

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

AARON SKALKA and EMMA SKALKA, *et al.*,

Plaintiffs,

v.

JEH JOHNSON, Secretary, U.S. Department
of Homeland Security, *et al.*,

Defendants.

Case No.: 1:16-cv-107-RJL

**DEFENDANTS' REPLY IN SUPPORT OF
THEIR MOTION TO DISMISS**

In August 2010, Defendants suspended the adjudication of immediate relative visa petitions (“I-600 petitions”) filed on behalf of children from Nepal who were reported as having been found abandoned (“the Suspension”). *See* ECF No. 11-6 at 2. The Suspension was part of a global response to systemic problems within the Nepali adoption system, which resulted in the inability to “reasonably determine whether a child documented as abandoned qualifies as an orphan.” *Id.* In this case, Plaintiffs assert that the Suspension is harming their individualized interests in adopting children from Nepal, an interest Defendants recognize as important and not insubstantial. Nevertheless, because of the greater interests at issue in this context, including important questions related to foreign relations, and due to defects in Plaintiffs’ claims, Defendants moved to dismiss Plaintiffs’ First Amended Complaint (“FAC”) under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). *See* ECF No. 12.

On May 18, 2016, Plaintiffs filed their Opposition to Defendants’ motion. *See* ECF No. 14. In their Opposition, Plaintiffs contend: (1) that they state a claim upon which relief can be granted because the plain language of 8 U.S.C. § 1154(b) requires an immediate “investigation”

in their cases; (2) their challenge to the prudence and propriety of Defendants’ decision to issue the Suspension does not present a non-justiciable political question; and (3) they have satisfied the requirements for mandamus relief. Plaintiffs also contend that each and every Plaintiff has standing. As shown below, Plaintiffs’ arguments are unavailing and this Court should dismiss their FAC in its entirety.

ARGUMENT

I. Plaintiffs’ argument that the Suspension is unlawful fails to state a claim because the Suspension is a proper exercise of Defendants’ statutory authority and not prohibited by law.

Plaintiffs’ claim that the Suspension is unlawful because it is “not in accordance with the law,” *see* FAC ¶ 68, fails as a matter of law. *See* Opp. at 22 (describing one of the “two central questions” presented by Plaintiffs’ FAC as: “whether 8 U.S.C. § 1154 permits Defendants to impose a suspension *under any circumstances*”) (emphasis added). As noted in Defendants’ motion, the Immigration and Nationality Act (“INA”) provides the authority for Defendants to impose the Suspension, and the Suspension is neither prohibited by nor in conflict with any other provision of law. Plaintiffs’ claim must therefore be dismissed under Federal Rule of Civil Procedure 12(b)(6).

In their Opposition, Plaintiffs argue that they have stated a claim because the plain language of 8 U.S.C. § 1154(b) and 8 C.F.R. § 204.3(k) requires that Defendants complete an investigation for every I-600 petition filed. Plaintiffs’ argument mischaracterizes the disputed issue before this Court. In fact, the parties are in agreement that § 1154(b) requires an “investigation” in every immigrant visa petition case. *See* Mot. at 19. What apparently is in dispute, however, is: (1) whether the Secretary of Homeland Security and Secretary of State have the authority to impose a suspension; (2) whether the Suspension actually prevents or forecloses

altogether the investigation required by § 1154(b); and (3) whether the investigation must be completed within a specific time after the petition is submitted.

First, Plaintiffs incorrectly suggest that Defendants “argue that they have unrestrained authority” related to immigration and naturalization of aliens. *See Opp.* at 18-19. In their motion, Defendants simply identified the specific statutory grants of authority provided to them by Congress, which authorized them to impose the Suspension. *See Mot.* at 18-19 (citing 8 U.S.C. §§ 1103 and 1104). Indeed, far from being “unrestrained,” Congress itself provided the Secretaries with the authority to “establish such regulations; . . . issue such instructions; and perform such other acts as [they] deem[] necessary for carrying out” their respective responsibilities. *See* 8 U.S.C. §§ 1103(a)(3) and 1104(a). The immigration of adopted children from Nepal, including children reported as abandoned, undoubtedly implicates the authorities of both the Secretary of Homeland Security and the Secretary of State entrusted to them by Congress. *See, e.g.,* 8 U.S.C. §§ 1101(b)(1) (definition of “child”), 1154 (visa petition authority), and 1154(b) (visa petition approval required for immigrant visa issuance). The Suspension is a legitimate exercise of such authority because it does not conflict with any other statute.

Second, Plaintiffs appear to misunderstand the Suspension to require denials of their I-600 petitions. *See Opp.* at 8 (“[T]he Skalkas and Lees have been denied based solely on the Suspension related to abandoned children.”), *see also id.* at 12, 13, 17, 20. It does not. Rather, as the Notices provided to the Skalkas and Lees make clear, the Suspension resulted in the administrative closure of their I-600 petitions, which will be reopened if and when the conditions in Nepal change sufficiently to permit the Suspension to be lifted. *See ECF No. 11-6* at 2; *see also ECF No. 11-2* at 4. Accordingly, the Suspension neither negates, nor eliminates § 1154(b)’s

requirement of an investigation, it merely postpones completion of the investigation and adjudication of I-600 petitions until the systemic problems in Nepal have been sufficiently ameliorated to allow confidence that children who were reported as abandoned are actually legally eligible beneficiaries of I-600 petitions.

Third, Plaintiffs appear to concede that neither § 1154(b) nor 8 C.F.R. § 204.3(k) imposes a specific timeframe within which the I-604 determination must be completed. *See* Opp. at 18-19. Instead, Plaintiffs argue that the required investigation is “tied to each *case*” but not *adjudication* of the case, and rely upon the Administrative Procedure Act’s (“APA”) “general but non-discretionary duty” for an agency “to pass upon a matter presented to it ‘within a reasonable time.’” Opp. at 19 (citing 5 U.S.C. § 555(b)). As Defendants noted in their motion, neither the statute nor the regulation indicates when the investigation must take place. Rather, both provide only that it must take place before adjudication is completed. *See* 8 C.F.R. § 204.3(k) (“An I-604 investigation shall be completed before a petition is adjudicated abroad.”); *see also* 8 U.S.C. § 1154(b) (“After an investigation of the facts in each case . . . the Attorney General shall, if he determines that the facts stated in the petition are true and that the alien in behalf of whom the petition is made is an immediate relative . . . approve the petition”). Because of the Suspension, the Skalkas’ and Lees’ petitions have not yet been adjudicated, and Defendants are therefore not in breach of their obligation to conduct an investigation before such adjudication.

Moreover, while the APA does provide a default reasonableness requirement on the timeframe for adjudication of matters presented to a governmental agency, that requirement is substantially and materially different from a “specific” timeframe. Most importantly, because the APA’s default timeliness requirement is not specific, the Suspension does not inherently conflict with it. Indeed, it is possible that the Suspension will not result in any *unreasonable*

delays of adjudication for I-600 petitions.¹ Accordingly, Defendants' imposition of the Suspension was not in violation of any provision of law.

Because the Suspension is an exercise of Defendants' duly authorized authority and is not prohibited by any law, Plaintiffs' claim that the Suspension is not in accordance with law should be dismissed.

II. The prudence and propriety of the Suspension presents a non-justiciable political question.

This Court should also dismiss Plaintiffs' challenge to the reasonableness of Defendants' determination that the circumstances in Nepal, including the unreliability of documents related to Nepali children reported as having been found abandoned, warranted imposing the Suspension.

See Opp. at 22 (noting that "Plaintiffs' Complaint presents two central questions for the Court to

¹ Based on the facts alleged in the FAC, this case does not appear to involve any delays that could be classified as "unreasonable." Plaintiffs filed this action in January 2016, only seven months after the Skalkas filed their I-600 petition (June 2015) and less than three months after they received notice that their I-600 petition would be administratively closed (November 6, 2015). *See* FAC ¶¶ 52, 54; Complaint, ECF No. 1 (filed Jan. 20, 2016). The Lees' I-600 petition was not administratively closed until April 6, 2016, three months *after* this action was initially filed, *see* ECF No. 14-1; the Ayers did not even file their I-600 petition until April 26, 2016, *see* ECF No. 14-2; and the Scheels "have not progressed" far enough "through the lengthy Nepali adoption process" to where they have even been matched with a Nepali child, *see Opp.* at 12. Thus, even at this stage of the case, the longest delay attributable to the Suspension is only seven months.

In light of the fact that Congress has not dictated any timetable for the adjudication of an I-600 petition, and competing interests and priorities at play including complex issues of foreign relations, such short delays cannot be unreasonable. *See Telecommunications Research & Action Ctr. v. F.C.C.*, 750 F.2d 70, 79 (D.C. Cir. 1984) (noting that court should consider *inter alia* whether Congress has provided a specific timetable in the enabling statute, and the effect of expediting delay action on agency activities of higher or competing priority). *Cf. Morgovsky v. Dep't of Homeland Sec.*, 517 F. Supp. 2d 581, 585 (D. Mass. 2007) ("While Morgovsky correctly states that he is entitled to have his appeal adjudicated within a "reasonable time," as section 555(b) of the APA requires, the sixteen month delay in deciding his appeal is not *per se* unreasonable."); *Irshad v. Johnson*, 754 F.3d 604, 607 (8th Cir. 2014) (five-year delay in adjudication of adjustment of status application was reasonable because, in part, the agency was involved in "high-level analysis of complex, sensitive factors that implicate national security, foreign policy, and humanitarian interests"); *Solenex LLC v. Jewell*, No. CV 13-0993(RJL), 2015 WL 9810999, at *2 n.1 (D.D.C. July 27, 2015) (listing cases where delays from three to eight years were found to be unreasonable).

consider,” the second of which is whether the Defendants’ decision to impose a suspension “in these circumstances was arbitrary and capricious”); *see also* FAC ¶¶ 37, 80 (arguing Defendants’ decision constitutes an “abuse of discretion”).

Plaintiffs argue that the question of whether the Suspension was an appropriate response to the troubling circumstances and problems posed in Nepal is not a political question because it fails to satisfy the first two factors outlined by the Court in *Baker v. Carr*, 369 U.S. 186, 210-11 (1962). *See* Opp. at 21-22. Plaintiffs are incorrect.

In *Baker*, the Supreme Court laid out a multi-factor framework for determining whether a particular claim presents a political question:

Prominent on the surface of any case held to involve a political question is found [1] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court’s undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Baker, 369 U.S. at 217. Although particular weight is accorded to the first two *Baker* factors, none of them are irrelevant. *See Zivotofsky ex rel. Zivotofsky v. Clinton*, 132 S. Ct. 1421, 1433 (2012) (Sotomayor, J., concurring); *see also Ctr. for Biological Diversity v. Hagel*, 80 F. Supp. 3d 991, 1002 & n.10 (N.D. Cal. 2015). Indeed, “[t]o find a political question, [the Court] need only conclude that one [*Baker*] factor is present, not all.” *Schneider v. Kissinger*, 412 F.3d 190, 194 (D.C. Cir. 2005).

In the case at hand, Plaintiffs’ challenge to Defendants’ exercise of discretion inextricably implicates the second and third *Baker* factors. The second and third *Baker* factors are largely overlapping, and “reflect circumstances in which a dispute calls for decisionmaking

beyond courts' competence." *Zivotofsky*, 132 S. Ct. at 1432 (Sotomayor, J., concurring). As Defendants noted in their motion, the need for decisionmaking entrusted exclusively to the prudence and discretion of the political branches and beyond a court's competence is precisely the reason why this Court should dismiss Plaintiffs' reasonableness challenge. *See* Mot. at 24-26. The decision to implement the Suspension instead of other alternatives was the product of the U.S. Government's balancing of complex and subtle foreign relations concerns, including its consultation and coordination with other foreign governments and its consideration of the potential impact of those alternatives on its bilateral relationship with Nepal and those other governments. And there are no standards by which the Court can measure and balance the foreign policy considerations at play in this case. *Cf. Smith v. Reagan*, 844 F.2d 195, 199 (4th Cir.) (internal quotations and alterations omitted) (describing courts as "unschooled in the delicacies of diplomatic negotiation and the inevitable bargaining for the best solution of an international conflict").

Nevertheless, Plaintiffs ask the Court to apply the general APA "arbitrary and capricious" standard to determine whether Defendants "abused [their] discretion" in determining that the Suspension is warranted. *See* Opp. at 22. Relying heavily on a single, out-of-circuit district court decision, Plaintiffs argue that the second *Baker* factor is not present because they seek "an application of the standards of the APA to the Defendants' decision" to impose the Suspension. *See* Opp. at 21-23 (citing and discussing extensively *Ctr. for Biological Diversity v. Hagel*, 80 F. Supp. 3d 991, 1005 (N.D. Cal. 2015)). That case, however, is materially distinguishable.

In *Center for Biological Diversity*, the court was presented with a challenge to the Department of Defense's decision to construct a new military base in Japan. *Id.* at 993-94. The plaintiffs argued that the Department of Defense "failed to 'take into account' any adverse

effects that construction of the military base might have” on the Okinawa dugong, a species of marine mammal, in violation of section 402 of the National Historic Preservation Act (“NHPA”). *Id.* at 994. The Department of Defense moved to dismiss on political question grounds, arguing that the court could not adjudicate plaintiffs’ claims “without passing judgment on, or interfering with” the final and plenary decision of the Executive – and the Japanese government – to build an overseas military base at a particular location. *Id.* at 1004. The court rejected the Department of Defense’s argument, noting that “the NHPA is a purely procedural statute,” which “regulates the process by which an undertaking is approved, requiring a federal agency to stop, look, and listen,” but “does not require [or preclude] a particular outcome” of that process. *Id.* at 1004. Thus, “the challenged activity [was] not the undertaking itself, but the process by which the effects of the undertaking [were] considered and assessed.” *Id.* Accordingly, the court held that it was only “called on to apply the standards of the APA to the process employed by the DoD,” and not to “pass judgment on the wisdom of the Executive’s ultimate foreign policy or military decisions.” *Id.* at 1005.

The claims in this case are precisely the opposite. Here, Plaintiffs are not raising a challenge to the procedure by which Defendants determined to impose the Suspension. On the contrary, they are asking that the Court find that Defendants’ ultimate decision to impose the Suspension was itself unreasonable. *See Opp.* at 22 (noting that the political question doctrine is only at issue with regard to the second of Plaintiffs’ “two central questions,” namely whether Defendants’ decision to impose the Suspension “was arbitrary and capricious”). The APA claims here are therefore materially different from the claims in cases like *Center for Biological Diversity*, in which a statute or regulation specifies the process by which an administrative decision is to be made or lays out a scheme by which decisions should be evaluated. *See Ctr. for*

Biological Diversity, 80 F. Supp. 3d at 993-94 (discussing the NHPA’s “take account process”); *Haitian Refugee Ctr. v. Civiletti*, 503 F. Supp. 442, 473 (S.D. Fla. 1980) (“In short, it cannot offend the coordinate branches of government for the judiciary to review administrative decisions in a manner contemplated by the statutory and treaty provisions adopted by the legislature and the executive. One cannot be said to have usurped that which one has been told to do.”). Indeed, there are no specific procedures governing Defendants’ decision to impose the Suspension. Thus, unlike the plaintiffs in *Center for Biological Diversity*, Plaintiffs here *are* asking the Court to pass judgment on the wisdom of the executive branch’s ultimate determination, taking into account its bilateral and multilateral relationships with foreign governments, that the Suspension was the appropriate response to the systemic problems in Nepal. Plaintiffs have failed to identify, however, any standard by which the Court could evaluate the Executive’s decision-making in this context. Indeed, there is none.

Plaintiffs essentially ask this Court to opine on sensitive matters of foreign relations that are committed to the prudence and discretion of the political branches and to second-guess a policy determination regarding the most appropriate response to the troubling circumstances and problems posed in Nepal. The Court lacks judicially discoverable and manageable standards for resolving such a challenge, and therefore should dismiss that claim as non-justiciable.²

² Plaintiffs’ discussion of cases that raise solely immigration or naturalization concerns is not particularly apt in this case. *See* Opp. at 24-25. Here, the Suspension primarily implicates the Executive’s authority with respect to foreign relations, although at an intersection with its immigration and naturalization authorities. That particular confluence of powers and duties is why the Suspension was jointly imposed by the Department of State and USCIS.

Plaintiffs’ citation to *Nine Iraqi Allies v. Kerry*, No. CV 15-300 (GK), 2016 WL 927142, *18 (D.D.C. Mar. 7, 2016) is similarly misplaced. *See* Opp. at 25 n.13. The court in *Nine Iraqi Allies* was considering a different justiciability doctrine—the doctrine of consular non-reviewability—which is not at issue in this case. *See* 2016 WL 927142 at *18. Accordingly, its holding that the doctrine of consular non-reviewability does not apply until a final decision has been made is inapplicable to the separate doctrine of the non-justiciability of political questions.

Additionally, as this Court has previously noted, courts should decline to “interject[] into” “sensitive” foreign affairs matters where the only remedies sought are discretionary equitable remedies under the APA. *Sanchez-Espinoza v. Reagan*, 770 F.2d 202, 208 (D.C. Cir. 1985) (“[W]here the authority for our interjection into so sensitive a foreign affairs matter as this are statutes no more specifically addressed to such concerns than the Alien Tort Statute and the APA, we think it would be an abuse of our discretion to provide discretionary relief.”); *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1, 42-43 (D.D.C. 2010) (“Irrespective of whether this case is ‘a matter so entirely committed to the care of the political branches as to preclude our considering the issue at all,’ . . . the Court concludes that it ‘at least requires the withholding of discretionary relief.’”). Here, Plaintiffs’ challenge to the reasonableness of the Suspension seeks exclusively equitable relief under the APA. *See* FAC ¶ 68. Because all such forms of relief are discretionary, *Sanchez-Espinoza*, 770 F.2d at 207-08, this Court should exercise the discretion provided to it under the APA to decline Plaintiffs’ invitation to opine on sensitive foreign policy decisions.

III. Plaintiffs’ mandamus claim should be dismissed for lack of jurisdiction and as a matter of discretion.

Defendants maintain that Plaintiffs’ mandamus claim should be dismissed for lack of jurisdiction and as a matter of discretion. Plaintiffs oppose dismissal, contending they have satisfied the requirements to show that Defendants have a clear duty to act, specifically to conduct an investigation into every immigrant visa petition, and that Defendants are violating that duty. *See* Opp. at 27. They contend that Defendants have conceded that they owe such a duty. *Id.*

As noted above, Plaintiffs oversimplify the issue before this Court. The issue is not *whether* an investigation must occur at all – the parties agree on that point. *See* Mot. at 19. The

issue before the Court is *when* such investigation, and accompanying adjudication of the I-600 petition, must take place, and whether Plaintiffs have shown Defendants owe a clear, nondiscretionary duty to adjudicate abandonment-based I-600 petitions *right now*. Plaintiffs have failed to identify any statute, regulation, or case law that requires such a duty. Instead, they rely upon the general APA provision that an agency must decide an issue presented to it “within a reasonable time.” *See* Opp. at 27 (citing 5 U.S.C. §§ 555(b), 706(1)). For the reasons provided above and in the motion to dismiss, Defendants maintain that the Suspension is a proper exercise of the authorities granted to the Secretaries by statute, and thus that delaying the adjudication of I-600 petitions while the Suspension remains in place is reasonable as matter of law.

Relatedly, Plaintiffs fail to address Defendants’ argument that the Court should deny mandamus relief in this case as an exercise of its discretion. *See* Mot. at 28 (citing *In re Cheney*, 406 F.3d 723, 729 (D.C. Cir. 2005) (“[E]ven if the plaintiff overcomes all these hurdles, whether mandamus relief should issue is discretionary.”)). Here, Plaintiffs’ decision to pursue adoption from Nepal, well aware that the Suspension—which had been in place for approximately five years at the time they filed and is discussed on the Frank Adoption Center’s website homepage, *see* ECF No. 12-1—would foreseeably cause the exact delay Plaintiffs now challenge, strongly cuts against any equitable case for mandamus relief. For this very reason, the *Pietro* court held under very similar circumstances that mandamus relief would be unavailable “even if Defendants owe[d] Plaintiffs a clear ministerial duty.” *See* Order (ECF No. 16), *Pietro v. BCIS*, No. 2:03-cv-702 at 4 (W.D. Wash. July 14, 2003) (“By [the time they filed their I-600 petition], Plaintiffs were aware of the status of Cambodian adoptions, and still decided to proceed with a Cambodian

adoption. Therefore, this case does not involve protracted and unexplained delay of what would be an ordinary immigration procedure.”).

IV. Several Plaintiffs should be dismissed for lack of Article III standing.

Finally, as Defendants noted in their motion, two of the four plaintiff couples and Frank Adoption Center lack standing and should be dismissed. *See* Mot. at 12-17. Because at least one of the plaintiff couples has standing, this Court is not required to address the issue. *See Tuaua v. United States*, 951 F. Supp. 2d 88, 93 (D.D.C. 2013), *aff’d*, 788 F.3d 300 (D.C. Cir. 2015).

Should the court reach the issue, however, the Scheels, the Ayers, and Frank Adoption Center should be dismissed for lack of standing.

First, as a preliminary matter, “standing is assessed as of the time a suit commences.” *Chamber of Commerce of U.S. v. E.P.A.*, 642 F.3d 192, 199 (D.C. Cir. 2011). Thus, Plaintiffs cannot rely upon post-filing activity—for example the Ayers’ recent filing of an I-600 petition—to establish injury-in-fact. *See* Opp. at 12 (“In any event, the Ayers have now filed their I-600 Petition.”).

Second, as noted in Defendants’ motion to dismiss, the Scheels and Ayers lack standing because they have failed to allege facts showing that the children they intend or hope to adopt are subject to the Suspension at all. *See* Mot. at 13 (citing FAC ¶¶ 58-59). Plaintiffs’ Opposition does not dispute that the Scheels do not currently know whether they will be subject to the Suspension. Indeed, Plaintiffs cannot do so because the Scheels have not yet been matched with a child, *see* Opp. at 12 (“Although the Scheels have not progressed as far . . . once they are matched with a Nepali child . . .”); FAC ¶ 58, and thus cannot yet know whether the child is one who has been reported abandoned. Similarly, Plaintiffs fail to allege that the child the Ayers have been matched with was reported abandoned, *see* FAC ¶ 58 (no mention of abandonment);

Declaration of Heather Alexander Ayers, ECF No. 14-2 (same). *But see* Opp. at 12 (arguing that the “Ayers were matched with a child that was abandoned in a hospital,” but citing only FAC Ex. 1 which relates to the Skalkas not the Ayers). Thus, the Scheels and the Ayers should be dismissed for lack of standing.

Frank Adoption Center likewise lacks standing and should be dismissed. As Defendants have argued and Plaintiffs acknowledge, “an organization may not manufacture the injury necessary to maintain a suit from its expenditure of resources on that very suit.” *Am. Soc. for Prevention of Cruelty to Animals v. Feld Entm’t, Inc.*, 659 F.3d 13, 25 (D.C. Cir. 2011) (internal quotations omitted) (“[A]n organization’s diversion of resources to litigation or to investigation in anticipation of litigation is considered a ‘self-inflicted’ budgetary choice that cannot qualify as an injury in fact for purposes of standing.”). In an attempt to side-step such limitation, Plaintiffs argue that Frank Adoption Center would be “helping willing families adopt Nepali orphans, regardless of whether the Joint Suspension Notice is in place or not.” *See* Opp. at 16. It is undisputed, however, that Frank Adoption Center did not handle any Nepali intercountry adoption cases until 2013, several years after the Suspension went into effect. *See* Mot. at 16; ECF No. 12-1. The difficulties Frank Adoption Center now claims to be suffering and costs it claims it is incurring were entirely foreseeable *before* it reorganized and “re-opened its doors as an entirely new agency,” focused “exclusively” on Nepali adoptions. *See* FAC ¶ 2; ECF No. 12-1. Indeed, Frank Adoption Center maintains on its website that it is the only U.S. adoption agency working in Nepal because all other organizations stopped handling such adoptions following the Suspension in 2010. To the extent Frank Adoption Center is “unable to fulfill [its] mission,” therefore, it is solely because it defined its “mission” as facilitating the very adoptions

prohibited by the then-in-place Suspension. Thus, Frank Adoption Center lacks standing because it has failed to show that it has suffered any injury fairly traceable to Defendants.

CONCLUSION

For the foregoing reasons, and the reasons provided in Defendants' motion to dismiss, the Court should dismiss Plaintiffs' FAC under Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6).

Dated: June 8, 2016

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General
Civil Division

WILLIAM C. PEACHEY
Director
Office of Immigration Litigation

JEFFREY S. ROBINS
Assistant Director

/s/ Timothy M. Belsan
TIMOTHY M. BELSAN
Senior Litigation Counsel
U.S. Department of Justice, Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Phone: (202) 532-4596
Fax: (202) 305-7000
Email: timothy.m.belsan@usdoj.gov

Attorneys for Defendants