

## **Gomez v. Trump FAQ**

*Updated Tuesday, March 16, 2021*

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\*\*](#) in the summer of 2020 on behalf of family-based immigrant visa petitioners, diversity visa 2020 lottery winners, and nonimmigrant employment-based visa sponsors, challenging President Trump's April and June 2020 proclamations which effectively stopped almost all immigration to the United States. On February 24, 2021, President Biden [rescinded the ban on immigrant visas](#) but left the nonimmigrant visa ban in place.

**Important information for winners of the DV-2020 lottery:** If you are a DV-2020 diversity visa holder and your diversity visa does NOT have an expiration date between February 17 and February 28, 2021, the State Department will treat your visa as if it had been issued on February 24, 2021. Your visa will be valid from this date for the same validity period for which it was originally issued. Please see more information [below](#) under **FAQ for DV-2020 selectees**.

If you are a DV-2020 lottery winner and have not yet been issued a visa, there is a possibility that you may be able to receive one of the 9,095 diversity visas that a federal judge has ordered the State Department to reserve. The reserved 9,095 diversity visas will be issued to DV-2020 lottery winners if the plaintiffs in the Gomez v. Trump case win a final judgment. Based on the schedule the judge has set, the judge will likely decide the case after early April 2021. Please see more information [below](#) under **FAQ for DV-2020 selectees**.

Here is a timeline of what's happened in the case so far:

- **September 4, 2020:** A federal court in Washington, D.C. [issued a preliminary injunction](#) ordering the Trump administration to stop denying immigrant visas to 2020 diversity visa winners (DV-2020) on account of Presidential Proclamations 10014. It also ruled that the order applies to all DV-2020 lottery winners, and not just the plaintiffs named in the lawsuits. Because of this ruling, over 7,000 individuals received DV-2020 visas.
- **September 30, 2020:** The court [amended its September 4 ruling](#) and ordered the State Department to [reserve an additional 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 had not received visas as of April 2020. The court order did not rule that Proclamations 10014 and 10052 are unlawful at this preliminary stage of the case — meaning that unfortunately, individuals impacted by the immigration ban, even if they had valid visas, could not enter the U.S.
- **January 1, 2021:** President Trump extended the immigration ban through March 31, 2021.
- **February 2, 2021:** President Biden issued an Executive Order directing a review of agency actions that are inconsistent with the administration's policy that "immigration processes and other benefits are delivered effectively and efficiently." However, neither this Executive Order — nor others signed by President Biden since he took office — rescinded or made any explicit reference to the immigrant visa ban (Presidential

- Proclamation 10014) or nonimmigrant visa ban (Presidential Proclamation 10052).*

• **February 19, 2021:** Upon a request by Gomez Class Counsel and other Plaintiffs' attorneys, the district court [granted emergency relief](#) to DV-2020 visa recipients who were issued visas under the Court's September 4, 2020 injunction, but whose visas would expire before the then-current March 31, 2021 expiration date of the Proclamations. However, DV-2020 visas that expired or will expire between February 17 and February 28, 2021 have not been extended under the Judge's order; recipients of those visas were granted National Interest Exceptions and must travel to the United States before their original visa expiration date. **If you are a DV-2020 visa recipient whose visa expires between now and February 28, 2021, you must travel to the United States before your visa expiration date.** See more information about that relief below under **Q: What do the court's prior orders in Gomez v. Trump mean?**
- **February 24, 2021:** President Biden [rescinded Proclamation 10014](#) (the immigrant visa ban), which means individuals with immigrant visas, including DV-2020 visas, may now seek to enter the U.S. upon completion of other entry formalities (e.g. completing Covid-19 testing and other country or region-specific formalities). President Biden did not take action to revoke the entry ban on nonimmigrant temporary workers

## FAQ

### **Q: What does it mean that President Biden has overturned Proclamation 10014 but left Proclamation 10052 in place?**

Presidential Proclamation 10014 (the immigrant visa ban) was revoked on February 24, 2021. This means that people who have been issued immigrant visas may, subject to other provisions of immigration law and protocols, travel to and seek admission to the United States.

Presidential Proclamation 10052 (the nonimmigrant visa ban) remains in force. This means people who have received certain nonimmigrant visas still may not enter the United States. (Under the [preliminary injunction](#) granted in *National Association Manufacturers v. U.S. Department of Homeland Security*, Proclamation 10052 does not apply to persons or sponsoring employers who are members of the U.S. Chamber, National Association of Manufacturers, Technet, and the National Retail Federation). Because then-President Trump renewed the ban on December 31, 2021, the nonimmigrant ban will remain in place until March 31, 2021 (unless President Biden decides to revoke it before then).

### **Q: Is there a chance that President Biden will end Proclamation 10052 (the nonimmigrant visa ban) at a later date?**

Yes, there may be a chance, but we have no definite information about the President's plans. Proclamation 10052 will expire on March 31, 2021, if President Biden does not rescind it earlier. President Biden may seek to extend it as well, although he has provided no indication that he intends to do so. The President did not mention Proclamation 10052 in the February 2 [Executive Order](#) directing review of certain immigration policies, however.

### **Q: What is the impact of the President's revocation of Proclamation 10014 on the Gomez v.**

## *Trump case?*

The rescission of Proclamation 10014 does not resolve all of the issues in the *Gomez* case. For example, the district court still needs to decide whether the government must issue the 9,095 visas to a portion of the DV-2020 lottery winners who have not yet received visas. Additionally, the nonimmigrant visa plaintiffs in the case are still banned from obtaining visas and entering the United States under Proclamation 10052. *Gomez* counsel continues to litigate the case at both the district and circuit courts, and seek relief for those affected by the Proclamations.

### **Q: What is the status of the resolution of the remaining issues in the *Gomez v. Trump* case?**

On January 20, the government filed its [Motion for Partial Summary Judgment](#) in district court.

On February 3, *Gomez* class counsel filed Plaintiffs' opposition to the government's motion, along with our own summary judgment motion. As per the court's order, summary judgment briefing is limited to claims regarding the Administrative Procedure Act, mandamus, and related claims concerning visa adjudication and issuance. This means that we are asking the court to decide the case in favor of the plaintiffs, which would allow processing of the 9,095 set-aside visas for DV2020 class members to begin, as well as the processing and adjudication of the family-based immigrant visas and non-immigrant visas as well. You can read our filing [here](#).

On March 15, 2021, the government filed its [opposition and reply](#) to Plaintiffs' filing.

By March 29, 2021, Plaintiffs must file a reply to the government's opposition.

The district court has not yet set a hearing date for these cross-summary judgment motions, but the *Gomez* plaintiffs have asked the court to rule expeditiously.

*Gomez* Plaintiffs have also pursued their appeal of the district court's decision that the Proclamations are not unlawful, and that the district court erred in not enjoining (or blocking) the Proclamations and their implementation. (You can listen to audio of our January 14, 2021 argument before the D.C. Circuit [here](#).) Now that President Biden has revoked Proclamation 10014 as to immigrants, the part of the appeal concerning that Proclamation is moot (that is, there is no remaining dispute over the Plaintiffs' claims), because Proclamation is no longer unlawfully preventing immigrant visa applicants from having their applications processed, receiving visas, and entering the United States. However, the *Gomez* Plaintiffs continue to pursue the appeal on behalf of nonimmigrant visa sponsors subject to Proclamation 10052.

### **Q: What do the court's prior orders in *Gomez v. Trump* mean?**

In his September 4, 2020 ruling, the district court judge, Judge Mehta, granted 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 pending a final adjudication on the merits in the case. This means after legal proceedings in the district court have concluded.

The court also granted class certification to DV-2020 lottery winners — meaning all diversity

visa lottery winners for 2020 who did not receive a visa prior to April 23, 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.

On February 19, 2021, Judge Mehta granted our motion for emergency relief for DV-2020 class members who received diversity visas in September 2020, but whose visas will expire on or before March 31, 2021. Apart from those visas that will expire between February 17 and February 28, 2021, the judge ordered the government to “treat all visas issued or renewed pursuant to *Gomez I* as having been issued in the first instance as of the date that this court renders a final judgment in this action,” or as of the date that the Proclamations are no longer in effect – whichever comes first.

The ban was rescinded on February 24, 2021. Therefore, DV-2020 winners who have been issued immigrant visas may, subject to other provisions of immigration law, travel to and seek admission to the United States. Under Judge Mehta’s order, the government must treat DV-2020 visas that were issued in September 2020 under the *Gomez I* order as if they were issued on February 24, 2021 (the date of the Proclamation’s rescission). However, DV-2020 visas that expired or will expire between February 17 and February 28, 2021 have not been extended under the Judge’s order; recipients of those visas were granted National Interest Exceptions and must travel to the United States before their original visa expiration date. If you have a visa that expired or will expire between February 17 and February 28, 2021 and you have not been granted a National Interest Exception, please contact class counsel immediately at [jordan@innovationlawlab.org](mailto:jordan@innovationlawlab.org).

**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, 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 (However, as discussed above, they are no longer subject to entry suspensions under President Biden’s revocation of Proclamation 10014).

The Northern District of California also [granted](#) a preliminary injunction to beneficiaries of immigrant relative visa petitions filed by 181 individual family immigration petitioners. Family members of named plaintiffs in that case should contact their counsel with any questions.

**FAQ for DV-2020 selectees**

**Q: Will the consulates resume the processing of diversity visas for fiscal year 2020 now that the Proclamation has been rescinded?**

By statute, the consulates are not permitted to issue diversity visas to DV-2020 lottery winners

after September 30, 2020. However, Judge Mehta's order set aside 9,095 diversity visas that will be issued to the class if we prevail in the case. Because the case is still pending, we do not know if those visas will be made available to class members. In other words, the consulates will not resume processing diversity visas for fiscal year 2020 unless and until the *Gomez* Plaintiffs win their case. The schedule for a court ruling on this issue is discussed above in the question addressing "**What is the status of the resolution of the remaining issues in the *Gomez v. Trump* case?**"

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

If we prevail before the district court on summary judgment and the district court orders that the government issue the 9,095 reserved diversity visas, 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. We asked the district court to issue a total of about 43,000 visas, taking into account some reduced capacity to process visas due to the COVID-19 pandemic, but the court declined to do so.

**Q: If the additional 9,095 visas that the court has reserved are issued, to whom and how will they be distributed?**

The criteria for allocation and process of distribution for these reserved visas (if they are distributed) has not yet been determined by the court.

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The criteria for allocation and process of distribution for these reserved visas (if they are distributed) has not yet been determined by the court. The government recently commented that "it is not clear yet if the court were to order the Department to issue additional DV2020s how the court would determine which DV2020 selectees should be prioritized for those, whether it would be based on the random order required by statute or some other priority scheme the court might determine."

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

If we prevail on summary judgment, the Court will order the government to issue the additional 9,095 visas. Briefing on summary judgment will conclude in March 2021, as discussed above.

**Q: The State Department has issued a notice stating that DV-2020 recipients who were not issued visas before September 30, 2020 due to Proclamation 10014 will not be interviewed or reconsidered for visas. Is this true?**

The State Department is stating the government's current litigation position- that the government is unable to issue additional DV-2020 visas after September 30, 2020 (the end of the fiscal year). The government recently confirmed to us that such a statement "is intended to convey the current state of the law, which provides that DV2020s may not be issued after the end of the fiscal year."

*Gomez* counsel has argued to the contrary both in our preliminary injunction motion (which we won), and in our pending summary judgement briefing. This question will be resolved by the district court in our summary judgement briefing, hopefully around the end of March. If plaintiffs prevail on summary judgment, the reserved 9,095 visas will be available to DV-2020 selectees for processing. The government has stated that “[i]f the court ultimately does order the Department to issue DV2020s based on a ruling on the merits, the Department will update its guidance at that time.”

**Q: I was issued a visa in September of 2020 that is expiring soon. What should I do?**

If your visa was set to expire between February 17 and February 28, 2021, the validity of your visa was not extended under Judge Mehta’s order, and you **must** travel to the United States before your visa’s original expiration date. The government has advised class counsel that the State Department has been in touch with all DV-2020 recipients who fall into this category. If your DV-2020 visa expired or will expire between now and February 28, 2021 and you have NOT received a National Interest Exception, please let class counsel know immediately by emailing [jordan@innovationlawlab.org](mailto:jordan@innovationlawlab.org).

Apart from those visas that will expire between February 17 and February 28, 2021, “all visas issued or renewed pursuant to *Gomez I*” (the district court’s September 4, 2020 order) must be treated as if they were “issued in the first instance” on February 24, 2021 (the date that the Proclamation was rescinded). So, for example, if you were issued a DV-2020 visa on September 15, 2020 that was valid for six months and set to expire on March 15, 2021, the government must now treat your visa as if it were issued on February 24, 2021 and will expire on August 24, 2021.

**Q: I was issued a visa in September of 2020 that has already expired. What should I do?**

[The State Department website](#) states (as of March 1, 2021) that “individuals who received diversity visas in 2021 as a result of orders in the court case *Gomez v. Trump* may travel to the United States on an expired visa as the court ordered the government to treat these visas as though they were issued on the date P.P. 10014 was rescinded” (February 24, 2021). Please see the State Department’s guidance for DV-2020 Applicants [at this link](#) for the most updated information.

If you are traveling to the United States on an expired DV-2020 visa that remains valid due to the *Gomez* order, you may wish to print this statement and bring it with you to the airport.

**Q: If the *Gomez* class prevails and additional visas are processed, it will be challenging for me to receive a visa because the consulate in my country is closed. What can I do?**

Unfortunately, the *Gomez* case will not resolve many of the other practical and legal barriers to immigration to the United States that are in place because of limited visa processing due to COVID-19. You should consult with immigration counsel and your local U.S. embassy or consulate about issues specific to your own immigrant visa processing.

**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 larger 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 classwide 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 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 who did not receive a diversity visa as of April 23, 2020 because of Proclamation 10014.

**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. You can reference proof of your membership in the court's September 30, 2020 memorandum opinion and amended order certifying the class, a copy of which is available [here](#).

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

The revocation of Proclamation 10014 does not mean that immigrant visa processing will resume for DV-2020 winners who may receive one of the 9,095 reserved visas; the *Gomez* class must prevail on summary judgement first. Therefore, winners of the DV-2020 lottery who have not yet received immigrant visas must continue to wait for a decision from the court. If the government issues further guidance on any aspects of our case, including the 9,095 reserved DV2020 visas, we will let the class know via email or updates to our website immediately.

**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.