

IN THE
Supreme Court of the United States

THOMAS MORE LAW CENTER,

Petitioner,

v.

MATTHEW RODRIQUEZ, ACTING ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,

Respondent.

*On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit*

**PETITIONER'S MOTION FOR LEAVE TO FILE
MERITS REPLY BRIEF OUT-OF-TIME**

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Petitioner Thomas More Law Center respectfully seeks the Court's leave to file its merits reply brief one day out-of-time. In support of its motion, Petitioner states:

1. Oral argument is scheduled in this case and the consolidated case of *Americans for Prosperity Foundation v. Rodriguez*, No. 19-251, for Monday, April 26, 2021. Accordingly, under Supreme Court Rule 25.3, Petitioner's reply brief was due to "be received by the Clerk not later than 2pm 10 days before the oral argument," i.e., on Friday, April 16, 2021.

2. Regrettably, Petitioner docketed the deadline for the reply brief based on the Court's pre-July 1, 2019 Rules. Under Rule 25.3 of those Rules, the reply brief was due to "be received by the Clerk not later than 2 p.m. one week before the date of oral argument," i.e., on Monday, April 19, 2021.

3. As soon as Petitioner realized the rule change, on Saturday morning, April 17, 2021, Petitioner promptly efiled the reply brief, emailed the brief to Counsel of Record for Americans for Prosperity Foundation, California Attorney General Rodriguez, and the United States, and to the Clerk's office, and notified the Clerk's office of the mistake. The Clerk's office instructed Petitioner to also submit this Motion for Leave to File Merits Reply Brief Out-of-Time.

4. Although the submission of Petitioner's reply brief is after the expiration of time prescribed in current Rule 25.3, the Court should accept the brief for filing. The Court has the power, in its discretion and in the interests of justice, to accept a brief filed out-of-time. See generally *Bowles v. Russell*, 551 U.S. 205, 212 (2007) ("[t]he procedural rules adopted by the Court for the orderly transaction of its business are not jurisdictional and can be relaxed by the Court in the exercise of its discretion") (quoting *Schacht v. United States*, 398 U.S. 58, 64 (1970)). The absence of any jurisdictional language in Rule 25.3 confirms that it is a Rule governing the orderly processing of briefs that can be relaxed where appropriate. Compare Rule 25.3 ("any reply brief must actually be received by the Clerk not later than 2 p.m. 10 days before the date of oral argument) with, e.g., Rule 13.2 ("The clerk will not file any petition for a writ of certiorari that is *jurisdictionally* out of time. See, e.g., 28 U.S.C. § 2101(c).") (emphasis added).

5. Here, justice is best served by accepting Petitioner's merits reply brief for filing. All counsel and the Court have been provided with electronic copies of the brief, the modest delay in submission was purely a clerical error, and the brief presents important arguments that the Court should consider when deciding this dispute and the companion case. Petitioner apologizes for any inconvenience the Court has experienced from our mistake in docketing the deadline.

6. Counsel of Record for Americans for Prosperity Foundation and Counsel of Record for the California Attorney General both consent to the relief requested in this Motion.

7. For the foregoing reasons, Petitioner respectfully requests that the Court grant leave to accept their Merits Reply Brief outside the time limits contained in Rule 25.3.

Respectfully submitted,

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