

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 20-3142 Caption [use short title]

Motion for: Dismissal

Set forth below precise, complete statement of relief sought:

Defendants-appellants respectfully request that this appeal be dismissed.

State of New York v. Donald J. Trump

MOVING PARTY: Donald J. Trump et al. OPPOSING PARTY: State of New York et al.

- Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Michael S. Raab OPPOSING ATTORNEY: Judith N. Vale

[name of attorney, with firm, address, phone number and e-mail]

U.S. Department of Justice, Civil Division, Appellate Staff New York State Office of the Attorney General

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Court- Judge/ Agency appealed from: Southern District of New York; Judge Furman

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1): Yes No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below? Has this relief been previously sought in this court? Requested return date and explanation of emergency:

Opposing counsel's position on motion: Unopposed Opposed Don't Know

Does opposing counsel intend to file a response: Yes No Don't Know

Is oral argument on motion requested? Yes No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? Yes No If yes, enter date:

Signature of Moving Attorney:

s/Michael S. Raab Date: January 12, 2021 Service by: CM/ECF Other [Attach proof of service]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

STATE OF NEW YORK, *et al.*,

Plaintiffs-Appellees,

v.

DONALD J. TRUMP, *et al.*,

Defendants-Appellants.

No. 20-3142

**DEFENDANTS-APPELLANTS' UNOPPOSED  
MOTION TO DISMISS THE APPEAL**

Defendants-appellants Donald J. Trump, Wilbur L. Ross, Steven Dillingham, the United States Department of Commerce, and the United States Census Bureau respectfully request that this appeal be dismissed. Plaintiffs do not oppose this motion.

1. This appeal arises from the decision of a three-judge district court convened under 28 U.S.C. § 2284. The district court granted summary judgment to plaintiffs and entered declaratory and injunctive relief on their claims challenging a Presidential Memorandum that announced a policy “to exclude from the apportionment base aliens who are not in a lawful immigration status under the Immigration and Nationality Act . . . to the maximum extent feasible and consistent with the discretion delegated to the executive branch,” and directed the Secretary of Commerce “to provide information permitting the President, to the extent practicable, to exercise the President’s discretion to carry out the policy.” 85 Fed. Reg. 44,679,

44,680 (July 21, 2020). Defendants timely appealed the three-judge district court's decision to the Supreme Court under 28 U.S.C. § 1253, which provides that such decisions may be appealed directly to the Supreme Court. *See Trump v. New York*, No. 20-366 (U.S.).

In its decision, the three-judge court stated that although it “believe[d] that this matter was properly heard by a three-judge panel” under § 2284, it nevertheless certified that Judge Furman, the district judge to whom the lawsuit was originally assigned, “individually arrived at the same conclusions that [the three-judge court has] reached collectively.” D. Ct. Op. 86 n.21. Likewise, although defendants believed that the Supreme Court, not this Court, was the proper forum for appellate review of the three-judge court's decision, defendants filed this appeal to ensure that their ability to obtain appellate review would not be prejudiced if the Supreme Court were to decline to exercise jurisdiction.

After filing this appeal, defendants moved to hold it in abeyance pending the Supreme Court's decision in *Trump v. New York*, No. 20-366. On October 16, 2020, this Court granted that motion. *See* Dkt. No. 20.

2. On December 18, 2020, the Supreme Court, exercising jurisdiction over the appeal, issued a per curiam opinion vacating the three-judge district court's judgment with instructions to dismiss the case for lack of jurisdiction. *See Trump v. New York*, 141 S. Ct. 530 (2020). As is reflected by the Supreme Court's exercising jurisdiction over the appeal, the three-judge district court in this case was properly

constituted and this Court therefore lacks jurisdiction over this appeal. *See* 28 U.S.C. § 1253 (providing for direct appeal to the Supreme Court from certain decisions of three-judge district courts); 28 U.S.C. § 1291 (providing for jurisdiction in the courts of appeals of appeals of final orders “except where a direct review may be had in the Supreme Court”). In addition, by vacating the order that forms the basis for this appeal, the Supreme Court’s decision renders this appeal moot. Accordingly, defendants respectfully move to dismiss this appeal.

3. As noted above, plaintiffs do not oppose this request.

Respectfully submitted,

MARK R. FREEMAN

*/s/ Michael S. Raab*

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January 12, 2021

## CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 495 words, according to the count of Microsoft Word.

/s/ Michael S. Raab  
Michael S. Raab