



The problem with Plaintiffs' statistic is that it is underinclusive, counting only the number of diversity *visas* issued for fiscal year 2017. While the parties and the Court have referred in writing and during oral argument to an annual statutory cap of 50,000 diversity visas, more precisely that cap actually limits the number of aliens that may obtain immigrant status through the diversity visa program each year. 8 U.S.C. § 1151(e) (“The worldwide level of diversity *immigrants* is equal to [50,000] for each fiscal year.” (emphasis added)). But being admitted to the United States on an immigrant visa is not the only path to becoming an immigrant. *E.g., id.* § 1255. As Defendants previously explained, an alien selected in the diversity lottery may seek to immigrate through one of two routes: either by applying for a visa from the Department of State and then being admitted to the United States if he or she is located abroad, or by applying for adjustment of status through U.S. Citizenship and Immigration Services (“USCIS”), a component of the Department of Homeland Security, if the alien is already present within the United States. Decl. of Charles Oppenheim (ECF No. 47-2 at ¶ 3); *see* 8 U.S.C. § 1255(a).<sup>1</sup>

The 50,000 cap for diversity immigrants encompasses both groups of aliens. *See* 8 U.S.C. § 1151(e). A large number of diversity-lottery selectees are already present in the United States when selected and, rather than leave the United States to process abroad, they apply to adjust status through the diversity lottery program, drawing from the same limited number of diversity visas available for allocation to individuals abroad. *See id.* § 1255(a)(2)–(3) (conditioning the adjustment of a domestically-present alien's status on the availability of a visa number, even

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<sup>1</sup> Although USCIS refers to the “diversity visa” process in its public-facing materials, USCIS does not issue visas. *See, e.g., Green Card Through the Diversity Immigrant Visa Program*, U.S. Citizenship & Immigrant Servs., <https://www.uscis.gov/greencard/diversity-visa> (last visited Dec. 12, 2017).

though such alien does not need, and will not actually receive, a visa). The need to coordinate the two agencies' issuance of diversity benefits and ensure they collectively stay under the statutory cap is part of the reason why the Department of State allocates diversity-visa numbers. *See* (ECF No. 42-3 at ¶¶ 3–4, 7–8).

Because Plaintiffs are all abroad, only visa applications have been at issue in this case. Nevertheless, Plaintiffs were competing during fiscal year 2017 with diversity-lottery selectees in the United States who were applying to adjust status without the need for a visa.

This background explains the supposed discrepancy between the figure Defendants reported to the Court and the number Plaintiffs found online. The title of the chart cited by Plaintiffs is “Immigrant Visas Issued,” and that chart’s “Worldwide Grant Total[]” of 49,067 refers to the number of diversity visas issued. Because that chart does not include aliens who became diversity immigrants by adjusting status through USCIS, it does not account for the total number of aliens who became diversity immigrants in fiscal year 2017 and thus does not completely answer the question of whether the statutory cap of 50,000 was reached.

On the same webpage cited by Plaintiffs, the Department of State has posted the total number of diversity immigrants – reflecting those who adjusted status within the United States as well as those who obtained visas abroad – in a separate, broader chart entitled “Immigrant Number Use for Visa Issuances and Adjustments of Status in the Diversity Immigrant Category.” *Table IV, Immigrant Number Use for Visa Issuances and Adjustments of Status in the Diversity Immigrant Category, Fiscal Years 2008–2017*, U.S. Dep’t of State, Bureau of Consular Affairs, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableVII.pdf> (emphasis added) (also attached as Ex. A). That chart lists the “Grand Total[]” of diversity immigrants in fiscal year 2017 as 49,976—the same exact number

Defendants previously reported to the Court. *Id.* at 6. In other words, Defendants provided visa numbers for visa issuance and adjustment of status for 49,976 diversity immigrants, or just 24 short of the statutory maximum.

The second figure cited by Plaintiffs' Status Report is 27,241, the number of diversity-visa numbers for fiscal year 2017 that were returned unused over the fiscal year. Plaintiffs claim, "Because over 27,000 visa numbers were returned unused, a sufficient quantity of visas exist to issue an immigrant visa to each member of the proposed class." (ECF No. 57 at ¶ 2).

As explained above and in past briefing, the diversity-visa number system is simply an administrative tool to ensure as many qualified aliens as possible become diversity immigrants without exceeding the statutory cap. Decl. of Charles Oppenheim (ECF No. 47-2 at ¶ 4). Many more visa numbers are allocated than Defendants anticipate will be used such that diversity-visa numbers are regularly returned. *Id.* A lottery selectee who is found eligible for a visa needs more than just a diversity-visa number to become a diversity immigrant; the fiscal year deadline must not have passed. 8 U.S.C. §§ 1151(e), 1154(a)(1)(I)(ii). Because fiscal year 2017 has ended, Plaintiffs thus cannot become diversity immigrants through that year's program. *See id.* § 1154(a)(1)(I)(ii)(I); *see generally* Defs.' Mot to Dismiss (ECF No. 53). But even if Plaintiffs could somehow surmount the statute's clear language on that point, the number of fiscal year 2017 diversity-visa numbers available to Plaintiffs would be the total number of possible diversity immigrants, 50,000, minus the number of aliens who became diversity immigrants, 49,976. That would leave only 24 visas or opportunities to adjust status – not 27,241. The latter figure is thus irrelevant to whether Plaintiffs are currently eligible for diversity visas (which they are not). The number's only relevance is to show that tens of thousands of individuals are in the position of Plaintiffs – diversity visa selectees who, due to the numerical and timing limits, were

unable to apply for or be issued a diversity visa. Preferring Plaintiffs over those many other disappointed selectees would be inappropriate and unwarranted.

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Dated: December 12, 2017

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 12, 2017, I electronically filed this document with the Clerk of the Court by using the CM/ECF system, which will provide electronic notice and an electronic link to this document to all attorneys of record.

By: /s/ Steven A. Platt  
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# **EXHIBIT**

# **A**

**Table VII**  
**Immigrant Number Use for Visa Issuances and Adjustments of Status in the Diversity Immigrant**  
**Category**  
**Fiscal Years 2008-2017**

Foreign State	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Africa</b>										
Algeria	823	798	797	846	343	1,058	971	1,093	1,277	996
Angola	4	14	6	15	7	13	10	8	37	12
Benin	183	198	223	220	82	230	182	193	282	237
Botswana	10	0	9	5	0	1	2	4	1	3
Burkina Faso	117	92	109	117	103	223	120	122	132	138
Burundi	9	22	42	28	11	28	37	47	64	75
Cabo Verde	0	8	0	10	0	7	2	12	0	2
Cameroon	1,190	1,530	1,581	1,706	847	1,619	1,289	1,455	1,625	1,214
Central African Republic	0	3	11	2	0	3	1	3	8	2
Chad	7	10	6	16	3	10	9	15	18	10
Comoros	1	2	5	2	0	1	0	0	0	1
Congo, Dem. Rep. of the	511	601	924	1,522	1,221	2,235	2,442	2,641	2,778	2,669
Congo, Rep. of the	43	20	34	45	12	47	55	49	50	42
Cote d'Ivoire	194	215	230	297	156	325	376	377	510	442
Djibouti	15	11	9	18	8	18	13	18	33	32
Egypt	3,310	3,651	3,253	3,268	2,013	3,383	3,500	3,456	2,855	3,580
Equatorial Guinea	1	0	2	0	0	0	0	0	0	0
Eritrea	302	392	368	381	144	245	173	186	149	81
Ethiopia	3,549	3,690	3,774	3,536	1,419	2,393	2,543	2,469	2,143	2,560
Gabon	18	5	7	7	10	6	18	12	9	13
Gambia, The	7	26	15	14	11	11	7	13	6	15
Ghana	1,868	1,912	2,660	2,460	1,689	1,895	1,460	526	432	803
Guinea	109	86	268	185	113	257	264	262	293	205
Guinea-Bissau	0	0	0	1	0	7	0	2	0	1
Kenya	2,187	2,365	2,420	1,918	752	1,281	1,216	903	1,116	1,014
Lesotho	0	0	1	0	4	0	3	0	0	0
Liberia	580	831	848	1,003	786	1,231	1,754	1,744	1,553	997
Libya	23	56	70	44	60	82	51	72	127	115
Madagascar	13	27	15	17	3	23	17	9	29	2
Malawi	20	13	17	13	1	16	15	11	0	10
Mali	34	43	38	23	20	29	21	23	39	15
Mauritania	3	8	2	12	3	7	0	6	6	13
Mauritius	22	21	20	24	7	4	6	16	11	2
Morocco	2,129	2,004	1,782	987	376	894	864	912	1,115	1,080
Western Sahara	0	0	0	0	0	0	0	0	0	0
TOTAL	2,129	2,004	1,782	987	376	894	864	912	1,115	1,080
Mozambique	0	1	3	0	2	0	5	1	0	3
Namibia	0	10	0	4	2	7	0	7	3	5
Niger	42	21	20	20	3	18	18	15	15	6
Nigeria	3,425	3,275	2,834	2,810	1,887	3,274	2,467	-	-	-
Rwanda	44	32	65	64	43	158	139	199	242	161
Sao Tome and Principe	0	0	0	0	0	0	0	0	0	0
Senegal	104	163	128	128	51	91	109	104	139	98
Seychelles	0	3	0	0	1	0	0	3	0	0



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Sierra Leone	438	547	314	317	287	719	449	354	383	340
Somalia	40	70	71	52	28	78	46	59	104	56
South Africa	235	301	303	309	225	319	217	197	182	215
South Sudan	-	-	-	0	0	0	0	1	11	6
Sudan	502	592	557	569	308	436	965	1,191	1,833	1,174
Swaziland	0	2	0	3	1	0	0	0	5	0
Tanzania	72	137	65	81	62	51	28	60	32	46
Togo	469	483	507	526	281	514	565	547	688	504
Tunisia	43	53	68	42	26	49	40	38	100	63
Uganda	152	170	158	211	111	204	184	171	166	92
Zambia	65	38	41	48	18	39	18	33	20	17
Zimbabwe	47	96	65	89	42	68	32	47	85	44
<b>Africa Total</b>	<b>22,960</b>	<b>24,648</b>	<b>24,745</b>	<b>24,015</b>	<b>13,582</b>	<b>23,607</b>	<b>22,703</b>	<b>19,686</b>	<b>20,706</b>	<b>19,211</b>
<b>Asia</b>										
Afghanistan	32	46	66	25	43	59	95	28	192	144
Bahrain	0	4	1	2	10	4	2	2	2	1
Bangladesh	2,286	2,663	3,017	3,090	295	-	-	-	-	-
Bhutan	7	5	0	4	4	8	7	1	9	7
Brunei	1	0	0	1	0	1	1	0	0	0
Burma	113	371	282	253	197	267	200	88	140	148
Cambodia	92	120	132	168	188	399	334	152	266	198
China - Taiwan born	275	251	231	214	158	160	215	103	167	160
Hong Kong S.A.R.	48	32	23	27	10	40	46	34	55	18
Indonesia	156	122	122	89	100	66	68	44	45	41
Iran	841	1,117	1,854	2,023	2,428	3,802	2,386	2,661	2,788	2,106
Iraq	88	50	37	57	36	66	49	23	146	150
Israel	47	43	30	41	45	74	58	20	35	34
Japan	282	207	199	177	216	287	269	143	194	117
Jordan	25	95	72	87	62	122	181	72	176	96
Korea, North	0	0	0	0	0	0	0	0	0	0
Kuwait	22	10	29	25	31	66	58	29	59	45
Laos	0	1	3	0	0	2	0	0	0	0
Lebanon	77	83	46	56	94	87	58	52	72	41
Malaysia	39	30	41	48	27	20	38	14	48	30
Maldives	0	0	0	0	0	0	0	0	0	0
Mongolia	199	129	108	209	91	116	79	55	157	97
Nepal	2,073	1,615	1,936	2,017	1,953	3,377	3,504	3,370	3,247	3,477
Oman	5	1	2	0	2	1	2	1	4	6
Qatar	1	0	0	0	3	14	15	15	16	9
Saudi Arabia	29	37	34	41	56	88	109	89	124	111
Singapore	21	14	11	12	14	6	32	2	12	9
Sri Lanka	466	548	441	336	217	296	301	201	324	160
Syria	40	53	37	67	72	91	138	134	164	128
Thailand	45	49	32	36	22	31	19	26	31	19

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Timor-Leste	0	1	0	0	0	0	0	0	0	0
United Arab Emirates	3	11	5	22	41	40	36	40	28	31
Yemen	22	51	33	40	66	195	200	171	397	267
<b>Asia Total</b>	<b>7,335</b>	<b>7,759</b>	<b>8,824</b>	<b>9,167</b>	<b>6,481</b>	<b>9,785</b>	<b>8,500</b>	<b>7,570</b>	<b>8,898</b>	<b>7,650</b>
<b>Europe</b>										
Albania	2,057	2,033	1,645	965	528	994	1,571	1,910	1,506	2,436
Andorra	0	0	0	0	0	0	0	2	0	0
Armenia	837	950	1,001	1,013	644	903	1,272	1,556	1,000	1,566
Austria	30	54	56	69	34	42	24	48	10	34
Azerbaijan	163	217	207	222	149	190	190	289	204	434
Belarus	769	780	734	684	285	848	844	868	568	801
Belgium	32	39	54	26	47	39	24	34	13	42
Bosnia and Herzegovina	31	62	37	33	44	30	39	77	48	84
Bulgaria	1,093	753	571	653	456	965	1,026	834	614	540
Croatia	18	36	29	20	34	20	41	30	22	27
Cyprus	5	14	8	2	2	3	7	8	8	8
Czech Republic	81	37	42	34	23	30	41	38	28	20
Denmark	23	12	34	17	17	20	21	17	14	21
Faroe Islands	-	-	0	0	0	0	0	0	0	0
Greenland	0	0	0	0	0	0	0	0	0	0
TOTAL	23	12	34	17	17	20	21	17	14	21
Estonia	19	16	13	21	12	23	17	21	10	13
Finland	9	22	34	40	35	25	16	29	22	29
France	308	241	272	275	186	228	326	346	211	258
French Guiana	0	0	0	0	-	-	-	-	-	-
French Polynesia	0	0	0	0	1	1	0	0	0	0
French Southern and Antarctic Lands	0	0	0	0	0	0	0	0	0	0
Guadeloupe	2	0	0	0	-	-	-	-	-	-
Martinique	4	1	0	0	-	-	-	-	-	-
New Caledonia	0	0	0	0	0	0	1	0	0	0
Reunion	0	1	0	0	-	-	-	-	-	-
St. Barthelemy	-	-	0	0	0	0	0	0	0	0
Saint Martin	-	-	0	0	0	0	0	0	0	0
St. Pierre and Miquelon	0	0	0	0	0	0	0	0	0	0
Wallis and Futuna	0	0	0	0	0	0	0	0	0	0
TOTAL	314	243	272	275	187	229	327	346	211	258
Georgia	284	360	441	461	293	411	345	507	368	548
Germany	817	910	964	860	595	584	497	535	293	284
Greece	84	76	43	42	30	54	79	98	54	96
Hungary	82	138	65	125	80	112	103	121	79	83
Iceland	4	9	30	13	15	15	10	11	1	9
Ireland	51	51	61	87	76	52	44	50	36	31
Italy	128	161	167	186	207	157	282	289	194	244
Kazakhstan	172	200	201	236	237	316	325	460	243	460

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Kosovo	2	50	91	83	71	126	95	146	164	318
Kyrgyzstan	132	122	130	147	182	189	235	286	135	223
Latvia	19	41	36	70	22	57	57	30	31	22
Liechtenstein	0	0	0	1	0	0	0	0	0	0
Lithuania	128	106	133	167	129	141	156	167	91	96
Luxembourg	3	0	0	2	3	3	0	0	0	2
Macedonia	219	205	150	177	68	148	183	263	206	235
Malta	0	0	5	0	4	0	0	0	0	0
Moldova	279	273	399	582	684	906	1,211	1,566	1,189	1,369
Monaco	1	0	0	0	0	0	4	0	0	0
Montenegro	8	4	11	4	5	11	11	6	7	13
Netherlands	68	103	80	52	61	35	71	46	40	31
Aruba	6	4	0	1	1	0	0	0	0	0
Curacao	-	-	-	1	2	4	0	0	0	0
Netherlands Antilles	3	12	1	0	-	-	-	-	-	-
Sint Maarten	-	-	-	0	0	0	0	1	0	0
TOTAL	77	119	81	54	64	39	71	47	40	31
Northern Ireland	3	13	10	17	15	14	18	15	6	4
Norway	10	11	12	12	9	16	0	4	3	9
Svalbard	-	-	0	0	0	0	0	0	0	0
TOTAL	10	11	12	12	9	16	0	4	3	9
Poland	-	-	-	-	-	829	500	412	327	287
Portugal	12	16	9	17	16	20	27	29	11	15
Macau	11	3	8	2	6	4	3	17	8	1
TOTAL	23	19	17	19	22	24	30	46	19	16
Romania	876	343	366	482	589	423	498	539	342	321
Russia	-	-	1,095	1,552	1,096	1,680	1,928	2,028	1,401	1,812
San Marino	0	0	0	0	0	0	0	0	0	0
Serbia	351	211	158	156	120	171	206	216	213	314
Slovakia	67	45	43	37	17	36	36	44	26	31
Slovenia	6	7	5	2	2	4	1	5	8	12
Spain	56	75	80	86	75	95	183	183	101	108
Sweden	50	46	54	43	62	62	35	48	46	53
Switzerland	71	96	79	69	50	40	61	56	31	35
Tajikistan	66	80	121	182	152	209	248	339	239	419
Turkey	972	1,041	1,058	993	899	712	1,084	1,245	796	1,386
Turkmenistan	78	59	77	85	72	70	106	105	75	93
Ukraine	1,914	1,714	1,807	1,676	1,439	1,844	1,770	1,313	1,787	2,040
Uzbekistan	2,274	2,388	3,356	3,596	3,212	3,385	3,032	2,524	2,378	3,199
Vatican City	0	0	0	0	0	0	0	0	0	0
<b>Europe Total</b>	<b>14,788</b>	<b>14,241</b>	<b>16,083</b>	<b>16,378</b>	<b>13,093</b>	<b>17,296</b>	<b>18,904</b>	<b>19,811</b>	<b>15,207</b>	<b>20,516</b>
<b>North America</b>										
Bahamas, The	5	1	13	2	3	16	2	7	5	3

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<b>North America Total</b>	<b>5</b>	<b>1</b>	<b>13</b>	<b>2</b>	<b>3</b>	<b>16</b>	<b>2</b>	<b>7</b>	<b>5</b>	<b>3</b>
<b>Oceania</b>										
Australia	238	187	285	275	292	433	406	486	331	398
Christmas Island	0	0	0	0	0	0	0	0	0	0
Cocos (Keeling) Islands	0	0	0	0	0	0	0	0	0	0
Norfolk Island	-	-	0	0	0	0	0	5	0	0
TOTAL	238	187	285	275	292	433	406	491	331	398
Fiji	313	291	232	174	174	254	218	185	130	214
Kiribati	2	2	0	0	2	0	0	3	3	0
Marshall Islands	0	0	0	0	4	0	1	0	0	0
Micronesia, Federated States of	0	0	0	0	0	0	0	0	0	0
Nauru	0	0	0	6	0	0	0	0	0	0
New Zealand	117	84	80	109	87	131	132	149	66	127
Cook Islands	0	0	0	0	0	0	0	0	0	0
Niue	0	0	0	0	0	0	0	0	0	0
Tokelau	-	-	0	0	0	0	0	0	0	0
TOTAL	117	84	80	109	87	131	132	149	66	127
Palau	0	0	3	0	0	0	0	0	0	0
Papua New Guinea	2	12	8	1	0	9	2	1	0	1
Samoa	11	2	9	4	2	0	0	0	0	0
Solomon Islands	0	0	0	0	0	0	0	0	0	0
Tonga	27	27	22	9	1	11	2	15	1	24
Tuvalu	0	0	0	0	0	0	0	0	0	2
Vanuatu	0	0	0	0	0	0	0	0	1	0
<b>Oceania Total</b>	<b>710</b>	<b>605</b>	<b>639</b>	<b>578</b>	<b>562</b>	<b>838</b>	<b>761</b>	<b>844</b>	<b>532</b>	<b>766</b>
<b>South America, Central America, and the Caribbean</b>										
Antigua and Barbuda	0	1	6	1	0	6	6	4	0	1
Argentina	60	62	91	57	37	32	73	52	30	36
Barbados	2	3	14	6	4	0	8	6	0	2
Belize	7	5	3	8	1	12	1	0	0	3
Bolivia	79	53	76	30	28	33	26	23	24	10
Chile	14	31	11	16	6	12	24	10	1	13
Costa Rica	3	2	17	12	2	20	25	6	10	13
Cuba	256	190	140	231	70	193	302	474	536	384
Dominica	3	21	15	10	9	11	6	2	4	3
Ecuador	113	-	-	-	-	-	-	-	-	-
Grenada	1	1	4	2	7	1	6	2	1	6
Guatemala	30	-	-	-	-	-	44	20	9	13
Guyana	7	19	32	30	7	16	6	14	4	2
Honduras	14	10	26	26	23	24	38	31	26	30

**Table VII**  
**Immigrant Number Use for Visa Issuances and Adjustments of Status in the Diversity Immigrant**  
**Category**  
**Fiscal Years 2008-2017**

<b>Foreign State</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Nicaragua	14	26	20	22	7	28	2	4	5	3
Panama	5	9	17	5	7	5	7	5	1	0
Paraguay	5	3	17	4	6	4	1	2	2	2
Saint Kitts and Nevis	2	2	2	0	3	5	0	1	0	0
Saint Lucia	2	4	7	9	1	9	15	5	1	10
Saint Vincent and the Grenadines	1	3	5	4	1	9	5	3	2	0
Suriname	2	1	3	0	1	3	4	2	2	0
Trinidad and Tobago	48	76	103	53	43	45	62	53	20	17
Uruguay	12	7	8	4	3	1	9	5	8	8
Venezuela	155	253	391	448	476	560	802	735	684	1,274
<b>South America, Central America, and the Caribbean Total</b>	<b>835</b>	<b>782</b>	<b>1,008</b>	<b>978</b>	<b>742</b>	<b>1,029</b>	<b>1,472</b>	<b>1,459</b>	<b>1,370</b>	<b>1,830</b>
<b>Grand Totals</b>	<b>46,633</b>	<b>48,036</b>	<b>51,312</b>	<b>51,118</b>	<b>34,463</b>	<b>52,571</b>	<b>52,342</b>	<b>49,377</b>	<b>46,718</b>	<b>49,976</b>