UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CASA de Maryland, Inc., *et al.* Plaintiffs, v. Donald J. Trump, in his official capacity as President of the United States, *et al.* Defendants.	No. 8:19-cv-2715-PWG

RESPONSE TO NOTICE OF ORDER OF THE UNITED STATES SUPREME COURT STAYING NATIONWIDE PRELIMINARY INJUNCTIONS

Defendants hereby respond briefly to Plaintiffs' recent Notice of Order of the Supreme Court of the United States on Application for Stay of Preliminary Injunctions (ECF No. 98).

First, Defendants must stress how temporally limited a stay is likely to be, at this point. The appeal from this Court's preliminary injunction will be fully briefed before the Fourth Circuit next Monday, February 3, 2020. The Fourth Circuit and courts around the country are deciding these case expeditiously, *see* Reply (ECF No. 92) at 5 n.4, and this Court can reasonably expect a decision in short order. By contrast, even if this Court were to deny the motion for stay today, Defendants' ensuing motion to dismiss would not be ripe until March 25, 2020. Thus, as a practical matter, it is unlikely that the motion to dismiss would even be fully briefed, let alone resolved, before the Fourth Circuit rules on the merits of the preliminary injunction. The fact that the Fourth Circuit has stayed that preliminary injunction suggests, moreover, that the court of appeals will disagree with this Court in at least some respect. Because the Fourth Circuit's impending decision will heavily influence further briefing in this case, and could obviate it altogether, it makes sense for the Parties and the Court to await that decision.

Plaintiffs are correct that Defendants expressed willingness to revisit a stay should the Public Charge Rule again become enforceable in Maryland. Reply in Support of Motion for Stay Pending Appeal (ECF No. 92) at 7. Plaintiffs are *not* correct, however, that the Supreme Court's recent order is "even greater reason for the Court to proceed." Notice at 2.

By definition, the Supreme Court's grant of a stay application means that the Court found three things: (1) "a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari"; (2) "a fair prospect that a majority of the Court will conclude that the decision below was erroneous"; and (3) "a likelihood that irreparable harm will result from the denial of a stay." *Conkriqht v. Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsburg, J., in chambers) (brackets, citation, and internal quotation marks omitted).

Contrary to Plaintiffs' suggestion, therefore, the Supreme Court's order supports a stay. Defendants' primary argument has always been that "judicial economy is best served by staying a case that may be obviated, in whole or in part, by an impending ruling from an appellate court." Motion (ECF No. 84) at 3. The Supreme Court has now found a reasonable probability of taking the case *and* a fair prospect of finding for the government—*i.e.*, of upholding the Public Charge Rule as legal. And although Plaintiffs may now face enforcement of the Public Charge Rule, the Supreme Court's ruling suggests that any alleged harms suffered by Plaintiffs will have been the result of a valid, legal regulation. That is not the kind of prejudice that favors a stay. On the whole, the Supreme Court's order is yet more reason to stay this case pending appeal.

Dated: January 29, 2020

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

ALEXANDER K. HAAS
Branch Director

/s/ Jason C. Lynch
JOSHUA M. KOLSKY
JASON C. LYNCH (D.C. Bar. No. 1016319)
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
Washington, D.C. 20530
Tel: (202) 514-1359 / Fax: (202) 616-8460
Email: Jason.Lynch@usdoj.gov

Attorneys for Defendants