

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DOMINGO ARREGUIN GOMEZ, et al.,
Plaintiffs,

v.

JOSEPH R. BIDEN JR., et al.,
Defendants.

Civil Action No. 1:20-cv-01419

MOHAMMED ABDULAZIZ ABDUL
MOHAMMED, et al.,
Plaintiffs,

v.

ANTHONY J. BLINKEN, et al.,
Defendants.

Civil Action No. 1:20-cv-01856

AFSIN AKER, et al.,
Plaintiffs,

v.

JOSEPH R. BIDEN JR., et al.,
Defendants.

Civil Action No. 1:20-cv-01926

CLAUDINE NGUM FONJONG, et al.,
Plaintiffs,

v.

JOSEPH R. BIDEN JR., et al.,
Defendants.

Civil Action No. 1:20-cv-02128

MORAA ASNATH KENNEDY, et al.,
Plaintiffs,

v.

JOSEPH R. BIDEN JR., et al.,
Defendants.

Civil Action No. 1:20-cv-02639

**PLAINTIFFS' CONSOLIDATED OPPOSITION TO DEFENDANTS' MOTION TO
EXTEND THE REMAINING BRIEFING SCHEDULE FOR SUMMARY JUDGMENT**

Plaintiffs in these consolidated cases strongly oppose Defendants' motion to extend the deadline **that Defendants requested** for their combined reply and opposition to Plaintiffs' cross-motions for partial summary judgment.

BACKGROUND

1. The Court originally set a schedule for the present cross-motions under which Defendants' combined reply and opposition was due February 17, 2021; Plaintiffs' replies were originally due March 3; and the Joint Appendix was originally due March 12. ECF 184.

The Court stayed the briefing schedule on February 10, to allow Defendants to address Plaintiffs' emergency motion for injunctive relief. Plaintiffs filed that motion on February 12 (ECF 201); Defendants filed their opposition on February 17 (ECF 203); and the Court heard argument on February 18, before granting the motion in part on February 19 (ECF 209).

On February 22, Plaintiffs filed a motion to reset the briefing schedule, proposing a new schedule under which Defendants' reply and opposition would have been due March 1. ECF 210. After 9 pm on February 23, Defendants proposed that their reply and opposition should be due March 8. ECF 212. Defendants based this request principally on "the new Administration's active review of Presidential Proclamation 10014, which [was to] conclude before the end of the month." *Id.* at 2.

On the morning of February 24, the Court adopted Defendants' proposed briefing schedule, ordering that Defendants' combined reply and opposition brief "shall be filed on or before March 8, 2021"; that Plaintiffs' replies "shall be filed on or before March 22, 2021"; and that the Joint Appendix shall be filed "on or before March 31, 2021." ECF 214, at 2.

Later on February 24 (the day after Defendants requested their present March 8 deadline), the Administration completed its "review of Presidential Proclamation 10014," with President

Biden's announcement of Proclamation 10149, *Revoking Proclamation 10014*, 86 Fed. Reg. 11,847 (Feb. 24, 2021).

2. On March 2, Defendants wrote to Plaintiffs' counsel to request their positions on the instant request to further extend the deadline that Defendants had proposed for their combined reply and opposition brief. Ex. A. Defendants represented that they "need[] additional time to discuss proposals with Plaintiffs' counsel on a possible joint request to modify the 2/19 Order, as well as to further assess the effect of the proclamation's revocation on arguments presently before the Court on summary judgment." *Id.* at 3. Defendants did not offer any proposal regarding "a possible joint request to modify the 2/19 Order," nor did they indicate any particular way in which the revocation of Proclamation 10014 bears on their upcoming summary judgment brief.

Each of the Plaintiff groups responded to indicate their view that the proposed modification of the February 19 order should not delay entry of summary judgment. *Id.* at 1-2. The *Mohammed, Fonjong, Kennedy, and Aker* Plaintiffs rejected outright Defendants' suggestion that the February 19 order should be modified. *Id.* The *Gomez* Plaintiffs explained that they could not take a substantive position on modification without knowing Defendant's proposal, and that in any event, "[a]ny discussions or motion practice regarding amendment [of] the 2/19 order can proceed on a separate track, which may continue after Defendants file their brief." *Id.* at 1.

Defendants filed the instant motion (ECF 220) without further corresponding with Plaintiffs' counsel. Defendants did not attach the correspondence to their motion, nor did they explain (or rebut) Plaintiffs' reasons for opposing a further extension.

ARGUMENT

Defendants' motion should be denied.

First, Defendants themselves requested the present March 8 deadline on the evening of February 23 (ECF 212)—four days after the February 19 order, and less than 24 hours before President Biden (a Defendant in this action) issued Proclamation 10149. At the time they proposed the present deadline, therefore, Defendants were fully aware of the February 19 order, and President Biden’s rescission of Proclamation 10014 was imminent. Defendants were in a position to account for both of those events when they requested the March 8 deadline. Defendants offer no basis for departing from their own scheduling request.

Second, Defendants also do not offer any basis for their assertions (ECF 220, at 2-3) that “additional time” for the summary-judgment brief “is needed as the Government continues to explore seeking modification of this Court’s February 19th Order” and that “the Government needs time to discuss proposals with the other side on the potential to jointly resolve the disposition of this Court’s February 19th Order.” While Defendants imply that there is some urgency with regard to the February 19 order, they do not supply any factual basis for that intimation. There is no imminent deadline. Moreover, Defendants’ rationale is belied by the fact that they did not present Plaintiffs with a proposal “to jointly resolve” their request for modification before filing this extension motion. And Plaintiffs’ responses to Defendants’ e-mail made clear that any discussion regarding modification provides no basis to delay the summary judgment briefing. As the *Gomez* Plaintiffs explained to Defendants, “[a]ny discussions or motion practice regarding amendment [of] the 2/19 order can proceed on a separate track, which may continue after Defendants file their brief on Monday,” March 8, as Defendants proposed. Ex. A, at 1.

Third, Defendants assert that “additional time is needed to assess Proclamation 10149’s revocation of Proclamation 10014 and its effects on arguments presently before the Court on summary judgment” (ECF 220, at 3), but they do not say what it is they need to assess. Rescission

of Proclamation 10014's *entry suspension* should have little effect on the issues being briefed, which, according to the Court's initial scheduling order (ECF 184), are limited to questions going to *visa processing*. Moreover, the issues before the Court on summary judgment are largely limited to the lawfulness of Defendants' *past* practice of failing to process fiscal year 2020 diversity visa applications prior to the September 30 deadline—and that issue cannot be affected by the forward-looking rescission of Proclamation 10014's entry suspension.

In this regard, the *Gomez* Plaintiffs note that their combined opposition to Defendants' motion for partial summary judgment and cross-motion for partial summary judgment was initially prepared in reliance on Defendant Biden's public commitments that the Proclamations would be rescinded by February 2. When Defendants reneged on that commitment without prior notice, Plaintiffs did not seek an extension, but worked expeditiously to revise their papers and to file them, on time, the very next day. Defendants have had notice of the March 8 deadline since they themselves requested it on February 23, and will by March 8 have had a full 12 days in which to revise their papers to account for Proclamation 10149.

Fourth, Defendants' cursory assertion that further extending the briefing schedule “will not cause undue delay nor prejudice the Plaintiffs” (ECF 220, at 3) is false. Many named Plaintiffs, and thousands of class members, still have not received their 2020 diversity visas. And as Plaintiffs have repeatedly explained, many Plaintiffs and class members continue to face ongoing hardships including famine, war, disease, authoritarian regimes, poverty, lack of education for their children, and the unbearable anxiety that comes with being in limbo with no certainty about their future. ECF 210, at 2; ECF 182, at 9. Defendant Biden *himself* correctly recognized, in rescinding Proclamation 10014, that “delay ... of [lottery winners'] opportunity to receive Fiscal Year 2020 diversity visas and to realize their dreams in the United States” irrevocably “harms individuals

who were selected to receive the opportunity to apply for” those visas. 86 Fed. Reg. at 11,847. In litigation, however, Defendants continue inexplicably to disregard the severe and ongoing hardships that result from further delay. The resolution of those hardships requires prompt entry of final judgment.

In sum, Defendants have given no good reason to extend the deadline that they themselves requested. Defendants have had ample time to prepare their summary judgment papers—far more than the Court originally allocated—and should not be allowed to further delay resolution of this urgent and important case.

CONCLUSION

Defendants’ motion should be denied.

March 4, 2021

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Respectfully submitted,

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EXHIBIT A

Welton, Cleland

From: gomezlitigation@innovationlawlab.org on behalf of Welton, Cleland <CWelton@mayerbrown.com>
Sent: Wednesday, March 3, 2021 10:47 AM
To: 'Charles Kuck'; Rafael Urena; York, Thomas B. (CIV)
Cc: Jesse Bless; Wen, James J. (CIV); Girdharry, Glenn M (CIV); Press, Joshua S. (CIV); Abadir Barre; kristina@ghazaryanlaw.com; Philip Duclos; gomezlitigation@innovationlawlab.org; Curtis Lee Morrison
Subject: RE: Gomez v. Biden -- request for position

****EXTERNAL SENDER****

Benton,

The Gomez plaintiffs also likely cannot join a motion for modification of the 2/19 order. But we can't even evaluate the question without knowing what you are offering. Please advise.

We will in any event be opposing any request to extend the deadline that Defendants themselves requested for their summary judgment brief. Any discussions or motion practice regarding amendment the 2/19 order can proceed on a separate track, which may continue after Defendants file their brief on Monday; we see no need to postpone the briefing deadline that you requested in order to accommodate a separate motion for as-yet-unspecified relief.

Regards,

Cleland

From: gomezlitigation@innovationlawlab.org <gomezlitigation@innovationlawlab.org> **On Behalf Of** Charles Kuck
Sent: Tuesday, March 2, 2021 8:59 PM
To: Rafael Urena <ru@urenaesq.com>; York, Thomas B. (CIV) <Thomas.B.York@usdoj.gov>
Cc: Jesse Bless <JBless@aila.org>; Wen, James J. (CIV) <James.J.Wen@usdoj.gov>; Welton, Cleland <CWelton@mayerbrown.com>; Girdharry, Glenn M (CIV) <Glenn.Girdharry@usdoj.gov>; Press, Joshua S. (CIV) <Joshua.Press@usdoj.gov>; Abadir Barre <abadir@barrelaw.com>; kristina@ghazaryanlaw.com; Philip Duclos <philip@curtismorrisonlaw.com>; gomezlitigation@innovationlawlab.org; Curtis Lee Morrison <curtis@curtismorrisonlaw.com>
Subject: Re: Gomez v. Biden -- request for position

****EXTERNAL SENDER****

Aker take the same position as articulated by Mr. Urena for his clients. Both the delay and any attempt at a modification that lessens the impact of Judge Mehta's order will be most strongly opposed.

Now, if you are suggesting the government will agree to expand the scope of Judge Mehta's order to, for example, reactivate ALL DV2020 regardless of issuance date or issue all 55,000 visas, then we would have something to discuss.

Let us know.

Best regards,

Chuck

From: Rafael Urena <ru@urenaesq.com>
Sent: Tuesday, March 2, 2021 8:26 PM
To: York, Thomas B. (CIV) <Thomas.B.York@usdoj.gov>
Cc: Jesse Bless <JBless@aila.org>; Wen, James J. (CIV) <James.J.Wen@usdoj.gov>; Welton, Cleland <CWelton@mayerbrown.com>; Girdharry, Glenn M (CIV) <Glenn.Girdharry@usdoj.gov>; Press, Joshua S. (CIV) <Joshua.Press@usdoj.gov>; Abadir Barre <abadir@barrelaw.com>; kristina@ghazaryanlaw.com <kristina@ghazaryanlaw.com>; Philip Duclos <philip@curtismorrisonlaw.com>; gomezlitigation@innovationlawlab.org <gomezlitigation@innovationlawlab.org>; Charles Kuck <CKuck@immigration.net>; Curtis Lee Morrison <curtis@curtismorrisonlaw.com>
Subject: Re: Gomez v. Biden -- request for position

[EXTERNAL]
Benton,

There is no need for additional time to discuss a joint proposal on the modification of the 2/19 Order with Mohammed, Fonjong, and Kennedy counsel. We will vehemently oppose any modification. Our visa holders have already relied on the Order to make their arrangements to enter the US. A subsequent modification will cause them great prejudice.

Also, "the effect of the proclamation's revocation on arguments presently before the Court on summary judgment" does not warrant a 21-day extension. The delay in adjudicating DV-2020 applications has gone on long enough.

Bests,

Rafael Urena



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On Tue, Mar 2, 2021 at 4:52 PM York, Thomas B. (CIV) <Thomas.B.York@usdoj.gov> wrote:

| Good evening counsel:

The government is continuing to evaluate the possibility of seeking modification of the Court's order. To that end and to facilitate the Court's suggestion at the conference yesterday, the government intends to seek a 21-day extension of its summary judgment deadline and is requesting Plaintiffs' position on an extension.

The government needs additional time to discuss proposals with Plaintiffs' counsel on a possible joint request to modify the 2/19 Order, as well as to further assess the effect of the proclamation's revocation on arguments presently before the Court on summary judgment. The government believes this extension presents the most efficient way to proceed with clarity regarding the 2/19 Order going forward.

Thank you,

Benton York
Trial Attorney

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