



U.S. Department of Justice
Civil Division

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VIA CM/ECF

April 14, 2020

Honorable Molly C. Dwyer, Clerk of Court
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103

RE: *Doe v. Trump*, Appeal No. 19-36020
Oral Argument on the Government's Motion for Stay Pending Appeal: January 9, 2020
Motions Panel Members: Chief Judge Thomas, Judge Berzon, Judge Bress

Dear Ms. Dwyer:

The Government submits this response to Plaintiffs-Appellees' notice regarding the district court's order certifying two classes under Federal Rule of Civil Procedure 23.

First, even putting aside the district court's faulty reasoning, the class certification order further supports the Government's position that the court lacked authority to issue a universal preliminary injunction in November. Dkt. 2-1 at 20-23. Because no class had been certified at that time, any relief should have been limited to the parties before the court. *Id.* The district court's 37-page order has many flaws. But the order makes clear that deciding whether to certify classes requires extensive consideration of their separate rights and interests before binding a universal class to the outcome of this litigation. The court did not undertake such analysis before ordering universal relief.

Second, contrary to Plaintiffs' assertion, the belated class certification order does not cure the improper scope of the universal preliminary injunction that is on appeal before this Court. Plaintiffs did not seek class-wide relief in their preliminary injunction motion, and the class certification order does not purport to modify the injunction. Indeed, defining the classes only underscores the flaw in the universal relief granted. No court has considered whether class-wide injunctive relief is appropriate for the classes that now have been defined, or weighed the equities in granting relief to those classes. For example, the visa applicant class includes aliens abroad with no connection to the United States, who likely lack any basis for relief. Dkt. 23 at 58.

Over four months have passed since the Government requested a stay pending appeal in this important matter, and this Court has not resolved that request or scheduled a hearing on the appeal. The latest burdens on the healthcare system created by the COVID-19 pandemic

underscore the importance of healthcare planning by everyone, including intending immigrants before their entry into the United States. The district court's order certifying two classes months after issuing a universal injunction—and never considering whether class-wide relief is appropriate—does not remedy the ongoing, permanent harm that the Government continues to suffer every day the injunction exists.

Sincerely,

/s/ Courtney E. Moran

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CERTIFICATE OF SERVICE

I hereby certify that on April 14, 2020, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Courtney E. Moran
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