

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

MORRISON URENA, L.C. )  
 )  
 P.O. Box 80844 )  
 Rancho Santa Margarita, CA )  
 92688 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 UNITED STATES DEPARTMENT )  
 OF STATE )  
 )  
 The Executive Office )  
 Office of the Legal Advisor )  
 Suite 5.600 600 19<sup>th</sup> St NW )  
 Washington, DC 20522 )  
 )  
 Defendant. )

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Case No. 22-cv-270

**COMPLAINT**

**INTRODUCTION**

Plaintiff, MORRISON URENA L.C., alleges as follows.

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 *et. seq.* (“FOIA”), to obtain an order for the production of an agency record from the United States Department of State, Office of Information Programs and Services in response to a request properly made by Plaintiff related to the implementation of court orders regarding the Diversity Visa Program (a/k/a/ the Diversity Visa Lottery).

**JURISDICTION & VENUE**

2. This court has jurisdiction under 5 U.S.C. § 552(a)(4)(B) (FOIA) and 28 U.S.C. § 1331 (federal question).

3. This Court has jurisdiction to grant declaratory, injunctive, and further necessary or proper relief pursuant to 5 U.S.C. § 552(a)(4)(B), 28 U.S.C. §§ 2201-2202, and Federal Rules of Civil Procedure 57 and 65.

4. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

### **PARTIES**

5. Plaintiff Morrison Urena, L.C. is an immigration law firm in the United States.

6. Defendant United States Department of State is an agency within the meaning of FOIA. *See* 5 U.S.C. § 552(f). It does not fall under any exception to the statutory definition of an agency within the meaning of FOIA. *See* 5 U.S.C. § 551(1). The Department of State Office of Information Programs & Services has custody and control of the specific agency records requested by Plaintiff pursuant to FOIA. *See* 22 C.F.R. §171.2. <sup>1</sup>

7. FOIA requires that agencies respond to FOIA requests within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A).

8. Defendant United States Department of State has failed to meet the statutory deadlines set by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)-(B). Plaintiffs are therefore deemed to have exhausted all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

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<sup>1</sup> *See also* U.S. Department of State, Freedom of Information Act, which states, “The Department of State maintains records dealing with: Formulation and execution of U.S. Foreign Policy; **Administration and operations of the Department of State and U.S. Missions abroad**; Consular assistance given to U.S. Citizens abroad; In general, permanent records 25 years and older, pre-1925 passport and pre-1940 visa records are property of National Archives and Records Administration (NARA); **Current and former employees of the Department of State**; Applications from U.S. Citizens for U.S. Passports; **Visa requests from non-citizens to enter the U.S.**,” <https://foia.state.gov> (last accessed Jan. 20, 2022) (emphasis added).

**FACTUAL ALLEGATIONS**

9. In the wake of the COVID-19 pandemic, the State Department dramatically reduced consular operations abroad beginning in March 2020. On April 22, 2022, former President Donald J. Trump issued Presidential Proclamation 10014 (hereafter “PP10014”), which broadly prohibited the immigration of diversity visa applicants to the United States unless they could establish that their entry was in the national interest. Additional region-specific Presidential Proclamations were also issued, suspending the processing of immigrant visa applications in the Diversity Visa Program and unlawfully withholding the issuance of immigrant visas to otherwise eligible applicants.

10. These Proclamations suspended entry of immigrants to the United States to the detriment of countless families, employers, and American citizens who benefit from the diverse skills, qualifications, and perspectives that immigrants bring to the United States. In the past three fiscal years, Diversity Visa Lottery winners included doctors and nurses working on the frontlines of the pandemic, successful business people, people fleeing persecution, and children with boundless potential. They passed rigorous merit and security checks and qualified for a unique and coveted path to the American dream.

11. Per the Immigration and Nationality Act, a diversity visa winner is only entitled to apply for an immigrant visa during the fiscal year for which their entry was submitted. INA § 204(a)(1)(I)(ii)(II).

12. By statute, winners must have their visas adjudicated and issued before midnight on the last day of the fiscal year. The diversity visa program restarts each year, so diversity visas may not be issued after midnight on September 30 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.

13. If it a diversity visa is not timely issued, it is lost forever.

14. Diversity Visa Lottery winners were uniquely impacted by these circumstances.

Those who did not receive immigrant visas before the statutorily mandated deadline of the end of the fiscal year lost a once-in-a-lifetime opportunity to immigrate to the United States due to factors beyond their control. Many winners tried to avail themselves of this opportunity at the risk of their own safety, relocating to cities near U.S. embassies outside of their home countries and hoping to have their immigrant visa interviews. Many sold everything they owned, betting everything on the American dream they were promised, and did so understanding the grave dangers of returning home emptyhanded.

15. The plight of Diversity Visa Lottery winners spurred mass litigation. As a result, the Honorable Judge Amit P. Mehta ordered that the United States Department of State adjudicate their visa applications and continue to issue diversity visas for fiscal year 2021 until all visas reserved pursuant to *Filazapovich v. Department of State*, 2021 WL 4127726 (D.D.C. Sept. 9, 2021), have been issued.

16. The United States government has filed a Notice of Appeal and litigation remains ongoing.

17. As the litigation continues, so do the practical challenges that Diversity Visa Lottery winners face in having their visas adjudicated. In light of the myriad challenges diversity applicants still face, it is unclear how government employees and contractors have been instructed to carry out Judge Mehta's orders.

18. Under normal circumstances, Department of State regulations designate an applicant's residence as the determining factor for the location of their immigrant visa interview. However, the United States does not have a diplomatic presence or a functioning embassy in every country.

19. A homeless visa applicant is one who is a national of a country in which the United States has no consular representation or in which the political or security situation is tenuous or uncertain enough that the limited consular staff is not authorized to process IV applications. 9 FAM 504.4-8(E)(1)(a).

20. For example, countries whose nationals are considered homeless include Iranian nationals, and are assigned to either Abu Dhabi, Ankara, or Yerevan. 9 FAM 504.4-8(E)(1).

21. Homeless applicants can also be found in countries where the security situation on the ground has curtailed operations so severely that consular services, including immigrant visa adjudications, are suspended.<sup>2</sup>

22. The National Visa Center ("NVC") is required to screen and assign all petitions for homeless beneficiaries to the appropriate post for processing. 9 FAM 504.4-8(E)(3).

23. However, until an applicant's country is designated as "homeless" by the Department of State, the case is effectively unassigned to any U.S. embassy or consulate. Their request is treated as a transfer, which are highly discretionary. Until that designation, the request

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<sup>2</sup> See *U.S. Embassy & Consulates in Iraq – Visas*, stating that all consular services have been suspended since January 1, 2020, due to an attack on the U.S. Embassy in Baghdad, <https://iq.usembassy.gov/visas/> (last accessed Jan. 26, 2022). See also *U.S. Embassy in Sudan – Visas* stating, "The United States Embassy in Khartoum Sudan remains unable to resume most routine immigrant and nonimmigrant visa services, including for routine B1/B2 applications. We will resume routine visa services as soon as possible but are unable to provide a specific date." <https://sd.usembassy.gov/visas/> (last accessed Jan. 26, 2022).

is not treated as a reassignment, but as a transfer, and no embassy is required to accept a transfer request.

24. Selectees from who are assigned to U.S. Embassies with non-operational consulates, including Baghdad, Kabul, and Khartoum have reported difficulties with having their cases reassigned to operational consulates, despite meeting all requirements and despite the time-sensitivity of their cases.

25. While some diversity visa selectees have access to legal counsel and consular representation, many similarly situated selectees do not, and their cases hang in a very time-sensitive balance. Many live in active conflict zones in Iraq, Afghanistan, and Sudan respectively.

26. Many live in areas assigned to consulates or embassies that become non-operational after they are assigned. This includes applicants assigned to the U.S. Embassy Khartoum.

27. Timely reassignment can be the difference between life and death. Only KCC can reassign a case once the applicant submits their Form DS-260.

28. Selectees from have also been impacted by labor negotiations and strikes by workers at the Kentucky Consular Center (“KCC”), which is responsible for the pre-processing of Diversity visa applications and liaises with U.S. Embassies to schedule interviews for selectees.

29. KCC’s work is supported by LDRM, a company which specializes in background investigation support, records management, business automation and optimization, and

administrative support. Per the LDRM website, its customers include U.S. Citizenship and Immigration Services, the U.S. Patent and Trademark Office, and the Department of State.<sup>3</sup>

30. LDRM has a performance-based contract with the Department of State. However, based on the foregoing issues diversity visa applicants continue to face, it is unclear whether performance-based requirements are being met and how LDRM contractors have been instructed to carry out Judge Mehta's orders.

31. In light of the time-sensitivity and humanitarian concerns in these cases, Plaintiff filed a FOIA request on November 2, 2021. Exhibit A, *Response to Electronic FOIA Request*.

32. On November 3, 2021, Defendant confirmed receipt of Plaintiff's FOIA request.

33. On November 3, 2021, Kellie N. Robinson, Chief, Requestor Liaison Division (Acting) FOIA Program Manager/FOIA Public Liaison, claimed that the Office of Information Programs and Services could not respond within 20 days due to "unusual circumstances." Ms. Robinson cited "the need to search for and collect requested records from other Department offices or Foreign Service Posts." Defendant also denied Plaintiff's request for expedited processing.

34. Ms. Robinson did not provide a timeline for completion of the review process.

35. As of the date of filing, Defendant has not communicated in any way with Plaintiff since sending its acknowledgement on November 3, 2021. Defendant has not provided Plaintiff with any additional updates or estimated timeline for completion. Over 51 business days have elapsed since Plaintiff placed the request.

36. Morrison Urena L.C. is an immigration law firm that advocates on behalf of Diversity Lottery winners around the world. Under FOIA, Defendant had twenty days to respond

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<sup>3</sup> See *LDRM – About Us*, <https://www.ldrmlc.com> (last accessed Jan. 26, 2022).

to Plaintiff's request. Despite the statutory timeline, the significant public interest of this request, and the collateral consequences of the U.S. government's failure to timely issue these immigrant visas in war-torn countries, Defendant has yet to provide a response.

37. Plaintiff now files this suit to order Defendant to undertake an adequate search and produce responsive records without delay. In so doing, Morrison Urena, L.C. intends to provide public clarity regarding the administration of the Diversity Visa Program in countries without operational U.S. consulates to ensure appropriate accountability. Plaintiff LC has the capacity and intent to disseminate widely the requested information to the public. Morrison Urena, L.C. is well-known internationally for its advocacy on behalf of Diversity Visa Lottery winners. Plaintiff is in constant contact with Diversity Visa winners and applicants through a substantial social media following and is well-equipped to provide public access to released documents and work with media outlets to disseminate any responsive materials.

### **CLAIM FOR RELIEF**

#### **Violation of Freedom of Information Act (Failure to Provide Timely Response to FOIA Request)**

38. Plaintiff repeats, realleges, and reincorporates the allegations in the foregoing paragraphs as though fully set forth herein.

39. Defendant is an agency subject to FOIA. Therefore, it is obligated to "promptly" release, in response to a FOIA request, any disclosable records in its possession at the time of the request. *See* 5 U.S.C. § 552(a)(3).

40. Defendant is permitted to withhold record or parts of records only if one of the enumerated FOIA exemptions apply. Defendant must provide a lawful reason for withholding any other materials as to which it is claiming an exemption. *See* 5 U.S.C. § 552(b).



41. No exemptions permit the withholding of the record sought by the Request.

42. FOIA requires that agencies respond to FOIA requests within 20 business days.

*See* 5 U.S.C. § 552(a)(6)(A).

43. Under 5 U.S.C. § 552(a)(6)(A)(i), Defendant must decide within 20 days of a request whether the agency will produce responsive documents.

44. An extension of this timeline is permitted only “[i]n unusual circumstances” where the agency provides “written notice.” Such notices allow the agency to extend the response deadline for ten additional working days. 5 U.S.C. § 552(a)(6)(B)(i): *see also, e.g., Hajro v. U.S. Citizenship & Immigration Servs.*, 881 F. 3d 1086, 1092 (9<sup>th</sup> Cir. 2016) (“The statutory time limits require an agency to determine within twenty days whether to comply with a FOIA request or, in the alternative, notify the requester of any ‘unusual circumstances’ requiring an extension in responding to the request.”).

45. Defendant United States Department of State has failed to meet the statutory deadlines set by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)-(B). Plaintiffs are therefore deemed to have exhausted all administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C).

46. Therefore, Plaintiff is entitled to an order compelling Defendant to produce the record responsive to the Request.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Declare that the record sought by the Request, as described in the foregoing paragraphs, is public under 5. U.S.C. § 552 and must be disclosed;

- c. Order Defendant to undertake an adequate search for the requested record and provide all responsive records and corresponding documents to Plaintiff's FOIA request within 20 business days of the Court's order;
- d. Award Plaintiff attorney's fees and costs, as expressly permitted by FOIA under 5 U.S.C. § 552(a)(4)(E) and on any other basis justified under the law; and
- e. Grant any other or further relief that this Court deems just and proper.

Dated: February 2, 2022

/s/Curtis Lee Morrison  
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