



U.S. Department of Justice
Office of the Solicitor General

Washington, D.C. 20530

September 2, 2020

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

Re: *Trump v. Sierra Club*, No. 20-138

Dear Mr. Harris:

We write in regards to respondent California's request, filed on September 1, 2020, for an eight-day extension of the time within which to file a brief in opposition in the above-captioned case. If California's request is granted, the government's petition for a writ of certiorari presumably would not be distributed in time for the Court's consideration at its first conference of the Term, on September 29, 2020, which in turn would make it difficult, absent expedited merits briefing, for the Court to hear argument in this matter (if the petition is granted) at the Court's January 2021 session. The government had previously identified the January 2021 session as the earliest practical opportunity for argument. Under the particular circumstances of these proceedings, we respectfully submit that California's request for additional time is unwarranted, although we ultimately defer to this Court's judgment.

The government filed its petition in this matter on August 7, 2020. The petition, filed pursuant to Rule 12.4 of the Rules of this Court, seeks review of two related Ninth Circuit decisions concerning actions taken by the Acting Secretary of Defense to transfer funds between appropriations accounts as part of the government's broader efforts to construct fencing along the southern border of the United States: *Sierra Club v. Trump*, 963 F.3d 874 (2020) (Pet. App. 1a-77a), and *California v. Trump*, 963 F.3d 926 (2020) (Pet. App. 78a-173a). The court of appeals entered judgment in both cases on June 26, 2020. A certiorari petition would have been timely if filed on or before November 23, 2020, but the government instead expedited its filing in order to permit the Court to consider the petition at the Court's first conference following the summer recess, on September 29, 2020.

Any brief in opposition is presently due on or before September 8, 2020. On September 1, 2020, respondent California requested an eight-day extension of that deadline, to and including September 16, 2020. If California's request is granted, it appears that the earliest date on which the petition could be distributed in the ordinary course would be September 23, 2020, for consideration at the Court's conference of October 9, 2020. As noted above, were the Court to grant the petition at its October 9 conference, it would be difficult for the Court to set the case for argument in the January sitting without expediting the merits briefing schedule.

California states in its September 1 letter that additional time is necessary in order for California to have an opportunity to respond to two amicus curiae briefs that may be filed on or around September 8. The government has received requests for consent to file amicus briefs from four parties: the U.S. House of Representatives (which indicated that it plans to oppose the petition); the Honorable Andy Barr, a Member of the U.S. House of Representatives; the Landmark Legal Foundation; and the American Center for Law and Justice. All of those parties already participated in the proceedings in the Ninth Circuit (although Landmark Legal Foundation filed a brief on behalf of other individuals and groups rather than in its own right, see C.A. Doc. 103).

In addition, this Court has already received extensive prior briefing—including from respondent California itself—about whether the questions presented in the petition warrant the grant of certiorari. That issue was previously litigated in connection with the government’s application for a stay of a nationwide injunction issued by the district court in *Sierra Club*. See 19A60 Gov’t Stay Appl. 19-34 (July 12, 2019); 19A60 Sierra Club Stay Opp. 15-41 (July 19, 2019). Respondent California participated in those proceedings as an amicus curiae, opposing the government’s stay application. See 19A60 California Br. 3-15 (July 19, 2019). On July 26, 2019, this Court granted the government’s application for a stay. 140 S. Ct. 1. The Court also recently received additional briefing about certiorari in connection with respondent Sierra Club’s July 22, 2020 motion to lift the stay, which the Court denied.

Respondent Sierra Club asserted in its motion to lift the stay that ongoing construction activities at the southern border are causing irreparable harm. See 19A60 Sierra Club Mot. to Lift Stay 4, 20 (July 22, 2020). The government strenuously disputes that assertion. Nonetheless, it is notable that respondent Sierra Club has not requested an extension of the time to file its own brief in opposition and has not joined California’s request.

In light of the foregoing, we believe that California’s request for additional time to respond to amicus briefing is unwarranted, although we ultimately defer to this Court’s judgment.

Sincerely,

Jeffrey B. Wall
Acting Solicitor General

cc: See Attached Service List

20-0138

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