

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

TIKTOK INC. and BYTEDANCE
LTD.

Petitioners,

v.

MERRICK B. GARLAND, in his
official capacity as Attorney General
of the United States,

Respondent.

No. 24-1113 (Lead)

BRIAN FIREBAUGH, CHLOE JOY
SEXTON, TALIA CADET, TIMOTHY
MARTIN, KIERA SPANN, PAUL
TRAN, CHRISTOPHER
TOWNSEND, and STEVEN KING,

Petitioners,

v.

MERRICK B. GARLAND, in his
official capacity as Attorney General
of the United States,

Respondent.

No. 24-1130

BASED POLITICS INC.,

Petitioner,

v.

MERRICK B. GARLAND, in his
official capacity as Attorney General
of the United States,

Respondent.

No. 24-1183

ON PETITION FOR REVIEW OF THE PROTECTING AMERICANS
FROM FOREIGN ADVERSARY CONTROLLED APPLICATIONS
ACT (H.R. 815)

REPLY IN SUPPORT OF EMERGENCY MOTION FOR INJUNCTION
PENDING SUPREME COURT REVIEW

Ambika Kumar
Tim Cunningham
Xiang Li
DAVIS WRIGHT TREMAINE LLP
920 Fifth Avenue, Suite 3300
Seattle, Washington 98104
(206) 757-8030
ambikakumar@dwt.com
timecunningham@dwt.com
xiangli@dwt.com

Jeffrey L. Fisher
O'MELVENY & MYERS LLP
2765 Sand Hill Road
Menlo Park, California 94025
(650) 473-2633
jlfisher@omm.com

(continued on inside cover)

Attorneys for Creator Petitioners

Elizabeth A. McNamara
Chelsea T. Kelly
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas
New York, New York 10020
(212) 489-8230
lizmcnamara@dwt.com
chelseakelly@dwt.com

James R. Sigel
Adam S. Sieff
DAVIS WRIGHT TREMAINE LLP
50 California Street, Suite 2300
San Francisco, California 94111
(415) 276-6500
jamessigel@dwt.com
adamsieff@dwt.com

Joshua Revesz
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006
(202) 383-5261
jrevesz@omm.com

Attorneys for Creator Petitioners

Jacob Huebert
Jeffrey M. Schwab
LIBERTY JUSTICE CENTER
7500 Rialto Blvd.
Suite 1-250
Austin, Texas 78735
(512) 481-4400
jhuebert@ljc.org
jschwab@ljc.org

Attorneys for Petitioner Based Politics, Inc.

The government does not dispute that even the temporary loss of TikTok will irreparably harm Petitioners—disrupting the forum they rely on for community, expression, information, entertainment, and in some instances, their livelihood. The government also does not dispute that this case presents unprecedented questions of significant constitutional magnitude, or that our country has a rich and long history and tradition of permitting the free exchange of expression unfettered by legal restrictions. Nor does the government give any reason to suggest a brief delay of the Act’s potential enforcement would cause it harm.

Instead, the government asks this Court to deny Petitioners’ Motion primarily on the basis that the Supreme Court should decide for itself whether to delay implementation of the Act pending further review. This Court, however, undisputedly has the authority to grant the relief Petitioners seek. *See, e.g., Population Inst. v. McPherson*, 797 F.2d 1062, 1073 (D.C. Cir. 1986) (staying enforcement of agency decision to withhold funding from plaintiff and redistribute funds to others); *Satiacum v. Laird*, 475 F.2d 320, 321 (D.C. Cir. 1972) (enjoining Arlington Memorial Cemetery officers from restraining plaintiff from holding services there pending appeal). And it is a standard practice of the federal courts of

appeals to issue orders maintaining the status quo on the ground pending Supreme Court review. *Cf.* Fed. R. App. P. 41(d) (providing for staying a mandate pending Supreme Court review). In fact, the Court often relies on lower courts to do so, so it can focus its energies instead on petitions for certiorari themselves and deciding cases on the merits.

In the alternative, the government asks this Court to condition an injunction pending Supreme Court review on Petitioners' filing their petition for a writ of certiorari within seven days. Gov't Resp. at 22. Such a deadline would be unnecessarily onerous. But Petitioners are prepared to move expeditiously, filing a petition for certiorari within thirty days.

For these reasons and the reasons in their Motion, Petitioners respectfully ask the Court to enjoin enforcement of the Act until the Supreme Court has had the opportunity to decide whether to accept review, and if so, decide the merits of this case.

Dated: December 12, 2024

Respectfully submitted,

/s/ Ambika Kumar

Ambika Kumar
Tim Cunningham
Xiang Li
DAVIS WRIGHT TREMAINE LLP
920 Fifth Avenue, Suite 3300
Seattle, Washington 98104
(206) 757-8030
ambikakumar@dwt.com
timcunningham@dwt.com
xiangli@dwt.com

Elizabeth A. McNamara
Chelsea T. Kelly
DAVIS WRIGHT TREMAINE LLP
1251 Avenue of the Americas
New York, New York 10020
(212) 489-8230
lizmcnamara@dwt.com
chelseakelly@dwt.com

Jeffrey L. Fisher
O'MELVENY & MYERS LLP
2765 Sand Hill Road
Menlo Park, California 94025
(650) 473-2633
jlfisher@omm.com

James R. Sigel
Adam S. Sieff
DAVIS WRIGHT TREMAINE LLP
50 California Street, Suite 2300
San Francisco, California 94111
(415) 276-6500
jamessigel@dwt.com
adamsieff@dwt.com

Joshua Revesz
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006
(202) 383-5261
jrevesz@omm.com

Attorneys for Creator Petitioners

Jacob Huebert
Jeffrey M. Schwab
LIBERTY JUSTICE CENTER
7500 Rialto Blvd., Suite 1-250
Austin, Texas 78735
(512) 481-4400
jhuebert@ljc.org
jschwab@ljc.org

Attorneys for Based Politics, Inc.

CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limit of D.C. Circuit Rule 27(c), because it contains 359 words, excluding the parts of the document exempted by Fed. R. App. 32(f).

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally-spaced typeface using Microsoft Word in 14-point Century font.

Dated: December 12, 2024

Respectfully submitted,

/s/ Ambika Kumar

Ambika Kumar

DAVIS WRIGHT TREMAINE LLP

920 Fifth Avenue, Suite 3300

Seattle, Washington 98104

(206) 757-8030

ambikakumar@dwt.com

Counsel for Creator Petitioners

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing to be electronically filed with the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on December 12, 2024.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED: December 12, 2024

/s/ Ambika Kumar

Ambika Kumar
Counsel for Creator Petitioners