



**U.S. Department of Justice**

*United States Attorney  
Eastern District of New York*

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July 7, 2021

**BY ECF**

The Honorable Marcia M. Henry  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *Bing Guan, et al. v. Alejandro Mayorkas, et al.*,  
Civ. No. 19-CV-6570 (Chen, J.) (Henry, M.J.) (E.D.N.Y.)

Dear Judge Henry:

This Office represents Defendants Alejandro Mayorkas, Troy Miller, and Tae Johnson (collectively, “Defendants”) in the above-referenced action commenced by Plaintiffs Bing Guan, Go Nakamura, Mark Abramson, Kitra Cahana, and Ariana Drehsler (collectively, “Plaintiffs”). Defendants respectfully request a 60-day extension of time, from July 12 to September 10, 2021, to serve their initial disclosures. In light of this request, Defendants further respectfully request a corresponding extension of time, from July 26 to September 10, 2021, for the commencement of discovery. Plaintiffs do not consent to this request, and have stated that they will oppose this motion by Friday, July 9, 2021.

By way of background, Plaintiffs allege a First Amendment violation in connection with their referral to secondary inspection and subsequent questioning at various points of entry by Defendants upon their return to the United States. On April 21, 2021, counsel for the parties appeared before the Court for an initial conference in this case. *See* Minute Order (Apr. 21, 2021). The parties’ initial disclosures are due to be served by July 12, 2021. *See* Order (June 11, 2021). The parties must, however, file a protective order governing discovery in this case prior to serving initial disclosures. *See id.*; Dkt. 46.

The 60-day extension of time, from July 12, 2021 to September 10, 2021 to serve Defendants’ initial disclosures is necessary because Defendants need additional time to review and finalize the protective order for this case, which will need to be filed and endorsed by the Court prior to the exchange of initial disclosures.

Defendants spent several weeks carefully crafting a proposed protective order that was internally vetted by this Office and the U.S. Department of Homeland Security (“DHS”). On May 24, 2021, Defendants provided this proposed protective order to Plaintiffs. On June 4, 2021, Plaintiffs – rather than commenting on Defendants’ proposed protective order – proposed an alternative protective order, which differed markedly in terms of structure and content from Defendants’ proposed protective order (to wit: Plaintiffs’ proposed protective order was two pages

longer than Defendants' proposed order, omitted provisions that Defendants believe to be integral, and reworded paragraphs and sections that were contained in Defendants' protective order). Plaintiffs specifically noted their objection to an "Attorneys Eyes Only" category of documents, but provided scant reasoning for rejecting Defendants' protective order outright instead of making edits to the document sent to them.

After extensive review of Plaintiffs' proposed protective order, on July 1, 2021, Defendants asked Plaintiffs for additional information about the changes made to Defendants' protective order, and requested their consent for an extension of time to finalize the protective order. Defendants noted that relying on Plaintiffs' version as the basis of the protective order would unnecessarily delay matters, especially given the various layers of review necessary by the Government.

Defendants contacted Plaintiffs' counsel again on July 6, 2021 regarding the prior inquiry; Plaintiffs responded to this email to state that they would take a position on an extension by the following day, but otherwise failed to provide a substantive response to Defendants' inquiries about the changes to the protective order. The next day (July 7, 2021), Plaintiffs informed Defendants that they would not consent to an extension of time.

Notwithstanding the above, any extension of time would also enable the parties to continue discussions regarding an out-of-court resolution of this case, without incurring the significant resources and expenditure involved with discovery in this case.

Should the Court be inclined to grant Defendants' request for this extension to serve their initial disclosures, Defendants further respectfully request the following amendments to the case management plan:

1. Discovery shall not commence before September 10, 2021.
2. The parties shall make required Rule 26(a)(2) disclosures with respect to
  - a. Expert witnesses on or before: December 27, 2021.
  - b. Rebuttal expert witnesses on or before: January 25, 2022.
3. All discovery, including deposition of experts, shall be completed on or before March 28, 2022.
4. Final Pre-Trial Conference, which is currently scheduled for February 2, 2022 at 10:00 am, to be scheduled on a date convenient for the Court on or after March 28, 2022.

This is the third request for an extension of time to serve initial disclosures in this case. *See* Dkts. 44, 46. The Court has granted the parties' previous requests for an extension of time. *See* Order (May 27, 2021); Order (June 11, 2021). This request does not impact the August 4, 2021 conference before Your Honor.

Defendants thank the Court for its consideration of this request.

Respectfully submitted,

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