

[NOT SCHEDULED FOR ORAL ARGUMENT]

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

ANGE SAMMA, *et al.*,

Plaintiffs-Appellees,

v.

UNITED STATES DEPARTMENT OF
DEFENSE, *et al.*,

Defendants-Appellants,

No. 20-5320

CONSENT MOTION FOR ABEYANCE

Pursuant to Federal Rule of Appellate Procedure 27, the government respectfully requests that the Court hold this case in abeyance, with status reports due at 60-day intervals. Plaintiffs-appellees consent to this motion.

1. Noncitizens who have “served honorably” in the United States military and who meet certain other requirements are eligible to apply for naturalization on an expedited timeframe. *See* 8 U.S.C. § 1440. In this case, plaintiffs-appellees, who are a group of noncitizen servicemembers, challenged a policy promulgated by the Department of Defense in 2017 that, as relevant to this case, imposed minimum time-in-service requirements that such

servicemembers were required to meet before the military would certify that they “served honorably” for purposes of section 1440. The district court granted summary judgment to plaintiffs and entered an order vacating the policy and enjoining the Department of Defense from enforcing those time-in-service requirements. The government filed a notice of appeal on October 23, 2020.

2. As the government recently informed this Court, on June 17, 2021, the Department of Defense promulgated additional guidance rescinding the portions of the policy challenged by the plaintiffs in this case. *See* Letter Filed Pursuant to Fed. R. App. P. 28(j) (June 23, 2021). That guidance explained that the Department of Defense “is currently reconsidering” the relevant issue and has rescinded the previous policy “in the interim” pending that reconsideration. *Id.*

3. Under this Court’s order of May 25, 2021, the government’s opening brief is currently due, after five thirty-day extensions, by July 2, 2021. In light of the recent agency guidance, the government respectfully requests that the Court place this appeal in abeyance, with status reports due at 60-day intervals. The relief requested in this motion is necessary to allow the Department of Defense sufficient time to engage in its reconsideration process and to determine the appropriate steps moving forward. In addition, the Department’s

process may narrow the issues presented or eliminate the need for this Court's review entirely.

4. Plaintiffs' counsel has indicated that plaintiffs consent to this request.

CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court grant the motion to place this case in abeyance, with status reports due at 60-day intervals.

Respectfully submitted,

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s/ Sean Janda

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 368 words, according to the count of Microsoft Word.

/s/ Sean Janda

Sean Janda