

No. 19-2222

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

CASA DE MARYLAND, INC., *et al.*,

Plaintiffs-Appellees,

v.

JOSEPH R. BIDEN, JR., in his official capacity
as President of the United States, *et al.*,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Maryland

SUPPLEMENTAL REPLY BRIEF FOR APPELLANTS

SARAH E. HARRINGTON
Deputy Assistant Attorney General

ROBERT K. HUR
United States Attorney

DANIEL TENNY
GERARD SINZDAK
JOSHUA DOS SANTOS
*Attorneys, Appellate Staff
Civil Division, Room 7242
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 514-0718*

TABLE OF CONTENTS

INTRODUCTION AND SUMMARY	1
ARGUMENT	1

TABLE OF AUTHORITIES

Executive Order, “Executive Order on Restoring Faith in our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans” (Feb. 2, 2021).....	1
--	---

INTRODUCTION AND SUMMARY

In its December 14, 2020 Order, this Court instructed the parties to file supplemental briefs “to address relevant developments concerning the Public Charge Rule.” Order (Dec. 14, 2020). The government filed its opening supplemental brief, per the Court’s Order, on January 4, 2021, and plaintiffs filed their response brief on January 25, 2021.

On Tuesday, February 2, 2021, President Biden issued an Executive Order with a direct bearing on this appeal. Pursuant to that Executive Order, federal agencies are reviewing the Rule that is at issue in this case and the associated litigation. We will update this Court of any further developments, but in order to ensure that this Court has the benefit of the results of that review, we respectfully suggest that this Court consider postponing argument until the review is complete.

ARGUMENT

This case relates to the Department of Homeland Security’s August 2019 rule (Rule) interpreting the public-charge ground of inadmissibility in the Immigration and Nationality Act. *See* 8 U.S.C. § 1182(a)(4)(A). In the weeks since the government filed its opening supplemental brief, President Biden was sworn in as the 46th President of the United States. On February 2, 2021, Alejandro N. Mayorkas was confirmed by the Senate as the Secretary of Homeland Security.

Also on February 2, 2021, President Biden signed an Executive Order entitled “Executive Order on Restoring Faith in our Legal Immigration Systems and

Strengthening Integration and Inclusion Efforts for New Americans.”¹ The Order directs the Secretary of Homeland Security, the Attorney General, the Secretary of State, and the heads of other relevant agencies to conduct an “[i]mmediate [r]eview” of “all agency actions related to the implementation of the public charge ground of inadmissibility in section 212(a)(4) of the Immigration and Nationality Act (INA), 8 U.S.C. 1182(a)(4), and the related ground of deportability in section 237(a)(5) of the INA, 8 U.S.C. 1227(a)(5).” Order § 4. Among other things, the Secretaries and Attorney General must “consider and evaluate the current effects of these agency actions” and identify agency actions “to address concerns about the current public charge policies’ effect on the integrity of the Nation’s immigration system and public health.” *Id.* § 4(a). The Secretaries and Attorney General must complete their review within 60 days and must submit a report to the President identifying “any steps their agencies intend to take or have taken” to further the policies identified in the Order. *Id.* § 4(b).

The Department of Homeland Security is currently evaluating the Rule at issue in this case, in light of the directive it has received from the President. The government is also considering how to proceed in this and other litigation challenging

¹ Available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/02/executive-order-restoring-faith-in-our-legal-immigration-systems-and-strengthening-integration-and-inclusion-efforts-for-new-americans/>

the August 2019 public-charge rule. If the government takes action that will impact this Court's adjudication of the Rule, it will notify the Court promptly.

The supplemental briefing in this case was ordered to allow the Court and the parties to take account of relevant developments since this Court granted rehearing en banc. Given the commencement of the agencies' review of the Rule and litigation, we respectfully suggest that this Court consider postponing argument until that review is complete, so that the Court's consideration of the Rule, if it remains necessary, can take account of the government's review and resulting actions. As noted, we will promptly inform the Court of any actions that bear on this litigation.

Respectfully submitted,

SARAH E. HARRINGTON
Deputy Assistant Attorney General

ROBERT K. HUR
United States Attorney

DANIEL TENNY
s/ DRAFT

GERARD SINZDAK
JOSHUA DOS SANTOS
*Attorneys, Appellate Staff
Civil Division, Room 7242
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, DC 20530
(202) 514-0718
gerard.j.sinzdak@usdoj.gov*

February 2021

CERTIFICATE OF COMPLIANCE

This supplemental brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 562 words. This brief also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word 2016 in Garamond 14-point font, a proportionally spaced typeface.

s/ Gerard Sinzdak
GERARD SINZDAK

CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth 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/ Gerard Sinzdak

GERARD SINZDAK