

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FRANCISCAN ALLIANCE, INCORPORATED;
CHRISTIAN MEDICAL AND DENTAL
SOCIETY; SPECIALTY PHYSICIANS OF
ILLINOIS, L.L.C.,

Plaintiffs-Appellants,

v.

ALEX M. AZAR II, in his official capacity as
Secretary of the U.S. DEPARTMENT OF HEALTH
AND
HUMAN SERVICES, et al.,

Defendants-Appellees,

v.

AMERICAN CIVIL LIBERTIES UNION OF
TEXAS; RIVER CITY GENDER ALLIANCE,

Intervenors-Appellees.

No. 20-10093

**UNOPPOSED JOINT MOTION FOR A 30-DAY EXTENSION
OF TIME TO FILE BRIEFS**

Under Circuit Rule 31.4, the federal government and Intervenor-Appellees respectfully request a Level 1 30-day extension of time in which to file their response briefs, to and including November 20, 2020 for the federal government, and to and including November 27, 2020 for Intervenor-Appellees. Plaintiffs consent to this motion.

1. This appeal involves a challenge to a 2016 Rule issued by the United States Department of Health and Human Services (HHS), in which HHS adopted regulations implementing the non-discrimination provision in Section 1557 of the Affordable Care Act. The district court vacated portions of the 2016 Rule and granted judgment to plaintiffs. Plaintiffs appealed.

2. Plaintiff-appellants' brief was originally due April 6, 2020. This Court subsequently granted plaintiff-appellants' first motion for an extension of time to file their brief until May 6, 2020, as well as plaintiff-appellants' second motion for an extension of time until June 5, 2020. The court thereafter granted plaintiff-appellants' motion to stay this appeal until 21 days after the Supreme Court's decision in *Bostock v. Clayton County* (No. 17-1618), *Altitude Express, Inc. v. Zarda* (No. 17-1623), and *R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC* (No. 18-107). After that decision issued, the Court granted plaintiff-appellant and the federal government's joint motion to stay proceedings until August 5, 2020, pending discussion of possible settlement. That stay lapsed, and plaintiff-appellants filed their opening brief on September 21, 2020.

3. The federal government's brief is now due October 21, 2020, and pursuant to Circuit Rule 35.2, Intervenor-Appellees' brief is due seven days later, on October 28, 2020.

4. The federal government and Intervenor-Appellees respectfully request a 30-day extension of time in which to file their respective response briefs. This is the federal government and Intervenor-Appellees' first request to extend these deadlines.

There is good cause to extend the federal government's deadline to provide adequate time for the preparation and review of the federal government's brief, in light of other litigation responsibilities. In addition to internal matters for which Joshua Dos Santos, the attorney with principal responsibility for drafting the government's brief, and Marleigh Dover, the supervising attorney on this case, have responsibility, Mr. Dos Santos will be presenting argument on October 16 in *Fort McDermitt Paiute and Shoshone Tribe v. Azar*, No. 19-5336 (D.C. Cir.), and is responsible for drafting the government's opening brief in a consolidated case involving multiple appeals in *ACOG v. FDA*, Nos. 20-1784, 20-1824, 20-1970 (4th Cir.), due October 26. Mr. Dos Santos has also worked on other pressing filings during the briefing period. See *Azar v. Mayor and City Council of Baltimore v. Azar*, No. 20-__ (S. Ct.), petition for certiorari, filed October 7. In addition, Ms. Dover has supervisory responsibility in *Babb v. Wilkie*, No. 16-16492 (11th Cir.), appellee brief on rehearing, due October 22.

There is likewise good cause to provide adequate time for the preparation and review of the Intervenor-Appellees' brief. Lindsey Kaley, the attorney with principal responsibility for drafting the Intervenor-Appellees' brief, is presenting argument at emergency bail hearings in *Yanes, et al. v. Martin, et al.*, No. 20-cv-216 (D.R.I.) on October 13, with additional hearing dates expected. Josh Block, the supervising attorney on this case, is counsel for Intervenor-Defendants in *Fulton v. City of Philadelphia*, No 19-123 (U.S.), and is responsible for preparing co-counsel for oral

argument on November 4. Additionally, both Ms. Kaley and Mr. Block have responsibility for ongoing internal litigation matters.

5. Counsel for plaintiff-appellants, Luke Goodrich, has stated that appellants consent to the extension.

CONCLUSION

For the foregoing reasons, the federal government and Intervenor-Appellees respectfully request a Level 1 30-day extension of time in which to file their response briefs, to and including November 20, 2020 for the federal government, and to and including November 27, 2020 for Intervenors-Appellees.

Respectfully submitted,

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/s/ Lindsey Kaley

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OCTOBER 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 625 words, according to the count of Microsoft Word.

s/ Joshua Dos Santos

JOSHUA DOS SANTOS

CERTIFICATE OF SERVICE

I certify that on October 8, 2020, I filed and served the foregoing with the Clerk of the Court by causing a copy to be electronically filed via the appellate CM/ECF system and by causing an original and one copy to be sent to the Court by Federal Express. I also hereby certify that the participants in the case are registered CM/ECF users and will be served via the CM/ECF system.

s/ Joshua Dos Santos

JOSHUA DOS SANTOS