

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

██████████ MASOOD, et al.,

Plaintiffs,

v.

MARCO RUBIO, Secretary of State, et al.,

Defendants.

Civil Action 1:26-cv-00857(CJN)

**PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT  
AND MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 7(h), Plaintiffs ██████████ ██████████ Masood, *et al.*, respectfully move this Court for summary judgment on all claims. There is no genuine dispute as to any material fact, and Plaintiffs are entitled to judgment as a matter of law. On January 14, 2026, Secretary of State Marco Rubio issued cable 26 STATE 3740, directing consular officers worldwide to categorically refuse immigrant visas to nationals of 75 designated countries based solely on their nationality, not based on any individualized finding that any particular applicant is likely to become a public charge. The cable violates three provisions of the Immigration and Nationality Act (“INA”) and was promulgated without the notice-and-comment procedures required by the Administrative Procedure Act (“APA”). The undisputed administrative record confirms these violations. No finding of fact is needed to resolve this case; the statutes speak for themselves.

In support of this Motion, Plaintiffs submit the accompanying Memorandum of Points and Authorities, Statement of Material Facts as to Which There Is No Genuine Dispute, and a Proposed Order. Plaintiffs request that this Court: (1) vacate cable 26 STATE 3740; (2) order Defendants to immediately resume adjudication of Plaintiffs’ pending immigrant visa applications;

(3) order the reissuance of immigrant visas that were approved and then canceled pursuant to the cable; and (4) extend the validity of any supporting documentation rendered stale by Defendants' unlawful conduct.

Dated: May 28, 2026

Respectfully submitted,

/s/ Jesse M. Bless  
JESSE M. BLESS  
MA0020  
Bless Litigation LLC  
6 Vineyard Lane  
Georgetown, MA 01833  
(781) 704-3897  
[jesse@blesslitigation.com](mailto:jesse@blesslitigation.com)

/s/ Zachary R. New  
ZACHARY R. NEW  
Atty. Reg. No. (Colorado): 53992  
Joseph & Hall, P.C.  
12203 East Second Ave.  
Aurora, CO 80011  
(303) 297-9171  
[zachary@immigrationissues.com](mailto:zachary@immigrationissues.com)  
*Appearing Pro Hac Vice*

/s/ Charles H. Kuck  
CHARLES H. KUCK  
GA429940  
Kuck Baxter LLC  
350 Northridge Rd., Suite 300  
Atlanta, GA 30350  
(404) 949-8154  
[ckuck@immigration.net](mailto:ckuck@immigration.net)

GREGORY SISKIND  
TN0021  
Siskind Susser, P.C.  
1028 Oakhaven Road  
Memphis, TN 38119  
[gsiskind@visalaw.com](mailto:gsiskind@visalaw.com)

Attorneys for Plaintiffs

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... *ii*

INTRODUCTION ..... 1

STATEMENT OF FACTS ..... 2

    A. The January 14, 2026 Visa Ban ..... 2

    B. The Public Charge Statutory Framework..... 4

    C. The Administrative Record Confirms No Legitimate Basis for the Ban ..... 5

    D. The Department's Own November 6, 2025 Guidance Required the Individualized Assessment the Ban Forbids..... 7

LEGAL STANDARD..... 9

ARGUMENT ..... 10

    I. PLAINTIFFS HAVE STANDING ..... 10

    II. THE BAN IS FINAL AGENCY ACTION SUBJECT TO APA REVIEW ..... 11

    III. THE BAN IS ARBITRARY, CAPRICIOUS, AND NOT IN ACCORDANCE WITH LAW ..... 11

        A. The Ban Is Arbitrary and Capricious ..... 11

            1. The Cable Identifies No Data and Articulates No Reasoning ..... 11

            2. The Underlying Data Is Defunct on Its Face ..... 12

            3. The Department’s Metric Does Not Match the Statutory Inquiry ..... 12

            4. The Department Departed from Its Own Stated Threshold Without Explanation ..... 13

            5. The Cable Reverses the Department’s November 6, 2025 Public Charge Guidance Without Acknowledgment..... 14

            6. The Ban Sweeps in Applicants Exempt from Being Denied Based on Public Charge Grounds..... 15

        B. The Ban Exceeds Statutory Authority..... 15

            1. The Ban Violates § 1152(a)(1)(A)’s Anti-Discrimination Provision ..... 15

            2. The Ban Arrogates Consular Officers’ Exclusive Statutory Authority .... 16

3. The Ban Nullifies Congress’s Mandatory Adjudication Requirement ..... 17

C. The Ban Was Issued Without Observance of Procedure Required by Law..... 19

IV. VACATUR AND COMPELLED ADJUDICATION ARE THE APPROPRIATE  
REMEDIES..... 21

CONCLUSION..... 22

PLAINTIFFS’ STATEMENT OF MATERIAL FACTS NOT IN GENUINE DISPUTE

CERTIFICATE OF SERVICE

**TABLE OF AUTHORITIES**

**CASE LAW**

*Bennett v. Spear*  
520 U.S. 154 (1997)..... 11

*Camp v. Pitts*  
411 U.S. 138 (1973)..... 9

*Citizens to Preserve Overton Park, Inc. v. Volpe*  
401 U.S. 402 (1971)..... 9

*Dep't of Commerce v. New York*  
588 U.S. 785 (2019)..... 14

*Encino Motorcars, LLC v. Navarro*  
579 U.S. 211 (2016)..... 9, 14, 15

*FCC v. Fox Television Stations, Inc.*  
556 U.S. 502 (2009)..... 9, 14

*Filazapovich v. Dep't of State*  
560 F. Supp. 3d 203 (D.D.C. 2021)..... 18

*Gomez v. Trump*  
485 F. Supp. 3d 145 (D.D.C. 2020)..... 17

*Gomez v. Biden*  
No. 20-cv-01419 (APM), 2021 WL 3663535 (D.D.C. Aug. 17, 2021)..... 17

*Grayscale Invs., LLC v. Sec. & Exch. Comm'n*  
82 F.4th 1239 (D.C. Cir. 2023)..... 12

*Kisor v. Wilkie*  
 588 U.S. 558 (2019).....19, 20

*Ky. Mun. Energy Agency v. FERC*  
 45 F.4th 162 (D.C. Cir. 2022).....21

*Legal Assistance for Vietnamese Asylum Seekers v. Dep't of State*  
 45 F.3d 469 (D.C. Cir. 1995).....16

*Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*  
 523 U.S. 26 (1998).....17

*Lujan v. Defs. of Wildlife*  
 504 U.S. 555 (1992).....10

*Milligan v. Pompeo*  
 502 F. Supp. 3d 302 (D.D.C. 2020).....17

*\*Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*  
 463 U.S. 29 (1983).....9, 12, 13, 15

*Nat'l Ass'n of Home Builders v. Defs. of Wildlife*  
 551 U.S. 644 (2007).....15

*Pietersen v. U.S. Dep't of State*  
 138 F.4th 552 (D.C. Cir. 2025).....18, 19

*Smith v. Spizzirri*  
 601 U.S. 472 (2024).....17

*Tate v. Pompeo*  
 513 F. Supp. 3d 132 (D.D.C. 2021).....17

*World Shipping Council v. Fed. Mar. Comm'n*  
 152 F.4th 215 (D.C. Cir. 2025).....13

**FEDERAL LAW**

5 U.S.C. § 553(b).....19, 20

5 U.S.C. § 706(1).....21

5 U.S.C. § 706(2)(A).....9

5 U.S.C. § 706(2)(C).....15

5 U.S.C. § 706(2)(D).....19, 21

8 U.S.C. § 1104(a).....16, 17

8 U.S.C. § 1151(d)(1)(A).....22

8 U.S.C. § 1152(a)(1)(A) .....1, 15, 16  
 8 U.S.C. § 1153(b)(2)(B)(i) .....4  
 8 U.S.C. § 1153(b)(5)(A).....3, 15  
 8 U.S.C. § 1154(a)(1)(D) .....4  
 \*8 U.S.C. § 1182(a)(4)..... 2, *passim*  
 8 U.S.C. § 1182(a)(4)(B)(i)(IV)–(V) .....4  
 8 U.S.C. § 1182(a)(4)(D) .....4  
 8 U.S.C. § 1183a(a)(1).....4  
 \*8 U.S.C. § 1201(g) ..... 2, *passim*  
 \*8 U.S.C. § 1202(b) ..... 2, *passim*  
 8 U.S.C. § 1202(e) .....19

**FEDERAL REGULATIONS AND AGENCY GUIDANCE**

8 C.F.R. § 204.5(g)(2).....4, 15  
 8 C.F.R. § 205.1(a)(1).....10, 21  
 22 C.F.R. § 40.6 .....18, 20  
 22 C.F.R. § 42.73(a).....19  
 22 C.F.R. § 42.81(b) .....18, 20  
 22 C.F.R. § 42.82(c)–(d).....19, 21  
 22 C.F.R. § 42.83(b) .....10, 21  
 9 FAM 302.8-2(B)(2)(b).....4, 15  
 9 FAM 302.8-2(B)(3)(a)(2) .....4  
 9 FAM 504.12-3(B)(a)(3) .....19, 22

**FEDERAL RULES OF CIVIL PROCEDURE**

Fed. R. Civ. P. 56(a) .....9

**OTHER AUTHORITIES**

\*U.S. Dep't of State Cable 26 STATE 3740 (Jan. 14, 2026)..... 2, *passim*  
 \*U.S. Dep't of State Cable 25 STATE 102426 (Nov. 6, 2025) .....5, 7, 8, 9

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS’  
MOTION FOR SUMMARY JUDGMENT**

**INTRODUCTION**

On January 14, 2026, Secretary of State Marco Rubio issued a cable to every diplomatic and consular post worldwide directing consular officers to refuse immigrant visas to nationals of seventy-five designated countries, not because any individual among them had been found likely to become a public charge, but because of their nationality alone. CAR STATE00001. The cable requires consular officers to continue collecting fees, conducting interviews, and receiving evidence from applicants while withholding the one thing that process is supposed to yield: a decision on eligibility. CAR STATE00002. It also directs officers to cancel visas that had already been approved and even printed but not yet physically delivered. CAR STATE00003-04. The result is a nationality-based visa ban imposed by executive fiat, untethered to any individualized assessment, any statutory authority, and any semblance of reasoned decisionmaking.

There is no genuine dispute of material fact. The cable’s text is undisputed. CAR STATE00001-04. The single page of analysis the Department offered to justify it, an Action Memo invoking an undefined and unsourced Council of Economic Advisers “welfare” metric with a 30% threshold, is undisputed. CAR STATE00005. The Department’s express admission that it exempted countries exceeding that very threshold for unstated “foreign policy considerations” is undisputed. CAR STATE00005. The Department’s own November 6, 2025, cable, issued by the same Secretary just two months earlier and reaffirming that public charge findings must rest on case-by-case, totality-of-the-circumstances analysis, is undisputed. CAR STATE00028-40. And the governing statutes are clear: Congress has expressly prohibited nationality-based discrimination in immigrant visa issuance, 8 U.S.C. § 1152(a)(1)(A); vested visa adjudication authority exclusively in consular officers, 8 U.S.C. § 1104(a); and mandated that all immigrant

visa applications be reviewed and adjudicated individually, 8 U.S.C. § 1202(b). Because no facts are in dispute and Defendants cannot prevail under any reading of those statutes, Plaintiffs are entitled to summary judgment as a matter of law.

This brief proceeds as follows. Part I establishes that each Plaintiff has Article III standing. Part II demonstrates that the cable constitutes final agency action reviewable under the Administrative Procedure Act (“APA”). Part III shows that the ban is arbitrary and capricious, exceeds statutory authority, and was issued without the notice and comment required by the APA. Part IV explains that the appropriate remedy is vacatur of the cable and an order compelling immediate adjudication of Plaintiffs’ pending immigrant visa applications.

## **STATEMENT OF FACTS**

### **A. The January 14, 2026 Visa Ban**

On January 14, 2026, Secretary Rubio issued cable 26 STATE 3740 to all diplomatic and consular posts. CAR STATE00001. The cable’s operative command is categorical: “[E]ffective January 21, consular officers must refuse under Section 221(g) of the Immigration and Nationality Act to all immigrant visa applicants who have not been refused under another ground of ineligibility, if the applicant is a national of the following countries”—and lists seventy-five designated nationalities, ranging from Afghanistan to Yemen. CAR STATE00001-02. The cable cites only two statutory provisions, 8 U.S.C. § 1182(a)(4) (the public charge inadmissibility ground) and 8 U.S.C. § 1201(g), as its asserted legal basis. CAR STATE00001-02. It provides no factual findings, no underlying data, and no explanation as to why nationals of these seventy-five countries uniquely risk becoming public charges as compared with nationals of any other country. CAR STATE00001-04. It contains a single, conclusory assertion that “[a]pplicants from these countries are at a high risk for becoming a public charge.” CAR STATE00002.

Under the cable's terms, consular officers "should continue to conduct interviews and fully assess each applicant for all possible ineligibilities, including INA 212(a)(4), Public Charge." CAR STATE00002. But the cable directs a pre-ordained result: "If an officer refuses an applicant under 4(a) and then the applicant provides additional evidence that demonstrates he or she overcomes the public charge refusal, the consular officer should write detailed case notes including the hashtag '#4AIVPause', CLOK the 4(a) hit, and refuse the applicant 221(g)." CAR STATE00003. Applicants thus continue paying visa fees, attending interviews, and submitting evidence for an adjudicative process the Department has pre-committed to lose.

For applicants whose visas had already been approved and whose passports had been retained by the consulate, the cable goes further. It instructs officers, where the visa is "print-authorized" but not yet printed, to "refuse the case under 221(g), inform the applicant, and post may not print the visa foil." CAR STATE00003. For cases in which the visa has already been printed but "has not left the consular section, the consular officer must CWOP (Cancel WithOut Prejudice) the foil, open the case in the system, and refuse the case under 221(g)." CAR STATE00004. The cable's sole exception is for dual nationals "applying with a valid passport of a country that is not subject to this directive." CAR STATE00003.

Each of the forty-eight Plaintiffs is a national of one of the seventy-five listed countries and holds a pending DS-260 immigrant visa application. Compl. ¶¶ 7, 15–62. Each has been refused, or imminently faces refusal of, an immigrant visa pursuant to the cable; two Plaintiffs ( [REDACTED] ) have already had their applications refused. Compl. ¶¶ 42–43, 97–98. Plaintiffs include family-based and employment-based immigrants, among them EB-5 investors who must invest between \$800,000 and \$1,050,000 in U.S. job-creating enterprises

and EB-2 beneficiaries whose work has been deemed in the U.S. national interest. Compl. ¶¶ 7, 81.

## **B. The Public Charge Statutory Framework**

To “establish that an alien is not excludable as a public charge,” Congress required that most family-based immigrants submit an affidavit of support from a qualifying relative under which the sponsor agrees to maintain the sponsored applicant at an annual income of at least 125% of the Federal poverty line and becomes contractually obligated to reimburse any government entity that provides public benefits to the applicant. 8 U.S.C. § 1183a(a)(1), (b)(1)(A). The Department of State’s own Foreign Affairs Manual acknowledges that a properly filed, non-fraudulent affidavit of support “is normally sufficient to meet the INA 212(a)(4) requirements” and to “satisfy the ‘totality of the circumstances’” test. 9 FAM 302.8-2(B)(2)(b), (B)(3)(a)(2).

The affidavit of support requirement does not apply to most employment-based immigrants. 8 U.S.C. § 1182(a)(4)(D). Before such immigrants can even schedule an immigrant visa interview, they must obtain an approved Form I-140 petition from U.S. Citizenship and Immigration Services (“USCIS”), which requires demonstrating either a bona fide job offer from a U.S. employer able to pay the proffered wage, 8 U.S.C. § 1154(a)(1)(D); 8 C.F.R. § 204.5(g)(2), a qualifying investment creating U.S. jobs, 8 U.S.C. § 1153(b)(5)(A), or that the work is in the national interest, 8 U.S.C. § 1153(b)(2)(B)(i). Congress’s list of factors immigration officers must consider in public charge determinations includes “financial status” and “education and skills,” 8 U.S.C. § 1182(a)(4)(B)(i)(IV)–(V), which are characteristics that the employment-based immigration process itself requires applicants to demonstrate.

Public charge inadmissibility is, in operation, an individualized determination made on a case-by-case basis. The administrative record itself confirms the individualized nature of the

inquiry: the Department's own November 6, 2025, cable on "Properly Implementing the INA 212(a)(4) Public Charge Ineligibility" directs that consular officers must "consider all aspects of the case and determine whether the applicant's circumstances, assessed in their totality, suggest that he is more likely than not to become a public charge at any time." CAR STATE00031-32.

### **C. The Administrative Record Confirms No Legitimate Basis for the Ban**

Defendants' Certified Administrative Record consists of seven documents totaling fifty-two pages. CAR STATE00001-52. The operative cable, 26 STATE 3740, is reproduced at CAR STATE00001-04. Two action memoranda purport to explain the Department's decision: (1) a January 8, 2026 "Action Memo for the Secretary" recommending the pause, CAR STATE00005-15; and (2) a January 13, 2026 "Action Memo for CA Assistant Secretary Mora Namdar" recommending issuance of the implementing cable, CAR STATE00041-48. The record also includes two predicate cables (a December 17, 2025 cable implementing 212(f) entry restrictions under Presidential Proclamation 10998, CAR STATE00016-27; and a November 6, 2025 public charge guidance cable, CAR STATE00028-40); a Truth Social post by President Trump, CAR STATE00049; and Executive Order 14161 of January 20, 2025, CAR STATE00050-52. None of these materials, individually or collectively, supplies a reasoned basis for the categorical, nationality-based refusal of immigrant visas.

The Action Memo for the Secretary, the one analytical document in the entire record, is two pages long. CAR STATE00005-06. Its substantive basis for sweeping in seventy-five countries is a single sentence: "[T]he Council on Economic Advisors (CEA) recently found significant percentages of immigrants from certain countries use welfare (Tab)." CAR STATE00005. The memo then announces the selection criterion: "Countries listed were selected

because, according to the CEA, 30 percent or more of immigrants from those countries use welfare.” CAR STATE00005.

Three deficiencies undermine that justification on its face. *First*, the memo does not define “welfare” or explain whether the CEA’s metric corresponds to the public charge ground of inadmissibility under 8 U.S.C. § 1182(a)(4) or to the regulatory definition of “public cash assistance for income maintenance” set out in the Department’s own November 6, 2025, cable (SSI, TANF, General Assistance, and long-term institutionalization at government expense). *Compare* CAR STATE00005 *with* CAR STATE00030-31. *Second*, the metric is “immigrant households,” which is a household-level statistic that includes U.S. citizen family members whose lawful receipt of public benefits is irrelevant to any individual applicant’s admissibility determination. CAR STATE00010 (table titled “Immigrant Welfare Recipient Rates by Country of Origin”). *Third*, the data table itself, attached to the Action Memo, uses defunct country categorizations that have not existed in decades: “Yemen Arab Republic (North)” (dissolved in 1990); “Zaire” (renamed the Democratic Republic of the Congo in 1997); “Kirghizia” (renamed Kyrgyzstan in 1991); “Byelorussia” (renamed Belarus in 1991); “Cambodia (Kampuchea)”; and even a row labeled “Samoa, 1940-1950.” CAR STATE00010-12. The underlying empirical basis for a twenty-first-century immigration policy is, on the face of the record, decades-old census categorization data.

The Action Memo concedes that the Department deliberately departed from its own stated selection criterion. After announcing the 30% threshold, the memo states: “Some countries have been excluded due to foreign policy considerations, including: . . . .” CAR STATE00005. The attached data table confirms the departure: countries whose immigrant households exceed the 30% threshold appear in the table struck through under the header “Countries Struck-through are

Proposed for Exemption.” CAR STATE00010. The Department was explicit about what it was doing: exempting above-threshold countries for unstated foreign policy reasons, without ever explaining why those reasons outweighed the public charge concern the ban was supposedly designed to address.

The January 13, 2026, Action Memo to Assistant Secretary Namdar repeats the same conclusory predicate (“public assistance and welfare use statistics from the Council of Economic Advisors”) and references—as one of four “Attachments” supporting the cable—a Truth Social post by President Trump. CAR STATE00041, STATE00042, STATE00049. The two action memoranda are inconsistent on their face about how long the pause is expected to last: the Secretary’s memo states “about 60 days,” CAR STATE00005; the Namdar memo states “at least 90 days,” CAR STATE00041; and the cable itself states “until further notice,” CAR STATE00002. The Secretary’s memo carries a one-day approval deadline (“Approve/Disapprove by 1/9/2026”). CAR STATE00005. Executive Order 14161, the only other agency-level document in the record, addresses “Foreign Terrorists and Other National Security and Public Safety Threats” and refers exclusively to INA §§ 212(a)(2)–(3); it does not mention the public charge ground or INA § 212(a)(4) at all. CAR STATE00050-52. The pause has now lasted more than 150 days.

**D. The Department’s Own November 6, 2025 Guidance Required the Individualized Assessment the Ban Forbids**

Cable 25 STATE 102426, issued by Secretary Rubio on November 6, 2025, just sixty-nine days before the visa ban, is reproduced in the Certified Administrative Record at CAR STATE00028-40. Its subject line is “Visas: Properly Implementing the INA 212(a)(4) Public Charge Ineligibility.” CAR STATE00028. The November cable expressly instructs that the public charge determination is not, and cannot be, a categorical one: “This guidance reminds consular officers to conduct a comprehensive and thorough vetting of visa applicants, considering all

relevant factors and the totality of the applicant's circumstances, in order to determine an applicant's eligibility under INA 212(a)(4)." CAR STATE00028.

The November cable is unambiguous on the controlling legal point: "There is no 'bright-line' test in making a public charge ineligibility determination. No one factor, other than the lack of a sufficient Affidavit of Support Under Section 213A of the INA, if required, can be the sole criterion for the determination. You must consider all aspects of the case and determine whether the applicant's circumstances, assessed in their totality, suggest that he is more likely than not to become a public charge at any time." CAR STATE00031-32. The cable then enumerates the mandatory factors—age, health, family status, assets and financial status, education and skills, current or past receipt of public cash assistance, and the affidavit of support where required, CAR STATE00032, and dedicates ten pages of guidance to applying them on a case-by-case basis. CAR STATE00032-40. It expressly defines the relevant regulatory category of "public cash assistance for income maintenance" as Supplemental Security Income, Temporary Assistance for Needy Families, General Assistance, and long-term institutionalization at government expense. CAR STATE00030-31.

The January 14, 2026, cable is the antithesis of the November guidance. The November cable required individualized, totality-of-the-circumstances assessment under the regulatory definition. CAR STATE00031-32. The January cable converts the same statutory provision into a categorical, nationality-based presumption—and instructs officers to refuse even applicants who individually "overcome[] the public charge refusal." CAR STATE00003. Nothing in the administrative record acknowledges the change, explains the departure, or attempts to reconcile the two cables. The Department instead carried forward its November guidance—citing it in the

very first “Reference” line of the January cable, CAR STATE00001—while operating under a directly contrary regime in practice.

The record’s silence is itself the violation. An agency that departs from a position adopted just weeks earlier must “display awareness that it is changing position” and “show that there are good reasons for the new policy.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); accord *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016). The administrative record before the Court contains no such acknowledgment and no such reasons.

### LEGAL STANDARD

Summary judgment is appropriate when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). In APA cases, the administrative record ordinarily forecloses genuine factual disputes because “[t]he entire case on review is a question of law.” *Camp v. Pitts*, 411 U.S. 138, 142 (1973). The district court reviews the agency’s decision based on the administrative record, and the “focal point for judicial review should be the administrative record already in existence.” *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971). Summary judgment in APA cases therefore resolves whether the agency acted lawfully as a matter of law on the undisputed record.

Under 5 U.S.C. § 706(2)(A), the Court must set aside agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” An agency rule is arbitrary and capricious where the agency “failed to examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). The agency must consider all “important aspect[s] of the problem” and may not offer an explanation that “runs counter to the evidence before the agency.” *Id.*

## ARGUMENT

### I. PLAINTIFFS HAVE STANDING

To establish Article III standing, a plaintiff must demonstrate “(1) an injury in fact, (2) a sufficient causal connection between the injury and the conduct complained of, and (3) a likel[ihood] that the injury will be redressed by a favorable decision.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992) (citation and internal quotation marks omitted). Each Plaintiff satisfies all three elements.

Each Plaintiff has suffered an injury in fact. Each is a national of one of the seventy-five listed countries who holds a pending DS-260 immigrant visa application and has been subjected to, or imminently faces, a categorical refusal or indefinite suspension based solely on nationality. Compl. ¶¶ 14–62, 95–98; CAR STATE00001–04. The denial of a congressionally mandated procedural right to adjudication, *see* 8 U.S.C. § 1202(b), is itself a concrete and particularized injury. Moreover, Plaintiffs have suffered concrete collateral harms, family separation, lost employment opportunities, delayed eligibility for U.S. citizenship, and in some cases physical danger abroad. Compl. ¶ 99. Plaintiffs also face the risk that their visa eligibility will permanently expire through automatic revocation of their approved petitions under 8 C.F.R. § 205.1(a)(1) or through lapse of their visa registrations under 22 C.F.R. § 42.83(b) before this case is resolved.

Causation and redressability are straightforward. The cable is the direct and proximate cause of the refusals, cancellations, and indefinite suspensions each Plaintiff has experienced. CAR STATE00001-04. An order vacating the cable and compelling adjudication of Plaintiffs’ applications would redress those injuries in full. Nothing more is required.

## **II. THE BAN IS FINAL AGENCY ACTION SUBJECT TO APA REVIEW**

The cable constitutes “final agency action” reviewable under the APA. *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997). Agency action is final when it marks the “consummation” of the agency’s decisionmaking process and determines “rights or obligations” or produces “legal consequences.” *Id.* at 178.

Both requirements are met. The cable reflects the Secretary of State’s considered determination that nationals of seventy-five countries are to be categorically refused immigrant visas. CAR STATE00001-02. It is not a tentative or interlocutory step; it is the operative directive under which consular officers currently act. *Id.* And the cable’s legal consequences are immediate and irreversible for each Plaintiff: visa applications are refused, already-approved visas are cancelled, and access to a congressionally created pathway to permanent residence is extinguished. CAR STATE00003-04. There is no further step for the Department of State to take; the cable has already done it. That is the paradigm of final agency action.

## **III. THE BAN IS ARBITRARY, CAPRICIOUS, AND NOT IN ACCORDANCE WITH LAW**

### **A. The Ban Is Arbitrary and Capricious**

Under *State Farm*, an agency must “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.” *State Farm*, 463 U.S. at 43. The administrative record before the Court fails that test in at least five independent respects.

#### **1. The Cable Identifies No Data and Articulates No Reasoning**

The cable itself contains no factual findings, no data, and no reasoned explanation for why nationals of these seventy-five countries, and not nationals of any other country, pose a categorical risk of becoming public charges. CAR STATE00001-04. Its only substantive statement on the

point is the conclusory assertion that “[a]pplicants from these countries are at a high risk for becoming a public charge.” CAR STATE00002. “It is a fundamental principle of administrative law that agencies must treat like cases alike,” *Grayscale Invs., LLC v. Sec. & Exch. Comm’n*, 82 F.4th 1239, 1243 (D.C. Cir. 2023), and an agency that offers “no data or explanation” for differential treatment has acted arbitrarily, *id.*

## **2. The Underlying Data Is Defunct on Its Face**

The Action Memo to the Secretary, the only analytical document in the record, rests on a single empirical premise: “according to the CEA, 30 percent or more of immigrants from those countries use welfare.” CAR STATE00005. The attached “Tab,” the only substantive backup, is a multi-page table of “Immigrant Welfare Recipient Rates by Country of Origin.” CAR STATE00010-15. That table uses country categorizations that have not existed for decades: “Yemen Arab Republic (North),” which ceased to exist in 1990; “Zaire,” renamed the Democratic Republic of the Congo in 1997; “Kirghizia,” “Byelorussia,” “Cambodia (Kampuchea),” and a row labeled “Samoa, 1940-1950.” CAR STATE00010-12. The Cable does not include the actual entire CEA memo or white paper. Whatever the CEA’s underlying study may have measured, it manifestly is not contemporary public charge data. An agency that bases a twenty-first-century categorical immigration policy on twentieth-century census categorizations has not “examine[d] the relevant data” within the meaning of *State Farm*. 463 U.S. at 43.

## **3. The Department’s Metric Does Not Match the Statutory Inquiry**

The Action Memo’s metric, “immigrants from those countries use welfare” is conceptually disconnected from the public charge ground of ineligibility. CAR STATE00005, STATE00010. Public charge inadmissibility is an individual-level determination under 8 U.S.C. § 1182(a)(4), tested against the regulatory definition of “public cash assistance for income maintenance” (SSI,

TANF, General Assistance, and long-term institutionalization at government expense). 9 FAM 302.8-2; *see also* CAR STATE00030-31 (Department’s own November 2025 cable defining the relevant universe). The CEA’s household-level “welfare” rate sweeps in U.S. citizen family members whose lawful receipt of benefits is wholly irrelevant to any individual applicant’s admissibility. CAR STATE00010 (table expressly captioned “Immigrant Welfare Recipient Rates by Country of Origin”). An agency that justifies a categorical visa refusal by reference to a statistic that does not measure the statutory concern has “entirely failed to consider an important aspect of the problem.” *State Farm*, 463 U.S. at 43.

#### **4. The Department Departed from Its Own Stated Threshold Without Explanation**

The Action Memo announces a selection criterion, 30% welfare-use, and then concedes, in the very next paragraph, that the Department departed from that criterion for unstated reasons: “Countries listed were selected because, according to the CEA, 30 percent or more of immigrants from those countries use welfare. Some countries have been excluded due to foreign policy considerations.” CAR STATE00005. The attached data table confirms that countries with welfare-use rates well above the 30% threshold were exempted and appear in the table struck through under the header “Countries Struck-through are Proposed for Exemption.” CAR STATE00010. The Department has not identified what “foreign policy considerations” justify the exemptions, how those considerations bear on public charge risk, or why nationals of countries with materially higher welfare-use rates may continue to receive immigrant visas while nationals of below-threshold countries on the ban list may not.

An agency that “acknowledges the existence of an evident inconsistency but gives no reasonable justification for it” has acted arbitrarily, and that “alone suffices to require setting aside the Rule.” *World Shipping Council v. Fed. Mar. Comm’n*, 152 F.4th 215, 223 (D.C. Cir. 2025);

*accord Dep't of Commerce v. New York*, 588 U.S. 785, 800 (2019) (requiring “a reasoned explanation for agency action” rather than one “incongruent with what the record reveals about the agency’s priorities and decisionmaking process”). The internal inconsistency confessed on the face of the record is independently fatal.

#### **5. The Cable Reverses the Department’s November 6, 2025 Public Charge Guidance Without Acknowledgment**

The record includes the Department’s own November 6, 2025 cable on “Properly Implementing the INA 212(a)(4) Public Charge Ineligibility.” CAR STATE00028-40. That cable, issued by the same Secretary just sixty-nine days earlier, required officers to “conduct a comprehensive and thorough vetting of visa applicants, considering all relevant factors and the totality of the applicant’s circumstances,” CAR STATE00028, and held that “[t]here is no ‘bright-line’ test” for public charge findings, CAR STATE00031. The January 14 cable converts the same statutory ground into a categorical, nationality-based presumption—and even instructs officers to refuse applicants who individually “overcome[] the public charge refusal.” CAR STATE00003. Nothing in the record acknowledges the reversal, explains why a regime of individualized, totality-of-the-circumstances analysis has been abandoned, or identifies any “good reasons” for the new approach.

“Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016). When an agency changes course, it must “display awareness that it is changing position” and “show that there are good reasons for the new policy.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). “An ‘[u]nexplained inconsistency’ in agency policy is ‘a reason for holding an interpretation to be an arbitrary and capricious change.’” *Encino Motorcars*, 579 U.S. at 222. The Department’s silent reversal of its own November 2025 guidance, a reversal the cable itself does

not so much as acknowledge—is the paradigm of an unexplained inconsistency. That, too, is independently sufficient to vacate the rule.

#### **6. The Ban Sweeps in Applicants Exempt from Being Denied Based on Public Charge Grounds**

The ban applies categorically, with no carve-out for the entire class of immigrants for whom “public charge” is conceptually implausible. EB-5 immigrant investors must commit at least \$800,000 to job-creating enterprises in the United States before they can schedule an immigrant visa interview. 8 U.S.C. § 1153(b)(5)(A). EB-2 and EB-3 beneficiaries can only be scheduled for an interview after USCIS finds the employer able to pay the prevailing wage for the position. 8 C.F.R. § 204.5(g)(2). Family-based immigrants must submit a binding I-864 affidavit of support that the Department’s own Foreign Affairs Manual recognizes “is normally sufficient to meet the INA 212(a)(4) requirements.” 9 FAM 302.8-2(B)(2)(b). The administrative record reflects no consideration of any of these categories. CAR STATE00001-52. By extending the ban without regard to circumstances that the statute itself treats as dispositive evidence against public charge findings, the Department “entirely failed to consider an important aspect of the problem.” *State Farm*, 463 U.S. at 43; *see also Nat’l Ass’n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007).

#### **B. The Ban Exceeds Statutory Authority**

The ban independently violates three provisions of the INA, each of which supplies an independent basis for vacatur under 5 U.S.C. § 706(2)(C).

##### **1. The Ban Violates § 1152(a)(1)(A)’s Anti-Discrimination Provision**

Section 1152(a)(1)(A) of the INA commands, with limited exceptions inapplicable to Plaintiffs, that “[n]o person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person’s race, sex, nationality, place of birth, or

place of residence.” 8 U.S.C. § 1152(a)(1)(A). The cable discriminates against applicants in the issuance of immigrant visas based on nationality alone. It says so in terms: refusal is required for “applicant[s] who [are] national[s] of the following countries.” CAR STATE00001. The lone exception, for dual nationals applying with a passport of a non-listed country, CAR STATE00003, confirms that nationality is the operative criterion.

“Congress has unambiguously directed that no nationality-based discrimination shall occur.” *Legal Assistance for Vietnamese Asylum Seekers v. Dep’t of State*, 45 F.3d 469, 473 (D.C. Cir. 1995). The D.C. Circuit explained that “Congress could hardly have chosen more explicit language. While we need not decide in the case before us whether the State Department could never justify an exception under the provision, such a justification, if possible at all, must be most compelling—perhaps a national emergency. We cannot rewrite a statutory provision which by its own terms provides no exceptions or qualifications simply on a preferred ‘rational basis.’” *Id.* Defendants have not invoked any national emergency, offered any compelling justification, or attempted to explain how the cable can be squared with § 1152(a)(1)(A). The record offers no such justification: it contains a one-page predicate citing CEA “welfare” data and the Department’s own internal 30% threshold, from which the Department admittedly departed for unstated foreign policy reasons. CAR STATE00005. By its plain text, the ban is unlawful.

## **2. The Ban Arrogates Consular Officers’ Exclusive Statutory Authority**

Congress vested authority for granting or refusing immigrant visas exclusively in consular officers and expressly withdrew that authority from the Secretary of State. Section 1104(a) of Title 8, U.S.C., provides that the Secretary “shall not be construed” to have the authority to interfere with “the performance of the” “duties” “conferred upon the consular officers relating to the granting or refusal of visas.” 8 U.S.C. § 1104(a). The cable does precisely what § 1104(a) forbids:

it directs consular officers, by Secretarial command, to refuse immigrant visas to entire classes of applicants by nationality, and to do so even where the officer's own individualized assessment shows the applicant has "overcome[] the public charge refusal." CAR STATE00003.

Courts in this district have consistently held that the Secretary of State may not "categorically suspend[] visa issuance" because doing so arrogates the statutory authority Congress vested in consular officers. *Tate v. Pompeo*, 513 F. Supp. 3d 132, 144 (D.D.C. 2021) (citing *Milligan v. Pompeo*, 502 F. Supp. 3d 302, 315-17 (D.D.C. 2020)); *Gomez v. Trump*, 485 F. Supp. 3d 145, 191-94 (D.D.C. 2020). The cable goes farther than the § 1182(f) travel bans at issue in those cases, and it does so without a Presidential proclamation: it retroactively overrides completed consular adjudications by directing the cancellation of visas already approved and printed by consular officers. CAR STATE00003-04. Tellingly, the record itself contains the Department's own cable implementing the most recent valid 212(f) Presidential Proclamation, and that cable expressly forbids what the Secretary now claims unilateral authority to do: "The PP does not direct the revocation of valid visas issued before the effective date." CAR STATE00017. The Secretary cannot do by ALDAC what a Presidential Proclamation cannot do by its terms.

### **3. The Ban Nullifies Congress's Mandatory Adjudication Requirement**

Section 1202(b) of the INA provides that "[a]ll immigrant visa applications shall be reviewed and adjudicated by a consular officer." 8 U.S.C. § 1202(b). The Supreme Court has held that the word "shall" "creates an obligation impervious to judicial discretion." *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998); accord *Smith v. Spizzirri*, 601 U.S. 472, 476 (2024). Congress's use of "shall" in § 1202(b) therefore "imposes a mandatory duty on consular officers to review and adjudicate immigrant visa applications." *Gomez v. Biden*, No. 20-cv-01419 (APM), 2021 WL 3663535, at 20 (D.D.C. Aug. 17, 2021). "The statute thus grants

Plaintiffs a procedural right to have their” “applications adjudicated.” *Filazapovich v. Dep’t of State*, 560 F. Supp. 3d 203, 220 (D.D.C. 2021). The cable nullifies that right by mandating a pre-ordained refusal that is not tethered to any individualized assessment. CAR STATE00001-03.

The cable’s design ensures that the nullification will become permanent. Under 22 C.F.R. § 42.83(b), a visa registration is automatically terminated if the applicant fails to present evidence overcoming a § 1201(g) refusal within one year. And once terminated, the approval of the underlying petition “is revoked as of the date of approval” under the automatic revocation provision. 8 C.F.R. § 205.1(a)(1). By mandating § 1201(g) refusals based solely on nationality, with no permissible path to overcome the refusal, see CAR STATE00003, the cable ensures that Plaintiffs will eventually lose their approved petitions entirely. The permanent extinguishment of Congress’s approved pathways to permanent residence is precisely the outcome § 1202(b)’s mandatory adjudication requirement was designed to prevent.

Under existing regulations, a visa may be refused only upon a ground “specifically set out in the law or implementing regulations.” 22 C.F.R. § 40.6. And the consular officer must inform the applicant of “the provision of law or implementing regulation on which the refusal is based.” 22 C.F.R. § 42.81(b). Because § 1201(g) authorizes refusals only where a consular officer has a “reason to believe” based on individualized facts that the applicant is ineligible under § 1182, it “appears merely to refer to a consular officer’s ‘reason to believe’ that a noncitizen already ‘is ineligible’ under some subsections of 1182” and presupposes “a determination based upon facts or circumstances which would lead a reasonable person to conclude that the applicant is ineligible.” *Pietersen v. U.S. Dep’t of State*, 138 F.4th 552, 561 (D.C. Cir. 2025) (quoting 22 C.F.R. § 40.6). The cable converts § 1201(g) into plenary authority to impose class-wide visa refusals untethered to any individualized finding; “such a reading would allow the Secretary to refuse visas

for any class of immigrants for any reason.” *Id.* That interpretation finds no support in the statute and must be rejected. *Id.*

Finally, the cable’s direction to cancel already-approved visas lacks any statutory basis. Once an immigrant visa application is signed in the presence of the consular officer and approved, it “shall become the immigrant visa.” 8 U.S.C. § 1202(e). The implementing regulation further specifies that the visa is “evidenced by a physical visa or by an electronic visa located in the Department’s records.” 22 C.F.R. § 42.73(a). After issuance, a visa may be altered only through the formal revocation process, which requires written notice to the applicant, 22 C.F.R. § 42.82(c)–(d), and an opportunity to contest the revocation before a consular officer, 9 FAM 504.12-3(B)(a)(3). The cable bypasses those protections entirely, directing officers to inform applicants of a “221(g) refusal” without following the revocation procedures required by law. CAR STATE00003-04.

### **C. The Ban Was Issued Without Observance of Procedure Required by Law**

The cable is a legislative rule that was required to undergo notice-and-comment rulemaking under § 553 of the APA before taking effect. 5 U.S.C. § 553(b). Defendants skipped that requirement entirely. That procedural failure independently warrants vacatur under 5 U.S.C. § 706(2)(D).

“A key feature of legislative rules, as distinguished from interpretive rules, is that, unlike interpretive rules, they “have the force and effect of law” and “bind private parties.” *Kisor v. Wilkie*, 588 U.S. 558, 573 (2019) (internal quotation marks omitted). Whether a rule is legislative “is best ascertained by asking (1) whether in the absence of the rule there would not be an adequate legislative basis for enforcement action or other agency action to confer benefits or ensure the performance of duties, (2) whether the agency has published the rule in the Code of Federal

Regulations, (3) whether the agency has explicitly invoked its general legislative authority, or (4) whether the rule effectively amends a prior legislative rule. If the answer to any of these questions is affirmative, we have a legislative, not an interpretive rule.” *Am. Mining Cong. v. Mine Safety & Health Admin.*, 995 F.2d 1106, 1109 (D.C. Cir. 1993). Two factors are met here.

*First*, the cable constitutes its own legislative basis for action. No statute or regulation authorizes the Secretary of State to order consular officers to cancel already-approved visas based on nationality. CAR STATE00001-04. The cable binds consular officers to cancel finalized adjudications on its own authority, an exercise of power that does not exist unless the cable itself creates it. Directing consular officers to override their own completed determinations is a paradigmatic example of “binding” a party “merely by the agency’s say-so.” *Kisor*, 588 U.S. at 573.

*Second*, the cable effectively amends prior legislative rules governing the issuance and refusal of immigrant visas under § 1201(g). Under existing regulations, a visa may be refused only upon a ground specifically set out in the law or regulations, 22 C.F.R. § 40.6, and only after the consular officer identifies the specific legal or regulatory basis for refusal, 22 C.F.R. § 42.81(b). Those legislative rules presuppose an individualized determination. The cable overrides them by converting § 1201(g), a provision that presupposes individual adjudication, into a basis for categorical exclusion. That transformation “effectively amends” existing legislative rules and therefore required notice and comment. *Am. Mining Cong.*, 995 F.2d at 1109.

Defendants made no attempt to show “good cause” to exempt the cable from the notice-and-comment requirement, and no such finding appears anywhere in the record. CAR STATE00001-52. The cable was not published in the Federal Register or the Code of Federal

Regulations. The failure to comply with § 553 independently requires vacatur under 5 U.S.C. § 706(2)(D).

#### **IV. VACATUR AND COMPELLED ADJUDICATION ARE THE APPROPRIATE REMEDIES**

Where agency action is found unlawful under the APA, the “normal remedy” is vacatur. *Ky. Mun. Energy Agency v. FERC*, 45 F.4th 162, 179 (D.C. Cir. 2022). Vacatur naturally follows from a finding of unlawfulness: if the agency lacked authority to act or acted arbitrarily and capriciously, the action should not remain in effect. Here, the cable is unlawful on three independent grounds, arbitrary and capricious, in excess of statutory authority, and procedurally deficient, and vacatur is the presumptive and proper remedy.

Vacatur alone is insufficient. The cable has already produced concrete and irreversible consequences: cancelled visas, refused applications, and an accumulating procedural record threatening to permanently extinguish Plaintiffs’ approved petitions. CAR STATE00003-04. Vacating the cable without compelling Defendants to resume adjudication would leave Plaintiffs exposed to the ongoing risk that their registrations lapse under 22 C.F.R. § 42.83(b) or their petitions are automatically revoked under 8 C.F.R. § 205.1(a)(1). Section 706(1) of the APA expressly authorizes courts to “compel agency action unlawfully withheld.” 5 U.S.C. § 706(1). Section 1202(b) imposes a nondiscretionary, mandatory duty to adjudicate immigrant visa applications. 8 U.S.C. § 1202(b). An order compelling Defendants to resume adjudication of Plaintiffs’ pending applications is therefore both necessary and warranted.

For those Plaintiffs whose visas were approved and then cancelled pursuant to the cable, additional relief is necessary. CAR STATE00003-04. Those Plaintiffs do not simply have pending applications; they have approved visas that were unlawfully revoked without the procedural protections mandated by 22 C.F.R. § 42.82(c)–(d) and 9 FAM 504.12-3(B)(a)(3). The Court should

order Defendants to reissue those visas and to extend the validity of any supporting documents, including medical examinations and police clearance certificates, whose expiration dates have elapsed as a direct result of Defendants' unlawful conduct.

Finally, the Court should direct Defendants to act expeditiously. Immigrant visa categories are subject to annual numerical limitations. 8 U.S.C. § 1151(d)(1)(A). Each month of delay consumes visa numbers that cannot be recovered, potentially relegating Plaintiffs—even after a favorable decision—to years-long waiting lists. An order requiring prompt action is essential to make Plaintiffs' victory meaningful.

### **CONCLUSION**

This case presents no genuine dispute of material fact. The cable is the undisputed agency action. CAR STATE00001-04. The statutory text is clear. The administrative record contradicts the cable's stated rationale in multiple, mutually reinforcing ways: the operative data is decades out of date; the metric does not measure the statutory concern; the Department admittedly departed from its own threshold for unstated foreign-policy reasons; and the cable silently reverses the Department's own public charge guidance issued just sixty-nine days earlier. CAR STATE00005, STATE00010-15, STATE00028-40. Courts in this district have consistently recognized that the Department of State may not unilaterally halt the issuance of immigrant visas, and nothing in the record supports a different result here. For the foregoing reasons, this Court should grant Plaintiffs' motion for summary judgment, vacate cable 26 STATE 3740, order Defendants to immediately resume adjudication of Plaintiffs' pending immigrant visa applications on an expedited basis, order the reissuance of previously approved visas unlawfully cancelled pursuant to the cable, and extend the validity of any supporting documentation rendered stale by Defendants' unlawful conduct.

Dated: May 28, 2026

Respectfully submitted,

/s/ Jesse M. Bless  
JESSE M. BLESS  
MA0020  
Bless Litigation LLC  
6 Vineyard Lane  
Georgetown, MA 01833  
(781) 704-3897  
[jesse@blesslitigation.com](mailto:jesse@blesslitigation.com)


/s/ Zachary R. New  
ZACHARY R. NEW  
Atty. Reg. No. (Colorado): 53992  
Joseph & Hall, P.C.  
12203 East Second Ave.  
Aurora, CO 80011  
(303) 297-9171  
[zachary@immigrationissues.com](mailto:zachary@immigrationissues.com)  
*Appearing Pro Hac Vice*

/s/ Charles H. Kuck  
CHARLES H. KUCK  
GA429940  
Kuck Baxter LLC  
350 Northridge Rd., Suite 300  
Atlanta, GA 30350  
(404) 949-8154  
[ckuck@immigration.net](mailto:ckuck@immigration.net)

GREGORY SISKIND  
TN0021  
Siskind Susser, P.C.  
1028 Oakhaven Road  
Memphis, TN 38119  
[gsiskind@visalaw.com](mailto:gsiskind@visalaw.com)

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

 MASOOD, et al.,  
Plaintiffs,  
v.  
MARCO RUBIO, Secretary of State, *et al.*,  
Defendants.

Civil Action: 1:26-cv-00857(CJN)

**PLAINTIFFS' STATEMENT OF  
MATERIAL FACTS NOT IN  
GENUINE DISPUTE IN SUPPORT  
OF PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT**

Pursuant to Local Civil Rule 7(h) and the Standing Order of this Court, Plaintiffs respectfully submit this Statement of Material Facts Not in Genuine Dispute in support of their Motion for Summary Judgment. The material facts are drawn from the Certified Administrative Record produced by Defendants on May 18, 2026 (“CAR STATE00001–STATE00052”) and from Plaintiffs’ Complaint.

**I. CABLE 26 STATE 3740 (JANUARY 14, 2026)**

1. On January 14, 2026, Secretary of State Marco Rubio issued cable 26 STATE 3740 to all diplomatic and consular posts. CAR STATE00001.

2. The cable directs that, effective January 21, 2026, “consular officers must refuse under Section 221(g) of the Immigration and Nationality Act to all immigrant visa applicants who have not been refused under another ground of ineligibility,” if the applicant is a national of one of seventy-five listed countries. CAR STATE00001.

3. The seventy-five listed countries are: Afghanistan, Albania, Algeria, Antigua and Barbuda, Armenia, Azerbaijan, Bahamas, Bangladesh, Barbados, Belarus, Belize, Bhutan, Bosnia, Brazil, Burma, Cambodia, Cameroon, Cape Verde, Colombia, Cote d’Ivoire, Cuba, Democratic Republic of the Congo, Dominica, Egypt, Eritrea, Ethiopia, Fiji, The Gambia,

Georgia, Ghana, Grenada, Guatemala, Guinea, Haiti, Iran, Iraq, Jamaica, Jordan, Kazakhstan, Kosovo, Kuwait, Kyrgyzstan, Laos, Lebanon, Liberia, Libya, Macedonia, Moldova, Mongolia, Montenegro, Morocco, Nepal, Nicaragua, Nigeria, Pakistan, Republic of the Congo, Russia, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Somalia, South Sudan, Sudan, Syria, Tanzania, Thailand, Togo, Tunisia, Uganda, Uruguay, Uzbekistan, and Yemen. CAR STATE00001–02.

4. The only statutory authorities the cable cites are 8 U.S.C. § 1182(a)(4) (the public charge ground of inadmissibility) and 8 U.S.C. § 1201(g). CAR STATE00001–04.

5. The cable contains no factual findings, no underlying data, and no reasoned explanation as to why nationals of these seventy-five countries pose a categorical risk of becoming public charges. CAR STATE00001–04.

6. The cable’s only substantive statement regarding public-charge risk is the conclusory assertion that “[a]pplicants from these countries are at a high risk for becoming a public charge.” CAR STATE00002.

7. The cable directs that “[i]f an officer refuses an applicant under 4(a) and then the applicant provides additional evidence that demonstrates he or she overcomes the public charge refusal, the consular officer should write detailed case notes including the hashtag ‘#4AIVPause’, CLOK the 4(a) hit, and refuse the applicant 221(g).” CAR STATE00003.

8. The cable directs that, for an immigrant visa that has been print-authorized but not yet printed, “the consular officer must refuse the case under 221(g), inform the applicant, and post may not print the visa foil.” CAR STATE00003.

9. The cable directs that, for an immigrant visa that has been printed but has not left the consular section, “the consular officer must CWOP the foil, open the case in the system, and refuse the case under 221(g).” CAR STATE00004.

10. The cable's sole exception is for "[d]ual nationals applying with a valid passport of a country that is not subject to this directive." CAR STATE00003.

11. The cable states that immigrant visa issuance is "paused until further notice." CAR STATE00002.

12. The cable was not published in the Federal Register or in the Code of Federal Regulations. CAR STATE00001-52.

13. The administrative record contains no finding of good cause to bypass notice-and-comment rulemaking. CAR STATE00001-52.

## **II. THE ACTION MEMORANDA**

14. The administrative record contains a January 8, 2026 Action Memo for the Secretary recommending the pause. CAR STATE00005-15.

15. The Action Memo for the Secretary states that "the Council on Economic Advisors (CEA) recently found significant percentages of immigrants from certain countries use welfare." CAR STATE00005.

16. The Action Memo for the Secretary states: "Countries listed were selected because, according to the CEA, 30 percent or more of immigrants from those countries use welfare." CAR STATE00005.

17. The Action Memo for the Secretary states: "Some countries have been excluded due to foreign policy considerations." CAR STATE00005.

18. The Action Memo for the Secretary neither defines "welfare" nor identifies what programs or benefits are counted within it. CAR STATE00005-15.

19. The data table attached to the Action Memo for the Secretary is captioned "Immigrant Welfare Recipient Rates by Country of Origin" and reports rates at the household level. CAR STATE00010.

20. The header of the data table provides that “Countries Struck-through are Proposed for Exemption.” CAR STATE00010.

21. The data table uses country categorizations including “Yemen Arab Republic (North),” “Zaire,” “Kirghizia,” “Byelorussia,” “Cambodia (Kampuchea),” and “Samoa, 1940-1950.” CAR STATE00010–12.

22. The Action Memo for the Secretary includes a decision line indicating that approval was sought by January 9, 2026. CAR STATE00005.

23. The Action Memo for the Secretary states the pause “will take about 60 days.” CAR STATE00005.

24. The administrative record contains a January 13, 2026 Action Memo for CA Assistant Secretary Mora Namdar recommending issuance of the cable. CAR STATE00041–48.

25. The Action Memo for Assistant Secretary Namdar states: “We intend for this pause to continue at least 90 days.” CAR STATE00041.

26. The Action Memo for Assistant Secretary Namdar identifies a Truth Social post by President Trump as Tab 3. CAR STATE00042; CAR STATE00049.

### **III. THE DEPARTMENT'S PRIOR PUBLIC CHARGE GUIDANCE, THE DECEMBER 2025 212(f) CABLE, AND EXECUTIVE ORDER 14161**

27. The administrative record contains cable 25 STATE 102426, dated November 6, 2025, captioned “Visas: Properly Implementing the INA 212(a)(4) Public Charge Ineligibility.” CAR STATE00028.

28. Cable 25 STATE 102426 directs consular officers to “conduct a comprehensive and thorough vetting of visa applicants, considering all relevant factors and the totality of the applicant’s circumstances, in order to determine an applicant’s eligibility under INA 212(a)(4).” CAR STATE00028.

29. Cable 25 STATE 102426 states: “There is no ‘bright-line’ test in making a public charge ineligibility determination.” CAR STATE00031.

30. Cable 25 STATE 102426 defines “public cash assistance for income maintenance” as Supplemental Security Income, Temporary Assistance for Needy Families, General Assistance, and long-term institutionalization at government expense. CAR STATE00030–31.

31. The administrative record contains cable 25 STATE 113496, dated December 17, 2025, implementing Presidential Proclamation 10998’s INA § 212(f) entry restrictions. CAR STATE00016–27.

32. Cable 25 STATE 113496 states: “The PP does not direct the revocation of valid visas issued before the effective date.” CAR STATE00017.

33. The administrative record contains Executive Order 14161 of January 20, 2025, captioned “Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats.” CAR STATE00050–52.

34. Executive Order 14161 addresses screening and vetting under INA §§ 212(a)(2)–(3) and does not refer to INA § 212(a)(4) (the public charge ground). CAR STATE00050–52.

#### **IV. PLAINTIFFS**

35. Plaintiffs are forty-eight noncitizens of the United States seeking immigrant visas. Compl. ¶ 7.

36. Each Plaintiff is a national of one or more of the seventy-five countries listed in the cable. Compl. ¶¶ 15–62.

37. Each Plaintiff has a pending DS-260 immigrant visa application with a U.S. consulate. Compl. ¶¶ 15–62.

38. Plaintiffs [REDACTED] and [REDACTED] have had their immigrant visa applications refused. Compl. ¶¶ 42–43.

39. Plaintiffs include EB-5 immigrant investors who must invest between \$800,000 and \$1,050,000 in U.S. job-creating enterprises. Compl. ¶ 81.

40. Plaintiffs include EB-2 beneficiaries whose work has been deemed in the U.S. national interest or who hold positions requiring a master’s degree or higher. Compl. ¶ 81.

41. Plaintiffs include immediate relatives of U.S. citizens who must obtain a Form I-864 Affidavit of Support from a financial sponsor who assumes legally binding financial responsibility. Compl. ¶¶ 81–82.

42. Plaintiffs have completed the necessary visa applications, received receipt numbers, and have either not been scheduled for an interview due to the cable or have had their visas categorically refused pursuant to the cable. Compl. ¶ 97.

43. No consular officer made an individualized determination that any Plaintiff is likely to become a public charge. Compl. ¶ 98.

44. As a result of the cable, Plaintiffs have been separated from family members in the United States, have lost employment opportunities, have had their eligibility for U.S. citizenship delayed, and in some cases face physical danger abroad. Compl. ¶ 99.

Dated: May 28, 2026

Respectfully submitted,

*/s/ Jesse M. Bless*  
JESSE M. BLESS  
MA0020  
Bless Litigation LLC  
6 Vineyard Lane  
Georgetown, MA 01833  
(781) 704-3897  
[jesse@blesslitigation.com](mailto:jesse@blesslitigation.com)

ZACHARY R. NEW  
Atty. Reg. No. (Colorado): 53992

Joseph & Hall, P.C.  
12203 East Second Ave.  
Aurora, CO 80011  
(303) 297-9171  
[zachary@immigrationissues.com](mailto:zachary@immigrationissues.com)  
*Appearing Pro Hac Vice*

CHARLES H. KUCK  
GA429940  
Kuck Baxter LLC  
350 Northridge Rd., Suite 300  
Atlanta, GA 30350  
(404) 949-8154  
[ckuck@immigration.net](mailto:ckuck@immigration.net)

GREGORY SISKIND  
TN0021  
Siskind Susser, P.C.  
1028 Oakhaven Road  
Memphis, TN 38119  
[gsiskind@visalaw.com](mailto:gsiskind@visalaw.com)


Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I, Jesse M. Bless, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

*/s/ Jesse M. Bless*  
JESSE M. BLESS  
Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

 MASOOD, et al.,  
Plaintiffs,  
v.  
MARCO RUBIO, Secretary of State, et al.,  
Defendants.

Civil Action No. 1:26-cv-857 (CJN)

**[PROPOSED] ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT**

**[PROPOSED] ORDER**

Upon consideration of Plaintiffs' Motion for Summary Judgment, the accompanying Memorandum of Points and Authorities, the Statement of Material Facts Not in Genuine Dispute, the Certified Administrative Record, the entire record before the Court, and any response in opposition; and the Court being fully advised; it is hereby

**ORDERED** that Plaintiffs' Motion for Summary Judgment is GRANTED; it is

**FURTHER ORDERED** that:

1. Cable 26 STATE 3740, "Pausing Immigrant Visa Issuances for Nationalities at High Risk of Public Charge" (Jan. 14, 2026), is hereby VACATED and SET ASIDE under 5 U.S.C. § 706(2)(A), (C), and (D);
2. Defendants, by and through their delegated consular officers, shall immediately resume the review and adjudication of each Plaintiff's pending immigrant visa application under 8 U.S.C. § 1202(b), on an expedited basis;
3. For any Plaintiff whose previously approved immigrant visa was cancelled or refused pursuant to Cable 26 STATE 3740, Defendants shall reissue the visa within fourteen (14) days of the date of this Order;

4. Defendants shall extend the validity of any supporting documentation—including medical examinations and police clearance certificates—whose expiration dates have elapsed as a direct result of Defendants’ implementation of Cable 26 STATE 3740;
5. Defendants are ENJOINED from refusing any Plaintiff’s immigrant visa application under INA § 221(g) or INA § 212(a)(4) on the basis of the applicant’s nationality, place of birth, or place of residence;
6. Defendants shall file a status report with the Court within thirty (30) days of the date of this Order setting forth the status of each Plaintiff’s immigrant visa application and confirming compliance with this Order; and
7. The Court retains jurisdiction to enforce this Order and to consider any future motions for fees, costs, or further relief.

**SO ORDERED.**

Dated: \_\_\_\_\_, 2026

\_\_\_\_\_  
CARL J. NICHOLS  
United States District Judge