

The Honorable James L. Robart

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

No. 2:17-cv-00141-JLR

PLAINTIFFS' RESPONSE TO  
DEFENDANTS' MOTION FOR AN  
EXTENSION OF TIME TO RESPOND TO  
PLAINTIFFS' SECOND AMENDED  
COMPLAINT

Eight weeks after first challenging a state's ability to bring this case, and three days before the deadline to respond to the complaint, Defendants move for an extension of time to file a motion to dismiss. The Plaintiff States respectfully submit that a fourteen-day extension is sufficient. The Court should deny Defendants' motion and order a responsive pleading by April 17.

**I. RELEVANT PROCEDURAL BACKGROUND**

Washington State filed this suit on January 30, seeking declaratory and injunctive relief against Executive Order 13769, which, among other things, banned travel from seven overwhelmingly Muslim countries and suspended the U.S. Refugee Admissions Program. ECF 1. In its complaint, Washington alleged harms to its residents, students, faculty, educational institutions, economy, and businesses. ECF 1 ¶¶ 11-22. Minnesota joined the challenge on February 1, alleging similar harms. ECF 18 ¶¶ 30-36.

1 In their February 2 opposition to the states' request for a temporary restraining order  
2 (TRO), Defendants vigorously disputed state standing and the reviewability of the Executive  
3 Order. ECF 50 at 9-26. In granting the TRO, this Court rejected Defendants' arguments,  
4 concluding that the states have standing and are likely to succeed on the merits of their claims.  
5 ECF 52 at 4-5. After Defendants renewed their justiciability and merits arguments on appeal, the  
6 Ninth Circuit agreed that the states have standing and that the Executive Order is reviewable.  
7 *Washington v. Trump*, 847 F.3d 1151, 1158-64 (9th Cir. 2017) (per curiam).

8 On March 9, the Court granted Oregon's motion to intervene as a plaintiff. ECF 112. On  
9 March 13, Washington, California, Maryland, Massachusetts, New York, and Oregon (States)  
10 filed an amended complaint that reasserts challenges to Executive Order 13769 and adds  
11 challenges to Executive Order 13780, which bans travel from six majority-Muslim countries and  
12 again suspends the U.S. Refugee Admissions Program. ECF 118 at 2; ECF 118-1 ¶¶ 182, 185.  
13 The States reallege harms to an array of important proprietary, sovereign, and *parens patriae*  
14 interests, including to their residents, students, faculty, educational institutions, economy and  
15 businesses, health care providers, religious organizations, and to the States' interest in preventing  
16 the federal government from establishing a disfavored religion or interfering with their anti-  
17 discrimination laws. ECF 118 at 4-13; ECF 118-1 ¶¶ 8-135. On March 17, in a *sua sponte* order  
18 imposing a limited stay of the States' renewed TRO motion, the Court expressly stated that it  
19 did not "stay any other aspect of this litigation." ECF 164 at 11.

20 Defendants' responsive pleading was due April 3. Defendants requested that the States  
21 agree to an extension of time to respond, and the States offered to stipulate to a fourteen-day  
22 extension and an April 17 due date. ECF 176 at 3. Defendants declined this offer and moved for  
23 an extension of time with no specified response date, pegged instead to their concurrently filed  
24 motion to stay all district court proceedings. ECF 176 at 1; *see also* ECF 175 at 1 (moving to  
25  
26

1 “stay district court proceedings”).<sup>1</sup> Defendants filed no responsive pleading by the April 3  
2 deadline.

## 3 II. ARGUMENT

### 4 A. Relief from a Deadline Requires a Timely Motion and a Showing of Good Cause

5 Federal Rule of Civil Procedure 6(b)(1) and Local Rule 7(j) govern motions for relief  
6 from a deadline. District courts may extend deadlines for good cause. Fed. R. Civ. P. 6(b).  
7 “[G]ood cause’ means scheduling deadlines cannot be met despite [a] party’s diligence.”  
8 *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (quoting 6A Wright,  
9 Miller & Kane, *Federal Practice and Procedure* § 1522.1 at 321 (2d ed. 1990)). The good cause  
10 inquiry is more lenient early in a case, but nonetheless focuses on the moving party’s reasons—  
11 “[i]f that party was not diligent, the inquiry should end.” *Johnson*, 975 F.2d at 609.<sup>2</sup> Rule 6(b)(1),  
12 “like all the Federal Rules of Civil Procedure,” is construed “to effectuate the general purpose  
13 of seeing that cases are tried on their merits.” *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253,  
14 1258-59 (9th Cir. 2010).

15 Separate from the good cause standard, Local Rule 7(j) governs the timing of  
16 Defendants’ motion. “A motion for relief from a deadline should, whenever possible, be filed  
17 sufficiently in advance of the deadline to allow the court to rule on the motion prior to the  
18 deadline.” LCR 7(j). Where a “true, unforeseen emergency exists that prevents a party from  
19 meeting a deadline,” and “the emergency arose too late to file a motion for relief from the  
20 deadline,” that party may seek a stipulation or schedule a telephonic hearing. *Id.* In any event,

21 \_\_\_\_\_  
22 <sup>1</sup> Defendants request an extension until ten days after the Court resolves Defendants’ pending motion to  
23 stay the district court proceedings in their entirety. *See* ECF 176 at 1; ECF 175-2 at 1 (proposed order staying “all  
district court proceedings in this case”). The States will respond to Defendants’ motion to stay by the April 10  
response deadline applicable to that motion. *See* LCR 7(d)(3).

24 <sup>2</sup> Defendants’ proposed extension—and particularly the indefinite extension they seek through a stay—  
25 prejudices the States by delaying discovery of critical intent evidence and forestalling resolution of the important  
26 merits issues in this case. Although the focus of the Rule 6(b) inquiry is “the moving party’s reasons for seeking [a  
deadline] modification,” “the existence or degree of prejudice to the party opposing the modification might supply  
additional reasons to deny a motion.” *Johnson*, 975 F.2d at 609. The States will more fully address prejudice from  
delay in their response to Defendants’ stay motion.

1 “[p]arties should not assume that [a motion for relief from a deadline] will be granted and must  
2 comply with the existing deadline unless the court orders otherwise.” LCR 7(j).

3 **B. No Good Cause—Let Alone Any Emergency—Justifies Defendants’ Motion**

4 Defendants have not argued, much less demonstrated, that any emergency prevented  
5 them from noting their motion on time. They also have not shown good cause that merits an  
6 extension beyond April 17 to respond to the States’ complaint.

7 First, with respect to timing, Defendants had 60 days—nearly three times the period  
8 afforded any other defendant—to file a responsive pleading. Fed. R. Civ. P. 12(a)(2). It was due  
9 April 3. Defendants waited until three days before the deadline to file their motion, which is  
10 noted for April 7. ECF 176. Under these circumstances, Defendants’ motion is untimely, and  
11 only “a true, unforeseen emergency” excuses compliance with the motion deadline. LCR 7(j).  
12 Defendants do not cite this rule, but assert that an extension is required because (1) they are in  
13 the process of seeking a much longer (in fact, indefinite) extension through a stay, and (2)  
14 counsel have been occupied with briefing in other Executive Order litigation. *See* ECF 176 at 1-  
15 2.

16 These are not unforeseen emergencies. Defendants’ stay motion is fully briefed, with no  
17 indication of having been conceived or drafted at the eleventh hour. And, of course, Defendants  
18 and their counsel were well aware of the briefing demands created by the issuance of the  
19 Executive Orders and resulting litigation. Neither justification explains why Defendants—with  
20 the ample legal resources of the Department of Justice—were unable to ensure their motion for  
21 an extension would be timely filed. Defendants should not benefit from a delay that overlooks  
22 the Local Rules.

23 Even if Defendants’ motion had been timely noted, they fail to demonstrate good cause  
24 to be excused from the April 3 deadline. Defendants have made clear that their responsive  
25 pleading will be a motion to dismiss. ECF 176 at 2 (Defendants’ response “will likely be a motion  
26 to dismiss”); Joint Status Report & Discovery Plan, ECF 177 at 4 (“Plaintiffs’ claims are not

1 justiciable because the States lack standing”); *id.* at 20 (“Defendants anticipate that the case can  
2 be resolved on a motion to dismiss or motion for summary judgment.”). They claim an extension  
3 is warranted because the appeal in *Hawai‘i v. Trump*, No. 17-15589 (9th Cir. Mar. 30, 2017), “is  
4 likely to provide substantial guidance” for their motion to dismiss. ECF 176 at 2. But Defendants  
5 already have significant guidance about the viability of state challenges to the Executive Orders,  
6 including two prior opinions in this case. Temporary Restraining Order, ECF 52 at 4-5;  
7 *Washington*, 847 F.3d at 1158-68; *see also Aziz v. Trump*, No. 1:17-cv-00116-LMB-TCB, ECF  
8 42 at 5-13 (E.D. Va. Feb. 3, 2017) (Virginia has standing to challenge Executive Order 13769);  
9 *Aziz*, No. 1:17-cv-00116-LMB-TCB, 2017 WL 580855, at \*2-3, \*5-9 (E.D. Va. Feb. 13, 2017)  
10 (Virginia’s claims are justiciable and Virginia is likely to prevail on the merits); *Hawai‘i v.*  
11 *Trump*, No. 17-cv-50-DKW-KSC, 2017 WL 1011673, at \*7-9, \*11-16 (D. Haw. Mar. 15, 2017)  
12 (Hawai‘i has standing to challenge Executive Order 13780 and is likely to prevail on the merits);  
13 *Hawai‘i*, No. 17-cv-50-DKW-KSC, 2017 WL 1167383, at \*3-6 (D. Haw. Mar. 29, 2017) (same).  
14 With these opinions at hand, Defendants have sufficient guidance on the States’ standing and  
15 reviewability of the Executive Orders to permit them to respond to the complaint.

16 Defendants further assert that an extension is needed to provide counsel “additional time  
17 to draft a response to the complaint in this case.” ECF 176 at 2. While counsel for the States are  
18 keenly aware of the time demands presented by this case, counsel for Defendants have already  
19 briefed state standing and the merits repeatedly and at length. *See* Defs.’ Opp. to Pl. State of  
20 Washington’s Mot. for Temporary Restraining Order, ECF 50 at 9-26; Emergency Mot. Under  
21 Circuit Rule 27-3 for Administrative Stay and Mot. for Stay Pending Appeal, *Washington*, No.  
22 17-35105, ECF 14 at 9-19 (9th Cir. Feb. 4, 2017); Mem. of Law in Opposition to the  
23 Commonwealth’s Mot. to Intervene, *Aziz*, No. 1:17-cv-116-LMB-TCB, ECF 34 at 2-9 (E.D. Va.  
24 Feb. 2, 2017); Resps.’ Mem. of Law in Opposition to Intervenor-Petitioner Commonwealth of  
25 Virginia’s Mot. for Preliminary Injunction, *Aziz*, No. 1:17-cv-116-LMB-TCB, ECF 80 at 9-27  
26 (E.D. Va. Feb. 8, 2017); Defs.’ Mem. in Opp. to Pls.’ Mot. for Temporary Restraining Order,

1 *Hawai‘i*, No. 17-cv-50-DKW-KSC, ECF 145 at 14-21, 23-47 (D. Haw. Mar. 13, 2017); Defs.’  
 2 Mem. in Opp. to Pls.’ Mot. to Convert TRO to PI, *Hawai‘i*, No. 17-cv-50-DKW-KSC, ECF 251  
 3 at 14-29 (D. Haw. Mar. 24, 2017).<sup>3</sup> At this point, justiciability and reviewability of the Executive  
 4 Orders are familiar territory for Defendants, and two additional weeks to draft a motion to  
 5 dismiss are sufficient.

6 Finally, Defendants confess hope that they will not have to file a response at all (or at  
 7 least not for a long time) because a response will be “unnecessary” if the Court grants the  
 8 complete stay they seek. ECF 176 at 2. This goal is incompatible with the requirement that the  
 9 Federal Rules of Civil Procedure, including Rule 6(b)(1), be administered to secure a just and  
 10 speedy determination of each case on its merits. *See Ahanchian*, 624 F.3d at 1258-59 (citing Fed.  
 11 R. Civ. P. 1, 6(b)). Defendants should be required to respond to the complaint no later than April  
 12 17, the stipulated extension offered by the States.

### 13 III. CONCLUSION

14 Defendants’ motion for an extension to file a responsive pleading is untimely and  
 15 unsupported by good cause. The States respectfully request that the Court deny the motion and  
 16 order Defendants to file a response by April 17.

17 DATED this 5th day of April, 2017.

18  
 19 Respectfully submitted,

20 BOB FERGUSON, WSBA #26004  
 21 Attorney General of Washington

22 /s/ Colleen M. Melody  
 23 NOAH G. PURCELL, WSBA #43492  
 24 Solicitor General  
 25 COLLEEN M. MELODY, WSBA #42275  
 26 Civil Rights Unit Chief

<sup>3</sup> These citations are limited to briefs filed by Defendants in cases where a state has challenged the Executive Orders. Defendants have submitted detailed briefing on the same or similar issues in many other cases brought by private plaintiffs and organizations.

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 5, 2017, I electronically filed the foregoing Plaintiffs' Response to Defendants' Motion for an Extension of Time to Respond to Plaintiffs' Second Amended Complaint using the Court's CM/ECF system, causing a notice of filing to be served upon all counsel of record.

Dated: April 5, 2017

/s/Colleen Melody  
COLLEEN MELODY

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