

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

PARENTS FOR PRIVACY, *et al.*,

Plaintiffs-Appellants,

v.

MATTHEW G. WHITAKER, in his official
capacity as Acting Attorney General, *et al.*,

Defendants-Appellees,

BASIC RIGHTS OREGON,

Intervenor-Defendant-Appellee.

No. 18-35708

MOTION TO RESET BRIEFING SCHEDULE

On January 14, 2019, this Court granted the government's motion to stay appellate proceedings in light of the lapse in appropriations for the U.S. Department of Justice. The Court ordered the government to file a motion to reset the remaining briefing schedule within seven days of the restoration of funding. The government hereby moves as follows:

1. Prior to the lapse in appropriations, this Court set the deadline for the government's appellee brief as January 30, 2019, following one extension of time.
2. Due to the funding lapse between December 21, 2018 and January 25, 2019, however, the government lost 35 days of its briefing time to prepare its appellee brief.

3. Congress has now temporarily restored funding for the Department of Justice and other agencies affected by the funding lapse for an additional 21 days until February 15, 2019. The protracted funding lapse, however, has also created a significant backlog of litigation for the Department and other affected agencies during that period, and additional time is also required to unwind that backlog.

4. The attorney with primary responsibility for preparing the government's appellee brief is Dennis Fan. Mr. Fan has been engaged in filing the government's brief in *Texas Retailers Association v. United States Dep't of Agriculture*, No. 18-50895 (5th Cir.) (filed Jan. 28, 2019), and is now engaged in the following matters: *Texas Retailers, supra* (5th Cir.) (oral argument scheduled Feb. 4, 2019); *Fajardo v. United States Dep't of State*, No. 18-56510 (9th Cir.) (brief due Feb. 16, 2019); *American Clinical Laboratory Ass'n v. Azar*, No. 18-5312 (D.C. Cir.) (brief due Feb. 25, 2019). Mr. Fan also anticipates that other courts of appeals will reset briefing schedules in his cases that were stayed during the funding lapse in *AbbVie Biotechnology, Ltd. v. Coberus BioSciences Inc.*, No. 17-2304 (Fed. Cir.), and *Evolved Wireless LLC v. ZTE (USA) Inc.*, No. 18-2008 (Fed. Cir.).

5. The government therefore requests that this Court reset the briefing schedule, providing in its discretion an additional period of time to file its appellee brief that is no shorter than the time that the government lost due to the lapse in appropriations (35 days). Counsel for appellants have informed the government that they do not oppose a period of 30 days for the government to prepare its brief.

Respectfully submitted,

s/ Dennis Fan

DENNIS FAN

(202) 514-2494

Attorney

Civil Division, Appellate Staff

U.S. Department of Justice

950 Pennsylvania Ave., N.W., Rm. 7213

Washington, D.C. 20530

dennis.fan@usdoj.gov

JANUARY 2019

CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2019, I electronically filed the foregoing with the Clerk of the Court by using the appellate CM/ECF system. I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Dennis Fan

DENNIS FAN

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond font, a proportionally spaced font, and that it complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A), because it contains 414 words, according to the count of Microsoft Word.

s/ Dennis Fan

DENNIS FAN