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February 22, 2023

Mark J. Langer
Clerk, U.S. Court of Appeals
for the D.C. Circuit
333 Constitution Avenue, N.W.
Washington, DC 20001

Re: *Goodluck, et al v. Biden, et al.*, Nos. 21-5263, 21-5270, 21-5271, 21-5272, 21-5277, 21-5288 (D.C. Cir.) (oral argument Sept. 16, 2022), Rule 28(j) Supplement

Dear Mr. Langer,

Defendants-Appellants notify the Court of the Supreme Court's recent decision in *Arellano v. McDonough*, 143 S. Ct. 543 (2023), which provides guidance related to a question in this appeal.

In *Arellano*, the Supreme Court decided whether a statute, 38 U.S.C. § 5110(b)(1), which governs the effective date of an award of disability compensation to U.S. military veterans, was subject to equitable tolling. 143 S. Ct. at 547. In that case, a veteran who suffered a service-connected disability applied for disability benefits about 30 years after his discharge. *Id.* Although the government awarded the veteran benefits after receiving his application, the veteran further sought approximately 30 years of retroactive payments. *Id.* The veteran argued that the government should have equitably tolled the statutory timeline to make his award effective as of the date after his discharge because his illness prevented him from applying for benefits sooner. *Id.*

A unanimous Supreme Court held that equitable tolling was unavailable because it conflicted with the relevant statute's text and structure. *See id.* at 548–49. The Court recognized that “hard and fast limits on retroactive benefits can create harsh results” and that “Congress could have designed a scheme that allowed adjudicators to maximize fairness in every case.” *Id.* at 550. “But Congress has the power to choose between rules . . . and standards[.]” *Id.* The Court concluded that

“an equitable extension of § 5110(b)(1)’s 1-year grace period would disrupt that choice.” *Id.*

Here, equitable relief is similarly unavailable in the context of the statutory fiscal-year deadline for the Diversity Visa (“DV”) Program. *See* Gov’t Br. 65–68. Under the Immigration and Nationality Act, DV selectees “shall remain eligible to receive such visas only through the end of the specific fiscal year for which they were selected.” 8 U.S.C § 1154(a)(1)(I)(ii)(II). Just as the Supreme Court held in *Arellano*, equitable relief is unavailable here where it contradicts the DV program’s statutory limits. Moreover, Congress’s past legislative responses to address certain impediments facing DV applicants reinforces this conclusion. *See* Gov’t Reply Br. 47.

Dated: February 22, 2023

Sincerely,

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CERTIFICATES OF SERVICE AND COMPLIANCE

I hereby certify that this filing is 341 words, and therefore complies with the word limitations of Federal Rule of Appellate Procedure 28(j) and this Circuit's local rules.

I hereby certify that on February 22, 2023, I electronically filed the foregoing letter brief with the Clerk of the Court by using the appellate CM/ECF system. Counsel of record are registered CM/ECF users.