

ORAL ARGUMENT PREVIOUSLY SCHEDULED MARCH 31, 2017

No. 16-5287

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Save Jobs USA,
Plaintiff-Appellant,

v.

United States Department of
Homeland Security,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA No. 15-cv-615
The Hon. Tanya S. Chutkan

**DEFENDANT-APPELLEE'S MOTION TO HOLD
PROCEEDINGS IN ABEYANCE FOR SIX
MONTHS**

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Pursuant to Fed. R. App. P. 27 and D.C. Court's Circuit Rule 27, and in response to the Court's February 10, 2017 order directing the parties to, by April 3, 2017, submit motions directed at how to proceed with this appeal, Defendant-Appellee the Department of Homeland Security respectfully request that this Court hold this case in abeyance for 180 days, up to and including September 27, 2017.

1. This case involves an Administrative Procedure Act challenge to the Executive's legal authority to issue, through notice and comment rulemaking, a rule, Employment Authorization for Certain H-4 Dependent Spouses, 80 Fed. Reg. 10,284-10,312 (Feb. 25, 2015) (H-4 Rule), permitting certain aliens maintaining H-4 nonimmigrant status,¹ *see* 8 U.S.C. § 1101(a)(15)(H), to apply for, and if deemed eligible, to receive employment authorization from the Department of Homeland Security.

2. On February 10, 2017, this Court granted a consent motion filed by Defendant-Appellee to hold this case in abeyance for sixty days. That motion indicated an abeyance was requested "to allow incoming leadership personnel adequate time to consider the issues." *See* Abeyance Motion at 3.

3. Since then, the Department of Homeland Security has concluded that it is appropriate to actively reconsider whether to revise the H-4 Rule through notice-

¹ H-4 nonimmigrants are spouses and children under 21 years of age of, *inter alia*, H-1B nonimmigrants. *See* 8 U.S.C. § 1101(a)(15)(H); *see also* 8 CFR 214.1(a)(2), 214.2(h)(9)(iv).

and-comment rulemaking.

4. Accordingly, the Department requests the Court hold this case in abeyance for 180 days to permit the Department time to reconsider the H-4 Rule and whether issuance of a notice of proposed rulemaking relating to it is appropriate. The Government will update the court every 60 days concerning the Department's review, and will inform the Court promptly should it determine new rulemaking is or is not appropriate before 180 days elapse.

5. An order holding this case in abeyance will serve judicial economy and prevent the expenditure of the resources of the Court and the parties. If the Department elects to promulgate a new rule that is different from the Rule at issue in this appeal, that may obviate the need for judicial review of the current rule.²

Accordingly, Defendant-Appellee respectfully requests that the Court hold this case in abeyance for 180 days.

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² On March 6, 2017, putative interveners filed a motion seeking to intervene in this appeal. Both named parties opposed the motion, which remains pending. The Government submits there is no basis to believe that it would not defend this appeal if the Department of Homeland Security determines that no new rulemaking is warranted, and unless and until there is, there is no basis to permit intervention. However, should that no longer be the case, the Government does not oppose the putative interveners filing a renewed motion at that time.

Dated: April 3, 2017

Respectfully submitted,

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**CERTIFICATE PURSUANT TO FED. R. APP. P. 27, 32(A)(7)(C) AND
CIRCUIT RULE 27(d)(2), 32(e)**

Pursuant to Fed. R. App. P. 27 and D.C. Circuit Rule 27(d)(2), the attached motion is proportionately spaced, has a typeface of 14 points or more, and contains 467 words, not including those sections excluded from the word count under applicable rules.

s/ Erez Reuveni
EREZ REUVENI
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia by using the appellate CM/ECF system on April 3, 2017.

s/ Erez Reuveni
EREZ REUVENI
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