

Harvey Reiter Talks Public Charge Rule Revival in Law360 Article

In the News

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Partner Harvey Reiter discusses the recent Supreme Court oral argument over several states' efforts to revive a Trump-era rule after it had already been vacated by a lower court and the Biden administration had chosen not to appeal the ruling in a recent article, "Should The Public Charge Case Still Have Life?," published in Law360.

Issued by the Department of Homeland Security in late 2019, the Public Charge rule made it harder for immigrants to qualify for green cards, potentially making applicants receiving even nominal amounts of noncash assistance over a four-month period in the last three years ineligible for permanent residence status. When the Biden Administration chose not to appeal a lower court's opinion striking down the rule as unlawful, the former public charge policy went back into effect. Oral arguments spurred questions from the justices on why the group of 13 states should be allowed to intervene in a Ninth Circuit case involving the rule after the rule had already been vacated. Wouldn't it make more sense, the justices suggested, to bring a direct challenge under the Administrative Procedure Act? There, the justice's questions suggested, the states could argue that the Biden administration's decision to forego an appeal of the lower court ruling was a way to circumvent the process of notice and comment before a rule could be repealed.

Reiter writes that the justices' questions seem to stem from what the DOJ counsel reiterated at oral argument: that the federal government doesn't believe that district court judges have the authority to issue nationwide vacatur of federal rules. The government's argument, he writes, is that while individual judges "lack authority to issue nationwide injunctions, wrongly decided or not," DOJ's decision not to appeal a district court's adverse ruling is not for a court to second-guess.

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Reiter suggested that big picture issue raised by the case how current rules allow parties to forum shop among lower courts for preliminary injunctions. He provided his view on how the appeals process could be reformed to prevent conflicting decisions on the same agency case by different district court judges.

"[T]he better course would be to reform the appeals process so that multiple district court cases challenging the same agency rulings are consolidated, randomly, in a single district court."

Reiter brings a wealth of knowledge to his legal counsel in litigation, appellate, transactional and other legal services. His experience includes over 20 oral arguments before various federal circuit courts of appeal, work in government supervising FERC trial lawyers, and representation of natural gas distributors, governmental agencies, the World Bank, electric utilities, cogenerators, gas and power marketers and Internet service providers in regulatory proceedings.

Read the [full article](#).

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