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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

)
 JOHN DOE #1; JUAN RAMON MORALES;) CASE NO. 3:19-cv-01743-SI
 JANE DOE #2; JANE DOE #3; IRIS)
 ANGELINA CASTRO; BLAKE DOE; BRENDA)
 VILLARRUEL; GABINO SORIANO) **DEFENDANTS' MOTION FOR 60-DAY**
 CASTELLANOS; and LATINO NETWORK,) **EXTENSION OF ANSWER DEADLINE**
)
 Plaintiffs,)
 v.)
)
 DONALD TRUMP, in his official capacity as)
 President of the United States; U.S.)
 DEPARTMENT OF HOMELAND SECURITY;)
 CHAD F. WOLF, in his official capacity as)
 Acting Secretary of the Department of Homeland)
 Security; U.S. DEPARTMENT OF HEALTH)
 AND HUMAN SERVICES; ALEX M. AZAR II,)
 in his official capacity as Secretary of the)
 Department of Health and Human Services; U.S.)
 DEPARTMENT OF STATE; MICHAEL)
 POMPEO, in his official capacity as Secretary of)
 State; and UNITED STATES OF AMERICA,)
)
 Defendants.)

INTRODUCTION

Pursuant to Local Rule 16-3, Defendants request a 60-day extension of time, up to and including March 30, 2020, to file a response to Plaintiffs' First Amended Complaint, ECF No. 100. Pursuant to Local Rule 7-1, the Parties conferred on the relief requested in this motion via email beginning on January 15, 2020, and by telephone on January 21, 2020. Counsel for Plaintiffs represented that Plaintiffs oppose this request for an extension of Defendants' deadline to respond to the First Amended Complaint.

There is good cause for granting this extension, which would promote the orderly course of justice. As explained below, Defendants have filed an interlocutory appeal of this Court's order granting Plaintiffs' motion for a preliminary injunction, and Defendants have sought a stay of the injunction pending appeal. *See Doe v. Trump*, No. 19-36020 (9th Cir.). The Ninth Circuit's decision in the appeal, as well as the Ninth Circuit's decision on the motion to stay the injunction, should provide substantial guidance to this Court and to the parties on various legal questions related to the claims Plaintiffs raise in the First Amended Complaint and should also assist this Court in resolving those claims. The Ninth Circuit's decision will necessarily address the exact same legal issues at issue in the litigation before this Court. Proceeding in the absence of that guidance would be inefficient and waste the resources of both the Court and the parties.

Defendants intend to move to dismiss Plaintiffs' claims. Absent an extension, the parties will be simultaneously briefing and litigating the same claims in both this Court and in the Ninth Circuit, resulting in wasteful and duplicative litigation. Moreover, any decision the Ninth Circuit issues after the parties submit briefs to this Court could quickly render those briefs out-of-date. Defendants are not seeking in this motion to extend the briefing related to the administrative record or class certification. This extension will thus not affect that briefing and will allow those

issues to be resolved while the parties await guidance from the Ninth Circuit. Plaintiffs thus will not suffer any prejudice from this extension. Moreover, the appeal is proceeding on an expedited briefing schedule, *see Doe v. Trump*, No. 19-36020, Dkt. 17 (9th Cir. Dec. 20, 2019), and briefing will conclude by February 20, 2020. Accordingly, Defendants respectfully request a 60-day extension of the deadline to respond to the First Amended Complaint to allow time for a ruling from the Ninth Circuit on Defendants' appeal of the preliminary injunction.

BACKGROUND

On December 4, 2019, Defendants filed a notice of appeal from this Court's order granting Plaintiffs' motion for a preliminary injunction and enjoining Defendants "from taking any action to implement or enforce Presidential Proclamation No. 9945, 'Presidential Proclamation on the Suspension of Entry of Immigrants Who Will Financially Burden the United States Healthcare System.'" ECF No. 95 at 48. On appeal, Defendants moved to stay the injunction pending appeal and asked the Ninth Circuit to expedite the appeal. *See Doe v. Trump*, No. 19-36020, Dkt. 2 (9th Cir. Dec. 4, 2019). The Ninth Circuit subsequently "expedit[ed] briefing and oral argument on the emergency motion" and noted that it "anticipate[d] an expeditious issuance of a decision following argument." *Doe v. Trump*, No. 19-36020, Dkt. 17 at 2 (9th Cir. Dec. 20, 2019). The Ninth Circuit has already heard argument on the motion to stay the injunction pending appeal, set a briefing schedule on the merits of the appeal that will conclude by February 20, 2020, and noted that the appeal "will be assigned to the next available oral argument panel for a decision on the merits of the appeal." *Id.* at 3.

On November 27, 2019, this Court issued a scheduling order requiring the parties to confer and file with the Court a proposed case management order addressing: "(1) a process and schedule for completing class discovery and supplementing, if necessary, any briefing on class

certification; (2) a process and schedule for resolving any remaining disputes concerning the lodging of the Administrative Record; and (3) any other matters that either party wishes to raise.” ECF No. 97. Consistent with that order, on December 25, 2019, the parties submitted a Joint Proposed Case Management Order. ECF No. 116.

In the Joint Proposed Case Management Order, Defendants noted that they believed the deadline for responding to the Complaint should be stayed until the Ninth Circuit resolved Defendants’ appeal. ECF No. 116 at 13. Plaintiffs agreed to an extension of Defendants’ deadline to respond to the Complaint until January 30, 2020, but opposed a stay of the deadline pending appeal. *Id.* The parties thus agreed to an extension of the answer deadline until January 30, 2020, and, for the same reasons set out in this motion, Defendants reserved the right to seek additional extensions of their deadline to respond to the Complaint. *Id.*

On December 26, 2019, the Court issued an Order Setting Amended Case Management Schedule. ECF No. 117. In addition to ordering several other deadlines to which the parties had agreed, the Court approved the parties’ agreement to extend Defendants’ deadline to respond to the First Amended Complaint until January 30, 2020. *Id.*

ARGUMENT

Pursuant to Local Rule 16-3, a party seeking an extension of a deadline must (1) show good cause for the deadline to be modified, (2) show effective prior use of time, (3) recommend a new deadline, and (4) show the impact of the proposed extension upon other existing deadlines, settings, or schedules. L.R. 16-3(a). All of these factors warrant an extension of Defendants’ deadline to respond to the First Amended Complaint.

First, there is good cause to extend Defendants’ deadline to respond to the First Amended Complaint. An extension would serve the orderly course of justice by simplifying or resolving

central and potentially dispositive issues in this litigation. *Cf. CMAX, Inc. v. Hall*, 300 F.2d 266, 268 (9th Cir. 1962) (a stay is warranted where it would promote “the orderly course of justice” by “simplifying” or resolving central legal issues). The Ninth Circuit’s decisions, both in considering and resolving Defendants’ motion to stay as well as the ultimate outcome of the appeal, will materially affect how this case proceeds in this Court. This Court held that Plaintiffs are likely to succeed on their claims that (1) the Proclamation violates the nondelegation doctrine and (2) the Proclamation violates the Constitution’s principle of separation of powers. ECF No. 95 at 19-35. These are the same issues the Ninth Circuit must consider to resolve Defendants’ appeal of the preliminary injunction and Defendants’ motion to stay the preliminary injunction pending appeal. The motion to stay already has been fully briefed and argued, and the appeal will be fully briefed on February 20, 2020.

Other district courts in the Ninth Circuit have stayed the district court proceedings entirely when an appeal of a preliminary injunction is pending before the Ninth Circuit. *See, e.g.*, *Kuang v. Dep’t of Def.*, No. 18-cv-3698, 2019 WL 1597495, at *6 (N.D. Cal. Apr. 15, 2019) (“DoD asserts that its interlocutory appeal contains issues that may dispose of the case or significantly reshape the merits. The Court agrees . . . [even] an appellate ruling that leaves in place a preliminary injunction may nonetheless resolve intermediate issues in a manner that simplifies further proceedings.”); *United States v. California*, No. 2:18-cv-490, ECF No. 214 (E.D. Cal. Oct. 19, 2018) (granting a stay of proceedings in district court pending the resolution of an appeal of a preliminary ruling when the appeal would likely resolve several legal questions before the court); *Washington v. Trump*, No. 2:17-cv-141, ECF No. 189 (W.D. Wash. May 17, 2017) (granting a stay when the Ninth Circuit was considering a preliminary injunction appeal in a case challenging the same action); *East Bay Sanctuary Covenant v. Trump*, No. 18-cv-6810,

ECF No. 113 (N.D. Cal. Mar. 5, 2019) (granting Defendants' motion to stay proceedings pending resolution of their interlocutory appeal of preliminary injunction); *Innovation Law Lab v. Nielsen*, No. 19-cv-807, ECF No. 94 (N.D. Cal. July 15, 2019) (same); *East Bay Sanctuary Covenant v. Trump*, No. 19-cv-4073, ECF No. 93 (N.D. Cal. Nov. 19, 2019) (same).

Here, the relief Defendants seek is much narrower—they do not request that the Court stay the proceedings entirely but only that the Court extend the deadline to respond to the First Amended Complaint. Defendants have agreed to go forward with producing the administrative record, briefing on the administrative record, discovery on class certification issues, and briefing on class certification. Because this Court did not previously rule on class certification or Plaintiffs' APA claims, those issues are not currently before the Ninth Circuit. However, many of the legal issues that would be decided when resolving Defendants' anticipated motion to dismiss are squarely before the Ninth Circuit at this time. To require Defendants to move forward with their motion to dismiss on these exact same legal issues would be an unnecessary waste of judicial resources when the Ninth Circuit is slated to soon address and potentially resolve these issues.

When the parties conferred on Defendants' contemplated motion to extend the response deadline, Plaintiffs stated that they opposed because (1) they wanted class certification to be resolved quickly, and (2) they thought Defendants should want to move forward in district court because Defendants had argued to the Ninth Circuit that the preliminary injunction is causing harm. Neither of these arguments is persuasive. First, Defendants are not requesting an extension of class certification briefing, and an extension of Defendants' response deadline will not affect the Court's resolution of class certification. Second, an extension of Defendants' response

deadline would not affect the arguments that Defendants are currently pursuing before the Ninth Circuit, *i.e.*, that the preliminary injunction should be stayed and ultimately overturned.

Second, Defendants have been effectively using their time. Pursuant to this Court’s Order Setting Amended Case Management Schedule, on January 10, 2020, Defendants lodged the “Certified Administrative Record,” served a privilege log on Plaintiffs, and served interrogatories related to class certification issues on the Named Plaintiffs. On January 24, 2020, Plaintiffs filed a Motion to Compel Completion of Administrative Record and Privilege Log, ECF No. 119, and, pursuant to the Local Rules, Defendants must respond to that motion by February 7, 2020. Additionally, Plaintiffs must respond to Defendants’ interrogatories by February 10, 2020, and then Defendants’ sur-reply in opposition to Plaintiffs’ Motion to Certify the Class is due by February 24, 2020. ECF No. 117. The Parties also have conferred multiple times over the last two weeks regarding the interrogatories and the administrative record. Further, in proceedings before the Ninth Circuit, Defendants filed their opening appeal brief on January 2, 2020, and already argued their motion to stay the preliminary injunction pending appeal on January 9, 2020. Plaintiffs’ response brief is due by January 30, 2020, and Defendants’ reply brief is due by February 20, 2020.

Third, Defendants propose a 60-day extension, up to and including March 30, 2020. By that time, Defendants expect the Ninth Circuit will have at least ruled on Defendants’ request for a stay of the preliminary injunction pending appeal.

Fourth, this proposed extension will not affect other existing deadlines. As explained above, Defendants are not requesting an extension of any other deadline that the Court has set. Defendants intend to move forward with briefing on the administrative record and class certification pursuant to the Court’s Order Setting Amended Case Management Schedule. ECF

No. 117. There are no other deadlines because the Court vacated the earlier Discovery and Pretrial Scheduling Order, ECF No. 5, and noted that it would “invite the parties to propose any additional case management deadlines after the Court rules on Plaintiffs’ Motion to Certify the Class.” ECF No. 117 at 2.

CONCLUSION

For the foregoing reasons, Defendants respectfully request a 60-day extension of time to respond to Plaintiffs’ First Amended Complaint, up to and including March 30, 2020.

Dated: January 27, 2020

Respectfully submitted,

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