

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
LUBBOCK DIVISION

NATIONAL FEDERATION OF	)	
INDEPENDENT BUSINESS <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Case No. 5:16-cv-00066-C
	)	
v.	)	
	)	
THOMAS E. PEREZ, in his official	)	
capacity as Secretary, United States	)	
Department of Labor <i>et al.</i> ,	)	
	)	
Defendants.	)	

**REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR EXTENSION  
OF TIME AND REQUEST FOR EXPEDITED CONSIDERATION**

TO THE HONORABLE SAM R. CUMMINGS, UNITED STATES SENIOR  
DISTRICT JUDGE PRESIDING:

On June 27, 2016, the Court granted in full the preliminary injunctive relief sought by Plaintiffs and Intervenor-Plaintiffs. A response to Plaintiffs' Complaint is due July 27, 2016, and a response to Intervenor-Plaintiffs' Complaint in Intervention is due on July 18, 2016. However, a decision whether to pursue an interlocutory appeal of the preliminary injunction has not been made and is under consideration by Department of Justice officials in Washington, D.C., with the deadline for filing a notice of appeal falling on August 26 (i.e., after the responses to the complaints are due). Given this timing, Defendants respectfully request the Court to extend these deadlines until September 2, after the deadline in which to file a notice of appeal. Cf. *Moore v. City of DeSoto*, No. 3:09-CV-710-K, 2010 WL 286725, at \*4 (N.D. Tex. Jan. 21, 2010) (staying proceedings pending appeal after denying a qualified-immunity motion, with the proviso that the stay would automatically dissolve if no notice of appeal was filed by the deadline for

doing so). That would allow the parties and the Court to consider the best approach to take with regard to the remainder of this case should a notice of appeal be filed.

As explained in Defendants' opening brief, the decision to authorize an appeal in cases involving federal officials and federal agencies rests with the Solicitor General of the United States. *See* 28 C.F.R. § 0.20(b) (stating that the Solicitor General determines "whether, and to what extent, appeals will be taken by the Government to all appellate courts"). Here, the requested extension of time to respond to the complaints in this case would conserve the Court's and the parties' resources in the event that an appeal of the preliminary injunction were to be authorized and filed.

Importantly, though Plaintiffs and Intervenor-Plaintiffs oppose the requested extension, their opposition brief identifies no prejudice they will suffer from any extension. Nor do Plaintiffs and Intervenor-Plaintiffs cite any authority whatever to support their opposition to the requested extension. With the preliminary injunctive relief that Plaintiffs and Intervenor-Plaintiffs had requested in place, there is no possible reason to think that Plaintiffs or Intervenor-Plaintiffs will incur any prejudice or harm from the requested extension.

Accordingly, because the requested extension will conserve the Court's and parties' resources, and because neither Plaintiffs nor Intervenor-Plaintiffs will incur any prejudice as the result of the requested extension, Defendants respectfully request that their motion for an extension of time be granted.

Dated: July 13, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

On July 13, 2016, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2) or the local rules.

/s/ Daniel Riess  
Daniel Riess