



**U.S. Department of Justice**  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue NW  
Washington, DC 20530

October 30, 2017

**By ECF and Fax**

The Honorable Nicholas G. Garaufis  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *Batalla Vidal, et al., v. Baran, et al.*, 16-cv-4756 (NGG) (JO)  
*State of New York, et al., v. Donald Trump, et al.*, 17-cv-5228 (NGG) (JO)

Dear Judge Garaufis:

On Friday, October 27, 2017, Defendants filed a motion to dismiss in the above-captioned matters. Defendants argued (1) that these actions are not justiciable, (2) that Plaintiffs have failed to state a claim upon which relief can be granted, and (3) that nationwide injunctive relief would be inappropriate. *Vidal* ECF No. 95. Defendants now respectfully request that the Court set a schedule for further briefing on Defendants' motion to dismiss.

Pursuant to the Court's order of October 27, 2017, *Vidal* ECF No. 98, Plaintiffs are currently scheduled to respond to Defendants' "jurisdiction and justiciability" arguments on or before noon on Wednesday, November 1. That Order also made clear that Plaintiffs, at least in their November 1 filing, "need not address" the other arguments raised in Defendants' motion to dismiss. *Id.* at 2.

Plaintiffs and the Court have, on several occasions, expressed their strong preference that this case be resolved well in advance of March 5, 2018. Defendants believe that full consideration of all arguments in Defendants' motion to dismiss will allow this Court to achieve that goal. As Defendants explained in their motion, Defendants believe that the Court should either (1) grant Defendants' motion and dismiss all of Plaintiffs' claims; or (2) reject Defendants' arguments, on the pleadings and the record currently before the Court, and order that the agency action at issue be set aside. *See* Defs.' Mot. to Dismiss at 3 ("[T]he Court should either uphold the Rescission Policy and grant this motion if it agrees that the record supports Defendants' position, or set aside the Rescission Policy if it disagrees.").<sup>1</sup> Defendants, of course, prefer the former, but also strongly believe that this case can and should be resolved on the record already before the Court.

In any event, even if this Court prefers to resolve the questions of jurisdiction and justiciability first, and separately from Defendants' other motion-to-dismiss arguments, it may do so even while the parties submit further briefing on Defendants' other arguments. That way, should this Court reject Defendants' jurisdictional arguments, it will already have the benefit of

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<sup>1</sup> To be clear, Defendants reserve their rights to (1) seek a stay pending appeal of such an order, and (2) seek any appropriate appellate review from any adverse judgment.

briefing on the other legal issues at stake in these cases. And further delaying briefing on Defendants' motion to dismiss would be an inefficient use of the parties' and the Court's time in advance of March 5, 2018, as all discovery and record supplementation has been stayed by the U.S. Court of Appeals for the Second Circuit pending consideration of Defendants' pending (but not yet fully briefed) petition for a writ of mandamus. *See* Order, *In re Duke*, No. 17-3345 (2d Cir. October 24, 2017), *Vidal* ECF No. 99.

Accordingly, Defendants respectfully request that the briefing schedule be modified in these matters as follows:

- Plaintiffs respond to the justiciability and jurisdiction arguments in Defendants' motion to dismiss on or before noon on November 1, 2017 (as currently scheduled).
- Plaintiffs respond to all of Defendants' other motion-to-dismiss arguments in an opposition brief to be filed on or before noon on November 15, 2017.

Before filing this letter motion, undersigned counsel for Defendants contacted counsel for each group of Plaintiffs, who (1) confirmed that they intend to respond only to Defendants' jurisdictional arguments on Wednesday, November 1, and (2) reported that they do not consent to Defendants' request.

Defendants thank the Court for consideration of the issues raised in this letter.

Respectfully submitted,

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CC:

All Counsel of Record (by ECF)

**CERTIFICATE OF SERVICE**

I hereby certify that I filed the foregoing Letter with the Clerk of the Court through the ECF system on October 31, 2017, which system provided a copy of the notice to all parties.

/s/ Joshua A. Rosenthal  
Joshua A. Rosenthal