

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
PETITIONERS

v.

STATE OF HAWAII, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

APPLICATION OF PETITIONERS FOR LEAVE FOR THE PARTIES TO FILE
OPENING, RESPONSE, AND REPLY BRIEFS IN EXCESS OF WORD LIMITS

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No. 17-965

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Pursuant to Rules 22 and 33.1(d) of the Rules of this Court, the Solicitor General, on behalf of petitioners President Donald J. Trump et al., respectfully requests that the parties be granted leave to file opening, response, and reply briefs in this case in excess of the word limits established by this Court's Rule 33.1(g)(v), (vi), and (vii). The government requests leave to file an opening brief of 20,000 words, for the respondents to file a response brief of 20,000 words, and for the government to file a reply brief of 8,000 words. Respondents have consented to this request.

1. Respondents in this case brought suit in the United States District Court for the District of Hawaii challenging various provisions of Proclamation No. 9645, 82 Fed. Reg. 45,161 (Sept. 27, 2017) (Proclamation). As relevant here, respondents contend that the Proclamation violates the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq., and the Establishment Clause. See Hawaii v. Trump, 878 F.3d 662, 674-675 (9th Cir. 2017) (per curiam). The Ninth Circuit upheld a global injunction barring enforcement of the Proclamation (with limited exceptions), concluding that respondents' claims are justiciable, that the Proclamation is not authorized by the INA or the President's inherent authority, and furthermore that it violates various provisions of the INA. Id. at 678-702. The court of appeals did not reach respondents' Establishment Clause claim. Id. at 702.

On January 19, 2018, this Court granted the government's petition for a writ of certiorari. In addition to the three questions presented by the petition -- whether respondents' challenges to the Proclamation are justiciable, whether the Proclamation is a lawful exercise of the President's authority to suspend entry of aliens abroad, and whether the global injunction against the Proclamation is impermissibly overbroad -- this Court directed the parties to address whether the Proclamation violates the Establishment Clause.

2. In light of the four questions presented and the complexity of the legal issues in this case, the word limits provided by this Court's Rules would be inadequate to allow for a thorough airing of the issues. In addition to addressing issues of justiciability and the injunction's overbreadth, the parties must address the meaning of multiple distinct provisions of the INA, as well as a separate claim under the Establishment Clause that was not discussed by the Ninth Circuit below but that was discussed extensively by the district court for the District of Maryland in IRAP v. Trump, 265 F. Supp. 3d 570, 616-629 (2017).

When this Court previously granted certiorari in Trump v. IRAP, No. 16-1436, and Trump v. Hawaii, No. 16-1540, both of which concerned a prior Executive Order whereby the President temporarily suspended entry of foreign nationals from some of the same countries, the Court granted the government's application to file a consolidated opening brief of 22,500 words and a consolidated reply brief of 10,000 words. Most of the same legal questions are also presented in this case.

3. Counsel for the respondents consents to this request. Pursuant to Rule 33.1(d), this application is being submitted more than 15 days before the date on which the government's opening brief is due, which is March 5, 2018.

CONCLUSION

The application for leave to file opening and response briefs in this case of 20,000 words and a reply brief of 8,000 words should be granted.

Respectfully submitted.

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Solicitor General

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