



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

February 17, 2021

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. Biden
No. 19-2222

Dear Ms. Connor:

The Court requested that Plaintiffs-Appellees respond to the Government's suggestion that oral argument be postponed in this case. Plaintiffs respectfully oppose postponement of oral argument.

Although Plaintiffs are cognizant that this is a time of transition for the Executive Branch, the Public Charge Rule remains in effect nationwide. And, as Plaintiffs have emphasized throughout this litigation, the Rule is causing great harm to Plaintiff CASA de Maryland and the immigrant communities it serves, including the individual Plaintiffs. Appellees' Br. 46–50; JA111–15. These harms have been magnified by the COVID-19 pandemic.

Plaintiffs are encouraged by President Biden's issuance of an Executive Order requiring the Department of Homeland Security to review the Public Charge Rule. *See* Exec. Order No. 14,012, 86 Fed. Reg. 8,277 (Feb. 5, 2021). But the Executive Order does not commit DHS to any policy change or set any timeline for implementation of any change that DHS recommends. Accordingly, the Executive Order offers no assurance that the harms that Plaintiffs are suffering because of the Rule will be alleviated in the short-term—or ever.

In light of the Government's ongoing enforcement of the Public Charge Rule on a nationwide basis, proceeding to oral argument in this case is appropriate. If this Court were to affirm the district court's order, the Rule would be preliminarily enjoined or stayed under 5 U.S.C. § 705 unless the Government were to file a petition for certiorari with the Supreme Court. Postponement of oral argument therefore would delay an opportunity for Plaintiffs to receive relief from the Rule's harms while the Government considers a potential change in policy.¹ Plaintiffs therefore oppose postponement of oral argument.

¹ Plaintiffs have shared their position with Defendants, explaining that Plaintiffs would not oppose postponement of oral argument if Defendants were to commit in writing to non-enforcement of the Public Charge Rule pending DHS's review. Defendants did not agree to this proposal and were unable to provide any further information to Plaintiffs. *See* Ex. 1.

Sincerely,

/s/ Jonathan L. Backer

Jonathan Backer

Counsel

Institute for Constitutional Advocacy and Protection

Georgetown University Law Center

(202) 662-9835

jb2845@georgetown.edu

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

EXHIBIT

1



Jonathan Backer <jb2845@georgetown.edu>

CASA de Maryland, Inc. v. Biden, No. 19-2222 (4th Cir.)

Jonathan Backer <jb2845@georgetown.edu>

Tue, Feb 16, 2021 at 6:53 PM

To: "Sinzdak, Gerard J (CIV)" <Gerard.J.Sinzdak@usdoj.gov>

Cc: "Dos Santos, Joshua Y. (CIV)" <Joshua.Y.Dos.Santos@usdoj.gov>, "Tenny, Daniel (CIV)" <Daniel.Tenny@usdoj.gov>, Mary McCord <mbm7@georgetown.edu>, Amy Marshak <as3397@georgetown.edu>

Hi Gerry,

Thanks for letting us know.

Best,

Jonathan

Sent from my iPhone

On Feb 16, 2021, at 6:50 PM, Sinzdak, Gerard J (CIV) <Gerard.J.Sinzdak@usdoj.gov> wrote:

Hi Jonathan,

I hope you had a nice weekend too. Unfortunately, we won't have an answer for you by tomorrow's deadline, so we understand if you plan to oppose.

Gerry

Sent from my iPhone

On Feb 16, 2021, at 10:10 AM, Jonathan Backer <jb2845@georgetown.edu> wrote:

Hi Gerry,

I hope you had a nice President's Day weekend. Just wanted to follow up on this. Are you able to give us an update today? If not, we will oppose postponement in our filing due tomorrow.

Thanks,

Jonathan

On Fri, Feb 12, 2021 at 9:41 AM Sinzdak, Gerard J (CIV) <Gerard.J.Sinzdak@usdoj.gov> wrote:

Jonathan,

Thanks for your email. We are consulting with DHS and the Solicitor General's Office about your request and will get back to you as soon as possible.

Thanks,

2/17/2021

Gerry

Gerard Sinzdak

Attorney

Civil Division, Appellate Staff

United States Department of Justice

Room 7242

950 Pennsylvania Ave. NW

Washington, DC 20530

Phone: (202) 514-0718

Fax: (202) 514-7964

gerard.j.sinzdak@usdoj.gov

From: Jonathan Backer <jb2845@georgetown.edu>

Sent: Thursday, February 11, 2021 12:59 PM

To: Sinzdak, Gerard J (CIV) <Gerard.J.Sinzdak@usdoj.gov>; Dos Santos, Joshua Y. (CIV) <Joshua.Y.Dos.Santos@usdoj.gov>

Cc: Mary McCord <mbm7@georgetown.edu>; Amy Marshak <as3397@georgetown.edu>

Subject: CASA de Maryland, Inc. v. Biden, No. 19-2222 (4th Cir.)

Dear Counsel,

In light of the Fourth Circuit's order requesting Plaintiffs-Appellees' position on postponement of oral argument in *CASA de Maryland, Inc. v. Biden*, No. 19-2222 (4th Cir.), we write to inquire whether you can provide any further information about the Government's plans with respect to the Public Charge Rule and the litigation challenging it.

As you know, affirmance by the Fourth Circuit would result in the reinstatement of the district court's nationwide injunction unless the Government were to file a petition for certiorari. Given that case posture and the ongoing harms that the Rule is causing CASA and its members, Plaintiffs cannot agree to a postponement of oral argument unless (1) the Government withdraws its appeal or (2) it formally commits in writing to non-enforcement of the Public Charge Rule. Are you able to provide any clarity on whether the Government intends to pursue either of those two courses of action?

Please let us know if you would like to hop on the phone to discuss prior to February 17, when our response is due.

Thank you,

Jonathan

2/17/2021

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Jonathan Backer

Counsel

Institute for Constitutional Advocacy and Protection

Georgetown University Law Center

(202) 662-9835

jb2845@georgetown.edu

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Jonathan Backer

Counsel

Institute for Constitutional Advocacy and Protection

Georgetown University Law Center

(202) 662-9835

jb2845@georgetown.edu

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