UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NATIONAL ASSOCIATION OF IMMIGRATION JUDGES, affiliated with the International Federation of Professional and Technical Engineers, Plaintiff–Appellant, v. JEAN KING, in her official capacity as the Acting Director of the Executive Office for Immigration Review, Defendant–Appellee.	Civil Action No. 20-1868

PLAINTIFF–APPELLANT'S MOTION TO LIFT STAY

Through this appeal, Plaintiff–Appellant the National Association of Immigration Judges ("NAIJ") challenges a speaking-engagement policy issued by the Executive Office for Immigration Review ("EOIR") that imposes an unconstitutional prior restraint on the speech of immigration judges. Although the appeal is fully briefed and was initially scheduled for oral argument on May 4, 2021, the case has been stayed for four months while EOIR considers revising the policy at issue. NAIJ has thus far consented to a stay of proceedings on the understanding that any revised policy would be approved "expeditiously," *see* ECF No. 37, and thus that the continuing and unconstitutional restraint on the speech of its members would soon come to an end. In requesting NAIJ's consent to a further continuance

of the stay, however, EOIR has refused to provide any detail to NAIJ about its apparently forthcoming policy or even to commit to any firm deadline for implementing that policy. Accordingly, NAIJ feels compelled to now move to lift the stay so that this Court can address the irreparable harm to the First Amendment rights of the immigration judges NAIJ represents.

NAIJ initially consented to a limited 60-day stay of the appeal on April 23, 2021, after the government represented that new EOIR and Department of Justice leadership had begun the process of reviewing the speaking-engagement policy to determine whether to revise it. In its motion to stay the appeal, the government stated that EOIR anticipated completing the review "expeditiously." *See* ECF No. 37. On April 26, 2021, this Court granted the government's motion and directed the parties to file a status report in 60 days. *See* ECF No. 39.

On June 25, 2021, the government filed a status report stating that EOIR was "reviewing several proposed revisions to the speaking-engagement policy," and requesting that the Court stay the appeal for an additional 60 days. *See* ECF No. 40. As the status report records, NAIJ consented to the request but indicated that it was "unlikely to consent to a further stay absent compelling justification." *Id.*

On August 24, 2021, the due date of the parties' next status report, the government informed counsel for NAIJ that EOIR had tentatively approved a new speaking-engagement policy, but that the policy would not be finalized until

technological and administrative changes had been made to implement it. The government sought NAIJ's consent to an additional 60-day stay to permit EOIR to make those changes. NAIJ indicated that it would consent to the stay if the government described the new policy to NAIJ, or provided some other assurance that the new policy would in fact address the defects in EOIR's current policy. EOIR refused to provide NAIJ any information at all about the new policy or its expected timeline for releasing it.

In light of the above, NAIJ respectfully requests that the Court lift the stay of this appeal. Although NAIJ hoped that a limited stay could conserve judicial resources, it has been 120 days since the Court granted the stay—more than sufficient time for EOIR's new leadership to review the issues on appeal and adopt a new policy. Every day that the current policy remains in place causes irreparable injury to NAIJ's members by depriving them of their rights, as citizens, to speak on matters of public concern. NAIJ's members should not have to put those rights on hold indefinitely, without any assurance from EOIR that the new policy will in fact address the First Amendment claims at issue in this appeal or even a commitment by the agency that it will implement that new policy by some date certain. This Court should decline the government's invitation to continue the stay and instead calendar the case for oral argument.

The government has been informed of the intended filing of this motion and intends to file a response in opposition.

August 25, 2021

Respectfully submitted,

/s/ Ramya Krishnan

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CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the word limit of Fed. R. App. P. 27(d)(2)(A) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), it contains 644 words.

/s/ Ramya Krishnan
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