



***Gomez v. Trump* Frequently Asked Questions (FAQs)**

Wednesday, October 21, 2020

Lawyers from the [American Immigration Lawyers Association \(AILA\)](#), [Justice Action Center \(JAC\)](#), and [Innovation Law Lab](#), with pro bono support from Mayer Brown LLP, filed the lawsuit [Gomez v. Trump this summer](#) on behalf of family-based immigrant visa petitioners, diversity visa lottery winners, and nonimmigrant employment-based visa sponsors, challenging President Trump's April and June 2020 proclamations which, in effect, stopped almost all immigration to the United States for the remainder of the year.

On September 4, a federal court in Washington, D.C. [issued a preliminary injunction](#) and ordered the Trump administration to stop denying immigrant visas to 2020 diversity visa winners (DV-2020). It also ruled that the order applies to all DV-2020 lottery winners, and not just the plaintiffs named in the lawsuits. On September 30, the court [amended its ruling](#) and ordered the State Department to [reserve 9,095 diversity visas](#), past the September 30 deadline, for 2020 diversity lottery winners. It also ruled that lawyers representing the *Gomez* plaintiffs would now also represent all DV-2020 lottery winners who have not received visas as of April 2020.

The court order did not rule that the proclamations were altogether unlawful at this preliminary stage of the case, so unfortunately individuals impacted by the immigration ban — even if they have valid visas — still cannot enter the U.S. The *Gomez* lawyers have filed an appeal to the court so impacted individuals can immigrate to the United States. The appeals court will have a hearing on our appeal sometime in January 2021.

Below are some frequently asked questions (FAQs) about the current status of *Gomez v. Trump*.

General FAQs about *Gomez v. Trump*

Q: What's the status of *Gomez v. Trump*, and what do the court's various orders mean?

We have some limited good news for diversity visa lottery winners for 2020 (DV-2020), and for the time being, not-so-great news for everyone else.

In his September 4 ruling, the judge saw the need to only grant preliminary relief for DV-2020 selectees, and ordered the State Department to process as many diversity visa applications as possible before the September 30 fiscal year deadline. In a later order on September 30, the court ordered the State Department to reserve 9,095 diversity visas for processing after legal proceedings have been exhausted and the case is resolved.

The court also granted class certification to DV-2020 lottery winners — meaning all diversity visa lottery winners for 2020 are covered by the court order, and not just the plaintiffs whose names appear in the case. The judge also appointed the *Gomez* lawyers -- that's attorneys from the American Immigration Lawyers Association, Justice Action Center, Innovation Law Lab, and the Law Office of Laboni A. Hoq, who have been working on the case *pro bono* — as class counsel.

The district court order did not agree with us that the proclamations are unlawful altogether, which means the ban on immigration against all impacted visa categories is still in place. As of today, the district court's orders provide limited relief to DV-2020 winners only, by allowing for visa processing for an additional 9,095



individuals, provided that we prevail on the final ruling. The court, unfortunately, did not grant similar relief in *Gomez v. Trump* regarding visa processing to any plaintiffs in family- or employment-based visa categories. However, we have filed an appeal on behalf of all plaintiffs and the court of appeal has indicated it will hear the case sometime in January.

Q: You agreed to put a hold on the district court proceedings while you pursue an appeal. Why?

We have agreed to put a hold — or “stay” the district court proceedings — because we think in this case that the quickest way to achieve complete relief for all impacted visa categories is by expediting the appeal of those parts of the court’s order we do not agree with. Those include our challenge to Trump’s ban on entry to the United States that is still in place for all impacted visa categories, as well as the no-visa policy that has greatly limited the Department of State’s visa processing for all visa categories. The appeals court will have a hearing on our appeal sometime in January 2021.

That said, we also don’t object to further court proceedings in district court at this time while we also move forward with the appeal, if that is what the judge decides.

Q: What will happen to *Gomez v. Trump* if Biden wins the election? What does that mean for President Trump’s proclamations on immigration?

We’re not in a position to speculate about what might happen. But as long as the immigration ban is in place, we will continue to fight it.

FAQs for non-DV-2020 selectees

Q: Will the *Gomez v. Trump* case help people other than DV-2020 selectees?

We hope so! We brought the lawsuit on behalf of not only diversity visa applicants, but also family- and employment-based visa applicants. We, too, were disappointed that the court’s preliminary injunction order did not apply to more than diversity visa winners. So on October 8, we filed an expedited appeal of the court’s decision on behalf of all of the aspects of the district court’s decision we do not agree with, including as it relates to family- and employment-based visa categories, as well as the diversity visa winners. If we are successful on appeal, the appellate court could strike down the suspension of entry and the “no-visa” policy for all impacted individuals. The appeals court will have a hearing on our appeal sometime in January 2021.

Q: Are there other cases that have provided relief for non-DV-2020 plaintiffs?

On October 1, a district court in California struck down [Trump’s June proclamation barring nonimmigrant workers](#), so long as they or their sponsoring employers are members of the U.S. Chamber of Commerce, National Association of Manufacturers, Technet, and the National Retail Federation. This is good news for those visa applicants. Unfortunately, it does not help all impacted nonimmigrant workers, nor diversity visa winners and individuals who have been separated from their families as a result of the President’s bans on entry.

While no relief has been ordered by the court yet, there is also a [new case filed in California](#) that is on behalf of a group of individual family immigration petitioners.



Q. I'm an applicant for a visa that's not a diversity visa, nor a family-based nor employment-based visa (e.g. I've applied for an F1). What can you do for me? Will you sue on my behalf?

For the time being, we are focusing on the plaintiffs in *Gomez v. Trump*, as well as similarly situated individuals who are members of the class, but are not named plaintiffs in the case. That includes DV-2020 winners, as well as family-based and employment-based visa applicants impacted by the proclamations. We currently do not plan to file a new lawsuit related to others impacted by the immigration ban proclamations from April and June, but will be sure to alert the public if anything changes.

FAQs for DV-2020 selectees

Q: How many DV-2020 selectees will actually receive visas?

Once the 9,095 diversity visas have been processed, the State Department estimates that the total number of diversity visas that will have been issued for FY 2020 will be around 27,000 (about 13,000 of those have already been issued). This is about half of the number of diversity visas that are issued in a typical year, and we asked the judge to issue a total of about 43,000 visas, taking into account some reduced capacity to process visas due to the COVID-19 pandemic. We are disappointed the judge did not require the State Department to issue more visas this year.

Q: When will the additional 9,095 visas that the court has reserved for DV-2020 winners be processed?

We do not know yet when the additional 9,095 visas will be processed, as that will depend on the schedule for further litigation in the district court that will be set by the judge. Our best guess is that it will take at least several months.

The schedule the judge sets will include a date for us to file a "motion for a final injunction," which will include additional evidence and arguments about why the visas should be processed regardless of the immigration ban. After that, the court will issue what's called a "final judgment" in the case, which could also take some time. Only then will the additional 9,095 visas be processed.

Q: What is a class action?

A class action is a lawsuit in which a small group of plaintiffs can ask the court for relief on behalf of a large group of similarly situated people. Class actions are useful when there's a large group of impacted people (for example, the DV-2020 selectees impacted by the President's proclamations go far beyond the six named plaintiffs in *Gomez v. Trump*), and it is difficult or inefficient for everyone to file their own lawsuit. As mentioned above, the district court has certified DV-2020 selectees as a class, and appointed *Gomez* counsel to represent the class with respect to the challenge to the legality of the immigration ban. We do not, however, represent class members with respect to their individual visa processing — including their individual efforts to obtain expedited visa processing, or to seek an exception to the immigration ban.

Q: What does it mean to be class counsel?

In class actions, the court appoints one or more attorneys to serve as "class counsel" to represent the members of the class who are not named plaintiffs in the litigation. The purpose is to make sure that the interests of class



members who are not actually in court are protected at all stages of the case. In *Gomez*, the court appointed the attorneys at the American Immigration Lawyers Association, Justice Action Center, Innovation Law Lab, and the Law Offices of Laboni Hoq as class counsel. Our job is to advocate for and protect the interests of the class members as the case goes forward. We will not be able to advise class members on questions specific to their individual cases, such as issues unique to the status of their visa processing or efforts to seek an exception to the presidential proclamations, but [if you sign up here](#), we will keep you posted on the latest information as it relates to class-wide issues.

Q: I'm a DV-2020 selectee, but I was not a named plaintiff in one of the lawsuits against the Trump administration. Does the court's latest ruling apply to me?

Yes. The district court's September 30 ruling in *Gomez* — which ordered the State Department to reserve 9,095 diversity visas for future processing — is not limited to the named plaintiffs in any of the cases challenging the suspension of entry for DV-2020 lottery winners. You are a class member. You do not need to take additional steps to become a class member.

Q: How long before the State Department is required to process all 9,095 visas?

Not until the court issues a final ruling on the merits of the case through a “final injunction motion” discussed above, which is likely at least a few months away. If and when we receive important updates about the case schedule, we will send updates via email to [those who sign up here](#).

Q: If the *Gomez* DV-2020 class wins a final judgment, how will the 9,095 visas be processed?

We assume, but cannot be sure, that the State Department will process the 9095 visas in numerical order by diversity visa confirmation number, and subject to country caps.

Q: How do I know if I am a member of the class?

You are automatically a member of the class if you are a DV-2020 selectee and did not receive a diversity visa as of April 23, 2020.

Q: Will I receive any documents or certificate from the court or attorneys confirming my membership?

No, you will not. Your membership in the class is automatic and we will not send you any confirmation of membership.

Q: I'm a DV-2020 selectee but was not a named plaintiff in *Gomez*, nor any other lawsuit against the Trump administration. Do I need to join a new lawsuit to benefit from the *Gomez* court's order?

No, you do not.

Q: Will my consulate continue to process my application between September 30, 2020, and the end of this case?

Unfortunately, it likely will not. The *Gomez* court order requires the State Department to reserve 9,095 diversity visas for future processing, but does not require the State Department to resume processing DV-2020 applications until after the court's final judgment, which will resolve the lawsuit. This will not likely happen for at least several months.



Q: Should I continue to contact my consulate to request that my application be processed?

You are welcome to do so, but we cannot advise people on questions specific to their individual cases, such as issues unique to the status of their visa processing or efforts to seek an exception to the immigration ban. As we learn additional information that impacts the class as a whole, or learn of any additional steps you should take, we will [communicate that to you via email](#) or updates to our website.

Q: 9,095 additional visas does not seem to be enough to cover all the would-be cases that have been thwarted this year because of Trump's immigration ban. Are you going to ask the court to set aside more?

We did ask the court to reserve more than 9,095 additional visas, but the judge denied our request because of the limitations placed on Department of State consular staff to process additional visas due to the COVID-19 pandemic. If avenues exist to overcome this issue, and increase the number of DV-2020 visas reserved so far, we will explore them.

Q: How do I sign up to receive updates about the status of the *Gomez* case?

Please [sign up here](#), and we will keep you posted about developments. This sign-up form is for both DV-2020 selectees and family/employment-based visa petitioners.

Q: I've filled out that form on your website. Now what?

We will be in touch! As we receive important updates from the court about the status of the case, we will make sure and provide those updates to you and other members of the class. We understand that this experience has proven difficult for you and your family. We remain committed to doing everything possible to help you as soon as possible.

[American Immigration Lawyers Association \(AILA\)](#), founded in 1946, is the national association of immigration lawyers established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members.

[Justice Action Center \(JAC\)](#) is a new nonprofit organization dedicated to fighting for greater justice for immigrant communities by combining litigation and storytelling. There is tremendous unmet need in the litigation landscape for immigrant communities. JAC is committed to bringing additional litigation resources to bear to address unmet needs in currently underserved areas. There is also untapped potential in how litigation can be combined with digital strategies to empower clients and change the corrosive narrative around immigrants.

[Innovation Law Lab](#) is a nonprofit organization that leverages advocacy, technology and law to fight for immigrant and refugee justice. By bringing technology to the fight for justice, Innovation Law Lab empowers advocates to scale their impact and provide effective representation to immigrants in detention and in hostile judicial jurisdictions across the country so that every claim that should win, does win, everywhere, every time.

