

No. 20-17132

In the
United States Court of Appeals
for the
Ninth Circuit

NATIONAL ASSOCIATION OF MANUFACTURERS, et al.,
Plaintiffs-Appellees,

– v. –

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, et al.,
Defendants-Appellants.

On appeal from the United States District Court
for the Northern District of California
Case No. 20-cv-4887
Hon. Jeffrey S. White

UNOPPOSED MOTION TO CONTINUE ORAL ARGUMENT

Pursuant to Ninth Circuit Rule 27-1, Plaintiffs-Appellees respectfully request a continuance of the oral argument in this case, which is currently set for February 18, 2021, in order to conserve party and judicial resources. Undersigned counsel has conferred with counsel for Defendants-Appellants, who stated that Defendants-Appellants do not oppose this motion.

1. This case is a challenge to the legality of a presidential proclamation issued by President Trump in June of 2020, which restricted temporary

work-based visas until December 31, 2020. *See Suspension of Entry of Immigrants and Nonimmigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak*, 85 Fed. Reg. 38,263 (June 22, 2020) (Proclamation 10052). On October 1, 2020, the district court preliminarily enjoined the government from enforcing or implementing Proclamation 10052's entry ban against Plaintiffs and their associational members. *See* ER 1-25.

2. Proclamation 10052's original expiration date of December 31, 2020 was later extended by a subsequent proclamation. *See Suspension of Entry of Immigrants and Nonimmigrants Who Continue To Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak*, 86 Fed. Reg. 417, 418 (December 31, 2020) (Proclamation 10131). As a result, Proclamation 10052 will now expire by its own terms on March 31, 2021. *Id.*

3. Based on Defendants-Appellants' supplemental brief of January 20, 2021, the parties agree that because Proclamation 10131 extended the expiration date of Proclamation 10052, the district court's injunction remains effective.

4. Plaintiffs-Appellees are unaware of any plans within the Biden administration to extend Proclamation 10052 beyond its current expiration date. If no extension is forthcoming, this appeal will almost certainly

become moot as of April 1, 2021. *See, e.g., Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (“A case becomes moot—and therefore no longer a ‘Case’ or ‘Controversy’ for purposes of Article III—‘when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.’”); *Bd. of Trs. Of Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195, 1198-1199 (9th Cir. 2019) (en banc) (“[I]n determining whether a case is moot, we should presume that the repeal, amendment, or expiration of legislation will render an action challenging the legislation moot, unless there is a reasonable expectation that the legislative body will reenact the challenged provision or one similar to it.”).

5. In order to conserve judicial resources—as well as those of the private plaintiffs and the government—Plaintiffs-Appellees respectfully submit that good cause exists to continue the oral argument date in this appeal beyond March 31, 2021.

6. If the Court grants the requested continuance, Plaintiffs-Appellees propose that the parties file a status report by April 7, 2021, informing the Court whether Proclamation 10052 has been extended or has expired, and stating their positions on the appropriate next steps for the resolution of this appeal.

CONCLUSION

The Court should continue oral argument beyond March 31, 2021.

Respectfully submitted,

/s/ Paul W. Hughes

Paul W. Hughes

Michael B. Kimberly

Sarah P. Hogarth

McDermott Will & Emery LLP

500 North Capitol Street NW

Washington, DC 20001

(202) 756-8000

William G. Gaede, III

McDermott Will & Emery LLP

275 Middlefield Road, Suite 100

Menlo Park, CA 94025

(650) 815-7400

Counsel for Plaintiffs-Appellees

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