

IN THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

DOUGLAS MARLAND, *et al.*,

Plaintiffs-Appellees,

v.

JOSEPH R. BIDEN, JR.,  
President of the United States, *et al.*,

Defendants-Appellants.<sup>1</sup>

No. 20-3322

**UNOPPOSED MOTION TO HOLD APPEAL IN ABEYANCE**

Pursuant to Federal Rule of Appellate Procedure 27, the government defendants-appellants respectfully request that the Court hold this case in abeyance, with status reports due at 60-day intervals. Notwithstanding this motion, the government stands ready to present oral argument as previously scheduled, on February 11, 2021.

This appeal involves a series of prohibitions issued by the Secretary of Commerce that regulate various transactions with TikTok Inc. and its parent company ByteDance Ltd. *See* 85 Fed. Reg. 60,061 (Sept. 24, 2020); *see also*

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<sup>1</sup> Per Federal Rule of Appellate Procedure 43(c)(2), a prior public officer's successor is automatically substituted as a party.

Exec. Order No. 13,942, 85 Fed. Reg. 48,637 (Aug. 11, 2020) (August 6 executive order, directing the Secretary to identify which transactions to prohibit). The district court enjoined those prohibitions from taking effect, and the government appealed that injunction to this Court.

As the Biden Administration has taken office, the Department of Commerce has begun a review of certain recently issued agency actions, including the Secretary's prohibitions regarding the TikTok mobile application at issue in this appeal. In relation to those prohibitions, the Department plans to conduct an evaluation of the underlying record justifying those prohibitions. The government will then be better positioned to determine whether the national security threat described in the President's August 6, 2020 Executive Order, and the regulatory purpose of protecting the security of Americans and their data, continue to warrant the identified prohibitions. The Department of Commerce remains committed to a robust defense of national security as well as ensuring the viability of our economy and preserving individual rights and data privacy.

Courts, including this Court, have held cases in abeyance when an agency sought to reconsider an action that was on review in the court of appeals. *See, e.g., Prometheus Radio Project v. FCC*, 652 F.3d 431, 443 (3d

Cir. 2011) (noting that the court had held petition in abeyance while the agency was addressing a reconsideration motion); *City of Arlington v. FCC*, 668 F.3d 229, 236 (5th Cir. 2012) (same); *Sierra Club v. EPA*, 551 F.3d 1019, 1023 (D.C. Cir. 2008) (same). This Court should do the same here.

A review of the prohibitions at issue here may narrow the issues presented or eliminate the need for this Court's review entirely. To allow new agency officials sufficient time to become familiar with the issues in this case and to allow the agency to adequately consider the issues presented in this appeal, the government thus respectfully moves to place this appeal in abeyance, with status reports due at 60-day intervals.

Plaintiffs have authorized us to state that this motion is unopposed.

Respectfully submitted,

H. THOMAS BYRON III

/s/ Casen B. Ross

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FEBRUARY 2021

## CERTIFICATION OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point CenturyExpd BT, 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 428 words, according to the count of Microsoft Word.

/s/ Casen B. Ross  
CASEN B. ROSS

## CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2021, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Casen B. Ross  
CASEN B. ROSS