

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

NATIONAL INFUSION CENTER
ASSOCIATION *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity
as Secretary of the Department of Health and
Human Services, *et al.*,

Defendants.

Case No. 1:23-cv-00707-DAE

**DEFENDANTS' CONSENT MOTION TO SET (OR, IN THE
ALTERNATIVE, TO EXTEND) ANSWER DEADLINE**

Defendants in the above-captioned matter respectfully request that their deadline to answer or otherwise respond to the complaint be set for (or, in the alternative, be extended to) December 20, 2024. As good cause for this request, to which Plaintiffs consent, Defendants offer the following:

1. Plaintiffs filed this lawsuit on June 21, 2023. ECF No. 1. Plaintiffs bring a facial constitutional challenge to certain provisions of the Inflation Reduction Act, which was signed into law on August 16, 2022.

2. On August 28, 2023, sixty days after service on the U.S. Attorney, *see* Fed. R. Civ. P. 12(a)(2), Defendants moved to dismiss for lack of venue. ECF No. 39.

3. On February 12, 2024, the Court granted Defendants' motion to dismiss, without prejudice, in its entirety. ECF No. 53.

4. Plaintiffs appealed. ECF No. 54. On, September 20, 2024, a divided panel of the Fifth Circuit reversed. *See Nat'l Infusion Ctr. Ass'n v. Becerra*, 116 F.4th 488 (5th Cir. 2024). The mandate issued on November 12, 2024. *See* Mandate, *Nat'l Infusion Ctr. Ass'n v. Becerra*, No. 24-50180, Dkt. No. 82-2 (5th Cir. Nov. 12, 2024).

5. The Solicitor General of the United States has not yet decided whether to file a petition for a writ of certiorari in this case. The deadline for such a petition is currently December 19, 2024.

6. “[N]o time period is specified in the Federal Rules for filing an answer where a district court grants a pre-answer dispositive motion but an appellate court subsequently reverses.” *Greenberg v. Nat’l Geographic Soc.*, 488 F.3d 1331, 1340 (11th Cir. 2007), *vacated on other grounds*, 533 F.3d 1244 (11th Cir. 2008)). In *Greenberg*, a case between private parties, the Eleventh Circuit held that an answer was timely when it was filed within the time-period specified in Rule 12(a)(1) following issuance of the mandate. *See id.* Here, the analogous rule would be Rule 12(a)(2), which generally provides the United States sixty days to respond to a complaint.

7. Nevertheless, Defendants are not aware of any Fifth Circuit precedent on this precise procedural question. Given the lack of clarity in the Federal Rules and in Fifth Circuit precedent, it is also possible that one could argue that Defendants’ deadline to answer (or otherwise respond) is this Tuesday, November 26, which is 14 days after issuance of the mandate. *Cf.* Fed. R. Civ. P. 12(a)(4)(A).

8. Accordingly, out of an abundance of caution, and for the sake of clarity for the parties and the Court, Defendants respectfully request that their deadline to answer or otherwise respond to the complaint be set for (or, in the alternative, be extended to) December 20, 2024.

9. By that date, Defendants are hopeful that the parties will have reached a broader agreement on a schedule for further proceedings in this case (perhaps including further relief with respect to the answer deadline). *Cf.* Joint Scheduling Motion, ECF No. 33 (“Because this case involves the facial constitutionality of a federal statute, the parties further respectfully request that the Court dispense with Defendants’ obligation to file an Answer to the Complaint.”); Order, ECF No. 34. The parties have begun those conversations, but additional time is necessary.

10. The additional time will also allow the Solicitor General time to make a decision regarding the filing of a petition for a writ of certiorari before the need for additional filings in district court—filings that would be unnecessary if the government sought further review and prevailed.

11. Finally, in addition, Plaintiffs filed a lengthy complaint, with 148 numbered paragraphs, many of which contain complex factual assertions about matters of nationwide significance. *See*

generally Compl., ECF No. 1. Accordingly, even setting aside the other issues above, Defendants would require additional time to prepare their answer (or other response) to the complaint.

12. Before filing this motion, counsel for Defendants conferred with counsel for Plaintiffs, who reported that Plaintiffs consent to the relief requested in this motion.

13. For these reasons, Defendants respectfully request that their deadline to answer or otherwise respond to the complaint be set for (or, in the alternative, be extended to) December 20, 2024.

Date: November 21, 2024

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

JAIME ESPARZA
United States Attorney

MICHELLE R. BENNETT
Assistant Branch Director

/s/ Stephen M. Pezzi
STEPHEN M. PEZZI
Senior Trial Counsel
ALEXANDER V. SVERDLOV
CHRISTINE L. COOGLE
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, D.C. 20005
(202) 305-8576
stephen.pezzi@usdoj.gov

Counsel for Defendants