IN THE 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.

Civil Action No. 8:19-cv-2715-PWG

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR STAY PENDING APPEAL

INTRODUCTION

On October 14, 2019, this Court preliminarily enjoined the enforcement of the Department of Homeland Security (DHS)'s final rule, Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41,292 (Aug. 14, 2019) (to be codified at 8 C.F.R. pts. 103, 212–14, 245, 248) [hereinafter "Public Charge Rule" or "Rule"]. *See* Mem. Op. & Order (Op.), ECF No. 65; Revised Order, ECF No. 68. That decision is currently on appeal before the Fourth Circuit, which recently stayed the preliminary injunction without a written opinion. Notice of Appeal, ECF No. 74; Order, *CASA de Maryland v. Trump*, No. 19-2222 (4th Cir. Dec. 9, 2019), Dkt. 21. Defendants move for a stay of proceedings in this Court during the pendency of the appeal. Motion for Stay Pending Appeal (Mot.), ECF No. 84.

In preliminarily enjoining the Public Charge Rule, this Court held that: (1) Plaintiff CASA de Maryland, Inc. (CASA) has organizational standing to challenge the legality of the Rule and (2) CASA is likely to succeed in establishing that the Rule violates the Administrative Procedure Act (APA) because the Rule cannot be reconciled with the text of the Immigration and Nationality Act (INA) and is therefore "not in accordance with law." Op. 14, 22 (quoting 5 U.S.C. § 706(2)(A)). This Court has not ruled on Plaintiffs' three remaining claims or the two other standing theories that Plaintiffs have advanced—none of which turn on the issues currently before the Fourth Circuit. *Id.* at 14, 33. Because the Fourth Circuit's review of the preliminary injunction decision will not in any way affect the viability of Plaintiffs' alternative standing theories or their other claims, the interests of judicial economy are not served by staying proceedings in this Court during the appeal. Furthermore, Defendants have not come close to demonstrating the harm necessary to justify a stay of proceedings; nor do they acknowledge the harm that Plaintiffs would suffer from delayed final adjudication of this matter. Accordingly,

this Court should deny Defendants' stay motion.

ARGUMENT

"Ordinarily, an interlocutory injunction appeal . . . does not defeat the power of the trial court to proceed further with the case." *BAE Sys. Tech. Solution & Servs., Inc. v. Republic of Korea's Defense Acquisition Program Admin.*, No. PWG-14-3551, 2016 WL 6167914, at *3 (D. Md. Oct. 24, 2016) (quoting 16 Charles A. Wright et al., Federal Practice & Procedure § 3921.2 (3d ed. 2012)). "The grant or denial of a request to stay proceedings calls for an exercise of the district court's judgment 'to balance the various factors relevant to the expeditious and comprehensive disposition of the causes of action on the court's docket.'" *Maryland v. Universal Elections, Inc.*, 729 F.3d 370, 375 (4th Cir. 2013) (quoting *United States v. Ga. Pac. Corp.*, 562 F.2d 294, 296 (4th Cir. 1977)). Those factors include:

> (1) the impact on the orderly course of justice, sometimes referred to as judicial economy, measured in terms of the simplifying or complicating of issues, proof, and questions of law which could be expected from a stay; (2) the hardship to the moving party if the case is not stayed; and (3) the potential damage or prejudice to the non-moving party if the stay is granted.

Int'l Refugee Assistance Project (IRAP) v. Trump, 323 F. Supp. 3d 726, 731 (D. Md. 2018). "The party seeking a stay must justify it by clear and convincing circumstances outweighing potential harm to the party against whom it is operative." *Williford v. Armstrong World Indus., Inc.*, 715 F.2d 124, 127 (4th Cir. 1983); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936) ("[T]he supplicant for a stay must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else.").

I. JUDICIAL ECONOMY IS NOT SERVED BY A STAY

A stay will not advance the interests of judicial economy because the Court has yet to

rule on several legal issues in this case, which are distinct from the claims now before the Fourth Circuit. Plaintiffs' Amended Complaint includes four claims: (1) the Public Charge Rule is contrary to the INA's text and therefore is "not in accordance with law," in violation of the APA;[1] (2) DHS further violated the APA by acting arbitrarily and capriciously in adopting the Rule; (3) the Rule is void for vagueness under the Fifth Amendment's Due Process Clause; and (4) the Rule was motivated by discriminatory animus in violation of the Fifth Amendment's equal-protection component. Am. Compl. ¶¶ 130–53, ECF No. 27 (quoting 5 U.S.C. § 706(2)(A)). In preliminarily enjoining the Public Charge Rule, this Court addressed only the first of those claims. Op. 32–33 ("Because I find that CASA is likely to prevail on its claim that the Public Charge Rule is "not in accordance with law" in violation of 5 U.S.C. § 706, I do not address [Plaintiffs' other merits] arguments . . . .").[2]

Plaintiffs also have advanced three different arguments for why they have Article III standing to press those claims: (1) CASA's organizational standing (i.e., standing based on the direct harm that CASA has suffered to its mission and resources as a result of the Rule); (2) CASA's associational or representational standing (i.e., standing to advance the claims of its members); and (3) individual standing for Plaintiffs Aguiluz and Camacho—two CASA members who are directly and negatively affected by the Public Charge Rule. Pls.' Reply Mem. Supp. Mot. Prelim. Inj. (PI Reply) 1–10, ECF No. 59. The Court addressed only one of these

[1] The Amended Complaint also alleges that the Public Charge Rule violates the Supplemental Nutrition Assistance Program (SNAP) statute "by treating SNAP benefits as income or a resource for purposes of public-charge determinations." Am. Comp. ¶ 134 (citing 7 U.S.C. § 2017(b)). This Court has not yet addressed this aspect of Plaintiffs' contrary-to-law claim.

[2] Defendants imply that, in ruling on only one legal claim, the Court deemed Plaintiffs unlikely to succeed on the merits of their other three claims. *See* Mot. 3. But the Court only needed to find Plaintiffs likely to succeed on one of its claims to preliminarily enjoin the Rule, and the Court's decision expressly disclaimed that it was addressing Plaintiffs' other claims. Op. 33.

bases for standing—CASA's organizational standing—in granting Plaintiffs' motion for a preliminary injunction. *See* Op. 14 ("Because this Court finds that CASA has organizational standing, it need not consider whether it also has representational standing or whether the Individual Plaintiffs have standing.").

Defendants argue that a decision reversing this court's preliminary injunction order "could obviate the need to consider Plaintiffs' claims altogether." Mot. 3. No conceivable outcome of the preliminary injunction appeal would resolve all of the issues that remain before this Court. Even if the Fourth Circuit were to hold that CASA lacks organizational standing to challenge the Public Charge Rule, that conclusion would have no bearing on whether individual CASA members—either the Individual Plaintiffs or other CASA members on whose behalf the organization is suing—are injured by the Rule in a manner that satisfies Article III's standing requirements. CASA's organizational injury—the diversion of its resources and frustration of its mission—is distinct from the injuries that the Rule inflicts on CASA's members, forcing them to make financial and life decisions that they would not otherwise make in order to avoid adverse public-charge determinations in the future and potentially rendering them ineligible to obtain lawful-permanent-resident (LPR) status. *Compare* PI Reply 5–7 (addressing CASA's organizational standing), *with id.* 1–5 (addressing Individual Plaintiffs' standing). Thus, contrary to Defendants' suggestion, a decision from the Fourth Circuit holding that CASA lacks organizational standing would not end this case.

Defendants are equally unpersuasive in arguing that a ruling from the Fourth Circuit on Plaintiffs' likelihood of success on their contrary-to-law claim would narrow the issues that remain before this Court. Mot. 3. Plaintiffs' contrary-to-law claim focuses on the plain meaning of the phrase "public charge" as used in the INA. Am. Compl. ¶¶ 130–35. In contrast,

Plaintiffs' arbitrary-and-capricious claim centers on whether DHS, in exercising whatever (if any) discretion it possesses to construe the phrase "public charge," failed to meaningfully consider critical issues regarding the Rule and its known effects. *Id.* ¶ 141. No ruling from the Fourth Circuit about the plain meaning of the phrase "public charge" will address DHS's failure to properly consider concerns brought to its attention during the rulemaking process. A Fourth Circuit ruling on the contrary-to-law question would have even less bearing on Plaintiffs' constitutional claims. Plaintiffs' void-for-vagueness claim concerns whether the Rule's standard and factors for making public-charge determinations give fair notice to noncitizens about how to avoid adverse immigration consequences and preclude discriminatory enforcement by immigration officials. *Id.* ¶¶ 144–48. Plaintiffs' equal-protection claim addresses the intent behind the Rule's enactment. *Id.* ¶¶ 149–53. The plain meaning of the phrase "public charge" does not factor into either of those questions.

This case is therefore analogous to *District of Columbia v. Trump*, 344 F. Supp. 3d 828 (D. Md. 2018), which denied a stay of proceedings where "the President's success on appeal would neither terminate nor narrow the case[,] nor . . . foreclose discovery relevant to proving, to at least some extent, Plaintiffs' claimed injuries." *Id.* at 843. By contrast, the lack of overlap between the issues that are before the Fourth Circuit and those that are still before this Court make this case unlike *IRAP*, on which Defendants rely. Mot. 4–5. In *IRAP*, the defendants had stated their intention to file a motion to dismiss addressing the same justiciability issues that were on appeal before the Supreme Court in *Trump v. Hawaii*; denial of a stay therefore risked the issuance of "a ruling . . . that would be subject to revisitation and potential modification." 323 F. Supp. 3d at 733. Moreover, the Supreme Court's decision "would likely inform any consideration of the viability of" the remaining claims before the district court that were not on

appeal. *Id.* As discussed above, these factors simply are not present here.

This case also differs from *IRAP* because, at the time that the district court in that case issued a stay, the Supreme Court was expected to issue a decision in *Trump v. Hawaii* within two months. *Id.* at 736. No such brief and certain timeline governs Defendants' appeal in this case or any petitions for rehearing en banc or for a writ of certiorari that might follow a decision by the Fourth Circuit panel.

In short, "a stay would be a greater waste of time" than simultaneous proceedings before this Court and the Fourth Circuit. *Hooker v. Sirius XM Radio, Inc.*, No. 4:13CV3, 2015 WL 10937407, at *3 (E.D. Va. Sept. 25, 2015). Because the Fourth Circuit's review of the preliminary injunction decision is unrelated to the other claims and standing theories on which this Court has yet to rule, a stay will serve only to delay consideration of those issues. The interests of judicial economy are better served by Defendants filing their motion to dismiss, which will enable the Court to consider the viability of Plaintiffs' other claims and arguments.

II. DELAY WILL HARM PLAINTIFFS, WHILE DEFENDANTS ARE NOT HARMED BY THE DENIAL OF A STAY

Defendants have not "justif[ied] by clear and convincing circumstances" that the denial of a stay harms them more than the grant of one will harm Plaintiffs. *See Williford*, 715 F.2d at 127. Absent a stay, Defendants argue that they will be harmed by being forced to "engage in a months-long briefing process" of their intended motion to dismiss that "could be obviated by the Fourth Circuit's ruling." Mot. 4. For the reasons discussed above, *supra* Pt. I, neither an affirmance nor a reversal of the preliminary injunction decision will obviate the need for this Court to rule on the claims and standing theories that are not on appeal.[3] Moreover, "the

[3] As the Court made clear in a telephonic status conference held on October 30, 2019, *see* ECF No. 72, the Court has no intention of revisiting issues addressed in the preliminary injunction decision. Thus, there is no risk that motion-to-dismiss briefing will overlap with issues that are

Government has the resources to litigate" those issues "without significant hardship or prejudice." *IRAP*, 323 F. Supp. 3d at 735. Accordingly, the costs associated with briefing Defendants' motion to dismiss do not constitute a "clear case of hardship or inequity" justifying a stay. *Landis*, 299 U.S. at 248.

Defendants also contend that a stay could spare them the need to "expend resources on discovery that may ultimately be rendered irrelevant by a decision from the Fourth Circuit." Mot. 4 n.2. But the contrary-to-law claim that is before the Fourth Circuit is a purely legal claim that is unlikely to be the subject of any hypothetical discovery. The appeal is therefore unlikely to narrow the scope of any discovery that might be necessary to evaluate Plaintiffs' other claims.

Although Defendants might find the prospect of motion-to-dismiss briefing and the potential discovery "taxing and burdensome," such minor inconveniences do not "sufficient[ly] offset" Plaintiffs' "right to have [their] case resolved without delay." *Williford*, 715 F.2d at 128. As Plaintiffs have alleged, the Public Charge Rule has had serious and deleterious effects on CASA and its members. It has "engendered much confusion and fear among CASA's membership, leading members to disenroll from or forgo benefits to which they or their family members (including U.S. citizen children) are entitled." Am. Comp. ¶ 118. As a result, "CASA has had to allocate significant resources to combatting the Rule's chilling effects through public education and to counseling and assisting its members" in navigating the confusing implications of the Rule, at the expense of its affirmative advocacy efforts. *Id.* ¶¶ 122–23. The Rule also has forced individual CASA members to make financial and life decisions based not on what makes the most sense for them and their families but, instead, with an eye toward minimizing their risk of an adverse public-charge determination under an exceptionally broad and vague standard. *Id.*

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before the Fourth Circuit.

¶¶ 128–29.

Any delay in proceedings in this Court will prolong the harms that Plaintiffs are experiencing by postponing their ability to obtain permanent injunctive relief. That is especially true in light of the recent order issued by the Fourth Circuit without a written opinion to stay this Court's preliminary injunction and another stay decision issued in the appeal of preliminary injunctions issued in cases challenging the Public Charge Rule in the Ninth Circuit. *See* Order, *CASA de Maryland v. Trump*, No. 19-2222 (4th Cir. Dec. 9, 2019), Dkt. 21; *Washington v. U.S. Dep't of Homeland Sec.*, No. 19-35914, slip op. 7 (9th Cir. Dec. 5, 2019). Those stay decisions have greatly unsettled the legal landscape surrounding the Public Charge Rule. Implementation of the Rule remains on hold because of nationwide injunctions issued by the U.S. District Court for the Southern District of New York, but those orders also are on appeal with stay motions pending. *New York v. U.S. Dep't of Homeland Sec.*, No. 19 Civ. 7777 (GBD), 2019 WL 5100372 (S.D.N.Y. Oct. 11, 2019), *appeal docketed* No. 19-3591 (2d Cir. Oct. 31, 2019); *Make the Road N.Y. v. Cuccinelli*, No. 19 Civ. 7993 (GBD), 2019 WL 5484638 (S.D.N.Y. Oct. 11, 2019), *appeal docketed* No. 19-3595 (2d Cir. Oct. 31, 2019); Appellants' Mot. Stay Pending Appeal, *New York v. U.S. Dep't of Homeland Sec.* No. 19-3591 (2d Cir. Nov. 15, 2019), Dkt. 31; Appellants' Mot. Stay Pending Appeal, *Make the Road N.Y. v. Cuccinnelli*, No. 19-3935 (2d Cir. Nov. 15, 2019), Dkt. 16. If the Second Circuit issues a stay as well, DHS could enforce the Rule in the states where CASA operates, absent further relief from this Court. And even if the preliminary injunctions issued by the Southern District of New York remain in effect during the pendency of the Second Circuit appeal, a stay of proceedings in this Court still would postpone Plaintiffs' ability to obtain a permanent injunction. Only swift and final resolution of this case will fully resolve Plaintiffs' harms.

CONCLUSION

For all of the foregoing reasons, the Court should deny Defendant's motion to stay proceedings in this Court pending appeal of the preliminary injunction.

Respectfully submitted,

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Dated: December 10, 2019

CERTIFICATE OF SERVICE

I hereby certify that on December 10, 2019, I electronically filed a copy of the foregoing. Notice of this filing will be sent via email to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Jonathan L. Backer
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