United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5379 **September Term, 2020**

1:20-cv-03261-RDM

Filed On: January 1, 2021

Lisa Marie Montgomery,
Appellee

v.

Jeffrey Rosen, Acting Attorney General of the United States in his official capacity, et al.,
Appellants

BEFORE: Henderson, Katsas, and Walker, Circuit Judges

O R D E R

Upon consideration of the emergency motion to stay or vacate, the opposition thereto, and the reply, it is

ORDERED that the motion to vacate, which is construed as a motion for summary reversal, be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). On November 23, 2020, the Director of the Federal Bureau of Prisons designated January 12, 2021 as appellee's new execution date. The governing regulation, 28 C.F.R. § 26.3(a)(1), did not prohibit the Director from making that designation on November 23 because, at that time, the "date designated for execution" had not yet "passe[d]." 28 C.F.R. § 26.3(a)(1). We therefore reverse and vacate the district court's order dated December 24, 2020 insofar as it granted summary judgment to appellee on her claim that appellants violated 28 C.F.R. § 26.3(a) and vacated the Director's November 23, 2020 designation, and remand for further proceedings. It is

FURTHER ORDERED, on the court's own motion, that any petition for rehearing or rehearing en banc be filed no later than 5:00 p.m. on January 2, 2021.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate until disposition of any timely petition for rehearing or petition for rehearing en banc. If no rehearing petition is filed by 5:00 p.m. on January 2, 2021, the Clerk is directed to issue the mandate forthwith. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Amanda Himes
Deputy Clerk