

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL NURSES UNITED, et al.,

Plaintiffs,

v.

ROBERT F. KENNEDY JR., in his
official capacity as Secretary of Health
and Human Services; and U.S.
DEPARTMENT OF HEALTH AND
HUMAN SERVICES,

Defendants.

Civil Action No. 1:25-cv-1538-TNM

**PLAINTIFFS' RESPONSE TO DEFENDANTS'
MOTION FOR AN EXTENSION OF TIME TO FILE A REPLY
IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

Defendants Robert F. Kennedy Jr. and the U.S. Department of Health and Human Services have a filed a motion requesting a 44-day extension, from September 10 to October 24, to file their reply in support of Defendants' motion to dismiss Plaintiffs' First Amended Complaint, *see* ECF 31. For the reasons set forth below, this Court should deny Defendants' request. Plaintiffs would not oppose an extension of 14 days, to September 24.

BACKGROUND

Plaintiffs—a group of labor unions, nonprofit organizations, and manufacturers that rely on the work of the National Institute for Occupational Safety and Health (NIOSH)—filed this lawsuit against Defendants Robert F. Kennedy Jr., in his official capacity as Secretary of Health and Human Services, and the U.S. Department of Health and Human Services on May 14, 2025, challenging actions that Defendants have taken to shut down critical components of NIOSH and render the agency incapable of fulfilling its statutory duties. ECF 1. Plaintiffs served their original

complaint on May 27, *see* ECF 25, triggering an answer deadline of July 28. *See* Fed. R. Civ. P. 12(a)(2). On July 2, Plaintiffs filed a First Amended Complaint to account for intervening factual developments. ECF 26. Plaintiffs served the First Amended Complaint that same day, leaving the July 28 answer deadline unchanged. *See* Fed. R. Civ. P. 15(a)(3).

On July 22, Defendants moved for a 30-day extension of time to respond to the complaint. ECF 28. According to Defendants, they had not assigned an attorney to the case until the previous afternoon. *Id.* at 1. Plaintiffs filed a response that emphasized the grave and mounting harms stemming from NIOSH's ongoing inability to function. ECF 29. Given the consequent need for this case to move expeditiously, Plaintiffs asked this Court either to deny the motion or to grant it but order Defendants to produce the administrative record by a date certain so that Plaintiffs could move forward in preparing a motion for summary judgment. *Id.* This Court granted Defendants' motion in part, allowing them a 23-day extension of time to respond to the complaint.

On August 20, Defendants filed a motion to dismiss the First Amended Complaint. Plaintiffs filed their opposition to the motion 14 days later, on September 3, in accordance with Local Rule 7(b). Under Local Rule 7(d), Defendants' reply, if any, is due on September 10. Defendants now seek a 44-day extension, to October 24, to file their reply.

ARGUMENT

Plaintiffs appreciate the need for professional courtesy with respect to extensions, *see* ECF 29 at 2, and they have accordingly informed counsel for Defendants that they do not oppose an extension of up to 14 days. At the same time, Plaintiffs are keenly aware that the longer NIOSH's core functions are suspended, the greater the risk of harm to vulnerable American workers in high-risk occupations, and the greater the difficulty Defendants will face in restoring NIOSH's functionality if Plaintiffs are ultimately successful in this case. *See id.* at 2–3.

Defendants contend that Plaintiffs will not be prejudiced by additional delay because “further implementation of reductions in force has been enjoined with respect to NIOSH.” ECF 34 at 2 (citing *New York v. Kennedy*, --- F. Supp. 3d ---, 2025 WL 1803260 (D.R.I. July 1, 2025)). As Plaintiffs have alleged, however, even under that preliminary injunction, the vast majority of NIOSH employees who are subject to RIF notices remain on administrative leave and are not performing their work functions, to Plaintiffs’ detriment. *See* ECF 26 at ¶ 40. The injunction therefore is not ameliorating the harm alleged in the First Amended Complaint.

Defendants seek a total of 51 days (7 days permitted by Local Rule 7(d), plus a 44-day extension) to file a reply in support of their motion to dismiss. In light of the harms at issue and the prejudice caused by delay, Plaintiffs submit that an extension longer than 14 days would be unreasonable. Moreover, given that Defendants were able to prepare a motion to dismiss in 30 days, *see* ECF 29 at 1, 21 days (7 days permitted by Local Rule 7(d), plus a 14-day extension) should be sufficient for them to file a reply.

CONCLUSION

This Court should deny Defendants’ request for a 44-day extension of time to file a reply in support of their motion to dismiss Plaintiffs’ First Amended Complaint and grant an extension of 14 days.

Dated: September 4, 2025

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