

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

GEORGE K. YOUNG, JR.,

*Plaintiff-Appellant,*

v.

STATE OF HAWAII, ET AL.,

*Defendants-Appellees.*

No. 12-17808

**DEFENDANTS-APPELLEES' MOTION FOR EXTENSION OF TIME  
TO FILE THE PARTIES' SUPPLEMENTAL *EN BANC* REPLY BRIEFS**

Defendants-Appellees move, under Federal Rules of Appellate Procedure 26(b) and 27, and Circuit Rule 31-2.2(b), for a 7-day extension of time for the parties to file their supplemental *en banc* reply briefs.

1. On April 30, 2020, this Court lifted the stay order previously issued in this case, and set a briefing schedule for *en banc* proceedings. Pursuant to that briefing schedule, the parties' simultaneous supplemental briefing is due on June 4, 2020, and supplemental reply briefs are due on June 22, 2020.

2. A 7-day extension of the deadline for the parties' reply briefs would make those briefs due on Monday, June 29, 2020.

3. This is the first request for an extension of time to file the supplemental *en banc* reply briefing. Defendants-Appellees previously sought and

received an extension to file their Answering Brief at the panel stage, as well as their Petition for Rehearing *En Banc*. Plaintiff-Appellant previously sought and received an extension to file his response to the Petition for Rehearing *En Banc*.

4. As set out further in the attached declaration, good cause exists for this requested extension. This appeal arises out of extensive proceedings below; the extension would allow counsel to best analyze and respond to the complex issues presented in the parties' opening *en banc* supplemental briefs. Counsel for Defendants-Appellees has several arguments and briefing deadlines set between now and the time the supplemental reply briefing is currently due. And because Defendants-Appellees are state and local government entities, additional time would enable counsel to engage in the necessary coordination and consultation with state and local officials concerning this case, which involves a question of overriding public concern to the State and the County of Hawaii.

5. The requested extension will not delay the Court's consideration of this case. Oral argument has already been scheduled for the week of September 21, 2020, and the requested extension will not affect that date.

6. Defendants-Appellees have exercised diligence at all times during this matter, and their supplemental *en banc* reply brief will be filed within the time requested.

7. This motion is being filed at least 7 days before the expiration of the time prescribed for filing the supplemental *en banc* reply briefs.

8. Counsel for Defendants-Appellees has contacted counsel for Plaintiff-Appellant and confirmed that Plaintiff-Appellant opposes this motion.

For these reasons, Defendants-Appellees submit that this Court find that good cause exists for this request and grant the motion for a 7-day extension of time to file the parties' supplemental *en banc* reply briefs.

June 3, 2020

Respectfully submitted,

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**DECLARATION OF NEAL KUMAR KATYAL IN SUPPORT OF  
DEFENDANTS-APPELLEES' MOTION FOR EXTENSION OF TIME  
TO FILE THE PARTIES' SUPPLEMENTAL *EN BANC* REPLY BRIEFS**

I, Neal Kumar Katyal, declare:

1. I am an attorney at the law firm of Hogan Lovells US LLP. I am lead counsel for Defendants-Appellees in this case. I have personal knowledge of the matters set forth below and, if called to testify to them, could do so competently.

2. This Declaration is made, pursuant to Circuit Rule 31-2.2(b), in support of Defendants-Appellees' motion for a 7-day extension of time to file the parties' supplemental *en banc* reply briefs.

3. This is the first request for an extension of time to file the supplemental *en banc* reply briefing. Defendants-Appellees previously sought and received an extension to file their Answering Brief at the panel stage, as well as their Petition for Rehearing *En Banc*. Plaintiff-Appellant previously sought and received an extension to file his response to the Petition for Rehearing *En Banc*.

4. Pursuant to the briefing schedule issued on April 30, 2020, the parties' simultaneous supplemental briefing is due on June 4, 2020, and supplemental reply briefs are due on June 22, 2020. Defendants-Appellees seek a 7-day extension, under which the parties' simultaneous supplemental reply briefs would be due on June 29, 2020.

5. There is good cause to grant the extension.

a. These appeals arise out of extensive proceedings below; the extension would allow counsel to best analyze and respond to the complex issues presented in the parties' opening *en banc* supplemental briefs.

b. Counsel for Defendants-Appellees has several other upcoming deadlines including: (1) a reply brief in support of certiorari in *Waggy v. United States*, No. 19-7544 (U.S.), on June 3; (2) an oral argument in *Pirkel v. Burton*, No. 19-1349 (6th Cir.), on June 9; and (3) a supplemental brief in *Nestlé USA, Inc. v. Doe I*, No. 19-416 (U.S.), no later than June 10.

c. Defendants-Appellees are state and local government entities. Additional time would enable counsel to engage in the necessary coordination and consultation with state and local officials concerning this case, which involves a question of overriding public concern to the State and the County of Hawaii.

6. Defendants-Appellees have exercised diligence at all times during this matter and their supplemental *en banc* reply brief will be filed within the time requested.

7. Further, this extension will not delay the Court's consideration of this case. Oral argument has already been scheduled for the week of September 21, 2020, and the requested extension will not affect that date.

8. Counsel for Defendants-Appellees has contacted counsel for Plaintiff-Appellant and confirmed that Plaintiff-Appellant opposes this motion.

9. Pursuant to Circuit Rule 31-2.2(b), the accompanying motion is being made at least seven days before the deadline it seeks to extend.

I declare under penalty of perjury that the foregoing is true and correct.

June 3, 2020

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## CERTIFICATE OF COMPLIANCE

1. This motion complies with the length limitation of Circuit Rule 27-1(d) because it is less than 20 pages, excluding the parts of the document exempted by Circuit Rule 27-1(d).

2. This motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the typestyle requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2010 in Times New Roman 14-point font.

/s/ Neal Kumar Katyal  
Neal Kumar Katyal



## **CERTIFICATE OF SERVICE**

I hereby certify that on June 3, 2020, I filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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

/s/ Neal Kumar Katyal  
Neal Kumar Katyal