

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 TIFFANY SANGSTER, et al.,  
4 Plaintiffs,  
5 v.  
6 MARCO RUBIO, et al.,  
7 Defendants.

Case No. 3:25-cv-00447-ART-CSD

ORDER  
(ECF NO. 9)

8  
9 Plaintiffs Tiffany Sangster and Julie Muangala are adoptive mother and  
10 daughter. They bring this action to compel the Department of State to adjudicate  
11 Ms. Muangala's application for an immigrant visa, and the application of her  
12 sister, B.M., who is also Mrs. Sangster's adoptive child. Plaintiffs move on an  
13 emergency basis for a Temporary Restraining Order ("TRO") to compel the  
14 Department of State ("the Department") to immediately adjudicate their  
15 applications, and/or to stay the effective date of its policy of January 14, 2026  
16 ("the Policy"), which would indefinitely prevent the adjudication of visas of  
17 nationals of the Democratic Republic of the Congo ("DRC"), among other  
18 countries. For the foregoing reasons, the Temporary Restraining Order against  
19 the Policy is GRANTED with respect to Plaintiffs' request to stay the Policy only.

20 **I. BACKGROUND**

21 **A. Relevant Procedural History of the International Adoption**

22 The following facts are taken from Plaintiffs' amended complaint unless  
23 otherwise noted. (ECF No. 8-1.)

24 Ms. Muangala was born in 2006 in the Democratic Republic of the Congo,  
25 and B.M., one of her siblings, was born in 2013. In 2015, Mrs. Sangster, not  
26 knowing of Ms. Muangala and B.M.'s existence, adopted their other two siblings  
27 and brought them to the United States. After one of the siblings told Mrs.  
28 Sangster that Ms. Muangala and B.M. were still in the DRC, Mrs. Sangster and

1 her husband, reasoning that all four should be part of one family, adopted them  
2 too. (ECF No. 9-3.) On December 29, 2016, the Appeals Court of Kananga, DRC  
3 ordered the adoption based on the passing of the children’s biological parents,  
4 and on February 11, 2017, a Congolese civil registry office issued adoption  
5 certificates. Mrs. Sangster noted in her declaration that since then, she and her  
6 U.S.-based family have maintained a consistent and supportive relationship with  
7 Ms. Muangala and B.M. (ECF No. 9-3.) They speak to them regularly over the  
8 phone and have traveled to the DRC “many times” to spend time with Ms.  
9 Muangala and B.M. (*Id.*) Ms. Muangala and B.M. call Mrs. Sangster and her  
10 husband “mommy and daddy,” and have dreams for their futures in the United  
11 States. (*Id.*)

12 After adopting Ms. Muangala and B.M., Mrs. Sangster submitted two  
13 Forms I-600 to the U.S. Embassy in Kinshasa, DRC. They were forwarded to  
14 USCIS and denied. On November 16, 2018, Mrs. Sangster gathered additional  
15 evidence and submitted new Forms I-600 to USCIS. (ECF Nos. 8-2, 8-3.) These  
16 petitions were also denied.

17 On December 8, 2023, Mrs. Sangster filed suit in this court seek seeking  
18 review of the denials of the latter visa petitions. *Sangster v. Jaddou et al*, No.  
19 3:23-cv-631-LRH-CLB (D. Nev. filed Dec. 8, 2023). Through that lawsuit, Mrs.  
20 Sangster learned for the first time that the denial related to USCIS’s concerns  
21 that Ms. Muangala and B.M. were not biologically related to their siblings in the  
22 United States, and that their uncle and guardian was involved in child  
23 trafficking.

24 In or around August 2024 (ECF No. 9-3), Mrs. Sangster moved to  
25 supplement the administrative record, and USCIS ultimately approved the visa  
26 petitions. Mrs. Sangster received notices from the Department dated October 31,  
27 2024, confirming that they had received the approved I-600s for processing. On  
28 the same date, Mrs. Sangster’s counsel emailed the Embassy to request the

1 expedited processing of immigrant visas for Ms. Muangala and B.M, noting that  
2 “the older child, Julie, will turn 18... and thus become ineligible for automatic  
3 acquisition of U.S. citizenship under the Child Citizenship Act, INA 320. The  
4 State Department has a policy of expediting cases for children in this situation.”  
5 (ECF No. 8-6.) On January 16, 2025, the two children’s Forms DS-260,  
6 Immigrant Visa and Alien Registration Application, were forwarded to the  
7 Embassy. (ECF Nos. 8-7, 8-8).

8 Despite continued back-and-forth with the Embassy, and the support of  
9 the Department of State’s Office of Children’s Affairs, Ms. Muangala and B.M.  
10 are waiting for interviews and adjudication still. Ms. Muangala is now 19 years  
11 old. (ECF No. 9-3.)

12 On January 14, 2026, the Department promulgated a policy that requires  
13 consular officers to refuse all immigrant visa applications for nationals from the  
14 DRC. (ECF No. 8-11.) Plaintiffs allege that this policy applies to Ms. Muangala  
15 and B.M., and that it “threatens to keep the family separated indefinitely.” (ECF  
16 No. 8-1 at 2.)

### 17 **B. The Department’s New Policy**

18 On January 14, 2026, the Secretary of State circulated a memo titled  
19 “Pausing Immigrant Visa Issuances for Nationalities at High Risk of Public  
20 Charge” to the Department of State’s diplomatic and consular officers. (ECF No.  
21 8-11.) The Policy was issued without notice and comment.

22 The Policy functions as a ban on immigrants of certain nationalities. It  
23 directs that any application for an immigrant visa from one of 75 enumerated  
24 countries must be denied. In relevant part, the memo states that “effective  
25 January 21, consular officers must refuse under Section 221(g) of the  
26 Immigration and Nationality Act [8 U.S.C. 1201(g)] to **all immigrant visa**  
27 **applicants** who have not been refused under another ground of ineligibility” if  
28 the applicant is a national of one of an enumerated list of 75 countries, including

1 the Democratic Republic of the Congo. (*Id.* ¶ 2) (emphasis in original). Consular  
2 officers are directed to continue interviewing applicants and assessing their  
3 inadmissibilities. (*Id.* ¶ 4.) If applicants are inadmissible, consular officers will  
4 refuse the visa on the basis of the relevant inadmissibility; if no bases of  
5 inadmissibility are presented, officers will make a notation in the applicant’s file  
6 and then refuse the visa on the basis of the policy alone. (*Id.*)

7 On their website, the Department further clarifies that visa interviews and  
8 processing will continue as before, even though the outcome will be refusal every  
9 time:

10 What happens to my immigrant visa interview appointment?

11 Immigrant visa applicants who are nationals of affected countries may  
12 submit visa applications and attend interviews, and the Department will  
13 continue to schedule applicants for appointments, but no immigrant visas  
14 will be issued to these nationals during this pause.

14 (ECF No. 8-12.)

15 The Department’s rationale for promulgating the Policy is “based on  
16 indication of nationals from these countries having sought public benefits in the  
17 United States.” (ECF No. 8-11 ¶ 3.) The Policy purports to remain in place “while  
18 the Department develops additional screening and vetting tools, policies and  
19 operations to more accurately identify any [immigrant visa] applicant likely to  
20 become a public charge.” (*Id.* ¶ 4.) The duration of this process is “unknown” and  
21 indefinite. (ECF No. 20 at 5.) The President has expressed an intention to keep  
22 the Policy in place “permanently.” (ECF No. 8 ¶ 40 n.7.)

23 The only statutory authority invoked for the memo is 8 U.S.C. § 1201(g).  
24 Under that subsection, a consular office will not grant a visa or other  
25 documentation to an applicant if it appears that the applicant is ineligible or the  
26 application is noncompliant under certain provisions of law. *Id.* Unlike some  
27 blanket refusal policies of the past, this memo was not issued with an  
28 accompanying Presidential Proclamation. *See Thein v. Trump*, No. CV 25-2369

1 (SLS), 2025 WL 2418402, at \*18 (D.D.C. Aug. 21, 2025); *Trump v. Hawaii*, 585  
2 U.S. 667, 678 (2018); 8 U.S.C. § 1182(f).

3 **II. RIPENESS**

4 Defendants assert that Plaintiffs' claims are not ripe for decision because  
5 they have not been interviewed and the policy has not been applied to them.  
6 (ECF No. 20.)

7 The ripeness doctrine avoids premature adjudication and prevents the  
8 courts from entangling themselves in abstract disagreements. *Abbott*  
9 *Laboratories v. Gardner*, 387 U.S. 136, 148 (1967). Nevertheless, under certain  
10 circumstances, challenges to agency policies may be ripe even before the policy  
11 has been enforced. *Id.*; *Hawaii v. Trump*, 898 F.3d 662, 678 (2017); see *Pietersen*  
12 *v. DOS*, 138 F.4th 552, 560 (D.C. Cir. 2025) (“[I]t is well settled that when  
13 plaintiffs pursue forward-looking challenges to the lawfulness of regulations or  
14 policies governing consular decisions, courts may review them to assure that the  
15 executive departments abide by the legislatively mandated procedures”) (internal  
16 quotation marks and citations omitted).

17 When deciding whether a case is ripe, courts primarily look to two  
18 considerations: “the fitness of the issues for judicial decision” and “the hardship  
19 to the parties of withholding court consideration.” *Abbott Laboratories*, 387 U.S.  
20 at 149. In *Abbott*, the Supreme Court found a challenge against a regulation fit  
21 for decision when it was a “purely legal” challenge, and when the regulation at  
22 issue was a “final agency action” within the meaning of the Administrative  
23 Procedure Act (“APA”). *Id.* at 150; 5 U.S.C. § 704. Here, Plaintiffs have challenged  
24 the policy on its face, not as applied. There is no need to wait for enforcement to  
25 develop the factual record to understand whether the Policy violates the  
26 procedural and substantive requirements of the APA. See *Nat'l Park Hosp. Ass'n*  
27 *v. Dep't of Interior*, 538 U.S. 803, 812 (2003). The Policy is also a “final agency  
28 action” in that it marks the “consummation of the agency’s decisionmaking

1 process” and is one by which “right or obligations have been determined, or from  
2 which legal consequences will flow.” *Bennett v. Spear*, 520 U.S. 154, 178 (1997)  
3 (internal citations and quotations omitted). Although the agency claims that the  
4 policy will be replaced with a new public charge screening at some future point,  
5 a temporary policy may still be the consummation of the agency’s  
6 decisionmaking process. *See id.*; *Oregon Nat. Desert Ass’n v. U.S. Forest Serv.*,  
7 465 F.3d 977, 984 (9th Cir. 2006) (finding that an agency policy statement that  
8 is revised and re-issued every year is a final agency action). Legal consequences  
9 certainly flow from the implementation of this policy. It is currently in effect, and  
10 while it is in effect, the Department of State will not approve any immigrant visas  
11 for nationals of seventy-five countries.

12         When evaluating the hardship to the parties of withholding court  
13 consideration, the Supreme Court has evaluated whether parties must change  
14 their primary conduct in response to the challenged policy, or whether parties  
15 will suffer an irredeemable adverse effect if they are forced to delay their  
16 challenge. *See, e.g. Toilet Goods Ass’n, Inc. v. Gardner*, 387 U.S. 158, 164 (1967);  
17 *Nat’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 810 (2003). Parties here  
18 will suffer an irredeemable adverse effect in the form of delay and prejudice if  
19 forced to wait until after a consular officer has applied the Policy to their  
20 applications. If Plaintiffs wait to apply for a TRO after the applications are denied,  
21 the doctrine of consular non-reviewability would bar direct judicial review of that  
22 decision. *Kleindienst v. Mandel*, 408 U.S. 753, 770 (1972); *Dep’t of State v. Munoz*,  
23 602 U.S. 899, 908 (2024). If Plaintiffs’ claims become ripe at some intermediate  
24 point—for example, after an interview is scheduled, but before a decision is  
25 made—the judicial timeline may cause interference and prejudicial delay in their  
26 visa application process. Normally, children of U.S. citizens are eligible for lawful  
27 permanent residence as immediate family members until they turn 21 years old,  
28 8 U.S.C. § 1101(b)(1), and Ms. Muangala is now 19. (ECF No. 9-3.) Because the

1 immigration relief they seek as adoptive children may be time-sensitive, the  
2 prejudice of delay worked by immediate pre-interview judicial review or post-  
3 interview reapplication may be greater than mere refusal.

4 In other cases where significant hardship would result from withholding  
5 court consideration, plaintiffs have been allowed to pursue forward-looking  
6 claims against immigration-related policies. In the Ninth Circuit case *Hawaii v.*  
7 *Trump*, the plaintiffs sought to prohibit implementation and enforcement of a  
8 Presidential Proclamation that indefinitely barred entry of certain nationals. 878  
9 F.3d 662, 698–99 (9th Cir. 2017), *rev'd on other grounds*, 585 U.S. 667. There,  
10 as here, the Government argued that the plaintiffs' claims were not ripe for  
11 adjudication until a specific applicant was denied a visa. *Id.* The Ninth Circuit  
12 rejected that argument on the basis of the significant hardship to the plaintiffs  
13 that would result from withholding court consideration. *Id.* On appeal, the  
14 Supreme Court also reviewed the Proclamation on its merits without finding that  
15 any applicant had been denied a visa. *Trump v. Hawaii*, 585 U.S. at 678; *see also*  
16 *Pietersen*, 138 F.4th at 560 (finding that the plaintiffs had standing based on a  
17 prospective future harm, and then proceeding to adjudicate their challenge to a  
18 Department of State immigration policy). Delaying a decision on this TRO may  
19 deprive Ms. Muangala of her present opportunity to be united with her siblings  
20 and adoptive parents, as the statute provides no other opportunities for  
21 potentially satisfactory review. *Cf. Reno v. Catholic Social Services, Inc.*, 509 U.S.  
22 43, 60 (1993) (declining to find claims ripe for decision where the INA provided a  
23 different, potentially satisfactory avenue for judicial review at a later point in the  
24 administrative process). In submitting their approved I-600s and DS-260s,  
25 Plaintiffs “took the affirmative steps that [they] could take before the  
26 [Department] blocked [their] path by applying” the policy to them. *Id.* at 59. This  
27 case is as ripe as it can become before additional judicial delay would create the  
28 risk of hardship.

1     **III.    LEGAL STANDARD**

2             A party seeking a preliminary injunction must demonstrate (1) a likelihood  
3 of success on the merits, (2) a likelihood of irreparable harm if preliminary relief  
4 is not granted, (3) the balance of equities is in their favor, and (4) an injunction  
5 is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555  
6 U.S. 7, 20 (2008). The third and fourth *Winter* factors merge when the opposing  
7 party is the government, because the government is supposed to represent the  
8 public interest. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Ninth Circuit  
9 maintains a “sliding scale” approach to the *Winter* factors, where “a stronger  
10 showing of one element may offset a weaker showing of another.” *All. for the Wild*  
11 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). The analysis for a  
12 temporary restraining order is “substantially identical” to that of a preliminary  
13 injunction. *Stuhlberg Intern. Sales Co, Inc. v. John D. Brush & Co., Inc.*, 240 F.3d  
14 832, 839 n.7 (9th Cir. 2001).

15             For a court to have the power to grant a preliminary injunction or  
16 temporary restraining order, “there must be a relationship between the injury  
17 claimed in the motion for injunctive relief and the conduct asserted in the  
18 underlying complaint.” *Pacific Radiation Oncology, LLC v. Queen's Medical*  
19 *Center*, 810 F.3d 631, 636 (9th Cir. 2015). “The relationship between the  
20 preliminary injunction and the underlying complaint is sufficiently strong where  
21 the preliminary injunction would grant ‘relief of the same character as that which  
22 may be granted finally.’” *Id.* (quoting *De Beers Consol. Mines v. United States*,  
23 325 U.S. 212, 220 (1945)).

24     **IV.    DISCUSSION**

25             Plaintiffs assert claims under the Administrative Procedures Act, arguing  
26 that the policy is unlawful under 5 U.S.C. § 706, and the visa processing delay  
27 they have experienced is unreasonable in violation of 5 U.S.C. §§ 555. The  
28 injunctive relief Plaintiffs seek is an order enjoining the Government from

1 applying the policy to them and requiring the Government to adjudicate their  
2 applications. The Government argues that the delay is routine, not  
3 unreasonable, and that any injunctive relief is premature as the policy has not  
4 yet been applied to Plaintiffs. The Government’s opposition brief does not address  
5 Plaintiffs’ claims that the policy is unlawful under § 706 of the APA.

6 **A. Likelihood of Irreparable Harm**

7 Plaintiffs have shown a likelihood of irreparable harm if preliminary relief  
8 is not granted. If preliminary relief is not granted before Ms. Muangala and B.M.’s  
9 visas are denied, whether under the Policy or on some other basis, the denials  
10 will be unreviewable. (ECF Nos. 19, 20.) Final injunctive or declaratory relief may  
11 come too late. And if relief is too late for these Plaintiffs, the Policy is likely to  
12 indefinitely prolong or make permanent Ms. Muangala and B.M.’s separation  
13 from family members. *Cf. Hawaii v. Trump*, 878 F.3d at 698–99. Indefinite delay  
14 can rise to the level of irreparable harm. *See, e.g., id.; CBS, Inc. v. Davis*, 510 U.S.  
15 1315, 1318 (1994). “The Constitution protects the sanctity of the family precisely  
16 because the institution of the family is deeply rooted in this Nation’s history and  
17 tradition.” *Moore v. East Cleveland*, 431 U.S. 494, 503–04 (1977). The harm of  
18 family separation is “not compensable with monetary damages and therefore  
19 weigh[s] in favor of finding irreparable harm.” *Hawaii v. Trump*, 878 F.3d, 698–  
20 99 (citing *Washington v. Trump*, 847 F.3d 1151, 1168–69 (9th Cir. 2017);  
21 *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017); *Regents of Univ. of*  
22 *Cal. v. Am. Broad. Cos., Inc.*, 747 F.2d 511, 520 (9th Cir. 1984)).

23 **B. Likelihood of Success on the Merits of Plaintiffs’ Challenge Against**  
24 **the State Department’s Policy Memo**

25 Plaintiffs challenge the Department’s new travel ban under the APA,  
26 arguing that the policy is arbitrary and capricious, lacks statutory authority, and  
27 failed to comply with the notice and comment requirement for a policy with such  
28 legal effect. As noted, the Government fails to address arguments on the merits.

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**a. The Administrative Procedure Act**

The APA provides for judicial review of “[a]gency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court[.]” 5 U.S.C. § 704. For an agency action to be final, the agency action must “mark the consummation of the agency’s decisionmaking process—it must not be of a merely tentative or interlocutory nature[—and] second, the action must be one by which rights or obligations have been determined or from which legal consequences will flow.” *Bennett*, 520 U.S. at 177–78 (internal quotations omitted).

Section 706 of the APA outlines the scope of judicial review of agency actions. 5 U.S.C. § 706. Under Section 706(2)(A) of the APA, reviewing courts shall “hold unlawful and set aside agency action, findings, and conclusions found to be... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” Section 706(2)(C) authorizes courts to set aside agency actions “in excess of statutory jurisdiction, authority, or limitations, or short of statutory right,” and Section 706(2)(D) to do the same to those “without observance of procedure required by law.” *Id.* Plaintiffs challenge the Policy under all three of these subsections.

**b. The State Department’s Policy is Likely Arbitrary, Capricious, An Abuse of Discretion, or Otherwise Not in Accordance with the Law**

The APA allows a court to overturn informal agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A); see *Dickson v. Secretary of Defense*, 68 F.3d 1396, 1404 n.12 (D.C. Cir. 1995).

The Policy is “not in accordance with law” because it contravenes the visa adjudication framework established by Congress. See 5 U.S.C. § 706(2)(A). “[W]hen a particular statute delegates authority to an agency consistent with

1 constitutional limits, courts must respect the delegation, *while ensuring that the*  
2 *agency acts within it.*” *Loper Bright Enterprises v. Raimondo*, 604 U.S. 369, 413  
3 (emphasis added). Even if agency interpretations of law may have the “power to  
4 persuade,” they have only that power, and courts “need not and under the APA  
5 may not defer to an agency interpretation of the law simply because a statute is  
6 ambiguous.” *Id.* at 402, 413; *Murillo-Chavez v. Bondi*, 128 F.4th 1076, 1086–87  
7 (9th Cir. 2025). The Policy essentially nullifies the grounds of inadmissibility that  
8 Congress created in Section 1182(a), and in particular the public charge  
9 determination set out in 8 U.S.C.A. § 1182(a)(4). Although the policy asks officers  
10 to go through the motions of an individualized analysis to determine whether the  
11 grounds of inadmissibility may apply, even if the officer finds no basis for  
12 inadmissibility the result is still refusal. Congress set out a detailed statutory  
13 scheme that tasks consular officers with conducting a searching analysis of  
14 prospective immigrants’ medical status, criminal history, financial affairs, and  
15 other personal details before admitting them. *See generally* 8 U.S.C. § 1182(a).  
16 Although it could have done so, nowhere did Congress give the Department the  
17 power to make an end run around the categories of inadmissibility by refusing  
18 all applications by immigrants based on their country of origin. *Compare id. with*  
19 8 U.S.C. § 1182(f). The public charge ground of inadmissibility specifically sets  
20 forth minimum and optional factors that a consular officer must or can consider  
21 in determining if someone is likely to become a public charge. *Id.* § 1182(a)(4).  
22 The factors are meant to have an impact on the officer’s decision. In making them  
23 redundant to the outcome, the Department has contravened the clear dictates of  
24 the statute. *Id.*

25 Plaintiffs also challenge the Department of State’s decisionmaking process  
26 as “arbitrary and capricious.” *See* 5 U.S.C. § 706(2)(A). An agency must examine  
27 the relevant data and articulate a satisfactory explanation for its action including  
28 a “rational connection between the facts found and the choice made.” *Motor*

1 *Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43  
2 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168  
3 (1962)).

4 When faced with a challenge against a regulation on the grounds that it is  
5 arbitrary and capricious, “[a] reviewing court must review the administrative  
6 record before the agency at the time the agency made its decision.” *Nat'l Wildlife*  
7 *Fed'n v. U.S. Army Corps of Eng'rs*, 384 F.3d 1163, 1170 (9th Cir. 2004). Absent  
8 an administrative record reflecting the agency’s decisionmaking process and  
9 choices, the Court cannot readily determine whether the Department’s  
10 decisionmaking process was inadequate under the APA.

11 Because the Court finds that the Policy is contrary to existing law, Plaintiff  
12 has shown a likelihood of success in challenging it under § 706(2)(A).

13 **c. The Policy Is Likely Issued in Excess of Statutory Authority**

14 Plaintiffs argue that the Department’s policy was issued “in excess of [the]  
15 statutory... authority” that was granted to it under Section 1201(g). *See* 5 U.S.C.  
16 § 706(2)(C). Section 1201(g) states that a consular officer shall not issue a visa  
17 to any applicant who the officer “knows or has reason to believe” is ineligible due  
18 to inadmissibility under 8 U.S.C. § 1182(a). As explained *supra*, the Policy  
19 contravenes the framework Congress set forth for adjudicating inadmissibility in  
20 8 U.S.C. § 1182(a) by substituting blanket denial for the considerations that  
21 Congress intended officers to take. The Policy also abrogates the discretion of  
22 consular officers, which Congress invested in them by statute. It requires  
23 consular officers to deny applications, purportedly due to risk of public charge  
24 status, regardless of whether it is “in the[ir] opinion” that the applicant will  
25 become a public charge. 8 U.S.C. § 1182(a)(4). *See also* 8 U.S.C. § 1202(b) (“All  
26 immigrant visa applications shall be reviewed and adjudicated by a consular  
27 officer.”)

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1           There are no other sections of the INA that appear to authorize the  
2 Department’s memo. The Department did not invoke Section 1182(f) as the basis  
3 of its policy, and neither could it have, since that section requires that the  
4 President issue a Proclamation before suspending the entry of a class of  
5 noncitizens. *See Trump v. Hawaii*, 585 U.S. No Proclamation has been issued  
6 here.

7                           **d. The State Department Was Likely Required to Promulgate**  
8                           **The Policy Through Notice-and-Comment Procedures**

9           Plaintiffs allege that the Department was required to promulgate this rule  
10 through a notice-and-comment process, and they failed to do so. The APA  
11 requires agencies to advise the public of all so-called “legislative rules” through  
12 a notice in the Federal Register of the terms or substance of a proposed  
13 substantive rule, allowing the public a period to comment. See 5 U.S.C. § 553(b)  
14 and (c); *Erringer v. Thompson*, 371 F.3d 625, 629–30 (9th Cir. 2004). The notice-  
15 and-comment requirement “is designed to give interested persons, through  
16 written submissions and oral presentations, an opportunity to participate in the  
17 rulemaking process.” *Chief Prob. Officers of California v. Shalala*, 118 F.3d 1327,  
18 1329 (9th Cir.1997). Generally, “[t]he procedural safeguards of the APA help  
19 ensure that government agencies are accountable and their decisions are  
20 reasoned.” *Sequoia Orange Co. v. Yeutter*, 973 F.2d 752, 758 (9th Cir.1992). This  
21 procedural requirement does not apply to “interpretative rules, general  
22 statements of policy, or rules of agency organization, procedure, or practice.” 5  
23 U.S.C. § 553(b)(3)(A). Neither does it apply “to the extent that there is involved  
24 ...[a] foreign affairs function of the United States.” *Id.* § 553(a)(1). An interpretive  
25 rule, unlike a substantive rule, is only “issued by an agency to advise the public  
26 of the agency's construction of the statutes and rules which it administers.”  
27 *Shalala v. Guernsey Memorial Hospital*, 514 U.S. 87, 99 (1995).

1           The Ninth Circuit has borrowed a D.C. Circuit framework for  
2 distinguishing between interpretive and legislative rules. A rule is a legislative  
3 rule in the following circumstances:

- 4           (1) when, in the absence of the rule, there would not be an adequate  
5 legislative basis for enforcement action;
- 6           (2) when the agency has explicitly invoked its general legislative authority;  
7 or
- 8           (3) when the rule effectively amends a prior legislative rule.

9           *Hemp Indus. Ass'n v. Drug Enf't Admin.*, 333 F.3d 1082, 1087 (9th Cir. 2003)  
10 (citing *American Mining Congress v. Mine Safety & Health Administration*, 995  
11 F.2d 1106, 1109 (D.C.Cir.1993)). Here the first criterion is most applicable.

12           The Policy meets the test as a legislative rule that should be subject to the  
13 notice-and-comment requirement. When determining whether or not there is an  
14 adequate legislative basis for enforcement action outside of the challenged rule,  
15 courts look to the governing statute and undisputed implementing regulations  
16 to see if they would authorize the action that the challenged rule implements.  
17 *Compare Alameda Health Sys. v. Centers for Medicare & Medicaid Servs.*, 287 F.  
18 Supp. 3d 896, 915 (N.D. Cal. 2017) *with LeadIC Design USA LLC v. United States*  
19 *Citizenship & Immigr. Servs.*, 766 F. Supp. 3d 946, 954 (N.D. Cal. 2025). In  
20 relevant part, Section 1201(g) provides that a consular officer will not grant an  
21 application where they “know or have reason to believe” that an applicant will  
22 become a public charge. 8 U.S.C. § 1201(g). Absent this policy, a consular officer  
23 would not have sufficient reason to refuse every single application from the  
24 affected countries, especially not on the basis of their nationality alone. Because  
25 no authorization for blanket denial exists besides the Policy, it is legislative.

26           Neither is the Policy subject to an exception to notice-and-comment on the  
27 basis of dealing with foreign affairs. The Ninth Circuit has held that the foreign  
28 affairs exception applies in the immigration context only when ordinary  
application of “the public rulemaking provisions [will] provoke definitely

1 undesirable international consequences.” *East Bay Sanctuary Covenant v.*  
2 *Trump*, 932 F.3d 742, 775-76 (2018) (quoting *Yassini v. Crosland*, 618 F.2d  
3 1356, 1360 n.4 (9th Cir. 1980)). The agency here has not explained or brought  
4 evidence showing the international consequences of a notice-and-comment  
5 period, nor is it obvious. At this stage, it is not likely that this Policy qualifies for  
6 the foreign affairs exception.

### 7 **C. Balance of Equities and the Public Interest**

8 The balance of equities is in Plaintiffs’ favor, and an injunction is in the  
9 public interest. Since Plaintiffs show a likelihood of success on the merits, they  
10 can show these factors as well because “[t]here is generally no public interest in  
11 the perpetuation of unlawful agency action.” *United Farm Workers v. DOL*, 509  
12 F. Supp. 3d 1225, 1253–54 (E.D. Cal. 2020). To the contrary, “[t]here is a  
13 substantial public interest ‘in having governmental agencies abide by the federal  
14 laws that govern their existence and operations.’” *Thein*, 2025 WL 2418402, at  
15 \*18 (quoting *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir.  
16 2016)) (holding that plaintiffs subject to a travel ban have shown that the balance  
17 of equities and the public interest tip in their favor, and are entitled to  
18 preliminary injunctive relief); *Gomez v. Trump*, 485 F. Supp. 3d 145, 200  
19 (D.D.C.), *amended in part*, 486 F. Supp. 3d 445 (D.D.C. 2020), *and amended in*  
20 *part sub nom. Gomez v. Biden*, No. 20-CV-01419 (APM), 2021 WL 1037866  
21 (D.D.C. Feb. 19, 2021) (same); *E. Bay Sanctuary Covenant v. Trump*, 950 F.3d  
22 1242, 1280 (9th Cir. 2020) (“[T]he public interest is served by compliance with  
23 the APA.”) (cleaned up).

24 The promulgating memo alleges that it protects the public fisc. But the  
25 Government offers nothing beyond a “mere assertion” that nationals of the DRC  
26 are overusing or unlawfully using public benefits. *See Thein*, 2025 WL 2418402,  
27 at \*18 (declining to lend credence to the Government’s argument that prioritizing  
28 the plaintiffs’ visa applications would cause harm to other applicants when

1 evaluating the balance of equities and the public interest). The promulgating  
2 memo also does not account for the fact that usage of public benefits by  
3 immigrants from the DRC is limited by law. 8 U.S.C. § 1613(a) (certain  
4 noncitizens must wait five years after entry to obtain federal means-tested public  
5 benefits); 8 U.S.C. § 1431 (under certain conditions, children under eighteen  
6 years of age of U.S. citizens are automatically citizens of the United States).  
7 Because injunctive relief here is limited to Plaintiffs only, it can cause no more  
8 than a slight burden on the purposes of the Policy.

9 **D. Plaintiffs’ Request for an Order Compelling the Department to**  
10 **Adjudicate Their Applications**

11 Plaintiffs request injunctive relief to compel Defendants to immediately  
12 adjudicate Ms. Muangala and B.M.’s applications. This request must also be  
13 evaluated under the *Winter* factors, which include a showing of imminent harm  
14 in the absence of preliminary relief. 555 U.S. at 20. Plaintiffs submitted their  
15 motion for both forms of injunctive relief before the Policy’s effective date, facing  
16 a possibility that if their applicants were not adjudicated in mere days, they  
17 would be interviewed but nevertheless automatically refused. Given that the  
18 Policy is now in effect, but enjoined as to Ms. Muangala and B.M., Plaintiffs have  
19 not met their burden to show that the harm they would suffer in the absence of  
20 an order compelling adjudication would constitute a basis for further injunctive  
21 relief. *Skalka v. Kelly*, 246 F. Supp. 3d 147, 153-54 (D. D.C. 2017) (noting that  
22 a two-year delay in processing an immigration visa “does not typically require  
23 judicial intervention”).

24 **V. CONCLUSION**

25 The Court ORDERS that the Secretary of State, directly and through his  
26 designees, is enjoined from refusing the applications of Ms. Muangala and B.M  
27 where such refusal is based on the Secretary’s memo of January 14, 2026. (ECF  
28 No. 8-11.)

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The Plaintiffs are ordered to post collectively a bond in the amount of \$1.00. See Fed. R. Civ. P. 65(c).

DATED: January 28, 2026



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ANNE R. TRAUM  
UNITED STATES DISTRICT JUDGE