No. 19-2222

In the United States Court of Appeals for the Fourth Circuit

CASA DE MARYLAND, *ET AL.*,
Plaintiffs-Appellees,

v.

JOSEPH R. BIDEN, 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

OPPOSED MOTION FOR LEAVE TO INTERVENE AS DEFENDANT-APPELLANTS

The States of Texas, Alabama, Arizona, Arkansas, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Montana, Ohio, Oklahoma, South Carolina, and West Virginia move under Federal Rule of Appellate Procedure 27 to intervene as Defendant-Appellants to appeal the district court's nationwide injunction against enforcement of the public charge rule (the "Rule"). The Rule implements the Immigration and Nationality Act's prohibition against immigration by those who are likely to become a public charge. Two days ago, the Defendants, who are agents or agencies of the United States (collectively the "United States"), filed a stipulated motion to dismiss this appeal. This morning, the Court granted that stipulated motion and issued its mandate without offering affected parties an opportunity to seek to defend the Rule.

Because the Rule at issue that directly implicates the States' obligations in providing Medicaid and other services, they seek leave to defend the suit.

The States timely seek to intervene. Until two days ago, the United States defended the Rule, so that the States' intervention prior to that point would have unnecessarily complicated this suit. But now that the federal government has abandoned that defense—and, by extension, has evaded the Administrative Procedure Act's strictures for modifying a rule it no longer finds genial—no one is left to represent the States' interests in defending the Rule.

Counsel for Texas contacted counsel for all parties regarding this motion and the accompanying ones. Counsel for Casa de Maryland indicated that it opposes them. Counsel for the United States indicated that it opposes them.

BACKGROUND

This immigration case concerns the hotly contested public charge rule. Under federal law, "any alien who . . . in the opinion of the Attorney General at the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible." 8 U.S.C. § 1182(a)(4)(A).

In 2019, following extensive notice and comment, the Department of Homeland Security issued a final rule adopting a new definition of "public charge" for purposes of this statute. *Casa de Maryland, Inc. v. Trump*, 971 F.3d 220, 234, *reh'g granted*, 981 F.3d 311, 314(4th Cir. 2020) (dismissed March 11, 2021). The Rule defines a "public charge" as "'an alien who receives one or more public benefits . . . for more than 12 months in the aggregate within any 36-month period.'" *Id.* at 234 (quoting Inadmissibility on Public Charge Grounds, 84 Fed. Reg. 41, 292 41,501). The Rule further

explains that the term "public benefits" includes non-cash benefits that are partially funded by the States, including certain Medicaid benefits. *Id.*

The Plaintiffs, CASA de Maryland, Inc. and two individuals, filed this action in the United States District Court for the District of Maryland against the President, the Secretary of Homeland Security, and other federal defendants in their official capacities. The Plaintiffs alleged that the Rule violates both the APA and the Fifth Amendment. *Id.* at 236. They moved for a preliminary injunction to block the rule from taking effect. *Id.* The district court granted the motion and entered a nationwide injunction preventing the United States from enforcing the rule anywhere. *Id.*

A panel of this Court reversed. It held that that the Rule "rests on an interpretation of 'public charge' that comports with a straightforward reading of the [statute]." *Id.* at 242. The panel further ruled that the district court "erred in its choice of remedy" by issuing a "plainly overbroad" nationwide injunction. *Id.* at 255-56.

The Plaintiffs moved for rehearing en banc, which the Court granted. *Casa de Maryland, Inc. v. Trump*, 981 F.3d 311, 314 (4th Cir. 2020). The Court called for supplemental briefing "to address relevant developments concerning the Public Charge Rule." Order of Dec. 14, 2020 at 2, *Casa de Maryland, Inc. v. Trump*, No. 19-2222 (4th Cir.) (ECF No. 158). The United States responded that on February 2, 2021, President Biden issued an Executive Order directing a review of the DHS rule, and suggested that the Court postpone en banc oral argument until that review is complete. Supplemental Reply Brief for Appellants at 3, *Casa de Maryland, Inc. v. Trump*, No. 19-2222 (4th Cir.) (ECF No. 188). The Court agreed and removed the case from

the oral argument calendar. Order of February 24, 2021, *Casa de Maryland, Inc. v. Trump*, No. 19-2222 (4th Cir.) (ECF No. 208).

Then, on March 9, 2021, without beginning the process to rescind the Rule or providing notice to parties who would normally be entitled to participate in notice-and-comment rulemaking, the United States filed an unopposed motion to dismiss the appeal. Unopposed Motion to Voluntarily Dismiss Appeal at 1, *Casa de Maryland, Inc. v. Trump*, No. 19-2222 (4th Cir.) (ECF No. 210). This Court granted that motion earlier today. It also issued its mandate without allowing any potentially interested parties to seek leave to intervene and defend the rule. As a result, the public charge rule will become (absent intervention and a stay) unenforceable in any State.

Because the United States will no longer defend a rule directly implicating the States' interests, the States now move this Court to withdraw its mandate, to reconsider its dismissal, and for leave to intervene in defense of the Rule.

ARGUMENT

Although the Federal Rules of Civil Procedure do not apply directly in appellate proceedings, multiple courts have recognized that the rules controlling district court intervention may serve as useful guidance regarding whether to permit intervention in other contexts. *E.g.*, *Int'l Union v. Scofield*, 382 U.S. 205, 217, 86 S. Ct. 373, 381 n.10 (1965); *Sierra Club, Inc. v. E.P.A.*, 358 F.3d 516, 517-18 (7th Cir. 2004); *Texas v. U.S. Dep't of Energy*, 754 F.2d 550, 551 (5th Cir. 1985). The States meet Rule 24's standards for intervention both as of right and as a permissive matter.

I. The States are entitled to intervene as of right.

"[T]o intervene as a matter of right under Rule 24(a) a movant generally must satisfy four criteria: (1) timeliness, (2) an interest in the litigation, (3) a risk that the interest will be impaired absent intervention, and (4) inadequate representation of the interest by the existing parties." *Scott v. Bond*, 734 F. App'x 188, 191 (4th Cir. 2018); *In re Brewer*, 863 F.3d 861, 872 (D.C. Cir. 2017). The States easily meet this standard.

First, this motion is timely. "In order to properly determine whether a motion to intervene in a civil action is sufficiently timely, a trial court in this Circuit is obliged to assess three factors: first, how far the underlying suit has progressed, second, the prejudice any resulting delay might cause the other parties; and third, why the movant was tardy in filing its motion." *Alt. v. U.S. E.P.A.*, 758 F.3d 588, 591 (4th Cir. 2014). Here, although the case is now at the en banc stage, the States are not "tardy" in filing this motion. The Defendants announced that they would no longer defend the Rule on March 9, and the States filed this motion on March 11, immediately after it learned that the United States intended to regulate by stipulation. Before that, the United States had defended the Rule in this and similar litigation in multiple fora over a period of years, and the United States gave the States no prior notice of its intention to withdraw that defense. Rather than further complicating these procedures and burdening the courts with duplicative briefing, the States relied on the United States to defend its own Rule.

Further, the Plaintiffs will not be prejudiced by the States' intervention. Plaintiffs faced the possibility of protracted litigation until two days ago, even if en banc

oral argument had been postponed; they suffer no prejudice by litigating the same issues in the same forum against the States rather than the United States. The absence of prejudice likewise indicates this motion is timely.

Second, the States have important interests in this litigation, specifically their interests in conserving their Medicaid and related social-welfare budgets. Providing for the healthcare needs of economically disadvantaged individuals represents a substantial portion of the States' budgets. For example, in Texas in 2015, approximately 4 million Texans relied on Medicaid. Tex. health. & Human servs. comm'n, Texas medicaid and Chip in Perspective 1-2 (11th ed. 2017), https://hhs.texas.gov/reports/2017/02/texas-medicaid-chip-perspective-eleventh-edition. Medicaid is jointly financed by the federal government and the States. *Id.* at 4. In 2015, total Texas expenditures for Medicaid represented approximately 28% of the State's budget. *Id.* at 4. In the past several years, the Federal Government has paid for approximately 56-58% of Texas's Medicaid expenditures. *Id.* at 183. Although the exact amount of Texas's Medicaid budget spent on immigrants who would otherwise be inadmissible under the DHS Rule has varied, the total budget is always measured in billions of dollars. *Id.* at 179. And from 2000 to 2015, Medicaid expenses increased from 20% to 28% of the state's budget. *Id.* at 179.

The Court can and should infer that invalidating the Rule will have a disproportionate impact on the States, particularly on border States. For example, Texas and Montana have among the largest international borders in the Union and provide Medicaid services to many immigrants. The Rule would reduce that burden. Under the relevant statute, "[a]ny alien who . . . in the opinion of the Attorney General at

the time of application for admission or adjustment of status, is likely at any time to become a public charge is inadmissible." 8 U.S.C. § 1182(a)(4)(A). DHS's rule defines "public charge" as "'an alien who receives one or more public benefits . . . for more than 12 months in the aggregate within any 36-month period.'" 84 Fed. Reg. at 41,501. "Public benefits" specifically includes, among other forms of public assistance, Medicaid services with some exceptions. *Id.* Thus, if the Attorney General determined that an alien applying for admission to the United States would likely require Medicaid services for more than 12 months in a 36-month period, then that alien would be inadmissible. Accordingly, fewer aliens requiring Medicaid and other public services would be admitted to the United States, including into the State Intervenors, thus reducing the States' Medicaid budgets. Accordingly, each Intervenor has a strong fiscal interest in this litigation.

Third, the States' interests in conserving their increasing Medicaid and related social-welfare budgets will be impaired absent intervention. As explained above, the district court entered a nationwide injunction preventing the federal defendants from enforcing DHS's rule anywhere. *CASA de Maryland*, 971 F.3d at 236. A panel of this Court reversed, but the Court vacated the panel's opinion for rehearing en banc. Now that the United States has voluntarily dismissed this appeal, nothing will stop the district court's nationwide injunction from taking effect and adversely impacting the States' budgets, including their Medicaid expenditures.

Fourth, no party now adequately represents the States' interests because no party is left to defend the Rule. Absent the States' intervention, all States will be

affected by the invalidation of the Rule without having the ability to defend those interests. For these reasons, the States are entitled to intervene as of right.

II. The States also meet the criteria for permissive intervention.

For similar reasons, even if the Court concludes that the States do not meet the standard to intervene as of right, it should use its discretion to allow the States to do so permissively. Under Rule 24(b), a movant seeking permissive intervention must show: (1) that there exists an independent ground of subject matter jurisdiction; (2) that the motion is timely; (3) that the movant's claims or defenses share with the main action a common question of law or fact; and (4) that intervention will not result in undue delay or prejudice to the existing parties. Fed R. Civ. P. 24(b)(1), 24(b)(2), 24(b)(1)(B), 24(b)(3); *Stuart v. Huff*, 706 F.3d 345, 349 (4th Cir. 2013); *League of Women Voters of Virginia v. Virginia State Bd. of Elections*, 458 F. Supp. 3d 460, 463–64 (W.D. Va. 2020); *Shanghai Meihao Elec., Inc. v. Leviton Mfg. Co., Inc.*, 223 F.R.D. 386, 387 (D. Md. 2004). Again, the States easily meet this standard.

Here, the requirements of an independent ground of subject-matter jurisdiction and shared claims or defenses are not strictly applicable, as plaintiffs must demonstrate subject-matter jurisdiction, and the States seek to intervene as defendants by stepping into the shoes of the former defendants. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). But this Court would retain subject-matter jurisdiction over this federal question, and the States intend to present similar defenses of the Rule to those that were (until two days ago) presented by the federal government. The States likewise enjoy an actual controversy against the plaintiffs: they will be

tangibly, economically affected by an adverse judgment redressable by this Court, and thus this Court would retain Article III jurisdiction.

The timeliness and prejudice analyses used in permissive intervention essentially mirror the analogous intervention as of right analysis discussed above. *See Alt*, 758 F.3d at 591. The States filed this motion promptly after they learned on March 9 that the United States would no longer defend the Rule, and Plaintiffs will suffer no prejudice by this intervention because they were already expected to continue to litigate this case until mere days ago.

This Court should exercise its discretion to permit the States to intervene to defend their interests in avoiding increased costs by the invalidation of the Rule that will otherwise go unprotected. The States have enormous financial obligations in providing Medicaid and other public services and, until quite recently, had no need to intervene to defend those interests. That need has changed due to unexpected litigation tactics by the federal defendants. This Court should not countenance this unprecedented turn.

Conclusion

The Court should grant the States leave to intervene as a Defendant-Appellants.

Respectfully submitted.

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CERTIFICATE OF CONFERENCE

On March 11, 2021, counsel for the State of Texas conferred with counsel for plaintiffs and for the United States, who advised that they are opposed to this motion.

/s/ Judd E. Stone II
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CERTIFICATE OF SERVICE

On March 11, 2021, this motion was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court. I also hereby certify that the participants in the case are registered CM/ECF users and will be served via the CM/ECF system.

/s/ Judd E. Stone II
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Certificate of Compliance

This brief complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 27 because it contains 2,289 words, excluding the parts of the brief exempted by Rule 32(f); and (2) the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared in a proportionally spaced typeface (14-point Equity) using Microsoft Word (the same program used to calculate the word count).

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