



U.S. Department of Justice
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September 14, 2022

Mark J. Langer
Clerk, U.S. Court of Appeals for the D.C. Circuit
333 Constitution Avenue, N.W.
Washington, DC 20001

Re: *Goodluck, et al v. Biden, et al.*, Nos. 21-5263, 21-5270, 21-5271, 21-5272, 21-5277, 21-5288 (D.C. Cir.) (oral argument Sept. 16, 2022), Rule 28(j) Letter

Dear Mr. Langer,

Defendants-Appellants notify this Court of *United African Organization v. Biden*, No. 1:22-cv-02599 (N.D. Ill. Aug. 9, 2022) (“*UAO*”) and *Preston v. Kentucky Consular Center*, No. 6:22-cv-00015-CHB (E.D. Ky. Aug. 22, 2022) (“*Preston*”), which relate to questions at issue in these appeals and show the ongoing impact of litigation relating to the diversity visa (“DV”) program.

UAO and *Preston* involve thousands of selectees and derivative beneficiaries for the fiscal year 2022 (“FY2022”) DV program alleging that the U.S. Department of State withheld or unreasonably delayed the processing of their DV applications. Additionally, there are over 60 cases pending in the U.S. District Court for the District of Columbia seeking court-ordered relief in connection with the DV program.

The *UAO* plaintiffs filed a motion for a preliminary injunction seeking, among other relief, an order mandating the Department to process nearly 5,000 DV applications and to preserve unused DVs for issuance beyond the end of FY2022. *UAO* at 2, 8. The *UAO* court denied Plaintiffs’ motion, reasoning that the Department does not have a duty to adjudicate every DV case each fiscal year or to issue all of the DVs allocated for each fiscal year. *Id.* at 18. The *Preston* court dismissed Plaintiffs’ suit, also reasoning that the Department does not have a duty to adjudicate every DV case each fiscal year. *Preston* at 21, 43. Both courts found

the Department did not improperly delay or withhold DV adjudications. *UAO* at 16–24; *Preston* at 32–48.

Both cases distinguished some of the matters currently before this Court in these appeals. *See UAO* at 20 (citing *Gomez* and reasoning that a “complete stoppage” of DV issuance “would be different”); *Preston* at 23–26 (distinguishing *Gomez* and *Goodluck*). But the reasoning and statutory interpretation in these two cases nonetheless supports the government’s position in these appeals. *See UAO* at 20 (observing that the Seventh Circuit explicitly rejected reasoning like that in *Gomez* by holding that 8 U.S.C. § 1154(a)(1)(I)(ii)(II) “does not set a time limit for administrative action”) (quoting *Shahi v. Dep’t of State*, 33 F.4th 927, 929 (7th Cir. 2002)).

Dated: September 14, 2022

Sincerely,

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CERTIFICATES OF SERVICE AND COMPLIANCE

I hereby certify that this filing is 347 words, and therefore complies with the word limitations of Federal Rule of Appellate Procedure 28(j) and this Circuit's local rules. I further hereby certify that on September 14, 2022, I electronically filed the foregoing letter brief with the Clerk of the Court by using the appellate CM/ECF system. Counsel of record are registered CM/ECF users.

Dated: September 14, 2022

Sincerely,

/s/ Michelle M. Ramus
MICHELLE M. RAMUS
Trial Attorney