



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

May 12, 2023

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Arizona v. Mayorkas, No. 22-592

Dear Mr. Harris:

The petition for a writ of certiorari in the above-captioned case was granted on December 27, 2022. The case involves an emergency public-health order issued by the Centers for Disease Control and Prevention (CDC) under 42 U.S.C. 265 that temporarily suspended the introduction of certain noncitizens into the United States. The district court permanently enjoined and vacated that Title 42 order and the underlying regulation, 42 C.F.R. 71.40. The government appealed. This Court subsequently granted certiorari to review the court of appeals' order denying petitioners' motion to intervene on appeal. The Court also stayed the district court's judgment pending its consideration of the intervention issue.

By its terms, the operative Title 42 order terminates upon "the expiration of the Secretary of [Health and Human Services'] declaration that COVID-19 constitutes a public health emergency." 86 Fed. Reg. 42,828, 42,830 (Aug. 5, 2021). The Secretary is authorized to declare public health emergencies under 42 U.S.C. 247d, which specifies that those declarations automatically expire after 90 days unless renewed. 42 U.S.C. 247d(a). When the government filed its brief in this case on February 7, 2023, it explained that the Secretary intended to allow the public health emergency to expire on May 11, 2023. Gov't Br. 12. The government further explained that the expiration of the public health emergency and the operative Title 42 order would moot this case and warrant vacatur of the relevant lower-court orders:

The anticipated end of the public health emergency on May 11, and the resulting expiration of the operative Title 42 order, would render this case moot: Because the Title 42 order would have "expired by its own terms," this suit seeking only prospective relief would "no longer present[] a 'live case or controversy.'" Trump v. International Refugee Assistance, 138 S. Ct. 353, 353 (2017) (citation omitted) (quoting Burke v. Barnes, 479 U.S. 361, 363 (1987)). In that event, the government will ask the court of appeals to vacate the district court's judgment and remand with instructions to dismiss private respondents' suit as moot. See United States v. Munsingwear, 340 U.S. 36, 39 (1950). And because the mooting of the underlying case would also moot petitioners' attempt to intervene, it would likewise be appropriate for this Court to resolve the intervention dispute by vacating the court of appeals' order denying intervention and remanding with instructions to dismiss petitioners' motion as moot.

Ibid. On February 23, 2023, the Court removed this case from the argument calendar.

This letter is submitted to notify the Court that, as anticipated, the public-health emergency expired at 11:59 pm Eastern on May 11, 2023. See U.S. Department of Health and Human Services, COVID-19 Public Health Emergency (PHE), www.hhs.gov/coronavirus/covid-19-public-health-emergency/index.html. As a result, the Title 42 order has expired by its terms, and private respondents' challenge is now moot. As the government's brief explained, the mootness of the underlying dispute also moots petitioners' request to intervene on appeal, and it would therefore be appropriate for this Court to vacate the court of appeals' order denying intervention and remand with instructions to dismiss petitioners' motion as moot. See, e.g., International Refugee Assistance, 138 S. Ct. at 353 (describing such vacatur as the Court's "established practice").

The government's underlying appeal is being held in abeyance pending this Court's disposition of this case. See 22-5325 C.A. Doc. 1982224 (Jan. 20, 2023). Once this Court disposes of the case and the abeyance ends, the government intends to file a motion asking the court of appeals to vacate the district court's judgment under Munsingwear and remand with instructions to dismiss private respondents' suit as moot. The government is filing a similar motion in its pending appeal from a preliminary injunction preventing the implementation of CDC's April 2022 order terminating the Title 42 order, Louisiana v. CDC, No. 22-30303 (5th Cir.).

I would appreciate it if you could circulate this letter to Members of the Court.

Sincerely,

Elizabeth B. Prelogar
Solicitor General

cc: See Attached Service List

22-0592

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