



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Judge Blocks Trump's New Limits On Immigration Fee Waivers

By **Hannah Albarazi**

Law360, San Francisco (December 9, 2019, 7:19 PM EST) -- A California federal judge blocked the Trump administration's recently-enacted rule increasing requirements for immigrants seeking application fee waivers due to financial hardship, granting a preliminary nationwide injunction requested by the city of Seattle and five immigration organizations that argued the rule violated the Administrative Procedure Act.

"It looks like in the Ninth Circuit that the precedent we've got is stacked against you," U.S. District Judge Maxine Chesney told U.S. Department of Justice attorney Julie Straus Harris at a hearing in San Francisco on Monday.

Judge Chesney granted Seattle and the immigrant organizations' request for a preliminary nationwide injunction, explaining that she saw no other way to limit the new rule given the "nature of what the harm is here."

The city of Seattle and five immigration organizations sued the U.S. Citizenship and Immigration Services and its officials in California federal court in October, arguing that the "sudden and unlawful" policy change "severely limits" the ability of low-income lawful permanent residents to become American citizens.

Judge Chesney said Monday that the **December 2018 ruling** in the case, *East Bay Sanctuary Covenant et al. v. Trump et al.*, makes it "awfully hard" for the federal government to argue that a nationwide injunction should not be granted in this case.

In the East Bay Sanctuary Covenant case, a California federal judge blocked the Trump administration from enforcing a rule that said migrants could only apply for asylum if they cross the U.S. border at a designated port of entry.

"It just seems like a real hurdle to get over, at least in this circuit," Judge Chesney told the DOJ, throwing up her hands. "You're sort of stuck with the case. I think it makes it very hard."

The lawsuit came after the USCIS announced **on Oct. 25** that it would no longer consider receipt of federal and state public benefits, such as Medicaid and food stamps, as a factor when weighing if an immigrant qualifies for a fee waiver for certain immigration applications.

Under the new process, which took effect on Dec. 2, low-income immigrants who want to apply for fee waivers needed to show they are eligible under one of the remaining two factors: that their income is at or below 150% of the federal poverty guidelines or that paying the fee would cause "financial hardship."

Immigration organizations hit the USCIS with **lawsuits** in California and D.C. federal court.

The California lawsuit notes that the fee waiver program has allowed hundreds of thousands of immigrants to begin the naturalization process despite limited financial resources, and in 2017, nearly 40% of all naturalization applications had their fees waived.

The lawsuit also took issue with one of the policy changes requiring applicants to submit a tax transcript from the IRS to prove they're below the poverty line rather than submitting copies of tax returns.

The immigration organizations say the change puts an additional burden on low-income applicants and that those tax transcripts may not be accurate, because even President Donald Trump has said publicly that tax transcripts "are notoriously inaccurate."

The new rules essentially set up a "wealth test for citizenship" that threaten to make it harder for legal immigrants to become citizens, the complaint alleged.

On Monday, Straus Harris urged the judge not to grant the nationwide injunction, saying "the agency did everything that notice and comment requires" and that the impediments alleged by the plaintiffs are merely speculative.

"They don't support the gloom and doom argument that they are making," Straus Harris told the judge.

Judge Chesney, however, told the DOJ that the harm plaintiffs allege "doesn't seem speculative to me" and that plaintiffs had shown that the new rule caused them to divert their resources.

"It fails because of procedural deficiencies," Judge Chesney said.

Straus Harris said granting a nationwide injunction would cut off the opportunity for various judicial officers to weigh in and could also cut off review by the U.S. Supreme Court.

Niketa K. Patel of Mayer Brown LLP, co-counsel for the plaintiffs, urged Judge Chesney to grant the nationwide injunction, saying, "When the harms are nationwide, the relief should also be nationwide."

Judge Chesney said she found the plaintiffs' have standing, that the agency should have gone through the APA procedures and that a nationwide injunction is appropriate.

Seattle Mayor Jenny Durkan lauded Judge Chesney's ruling Monday.

"I am glad that the court recognizes the urgent need to block this 'pay-to-play' approach to citizenship from taking effect," Durkan said in a statement Monday. "Wealth is not and should never be a requirement of being an American citizen."

Jessica Marsden of Protect Democracy, co-counsel for the plaintiffs, described the ruling as "an encouraging step in the right direction for the health of our democracy."

"Participation in democracy must not be limited to those who can afford it. This unlawful policy was intended to hurt legal immigrants who have been here for years and we commend the judge for correctly siding with the law," Marsden said in a statement Monday.

The DOJ did not immediately respond to a request for comment.

The city of Seattle and the immigration organizations are represented by Lee H. Rubin, Matthew D. Ingber, Lauren R. Goldman, Niketa K. Patel, Nicolas E. Rodriguez and Luc W.M. Mitchell of Mayer Brown LLP, Jessica Marsden and Jamila Benkato of Protect Democracy Project, Niyati Shah and Marita Etcubanez of Asian Americans Advancing Justice and Seattle City Attorney Peter S. Holmes and Assistant City Attorney Erica R. Franklin.

The Northwest Immigrants Rights Project is represented by Rebecca Smullin and Michael T. Kirkpatrick of the Public Citizen Litigation Group.

The government is represented by Julie Straus Harris of the U.S. Department of Justice's Civil Division.

The cases are City of Seattle et al. v. Department of Homeland Security et al., case number 3:19-cv-07151, in the U.S. District Court for the Northern District of California, and Northwest Immigrants

Rights Project v. the U.S. Citizenship and Immigration Services, case number 1:19-cv-03283, in the U.S. District Court for the District of Columbia.

--Editing by Jay Jackson Jr.

All Content © 2003-2019, Portfolio Media, Inc.