

No. 17-17144 [Dist Ct. No.: 5:15-cv-03698-EJD]

IN THE
UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

LORI RODRIGUEZ; et al.,
Plaintiffs - Appellants,

vs.

CITY OF SAN JOSE; et al.,
Defendants - Appellees.

APPEAL FROM THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**UNOPPOSED MOTION OF PLAINTIFF-APPELLANTS
FOR AN EXTENSION OF TIME TO FILE A PETITION
FOR REHEARING AND/OR REHEARING EN BANC and
DECLARATION OF COUNSEL**

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**Counsel of Record for Plaintiff - Appellants*

Pursuant to Federal Rules of Appellate Procedure 26(b) and 40(a)(1), Plaintiff-Appellants respectfully request an extension of time to file a Petition for Rehearing and/or Rehearing En Banc, to and including August 27, 2019.

The opinion (and memorandum) for which Plaintiff-Appellants seek rehearing was filed July 23, 2019. The current 14-day deadline from the date of the opinion would make any petitions due on August 6, 2019. The requested extension to and including August 27, 2019 is an additional 21 days.

Counsel for Appellees has stated that they do not oppose this motion.

In support of this motion, Plaintiff-Appellants state as follows:

1. The case involves issues relating to the following fundamental rights: Secondment Amendment (keeping arms in the home); Fourth Amendment (warrantless seizure of arms from law-abiding citizens); Fifth Amendment (local government interference with property rights); Fourteenth Amendment (lack of procedural due process); and recently (raised sua sponte by the court itself) claim and issue preclusion.

2. This is Plaintiffs-Appellants first request for an extension of time to file a petition for rehearing or rehearing en banc.
3. Plaintiff-Appellants counsel is a sole practitioner and is currently in the process of relocating his office and home, while at the same time carrying a normal case load.
4. Plaintiff-Appellants counsel is currently involved in other trial court matters¹ and has appellate (amicus) briefs coming due in at least one other² case in this Circuit.
5. Counsel for Plaintiff-Appellants has exercised diligence in this case and, barring unforeseen circumstances, will file the petitions within the time requested.
6. This motion is being filed more than seven calendar days before the current due date for the Petition(s).

Respectfully Submitted on July 26, 2019,

/s/ Donald Kilmer

Donald Kilmer,
Attorney for Plaintiff-Appellants

¹ *Roe v. United States*, Case No.: 1:19-CV-00270 EDCA; *B & L Productions, Inc. v. 22nd District Agricultural Assoc.*, Case No.: 3:19-CV-0134 SDCA.

² *Duncan v. Becerra*, Case No.: 19-55376.

Declaration of Counsel

I, Donald Kilmer, declare:

1. I am the attorney of record for Plaintiff-Appellants in this matter.
2. I am a solo practitioner.
3. I am in the process of relocating my office and my residence to another state.
4. I am carrying a normal case load during the move and have other matters pending in trial courts³ and I have one appellate (amicus) brief coming due soon in one other⁴ case in this Circuit.
5. I have exercised diligence in this matter and barring unforeseen circumstance, should be able to file a Petition for Rehearing and/or Rehearing En Banc by the requested deadline of August 27, 2019.
6. This is Plaintiff-Appellants' first request for an extension of time. I emailed counsel for Appellees and they do not oppose this request.

³ *Roe v. United States*, Case No.: 1:19-CV-00270 EDCA; *B & L Productions, Inc, v. 22nd District Agricultural Assoc.*, Case No.: 3:19-CV-0134 SDCA.

⁴ *Duncan v. Becerra*, Case No.: 19-55376.

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

Executed On: July 26, 2019

/s/ Donald Kilmer

Donald Kilmer,
Attorney for Plaintiff-Appellants

CERTIFICATE OF SERVICE

On July 26, 2019, I served the foregoing **UNOPPOSED MOTION OF PLAINTIFF-APPELLANTS FOR AN EXTENSION OF TIME TO FILE A PETITION FOR REHEARING AND/OR REHEARING EN BANC and DECLARATION OF COUNSEL** by electronically filing it with the Court's ECF/CM system, which generated a Notice of Filing and effects service upon counsel for all parties in the case. I declare under penalty of perjury that the foregoing is true and correct.

Executed July 26, 2019,

/s/ Donald Kilmer

Attorney for Appellants