

20-15398, 20-15399, No. 20-16045, No. 20-35044

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CITY AND COUNTY OF
SAN FRANCISCO,

Plaintiff - Appellee,

v.

ALEX M. AZAR II, Secretary of
U.S. Department of Health and
Human Services, et al.,

Defendants - Appellants.

No. 20-15398

D.C. No. 3:19-cv-02405-WHA
U.S. District Court for Northern
California, San Francisco

COUNTY OF SANTA CLARA, et al.,

Plaintiffs - Appellees,

v.

U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES and
ALEX M. AZAR II, in his official
capacity as Secretary of Health and
Human Services,

Defendants - Appellants.

No. 20-15399

D.C. No. 3:19-cv-02916-WHA
U.S. District Court for Northern
California, San Francisco

STATE OF CALIFORNIA,

Plaintiff - Appellee,

v.

No. 20-16045

D.C. No. 3:19-cv-02769-WHA
U.S. District Court for Northern
California, San Francisco

ALEX M. AZAR II, in his official
capacity as Secretary of the U.S
Department of Health & Human
Services and U.S. DEPARTMENT
OF HEALTH AND HUMAN
SERVICES,

Defendants - Appellants.

STATE OF WASHINGTON,

Plaintiff - Appellee,

v.

ALEX M. AZAR II and U.S.
DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Defendants - Appellants.

No. 20-35044

D.C. No. 2:19-cv-00183-SAB
U.S. District Court for Eastern
Washington, Spokane

On Appeal from the United States District Court
for the Northern District of California

No. 3:19-cv-02769-WHA
Hon. William Alsup, Judge

**APPELLEE STATE OF CALIFORNIA'S
OPPOSED MOTION FOR A 90-DAY
EXTENSION OF TIME TO FILE ANSWERING
BRIEF**

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Pursuant to Federal Rule of Appellate Procedure 26(b) and Circuit Rules 3-3 and 31-2.2(b), plaintiff-appellee State of California respectfully moves this Court for a 90-day extension of time to October 13, 2020, in which to file its answering brief. There is a substantial need for the extension. Palma Decl. ¶¶ 3-9.

First, in light of the importance and complexity of this case, and the demands of other pressing matters, additional time is necessary to prepare a brief that will be of the most assistance to the Court. Palma Decl. ¶ 4. This case presents a host of complex legal issues impacting the delivery healthcare in this country. *Id.* It will take a substantial amount of time to review and adequately respond to the opening brief and the supporting amicus briefs, and to prepare a comprehensive answering brief. *Id.*

Second, the answering brief must undergo multiple layers of review within the Attorney General's Office, the Office of the Solicitor General, and the Governor's Office as the Rule targets the State of California and puts in jeopardy billions of dollars of annual federal funds to the State. Palma Decl. ¶ 5. In addition, this matter requires counsel consult with states agencies dealing with healthcare matters, many of whom are burdened with response to the current pandemic. *Id.* Such a multi-layered review process for an answering brief like this one will require additional time.

Third, lead counsel for the State of California must tend to a number of other matters that demand attention during the next month. Palma Decl. ¶ 6. This includes working on matters involving the State's response to the COVID-19 pandemic as it relates to the federal government. *Id.* Specifically, lead counsel on this matter is also lead on a matter challenging federal regulatory action, due to take effect mid-August 2020, which harms California's healthcare system, especially during the current healthcare crisis. *Id.*

Concurrent therewith, the Department of Justice is implementing a mandatory furlough program effective July 1, 2020 in response to the Governor's revised budget of May 2020. Palma Decl. ¶ 7. This program affects all staff including attorneys and legal support staff, and will necessarily impact the ability of the office to handle the current case load. *Id.*

Lastly, lead counsel for the State of California requires additional time due to her current status as primary caregiver to her elderly father, who is gravely ill. Palma Decl. ¶ 8.

This is appellee's first request for an extension of time in this appeal. Counsel for appellants oppose this request to the extent it requests an extension beyond 30 days. Palma Decl. ¶ 10.

Appellee respectfully requests that this Court grant its motion for a 90-day extension of time to file its answering brief, moving the deadline from July 15, 2020 to October 13, 2020.

Dated: July 8, 2020

Respectfully Submitted,

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Supervising Deputy Attorney General

/s/ NELI N. PALMA

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**DECLARATION OF NELI N. PALMA IN SUPPORT OF
APPELLEE'S OPPOSED MOTION FOR EXTENSION OF TIME TO
FILE ANSWERING BRIEF**

I, Neli N. Palma, declare:

1. I am an attorney licensed by the State of California and admitted to practice before the Ninth Circuit Court of Appeals. I am employed as a Deputy Attorney General with the Office of the Attorney General, and serve as lead counsel of record for appellee in this matter.

2. On June 15, 2020, appellants submitted their opening brief, and concurrently filed a motion to file an oversized brief. As a result of the latter filing, the briefing schedule in this matter was stayed.

3. The four appeals in this case were consolidated by the Court on July 7, 2020. On the same day, the Court granted appellants' motion to exceed the word limit and ordered the submitted opening brief to be filed. Although the matter was stayed for several weeks, the Court did not extend the time to file the appellees' briefs. The appellees' briefs are thus due on July 15, 2020.

4. In light of the importance and complexity of this case, and the demands of other pressing matters, additional time is necessary to prepare a brief that will be of the most assistance to the Court. This case presents a host of complex legal issues impacting the delivery healthcare in this country. It will take a substantial amount of time to review and adequately respond to the

opening brief and the supporting amicus briefs, and to prepare a comprehensive answering brief.

5. Aside from researching and drafting the answering brief, the brief must undergo multiple layers of review within the Attorney General's Office, the Office of the Solicitor General, and the Governor's Office as the Rule targets the State of California and puts in jeopardy billions of dollars of annual federal funds to the State. In addition, this matter requires I consult with states agencies dealing with healthcare matters, many of whom are burdened with response to the current pandemic.

6. In addition to this case, I am also counsel in a number of other matters that demand attention during the next month and I am also responsible for completing a number of time-sensitive projects for the Attorney General. As a member of the Office's Healthcare Rights and Access Section, this includes working on matters involving the State's response to the COVID-19 pandemic as it relates to the federal government. Specifically, I am lead counsel on a matter challenging federal regulatory action, due to take effect mid-August 2020, which harms California's healthcare system, especially during the current healthcare crisis.

7. The Department of Justice is implementing a mandatory furlough program effective July 1, 2020 in response to the Governor's revised budget of May 2020. This program affects all staff including attorneys and legal

support staff, and will necessarily impact the ability of the office to handle the current case load.

8. Since June 16, 2020, I have been traveling back and forth from Sacramento to Los Angeles to serve as one of the primary caregivers for my 92-year old father who suffered a head injury from a fall and is now bedridden. Due to the COVID-19 pandemic, his providers recommended he remain home because if he were to be admitted to a hospital, he would likely decline faster due to being removed from the home and isolated from family. Because he is in hospice due to advanced Parkinson's and Alzheimer's, even if he were to be admitted, it is unlikely he would receive treatment for his injury. I have been alternating caregiving with my siblings as my 82-year old mother is unable to care for him alone. I desire to be with my father during this last stage of his life. As of last week, the providers tell us he is within an approximate 21-day "transition period."

9. Despite our office's diligence, as a result of the complex nature of the case, the internal review processes for our office, and my aforementioned personal obligations to my father, additional time is needed to prepare the State of California's answering brief. Therefore, we seek a 90-day extension, moving the deadline from July 15, 2020 to October 13, 2020. I believe that, with the deadline extended to October 13, 2020, appellee will have sufficient time to prepare and file the answering brief.

10. This is appellee's first request for an extension of time in this appeal. On July 7, 2020, co-counsel in this matter emailed counsel for appellants and alerted them to the fact that all appellees would need an extension of time to file their answering briefs. Counsel for federal defendants stated that they would oppose an extension beyond 30 days.

I declare under the penalty of perjury under the laws of the United States and California that the foregoing is true and correct.

Executed in Sacramento, California on July 8, 2020.

By: /s/ Neli N. Palma
Neli N. Palma

CERTIFICATE OF SERVICE

I certify that on July 8, 2020, I electronically filed the foregoing document with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all other participants in this case are registered CM/ECF users and that services will be accomplished by the appellate EM/EC system.

Date: July 8, 2020

By: /s/ Ashley Harrison
Ashley Harrison