

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL VETERANS LEGAL
SERVICES PROGRAM, NATIONAL
CONSUMER LAW CENTER, and
ALLIANCE FOR JUSTICE, for themselves
and all others similarly situated,
Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant.

Case No. 16-745-ESH

PLAINTIFFS' RESPONSE TO DEFENDANT'S EXTENSION REQUEST

Five days before its deadline, the government seeks a 60-day extension of the time in which to file its opposition to the plaintiffs' summary-judgment motion. ECF No. 57. Although our practice is to routinely consent to all reasonable extension requests, plaintiffs' counsel regret that we cannot consent to this request in full because it is, in our view, unreasonable.

The government has known for at least eight months that it would need to file an opposition to our summary-judgment motion, which raises only one legal issue—the same discrete statutory-interpretation issue that has been the focus of this case from the very beginning, as both parties recognized at the class-certification hearing on January 18, 2017. *See* Tr. 21–23.

The summary-judgment briefing schedule has been set for months: The Court's January 24 order (ECF No. 24) made clear that the government would receive 20 days to respond. The sole reason for the 30-day extension to file the summary-judgment motion was “to provide *the government* with additional time” to produce long-requested basic factual information that should not have reasonably taken so long to produce—not because the plaintiffs needed any more time. ECF No. 48. The plaintiffs made the request, in other words, as a courtesy to the government's

counsel, who “cited competing scheduling obligations and the need to coordinate with clients as the basis for the [government’s] delay.” *Id.*

Now the government again cites yet more competing scheduling obligations as justification for further delay, while asserting that the size of the summary-judgment filings (including exhibits and amicus briefs) necessitates a lengthy extension. ECF No. 57. We cannot agree. The exhibits are no surprise; they are mainly copies of documents already cited in the complaint and previous briefing, or documents produced by the government itself. The actual argument section of the motion, moreover, is less than ten pages. And, while the amicus briefs certainly offer context and insight on the practical and constitutional implications of this litigation, the government identifies no distinct legal arguments that should require an extensive response.

At the same time, we recognize that the government’s counsel have other obligations, and we are willing to accommodate those obligations within reason (despite the fact that the government’s due date has been known since July 5). For that reason, the plaintiffs consent to a 30-day extension. A 30-day extension should afford the federal government more than enough time to brief the one straightforward legal issue now before the Court. But nothing has happened since the scheduling order that would warrant a two-month extension.

Respectfully submitted,

/s/ Deepak Gupta

Deepak Gupta (D.C. Bar No. 495451)

Jonathan E. Taylor (D.C. Bar No. 1015713)

GUPTA WESSLER PLLC

1900 L Street, NW, Suite 312

Washington, DC 20036

(202) 888-1741

William H. Narwold (D.C. Bar No. 502352)
Elizabeth Smith
Meghan S.B. Oliver
William Tinkler
MOTLEY RICE LLC
401 9th Street, NW, Suite 1001
Washington, DC 20004
(202) 232-5504

Attorneys for Plaintiffs

September 13, 2017

CERTIFICATE OF SERVICE

I hereby certify that on September 13, 2017, I filed this response to the defendant's extension request through this Court's CM/ECF system, which will send a notice of electronic filing to all counsel required to be served.

/s/ Deepak Gupta

Deepak Gupta