

19-15072, 19-15118, 19-15150

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**STATE OF CALIFORNIA, et al.,**

Plaintiffs-Appellees,

v.

**U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, et. al.,**

Defendants-Appellants,

**LITTLE SISTERS OF THE POOR JEANNE  
JUGAN RESIDENCE, and MARCH FOR  
LIFE EDUCATION AND DEFENSE FUND,**

Intervenors-Defendants-Appellants.

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

No. 4:17-cv-05783-HSG

Hon. Haywood Gilliam, Jr. Judge

**APPELLEES' OPPOSED MOTION FOR A 21-DAY  
EXTENSION OF TIME TO FILE CONSOLIDATED  
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), plaintiffs-appellees California *et al.* respectfully move this Court for a 21-day extension of time to April 15, 2019, in which to file their consolidated answering brief. There is a substantial need for the extension. Eisenberg Decl. ¶¶ 5-10.

First, additional time is necessary to prepare the brief given the complexity of this case. These appeals come to the Court after multiple rounds of litigation and present a host of complex legal issues. It will take a substantial amount of time to review the three opening briefs and the numerous supporting amicus briefs, and to prepare a consolidated answering brief. Eisenberg Decl. ¶ 5.

Second, there are multiple, overlapping deadlines in this case and competing deadlines in counsel's other matters. Appellees' motion for summary judgment in *California, et al. v. Azar, et al.*, Case No. 4:17-cv-05783-HSG (N.D. Cal.) is currently due on April 30, 2019. Eisenberg Decl. ¶ 6. A substantial portion of appellees' time will be dedicated to working on that brief as well. *Id.* In addition to this case, appellees' lead counsel and co-counsel have a number of competing and time sensitive litigation demands. *Id.* at ¶¶ 6-7.

Lastly, the consolidated answering brief must undergo multiple layers of review within the California Attorney General's Office, as well as by the fourteen co-plaintiffs. Eisenberg Decl. ¶ 9. Such a multi-layered review process for a consolidated answering brief like the one in this case will take additional time.

This is appellees' first request for an extension of time in these appeals. Counsel for appellants oppose this request. Eisenberg Decl. ¶ 10. Appellees understand the importance of expeditious briefing in preliminary injunction appeals, and do not believe that a modest request for 21 additional days for briefing is in conflict with expediting such appeals. For example, in the prior appeals, federal appellants requested—and this Court granted—additional time for all parties to complete the briefing. *See California v. Azar*, No. 18-15255, Dkt. No. 13 (9th Cir. March 5, 2018) (federal appellants' request for a consolidated briefing schedule, wherein each party was allotted additional time for all briefing); *see also California v. Azar*, No. 18-15144, Dkt. No. 6 (9th Cir. Feb. 8, 2018) (Little Sisters' motion for a 24-day extension of time to file its opening brief).

Appellees respectfully request that this Court grant their motion for a 21-day extension of time to file their consolidated answering brief, moving the deadline from March 25, 2019 to April 15, 2019.

Dated: February 28, 2019

Respectfully Submitted,

XAVIER BECERRA  
Attorney General of California  
MICHAEL L. NEWMAN  
Senior Assistant Attorney General  
KATHLEEN BOERGERS  
Supervising Deputy Attorney General

*/s/ Karli Eisenberg*

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**DECLARATION OF KARLI EISENBERG IN SUPPORT OF  
APPELLEES' OPPOSED MOTION FOR EXTENSION OF TIME TO  
FILE CONSOLIDATED ANSWERING BRIEF**

I, Karli Eisenberg, declare under penalty of perjury:

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 appellees in this matter.

2. These appeals were consolidated by the Court on January 29, 2019. On February 25, 2019, appellants filed their three opening briefs.

3. Appellees anticipate that several amicus briefs will be filed on or around March 4, 2019, in support of appellants.

4. Pursuant to Ninth Circuit Rule 3-3, appellees' consolidated answering brief is currently due on March 25, 2019.

5. 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 comes to the Court after multiple rounds of litigation and presents a host of complex legal issues. It will take a substantial amount of time to review the three opening

briefs and the numerous supporting amicus briefs, and prepare a comprehensive consolidated answering brief.

6. There are also multiple, overlapping deadlines in this case. Appellees' motion for summary judgment in *California, et al. v. Azar, et al.*, Case No. 4:17-cv-05783-HSG (N.D. Cal.) is currently due on April 30, 2019. A substantial portion of my time will be dedicated to working on that brief as well, including continuing to review the over 800,000 page administrative record. 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.

7. In addition, my co-counsel, Nimrod Elias, is counsel for the State of California in an appeal currently pending in the Fifth Circuit Court of Appeals, *Texas et al. v. United States, et al.*, no. 19-10011. California is leading a group of twenty states and the District of Columbia as intervenor-defendants-appellants. The opening brief in that appeal is also due on March 25, 2019.

8. Aside from researching and drafting the answering brief, the brief must undergo multiple layers of review within the California Attorney

General's Office. It also must be reviewed and approved by the fourteen co-plaintiffs, including Connecticut, Delaware, Hawaii, Illinois, Maryland, Minnesota (by and through its Department of Human Services), New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, the Commonwealth of Virginia, and the District of Columbia.

9. As a result of the complex nature of the case, the volume of materials to review and respond to, multiple and overlapping deadlines in this Court and in the district court, and the internal review processes for our office and for the fourteen co-plaintiff states, despite this office's diligence, additional time is needed to prepare and finalize the consolidated answering brief, and therefore we seek a 21-day extension, moving the deadline from March 25, 2019 to April 15, 2019. I believe that, with the deadline extended to April 15, 2019, appellees will have sufficient time to prepare and file the consolidated answering brief.

10. On February 26, 2019, I emailed counsel for appellants and alerted them to the fact that we would need an extension of time to file the consolidated answering brief. Counsel for federal defendants stated that "the most we can agree to is 7 days, because of existing, non-reschedulable travel plans and the need for expedition in this preliminary injunction appeal."

Counsel for Little Sisters of the Poor stated that they would oppose an extension request, without providing a reason for its opposition. Counsel for March for Life stated that they would only “consent to a 7-day extension.” No further explanation was provided.

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 Washington, D.C. on February 28, 2019.

By:       /s/ Karli Eisenberg      

Karli Eisenberg



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MARCH FOR LIFE EDUCATION AND  
DEFENSE FUND,**

Intervenors-Defendants-  
Appellants.

**STATEMENT OF RELATED CASES**

To the best of our knowledge, there are no related cases.

Dated: February 28, 2019

Respectfully Submitted,

XAVIER BECERRA  
Attorney General of California  
MICHAEL L. NEWMAN  
Senior Assistant Attorney General  
KATHLEEN BOERGERS  
Supervising Deputy Attorney General

*/s/ Karli Eisenberg*

KARLI EISENBERG  
NIMROD P. ELIAS  
Deputy Attorneys General  
*Attorneys for the State of California*

## CERTIFICATE OF SERVICE

I certify that on February 28, 2019, 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: February 28, 2019

/s/Karli Eisenberg