

Case No. 19-15979
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ESSENTIAL ACCESS HEALTH, INC.; and MELISSA MARSHALL, M.D.,
Plaintiffs-Appellees,

v.

ALEX M. AZAR II, in his official capacity as Secretary of the United States
Department of Health and Human Services; and UNITED STATES
DEPARTMENT OF HEALTH AND HUMAN SERVICES,
Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of California
No. 3:19-cv-01195-EMC
Hon. Edward M. Chen

**PLAINTIFFS-APPELLEES' MOTION FOR
RECONSIDERATION EN BANC**

MICHELLE YBARRA, #260697
JUSTINA SESSIONS, #270914
SOPHIE HOOD, #295881
SARAH SALOMON, #308770
KEKER, VAN NEST & PETERS LLP
633 Battery Street
San Francisco, CA 94111-1809

Attorneys for Plaintiffs-Appellees
ESSENTIAL ACCESS HEALTH, INC.
and MELISSA MARSHALL, M.D.

On June 20, 2019, a motions panel of this Court issued a published order staying the preliminary injunction issued by the District Court in this case (“Stay Order”). The Stay Order allows regulations to take effect which result in irreparable harm to plaintiffs in this case. Pursuant to Federal Rule of Appellate Procedure 35(b) and Ninth Circuit General Order 6.11, Plaintiffs-Appellees Essential Access Health and Dr. Melissa Marshall (hereinafter “Plaintiffs”) respectfully move for en banc reconsideration of the Stay Order.

Plaintiffs’ case has been consolidated with a companion case, *State of California v. Alex Azar & U.S. Dept. of Health and Human Services*, Case No. 19-15974. The State of California (“California”) has, concurrently with this motion, filed a motion for reconsideration en banc. Case No. 19-15974, Dkt. 28. Plaintiffs adopt by reference the substance of California’s motion pursuant to Federal Rule of Appellate Procedure 28(i). For the reasons stated in California’s motion, the Court should grant en banc reconsideration, vacate the motions panel’s Stay Order, and deny Defendants’ motion for a stay of the preliminary injunction pending appeal.

DATED: June 25, 2019

/s/ Michelle Ybarra
Michelle Ybarra
Keker, Van Nest & Peters LLP
Attorneys for Plaintiffs-Appellees
ESSENTIAL ACCESS HEALTH,
INC. and MELISSA MARSHALL,
M.D.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Ninth Circuit Rules 27-1 and 32-3 because it contains 178 words, excluded of the exempted portions of the brief. The brief has been prepared in proportionally spaced typeface using Microsoft Word 2010 in 14-point Times New Roman font.

/s/ Michelle Ybarra

Michelle Ybarra

CERTIFICATION OF SERVICE

I hereby certify that on June 25, 2019, I filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. All participants in the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ Michelle Ybarra

Michelle Ybarra

1330754