

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
WESTERN DIVISION**

STATE OF KANSAS, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Case No. 24-cv-150-DMT-CRH

**DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION TO STAY AND
PROPOSED INTERVENORS' MOTION FOR EXPEDITED BRIEFING SCHEDULE**

Defendants respectfully respond to Plaintiffs' motion to stay briefing on Proposed Intervenor's motion to transfer, ECF No. 59, and Proposed Intervenor's opposition to the motion to stay and, in the alternative, motion for expedited briefing schedule, ECF No. 60.

First, Defendants take no position on the briefing schedule for Proposed Intervenor's motion to transfer, *see* ECF No. 50. Defendants agree with Proposed Intervenor that North Dakota lacks standing and, as a result, venue is improper in this district. In their opposition to Plaintiffs' motion for a stay and preliminary injunction, Defendants have presented their arguments on both points. *See* ECF No. 61 at 9-15, 20. The Court must decide this issue before it could grant Plaintiffs relief regardless of whether Proposed Intervenor's motion is fully briefed. *See Maybelline Co. v. Noxell Corp.*, 813 F.2d 901, 907 (8th Cir. 1987); *see also Kansas v. Garland*, 2024 WL 2384611, at *1 (E.D. Ark. May 23, 2024) (denying motion for preliminary injunction and transferring case to proper venue).

Second, Defendants oppose Proposed Intervenor's alternative request to expedite briefing on the motion to intervene. *See* ECF No. 60 at 4. Defendants intend to oppose Proposed Intervenor's intervention, although not their participation as amici, in this case. *See, e.g., N.D. ex rel. Stenehjem v. United States*, 787 F.3d 918, 921-23 (8th Cir. 2015). That opposition

is currently due on October 4, 2024. *See* D.N.D. Civ. L.R. 7.1(B). However, as the Court is aware, the parties are in the process of briefing Plaintiffs' motion for a stay and preliminary injunction, which has required counsel's full attention. *See* ECF No. 44 (setting briefing schedule). Defendants respectfully submit that expediting briefing on the motion to intervene just to ensure further briefing on the motion to transfer is unnecessary given that the views of Plaintiffs, Defendants, and Proposed Intervenor will be before the Court as part of the briefing on Plaintiffs' motion for a stay and preliminary injunction. If the Court is nonetheless inclined to expedite briefing on Proposed Intervenor's motion to intervene, Defendants respectfully request until October 2 to file any opposition to that motion. Shortening the briefing schedule on the motion to intervene further at this point would potentially impede Defendants' ability to prepare a satisfactory response.

Dated: September 26, 2024

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

ERIC B. BECKENHAUER
Assistant Branch Director
Federal Programs Branch

/s/ Christopher A. Eiswerth
Christopher A. Eiswerth (D.C. Bar No. 1029490)
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20005
Tel: (202) 305-0568
Email: christopher.a.eiswerth@usdoj.gov

Counsel for Defendants