



U.S. Department of Justice
Civil Division

Tel: (202) 616-9121

VIA CM/ECF

September 28, 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 September 3, 2020
Panel Members: Judge Collins, Judge Tashima, Judge Bybee
Response to Appellees' September 11, 2019 letter under Rule 28(j)

Dear Ms. Dwyer:

Appellees' letter addresses a purported "supplemental authority"—a 2017 administrative decision—which they say shows that "the Proclamation keeps subsidized ACA coverage out of the reach of lawful immigrants even after they arrive in the United States." That is not correct. As explained in the government's briefs and at argument, the Proclamation does not bar an immigrant in the United States from later obtaining additional coverage, including subsidized coverage. Dkt. 23 at 9; dkt. 60 at 14.

Appellees note that immigrants who circumvent the Proclamation through "fraud" become priorities for removal. But that provision applies to immigrants who intentionally provide false information, and nothing in the Proclamation requires an intending immigrant to promise never to obtain subsidized coverage. For example, if an intending immigrant satisfies the Proclamation by showing that she has a qualifying travel health insurance plan, or by showing the resources to pay for any reasonably foreseeable medical expenses she may have when she first arrives in the United States, it is irrelevant that she might also intend to later obtain additional coverage that does not qualify, such as a subsidized ACA plan. And if the intending immigrant disclosed such an intent, the consular officer would evaluate whether the individual has sufficient resources to cover reasonably foreseeable medical expenses or a qualifying travel plan, without considering the coverage that might be provided in the future by the non-qualifying plan. The language Appellees cite would instead apply to an intending immigrant who, for example, obtains a visa by falsely representing that she will obtain a qualifying plan when, in reality, she intends to obtain *only* a subsidized ACA plan (or no plan at all) after arrival.

The Proclamation addresses a specific problem—immigrants who are not planning for their insurance needs at very high rates (even with subsidized ACA coverage). The Proclamation ensures advance planning to address those needs but does not limit what additional insurance an immigrant might later obtain after she obtains the plan she represented she would use to comply with the Proclamation.

Sincerely,

/s/ Brian C. Ward _____
BRIAN C. WARD
Senior Litigation Counsel
U.S. Department of Justice
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 616-9121
Email: brian.c.ward@usdoj.gov

cc: All Counsel (via CM/ECF)

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 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/ Brian C. Ward

BRIAN C. WARD
U.S. Department of Justice