

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

STATE OF FLORIDA,

Plaintiff,

v.

XAVIER BECERRA, Secretary of the
Dep't of Health and Human Services,
et al.,

Defendants.

Case No. 8:21-cv-839-SDM-AAS

**DEFENDANTS' UNOPPOSED FOURTH MOTION TO EXTEND TIME
TO RESPOND TO THE COMPLAINT**

Defendants, Xavier Becerra, Secretary of Health and Human Services (“HHS”); HHS; Rochelle Walensky, director of the Centers for Disease Control and Prevention (“CDC”); the CDC; and the United States America, by and through undersigned counsel, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, respectfully request an extension of time to respond to Plaintiff State of Florida’s Complaint, until two weeks after Defendants’ appeal from this Court’s Order granting Florida’s motion for a preliminary injunction is resolved and the Eleventh Circuit’s mandate issues. Florida consents to this motion, as explained below. In support of this motion, Defendants submit the following:

1. On April 8, 2021, Plaintiff filed a Complaint against Defendants seeking judicial review of a CDC order issued on October 31, 2020. ECF No. 1. The

United States attorney was served on April 13, 2021. The original deadline for Defendants to respond to the Complaint was June 14, 2021.

2. Defendants previously moved to extend that deadline three times. Defendants first moved to extend the deadline for two weeks, in consideration of the time spent on the intervening litigation over the motion for a preliminary injunction and motions for intervention, as well as time spent in mediation. *See* ECF No. 73. On June 8, 2021, the Court granted that motion, such that Defendants had until July 1, 2021 to respond to the Complaint. ECF No. 81. Defendants filed a second motion to extend the deadline in light of the need to consider the Court's intervening opinion on the preliminary injunction, and make decisions regarding appeal or other options. ECF No. 93. This second motion was opposed in part; the Court adopted neither party's proposed schedule but granted a three-week extension such that Defendants had until July 22, 2021 to respond to the Complaint. ECF No. 94. Defendants filed an unopposed third motion to extend the deadline to respond to the Complaint in light of the ongoing litigation before the Eleventh Circuit as well as overlapping deadlines in other matters. ECF No 103. On July 19, 2021, the Court granted that motion such that Defendants' response to the Complaint is currently due August 12, 2021. ECF No. 105.
3. Since that extension was granted, the parties have been actively litigating this matter. On July 23, 2021, an Eleventh Circuit panel vacated a prior order granting a stay pending appeal from the preliminary injunction. On July 24,

2021, Plaintiff filed a motion to enforce the preliminary injunction. ECF No. 108. On July 25, 2021, Defendants responded. ECF No. 112. And on July 26, 2021, this Court held a hearing on the motion and issued an order deferring disposition of the motion. ECF Nos. 114, 115. Moreover, on July 29, 2021, the Court granted the State of Texas's motion to intervene and Texas filed its Complaint on August 4, 2021.

4. This request is supported by good cause. A ruling by the Eleventh Circuit is likely to substantially inform, and perhaps control, resolution of the jurisdictional and merits issues presented in this case. Moreover, the extension request does not prejudice Plaintiff because the Court has already granted Plaintiff's request for a preliminary injunction. The extension will also advance an interest in judicial and party economy, as Plaintiff and Defendants will not have to litigate the same issues in this Court that will be under review in the Eleventh Circuit, including threshold jurisdictional issues pertaining to Plaintiff's standing, as well as the merits of their challenge to the CDC's order.
5. Good cause also supports this request as it is made as part of a conditional agreement between Plaintiff and Defendants for moving forward expeditiously if Defendants' appeal from this Court's Order granting Plaintiff's motion for a preliminary injunction is unsuccessful, as set forth in the Local Rule 3.01(g) Certification below.

THEREFORE, Defendants respectfully request that the Court extend the time to file an answer or otherwise respond to the Complaint until two weeks after

Defendants' appeal from this Court's Order granting Florida's motion for a preliminary injunction is resolved and the Eleventh Circuit's mandate issues.

Local Rule 3.01(g) Certification

Undersigned counsel conferred with counsel for the State of Florida by email on August 5, 6, 7, and 9, 2021. Plaintiff consents to the relief requested in this motion as part of the following agreement between Plaintiff and Defendants:

- (1) Plaintiff agrees to extend the deadline to the Complaint until two weeks after Defendants' Eleventh Circuit appeal is resolved, and the mandate issues.
- (2) Defendants agree that, if both of the following contingencies are met, Defendants will produce the Administrative Record for the Conditional Sail Order, and file an Answer. The parties will then confer about a schedule for motions for summary judgment. But if either (or both) conditions are not met, Defendants remain free to file a 12(b) motion to dismiss in lieu of an Answer.
 - a. Defendants' appeal from this Court's Order granting Plaintiff State of Florida's motion for a preliminary injunction is unsuccessful; and
 - b. Plaintiff voluntarily dismisses the unreasonable delay claim set forth in paragraphs 62-63 of its Complaint, ECF No. 1.

Plaintiff and Defendants' agreement is without prejudice to either party's need for potential motions practice related to, for example, scheduling, enforcement, the record, or discovery.

On August 9, 2021, undersigned counsel conferred with counsel for Intervenor State of Texas by email. Intervenor is unopposed to the relief requested in this motion.

Dated: August 9, 2021

Respectfully submitted,

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