UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
PAUL W. GRIMM
UNITED STATES DISTRICT JUDGE

6500 CHERRYWOOD LANE
GREENBELT, MARYLAND 20770
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November 14, 2019

RE: *Casa de Maryland, Inc. et al. v. Trump et al.*
PWG-19-2715

LETTER ORDER

Dear Counsel:

Pending before me is the Government's Motion for Stay of Preliminary Injunction Pending Appeal, ECF No. 69 ("Def. Mtn."). For the reasons discussed below, this motion is DENIED.

Procedural History

This case arises out of Plaintiffs' challenge to the Department of Homeland Security's ("DHS") newly adopted immigration rule regarding "public charge" admissibility determinations (the "Public Charge Rule" or the "Rule.") On September 19, 2019, Plaintiffs filed a corrected motion for a preliminary injunction or to postpone the effective date of the Rule under 5 U.S.C. § 705. ECF No. 28. The Rule was scheduled to go into effect October 15, 2019. The motion was fully briefed, and a hearing was held on October 10, 2019.[1]

On October 14, 2019, I issued a Memorandum Opinion and Order granting Plaintiffs' motion, issuing a preliminary injunction and postponing the effective date of the Rule during the pendency of this case. ECF Nos. 65 (Mem Op. and Order, "Op."), 68 (revised Order, Oct. 18, 2019). I found that the Plaintiff CASA de Maryland, Inc. ("CASA") had satisfied the justiciability requirements to bring its case and each of the factors for a preliminary injunction provided in *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7, 20 (2008). As to justiciability, I found that CASA had organizational standing, the case was ripe, and that CASA was within the zone of interest of Section 212(a)(4) of the Immigration and Naturalization Act ("INA"). Op. at 8–21. For the preliminary injunction *Winter* factors, I found that CASA had established a likelihood of success on the merits that the Public Charge Rule was "not in accordance with law" in violation of the Administrative Procedure Act, 5 U.S.C. § 706, CASA was likely to suffer irreparable harm in the absence of preliminary relief, and the balance of equities and the public interest favored a preliminary injunction. *Id.* at 22–34.

Accordingly, I issued a preliminary injunction and postponed the effective date of the Rule during the pendency of this case. *Id.* at 39–40; ECF No. 68. The preliminary injunction and postponement of the Rule applied on a nationwide basis to remedy the harms to CASA, to preserve uniformity in the immigration laws, and because the Rule is likely defective under the APA. Op.

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[1] *See* ECF Nos. 28, 52, 59, 60, 61, 63. Multiple *amici* also filed briefs. *See* ECF Nos. 36-1, 39-1, 43-1, 56-1.

at 34–37. Considering U.S. Supreme Court and Fourth Circuit precedent, the preliminary injunction was not extended to the President himself. *Id.* at 38.

On October 25, 2019, the Government filed a motion to stay the preliminary injunction pending appeal. ECF No. 69. The Government argues that a stay is warranted because it is likely to succeed on the merits of its appeal and because the government and the public will be irreparably harmed if the injunction is not stayed. The Government argues that it is likely to succeed on appeal because CASA does not have standing, is not within the zone of interest of Section 212(a)(4) of the INA, and that the Rule does not contravene the APA.

Alternatively, the Government argues that the Court should at least stay the injunction in part, limiting it to the named individual plaintiffs, Angel Aguiluz and Monica Camacho Perez, any alien residing in the State of Maryland, and any CASA member served by the USCIS Virginia-Washington Field Office or the USCIS Pennsylvania-Philadelphia Field Office if CASA submits a list of all of its members, including the name, city, state of residence, and A-number within 7 days of the Court's order and if any members on the list identify themselves as a CASA member in a relevant application to DHS. *See id.* at 2; ECF No. 61 (proposed preliminary injunction).

Plaintiffs filed a brief in opposition. ECF No. 77. The Government waived its right to reply, submitted that a hearing is not necessary, and requested that the Court rule on its motion by November 14, 2019. ECF No. 78.

Discussion

Granting a stay "is not a matter of right," but is "an exercise of judicial discretion." *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginia Ry. Co.*, 272 U.S. 658, 672 (1926)). As the moving party, the Government "bears the burden of showing that the circumstances justify an exercise of that discretion." *Id.* at 433–34. In making its determination, the Court considers four factors:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id. at 426 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). The Government's request fails at each factor.[2]

To begin, the Government has not made a "strong showing" that it is likely to succeed on appeal. To the contrary, the arguments that it makes in support of its motion are precisely those that I rejected when I found that CASA is likely to succeed on the merits of its claim that the Rule

[2] Some district courts in the Fourth Circuit have held that a party seeking a stay must satisfy each of the factors listed above, while others permit a sliding scale in which a stronger showing for some factors can make up for a weaker showing for others. Still other district courts have applied the standards for preliminary injunctions provided in *Winter*, 555 U.S. at 24 and *The Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346 (4th Cir. 2009) ("[1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest."). *See Rose v. Logan*, No. RDB-13-3592, 2014 WL 3616380, at *1–2 (D. Md. July 21, 2014) (collecting cases). Under any of these approaches, the Government fails to carry its burden.

violates the APA. The Government has presented no new arguments or authority to suggest a different result. Therefore, for the reasons described in my Memorandum Opinion and Order, the Government has not made a "strong showing" that it will likely succeed on appeal. *See* Op. at 8–34.

The Government also fails to establish that it will be irreparably injured absent a stay. The Government argues that it will be irreparably harmed because the preliminary injunction will result in DHS granting lawful permanent resident status to aliens that would be denied such status under the Public Charge Rule, and this set of immigrants would then obtain public benefits at some point in the future. Def. Mtn. at 7. But the preliminary injunction simply preserves the way that public charge determinations have been made since at least 1999 when the DOJ issued its Field Guidance and for arguably more than a century. *See* Op. at 34. Requiring the Government to maintain its existing public charge admissibility regime, instead of switching to one that is likely "not in accordance with law," does not constitute irreparable harm.

The Government also says that it is harmed by the administrative burdens of having to restart the implementation of its Rule if the preliminary injunction is vacated. Def. Mtn. at 7. While there may be some costs associated with these changes, preserving the status quo of public charge determinations during the pendency of this case and implementing the Rule later if it is ultimately determined to be lawful does not amount to irreparable harm. Moreover, since this Court and four others[3] held that the Rule likely is unlawful, preserving the status quo likely saves costs to the Government compared to potentially implementing then undoing the Rule later.

The Government cites *Maryland v. King*, a non-precedential stay opinion by Chief Justice Roberts, for the proposition that when the federal government "is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." 567 U.S. 1301 (2012) (Roberts, C.J., in chambers) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977). But the preliminary injunction does not stop enforcement of Section 212(a)(4) of the INA governing public charge admissibility. It simply requires that the Government continue to do so in the way it has done for at least two decades. In contrast, it is the *new* Public Charge Rule that likely is without Congressional authority. *See* Op. at 22–34.

As to the third factor, the Government argues that staying the preliminary injunction will not harm CASA. I previously found that in the absence of a preliminary injunction, CASA would be irreparably harmed. *See* Op. at 33–34. This harm includes the diversion of its resources away from other time-sensitive political advocacy. *Id.* The Government offers no new arguments or authority here that lead to a different result.

Finally, the Government offers no arguments specifically addressing why a stay would be in the public interest. I previously found that a preliminary injunction, preserving the current standards for public charge determinations, was in the public interest. Op. at 34. Even assuming that the public interest factor merges with the Government's arguments as to why it is irreparably

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[3] *See Make the Rd. New York v. Cuccinelli*, No. 19-CV-7993-GBD, 2019 WL 5484638 (S.D.N.Y. Oct. 11, 2019); *Washington v. United States Dep't of Homeland Sec.*, No. 19-CV-5210-RMP, 2019 WL 5100717 (E.D. Wash. Oct. 11, 2019); *City & Cty. of San Francisco v. U.S. Citizenship & Immigration Servs.*, No. 19-CV-04717-PJH, 2019 WL 5100718 (N.D. Cal. Oct. 11, 2019); *Cook Cty., Illinois v. McAleenan*, No. 19-CV-6334-GF, 2019 WL 5110267 (N.D. Ill. Oct. 14, 2019).

harmed, for the same reasons as discussed above the Government has not established that a stay is in the public interest.

The Government argues in the alternative that the Court should stay portions of its preliminary injunction so that it is consistent with the Government's proposed preliminary injunction described above. But the Government has failed to establish that a stay is warranted at all. Moreover, the Government presents no new arguments or authority for limiting the scope of the preliminary injunction, nor does it even address all the reasons this Court issued a nationwide injunction. Therefore, this request is denied.

In sum, the Government has failed to carry its burden to show that a stay of the preliminary injunction pending appeal is warranted. The Government's Motion for Stay of Injunction Pending Appeal, ECF No. 69, is DENIED.

Although informal, this is an Order of the Court and shall be docketed as such.

Sincerely,
/S/
Paul W. Grimm
United States District Judge