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**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**PORTLAND DIVISION**

JOHN DOE #1; JUAN RAMON MORALES;  
JANE DOE #2; JANE DOE #3; IRIS  
ANGELINA CASTRO; BLAKE DOE;  
BRENDA VILLARRUEL; and LATINO  
NETWORK,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as  
President of the United States; U.S.  
DEPARTMENT OF HOMELAND  
SECURITY; KEVIN MCALLENAN, in his  
official capacity as Acting Secretary of the  
Department of Homeland Security; U.S.  
DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; ALEX M. AZAR II, in  
his official capacity as Secretary of the  
Department of Health and Human Services;  
U.S. DEPARTMENT OF STATE;  
MICHAEL POMPEO, in his official capacity  
as Secretary of State; and UNITED STATES  
OF AMERICA,

Defendants.

Case No.: 3:19-cv-01743-SB

**DECLARATION OF NADIA DAHAB IN  
SUPPORT OF PLAINTIFFS' MOTION  
TO COMPEL ADMINISTRATIVE  
RECORD**

I, Nadia Dahab, upon my personal knowledge, hereby submit this declaration pursuant to 28 U.S.C. § 1746 and declare as follows:

1. I am a Senior Staff Attorney at Innovation Law Lab and counsel for Plaintiffs in the above-captioned matter.

2. On November 2, 2019, this Court held a hearing on Plaintiffs' Motion for Temporary Restraining Order, and later issued an Order "temporarily restrain[ing] and enjoin[ing] [Defendants] from taking any action to implement or enforce Presidential Proclamation No. 9945." In that order, the Court held that "Plaintiffs have satisfied their burden of showing Defendants' implementation of the Proclamation likely constitutes final agency action that is 'arbitrary, capricious, [or] an abuse of discretion.'" The Court also issued a scheduling order requiring Plaintiffs to file their Motion for Preliminary Injunction by Friday, November 8, 2019. The Court set hearing on Plaintiffs' Motion for Preliminary Injunction for Friday, November 22, 2019.

3. On Sunday, November 3, 2019, I sent an e-mail to Defendants' counsel inquiring about when Plaintiffs could expect to receive a copy of the administrative record. After receiving no response, I sent a follow-up e-mail to Defendants' counsel on Monday, November 4, 2019, requesting a response to my inquiry by 5:00 p.m. Eastern Standard Time that same day.

4. Later in the day on Monday, November 4, 2019, I received an email from Mr. Andrew Bernie, counsel for Defendants, stating that Defendants do not intend to produce an administrative record by this Friday, and inviting Plaintiffs to meet and confer on the issue.

5. On Tuesday, November 5, 2019, the parties conferred telephonically. In response to Defendants' request that Plaintiffs identify the specific final agency challenged, my colleagues Esther Sung and Stephen Manning pointed to a new page on the State Department's website that

informed prospective immigrant visa applicants that failure to meet the Proclamation's requirements "will result in a denial of the visa application," and which provided further information and instructions to applicants with respect to implementation of the Proclamation through consular interviews. Ms. Sung and Mr. Manning also pointed to the State Department's Notice of Information Collection under OMB Emergency Review, published in the *Federal Register* on October 30, 2019, which provided less than 48 hours for solicitation and submission of public comments on an information collection methodology adopted by the State Department to implement the Proclamation. Ms. Sung and Mr. Manning also stressed that to the extent the Defendant agencies had been prepared to implement the Proclamation on November 3, 2019, and had made decisions on how that implementation would occur, any such decisions would constitute final agency action even if they were not publicly disclosed; that such final agency actions cannot be shielded from judicial review under the Administrative Procedure Act simply because they are not made public; and that Plaintiffs are entitled to the Administrative Record for such any such final agency action. Defendants' counsel informed my colleagues that they would respond to our inquiry after they conferred with their clients.

6. On Wednesday, November 6, 2019, I sent an e-mail to Defendants, following up on our request for the administrative record. Later that day, I sent a follow-up email asking for Defendants' position by 10:00 a.m. Pacific Standard Time on Thursday, November 7, 2019. I also informed Defendants that if they were unable to respond by that time, we intended to seek the Court's guidance on the issue.

7. On Thursday, November 7, 2019, I received an e-mail Mr. Brian Ward, counsel for Defendants, stating that, in Defendants' view "no administrative record for the Proclamation is required or appropriate" because "the President is not an administrative agency subject to the

APA.” Mr. Ward further explained Defendants’ position that no record is required for “State’s notification regarding the Proclamation on its website;” and that “[a]s to the Federal Register notice regarding information collection, Plaintiffs are not challenging OMB’s approval of the information collection under the Paperwork Reduction Act.”

8. Later that same day, I sent an e-mail to the Court requesting guidance as to how the parties should resolve their dispute. The Court instructed me to file a formal motion.

9. Attached as **Exhibit A** is a true and correct copy, preserved on October 26, 2019, of a page from the State Department’s website, entitled “Presidential Proclamation on Health Care.” The website was published several weeks before the Proclamation’s effective date of November 3, 2019.

10. Attached as **Exhibit B** is a true and correct copy of a “Notice of Information Collection under OMB Emergency Review: Immigrant Health Insurance Coverage,” which was published in the Federal Register on October 30, 2019, after release of the Notice in advance print copy on October 29, 2019.

11. Attached as **Exhibit C** is a true and correct copy of a “Notice of Office of Management and Budget Action,” issued on November 1, 2019, along with the accompanying “Response to public comments received in response to the notice of request for emergency OMB review and approval of the DS-5541, Immigrant Health Insurance Coverage.”

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 11th day of November, 2019.

s/Nadia H. Dahab  
**Nadia H. Dahab**, OSB No. 125630

# **Exhibit A**

# Presidential Proclamation on Health Care

## Presidential Proclamation on Health Care - White House Announcement

If you are applying for an immigrant visa, including a diversity visa, on or after November 3, 2019, you must demonstrate to the consular officer at the time of interview that you will be covered by approved health insurance within 30 days of entry into the United States or have the financial resources to pay for reasonably foreseeable medical costs. Inability to meet this requirement will result in the denial of the visa application.

This requirement will apply to all immigrant visa applicants and individuals seeking to enter the United States on an immigrant visa, except:

- Individuals who are holding (or who held) a valid immigrant visa as of November 3, 2019
- Iraqi and Afghan special immigrant visa applicants and their spouses and children (SI and SQ visas)
- Applicants who are children, whether adopted, biological, and step-children, of a U.S. citizen applying in the IR-2, CR-2, IR-3, IR-4, IH-3, or IH-4 visa classifications
- Returning Resident SB-1 applicants
- Applicants for K fiancé(e) visas and other aliens entering the United States without an immigrant visa, including lawful permanent residents, refugees, and asylees.
- Applicants for IR-5 visas and alien seeking to enter the United States pursuant to an IR-5 visa, provided that the alien or the alien's sponsor demonstrates to the satisfaction of the consular officer that the alien's healthcare will not impose a substantial burden on the United States healthcare system
- Any alien under the age of 18, except for any alien seeking to accompany a parent who is also immigrating to the United States and subject to this proclamation
- Any alien whose entry would further important United States law enforcement objectives, as determined by the Secretary of State or his designee based on a recommendation of the Attorney General or his

designee

- Any alien whose entry would be in the national interest, as determined by the Secretary of State or his designee on a case-by-case basis

## **Qualifying Insurance or Financial Resource to Pay for Medical Costs**

If you are not covered by the exceptions above, you will need to show to a consular officer or immigration official that you will be covered by approved health insurance within 30 days of entry to the United States or that you have the financial resources to pay for reasonably foreseeable medical costs.

Approved health insurance includes:

- Employer-sponsored health plans, including retiree plans
- Unsubsidized health plans offered in the individual market within a State
- Short-term, limited duration health plans effective for a minimum of 364 days or until the beginning of planned, extended travel outside the United States
- Catastrophic plans
- Coverage by a family member's health plan
- U.S. military health plans, including TRICARE
- Visitor health insurance plans with adequate medical coverage for a minimum of 364 days or until the beginning of planned, extended travel outside the United States
- Medical plans under the Medicare program
- Any other health plan with adequate coverage as determined by the Secretary of Health and Human Services

For individuals over the age of 18, approved health insurance does not include coverage under the Medicaid program.

## **Requirement at visa interview**

During the visa interview, applicants should be able to demonstrate to the satisfaction of the consular officer that they have the financial resources to

pay for reasonably foreseeable medical costs or will have approved health insurance from the list above within 30 days of entry into the United States. Officers will review the medical and financial documentation that is already part of the applicant's case file and may request additional information or documentation as needed. Prior to the visa interview, applicants may wish to review costs and eligibility requirements for approved health insurance plans or consider how they would pay for the reasonably foreseeable medical costs of any current medical condition they may have.

# **Exhibit B**

**Billing Code 4710-06****DEPARTMENT OF STATE****[Public Notice: 10934]****Notice of Information Collection under OMB Emergency Review: Immigrant Health Insurance Coverage**

**ACTION:** Notice of request for emergency review and approval by OMB and public comment.

**SUMMARY:** The Department of State (“Department”) has submitted the information collection request described below to the Office of Management and Budget (“OMB”) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. The purpose of this notice is to allow for public comment from all interested individuals and organizations. Emergency review and approval of this collection has been requested from OMB by November 1, 2019. If granted, the approval is only valid for 180 days. The Department is separately submitting a 3 year approval through OMB’s normal PRA clearance process.

**ADDRESSES:** Direct any comments on this request to both the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB) and to the Department of State’s Bureau of Consular Affairs, Office of Visa Services.

All public comments must be received by October 31, 2019.

You may submit comments to OMB by the following methods:

- *E-mail:* oira\_submission@omb.eop.gov. You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202-395-5806. Attention: Desk Officer for Department of State. You may submit comments to the Bureau of Consular Affairs, Visa Office by the following methods:
- *Web:* Persons with access to the Internet may comment on this notice by going to [www.Regulations.gov](http://www.Regulations.gov). You can search for the document by entering “Docket Number: DOS-2019-0039” in the Search field. Then click the “Comment Now” button and complete the comment form.
- *E-mail:* PRA\_BurdenComments@state.gov. You must include *Emergency Submission Comment on “information collection title”* in the subject line of your message.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents to Megan Herndon, who may be reached at (202) 485-7586 or at PRA\_BurdenComments@state.gov.

**SUPPLEMENTARY INFORMATION:**

- *Title of Information Collection:* Immigrant Health Insurance Coverage
- *OMB Control Number:* None
- *Type of Request:* Emergency Review
- *Originating Office:* Bureau of Consular Affairs, Visa Office (CA/VO)

- Form Number: DS-5541 (oral information collection)
- Respondents: Certain immigrant visa applicants
- Estimated Number of Respondents: 450,500
- Estimated Number of Responses: 450,500
- Average Time Per Response: 10 minutes
- Total Estimated Burden Time: 75,083 hours
- Frequency: Once per respondent's application
- Obligation to respond: Required to Obtain or Retain a Benefit

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden of this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

### **Abstract of Proposed Collection**

*The Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System (“PP 9945”) requires*

immigrant visa applicants to establish, to the satisfaction of a consular officer, that the applicant will be covered by an approved health insurance plan within 30 days of entry into the United States, unless the applicant possesses sufficient financial resources to cover reasonably foreseeable medical costs. Proclamation No. 9945, 84 FR 53991 (Oct. 4, 2019). Section 3 of the Proclamation authorizes the Secretary of State to establish standards and procedures for governing such determinations. *Id.* PP 9945 was signed on October 4, 2019, and emergency review of this information collection is necessary for the Department to prepare consular officers to implement PP 9945 when it goes into effect on November 3, 2019.

### **Methodology**

Consular officers will verbally ask immigrant visa applicants covered by PP 9945 whether they will be covered by health insurance in the United States within 30 days of entry to the United States and, if so, for details relating to such insurance. Proclamation No. 9945, 84 FR 53991 (Oct. 4, 2019). PP 9945 only applies to applicants seeking to enter the United States pursuant to an immigrant visa. If applicants answer affirmatively, consular officers will ask for applicants to identify the specific health insurance plan, the date coverage will begin, and such other information related to the insurance plan as the consular officer deems necessary. PP 9945 does not suspend or limit the entry of applicants if they do not have coverage, but possess financial resources to pay for reasonably foreseeable medical expenses. Reasonably foreseeable medical expenses are those expenses related to existing medical conditions, relating to health issues existing at the time of visa adjudication.

PP 9945 does not apply to holders of valid immigrant visas issued before the effective date of the proclamation; aliens seeking to enter the United States pursuant to a Special Immigrant Visa, in either the SI or SQ classification; any alien who is seeking to enter the United States pursuant to an IR-2, CR-2, IR-3, IR-4, IH-3, or IH-4 visa; aliens seeking to enter pursuant to an IR-5 visa, provided the alien or alien's sponsor demonstrates to the satisfaction of consular officers that they will not impose a substantial burden on the United States healthcare system; aliens seeking to enter the United States pursuant to a SB-1 visa; any alien under the age of 18, except for any alien accompanying a parent who is also immigrating to the United States and subject to PP 9945; any alien whose entry would further important United States law enforcement objectives, as determined by the Secretary of State or his designee based on a recommendation from the Attorney General or his designee; or aliens whose entry would be in the national interest, as determined by the Secretary of State or his designee on a case-by-case basis.

**Edward J. Ramotowski,**

*Deputy Assistant Secretary,*

*Visa Services,*

*Bureau of Consular Affairs,*

*Department of State.*

[FR Doc. 2019-23639 Filed: 10/29/2019 8:45 am; Publication Date: 10/30/2019]

# **Exhibit C**

## NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 11/01/2019

Department of State

Administration of Foreign Affairs

FOR CERTIFYING OFFICIAL: Stuart McGuigan

FOR CLEARANCE OFFICER: Zachary Parker

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received

10/22/2019ACTION REQUESTED: New collection (Request for a new OMB Control Number)TYPE OF REVIEW REQUESTED: EmergencyICR REFERENCE NUMBER: 201910-1405-001

AGENCY ICR TRACKING NUMBER:

TITLE: Immigrant Health Insurance Coverage

LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved with changeOMB CONTROL NUMBER: 1405-0231

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 05/31/2020

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	450,500	75,083	0
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	450,500	75,083	0
Change due to Agency Adjustment	0	0	0
Change due to PRA Violation	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Dominic J. Mancini  
Deputy and Acting Administrator,  
Office Of Information And Regulatory Affairs

## List of ICs

IC Title	Form No.	Form Name	CFR Citation
Immigrant Health Insurance Coverage	DS-5541	Immigrant Healthcare Questionnaire	

**Response to public comments received in response to the notice of request for emergency OMB review and approval of the DS-5541, Immigrant Health Insurance Coverage**

The Department of State (“Department”) published a notice of request for emergency OMB review and approval in the *Federal Register* on October 30, 2019 (84 FR 58199), and solicited public comments on the DS-5541, Immigrant Health Insurance Coverage. This collection, which will authorize consular officers to ask certain immigrant visa applicants about their intended health insurance coverage in the United States, is necessary to implement Presidential Proclamation 9945, which requires immigrant visa applicants to establish, to the satisfaction of a consular officer, that the applicant will be covered by an approved health insurance plan within 30 days of entry into the United States, unless the applicant possesses sufficient financial resources to cover reasonably foreseeable medical costs, or if an exception applies. The comment period closed on October 31, 2019 at 11:59 PM, and the Department has received over 300 comments.

The Department has determined that the majority of comments fall within one of the categories below:

- At least 11 comments recommend providing a longer time period for public comment. To these comments, the Department generally responds that the time available to accept public comments was constrained by the effective date of the Proclamation;
- At least 29 comments expressed concern about the acceptance of short-term health insurance plans. To these comments, the Department generally responds that the categories of approved health plans were decided by the President and, consequently, the comments are nonresponsive, as they fall outside the scope of issues relevant to this information collection;
- At least 3 comments identified specific criteria that should be considered in the collection’s time and cost burden estimates; and
- Many comments stated opposition to the requirement in Presidential Proclamation 9945 that immigrant visa applicants obtain health insurance coverage. To these comments, the Department generally responds that the requirement relating to health insurance were decided by the President and, consequently, the comments are nonresponsive, as they the comments fall outside the scope of issues relevant to this information collection.

The Department cannot respond to all comments prior to the implementation deadline of Presidential Proclamation 9945 on November 3, 2019. The Department is, however, currently reviewing all submissions to identify responsive comments, and will respond to those comments as appropriate.