

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

STATE OF NEW YORK, CITY OF NEW YORK,
STATE OF CONNECTICUT, and STATE OF
VERMONT,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF HOMELAND
SECURITY; KEVIN K. McALEENAN, *in his official
capacity as Acting Secretary of the United States
Department of Homeland Security*; UNITED STATES
CITIZENSHIP AND IMMIGRATION SERVICES;
KENNETH T. CUCCINELLI II, *in his official capacity
as Acting Director of United States Citizenship and
Immigration Services*; and UNITED STATES OF
AMERICA,

Defendants.

**CIVIL ACTION NO.
19 Civ. 07777 (GBD)**

MAKE THE ROAD NEW YORK, AFRICAN
SERVICES COMMITTEE, ASIAN AMERICAN
FEDERATION, CATHOLIC CHARITIES
COMMUNITY SERVICES, and CATHOLIC LEGAL
IMMIGRATION NETWORK, INC.,

Plaintiffs,

v.

KEN CUCCINELLI, *in his official capacity as Acting
Director of United States Citizenship and Immigration
Services*; UNITED STATES CITIZENSHIP &
IMMIGRATION SERVICES; KEVIN K.
McALEENAN, *in his official capacity as Acting
Secretary of Homeland Security*; and UNITED STATES
DEPARTMENT OF HOMELAND SECURITY,
Defendants.

**CIVIL ACTION NO.
19 Civ. 07993 (GBD)**

**PLAINTIFFS' REPLY IN SUPPORT OF SHORTENING TIME TO RESPOND TO
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiffs have demonstrated that the devastating consequences of the COVID-19
pandemic, and the need for swift action to remedy these harms, warrant expediting the

consideration of their motion for preliminary injunction, or in the alternative, a temporary restraining order pending the national COVID-related emergency.

Defendants' contention that Plaintiffs unduly delayed filing their motion for preliminary injunction is meritless. Defendants argue that, since this Court retains jurisdiction pending interlocutory appeal to issue a new injunction based on changed circumstances, Plaintiffs should have first sought relief from this Court, instead of first asking the Supreme Court to temporarily modify its stay or clarify the scope of its stay. But Defendants took the opposite position in opposing the Government Plaintiffs' motion in the Supreme Court, arguing that the district court, even if it had the "authority [to issue a new injunction]," should not "in effect be permitted to second-guess and modify a stay issued by [the Supreme] Court." Def's. Opp'n. to Mot. at 17.¹ And Defendants improperly ignore the unusual circumstances of this case, which do not involve solely the pending interlocutory appeal in the Second Circuit from the preliminary injunction order but also the Supreme Court's stay of that preliminary injunction order. While the pending appeal in the Second Circuit left the Court's October 11, 2019 injunction in place, the Supreme Court's stay of the injunction permitted the Rule to take effect. Plaintiffs thus moved expeditiously to seek relief from the Supreme Court because its stay had allowed DHS to implement the Rule pending Defendants' appeal and cast "substantial doubt as to whether the lower courts could provide any meaningful relief." Gov't Pl's. Mot. to Temporarily Lift to Modify Stay at 16.²

¹ *Department of Homeland Security, et al. v. New York, et al.*, No. 19A785 (S. Ct. Apr. 20, 2020) available at https://www.supremecourt.gov/DocketPDF/19/19A785/142030/20200420112112348_19A785%20Govt%20oppn%20to%20NY%20motion%20FILE.pdf.

² *Department of Homeland Security, et al. v. New York, et al.*, No. 19A785 (S. Ct. Apr. 13, 2020), available at https://www.supremecourt.gov/DocketPDF/19/19A785/141515/20200413153014307_19A785%20Motion%20to%20Temporarily%20Lift%20or%20Modify%20Stay.pdf.

On April 24, 2020, however, the Supreme Court clarified that the district court was the proper forum for Plaintiffs to seek emergency relief based on the new and catastrophic harms stemming from the COVID-19 pandemic and that the scope of its prior stay did not preclude Plaintiffs from doing so. *See* Declaration of Elena Goldstein Dated Apr. 28, 2020, Docket No. 170, Ex. 2. Plaintiffs filed their motion for preliminary injunction four days after the Supreme Court's Order.

Additionally, Defendants are wrong that Plaintiffs learned of the new COVID-related harms at the time the President declared a national emergency on March 13, 2020. Specific data and information about the pandemic's damage in particular states did not emerge until late March through early April of 2020 as infection, hospitalization, and death rates began to surge.³ Plaintiffs moved expeditiously after these new facts – from doctors, legal services providers, and state and city health officials – became available.

Shortening Defendants' response time will not cause Defendants undue hardship as many of the new harms that Plaintiffs raise in their motion for preliminary injunction were raised in their motion before the Supreme Court over two weeks ago. Defendants have been on notice, since April 13, 2020, that Plaintiffs were requesting, as an alternative to modification of the Supreme Court's stay, permission to move for relief in the district court. And Plaintiff State of New York announced publicly that it intended to seek emergency relief in this Court on April 24, 2020.⁴

³ Even New York City, one the earliest cities to experience a surge in infections, did not reach its peak until April 6, 2020. *See* New York City, Covid-19 Data (last updated Apr. 29, 2020), available at <https://www1.nyc.gov/site/doh/covid/covid-19-data.page>.

⁴ New York Attorney General, *Supreme Court Rules That Attorney General James Can Take Public Charge Fight Back to Lower Court* (Apr. 24, 2020), available at <https://ag.ny.gov/press-release/2020/supreme-court-rules-attorney-general-james-can-take-public-charge-fight-back>.

Finally, setting the argument date on May 5, 2020, when the parties are already scheduled to appear before the Court, serves the interests of judicial efficiency. Given the many parties involved in the above-captioned consolidated cases, it will conserve the resources of the parties and the Court for all the outstanding issues to be heard on one day.

For the foregoing reasons, the expedited schedule, giving Defendants until May 1, 2020 to file their opposition, and setting the hearing on Plaintiffs' motion for May 5, 2020, although expedited, is reasonable and warranted under these circumstances.

DATED: April 30, 2020

Respectfully submitted,

LETITIA JAMES

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