Pls.’ Mot. for Suppl. Relief at 12–13; *id.*, Decl. of Nadia Dahab, ECF No. 146-1 [hereinafter Dahab Decl.] ¶ 9; *see also* Dr. Hr’g Tr. at 47–48 (audio recording from KCC communicating a similar message). Indeed, in a survey that Plaintiffs’ counsel conducted of 1,794 non-Named Plaintiffs who requested expedited processing based on the court’s September 4 Order, 81 percent reported that the consulate had either not responded or had otherwise not processed their applications. *See* Dahab Decl. ¶ 8. Many of these

respondents indicated that they received “automatic response[s]” from consular offices “indicating that their application would not be processed.” *Id.* The survey and accompanying anecdotal evidence may not be fully representative or statistically unassailable, but they suffice to show that further relief is necessary for DV-2020 Selectees who are not Named Plaintiffs.

Reserving additional visas past the fiscal year also comports with the additional requirements of injunctive relief. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Failure to issue such relief will result in irreparable harm to thousands of DV-2020 Selectees who will otherwise lose their opportunity to secure a DV-2020 visa. Such relief is also in the public interest because “there is a substantial public interest in having governmental agencies abide by the federal laws,” *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (cleaned up), and an order reserving additional visas is necessary to remedy Defendants’ violations of the INA and the Administrative Procedure Act.

3. *Scope of Relief*

What remains then is to determine the scope of relief. Plaintiffs ask the court to order Defendants to both reserve visas beyond the fiscal year and to renew FY 2020 diversity visas that lapse after the end of the fiscal year. The court considers each request in turn.

Visa Reservation. Plaintiffs ask the court to order the State Department to reserve 30,000 diversity visas past September 30 pending final resolution of this matter. Pls.’ Mot. for Suppl. Relief at 14. Plaintiffs presumably arrive at that number by subtracting the number of diversity visas issued in FY 2020 as of September 24, 2020—15,401, *see* Grewe Decl. ¶ 6—from the eighteen-year average for diversity visas issued between FY 1998 and 2016—47,404, *see* Pls.’ Mot. for Suppl. Relief at 15. This means approximately 32,003 (47,404 – 15,401) fewer diversity visas have issued in FY 2020. Ordering the State Department to reserve 30,000 diversity visa

numbers would result in a total FY 2020 issuance that, Plaintiffs contend, “falls within the historical range of diversity visa issuance (though below the average), while reasonably balancing the challenges presented this fiscal year against the irreparable harms faced” by DV-2020 Selectees as a result of the State Department’s actions. *Id.* at 15.

The problem with Plaintiffs’ proposed number is that it asks the court to treat FY 2020 as if it were an “average” year. But, to state the obvious, it has been anything but average. The COVID-19 pandemic has caused worldwide operational disruptions of the State Department’s consular and visa processing operations. For example, from March 20, 2020, to July 15, 2020, the State Department’s COVID-19 Guidance was in effect, which “temporarily suspend[ed] routine visa services at all U.S. Embassies and Consulates” due to COVID-19, but continued to require posts to provide “emergency and mission critical visa services” as resources allowed. *Gomez*, 2020 WL 5367010, at *3. After July 15, 2020, the State Department began a phased re-opening dependent upon individual country health and safety conditions. *See id.* at *4.

The impact on visa processing has been substantial. Take, for example, the IR-1 and IR-2 visa categories, which are immigrant visas for spouses and children of U.S. citizens, respectively. These are not numerically capped visas, and they were not subject to the Presidential Proclamations’ restrictions on entry. Still, issuance of these visas fell dramatically in FY 2020. IR-1 visa issuance was down approximately 35% and IR-2 visa issuance was down approximately 41% from FY 2019. *See* Defs.’ Suppl. Report on Good Faith Efforts to Implement the Prelim. Inj., ECF No. 148 [hereinafter Defs.’ Second Suppl. Report], at 3. For those same categories, visa issuance fell by 76% and 73%, respectively, from March 21, 2020, to September 30, 2020, when compared to that same period in FY 2019. *See id.* There was an approximately 50% drop off in both categories from July 15, 2020, to September 30, 2020, when compared to that same period in

FY 2019. *See id.* These figures illustrate the substantial operational impact that COVID-19 has had on the State Department's visa-processing capacity.

As a court of equity, the court cannot place Plaintiffs in a *better* position than they would have been in but for the State Department's legal mistakes. At most, the court can endeavor to place Plaintiffs in the position they would have been in but for the errors. That requires the court to approximate how many DV-2020 visas the State Department likely would have issued had it continued visa adjudications under its substantially limited operations from March 20, 2020—the date of the COVID-19 Guidance—to September 9, 2020—the date embassies and consulates were advised to resume diversity visa processing as a result of this court's order. Coming up with a reasonable estimate is hardly an exact science.

The percentage reduction in issued IR-1 and IR-2 visas during FY 2020 provides a helpful guide. Again, these are not visa categories subject to the Presidential Proclamations. So, presumably these visas were processed and adjudicated as health and safety conditions permitted in various embassies and consulates around the world. Even then, issuance of these visas fell by approximately 75% during the period of March 21, 2020, to September 30, 2020, compared to that same period in FY 2019. Defs.' Second Suppl. Report at 3.

With respect to diversity visas, the State Department has advised that in FY 2019 it issued 44,882 diversity visas, of which 12,897 were issued between October 1, 2018, and March 20, 2019. Defs.' Report on Good Faith Efforts to Implement the Prelim. Inj., ECF No. 136, at 6. That means the balance of 31,985 (44,882 – 12,897) FY 2019 diversity visas were issued between March 21, 2019, and September 30, 2019. The court can assume a similar increase in issuance would have unfolded in FY 2020 but for COVID-19, as the State Department had issued only 11,023 diversity visas as of March 20, 2020. *See id.* at 7. The court assumes that, but for the COVID-19 pandemic,

the State Department in FY 2020 would have issued an average number of diversity visas. The court will use the eighteen-year average figure of 47,404. That means that, but for COVID-19, the State Department would have issued an additional 36,381 ($47,404 - 11,023$) diversity visas between March 21, 2020, and September 30, 2020. The court further assumes that the issuance of diversity visas, if it had continued after March 20, 2020, would have been impacted by the pandemic to the same extent as the approximate 75% reduction that occurred in the IR-1 and IR-2 categories. Applying such reduction to the 36,381 projection yields a total of 9,095 visas that the State Department reasonably and realistically could have issued after March 20, 2020, through the end of the fiscal year.

The court will order the State Department to reserve 9,095 diversity visa numbers after September 30, 2020, pending final adjudication of this matter.⁴ Adding that number to the number of diversity visas already issued in FY 2020—15,401 through September 24, 2020, *see* Grewe Decl. ¶ 6—could result in the issuance of a total of 24,496 DV-2020 visas, if Plaintiffs ultimately were to prevail. That is approximately 51% of the average of diversity visas issued over the last eighteen years ($24,496 / 47,404$). That percentage is slightly below the percentage of IR-1 (65%) and IR-2 (59%) visas issued in FY 2020 relative to FY 2019, *see* Defs.’ Second Suppl. Report at 3, but is nevertheless a reasonable estimate.

Visa Reissuance. Plaintiffs also ask for the court to order Defendants to renew DV-2020 visas after the end of the fiscal year, as necessary to permit the visa recipients a reasonable opportunity to use their visas to enter the country. *See* Pls.’ Mot. for Suppl. Relief at 18. The

⁴ The court recognizes that this final reservation figure does not credit the State Department for diversity visas issued following the agency’s implementation of the court’s September 4 Order. The court does not believe that a further reduction of this already rough approximation is warranted, however, as the equities favor reserving a greater number of DV-2020 visas to offset the State Department’s halting the processing and adjudication of visa applications for nearly six months.

court denies this request without prejudice. Plaintiffs have not shown how the post-deadline expiration (or the possible refusal to renew the visa) could be attributed to any action which the court has found to be unlawful. Absent this connection, equitable relief is unwarranted. Nor is it apparent that such relief is necessary at this juncture. Plaintiffs have explained that “[n]othing in the INA forecloses” the State Department from reissuing diversity visas after the fiscal year, and so the only apparent impediment is the State Department’s non-binding “policy of refusing to reissue diversity visas after the end of this fiscal year.” *See* Pls.’ Mot. for Suppl. Relief at 18 (citing FAM 504.10-5(A)). Should the State Department choose to enforce that policy in the future, then presumably the INA would not prevent Plaintiffs from seeking relief at that point.

B. Class Certification

The court turns now to the *Gomez* and *Aker* Plaintiffs’ renewed motion for class certification. *See* Pls.’ Renewed Class Cert. Mot. The court previously declined to certify a DV-2020 subclass “because all proposed class members will benefit from the preliminary relief” afforded by the court under the Administrative Procedure Act. *Gomez*, 2020 WL 5367010, at *37. As discussed, the preliminary relief thus far fashioned has not been sufficient to remedy the harm caused by the State Department’s legal errors. That is particularly true for DV-2020 Selectees who are not Named Plaintiffs. Although some have benefited and received visas, thousands have not, and their lack of success at securing visa adjudication in the weeks since the court issued its order is well documented. *See, e.g.,* Dahab Decl. ¶ 8(e) (indicating that in a survey of nearly 1,800 non-named plaintiff DV-2020 Selectees, over 1,450, or approximately 81 percent, reported that they either received no response to consular inquiries regarding expedited processing, or that they otherwise received indications that their applications would not be processed). Class certification is now required to place putative class members before the court as parties, *see Molock v. Whole*

Foods Mkt. Grp., Inc., 952 F.3d 293, 298 (D.C. Cir. 2020) (“Putative class members become parties to an action . . . only after class certification.”), and to ensure their eligibility for the visa numbers that the court has ordered the State Department to reserve after September 30 pending final judgment, *see Almaqrami*, 933 F.3d at 781–82. The court will grant the class certification motion in *Gomez*, but declines to do so for the class requested in *Aker*.

The Gomez Plaintiffs’ Proposed Class. The *Gomez* Plaintiffs seek to certify a class of DV-2020 Selectees pursuant to Rule 23(b)(2) and 23(b)(1)(A). They define the proposed class as follows:

Individuals who have been selected to receive an immigrant visa through the U.S. Department of State’s FY2020 Diversity Visa Lottery and who had not received their immigrant visa on or before April 23, 2020, when the Presidential Proclamation 10014, later extended by Presidential Proclamation 10052, took effect.

Gomez Pls.’ Mot. for Class Certification, ECF No. 52, at 1 [hereinafter *Gomez* Pls.’ Class Mot.]. The *Gomez* Plaintiffs ask that the class representatives include Plaintiffs Fatma Bushati, Jodi Lynn Karpes, Shyam Sundar, Koirala, Aja Tamamu Mariama Kinteh, Iwundu épouse Kouadio Ijeoma Golden, and Aya Nakamura. *See id.* at 2.

Rule 23, which governs class certification, permits certification only if: “(1) the class is so numerous that joinder of all members is impracticable”; (2) “there are questions of law or fact common to the class”; (3) “the claims or defenses of the representative parties are typical of the claims or defenses of the class”; and (4) “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). In addition to meeting these requirements, a class must satisfy at least one of the three subsections of Rule 23(b). Here, Plaintiffs seek certification under subsections 23(b)(2) and 23(b)(1)(A). The former subsection allows certification of a class if “the party opposing the class has acted or refused to act on grounds that

apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). The latter subsection permits certification if “inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class.” Fed. R. Civ. P. 23(1)(A).

The *Gomez* Plaintiffs easily satisfy the Rule 23(a) requirements. The class consists of tens of thousands of DV-2020 Selectees, whose collective joinder is impracticable. There are questions of law common to the class, including but not limited to, whether the State Department’s No-Visa Policy as applied to DV-2020 Selectees is in accordance with the law or in excess of the agency’s statutory authority; whether the State Department unreasonably delayed in processing and adjudicating DV-2020 applications; and whether the treatment of DV-2020 Selectees as not “mission critical” under the agency’s COVID-19 Guidance was arbitrary and capricious. *Gomez*, 2020 WL 5367010, at *26–33. The class representatives’ claims are typical of the class as a whole, as the representatives and class members share the same interest and suffered the same injury—securing the otherwise stalled adjudication of their DV-2020 applications. *See Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 156 (1982). The representative parties will fairly and adequately represent the interests of the class, and class counsel are qualified to vigorously prosecute their interests. *See Twelve John Does v. District of Columbia*, 117 F.3d 571, 575 (D.C. Cir. 1997). The proposed class therefore satisfies the prerequisites of numerosity, commonality, typicality, and adequacy of representation required under Rule 23(a).

Additionally, class certification is appropriate under both Rules 23(b)(2) and 23(b)(1)(A). “Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class. It does not authorize class certification when each individual class

member would be entitled to a different injunction or declaratory judgment against the defendant.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011) (cleaned up). That criterion is satisfied here. Each class member seeks an injunction that prevents the State Department from implementing the No-Visa Policy and the COVID-19 Guidance against DV-2020 Selectees. They also seek the *opportunity* to have their diversity visa applications processed and adjudicated consistent with governing statutes and regulations after the end of the 2020 fiscal year. No class member asks the court to actually issue a visa. The requested injunctive relief thus applies uniformly across the class. *Id.* (stating that “the key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted—the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them” (cleaned up)).⁵

As for Rule 23(b)(1)(A), “certification is appropriate when the class seeks injunctive or declaratory relief to change an alleged ongoing course of conduct that is either legal or illegal as to all members of the class.” *Adair v. England*, 209 F.R.D. 5, 12 (D.D.C. 2002) (citing 5 Moore’s Federal Practice § 23.41[4] (3d ed. 2000)). “‘Rule 23(b)(1)(A) certification is most common’ in cases in which the class seeks declaratory or injunctive relief against the government ‘to provide unitary treatment to all members of a defined group.’” *Id.* (quoting 5 Moore’s § 23.41[4]). That is, of course, precisely the case here. Certification under Rule 23(b)(1)(A) is thus appropriate for the same reasons as under Rule 23(b)(2).

⁵ The court recognizes that the number of class members exceeds the number of visas reserved by the court, meaning that many class members will not actually obtain a visa. That fact does not, however, defeat class certification under Rule 23(b)(2). *See DL v. District of Columbia*, 713 F.3d 120, 128 (D.C. Cir. 2013) (stating that Rule 23(b)(2) “does not bar courts from granting further equitable relief that does not reach every plaintiff in the case” and “the requested relief must respond, at least in part, to a common harm suffered as a result of a policy or practice that affects each class member”).

Defendants advance a host of arguments in opposition to class certification, but none are persuasive. First, Defendants contend that none of the *Gomez* DV-2020 Plaintiffs has standing to bring suit and therefore cannot serve as a representative of the class. Defs.’ Opp’n to *Gomez* Pls.’ Class Mot., ECF No. 95, at 13–15 [hereinafter Defs.’ Opp’n to Class Mot.]. But the court already has held that Plaintiff Aya Nakamura has demonstrated a substantial likelihood of Article III standing. *See Gomez*, 2020 WL 5367010, at *11–12. She therefore can serve as a class representative. *J.D. v. Azar*, 925 F.3d 1291, 1324 (D.C. Cir. 2019) (“The [Article III] ‘one plaintiff’ rule presumably applies with equal force to a Rule 23(b)(2) class action advancing a uniform claim and seeking uniform injunctive and declaratory relief.”).⁶

Second, Defendants contend that the *Gomez* DV-2020 Plaintiffs cannot satisfy the commonality requirement because the proposed class, as defined, “would sweep in a wide number of individuals who would be otherwise ineligible for an immigrant visa for any number of independent reasons, or who may not be able to receive an interview due to the suspension of consular services based on the ongoing worldwide pandemic.” Defs.’ Opp’n to Class Mot. at 16. But these differences do not defeat commonality. Plaintiffs need only show that one issue is common to all proposed class members in order to satisfy the commonality requirement. *See Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016). Here, there are multiple legal issues common to the class.

Third, Defendants argue that the *Gomez* DV-2020 Plaintiffs have not come forward with “evidentiary proof” that the Named Plaintiffs can adequately represent the class. Defs.’ Opp’n to Class Mot. at 18. But the court has carefully analyzed the evidence concerning Plaintiff Nakamura

⁶ Defendants also premise their arguments regarding typicality, adequacy, Rule 23(b)(2), and Rule 23(b)(1)(A), in part, on the DV-2020 Plaintiffs’ purported lack of standing. *See* Defs.’ Opp’n to Class Mot. at 16–19. These contentions fail insofar as they rest on the standing argument already rejected by the court.

to establish her standing, and finds that the same proof shows her to be an adequate class representative.

Finally, Defendants contend that certification under Rules 23(b)(2) and 23(b)(1)(A) should be denied because “any single injunction or declaration of relief would not provide relief to each member of the class.” *Id.* at 28; *id.* at 29 (arguing that certification should be denied under Rule 22(b)(1)(A) because “a wide variety of factual circumstances” foreclose class-wide relief). That contention rests on the assertion that “Plaintiffs’ claims rely on too many case-specific allegations.” *Id.* at 28. But Defendants misconstrue what the *Gomez* DV-2020 Plaintiffs seek. They do not ask the court to order the State Department to issue visas to each class member. Rather, they seek the removal of unlawful State Department policies that stand in the way of their statutory right to have their DV-2020 applications adjudicated. *See* 8 U.S.C. § 1202(b) (“All immigrant visa applications shall be reviewed and adjudicated by a consular officer.”); *Almaqrami*, 933 F.3d at 777 (observing that if a diversity visa selectee “meets the criteria to obtain one, the State Department ‘shall’ issue him a diversity visa”) (quoting 8 U.S.C. § 1153(c)). Individual circumstances that might ultimately result in a visa denial or prevent a class member from completing visa processing for reasons unrelated to the challenged policies therefore do not impede certification under Rule 23(b)(2).

Accordingly, pursuant to Rules 23(b)(2) and 23(b)(1)(A), the court certifies as a class,

Individuals who have been selected to receive an immigrant visa through the U.S. Department of State’s FY2020 Diversity Visa Lottery and who had not received their immigrant visa on or before April 23, 2020, when the Presidential Proclamation 10014, later extended by Presidential Proclamation 10052, took effect.

The court also names as representatives of the class: *Gomez* Plaintiffs Fatma Bushati, Jodi Lynn Karpes, Koirala, Aja Tamamu Mariama Kinteh, Iwundu épouse Kouadio Ijeoma Golden, and Aya

Nakamura. Finally, under Rule 23(g), the Court appoints Karen C. Tumlin and Esther H. Sung of Justice Action Center; Stephen Manning, Nadia Dahab, Tess Hellgren, and Jordan Cunnings of Innovation Law Lab; Jesse Bless of American Immigration Lawyers Association; and Laboni Hoq of the Law Office of Laboni A. Hoq as class counsel.

The Aker Plaintiffs' Proposed Class. The *Aker* Plaintiffs request certification of a class that would consist of “all individual diversity visa immigrant applicants and their derivative beneficiaries whose diversity visas *were issued* prior to Presidential Proclamations 10052 and/or 10014 taking effect, but who were unable to enter the United States due to travel restrictions and who have subsequently been unable to obtain reissuance of their visas through the individual consulates of the Department of State pursuant to the Presidential Proclamations.” Mot. for Class Cert. & Supporting Mem., ECF No. 84 (emphasis added). By its own terms, the requested *Aker* class does not include DV-2020 Selectees whose visas were not issued before the Proclamations went into effect; it includes only applicants who received diversity visas that have since expired. The court’s September 4 Order required the State Department to renew visas that had expired but were not renewed due to the Proclamations.

The court declines to certify the *Aker* class for two main reasons. First, it is unclear how many DV-2020 Selectees who meet the definition of the proposed *Aker* class continue to be without a renewed visa and thus face ongoing harm resulting from the State Department’s prior actions. Without even an approximation of how many DV-2020 Selectees are awaiting a renewed visa, the court cannot make a numerosity or typicality assessment. Second, the need for class relief is not apparent. As discussed, for DV-2020 Selectees who have yet to obtain a visa, class certification is necessary to affect their party status before the court and to ensure their eligibility for reserved visa numbers after September 30. The same cannot be said for the proposed *Aker*

class. The court has received no information that a reserved visa number is necessary to renew a visa (as distinct from issuing one in the first instance). And, according to Plaintiffs, there is no legal impediment to renewing a visa after the end of the fiscal year. Thus, the relief that is driving the need for class certification for the *Gomez* proposed class is missing for the proposed *Aker* class. The *Aker* Plaintiffs have thus failed to carry their burden under Rule 23 to certify a class.

III. CONCLUSION AND AMENDED ORDER

For the foregoing reasons, the court grants in part and denies in part Plaintiffs' request for supplemental relief, ECF No. 146, and orders the State Department to reserve 9,095 diversity visa numbers after September 30, 2020, for the future processing of the Named Plaintiffs' and class-members' diversity visa applications, pending final adjudication of this matter.

The court also grants the *Gomez* Plaintiffs' Renewed Motion for Class Certification, ECF No. 144, and certifies the following class:

Individuals who have been selected to receive an immigrant visa through the U.S. Department of State's FY2020 Diversity Visa Lottery and who had not received their immigrant visa on or before April 23, 2020, when the Presidential Proclamation 10014, later extended by Presidential Proclamation 10052, took effect.

The court names as representatives of the class and appoints as class counsel those individuals identified in Section II.B. of this opinion. The *Aker* Plaintiffs' Renewed Motion for Class Certification is denied.

Dated: September 30, 2020



 Amit P. Mehta
 United States District Judge

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DOMINGO ARREGUIN GOMEZ, et al.,

Plaintiffs,

V.

DONALD J. TRUMP, et al.,

Defendants.

Case No. 20-cv-01419 (APM)

**MOHAMMED ABDULAZIZ
ABDUL MOHAMMED, et al.,**

Plaintiffs,

V.

Case No. 20-cv-01856 (APM)

MICHAEL R. POMPEO, et al.,

Defendants.

AFSIN AKER, et al.,

Plaintiffs,

v.

Case No. 20-cv-01926 (APM)

DONALD J. TRUMP, et al.,

Defendants.

CLAUDINE NGUM FONJONG, et al.,

Plaintiffs,

v.	)	Case No. 20-cv-02128 (APM)
	)	
DONALD J. TRUMP, et al.,	)	
	)	
Defendants.	)	
_____	)	
	)	
CHANDAN PANDA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 20-cv-1907 (APM)
	)	
CHAD F. WOLF, et al.,	)	
	)	
Defendants.	)	
_____	)	

MEMORANDUM OPINION AND ORDER

These five consolidated cases concern recent actions taken by the President and the State Department to restrict the issuance of visas and entry of certain classes of foreign nationals into the United States due to the COVID-19 pandemic. On March 20, 2020, the State Department temporarily suspended routine visa services at consular offices and embassies worldwide due to the pandemic, allowing only “emergency and mission critical visa services.” Then, on April 20, 2020, the President issued Presidential Proclamation 10014, which suspended the entry of all immigrants into the United States for two months unless they qualified for an exception to the Proclamation. That Proclamation was followed two months later by Presidential Proclamation 10052, which extended the entry suspension for immigrants until December 31, 2020, and also suspended the entry of foreign nationals seeking admission on temporary nonimmigrant visas, with limited exceptions.

The State Department has interpreted Proclamations 10014 and 10052 to suspend not just entry, but also the review and adjudication of visas for applicants who are covered by the Proclamations and not subject to any of their exceptions. Consequently, at posts that have not resumed routine operations, visa processing and issuance have been suspended unless the applicant is both (1) eligible for an exception to the Proclamation and (2) considered “mission critical.” Though these are distinct requirements, the exceptions to the Proclamations appear to heavily inform the types of applications considered to be mission critical. The State Department has begun a phased reopening since July 15, 2020, but even at posts that have resumed routine operations, the processing and issuance of covered, non-exempt visas remains suspended pursuant to the Department’s interpretation of the Proclamations.

Plaintiffs in these five consolidated actions are approximately 1,076 visa applicants, visa sponsors, and their derivative beneficiaries who represent various immigrant and nonimmigrant visa categories that are subject to the Proclamations’ suspension of entry. Plaintiffs have all filed motions for preliminary injunctions and temporary restraining orders, seeking to preliminarily enjoin Defendants from implementing or enforcing the Proclamations, and two of the actions seek to certify six putative subclasses. Plaintiffs all challenge the validity of the Proclamations on various statutory and constitutional grounds, and they assert that the State Department’s suspension of the processing and issuance of non-exempt visas pursuant to the Proclamations violates the Administrative Procedure Act.

In addition, a subset of Plaintiffs (“DV-2020 Plaintiffs”) raise several challenges that are specific to one category of immigrant visas—diversity visas. The DV-2020 Plaintiffs’ opportunity to receive diversity visas and immigrate to the United States will permanently expire on September 30, 2020, unless Defendants process and issue their visas by then. Diversity visa applications are

not currently being adjudicated, however, because they are, in general, ineligible for an exception to the Proclamation and not considered mission critical. These Plaintiffs assert that the processing and adjudication of their visas has been unreasonably delayed, and that the State Department's exclusion of this category from its guidance regarding mission critical services is arbitrary.

For the reasons discussed below, the court grants in part and denies in part Plaintiffs' motions for preliminary relief. Specifically, the court rejects Plaintiffs' statutory and constitutional challenges to the Proclamations, but holds that Plaintiffs are substantially likely to succeed on their claims that (1) the State Department's policy of not reviewing and adjudicating non-exempt visas is not in accordance with law, is in excess of statutory authority, and is arbitrary and capricious; (2) the State Department's non-processing of 2020 diversity visa applications constitutes agency action unreasonably delayed; and (3) the State Department's exclusion of 2020 diversity visa applications from its guidance on mission critical services is arbitrary and capricious. The court further concludes that the DV-2020 Plaintiffs have met the additional requirements for preliminary injunctive relief pursuant to the court's equitable authority and 5 U.S.C. § 705, but the Non-DV Plaintiffs in *Gomez* have not. In light of the foregoing, the court denies without prejudice the pending class certification motions as they pertain to the putative diversity visa classes, and defers ruling on the *Gomez* Plaintiffs' motion for class certification as it pertains to the other four putative subclasses of Non-DV Plaintiffs.

I. BACKGROUND

A. Relevant Visa Categories

Broadly speaking, a foreign national wishing to enter the United States must first obtain a visa from the State Department. A visa is a travel document that allows its holder to travel to a port of entry and request permission to enter the United States, but it does not guarantee the right

to enter the country. *See Almaqrami v. Pompeo*, 933 F.3d 774, 776 (D.C. Cir. 2019); *Trump v. Hawaii*, 138 S. Ct. 2392, 2414 (2018) (explaining the “basic distinction” between visa issuance and entry “that runs throughout the INA”); 8 U.S.C. § 1201(h). There are two overarching categories of visas: immigrant and nonimmigrant. Nonimmigrant visas are issued to foreign nationals seeking to enter the United States on a temporary basis for tourism, business, medical treatment, and certain types of temporary work. Immigrant visas are issued to foreign nationals intending to relocate permanently to the United States. *See United States v. Idowu*, 105 F.3d 728, 731 (D.C. Cir. 1997); *Requirements for Immigrant and Nonimmigrant Visas*, U.S. CUSTOMS & BORDER PROTECTION (Jan. 3, 2018).¹ Six visa categories are relevant for this case.

Family-Based Immigrant Visas. Under the family-based immigrant visa program, a U.S. citizen or lawful permanent resident may “sponsor” a foreign-national relative (the “beneficiary”) for an immigrant visa. *See* 8 U.S.C. §§ 1151, 1153(a). The sponsor may also petition for visas for certain relatives (“derivatives”) of the principal beneficiary. *Id.* §§ 1153(d), 1154(a). A family member seeking to sponsor a beneficiary must file a petition with the United States Citizenship and Immigration Services (“USCIS”). Once the petition is approved, USCIS will forward the visa petition for consular processing. Most approved visa applicants must then wait in a queue, determined by the applicant’s country of origin and his or her relationship with the visa sponsor. *See id.* § 1153(e); 22 C.F.R. §§ 42.51(a), 42.52(a)–(c); 9 FAM 504.1-2(c)–(d). When the applicant reaches the front of the queue, he or she completes the visa application, provides supporting evidence, pays the requisite fees, and attends an in-person interview with a

¹ Available at <https://www.cbp.gov/travel/international-visitors/visa-waiver-program/requirements-immigrant-and-nonimmigrant-visas>.

consular officer, who issues the visa upon finding that the beneficiary is eligible and merits the visa. 8 U.S.C. § 1201; 22 C.F.R. § 42.73; 9 FAM 504.1-2(d), 504.1-3.

Diversity Immigrant Visas. Congress has reserved 55,000 “diversity” immigrant visas each year to randomly selected individuals from countries with historically low levels of immigration into the United States. *See* 8 U.S.C. § 1151(e); *id.* § 1153(c)(1)(A). Eligible applicants enter a “lottery” held once each fiscal year. *Id.* § 1153(c); 22 C.F.R. § 42.33. Demand regularly outstrips supply: in Fiscal Year 2018 there were approximately 14.7 million qualified entries. *See* Pls.’ Mem. in Supp. of Pls.’ Mot. for a Prelim. Inj., *Gomez v. Trump*, No. 20-cv-1419 (APM), ECF No. 53-1 [hereinafter *Gomez* PI Mem.], at 5. A lottery winner or “selectee” must complete a visa application and schedule a consular interview, and “if he meets the criteria to obtain one, the State Department shall issue him a diversity visa.” *Almaqrami*, 933 F.3d at 777 (cleaned up). If the selectee does not receive a visa by the end of the fiscal year, however, he is out of luck: “Because the diversity visa program restarts each fiscal year, consular officers may not issue diversity visas after midnight on September 30 of the” fiscal year in which the visa applicant was selected. *Id.* A diversity visa is generally valid for six months after issuance. 8 U.S.C. § 1201(c).

H-1B Nonimmigrant Visas. The H-1B category enables U.S. employers to hire qualified foreign professionals in “specialty occupation[s]” requiring “theoretical and practical application of a body of highly specialized knowledge” and a “bachelor’s or higher degree.” *Id.* §§ 1184(i)(1), 1101(a)(15)(H)(i)(b). An employer seeking to hire an H-1B worker must first file a labor condition application with the Department of Labor, identifying the specialty occupation position, the location of employment, and attesting that the employer will pay the worker prevailing wage rates. *See id.* § 1182(n)(1)(A)–(D); 20 C.F.R. §§ 655.730(c)(4), 655.731(a). After the application is

approved, the employer may file a petition with USCIS to classify the foreign worker as an H-1B nonimmigrant. *See* 8 U.S.C. § 1184(c)(1); 8 C.F.R. § 214.2(h)(4)(iii)(B)(1). Once USCIS approves the petition, the worker may apply for an H-1B visa at a U.S. embassy or consulate, which will grant the visa, provided the application is complete and the worker is not otherwise ineligible to receive a visa. 9 FAM 402.10; 8 U.S.C. §§ 1182, 1201(g); *see also Almaqrami*, 933 F.3d at 776. Spouses and minor children of H-1B workers may obtain derivative H-4 visas. 8 U.S.C. § 1101(a)(15)(H).

Immigrant Visas Based on Permanent Labor Certification. While the H-1B program only allows for temporary work in this country, an employer may also petition for the classification of a foreign national seeking admission to the United States based on an offer of *permanent* employment as a skilled worker or a member of a profession holding an advanced degree. *See id.* §§ 1153(b)(2)(A), 1153(b)(3)(A)(i), 1154(a)(1)(F). Before doing so, the employer must obtain a labor certification from the Department of Labor stating that there are no qualified, able, and willing United States workers available to fill the employer’s job opportunity, and the employment of the beneficiary will not adversely affect the wages and working conditions of similarly employed workers in the United States. *See id.* §§ 1153(b)(3)(C), 1182(a)(5)(A)(i)(I)–(II); *Patel v. Johnson*, 2 F. Supp. 3d 108, 113–14 (D. Mass. 2014).

H-2B Nonimmigrant Visas. An H-2B petition allows an employer to hire foreign nationals “to perform . . . temporary service or labor” in non-specialized, non-agricultural sectors “if unemployed persons capable of performing such service or labor cannot be found in this country.” 8 U.S.C. § 1101(a)(15)(H)(ii)(b); *see also* 8 C.F.R. § 214.2(h)(6). To hire an H-2B worker, an employer must certify to the Department of Labor that it has attempted to recruit domestic workers for the position, that no such workers are available, and that the temporary

employment of an H-2B worker will not adversely affect the wage rates or working conditions of similarly employed domestic workers. *See* 8 C.F.R. §§ 214.2(h)(6)(iii)(A)–(D), (6)(iv)(A); *id.* § 655.0 *et seq.* If the certification is approved, the employer may file a petition with USCIS. *Id.* § 214.2(h)(6)(iii)(E).

J Nonimmigrant Visas. The J visa category allows approved individuals to participate in work- and study-based exchange visitor programs. *See* 8 U.S.C. § 1101(a)(15)(J); 22 U.S.C. §§ 2451, *et seq.* Regulations establish 15 categories of exchange program eligibility, including trainees, teachers, au pairs, and summer work and travel for foreign students. 22 C.F.R. §§ 62.1, 62.4. J visa applicants must be sponsored by designated entities, which include government agencies, academic institutions, businesses, and non-profits. *Id.* §§ 62.3, 62.5–13, 62.15.

L Nonimmigrant Visas. The L visa program allows multinational corporations to sponsor visas for temporary intracompany transfers to the United States of foreign managers and executives (L-1A visas) or employees with certain “specialized knowledge” about the petitioning company (L-1B visas). *See* 8 U.S.C. § 1101(a)(15)(L); 8 C.F.R. §§ 214.2(l)(1)(ii)(B)–(D).

B. The State Department’s COVID-19 Guidance

On March 20, 2020, the State Department “temporarily suspend[ed] routine visa services at all U.S. Embassies and Consulates” due to COVID-19, but continued to require posts to provide “emergency and mission critical visa services” as resources allowed. *See* Certified Admin. R. (“CAR”), ECF No. 103-1 [hereinafter CAR], at 12–14 [hereinafter “COVID-19 Guidance”]. The State Department included as “mission critical or emergency services”:

[t]he processing of certain non-immigrant visas such as diplomatic and official visas, H-2 visas associated with food supply, certain medical professionals, air and sea crew and medical emergencies, . . . [and] cases in which an applicant is not protected by the Child Status Protection Act and is at risk of losing eligibility for a visa in his or her current category . . . , spouses and unmarried children of

U.S. citizens, as well as visas for adopted children, Afghan and Iraqi Special Immigrant visas, certain medical professionals, and medical emergencies.

Defs.’ Opp’n to Pls.’ Mots. for Prelim. Inj., ECF No. 94 [hereinafter Defs.’ Opp’n], Decl. of Brianne Marwaha, ECF No. 94-1 [hereinafter Marwaha Decl.], ¶ 8.

Between March 20 and July 15, 2020, “[p]osts [did] not have the authority to resume normal visa operations even if the host country ha[d] lifted most restrictions.” CAR at 23, 35. Since July 15, however, the State Department has permitted posts to “begin a phased approach to the resumption of routine visa services.” CAR 35. The phased reopening, termed “Diplomacy Strong,” is “based on local health and safety conditions,” and includes four operational tiers. CAR 36. In Phases Zero and One, posts “may continue processing only emergency and mission-critical . . . cases, as resources and local conditions allow.” CAR 36, 38. Phase Two allows for a partial resumption of routine services, and Phase Three allows for full resumption. CAR 37–39. Each phase includes detailed guidance regarding the types of visa categories posts should prioritize for processing. CAR 36–39.

C. Proclamation 10014

On April 22, 2020, the President signed Presidential Proclamation 10014, which temporarily suspends the entry of immigrants into the United States pursuant to 8 U.S.C. § 1182(f) and 8 U.S.C. § 1185(a). 85 Fed. Reg. 23,441 (Apr. 22, 2020). The Proclamation supplies three justifications for the action. First among those is to address the damage to the economy caused by the COVID-19 pandemic. *See id.* at 23,441–42. The Proclamation states that “we must be mindful of the impact of foreign workers on the United States labor market, particularly in an environment of high domestic unemployment and depressed demand for labor,” and highlights the need to protect in particular “workers at the margin between employment and unemployment, who are

typically ‘last in’ during an economic expansion and ‘first out’ during an economic contraction.” *Id.* at 23,441. Second, the Proclamation notes that “introducing additional permanent residents when our healthcare resources are limited puts strain on the finite limits of our healthcare system at a time when we need to prioritize Americans and the existing immigrant population.” *Id.* at 23,442. And third, the Proclamation explains that a pause on entry is required “so that consular officers may continue to provide services to United States citizens abroad.” *Id.* at 23,441.

Accordingly, Proclamation 10014 suspended for two months the “entry into the United States” of most immigrants abroad who did not already have a valid immigrant visa or travel document as of April 23, 2020. 85 Fed. Reg. at 23,442–43 §§ 1, 2(a), 5. The Proclamation is subject to certain exceptions, including that “any alien whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees,” is eligible to seek entry. 85 Fed. Reg. at 23,443 § 2(b)(ix). The Secretaries of State and Homeland Security are tasked with implementing the Proclamation as it applies to visas and entry, respectively, though consular officers are directed to determine, “in their discretion, whether an immigrant has established his or her eligibility for an exception” to the Proclamation. *Id.* at 23,443 § 3.

D. Proclamation 10052 and the National Interest Exception

On June 22, 2020, the President issued Proclamation 10052, which extended Proclamation 10014 and also suspended the entry of various nonimmigrants through December 31, 2020. 85 Fed. Reg. 38,263, 38,263–67 (June 25, 2020). The President announced that the Secretaries of Labor and Homeland Security had reviewed nonimmigrant programs and “found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.” *Id.* at 38,263.

Proclamation 10052 acknowledges that “[u]nder ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy,” but explains that “under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.” *Id.*

According to the Proclamation, “[t]he entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs,” in particular, “presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.” *Id.* at 38,264. The Proclamation cites various figures in support of this finding, noting that “between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas,” and “more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions.” *Id.* at 38,263–64. The Proclamation also highlights that “the May [2020] unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high,” and that “[t]emporary workers are often accompanied by their spouses and children, many of whom also compete against American workers.” *Id.*

Based on these findings, the Proclamation suspends the entry of foreign nationals seeking entry pursuant to H-1B, H-2B, L, and certain J nonimmigrant visas, unless they are eligible for an exception, including a national interest exception. *Id.* at 38,264–65 §§ 2, 3. Proclamation 10052 also instructs the Secretaries of State, Labor, and Homeland Security to “establish standards to define categories of aliens covered by [the national interest exception] of [the] proclamation.” *Id.*

at 28,265 § 4(i); *see also Gomez v. Trump*, No. 20-CV-01419 (APM), 2020 WL 3429786, at *2 n.2 (D.D.C. June 23, 2020).

Since then, the State Department has published guidance listing various scenarios in which an applicant in a covered visa category may qualify for a national interest exception to Proclamations 10014 and 10052. CAR 167–174. Under this guidance, certain H-1B, H-2B, J, and L nonimmigrant visa applicants who also meet additional criteria may qualify for a national interest exception; however, there appear to be no specific national interest exceptions available for diversity visa applicants or family-based visa applicants, except for minors who are at risk of aging out of their visa classification. CAR 173–74.

E. Defendants’ Implementation of Proclamations 10014 and 10052 and the COVID-19 Guidance

The State Department has interpreted the Proclamations to suspend not only entry but also the issuance of visas in categories covered under the Proclamations and not subject to one of the enumerated exceptions. *See* CAR 38 (“Presidential Proclamation 10052 suspended the issuance of nonimmigrant visas in the H-1B, H-2B, L, and J-1 . . . classifications until December 31, 2020, with certain exceptions.”); CAR 28 (“This [Proclamation] effectively suspends issuance of certain H-1B, H-2B, J (for certain categories within the Exchange Visitor Program), and L” visas.); CAR 24 (“The issuance of many immigrant visas . . . was suspended by Presidential Proclamation” 10014.); CAR 36 (explaining that “Presidential Proclamation . . . 10014 suspending issuance of certain immigrant visas has been extended through at least December 31”).

Based on this interpretation, the State Department has instructed consular posts that “[o]nly [visa] applicants that [the] post believes may meet an exception to the [Proclamation], including the national interest exception, *and* that constitute a mission-critical category should be adjudicated at this time,” and that officers “may not issue any [visas] that are not also excepted under the

[Proclamation].” CAR 24 (emphasis added); *see also* CAR 32 (“Posts may continue to schedule mission critical and emergency immigrant and nonimmigrant visa interviews as resources allow . . . , but should applicants not qualify for an exception under the relevant presidential proclamation, including in the national interest, post should refuse the case”); CAR 44 (“Under P.P. 10014, consular officers may continue to process visa applications for individuals who are expressly excepted from the Proclamation”).

Thus, for consular posts that have not resumed routine visa services, the State Department has suspended processing and issuance of covered visas unless they (1) are eligible for an exception to the Proclamations, and (2) qualify for mission critical or emergency services under the State Department’s COVID-19 Guidance. Though these two requirements are distinct, *see* Marwaha Decl. ¶ 7, they appear to overlap, with the “exceptions to the Presidential Proclamations” being “used as a guide for additional mission-critical or emergency travelers.” CAR 38; *see also* CAR 189 (“Mission-critical immigrant visa categories include applicants who may be eligible for an exception under these presidential proclamations.”); CAR 70 (“[C]onsular managers may, in their discretion, determine that a specific H-1B, H-2, J, or L application that is likely to meet the . . . national interest exception to P.P. 10052 or another exception is also ‘mission critical.’”). Conversely, if a visa category “fall[s] under the proclamation” and is not eligible for an exception, then it “would not be considered mission critical,” and a visa application “would not move forward.” 8/27/2020 Oral Arg. Tr., ECF No. 122 [hereinafter 8/27/2020 Arg. Tr.], at 87.

Posts that have resumed routine visa services since July may process cases that are not designated as mission critical pursuant to a detailed prioritization scheme, *see* CAR 36–41, but those posts are still forbidden from “resum[ing] routine processing of [covered] visa classifications, unless the applicant qualifies for an exception under [Proclamations 10014 and

10052], until given a specific instruction to do so.” CAR 38; *see also* CAR 36. This policy of suspending all processing and issuance of visas in categories covered by the Proclamation and not subject to an exception is referred to as the “No-Visa Policy.”²

F. The Application of Defendants’ COVID-19 Guidance and No-Visa Policy to Diversity Visa Applicants

The State Department has issued only approximately 12,000 Fiscal Year 2020 diversity visas, meaning that approximately 43,000 visas are still available to DV-2020 selectees. *See* 8/27/2020 Arg. Tr. at 68. Those selectees must receive visas by the end of the fiscal year, September 30, 2020, or their opportunity to immigrate to the United States will vanish. 8 U.S.C. § 1154(a)(1)(I)(ii)(II). Despite this fast-approaching deadline, “[p]ursuant to guidance from the [State] Department on the suspension of routine visa services and implementation of P.P. 10014 and P.P. 10052,” no “additional diversity visa case appointments with [consular] posts” have been scheduled since March 20, 2020. Defs.’ Opp’n, Decl. of Aaron Luster, ECF No. 94-3 [hereinafter Luster Decl.], ¶ 5. “[O]nly when a consular post reaches Phase Three of the Diplomacy Strong Framework may the post resume diversity visa case processing, and only for cases that appear to be eligible for an exception to P.P. 10014.” *Id.*

Thus, DV-2020 selectees are doubly doomed. Pursuant to the COVID-19 Guidance, diversity visa selects who are imminently going to lose their eligibility to receive a visa are not being treated as mission critical at those posts that have not resumed routine visa processing. *See* 8/7/2020 Status Hr’g Tr., ECF No. 78 [hereinafter 8/7/2020 Status Hr’g Tr.], at 19. And pursuant

² Communications from consular offices, embassies, and the Kentucky Consular Center to visa applicants and DV-2020 selectees reflect the execution of the State Department’s No-Visa Policy. *See, e.g.*, Second Am. Compl., *Gomez v. Trump*, 20-cv-1419, (APM), ECF No. 46, Ex. H, ECF No. 46-8 (“While the proclamation is in place, the issuance of diversity visas is not permitted.”); *id.*, Ex. O, ECF No. 46-15 (“We will not be issuing H-1B, H-2B, L, or certain J visas . . . through December 31, 2020, unless an exception applies.”); *Gomez* PI Mot., ECF No. 53-11 ¶ 21 (“We contacted the Kentucky Consular Center, which reported that no interviews would be scheduled due to the travel ban.”); *id.*, ECF No. 53-24 ¶ 14 (“Please be informed that L visas issuance is suspended due to Presidential Proclamation 10052 until, at least, December 31st, 2020.”).

to the State Department’s “No-Visa Policy,” the Department is not currently processing any diversity visas, unless an applicant qualifies for an exception to the Proclamations, even at posts that have resumed routine processing. *See* 8/27/2020 Arg. Tr. at 79–80; Luster Decl. ¶ 5. However, the average DV-2020 selectee who did not receive her visa before April 23, 2020, does not appear to be eligible for an exception: under the State Department’s latest national interest exception guidance, diversity visas are not listed as among the categories of visas eligible for the exception. *See* CAR 167–174 (listing the categories of visas eligible for national interest exceptions); *see also* 8/7/2020 Status Hr’g Tr. at 18 (“[W]e are aware of . . . isolated cases of . . . Diversity Visa selectees being granted the national interest exception, but those are -- those would appear to be isolated cases.”).

Thus, it appears that, as things currently stand, the substantial majority of the remaining 43,000 diversity visas for this fiscal year will go unissued, and most of this year’s diversity visa selectees will permanently lose their opportunity to immigrate to the United States through the diversity visa program.³

G. Procedural Background

This matter involves four fully consolidated cases (*Gomez v. Trump*, No. 20-cv-1419; *Mohammed v. Pompeo*, No. 20-cv-1856; *Fonjong v. Pompeo*, No. 20-cv-2128; and *Aker v. Trump*, No. 20-cv-1926) and one partially consolidated case (only the merits of the first two arguments raised in *Panda v. Wolf*, No. 20-cv-1907). *See* Am. Order, *Gomez v. Trump*, No. 20-cv-1419 (APM), ECF No. 79.

³ Selectees can always enter the diversity lottery again in future years, but with millions of applications submitted each year for 55,000 slots, the chances they will hit the lottery twice are vanishingly slim. *See Diversity Visa Program, DV 2016-2018: Number of Entries Received During Each Online Registration Period by Country of Chargeability, FY16–FY18*, U.S. DEP’T OF STATE, available at <https://travel.state.gov/content/dam/visas/Diversity-Visa/DVStatistics/DV%20AES%20statistics%20by%20FSC%202016-2018.pdf>.

1. *Gomez v. Trump, No. 20-cv-1419*

In their Second Amended Complaint, the *Gomez* Plaintiffs challenge Proclamations 10014 and 10052 and their implementation in a putative class action consisting of 23 named plaintiffs across five subclasses representing the following five visa categories: family-based immigrant visas, diversity immigrant visas, H-1B nonimmigrant visas, H-2B nonimmigrant visas, J nonimmigrant visas, and L nonimmigrant visas. *See* Second Am. Compl., *Gomez v. Trump*, No. 20-cv-1419 (APM), ECF No. 111 [hereinafter *Gomez* SAC]. The named plaintiffs are nine family-based immigrant visa sponsors, consisting of citizens and lawful permanent residents, who are petitioning on behalf of foreign family members; seven diversity visa selectees for Fiscal Year 2020; and seven employers or organizations who either sponsor individuals for nonimmigrant visas, sponsor nonimmigrant visa programs, or represent nonimmigrant workers. *Id.* ¶¶ 15–36. The Defendants are President Donald Trump, Attorney General William Barr, the Department of State, Secretary of State Michael Pompeo, the Department of Homeland Security, and Acting Secretary of Homeland Security Chad Wolf. *Id.* ¶¶ 37–42.

The *Gomez* Plaintiffs have two pending motions for preliminary injunctive relief. In the first, they argue that Proclamation 10052 is *ultra vires*, violates the separation of powers between Congress and the Executive Branch, and, in the alternative, that the statutory authority for the Proclamation, 8 U.S.C. § 1182(f), violates the nondelegation doctrine. *See Gomez* PI Mem. at 22–32. They also argue that the State Department’s No-Visa Policy violates the Administrative Procedure Act (“APA”) because, among other things, it unlawfully and arbitrarily engrafts the Proclamations’ restrictions on entry onto the requirements for visa eligibility, thereby causing the cessation of processing and issuance of visa applications for otherwise qualified visa applicants now deemed ineligible for an exception. *Id.* at 33–38. Plaintiffs ask the court to preliminarily

enjoin Defendants from implementing or enforcing Proclamation 10014 and 10052 against Plaintiffs and the proposed classes pursuant to 5 U.S.C § 705 and the court’s traditional equitable powers. *See* Pls.’ Mot. for a Prelim. Inj., *Gomez v. Trump*, No. 20-cv-1419 (APM), ECF No. 53 [hereinafter *Gomez* PI Mot.]; *Gomez* PI Mem. at 33, 45. In the alternative, Plaintiffs request an order requiring the State Department to reserve unused diversity visa numbers for fiscal year 2020. *Gomez* PI Mem. at 45.

In their supplemental preliminary injunction, the *Gomez* DV-2020 Plaintiffs argue that the State Department’s COVID-19 Guidance also violates the APA insofar as it does not adequately explain its exclusion of 2020 diversity visas from the categories of visas eligible for mission critical and emergency processing. *See* Pls.’ Suppl. Mot. for Prelim. Inj., ECF No. 66 [hereinafter *Gomez* Suppl. PI Mem.]. These plaintiffs seek an order enjoining the State Department’s application of the COVID-19 Guidance to diversity visa applicants pursuant to 5 U.S.C. § 705 and the court’s equitable authority. *Id.* at 7. They also incorporate by reference the claims asserted in *Mohammed*, *Aker*, and *Fonjong*, and seek classwide relief directing Defendants to adjudicate their visa applications notwithstanding the suspension of routine visa services at certain consular posts. *Id.* at 1, 8–9.

In addition, the *Gomez* Plaintiffs ask the court to certify the matter as a class action with the following subclasses:

- a) **Immediate Relative Parent Subclass**—Individual U.S. citizens with an approved immigrant visa petition for an immediate relative parent and whose sponsored relative is subject to Presidential Proclamation 10052.
- b) **Preference Relative Subclass**—Individual U.S. citizens and lawful permanent residents with an approved immigrant visa petition for a relative in a preference immigrant category, including a spouse, parent, child, or sibling, and any qualifying derivative relatives, where the immigrant visa is “current” or will become “current,” meaning visas are authorized for issuance abroad, while

Presidential Proclamation 10052 is in effect, and whose sponsored preference relative is subject to Proclamation 10052.

- c) **Diversity Visa Subclass**—Individuals who have been selected to receive an immigrant visa through the U.S. Department of State’s FY2020 Diversity Visa Lottery and who had not received their immigrant visa on or before April 23, 2020, when the Presidential Proclamation 10014, later extended by Presidential Proclamation 10052, took effect.
- d) **Temporary Worker Subclass**—United States employers who have an approved nonimmigrant visa petition for an employee or potential employee in the H-1B, H-2B, or L-1 nonimmigrant visa categories; where the employee or potential employee’s petition for nonimmigrant status has been approved for temporary employment in the United States, and where the employee or potential employee is subject to Proclamation 10052.
- e) **Exchange Visitor Program Subclass**—Entities designated by the U.S. Department of State as an Exchange Visitor Program sponsor for any category of J-1 exchange visitors included in Proclamation 10052.

See Pls.’ Mot. for Class Cert., *Gomez v. Trump*, No. 20-cv-1419 (APM), ECF No. 52 [hereinafter *Gomez* Class Cert. Mot.], at 1.

2. *Mohammed v. Pompeo, No. 20-cv-1856*

The *Mohammed* Plaintiffs include 493 DV-2020 selectees and their derivative beneficiaries, and the Defendants are President Trump and Secretary of State Pompeo. Am. Compl., *Mohammed v. Pompeo*, No. 20-cv-1856 (APM), ECF No. 5, ¶¶ 1, 2114–15. In their pending motion for preliminary injunction, Plaintiffs argue that Defendants’ policies, procedures, and practices suspending the adjudication and issuance of immigrant visa applications for Fiscal Year 2020 diversity visa selectees and their derivative beneficiaries violate the APA, and warrant mandamus relief. See Mem. in Supp. of Pls.’ Mot. for Prelim. Inj., *Mohammed v. Pompeo*, No. 20-cv-1856 (APM), ECF No. 8-1 [hereinafter *Mohammed* PI Mem.], at 15–23. Plaintiffs seek an order: (1) requiring Defendants to reserve visa numbers for the Plaintiffs through the pendency of litigation; (2) declaring Defendants’ policies, procedures, and practices suspending the

adjudication of immigrant visa applications for the fiscal year 2020 Diversity Visa Program unlawful; (3) setting aside Defendants' implementation of policies, procedures, and practices precluding issuance of visas for DV-2020 selectees and their derivative beneficiaries based on the entry suspension promulgated in Proclamations 10014 and 10052; and (4) mandating Defendants process Plaintiffs' immigrant visa applications, schedule Plaintiffs for immigrant visa interviews, and issue visas to eligible Plaintiffs. *Id.* at 26.

3. *Fonjong v. Trump, No. 20-cv-2128*

Plaintiffs in this case include 243 DV-2020 selectees and their derivative beneficiaries. *See* Compl., *Fonjong v. Trump*, No. 20-cv-2128 (APM), ECF No. 1, ¶ 1. They are suing President Trump and Secretary of State Pompeo. *Id.* ¶¶ 1091–93. The *Fonjong* Plaintiffs have filed a motion for preliminary injunction and temporary restraining order, which raises identical arguments and seeks the same relief as the *Mohammed* Plaintiffs' motion. *See* Mem. in Supp. of Pls.' Mot. for TRO & Prelim. Inj., *Fonjong v. Trump*, No. 20-cv-2128 (APM), ECF No. 70-1 [hereinafter *Fonjong* TRO/PI Mem.].

4. *Aker v. Trump, No. 20-cv-1926*

The *Aker* Plaintiffs are 149 DV-2020 selectees and their derivative beneficiaries, and the Defendants in this case are President Trump, Secretary of State Pompeo, and the State Department. *See* Am. Compl., *Aker v. Trump*, No. 20-cv-1926 (APM), ECF No. 3 [hereinafter *Aker* Compl.], ¶¶ 4, 672–74. These Plaintiffs are situated in the following four circumstances:

(1) Those with issued, but expired immigrant visas; (2) [t]hose with completed immigrant visa interviews, but who[se] immigrant visa stamps were never issued; (3) [t]hose who completed all immigrant visa processing at the [Kentucky Consular Center] and were scheduled for or who were awaiting interviews; and (4) [t]hose who were in the process of completing their immigrant visa packages with the [Center], but who were then told all processing on their cases had ceased.

Pls.’ Mot. for TRO & Prelim. Inj. & Mem. of P. & A. in Supp., *Aker v. Trump*, No. 20-cv-1926 (APM), ECF No. 4 [hereinafter *Aker* TRO/PI Mem.], at 15–16. In their motion for temporary restraining order and preliminary injunction, the *Aker* Plaintiffs assert that the Proclamations are *ultra vires*, the State Department’s implementation of the Proclamations violates the APA, and the Proclamations and their implementations violate the Take Care Clause, the Due Process Clause, and the Equal Protection clause of the Constitution. *Id.* at 38–55. They ask the court to: (1) postpone the end-date of visa issuance for DV-2020 selectees to September 30, 2021; (2) enjoin the State Department from suspending the issuance and reissuance of visas for the diversity visa program; (3) enjoin the State Department from suspending visa adjudication for DV-2020 selectees; (4) order the State Department and the Kentucky Consular Center to complete processing visas for DV-2020 selectees; (5) order the State Department to issue visas for individuals who completed the interview process prior to the Proclamations; and (6) order the State Department to reissue expired visas for Fiscal Year 2020 diversity visa selectees whose visas expired before they could complete travel to the United States. *Id.* at 1–2.

In addition, the *Aker* Plaintiffs seek to certify the following class:

All individual diversity visa immigrant applicants and their derivative beneficiaries whose diversity visas were issued prior to Presidential Proclamations 10052 and/or 10014 taking effect, but who were unable to enter the United States due to travel restrictions and who have subsequently been unable to obtain reissuance of their visas through the individual consulates of the Department of State pursuant to the Presidential Proclamations.

See Mot. for Class Cert. & Supporting Mem., *Gomez v. Trump*, No. 20-cv-1419 (APM), ECF No. 84 [hereinafter *Aker* Class Cert. Mot.], at 2.

5. *Panda v. Wolf, No. 20-cv-1907*

Plaintiffs in this case are 169 Indian nationals with approved H-1B petitions and their derivative beneficiaries. *See* Compl., *Panda v. Wolf*, No. 20-cv-1907 (APM), ECF No. 1 [hereinafter *Panda* Compl.], at 21; *see also* 8/27/2020 Arg. Tr. at 54 (updating the court on the number of Plaintiffs in this action). These Plaintiffs all were residing and working in the United States under H-1B or H-4 status. *See* Pls.’ Am. Mem. of P. & A. in Supp. of Their Mot. for a Prelim. Inj., ECF No. 8 [hereinafter *Panda* PI Mem.], at 1. For various reasons they traveled to India, and now must receive visas to return to the United States. *Id.* However, they allege that Defendants, Acting Secretary of Homeland Security Wolf, Secretary of State Pompeo, and Secretary of Labor Eugene Scalia, have been withholding the adjudication of their DS-160 nonimmigrant visa applications, which if approved would allow them to re-enter the country. *Id.*

The court has bifurcated briefing on the *Panda* Plaintiffs’ motion for preliminary injunction, with the merits of their two overlapping claims being heard in this consolidated action, and the merits of the non-overlapping claim and other non-merits defenses being considered separately. *See* Am. Order, *Gomez v. Trump*, No. 20-cv-1419 (APM), ECF No. 79; Order, *Panda v. Wolf*, No. 20-cv-1907 (APM), ECF No. 23. As relevant here, the *Panda* Plaintiffs argue that Proclamation 10052 and its implementation are *ultra vires*, and that Defendants’ withholding adjudication of Plaintiffs’ visa applications violates the APA. *See Panda* PI Mem. at 25–35. They seek an order (1) enjoining Defendants from applying Proclamation 10052 in adjudicating Plaintiffs’ visa applications and determining whether they are admissible to the United States to resume H-1B or H-4 status, and (2) directing the Secretary of State and the United States consulates to process, adjudicate, and render final decisions on Plaintiffs’ DS-160 visa applications within fourteen days. *Id.* at 40.

II. LEGAL STANDARD

Motions for temporary restraining orders and preliminary injunctions are analyzed using the same standards. *See Dunlap v. Presidential Advisory Comm’n on Election Integrity*, 319 F. Supp. 3d 70, 81 (D.D.C. 2018); *Sterling Commercial Credit–Mich., LLC v. Phx. Indus. I, LLC*, 762 F. Supp. 2d 8, 12 (D.D.C. 2011). Requests for preliminary relief under the APA, 5 U.S.C. § 705, are also governed by the same standards. *See Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 30 (D.D.C. 2012) (collecting cases).

These “extraordinary” remedies “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). To prevail on such a motion, the movant bears the burden of showing that: (1) “he is likely to succeed on the merits”; (2) “he is likely to suffer irreparable harm in the absence of preliminary relief”; (3) “the balance of equities tips in his favor”; and (4) “an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Where, as here, the federal government is the opposing party, the balance of equities and public interest factors merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009).

Courts in this jurisdiction evaluate the four preliminary injunction factors on a “sliding scale”—if a “movant makes an unusually strong showing on one of the factors, then it does not necessarily have to make as strong a showing on another factor.” *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1291–92 (D.C. Cir. 2009); *see also Confederated Tribes of Chehalis Reservation v. Mnuchin*, No. 20-CV-01002 (APM), 2020 WL 1984297, at *6–7 (D.D.C. Apr. 27, 2020) (explaining that, though the sliding scale framework has been called into question, in the absence of a D.C. Circuit decision overruling it, the approach “remains binding precedent that this

court must follow”). The weighing of the four factors is within the district court’s discretion. *See Davis*, 571 F.3d at 1291.

III. LIKELIHOOD OF SUCCESS ON THE MERITS

A. Threshold Justiciability Questions

“[T]he ‘merits’ on which [a] plaintiff must show a likelihood of success encompass not only substantive theories but also establishment” that the action is justiciable. *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 913 (D.C. Cir. 2015) (quoting *Obama v. Klayman*, 800 F.3d 559, 565 (D.C. Cir. 2015) (Williams, J.)); *Brown v. FEC*, 386 F. Supp. 3d 16, 25–26 (D.D.C. 2019). Defendants argue that there are three threshold impediments to this court’s review of the merits of Plaintiffs’ claims: Plaintiffs lack standing, consular non-reviewability bars review of their claims, and they lack a cause of action.

1. Standing

“To establish standing, the plaintiff must show (1) [she] has suffered a concrete and particularized injury (2) that is fairly traceable to the challenged action of the defendant and (3) that is likely to be redressed by a favorable decision.” *Elec. Privacy Info. Ctr. v. Presidential Advisory Comm’n on Election Integrity*, 878 F.3d 371, 376–77 (D.C. Cir. 2017) (cleaned up). The plaintiff “bears the burden of establishing all three elements of standing,” and “[i]n the context of a preliminary injunction” the court “require[s] the plaintiff to show a substantial likelihood of standing under the heightened standard for evaluating a motion for summary judgment.” *Id.* at 377 (cleaned up). As a result, a plaintiff seeking such extraordinary relief “cannot rest on mere allegations, but must set forth by affidavit or other evidence specific facts that, if taken to be true, demonstrate a substantial likelihood of standing.” *Id.* (cleaned up). To establish jurisdiction over

a claim, “the court need only find one plaintiff who has standing.” *Mendoza v. Perez*, 754 F.3d 1002, 1010 (D.C. Cir. 2014).

At the threshold of the threshold issue of standing, Defendants challenge the evidentiary sufficiency of all Plaintiffs’ standing. Citing this court’s decision in *Nguyen v. U.S. Department of Homeland Security*, they argue that “all of the named plaintiffs in *Gomez*, *Mohammed*, *Fonjong*, and *Aker* . . . fail to provide the record evidence necessary to establish standing.” Defs.’ Opp’n at 19 (citing *Nguyen v. U.S. Dep’t of Homeland Sec.*, 2020 WL 2527210, at *4 (D.D.C. May 18, 2020)). Defendants note that many of the declarations submitted by Plaintiffs and others “refer to emails to and from the State Department or various consular posts, but none of the purported messages are included among the voluminous filings in these cases.” *Id.*

The *Gomez* Plaintiffs counter—correctly—that Defendants misunderstand the court’s holding in *Nguyen*. Pls.’ Reply Mem. in Supp. of Mot. for Prelim. Inj., ECF No. 108 [hereinafter *Gomez* Reply Mem.], at 2. The plaintiffs in that case “d[id] not even discuss standing, much less supply ‘specific facts’ that establish a substantial likelihood thereof.” *Nguyen*, 2020 WL 2527210, at *4. Here, by contrast, as will be seen below, Plaintiffs’ various declarants have supplied “specific facts” to establish a substantial likelihood of standing.⁴

a. *Gomez* Plaintiffs

As discussed, the preliminary injunction motion in *Gomez* requests relief for 23 plaintiffs, including six DV-2020 selectees (“DV-2020 Plaintiffs”), nonimmigrant visa plaintiffs, and family-based immigrant visa plaintiffs, and five putative subclasses. *Gomez* PI Mem. at 12–18; *Gomez* Class Cert Mot. Additionally, on behalf of themselves, their beneficiaries, and the proposed subclass of diversity visa lottery winners, the DV-2020 Plaintiffs filed a separate supplemental

⁴ Because the court will address standing and other justiciability issues for Plaintiffs in *Panda* separately, this opinion only addresses standing for the claims in *Gomez*, *Mohammed*, *Fonjong*, and *Aker*.

motion for a preliminary injunction directing Defendants to adjudicate their visa applications despite the suspension of routine visa services at particular consular posts. *Gomez* Suppl. PI Mem. at 1. Because each DV-2020 Plaintiff asserts every claim in the case (i.e., those common to all *Gomez* Plaintiffs as well as those specific to DV-2020 Plaintiffs), only one DV-2020 Plaintiff need demonstrate a substantial likelihood of standing for the court to maintain jurisdiction. *See Mendoza*, 754 F.3d at 1010. At least one does.

In support of their motion, Plaintiffs submit the declaration of Plaintiff Aya Nakamura, a diversity visa lottery winner and citizen of Japan. *Gomez* PI Mot., Decl. of Aya Nakamura, ECF No. 53-25 [hereinafter Nakamura Decl.], ¶¶ 1, 4. Nakamura had entered the diversity visa lottery for the past four years while pursuing her college education in the United States. *Id.* ¶ 2. After winning the lottery on May 7, 2019, she “decided to submit all the paperwork for the diversity visa as quickly as [she] could” and to return to Japan to complete “the necessary consular processing for [her] immigrant visa.” *Id.* ¶ 5. She left for Japan on January 1, 2020. *Id.* ¶ 8. By then, Nakamura had completed her Associate in Applied Science Degree in Business Administration from ASA College in New York City and had begun a one-year post-completion Optional Practical Training (“OPT”) period. *Id.* ¶ 3. She states that by leaving for Japan, she “forfeited nearly eight months remaining in [her] OPT period.” *Id.* ¶ 8. Nakamura had to “buy a plane ticket, give up the lease on [her] apartment, and give away belongings [she] wouldn’t be able to bring back with [her] on the plane.” *Id.* ¶ 9. She also hired and paid a New York immigration attorney to “help advise [her] in pursuing [her] diversity visa.” *Id.*

On June 19, 2020, Nakamura “received confirmation . . . that [she] had completed every step necessary for an interview to be scheduled.” *Id.* ¶ 10. But on June 22, 2020, she “received the news that the President had extended the proclamation to restrict immigration through

December 31, 2020.” *Id.* ¶ 13. Nakamura states that unless she could “show that [she] was eligible for a national interest exception, the president’s proclamation would end [her] one chance at immigrating to the United States.” *Id.* On July 13, 2020, Nakamura’s attorney, Michael Dunn, contacted the U.S. Consulate in Tokyo to request an emergency interview before the end of the fiscal year, but the Consulate responded that “[a]ll diversity (DV) immigrant visa appointments have been cancelled at this time.” *Id.* ¶ 15. Nakamura states that after Dunn reached out to the Kentucky Consular Center, he was told that “[d]ue to the novel COVID-19 outbreak[,] all interviews for the DV program have been suspended, [and] it is undetermined when scheduling will resume.” *Id.* ¶ 16.

On July 16, 2020, Dunn contacted the Consulate on Nakamura’s behalf once more to request an emergency interview “in order to specifically seek an exception to the proclamation.” *Id.* ¶ 17. As of July 31, 2020, Nakamura states that Dunn has not received a response. *Id.* On July 28, 2020, Dunn contacted the Consulate a third time to request an emergency interview “in order to specifically seek a national interest exception to the proclamation.” *Id.* ¶ 18. Again, Nakamura states that Dunn has not received a response. *Id.* She further states that if she had not pursued a diversity visa, she “would still be in the United States preparing to enter a university to complete a four-year degree in accounting.” *Id.* ¶ 21. She worries that if she does “not get a visa on or before September 30, [she] will have wasted so much time and money [she] spent on [her] U.S. education,” and she “will never be able to reach [her] dream of becoming a CPA . . . in the United States.” *Id.* ¶ 21.

Injury. Defendants do not contest that Nakamura (or any of the other *Gomez* Plaintiffs, for that matter) fails to establish a cognizable injury in fact. And for good reason: she easily establishes the requisites for an imminent injury in fact. *Nakamura*, like all Plaintiffs in these

consolidated cases, asserts a procedural injury—the withholding of statutorily mandated, non-discretionary review and adjudication of her visa applications.⁵ This procedural deprivation is paired with a concrete interest—Nakamura’s interest in obtaining a diversity lottery visa before September 30, 2020, which would allow her to enter the country as a lawful permanent resident—thereby rendering the procedural injury sufficient to establish standing. *See Food & Water Watch*, 808 F.3d at 921 (stating that “[d]eprivation of a procedural right without some concrete interest that is affected by the deprivation—a procedural right *in vacuo*—is insufficient to create Article III standing” (quoting *Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009))); *see also E.B. v. U.S. Dep’t of State*, 422 F. Supp. 3d 81, 86–87 (D.D.C. 2019); *Smirnov v. Clinton*, 806 F. Supp. 2d 1, 10 (D.D.C. 2011) (finding standing “based upon the plaintiffs’ lost opportunity to have their visa applications—some of which have already been submitted—fully processed and considered”), *aff’d*, 487 F. App’x 582 (D.C. Cir. 2012); *Abboud v. INS*, 140 F.3d 843, 847 (9th Cir. 1998), *superseded in part on other grounds*, 8 U.S.C. § 1154.

Causation. To establish causation, a plaintiff must show “a causal connection between the injury and the conduct complained of.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The injury must be “fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court.” *Id.* (cleaned up). The Nakamura Declaration contains specific facts demonstrating that the State Department’s implementation of the Proclamations and the COVID-19 Guidance is substantially likely preventing the adjudication of Nakamura’s diversity visa application and thus her potential entry into the United States.

⁵ For purposes of the standing inquiry, the court must assume Plaintiffs possess a mandatory, non-discretionary right of review and adjudication of their visa applications. *See Estate of Boyland v. U.S. Dep’t of Agric.*, 913 F.3d 117, 123 (D.C. Cir. 2019) (stating that, when considering a plaintiff’s standing, a federal court must assume the merits of his or her legal claim).

Nakamura Decl. ¶ 13 (addressing the impact of the Proclamations), *id.* ¶ 16 (noting the State Department’s correspondence linking the cancellation of Nakamura’s interview to COVID-19).⁶ For their part, Defendants do not challenge the *Gomez* Plaintiffs on this prong of the standing analysis, choosing instead to focus on redressability. Defs.’ Opp’n at 20–25.

Redressability. To establish redressability, a plaintiff must show that it is “‘likely,’ as opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” *Lujan*, 504 U.S. at 561 (quoting *Simon v. Eastern Ky. Welfare Rights Org.*, 425 U.S. 26, 38 (1976)). Causation and redressability are “closely related” concepts, which typically “overlap as two sides of a . . . coin.” *Dynalantic Corp. v. Dep’t of Def.*, 115 F.3d 1012, 1017 (D.C. Cir. 1997). The redressability requirement is “relaxed” when a plaintiff has alleged a procedural injury. *WildEarth Guardians v. Jewell*, 738 F.3d 298, 305–06 (D.C. Cir. 2013). That more relaxed redressability inquiry means that “instead of needing to establish that compelling the agency to follow the correct procedure *would* lead to a substantive result that favors the [plaintiff’s] concrete interests, the [plaintiff] need only show that its concrete interests *could* be better protected.” *Narragansett Indian Tribal Historic Pres. Office v. Fed. Energy Regulatory Comm’n*, 949 F.3d 8, 13 (D.C. Cir. 2020). “In other words, the relaxed redressability requirement is met when correcting the alleged

⁶ Other *Gomez* DV-2020 Plaintiffs have also received communications tying the suspension of processing of their applications to Proclamations 10014 and 10052. *See, e.g., Gomez* PI Mem., Decl. of Fatma Bushati, ECF No. 53-11 ¶ 21 (“We contacted the Kentucky Consular Center, which reported that no interviews would be scheduled due to the travel ban.”); *id.*, Decl. of Iwundu Epouse Kouadio Ijeoma Golden, 53-16 ¶ 10 (Embassy email stating: “It will not be possible to schedule your DV interview before September 30, 2020 due to the restrictions in the Presidential Proclamation On June 22, the President extended these restrictions through December 30, 2020. At this time, applicants for the Diversity Visa do not meet the criteria provided for a national interest exception. We understand your request and desire for an interview, but unfortunately will not be able to facilitate this under the current immigration laws.”); *id.*, Decl. of Jodi Lynn Karpes, ECF No. 53-19 ¶ 12 (“My attorney contacted the U.S. Consulate in Johannesburg, South Africa on July 13, 2020 to request an emergency appointment. The Consulate stated in an automatic email response to my attorney on July 13, 2020 that ‘All routine visa processing has been suspended until 30 December 2020 due to the Presidential Proclamation for Coronavirus’. On July 28, my attorney again requested an interview be scheduled in the National Interest but to date has not received a response.”).

procedural violation *could* still change the substantive outcome in the [plaintiff's] favor; the [plaintiff] need not go further and show that it *would* effect such a change.” *Id.*

Defendants assert that even if the court were to enjoin the Proclamations, “the State Department’s suspension of routine visa services due to COVID-19, as well as processing backlogs” would “render it unlikely that the diversity visas at issue could be processed or adjudicated by September 30, 2020.” Defs.’ Opp’n at 20. But that argument is unpersuasive with respect to Nakamura. Having established a procedural injury, Nakamura need only demonstrate that the relief she requests *could* better protect her concrete interest in the adjudication of her diversity visa application. She has done so. As Defendants acknowledge, the consular post in Tokyo is now processing immigrant visa applications. *See* Defs.’ Opp’n at 21; *see also* Pls.’ Notice Regarding Number of Diversity Visas Issued in July 2020 and Bulletin Showing Number of Selected Entrants in DV-2020 by Country, ECF No. 115 [hereinafter Notice Regarding July 2020 Processing], at 16 (showing 84 immigrant visa issued from the Tokyo consulate in July 2020).⁷ The relief she seeks would restart the processing of her application, and Defendants have offered no reason to believe that the Tokyo consulate could not complete processing and issuance of her diversity lottery visa by September 30, 2020. Nakamura therefore has satisfied the redressability requirement.

Defendants’ additional contention that Nakamura cannot show redressability because she has not met her “burden of establishing eligibility for a visa ‘to the satisfaction of the consular officer’” likewise fails. Defs.’ Opp’n at 20 (quoting 8 U.S.C. § 1361). Even assuming Nakamura must make such a showing to redress her *procedural* injury, she attests that she has “met all the

⁷ The government stresses that these diversity visas were replacement visas issued to applicants who previously had valid immigrant visas, *see* Defs.’ Suppl. Notice, ECF No. 120, at 6, but that does not undermine the fact that the Tokyo post is currently capable of processing and issuing visas.

requirements for a diversity visa” and is “not aware of any reason why a consular officer might decide that [she is] inadmissible and refuse to issue [her] a visa.” Nakamura Decl. ¶ 11. Defendants offer no evidence to the contrary. Nakamura therefore has established a substantial likelihood of redressability at the preliminary injunction stage.

In summary, because one *Gomez* DV-2020 Plaintiff has established a substantial likelihood of standing, the court has subject matter jurisdiction over all claims asserted by the *Gomez* Plaintiffs.

b. *Mohammed, Fonjong, and Aker Plaintiffs*

The court likewise holds that there is at least one plaintiff in each of the *Mohammed*, *Fonjong*, and *Aker* cases who has demonstrated a substantial likelihood of standing.

The *Mohammed* Plaintiffs submit the declaration of Shereen Elsaid Rezk Abdelaziz Nawara, a citizen of Egypt who currently resides in the United Arab Emirates. Pls.’ Mot. for Prelim. Inj. Relief, *Mohammed v. Pompeo*, ECF No. 20-cv-1856 (APM), ECF No. 8 [hereinafter *Mohammed* Pls.’ Mot.], Ex. 19, Decl. of Shereen Elsaid Rezk Abdelaziz Nawara, ECF No. 8-20 at 1. After Nawara was selected for the DV-2020 lottery, she traveled to Egypt to obtain the needed documents. *See id.* ¶ 15. She sent them all to the Kentucky Consular Center and was informed that she had submitted the required documents and was ready to be scheduled for an interview when her case number became current. *Id.* Believing that her children would be attending school in the United States, Nawara did not enroll them in school in the UAE. *Id.* ¶ 14. But her interview was scheduled for May 2020, just a few weeks after Proclamation 10014 was issued, and it was cancelled. *Id.* ¶¶ 11, 16. She states that “this Proclamation [has] made it so that we cannot get the immigrant visas which we should be granted,” and that this has been “terrible” news. *Id.* ¶ 6.

Nawara describes the chance to move to the United States with her spouse and two children as a “once in a lifetime opportunity” to provide “a better life for [her] family,” and she discusses her extreme disappointment at having potentially lost out on this opportunity. *Id.* ¶¶ 16, 19. In particular, she emphasizes that “[she] cannot stress enough how important it [is] to be able to give [her children] the chance to live, grow, and get an education in America.” *Id.* ¶ 9.

The *Fonjong* Plaintiffs submit the declaration of Marina Filippova, a resident and citizen of Russia. Pls.’ Mot. for T.R.O. and Prelim. Inj., *Fonjong v. Trump*, No. 20-cv-2128 (APM), ECF No. 7 [hereinafter *Fonjong* Pls.’ Mot.], Ex. 13, Decl. of Marina Filippova, ECF No. 7-14 at 1. Filippova states that she was “extremely excited” when she learned that her spouse was selected for the DV-2020 lottery. *Id.* ¶ 7. Her and her husband’s interview was scheduled to be held in June 2020, but was cancelled. *Id.* ¶ 9. She notes that the Proclamation has “made it impossible for [them] to get the immigrant visa.” *Id.* ¶ 10. Believing they would obtain the visas, Filippova and her husband put their “entire life . . . on hold while [they] were waiting for the interview.” *Id.* ¶ 7. The couple spent thousands of dollars on a trip to the United States last December to choose where to live, and her husband passed on a promotion. *Id.* ¶¶ 7–8. The couple hoped to “build [a] family and raise [their] future children” in the United States, but their “hopes and desires were crashed because of the Presidential Proclamation.” *Id.* ¶¶ 10, 12.

The *Aker* Plaintiffs submit the declaration of Nora Abdelkhalek Abdelsalam Abdelsalam, who is from Egypt and is a resident of Saudi Arabia. Decl. of Nora Abdelkhalek Abdelsalam Abdelsalam, *Aker* TRO/PI Mem. at 93. She won the diversity visa lottery for 2020, and her husband and three children are derivative beneficiaries. *Id.* ¶ 1. After winning, she traveled to Egypt on multiple occasions to obtain the necessary documents for her application. *Id.* ¶ 3. In order to travel to the United States once their visas were issued, her husband “refused many job

offers in Saudi Arabia,” which led to the “expiration [of] his Saudi medical practice license [in] May 2020.” *Id.* Abdelsalam states that after she and her husband finished their interview at the U.S. Embassy in Saudi Arabia on March 16, 2020, they were “placed in Administrative Processing” as the Embassy had “suspended routine visa processing due to COVID-19.” *Id.* ¶ 4. She further declares that the Embassy “refus[ed] to issue [their] visas because of [the] presidential proclamation” and told her that “while [she is] documentar[il]y qualified, [her] case is subjected to the Presidential Proclamation Suspending Entry of Immigrants who present risk to the U.S. labor market.” *Id.* Abdelsalam’s husband “is now preparing to leave and travel to Egypt to renew [his] medical practice license” and she states that “[her] family will be separated.” *Id.* ¶ 5.

These Plaintiffs, like Nakamura, have demonstrated a substantial likelihood that they have been procedurally injured and that those injuries are traceable to Defendants’ implementation of the Proclamations. Defendants do not contend otherwise. *See* Defs.’ Opp’n at 22–23. Nawara’s, Filippova’s, and Abdelsalam’s injuries are also redressable. Though the consular offices in Russia and Egypt do not appear to have fully resumed routine operations, they are continuing to process visas. *See* Notice Regarding July 2020 Processing at 8 (listing immigrant visas issued in Egypt in July); *COVID-19 Information*, U.S. Embassy & Consulates in Russia (Aug. 31, 2020)⁸ (confirming that the consulate is still providing limited visa services). Defendants point to a worldwide backlog of immigrant visa applications, but they do not suggest that this backlog, or any in-country restrictions in Egypt or Russia, would make it impossible for these three Plaintiffs’ applications to be processed. To the contrary, Defendants have demonstrated in an earlier stage of this litigation that the State Department is more than capable of issuing visas within an extremely tight timeframe, notwithstanding difficult in-country conditions. *See generally* Mem. Op. & Order,

⁸ Available at <https://ru.usembassy.gov/covid-19-information/>.

ECF No. 41. Furthermore, the *Aker*, *Fonjong*, and *Mohammed* Plaintiffs request that the court postpone the end-date of visa issuance for DV-2020 selectees to September 30, 2021, or, at a minimum, reserve visa numbers for the Plaintiffs through the pendency of litigation. *See Mohammed* PI Mem. at 26; *Fonjong* TRO/PI Mem. at 28; *Aker* TRO/PI Mem. at 1. Assuming such relief is legally available—which the court must do for purposes of its standing analysis, *see Almaqrami*, 933 F.3d at 779–80—it would provide a remedy to overcome any inability of Russia and Egypt consular offices to process these Plaintiffs’ visa applications by the September 30 deadline.⁹

Defendants additionally assert that Plaintiffs in all three cases, “do not and cannot pinpoint any specific agency action,” an argument that appears to be directed at the element of causation. Defs.’ Opp’n at 24. The court disagrees, as Plaintiffs in each case point to the State Department’s implementation of the Presidential Proclamations against diversity visa applicants as the cause of their injury. *Mohammed* PI Mem. at 10 (identifying “policies, procedures, and practices suspend[ing] all stages of the processing of immigrant visa applications for selectees and their beneficiaries, including . . . (3) mandatory scheduling of immigrant visa interviews, and (4) decision-making on already interviewed applications”); *Fonjong* TRO/PI Mem. at 11 (same); *Aker* TRO/PI Mem. at 42–43 (identifying “[t]he agency actions of suspending the adjudication of immigrant visas for the Diversity Visa Program” and “[t]he agency actions of suspending issuance

⁹ Likewise, insofar as these posts are only processing visa applications deemed “mission critical” under the State Department’s COVID-19 Guidance, the *Gomez* DV-2020 Plaintiffs seek to enjoin the applications of that Guidance to DV-2020 selectees’ visa applications. *See Gomez* Suppl. PI Mem. at 7. That remedy would equally redress any COVID-19 Guidance-related impediment to processing Plaintiffs’ DV-2020 applications at the Russia and Egypt consular offices. *See Nat’l Mining Ass’n v. U.S. Army Corps of Eng’rs*, 145 F.3d 1399, 1409 (D.C. Cir. 1998) (“[W]hen a reviewing court determines that agency [actions] are unlawful, the ordinary result is that the [actions] are vacated—not that their application to the individual petitioners is proscribed.” (cleaned up)).

of immigrant visas or reissuance of the same for the Diversity Visa Program”). Accordingly, these Plaintiffs’ showing of causation and redressability is satisfied.

Nawara, Filippova, and Abdelsalam have established a substantial likelihood of standing as to each claim asserted in *Mohammed*, *Fonjong*, and *Aker*, respectively. The court therefore has subject matter jurisdiction over each action. *See Mendoza*, 754 F.3d at 1010.¹⁰

2. *Consular Non-Reviewability*

Defendants challenge Plaintiffs’ suits at the starting gate on another ground: the doctrine of consular nonreviewability. They assert that, under that doctrine, “Plaintiffs cannot state a claim under the [Immigration and Nationality Act (“INA”)] or the APA to challenge consular officers’ visa determinations.” Defs.’ Opp’n at 28. Defendants are wrong.

The doctrine of consular nonreviewability “holds that a consular official’s decision to issue or withhold a visa is not subject to judicial review, at least unless Congress says otherwise.” *Saavedra Bruno v. Albright*, 197 F.3d 1153, 1159 (D.C. Cir. 1999). The doctrine is rooted in the ancient principle of international law that nation states have the inherent right to exclude or admit aliens, and that such matters are “so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.” *Id.* (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952)). But not every legal challenge that touches on the admission or exclusion of foreign nationals is foreclosed by consular nonreviewability. District courts in this jurisdiction consistently have held that “when the suit challenges inaction, ‘as opposed to a decision taken within the consul’s discretion,’ there is jurisdiction.” *Moghaddam v.*

¹⁰ Defendants fault the *Aker* Plaintiffs for not discussing standing in their brief. *See* Defs.’ Opp’n at 18, 24. But the *Aker* Plaintiffs’ brief provides an extensive, individualized discussion of numerous Plaintiffs’ irreparable injury as a result of the Proclamations and Defendants’ implementation thereof. *See Aker* TRO/PI Mem. at 16–26. While not specifically couched in standing terms, this discussion and the accompanying affidavits attesting to the harms these Plaintiffs have and will experience is sufficient to meet Plaintiffs’ burden of showing a substantial likelihood of standing.

Pompeo, 424 F. Supp. 3d 104, 114 (D.D.C. 2020) (quoting *Patel v. Reno*, 134 F.3d 929, 931–32 (9th Cir. 1997)); see also *Nine Iraqi Allies Under Serious Threat Because of Their Faithful Serv. to the United States v. Kerry* (“*Nine Iraqi Allies*”), 168 F. Supp. 3d 268, 290 (D.D.C. 2016) (“[T]he doctrine of consular nonreviewability is not triggered until a consular officer has made a decision with respect to a particular visa application.”). That distinction makes sense, as the doctrine of consular nonreviewability exists to insulate from review the political branches’ prerogative to regulate the entry of foreign nationals. But “[w]hen the Government simply declines to provide a decision in the manner provided by Congress, it is not exercising its prerogative to grant or deny applications but failing to act at all.” *Nine Iraqi Allies*, 168 F. Supp. 3d at 290–91.

The leading D.C. Circuit case on the doctrine, *Saavedra Bruno*, is illustrative. There, the plaintiff advanced three challenges under the APA: one directed to the revocation of his B-1/B-2 visa, a second to the refusal to renew his L-1 visa, and a third to the State Department’s failure to act on a waiver application under 8 U.S.C. § 1182(d)(3). See 197 F.3d at 1156. After an extended discussion, the Circuit declined to review the first two claims due to consular nonreviewability, but not the third. See *id.* at 1162, 1164–65. As to the third claim—the State Department’s refusal to act—the court held that claim to be moot because the agency had since denied the waiver request. See *id.* 1164–65. Had the doctrine of consular nonreviewability applied to the refusal-to-act claim, presumably the court would have said so.

Here, all Plaintiffs challenge the State Department’s refusal to review and adjudicate their pending visa applications or issue or reissue a visa due to the Proclamations. None challenge an affirmative visa “determination.” The doctrine of consular nonreviewability therefore does not foreclose review of their claims. See *Patel*, 134 F.3d at 931–32; *Moghaddam*, 424 F. Supp. 3d at 114–15.

3. *Cause of Action*

Defendants deliver a third and final broadside attack. Insisting that “[n]o matter how they frame their causes of action, the plaintiffs’ TRO and PI motions all boil down to arguments resting entirely on claims against the proclamations under the APA,” and because the President is not subject to the APA, Defendants say that “the Court cannot review” claims contesting the Proclamations. *See* Defs.’ Opp’n at 25 (citing *Franklin v. Massachusetts*, 505 U.S. 788, 800–01 (1992) (holding that the President is not subject to the requirements of the APA because his office is not an “agency” under the statute)). Nor can the court review agency implementation of the Proclamations under the APA, Defendants continue, when as here, the “President relies on agencies, such as the State Department, to carry out his decision.” *Id.* at 27. The court rejects these arguments. They suffer from a fundamental misreading of Plaintiffs’ complaints and a misunderstanding of the law.

All of Plaintiffs’ claims do not arise under the APA. The *Gomez*, *Aker*, and *Panda* Plaintiffs all advance causes of action against the President and Executive Branch officials asserting that the Proclamations exceed the scope of the President’s congressionally granted authority under Section 212(f) of the INA, 8 U.S.C. § 1182(f). *See Gomez* SAC ¶¶ 332–35 (Fourth Cause of Action); *Aker* Compl. ¶¶ 687–96 (First Cause of Action); *Panda* Compl. ¶¶ 1963–68 (First Cause of Action). These claims can be construed as either a non-statutory *ultra vires* cause of action or a statutory cause of action under the INA. The D.C. Circuit has long recognized the availability of “non-statutory review action” aimed at the legality of presidential executive orders. *See Chamber of Commerce of the U.S. v. Reich*, 74 F.3d 1322, 1327–28 (D.C. Cir. 1996). And, the Supreme Court recently characterized a challenge to presidential action taken pursuant to § 1182(f) as a “statutory claim[.]” under the INA. *Hawaii*, 138 S. Ct. at 2407. Thus, no matter in

which box one places Plaintiffs’ direct challenges to the Proclamations, they are cognizable outside of the APA.¹¹

To the extent Defendants contend that the court is foreclosed from reviewing *agency actions* taken to implement the Proclamations, they are wrong. The D.C. Circuit rejected a similar argument in *Chamber of Commerce*, a case in which the Secretary of Labor issued regulations following an executive order. There, the government argued that “a cause of action under the APA is not available, even were appellants to rely on it, because a challenge to the regulation should be regarded as nothing more than a challenge to the legality of the President’s Executive Order and therefore not reviewable.” 74 F.2d at 1326–27. The court soundly rejected that contention: “that the Secretary’s regulations are based on the President’s Executive Order hardly seems to insulate them from judicial review under the APA, even if the validity of the Order were thereby drawn into question.” *Id.* at 1327. APA review of an Executive Branch official’s actions is thus not precluded merely because the official is carrying out an executive order. The court in *Chamber of Commerce* went on to hold that a non-statutory *ultra vires* cause of action is likewise available against Executive Branch officials. *See id.* at 1328. “That the ‘executive’s’ action here is essentially that of the President does not insulate the entire executive branch from judicial review. We think it is now well established that ‘[r]eview of the legality of Presidential action can ordinarily be obtained in a suit seeking to enjoin the officers who attempt to enforce the President’s directive.’” *Id.* (quoting *Franklin v. Massachusetts*, 505 U.S. 788, 815 (1992) (Scalia, J., concurring in part and concurring in the judgment)). Plaintiffs assert such *ultra vires* causes of action against Executive Branch officials here. *See Gomez* SAC ¶¶ 332–336 (Fourth Cause of

¹¹ The APA waives sovereign immunity for these non-monetary claims, *see* 5 U.S.C. § 702, but that does not mean that they arise under the APA. *See Chamber of Commerce*, 74 F.3d at 1328 (“The APA’s waiver of sovereign immunity applies to any suit whether under the APA or not.”).

Action); *Aker* Compl. ¶¶ 687–96 (First Cause of Action); *Panda* Compl. ¶¶ 1963–68 (First Cause of Action).

Defendants make no mention of *Chamber of Commerce* in their opposition brief. Instead, their entire argument rests on the district court’s decision in *Detroit International Bridge Co. v. Government of Canada*, 189 F. Supp. 3d 85 (D.D.C. 2016), *see* Defs.’ Opp’n at 25–27, but that case is easily distinguishable. There, Congress had delegated to the President the power to issue final approvals to build bridges across international boundaries. *See id.* at 100. The court held that the Department of State’s action in issuing a permit for a bridge approved by the President was not subject to review under the APA, because such issuance implemented in a ministerial sense “an exercise of discretionary authority committed to the President by law.” *Id.* at 102. In this case, by contrast, the Secretary of State’s alleged actions are in no sense a ministerial implementation of presidential action. *See Public Citizen v. U.S. Trade Rep.*, 5 F.3d 549, 552 (D.C. Cir. 1993) (“*Franklin*[’s denial of judicial review of presidential action] is limited to those cases in which the President has final constitutional or statutory responsibility for the *final step* necessary for the agency action directly to affect the parties.”) (emphasis added). Instead, the Secretary of State is alleged to have expanded the scope of the Proclamations by grafting their restrictions on entry onto the requirements for visa eligibility, thereby precipitating the cessation of review and adjudication of visa applications for foreign nationals now deemed inadmissible. That is a far greater step than the type of ministerial agency action that was deemed indistinguishable from presidential action, and thus unreviewable, in *Detroit International Bridge*. None of Plaintiffs’ claims are foreclosed from judicial review merely because they challenge agency action implementing the Proclamations.

B. Challenges to Proclamations 10014 and 10052

Having determined that each of the consolidated cases presents justiciable and reviewable claims, the court turns to the merits, starting with those causes of action directly challenging the validity of Proclamations. The *Gomez* and *Aker* Plaintiffs assert the following: (1) the Proclamations are *ultra vires* because they do not satisfy the statutory prerequisites for suspension of entry under § 1182(f); and (2) the President’s issuance of the Proclamations (and the State Department’s implementation of them) violate (a) the Take Care Clause and (b) the Due Process Clause, and (c) deny equal protection under the law. Separately, the *Gomez* Plaintiffs contend that (3) the Proclamations violate the separation of powers, and (4) Congress impermissibly delegated legislative power to the President under § 1182(f). The court first addresses the *ultra vires* claim, then turns to the separation of powers and nondelegation claims, and concludes with the remaining three constitutional challenges.

1. *Ultra Vires Presidential Action*

The text of § 1182(f) provides as follows:

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.

8 U.S.C. § 1182(f). The natural starting point of any dispute involving the President’s exercise of authority under § 1182(f) is the Supreme Court’s decision in *Trump v. Hawaii*. That case involved a challenge to Presidential Proclamation No. 9645, better known as the “travel ban,” which placed “entry restrictions on the nationals of eight foreign states whose systems for managing and sharing information about their nationals the President deemed inadequate.” 138 S. Ct. at 2404. Following a “worldwide, multi-agency review,” the President found that the entry of covered foreign

nationals from those eight countries would be detrimental to the national interest and excluded them from entry. *Id.* at 2408. The plaintiffs in that case argued, among other things, that § 1182(f) “confers only residual power to temporarily halt the entry of a discrete group of aliens engaged in harmful conduct.” *Id.* The Court concluded otherwise.

It first observed that, “[b]y its plain language, § 1182(f) grants the President broad discretion to suspend the entry of aliens into the United States.” *Id.* The statute “exudes deference to the President in every clause.” *Id.*

It entrusts to the President the decisions whether and when to suspend entry (“[w]henver [he] finds that the entry” of aliens “would be detrimental” to the national interest); whose entry to suspend (“all aliens or any class of aliens”); for how long (“for such period as he shall deem necessary”); and on what conditions (“any restrictions he may deem to be appropriate”).

Id. Thus, the Court concluded, § 1182(f) grants “‘ample power’ to impose entry restrictions *in addition* to those elsewhere enumerated in the INA.” *Id.* (quoting *Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 187 (1993)) (emphasis added).

The Court further explained that § 1182(f)’s “sole prerequisite” is that the President “find[]” that the entry of the covered aliens “would be detrimental to the interests of the United States.” *Id.* The “finding” requirement is not particularly stringent. The Court characterized the plaintiffs’ assertion that the President must “explain that finding with sufficient detail to enable judicial review” to be “questionable,” and in any event found the Proclamation at issue to be “more detailed than any prior order a President has issued under § 1182(f).” *Id.* at 2409.

Plaintiffs in this matter acknowledge the President’s broad scope of authority under § 1182(f), but argue that the Proclamations nevertheless are unlawful. Primarily, they challenge the sufficiency of the “finding” made by the President, and attack that “finding” from multiple angles. *See Gomez PI Mem.* at 22–23. First, they contend that the “finding” requirement places

on the President the duties to “supply a rational justification” and to conduct “some rational investigation,” neither of which are reflected in the Proclamations. *Id.* Second, Plaintiffs dispute the logic underlying the “finding.” They contend that, contrary to the justifications put forward in the Proclamation, immigrants like diversity lottery winners do not compete against American workers for scarce jobs; they also insist that nonimmigrants like H-1B and H-2B visa applicants work in sectors where “unemployment is *low*, rather than in the high-unemployment areas that the entry suspension is supposedly meant to target.” *Id.* at 25. Finally, they maintain that the exclusion of immigrant and nonimmigrant labor actually is counterproductive to the President’s stated goal of improving the economic prospects of American workers. *See id.* at 26. They cite declarations from experts, economic studies, and even statements from federal agencies to make the point that the entry of aliens in fact *creates* jobs for American workers, and the idea that new arrivals take jobs from Americans is a fallacy. *See id.* at 26–29. None of these arguments is ultimately persuasive.¹²

a. Plaintiffs’ demand for a “rational justification” and a “rational investigation” far exceeds what the Court in *Trump v. Hawaii* required for a valid presidential “finding.” As noted, the Court found it “questionable” that § 1182(f) required the President to “explain [the] finding with sufficient detail to enable judicial review.” 138 S. Ct. at 2409. “[A]

¹² The *Gomez* Plaintiffs advance claims titled “Ultra Vires—Violation of the INA” as their Third and Fifth Causes of Action. *See Gomez* SAC ¶¶ 328–31, 337–40. Each of those causes of action asserts that the Proclamations are unlawful because they suspend not only *entry* to the United States, but also the *issuance* of various categories of immigrant and nonimmigrant visas. *See id.* ¶¶ 328–30; *see also Hawaii*, 138 S. Ct. at 2414 (observing that the “basic distinction between admissibility determinations and visa issuance [] runs throughout the INA”). The *Gomez* Plaintiffs did not, however, advance either of these claims in their motion for injunctive relief, which repeatedly stresses that “the Proclamations address only *entry* into the United States. They do not say anything about suspending the *issuance of visas*.” *Gomez* PI Mem. at 2. Rather, Plaintiffs asserted only the legal theory contained in their Fourth Cause of Action, which challenges the sufficiency and accuracy of the findings the President made to justify the suspension of entry. *Compare id.* ¶¶ 332–35, with *Gomez* PI Mem. at 22–29. Defendants must have read the *Gomez* Plaintiffs’ motion the same way, as they do not address whether the Proclamations are directed to conditions of entry only, or also establish new conditions of visa eligibility. *See Defs.’ Opp’n* at 31–42. Accordingly, consistent with the parties’ briefing, the court does not opine on the question whether the Proclamations exceed the President’s authority under § 1182(f) by impermissibly adding conditions of visa eligibility.

searching inquiry into the persuasiveness of the President’s justifications is inconsistent with the broad statutory text and the deference traditionally accorded the President this sphere.” *Id.* Although Plaintiffs recognize the restrictive nature of judicial review explained in *Trump v. Hawaii*, they say it is inapplicable because the President here acted not in the context of international affairs and national security, as in *Trump v. Hawaii*, but in the area of domestic affairs, in which he is not owed the same level of deference. *See Gomez Reply Mem.* at 8. But this argument suffers from several problems.

To start, the foreign/domestic distinction advocated by Plaintiffs finds no support in the statutory text. Section 1182(f) simply speaks in terms of restricting entry of aliens “detrimental to the United States”; it does not limit such detriment to any particular sphere, foreign or domestic. The distinction also finds no support in Supreme Court case law. The Court has long recognized that “[t]he exclusion of aliens is a fundamental act of sovereignty” that “is inherent in the executive power to control the foreign affairs of the nation.” *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950). The Court also has said that “*any policy towards aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations.*” *Harisiades*, 342 U.S. 588–89 (emphasis added). Plaintiffs’ effort to characterize the Proclamations’ exclusion of aliens in purely or predominately domestic terms therefore runs headlong into Supreme Court precedent. Finally, even if Plaintiffs’ foreign/domestic dichotomy is a practically feasible one, it does not follow that judicial deference is any less when the overarching purpose for the exclusion of aliens is domestic in nature. In *Trump v. Hawaii*, the Court stated that, because decisions involving “the admission and exclusion of foreign nationals” may “implicate ‘relations with foreign powers,’ or involve ‘classifications defined in the light of changing political and *economic circumstances*,’ such judgments ‘are frequently of a character

more appropriate to either the Legislature or the Executive.” 138 S. Ct. at 2418–19 (quoting *Mathews v. Diaz*, 426 U.S. 67, 81 (1976)) (emphasis added). No one could reasonably dispute that the COVID-19 pandemic has caused “chang[ed]” “economic circumstances.” The wisdom of the President’s decision to address those changed circumstances by restricting the entry of certain classes of aliens is a policy decision the judiciary is not well equipped to evaluate.

The court is aware that recently the Ninth Circuit, in declining to stay a district court’s injunction of a different Presidential Proclamation, expressed the view that the President’s powers under § 1182(f) are diminished when he acts to “deny visas to immigrants based on purely long-term economic concerns.” *Doe #1 v. Trump*, 957 F.3d 1050, 1065 (9th Cir. 2020). The Presidential Proclamation at issue in *Doe #1* excluded foreign nationals unless they could demonstrate coverage by specified types of health care insurance within 30 days of entry or that they had the resources to cover foreseeable healthcare costs. *Id.* at 1057. The court determined that the Proclamation dealt “with a purely domestic economic problem” and, for that reason, accorded it less deferential review than that proscribed in *Trump v. Hawaii*. *Id.* at 1067. For the reasons already stated, this court respectfully declines to adopt this approach and finds the dissenting opinion in *Doe #1* to be more persuasive. *See id.* at 1078–79 (Bress, J., dissenting).

The other cases that Plaintiffs cite to support a more searching, “rational” findings requirement are inapplicable. None involve an interpretation of § 1182(f). *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 167–68 (1962), involved the classic formulation of the need for a “rational connection between the facts found and the choice made” in the context of the APA. *See Gomez Reply Mem.* at 5. *Temple University v. White*, 941 F.2d 201, 208–09 (3d Cir. 1991), involved a “find[ing]” requirement under the Medicaid law, specifically Title XIX of the Social Security Act. *See Gomez PI Mem.* at 23 n.19. And, oddly, Plaintiffs cite two cases, *United States*

v. Bikundi, 926 F.3d 761, 776–77 (D.C. Cir. 2019), and *United States v. Sanders*, 485 F.3d 654, 659 (D.C. Cir. 2007), which articulate the standard for granting an ends-of-justice continuance under the Speedy Trial Act. *See Gomez* PI Mem. at 23. Suffice it to say none of these cases supply a more controlling or persuasive interpretation of the “finding” requirement under § 1182(f) than *Trump v. Hawaii*.

b. Plaintiffs’ attack on the sufficiency of the President’s findings also fails. In Proclamation 10014, the President identified the massive displacement of American workers due to the COVID-19 pandemic as the reason for executive action: “[W]e must be mindful of the impact of foreign workers on the United States labor market, particularly in an environment of high domestic unemployment and depressed demand for labor.” 85 Fed. Reg. at 23,441. The President continued that excess labor supply affects all workers and potential workers, particularly those who are “last in” during an economic expansion and “last out” during an economic contraction, including most significantly “historically disadvantaged groups,” such as African-Americans and other minorities, those without college degrees, and the disabled. *Id.* An influx of new lawful permanent residents would exacerbate the strain on the labor market. The President noted that new lawful permanent residents are granted “open-market” employment authorization allowing them to compete in almost any sector of the economy, and that “[e]xisting immigrant visa processing protections are inadequate for recovery from the COVID-19 outbreak.” *Id.* Most immigrant visa categories, the President stated, “do not require employers to account for displacement of United States workers” and, though some employment-based visas require a labor certification, “because visa issuance happens substantially after the certification is completed, the labor certification process cannot adequately capture the status of the labor market today.” *Id.* at 23,441–42. Proclamation 10052, issued nearly 60 days later, amplified the President’s rationale

for the initial exclusion and explained its expansion. He found that the “considerations present in Proclamation 10014 remain,” and added that “the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.” 85 Fed. Reg. at 38,263. The President noted, for example, that between February and April 2020, more than 17 million United States jobs were lost in industries in which employers seek to fill positions with “worker positions tied to H-2B immigrant visas.” *Id.* at 38,263–64. During that same period, 20 million United States workers “lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions.” *Id.* at 38,264. And, finally, the President explained that certain J nonimmigrant visa applicants compete for jobs with young Americans, whose job prospects have been hit particularly hard during the pandemic. *Id.*

These findings are more than adequate. They are in fact far more detailed than those contained in past § 1182(f) proclamations identified by the Court in *Trump v. Hawaii*. *See* 138 S. Ct. at 2409 (observing that previous proclamations had contained as little as one and five sentences of justification for entry restrictions). And although the findings here may not be as robust as those in *Trump v. Hawaii* or supported by any evident “worldwide, multi-agency review,” the Court surely did not mean for the findings and administrative efforts in that case to set a floor for future presidential actions under § 1182(f).

Plaintiffs take issue with the underlying premise of the Proclamations—that the U.S. jobs market is a zero-sum game in which foreign workers displace U.S. workers upon arrival—and marshal an array of evidence showing, to the contrary, that new entrants to this country actually create jobs and provide overall benefits to the U.S. economy. Plaintiffs go so far as to say that “it

is undisputed that the President’s purported ‘findings’ are false.” *Gomez Reply Mem.* at 9. These arguments, however persuasive they might be in a policy forum or even in a contest under the APA, do not win the day in a legal challenge to presidential action under § 1182(f). “‘Whether the President’s chosen method’ of addressing perceived risk is justified from a policy perspective is ‘irrelevant to the scope of his [§ 1182(f)] authority.’” *Hawaii*, 138 S. Ct. at 2409 (quoting *Sale*, 509 U.S. at 187–188) (emphasis added). The plaintiffs in *Trump v. Hawaii* mounted a similar attack on the travel ban “based on their perception of its effectiveness and wisdom.” *Id.* at 2421 (“They suggest that the policy is overbroad and does little to serve national security interests.”). The Court held that “we cannot substitute our own assessment for the Executive’s predictive judgments on such matters, all of which ‘are delicate, complex, and involve large elements of prophecy.’” *Id.* (quoting *Chicago & Southern Air Lines, Inc. v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948)). The same holds true here.

Plaintiffs respond that this hands-off approach to presidential action “amounts to a claim that the President is free under § 1182(f) to suspend immigration under plainly false pretenses, and in any manner he chooses. That alarming proposition is not the law.” *Gomez Reply Mem.* at 11. As “alarming” as that proposition may be to Plaintiffs, the judicial role in evaluating presidential action pursuant to § 1182(f) is decidedly constrained. In this sphere, Congress provides the stronger counterweight to Executive Branch excess. If the President were to act on “plainly false pretenses,” as Plaintiffs fear, Congress possesses ample powers to right that wrong. The scope of judicial review is circumscribed.

c. The *Aker* Plaintiffs advance one more contention in support of their claim that the Proclamations exceed the President’s authority under § 1182(f). In *Trump v. Hawaii*, the Court recognized that § 1182(f) contains a temporal limitation because Congress’s inclusion of the

word “suspend” connotes a “deferral until later.” *See* 138 S. Ct. at 2409–10 (cleaned up). To satisfy that limitation, the Court stated, the President need not “prescribe in advance a fixed end date for the entry restriction,” but may “link the duration of those restrictions, implicitly or explicitly, to the resolution of the triggering condition.” *Id.* The *Aker* Plaintiffs assert not that the Proclamations fail to include a “triggering condition”; rather, citing the President’s own tweets and words, they argue that the “triggering condition”—recovery of the economy—has been satisfied, thereby “the basis of the Proclamation has been overcome.” *Aker* TRO/PI Mem. at 39–42. This argument has no merit. Section 1182(f) “exudes deference” to the President as to “how long” and on “what conditions” restrictions on entry shall remain. *Hawaii*, 138 S. Ct. at 2408. The economic conditions triggering the Proclamations have not by any stretch returned to normal, and Plaintiffs cannot seriously contend otherwise. Thus, to the extent the judicial branch has any role in assessing whether such a “triggering condition” has been resolved, it plainly has not in this case.

2. *Separation of Powers*

The *Gomez* Plaintiffs contend that, even if the President made the requisite statutory findings, the Proclamations are “independently invalid because [they] . . . violate[] foundational separation-of-powers principles.” *Gomez* PI Mem. at 29. They maintain that Congress already has “carefully prescribed” the requirements for foreign nationals who seek to enter the United States as skilled and unskilled workers, and the Proclamations nullify those requirements. *See id.* at 30–31. For immigrant visa categories, like diversity visas, Congress elected not to place restrictions on their labor market participation. *See id.* at 31. The Proclamations, they say,

overturn the balance carefully struck by Congress between admitting foreign nationals and protecting American workers.¹³

The *Panda* Plaintiffs put forth a similar contention particular to H-1B visa applicants: “Proclamation 10052 subverts Congress’s detailed regulatory scheme that intertwines the H-1B and permanent labor certification programs to ensure the retention of skilled foreign labor to benefit the national economy and induce job growth while protecting domestic workers.” *Panda* PI Mem. at 26–27. Proclamation 10052, they maintain, “specifically overrides” 8 U.S.C. § 1182(a)(5)(A) (which governs permanent immigrant visas based on labor certifications) and § 1182(n) (which governs labor condition applications for H-1B nonimmigrant visas). *Id.* at 27. To be eligible for a permanent immigrant visa based on employment, for instance, the sponsoring employer must obtain a certification from the Department of Labor confirming that there are no qualified, able, and willing United States workers available to fill the employer’s job opportunity, 8 U.S.C. §§ 1153(b)(3)(C), 1182(a)(5)(A)(i)(I), and that the hire will not adversely affect the wages and working conditions of similar employed workers in the United States, *id.* § 1182(a)(5)(A)(i)(II). A similar labor certification is mandated for temporary H-1B nonimmigrant workers. *See id.* § 1182(n). “The Proclamation’s broad programmatic objective of purporting to help the domestic labor market,” the *Panda* Plaintiffs assert, “cannot trump the statute’s specific instructions to allow for the importation of skilled foreign labor under the statutory conditions that have already been satisfied.” *Panda* PI Mem. at 27.

Faced with similar arguments, the Court in *Trump v. Hawaii* stated that “[w]e may assume that § 1182(f) does not allow the President to *expressly override* particular provisions of the INA.”

¹³ The *Gomez* Plaintiffs’ separation-of-powers arguments appears to be a variant of their *ultra vires* claim—that the President has acted in excess of his congressionally granted authority under § 1182(f). The *Panda* Plaintiffs advance a similar argument, but couch it in statutory, not constitutional, terms. Whether framed as a statutory or constitutional claim, the arguments fail.

138 S. Ct. at 2411 (emphasis added). The Proclamations at issue in this case do not “expressly override” any “particular provision” of the INA. On their face, the Proclamations make no mention of any provision of the INA other than § 1182(f) and § 1185(a) (making it unlawful for “any alien to depart from or enter or attempt to depart from or enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe”), 8 U.S.C. § 1185(a)(1). The Proclamations do, of course, restrict from entry various immigrant and nonimmigrant visa classifications, but they do not expressly override any of them. Those classifications are not abolished. Presumably, their full admission will resume once the labor market recovers and the surplus labor concerns identified in the Proclamations are ameliorated.

But even now, certain categories of immigrants and nonimmigrants are eligible for admission if they can satisfy an exception set forth in the Proclamations. *Cf. Hawaii*, 138 S. Ct. 2422 (explaining that “significant exceptions” for various categories of foreign nationals from the designated countries supported the government’s claim of a legitimate national security interest). For instance, under Proclamation 10014, foreign nationals may enter the United States on an immigrant visa as a physician, nurse, or other healthcare professional (§ 2(b)(ii)); to perform medical research or other research to combat the spread of COVID-19 (§ 2(b)(ii)); or to perform other work essential to combating, recovering from, or otherwise alleviating the effects of the outbreak (§ 2(b)(iii)). So, too, may any foreign national enter who is a spouse or minor child of a United States citizen (§§ 2(b)(iv), (v)), or who is a member of the armed forces or any spouse or child of such member (§ 2(b)(vii)). Proclamation 10052 likewise includes exceptions for nonimmigrant visa categories. It permits entry of a foreign national who is a spouse or child of a United States citizen (§ 3(b)(ii)) and any foreign national seeking to enter to provide temporary

labor or services essential to the food supply chain (§ 3(b)(iii)). Finally, and critically, both Proclamations contain a “national interest” exception, whereby a foreign national may enter under criteria determined by the Secretary of State and the Secretary of Homeland Security. 85 Fed. Reg. at 23,443 § 2(b)(ix); 85 Fed. Reg. at 38,265 § 3(b)(iv). The State Department on August 12, 2020, issued guidance on the “national interest” exception. CAR 167–74. By way of illustration, H-1B visa holders qualify for the exception if, among other things, they are “seeking to resume ongoing employment in the United States in the same position with the same employer and visa classification” or are “technical specialists, senior level managers, and other workers whose travel is necessary to facilitate the immediate and continued economic recovery of the United States.” CAR 169. Consular officers are to consider five criteria in assessing this latter category approved for travel. CAR 169–70. H-2B temporary workers, as another example, may enter the country “to facilitate the immediate and continued economic recovery of the United States (e.g. those working in forestry and conservation, nonfarm animal caretakers, etc.),” with consular officers instructed to consider three criteria under this class accepted for travel. CAR 170–71. The guidance also sets forth various exceptions for the J-1 and L visa categories. CAR 171–73.

It may be a fair criticism that these exceptions are overly narrow and indiscriminately exclude large numbers of aliens seeking to enter the United States. But these exceptions demonstrate that the Proclamations do not “expressly override” any “particular” provision of the INA. *Hawaii*, 138 S. Ct. at 2411. Aliens still may travel to the United States under the visa categories established by Congress. That the Proclamations add burdensome conditions to entry is not a valid objection. The Court in *Hawaii* made clear that § 1182(f) grants the President “‘ample power’ to impose entry restrictions *in addition to* those elsewhere enumerated in the INA.” *Id.* at 2408 (quoting *Sale*, 509 U.S. at 187) (emphasis added); *see also id.* at 2412 (stating that

§ 1182(f) “vests authority in the President to impose additional limitations on entry beyond the grounds for exclusion set forth in the INA”). Placing sweeping limitations on entry is within the broad presidential powers conferred under § 1182(f).

Plaintiffs rely primarily on the district court’s decision in *Doe #1*, which enjoined a presidential proclamation in part on separation-of-powers grounds. *See Doe #1 v. Trump*, 418 F. Supp. 3d 573, 593–98 (D. Or. 2019). There, the court held that a presidential proclamation requiring aliens to demonstrate proof of health insurance as a condition of entry was unlawful because it conflicted with the INA’s “public charge” provision, which excludes aliens from admission who would create a financial burden on the United States. *See id.* at 594 (citing 8 U.S.C. § 1182(a)(4)). The key deficiencies that the court in *Doe #1* identified are not present here. First, the reason for the entry suspension in that case was the widespread problem of “uncompensated costs” in the national healthcare system. *See id.* at 596. This “triggering condition,” the court found, was apt to lead to an unauthorized “indefinite” suspension, because “[t]here is no reasonable interpretation of the Proclamation showing that this intractable problem is going to end any time soon” and the Proclamation provides no guidance “for determining under what circumstances the necessity for the Proclamation would be over.” *Id.* The same concerns are not present here. Though the job displacement in the U.S. labor market caused by the COVID-19 pandemic has been immense and swift, even Plaintiffs do not suggest that its lasting effects will be indefinite. Second, the court in *Doe #1* found that the entry restriction in that case reinstated a “bar that Congress expressly eliminated from the INA—the bar to ‘paupers.’” *Id.* Plaintiffs here have identified no similar conflict. In the end, the constitutional concerns that led to the court’s decision in *Doe #1* are not present in this case. The Proclamations here do not run afoul of separation of powers.

3. *Unconstitutional Delegation of Legislative Authority*

The *Gomez* Plaintiffs challenge the constitutionality of § 1182(f) itself. They contend that, by granting the President the power to exclude aliens under § 1182(f), Congress impermissibly delegated its exclusive legislative authority to the Executive Branch. *See Gomez* PI Mem. at 32–33. This nondelegation problem did not arise in *Trump v. Hawaii*, the *Gomez* Plaintiffs argue, because that case involved the President’s exercise of § 1182(f) authority in the sphere of international affairs and national security, where nondelegation concerns are “diminished.” *Id.* at 32. But here, they say, the President’s exercise of § 1182(f) power exceeds constitutional limits because he was operating in the realm of “domestic policymaking”—a power that rests within Congress’s exclusive legislative authority. *See id.*

Article I of the Constitution provides that “[a]ll legislative Powers herein granted shall be vested in a Congress of the United States.” U.S. Const., Art. 1 § 1. “Accompanying that assignment of power to Congress,” the Supreme Court has explained, “is a bar on its further delegation.” *Gundy v. United States*, 139 S. Ct. 2116, 2123 (2019). Congress may not convey to another branch “powers which are strictly and exclusively legislative.” *Id.* (quoting *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 42–43 (1825)). That restriction does not mean that Congress is forbidden from relying on coordinate Branches to assist in its legislative function. To the contrary, the Supreme Court has recognized that “Congress simply cannot do its job absent an ability to delegate power under broad general directives.” *Mistretta v. United States*, 488 U.S. 361, 372 (1989). “[I]n particular,” Congress “may confer substantial discretion on executive agencies to implement and enforce the laws.” *Gundy*, 139 S. Ct. at 2123. In light of the practical need for flexibility in carrying out its legislative functions, “a statutory delegation is constitutional so long as Congress ‘lay[s] down by legislative act an intelligible principle to which the person or body

authorized to [exercise the delegated authority] is directed to conform.” *Id.* (quoting *Mistretta*, 488 U.S. at 372).

The “intelligible principle” standard is “not demanding.” *Id.* at 2129. As the Supreme Court recently observed in *Gundy*, “[o]nly twice in this country’s history (and that in a single year) have we found a delegation excessive—in each case because ‘Congress had failed to articulate *any* policy or standard’ to confine discretion.” *Id.* (quoting *Mistretta*, 488 U.S. at 373 n.7). On the other hand, the Court has upheld “over and over” “even very broad delegations.” *Id.* In *Gundy*, the Court cited its past approval of delegations as including statutes authorizing agencies to act in “the public interest,” *id.* (citing *Nat’l Broadcasting Co. v. United States*, 319 U.S. 190, 216 (1943); *New York Central Securities Corp. v. United States*, 287 U.S. 12, 24 (1932); to set “fair and equitable prices” and “just and reasonable rates,” *id.* (citing *Yakus v. United States*, 321 U.S. 414, 422, 427 (1944); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944)); and to issue air quality standards “requisite to protect the public health,” *id.* (citing *Whitman v. Am. Trucking Ass’n*, 531 U.S. 457, 472 (2001)). In view of these approved broad delegations, the D.C. Circuit has remarked that “the basic doctrine of unconstitutional delegation, while by no means repudiated, remains only a shadowy limitation on congressional power.” *Chamber of Commerce*, 74 F.3d at 1327.

That “shadowy limitation” presents no constitutional constraint on the presidential action challenged here. The language of § 1182(f), according to the Supreme Court, provides a “comprehensive delegation” of authority to the President, and its text is “clear.” 138 S. Ct. at 2408, 2410. The statute, the Court observed, contains “textual limits.” *Id.* at 2409. Those include the requirement that the President make a “find[ing]”; identify a “class of aliens” whose entry is restricted; and “suspend” such entry for a fixed period of time or until resolution of a triggering condition. *See id.* at 2409–10. To be sure, standards such as “detrimental to the interests of the

United States” and as “he may deem to be appropriate” convey an expansive grant of power, but they are no more capacious than the broad standards deemed sufficiently intelligible by the Supreme Court in all but two of its cases. *See Gundy*, 139 S. Ct. at 2129. Section 1182(f) thus “does not suffer from a mortal constitutional defect hiding in plain sight.” *Doe #1*, 957 F.3d at 1079 (Bress, J., dissenting).

The *Gomez* Plaintiffs suggest that a nondelegation problem arises here because the President acted in the sphere of domestic policymaking, as opposed to international affairs or national security. That argument misses the mark. As already discussed, that less deference is warranted here because the Proclamations targeted “domestic” matters, as distinct from foreign affairs or national security matters, is a dubious proposition. *See* pp. 40–41, *supra*. But the distinction also misapprehends the nondelegation inquiry. Whether Congress exceeded *its* broad authority to delegate depends not on the setting in which that authority is exercised, but on the text of the statute. Otherwise, “[t]he very choice of which portion of the power to exercise”—domestic or foreign power—“would *itself* be an exercise of the forbidden legislative authority.” *Whitman*, 531 U.S. at 473. “[A] nondelegation inquiry always begins (and often almost ends) with statutory interpretation.” *Gundy*, 139 S. Ct. at 2123. “The constitutional question is whether Congress has supplied an intelligible principle to guide the delegatee’s use of discretion.” *Id.* The context in which the delegatee exercises that discretion is not the proper lens through which to make the nondelegation inquiry.¹⁴ The *Gomez* Plaintiffs thus have failed to establish a likelihood of success on their nondelegation claim.

¹⁴ The court recognizes that the district court in *Doe #1 v. Trump* held that when the President uses his authority under § 1182(f) “to engage in *domestic* policymaking, without addressing any foreign relations or national security issue or emergency . . . the delegation by Congress is without any intelligible principle and thus fails under the nondelegation doctrine.” 418 F. Supp. 3d at 592. For the reasons discussed, this court respectfully disagrees with that conclusion.

4. *Remaining Constitutional Claims*

The *Aker* Plaintiffs, joined by the *Gomez* DV-2020 Plaintiffs, advance three other constitutional arguments to nullify the Proclamations and their implementation specific to diversity visa applicants. *See Aker* TRO/PI Mem. at 53–56; *Gomez* Suppl. PI Mem. at 8. The court easily disposes of these claims.

First, Plaintiffs assert that the President has violated the Constitution’s Take Care Clause, *see* U.S. Const. Art. II § 3, Cl. 5, because “the INA holds diversity visa eligibility and the ability to apply for these visas as mandatory” and “the State Department’s unlawful and *ultra vires* suspension of and untimely adjudication of cases and issuance or reissuance of visas is ‘unfaithful’ to the INA.” *Aker* TRO/PI Mem. at 53–54. As framed, Plaintiffs’ Take Care Clause claim is duplicative of that aspect of their APA arbitrary-and-capricious claim asserting that the State Department has unlawfully withheld nondiscretionary review and adjudication of diversity visa applications and renewals. Because, as discussed below, the court finds in favor of Plaintiffs on their APA claim, the court need not reach their claim under the Take Care Clause. *See Qassim v. Trump*, 927 F.3d 522, 530 (D.C. Cir. 2019) (stating that “courts must ‘avoid the premature adjudication of constitutional questions’ and ‘not . . . pass on questions of constitutionality . . . unless such adjudication is unavoidable’” (quoting *Matal v. Tam*, 137 S. Ct. 1744, 1755 (2017))).

Second, Plaintiffs contend that the President’s and the State Department’s suspension of diversity visa application processing violates the Due Process Clause. *Aker* TRO/PI Mem. at 54–55. Plaintiffs do not, however, invoke a constitutional framework to support this claim. Instead, they argue that “[b]y failing to comply with the APA,” “the procedural due process rights of the Plaintiffs have been violated,” citing in particular the State Department’s failure to provide “any notice or meaningful opportunity to comment on its application of the Presidential Proclamations.”

Id. Plaintiffs, however, cite no case to support the notion that the Due Process Clause’s protections are co-extensive with the APA’s notice-and-comment requirements, and this court is aware of none. *Cf. Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 445 (1915) (holding that rulemaking activities that affect a large number of people without regard to the facts of individual cases do not implicate due process protections). In their reply brief, the *Aker* Plaintiffs recast their due process claim in more traditional constitutional terms, asserting that certain plaintiffs who are legal permanent residents “have a protected liberty interest in the marital relationship and to establish a home and bring up children” that was denied without adequate process. *See Mohammed, Aker, and Fonjong Pls.’ Reply in Support of Mot. for Prelim. Inj. & TRO*, ECF No. 110 [hereinafter *Mohammed Reply*], at 26–28. But that argument comes too late, so the court declines to consider it. *See Rollins Envtl. Servs. Inc. v. EPA*, 937 F.2d 649, 652 n.2 (D.C. Cir. 1991) (“Issues may not be raised for the first time in a reply brief.”).

Third, Plaintiffs challenge the Proclamations on equal protection grounds. They contend that, on their face, the Proclamations draw an irrational distinction between diversity visa applicants who were inside the United States versus those who were outside of the country on the Proclamations’ effective dates. *See Aker TRO/PI Mem.* at 55. The Proclamations apply to the latter group but not the former. *See* 85 Fed. Reg. 23,442 § 2(i) (stating that Proclamation applies only to aliens “outside the United States on the effective date of this proclamation”); 85 Fed. Reg. 38,265 § 3(i) (same). But this argument fails for two reasons. At the threshold, the Fifth Amendment’s equal protection clause does not protect any Plaintiff outside the United States, so they have no constitutional claim. *See Legal Assistance for Vietnamese Asylum Seekers v. Dep’t of State, Bureau of Consular Affairs*, 104 F.3d 1349, 1354 (D.C. Cir. 1997) (stating that “migrants, as aliens, may not assert a Fifth Amendment right in challenging the procedures for granting

immigrant visas”) (citing *United States v. Verdugo-Urquidez*, 494 U.S. 259, 269 (1990)). There are three *Aker* diversity visa lottery winners who have entered the United States and whose families, as derivative beneficiaries, remain outside the country, see *Aker* Compl. ¶¶ 75–82 (Utkirbek Abdumominov), ¶¶ 101–110 (Laila Faizi Sohail), ¶¶ 111–121 (Oleg Kamanev), who arguably may challenge the Proclamations on equal protection grounds, see *Legal Assistance for Vietnamese Asylum Seekers*, 104 F.3d at 1354 (“The equal protection claim must be asserted, if at all, by the citizen sponsors of the migrants.”); see also *Hawaii*, 138 S. Ct. at 2419 (stating that the Court has “engaged in a circumscribed judicial inquiry when the denial of a visa allegedly burdens the constitutional rights of a U.S. citizen”).¹⁵ But their claims fail on the merits. Because the Proclamations create a classification based on the foreign national’s location, the classification “must be upheld against [an] equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 313 (1993). Where there is a “plausible reason” for the challenged classification, the “[judicial] inquiry is at an end.” *Id.* (quoting *United States R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 174–179 (1980)); see also *Hawaii*, 138 S. Ct. at 2420 (observing that the Court “hardly ever strikes down a policy as illegitimate under rational basis scrutiny”). Here, the “plausible reason” for treating foreign nationals in the United States differently from those outside of it is plain on the face of the Proclamations. The Proclamations exclude categories of foreign nationals from *entry* into the United States to protect U.S. workers. Entry cannot logically be denied to those persons

¹⁵ The court recognizes that it is not free from doubt whether a diversity lottery winner who becomes a lawful permanent resident and resides in the United States has a Fifth Amendment right to challenge the exclusion of a spouse or child as a derivative beneficiary. See *Singh v. Tillerson*, 271 F. Supp. 3d 64, 71 (D.D.C. 2017) (observing that, “while the Constitution protects an individual’s right to marry and the marital relationship, these constitutional rights are not implicated when a spouse is removed or denied entry to the United States” (citing *Swartz v. Rogers*, 254 F.2d 338, 339 (D.C. Cir. 1958))); *Butera v. District of Columbia*, 235 F.3d 637, 656 (D.C. Cir. 2001) (holding that “a parent does not have a constitutionally-protected liberty interest in the companionship of a child who is past minority and independent”). Nevertheless, for present purposes, the court assumes that such a right exists.

already in the United States. Indeed, any effort by the President to exercise his authority under § 1182(f) to oust foreign nationals already in the country would present its own problems, as the statute says nothing about the power of removal. The Proclamations’ different treatment based on a foreign national’s location presents no equal protection problem.¹⁶

Plaintiffs advance one other challenge under the equal protection rubric: the Proclamations are unconstitutional because they are the product of “the President’s preexisting animus toward the Diversity Visa program.” *Aker* TRO/PI Mem. at 56. To support their position, Plaintiffs cite various tweets and statements from the President denouncing the diversity visa lottery program. *See id.* at 32–36. The President’s hostility towards the diversity visa lottery program is well documented. The President has questioned its value, mischaracterized its requirements, and disparaged its recipients. He has referred to diversity lottery visa winners as “dangerous,” “not [the] country’s finest,” “the worst of the worst,” bank robbers, and “murderers.” *Id.* at 33–36. They are nothing of the sort. Diversity visa lottery winners are people who have come to this nation, like millions before, to seek a better life for themselves and their families, and to pursue the American Dream. They do not deserve to be caricatured as common criminals, or to be used as a political wedge issue. But for the same reasons that the Court in *Trump v. Hawaii* rejected a similar challenge based on purported religious animus, *see* 136 S. Ct. at 2421–23, the court does so here, too.

C. Challenges to the Implementation of Proclamations 10014 and 10052

Plaintiffs raise a host of APA and Mandamus Act challenges to how federal agencies have implemented the Proclamations. First, all Plaintiffs except the *Panda* Plaintiffs assert that

¹⁶ The *Aker* Plaintiffs for the first time in their reply brief attempt to recharacterize the Proclamations as containing suspect classifications based on “alienage and/or national origin.” *Mohammed* Reply at 30. The court declines to consider this belatedly raised argument. *See Rollins Envtl. Servs.*, 937 F.2d at 652 n.2.

Defendants’¹⁷ suspension of adjudication and issuance of covered, non-exempt visas—i.e., the “No-Visa Policy”—is contrary to law, in excess of Defendants’ statutory authority, and usurps the role of consular officers. Second, the *Gomez, Panda*, and *Aker* Plaintiffs argue that Defendants’ No-Visa Policy is arbitrary and capricious because it lacks any reasoned explanation, fails to consider reliance interests, and fails to consider important aspects of the problem. Third, the *Aker* Plaintiffs argue that Defendants failed to undergo notice-and-comment rulemaking before issuing their No-Visa Policy. Fourth, the *Gomez, Mohammed, Fonjong*, and *Aker* DV-2020 Plaintiffs argue that Defendants have unreasonably delayed adjudicating DV-2020 visa applications. The *Mohammed* and *Fonjong* Plaintiffs also argue that this delay entitles them to relief under the Mandamus Act. And fifth, the *Gomez* diversity visa Plaintiffs contend that the State Department’s decision not to treat 2020 diversity visa selectees as “mission critical” or “emergency” cases in its COVID-19 Guidance also violates the APA. The court considers each argument in turn.

1. No-Visa Policy – Not in Accordance with Law

The *Gomez, Mohammed, Aker*, and *Fonjong* Plaintiffs each assert that Defendants’ No-Visa Policy is “‘not in accordance with law’ and ‘in excess of statutory authority.’” *See Gomez* PI Mem. at 35; *Mohammed* PI Mem. at 21–23; *Aker* TRO/PI Mem. at 42–43, 52–53; *Fonjong* TRO/PI Mem. at 20–23. Broadly speaking, these Plaintiffs contend that (1) neither Proclamation directs the State Department to suspend the processing and issuance of visas and nothing in the INA or the State Department’s implementing regulations give Defendants such power; and so (2) Defendants’ No-Visa Policy unlawfully usurps consular officers’ sole and express statutory authority to issue visas to qualifying applicants. *See, e.g., Aker* TRO/PI Mem. at 42–43; *Gomez* PI Mem. at 35. Defendants retort that Plaintiffs have not alleged final agency action, *see Defs.’*

¹⁷ The court’s use of the term “Defendants” for the purpose of discussing Plaintiffs’ APA claims excludes the President.

Opp’n at 29, and that the State Department’s refusal to process non-exempt covered visas is lawful because 8 U.S.C. § 1201(g) prohibits consular officers from issuing visas to persons declared ineligible for entry under § 1182(f), *see id.* at 42–44. Neither defense is persuasive.

First, Defendants incorrectly assert that Plaintiffs have not alleged final agency action because the “legal consequences that Plaintiffs challenge flow from the Proclamations, not action by the State Department.” *Id.* at 31. The Proclamations solely address the *entry* of immigrants and certain nonimmigrants into the country; they say nothing about the issuance and adjudication of visas. And the statutory authorities cited in the Proclamations also address only entry, not visa issuance. *See* 8 U.S.C. § 1182(f) (empowering the President to “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”); 8 U.S.C. § 1185(a) (“[I]t shall be unlawful . . . for any alien to depart from or *enter* . . . the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President may prescribe.”). The Proclamations themselves do not dictate Defendants’ No-Visa Policy.

Defendants’ primary argument is that the No-Visa Policy is an automatic consequence of another statutory provision of the INA—8 U.S.C. § 1201(g)—and therefore does not violate the APA. *See* Defs.’ Opp’n at 42–44; *see also* CAR 156 (“All [covered, non-exempt] cases must be refused under INA [§ 1201(g)] until further guidance is received from the Department.”). Subsection 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 or other such documentation under section 1182.” A person declared inadmissible to enter the United States under § 1182(f), the theory goes, is therefore ineligible to receive a visa under § 1201(g). Defs.’ Opp’n at 42–44. But that argument ignores “the basic distinction between admissibility determinations,” i.e., entry

determinations,¹⁸ and “visa issuance that runs throughout the INA.” *Hawaii*, 138 S. Ct. at 2414 & n.3 (collecting statutory examples). Subsection 1201(g) precludes the issuance of visas only as to persons who are “ineligible to *receive a visa*” under Section 1182, not to persons who are only ineligible to *enter* under that provision. 8 U.S.C. § 1201(g) (emphasis added).

The categories of persons deemed ineligible to receive a visa pursuant to § 1201(g) appear in § 1182(a), not § 1182(f).¹⁹ See *Castaneda-Gonzalez v. Immigr. & Naturalization Serv.*, 564 F.2d 417, 426 (D.C. Cir. 1977) (explaining that § 1201(g) “directs [consular officers] not to issue visas to any alien who falls within one of the excludable classes described in [8 U.S.C. § 1182(a)]”). Subsection 1182(a) provides that “aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States.” Thus, a person who falls into one of the categories of inadmissible persons outlined in § 1182(a) is both ineligible to enter the country *and* ineligible to receive a visa pursuant to § 1201(g). “For example, an alien cannot receive a visa if she has ‘a communicable disease of public health significance,’ and if she contracts such a disease after receiving her visa, she will be denied entry.” *Almaqrami*, 933 F.3d at 776 (quoting 8 U.S.C. § 1182(a)(1)(A)). Subsection 1182(a) does not provide the President or the State Department any authority to supplement the listed categories of dual ineligibility and inadmissibility.

The reference to “the following paragraphs” in § 1182(a) does not “includ[e] § 1182(f),” as Defendants suggest. Defs.’ Opp’n at 43. Section 1182 of the INA carefully distinguishes between *subsections*, which include §§ 1182(a) and 1182(f), and *paragraphs*, which are subunits

¹⁸ “The concepts of entry and admission—but not issuance of a visa—are used interchangeably in the INA.” *Hawaii*, 138 S. Ct. at 2414 n.4; see 8 U.S.C. § 1101(a)(13)(A) (defining “admission” as the “lawful entry of the alien into the United States”).

¹⁹ Other subsections of § 1182, including § 1182(e), provide additional limitations on eligibility for visas, but Defendants do not contend that these subsections have any bearing on the question of whether a person suspended from entering under § 1182(f) is ineligible for a visa under § 1201(g).

of those subsections. *See generally* 8 U.S.C. § 1182. Thus, “the following paragraphs” in § 1182(a) include only the ten paragraphs of § 1182(a); they do not also include § 1182(f), a distinct subsection of § 1182. A suspension of entry under § 1182(f) therefore has no bearing on whether the person is “inadmissible” under § 1182(a) or ineligible to receive a visa under § 1201(g). *See Almaqrami*, 933 F.3d at 776 (explaining that “[f]ailure to satisfy” the requirements of § 1182(a) “will render an alien ineligible for a visa *and* ineligible for entry,” while “[o]ther parts of the INA apply to only visas *or* entry” (emphasis in original)).

Losing the textual battle, Defendants invoke the Supreme Court’s decision in *Trump v. Hawaii*, which held that “any alien who is inadmissible under § 1182 (based on, for example, health risks, criminal history, or foreign policy consequences) is screened out as ‘ineligible to receive a visa.’” *Hawaii*, 138 S. Ct. at 2414 (quoting § 1201(g)); Defs.’ Opp’n at 43. But the Court never held that the President’s suspension of entry under § 1182(f) renders a person ineligible to receive a visa. To the contrary, all the examples *Hawaii* cites all come from § 1182(a), *see* 8 U.S.C. § 1182(a)(1) (health risks); *id.* § 1182(a)(2) (criminal history); *id.* § 1182(a)(3)(C) (foreign policy). And the Court specifically cited § 1182(f) as a screen on *entry* into the United States. *See* 138 S. Ct. at 2414. Subsection 1182(a), unlike § 1182(f), *does* establish categories of applicants that are ineligible to receive visas under § 1201(g). And, as discussed, the Court repeatedly stressed the distinction between entry and visa issuance, *see Hawaii*, 138 S. Ct. at 2414, a distinction which Defendants’ position elides.²⁰

²⁰ Defendants also argue that the “State Department’s practice, consistent with section 1201(g), has thus been to treat aliens covered by Presidential orders under section 1182(f) as ineligible for visas,” Defs’ Opp’n at 43, but the provision of the Foreign Affairs Manual they cite for that proposition, 9 FAM 302.14-3(B), does not mention visas at all—it simply describes the President’s authority “to suspend entry into the United States.” The court notes that another provision of the Manual, 9 FAM 301.4-1, does suggest that aliens excluded under § 1182(f) may be ineligible to receive visas. That section has not been briefed, however, and so the court does not opine on its validity or persuasive force.

Nor is the court persuaded by Defendants' argument that interpreting the INA to allow the issuance of visas to persons who might be ineligible to enter the country under a § 1182(f) proclamation "would only result in administrative confusion." Defs.' Opp'n at 44. The court acknowledges that such a system could create the odd result of persons receiving visas only to be turned away at ports of entry. However, "[a] visa does not guarantee entry into the United States; it only confers the right to travel to a port of entry and apply for admission to enter the country." *Almaqrami*, 933 F.3d at 776. In any event, there may be sound reasons for Congress's distinction. For instance, most immigrant visas are valid for six months, and some are valid for three years. 8 U.S.C. § 1201(c)(1). Congress may not have wished to halt visa processing and issuance for categories of persons who are only temporarily "suspend[ed]" from entering the country under § 1182(f), particularly where, as here, the visa applicant's opportunity to receive a visa is time delimited. For example, if a DV-2020 selectee receives her visa by the end of this month, it will be valid for another three months after the Proclamations are set to expire, giving her three months to enter the country.

Because neither the Proclamation nor § 1201(g) of the INA compel or empower the State Department to suspend the processing and issuance of visas, Defendants' argument that Plaintiffs have alleged no final agency action collapses. The term "agency action" "cover[s] comprehensively every manner in which an agency may exercise its power." *Whitman*, 531 U.S. at 478. To be "final," that action need only "mark the consummation of the agency's decisionmaking process" and "be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (cleaned up). Defendants, through a cluster of guidance documents, cables, and directives, have ordered consular offices and embassies to cease processing and issuing visas for otherwise

qualified applicants not exempt or excepted from the Proclamation, under the mistaken belief that they are legally required to do so. *See e.g.*, CAR 24 (instructing that “[o]nly [visa] applicants that post believes may meet an exception to the [Proclamation], including the national interest exception, and that constitute a mission-critical category should be adjudicated at this time,” and clarifying that officers “may not issue any [visas] that are not also excepted under [Proclamation]”); CAR 38 (“Presidential Proclamation 10052 suspended the issuance of nonimmigrant visas in the H-1B, H-2B, L, and J-1 . . . classifications until December 31, 2020, with certain exceptions Posts should NOT resume routine processing of these visa classifications, unless the applicant qualifies for an exception under this or any subsequent Proclamation, until given a specific instruction to do so.”); CAR 36 (providing similar instructions for immigrant visas); Luster Decl. ¶ 5 (explaining that “[p]ursuant to guidance from the Department on . . . the implementation of P.P. 10014 and P.P. 10052,” no “additional diversity visa case appointments with [consular] posts” have been scheduled,” and “only when a consular post reaches Phase Three of the Diplomacy Strong Framework may the post resume diversity visa case processing, and only for cases that appear to be eligible for an exception to P.P. 10014”).

Both of the *Bennett* factors are met here. Defendants’ decisionmaking process is not in flux; they believe the policy is statutorily required. As a consequence, it appears that thousands of otherwise qualified visa applications are not being processed or issued. And even those applicants who may be able to meet an exception to the Proclamations are, as the *Mohammed* Plaintiffs note, subject to additional “eligibility requirements for decisions on diversity visa applications that cannot be . . . found in the statutes, regulations, or executive orders governing their adjudications.” *See Mohammed* PI Mem. at 21; *see* CAR 167–74 (detailing various extra-statutory requirements for applicants to qualify for the national interest exception). That is

paradigmatic final agency action. *See Cal. Cmtys. Against Toxics v. EPA*, 934 F.3d 627, 637 (D.C. Cir. 2019) (Finality is determined “based on the concrete consequences an agency action has or does not have as a result of the specific statutes and regulations that govern it.”); *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1023 (D.C. Cir. 2000) (finding final agency action where “the entire Guidance, from beginning to end . . . reads like a ukase. It commands, it requires, it orders, it dictates”); *Ciba-Geigy Corp. v. EPA*, 801 F.2d 430, 438 (D.C. Cir. 1986) (“[A]n agency’s interpretation of its governing statute, with the expectation that regulated parties will conform to and rely on this interpretation, is final agency action fit for judicial review.” (cleaned up)).

Likewise, Defendants’ argument that their No-Visa Policy is consistent with the INA and does not “usurp[] consular officers’ sole and express statutory authority to issue visas” rises and falls on their incorrect assumption that “Plaintiffs are inadmissible” under § 1182(f) “and, in turn, ‘ineligible to receive a visa’ for the purposes of 8 U.S.C. § 1201(g)(1).” Defs.’ Opp’n at 43–44. Apart from § 1201(g), which does not apply here, Defendants identify no statutory authority that would authorize Defendants to order consular officers to cease processing and issuing qualifying visas. Under the INA, “[a]ll immigrant visa applications,” and “[a]ll nonimmigrant visa applications” “shall be reviewed and adjudicated by a consular officer.” 8 U.S.C. § 1202(b), (d). “[A] consular officer may issue” visas to individuals who have “made proper application therefor,” *id.* § 1201(a)(1), and the INA expressly deprives the Secretary of State of “those powers, duties, and functions conferred upon the consular officers relating to the granting or refusal of visas,” *id.* § 1104(a). Because Defendants have not identified any statutory authority that would permit the suspension of this ordinary process, the court concludes that Plaintiffs are likely to succeed on the merits of their claim that Defendants’ No-Visa Policy is “not in accordance with law” and “in excess of statutory . . . authority.” 5 U.S.C. § 706(2).

2. *No-Visa Policy – Arbitrary and Capricious*

Next, the *Gomez*, *Panda*, and *Aker* Plaintiffs argue that Defendants’ No-Visa Policy is arbitrary and capricious because it lacks any reasoned explanation, fails to consider reliance interests, and fails to consider important aspects of the problem. *See Gomez* PI Mem. at 35–38; *Aker* TRO/PI Mem. at 43; *Panda* PI Mem. 32–35. The court need not linger on these arguments long. The Administrative Record reveals no justification for Defendants’ No-Visa Policy except the incorrect assumption that it is compelled by the Proclamations and § 1201(g). *See, e.g.*, CAR 24, 26, 28, 36, 38. In promulgating the No-Visa Policy, Defendants offered no rational explanation for the policy, nor did they account for the serious consequences the policy would impose on DV-2020 selectees, whose opportunity to receive visas will expire by the end of this fiscal year. The court assumes that Defendants may in some circumstances permissibly prioritize the processing of visas for applicants who are actually eligible to enter the United States, particularly given the operational difficulties posed by the COVID-19 pandemic, but no such rationale was given. Agency action that “stands on a faulty legal premise and [lacks] adequate rationale” is arbitrary and capricious. *Prill v. NLRB*, 755 F.2d 941, 948 (D.C. Cir. 1985); *see also SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943) (“[A]n order may not stand if the agency has misconceived the law.”). Plaintiffs are therefore likely to succeed on their argument that Defendants’ No-Visa Policy is arbitrary and capricious.

3. *No-Visa Policy – Notice and Comment Rulemaking*

The *Aker* Plaintiffs additionally argue that Defendants’ No-Visa Policy violates the APA because it was issued without giving notice and an opportunity to comment. *See Aker* TRO/PI Mem. at 44–49. Defendants retort that the policy is at most an interpretive rule, and is not subject to the same notice-and-comment rulemaking requirements as legislative rules. *See Defs.’ Opp’n*

at 56–58. But a rule is legislative, not interpretive, “when it ‘change[s] the law.’” *Ciox Health, LLC v. Azar*, 435 F. Supp. 3d 30, 66 (D.D.C. 2020) (quoting *Nat’l Res. Def. Council v. EPA*, 643 F.3d 311, 320 (D.C. Cir. 2011)). As discussed, Defendants’ No-Visa Policy is not an automatic consequence of the Proclamations or 8 U.S.C. § 1201(g), and so it changes the law by suspending processing and issuance of covered, non-exempt visa applicants and subjecting potentially exempt applicants to additional eligibility requirements. Defendants’ policy therefore bears the hallmarks of a legislative rule.

However, the court declines to rule on whether notice-and-comment rulemaking was required for Defendants’ policy for three reasons. First, it is unnecessary. A ruling on this issue would provide Plaintiffs no additional relief than they will otherwise receive. Second, Defendants have not identified any authority granted to the Secretary of State to suspend the processing and issuance of visas in the first place. The court cannot assess whether notice-and-comment rulemaking is required absent this information. And finally, insofar as Defendants do have authority to issue such a legislative rule, certain exceptions to the APA’s notice-and-comment requirements might apply, *see* 5 U.S.C. § 553(a)(1), 553(b)(3)(B), but Defendants have not briefed any of those exceptions. Therefore, the court declines to rule on the likelihood of Plaintiffs’ success on this issue.

4. *Unreasonable Delay of Processing DV-2020 Visa Applications*

The *Gomez* DV-2020 Plaintiffs and the *Mohammed*, *Aker*, and *Fonjong* Plaintiffs argue that Defendants have unreasonably delayed and unlawfully withheld adjudicating their DV-2020 visa applications, and the *Mohammed* and *Fonjong* Plaintiffs also argue that this delay entitles them to relief under the Mandamus Act. *See Gomez* Suppl. PI Mem. at 8; *Mohammed* PI Mem. at 16–20, 23; *Aker* TRO/Mot. at 49–50; *Fonjong* TRO/PI Mem. at 16–22, 25–26.

The court agrees that Defendants have unreasonably delayed processing Plaintiffs’ DV-2020 selectees’ visa applications. Courts in this Circuit analyze a claim of unreasonable delay under the six-part standard outlined in *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 79 (D.C. Cir. 1984) (“*TRAC*”):

(1) the time agencies take to make decisions must be governed by a rule of reason; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find any impropriety lurking behind agency lassitude in order to hold that agency action is ‘unreasonably delayed.’

In re United Mine Workers of Am. Int’l Union, 190 F.3d 545, 549 (D.C. Cir. 1999) (quoting *TRAC*, 750 F.2d at 80) (quotation marks omitted). Plaintiffs have established each of the required *TRAC* elements.

First and Second TRAC Factors. First, the INA provides a clear “indication of the speed with which it expects the agency to proceed in” processing diversity lottery selectees’ visa applications, which supplies content for the *TRAC* rule of reason. *TRAC*, 750 F.2d at 80. Section 1154 sets an absolute, unyielding deadline by which selectees must receive their visas: “Aliens who qualify, through random selection, for a visa under section 1153(c) of this title shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.” 8 U.S.C. § 1154(a)(1)(I)(ii)(II). While Defendants correctly note that that provision does not expressly require the State Department to conclude processing diversity visas by that date, Defs.’ Opp’n at 53, they ignore that the second *TRAC* factor may be satisfied by an express timetable *or* any “other indication of [] speed,” 750 F.2d at 80. Here, “[t]he specificity and relative

brevity” of the September 30 deadline manifests Congress’s intent that the State Department undertake good-faith efforts to ensure that diversity visas are processed and issued before the deadline. *In re People’s Mojahedin Org. of Iran*, 680 F.3d 832, 837 (D.C. Cir. 2012). “[A] reasonable time for agency action is typically counted in weeks or months, not years”; surely a delay that results in the *permanent* loss of a statutory benefit is not reasonable. *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004).

To be clear, there is no statutory requirement that every available diversity visa be issued each year. But that does not mean that the State Department could effectively extinguish the diversity program for a given year by simply sitting on its hands and letting all pending diversity visa applications time out. Doing so would “plainly frustrate[] the congressional intent” to make available 55,000 diversity immigrant visas each year. *See In re People’s Mojahedin Org. of Iran*, 680 F.3d at 837; *see also* 8 U.S.C. § 1151(e) (“The worldwide level of diversity immigrants is equal to 55,000 for each fiscal year.”); *id.* § 1153(c)(1)(A) (providing that persons “subject to the worldwide level specified in section 1151(e) of this title for diversity immigrants shall be allotted visas each fiscal year” pursuant to a detailed statutory scheme); H.R. Rep. No. 101-723, pt. 1 (1990) (finding that it is important “to promote diversity in [the] immigration system”).²¹ These factors favor Plaintiffs.

Third and Fifth TRAC Factors. Defendants do not dispute that the third and fifth *TRAC* factors favor a finding of unreasonable delay, *see* Defs.’ Opp’n at 53, and for good reason. The prejudice from delay is dire—DV-2020 applicants might permanently lose their opportunity to

²¹ The only case Defendants cite in support of their position, *Ghadami v. Department of Homeland Security*, 19-cv-00397 (ABJ), 2020 WL 1308376 (D.D.C. Mar. 19, 2020), involved a request for a waiver to an entry ban, for which there was no expiration date or “any particular time frame” associated with processing the request. *See id.* at *2, *8. That case is therefore inapposite.

immigrate to the United States—and such delay is “less tolerable” in cases like this one, where “human . . . welfare” is “at stake.” *TRAC*, 750 F.2d at 80.

Fourth Factor. The fourth *TRAC* factor—“the effect of expediting delayed action on agency activities of a higher or competing priority,” *see TRAC*, 750 F.2d at 80—is a closer call, but ultimately does not militate against a finding of unreasonable delay. Defendants argue that “given that diversity visa selectees are ineligible to receive visas for the remainder of the fiscal year, the agency understandably has not prioritized the scheduling of consular interviews for diversity visa selectees.” Defs.’ Opp’n at 54. But, as discussed, that premise is plainly incorrect: qualified DV-2020 selectees have no legal impediment to receiving visas.

Defendants argue more persuasively that “[t]he COVID-19 pandemic has disrupted the State Department’s operations and strained its resources to an unprecedented degree[,]” and that “[m]any embassies and consulates continue to suspend routine operations.” *Id.* The court is not insensitive to these concerns, but they do not render reasonable the agency’s complete refusal to process diversity visa applications for two reasons. For one, the agency’s declarant, Brianne Marwaha, has informed the court that despite in-country “restrictions, the Department is committed to processing visa services that are deemed ‘mission critical.’” *See* Marwaha Decl. ¶ 8. As discussed below, the agency has not provided an adequate explanation for why it does not consider DV-2020 applications mission critical. And two, posts have been resuming visa processing to various degrees since July 15 of this year but are directed to treat DV-2020 applications as low priority. *See* CAR 35. There may well be certain consular offices that are simply incapable of processing additional visa applications at this time, but that does not justify a blanket withholding of processing worldwide.

Finally, Defendants argue that the INA “sets forth a policy of a 30-day timeframe for the processing of K-1 visa applications^[22] and a 60-day timeframe for the processing of all other family-preference cases,” and suggest that Plaintiffs are impermissibly attempting to “be prioritized at the expense of other prospective visa applicants.” Defs.’ Opp’n at 53–54. But Defendants cite no evidence suggesting that they would be unable to process these other visa applications if ordered to expeditiously process DV-2020 visa applications. Nor do they identify any statutory authority that sets the processing of these other visa categories as a more important priority than diversity visa applications that will expire in less than thirty days. In the end, Defendants’ argument boils down to the notion that it “has acted reasonably in prioritizing family-preference cases and other visa categories in which prospective applicants are not ineligible to receive visas.” Defs.’ Opp’n at 54. For the reasons already discussed, that premise is incorrect. Accordingly, the fourth factor does not favor Defendants.

Sixth TRAC Factor. Plaintiffs argue that “impropriety lurking behind agency lassitude” further favors a finding that processing of DV-2020 visa applications has been unreasonably delayed. *TRAC*, 750 F.2d at 80. The court “need not” make any such finding to find unreasonable delay, however, and so it declines to do so here. *Id.*

Therefore, the court finds that Plaintiffs are likely to succeed on their claim that Defendants have unreasonably delayed processing their DV-2020 visa applications. In view of this conclusion, the court does not separately address the merits of Plaintiffs’ overlapping claim that Defendants have unlawfully withheld processing DV-2020 selectees’ applications, as that additional claim

²² A K-1 visa is a nonimmigrant visa for the foreign-citizen fiancé of a United States citizen. *See Nonimmigrant Visa for a Fiancé(e) (K-1)*, U.S. DEP’T OF STATE, available at <https://travel.state.gov/content/travel/en/us-visas/immigrate/family-immigration/nonimmigrant-visa-for-a-fiance-k-1.html>.

seeks identical relief.²³ Likewise, any separate mandamus relief is unwarranted. “[T]he standards for obtaining relief” under § 706(1) of the APA and the Mandamus Act are “essentially the same,” *Viet. Veterans of Am. v. Shinseki*, 599 F.3d 654, 659 n.6 (D.C. Cir. 2010), and relief under the Mandamus Act is only warranted when “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).

5. *Exclusion of DV-2020 Visa Applications from Mission Critical Processing*

Defendants’ interpretation of the Proclamations and 8 U.S.C. § 1201(g) as suspending the processing and issuance of covered, non-exempt visa applications is not the only impediment the diversity visa Plaintiffs must overcome. Since March 20, 2020, the State Department has also suspended the routine processing of visas worldwide due to the COVID-19 pandemic, and has only recently begun to resume routine services at some posts. *See* CAR 12–14, 35. The State Department has continued to process “mission critical” applications, *id.*, *see also* Marwaha Decl. ¶ 8, but DV-2020 applications are not being treated as mission critical, *see* 8/7/2020 Status Hr’g Tr. at 19; *see also* CAR 26 (listing “examples of categories of visa services that should be considered mission-critical,” but not including DV-2020 applications). Even as consular offices resume routine visa operations, diversity visa applications eligible for an exception to the

²³ Defendants suggest that Plaintiffs have failed to establish that any agency action has been unlawfully withheld because they owe Plaintiffs no non-discretionary duty, and that fact “dooms Plaintiffs’ unreasonable-delay claim.” Defs.’ Opp’n at 51. But the APA provides for judicial review of agency action “unlawfully withheld *or* unreasonably delayed.” 5 U.S.C. § 706(1) (emphasis added). Defendants identify no authority for the notion that a plaintiff must prove the former to obtain relief on the latter. Moreover, agencies are separately required to “proceed to conclude a matter presented to it” “within a reasonable time.” 5 U.S.C. § 555(b). Given this obligation under the APA, any absence of an additional statutory mandate is “beside the point.” *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004). In any event, Defendants’ argument that they have no “nondiscretionary duty to afford Plaintiffs the opportunity to apply for immigrant visas at consular interviews,” Defs.’ Opp’n at 51, is flatly contradicted by § 1202(b) and 1202(d) of the INA, which require that all immigrant and nonimmigrant visa applications “shall be reviewed and adjudicated by a consular officer,” 8 U.S.C. § 1202(b), (d).

Proclamations are still given the lowest priority for processing under the State Department’s guidance. *See* CAR 38. Pursuant to this guidance, and the State Department’s additional guidance implementing the Proclamations, the State Department “has not scheduled additional diversity visa case appointments with posts since March 20, 2020.” Luster Decl. ¶ 5.

The *Gomez* DV-2020 Plaintiffs assert that Defendants’ COVID-19 Guidance excluding DV-2020 diversity visa applications from the categories of “mission critical” visa services is arbitrary and capricious because, among other reasons, it does not reflect any “meaningful consideration to the exceptionally harsh result of failing to issue visas to diversity visa lottery winners.” *Gomez* Suppl. PI Mem. at 5. The court agrees. The record reveals no explanation whatsoever for the exclusion of DV-2020 selectees from mission critical services, nor does it reflect any reasoned consideration of the detrimental effects that will be wrought on diversity visa selectees if they do not receive visas. The agency thus “failed to consider [an] important aspect of the problem.” *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1913 (2020).

Defendants do not attempt to defend the rationality of their COVID-19 Guidance. Nor do they dispute that the Guidance constitutes final agency action. Instead, they argue that Plaintiff’s claim is untimely because it was after the court issued a scheduling order for consolidated, omnibus briefing in these consolidated cases and the information was allegedly available to Plaintiffs since June. *See* Defs.’ Opp’n at 29–30 n.6. However, Defendants’ policy of excluding DV applications from mission critical services was only revealed at the status conference on August 7, 2020. *See* 8/7/2020 Status Hr’g Tr. at 19. Plaintiffs acted promptly after that, filing a supplemental preliminary injunction motion on August 10, 2020, ECF No. 66, and a motion to file a second amended complaint two days later, ECF No. 76. Defendants could have asked the court for an

expansion of pages in their omnibus opposition brief or filed a separate opposition to Plaintiffs' supplemental motion, but they did neither. Plaintiffs' additional argument is therefore neither untimely nor prejudicial.

Defendants' final argument—that Plaintiffs do not state a claim under § 706(1) of the APA because “there is no non-discretionary duty to consider [DV-2020 selectees] as emergency/mission critical under the State Department’s COVID-19 guidance,” Defs.’ Opp’n at 29 n.6—misconstrues the nature of Plaintiffs’ claim. Plaintiffs argue that Defendants’ COVID-19 Guidance “is arbitrary, capricious, and unlawful,” under § 706(2) of the APA, not that Defendants have unlawfully withheld a non-discretionary duty under § 706(1). *See Gomez*. Suppl. PI Mem. at 3; *see also Gomez* SAC ¶¶ 353–54.²⁴ The COVID-19 Guidance is final agency action (it marks the consummation of Defendants’ decisionmaking and imposes significant legal consequences on DV-2020 selectees applying for visas at posts that have not resumed routine visa services), and, in issuing and implementing the Guidance, Defendants failed to consider an important aspect of the problem in violation of § 706(2) of the APA. Defendants’ insistence that the State Department “was not required” to include DV-2020 applicants in its COVID-19 Guidance simply “misses the point.” *Regents*, 140 S. Ct. at 1913.

Therefore, the *Gomez* diversity visa plaintiffs are likely to succeed on the merits of this claim.

²⁴ Likewise, in the context of this claim, the *Gomez* Plaintiffs seek only an order “holding that the agency defendants’ implementation of the Proclamation and the COVID-19 Guidance are unlawful and are set aside,” *see Gomez* SAC at 104; *Gomez* Suppl. PI Mem. at 7. Their requests for an order compelling the State Department to adjudicate their claims is tied to their adoption of the *Mohammed*, *Fonjong*, and *Aker* Plaintiffs’ § 706(1) claims. *See Gomez* Suppl. PI Mem. at 1, 8.

IV. REMAINING FACTORS GOVERNING PRELIMINARY RELIEF

Having found that Plaintiffs are likely to succeed on their APA claims regarding Defendants' implementation of the Proclamations 10014 and 10052 and the COVID-19 Guidance, the court now turns to the remaining factors governing preliminary injunctive relief. The court first discusses those factors as they pertain to the DV-2020 Plaintiffs, and then considers the non-diversity visa Plaintiffs' claims for equitable relief in *Gomez*.²⁵

A. DV-2020 Plaintiffs

The DV-2020 Plaintiffs have demonstrated that they are likely to experience irreparable harm absent injunctive relief, and that the balance of equities and public interest tip in their favor.

1. Irreparable Harm

A party seeking preliminary injunctive relief bears the burden of showing that she imminently will be irreparably harmed by the challenged action or inaction. The "injury must be both certain and great, actual and not theoretical, beyond remediation, and of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm." *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015) (cleaned up).

Defendants do not contest that the DV-2020 Plaintiffs have met their burden of showing irreparable harm. *See* Defs.' Opp'n at 68–72. That was a smart choice. Plaintiffs in each case have provided a mountain of affidavits attesting to the severe emotional, economic, educational, and personal harms that they and their families will imminently experience if Defendants' actions are not enjoined by September 30, 2020, and they permanently lose their opportunity to immigrate to the United States through the diversity visa program. *See, e.g., Gomez* PI Mem. ECF No. 53-11, 53-16, 53-19, 53-20, 53-21, 53-25; *Mohammed* PI Mem., ECF Nos. 8-5–8-41; *Fonjong*

²⁵ The equitable factors governing whether the *Panda* plaintiffs are entitled to preliminary injunctive relief are being briefed separately in that case.

TRO/PI Mem., ECF Nos. 7-5-7-24; *Aker*, TRO/PI Mem., Ex. A-0, at PDF pp. 70–104. They have met their burden of showing imminent, irreparable harm. *See P.K. v. Tillerson*, 302 F. Supp. 3d 1, 10 (D.D.C. 2017) (granting a preliminary injunction based on DV selectees’ imminent loss of opportunity to receive diversity visas); *see also Mohamed v. Pompeo*, No. 1:19-cv-01345-LJO-SKO, 2019 U.S. Dist. LEXIS 167266, at *1 (E.D. Cal. Sep. 27, 2019) (finding that if diversity visa selectees’ applications were not adjudicated by the end of the fiscal year, the plaintiffs would “be harmed irreparably, pursuant to the mandates of 8 U.S.C. § 1154(a)(1)(I)(ii)(II)”).

2. *Balance of Equities and Public Interest*

The DV-2020 Plaintiffs have also established the final two *Winter* factors for injunctive relief—that the “balance of equities tips in [their] favor and that an injunction is in the public interest.” *See Winter*, 555 U.S. at 20. Where, as here, the federal government is the opposing party, these two factors merge. *See Nken*, 556 U.S. at 435.

Defendants’ No-Visa Policy, unreasonable delay in processing DV-2020 selectees’ applications, and COVID-19 Guidance will imminently cause severe harms to the DV-2020 Plaintiffs and thousands of other similarly situated DV-2020 applicants. If the court does not grant preliminary relief now, there is a strong likelihood that these Plaintiffs will lose any opportunity for permanent relief later. These drastic harms heavily favor preliminary relief. On the public interest side of the ledger, “[t]here is generally no public interest in the perpetuation of unlawful agency action.” *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). “To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *Id.* (cleaned up); *see also E. Bay Sanctuary Covenant v. Trump*, 950 F.3d 1242, 1280 (9th Cir. 2020) (“[T]he public interest is served by compliance with the APA.” (cleaned up)). Plaintiffs are highly likely to succeed on

the merits of their challenges to these agency actions and inactions. Accordingly, the public interest also favors preliminary relief.

Defendants focus on the public interest harms that would purportedly stem from enjoining the Proclamations. *See* Defs.’ Opp’n at 71–72. However, Plaintiffs have not shown a substantial likelihood of success on their challenges to the Proclamations, and so the associated public interests undergirding them are irrelevant to the court’s balancing. Defendants also fret that if the court were to grant an order enjoining “the State Department’s suspension of routine visa services due to COVID-19,” it could threaten the health of “foreign-service employees and their families located all over the world.” *Id.* at 72 n.15. But the *Gomez* DV-2020 Plaintiffs only ask the court to enjoin “the State Department’s application of the COVID-19 Guidance to diversity visa applicants,” not to vacate the agency’s entire guidance to embassies and consular offices concerning the resumption of visa processing services in light of the COVID-19 pandemic. *See Gomez* Suppl. PI Mem. at 7. The court’s relief, described below, does not place foreign-service employees at any greater risk than they already are experiencing under the agency’s current “Diplomacy Strong” operating procedures.

The court is cognizant of the extreme exigencies caused by the COVID-19 pandemic, and acknowledges that certain consular offices may, for reasons outside Defendants’ control, find it impossible to process all pending diversity visa applications by September 30. But this does not tip the scale against a remedy for Defendants’ unlawful conduct, because the court is capable of fashioning a tailored remedy that accounts for these extrinsic limitations.

B. *Gomez* Non-DV Plaintiffs

The court reaches a different conclusion with respect to the *Gomez* Non-DV Plaintiffs. A “plaintiff must establish a causal link between the injunction sought and the alleged injury,”

Chaplaincy of Full Gospel Churches v. England, 454 F.3d 290, 301 (D.C. Cir. 2006) (cleaned up), and she must “demonstrate[] that the Court’s injunction” is likely to “eliminate the harm that already exists,” *Ass’n of Flight Attendants-CWA, AFL-CIO v. Pension Ben. Guar. Corp.*, 372 F. Supp. 2d 91, 102 (D.D.C. 2005) (cleaned up). Unfortunately for these Plaintiffs, their asserted irreparable harms cannot be remedied by granting relief on their APA claims. For instance, the family-visa Plaintiffs identify vast harms stemming from being separated from their family members. *See Gomez Pls.’ Mem.* at 39–40. The court has no doubt that this separation has been devastating for these Plaintiffs and their families, but this harm would continue to flow from the Proclamations’ ban on entry, even if the court were to grant relief on these Plaintiffs’ challenges to Defendants’ No-Visa Policy. Likewise, the companies sponsoring nonimmigrant visa applicants assert that their businesses will likely cease if they cannot continue to recruit nonimmigrant workers to fill positions. *Id.* at 41–42. Once again, these workers will continue to be unable to enter the country even if the court were to grant their claims for APA relief.

The court acknowledges that the *Gomez* Non-DV Plaintiffs have also experienced a procedural injury from Defendants’ No-Visa Policy, but “courts generally will not base a finding of irreparable injury on a procedural violation standing alone.” *Elk Assocs. Funding Corp. v. U.S. Small Bus. Admin.*, 858 F. Supp. 2d 1, 31 (D.D.C. 2012) (cleaned up). Likewise, these Plaintiffs’ assertion that granting relief on their APA claims will give them an opportunity to enter the country more quickly after the Proclamations expire, *see Gomez Pls.’ Mem.* at 3, might be sufficient to support standing, but it does not constitute “a clear and present need for equitable relief” and, in any event, is too speculative a reed on which to stand. *Mexichem*, 787 F.3d at 555.

The public interest factor also does not support these Plaintiffs. Issuing injunctive relief that could be construed to mean that the State Department must issue visas to people who have no

immediate prospect for entering the country could create substantial havoc and confusion. While such risk is warranted in the context of DV-2020 applicants who have a swiftly expiring window of time to receive their visas, it counsels in favor of staying the court's hand as to the *Gomez* Non-DV Plaintiffs.

Accordingly, preliminary injunctive relief is not warranted for the *Gomez* Non-DV Plaintiffs, even though they are substantially likely to succeed on their challenges to Defendants' No-Visa Policy. Because preliminary relief is unwarranted for these Plaintiffs at this time, the court defers ruling on the *Gomez* Plaintiffs' motion for class certification with respect to the four Non-DV putative subclasses.

V. REMEDY AND CLASS CERTIFICATION FOR THE DV-2020 PLAINTIFFS

Finally, the court considers the scope of relief due to the DV-2020 Plaintiffs, along with the *Gomez* and *Aker* Plaintiffs' motions for class certification.

A. Scope of Relief

Defendants assert that any injunctive relief must be “sharply limited,” and “tailored to the injury asserted by the plaintiffs.” Defs.’ Opp’n at 4. In support of their argument against a universal injunction, Defendants invoke *Califano v. Yamasaki* for the proposition that “injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.” Defs.’ Opp’n at 75 (emphasis in original) (quoting 442 U.S. 682, 702 (1979)). The court agrees that “[a]n injunction must be narrowly tailored to remedy the specific harm shown,” *Neb. Dep’t of Health & Human Servs. v. Dep’t of Health & Human Servs.*, 435 F.3d 326, 330 (D.C. Cir. 2006) (cleaned up), and so it will tailor its relief under the APA to apply only to DV-2020 applicants, as the DV-2020 Plaintiffs are the only plaintiffs in these consolidated cases who have met the equitable requirements for injunctive relief. In the context of granting relief under

the APA to the DV-2020 Plaintiffs, however, this court is bound by D.C. Circuit precedent, which holds that “when a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated — *not that their application to the individual petitioners is proscribed.*” *Nat’l Mining Ass’n*, 145 F.3d at 1409 (cleaned up and emphasis added); *see also*, *e.g.*, *Humane Soc’y of U.S. v. Zinke*, 865 F.3d 585, 614 (D.C. Cir. 2017) (“A common remedy when we find a rule is invalid is to vacate.”). The APA provision underlying that principle, 5 U.S.C. § 706, applies not just to agency regulations but any “agency action,” which includes a “failure to act,” 5 U.S.C. § 704. As Justice Blackmun observed “in dissent but apparently expressing the view of all nine justices,” *Nat’l Mining Ass’n*, 145 F.3d at 1409, “when a plaintiff ‘prevails’ on a challenge under the APA to ‘a rule of broad applicability,’ ‘the result is that the rule is invalidated, not simply that the court forbids its application to a particular individual,’” *Lujan v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 913 (1990) (Blackmun, J., dissenting). Justice Blackmun contrasted “these circumstances,” with a case where “a generally lawful policy is applied in an illegal manner on a particular occasion,” and “one who is injured is not thereby entitled to challenge other applications of the rule.” *Id.* This case falls into the former category: the State Department adopted a blanket policy of suspending adjudication and issuance of diversity visa applications and visas pursuant to Proclamations 10014 and 10052—an action that the court now finds unlawful. Accordingly, the DV-2020 Plaintiffs in this case, having established that they were injured by the policy, may obtain “relief that affects the rights of parties not before the court.” *Id.*

Defendants suggest that the holding in *National Mining* does not control because that case involved a final decision on the merits, whereas this case is in a preliminary posture. *See* Defs.’ Opp’n at 74. But the section of the APA governing preliminary relief, 5 U.S.C. § 705, also “authorize[s] relief from agency action for any person otherwise subject to the action, not just as

to plaintiffs,” *District of Columbia v. USDA*, 444 F. Supp. 3d 1, 48 (D.D.C. 2020). That provision allows “the reviewing court” to “issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings” to “the extent necessary to prevent irreparable injury.” 5 U.S.C. § 705. It therefore “authorizes courts to stay agency [action] pending judicial review,” not just to enjoin their application to the injured parties before the court. See *Mexichem*, 787 F.3d at 562 (Kavanaugh, J., dissenting in part); see also *In re GTE Service Corp.*, 762 F.2d 1024, 1026 (D.C. Cir. 1985) (recognizing that § 705 supplies “statutory authority to stay agency orders pending review in this court”); *Texas v. EPA*, 829 F.3d 405, 435 (5th Cir. 2016) (staying a final rule “in its entirety” across the country in a case brought by Texas, other state regulators, and private parties). By the same token, § 705’s grant of power to “issue all necessary and appropriate process” includes the power to compel agency inaction when necessary “to preserve status or rights pending conclusion” of the action. 5 U.S.C. § 705.

Even if Defendants’ citationless assertion that “the APA does not authorize relief beyond the parties before the Court,” Defs.’ Opp’n at 74, were correct, more expansive relief for the DV-2020 Plaintiffs and those similarly situated is merited under the court’s equitable authority. “Crafting a preliminary injunction,” indeed any equitable relief, “is an exercise of discretion and judgment, often dependent as much on the equities of a given case as the substance of the legal issues it presents.” *Trump v. Int’l Refugee Assistance Project*, 137 S. Ct. 2080, 2087 (2017); see also *Winter*, 555 U.S. at 20, 24; 11A C. Wright, A. Miller, & M. Kane, *Federal Practice and Procedure* § 2948 (3d ed. 2013). An important equity here, as recognized by at least two other circuits, is “our country’s strong interest in the uniform application of immigration law and policy.” See *Hawaii v. Trump*, 878 F.3d 662, 701 (9th Cir. 2017) (“Because this case implicates

immigration policy, a nationwide injunction was necessary to give Plaintiffs a full expression of their rights.”), *rev'd on other grounds*, 138 S. Ct. 2392; *Washington v. Trump*, 847 F.3d 1151, 1167 (9th Cir. 2017) (finding that limiting the geographic scope of an injunction on an immigration enforcement policy “would run afoul of the constitutional and statutory requirements for uniform immigration law and policy”); *Texas v. United States*, 809 F.3d 134, 187–88 (5th Cir. 2015) (holding that uniform application of the immigration laws justified a nationwide injunction). Were the court to limit relief to the DV-2020 Plaintiffs only, and not the thousands of other DV-2020 applicants whose applications have also been suspended by Defendants’ policies, thousands of individual lawsuits would likely follow, and the potentially disparate outcomes of those cases would result in widespread administrative confusion. That cannot be the outcome that Defendants desire.

B. Class Certification

In light of the foregoing, the court also finds that it need not rule on the DV-2020 Plaintiffs’ pending motions to certify classes of DV-2020 applicants, *see Aker* Mot. for Class Cert.; *Gomez* Mot. for Class Cert, because all proposed class members will benefit from the preliminary relief granted by this Order. “The question of whether to allow a suit to proceed as a class action is one primarily for the determination of the trial judge,” *Bermudez v. U.S. Dep’t of Agr.*, 490 F.2d 718, 725 (D.C. Cir. 1973), who has “broad discretion in deciding whether to permit a case to proceed as a class action,” *Hartman v. Duffey*, 19 F.3d 1459, 1471 (D.C. Cir. 1994). It is not uncommon for courts to deny class certification on the basis that certification is not needed “when the particular facts and circumstances of the case warrant doing so.” *Mills v. District of Columbia*, 266 F.R.D 20, 22 (D.D.C. 2010). A particularly common reason for declining to certify a class is where, as here, plaintiffs contend that their proposed class qualifies under Rule 23(b)(1) or

23(b)(2), and “all [putative] class members [would] benefit from an injunction issued on behalf of the named plaintiffs.” *Kan. Health Care Ass’n v. Kan. Dep’t of Soc. and Rehab. Servs.*, 31 F.3d 1536, 1548 (10th Cir. 1994); *see also, e.g., Davis v. Smith*, 607 F.2d 535, 540 (2d Cir. 1978) (“Where . . . the prospective benefits of declaratory and injunctive relief will benefit all members of a proposed class to such an extent that the certification of a class would not further the implementation of the judgment, a district court may decline certification.”); *Sargent v. Block*, 576 F. Supp. 882, 888 (D.D.C. 1983) (“[T]he Court finds that class certification is unnecessary in this action since the defendants are government officials and the declaratory and injunctive relief sought by the named plaintiffs would benefit all proposed class members.”). The relief issued by the court’s ruling will benefit all putative class members. Thus, because there is nothing left to achieve by certifying the class and doing so would only “needlessly burden this litigation,” *Mills*, 266 F.R.D. at 23, the court denies without prejudice the DV-2020 Plaintiffs’ requests for class certification, pending a final resolution of the merits of their claims.

VI. CONCLUSION AND ORDER

For the reasons set forth above, the court concludes that the Plaintiffs are not likely to succeed on their challenges to the Proclamations. Plaintiffs, however, are likely to succeed on their claims that (1) Defendants’ No-Visa Policy is not in accordance with law, is in excess of statutory authority, and is arbitrary and capricious; (2) Defendants have unreasonably delayed processing DV-2020 Plaintiffs’ visa applications; and (3) Defendants’ COVID-19 Guidance arbitrarily excludes DV-2020 visa applications from the categories of applications eligible for mission critical and emergency services. The court additionally finds that the DV-2020 Plaintiffs have met the equitable requirements for injunctive relief, but the Non-DV Plaintiffs have not. The

court therefore orders the following pursuant to 5 U.S.C. § 705 and the court’s traditional equitable powers:

1. The court preliminarily stays the No-Visa Policy as applied to DV-2020 selectees and their derivative beneficiaries. Defendants²⁶ may not interpret or apply the Proclamations in any way that forecloses or prohibits embassy personnel, consular officers, or any administrative processing center (such as the Kentucky Consular Center) from processing, reviewing, or adjudicating a 2020 diversity visa or derivative beneficiary application or issuing or reissuing a 2020 diversity or derivative beneficiary visa based on the entry restrictions contained in the Proclamations. Except as provided in paragraphs 2 and 3 below, this order does not prevent any embassy personnel, consular officer, or administrative processing center from prioritizing the processing, adjudication, or issuance of visas based on resource constraints, limitations due to the COVID-19 pandemic, or country conditions;
2. Defendants shall undertake good-faith efforts, directly and through their designees, to expeditiously process and adjudicate DV-2020 diversity visa and derivative beneficiary applications and issue or reissue diversity and derivative beneficiary visas to eligible applicants by September 30, 2020, giving priority to the named diversity visa Plaintiffs in *Gomez*, *Aker*, *Mohammed*, and *Fonjong* and their derivative beneficiaries;
3. The court preliminarily enjoins Defendants from interpreting and applying the COVID Guidance to DV-2020 selectees and their derivative beneficiaries in any way that requires embassy personnel, consular officers, or administrative processing centers (such as the Kentucky Consular Center) to refuse processing, reviewing, adjudicating 2020 diversity visa applications or issuing or reissuing diversity visas on the ground that the DV-2020 selectee or derivative beneficiary does not qualify under the “emergency” or “mission critical” exceptions to the COVID Guidance;
4. At this time, the court declines Plaintiffs’ request to order Defendants to reserve unprocessed DV-2020 visas past the September 30 deadline or until a final adjudication on the merits, but will revisit the issue closer to the deadline. Accordingly, the court orders the State Department to report, by not later than September 25, 2020, which of the named DV-2020 Plaintiffs in this action have received diversity visas, the status of processing of the named DV-2020 Plaintiffs’ applications who have not yet received visas, and the number of unprocessed DV-2020 visa applications and unused diversity visas remaining for Fiscal Year 2020.
5. The *Aker* and *Gomez* Plaintiffs’ motions for class certifications as to DV-2020 selectees are denied without prejudice, subject to final resolution on the merits of Plaintiffs’ challenges to the Proclamations.
6. The court defers ruling on the *Gomez* Plaintiffs’ motion for class certification with respect to the four putative subclasses representing Non-DV Plaintiffs, as the named

²⁶ The court’s reference to “Defendants” in its Order excludes the President.

Plaintiffs representing these putative subclasses have not demonstrated entitlement to preliminary injunctive relief.

7. Plaintiffs' requests for the court to preliminarily enjoin Defendants from implementing or enforcing Proclamations 10014 and 10052 against Plaintiffs are denied.

The Parties shall meet and confer and, by September 25, 2020, file a Joint Status Report proposing a briefing schedule for the court's resolution of the merits.

Dated: September 4, 2020


Amit P. Mehta
United States District Judge

(b)(6)

From: Angustia, Kathleen M (Kate)
Sent: Monday, November 09, 2020 3:18 PM
To: Cox, Robert H
Subject: FW: DIRECTOR'S OFFICE PASSBACK] - VIP Correspondence [REDACTED] H-2B - STARS 30633
Attachments: Draft response - [REDACTED] (Final) LH 9.21.20 Revised (OCC 9-22).doc

From: Choi, Heesun S (Sunny) [REDACTED] gov>
Sent: Tuesday, September 22, 2020 4:17 PM
To: Blanco, Patricia [REDACTED] gov>; USCIS Exec Congr Corresp
[REDACTED] gov>
Cc: OCC-Clearance [REDACTED] gov>; ALD [REDACTED] gov>; Angustia, Kathleen M (Kate)
[REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Gisser, Sheldon A (Alex)
[REDACTED] gov>
Subject: FW: DIRECTOR'S OFFICE PASSBACK] - VIP Correspondence [REDACTED] H-2B - STARS 30633

Hi Patricia – attached please find ALD's minor edits to the [REDACTED] response. Please consider this as a concur with edits response. As I don't see a STARS link in the below, I'm sending our clearance response to you by email.

Thanks,
Sunny

Sunny Choi
Deputy, Adjudications Law Division
DHS|USCIS|Office of the Chief Counsel

(Direct)
(Cell)
(Fax)

[REDACTED] gov

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From: Blanco, Patricia J <[REDACTED] gov>
Sent: Tuesday, September 22, 2020 2:05 PM
To: OCC-Clearance [REDACTED] gov>
Cc: USCIS Exec Congr Corresp [REDACTED] gov>
Subject: DIRECTOR'S OFFICE PASSBACK] - VIP Correspondence [REDACTED] H-2B - STARS 30633

Good afternoon OCC,

The Director's Office has made changes to the original draft response (which is based upon similar inquiry - Chm Neal- STARS#29504).

OP&S cleared. Please review and clear by COB Today.

Thank you,

Patricia Blanco

U.S. Citizenship and Immigration Services

Executive Secretariat

[Redacted]

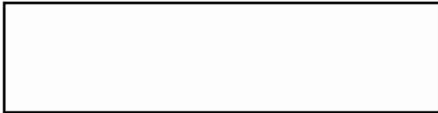
(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000

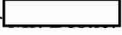


U.S. Citizenship
and Immigration
Services

September XX, 2020



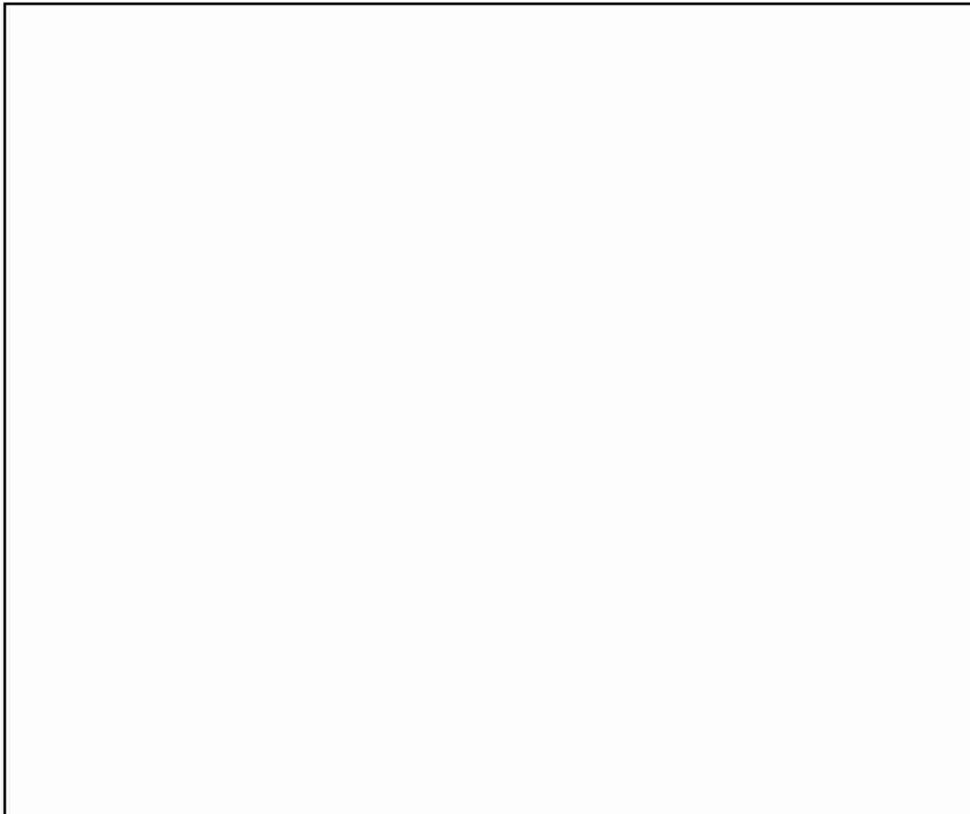
Charleston, West Virginia 25339

Dear 

(b)(6)

———Thank you for your August 27, 2020 letter regarding shortage of H-2B workers. Acting Secretary Wolf asked that I respond on his behalf.

(b)(5)



www.uscis.gov

Mr. [REDACTED] (b)(6)

Page 2

(b)(5)

Formatted: Indent: First line: 0.5"

DHS appreciates the concerns you raise regarding the need for H-2B nonimmigrant labor to support [REDACTED] in West Virginia. We also recognize this industry's importance to West Virginia's, as well as the nation's, economy. DHS-We remains committed to protecting U.S. workers and businesses, while strengthening and lawfully administering our nation's immigration system. DHS will continue to monitor the rapidly evolving situation.

Thank you again for your letter and your interest in this matter.

Sincerely,

(b)(5)

³ For USCIS policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.

⁴ See U.S. Department of State, *Exceptions to Proclamation 10052*, <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html>.

⁵ For USCIS policy updates and operational changes resulting from COVID-19, please visit uscis.gov/coronavirus.

Mr.
Page 2

(b)(6)

Joseph Edlow
Deputy Director for Policy

(b)(6)

From: Cox, Robert H
Sent: Wednesday, June 24, 2020 8:17 AM
To: Elder, Phillip D
Cc: Choi, Heesun S (Sunny); Zimonjic, Milica
Subject: FW: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Hi Phillip – I responded to a couple of your comments pertaining to sections 2-4 of the proclamation and the impact those have on USCIS adjudications. I don't think [REDACTED]

(b)(5)

From: Choi, Heesun S (Sunny) [REDACTED] gov>
Sent: Wednesday, June 24, 2020 8:22 AM
To: Parascando, Bridgette H [REDACTED] gov>; Tellawi, Heba K [REDACTED] gov>; Elder, Phillip D [REDACTED] gov>; Kleczek, Marguerite P (Ania) [REDACTED] gov>; Rollins, Thomas J (Tom) [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Kenny, Allen (Allen) [REDACTED] gov>; Lundberg, Robert K (Bobby) [REDACTED] hs.gov>
Cc: Cox, Robert H [REDACTED] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

(b)(6)

Excellent – thank you Bridgette!

From: Parascando, Bridgette H [REDACTED] gov>
Sent: Wednesday, June 24, 2020 8:00 AM
To: Choi, Heesun S (Sunny) [REDACTED] gov>; Tellawi, Heba K [REDACTED] gov>; Elder, Phillip D [REDACTED] gov>; Kleczek, Marguerite P (Ania) [REDACTED] gov>; Rollins, Thomas J (Tom) [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Kenny, Allen (Allen) [REDACTED] gov>; Lundberg, Robert K (Bobby) [REDACTED] gov>
Cc: Cox, Robert H [REDACTED] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Good morning,

I completed review and have no additional suggestions. Thanks so much everyone.

Bridgette

From: Choi, Heesun S (Sunny) [REDACTED] gov>
Sent: Wednesday, June 24, 2020 7:16 AM
To: Tellawi, Heba K [REDACTED] gov>; Elder, Phillip D [REDACTED] gov>; Kleczek, Marguerite P (Ania) [REDACTED] gov>; Rollins, Thomas J (Tom) [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Kenny, Allen (Allen) [REDACTED] gov>; Parascando, Bridgette H [REDACTED] gov>

(b)(6)

[redacted] gov>; Lundberg, Robert K (Bobby) [redacted] ov>

Cc: Cox, Robert H [redacted] gov>

Subject: Re: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Thank you Heba and Phillip!

Bridgette and Allen - let me know when you're finished reviewing so I can start cleaning up the document.

Thanks again everyone for your help!

Sunny

From: Tellawi, Heba K [redacted] ov>

Sent: Wednesday, June 24, 2020 6:48 AM

To: Elder, Phillip D [redacted] gov>; Kleczek, Marguerite P (Ania) [redacted] ov>;

Rollins, Thomas J (Tom) [redacted] gov>; Salem, Claudia S [redacted] gov>; Zimonjic,

Milica [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N

[redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H

[redacted] gov>; Lundberg, Robert K (Bobby) [redacted] gov>

Cc: Cox, Robert H [redacted] gov>

Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

I reviewed as well and agree with Phillip's edits re: biometrics and the rule.

Thanks,

Heba K. Tellawi

Associate Counsel

Regulatory and Verification Law Division

U.S. Citizenship and Immigration Services

[redacted] v

Cell [redacted]

-----Original Message-----

From: Elder, Phillip D [redacted] gov>

Sent: Tuesday, June 23, 2020 10:22 PM

To: Kleczek, Marguerite P (Ania) [redacted] gov>; Rollins, Thomas J (Tom)

[redacted] ov>; Salem, Claudia S [redacted] gov>; Zimonjic, Milica

[redacted] v>; Choi, Heesun S (Sunny) [redacted] ov>; Bump, Micah N

[redacted] gov>; Kenny, Allen (Allen) [redacted] ov>; Parascando, Bridgette H

[redacted] gov>; Tellawi, Heba K [redacted] gov>; Lundberg, Robert K (Bobby)

[redacted] v>

Cc: Cox, Robert H [redacted] ov>

Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

I added a few edits and comments and a description of the biometrics rule and 8 CFR 103.16(a) regarding biometrics.

-----Original Message-----

From: Kleczek, Marguerite P (Ania) [redacted] gov>

Sent: Tuesday, June 23, 2020 6:13 PM

To: Rollins, Thomas J (Tom) [redacted] gov>; Salem, Claudia S [redacted] gov>;

Zimonjic, Milica [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah

N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Elder, Phillip D [redacted] gov>; Tellawi, Heba K [redacted] gov>; Lundberg, Robert K (Bobby) [redacted] gov>
 Cc: Cox, Robert H [redacted] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

I think we are set on the employment authorization piece. What's left is biometrics. Stay tuned for that.

-----Original Message-----

From: Rollins, Thomas J (Tom) [redacted] gov>
 Sent: Tuesday, June 23, 2020 6:22 PM
 To: Kleczek, Marguerite P (Ania) [redacted] gov>; Salem, Claudia S [redacted] gov>; Zimonjic, Milica [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Elder, Phillip D [redacted] gov>; Tellawi, Heba K [redacted] gov>; Lundberg, Robert K (Bobby) [redacted] gov>
 Cc: Cox, Robert H [redacted] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Ania,

I've completed my review and added a quick summary of the OSUP rule. We just got our final pass back from ICE, so it should be headed back to OGC and then to OMB in the very near future.

Arrests are always a tricky topic - the presumption of innocence and all that...

Thanks,

Tom Rollins

Associate Counsel
 DHS, USCIS, OCC, RVLD

(cell)
 (ofc)

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-----Original Message-----

From: Kleczek, Marguerite P (Ania) [redacted] gov>
 Sent: Tuesday, June 23, 2020 6:11 PM
 To: Salem, Claudia S [redacted] gov>; Zimonjic, Milica [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Elder, Phillip D [redacted] gov>; Tellawi, Heba K [redacted] gov>; Lundberg, Robert K (Bobby) [redacted] gov>; Rollins, Thomas J (Tom) [redacted] gov>
 Cc: Cox, Robert H [redacted] gov>

Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Adding Phillip, Heba, Tom and Bobby. [Please let the group know when you're done.]

-----Original Message-----

From: Salem, Claudia S [redacted] gov>

Sent: Tuesday, June 23, 2020 6:08 PM

To: Kleczek, Marguerite P (Ania) [redacted] gov>; Zimonjic, Milica

[redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N

[redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H

[redacted] gov>

Cc: Cox, Robert H [redacted] gov>

Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Oh my gosh, you all are wonderful. Tomorrow morning would be GREAT! I'm about to dive into it myself. THANK YOU TEAM OCC!

-----Original Message-----

From: Kleczek, Marguerite P (Ania) [redacted] gov>

Sent: Tuesday, June 23, 2020 5:35 PM

To: Zimonjic, Milica [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump,

Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H

[redacted] gov>; Salem, Claudia S [redacted] gov>

Cc: Cox, Robert H [redacted] gov>

Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

And I'm sending it to Tom and Bobby too b/c they were working on rules and policy that dealt with EADs and people with negative factors.

Claudia--When did you want to wrap this up; would tomorrow morning work? Phillip said he can't get to it before dinnertime and I just sent it to Tom and Bobby.

-----Original Message-----

From: Kleczek, Marguerite P (Ania)

Sent: Tuesday, June 23, 2020 5:24 PM

To: Zimonjic, Milica [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump,

Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H

[redacted] gov>; Salem, Claudia S [redacted] gov>

Cc: Cox, Robert H [redacted] gov>

Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Yes, Phillip and Heba.

-----Original Message-----

From: Zimonjic, Milica [redacted] gov>

Sent: Tuesday, June 23, 2020 5:19 PM

To: Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny,

Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Salem,

Claudia [redacted] gov>

Cc: Cox, Robert H [redacted] gov>; Kleczek, Marguerite P (Ania) [redacted] gov>

Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

I added a few edits, including editorial notes that I hope will be helpful to leadership. Ania, should Phillip look at the biometric piece to see if he has any thoughts about it? Robert added an editorial note about it.

(b)(6)

-----Original Message-----

From: Choi, Heesun S (Sunny) [redacted] gov>
Sent: Tuesday, June 23, 2020 3:35 PM
To: Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Salem, Claudia S [redacted] gov>; Zimonjic, Milica [redacted] gov>
Cc: Cox, Robert H [redacted] gov>; Kleczek, Marguerite P (Ania) [redacted] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Thank you Micah! Adding Millie and Ania.

-----Original Message-----

From: Bump, Micah N [redacted] gov>
Sent: Tuesday, June 23, 2020 3:33 PM
To: Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Salem, Claudia S [redacted] gov>
Cc: Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Hi All,

I dropped a section by section summary into the document that Claudia created:

<https://ecn.uscis.dhs.gov/team/occ/hqteams/adjudications/Document%20Library/Exec%20Order%20Continuation%20of%20Proclamation%2010014%20%20June%2022%202020.docx?web=1>

Thanks,

Micah

-----Original Message-----

From: Kenny, Allen (Allen) [redacted] gov>
Sent: Tuesday, June 23, 2020 1:57 PM
To: Parascando, Bridgette H [redacted] gov>; Salem, Claudia S [redacted] gov>; Bump, Micah N [redacted] gov>
Cc: Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

The link opened for me, but it was a blank page.

-----Original Message-----

From: Parascando, Bridgette H [redacted] gov>
Sent: Tuesday, June 23, 2020 12:46 PM
To: Salem, Claudia S [redacted] gov>; Bump, Micah N [redacted] gov>
Cc: Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Thanks Micah. The link wouldn't open, but I can try again in a little while.

Bridgette

-----Original Message-----

From: Salem, Claudia S [REDACTED]@gov>

Sent: Tuesday, June 23, 2020 1:40 PM

To: Bump, Micah N [REDACTED]@gov>; Parascando, Bridgette H [REDACTED]@gov>

Cc: Choi, Heesun S (Sunny) [REDACTED]@gov>; Cox, Robert H [REDACTED]@gov>

Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Haven't written a darn thing yet (multitasking) but Micah putting something together. Bridgette do you get access via bottom link for your notes? Micah graciously offered to get this started.

-----Original Message-----

From: Salem, Claudia S

Sent: Tuesday, June 23, 2020 1:38 PM

To: Bump, Micah N [REDACTED]@gov>

Cc: Choi, Heesun S (Sunny) [REDACTED]@gov>

Subject: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

<https://ecn.uscis.dhs.gov/team/occ/hqteams/adjudications/Document%20Library/Exec%20Order%20Continuation%20of%20Proclamation%2010014%20June%2022%202020.docx?web=1>

From: Angustia, Kathleen M (Kate)
Sent: Monday, November 09, 2020 3:19 PM
To: Cox, Robert H
Subject: FW: Question from Sen. Shaheen's office

From: Westra, Michelle M [redacted] gov>
Sent: Wednesday, August 26, 2020 10:27 AM
To: Angustia, Kathleen M (Kate) [redacted] gov>; Gisser, Sheldon A (Alex) [redacted] gov>; Miran, Maria Y [redacted] gov>
Cc: Fortes, Michael J [redacted] gov>; Michaelis, Kyle L [redacted] gov>; Choi, Heesun S (Sunny) <[redacted] gov>
Subject: RE: Question from Sen. Shaheen's office

Thank you for the quick response, OCC! Much appreciated.

Michelle Westra
Adjudications Officer (Policy)
USCIS Service Center Operations Directorate
Employment Professional Immigrant Classification (EPIC) Branch
Office [redacted] | Mobile [redacted]

From: Angustia, Kathleen M (Kate) [redacted] gov>
Sent: Wednesday, August 26, 2020 7:10 AM
To: Westra, Michelle M [redacted] gov>; Gisser, Sheldon A (Alex) [redacted] gov>; Miran, Maria Y [redacted] gov>
Cc: Fortes, Michael J [redacted] gov>; Michaelis, Kyle L [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>
Subject: RE: Question from Sen. Shaheen's office

(b)(6)

Hi Michelle,

Thank you again for looping us in on the response to Senator Shaheen. Our edit are below in yellow.

(b)(5)

(b)(5)

Kate

From: Westra, Michelle M <[REDACTED]@[REDACTED].gov> (b)(6)
Sent: Tuesday, August 25, 2020 7:29 PM
To: Angustia, Kathleen M (Kate) <[REDACTED]@[REDACTED].gov>; Gisser, Sheldon A (Alex) <[REDACTED]@[REDACTED].gov>; Miran, Maria Y <[REDACTED]@[REDACTED].gov>
Cc: Fortes, Michael J <[REDACTED]@[REDACTED].gov>; Michaelis, Kyle L <[REDACTED]@[REDACTED].gov>; Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>
Subject: FW: Question from Sen. Shaheen's office (b)(6)

Hi OCC,

SCOPS received a question from the Director's Office about the recent Presidential Proclamations. The email chain is below. Our team drafted a response; however, before we respond, would you mind reviewing? It's only a few sentences, so hopefully it's not a huge lift! The Director's Office wanted a response by COB tomorrow (8/26/2020).

Proposed response:

(b)(5)

Thank you so much!

Michelle Westra
Adjudications Officer (Policy)
USCIS Service Center Operations Directorate
Employment Professional Immigrant Classification (EPIC) Branch
Office: [REDACTED] | Mobile: [REDACTED]

(b)(6)

From: Simpson, Erica L <[REDACTED]@[REDACTED].gov>
Sent: Tuesday, August 25, 2020 12:36 PM
To: Fortes, Michael J <[REDACTED]@[REDACTED].gov>
Cc: Bae, Connie J <[REDACTED]@[REDACTED].gov>
Subject: Fwd: Question from Sen. Shaheen's office

Could your team take a look at this DO request? Due COB tomorrow, if possible. Thank you!

Erica Simpson
USCIS-SCOPS
Senior Advisor
[REDACTED]

(b)(6)

(b)(6)

From: Duchek, Elizabeth F (Liz) <[REDACTED]@gov>
Sent: Tuesday, August 25, 2020 12:29 PM
To: Simpson, Erica L
Cc: Koncar, Steven A
Subject: Question from Sen. Shaheen's office

Hi Erica –

Hope you're having a good week. OLA is requesting SCOPS's assistance on providing an answer to Sen. Shaheen's office regarding H-2B applications. Please see below:

We're looking for some clarification on the H-2B application process for employers in light of the Presidential Proclamations (10014 & 10052) suspending the entry of certain nonimmigrants.

The National Interest Exceptions to Presidential Proclamations (10014 & 10052) notice posted on the Department of State's website on 8/12/2020 outlined the indicators the Consular officer will use to determine exemption. It states the Department of State is implementing this Proclamation and making determinations in conjunction with the Department of Homeland Security.

Will USCIS require this additional proof of exemption information as part of an employer's Petition for Non-Immigrant Worker prior to approval? What supplemental exemption-related information, if any, is USCIS looking for from employers as part of their application?

Can SCOPS provide an answer by COB tomorrow? Appreciate your help.

Thank you,

Elizabeth Frei Duchek
U.S. Citizenship and Immigration Services

(b)(6)

(O)
(M)

[REDACTED]

From: Cox, Robert H
Sent: Wednesday, June 24, 2020 7:58 AM
To: Salem, Claudia S; Zimonjic, Milica; Bump, Micah N
Cc: Choi, Heesun S (Sunny)
Subject: FW: Trump Administration, DHS Prioritizes American Citizens for American Jobs
Attachments: Re: URGENT - q. re new 212(f) labor proclamation

Fyi – the attached email chain is interesting, especially if you scroll all the way down to the start of the chain.

From: Busch, Philip B <[REDACTED]@[REDACTED].gov> (b)(6)
Sent: Wednesday, June 24, 2020 8:46 AM
To: Nimick, Charles L (Locky) <[REDACTED]@[REDACTED].gov>; Cox, Robert H <[REDACTED]@[REDACTED].gov>; Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>
Cc: Groom, Molly M <[REDACTED]@[REDACTED].gov>; Parascandola, Ciro A <[REDACTED]@[REDACTED].gov>; Buono, Paul M <[REDACTED]@[REDACTED].gov>; Aucoin, Lauren J <[REDACTED]@[REDACTED].gov> (b)(6)
Subject: RE: Trump Administration, DHS Prioritizes American Citizens for American Jobs

(b)(5)

Phil

From: Nimick, Charles L (Locky) <[REDACTED]@[REDACTED].gov> (b)(6)
Sent: Wednesday, June 24, 2020 8:37 AM
To: Cox, Robert H <[REDACTED]@[REDACTED].gov>; Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>
Cc: Busch, Philip B <[REDACTED]@[REDACTED].gov>; Groom, Molly M <[REDACTED]@[REDACTED].gov>; Parascandola, Ciro A <[REDACTED]@[REDACTED].gov>; Buono, Paul M <[REDACTED]@[REDACTED].gov>; Aucoin, Lauren J <[REDACTED]@[REDACTED].gov> (b)(6)
Subject: FW: Trump Administration, DHS Prioritizes American Citizens for American Jobs

OCC, apologies for forwarding such a long email, but to cut to the chase, the DHS attaché in Ottawa reached out to Maura Nicholson for details on how the new proclamation will affect Canadian consular. My initial take

(b)(5)

Thanks,

Locky

Charles (Locky) Nimick
Chief, Business and Foreign Worker Division (BFWD)
USCIS Office of Policy and Strategy (OP&S)

(b)(6)

[redacted] gov
Office: [redacted]
Telework: [redacted]

From: Aucoin, Lauren J [redacted] gov>
Sent: Wednesday, June 24, 2020 7:55 AM
To: Buono, Paul M [redacted] gov>; Parascandola, Ciro A [redacted] gov>; Nimick, Charles L (Locky) [redacted] gov>; Bruun, Lori L [redacted] gov>; Buten, Elizabeth C [redacted] gov>; Chulapakorn, Adrienne [redacted] gov>; Earnhardt, Eileen C [redacted] gov>; Graham, Michael D [redacted] gov>; Hardy, Amanda L [redacted] gov>; Hernandez, Efren [redacted] gov>; Leal, Jessica [redacted] gov>; Lin, Peggy P [redacted] gov>; Orzea, Alissa M [redacted] gov>; Freiburger, Andrea L (Ande) [redacted] gov>
Subject: RE: Trump Administration, DHS Prioritizes American Citizens for American Jobs

I agree that the proclamation is unclear. I initially read it to mean that Canadians were excluded because they are visa exempt and would otherwise be ineligible for the exemption, but the "visa" language is confusing.

From: Buono, Paul M [redacted] gov>
Sent: Wednesday, June 24, 2020 7:41 AM
To: Parascandola, Ciro A [redacted] gov>; Nimick, Charles L (Locky) [redacted] gov>; Aucoin, Lauren J [redacted] gov>; Bruun, Lori L [redacted] gov>; Buten, Elizabeth C [redacted] gov>; Chulapakorn, Adrienne [redacted] gov>; Earnhardt, Eileen C [redacted] gov>; Graham, Michael D [redacted] gov>; Hardy, Amanda L [redacted] gov>; Hernandez, Efren [redacted] gov>; Leal, Jessica [redacted] gov>; Lin, Peggy P [redacted] gov>; Orzea, Alissa M [redacted] gov>; Freiburger, Andrea L (Ande) [redacted] gov>
Subject: RE: Trump Administration, DHS Prioritizes American Citizens for American Jobs

(b)(6)

I think it is unclear. [redacted]

(b)(5)

From: Parascandola, Ciro A [REDACTED] (b)(6)
Sent: Wednesday, June 24, 2020 7:24 AM
To: Nimick, Charles L (Locky) [REDACTED]; Aucoin, Lauren J [REDACTED]; Bruun, Lori L [REDACTED]; Buono, Paul M [REDACTED]; Buten, Elizabeth C [REDACTED]; Chulapakorn, Adrienne [REDACTED]; Earnhardt, Eileen C [REDACTED]; Graham, Michael D [REDACTED]; Hardy, Amanda L [REDACTED]; Hernandez, Efren [REDACTED]; Leal, Jessica [REDACTED]; Lin, Peggy P [REDACTED]; Orzea, Alissa M [REDACTED]; Freiburger, Andrea L (Ande) [REDACTED] (b)(6)
Subject: RE: Trump Administration, DHS Prioritizes American Citizens for American Jobs

Perhaps it was unintentional, but the text of the EO would seem to give Canadians a lesser chance of being exempt. The EO states that it only applies to any alien who on the date the proclamation was issued 1) is outside the US, 2) does not have a valid visa; and 3) does not have some other type of travel document, such as an advance parole.

(b)(5)

Please check me on this, but that seems to be the way they text reads to me.

Ciro Parascandola

Special Assistant

USCIS Office of Policy and Strategy, DHS

Office [REDACTED] Cell [REDACTED]

(b)(6)

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From: Nimick, Charles L (Locky) [REDACTED]
Sent: Wednesday, June 24, 2020 6:54 AM
To: Parascandola, Ciro A [REDACTED]; Aucoin, Lauren J [REDACTED]; Bruun, Lori L [REDACTED]; Buono, Paul M [REDACTED]; Buten, Elizabeth C [REDACTED]; Chulapakorn, Adrienne [REDACTED]; Earnhardt, Eileen C [REDACTED]; Graham, Michael D [REDACTED]; Hardy, Amanda L [REDACTED]; Hernandez, Efren [REDACTED]; Leal, Jessica [REDACTED]; Lin, Peggy P [REDACTED]; Orzea, Alissa M [REDACTED]
Subject: FW: Trump Administration, DHS Prioritizes American Citizens for American Jobs (b)(6)

Folks, I got this inquiry from Maura Nicholson yesterday and replied that there was nothing in particular that was different for Canadians, but the line below from today's Law360 analysis caught my eye and I may not be completely correct. Has this come up before to anyone's awareness? (Ciro, I recopied the article below for your reference.)

Thanks, Locky

Attorneys are still confused, for example, about whether Canadians are restricted under the proclamation's phrasing, since they don't require visa stamps to enter the U.S.

Ban On Work Visas Could Draw International Blowback

By [Suzanne Monyak](#)

Share us on: By [Suzanne Monyak](#)

Law360 (June 23, 2020, 10:31 PM EDT) -- President Donald Trump's proclamation blocking foreign executives and other skilled workers from moving to the U.S. this year could deter multinational companies from setting up shop in the country and threaten jobs for Americans working abroad.

Administration officials said [the Monday order](#) — an expansion of the president's earlier temporary ban on new green cards abroad — would open up more jobs for Americans who found themselves unemployed as a result of the coronavirus pandemic.

But with limited exceptions for crucial employees, the restrictions on H-1B specialty occupation visas and L visas for internal transfer of foreign executives could have the opposite effect by pushing more job opportunities abroad to countries, like Canada, with more welcoming immigration systems, attorneys said

"Companies are going to rethink where they make their investments, how they figure out their strategy if there's business uncertainty as to whether they can bring in their own supervisors," said Davis Bae, co-chair of [Fisher Phillips'](#) global immigration group. "There is no real national interest in doing this."

Greg Siskind, a partner at Tennessee-based [Siskind Susser PC](#) and member of the [American Immigration Lawyers Association's](#) board of governors, said that restricting L visas in particular is like "exploding a nuclear bomb."

"It's absolutely unbelievable that you would say to [Volkswagen](#), that employs thousands of people in Chattanooga, that their senior executives are not welcome in the United States to monitor their investments," he said.

The action could also leave the U.S. companies and Americans working abroad vulnerable to tit-for-tat visa limits from other countries under the principle of visa reciprocity, attorneys said.

"I will not be utterly shocked if other countries around the world take some retaliatory measures against the United States because of this," said Nandini Nair, a partner in [Greenspoon Marder LLP's](#) immigration practice group.

The proclamation, signed Monday after weeks of leaks and rumors, spurred panic and confusion among immigrants and their employers as they hurried to determine if they, or any of their new hires, were covered.

Attorneys are still confused, for example, about whether Canadians are restricted under the proclamation's phrasing, since they don't require visa stamps to enter the U.S.

Ali Brodie, co-chair of [Fox Rothschild LLP's](#) immigration practice, told Law360 on Monday evening she had already started receiving messages from human resources and general counsel departments at companies that had hoped to bring on foreign workers

"All of a sudden, it was text messages, a million phone calls and emails. Right now, people are panicked," she said.

Some employers were immediately relieved to see that the proclamation only touched people outside the U.S. on the date it took effect, allowing them, for example, to continue onboarding recent graduates of U.S. schools, according to Cynthia Lange of [Fragomen, Del Rey, Bernsen & Loewy LLP](#), who represents technology companies.

But the inclusion of the L visa without exemptions for high-level executives came as a surprise to some attorneys who had expected any suspension to at least shield foreigners coming to the U.S. on an L-1A, reserved for foreign executives and managers moving within the company from a location abroad.

"When I saw that, I had to look at it twice," Nair said.

The administration's targeting of L visas "seems odd and unprecedented and really misplaced for a lot of our clients," Lange said. She noted that the L visa is used to bring in CEOs and other executives to lead U.S. locations for foreign companies, which typically create jobs locally.

The Trump administration had included exceptions in some of the other restricted visa categories. For instance, the ban only covers H-2B visas for non-agricultural seasonal labor, without touching H-2A farm worker visas. And within the H-2B suspension, seafood and food processing workers are shielded.

"Maybe [executives] are just collateral damage in the administration's war against companies from bringing foreigners into the United States. It's more like a bludgeon instead of surgically attempting to identify," Lange said.

While administration officials have claimed that the visa suspension will free up over half a million jobs for Americans, experts stress that immigration and job availability is not a zero-sum game. Additionally, the visa restrictions on high-skilled immigration will disproportionately affect the technology sector, which has maintained low U.S. unemployment despite the pandemic.

Moreover, international companies would be unlikely to replace their own foreign CEO with an American, attorneys said.

"It boggles the mind to think that the expertise and sophistication of executives and managers, who have been employed by the organization, and the specialized knowledge of essential workers with that level of expertise, can be replaced by a U.S. worker," said Angelo Paparelli, a partner at [Seyfarth Shaw LLP](#). "No amount of education can substitute for that level of internal experience."

Attorneys also told Law360 that their clients are not eager to rescind offers for foreign workers selected in the H-1B lottery that the company had hand-picked, recruited and, for some, already filed full visa applications for, particularly as many companies start to envision a future of remote work.

And if international companies decide the restrictions aren't worth it and take their business outside the U.S., it could result in fewer, not more, jobs for Americans. Paparelli compared the proclamation to attempting to solve the U.S.' current economic woes with the medieval practice of bloodletting.

"While other countries are making their destinations more attractive, we're basically pushing people out," he said. "And if that won't affect U.S. workers adversely, I don't know what will."

Beyond hurting the U.S. economy, the restrictions could also cause a rift internationally.

The administration appeared to steer clear of the visas specifically provided for by global treaties, including the TN visa for Mexican and Canadian professionals included in the U.S.-Mexico-Canada agreement, as well as the E treaty investor visas.

But Siskind said that the restrictions may still run afoul of the General Agreement on Trade in Services, in which the U.S. committed to providing temporary visas for certain specialty workers and internal company transfers.

The threat of retaliatory visa measures as a result could further worsen U.S. job losses, he said.

"I'm afraid any jobs U.S. workers get may be more than made up for with overseas Americans losing theirs," Siskind said.

The proclamation's shaky economic justification, and potential conflict with global treaties, could ultimately be its downfall in court, attorneys said. The proclamation has already drawn opposition from tech giants including Apple Inc. and Google LLC, and will likely face litigation.

But even if the suspension is blocked in court, these restrictions may only be the tip of the iceberg, attorneys warned, as Trump eyes more aggressive regulatory changes to the immigration system ahead of the upcoming election.

In addition to temporarily suspending visas, the president is also calling for sweeping changes to the H-1B visa system, which caps specialty occupation visas at 85,000 annually, including by raising the salary minimum and offering the slots based on the highest salary offers, rather than random lottery.

"This is the tip of the spear," Bae said. "As the election comes along, as he gets into a position where he needs to come down hard on immigration, taking a protectionist point of view, what's going to end up happening is he's going to try to push the narrative to say that these foreign nationals are taking U.S. jobs."

He continued, "This really is a political move, and it's a shameful one."

--Editing by Brian Baresch.

From: Nicholson, Maura J [REDACTED] gov>

(b)(6)

Sent: Tuesday, June 23, 2020 4:42 PM

To: Nimick, Charles L (Locky) [REDACTED] gov>

Subject: FW: Trump Administration, DHS Prioritizes American Citizens for American Jobs

Hi Locky!

I hope you are hanging in there during these uncertain times. What a year, huh?

I'm wondering if you might be able to shed some light on the below for me. [REDACTED]

(b)(5)

Thoughts?

Maura

From: Sobel, Ted [REDACTED]
Sent: Tuesday, June 23, 2020 12:26 PM
To: Nicholson, Maura J [REDACTED] <[REDACTED]>
Cc: OIA-CAN [REDACTED]
Subject: FW: Trump Administration, DHS Prioritizes American Citizens for American Jobs

(b)(6)

Has USCIS gotten any implementation instructions re: the announcement?

Working on gauging level of impact on Canadian consular

From: U.S. Department of Homeland Security [REDACTED]
Sent: Monday, June 22, 2020 7:24 PM
To: Meyers, Deborah [REDACTED]
Subject: Trump Administration, DHS Prioritizes American Citizens for American Jobs

(b)(6)

U.S. DEPARTMENT OF HOMELAND SECURITY
Office of Public Affairs

Trump Administration, DHS Prioritizes American Citizens for American Jobs
Trump Administration moves to suspend foreign worker visas as nation undertakes economic recovery following COVID-19 closures

The Department of Homeland Security (DHS) announced it will begin implementing a Trump Administration proclamation to protect American workers in the wake of unprecedented unemployment caused by COVID-19.

“The President is taking decisive action to put American families and workers first in the reopening of the economy and the Department stands ready to implement this important executive action,” said DHS Acting Secretary Chad F. Wolf. “This proclamation ensures Americans are first in line for American jobs as the economy reopens.”

The proclamation unveiled by President Trump directs the Department of Homeland Security to undertake a two-part approach to ensure employers put Americans first.

First, the proclamation uses presidential authority under Section 212(f) of the Immigration and Nationality Act to temporarily pause the issuance of certain new nonimmigrant visas until December 31, 2020, which could be extended as necessary. The visa categories paused include H-1B, H-2B, L and certain J nonimmigrants. The stipulations will not apply to foreign workers already in the country on existing visas or foreign nationals already in possession of visas at the time of the proclamation’s effective date.

Second, DHS is also directed to use all available tools to transition to a merit-based immigration system, ending often-exploited avenues for fraud and abuse. New provisions include non-displacement provisions, which prohibit companies from laying off American workers only to replace citizen employees with foreign nationals, and new efforts to prevent illegal aliens from obtaining work permits.

DHS is also working with United States Government partners to ensure enhanced medical screening procedures are in place for foreign workers in the event that travel suspensions are lifted as well as to improve biometric collection. Existing policies for both matters will be expanded and improved in the coming days.

The full text is available [here](#).

#

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Referred to Department of Homeland Security

From: Salem, Claudia S
Sent: Tuesday, June 23, 2020 10:16 AM
To: Groom, Molly M; Highsmith, AnnMarie R
Cc: Choi, Heesun S (Sunny); Parascando, Bridgette H; Grimm, Jason R; Cox, Robert H
Subject: Presidential Executive Order

Is there anything you want us to do in reaction to this yet? We don't want to duplicate efforts that may be underway but we can prepare some bullets or are wondering if we should be proactively assisting the client interpret. Awaiting your recommended approach. At 1pm during our normal ALD EB meeting, we will no doubt discuss. Seems like lots of reg writing coming to retained OCC attorneys.

<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

IMMIGRATION

Issued on: June 22, 2020

The 2019 Novel Coronavirus (COVID-19) has significantly disrupted Americans' livelihoods. Since March 2020, United States businesses and their workers have faced extensive disruptions while undertaking certain public health measures necessary to flatten the curve of COVID-19 and reduce the spread of SARS-CoV-2, the virus that causes COVID-19. The overall unemployment rate in the United States nearly quadrupled between February and May of 2020 — producing some of the most extreme unemployment ever recorded by the Bureau of Labor Statistics. While the May rate of 13.3 percent reflects a marked decline from April, millions of Americans remain out of work.

In Proclamation 10014 of April 22, 2020 (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak), I determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Consequently, I suspended, for a period of 60 days, the entry of aliens as immigrants, subject to certain exceptions. As I noted, lawful permanent residents, once admitted pursuant to immigrant visas, are granted "open-market" employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Given that 60 days is an insufficient time period for the United States labor market, still

stalled with partial social distancing measures, to rebalance, and given the lack of sufficient alternative means to protect unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents, the considerations present in Proclamation 10014 remain.

In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas. During this same period, more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions. Also, the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high — 29.9 percent for 16-19 year olds, and 23.2 percent for the 20-24 year old group. The entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs, therefore, presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.

As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment — those who are typically “last in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation’s immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand. In light of the above, I have determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Continuation of Proclamation 10014. (a) Section 4 of Proclamation 10014 is amended to read as follows:

“Sec. 4. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of June 24, 2020, and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.”

(b) This section shall be effective immediately.

Sec. 2. Suspension and Limitation on Entry. The entry into the United States of any alien seeking entry pursuant to any of the following nonimmigrant visas is hereby suspended and limited, subject to section 3 of this proclamation:

(a) an H-1B or H-2B visa, and any alien accompanying or following to join such alien;

(b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and

(c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

(i) is outside the United States on the effective date of this proclamation;

(ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and

(iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

(b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;

(iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and

(iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. Implementation and Enforcement. (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

(i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. Additional Measures. (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of Homeland Security for implementing measures that could reduce the risk that aliens seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

Sec. 6. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. Effective Date. Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

[redacted] (b)(6)

From: Choi, Heesun S (Sunny)
Sent: Tuesday, October 06, 2020 12:06 PM
To: Busch, Philip B; Cox, Robert H; Bump, Micah N
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504 [AS-008362]

Thanks Phil! I'll reply to EXSO.

Sunny

From: Busch, Philip B [redacted] gov> (b)(6)
Sent: Tuesday, October 6, 2020 1:05 PM
To: Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>; Bump, Micah N [redacted] gov>
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504 [AS-008362]

Nothing else on this from me, thanks.

From: Choi, Heesun S (Sunny) [redacted] gov>
Sent: Tuesday, October 6, 2020 1:04 PM
To: Cox, Robert H [redacted] gov>; Bump, Micah N [redacted] gov>
Cc: Busch, Philip B [redacted] gov>
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504 [AS-008362]

That's my take on it as well. Anyone else? It looks like they want a response by 1.

Thanks,
Sunny

From: Cox, Robert H [redacted] gov>
Sent: Tuesday, October 6, 2020 12:15 PM
To: Bump, Micah N [redacted] gov>
Cc: Busch, Philip B [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov> (b)(6)
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504 [AS-008362]

My understanding [redacted]

[redacted] (b)(5)

From: Miran, Maria Y [REDACTED] v> (b)(6)
Sent: Tuesday, October 6, 2020 11:51 AM
To: Bump, Micah N [REDACTED] ov>; Cox, Robert H [REDACTED] v>
Cc: Busch, Philip B [REDACTED] ov>; ALD [REDACTED] v>; Choi, Heesun S (Sunny) [REDACTED] v>
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504 [AS-008362]
Importance: High

Here you go –

Maria (for ALD Box)

From: OCC-Clearance [REDACTED] gov>
Sent: Tuesday, October 6, 2020 11:04 AM
To: ALD [REDACTED] v>
Cc: Busch, Philip B [REDACTED] gov>
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504 [AS-008362]
Importance: High

ALD,

This FO inquiry relates to your previous review– STARS AS-008362. I have attached your response for easy reference.

Including Phil for visibility and input as needed – he was involved in the previous OCC review. Please include OCC-Clearance in your response to EXSO.

Thanks so much, Cathy

Catherine Muhletaler for OCC-Clearance
Special Counsel to the Deputy Chief Counsel
DHS | USCIS | Office of the Chief Counsel

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From: Brown, James R [REDACTED] ov>
Sent: Tuesday, October 06, 2020 10:54 AM
To: OCC-Clearance [REDACTED] ov>
Cc: USCIS Exec Congr Corresp [REDACTED] gov>
Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504
Importance: High

Good Morning OCC,

(b)(6)

The Director's Office has requested for you all to confirm if the proclamation being referred to may have been enjoined recently.

Please advise by 1pm today.

Thanks,

James

James R. Brown
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
Department of Homeland Security
[Redacted] Office
[Redacted] Cell (b)(6)

(b)(6)

From: Choi, Heesun S (Sunny)
Sent: Tuesday, October 06, 2020 12:11 PM
To: Brown, James R; USCIS Exec Congr Corresp
Cc: OCC-Clearance; ALD; Busch, Philip B; Cox, Robert H; Bump, Micah N
Subject: RE: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504 [AS-008362]

Hi James

Yes, the Proclamation was recently enjoined

(b)(5)

Thanks,
Sunny

Sunny Choi
Deputy, Adjudications Law Division
DHS/USCIS/Office of the Chief Counsel

Direct)
Cell)
Fax)

gov

(b)(6)

This communication, along with any attachments, is covered by federal and state law governing electronic communications and may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply immediately to the sender and delete this message. Thank you.

From: Brown, James R <[REDACTED]@gov>

(b)(6)

Sent: Tuesday, October 06, 2020 10:54 AM

To: OCC-Clearance <[REDACTED]@gov>

Cc: USCIS Exec Congr Corresp <[REDACTED]@gov>

(b)(6)

Subject: FW: [DIRECTOR'S OFFICE CLEARANCE REQUEST] - Due Date 8/19/20 - DHS Congressional Correspondence - Chm. Neal - Health Workforce Implications of Proclamation 10052 -STARS# 29504

Importance: High

Good Morning OCC,

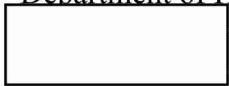
The Director's Office has requested for you all to confirm if the proclamation being referred to may have been enjoined recently.

Please advise by 1pm today.

Thanks,

James

James R. Brown
U.S. Citizenship and Immigration Services
Office of the Executive Secretariat
Department of Homeland Security



- Office
- Cell

(b)(6)

From: Salem, Claudia S
Sent: Tuesday, June 23, 2020 11:02 AM
To: Parascando, Bridgette H; Grimm, Jason R; Choi, Heesun S (Sunny); Cox, Robert H; Bump, Micah N; Zimonjic, Milica; Kleczek, Marguerite P (Ania)
Cc: Estes, Marvin E; Kenny, Allen (Allen); Schmalz, Peter N
Subject: RE: A quick call on Exec order at noon? EB line here.

We had to change to 1215. Sorry for late notice. If someone else needs to be added please do so but this is more just "who does what for right now" to interpret this quickly for Molly/AM and maybe clients calling them.

From: Parascando, Bridgette H [redacted] gov>
Sent: Tuesday, June 23, 2020 12:00 PM
To: Grimm, Jason R [redacted] gov>; Salem, Claudia S [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>; Bump, Micah N [redacted] gov>
Cc: Estes, Marvin E [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Schmalz, Peter N [redacted] gov>
Subject: RE: A quick call on Exec order at noon? EB line here.

Me too ...

Bridgette

From: Grimm, Jason R [redacted] gov>
Sent: Tuesday, June 23, 2020 11:59 AM
To: Salem, Claudia S [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>; Bump, Micah N [redacted] gov>
Cc: Estes, Marvin E [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Schmalz, Peter N [redacted] gov>
Subject: RE: A quick call on Exec order at noon? EB line here.

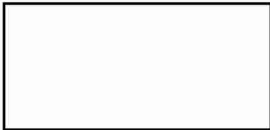
Standing by... 😊

From: Salem, Claudia S [redacted] gov>
Sent: Tuesday, June 23, 2020 8:54 AM
To: Parascando, Bridgette H [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>; Bump, Micah N [redacted] gov>
Cc: Estes, Marvin E [redacted] gov>; Grimm, Jason R [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Schmalz, Peter N [redacted] gov>
Subject: RE: A quick call on Exec order at noon? EB line here.
Importance: High

Thanks B! Are you free at noon? I'm deleting one personal chain in this email cause I don't want that part accidentally circulated though I do hope this gives hope for SC and ALD that we will do okay in furlough. Anybody welcome to join us but noon is just a few minutes so quick coordination call?

Claudia

EB line:



Leader Passcode



Participant Passcode

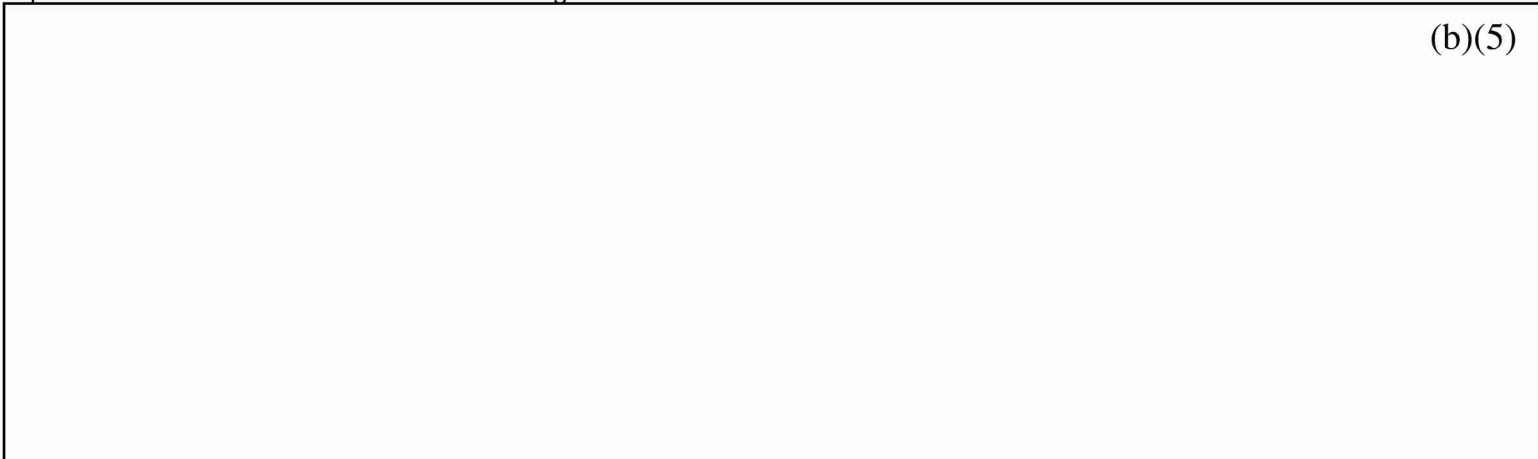


(b)(6)

From: Parascando, Bridgette H <[REDACTED]@ov>
Sent: Tuesday, June 23, 2020 11:30 AM
To: Salem, Claudia S <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@ov>
Cc: Estes, Marvin F <[REDACTED]@gov>; Grimm, Jason R <[REDACTED]@gov>; Kenny, Allen (Allen) <[REDACTED]@v>; Schmalz, Peter N <[REDACTED]@ov>
Subject: RE: A call later today maybe?

(b)(6)

I have a 4 pm call, but am free before or after. Including SCLD deputies. Here is feedback counsel Brendan Hanehan provided to VSC client this am after reviewing the EO:



(b)(5)

Bridgette

From: Groom, Molly M <[REDACTED]@gov>
Sent: Tuesday, June 23, 2020 11:18 AM
To: Salem, Claudia S <[REDACTED]@ov>; Highsmith, AnnMarie R <[REDACTED]@gov>; Busch, Philip B <[REDACTED]@v>

(b)(6)

(b)(6)

Cc: Choi, Heesun S (Sunny) [REDACTED] gov>; Parascando, Bridgette H [REDACTED] gov>; Grimm, Jason R [REDACTED] gov>; Cox, Robert H [REDACTED] gov>

Subject: RE: Presidential Executive Order

It would be great if you could pull together bullets on what this means and what actions USCIS or others need to take. That will allow us to determine what are best next steps. Thanks for reaching out. Molly

From: Salem, Claudia S [REDACTED] gov>
Sent: Tuesday, June 23, 2020 11:16 AM
To: Groom, Molly M [REDACTED] gov>; Highsmith, AnnMarie R [REDACTED] gov>
Cc: Choi, Heesun S (Sunny) [REDACTED] gov>; Parascando, Bridgette H [REDACTED] gov>; Grimm, Jason R [REDACTED] gov>; Cox, Robert H [REDACTED] gov>

Subject: Presidential Executive Order

(b)(6)

Is there anything you want us to do in reaction to this yet? We don't want to duplicate efforts that may be underway but we can prepare some bullets or are wondering if we should be proactively assisting the client interpret. Awaiting your recommended approach. At 1pm during our normal ALD EB meeting, we will no doubt discuss. Seems like lots of reg writing coming to retained OCC attorneys.

<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

IMMIGRATION

Issued on: June 22, 2020

The 2019 Novel Coronavirus (COVID-19) has significantly disrupted Americans' livelihoods. Since March 2020, United States businesses and their workers have faced extensive disruptions while undertaking certain public health measures necessary to flatten the curve of COVID-19 and reduce the spread of SARS-CoV-2, the virus that causes COVID-19. The overall unemployment rate in the United States nearly quadrupled between February and May of 2020 — producing some of the most extreme unemployment ever recorded by the Bureau of Labor Statistics. While the May rate of 13.3 percent reflects a marked decline from April, millions of Americans remain out of work.

In Proclamation 10014 of April 22, 2020 (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak), I

determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Consequently, I suspended, for a period of 60 days, the entry of aliens as immigrants, subject to certain exceptions. As I noted, lawful permanent residents, once admitted pursuant to immigrant visas, are granted “open-market” employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Given that 60 days is an insufficient time period for the United States labor market, still stalled with partial social distancing measures, to rebalance, and given the lack of sufficient alternative means to protect unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents, the considerations present in Proclamation 10014 remain.

In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas. During this same period, more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions. Also, the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high — 29.9 percent for 16-19 year olds, and 23.2 percent for the 20-24 year old group. The entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs, therefore, presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.

As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment — those who are typically “last in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation’s immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-

contraction economic output, and additional months to restore stable labor demand. In light of the above, I have determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Continuation of Proclamation 10014. (a) Section 4 of Proclamation 10014 is amended to read as follows:

“Sec. 4. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of June 24, 2020, and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.”

(b) This section shall be effective immediately.

Sec. 2. Suspension and Limitation on Entry. The entry into the United States of any alien seeking entry pursuant to any of the following nonimmigrant visas is hereby suspended and limited, subject to section 3 of this proclamation:

(a) an H-1B or H-2B visa, and any alien accompanying or following to join such alien;

(b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and

(c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

(i) is outside the United States on the effective date of this proclamation;

(ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and

(iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

(b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;

(iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and

(iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. Implementation and Enforcement. (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

(i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. Additional Measures. (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of Homeland Security for implementing measures that could reduce the risk that aliens seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

Sec. 6. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. Effective Date. Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

From: Cox, Robert H
Sent: Wednesday, July 08, 2020 2:34 PM
To: Hunt, Brian J; Bump, Micah N; Chase, Carmen M; Hale, Paola R
Cc: Choi, Heesun S (Sunny)
Subject: RE: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program
Attachments: Draft Response - Rep. Curtis (OPS response) 7.8.20 clean OCC.docx

I reviewed the response and made a few edits. See attached. Thanks.

From: Hunt, Brian J [redacted] gov>
Sent: Wednesday, July 8, 2020 2:30 PM
To: Bump, Micah N [redacted] gov>; Chase, Carmen M [redacted] gov>; Hale, Paola R [redacted] gov>; Cox, Robert H [redacted] gov>
Cc: Choi, Heesun S (Sunny) [redacted] gov>
Subject: RE: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program

Nor do I. It says it's due "by 7/9", I guess that means COB today or OOB tomorrow.
 It's a STARS thing (sorry Sunny!)

Thanks,
 Brian

From: Bump, Micah N [redacted] gov>
Sent: Wednesday, July 8, 2020 1:57 PM
To: Chase, Carmen M [redacted] gov>; Hunt, Brian J [redacted] gov>; Hale, Paola R [redacted] gov>; Cox, Robert H [redacted] gov>
Cc: Choi, Heesun S (Sunny) [redacted] gov>
Subject: RE: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program

I have no comments or suggested edits for this letter.

Thanks,

Micah

From: Raymond, Robert R [redacted] gov> On Behalf Of ALD
Sent: Wednesday, July 8, 2020 12:37 PM
To: Chase, Carmen M [redacted] gov>; Hunt, Brian J [redacted] gov>; Hale, Paola R [redacted] gov>; Cox, Robert H [redacted] gov>; Bump, Micah N [redacted] gov>
Cc: Choi, Heesun S (Sunny) [redacted] gov>; ALD [redacted] gov>
Subject: FW: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program

Here you go.

(b)(6)

From: OCC-Clearance <[REDACTED]@ov>

Sent: Wednesday, July 8, 2020 12:29 PM

To: ALD <[REDACTED]@ov>

Cc: Choi, Heesun S (Sunny) <[REDACTED]@gov>; Busch, Philip B <[REDACTED]@ov>

Subject: FW: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program

ALD,

Please take the lead on review/clearance of the attached documents. Copying Phil for his visibility.

Once you've completed your review, please register your response in STARS and send a message to the OCC-Clearance Box indicating your response along with a copy of any uploaded document containing OCC edits/comments.

Thanks,
Ian

From: Patricia Blanco <[REDACTED]@ov>

Sent: Wednesday, July 8, 2020 12:18 PM

To: OCC-Clearance <[REDACTED]@ov>

(b)(6)

Subject: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program



Please review the details below regarding the Clearance Request that has just been assigned to you.

Assignment Number: AS-007775

Service Item Subject: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program

Service Item Description: D2P to sign

Prepare for Component Reply Direct and Cc

Instructions: OCC - Please review and clear attached draft response to Rep. Curtis. Provide response by 7/9/20.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t00000006Rsic>



The Honorable John R. Curtis
U.S. House of Representatives
Washington, DC 20515

Dear Representative Curtis:

Thank you for your July 1, 2020 letter regarding the Utah Dual Language Immersion (DLI) Program. Acting Secretary Wolf asked that I respond on his behalf.

(b)(5)

¹ <https://www.uscis.gov/about-us/uscis-response-covid-19>

Thank you again for your letter and interest in this matter. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

From: Choi, Heesun S (Sunny)
Sent: Wednesday, July 08, 2020 4:17 PM
To: OCC-Clearance; ALD
Cc: Busch, Philip B; Cox, Robert H
Subject: RE: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program
Attachments: Draft Response - Rep. Curtis (OPS response) 7.8.20 clean OCC.docx

I just uploaded the attached along with our concur with edits response into STARS.

Thanks,
Sunny

From: OCC-Clearance <[REDACTED]@gov>
Sent: Wednesday, July 8, 2020 12:29 PM
To: ALD [REDACTED]@gov>
Cc: Choi, Heesun S (Sunny) [REDACTED]@gov>; Busch, Philip B [REDACTED]@gov>
Subject: FW: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program

ALD,

Please take the lead on review/clearance of the attached documents. Copying Phil for his visibility.

Once you've completed your review, please register your response in STARS and send a message to the OCC-Clearance Box indicating your response along with a copy of any uploaded document containing OCC edits/comments.

Thanks,
Ian

From: Patricia Blanco [REDACTED]@gov>
Sent: Wednesday, July 8, 2020 12:18 PM
To: OCC-Clearance [REDACTED]@gov>
Subject: AS-007775: WF 1198144 - Rep. Curtis +3 - Regarding the effect of COVID-19 visa restrictions on the Utah Dual Language Immersion program

(b)(6)



Please review the details below regarding the Clearance Request that has just been assigned to you.

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Instructions: OCC - Please review and clear attached draft response to Rep. Curtis. Provide response by 7/9/20.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t00000006Rsic>



The Honorable John R. Curtis
U.S. House of Representatives
Washington, DC 20515

Dear Representative Curtis:

Thank you for your July 1, 2020 letter regarding the Utah Dual Language Immersion (DLI) Program. Acting Secretary Wolf asked that I respond on his behalf.

(b)(5)

¹ <https://www.uscis.gov/about-us/uscis-response-covid-19>

Thank you again for your letter and interest in this matter. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

Sincerely,

Joseph Edlow
Deputy Director for Policy

From: Miran, Maria Y
Sent: Thursday, July 16, 2020 9:58 AM
To: Hale, Paola R; Chase, Carmen M; Cox, Robert H; Bump, Micah N; Hunt, Brian J; Gisser, Sheldon A (Alex); Angustia, Kathleen M (Kate); Mahadevan, Sheila
Cc: Choi, Heesun S (Sunny)
Subject: RE: AS-007822: WF 1198271 - Bennet - Regarding labor visas
Attachments: Bennet OCC 7-16.docx

Hi S- I think that's everyone. I cleaned up internal comments, but this is a STARS review so it's all yours (sorry, I haven't had the chance to contact the IT folks again since they keep on telling me I should have STARS access, but I still don't!). Let me know if you have questions/need anything further.

And thank you P and all again for reviewing!

From: Hale, Paola R [REDACTED] gov>
Sent: Thursday, July 16, 2020 10:47 AM
To: Miran, Maria Y [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>
Cc: Choi, Heesun S (Sunny) [REDACTED] gov>
Subject: RE: AS-007822: WF 1198271 - Bennet - Regarding labor visas

No further edits here.

Thanks all!

From: Miran, Maria Y [REDACTED] gov>
Sent: Thursday, July 16, 2020 10:46 AM
To: Chase, Carmen M [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>
Cc: Choi, Heesun S (Sunny) [REDACTED] gov>
Subject: RE: AS-007822: WF 1198271 - Bennet - Regarding labor visas

Thanks Carmen!

From: Chase, Carmen M [REDACTED] gov>
Sent: Thursday, July 16, 2020 10:42 AM
To: Miran, Maria Y [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>
Cc: Choi, Heesun S (Sunny) [REDACTED] gov>
Subject: RE: AS-007822: WF 1198271 - Bennet - Regarding labor visas

I reviewed and made a minor edit to Maria's additional language regards Js.

~Carmen

(b)(6)

From: Miran, Maria Y [REDACTED] <[REDACTED]@usdoj.gov>

Sent: Wednesday, July 15, 2020 6:35 PM

To: Cox, Robert H [REDACTED] <[REDACTED]@usdoj.gov>; Bump, Micah N [REDACTED] <[REDACTED]@usdoj.gov>; Hale, Paola R

[REDACTED] <[REDACTED]@usdoj.gov>; Chase, Carmen M [REDACTED] <[REDACTED]@usdoj.gov>; Hunt, Brian J

[REDACTED] <[REDACTED]@usdoj.gov>; Gisser, Sheldon A (Alex) <[REDACTED]@usdoj.gov>; Angustia, Kathleen M (Kate)

[REDACTED] <[REDACTED]@usdoj.gov>; Mahadevan, Sheila <[REDACTED]@usdoj.gov>

Cc: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@usdoj.gov>

(b)(6)

Subject: FW: AS-007822: WF 1198271 - Bennet - Regarding labor visas

Hello all,

Our review is due tomorrow at 3 pm. Feel free to add in your edits/comments at

<https://ecn.uscis.dhs.gov/team/occ/hqteams/adjudications/Employment%20Based%20Collaboration/Bennet.docx?d=w e893a39b740043fcbf2160d65d8eea99> (Miscellaneous Folder under ALD-EB ECN).

J folks – I have a question for you in the link.

Also, I have a general comment since I think [REDACTED]

(b)(5)

Let me know if you disagree with any of my comments/edits.

Thanks very much everyone,

Maria

(b)(6)

From: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@usdoj.gov>

Sent: Wednesday, July 15, 2020 4:34 PM

To: Miran, Maria Y [REDACTED] <[REDACTED]@usdoj.gov>

Cc: ALD [REDACTED] <[REDACTED]@usdoj.gov>

Subject: FW: AS-007822: WF 1198271 - Bennet - Regarding labor visas

Maria – will you please take the lead on this?

Thank you!

Sunny

From: Raymond, Robert R [REDACTED] <[REDACTED]@usdoj.gov> On Behalf Of ALD

Sent: Wednesday, July 15, 2020 4:30 PM

To: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@usdoj.gov>

Subject: FW: AS-007822: WF 1198271 - Bennet - Regarding labor visas

Will you please assign?

(b)(6)

From: OCC-Clearance [REDACTED] gov>

(b)(6)

Sent: Wednesday, July 15, 2020 3:26 PM

To: ALD [REDACTED] gov>

Subject: FW: AS-007822: WF 1198271 - Bennet - Regarding labor visas

THIS IS A STARS EXSO ASSIGNMENT. PLEASE READ INSTRUCTIONS BELOW.

ALD,

Please take the lead on review and response of the attached documents. Since this is an STARS EXSO assignment review, once you've completed your review, please register your response in STARS and send a message to the OCC-Clearance Box indicating your response, with a copy of any uploaded document containing OCC edits/comments.

Thanks.

Tony

From: James Brown [REDACTED] ov>

Sent: Wednesday, July 15, 2020 13:57

To: OCC-Clearance [REDACTED] gov>

Subject: AS-007822: WF 1198271 - Bennet - Regarding labor visas

(b)(6)



Please review the details below regarding the Clearance Request that has just been assigned to you.

Assignment Number: AS-007822

Service Item Subject: WF 1198271 - Bennet - Regarding labor visas

Service Item Description: Prepare for Component Head Signature Reply
Direct and Cc

Instructions: OCC:

Please review and clear the attached draft response by 3pm 7/16/20.

Please provide your clearing official as well.

Thanks

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t00000006STPh>





U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

July XX, 2020

The Honorable Michael F. Bennet
U.S. Senate
Washington, DC 20515

(b)(5)

Dear Senator Bennet:

Thank you for your July 9, 2020 letter

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www.uscis.gov

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(b)(5)

Senator Bennet
Representative Ryan
Page 2

[Redacted]

Thank you again for your letter and your interest in this important matter.

Sincerely,

Joseph Edlow
Deputy Director for Policy

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[Redacted]

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[Redacted]

(b)(5)

(b)(5) (b)(6)

Page 2: [1] Commented

I

[REDACTED]

From: Choi, Heesun S (Sunny)
Sent: Wednesday, July 15, 2020 5:26 PM
To: OCC-Clearance; ALD
Cc: Gisser, Sheldon A (Alex); Mahadevan, Sheila; Cox, Robert H; Bump, Micah N
Subject: RE: AS-007823: WF 1198289 - Darr - Regarding concerns about H-1B and L visas
Attachments: Darr.OCCredits.docx

I uploaded the attached along with our concur with edits/comment into STARS.

Thanks,
Sunny

From: Raymond, Robert R [REDACTED] <[REDACTED]@[REDACTED].gov> **On Behalf Of** ALD
Sent: Wednesday, July 15, 2020 4:28 PM
To: Cox, Robert H [REDACTED] <[REDACTED]@[REDACTED].gov>; Gisser, Sheldon A (Alex) [REDACTED] <[REDACTED]@[REDACTED].gov>; Mahadevan, Sheila [REDACTED] <[REDACTED]@[REDACTED].gov>
Cc: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@[REDACTED].gov>
Subject: FW: AS-007823: WF 1198289 - Darr - Regarding concerns about H-1B and L visas

Enjoy

From: OCC-Clearance [REDACTED] <[REDACTED]@[REDACTED].gov>
Sent: Wednesday, July 15, 2020 3:32 PM
To: ALD [REDACTED] <[REDACTED]@[REDACTED].gov>
Subject: FW: AS-007823: WF 1198289 - Darr - Regarding concerns about H-1B and L visas

Assignment Due Date: 7/16/2020 2:52 PM

THIS IS A STARS EXSO ASSIGNMENT. PLEASE READ INSTRUCTIONS BELOW.

ALD,

Please take the lead on review and response of the attached documents. Since this is an STARS EXSO assignment review, once you've completed your review, please register your response in STARS and send a message to the OCC-Clearance Box indicating your response, with a copy of any uploaded document containing OCC edits/comments.

Thanks.

Tony

From: James Brown [REDACTED] <[REDACTED]@[REDACTED].gov>
Sent: Wednesday, July 15, 2020 14:53
To: OCC-Clearance [REDACTED] <[REDACTED]@[REDACTED].gov>
Subject: AS-007823: WF 1198289 - Darr - Regarding concerns about H-1B and L visas



Please review the details below regarding the Clearance Request that has just been assigned to you.

Assignment Number: AS-007823

Service Item Subject: WF 1198289 - Darr - Regarding concerns about H-1B and L visas

Service Item Description: Prepare for Component Reply Direct and Cc

Instructions: OCC:

Please review and clear the attached draft response by 3pm 7/16/20.

Thanks,

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t00000006SUDE>



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Washington, DC 20529-2000



U.S. Citizenship
and Immigration
Services

July XX, 2020



(b)(6)

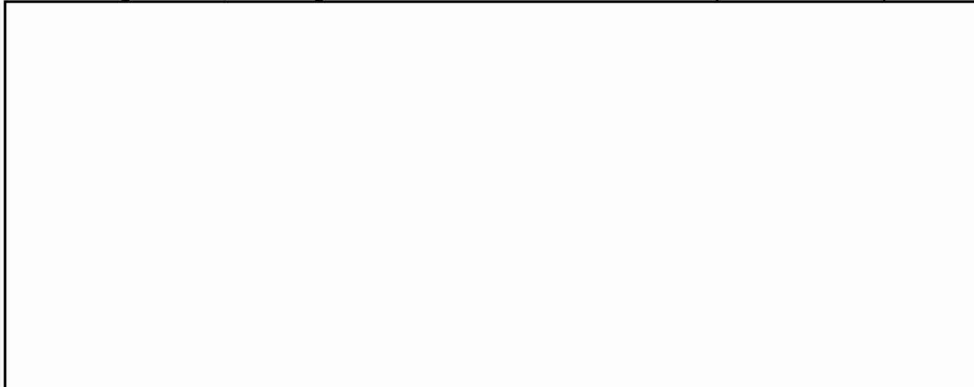
Washington, DC 20005

(b)(5)

Dear Ms. Darr:

Thank you for your July 10, 2020 letter expressing your support for certain job-related nonimmigrant visas. The Acting Secretary has asked that I respond on his behalf.

In your letter, you raise concerns about the Proclamation pausing certain job-related nonimmigrant visas, including H-1B and L visas. You note that such a pause could disrupt the



Thank you again for your letter and your interest in this important matter.

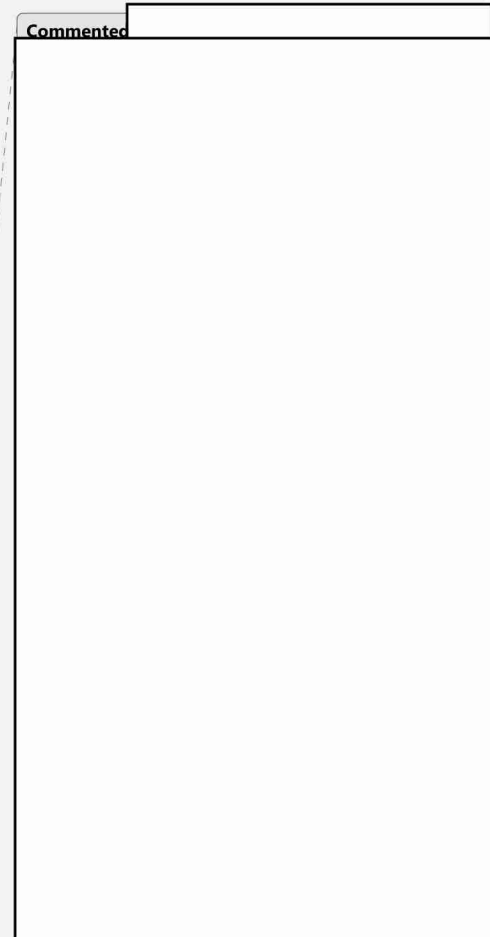
Respectfully,

John H Hill
Assistant Secretary for Partnership & Engagement

www.uscis.gov

(b)(5)

Commented



[REDACTED]

From: Cox, Robert H
Sent: Thursday, September 03, 2020 3:28 PM
To: ALD
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Thanks. in case they ask, there was a separate cover letter, but we did not have any comments or edits to the cover letter.

From: Raymond, Robert R [REDACTED] <[REDACTED]@ov> **On Behalf Of** ALD
Sent: Thursday, September 3, 2020 4:26 PM
To: Cox, Robert H [REDACTED] <[REDACTED]@ov>; Bump, Micah N [REDACTED] <[REDACTED]@ov>; Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@ov>; Busch, Philip B [REDACTED] <[REDACTED]@ov>; OCC-Clearance [REDACTED] <[REDACTED]@ov>; ALD [REDACTED] <[REDACTED]@ov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Uploaded and concurred with comments in STARS.

From: Cox, Robert H <[REDACTED]@ov>
Sent: Thursday, September 3, 2020 4:11 PM
To: ALD [REDACTED] <[REDACTED]@ov>
Cc: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@ov>; Bump, Micah N [REDACTED] <[REDACTED]@ov>
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

ALD box – could you upload this document to STARS? WE reviewed and just made a few edits/comments. Phil also reviewed.

From: McIntosh, Elton D [REDACTED] <[REDACTED]@ov> **On Behalf Of** ALD
Sent: Tuesday, September 1, 2020 11:02 AM
To: ALD [REDACTED] <[REDACTED]@ov>; Bump, Micah N [REDACTED] <[REDACTED]@ov>; Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@ov>; Cox, Robert H [REDACTED] <[REDACTED]@ov>
Cc: OCC-Clearance [REDACTED] <[REDACTED]@ov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Hi Micah & Robert,

Would you please be the lead for this review?

Thanks,

Elton

From: OCC-Clearance [REDACTED] <[REDACTED]@ov>
Sent: Tuesday, September 1, 2020 10:54 AM
To: ALD [REDACTED] <[REDACTED]@ov>

Cc: Busch, Philip B [REDACTED]@ov>

Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

THIS IS A STARS EXSO ASSIGNMENT. PLEASE READ INSTRUCTIONS BELOW.

ALD,

Please take the lead on review and response of this assignment. Per STARS – OCC response due: 9/2/20. If you will not be able to meet the deadline established by EXSO, please request an extension of the review timeframe directly with EXSO and/or originating requestor, with cc to OCC-Clearance.

Since this is a STARS EXSO assignment, once you've completed your review, please use the link below to register your response in STARS and send a message to the OCC-Clearance Box indicating your response, with a copy of any uploaded document containing OCC edits/comments.

CCing Phil for visibility and input as needed.

Thanks so much, Cathy

Catherine Muhletaler for OCC-Clearance
Special Counsel to the Deputy Chief Counsel
DHS | USCIS | Office of the Chief Counsel

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From: Patricia Blanco <[REDACTED]@ov>

Sent: Tuesday, September 01, 2020 10:49 AM

To: OCC-Clearance [REDACTED]@ov>

Subject: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052



Please review the details below regarding the Clearance Request that has just been assigned to you.

Assignment Number: AS-008362

Service Item Subject: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Service Item Description: OLA to sign

Prepare for Assistant Secretary OLA Signature

MGMT, OGC, OLA, CBP

Instructions: OCC - Please review and clear OP&S draft response to Chm. Neal by 9/2.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t00000006vcCK>



[REDACTED] (b)(6)

From: Bump, Micah N
Sent: Thursday, September 03, 2020 3:11 PM
To: Cox, Robert H; Choi, Heesun S (Sunny)
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Agree.

From: Cox, Robert H [REDACTED].gov>
Sent: Thursday, September 3, 2020 4:03 PM
To: Bump, Micah N [REDACTED].gov>; Choi, Heesun S (Sunny) [REDACTED].gov> (b)(6)
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

[REDACTED] (b)(5)

From: Bump, Micah N [REDACTED].gov> (b)(6)
Sent: Thursday, September 3, 2020 4:02 PM
To: Cox, Robert H [REDACTED].gov>; Choi, Heesun S (Sunny) [REDACTED].gov> (b)(6)
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

[REDACTED] (b)(5)

From: Busch, Philip B [REDACTED].gov> (b)(6)
Sent: Thursday, September 3, 2020 3:58 PM
To: Cox, Robert H [REDACTED].gov>
Cc: Bump, Micah N [REDACTED].gov>; Choi, Heesun S (Sunny) [REDACTED].gov> (b)(6)
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Thanks. I reviewed it and had some comments. I appreciate everyone's diligence and careful review but I think we're

[REDACTED] (b)(5)

From: Cox, Robert H [REDACTED].gov> (b)(6)
Sent: Thursday, September 3, 2020 2:27 PM
To: Busch, Philip B [REDACTED].gov>
Cc: Bump, Micah N [REDACTED].gov>; Choi, Heesun S (Sunny) [REDACTED].gov> (b)(6)
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Hi Phil,

I am just following up to see if you will be able to review the draft enclosure and our comments/edits. The client has followed up, but we prefer to send this back only after you have reviewed.

Thanks,

Robert

(b)(6)

From: Choi, Heesun S (Sunny) [redacted] <[redacted]@[redacted].gov>
Sent: Tuesday, September 1, 2020 8:12 PM
To: Busch, Philip B [redacted] <[redacted]@[redacted].gov>
Cc: Bump, Micah N [redacted] <[redacted]@[redacted].gov>; Cox, Robert H [redacted] <[redacted]@[redacted].gov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

(b)(6)

Hi Phil – as this response is prepared for the Assistant Secretary for Legislative Affairs, would you mind reviewing our edits/comments to the enclosure [redacted]

(b)(5)

Thank you for your help!
Sunny

From: McIntosh, Elton D [redacted] <[redacted]@[redacted].gov> **On Behalf Of** ALD
Sent: Tuesday, September 1, 2020 11:02 AM
To: ALD [redacted] <[redacted]@[redacted].gov>; Bump, Micah N [redacted] <[redacted]@[redacted].gov>; Choi, Heesun S (Sunny) [redacted] <[redacted]@[redacted].gov>; Cox, Robert H [redacted] <[redacted]@[redacted].gov>
Cc: OCC-Clearance [redacted] <[redacted]@[redacted].gov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

(b)(6)

Hi Micah & Robert,

Would you please be the lead for this review?

Thanks,

Elton

From: OCC-Clearance [redacted] <[redacted]@[redacted].gov>
Sent: Tuesday, September 1, 2020 10:54 AM
To: ALD [redacted] <[redacted]@[redacted].gov>
Cc: Busch, Philip B [redacted] <[redacted]@[redacted].gov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

(b)(6)

THIS IS A STARS EXSO ASSIGNMENT. PLEASE READ INSTRUCTIONS BELOW.

ALD,

Please take the lead on review and response of this assignment. Per STARS – OCC response due: 9/2/20. If you will not be able to meet the deadline established by EXSO, please request an extension of the review timeframe directly with EXSO and/or originating requestor, with cc to OCC-Clearance.

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CCing Phil for visibility and input as needed.

Thanks so much, Cathy

Catherine Muhletaler for OCC-Clearance
Special Counsel to the Deputy Chief Counsel
DHS | USCIS | Office of the Chief Counsel

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From: Patricia Blanco [REDACTED] <[REDACTED]@ov>

Sent: Tuesday, September 01, 2020 10:49 AM

To: OCC-Clearance [REDACTED] <[REDACTED]@ov>

Subject: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

(b)(6)



Please review the details below regarding the Clearance Request that has just been assigned to you.

Assignment Number: AS-008362

Service Item Subject: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Service Item Description: OLA to sign

Prepare for Assistant Secretary OLA Signature

MGMT, OGC, OLA, CBP

Instructions: OCC - Please review and clear OP&S draft response to Chm. Neal by 9/2.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t0000006vcCK>



From: Cox, Robert H
Sent: Thursday, September 03, 2020 3:11 PM
To: ALD
Cc: Choi, Heesun S (Sunny); Bump, Micah N
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052
Attachments: Draft Enclosure (Final) 9.1.20.ALDEdits.docx

ALD box – could you upload this document to STARS? WE reviewed and just made a few edits/comments. Phil also reviewed.

From: McIntosh, Elton D [redacted] gov> **On Behalf Of** ALD
Sent: Tuesday, September 1, 2020 11:02 AM
To: ALD [redacted] gov>; Bump, Micah N [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>
Cc: OCC-Clearance [redacted] gov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Hi Micah & Robert,

Would you please be the lead for this review?

Thanks,

Elton

From: OCC-Clearance <[redacted] gov>
Sent: Tuesday, September 1, 2020 10:54 AM
To: ALD [redacted] gov>
Cc: Busch, Philip B <[redacted] gov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

(b)(6)

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CCing Phil for visibility and input as needed.

Thanks so much, Cathy

Catherine Muhletaler for OCC-Clearance
Special Counsel to the Deputy Chief Counsel
DHS | USCIS | Office of the Chief Counsel

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From: Patricia Blanco [REDACTED] gov>

Sent: Tuesday, September 01, 2020 10:49 AM

To: OCC-Clearance [REDACTED] gov>

Subject: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

(b)(6)



Please review the details below regarding the Clearance Request that has just been assigned to you.

Assignment Number: AS-008362

Service Item Subject: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Service Item Description: OLA to sign

Prepare for Assistant Secretary OLA Signature

MGMT, OGC, OLA, CBP

Instructions: OCC - Please review and clear OP&S draft response to Chm. Neal by 9/2.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t00000006vcCK>



**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

(b)(5)

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.

2. How will the "substantial public health benefit/secondary effect" exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.

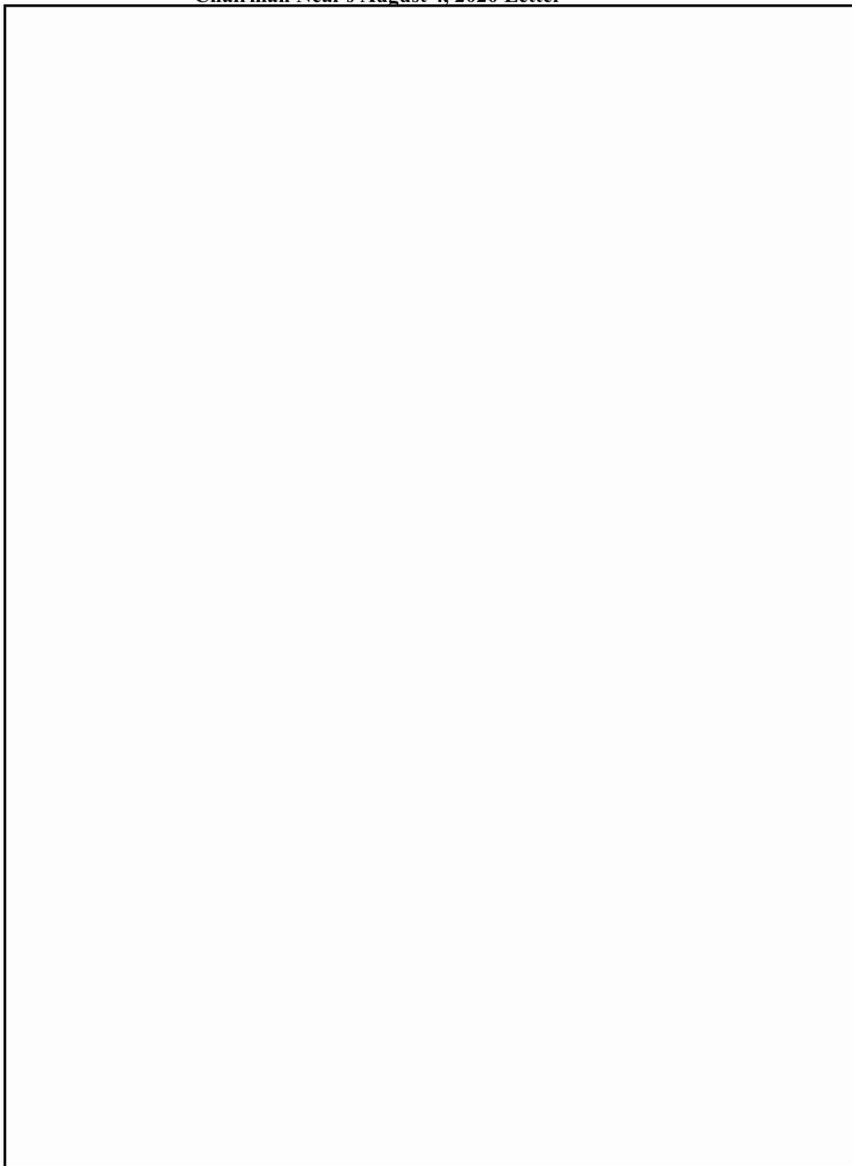
3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?

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**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**



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¹ *Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*, Proclamation 10052, available at <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/> (Aug. 3, 2020); *see also* Proclamation on Amendment to Proclamation 10052, June 29, 2020, available at <https://www.whitehouse.gov/presidential-actions/proclamation-amendment-proclamation-10052/>

² Executive Order on Improving Rural Health and Telehealth Access, August 3, 2020, available at <https://www.whitehouse.gov/presidential-actions/executive-order-improving-rural-health-telehealth-access>

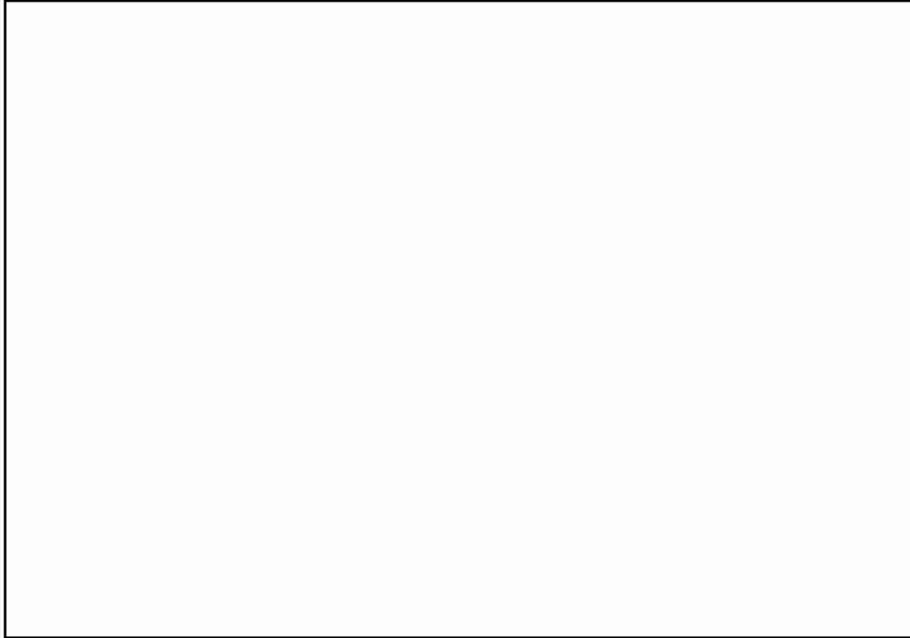
³ White House Proclamation 10052.

(b)(5)

DHS-20-2144-A-000253

(b)(5)

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**



4. **How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?**



⁴ Exceptions to Proclamation 10052, U.S. Department of State, available at <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html>,

⁵ <https://protect-public.hhs.gov/>.

(b)(5)

(b)(6)

From: Cox, Robert H
Sent: Thursday, September 03, 2020 3:01 PM
To: Busch, Philip B
Cc: Bump, Micah N; Choi, Heesun S (Sunny)
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

(b)(5)

From: Busch, Philip B [redacted] gov> (b)(6)
Sent: Thursday, September 3, 2020 3:58 PM
To: Cox, Robert H [redacted] gov>
Cc: Bump, Micah N [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov> (b)(6)
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Thanks. I reviewed it and had some comments. I appreciate everyone's diligence and careful review but I think we're

(b)(5)

From: Cox, Robert H [redacted] gov> (b)(6)
Sent: Thursday, September 3, 2020 2:27 PM
To: Busch, Philip B [redacted] v>
Cc: Bump, Micah N [redacted] ov>; Choi, Heesun S (Sunny) [redacted] ov>
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Hi Phil,

I am just following up to see if you will be able to review the draft enclosure and our comments/edits. The client has followed up, but we prefer to send this back only after you have reviewed.

Thanks,
Robert

From: Choi, Heesun S (Sunny) [redacted] gov>
Sent: Tuesday, September 1, 2020 8:12 PM
To: Busch, Philip B [redacted] ov>
Cc: Bump, Micah N [redacted] gov>; Cox, Robert H [redacted] gov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052 (b)(6)

Hi Phil – as this response is prepared for the Assistant Secretary for Legislative Affairs, would you mind reviewing our edits/comments to the enclosure

(b)(5)

Thank you for your help!
Sunny

From: McIntosh, Elton D [REDACTED] gov> **On Behalf Of** ALD (b)(6)
Sent: Tuesday, September 1, 2020 11:02 AM
To: ALD [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Cox, Robert H [REDACTED] gov>
Cc: OCC-Clearance [REDACTED] ov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Hi Micah & Robert,

Would you please be the lead for this review?

Thanks,

Elton

From: OCC-Clearance [REDACTED] gov>
Sent: Tuesday, September 1, 2020 10:54 AM
To: ALD [REDACTED] gov>
Cc: Busch, Philip B [REDACTED] ov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

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Thanks so much, Cathy

Catherine Muhletaler for OCC-Clearance
Special Counsel to the Deputy Chief Counsel
DHS | USCIS | Office of the Chief Counsel

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From: Patricia Blanco [REDACTED] ov>
Sent: Tuesday, September 01, 2020 10:49 AM
To: OCC-Clearance [REDACTED] ov>
Subject: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

(b)(6)



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Assignment Number: AS-008362

Service Item Subject: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Service Item Description: OLA to sign

Prepare for Assistant Secretary OLA Signature

MGMT, OGC, OLA, CBP

Instructions: OCC - Please review and clear OP&S draft response to Chm. Neal by 9/2.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t00000006vcCK>



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To: Cox, Robert H
Cc: Bump, Micah N; Choi, Heesun S (Sunny)
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052
Attachments: Draft Enclosure (Final) 9.1.20.ALDeDits.docx

Thanks. I reviewed it and had some comments. I appreciate everyone's diligence and careful review but I think we're

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Cc: Bump, Micah N [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov> (b)(6)
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Sunny

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Sent: Tuesday, September 1, 2020 11:02 AM
To: ALD [redacted] gov>; Bump, Micah N [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>
Cc: OCC-Clearance [redacted] gov>
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Elton

From: OCC-Clearance [REDACTED] gov>

Sent: Tuesday, September 1, 2020 10:54 AM

To: ALD [REDACTED] gov>

Cc: Busch, Philip B [REDACTED] gov>

Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

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From: Patricia Blanco [REDACTED] gov>

Sent: Tuesday, September 01, 2020 10:49 AM

To: OCC-Clearance [REDACTED] gov>

Subject: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052



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Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t00000006vcCK>



(b)(5)

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.



2. How will the “substantial public health benefit/secondary effect” exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.



3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?



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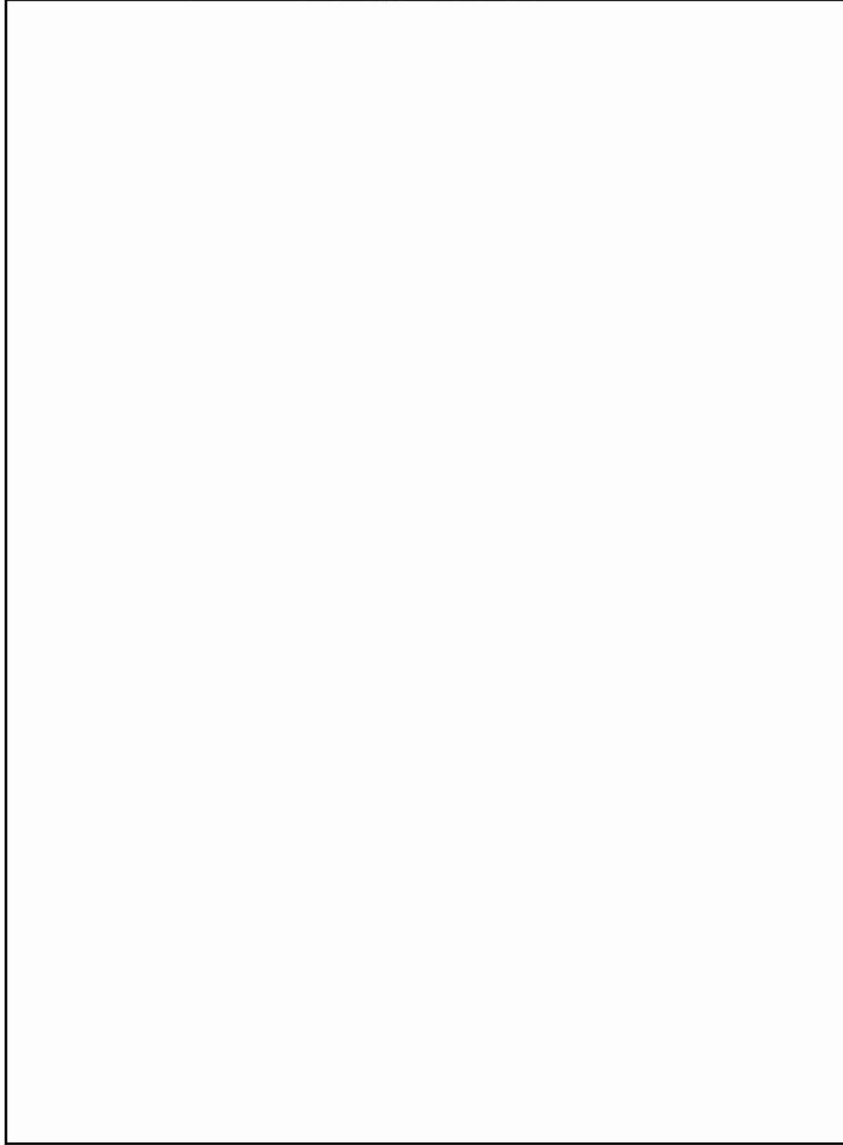
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Commented

(b)(5)

(b)(5)

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**



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¹ *Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*, Proclamation 10052, available at <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/> (Aug. 3, 2020); *see also* Proclamation on Amendment to Proclamation 10052, June 29, 2020, available at <https://www.whitehouse.gov/presidential-actions/proclamation-amendment-proclamation-10052/>

² Executive Order on Improving Rural Health and Telehealth Access, August 3, 2020, available at <https://www.whitehouse.gov/presidential-actions/executive-order-improving-rural-health-telehealth-access>

³ White House Proclamation 10052.

(b)(5)

(b)(5)

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

Commented [1] [Redacted]

Commented [2] [Redacted]

Commented [3] [Redacted]

Commented [4] [Redacted]

Commented [5] [Redacted]

Commented [6] [Redacted]

⁴ Exceptions to Proclamation 10052, U.S. Department of State, available at <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html>.

⁵ <https://protect-public.hhs.gov/>.

(b)(5)

From: Cox, Robert H
Sent: Tuesday, September 01, 2020 7:19 PM
To: Choi, Heesun S (Sunny)
Cc: Bump, Micah N
Subject: Re: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Thanks!

On Sep 1, 2020, at 8:05 PM, Choi, Heesun S (Sunny) <[REDACTED]@gov> wrote: (b)(6)

[REDACTED] (b)(5) I'm going to go ahead and send these to Phil for his review as our edits are due tomorrow.

Thanks guys!
Sunny

From: Cox, Robert H <[REDACTED]@gov> (b)(6)
Sent: Tuesday, September 1, 2020 5:30 PM
To: Bump, Micah N <[REDACTED]@gov>; Choi, Heesun S (Sunny) (b)(6)
<[REDACTED]@gov>
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Thanks. I made a bunch of comments. [REDACTED]

(b)(5)

From: Bump, Micah N <[REDACTED]@gov> (b)(6)
Sent: Tuesday, September 1, 2020 4:55 PM
To: Cox, Robert H <[REDACTED]@gov>; Choi, Heesun S (Sunny)
<[REDACTED]@gov>
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Thanks. I made that tweak throughout as it applied to several comments.

From: Cox, Robert H <[REDACTED]@gov>
Sent: Tuesday, September 1, 2020 4:48 PM
To: Bump, Micah N <[REDACTED]@gov>; Choi, Heesun S (Sunny)
<[REDACTED]@gov>
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

(b)(6)

Reviewing now

(b)(5)

From: Bump, Micah N [REDACTED] <[REDACTED]@ov>

(b)(6)

Sent: Tuesday, September 1, 2020 4:28 PM

To: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@ov>; Cox, Robert H [REDACTED] <[REDACTED]@ov>

(b)(6)

Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

I reviewed and added some comments/edit [REDACTED]

(b)(5)

From: Bump, Micah N

Sent: Tuesday, September 1, 2020 1:29 PM

To: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@ov>; Cox, Robert H [REDACTED] <[REDACTED]@ov>

(b)(6)

Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Response:

[https://ecn.uscis.dhs.gov/team/occ/hqteams/adjudications/Employment%20Based%20Collaboration/Revised%20Draft%20Response%20Neal%20\(Final\)%209.1.20.docx?d=w662d01db703e43ca81c0014fe99ede1f](https://ecn.uscis.dhs.gov/team/occ/hqteams/adjudications/Employment%20Based%20Collaboration/Revised%20Draft%20Response%20Neal%20(Final)%209.1.20.docx?d=w662d01db703e43ca81c0014fe99ede1f)

Enclosure:

[https://ecn.uscis.dhs.gov/team/occ/hqteams/adjudications/Employment%20Based%20Collaboration/Draft%20Enclosure%20\(Final\)%209.1.20.docx?d=w7c8e161f53554198bb8ed6bfb5eeffba](https://ecn.uscis.dhs.gov/team/occ/hqteams/adjudications/Employment%20Based%20Collaboration/Draft%20Enclosure%20(Final)%209.1.20.docx?d=w7c8e161f53554198bb8ed6bfb5eeffba)

From: McIntosh, Elton D [REDACTED] <[REDACTED]@ov> **On Behalf Of** ALD

Sent: Tuesday, September 1, 2020 11:02 AM

To: ALD [REDACTED] <[REDACTED]@ov>; Bump, Micah N [REDACTED] <[REDACTED]@ov>; Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@ov>; Cox, Robert H [REDACTED] <[REDACTED]@ov>

Cc: OCC-Clearance [REDACTED] <[REDACTED]@ov>

Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Hi Micah & Robert,

Would you please be the lead for this review?

Thanks,

Elton

From: OCC-Clearance [REDACTED] <[REDACTED]@ov>

Sent: Tuesday, September 1, 2020 10:54 AM

To: ALD [REDACTED] <[REDACTED]@ov>

(b)(6)

Cc: Busch, Philip B [REDACTED] gov>

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From: Patricia Blanco [REDACTED] gov>

Sent: Tuesday, September 01, 2020 10:49 AM

To: OCC-Clearance [REDACTED] ov>

Subject: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

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Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t00000006vcCK>



[REDACTED]

From: Cox, Robert H
Sent: Thursday, September 03, 2020 1:27 PM
To: Busch, Philip B
Cc: Bump, Micah N; Choi, Heesun S (Sunny)
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052
Attachments: Incoming 8.4.20.pdf; Revised Draft Response Neal (Final) 9.1.20.docx; Draft Enclosure (Final) 9.1.20.ALDeDits.docx

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Congress of the United States
Washington, DC 20515

August 4, 2020

The Honorable Michael R. Pompeo
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0525

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave NW
Washington, DC 20210

Re: Health Workforce Implications of Proclamation 10052

Dear Secretary Pompeo, Acting Secretary Wolf, and Secretary Scalia:

We are writing to express our urgent concern about Proclamation 10052, which President Trump signed on June 22, 2020. As you are aware, in addition to extending the President's suspension on the admission of most immigrants announced in Proclamation 10014, Proclamation 10052 suspends the admission of certain temporary workers, including many H-1B health workers. Each year since at least Fiscal Year 2015, U.S. Citizenship and Immigration Services (USCIS) has granted more than 10,000 H-1B petitions to physicians and other health care workers who play a critical role in our health care workforce.¹ Although Proclamation 10052 exempts individuals providing medical care to COVID-19 patients and conducting COVID-19 research, this Proclamation is overly restrictive and harmful in the midst of this pandemic. Without broader exemptions for health care workers and researchers, the Administration's actions put all Americans at risk.

Critical to controlling any pandemic is the ability to rapidly deploy the health workforce to care for patients, mitigate spread, and advance health research agendas that offer rapid solutions. Without an adequate health and research workforce, we risk the unnecessary loss of

¹ U.S. Citizenship and Immigration Services, H-1B Approvals for Healthcare-Related Occupations (Fiscal Years 2015-2020 (YTD)), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Employment-based/I129_H1B_A_Healthcare_FY15-20.pdf.

more lives and impose further obstacles to our economic recovery. As noted by the American Association of Medical Colleges (AAMC), “[r]estricting these gifted international researchers and physicians from entering the U.S. will not help our economy, but rather will hamper the ability of our medical schools and teaching hospitals to make scientific progress.”² Ultimately, it will reduce health care access across our nation.

Recently, the Department of State issued guidance further defining the national interest exemptions for H-1B health workers.³ According to that guidance, an exemption to the Proclamation for H-1B nonimmigrants is available to public health or health care professionals or researchers “to alleviate the effects of the COVID-19 pandemic, or to conduct ongoing medical research in an area with a substantial public health benefit (e.g. cancer or communicable disease research).”⁴ The guidance states that this includes H-1B nonimmigrants whose work will “alleviate effects of the COVID-19 pandemic that may be a secondary effect of the pandemic.”⁵ While this is a welcome interpretation of the Proclamation, it is unclear how it will be applied by consular and Customs and Border Protection (CBP) officers, and is still overly restrictive. The United States needs the strongest possible health care and research workforce now more than ever. Importantly, this includes individuals who provide care or conduct research in areas other than COVID-19. Health workers and researchers working on issues unrelated to COVID-19 free up others to focus on COVID-19, while continuing to provide essential care and conduct critical research that cannot stop because of the pandemic.

Further, as our nation surpasses 4.6 million cases of COVID-19 and over 154,000 deaths, it is important to consider infections and deaths of health workers and researchers when projecting workforce needs. Researchers project that, in the first year of the pandemic, millions of health care workers will test positive for COVID-19 and thousands will die from it.⁶ As such, visa programs are more important than ever to ensure that the health workforce is resilient and prepared both for the current wave of COVID-19 as well as the subsequent waves predicted to hit the country in the near future.

In July 2019, in recognition of the importance of ensuring all Americans have access to quality health care, the Committee on Ways and Means created the bipartisan Rural and Underserved Communities Health Task Force to address issues of health equity in rural and underserved communities across the country.⁷ Many of the physicians who serve our

² <https://www.aamc.org/news-insights/press-releases/aamc-statement-presidential-proclamation-limiting-non-immigrant-visas>.

³ Dep’t of State, National Interest Exceptions to Presidential Proclamations (10014 & 10052) Suspending the Entry of Immigrants and Nonimmigrants Presenting a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak (Jul. 22, 2020), <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html#:~:text=On%20June%2022%2C%20the%20President,%2C%20through%20December%2031%2C%202020>.

⁴ *Id.*

⁵ *Id.*

⁶ <https://depts.washington.edu/fammed/chws/how-many-health-care-workers-are-at-risk-of-being-sacrificed-to-covid-19-in-the-us/>.

⁷ <https://waysandmeans.house.gov/media-center/press-releases/ways-and-means-committee-launches-rural-and-underserved-communities>.

underserved communities are immigrant physicians who rely on temporary visas. Proclamation 10052 puts underserved communities at even more risk by restricting physician visas.

Section 4 of Proclamation 10052 directs the Secretary of Homeland Security to consult with Secretaries of State and Labor and to recommend to the President any necessary modifications to the Proclamation. As such, we urge you to recommend that the President modify Proclamation 10052 to exempt all health workers and researchers from the suspension on entry because they all serve the national interest. In the meantime, we request answers to the following questions by August 14, 2020:

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.
2. How will the “substantial public health benefit/secondary effect” exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.
3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?
4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

Thank you for attention to this important matter. We look forward to working with you to ensure that our front-line health and research workers have our nation’s full support during this crisis. If you have further questions about this letter or the questions raised, please contact Melanie Egorin at melanie.egorin@mail.house.gov.

Sincerely,



Richard E. Neal
Chairman
Committee on Ways and Means



Jerrold Nadler
Chairman
Committee on the Judiciary



Zoe Lofgren
Chairwoman
Subcommittee on Immigration and Citizenship, Committee on the Judiciary

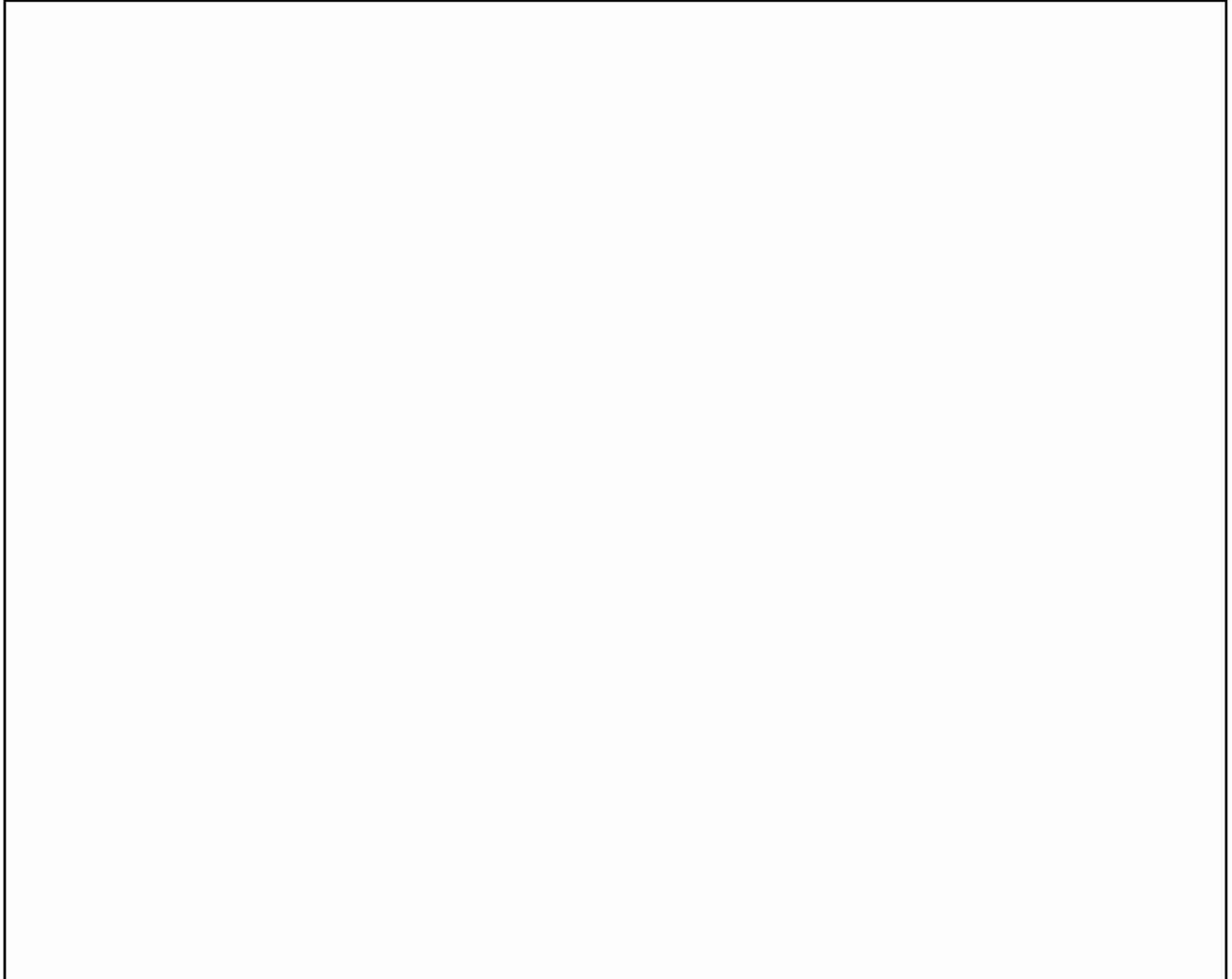
Cc: The Honorable Alex M. Azar II, Secretary of Health and Human Services

The Honorable Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Neal:

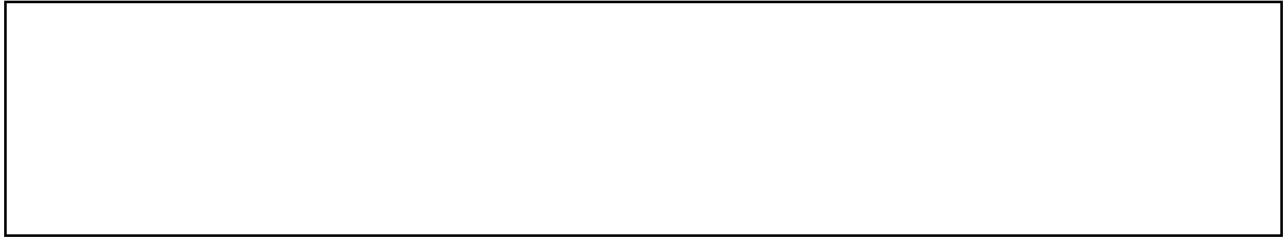
Thank you for your August 4, 2020 letter expressing support for H-1B health workers and researchers. Acting Secretary Wolf asked that I respond on his behalf.

(b)(5)



¹ On June 29, 2020, the President issued further clarification in the “Proclamation on Amendment to Proclamation 10052.”

² For policy updates, operational changes, and COVID-19 information, please visit uscis.gov/coronavirus.



(b)(5)

Thank you again for your letter and interest in this important issue. The cosigners of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (202) 272-1940.

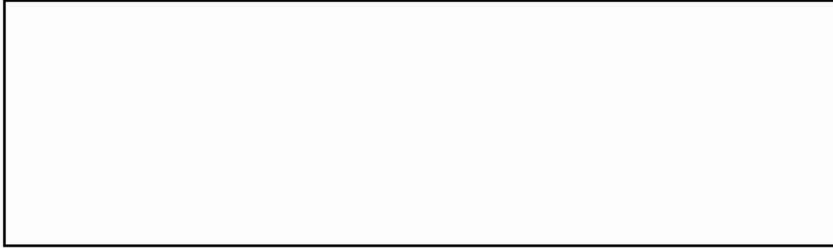
Respectfully,

Beth Spivey
Assistant Secretary for Legislative Affairs

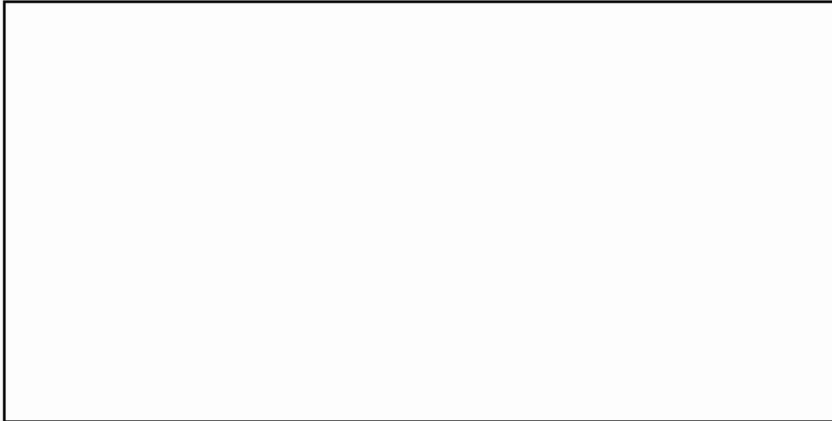
(b)(5)

**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**

1. Please provide the number of H-1B visa applications for physicians and other health care workers (as well as applications for H-4 visas for the dependents of such workers) that have been approved, denied, or rejected since June 24, 2020.



2. How will the “substantial public health benefit/secondary effect” exemption in the Department of State guidance be applied in the field? Does this guidance also apply to CBP officers? Please provide any written guidance that has been provided to consular officers or CBP officers in interpreting this exemption.



3. Why was the exemption in Proclamation 10052 limited to health and research workers focused only on hospitalized COVID-19 patients and COVID-19 research considering the interdependence of the health and research workforce?



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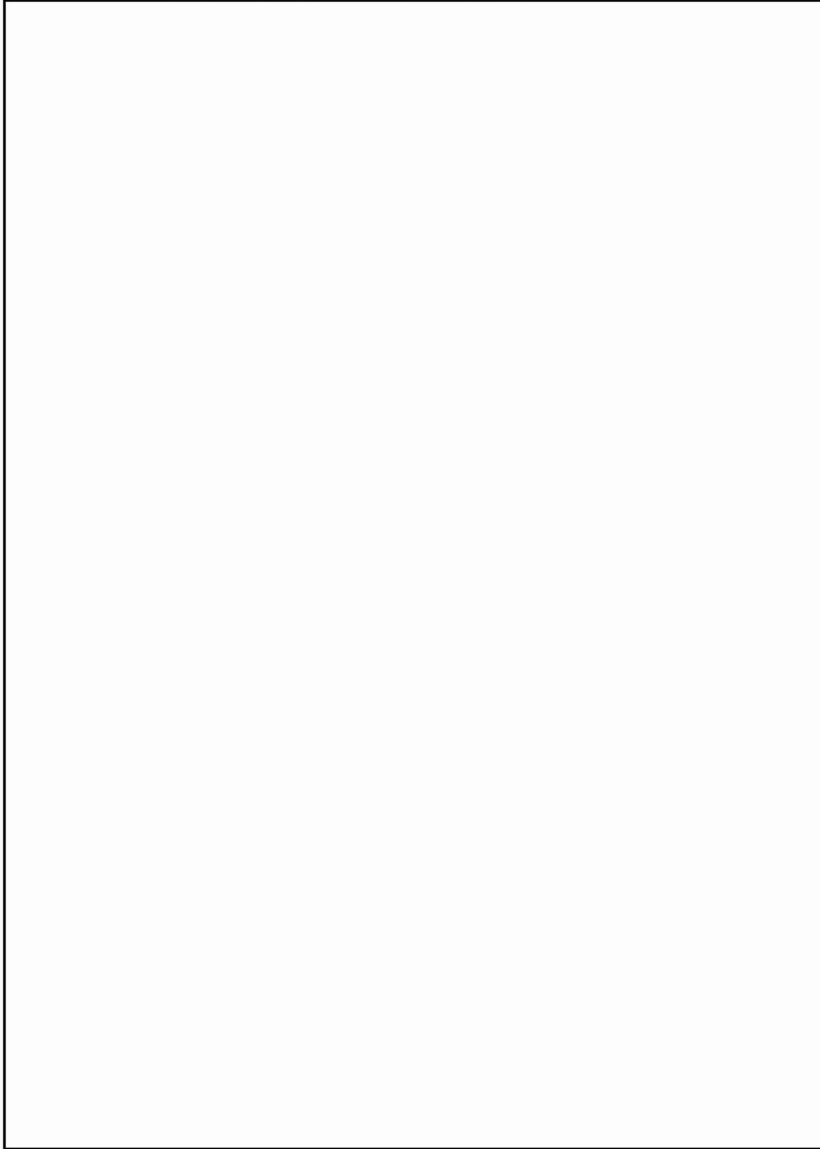
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(b)(5)

(b)(5)

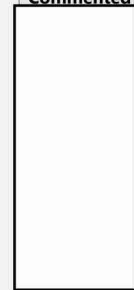
**U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter**



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¹ *Suspending Entry of Immigrants Who Present Risk to the U.S. Labor Market During the Economic Recovery Following the COVID-19 Outbreak*, Proclamation 10052, available at <https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-immigrants-present-risk-u-s-labor-market-economic-recovery-following-covid-19-outbreak/> (Aug. 3, 2020); *see also* Proclamation on Amendment to Proclamation 10052, June 29, 2020, available at <https://www.whitehouse.gov/presidential-actions/proclamation-amendment-proclamation-10052/>

² Executive Order on Improving Rural Health and Telehealth Access, August 3, 2020, available at <https://www.whitehouse.gov/presidential-actions/executive-order-improving-rural-health-telehealth-access>

³ White House Proclamation 10052.

(b)(5)

U.S. Citizenship and Immigration Services' Response to
Chairman Neal's August 4, 2020 Letter

(b)(5)

4. How will the Administration use infection and mortality projections to prospectively and proactively ensure that the health and research workforce is adequate for the current wave as well as future waves of the COVID-19 pandemic? How will you ensure that proper coordination occurs across the Administration in this regard?

Commented

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⁴ Exceptions to Proclamation 10052, U.S. Department of State, available at <https://travel.state.gov/content/travel/en/News/visas-news/exceptions-to-p-p-10014-10052-suspending-entry-of-immigrants-non-immigrants-presenting-risk-to-us-labor-market-during-economic-recovery.html>,
⁵ <https://protect-public.hhs.gov/>.

(b)(5)

(b)(6)

From: Cox, Robert H
Sent: Tuesday, September 01, 2020 3:58 PM
To: Bump, Micah N; Choi, Heesun S (Sunny)
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Thanks. These responses are hard to follow.

From: Bump, Micah N [redacted] gov> (b)(6)
Sent: Tuesday, September 1, 2020 4:55 PM
To: Cox, Robert H [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Thanks. I made that tweak throughout as it applied to several comments.

From: Cox, Robert H [redacted] gov>
Sent: Tuesday, September 1, 2020 4:48 PM
To: Bump, Micah N [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov> (b)(6)
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Reviewing now, but for your comment [redacted]

(b)(5)

From: Bump, Micah N [redacted] gov> (b)(6)
Sent: Tuesday, September 1, 2020 4:28 PM
To: Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

I reviewed and added some comments/edit [redacted]

(b)(5)

From: Bump, Micah N
Sent: Tuesday, September 1, 2020 1:29 PM
To: Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov> (b)(6)
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Response:

[https://ecn.uscis.dhs.gov/team/occ/hqteams/adjudications/Employment%20Based%20Collaboration/Revised%20Draft%20Response%20Neal%20\(Final\)%209.1.20.docx?d=w662d01db703e43ca81c0014fe99ede1f](https://ecn.uscis.dhs.gov/team/occ/hqteams/adjudications/Employment%20Based%20Collaboration/Revised%20Draft%20Response%20Neal%20(Final)%209.1.20.docx?d=w662d01db703e43ca81c0014fe99ede1f)

Enclosure:

From: McIntosh, Elton D [REDACTED] gov> **On Behalf Of** ALD (b)(6)
Sent: Tuesday, September 1, 2020 11:02 AM
To: ALD [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Cox, Robert H [REDACTED] gov>
Cc: OCC-Clearance [REDACTED] gov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Hi Micah & Robert,

Would you please be the lead for this review?

Thanks,

Elton

From: OCC-Clearance [REDACTED] gov>
Sent: Tuesday, September 1, 2020 10:54 AM
To: ALD [REDACTED] gov>
Cc: Busch, Philip B [REDACTED] gov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

THIS IS A STARS EXSO ASSIGNMENT. PLEASE READ INSTRUCTIONS BELOW.

ALD,

Please take the lead on review and response of this assignment. Per STARS – OCC response due: 9/2/20. If you will not be able to meet the deadline established by EXSO, please request an extension of the review timeframe directly with EXSO and/or originating requestor, with cc to OCC-Clearance.

Since this is a STARS EXSO assignment, once you've completed your review, please use the link below to register your response in STARS and send a message to the OCC-Clearance Box indicating your response, with a copy of any uploaded document containing OCC edits/comments.

CCing Phil for visibility and input as needed.

Thanks so much, Cathy

Catherine Muhletaler for OCC-Clearance
Special Counsel to the Deputy Chief Counsel
DHS | USCIS | Office of the Chief Counsel

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From: Patricia Blanco [REDACTED] gov>
Sent: Tuesday, September 01, 2020 10:49 AM

(b)(6)

To: OCC-Clearance [REDACTED] ov>

(b)(6)

Subject: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052



Please review the details below regarding the Clearance Request that has just been assigned to you.

Assignment Number: AS-008362

Service Item Subject: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Service Item Description: OLA to sign

Prepare for Assistant Secretary OLA Signature

MGMT, OGC, OLA, CBP

Instructions: OCC - Please review and clear OP&S draft response to Chm. Neal by 9/2.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t00000006vcCK>



[REDACTED]

From: Bump, Micah N
Sent: Tuesday, September 01, 2020 10:03 AM
To: ALD; Choi, Heesun S (Sunny); Cox, Robert H
Cc: OCC-Clearance
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Sure.

From: McIntosh, Elton D [REDACTED] gov> **On Behalf Of** ALD
Sent: Tuesday, September 1, 2020 11:02 AM
To: ALD [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Cox, Robert H [REDACTED] gov>
Cc: OCC-Clearance [REDACTED] gov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Hi Micah & Robert,

Would you please be the lead for this review?

Thanks,

Elton

From: OCC-Clearance [REDACTED] gov>
Sent: Tuesday, September 1, 2020 10:54 AM
To: ALD [REDACTED] gov>
Cc: Busch, Philip B [REDACTED] gov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

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CCing Phil for visibility and input as needed.

Thanks so much, Cathy

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From: Patricia Blanco <patricia.j.blanco@uscis.dhs.gov>

Sent: Tuesday, September 01, 2020 10:49 AM

To: OCC-Clearance <OCC-Clearance@uscis.dhs.gov>

Subject: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052



Please review the details below regarding the Clearance Request that has just been assigned to you.

Assignment Number: AS-008362

Service Item Subject: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Service Item Description: OLA to sign

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MGMT, OGC, OLA, CBP

Instructions: OCC - Please review and clear OP&S draft response to Chm. Neal by 9/2.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t0000006vcCK>



[REDACTED]

From: Raymond, Robert R on behalf of ALD
Sent: Thursday, September 03, 2020 3:40 PM
To: Cox, Robert H
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

gotcha

From: Cox, Robert H [REDACTED] <[REDACTED]@ov>
Sent: Thursday, September 3, 2020 4:28 PM
To: ALD [REDACTED] <[REDACTED]@ov>
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Thanks. in case they ask, there was a separate cover letter, but we did not have any comments or edits to the cover letter.

From: Raymond, Robert R [REDACTED] <[REDACTED]@ov> **On Behalf Of** ALD
Sent: Thursday, September 3, 2020 4:26 PM
To: Cox, Robert H [REDACTED] <[REDACTED]@ov>; Bump, Micah N [REDACTED] <[REDACTED]@ov>; Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@ov>; Busch, Philip B [REDACTED] <[REDACTED]@ov>; OCC-Clearance [REDACTED] <[REDACTED]@ov>; ALD [REDACTED] <[REDACTED]@ov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Uploaded and concurred with comments in STARS.

From: Cox, Robert H [REDACTED] <[REDACTED]@ov>
Sent: Thursday, September 3, 2020 4:11 PM
To: ALD [REDACTED] <[REDACTED]@ov>
Cc: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@ov>; Bump, Micah N [REDACTED] <[REDACTED]@ov>
Subject: RE: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

ALD box – could you upload this document to STARS? WE reviewed and just made a few edits/comments. Phil also reviewed.

From: McIntosh, Elton D [REDACTED] <[REDACTED]@ov> **On Behalf Of** ALD
Sent: Tuesday, September 1, 2020 11:02 AM
To: ALD [REDACTED] <[REDACTED]@ov>; Bump, Micah N [REDACTED] <[REDACTED]@ov>; Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@ov>; Cox, Robert H [REDACTED] <[REDACTED]@ov>
Cc: OCC-Clearance [REDACTED] <[REDACTED]@ov>
Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

Hi Micah & Robert,

(b)(6)

Would you please be the lead for this review?

Thanks,

Elton

From: OCC-Clearance <[REDACTED]@gov>

Sent: Tuesday, September 1, 2020 10:54 AM

To: ALD <[REDACTED]@ov>

Cc: Busch, Philip B <[REDACTED]@gov>

Subject: FW: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052

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CCing Phil for visibility and input as needed.

Thanks so much, Cathy

Catherine Muhletaler for OCC-Clearance
Special Counsel to the Deputy Chief Counsel
DHS | USCIS | Office of the Chief Counsel

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From: Patricia Blanco <[REDACTED]@gov>

Sent: Tuesday, September 01, 2020 10:49 AM

To: OCC-Clearance <[REDACTED]@gov>

Subject: AS-008362: WF 1199281 - Chm. Neal wrote to AS1 regarding Health Workforce Implications of Proclamation 10052



(b)(6)

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Assignment Number: AS-008362

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Service Item Description: OLA to sign

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MGMT, OGC, OLA, CBP

Instructions: OCC - Please review and clear OP&S draft response to Chm. Neal by 9/2.

Due Date:

Link: <https://uscis2.force.com/USCISCorrMgmt/s/detail/a03t00000006vcCK>



(b)(6)

From: Elder, Phillip D
Sent: Wednesday, June 24, 2020 11:28 AM
To: Busch, Philip B
Cc: Kleczek, Marguerite P (Ania); Cox, Robert H; Zimonjic, Milica; Salem, Claudia S; Choi, Heesun S (Sunny); Bump, Micah N; Groom, Molly M; Jacobs, Elizabeth A (Liz)
Subject: RE: EO Question

(b)(5)

From: Busch, Philip B [redacted] <[redacted]@gov>
Sent: Wednesday, June 24, 2020 11:08 AM
To: Elder, Phillip D [redacted] <[redacted]@gov>
Cc: Kleczek, Marguerite P (Ania) [redacted] <[redacted]@gov>; Cox, Robert H [redacted] <[redacted]@gov>; Zimonjic, Milica [redacted] <[redacted]@gov>; Salem, Claudia S [redacted] <[redacted]@gov>; Choi, Heesun S (Sunny) [redacted] <[redacted]@gov>; Bump, Micah N [redacted] <[redacted]@gov>; Groom, Molly M [redacted] <[redacted]@gov>; Jacobs, Elizabeth A (Liz) [redacted] <[redacted]@gov>
Subject: RE: EO Question

(b)(6)

(b)(6)

Are those the choices? [redacted] (b)(5)

From: Elder, Phillip D [redacted] <[redacted]@gov>
Sent: Wednesday, June 24, 2020 12:00 PM
To: Busch, Philip B [redacted] <[redacted]@gov>
Cc: Kleczek, Marguerite P (Ania) [redacted] <[redacted]@gov>; Cox, Robert H [redacted] <[redacted]@gov>; Zimonjic, Milica [redacted] <[redacted]@gov>; Salem, Claudia S [redacted] <[redacted]@gov>; Choi, Heesun S (Sunny) [redacted] <[redacted]@gov>; Bump, Micah N [redacted] <[redacted]@gov>; Groom, Molly M [redacted] <[redacted]@gov>; Jacobs, Elizabeth A (Liz) [redacted] <[redacted]@gov>
Subject: RE: EO Question

(b)(6)

(b)(6)

Phil,
See below regarding an issue that came up from SCOPS on yesterday's proclamation. [redacted]

(b)(5)

(b)(5)

Let me know if you want to discuss.

Thanks,
Phillip

From: Cox, Robert H <[REDACTED]@gov> (b)(6)
Sent: Wednesday, June 24, 2020 9:04 AM
To: Elder, Phillip D <[REDACTED]@gov>; King, Alexander R <[REDACTED]@gov>
Cc: Piatetski, Jennifer E <[REDACTED]@gov>; Zimonjic, Milica <[REDACTED]@gov>; Salem, Claudia S <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>
Subject: RE: EO Question

+

From: Elder, Phillip D <[REDACTED]@gov>
Sent: Wednesday, June 24, 2020 10:01 AM
To: King, Alexander R <[REDACTED]@gov>
Cc: Piatetski, Jennifer E <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Zimonjic, Milica <[REDACTED]@gov>
Subject: RE: EO Question (b)(6)

Alex,
I stand by my opinion

(b)(5)

Thanks,
Phillip

From: King, Alexander R <[REDACTED]@gov>
Sent: Wednesday, June 24, 2020 8:27 AM (b)(6)
To: Elder, Phillip D <[REDACTED]@gov>

Cc: Piatetski, Jennifer E <[REDACTED]@gov>

(b)(6)

Subject: RE: EO Question

Adding Jenny to this chain for her awareness.

From: King, Alexander R <[REDACTED]@gov>

Sent: Tuesday, June 23, 2020 9:24 PM

(b)(6)

To: Elder, Phillip D <[REDACTED]@gov>

Subject: Re: EO Question

I interpret the EO as [REDACTED]

(b)(5)

Get [Outlook for iOS](#)

From: Elder, Phillip D <[REDACTED]@gov>

(b)(6)

Sent: Tuesday, June 23, 2020 9:07:59 PM

To: King, Alexander R <[REDACTED]@s.gov>

Subject: RE: EO Question

Alex,

(b)(5)

Thanks,
Phillip

From: King, Alexander R <[REDACTED]@gov>

(b)(6)

Sent: Tuesday, June 23, 2020 6:51 PM

To: Elder, Phillip D <[REDACTED]@gov>

Subject: EO Question

Hey Phillip,

I have a question regarding the President's proclamation last night. [REDACTED]

(b)(5)

Thanks,
Alex

[REDACTED] (b)(6)

From: Piateski, Jennifer E
Sent: Wednesday, June 24, 2020 11:06 AM
To: Cox, Robert H; Elder, Phillip D; King, Alexander R
Cc: Zimonjic, Milica; Salem, Claudia S; Choi, Heesun S (Sunny); Bump, Micah N
Subject: RE: EO Question

Hi Phillip (or anyone else who wants to chime in) –

Is there a regulatory requirement [REDACTED]

(b)(5)

Thanks
Jenny

From: Cox, Robert H [REDACTED] v> (b)(6)
Sent: Wednesday, June 24, 2020 10:04 AM
To: Elder, Phillip D [REDACTED] gov>; King, Alexander R [REDACTED] gov>
Cc: Piateski, Jennifer E [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>
Subject: RE: EO Question

+

From: Elder, Phillip D [REDACTED] gov>
Sent: Wednesday, June 24, 2020 10:01 AM
To: King, Alexander R [REDACTED] gov>
Cc: Piateski, Jennifer E [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>
Subject: RE: EO Question (b)(6)

Alex,
I stand by my opinion [REDACTED]

(b)(5)

Thanks,
Phillip

From: King, Alexander R [REDACTED] gov>
Sent: Wednesday, June 24, 2020 8:27 AM (b)(6)
To: Elder, Phillip D [REDACTED] gov>
Cc: Piateski, Jennifer E [REDACTED] gov>
Subject: RE: EO Question

Adding Jenny to this chain for her awareness.

From: King, Alexander R [REDACTED] gov>
Sent: Tuesday, June 23, 2020 9:24 PM
To: Elder, Phillip D [REDACTED] gov>
Subject: Re: EO Question

(b)(6)

I interpret the EO as [REDACTED]

(b)(5)

Get [Outlook for iOS](#)

From: Elder, Phillip D [REDACTED] gov>
Sent: Tuesday, June 23, 2020 9:07:59 PM
To: King, Alexander R [REDACTED] gov>
Subject: RE: EO Question

(b)(6)

Alex,

(b)(5)

Thanks,
Phillip

From: King, Alexander R [REDACTED] gov>
Sent: Tuesday, June 23, 2020 6:51 PM
To: Elder, Phillip D [REDACTED] ov>
Subject: EO Question

(b)(6)

Hey Phillip,

I have a question regarding the President's proclamation last night. [REDACTED]

(b)(5)

Thanks,
Alex

[REDACTED] (b)(6)

From: Elder, Phillip D
Sent: Wednesday, June 24, 2020 11:34 AM
To: Piateski, Jennifer E; Cox, Robert H; King, Alexander R
Cc: Zimonjic, Milica; Salem, Claudia S; Choi, Heesun S (Sunny); Bump, Micah N
Subject: RE: EO Question

Hi Jenny. I'm discussing my recommendation with Phil and Molly and exploring options right now, and we'll get back with you.

Phillip

From: Piateski, Jennifer E [REDACTED] gov> (b)(6)
Sent: Wednesday, June 24, 2020 11:06 AM
To: Cox, Robert H [REDACTED] gov>; Elder, Phillip D [REDACTED] gov>; King, Alexander R [REDACTED] gov>
Cc: Zimonjic, Milica [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>
Subject: RE: EO Question (b)(6)

Hi Phillip (or anyone else who wants to chime in) –

Is there a regulatory requirement [REDACTED]

(b)(5)

Thanks
Jenny

From: Cox, Robert H [REDACTED] gov> (b)(6)
Sent: Wednesday, June 24, 2020 10:04 AM
To: Elder, Phillip D [REDACTED] gov>; King, Alexander R [REDACTED] gov>
Cc: Piateski, Jennifer E [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>
Subject: RE: EO Question

+

From: Elder, Phillip D [REDACTED] gov>
Sent: Wednesday, June 24, 2020 10:01 AM
To: King, Alexander R [REDACTED] gov>
Cc: Piateski, Jennifer E [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov> (b)(6)
Subject: RE: EO Question

Alex,
I stand by my opinion [REDACTED]

(b)(5)

(b)(5)

Thanks,
Phillip

From: King, Alexander R <[REDACTED]@[REDACTED].gov>
Sent: Wednesday, June 24, 2020 8:27 AM
To: Elder, Phillip D <[REDACTED]@[REDACTED].gov>
Cc: Piatetski, Jennifer E <[REDACTED]@[REDACTED].gov>
Subject: RE: EO Question

(b)(6)

Adding Jenny to this chain for her awareness.

From: King, Alexander R <[REDACTED]@[REDACTED].gov>
Sent: Tuesday, June 23, 2020 9:24 PM
To: Elder, Phillip D <[REDACTED]@[REDACTED].gov>
Subject: Re: EO Question

(b)(6)

I interpret the EO as [REDACTED]

(b)(5)

Get [Outlook for iOS](#)

From: Elder, Phillip D <[REDACTED]@[REDACTED].gov>
Sent: Tuesday, June 23, 2020 9:07:59 PM
To: King, Alexander R <[REDACTED]@[REDACTED].gov>
Subject: RE: EO Question

(b)(6)

Alex

(b)(5)

Thanks,
Phillip

From: King, Alexander R <[REDACTED]@[REDACTED].gov>
Sent: Tuesday, June 23, 2020 6:51 PM
To: Elder, Phillip D <[REDACTED]@[REDACTED].gov>
Subject: EO Question

(b)(6)

Hey Phillip,

I have a question regarding the President's proclamation last night. [REDACTED]

(b)(5)

(b)(5)

Thanks,
Alex

From: Cox, Robert H
Sent: Wednesday, June 24, 2020 9:18 AM
To: Elder, Phillip D
Cc: Choi, Heesun S (Sunny); Zimonjic, Milica
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Thanks Phillip.

From: Elder, Phillip D [redacted] gov>
Sent: Wednesday, June 24, 2020 10:15 AM
To: Cox, Robert H [redacted] gov>
Cc: Choi, Heesun S (Sunny) [redacted] gov>; Zimonjic, Milica [redacted] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Thanks Robert. I understand and I've responded.

From: Cox, Robert H [redacted] gov>
Sent: Wednesday, June 24, 2020 8:17 AM
To: Elder, Phillip D [redacted] gov>
Cc: Choi, Heesun S (Sunny) [redacted] gov>; Zimonjic, Milica [redacted] gov>
Subject: FW: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

(b)(6)

Hi Phillip – I responded to a couple of your comments pertaining to sections 2-4 of the proclamation and the impact those have on USCIS adjudications. [redacted]

(b)(5)

From: Choi, Heesun S (Sunny) [redacted] gov>
Sent: Wednesday, June 24, 2020 8:22 AM
To: Parascando, Bridgette H [redacted] gov>; Tellawi, Heba K [redacted] gov>; Elder, Phillip D [redacted] gov>; Kleczek, Marguerite P (Ania) [redacted] gov>; Rollins, Thomas J (Tom) [redacted] gov>; Salem, Claudia S [redacted] gov>; Zimonjic, Milica [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Lundberg, Robert K (Bobby) [redacted] gov>
Cc: Cox, Robert H [redacted] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

(b)(6)

Excellent – thank you Bridgette!

From: Parascando, Bridgette H [redacted] gov>
Sent: Wednesday, June 24, 2020 8:00 AM
To: Choi, Heesun S (Sunny) [redacted] gov>; Tellawi, Heba K [redacted] gov>; Elder, Phillip D [redacted] gov>; Kleczek, Marguerite P (Ania) [redacted] gov>; Rollins, Thomas J (Tom) [redacted] gov>; Salem, Claudia S [redacted] gov>; Zimonjic, Milica [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Lundberg, Robert K (Bobby) [redacted] gov>

(b)(6)

Cc: Cox, Robert H [REDACTED] gov>

Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Good morning,

I completed review and have no additional suggestions. Thanks so much everyone.

Bridgette

From: Choi, Heesun S (Sunny) [REDACTED] gov>

Sent: Wednesday, June 24, 2020 7:16 AM

To: Tellawi, Heba K [REDACTED] gov>; Elder, Phillip D [REDACTED] gov>; Kleczek, Marguerite P (Ania) [REDACTED] gov>; Rollins, Thomas J (Tom) [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Kenny, Allen (Allen) [REDACTED] gov>; Parascando, Bridgette H [REDACTED] gov>; Lundberg, Robert K (Bobby) [REDACTED] gov>

Cc: Cox, Robert H [REDACTED] gov>

Subject: Re: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Thank you Heba and Phillip!

Bridgette and Allen - let me know when you're finished reviewing so I can start cleaning up the document.

Thanks again everyone for your help!

Sunny

From: Tellawi, Heba K [REDACTED] gov>

Sent: Wednesday, June 24, 2020 6:48 AM

To: Elder, Phillip D [REDACTED] gov>; Kleczek, Marguerite P (Ania) [REDACTED] gov>; Rollins, Thomas J (Tom) [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Kenny, Allen (Allen) [REDACTED] gov>; Parascando, Bridgette H [REDACTED] gov>; Lundberg, Robert K (Bobby) [REDACTED] gov>

Cc: Cox, Robert H [REDACTED] gov>

Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

I reviewed as well and agree with Phillip's edits re: biometrics and the rule.

Thanks,

Heba K. Tellawi

Associate Counsel
Regulatory and Verification Law Division
U.S. Citizenship and Immigration Services
[REDACTED] gov

Cell: [REDACTED]

-----Original Message-----

From: Elder, Phillip D [REDACTED] gov>

Sent: Tuesday, June 23, 2020 10:22 PM

To: Kleczek, Marguerite P (Ania) [REDACTED] gov>; Rollins, Thomas J (Tom) [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Kenny, Allen (Allen) [REDACTED] gov>; Parascando, Bridgette H [REDACTED] gov>; Tellawi, Heba K [REDACTED] gov>; Lundberg, Robert K (Bobby) [REDACTED] gov>
Cc: Cox, Robert H [REDACTED] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

I added a few edits and comments and a description of the biometrics rule and 8 CFR 103.16(a) regarding biometrics.

-----Original Message-----

From: Kleczek, Marguerite P (Ania) [REDACTED] gov>
Sent: Tuesday, June 23, 2020 6:13 PM
To: Rollins, Thomas J (Tom) [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Kenny, Allen (Allen) [REDACTED] gov>; Parascando, Bridgette H [REDACTED] gov>; Elder, Phillip D [REDACTED] gov>; Tellawi, Heba K [REDACTED] gov>; Lundberg, Robert K (Bobby) [REDACTED] gov>
Cc: Cox, Robert H [REDACTED] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

I think we are set on the employment authorization piece. What's left is biometrics. Stay tuned for that.

-----Original Message-----

From: Rollins, Thomas J (Tom) [REDACTED] gov>
Sent: Tuesday, June 23, 2020 6:22 PM
To: Kleczek, Marguerite P (Ania) [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Kenny, Allen (Allen) [REDACTED] gov>; Parascando, Bridgette H [REDACTED] gov>; Elder, Phillip D [REDACTED] gov>; Tellawi, Heba K [REDACTED] gov>; Lundberg, Robert K (Bobby) [REDACTED] gov>
Cc: Cox, Robert H [REDACTED] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Ania,

I've completed my review and added a quick summary of the OSUP rule. We just got our final pass back from ICE, so it should be headed back to OGC and then to OMB in the very near future.

Arrests are always a tricky topic - the presumption of innocence and all that...

Thanks,

Tom Rollins

Associate Counsel
DHS, USCIS, OCC, RVLD

(cell)
(ofc)

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-----Original Message-----

From: Kleczek, Marguerite P (Ania) <[REDACTED]@[REDACTED].gov>
Sent: Tuesday, June 23, 2020 6:11 PM
To: Salem, Claudia S <[REDACTED]@[REDACTED].gov>; Zimonjic, Milica <[REDACTED]@[REDACTED].gov>; Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>; Bump, Micah N <[REDACTED]@[REDACTED].gov>; Kenny, Allen (Allen) <[REDACTED]@[REDACTED].gov>; Parascando, Bridgette H <[REDACTED]@[REDACTED].gov>; Elder, Phillip D <[REDACTED]@[REDACTED].gov>; Tellawi, Heba K <[REDACTED]@[REDACTED].gov>; Lundberg, Robert K (Bobby) <[REDACTED]@[REDACTED].gov>; Rollins, Thomas J (Tom) <[REDACTED]@[REDACTED].gov>
Cc: Cox, Robert H <[REDACTED]@[REDACTED].gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Adding Phillip, Heba, Tom and Bobby. [Please let the group know when you're done.]

-----Original Message-----

From: Salem, Claudia S <[REDACTED]@[REDACTED].gov>
Sent: Tuesday, June 23, 2020 6:08 PM
To: Kleczek, Marguerite P (Ania) <[REDACTED]@[REDACTED].gov>; Zimonjic, Milica <[REDACTED]@[REDACTED].gov>; Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>; Bump, Micah N <[REDACTED]@[REDACTED].gov>; Kenny, Allen (Allen) <[REDACTED]@[REDACTED].gov>; Parascando, Bridgette H <[REDACTED]@[REDACTED].gov>
Cc: Cox, Robert H <[REDACTED]@[REDACTED].gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Oh my gosh, you all are wonderful. Tomorrow morning would be GREAT! I'm about to dive into it myself. THANK YOU TEAM OCC!

-----Original Message-----

From: Kleczek, Marguerite P (Ania) <[REDACTED]@[REDACTED].gov>
Sent: Tuesday, June 23, 2020 5:35 PM
To: Zimonjic, Milica <[REDACTED]@[REDACTED].gov>; Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>; Bump, Micah N <[REDACTED]@[REDACTED].gov>; Kenny, Allen (Allen) <[REDACTED]@[REDACTED].gov>; Parascando, Bridgette H <[REDACTED]@[REDACTED].gov>; Salem, Claudia S <[REDACTED]@[REDACTED].gov>
Cc: Cox, Robert H <[REDACTED]@[REDACTED].gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

And I'm sending it to Tom and Bobby too b/c they were working on rules and policy that dealt with EADs and people with negative factors.

Claudia--When did you want to wrap this up; would tomorrow morning work? Phillip said he can't get to it before dinnertime and I just sent it to Tom and Bobby.

-----Original Message-----

From: Kleczek, Marguerite P (Ania)
Sent: Tuesday, June 23, 2020 5:24 PM

To: Zimonjic, Milica [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Kenny, Allen (Allen) [REDACTED] gov>; Parascando, Bridgette H [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>
 Cc: Cox, Robert H [REDACTED] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Yes, Phillip and Heba.

-----Original Message-----

From: Zimonjic, Milica [REDACTED] gov>
 Sent: Tuesday, June 23, 2020 5:19 PM
 To: Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Kenny, Allen (Allen) [REDACTED] gov>; Parascando, Bridgette H [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>
 Cc: Cox, Robert H [REDACTED] gov>; Kleczek, Marguerite P (Ania) [REDACTED] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

I added a few edits, including editorial notes that I hope will be helpful to leadership. Ania, should Phillip look at the biometric piece to see if he has any thoughts about it? Robert added an editorial note about it.

-----Original Message-----

From: Choi, Heesun S (Sunny) [REDACTED] gov>
 Sent: Tuesday, June 23, 2020 3:35 PM
 To: Bump, Micah N [REDACTED] gov>; Kenny, Allen (Allen) [REDACTED] gov>; Parascando, Bridgette H [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>
 Cc: Cox, Robert H [REDACTED] gov>; Kleczek, Marguerite P (Ania) [REDACTED] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Thank you Micah! Adding Millie and Ania.

-----Original Message-----

From: Bump, Micah N [REDACTED] gov>
 Sent: Tuesday, June 23, 2020 3:33 PM
 To: Kenny, Allen (Allen) [REDACTED] gov>; Parascando, Bridgette H [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>
 Cc: Choi, Heesun S (Sunny) [REDACTED] gov>; Cox, Robert H [REDACTED] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

(b)(6)

Hi All,

I dropped a section by section summary into the document that Claudia created:

<https://ecn.uscis.dhs.gov/team/occ/hqteams/adjudications/Document%20Library/Exec%20Order%20Continuation%20of%20Proclamation%2010014%20June%2022%202020.docx?web=1>

Thanks,

Micah

-----Original Message-----

From: Kenny, Allen (Allen) <[REDACTED]@[REDACTED].gov>

Sent: Tuesday, June 23, 2020 1:57 PM

To: Parascando, Bridgette H <[REDACTED]@[REDACTED].gov>; Salem, Claudia S

<[REDACTED]@[REDACTED].gov>; Bump, Micah N <[REDACTED]@[REDACTED].gov>

Cc: Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>; Cox, Robert H <[REDACTED]@[REDACTED].gov>

Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

The link opened for me, but it was a blank page.

-----Original Message-----

From: Parascando, Bridgette H <[REDACTED]@[REDACTED].gov>

Sent: Tuesday, June 23, 2020 12:46 PM

To: Salem, Claudia S <[REDACTED]@[REDACTED].gov>; Bump, Micah N <[REDACTED]@[REDACTED].gov>

Cc: Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>; Cox, Robert H <[REDACTED]@[REDACTED].gov>; Kenny, Allen (Allen) <[REDACTED]@[REDACTED].gov>

Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Thanks Micah. The link wouldn't open, but I can try again in a little while.

Bridgette

-----Original Message-----

From: Salem, Claudia S <[REDACTED]@[REDACTED].gov>

Sent: Tuesday, June 23, 2020 1:40 PM

To: Bump, Micah N <[REDACTED]@[REDACTED].gov>; Parascando, Bridgette H <[REDACTED]@[REDACTED].gov>

Cc: Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>; Cox, Robert H <[REDACTED]@[REDACTED].gov>

Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Haven't written a darn thing yet (multitasking) but Micah putting something together. Bridgette do you get access via bottom link for your notes? Micah graciously offered to get this started.

-----Original Message-----

From: Salem, Claudia S

Sent: Tuesday, June 23, 2020 1:38 PM

To: Bump, Micah N <[REDACTED]@[REDACTED].gov>

Cc: Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>

Subject: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

(b)(6)

<https://ecn.uscis.dhs.gov/team/occ/hqteams/adjudications/Document%20Library/Exec%20Order%20Continuation%20of%20Proclamation%2010014%20June%2022%202020.docx?web=1>

From: Salem, Claudia S
Sent: Wednesday, June 24, 2020 11:43 AM
To: Cox, Robert H
Cc: Choi, Heesun S (Sunny); Bump, Micah N
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx
Attachments: Exec Order Continuation of Proclamation 10014 June 24 2020-css

Sorry I've been on the EB-5 call. This is what I sent so I don't think anything resolved. Sorry if I sent them something prematurely but I didn't want them not getting anything so I basically accepted all changes and rushed it with indication discussions ongoing.

From: Cox, Robert H [redacted] gov>
Sent: Wednesday, June 24, 2020 12:02 PM
To: Salem, Claudia [redacted] gov>
Cc: Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx
Importance: High

(b)(6)

Hi C – did this go to AM and Molly yet? Just following up because I think

(b)(5)

From: Salem, Claudia S [redacted] gov>
Sent: Wednesday, June 24, 2020 10:39 AM
To: Choi, Heesun S (Sunny) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Tellawi, Heba K [redacted] gov>; Elder, Phillip D [redacted] gov>; Kleczek, Marguerite P (Ania) [redacted] gov>; Rollins, Thomas J (Tom) [redacted] gov>; Zimonjic, Milica [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Lundberg, Robert K (Bobby) [redacted] gov>
Cc: Cox, Robert H [redacted] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

(b)(6)

(b)(6)

Hi folks,

I'm cleaning up the document now and I'm going to sent it to AM and Molly and I'll copy chiefs and deputies so they don't see a million people as POCs.

From: Choi, Heesun S (Sunny) [REDACTED] gov>
Sent: Wednesday, June 24, 2020 8:22 AM
To: Parascando, Bridgette H [REDACTED] gov>; Tellawi, Heba K [REDACTED] gov>; Elder, Phillip D [REDACTED] gov>; Kleczek, Marguerite P (Ania) [REDACTED] gov>; Rollins, Thomas J (Tom) [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Kenny, Allen (Allen) [REDACTED] gov>; Lundberg, Robert K (Bobby) [REDACTED] gov>
Cc: Cox, Robert H [REDACTED] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Excellent – thank you Bridgette!

From: Parascando, Bridgette H [REDACTED] gov>
Sent: Wednesday, June 24, 2020 8:00 AM
To: Choi, Heesun S (Sunny) [REDACTED] gov>; Tellawi, Heba K [REDACTED] gov>; Elder, Phillip D [REDACTED] gov>; Kleczek, Marguerite P (Ania) [REDACTED] gov>; Rollins, Thomas J (Tom) [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Kenny, Allen (Allen) [REDACTED] gov>; Lundberg, Robert K (Bobby) [REDACTED] gov>
Cc: Cox, Robert H [REDACTED] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Good morning,

I completed review and have no additional suggestions. Thanks so much everyone.

Bridgette

From: Choi, Heesun S (Sunny) [REDACTED] gov>
Sent: Wednesday, June 24, 2020 7:16 AM
To: Tellawi, Heba K [REDACTED] gov>; Elder, Phillip D [REDACTED] gov>; Kleczek, Marguerite P (Ania) [REDACTED] gov>; Rollins, Thomas J (Tom) [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Kenny, Allen (Allen) [REDACTED] gov>; Parascando, Bridgette H [REDACTED] gov>; Lundberg, Robert K (Bobby) [REDACTED] gov>
Cc: Cox, Robert H [REDACTED] gov>
Subject: Re: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Thank you Heba and Phillip!

Bridgette and Allen - let me know when you're finished reviewing so I can start cleaning up the document.

Thanks again everyone for your help!
 Sunny

From: Tellawi, Heba K [REDACTED] gov>
Sent: Wednesday, June 24, 2020 6:48 AM
To: Elder, Phillip D [REDACTED] gov>; Kleczek, Marguerite P (Ania) [REDACTED] gov>; Rollins, Thomas J (Tom) [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Zimonjic, [REDACTED] gov>

Milica [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Lundberg, Robert K (Bobby) [redacted] gov>
Cc: Cox, Robert H [redacted] gov>

Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

I reviewed as well and agree with Phillip's edits re: biometrics and the rule.

Thanks,

Heba K. Tellawi

Associate Counsel
Regulatory and Verification Law Division
U.S. Citizenship and Immigration Services
[redacted] gov
Cell [redacted]

-----Original Message-----

From: Elder, Phillip D [redacted] gov>
Sent: Tuesday, June 23, 2020 10:22 PM
To: Kleczek, Marguerite P (Ania) [redacted] gov>; Rollins, Thomas J (Tom) [redacted] gov>; Salem, Claudia S [redacted] gov>; Zimonjic, Milica [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Tellawi, Heba K [redacted] gov>; Lundberg, Robert K (Bobby) [redacted] gov>
Cc: Cox, Robert H [redacted] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

I added a few edits and comments and a description of the biometrics rule and 8 CFR 103.16(a) regarding biometrics.

-----Original Message-----

From: Kleczek, Marguerite P (Ania) [redacted] gov>
Sent: Tuesday, June 23, 2020 6:13 PM
To: Rollins, Thomas J (Tom) [redacted] gov>; Salem, Claudia S [redacted] gov>; Zimonjic, Milica [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Elder, Phillip D [redacted] gov>; Tellawi, Heba K [redacted] gov>; Lundberg, Robert K (Bobby) [redacted] gov>
Cc: Cox, Robert H [redacted] gov>
Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

I think we are set on the employment authorization piece. What's left is biometrics. Stay tuned for that.

-----Original Message-----

From: Rollins, Thomas J (Tom) [redacted] gov>
Sent: Tuesday, June 23, 2020 6:22 PM
To: Kleczek, Marguerite P (Ania) [redacted] gov>; Salem, Claudia S [redacted] gov>; Zimonjic, Milica [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Elder, Phillip D [redacted] gov>

[redacted] gov>; Tellawi, Heba K [redacted] gov>; Lundberg, Robert K (Bobby)
 [redacted] gov>
 Cc: Cox, Robert H [redacted] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Ania,

I've completed my review and added a quick summary of the OSUP rule. We just got our final pass back from ICE, so it should be headed back to OGC and then to OMB in the very near future.

Arrests are always a tricky topic - the presumption of innocence and all that...

Thanks,

Tom Rollins

Associate Counsel
 DHS, USCIS, OCC, RVLD

[redacted] (cell)
 [redacted] (ofc)

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-----Original Message-----

From: Kleczek, Marguerite P (Ania) [redacted] gov>
 Sent: Tuesday, June 23, 2020 6:11 PM
 To: Salem, Claudia S [redacted] gov>; Zimonjic, Milica [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Elder, Phillip D [redacted] gov>; Tellawi, Heba K [redacted] gov>; Lundberg, Robert K (Bobby) [redacted] gov>; Rollins, Thomas J (Tom) [redacted] gov>
 Cc: Cox, Robert H [redacted] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Adding Phillip, Heba, Tom and Bobby. [Please let the group know when you're done.]

-----Original Message-----

From: Salem, Claudia S [redacted] gov>
 Sent: Tuesday, June 23, 2020 6:08 PM
 To: Kleczek, Marguerite P (Ania) [redacted] gov>; Zimonjic, Milica [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>
 Cc: Cox, Robert H [redacted] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Oh my gosh, you all are wonderful. Tomorrow morning would be GREAT! I'm about to dive into it myself. THANK YOU

TEAM OCC!

-----Original Message-----

From: Kleczek, Marguerite P (Ania) [redacted] gov>
 Sent: Tuesday, June 23, 2020 5:35 PM
 To: Zimonjic, Milica [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Salem, Claudia S [redacted] gov>
 Cc: Cox, Robert H [redacted] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

And I'm sending it to Tom and Bobby too b/c they were working on rules and policy that dealt with EADs and people with negative factors.

Claudia--When did you want to wrap this up; would tomorrow morning work? Phillip said he can't get to it before dinnertime and I just sent it to Tom and Bobby.

-----Original Message-----

From: Kleczek, Marguerite P (Ania)
 Sent: Tuesday, June 23, 2020 5:24 PM
 To: Zimonjic, Milica [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Salem, Claudia S [redacted] gov>
 Cc: Cox, Robert H [redacted] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Yes, Phillip and Heba.

-----Original Message-----

From: Zimonjic, Milica [redacted] gov>
 Sent: Tuesday, June 23, 2020 5:19 PM
 To: Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Salem, Claudia S [redacted] gov>
 Cc: Cox, Robert H [redacted] gov>; Kleczek, Marguerite P (Ania) [redacted] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

I added a few edits, including editorial notes that I hope will be helpful to leadership. Ania, should Phillip look at the biometric piece to see if he has any thoughts about it? Robert added an editorial note about it.

-----Original Message-----

From: Choi, Heesun S (Sunny) [redacted] gov>
 Sent: Tuesday, June 23, 2020 3:35 PM
 To: Bump, Micah N [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Salem, Claudia S [redacted] gov>; Zimonjic, Milica [redacted] gov>
 Cc: Cox, Robert H [redacted] gov>; Kleczek, Marguerite P (Ania) [redacted] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Thank you Micah! Adding Millie and Ania.

-----Original Message-----

From: Bump, Micah N [redacted] gov>
 Sent: Tuesday, June 23, 2020 3:33 PM
 To: Kenny, Allen (Allen) [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Salem, Claudia S [redacted] gov>
 Cc: Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Hi All,

I dropped a section by section summary into the document that Claudia created:

<https://ecn.uscis.dhs.gov/team/occ/hqteams/adjudications/Document%20Library/Exec%20Order%20Continuation%20of%20Proclamation%2010014%20%20June%2022%202020.docx?web=1>

Thanks,

Micah

-----Original Message-----

From: Kenny, Allen (Allen) [redacted] gov>
 Sent: Tuesday, June 23, 2020 1:57 PM
 To: Parascando, Bridgette H [redacted] gov>; Salem, Claudia S [redacted] gov>; Bump, Micah N [redacted] gov>
 Cc: Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

The link opened for me, but it was a blank page.

-----Original Message-----

From: Parascando, Bridgette H [redacted] gov>
 Sent: Tuesday, June 23, 2020 12:46 PM
 To: Salem, Claudia S [redacted] gov>; Bump, Micah N [redacted] gov>
 Cc: Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>; Kenny, Allen (Allen) [redacted] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Thanks Micah. The link wouldn't open, but I can try again in a little while.

Bridgette

-----Original Message-----

From: Salem, Claudia S [redacted] gov>
 Sent: Tuesday, June 23, 2020 1:40 PM
 To: Bump, Micah N [redacted] gov>; Parascando, Bridgette H [redacted] gov>
 Cc: Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>
 Subject: RE: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

Haven't written a darn thing yet (multitasking) but Micah putting something together. Bridgette do you get access via bottom link for your notes? Micah graciously offered to get this started.

-----Original Message-----

From: Salem, Claudia S

Sent: Tuesday, June 23, 2020 1:38 PM

To: Bump, Micah N <[REDACTED]@ov>

Cc: Choi, Heesun S (Sunny) <[REDACTED]@ov>

Subject: Exec Order Continuation of Proclamation 10014 June 22 2020.docx

(b)(6)

<https://ecn.uscis.dhs.gov/team/occ/hqteams/adjudications/Document%20Library/Exec%20Order%20Continuation%20of%20Proclamation%2010014%20June%2022%202020.docx?web=1>

From: Salem, Claudia S
Sent: Wednesday, June 24, 2020 10:26 AM
To: Groom, Molly M; Highsmith, AnnMarie R; Busch, Philip B
Cc: Kleczek, Marguerite P (Ania); Parascando, Bridgette H; Choi, Heesun S (Sunny)
Subject: Exec Order Continuation of Proclamation 10014 June 24 2020-css
Attachments: Exec Order Continuation of Proclamation 10014 June 24 2020-css.docx

Importance: High

Hi,

As promised yesterday, a very high level overview of the EO and some issues raised as a result. We have begun to assist the client in answering questions and will likely need to formulate consistent OCC guidance so we (ALD, SCLD, RVLD) coordinated on the attached. There are a few outstanding interpretation questions that we are attempting to resolve or at least bring up for resolution to you.

Most notably

(b)(5)

Several people were involved in the review of the EO and in drafting a separate document on the ECN but I limited circulation of this "clean" document so that you can reach out to us if you like and we can parse out accordingly.

Thank you,
Claudia Salem
Chief, Adjudications Law Division
Office of Chief Counsel, USCIS

cell

(b)(6)

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Summary

Effective Date: Goes into effect on June 24, 2020 at 12:01 AM ET. Remains in effect through December 31, 2020. Subject to continuations or modifications as deemed necessary.

Authority: INA 212(f) and 215(a) and 3 U.S.C. 301

Section 1 - Continuation of Proclamation 10014:

- Extends, effective immediately, Presidential Proclamation 10014 issued on April 22, 2020 to December 31, 2020.
- Within 30 days of June 24, 2020, and every 60 days thereafter while in effect, DHS is to recommend modifications in consultation with DOS and DOL.

Section 2 - Suspension and Limitation on Entry:

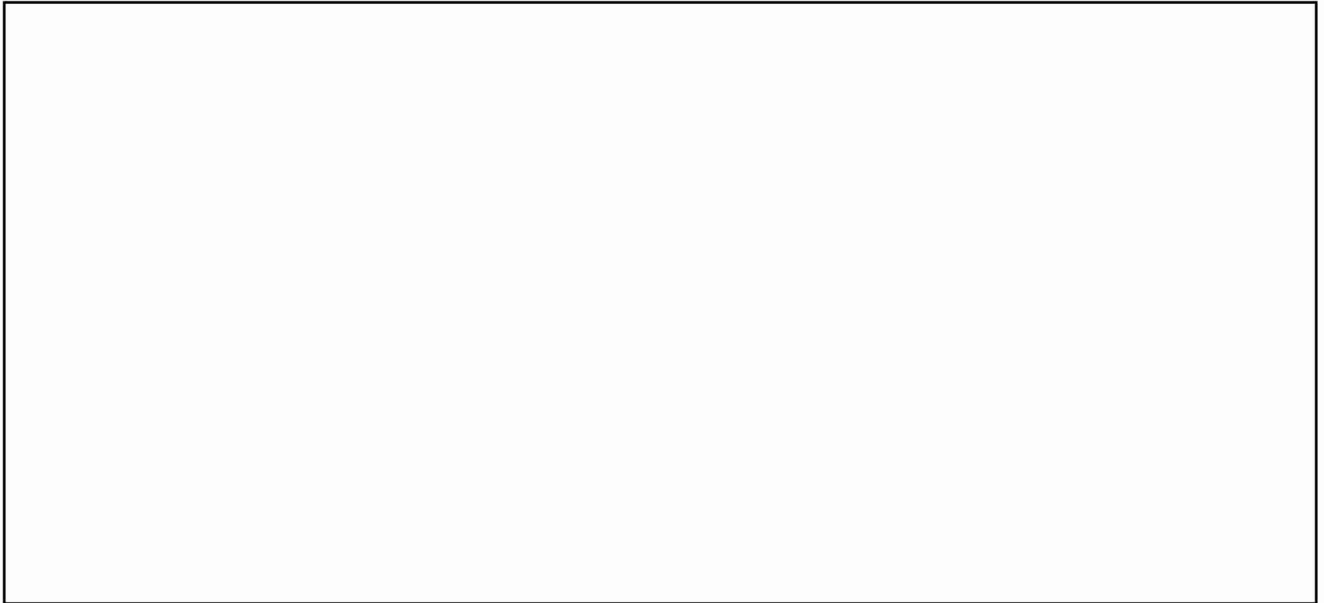
- Unless exempt under Section 3(b), suspends visa issuance and limits entry for those seeking entry pursuant to a(n):
 - H-1B visa and any alien accompanying or following to join;
 - H-2B visa and any alien accompanying or following to join;
 - J visa, to the extent the foreign national is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join them; and
 - L visa, and any alien accompanying or following to join them.

Section 3 - Scope of Suspension and Limitation on Entry:

- The suspension and limitation on entry pursuant to section 2 only applies to an alien who is:
 - Outside the United States on the effective date of the Proclamation;
 - Does not have a nonimmigrant visa that is valid on the effective date of the Proclamation; and
 - Does not have an official travel document other than a visa valid on the effective date of the Proclamation or issued thereafter permitting the alien to be admitted to the United States

(b)(5)

Editorial (OCC staff) note:



Section 4 - Implementation and Enforcement:

- The consular officer has discretion to determine if an alien is within one of the exempted categories in Section 3(b) (e.g. lawful permanent resident, spouse or child of U.S. citizen, etc.).
- In determining the Section 3 “national interest” exemption, the Secretaries of State, Labor, and Homeland Security must determine standards for those to whom such an exemption would be available, including any aliens who:
 - are critical to the defense, law enforcement, diplomacy, or national security of the United States;
 - are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized;
 - are involved with the provision of medical research at U.S. facilities to help the United States combat COVID-19;
 - are necessary to facilitate the immediate and continued economic recovery of the United States; or
 - are children who would age out of eligibility for a visa because of this proclamation or Proclamation 10014.
- Individuals who circumvent the application of the Proclamation through fraud, willful misrepresentation or illegal entry will be prioritized for removal.
- Asylum seekers are not included in the ban. The Proclamation states that it does not limit the ability of individuals to apply for asylum, refugee status, withholding of removal or protection under the Convention Against Torture.

(b)(5)

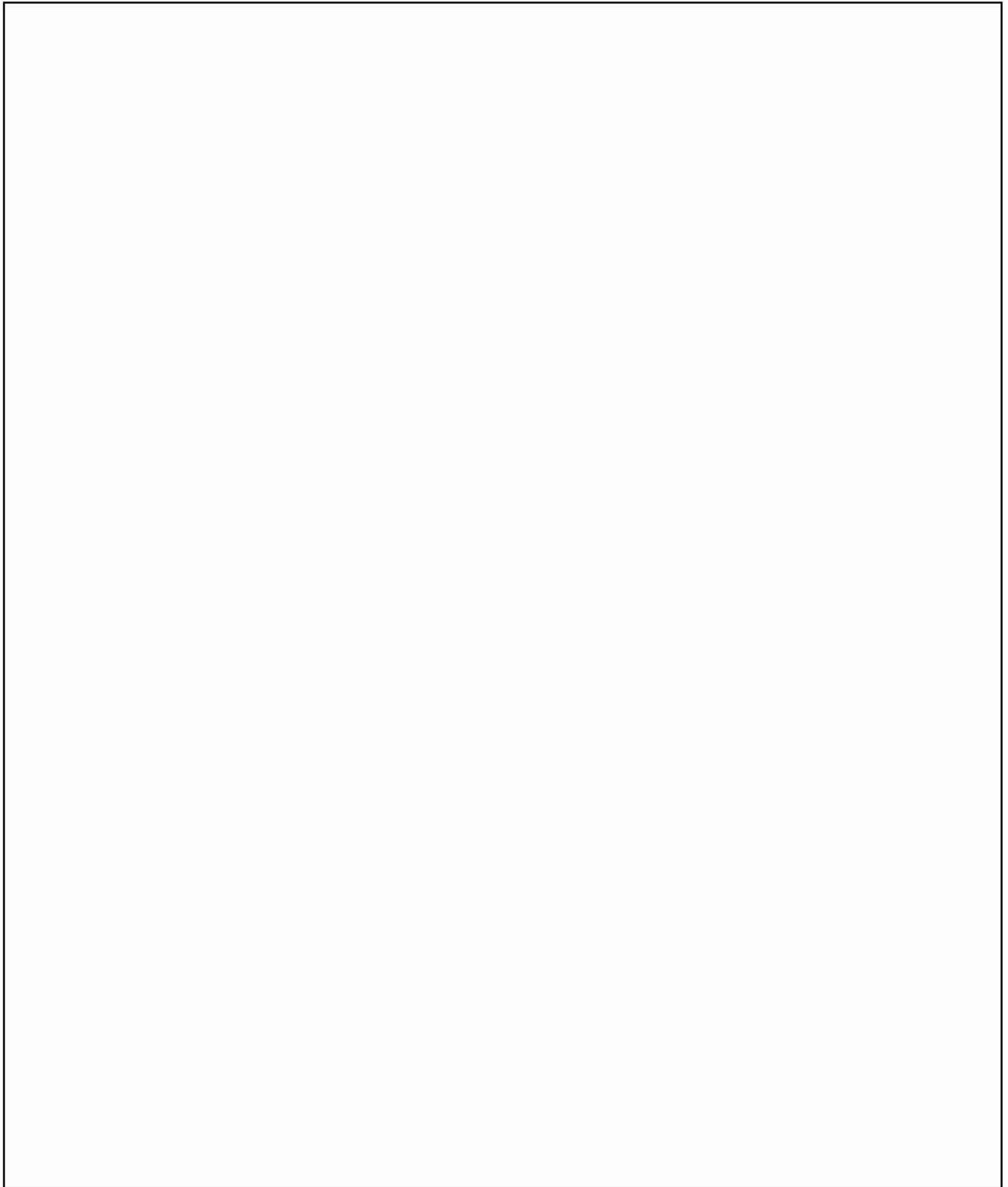
Editorial (OCC staff) note

Section 5 - Additional Measures:

- The Secretary of Health and Human Services will provide guidance to the Secretaries of State and Homeland Security concerning measures that will reduce the risk of those seeking admission to the United States introducing or spreading COVID-19 within the country. It is our understanding that this means individuals will be subject to a COVID-19 test before arrival.
- DOL, in consultation with DHS, should, as soon as practicable, issue regulations or take additional actions to ensure that those who have already been admitted, or are seeking admission, on an EB-2 immigrant visa, EB-3 immigrant visa, or H-1B nonimmigrant visa do not limit opportunity for U.S. workers. DOL should also undertake Secretary-initiated investigations, as appropriate, under its INA 212(n)(2)(G)(i) authority.
- DHS shall:
 - Ensure, in coordination with DOS, that an individual will not be able to apply for a visa, admission to the United States or other benefit until they have completed biometrics, including photographs, signatures, and fingerprints;
 - Take steps, consistent with law, to prevent certain individuals who have final orders of removal; who are inadmissible or deportable from the U.S.; have been arrested for, charged with or convicted of a criminal offense, from “obtaining eligibility” to work in the United States; and
 - Consider issuing regulations or other actions concerning the “efficient allocation” of visas under INA 214(g)(3)(pertains to H-1B and H-2B caps) and ensuring that the presence of H-1B workers in the United States does not negatively affect U.S. workers.

(b)(5)

Editorial (OCC staff) note:



Section 6 - Termination:

- Proclamation goes into effect on June 24, 2020 at 12:01 AM ET. Remains in effect through December 31, 2020. Subject to continuations or modifications as deemed

necessary.

Section 7 - Effective Date:

- Except as provided in section 1, proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020. Section 1 is effective immediately.

Section 8 – Severability:

- If any provision, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of the Proclamation shall not be affected.

Section 9 – General Provisions:

- Nothing in the proclamation shall be construed to impair or otherwise affect:
 - the authority granted by law to an executive department or agency, or
 - the head thereof; or the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.
- The proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.
- The proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

From: Cox, Robert H
Sent: Wednesday, July 29, 2020 7:51 AM
To: Choi, Heesun S (Sunny)
Cc: Salem, Claudia S; Bump, Micah N
Subject: Re: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

(b)(5)

On Jul 29, 2020, at 8:24 AM, Doumani, Stephanie M <[REDACTED] gov> wrote:

(b)(6)

Hi Sunny,

Not sure if anyone else has responded yet, but I don't believe

(b)(5)

Thanks very much,
Stephanie

Stephanie Doumani
Acting Senior Advisor
Service Center Operations
[REDACTED] Desk
[REDACTED] Cell

(b)(6)

From: Choi, Heesun S (Sunny) <[REDACTED] gov>
Sent: Tuesday, July 28, 2020 7:58 PM
To: Fortes, Michael J <[REDACTED] gov>; Collins, Gregory A <[REDACTED] gov>; Kane, Daniel J <[REDACTED] gov>; Nicklaw, Nicole C <[REDACTED] gov>; Doumani, Stephanie M <[REDACTED] gov>
Cc: Salem, Claudia S <[REDACTED] gov>; Cox, Robert H <[REDACTED] gov>; Bump, Micah N <[REDACTED] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

(b)(6)

Good evening SCOPS. Quick question for you. Did you issue guidance to the centers in implementing this EO? DHS and DOJ are asking as it relates to the Gomez et al vs Trump case.

Thanks for your help,
Sunny

From: Fortes, Michael J <[REDACTED]@[REDACTED].gov>
Sent: Wednesday, July 1, 2020 11:34 AM
To: Nimick, Charles L (Locky) <[REDACTED]@[REDACTED].gov>; Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>
Cc: Collins, Gregory A <[REDACTED]@[REDACTED].gov>; Nicklaw, Nicole C <[REDACTED]@[REDACTED].gov>; Kane, Daniel J <[REDACTED]@[REDACTED].gov>; Doumani, Stephanie M <[REDACTED]@[REDACTED].gov>; Salem, Claudia S <[REDACTED]@[REDACTED].gov>; Cox, Robert H <[REDACTED]@[REDACTED].gov>; Bump, Micah N <[REDACTED]@[REDACTED].gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Thank you for considering these questions Sunny and Locky. We'll let you know if there are any follow-up questions.

-Mike

Mike Fortes
USCIS Service Center Operations
EPIC Branch Chief
Cell: [REDACTED]

From: Nimick, Charles L (Locky) <[REDACTED]@[REDACTED].gov>
Sent: Wednesday, July 1, 2020 11:19 AM
To: Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>; Fortes, Michael J <[REDACTED]@[REDACTED].gov>
Cc: Collins, Gregory A <[REDACTED]@[REDACTED].gov>; Nicklaw, Nicole C <[REDACTED]@[REDACTED].gov>; Kane, Daniel J <[REDACTED]@[REDACTED].gov>; Doumani, Stephanie M <[REDACTED]@[REDACTED].gov>; Salem, Claudia S <[REDACTED]@[REDACTED].gov>; Cox, Robert H <[REDACTED]@[REDACTED].gov>; Bump, Micah N <[REDACTED]@[REDACTED].gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

On leave, so apologies for the delayed reply. We had one suggested edit and note that the 6/29 amendment to the EO may be worth mentioning/incorporating as appropriate.

Thanks, Locky

Charles (Locky) Nimick
Chief, Business and Foreign Worker Division (BFWD)
USCIS Office of Policy and Strategy (OP&S)
[REDACTED]@[REDACTED].gov
Office: [REDACTED]
Telework: [REDACTED]

From: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@[REDACTED].gov>
Sent: Thursday, June 25, 2020 4:38 PM
To: Fortes, Michael J [REDACTED] <[REDACTED]@[REDACTED].gov>; Nimick, Charles L (Locky) [REDACTED] <[REDACTED]@[REDACTED].gov>
Cc: Collins, Gregory A [REDACTED] <[REDACTED]@[REDACTED].gov>; Nicklaw, Nicole C [REDACTED] <[REDACTED]@[REDACTED].gov>; Kane, Daniel J [REDACTED] <[REDACTED]@[REDACTED].gov>; Doumani, Stephanie M [REDACTED] <[REDACTED]@[REDACTED].gov>; Salem, Claudia S [REDACTED] <[REDACTED]@[REDACTED].gov>; Cox, Robert H [REDACTED] <[REDACTED]@[REDACTED].gov>; Bump, Micah N [REDACTED] <[REDACTED]@[REDACTED].gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hi Mike and Locky – attached please find OCC's suggested responses. Let us know if and when a meeting will be scheduled to discuss these responses.

Thank you,
 Sunny

Sunny Choi
 Deputy, Adjudications Law Division
 DHS/USCIS/Office of the Chief Counsel

[REDACTED] (Direct)
 [REDACTED] (Cell)
 [REDACTED] (Fax)
 [REDACTED]@[REDACTED].gov

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From: Fortes, Michael J [REDACTED] <[REDACTED]@[REDACTED].gov>
Sent: Wednesday, June 24, 2020 10:20 AM
To: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@[REDACTED].gov>; Nimick, Charles L (Locky) [REDACTED] <[REDACTED]@[REDACTED].gov>
Cc: Collins, Gregory A [REDACTED] <[REDACTED]@[REDACTED].gov>; Nicklaw, Nicole C [REDACTED] <[REDACTED]@[REDACTED].gov>; Kane, Daniel J [REDACTED] <[REDACTED]@[REDACTED].gov>; Doumani, Stephanie M [REDACTED] <[REDACTED]@[REDACTED].gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hello OPS and OCC,

(b)(6)

Attached is a list of questions for OPS and OCC consideration, which are related to the recent presidential proclamation. Many of these are key issues for determining how this should be implemented across all the centers. If you can please consult with your teams, we'd appreciate it. We'll stay tuned for written response, or perhaps a meeting might be required for additional consultation.

Locky, would it be possible for your team to post this on the policy ECN and share with OCC so there can be joint collaboration?

Thank you both,

-Mike

Mike Fortes
USCIS Service Center Operations
Acting Adjudications Division Chief
Cell: [REDACTED]

From: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@[REDACTED].gov>
Sent: Tuesday, June 23, 2020 11:28 AM
To: Fortes, Michael J [REDACTED] <[REDACTED]@[REDACTED].gov>; Nimick, Charles L (Locky) [REDACTED] <[REDACTED]@[REDACTED].gov>
Cc: Collins, Gregory A [REDACTED] <[REDACTED]@[REDACTED].gov>; Nicklaw, Nicole C [REDACTED] <[REDACTED]@[REDACTED].gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Sounds good – we'll take a look.

Sunny

From: Fortes, Michael J [REDACTED] <[REDACTED]@[REDACTED].gov>
Sent: Tuesday, June 23, 2020 11:26 AM
To: Nimick, Charles L (Locky) <[REDACTED]@[REDACTED].gov>; Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@[REDACTED].gov>
Cc: Collins, Gregory A [REDACTED] <[REDACTED]@[REDACTED].gov>; Nicklaw, Nicole C [REDACTED] <[REDACTED]@[REDACTED].gov>
Subject: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hello Locky and Sunny,

The SCOPS employment branches are collecting both policy and legal questions for your consideration, from both HQ SCOPS and the Service Centers, related to the June 22, 2020 executive order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market." We will forward these questions to you once they are consolidated.

Thank you for your help with this.

-Mike

Mike Fortes
USCIS Service Center Operations
Acting Adjudications Division Chief
Cell [REDACTED]

[REDACTED]

From: Choi, Heesun S (Sunny)
Sent: Wednesday, July 29, 2020 7:30 AM
To: Doumani, Stephanie M; Fortes, Michael J; Collins, Gregory A; Kane, Daniel J; Nicklaw, Nicole C
Cc: Salem, Claudia S; Cox, Robert H; Bump, Micah N
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hi Stephanie – thank you for your response. That's what we initially told DHS but wanted to confirm that was absolutely the case.

Hope you all are well and hanging in there!

Sunny

Sunny Choi
Deputy, Adjudications Law Division
DHS/USCIS/Office of the Chief Counsel

[REDACTED] (Direct)

[REDACTED] (Cell)

[REDACTED] (Fax)

[REDACTED] gov

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From: Doumani, Stephanie M [REDACTED] gov>
Sent: Wednesday, July 29, 2020 8:24 AM
To: Choi, Heesun S (Sunny) [REDACTED] gov>; Fortes, Michael J [REDACTED] gov>; Collins, Gregory A [REDACTED] gov>; Kane, Daniel J [REDACTED] gov>; Nicklaw, Nicole C [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Bump, Micah N [REDACTED] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

(b)(6)

Hi Sunny,

Not sure if anyone else has responded yet, but I don't believe [REDACTED]

[REDACTED] (b)(5)

Thanks very much,
Stephanie

Stephanie Doumani
Acting Senior Advisor

Service Center Operations

Desk

Cell

From: Choi, Heesun S (Sunny) [redacted] gov>
Sent: Tuesday, July 28, 2020 7:58 PM
To: Fortes, Michael J [redacted] gov>; Collins, Gregory A [redacted] gov>; Kane, Daniel J [redacted] gov>; Nicklaw, Nicole C [redacted] gov>; Doumani, Stephanie M [redacted] gov>
Cc: Salem, Claudia S [redacted] gov>; Cox, Robert H [redacted] gov>; Bump, Micah N [redacted] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Good evening SCOPS. Quick question for you. Did you issue guidance to the centers in implementing this EO? DHS and DOJ are asking as it relates to the Gomez et al vs Trump case.

Thanks for your help,
 Sunny

From: Fortes, Michael J [redacted] gov>
Sent: Wednesday, July 1, 2020 11:34 AM
To: Nimick, Charles L (Locky) [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>
Cc: Collins, Gregory A [redacted] gov>; Nicklaw, Nicole C [redacted] gov>; Kane, Daniel J [redacted] gov>; Doumani, Stephanie M [redacted] gov>; Salem, Claudia S [redacted] gov>; Cox, Robert H [redacted] gov>; Bump, Micah N [redacted] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Thank you for considering these questions Sunny and Locky. We'll let you know if there are any follow-up questions.

-Mike

Mike Fortes
 USCIS Service Center Operations
 EPIC Branch Chief
 Cell: [redacted]

From: Nimick, Charles L (Locky) [redacted] gov>
Sent: Wednesday, July 1, 2020 11:19 AM
To: Choi, Heesun S (Sunny) [redacted] gov>; Fortes, Michael J [redacted] gov>
Cc: Collins, Gregory A [redacted] gov>; Nicklaw, Nicole C [redacted] gov>; Kane, Daniel J [redacted] gov>; Doumani, Stephanie M [redacted] gov>; Salem, Claudia S [redacted] gov>; Cox, Robert H [redacted] gov>; Bump, Micah N [redacted] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

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Thanks, Locky

Charles (Locky) Nimick
Chief, Business and Foreign Worker Division (BFWD)
USCIS Office of Policy and Strategy (OP&S)

[redacted]ov
Office: [redacted]
Telework: [redacted]

From: Choi, Heesun S (Sunny) [redacted]gov>
Sent: Thursday, June 25, 2020 4:38 PM
To: Fortes, Michael J <[redacted]gov>; Nimick, Charles L (Locky) [redacted]gov>
Cc: Collins, Gregory A [redacted]gov>; Nicklaw, Nicole C [redacted]gov>; Kane, Daniel J [redacted]gov>; Doumani, Stephanie M [redacted]gov>; Salem, Claudia S [redacted]gov>; Cox, Robert H [redacted]gov>; Bump, Micah N [redacted]gov>

Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hi Mike and Locky – attached please find OCC's suggested responses. Let us know if and when a meeting will be scheduled to discuss these responses.

Thank you,
Sunny

Sunny Choi
Deputy, Adjudications Law Division
DHS/USCIS/Office of the Chief Counsel

[redacted] (Direct)
[redacted] (Cell)
[redacted] (Fax)
[redacted]gov

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Locky, would it be possible for your team to post this on the policy ECN and share with OCC so there can be joint collaboration?

Thank you both,

-Mike

Mike Fortes
USCIS Service Center Operations
Acting Adjudications Division Chief
Cell: [REDACTED]

From: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@[REDACTED].gov>
Sent: Tuesday, June 23, 2020 11:28 AM
To: Fortes, Michael J [REDACTED] <[REDACTED]@[REDACTED].gov>; Nimick, Charles L (Locky) [REDACTED] <[REDACTED]@[REDACTED].gov>
Cc: Collins, Gregory A [REDACTED] <[REDACTED]@[REDACTED].gov>; Nicklaw, Nicole C [REDACTED] <[REDACTED]@[REDACTED].gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

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Sunny

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Subject: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hello Locky and Sunny,

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Mike Fortes
USCIS Service Center Operations
Acting Adjudications Division Chief
Cell: [REDACTED]

[REDACTED]

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Sent: Wednesday, July 01, 2020 10:19 AM
To: Choi, Heesun S (Sunny); Fortes, Michael J
Cc: Collins, Gregory A; Nicklaw, Nicole C; Kane, Daniel J; Doumani, Stephanie M; Salem, Claudia S; Cox, Robert H; Bump, Micah N
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"
Attachments: 6.22.2020 Proclamation Questions.OCCresponses-OPS edit.docx

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Charles (Locky) Nimick
Chief, Business and Foreign Worker Division (BFWD)
USCIS Office of Policy and Strategy (OP&S)

[REDACTED]@gov
Office: [REDACTED]
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To: Fortes, Michael J [REDACTED]@gov>; Nimick, Charles L (Locky) [REDACTED]@gov>
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Sunny Choi
Deputy, Adjudications Law Division
DHS/USCIS/Office of the Chief Counsel

[REDACTED] (Direct)
[REDACTED] (Cell)
[REDACTED] (Fax)
[REDACTED]@gov

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 USCIS Service Center Operations
 Acting Adjudications Division Chief
 Cell [REDACTED]

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Sent: Tuesday, June 23, 2020 11:28 AM
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Cc: Collins, Gregory A [REDACTED] <[REDACTED]@[REDACTED].gov>; Nicklaw, Nicole C [REDACTED] <[REDACTED]@[REDACTED].gov>
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Subject: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

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Thank you for your help with this.

-Mike

Mike Fortes
USCIS Service Center Operations
Acting Adjudications Division Chief
Cell:

(b)(6)

Consolidated Questions re: June 22, 2020 Presidential Proclamation

(b)(5)

Questions:	Classification(s):	SCOPS thoughts:	OCC/Policy Response:
Does the proclamation impact USCIS adjudication of consular petitions? It appears that implementation and enforcement of the exemptions listed in Section 3(b) resides with the consular officer. Could this proclamation be read as its requirements being wholly outside of USCIS purview? For pending cases where the beneficiary is outside of the US, do we continue to adjudicate as normal? Or will there be guidance on how to treat these according to how the proclamation is interpreted? Perhaps deny or only grant validity dates to time eligible to entry according to the ban?	All		
If a petitioner has submitted a petition, and it is not yet adjudicated, and a request for a withdraw and a refund is received because the petitioner is now aware that a visa won't be issued, how will USCIS treat the withdrawal request?	All		

(b)(5)

How will the nonimmigrant workers described in Section 3(b)(iv) be defined?	All	
Will current nonimmigrants in the U.S. be allowed to extend their stay or change status under this proclamation?	All	
The executive order appears to be concerned with employment authorization documents (incorrectly states that lawful permanent residents are eligible for open market EADs, they are, in fact, eligible for employment based on LPR status and the I-551/Green Card), is the intent to suspend adjudication of all I-765s which provide open market EADs for applicants?	LPRs vs. open market EADs	

(b)(5)

Suspending H1B, should we also suspend adjudication of c26 applications for H4 spouses?	(c)(26) I-765	
Suspending L petitions, should we also suspend adjudication of a18 applications for L2 spouses?	(a)(18) I-765	
Suspending certain J applicants, should we also suspend adjudication of c5 applications for J2 spouses/children?	(c)(5) I-765	
If we suspend I-765 adjudication and there are exceptions for certain professions, how will the public notify USCIS in order for those applications to be adjudicated?		
Temporary labor or services essential to the U.S. food supply chain are exempt from the entry ban. Under the current H-2B TFR, USCIS requires an attestation in order take advantage of the flexibilities in that Rule. Is there any basis to adapt the H-2B TFR attestation under this proclamation? Could USCIS require or otherwise recommend that something similar be filed to support this particular exception?	All	

(b)(5)

An exemption to the entry ban also extends to nonimmigrant workers whose entry would be in the national interest. Will DHS OPA or OP&S be issuing further guidance on this national interest exception? Will USCIS have any role in identifying the exceptions either through adjudications or some other program, report etc.?	All	
Section 5(c)(3)(iii) mentions INA 214(g)(3). We believe that section of the INA pertains to H-1B and H-2B. Will DHS need to reconsider the allocation of H-2B visas?	H-2B	
Regarding Section 3 (a) that states: <u>Sec. 3.</u> Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who: (i) is outside the United States on the effective date of this proclamation; (ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and (iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits	All	

Commented

(b)(5)

(b)(5)

him or her to travel to the United States and seek entry or admission. If a nonimmigrant is granted a change of status, but travels outside the U.S. after we approve the petition, will the individual be permitted to return to the U.S.? The use of “and” in this section appears to indicate that all three of these must apply to every person seeking entry. So, if the person is in the United States in valid L-1 status and is seeking an extension but their visa is no longer valid, it appears that they could still be approved. Is this correct? Would the lack of one of these be an admissibility concern in an EOS/COS adjudication?		
What about Canadians? Canadians are not granted H-2B and L visas and as such would not have a valid nonimmigrant visa. Is all adjudication of Canadian H-2Bs and Ls being stopped at the border? I think this is an important question in regards to workload planning as we should see no more CBP Ls until the hold is lifted.	H-2B and L	
Does the proclamation impact all L petitions (L1A, L1B, LZ)	L	
Petitioners are allowed to file up to six months in advance of the requested validity start date. Come July 1, petitioners can request start date of		

(b)(5)

Jan 1, 2021. I believe the exec order is for visas through Dec 31, 2020. Will we accept and adjudicate those requests for petitions filed after July 1?		
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[REDACTED]

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Sent: Thursday, June 25, 2020 3:38 PM
To: Fortes, Michael J; Nimick, Charles L (Locky)
Cc: Collins, Gregory A; Nicklaw, Nicole C; Kane, Daniel J; Doumani, Stephanie M; Salem, Claudia S; Cox, Robert H; Bump, Micah N
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"
Attachments: 6.22.2020 Proclamation Questions.OCCresponses.docx

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Sunny Choi
Deputy, Adjudications Law Division
DHS/USCIS/Office of the Chief Counsel

[REDACTED] (Direct)
[REDACTED] (Cell)
[REDACTED] (Fax)

[REDACTED] ov

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Mike Fortes
USCIS Service Center Operations
Acting Adjudications Division Chief
Cell: [REDACTED]

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Mike Fortes
USCIS Service Center Operations
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Cell: [REDACTED]

(b)(6)

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(b)(5)

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[REDACTED]

From: Busch, Philip B
Sent: Thursday, June 25, 2020 1:37 PM
To: Choi, Heesun S (Sunny)
Cc: Salem, Claudia S; Kleczek, Marguerite P (Ania); Cox, Robert H
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"
Attachments: 6.22.2020 Proclamation Questions.docx

Thanks, a couple of suggestions. Phil

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Sent: Thursday, June 25, 2020 1:29 PM
To: Busch, Philip B [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Kleczek, Marguerite P (Ania) [REDACTED] gov>; Cox, Robert H [REDACTED] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hi Phil – SCOPS sent us a list of questions they had pertaining to the Presidential Proclamation. Please see our suggested responses in the attached. There is one question about refunding of fees that we've highlighted for your review.

Let us know if you have any questions.

Thank you,
Sunny

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Locky, would it be possible for your team to post this on the policy ECN and share with OCC so there can be joint collaboration?

Thank you both,

-Mike

Mike Fortes

USCIS Service Center Operations
Acting Adjudications Division Chief
Cell: [REDACTED]

From: Choi, Heesun S (Sunny) <[REDACTED]@gov>
Sent: Tuesday, June 23, 2020 11:28 AM
To: Fortes, Michael J <[REDACTED]@gov>; Nimick, Charles L (Locky) <[REDACTED]@s.gov>
Cc: Collins, Gregory A <[REDACTED]@gov>; Nicklaw, Nicole C <[REDACTED]@gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Sounds good – we'll take a look.

Sunny

From: Fortes, Michael J <[REDACTED]@gov>
Sent: Tuesday, June 23, 2020 11:26 AM
To: Nimick, Charles L (Locky) <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>
Cc: Collins, Gregory A <[REDACTED]@gov>; Nicklaw, Nicole C <[REDACTED]@gov>
Subject: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hello Locky and Sunny,

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Thank you for your help with this.

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Mike Fortes
USCIS Service Center Operations
Acting Adjudications Division Chief
Cell: [REDACTED]

(b)(5)

Consolidated Questions re: June 22, 2020 Presidential Proclamation

Questions:	Classification(s):	SCOPS thoughts:	OCC/Policy Response:
Does the proclamation impact USCIS adjudication of consular petitions? It appears that implementation and enforcement of the exemptions listed in Section 3(b) resides with the consular officer. Could this proclamation be read as its requirements being wholly outside of USCIS purview? For pending cases where the beneficiary is outside of the US, do we continue to adjudicate as normal? Or will there be guidance on how to treat these according to how the proclamation is interpreted? Perhaps deny or only grant validity dates to time eligible to entry according to the ban?	All		
If a petitioner has submitted a petition, and it is not yet adjudicated, and a request for a withdraw and a refund is received because the petitioner is now aware that a visa won't be issued, how will USCIS treat the withdrawal request?	All		

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How will the nonimmigrant workers described in Section 3(b)(iv) be defined?	All	
Will current nonimmigrants in the U.S. be allowed to extend their stay or change status under this proclamation?	All	

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The executive order appears to be is concerned with employment authorization documents (incorrectly states that lawful permanent residents are eligible for open market EADs, they are, in fact, eligible for employment based on LPR status and the I-551/Green Card), is the intent to suspend adjudication of all I-765s which provide open market EADs for applicants?	LPRs vs. open market EADs	
Suspending H1B, should we also suspend adjudication of c26 applications for H4 spouses?	(c)(26) I-765	
Suspending L petitions, should we also suspend adjudication of a18 applications for L2 spouses?	(a)(18) I-765	
Suspending certain J applicants, should we also suspend adjudication of c5 applications for J2 spouses/children?	(c)(5) I-765	
If we suspend I-765 adjudication and there are exceptions for certain professions, how will the public notify USCIS in order for those applications to be adjudicated?		
Temporary labor or services essential to the U.S. food supply chain are exempt from the entry ban.	All	

(b)(5)

Under the current H-2B TFR, USCIS requires an attestation to in order take advantage of the flexibilities in that Rule. Is there any basis to adapt the H-2B TFR attestation under this proclamation? Could USCIS require or otherwise recommend that something similar be filed to support this particular exception?

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Will DHS OPA or OP&S be issuing further guidance on this national interest exception? Will USCIS have any role in identifying the exceptions either through adjudications or some other program, report etc.?

Section 5(c)(3)(iii) mentions INA 214(g)(3). We believe that section of the INA pertains to H-1B and H-2B. Will DHS need to reconsider the allocation of H-2B visas?

Regarding Section 3 (a) that states:

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this

All

H-2B

All

(b)(5)

proclamation shall apply only to any alien who: (i) is outside the United States on the effective date of this proclamation; (ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and (iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission. If a nonimmigrant is granted a change of status, but travels outside the U.S. after we approve the petition, will the individual be permitted to return to the U.S.? The use of “and” in this section appears to indicate that all three of these must apply to every person seeking entry. So, if the person is in the United States in valid L-1 status and is seeking an extension but their visa is no longer valid, it appears that they could still be approved. Is this correct? Would the lack of one of these be an admissibility concern in an EOS/COS adjudication?		
What about Canadians? Canadians are not granted H-2B and L visas and as such would not have a valid nonimmigrant visa. Is all adjudication	H-2B and L	

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How does the proclamation impact premium processing filings? If a petition requesting consular processing is filed with an I-907 to request PP, should the PP be receipted in or rejected?	All	
Will employment related to the military realignment on Guam and in the CNMI (NDAA) be subject to the suspension, or will this employment be considered exempt per the national interest clause in Section 3(b)(iv)?	H-2B	

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From: Choi, Heesun S (Sunny)
Sent: Thursday, June 25, 2020 12:29 PM
To: Busch, Philip B
Cc: Salem, Claudia S; Kleczek, Marguerite P (Ania); Cox, Robert H
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"
Attachments: 6.22.2020 Proclamation Questions.docx

Hi Phil – SCOPS sent us a list of questions they had pertaining to the Presidential Proclamation. Please see our suggested responses in the attached. There is one question about refunding of fees that we've highlighted for your review.

Let us know if you have any questions.

Thank you,
Sunny

From: Fortes, Michael J [REDACTED] <[REDACTED]@usdoj.gov>
Sent: Wednesday, June 24, 2020 10:20 AM
To: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@usdoj.gov>; Nimick, Charles L (Locky) [REDACTED] <[REDACTED]@usdoj.gov>
Cc: Collins, Gregory A [REDACTED] <[REDACTED]@usdoj.gov>; Nicklaw, Nicole C [REDACTED] <[REDACTED]@usdoj.gov>; Kane, Daniel J [REDACTED] <[REDACTED]@usdoj.gov>; Doumani, Stephanie M [REDACTED] <[REDACTED]@usdoj.gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hello OPS and OCC,

Attached is a list of questions for OPS and OCC consideration, which are related to the recent presidential proclamation. Many of these are key issues for determining how this should be implemented across all the centers. If you can please consult with your teams, we'd appreciate it. We'll stay tuned for written response, or perhaps a meeting might be required for additional consultation.

Locky, would it be possible for your team to post this on the policy ECN and share with OCC so there can be joint collaboration?

Thank you both,

-Mike

Mike Fortes
USCIS Service Center Operations
Acting Adjudications Division Chief
Cell: [REDACTED]

From: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@usdoj.gov>
Sent: Tuesday, June 23, 2020 11:28 AM
To: Fortes, Michael J [REDACTED] <[REDACTED]@usdoj.gov>; Nimick, Charles L (Locky) [REDACTED] <[REDACTED]@usdoj.gov>

Cc: Collins, Gregory A [REDACTED] gov>; Nicklaw, Nicole C [REDACTED] gov>
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Mike Fortes
 USCIS Service Center Operations
 Acting Adjudications Division Chief
 Cell: [REDACTED]

Consolidated Questions re: June 22, 2020 Presidential Proclamation

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H-2B

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Will employment related to the military realignment on Guam and in the CNMI (NDAA) be subject to the suspension, or will this employment be considered exempt per the national interest clause in Section 3(b)(iv)?	H-2B	

[REDACTED]

From: Choi, Heesun S (Sunny)
Sent: Thursday, June 25, 2020 11:11 AM
To: Elder, Phillip D
Cc: Salem, Claudia S; Kleczek, Marguerite P (Ania); Cox, Robert H
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"
Attachments: 6.22.2020 Proclamation Questions.docx

Hi Phillip – I made edits to the refunding of fees response in light of what Phil sent this morning. Did you receive that email? Before I send this back to Phil for his review, I wanted to check in with you.

Thank you!
Sunny

From: Cox, Robert H [REDACTED] gov>
Sent: Thursday, June 25, 2020 9:05 AM
To: Elder, Phillip D [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>;
Miran, Maria Y [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump,
Micah N [REDACTED] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Thanks, all. Claudia and Sunny, this is ready for your review.

The document with questions and draft responses is on our ECN [here](#)

From: Elder, Phillip D [REDACTED] gov>
Sent: Wednesday, June 24, 2020 10:01 PM
To: Angustia, Kathleen M (Kate) [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>;
Cox, Robert H [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump,
Micah N [REDACTED] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

I have finished my review.

From: Angustia, Kathleen M (Kate) [REDACTED] gov>
Sent: Wednesday, June 24, 2020 7:40 PM
To: Miran, Maria Y [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Elder, Phillip D
[REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump,
Micah N [REDACTED] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hi Maria. Your edits work for me. Thank you!

From: Miran, Maria Y <[REDACTED]@gov>
Sent: Wednesday, June 24, 2020 7:30 PM
To: Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Elder, Phillip D <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>
Cc: Salem, Claudia S <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

See my edits if that works for you A/Kate.

From: Angustia, Kathleen M (Kate) <[REDACTED]@gov>
Sent: Wednesday, June 24, 2020 7:16 PM
To: Cox, Robert H <[REDACTED]@gov>; Elder, Phillip D <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>
Cc: Salem, Claudia S <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hi Robert,

Thank you for sharing this for our review. I have read through the document and provided some thoughts, most of which I do not think change the answers. I did make one suggested change to a response, borrowing language that is from another response.

Have a nice evening!

Kate

From: Cox, Robert H <[REDACTED]@gov>
Sent: Wednesday, June 24, 2020 5:47 PM
To: Elder, Phillip D <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>
Cc: Salem, Claudia S <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>
Subject: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hi Phillip and H-2B SMEs,

Could you please review the responses we drafted to various questions that were raised by officers/SCOPS. The document with questions and draft responses is on our ECN [here](#)

Thanks,
 Robert

(b)(5)

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H-2B

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From: Choi, Heesun S (Sunny)
Sent: Wednesday, July 29, 2020 8:35 AM
To: Doumani, Stephanie M; Fortes, Michael J; Collins, Gregory A; Kane, Daniel J; Nicklaw, Nicole C
Cc: Salem, Claudia S; Cox, Robert H; Bump, Micah N
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Thanks for confirming.

From: Doumani, Stephanie M [redacted] gov>
Sent: Wednesday, July 29, 2020 9:30 AM
To: Choi, Heesun S (Sunny) [redacted] gov>; Fortes, Michael J [redacted] gov>; Collins, Gregory A [redacted] gov>; Kane, Daniel J [redacted] gov>; Nicklaw, Nicole C [redacted] gov>
Cc: Salem, Claudia S [redacted] gov>; Cox, Robert H [redacted] gov>; Bump, Micah N [redacted] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hi Sunny – no I don't believe so. I think we just reviewed here.

Stephanie Doumani
Acting Senior Advisor
Service Center Operations
[redacted] Desk
[redacted] Cell

From: Choi, Heesun S (Sunny) [redacted] gov>
Sent: Wednesday, July 29, 2020 9:29 AM
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Cc: Salem, Claudia S [redacted] gov>; Cox, Robert H [redacted] gov>; Bump, Micah N [redacted] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hi Stephanie – I have a follow up question. Was the FAQ document that we reviewed provided to the centers? That document may be considered as guidance even if it was sent as an FYI to the centers.

Thanks,
Sunny

From: Doumani, Stephanie M [redacted] gov>
Sent: Wednesday, July 29, 2020 8:24 AM
To: Choi, Heesun S (Sunny) [redacted] gov>; Fortes, Michael J [redacted] gov>; Collins, Gregory A [redacted] gov>; Kane, Daniel J [redacted] gov>; Nicklaw, Nicole C [redacted] gov>
Cc: Salem, Claudia S [redacted] gov>; Cox, Robert H [redacted] gov>; Bump, Micah N [redacted] gov>

[redacted] <[redacted]@[redacted].gov>

Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hi Sunny,

Not sure if anyone else has responded yet, but I don't believe [redacted]

(b)(5)

Thanks very much,
Stephanie

Stephanie Doumani
Acting Senior Advisor
Service Center Operations
[redacted] Desk
[redacted] Cell

(b)(6)

From: Choi, Heesun S (Sunny) <[redacted]@[redacted].gov>

Sent: Tuesday, July 28, 2020 7:58 PM

To: Fortes, Michael J <[redacted]@[redacted].gov>; Collins, Gregory A <[redacted]@[redacted].gov>; Kane, Daniel J <[redacted]@[redacted].gov>; Nicklaw, Nicole C <[redacted]@[redacted].gov>; Doumani, Stephanie M <[redacted]@[redacted].gov>

Cc: Salem, Claudia S <[redacted]@[redacted].gov>; Cox, Robert H <[redacted]@[redacted].gov>; Bump, Micah N <[redacted]@[redacted].gov>

Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Good evening SCOPS. Quick question for you. Did you issue guidance to the centers in implementing this EO? DHS and DOJ are asking as it relates to the Gomez et al vs Trump case.

Thanks for your help,
Sunny

From: Fortes, Michael J <[redacted]@[redacted].gov>

Sent: Wednesday, July 1, 2020 11:34 AM

To: Nimick, Charles L (Locky) <[redacted]@[redacted].gov>; Choi, Heesun S (Sunny) <[redacted]@[redacted].gov>

Cc: Collins, Gregory A <[redacted]@[redacted].gov>; Nicklaw, Nicole C <[redacted]@[redacted].gov>; Kane, Daniel J <[redacted]@[redacted].gov>; Doumani, Stephanie M <[redacted]@[redacted].gov>; Salem, Claudia S <[redacted]@[redacted].gov>; Cox, Robert H <[redacted]@[redacted].gov>; Bump, Micah N <[redacted]@[redacted].gov>

Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Thank you for considering these questions Sunny and Locky. We'll let you know if there are any follow-up questions.

-Mike

Mike Fortes
USCIS Service Center Operations
EPIC Branch Chief
Cell: [redacted]

From: Nimick, Charles L (Locky) [REDACTED] gov>
Sent: Wednesday, July 1, 2020 11:19 AM
To: Choi, Heesun S (Sunny) [REDACTED] gov>; Fortes, Michael J [REDACTED] gov>
Cc: Collins, Gregory A [REDACTED] gov>; Nicklaw, Nicole C [REDACTED] gov>; Kane, Daniel J [REDACTED] gov>; Doumani, Stephanie M [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Bump, Micah N [REDACTED] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

On leave, so apologies for the delayed reply. We had one suggested edit and note that the 6/29 amendment to the EO may be worth mentioning/incorporating as appropriate.

Thanks, Locky

Charles (Locky) Nimick
Chief, Business and Foreign Worker Division (BFWD)
USCIS Office of Policy and Strategy (OP&S)

[REDACTED] gov
Office: [REDACTED]
Telework: [REDACTED]

From: Choi, Heesun S (Sunny) [REDACTED] gov>
Sent: Thursday, June 25, 2020 4:38 PM
To: Fortes, Michael J [REDACTED] gov>; Nimick, Charles L (Locky) [REDACTED] gov>
Cc: Collins, Gregory A [REDACTED] gov>; Nicklaw, Nicole C [REDACTED] gov>; Kane, Daniel J [REDACTED] gov>; Doumani, Stephanie M [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Bump, Micah N [REDACTED] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hi Mike and Locky – attached please find OCC's suggested responses. Let us know if and when a meeting will be scheduled to discuss these responses.

Thank you,
Sunny

Sunny Choi
Deputy, Adjudications Law Division
DHS/USCIS/Office of the Chief Counsel

[REDACTED] (Direct)
[REDACTED] (Cell)
[REDACTED] (Fax)
[REDACTED] gov

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From: Fortes, Michael J [redacted] gov>
Sent: Wednesday, June 24, 2020 10:20 AM
To: Choi, Heesun S (Sunny) [redacted] gov>; Nimick, Charles L (Locky) [redacted] gov>
Cc: Collins, Gregory A [redacted] gov>; Nicklaw, Nicole C [redacted] gov>; Kane, Daniel J [redacted] gov>; Doumani, Stephanie M [redacted] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hello OPS and OCC,

Attached is a list of questions for OPS and OCC consideration, which are related to the recent presidential proclamation. Many of these are key issues for determining how this should be implemented across all the centers. If you can please consult with your teams, we'd appreciate it. We'll stay tuned for written response, or perhaps a meeting might be required for additional consultation.

Locky, would it be possible for your team to post this on the policy ECN and share with OCC so there can be joint collaboration?

Thank you both,

-Mike

Mike Fortes
USCIS Service Center Operations
Acting Adjudications Division Chief
Cell: [redacted]

From: Choi, Heesun S (Sunny) [redacted] gov>
Sent: Tuesday, June 23, 2020 11:28 AM
To: Fortes, Michael J [redacted] gov>; Nimick, Charles L (Locky) [redacted] gov>
Cc: Collins, Gregory A [redacted] gov>; Nicklaw, Nicole C [redacted] gov>
Subject: RE: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Sounds good – we'll take a look.

Sunny

From: Fortes, Michael J [redacted] gov>
Sent: Tuesday, June 23, 2020 11:26 AM
To: Nimick, Charles L (Locky) [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>
Cc: Collins, Gregory A [redacted] gov>; Nicklaw, Nicole C [redacted] gov>
Subject: Executive Order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market"

Hello Locky and Sunny,

The SCOPS employment branches are collecting both policy and legal questions for your consideration, from both HQ SCOPS and the Service Centers, related to the June 22, 2020 executive order related to "Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market." We will forward these questions to you once they are consolidated.

(b)(6)

Thank you for your help with this.

-Mike

Mike Fortes

USCIS Service Center Operations

Acting ~~Adjudications~~ Division Chief

Cell:

[Redacted]

(b)(6)

From: Hanehan, Brendan J
Sent: Tuesday, June 23, 2020 11:24 AM
To: Salem, Claudia S; Choi, Heesun S (Sunny); Cox, Robert H; Bump, Micah N; Parascando, Bridgette H; Grimm, Jason R; Hunt, Brian J; Kenny, Allen (Allen)
Subject: RE: Just some questions coming to mind on the exec order
Attachments: RE: EO

-Brendan

From: Salem, Claudia S <[Redacted]@gov>
Sent: Tuesday, June 23, 2020 12:15 PM
To: Choi, Heesun S (Sunny) <[Redacted]@gov>; Cox, Robert H <[Redacted]@gov>; Bump, Micah N <[Redacted]@gov>; Parascando, Bridgette H <[Redacted]@gov>; Grimm, Jason R <[Redacted]@gov>; Hanehan, Brendan J <[Redacted]@gov>; Hunt, Brian J <[Redacted]@gov>
Subject: Just some questions coming to mind on the exec order

(b)(6)

[Large Redacted Block]

(b)(5)

(b)(6)

From: Hanehan, Brendan J
Sent: Tuesday, June 23, 2020 8:14 AM
To: Smith, Timothy L; Boudreau, Lynn A
Cc: Duty-Attorney, VSC; Hardy, David C; Dolan, Susan S; Young, Blanton R (Roy); Schmalz, Peter N
Subject: RE: EO

Hi Tim and Lynn,

I read the Executive Order (b)(5)

Hope that helps! Any additional points from the OCC team?

Thanks,

-Brendan

Brendan J. Hanehan
Associate Counsel

Vermont Service Center | Service Center Law Division
Office of the Chief Counsel | USCIS | DHS
Desk Phone: (b)(6)
Work Cell: (b)(6)
Email: (b)(6) gov

(b)(6)

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From: Duty-Attorney, VSC (b)(6) gov>
Sent: Tuesday, June 23, 2020 8:57 AM
To: Hanehan, Brendan J (b)(6) gov>; Hardy, David C (b)(6) gov>; Dolan, Susan S (b)(6) gov>; Young, Blanton R (Roy) (b)(6) gov>; Schmalz, Peter N (b)(6) gov>
Cc: Smith, Timothy L (b)(6) gov>; Boudreau, Lynn A (b)(6) gov>
Subject: Re: EO

(b)(6)

Good morning,

Passing around.

Thank you,

Paulina Rodriguez

Paralegal Specialist
Service Center Law Division | Vermont Service Center
U.S. Citizenship and Immigration Services

[REDACTED]
[REDACTED]@gov

(b)(6)

From: Boudreau, Lynn A [REDACTED]@gov>
Sent: Tuesday, June 23, 2020 8:55 AM
To: Duty-Attorney, VSC [REDACTED]@gov>
Cc: Smith, Timothy L [REDACTED]@gov>
Subject: FW: EO

(b)(6)

Good Morning,

It looks like Pete is on leave today. Has anyone on your team taken a look at the Executive Order that was issued last night? Please see the short response from BEST below.

Tim and I were just wondering if could share your “unofficial” read on the EO and let us know if you foresee any potential impacts for us.

Thanks,

Lynn

From: Nicklaw, Nicole C [REDACTED]@gov>
Sent: Tuesday, June 23, 2020 8:00 AM
To: Boudreau, Lynn A [REDACTED]@gov>
Cc: Smith, Timothy L [REDACTED]@gov>
Subject: RE: EO

(b)(6)

Hi Lynn,

That was my reading/understanding [REDACTED] (b)(5)

[REDACTED]
[REDACTED] If I
hear otherwise or get additional information, I will let you know.

Thank you,
Nicole Nicklaw | Acting Branch Chief | Adjudications Officer
Business Employment Services Team (BEST) | SCOPS | USCIS

Office: [redacted]
Cell: [redacted]

(b)(6)

From: Boudreau, Lynn A [redacted] gov>
Sent: Tuesday, June 23, 2020 7:16 AM
To: Nicklaw, Nicole C [redacted] gov>
Cc: Smith, Timothy L [redacted] gov>
Subject: EO

(b)(6)

Hi Nicole,

I have only skimmed the EO that was signed last night.

(b)(5)

Thanks,

Lynn

(b)(6)

From: Cox, Robert H
Sent: Tuesday, June 23, 2020 5:19 PM
To: Grimm, Jason R; Parascando, Bridgette H; Salem, Claudia S; Choi, Heesun S (Sunny); Bump, Micah N; Hanehan, Brendan J; Hunt, Brian J
Cc: Kenny, Allen (Allen)
Subject: RE: Just some questions coming to mind on the exec order

I think [REDACTED] (b)(5)

From: Grimm, Jason R [REDACTED] gov> (b)(6)
Sent: Tuesday, June 23, 2020 6:14 PM
To: Parascando, Bridgette H [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Hanehan, Brendan J [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>
Cc: Kenny, Allen (Allen) [REDACTED] gov> (b)(6)
Subject: RE: Just some questions coming to mind on the exec order

Here are a few questions that CSC shared with me today:

(b)(5)

From: Parascando, Bridgette H [REDACTED] gov> (b)(6)
Sent: Tuesday, June 23, 2020 10:25 AM
To: Salem, Claudia S [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Grimm, Jason R [REDACTED] gov>; Hanehan, Brendan J [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>

(b)(6)

(b)(6)

Cc: Kenny, Allen (Allen) [redacted] gov>

Subject: RE: Just some questions coming to mind on the exec order

Hi Claudia,

Allen Kenny and I will be pocs for SCLD. Thanks.

Bridgette

From: Salem, Claudia S [redacted] gov>

Sent: Tuesday, June 23, 2020 12:15 PM

To: Choi, Heesun S (Sunny) [redacted] gov>; Cox, Robert H [redacted] gov>; Bump, Micah N [redacted] gov>; Parascando, Bridgette H [redacted] gov>; Grimm, Jason R [redacted] gov>; Hanehan, Brendan J [redacted] gov>; Hunt, Brian J [redacted] gov>

(b)(6)

Subject: Just some questions coming to mind on the exec order

(b)(5)

Referred to U.S. Department of State

Referred to U.S. Department of State

Referred to U.S. Department of State

Referred to U.S. Department of State

Referred to U.S. Department of State

From: Groom, Molly M
Sent: Tuesday, June 23, 2020 10:18 AM
To: Salem, Claudia S; Highsmith, AnnMarie R; Busch, Philip B
Cc: Choi, Heesun S (Sunny); Parascando, Bridgette H; Grimm, Jason R; Cox, Robert H
Subject: RE: Presidential Executive Order

It would be great if you could pull together bullets on what this means and what actions USCIS or others need to take. That will allow us to determine what are best next steps. Thanks for reaching out. Molly

From: Salem, Claudia S [redacted]ov>
Sent: Tuesday, June 23, 2020 11:16 AM
To: Groom, Molly M [redacted]gov>; Highsmith, AnnMarie R [redacted]gov>
Cc: Choi, Heesun S (Sunny) [redacted]gov>; Parascando, Bridgette H [redacted]gov>; Grimm, Jason R [redacted]gov>; Cox, Robert H [redacted]bv>
Subject: Presidential Executive Order

(b)(6)

Is there anything you want us to do in reaction to this yet? We don't want to duplicate efforts that may be underway but we can prepare some bullets or are wondering if we should be proactively assisting the client interpret. Awaiting your recommended approach. At 1pm during our normal ALD EB meeting, we will no doubt discuss. Seems like lots of reg writing coming to retained OCC attorneys.

<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

IMMIGRATION

Issued on: June 22, 2020

The 2019 Novel Coronavirus (COVID-19) has significantly disrupted Americans' livelihoods. Since March 2020, United States businesses and their workers have faced extensive disruptions while undertaking certain public health measures necessary to flatten the curve of COVID-19 and reduce the spread of SARS-CoV-2, the virus that causes COVID-19. The overall unemployment rate in the United States nearly quadrupled between February and May of 2020 — producing some of the most extreme unemployment ever

recorded by the Bureau of Labor Statistics. While the May rate of 13.3 percent reflects a marked decline from April, millions of Americans remain out of work.

In Proclamation 10014 of April 22, 2020 (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak), I determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Consequently, I suspended, for a period of 60 days, the entry of aliens as immigrants, subject to certain exceptions. As I noted, lawful permanent residents, once admitted pursuant to immigrant visas, are granted “open-market” employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Given that 60 days is an insufficient time period for the United States labor market, still stalled with partial social distancing measures, to rebalance, and given the lack of sufficient alternative means to protect unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents, the considerations present in Proclamation 10014 remain.

In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas. During this same period, more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions. Also, the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high — 29.9 percent for 16-19 year olds, and 23.2 percent for the 20-24 year old group. The entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs, therefore, presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.

As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment — those who are typically “last in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation's immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand. In light of the above, I have determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Continuation of Proclamation 10014. (a) Section 4 of Proclamation 10014 is amended to read as follows:

“Sec. 4. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of June 24, 2020, and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.”

(b) This section shall be effective immediately.

Sec. 2. Suspension and Limitation on Entry. The entry into the United States of any alien seeking entry pursuant to any of the following nonimmigrant visas is hereby suspended and limited, subject to section 3 of this proclamation:

(a) an H-1B or H-2B visa, and any alien accompanying or following to join such alien;

(b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and

(c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

- (i) is outside the United States on the effective date of this proclamation;
 - (ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and
 - (iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.
- (b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:
- (i) any lawful permanent resident of the United States;
 - (ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;
 - (iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and
 - (iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. Implementation and Enforcement. (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

- (i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. Additional Measures. (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of Homeland Security for implementing measures that could reduce the risk that aliens seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

Sec. 6. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. Effective Date. Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

[REDACTED]

From: Choi, Heesun S (Sunny)
Sent: Tuesday, June 23, 2020 8:22 AM
To: Zimonjic, Milica
Cc: Bump, Micah N; Cox, Robert H
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Thank you Millie!

From: Zimonjic, Milica [REDACTED] gov>
Sent: Tuesday, June 23, 2020 9:20 AM
To: Choi, Heesun S (Sunny) [REDACTED] gov>
Cc: Bump, Micah N [REDACTED] gov>; Cox, Robert H <[REDACTED] gov> (b)(6)
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Thank you Sunny! I added [REDACTED]
[REDACTED] (b)(5)

From: Choi, Heesun S (Sunny) [REDACTED] gov> (b)(6)
Sent: Monday, June 22, 2020 6:08 PM
To: Zimonjic, Milica [REDACTED] gov>
Cc: Bump, Micah N <[REDACTED] gov>; Cox, Robert H [REDACTED] gov>
Subject: FW: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Millie – FYI

From: Choi, Heesun S (Sunny)
Sent: Monday, June 22, 2020 6:05 PM
To: Miran, Maria Y [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M <[REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R <[REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Morse, Miriam A <[REDACTED] gov> (b)(6)
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Possibly but I think the below two sections may keep us busy with reg writing?

Sec. 4. Implementation and Enforcement.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who

have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

From: Miran, Maria Y [REDACTED] gov> (b)(6)
Sent: Monday, June 22, 2020 6:02 PM
To: Salem, Claudia S [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Gisser, Sheldon A (Alex) <[REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak (b)(6)

Do you think there will be work for the EB-team under Section 3(b)(iv) and this portion of the EO? –

“The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.”

From: Salem, Claudia S <[REDACTED]@gov>

Sent: Monday, June 22, 2020 5:54 PM

To: Cox, Robert H <[REDACTED]@gov>; Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Reading. Not sure I want to. 😞

From: Cox, Robert H <[REDACTED]@gov>

Sent: Monday, June 22, 2020 5:52 PM

To: Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>

Cc: Salem, Claudia S <[REDACTED]@gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Nicely edited. It refers at one point to "the Unites States economy."

From: Angustia, Kathleen M (Kate) <[REDACTED]@gov>

Sent: Monday, June 22, 2020 5:49 PM

To: Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>

Cc: Salem, Claudia S <[REDACTED]@gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Thanks. I'll read it now.

From: Choi, Heesun S (Sunny) <[REDACTED]@gov>

Sent: Monday, June 22, 2020 5:46 PM

To: Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>

Cc: Salem, Claudia S <[REDACTED]@gov>

Subject: FW: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Here's the proclamation. I'm still reading through it....

(b)(6)

From: Wahla, Sarosh N <[REDACTED]@gov>

Sent: Monday, June 22, 2020 5:42 PM

To: Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Salem, Claudia S <[REDACTED]@gov>

Subject: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

IMMIGRATION

Issued on: June 22, 2020

The 2019 Novel Coronavirus (COVID-19) has significantly disrupted Americans' livelihoods. Since March 2020, United States businesses and their workers have faced extensive disruptions while undertaking certain public health measures necessary to flatten the curve of COVID-19 and reduce the spread of SARS-CoV-2, the virus that causes COVID-19. The overall unemployment rate in the United States nearly quadrupled between February and May of 2020 — producing some of the most extreme unemployment ever recorded by the Bureau of Labor Statistics. While the May rate of 13.3 percent reflects a marked decline from April, millions of Americans remain out of work.

In Proclamation 10014 of April 22, 2020 (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak), I determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Consequently, I suspended, for a period of 60 days, the entry of aliens as immigrants, subject to certain exceptions. As I noted, lawful permanent residents, once admitted pursuant to immigrant visas, are granted “open-market” employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Given that 60 days is an insufficient time period for the United States labor market, still stalled with partial social distancing measures, to rebalance, and given the lack of sufficient alternative means to protect unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents, the considerations present in Proclamation 10014 remain.

In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas. During this same period, more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions. Also, the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high — 29.9 percent for 16-19 year olds, and 23.2 percent for the 20-24 year old group. The entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs, therefore, presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.

As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment — those who are typically “last in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation’s immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand. In light of the above, I have determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests

of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Continuation of Proclamation 10014. (a) Section 4 of Proclamation 10014 is amended to read as follows:

“Sec. 4. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of June 24, 2020, and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.”

(b) This section shall be effective immediately.

Sec. 2. Suspension and Limitation on Entry. The entry into the United States of any alien seeking entry pursuant to any of the following nonimmigrant visas is hereby suspended and limited, subject to section 3 of this proclamation:

(a) an H-1B or H-2B visa, and any alien accompanying or following to join such alien;

(b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and

(c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

(i) is outside the United States on the effective date of this proclamation;

(ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and

(iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

(b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;

(iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and

(iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. Implementation and Enforcement. (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

(i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. Additional Measures. (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of Homeland Security for implementing measures that could reduce the risk that aliens

seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

Sec. 6. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. Effective Date. Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

Sarosh Wahla
Associate Counsel
Office of the Chief Counsel
U.S. Citizenship and Immigration Services

[redacted] gov
Cell [redacted]

(b)(6)

*****Warning*** Attorney/Client Privilege *** Attorney Work Product*****

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[REDACTED]

From: Choi, Heesun S (Sunny)
Sent: Monday, June 22, 2020 5:52 PM
To: Salem, Claudia S
Cc: Morse, Miriam A; Miran, Maria Y; Cox, Robert H; Angustia, Kathleen M (Kate); Gisser, Sheldon A (Alex); Bump, Micah N; Chase, Carmen M; Hale, Paola R; Hunt, Brian J; Mahadevan, Sheila
Subject: Re: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Yup - lots to discuss.

Sent from my iPhone

On Jun 22, 2020, at 6:51 PM, Salem, Claudia S <Claudia.S.Salem@uscis.dhs.gov> wrote:

You got that right!

From: Morse, Miriam A [REDACTED] gov>
Sent: Monday, June 22, 2020 6:47 PM
To: Miran, Maria Y [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) <[REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Well. We have a lot to discuss tomorrow at 1.

From: Miran, Maria Y [REDACTED] gov>
Sent: Monday, June 22, 2020 6:32 PM
To: Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

I don't disagree [REDACTED]

[REDACTED]
(b)(5)

From: Cox, Robert H <[REDACTED]@gov>
Sent: Monday, June 22, 2020 6:28 PM
To: Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>
Cc: Salem, Claudia S <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

I still think [REDACTED]

(b)(5)

From: Angustia, Kathleen M (Kate) <[REDACTED]@gov>
Sent: Monday, June 22, 2020 6:21 PM
To: Miran, Maria Y <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>
Cc: Salem, Claudia S <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

I read the duration the same way as Maria.

From: Miran, Maria Y <[REDACTED]@gov>
Sent: Monday, June 22, 2020 6:20 PM
To: Cox, Robert H <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>
Cc: Salem, Claudia S <[REDACTED]@gov>; Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

I thought [REDACTED]

(b)(5)

(b)(5)

From: Cox, Robert H [REDACTED] gov>
Sent: Monday, June 22, 2020 6:15 PM
To: Miran, Maria Y [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>

(b)(6)

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(5)

From: Miran, Maria Y [REDACTED] gov>
Sent: Monday, June 22, 2020 6:14 PM
To: Gisser, Sheldon A (Alex) [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>

(b)(6)

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(5)

From: Gisser, Sheldon A (Alex) [REDACTED] gov>
Sent: Monday, June 22, 2020 6:13 PM
To: Miran, Maria Y [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>

(b)(6)

Subject: Re: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(5)

Sent from my iPhone

On Jun 22, 2020, at 6:11 PM, Miran, Maria Y [REDACTED] gov> wrote:

(b)(6)

(b)(5)

From: Gisser, Sheldon A (Alex) [REDACTED] gov>
Sent: Monday, June 22, 2020 6:08 PM
To: Miran, Maria Y [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>

(b)(6)

Subject: Re: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Those would be the exceptions though, right? What about Rs, Qs, etc.?

Sent from my iPhone

On Jun 22, 2020, at 6:01 PM, Miran, Maria Y [REDACTED] gov> wrote:

(b)(6)

Do you think there will be work for the EB-team under Section 3(b)(iv) and this portion of the EO? –

“The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation

and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.”

From: Salem, Claudia S [REDACTED] gov>
Sent: Monday, June 22, 2020 5:54 PM
To: Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

Reading. Not sure I want to. ☹

From: Cox, Robert H [REDACTED] gov>
Sent: Monday, June 22, 2020 5:52 PM
To: Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

Nicely edited. It refers at one point to “the United States economy.”

(b)(6)

From: Angustia, Kathleen M (Kate)

[REDACTED] gov>

Sent: Monday, June 22, 2020 5:49 PM

To: Choi, Heesun S (Sunny) [REDACTED] gov>; Bump,

Micah N [REDACTED] gov>; Chase, Carmen M

[REDACTED] gov>; Cox, Robert H

[REDACTED] gov>; Gisser, Sheldon A (Alex)

[REDACTED] gov>; Hale, Paola R

[REDACTED] gov>; Hunt, Brian J

[REDACTED] gov>; Mahadevan, Sheila

[REDACTED] gov>; Miran, Maria Y

<[REDACTED] gov>; Morse, Miriam A

[REDACTED] gov>

Cc: Salem, Claudia S [REDACTED] gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Thanks. I'll read it now.

From: Choi, Heesun S (Sunny) [REDACTED] gov>

Sent: Monday, June 22, 2020 5:46 PM

To: Angustia, Kathleen M (Kate) <[REDACTED] gov>;

Bump, Micah N [REDACTED] gov>; Chase, Carmen M

[REDACTED] gov>; Cox, Robert H

<[REDACTED] gov>; Gisser, Sheldon A (Alex)

[REDACTED] gov>; Hale, Paola R

[REDACTED] gov>; Hunt, Brian J

[REDACTED] gov>; Mahadevan, Sheila

<[REDACTED] gov>; Miran, Maria Y

[REDACTED] gov>; Morse, Miriam A

[REDACTED] gov>

Cc: Salem, Claudia S [REDACTED] gov>

Subject: FW: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Here's the proclamation. I'm still reading through it.....

From: Wahla, Sarosh N [REDACTED] gov>

Sent: Monday, June 22, 2020 5:42 PM

To: Gisser, Sheldon A (Alex) [REDACTED] gov>; Mahadevan,

Sheila <[REDACTED] gov>; Choi, Heesun S (Sunny)

<[REDACTED] gov>; Salem, Claudia S

<[REDACTED] gov>

Subject: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

(b)(6)

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

IMMIGRATION

Issued on: June 22, 2020

The 2019 Novel Coronavirus (COVID-19) has significantly disrupted Americans' livelihoods. Since March 2020, United States businesses and their workers have faced extensive disruptions while undertaking certain public health measures necessary to flatten the curve of COVID-19 and reduce the spread of SARS-CoV-2, the virus that causes COVID-19. The overall unemployment rate in the United States nearly quadrupled between February and May of 2020 — producing some of the most extreme unemployment ever recorded by the Bureau of Labor Statistics. While the May rate of 13.3 percent reflects a marked decline from April, millions of Americans remain out of work.

In Proclamation 10014 of April 22, 2020 (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak), I determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Consequently, I suspended, for a period of 60 days, the entry of aliens as immigrants, subject to certain exceptions. As I noted, lawful permanent residents, once admitted pursuant to immigrant visas, are granted “open-market” employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Given that 60 days is an insufficient time period for the United States labor market, still stalled with

partial social distancing measures, to rebalance, and given the lack of sufficient alternative means to protect unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents, the considerations present in Proclamation 10014 remain.

In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas. During this same period, more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions. Also, the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high — 29.9 percent for 16-19 year olds, and 23.2 percent for the 20-24 year old group. The entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs, therefore, presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.

As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment — those who are typically “last

in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation’s immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand. In light of the above, I have determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Continuation of Proclamation 10014. (a) Section 4 of Proclamation 10014 is amended to read as follows:

“Sec. 4. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of June 24, 2020, and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the

Secretary of Labor, recommend any modifications as may be necessary.”

(b) This section shall be effective immediately.

Sec. 2. Suspension and Limitation on Entry. The entry into the United States of any alien seeking entry pursuant to any of the following nonimmigrant visas is hereby suspended and limited, subject to section 3 of this proclamation:

(a) an H-1B or H-2B visa, and any alien accompanying or following to join such alien;

(b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and

(c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

(i) is outside the United States on the effective date of this proclamation;

(ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and

(iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

(b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;

(iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and

(iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. Implementation and Enforcement. (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

(i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. Additional Measures. (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of Homeland Security for implementing measures that could reduce the risk that aliens seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien

should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

Sec. 6. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. Effective Date. Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be

invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

Sarosh Wahla
Associate Counsel
Office of the Chief Counsel
U.S. Citizenship and Immigration Services

[Redacted]
Cell [Redacted] .gov

(b)(6)

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USE ONLY. FOIA exempt under 5 U.S.C. § 552(b)(5).*

From: Angustia, Kathleen M (Kate)
Sent: Monday, June 22, 2020 5:28 PM
To: Miran, Maria Y; Choi, Heesun S (Sunny); Cox, Robert H; Gisser, Sheldon A (Alex)
Cc: Salem, Claudia S; Bump, Micah N; Chase, Carmen M; Hale, Paola R; Hunt, Brian J; Mahadevan, Sheila; Morse, Miriam A
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

There's so much in here that it's easy to gloss over a part.

Do we need to send an email to OP&S and OCC?

From: Miran, Maria Y <[REDACTED]@gov>
Sent: Monday, June 22, 2020 6:26 PM
To: Choi, Heesun S (Sunny) <[REDACTED]@gov>; Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>
Cc: Salem, Claudia S <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Great eyes S! I completely missed that part!

From: Choi, Heesun S (Sunny) <[REDACTED]@gov>
Sent: Monday, June 22, 2020 6:25 PM
To: Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>
Cc: Salem, Claudia S <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

Note the following exceptions. So, those H-2B workers providing service in the food supply chain, will still be able to enter the U.S. if they are able to obtain a visa from DOS.

(b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;

(iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and

(iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

From: Angustia, Kathleen M (Kate) [REDACTED] gov> (b)(6)
Sent: Monday, June 22, 2020 6:21 PM
To: Miran, Maria Y [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

I read the duration the same way as Maria.

From: Miran, Maria Y [REDACTED] gov>
Sent: Monday, June 22, 2020 6:20 PM
To: Cox, Robert H [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Morse, Miriam A [REDACTED] gov> (b)(6)
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

I thought [REDACTED]

(b)(5)

From: Cox, Robert H <[REDACTED]@gov>

(b)(6)

Sent: Monday, June 22, 2020 6:15 PM

To: Miran, Maria Y <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>

Cc: Salem, Claudia S <[REDACTED]@gov>; Angustia, Kathleen M (Kate)

<[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N

<[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Hale, Paola R

<[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila

<[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

(b)(5)

From: Miran, Maria Y <[REDACTED]@gov>

(b)(6)

Sent: Monday, June 22, 2020 6:14 PM

To: Gisser, Sheldon A (Alex) <[REDACTED]@gov>

Cc: Salem, Claudia S <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Angustia, Kathleen

M (Kate) <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah

N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Hale, Paola R

<[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila

<[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>

(b)(6)

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(5)

From: Gisser, Sheldon A (Alex) <[REDACTED]@gov>

(b)(6)

Sent: Monday, June 22, 2020 6:13 PM

To: Miran, Maria Y <[REDACTED]@gov>

Cc: Salem, Claudia S <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Angustia, Kathleen

M (Kate) <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah

N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Hale, Paola R

<[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila

<[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>

(b)(6)

Subject: Re: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(5)

Sent from my iPhone

On Jun 22, 2020, at 6:11 PM, Miran, Maria Y <[REDACTED]@gov> wrote:

(b)(6)

(b)(5)

From: Gisser, Sheldon A (Alex) [REDACTED] .gov>
Sent: Monday, June 22, 2020 6:08 PM
To: Miran, Maria Y [REDACTED] .gov>
Cc: Salem, Claudia S [REDACTED] .gov>; Cox, Robert H [REDACTED] .gov>;
Angustia, Kathleen M (Kate) [REDACTED] .gov>; Choi, Heesun S (Sunny)
[REDACTED] .gov>; Bump, Micah N [REDACTED] .gov>; Chase, Carmen M
[REDACTED] .gov>; Hale, Paola R [REDACTED] .gov>; Hunt, Brian J
[REDACTED] .gov>; Mahadevan, Sheila [REDACTED] .gov>; Morse, Miriam A
[REDACTED] .gov>
Subject: Re: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

Those would be the exceptions though, right? What about Rs, Qs, etc.?

Sent from my iPhone

On Jun 22, 2020, at 6:01 PM, Miran, Maria Y [REDACTED] .gov> wrote:

(b)(6)

Do you think there will be work for the EB-team under Section 3(b)(iv) and this portion of the EO? –

“The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.”

From: Salem, Claudia S [REDACTED] gov>
Sent: Monday, June 22, 2020 5:54 PM
To: Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Reading. Not sure I want to. 😞

From: Cox, Robert H [REDACTED] gov>
Sent: Monday, June 22, 2020 5:52 PM
To: Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

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Sent: Monday, June 22, 2020 5:49 PM
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(b)(6)

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[redacted] gov>; Mahadevan, Sheila [redacted] .gov>;
Miran, Maria Y [redacted] gov>; Morse, Miriam A
[redacted] gov>
Cc: Salem, Claudia S [redacted] gov>
Subject: FW: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S.
Labor Market Following the Coronavirus Outbreak

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[redacted] gov>; Choi, Heesun S (Sunny)
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(b)(6)

<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

IMMIGRATION

Issued on: June 22, 2020

The 2019 Novel Coronavirus (COVID-19) has significantly disrupted Americans' livelihoods. Since March 2020, United States businesses and their workers have faced extensive disruptions while undertaking certain public health measures necessary to flatten the curve of COVID-19 and reduce the spread of SARS-CoV-2, the virus that causes COVID-19. The overall unemployment rate in the United States nearly quadrupled between February and May of 2020 — producing some of the most extreme unemployment ever recorded by the Bureau of Labor Statistics. While the May rate of 13.3 percent reflects a marked decline from April, millions of Americans remain out of work.

In Proclamation 10014 of April 22, 2020 (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak), I determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Consequently, I suspended, for a period of 60 days, the entry of aliens as immigrants, subject to certain exceptions. As I noted, lawful permanent residents, once admitted pursuant to immigrant visas, are granted “open-market” employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Given that 60 days is an insufficient time period for the United States labor market, still stalled with partial social distancing measures, to rebalance, and given the lack of sufficient alternative means to protect unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents, the considerations present in Proclamation 10014 remain.

In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas. During this same period, more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions. Also, the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high — 29.9 percent for 16-19 year olds, and 23.2 percent for the 20-24 year old group. The entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs, therefore, presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.

As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment — those who are typically “last in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation’s immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand. In light of the above, I have determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Continuation of Proclamation 10014. (a) Section 4 of Proclamation 10014 is amended to read as follows:

“Sec. 4. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of June 24, 2020, and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.”

(b) This section shall be effective immediately.

Sec. 2. Suspension and Limitation on Entry. The entry into the United States of any alien seeking entry pursuant to any of the following nonimmigrant visas is hereby suspended and limited, subject to section 3 of this proclamation:

- (a) an H-1B or H-2B visa, and any alien accompanying or following to join such alien;
- (b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and
- (c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

- (i) is outside the United States on the effective date of this proclamation;
- (ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and
- (iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

(b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:

- (i) any lawful permanent resident of the United States;
- (ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;
- (iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and
- (iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. Implementation and Enforcement. (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

(i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. Additional Measures. (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of

Homeland Security for implementing measures that could reduce the risk that aliens seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

Sec. 6. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. Effective Date. Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

Sarosh Wahla
Associate Counsel
Office of the Chief Counsel
U.S. Citizenship and Immigration Services

[REDACTED] gov

(b)(6)

Cell: [REDACTED]

*****Warning*** Attorney/Client Privilege *** Attorney Work Product*****

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(b)(6)

From: Angustia, Kathleen M (Kate)
Sent: Monday, June 22, 2020 5:19 PM
To: Miran, Maria Y; Gisser, Sheldon A (Alex)
Cc: Salem, Claudia S; Cox, Robert H; Choi, Heesun S (Sunny); Bump, Micah N; Chase, Carmen M; Hale, Paola R; Hunt, Brian J; Mahadevan, Sheila; Morse, Miriam A
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Many of the H-2B essential food workers are here already?

From: Miran, Maria Y <[REDACTED]@gov>
Sent: Monday, June 22, 2020 6:11 PM
To: Gisser, Sheldon A (Alex) <[REDACTED]@gov>
Cc: Salem, Claudia S <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>
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(b)(6)

(b)(5)

From: Gisser, Sheldon A (Alex) <[REDACTED]@gov>
Sent: Monday, June 22, 2020 6:08 PM
To: Miran, Maria Y <[REDACTED]@gov>
Cc: Salem, Claudia S <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>
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(b)(6)

Those would be the exceptions though, right? What about Rs, Qs, etc.?

Sent from my iPhone

On Jun 22, 2020, at 6:01 PM, Miran, Maria Y <[REDACTED]@gov> wrote:

(b)(6)

Do you think there will be work for the EB-team under Section 3(b)(iv) and this portion of the EO? –

“The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.”

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To: Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
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<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

IMMIGRATION

Issued on: June 22, 2020

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In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B

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As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment — those who are typically “last in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation’s immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand. In light of the above, I have determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

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(b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and

(c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

(i) is outside the United States on the effective date of this proclamation;

(ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and

(iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

(b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;

(iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and

(iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. Implementation and Enforcement. (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

(i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. Additional Measures. (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of Homeland Security for implementing measures that could reduce the risk that aliens seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

Sec. 6. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. Effective Date. Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

Sarosh Wahla
Associate Counsel
Office of the Chief Counsel
U.S. Citizenship and Immigration Services

[REDACTED] gov
Cell [REDACTED]

(b)(6)

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From: Cox, Robert H
Sent: Monday, June 22, 2020 5:14 PM
To: Miran, Maria Y; Choi, Heesun S (Sunny); Salem, Claudia S; Angustia, Kathleen M (Kate); Bump, Micah N; Chase, Carmen M; Gisser, Sheldon A (Alex); Hale, Paola R; Hunt, Brian J; Mahadevan, Sheila; Morse, Miriam A
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Certainly a lot of H-1B stuff in the EO. Doesn't really help with the legal theory about

(b)(5)

From: Miran, Maria Y [redacted] gov>
Sent: Monday, June 22, 2020 6:08 PM
To: Choi, Heesun S (Sunny) [redacted] gov>; Salem, Claudia S [redacted] gov>; Cox, Robert H [redacted] gov>; Angustia, Kathleen M (Kate) [redacted] gov>; Bump, Micah N [redacted] gov>; Chase, Carmen M [redacted] gov>; Gisser, Sheldon A (Alex) [redacted] gov>; Hale, Paola R [redacted] gov>; Hunt, Brian J [redacted] gov>; Mahadevan, Sheila [redacted] gov>; Morse, Miriam A [redacted] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

That sounds like it gave you the hook for your H-1B rule...

From: Choi, Heesun S (Sunny) [redacted] gov>
Sent: Monday, June 22, 2020 6:05 PM
To: Miran, Maria Y [redacted] gov>; Salem, Claudia S [redacted] gov>; Cox, Robert H [redacted] gov>; Angustia, Kathleen M (Kate) [redacted] gov>; Bump, Micah N [redacted] gov>; Chase, Carmen M [redacted] gov>; Gisser, Sheldon A (Alex) [redacted] gov>; Hale, Paola R [redacted] gov>; Hunt, Brian J [redacted] gov>; Mahadevan, Sheila [redacted] gov>; Morse, Miriam A [redacted] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

Possibly but I think the below two sections may keep us busy with reg writing?

Sec. 4. Implementation and Enforcement.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or

take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

From: Miran, Maria Y [redacted] gov> (b)(6)
Sent: Monday, June 22, 2020 6:02 PM
To: Salem, Claudia S [redacted] gov>; Cox, Robert H [redacted] gov>; Angustia, Kathleen M (Kate) [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Chase, Carmen M [redacted] gov>; Gisser, Sheldon A (Alex) [redacted] gov>; Hale, Paola R [redacted] gov>; Hunt, Brian J [redacted] gov>; Mahadevan, Sheila [redacted] gov>; Morse, Miriam A [redacted] gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak (b)(6)

Do you think there will be work for the EB-team under Section 3(b)(iv) and this portion of the EO? –

“The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.”

From: Salem, Claudia S <[REDACTED]@gov>

Sent: Monday, June 22, 2020 5:54 PM

To: Cox, Robert H <[REDACTED]@gov>; Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Reading. Not sure I want to. 😞

From: Cox, Robert H <[REDACTED]@gov>

Sent: Monday, June 22, 2020 5:52 PM

To: Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>

Cc: Salem, Claudia S <[REDACTED]@gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Nicely edited. It refers at one point to "the Unites States economy."

From: Angustia, Kathleen M (Kate) <[REDACTED]@gov>

Sent: Monday, June 22, 2020 5:49 PM

To: Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>

Cc: Salem, Claudia S <[REDACTED]@gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Thanks. I'll read it now.

From: Choi, Heesun S (Sunny) <[REDACTED]@gov>

Sent: Monday, June 22, 2020 5:46 PM

To: Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>

Cc: Salem, Claudia S <[REDACTED]@gov>

Subject: FW: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Here's the proclamation. I'm still reading through it....

From: Wahla, Sarosh N <[REDACTED]@gov>

(b)(6)

Sent: Monday, June 22, 2020 5:42 PM

To: Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Salem, Claudia <[REDACTED]@gov>

(b)(6)

Subject: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

IMMIGRATION

Issued on: June 22, 2020

The 2019 Novel Coronavirus (COVID-19) has significantly disrupted Americans' livelihoods. Since March 2020, United States businesses and their workers have faced extensive disruptions while undertaking certain public health measures necessary to flatten the curve of COVID-19 and reduce the spread of SARS-CoV-2, the virus that causes COVID-19. The overall unemployment rate in the United States nearly quadrupled between February and May of 2020 — producing some of the most extreme unemployment ever recorded by the Bureau of Labor Statistics. While the May rate of 13.3 percent reflects a marked decline from April, millions of Americans remain out of work.

In Proclamation 10014 of April 22, 2020 (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak), I determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Consequently, I suspended, for a period of 60 days, the entry of aliens as immigrants, subject to certain exceptions. As I noted, lawful permanent residents, once admitted pursuant to immigrant visas, are granted “open-market” employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Given that 60 days is an insufficient time period for the United States labor market, still stalled with partial social distancing measures, to rebalance, and given the lack of sufficient alternative means to protect unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents, the considerations present in Proclamation 10014 remain.

In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas. During this same period, more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions. Also, the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high — 29.9 percent for 16-19 year olds, and 23.2 percent for the 20-24 year old group. The entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs, therefore, presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.

As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment — those who are typically “last in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation’s immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand. In light of the above, I have determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests

of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Continuation of Proclamation 10014. (a) Section 4 of Proclamation 10014 is amended to read as follows:

“Sec. 4. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of June 24, 2020, and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.”

(b) This section shall be effective immediately.

Sec. 2. Suspension and Limitation on Entry. The entry into the United States of any alien seeking entry pursuant to any of the following nonimmigrant visas is hereby suspended and limited, subject to section 3 of this proclamation:

(a) an H-1B or H-2B visa, and any alien accompanying or following to join such alien;

(b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and

(c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

(i) is outside the United States on the effective date of this proclamation;

(ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and

(iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

(b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;

(iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and

(iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. Implementation and Enforcement. (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

(i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. Additional Measures. (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of Homeland Security for implementing measures that could reduce the risk that aliens

seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

Sec. 6. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. Effective Date. Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

Sarosh Wahla
Associate Counsel
Office of the Chief Counsel
U.S. Citizenship and Immigration Services

[REDACTED] gov
Cell [REDACTED]

(b)(6)

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(b)(6)

From: Miran, Maria Y
Sent: Monday, June 22, 2020 5:14 PM
To: Gisser, Sheldon A (Alex)
Cc: Salem, Claudia S; Cox, Robert H; Angustia, Kathleen M (Kate); Choi, Heesun S (Sunny); Bump, Micah N; Chase, Carmen M; Hale, Paola R; Hunt, Brian J; Mahadevan, Sheila; Morse, Miriam A
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(5)

From: Gisser, Sheldon A (Alex) [REDACTED] gov> (b)(6)
Sent: Monday, June 22, 2020 6:13 PM
To: Miran, Maria Y [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Morse, Miriam A [REDACTED] gov> (b)(6)
Subject: Re: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(5)

Sent from my iPhone

On Jun 22, 2020, at 6:11 PM, Miran, Maria Y [REDACTED] gov> wrote:

(b)(6)

(b)(5)

From: Gisser, Sheldon A (Alex) [REDACTED] gov> (b)(6)
Sent: Monday, June 22, 2020 6:08 PM
To: Miran, Maria Y [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Morse, Miriam A [REDACTED] gov> (b)(6)
Subject: Re: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Those would be the exceptions though, right? What about Rs, Qs, etc.?

On Jun 22, 2020, at 6:01 PM, Miran, Maria Y [REDACTED] <[REDACTED]@gov> wrote:

(b)(6)

Do you think there will be work for the EB-team under Section 3(b)(iv) and this portion of the EO? –

“The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.”

From: Salem, Claudia S [REDACTED] <[REDACTED]@gov>

(b)(6)

Sent: Monday, June 22, 2020 5:54 PM

To: Cox, Robert H [REDACTED] <[REDACTED]@gov>; Angustia, Kathleen M (Kate)

[REDACTED] <[REDACTED]@gov>; Choi, Heesun S (Sunny)

[REDACTED] <[REDACTED]@gov>; Bump, Micah N [REDACTED] <[REDACTED]@gov>;

Chase, Carmen M [REDACTED] <[REDACTED]@gov>; Gisser, Sheldon A (Alex)

[REDACTED] <[REDACTED]@gov>; Hale, Paola R [REDACTED] <[REDACTED]@gov>; Hunt, Brian J

[REDACTED] <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>;

Miran, Maria Y [REDACTED] <[REDACTED]@gov>; Morse, Miriam A

[REDACTED] <[REDACTED]@gov>

(b)(6)

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Reading. Not sure I want to. ☹️

(b)(6)

From: Cox, Robert H [REDACTED] gov>
Sent: Monday, June 22, 2020 5:52 PM
To: Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Nicely edited. It refers at one point to "the United States economy."

From: Angustia, Kathleen M (Kate) [REDACTED] gov>
Sent: Monday, June 22, 2020 5:49 PM
To: Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Thanks. I'll read it now.

From: Choi, Heesun S (Sunny) [REDACTED] gov>
Sent: Monday, June 22, 2020 5:46 PM
To: Angustia, Kathleen M (Kate) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>
Subject: FW: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Here's the proclamation. I'm still reading through it.....

From: Wahla, Sarosh N [REDACTED] gov>
Sent: Monday, June 22, 2020 5:42 PM
To: Gisser, Sheldon A (Alex) [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>

[redacted]ov>; Choi, Heesun S (Sunny)

[redacted]ov>; Salem, Claudia S [redacted]ov>

(b)(6)

Subject: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

IMMIGRATION

Issued on: June 22, 2020

The 2019 Novel Coronavirus (COVID-19) has significantly disrupted Americans' livelihoods. Since March 2020, United States businesses and their workers have faced extensive disruptions while undertaking certain public health measures necessary to flatten the curve of COVID-19 and reduce the spread of SARS-CoV-2, the virus that causes COVID-19. The overall unemployment rate in the United States nearly quadrupled between February and May of 2020 — producing some of the most extreme unemployment ever recorded by the Bureau of Labor Statistics. While the May rate of 13.3 percent reflects a marked decline from April, millions of Americans remain out of work.

In Proclamation 10014 of April 22, 2020 (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak), I determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Consequently, I suspended, for a period of 60 days, the entry of aliens as immigrants, subject to certain exceptions. As I noted, lawful permanent residents, once admitted pursuant to immigrant visas, are granted “open-market” employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Given that 60 days is an insufficient time period for the United States labor market, still stalled with partial social distancing measures, to rebalance, and given the lack of sufficient alternative means to protect

unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents, the considerations present in Proclamation 10014 remain.

In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas. During this same period, more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions. Also, the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high — 29.9 percent for 16-19 year olds, and 23.2 percent for the 20-24 year old group. The entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs, therefore, presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.

As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment — those who are typically “last in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation’s immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when

recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand. In light of the above, I have determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Continuation of Proclamation 10014. (a) Section 4 of Proclamation 10014 is amended to read as follows:

“Sec. 4. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of June 24, 2020, and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.”

(b) This section shall be effective immediately.

Sec. 2. Suspension and Limitation on Entry. The entry into the United States of any alien seeking entry pursuant to any of the following nonimmigrant visas is hereby suspended and limited, subject to section 3 of this proclamation:

(a) an H-1B or H-2B visa, and any alien accompanying or following to join such alien;

(b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and

(c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

- (i) is outside the United States on the effective date of this proclamation;
- (ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and
- (iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

(b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:

- (i) any lawful permanent resident of the United States;
- (ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;
- (iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and
- (iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. Implementation and Enforcement. (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

(i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. Additional Measures. (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of Homeland Security for implementing measures that could reduce the risk that aliens seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall

also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

Sec. 6. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. Effective Date. Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

Sarosh Wahla
Associate Counsel
Office of the Chief Counsel
U.S. Citizenship and Immigration Services

[REDACTED] gov
Cell [REDACTED]

(b)(6)

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This email and any attachments thereto may contain information that is privileged, confidential, or otherwise protected from disclosure under applicable law. If the reader of this transmission is not the intended recipient or the employee or agent responsible for delivering the transmission to the intended recipient, you are hereby notified that any dissemination, distribution, copying or use of this transmission or its contents is strictly prohibited. If you have received this transmission in error, please notify us by email or telephone and delete or destroy the original transmission and any copies (electronic or paper). This document is for INTERNAL GOVERNMENT USE ONLY. FOIA exempt under 5 U.S.C. § 552(b)(5).

[REDACTED]

From: Gisser, Sheldon A (Alex)
Sent: Monday, June 22, 2020 5:12 PM
To: Choi, Heesun S (Sunny)
Cc: Miran, Maria Y; Salem, Claudia S; Cox, Robert H; Angustia, Kathleen M (Kate); Bump, Micah N; Chase, Carmen M; Hale, Paola R; Hunt, Brian J; Mahadevan, Sheila; Morse, Miriam A
Subject: Re: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

And Os and Ps are not mentioned either.

Sent from my iPhone

On Jun 22, 2020, at 6:11 PM, Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@[REDACTED].gov> wrote:

(b)(6)

[REDACTED] (b)(5)

From: Gisser, Sheldon A (Alex) [REDACTED] <[REDACTED]@[REDACTED].gov>
Sent: Monday, June 22, 2020 6:10 PM
To: Miran, Maria Y [REDACTED] <[REDACTED]@[REDACTED].gov>
Cc: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@[REDACTED].gov>; Salem, Claudia S [REDACTED] <[REDACTED]@[REDACTED].gov>; Cox, Robert H [REDACTED] <[REDACTED]@[REDACTED].gov>; Angustia, Kathleen M (Kate) [REDACTED] <[REDACTED]@[REDACTED].gov>; Bump, Micah N [REDACTED] <[REDACTED]@[REDACTED].gov>; Chase, Carmen M [REDACTED] <[REDACTED]@[REDACTED].gov>; Hale, Paola R [REDACTED] <[REDACTED]@[REDACTED].gov>; Hunt, Brian J [REDACTED] <[REDACTED]@[REDACTED].gov>; Mahadevan, Sheila [REDACTED] <[REDACTED]@[REDACTED].gov>; Morse, Miriam A [REDACTED] <[REDACTED]@[REDACTED].gov>
Subject: Re: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

[REDACTED] (b)(5)

Sent from my iPhone

On Jun 22, 2020, at 6:08 PM, Miran, Maria Y <[REDACTED]@[REDACTED].gov> wrote:

(b)(6)

That sounds like it gave you the hook for your H-1B rule...

From: Choi, Heesun S (Sunny) [REDACTED] <[REDACTED]@[REDACTED].gov>
Sent: Monday, June 22, 2020 6:05 PM
To: Miran, Maria Y [REDACTED] <[REDACTED]@[REDACTED].gov>; Salem, Claudia S [REDACTED] <[REDACTED]@[REDACTED].gov>; Cox, Robert H [REDACTED] <[REDACTED]@[REDACTED].gov>; Angustia, Kathleen M (Kate) [REDACTED] <[REDACTED]@[REDACTED].gov>; Bump, Micah N [REDACTED] <[REDACTED]@[REDACTED].gov>

(b)(6)

[redacted] gov>; Chase, Carmen M [redacted] gov>;
 Gisser, Sheldon A (Alex) [redacted] gov>; Hale, Paola R
 [redacted] gov>; Hunt, Brian J [redacted] gov>; Mahadevan,
 Sheila [redacted] gov>; Morse, Miriam A
 [redacted] gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S.
 Labor Market Following the Coronavirus Outbreak

Possibly but I think the below two sections may keep us busy with reg writing?

Sec. 4. Implementation and Enforcement.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

From: Miran, Maria Y <[redacted] gov>
Sent: Monday, June 22, 2020 6:02 PM
To: Salem, Claudia S <[redacted] gov>; Cox, Robert H
 <[redacted] gov>; Angustia, Kathleen M (Kate)
 <[redacted] gov>; Choi, Heesun S (Sunny)
 <[redacted] gov>; Bump, Micah N <[redacted] gov>;
 Chase, Carmen M <[redacted] gov>; Gisser, Sheldon A (Alex)
 <[redacted] gov>; Hale, Paola R <[redacted] gov>; Hunt, Brian J
 <[redacted] gov>; Mahadevan, Sheila <[redacted] gov>;
 Morse, Miriam A <[redacted] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S.
 Labor Market Following the Coronavirus Outbreak

Do you think there will be work for the EB-team under Section 3(b)(iv) and this portion of the EO? –

“The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.”

From: Salem, Claudia S [REDACTED] gov>
Sent: Monday, June 22, 2020 5:54 PM
To: Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Reading. Not sure I want to. ☹

From: Cox, Robert H [REDACTED] gov>
Sent: Monday, June 22, 2020 5:52 PM
To: Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>

(b)(6)

(b)(6)

Gisser, Sheldon A (Alex) [redacted] gov>; Hale, Paola R
 [redacted] gov>; Hunt, Brian J [redacted] gov>; Mahadevan,
 Sheila [redacted] gov>; Miran, Maria Y
 [redacted] gov>; Morse, Miriam A [redacted] gov>
Cc: Salem, Claudia S [redacted] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S.
 Labor Market Following the Coronavirus Outbreak

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Sent: Monday, June 22, 2020 5:49 PM
To: Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N
 [redacted] gov>; Chase, Carmen M [redacted] gov>;
 Cox, Robert H [redacted] gov>; Gisser, Sheldon A (Alex)
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 [redacted] gov>; Mahadevan, Sheila <[redacted] gov>;
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Cc: Salem, Claudia S [redacted] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S.
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 [redacted] gov>; Choi, Heesun S (Sunny)
 [redacted] gov>; Salem, Claudia S [redacted] gov>
Subject: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor
 Market Following the Coronavirus Outbreak

<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

IMMIGRATION

Issued on: June 22, 2020

The 2019 Novel Coronavirus (COVID-19) has significantly disrupted Americans' livelihoods. Since March 2020, United States businesses and their workers have faced extensive disruptions while undertaking certain public health measures necessary to flatten the curve of COVID-19 and reduce the spread of SARS-CoV-2, the virus that causes COVID-19. The overall unemployment rate in the United States nearly quadrupled between February and May of 2020 — producing some of the most extreme unemployment ever recorded by the Bureau of Labor Statistics. While the May rate of 13.3 percent reflects a marked decline from April, millions of Americans remain out of work.

In Proclamation 10014 of April 22, 2020 (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak), I determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Consequently, I suspended, for a period of 60 days, the entry of aliens as immigrants, subject to certain exceptions. As I noted, lawful permanent residents, once admitted pursuant to immigrant visas, are granted “open-market” employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Given that 60 days is an insufficient time period for the United States labor market, still stalled with partial social distancing measures, to rebalance, and given the lack of sufficient alternative means to protect unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents, the considerations present in Proclamation 10014 remain.

In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found

that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas. During this same period, more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions. Also, the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high — 29.9 percent for 16-19 year olds, and 23.2 percent for the 20-24 year old group. The entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs, therefore, presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.

As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment — those who are typically “last in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation’s immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand. In light of the above, I have

determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Continuation of Proclamation 10014. (a) Section 4 of Proclamation 10014 is amended to read as follows:

“Sec. 4. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of June 24, 2020, and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.”

(b) This section shall be effective immediately.

Sec. 2. Suspension and Limitation on Entry. The entry into the United States of any alien seeking entry pursuant to any of the following nonimmigrant visas is hereby suspended and limited, subject to section 3 of this proclamation:

(a) an H-1B or H-2B visa, and any alien accompanying or following to join such alien;

(b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and

(c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

- (i) is outside the United States on the effective date of this proclamation;
 - (ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and
 - (iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.
- (b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:
- (i) any lawful permanent resident of the United States;
 - (ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;
 - (iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and
 - (iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. Implementation and Enforcement. (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

- (i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals

who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. Additional Measures. (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of Homeland Security for implementing measures that could reduce the risk that aliens seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

Sec. 6. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. Effective Date. Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

Sarosh Wahla
Associate Counsel
Office of the Chief Counsel
U.S. Citizenship and Immigration Services

[redacted] gov (b)(6)
Cell: [redacted]

*****Warning*** Attorney/Client Privilege *** Attorney Work Product*****

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(b)(6)

From: Salem, Claudia S
Sent: Monday, June 22, 2020 5:11 PM
To: Gisser, Sheldon A (Alex); Miran, Maria Y
Cc: Choi, Heesun S (Sunny); Cox, Robert H; Angustia, Kathleen M (Kate); Bump, Micah N; Chase, Carmen M; Hale, Paola R; Hunt, Brian J; Mahadevan, Sheila; Morse, Miriam A
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(5)

From: Gisser, Sheldon A (Alex) <[REDACTED]@gov> (b)(6)
Sent: Monday, June 22, 2020 6:10 PM
To: Miran, Maria Y <[REDACTED]@gov>
Cc: Choi, Heesun S (Sunny) <[REDACTED]@gov>; Salem, Claudia S <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>
Subject: Re: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak (b)(6)

(b)(5)

Sent from my iPhone

On Jun 22, 2020, at 6:08 PM, Miran, Maria Y <[REDACTED]@gov> wrote:

(b)(6)

That sounds like it gave you the hook for your H-1B rule...

From: Choi, Heesun S (Sunny) <[REDACTED]@gov>
Sent: Monday, June 22, 2020 6:05 PM
To: Miran, Maria Y <[REDACTED]@gov>; Salem, Claudia S <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak (b)(6)

Possibly but I think the below two sections may keep us busy with reg writing?

Sec. 4. Implementation and Enforcement.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.”

From: Salem, Claudia S [REDACTED] gov>
Sent: Monday, June 22, 2020 5:54 PM
To: Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

Reading. Not sure I want to. ☹️

From: Cox, Robert H [REDACTED] gov>
Sent: Monday, June 22, 2020 5:52 PM
To: Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
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Subject: FW: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

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Subject: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

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Issued on: June 22, 2020

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In Proclamation 10014 of April 22, 2020 (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak), I determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Consequently, I suspended, for a period of 60 days, the entry of aliens as immigrants, subject to certain exceptions. As I noted, lawful permanent residents, once admitted pursuant to immigrant visas, are granted “open-market” employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Given that 60 days is an insufficient time period for the United States labor market, still stalled with partial social distancing measures, to rebalance, and given the lack of sufficient alternative means to protect unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents, the considerations present in Proclamation 10014 remain.

In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas. During this same period, more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions. Also, the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high — 29.9 percent for 16-19 year olds, and 23.2 percent for the 20-24 year old group. The entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs, therefore, presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.

As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment — those who are typically “last in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation's immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand. In light of the above, I have determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Continuation of Proclamation 10014. (a) Section 4 of Proclamation 10014 is amended to read as follows:

"Sec. 4. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of June 24, 2020, and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary."

(b) This section shall be effective immediately.

Sec. 2. Suspension and Limitation on Entry. The entry into the United States of any alien seeking entry pursuant to any of the following nonimmigrant visas is hereby suspended and limited, subject to section 3 of this proclamation:

(a) an H-1B or H-2B visa, and any alien accompanying or following to join such alien;

(b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and

(c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

(i) is outside the United States on the effective date of this proclamation;

(ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and

(iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

(b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;

(iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and

(iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. Implementation and Enforcement. (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

(i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy,

or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. Additional Measures. (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of Homeland Security for implementing measures that could reduce the risk that aliens seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered

with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

Sec. 6. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. Effective Date. Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

Sarosh Wahla
Associate Counsel
Office of the Chief Counsel
U.S. Citizenship and Immigration Services

[redacted] gov
Cell [redacted]

(b)(6)

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From: Salem, Claudia S
Sent: Monday, June 22, 2020 5:10 PM
To: Miran, Maria Y; Choi, Heesun S (Sunny); Cox, Robert H; Angustia, Kathleen M (Kate); Bump, Micah N; Chase, Carmen M; Gisser, Sheldon A (Alex); Hale, Paola R; Hunt, Brian J; Mahadevan, Sheila; Morse, Miriam A
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Yes, I got the impression

(b)(5)

From: Miran, Maria Y <[REDACTED]@gov>
Sent: Monday, June 22, 2020 6:08 PM
To: Choi, Heesun S (Sunny) <[REDACTED]@gov>; Salem, Claudia S <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

That sounds like it gave you the hook for your H-1B rule...

From: Choi, Heesun S (Sunny) <[REDACTED]@gov>
Sent: Monday, June 22, 2020 6:05 PM
To: Miran, Maria Y <[REDACTED]@gov>; Salem, Claudia S <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

Possibly but I think the below two sections may keep us busy with reg writing?

Sec. 4. Implementation and Enforcement.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8

U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

From: Miran, Maria Y [REDACTED] [ov>] (b)(6)
Sent: Monday, June 22, 2020 6:02 PM
To: Salem, Claudia S [REDACTED] [ov>; Cox, Robert H [REDACTED] [ov>; Angustia, Kathleen M (Kate) [REDACTED] [ov>; Choi, Heesun S (Sunny) [REDACTED] [ov>; Bump, Micah N [REDACTED] [ov>; Chase, Carmen M [REDACTED] [ov>; Gisser, Sheldon A (Alex) [REDACTED] [ov>; Hale, Paola R [REDACTED] [ov>; Hunt, Brian J [REDACTED] [ov>; Mahadevan, Sheila [REDACTED] [ov>; Morse, Miriam A [REDACTED] [ov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Do you think there will be work for the EB-team under Section 3(b)(iv) and this portion of the EO? –

“The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.”

From: Salem, Claudia S [REDACTED] [ov>] (b)(6)
Sent: Monday, June 22, 2020 5:54 PM

To: Cox, Robert H [REDACTED] <[REDACTED]@[REDACTED].gov>; Angustia, Kathleen M (Kate) <[REDACTED]@[REDACTED].gov>; Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>; Bump, Micah N <[REDACTED]@[REDACTED].gov>; Chase, Carmen M <[REDACTED]@[REDACTED].gov>; Gisser, Sheldon A (Alex) <[REDACTED]@[REDACTED].gov>; Hale, Paola R <[REDACTED]@[REDACTED].gov>; Hunt, Brian J <[REDACTED]@[REDACTED].gov>; Mahadevan, Sheila <[REDACTED]@[REDACTED].gov>; Miran, Maria Y <[REDACTED]@[REDACTED].gov>; Morse, Miriam A <[REDACTED]@[REDACTED].gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Reading. Not sure I want to. 😞

From: Cox, Robert H <[REDACTED]@[REDACTED].gov>

Sent: Monday, June 22, 2020 5:52 PM

To: Angustia, Kathleen M (Kate) <[REDACTED]@[REDACTED].gov>; Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>; Bump, Micah N <[REDACTED]@[REDACTED].gov>; Chase, Carmen M <[REDACTED]@[REDACTED].gov>; Gisser, Sheldon A (Alex) <[REDACTED]@[REDACTED].gov>; Hale, Paola R <[REDACTED]@[REDACTED].gov>; Hunt, Brian J <[REDACTED]@[REDACTED].gov>; Mahadevan, Sheila <[REDACTED]@[REDACTED].gov>; Miran, Maria Y <[REDACTED]@[REDACTED].gov>; Morse, Miriam A <[REDACTED]@[REDACTED].gov>

Cc: Salem, Claudia S <[REDACTED]@[REDACTED].gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Nicely edited. It refers at one point to "the United States economy."

From: Angustia, Kathleen M (Kate) <[REDACTED]@[REDACTED].gov>

Sent: Monday, June 22, 2020 5:49 PM

To: Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>; Bump, Micah N <[REDACTED]@[REDACTED].gov>; Chase, Carmen M <[REDACTED]@[REDACTED].gov>; Cox, Robert H <[REDACTED]@[REDACTED].gov>; Gisser, Sheldon A (Alex) <[REDACTED]@[REDACTED].gov>; Hale, Paola R <[REDACTED]@[REDACTED].gov>; Hunt, Brian J <[REDACTED]@[REDACTED].gov>; Mahadevan, Sheila <[REDACTED]@[REDACTED].gov>; Miran, Maria Y <[REDACTED]@[REDACTED].gov>; Morse, Miriam A <[REDACTED]@[REDACTED].gov>

Cc: Salem, Claudia S <[REDACTED]@[REDACTED].gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Thanks. I'll read it now.

From: Choi, Heesun S (Sunny) <[REDACTED]@[REDACTED].gov>

Sent: Monday, June 22, 2020 5:46 PM

To: Angustia, Kathleen M (Kate) <[REDACTED]@[REDACTED].gov>; Bump, Micah N <[REDACTED]@[REDACTED].gov>; Chase, Carmen M <[REDACTED]@[REDACTED].gov>; Cox, Robert H <[REDACTED]@[REDACTED].gov>; Gisser, Sheldon A (Alex) <[REDACTED]@[REDACTED].gov>; Hale, Paola R <[REDACTED]@[REDACTED].gov>; Hunt, Brian J <[REDACTED]@[REDACTED].gov>; Mahadevan, Sheila <[REDACTED]@[REDACTED].gov>; Miran, Maria Y <[REDACTED]@[REDACTED].gov>; Morse, Miriam A <[REDACTED]@[REDACTED].gov>

Cc: Salem, Claudia S <[REDACTED]@[REDACTED].gov>

Subject: FW: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Here's the proclamation. I'm still reading through it.....

From: Wahla, Sarosh N [REDACTED] gov>

(b)(6)

Sent: Monday, June 22, 2020 5:42 PM

To: Gisser, Sheldon A (Alex) [REDACTED] gov>; Mahadevan, Sheila [REDACTED] ov>; Choi, Heesun S (Sunny) [REDACTED] v>; Salem, Claudia S [REDACTED] ov>

(b)(6)

Subject: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

IMMIGRATION

Issued on: June 22, 2020

The 2019 Novel Coronavirus (COVID-19) has significantly disrupted Americans' livelihoods. Since March 2020, United States businesses and their workers have faced extensive disruptions while undertaking certain public health measures necessary to flatten the curve of COVID-19 and reduce the spread of SARS-CoV-2, the virus that causes COVID-19. The overall unemployment rate in the United States nearly quadrupled between February and May of 2020 — producing some of the most extreme unemployment ever recorded by the Bureau of Labor Statistics. While the May rate of 13.3 percent reflects a marked decline from April, millions of Americans remain out of work.

In Proclamation 10014 of April 22, 2020 (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak), I determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Consequently, I suspended, for a period of 60 days, the entry of aliens as immigrants, subject to certain exceptions. As I noted, lawful permanent residents, once admitted pursuant to immigrant visas, are granted “open-market” employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Given that 60 days is an insufficient time period for the United States labor market, still stalled with partial social distancing measures, to rebalance, and given the lack of sufficient alternative means to protect unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents, the considerations present in Proclamation 10014 remain.

In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several

nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas. During this same period, more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions. Also, the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high — 29.9 percent for 16-19 year olds, and 23.2 percent for the 20-24 year old group. The entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs, therefore, presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.

As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment — those who are typically “last in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation’s immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand. In light of the above, I have determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Continuation of Proclamation 10014. (a) Section 4 of Proclamation 10014 is amended to read as follows:

“Sec. 4. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of June 24, 2020, and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.”

(b) This section shall be effective immediately.

Sec. 2. Suspension and Limitation on Entry. The entry into the United States of any alien seeking entry pursuant to any of the following nonimmigrant visas is hereby suspended and limited, subject to section 3 of this proclamation:

(a) an H-1B or H-2B visa, and any alien accompanying or following to join such alien;

(b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and

(c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

(i) is outside the United States on the effective date of this proclamation;

(ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and

(iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

(b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:

(i) any lawful permanent resident of the United States;

(ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;

(iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and

(iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. Implementation and Enforcement. (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

(i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. Additional Measures. (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of Homeland Security for implementing measures that could reduce the risk that aliens seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

Sec. 6. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. Effective Date. Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch

officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

Sarosh Wahla
Associate Counsel
Office of the Chief Counsel
U.S. Citizenship and Immigration Services

[REDACTED] gov
Cell [REDACTED]

(b)(6)

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From: Salem, Claudia S
Sent: Monday, June 22, 2020 5:08 PM
To: Gisser, Sheldon A (Alex); Choi, Heesun S (Sunny)
Cc: Miran, Maria Y; Cox, Robert H; Angustia, Kathleen M (Kate); Bump, Micah N; Chase, Carmen M; Hale, Paola R; Hunt, Brian J; Mahadevan, Sheila; Morse, Miriam A
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

I saw that. Wow, that's sudden.

And Not sure what we'll be asked to do per:

The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)).

From: Gisser, Sheldon A (Alex) [REDACTED] gov>
Sent: Monday, June 22, 2020 6:07 PM
To: Choi, Heesun S (Sunny) [REDACTED] gov>
Cc: Miran, Maria Y [REDACTED] gov>; Salem, Claudia S [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Subject: Re: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Notice This is 'effective immediately'

Sent from my iPhone

On Jun 22, 2020, at 6:04 PM, Choi, Heesun S (Sunny) [REDACTED] gov> wrote:

(b)(6)

Possibly but I think the below two sections may keep us busy with reg writing?

Sec. 4. Implementation and Enforcement.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise

provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

From: Miran, Maria Y [redacted] <[redacted]@[redacted].gov>
Sent: Monday, June 22, 2020 6:02 PM
To: Salem, Claudia S [redacted] <[redacted]@[redacted].gov>; Cox, Robert H [redacted] <[redacted]@[redacted].gov>; Angustia, Kathleen M (Kate) [redacted] <[redacted]@[redacted].gov>; Choi, Heesun S (Sunny) [redacted] <[redacted]@[redacted].gov>; Bump, Micah N [redacted] <[redacted]@[redacted].gov>; Chase, Carmen M [redacted] <[redacted]@[redacted].gov>; Gisser, Sheldon A (Alex) [redacted] <[redacted]@[redacted].gov>; Hale, Paola R [redacted] <[redacted]@[redacted].gov>; Hunt, Brian J [redacted] <[redacted]@[redacted].gov>; Mahadevan, Sheila [redacted] <[redacted]@[redacted].gov>; Morse, Miriam A [redacted] <[redacted]@[redacted].gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

(b)(6)

Do you think there will be work for the EB-team under Section 3(b)(iv) and this portion of the EO? –

“The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.”

(b)(6)

From: Salem, Claudia S [REDACTED] gov>
Sent: Monday, June 22, 2020 5:54 PM
To: Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Reading. Not sure I want to. ☹

From: Cox, Robert H [REDACTED] gov>
Sent: Monday, June 22, 2020 5:52 PM
To: Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Nicely edited. It refers at one point to "the Unites States economy."

From: Angustia, Kathleen M (Kate) [REDACTED] gov>
Sent: Monday, June 22, 2020 5:49 PM
To: Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>; Morse, Miriam A [REDACTED] gov>
Cc: Salem, Claudia S [REDACTED] gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Thanks. I'll read it now.

From: Choi, Heesun S (Sunny) [REDACTED] gov>
Sent: Monday, June 22, 2020 5:46 PM
To: Angustia, Kathleen M (Kate) [REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>; Hale, Paola R [REDACTED] gov>

(b)(6)

[redacted] <[redacted]@[redacted].gov>; Hunt, Brian J [redacted] <[redacted]@[redacted].gov>; Mahadevan, Sheila [redacted] <[redacted]@[redacted].gov>; Miran, Maria Y [redacted] <[redacted]@[redacted].gov>; Morse, Miriam A [redacted] <[redacted]@[redacted].gov>
 Cc: Salem, Claudia S [redacted] <[redacted]@[redacted].gov>
Subject: FW: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Here's the proclamation. I'm still reading through it.....

From: Wahla, Sarosh N [redacted] <[redacted]@[redacted].gov>
Sent: Monday, June 22, 2020 5:42 PM
To: Gisser, Sheldon A (Alex) [redacted] <[redacted]@[redacted].gov>; Mahadevan, Sheila [redacted] <[redacted]@[redacted].gov>; Choi, Heesun S (Sunny) [redacted] <[redacted]@[redacted].gov>; Salem, Claudia S [redacted] <[redacted]@[redacted].gov>
Subject: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

IMMIGRATION

Issued on: June 22, 2020

The 2019 Novel Coronavirus (COVID-19) has significantly disrupted Americans' livelihoods. Since March 2020, United States businesses and their workers have faced extensive disruptions while undertaking certain public health measures necessary to flatten the curve of COVID-19 and reduce the spread of SARS-CoV-2, the virus that causes COVID-19. The overall unemployment rate in the United States nearly quadrupled between February and May of 2020 — producing some of the most extreme unemployment ever recorded by the Bureau of Labor Statistics. While the May rate of 13.3 percent reflects a marked decline from April, millions of Americans remain out of work.

In Proclamation 10014 of April 22, 2020 (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak), I determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Consequently, I suspended, for a period of 60 days, the

entry of aliens as immigrants, subject to certain exceptions. As I noted, lawful permanent residents, once admitted pursuant to immigrant visas, are granted “open-market” employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Given that 60 days is an insufficient time period for the United States labor market, still stalled with partial social distancing measures, to rebalance, and given the lack of sufficient alternative means to protect unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents, the considerations present in Proclamation 10014 remain.

In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas. During this same period, more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions. Also, the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high — 29.9 percent for 16-19 year olds, and 23.2 percent for the 20-24 year old group. The entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs, therefore, presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.

As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment — those who are typically “last in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation’s immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when recovering from economic shocks that cause significant

contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand. In light of the above, I have determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Continuation of Proclamation 10014. (a) Section 4 of Proclamation 10014 is amended to read as follows:

“Sec. 4. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of June 24, 2020, and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.”

(b) This section shall be effective immediately.

Sec. 2. Suspension and Limitation on Entry. The entry into the United States of any alien seeking entry pursuant to any of the following nonimmigrant visas is hereby suspended and limited, subject to section 3 of this proclamation:

(a) an H-1B or H-2B visa, and any alien accompanying or following to join such alien;

(b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and

(c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

- (i) is outside the United States on the effective date of this proclamation;
 - (ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and
 - (iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.
- (b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:
- (i) any lawful permanent resident of the United States;
 - (ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;
 - (iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and
 - (iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. Implementation and Enforcement. (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

- (i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of

Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. Additional Measures. (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of Homeland Security for implementing measures that could reduce the risk that aliens seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United

States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

Sec. 6. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. Effective Date. Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

Sarosh Wahla
Associate Counsel
Office of the Chief Counsel
U.S. Citizenship and Immigration Services

[redacted] gov (b)(6)
Ce [redacted]

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(b)(6)

From: Salem, Claudia S
Sent: Tuesday, June 23, 2020 11:09 AM
To: Hunt, Brian J; Miran, Maria Y; Cox, Robert H; Angustia, Kathleen M (Kate); Gisser, Sheldon A (Alex)
Cc: Choi, Heesun S (Sunny); Bump, Micah N; Chase, Carmen M; Hale, Paola R; Mahadevan, Sheila; Morse, Miriam A
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak
Importance: High

Whoever is free at 1215, I put together a very RUSHED little call with Bridgette and some of the SCLD folks to discuss who does what to interpret this Exec Order for Molly/AM the client. This is a quick call to decide what are the top bullets/impact and decide maybe who is doing what so it's not 3 million chefs in kitchen. Feel free to tap into EB line at 1215. If you can't make it or feel this is not exactly as much yo as it is others on eb, then join on EB call at 1pm for more discussion.

From: Hunt, Brian J [redacted] gov>
Sent: Monday, June 22, 2020 6:49 PM
To: Miran, Maria Y [redacted] gov>; Cox, Robert H <[redacted] gov>; Angustia, Kathleen M (Kate) [redacted] gov>; Gisser, Sheldon A (Alex) [redacted] gov>
Cc: Salem, Claudia S [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Chase, Carmen M [redacted] gov>; Hale, Paola R [redacted] gov>; Mahadevan, Sheila <[redacted] gov>; Morse, Miriam A [redacted] gov>

(b)(6)

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

So, an H-1B for example [redacted]

(b)(5)

From: Miran, Maria Y [redacted] gov>
Sent: Monday, June 22, 2020 6:32 PM
To: Cox, Robert H <[redacted] gov>; Angustia, Kathleen M (Kate) [redacted] gov>; Gisser, Sheldon A (Alex) <[redacted] gov>
Cc: Salem, Claudia S [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>; Chase, Carmen M [redacted] gov>; Hale, Paola R [redacted] gov>; Hunt, Brian J [redacted] gov>; Mahadevan, Sheila [redacted] gov>; Morse, Miriam A <[redacted] gov>

(b)(6)

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

I don't disagree [redacted]

(b)(5)

From: Cox, Robert H [REDACTED] gov>

(b)(6)

Sent: Monday, June 22, 2020 6:28 PM

To: Angustia, Kathleen M (Kate) [REDACTED] gov>; Miran, Maria Y [REDACTED] gov>;

Gisser, Sheldon A (Alex) [REDACTED] gov>

Cc: Salem, Claudia S [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump,

Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R

[REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila

[REDACTED] gov>; Morse, Miriam A [REDACTED] gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

I still think [REDACTED]

(b)(5)

From: Angustia, Kathleen M (Kate) [REDACTED] gov>

(b)(6)

Sent: Monday, June 22, 2020 6:21 PM

To: Miran, Maria Y [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Gisser, Sheldon A

(Alex) [REDACTED] gov>

Cc: Salem, Claudia S [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump,

Micah N [REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R

[REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila

[REDACTED] gov>; Morse, Miriam A [REDACTED] gov>

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

I read the duration the same way as Maria.

From: Miran, Maria Y [REDACTED] gov>

Sent: Monday, June 22, 2020 6:20 PM

To: Cox, Robert H [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>

Cc: Salem, Claudia S [REDACTED] gov>; Angustia, Kathleen M (Kate)

[REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N

[REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R

[REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila

[REDACTED] gov>; Morse, Miriam A [REDACTED] gov>

(b)(6)

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

I thought [REDACTED]

(b)(5)

From: Cox, Robert H [REDACTED] gov>

(b)(6)

Sent: Monday, June 22, 2020 6:15 PM

To: Miran, Maria Y [REDACTED] gov>; Gisser, Sheldon A (Alex) [REDACTED] gov>

Cc: Salem, Claudia S [REDACTED] gov>; Angustia, Kathleen M (Kate)

[REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N

[REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R

[REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila

[REDACTED] gov>; Morse, Miriam A [REDACTED] gov>

(b)(6)

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(5)

From: Miran, Maria Y [REDACTED] gov>

(b)(6)

Sent: Monday, June 22, 2020 6:14 PM

To: Gisser, Sheldon A (Alex) [REDACTED] gov>

Cc: Salem, Claudia S [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N

[REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R

[REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila

[REDACTED] gov>; Morse, Miriam A [REDACTED] gov>

(b)(6)

Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(5)

From: Gisser, Sheldon A (Alex) [REDACTED] gov>

(b)(6)

Sent: Monday, June 22, 2020 6:13 PM

To: Miran, Maria Y [REDACTED] gov>

Cc: Salem, Claudia S [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>; Bump, Micah N

[REDACTED] gov>; Chase, Carmen M [REDACTED] gov>; Hale, Paola R

[REDACTED] gov>; Hunt, Brian J [REDACTED] gov>; Mahadevan, Sheila

[REDACTED] gov>; Morse, Miriam A [REDACTED] gov>

(b)(6)

Subject: Re: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(5)

Sent from my iPhone

On Jun 22, 2020, at 6:11 PM, Miran, Maria Y [REDACTED] gov> wrote:

(b)(6)

(b)(5)

From: Gisser, Sheldon A (Alex) [REDACTED] gov>

(b)(6)

Sent: Monday, June 22, 2020 6:08 PM

To: Miran, Maria Y [REDACTED] gov>

Cc: Salem, Claudia S [REDACTED] gov>; Cox, Robert H [REDACTED] gov>;

Angustia, Kathleen M (Kate) [REDACTED] gov>; Choi, Heesun S (Sunny)

[REDACTED] gov>; Bump, Micah N [REDACTED] gov>; Chase, Carmen M

[REDACTED] gov>; Hale, Paola R [REDACTED] gov>; Hunt, Brian J

[REDACTED] gov>; Mahadevan, Sheila [REDACTED] gov>; Morse, Miriam A

[REDACTED] gov>

Subject: Re: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Those would be the exceptions though, right? What about Rs, Qs, etc.?

Sent from my iPhone

On Jun 22, 2020, at 6:01 PM, Miran, Maria Y [REDACTED] gov> wrote:

(b)(6)

Do you think there will be work for the EB-team under Section 3(b)(iv) and this portion of the EO? –

“The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.”

(b)(6)

From: Salem, Claudia S <[REDACTED]@gov>
Sent: Monday, June 22, 2020 5:54 PM
To: Cox, Robert H <[REDACTED]@gov>; Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Reading. Not sure I want to. 😞

From: Cox, Robert H <[REDACTED]@gov>
Sent: Monday, June 22, 2020 5:52 PM
To: Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>
Cc: Salem, Claudia S <[REDACTED]@gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Nicely edited. It refers at one point to "the Unites States economy."

From: Angustia, Kathleen M (Kate) <[REDACTED]@gov>
Sent: Monday, June 22, 2020 5:49 PM
To: Choi, Heesun S (Sunny) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>; Hale, Paola R <[REDACTED]@gov>; Hunt, Brian J <[REDACTED]@gov>; Mahadevan, Sheila <[REDACTED]@gov>; Miran, Maria Y <[REDACTED]@gov>; Morse, Miriam A <[REDACTED]@gov>
Cc: Salem, Claudia S <[REDACTED]@gov>
Subject: RE: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Thanks. I'll read it now.

From: Choi, Heesun S (Sunny) <[REDACTED]@gov>
Sent: Monday, June 22, 2020 5:46 PM
To: Angustia, Kathleen M (Kate) <[REDACTED]@gov>; Bump, Micah N <[REDACTED]@gov>; Chase, Carmen M <[REDACTED]@gov>; Cox, Robert H <[REDACTED]@gov>; Gisser, Sheldon A (Alex) <[REDACTED]@gov>

(b)(6)

(b)(6)

[redacted] <[redacted]@[redacted].gov>; Hale, Paola R <[redacted]@[redacted].gov>; Hunt, Brian J <[redacted]@[redacted].gov>;
[redacted] <[redacted]@[redacted].gov>; Mahadevan, Sheila <[redacted]@[redacted].gov>;
Miran, Maria V <[redacted]@[redacted].gov>; Morse, Miriam A <[redacted]@[redacted].gov>;
[redacted] <[redacted]@[redacted].gov>
Cc: Salem, Claudia S <[redacted]@[redacted].gov>
Subject: FW: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Here's the proclamation. I'm still reading through it.....

From: Wahla, Sarosh N <[redacted]@[redacted].gov>
Sent: Monday, June 22, 2020 5:42 PM
To: Gisser, Sheldon A (Alex) <[redacted]@[redacted].gov>; Mahadevan, Sheila <[redacted]@[redacted].gov>; Choi, Heesun S (Sunny) <[redacted]@[redacted].gov>; Salem, Claudia S <[redacted]@[redacted].gov>
Subject: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(6)

<https://www.whitehouse.gov/presidential-actions/proclamation-suspending-entry-aliens-present-risk-u-s-labor-market-following-coronavirus-outbreak/>

Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

IMMIGRATION

Issued on: June 22, 2020

The 2019 Novel Coronavirus (COVID-19) has significantly disrupted Americans' livelihoods. Since March 2020, United States businesses and their workers have faced extensive disruptions while undertaking certain public health measures necessary to flatten the curve of COVID-19 and reduce the spread of SARS-CoV-2, the virus that causes COVID-19. The overall unemployment rate in the United States nearly quadrupled between February and May of 2020 — producing some of the most extreme unemployment ever recorded by the Bureau of Labor Statistics. While the May rate of 13.3 percent reflects a marked decline from April, millions of Americans remain out of work.

In Proclamation 10014 of April 22, 2020 (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak), I determined that, without intervention, the United States faces a potentially protracted economic recovery with persistently high unemployment if labor supply outpaces labor demand. Consequently, I suspended, for a period of 60 days, the entry of aliens as immigrants, subject to certain exceptions. As I noted, lawful permanent residents, once admitted pursuant to immigrant visas, are granted “open-market” employment authorization documents, allowing them immediate eligibility to compete for almost any job, in any sector of the economy. Given that 60 days is an insufficient time period for the United States labor market, still stalled with partial social distancing measures, to rebalance, and given the lack of sufficient alternative means to protect unemployed Americans from the threat of competition for scarce jobs from new lawful permanent residents, the considerations present in Proclamation 10014 remain.

In addition, pursuant to Proclamation 10014, the Secretary of Labor and the Secretary of Homeland Security reviewed nonimmigrant programs and found that the present admission of workers within several nonimmigrant visa categories also poses a risk of displacing and disadvantaging United States workers during the current recovery.

American workers compete against foreign nationals for jobs in every sector of our economy, including against millions of aliens who enter the United States to perform temporary work. Temporary workers are often accompanied by their spouses and children, many of whom also compete against American workers. Under ordinary circumstances, properly administered temporary worker programs can provide benefits to the economy. But under the extraordinary circumstances of the economic contraction resulting from the COVID-19 outbreak, certain nonimmigrant visa programs authorizing such employment pose an unusual threat to the employment of American workers.

For example, between February and April of 2020, more than 17 million United States jobs were lost in industries in which employers are seeking to fill worker positions tied to H-2B nonimmigrant visas. During this same period, more than 20 million United States workers lost their jobs in key industries where employers are currently requesting H-1B and L workers to fill positions. Also, the May unemployment rate for young Americans, who compete with certain J nonimmigrant visa applicants, has been particularly high — 29.9 percent for 16-19 year olds, and 23.2 percent for the 20-24 year old group. The entry of additional workers through the H-1B, H-2B, J, and L nonimmigrant visa programs, therefore, presents a significant threat to employment opportunities for Americans affected by the extraordinary economic disruptions caused by the COVID-19 outbreak.

As I described in Proclamation 10014, excess labor supply is particularly harmful to workers at the margin between employment and unemployment — those who are typically “last in” during an economic expansion and “first out” during an economic contraction. In recent years, these workers have been disproportionately represented by historically disadvantaged groups, including African Americans and other minorities, those without a college degree, and Americans with disabilities.

In the administration of our Nation’s immigration system, we must remain mindful of the impact of foreign workers on the United States labor market, particularly in the current extraordinary environment of high domestic unemployment and depressed demand for labor. Historically, when recovering from economic shocks that cause significant contractions in productivity, recoveries in employment lag behind improvements in economic activity. This predictive outcome demonstrates that, assuming the conclusion of the economic contraction, the United States economy will likely require several months to return to pre-contraction economic output, and additional months to restore stable labor demand. In light of the above, I have determined that the entry, through December 31, 2020, of certain aliens as immigrants and nonimmigrants would be detrimental to the interests of the United States.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States, by the authority vested in me by the Constitution and the laws of the United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that the entry into the United States of persons described in section 1 of Proclamation 10014, except as provided in section 2 of Proclamation 10014, and persons described in section 2 of this proclamation, except as provided for in section 3 of this proclamation, would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. Continuation of Proclamation 10014. (a) Section 4 of Proclamation 10014 is amended to read as follows:

“Sec. 4. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of June 24, 2020, and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.”

(b) This section shall be effective immediately.

Sec. 2. Suspension and Limitation on Entry. The entry into the United States of any alien seeking entry pursuant to any of the following nonimmigrant visas is hereby suspended and limited, subject to section 3 of this proclamation:

- (a) an H-1B or H-2B visa, and any alien accompanying or following to join such alien;
- (b) a J visa, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and
- (c) an L visa, and any alien accompanying or following to join such alien.

Sec. 3. Scope of Suspension and Limitation on Entry. (a) The suspension and limitation on entry pursuant to section 2 of this proclamation shall apply only to any alien who:

- (i) is outside the United States on the effective date of this proclamation;
- (ii) does not have a nonimmigrant visa that is valid on the effective date of this proclamation; and
- (iii) does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of this proclamation or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

(b) The suspension and limitation on entry pursuant to section 2 of this proclamation shall not apply to:

- (i) any lawful permanent resident of the United States;
- (ii) any alien who is the spouse or child, as defined in section 101(b)(1) of the INA (8 U.S.C. 1101(b)(1)), of a United States citizen;
- (iii) any alien seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and
- (iv) any alien whose entry would be in the national interest as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

Sec. 4. Implementation and Enforcement. (a) The consular officer shall determine, in his or her discretion, whether a nonimmigrant has established his or her eligibility for an exception in section 3(b) of this proclamation. The Secretary of State shall implement this proclamation as it applies to visas pursuant to such procedures as the Secretary of State, in consultation with the Secretary of Homeland Security and the Secretary of Labor, may establish in the Secretary of State's discretion. The Secretary of Homeland Security shall implement this proclamation as it applies to the entry of aliens pursuant to such procedures as the Secretary of Homeland Security, in consultation with the Secretary of State, may establish in the Secretary of Homeland Security's discretion.

(i) The Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security shall establish standards to define categories of aliens covered by section 3(b)(iv) of this proclamation, including those that: are critical to the defense, law enforcement, diplomacy, or national security of the United States; are involved with the provision of medical care to individuals who have contracted COVID-19 and are currently hospitalized; are involved with the provision of medical research at United States facilities to help the United States combat COVID-19; or are necessary to facilitate the immediate and continued economic recovery of the United States. The Secretary of State and the Secretary of Homeland Security shall exercise the authority under section 3(b)(iv) of this proclamation and section 2(b)(iv) of Proclamation 10014 to exempt alien children who would as a result of the suspension in section 2 of this proclamation or the suspension in section 1 of Proclamation 10014 age out of eligibility for a visa.

(ii) Aliens covered by section 3(b)(iv) of this proclamation, under the standards established in section 4(a)(i) of this proclamation, shall be identified by the Secretary of State, the Secretary of Homeland Security, or their respective designees, in his or her sole discretion.

(b) An alien who circumvents the application of this proclamation through fraud, willful misrepresentation of a material fact, or illegal entry shall be a priority for removal by the Department of Homeland Security.

(c) Nothing in this proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.

Sec. 5. Additional Measures. (a) The Secretary of Health and Human Services, through the Director of the Centers for Disease Control and Prevention, shall, as necessary, provide guidance to the Secretary of State and the Secretary of

Homeland Security for implementing measures that could reduce the risk that aliens seeking admission or entry to the United States may introduce, transmit, or spread SARS-CoV-2 within the United States.

(b) The Secretary of Labor shall, in consultation with the Secretary of Homeland Security, as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence in the United States of aliens who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB-2 or EB-3 immigrant visa or an H-1B nonimmigrant visa does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1)). The Secretary of Labor shall also undertake, as appropriate, investigations pursuant to section 212(n)(2)(G)(i) of the INA (8 U.S.C. 1182(n)(2)(G)(i)).

(c) The Secretary of Homeland Security shall:

(i) take appropriate action, consistent with applicable law, in coordination with the Secretary of State, to provide that an alien should not be eligible to apply for a visa or for admission or entry into the United States or other benefit until such alien has been registered with biographical and biometric information, including but not limited to photographs, signatures, and fingerprints;

(ii) take appropriate and necessary steps, consistent with applicable law, to prevent certain aliens who have final orders of removal; who are inadmissible or deportable from the United States; or who have been arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and

(iii) as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H-1B nonimmigrants does not disadvantage United States workers.

Sec. 6. Termination. This proclamation shall expire on December 31, 2020, and may be continued as necessary. Within 30 days of the effective date of this proclamation and every 60 days thereafter while this proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the Secretary of State and the Secretary of Labor, recommend any modifications as may be necessary.

Sec. 7. Effective Date. Except as provided in section 1 of this proclamation, this proclamation is effective at 12:01 a.m. eastern daylight time on June 24, 2020.

Sec. 8. Severability. It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly:

(a) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby; and

(b) if any provision of this proclamation, or the application of any provision to any person or circumstance, is held to be invalid because of the lack of certain procedural requirements, the relevant executive branch officials shall implement those procedural requirements to conform with existing law and with any applicable court orders.

Sec. 9. General Provisions. (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This proclamation shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.

DONALD J. TRUMP

Sarosh Wahla
Associate Counsel
Office of the Chief Counsel
U.S. Citizenship and Immigration Services

(b)(6)

[redacted] gov

Cell [redacted]

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[REDACTED]

From: Zimonjic, Milica
Sent: Wednesday, June 24, 2020 8:10 AM
To: Cox, Robert H; Salem, Claudia S; Bump, Micah N
Cc: Choi, Heesun S (Sunny)
Subject: RE: Trump Administration, DHS Prioritizes American Citizens for American Jobs

Thanks for sharing Robert!

From: Cox, Robert H [REDACTED] gov>
Sent: Wednesday, June 24, 2020 8:58 AM
To: Salem, Claudia S [REDACTED] gov>; Zimonjic, Milica [REDACTED] gov>; Bump, Micah N [REDACTED] gov>
Cc: Choi, Heesun S (Sunny) [REDACTED] gov>
Subject: FW: Trump Administration, DHS Prioritizes American Citizens for American Jobs

Fyi – the attached email chain is interesting, especially if you scroll all the way down to the start of the chain.

From: Busch, Philip B [REDACTED] gov>
Sent: Wednesday, June 24, 2020 8:46 AM
To: Nimick, Charles L (Locky) [REDACTED] gov>; Cox, Robert H [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>
Cc: Groom, Molly M [REDACTED] gov>; Parascandola, Ciro A [REDACTED] gov>; Buono, Paul M [REDACTED] gov>; Aucoin, Lauren J [REDACTED] gov>
Subject: RE: Trump Administration, DHS Prioritizes American Citizens for American Jobs (b)(6)

[REDACTED]

(b)(5)

Phil

From: Nimick, Charles L (Locky) [REDACTED] gov> (b)(6)
Sent: Wednesday, June 24, 2020 8:37 AM
To: Cox, Robert H [REDACTED] gov>; Choi, Heesun S (Sunny) [REDACTED] gov>
Cc: Busch, Philip [REDACTED] gov>; Groom, Molly M [REDACTED] gov>; Parascandola, Ciro A [REDACTED] gov>; Buono, Paul M [REDACTED] gov>; Aucoin, Lauren J [REDACTED] gov>
Subject: FW: Trump Administration, DHS Prioritizes American Citizens for American Jobs (b)(6)

OCC, apologies for forwarding such a long email, but to cut to the chase, the DHS attaché in Ottawa reached out [REDACTED]

[REDACTED]

(b)(5)

(b)(5)

Thanks,

Locky

Charles (Locky) Nimick
Chief, Business and Foreign Worker Division (BFWD)
USCIS Office of Policy and Strategy (OP&S)

[redacted] gov

Office [redacted] (b)(6)

Telework: [redacted]

(b)(6)

From: Aucoin, Lauren J <[redacted] gov>

Sent: Wednesday, June 24, 2020 7:55 AM

To: Buono, Paul M <[redacted] gov>; Parascandola, Ciro A <[redacted] gov>; Nimick, Charles L (Locky) <[redacted] gov>; Bruun, Lori L <[redacted] gov>; Buten, Elizabeth C <[redacted] gov>; Chulapakorn, Adrienne <[redacted] gov>; Earnhardt, Eileen C <[redacted] gov>; Graham, Michael D <[redacted] gov>; Hardy, Amanda L <[redacted] gov>; Hernandez, Efren <[redacted] gov>; Leal, Jessica <[redacted] gov>; Lin, Peggy P <[redacted] gov>; Orzea, Alissa M <[redacted] gov>; Freiburger, Andrea L (Ande) <[redacted] gov>

Subject: RE: Trump Administration, DHS Prioritizes American Citizens for American Jobs

(b)(6)

I agree that [redacted]

(b)(5)

From: Buono, Paul M <[redacted] gov>

(b)(6)

Sent: Wednesday, June 24, 2020 7:41 AM

To: Parascandola, Ciro A <[redacted] gov>; Nimick, Charles L (Locky) <[redacted] gov>; Aucoin, Lauren J <[redacted] gov>; Bruun, Lori L <[redacted] gov>; Buten, Elizabeth C <[redacted] gov>; Chulapakorn, Adrienne <[redacted] gov>; Earnhardt, Eileen C <[redacted] gov>; Graham, Michael D <[redacted] gov>; Hardy, Amanda L <[redacted] gov>; Hernandez, Efren <[redacted] gov>; Leal, Jessica <[redacted] gov>; Lin, Peggy P <[redacted] gov>; Orzea, Alissa M <[redacted] gov>; Freiburger, Andrea L (Ande) <[redacted] gov>

Subject: RE: Trump Administration, DHS Prioritizes American Citizens for American Jobs

(b)(6)

I think [redacted]

(b)(5)

(b)(5)

From: Parascandola, Ciro A [REDACTED] gov>

(b)(6)

Sent: Wednesday, June 24, 2020 7:24 AM

To: Nimick, Charles L (Locky) [REDACTED] gov>; Aucoin, Lauren J [REDACTED] gov>; Bruun, Lori L [REDACTED] gov>; Buono, Paul M [REDACTED] gov>; Buten, Elizabeth C [REDACTED] gov>; Chulapakorn, Adrienne [REDACTED] gov>; Earnhardt, Eileen C [REDACTED] gov>; Graham, Michael D [REDACTED] gov>; Hardy, Amanda L [REDACTED] gov>; Hernandez, Efren [REDACTED] gov>; Leal, Jessica [REDACTED] gov>; Lin, Peggy P [REDACTED] gov>; Orzea, Alissa M [REDACTED] gov>; Freiburger, Andrea L (Ande) [REDACTED] gov>

(b)(6)

Subject: RE: Trump Administration, DHS Prioritizes American Citizens for American Jobs

Perhaps it was unintentional, but [REDACTED]

(b)(5)

Please check me on this, but that seems to be the way they text reads to me.

Ciro Parascandola

Special Assistant

USCIS Office of Policy and Strategy, DHS

Office: [REDACTED] Cell: [REDACTED]

(b)(6)

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From: Nimick, Charles L (Locky) [REDACTED] gov>

(b)(6)

Sent: Wednesday, June 24, 2020 6:54 AM

To: Parascandola, Ciro A [REDACTED] gov>; Aucoin, Lauren J [REDACTED] gov>; Bruun, Lori L [REDACTED] gov>; Buono, Paul M [REDACTED] gov>; Buten, Elizabeth C [REDACTED] gov>; Chulapakorn, Adrienne [REDACTED] gov>; Earnhardt, Eileen C [REDACTED] gov>; Graham, Michael D [REDACTED] gov>; Hardy, Amanda L [REDACTED] gov>; Hernandez, Efren [REDACTED] gov>; Leal, Jessica [REDACTED] gov>; Lin, Peggy P [REDACTED] gov>; Orzea, Alissa M [REDACTED] gov>

Subject: FW: Trump Administration, DHS Prioritizes American Citizens for American Jobs

(b)(6)

Folks, I got this inquiry [REDACTED]

(b)(5)

[REDACTED]
[REDACTED] (Ciro, I recopied the article below for your reference.)

Thanks, Locky

Attorneys are still confused, for example, about whether Canadians are restricted under the proclamation's phrasing, since they don't require visa stamps to enter the U.S.

Ban On Work Visas Could Draw International Blowback

By Suzanne Monyak

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Law360 (June 23, 2020, 10:31 PM EDT) -- President Donald Trump's proclamation blocking foreign executives and other skilled workers from moving to the U.S. this year could deter multinational companies from setting up shop in the country and threaten jobs for Americans working abroad.

Administration officials said **the Monday order** — an expansion of the president's earlier temporary ban on new green cards abroad — would open up more jobs for Americans who found themselves unemployed as a result of the coronavirus pandemic.

But with limited exceptions for crucial employees, the restrictions on H-1B specialty occupation visas and L visas for internal transfer of foreign executives could have the opposite effect by pushing more job opportunities abroad to countries, like Canada, with more welcoming immigration systems, attorneys said

"Companies are going to rethink where they make their investments, how they figure out their strategy if there's business uncertainty as to whether they can bring in their own supervisors," said Davis Bae, co-chair of Fisher Phillips' global immigration group. "There is no real national interest in doing this."

Greg Siskind, a partner at Tennessee-based Siskind Susser PC and member of the American Immigration Lawyers Association's board of governors, said that restricting L visas in particular is like "exploding a nuclear bomb."

"It's absolutely unbelievable that you would say to Volkswagen, that employs thousands of people in Chattanooga, that their senior executives are not welcome in the United States to monitor their investments," he said.

The action could also leave the U.S. companies and Americans working abroad vulnerable to tit-for-tat visa limits from other countries under the principle of visa reciprocity, attorneys said.

"I will not be utterly shocked if other countries around the world take some retaliatory measures against the United States because of this," said Nandini Nair, a partner in Greenspoon Marder LLP's immigration practice group.

The proclamation, signed Monday after weeks of leaks and rumors, spurred panic and confusion among immigrants and their employers as they hurried to determine if they, or any of their new hires, were covered.

Attorneys are still confused, for example, about whether Canadians are restricted under the proclamation's phrasing, since they don't require visa stamps to enter the U.S.

Ali Brodie, co-chair of Fox Rothschild LLP's immigration practice, told Law360 on Monday evening she had already started receiving messages from human resources and general counsel departments at companies that had hoped to bring on foreign workers

"All of a sudden, it was text messages, a million phone calls and emails. Right now, people are panicked," she said.

Some employers were immediately relieved to see that the proclamation only touched people outside the U.S. on the date it took effect, allowing them, for example, to continue onboarding recent graduates of U.S. schools, according to Cynthia Lange of Fragomen, Del Rey, Bernsen & Loewy LLP, who represents technology companies.

But the inclusion of the L visa without exemptions for high-level executives came as a surprise to some attorneys who had expected any suspension to at least shield foreigners coming to the U.S. on an L-1A, reserved for foreign executives and managers moving within the company from a location abroad.

"When I saw that, I had to look at it twice," Nair said.

The administration's targeting of L visas "seems odd and unprecedented and really misplaced for a lot of our clients," Lange said. She noted that the L visa is used to bring in CEOs and other executives to lead U.S. locations for foreign companies, which typically create jobs locally.

The Trump administration had included exceptions in some of the other restricted visa categories. For instance, the ban only covers H-2B visas for non-agricultural seasonal labor, without touching H-2A farm worker visas. And within the H-2B suspension, seafood and food processing workers are shielded.

"Maybe [executives] are just collateral damage in the administration's war against companies from bringing foreigners into the United States. It's more like a bludgeon instead of surgically attempting to identify," Lange said.

While administration officials have claimed that the visa suspension will free up over half a million jobs for Americans, experts stress that immigration and job availability is not a zero-sum game. Additionally, the visa restrictions on high-skilled immigration will disproportionately affect the technology sector, which has maintained low U.S. unemployment despite the pandemic.

Moreover, international companies would be unlikely to replace their own foreign CEO with an American, attorneys said.

"It boggles the mind to think that the expertise and sophistication of executives and managers, who have been employed by the organization, and the specialized knowledge of essential workers with that level of expertise, can be replaced by a U.S. worker," said Angelo Paparelli, a partner at Seyfarth Shaw LLP. "No amount of education can substitute for that level of internal experience."

Attorneys also told Law360 that their clients are not eager to rescind offers for foreign workers selected in the H-1B lottery that the company had hand-picked, recruited and, for some, already filed full visa applications for, particularly as many companies start to envision a future of remote work.

And if international companies decide the restrictions aren't worth it and take their business outside the U.S., it could result in fewer, not more, jobs for Americans. Paparelli compared the proclamation to attempting to solve the U.S.' current economic woes with the medieval practice of bloodletting.

"While other countries are making their destinations more attractive, we're basically pushing people out," he said. "And if that won't affect U.S. workers adversely, I don't know what will."

Beyond hurting the U.S. economy, the restrictions could also cause a rift internationally.

The administration appeared to steer clear of the visas specifically provided for by global treaties, including the TN visa for Mexican and Canadian professionals included in the U.S.-Mexico-Canada agreement, as well as the E treaty investor visas.

But Siskind said that the restrictions may still run afoul of the General Agreement on Trade in Services, in which the U.S. committed to providing temporary visas for certain specialty workers and internal company transfers.

The threat of retaliatory visa measures as a result could further worsen U.S. job losses, he said.

"I'm afraid any jobs U.S. workers get may be more than made up for with overseas Americans losing theirs," Siskind said.

The proclamation's shaky economic justification, and potential conflict with global treaties, could ultimately be its downfall in court, attorneys said. The proclamation has already drawn opposition from tech giants including Apple Inc. and Google LLC, and will likely face litigation.

But even if the suspension is blocked in court, these restrictions may only be the tip of the iceberg, attorneys warned, as Trump eyes more aggressive regulatory changes to the immigration system ahead of the upcoming election.

In addition to temporarily suspending visas, the president is also calling for sweeping changes to the H-1B visa system, which caps specialty occupation visas at 85,000 annually, including by raising the salary minimum and offering the slots based on the highest salary offers, rather than random lottery.

"This is the tip of the spear," Bae said. "As the election comes along, as he gets into a position where he needs to come down hard on immigration, taking a protectionist point of view, what's going to end up happening is he's going to try to push the narrative to say that these foreign nationals are taking U.S. jobs."

He continued, "This really is a political move, and it's a shameful one."

--Editing by Brian Baresch.

From: Nicholson, Maura J [REDACTED] gov>

Sent: Tuesday, June 23, 2020 4:42 PM

To: Nimick, Charles L (Locky) [REDACTED] gov>

Subject: FW: Trump Administration, DHS Prioritizes American Citizens for American Jobs

Hi Locky!

I hope you are hanging in there during these uncertain times. What a year, huh?

I'm wondering if you might be able to shed some light on the below for me [REDACTED]
[REDACTED]

(b)(5)

Thoughts?

Maura

From: Sobel, Ted [redacted]
Sent: Tuesday, June 23, 2020 12:26 PM
To: Nicholson, Maura J [redacted] gov>
Cc: OIA-CAN [redacted]
Subject: FW: Trump Administration, DHS Prioritizes American Citizens for American Jobs

(b)(6)

Has USCIS gotten any implementation instructions re: the announcement?

Working on gauging level of impact on Canadian consular

From: U.S. Department of Homeland Security [redacted]
Sent: Monday, June 22, 2020 7:24 PM
To: Meyers, Deborah [redacted]
Subject: Trump Administration, DHS Prioritizes American Citizens for American Jobs

(b)(6)

U.S. DEPARTMENT OF HOMELAND SECURITY

Office of Public Affairs

Trump Administration, DHS Prioritizes American Citizens for American Jobs
Trump Administration moves to suspend foreign worker visas as nation undertakes economic recovery following COVID-19 closures

The Department of Homeland Security (DHS) announced it will begin implementing a Trump Administration proclamation to protect American workers in the wake of unprecedented unemployment caused by COVID-19.

“The President is taking decisive action to put American families and workers first in the reopening of the economy and the Department stands ready to implement this important executive action,” said DHS Acting Secretary Chad F. Wolf. “This proclamation ensures Americans are first in line for American jobs as the economy reopens.”

The proclamation unveiled by President Trump directs the Department of Homeland Security to undertake a two-part approach to ensure employers put Americans first.

First, the proclamation uses presidential authority under Section 212(f) of the Immigration and Nationality Act to temporarily pause the issuance of certain new nonimmigrant visas

until December 31, 2020, which could be extended as necessary. The visa categories paused include H-1B, H-2B, L and certain J nonimmigrants. The stipulations will not apply to foreign workers already in the country on existing visas or foreign nationals already in possession of visas at the time of the proclamation's effective date.

Second, DHS is also directed to use all available tools to transition to a merit-based immigration system, ending often-exploited avenues for fraud and abuse. New provisions include non-displacement provisions, which prohibit companies from laying off American workers only to replace citizen employees with foreign nationals, and new efforts to prevent illegal aliens from obtaining work permits.

DHS is also working with United States Government partners to ensure enhanced medical screening procedures are in place for foreign workers in the event that travel suspensions are lifted as well as to improve biometric collection. Existing policies for both matters will be expanded and improved in the coming days.

The full text is available [here](#).

#

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▪

(b)(6)

From: Ammerman, Michael J
Sent: Tuesday, June 23, 2020 5:11 PM
To: Cox, Robert H; Grimm, Jason R; Choi, Heesun S (Sunny); Bump, Micah N
Subject: Re: White House: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Ok.

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From: Cox, Robert H [redacted] gov> (b)(6)
Sent: Tuesday, June 23, 2020 3:03:35 PM
To: Ammerman, Michael J [redacted] gov>; Grimm, Jason R [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>
Subject: RE: White House: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak (b)(6)

(b)(5)

From: Ammerman, Michael J [redacted] gov> (b)(6)
Sent: Tuesday, June 23, 2020 5:56 PM
To: Grimm, Jason R [redacted] gov>; Cox, Robert H [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>
Subject: RE: White House: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak (b)(6)

My immediate concern [redacted]

(b)(5)

From: Grimm, Jason R [redacted] gov> (b)(6)
Sent: Tuesday, June 23, 2020 2:49 PM
To: Cox, Robert H [redacted] gov>; Choi, Heesun S (Sunny) [redacted] gov>; Bump, Micah N [redacted] gov>
Cc: Ammerman, Michael J [redacted] gov> (b)(6)
Subject: FW: White House: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

(b)(5)

From: Ammerman, Michael J [REDACTED] gov>

Sent: Tuesday, June 23, 2020 1:51 PM

To: Grimm, Jason R [REDACTED] gov>

(b)(6)

Subject: Re: White House: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

No, it doesn't.

My point was [REDACTED]

(b)(5)

I could just be thinking too much.

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From: Grimm, Jason R [REDACTED] gov>

Sent: Tuesday, June 23, 2020 1:32:58 PM

(b)(6)

To: Ammerman, Michael J [REDACTED] gov>

Subject: FW: White House: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Look at this and let me know if it addresses the points you raised to me.

From: Fierro, Joseph [REDACTED] gov>

Sent: Tuesday, June 23, 2020 1:27 PM

(b)(6)

To: Grimm, Jason R [REDACTED] gov>

Subject: White House: Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak

Here is a very good summary [REDACTED]

(b)(5)

(b)(5)

(b)(5)