

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): 19-1162* (*see Exhibit A for additional docket numbers)

Caption [use short title]

Motion for: Stay of mandate (on consent)

Set forth below precise, complete statement of relief sought:

An order staying this Court's mandate pursuant to FRAP 41(b), for 60 days from the date of this motion, i.e. through June 20, 2021, with the possibility that the parties will seek to extend the stay further at a future date.

In re: New York City Board of Education Appeals

MOVING PARTY: Board of Education of the City School District of the City of New York

OPPOSING PARTY: Victoria Munoz, Plaintiff-Appellee

Plaintiff Defendant Appellant/Petitioner Appellee/Respondent

MOVING ATTORNEY: Aaron Bloom

OPPOSING ATTORNEY: Joshua Sohn

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

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Court- Judge/ Agency appealed from: Kimba M. Wood, SDNY

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? Yes No Has this relief been previously sought in this court? Yes No 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: Case heard Jan. 14, 2021; Summary Order entered Jan. 28, 2021; Rehearing denied Apr. 15, 2021

Signature of Moving Attorney:

/s/ Aaron M. Bloom Date: April 21, 2021 Service by: CM/ECF Other [Attach proof of service]

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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In re: New York City Board of
Education Appeals

**DECLARATION IN
SUPPORT OF MOTION
ON CONSENT FOR
STAY OF MANDATE
PURSUANT TO
FRAP 41(B)**

**Docket No. 19-1162*
(* see additional
docket numbers in
Exhibit A)**

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AARON M. BLOOM, an attorney admitted to practice in this Court, declares under penalty of perjury:

1. I am a Senior Assistant Corporation Counsel in the Office of James E. Johnson, Corporation Counsel of the City of New York, the attorney of record for defendant-appellant the Board of Education of the City School District of the City of New York (BOE) in this action.

2. I submit this declaration in support of BOE's motion, on consent, for a stay of the issuance of this Court's mandate for 60 days from the date of this motion, through June 20, 2021, pursuant to Federal Rule of Appellate Procedure (FRAP) 41(b). *See* Fed. R. App.

Proc. 41(b) (providing that the Court “may extend the time” for issuance of the mandate “by order”); *id.* Committee Notes - 2018 Amendment (describing such extension as a “stay of the mandate”).

3. This Court denied BOE’s petition for rehearing or rehearing en banc on April 15, 2021. Pursuant to FRAP 41(b), this Court’s mandate would issue on April 22, 2021. However, FRAP 41(b) authorizes this Court to “shorten or extend the time” for issuing its mandate “by order.” There is good cause here for the Court to exercise its authority to extend the time to issue the mandate.

4. The parties in this class action are currently engaged in ongoing, active settlement discussions mediated by the Special Master, John Siffert. The parties and the Special Master believe that a stay of the mandate will greatly help facilitate the successful resolution of those negotiations. Conversely, the issuance of the mandate would significantly impair the parties’ ability to negotiate a settlement.

5. To that end, plaintiffs, through counsel, have given their consent to a 60-day stay of the issuance of this Court’s mandate, under FRAP 41(b). The parties further anticipate that, if settlement negotiations remain productive but more time is needed while the

mandate remains stayed, BOE will make a subsequent motion, or motions, on consent for additional 30-day stay increments.

6. Accordingly, in light of the parties' consent and the ongoing settlement negotiations, this Court should issue a stay of the mandate for 60 days from the date of this motion, i.e. through June 20, 2021.

7. By making the present motion, on consent, under FRAP 41(b), seeking a stay to facilitate settlement negotiations, BOE does not waive its right to make a subsequent motion with this Court pursuant to FRAP 41(d), seeking a stay of the mandate pending BOE's petition for certiorari to the United States Supreme Court.

8. Thus, if this Court denies the present motion for a stay of the mandate pursuant to FRAP 41(b), BOE will file, less than seven days after such denial (or within such time as this Court directs), a motion with this Court under FRAP 41(d) seeking a stay of the mandate pending BOE's petition for certiorari to the United States Supreme Court. *See* Fed. R. App. Proc 41(b) (providing that the filing of a motion to stay the mandate itself stays issuance of the mandate until seven days after determination of the motion).

9. BOE also expects that it would file a motion with this Court under FRAP 41(d) seeking a stay pending BOE's petition for certiorari to the United States Supreme Court if the Court grants the present motion for a stay pursuant to FRAP 41(b) and such stay is nearing its expiration without a likely further extension on consent.

10. This filing applies to, and the same relief is requested with respect to, each of the 347 appeals consolidated for filing and considered in tandem that were resolved by the Court's January 28, 2021 Summary Order and addressed by its April 15, 2021 order denying rehearing. As directed by the Clerk of Court, attached as Exhibit A to this declaration is a list of the docket numbers of those appeals.

WHEREFORE, this Court should issue a stay of the mandate for 60 days from the date of this motion, i.e. through June 20, 2021, with the possibility that the stay will be extended further at a future date.

Dated: New York, New York
April 21, 2021

/s/ Aaron M. Bloom
AARON M. BLOOM
Senior Counsel
(212) 356-2274
abloom@law.nyc.gov

EXHIBIT A

The above filing applies to the 347 appeals consolidated for filing and considered in tandem, listed by docket number below:

19-1162, 19-1164, 19-1165, 19-1168, 19-1172, 19-1174, 19-1175,
19-1176, 19-1177, 19-1178, 19-1179, 19-1180, 19-1181, 19-1182,
19-1183, 19-1184, 19-1185, 19-1186, 19-1187, 19-1188, 19-1189,
19-1190, 19-1191, 19-1192, 19-1193, 19-1194, 19-1195, 19-1196,
19-1197, 19-1198, 19-1199, 19-1200, 19-1201, 19-1202, 19-1203,
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