Filed: 04/03/2017

## **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

CHAD A. READLER

Acting Assistant Attorney General Civil Division

United States Department of Justice

United States Department of Justice

WILLIAM C. PEACHEY

Director, Office of Immigration Litigation, District Court Section **EREZ REUVENI** 

Senior Litigation Counsel

P.O. Box 878, Ben Franklin Station

Washington, DC 20044-0878 Telephone: (202) 307-4293

Attorneys For Defendant-

Appellant

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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, 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-

<sup>&</sup>lt;sup>1</sup> 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.<sup>2</sup>

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

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<sup>&</sup>lt;sup>2</sup> 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,

CHAD A. READLER
Acting Assistant Attorney General
Civil Division

WILLIAM C. PEACHEY
Director
Office of Immigration Litigation
District Court Section

GLENN M. GIRDHARRY Assistant Director

Isl Erez Reuveni
EREZ REUVENI
Senior Litigation Counsel
United States Department of Justice
P.O. Box 868, Ben Franklin Station
Washington, DC 20044
Phone: (202) 307-4293
Erez.r.reuveni@usdoj.gov

**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.

<u>s/ Erez Reuveni</u>EREZ REUVENISenior Litigation Counsel

### **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.

<u>s/ Erez Reuveni</u>EREZ REUVENISenior Litigation Counsel