

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

ROSEBUD SIOUX TRIBE,

Plaintiff-Appellee,

v.

UNITED STATES OF AMERICA, ET AL.,

Defendants-Appellants.

No. 20-2062

**APPELLANTS' UNOPPOSED MOTION FOR EXTENSION OF TIME TO
FILE PETITION FOR REHEARING AND/OR REHEARING EN BANC**

With the consent of plaintiff-appellee Rosebud Sioux Tribe, defendants-appellants United States of America, et al., hereby move for an extension of thirty (30) days, to and including November 12, 2021, to file a petition for rehearing and/or rehearing en banc in the above-captioned case. In support of this motion, defendants state the following:

1. The Court's Opinion and Judgment were filed on August 25, 2021, and any petition must be filed within 45 days of that date. Fed. R. App. P. 40(a)(1). Accordingly, pursuant to Fed. R. App. P. 26(a)(3), the petition is currently due on October 12, 2021,¹ no previous extension having been sought or granted.

¹ The 45th day from the date of the Opinion and Judgment falls on a Saturday, and the next weekday, Monday, October 11, 2021, is a federal holiday.

2. Responsibility for the preparation of the petition at the Department of Justice is assigned to undersigned counsel, John S. Koppel, Attorney, Appellate Staff, Civil Division, U.S. Department of Justice, and Daniel Tenny, Assistant Director, of the same office.

3. On August 25, 2021, a divided panel of this Court affirmed the judgment of the district court, holding that the United States has a duty under the 1868 Treaty of Fort Laramie, as reinforced by the Snyder Act, 25 U.S.C. § 13, and the Indian Health Care Improvement Act, 25 U.S.C. §§ 1601-83, to provide competent physician-led health care to the Rosebud Sioux Tribe and its members.

4. All government petitions for rehearing en banc must be authorized by the Solicitor General of the United States. *See* 28 C.F.R. § 0.20(b). The authorization process requires extensive deliberations and consultation among the Office of the Solicitor General, other components of the Department of Justice, and the Department of Health and Human Services. That process is ongoing. In addition, if the Solicitor General authorizes the filing of a petition for rehearing en banc, time will be required for undersigned counsel to prepare the petition, again in consultation with the interested parties.

The 30th day from October 12, 2021, is November 11, 2021, which is also a federal holiday.

5. Timothy W. Billion, Esq., counsel for plaintiff, has authorized us to state that plaintiff consents to this motion.

CONCLUSION

For the foregoing reasons, the time to file a petition for rehearing and/or rehearing en banc should be extended to and including November 12, 2021.

Respectfully submitted,

/s/ Daniel Tenny

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SEPTEMBER 2021

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(a) because it contains 396 words (excluding exempted matter) according to the count of Microsoft Word, and is printed in Times New Roman 14-point font.

/s/ John S. Koppel
JOHN S. KOPPEL

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2021, I electronically filed the foregoing Motion with the Clerk of the Court by using the appellate CM/ECF system.

I further 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/ John S. Koppel
JOHN S. KOPPEL