

Nos. 24A11 and 24A173

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF ALASKA, ET AL., APPLICANTS

v.

DEPARTMENT OF EDUCATION, ET AL.

JOSEPH R. BIDEN, JR., PRESIDENT OF THE UNITED STATES, ET AL.,
APPLICANTS

v.

STATE OF MISSOURI, ET AL.

SUPPLEMENTAL MEMORANDUM REGARDING EMERGENCY APPLICATIONS

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The government respectfully files this supplemental memorandum to advise the Court of recent developments in the Tenth Circuit that bear on these pending applications.

1. This Court currently has before it emergency applications in two cases involving a rule that makes changes to the Department of Education's income-contingent repayment (ICR) plans for student loans. In one of the cases, the U.S. District Court for the District of Kansas issued a universal preliminary injunc-

tion blocking the rule's payment-calculation and other provisions that were set to become effective on July 1. 24-cv-1057 D. Ct. Doc. 76, at 42 (June 24, 2024). On June 30, the Tenth Circuit stayed that preliminary injunction pending appeal. 24-3089 C.A. Order 1 (June 30, 2024). The plaintiffs asked this Court to vacate that stay; their application remains pending. See Alaska v. Department of Educ., No. 24A11 (filed July 5, 2024).

In the other case, the U.S. District Court for the Eastern District of Missouri issued a universal preliminary injunction limited to the rule's shortened-repayment-period provision. 24-cv-520 D. Ct. Doc. 36, at 1 (June 24, 2024); 24-cv-520 D. Ct. Doc. 54, at 1 (July 10, 2024). On August 9, the Eighth Circuit granted a universal injunction pending appeal that also blocked the rule's protected-income, payment-calculation, and accrued-interest provisions and prohibited the Department from granting forgiveness under the preexisting provisions of the original ICR plan, the PAYE plan, and the REPAYE plan. 24-2332 C.A. Order 9 (Aug. 9, 2024); 24-2332 C.A. Order 1 (Aug. 19, 2024). The government asked this Court to vacate the Eighth Circuit's injunction; that application remains pending. See Biden v. Missouri, No. 24A173 (filed Aug. 13, 2024).

2. Yesterday -- a day after hearing oral argument in the appeal and cross-appeal of the preliminary injunction in Alaska -- the Tenth Circuit ordered that the appeals be "abated until

further order of the court.” 24-3089 C.A. Order 2 (Aug. 22, 2024). The Tenth Circuit noted that the Eighth Circuit had enjoined “several major parts of the Final Rule at issue in the appeals before [the Tenth Circuit].” Ibid. And the Tenth Circuit explained that it was abating its own proceedings “[i]n light of the Eighth Circuit’s injunction.” Ibid.

3. The Tenth Circuit’s decision to abate its own proceedings further confirms that this Court should vacate, or at a minimum narrow, the Eighth Circuit’s universal injunction. That injunction had already nullified the Tenth Circuit’s stay in Alaska and granted the plaintiffs in that case the very relief they were denied in their own suit. But now the Eighth Circuit’s universal injunction has also prompted the Tenth Circuit to discontinue further review -- and thus pretermitted further percolation.

That is not how the judicial process is supposed to work. One circuit should not be able to inhibit the development of “thoughtful precedent at the circuit level” by issuing an injunction with universal reach in circumstances where more tailored relief would fully redress the plaintiffs’ asserted injury. Labrador v. Poe, 144 S. Ct. 921, 928 (2024) (Gorsuch, J., concurring). To put this litigation back on a normal track in both circuits, this Court should vacate, or at a minimum narrow, the Eighth Circuit’s universal injunction. If, however, this Court declines to

do so, it should grant certiorari before judgment in Missouri and set that case for expedited briefing and argument.

Respectfully submitted.

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