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United States Supreme Court to Decide Whether to Stop Children's Constitutional Case on the Eve of Trial

The People's faith in the courts as a check on the political branches will be tested by the outcome

Washington, D.C. - Today, for the second time in three months, the Department of Justice asked the United States Supreme Court to circumvent the ordinary procedures of federal litigation and stop the constitutional case *Juliana v. United States*, involving the substantive due process and equal protection rights of children, from going to trial. Claiming harm from the costs of litigation, the federal government filed a second writ of mandamus petition and application for stay with the Supreme Court.

The Department of Justice describes the “impending harm” to the defendants as:

“Absent relief from this Court, the government imminently will be forced to participate in a 50-day trial that would violate bedrock requirements for agency decisionmaking and judicial review imposed by the APA and the separation of powers.”

Vic Barrett, 19-year-old plaintiff from White Plains, New York said:

“We are 6 business days from a trial we have been preparing for for 3 years. The lengths my own government is going to get this case thrown out and avoid trial is absurd and offensive. This case is not about money. This is not about the “harms to the government” or how much money the government has paid its experts or how many hours their lawyers have to work. This is about my future and the future of our youngest generations. This is about fundamental constitutional rights of children. We are simply asking for our right to be heard. Our Government exists to hear us and protect us. If we cannot go to our federal courts with real constitutional claims for relief and present our evidence at trial then the people of this country have been failed by our third branch of government. The final judgment will be reviewed by appellate courts, but this case needs to go to trial on October 29.”

Julia Olson, executive director and chief legal counsel of **Our Children’s Trust** and co-counsel for youth plaintiffs said:

“This Department of Justice is calling the District Court’s actions in holding a trial a “judicial ‘usurpation of power.’” On the contrary, it would be a complete abdication of responsibility by the third branch of government not to declare the constitutional rights of these young people and not to hear the evidence in this fundamental rights case. If in the 1950s the Supreme Court had prevented the children in *Brown v. Board of Education* from going to trial because *Plessy v. Ferguson* was the law of the land, the courts would never have had the opportunity to say that separate but equal was unconstitutional. We don’t usurp judicial power in the United States of America. Our courts hear constitutional claims and they decide them not by speculating as to the facts, but seeing the evidence and hearing the expert testimony.”

The 21 young plaintiffs have been working for three years with a team of world-class experts to bring their claims to trial, overcoming three motions in the district court, two motions in the Ninth Circuit, and one in the Supreme Court, all seeking to dismiss their case. In the last 60 days, the parties have taken almost 50 depositions, have finalized their exhibit and witness lists, and filed their pre-trial briefs.

Plaintiffs’ counsel say their 20 experts, all working pro bono, have already booked their travel to be in Eugene, Oregon for trial this fall. Plaintiffs’ experts include Nobel Laureate Joseph Stiglitz and renowned climate scientists including Dr. Kevin Trenberth, Dr. Ove Hoegh-Guldberg, and Dr. Eric Rignot.

Counsel for plaintiffs also say the Department of Justice has mischaracterized *Juliana v. U.S.* by telling the Supreme Court that plaintiffs’ asserted fundamental rights have never before been recognized by the Court. In fact, the plaintiffs’ pre-trial memorandum explains in detail that their rights to personal security and family autonomy have been infringed by the systemic conduct of the federal government. Both of those fundamental rights have long been recognized by the Supreme Court. The application to stay the case also ignores the children’s claims to equal protection under the law and the discrimination they face when their government discounts the value of their lives when making decisions about our nation’s energy system. While the District Court ruled earlier this week that children are not a “suspect class,” they are nonetheless a class and have raised evidence of discrimination that can be reviewed by the district court at trial.

On July 30, the United States Supreme Court ruled on the first petition and application for stay filed by the government and found that its “relief is premature,” giving the case the greenlight to go to trial. That decision was one of Justice Kennedy’s last prior to his retirement, and a matter he oversaw as the Justice then responsible for emergency applications within the geographic region of the Ninth Circuit Court of Appeals.

Aji Piper, 18-year-old plaintiff from Seattle said:

“This administration is so afraid of being held accountable. It believes itself above standard court proceedings. If the United States Supreme Court allows the federal branch of government to act in this manner, stops this case and denies us our right as young people to be heard in a court of law, the institutional legitimacy of this highest court will be harmed. At this moment in our country’s history when we are so divided, it is more important than ever that the judicial branch

of our government maintains the trust and respect of the American public. There is nothing great about a country that abandons its children and future generations.”

Andrea Rodgers, senior staff attorney at co-counsel for the youth plaintiffs, commented:

“Dozens of law schools across the United States are teaching *Juliana* because this case is so important for the future of this country. Top constitutional scholars have weighed in as *amicus curiae*. Seasoned judges in every branch of the judiciary have all given this case the greenlight to go to trial.”

Last Friday the Department of Justice filed a third [writ of mandamus petition](#) and application for stay with the Ninth Circuit Court of Appeals. The Ninth Circuit has not yet issued a decision on those filings.

Counsel for Plaintiffs are Julia Olson, Esq. of Eugene, OR, Philip L. Gregory, Esq. of Gregory Law Group of Redwood City, CA, and Andrea Rodgers, Esq. of Seattle, WA.

***Our Children’s Trust** is a nonprofit organization, leading a coordinated global human rights and environmental justice campaign to implement enforceable science-based Climate Recovery Plans that will return atmospheric carbon dioxide concentrations to below 350 ppm by the year 2100. We elevate the voice of youth, those with most to lose in the climate crisis, to secure the legal right to a healthy atmosphere and stable climate on behalf of all present and future generations. www.ourchildrenstrust.org/*

***Earth Guardians** is a Colorado-based nonprofit organization with youth chapters on five continents, and multiple groups in the United States with thousands of members working together to protect the Earth, the water, the air, and the atmosphere, creating healthy sustainable communities globally. We inspire and empower young leaders, families, schools, organizations, cities, and government officials to make positive change locally, nationally, and globally to address the critical state of the Earth. www.earthguardians.org*

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