

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REPUBLIC OF THE MARSHALL ISLANDS, a
non-nuclear-weapon State party to the Treaty
on the Non Proliferation of Nuclear Weapons,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA; et al,

Defendants-Appellees.

No. 15-15636

**UNOPPOSED MOTION OF THE FEDERAL APPELLEES FOR A
FORTY-FIVE DAY EXTENSION OF TIME TO FILE RESPONSE BRIEF**

Pursuant to Federal Rules of Appellate Procedure 26 and 27, and Ninth Circuit Rule 31-2.2(b), the federal defendants hereby respectfully move for a 45-day extension of time, to and including September 28, 2015 (because the forty-fifth day, September 27, is a Sunday), within which to file the response brief of the federal defendants. In support of this motion, counsel states as follows:

1. Pursuant to the briefing schedule issued on April 2, 2015, the plaintiff-appellant filed its opening brief in this case on July 13, 2015, and the federal defendants' response brief is due on August 13, 2015. Neither party has requested any prior extensions.

2. Counsel for the United States will be unable to prepare the response brief by August 13, 2015 for the following reasons. Plaintiff alleges that the United States has failed to carry out its obligation under the Treaty on the Non-Proliferation of Nuclear Weapons to negotiate in good faith on nuclear disarmament. As relief, plaintiff seeks a declaration that the United States has breached its treaty obligations, and an injunction directing the United States to convene multilateral disarmament negotiations within one year from the district court's judgment. The district court dismissed the suit on the grounds that plaintiff lacks Article III standing and that the claim for relief raises a fundamentally non-justiciable political question.

Preparation of the government's brief will require extensive consultation with the State Department and with components within the

Department of Justice. Sushma Soni, the United States Department of Justice attorney who has primary responsibility for preparing the government's brief in this case, did not handle this case in district court and will require additional time to familiarize herself with the record in this case. Additional time is also required to address the issues raised in the six separate amicus briefs filed in support of plaintiff's appeal by (1) Tri-Valley CAREs, (2) Western States Legal Foundation, (3) United Electrical, Radio and Machine Workers of America, (4) Global Justice Center, (5) Lawyers Committee on Nuclear Policy, and (6) Physicians for Social Responsibility. On July 24, 2015, Nuclear Watch New Mexico has sought a second extension of time, until August 7, 2015, to file its own amicus brief supporting plaintiff. That date is six days before the current filing date for the federal defendants' response brief.

During this period, Ms. Soni has also been responsible for preparing draft briefs in opposition to petitions for a writ of *certiorari* in *Reveles v. Napolitano*, No. 14-1343 (S. Ct.), and *Davila v. Haynes*, No. 14-1394 (S. Ct.);

and a reply brief for the United States in *Mantiplay v. United States*, No. 14-31349 (5th Cir.) (filed July 20, 2015).

3. Government counsel therefore respectfully request a 45-day extension of time, to and including September 28, 2015, to prepare the response brief. A full 45 days is necessary because Ms. Soni is also responsible for preparing the United States' response brief in *Equity Trust v. McDonald*, No. 15-60355 (5th Cir.) (due August 19, 2015). In addition, Ms. Soni will be out of the office on previously scheduled leave from August 22, 2015 through September 7, 2015.

4. A 45-day extension should not delay resolution of the case, and counsel will exercise diligence in preparing the brief in the time requested.

5. Counsel for the plaintiff, Laurie Ashton, stated that she does not object to this extension request.

CONCLUSION

For the foregoing reasons, we respectfully ask that the Court extend the filing date for the federal defendants' response brief by 45 days, to and including September 28, 2015.

Respectfully submitted,

DOUGLAS N. LETTER
(202) 514-3602

/s/ Sushma Soni

SUSHMA SONI

(202) 514-4331

Attorneys, Appellate Staff

Civil Division

U.S. Department of Justice

950 Pennsylvania Ave., N.W.

Room 7218

Washington, D.C. 20530

AUGUST 2014

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2015, I electronically filed the foregoing motion with the Clerk of the Court by using the appellate CM/ECF system.

I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system

/s/ Sushma Soni
SUSHMA SONI