

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION**

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

Plaintiffs,

v.

MAYORKAS, *et al.*,

Defendants.

Case No. 20-2118-PX

**PLANTIFFS' MEMORANDUM OF LAW IN FURTHER SUPPORT
OF THEIR MOTION FOR SUMMARY JUDGMENT,
OR IN THE ALTERNATIVE, MOTION FOR CONTEMPT [ECF NO. 189]**

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Defendants continue to flout this Court's orders while they slow-walk the expungement of regulations that they unlawfully put in place, wasting this Court's limited resources and causing ongoing harm to Plaintiffs and their Members. There is no dispute that since September 11, 2020, this Court's preliminary injunction ("PI") has required Defendants to process within thirty days initial applications for employment authorization documents ("EADs") for members of ASAP and CASA. And since the February 2022 *Asylumworks* order of vacatur, the operative rules required Defendants to process all initial EADs for asylum-seeker applicants within thirty days. Yet Defendants remain in default of their legal obligations, while failing to provide sufficient assurances to the Court or to Plaintiffs that they are progressing towards compliance. And Defendants' newly released instructions to applicants continue to implement one of the rules preliminarily enjoined by this Court and vacated in *Asylumworks*.

Yet rather than engage with Plaintiffs and the Court to find meaningful solutions to the continuing problems created by their unlawful regulations, Defendants refused to commit to taking actions needed to restore the *status quo ante* by dates certain, walked away from the parties' settlement negotiations, moved this Court to indefinitely stay this case, and then defaulted on their obligations under this Court's briefing schedule. Meanwhile, while Defendants have refused to notify the Court or Plaintiffs that they were changing agreed-upon notices and processes for complying with certain aspects of the PI, they have finally addressed some—but not all—of their deficiencies and thereby narrowed the questions before the Court, but only after Plaintiffs had no choice but to seek the Court's assistance. They also narrow the issues for this Court to resolve by failing to oppose Plaintiffs' motions.¹

¹ On September 14, 2022, the Court set a briefing schedule under which Plaintiffs would file a reply brief by October 7, 2022. ECF No. 190. After Defendants failed to file their brief in accordance with the briefing schedule, the Court denied their motion for an extension and stated

Plaintiffs' motions are ready for decision now. This Court should reject the government's wasteful and dilatory tactics and bring this matter to a swift conclusion by ordering the still-essential permanent relief requested in Plaintiffs' Motion for Summary Judgment. Alternatively, the Court should, at a minimum, find Defendants in contempt of the Court's PI and take immediate action to ensure that Defendants provide Plaintiffs the relief to which they are entitled under that injunction.

I. Relevant Recent Developments

Several relevant developments occurred after Plaintiffs filed their Motion for Summary Judgment, or in the Alternative, Motion for Contempt on September 9. ECF No. 189.

First, on September 22, 2022, the Department of Homeland Security ("DHS") published a final rule that "removes from the *Code of Federal Regulations* (CFR) the regulatory text that DHS promulgated in the Timeline Repeal rule and the Broader Asylum EAD rule and restores the regulatory text to appear as it did prior to the effective dates of the June 2020 EAD rules in August 2020."² The National Archives eCFR system reflects these changes to the regulatory text.³

Second, after Plaintiffs filed their motion on September 9, 2022, USCIS removed all references to this Court's PI on its public-facing EAD webpage, including the alert stating "[w]e

that "[t]he briefing schedule will remain unchanged." ECF No. 194. Plaintiffs file this brief as their second brief permitted by the briefing schedule in order to inform the court of their position with respect to the consequences of Defendants' default as well as certain intervening developments.

² *Asylum Application, and Employment Authorization for Applicants; Implementation of Vacatur*, 87 Fed. Reg. 57,795, 57,795 (Sept. 22, 2022) (removing text of 85 Fed. Reg. 37,502 (Jun. 22, 2020) and 85 Fed. Reg. 38,532 (Jun. 26, 2020) and reinserting prior provisions).

³ See, e.g., 8 C.F.R. § 208.7, available at <https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-208/subpart-A/section-208.7> (last accessed Sept. 30, 2022).

are implementing the U.S. District Court for the District of Maryland’s Sept. 11 preliminary injunction in *Casa de Maryland Inc. et. al. v. Chad Wolf et. al.*”⁴

Finally, on September 27, 2022, the *Rosario* court denied without prejudice the plaintiffs’ motion for civil contempt⁵—the pendency of which was one of two bases Defendants identified as justifying their motion to indefinitely stay this case, *see* ECF No. 185 at 13. The *Rosario* court concluded that Defendants had taken “all reasonable steps” to return to substantial compliance—relying on Defendants’ representations that they would clear the backlog of initial EADs and “demonstrate full compliance” with the 30-day timeline in November 2022, *see Rosario*, ECF No. 207 at 3. The *Rosario* order does not consider that Defendants have for over a month—and as recently as September 12—represented that they would reach substantial compliance two months earlier, by the end of September 2022 or soon thereafter. *See* ECF No. 189-4 ¶ 15; ECF No. 185-5 at 6; *Rosario*, ECF No. 202 at 11–12.

II. Plaintiffs Further Narrow Their Limited Request for Relief

The developments described above have obviated the need for some—but not all—of the relief Plaintiffs sought in their Motion, specifically: (i) an order requiring Defendants to publish a final rule removing the 2020 EAD Rules from the Code of Federal Regulations; (ii) an order requiring Defendants to update the Court on their progress in doing so; or (iii) an order requiring Defendants to update their forms, websites, and documents other than those necessary to eliminate the Discretionary Review Rule.⁶

⁴ Compare www.uscis.gov/i-765 (last accessed on Sept. 30, 2022), with Manfredi Decl., Ex. I, ECF No. 189-13 (same as of Sept. 9, 2022).

⁵ *See Rosario v. USCIS*, No. 15-cv-0813-JLR (W.D. Wash. Sept. 27, 2022), Order on Pls.’ Second Mot. for Civil Contempt, ECF No. 207; *see also id.*, Defs.’ Resps. To the Ct.’s Questions, ECF No. 206.

⁶ Plaintiffs hereby withdraw paragraphs (3) and (5)(b)–(d) of their Proposed Order Granting Permanent Injunctive Relief. ECF No. 189-2. Plaintiffs note that references to 8 C.F.R. § 208.7

Plaintiffs and their Members still require this Court's assistance, however, to stop the continuing irreparable harms they suffer as a result of Defendants' failure to restore the *status quo ante*:

First, unless this Court orders Plaintiffs' requested relief, including the Implementation Plan—which Defendants previously said was necessary for them to restore 30-day processing for all asylum seeker applicants, *see* ECF No. 121 at 22-23—there appears to be no end in sight to Defendants' inability to consistently meet the 30-day timeline, causing continuing irreparable harm to Plaintiffs and their Members, *see* ECF No. 189-1 at 13–20. While Defendants this week represented to the *Rosario* court that they expect to resume 30-day processing in November 2022, they had projected as recently as September 12 that they expected to substantially return to 30-day processing soon after the end of *September*. Moreover, Defendants' representations to the *Rosario* court leave open critical questions about whether their latest projections are realistic—most notably, whether their projections assume current monthly filing rates (approximately 30,000 applications per month), or assume rates will imminently return to their much lower 2020 levels (before Defendants' unlawful rules prevented unknown thousands of applicants from applying for EADs for two years), as Defendants represented to Plaintiffs last month, *see* ECF No. 189-4 ¶ 20.

Second, Defendants' newly-issued instructions for Form I-765 continue to assert that USCIS may deny an asylum applicant's request for work authorization as a matter of discretion, *see* ECF No. 189-1 at 6, 15; *contra* ECF No. 69 at 68, causing ongoing irreparable harm to Plaintiffs and their Members, *see* ECF Nos. 189-20, 189-21, 189-22, 189-23, 189-24.

in the Form I-765 instructions now point to the correct regulatory text. *Cf.* ECF No. 189-1 at 15 (arguing that injunctive relief was necessary in part because the form instructions cross referenced outdated provisions of the Code of Federal Regulations).

III. Defendants Forfeited Their Right to Oppose Plaintiffs' Motions

The remaining issues pending before this Court are even narrower because of Defendants' failure to oppose Plaintiffs' motion. Where, as here, Defendants fail to file any brief in opposition to Plaintiffs' motions for summary judgment and contempt, the proper course is to deem their defense of those motions abandoned and to proceed to adjudicating the motions without their input. *See Custer v. Pan Am. Life Ins. Co.*, 12 F.3d 410, 416 (4th Cir. 1993) (where a party fails to respond to a motion for summary judgment, the court may deem uncontroverted those facts established by the moving party and then determine whether the uncontroverted facts entitle the party to judgment as a matter of law); *Mejica v. Montgomery Cnty.*, 2014 WL 4634298, at *4 (D. Md. Sept. 15, 2014) ("A non-moving party abandons a claim where the party fails to respond to an argument raised in a dispositive motion."). Moreover, the Court should find for Plaintiffs on any issues on which Defendants bear the burden of proof, such as whether Defendants have made all reasonable efforts to comply with this Court's PI. *See De Simone v. VSL Pharms., Inc.*, 36 F.4th 518, 529 (4th Cir. 2022) (placing burden on contemnor to demonstrate that they made in good faith all reasonable efforts to comply with the decree).

With respect to Plaintiffs' summary judgment motion, Plaintiffs have demonstrated that there is no genuine dispute of material fact, and they are entitled to judgment as a matter of law. *See Fed. R. Civ. P. 56*. As to the merits, it is undisputed that the 2020 EAD Rules are unlawful and cannot stand. *See ECF No. 189-1 at 3–4, 12*. Defendants have failed to controvert Plaintiffs' factual record demonstrating that Plaintiffs have standing to challenge all of the 2020 EAD Rules, and that this matter continues to present a live case or controversy. *Id.* at 11–12. Moreover, with respect to both summary judgment and contempt, Plaintiffs have met their burden to demonstrate

that limited injunctive relief is necessary and appropriate here, *see id.* at 12–17, and Defendants have failed to controvert their factual record or arguments.⁷

IV. This Matter is Ripe for Resolution

Further delay in this matter contributes to the irreparable injury currently suffered by Plaintiffs.⁸ *See* ECF No. 189-1 at 8–11. Plaintiffs respectfully submit that the parties’ pending motions are ready for prompt resolution by the Court, oral argument is unnecessary, and the Court should grant Plaintiffs’ Motion for Summary Judgment, or in the Alternative, Motion for Contempt, ECF No. 189, deny Defendants’ Motion to Stay, ECF No. 185, and enter permanent injunctive relief or a contempt order, ECF No. 189-2.

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⁷ If the Court determines further information or argument from Defendants is necessary, it should set appropriate limits on Defendants’ participation, given their noncompliance with their briefing deadline. For example, the Court could order Defendants to provide supplemental information in writing, but limit them from providing additional argument. *Cf.* Fed. R. App. P. 31(c) (providing in a similar posture in an appeal that “[a]n appellee who fails to file a brief will not be heard at oral argument unless the court grants permission”).

⁸ Plaintiffs submit this memorandum of law well in advance of their briefing October 7 deadline. *See* ECF No. 190.

Dated September 30, 2022

Respectfully submitted,

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