No. 14-133

In the Supreme Court of the United States

SARAHJANE BLUM, ET AL., PETITIONERS

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
JOYCE R. BRANDA
Acting Assistant Attorney General
MATTHEW M. COLLETTE
GERARD SINZDAK
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether petitioners have standing to challenge the constitutionality of the Animal Enterprise Terrorism Act, Pub. L. No. 109-374, 120 Stat. 2652 (18 U.S.C. 43), based on their allegations of planned future activities that they claim might expose them to prosecution under the Act, when (1) the court of appeals found it unreasonable to interpret the Act to cover those activities and (2) the government has disavowed any authority under the Act to prosecute petitioners for those activities.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Constitution and statutes:

Miscellaneous: Page

In the Supreme Court of the United States

No. 14-133

SARAHJANE BLUM, ET AL., PETITIONERS

v.

ERIC H. HOLDER, JR., ATTORNEY GENERAL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a) is reported at 744 F.3d 790. The opinion of the district court (Pet. App. 29a-49a) is reported at 930 F. Supp. 2d 326.

JURISDICTION

The judgment of the court of appeals was entered on March 7, 2014. A petition for rehearing was denied on May 6, 2014 (Pet. App. 27a-28a). The petition for a writ of certiorari was filed on August 4, 2014. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Animal Enterprise Terrorism Act (AETA or Act), Pub. L. No. 109-374, 120 Stat. 2652 (18 U.S.C. 43), prohibits particular types of "[f]orce, violence,

and threats" against certain commercial or academic enterprises that involve animals, animal products, or agriculture. 18 U.S.C. 43; see 18 U.S.C. 43(d)(1) (definition of "animal enterprise"). The Act makes it a criminal offense to travel in or use a means of interstate commerce:

> (1) for the purpose of damaging or interfering with the operations of an animal enterprise; and
>
> (2) in connection with such purpose—
>
> (A) intentionally damage[] or cause[] the loss of any real or personal property (including animals or records) used by an animal enterprise, or any real or personal property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise;
>
> (B) intentionally place[] a person in reasonable fear of the death of, or serious bodily injury to that person, a member of the immediate family (as defined in section 115) of that person, or a spouse or intimate partner of that person by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation; or
>
> (C) conspire[] or attempt[] to do so.

18 U.S.C. 43(a); see 18 U.S.C. 43(b)-(c) (penalties); 18 U.S.C. 43(d) (definitions). The Act's "Rules of Construction" make clear that "[n]othing in this [Act] shall be construed * * * to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution." 18 U.S.C. 43(e)(1).

2. Petitioners are five animal-rights advocates. Pet. App. 2a. They have never been prosecuted or threatened with prosecution under the AETA, and they "do not claim they have engaged in or wish to engage in activities plainly falling within the core of the statute, which is concerned with intentional destruction of property and making true threats of death or serious bodily injury." *Id.* at 2a, 4a-5a. They instead allege that they intend to "participate in" various forms of "lawful and peaceful advocacy." *Id.* at 47a.

Petitioner Sarahjane Blum alleges that she would like to make and publicize a documentary film about a foie gras farm and to "organize letter-writing and protest campaigns to raise public awareness and pressure local restaurants to stop serving foie gras." Pet. App. 5a. Petitioner Ryan Shapiro similarly alleges that "he would like to lawfully document and film animal rights abuses." *Ibid.* Petitioner Lana Lehr alleges that she desires to "attend lawful, peaceful anti-fur protests, bring rabbits with her to restaurants that serve rabbit meat, and distribute literature at events attended by rabbit breeders." *Ibid.* Petitioner Lauren Gazzola— who was previously convicted for threats, a bombing, and other illegal activities under a predecessor to the AETA, *id.* at 5a-6a; see *United States* v. *Fullmer*, 584 F.3d 132, 148-149, 157 (3d Cir. 2009)—alleges that she wants to make statements that express support for unlawful activity but do not qualify as the sort of "incitement" to commit crimes that is proscribable under the First Amendment. Pet. App. 5a-6a. And petitioner Iver Robert Johnson, III, alleges that he would like to, and does, engage in various advocacy activities related to animal rights. *Id.* at 5a.

3. Petitioners filed suit in district court seeking declaratory and injunctive relief precluding any enforcement of the AETA against them for the above-described activities, on the ground that the AETA violates the First Amendment. Pet. App. 2a. Although petitioners continue variously to engage in a number of animal-advocacy activities, including leafleting, public speaking, campaign work, letter-writing, and petitions, *id.* at 5a, they all (with the exception of petitioner Johnson) allege that the AETA chills them from engaging in the particular activities described above. *Id.* at 4a-6a.

The district court dismissed petitioners' suit for lack of standing. Pet. App. 29a-49a. The court reasoned that petitioners' standing "turn[ed] on whether" any of them faced a "credible"—that is, "objectively reasonable"—"fear of prosecution" under the AETA for engaging in the allegedly chilled activities. *Id.* at 44a (internal quotation marks and citation omitted). Applying that test, the court determined that petitioners had "not alleged an intention to engage in any activity that could reasonably be construed to fall within the statute." *Id.* at 45a (internal quotation marks and citation omitted).

The district court observed that petitioners had failed to identify "any case charging as an AETA violation the type of conduct in which they seek to engage." Pet. App. 47a. And it rejected petitioners' argument that the AETA's prohibition against "damag[ing] or caus[ing] the loss of any real or personal property," 18 U.S.C. 43(a)(2)(A), criminalized speech activities that simply resulted in lost profits. Pet. App. 48a. The court reasoned that, in context, the term "personal property" could not "reasonably be

read to include an intangible such as lost profits." *Ibid.* (bracketed page number omitted); see *ibid.* (noting, *inter alia*, that the statute defines the separate "term 'economic damage' to include 'loss of profits'") (quoting 18 U.S.C. 43(d)(3)).

4. The court of appeals affirmed. Pet. App. 1a-26a. Like the district court, the court of appeals determined that petitioners had failed to establish that they faced a "realistic threat of enforcement." *Id.* at 17a. The court of appeals concluded that petitioners' asserted "fear of prosecution and purported corresponding reluctance to engage in expressive activity rest on speculation," *id.* at 16a, and that petitioners' allegations of standing were thus "too speculative for Article III purposes," *id.* at 18a (citation omitted).

The court of appeals noted that, in the context of "First Amendment pre-enforcement actions," its precedents required an "'objectively reasonable' fear of prosecution" as a prerequisite to finding Article III injury. Pet. App. 15a. The court questioned, however, whether this Court's decision in *Clapper* v. *Amnesty International USA*, 133 S. Ct. 1138 (2013), "may have adopted a more stringent injury standard" applicable in such cases. Pet. App. 14a-15a. The court of appeals observed that *Clapper*, which held that certain plaintiffs lacked standing to challenge a government surveillance program under the First and Fourth Amendments, had found a standard requiring an "objectively reasonable likelihood" of injury to be "inconsistent with 'the well-established requirement that threatened injury must be certainly impending.'" *Id.* at 13a-14a (quoting *Clapper*, 133 S. Ct. at 1143) (nested quotation marks omitted).

The court of appeals also noted some parallels between the speculativeness of the injuries alleged in *Clapper* and the speculativeness of the injuries alleged in this case. Pet. App. 15a-18a. In the course of that discussion, the court observed that petitioners here had not actually been threatened with prosecution; that "prosecution under AETA has been rare"; and that there is no history of AETA enforcement against individuals participating in the type of activities in which petitioners planned to engage. *Id.* at 15a-16a. The court also repeatedly stressed that "the Government has disavowed any intention to prosecute [petitioners] for their stated intended conduct because, in its view, that conduct is not covered by AETA." *Id.* at 17a; see, *e.g.*, *id.* at 15a ("The government has affirmatively represented that it does not intend to prosecute such conduct because it does not think it is prohibited by the statute.").

Although the court of appeals found that *Clapper* "help[ed] make clear" that petitioners lacked standing, it ultimately determined that petitioners had "not established the needed degree of injury to establish standing based on their proffered interpretations of the provisions of the statute * * * even under [a] potentially more lenient 'substantial risk' standard or even the 'objectively reasonable' standard." Pet. App. 18a. First, the court was "satisfied that AETA includes safeguards in the form of its expression-protecting rules of construction, which preclude an interpretation according to which protected speech activity resulting in lost profits gives rise to liability" under the AETA provision prohibiting "'[i]ntentionally damag[ing] or caus[ing] the loss of any real or personal property (including animals or records) used

by an animal enterprise.'" *Id.* at 19a, 21a (quoting 18 U.S.C. 43(a)(2)(A)). Second, the court rejected the contention that the AETA's prohibition on "intentionally plac[ing] a person in reasonable fear of * * * death * * * or serious bodily injury * * * by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation," 18 U.S.C. 43(a)(2)(B), could reasonably be construed, in light of the statute's constitutional savings clause, to reach expressions of support for illegal conduct short of constitutionally proscribable incitement. Pet. App. 21a-23a; see *id.* at 23a (noting that petitioner Gazzola's conviction under a predecessor statute involved actions "well beyond expressing general support for illegal action by others"). Finally, the court found that an interpretation of the AETA's conspiracy provision to cover petitioners' otherwise lawful conduct "cannot be squared with the clear expressions of legislative intent in both the plain text of the Act and [its] legislative history." *Id.* at 24a; see *id.* at 23a-25a.

ARGUMENT

The court of appeals correctly concluded that, in the circumstances of this case, petitioners lack standing to bring a pre-enforcement challenge to the constitutionality of the AETA. Its decision does not conflict with any decision of this Court or another court of appeals. Further review is not warranted.

1. To establish Article III standing, a plaintiff must show that he has "suffered an injury in fact * * * which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992) (internal quotation marks and citations

omitted). "An allegation of future injury may suffice if the threatened injury is 'certainly impending,' or there is a 'substantial risk that the harm will occur.'" *Susan B. Anthony List* v. *Driehaus*, 134 S. Ct. 2334, 2341 (2014) (*SBA List*) (quoting *Clapper* v. *Amnesty Int'l USA*, 133 S. Ct. 1138, 1147, 1150 n.5 (2013)) (nested quotation marks omitted). In the context of a pre-enforcement challenge to a criminal statute, a "plaintiff satisfies the injury-in-fact requirement where he alleges an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution." *Id.* at 2342 (internal quotation marks and citation omitted). An asserted fear of prosecution that is "imaginary or speculative" does not suffice. *Babbitt* v. *United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979). Here, petitioners cannot show either that their intended expressive activities are "arguably . . . proscribed by the statute" they are challenging, *SBA List*, 134 S. Ct. at 2344 (brackets and citation omitted), or that they face a "credible threat of prosecution," *id.* at 2342 (citation omitted), should they engage in those activities.

a. Unlike some cases in which this Court has found a pre-enforcement First Amendment claim to be justiciable, petitioners do not contend that their planned future conduct would *in fact* violate the challenged statute. Pet. 6-9; see, *e.g.*, *Virginia* v. *American Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988); *United Farm Workers*, 442 U.S. at 301. That is, they do not concede that a prosecution against them for engaging in that conduct would actually be valid under the statute, but instead simply suggest that the statute might be interpreted that way. Pet. 6-9. The

court of appeals correctly determined that petitioners' hypothetical interpretations of the statute are not enough to establish standing, because they are not "objectively reasonable." Pet. App. 18a; see *id.* at 18a-25a.

First, it is objectively unreasonable for petitioners to suggest (Pet. 6-7) that the AETA's prohibition against intentionally damaging "real or personal property (including animals or records) used by an animal enterprise," 18 U.S.C. 43(a)(2)(A), might encompass speech activity that results in lost profits. Profits that an animal enterprise never earned are not "used" by that enterprise; hypothetical profits cannot be considered the enterprise's "real or personal *property*," see *Black's Law Dictionary* 1335 (9th ed. 2009) (defining "property" as the "right to possess, use, and enjoy a determinate thing (either a tract of land or a chattel"); and the statute explicitly addresses "loss of profits" (as distinct from "replacement costs of lost or damaged property") elsewhere, in its definition of "economic damage," which is relevant to the calculation of penalties, 18 U.S.C. 43(d)(3)(A); see 18 U.S.C. 43(b)(1)(A)-(B), (b)(2)(A), (b)(3)(A), (b)(4)(B), and (c)(3).

Second, it is objectively unreasonable for petitioners to suggest (Pet. 8) that the AETA's prohibition against "intentionally plac[ing] a person in reasonable fear of * * * death * * * or serious bodily injury * * * by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation," 18 U.S.C. 43(a)(2)(B), might apply to the planned activities of petitioner Gazzola, when petitioner Gazzola "alleges no intention to engage in 'vandalism, property damage, criminal

trespass, harassment, or intimidation'" and no "intention to act in a way that would give rise to a 'reasonable fear of . . . death . . . or serious bodily injury,'" Pet. App. 22a (quoting 18 U.S.C. 43(a)(2)(B)). Finally, it is objectively unreasonable for petitioners to suggest (Pet. 8-9) that the AETA's prohibition against conspiracies, 18 U.S.C. 43(a)(2)(C), might apply to an agreement to engage solely in expressive activity, when the objects of the agreement would not violate the Act's substantive prohibitions. See Pet. App. 23a-25a (explaining that such an interpretation would be inconsistent with the statute's structure, legislative history, and express constitutional savings clause). And to the extent of any doubt about whether petitioners' suggested interpretations are reasonable, the Act's "Rules of Construction"—which provide that "[n]othing in this [Act] shall be construed * * * to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution," 18 U.S.C. 43(e)(1)—would require such doubt to be resolved against petitioners.

b. Not only does petitioners' standing argument rest on an implausible interpretation of the AETA, which even they do not fully embrace, but also they provide no other evidence suggesting that they face a credible threat of prosecution if they engage in their alleged future conduct. Petitioners have not actually been threatened with prosecution. See, *e.g.*, *SBA List*, 134 S. Ct. at 2345 (finding threat of future enforcement where state agency had found probable cause to believe substantially identical prior conduct violated challenged statute); *Steffel* v. *Thompson*, 415 U.S. 452, 459 (1974) (finding credible threat of future enforce-

ment where, *inter alia*, plaintiff had twice been warned by police that he would "likely be prosecuted"); *Younger* v. *Harris*, 401 U.S. 37, 42 (1971) (finding no credible threat of future enforcement where, *inter alia*, plaintiffs did "not claim that they ha[d] ever been threatened with prosecution"). Petitioners also have not identified any past prosecutions under the AETA for conduct similar to what they allege they intend to do. Pet. App. 16a-17a & n.13; see, *e.g.*, *SBA List*, 134 S. Ct. at 2345 ("We have observed that past enforcement against the same conduct is good evidence that the threat of enforcement is not chimerical.") (internal quotation marks and citation omitted); *Holder* v. *Humanitarian Law Project*, 561 U.S. 1, 15-16 (2010) (noting existence of similar previous prosecutions in finding credible threat of prosecution).

It is also significant that the government has consistently maintained that the AETA cannot reasonably be read to cover petitioners' alleged planned activities and has disavowed any intent to prosecute them for engaging in those activities. See, *e.g.*, Pet. App. 4a, 16a-17a. In cases in which this Court has found a credible threat of prosecution, and there has been no such disavowal, the Court has typically regarded that absence as a strong factor favoring standing. *SBA List*, 134 S. Ct. at 2345 (emphasizing that the State has "not disavowed enforcement if petitioners make similar statements in the future"); *Humanitarian Law Project*, 561 U.S. at 16 (emphasizing that the government "has not argued to this Court that plaintiffs will not be prosecuted if they do what they say they wish to do"); *United Farm Workers*, 442 U.S. at 302 (emphasizing that "the State has not disavowed any intention of invoking the criminal penalty provi-

sion against unions that commit unfair labor practices").

2. The court of appeals' fact-specific determination that petitioners failed to demonstrate standing does not warrant this Court's review. Petitioners identify no other court of appeals that has allowed a pre-enforcement claim against the AETA to proceed or that has found the constructions of the AETA proffered by petitioners to be reasonable.[1]

Petitioners' argument (Pet. 13-27) for further review rests primarily on the contention that the court of appeals committed a methodological error by relying on *Clapper* v. *Amnesty International USA*, *supra*, to apply an inappropriately strict standard for determining whether a plaintiff has shown a credible threat of prosecution for purposes of establishing an Article III injury. That contention misunderstands the court

---

[1] Petitioners briefly suggest (Pet. 20 & n.11) that the court of appeals' construction of the AETA violated the principle "that the presence of a savings clause cannot save a criminal statute that on its terms is vague and overbroad under the First Amendment." But none of the decisions they cite (two of which are not federal cases) involved the AETA, and none of them holds that a savings clause is categorically irrelevant in determining legislative intent. See *Waste Mgmt. Holdings, Inc.* v. *Gilmore*, 252 F.3d 316, 333 (4th Cir. 2001) (rejecting reliance on savings clauses that were "repugnant to the straightforward, limiting language of the respective statutory provisions"), cert. denied, 535 U.S. 904 (2002); *Fisher* v. *King*, 232 F.3d 391, 395 (4th Cir. 2000) (rejecting reliance on savings clause that was "repugnant" to the language of the relevant statutory provisions); see also *Humanitarian Law Project*, 561 U.S. at 15-16 (noting savings clause); *CISPES* v. *Federal Bureau of Investigation*, 770 F.2d 468, 474 (5th Cir. 1985) (observing that while savings clause cannot "operate to save an otherwise invalid statute," it can "serve[] to validate a construction of the statute which avoids its application to protected expression").

of appeals' decision, which in fact determined that petitioners lacked standing even under the standard that petitioners themselves advocate.

Petitioners recognize (Pet. 26) that a plaintiff's mere assertion that a statute might prohibit particular alleged future conduct is not in itself enough to show a credible threat of prosecution. They acknowledge, in particular, that the standing inquiry "demands that [the plaintiff's] interpretation be 'objectively reasonable'" (*ibid.*), which necessarily entails at least some threshold inquiry into the statute's scope. They further acknowledge that, as the court of appeals itself observed, the court of appeals' preexisting precedent applied just such an objective-reasonableness test. See Pet. App. 15a; Pet. 26; see also Pet. 24 n.14.

The court of appeals also applied that test in this case and found that petitioners could not satisfy it. See Pet. App. 18a. Although the court of appeals noted that *Clapper* "*may* have adopted a more stringent injury standard," *id.* at 14a-15a (emphasis added), it proceeded to conclude that petitioners "have not established the needed degree of injury to establish standing based on their proffered interpretations of the provisions of the statute * * * *even under* the potentially more lenient * * * 'objectively reasonable' standard," *id.* at 18a (emphasis added). In reaching that conclusion, the court cited *Ramirez* v. *Sanchez Ramos*, 438 F.3d 92, 98-99 (1st Cir. 2006), an objective-reasonableness case that petitioners themselves cite as exemplifying the proper Article III test. Pet. App. 18a; see Pet. 24 n.14.

Petitioners therefore err in contending (Pet. 24-26) that the decision below conflicts with decisions in other circuits. Petitioners do not dispute that the

First Circuit's preexisting objective-reasonableness test sets what they view to be an appropriate test for standing and accords with the law in other circuits. See Pet. 24-26 & n.14. The court of appeals' conclusion that petitioners could not satisfy even that standard, see Pet. App. 18a, accordingly means that the result in this case would not have been different had the case arisen in another circuit. And because the articulation of the standard was not outcome-determinative here, this case would be an unsuitable vehicle for this Court's review of which formulation would have been most appropriate. [2]

---

[2] Petitioners separately suggest (Pet. 22-23) that the decision below departed from the approaches of other circuits by considering, as part of the standing inquiry, the government's disavowal both of petitioners' suggested interpretation of the AETA and of any intent to prosecute petitioners for their alleged future conduct. As discussed in the text, see pp. 11-12, *supra*, this Court has itself frequently looked to governmental disavowal as an important factor in determining whether a plaintiff has demonstrated Article III injury for purposes of a pre-enforcement challenge to a criminal statute. The circuit decisions cited by petitioners involve circumstances different from this case—such as statutes with language clearly prohibiting the plaintiffs' proposed conduct—and do not suggest that disavowals are categorically irrelevant to determining whether a credible threat of prosecution exists. See *Vermont Right to Life Comm., Inc.* v. *Sorrell*, 221 F.3d 376, 383-384 (2d Cir. 2000) (reasoning that State's interpretation could not "remove * * * reasonable fear" that statute otherwise created); *Citizens for Responsible Gov't State Political Action Comm.* v. *Davidson*, 236 F.3d 1174, 1192 (10th Cir. 2000) (reasoning that disavowal was "insufficient to overcome the chilling effect of the statute's plain language"); *Vittitow* v. *City of Upper Arlington*, 43 F.3d 1100, 1106 (6th Cir.) (reasoning that "nothing * * * *requires* us to accept representations from the City's counsel under the circumstances presented here," where the representations (if any) were unclear, counsel could not clearly bind the city,

3. Petitioners' suggestion (Pet. 27-28) that the Court should grant the petition for a writ of certiorari, vacate the judgment below, and remand for further proceedings in light of *Susan B. Anthony List* v. *Driehaus*, *supra*, is misplaced. As discussed above, the court of appeals decided this case under the very standard that petitioners interpret this Court's precedents, including *SBA List*, to require. And contrary to petitioners' contention (Pet. 17-20), the Court's conclusion that the suit in *SBA List* was justiciable does not imply that the factually quite different suit here is also justiciable.

In *SBA List*, the Court held that two plaintiff advocacy groups could bring a pre-enforcement First Amendment challenge to provisions of Ohio law that prohibited certain false political-campaign-related statements. 134 S. Ct. at 2338. The Court emphasized, *inter alia*, that the plaintiffs alleged an intent to make statements substantially identical to ones that a panel of the Ohio Elections Commission had already found probable cause to believe violated the challenged statutes. *Id.* at 2344-2345. The Court additionally noted the substantial "history of past enforcement" of the statutes, and the State's refusal to

---

and the representation was questionable in light of the record), cert. denied, 515 U.S. 1121 (1995); *Kucharek* v. *Hanaway*, 902 F.2d 513, 518-519 (7th Cir. 1990) (reasoning that state attorney general's interpretation of statute was "implausible" and thus "hesitat[ing] to rely on it to dispel the ambiguity in the words, especially as he makes no representation that his concession would bind either other law enforcement officials in Wisconsin or the courts of Wisconsin"), cert. denied, 498 U.S. 1041 (1991); see also *Chamber of Commerce* v. *Federal Election Comm'n*, 69 F.3d 600, 603 (D.C. Cir. 1995) (addressing circumstance where administrative agency was evenly split on relevant issue).

disavow future enforcement. *Id.* at 2345. The Court also found significant that the statutes at issue could be privately enforced in administrative proceedings, and that the "specter of enforcement is so substantial" that a billboard operator had refused to display the groups' message upon receiving a private cease-and-desist letter. *Ibid.* This case involves no similar circumstances that would warrant its reconsideration by the court of appeals.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
JOYCE R. BRANDA
Acting Assistant Attorney General
MATTHEW M. COLLETTE
GERARD SINZDAK
Attorneys

OCTOBER 2014