



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

June 17, 2021

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

Re: Alejandro N. Mayorkas, Secretary of Homeland Security, et al. v. Innovation Law Lab, et al., No. 19-1212

Dear Mr. Harris:

On June 15, 2021, two weeks after the government filed its June 1 motion for vacatur in the above-captioned case, four days after respondents filed their opposition to that motion in accordance with the time limits in this Court’s Rule 21.4, and hours after the government filed its reply in support of the motion, the States of Texas, Missouri, and Arizona filed a brief styled as a “response” to the government’s June 1 motion and a “reply” in support of the States’ May 18, 2021 motion to intervene (which the government and respondents had opposed on June 1). Because the States’ delayed response deprived the government of the opportunity to address their arguments regarding the government’s motion for vacatur, we submit this short letter to supplement our reply.

Contrary to the States’ assertions, this appeal is moot. See Vacatur Motion 10-12. In light of Secretary Mayorkas’s June 1 decision terminating the MPP program and his express statement that the government has “no intention to resume MPP in any manner similar to the program as outlined in the January 25, 2019 [Department of Homeland Security (DHS)] Memorandum,” Vacatur Motion App. 14a, respondents have acknowledged that they “no longer have a live interest in [the] relief” entered by the district court in this case, Vacatur Opp. 3—a preliminary injunction that “enjoined and restrained [DHS] from continuing to implement or expand [MPP] as announced in the January 25, [2019] DHS policy memorandum,” Pet. App. 83a. Where, as here, the plaintiffs no longer have a personal stake in the relief entered below, “the action can no longer proceed” under Article III. *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72 (2013); see *University of Texas v. Camenisch*, 451 U.S. 390, 394-396 (1981).

The States offer no sound basis to conclude that this appeal continues to present a live case or controversy, despite the Secretary’s decision and respondents’ own acknowledgement that they lack any ongoing cognizable interest in the district court’s preliminary injunction. The States principally express concern that their ability to obtain an injunction in separate lawsuits challenging the Secretary’s termination of MPP could be “frustrated” by the “conflicting” preliminary injunction in this case that would “prevent[] enforcement of the MPP nationwide” if it were not vacated. States’ Response 1. But the States cite no authority to support their suggestion that Article III permits a court to continue entertaining a case because of speculative collateral effects that the eventual resolution of other litigation brought by third parties might have on the same subject

matter. Cf. *United States v. Juvenile Male*, 564 U.S. 932, 937 (2011) (per curiam) (holding that, while “a favorable decision in this case might serve as a useful precedent for [the defendant] in a hypothetical lawsuit,” “this possible, indirect benefit in a future lawsuit cannot save *this* case from mootness”); *Hall v. Beals*, 396 U.S. 45, 49-50 (1969) (observing that “speculative contingencies” did not prevent a case from becoming moot and “afford[ed] no basis for” the Court to “pass[] on the substantive issues the appellants would have [the Court] decide with respect to [a] now-amended law”). Here, “[n]o matter how vehemently” the States assert “the lawfulness of the conduct that precipitated th[is] lawsuit, the case is moot” because “the dispute ‘is no longer embedded in any actual controversy about *the plaintiffs’* particular legal rights.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (emphasis added) (quoting *Alvarez v. Smith*, 558 U.S. 87, 93 (2009)).

Moreover, as the States explain, the decision below would implicate their concern about “conflicting” orders only if (1) “Texas and Missouri are successful in seeking” an injunction in their separate lawsuit that requires DHS to reinstate the MPP program, States’ Response 5; and (2) this Court lifts its stay of the district court’s preliminary-injunction order, 140 S. Ct. 1564, and does not accept the government’s request to vacate the judgment below and remand with instructions to vacate the preliminary-injunction order under *United States v. Munsingwear, Inc.*, 340 U.S. 36 (1950), see States’ Response 12. But the vacatur that the government requests would obviate the States’ fear. Vacating the judgment and remanding with instructions to vacate the preliminary injunction would “clear[] the path” and eliminate the States’ speculation about potentially conflicting injunctions. *Alvarez*, 558 U.S. at 94 (citation omitted); see States’ Response 1 (arguing that, “[a]bsent * * * vacatur,” the States could be frustrated in other litigation).

Vacatur is warranted for all of the reasons the government has previously explained, and that course makes far more sense than the States’ suggestion that the Court “hold this case in abeyance” for some indefinite period, States’ Response 11, while the States pursue their preliminary-injunction motion in the district court (and then perhaps on appeal). Indeed, the States have identified no circumstance in which it would be “appropriate for the Court to reinstate the briefing and argument schedule to resolve this case.” *Ibid.* Even if a court were to conclude that the legal questions formerly at issue in this preliminary-injunction appeal bear on whether the States are entitled to relief in their lawsuits against DHS, such questions should be addressed in the context of those disputes—rather than in this appeal of a preliminary injunction that was expressly limited to a now-rescinded policy.

In sum, this appeal is moot, and vacatur remains the disposition “most consonant to justice” in the present circumstances. *U.S. Bancorp Mortgage Co. v. Bonner Mall P’ship*, 513 U.S. 18, 24 (1994) (citation omitted).

I would appreciate it if you would circulate this letter to Members of the Court.

Sincerely,

s/ Elizabeth B. Prelogar

Elizabeth B. Prelogar
Acting Solicitor General

cc: See Attached Service List