

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

MORRISON URENA, L.C.

8910 University Center Lane, Suite 400  
San Diego, CA 92122

*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.*

Civil Action No.: 1:22-cv-03773

**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 staffing, federal hiring freezes, immigrant visa interview capacity, and interview scheduling at the U.S. Embassy Islamabad.

**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 (“DOS”) 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/Request/FOIA.aspx> (last accessed Nov. 10, 2022) (emphasis added).

## FACTUAL ALLEGATIONS

### **I. Introduction**

9. The information Plaintiff requested in this FOIA relates to extensive backlogs on immigrant visa interviews and adjudications at the U.S. Embassy Islamabad.

10. In response, 20 plaintiffs, including 10 United States citizens and their Pakistani national spouses awaiting interviews, have filed suit against officials at the United States Department of State and the U.S. Embassy Islamabad. All plaintiffs have submitted all required documents over one year ago, and some started the immigrant visa process with a petition to U.S. Citizenship and Immigration Services (“USCIS”) over three years ago. *See generally Naveed et al v. Blinken et al*, 22-cv-03579 (RBW), ECF No. 1, (D.D.C. Nov. 25, 2022).

11. The plaintiffs in *Naveed* challenge the lawfulness of directives by Secretary of State Antony Blinken, which allowed “consular chiefs” to determine the priority order of consular services at post, prioritize nonimmigrant visas over immigrant visas, and understaff the consular section at the U.S. Embassy Islamabad. *Id.*

12. Plaintiffs allege that these directives contravene the Immigration and Nationality Act (“INA”), unlawfully expand the authority of consular chiefs, and understaff the U.S. Embassy Islamabad to the detriment of U.S. citizens and their spouses. *Id.*

13. Family reunification has been a key principle underlying U.S. immigration policy since 1965. *See generally The Immigration and Nationality Act Amendments of 1965* (Pub. L. 89-236). It remains a cornerstone of the INA today.

14. Congress built on this cornerstone through The Immigration Act of 1990, now known as the INA. Pub. L. 101-649 Among Congress’s chief goals was reunifying families. *See, e.g., Solis-Espinoza v. Gonzales*, 401 F.3d 1090, 1094 (9th Cir. 2005).

15. Statutory notes instruct the Department of State to adopt policies that provide a faster timeline for immigrant visas for immediate relatives (“IRs”) over family-preference visas. Pub. L. No. 107-228, § 233.

16. Further, unlike most other immigrant visa categories, IRs are not subject to direct numerical limitations or annual quotas. 8 U.S.C. § 1201; 22 C.F.R. § 42.71.

17. In its drafting and statutory notes, Congress makes clear that immigrant visas for immediate relatives of U.S. citizens are supposed to be a top priority for the Department of State.

18. Subsequent legislation requires the Department of State to establish a policy under which immediate relative and fiancée visas be processed “within 30 days of receipt of the necessary information from the applicant and the Department of Homeland Security (DHS).” 9 FAM 504.7-2(b), and District of Columbia Appropriations Act, 1999, Pub. L. 106-113 § 237.

19. Per the INA, the Administrative Procedure Act (“APA”), and relevant regulations and policies, the U.S. Department of State has a mandatory duty to adjudicate immigrant visa applications within a reasonable time. *See Mohamed v. Pompeo*, No. 1:19-cv-01345-LJO-SKO, 2019 U.S. Dist. LEXIS 167266 (E.D. Cal. Sep. 27, 2019) (issuing a mandatory injunction ordering the State Department to complete adjudications of immigrant visa applications); 5 U.S.C. § 555(b) (requiring agencies to, “within a reasonable time ... conclude the matter presented to it”); *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, 293 n. 22, 295–96 (D.D.C. 2016).

20. While 22 U.S.C. § 2651(a) grants the Secretary some discretion to carry out the INA abroad, that discretion is not without limits.

21. 22 U.S.C. § 2651(a)(1) states that the Department of State “must” administer “in accordance with [the INA], the provisions of which govern the allotment of immigrant visas,

setting a “finely reticulated regulatory scheme governing the admission of foreign nationals.” *See Hawaii v. Trump*, 878 F.3d 662, 685 (9th Cir. 2017); *cf. Arizona v. United States*, 567 U.S. 387, 395 (2012).

22. There is also a “strong presumption that Congress intends judicial review of administrative action” that can be overcome only by “clear and convincing evidence that Congress intended” such action to be unreviewable. *See Am. Hosp. Ass'n v. Azar*, 967 F.3d 818, 823-24 (D.C. Cir. 2020)(internal quotations omitted). *See also Dep't of Com. v. New York*, 139 S. Ct. 2551, 2568 (2019) (holding that exceptions to judicial review are interpreted “quite narrowly” and are generally limited to categories of decisions that are “traditionally” left to agency discretion.)

23. Since early 2020, the U.S. Embassy Islamabad Immigrant Visa Inquiries Form webpage has read, “As of 17 March, the United States Embassy and Consulates in Pakistan canceled routine immigrant and nonimmigrant visa appointments to mitigate the spread of COVID-19.” The webpage also reads, “We will resume routine services as soon as possible but are unable to provide a specific date at this present.”

24. As of this filing, over two and half years later, the same message, suggesting routine immigrant and nonimmigrant visa appointments have been canceled, still greets those who complete the Immigrant Visa Inquiries Form. *See Immigrant Visa Inquiries Form*, U.S. Embassy & Consulates in Pakistan, <https://pk.usembassy.gov/visas/immigrant-visa-inquiries/> (last accessed Dec. 12, 2022).

25. Perplexingly, the Embassy’s “Immigrant Visas” page says:

U.S. Embassy Islamabad is processing immigrant visas across all categories. However, with significant backlogs in most categories and continuing staffing shortages, wait times for interviews are lengthy. It is not possible to provide precise wait times as staffing and local conditions affect capacity and scheduling. If you

have a life or death emergency and need to request expedited processing, please contact [NVCExpedit@state.gov](mailto:NVCExpedit@state.gov) and follow this guidance: <https://travel.state.gov/content/travel/en/us-visas/immigrate/national-visa-center/immigrant-visas-processing-general-faqs.html>. If you would like to check the status of your case, please contact us here: <https://pk.usembassy.gov/visas/immigrant-visa-inquiries/>

*See Immigrant Visas*, U.S. Embassy & Consulates in Pakistan, <https://pk.usembassy.gov/visas/immigrant-visas/> (last accessed Dec. 12, 2022).<sup>2</sup>

26. In short, one page tells applicants that the U.S. Embassy Islamabad is processing immigrant visas. The other page says the opposite and routes applicants back to the form on the first page. These internally inconsistent pages leave applicants in a closed loop of confusion.

27. Defendants' lack of communication has forced applicants and their advocates to turn to the U.S. Embassy Islamabad visa issuance statistics for clarity. These statistics show that IRs are being processed, but substantially more slowly than the Embassy's annual average, which creates an ever-growing backlog of applications. *See generally Monthly Immigrant Visa Issuance Statistics*, U.S. Dep't. of State Bureau of Consular Affairs, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/immigrant-visa-statistics/monthly-immigrant-visa-issuances.html> (last accessed Dec. 12, 2022).

28. A memo to Assistant Secretary Rena Bitter, approved by now-Principal Deputy Assistant Secretary Douglass R. Benning, explicitly warned, “[u]nless additional resources are received, our overseas posts will continue to be insufficiently staffed to tackle the IV backlogs.”

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<sup>2</sup> The Court may “take judicial notice of, and give effect to, its own records in another but interrelated proceeding.” *Opati v. Republic of Sudan*, 60 F. Supp. 3d 68, 73 (D.D.C. 2014) (quoting *Booth v. Fletcher*, 101 F.2d 676, 679 n.2 (D.C. Cir. 1938)); see Fed. R. Evid. 201(b) (allowing a court to “judicially notice a fact that is not subject to reasonable dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”).

Exhibit A, *Action Memo for Deputy Assistant Secretary Benning* (June 22, 2021), page 93.

29. However, the consular temporary duty personnel that the Department of State allocated to the U.S. Embassy Islamabad exclusively assist Afghans, as well as U.S. citizens and lawful permanent residents (“LPRs”) with ties to Afghanistan. They do not provide services for Pakistani nationals or U.S. citizens or LPRs with ties to Pakistan.

30. To date, the Department of State has yet to remedy the chronic staffing issues that grow the backlog of IRs at the U.S. Embassy Pakistan.

31. U.S. citizens and their Pakistani national spouses are desperate for clarity, but they are met with vague boilerplate autoreplies and non-answers.

32. The Department of State’s conduct undermines a foundational principle of the INA by separating U.S. citizens from their spouses indefinitely.

33. The Department of State’s lack of communication and clarity has left U.S. citizens, Pakistani national spouses, and their attorneys and advocates with limited information to understand the source of the delay.

34. While some of the aggrieved families have access to counsel, many do not.

35. According to the U.S. Department of State’s Travel Advisory system, many Pakistani national spouses caught in the IR backlog live in areas where routine travel and daily life are dangerous.

36. On October 5, 2022, the Department of State Bureau of Consular Affairs issued a “Level 3 – Reconsider Travel” Advisory for Pakistan, citing “terrorism and sectarian violence.” The US Department of State also issued a “Level 4 – Do Not Travel” Advisory for Balochistan Province, Khyber Pakhtunkhwa Province, and the vicinity of the Line of Control (the India-Pakistan border), citing deadly terrorist attacks, sectarian violence, exchange of military gun and

artillery fire, attempted kidnapping, and attempted murder of civilians, government officials, and polio eradication teams. *See Pakistan Travel Advisory*, U.S. Dep't. of State Bureau of Consular Affairs, <https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/pakistan-travel-advisory.html> (last accessed Dec. 12, 2022).

37. The Department of State's lack of urgency and transparency in addressing the IR backlog shows a complete and utter disregard for the safety and family unity of U.S. citizens and their Pakistani national spouses.

38. The Department of State's lack of transparency regarding the interplay of visa prioritization directives and staffing also shows a lack of regard for the safety of Afghan nationals who remain in Pakistan pending the adjudication of their cases.

39. Applicants and their U.S. citizen spouses simply want the information they need to make informed decisions and move on with their lives.

40. As it stands today, they are forced to live in limbo, turning down professional opportunities and postponing family planning because they have no way to know how much longer they will be separated. Their dreams are indefinitely deferred, which takes a profound psychological toll on individuals and families.

41. Even if some delays are unavoidable, foreign nationals and their families would be in a much better position to manage their lives and expectations if the government gave them the information they need to make informed decisions.

42. Further, a reasonable amount of transparency would likely save the U.S. government and their contractors valuable time and resources, which is otherwise spent responding to swaths of case status inquiry emails, expedite requests, and lawsuits.

43. In light of the time sensitivity and humanitarian concerns in these cases, Plaintiff filed a FOIA request on November 9, 2022. Exhibit B, *Electronic FOIA Request*.

44. In this request, Plaintiff sought:

Emails or cables between the US Embassy Islamabad, and the Visa Office (“VO” and/or “CA/VO”), the Office of the Executive Director (“CA/EX”), the Office of Career Development and Assignments (“CDA” and/or “CDA/EL”), or National Visa Center (“NVC”) regarding:

1. immigrant visa interview capacity and scheduling;
2. staffing gaps and vacancies;
3. any attempts to fill staffing gaps and vacancies;
4. vacant positions at the US Embassy Islamabad designated as “Do Not Fill.”
5. the federal hiring freeze and any exceptions to the hiring freeze;
6. immigrant visa (“IV”) backlog at the US Embassy Islamabad;
7. personnel requests made pursuant to 7 FAH-1 H-432.4a; 8. decision(s) to fill US Embassy Islamabad vacancies with only second-tour FAST officers.

45. Plaintiff outlined the compelling circumstances that drive the need for expedited handling of this request, specifically:

- An urgency to inform the public concerning actual or alleged Federal Government activity exists.
- A harm to substantial humanitarian concerns exists.
- The Bureau of Consular Affairs does not voluntarily release useful information to aspiring Americans or their US citizen and permanent resident family members. This information is critical for planning their individual and family immigration paths. Immigrant communities from all nations deserve to have their safety prioritized and be treated with respect, no matter which embassy their cases are assigned to.

Further, the US Department of State Bureau of Consular Affairs issued a Level 3 – Reconsider Travel” Advisory for Pakistan, citing “terrorism and sectarian violence.” The US Department of State also issued a “Level 4 – Do Not Travel” Advisory for Balochistan Province, Khyber Pakhtunkhwa Province, and the vicinity of the Line of Control (the India-Pakistan border), citing deadly terrorist attacks, sectarian violence, exchange of military gun and artillery fire, attempted kidnapping, and attempted murder of civilians, government officials, and polio eradication teams.

US citizens and permanent residents have a substantial due process interest in family unity. Without this information, their families risk becoming victims of violent crime while they wait for the US Embassy Islamabad to schedule their immigrant visa interviews. US citizens and permanent residents also assume substantial risk to their own safety by visiting them in Pakistan. Without this information, they will have no way to determine when the US Embassy Islamabad will conduct their immigrant visa interviews and issue their visas. This lack of transparency harms substantial humanitarian interests in the unity, safety, and wellbeing of US citizens, permanent residents, and their spouses and children.

Many Afghan nationals are assigned to the US Embassy Islamabad. On August 31, 2021, the US Embassy Kabul suspended all visa operations due to the security situation sparked by the withdrawal of US troops from Afghanistan. Afghan nationals whose cases are pending at the US Embassy Islamabad, and the US citizens and permanent resident spouses and parents who sponsor their cases, have a substantial due process and humanitarian interest in the fair and timely adjudication of their cases. There is a substantial risk to their safety if they are forced to remain in dangerous regions of Pakistan or return to Afghanistan under Taliban rule.

46. Plaintiff specified the time period of the FOIA request is “from August 1, 2021 to present (and not November 9, 2022 entered as the online form requires a date).” Plaintiff noted that “the term ‘present’ should be construed as the date on which the agency begins its search for responsive records. *Pub. Citizen v. Dep’t of State*, 276 F.3d 634 (D.C. Cir. 2002).”

47. On November 17, 2022, Defendant confirmed receipt of Plaintiff’s FOIA request. Defendant confirmed that Plaintiff’s request was placed in “the complex processing track where it will be processed as quickly as possible.” Exhibit C, *Response to Electronic FOIA Request*.

48. However, despite the detailed request outlining the humanitarian interests at stake, Defendant denied expedited processing of Plaintiff’s request, claiming that Plaintiff’s request “does not demonstrate a ‘compelling need’ for the requested information.”

49. Defendant has not provided Plaintiff with any additional updates or estimated timeline for completion.

50. Over 21 business days have elapsed since Plaintiff placed the request.

51. Defendant has not provided Plaintiff with any additional updates or estimated timeline for completion since sending its acknowledgment on November 17, 2022. Defendant merely notes that they cannot respond within the statutory timeline due to “unusual circumstances,” which include “the need to search for and collect requested records from other Department offices or Foreign Service posts.”

52. Defendant’s characterization of the nature and location of the search as “unusual,” is dubious.

53. It is unclear why such a search would warrant extraordinary measures. These records are located in their own offices and consular posts. Their daily operations are international by definition.

54. Morrison Urena L.C. is an immigration law firm that advocates on behalf of immigrants around the world and their families in the U.S. Under FOIA, Defendant had twenty days to respond 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 for immediate relatives of U.S. citizens living in conflict zones, Defendant has yet to provide a response.

55. 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 both use this information for business purposes and provide public clarity regarding the growing IR backlog and chronic staffing issues at the U.S. Embassy Islamabad, as well as the interplay of any directives that do not align with the INA or express intent of Congress. Plaintiff’s goal is to promote transparency and accountability.

56. Plaintiff 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 U.S. citizens and IR 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)**

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

58. 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).

59. 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).

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

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

62. 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.

63. 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.”).

64. In this case, over 21 business days have elapsed without a substantive reply from Defendant.

65. Defendant failed to demonstrate why Plaintiff’s request for electronic records from a government agency that routinely operates internationally in the year 2022 is unusual. Defendant also fails to demonstrate that their delay is permissible or lawful.

66. 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).

67. 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 grants 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: December 20, 2022

*/s/Curtis Lee Morrison*  
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