



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

January 8, 2020

VIA CM/ECF

Patricia S. Connor, Clerk
U.S. Court of Appeals for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219

Re: CASA de Maryland, Inc. v. Trump
No. 19-2222

Dear Ms. Connor:

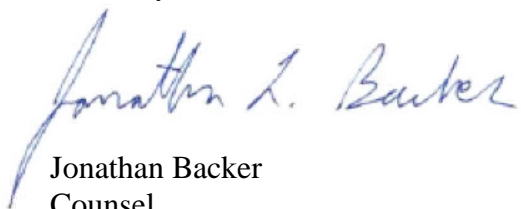
On December 9, 2019, a motions panel of this Court granted Appellants' Motion for a Stay Pending Appeal of a preliminary injunction issued by the District of Maryland. Appellees have filed a Petition for Rehearing *En Banc* of that decision, which Appellants have opposed. We write to inform the Court that the Second Circuit has denied the Government's motion for a stay pending appeal of two preliminary injunctions issued by Southern District of New York preventing the Government from implementing the same Rule that is at issue here (order attached).¹

The Second Circuit properly concluded that the Government did not carry its burden of establishing the factors required for a stay. *See Nken v. Holder*, 556 U.S. 418, 433 (2009). Appellants, anticipating the Second Circuit's conclusion, contended in their Opposition to Petition for Rehearing *En Banc* that this decision by the Second Circuit would obviate the need for *en banc* review of the Fourth Circuit motions panel's decision because CASA and its members would not "experience the harms they allege" absent review of that decision by the *en banc* Court. Doc. 32, at 1, 5. But whether an order threatens "uniformity" and the "importance" of the case govern the appropriateness of *en banc* review, not the degree of harm being suffered by the petitioning party. *See Fed. R. App. P. 35(a)*.

The Second Circuit's denial of a stay makes particularly clear that the motions panel's order in this case threatens the uniformity of this Court's decisions by setting a precedent for the grant of stays that disrupt rather than preserve the status quo and in the absence of proof that a preliminary injunction irreparably harms the movant. *See Nken*, 556 U.S. at 429, 433. Accordingly, this Court should grant *en banc* review of the motions panel's stay decision.

¹ Appellants have noted that the Seventh Circuit also denied a stay pending appeal of the Northern District of Illinois's preliminary injunction of the same Rule. Doc. 32, at 4–5 (citing Order, *Cook County v. Wolf*, No. 19-3160 (7th Cir. Dec. 23, 2019)).

Sincerely,

A handwritten signature in blue ink that reads "Jonathan L. Backer". The signature is written in a cursive style with a large initial 'J'.

Jonathan Backer

Counsel

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Cc: All counsel of record (via CM/ECF)

S.D.N.Y. – N.Y.C.
19-cv-7993; 19-cv-7777
Daniels, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of January, two thousand twenty.

Present:

Amalya L. Kearse,
Guido Calabresi,
Susan L. Carney,
Circuit Judges.

State of New York, City of New York, State of Connecticut,
State of Vermont,

Plaintiffs - Appellees,

v.

No. 19-3591

United States Department of Homeland Security, Secretary
Kevin K. McAleenan, in his official capacity as Acting
Secretary of the United States Department of Homeland Security,
United States Citizenship and Immigration Services, Director
Kenneth T. Cuccinelli II, in his official capacity as Acting
Director of United States Citizenship and Immigration Service,
United States of America,

Defendants - Appellants.

Make the Road New York, African Services Committee,
Asian American Federation, Catholic Charities Community
Services, (Archdiocese of New York), Catholic Legal
Immigration Network, Inc.,

Plaintiffs - Appellees,

v.

No. 19-3595

Kenneth T. Cuccinelli, in his official capacity as Acting
Director of United States Citizenship and Immigration
Services, United States Citizenship and Immigration Services,
Kevin K. McAleenan, in his official capacity as Acting
Secretary of Homeland Security, United States Department of
Homeland Security,

Defendants - Appellants.

In these related cases, Appellants move for stays pending their appeals of the district court's preliminary injunctions. Upon due consideration, it is hereby ORDERED that Appellants' motions are DENIED. *See U.S. Sec. & Exch. Comm'n v. Citigroup Global Mkts. Inc.*, 673 F.3d 158, 162–63 (2d Cir. 2012) (explaining standard for stay pending appeal). The Court has set an expedited briefing schedule on the merits of the government's appeals, with the last brief due on February 14. Oral argument will be scheduled promptly thereafter. As always, the merits panel as soon as constituted has full authority to consider the scope of the existing injunction.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court