

The Honorable James L. Robart

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

STATE OF WASHINGTON, et al.,

Plaintiffs,

v.

DONALD TRUMP, in his official capacity as President of the United States; U.S. DEPARTMENT OF HOMELAND SECURITY; JOHN F. KELLY, in his official capacity as Secretary of the Department of Homeland Security; REX W. TILLERSON, in his official capacity as Secretary of State; and the UNITED STATES OF AMERICA,

Defendants.

No. 2:17-cv-00141 (JLR)

**REPLY IN SUPPORT OF
DEFENDANTS’ MOTION FOR AN
EXTENSION OF TIME TO RESPOND
TO PLAINTIFFS’ SECOND
AMENDED COMPLAINT**

Noted For Consideration:
April 7, 2017

Defendants seek an extension of time to respond to Plaintiffs’ Second Amended Complaint (ECF No. 152), until ten (10) days after the Court resolves Defendants’ pending—but not yet fully briefed—Motion to Stay District Court Proceedings Pending Resolution of Appeal in *Hawaii v. Trump* (ECF No. 175). The reason for this extension request is simple: Had Defendants not filed the instant motion, a portion of the relief they seek in their stay motion (*i.e.*, a stay of the deadline to respond to Plaintiffs’ Second Amended Complaint) would have become moot before the Court is able to decide the issue. Moreover, the parties would have wasted time and resources briefing a Rule 12(b) motion to dismiss that, if the Court grants

1 a stay, would need to be re-briefed after the appeal in *Hawaii* is resolved. *See* ECF No. 175, at
2 8-9. Under these circumstances, Defendants have shown good cause for an extension of time
3 and their motion should be granted. *See Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253,
4 1259 (9th Cir. 2010) (“‘Good cause’ is a non-rigorous standard that has been construed broadly
5 across procedural and statutory contexts.”).

6
7 By comparison, this Court previously stayed consideration of Plaintiffs’ motion for a
8 temporary restraining order (“TRO”), because “many of the legal arguments Plaintiffs raise[d]
9 in their TRO motion are likely to be before the Ninth Circuit in *Hawaii*” and “it would waste
10 judicial resources to decide these issues here when guidance from the Ninth Circuit is likely to
11 be available soon.” *Washington v. Trump*, 2017 WL 1050354, at *5 (W.D. Wash. Mar. 17,
12 2017). The exact same reasoning supports a stay of other proceedings in this case.

13
14 Defendants’ forthcoming motion to dismiss will undoubtedly raise legal issues—as to both
15 standing and the merits—on which the Ninth Circuit’s decision in *Hawaii* will likely provide
16 substantial guidance. Accordingly, as explained more fully in Defendants’ stay motion,
17 Defendants believe that staying district proceedings in this case pending resolution of the
18 *Hawaii* appeal is the most “efficient” approach “for [the court’s] own docket and the fairest
19 course for the parties[.]” *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863 (9th
20 Cir. 1979).¹

21
22 Defendants’ stay motion, however, will not be fully briefed until April 14, 2017—after
23 the deadline for Defendants to respond to Plaintiffs’ Second Amended Complaint. Therefore,
24

25
26 ¹ The Ninth Circuit has adopted an expedited briefing schedule in *Hawaii*, under which briefing
27 will be completed by April 28, 2017 and oral argument is set for May 15, 2017. *See* No. 17-
28 15589, ECF Nos. 14, 18 (9th Cir.). In the district court in *Hawaii*, the court granted the parties’
joint motion to stay proceedings pending resolution of the appeal. *See* No. CV 17-00050, ECF
Nos. 277, 279 (D. Haw.).

1 Defendants filed the instant motion to extend that deadline, so that they could have the benefit
2 of the Court’s ruling on the stay motion before moving to dismiss the complaint.

3 Contrary to Plaintiffs’ suggestion, *see* Pls.’ Resp. at 4, ECF No. 178, Defendants could
4 not have filed this extension request any earlier than they did. Indeed, Defendants filed their
5 extension motion (and their accompanying stay motion) as soon as possible after occurrence of
6 the events that justified the motions. The district court in *Hawaii* converted its TRO into a
7 preliminary injunction on March 29, 2017. *See* No. CV 17-00050, ECF No. 270. That same
8 day, Defendants reached out to Plaintiffs to inform them that Defendants would move for a stay
9 pending resolution of any appeal in *Hawaii* and also inquiring whether Plaintiffs would oppose
10 a motion for extension of time to respond to the complaint until ten days after the stay motion is
11 resolved. The following day (March 30, 2017), Defendants filed an appeal in *Hawaii*;
12 Plaintiffs that day informed Defendants that they would stipulate to a fourteen-day extension
13 for Defendants’ response to the complaint, but no longer; and Defendants that day filed both
14 their stay motion and their extension motion. Any suggestion that Defendants should have
15 moved for an extension of time before the very event that precipitated Defendants’ stay
16 motion—and correspondingly, their extension motion—is illogical.

17 Defendants, moreover, did not “overlook[]” Local Rule 7(j). Pls.’ Resp. at 4. As noted
18 in Defendants’ extension motion, Plaintiffs informed Defendants that they would stipulate to a
19 fourteen-day extension of time—until April 17, 2017—for Defendants’ response to the
20 complaint. Defendants’ extension motion, which requests a longer extension of time, will be
21 fully briefed on April 7, and thus, the Court could rule on it before April 17. If, however, the
22 Court has not ruled on the extension motion before April 17, Defendants intend to request a
23 telephonic hearing pursuant to Local Rule 7(i) to discuss the extension motion. *See* Local Rule
24
25
26
27
28

1 7(j). Defendants did not see a need to contact the Court prior to the April 17 agreed extension
2 date when it is possible the Court will resolve the extension motion before that date.²

3 Plaintiffs also claim that Defendants have not shown good cause for the requested
4 extension, because “Defendants had 60 days” to respond to the complaint and have already
5 briefed many of the issues that will be raised in Defendants’ motion to dismiss. Pls.’ Resp. at
6 4; *id.* at 5-6. This assertion ignores both the history of this case and the primary reason for the
7 requested extension. First, Plaintiffs’ operative complaint—the Second Amended Complaint—
8 was not filed until March 13, 2017, less than a month ago. *See* ECF No. 152. The Second
9 Amended Complaint is voluminous; among other things, it adds five new State plaintiffs and
10 related allegations, and attaches 41 exhibits totaling nearly 460 pages. *See id.* In addition,
11 since this case was filed, the parties have litigated numerous motions: Plaintiffs’ TRO motion
12 as to the Revoked Order (ECF No. 19-1); Defendants’ motion in the Ninth Circuit seeking a
13 stay of the Court’s injunctive order as to the Revoked Order; Plaintiffs’ Emergency Motion to
14 Enforce Preliminary Injunction (ECF No. 119); and Plaintiffs’ Emergency TRO motion as to
15 the New Executive Order (ECF No. 148). The parties also have engaged in Rule 26(f)
16 consultations and filed a 22-page Joint Status Report and Discovery Plan (ECF No. 177).
17 Defendants, therefore, have not been sitting on their hands.³

21
22
23
24 ² Defendants note that, in another case raising similar issues, *see Ali v. Trump*, No. 2:17-cv-
25 00135-JLR (W.D. Wash.), Defendants requested a telephonic hearing when the plaintiffs in that
26 case were unwilling to agree to any extension of the deadline for Defendants to respond to the
complaint.

27 ³ As explained in Defendants’ extension motion, counsel for Defendants also have spent, and
28 continue to spend, significant time briefing preliminary motions in other cases challenging the
New Executive Order. *See* ECF No. 176, at 2.

1 Second, Plaintiffs’ argument disregards the primary reason for the requested extension.
2 Defendants could file a motion to dismiss, but that motion likely will become obsolete once the
3 appeal in *Hawaii* is resolved. Indeed, as this Court previously recognized with respect to
4 Plaintiffs’ TRO motion, “[c]onsiderable . . . resources may be wasted if the appellate court’s
5 controlling decision changes the applicable law.” *Washington*, 2017 WL 1050354, at *5. To
6 avoid unnecessary briefing and/or re-briefing of Defendants’ motion to dismiss, as well as any
7 need for this Court to issue a decision on the motion that may be nullified or may need to be
8 made anew once the appeal in *Hawaii* is resolved, “[t]he more efficient course is to wait for a
9 decision from the Ninth Circuit,” which will permit the parties and the Court to “conserve
10 [their] resource and to benefit from any Ninth Circuit rulings.” *Id.* Indeed, the Federal Rules
11 of Civil Procedure provide not for the “just and speedy determination of each case,” Pls.’ Resp.
12 at 6, but for “the just, speedy, and *inexpensive* determination” of each case, Fed. R. Civ. P. 1
13 (emphasis added). Plaintiffs suggest that the Ninth Circuit has already spoken to the issues that
14 will be raised in Defendants’ motion to dismiss, *see* Pls.’ Resp. at 5, but this Court previously
15 rejected that argument. Specifically, the Court determined that the New Order is
16 “significant[ly] differen[t]” than the Revoked Order and thus the Ninth Circuit’s preliminary
17 ruling as to the Revoked Order “does not preordain how the Ninth Circuit will rule in [*Hawaii*]
18 with respect to [the New Order].” *Washington*, 2017 WL 1050354, at *5.

22 In *Ali*, this Court granted in part and denied in part an extension motion similar to the
23 one at issue here. *See Ali*, No. 2:17-cv-00135-JLR, ECF No. 91. The Court granted the motion
24 as to the issue of class certification, explaining that “there is a strong possibility that the Ninth
25 Circuit’s decision in *Hawaii v. Trump* will inform the parties’ positions and the court’s decision
26 concerning class certification.” *Id.* at 2. But the Court denied the motion as to Defendants’
27
28

1 deadline to respond to the complaint, based on the belief that Defendants would be filing an
 2 “answer” in that case. *Id.* Here, Defendants have made clear that they intend to file a motion
 3 to dismiss under Rules 12(b)(1) and 12(b)(6) that will raise, *inter alia*, the same arguments that
 4 will be at issue in the *Hawaii* appeal. *See Washington*, ECF No. 176, at 2; *id.*, ECF No. 175, at
 5 8-9. Unlike an answer, Defendants’ forthcoming motion to dismiss will raise legal arguments
 6 on which the Ninth Circuit’s decision is likely to provide substantial guidance to both the
 7 parties and the Court.⁴ Therefore, the reasons supporting an extension of the class certification
 8 deadline in *Ali* also support extending the deadline to respond to the complaint here.

9
 10 For these reasons and those set forth in Defendants’ extension motion, Defendants
 11 respectfully request that the Court extend the time by which Defendants must respond to the
 12 Second Amended Complaint until ten (10) days after the Court resolves Defendants’ pending
 13 Motion to Stay District Court Proceedings Pending Resolution of Appeal in *Hawaii v. Trump*
 14 (ECF No. 175). In the alternative, Defendants request that the Court extend the response
 15 deadline by fourteen (14) days—until April 17, 2017—as agreed to by Plaintiffs.
 16

17 DATED: April 7, 2017

Respectfully submitted,

18
 19 CHAD A. READLER
 Acting Assistant Attorney General

20
 21 JENNIFER D. RICKETTS
 Director, Federal Programs Branch

22
 23 JOHN R. TYLER
 Assistant Director, Federal Programs Branch

24
 25 /s/ Michelle R. Bennett
 MICHELLE R. BENNETT
 DANIEL SCHWEI
 26 ARJUN GARG

27
 28 ⁴ A motion to dismiss also is not a responsive pleading that can be amended like an answer.
See Ali, ECF No. 91, at 2-3.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BRAD P. ROSENBERG
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20530
Tel: (202) 305-8902
Fax: (202) 616-8470
Email: michelle.bennett@usdoj.gov
arjun.garg@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2017, I electronically filed the foregoing Reply in Support of 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.

/s/ Michelle R. Bennett
MICHELLE R. BENNETT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28