

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 STATUS UPDATE

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Defendant-Appellee the Department of Homeland Security (DHS) respectfully submits this status report in response to the Court's order dated February 21, 2018, which placed these proceedings in abeyance based on DHS's representation that it would "begin the NPRM process with respect to the H-4 Rule in February 2018."¹ *See* Abeyance Mot. at 3. Based on that representation, the Court concluded that "[t]his case will continue to be held in abeyance pending further order of the court" because DHS "represents that it plans to issue a notice of proposed rulemaking in February 2018 to remove from its regulations certain H-4 spouses of H-1B nonimmigrants as a class of aliens eligible for employment authorization." Order at 1.

Consistent with the Government's prior representations, DHS was working to issue an NPRM in February 2018. However in January 2018, United States Citizenship and Immigration Services (USCIS), the component of DHS responsible for oversight of the H-4 visa program at issue in this litigation, reevaluated the rule and determined that significant revisions to the draft proposal were necessary. Ex. 1, Decl. of Kevin Cummings, ¶ 7. Those revisions required a new economic analysis, which required an additional several weeks to perform. *Id.* The changes to the rule and the revised economic analysis require revisions to the

¹ That Rule, Employment Authorization for Certain H-4 Dependent Spouses, 80 Fed. Reg. 10,284-10,312 (Feb. 25, 2015) (H-4 Rule), permits certain aliens maintaining H-4 nonimmigrant status, *see* 8 U.S.C. § 1101(a)(15)(H), to apply for, and if deemed eligible, to receive employment authorization from DHS

projected timeline for the NPRM's publication, and therefore cannot be issued in February. *Id.*

Under the revised timeline, DHS anticipates submitting to the Office of Management and Budget for review and clearance the proposed rule in time for publication in June 2018. *Id.*, ¶ 8. DHS's intentions to proceed with publication of an NPRM concerning the H-4 visa rule at issue in this case remain unchanged. *See id.*

Dated: February 28, 2018

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 322 words, not including those sections excluded from the word count under applicable rules.

s/ Erez Reuveni
EREZ REUVENI
Assistant Director

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 February 28, 2018.

s/ Erez Reuveni
EREZ REUVENI
Assistant Director

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

	:	
SAVE JOBS USA,	:	
Plaintiff-Appellant,	:	
	:	Case No.: 16-5287
v.	:	
	:	
UNITED STATES DEPARTMENT OF	:	
HOMELAND SECURITY,	:	
Defendant-Appellee.	:	
	:	
	:	

DECLARATION OF KEVIN J. CUMMINGS

I, Kevin J. Cummings, hereby state and declare as follows:

1. I am over the age of 18 and provide this declaration based upon my personal knowledge and information available to me in my official capacity as the Chief of the Business & Foreign Workers Division in the Office of Policy and Strategy at the U.S. Citizenship and Immigration Services (USCIS), a component agency of the Department of Homeland Security (DHS).

2. I have held my current position since August 2009. In this position, I am responsible for leading the development and implementation of agency policy with respect to employment-based immigrant and nonimmigrant visa classifications. My team leads the rulemaking process for these categories, including recommending policies for inclusion in regulations, negotiating policy positions, drafting and clearing regulations through the agency, and considering public feedback for possible revision to certain regulations when promulgating final rules. In addition, my team leads the development of other policy products outside the rulemaking process, and we review policies and regulations promulgated by other agencies and departments that may affect these programs. Prior to this position, I served as the Chief of Business and Trade Services in the USCIS Office of Service Center Operations (SCOPS) with oversight of all regulatory, program, and policy issues regarding employment-based immigration matters for nearly 2 years. During my 26 years combined with USCIS and the Immigration and Naturalization Service (INS), I have served in various other roles including Deputy Branch Chief with the Fraud Detection and National Security Directorate at USCIS Headquarters, as Special Assistant to the Chief of SCOPS, and as an Adjudications Officer.

3. As a result of these duties, I am well-acquainted with the final rule entitled Employment Authorization for Certain H-4 Dependent Spouses, 80 Fed. Reg. 10,284 (Feb. 25, 2015) (H-4 Rule). Additionally, I am familiar with recent Executive Orders that have been issued, including Executive Order 13,777, Enforcing the Regulatory Reform Agenda, 82 Fed. Reg. 12285 (Mar. 1, 2017) (E.O. 13777), and Executive Order 13,788 of April 18, 2017, Buy American and Hire American, 82 Fed. Reg. 18837 (Apr. 21, 2017) (E.O. 13788). Moreover, I am well-versed in the requirements for notice-and-comment rulemaking and notifications to the

public regarding agency regulatory plans through the Unified Agenda, as well as with the general process for developing, clearing regulations at USCIS.

4. I make this declaration in support of DHS's filing to clarify its timeline for issuing a proposed rulemaking relating to the H-4 Rule.

5. On December 15, 2017, DHS announced through publication of its Unified Agenda by the Office of Management and Budget (OMB), a rulemaking titled, Removing H-4 Dependent Spouses from the Class of Aliens Eligible for Employment Authorization, describing the agency's intentions regarding the H-4 Rule as follows: "On February 25, 2015, DHS published a final rule extending eligibility for employment authorization to certain H-4 dependent spouses of H-1B nonimmigrants who are seeking employment-based lawful permanent resident (LPR) status. DHS is publishing this notice of proposed rulemaking to amend that 2015 final rule. DHS is proposing to remove from its regulations certain H-4 spouses of H-1B nonimmigrants as a class of aliens eligible for employment authorization." The announcement indicated that DHS is working toward issuing a rescission NPRM in February 2018.

6. On December 22, 2017, the Department requested this Court to hold the case in abeyance to permit it to begin the NPRM process with respect to the H-4 Rule in February 2018, as announced in the Unified Agenda. DHS represented that it would update the court promptly if and when the NPRM process is completed, and would provide the Court with an update in any event by July 1, 2018.

7. In January 2018, USCIS reevaluated the rule and determined that significant revisions to the draft proposal were necessary, requiring revisions to the projected timeline for the rule's publication as well. USCIS has had ongoing discussions with DHS about the draft

NPRM. The revisions to the proposal required a new economic analysis, which requires several weeks to perform. USCIS concluded that an NPRM could not be issued in February.

8. Under the revised timeline, USCIS is planning to complete its revisions to the proposed rule, after which time it will resubmit the rule to DHS for review. Thereafter, DHS will submit the proposed rule to OMB for review and clearance pursuant to section 6(b)(2)(B) of E.O. 12866, which may take up to 90 days. The anticipated publication of the proposed rule under the current timeline is June 2018.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on February 28, 2018

Washington, D.C.



Kevin J. Cummings

Chief, Business & Foreign Workers Division

Office of Policy and Strategy

U.S. Citizenship and Immigration Services