

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
Simon ATEBA,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Case No. 1:23-cv-02321-JDB
)	
Karine JEAN-PIERRE, in her official capacity as White House Press Secretary, et al.))	
)	
<i>Defendants.</i>)	
)	

[PROPOSED]
DEFENDANTS’ SURREPLY IN OPPOSITION TO
PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

Mr. Ateba’s supplemental declaration omits material information directly relevant to this litigation. Specifically, Mr. Ateba makes numerous assertions about the day pass process that are contradicted by his own recent experience applying for, and receiving, a day pass to access the White House grounds. This confirms Defendants’ arguments that he has failed to demonstrate irreparable harm warranting the extraordinary and equitable remedy of preliminary injunctive relief.

Mr. Ateba relies on the supplemental declaration to support his contention that he is irreparably harmed by being directed to the day pass system. *See* PI Reply at 20, ECF No. 18; *see also* Ateba Supp. Decl. ¶ 7, ECF No. 18-1 (explaining that the day pass process “is cumbersome and required me to expend additional time each day”). The declaration suggests that he has been unable to access the White House for press briefings using the day pass system. *See* Ateba Supp. Decl. ¶¶ 8-17.

In his reply, Mr. Ateba argues that he has suffered an “inability to obtain a day pass for the [press] briefings that have occurred.” Pl.’s Reply, at 20, ECF No. 18. To the extent he suffered such an “inability,” it was one of his own making. As an initial matter, Mr. Ateba conceded that, before

August 28, he did not request a day pass. Ateba Supp. Decl. ¶ 12. The only day this month that Mr. Ateba has requested access to the White House campus was August 28. And his request was, in fact, granted for that day. Mr. Ateba requested a White House day pass at 9:40 p.m. on Sunday, August 27, and received the links to the WAVES forms necessary to request a day pass at 9:07 a.m. Monday morning, August 28.¹ *See* Exhibit 4 (Aug. 28, 2023, email to Mr. Ateba and Aug. 27, 2023, email from Mr. Ateba). That email advised him that, if he wished to access the White House that same day (August 28), he would have to complete his form no later than 11:00 AM. *Id.* Mr. Ateba's request was received at 11:00 AM, and he was authorized to access the White House that day. Fleischer Supp. Decl. ¶¶ 2-3. Despite this authorization, Mr. Ateba did not access the White House on August 28. *Id.* ¶ 4.

Mr. Ateba—despite three years using the day pass system, Compl. ¶ 39—apparently attributes his decision not to come to the White House on August 28 to confusion about the appropriate point of contact at the White House and the lack of confirmation that a day pass had been issued on August 28. Ateba Supp. Decl. ¶¶ 16-17. But Mr. Ateba had received an email from the White House press office with the required WAVES links only hours before, in direct response to his original email, Ex. 4, and he had previously corresponded with the White House Press Office and had been provided the Press Office's contact number. *See, e.g.*, Aug. 6, 2023 email to Mr. Ateba (ECF No. 17-2). And, as Mr. Ateba likely knew from his three years of using the day pass system, neither the Secret Service nor the WAVES system generates notifications when access is granted. Fleischer Supp. Decl. ¶ 5. Mr. Ateba does not allege he made any effort of his own to confirm the status of his day pass or ensure its issuance on August 28.

Other representations in Mr. Ateba's declaration and brief are similarly inaccurate. Mr. Ateba asserts that he had to request a day pass "by 5:00pm the day before." Pl.'s Reply, at 20; *see also* Ateba Supp. Decl. ¶ 8. Yet the White House email he received on the morning of August 28 made clear that

¹ Mr. Ateba suggests that the White House Press Office sometimes fails to send requested links, citing to the experience of two unidentified colleagues. *See* Ateba Supp. Decl. ¶¶ 10, 14. Defendants are unable to verify this claim, but, in any event, Mr. Ateba does not allege it happened to him. Moreover, Mr. Ateba could simply re-request the links if his email went unanswered.

the White House was willing and able to process his same day request if he filled out his WAVES form by 11 am (which he did). *See* Ex. 4. Mr. Ateba's unexplained decision not to act on this advice by entering the White House—contrary to his own apparent understanding of the process—is not a harm attributable to the White House.

Moreover—and contradicting his briefing if not his declaration, *compare* PI Reply at 20 (citing, apparently in error, to paragraph 11 of Mr. Ateba's declaration), *with* Ateba Supp. Decl. (nowhere indicating intent to seek additional day passes)—Mr. Ateba has not yet sought a day pass to access the White House on future days, despite the White House having provided him links to the WAVES forms for the remainder of the week of August 28, 2023 in its email of that same date. *See* Fleischer Supp. Decl. ¶ 6; Aug. 28, 2023 email (Exhibit 4) (including links for requesting a day pass for each day through September 3).

The grant of injunctive relief is an exercise of the Court's equitable power. Mr. Ateba's recent efforts to use the day pass system with which he alleges familiarity are not consistent with his claim of imminent and irreparable injury. For the reasons given in Defendants' opposition, the Court should deny the motion for a preliminary injunction.

Dated: August 29, 2023

Respectfully submitted,

BRIAN M. BOYNTON
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LESLEY FARBY
Assistant Director
Federal Programs Branch

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Counsel for Defendants

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SUPPLEMENTAL DECLARATION OF NATHAN FLEISCHER
ASSISTANT TO THE SPECIAL AGENT IN CHARGE
PRESIDENTIAL PROTECTIVE DIVISION
UNITED STATES SECRET SERVICE

I, Nathan Fleischer, do hereby declare, subject to penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I previously submitted a declaration in support of Defendants’ Opposition to the Plaintiff’s Motion for a Preliminary Injunction. I have been asked to submit this supplemental declaration.
2. Simon Ateba submitted a Worker and Visitor Entry System (WAVES) request form on Monday, August 28, 2023, that was received at exactly 11:00 am, requesting access to the White House Complex on Monday, August 28, 2023.
3. After the security checks were completed, Simon Ateba was authorized through the WAVES system to access the White House Complex on August 28, 2023.
4. Simon Ateba did not access the White House Complex on August 28, 2023.

5. The Secret Service does not notify requesters when they have been cleared in WAVES.
6. As of the date of this declaration, Simon Ateba has not submitted any other WAVES requests for entry onto the White House Complex.

8/29/2023

Date

Nathan Fleischer

Nathan Fleischer
Assistant to the Special Agent in Charge
Presidential Protective Division
United States Secret Service

Bayless, Allyson N. EOP/WHO

From: Presswaves
Sent: Monday, August 28, 2023 9:07 AM
To: Today News Africa
Subject: RE: [EXTERNAL] REQUEST FOR DAY PASSES

Good morning -- Please request a day pass using the link(s) below. If you would like to access campus today, please fill out the following form by 11am [REDACTED]

If you do not have a press credential or are not a U.S. citizen, you will require a Press Office escort, which is only available business days at the top of each hour (i.e., 8:00, 9:00, 10:00, etc.).

Due by 5:00 PM the day before:

Tuesday, August 29
[REDACTED]

Wednesday, August 30
[REDACTED]

Thursday, August 31
[REDACTED]

Friday, September 1
[REDACTED]

Saturday, September 2
[REDACTED]

Sunday, September 3
[REDACTED]

From: Today News Africa <todaynewsafrika@proton.me>
Sent: Sunday, August 27, 2023 9:40 PM
To: Presswaves <Presswaves@WHO.eop.gov>
Subject: [EXTERNAL] REQUEST FOR DAY PASSES

I would like to request day passes for this week. Thanks

Simon Ateba, Today News Africa.