

**No. 16-2481**

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT

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DAVID LITTLEFIELD; MICHELLE LITTLEFIELD; TRACY ACORD;  
DEBORAH CANARY; VERONICA CASEY; PATRICIA COLBERT; VIVIAN  
COURCY; DONNA DEFARIA; KIM DORSEY; FRANCIS LAGACE; WILL  
COURCY; ANTONIO DEFARIA; KELLY DORSEY; JILL LAGACE; DAVID  
LEWRY; KATHLEEN LEWRY; ROBERT LINCOLN; CHRISTINA  
MCMAHON; CAROL MURPHY; DOROTHY PEIRCE; DAVID PURDY;  
LOUISE SILVIA; FRANCIS CANARY, JR.; MICHELLE LEWRY; RICHARD  
LEWRY;

Plaintiffs-Appellees,

v.

U.S. DEPARTMENT OF THE INTERIOR; RYAN ZINKE, in his official capacity  
as Secretary – U.S. Department of the Interior; BUREAU OF INDIAN AFFAIRS,  
U.S. Department of the Interior; MICHAEL S. BLACK, Acting Assistant  
Secretary, Indian Affairs, U.S. Department of the Interior; UNITED STATES;

Defendants-Appellants,

MASHPEE WAMPANOAG TRIBE;

Defendant.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

**APPELLANTS' UNOPPOSED MOTION FOR A 45-DAY EXTENSION OF  
TIME TO FILE THE OPENING BRIEF**

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Pursuant to Federal Rule of Appellate Procedure 26(b), the federal appellants (collectively, “Interior”) respectfully move for a 45-day extension of time to file their opening brief, from March 13, 2017, to April 27, 2017. Interior has not previously sought an extension for this brief. Both Plaintiffs-Appellees and Defendant Mashpee Wampanoag Tribe consent to the requested extension. The reasons for the requested extension are set forth below.

1. This appeal, No. 16-2481, is taken by Interior from a district-court decision deeming unlawful Interior’s decision to take certain parcels of land in trust for the Mashpee Wampanoag Tribe (the “Tribe”). The Tribe filed its own appeal from that decision, which has been designated No. 16-2484. On January 30, 2017, this Court consolidated the two appeals and set identical briefing schedules in the cases, ordering that Interior file its opening brief in No. 16-2481 and the Tribe file its opening brief in No. 16-2484 on March 13, 2017.

2. On March 3, 2017, this Court granted the Tribe’s motion for a 45-day extension of the time to file the Tribe’s opening brief in No. 16-2484. The Tribe’s opening brief in No. 16-2484 is now due April 27, 2017.

3. Interior now seeks a corresponding 45-day extension of time, up to and including April 27, 2017, to file the opening brief in No. 16-2481. This extension will keep the briefing schedule in the two consolidated appeals consistent, to the benefit of the parties and this Court.

4. The requested extension is also needed because the undersigned attorney, who represents Interior in this matter, is responsible for several other pending matters that have required substantial time and attention since this Court issued the briefing schedule, and that will continue to require substantial time and attention between now and the current deadline for filing the opening brief. These matters include:

a. Counsel was responsible for drafting and filing a response brief for the federal appellees in *Nelson v. Reynolds*, D.C. Cir. No. 16-5282. The appellant's opening brief in that matter was filed on February 1, 2017, two days after this Court set the briefing schedule in this appeal, and the federal appellees' brief was due 30 days later, on March 3, 2017.

b. Counsel is also responsible for representing the federal appellees at oral argument in *Mishewal Wappo Tribe of Alexander Valley v. Zinke*, Ninth Cir. No. 15-15993. Counsel has been ordered to deliver argument in that matter in San Francisco, CA, on March 13, 2013, the same day that the opening brief in this appeal is currently due.

5. The United States cannot pursue an affirmative appeal without authorization from the Solicitor General. *See* 28 C.F.R. § 0.20(b). At the present time, the Acting Solicitor General has not provided authorization for this appeal or

direction on the positions of federal appellants.<sup>1</sup> An extension of time is required to complete this coordination with the Office of the Solicitor General.

6. Undersigned counsel for Interior must also coordinate the drafting of the opening brief with the responsible officials of the Department of the Interior, as well as with all interested components within the Environment & Natural Resources Division (“ENRD”) of the United States Department of Justice. An extension of time is required to complete this coordination with Interior and within ENRD.

9. Undersigned counsel will continue to exercise diligence in the handling of this matter.

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For all these reasons, Interior respectfully requests that the Court grant this unopposed motion for an extension of 45 days, to and including April 27, 2017, for Interior to file its opening brief.

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<sup>1</sup> It is well recognized that the government may file a protective notice of appeal, as it did in this case, when the time for appeal would have expired prior to a decision by the Solicitor General. See *United States v. Hill*, 19 F.3d 984, 991 n.6 (5th Cir. 1994).

Respectfully submitted,

s/ Rachel Heron

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March 6, 2017

DJ No. 90-6-24-01113

### **CERTIFICATE OF SERVICE**

I hereby certify that on March 6, 2017, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the First Circuit using the appellate CM/ECF system, and that all participants in this case were served through that system.

s/ Rachel Heron  
RACHEL HERON