**Lawsuit FAQs**

Thank you to all of you for your support. To answer many of the questions that you have posed, I have compiled this basic FAQ. I will not delve into detailed legal strategy here.

1. **What is the essence of the case?**

The essence of this case is spelled out in our May 17, 2011 Letter to Deputy Assistant Secretary Donahue (<http://blog.visarefusal.com/?p=101>) and May 25, 2011 Letter to Deputy Inspector General Geisel (<http://blog.visarefusal.com/?p=160>). We are challenging the invalidation of the DV-2012 results and requesting that the Department recognize the 22,000 selected and notified winners.

1. **What is the legal theory?**

We intend to posit several legal theories in support of our case. Chief among them is the fact that the drawing satisfied the statutory requirement for randomness.

1. **What is the remedy?**

The remedy we are seeking is that the 22,000 selected be recognized as winners and eligible to pursue applications to immigrate under the DV-2012 program. One possible outcome will be that the July 15th drawing will be cancelled and the 100,000 selected in the original lottery will be reinstated as winners. Other outcomes are also possible, and we don’t seek to unduly prescribe that a particular resolution is enacted by the Department of State, so long as the interests of the 22,000 individuals we seek to represent are protected.

1. **Will we win?**

In general, it is very difficult to win a lawsuit against the Department of State. There are numerous procedural, as well as substantive, legal barriers. The Secretary of State has tremendous powers. However, most of the case law deals with visa decisions, not decisions made by policymakers in Washington, D.C., as in our case. This is a critical difference. We would not be undertaking this case if we felt that we did not have a good legal (and moral) case to make to the court.

1. **What is a class action?**

We will be requesting the court to certify this case as a class action. This means that in addition to the named plaintiffs, we will be asking the court to authorize us to represent anyone among the 22,000 who wishes to be represented in this case. (No one is obliged to participate.) The idea behind a class action is to ensure that one court decides all of the issues pertinent to the case – that various courts do not expend judicial resources hearing the same issues and issuing (possibly) conflicting decisions.

1. **Why wouldn’t the court certify the class action?**

If the court found that there were not common issues of law or fact, or that the lawyer is not competent to represent the group, the court may allow the case to proceed, but not as a class action.

1. **What is your experience?**

I am an honors graduate of the George Washington University National Law Center and admitted to the bars of Pennsylvania and Washington, D.C., and the District Court of Washington, D.C., the D.C. Circuit, and 9th Circuit. I have been a member of the American Immigration Lawyers Association since 1994. I have written two books and dozens of articles on American immigration laws. My particular expertise lies in dealings with the Department of State and consular issues, as well as investor immigration questions. My litigation experience includes filing a class action Lottery lawsuit and mandamus cases against the Department of State and USCIS. More background about me can be found at [www.visarefusal.com](http://www.visarefusal.com) and [www.bridgewest.com](http://www.bridgewest.com)

1. **Am I your client?**

We have an attorney-client relationship only with those individuals with whom we have concluded a legal services agreement. This will include the named plaintiffs in the lawsuit. If we have not concluded a legal services agreement with you, you are not our client, although it is fair to say that the interests of anyone who was selected align with those of the named plaintiffs. Assuming the court certifies the class action, we would then become representatives of the class. Given the enormous interest in this case, we will continue to periodically post updates to the public.

1. **Can I hire my own lawyer?**

Yes, since the time that you learned of the invalidation of the DV-2012 results, you were perfectly within your rights to retain your own lawyer. Going forward, you have the right to hire your own lawyer. In such case, as a courtesy, we would ask that your lawyer notifies us of his/her representation of your interests so that we may coordinate our actions.

1. **Must I pay money?**

No. Neither the named plaintiffs nor members of the class will be obliged to pay for our services, other consultants, the services of experts, etc... However, we will be posting an appeal for donations to support this cause – to pay for our services, the services of other consultants/experts, travel expenses, etc... A full accounting will be provided at the conclusion of the case. Unused funds will be returned to donors on a pro rata basis. Again, such a donation will be entirely voluntary.

1. **Can’t the Government pay your fees?**

In general, the government would have to pay legal fees only if 1) a court enters a final decision in our favor; 2) the court finds that the government’s position was not substantially justified; and 3) other technical requirements were met. If there is a settlement – as we still remain hopeful for here – as a general rule, attorneys do not receive payment of fees. In any event, an attorney cannot double-dip: receive donations for legal fees + judicial award for the same legal fees, so any monetary judgment would subtract donations paid for legal fees.

1. **I understand that you originally believed that the results were not random. Will this affect our case?**

This issue was dealt with on my blog of May 25, 2011. As noted, many experts, including members of our group, have educated me on this issue and I feel comfortable and definitive that the original results were random. To put this in to a sports fan’s language, thousands of individuals, including myself, called for a “foul” by publicly questioning the randomness of the drawing after learning of the skewed results. But with the benefit of review (“replay”), we can see that there was no “foul”. Regardless of the fans’ opinions, it is of course up to the “referee” – the Department of State – to get the call right. That was not done here.

In addition, no one – including myself – called for the invalidation of the results. No one called on DOS to disavow its commitment to the 22,000 winners.

Finally, I have discussed this issue with Ethics Counsel and reviewed my pertinent bar rules. I am on firm ethical grounds going forward representing this group.

As mentioned, any one of the group is entitled to find and retain his own attorney.

1. **Will I be banned from the United States for filing a lawsuit?**

No, the United States government may not retaliate against a litigant. Any such action by a consular officer would subject that officer to discipline.

However, by filing the DS-230/DSP-117 with the Kentucky Consular Center, all applicants – litigants or not - have expressed an intent to immigrate to the United States. This could adversely impact future visitor or student visa applications to a US consulate abroad because of the necessity of proving a non-immigrant intent.

1. **What about a settlement out-of-court?**

Our goal is to get a fair resolution for the class members by any means possible. It is our preference to do this with an out-of-court settlement if this can be achieved, and so far we have taken every possible step towards this. Unfortunately, the Department of State has not been receptive to this, and in the interest of all members of the class we will be initiating a lawsuit very soon. An out-of-court settlement is a possibility, and we will put a great deal of energy into pursuing any genuine opportunity – but we will not be derailed by non-substantive offers that are intended only to antagonize and delay the hearing of our case.

1. **What can I do to help?**

The two most important things that supporters can do to help this case are:

1. Do EVERYTHING you can to raise the profile of our case in a sympathetic light, particularly by writing to U.S. Senators and other politicians, and attracting the interest of the media. You cannot do this enough. If you have already done this, do more – write new letters and follow up on previous correspondence each day. You may want to join the following Facebook group, that is active in coordinating this: <http://www.facebook.com/dv2012>
2. When the facility becomes available, make a voluntary contribution to the case fund. To repeat, no one has to pay anything, but what you do contribute makes us stronger – better able to involve expert witnesses, prepare and compile our case, engage the media, and travel to meet individuals and groups who can make a genuine difference to the outcome of our case.
3. **Any final thoughts?**

You are a tremendous group – your stories have touched me and inspired me to work harder. Thanks to your efforts, we have made some progress: Congress knows of your plight; the media has publicized it; the OIG has launched an investigation. But we are not there yet. Litigation is difficult – and doubly so against the DOS. We need to stay united and be relentless in order to achieve our goal. Our cause is good. Our cause is just. Please keep the faith.