

DHS Says Wolf Had Power To Issue Asylum Work Permit Regs

By Alyssa Aquino

Law360 (June 4, 2021, 7:46 PM EDT) -- The U.S. Department of Homeland Security asked a Maryland federal court to preserve Trump-era regulations restricting asylum-seeker work permits, saying the official who created the policies had the legal authority to do so despite several courts calling that authority into question.

Several immigration advocacy organizations asked U.S. District Judge Paula Xinis to scrap the entire set of policies, arguing they were enacted by Chad Wolf, who they say was illegally installed as acting secretary of Homeland Security. Judge Xinis preliminarily ruled in August that the Trump White House had likely promoted Wolf **over the correct successor**. Other federal judges in **California** and **New York** have also cast doubt on Wolf's authority to create immigration policy.

But DHS defended Wolf's promotion on Thursday. Judge Xinis had issued her ruling based on former Homeland Security Secretary Jeh Johnson's 2016 order setting the department's line of succession, even though Congress hadn't yet authorized him to designate his successors, DHS said.

Instead, the department identified later Homeland Security Secretary Kirstjen Nielsen's 2019 order establishing a line of succession — which paved the way to Wolf's installation — as the controlling one.

"The document that then-Secretary Nielsen signed explains no fewer than five times that she was designating a new 'order of succession,'" DHS said. "As such, acting Secretary Wolf was lawfully serving in that position as of November 13, 2019."

On that date, Wolf enacted policies making it **harder for asylum-seekers to legally work** in the U.S. while their immigration cases are being processed, including by requiring them to wait a year to request a work permit instead of 150 days, and by repealing the 30-day time limit for the government to process those applications.

Casa de Maryland Inc., the Asylum Seeker Advocacy Project, Centro Legal de la Raza, Oasis Legal Services and Pangea Legal Services immediately sued DHS to strike the rules down. Based on their claims challenging Wolf's authority, Judge Xinis shielded members of Casa and ASAP from some of the restrictions, including the 30-day timeline repeal, while she heard the case.

Following the change in administrations, DHS informed the court that its new head, Alejandro Mayorkas, intended on issuing new policies that "may moot or reshape" the case. Due to necessary notice-and-comment requirements, the upcoming rules would be effective "no earlier than June 2022," the department said in a status report. It also reported that Mayorkas had ratified Wolf's repeal of the 30-day timeline "out of an abundance of caution."

But the organizations slammed those measures as insufficient. They called on Judge Xinis to either block all the policies, or to strike down the majority but broaden her injunction to freeze the timeline repeal.

On Thursday, DHS told Judge Xinis that the organizations lacked standing to challenge the rules, saying they hadn't shown that they or their members were injured by the policies.

It also cautioned Judge Xinis against blocking the 30-day timeline rule nationwide. Broadening the injunction wouldn't improve processing times for organizational members. With more than 47,000 work permit requests

from non-member asylum-seekers in the system, the government couldn't process every application within a 30-day period, DHS said.

Moreover, barring that policy wholesale would force the government to divert personnel away from other immigrants' work permit requests, the department added.

DHS noted that another court had already ordered the government to process asylum-seekers' work permit requests within a 30-day window.

"Accordingly, any issues concerning processing delays regarding initial I-765 applications filed by CASA and ASAP members are outside the scope of this lawsuit," the department said.

Linda Evarts of the International Refugee Assistance Project, which is representing the immigration group plaintiffs, told Law360 on Friday that without court intervention, asylum-seekers will suffer.

"Our clients and their members and communities are continuing to suffer because of these rules that were designed by the prior administration to prevent asylum-seekers from being able to work while their cases are pending. Asylum-seekers are in desperate need of being able to work," she said.

Representatives for the government didn't immediately respond to Friday requests for comment.

The organizations are represented by Linda Evarts, Geroline Castillo, Kathryn Austin and Mariko Hirose of the International Refugee Assistance Project, Dennise Moreno, Amit Jain, Conchita Cruz and Zachary Manfredi of the Asylum Seeker Advocacy Project, Justin Cox of the International Refugee Assistance Project, and Richard Mark, Joseph Evall and Katherine Marquart of Gibson Dunn & Crutcher LLP.

DHS is represented by Jonathan Lenzner and Jane Anderson of the U.S. Attorney's Office of the District of Maryland.

The case is Casa de Maryland Inc. et al. v. Mayorkas et al., case number 8:20-cv-02118, in the U.S. District Court for the District of Maryland.

--Editing by Adam LoBelia.