

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

L'ASSOCIATION DES AMERICAINS

ACCIDENTELS, et al.,

Civil Action

No. 20-03573 (TSC)

Plaintiff(s),

v.

Washington, D.C.

UNITED STATES DEPARTMENT

OF STATE, et al.,

January 9, 2023

Defendant(s).

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MOTION HEARING

BEFORE THE HONORABLE TANYA S. CHUTKAN

UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF(S): Noam B. Schreiber, Esquire

Lawrence M. Zell, Esquire

Zell, Aron & Co.

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FOR THE DEFENDANT(S): Laurel H. Lum, Esquire

Anthony Coppolin, Esquire

United States Department of Justice

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REPORTED BY:

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1 The following proceedings began at 2:27 p.m.:

2 THE COURTROOM DEPUTY: Your Honor, we have Civil  
3 Action 20-3573, L'Association Des Americains Accidentels,  
4 et al. -- I hope I did a good job of that -- versus the United  
5 States Department of State. We have Mr. Lawrence Zell and  
6 Mr. Noam Schreiber representing the plaintiffs. And we have  
7 Ms. Laurel Lum and Mr. Anthony Coppolino representing the State  
8 Department and others.

9 THE COURT: All right. Everyone, good afternoon. We  
10 are here for oral argument in this matter.

11 I have read the parties' briefs, and as you noticed in  
12 my order, I asked that you not just restate your briefs.

13 Plaintiffs allege that the State Department's 2015  
14 final rule which finalizes citizenship renunciation processing  
15 fee violates the Administrative Procedure Act and customary  
16 international law and that the imposition of the current fee  
17 and any fee whatsoever is unconstitutional under the First,  
18 Fifth, and Eighth Amendments of the United States Constitution.

19 Defendants have moved for partial summary judgment and  
20 have also moved to dismiss, and plaintiffs have cross-moved for  
21 partial summary judgment.

22 Defendants argue the Court should dismiss plaintiffs'  
23 customary international law on Eighth Amendment claims under  
24 Rule 12(b)(6) and that plaintiffs' remaining claims should be  
25 dismissed pursuant to Rule 30.

1           Plaintiffs in their cross motion have asked for  
2 summary judgment on their First and Fifth Amendment claims as  
3 well as their customary international law claim.

4           Plaintiffs also have a pending motion to expedite  
5 before the Court, which I will rule on when I issue my decision  
6 on the pending dispositive motions.

7           So lastly, defendants have filed a notice of intent, I  
8 think it was late last week, Friday, maybe.

9           MR. ZELL: Friday.

10          THE COURT: Yes, a notice of intent to pursue rule  
11 making to reduce fee amount, yes, this past Friday in which  
12 they alerted the Court of the Department of State's intention  
13 to pursue rule making to reduce the fee for processing a  
14 request, renunciation request, from the current amount of  
15 \$2,350 to the prior amount of \$450.

16          So before we begin oral argument on the motions, I  
17 would like to hear from who's going to be speaking for the  
18 government?

19          MS. LUM: I will, Your Honor.

20          THE COURT: Okay. And is it Ms. Lum?

21          MS. LUM: Ms. Lum.

22          THE COURT: All right. You can stay at counsel table  
23 if you like and remain seated if you wish, just make sure you  
24 speak into the microphone, or you can approach the podium,  
25 whichever you prefer.

1 MS. LUM: If it's all right with Your Honor, I would  
2 prefer to stay seated.

3 THE COURT: That's perfectly fine. we don't have a  
4 jury here.

5 MS. LUM: Is this loud enough?

6 THE COURT: As long as my court reporter can hear you,  
7 I can hear you. All right.

8 So, I mean, a notice of rule making doesn't really  
9 tell me when this is going to happen. Is it a matter of it's  
10 going to happen, it's just when?

11 MS. LUM: Yes, Your Honor.

12 THE COURT: And what is the scope, when will it begin,  
13 and when does state anticipate having a final rule reducing the  
14 amount?

15 MS. LUM: So I don't have an exact timing for you on  
16 when the rule would go into place. The department is actively  
17 pursuing that rule making. And we would be happy to update the  
18 Court of any formal developments as they occur.

19 THE COURT: So what happens between now or between  
20 last Friday and when the final rule making goes into effect?  
21 Does everybody who paid the current fee get to file something  
22 and ask for a rebate or a refund or something, or you are just  
23 out of luck?

24 MS. LUM: So I don't have an understanding on how that  
25 would work in terms of rebates and I --

1           THE COURT: That's a big difference. I mean, you are  
2 talking about almost a \$2,000 difference, well, between 2,350  
3 and 450, which I think is what it's going back to. Yeah.

4           So if somebody has an exigent or urgent need for a  
5 renunciation claim to be processed and they can't wait until  
6 the end of the rule-making period and they have to pay this  
7 fee, I mean, they have no recourse once the fee is reduced?

8           MS. LUM: I don't have an understanding of whether  
9 there is a recourse. I don't believe that there is, but that's  
10 not something that I am prepared to speak on today.

11          THE COURT: Okay. It's something you might want to  
12 inquire into.

13          All right. Is it Mr. Zell or Mr. Schreiber who is  
14 speaking?

15          Mr. Zell.

16          MR. ZELL: I will be.

17          THE COURT: I understand from your reply that, despite  
18 the notice, you maintain your position given the length of time  
19 it may -- and obviously I wasn't able to get a time frame from  
20 Ms. Lum -- that it may take to reduce the fee.

21          Let me ask you this. Let's assume for purposes of  
22 argument that the fee was reduced tomorrow. Would you still  
23 maintain your claim?

24          MR. ZELL: Yes, Your Honor.

25          THE COURT: Is it your position that any fee is a

1 violation of plaintiffs' rights?

2 MR. ZELL: No. Our primary position is that the \$450  
3 fee, which would remain under the government's notice of  
4 proposed rule making, would also violate what we have  
5 maintained is a fundamental inherent and natural constitutional  
6 right under the due process clause to expatriate.

7 THE COURT: I am ambushing you with this. You may not  
8 know. Do you know what the current fee is to file a  
9 citizenship application fee? I have actually filed such an  
10 application myself many years ago, but I'm sure it's gone up  
11 since then. Do you have any idea what that is?

12 MS. LUM: Unfortunately, I don't, Your Honor.

13 THE COURT: Could the Court take judicial notice of  
14 whatever that fee is?

15 MS. LUM: I assume the Court could take judicial  
16 notice of the fact of the fee, but I'm not sure how relevant --

17 THE COURT: If it were in the federal register or  
18 somewhere in CFR or in some federal regulation.

19 MS. LUM: Right. The Court could certainly take  
20 notice of the fact of it, but I'm not sure how relevant it  
21 would be to the analysis --

22 THE COURT: Well, I think it's kind of relevant. Let  
23 me ask you, again, I'm sorry, is it Mr. Zell?

24 MR. ZELL: I'm sorry, I apologize, Your Honor.

25 THE COURT: Is it Mr. Zell?

1 MR. ZELL: I didn't hear the Court's question.

2 THE COURT: I was asking Ms. Lum what the current  
3 citizenship application fee is. And the reason I am asking is  
4 because it seems analogous to me that the government -- do you  
5 disagree that the government can impose fees for certain  
6 administrative tasks?

7 MR. ZELL: I don't disagree with that statement.

8 THE COURT: So if you have to pay, say, a 400 -- I  
9 don't know what it is, but let's assume for purposes of  
10 argument that someone seeking U.S. citizenship has to pay a  
11 \$450 fee. And I remember it was pretty big when I applied many  
12 years ago so, you know. Would that be similarly violative? I  
13 mean, because the right -- I mean, citizenship is pretty  
14 fundamental, right? Would that similarly violate the  
15 Constitution and the APA in the manner you claim that this fee  
16 does?

17 MR. ZELL: That's an interesting question. It's one  
18 that we have actually looked at in terms of comparing the  
19 relative fees for different types of consular services. I  
20 believe, if I'm not mistaken, that the form for applying for  
21 naturalization by a noncitizen permanent resident would be  
22 entitled to apply for citizenship is called the N-600.

23 THE COURT: I think that's it. There is a fee, then  
24 there's a fingerprint fee.

25 MR. ZELL: Right. So, and I believe that fee is --

1 I'm not a hundred percent certain, but you can find it on the  
2 internet. And I have asked my colleague here just to --

3 THE COURT: I don't mean to --

4 MR. ZELL: We don't have a connection. Okay.

5 THE COURT: -- derail the argument, but it's something  
6 that I have also been thinking about.

7 MR. ZELL: It's a fraction of the 2,350.

8 THE COURT: Right. But I suspect it's pretty close to  
9 \$450, so --

10 MR. ZELL: It could well be.

11 THE COURT: -- I guess my question to you is, how is  
12 that not violative of the Constitution and the APA as you claim  
13 this fee is? You claim that this 450 -- if the fee were  
14 reduced to \$450, you would still maintain your claims. Why  
15 isn't that similar to a fee to apply for naturalization?

16 MR. ZELL: Well, my first response, Your Honor, would  
17 be that the person applying for a -- for citizenship, filing  
18 the N-600, okay, is not a U.S. citizen and does not at that  
19 point have the same standing, in terms of the Constitution, as  
20 a U.S. citizen has for purposes of expatriation. That's one  
21 distinguishing factor.

22 THE COURT: I think I have had to rule on this in  
23 other circumstances, that the Constitution applies to anybody  
24 present on U.S. soil in the same regard.

25 MR. ZELL: That's true. And the question is what is



1 the nature of the right -- it's not before us today, but what  
2 is the nature of the right of the permanent resident seeking to  
3 be naturalized under N-600. Like, my mother, for example, came  
4 from Cuba. What is her -- what is their standing -- what is  
5 the nature of their constitutional right as opposed to the  
6 right of the plaintiffs in this case who are U.S. citizens, all  
7 of them? Yes, they have constitutional rights. The Supreme  
8 Court has said that once they are here in the United States as  
9 aliens, even permanent resident aliens, they have a full  
10 panoply of constitutional rights. But what are those rights  
11 vis-a-vis an expatriate? They would be somewhat different, I  
12 would think.

13 THE COURT: There are certainly some analogies to be  
14 drawn, for example, in the educational sector. But anyway, let  
15 me not --

16 MR. ZELL: If I may, Your Honor, I think it's  
17 appropriate for the Court -- the Court's question is entirely  
18 appropriate in my view.

19 THE COURT: I wouldn't have asked it if I didn't think  
20 it was.

21 MR. ZELL: But for purposes of comparing the amount of  
22 the fee, okay, vis-a-vis what's going on in our case, I think  
23 it's entirely --

24 THE COURT: I guess what I am trying to get an idea of  
25 is, does your objection stem from the existence of the fee or

1 the amount of the fee? And if it's the amount of the fee, what  
2 would be appropriate? What would not run afoul of the  
3 Constitution?

4 MR. ZELL: Well, as I indicated earlier, I don't -- we  
5 don't dispute the ability of the government to collect some  
6 kind of a fee to cover or defray real actual costs incurred in  
7 connection with the administration of the government's role in  
8 the circumstances that we are talking about.

9 But what the amount of that fee is is a function of,  
10 as we have indicated in our papers, what the government's  
11 actual costs are. Now, I think we have seen, and this latest  
12 notice that the government has filed late Friday is -- calls  
13 into question the government's bona fides or credibility  
14 regarding their actual costs.

15 THE COURT: Are you allowed to do that under the APA?  
16 Under the APA, my review is fairly deferential. The government  
17 provides an explanation and a reason for the regulation and the  
18 fee. My role, as I understand it, is not to sit down and go  
19 through their breakdown of the costs with a fine-tooth comb,  
20 not on the APA anyway.

21 MR. ZELL: The government has done a very nice job in  
22 trying to portray this case as a conventional APA case. It is  
23 not. In fact, if the Court will look at our papers, the \$450  
24 fee, which we are talking about at the moment, is not the  
25 subject of our APA claim. We don't have an APA claim with

1 respect to the 450. We do with respect to the 2,350. With  
2 respect to the 450, our claim is purely constitutional and  
3 under customary international law.

4 THE COURT: So are you saying that if the final rule  
5 making occurred on Friday, you would withdraw your APA claim?

6 MR. ZELL: No.

7 THE COURT: If the fee were reduced on Friday --

8 MR. ZELL: Oh, the APA claim with respect to the  
9 2,350? I think it would be moot at that point, okay, I mean,  
10 if they actually did what they say they are planning to do.

11 THE COURT: Well, I mean, when they said they were  
12 going to raise it, they raised it. So I don't have any reason  
13 to believe that now they are saying they are going to lower it,  
14 they are not going to lower it.

15 MR. ZELL: Your Honor, if I may, one of the things, if  
16 you've studied, as I'm sure Your Honor has, the history of the  
17 rule making in this case, you will see, for example, when the  
18 government, if I'm not mistaken, decided in 2015 to quintuple  
19 the fee for renunciation, voluntary renunciation, of U.S.  
20 citizenship, they didn't wait, you know, 90 days or 60 days  
21 or -- they did it within a span of two weeks without any notice  
22 and common rule making prior to the implementation of the fee.

23 So the government has the power, Your Honor, to  
24 implement this proposed change, reduction of fee, for all  
25 intents and purposes immediately if they wish to do so.

1           And I maintain that there's as much -- in fact, even  
2 more justification for the government to act expeditiously with  
3 respect to the reduction of the fee that they are now  
4 proposing, now in this case, more justification than they had  
5 in 2015 when they quintupled the 450 to reach the 2,350 fee.

6           THE COURT: I think the government's always in a  
7 bigger hurry to raise prices than lower them.

8           Let me ask you this: With regard to your Fifth  
9 Amendment claim, what is your strongest argument for why the  
10 right to voluntarily expatriate is protected by the Fifth  
11 Amendment substantive due process clause?

12           MR. ZELL: Thank you, Your Honor. The argument is  
13 based on the Supreme Court's substantive due process analytical  
14 framework established in Washington versus Glucksberg. I don't  
15 want to get into any controversial topics, but recently  
16 affirmed just this year in the Dobbs case in connection with  
17 another constitutional right, which I will not mention.

18           But the framework that the Court set out in Glucksberg  
19 requires that the -- and the Court examine, first of all, the  
20 tradition -- the historical roots of the claimed right.

21           In this case -- and it's very interesting, because in  
22 our complaint itself, which has not within controverted as of  
23 yet by the government, we set out in great detail the history  
24 of this right, the right to expatriate going back literally to  
25 the day that this republic was declared in 1776.

1           And while there have been -- I can say that there have  
2 been very, very energetic discussions about this right even  
3 from the early days of the republic, there are not only  
4 statements by historical figures such as Thomas Jefferson and  
5 John Adams and others, but there are also legal decisions from  
6 the courts, treatises.

7           There's a famous treatise that I just read the other  
8 day by George Hay, the U.S. Attorney for the District of  
9 Virginia, the Circuit of Virginia as it was then called, from  
10 1814 called the Treatise of Expatriation and it dealt with  
11 this. It was the basis for a decision by the circuit court in  
12 New York in 1818 and on and on until we get to the Expatriation  
13 Act that Congress passed in 1868.

14           I am just -- I'm kind of fast-forwarding for Your  
15 Honor. Your Honor does not want us to repeat our brief. But  
16 that -- I don't think there can be any question that the right  
17 to expatriate, given these historical and legal authorities  
18 that we have cited, is deeply, deeply rooted in American law  
19 and politics, okay, and the philosophy of the American republic  
20 to such an extent, Your Honor, that founders of the republic  
21 maintain -- here I will cite Thomas Jefferson among others --  
22 that the right to expatriate was so fundamental and so natural  
23 and so inherent that to deny it, even to legislate it out of --  
24 with -- to regulate it by heavy legislation, put it that way,  
25 would be contrary to the most fundamental principles of when

1 this country was founded. So that's the first part,  
2 traditional historical roots of the right claim.

3 The next element under Glucksberg, Your Honor, is that  
4 the right being claimed to be protected by the substantive due  
5 process must be part and parcel of what our concepts are of  
6 what the Court has described as ordered liberty.

7 And here again, without repeating the authorities that  
8 we cite to great extent in our brief, Your Honor can see that  
9 this too, this requirement too, has been more than adequately,  
10 not only alleged, but proved. And the government doesn't say a  
11 word about it.

12 In fact, Your Honor, what the government does say  
13 is -- well, I don't want to characterize it, but the government  
14 has said outright in its filings in this case that the right of  
15 expatriation can exist and only exist by virtue of statute.  
16 And the statute that the government has identified as the  
17 source of this right, and I can -- Your Honor has read it --

18 THE COURT: But do I need to reach that? I'm not -- I  
19 don't think I am being asked to determine whether the right to  
20 expatriate exists. I am being asked to determine what  
21 regulation and limitation the government can put on that right.

22 I mean, and why -- and assume I agree that the right  
23 to voluntarily expatriate is guaranteed by the Fifth Amendment.  
24 Why wouldn't the renunciation fee pass strict scrutiny  
25 analysis?

1           MR. ZELL: First of all, I urge Your Honor not to  
2 assume the existence of this right. That's something that  
3 courts have done up to now in different contexts, some of them  
4 cited by the government involving incarcerated persons and so  
5 on, which are not relevant here.

6           The time has come, and this is the case to do it, for  
7 the Court to --

8           THE COURT: Oh, boy. I have had my share of cases of  
9 the first impression on these issues. I don't know how I keep  
10 getting so lucky.

11          MR. ZELL: Okay.

12          THE COURT: Okay. And I wouldn't be the court to do  
13 it. I believe there are nine judges on the third floor that  
14 would be the ones to do it and nine more up the street.

15          MR. ZELL: Your Honor can take that tack, and we can  
16 address it in another forum. I think this is the case to do  
17 it.

18          But to answer Your Honor's question, hypothetically,  
19 assuming that there is a fundamental constitutionally protected  
20 right under the due process clause to expatriate, then the  
21 question becomes what is the standard. Your Honor has  
22 mentioned the strict scrutiny analysis. That's what we  
23 maintain would be the appropriate framework of analysis. Okay.  
24 That has not happened -- even that -- even in those cases that  
25 have discussed this hypothetically, none of them have applied

1 strict scrutiny.

2 In our case, we would suggest that when you apply  
3 strict scrutiny, there are two consequences of that decision,  
4 that analytical framework. First, the government must have a  
5 compelling interest in doing whatever it's trying to do  
6 impinging upon that right. And secondly, whatever the  
7 government's course of action may be, it has to be narrowly  
8 tailored to meet that compelling interest.

9 The courts have held, Your Honor -- and here you don't  
10 have to be making a decision of first impression -- that when  
11 it comes to regulating fundamental constitutional liberty, the  
12 budgetary concerns of the government are not a compelling  
13 interest. That's the first point.

14 The second point is -- and we have had this  
15 demonstrated to us in a very vivid manner by the government's  
16 notice of proposed rule making filed late Friday. And that is  
17 that the imposition, that the fixing of the amount of a fee,  
18 okay, in the cases they maintain vigorously throughout the  
19 filings in this case, that the \$2,350 fee was permissible under  
20 constitutional analysis.

21 And they maintain that the only proper framework for  
22 assessing the propriety of that fee, Your Honor, is the  
23 rational basis test. Of course. All we are doing is charging  
24 a fee and we are trying to recover for services. No. Under  
25 strict scrutiny, Your Honor, they must show that this is the



1 most narrowly tailored way to do it. And they just basically  
2 conceded by their notice of proposed rule making that the 2,350  
3 fee, which they so vigorously defended up until now, until  
4 Friday, is not and was not the most narrowly tailored way to  
5 achieve the government's non-compelling interest.

6 THE COURT: To go back to your request that this is a  
7 case to find that there is a fundamental or constitutional  
8 right to expatriate, doesn't that fall afoul of the canons of  
9 statutory construction that I have to apply in which all courts  
10 are instructed to, if the case can be decided without reaching  
11 the constitutional issue, then that is what we should do. Why  
12 should I reach a constitutional issue here if I don't have to?

13 MR. ZELL: Well, you have to.

14 THE COURT: Well, maybe not.

15 MR. ZELL: Our position is you have to. And Your  
16 Honor proposes doing that by assuming the existence of the  
17 right and then applying the appropriate standard.

18 THE COURT: It was simply a question. I wasn't saying  
19 that that is going to be my path. I was simply asking you if  
20 the regulation, assuming arguendo that I find that there is a  
21 constitutional right, if it passes the strict scrutiny test.  
22 But that does -- and I asked you the question regarding  
23 statutory construction when you said, you know, it's finally  
24 time, that that issue needs to be made clear.

25 MR. ZELL: May I answer?

1           THE COURT: Yes. Although I forgot to say I've  
2 blocked off an hour for this. I can go a little further than  
3 that. But I realize my questions may have pulled you off from  
4 your argument.

5           I don't have any questions for you on your First and  
6 Eighth Amendment claims. My next questions would be on  
7 customary international law claims. So if you want to make  
8 argument up to then, go ahead.

9           MR. ZELL: Well, I just want to respond very briefly  
10 to the constitutional avoidance doctrine, okay, which is  
11 appropriate when you are construing a statute and the statute  
12 governs the full panoply of rights being at issue in a case.  
13 This is not the case here. In fact, I have already mentioned  
14 that with respect to the \$450 fee, we don't have an APA claim.  
15 So there's no statute to construe. So the constitutional  
16 avoidance doctrine really has no applicability in that  
17 situation. We argue also with respect to the rest of the case.

18           Now turning to Your Honor's question about customary  
19 international law. When I was reviewing and preparing for this  
20 hearing, one of the things I did is read all of the  
21 government's rule-making publications from 2010 all the way to  
22 2015 excluding Friday's latest development. And one of the  
23 things I saw on there was that, in responding to comments that  
24 were issued -- I believe this is the case, and I may be mixing  
25 up either 2010 versus 2014, 2015, but people -- public comments

1 that were submitted raised this very issue about the propriety  
2 of the renunciation fee under international law.

3 And what was interesting, Your Honor, is that the  
4 government specifically referred to the universal declaration  
5 of human rights, which addresses this issue. And the  
6 government in its response to this, made to this comment, was  
7 not to say there's no customary international law rule  
8 regarding renunciation fees, okay, or affecting the right of  
9 expatriation. They simply said, we don't think our  
10 renunciation fee impinges upon the right, whatever the source.

11 Okay. And when you look at their brief, and Your  
12 Honor has read them and you will see this too, what does the  
13 government say that -- it doesn't argue that there's no  
14 international legal principle, CIL principle, regarding  
15 expatriation.

16 What they say is, under the certain decisions of the  
17 International Court of Justice, this rule has not arisen to the  
18 level of customary international law. They don't dispute the  
19 fact that international law relates to this issue in a very  
20 dramatic way, just as they didn't relate to it when they were  
21 commenting on the public's comments on the effect of the  
22 renunciation fee on the right to expatriate.

23 So now the decision that the Court would need to make  
24 is whether or not the government is correct or we are correct  
25 in our assertion of the principle that there is a right of

1 expatriation under international law, and the imposition of  
2 fees that would be in excess of that which is necessary and  
3 desirable for the governments to administer their system of  
4 consular services, whether that would be violative of this  
5 principle of international law.

6 THE COURT: You gave me a selective list of  
7 renunciation fees around the world, which is ECF No. 14-3. I  
8 assume that's not an exhaustive list. Of the 16 countries that  
9 are listed, 10 charge a fee. None of these fees are nominal  
10 except maybe perhaps India's \$25 fee, which I would probably  
11 argue is a lot more money in India than it is here.

12 How does this exhibit support your argument that the  
13 right to voluntarily expatriate free from more than a nominal  
14 fee is protected under customary international law?

15 MR. ZELL: This goes to the question of what is the  
16 proper source of customary international law, which I admit is  
17 a rather esoteric inquiry.

18 THE COURT: It's the first time I have had to have the  
19 issue.

20 MR. ZELL: We don't have the time to discuss  
21 opinio juris and all these other doctrines.

22 What's interesting is that in our list -- and I have  
23 asked my colleague to pull up the list because I don't remember  
24 exactly what's on it. I know in many countries I come -- our  
25 offices are in Israel and the -- which is a very small country,

1 to be sure, but it gets a lot of headlines. And in Israel,  
2 there is no fee or one that would be described as a pittance.  
3 All right.

4 And, in fact, Your Honor, this is really a very  
5 interesting thing, is that for 200 years of this nation's  
6 history, 200 years, no small amount of time, Your Honor, the  
7 United States did not charge a penny for this privilege, right  
8 to expatriate. And it only came in 2010. And then they went  
9 to 450. And four years later, five years later, they came up  
10 with this five-time fee which they are now trying to whitewash  
11 and reduce --

12 THE COURT: I understand that timeline.

13 MR. ZELL: -- and charge this enormous sum, which is  
14 what we did -- what we were referring to in our papers, has no  
15 comparable amount anywhere on this planet, that fee.

16 Now the question is, does 450 meet that, or was it  
17 maybe 300 or maybe 200 or maybe 50? I don't know. And that's  
18 something that we would have to -- and we have some ideas for  
19 Your Honor about how we might explore the reasonableness or the  
20 appropriateness of the government's charges or attempt to  
21 defray these costs, you know, as this litigation continues.

22 THE COURT: Let me ask you, under your APA claim, you  
23 are not in accordance with the law claims, you allege that the  
24 2015 final law violated the APA because it was not in  
25 accordance with the law. Defendants moved for summary judgment

1 on this claim. And you didn't respond in opposition with any  
2 arguments. So why shouldn't I treat that as conceded?

3 MR. ZELL: Well, okay. I am -- my response to that  
4 would be based on OMB Circular A-25, which the government  
5 relies on heavily in their papers. Okay. And in that  
6 particular document, which is really the official  
7 interpretation and implementation of the IOAA, a 1954 statute,  
8 and the Presidential Proclamation of 195 --

9 THE COURT: No. Sir, what I am asking you is, you  
10 didn't respond to the argument in your opposition. So why  
11 shouldn't I treat the government's argument as conceded?

12 MR. ZELL: We have responded to the argument about the  
13 authority of the United States government to impose  
14 renunciation, a renunciation fee, vel non, okay, under their  
15 claimed authorities. They claim 31 U.S.C. 9701, they claim 22  
16 U.S.C. 1419 -- 4219, and, of course, the OMB Circular, which is  
17 the primary source of their authority, 825.

18 And we say in our papers, and we responded to that,  
19 that these authorities do not justify the claimed imposition of  
20 this fee. The government says they can apply a fee. And we  
21 say no, 825 requires that the government confer a special  
22 benefit in order to charge a user fee. And we say you don't --  
23 you don't -- the government of the United States is not  
24 providing the general public with a special benefit when it  
25 comes to the right to expatriate. That's a fundamental right

1 of every U.S. citizen. And they -- it doesn't come from, like,  
2 a license from the government to do that. The government --  
3 for the country. What the government says they are trying to  
4 do is somewhat to protect that right by imposing these  
5 requirements about doing an oath in front of a consular  
6 official and doing all these other procedures which are very  
7 minimalistic and using that as a basis for the argument that  
8 they can regulate this fee under these authorities. We say no,  
9 825 does not permit that.

10 THE COURT: I'm really trying to pin you down. I know  
11 you want to make some very broad statements about the  
12 righteousness of your claim, but I'm really here to ask very  
13 specific questions about your pleadings.

14 You allege that the 2015 final rule is in excess of  
15 jurisdiction in violation of 5 U.S.C., Section 7062(c). That's  
16 in paragraph 203 of your complaint. Defendants move to dismiss  
17 this claim. And you didn't respond to their argument in your  
18 opposing motion.

19 Again, why shouldn't I treat this argument -- this  
20 aspect of their motion as conceded?

21 MR. ZELL: I think you need to, with all great  
22 respect, see the complaint as an entirety. Okay. And when you  
23 see the complaint as an entirety together with our oppositions  
24 that we filed to the government's motion to dismiss, you will  
25 see that it can be reasonably inferred from our complaint,

1 which goes into extraordinary detail, that we maintain that the  
2 government's authority -- the government did not have the  
3 authority under existing law, I have just mentioned to Your  
4 Honor the principal source of it, 825, which does not confer a  
5 specific benefit and, therefore, is not eligible for a user  
6 charge.

7           And in addition to that, we also say in our papers  
8 that the government -- and we say this specifically. If you  
9 want chapter and verse, I will have to search for it. We have  
10 it here -- that the government, when they went to impose this  
11 user charge, as they describe it, under 825 and the statutes  
12 that we've mentioned, they never, ever took into account the  
13 fundamental right of the plaintiffs to expatriate.

14           And we, based on that oversight on the part of the  
15 government -- which they never addressed. If Your Honor wants  
16 to ask about pleading formalities, the government never  
17 addressed those arguments in our papers regarding this under  
18 their APA claim. They simply said no, we can do it. This is a  
19 rational basis. It's user charts. It's authorized by  
20 Congress, not related to renunciation fees, but as general cost  
21 recoupment authorities and, therefore, that's it, that the  
22 Court needn't go further than that. That's our authority.

23           We say no. You didn't have the authority to do this  
24 under 825, and perhaps even more importantly, you did not take  
25 into consideration the all-important fact that the right being



1 that you are proposing to impinge upon here in a dramatic  
2 fashion is fundamentally protected, whether by the  
3 Constitution, Your Honor, under the due process clause or under  
4 the First Amendment or even under the Immigration and  
5 Nationality Act of 1952 and the Expatriation Act of 1868,  
6 et cetera, if you want to look for statutory sources.

7 THE COURT: All right. Thank you.

8 I don't have any further questions for you, but if  
9 there are some additional points you wanted to make, I will  
10 give you a few minutes to wrap up.

11 MR. ZELL: Well, this is -- Your Honor, this is the  
12 government's motion.

13 THE COURT: I know. They have the burden.

14 So I am going to turn to you, Ms. Lum. I have a  
15 similar question.

16 You have heard plaintiffs have argued that the right  
17 to voluntarily expatriate is deeply rooted in the nation's  
18 history and tradition and a fundamental right. And, I mean,  
19 don't they have a point? I mean, it's founded by -- this  
20 country is founded by people, partially by people who renounced  
21 their British citizenship to form this country. And wouldn't  
22 the founding fathers agree that the right to renounce  
23 citizenship is an inherent or natural right?

24 MS. LUM: So, Your Honor, there's no dispute about  
25 whether it's important to be able to be permitted to

1 expatriate, and the Department of State certainly provides the  
2 means.

3 THE COURT: I'm not asking if it's important. I am  
4 asking whether it is a fundamental right, as counsel for the  
5 plaintiffs have said it, perhaps a constitutional dimension  
6 such that the Fifth Amendment due process rights apply?

7 MS. LUM: Right. So it certainly has its roots and  
8 recognition of its importance in statute, but it doesn't rise  
9 to the level of a fundamental right that should be recognized  
10 under the Fifth Amendment.

11 THE COURT: Assuming I decided -- again, I am going to  
12 ask you the same question that I asked plaintiffs. Assuming  
13 for the purposes of argument that I decide it is, how does your  
14 regulation, your fee, pass strict scrutiny?

15 MS. LUM: So at that point, it would be the compelling  
16 interest in the government recuperating the costs of providing  
17 this fee, which is very costly.

18 THE COURT: But --

19 MS. LUM: -- to --

20 THE COURT: I'm sorry, I forgot your name, sir. Is it  
21 Mr. Zell?

22 MR. ZELL: Yes.

23 THE COURT: Mr. Zell points out that the government  
24 charged no fee for many, many years. And I understand that in  
25 imposing a fee, the government's rationale was that the

1 costs -- that these renunciations were taking up significant  
2 amounts of consular administrative time and, therefore, were  
3 getting -- and were getting expensive, so this was a sort of  
4 covering those costs.

5 But then the fee jumps from 450 to 2,350. How does  
6 that pass strict scrutiny?

7 MS. LUM: So the explanation for the jump in the fee  
8 from zero to 450 to the current amount tracks with the high  
9 increase in demand.

10 THE COURT: Did the high increase in demand track  
11 certain changes in the tax laws?

12 MS. LUM: I believe that after the changes in the tax  
13 laws, the demand ended up increasing. At the time the \$450 fee  
14 was imposed, the State Department indicated that it was less  
15 than a fourth of what the actual cost to the department was.  
16 So it's not so much that in the two-year period the cost of the  
17 department jumped that much. It's that the cost of the  
18 department was that high when the \$450 fee was imposed, and  
19 then the department decided to charge the full actual cost.

20 THE COURT: But now they have gone back down, so it  
21 doesn't seem such a compelling interest.

22 MS. LUM: So in response to that, Your Honor, it's not  
23 that the government, in reducing the fee to 450, is trying to  
24 recuperate the full cost. It's just that they, in doing so,  
25 they would be choosing not to recuperate those full costs.

1           THE COURT: Well, I mean, doesn't the fact that this  
2 jumped to 450 and then from 450 to 2,350 and abruptly back to  
3 450, doesn't that lend itself to an inference that this fee is  
4 not so narrowly drawn to reimbursement for costs? That's a  
5 pretty big jump. I could understand if it went from 450 to 550  
6 to 700, and well, maybe there's been a reduction in the number,  
7 so we are going back town to 600 or 500. But to jump from 450  
8 to 2,350 and then 2,350 back to 450, one might conclude that  
9 that there doesn't seem to be a whole lot of reason for such  
10 drastic changes in the fees, or at least that reason doesn't  
11 seem to be based on recoupment of actual costs.

12           I'm sorry. Sir, what are you doing?

13           MR. ZELL: I just needed to get information. Sorry.  
14 Excuse me, Your Honor.

15           MS. LUM: Your Honor, the question of narrow tailoring  
16 really goes to whether the fee is narrowly tailored to meeting  
17 the government interest of full recuperation of costs.

18           THE COURT: Right. So how is this fee narrowly  
19 tailored if it goes from 0 to 450, from 450 to 2,350, and back  
20 down to 450 again? How is that narrowly tailored?

21           MS. LUM: Right. It's narrowly tailored because the  
22 only fee that was intended to recuperate the full cost is --

23           THE COURT: Recoup.

24           MS. LUM: Recuperate.

25           THE COURT: Recoup, not recuperate. Recuperate is to

1 recover from illness.

2 MS. LUM: Fair, Your Honor. Thank you. To recoup the  
3 full cost, the only fee that's narrowly tailored towards that  
4 is \$2,350 fee. And the \$450 fee was set lower for public  
5 policy reasons acknowledging that it was not to recoup the full  
6 cost.

7 THE COURT: So what you saying is the government has  
8 decided to go back to taking a loss? In lowering the fee from  
9 2,350 to 450, the government has made some sort of a decision  
10 to go back to taking a loss on the cost of these renunciations?  
11 What you are saying is the 450 doesn't cover the full cost.

12 MS. LUM: That's correct, Your Honor.

13 THE COURT: And so what's a rational basis for going  
14 up and then going back down?

15 MS. LUM: So that is something that would be explained  
16 in the forthcoming rule making, and the department is pursuing  
17 that rule making to reduce the fee.

18 THE COURT: But doesn't the fact that that rule making  
19 has now been instituted to go back to what it was -- to take  
20 the fee back to what it was lend some sort support to the  
21 argument that the fee is not really connected to anything real?

22 MS. LUM: I don't think it lends support to the  
23 argument that the fee is not connected to anything real because  
24 the fee can be connected to real costs, and then the State  
25 Department can make public policy decisions about whether it is

1 going to attempt to recoup those full costs or not.

2 THE COURT: Can you explain to me the cost of service  
3 model methodology that consular affairs uses and how it was  
4 applied to the 2015 renunciation fee.

5 MS. LUM: Yeah, so I think that the most helpful page  
6 in the administrative record for this would be page 190. That  
7 sets out a chart breaking down some of those costs. And the  
8 cost of service model tracks what the guidance is from OMB  
9 about what types of costs should be considered when you are  
10 calculating the full cost of a fee.

11 So that includes direct costs, and it also includes  
12 indirect costs. And that can include things like rent,  
13 utilities, management services, IT support, all of that.

14 And so the cost of service model takes into account  
15 labor costs and other compensation costs for staff for the  
16 amount of time that they put into this particular service.  
17 Then it also looks at the amount of total time that the  
18 department spends on provision of the service and then breaks  
19 down what you might characterize as overhead-type costs by the  
20 percentage that should be allocated to the renunciation or  
21 provision of a CLN service.

22 So that's what the breakdown reflects on page 190 of  
23 the administrative record, is those direct costs and also the  
24 indirect costs that are properly assigned to the service.

25 THE COURT: Can you respond to the plaintiffs'

1 argument that the Department of State doesn't even need to do a  
2 final rule making if it wants to reduce the fee. It could just  
3 simply reduce the fee. And why not -- what is the -- I mean,  
4 it seems pretty sort of selective to go without rule making  
5 from 450 to 2,350, but then impose rule making to go from 2,350  
6 to 450. What is the basis for that?

7 MS. LUM: So plaintiffs' counsel indicated that it was  
8 an interim final rule that had public comment follow the final  
9 rule 60 days afterwards instead of preceding the rule. That  
10 was still a rule making. And the department hasn't specified  
11 exactly what type of rule making it intends to undergo. And  
12 this process involves consulting with other agencies including  
13 OMB. So they are still working out what exactly will make --

14 THE COURT: I guess I'm finding it difficult to  
15 understand the different justifications because, as plaintiffs'  
16 counsel said, the Department of State went to a fee that was, I  
17 guess, maybe four times higher than it had been rather  
18 summarily and now is saying, well, we are going reduce it, we  
19 are going to go back to the old fee, but we need to go  
20 through -- we need to consult with the OMB, we need to go  
21 through all these steps.

22 Someone who is cynical might argue that that's an  
23 attempt to sort of forestall a ruling here to say, well, wait,  
24 we are going to change it.

25 Is this notice of final rule making -- I mean, why go

1 through the steps when you are going right back to the fee that  
2 you had before for which I assume a cost of service model  
3 methodology was used the first time?

4 MS. LUM: Right. I think when Your Honor is saying  
5 why go through all the steps, I believe you are referring to  
6 why go through a final rule --

7 THE COURT: Yeah, why go through a final rule making?

8 MS. LUM: Right, with notice and comment prior to that  
9 rule making. And I guess what I am saying is that that's not  
10 necessarily the route that the State Department intends to take  
11 and --

12 THE COURT: But you don't know? Sitting right here,  
13 you don't know what route they intend to take?

14 MS. LUM: I don't know because they have to consult  
15 with other agencies. But I guess I am saying that they could  
16 go through with an interim final rule process which would be  
17 the same process that was used to impose the \$450 fee.

18 THE COURT: Did they have to consult with other  
19 agencies when they went from the 450 to 2,350?

20 MS. LUM: I believe so, yes, Your Honor.

21 THE COURT: Is that anywhere in the record?

22 MS. LUM: I can look at the final rule to see if it  
23 shows up there.

24 THE COURT: All right. Those were my questions. You  
25 can complete the rest of your argument on anything I didn't ask



1     you about if you wish now.

2             MS. LUM:   Okay.  Your Honor, I would just emphasize,  
3     in terms of the Fifth Amendment, to respond some of the things  
4     plaintiffs' counsel was saying, that the plaintiffs' have  
5     failed to give a careful description of what a right would be  
6     that would be recognized as fundamental.  And that's a critical  
7     importance because the Supreme Court has emphasized that if  
8     courts are to recognize a new fundamental right, they should be  
9     very cautious in doing so, and that right would have to be  
10    carefully described.  And here plaintiffs aren't even able to  
11    tell the Court what --

12            THE COURT:  I mean, a right to renunciate citizenship  
13    is not very complicated, right?  You no longer wish to be a  
14    citizen of the United States.  There's nothing really -- it's  
15    actually a lot simpler than a lot of the other rights that  
16    litigants seek to have declared as fundamental rights.  It's  
17    the right to relinquish citizenship that, for whatever reason,  
18    you don't want to have anymore.

19            I guess plaintiffs would make the argument that it's  
20    even more fundamental than the right to seek citizenship.  I  
21    don't need to reach that issue.  But it's pretty simple, isn't  
22    it?  I mean, and citizenship is mentioned in the Constitution.  
23    If you are born here, you have a constitutional right to United  
24    States citizenship.  So how is a right to relinquish that  
25    citizenship which the Constitution vests you with, how is that

1 not equally fundamental?

2 MS. LUM: So in narrative form, Your Honor, it may  
3 sound simple to describe it that way, but the problem is that  
4 plaintiffs can't answer the Court's question of what number  
5 between \$2 and \$450 would be violative of such a right.

6 THE COURT: Well, I mean, I'm trying to find an  
7 analogy of a substantive fundamental right. Maybe voting. You  
8 couldn't impose a poll tax. Those have been ruled upon, right,  
9 because that -- those wouldn't stand up to constitutional  
10 scrutiny. So why isn't plaintiffs' argument about the fee to  
11 renunciate citizenship similar to that of a poll tax?

12 MS. LUM: It's not similar because it's much more  
13 analogous to the types of cases the government has cited where  
14 the fee is solely for the administrative processing costs.

15 THE COURT: It costs money to vote. It costs money to  
16 run the electoral system. You have to pay poll workers. You  
17 have to print out ballots. You have to -- you know, it's an  
18 expensive undertaking.

19 But I would imagine any attempt to try and charge  
20 citizens for their -- and again, this is assuming this is a  
21 fundamental right -- but to charge citizens for exercising  
22 their right to vote by saying, well, you got to recoup the  
23 cost -- it costs us a lot of money to put on these elections.  
24 More people are voting than ever. We need to recover the  
25 costs, so we are going to charge you a fee, any kind of fee, to

1 recoup the costs. The government couldn't do that, do you  
2 agree?

3 MS. LUM: Right, not the poll tax. But here I think  
4 it's a little bit different because the service that's being  
5 provided is the receipt of a CLN, so a certificate of loss of  
6 nationality. And then that certificate can be used for various  
7 purposes. And so it's the provision of that certificate, not  
8 just the ability to renounce or --

9 THE COURT: So is it more like a passport? Is that  
10 your analogy, you know, that not every citizen has a passport,  
11 but every citizen apply for a passport, and if you want the  
12 passport, you have to pay a fee?

13 MS. LUM: Yes, I think you could draw analogies to  
14 that. You could also draw analogies to, for example, the Cox  
15 versus New Hampshire case where citizens have a right to  
16 demonstrate and have a public meeting, but they might have --

17 THE COURT: The problem with the certificate argument,  
18 though, is that you can't renunciate and say, okay, well, I'm  
19 going to renunciate. I don't want the certificate. I just  
20 want to renounce my citizenship, but you can keep the  
21 certificate, so I don't need to pay the fee.

22 It's all part and parcel of the same proceeding,  
23 correct?

24 MS. LUM: It is, although I believe there is some D.C.  
25 Circuit possibility dicta indicating that renunciation can

1 happen prior to the certificate being provided, so I think that  
2 the law has sometimes drawn some distinctions between those two  
3 things.

4 But the main point here with the Fifth Amendment, Your  
5 Honor, is that the Court need not reach the issue of whether  
6 there is a fundamental right to expatriate or to do so without  
7 a fee because it's under the doctrine of constitutional  
8 avoidance, also because no court has ever chosen to recognize  
9 that as a fundamental right.

10 THE COURT: Did you want to address the customary  
11 international law claims and First and Eighth amendment claims?

12 MS. LUM: Sure. I will briefly address those if that  
13 would be helpful to the Court.

14 THE COURT: I didn't have any questions on it. You  
15 are the proponent of the motion so...

16 MS. LUM: Yes. In response to what plaintiffs'  
17 counsel had shared about their arguments for customary  
18 international law, I would point out, as the Court did, that  
19 none of the fees from the other countries that they propose are  
20 nominal. And so even if you have consistent state practice of  
21 charging a fee that is less than what the United States  
22 charges, the test for customary international law has not been  
23 met, one, because those fees are not nominal either, and two,  
24 because there's no indication and plaintiffs have not shown  
25 that the countries has set their fees at the amount they have

1 set them because they believe that there is a legal reason that  
2 they have to do that.

3 And that's the second prong of the customary  
4 international law test, and so there is no customary  
5 international law that would require a fee that's lower than  
6 what the State Department is charging.

7 THE COURT: All right. Thank you all. These are very  
8 interesting questions.

9 MR. ZELL: May I respond briefly?

10 THE COURT: Very briefly.

11 MR. ZELL: First of all, with regard to the --

12 (There was an interruption by the court reporter.)

13 THE COURT: Is your microphone on?

14 MR. ZELL: Yeah, sorry.

15 With regard to --

16 THE COURT: And you need to get --

17 MR. ZELL: With regard to --

18 THE COURT: You need to get a little closer to it so  
19 that the -- I can hear you, but the court reporter, who is  
20 wearing headphones, needs you to be close to the microphone.

21 MR. ZELL: I'm with you.

22 So first of all, I made a misstatement about the  
23 Israeli fee for renunciation. Our exhibits show it's about  
24 \$105. So I want to correct that. I don't want to misstate.

25 If you look down our list, France is free. Luxembourg

1 is free. Germany, the largest country in the European Union,  
2 free. The United Kingdom charges 372, which is along the lines  
3 of that 450. Ireland is free. Italian is 250 euros. Austria,  
4 25 euros, et cetera. Russia, 65. Okay. Mexico is free.  
5 Canada, I understand from my colleague from Toronto, is \$100  
6 Canadian. Okay.

7           So these are not -- these are a lot less, a lot less,  
8 than what the -- and what's interesting is the government  
9 didn't provide any data of its own on this issue. They could  
10 have easily done that. And they did not do that. That's the  
11 first point.

12           The second point is Your Honor asked about -- you  
13 know, to describe this cost of services model that the  
14 government used. Okay. I would like to refer Your Honor --  
15 I'm not going to read it here, but I would like to refer Your  
16 Honor to page 30 of the administrative record, which is an  
17 excerpt from the rule making that took place, the notice and  
18 comment period that took place March 24, 2010. And the  
19 government gave a very helpful description of this process that  
20 they were using in 2010, which they want to revert to, to  
21 describe how they go about fixing these actual costs.

22           And you will see it in the example on the last column  
23 of that page which analogizes the government's actual cost  
24 survey to the making of a peanut butter and jelly sandwich.  
25 And I kid you not. That's it.

1           And you can look at it there, and they will give you  
2 all of the analogies that Your Honor needs to understand what  
3 they did in 2010, which included the statement that the costs  
4 for renunciation were extremely costly, says the government.  
5 But they, by their own admission -- the records supports this,  
6 but -- the record that we were able to see because a lot of it  
7 is redacted shows that they had no idea in 2010 what their  
8 actual costs were. They were making peanut butter and jelly  
9 sandwiches.

10           And they didn't have the data until 2013, and then  
11 they used it to justify the quintupling of the fee to 450. So  
12 Your Honor can read that just as well as I can.

13           The other thing about the 2010 rule making, to which  
14 they are referring in their latest notice, is something very  
15 interesting because it describes -- and counsel referred to it  
16 in her remarks. Why is it -- Your Honor asked, how come you  
17 were able to justify recouping only \$450 of your actual costs  
18 of these extremely costly procedures in 2010. And you know  
19 what the government said about this? It's very interesting.  
20 And counsel alluded to this. They said, for public policy  
21 reasons, for public policy reasons, we didn't think it would be  
22 a good idea to recoup the full amount of the actual costs,  
23 whatever they were guesstimated to have been.

24           What the government said was, we believe that we  
25 should keep the fee lower than the actual cost in 2010 in order

1 to -- not to discourage the renunciates and exercising their  
2 right, exercising this procedure -- they didn't call it a  
3 right -- exercising this procedure. And you know what they  
4 said? They said that doing so, keeping it below cost, was in  
5 the national interest. That is a quote. And they repeated  
6 that again back in 2014 and 2015.

7 Now, as I finish my remarks, I just have four  
8 questions that I would like to put onto the record.

9 Why is the government flip-flopping, okay, at this  
10 point in time? Your Honor alluded to that question.

11 When does the government intend to implement the fee  
12 reduction? It can do it, as Your Honor asked counsel,  
13 immediately if it wished to do so. Why the delay?

14 Who does the fee -- who does the fee reduction apply  
15 to? Is it only to accidental Americans like my clients, the  
16 plaintiffs in this case? Does it apply to the other  
17 relinquishment categories in 1481(a)(1) through (a)(4) and  
18 (a)(6) and (a)7? What about indigents who can't afford it?

19 And by the way, there are allegations in the complaint  
20 uncontroverted by the government, not even cited to by the  
21 government, which the Court under our 12(b)(6) jurisprudence is  
22 required to take --

23 THE COURT: You are not asserting that your clients  
24 are indigent, are you?

25 MR. ZELL: Some of my clients are indigent, yes. They



1 say specifically in the complaint, Your Honor, they can't  
2 afford the \$2,350 fee. And they would say the same thing  
3 about, some of them, not all of them, about the \$450 fee.

4 And how does the government intend to implement this  
5 rule making that they are talking about? I think we need, as  
6 we go forward with this litigation, okay, we need to be able to  
7 learn more about what the government was doing with its cost  
8 analysis both in 2010 and in 2015 and here in 2023. That  
9 means, in our view, Your Honor, that we need to conduct either  
10 supplemental briefing, maybe that's an idea that we need to do,  
11 or --

12 THE COURT: I don't think we need supplemental  
13 briefing.

14 MR. ZELL: -- discovery

15 THE COURT: I am intending to rule on this in due  
16 course, as soon as I can, given all the other matters I am  
17 dealing with. I appreciate the parties' preparation for this  
18 and their arguments today.

19 I also encourage the parties to keep talking. You've  
20 already said, Mr. Zell, that the reduction to 450 would not  
21 extinguish your claims, but it may narrow the litigation, the  
22 focus of the litigation somewhat. So if you all can come to  
23 some agreement on that, if the government could provide more  
24 information to plaintiffs about this proposed rule making which  
25 we've all just learned about literally days ago, that might be

1 more helpful.

2 But other than that, I will -- I don't think we need  
3 supplemental briefing at this point. I will consider the  
4 request for additional discovery if I think it is needed. But  
5 thank you all.

6 MR. ZELL: Thank you, Your Honor.

7 (The hearing concluded at 3:32 p.m.)

8 - - -

9 C E R T I F I C A T E

10

11 I hereby certify that the foregoing is an  
12 accurate transcription of the proceedings in the  
13 above-entitled matter.

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