

[ORAL ARGUMENT NOT SCHEDULED]**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

ANGE SAMMA *et al.*, on behalf of
themselves and others similarly situated,

Plaintiffs–Appellees,

v.

No. 20-5320

UNITED STATES DEPARTMENT OF
DEFENSE *et al.*,

Defendants–Appellants.

MOTION TO SET BRIEFING SCHEDULE

Pursuant to Federal Rule of Appellate Procedure 27, Plaintiffs–Appellees respectfully request that the Court lift the abeyance and issue a briefing schedule for this appeal. Defendants–Appellants take no position on this motion.

Non-citizens who are serving honorably in the United States Armed Forces during a period of armed conflict are eligible to apply for naturalization on an expedited timeframe. *See* 8 U.S.C. § 1440. In this case, Plaintiffs–Appellees challenged a 2017 Department of Defense policy that, in a dramatic departure from prior practice, withheld certification of honorable service, which non-citizen service members need to apply for naturalization, until service members satisfied new requirements. The district court certified a class, granted summary judgment to Plaintiffs–Appellees, and entered an order vacating those requirements and enjoining the Department of Defense from enforcing them. *Samma v. United States Dep’t of Def.*, 486 F. Supp. 3d 240 (D.D.C. 2020).

The government filed a Notice of Appeal on October 29, 2020. After moving to postpone the filing of their opening brief five times, Defendants–Appellants moved to hold this appeal in abeyance while the Department of Defense developed a new policy. Consent Motion of June 29, 2021. On June 30, 2021, the Court granted the motion for abeyance and directed the government to file status reports every 60 days. The government filed its last status report on April 22, 2024, and its next report is due June 21, 2024.

The government has filed seventeen status reports since August 2021. Every status report since February 2022 has recited identical text:

“Since the filing of the government’s last status report, the Department has continued to carefully review the time-in-service requirements that are at issue in this appeal. As explained in the government’s last report, the Department has made significant progress on that review and has completed coordination of the proposed policy, including with the military departments and relevant Under Secretaries. Following that coordination, the Department continues to focus its efforts on incorporating recommendations received and completing the proposed policy.”

See, e.g., Report of February 28, 2022; Report of April 28, 2023; Report of April 22, 2024. As early as December 2021, the government promised that “[o]nly a few additional steps remain to be completed before updated policy guidance is promulgated.” Report of December 28, 2021. Nearly three years later, the government has yet to complete those “few additional steps.”

When pressed for more information, the government has declined to provide any. Given the years-long wait, Plaintiffs–Appellees believe that no new policy will be forthcoming in the foreseeable future.

This appeal has been in abeyance for three years. It is time for the government to pursue its appeal or dismiss it.

Wherefore the Court should direct the Clerk to issue a briefing schedule forthwith.

Dated: June 10, 2024

Respectfully submitted,

/s/ Scarlet Kim

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