

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

E.J. D.-B., a Minor, Elad Dvash-Banks as the guardian
ad litem, and ANDREW MASON DVASH-BANKS,

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF STATE and MICHAEL
POMPEO,

Defendants-Appellants.

No. 19-55517

**APPELLANTS' UNOPPOSED MOTION FOR AN EXTENSION OF TIME
TO PETITION FOR REHEARING EN BANC**

The government respectfully requests a 30-day extension, to and including December 23, 2020, of the deadline for filing any petition for rehearing en banc. Plaintiffs consent to the requested extension, and there is good cause for the extension for the following reasons.

1. This case presents the question whether a child born outside the United States can acquire U.S. citizenship at birth without a biological relationship to a U.S. citizen. This Court has previously answered that question in the affirmative. *Scales v. INS*, 232 F.3d 1159 (9th Cir. 2000); *Solis-Espinoza v. Gonzales*, 401 F.3d 1090 (9th Cir. 2005). Before the panel, the government conceded that those decisions required affirmation of the district court's ruling in plaintiffs' favor, but the government preserved for potential further review the argument that *Scales* and *Solis-Espinoza* are incorrect.

2. The panel affirmed in a memorandum disposition on October 9, 2020, noting (at 2) that “[t]he government concedes that *Scales* and *Solis-Espinoza* control this case and has appealed to preserve the argument that those cases were incorrectly decided.” Any petition for rehearing en banc is currently due November 23, 2020. *See* Fed. R. App. P. 35(c); Fed. R. App. P. 40(a)(1)(B), (C).

3. An extension of time is warranted principally because the Acting Solicitor General has not yet made the requisite determination whether the government will petition for rehearing en banc, *see* 28 C.F.R. § 0.20. The requested extension is necessary to permit adequate review by the Solicitor General’s Office, including appropriate consultation with the affected agencies.

4. The requested extension is also necessary to permit the preparation of a petition if authorized by the Acting Solicitor General. Daniel Winik, who has primary responsibility for preparing any petition for rehearing in this case, is also responsible for preparing briefs in *Guardiola v. United States* (9th Cir. No. 20-15831, reply brief due December 4 with anticipated extension to January 4) and *United States ex rel. Cairns v. DS Medical LLC* (8th Cir. No. 20-2445 et al., response brief due January 15 as extended), and for presenting oral argument in *Genus Medical Technologies v. FDA* (D.C. Cir. No. 20-5026, set for December 10). In the past two weeks, Mr. Winik also filed a response to the rehearing petition in *Association for Community Affiliated Plans v. Department of the Treasury* (D.C. Cir. No. 19-5212) and presented oral argument in *VoteVets Action Fund v. Department of Veterans Affairs* (D.C. Cir. No. 19-5337).

H. Thomas Byron III, who has supervisory responsibility in this case, also has supervisory responsibility for upcoming filings in *Hunt v. Matevosian* (9th Cir. No. 18-17464, response brief due November 30 with anticipated extension); *Union of Concerned Scientists v. U.S. Department of Energy* (D.C. Cir. No. 20-1247, response brief due December 9); *Harper v. Wright* (9th Cir. No. 19-55915, response brief due December 14 as extended); and *WeChat Users Alliance v. Trump* (9th Cir. No. 20-16908, reply brief due December 18). Mr. Byron has also had supervisory responsibility for recent filings in *WeChat* (opening brief filed October 30); *TikTok, Inc. v. Trump* (D.C. Cir. No. 20-3322, reply brief filed November 12); and *Manzanita Band of the Kumeyaay Nation v. Wolf* (D.C. Cir. No. 20-5333, opposition to emergency motion for injunction pending appeal filed November 17); and for upcoming oral arguments in *TikTok* on December 14.

5. As noted above, plaintiffs consent to the requested extension.

Respectfully submitted,

H. THOMAS BYRON III

/s/ Daniel Winik

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November 18, 2020

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I hereby certify this motion complies with the requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in 14-point Garamond, 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 557 words, according to the count of Microsoft Word.

/s/ Daniel Winik

Daniel Winik