

**UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

COOK COUNTY, ILLINOIS, et al.,

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY, et al.,

Defendants-Appellants.

No. 19-3169

**MOTION OF UNITED STATES HOUSE OF REPRESENTATIVES FOR
LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS *AMICUS CURIAE*
IN SUPPORT OF THE PLAINTIFFS**

Pursuant to Federal Rule of Appellate Procedure 29(a)(8), the United States House of Representatives respectfully requests leave to participate in the oral argument in this case in support of the plaintiffs. The House requests that the Court enlarge the oral argument by five minutes per side and grant the House five minutes of argument time. If the Court declines to enlarge the argument time, the House requests that the Court grant the House three minutes of argument time. The plaintiffs consent to these requests, and the defendants take no position on them.

1. This proceeding involves the Department of Homeland Security's (DHS's) new "public charge" rule, which seeks to redefine a historically narrow ground for inadmissibility to the United States as a broad exclusion of prospective immigrants

without significant means. As the House’s brief explains, for more than 100 years, courts and Executive Branch agencies understood the “public charge” provision to extend only to individuals who are likely to become primarily dependent on public assistance for a significant period. In 1996, Congress reenacted the provision without material change, thereby retaining that long-settled understanding. Congress that same year affirmed that noncitizens admitted to the United States were eligible for certain public benefits. In 1996 and 2013, Congress also rejected legislative proposals that would have given “public charge” the kind of expansive meaning DHS now seeks to impose by rule.

2. The House has a strong institutional interest in resisting DHS’s incursion on the role of the Legislative Branch. The Constitution authorizes Congress to “establish an uniform Rule of Naturalization.” U.S. Const., Art. I, § 8, cl 4. The formulation of “[p]olicies pertaining to the entry of [noncitizens] and their right to remain here ... is entrusted exclusively to Congress.” *Galvan v. Press*, 347 U.S. 522, 531 (1954) (citation omitted). By departing from the meaning Congress adopted and embracing a meaning Congress rejected, DHS’s new “public charge” rule would reshape an important area of federal immigration law by executive fiat.

This case also involves principles of statutory interpretation with important implications for the House. Congress often relies on the prior understanding of a statutory phrase when it reenacts legislation. When it uses a statutory phrase that has been consistently understood by the other Branches, it intends to carry through that

understanding. Congress likewise trusts that the other Branches will not give a statutory term a meaning that Congress has considered and rejected. The House respectfully submits that its presentation of oral argument will aid the Court in its consideration of these issues.

3. In recent years, the Supreme Court has regularly provided oral argument time to Congressional amici. *See, e.g., Dep't of Commerce v. New York*, 139 S. Ct. 1543 (2019) (mem.) (granting motion of U.S. House of Representatives); *United States v. Texas*, 136 S. Ct. 1539 (2016) (mem.) (granting motion of U.S. House of Representatives); *NLRB v. Noel Canning*, 134 S. Ct. 811 (2013) (mem.) (granting motion of group of 45 Senators). The courts of appeals and district courts have similarly authorized the House to present oral argument as amicus curiae in cases implicating the House's interests. *See Order, Sierra Club v. Trump*, No. 19-16102 (9th Cir. Oct. 15, 2019), Dkt. 170 (challenge to the Administration's effort to use non-appropriated funds to build a border wall); *Order, California v. Trump*, No. 4:19-cv-872 (N.D. Cal. May 2, 2019), Dkt. 111 (similar); *Minute Order, Castanon v. United States*, No. 1:18-cv-2545 (D.D.C. Nov. 11, 2019) (three-judge panel) (case involving voting rights for the District of Columbia). The same practice should be followed here.

4. This Court has allocated each side 20 minutes of oral argument time in this case. The House respectfully requests that the Court enlarge the oral argument by five minutes per side, and that the Court grant the House five minutes of the argument time allocated to the plaintiffs. Given the numerous complex issues

presented in this case—including threshold standing questions, zone-of-interest questions, and questions on the merits—a modest enlargement of the oral argument time by five minutes per side is warranted. The plaintiffs consent to this request, and the defendants take no position on it.

In the event the Court declines to enlarge the time allocated for oral argument, the House alternatively requests that the Court grant the House three minutes of the 20 minutes of argument time now allocated to the plaintiffs. The plaintiffs consent to this request, and the defendants take no position on it.¹

¹ Counsel for the defendants asked that their position be reflected as follows: “Although Defendants believe the House of Representatives has no cognizable institutional interest in the validity of a DHS rule interpreting a statutory term Congress has chosen not to define, Defendants take no position regarding the House’s participation at oral argument.”

Respectfully submitted,

/s/ Douglas N. Letter

Douglas N. Letter

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February 12, 2020

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this motion contains 791 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

This brief complies with the typeface requirements of Fed. R. App. P. 27(d)(1)(E) and Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) and Cir. R. 32(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in Garamond 14-point font.

/s/ Douglas N. Letter

Douglas N. Letter

CERTIFICATE OF SERVICE

I certify that on February 12, 2020, I caused the foregoing motion to be filed via the U.S. Court of Appeals for the Seventh Circuit CM/ECF system, which I understand caused a copy to be served on all registered parties.

/s/ Douglas N. Letter
Douglas N. Letter