



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

OFFICE OF FEDERAL INITIATIVES

September 13, 2019

Hon. George B. Daniels
United States District Court
Southern District of New York
500 Pearl St., Room 1310
New York, NY 10007

Re: Defendants' request for an extension of time in *State of New York, et al. v. U.S. Department of Homeland Security, et al.*, 19 Civ. 7777 (GBD)

Dear Judge Daniels,

Plaintiffs, the State of New York, the City of New York, and the States of Connecticut and Vermont ("Plaintiffs"), write to oppose Defendants' request for a one-week extension of the deadline to file their opposition to Plaintiffs' motion for a preliminary injunction. As any extension would be both prejudicial and unnecessary, Plaintiffs respectfully request that the Court deny Defendants' request. In addition, Plaintiffs request that the Court schedule this matter for oral argument as soon as practicable.

First, Defendants' request will prejudice Plaintiffs. Defendants chose to make the Final Rule at issue in this case, *Inadmissibility on Public Charge Grounds*, 84 Fed. Reg. 41,292 (Aug. 14, 2019), effective on October 15, 2019, the earliest date permitted by statute. *See* 5 U.S.C. 801(a)(3)(A).¹ Moreover, Defendants consented to the filing of 40-page briefs in this matter; they seek effectively to impose a condition on that consent – an extension of time to oppose – that they did not raise at the time. *See* Docket No. 30. Pursuant to the presumptive briefing schedule set forth by Local Civil Rule 6.1, Plaintiffs' Motion for a Preliminary Injunction will be fully briefed on September 30, 2019, approximately two weeks prior to the effective date. Defendants' proposed extension would allow the Court just four business days before the effective date to hear and consider Plaintiffs' motion. Given the impending effective date and the already compressed schedule, any delay would be prejudicial.

Moreover, Defendants' request is unnecessary. Defendants acknowledge that they are responding to three similar motions filed in jurisdictions outside of the Southern District of New York. Defendants' opposition to all but one of those motions will be filed by September 16,

¹ Defendants' suggestion that Plaintiffs have been somehow dilatory in filing their motion for preliminary injunction is without merit. Plaintiffs filed their complaint in this matter less than one week after Defendants' 217-page Final Rule was published. Plaintiffs filed their motion for preliminary injunction, which includes nineteen fact and expert declarations, less than three weeks later.

2019 – one full week prior to their deadline in this matter. Moreover, as Defendants have taken the position that the issues in these cases “rais[e] substantially the same claims as Plaintiffs’ complaint,” *see* Docket No. 30, Defendants have no legitimate need to seek an extension of time. *See also id.* (opposing Plaintiffs’ request for a page extension on the grounds that given the compressed timeline, there is “little if any opportunity to adjust” the briefing schedule).²

Finally, Plaintiffs respectfully request that the Court schedule a date for argument as soon as possible after September 30, 2019, when Plaintiffs’ reply papers are due, and in any event before October 15, 2019, the scheduled effective date of the Rule. Plaintiffs submit that the interests of efficiency would be served by hearing argument at the same time on the motions for a preliminary injunction in the present case and in *Make the Road New York et al. v. Cuccinelli*, Case No. 1:19-cv-07993. Plaintiffs’ counsel in both cases are available to be heard on any day between October 1 and October 14 other than October 9 and after 3 pm on October 8.

Respectfully submitted,
LETITIA JAMES
Attorney General of the State of New York

By: /s/ Elena Goldstein

Elena Goldstein
Senior Trial Counsel
New York Office of the Attorney General
28 Liberty St.
New York, New York 10005
Phone: (212) 416-6201
elena.goldstein@ag.ny.gov

Attorney for the Plaintiffs

cc: Joshua Kolsky, counsel for Defendants (via ECF)

² Moreover, to the extent that counsel needs additional resources to assist in briefing this matter, as of FY 2018, there were 818 attorneys in the Civil Division of the Department of Justice and at least 111 attorneys in the Federal Programs Branch alone. *See* <https://www.justice.gov/jmd/page/file/1033251/download> at 2. And the U.S. Attorney’s office in the Southern District of New York likewise employs 220 attorneys, a significant percentage of whom work on civil matters. *See* <https://www.justice.gov/usao-sdny/about>.