

# MITCHELL LAW

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Lyle W. Cayce  
Clerk of Court  
United States Court of Appeals for the Fifth Circuit  
F. Edward Hebert Building  
600 South Maestri Place  
New Orleans, Louisiana 70130-3408

**Re: *Braidwood Management, Inc. v. Becerra*, No. 23-10326 (5th Cir.)**

Dear Mr. Cayce:

The defendants claim that *Deanda v. Becerra*, No. 23-10159 (5th Cir. Mar. 12, 2024), precludes this Court from affirming the district court’s APA remedy. Not so.

*Deanda* rejected a district court’s decision to vacate 42 C.F.R. § 59.10(b) because the validity of that rule went unmentioned in the summary-judgment briefing, and the plaintiff first suggested vacatur when he submitted his proposed final judgment to the district court. *See* slip op. at 28 (“It was only *Deanda*’s proposed final judgment that first mentioned vacating 42 C.F.R. § 59.10(b).”). The opposing party therefore lacked an “opportunity to challenge” the vacatur remedy, and never received “meaningful notice” of it. Slip op. at 28 (quoting *Peterson v. Bell Helicopter Textron, Inc.*, 806 F.3d 335, 340 n.4 (5th Cir. 2015)).

In this case, the parties briefed *all* of the remedial questions at the summary-judgment stage, and the defendants received both “meaningful notice” and an “opportunity to challenge” the vacatur remedy that the plaintiffs were seeking. ROA.1841-1851; ROA.1869-1879; ROA.2054-2063; ROA.2093-2100. The defendants incorrectly state that the plaintiffs’ “first invocation of § 706 and vacatur—like in *Deanda*—came in a post-summary-judgment brief.” Letter from Daniel Aguilar, ECF. No. 326, at 2. The remedial issues were briefed during summary judgment, as the district court bifurcated the summary-judgment briefing schedule and established separate rounds of summary-judgment briefing on the constitutional and remedial questions. ROA.1828-1829 (scheduling order). All of the briefs that discuss the vacatur and section 706 issues in the district court have “summary judgment” in their title. ROA.1830; ROA.1854; ROA.2035; ROA.2072.

*Deanda* does not hold that that a litigant must plead or specifically mention an APA remedy in his complaint as a necessary condition to obtaining relief under section 706, as the defendants seem to suggest at times in their letter, and any such interpretation of *Deanda* would contradict Rule 54(c), *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 603–04 (2016), and *Sapp v. Renfroe*, 511 F.2d 172, 176, n.3 (5th Cir. 1975).

Respectfully submitted.

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