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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

KELSEY CASCADIA ROSE JULIANA;
XIUHTEZCATL TONATIUH M., through his
Guardian Tamara Roske-Martinez; et al.

Plaintiffs,

v.

The UNITED STATES OF AMERICA;
DONALD TRUMP, in his official capacity as
President of the United States; et al.,

Defendants.

Case No.: 6:15-cv-01517-TC

**DECLARATION OF JULIA A. OLSON
in Support of Plaintiffs' Motion for
Extension of Time to File Response in
Opposition to Defendants' Motion for
Judgment on the Pleadings**

EXPEDITED HEARING REQUESTED

**DECLARATION OF JULIA A. OLSON IN SUPPORT OF PLAINTIFFS' MOTION
FOR EXTENSION OF TIME**

I, Julia A. Olson, hereby declare and if called upon would testify as follows:

1. I am an attorney of record in the above-entitled action and I have personal knowledge of the statements made herein.
2. I am one of two attorneys principally responsible for opposing Defendants' Motion for Judgment on the Pleadings.
3. On May 16, 2018, I and my co-counsel Philip L. Gregory conferred telephonically with counsel for Defendants about a briefing schedule for Defendants' Motion for Judgment on the Pleadings and the need of Plaintiffs' counsel for an extension of time to file our response. After getting approval from their supervisors, counsel for Defendants stated by email that they would agree to an extension until June 1, 2018. Defendants' stated that they oppose an extension until June 29. A true and correct copy of an email of May 17, 2018 from counsel for Defendants, Sean Duffy, setting forth Defendants' position on the extension request, is attached hereto as Exhibit 1.
4. In order to be prepared for trial, and pursuant to this Court's April 23, 2018 Order setting trial for October 29, 2018 and the Court's direction in monthly status conferences, I, along with co-counsel, am engaged in the following pre-trial activities:
 - a. Plaintiffs are finalizing propounding Requests for Admissions, contention interrogatories, and Rule 30(b)(6) notices of deposition for each agency Defendant in order to fulfill Plaintiffs' commitment to Defendants to propound all discovery by the end of May;
 - b. Plaintiffs are complying with Defendants' request to Bates stamp and produce all sources relied upon by Plaintiffs' experts in their expert reports;

- c. Scheduling and preparing for depositions of the 21 Youth Plaintiffs during the months of June, July, and August;
 - d. Scheduling, preparing for, and defending depositions of Plaintiffs' experts beginning in June; and
 - e. Scheduling, preparing for, and taking depositions of Defendants' Rule 30(b)(6) witnesses beginning in June.
5. In addition to finalizing and serving all Requests for Admissions, notices of deposition under Rule 30(b)(6) for each agency Defendant, and contention interrogatories, as well as obtaining information for Plaintiffs' final expert report of James Gustave Speth, counsel for Plaintiffs need to prepare the youth Plaintiffs for the first round of depositions, which the parties agreed during their May 10, 2018 in-person meet and confer would be scheduled to begin the first week in June.
6. I have a pre-existing commitment to travel to Dickinson College in Pennsylvania to receive an award and speak at commencement the weekend of May 18, 2018. I also have a respondent's brief due in the Colorado Supreme Court on May 25, 2018. I also have an important family commitment for my child's graduation June 14-19 during which time my ability to work on briefing will be limited.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED this 18th day of May, 2018.

Respectfully submitted,

/s/ Julia A. Olson

From: Duffy, Sean C. (ENRD) <Sean.C.Duffy@usdoj.gov>
Sent: Thursday, May 17, 2018 2:37 PM
To: Julia Olson <juliaaolson@gmail.com>; Philip Gregory <pgregory@gregorylawgroup.com>
Cc: Singer, Frank (ENRD) <Frank.Singer@usdoj.gov>; Piropato, Marissa (ENRD) <Marissa.Piropato@usdoj.gov>; Boronow, Clare (ENRD) <Clare.Boronow@usdoj.gov>
Subject: Juliana v. United States (D. Or.), No. 6:15-cv-1517 - Motion for Extension

Julia & Phil:

I write to provide the United States' position with respect to Plaintiffs' proposed "back-up" extension of time to respond to Defendants' motion under Fed. R. Civ. P. 12(c). Our position is informed by the parties' telephonic meet-and-confer this afternoon. We understand that Plaintiffs seek to extend their time to respond by 37 days, from May 23 to June 29. We further understand that Plaintiffs plan to seek the extension because (1) Julia has timing conflicts, including work on other cases, a brief due in the Colorado Supreme Court, and a commencement address she will offer this coming weekend, (2) Phil has timing conflicts, including briefs due and his responsibility as a mediator in another case, (3) Plaintiffs desire to await a ruling from the U.S. Supreme Court in *Hawaii v. Trump*, (4) Plaintiffs want to know Defendants' bases for any cert petition it might file in the future, (5) Plaintiffs are preparing additional discovery requests, and (6) Plaintiffs are preparing for depositions of named Plaintiffs, which have not yet been scheduled.

Defendants indicated that they would not oppose a one-week extension to May 30. Plaintiffs believed that the proposed May 30 extension would require them to work over the Memorial Day weekend.

We have conferred with our management about the June 29 extension. We oppose a June 29 extension for three overarching reasons.

First, despite the courtroom deputy's instruction, Plaintiffs' June 29 proposal is not "a short extension of the period to respond as a 'backup' to their primary request" that ruling be deferred to trial under Rule 12(i). Extending the response date by more than one month when there is already an October 29 trial date scheduled effectively merges Plaintiffs' "back-up" request with their primary request.

Second, most of the justifications Plaintiffs proffer (#3 - #6) do not warrant an extension at all, much less one that extends the response time by more than one month. More specifically, as to #6, there are currently no noticed depositions of the named Plaintiffs, and Defendants have advised that they are not available for depositions during the week of June 4 (as Plaintiffs propose in their May 11 letter). Thus, whatever time counsel may have reserved for preparing the named plaintiffs for depositions is now available. As to # 5, the additional discovery requests will mirror the requests for admission and the Fed. R. Civ. P. 30(b)(6) topics that Plaintiffs already served on the Departments of Agriculture, Interior, and Transportation and preparing them for other agencies should not impose a burden so significant as to hamper Plaintiffs' ability to respond to the Rule 12(c) motion. Moreover, Plaintiffs indicated that were revising their discovery requests as early as last August and should not be permitted to use the fact that they have yet to complete

that process as justification for an extension on a brief nine months later. As to #3-4, we cannot fathom why the mere possibility of a cert petition in this case or a decision in another case pending before the U.S. Supreme Court would have any bearing on the pending Rule 12(c) motion, or would justify delaying its resolution by over five weeks.

Finally, as to counsel's obligations (#1 and #2), we are sensitive to time conflicts that all attorneys face and want to find a way of balancing your schedules with Defendants' desire for final resolution of what it believes is a wholly improper case. We note that the significant overlap between the Rule 12(c) motion and the motion for protective order—which Plaintiffs state they will respond to by May 23—significantly diminishes the apparent scheduling conflicts. Both motions turn on a key legal dispute between the parties: whether this case presents an opportunity for the district court to exercise equitable jurisdiction or whether this case is confined to the Administrative Procedure Act. If Plaintiffs are prepared to brief that purely legal issue for purposes of the motion for protective order, we do not see why Plaintiffs require until June 29 to brief that same issue in the context of a Rule 12(c) motion. Notwithstanding this overlap, Defendants' sensitivity to what we assumed before today's call were your busy schedules was the reason Defendants came to today's call offering May 30 as an unopposed extension.

Third, the proposed June 29 extension exacerbates the harm to Defendants of working through discovery where no discovery is permissible and defending a programmatic challenge to energy policy where no such challenge is legally sustainable.

In sum, we do not agree that the reasons Plaintiffs offer warrant an extension of the response time to the Rule 12(c) motion to June 29. Defendants remain sensitive, however, to the various demands on your schedules and want to make reasonable accommodations. To abate the risk of your having to work over the Memorial Day weekend, Defendants are willing to agree to extend the time for Plaintiffs' response to Defendants' Rule 12(c) motion by nine days, to Friday, June 1. The June 1 date should offer sufficient time for Plaintiffs to repackage their May 23 response to the motion for protective order for purposes of responding to the same issue in the context of Rule 12(c).

If Plaintiffs agree to move for an extension to June 1, they may represent that the motion is unopposed. If Plaintiffs still seek an extension to June 29, we request that Defendants' opposition be noted and that this e-mail be attached to the motion as an explanation of that objection.

Notwithstanding this e-mail, Defendants would avail themselves of any opportunity the Court might afford to respond to Plaintiffs' motion.

Sincerely,

Sean Duffy

Sean C. Duffy
Environment & Natural Resources Division
U.S. Department of Justice

Natural Resources Section
(202) 305-0445 | sean.c.duffy@usdoj.gov
