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DEPARTMENT OF JUSTICE



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May 6, 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. Responses to the petition are currently due on May 19, 2021. Pursuant to Rule 30.4, we respectfully request that the time in which to respond to the petition be extended by 60 days, to July 18, 2021. Counsel for all other respondents join in the request. Counsel for petitioners 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—and that each case implicated questions about the extent to which plaintiffs have the ability to challenge such transfers. Pet. 3; *see also id.* at 33 (discussing “overlapping issues presented . . . concerning whether the plaintiffs have a cognizable cause of action to challenge military spending”).¹

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, in light of the President's recent Executive Order requiring “an assessment of ‘the legality of the

¹ Case No. 20-138 involves transfers, under Sections 8005 and 9002 of the Department of Defense Appropriations Act, 2019, (2019 Act), Pub. L. No. 115-245, Div. A, Tit. VIII, 132 Stat. 2999, to an account under 10 U.S.C. § 284. This case involves transfers under 10 U.S.C. § 2808.

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funding and contracting methods used to construct the wall,” and creation of a plan to “redirect[] . . . funds concerning the southern border wall, as appropriate and consistent with applicable law.” *Id.* at 5. On February 3, the Court granted the motion. In light of that development in No. 20-138, California moved to extend to May 19 the time for all respondents to respond to the petition in this case, and the Court granted that motion on February 10.

On April 30, respondents filed a letter in *Trump v. Sierra Club*, No. 20-138, requesting that that case remain in abeyance for the time being. The letter advised the Court that the Deputy Secretary of Defense had that day “issued a memorandum directing the Secretary of the Army to “take immediate action to cancel” the construction projects at issue in that case and “authoriz[ing] the Department of the Army to use any funds transferred for construction ‘to pay contract termination costs.’” Letter in No. 20-138, at 1. Respondents stated that:

As a result of those actions, DoD has now made clear that it will not undertake any further Section 284 border-barrier construction, and that any funds transferred under Sections 8005 or 9002 and obligated for such construction instead will be used for contract termination costs and the costs of certain safety measures. Those changes in factual circumstances may ultimately have a bearing on the Court’s review of the questions presented in this case. But because the Secretaries have not yet completed the plan that is being developed in response to the President’s Proclamation, and the completion of that process may affect the proper disposition of this case, we respectfully submit that it would be premature for this Court to take any action at this time.

Id. at 2.

In light of the respondents’ representations in No. 20-138, the current abeyed status of that case, and the relationship between the issues in that case and those in this one, respondents respectfully request that the due date for responses to the petition in No. 20-685 be extended by 60 days, to July 18, 2021. This Court has granted three previous requests for extensions of time for the response.

Sincerely,

s/ Joshua A. Klein

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For ROB BONTA
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