UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

MAXWELL GOODLUCK, et al. (*caption pages attached)*,

c/o MORRISON URENA, L.C.
P.O. Box 80844
Rancho Santa Margarita, CA 92688

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., *in his official capacity as President of the United States of America*,

1600 Pennsylvania Avenue NW
Washington, DC 20500

ANTONY BLINKEN, *in his official capacity as U.S. Secretary of State*,

U.S. Department of State
The Executive Office
Office of the Legal Advisor, Suite 5.600
600 19th Street NW
Washington, DC 20522

JULIE M. STUFFT, *in her official capacity as Acting Deputy Assistant Secretary for Visa Services*,

U.S. Department of State
The Executive Office
Office of the Legal Advisor, Suite 5.600
600 19th Street NW
Washington, DC 20522

MORGAN D. MILES, *in his official capacity as Acting Director of the Kentucky Consulate Center*,

U.S. Department of State
The Executive Office
Office of the Legal Advisor, Suite 5.600
600 19th Street NW
Washington, DC 20522

Defendants.

Civil Action No. 21-cv-1530

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND WRIT OF MANDAMUS

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Eighty-two years ago today, the German transatlantic liner *St. Louis*, with 908 mostly Jewish refugees, was turned away from the United States and returned to Europe, where almost 30% of its passengers were murdered in the Holocaust. Today, immigrants may not all face the same risk if denied entry to the United States, but there is an undoubted correlation with Defendants still turning away those seeking a better life.

INTRODUCTION

1. Plaintiffs are 24,089 Diversity Visa 2021 (DV-2021) program immigrant visa applicants.
2. Plaintiffs currently reside in 141 different countries.
3. Congress found that the broader the mix of nationalities that comes to define America, the better America becomes equipped to understand and relate to the diversity of the world abroad. There is no better antidote to the challenges of globalization than to attract the ‘‘self-selected strivers’’ from every corner of the globe.
4. Plaintiffs include professionals, businesspeople, academics, doctors, engineers, lawyers, and other good people, and their children yearning to make a life in the United States of America.
5. Plaintiffs hereby challenge the U.S. Department of State’s (“Department”) continued policies, procedures, and practices withholding and/or delaying the adjudication of Diversity Visas for fiscal year 2021 (“FY21”).
6. Defendants’ policies, procedures, and practices suspending adjudication of diversity visas is a continuation from the “No-Visa Policy” that Defendants relied on to suspend adjudication of diversity visas for fiscal year 2020.

7. On February 24, 2021, Defendant President Joseph R. Biden, Jr. revoked Presidential Proclamation 10014, but he did not revoke Defendants' No-Visa Policy.
8. Despite Defendant President Biden admitting and expressly finding that eliminating the DV program "does not advance the interests of the United States" because it "harms individuals who were selected to receive the opportunity to apply for" immigrant visas, he did not remedy the five-month long cessation of adjudication of diversity visas. *See* Presidential Proclamation 10149, Revoking Proclamation 10014, 86 Fed. Reg. 11,847 (Feb. 24, 2021).
9. Rather than adjudicate Plaintiffs' Diversity Visa applications consistent with Congressional intent and Department policies, Defendants have created an unlawful Prioritization Scheme that places the adjudication of diversity visas at the lowest priority and withholds the scheduling of interviews for DV selectees. 9 FAM 502.6-4(d)(2) (DOS policy recognizing the clear timetable for adjudication of DV applications).
10. For the first half of the fiscal year, the Department failed to process, adjudicate, or issue any Diversity Visa applications.
11. The complete cessation of the processing of DV-2021 applications was not due to COVID-19, but was pursuant to an unlawful No-Visa Policy, Defendants unlawful Prioritization Scheme, and Defendants' refusal to actively remedy the delay caused by the No-Visa Policy.
12. Between the start of DV 2021 Program on October 1, 2020 and May 27, 2021, Defendants have issued only 1,483 diversity visas.
13. Defendants' policies, procedures, and practices delay: (1) processing of applications for the DV-2021 program at the KCC; (2) scheduling of mandatory immigrant visa interviews

for DV-2021 program selectees and their derivative beneficiaries at United States Embassies and Consulates; (3) and adjudications for already submitted applications pending decisions by consular officers.

14. For Plaintiffs, the stakes are high and a matter of extreme urgency. By statute, DV-2021 program selectees must have their visas adjudicated and issued before midnight on September 30, 2021.

15. If Defendants do not issue Plaintiffs' visas before midnight on September 30, 2021, barring a protective order from this Court, Plaintiffs will lose their opportunity to immigrate to the United States of America through the DV-2021 program.

16. Defendants, through the unlawful policies and procedures, have willfully allowed eight months to pass without issuing more than 1,500 diversity visas.

17. The Department's No-Visa Policy and Prioritization Scheme, which withholds and delays adjudication of Diversity Visa applications for Plaintiffs and their derivative beneficiaries and/or issue visas, violates its non-discretionary duty to adjudicate immigrant visa applications as mandated by the Immigration and Nationality Act.

18. Defendants' policies, procedures, and practices will remain in place through September 30, 2021 and effectively end the DV-2021 program.

19. Accordingly, Plaintiffs seek an order requiring Defendant President Joseph R. Biden, Jr., Secretary of State Anthony Blinken, Acting Secretary Julie M. Stufft, Director Morgan Miles, and the Department to set aside the Department's implementation of the No-Visa Policy and Prioritization Scheme which withholds and delays the processing and adjudication of Plaintiffs' immigrant visa applications.

20. Additionally, Plaintiffs also seek an order from this Court which mandates Defendants to fulfill their mandatory, non-discretionary duty to adjudicate Plaintiffs' immigrant visa applications, and issue decisions on their applications before September 30, 2021.

21. Finally, Plaintiffs also seek an order mandating Defendants to reserve unused Diversity Visa numbers for Plaintiffs beyond September 30, 2021 in the event that Defendants fail to fully adjudicate and issue Plaintiffs' visas before the deadline.

22. Accordingly, Plaintiffs are requesting that the Court: (1) declare Defendants' policies, procedures, and practices suspending Plaintiffs' Diversity Visa applications unlawful, (2) order Defendants to fully adjudicate Plaintiffs' Diversity Visa applications before the statutory deadline on September 30, 2021, and issue visas to eligible applicants in accordance with law; (3) preserve visa numbers in the event that Defendants do not adjudicate Plaintiffs' diversity visas before the statutory deadline. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1361, and 42 U.S.C. § 1983. Declaratory relief is authorized by Rule 57 of the Federal Rules of Civil Procedure. The Court has remedial authority pursuant to 28 U.S.C. § 1361, 28 U.S.C. § 2201, and 5 U.S.C. § 702.

23. Venue is proper pursuant to 28 U.S.C. § 1391(e)(1)(A) because Defendant Joseph R. Biden, Jr., resides in the District, and pursuant to 28 U.S.C. § 1391(e)(1)(B) because a substantial part of the events or omissions giving rise to the claim occurred in this District, namely, the formulation and promulgation of the challenged policies, procedures, and practices suspending the adjudication of Diversity Visa applications for Plaintiffs.

PARTIES

PLAINTIFFS

24. Plaintiffs consist of 24,089 Diversity Visa lottery immigrant visa applicants for fiscal year 2021, who have been unlawfully delayed visa adjudications, due to Defendants' No-Visa Policy, Prioritization Scheme, and/or lingering effects of the No-Visa Policy.

25. All Plaintiffs and their derivative beneficiaries have submitted a DS-260, Immigrant Visa Application and Alien Registration.

26. All Plaintiffs' priority dates will be current by July 2021.

27. Defendants' No-Visa Policy and/or the Prioritization Scheme withholds and delays the adjudication of Plaintiffs and their derivative beneficiaries' visa applications.

DEFENDANTS

28. Defendant Joseph R. Biden, Jr. is the President of the United States of America. He is sued in his official capacity.

29. Defendant Antony J. Blinken is the Secretary of State for the United States of America. Under the Immigration and Nationality Act, he has the authority to issue regulations to implement the Diversity Visa Lottery Program. 8 U.S.C. §§ 1153, 1154. He also prescribes the Visa Lottery fee, which is $330 per DV winner or derivative. C.F.R. § 42.33(h)(2)(i). He is sued in his official capacity.

30. Defendant Blinken administers the Diversity Visa Lottery Program through the Bureau of Consular Affairs' Kentucky Consular Center ("KCC"), located in Williamsburg, Kentucky, which opened in 2000 to administer the program. As of May 2019, KCC had approximately 430 contract staff members working in two shifts and on weekends and five Bureau of Consular Affairs direct-hire employees, including a Foreign Service officer

Director, all working under the direction of Defendant Blinken. Among those, 21 contract staff members in KCC's DV unit handle inquiries about the program, process the electronic visa applications from DV selectees, schedule overseas interviews, and work with U.S. Citizen and Immigration Services to process selectees already in the United States. Julie M. Stufft is the Acting Assistant Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs. She is being sued in her official capacity.

31. Defendant Stufft oversees the State Department Visa Office in Washington, D.C., KCC, the National Visa Center, and the visa operations at U.S. embassies and consulates abroad.

32. Defendant Morgan D. Miles is the Acting Director of the Kentucky Consulate Center. He is being sued in his official capacity.

33. Defendant Miles oversees the Kentucky Consular Centers' processing for diversity visa application for Diversity Visa selectees, including collecting and reviewing required documents and scheduling selectees for interviews at U.S. embassies and consulates. Defendant Miles also oversees the five-year $389 million government performance-based contract awarded in September 2019 to LDRM, LLC to help manage KCC and respond to inquiries from DV selectees. Defendants Miles made the decision in October 2020 that KCC should stop answering phone calls from DV-2021 selectees.

FACTUAL ALLEGATIONS

I. DIVERSITY VISA IMMIGRANT PROGRAM

34. The Immigration Act of 1990 created a new immigration category, the Diversity Immigrant Visa Program, to increase diversity in the U.S. immigrant population by providing 50,000

Diversity visas to nationals of countries that have had low immigration rates to the United States. Public Law 101-649; 8 U.S.C. § 1153(c).

35. The Diversity Immigrant Visa Program has led to a broader mix of nationalities represented in the U.S. immigrant population, creating a U.S. better equipped to understand and relate to the diversity of the world abroad.

36. The Congressionally mandated program issues visas specifically for immigrants who are natives of countries and regions from where fewer than 50,000 immigrants came to the United States over the previous five years.

37. Each fiscal year, the Department grants approximately 50,000 diversity immigrant visas to individuals from countries underrepresented in the immigration process, which allow recipients who are granted admission to enter the country as lawful permanent residents who may live and work in the United States indefinitely. *See* 8 U.S.C. §§ 1151(e), 1153(c)(1).

38. Hopeful immigrants must submit entries during the application period.

39. From those entries, the Department then chooses eligible selectees to apply for immigrant visas.

40. With over 23 million entrants a year, a diversity visa entrant has less than a one percent chance to be selected to apply for the visa. The probability of being selected twice is approximately 0.00025%.

41. A diversity visa selectee is entitled to apply for an immigrant visa only during the fiscal year for which the entry was submitted. *See* INA § 204(a)(1)(I)(ii)(II).

42. The diversity visa program is administered at the Department's KCC. *See* 9 FAM 502.6-4(c)(1)(a).

43. Selectees receives a first notifications letter informing the selectee of their selection and visa number. *Id.*

44. The visa number, assigned by the KCC, is an administrative device used by the State Department to ensure that it does not grant more than the statutorily allocated 55,000 visas per year.

45. Selectees must then submit a DS-260, Immigrant Visa and Alien Registration Application and various supporting documents. *See* 9 FAM 502.6-4(d)(1)(a), (b).

46. When a selectee submits the DS-260, Immigrant Visa and Alien Registration Application and supporting documentation, KCC considers the case "documentarily qualified."

47. Once the case is documentarily qualified, the Department must schedule the selectee for an immigrant visa interview at a United States Embassy or Consulate.

48. The Foreign Affairs Manual and associated Handbooks (hereafter collectively referred to as the "FAM") are a single, comprehensive, and authoritative source for the Department's organization structures, policies, and procedures that govern the operations of the Department, the Foreign Service and, when applicable, other federal agencies. The FAM conveys codified information to Department staff and contractors so they can carry out their responsibilities in accordance with statutory, executive, and Department mandates.

49. The FAM states that "KCC will schedule an appointment for a 'documentarily qualified' applicant when his or her regional lottery rank number is about to become current." 9 FAM 502.6-4(d)(2)).

50. Each month, the Department publishes a Diversity Visa Bulletin summarizing the availability of immigrant visas for diversity visa selectees.

51. Selectees with current visa numbers are entitled to an immigrant visa interview to make a formal application for an immigrant visa before a consular officer.

52. All Plaintiffs have an available immigrant visa pursuant to their DV-2021 program selection.

53. Department's June 2021 Diversity Visa Bulletin demonstrates that nearly all Plaintiffs have an available immigrant visa.

DIVERSITY IMMIGRANT (DV) CATEGORY FOR THE MONTH OF JUNE

Section 203(c) of the INA provides up to 55,000 immigrant visas each fiscal year to permit additional immigration opportunities for persons from countries with low admissions during the previous five years. The NACARA stipulates that beginning with DV-99, and for as long as necessary, up to 5,000 of the 55,000 annually allocated diversity visas will be made available for use under the NACARA program. This will result in reduction of the DV-2021 annual limit to approximately 54,850. DV visas are divided among six geographic regions. No one country can receive more than seven percent of the available diversity visas in any one year.

For June, immigrant numbers in the DV category are available to qualified DV-2021 applicants chargeable to all regions/eligible countries as follows. When an allocation cut-off number is shown, visas are available only for applicants with DV regional lottery rank numbers BELOW the specified allocation cut-off number:

Region	**All DV Chargeability Areas Except Those Listed Separately**	
AFRICA	**CURRENT**	**Except: Egypt 18,900**
ASIA	**CURRENT**	**Except: Iran 6,400 Nepal 6,400**

EUROPE	**CURRENT**		
NORTH AMERICA (BAHAMAS)	**CURRENT**		
OCEANIA	**CURRENT**		
SOUTH AMERICA, and the CARIBBEAN	**CURRENT**		
Region	**All DV Chargeability Areas Except Those Listed Separately**		
AFRICA	14,000	Except:	Egypt 10,000
ASIA	6,200	Except:	Iran 3,800 Nepal 4,200
EUROPE	9,400		
NORTH AMERICA (BAHAMAS)	6		
OCEANIA	900		
SOUTH AMERICA, and the CARIBBEAN	1,175		

Visa Bulletin for June 2021 Number 54, Volume X, Department of State, Washington, D.C., https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2021/visa-bulletin-for-june-2021.html (last visited June 6, 2021).

54. Because the Department must schedule immigrant visa interviews for DV-2021 selectees when their visa rank number is about to be current, the Department also publishes the forthcoming months visa bulletin for DV-2021 selectees.

55. By July 2021, all Plaintiffs' visa rank numbers will be current.

56. Once Plaintiffs' visa number are about to be current the Department must schedule the selectee for a mandatory immigrant interview at a U.S. Embassy or Consulate to determine the selectee's qualifications for the diversity visa and admissibility into the United States pursuant to the laws of the United States of America.

57. At the time of the interview, the consular officer must issue or refuse the immigrant visa application.

58. If the selectee is admissible to the United States, the consular officer "shall" issue the selectee an immigrant visa and may only refuse a visa "upon a ground specifically set out in the law or implementing regulations." 22 C.F.R. § 40.6.

59. Because the diversity visa program restarts each fiscal year, diversity visas may not be issued after midnight on September 30th of the fiscal year of the selection. *See* 8 U.S.C. §§ 1153(c)(1), 1154(a)(1)(I)(ii)(II); 22 C.F.R. § 42.33(a)(1)(d); *see* also 31 U.S.C. § 1102.

60. Congress created a timetable of a calendar year to adjudicate diversity visa because Congress understood that it takes several months for individuals and the agency to work together to complete the adjudication of a diversity visa.

61. Barring an order from this Court preserving Diversity Visa numbers for Plaintiffs, in the event that Defendants' fail to properly discharge their nondiscretionary duty and issue Plaintiffs' diversity visas before September 30, 2021, Plaintiffs will forever lose their chances to immigrate. If a selectee is not issued a visa prior to midnight on September 30th of the fiscal year of the selection, the selectee cannot be issued a visa based on his or her visa selection for that fiscal year.

62. If Plaintiffs' visas are not issued before midnight on September 30, 2021, those visas cannot be issued to Plaintiffs without a court order reserving them before September 30, 2021.

II. DEFENDANTS ARE STILL APPLYING THE NO-VISA POLICY DESPITE THE RESCISSION OF PP 10014

63. Defendants and the Department are still implementing the No-Visa Policy which suspends the adjudication of 2021 Diversity Visas to a near stagnation.

64. As of May 27, 2021 Defendants have issued fewer than a 1,483 diversity visas globally.

65. This is the second year in a row that Defendants have effectively dismantled the Diversity Visa Program through the No-Visa Policy.

66. Statutory authority, regulations, past presidential proclamations, executive orders, or preexisting Department policies do not support a lawful implementation of policies, procedures, and practices of the Defendants that suspend or withhold the adjudication of Diversity Visa applications.

67. Defendants and the Department have suspended adjudication of immigrant visa applications for Plaintiffs and their derivative beneficiaries at the KCC pursuant to the Department's No-Visa Policy and/or Prioritization Scheme.

68. Defendants' policies, practices, and procedures within their application of the No-Visa Policy is arbitrary and capricious because Defendants and the Department are willing and able to adjudicate immigrant visas for other immigrant categories that have no clear deadline such as the end of the fiscal year but have unlawfully refused to adjudicate immigrant visas for FY-2021 Diversity Visa applications.

69. The KCC, under the direction of Defendant Miles, has withheld processing Diversity Visa applications for individuals pursuant to the Department's No-Visa Policy and/or Prioritization Scheme.

70. The KCC has suspended transferring documentarily complete immigrant visa applications for Plaintiffs and their derivative beneficiaries pursuant to the Department's No-Visa Policy and/or Prioritization Scheme.

71. Even though the KCC is fully staffed and able to discharge their nondiscretionary duty, Defendants have refused to properly adjudicate Plaintiffs' Diversity Visas at the KCC.

72. United States Embassies and Consulates have refused to schedule and conduct interviews for Plaintiffs pursuant to the Department's No-Visa Policy and/or Prioritization Scheme.

73. The aforementioned withholdings and delays have occurred and will continue regardless of the U.S. Embassies and Consulates' host countries' restrictions.

74. Defendants' and the Department's No-Visa Policy and Prioritization Scheme will not fulfill their legal duties to ensure the adjudications of immigrant visa applications for DV-2021 program selectees and their derivative beneficiaries before September 30, 2021 effectively foreclosing Plaintiffs from immigrating to the United States.

75. Defendants' No-Visa Policy and/or Prioritization Scheme constitutes a final agency action and is reviewable by this court under the APA. Defendants' policies, procedures, and practices have resulted in an unreasonable delay and unlawful withholding of Plaintiffs' Diversity Visas.

76. Accordingly, Plaintiffs only recourse is an order from this Court enjoining Defendants from further effectuating their unlawful policies, practices and procedures withholding the adjudication of their diversity visas.

III. PRIOR ADMINISTRATION'S ANIMUS TOWARDS THE DIVERSITY VISA PROGRAM

77. The origin of the current Administration's unlawful polices, practices, and procedures withholding the adjudication of Plaintiffs' diversity visas begins with the former administration's xenophobic attacks on the Diversity Visa Program.

78. Former President Trump's animus towards the Diversity Visa Program and immigrants was long-running and well documented.

79. The Former President had taken to Twitter at least 16 times to denigrate the Diversity Visa selectees and express his intent to end the Congressionally mandated diversity visa program.

80. The Former President also frequently unfavorably commented on the Diversity Program in the media and during public appearances.

81. Former President Trump's longstanding animus towards the Diversity Visa Program and its immigrant participants, failed efforts to garner the Congressional support to end the Diversity Visa Program.

82. Unable to end the Diversity Visa Program through Congress, the Trump Administration directed the Department to create policies, procedures, and practices that wholesale suspended the adjudication of diversity visas for the fiscal year 2020.

83. The Trump Administration's unlawful policies, procedures, and practices effectively dismantling the diversity visa program were challenged in *Gomez v. Trum*p, 485 F. Supp. 3d 145 (D.D.C. 2020).

84. The Court in *Gomez* found that the Trump Administration did not have the authority to suspend the Diversity Visa Program and coined the unlawful policy the "No-Visa Policy."

85. In *Gomez*, the Court entered a Preliminary Injunction on September 4, 2020, and because there were only 26 days before the deadline to adjudicate immigrant visas for FY-2020 Diversity Visa selectees, Defendants only issued 7,000 out of the possible 45,000 remaining FY-2020 Diversity Visa numbers allotted by Congress.

86. However, the Trump Administration continued to apply its No-Visa Policy to DV 2021 selectees, who were not parties to the *Gomez* litigation.

87. All of the challenged policies in the instant action were formulated under the direction of a White House that sought to end the Diversity Visa program and characterized diversity selectees criminals.

IV. PRESIDENTIAL PROCLAMATION 10014 AND ITS RESCISSION

88. On April 22, 2020, then President Trump issued Presidential Proclamation 10014 restricting the entry of certain aliens under 8 U.S.C. § 1182(f). 85 Fed. Reg. 23,441 (Apr. 22, 2020).

89. Presidential Proclamation 10014, which was extended by Proclamation 10052 on June 22, 2020, and again by Proclamation 10131 on December 31, 2020, rationalized the suspension of entry of diversity visa selectees on the xenophobic fallacy that immigrants would displace native workers. 85 Fed. Reg. 38,263, (June 25, 2020).

90. The suspension of entry of diversity visa applicants remained in place until its Rescission on February 24, 2021. 86 FR 11,847 (Feb. 24, 2021).

91. The lingering effects of the policies and procedures withholding and delaying adjudication of diversity visa applications continue to harm DV 2021 selectees.

92. Despite the Rescission of PP 10014, Defendants have continued to apply the No-Visa Policy, particularly the Prioritization Scheme on DV 2021 selectees.

V. DEFENDANTS' IMPLEMENTATION OF PP 10014

93. Although the text of PP 10014 and its progeny did not suspend the issuance of visas (the INA does not grant the President such power), Defendants interpreted PP 10014 to suspend

not only the entry of diversity visa selectees, but also the processing and adjudication of visa applicants subject to the proclamation.

94. Based on these interpretations, the State Department instructed the KCC and consular posts to only process, adjudicate, and issue visas to diversity visa applicants that posts believed may have met an exception to the proclamation *and* were designated as "mission critical" or "emergency". The Department implemented the PP 10014 by adopting the No-Visa Policy forbidding the processing of applications and issuance of diversity visas.

95. However, diversity visa selectees were categorically ineligible for "national interest exemptions" and categorically excluded for mission critical designations.

96. Thus, Defendants suspended the processing and issuance of Plaintiffs' visas. This policy of suspending all processing and issuance of visas to diversity visa applicants subject to PP 10014's suspension of entry pursuant to 1182(f) came to be known as "No-Visa Policy."

VI. TRUMP'S PRIORITIZATION SCHEME AND ITS ONGOING ENFORCEMENT

97. On March 20, 2020, the State Department temporarily suspended "routine ... visa services" at consular posts abroad due to COVID-19, but continued to require posts to provide "mission critical and emergency visa services."

98. Until July 15, 2020, "[p]osts [did] not have the authority to resume normal visa operations even if the host country ha[d] lifted most restrictions."

99. The Trump administration created directive entitled "Diplomacy Strong," the State Department permitted posts to "begin a phased approach to the resumption of routine visa services" beginning July 15, "based on local health and safety conditions."

100. However, diversity visa applicants were assigned the lowest priority for processing and adjudication when consulates began to reopen.

101. Under most phases of the Diplomacy Strong directive the State Department required visa applicants to be considered a "mission critical" or "emergency", but the State Department does not consider diversity visa selectees to be "mission critical" cases despite the imminent expiration of their visa eligibility.

102. More troubling, is that even when consulates were considered fully reopened and unincumbered by any COVID-19 restrictions, diversity visa applicants were still given the lowest priority and only scheduled visa appointments to prevent "complete stagnation."

103. As a result, the State Department, and the KCC completely ceased processing diversity visa applications or scheduling diversity visa interviews.

104. The current administration continues to enforce the Trump Administration's No-Visa Policy and/or Prioritization Scheme towards the processing of 2021 DVs and at many of the embassies and consulates this processing remain completely suspended.

VII. MALFEASANCE AT THE KCC

A. Lack of Processing and Refusal to Accept Documents

105. All Plaintiffs have timely submitted DS-260s, but most have yet to be instructed to provide documentation as required by Department policy.

106. Regardless, Plaintiffs have all submitted the necessary documents, some as early as September, and most are still waiting to receive confirmation of the processing of their documents, despite receiving verification from the KCC that the documents have been received.

107. This has placed Plaintiffs in an untenable position, as they have current visa numbers and have sent the required documents, while the KCC refuses to review or confirm processing, leading to a lack of interview scheduling, and ultimately a complete stagnation of their cases.

108. KCC informs selectees that they will be contacted if documents are deficient, and to contact KCC if they do not receive such an email in 6 weeks.

109. When six weeks elapse and Plaintiffs e-mail KCC to obtain confirmation, they are met with boilerplate language directing them to follow the instructions in the initial document request email.

110. This cyclical chain of events has sent DV selectees on a fruitless undertaking, wasting valuable time.

111. KCC emails Plaintiffs requesting documentation, which is promptly submitted, and then Plaintiffs receive an auto-reply receipt.

112. After receiving neither a DQ email, nor any email regarding deficiencies, Plaintiffs have contacted KCC, only to have their inquiry ignored and was instead directed to follow the instructions in the [previous] email.

113. After waiting weeks or months, Plaintiffs have inquired with KCC yet again and received a verbatim response directing them to "follow the instructions in the email."

114. When Plaintiffs follow up again, they receive an automated receipt email instructing them to follow up after 6 weeks, thereby repeating the same cycle.

115. To the extent that Defendants argue capacity limitations, Defendants have created their alleged lack of capacity.

116. Defendants have directed a phase-out of day-to-day adjudication of Diversity Visas to varying degrees, reduced funding for consular officers, and consistently understaffed embassies and consulates, preventing them from reaching full capacity for DV adjudications.

117. Absent an order from this Court, Defendants will not discharge their non-discretionary duty and process Plaintiffs' diversity visa applications before the deadline of September 30, 2021.

B. Conflicting and Contradictory Information

118. Plaintiffs are left mystified, as they are being offered inconsistent and ambiguous information.

119. The first communication Defendants send diversity visa selectees informs them that their cases will not be scheduled for an interview until a visa number is available and all required documentation and DS-260s are submitted.

120. The message informs selectees: "You will receive document submission instructions by email after KCC processes and accepts the DS-260 application forms for you and any accompanying family members."

121. The Department's website reiterates the same, emphasizing that selectees "*should complete these steps as soon as possible.*" *See* www.Dvselectee.state.gov (last visited June 6, 2021).

122. Plaintiffs that have received this email are instructed to "send documents only to the kccdvdocuments@state.gov email address." Upon document submission, selectees receive an auto-reply that states, the Kentucky Consular Center (KCC) has received your email and is currently processing your documents. […]You should expect an email from KCC in the next 3-6 weeks. If you do not hear from KCC after 6 weeks, please

contact KCCDV@state.gov to confirm all of your documents have been received, and you are ready to be scheduled for an interview."

123. Many DV-2021 selectees, including Plaintiffs in this case and their counsel, have emailed kccdvdocuments@state.gov and received a bounce-back email that indicates, "Delivery has failed to these recipients or groups: kccdvdocuments@state.gov. The recipient's mailbox is full and can't accept messages now. Please try resending your message later, or contact the recipient directly."

124. This "mailbox is full" phenomena has taken place as recently as May 28, 2021, weeks after Defendants and their counsel were made aware of the problem in other litigation. Beside the bounce-back email, Defendant Morgan Miles, who manages KCC, has made no attempt to alert DV-2021 selectees who submitted their documents that those documents may have not been received.

125. After waiting the requisite 6 weeks, Plaintiffs have contacted KCCDV@state.gov only to receive a generic response stating, "Your DS-260 has been processed. You should have received, or will soon receive, an email from the [KCC] giving you instructions to complete in order for your case to continue processing. Please follow the instructions in the email."

126. But Plaintiffs *have* followed the instructions in the referenced email, and waited the requisite 6 weeks, just to receive a mechanical response repeating that they are to follow the instructions.

127. Next, selectees are told, "[i]nterviews are scheduled numerically based on case numbers that have completed processing. Please refer to the visa bulletin [...] to locate the current numbers being processed."

128. The automated document receipt email similarly informs Plaintiffs that "[d]ocuments are processed in numerical order, based on lottery rank number.

129. Once KCC has processed your documents, we will let you know if anything is missing or if we have received everything needed."

C. Failure to Schedule Interviews

130. From October 1, 2020 through at least February 24, 2021, KCC failed to send any diversity visa scheduling information to consular posts.

131. Astonishingly, KCC also failed to respond to consular posts that were contacting KCC directly about diversity visa appointments during this time period.

132. KCC also admits that they fail to abide by the Department's own policies to schedule diversity visa applicants when they are documentarily qualified and about to be current, but has adopted an independent, unpublished practice for the scheduling of interviews for diversity visa applicants.

VIII. PURPORTED OPERATIONAL CAPACITY RESTRICTOINS

133. Defendants have argued that their capacity has been significantly reduced and they are therefore unable to adjudicate Plaintiffs' DV applications in a reasonable time.

134. Nevertheless, when the Defendants' visa issuance statistics are scrutinized, this argument does not hold water.

135. The adjudication of immediate relative visas for spouses and minor children of United States citizens has not been affected by Defendants' unlawful No-Visa Policy and the Prioritization Scheme.

136. The visa category for spouses and minor children of U.S citizens is identified by the acronym IR-1 and IR-2.

137. In *Gomez,* the Court found that the IR-1 and IR-2 visa categories represented a snapshot of the realities of COVID-19 impediments on the capacity of Defendants' ability to adjudicate visa applications when free from the incumbencies of the Defendants' "No-Visa" Policies. *Gomez III* at 289.

138. The *Gomez* Court also found that the comparative pace of adjudications of diversity visas should keep pace with IR-1 and IR-2 adjudications. *Id*. at 289.

139. Hereafter, this comparison is referred to as the *Gomez* Equation.

A. Comparison with IR-1/2 Visa Adjudications

140. From October 1, 2020 to April 30, 2021, Defendants adjudicated 55,425 IR-1 and IR-2 visas or an average of 7,918 per month.

141. In 2019, before COVID-19 presented any operational impediment, Defendants issued an average of 7,605 IR-1 and IR-2 visas per month.

142. This represents an increase of 4% for IR-1 and IR-2 visa categories.

143. Stated differently, Defendants adjudicated more visas for IR-1 and IR-2 visa categories over the last 7 months when compared to the average number of IR-1 and IR-2 visas issued per month in 2019.

B. Comparison of Diversity Visas Adjudications

144. Between 1998 and 2016, the State Department issued an average of 47,404 DVs per year.

145. Over the course of that period, Defendants issued an average of 3,905 DVs per month. From October 1, 2020 (the first day of the fiscal year 2021) and April 30, 2021 (the last day of publicly published visa issuance statistics) Defendants issued *only* 554 diversity visas.

146. By comparison, Defendants adjudicated an average of 30, 910 visas over the same period between 1998 and 2016.

147. This marks a 98% decline in DV issuances when compared to pre-COVID-19 adjudications.

148. Pursuant to the Gomez Equation, even within the Pandemic, Defendants should have issued at least 22,000 diversity visas by this time.

C. Pace of Adjudications at "Diversity Visa Embassies"

149. When the adjudication of diversity visas and IR 1/2 visas are examined for the 30 posts responsible for the processing of the majority of the diversity visas applications worldwide, the *ongoing* withholding of adjudications pursuant to the No-Visa Policy, and its continually enforced Prioritization Scheme and mission critical designation requirements is crystalized.

150. Defendants issued no diversity visas, at any posts, worldwide, from October 1, 2021 to March 1, 2021.

151. When the visa issuance statistics for diversity visas and IR1/2 visas for April 2019 are compared to the statistics for April 2021 at 29 of the 30 consular posts, Defendants' arguments of operational capacity limitation are disproven.

152. Overall, Defendants increased the adjudicatory capacity for IR 1/2 visa by 22% while decreasing the adjudicatory capacity for diversity visas by 89%.

153. Furthermore, 14 of the 29 embassies had increases in IR1/2 adjudications of over 100%.

154. At 13 of the 30 consular posts, defendants have failed to issue a single diversity visa through April 30, 2021. An additional 9 of the 30 issued less than 10 visas.

IX. DEFENDANTS' PRIORITIZATION SCHEME VIOLATES THE INA AND APA

155. The policies implemented pursuant to Presidential Proclamation 10014, specifically "mission critical/emergency" designation requirements for adjudication and tiered prioritization scheme, remains *in place*.

156. The Diplomacy Strong framework, its Prioritization Scheme, and PP 10014 remain inextricably linked.

157. At all times, the Scheme is guided by PP 10014 and its purpose to revise and limit immigration to the United States without the requisite legislation.

158. In support of its response to Defendants' explanation, Plaintiffs have attached certified administrative record for the Department's prioritization scheme.

159. To the extent that Defendants have argued that these policies are lawful in their explanation, the Court should give those arguments no weight given the limitation placed on Plaintiffs to respond to those arguments.

A. Formulation of Diplomacy Strong and the Tiered Prioritization Scheme

160. On April 28, 2020, six days after PP 10014 went into effect, the Department began formulating the implementation of a tiered prioritization scheme.

161. The guidance stated that the Department had assembled a "working group to plan for the eventual resumption of consular services and to coordinate guidance to posts."

162. The guidance expressly forbade the adjudication of **"immigrant visas (IV) [] suspended by Presidential Proclamation [10014]."**

163. On May 1, 2020, under guidance from the Trump White House, the Department's "Under-Secretary for Management approved and released the Diplomacy Strong Framework ("Diplomacy Strong"), which is the DOS's phased approach for resuming in-person operations."

B. Diplomacy Strong and the Tiered Prioritization Scheme

164. Shortly after the extension of PP 10014, the Department issued its tiered prioritization scheme, entitled "Guidance on the Phased Resumption of Routine Visa Services."

165. The cable provides guidance to the field to inform post decision which visa services they choose to resume during each phase of Diplomacy Strong.

166. The guidance states that consular "posts must adhere to the restrictions laid out in any current or subsequent, Presidential Proclamation" including "P.P. 10014."

167. Diplomacy Strong set forth a four-stage approach to the resumption of visa services (Phases 0 to 3).

168. In each phase, PP 10014 guides the resumption of immigrant visa adjudication.

169. In Phase Zero and One, the Department states that "[s]ince Presidential Proclamation (P.P. 10014) suspending issuance of certain [categories of visa] have been extended through at least December 31, posts should prioritize the cases that may fall under an exception to P.P. 10014."

170. Only spouses and minor children of United States were excepted under PP 10014. 85 FR 23441 (April 22, 2020).

171. Under Phase Two, the State Department instructed posts "to plan two months in advance to allow NVC to schedule cases…taking the IV prioritization guidelines set forth in this cable."

172. Posts were further instructed that "IRs excepted under P.P. 10014 should be prioritized over most other IV categories."

173. During Phase Three, posts were instructed to "resume routine services for all IV classes and cases excepted under P.P. 10014."

174. Only visas for spouses and minor children of United States citizens were excepted under PP 10014.

175. Because PP 10014 guided the resumption of services, applicants who were not spouses or minor children of United States citizens were relegated to the lowest tier.

176. These immigrant visa categories were only scheduled **"each month to prevent complete stagnation"** – likely to avoid judicial scrutiny.

177. On November 12, 2020, the Department issued an "Expanded Guidance on Prioritization for the Phased Resumption of Routine Visa Services."

178. The guidance states that "while posts are no longer obligated to be in a specific Diplomacy Strong phase to adjudicate a particular visa class, "the Diplomacy Strong framework provides important context and structure."

179. The expanded guidelines continued to instruct consular posts "prioritize services for applicants not subject to or excepted from these Presidential Proclamations."

180. In the guidance's action memo by then-Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs Edward Ramotowski, the guidance was described as the Department "expand[ing] its guidance to explain further how services should be prioritized and give posts more flexibility to provide routine services."

181. A statement attached to the action memo specified that "posts are directed to deprioritize categories of applicants who appear to be ineligible for visas, such as categories of applicants covered by Presidential Proclamations."

C. Rescission of PP 10014

182. In anticipation of the expiration of PP 10014, the Department stated that it would "resume the normal scheduling processes of all immigrant visa (IV) and diversity visa (DV) classifications, for appointment starting April 2021."

183. However, the prioritization guidance remains in effect. Despite the Rescission, the prioritization guidance remains unchanged and guided by the consideration and purposes of PP 10014.

D. PP 10014, the Diplomacy Strong Framework, and its Prioritization Scheme Are Inextricably Linked

184. The administrative record of the formulation, implementation, and expansion of the Defendants' Prioritization Scheme makes clear that the decisions to relegate Family Preference and Diversity Visas to the lowest tiers was always shaped by the suspension of entry pursuant PP 10014 and its No-Visa Policy.

185. The Proclamation and its true underlying rational, the restructuring of the INA, provides the foundation and commands Defendants' Prioritization Scheme and Diplomacy Strong.

E. The Certified Administrative Record

186. While PP 10014 and its objectives are consistently considered in the formulation of the tiered approach, the Prioritization Scheme's administrative record fails to offer a rational explanation for the policy, fails to account for matters of important to the INA or the dire consequences to Diversity Visa and Family Preference applicants.

187. *First*, there is no rational explanation for prioritizing the reunification of immediate relatives over other family members.

188. This is a direct contradiction to the highly meticulous numerical visa allocations implemented by law.

189. *Second*, the INA places no more importance of one visa category over another beyond the numerical limitations themselves.

190. *Third*, the administrative record does not account for the loss of eligibility for diversity visa applicants and the loss of allocated visas for Family Preference categories at the end of the fiscal year creating years longer wait times for family reunification.

191. The INA specifically states that 226,000 family preference visas and 55,000 diversity visas must be allocated irrespective of the number of immediate relative visas.

192. The tiered approach upends this Congressional mandate.

193. Defendants argue that IR-1 and IR-2 visas are adjudicated above other immigrant visas because Congress stated that these visas "shall be adjudicated within 30 days of receipt of all necessary documents from the applicant." *See* Section 233 of Pub. L. 107-228.

194. Section 233 of Public Law 107-228 also mandates the Department to schedule family preferences visa applicants withing 60 days of being current." *Id.*

195. However, Defendants are not processing family preference visa applicants within 60 days of being current.

196. In fact, Defendants have places family preference visa applicants in tier three of the Prioritization Scheme.

197. For Diversity Visas, the INA is clear that they must be adjudicated before September 30th of each fiscal year. Given that Diversity Visas have a strict deadline from Congress, Defendants should prioritize the adjudication of Diversity Visas.

198. In reality, Defendants are not following the will of Congress with respect to their Prioritization Scheme for adjudicating immigrant visas.

199. Defendants appear to follow the will on Congress when it serves their needs, i.e., with respect to adjudication of IR-1 and IR-2 visas, but blatantly ignore the will of Congress with respect to family preference visas and diversity visas.

F. Continued effect of the Diplomacy Strong framework and its adherence to the purpose of PP 10014

200. The adherence to PP 10014 in the formulation, implementation, and expansion of the prioritization scheme and its intended revisions of the INA is crystalized when comparing visa issuance statistics.

201. Today, Immediate Relatives enjoy nominal changes in the issuances of visas while the prioritization scheme drastically cuts the issuances of visas to family preference and diversity visa applicants.

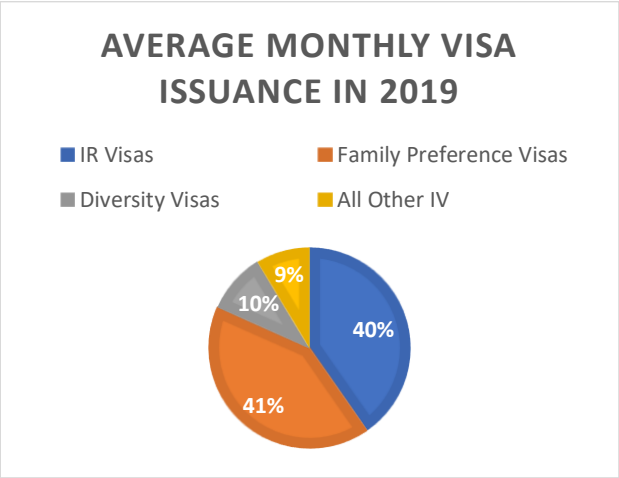
April Issuance for IR Visas	Average Monthly Issuance for IR Visas in 2019	Change
14,815 Issuances	15,549 Issuances	5% Decrease

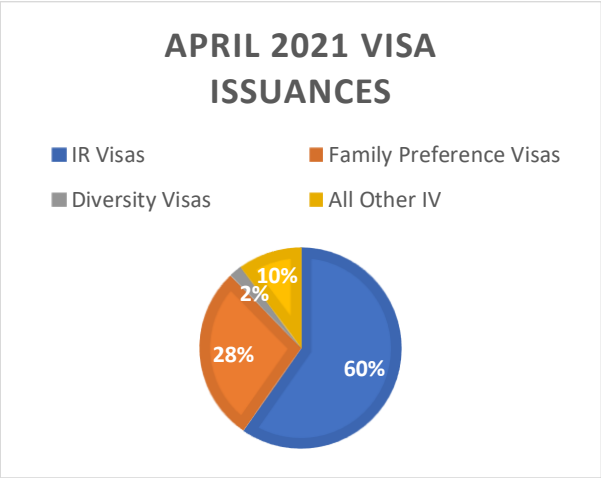
April Issuance for All Family Preference Visa Categories	Average Monthly Issuance for Family Preference Visa Categories in 2019	Change
6,985 Issuances	15,912 Issuances	56% Decrease

April Issuances for Diversity Visas	Average Monthly Diversity Visa Issuances in 2019	Change
534 Issuances	3740 Issuances	86% Decrease

202. The tiered Prioritization Scheme dramatically changes the percentage of immigrant visas issued to family preference and diversity visa categories.

203. Immediate Relatives have enjoyed a 50% increase in their share of visa issuances in April 2021 when compared to April 2019, while family preference and diversity visa have been reduced by 32% and 80%, respectively.





204. Defendants delay in processing of DVs by their further implementation of an arbitrary Prioritization Scheme that ignores the will of Congress and prioritizes the adjudication of all other visa categories over the processing of DV applications.

205. In *Gomez v. Trump*, 485 F. Supp. 3d 145, 197 (D.D.C. 2020), the Court held that there is no "statutory authority that sets the processing of [] other visa categories as a more important priority than DV applications that will expire [on September 30]").

206. In *Gomez III*, the Court recognized the operational restrictions but balanced those with the capacity demonstrated in prioritized visa categories. *Gomez v. Trump*, 490 F. Supp. 3d 276 (D.D.C. 2020) (*Gomez III*) (finding that reduction in visas for IR-1 and IR-2 visas should be proportional to the reduction in DVs to determine a reasonable pace of adjudication of DVs)

207. Under the *Gomez* Equation, Defendants should have issued 20,306 DVs as of March 30, 2021. Defendants have issued 20 by March 30, 2021 —a 99.9% reduction in issuances.

208. This extraordinary reduction in adjudication is a direct result of the challenged No-Visa Policy and/or Prioritization Scheme.

209. Much like the *Gomez* Court found that Defendants' Prioritization Scheme was arbitrary, capricious, and not in accordance with law for DV 2020 selectees, this Court should find Defendants' Prioritization Scheme is a violation of the APA for DV 2021 selectees.

X. DEFENDANTS REFUSED TO ADJUDICATE DIVERSITY VISAS BY IMPROPERLY RELYING ON INA § 212(f) FOR THE FIRST FIVE MONTHS OF THE 2021 FISCAL YEAR

210. Section 212(f) of the INA reads, in relevant part, as follows: "Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate."

211. There is no language in Section 212(f) that gives the President the authority to suspend the adjudication of visas. Moreover, while previous presidents have relied on Section 212(f) to preclude the entry of certain immigrants, there is no precedent that Section 212(f) was utilized to prevent the adjudication of visas.

212. Several federal courts have found that the President does not have authority under INA § 212(f) to suspend the adjudication of immigrant visas. *See Gomez v. Trump*, 490 F. Supp.

3d 276 (D.D.C. 2020); *Young v. Trump*, No. 20-cv-07183-EMC (N.D. Cal. Dec. 11, 2020); *Tate v. Pompeo*, No. 20-cv-032249-BAH (D.D.C. Jan. 16, 2021); *Milligan v. Pompeo*, No. 20-cv-02631-JEB (Jan. 20, 2021).

213. Similar to *Gomez*, *Young*, *Tate*, and *Milligan*, this case is about the adjudication of visa applications and not about entry of immigrants into the United States.

214. Congress, through its plenary power to control immigration to the United States, has charged the Secretary of State with the adjudication of visa applications. INA § 104(a) states: the Secretary of State shall be charged with the administration and the enforcement of the provisions of this Act and all other immigration and nationality laws relating to (1) the powers, duties, and functions conferred upon the consular officers relating to the granting or refusal of visas… He shall establish such regulations[,]….[and] issue such instructions; and perform such other acts as he deems necessary for carrying out such provisions.

215. In suspending adjudication of FY-2021 Diversity Visas, the Secretary of State attempted to cloaked the unlawful policies suspending the adjudications and withholding of issuance of DVs in its implementation of proclamations to shield them from APA review.

216. In a declaration dated February 8, 2021, Edward J. Ramotowski, then-Deputy Assistant Secretary for Visa Services, Bureau of Consular Affairs, defended the State Department's policy to implement an entry ban under the authority of 8 USC § 1182(f) as an issuance ban.

217. Ramotowski represented that this was "longstanding practice." In fact, this interpretation and practice was first implemented under the Trump Administration in 2017.

218. However, because those policies regarding the adjudication and issuance of visas are not committed to the discretion of the President under INA § 212(f) but rather the Secretary under INA § 104(a), this Court reviewed DOS's policies suspending the adjudication and issuance of DVs under the APA. *Gomez v. Trump*, 490 F. Supp. 3d 276 (D.D.C. 2020); *see also Detroit Int'l Bridge Co. v. Gov't of Canada*,189 F. Supp. 3d 85, 100 (D.D.C. 2016) (holding ministerial executive action is reviewable under the APA).

219. Accordingly, Defendants' No-Visa Policy and/or Prioritization Scheme towards adjudication of diversity visas are reviewable under the APA because the agency is violating the INA and federal regulations by withholding adjudication of FY 2021 Diversity Visas for the first half of the fiscal year.

CAUSES OF ACTION

A. COUNT ONE: Defendants' No-Visa Policy is Contrary to APA § 706(2)

220. Plaintiffs incorporate and re-allege the foregoing paragraphs as though fully set forth herein.

221. Defendants arbitrarily and capriciously created a No-Visa Policy with no sensible, reasoned, or rational explanation that fails to consider reliance interests or any of the other serious consequences flowing from their unlawful policy.

222. Agency action that "stands on a faulty legal premise and [lacks] adequate rationale" is arbitrary and capricious. *Prill v. NLRB*, 755 F.2d 941, 948 (D.C. Cir. 1985); *see also SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943) ("[A]n order may not stand if the agency has misconceived the law.").

223. Defendants' No-Visa Policy as applied against DV 2020 selectees was found to be arbitrary, capricious, and not in accordance with law in *Gomez v. Trump*, 490 F. Supp. 3d 276 (D.D.C. 2020).

224. Yet, Defendants have continued implementing the unlawful No-Visa Policy towards DV 2021 selectees.

225. Defendants' unlawful policies, procedures, and practices are further evinced by the fact that Department is processing immigrant visas for other immigrant categories.

226. Given that diversity visas must be adjudicated by September 30, 2021, it is unfathomable how Defendants could make the determination that the adjudication of diversity visas is not critical.

227. The No-Visa Policy does not dictate Defendants to suspend issuance of diversity visas.

228. However, Defendants in the first six months of the fiscal year for DV 2021 Program, Defendants issued 20 diversity visas out of a possible 55,000.

229. Defendants' failure to make the basic distinction between visa issuance and entry determinations "runs throughout the INA." *Hawaii v. Trump*, 138 S. Ct. at 2414 & n.3.

230. Defendants improperly relied on Section 1182(a) of the INA to enforce the No-Visa policy against Diversity visas.

231. Section 1182(a) governs ineligibility to receive a visa and it does not provide the President or State Department or any subordinate thereof to add, subtract, or otherwise modify any of the categories listed in that Section constituting grounds for denying a visa.

232. Since the Rescission of PP 10014, Defendants have continued to implement the No Visa Policy, particularly Diplomacy Strong, Mission Critical, and the Prioritization Scheme to

refuse to properly and fully adjudicate Diversity Visas for Plaintiffs and similarly situated individuals.

233. Defendants are required to schedule immigrant visa interviews for DV applicants before they are current. 9 FAM 502.6-4(d)(2).

234. This Department policy is enforceable pursuant to the *Accardi* Doctrine. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

235. Rather than follow the stated policies and procedures for adjudicating diversity visas, Defendants have failed to take meaningful steps to remedy the six-month cessation of adjudication of Plaintiffs' diversity visas.

236. Defendants' No-Visa Policy constitutes a final agency action and is reviewable by this court under the APA.

237. Accordingly, Plaintiffs were harmed and will suffer irreparable harm by these unlawful acts absent an order enjoining Defendants' implementation of the No-Visa Policy.

238. Plaintiffs will suffer irreparable harm if Defendants are not mandated to take positive steps to remedy the six-month cessation of adjudication of Plaintiffs' diversity visas.

B. COUNT TWO: Defendants' Tiered Prioritization Scheme is Contrary to APA § 706(2) and the INA

239. Plaintiffs incorporate and re-allege the foregoing paragraphs as though fully set forth herein.

240. Defendants arbitrarily and capriciously created the Prioritization Scheme with no sensible, reasoned, or rational explanation that fails to consider reliance interests or any of the other serious consequences flowing from their unlawful policy.

241. Agency action that "stands on a faulty legal premise and [lacks] adequate rationale" is arbitrary and capricious. *Prill v. NLRB*, 755 F.2d 941, 948 (D.C. Cir. 1985); *see also SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943) ("[A]n order may not stand if the agency has misconceived the law.").

242. On April 28, 2020, six days after PP 10014 went into effect, the Department began formulating the implementation of a tiered prioritization scheme.

243. In *Gomez III*, the Court found that the prioritization scheme in place under the No-Visa policy did not give the Department the authority to refuse to adjudicate Diversity Visas. *Gomez v. Trump*, 490 F. Supp. 3d 276 (D.D.C. 2020) (*Gomez III*) (finding that reduction in visas for IR-1 and IR-2 visas should be proportional to the reduction in DVs to determine a reasonable pace of adjudication of DVs).

244. Despite the *Gomez* Court finding that Defendants' Prioritization Scheme was a not a lawful basis to suspend adjudication of diversity visas for DV2020 selectees, Defendants' have continued to apply the Prioritization Scheme towards DV 2021 selectees.

245. On November 12, 2020, the Department issued an "Expanded Guidance on Prioritization for the Phased Resumption of Routine Visa Services."

246. The guidance states that "while posts are no longer obligated to be in a specific Diplomacy Strong phase to adjudicate a particular visa class, "the Diplomacy Strong framework provides important context and structure."

247. The expanded guidelines continued to instruct consular posts "prioritize services for applicants not subject to or excepted from these Presidential Proclamations."

248. Since the Rescission of PP 10014, Defendants have continued to apply the Prioritization Scheme towards the adjudication of diversity visas.

249. Defendants' unlawful policies, procedures, and practices are further evinced by the fact that Department is processing immigrant visas for other immigrant categories.

250. Defendants have disproportionately adjudicated immigrant visas for immediate relatives and deprioritized the adjudication of diversity visas.

251. Immediate Relatives have enjoyed a 50% increase in their share of visa issuances in April 2021 when compared to April 2019, while family preference and diversity visa have been reduced by 32% and 80%, respectively.

252. Congress set a one-year time table for the adjudication of Diversity Visas because it takes the Department on year to properly adjudicate 55,000 visas.

253. Pursuant to the *Accardi* Doctrine, Defendants must discharge the nondiscretionary duty and fulfill the will of Congress by properly and fully adjudicating Plaintiffs' diversity visas.

254. Given that diversity visas must be adjudicated by September 30, 2021, it is unfathomable how Defendants could place the adjudication of diversity visas in the lowest priority – tier four.

255. Defendants tiered Prioritization Scheme is not in the INA or federal regulations. It is a policy that Defendants created under the No-Visa Policy pursuant to PP 10014 and have continued its implementation.

256. Accordingly, Plaintiffs were harmed and will suffer irreparable harm by these unlawful acts absent an order enjoining Defendants' implementation of the Prioritization Scheme.

257. Plaintiffs will suffer irreparable harm if Defendants are not mandated to take prioritize the adjudication of Diversity Visas before the end of the fiscal year on September 30, 2021.

C. COUNT THREE: Agency Action Without Observance of Procedure Required by Law in Violation of 5 U.S.C. § 706(2)(D)

258. Plaintiffs incorporate and re-allege the foregoing paragraphs as though fully set forth herein.

259. The APA requires administrative agencies to follow notice-and-comment rulemaking procedures to promulgate substantive rules. 5 U.S.C. § 553.

260. The Administrative Procedures Act defines "rule" broadly to include "the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages . . ." 5 U.S.C. § 551(4).

261. Defendants' unlawful policies, practices and procedures to suspend adjudication Plaintiffs' Diversity Visas is legislative, not interpretive, because it changed the law.

262. The No-Visa Policy suspended processing and issuance of Plaintiffs' visas and the Prioritization Scheme continues to delay processing of diversity visas for Plaintiffs. *See Nat'l Res. Def. Council v. EPA*, 643 F.3d 311, 320 (D.C. Cir. 2011); *Ciox Health, LLC v. Azar*, 435 F. Supp. 3d 30, 66 (D.D.C. 2020).

263. The Department promulgated and relied upon the policies, procedures, and practices suspending adjudication and issuance Plaintiffs' Diversity Visas without authority and without notice-and-comment rulemaking. It is therefore unlawful.

264. The Department's No-Visa Policy and Prioritization Scheme withholds and delays adjudication and issuance of immigrant visas for Plaintiffs and their derivative

beneficiaries constitutes a substantive rule subject to the APA's notice-and-comment requirements.

265. The Department's No-Visa Policy and Prioritization Scheme withholds and delays the adjudication and issuance of immigrant visas for Plaintiffs and their derivative beneficiaries constitute a substantive rule because it affirmatively circumscribes the Department's Congressional mandate and nondiscretionary duty to properly adjudicate and issue decisions for immigrant visas.

266. The Department's No-Visa Policy and Prioritization Scheme withholds and delays the adjudication of immigrant visas for Plaintiffs and their derivative beneficiaries constitute a substantive rule because it is a categorical rule, which applies to all Diversity Visa applicants.

267. In implementing the Department's No-Visa Policy and Prioritization Scheme which withholds and delays the adjudication of immigrant visas for Plaintiffs and their derivative beneficiaries, Defendant impermissibly announced a new rule without undertaking notice-and-comment rulemaking.

268. An agency that seeks to make a rule must publish an "Advance Notice of Proposed Rulemaking" in the Federal Register. The Advance Notice is a formal invitation to participate in shaping the proposed rule and commences the notice-and-comment process.

269. Interested parties may respond to the Advance Notice by submitting comments aimed at developing and improving the draft proposal or by recommending against issuing rule.

270. As of the filing of this Complaint, no procedures or responsibilities have been published in the Federal Register with regard to Defendants new rules of suspending adjudication of the DV Program.

271. The Plaintiffs were harmed and will suffer irreparable harm by these unlawful acts absent an order enjoining Defendants' unlawful policies, practices, and procedures.

D. COUNT FOUR: Violation of the Administrative Procedures Act, 5 U.S.C. § 706(2)— in Withholding of Plaintiffs' Diversity Visa Applications

272. Plaintiffs incorporate and re-allege the foregoing paragraphs as though fully set forth herein.

273. Department is an agency subject to the requirements of the Administrative Procedure Act 5 U.S.C. § 701(b)(1).

274. Under 5 U.S.C. § 706(2), courts shall hold unlawful and set aside agency action that is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations; or without observance of procedure required by law.

275. The implementation of the Department's No-Visa Policy and Prioritization Scheme withholding and delaying the adjudication and issuance of Plaintiffs' and their derivative beneficiaries Diversity Visas constitutes a final agency action that is reviewable by this Court. *Whitman*, 531 U.S. at 478; *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997).

276. The legal consequences flowing from the consummation of the State Department's decision-making process in this case are the Defendants' withholding and delay in processing Plaintiffs' diversity visas. *Bennett*, 520 U.S. 154; *Cal. Cmtys. Against Toxics v. EPA*, 934 F.3d 627, 637 (D.C. Cir. 2019); *Appalachian Power Co. v. EPA*, 208 F.3d 1015, 1023 (D.C. Cir. 2000); *Ciba-Geigy Corp. v. EPA*, 801 F.2d 430, 438 (D.C. Cir. 1986).

277. Defendants' No-Visa Policy and Prioritization Scheme withholds and delays the adjudication of Plaintiffs' diversity visas and constitutes final agency action because Defendants' policies indefinitely end Plaintiffs' diversity visa applications beyond the statutory deadline.

278. **As of today, it has been eight months since the start of FY 2021 Diversity Visa Program and Defendants have issued less than 1,500 diversity visas.**

279. **Pursuant to the *Gomez Equation*, Defendants should have issued at least 22,000 diversity visas at this point.**

280. Defendants' policies, procedures, and practices suspending the adjudication of immigrant visas for Plaintiffs and their derivative beneficiaries are arbitrary and capricious, an abuse of discretion, and not in accordance with law because the Defendants lacked the statutory authority to unilaterally withhold and delay the adjudications of immigrant visas for Plaintiffs and their derivative beneficiaries.

281. The No-Visa Policy and Prioritization Scheme withholding and delaying the adjudication of immigrant visas for Plaintiffs and their derivative beneficiaries strips the Congressionally mandated entitlements of DV-2021 program selectees and their derivative beneficiaries and it does so by rewriting the immigration laws and contradicting the priorities adopted by Congress.

282. Defendants' inaction, in this case, creates jurisdiction. *Moghaddam v. Pompeo*, 424 F. Supp. 3d 103, 114 (D.D.C. 2020) (quoting *Patel v. Reno*, 134 F.3d 929, 931–32 (9th Cir. 1997)); *see also Nine Iraqi Allies Under Serious Threat Because of Their Faithful Serv. to the United States v. Kerry* ("*Nine Iraqi Allies*"), 168 F. Supp. 3d 268, 290–91 (D.D.C. 2016) ("When the Government simply declines to provide a decision in the manner

provided by Congress, it is not exercising its prerogative to grant or deny applications but failing to act at all.").

283. Plaintiffs are harmed and will continued to be irreparably harmed by these unlawful acts absent an injunction from this Court enjoining Defendants from withholding adjudication of Plaintiffs' diversity visas.

E. COUNT FIVE: Defendants Policies, Practices, and Procedures are a Violation of 5 U.S.C. § 555(b) Because Defendants have Unreasonably Delayed Adjudication of Plaintiffs' Diversity Visas

284. Plaintiffs incorporate and re-allege the foregoing paragraphs as though fully set forth herein.

285. Pursuant to the APA, the Defendants have a nondiscretionary duty "to conclude a matter presented to it" "within a reasonable time." 5 U.S.C. § 555(b).

286. Plaintiffs' claims arise in the context of the concrete statutory deadline for visa issuance, which "provides a clear 'indication of the speed with which [Congress] expects the agency to proceed in' processing diversity lottery selectees' visa applications." *Gomez I*, 485 F. Supp. 3d at 196 (quoting *Telecomms. Research & Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984) (TRAC), and citing 8 U.S.C. § 1154(a)(1)(I)(ii)(II)).

287. Plaintiffs' claims also implicate the statutory mandates that "[a]ll immigrant visa applications shall be reviewed and adjudicated by a consular officer," 8 U.S.C. § 1202(b) (emphases added).

288. Separately and in combination, the INA and the APA required Defendants to make good-faith efforts to process as many DV-2021 visas as s practicable before the deadline. *See Gomez I*, 485 F. Supp. 3d at 196, 198 n.23.

289. Defendants have unreasonably delayed processing Plaintiffs' visa applications under *Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 79 (D.C. Cir. 1984) ("*TRAC*"):

> (1) The time agencies take to make decision must be governed by a rule of reason; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason; (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake; (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority; (5) the court should also take into account the nature and extent of the interests prejudiced by delay; and (6) the court need not find any impropriety lurking behind agency lassitude in order to hold the agency action is "unreasonably delayed."

In re: United Mine Workers of Am. Int'l Union, 190 F.3d 545, 549 (D.C. Cir. 1999) (quoting *TRAC*, 750 F.2d at 80).

290. The INA provides a clear "indication of the speed with which it expects the agency to proceed in" processing diversity lottery selectees' visa applications—that is, "only through the end of the specified fiscal year for which they were selected." 8 U.S.C. § 1154(a)(1)(I)(ii)(II); *TRAC*, 750 F.2d at 80.

291. The indication of speed present in 8 U.S.C. § 1154(a)(1)(I)(ii)(II) clearly correlates with the second *TRAC* factor in establishing a September 30 deadline; moreover, "reasonable time for agency action is typically counted in weeks or months, not years." *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004).

292. Plaintiffs' human welfare is "at stake" in this case and prejudice from delay here is unconscionable and irreversible—if Defendants' neglect adjudication of Plaintiffs' visa applications, Plaintiffs will intolerably, permanently lose their opportunity to immigrate to the United States. *TRAC*, 750 F.2d at 80.

293. Defendants, although neglecting Plaintiffs' visa adjudications, have admittedly continued to process immigrant visas for other categories.

294. Defendants have proportionally increased the adjudication of immigrant visas for Immediate Relatives while decreasing the adjudication of diversity visas.

295. Defendants' blatant disregard for the time sensitive nature of the Diversity Visa Lottery ultimately shows—although not needed to satisfy the *TRAC* analysis—that Defendants act with impropriety in creating "agency lassitude." *TRAC*, 750 F.2d at 80.

296. The Department has failed to adjudicate immigrant visas for Plaintiffs and their derivative beneficiaries within a reasonable time.

297. It has been eight months since the FY-2021 Diversity Visa Program commenced and Defendants have only issued 1,483 diversity visa applications.

298. The Department implemented its unlawful policies, procedures, and practices suspending adjudication of Plaintiffs' diversity visas since at least October 1, 2020.

299. In order to fully process a diversity visa application, the Department needs several months to review the applications and supporting documents, direct the applicants to submit medical exams, police clearances and other pertinent documents. Thereafter, the Department needs time to schedule the diversity visa applicant for an interview and ultimately adjudicate the immigrant visa.

300. Defendants have already lost eight months of critical time by refusing to adjudicate Plaintiffs' diversity visas.

301. Absent an injunction from this Court, Defendants will undoubtedly not be able to adjudicate Plaintiffs Diversity Visas before the deadline of September 30, 2021.

302. The Department's policies, procedures, and practices suspending adjudications and issuance of immigrant visas for Plaintiffs and their derivative beneficiaries is a final agency action. It is the consummation of the Department's agency on this matter.

303. The Department has nothing further to do to issue directions to its employees at the KCC or its consular officers at US Embassies and Consulates around the world regarding withholding and delaying adjudications of immigrant visas for Plaintiffs and their derivative beneficiaries.

304. The Department's policies, procedures, and practices suspending the adjudications for and issuance of immigrant visas for Plaintiffs and their derivative beneficiaries have legal consequences.

305. The Department will continue to refuse to adjudicate and issue immigrant visas for Plaintiffs and their derivative beneficiaries through September 30, 2021, effectively ending their opportunity to immigrate to the United States.

306. The Department's policies, procedures, and practices directing employees at the KCC and the US Embassies and Consulates around the world to refuse to adjudicate diversity visas is not authorized by any governing law, and are arbitrary, capricious, an abuse of discretion, and in violation of law.

307. Defendant administers the Department's policies, procedures, and practices suspending and withholding the adjudication of Plaintiffs' Diversity Visa applications.

308. Pursuant to the APA, a court may compel agency action "unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

309. Plaintiffs were harmed and will to suffer irreparable harm by these unlawful acts.

F. COUNT SIX: Defendants Actions are Violation of Separation of Powers/Nondelegation Doctrine Through Executive Usurpation of Congressional Power to Govern Immigration

310. Plaintiffs incorporate and re-allege the foregoing paragraphs as though fully set forth herein.

311. It is the role of Congress, not the President, to "exclude aliens altogether or prescribe terms and conditions upon which they may come into or remain in this country." *See Fok Young Yo v. United States*, 185 U.S. 296, 302 (1902).

312. In that role, and pursuant to that power, Congress crafted a complex and carefully balanced system of immigrant and nonimmigrant visas, and in doing so carefully considered the effects that the issuance of visas and entry of foreign nationals as immigrants may have on the U.S.

313. In this context, Congress cannot be understood to have delegated to the President (through 8 U.S.C. § 1182(f) or § 1185(a)) the authority to override decades of Congressional judgement regarding the Diversity Visa Program.

314. The Department's expansion of the PP 10014's suspension on the entry of Plaintiffs to the issuance of immigrant visas and the adjudication of visa applications constituted an ultra vires action that contravenes the INA.

315. Several federal courts have found that the President does not have authority under INA § 212(f) to suspend the adjudication of immigrant visas. *See Gomez v. Trump*, 490 F. Supp. 3d 276 (D.D.C. 2020); *Young v. Trump*, No. 20-cv-07183-EMC (N.D. Cal. Dec. 11, 2020); *Tate v. Pompeo*, No. 20-cv-032249-BAH (D.D.C. Jan. 16, 2021); *Milligan v. Pompeo*, No. 20-cv-02631-JEB (Jan. 20, 2021).

316. The application of the PP 10014's entry restriction on visa issuance further demonstrates that the Executive Branch overstepped its authority with regards to processing of Diversity Visa applications, which is governed by the INA through congressional mandate.

317. Defendants continue to apply the No-Visa Policy and the Prioritization Scheme which directly flows from the implementation of PP 10014. As such, the Executive Branch continues to overstep Congressional intent by applying polices that withholding and delay adjudication of diversity visas.

318. Plaintiffs seek an order enjoining Defendants from further enforcement of the No-Visa Policy and/or Prioritization Scheme that is responsible for the withholding and delayed adjudication of Plaintiffs' Diversity Visas.

G. COUNT SEVEN: Defendants' Noncompliance with 5 U.S.C. § 903 Is Ultra Vires

319. Plaintiffs incorporate and re-allege the foregoing paragraphs as though fully set forth herein.

320. Defendants have directed an implicit reorganization plan that phase-out of day-to-day adjudication of Diversity Visas to varying degrees, reduced funding for consular officers,

and consistently understaffed embassies and consulates, preventing them from reaching full capacity for DV adjudications. Defendants did so even before the Covid pandemic: “

321. As the Executive Branch, Defendants are mandated to faithfully execute the laws of the United States.

322. Faithful execution of the laws of the United States requires Defendants to allocate the proper resources to the agencies that administer the immigration laws of the United States.

323. Defendants have gutted the capacity of the agencies that adjudicate Diversity Visa Program, namely the KCC and the embassies and consulates.

324. Defendants’ actions “have presented a judicially cognizable controversy that is having severe, intended, and immediate adverse consequences” upon plaintiffs. *Am. Fed’n of Gov’t Emps. v. Phillips*, 358 F. Supp. 60, 66 (D.D.C. 1973).

325. Plaintiffs’ injury need not be complete for this Court to adjudicate Plaintiffs’ claims. *Phillips*, 358 F. Supp. at 67. “The controversy is so concrete that a delay in judicial consideration would work extreme hardship on the plaintiffs.” *Phillips*, 358 F. Supp. at 67 (citing *Nat’l Automatic Laundry & Cleaning Council v. Shultz*, 443 F.2d 689 (D.C. Cir. 1971).

326. Congress has already spoken through the INA on the manner in which Defendants must adjudicate Diversity Visas, and Defendants are acting contrary to that mandate. *Phillips*, 358 F. Supp. at 67.

327. The President has broad authority under the APA to initiate and propose changes in the organization and functions of the Executive branch. *See* 5 U.S.C. §§ 901–913.

328. The President must submit to Congress a reorganization plan before abolishing all or a part of the functions of an agency. 5 U.S.C. § 903(a)(2); (b); (c). “Thus, in the absence of any

contrary legislation, the defendant's plans … are unlawful as beyond his statutory authority." *Phillips*, 538 F. Supp. at 80.

329. Defendants are in violation of their duties under the Immigration and Nationality Act to adjudicate 55,000 diversity visas per fiscal year. INA § 203(c); *cf. Phillips*, 358 F. Supp. at 68.

330. The allocation of diversity visas is similar to the allocation of funds. When creating the Diversity Visa Program in 1990, Congress allocated 50,000 immigrant vias to the Diversity Visa program with the intent that the Department would fully allocate those visas.

331. Congress has already appropriated funds for the adjudication of Diversity Visas and allowing Defendants to refuse to discharge their nondiscretionary duty to adjudicating visas would be endorsing a line-item veto. "[H]istorical precedent, logic, and the text of the Constitution itself obligate the defendant[s] to continue to operate the [Diversity Visa] program as was intended by the Congress, and not terminate them." *Phillips*, 358 F. Supp. at 76.

332. Authorization for a President's actions "must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952).

333. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. The Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. *Youngstown*, 343 U.S. at 587.

334. If the President's power is not so limited, "would … cloth[e] the president with a power entirely to control the legislation of congress, and paralyze the administration of justice." *Kendall v. United States*, 37 U.S. (12 Pet.) 524, 613 (1838). "[D]iscretion in the implementation of a program is not the freedom to ignore the standards for its implementation." *Phillips*, 538 U.S. at 77 (citing *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 411 (1971)).

335. Because the DV program is self-funded, "The relief which the plaintiffs seek would not be a drain on the public purse. No injunction to spend unappropriated funds is sought." *Phillips*, 358 F. Supp. at 68. Defendants have "acted beyond their statutory powers." *Phillips*, 358 F. Supp. at 68. "Even though a judgment of this Court will require that funds be expended in its implementation, there is no draw upon the public treasury." *Phillips*, 358 F. Supp. at 68.

336. Additionally, diverting those funds appropriated by Congress to the DV program without consulting Congress constitutes impoundment: "But even if the Secretary's discretion is broad, it is not limitless. Here again, there is a distinction between the Court venturing into areas "committed to agency discretion"—such as how best to use TFF funds—and the Court applying statutory interpretation principles to determine whether the Secretary's actions follow Congress's dictates. The Treasury Secretary may not use TFF funds for any purpose he chooses. It restricted his use of these particular funds to expenditures connected to "law enforcement activities of any Federal agency." 31 U.S.C. 9705(g)(4)(B). "This limitation affords a 'statutory reference point' by which the court is able to review the Secretary's" decision to use TFF funds for border wall construction. *See* Milk Train, Inc.

v. Veneman, 310 F.3d 747, 752, 354 U.S. App. D.C. 25 (D.C. Cir. 2002) *Ctr. for Biological Diversity v. Trump*, 453 F. Supp. 3d 11 (D.D.C. 2020) at 47.

H. COUNT EIGHT: Mandamus Act, 28 U.S.C. § 1361

337. Plaintiffs incorporate and re-allege the foregoing paragraphs as though fully set forth herein.

338. Defendants have a clear non-discretionary duty to adjudicate immigrant visa applications and issue visas to Plaintiffs and their derivative beneficiaries who are eligible to receive them and not inadmissible under 8 U.S.C. § 1182(a), so long as visas are remain available.

339. The No-Visa Policy and/or the prioritization scheme that prohibits are substantively restricts the issuance of diversity visas that must be issued by September 30, 2021 is not lawful.

340. Defendant have a mandatory duty to adjudicate diversity immigrant visa applications and issue diversity immigrant visas to statutorily eligible individuals, and there is no legal bar to doing so. Accordingly, Plaintiffs have a clear and indisputable right to relief, and Defendants have clear, nondiscretionary duty to act.

341. No alternative remedy exists to compel Defendants' action.

PRAYER FOR RELIEF

"There is no better antidote to the challenges of globalization than to attract self-selected strivers from every corner of the globe."

— Rep. Bruce A. Morrison, author of the House bill that became the Immigration Act of 1990, Hearing Before the Subcommittee on Immigration, Border Security, and Claims of the

Committee on the Judiciary, House of Representatives, 109th Congress, 1st Session, June 15, 2005.

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Vacate and set aside Defendants' policies, practices, procedures, or any other actions taken by Defendants to unlawfully withhold and/or delay the adjudication and issuance of immigrant visas for Plaintiffs and their derivative beneficiaries;

B. Declare that Defendants' policies, practices, procedures, or any other actions taken by Defendants to withhold and/or delay the adjudication and issuance of immigrant visas for Plaintiffs void and without legal force or effect;

C. Declare that Defendants' polices, practices, procedures, or any other actions taken by Defendants to withhold and/or delay the adjudication and issuance of immigrant visas for Plaintiffs and their derivative beneficiaries are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, and without observance of procedure required by law in violation of 5 U.S.C. §§ 702–706;

D. Declare that Defendants' polices, practices, procedures, or any other actions taken by Defendants to withhold and/or delay the adjudication and issuance of immigrant visas for Plaintiffs and their derivative beneficiaries are in violation of the Constitution and contrary to the laws of the United States;

E. Declare that Defendants' elimination of consular officer positions is an unlawful restructuring in violation of 5 U.S.C. § 903.

F. Preliminarily and permanently enjoin and restrain Defendants, the Department, their agents, servants, employees, attorneys, and all persons in active concert or participation

with any of them, from implementing or enforcing the Departments' polices, practices, procedures, including but not limited to, the No-Visa Policy and Prioritization Scheme, or any other actions taken by Defendants to indefinitely withhold and/or delay the adjudication and issuance of immigrant visas for Plaintiffs and their derivative beneficiaries that is not in compliance with applicable law;

G. Mandate Defendants fulfill their mandatory, non-discretionary duty to process Plaintiffs' immigrant visa applications, schedule Plaintiffs for immigrant visa interviews, and issue visas to eligible Plaintiffs;

H. Reserve visas numbers for Plaintiffs beyond September 30, 2021 in the event that Defendants fail to fully adjudicate and issue Plaintiffs' visas before that deadline.

I. Retain jurisdiction over this action to monitor and enforce Defendants' compliance with all orders of this Court;

J. Award Plaintiffs costs of suit and reasonable attorney's fees under the Equal Access to Justice Act, 42 U.S.C. § 1988, and any other applicable law; and

K. Grant such further relief as this Court deems just and proper.

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Dated: June 6, 2021

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Respectfully Submitted,

/s/ Curtis Lee Morrison

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