

FROM THE COURTS

2nd Circuit Panel Challenges DOJ Lawyer on 'Public Charge' Rationale

by Thomas McParland

Judges from a Manhattan-based appeals court on Monday challenged the Trump administration's rationale for a new rule that would make it easier for the federal government to deny legal status to immigrants who apply for public assistance.

A three-judge panel of the U.S. Court of Appeals for the Second Circuit peppered Justice Department attorney Gerard Sinzduk with a series of questions over his defense of the administration's so-called "public charge" rule, which would expand the ability of immigration officials to deny green cards and certain visas to applicants who had been, or may become, a burden on the country.

Under the new definition, immigrants who receive one or more designated public benefits, such as Medicaid, food stamps and housing subsidies, would be more likely to be deemed a public charge and refused status. New York state and immigrant rights groups last year sued to halt the rule from taking effect, arguing in separate lawsuits that the change unfairly targeted racial minorities, who could be exposed to irreparable harm if it was allowed to be enforced.

U.S. District Judge George B. Daniels of the Southern District of New York in October blocked the public charge rule from taking effect anywhere in the country, in a fiery opinion that skewered the new regulation as "repugnant to the American Dream of the opportunity for prosperity and success through hard work and upward mobility."

The Second Circuit in January refused to lift Daniels' injunction while it considered the government's appeal.

The U.S. Supreme Court, however, allowed enforcement to move forward, as two justices from the court's conservative wing voiced their strenuous objections to the use of nationwide injunctions, which have increased dramatically under President Donald Trump. Implementation of the rule began Feb. 24.

On Monday, Sinzduk addressed the panel for only a few seconds before Judge Gerard E. Lynch of the U.S. Court of Appeals for the Second Circuit jumped in to contest Congress' intent on making public benefits available to immigrants.

"Was there ever judicial interpretations or administrative interpretations that took the view that receipt of any kind of public benefits was the test," asked Lynch, who was appointed to the appeals court by President Barack Obama in 2009.

Sinzduk offered the example of one person who had been institutionalized, yet was still found not to have been a public charge.

The response sparked an incredulous reply from Lynch, and Judge Pierre N. Leval of the U.S. Court of Appeals for the Second Circuit, a Bill Clinton appointee, quickly agreed that the "case you're citing seems to be strong authority against what you're saying."

The panel Monday also included Judge Peter W. Hall of the U.S. Court

of Appeals for the Second Circuit, who was appointed to the court by President George W. Bush in 2004.

The judges also noted that people with full-time jobs who receive supplemental benefits, like food stamps, would still be likely to be deemed a "public charge" under the administration's proposed definition.

"In my experience, people take what's available to them," Leval said, citing his own use of tax deductions. "Where do you get justification for the notion that they need public benefits?"

Sinzduk said that Congress had never clearly defined "public charge" and left discretion to the executive branch to suss out its meaning.

"All we're asking is that this court finds it's a reasonable interpretation—not the only one," he said.

Attorneys for the challengers, meanwhile, faced less withering questioning from the engaged panel, as oral argument stretched on for nearly two hours. Judith Vale, who argued on behalf of New York City and state, said the administration's new definition would upend "over 100 years of meaning" that reserved the public charge designation for only those who "primarily dependent" on the government in the long term.

"It is going to have real bite," Vale said.

Jonathan Hurwitz, a Paul, Weiss, Rifkind, Wharton & Garrison attorney representing the immigrants' rights groups, argued that the rule would cause "hundreds of thousands" of immigrants to forgo benefits that they would otherwise be entitled to receive.

The marathon arguments Monday also included a discussion about the propriety of nationwide injunctions, like the one Daniels had entered in the Southern District.

Supreme Court Justices Neil Gorsuch and Clarence Thomas both expressed disapproval of the practice in the high court's Jan. 27 decision, with Gorsuch asking: "What in this gamesmanship and chaos can we be proud of?"

Leval said Monday that he was "very dubious" that an injunction like Daniels' could continue to have force if in other jurisdictions if circuit courts there ruled the other way. It was "perfectly possible," he said, to craft an injunction that would "cease to have effect" if another circuit disagreed.

When asked by Lynch whether the Second Circuit was able to rule on "what the appropriateness of a nationwide injunction is now," Hurwitz responded: "I think the court could certainly do that."

District courts in Maryland and Washington state had also issued nationwide injunctions that temporarily halted the public charge rule from taking effect. The Fourth and Ninth Circuits, however, lifted those injunctions, and the Supreme Court in January cleared the remaining obstacles to its implementation.

The Second Circuit panel did not rule Monday on the government's appeal.

Contact Thomas McParland at tmcp@alm.com.



CITY OF DORAL NOTICE OF PUBLIC HEARING

All residents, property owners and other interested parties are hereby notified of a **Council Zoning Meeting** on **Wednesday, March 18, 2020, beginning at 6:00 PM**, prohibiting Medical Marijuana Treatment Center Dispensaries within all zoning districts in the City of Doral. The City Council will consider this item for **SECOND READING**. This meeting will be held at the **City of Doral, Government Center, Council Chambers located at 8401 NW 53rd Terrace, Doral, Florida, 33166**.

The City of Doral proposes to adopt the following Ordinance:

ORDINANCE No. 2020-01

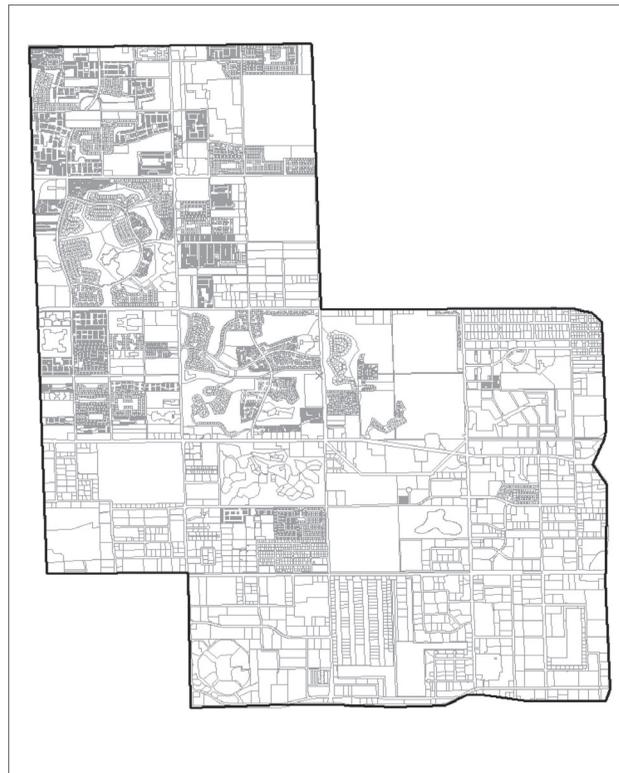
AN ORDINANCE OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AMENDING CHAPTER 53, ARTICLE II, DIVISION 5, SECTION 53-128, ENTITLED "USE COMPATIBILITY TABLE", OF THE CITY OF DORAL LAND DEVELOPMENT CODE, PROHIBITING MEDICAL MARIJUANA TREATMENT CENTER DISPENSARIES WITHIN ALL ZONING DISTRICTS IN THE CITY OF DORAL; PROVIDING FOR A SEVERABILITY CLAUSE; PROVIDING FOR CONFLICTS; PROVIDING FOR INCORPORATION INTO THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE

HEARING NO.: 20-03-DOR-11

APPLICANT: City of Doral

REQUEST: The City of Doral (the "Applicant") is requesting Mayor and City Council approval to prohibit the establishment of Medical Marijuana Treatment Center Dispensaries within all zoning districts in the City of Doral.

Location Map



Information relating the subject application is on file and may be examined in the City of Doral, Planning and Zoning Department Located at **8401 NW 53rd Terrace, Doral, FL. 33166**. All persons are invited to appear at this meeting or be represented by an agent, or to express their views in writing addressed to the City Clerk, **8401 NW 53rd Terrace, Doral, FL. 33166**. Maps and other data pertaining to these applications are available for public inspection during normal business hours in City Hall. Any persons wishing to speak at a public hearing should register with the City Clerk prior to that item being heard. Inquiries regarding the item may be directed to the Planning and Zoning Department at 305-59-DORAL.

Pursuant to Section 286.0105, Florida Statutes If a person decides to appeal any decisions made by the City Council with respect to any matter considered at such meeting or hearing, they will need a record of the proceedings and, for such purpose, may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. This notice does not constitute consent by the City for introduction or admission of otherwise inadmissible or irrelevant evidence, nor does it authorize challenges or appeals not otherwise allowed by law. In accordance with the Americans with Disabilities Act, all persons who are disabled and who need special accommodations to participate in this meeting because of that disability should contact the Planning and Zoning Department at 305-59-DORAL no later than three (3) business days prior to the proceeding.

NOTE: If you are not able to communicate, or are not comfortable expressing yourself, in the English language, it is your responsibility to bring with you an English-speaking interpreter when conducting business at the City of Doral during the zoning application process up to, and including, appearance at a hearing. This person may be a friend, relative or someone else. A minor cannot serve as a valid interpreter. The City of Doral DOES NOT provide interpretation services during the zoning application process or during any quasi-judicial proceeding.

NOTA: Si usted no está en capacidad de comunicarse, o no se siente cómodo al expresarse en inglés, es de su responsabilidad traer un intérprete del idioma inglés cuando trate asuntos públicos o de negocios con la Ciudad de Doral durante el proceso de solicitudes de zonificación, incluyendo su comparecencia a una audiencia. Esta persona puede ser un amigo, familiar o alguien que le haga la traducción durante su comparecencia a la audiencia. Un menor de edad no puede ser intérprete. La Ciudad de Doral NO suministra servicio de traducción durante ningún procedimiento durante el proceso de solicitudes de zonificación.

Connie Diaz, MMC
City Clerk
City of Doral