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United States Senate

COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, Chief Counsel and Staff Director  
JENNIFER DUCK, Democratic Staff Director

November 20, 2017

**VIA ELECTRONIC TRANSMISSION**

The Honorable Rex W. Tillerson  
Secretary  
U.S. Department of State  
Washington, D.C. 20520

Dear Secretary Tillerson:

I am writing as a follow-up to my letter of November 1, 2017, in which I requested information about the Diversity Visa (DV) recipient who carried out the October 31 terrorist attack in New York City.<sup>1</sup> Since then, reports of additional DV recipients in the U.S. with suspected ties to terror have surfaced.<sup>2</sup> For example, days before the October 31 attack, the Department of Justice announced that another Uzbek national and DV lottery winner, Abdurasul Hasanovich Juraboev, was sentenced to 15 years in prison after pleading guilty to conspiring to provide material support to the Islamic State, for acts that occurred in 2014.<sup>3</sup> In 2009, Pakistani national and DV recipient Syed Haris Ahmed was convicted of terrorism related activities.<sup>4</sup> In 2002, another Pakistani national and DV recipient, Imran Mandhai, pled guilty to conspiring to bomb several locations near Miami, Florida.<sup>5</sup> Also in 2002, DV recipient Hesham Mohamed Ali Hedeyat perpetrated a terrorist attack on U.S. soil, when he shot and killed two people at Los Angeles International Airport on the 4<sup>th</sup> of July.<sup>6</sup>

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<sup>1</sup> Ltr. From Chmn Grassley to Act. Sec'y Duke and Sec'y Tillerson (Nov. 1, 2017) available at <https://www.grassley.senate.gov/news/news-releases/grassley-seeks-details-nyc-attacker>.

<sup>2</sup> Brooke Singman, *Six Terror-Linked Foreigners Entered US Via 'Diversity Lottery,' Says Trump Administration* Fox News, available at <http://www.foxnews.com/politics/2017/11/14/six-terror-linked-foreigners-entered-us-via-diversity-lottery-says-trump-administration.html> [hereinafter Singman, *Six Terror-Linked Foreigners*].

<sup>3</sup> U.S. Dept. of Justice, Press Release (Oct. 27, 2017) available at <https://www.justice.gov/opa/pr/uzbek-citizen-sentenced-15-years-conspiring-provide-material-support-terrorists>.

<sup>4</sup> Singman, *Six Terror-Linked Foreigners*.

<sup>5</sup> *Id.*

<sup>6</sup> CNN, *FBI, Justice: El Al attack was terrorism* (Apr. 12, 2003) available at <http://www.cnn.com/2003/US/West/04/12/airport.shooting/>.

Because the State Department has single handedly administered this statutorily mandated program since its inception in the 1990s, placing the Department in a unique position to provide feedback, I am requesting your candid assessment of the program's operation and merits.

As you know, the Diversity Visa program was created when the Immigration Act of 1990 amended<sup>7</sup> the Immigration and Nationality Act (INA) to create a new class of "diversity immigrants."<sup>8</sup> The law currently provides a maximum of 55,000 DVs<sup>9</sup> each fiscal year to be made available to aliens from countries with low rates of immigration to the United States. The State Department's Kentucky Consular Center (KCC) oversees the complex "lottery" system whereby aliens register for the chance to be selected at random and, if selected, are then permitted to submit a DV application.<sup>10</sup> Although millions apply for the lottery each year,<sup>11</sup> KCC "processes approximately 125,000 registrants (both principals and dependents)."<sup>12</sup> This number appears to be substantially larger than the 55,000 visa annual cap because once approved, DV immigrants may bring along spouses and children under the age of twenty-one.<sup>13</sup>

Since the October 31 terror attacks, calls for elimination of the DV program have become increasingly strident.<sup>14</sup> As one commentator noted, every year thousands of diversity visas are awarded to aliens from countries that have been flagged by the U.S. government for terrorism scrutiny.<sup>15</sup> "[L]etting people into America from these terror-rocked nations through a veritable game of chance is bizarre and potentially suicidal," he argued, noting that more than 65,000 aliens from such high risk countries have been welcomed through the DV program since 2007.<sup>16</sup> Although the October 31 attacker was not from one of the highest risk countries, his post-entry radicalization points to a more amorphous but nonetheless serious concern: that some combination of predisposition, lack of skills (which makes assimilation more difficult), and cultural isolation, could render some DV recipients as great a risk to the United States as those who enter with concrete plans to do harm.

The DV program is also highly susceptible to fraud, as a recent prosecution demonstrates: on November 6, 2017, the Department of Justice brought charges against a Somali woman who won the DV lottery and subsequently recruited an entire fictitious family, including a fake husband and two fake adult children, all of whom came to the United States, and later naturalized as U.S. citizens solely on the fraudulent basis that they were related to the Somali woman.<sup>17</sup> All

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<sup>7</sup> Pub. Law 101-649.

<sup>8</sup> INA § 203(c).

<sup>9</sup> *Id.* § 201(e).

<sup>10</sup> See generally, U.S. Dept. of State Foreign Affairs Manual (FAM), 9 FAM § 502.6 (*Diversity Immigrant Visas*).

<sup>11</sup> U.S. Dept. of State, *Diversity Visa Program Statistics*, available at

<https://travel.state.gov/content/visas/en/immigrate/diversity-visa/diversity-visa-program-statistics.html>.

<sup>12</sup> 9 FAM § 502.6-4(c).

<sup>13</sup> *Id.* § 502.6-4(g).

<sup>14</sup> See, e.g., Murdock, Deroy, *Diversity Visa Lottery is a Jackpot for Immigrants from Terror States*, Nat'l Rev. (Nov. 6, 2017) available at <http://www.nationalreview.com/article/453460/diversity-visa-lottery-public-safety-terrorism>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Dept. of Justice, Press Release, *Denaturalization Sought Against Four Somalia-Born Individuals Who Falsely Claimed to be a Family and Were Admitted to the United States on Diversity Immigrant Visas* (Nov. 6, 2017)

of the fictitious family members claimed, and naturalized under, alternate identities that were clearly made possible through the use of fraudulent identification documents. In another case human traffickers coerced dozens of DV recipients into listing trafficked young women as their own family members on the DV application.<sup>18</sup>

Because fraudulent documents used to verify family relationships can be difficult to spot and are often readily available<sup>19</sup>—particularly in the developing countries that are likely to be among those eligible for the DV lottery<sup>20</sup>—the DV program has, historically, proved particularly difficult to administer. In 2007 the Government Accountability Office (GAO) described this ongoing concern:

*Consular officers at 6 of the 11 posts we reviewed reported that widespread use of fake documents, such as birth certificates, marriage certificates, and passports, presented challenges when verifying the identities of applicants and dependents. Difficulty in verifying identities has security implications because State’s security checks rely heavily on name-based databases. In 2003, State’s Inspector General raised concerns that aliens from countries designated as state sponsors of terrorism can apply for diversity visas. Nearly 9,800 persons from these countries have obtained permanent residency in the United States through the program. We found no documented evidence that DV immigrants from these, or other, countries posed a terrorist or other threat. However, experts familiar with immigration fraud believe that some individuals, including terrorists and criminals, could use fraudulent means to enter or remain in the United States.*<sup>21</sup>

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available at <https://www.justice.gov/opa/pr/denaturalization-sought-against-four-somalia-born-individuals-who-falsely-claimed-be-family>.

<sup>18</sup> See *Fact Summary: U.S. v. Afolabi*, UNODC Human Trafficking Knowledge Portal, available at [https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/usa/2010/united\\_states\\_v.\\_afolabi.html?lng=en&tmpl=htms](https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/usa/2010/united_states_v._afolabi.html?lng=en&tmpl=htms); see also U.S. Attorney District of New Jersey, “Togolese Woman Sentenced To 27 Years In Prison For Forced Labor,” press release, September 20, 2010, available at <http://www.justice.gov/usao/nj/Press/files/pdffiles/2010/Afolabi,%20Akouavi%20Kpade%20Sentencing%20PR.pdf>. The risk of this specific form of fraud has likely been reduced or eliminated by the subsequently imposed requirement that all DV family members be listed at the time of lottery registration.

<sup>19</sup> See, e.g., Zill, Oriana, *Crossing Borders, How Terrorist Use Fake Passports, Visas, and Other Identity Documents*, Public Broadcasting Service (2014), available at <http://www.pbs.org/wgbh/pages/frontline/shows/trail/etc/fake.html>; see also Immigration and Customs Enforcement, *Identity and Benefit Fraud*, available at <https://www.ice.gov/identity-benefit-fraud>.

<sup>20</sup> Countries with otherwise low levels of immigration are selected for the DV lottery. In recent years these countries may tend to be among the least secure, where other means of emigration, including for skilled employment or higher education, are less readily available. See, e.g., Murdock, Deroy, *Diversity Visa Lottery is a Jackpot for Immigrants from Terror States*, Nat’l Rev. (Nov. 6, 2017) available at <http://www.nationalreview.com/article/453460/diversity-visa-lottery-public-safety-terrorism>; see also Alvarez, Patricia, *The Diversity Visa Program Was Created to Help Irish Immigrants*, The Atlantic (Nov. 1, 2017), available at <https://www.theatlantic.com/politics/archive/2017/11/diversity-visa-program/544646/> (noting that “Over time, the percentage of these visas allocated to immigrants from Europe has declined, while the share coming from other regions—particularly Africa and Asia—has surged”).

<sup>21</sup> GAO Report 07-1174, , available at <http://www.gao.gov/products/GAO-07-1174>.

In addition to other concerns, the DV program arguably harms some immigrants themselves, both by exposing DV lottery winners to extortion and fraud,<sup>22</sup> and by permitting lucky lottery winners to jump the queue ahead of hundreds of thousands of family- and employment-based applicants, some of whom have been waiting for years, under other legal immigration programs.<sup>23</sup>

In light of these apparent flaws, many have called for the elimination of the DV program, and I am seeking to evaluate its utility and security. To assist in this endeavor, please respond to the following inquiries no later than December 18, 2017:

1. Please describe the internal State Department workflow for DV cases, beginning with determination of DV-eligible countries, through registration by an applicant for the lottery, selection, and visa adjudication and issuance.
2. Evidence suggests that visa application fraud has been a serious concern, historically, within the DV applicant population, and fraudulent documents continue to be available. What technology or process improvements have been made to address this risk since GAO's 2007 report and since the recently prosecuted fictitious family of applicants were approved for DVs in 2001?
3. I am concerned that the complexity, burden, and risks may outweigh the rewards of the DV program. So that we can best assess its true value, please describe the resources expended on an annual basis to manage and oversee the diversity visa program, including the lottery registration and selection process and related web site, and consular adjudication of lottery winners' applications.
  - a. Are all DV programs costs, including the lottery and registration web site, covered entirely by applicant fees?
  - b. How does consular processing of DV cases compare with the adjudication of other immigrant visa applications, in terms of times and resources expended?
    - i. If such metrics are available, what is the average case processing time for the average DV application? For the average immigrant visa application in other categories?
    - ii. Unlike most other immigrant visa applicants, DV applicants do not submit a petition for advance DHS approval,<sup>24</sup> prior to applying for a

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<sup>22</sup> The Department of State recently warned of "a notable increase in fraudulent emails and letters" being sent to DV Lottery winners (U.S. Dept. of State, Visa Services, *Diversity Visa Program Scammers Sending Fraudulent Emails and Letters* available at <https://travel.state.gov/content/visas/en/general/fraud.html>) and U.S. Citizenship and Immigration Services also warned applicants to "[n]ever send money to anyone who sends you a letter or email claiming you have won." (USCIS, *Green Card Through the Diversity Immigrant Visa Program*, available at <https://www.uscis.gov/greencard/diversity-visa>.)

<sup>23</sup> Cong. Research Serv., *Diversity Immigrant Visa Lottery Issues* (Apr. 1, 2011), p. 9, available at <https://fas.org/sgp/crs/misc/R41747.pdf>.

<sup>24</sup> This inquiry is not concerned with DV lottery winners who adjust status from within the United States.

visa. What, if any, measures does the Department of State take to compensate for the lack of DHS scrutiny of DV applicants?

- iii. Unlike most other immigrant visa applicants, DV applicants must be issued a visa during the same fiscal year within which they “win” the DV lottery. Are DV applications expedited or given any other special consideration due to this restrictive time frame?
- iv. If statistics are available, please provide the number of DV cases subjected to administrative processing in the past five years, including the number of such cases in which a visa was eventually issued.
  - 1. Please advise whether, in cases during the last five years where no DV was issued, the visa was denied, or the application was not successful because the process could not be completed within the same fiscal year (or for some other reason), if such information is readily available.
- c. Posts are required to submit reports of immigrant visas issued and refused, and to report on “Significant Factors Affecting [Immigrant] Visa Work.”<sup>25</sup> Given that the DV program is available only in countries with lower numbers of immigrant visa applications, do embassies and consulates in countries selected for the program see an annual surge in visa applications due to DV registrants? If so, how is this surge handled, and what efforts are made to ensure that DV applicant screening is consistent with screening of other immigrant visa applicants at these lower volume posts?
- 4. Given significant fraud concerns, has the Department considered employing DNA to verify family relationships among DV applicants? If you do not use DNA testing, why not?
- 5. Given the lack of reliable documentation in some developing countries, are DV applicants refused at a higher rate than applicants from other countries? Can you calculate the overall refusal rate for DV applicants on an annual basis?
  - a. If such information is available, please provide the DV applicant visa refusal rate for the past five years and, if readily available, broken down by country of chargeability.
- 6. The numerous terrorism related prosecutions of former DV applicants raises concerns for those who implement the program. Is there any mechanism whereby the Department is notified of the activity of former DV recipients, once they have arrived in the United States? For example, does the Department of Justice notify the Department of State when it (DOJ) prosecutes a former visa recipient—DV or

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<sup>25</sup> 9 FAM 601.4-4(C)(2)

otherwise—and if so, how is that information evaluated and incorporated into DV (or other visa) program management?

7. Please provide any other information that may be helpful as we evaluate the DV program.

Thank you in advance for your cooperation with this request. If you have questions, please contact Katherine Nikas or Brad Watts at (202) 224-5225.

Sincerely,



Charles E. Grassley  
Chairman  
Senate Committee on the Judiciary

Cc:

The Honorable Dianne Feinstein  
Ranking Member  
Senate Committee on the Judiciary

Ms. Elaine Duke  
Acting Secretary  
Department of Homeland Security