

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

DANA ALIX ZZYIM,

Plaintiff-Appellee,

v.

MICHAEL R. POMPEO, in his official capacity
as the Secretary of State,

Defendant-Appellant, and

STEVEN J. MULLEN, in his official capacity as
the Director of the Colorado Passport Agency
for the United States Department of State,

Defendant-Appellant.

No. 18-1453

CONSENT MOTION FOR AN EXTENSION
OF BRIEFING DEADLINE TO MARCH 5, 2019

Defendants-appellants Michael R. Pompeo and Steven J. Mullen¹ hereby
move for a two-week extension of the briefing deadline in the above-captioned case.
Plaintiff-appellee consents to this request.

¹ Steven J. Mullen has replaced Sherman Portell as the Director of the Colorado Passport Agency and is automatically substituted as defendant-appellant pursuant to Federal Rule of Appellate Procedure 43(c)(2).

1. At the end of the day on December 21, 2018, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. Department of Justice attorneys were prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342. In light of the lapse of appropriations, the federal defendants-appellants moved for a stay of the briefing schedule. On January 2, 2019, this Court granted the motion, in part, extending the government’s briefing deadline to February 19, 2019.

2. On January 25, 2019, Congress temporarily restored funding for the Department of Justice and other agencies affected by the funding lapse, permitting the Department’s furloughed attorneys to resume their duties. However, the protracted shutdown has created a significant backlog of litigation obligations for Department attorneys. Many briefing and other litigation deadlines that were extended by this Court and other courts during the shutdown are currently scheduled to come due shortly. At the same time, deadlines in many other cases that were not extended during the shutdown are now impending. As a result, the number of litigation deadlines that must be met in the next several weeks, and the

volume of work required to meet those deadlines, have effectively been multiplied by the shutdown.

3. Lewis S. Yelin is the attorney principally responsible for representing the government in this appeal. Mr. Yelin also is principally responsible for representing the government in *Humane Society v. Perdue*, No. 18-5188 (D.C. Cir.). A brief in that matter is due February 12, 2019. Mr. Yelin also has principal responsibility in *Scalin v. Société Nationale des Chemins de Fer Français*, No. 18-1887 (7th Cir.), in which the Seventh Circuit has invited the United States to file a supplemental amicus curiae brief by February 19, 2019, the date on which the government's brief in this case currently is due.

In addition, Mr. Yelin is principally responsible for reviewing petitions for certiorari in matters within the purview of the Department of Justice Civil Division, to determine whether a response is merited, or whether the Division should recommend to the Solicitor General's office that the government waive its right to respond. Among such cases Mr. Yelin has personally handled since returning to work or will personally handle in the next two weeks are:

- *Bret v. Strange*, No. 18-888 (S. Ct.)
- *Freer v. Berryhill*, No. 18-7347 (S. Ct.)
- *Peters v. Berryhill*, No. 18-7376 (S. Ct.)
- *Bove v. United States*, No. 18-7347 (S. Ct.)
- *Duncan v. United States*, No. 18-7519 (S. Ct.)
- *Swartz v. Iancu*, No. 18-961 (S. Ct.)

- *Mitrano v. United States*, No. 18-958 (S. Ct.)
- *Wheeler v. United States*, No. 18-7441 (S. Ct.)
- *Judy v. United States*, No. 18-7589 (S. Ct.)
- *Hobson v. Mattis*, No. 18-971 (S. Ct.)
- *Daley v. Berryhill*, No. 18-7559 (S. Ct.)
- *Chalfant v. Berryhill*, No. 18-7535 (S. Ct.)

4. A two-week extension of the government's briefing deadline in this appeal to March 5, 2019, will allow Mr. Yelin to complete preparation of the government's brief in this matter, consistent with his other responsibilities.

5. As noted, plaintiff-appellee consents to this request.

Respectfully submitted,

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s/Lewis S. Yelin
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February 7, 2019

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s/ Lewis S. Yelin

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ECF CERTIFICATION

I hereby certify that this document contains no information requiring privacy redactions; that no hard copies of this filing are required to be submitted to the clerk's office; and that I scanned this document for viruses using Symantec Endpoint Detection version 13.3.1.14 with a virus definition dated February 7, 2019, and, according to the program, this document is virus free.

s/ Lewis S. Yelin

LEWIS S. YELIN
Counsel for the defendants-appellants

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2019, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system, which, pursuant to Circuit Rule 25.4, constitutes service on all parties registered for electronic filing.

s/ Lewis S. Yelin

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