

[ORAL ARGUMENT NOT YET SCHEDULED]

No. 21-5200

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NANCY GIMENA HUISHA-HUISHA, ON BEHALF OF HERSELF AND OTHERS SIMILARLY
SITUATED,

Plaintiffs-Appellees,

v.

ALEJANDRO MAYORKAS, SECRETARY OF HOMELAND SECURITY, IN HIS OFFICIAL
CAPACITY, ET AL.

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Columbia
No. 21-cv-00100-EGS

**MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN
SUPPORT OF PLAINTIFFS-APPELLEES' OPPOSITION TO
DEFENDANTS-APPELLANTS' EMERGENCY MOTION FOR A STAY**

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Pursuant to Federal Rules of Appellate Procedure 29(a)(3) and 27, Alan Kraut (American University), Carl Bon Tempo (University at Albany), Nancy Foner (City University of New York), Maria Cristina Garcia (Cornell University), David A. Gerber (University at Buffalo), Adam Goodman (University of Illinois at Chicago), Torrie Hester (Saint Louis University), Hidetaka Hirota (Sophia University), Philip Kasinitz (City University of New York), S. Deborah Kang (University of Virginia), Julia Rose Kraut (author and legal historian), Erika Lee (University of Minnesota), Julian Lim (Arizona State University), Maddalena Marinari (Gustavus Adolphus College), Howard Markel (University of Michigan), Deirdre Moloney (author and legal historian), Lucy E. Salyer (University of New Hampshire), and Yael Schacher (Refugees International) respectfully move for leave to file the attached brief as *amici curiae* in the above-captioned matter in support of Plaintiffs-Appellees' opposition to Defendants-Appellants' emergency motion for a stay of the district court's preliminary injunction.¹

Amici curiae are distinguished scholars with expertise in the history of immigration, medicine, and public health in the United States. *Amici* seek to file this brief because, as professional historians, they have a significant interest in providing this Court with an accurate historical understanding of 42 U.S.C. § 265, which forms

¹ Institutional affiliation is noted for informational purposes only and does not indicate endorsement by institutional employers of the positions advocated in the proposed *amicus* brief.

the basis of the government's unprecedented policy of barring and expelling families at the border under the guise of protecting public health. Based on their expertise and knowledge of the relevant history, *amici* urge the Court to deny the government's emergency motion for a stay pending appeal.

The proposed *amicus* brief would be desirable and relevant to the Court's evaluation of the government's emergency motion for a stay. The central question in this appeal is whether the government has authority under 42 U.S.C. § 265 to summarily expel noncitizen families from the country. The proposed *amicus* brief provides valuable historical context that will assist this Court in answering that question of statutory interpretation. *See United States v. Hite*, 769 F.3d 1154, 1160 (D.C. Cir. 2014) ("The search for the meaning of the statute must also include an examination of the statute's context and history."). Furthermore, granting leave to file would not cause any delay or prejudice to the parties.

Counsel for Plaintiffs-Appellees has consented to *amici's* proposed filing. Counsel for Defendants-Appellants has represented that the government "takes no position" on this motion, but that "if the court grants the motion the amicus brief should be filed on or before plaintiff's opposition is due on Thursday Sept. 23 at 4pm."

For the foregoing reasons, *amici* respectfully request that this Court grant them leave to file the proposed brief.

Dated: September 23, 2021

Respectfully Submitted,

/s/ Raymond P. Tolentino

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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 449 words.

This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. 32(a)(6) because this brief has been prepared in a proportionally spaced type face using Microsoft Word 2010 in Times New Roman 14-point font.

Dated: September 23, 2021

/s/ Raymond P. Tolentino

Raymond P. Tolentino
Counsel for Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2021, I electronically filed the foregoing motion with the Clerk for the United States Court of Appeals for the D.C. Circuit by using the CM/ECF system. A true and correct copy of this motion has been served via the Court's CM/ECF system on all counsel of record.

Dated: September 23, 2021

/s/ Raymond P. Tolentino

Raymond P. Tolentino
Counsel for Amici Curiae