



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

January 27, 2021

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

Re: Robert M. Wilkinson, Acting Attorney General, et al. v. City and County of San Francisco, et al., No. 20-666

Dear Mr. Harris:

On November 13, 2020, the government filed the petition for a writ of certiorari in the above-captioned case, seeking review of a decision of the Ninth Circuit concerning certain conditions that the Department of Justice imposed on awards made under the Edward Byrne Memorial Justice Assistance Grant (Byrne JAG) program for Fiscal Year 2017. Pet. 1-35. The government's petition is currently pending and has been distributed today for consideration at the Court's conference of February 19, 2021. In its response to the government's petition, filed on January 13, 2021, respondent California suggested that, in light of the then-"impending transition in federal administrations, * * * it would be appropriate for the Court to defer action on th[e] petition * * * until it can ascertain the position of the incoming administration on these issues." California Cert. Br. 7; see *id.* at 16-18; see also San Francisco Br. in Opp. 36 (opposing certiorari but suggesting that, "[i]n the alternative, the Court should hold the petition[] to hear the incoming presidential administration's position"); *id.* at 16-19. The government agrees with California's suggestion that the Court hold the petition in abeyance pending a determination by the current Administration of its position concerning the issues presented in the petition. Cf. Stephen M. Shapiro et al., *Supreme Court Practice* § 5.9, at 5-31 (11th ed. 2019) (noting other circumstances in which the Court will defer action on a pending petition for a writ of certiorari).

In addition, as respondents in No. 20-666 have noted, two other petitions for writs of certiorari are pending that seek review of a decision of the Second Circuit concerning the same Byrne JAG conditions at issue here, and that raise the same or substantially similar questions. *E.g.*, California Cert. Br. 16-17 (discussing *New York v. Department of Justice*, No. 20-795 (filed Dec. 7, 2020), and *City of New York v. Department of Justice*, No. 20-796 (filed Dec. 7, 2020)). In its combined response to those petitions, the government recommended that both be granted and that, in light of the significant overlap between those petitions and the government's petition in this case (No. 20-666), all three petitions be consolidated. 20-795 & 20-796 Gov't Cert. Mem. 1-2, 5-7. Those other two petitions have also been distributed for the Court's February 19 conference. In light of the overlap among the cases, if the Court holds the government's petition in this case in abeyance, the Court also may wish to defer consideration of the petitions in Nos. 20-795 and 20-796 so that the Court may consider all three petitions together at an appropriate time, as

respondents in this case have suggested. See California Cert. Br. 7, 16; San Francisco Br. in Opp. 3, 36. We are accordingly serving a copy of this letter on counsel for petitioners in Nos. 20-795 and 20-796.

Sincerely,

/s/

Elizabeth B. Prelogar
Acting Solicitor General

cc: See Attached Service List

20-0666

WILKINSON, ROBERT M., ACTING ATTORNEY
GENERAL, ET AL.,
CITY AND COUNTY OF SAN FRANCISCO,
CALIFORNIA, ET AL.

SARA J. EISENBERG
SAN FRANCISCO CITY ATTORNEY'S OFFICE
CITY HALL
1 DR. CARLTON B. GOODLETT PL.
ROOM 234
SAN FRANCISCO, CA 94102
415-554-4633
CITYATTORNEY@SFGOV.ORG

JOSHUA A. KLEIN
DEPUTY SOLICITOR GENERAL
STATE OF CALIFORNIA DEPARTMENT OF
JUSTICE
455 GOLDEN GATE AVE.
SUITE 11000
SAN FRANCISCO, CA 94102
JOSHUA.KLEIN@DOJ.CA.GOV