



PRESS RELEASE

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COURT TOSSES OUT TRUMP-ERA “PASSPORT RULE” FOR DIVERSITY VISA APPLICANTS

Federal court finds that the rule, which cut applications to the DV lottery by millions worldwide, violated public notice and comment requirements

Washington, D.C.- On Friday, a federal court in the District of Columbia vacated a Trump-era rule that limited applications to the Diversity Visa (DV) program. The Department of State “passport rule,” promulgated in 2019, required applicants to possess a valid passport just to enter the lottery for a chance to receive a visa to immigrate to the United States through the DV Program, effectively foreclosing the program to low-income people from countries where passports are expensive or difficult to obtain. The court held that the government did not follow public notice and comment procedures required by federal law before enacting the rule, and rejected the government’s claim that immigration regulations are exempt because they implicate “foreign affairs.”

The ruling ([linked here](#)) overturns one of the most significant procedural barriers to legal migration erected by the Trump Administration. The DV program is one of the few ways that people from countries without large immigrant populations in the U.S. and who do not have U.S. family or work connections can legally obtain a visa. The program’s purpose is “to diversify the immigrant population in the United States,” which it does by allowing aspiring immigrants from around the world to enter a lottery for the chance to apply for a visa. For many aspiring immigrants, particularly those from poorer countries, passports are in limited supply and procuring one can be expensive, involve extensive delays, and may be impossible to obtain for someone who has not purchased a ticket for international travel.

After implementation of the passport requirement, applications for the DV lottery plummeted worldwide, from 14.7 million in 2018 to 6.7 million in 2019. The most dramatic impact was on



African migrants aspiring to be American citizens, with applications from African countries dropping by a staggering 62 percent. Unlike some other Trump-era policies, the Biden Administration declined to withdraw the passport rule and continued to defend it in court.

The ruling came in the lawsuit *E.B. v. Department of State* ([link to case background](#)), which was organized by [African Communities Together](#), an advocacy organization for immigrants from Africa. *E.B.* was filed by four anonymous plaintiffs: a national of Ethiopia and a national of Côte d’Ivoire and their U.S.-citizen siblings. The aspiring immigrants had previously applied to the DV program and would have continued to apply each year but for the passport rule. Plaintiffs were represented by the [Institute for Constitutional Advocacy and Protection \(ICAP\)](#) at Georgetown University Law Center, and [Friedman Kaplan Seiler & Adelman LLP](#).

The opinion ([link here](#)) by Judge Timothy J. Kelly sets and affirms important legal precedents for the U.S. District Court in the District of Columbia, which often hears suits challenging federal government actions. Judge Kelly rejected the government’s argument that the passport rule was exempt from notice and comment rulemaking under the “foreign affairs function exception,” concluding that the exception applies only when a rule “directly involves the conduct of foreign affairs.” The court roundly rejected the government’s defense that it was sufficient to provide an opportunity for public comment on the rule after it was already adopted, which Judge Kelly deemed “as bold as it is wrong.”

The most significant impact of the decision will be for millions of aspiring American immigrants and communities in the United States that hail from countries that have been underrepresented in U.S. migration. As a result of this ruling, applicants to the next DV lottery, which is expected to open in October 2022, will not be required to submit a passport until they know that they have won the lottery and may apply for a visa.

“This decision is a victory for 8 million people from around the world who were blocked and discouraged from pursuing legal migration to the United States by the passport rule,” said **Amaha Kassa, Executive Director of African Communities Together**. “It is especially important for African immigrants, who are the biggest beneficiaries of the DV program and who put the ‘diversity’ into ‘Diversity Visa.’ We are grateful to the plaintiffs, to the legal team, and to the court. We urge the Biden administration to back away from this Trump-era policy and restore the Diversity Visa program to its original intent and purpose.”



“This win represents a huge step forward for so many of us. Back home, I have many relatives who were stripped of their chance to come to the U.S. Now that this requirement has been removed, my hope of being reunited with my family members has been revived.”- **A.K (Plaintiff)**

"I live in Arba Minch city - a remote part in Southern Ethiopia. I have a dream of one day traveling with my family to the U.S. and joining my sister- so I have applied for the DV program year after year. Since the passport rule happened, I have not applied because it meant that I have to close my shop, travel with my whole family to the capital of the region to apply for a passport, spend thousands of Ethiopian Birr just to be able to apply for a lottery that I have a slim chance of winning. Now with this decision, I can continue to apply and hope to be granted the opportunity to receive the Diversity Visa. Thank you to African Communities Together and all the attorneys that fought hard on behalf of millions." **E.B. (Plaintiff)**

“It has long been a cornerstone of our federal government that members of the public are given the opportunity to have their voices heard on important regulations before they take effect, which is especially critical for rules like this one that inflict harm on communities,” said **Seth Wayne, Senior Counsel at ICAP**. “This decision reaffirms that principle, and ensures that the government cannot rely on a narrow exception to avoid public input any time it makes a rule affecting immigration. We are proud to work with our partners to vindicate the public interest and eliminate this unnecessary barrier.”

“The requirement under federal law that the public should have notice of, and be permitted to comment on, the development of any final rule allows affected communities to raise concerns,” said **Anil K. Vassanji, associate and pro bono counsel at Friedman Kaplan Seiler & Adelman LLP**. “The passport rule sidestepped that obligation and, as we have seen, the effect on our immigrant communities was immense. The court’s thoughtful and thorough ruling underscores the importance of the notice and comment requirement, and why exceptions to that rule should be narrowly construed. Friedman Kaplan is proud to have worked on this important matter with its community partners.”

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African Communities Together

African Communities Together is an organization of African immigrants fighting for civil rights, opportunity, and a better life for African families in the U.S. and worldwide. ACT connects African immigrants to critical services, helps Africans develop as leaders, and organizes African immigrant communities on the issues that matter.

Twitter/Instagram/Facebook: @AfricansUS

Website: www.africans.us

Georgetown Law's Institute for Constitutional Advocacy and Protection

The mission of the Institute for Constitutional Advocacy and Protection (ICAP) is to use strategic legal advocacy to defend constitutional rights and values, while working to restore confidence in the integrity of our governmental institutions. A non-partisan institute within Georgetown University Law Center, ICAP's experienced attorneys use novel litigation tools, strategic policy development, and the constitutional scholarship of Georgetown to vindicate individuals' rights and protect our democratic processes.

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