



**U.S. Department of Justice**

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June 26, 2019

**BY ELECTRONIC COURT FILING**

The Honorable Paul A. Engelmayer  
United States District Court  
Southern District of New York  
Thurgood Marshall U.S. Courthouse  
40 Foley Square, Room 2201  
New York, NY 10007

Re: Defendants' letter motion to continue the deadline to respond to Plaintiffs' motions for preliminary injunction and to set a summary judgment briefing schedule; or, in the alternative, for enlargement of time to file Defendants' opposition to Plaintiffs' motions for preliminary injunction, No. 1:19-cv-04676-PAE (consolidated with Nos. 1:19-cv-05433-PAE & 1:19-cv-05435-PAE).

Dear Judge Engelmayer:

Defendants Alex M. Azar II, in his official capacity as Secretary of Health and Human Services, and the U.S. Department of Health and Human Services (HHS) respectfully ask that the Court continue the deadline to respond to Plaintiffs' motions for a preliminary injunction in the three consolidated cases and to set a briefing schedule for (cross) motion(s) for summary judgment. In the alternative, Defendants respectfully ask for an enlargement of time to respond to Plaintiffs' motions for preliminary injunction, until July 31, 2019. Pursuant to the Court's June 7, 2019 and June 13, 2019 Orders, ECF No. 27; ECF No. 38, Defendants' opposition to Plaintiffs' motions for preliminary injunction is currently due on June 28, 2019.

Defendants' request is warranted for several reasons. First, undersigned counsel is authorized to represent to this Court that HHS will delay enforcement of the HHS rule challenged in this case, Protecting Statutory Conscience Rights in Health Care; Delegations of Authority, 84 Fed. Reg. 23,170 (May 21, 2018) ("Final Rule"), until *November 22, 2019*—four months after its July 22, 2019 effective date. Thus, the initial alleged emergency that prompted Plaintiffs' preliminary injunction motions no longer exists. Instead, there is now sufficient time to permit the Court's resolution on the merits of Plaintiffs' purely legal challenges to the Final Rule, before any of Plaintiffs' allegedly irreparable harms could plausibly come to pass. Proceeding to summary judgment briefing would also conserve the resources of the Court and the parties by avoiding the duplication of resolving motions for preliminary injunction and then, regardless of that result, a

later motions for summary judgment.

Accordingly, Defendants respectfully request that the Court continue the deadline to respond to Plaintiffs' motions for preliminary injunction and set the following briefing schedule for (cross) motion(s) for summary judgment, which would provide sufficient time for Defendants to prepare the Administrative Record, for Plaintiffs to review the Record (more than two months), for the parties' to thoroughly brief the merits, and for the Court to resolve this case on the merits before November 22, 2019:

- July 22, 2019: HHS lodges the administrative record.
- September 5, 2019: Defendants file their motion for summary judgment.
- September 27, 2019: Plaintiffs file their opposition to Defendants' motion for summary judgment (and cross-motions for summary judgment, if any).
- October 11, 2019: Defendants file their reply (and opposition, if any).
- October 25, 2019: Plaintiffs file their reply in support of their motions for summary judgment, if any.

If the Court is not inclined to adopt Defendants' proposed summary judgment briefing schedule, Defendants respectfully request, in the alternative, an expansion of time, until July 31, 2019, to respond to Plaintiffs' motions for preliminary injunction. Again, in light of HHS's commitment not to enforce the Final Rule until November 22, 2019 at the earliest, Plaintiffs will not be harmed by the expansion of time. Counsel for Defendants require more time to respond because they have expended a significant amount of time in the past several weeks consulting both within the government concerning the delay in enforcement and with Plaintiffs as to the best course forward. A small team of government attorneys, each of whom is also assigned to other matters in active litigation, are handling the multiple cases in various jurisdictions challenging the Final Rule. Defendants' proposed opposition deadline would allow sufficient time to resolve Plaintiffs' motions for preliminary injunction well before November 22, 2019. The longer briefing schedule would also permit Defendants to more thoroughly respond to Plaintiffs' claims, including through motions for summary judgment, which Defendants may file alongside their opposition to Plaintiffs' motions for preliminary injunction.

Counsel for Defendants have conferred with counsel for Plaintiffs, who indicated that Plaintiffs do not consent to Defendants' motion.

We appreciate your Honor's time and attention to this matter.

Sincerely,

/s/ Bradley P. Humphreys

BRADLEY P. HUMPHREYS

Trial Attorney

U.S. Department of Justice, Civil Division