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**DEPARTMENT OF JUSTICE**



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February 9, 2021

By Electronic Filing

Hon. Scott S. Harris  
Clerk of the Supreme Court  
Supreme Court of the United States  
1 First Street, NE  
Washington, DC 20543

RE: *Joseph Biden, et al. v. Sierra Club, et al.*, No. 20-685  
Request for extension of time

Dear Mr. Harris:

My office represents respondent the State of California in this case. The petition for certiorari was filed on November 17, 2020, under the case name *Donald Trump, et al. v. Sierra Club, et al.* Responses to the petition are currently due on February 18, 2021. Pursuant to Rule 30.4, we respectfully request that the time in which to respond to the petition be extended by 90 days, to May 19, 2021. Counsel for petitioners and for the other respondents have authorized us to state that they consent to the request.

The petition in this case requested either plenary review or, in the alternative, that the petition be held pending the Court's disposition of *Trump v. Sierra Club*, No. 20-138 (certiorari granted Oct. 19, 2020). The petition noted that each case involves questions about the legality of the federal government's transfers of funds appropriated in the 2019 Department of Defense Appropriations Act to other accounts that would fund border wall construction along the U.S.-Mexico border. Pet. 3; *see also id.* at 33 (stating that the two cases also involve "overlapping issues presented . . . concerning whether the plaintiffs have a cognizable cause of action to challenge military spending").

On February 1, 2021, the petitioners filed a motion in No. 20-138 to hold further briefing in that case in abeyance and to remove that case from the February 2021 argument calendar. The motion stated that "[t]he President has directed the Executive Branch to undertake an assessment of 'the legality of the funding and contracting methods used to construct the wall,' . . . and also to develop a plan within 60 days for 'the redirection of funds concerning the southern border wall, as appropriate and consistent with applicable law.'" *Id.* at 5. The motion stated that "[i]t would therefore be appropriate for the Court to hold further proceedings in this case in abeyance to allow for the completion of the process that the President has directed," and promised that if

February 9, 2021

Page 2

abeyance were granted, petitioners would “advise the Court of material developments that would support further action by the Court.” *Id.* at 5-6. On February 3, the Court granted the motion and removed No. 20-138 from the February argument calendar.

In light of the presidential actions mentioned above and this Court’s order granting an abeyance of No. 20-138, respondents respectfully request that the due date for responses to the petition in No. 20-685 be extended by 90 days, to May 19, 2021. This Court has granted two previous requests for extensions of time for the response.

Sincerely,

s/ Joshua A. Klein

JOSHUA A. KLEIN  
Deputy Solicitor General

For XAVIER BECERRA  
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