

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

RASUL ROE, RENA ROE, RAFI ROE, RABI ROE,  
MALIK MOE, MARWA MOE, MALIA MOE,  
MEDINA MOE,  
NAHID NOE, NASER NOE, NABI NOE, NAJI NOE,  
BADDAR BOE, BASEL BOE, BADI BOE, BAHAR  
BOE, BARAKAT BOE, BAHARAK BOE,  
BAKTASH BOE, BENESH BOE, BASIM BOE,  
BASIR BOE, BURHAN BOE,  
DIANA DOE, AMIR DOE, AFSOON DOE, AAZAR  
DOE, ABDUL DOE, AFSHANEH DOE, ALI DOE  
ALIMA DOE, AND PERMAZ DOE,

Plaintiffs,

v.

ALEJANDRO N. MAYORKAS, Secretary of the U.S.  
Department of Homeland Security;  
UR M. JADDOU, Director of the United States  
Citizenship and Immigration Services; and  
ANTONY J. BLINKEN, U.S. Secretary of State;

Defendants.

Civ. Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MANDAMUS RELIEF**

1. The Plaintiffs are Afghans endangered by the Taliban’s return to power and U.S.-based loved ones attempting to bring them to safety.

2. Plaintiff Rasul Roe worked with the U.S. military in Afghanistan and is now a U.S. citizen living in Massachusetts. When the Taliban took control of Afghanistan in August 2021, Rasul knew his relatives who remained there would be in peril. He learned that U.S. Citizenship and Immigration Services (“USCIS”) had put forward a process known as “humanitarian parole,” through which he could apply to bring his relatives to the United States based on “urgent humanitarian reasons.” He applied for six family members and requested expedited treatment.

3. But USCIS's commitment to the humanitarian parole process foundered. After spurring thousands of Afghans to submit parole applications (and pay millions of dollars in application fees), USCIS changed the rules, setting new standards that effectively ensured the overwhelming majority of Afghan parole applications would be denied—if they were adjudicated at all. The agency also abandoned important procedural safeguards that it had previously treated as binding on its adjudicators, and stopped making reasonable efforts to adjudicate Afghan humanitarian parole cases. Rasul's applications for his family languished.

4. Months later—while their applications sat unadjudicated at USCIS—three of Rasul's family members in Afghanistan were murdered. Even after Rasul's representatives notified USCIS and attempted to expedite the cases of three surviving family members, USCIS did not act, leaving the survivors at risk. Indeed, it was not until May 2022, more than six months after Rasul filed the applications on behalf of his family, that USCIS first asked him for additional information. The cases remain pending.

5. USCIS's failure to act despite devastating consequences is a common story. Like Rasul and his family, the other Plaintiffs and their loved ones also remain in peril abroad. They include individuals who have been targeted by the Taliban because they served—or had close family members who served—the United States in Afghanistan or the prior U.S.-backed Afghan government. Several fear Taliban reprisal for different reasons: *e.g.*, because they are well-known figures in Afghan public life, or women who reached prominent positions, including a female judge who sentenced members of the Taliban. Some remain in hiding in Afghanistan, while others have fled on short-term visas to nearby countries, from which they fear deportation back to Afghanistan. But each of their applications has either languished or been denied under USCIS's new, restrictive standards.

6. The government has violated its existing rules and also changed its standards and methods for adjudicating the Plaintiffs' applications without explanation, rational justification, or proper procedure. Moreover, its failure to process the vast majority of the applications (many of which were filed more than eight months ago) is unreasonable and unjustified. The Plaintiffs ask this Court to declare the agency's actions arbitrary and capricious and contrary to law, to vacate them, and to require that all of the Plaintiffs' applications be adjudicated—or re-adjudicated—within a reasonable time and pursuant to proper procedures and to the standards that USCIS had in place on August 31, 2021.

### **PARTIES<sup>1</sup>**

7. Plaintiff Rasul Roe is a U.S. citizen living in Massachusetts. He petitioned to USCIS for humanitarian parole for his family members, Rena, Rafi, and Rabi Roe.

8. Plaintiffs Rena Roe, Rafi Roe, and Rabi Roe are Afghan nationals and beneficiaries of pending applications for humanitarian parole to USCIS. [REDACTED]

9. Plaintiff Malik Moe is a U.S. citizen living in Massachusetts. He petitioned to USCIS for humanitarian parole for his family members, Marwa, Malia, and Medina Moe.

10. Plaintiffs Marwa Moe, Malia Moe, and Medina Moe are Afghan nationals and beneficiaries of pending applications for humanitarian parole to USCIS. [REDACTED]

11. Plaintiffs Nahid Noe, Naser Noe, Nabi Noe, and Naji Noe are Afghan nationals who self-petitioned to USCIS for humanitarian parole but whose applications were denied. [REDACTED]

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<sup>1</sup> Given the dangers faced by the Plaintiff families, all names in this complaint are pseudonyms. Plaintiffs are contemporaneously filing a motion seeking leave to proceed under pseudonym.

12. Plaintiff Baddar Boe is a U.S. citizen living in New Hampshire. He petitioned for humanitarian parole for his family members, Baktash, Benesh, Basim, Basir, and Burhan Boe.

13. Plaintiff Basel Boe is a lawful permanent resident living in Massachusetts and is [REDACTED] of Baddar Boe. He petitioned to USCIS for humanitarian parole for his family members, Badi, Bahar, Barakat, and Baharak Boe.

14. Plaintiffs Badi Boe, Bahar Boe, Barakat Boe, Baharak Boe, Baktash Boe, Benesh Boe, Basim Boe, Basir Boe, and Burhan Boe are Afghan nationals and beneficiaries of pending applications for humanitarian parole to USCIS. [REDACTED]

15. Plaintiff Diana Doe is a U.S. citizen living in Massachusetts. She petitioned for humanitarian prole for Amir Doe and his family—Afsoon, Aazar, Abdul, Afshaneh, Ali, and Alima Doe—and for Permaz Doe, all close friends of her family.

16. Plaintiffs Amir Doe, Afsoon Doe, Aazar Doe, Abdul Doe, Afshaneh Doe, Ali Doe, and Alima Doe are Afghan nationals and beneficiaries of applications for humanitarian parole that have been denied by USCIS [REDACTED]

17. Plaintiff Permaz Doe is an Afghan national and the beneficiary of an application for humanitarian parole that has been denied by USCIS. [REDACTED]

18. Defendant Alejandro N. Mayorkas, named in his official capacity, is the Acting Secretary of the U.S. Department of Homeland Security.

19. Defendant Ur M. Jaddou, named in her official capacity, is the Director of the U.S. Citizenship and Immigration Services. USCIS is a component agency of DHS that adjudicates applications for immigration benefits, including humanitarian parole.

20. Defendant Antony J. Blinken, named in his official capacity, is Secretary of the U.S. Department of State, which has a role in screening and issuing travel documents to those granted humanitarian parole by USCIS.

### **JURISDICTION AND VENUE**

21. Jurisdiction of the Court is predicated on 28 U.S.C. §§ 1331 (federal question), 2201 (declaratory judgment), and 1361 (mandamus).

22. Venue is proper in the District of Massachusetts under 28 U.S.C. § 1391(e) because Plaintiffs Rasul Roe, Malik Moe, Basel Boe, and Diana Doe reside in this district, and the Defendants are U.S. agencies and officers sued in their official capacities.

### **BACKGROUND**

#### **I. The United States' withdrawal from Afghanistan left thousands of U.S.-allied Afghans in danger.**

23. On August 30, 2021, the United States ended a 20-year intervention in Afghanistan.

24. Amid the departure of U.S. and NATO forces, the U.S.-backed Afghan government quickly collapsed. By August 15, 2021, the Taliban had completed their takeover of Afghanistan, moved into the capital, Kabul, and occupied the presidential palace.

25. The Taliban's seizure of power immediately placed in danger Afghans who had worked with U.S. armed forces, those who had served in military or other government functions in the U.S.-backed Afghan government, and their families. Those at immediate risk also included journalists, academics, ethnic minorities, women, and others.

26. Many endangered Afghans tried desperately to flee the country.

27. On August 16, 2021, hundreds of Afghans rushed onto the tarmac at Kabul International Airport, where some fell to their death after clinging to an American plane as it took

off. Others were crushed by stampeding crowds. On August 26, a suicide bombing at the airport killed 13 U.S. service members and at least 170 Afghans.

28. The United States airlifted more than 100,000 Afghan nationals out of the country in the final weeks of August 2021. Through a memorandum issued on August 23, 2021, Secretary Mayorkas authorized U.S. Customs and Border Protection (“CBP”), a component agency of DHS, to parole many of these Afghans into the United States under 8 U.S.C. § 1182(d)(5) on a case-by-case basis. CBP ultimately paroled approximately 70,000 Afghans from U.S. military bases and other sites around the world into the United States.

29. But the evacuation efforts left thousands of U.S.-allied and other at-risk Afghans behind. Many made it to the airport, but could not board flights. And with the collapse of the Afghan government, thousands of Afghans took necessary shelter from the Taliban, or otherwise determined that going to the airport was too dangerous. Indeed, just days after the Taliban seized power, on August 21, the U.S. government advised U.S. citizens to avoid Kabul airport.

30. The distinction between those Afghans who made it out through the airlift and those who did not was the product of various factors—including happenstance—none of which suggests that those left behind were less “deserving” of evacuation or less likely to be eligible for relief from the United States.

31. In the weeks that followed, tens of thousands of vulnerable Afghans who had been left behind sought help from USCIS through applications for a form of relief called humanitarian parole.

## **II. USCIS held out the prospect of humanitarian parole.**

32. As the military evacuation effort came to a close, USCIS appeared poised to help U.S. allies in Afghanistan.

33. By August 2021, officials at USCIS had identified and analyzed multiple avenues for Afghans to enter the United States, both temporarily and permanently. These avenues included the Special Immigrant Visa (“SIV”) program for interpreters and others who had worked for the U.S. government in Afghanistan for at least a year, a refugee priority program for individuals who worked with U.S. media or nonprofit organizations, and family petitions from immediate family members who were U.S. citizens or lawful permanent residents.

34. As relevant here, USCIS also identified humanitarian parole as an avenue for Afghans seeking entry to the United States. Unlike the SIV program and certain other forms of relief, humanitarian parole does not have rigid eligibility constraints.

35. Rather, under the Immigration and Nationality Act, the Secretary of Homeland Security is authorized “to parole any [noncitizen] into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” 8 U.S.C. § 1182(d)(5)(A).<sup>2</sup>

36. This type of parole can be granted by different DHS subagencies. For example, CBP can grant humanitarian parole to individuals arriving in person at U.S. ports of entry. This was the process used to bring about 70,000 airlifted Afghans into the United States for eventual resettlement. And USCIS receives and adjudicates applications for humanitarian parole under the same statute made on behalf of noncitizens who are outside the United States—the process Plaintiffs here utilized.

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<sup>2</sup> Although the statute refers to the power of the Attorney General, the Homeland Security Act of 2002 transferred most immigration authority to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, §§ 441(2), 442(a)(3), 451(b), 116 Stat. 2192, 2193, 2196, 6 U.S.C. §§ 251(2), 252(a)(3), 271(b)

37. A grant of humanitarian parole allows noncitizens to enter the United States temporarily, often for one year, during which they may apply for asylum or other immigration benefits, if eligible.

38. Anyone may apply for humanitarian parole on behalf of a noncitizen overseas (or the noncitizen may self-petition) by filing with USCIS a Form I-131 Application for Travel Document and a Form I-134 Affidavit of Support from a sponsor that is willing to provide financial support if needed. USCIS charges an application fee of \$575 for every application for humanitarian parole; if multiple adults and children from a single family apply for humanitarian parole, they must each pay the \$575 fee—a significant expense.

39. At USCIS, humanitarian parole applications are adjudicated by the agency's Humanitarian Affairs Branch. Before August 2021, the office had a small number of adjudicators, who processed fewer than 2,000 applications per year on behalf of noncitizens from all over the world. The office typically processed those applications within 90 days of receipt. It approved approximately 500 to 700 applications each year—an approval rate of 25-35%.

40. Denials are not subject to appeal. When USCIS approves an application for humanitarian parole, a noncitizen generally must then travel to a U.S. consulate to be screened and interviewed. If a noncitizen is approved for travel by the consulate, the U.S. Department of State typically issues a travel document facilitating air travel to the United States.

41. At a listening session hosted by DHS on August 25, 2021, USCIS solicited feedback from over 200 legal service providers and others on effective and efficient ways to process Afghan applications. The agency identified humanitarian parole as among the legal pathways for those fleeing the evolving crisis in Afghanistan.

42. On August 26, 2021, USCIS published a webpage specifically providing “Information for Afghan Nationals on Parole Into the United States.”

43. This Afghan-specific humanitarian parole page explained that “Individuals who are outside of the United States may request parole into the United States based on urgent humanitarian or significant public benefit reasons for a temporary period, on a case-by-case basis.” It provided that “[a]nyone may request parole for themselves, or on behalf of another individual,” by filling out the form.

44. The website instructed applicants to “[w]rite ‘Afghanistan Humanitarian Parole’ on the mailing envelope,” and “[f]or expedited processing, write the word EXPEDITE in the top right corner of the application in black ink.” It told beneficiaries without passports to provide “available identity documentation and an explanation of why they do not have an Afghan passport.”

45. The website further explained that “beneficiaries . . . may need to arrange travel to a U.S. embassy outside of Afghanistan to continue processing their parole request.”

46. On August 26, 2021, USCIS also modified its general humanitarian parole webpage by adding a banner that directed Afghan nationals to the agency’s new Afghan-specific humanitarian parole webpage.

47. Until early September 2021, USCIS acted with reasonable dispatch to address Afghan humanitarian parole applications in light of the dangerous situation beneficiaries faced. On information and belief, USCIS approved—or at least conditionally approved, subject to screening at a consulate—most if not all Afghan humanitarian parole applications adjudicated during that period. The agency instructed those grantees who were still in Afghanistan that completing the humanitarian parole process would require travel to a U.S. consulate.

48. On information and belief, these early approval trends reflected USCIS's recognition that many Afghan beneficiaries left behind by the U.S. evacuation presented "urgent humanitarian reasons" warranting a grant of humanitarian parole under then-existing standards.

**III. As applications increased, USCIS changed course and adopted standards and procedures that facilitated the denial of applications.**

49. As USCIS could reasonably have expected when it held out the prospect of humanitarian parole for Afghans—particularly in light of the dire situation on the ground—the agency received thousands of applications for humanitarian parole for Afghans beginning in late August 2021.

50. These applications reflected a significant mobilization on behalf of the Afghan community in the United States, attorneys, nonprofit organizations, and the public at large to fill out necessary forms, gather supporting documents, and raise money for filing fees.

51. On information and belief, in a few short months, the agency collected more than \$20 million in filing fees in connection with humanitarian parole applications for Afghans.

52. Confronted with applications from so many desperate Afghans, USCIS paused adjudications for approximately two months, from early September to sometime in November.

53. Although USCIS assigned and trained additional adjudicators to handle Afghan applications, on information and belief, the adjudicators assigned to Afghan applications were not permitted to adjudicate them under the standards in effect on August 31, 2021.

54. Instead, knowing that tens of thousands of Afghans would qualify for humanitarian parole under then-existing standards, USCIS abandoned those standards and adopted new ones.

55. The new standards operated on at least two fronts to ensure that the vast majority of Afghan humanitarian parole applications would be denied. First, on information and belief, USCIS decided that, as a rule, it would *not* issue approvals or conditional approvals for noncitizens

who were still in Afghanistan. Instead, USCIS decided that the only decisions it would issue for beneficiaries who were still in Afghanistan were (1) denials, or (2) letters administratively closing an application until such time as USCIS was notified that the beneficiary had left Afghanistan. On information and belief, this rule relied on the absence of a U.S. consulate in Afghanistan—a reality that already existed and USCIS acknowledged when it was still granting approvals or conditional approvals to vulnerable noncitizens in Afghanistan, and when it took pains to inform vulnerable Afghans and their advocates that they could apply for humanitarian parole.

56. Second, on information and belief, at the same time that it determined it would not grant humanitarian parole to Afghans *in Afghanistan*, USCIS also instructed its adjudicators that applications filed on behalf of individuals who *had already left Afghanistan* could be approved only in extreme cases in which beneficiaries faced either imminent harm in the country in which they were present or an imminent risk of being returned to Afghanistan.

57. On information and belief, USCIS determined that these new heightened standards would apply retroactively to thousands of already-pending humanitarian parole applications, including those filed by the Plaintiffs.

58. USCIS even withdrew approvals or conditional approvals that it had previously granted, contending that they required re-review under the new criteria.

59. USCIS did not notify applicants and beneficiaries, including the Plaintiffs, that it had changed its standards such that those who had already fled Afghanistan would have a reduced chance of receiving humanitarian parole, while those who remained would have no chance of receiving humanitarian parole at all.

60. On information and belief, along with its decision to heighten the standards used for Afghan humanitarian parole applications, USCIS also deprived Afghan humanitarian parole

applicants of certain protections—in particular, its rules for requesting additional evidence and issuing denials.

61. With regard to requests for evidence, on information and belief, in response to increased numbers of Afghan humanitarian parole applications, USCIS decided that adjudicators could dispense with the agency’s standard rule—required by the agency’s Policy Manual—of asking applicants for additional information whenever that information could lead the agency to grant a benefit.

62. USCIS adjudicators are required to follow the agency’s Policy Manual. That Manual instructs adjudicators not to deny cases simply because the application on its face “does not establish eligibility for the benefit sought.” Instead, adjudicators are directed to issue Requests for Evidence (“RFEs”) or Notices of Intent to Deny (“NOIDs”), unless “there is *no legal basis* for the benefit request and *no possibility* that additional information or explanation will establish a legal basis for approval.”<sup>3</sup>

63. As explained by USCIS, this policy generally requires adjudicators to issue an RFE or NOID whenever “additional evidence *could* demonstrate eligibility for an immigration benefit”—*i.e.*, if there is “a *possibility* the benefit requestor can overcome a finding of ineligibility for the benefit sought by submitting additional evidence.”<sup>4</sup>

64. But when it comes to Afghan applications for humanitarian parole filed since August 2021, on information and belief, USCIS instructed adjudicators that they could disregard the Policy Manual’s directive regarding RFEs and NOIDs. Instead, on information and belief,

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<sup>3</sup> USCIS Policy Manual, Part E – Adjudications, Ch. 6 – Evidence, § F(3) – Requests for Evidence (emphasis added), [uscis.gov/policy-manual](https://uscis.gov/policy-manual) (last accessed March 24, 2022).

<sup>4</sup> USCIS Policy Alert, PA-2021-11, Requests for Evidence and Notices of Intent to Deny (June 9, 2021) (emphasis added), [uscis.gov/sites/default/files/document/policy-manual-updates/20210609-RFEs%26NOIDs.pdf](https://uscis.gov/sites/default/files/document/policy-manual-updates/20210609-RFEs%26NOIDs.pdf) (last accessed May 25, 2022).

USCIS adjudicators have repeatedly denied Afghan applications for humanitarian parole without ever issuing RFEs or NOIDs even when there is a possibility that additional information could establish a basis for approval.

65. The facts in this case suggest that USCIS is now willing to issue RFEs only in the most extreme circumstances. The agency denied applications for the Noe and Doe families without RFEs and belatedly issued RFEs to the surviving Roes only after senior officials learned that half of the family had been murdered while their parole application languished in bureaucratic limbo.

66. On information and belief, USCIS has also instructed or authorized adjudicators to systematically disregard the Policy Manual's instruction that, when denying a benefit, an adjudicator "issues a written decision informing the requestor of the reason(s) for denial."<sup>5</sup>

67. Instead, on information and belief, USCIS provided adjudicators with a boilerplate denial letter that lists several categories of evidence and provides applicants no explanation other than, "[i]n your case, USCIS did not find sufficient evidence of the nature noted above to establish eligibility for parole."

#### **IV. USCIS is not adjudicating humanitarian parole applications on behalf of Afghans within a reasonable time.**

68. In addition to USCIS's decisions to all but stop granting Afghan humanitarian parole applications and abandon its usual standards, the agency has also appeared reluctant to process the applications at all—leaving adjudications at a trickle.

69. On information and belief, from early September to sometime in November 2021, USCIS stopped adjudicating Afghan humanitarian parole applications, but it continued to adjudicate applications filed on behalf of nationals of other countries.

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<sup>5</sup> Policy Manual, *supra* n.3, Part E – Adjudications, Ch. 9 – Rendering a Decision, § B – Denials.

70. Even if the small humanitarian affairs office initially faced challenges adjudicating the substantial number of applications from Afghan nationals, the number of adjudicators had increased approximately five-fold by around November 2021.

71. On information and belief, USCIS has now processed only about 2,600 Afghan humanitarian parole applications of more than 45,000 that it has received since July 2021.

72. Even accounting for a period in which USCIS was ramping up its staffing and assuming that 2,600 applications have been adjudicated in a five-month period from December through April, USCIS would require more than *seven years* to process all 45,000 Afghan humanitarian parole applications at its current pace—a pace that is all the more unreasonable considering the dire humanitarian situation of those seeking this benefit.

**V. USCIS’s change in policy has left Afghans stranded, at risk, and hopeless.**

73. The change in USCIS’s policy with regard to humanitarian parole applications on behalf of Afghans has devastated those who put their faith in the humanitarian parole process.

74. Beginning in August 2021, Afghans in the United States—with the support of the legal community and others—undertook substantial and often frenzied efforts to prepare humanitarian parole applications and raise thousands of dollars in application fees in a desperate bid to save their family members.

75. Although USCIS has a process for seeking a waiver of the \$575 per-person filing fee, most Afghan humanitarian parole applicants were afraid to apply for a fee waiver for fear that it would delay their applications.

76. Loved ones in Afghanistan and third countries also made significant sacrifices to assist in their applications. In many cases, these efforts placed applicants in greater danger than if

they had not applied, due to the possibility of the Taliban discovering their communications and documents.

77. Afghan applicants and beneficiaries seeking humanitarian parole from USCIS—including the Plaintiffs here—relied on the existence of a process that would be open and fair. Applicants often made life decisions about where to go and what to do based on the hope of action on their applications. For many families, there was and is no backup plan, no other contemplated or available pathway to safety or stability.

78. But while the Afghans who arrived via the airlift were quickly granted parole by CBP, those left behind have had to wait and watch as written and binding policies were ignored, standards were changed, and tens of millions of dollars in application fees entered government coffers while their families were left stranded, in imminent danger, and without hope.

79. In recent weeks, Afghan applicants have seen USCIS demonstrate its ability to expeditiously respond to a crisis through humanitarian parole. Under USCIS's new humanitarian parole process for Ukrainians, a U.S.-based sponsor can file an application online, and when it is approved, the Ukrainian beneficiary can register with USCIS electronically and attest that they meet all requirements to enter the United States. The filing fee is waived. And without requiring travel to a consulate, USCIS issues electronic travel authorizations that allow travel to the United States for further processing by CBP upon arrival.<sup>6</sup> USCIS processed over 6,000 such applications within the first three weeks<sup>7</sup>—far exceeding the total number of Afghan humanitarian parole adjudications in the nine months since August 2021.

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<sup>6</sup> See USCIS, *Uniting for Ukraine*, [uscis.gov/humanitarian/uniting-for-ukraine](https://uscis.gov/humanitarian/uniting-for-ukraine) (last accessed on May 5, 2022).

<sup>7</sup> See Rebecca Beitsch, *Nearly 6,000 Ukrainians have received temporary residency in US through new program* (THE HILL May 9, 2022), [thehill.com/news/3482233-about-6000-ukrainians-have-received-temporary-residency-in-us/](https://thehill.com/news/3482233-about-6000-ukrainians-have-received-temporary-residency-in-us/).

80. Meanwhile, Afghans confront an economy in shambles, continual terror attacks by the group known as “ISIS-K,” and a Taliban regime brutally cracking down on its opponents. In recent weeks, faced with the beginnings of an armed resistance dominated by ethnic Tajiks, the Taliban have responded with extra-judicial killings and harsh reprisals, especially against Tajiks. Women also face increasing restrictions: they cannot study beyond primary school, work in most jobs, or go outside without a male relative and clothing that covers them from head to toe. What is more, the Taliban are reportedly working to improve their technology and surveillance infrastructure with possible foreign assistance—posing grave threats to Afghans who have Western ties or are seeking help to get to the United States, including the Plaintiffs here.

#### STATEMENT OF FACTS

81. The Plaintiffs are U.S.-based applicants and Afghan beneficiaries of humanitarian parole applications. In late summer and fall 2021, each placed their hopes for safety in USCIS’s humanitarian parole process. Each requested expedited treatment of their application. And given the dangers they and their families faced, they reasonably believed that USCIS would take prompt action to provide them with protection. They did not know and could not have imagined that USCIS would cease treating their applications as urgent and decline to take action for months, or that, if the agency finally *did* act, it would be under new standards rolled out while their applications were pending—standards that involve the harsh combination of a refusal to approve in-country Afghans, an almost impossible-to-satisfy standard for those who have fled, and a willingness to abandon the rules for reviewing additional evidence from applicants.

#### I. Rasul, Rena, Rafi, and Rabi Roe

82. Rasul Roe is an Afghan-born U.S. citizen.

83. When the Taliban took over Afghanistan in August 2021, he knew his [REDACTED] Radia—a widow who lived alone in Kabul with her [REDACTED]—would be in danger.

84. Rasul had many reasons to fear for [REDACTED] and her children. These included his own work as a [REDACTED] for the U.S. military— [REDACTED] [REDACTED]—and [REDACTED] work on a contract [REDACTED] [REDACTED]. Radia's [REDACTED] worked as an interpreter at a U.S. military base and, before his death, [REDACTED] had also been a police officer for the Afghan government. Radia's family was deeply connected to the West in other ways, with her parents and most of her siblings living in the United States.

85. Rasul knew that in Afghanistan, these family connections were intensely important. If the community sees one family member as disloyal due to their connections to the United States, the entire family carries the perceived stain.

86. The risk would only be made greater by the fact that Rasul and his family are Tajik, an ethnic group that is often associated with opposition to the Taliban.

87. Rasul also knew that, as a woman, Radia's education and career would place her at risk. After taking power in 2021, the Taliban barred Radia from continuing her job at the [REDACTED] [REDACTED] where she had worked throughout her adult life (except from 1995 to 2001, during the Taliban's prior rule). In recent years, Radia had gone back to school and was finishing her second bachelor's degree, [REDACTED]. Radia's [REDACTED] also pursued higher education, and one worked at the [REDACTED]. Radia's ties to the West were known within the [REDACTED]. And Rasul knew the Taliban would not look favorably on these ties, or on his [REDACTED] education and independence.

88. The dangers did not come just from Taliban members. Even before the Taliban's return to power, Rasul had interacted with a segment of Afghan society that considered people like him, [REDACTED] and their family, to be traitors who could be killed without compunction.

89. The Taliban's rapid rise empowered those who shared that ideology and sent those who disagreed into hiding. Rasul immediately knew it spelled danger for [REDACTED]

90. In the final weeks of August 2021, Rasul tried unsuccessfully to have [REDACTED] and her children put on a list to be evacuated from Afghanistan.

91. On October 27, 2021, Rasul petitioned for humanitarian parole for Radia and five of her children, including Plaintiffs Rena, Rafi, and Rabi Roe. Rasul had seen information about humanitarian parole for Afghans on USCIS's website, and felt optimistic that the agency would help [REDACTED]

92. His applications included a cover letter stating, "Please expedite this petition, as [Radia] and her family are at risk living in hiding in Kabul."

93. USCIS issued receipt notices for these applications on October 30, 2021.

94. For months, Rasul and Radia waited and worried, with humanitarian parole their only hope. They did not imagine that USCIS had changed the standards for Afghan applicants, making it virtually impossible for Radia and her children's cases to be granted.

95. On [REDACTED]—with their humanitarian parole applications still pending—Radia and [REDACTED] were savagely [REDACTED] to death [REDACTED]

96. Radia's [REDACTED] years old. One wanted to be an engineer; the other, an astrologist.

97. Rasul's counsel notified USCIS of their deaths and even managed to have a call with the chief of the USCIS division overseeing humanitarian parole applications about the need to expedite the cases of [REDACTED]'s surviving children. The division chief followed up to let them know that the cases were being "actively" worked.

98. In March, Radia's [REDACTED] surviving children traveled [REDACTED].

99. Rasul's counsel immediately notified USCIS, including the division chief, that the children had left Afghanistan. The division chief responded on March 10, 2022 that USCIS was "expediting the case."

100. On April 27, 2020—six months after the cases were first filed—Rasul's counsel inquired about their status with the division chief.

101. On May 10, 2022, USCIS sent Rasul three RFEs asking for a long list of additional evidence in Rena, Rafi, and Rabi's cases, including evidence that they had included in their original applications.

102. At ages [REDACTED] Rena, Rafi, and Rabi remain [REDACTED] on a single-entry short-stay visa that is valid only for that country and is non-renewable. Their authorized stay cannot exceed [REDACTED], which expires on [REDACTED]. There is little precedent for extending this type of visa.

103. Rena, Rafi and Rabi are traumatized and vulnerable. They have no family to care for them except [REDACTED], who has an approved immigration petition [REDACTED].

104. Back in Massachusetts, Rasul blames himself. He feels that the way he and his other siblings lived their lives, including his work for the United States, led to [REDACTED]'s death.

## **II. Malik, Marwa, Malia, and Medina Moe**

105. Malik Moe is a U.S. citizen and resident of Massachusetts who filed humanitarian parole applications for [REDACTED]—Marwa, Malia, and Medina—on September 24, 2021. USCIS issued receipt notices on September 30, 2021 but has not responded to their applications.

106. [REDACTED] are among the most vulnerable people [REDACTED].

107. Marwa served as a judge for [REDACTED] in the major crimes division, where her docket included terrorism cases against Taliban members. She was one of approximately 250 female judges in Afghanistan.

108. [REDACTED], Malia, served as one of approximately [REDACTED]  
[REDACTED]  
[REDACTED]

109. Medina is a [REDACTED] who is vulnerable due to her family connections and because of continued terrorist attacks [REDACTED]

110. [REDACTED] also live with [REDACTED]  
[REDACTED]

111. Even prior to the fall of Kabul, the family faced repeated threats. Marwa lost colleagues in violent attacks on the judiciary, including a bombing outside the Afghan Supreme Court and the shooting of two female judges on their way to work in January 2021. Malia had also lost numerous colleagues in two explosions [REDACTED]  
[REDACTED].

[REDACTED] Malia and Marwa had continued in their jobs largely due to a sense of duty to use their educations in the service of their country.

112. After the Taliban's takeover, Malik scrambled to find ways to get [REDACTED] out of Afghanistan and ultimately applied for humanitarian parole.

113. Over seven months later, the Moes have not heard back on their applications.

114. Marwa and Malia are now barred from working and [REDACTED]  
[REDACTED].

[REDACTED] The Taliban leadership released from jail many of the people they prosecuted or sentenced. And the Moes have heard of at least ten judges who

have been killed after the withdrawal of American troops. Marwa regularly receives threatening calls asking about her location. [REDACTED]

115. Meanwhile, the Taliban continue to search homes to look for employees of the former Afghan government, like Marwa and Malia, and supporters of the US occupation, [REDACTED]

116. The Moes have had their home raided [REDACTED] times. The first time was in [REDACTED] when five Taliban members showed up at their home unannounced, demanded to be let inside, and rummaged through each room. The homes of other government employees in the Moes' neighborhood were also searched, and some were arrested by the Taliban.

117. After hearing other government employees had been disappeared in the initial search, the family was terrified. They hid documents about their previous employment, knowing that if these records are found they may be killed, tortured, or disappeared. But if they destroy the documents, they will lose the evidence that could be important to their U.S. immigration cases.

118. The Taliban raided the Moes' home again in [REDACTED]. [REDACTED]

[REDACTED] The Moes do not know what will happen if their home is raided again.

119. After decades of serving their country, at great risk to their own lives, the Moes face unrelenting danger and wait desperately for action on their humanitarian parole applications in the hopes of being safe and reunited with their [REDACTED] Malik in Massachusetts.

**III. Nahid, Naser, Nabi, and Naji Noe**

120. Nahid Noe is a [REDACTED] and trailblazer in Afghan [REDACTED]. She and her husband and [REDACTED] self-petitioned to USCIS for humanitarian parole. Their applications were denied.<sup>8</sup>

121. Nahid and her family are Tajiks whose careers have long placed them in positions of visibility.

122. In [REDACTED], when Nahid became the [REDACTED] [REDACTED] she was the first woman in [REDACTED] to reach such a high rank. In [REDACTED], she became the first woman [REDACTED] [REDACTED] that put her in charge of one [REDACTED]

123. Nahid faced hostility and threats from people who did not believe women should hold positions of power, including [REDACTED] allied with the Taliban.

124. Meanwhile, Naser was a [REDACTED] [REDACTED] [REDACTED] Naser regularly criticized the Taliban.

125. [REDACTED] [REDACTED] [REDACTED]

126. [REDACTED] warned Naser that the Taliban were planning to assassinate him. Terrified, he soon left his position [REDACTED]

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<sup>8</sup> A denial letter for Naji was never received and it is unclear whether his application is pending.

127. Nahid and Naser [REDACTED] dividing their time between [REDACTED]

128. [REDACTED] while Naser was [REDACTED] members of the Taliban violently attacked [REDACTED]

[REDACTED] The attackers mentioned Naser's work as a reason for their violence.

129. When the Taliban took power in August 2021, Naser and Nahid tried desperately to flee the country—dragging their children around Kabul airport and sleeping in their car while contacts in the United States tried to place them on a flight list. The four were at the airport when a bombing killed more than a hundred people. After leaving the airport in fear, they later made it on a list to fly out on a civilian aircraft. But as they headed to the airport, [REDACTED] was intercepted by the Taliban, sending them back into hiding.

130. On August 31, 2021, Nahid, Naser, Nabi and Naji self-petitioned to USCIS for humanitarian parole. USCIS issued a receipt notice on September 3, 2021.

131. As they waited for word on their applications, danger lurked near. Among other things, [REDACTED] was detained and tortured by the Taliban. [REDACTED] joined the Taliban and showed up at [REDACTED] house, demanding information.

132. Nahid and Naser moved around, [REDACTED] when their situation felt especially unsafe, then returning in response to other dangers. They stayed inside as much as possible. Every time they went out, they passed numerous Taliban checkpoints.

133. On February 14, 2022, USCIS denied the family's applications without having asked for additional evidence or information in the form of an RFE or NOID.

134. The denial was a form letter stating, “USCIS generally offers parole based on protection needs only when USCIS finds that the beneficiary is at risk of severe targeted or individualized harm in the country where the beneficiary is located or is at risk of imminent return to a country where the beneficiary would be harmed.” USCIS listed certain categories of evidence, including “[d]ocumentation from a credible third-party source specifically naming the beneficiary,” “a USCIS grant of a protection-based immigration benefit such as asylum, refugee, or special immigrant status to an immediate family member,” “[e]vidence of the beneficiary’s particular vulnerabilities,” and “[e]vidence of the severity and imminence of the harm the beneficiary fears.”

135. Without individualized explanation, the letter stated that “USCIS did not find sufficient evidence of the nature noted above to establish eligibility for parole.”

136. Nahid and Naser were devastated by the denials. They had no other plan.

137. To make matters worse, [REDACTED] the new Taliban [REDACTED]

[REDACTED]  
[REDACTED] Nahid could not afford these payments. She tried to persuade the [REDACTED] but they would not listen. Even her [REDACTED] shunned her, scared and annoyed at her unwillingness to accept her situation.

138. Days later, the Taliban began calling. [REDACTED]

[REDACTED] Nahid disabled her phone and she and her family fled Afghanistan and [REDACTED]  
[REDACTED] They were terrified that they would be stopped, detained, and tortured, or worse.

139. [REDACTED] who joined the Taliban again visited [REDACTED] house, asking about her whereabouts. This time, armed Taliban members were with him.

140. Nahid and Naser must [REDACTED] and they and their children must [REDACTED]

141. This impending deadline fills Nahid and Naser with terror. The family has nowhere to go when [REDACTED]

**IV. Baddar, Basel, Badi, Bahar, Barakat, Baharak, Baktash, Benesh, Basim, Basir, and Burhan Boe**

142. Baddar and Basel Boe [REDACTED] who worked as [REDACTED] supporting U.S. troops in Afghanistan. Baddar is a U.S. citizen living in New Hampshire, while Basar is a lawful permanent resident living in Massachusetts.

143. On September 7, 2021, Basel Boe petitioned for humanitarian parole on behalf of [REDACTED] Badi; [REDACTED] Bahar; and [REDACTED] Barakat and Baharak. USCIS issued receipt notices for the applications on September 10, 2021. On September 14, 2021, Baddar Boe petitioned for humanitarian parole on behalf of [REDACTED] Baktash; [REDACTED] Benesh; and the [REDACTED] Basim, Basir, and Burhan. USCIS issued receipt notices for the applications on September 22, 2021. The applications remain pending.

144. Badi Boe is Baddar and Basel's [REDACTED] and served as a [REDACTED] for the Afghan Government and as a [REDACTED] alongside the U.S. Military for more than twenty years. He worked closely with the U.S. Army and played a prominent role in the Afghan government's efforts to prevent the Taliban from disrupting the country's new and fragile democracy, including neutralizing a suicide bombing [REDACTED] [REDACTED] Badi's work saved countless lives, and he received formal recognition for his heroic deeds from the U.S. Military. Through his decades of counterterrorism work and high-profile positions with the Afghan government, he became a prominent figure across Afghanistan and especially [REDACTED] where the Boes lived.

145. Badi's service to the Afghan government alongside U.S. forces inspired ██████████ Basel and Baddar, to pursue similar work. Basel spent years working with the U.S. Military as a ██████████ training Afghan soldiers and law enforcement officers. Baddar worked with the ██████████ ██████████ from ██████████ in a similar role, performing countless interviews of Taliban soldiers and commanders. ██████████ Baktash, was a project coordinator for projects funded by ██████████

146. The Boe family experienced numerous threats to their lives due to their work against the Taliban and their association with the U.S. armed forces.

147. Badi survived several ambushes, attempted bombings, and assassination attempts. Many of his colleagues lost their lives after being targeted by the Taliban.

148. Basel received constant written and verbal death threats from the Taliban during his service to the U.S. Military. ██████████ men believed to be Taliban fugitives attacked his vehicle. ██████████ After continued threats, Basel resettled in the United States in ██████████ and was granted asylum in ██████████

149. Baddar was similarly a Taliban target due to his work with the ██████████ The threats against him and his fear for his life became so severe that in ██████████ he relocated to the United States. He later became a U.S. citizen. Still, Baddar returned to Afghanistan on four active duty deployments with the U.S. military, including one in which he was injured by Taliban forces and medically evacuated.

150. With the Taliban in control of Afghanistan, Taliban operatives that Badi, Basel, and Baddar formerly worked against have free rein and are actively searching for the Boes. By association, all members of the Boe family are considered to be affiliated with the former Afghan government and U.S. forces.

151. When the Boes heard that the Taliban were [REDACTED] in August 2021, they believed their family would be among the first to be targeted if the Taliban gained control of [REDACTED]. They quickly packed their belongings and fled [REDACTED].

152. As the Boes fled, the Taliban had raided the family's home and seized its property. [REDACTED] the Boes that the Taliban were interrogating people about the family's whereabouts. The Taliban were similarly conducting door-to-door searches for anyone affiliated with U.S. forces.

153. Although they managed to [REDACTED] the Boes were unable to board evacuation flights during the chaotic withdrawal of U.S. forces. Border crossings into neighboring countries were too risky to pursue. Stuck [REDACTED] with no options, the Boes turned to pro bono counsel to assess the family's immigration options, and applied for humanitarian parole.

154. But eight months after filing, they have received no response.

155. The lack of timely action on the Boes' humanitarian parole applications has left them in anguish. The Boes [REDACTED]

[REDACTED] Family members rarely venture outside [REDACTED]  
[REDACTED]

156. The Boes anxiously await adjudication of their humanitarian parole applications. Basel and Baddar can only watch helplessly from their homes in America, while their family has been forgotten [REDACTED] despite their valiant assistance to the United States.

**V. Diana Doe and Amir, Afsoon, Aazar, Abdul, Afshaneh, Ali, and Alima Doe**

157. Diana Doe is a U.S. citizen and Massachusetts resident with close family ties to Afghanistan. On August 23, 2021, she petitioned for humanitarian parole for Amir, Afsoon,

Aazar, Abdul, Afshaneh, Ali, and Alima Doe. USCIS issued receipt notices for the family's applications on August 25, 2021. It denied their applications on December 1, 2021.

158. As a young man, Amir joined the Afghan army and rose through the ranks to become a senior officer. In the 1990s, Amir was [REDACTED]. After he escaped, he left his young family in Kabul and fled to a distant province. But the Taliban and their affiliates visited his Kabul home, extorting his wife, Afsoon, and demanding that she disclose his location. [REDACTED] the Taliban again found and captured Amir and subjected him to interrogation and severe torture [REDACTED]. [REDACTED] He was rescued by U.S.-affiliated forces. His decades of work and affiliation with the Afghan military place him and his entire family at severe risk of Taliban retaliation.

159. Beyond Amir's military affiliation, he and his family are Tajik and have many affiliations with Western entities and [REDACTED] that further threaten the family's safety.

160. In addition to his military service, Amir was the [REDACTED]. [REDACTED] This highly visible position placed a spotlight on Amir and his family, making them even more susceptible to identification and targeting by the Taliban.

161. Aazar, [REDACTED] is a successful [REDACTED]. [REDACTED] Several years ago, he was physically assaulted [REDACTED]. [REDACTED] harassed and threatened to kill Aazar for years—causing him to relocate several times within Kabul to avoid detection. Now, several of [REDACTED] have joined the Taliban.

162. Since Kabul's fall, Aazar has also received threatening text messages from Taliban operatives. These messages included identifying information about him and his family and threats of serious bodily harm to him and his family if he did not comply with the Taliban's demands. Aazar was forced [REDACTED] putting himself and his family in additional danger.

163. Abdul, [REDACTED] previously worked remotely for a U.S.-based company while living in Kabul.

164. [REDACTED] Afshaneh, is a women's rights activist who [REDACTED] [REDACTED] for a number of years. She has used this position to advocate for gender equality and traveled internationally to [REDACTED] [REDACTED] Afshaneh is well known across Afghanistan due to her high-profile position, and her vocal support for women's rights has placed her in Taliban crosshairs and also placed [REDACTED] Ali, and [REDACTED] Alima, at risk.

165. [REDACTED] is a student in the United States. He previously served as a translator at the [REDACTED] in Kabul and [REDACTED]

166. Because the family's visibility and connections to the United States, to women's rights, and to [REDACTED] places them in danger, they decided to pursue humanitarian parole as their only chance at safety after the Taliban regained power in 2021.

167. As weeks passed with no news of adjudication and security in Kabul further deteriorated, the Does frantically began searching for options to escape to another country while they waited for their humanitarian parole applications to be adjudicated.

168. Undertaking significant risk to escape Afghanistan, the Doe family [REDACTED] [REDACTED] Their counsel informed USCIS of their new location.

169. On December 3, 2021, USCIS denied the Doe family's humanitarian parole applications using a template denial letter and without asking for further evidence or information (that is, without issuing an RFE or an NOID).

170. The Does remain in [REDACTED] without long-term prospects and [REDACTED] [REDACTED] Taliban affiliates live and operate openly [REDACTED] and are known to target, abuse, and [REDACTED] The family seldom leaves its residence out of fear that they will be recognized and captured by the Taliban.

171. Meanwhile, [REDACTED] the Taliban have continued searching for the Does. In March 2022, the Doe family learned that the Taliban had ransacked their [REDACTED] [REDACTED] Although the Taliban ultimately released him, [REDACTED] [REDACTED]

## VI. Permaz Doe

172. Diana Doe also applied for humanitarian parole for Permaz Doe, a family friend who [REDACTED] with Amir Doe and his family. Like their applications, her application for humanitarian parole was also submitted on August 24, 2021, acknowledged in an August 25, 2021 receipt notice, and denied on December 3, 2021, without explanation and without a prior RFE or NOID.

173. Permaz Doe is a women's rights activist and the former [REDACTED] [REDACTED] She spent most of her youth [REDACTED] due to her mother's death and her father's [REDACTED] She excelled [REDACTED] [REDACTED] and eventually joined the [REDACTED] [REDACTED] Permaz used her visibility in Afghanistan to advocate for gender equality. In media coverage of Permaz's leadership, at least one journalist has used a pseudonym

to conceal her identity, and media photos of similarly situated women leaders have been retracted out of concern for their wellbeing. Permaz is also Tajik.

174. Permaz also excelled in school, taught herself English, and began university studies, before her education was cut short by the Taliban capture of Kabul.

175. Permaz made the risky journey [REDACTED] with Amir Doe and his family in [REDACTED] and notified USCIS of her arrival. [REDACTED] she seldom ventures outdoors due to fears of being discovered by the Taliban. Given her heavy involvement in activities that the Taliban deem traitorous, Permaz fears for her life should she [REDACTED] [REDACTED] especially as a young woman with no male guardians or relatives.

## CAUSES OF ACTION

### COUNT I

#### Violation of the APA, 5 U.S.C. § 706 Arbitrary and Capricious Agency Action

176. The above paragraphs are incorporated by reference.

177. The APA directs reviewing courts to invalidate agency action found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

178. Agency action is arbitrary and capricious, among other things, when agencies “depart from a prior policy *sub silentio*,” “disregard rules that are still on the books,” or fail to “show that there are good reasons for the new policy.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). An agency may not “rel[y] on factors which Congress has not intended it to consider, entirely fail[] to consider an important aspect of the problem, [or] offer[] an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.” *Motor Vehicles*

*Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). Among the aspects of a problem that an agency must consider, “it would be arbitrary and capricious to ignore” the “reliance interests” generated by prior policies. *See Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1913 (2020).

179. Around November 2021, after receiving thousands of applications from Plaintiffs and others, USCIS implemented new standards used to adjudicate requests for humanitarian parole on behalf of Afghans. Those changes had the purpose, and effect, of making it all but impossible for Afghan beneficiaries to be granted this benefit.

180. In addition, on information and belief, USCIS altered these standards without publicly announcing the change or providing a reasoned basis for it. It applied those changes to already-pending applications without notifying applicants.

181. On information and belief, USCIS’s change in standards was based at least in part on impermissible considerations. These included the agency’s apparent realization that many Afghans would qualify for humanitarian parole under the standards then in effect, the desire for a standard that would lead to more denials, and the desire to deter more applicants. And the agency evidently failed to consider important aspects of the problem, including the reliance interests of the Plaintiffs and other applicants and beneficiaries, who paid a total of more than 20 million dollars in application fees and who were waiting for a decision while in hiding from the Taliban or in third countries in which they have no long-term prospects.

182. In processing humanitarian parole applications for Afghan nationals, USCIS also unlawfully decided to amend or ignore the provision of its Policy Manual that requires issuing an RFE or NOID before denying any application for which “additional evidence *could* demonstrate eligibility for an immigration benefit.” And the agency abandoned the existing provisions in its

Policy Manual requiring an explanation for the denial of a benefit, instead issuing boilerplate denial letters lacking any explanation of the reasons for the denial.

183. Indeed, all but one of the Plaintiff families have never received an RFE or NOID. And many months after they applied, each family’s case is either still pending or has been answered with a template denial issued under USCIS’s new standards.

184. USCIS’s change to its adjudication standards for Afghan humanitarian parole applications—and its abandonment of its otherwise applicable rules and policies—were arbitrary and capricious, and otherwise in violation of the APA. 5 U.S.C. § 706(2)(A).

**COUNT II**  
**Violation of the APA, 5 U.S.C. § 706**  
**Failure to Comply with Law and Agency Rules**

185. The above paragraphs are incorporated by reference.

186. Agency action that is “not in accordance with law” violates the APA. 5 U.S.C. § 706(2)(A). And “government agencies are bound to follow their own rules, even self-imposed procedural rules that limit otherwise discretionary decisions.” *Wilkinson v. Legal Servs. Corp.*, 27 F. Supp. 2d 32, 60-61 & n.3 (D.D.C. 1998); *see Damus v. Nielsen*, 313 F. Supp. 3d 317, 336–37 (D.D.C. 2018) (agency must abide by its rules regarding parole, “and particularly those that affect individual rights”); *see also United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

187. The humanitarian parole statute provides that the agency will make parole decisions “only on a case-by-case basis.” 8 U.S.C. § 1182(d)(5)(A). And the agency’s Policy Manual sets forth its procedures and provides that it “is to be followed by all USCIS officers in the performance of their duties but it does not remove their discretion in making adjudicatory decisions.”

188. In contravention of the requirements set forth in the statute and Policy Manual, the agency has substituted case-by-case adjudication for a categorical rule refusing to approve Afghan

humanitarian parole applications for Afghan nationals located in Afghanistan, and failed to adhere to its own policies, including for issuing RFEs and/or NOIDs whenever there is a possibility that the applicant may be eligible for humanitarian parole. *See* 8 U.S.C. § 1182(d)(5)(A).

**COUNT III**  
**Violation of the APA, 5 U.S.C. § 553**  
**Failure to Comply with Notice-and-Comment Requirements**

189. The above paragraphs are incorporated by reference.

190. To issue a rule, the APA requires an agency to adhere to specific procedural requirements. The agency must first publish a notice in the Federal Register, allow for comment, and incorporate comments into a final rule. 5 U.S.C. § 553; *see id.* §§ 551 (defining “rule” and “rule making”), 706(2)(D) (concerning agency action “without observance of procedure required by law”).

191. These requirements apply to all legislative, or substantive, rules. *See AFL-CIO v. NLRB*, 466 F. Supp. 3d 68, 87 (D.D.C. 2020). “[A]n agency rule is essentially *presumed* to be substantive for the purpose of the notice-and-comment requirement, and [] notice-and-comment rulemaking is thus generally required.” *Id.* at 88 (emphasis in original). Standards contained in informal documents are not exempt from the APA’s notice-and-comment requirements. *See Centro Presente v. United States Dep’t of Homeland Sec.*, 332 F. Supp. 3d 393, 417 (D. Mass. 2018) (citing *N.H. Hosp. Ass’n v. Azar*, 887 F.3d 69, 70-71 (1st Cir. 2018)).

192. The new standards adopted by USCIS are substantive rules requiring notice-and-comment rulemaking because they affect “rights, assign[] duties, or impose[] obligations.” *See N.H. Hosp. Ass’n*, 887 F.3d at 70. In particular, on information and belief, USCIS promulgated new standards, under which: (1) applications of Afghans remaining in Afghanistan would be categorically denied or administratively closed; (2) Afghans outside of Afghanistan would no

longer meet the urgent humanitarian reason prong of 8 U.S.C. § 1182(d)(5)(A), unless they either faced imminent harm in that country or an imminent risk of being returned to Afghanistan; and (3) with respect to Afghan applicants, USCIS would not enforce or abide by its written policy to require seeking additional information gathered through RFEs or NOIDs before issuing denials, even if there is a possibility that additional information will yield an approval.

193. USCIS’s promulgation of new standards governing the Afghan humanitarian parole applications, without notice and comment, violated the APA. 5 U.S.C. § 553.

**COUNT IV**  
**Violation of the APA, 5 U.S.C. § 706**  
**Agency Action Unlawfully Withheld and/or Unreasonably Delayed**

194. The above paragraphs are incorporated by reference.

195. The APA mandates that an agency “shall conclude a matter presented to it” “within a reasonable time.” 5 U.S.C. § 555(b). It also grants this Court the power to “compel agency action unlawfully withheld or unreasonably delayed.” 5 U.S.C. § 706(1).

196. Plaintiffs have a clear right to apply for and receive a timely determination on their applications for parole for “urgent humanitarian reasons” under 8 U.S.C. § 1182(d)(5)(A), and USCIS has a duty to timely adjudicate the Plaintiffs’ applications.

197. USCIS has unreasonably delayed and/or unlawfully withheld the adjudication of urgent applications filed by or on behalf of the Plaintiffs who have pending applications, in violation of the APA. *See* 5 U.S.C. §§ 555(b), 706(1).

**COUNT V**  
**Mandamus, 28 U.S.C. § 1361**

198. The above paragraphs are incorporated by reference.

199. The Mandamus Act, 28 U.S.C. § 1361, grants authority to courts to compel defendants to perform a duty owed to a Plaintiff.

200. The Plaintiffs who have pending applications have a clear right receive a determination on their applications for humanitarian parole, USCIS has failed to discharge its mandatory duty to issue an adjudication, and those Plaintiffs lack an adequate remedy other than this litigation. Mandamus relief is therefore appropriate.

**COUNT VI**  
**Declaratory Judgment, 28 U.S.C. § 2201**

201. The above paragraphs are incorporated by reference.

202. The Declaratory Judgment Act, 28 U.S.C. § 2201, grants authority to courts to “declare the rights and other legal relations of any interested party.”

203. Plaintiffs are entitled to a declaration that USCIS has improperly changed its adjudication standards and ignored agency standards, rules, or procedures in its handling of Plaintiffs’ and others’ applications for humanitarian parole on behalf of Afghan nationals, and—in the case of the pending plaintiffs—that USCIS has unreasonably delayed and unlawfully withheld adjudication of these applications.

**PRAYER FOR RELIEF**

The Plaintiffs request that the Court grant the following relief:

**A.** Vacate, as arbitrary, capricious, and not in accordance with law, each of the denials of the humanitarian parole applications filed on behalf of Plaintiffs whose applications have been denied, and remand each matter with an order to properly and promptly re-adjudicate such applications in accordance with the standards in effect on August 31, 2021 and the Policy Manual’s provisions for the issuance of RFEs, NOIDs, and denials;

**B.** Order Defendants to promptly adjudicate each of the unadjudicated humanitarian parole applications filed on behalf of any of the Plaintiffs in accordance with the standards in effect on August 31, 2021 and the Policy Manual’s provisions for the issuance of RFEs, NOIDs, and

denials;

**C.** Declare that USCIS's change in adjudication standards for Afghan humanitarian parole applications—including its decision not to grant applications on behalf of Afghans in Afghanistan, and its heightened standard for Afghans who fled Afghanistan—and its refusal to follow the Policy Manual's provisions for the issuance of RFEs, NOIDs, and denials, are arbitrary and capricious and not in accordance with law;

**D.** Set aside as arbitrary, capricious, and not in accordance with law, USCIS's heightened adjudication standard for Afghan humanitarian parole—including its decision not to grant applications on behalf of Afghans in Afghanistan, and its heightened standard for Afghans who fled Afghanistan—and its decision not to follow the Policy Manual's provisions for the issuance of RFEs, NOIDs, and denials;

**E.** Retain jurisdiction during the adjudication or re-adjudication of Plaintiffs' humanitarian parole applications in order to ensure compliance with the Court's orders;

**F.** Award the Plaintiffs reasonable costs and attorneys' fees under the Equal Access to Justice Act, 28 U.S.C. § 2412(d); and

**G.** Grant such other relief as the Court may deem just and proper.

Dated: May 25, 2022

Respectfully submitted,

/s/ Susan M. Finegan

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