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NCLA Court Win Keeps SBA from Rewriting CARES Act to Exclude Small Biz Owners on Probation

Carmen's Corner Store, et al. v. U.S. Small Business Administration, et al.

Washington, DC (June 30, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group today is celebrating a victory in the case of *Carmen's Corner Store, et al. v. U.S. Small Business Administration, et al.* A federal judge granted a lifeline yesterday to Carmen's Corner Store and Retail4Real, both businesses of Mr. Altimont Mark Wilks from Hagerstown, MD, who is desperately trying to keep its doors open. Judge Catherine C. Blake for the U.S. District Court for the District of Maryland enjoined the Small Business Administration ("SBA") and extended the deadline for Carmen's Corner Store and Retail4Real to obtain the non-recourse loans Congress backed through the Paycheck Protection Program ("PPP").

The program was set to end today, but Mr. Wilks challenged the ever-changing regulations SBA had issued that unlawfully precluded small businesses whose owners were still on probation from obtaining much-needed funds. This prohibition was found nowhere in the statute. The Court further ordered the SBA to reserve and pre-approve \$31,500 in funds for Mr. Wilks's two businesses while his applications were processed.

Judge Blake ruled that SBA had behaved "arbitrarily and capriciously" in failing to explain its actions in constantly revising the regulations. After the suit was filed three weeks ago, SBA amended its regulations twice. The final change happened on June 24th when SBA shortened the (still unlawful) prohibition to no longer apply to Mr. Wilks. The Court also relieved the Plaintiffs from posting a bond for the extraordinary relief of an injunction as it would defeat the purpose of the PPP.

Congress tasked SBA with managing the PPP loans—\$659,000,000,000 in total—for businesses with fewer than 500 employees. But the agency disqualified Mr. Wilks from applying because he is still on probation. In doing so, SBA disregarded the design of Congress to make loans available to *all* small businesses expeditiously during a national crisis. NCLA argued that SBA exceeded the statutory authority that Congress delegated to the agency. The lawsuit challenged unlawful portions of SBA's Interim Final Rule that purport to implement PPP, and it called out the agency's Criminal History Rule as an arbitrary and capricious exercise of power.

NCLA will continue to press for regulations that adhere to the statute as written by Congress, and NCLA will urge courts not to defer to SBA's interpretation of the CARES Act (Coronavirus Aid, Relief, and Economic Security Act). Among other problems, as explained in NCLA's brief, giving *Chevron* deference to SBA's Interim Final Rule would offend the requirement for judicial independence in Article III of the Constitution as well as violate the Fifth Amendment's due process protections, which prohibit judges from displaying bias toward the litigation position of SBA over other litigants (e.g., by according it *Chevron* deference).

NCLA released the following statements:

“I am grateful to NCLA for their commitment to making this right. SBA was wrong to deny business owners like myself much-needed loans as intended by Congress during this time of crisis. This lifeline will allow me to keep the doors of my businesses open to service my community and keep my employees employed.”

— **Altimont Mark Wilks, Plaintiff in *Carmen’s Corner Store v. U.S. Small Business Administration***

“SBA changed these rules so often that it was impossible for banks and small businesses to keep up. We’re happy that Judge Blake’s ruling recognized the real-world cost that our clients have had to endure due to SBA’s lawless and erratic rulemaking.”

— **Jared McClain, Staff Counsel, NCLA**

“We are of course pleased with the Court’s extraordinary and quick action in this matter, as are our clients, but the Court should also have declared that the SBA has acted unlawfully and in contravention of the CARES Act in its administration of this important statute.”

— **John J. Vecchione, Senior Litigation Counsel, NCLA**

Click [here](#) to view full case summary.

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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