

## UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

## MOTION INFORMATION STATEMENT

Docket Number(s): 24-3104

Caption [use short title]

Motion for: Unopposed Motion for Extension of Time to  
File Opening Brief

Set forth below precise, complete statement of relief sought:

To extend the time to file the United States' opening brief  
from March 10, 2025, to April 24, 2025

United States of America v. eBay, Inc.

MOVING PARTY: United States

OPPOSING PARTY: eBay, Inc.



Plaintiff



Defendant



Appellant/Petitioner



Appellee/Respondent

MOVING ATTORNEY: Andrew M. Bernie

OPPOSING ATTORNEY: Jeffrey Bryan Wall

[name of attorney, with firm, address, phone number and e-mail]

U.S. Department of Justice, Environment and Natural Resources

Sullivan &amp; Cromwell LLP

Division, Appellate Section

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202-956-7500, wallj@sullcrom.com

Court- Judge/ Agency appealed from: United States District Court, Eastern District of New York, Hon. Orelia E. Merchant

## Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):



Yes



No (explain):

Opposing counsel's position on motion:



Unopposed



Opposed



Don't Know

Does opposing counsel intend to file a response:



Yes



No



Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND  
INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?



Yes



No

Has this relief been previously sought in this court?



Yes



No

Requested return date and explanation of emergency:

Is oral argument on motion requested?



Yes



No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set?



Yes



No If yes, enter date:

Signature of Moving Attorney:

/s/ Andrew M. Bernie

Date: February 21, 2025

Service by:



CM/ECF



Other [Attach proof of service]

No. 24-3104

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,  
*Plaintiff/Appellant,*

v.

EBAY, Inc.,  
*Defendant/Appellee.*

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Appeal from the United States District Court for the Eastern District of New York  
No. 23-cv-7173 (Hon. Orelia Merchant)

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF-APPELLANT  
UNITED STATES' UNOPPOSED MOTION FOR EXTENSION OF TIME  
TO FILE OPENING BRIEF**

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Counsel for Plaintiff-Appellant United States respectfully moves for a 45-day extension of time to file its opening brief, from March 10, 2025 to April 24, 2025. eBay does not oppose this motion. The United States understands and appreciates that extensions of time are highly disfavored. *See* Local Rule 27.1(f). For the following reasons, however, the United States respectfully submits that an extension is needed and that extraordinary circumstances exist that warrant an extension here. In support of its request, Appellant states as follows:

1. In the underlying case, the United States brought a civil enforcement action against eBay for the sale, offering for sale, and distribution in commerce of illegal products under the Clean Air Act (CAA), Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the Toxic Substances Control Act (TSCA), based on thousands of alleged violations of these statutes. The district court granted eBay's motion to dismiss, finding that eBay's alleged actions did not qualify for potential liability under the CAA and FIFRA, that the United States' Complaint by contrast stated a claim under TSCA, but that eBay was immune from suit on the TSCA claim under section 230 of the Communications Decency Act.

2. Both the immunity and statutory issues presented in this appeal are important and legally complex. In addition, the underlying question implicated by the appeal—whether and under what circumstances entities like eBay can be held liable for unlawful sales conducted on their platforms—is significant and potentially far-reaching.

3. In addition, the Solicitor General of the United States must authorize all appeals to the lower appellate courts in cases handled by divisions of the Department of Justice and United States Attorneys. *See* 28 C.F.R. § 0.20(b). The Acting Solicitor General has not yet determined whether to authorize this appeal. Due both to the complexity of this case and the press of other matters—including numerous decisions and matters associated with the recent change in

Administration—the government requires additional time to determine whether to authorize the appeal in this case and, if appeal is authorized, to determine what issues the United States will raise on appeal.

4. In addition, if appeal is authorized, the United States’ brief will need to be reviewed by, among others, the Office of the Solicitor General, the Front Office of the Environment and Natural Resources Division, trial counsel, the United States’ Attorney’s Office for the Eastern District of New York, the Environmental Protection Agency, and any other affected agencies and components.

5. Given all of these considerations, additional time is needed for the United States to determine whether to pursue this appeal as well as what issues (if any) to raise on appeal and—if appeal is authorized—to prepare, finalize, and file the United States’ opening brief.

6. Under the circumstances, no party will be prejudiced by the requested extension. Counsel for eBay has informed counsel for the United States that eBay does not oppose this motion. And since the United States is both the Appellant in this Court and the Plaintiff below, no other party is seeking substantive relief in this action or on appeal.

7. Consistent with Local Rule 27.1(f)(3), the United States is filing this motion as soon as practicable after it became apparent that the extraordinary circumstances discussed above necessitated an extension.

8. Consistent with Local Rule 27.1(f)(2), the United States has not filed a previous extension motion, but did file a motion to remove this case from the expedited appeals calendar, which was granted. There have been no prior orders stating that no extension would be allowed.<sup>1</sup>

9. For the foregoing reasons, the United States respectfully requests that the Court extend the time to file its opening brief from March 10, 2025, to April 24, 2025.

Respectfully submitted,

/s/ Andrew M. Bernie

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<sup>1</sup> The Court's January 15, 2025 order stated that "[a] motion to extend the time to file the brief or to seek other relief will not toll the filing date," ECF No. 30.1; *see also* Local Rule 27.1(f)(1), but did not state that no extension would be granted.