

D. Vt.
20-cv-151
Reiss, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of February, two thousand twenty-one.

Present:

Dennis Jacobs,
Richard J. Sullivan,
Steven J. Menashi,
Circuit Judges.

A.H., by and through her parents and natural guardians,
James Hester and Darlene Hester, et al.,

Plaintiffs-Appellants,

v.

21-87

Daniel M. French, in his official capacity as Secretary of the
Vermont Agency of Education, et al.,

Defendants-Appellees.

The appellants move for an emergency injunction pending appeal. The school district appellees excluded the appellants from Vermont’s Town Tuition Program (“TTP”) “solely because of [the] religious affiliation” of the appellants’ chosen school. AA374. Though the district court concluded that such exclusion violates the First Amendment, *see Espinoza v. Mont. Dep’t of Revenue*, 140 S. Ct. 2246 (2020), it declined to provide the full relief the appellants requested in deference to the appellees’ desire to develop new criteria for TTP eligibility that would satisfy Vermont’s constitution. AA375-77. In the meantime, the school districts continue to exclude the appellants from the TTP. AA378.

Upon due consideration, the court construes the appellants’ motion as a petition for a writ of mandamus directing the district court to amend the scope of its preliminary injunction and enjoin the appellees from continuing to exclude the appellants from the TTP. *See Hong Mai Sa v. Doe*, 406 F.3d 155, 158-59 (2d Cir. 2005); *Richardson Greenshields Sec., Inc. v. Lau*, 825 F.2d 647, 652-53 (2d Cir. 1987).

It is hereby ORDERED that the appellants’ petition is GRANTED. In this case: (1) the appellants have “no other adequate means to attain the relief [they] desire[],” (2) the appellants’ “right to the issuance of the writ is clear and indisputable,” and (3) we are “satisfied that the writ is appropriate under the circumstances.” *Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380-81 (2004) (internal quotation marks omitted); *see also United States v. Manzano (In re United States)*, 945 F.3d 616, 623 (2d Cir. 2019). The district court is ordered to amend its preliminary injunction to prohibit the appellees from continuing to deny the appellants’ requests for tuition reimbursement under the

TTP, regardless of the appellants' chosen school's religious affiliation or activities. An opinion will be forthcoming.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit


Catherine O'Hagan Wolfe