

DEC 14 2005

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ELOUISE PEPION COBELL, et al.,

Plaintiffs-Appellees,

v.

No. 05-5269

GALE A. NORTON,
Secretary of the Interior, et al.,

Defendants-Appellants.

**APPELLANTS' MOTION FOR A 14-DAY EXTENSION
IN WHICH TO FILE REPLY BRIEF**

For the following reasons, appellants respectfully request a 14-day extension of time, to and including Friday, January 20, 2006, in which to file the reply brief in this appeal. Under the current briefing schedule, appellees' brief is due December 23, 2005, and the reply brief is due January 6, 2006. Oral argument has not yet been scheduled.

2. This appeal arises out of a lawsuit filed in 1996 by a class of present and former holders of Individual Indian Money accounts, which are held in trust by the Department of the Interior. To date, this Court has issued six decisions arising out of this litigation. See Cobell v. Norton, 428 F.3d 1070 (D.C. Cir. 2005); Cobell v. Norton, 392 F.3d 461 (D.C. Cir. 2004); Cobell v. Norton, 391 F.3d 251 (D.C. Cir. 2004); In re Brooks, 383 F.3d 1036 (D.C. Cir. 2004); Cobell v. Norton, 334 F.3d 1128 (D.C. Cir. 2003); and Cobell v. Norton, 240 F.3d 1081 (D.C. Cir. 2001). In addition, this Court heard oral argument on

the government's mandamus petition in In re Norton, No. 03-5388, on October 14, 2005. No decision on that petition has issued.

3. In the July 12, 2005 ruling on review in this appeal, the district court directed Interior to include in all written communications with class members, regardless of subject matter, a notice declaring that "[e]vidence introduced" in this litigation shows that Interior's trust-related information "may be unreliable" and warning class members to take into account the "questionable reliability" of Interior's trust-related information before taking action on such information. 229 F.R.D. 5, 24 (D.D.C. 2005). The court declared that its July 12 ruling "represents a significant victory for the plaintiffs," and would make Indian beneficiaries aware of "the danger involved in placing any further confidence in the Department of the Interior." Id. at 23.

On the government's motion, this Court stayed the July 12 order pending appeal. The issues presented on this appeal are of great significance. In addition to the relief ordered in the July 12 ruling, this appeal also presents the government's request that the case be assigned to a different district court judge. See No. 05-5068, 9/15/05 order (referring to this panel the motion to assign the case to a different district court judge).

4. Because of the importance of the issues and the need for consultation, preparation of the government's reply brief on the present schedule posed difficulties even prior to this Court's

establishment of an expedited briefing schedule in No. 05-5388 (discussed below). Six of the fourteen days for the government's reply brief are official holidays or weekend days, and appellate attorneys on the case had previously scheduled vacations for this period. In addition, attorneys in other components and at the Department of Interior will be less available during the holiday period.

5. On December 9, 2005, this Court granted the government's motion for a stay in No. 05-5388, and also set an expedited briefing schedule under which the government's opening brief will be due on January 11. In that appeal, the government challenges an injunction requiring Interior to disconnect a broad array of computers and computer systems from the internet and from Interior's internal "intranet" connections. The injunction was issued after a 59-day evidentiary hearing on plaintiffs' charge that Interior's electronic data are at risk of corruption. Preparation of the government's brief in this period will itself be a significant undertaking. The same appellate attorneys responsible for the brief in this appeal are also responsible for the brief in No. 05-5388.

6. The requested extension will facilitate optimal presentation to this Court in both of these important appeals. Although the government believes that argument in this appeal should be heard at an early date, no date has yet been set and the extension will not interfere with an existing schedule.

7. Plaintiffs' counsel has stated that plaintiffs do not consent to this motion.

CONCLUSION

For the following reasons, appellants respectfully request a 14-day extension of time, to and including Friday, January 20, 2006, in which to file the reply brief in this appeal.

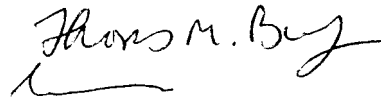
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of December, 2005, I caused copies of the foregoing motion to be sent to the Court and to the following by hand delivery:

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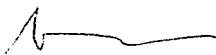
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