

Nos. 16-1436 and 16-1540

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
PETITIONERS

v.

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, ET AL.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
PETITIONERS

v.

STATE OF HAWAII, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS
FOR THE FOURTH AND NINTH CIRCUITS

APPLICATION OF PETITIONERS FOR LEAVE TO FILE CONSOLIDATED MERITS
BRIEF AND CONSOLIDATED REPLY BRIEF IN EXCESS OF WORD LIMITS

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Pursuant to Rules 22 and 33.1(d) of the Rules of this Court, the Acting Solicitor General, on behalf of petitioners Donald J. Trump et al., respectfully requests leave to file a single, consolidated opening brief on the merits and a single, consolidated reply brief in these cases, each in excess of the applicable word limits established by this Court's Rule 33.1(g) (v) and (vii). The

government requests leave to file a single opening brief of 22,500 words and a single reply brief of 10,000 words. Respondents in both cases have consented to this request.

1. Respondents in these cases brought separate suits -- in the United States District Courts for the District of Maryland (No. 16-1436) and the District of Hawaii (No. 16-1540) -- challenging various provisions of Executive Order No. 13,780, 82 Fed. Reg. 13,209 (Mar. 9, 2017) (Order), on both statutory and constitutional grounds. Trump v. IRAP, No. 16-1436 (June 26, 2017), slip op. 4-6. In No. 16-1436, the Fourth Circuit upheld a global injunction barring enforcement of Section 2(c) of the Order, which temporarily suspends entry of nationals of six countries, on the basis that it likely violates the Establishment Clause. Id. at 5. In No. 16-1540, the Ninth Circuit upheld a global injunction barring enforcement of Section 2(c), as well as Section 6(a)'s temporary suspension of the United States Refugee Admission Program and Section 6(b)'s refugee cap, on the basis that those provisions likely exceed the President's statutory authority under the Immigration and Nationality Act (INA), 8 U.S.C. 1101 et seq. IRAP, slip op. 6. On June 26, 2017, the Court granted certiorari in both cases and consolidated them for oral argument. Id. at 5-7, 9.

Together, these cases collectively present five distinct issues. The government sought review of four questions: (1) whether respondents' challenges to Section 2(c)'s temporary

entry suspension, Section 6(a)'s refugee suspension, and Section 6(b)'s refugee cap are justiciable; (2) whether the challenged provisions of the Order exceed the President's statutory authority under the INA; (3) whether the challenged provisions violate the Establishment Clause; and (4) whether the lower courts' global injunctions are impermissibly overbroad. In addition to those questions, the Court directed the parties to address "[w]hether the challenges to [Section] 2(c) became moot on June 14, 2017." IRAP, slip op. 9.

2. In the ordinary course, under Rule 33.1(g) (v) and (vii), the government would be entitled to file a separate opening brief in each case of 15,000 words, and a separate reply brief in each case of 6,000 words. The government respectfully submits, however, that filing a single, consolidated opening brief and reply brief would be of greater assistance to the Court. There is considerable overlap in the issues presented in these cases, which both concern legal challenges to the same Executive Order. A single opening brief and a single reply brief would facilitate a consolidated, streamlined presentation of these issues.

In light of the five questions presented, as well as because each case presents different facts and the lower courts adopted different rationales, the government further respectfully submits that a single opening brief of 15,000 words and a single reply brief of 6,000 words would be inadequate to provide a thorough airing of the issues. The government accordingly requests leave

to file a single, consolidated opening brief of 22,500 words and a single, consolidated reply brief of 10,000 words. See Turner v. United States, No. 15-1503 (Feb. 9, 2017) (granting leave to file a single, consolidated merits brief for the government as respondent in two consolidated cases of 22,500 words); Zubik v. Burwell, No. 14-1418 (Nov. 17, 2015) (same). Both the proposed opening brief and reply brief would be substantially shorter than the aggregate maximum length of two separate opening briefs (30,000) and two separate reply briefs (12,000).

3. Counsel for the respondents in each case consents to this request. Pursuant to Rule 33.1(d), this application is being submitted 15 days before the government's opening brief is due, on August 10, 2017.

CONCLUSION

The application for leave to file a consolidated opening brief in these cases of 22,500 words and a consolidated reply brief of 10,000 words should be granted.

Respectfully submitted.

JEFFREY B. WALL
Acting Solicitor General

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