25–2090

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VICTOR CRUZ GAMEZ, et al.,

Plaintiffs-Appellees,

v.

TODD M. LYONS, et al.,

Defendants-Appellants.

RESPONDENT'S UNOPPOSED MOTION FOR A 30-DAY EXTENSION OF TIME TO FILE THE OPENING BRIEF

Defendants-Appellants respectfully move this Court for an extension of time of thirty (30) days to file the opening brief in this case in accordance with Rule 26(b) of the Federal Rules of Appellate Procedure and Circuit Rule 31-2.2. Appellants' brief is currently due on June 3, 2026. If the Court grants this extension, Appellants' opening brief would be due on July 3, 2026. As set forth in the attached declaration, a decision whether or not to appeal must be made by the Office of the Solicitor General. *See* 28 C.F.R. § 0.20(b). On April 6, 2026,

Appellants filed a protective notice of appeal of the district court's February 4, 2026 order in accordance with Justice Manual § 2-2.132 ("[I]f the time for appeal or cross-appeal is about to expire . . . and the United States Attorney has not received notice from the appellate section of the appropriate division of the Department as to whether an appeal is to be taken, a 'protective' notice of appeal must be filed . . . in order to preserve the government's right to appeal.").

The process to determine whether an appeal is appropriate remains ongoing. Main Justice has advised undersigned counsel that the Solicitor General has not made a decision and that the Government will need a minimum of 30 additional days in which to make a decision on whether to appeal and to draft the opening brief, if appeal is pursued.

Respectfully submitted,

BRETT A. SHUMATE
Assistant Attorney General
Civil Division

ERICA B. MILES
Assistant Director
Office of Immigration Litigation

/s/ *Gregory A. Pennington, Jr.*
Gregory A. Pennington, Jr.

Trial Attorney
Office of Immigration Litigation
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Dated: May 18, 2026

Attorneys for Respondent

25–2090

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

VICTOR CRUZ GAMEZ, et al.,

Plaintiffs-Appellees,

v.

TODD M. LYONS, et al.,

Defendants-Appellants.

DECLARATION OF GREG PENNINGTON

I, Greg Pennington, hereby declare as follows:

1. I am an attorney with the Office of Immigration Litigation, Civil Division, United States Department of Justice, Washington D.C., and represent Defendants-Appellants in the instant matter.
2. Defendants-Appellants' opening brief was first due on May 4, 2026. ACMS #2.
3. On April 24, 2026, Defendants-Appellants filed a motion for extension of time to file opening brief. ACMS # 5. That motion was granted on May 5, 2026, extending the deadline to June 3, 2026. ACMS # 6.

4. Defendants-Appellants request an additional thirty (30) days to file the opening brief. Appellants' requested opening brief deadline would be July 3, 2026.

5. A decision whether or not to appeal must be made by the Office of the Solicitor General. *See* 28 C.F.R. § 0.20(b). On April 6, 2026, Appellants filed a protective notice of appeal of the district court's order dated February 4, 2026, in accordance with Justice Manual § 2-2.132 ("[I]f the time for appeal or cross-appeal is about to expire . . . and the United States Attorney has not received notice from the appellate section of the appropriate division of the Department as to whether an appeal is to be taken, a 'protective' notice of appeal must be filed . . . in order to preserve the government's right to appeal.").

6. The process to determine whether an appeal is appropriate remains ongoing. Main Justice has advised undersigned counsel that the Solicitor General has not made a decision and that the Government will need a minimum of 30 additional days in which to make a decision on whether to appeal and to draft the opening brief, if appeal is pursued.

7. On May 15, 2026, undersigned counsel advised counsel for Plaintiffs-Appellees, who stated that Plaintiffs-Appellees do not oppose this motion.
8. Undersigned counsel for Defendants-Appellants will exercise diligence to submit their opening brief or notify this court otherwise by the deadline of the extension.
9. Undersigned counsel attests that the court reporter is not in default with regard to any designated transcripts

I DECLARE under penalty of perjury that the foregoing is true and correct.

/s/ *Gregory A. Pennington*
Gregory A. Pennington
Trial Attorney
Office of Immigration Litigation
Department of Justice, Civil Division
PO Box 878, Ben Franklin Station
Washington, D.C. 20044

Dated: May 18, 2026

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rules of Appellate Procedure 27 and 32(g) and 9th Cir. Rule 32-3(2), I certify that this motion was prepared using 14-point Century type, is proportionally spaced, and contains 931 words, which, divided by 280, is less than the 20 pages authorized in 9th Cir. Rule 27-1(1)(d).

/s/ *Gregory A. Pennington*
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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2026, I caused the foregoing document to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate ACMS system. Petitioners' counsel is a registered ACMS user and will be served electronically through that system.

/s/ *Gregory A. Pennington*
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