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July 27, 2020

Lyle W. Cayce
Clerk, United States Court of Appeals
for the Fifth Circuit
600 S. Maestri Place, Suite 115
New Orleans, LA 70130

Re: *Dierlam v. Trump*, No. 18-20440 (5th Cir.)

Dear Mr. Cayce:

By letter of April 1, 2020, the federal appellees requested this Court to stay this appeal pending the Supreme Court's resolution of *Little Sisters of the Poor Saints Peter and Paul Home v. Pennsylvania*, Nos. 19-431 & 19-454 (S. Ct.), and *Department of Health and Hum. Servs. v. Trump*, No. 19-1038 (S. Ct.).

We write to advise the Court that on July 8, 2020, the Supreme Court issued an opinion in *Little Sisters*. See 2020 WL 3808424 (Jul. 8, 2020). The Court held that the Affordable Care Act provided the federal government with authority to exempt or accommodate employers' religious or moral objections to providing no-cost contraceptive coverage. The Court did not, however, address the issue the federal appellees identified as being relevant to the present appeal, which concerns the "substantial burden" requirement in the Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb. See Appellees' April 1, 2020, Letter Brief at 1-2.

On July 9, 2020, the Supreme Court granted, vacated, and remanded the judgment in *Department of Health and Hum. Servs. v. California*, in light of the July 8 ruling in *Little Sisters*. See 2020 WL 3865243 (Jul. 9, 2020).

Given the Supreme Court's resolution of *Little Sisters* and *Department of Health and Hum. Servs. v. Trump*, the federal appellees believe the present appeal is ready for disposition consistent with the arguments presented in the government's appellee brief.

The government continues to believe, as explained in our April 1, 2020, letter brief, that the Court need not hold this appeal for *California v. Texas*, No. 19-840 (S. Ct.), because Dierlam failed to preserve the non-severability arguments at issue in *Texas*, see Gov't Br. 52-53, and because this Court's invalidation of the individual mandate in that case only underscores that Dierlam is not entitled to prospective relief from the individual mandate, which was already the case given the TCJA's elimination of the mandate's penalty. See Gov't Br. 26-27. *California v. Texas* remains pending in the Supreme Court as of this date.

Sincerely,

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Certificate of Service

I hereby certify that on July 27, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system. A copy of this letter will be served on the plaintiff by e-mail.

s/Lowell V. Sturgill Jr.
Lowell V. Sturgill Jr.