

Case No. 20-55437

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In the United States Court of Appeals  
for the Ninth Circuit

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KIM RHODE, et al.  
*Plaintiffs-Appellees,*

v.

XAVIER BECERRA, in his official capacity as Attorney General of the State of  
California,  
*Defendant-Appellant.*

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On Appeal from the United States District Court  
for the Southern District of California  
(18-cv-00802-BEN-JLB)

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**APPELLEES' UNOPPOSED MOTION FOR EXTENSION OF TIME TO  
FILE ANSWERING BRIEF AND EXCERPTS OF RECORD;  
DECLARATION OF SEAN A. BRADY**

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June 29, 2020

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## MOTION

To the Clerk of the United States Court of Appeals for the Ninth Circuit:

Pursuant to Federal Rule of Appellate Procedure 26(b) and Ninth Circuit Rule 31-2.2, Appellees respectfully submit this unopposed motion for an extension of time in which to file their responsive brief and excerpts of record. Appellees' current deadline to file their answering brief and excerpts of record is July 10, 2020. Appellees request a 21-day extension, up to and including July 31, 2020, to file all responsive documents. Appellees have not requested any previous extensions for this brief. Declaration of Sean A. Brady (Brady Decl.) ¶ 4.

Substantial need for this request is present for several reasons. *See* 9th Cir. R. 31-2.2(b). The attorneys responsible for drafting Appellees' brief are under a heavy press of business with coinciding deadlines in other matters. Brady Decl. ¶¶ 6, 7. Most notably, they have a reply brief due in a matter before this Court on July 16—a mere six days after the current deadline in this matter. *Id.* at ¶ 6. Preparation of Appellees' brief requires collaboration among various attorneys and the clients, which is generally challenging to coordinate, but has been made significantly more so by the COVID-19 situation, because some of the attorneys must work remotely or have childcare obligations imposed. *Id.* at ¶ 8.

Additionally, the scope of the issues that Appellees' brief must address is immense. This appeal raises serious questions about two constitutional provisions (the Second Amendment and Commerce Clause) and justiciability (standing to assert a

facial challenge). Appellant asked for and received a 21-day extension to file his opening brief, in part to properly address those. See ECF No. 9, May 4, 2020. He has thus had significantly more time to prepare his brief than Appellees, even if this extension is granted, during which time he has refined his arguments to include new materials not fully addressed in the court below. This amplifies the level of attention and time required for Appellees to properly respond.

The additional time requested will permit counsel to prepare a brief in a way that will be most helpful to the Court. Counsel has worked diligently on this case, intends to continue to do so, and believes Appellees' brief will be filed within the time requested. Brady Decl. ¶¶ 9, 10; see also 9th Cir. R. 31-2.2(b)(5).

Appellant's counsel confirmed to Appellees' counsel via electronic correspondence that Appellant would not be opposing this request. Brady Decl. ¶ 11

Date: June 29, 2020

**MICHEL & ASSOCIATES, P.C.**

*s/ Sean A. Brady*  
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Sean A. Brady  
*Counsel for Plaintiffs-Appellees*

## **DECLARATION OF SEAN A. BRADY**

I, Sean A. Brady, declare as follows:

1. I am an attorney at the law firm of Michel & Associates, P.C., attorneys of record for plaintiffs-appellees in this action. I am licensed to practice law before the Ninth Circuit Court of Appeals. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, could and would testify competently thereto.

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

3. Appellees' current operative deadline to file their answering brief and excerpts of record is July 10, 2020. Appellees request an extension of 21 days, which would make the answering brief and excerpts of record due not later than July 31, 2020.

4. Appellees have not requested any previous extensions for this brief.

5. I am primarily responsible for preparing Appellees' brief and excerpts of record. I am assisted by my colleague, Attorney Anna M. Barvir.

6. Other matters have consumed much of my time in the past weeks, which matters I anticipate continuing to consume my time in the coming weeks, such that I have been and will continue to be unable to devote the time required to adequately prepare Appellees' answering brief and excerpts of record. These other matters include, but are not limited to:

- a. Preparing a reply brief in *Rupp v. Berra*, Case No. 19-56004, which is due July 16, 2020;
- b. Preparing for a mandatory settlement conference in the matter of *Carlisle v. County of Placer, et al.*, Case No. S-CV-0044812, in Placer County Superior Court, scheduled to take place on July 14, 2020; and
- c. Case management of this matter in the district court, including setting new discovery and trial deadlines, conducting discovery, and amending the complaint;

7. Anna M. Barvir also has several active matters with deadlines in the coming weeks. For instance, Ms. Barvir has been preparing briefing on cross motions for summary judgment in *Kirk v. City of Morgan Hill*, Santa Clara Superior Court Case No. 19CV346360. The hearing on those motions for summary judgment is July 2, 2020 and Ms. Barvir has been and will continue to be required to dedicate significant time to preparing for that hearing.

8. Both Ms. Barvir and I also have childcare obligations imposed under the COVID-19 situation. We have children who are unable to attend their normal daycare and as a result, we currently spend substantially more time caring for children than usual, and, as a result, Ms. Barvir is rarely present in the office.

9. Counsel for Appellees have at all times exercised diligence to provide this Court timely and professional briefing. The requested extension of time will

enable counsel to continue to do so, while at the same time fulfilling their obligations in other courts and other matters.

10. This motion is made in good faith for the reasons of actual need set forth herein and not for the purpose of delay. In fact, it is in Appellants' interest to expedite a resolution of this matter, but not at the expense of the brief's quality.

11. On June 26, 2020, I sent electronic mail to Nelson Richards and Peter Chang, counsel for Appellant Xavier Becerra, and informed them that Appellees intend to file a motion for extension of time to file the answering brief. Mr. Richards responded via electronic mail to confirm that Appellant would not be opposing this motion.

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

Executed within the United States on June 29, 2020.

s/ Sean A. Brady  
Sean A. Brady  
Declarant

## **CERTIFICATE OF SERVICE**

I hereby certify that on June 29, 2020, an electronic PDF of APPELLEES' UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE ANSWERING BRIEF AND EXCERPTS OF RECORD; DECLARATION OF SEAN A. BRADY was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: June 29, 2020

**MICHEL & ASSOCIATES, P.C.**

*s/ Sean A. Brady*  
Sean A. Brady  
*Counsel for Plaintiffs-Appellees*