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Submitted via www.regulations.gov

Taylor Beaumont
Acting Chief, Legislation and Regulations Division
Visa Services, Bureau of Consular Affairs
Department of State
600 19th St. NW
Washington, DC 20006

RE: Comment Opposing Interim Final Rule: “Visas: Diversity Immigrants,” 84 Fed. Reg. 25989; Docket Number DOS-2019-0014; RIN 1400-AE74

Dear Acting Chief Beaumont,

African Communities Together (“ACT”) submits the following comment in response to the changes to the Diversity Visa (“DV”) Program electronic entry form. ACT opposes the Department of State’s (“Department”) interim final rule (“Rule”) that requires DV registrants to now provide certain information from a valid, unexpired passport on the electronic entry form.¹ This change will likely cause a substantial decrease in the number of DV registrants from African countries and result in fewer Africans receiving DV. As such, ACT recommends that the Rule be withdrawn.

ACT is an organization of African immigrants fighting for civil rights, opportunity, and a better life for the over 2 million African immigrants living in the U.S. For the last several years, Africans have been the largest recipients of diversity visas. The DV Program has been a significant avenue for Africans to immigrate to the U.S. It is for this reason that ACT continues to oppose efforts by the Trump Administration to eliminate the visa category, or as is the case here, to take administrative action that will have the effect of limiting immigration from places President Donald Trump has referred to as “shithole countries.”²

I. The Rule Will Lead to A Decrease in African DV Registrants.

The Department is now requiring DV registrants to include on the electronic entry form the unique serial or issuance number associated with the registrant's valid, unexpired passport; country or authority of passport issuance; and passport expiration date. Previously, a passport was not required until after winning the lottery, but prior to receiving a visa. Expending the effort and money required to procure a passport at that point has always been reasonable. Requiring a registrant to do so before is not only unreasonable, but will have the effect of decreasing participation by Africans because many likely do not

¹ Though the focus of this comment is the requirement for valid passport information, ACT also opposes the portion of the Rule that effectively amounts to the automatic disqualification of entries that contain inadvertent errors.

² Ali Vitali, Kasie Hunt and Frank Thorp V, *Trump referred to Haiti and African nations as 'shithole' countries*, NBC News (January 10, 2018), <https://www.nbcnews.com/politics/white-house/trump-referred-haiti-african-countries-shithole-nations-n836946>.

have a passport. Many DV registrants will also not likely find out about the change until they begin completing the electronic entry form, at which point it could be too late to secure a passport.

1. Many African DV Registrants Will Not Have Valid, Unexpired Passports.

Many potential African DV registrants likely do not have passports.³ Obtaining a passport in some African countries can present significant financial hardship. In the Democratic Republic of Congo, for example, where the average per capita income is \$680 a year, a passport costs \$185.⁴ In other African countries, frequent lack of passport availability make securing a travel document challenging. Last month, for example, it was reported that the state of affairs in Zimbabwe had created a situation where the country did not have enough foreign currency to purchase the ink and paper needed to print passports.⁵ Zimbabweans were sleeping outside of the passport office for an opportunity to fill out a passport application. Similarly, Uganda also experienced a shortage of material needed to print passports earlier this year.⁶ This is not the first time either of these countries have experienced passport shortages.⁷ Given the difficulty in securing a passport in some African countries, it is not unreasonable to presume that a significant number of potential African DV registrant will not have prioritized getting one.⁸ Hundreds of thousands of potential African DV registrants should not have to apply for passports they may never use on the off chance that they will be selected to apply for DV.

Additionally, because African migration happens more within the continent than outside of it, it is likely that a large number of Africans travelers with passports carry regional passports. Nationals of countries within the Economic Community of West African States (“ECOWAS”) may have passports which only permit travel within the 15 ECOWAS member countries.⁹ Citizens of Kenya, Uganda, Rwanda, Burundi, South Sudan and Tanzania may have East African Community passports that facilitate easy travel between those countries.¹⁰ Others still may have African Union passports meant to allow visa-free travel throughout Africa.¹¹ The Rule is not clear about whether genuine passports that do not permit travel to the U.S. can be entered into the electronic entry form. If not, this may further limit African participation.

³ Even in the U.S., a highly developed country, less than half of all American citizens have a valid, unexpired passport. See Passport Statistics, Department of State, <https://travel.state.gov/content/travel/en/passports/after/passport-statistics.html>.

⁴ David Lewis, *Congo's pricey passport scheme sends millions of dollars offshore*, Reuters (April 13, 2017), <https://www.reuters.com/investigates/special-report/congo-passports/>.

⁵ Farai Mutsaka, *'We are trapped': Zimbabwe's economic crunch hits passports*, Associated Press News (June 15, 2019), <https://www.apnews.com/217ddb22679a4c2f881f0d1e2391239c>.

⁶ Misari Thembo Kahungu, *Passport Shortage Hits Labour Export Agencies*, Daily Monitor (April 5, 2019), <https://www.monitor.co.ug/News/National/Passport-shortage-Siminyu-labour-export-agencies-Kania/688334-5059004-15pvihez/index.html>.

⁷ *The challenges of getting a (real) passport in Africa*, The Economist (June 22, 2017), <https://www.economist.com/middle-east-and-africa/2017/06/22/the-challenges-of-getting-a-real-passport-in-africa>.

⁸ See Nanjala Nyabola, *Check your passport privilege*, New Internationalist (July 4, 2019), <https://newint.org/features/2019/06/19/view-africa> (describes various hurdles citizens from some African countries have had to go through to secure a passport).

⁹ ECOWAS Member States, <http://www.ecowas.int/member-states/>.

¹⁰ Ivan R. Mugisha, *Rwanda launches EAC e-passport*, The EastAfrican (June 28, 2019), <https://www.theeastafrican.co.ke/news/ea/Rwanda-launches-eac-epassport/4552908-5175624-11e3gdz/index.html>.

¹¹ Eromo Egbejule, *Dangote revels in his AU passport; good for him, but what about us?*, The Africa Report (April 12, 2019), <https://www.theafricareport.com/11814/dangote-revels-in-his-au-passport-good-for-him-but-what-about-us/>.

2. DV Registrants Will Not Have Sufficient Notice To Secure Valid, Unexpired Passports.

The significant impact this change will have on DV registrants' ability to enter the lottery necessitates sufficient notice. However, despite the Department's own acknowledgment that some DV registrants will need to procure a passport,¹² the Department has done very little to inform the public of the new requirement. As of the writing of this comment, the Department's DV Program website has not provided information about the change for the next lottery, which is expected to run from October to November 2019.¹³ The written instructions have not been updated to reflect the new requirement.¹⁴ The video instructions do not provide information about the new requirement.¹⁵ The U.S. Visas News website does not provide any relevant update about the change.^{16,17} As a result of this lack of notice, potential DV registrants are less likely to be aware of the need for a valid, unexpired passport until they access the electronic entry form to enter the lottery. At that point it may be too late to procure a passport.¹⁸

Because a significant number of African DV registrants will not have a valid, unexpired passport and because potential registrants have not been sufficiently alerted to this new requirement in order to prepare, it is likely that the Rule will lead to a significant drop in African DV registrants. The Rule will negatively impact African DV registrants without meaningfully addressing fraud, as discussed below.

II. The Rule Does Not Meaningfully Address Fraud.

The Department's stated intent of the Rule is to address the "significant number of fraudulent entries for the DV Program each year, including entries submitted by criminal enterprises on behalf of individuals without their knowledge."¹⁹ The Department believes that "requiring that each entry form include a valid passport number at the time of the DV Program entry will make it more difficult for third parties to submit unauthorized entries, because third parties are less likely to have individuals' passport numbers."²⁰ While ACT fully supports the Department's efforts to minimize fraud in the DV Program, doing so using documents commonly known for being forged is unproductive. Further, it is not likely that entities already engaged in criminal activity will be deterred by a need to alter their methods.

Passport fraud is a widespread, worldwide problem.²¹ Unfortunately, passport fraud has also been reported as being a problem at some DV-issuing consular posts. A 2007 report from the Government Accountability Office that examined fraud in the DV Program recounted the availability of fake

¹² 84 Fed. Reg. 25989 at 25991.

¹³ Diversity Visa Program – Entry, Department of State, <https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry.html>.

¹⁴ Diversity Visa Instructions, Department of State, <https://travel.state.gov/content/travel/en/us-visas/immigrate/diversity-visa-program-entry/diversity-visa-instructions.html>.

¹⁵ U.S. Diversity Immigrant Visa Program Tutorial: Submitting an Entry, YouTube (October 1, 2015), <https://www.youtube.com/watch?v=tOQlh2d2EbQ&feature=youtu.be>.

¹⁶ U.S. Visas News, Department of State, <https://travel.state.gov/content/travel/en/News/visas-news.html>.

¹⁷ Though beyond the scope of this comment, ACT urges the Department to update its DV Program website to include information about other regulations that will impact DV applicants (e.g., public charge and social media collection).

¹⁸ Even in a developed country like the U.S., the current standard processing time for a passport is 6-8 weeks, well outside the timeframe available to register for the DV Program. *See* Processing Times, Department of State, <https://travel.state.gov/content/travel/en/passports/requirements/processing-times.html>.

¹⁹ 84 Fed. Reg. 25989 at 25990.

²⁰ *Id.*

²¹ *See* John Stapleton, *Thailand: World's Centre for Fake Passports*, Medium (July 31, 2018), https://medium.com/@john.stapleton_366/thailand-worlds-centre-for-fake-passports-56e8ed0d640f.

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documents, or genuine documents with false information, such as birth certificates, marriage certificates, and passports. The report also noted that in some countries authentic identity documents with false information could be purchased from corrupt government officials. It is, therefore, perplexing that this Rule attempts to address fraud committed by bad actors by using a document bad actors are known to falsify.

Moreover, it is not far-fetched to believe that criminal enterprises and unscrupulous actors who are already engaged in criminal activity would not be deterred by this new requirement. This Rule does not, for example, prevent criminal enterprises from entering fake passport information into the electronic entry form and once winners are announced securing passports (whether fake or genuine with false information) with the details provided in the entry form. It is not inconceivable that these actors have the resources and necessary networks to procure fake passports much quicker than a genuine Zimbabwean DV registrant who would need to sleep outside of a government office for the chance to apply for a passport. A passport she may never use if she is not a DV winner.

This Rule is not likely to have any significant impact on unauthorized third party entries into the DV electronic entry form.

III. The Rule Was Improperly Promulgated Without Notice and Comment.

ACT also objects to the Department's failure to engage in notice and comment rulemaking before promulgating the Rule. The "notice-and-comment requirement permits interested parties to criticize projected agency action *before* that action is embedded in a final rule and allows the agency to benefit from the parties' suggestions."²² The Department justifies its failure by invoking the Administrative Procedure Act's foreign-affairs exception,²³ but that exception applies narrowly, and "it would be problematic if incidental foreign affairs effects eliminated public participation in this entire area of administrative law."²⁴ The exception does not apply where, as is the case here, the agency engages in standard immigration rulemaking.

For all the reasons stated above, ACT opposes the Rule and recommends that it be withdrawn.

Sincerely,



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African Communities Together

²² *Council of S. Mountains, Inc. v. Donovan*, 653 F.2d 573, 580 (D.C. Cir. 1981) (emphasis added).

²³ See 84 Fed. Reg. 25989, 25990 (citing 5 U.S.C. 553(a)(1)).

²⁴ *New York v. Permanent Mission of India to United Nations*, 618 F.3d 172, 202 (2d Cir. 2010).