

IN THE SUPREME COURT OF THE UNITED STATES

No. 24-413

DEPARTMENT OF EDUCATION, ET AL., PETITIONERS

v.

CAREER COLLEGES AND SCHOOLS OF TEXAS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION OF THE PETITIONERS
TO RESUME MERITS BRIEFING

Pursuant to Rule 21.1 of the Rules of this Court, the Solicitor General, on behalf of petitioners the United States Department of Education and Linda McMahon in her official capacity as the Secretary of Education, respectfully moves to resume merits briefing in this case.* We are authorized to represent that respondent consents to this motion.

* Secretary McMahon is substituted as a party for her predecessor in office. See Sup. Ct. R. 35.3.

1. The Higher Education Act of 1965, 20 U.S.C. 1070 et seq., permits borrowers of federal student loans to assert defenses to their federal repayment obligations based on, among other things, misconduct of the borrower's school. See 20 U.S.C. 1087e(h). The Department has long interpreted the Act to authorize the assessment of borrower defenses in administrative proceedings before default. See, e.g., 87 Fed. Reg. 65,904, 65,904 (Nov. 1, 2022) (2022 Rule); 84 Fed. Reg. 49,788, 49,796 (Sept. 23, 2019) (2019 Rule); 81 Fed. Reg. 75,926, 75,959-75,964 (Nov. 1, 2016) (2016 Rule). The Department has also interpreted the Act to authorize the Department to assess borrower defenses on a group basis. See, e.g., 87 Fed. Reg. at 65,937; 81 Fed. Reg. at 75,964-75,974.

Respondent challenged the Department's interpretation of the statute and moved for a preliminary injunction. The district court denied the motion, Pet. App. 65a-89a, and the court of appeals reversed, id. at 1a-64a. The court of appeals held, among other things, that respondent is likely to succeed on its contention that the Department lacks statutory authority to consider borrower defenses administratively and prior to default, and that the Department cannot do so on a group basis. Id. at 30a-36a, 45a-46a, 50a-54a. The court of appeals remanded the case to the district court with instructions to postpone the effective date of the challenged provisions of the 2022 Rule pending final judgment. Id. at 64a.

On October 10, 2024, petitioners filed a petition for a writ of certiorari presenting the question whether the court of appeals erred in holding that the Higher Education Act does not permit the assessment of borrower defenses to repayment before default, in administrative proceedings, or on a group basis. The certiorari petition also presented a question concerning the scope of the preliminary relief the court of appeals ordered. On January 10, 2025, this Court granted the petition limited to the first question presented.

2. After the change in Administration, the Department determined that it should reassess the basis for and soundness of its borrower-defense regulations. On January 24, 2025, petitioners filed an unopposed motion to hold the briefing schedule in abeyance while the Department conducted that reassessment. On February 6, 2025, this Court granted the motion.

3. Since then, the Department has reexamined the basis for and soundness of its borrower-defense regulations, and it has decided to adhere to its position that the Higher Education Act permits the assessment of borrower defenses before default, in administrative proceedings, and on a group basis. In the Department's view, the court of appeals erred in adopting a contrary interpretation of the statute. The government continues to regard the issue as one of exceptional and lasting importance. See Pet. 31. Indeed, if this Court were to reject the court of appeals' inter-

pretation of the statute, the Department would exercise its statutory authority to promulgate a new borrower-defense regulation to replace the 2022 Rule.

Petitioners therefore wish to proceed with their defense of the Department's statutory authority in this case, and respectfully move to resume briefing on the merits of the question on which the Court granted certiorari. If the Court grants this motion, the parties will jointly propose an appropriate briefing schedule.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
Counsel of Record

MAY 2025