UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CASA DE MARYLAND, INC., et al.,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, et al.,

Defendants-Appellants.

No. 19-2222

UNOPPOSED MOTION OF U.S. HOUSE OF REPRESENTATIVES FOR LEAVE TO PARTICIPATE IN THE EN BANC ORAL ARGUMENT AS *AMICUS CURIAE* IN SUPPORT OF THE PLAINTIFFS

Pursuant to Federal Rule of Appellate Procedure 29(a)(8), *amicus curiae* the U.S. House of Representatives respectfully requests leave to participate in the en banc oral argument in support of the plaintiffs. The House requests that the Court enlarge the oral argument by 10 minutes per side, and that the Court grant the House 10 minutes of argument time.

1. This proceeding involves the Department of Homeland Security's (DHS's) "public charge" rule, which seeks to transform a historically narrow ground for inadmissibility to the United States into a wealth requirement for prospective immigrants. 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 dependent on public assistance for a significant period. In 1996, Congress reenacted the provision without material change, thereby retaining that long-settled understanding. In 1996 and 2013, Congress also rejected legislative proposals that would have given "public charge" the kind of expansive meaning DHS seeks to impose by rule.

2. The House has a strong institutional interest in this case. The Constitution authorizes Congress to "establish a uniform Rule of Naturalization." U.S. Const., Art. I, § 8, cl 4. "[O]ver no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens." *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (quotation marks omitted). By departing from the meaning Congress adopted and embracing a meaning Congress rejected, DHS's 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 term or 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. Congress has an important interest in preserving its ability to reenact a statutory term without the risk that an administration dissatisfied with its policy judgment will seek to give

the term a meaning Congress rejected. The House respectfully submits that its presentation of oral argument will aid the Court in its consideration of these issues.

3. This Court granted the House's motion to participate in the oral argument at the panel stage in this case. *See* Order, Dkt. 97 (Feb. 14, 2020). The Second, Seventh, and Ninth Circuits similarly granted the House's motions to participate in the oral arguments in similar challenges to the public-charge rule. The House has presented oral argument in every court of appeals that has addressed the public-charge rule.

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 House's motion to participate in oral argument in challenge to Trump Administration effort to add a citizenship question to the census); *United States v. Texas*, 136 S. Ct. 1539 (2016) (mem.) (granting House's motion to participate in oral argument in challenge to Obama Administration deferred action policy); *NLRB v. Noel Canning*, 134 S. Ct. 811 (2013) (mem.) (granting Senator Mitch McConnell's motion to participate in oral argument in challenge to Obama Administration recess appointments). The House respectfully submits that the same practice should be followed here.

4. This Court normally allots 30 minutes of argument time per side in en banc cases. The House respectfully requests that the Court enlarge the oral argument time by 10 minutes per side, for a total of 40 minutes per side, and that the Court allot 10

minutes of the plaintiffs' argument time to the House. The oral argument in this case may touch on numerous issues—not only the merits of the public-charge rule, but also questions regarding organizational standing and nationwide injunctions. A modest enlargement of the oral argument time by 10 minutes per side would ensure that the en banc Court has adequate time to consider each of the issues presented.

5. Counsel for the plaintiffs and defendants have been informed of the House's intent to file this motion. The plaintiffs consent to the House's request. The defendants take no position on the House's request and do not plan to file a response in opposition.

Respectfully submitted,

/s/ Douglas N. Letter

Douglas N. Letter
General Counsel
Todd B. Tatelman
Megan Barbero
William E. Havemann
OFFICE OF GENERAL COUNSEL
U.S. HOUSE OF REPRESENTATIVES
219 Cannon House Office Building
Washington, DC 20515
(202) 225-9700

Counsel for Amicus Curiae

Robert M. Loeb
Thomas M. Bondy
Melanie Hallums
ORRICK, HERRINGTON & SUTCLIFFE LLP
1152 15th Street NW
Washington, DC 20005

January 29, 2021

CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this motion contains 754 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

This motion 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 January 29, 2021, I caused the foregoing motion to be filed via the U.S. Court of Appeals for the Fourth Circuit CM/ECF system, which I understand caused a copy to be served on all registered parties.

/s/ Douglas N. Letter
Douglas N. Letter