

undersigned counsel conferred with counsel for Plaintiffs who stated that Plaintiffs oppose this request for an extension of time. In support of this motion, the Secretary states as follows:

1. By Minute Order issued on March 22, 2018, this Court stayed this case for a period of three months, until June 22, 2018, and directed Plaintiffs to submit by that date “specific proposals (and reasons therefor) that they wish the Court to impose via mandamus and explain why current procedures are insufficient.” The Court also directed that the Secretary respond to Plaintiffs’ proposals two weeks later, by July 6, 2018, by “providing a status update on the progress of current reforms” and to address why Plaintiffs’ proposals may be “impossible or unhelpful.” Plaintiffs filed their brief on June 22.

2. There have been significant developments in the posture of this case after this Court entered its scheduling order. In particular, Congress has appropriated a substantial amount of new funds for OMHA to address the issue of the backlog in Medicare appeals. Consolidated Appropriations Act, 2018, Pub. L. No. 115-141, tit. II, 132 Stat. 348, 739 (2018). The Secretary has been working diligently since the enactment of this appropriation to determine the most efficient way to use this new funding to address the backlog.

3. June 30, 2018 is the end of the third quarter of fiscal year 2018, at which time HHS begins receiving updated third-quarter data, which includes the number of ALJ appeals pending before OMHA as of June 30, 2018, the number of incoming appeals (including RAC-related appeals) received, as well as the number of appeals disposed of by OMHA. The Department will need six weeks to finalize the data and to make projections based on these updated statistics about the number of ALJ appeals pending before OMHA through 2021. These projections will reflect the new appropriation under the Consolidated Appropriations Act, which will enable the agency to hire a significant number of additional ALJ teams. Because the third

quarter FY 2018 information is relevant to the Court's assessment of the agency's progress in reducing the backlog, the Secretary respectfully submits that an extension until August 15 to file his response to Plaintiff's brief is warranted and will aid the Court's decision-making.

4. The extension of time requested by the Secretary is not for the purpose of delay, but will instead ensure that the Secretary is able to provide the Court with a full record so as to aid its consideration of this case. Plaintiffs' June 22 filing proposes — in some instances, for the first time — policy measures that will require careful input by policy makers at different levels and within different components throughout the agency. The extension of time is necessary to enable the Secretary to fully gather information concerning the feasibility or utility of the proposed measures, and then submit, through sworn declarations, facts and data that will guide the Court's decision making with respect to this case.

5. Plaintiffs will not be prejudiced by an extension until August 15 to allow for the development of a more complete record. Moreover, should the Court grant this motion, the Secretary is willing to consent to a corresponding extension for Plaintiffs' Reply, which is currently due on July 13th.

6. This extension is also necessary, in part, because Joel McElvain, the Assistant Director who has been assigned to this matter, will shortly be leaving his employment with the Department of Justice. Mr. McElvain has played an active role in the development of litigation strategy in this matter, and it will require some time for a replacement supervisor to prepare for participation in this case.

7. Further, the Secretary would be unable to provide a fully responsive pleading by July 6, as Plaintiffs' proposals require declarations and consultation with policymakers who are out of the office during the week of July 2.

8. Accordingly, for the foregoing reasons, the Secretary respectfully requests that this Court grant him until August 15, 2018 to file his response to Plaintiffs' proposed remedies.

Dated: July 2, 2018

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

JOEL McELVAIN
Assistant Director, Federal Programs Branch

/s/ Nicholas Cartier
ADAM C. SIPLE (NY Bar No. 4387296)
NICHOLAS CARTIER (D.C. Bar # 495850)
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, NW
Washington, DC 20530
Telephone: (202) 305-7664
Facsimile: (202) 616-8460

Of Counsel:

ROBERT P. CHARROW
General Counsel
JANICE L. HOFFMAN
Associate General Counsel
SUSAN MAXSON LYONS
Deputy Associate General
Counsel for Litigation
KIRSTEN FRIEDEL RODDY

Counsel for Defendant

Attorney
United States Department of Health and
Human Services