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Trump Administration Requests Pauses in Several Supreme Court Cases to Reconsider Biden Administration Policies

*By Jeremy J. Broggi, Tatiana Sainati, Joel S. Nolette and Stephanie Rigizadeh**

The authors of this article discuss the Trump administration's request that the U.S. Supreme Court pause briefing in three cases involving the U.S. Environmental Protection Agency (and one case involving the U.S. Department of Education).

The Trump administration has asked the U.S. Supreme Court to pause briefing in several cases on the current merits docket. In making the request, Acting Solicitor General Sarah Harris explained that the new administration needs to reevaluate prior agency positions in three cases involving the U.S. Environmental Protection Agency (EPA) (and one case involving the U.S. Department of Education).¹ These requests could signal a departure from the Biden administration's policies and legal positions in cases pending before the Supreme Court, and may provide critical insights into the Trump administration's legal and policy agenda.

BACKGROUND

Once rare, it has become more common for a new presidential administration to modify the government's litigating position before the Supreme Court. The Obama administration flipped the United States' positions in cases involving extraterritorial application of the Alien Tort Statute, federal sovereign immunity, and attorneys' fees.² The first Trump administration reversed course from the Obama administration in high-profile cases touching on labor unions and the First Amendment, voting rights, and the separation of powers.³ The Biden administration likewise changed the government's position in cases implicating the Takings Clause of the Fifth Amendment, voting rights, and

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¹ See Mot. of Resps. to Hold Briefing Schedule in *Abeyance*, *Diamond Alternative Energy, LLC v. EPA*, No. 24-7 (U.S. Jan. 24, 2025); Mot. of Resps. to Hold Briefing Schedule in *Abeyance*, *Oklahoma v. EPA*, No. 23-1067 (U.S. Jan. 24, 2025); Mot. of Pet'rs to Hold Briefing Schedule in *Abeyance*, *EPA v. Calumet Shreveport Refining, LLC*, No. 23-1229 (U.S. Jan. 24, 2025); Mot. of Pet'rs to Hold Briefing Schedule in *Abeyance*, *U.S. Dep't of Educ. v. Career Colls. & Schs. of Tex.*, No. 24-413 (U.S. Jan. 24, 2025).

² See Josh Blackman, *Presidential Maladministration*, 2018 U. Ill. L. Rev. 397, 410–13 (2018).

³ See, e.g., *Epic Sys. Corp. v. Lewis*, 584 U.S. 497 (2018); *Janus v. Am. Fed'n State, Cnty.*,

criminal sentencing.⁴ And if history repeats itself, the current administration's requests may foreshadow a shift in similar, politically salient cases.⁵

THREE EPA-RELATED CASES

The three EPA-related cases signal that the administration is reevaluating its position on the proper implementation of the Clean Air Act and related programs.

First, in *Diamond Alternative Energy, LLC v. EPA*, various oil-and-gas and alternative-energy enterprises challenged the EPA's 2022 decision to grant California a waiver from federal preemption standards under the Clean Air Act. The waiver was first conferred by the Obama administration, then rescinded by the first Trump administration, then reinstated by the Biden administration. Petitioners claim it permits California to "operate as a quasi-federal regulator on global climate change."⁶ The U.S. Court of Appeals for the District of Columbia Circuit concluded that the petitioners lacked standing to challenge the waiver, and the Supreme Court granted certiorari to address the standing question.⁷ Signaling a change, Acting Solicitor General Harris explained that a pause in briefing is necessary because the EPA is "reassess[ing] the basis for and soundness" of the waiver, which "could obviate the need" for the Court to decide the question presented in the case.⁸

Second, in *Oklahoma v. EPA*, state and industry petitioners challenged the EPA's 2023 denial of several states' ozone plans to implement the Clean Air

& Municipal Emps., 585 U.S. 878 (2018); *Husted v. A. Phillip Randolph Inst.*, 584 U.S. 756 (2018); *Lucia v. SEC*, 585 U.S. 237 (2018).

⁴ See, e.g., *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021); *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647 (2021); *Terry v. United States*, 593 U.S. 486 (2021).

⁵ Underscoring this, also on January 24, 2025, the Acting Solicitor General submitted a letter in *Louisiana v. Callais*, a voting-rights case in which the United States is not a party but had filed an amicus curiae brief in support of neither party and moved for leave to participate in oral argument. The letter served to "notify the Court that the previously filed brief no longer represents the position of the United States" and to withdraw the government's motion to participate in oral argument. See Letter of the Acting Solicitor General at 1, *Louisiana v. Callais*, No. 24-109 (U.S. Jan. 24, 2025).

⁶ See Pet. for Cert. at 2, 9–10, *Diamond Alternative Energy, LLC v. EPA*, No. 24-7 (U.S. July 2, 2024); see generally *Diamond Alternative Energy, LLC v. EPA*, 98 F.4th 288 (D.C. Cir. 2024), cert. granted in part, No. 24-7 (U.S. Dec. 13, 2024).

⁷ See Order, *Diamond Alternative Energy, LLC v. EPA*, No. 24-7 (U.S. Dec. 13, 2024).

⁸ Mot. of Resps. to Hold Briefing Schedule in Abeyance at 3, *Diamond Alternative Energy, LLC v. EPA*, No. 24-7 (U.S. Jan. 24, 2025).

Act’s “Good Neighbor Provision.”⁹ The U.S. Court of Appeals for the Tenth Circuit ruled that venue lies exclusively in the District of Columbia Circuit. The Supreme Court granted certiorari to decide the venue question.¹⁰ Here again, Acting Solicitor General Harris explained that the EPA – which already filed its merits brief – was “reassess[ing] the basis for and soundness” of the underlying denial, which “could obviate the need” for resolving the venue question.¹¹

Third, *EPA v. Calumet Shreveport Refining, LLC*, likewise involves whether the District of Columbia Circuit is the sole venue for challenges to the EPA’s 2022 denial of Clean Air Act Renewable Fuel Standards program exemption petitions.¹² Here, too, Acting Solicitor General Harris explained that “[a]fter the change in Administration,” the EPA is “reassess[ing] the basis for and soundness of the underlying” denials.¹³

DEPARTMENT OF EDUCATION CASE

The last merits case in which the Trump administration seeks to pause briefing concerns education policy. In *U.S. Department of Education v. Career Colleges and Schools of Texas*, a trade association for Texas-based, for-profit higher education institutions sued to preliminarily enjoin a 2022 regulation concerning student-loan-forgiveness requests that adversely affected its members.¹⁴ The district court denied the trade association’s motion, finding that the institutions did not establish sufficient harm to justify injunctive relief.¹⁵ The U.S. Court of Appeals for the Fifth Circuit disagreed and preliminarily enjoined the rule.¹⁶ The government petitioned for certiorari, which was granted in

⁹ *Oklahoma v. EPA*, 93 F.4th 1262 (10th Cir. 2024), cert. granted, No. 23-1067 (U.S. Oct. 21, 2024).

¹⁰ Order, *Oklahoma v. EPA*, No. 23-1067 (U.S. Oct. 21, 2024).

¹¹ Mot. of Resps. to Hold Briefing Schedule in Abeyance at 3–4, *Oklahoma v. EPA*, No. 23-1067 (U.S. Jan. 24, 2025).

¹² See generally *EPA v. Calumet Shreveport Refining, LLC*, 86 F.4th 1121 (5th Cir. 2023), cert. granted, No. 23-1229 (U.S. Oct. 21, 2024).

¹³ Mot. of Pet’rs to Hold Briefing Schedule in Abeyance at 3, *EPA v. Calumet Shreveport Refining, LLC*, No. 23-1229 (U.S. Jan. 24, 2025).

¹⁴ See generally *Career Colls. & Schs. of Tex. v. U.S. Dep’t of Educ.*, 681 F. Supp. 3d 647 (W.D. Tex. 2023), rev’d, 98 F.4th 220 (5th Cir. 2024), cert. granted in part, No. 24-413 (U.S. Jan. 10, 2025).

¹⁵ *Career Colls. & Schs. of Tex.*, 681 F. Supp. 3d at 661.

¹⁶ *Career Colls. & Schs. of Tex.*, 98 F.4th at 226 & n.1.

part.¹⁷ The Trump administration is now “reassess[ing] the basis for and soundness” of the rule.¹⁸

CONCLUSION

The Supreme Court will likely decide the Trump administration's requests in short order. Whether the cases proceed or are ultimately mooted, the Trump administration appears to be signaling certain priorities regarding the implementation of the Clean Air Act and its approach to student loan forgiveness – perhaps with more to come soon.

¹⁷ Order, U.S. Dep't of Educ. v. Career Colls. & Schs. of Tex., No. 24-413 (U.S. Jan. 10, 2025).

¹⁸ Mot. of Pet'rs to Hold Briefing Schedule in Abeyance at 3–4, U.S. Dep't of Educ. v. Career Colls. & Schs. of Tex., No. 24-413 (U.S. Jan. 24, 2025).