

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

February 27, 2023

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), *Response to Appellants'* February 22, 2023, Rule 28(j) Supplement.

Dear Mr. Langer,

Plaintiffs-Appellees in *Gomez* hereby respond to Defendants-Appellants' Notice of Supplemental Authority under Rule 28j of the Federal Rules of Appellate Procedure. Appellants alerted this Court to the Supreme Court's January 23, 2023 decision in *Arellano v. McDonough*, 143 S. Ct. 543 (2023), suggesting *Arellano* "provides guidance related to a question in this appeal."

Appellants are wrong. In the first line Justice Barrett states "[t]his case concerns the effective date of an award of disability compensation to a veteran of the United States military." *Arellano*, 143 S. Ct. at 546. The effective date of the award "shall not be earlier" than the day on which the Department of Veterans Affairs receives the application. *Id.* The statute specifies 16 exceptions. The Supreme Court decided that one exception was not subject to "equitable tolling." *Id.* at 548-551.

The decisions on appeal do not concern equitable tolling. The *Gomez* class made timely applications for visas and the district court ordered relief *prior to* the deadline. 8 U.S.C § 1154(a)(1)(I)(ii)(II). Appellees have relied on cases drawing the distinction between those who sought and received relief prior to the statutory deadline and those that did not. *Compare Almaqrami v. Pompeo*, 933 F.3d 774, 780 (D.C. Cir. 2019) (where "the court grants some relief—but not the visa—before October 1 ..., the court might lawfully take steps [after October 1] to compel the government to process the plaintiff's application and issue her a diversity visa anyway."); *Shahi v. United States Dep't of State*, 33 F.4th 927, 928-29 (recognizing the "fiscal-year limit cannot be extended by a judicial order" entered *after* the deadline). The decision in *Arellano* does not suggest an overlap

exists between the doctrine of equitable tolling and a court's inherent authority to fashion meaningful relief.

February 27, 2023

Respectfully submitted,

/s/Jesse M. Bless  
JESSE M. BLESS  
Bless Litigation  
6 Vineyard Lane  
Georgetown MA 01833  
781.704.3897  
[jesse@blesslitigation.com](mailto:jesse@blesslitigation.com)  
Attorney for Appellees in  
No. 21-5288 (D.C. Cir.)

## CERTIFICATES OF SERVICE AND COMPLIANCE

I hereby certify that this filing is 291 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 27, 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.

/s/Jesse M. Bless  
JESSE M. BLESS