

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN HOSPITAL ASSOCIATION,  
*et al.*,

*Plaintiffs-Appellants,*

—v—

ERIC D. HARGAN, *et al.*,

*Defendants-Appellees.*

**Case No. 18-5004**

**REPLY IN SUPPORT OF EMERGENCY MOTION TO EXPEDITE**

The Government-Appellees do not object to expedition but seek 60 days from the filing of Plaintiffs-Appellants' opening brief to file their responsive brief, which is 30 days more than the time provided by the Federal Rules of Appellate Procedure. *See* FRAP 31(a). The Government has not adequately justified its request for additional time in this case, which plainly satisfies the standard for expedition. In considering the Government's request, Plaintiffs-Appellants urge the Court to establish a schedule that does not jeopardize this Court's ability to hear oral argument in May, prior to the summer recess. Otherwise the next opportunity for argument would be in September, which would likely significantly delay the resolution of this action.

Plaintiffs have previously demonstrated that the reimbursement payments in dispute enable the Hospital Plaintiffs and the members of the Association Plaintiffs to provide essential health services to their communities, including to their vulnerable, poor and underserved patients, leading to serious and potentially fatal health consequences. These services include oncology services, services for immediate stroke treatment and other equally vital services. Thus the continued reduction in reimbursements (approximately \$1.6 billion according to the Department of Health and Human Services) will jeopardize essential health programs that are currently paid for with the funds at issue. *See* Emergency Motion to Expedite, pp. 5-6.

To the extent that a period of time less than 60 days for the filing of the Government's brief is necessary to allow for oral argument in May, the Government has offered no reason why it should not be able to meet this schedule. The Department of Health and Human Services thoroughly addressed the legal issues in this case in its final rule, issued on November 1, 2017. *See* 82 Fed. Reg. 52,356, 52,499-52,502 (Nov. 13, 2017). The Government acknowledges in its Response to Motion to Expedite (p. 2), that this case "resulted in extensive briefing" below. In fact, the Government filed its motion to dismiss and opposition to Plaintiffs' motion for preliminary injunction 17 days after Plaintiffs' motion was filed. In these circumstances, 30 days for filing a responsive brief is adequate.

Accordingly, the Court should grant Plaintiffs-Appellants' Emergency Motion to Expedite, and establish a briefing schedule that would allow the Court to schedule oral argument in May 2018.

Respectfully Submitted,

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**CERTIFICATE OF COMPLIANCE**

This Reply in Support of Emergency Motion to Expedite complies with the type-volume limitation of FRAP 27(d)(2) and 32(c) because, excluding the parts of the document exempted by FRAP 32(f), this document contains 374 words. This document also complies with the typeface and type-style requirements of FRAP 32(a)(5) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point font size and Times New Roman type style.

/s/ Carlos T. Angulo

Carlos T. Angulo

*Attorney for the Plaintiffs-Appellants*

**CERTIFICATE OF SERVICE**

I hereby certify that on January 22, 2018, I electronically filed the foregoing using the court's CM/ECF system which will send notification of such filing to all filers registered in this case. I also hereby certify that I caused four copies to be hand-delivered to the Clerk's Office.

/s/ Carlos T. Angulo

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