



U.S. Department of Justice
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September 16, 2019

Hon. Mark Langer
Clerk, U.S. Court of Appeals for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse &
William B. Bryant Annex
333 Constitution Ave., N.W.
Washington, D.C. 20001

Re: *Save Jobs USA v. Dep't of Homeland Sec.*, Case No. 16-5287 (D.C. Cir.) (oral argument scheduled for September 27, 2019, before Judges Tatel, Griffith, and Silberman)

Dear Mr. Langer:

I write on behalf of the defendant-appellee, the U.S. Department of Homeland Security (DHS), in the above-referenced appeal to respond to the Court's September 11, 2019 Order to "show cause why the September 27, 2019 oral argument should not be removed from the oral argument calendar and indefinitely postponed." DHS continues to believe that the impending notice of proposed rulemaking (NPRM), which shall propose removing H-4 dependent spouses from the class of aliens eligible for employment authorization, warrants staying this appeal because it would effectively rescind the challenged H-4 Rule, *Employment Authorization for Certain H-4 Dependent Spouses*, 80 Fed. Reg. 10,284 (Feb. 25, 2015), 8 C.F.R. §§ 214, 274a, and moot this case. *See* Appellee's Brief at 36–37; *see also Wash. All. of Tech. Workers v. DHS*, 650 F. App'x 13, 14 (D.C. Cir. 2016) (dismissing appeal as moot once the prior rule was "no longer in effect"). Accordingly, DHS believes that oral argument should be indefinitely postponed while the proposed rule remains under review.

As explained in DHS's letter of September 10, 2019, DHS formally submitted the proposed rule, titled *Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization* (H-4 EAD proposed rule), to both the Office of Management and Budget (OMB) and Office of Information and Regulatory Affairs (OIRA) for their review under Executive Order 12866 on February 20, 2019.

The proposed rule is currently undergoing the interagency process as required by Executive Order 12866. As previously indicated, DHS's intention to proceed with publication of the H-4 EAD proposed rule remains unchanged. At this point, DHS has informed counsel that it believes the earliest possible publication date for that rule would be in spring 2020. Although that timeframe is aspirational, DHS believes that the September 27, 2019 oral argument should be removed from the calendar and postponed and DHS ordered to provide status updates in accordance with a schedule the Court deems appropriate.

Sincerely,

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By: /s/ Joshua S. Press

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cc: Counsel of Record (by ECF)

CERTIFICATES OF SERVICE AND COMPLIANCE

I hereby certify that this filing is 320 words, and therefore complies with the word limitations set by this Court's September 11, 2019 order and this Circuit's local rules.

I hereby certify that on September 16, 2019, I electronically filed the foregoing letter brief with the Clerk of the Court by using the appellate CM/ECF system. Counsel of record are registered CM/ECF users.

/s/ Joshua S. Press

JOSHUA S. PRESS

Trial Attorney

U.S. Department of Justice