

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAXWELL GOODLUCK, *et al.*,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., in his official
capacity as President of the United States, *et*
al.,

Defendants.

Civil Action No. 21-1530 (APM)

JOINT STATUS REPORT

Pursuant to the Court's June 18, 2021, Minute Order, the Parties respectfully propose the following schedule for resolving Plaintiffs' motion for a preliminary injunction in this case challenging the U.S. Department of State's adjudication of Diversity Visa 2021 program ("DV2021") immigrant visa applications. The parties propose as follows:

Plaintiffs' Position

Plaintiffs request the following briefing schedule for resolution of their Motion for Preliminary Injunction:

Defendants Response: Due July 1, 2021

Plaintiffs' Reply: Due July 8, 2021

Hearing Date: As expeditiously as the Court's docket will allow

Plaintiffs have graciously offered a briefing schedule that extends Defendants' due date seven days beyond briefing schedule set forth in the LCvR 65.1(c). Defendants' reasons for not stipulating to these due dates are unpersuasive.

First, Defendants' request to extend the briefing schedule for resolution of a forthcoming Motion for Class Certification in ongoing litigation in *Jacob v. Biden*, No. 3:21-cv-00261-EMC (N.D.Cal.). However, class certification in *Jacob* will likely be inconsequential for the purposes of disposition of the matter before this Court. U.S. District Judge Edward M. Chen, presiding over *Jacob*, suggested to the plaintiffs in the *Jacob* matter that there be a carveout in the proposed class definition that excludes DV-2021 selectees with their own litigation occurring in U.S. District Court for the District of Columbia, including *Goh v. Biden*, No. 1:21-cv-9999-APM (D.D.C.); *Rai v. Biden*, No. 1:21-cv-863-TSC (D.D.C.), and *Goodluck v. Biden*, 1:21-cv-1530-APM (D.D.C). *See: Ex. A, Jacob v. Biden, June 11, 2021 Transcript*, at 18-21. As counsel in the *Jacob* case, I can share that suggested approach is the approach *Jacob* plaintiffs have chosen, which will be revealed this evening in their forthcoming second amended complaint and second renewed motions for class certification and preliminary injunction. Simply, despite Defendants attempts to confuse Courts across the land,¹ *Jacob* is unlikely to provide any relief for Plaintiffs here.

Second, Defendants propose an extended briefing schedule because unnamed attorneys working for the President and State Department Defendants believe that they are unable to maintain this briefing schedule because of a due date in a single lawsuit occurring in the Northern District of California. The extra time is needed "to increase the quality of the work." The State Department and the Department of Justice employs 1,000s of attorneys and handle 1,000s of cases a year. Considering the monumental consequences to welfare of the more than 24,000 Plaintiffs by the Defendants' unlawful "No Visa" Policy, Defendants' desire "to increase

¹ Just twelve days ago, Defendants attempted, without foundation, to convince the *Jacob* court that *Goodluck* was a proposed class action. Ex. C, *Jacob*, Gov. Notice of Filing, ("Based on a review the pleadings in *Goodluck*, it appears that Plaintiffs' have elected to pursue a class action mandamus claim related to the "No Visa"/"Diplomacy Strong" framework and the Department of State's tiered prioritization scheme in the District Court for the District of Columbia and not in the Northern District of California.").

the quality of the work” is far outweighed by Plaintiffs need for expeditious resolution of their Motion for Preliminary Injunction.

Further, the number of diversity visa adjudications demonstrates that Defendants have not only failed to remedy the withholding and unreasonable delay in the diversity visa adjudications caused by PP 10014 and its implementing policies, but that those policies continue to cause an ongoing injury that this Court may cure. Regrettably, without immediate judicial intervention this Court may be without authority to provide relief after September 30, 2021 – the date eligibility for DV-2021 selectees expires.

Last year in the *Mohammed v Pompeo* lawsuit for DV-2020 selectees, before it was assigned to this Court, the government argued on July 23 that *Mohammed* plaintiffs would not be prejudiced by a proposed stay. See: Ex. B, Excerpt of *Mohammed*, Gov. Memo in Support of Stay (*Mohammed* ECF No 14-1). That stay was not granted, and nevertheless, history demonstrated a September 4, 2020 order was too late to sufficiently cure the harm inflicted by Defendants. Thus, it is ludicrous for Defendants to suggest that putting the briefing schedule in this case more than a month ahead of last year’s is a bad thing.

Further, there was another lesson from *Mohammed* (and consolidated *Gomez* litigation): it takes 2-3 (14-21 days) weeks before Defendants can begin to properly implement an order from this court. We know that all immigrant applicants must undergo a medical examination that includes a Tuberculosis test where Soviet-era vaccines cause many to have a false positive result triggering another exam that takes between 6 to 8 weeks (42-56 days) to complete. For *Mohammed* plaintiffs who had that false positive, they continue to wait with hope for final judgment in that matter. Thus, for many *Goodluck* plaintiffs in similar situation, Defendants’ suggestion for

delaying the briefing schedule, when DV-2021 is just 100 days before September 30, 2021 deadline, would have devastating and final consequences.

Further, the imminent harm faced by Plaintiffs is also highlighted below by this fiscal year's pace of adjudication comparisons demonstrating a 97% decrease on DV adjudications over the course of the fiscal year 2021 with a remarkable increase in adjudication for IR1/2 visa categories when compared to pre-COVID-19 adjudications.

Monthly Pace of DV Issuances from Oct. 1, 2020 to Apr. 31, 2021	Monthly Pace of DV Issuances Between 1998 and 2016 ²	Decrease in DV Adjudications
79	3,095	97.4% Decrease

Monthly Pace of IR1/2 from Oct. 1, 2020 to Apr. 31, 2021	Monthly Pace of IR1/2 Adjudication in 2019	Increase in IR1/IR2 Adjudications
7,900	7,605	4% Increase

Finally, Plaintiffs want to bring the Court's attention the procedural situation that service of process has not yet been achieved as Plaintiffs are still awaiting the issuance of the summons.

Defendants' Position

1. For the reasons set forth more fully in the motion for an extension of time Defendants are filing concurrently with the filing of this joint status report, Defendants respectfully request that their deadline to file an opposition to Plaintiffs' preliminary injunction motion be extended by three weeks—from June 24, 2021, to July 15, 2021. This will allow the government to further assess whether a stay of this action may be warranted in light of the class certification papers that are anticipated in a case currently pending before the U.S. District Court for the

² Each year the number of available diversity visas changes slightly, the Gomez court deduced that the 18-year average pace of adjudication was a reliable barometer for determining the pace of adjudication. *Gomez v. Trump*, 490 F. Supp. 3d 276, 287 (D.D.C. 2020)

Northern District of California, *Jacob v. Biden*, Civ. A. No. 21-0261 (N.D. Cal.).³ *Jacob* involves the same Plaintiffs' counsel, raises similar challenges to the Department of State's handling of selectees for the diversity visa program for fiscal year 2021, and the court there has directed the plaintiffs to file an amended complaint "which properly alleges a class action and directs DV2021 Plaintiffs to file renewed Motions for Class Certification and Preliminary Injunctive Relief." *See* Civ. A. No. 21-0261 (N.D. Cal.) (ECF No. 91 at 23). In their Motion for Preliminary Injunction in this case, Plaintiffs seek "an order requiring Defendants to reserve visa numbers for Plaintiffs through the pendency of litigation" and "an order mandating that Defendants . . . process Plaintiffs' immigrant visa applications, schedule Plaintiffs for immigrant visa interviews, and issue visas to eligible Plaintiffs." *See* ECF No. 18 at 45.

2. The requested three-week extension will also allow for coordination between the U.S. Attorney's Office, agency counsel, and the Department of Justice Office of Immigration Litigation. The requested extension will improve the quality of briefing before this Court and an additional two-week extension beyond the July 1, 2021, deadline proposed by Plaintiffs will not unduly delay the proceedings or prejudice Plaintiffs. A July 15, 2021, opposition filing deadline would put the briefing schedule in this case more than a month ahead of last year's preliminary injunction motion briefing schedule in the *Gomez v. Trump* litigation regarding the 2020 Diversity Visa program, in which Defendants filed their memorandum in opposition to Plaintiffs' motion for a preliminary injunction on August 18, 2020. *See* Civ. A. No. 20-1419 (ECF No. 95).

³ Defendants believe it necessary to respond to Plaintiffs' allegation that the government has attempted in any way to mislead the court in *Jacob* as to the nature of the present action. In fact, the notice of filing Plaintiffs cite explicitly noted that the *Goodluck* complaint did not include allegations related to class certification, but noted that neither did the amended complaint in *Jacob*, although plaintiffs still filed a motion for class certification thereafter. In addition, it is entirely reasonable to assume that a case involving over 24,000 named plaintiffs would be pursued as a class action.

Dated: June 22, 2021

Respectfully submitted,

/s/Curtis Lee Morrison

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE EDWARD M. CHEN

JANAN VARGHESE JACOB, et al.,)	
)	
Plaintiffs,)	
vs.)	No. C 21-0261 EMC
)	
JOSEPH R. BIDEN, et al.,)	
)	San Francisco, California
Defendants.)	Friday
)	June 11, 2021
)	10:00 a.m.

TRANSCRIPT OF ZOOM WEBINAR PROCEEDINGS

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Reported By: Katherine Powell Sullivan, CSR #5812, CRR, RMR
Official Reporter - U.S. District Court

1 Friday - June 11, 2021

10:00 a.m.

2 P R O C E E D I N G S

3 ---000---

4 **THE CLERK:** Court is now in session. The Honorable
5 Edward M. Chen is presiding.

6 Calling Civil action 21-261, Jacob versus Biden, related
7 to Civil action 20-7183.

8 Counsel, please state your appearances for the record,
9 beginning with counsel for plaintiffs.

10 **MR. BARRE:** Good morning, Your Honor. Abadir Barre on
11 behalf of plaintiffs.

12 **THE COURT:** All right. Good morning, Mr. Barre.

13 **MR. MORRISON:** Good morning, Your Honor. Curtis
14 Morrison on behalf of plaintiffs.

15 **THE COURT:** Good morning, Mr. Morrison.

16 **MS. GHAZARYAN:** Kristina Ghazaryan on behalf of
17 plaintiffs.

18 **THE COURT:** All right. Good morning, Ms. Ghazaryan.

19 **MS. AL-AKHRAS:** Good morning, Your Honor. Jana
20 Al-Akhras on behalf of plaintiffs.

21 **THE COURT:** All right. Good morning, Ms. Al-Akhras.

22 You're muted, Mr. Aftalion.

23 **MR. AFTALION:** Good morning, Your Honor. Jonathan
24 Aftalion on behalf of plaintiffs.

25 **THE COURT:** All right. Good morning, Mr. Aftalion.

1 **MS. SMITH:** Good morning, Your Honor. Valerie Smith
2 on behalf of defendants.

3 **THE COURT:** All right. Good morning, Ms. Smith.

4 So you have my order. What I have kept alive and what is
5 outstanding, at this point, is the claim brought on behalf of
6 the DV-2021s. As I've noted, I've denied the motion for class
7 cert and classwide relief because the complaint is not
8 adequately pled, and we can't proceed without an adequately
9 pled and defined class.

10 So I've set forth a timeline to have that done, keeping in
11 mind the approaching deadline of September 30th, in terms of
12 the fiscal year, and what the consequences are if things don't
13 get resolved.

14 In looking at the defendants' biweekly status report, I
15 see that some progress has been made, but at this point the
16 cases scheduled for interview are 2,817 as of 5/27, which
17 involve close to 5,000 applicants.

18 Do I have that right, Ms. Smith?

19 You're muted.

20 **MS. SMITH:** I'm sorry. I did not pull up the filing,
21 but that information that was contained in our prior most
22 recent biweekly finding is the most up-to-date information I
23 have for you.

24 **THE COURT:** Okay. All right. There's a statement in
25 here: While not required by the minute order, defendant

1 reports, as of June 1st, total of 14,000 cases representing
2 29,830 applicants have been determined to be documentarily
3 qualified.

4 So that's documentarily qualified but still pending for
5 interview, and that's where some of the bottleneck -- the main
6 bottleneck is, I take it, because of the pandemic situation?

7 **MS. SMITH:** Without directly speaking to my client,
8 that's what I would anticipate, yes, Your Honor.

9 **THE COURT:** Okay. So people that are documentarily
10 qualified, they would be -- if there were enough resources,
11 they'd be eligible to be scheduled for an interview. Is
12 that --

13 **MS. SMITH:** Yes, in the queue to be scheduled for
14 interview.

15 **THE COURT:** Okay. All right.

16 **MS. SMITH:** Depending on when they became
17 documentarily qualified. I believe at this point all DV
18 numbers are current.

19 **THE COURT:** And what's your sense in terms of what
20 conditions are like now at the consulates? I know it varies
21 from country to country and things seem to be getting better in
22 some places and maybe not in others. But do you have an
23 overall sense?

24 **MS. SMITH:** Well, one of the embassies that was
25 referred to by the plaintiff was embassy in Colombo, Sri Lanka.

1 And at that time they were under very strict COVID lockdown
2 measures. I believe they were operating at 25 percent
3 capacity.

4 So there are still very serious COVID implications
5 impacting the ability of consular posts to staff and to process
6 these visa applications.

7 **THE COURT:** Okay. So it's a fair assumption that all
8 applicants who would be documentarily qualified by the time we
9 get to the end of the fiscal year will not have had an
10 opportunity to be interviewed.

11 Is that at least looking that way at this point?

12 **MS. SMITH:** I can't speak to -- that's an unknown.
13 That's a speculation on behalf of that. But just because there
14 are people who are receiving selectee spots for the DV lottery
15 of 2021, and just because they're documentarily qualified does
16 not entitle them automatically to a visa.

17 As Your Honor knows, there are very, very serious COVID
18 implications worldwide affecting consular operations.

19 **THE COURT:** All right. All right. Let me hear from
20 the plaintiffs.

21 As you can see, I've sort of taken a cue from Judge Mehta,
22 who devised, at least for the 2020 folks, a construct that
23 didn't guarantee, you know, the full numbers, but looked at
24 what the numbers might look like had it not been for the delay
25 in the results of the PP 10014, but allowing for, you know, the

1 general falloff from COVID. So had it not been for that
2 proclamation, some number south of 55,000, but, you know, still
3 a significant number.

4 And that's -- I'd like to hear your comments in the
5 likelihood we're going to end up in a similar situation.

6 **MR. BARRE:** Yes, Your Honor. The way that defendants
7 are adjudicating or failing to adjudicate DV-2021s will fall
8 far short from the 55,000 number.

9 We contest that it's not due to, you know, capacity or
10 pandemic restrictions, but to the No-Visa Policy. The fact
11 that they've adjudicated less than 1,500 visas to date --
12 1,483, to be exact -- shows that -- I mean, last year at this
13 point they had adjudicated 10,000 when we were in litigation in
14 *Gomez*, and this year 1500, and last year we finished with the
15 10,000 plus the 7,000 that Judge Mehta ordered, so 17,000. And
16 he reserved 9,000, so about 25,000.

17 So using the *Gomez* equation, if they were adjudicating at
18 the same pace as IR-1s, IR-2s, proportionally they would have
19 been at about 22,000 at the end of May.

20 So defendants have stated that they've moved 14,000
21 applicants as documentarily qualified. That was the
22 bottleneck. And KCC didn't have pandemic restrictions. It
23 was, they just shut down the consular center because of the
24 No-Visa Policy.

25 Had they, you know, stamped them documentarily qualified,

1 inevitably some of those applicants would have been set for
2 interview because they have hundreds of embassies worldwide, 30
3 particularly that do DVs.

4 And we have to go back to the six-month cessation of no
5 processing. So the numbers certainly would not have been at
6 1500. That's dismal.

7 So without a court order, we might get 5,000 visas
8 actually issued. Right? Not documentarily qualified, not sent
9 to an embassy to be adjudicated at some later date, possibly,
10 but actual adjudication.

11 An issuance or refusal, the number will probably be, based
12 on how the numbers have been, 1500 over nine months, maybe
13 5,000, if we're being generous. And that means 50,000 visas
14 would not be issued for DV-2021, which is far worse than
15 DV-2020 and any other year combined.

16 **THE COURT:** Let me ask you about the numbers. Right
17 now the report shows, as of 5/27, the cumulative total of cases
18 is 2,817 scheduled for interview, and that represents 4,971
19 applicants. That's because there are multiple applicants
20 for --

21 **MR. BARRE:** For family, yes.

22 **THE COURT:** And so one would expect within the next --
23 I don't know, within the next couple of months that they would
24 be adjudicated? Or do you think even those 4,971 would not be
25 adjudicated in the next couple of months?

1 **MR. BARRE:** Would not be, because they need -- that's
2 why defendants have the policy of schedule some before they're
3 even current, because it takes time to schedule the interview,
4 do the medical. A lot of these countries have TB tests where
5 they get false positives, so they have to redo it. Make sure
6 they have a current criminal clearance from their home country.

7 So all of that needs to be in place to get, you know,
8 fully adjudicated one way or the other, whether it's issuance
9 or refusal. Merely scheduling an interview doesn't mean the
10 case is completed.

11 **THE COURT:** So documentarily qualified doesn't include
12 all the medical --

13 **MR. BARRE:** No. At the KCC -- and this is why there
14 was such a problem at the KCC when they shut it down and failed
15 to take calls -- to fill the inbox, the email inbox, and then
16 to close the telephone lines, because KCC essentially gets the
17 DS-2 application together, the supporting documents like the
18 birth certificate, the passport page, you know, all the
19 derivative -- all the documents for the derivative applicants,
20 collects them all and essentially sends it over to the embassy.

21 And then at the embassy there's the other step of the
22 applicants getting all the originals together, doing the
23 medical, doing the criminal, coming in for the interview, the
24 consular officer viewing everything and also interviewing the
25 applicant to make sure they're eligible, and then giving a

1 final adjudication, whether it's issuance or refusal.

2 So KCC's job is really to process it as quickly as
3 possible and kick it to the embassy. So the fact that they
4 held it for seven months, now it's really putting a strain on
5 embassy.

6 So defendants try to say embassies have limited resources
7 but have put themselves in a position of trying now to
8 adjudicate 53,000 visas in three and a half months, when they
9 could have, as intended by Congress, spread it out over a year.

10 So it's going to really be a busy summer for defendants if
11 they are representing that they do intend to adjudicate as many
12 DVs as possible, given that they've, you know, squandered nine
13 months, really, at this point.

14 **THE COURT:** All right. Are there any developments in
15 Judge Mehta's -- the new case, the second -- the DV-2021
16 nonclass action case that he has?

17 **MR. BARRE:** Thank you for recognizing. Yeah, it is
18 nonclass action. There's no other class action for DVs pending
19 in any court. We just found it's assigned to Judge Mehta. We
20 don't have any update in terms of an initial --

21 **MR. MORRISON:** Excuse me, Abadir?

22 **MR. BARRE:** Yes.

23 **MR. MORRISON:** He's talking about Goh. He's not
24 talking about --

25 **MR. BARRE:** Sorry, Your Honor. Goh or Goodluck?

1 **THE COURT:** Goh first. Then I'll talk about Goodluck.

2 **MR. BARRE:** Oh.

3 Then, Curtis, I guess you could speak on Goh.

4 **MR. MORRISON:** Oh, yes. I can say this. It's a 465
5 action. The docket is not public. So we know that they're
6 pursuing a different strategy for resolution of the case.
7 They're going straight to summary judgment. But we don't know
8 anything about what's going on in the case because we can't
9 access the docket. The Government knows.

10 Valerie could probably answer these questions about Goh.

11 **THE COURT:** Is there something that you can disclose,
12 Ms. Smith, about the status of the DV-2021 plaintiffs in Goh?
13 What's happening?

14 **MS. SMITH:** All I know, in terms of Goh, Your Honor,
15 is that it's scheduled for hearing on those motions for
16 July 13th.

17 And if I may, I do need to address the representation of
18 the KCC shutdown operations.

19 **THE COURT:** Yeah.

20 **MS. SMITH:** The KCC did not shut down operations. And
21 that's further demonstrated by the exhibit the plaintiffs
22 attached to the joint statement, Your Honor.

23 That individual, who has a very high DV number, lottery
24 number, is actually being scheduled for an interview despite
25 the fact that they have a high number. That's because they

1 submitted their documents, and those documents were processed
2 in September, and they were processed by October, and so
3 because that individual got their documents, became
4 documentarily qualified in October, when their number became
5 current they were eligible to be scheduled for an interview.

6 And so the argument that the KCC has not been processing
7 or documentarily qualifying individuals is wrong. And that's
8 supported by plaintiffs' own exhibit, the joint -- to the joint
9 statement, Your Honor.

10 **THE COURT:** All right. I don't need to get into
11 whether they actually closed or slowed things down. There's
12 little question, and I don't think there's any dispute that
13 applicants for DV-2021 were affected by -- you can debate how
14 much they were affected by, but there's no question they were
15 affected by.

16 And that's why I'm keeping that part alive, because I
17 think there is a practicable remedy that -- and makes
18 redressability an attainable object here. And that's why I
19 find that there's standing under the three-part test of
20 standing.

21 Now, we're going to get into, I suspect, exactly what that
22 number will look like. And maybe that's what you're debating.
23 I mean, the Government may say, well, that number would have
24 been much, much lower even if there hadn't been a Proclamation
25 because of X, Y, Z. But I do take, as a starting point, Judge

1 Mehta's approach, which, seemed to me, made a lot of sense.

2 So let me ask about -- in Goh, there is a -- do we know
3 there is a summary judgment hearing coming up? Is that what I
4 understand?

5 **MS. SMITH:** Yes, Your Honor. It's scheduled for
6 July 13th, is my understanding.

7 **THE COURT:** So there may be a substantive ruling
8 coming out of Judge Mehta's -- okay. That's interesting.

9 And then what about the Goodluck case? What do we know
10 about -- do we know anything more about that?

11 **MR. MORRISON:** Your Honor, I want to talk about
12 Goodluck, but I just want to go back real quick. Defendants'
13 counsel has brought up an issue that has brought new facts to
14 light.

15 When she said that the 86,000 case number was scheduled
16 because they sent their documents in early, the rule that's
17 posted on -- and all DVs are told -- is that they do not send
18 their documents until they are requested.

19 So what she's revealing with that admission is that they
20 are so poorly mismanaged that the DVs are able to game them by
21 just not following the rules. And it just -- it just shows you
22 kind of what a mess it is.

23 I'm sorry, I had to get that out because I know my
24 plaintiffs are --

25 **THE COURT:** I don't know if that affects anything that

1 we're doing here.

2 **MR. MORRISON:** Well, yeah, it just -- it affects it
3 from their perspective.

4 So Goodluck is not a class action. The plaintiffs in
5 Goodluck, who are separate from the plaintiffs in Jacob, have
6 no desire to pursue that strategy.

7 **THE COURT:** But when you say "that strategy," what do
8 you mean "that strategy"?

9 **MR. MORRISON:** They don't want to pursue classwide
10 relief.

11 **THE COURT:** All right. But they have 11,698 2021 DV
12 selectees --

13 **MR. MORRISON:** Yes.

14 **THE COURT:** -- I guess, as their named plaintiffs?

15 **MR. MORRISON:** Yes. They are joined.

16 **THE COURT:** And that's a pretty big chunk; right? I
17 mean, that's not an insubstantial --

18 **MS. SMITH:** Yes.

19 **MR. MORRISON:** It may be a record.

20 **THE COURT:** And what proceeding -- has anything been
21 scheduled in terms of -- are they seeking preliminary
22 injunctive relief? Or what do we know?

23 **MR. MORRISON:** We plan to file a motion for
24 preliminary injunction in the coming days.

25 **THE COURT:** All right. So you're counsel in that

1 case?

2 **MR. MORRISON:** Yes.

3 **THE COURT:** And that's been assigned to Judge Mehta?

4 **MR. BARRE:** Yes.

5 **MR. MORRISON:** Yes.

6 **THE COURT:** So how will that interact? That would
7 take -- well, so what would be your plan here?

8 I've opened the door to the option of your filing this
9 case, the Jacob case, as a class action, but if you've got
10 almost 12,000 people already now in Goodluck, what is -- have
11 you decided what you're going to do in this case?

12 **MR. MORRISON:** I'm so glad you asked, Judge. This
13 isn't about me and what I want to do. It's about what my
14 plaintiffs want to do.

15 The Jacob plaintiffs, from their perspective, they are
16 five months ahead of Goodluck plaintiffs. They brought this
17 controversy and the defendants' conduct to the Court in
18 January, five months ago. So they feel like they should not
19 have to wait on the Goodluck plaintiffs to have relief when
20 they've already --

21 **THE COURT:** How many of the plaintiffs in Jacob are
22 DV-2021?

23 **MR. MORRISON:** Oh, I have that number exactly. Hold
24 on.

25 **MR. BARRE:** I believe it's 380, Your Honor.

1 **THE COURT:** 380?

2 **MR. BARRE:** Yes, Your Honor.

3 **THE COURT:** Okay. And so in light of my order, and
4 now given Goodluck, what is your intent, or your client's
5 intent?

6 I understand that they -- I assume the 380 will want to
7 seek -- they're going to seek some kind of relief. Is that --

8 **MR. BARRE:** Yes. The named plaintiffs will like
9 relief for themselves, which are DV-2021 selectees.

10 And, as you know, so Goh has come out of this, Rai has
11 come out of this. So as we are proceeding in the months
12 January, February, March, April, DV-2021 selectees were very
13 nervous that, you know, they weren't going to get any
14 protection for the DV-2021 program, so they were joining other
15 suits like Goh, like Rai, and now Goodluck.

16 And now that we know that the class certification is on
17 the table for DV-2021 selectees, those plaintiffs in each of
18 those other cases still want relief for themselves as named
19 plaintiffs. But as a whole, the class has threatened to, as a
20 whole, not to get -- like I said, maybe 5,000 visas will get
21 issued entirely even with the litigation, maybe a little more.

22 Goh has 600 plaintiffs. Rai has 71. Jacob has 380. And
23 Goodluck is the largest, with about a little over 11,000.

24 **THE COURT:** Goh has how many?

25 **MR. BARRE:** About 600 named plaintiffs, I believe,

1 Your Honor.

2 **THE COURT:** In the DV --

3 **MR. BARRE:** In DV, yes, DV-2021.

4 And then Jacob has 380, and Rai has 71, and then Goodluck
5 a little over 11,000. So all those numbers added still fall
6 far short than the 55,000 cap. So that's why plaintiffs were
7 getting into individual suits, because it appeared that the
8 months were going by, relief wasn't coming.

9 So they understood from last year that named plaintiffs
10 were the ones that got relief based on *Gomez, Mohamed, Fonjong,*
11 *Akers,* and *Kennedy*; right? So the plaintiffs would be the ones
12 driving this litigation by saying, well, based on last year, if
13 we don't file suit, we won't get visa processing.

14 **THE COURT:** All right. So it sounds like you may not
15 be seeking class certification in Jacob.

16 **MR. BARRE:** We still are.

17 **THE COURT:** You are going to seek class -- I wasn't
18 clear where this was going. You are going to seek class
19 certification in Jacob?

20 **MR. BARRE:** Yes, Your Honor.

21 **THE COURT:** And if that happens, that would bring into
22 it -- sweep in the Goodluck plaintiffs?

23 **MR. BARRE:** Goodluck, yes. That sweeps in everybody.

24 **THE COURT:** Okay.

25 **MR. MORRISON:** Your Honor, if I may, our firm -- we

1 are done filing DV-2021. Even though there's a lot of demand,
2 we don't have any more capacity to file anymore lawsuits. But
3 the Court should probably know, the longer it goes that the
4 Government doesn't stipulate to classwide relief or to turn on
5 the DV program, cases will continue to be filed between now and
6 September. Our competitors are already soliciting for those
7 cases.

8 **THE COURT:** All right. Well, you have my schedule
9 from my order that if we're going to move further in this case
10 I've set forth a fairly expedited schedule.

11 Now it's a bit more complicated. We've got three other
12 cases where there are others already bringing cases. And,
13 interestingly, if Judge Mehta rules on summary judgment in Goh,
14 we'd have to think about how that all plays out here.

15 **MR. BARRE:** Right. Well, Your Honor, all those
16 suits -- the relief will be specifically for those plaintiffs.

17 So just like last year, if Judge Mehta rules in Goh in
18 favor of plaintiffs, it'll be for those named plaintiffs to get
19 processed. And, similarly, in Rai.

20 And so it won't conflict with a ruling -- a class
21 certification ruling saying, okay, we know these individual
22 courts have ruled for named plaintiffs but, as a class, the
23 DV-2021 program should proceed and adjudicate as many visas as
24 possible. And then you can discuss how many reserve if they
25 don't make it to the targeted number by September 30th.

1 **MR. MORRISON:** If I could add one --

2 **THE COURT:** Yeah, go ahead.

3 **MR. MORRISON:** Just one little thing. And it's
4 something that one of my co-counsels brought up in *Gomez* last
5 year. The Court has limited jurisdiction over the class if
6 it's not certified.

7 And so -- and the Circuit Court of Appeals for this
8 district has repeatedly shot down the District Court when they
9 tried to apply relief outside of named plaintiffs without class
10 certification.

11 We could get you those cases. I don't have them off the
12 top of my head.

13 **THE COURT:** If you'll recall, that's why I denied
14 early on any classwide relief, because of those cases. Under
15 only extraordinary circumstances can a court grant classwide
16 relief without class certification. That's why I set this up.

17 You see now why I've set the schedule to have
18 concurrent --

19 **MR. BARRE:** Right.

20 **THE COURT:** -- seeking class-wide relief. It sounds
21 like you may -- is it your plan, at this point, to then carve
22 out the 11,000 in Goodluck out of the class or would they be
23 folded in?

24 **MR. MORRISON:** Your Honor, there's -- there's not a
25 class.

1 **THE COURT:** No, no, no. I'm saying in the putative
2 class you want to certify here, will you include or exclude the
3 11,698 Goodluck plaintiffs?

4 **MR. MORRISON:** We could do that if you wish.

5 **THE COURT:** No, I'm asking -- well, I'm not going to
6 tell you how to --

7 **MR. BARRE:** Or Jacob -- if it was up to -- Your Honor,
8 if I may, I think the point that Curtis -- Mr. Morrison was
9 trying to make was that classwide relief cannot be given
10 without classwide certification.

11 So in Goh, Judge Mehta, you know, he'll be hesitant to
12 give class relief. He'll just give relief to those named
13 plaintiffs. Similarly, in *Rai* with Judge Chutkan.

14 So nobody is going to go beyond and give class
15 certification -- no other court except this Court, which has
16 the only motion for class certification before it.

17 **THE COURT:** I understand that.

18 **MR. BARRE:** So -- and if you do give class
19 certification, it's going to subsume everybody just like last
20 year when --

21 **THE COURT:** You can define the class to include or
22 exclude. For instance, you can define the class to exclude --

23 **MR. BARRE:** Yes.

24 **THE COURT:** -- the Goodluck plaintiffs.

25 **MR. BARRE:** Right.

1 **THE COURT:** That they could seek their own individual
2 relief before Judge Mehta. That's one way you could try to do
3 it.

4 **MR. BARRE:** We understand.

5 **THE COURT:** The other way is you could essentially
6 jettison them from the Goodluck case --

7 **MR. BARRE:** Right.

8 **THE COURT:** -- and fold them into the class as unnamed
9 class members in this case. I'm just simply asking, which
10 direction are you going. I'm not telling you which way to go.

11 **MR. BARRE:** Right. Yeah. And that's something we'll
12 discuss.

13 Based on last year, for instance, when *Gomez* was given the
14 class cert, they did include the other smaller cases like
15 *Akers*, *Mohamed*, *Fonjong*, and *Kennedy* was -- was part of that
16 class for DV-2020.

17 So I understand that we can go both ways, and that's
18 something that, you know, us, as plaintiffs' counsel, will have
19 to consider.

20 But, actually -- go ahead, Curtis.

21 **MR. MORRISON:** Can I jump in?

22 The reason I said it's up to you -- or, basically, we want
23 to do what's easiest for the Court. So if the Court wants to
24 narrow the -- if the Court thinks that narrowing the class
25 definition to take out the named plaintiffs in the other cases,

1 the Jacob plaintiffs are all about that. The Jacob plaintiffs
2 want relief as quickly as possible.

3 **THE COURT:** All right. Well, here's the other thing
4 I'd like to do. I'd like the parties to begin -- because we
5 know where we're headed. There's going to be -- it sounds like
6 there's going to be an amended complaint. And in that
7 complaint you have to define the class and make your class
8 allegations.

9 At the same time, if you're going to move for relief,
10 you're going to have to refile your papers and -- knowing that
11 now we're talking about a very discrete group, the DV-2021s,
12 and you know the model that has been used at least by one
13 court.

14 I'd like the counsel for both sides to meet and confer to
15 see whether you can stipulate to -- if it gets to a certain
16 point where it's going to be evident that the fiscal year will
17 come and go and there's only going to be a handful of people,
18 far short of the 49 or the 55 or whatever the historical
19 numbers are, to see if the parties could reach a stipulation
20 along the lines of what Judge Mehta did; and that is a
21 reservation system, you know, X number.

22 So I'd like you to at least try to see if you can have
23 that discussion, because I think that is a -- at least
24 theoretically, that is a logical approach that is -- that is
25 discrete, has a statistical basis, has a legal basis for it,

1 and it's something that would be tailored to the -- to the harm
2 of the prior injunction and the policy that -- the No-Visa
3 Policy.

4 **MR. BARRE:** Yes.

5 **THE COURT:** But you've got a deadline, so we need to
6 do that. But I'd like you to talk in the meantime and see if
7 you can begin to at least have some discussion along those
8 lines. And if we have to adjudicate it, we can adjudicate it.

9 **MR. BARRE:** Thank you.

10 **MS. SMITH:** Your Honor, if I can raise a scheduling
11 issue?

12 **THE COURT:** Yeah.

13 **MS. SMITH:** In terms of the deadlines that you've set
14 for our response to any filings by plaintiffs in this case,
15 you've set a July 2nd deadline.

16 **THE COURT:** Yes.

17 **MS. SMITH:** We also have the briefing that's going on
18 in Young as well, and our reply in Young is due June 30th, and
19 it's also scheduled for the July 15th date. They've both been
20 scheduled for hearings on the same date.

21 I was going to request that we push back our reply by a
22 week in this case, in Jacob, from the 2nd to the 9th, and then
23 push Jacob to the following week for scheduling for hearing.

24 **THE COURT:** All right. So tell me again what schedule
25 you want to do?

1 **MS. SMITH:** I would like to have defendants' response
2 to the Second Amended Complaint, if there's a preliminary
3 injunction filed or class certification --

4 **THE COURT:** Yeah.

5 **MS. SMITH:** -- for that to be due on June 9th, the
6 hearing to then be July 22nd.

7 **THE COURT:** In this case?

8 **MS. SMITH:** Yeah.

9 **MR. BARRE:** Your Honor --

10 **THE COURT:** And not move anything else?

11 **MS. SMITH:** Correct. Young's briefing schedule was
12 already set, you know, almost a month ago.

13 **THE COURT:** Okay.

14 **MR. BARRE:** Your Honor, yes, given that this case, the
15 DV case, is more urgent than Young, we would like for this case
16 not to get moved back, and possibly Young to get moved back,
17 given that Young is out of, you know, motion to dismiss stage,
18 it's less than nine or ten plaintiffs left, while we have the
19 entire DV-2021 class to discuss on this, to keep this at the
20 current schedule and maybe shift Young.

21 **THE COURT:** Yeah. That's what I'm going to do. I set
22 this schedule for a reason. I'll move Young so you don't have
23 to double up and you have some more time. But as between the
24 two, I want this one to proceed more quickly.

25 So this schedule stays in place. I'll move Young back, so

1 the oppositions -- I'll move everything back by a week,
2 whatever the schedule was in Young, so the hearing is on the
3 22nd.

4 **MS. SMITH:** Right. And then I would just request then
5 that our briefing -- our reply in Young be due on July 9th.

6 **THE COURT:** July 9th, that's correct.

7 Is there a reply -- I don't know if you'll need a reply in
8 Young. I generally like to have that two weeks in advance.

9 If there's a reply, that should be filed by the 15th --
10 all right? -- in Young.

11 All right. But I'm not asking for a reply in this case
12 because you've already done some briefing, and I'm trying to
13 compress this. In order to get that July 15th date, I've
14 omitted the reply.

15 So I guess I'll see you on July 15th.

16 **MR. BARRE:** Thank you, Your Honor.

17 **THE COURT:** Thank you.

18 **MR. MORRISON:** Thank you, Your Honor.

19 (At 10:33 a.m. the proceedings were adjourned.)

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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Saturday, June 12, 2021



Katherine Powell Sullivan, CSR #5812, RMR, CRR
U.S. Court Reporter

judicial efficiency by enabling the judge who will ultimately adjudicate these pending motions to set an appropriate case management and briefing schedule for further proceedings, and “secure[s] the just, speedy, and inexpensive determination” of this case. Fed. R. Civ. P. 1.

B. Plaintiffs Are Not Prejudiced By A Stay

Notwithstanding Plaintiffs’ pending motion for injunctive relief, Plaintiffs’ interests are not adversely affected by a stay of these proceedings while the Court determines before which judge this case proceeds. Plaintiffs allege that they are fiscal year 2020 diversity visa selectees and derivative beneficiaries impacted by purported State Department “policies, procedures, and practices” purportedly related to Presidential Proclamations 10014 and 10052. 2d Am. Compl. ¶ 5. They are similarly situated to numerous *Gomez* plaintiffs, who also allege that they, too, are diversity visa program selectees in fiscal year 2020. *See* Civ. A. No. 20-1419, ECF No. 46 at 63 (1st Am. Compl. ¶¶ 187-226). In fact, Plaintiffs here *are already members* of the following putative subclass of *Gomez* plaintiffs:

Individuals who have been selected to receive an immigrant visa through the U.S. Department of State’s FY2020 Diversity Visa Lottery and who had not received their immigrant visa on or before June 23, 2020, when the June Proclamation⁴ took effect, and who, as a result of the June Proclamation, will become ineligible to a [sic] receive a visa through the FY2020 Diversity Visa Lottery and therefore will be unable to immigrate to the United States with any eligible derivatives as of midnight on September 30, 2020.

Id. at 90 (1st Am. Compl. ¶ 300(a)) (footnote added). In other words, Plaintiffs’ claims here are wholly duplicative of the claims brought by the *Gomez* putative subclass to which Plaintiffs

⁴ The “June Proclamation” refers to Presidential Proclamation 10052, which was issued on June 22, 2020, and took effect on June 24, 2020. *See* 85 Fed. Reg. 38,263 (2020).

belong. The *Gomez* defendants intend to file on July 27, 2020, a motion to consolidate this case with *Gomez*.

As part of its general power to administer its docket, a district court may stay or dismiss a suit that is duplicative of another federal court lawsuit. *See Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) (“As between federal district courts, . . . though no precise rule has evolved, the general principle is to avoid duplicative litigation.”); *cf. Armstrong v. Martin Marietta Corp.*, 138 F.3d 1374, 1391 (11th Cir. 1998) (“A putative class member who wishes to preserve both rights should file her individual suit *and immediately seek a stay of the individual suit pending the outcome of an appeal from the denial of class certification.*” (emphasis added)). Indeed, Federal Rule of Civil Procedure 23(b) authorizes class actions where “prosecuting separate actions by or against individual class members would create a risk of” either “inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class,” Fed. R. Civ. P. 23(b)(1)(A), or adjudication for individual class members that “would be dispositive of the interests of the other members not parties to the individual adjudications,” Fed. R. Civ. P. 23(b)(1)(B); *see, e.g., McNeil v. Guthrie*, 945 F.2d 1163, 1165-66 (10th Cir. 1991) (determining that individual suits for injunctive and declaratory relief cannot be brought where a class action with the same claims exists); *Bennett v. Blanchard*, 802 F.2d 456, 456 (6th Cir. 1986) (affirming dismissal where the plaintiff was also a member in a parallel class action).

Defendants raise this point to illustrate that a *temporary* stay of these proceedings for the limited purposes requested herein is appropriate, justified, and not in any way prejudicial to Plaintiffs’ interests. Whether this case should be dismissed in its entirety is a separate question for

the parties and the judge to whom this case is assigned to address at a later time. For now, Plaintiff can identify no harm arising from the relief Defendants seek.

C. Defendants Are Prejudiced In the Absence of A Stay

Although Plaintiffs will suffer no prejudice if these proceedings are temporarily stayed to resolve issues of case relatedness and consolidation, Defendants will be prejudiced if they are required to litigate simultaneously before two different judges duplicative issues on different schedules. “[C]onsolidation is a purely ministerial act which . . . relieves the parties and the Court of the burden of duplicative pleadings and Court orders.” *New York v. Microsoft Corp.*, 209 F. Supp. 2d 132, 148 (D.D.C. 2002). Courts should consider whether judicial efficiency is best served by consolidation and, in doing so, weigh “the saving of time and effort that consolidation would produce against any inconvenience, delay, or expense that consolidation would cause.” *Clayton v. District of Columbia*, 36 F. Supp. 3d 91, 94 (D.D.C. 2014). A district court is not required to consolidate actions and can “generally decide instead to dismiss a duplicative and later-filed action, stay a later-filed action pending resolution of the previously filed action, or enjoin the parties from proceeding with a later-filed action.” *Id.*

Judicial efficiency weighs in favor of staying this case at this time. Since *Gomez* and this case share the same legal and factual issues, consolidation of the two actions would “facilitate a more efficient resolution” of the cases. *Colbert v. FBI*, 275 F.R.D. 30, 32 (D.D.C. 2011). Accordingly, Defendants should not be required to defend against the same factual allegations and legal issues in two separate cases with separate briefing schedules pending before different judges. Staying these proceedings until the issues of relatedness and consolidation are resolved is therefore necessary to conserve the parties’ and judicial resources. *See, e.g., In re Wholesale Grocery Prods.*

Antitrust Litig., 663 F. Supp. 2d 1380, 1381 (J.P.M.L. 2009) (recognizing that centralization of cases that share factual question “will eliminate duplicative discovery; prevent inconsistent pretrial rulings, including with respect to class certification; and conserve the resources of the parties, their counsel, and the judiciary”).

III. CONCLUSION

For the foregoing reasons, this Court should stay these proceedings and suspend all briefing deadlines until it resolves outstanding issues concerning assignment of this case. A proposed order accompanies this submission.

Dated: July 23, 2020

Respectfully submitted,

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8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

11
 12
 13 JACOB, *et al.*,
 14 Plaintiffs,
 15 v.
 16 BIDEN, *et al.*,
 17 Defendants.

CASE NO. 21-cv-00261-EMC
NOTICE OF RECENT FILING

18
 19 On June 7, 2021, Plaintiffs’ counsel filed a duplicative action in the United States District Court
 20 for the District of Columbia, *Goodluck et al. v. Biden, et al.*, No. 21 cv1530-APM. The *Goodluck*
 21 complaint is attached hereto as Exhibit A. *Goodluck* is brought on behalf of 24,089 individual plaintiffs,
 22 all of whom are selectees for the 2021 Diversity Visa lottery. The *Goodluck* plaintiffs bring a mandamus
 23 action challenging the “No-Visa” policy and the prioritization scheme as they relate to diversity visas
 24 selectees. Exhibit A at ¶ 19.

1 Based on a review the pleadings in *Goodluck*, it appears that Plaintiffs’ have elected to pursue a
2 class action mandamus claim related to the “No Visa”/“Diplomacy Strong” framework and the
3 Department of State’s tiered prioritization scheme in the District Court for the District of Columbia and
4 not in the Northern District of California.¹

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Respectfully submitted,

STEPHANIE M. HINDS
Acting United States Attorney

Dated: June 10, 2021

By: /s/ Valerie E. Smith

VALERIE E. SMITH
Assistant United States Attorney

¹ Although the *Goodluck* complaint does not include allegations related to class certification, neither did the Amended Complaint in the *Jacob*. (ECF 14). Despite this, the *Jacob* plaintiffs still filed a motion for class certification. (ECF Nos. 4, 14).