



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

November 20, 2020

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

Re: Department of Homeland Security v. New York, No. 20-449

Dear Mr. Harris:

The petition for a writ of certiorari in the above-captioned case was filed on October 7, 2020. The responses are currently due, after one extension, on December 9, 2020. Respondents have sought a further extension of time to and including January 8, 2021 within which to file their responses. On behalf of the Department of Homeland Security (DHS) and the other governmental petitioners, we write to express our opposition to any such further extension.

The district court entered the preliminary injunctions at issue in this case on October 11, 2019. See Pet. App. 121a, 158a. This Court entered a stay pending appeal of those injunctions on January 27, 2020, and directed that its stay would remain in effect “pending disposition of the Government’s appeal in the United States Court of Appeals for the Second Circuit and disposition of the Government’s petition for a writ of certiorari, if such writ is timely sought.” 140 S. Ct. 599, 599. On August 4, 2020, the court of appeals affirmed the district court’s preliminary injunctions. See Pet. App. 1a-90a.

The government filed its petition for a writ of certiorari well before it was due and early enough to ensure that even if respondents received a 30-day extension of the time for filing their response, the Court would still be able to consider the petition at its January 8, 2021 Conference and, if it granted the petition, hear argument in the case this Term. The government acted with expedition because of the significant uncertainty that the court of appeals’ decision has created about the status of the DHS rule at issue: notwithstanding this Court’s stay, the conflicting decisions about the rule’s validity from the Second, Fourth, Seventh, and Ninth Circuits, see Pet. 24-26, have created confusion that only a decision from this Court can resolve, and the government and the public have a strong interest in obtaining such resolution as quickly as possible.

Granting respondents’ requests for a further extension of time, however, would—absent a departure from this Court’s ordinary practices—prevent the Court from even considering the petition until at least its February 19, 2021 Conference, and would prevent the Court from hearing argument in the case until October Term 2021. No sound basis exists for such delay.

Respondents speculate that DHS may choose in the future to rescind the rule. Even if respondents' speculation about the agency's future actions were to prove true, however, the agency would need to go through notice-and-comment rulemaking again before making any final determination—a process that would itself likely be subject to further litigation. That just underscores why this Court should have the opportunity to address the current rule's validity, and the breadth of authority granted by the underlying statutory provisions, this Term. Respondents' request would, as a practical matter, deprive this Court of that choice.

Accordingly, the government respectfully requests that the Court grant no further extension of time within which to respond to the government's petition in this case.

Sincerely,

Jeffrey B. Wall
Acting Solicitor General

cc: See Attached Service List

20-0449

UNITED STATES DEPARTMENT OF HOMELAND
SECURITY, ET AL.
NEW YORK, ET AL.

BAHER AZMY
CENTER FOR CONSTITUTIONAL RIGHTS
666 BROADWAY
7TH FLOOR
NEW YORK, NY 10012
212-614-6464
BAZMY@CCRJUSTICE.ORG

JONATHAN H. HURWITZ
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON, LLP
1285 AVENUE OF THE AMERICAS
NEW YORK, NY 10019-
212-373-3254
JHURWITZ@PAULWEISS.COM

CLARE E. KINDALL
ASSISTANT ATTORNEY GENERAL
OFFICE OF THE ATTORNEY GENERAL
10 FRANKLLIN SQUARE
NEW BRITAIN, CT 06051
860-827-2683
CLARE.KINDALL@CT.GOV

GEORGIA MARY PESTANA
INTERIM CORPORATION COUNSEL
NEW YORK LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007
212-356-2400

JULIO A. THOMPSON
ASSISTANT GENERAL COUNSEL
VERMONT OFFICE OF THE ATTORNEY
GENERAL
1711 BLISS ROAD
EAST MONTPELIER,, VT 05651
802-828-5519
JULIO.THOMPSON@VERMONT.GOV

BARBARA DALE UNDERWOOD
SOLICITOR GENERAL
ATTORNEY GENERAL'S OFFICE
28 LIBERTY STREET
NEW YORK, NY 10005-1400
212-416-6274
BARBARA.UNDERWOOD@AG.NY.GOV