

20-55437

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**KIM RHODE, et al.,**

Plaintiffs-Appellees,

**v.**

**XAVIER BECERRA, in his official capacity as  
Attorney General of the State of California,**

Defendant-Appellant.

On Appeal from the United States District Court  
for the District of California

No. 3:18-cv-00802 BEN JLB  
The Honorable Roger T. Benitez, Judge

**MOTION FOR EXTENSION OF TIME TO  
FILE APPELLANT'S OPENING BRIEF AND  
EXCERPTS OF RECORD**

XAVIER BECERRA  
Attorney General of California  
THOMAS S. PATTERSON  
Senior Assistant Attorney General  
ANTHONY R. HAKL  
Supervising Deputy Attorney General

NELSON R. RICHARDS  
Deputy Attorney General  
State Bar No. 246996  
1300 I Street, Suite 125  
P.O. Box 944255  
Sacramento, CA 94244-2550  
Telephone: (916) 210-7867  
Fax: (916) 324-8835  
Email: Nelson.Richards@doj.ca.gov  
*Attorneys for Defendant-Appellant*

Pursuant to Ninth Circuit Rule 31-2.2, Appellant Xavier Becerra, in his official capacity as the Attorney General of the State of California, respectfully submits this motion for an extension of time in which to file his opening brief and excerpts of record.

The opening brief and excerpts of record are currently due no later than May 22, 2020. Order at 1, ECF No. 2. The Attorney General respectfully requests a 21-day extension of time to file his opening brief and excerpts of record, up to and including June 12, 2020. The Attorney General has not requested any previous extensions for this purpose. Declaration of Nelson R. Richards (Richards Decl.) ¶ 5.

There is substantial need for this request. *See* 9th Cir. R. 31-2.2(b). Due to restrictions arising from the COVID-19 outbreak, the attorney with primary drafting responsibilities is not able to devote as much time each day to the brief as he would under normal circumstances. Richards Decl. ¶ 7. In particular, the assigned attorney has two children under the age of five at home who cannot currently attend their normal daycare and a spouse who works full time. Richards Decl. ¶ 7. As a result, the attorney with primary drafting responsibilities currently spends more than half of each day as the

primary caregiver for his children, and cannot work during those hours.

Richards Decl. ¶ 7.

Several other considerations make drafting an opening brief on the current schedule infeasible, even with the exercise of diligence. **First**, the district court's preliminary injunction decision now on appeal is 122 pages and involves numerous legal and factual issues. Richards Decl. ¶ 8. Indeed, the district court itself took over nine months to draft the decision. Richards Decl. ¶ 8. **Second**, the district court refused to stay its order pending this appeal, forcing the Attorney General to seek a stay in this Court. The Attorney General's reply brief in support of his motion for stay is due May 7, 2020. Richards Decl. ¶ 9. The attorney with primary drafting responsibilities for the opening brief is also the attorney with primary drafting responsibilities for the reply brief regarding the stay. Richards Decl. ¶ 9. **Third**, the Deputy Attorney General co-assigned to the case is on indefinite leave and is thus unable to assist in the preparation of the opening brief. Richards Decl. ¶ 10. **Fourth**, preparation of the Attorney General's opening brief involves collaboration among attorneys in the Department of Justice, including review by senior attorneys and the Office of the Solicitor General, as well as review by stakeholders in the Bureau of Firearms.

Richards Decl. ¶ 11. **Finally**, the attorney with primary drafting responsibilities has other active matters with deadlines in the coming weeks. Most notably, he has an answer to three amicus curiae briefs, which total over 150 pages, in *Department of Finance v. Commission on State Mandates* (Cal. Ct. App. B292446), due on May 13, 2020. Richards Decl. ¶ 12. He is also managing the Attorney General's defense of Senate Bill 1437 (2017-2018 Reg. Sess.), Cal. Stats. 2018, ch. 1015, in over 150 cases in the California Courts of Appeal. Richards Decl. ¶ 12. Managing these cases consumes a significant amount of time. Richards Decl. ¶ 13.

The Attorney General believes that the additional time requested will permit counsel to prepare an opening brief in a way that will be most helpful to the Court. Richards Decl. ¶ 14. Counsel has worked diligently on this case, intends to continue to do so, and believes the Attorney General's opening brief will be filed within the time requested. Richards Decl. ¶ 6; *see also* 9th Cir. R. 31-2.2(b)(5).

Counsel for the Attorney General attempted to contact Sean Brady, counsel for appellees, three times between May 1 and May 4, about the extension requested in this motion, twice by e-mail and once by telephone. Richards Decl. ¶ 15. As of the filing of this motion, the Attorney General's

counsel was unable to learn whether plaintiffs oppose this request. Richards Decl. ¶ 15.

Dated: May 4, 2020

Respectfully Submitted,

XAVIER BECERRA  
Attorney General of California  
THOMAS S. PATTERSON  
Senior Assistant Attorney General  
ANTHONY R. HAKL  
Supervising Deputy Attorney General

*/s/ Nelson Richards*  
NELSON R. RICHARDS  
Deputy Attorney General  
*Attorneys for Defendant-Appellant*

## **DECLARATION OF NELSON R. RICHARDS**

I, Nelson R. Richards, declare:

1. I am a Deputy Attorney General with the California Department of Justice and serve as counsel to Defendant Xavier Becerra, in his official capacity as Attorney General of the State of California, in the above-captioned matter. I make this declaration in support of Appellant's Motion for Extension of Time to File Appellant's Opening Brief. Except as otherwise stated herein, I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently as to those facts.

2. I make this declaration to comply with Ninth Cir. Rule 31-2.2(b).

3. Pursuant to this Court's April 24, 2020 Order and Ninth Cir. Rule 3-3, the Attorney General's opening brief and excerpts of record are due not later than May 22, 2020.

4. The Attorney General requests an extension of 21 days, which would make the opening brief and excerpts of record due not later than June 12, 2020.

5. The Attorney General has not requested any previous extensions for this purpose.

6. I have been working diligently on this matter, and intend to continue to do so, but I need additional time to prepare a brief that will be most helpful to the Court.

7. Due to restrictions arising from the COVID-19 outbreak, I am not able to devote as much time to the brief as I would under normal circumstances. I have two children under the age of five at home who cannot currently attend their normal daycare and a spouse who works full time. As a result, I currently spend more than half of each day as the primary caregiver for my children, and cannot work during those hours.

8. The district court's preliminary injunction decision now on appeal is 122 pages long and involves numerous legal and factual issues. The district court held a hearing on the fully briefed motion for preliminary injunction on August 19, 2019, and issued its decision on April 23, 2020.

9. The Attorney General filed an emergency motion to stay the trial court's preliminary injunction pending interlocutory appeal on April 24, 2020. On April 30, 2020, appellees filed their opposition to that motion. Under Federal Rule of Appellate Procedure 27(a)(4) and Ninth Cir. Rule 27-3, the Attorney General's reply in support of his motion to stay is due no later than May 7, 2020. I am the attorney with primary drafting responsibilities for the reply brief.

10. My colleague who was co-assigned to this case is on indefinite leave and is thus unable to assist with this appeal, including with the preparation of the opening brief.

11. As part of my preparation for of the opening brief, I will need to collaborate with numerous attorneys in the Department of Justice, including senior attorneys and attorneys in the Office of the Solicitor General. I will also need to collaborate with stakeholders in the Bureau of Firearms.

12. In addition to this case, I have other active matters with deadlines in the coming weeks. Most notably, I have an answer to three amicus curiae briefs, which total over 150 pages, in *Department of Finance v. Commission on State Mandates* (Cal. Ct. App. B292446), due on May 13, 2020.

13. I am also managing the Attorney General's defense of Senate Bill 1437 (2017-2018 Reg. Sess.), Cal. Stats. 2018, ch. 1015, in over 150 cases in the California Courts of Appeal. Managing these cases consumes a significant amount of time.

14. Additional time to file the opening brief and excerpts of record will allow me and the other attorneys in my office to prepare a brief that will be most helpful to the Court.

15. On May 1, 2020, at 10:24 a.m., I e-mailed Sean Brady, counsel for appellees, and informed him that the Attorney General intended to request this extension and asked whether plaintiffs would oppose the request. On the same day, I telephoned Mr. Brady at his office and left him a voicemail regarding this motion. On May 3, 2020, at 6:06 p.m., I e-mailed Mr. Brady again about the



motion. As of the filing, I have been unable to learn whether plaintiffs oppose this motion.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 4, 2020

/s/ Nelson Richards  
NELSON R. RICHARDS

## CERTIFICATE OF SERVICE

Case Name: **Rhode, Kim, et al. v. Xavier  
Becerra, et al. [APPEAL 9th  
Cir.]**

No. **20-55437**

I hereby certify that on May 4, 2020, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

**MOTION FOR EXTENSION OF TIME I TO FILE APPELLANT'S OPENING BRIEF  
AND EXCERPTS OF RECORD**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 4, 2020, at Sacramento, California.

Tracie L. Campbell  
Declarant

/s/ *Tracie Campbell*  
Signature