

May 21, 2021

By ECF

Hon. Ona T. Wang
United States District Court
Southern District of New York
500 Pearl Street, Room 1310
New York, NY 10007

Re: Joint status letter and unopposed request to extend the stay of proceedings in
Make the Road New York v. Blinken, No. 19-cv-11633

Dear Judge Wang:

The parties are submitting this joint status letter in response to the Court's April 29, 2021, Order, ECF No. 113. The defendants request that the Court extend the stay of proceedings in this action for 90 days (until August 23, 2021) as detailed further below.

The plaintiffs in this case are challenging three Government actions that pertain to the entry of persons into the United States: (1) a January 2018 revision to portions of the Department of State Foreign Affairs Manual, 9 FAM § 302.8-2, pertaining to evaluation of whether a visa applicant is likely to become a "public charge" under the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(4); (2) the President's October 2019 Proclamation concerning Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System, in Order to Protect the Availability of Healthcare Benefits for Americans, Proclamation No. 9945, 84 Fed. Reg. 53,991 (Oct. 4, 2019); and (3) the October 2019 interim final rule published by the Department of State amending its regulation governing the application of the "public charge" provision, 22 C.F.R. § 40.41, Visas: Ineligibility Based on Public Charge Grounds, 84 Fed. Reg. 54,996 (Oct. 11, 2019).

None of these actions is currently being applied. The January 2018 guidance was superseded by new guidance reflecting the October 2019 rule and is no longer in use. This Court entered a preliminary injunction in July 2020 barring enforcement of all three challenged actions. Mem. Decision and Order 52, ECF No. 88. And on May 14, 2021, the President revoked the October 2019 Proclamation. Proclamation No. 10,209, 86 Fed. Reg. 27,015 (May 14, 2021), <https://www.govinfo.gov/content/pkg/FR-2021-05-19/pdf/2021-10686.pdf>.¹

The defendants have filed an appeal from the July 2020 preliminary injunction, but the Second Circuit has entered an order holding the proceedings in abeyance, including consideration of the defendants' motion for a stay pending appeal. *See Make the Road N.Y. v. Pompeo*, No. 20-3214 (2d Cir. May 14, 2021), ECF No. 3100698.

¹ The defendants' view is that the revocation of the Proclamation makes the claims pertaining to the Proclamation moot.

On February 2, 2021, the President issued an Executive Order calling for the Secretary of State to review agency actions related to implementation of the public charge ground of inadmissibility, 8 U.S.C. § 1182(a)(4)(A). Exec. Order No. 14,012, 86 Fed. Reg. 8277 (Feb. 2, 2021), <https://www.govinfo.gov/app/details/FR-2021-02-05/2021-02563>. In light of that Executive Order and the review the Department of State is conducting under that Order, the defendants requested a 90-day stay of proceedings. Judge Daniels granted that request in a February 22, 2021, Order, ECF No. 110.

In light of the Executive Order and the review the Department of State is conducting under the Order, the defendants request that the Court extend the stay of proceedings in this action for 90 days (until August 23, 2021). The plaintiffs do not oppose the request in light of the Second Circuit's order and this Court's preliminary injunction remaining in effect, though they reserve the right to seek to advance the case if circumstances change. The defendants agree that a stay should not preclude either side from making a request to lift the stay if circumstances change.

Accordingly, the defendants respectfully request that the Court extend the stay of proceedings in this action for 90 days (until August 23, 2021).

Sincerely,

/s/

James C. Luh
Senior Trial Counsel
United States Department of Justice

/s/ Andrew J. Ehrlich

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LLP
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Cc: All counsel of record via ECF