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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

KELSEY CASCADIA ROSE JULIANA; **XIUHTEZCATL TONATIUH M.**, through his Guardian Tamara Roske-Martinez; et al.,

Plaintiffs,

v.

The UNITED STATES OF AMERICA; et al.,

Defendants.

Case No.: 6:15-cv-01517-AA

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR EXTENSION OF TIME TO FILE ANSWER TO SECOND AMENDED COMPLAINT (ECF No. 567)

EXPEDITED CONSIDERATION REQUESTED

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION FOR EXTENSION OF TIME TO FILE ANSWER TO SECOND AMENDED COMPLAINT (ECF No. 567)

While counsel for the Plaintiffs are ordinarily inclined to work with counsel for Defendants on routine requests for extensions of time and scheduling matters, the circumstances underlying Defendants' request are not accurately set forth in their Motion. Importantly, Defendants are not correctly describing the circumstances surrounding the January 10 meet and confer session about the basis for their request for an extension of time to answer the Second Amended Complaint ("SAC"). While counsel for Defendants informed counsel for Plaintiffs that they need until February 27, 2024 to file their amended answer to the SAC to consult with their clients in light of new developments in climate science that may affect their answer to some allegations in the SAC, Defendants refuse to commit that they are not also using the additional time to prepare and file their *fifth* petition for writ of mandamus to the Ninth Circuit and to seek a motion to stay these proceedings. An extension to file an amended answer should be denied absent an assurance by Defendants that the requested additional time will not be used to once again attempt to halt these proceedings.

This latest motion continues Defendants' pattern of endless obstruction and stalling that Plaintiffs have called out in numerous prior responses. *See, e.g.*, Pls.' Reply in Support of Mot. to Set Pretrial Conf. at 1, Doc. 550 ("[I]t is obvious the Biden Administration intends to continue to bombard Plaintiffs and this Court with motions and requests to certify."); Pls.' Opp'n to Defs.' Mot. to Dismiss Second Am. Compl. at 1, Doc. 549 ("[The] DOJ has used every rare legal tool, more times than in any other case in history, to silence the constitutional claims of twenty-one of our nation's youth.").

As more fully set forth in the Declaration of Julia A. Olson, filed herewith, in the January 10 meet and confer session leading up to the filing of the instant motion, counsel for Defendants (Sean Duffy and Frank Singer) stated they could not comment on whether Defendants will use the

additional time requested by this Motion to prepare and file a petition for writ of mandamus with the Ninth Circuit, including a motion to stay proceedings in the district court. Olson Decl. ¶3. During the meet and confer, counsel for Defendants stated:

- The Solicitor General (who had no representative in the meet and confer) will make the decision as to whether to file a petition for writ of mandamus with the Ninth Circuit and a motion to stay the proceedings.
- They could not comment on whether the Solicitor General will be filing a petition for writ of mandamus and seek a stay, stating that "doesn't mean we aren't going to seek mandamus" and they had no specific information on a request for a stay.
- They have no role in the decision to bring writ proceedings, as that process is in the control of the Solicitor General's office and they are not privy to those discussions.
- They do not have control over when the Solicitor General decides to do things.
- They do not have "a say" in what goes on in connection with the writ proceedings.
- When asked, they refused to say they would not be working on writ proceedings or seeking a stay during the period for which Defendants seek an extension to ostensibly work on the amended answer. In other words, counsel for Defendants refused to represent to this Court that, if the extension is granted, Mr. Duffy and Mr. Singer would not be working on the writ petition or the motion to stay, but would instead use the additional time to work on the amended answer and other work to prepare for trial.
- In response to a request for assurance that Defendants would not seek a stay if Plaintiffs agreed to the extension request, counsel for Defendants refused to discuss

whether Defendants would file a motion to stay in the Ninth Circuit after Plaintiffs agreed to an extension.

- Plaintiffs requested that Defendants inform this Court that the primary reason Plaintiffs would oppose the extension request is Defendants "have not decided whether to seek stay." Plaintiffs' counsel went on to state that Plaintiffs "would be amendable to an extension of time" for Defendants' amended answer if Defendants were not going to seek a stay. Defendants refused to so characterize Plaintiffs' position in the instant motion.
- Importantly, countering their assertions of candor and transparency, counsel for Defendants have refused to provide any contact information for any counsel at the Solicitor General's office who could answer these questions or provide any information as to the status of writ proceedings.

Olson Decl. ¶¶ 3a-i.

Further, Plaintiffs oppose the extension request because the SAC does not amend Plaintiffs' allegations concerning any of the supposed "numerous complex scientific issues." Mot. for Extension ¶ 2, Doc. 567. As this Court has previously noted, Plaintiffs' SAC "cures the standing deficiencies identified by the Ninth Circuit." Amend Order at 19, Doc. 540. These "standing deficiencies" did not go to "numerous complex scientific issues," instead going to redressability. In fact, when they sought certification, Defendants took the position that the SAC is "functionally identical" to the Amended Complaint on which their amended answer is based. Mot. to Certify at 8, Doc. 551. Plaintiffs' new factual allegations merely show how Plaintiffs are concretely injured by Defendants' conduct in ways that would be redressed by declaratory relief. *See* SAC, Doc. 542

¶¶ 12-14, 19-A, 22-A, 30-A, 34-A, 39-A, 43-A, 46-A, 49-A, 52-A, 56-A, 59-A, 62-A, 64-A, 67-A, 70-A, 72-A, 76-A, 80-A, 85-A, 88-A, 90-A, 95-A to -D.

While Defendants assert they "need to update the answer," (Mot. for Extension ¶ 2) that professed "need" is not required to comply with the Federal rules to provide an Answer to the amended allegations in the SAC. Defendants can provide an amended Answer to previously answered allegations during the course of discovery. For purposes of its January 16, 2024 deadline to answer the SAC, Defendants should limit their answer to the amended or new allegations.

To move this case forward in an expeditious manner, Defendants could file an answer to the SAC, answering the new allegations. Then, to the extent Defendants seek to amend their current answer as to the allegations that were both in the Amended Complaint and the SAC, Defendants could present that proposed amended answer to Plaintiffs, who either would stipulate to the filing of that amended answer or would request Defendants seek leave of court to file that proposed amended answer. The parties could also stipulate to facts in the SAC to which the parties agree, including the current state of climate science, which includes the headline out today from Defendant Department of Commerce, the National Oceanic and Atmospheric Administration, that "2023 was the world's warmest year on record, by far."[1]

Finally, Defendants' motion is silent as to whether Defendants or their counsel have taken any steps to begin the process of preparing an amended answer. If Defendants believe the "second amended complaint [to be] functionally identical" to the Amended Complaint, then it is hard to imagine why Defendants would need more than two weeks to answer the SAC. Yet their motion is silent on any efforts they have made or a reasonable investigation as to why an amended answer cannot be filed on January 16. Defendants have provided no assurances to this Court that they have

[1] https://www.noaa.gov/news/2023-was-worlds-warmest-year-on-record-by-far#:~:text=It's%20official%3A%202023%20was%20the,a%20record%20low%20in%202023

commenced work on the Answer or that they are not using the additional time to run to the Ninth Circuit.

Defendants have used every opportunity to forestall this litigation, perhaps more than any other case in U.S. history. *See* Pls.' Mot. to Set Pretrial Conf. at 5-6, Doc. 543 ("The legal claims and defenses raised in this case have been briefed multiple times in this Court, in the Ninth Circuit Court of Appeals on four petitions for writ of mandamus, and three times before the United States Supreme Court.") (citations omitted). The best way to materially advance this litigation remains to set an expedited trial date and to develop claims by hearing them on the merits, not to countenance further delay.

For the foregoing reasons, Plaintiffs request that Defendants' Motion be denied, that Defendants be ordered to file their amended answer to the SAC on January 16, 2024, as scheduled, and that a representative from the Solicitor General's office with authority to communicate about whether Defendants will seek a stay or petition for a writ of mandamus be required to attend the January 19, 2024 pretrial conference so that, under Federal Rule of Civil Procedure 16 and Local Rule 16-2, the January 19 pretrial conference will have in attendance all attorneys who are necessary "to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a pretrial conference." *See* Olson Decl. ¶¶ 4-5.

DATED this 12th day of January, 2024.

/s/ Julia A. Olson

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