



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

June 13, 2017

Honorable Scott S. Harris
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Donald J. Trump, et al. v. State of Hawaii, et al., No. 16A1191

Dear Mr. Harris:

The government filed its application for stay pending appeal to the United States Court of Appeals for the Ninth Circuit on June 1, 2017. Pursuant to this Court's scheduling order, respondents filed a response to the application on June 12, 2017. In the ordinary course, the government would now complete the briefing on its application by filing a reply.

After respondents' response was filed, however, the Ninth Circuit issued its decision in the case. That decision is the first addressing the Executive Order at issue to rest relief on statutory rather than constitutional grounds. Because the Ninth Circuit's decision rests on different grounds than the decisions of the district court here or of the Fourth Circuit in the parallel litigation, the government could file a superseding application for a stay that is specifically addressed to the court of appeals' decision. But rather than reset the stay briefing entirely, the government believes that it would be more efficient simply to supplement the briefing on the government's current stay application. That application seeks relief that is still applicable in the current circumstance, and some of the issues—such as alternative grounds on which respondents might seek to support the judgment below—will overlap.

In the government's view, the need to address the stay factors in light of the Ninth Circuit's decision counsels in favor of structuring further briefing on the government's stay application in a manner that mirrors the structure of briefing on a new stay application. We therefore propose that the government file a brief (limited to 30 pages) in support of its stay application by Thursday, June 15, at 3 p.m.; respondents file a response (also limited to 30 pages) by Monday, June 19, at 3 p.m., and the government file a reply (limited to 15 pages) by Wednesday, June 21, at 3 p.m. Under that schedule, the matter will be fully briefed by the Court's last scheduled conference on June 22. In light of the short timing, the government will continue to request that its stay papers also be treated as a petition for certiorari and that, if the Court grants review of the Fourth Circuit

decision, it should grant review of the Ninth Circuit's decision as well and consolidate the cases for argument.

Counsel for respondents objects to the government's filing of a reply brief and has asked us to include the following statement in this letter: "Counsel for plaintiffs Neal Katyal opposes this schedule. Plaintiffs do not believe two additional briefs by the Government on this stay application would be appropriate, and they fear that a third Government brief will unduly delay resolution of this case. They will respond to our scheduling proposal in more detail shortly."

We respectfully submit that the filing of a reply brief is appropriate here. Because the Ninth Circuit's decision rests on statutory grounds that are not adequately addressed in the parties' existing papers, once respondents address the merits of that decision, the government should have the usual opportunity to reply. Filing a reply brief will not unduly delay resolution of this case, because it will be fully briefed by the June 22 Conference.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey B. Wall" followed by a stylized flourish or set of initials.

Jeffrey B. Wall
Acting Solicitor General

cc: See Attached Service List

SERVICE LIST:

Neal Kumar Katyal
HOGAN LOVELLS US LLP
555 Thirteenth Street NW
Washington, DC 20004
Telephone: (202) 637-5600
Email: neal.katyal@hoganlovells.com

Douglas S. Chin, Attorney General of the State of Hawaii
DEPARTMENT OF THE ATTORNEY GENERAL, STATE OF HAWAII
425 Queen Street
Honolulu, HI 96813
Telephone: (808) 586-1500
Email: hawaiiag@hawaii.gov

Richard D. Bernstein
Willkie Farr & Gallagher LLP
1875 K Street, NW
Washington, DC 20006
Telephone: 202-303-1100