

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN J. DIERLAM,)
v.)
JOSEPH R. BIDEN JR., in his official)
capacity as President of the United States, *et al.*,)
Defendants.)

Plaintiff,)
Case No. 4:16-CV-00307
Defendants.)

)

**MOTION FOR AN EXTENSION OF TIME
TO RESPOND TO MR. DIERLAM'S SECOND AMENDED COMPLAINT**

On April 29, 2021, the Court held a status conference in this case to discuss next steps after the U.S. Court of Appeals for the Fifth Circuit remanded this case to this Court. *See* Min. Entry, Apr. 29, 2021. During the hearing and in the Court's supplemental Minute Entry, it ordered Plaintiff, John J. Dierlam to file his Second Amended Complaint by May 10, 2021, and the Government to file its response to the complaint in 45 days, such that Defendants' response is due this Thursday, June 24, 2021. *See id.* Plaintiff filed his Second Amended Complaint on May 5, 2021, raising eight claims, challenging the minimum essential coverage and preventive services coverage provisions of the Affordable Care Act ("ACA") on constitutional and statutory grounds. ECF No. 94. On June 17, 2021, the Supreme Court issued its ruling in *California v. Texas*, No. 19-840, a constitutional challenge to the minimum essential coverage provision and the ACA, holding that the plaintiffs did not have standing to challenge the minimum essential coverage provision. In light of the Supreme Court's recent ruling, and the additional reasons set forth below,

Defendants respectfully request a two-week extension, or until July 8, 2021, to respond to Plaintiff's Second Amended Complaint.

Defendants are currently considering the impact, if any, the Supreme Court's ruling will have on this case, and Defendants' response to Plaintiff's Second Amended Complaint, which, like *California*, challenges the minimum essential coverage provision on constitutional grounds, among other things. Defendants request this extension to allow for this intra- and inter-agency consideration. In addition, undersigned counsel is counsel in eight cases challenging a provision of the American Rescue Plan Act ("ARPA"). Over the last several weeks, the plaintiffs in five of those cases have filed motions for preliminary injunctions and in one of those, a motion for a temporary restraining order, all of which have required and are currently requiring expedited briefing. Accordingly, to allow for the Government's consideration of the Supreme Court's recent opinion potentially bearing on this case, as well as counsel's other litigation demands, Defendants respectfully request a two-week extension, or until July 8, 2021, to file Defendants' response to Plaintiff's Second Amended Complaint. Undersigned counsel conferred with Plaintiff, who indicated that he opposes Defendants' extension request.

A proposed order is attached.

Dated: June 18, 2021

Respectfully submitted,

JENNIFER RICKETTS
Director

MICHELLE BENNETT
Assistant Branch Director

/s/ *Emily Newton*
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on June 18, 2021, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system. Because Plaintiff is not registered on the CM/ECF system, I also served Plaintiff with a copy of the foregoing document by electronic mail.

Executed on June 18, 2021, in Washington, D.C.

/s/ Emily Newton
EMILY SUE NEWTON

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[Proposed] ORDER

Upon careful consideration of Defendants' Motion for an Extension of Time to Respond to Mr. Dierlam's Second Amended Complaint, ECF No. [XX], and for good cause shown, it is hereby ORDERED that Defendants' Motion for an Extension of Time is GRANTED. Defendants shall have an additional fourteen days, or until July 8, 2021, to file any response to Plaintiff's Second Amended Complaint.

The Honorable Keith P. Ellison
United States District Judge