

No. 19-17213

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CITY AND COUNTY OF SAN FRANCISCO and
COUNTY OF SANTA CLARA,

Plaintiffs-Appellees,

vs.

UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, et al.,

Defendants-Appellants,

On Appeal from the United States District Court, Northern District of California
Case No. 4:19-cv-04717-PJH (Hon. Phyllis J. Hamilton)

**JOINT MOTION TO MODIFY BRIEFING SCHEDULE;
DECLARATION IN SUPPORT THEREOF**

CITY ATTORNEY'S OFFICE
CITY AND COUNTY OF
SAN FRANCISCO
DENNIS J. HERRERA
City Attorney
JESSE C. SMITH
Chief Assistant City Attorney
RONALD P. FLYNN
Chief Deputy City Attorney
YVONNE R. MERE
Chief, Complex & Affirmative Litigation
SARA J. EISENBERG
Chief of Strategic Advocacy
MATTHEW D. GOLDBERG
Deputy City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4602
Telephone: (415) 554-4748
Facsimile: (415) 554-4715

*Attorneys for Plaintiff – Appellee
City and County of San Francisco*

OFFICE OF THE COUNTY COUNSEL
COUNTY OF SANTA CLARA
JAMES R. WILLIAMS
County Counsel
GRETA S. HANSEN
Chief Assistant County Counsel
LAURA TRICE
Lead Deputy County Counsel
RAPHAEL N. RAJENDRA,
JULIA B. SPIEGEL
H. LUKE EDWARDS
Deputy County Counsels
70 West Hedding Street
East Wing, Ninth Floor
San Jose, CA 95110-1770
Telephone: (408) 299-5900

*Attorneys for Plaintiff – Appellee
County of Santa Clara*

DANIEL TENNY
GERARD SINZDAK
JOSHUA DOS SANTOS
U.S. Department of Justice

Attorneys for Defendants – Appellants

MOTION

Plaintiffs-Appellees the City and County of San Francisco and County of Santa Clara (“Plaintiffs” or “Counties”), and Defendants-Appellants U.S. Citizenship and Immigration Services; Department of Homeland Security; Kevin McAleenan, Acting Secretary of Homeland Security; and Kenneth T. Cuccinelli, in his official capacity as Acting Director of U.S. Citizenship and Immigration Services (“Defendants-Appellants” or “Defendants”) jointly move pursuant to Circuit Rule 31-2.2(b) for an order extending the briefing schedule.

According to this Court’s November 1, 2019 order, Dkt. 2, Defendants-Appellants’ Opening Brief and Excerpts of Record are currently due on November 27, 2019; the Counties’ Answering Brief is due December 26, 2019; and Defendants-Appellants’ Optional Reply Brief is due January 9, 2020. The parties jointly request an extension of the briefing schedule as follows:

- Defendants’ Opening Brief & Excerpts of Record due December 4, 2019;
- Counties’ Answering Brief due January 16, 2020;
- Defendants’ optional Reply Brief due February 6, 2020.

Good cause exists for this request in light of the holiday schedule, counsels’ obligations in other matters, and pre-existing vacations plans, as discussed in the following section.

SUMMARY OF THE CASE AND ISSUE ON APPEAL

This case concerns the validity of regulations issued by the Department of Homeland Security (DHS) governing “public charge” determinations.

Under the Immigration and Nationality Act (INA), the federal government may deny a visa, admission, or adjustment of status to an individual if it determines that person is “likely at any time to become a public charge.” 8 U.S.C. § 1182(a)(4)(A). On August 14, 2019, DHS issued a final rule entitled “Inadmissibility on Public Charge Grounds,” interpreting that provision. 84 Fed.

Reg. 41,292 (Aug. 14, 2019) (“Final Rule” or “Rule”). Plaintiffs challenge the rule on multiple grounds. Defendants appeal from the district court’s order, issued October 11, 2019, granting a preliminary injunction prohibiting application or enforcement of the Final Rule within the City and County of San Francisco and the County of Santa Clara (as well as within the States of California, Oregon, and Maine, the Commonwealth of Pennsylvania, and the District of Columbia, which are the plaintiffs-appellants in the related case No. 19-17214). Defendants filed their notice of appeal on October 30, 2019. On November 1, 2019, this Court issued an order setting the briefing schedule in this appeal. Dkt. 2.

GOOD CAUSE EXISTS TO GRANT THE MODIFICATION

Under the briefing schedule set by this Court, Defendants’ Opening Brief and Excerpts of Record are due December 4, 2019, and the Counties’ Answering Brief is due the day after Christmas, on December 26, 2019. Substantial need exists to extend this deadline. Several major holidays—including Thanksgiving, Hanukkah, and Christmas—fall within the 4 weeks currently allotted to the Counties to prepare their brief. In addition, most of the lawyers representing the Counties in this matter are scheduled to be on vacation from December 21 through December 27, 2019, making a December 26 filing particularly challenging.

Moreover, counsel for plaintiffs anticipate having multiple deadlines in other cases during early December, including opposing a demurrer in San Francisco Superior Court, assisting with preparation for a Ninth Circuit appellate argument scheduled for December 2, and drafting a petition for rehearing en banc due to the DC Circuit Court of Appeals on December 13.

Counsel for Defendants likewise have multiple deadlines in other cases, including briefs in *National Women’s Law Center v. Office of Management & Budget*, No. 19-5130 (D.C. Cir.) (filed Nov. 15, 2019); *Zukerman v. U.S. Postal Service*, No. 19-5168 (D.C. Cir.) (due Nov. 18, 2019); *Karem v. Trump*, No. 19-

5255 (D.C. Cir.) (due Nov. 22, 2019); and *Schoenberg v. FBI*, No. 19-55696 (9th Cir.) (due Nov. 27, 2019).

Lastly, the parties have coordinated the proposed schedule here with the major, dispositive briefing deadlines in this matter in the district court. The proposed extension ensures the parties will have sufficient time and resources to adequately address the complex, novel questions in both forums.

Dated: November 15, 2019 Respectfully submitted,

DENNIS J. HERRERA
City Attorney

By: /s/ Sara J. Eisenberg
SARA J. EISENBERG
Deputy City Attorney
Attorneys for Plaintiff/Appellee
CITY AND COUNTY OF SAN
FRANCISCO

Dated: November 15, 2019 Respectfully submitted,

JAMES R. WILLIAMS
County Counsel

By: /s/ H. Luke Edwards
H. LUKE EDWARDS
Deputy County Counsel
Attorneys for Plaintiff/Appellee
COUNTY OF SANTA CLARA

Dated: November 15, 2019 Respectfully submitted,

By: /s/ Daniel Tenny
DANIEL TENNY
GERARD SINZDAK
JOSHUA DOS SANTOS
Attorneys for Defendants/Appellants

DECLARATION OF SARA EISENBERG

1. I am a San Francisco Deputy City Attorney and one of the attorneys assigned to this matter. I have personal knowledge of the contents of this declaration, and, if called upon to testify, I could and would testify competently to the contents of this declaration.

2. Under the briefing schedule set by this Court, Defendants-Appellants' Opening Brief and Excerpts of Record are currently due on November 27, 2019; the Counties' Answering Brief is due December 26, 2019; and Defendants-Appellants' Optional Reply Brief is due January 9, 2020.

3. The parties are requesting an extension of the briefing schedule as follows:

- Defendants' Opening Brief & Excerpts of Record due December 4, 2019;
- Counties' Answering Brief due January 16, 2020;
- Defendants' optional Reply Brief due February 6, 2020.

4. The parties have and will exercise diligence, and represent that the briefs will be filed within the time requested.

5. Several major holidays—including Thanksgiving, Hanukkah, and Christmas—fall within the 4 weeks currently allotted to the Counties to prepare their brief.

6. Most of the lawyers representing the Counties in this matter are scheduled to be on vacation from December 21 through December 27, 2019, making a December 26 filing particularly challenging.

7. Moreover, Plaintiffs' counsel anticipate having multiple deadlines in other cases during early December, including opposing a demurrer in San Francisco Superior Court, assisting with preparation for a Ninth Circuit appellate argument scheduled for December 2, and drafting a petition for rehearing en banc due to the DC Circuit Court of Appeals on December 13.

8. I am informed that Defendants counsel likewise have multiple deadlines in other cases, including briefs in *National Women's Law Center v. Office of Management & Budget*, No. 19-5130 (D.C. Cir.) (filed Nov. 15, 2019); *Zukerman v. U.S. Postal Service*, No. 19-5168 (D.C. Cir.) (due Nov. 18, 2019); *Karem v. Trump*, No. 19-5255 (D.C. Cir.) (due Nov. 22, 2019); and *Schoenberg v. FBI*, No. 19-55696 (9th Cir.) (due Nov. 27, 2019).

9. The parties have coordinated the proposed schedule here with the major, dispositive briefing deadlines in this matter in the district court. The proposed extension ensures the parties will have sufficient time and resources to adequately address the complex, novel questions in both forums.

10. Counsel for Defendants join in this request for modification of the briefing schedule.

11. The court reporter is not in default with regard to any designated transcripts.

12. No previous extension of the briefing schedule has been requested or granted in this case.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct. Executed on November 15, 2019, at San Francisco, California.

/s/ Sara J. Eisenberg
SARA J. EISENBERG

ATTESTATION OF SIGNATURES

I, Sara J. Eisenberg, hereby attest that all other parties on whose behalf the filing is submitted concur in the filing's content.

/s/ Sara J. Eisenberg
SARA J. EISENBERG

