

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

FAULK COMPANY, INC.,)	
)	
Plaintiff-Appellee)	
)	
v.)	No. 25-10773
)	
ROBERT F. KENNEDY, JR., in his official)	
capacity as Secretary of Health and)	
Human Services, U.S. DEPARTMENT OF)	
HEALTH AND HUMAN SERVICES and)	
its subcomponent CENTERS FOR)	
MEDICARE AND MEDICAID SERVICES,)	
MEHMET OZ, in his official capacity as)	
Administrator of the Centers for Medicare)	
and Medicaid Services, and)	
UNITED STATES OF AMERICA,)	
)	
Defendants-Appellants)	

**APPELLANTS' UNOPPOSED MOTION FOR AN
ADDITIONAL 30-DAY EXTENSION OF TIME
TO FILE THEIR OPENING BRIEF**

The defendants-appellants United States, the U.S. Department of Health and Human Services (“HHS”) and its subcomponent the Centers for Medicare and Medicaid Services (“CMMS”), the Secretary of HHS, and the Administrator of CMMS (collectively, “the Government”) respectfully request an additional 30-day (level 2) extension of time,

from September 24, 2025, until October 24, 2025, within which to file their opening brief. This is the Government's second request for an extension of time in this appeal. Counsel for the plaintiff-appellee Faulk Company, Inc. ("Faulk"), Taylor Winn, has indicated that Faulk does not oppose the Government's requested extension. As good cause for granting this motion, counsel for the Government states as follows:

1. I am an attorney employed in the Appellate Section of the Tax Division of the United States Department of Justice. In that capacity, I have been assigned the primary responsibility for representing the interests of the Government in the above-captioned appeal.
2. The Government's opening brief is currently due on September 24, 2025, following a 30-day (level 1) extension.
3. Despite exercising diligence, I am unable to file the Government's opening brief by the current deadline.
4. The Government's appeal may proceed only if authorized by the Solicitor General, after consideration of the views of the Tax Division of the Department of Justice, the views of the Chief Counsel, Internal Revenue Service, and the views of the U.S. Department of

Health and Human Services. *See* 28 C.F.R. Part O, Subpart D, §0.20(b). Accordingly, the Solicitor General's authorization must be obtained before the Government can file its opening brief. Although that process is underway, the Solicitor General has not yet made a decision whether to authorize an appeal in this case. If authorization is denied, the Government will dismiss its appeal. Alternatively, if authorization for the appeal is given, it will be necessary to take into account the Solicitor General's views in drafting the Government's brief.

5. Furthermore, this suit involves the interplay between a provision of the Internal Revenue Code (26 U.S.C. §4980H) and the Patient Protection and Affordable Care Act, P.L. 111-148, 124 Stat. 119 (Mar. 23, 2010). In its opinion denying Faulk's motion for attorneys' fees, the District Court characterized the correct interpretation of those statutes as "a matter of first impression" that presented "interpretive challenges." (Doc. 50, p. 3; *see also* Doc. 38, pp. 9 & 11 (characterizing the statutes as "far from perfectly drafted" and acknowledging that "its ruling is not the only possible interpretation of the statutes").) The process of reviewing the record, conducting research, and incorporating

the foregoing into a draft of the Government's opening brief has taken more time than I originally anticipated.

6. In addition to working on the Government's opening brief in this case, I needed to prepare for and present oral argument in *Standard Ins. Co., et al. v. Internal Revenue Serv., et al.*, No. 24-2094 (10th Cir.), on September 9, 2025.

7. I have also consulted on and reviewed proposed filings in the following cases: *Jeffrey J. Morella, et al. v. United States*, Nos. 4:25-cv-109 and 4:25-cv-818 (N.D. Ohio), *Drake Plastics Ltd. Co., et al. v. Internal Revenue Serv., et al.*, No. 4:25-cv-2570 (S.D. Tex.), *Center for Taxpayer Rights, et al. v. Internal Revenue Serv., et al.*, No. 1:25-cv-457 (D.D.C.), and *Supreme Linen Servs., Inc. v. United States*, No. 1:25-cv-20723 (S.D. Fla.).

8. Moreover, during the period covered by the requested extension, I must prepare for and present oral argument in *Centro de Trabajadores Unidos, et al. v. Scott Bessent, et al.*, No. 25-5181 (D.C. Cir.), on October 3, 2025.

9. The Tax Division's Appellate Section has lost approximately 40% of its attorneys since February due to retirement, resignation, or

temporary transfer. Thus, it would be difficult to transfer this case to a different attorney.

10. In accordance with the standard procedures of the Department of Justice, Tax Division, my draft of the Government's opening brief, like all other briefs filed by our office, must be reviewed by a supervisory attorney before it is filed. In addition, the Government's brief must be reviewed by attorneys employed in the IRS Chief Counsel's Office and the U.S. Department of Health and Human Services.

11. Accordingly, the requested extension is necessary to allow the Solicitor General to decide whether to authorize an appeal in this case; provide me with adequate time to review the record, research the issues, and prepare a draft of the Government's opening brief that will be of maximum assistance to the Court; and have the draft undergo the review process described above.

WHEREFORE, the Government respectfully requests that the Court grant this unopposed motion for an additional 30-day extension of time, until October 24, 2025, to file its opening brief.

Respectfully submitted,

/s/ Geoffrey J. Klimas

GEOFFREY J. KLIMAS

Attorney

Tax Division

Department of Justice

Post Office Box 502

Washington, D.C. 20044

(202) 307-6346

Counsel for the Appellants

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UNITED STATES OF AMERICA,)	
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Defendants-Appellants)	
)	

DECLARATION

I, Geoffrey J. Klimas, of the United States Department of Justice,
Washington, D.C., state as follows:

1. I am an attorney employed in the Appellate Section of the
Tax Division, United States Department of Justice. In that capacity, I
have been assigned the primary responsibility for handling the above-
captioned appeal on behalf of the Government.

2. The facts recited in the foregoing motion are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed on this 11th day of September, 2025, at Washington, D.C.

/s/ Geoffrey J. Klimas
GEOFFREY J. KLIMAS
Attorney

CERTIFICATE OF COMPLIANCE

With Type-Volume Limitation, Typeface Requirements,
and Type Style Requirements

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d) because:

☒ this motion contains 1,124 words, excluding the parts thereof exempted by Fed. R. App. P. 32(a)(7)(B)(iii), *or*

☐ this motion uses a monospaced typeface and contains [*state the number of*] lines of text, excluding the parts thereof exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

☒ this motion has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Century Schoolbook, *or*

☐ this motion has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

(s) /s/ Geoffrey J. Klimas

Attorney for the Appellants

Dated: September 11, 2025