

IN THE SUPREME COURT OF THE UNITED STATES

No. 18A_____

FNU TANZIN, SPECIAL AGENT, FBI, ET AL., APPLICANTS

v.

MUHAMMED TANVIR, ET AL.

APPLICATION FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, the Solicitor General respectfully requests a 30-day extension of time, to and including June 14, 2019, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case. The opinion of the court of appeals (App., infra, A1-A57) is reported at 915 F.3d 898. The judgment of the court of appeals was entered on May 2, 2018. A petition for rehearing was denied on February 14, 2019 (App., infra, A58-A60). Unless extended, the time for filing a petition for a writ of certiorari will expire on May 15, 2019. The jurisdiction of this Court would be invoked under 28 U.S.C. 1254(1).

1. The court of appeals held in this case that the Religious Freedom Restoration Act (RFRA), 42 U.S.C. 2000bb et seq., provides a cause of action for money damages against federal officers acting in their individual capacities. RFRA provides that the government "shall not substantially burden a person's exercise of religion" unless the government "demonstrates that application of the burden" furthers a "compelling governmental interest" and "is the least restrictive means" of doing so. 42 U.S.C. 2000bb-1(a) and (b). RFRA further provides that any "person whose religious exercise has been burdened in violation of" RFRA "may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government." 42 U.S.C. 2000bb-1(c). RFRA defines "government" to include a "branch, department, agency, instrumentality, and official (or other person acting under color of law) of the United States." 42 U.S.C. 2000bb-2(1).

Here, respondents are Muslim men who reside in New York or Connecticut. Each was born abroad, immigrated to the United States, and is now lawfully present as a U.S. citizen or permanent resident. They brought this suit against a number of federal officers in their individual capacities, alleging that that they were placed and maintained on the national "No Fly List" in retaliation for their refusal to serve as informants for the Federal Bureau of Investigation (FBI). Respondents contended,

among other things, that this violated their rights under RFRA and that they were entitled to money damages against the individual federal officers personally.

The district court dismissed the RFRA claim, holding that RFRA does not permit the recovery of money damages against federal officers sued in their individual capacities. The court of appeals reversed, holding that "appropriate relief" includes money damages in a RFRA suit against federal officials in their individual capacities. In reaching that result, the court distinguished Sossamon v. Texas, 563 U.S. 277 (2011), in which this Court held that similar language in the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA), 42 U.S.C. 2000cc et seq., does not provide for money damages against state officers sued in their individual capacities.

The government filed a petition for rehearing en banc, which was denied over the dissent of three judges. Judge Jacobs filed an opinion dissenting from the denial of rehearing en banc, which was joined by Judges Cabranes and Sullivan. Judge Cabranes also filed an opinion dissenting from the denial of rehearing en banc, which was joined by Judges Jacobs and Sullivan. Chief Judge Katzmann and Judge Pooler filed an opinion concurring in the denial of en banc review.

2. The Solicitor General is considering whether to file a petition for a writ of certiorari in this case. The additional time sought in this application is needed to permit further consultation between the Department of Justice and other interested agencies and, if a petition is authorized, to prepare and file it, and because the attorneys with principal responsibility for drafting the petition have been heavily engaged with the press of other matters before this Court.

NOEL J. FRANCISCO.
Solicitor General
Counsel of Record

MAY 2019

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