Oral Argument Not Yet Rescheduled
No. 16-5287

United States Court of Appeals

for the

District of Columbia Circuit

Save Jobs USA,

Appellants,

v.

United States Department of Homeland Security

Appellee.

On appeal from an order entered in the
United States District Court for the District of Columbia
1:15-cv-615
The Hon. Tanya S. Chutkan

Plaintiff-Appellant's Motion to Reschedule Briefing and Oral Argument

On the Brief:
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September 20, 2017

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Appellant, Save Jobs USA, respectfully moves this Court to reschedule briefing and oral argument.

DISCUSSION

This case presents the question of whether the Executive Branch has unfettered authority to permit aliens to work in the United States through regulation. H-4 visas permit dependents guestworkers in the H visa category to accompany or join them in the United States. 8 U.S.C. § 1101(a)(15)(H). The regulations at issues authorize certain spouses of H-1B guestworkers to be employed while in H-4 visa status. Employment Authorization for Certain H-4 Dependent Spouses, 80 Fed. Reg. 10,284 (Feb. 25, 2015) (codified at 8 C.F.R. §§ 214, 274a) ("H-4 Rule"). The question in this case is whether allowing such employment is within U.S. Department of Homeland Security (DHS) authority in the absence of any congressional authorization.

On December 2, 2016, this Court issued a scheduling order for briefing and on January 10, 2017, this Court scheduled oral argument for March 31, 2017.

Save Jobs USA filed its opening brief with the Court on January 11, 2017.

Prior to filing its response, on February 2, 2017, DHS moved this Court to hold this case in abeyance for 60 days. DHS explained that it needed this delay because of the change in presidential administrations and the need to give "incoming leadership personnel adequate time to consider

the issues." *Id.* Save Jobs USA consented to DHS's motion for the first delay. *Id.*

On February 10, 2017, this Court granted DHS's motion to hold the case in abeyance and ordered the parties to file motions to govern the proceedings in this case by April 3, 2017.

In response to that Order, Save Jobs USA moved to reschedule briefing and oral argument. App. Mot., Apr. 3, 2016. DHS made a cross-motion to hold the case in abeyance for additional 180 days. Resp. Mot., Apr. 3, 2017.

On June 6, 2017, this Court denied Save Jobs USA's motion and granted DHS's motion to delay the case further. This Court ordered both parties "to file motions to govern further proceedings by September 27, 2017." This motion is made in response to that order.

Save Jobs USA again moves this Court to reschedule briefing and oral argument to bring this case to a conclusion. Save Jobs USA has already filed its opening brief, so just the response, reply, and oral argument need to be scheduled.

There have now been two delays in this case, yet DHS has taken no tangible action and has made no publication in the Federal Register related to the rule at issue. This Court should conclude that further delay would serve no purpose, considering that:

1. Rescission of the rule is not likely to put end to the litigation. The rule at issue benefits some individuals, 80 Fed. Reg. at 10,285–86 (alien

guestworkers and employers) while it harms others, 80 Fed. Reg. at 10,295 (American workers). A party has already moved to intervene as an appellee/defendant. Proposed Intervener's Mot., Mar. 6, 2017. Thus, if DHS decides to rescind the rule in question, that rescission is likely to be challenged in another lawsuit.

2. The longer the H-4 Rule remains in effect, the longer American workers suffer injury from foreign competitors in their job market. In addition, the number of guestworkers employed under the rule continues to grow each year. *Number of Approved Employment Authorization Documents, by Classification and Basis for Eligibility October 1, 2012—June 29, 2017*, U.S. Citizenship and Immigration Services.[1] The longer a decision is delayed, the more will justice be denied to those American workers and the more disruptive will the impact of a redress of that injustice be on the families of foreign guestworkers.

3. Instead of rescinding the rule, DHS may use this delay to put a new rule in place that still allows aliens on H-4 visas to be employed, but under different terms. In that case, DHS may argue that the current lawsuit is moot, and that Save Jobs USA must start over from the beginning with a new lawsuit—an alternative that results in a new round litigation.

Accordingly, the most efficient path to deal with the questions of executive power raised by the H-4 Rule is to bring this case to a conclusion.

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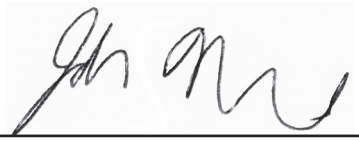
1 Available at https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/eads-by-basis-for-eligibility.pdf

Respectfully submitted,
Dated: September 20, 2017



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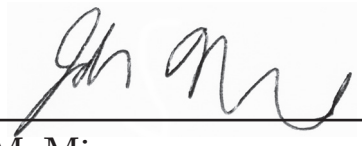
CERTIFICATE OF COMPLIANCE WITH RULE 32(A)

This brief complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because this brief contains 736 words, excluding the parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Mac 2011 using 14 pt. Caslon.



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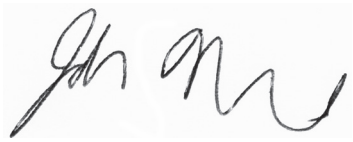
CERTIFICATE OF SERVICE

I certify that on September 30, 2017, I filed Plaintiff-Appellant's Motion to Reschedule Briefing and Oral Argument with the Clerk of the Court using the CM/ECF system that will provide notice and copies to all parties' attorneys of record.



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