

No. 20-5292

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

DOMINGO ARREGUIN GOMEZ, et al.,

Plaintiffs-Appellants,

v.

DONALD J. TRUMP, et al.,

Defendants-Appellees.

APPELLANTS' UNOPPOSED MOTION TO EXPEDITE APPEAL

INTRODUCTION

Pursuant to 28 U.S.C. § 1657(a) and Circuit Rule 47.2, Plaintiffs-Appellants (“Appellants”) respectfully move to expedite this appeal. Defendants-Appellees (“Defendants”) do not oppose this motion.¹ The parties have conferred and agreed to the following proposed expedited briefing schedule:

Appellants’ opening brief and appendix:	October 29, 2020
Defendants’ answering brief:	November 30, 2020
Appellants’ reply brief:	December 14, 2020
Oral Argument:	Court’s earliest convenience

¹ This case was consolidated with three other cases (in addition to the *Panda v. Wolf* case referenced in the text) in the district court. Plaintiffs in the other consolidated cases did not directly challenge the Presidential Proclamations that are at issue in this appeal, and have not filed notices of appeal.

This appeal involves the district court's September 4, 2020 denial (in relevant part) of Appellants' motion for a preliminary injunction, which they filed based on the immediate, irreparable harm they continue to suffer due to Defendants' implementation of Presidential Proclamations 10014 and 10052, which suspends the entry of various immigrants and nonimmigrants into the United States and has resulted in the refusal to issue visas to such individuals. Appellants are visa applicants; sponsors of foreign nationals seeking to obtain visas to enter the country; and organizations that sponsor nonimmigrant visa programs pursuant to several categories of visas established by Congress. The Proclamations, and Defendants' implementation and enforcement thereof, have prevented Appellants and their beneficiaries from receiving their visas and entering the country. Defendants' ongoing refusal to allow Appellants and their beneficiaries to enter the United States is causing immense and irreparable harm. An expedited schedule for this appeal is warranted so that this harm may be redressed upon reversal of the decision below.

Additionally, this appeal arises from the same proceedings and shares common legal questions with *Panda v. Wolf*, No. 20-5284 (D.C. Cir.), with which this case was partially consolidated in the district court. This Court ordered an expedited briefing schedule in *Panda* under which briefing is to be complete by October 30, 2020. Appellants submit that an expedited briefing schedule is

warranted to allow for the possibility that this case may be heard and decided together with *Panda*.

BACKGROUND

1. Appellants are visa applicants, sponsors of foreign nationals seeking to obtain visas to enter the country, and organizations that sponsor nonimmigrant visa programs pursuant to six categories of visas established by Congress, as follows:

(a) Family-based Immigrant Visas are issued to relatives of U.S. citizens or lawful permanent residents (LPRs) who “sponsor” them to permanently immigrate to the United States. *See* 8 U.S.C. § 1153(e); 22 C.F.R. §§ 42.51(a), 42.52(a)-(c); 9 FAM 504.1-2(c)-(d). Appellants Nazif Alam, Carmen Ligia Vidal Pimentel, Juan Carlos Rosario Lebron, Daniel Chibundu Nwankwo, Claudio Alejandro Sarniguet Jimenez, Angela Sinon, Loida Phelps, and Nancy Abarca fall in this category.

(b) Diversity Immigrant Visas are issued to individuals from countries with historically low levels of immigration into the United States, who have been selected through an annual random lottery. *See* 8 U.S.C. § 1151(e); 8 U.S.C. § 1153(c)(1)(A). Once a diversity visa issues, it is normally valid for only six months. 8 U.S.C. § 1201(c). Appellants Fatma Bushati of Albania, Jodi Lynn Karpes of South Africa, Shyam Sundar Koirala of Nepal, Aja Tamamu Mariama Kinteh of the Gambia,

Iwundu épouse Kouadio Ijeoma Golden of Cote D'Ivoire and Aya Nakamura of Japan have all received diversity visas, but the Proclamations prevent them from entering the country.

(c) Congress has enacted a variety of Nonimmigrant Visa categories to allow U.S. employers to fill jobs which they are unable to fill with U.S. workers, and to promote cultural exchange and other foreign-policy goals. Appellants 3Q Digital (H-1B visas), Superior Scape Inc. (H-2B visas), and Shipco Transport, Inc. (L-1 visas) rely on such visa recipients to fill their business needs, and Appellants ASSE International and EurAuPair International are nonprofit entities whose sole purpose is to administer J-1 exchange visa programs.

2. On April 22, 2020 and June 22, 2020, respectively, the President issued Proclamations 10014 and 10052 pursuant to 8 U.S.C. §§ 1182(f) and 1185(a). 85 Fed. Reg. 23,441 (Apr. 22, 2020); 85 Fed. Reg. 38,263 (June 22, 2020). With limited exceptions for which Appellants and their beneficiaries have not been found eligible, the Proclamations suspended entry of foreign nationals into the United States, including under the visa categories set forth above. The Proclamations are set to expire on December 31, 2020, but they may be extended. The Proclamations, and Defendants' enforcement thereof, have prevented Appellants and their beneficiaries from entering the United States.

3. The suspension of entry causes Appellants immense and irreparable harm every day that it remains in force.

For the family members who are Appellants and who have sponsored loved ones for an immigrant visa, the suffering from prolonged family separation cannot be recovered and compounds daily. This includes spouses and minor children (including a newborn infant) who are separated from their families. *See* ECF 53-9 (Abarca Decl.), 53-10 (Alam Decl.), 53-18 (Jimenez Decl.), 53-23 (Lebron Decl.), 53-28 (Nwankwo Decl.), 53-30 (Phelps Decl.), 53-31 (Pimentel Decl.), 53-34 (Sinon Decl.).²

For the Appellants who have sponsored temporary workers for nonimmigrant visas, the inability to retain, sponsor, and utilize the workers will jeopardize their viability and continued success as businesses that depend on the nonimmigrant visa categories for their existence. *See* ECF 53-14 (Gustafson Decl.), 53-17 (Jepsen Decl.), 53-26 (Newman Decl.), 53-32 (Rodnitzky Decl.)

The diversity-visa Appellants have received their visas, but the Proclamations prevent them from using the issued visas for entry to the United States. Reasonably relying on the fact that they met all of the prerequisites to travel to the United States as immigrants, these Appellants have taken substantial steps to prepare to immigrate,

² Citations to “ECF” are to the docket entries in the district court.

including by selling property to pay for their journeys and invest in their new lives in the United States. Those efforts are being stymied as the Proclamations prevent these Appellants from completing the immigration process. Further, these Appellants' visas extend a maximum of six months; if the Proclamations are extended beyond the current December 31, 2020 termination date, the visas may expire, with no assurance that the visas will be renewed. *See* ECF 53-11 (Bushati Decl.), 53-16 (Iwundu Decl.), 53-19 (Karpes Decl.), 53-20 (Kinteh Decl.), 53-21 (Koirala Decl.), 53-25 (Nakamura Decl.). In addition, the district court certified a class of diversity-visa applicants (*see* ECF 151, at 25-26), some of whom may have visas that are set to expire before December 31.

4. Appellants challenged the Proclamations and their implementation, and sought a preliminary injunction on multiple grounds—including that the Proclamations do not satisfy the requirements of the statutes under which they were promulgated, 8 U.S.C. §§ 1182(f) and § 1185(a); that the Proclamations violate the separation of powers by overwriting large portions of the Immigration and Nationality Act (“INA”); and that if the statutes are not otherwise limited, they violate the nondelegation doctrine by conferring on the President unbounded legislative authority to set domestic policy. *See* ECF 53-1, at 22-38.

The district court (Mehta, J.) granted limited relief on certain of the diversity-

visa Appellants' other claims challenging the State Department's implementation of the Proclamations under the Administrative Procedure Act, but it denied Appellants' motion for a preliminary injunction barring enforcement of the Proclamations themselves—ruling on purely legal grounds that Appellants are not likely to succeed on the merits of the claims summarized above. *See Gomez v. Trump*, 2020 WL 5367010, at *26–33, 38 (D.D.C. Sept. 4, 2020), ECF 123, at 83-85. The district court also denied Appellants' motion for class certification without prejudice as to the diversity visa class, and deferred ruling on the motion as to the other four family and employment-based visa applicant classes. *Id.*³

5. On September 28, 2020, Appellants filed a notice of appeal from the order denying the initial motion for a preliminary injunction. In doing so, Appellants noted that this appeal is subject to expedited treatment pursuant to 28 U.S.C. § 1657(a). Although the Clerk's office issued an order directing that preliminary submissions be filed by October 28, 2020, it has not issued a briefing schedule.

6. On October 1, 2020, the U.S. District Court for the Northern District of

³ On September 30, 2020, the district court issued an amended order and opinion, in which it: (1) ordered “the State Department to reserve 9,095 diversity visa numbers after September 30, 2020, for the future processing of the Named Plaintiffs' and class-members' diversity visa applications, pending final adjudication of this matter”; and (2) granted Appellants' renewed motion for certification of a class of diversity visa applicants. ECF 151, at 20-25.

California enjoined Proclamation 10052 with respect to certain business entities that sponsor nonimmigrant visa recipients including those described above. *Nat'l Ass'n of Manufacturers v. U.S. Department of Homeland Security (NAM)*, 2020 WL 5847503 (N.D. Cal. Oct. 1, 2020). The district court in *NAM* expressly disagreed with the district court in this case, *id.* at *9 n.5, and held that the Proclamations are likely unlawful on the grounds that Appellants in this case advanced in the district court. *Id.* at *6-13.⁴

ARGUMENT

The district court's denial of Appellants' motion for a preliminary injunction warrants an expedited consideration on appeal. Under 28 U.S.C. § 1657(a), the federal courts are directed to "expedite the consideration of ... action for temporary or preliminary injunctive relief." *See American Bioscience v. Thompson*, 269 F.3d 1077, 1084 n.8 (D.C. Cir. 2001) ("the granting or denying of a preliminary injunction is the basis for an expedited appeal"). Consistent with this statutory requirement, the local rules provide that the Clerk will prepare an expedited schedule for briefing and argument in cases under 28 U.S.C. § 1657 involving actions seeking preliminary

⁴ Although it remains possible that Appellants in this case who have sponsored nonimmigrant visas may receive the benefit of the district court's injunction in *NAM*, they have not yet received that benefit. And at all events, the family-based sponsors of immigrant visas cannot benefit from the *NAM* decision and remain in urgent need of an expedited schedule here.

injunctive relief. *See* D.C. Cir. R. 47.2(a). While Appellants understand the current unusual demands on the Court's resources, Appellants respectfully submit an expedited briefing schedule and resolution pursuant to 28 U.S.C. § 1657(a) are warranted, particularly in view of the ongoing irreparable harms described above.

Additionally, having this appeal heard together with the *Panda* appeal would benefit judicial economy. The district court consolidated *Panda* with this case and decided the respective plaintiffs' motions for preliminary injunctions in the same proceedings—applying the same rationale to deny the claims regarding the unlawfulness of the Proclamations suspension of entry. *See Gomez*, 2020 WL 5367010, at *26–33, 38, ECF 123, at 83-85. Both appeals raise a central overlapping issue—whether the President exceeded his authority under Section 1182(f) in issuing the Proclamation. An expedited briefing schedule would allow for the possibility that the two appeals could be heard and decided together.

Finally, Defendants have assented to this motion and to the proposed briefing schedule. There is accordingly no prejudice to any party.

CONCLUSION

For the foregoing reasons, the Court should grant this motion to expedite the appeal and order briefing as follows:

Appellants' opening brief and appendix:	October 29, 2020
Defendants' answering brief:	November 30, 2020
Appellants' reply brief:	December 14, 2020
Oral Argument:	Court's earliest convenience

Dated: October 8, 2020

Respectfully submitted,

/s/ Andrew J. Pincus
Andrew J. Pincus
MAYER BROWN LLP
1999 K Street, NW
Washington, D.C. 20006

CERTIFICATE OF SERVICE

I certify that on October 8, 2020, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will provide electronic notice and an electronic link to this document to counsel of record for Appellees.

/s/ Andrew J. Pincus
Andrew J. Pincus
MAYER BROWN LLP
1999 K Street, NW
Washington, D.C. 20006

CERTIFICATE OF COMPLIANCE

The text of the foregoing APPELLANTS' UNOPPOSED MOTION TO EXPEDITE APPEAL contains 1888 words and uses 14-point Times New Roman font. Counsel relies on the word count of Microsoft Word used to prepare this filing.

/s/ Andrew J. Pincus
Andrew J. Pincus
MAYER BROWN LLP
1999 K Street, NW
Washington, D.C. 20006

ADDENDUM**APPELLANTS' CERTIFICATE AS TO PARTIES**

Pursuant to Local Circuit Rule 27(a)(4), counsel for Appellants certifies that the following are all of the parties, intervenors, and amici who appeared before the district court in *Gomez v. Trump*, No. 20-cv-1419:

Plaintiffs

Nazif Alam

Carmen Ligia Vidal Pimentel

Juan Carlos Rosario Lebron

Daniel Chibundu Nwankwo

Claudio Alejandro Sarniguet Jimenez

Angela Sinon

Loida Phelps

Nancy Abarca

Fatma Bushati

Jodi Lynn Karpes

Shyam Sundar Koirala

Aja Tamamu Mariama Kinteh

Iwundu épouse Kouadio Ijeoma Golden

Aya Nakamura

3Q Digital

Superior Scape Inc.

Shipco Transport, Inc.

ASSE International

EuAuPair International

Domingo Arreguin Gomez

Mirna S.

Vicenta S

Mohamed Saleh

Farangis Kurbonova

SEIU Healthcare (CIR)

Powertrunk Inc.

Defendants

Donald J. Trump

William Barr

United States Department of State

Michael Pompeo

Chad Wolf

United States Department of Homeland Security

Amici Curiae

Immigration Reform Law Institute

Local Governments and Local Elected Officials (Los Angeles, California; Albany, New York; Albuquerque, New Mexico; Alexandria, Virginia; Atlanta, Georgia; Austin, Texas; Berkeley, California; Chelsea, Massachusetts; Chicago, Illinois; Contra Costa County, California; Denver, Colorado; Detroit, Michigan; Durham, North Carolina; Hartford, Connecticut; Houston, Texas; Iowa City, Iowa; New York, New York; Oakland, California; Philadelphia, Pennsylvania; Phoenix, Arizona; Pittsburgh, Pennsylvania; Sacramento, California; Saint Paul, Minnesota; Salinas, California; Seattle, Washington; Somerville, Massachusetts; and West Hollywood, California)

Leading Companies and Business Organizations (Adobe Inc., Alliance of Business Immigration Lawyers, Amazon.com, Inc., Apple Inc., Atlassian, Inc., Autodesk, Inc.; Bates White, LLC; Box, Inc.; Bloomberg L.P.; BSA Business Software Alliance, Inc. d/b/a BSA | The Software Alliance; Consumer Technology Association; Denver Metro Chamber of Commerce; Dropbox, Inc.; Facebook, Inc.;

FWD.us Education Fund; GitHub, Inc.; Google LLC; Hewlett Packard Enterprise Company; HP Inc.; HR Policy Association; Information Technology Industry Council; Institute of International Bankers; Intel Corp.; Internet Association; Juniper Networks, Inc.; LinkedIn Corporation; Metro Atlanta Chamber; Microsoft Corporation; Netflix, Inc.; New Imagitas, Inc.; North Texas Commission; Partnership for a New American Economy Research Fund; PayPal, Inc.; Plaid Inc.; Postmates Inc.; Reddit, Inc.; salesforce.com, inc.; SAP SE; Semiconductor Industry Association (SIA); ServiceNow, Inc.; Shutterstock, Inc.; Silicon Valley Bank; Society for Human Resource Management (SHRM); Splunk Inc.; Spotify USA Inc.; Square, Inc.; SurveyMonkey Inc.; Twitter, Inc.; Uber Technologies, Inc.; Upwork Inc.; Vail Valley Partnership; VMware, Inc.; Workday, Inc.; Xylem Inc.; and Zillow Group, Inc.)

The States of California, New York, Colorado, Connecticut, Delaware, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin, and the District of Columbia

Society for Human Resource Management

Worldwide Employee Relocation Council

Charles Kuck, Gregory Siskind, and Joanna Main Bailey

Immigration Law Professors (Deborah Anker, Sabrineh Ardalan, David Baluarte, Lenni B. Benson, Jennifer Chacon, Gabriel Chin, Marisa S. Cianciarulo, Alina Das, Jill E. Family, Niels W. Frenzen, Maryellen Fullerton, Denise Gilman, Lindsay Harris, Elizabeth Keyes, Annie Lai, Peter Margulies, M. Isabel Medina, Jennifer Moore, Michael A. Olivas, Bijal Shah, Maureen A. Sweeney, Shoba Sivaprasad Wadhia, and Michael J. Wishnie)

All Plaintiffs in *Gomez v. Trump*, except Domingo Arreguin Gomez, Mirna S., Vicenta S., Mohamed Saleh, Farangis Kurbonova, SEIU Healthcare (CIR), and Powertrunk Inc. are Appellants in this Court.

All Defendants in *Gomez v. Trump* are Appellees in this Court.

No *amici curiae* have yet appeared in this Court.

This case is consolidated in the district court with four other cases: *Mohammed v. Pompeo*, No. 20-cv-1856; *Aker v. Trump*, No. 20-cv-1926; *Fonjong v. Trump*, No. 20-cv-2128, and *Panda v. Wolf*, No. 20-cv-1907. Those cases involve several hundred individual plaintiffs who are not involved in this appeal.

/s/ Andrew J. Pincus
Andrew J. Pincus

CORPORATE DISCLOSURE STATEMENT

3Q Digital is a digital marketing agency. It has no parent company, and no publicly-held company has a 10% or greater ownership interest.

Superior Scape Inc. is a landscaping company. It has no parent company, and no publicly-held company has a 10% or greater ownership interest.

Shipco Transport, Inc. is a shipping and logistics company. It is wholly owned by SSNYC Inc., which is wholly owned by Shipco Transport Holding A/S, which is wholly owned by Scan-Group A/S, which is wholly owned by A.S. Scan Holding A/S, which is privately held. No publicly held company has a 10% or greater ownership interest in any of these entities.

ASSE International is a nonprofit public benefit organization that administers exchange programs for individuals on J-1 nonimmigrant visas. It has no parent company, and no publicly-held company has a 10% or greater ownership interest.

EurAuPair International is a nonprofit public benefit organization that administers an exchange visitor program for au pairs using J-1 nonimmigrant visas. It has no parent company, and no publicly-held company has a 10% or greater ownership interest.

/s/ Andrew J. Pincus
Andrew J. Pincus