

STEPHANIE M. HINDS (CABN 154284)

Acting United States Attorney

SARA WINSLOW (DCBN 457643)

Chief, Civil Division

VALERIE E. SMITH (NYBN 5112164)

Assistant United States Attorney

450 Golden Gate Avenue, Box 36055

San Francisco, California 94102-3495

Telephone: (415) 436-6985

FAX: (415) 436-6748

Valerie.smith2@usdoj.gov

Attorneys for Defendants

CURTIS LEE MORRISON (CSBN 321106)

KRISTINA GHAZARYAN (CSBN 330754)

ABADIR BARRE\*

JONATHAN AFTALION (CSBN 317235)

JANA AL-AKHRAS\*

THE LAW OFFICE OF RAFAEL UREÑA

925 N. La Brea, 4th Floor

Los Angeles, California 90038

Telephone: (703) 989-4424

Email: curtis@curtismorrisonlaw.com

Attorneys for Plaintiffs

*\*Pro Hac Vice*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Case No. 3:21-cv-00261-EMC

JACOB, et al.,

Plaintiffs,

v.

BIDEN, et al.,

Defendants.

JOINT STATUS REPORT

**Plaintiffs' Statement**

## **Plaintiffs' Response to Defendants Biweekly Report**

Plaintiffs respectfully submit the following response to Defendants' biweekly reports. Defendants' reports demonstrate that the injury caused by Presidential Proclamation 10014 and its implementing policies is still ongoing. Defendants' reports clearly demonstrate that the withholding and unreasonable delay of Plaintiffs' immigrant visa applications has not been remedied by the rescission of the PP 10014 and this Court may still grant relief that the Plaintiffs seek. Further, the ongoing delays in Plaintiffs' visa applications are a result of Defendants' prioritization scheme that contravenes the will of Congress and is *ultra vires*. Defendants' Motion to Dismiss as Moot makes no mention and dismissal of this action would be wholly premature. Further, Defendants suggest "[t]here is no dispute that visa processing is taking place without regard to Proclamation 10014," which misses the point. Visa processing is not taking place without regard to the implementation policies (No Visa Policies) developed with Proclamation 10014. Unlike in *Anunciato*, Plaintiffs here challenge those No Visa Policies.

### **I. *Ongoing Injury Family Preference Relatives***

Defendants' lament over the increase in adjudications for Family Preference Categories since the rescission of PP 10014, but when these numbers are scrutinized the ongoing injury Plaintiffs face is clear.

<b>Average Weekly Issuance for IR1/2 Visas From 4/9/21-5/6/21</b>	<b>Average Weekly Issuance for IR1/2 Visas in 2019<sup>1</sup></b>	<b>Increase in Adjudication</b>
1,875.5 Issuances	1,755 Issuances	7% Increase

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<sup>1</sup> 2019 Visa Issuance Statistics are found on the Defendants' *Report of the Visa Office 2020*. The IR 1 and IR 2 visas issuances can be found at [Classes of Immigrants Issued Visas at Foreign Service Posts: Fiscal Years 2016 - 2020 \(state.gov\)](#).

Average Weekly Issuance for Family Preference Visas From 4/9/21-5/6/21	Average Weekly Issuance for Family Preference Visas In 2019	Reduction in Adjudication
1,767 Issuances	3,662 Issuances	51% Decrease

Considering the complete suspension of adjudications for Family Preference visa categories for nearly one year, Defendants' adjudications of Family Preference when compared to IR1/2 visas can hardly be considered to have remedied the year-long withholding of adjudications of visa applicants subjected to PP 10014 and its implementing policies.

The two embassies where the most Family Preference Plaintiffs are being adjudicated at are the United States Embassy in Manila and the United States Embassy in Mumbai. When the pace of adjudications is examined against pre-COVID-19 adjudications rates at those embassies, the egregiousness of Defendants ongoing withholding and the ongoing harm is completely crystalized.

#### **Comparison of Spouses and Children of U.S. Citizen Adjudications at the US Embassy in Manila<sup>2</sup>**

Spouses and Children of U.S. Citizen Adjudications for March 2021	Spouses and Children of U.S. Citizen Adjudications for March 2019	Increase in Adjudications of Spouses and Children of U.S. Citizen
1,106 Issuances	396 Issuances	174% Increase

#### **Comparison of Family Preference Adjudications at the US Embassy in Manila**

Family Preference Adjudications for March 2021	Family Preference Adjudications for March 2019	Decrease in Family Preference Adjudications
33 Issuances	1,118 Issuances	97% Decrease

<sup>2</sup> Visa Issuance Statistics for Posts and Visa Class are found on Defendants' *Monthly Immigrant Visa Issuance Statistics* at [Monthly Immigrant Visa Issuance Statistics \(state.gov\)](https://state.gov/immigration/visas/issuance-statistics).

**Comparison of Spouses and Children of U.S. Citizen Adjudications at the US Embassy in Mumbai**

<b>Spouses and Children of U.S. Citizen Adjudications for March 2021</b>	<b>Spouses and Children of U.S. Citizen Adjudications for March 2019</b>	<b>Increase in Adjudications of Spouses and Children of U.S. Citizen</b>
990 Issuances	297 Issuances	233% Increase

**Comparison of Family Preference Adjudications at the US Embassy in Mumbai**

<b>Family Preference Adjudications for March 2021</b>	<b>Family Preference Adjudications for March 2019</b>	<b>Decrease in Family Preference Adjudications</b>
4 Issuances	937 Issuances	99.5% Decrease

Remarkably, Defendants have actually increased the capacity to adjudicate visas for spouses and children of U.S. citizens at these posts when compared to post-COVID-19 adjudications. This extraordinary increase in the adjudication of U.S. citizen spouse and children visas is a direct result of the challenged policies and the “No-Visa” Policy and demonstrates that the Plaintiffs injury remains a live and ongoing controversy.

**II. Ongoing Injury and Imminent Irreparable Injury to DV-2021 Plaintiffs**

The number of diversity visa adjudications demonstrates that Defendants have not only failed to remedy the withholding and unreasonable delay in the diversity visa adjudications caused by PP 10014 and its implementing policies, but that those policies continue to cause an ongoing injury that this Court may cure. Regrettably, without immediate judicial intervention this Court may be without authority to provide relief after September 30, 2021 – the date eligibility for DV-2021 selectees expires. This imminent harm is highlighted below by the following pace of adjudication comparisons demonstrating a 99.9% decrease on DV adjudications over the course of the fiscal year 2021 with a remarkable 4% increase in adjudication for IR1/2 visa categories.

Monthly Pace of DV Issuances from Oct. 1, 2020 to Mar. 31, 2021	Monthly Pace of DV Issuances Between 1998 and 2016 <sup>3</sup>	Decrease in DV Adjudications
20	3,095	99.9% Decrease

Monthly Pace of IR1/2 from Oct. 1, 2020 to Mar. 31, 2021	Monthly Pace of IR1/2 Adjudication in 2019	Increase in IR1/IR2 Adjudications
7,935	7,605	4% Increase

Even when these comparisons attribute the Defendants self-lauded increase in diversity visa adjudications over the last month, the pace of adjudications have decreased 86% while IR1/2 adjudications have decreased on 11%. At that pace, only 3,308 diversity visas will be issued. The lowest number of diversity visas issued in the history of the program.

#### Pace of DV Adjudications

Weekly Pace of DV Issuances from 4/9 to 5/6	Average Weekly Pace of DV Issuances Between 1998 and 2016	Decrease in DV Adjudications
131	976	86% Decrease

#### Pace of IR 1/2 Adjudications

Weekly Pace of IR1/2 Issuances from 4/9 to 5/6	Average Weekly Pace of IR1/2 Issuances in 2019	Increase in IR 1/2 Adjudications
1,875.5	1,755	7% Increase

### III. Relief

In *Gomez*, the Court recognized the operational restrictions of State Department but scrutinized those restrictions with the capacity to adjudicate visas demonstrated in prioritized

<sup>3</sup> Each year the number of available diversity visas changes slightly, the Gomez court deduced that the 18-year average pace of adjudication was a reliable barometer for determining the pace of adjudication. *Gomez v. Trump*, 490 F. Supp. 3d 276, 287 (D.D.C. 2020)

categories that were unaffected by PP 10014 and its implementing policies. *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) (hereafter referred to as the “*Gomez Equation*”).<sup>4</sup> To graciously benefit the Defendants, we have used the pace of adjudications for IR 1 and 2 over the course of the last month for this equation. That means, Family Preference and Diversity visas categories should have seen a increase of 7% but for the “No-Visa” policies.

#### **A. Diversity Visas**

Under the *Gomez Equation*, Defendants should have issued 26,927 FY-2021 DVs as of May 6, 2021 but for the unlawful implementation of PP 10014. Defendants had issued only 688 diversity visas — a 99.7% reduction in issuances even after COVID-19 capacity are taken into account. If Defendants are given the benefit of the doubt that they will continue the pace of adjudication of diversity visa applications over the course of the rest of the fiscal year, only 3,457 diversity visas will be issued and over 50,000 diversity visas will be lost forever. The lowest in the history of the program and less than the total visas issued in the last two weeks of September as the result of the preliminary injunction in *Gomez*.

#### **B. Family Preference Visas**

Tragically, immigrant families fair no better when the pace of adjudication of Family Preference visa categories are scrutinized. From May 1, 2020 until February 28, 2021, the

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<sup>4</sup> To the extent Defendants suggest Plaintiffs raise arguments that are outside the scope of a Joint Status Report, Plaintiffs ask the court to refer to Defendants' and unsupported argument in their Second Biweekly Status Update that "[they] recently shared the tiered approach to processing immigrant visas, noting that this prioritization relied heavily on Congress' clear direction regarding the prioritization of certain categories over others." Dkt. No. 77 at 4. (Where in fact, this was not Congress' clear direction, and the Biden administration re-naming an unlawful prioritization scheme a “tiered approach” does not make it lawful.)

1 course of the PP 10014, only 2,014 family preference visas were issued. Using the average pace  
2 of adjudication in 2019, 175,034 visas would have been issued during that time frame. When the  
3 *Gomez* Equation is applied to account for COVID-19, 155,781 Family Preference visas should  
4 have been issued over the course of PP 10014 if those adjudications matched the pace of  
5 adjudication of visas for spouses and children of U.S. citizens. When that same equation is  
6 applied over the course of the last month, the lingering injury is obvious. From April 6, 2021 to  
7 May 6, 2021, Defendants should have issued 2,151 more family preference visas to match the  
8 increase in adjudication of visas for spouses and children of U.S. citizens this month alone. This  
9 is more than all 1581 total Named Plaintiffs visa applicants.

### 10 **C. Priority**

11 This extraordinary reduction in adjudication of diversity and family preference visas is a  
12 direct result of the challenged policies and the “No-Visa” Policy. Defendants have spent an  
13 entire year violating what they were required to do under the INA. These withholding and delays  
14 have resulted in an actual increase in capacity for U.S. citizen spouses and children visa  
15 applicants when compared to pre-COVID adjudication. In *Gomez*, the Court recognized that the  
16 only remedy the complete cessation of adjudication caused by PP 10014 and its “No Visa”  
17 policies, was to prioritize the adjudication of Named Plaintiffs visas. Defendants argue that this  
18 court should not move Plaintiffs to the front of the line, ignoring their own actions that moved  
19 Plaintiffs to the back of the line. Even if Defendants were right on this point, it would only allow  
20 the court to consider the “movement” “within the context of determining whether agency action  
21 has been ‘unreasonably delayed.’” *Rodriguez v. Nielsen*, 2018 U.S. Dist. LEXIS 169448 at \*36,  
22 n.21 (EDNY Sept. 30, 2018). In the context of determining whether agency action was  
23 “unlawfully withheld,” however, “the Court need not make a reasonability determination.  
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*Rodriguez*, 2018 U.S. Dist. LEXIS 169448 at \*36, n.21. Neither result is acceptable, but wholly preventing DV Plaintiffs from immigrating is or delaying the reunification of families for years more is unconscionable.

#### **D. Conclusion**

The Court should mandate Defendants undertake good-faith efforts, directly and through their designees, to expeditiously process and adjudicate the immigrant visa applications for Named Plaintiffs, as well as further relief for the class. Dkt. 31 at 2.

#### **Defendants' Statement**

Defendants' position that the instant litigation was rendered moot by the revocation of Proclamation 10014 on February 24, 2021 remains unchanged. Indeed, as Defendants previously noted, the Ninth Circuit has dismissed as moot claims based on Presidential Proclamations that were revoked subsequent to the filing of the litigation. *See* Joint Status Report filed April 8, 2021 (ECF No. 67) (citing *National Ass'n of Manufacturers v. U.S. Department of Homeland Security*, Appeal No. 20-17132 ("NAM") (Dkt. Entry No. 90); *see also Kavosian v. Blinken*, No. 20-55325, 2021 U.S. App. LEXIS 3808 (9th Cir. Feb. 9, 2021) (ruling that the President's revocation of Proclamation 9645 mooted a challenge to adjudications applying that proclamation); *Almerdaei v. Trump*, No. 19-CV-830(EK), 2021 U.S. Dist. LEXIS 46688, at \*5–6 (E.D.N.Y. Mar. 12, 2021) (same). Defendants' submission of the bi-weekly statistical reports further bolsters the argument that there is no longer a live case or controversy for the Court to resolve and no further relief to be granted as the government is already undertaking good-faith efforts to process all visas, including Plaintiffs. As the statistics clearly demonstrate, visa processing across all categories—immediate relative, family preference, and Diversity 2021—continues to expand as posts' capacity allows. Proclamation 10014 has been



1 revoked and clearly is no longer an obstacle to the processing of immigrant visas; Plaintiffs’  
 2 claim, therefore, should be dismissed.

3 In their statement, Plaintiffs raise substantive arguments that are outside the scope of a  
 4 Joint Status Report and are an improper attempt to continue to argue against Defendants’ Motion  
 5 to Dismiss. (ECF 60). Plaintiffs’ arguments are also in violation of Local Civil Rule 7-3(d)  
 6 which states that “once a reply is filed, no additional memoranda, papers, or letters may be filed  
 7 without prior Court approval...” except in limited circumstances that do not apply here.  
 8 Furthermore, the so-called “*Gomez* Equation” and order are unique to the facts of that case and  
 9 involves a decision that was issued by the Court when the Proclamation was still in place.  
 10 Consequently, these arguments should be disregarded.

11 In addition, Plaintiffs select statistics which provide a snapshot comparison of visas  
 12 issued to spouses and children of U.S. citizens and family preference adjudications in March  
 13 2019 to March 2021, and a snapshot comparison between DV issuance (not adjudications)  
 14 between October 2020 and March 31, 2021 and visa processing between 1998 and 2016, when  
 15 there was no global pandemic impacting consular operations.<sup>5</sup> Plaintiffs’ comparisons ignore the  
 16 reality of the ongoing pandemic and further assume that 2019 is a baseline for visa processing,  
 17 which is not proper. The statistics selected by Plaintiffs look at visa processing less than a full  
 18 month after the revocation took place and do not reflect the current status of visa processing as  
 19 depicted in Defendants’ Bi-Weekly Reports.  
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22 <sup>5</sup> Plaintiffs’ statistics and calculations were provided after the business hours and differ from the  
 23 statistical information provided to Defendants in their draft statement. As a result, the client has  
 24 not been able to check the accuracy of the numbers reported. Defendants refer the Court to  
 25 *Report of the Visa Office 2020* located at  
 26 [https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2020AnnualReport/FY20](https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2020AnnualReport/FY20AnnualReport_TableII.pdf)  
 27 [AnnualReport\\_TableII.pdf](https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2020AnnualReport/FY20AnnualReport_TableII.pdf) (last visited May 18, 2021) for an accurate accounting of statistics  
 28 from 2019.

Defendants contend that the Court should not rely on Plaintiff's misleading comparisons and instead should rely on the information provided in the Bi-Weekly Reports. These reports amply demonstrate that Defendants continue to process and adjudicate immigrant visas across all categories in increasing numbers as consular posts' capacity permits, without regard to the now-revoked Proclamation. Defendants have further proven how posts' capacity to expand immigrant visa processing continues to be impacted by both political developments (e.g. Embassy Moscow) and by the ravages of the COVID-19 pandemic (e.g. lockdowns in Mumbai, Ankara, Kathmandu, and Lima). There is no dispute that visa processing is taking place without regard to Proclamation 10014. Plaintiffs appear to ignore the terrible toll that COVID continues to wreak on not only Defendants' visa operations, but on the health and safety of its staff and the general public. Plaintiffs not only ask this Court to allow them to jump to the head of the line, before other similarly situated immigrant visa applicants, but expect Defendants to place the health and well-being of its consular staff at risk in order to do so.

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Respectfully submitted,  
STEPHANIE M. HINDS  
Acting United States Attorney

/s/ Valerie E. Smith  
VALERIE E. SMITH  
Assistant United States Attorney

/s/ Curtis Lee Morrison  
CURTIS LEE MORRISON

ABADIR BARRE  
JONATHAN AFTALION  
JANA AL-AKHRAS  
KRISTINA GHAZARYAN  
The Law Office Of Rafael Ureña  
Attorneys for Plaintiffs

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