

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 THROUGH
DECEMBER 31, 2017**

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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 June 23, 2017 order directing the parties to submit, by September 27, 2017, motions directed at how to proceed with this appeal, Defendant-Appellee the Department of Homeland Security (DHS) respectfully requests that this Court hold this case in abeyance through December 31, 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 DHS.

2. On February 10, 2017, this Court granted a consent motion filed by DHS to hold this case in abeyance for 60 days. That motion indicated that an abeyance was requested "to allow incoming leadership personnel adequate time to consider the issues." Abeyance Motion (Feb. 10, 2017) at 3.

3. On April 3, 2017, DHS requested an abeyance of an additional 180 days. *See* Abeyance Motion (April 3, 2017) at 2-3. That motion indicated that DHS had concluded that it is appropriate to actively reconsider whether to revise the H-4

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).

Rule through notice-and-comment rulemaking” and requested that “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.” *Id.* at 2.

4. On April 18, 2017, the President issued Executive Order 13,788, Buy American and Hire American, 82 Fed. Reg. 18837 (April 18, 2017). The Order provides that “[i]n order to create higher wages and employment rates for workers in the United States, and to protect their economic interests, it shall be the policy of the executive branch to rigorously enforce and administer the laws governing entry into the United States of workers from abroad, including section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)).” *Id.*, § 2(b). To effectuate this policy, the Order instructs the “Secretary of State, the Attorney General, the Secretary of Labor, and the Secretary of Homeland Security” to, “as soon as practicable, and consistent with applicable law, propose new rules and issue new guidance, to supersede or revise previous rules and guidance if appropriate, to protect the interests of United States workers in the administration of our immigration system. . . .” *Id.*, § 5.

5. Consistent with the President’s directive, DHS is assessing whether it is appropriate to issue a notice of proposed rulemaking relating to the H-4 Rule. *See* Declaration of Kevin J. Cummings, Ex. 1, ¶¶ 5-7. Although DHS previously

requested 180 days in order to make this determination, Executive Order 13,788 is an intervening event necessitating careful, considered review of all of DHS's immigration policies to ensure that the interests of U.S. workers are being protected. *Id.*, ¶ 6. Accordingly, DHS had to refocus its review of the H-4 Rule to ensure that it meets the newly announced priorities and to decide whether to undertake a new rulemaking concerning the H-4 Rule and comply with the President's Order. *Id.*

6. DHS is diligently conducting this review, evaluating next steps, and plans to announce its intentions in the fall Unified Agenda, which it expects the Office of Management and Budget (OMB) to publish by the end of the calendar year 2017. *Id.*, ¶ 7.

7. Accordingly, the Department requests the Court hold this case in abeyance through December 31, 2017, to permit it to complete the review mandated by Executive Order 13,788 and also to adequately assess how to act regarding the H-4 Rule. DHS will update the court promptly if its review is completed prior to the end of the calendar year.

8. 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.

Accordingly, Defendant-Appellee respectfully requests that the Court hold this case in abeyance through December 31, 2017.

Dated: September 27, 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 740 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 September 27, 2017.

s/ Erez Reuveni
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