

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 A FURTHER 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 additional extension of thirty (30) days, to and including December 13, 2021 (December 12 being a Sunday), 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 was due to 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 was initially due on October 12, 2021; by Order of October 4, 2021, the Court granted

defendants' unopposed request for a 30-day extension, to and including November 12, 2021.<sup>1</sup>

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,

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<sup>1</sup> The 45th day from the date of the Opinion and Judgment fell on a Saturday, and the next weekday, Monday, October 11, 2021, was a federal holiday. The 30th day from October 12, 2021, is November 11, 2021, which is also a federal holiday.

time will be required for undersigned counsel to prepare the petition, again in consultation with the interested parties.

5. In addition to the instant matter, Messrs. Koppel and Tenny are currently tasked with several matters that require their attention in the same time period. They are responsible for the preparation and filing of defendants-appellees' brief in *San Carlos Apache Tribe v. Becerra, et al.*, No. 21-15641 (9th Cir.), due as extended on November 19, 2021. They are also responsible for filing an opposition to petition for rehearing or rehearing en banc in the D.C. Circuit in *Cook Inlet Tribal Council, Inc. v. Dotomain*, Nos. 19-5005 & 20-5192 (D.C. Cir.), which is currently due on November 12, 2021, but as to which the government is also seeking an extension.

Mr. Tenny also has supervisory responsibility for several other cases that will require attention during the relevant period. Mr. Tenny is supervising a family of cases involving challenges to Transportation Security Administration Security Directives, in which several emergency motions have been filed that have required Mr. Tenny's attention in preparing the government's response, and more emergency motions may be forthcoming. *See Faris v. TSA*, No. 21-3951 (6th Cir.) (petition filed Oct. 19, 2021; emergency motion filed Oct. 27, 2021, denied Oct. 29, 2021); *Andreadakis v. TSA*, No. 21-2173 (4th Cir.) (petition filed Oct. 19, 2021); *Bonin v. TSA*, No. 21-60808 (5th Cir.) (petition filed Oct. 19, 2021);

emergency motion filed Oct. 28, 2021, denied Oct. 29, 2021); *Eades v. TSA*, No. 21-3362 (8th Cir.) (petition filed Oct. 19, 2021); *Wall v. TSA*, No. 21-13619 (11th Cir.) (petition filed Oct. 19, 2021; emergency motion filed Oct. 29, 2021, denied Oct. 29, 2021); *Abadi v. TSA*, No. 21-2692 (2d Cir.) (petition filed Oct. 19, 2021). Mr. Tenny will also be responsible for reviewing the brief of federal defendants-appellees Alejandro Mayorkas, et al., in *Cook County v. Texas*, No. 21-2561 (7th Cir.), due on December 3, 2021.

6. Furthermore, the occurrence of the federal Veterans Day and Thanksgiving Day holidays is likely to delay the necessary intra-government consultation regarding the government's response here, due to the anticipated absence of involved personnel. For example, Mr. Koppel is scheduled to be out of the office on "use-or-lose" annual leave from November 22, 2021 thru November 26, 2021.

7. 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 further extended for thirty (30) days, to and including December 13, 2021.

Respectfully submitted,

/s/ Daniel Tenny

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NOVEMBER 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 785 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 November 2, 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