

DV-2021 Litigation FAQ –

By Greg Siskind (gsiskind@visalaw.com)

Version date – 3/21/2021

This FAQ relates to proposed mandamus litigation challenging immigrant visa processing delays at US consulates relating to selectees in the DV-2021 program. The case will be filed jointly by the Impact Immigration team comprised of the law firms [Kuck Baxter](#), [Joseph & Hall](#), and [Siskind Susser](#).

1. Who is the lawsuit aiming to help?

We are looking to further assist DV-2021 immigrant visa applicants facing delays at any of the State Department stages of processing.

Our new action filing will include people in the following situations:

- A DV-2021 selectee has submitted initial paperwork, but the case is stuck at the Kentucky Consular Center
- The case is at the consulate, but an interview has not been scheduled
- The interview has been scheduled and cancelled at least once
- The interview has happened, but the case is stuck in administrative processing
- The visa was issued, but because of travel restrictions, the immigrant visa beneficiary was unable to travel before the visa expired and the consulate has not reissued the visa

We are seeking a temporary restraining order from the judge that seeks to have all of the plaintiffs cases adjudicated in a reasonable time frame and no later than September 30, 2021. If the State Department does not meet this deadline, we are seeking to have a reserve of all unissued DV-2021 visas for issuance after 9/30/2021 so that even those plaintiffs with high case numbers are able to process and enter the US. This lawsuit cannot guarantee visa issuance and if a case is deniable for grounds unrelated to the State Department's delays, this case will not help.

Note as well that this lawsuit does NOT cover adjustment of status cases for DV-2021 that are pending at USCIS.

2. What is the deadline to sign up?

New plaintiffs must complete the engagement letter at <https://www.visalaw.com/dv-2021-mandamus-litigation-onboarding-page/> AND make their payment to join the case no later than April 5th, 2021 at 11:59 pm central time. We plan on filing the amended complaint and request for Preliminary Injunction shortly after that.

3. What is the legal basis for the suit?

The case is seeking a writ of mandamus based on unreasonable delays by the State Department. The State Department has failed to work on DV-2021 cases since the selections began and they are very likely going to fail to issue tens of thousands of immigrant visas unless a court orders them to do so. A writ of mandamus is a judge's order to the government to immediately adjudicate a case that has been unreasonably delayed. We are also challenging the State Department's position that they can refuse to issue a visa on the basis of a presidential proclamation under INA Section 212(f). That is an issue from people in 35 countries subject to various COVID-related travel bans (the EU, Ireland, UK, Iran, China, Brazil and South Africa).

3. What remedy is being sought by the litigation? What does a win look like?

We are seeking an order from the judge requiring the State Department to immediately schedule appointments and adjudicate the applications of the plaintiffs in our litigation.

4. Where is the case filed?

We will file the case in the District Court for the District of Columbia.

5. How long will it take to get results?

We are filing a request for a temporary restraining order and asking for immediate emergency relief. If the government chooses, it could adjudicate cases quickly to bring them out of the litigation. This is actually quite common. If the government instead chooses to defend the case, they can typically delay a hearing by up to 60 days. However, we will be seeking a faster timetable given the risks our plaintiffs are facing. After a judicial hearing, it will typically take a few days to a few weeks to get a decision. We cannot force the judge to make a decision within a specific timeline

7. Will there be a risk of backlash if I participate in the case?

We have found over the years that the opposite tends to be the case - people who file a lawsuit are likely to get better treatment than people who don't. Knowing that an applicant is not afraid to sue - something that is time consuming and expensive for the government to have to defend - usually means that the litigant will be treated respectfully. Note that we are filing to speed up processing on these cases. If a case has significant problems aside from the delay, suing the government is not going to solve that.

8. What are the odds of success?

Any lawyer who promises success in litigation is not serving a client well. Litigation is unpredictable by its nature. However, we have had good results to date for many our plaintiffs in

the Milligan v. Pompeo K-1 case and the Tate v. Pompeo O-1 case as well as Aker v. Gomez which dealt with a similar issue facing DV-2020 slectees. We are hopeful this will continue for this similar case and we are optimistic. But we do not believe it is appropriate to quantify that.

9. What is the charge to participate in the litigation?

Our fee for this litigaton is \$1,500 per plaintiff for those who sign on before March 29th at 11:59 pm central time. For the second week we are onboarding plaintiffs (March 30th to April 5th), the feel will be \$2000. The fee for active duty members of the US military is discounted \$500.

The fee is a one-time charge and we will not be billing for additional expenses and legal fees. An exception will be if a plaintiff seeks to have individualize communications with the firm (see below). The fee is due at the outset and we are not able to offer payment plans or other financing. Please do NOT sign up for this case if you are expecting a refund of fees. **Once we have drafted the complaint and filed it with the court, all fees will be considered earned and no refunds will be issued after that point.** If we have not filed the case, we may offer a partial refund depending on how much work we've done at the time of withdrawal. Please note we are moving quickly on this lawsuit and aim to file the complaint by April 15, 2021.

ANUNCIATO PLAINTIFFS – There is no charge to participate in this case if you are a plaintiff in Anunciato v. Trump. Simply complete the engagement letter app and answer the question regarding whether you are an Anunciato plaintiff and your engagement letter will indicate there is no fee. You can also skip the payment step in our onboarding page. If you are not an Anunciato plaintiff and falsely indicate you are, we will be checking each individual and will bar those making such claims from participating in the case or any future cases our firms are handling.

10. Any problems with US service members being plaintiffs?

In our experience, US service members are not barred from suing a federal agency in their personal capacity. Note that we are not experts on rules and regulations applicable to the military so it might be useful to check with a lawyer specializing in helping service members. We suggest that people consider scheduling a consultation with attorney Margaret Stock at <https://www.cascadiawalaska.com/>. Margaret is the nation's foremost expert on immigration law as it affects military members.

11. How will communications work?

We have weekly livestreams to brief plaintiffs in our various cases on the progress of the cases and answer questions and we send out emails to clients when there is news on the case. We do NOT have the ability to discuss your individual case situations. You should be hiring a lawyer on an individual process if you need to do this and you are welcome to hire any of the three firms co-counseling on this case if you need talk to an immigration lawyer and do not have counsel already. Links to each firm are provided at the top of this document.

We also do not have the ability to answer your individual emails. We ask that you communicate with us about your cases via a web form we have created for plaintiffs in the case. We would love to answer your individual questions about the case, but we simply can't get our work done for you unless we are strict about this. We have created a web form that you can use to update us about your individual cases which can be found at <https://www.visalaw.com/dv-2021-mandamus-litigation-onboarding-page/> . And you are welcome to post questions in our regular livestreams.

Please note that we reserve the right to bill you for our time if you send emails to the legal team. Answering your individual emails means the legal team spends less time working on the case which hurts everyone.

13. What if I already have a lawyer or have filed a mandamus case?

We are not representing you with respect to your individual case and cannot advise on your individual case strategy. If you are represented by counsel, you should talk about the pluses and minuses of joining the lawsuit and whether it makes sense for you. If you are already independently pursuing a mandamus action, you cannot be a plaintiff in this case.

14. What is the correct way to update you regarding my case?

Please do NOT send emails to any of the lawyers or staff telling them about your case (e.g. case transferred from the KCC to the consulate, interview scheduled, visa issued, etc.). Instead, please complete the form <https://www.visalaw.com/dv-2021-mandamus-litigation-onboarding-page/> each time you have news.

15. Is the case a class action?

No. That will slow us down. However, we are seeking a universal order reserving all 55,000 visas be reserved and people not in the case would benefit. However, we will be requesting our named plaintiffs have their cases adjudicated first as is customary in a mass action.

16. Will this case send me to the front of the line if I have a high DV rank number?

If your case number is not current when we get a positive decision, you would not be entitled to process. However, the State Department has indicated all DVs will be current in June and if your date is current and we get a positive result, we will request our plaintiffs cases be adjudicated first.

Note that we believe our succeeding in reserving all unused DV visas means it is very likely everyone who otherwise meets the visa requirements will be able to get an immigrant visa.